

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
TUESDAY, FEBRUARY 8, 2005

The Board consisted of:

Jonathan G. Gossels, Chairman
Stephen M. Richmond, Clerk
Elizabeth A. Taylor
Jeffrey P. Klofft
Constantine Athanas, Alternate

Notice was published in the Sudbury Town Crier on January 20 and 27, 2005, posted mailed and read at this hearing.

Mr. Gossels, Chairman, explained the requirements necessary to substantiate the granting of a special permit. He also explained that if anyone is not satisfied with the Board's decision, they have the right to appeal to Superior Court or District Court within twenty days after the decision has been filed with the Town Clerk, and that possible other appeals may exist under current law.

Sylvia Coletti was present to represent a petition for special permit to allow demolition of an existing residence and construction of a new residence on a nonconforming lot which will exceed the area of the original nonconforming structure.

Ms. Coletti noted that she was previously before this Board (Case 04-51) and at that time, after review of the plans, the Board was favorably inclined towards the proposal. However, the applicant noted that the square footage of the proposed new construction was incorrect and was higher than that which was indicated on the application.

At the suggestion of the Board, the Coletti's withdrew their application without prejudice and resubmitted it with the correct figure.

Mr. Richmond pointed out that this application proposes 3,500 s.f. rather than the 3,900 which was given as the correct amount for the previous case. He asked whether the 3,500 s.f. figure was the correct one. Ms. Coletti said it was.

Mr. Gossels provided an overview of this petition for the benefit of Mr. Athanas who was not present for Case 04-51.

There was no further input. No abutters were present. The public hearing was closed.

After deliberation the following motion was placed and seconded:

MOTION: “To grant David & Sylvia Coletti, owners of property, a Special Permit under the provisions of Section 2460 of the Zoning Bylaws, to allow demolition of an existing residence and construction of a new residence not to exceed 3,500 s.f., which will exceed the area of the original nonconforming structure, said residence to conform to all zoning setback requirements, property located at 250 Goodmans Hill Road, Residential Zone C-1, subject to the following:

1. This special permit shall lapse if construction has not begun, except for good cause, within twelve (12) months following the filing of the Special Permit approval, plus such time required to pursue or await the determination of an appeal under M.G.L., Chapter 40A, Section 17.
2. The new dwelling will be completed within twelve (12) months from issuance of a Building Permit, and the old structure will be demolished within six (6) weeks from the issuance of a Certificate of Occupancy for the new residence.”

VOTED: In favor: 5 (unanimous) Opposed: 0

REASONS: The petitioners require a Special Permit due to the nonconforming nature of the property. The Board finds that the proposed construction of a new residence, which will exceed the area of the original nonconforming structure, will not be substantially more detrimental to the neighborhood. The proposed 2-story colonial, which will replace a 1950s ranch style house, will not be intrusive to the neighborhood as it will be set further back on the lot. The design is appropriate in scale and design and will enhance the property and the neighborhood.

Jonathan G. Gossels, Chairman

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Mark Taylor and Christine Taylor were present to represent a petition for renewal of Special Permit 02-5 to conduct a summer day camp for children which is known as Camp Sewataro located at One Liberty Ledge.

Mr. Taylor said the camp has been in operation as a summer day camp since 1960. The camp operates for eight weeks during the summer accommodating 600 children with a staff of 140. The camp has operated in compliance with the conditions of the permit and no changes are being requested. There have been no complaints from the neighbors.

Mr. Gossels reviewed the existing Special permit conditions with the Taylors. They were agreeable to continuing those conditions.

Mr. Gossels explained that the Board's revised renewal period allows for a five-year renewal which he felt to be appropriate in this case.

Mr. Richmond commended the Taylors for utilizing the Boy Scouts in their yearly clean-up effort. Mr. Taylor said he expects to continue this as it benefits both parties.

There was no further input. No abutters were present. The hearing was closed.

After deliberation the following motion was placed and seconded:

MOTION: "To grant Camp Sewataro, Inc., applicant, and Liberty Ledge Real Estate Trust, owner of property, renewal of Special Permit 02-5, granted under the provisions of Section 2140

of the Zoning Bylaws, to conduct a summer day camp, property located at One Liberty Ledge, Residential Zone A-1, as follows:

1. The number of campers for nursery, kindergarten and first graders shall not exceed 150.
2. The number of campers for all other campers to age 14 shall not exceed 450.
3. This permit will expire in five (5) years on February 8, 2010, and the Board will consider renewal upon receipt of proper application on or before that date.”

VOTED: In favor 5 (unanimous) Opposed: 0

REASONS: This camp has been in existence since 1960 and has operated with no detriment to the neighborhood. The Board finds that the petitioners have consistently met the requirements for the granting of a special permit and considers this camp to be an asset to the community. Proper facilities are in place for this operation which continues to exist harmoniously with the surrounding neighborhood. No complaints have been received with regard to this operation and no abutters were present to oppose the granting of this special permit.

Jonathan G. Gossels, Chairman

Stephen M. Richmond, Clerk

Elizabeth A. Taylor

Jeffrey P. Klofft

Constantine Athanas, Alternate

AYMAN YOUSSEF/SARAH REALTY, LLC
& WILLIAM KING/AUTO DIAGNOSTIC CENTER
100 Boston Post Road
05-7

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
TUESDAY, FEBRUARY 8, 2005

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Constantine Athanas

Notice was published in the Sudbury Town Crier on January 20 and 27, 2005, posted, mailed and read at this hearing.

John Delprett was present together with Ayman Youssef in a petition for Special Permit to continue the sale and repair of new and used motor vehicles at 100 Boston Post Road which property Mr. Youssef has recently purchased. Previous permits have been issued to William King, Auto Diagnostic, former property owner.

Mr. Delprett said the business has been existing and the Mr. Youssef wishes to have the permit reflect the new ownership.

In response to a question from Mr. Klofft as to whether Mr. Youssef is the landlord or the tenant, Mr. Delprett replied that there are two tenants – Sudbury Sundries is one of the tenants and William King is a current tenant operating the garage. Mr. Youssef is operating the convenience store which is presently undergoing renovation.

Mr. Gossels said the Board was in receipt of a letter dated February 1, 2005 from Attorney Joshua Fox requesting that the Board include William King/Auto Diagnostic on this special permit renewal as it was his opinion that Mr. Youssef has incorrectly applied for renewal of Mr. King's non-transferable special permit. He believed a vote by the Board to include Mr. King's name on the special permit.

Mr. Gossels asked whether the applicants had any objection to this request.

Mr. Delprett said if the tenancy changed he would have to come back to the Board. Since the use would remain the same he felt the permit should reflect Mr. Youssef's name. He felt that the use ran with the real estate, not the person.

Mr. Gossels pointed out that the previous permit was specific to William King and is nontransferable. Discussion followed among the Board who in any event would want to know

who the tenant would be for the purpose of the conditions imposed. The general feeling was to include Mr. King as applicant and Mr. Youssef as owner. Should tenancy change, the new tenant would have to appear before the Board for application to change the tenancy.

Mr. Delprett had no objection if the Board felt inclusion of both names was preferable.

Mr. Gossels read the conditions of the previous permit asking whether the petitioners were comfortable with them. Mr. Delprett was agreeable to all three conditions.

Although this permit has been in existence for many years, since ownership has changed, the Board would prefer to limit the term to three years at this time.

There was no further input. No abutters were present. The hearing was closed.

After deliberation the following motion was placed and seconded:

MOTION: "To grant William King, Auto Diagnostic Center, applicant, Ayman Youssef, Sarah Realty, LLC, owner of property, a Special Permit under the provisions of Section 2230, Appendix A,C, Use 12, 13, 14, of the Zoning Bylaws, for the sale and repair of new and used motor vehicles, property located at 100 Boston Post Road, Business District #1, provided that:

1. No more than two (2) cars for resale be stored overnight.
2. No more than twenty (20) cars being repaired can be stored overnight.
3. This permit is non-transferable and will expire in three (3) years on February 8, 2008, and the Board will consider renewal upon receipt of proper application on or before that date."

VOTED: In favor 5 (unanimous) Opposed: 0

REASONS: The petitioner is seeking this special permit to reflect a transfer of ownership of the property. The permit allows for the sale and repair of new and used motor vehicles. The applicant is the former owner of the property. The used is a permitted one in the zoning district with the granting of a special permit. The facilities are proper for the use. There is no detriment to adjoining zoning districts or neighboring properties due to odor, smoke, sewage, or refuse materials. Because of the transfer in ownership, the Board finds a three-year renewal period to be appropriate in this case.

Jonathan G. Gossels, Chairman

Stephen M. Richmond, Clerk

Elizabeth A. Taylor

Jeffrey P. Klofft

Constantine Athanas, Alternate

NEW CINGULAR WIRELESS PCS LLC
142 North Road
05-9

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
TUESDAY, FEBRUARY 8, 2005

The Board consisted of:

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Jeffrey P. Klofft
Constantine Athanas, Alternate

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Mr. Gossels, Chairman, explained the requirements necessary to substantiate the granting of a special permit. He also explained that if anyone is not satisfied with the Board's decision, they have the right to appeal to Superior Court or District Court within twenty days after the decision has been filed with the Town Clerk, and that possible other appeals may exist under current law.

Mr. Gossels noted that ZBA member Stephen M. Richmond, Clerk, has recused himself from the hearing on this case because of a conflict of interest. He also pointed out that as a result there is a 4-member Board and a vote to approve must be unanimous. He asked whether the petitioner had a problem with this.

Attorney Brian Grossman, Anderson & Kreiger LLP, who was representing New Cingular Wireless Services, said he would proceed with a 4-member Board.

The petition before the Board was to allow for the continued operation of a 120-foot, flagpole style, two-carrier pole, including associated equipment, at 142 North Road. Mr. Grossman said this site was granted a permit on December 28, 1999. Condition 6 requires renewal after five years.

Mr. Grossman said the facility was installed in accordance with the plans and has been operational for approximately five years. The site remains important to the AT&T wireless network to provide coverage in this area of Sudbury.

With regard to this petition, Mr. Grossman said the issue that is clearly on everyone's mind has to do with the panels since a couple of panels came loose and fell off landing on adjacent property. He said Cingular is also extremely concerned with safety and with the design of this particular monopole and its failure.

NEW CINGULAR WIRELESS PCS LLC
142 North Road
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Mr. Grossman said Cingular appreciates the town's response and has worked to try and respond as quickly as possible to figure out what went wrong, why it went wrong, and how to fix it. Cingular has been working with the tower manufacturer, PiRod, to figure out what went wrong and, more importantly, how to fix it.

There are a number of differences in this design. This particular style, instead of using a one-piece pre-fabricated shroud uses fiberglass which overlaps. What PiRod did in the original design bid was to rivet along the top of all of those panels. It did not rivet down the sides which allowed, essentially over time, air to get under that seam and to shake those rivets loose.

Mr. Grossman said both he and Cingular are very concerned that this failure happened and have worked with PiRod to develop a different design. It will still be an overlap design, but what PiRod has done as an adjustment to address this particular issue is to rivet all the way down the long sides. That repair has not been done yet. It is expected to be done this week or the next. According to PiRod's engineers, this should take care of the problem and should make it a much tighter seal.

Mr. Gossels said safety is the Board's primary concern. There is a zoning issue and an overriding public safety issue. He noted that there are some neighbors here that would like to speak.

Barbara Bahlkow, 150 North Road, Unit 22 (Frost Farm resident) was present along with a group of Frost Farm residents to strongly object to this permit being renewed. She said the residents feel that what happened to them is extremely dangerous. She brought photographs of the fallen panels to show to the Board.

Describing the events, Ms. Bahlkow said on December 23rd she and her husband found a 7-foot piece of fiberglass on their front lawn when they returned home around 8PM. Because it was dark, they couldn't identify the object and looked around at the tower and thought perhaps that was it. The next day they saw clearly that it was a panel that fell from the tower. Two days later, one of their neighbors was walking along the conservation trail and found another large panel on the trail. On Dec. 26th Ms. Bahlkow looked up at the tower and saw two more panels hanging. After each of these occurrences they called the Sudbury Fire Dept. When the Fire Dept. came and saw the two panels hanging,, they immediately considered this to be an emergency and notified the Selectmen and Cingular. Somehow it got into the newspaper and television reporters arrived.

An executive from Cingular called to apologize for the anxiety this had caused the residents. However, the residents feel that because this tower is in a development area where there are 44 families right beside it and also two schools right under it – that it's a very serious public safety issue. Ms. Bahlkow had some questions for Mr. Grossman with regard to maintenance.

NEW CINGULAR WIRELESS PCS LLC
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Mr. Gossels asked Ms. Bahlkow to proceed with her questions.

Ms. Bahlkow said she discovered that as of April 2004 the tower was no longer registered with the FCC because of height requirements. It wasn't as high as it should be for a FCC requirement. It was her understanding that the tower is not regulated by the FCC or by the State of Massachusetts – only by local bylaws. She said the FCC required a maintenance log on the tower for the few years that it was regulated by that agency, up until April 2004. She asked whether Cingular continued that maintenance log and who monitors the tower for safety.

Mr. Grossman said he would have to check on whether a maintenance log is being maintained. However, he said Cingular still must comply with the FCC regulations even though it may not be required to register because of the height. He explained that registration is required only when the tower exceeds a height which may cause a hazard to air navigation, in which case a strobe light is required on top of the tower for air traffic safety.

Ms. Bahlkow asked who would be responsible for safety.

Mr. Gossels asked whether Mr. Grossman would object to a permit condition requiring that a maintenance log be maintained and that there be periodic safety inspections of the tower.

Mr. Grossman asked what type of log and inspection requirement were being proposed.

Mr. Klofft had concerns with regard to the attaching of the panels. At a minimum he would want to see ongoing logs and inspections on those panels. Or, at the extreme, the pole would remain but the design would be different. He felt Cingular could make the judgment as to whether or not the long term maintenance costs and safety inspections are more expensive than replacing the pole.

Mr. Gossels asked how much one of the panels weighed.

Mr. Grossman was not sure, but he said coming from that height it certainly could cause serious personal injury. Clearly there's a safety issue.

Mr. Gossels asked whether the panels would all be removed and reinstalled or would there be new panels installed that haven't been damaged by flapping around.

Mr. Grossman was not sure. He said first of all the design is approved by a professional engineer. Someone would have to take a look at it exactly what's there. Some of the panels may not be damaged and they may be perfectly fine and they can be repaired. To the extent the panels are damaged and wouldn't be able to accommodate the repair, they would have to be removed and replaced.

NEW CINGULAR WIRELESS PCS LLC
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Mr. Klofft said fiberglass is a structure so either it's intact or it's not. Either the panels are intact and can be reattached or the structure is compromised and the whole unit will have to be taken off.

Mr. Gossels concerns were with cracking.

Mr. Klofft said once it's cracked, there's no structural integrity.

Mr. Athanas felt the Board should have someone from PiRod go out to the site and report on what is going on. Then everyone will have the opportunity to ask the engineer questions and see a plan as to how this is going to be addressed.

Ms. Bahlkow said the panels on the lawn and the path were intact. It was the bolts that had kept them on the tower. The holes are huge. She felt what happened was that the wind constantly blowing on this high tower gradually loosened the bolts. There were winds of 35 mph the night the felt panel fell off. So they were constantly being loosened.

Discussion followed on possible scenarios as to what would cause the failure, which the Board felt reinforced the need for an engineer from PiRod to provide that information along with a solution to rectify the situation.

Ms. Bahlkow said there is a bylaw dealing with the proximity of cell towers to schools and there are 50 students right at the basis of the tower. She asked how this company was able to obtain a permit to construct a tower.

Mr. Gossels said the Board was not familiar with the history of the granting of the permit.

Ms. Bahlkow said there was an article in the Boston Globe that reported that Nextel has informed the EPA in another state that cell phone reception from a 70-foot tower is just as good as a 100-foot tower.

Mr. Grossman said this is a different carrier in another state. He could not speak for Nextel, but in certain locations it may possible that for their particular needs 70 feet works as well as 100 feet. For this particular location Cingular needs the 120-foot tower.

Mr. Klofft added that rather than have every carrier coming in with their towers in different locations, in many cases if the location is deemed suitable, such as the landfill and the water tower, the tower is built to accommodate multiple carriers, and there needs to be a certain height between carriers on the pole so the tower is basically larger. Also, the height depends largely on the topography of the land.

NEW CINGULAR WIRELESS PCS LLC
142 North Road
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Carmin Spiro, 150 North Road, Unit 26 asked whether there was a benefit to have three towers along Route 117 in Sudbury.

Mr. Grossman explained how wireless communications works in terms of handoffs to allow for filling coverage gaps. These towers allow for seamless coverage.

Mr. Spiro said Ms. Bahlkow had spoken with someone at Cingular who they said they had relocated towers in the past and that this might be a candidate for relocation. He asked whether Cingular would consider relocating the tower.

Mr. Grossman said he was not sure why that person said that. He said any tower could be a candidate for relocation depending upon whether adequate coverage could be provided. He was not sure this could be achieved for this particular location. He said from a corporate level someone could make that statement, but getting down to the actuality of doing it may be a different story. Without having done a zoning analysis to determine whether it could even be done in Sudbury because of areas allowed by the town and whether other areas would be able to provide the coverage needed he could not say it was a possibility.

Mr. Spiro said he preferred a single shroud noting that another tower in town had a single one. He asked why this could not be had for this tower.

Mr. Grossman said that tower is designed by a different manufacturer. He would have to research whether it could be done on Cingular's tower. Also, he was not sure this could be done with a flagpole type style.

Nancy Lewis, 150 North Road, Unit 24 said she could not understand why something like this could be put right in the heart of the residential area. Since that tower was constructed in 2000 there are now 60 residents at Frost Farm. There is the Montessori School and all the businesses that are up there. In addition, there is the Northwood development which has two buildings and there is talk about construction of three more buildings.

Mr. Grossman said with regard to structural inspection, given the Board's concerns, the neighbors' concerns, and Cingular's concerns, if that were a requirement for renewal; i.e., inspection and report to the Building Inspector, Cingular would be agreeable.

Mr. Gossels said at a minimum the Board would require something like that. There are concerns over what's being proposed which seemed to him like a quick fix and may not be the right answer. Mr. Gossels would suggest continuing this hearing in order for Cingular to come back with an engineer with a real proposed solution so everyone can understand whether or not it is going to be safe or not.

Mr. Athanas asked if PiRod was located in Massachusetts.

NEW CINGULAR WIRELESS PCS LLC
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Mr. Grossman said they were not. He was not sure he would be able to have a PiRod specific representative here. He could certainly get a Mass. Registered structural engineer to attend. He asked whether the Board had a preference as to a professional vs. structural engineer.

Mr. Gossels said the preference is to hear from the specific manufacturer with a specific fix to their product. Mr. Athanas added that the person who is proposing the fix should be the one who is here so the Board can ask them questions.

Mr. Grossman said usually what happens is that Cingular works with the tower manufacturer, and their specifications and recommendations are done by the structural engineering firm that does the plans. They're the ones on the front lines as far as dealing with the structural issues and making sure that the specifications are followed.

Mr. Gossels said along those lines Mr. Grossman has heard from the neighbors. Their preference would be a continuous shroud. But the Board would like to hear back whether or not that is feasible.

Mr. Grossman wanted to be sure he understood what the Board was looking for.

Mr. Gossels said a single shroud would be preferable. He would want an inspection and replacement of any damaged tiles before any additional fasteners go on. The Board would also want a maintenance log to be kept and reported to the Building Inspector with periodic safety monitoring.

Mr. Klofft said there needs to be some sort of call down list. The residents didn't even know who to call when the problem started happening. Even when the Fire Dept. showed up he was not really sure that they even knew who to call outside of the Selectmen.

Mr. Grossman said there should be a metal plate on the fence. He could get that number.

Mr. Klofft said it should be clearly posted and someone should get that number to the neighbors.

Mr. Spiro said Cingular should also look into where the tower is located.

Mr. Klofft said the neighbors should know that most of the issues surrounding whether or not the pole should be there in the first place are typically addressed with the original application. He felt there to be a substantial issue here with regard to the pole safety that needs to be addressed. In terms of relocation of the pole, Mr. Klofft wanted to be sure that the expectations are set that that's not likely to happen. What the Board is looking to do here is to find a solution that has that pole in that location but also is safe for the surrounding area.

NEW CINGULAR WIRELESS PCS LLC
142 North Road
05-9 Page 7

Mr. Gossels added that the Board would only address the relocation issue if it were not satisfied that the safety issue could not be addressed.

Ms. Bahlkow said she would like Mr. Grossman to put it down on his list that the residents' first preference would be relocation.

Mr. Gossels told Mr. Grossman that he has heard different views from the townspeople vs. the Board. He said the Board is not setting relocation as a highest priority. Its primary concern is with safety.

Ms. Bahlkow referred to her phone conversation in which a Cingular representative told her this could be a candidate for relocation.

Mr. Athanas suggested that Mr. Grossman may want to be prepared to answer this even though it's not necessarily the concern of the Board at this time.

Mr. Gossels said every time the Board receives an application for a tower, wherever it goes in town, no one wants it. And yet there are federal laws that make it very hard for the Board to stop it. Trying to take it away from this neighborhood and put it in another one will just mean a different set of people objecting to it. He said there have been cases where the Board has denied the application and the courts have overturned the denial.

Ms. Bahlkow said one of the schools has been there for eight years, the other for ten years, this tower has only been there for five years, and Frost Farm was planned in 1997.

Mr. Gossels said it was his understanding that this particular tower may have been approved under an older bylaw that did not have distance or separation from schools or the like. However, he said he understood the residents' concerns.

It was on motion unanimously voted to continue the hearing to March 2 at 7:30PM.

Jonathan G. Gossels, Chairman

Elizabeth A. Taylor, Acting Clerk

Jeffrey P. Klofft

Constantine Athanas, Alternate

NEW CINGULAR WIRELESS SERVICES OF MASS.
Boston Post Road (Landfill) 05-8
0 Maynard Road (Willis Hill Watertank) 05-10

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Mr. Gossels noted that ZBA member Stephen M. Richmond and Clerk has recused himself from the hearings on these cases because of a conflict of interest. He also pointed out that as a result, there is a 4-member Board and a vote to approve must be unanimous. He asked whether the petitioner had a problem with this.

Attorney Brian Grossman, Anderson & Kreiger LLP, who was representing New Cingular Wireless Services, said he would proceed with a 4-member Board.

Beginning with Case 05-8, the landfill application, Mr. Grossman, explained that New Cingular Wireless is the new name for AT&T Wireless as a result of a recent merger. He said the Sudbury landfill site was approved by a Decision of the Board on December 28, 1999. That Decision included a 5-year expiration for which the applicant would have to come back to request an extension.

Cingular has been operating a 150-foot, three carrier flagpole at the Sudbury landfill for the past five years. The site is needed to provide coverage to this particular area of Sudbury. Cingular, prior to the merger, had applied as a fourth carrier on this pole; however, that site has not been constructed. Mr. Grossman expected that they would return to this Board with regard to that separate permit. However, currently, the site is operating in accordance with the permit issued in 1999 along with Sprint and Verizon, the other two carriers.

With regard to the Willis Hill watertank site, Mr. Grossman said the right to operate was dictated by a Consent Decree from the court. He said that permit is due to come up for renewal

NEW CINGULAR WIRELESS SERVICES OF MASS.

Boston Post Road (Landfill) 05-8

0 Maynard Road (Willis Hill Watertank) 05-10

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in May. The site is constructed and is operating in the configuration that was proposed. The site is necessary for the operation of the wireless communications network to provide service to that area of town.

Mr. Gossels referred to the landfill site, noting that the permit was very clear in that it was a monopole with specific dimensions – 24 inches at the top, 36 inches at the bottom. However, what is existing there is different in that there are externally mounted antennas. He asked why what was built was not in accordance with the permit.

Mr. Grossman said he believed the bump-out was Verizon's spot on the pole. He said Verizon requires a slightly larger diameter pole.

Mr. Gossels said Condition 2 of the permit called for a pole no larger than 24 inches at the top and 36 inches at the bottom. He did not feel that meant that something could stick out in some places.

Mr. Grossman felt that Verizon probably should have come before the Board prior to their installation.

It was pointed out that the permit was issued to AT&T for a 3-carrier monopole. The permit holder is AT&T who is responsible for adhering to the conditions of the permit. The recent permit was granted to Cingular as a fourth carrier which was an increase in the number of carriers allowed.

Mr. Grossman apologized for not having an answer as to why the pole was constructed with the bump-out or to the process that took place with regard to that construction. He said Cingular as a fourth carrier would not be utilizing a build-out on the pole.

Mr. Gossels said he would expect any carrier that goes in to stay within the permit conditions. He said he mentioned this because it hasn't happened in the past.

Mr. Grossman said in the event that Cingular requires a bump-out, they will be back to the Board. Mr. Klofft suggested that if that is the case that Cingular be prepared to present alternatives. Mr. Grossman said he would address those issues if need be. He said he would also be in contact with his client to explain the Board's concerns with regard to compliance.

There was no further input. No abutters were present. The hearing was closed.

The following motions were made and seconded:

NEW CINGULAR WIRELESS SERVICES OF MASS.
Boston Post Road (Landfill) 05-8
0 Maynard Road (Willis Hill Watertank) 05-10
Page 3

MOTION #1: (Case 05-8)

“To grant New Cingular Wireless Services of Massachusetts LLC, as successor to AT&T Wireless PCS, Inc., renewal of Special Permit 99-55 for the continued operation of a 150-foot, 3-carrier, flagpole monopole wireless communications facility, including associated equipment, property shown on Town Assessors Map K12 as Parcel 002 (Sudbury Landfill), Boston Post Road, Limited Industrial District #5, provided that

1. Monopole shall be in accordance with plans prepared by Greenman-Pederson, Inc., Consulting Engineers, Marlborough, MA, dated September 30, 1999, Sheets T1, A1 and A2.
2. The diameter of the monopole shall be no larger than 24 inches at the top, 26 inches at the base, and shall be medium gray in color. No flag will be flown at the top of the pole.
3. Add-on antennas may be allowed for future town use (i.e., fire safety); however, no antennas will be added without approval of the Board of Appeals.
4. There will be no lighting on the pole unless required by the FAA.
5. A 22X30 foot equipment shelter within a 32X45 foot equipment compound shall be constructed, as shown on the plan, and shall be of clapboard siding and asphalt shingle roofing. In the event permission is granted to add antennas for fire/safety, the lowest carrier on the monopole shall allocate space in its portion of the shelter sufficient to house the town's equipment.
6. The approval granted herein shall expire in five (5) years on February 8, 2010. Continued operation of the facility shall be subject to application for and renewal by the Board of Appeals.
7. To allow, for Town fire/safety use, a PD1108 omni-directional collinear antenna which will extend 8.27 feet above the 150-foot monopole, in accordance with Cellwave Specification Sheets pages 88 and 89, to include a 7/8-inch LDG foam heliax coaxial cable in accordance with Motorola Specification Sheet titled “Heliax Transmission Line”, consisting of 2 pages as submitted with AT&T letter dated March 14, 2000, all of which are incorporated and made a part of this condition.

The antenna and cable shall be for Police Department use and shall be designed so as to allow for Fire Department access should the need arise.”

VOTED: In favor (4) unanimous Opposed: 0

REASONS: The petitioner seeks renewal for continued wireless communications operation. This site has been in operation for the past five years. The Board finds an additional five-year
NEW CINGULAR WIRELESS SERVICES OF MASS.
Boston Post Road (Landfill) 05-8
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renewal to be appropriate; however, in so doing has expressed concern that one of the carriers has not conform to Condition 2 of the permit which deals with size of the installation. Further, the Board has notified Cingular that as principal permit holder, they are responsible for compliance by the two additional carriers allowed under the permit and that any deviation from the conditions will require application from the Board of Appeals.

MOTION #2: (Case 05-10)

To grant New Cingular Wireless Services of Massachusetts LLC, as successor to AT&T Wireless PCS, Inc. the continued operation of wireless communications services in accordance with Consent Decree, Order, and Judgment No. 98-10713NG, property shown on Town Assessors Map E07 and Parcel 3 (Willis Hill Watertank), Residential Zone A-1, as follows:

1. This permit will expire in five (5) years on May 1, 2010. Continued operation of the facility shall be subject to application for renewal to the Board of Appeals on or before that date.”

VOTED: In favor: 4 (unanimous) Opposed: 0

REASONS: The petitioner has been operating a wireless communications facility by order of a Consent Decree, Order, and Judgment issued by the court. The Board finds a five-year renewal period to be appropriate in this case.

Jonathan G. Gossels, Chairman

Elizabeth A. Taylor, Acting Clerk

Jeffrey P. Klofft

Constantine Athanas, Alternate

MAILLET & SON INC. & ALVID YE
73 Robbins Road
05-11

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
TUESDAY, FEBRUARY 8, 2005

The Board consisted of:

Jonathan G. Gossels, Chairman
Stephen M. Richmond, Clerk
Elizabeth A. Taylor
Jeffrey P. Klofft
Constantine Athanas, Alternate

Notice was published in the Sudbury Town Crier on January 20 and 27, 2005, posted, mailed and read at this hearing.

Mr. Gossels, Chairman, explained the requirements necessary to substantiate the granting of a special permit. He also explained that if anyone is not satisfied with the Board's decision, they have the right to appeal to Superior Court or District Court within twenty days after the decision has been filed with the Town Clerk, and that possible other appeals may exist under current law.

Marcel Maillet was present to represent a petition for a special permit to demolish an existing nonconforming structure and construct a larger new residence. Mr. Maillet explained that he is in the process of purchasing the property which contains a structure which is mold infested. He plans to demolish that house which is approximately 1,200 s.f. and replace it with a 2-story, 3,100 s.f. house. The new house will conform to current zoning setback requirements.

Mr. Gossels asked whether Mr. Maillet has spoken with the neighbors with regard to his project. Mr. Maillet said he sent them plans with a request to call him with questions. He received one response which was positive.

The Board reviewed the plans submitted with the application. All felt the scale and design to be appropriate for the lot and the neighborhood and a good use of the land.

Mr. Gossels reviewed the guidelines pertaining to construction after demolition. Mr. Maillet said he was comfortable with those guidelines.

There was no further input. No abutters were present. The hearing was closed.

The following motion was placed and seconded:

MOTION: "To grant Maillet & Son, Inc. applicant, Alvid Ye, owner of property, a Special Permit under the provisions of Section 2460 of the Zoning Bylaws, to allow demolition of an

MAILLET & SON INC. & ALVID YE
73 Robbins Road
05-11 Page 2

existing residence and construction of a new residence not to exceed 3,100 s.f., which will exceed the area of the original nonconforming structure, said residence to conform to all zoning setback requirements, property located at 73 Robbins Road, Residential Zone A-1.”

This Special Permit shall lapse if construction has not begun, except for good cause, within 12 months following the filing of the Special Permit approval, plus such time required to pursue or await the determination of an appeal under M.G.L., Chapter 40A, Section 17.

Construction must be completed no later than one year after commencement.

VOTED: In favor: 5 (unanimous) Opposed: 0

REASONS: The petitioner requires a Special permit due to the nonconforming nature of the property. The Board finds that the proposed construction of a new residence, which will exceed the area of the original nonconforming structure, will not be substantially more detrimental to the neighborhood. The proposed 2-story colonial, which will replace a mold infested home which must be demolished, is appropriate in style, scale and location and will not be intrusive to the neighborhood.

Jonathan G. Gossels, Chairman

Stephen M. Richmond, Clerk

Elizabeth A. Taylor

Jeffrey P. Klofft

Constantine Athanas

ELIZABETH M. SULKOWSKI
73 Moore Road
05-12

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
TUESDAY, FEBRUARY 8, 2005

The Board consisted of:
Jonathan G. Gossels, Chairman
Stephen M. Richmond, Clerk
Elizabeth A. Taylor

Jeffrey P. Klofft
Constantine Athanas, Alternate

Notice was published in the Sudbury Town Crier on January 20 and 27, 2005, posted, mailed and read at this hearing.

The petition before the Board was an appeal of the Building Inspector's decision that a Special Permit is required under Section 2313 of the Zoning Bylaws for the raising of animals (poultry). The property in question is located at 73 Moore Road and owned by Elizabeth Sulkowski.

Mr. Gossels, Chairman, explained that if anyone is not satisfied with the Board's decision, they have the right to appeal to Superior Court or District Court within twenty days after the decision has been filed with the Town Clerk, and that possible other appeals may exist under current law.

Elizabeth Sulkowski said in 1983 she moved to this property called "Water's Edge Farm", which was a farm for over 150 years. She was appealing the decision of the Building Inspector, James Kelly to require a special permit for chickens.

Ms. Sulkowski said the chickens are currently and always for the past 30 years have been housed in a barn. The barn has a special permit issued yearly by the Board of Health.

Ms. Sulkowski felt the reason for the special permit requirement is discriminatory and was caused to be issued by neighbors who have moved in next door to her property and who have a problem with the roosters crowing, even in the daytime.

The property is comprised of 3.6 acres. Mr. & Ms. Kavalier moved to the property next door in July, and in August or September they called with a request to relocate the chicken coop to another part of the property. This is impossible because the barn permit is issued based on the location. There is a pond abutting our property, an artesian water well in the middle of the property and there is a brook across the property. The chicken coop which was located there 150 years ago was located there for a very good reason and it cannot be moved anywhere else.

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Ms. Sulkowski said when the Kavaliers purchased their property, her property was in full sight. They were moving next to a farm which has a horse, a goat and chickens.

In September 2004, Ms. Sulkowski said Mr. Kelly called her and told her that she could legally have chickens on her property but that a permit was required. She said she then called four or five departments in town and no one was aware of any chicken permit in existence. It was always part of the barn permit.

Mr. Gossels said in the newest version of the Bylaw which is 2003, there is a section, 2313, which specifically deals with this. He said Ms. Sulkowski is appealing the decision of the Building Inspector – the Board is not ruling on the merit.

Ms. Sulkowski said the Kavalers never came in person to resolve this, which should be a neighborly issue. They have forced their issue through the regulations and now we are here appealing the permit part.

Adam Sulkowski introduced himself as the oldest son of Ms. Sulkowski. He handed out some letters from neighbors on all sides of the property. In addition, he distributed a summary of the legal basis, M.G.L., Chapter 40A, Section 6.

Mr. Sulkowski said his family has lived in Sudbury for almost three decades. His family considers the character of Sudbury as well as their rights as citizens of Sudbury to be at stake. There is also the issue of raising pets.

This property has been around for approximately 150 years. Oral history suggests that there was once a dairy farm there. There are stables nearby which are decades old. As far back as we can obtain oral testimony from people who live there or who formerly lived in the neighborhood, there has always been poultry on the property. He said the reason this is important is that in Chapter 40A, Section 6 exempts pre-existing uses from the bylaws. He said there is a use here that predates certainly the 2003 edition of the Sudbury bylaws.

With regard to the process, Mr. Sulkowski said he had to hand over a check for \$61 in order to be here tonight. He will have to hand over another check if the Board decides to require a special permit which has an uncertain outcome. He took issue with the fact that the Kavalers are attempting to remedy their issues through the Board of Appeals.

Mr. Klofft asked Mr. Sulkowski what factual evidence he possessed that the raising of the chickens has existed for a certain period of time.

Mr. Sulkowski said he had a letter from the people who lived in the house before them who state that they raised poultry and who indicate that the barn and the chicken coop were there

ELIZABETH M. SULKOWSKI
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before they moved in. By all accounts he said there have been chickens for at least 27 years and the barn has been there for about 150 years.

Further, Mr. Sulkowski said Mr. Kelly has admitted that he wouldn't be doing anything if not for the complaints. He said there are other people present this evening who have chickens and poultry in residential zones. He felt his family was singled out. Further, the Supreme Court in 2000 decided that if a zoning official selectively applies a bylaw, that is discrimination under the bylaw and violates the 14th Amendment. That issue is at stake as well.

Looking at the context of Bylaw 2313 and all its precedents that were passed, they were in response to commercial use. Section 2313 addresses the raising of swine, furbearing animals and poultry. The original version of 2313 says a special permit is required for a commercial enterprise. This is not a commercial enterprise – we don't want to raise the chickens – we get them from hatcheries. Therefore, 2313 doesn't apply.

Mr. Athanas asked whether there is a technical definition of raising. Because to him, raising his children means he feeds them and clothe them. With chickens, you're feeding them; he would assume they are being raised.

Discussion followed on the definition of raising. In response to questions from the Board, Mr. Sulkowski said they have 24 chickens and four roosters. They are used to supplement the food budget. Further, he noted that it was the opinion of the previous Building Inspector that a special permit is not required in this situation. When that Inspector was asked what he would do in this situation, he said it should be settled amongst the neighbors.

Mr. Sulkowski said this issue belongs under the Board of Selectmen who they deal with this routinely. It's not a zoning issue. Further, he said the main reason for the complaint has been eliminated as eight roosters have been slaughtered.

Mr. Richmond asked when this section of the bylaw was adopted.

Ms. Taylor said it goes back at least as far as 1939.

Mr. Athanas said the Sulkowskis would have to prove it was a pre-existing use prior to 1939.

Mr. Sulkowski asked what the threshold would be to require someone to come before the Board for a special permit.

Mr. Gossels said that is a different issue. That would be the issue for granting a special permit. The issue before the Board this evening is whether Mr. Kelly was correct in applying

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this section of the bylaw. He then read the following letters of support which were submitted for the record:

- from the Pease family, 93 Moore Road, dated February 2, 2005
- from Sarah Barker, 32 Moore Road, undated
- from Charles & Constance Detwiller, 54 Moore Road, dated February 8, 2005
- from David Parsons, 40 Moore Road, undated

- from Lynda Renfroe, 1510 Monument Street, Concord, MA, dated January 31, 2005, (former owner of 73 Moore Road)

Mr. Gossels asked Mr. Sulkowski to explain what has been done to mitigate the noise of the roosters and what is being done now to mitigate the situation.

Mr. Sulkowski said the reason there were too many roosters in the summer was because the hatchery that was called to order replacements sent too many roosters. When they found out about it and got the complaints, especially the ones that said they were keeping people up at night, his mother scheduled the first available opportunity to slaughter the noisiest ones. Eight roosters were killed, five were given away, leaving four roosters. In addition, the run that is immediately adjacent to the property has been shut down. The roosters are not allowed within the internal pen; they are kept in a stable stall. The sound baffles between them and the Kavalers and everyone in that direction is 2-inch thick rough hardwood stable walls. There is an intervening chicken coop of about 20 feet and a chicken run outside of about 30 feet, then a hard wooden solid fence on their (Kavalers) property line, then a full shed, then about 20-25 feet with a pool. The roosters cannot get anywhere close to the property line anymore.

Mr. Richmond felt the challenge to the Building Inspector's decision raises two issues – whether this is a pre-existing non-conforming use or, if it is not a pre-existing non-conforming use, are they raising poultry. If not pre-existing and the Board decides that they are raising poultry, he would have to say that a permit is required.

Further, Mr. Richmond said if the Board finds that it is a pre-existing non-conforming use, this is over, and the Sulkowskis can go and raise the chickens. While it is helpful to hear information about what has been done to address the concerns, he was not sure that those issues are appropriate at this time.

There was agreement among the Board to Mr. Richmond's statements.

Mr. Kelly felt the Board needed to make a decision on whether his decision was correct because he needed to know for the next person who comes along.

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Mr. Richmond preferred to focus on whether this is pre-existing, and the definition of "raising".

Mr. Kelly felt it met Section 2313 of the Bylaw and that what is being done here is raising. But, he said that is his decision. As to the pre-existing nonconforming piece, he wasn't sure if it was a grandfathered pre-existing use which, if it was, may continue if it has never been interrupted.

Mr. Richmond said there is a record of a 1939 Bylaw. Therefore, the Board would have to establish that at least in 1939 they were raising poultry, or there was a chicken farm or something on that property and that it was continued up to now.

Discussion followed on the intent of the Bylaw with regard to the definition of “raising” and the fact that it seemed that the establishment of any of the enterprises (raising of swine, poultry, furbearing animals) within a single residential left open the question as to whether one could do it for personal use.

Ms. Taylor said it appears to prohibit except for commercial use. This would have been a prohibited use even at the time of the 1939 bylaw. However, the Board didn’t know the intent of the bylaw.

Mr. Richmond did not see anything that shows that poultry was being raised on this property in 1939.

It appeared that there were several questions that couldn’t be answered at this time.

Mr. Sulkowski said it appeared that the Board was not going to make a decision this evening. He asked if the Board would like him to get back with research as far back as he could go.

Mr. Richmond was thinking along the lines of establishing a pre-existing nonconforming use. Also, he asked whether Mr. Sulkowski would consider proceeding with a special permit application without waiving any claim to a pre-existing nonconforming use and the Board considering a waiver of the additional fee that would be charged.

Mr. Sulkowski said there is still the issue of how everyone else who owns chickens in Sudbury is going to meet the threshold step of having a permit issued. He felt it to be discriminatory.

Mr. Athanas referred to the documentation submitted for the record by Mr. Kelly which consisted of the 1939 Bylaw and five special permits which have been granted in the past. He said there were other people who have applied in the past who have been granted special permits.

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The Building Inspector has made a decision as a result of the complaints. It’s not discriminatory unless there are other complaints and he hasn’t attempted to do anything about it.

Mr. Kelly felt the Board needed to make a decision on whether his decision is appropriate in this case.

Ms. Taylor said they would but can’t do it without more information.

Mr. Kelly thought a decision could be made.

Mr. Klofft said not if it can be established that the use is pre-existing nonconforming.

Mr. Kelly said the Board could decide if the Bylaw requires a special permit for the raising of poultry.

Mr. Athanas said it comes back to the definition of raising.

Mr. Gossels said 24 chickens and 4 roosters are not pets. There's a purpose of raising for food, for eggs, whatever that is. In his opinion, that is raising. Even if you're not selling them.

Robert Abrams, 24 Goodman Hill Road, felt that Mr. Richmond zeroed in on the issue earlier. Is it a prior non-conforming use. If it is a prior non-conforming use, then a permit is not required. If it's not a prior non-conforming, when was the bylaw in effect, what does it cover and what does it apply to. He said this is important to Sudbury's agricultural community.

Mr. Abrams would encourage the Board to listen to the members of the agricultural community who are here and want to speak about this. And consider that as part of the overall picture above and beyond this particular problem.

James Frazer, 81 Moore Road said he has owned the adjoining property for some forty years, since 1964. He would ask the Board to decide how far back the continuing use has to go because this property was created in 1955. Before that it was one large property, with his lot, the next door lot, the house across the street – and all those fields were developed in the area around Moore Road. One giant farm, very impressive, which had a nice big barn and stable. He would daresay it probably was a farm - a summer farm - gentlemen's vacation place. However, that ended in 1959 when it was subdivided and the property in question had a barn, which was converted to a house. It had a large stable and a chicken coop, a side yard where you could keep horses and the owners, the Poole's, kept horses. Most of the owners since then through several ownerships at least kept horses. He was not sure if any of them kept chickens although his wife said the Churchills and the Renfroes did. Whatever, it wasn't a farm, they were pets. The chickens were pets. He didn't think farming was really an issue here with three acres. As for the

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birds, he said they were noisy last summer. When the sun comes up, the roosters crowed but they didn't bother him or his wife.

Mr. Richmond as if Mr. Frazier recalled, once the property was subdivided, whether this particular lot had a chicken coop on it.

Mr. Frazer could not say whether it did or not, but he did have the plot plan which shows the stable and a small sort of building beyond the stable. He said it might have been a chicken coop or a greenhouse.

Kelly Kavalier – 61 Moore Road said they have never asked the Sulkowskis to get rid of their animals in any way. The Sulkowski's chicken coop is attached to their fence. The birds, and there were 17 that they were admitting to at one time, were kept on their property line, and they were approximately 100 feet from their bedroom window. They created a substantial amount of noise. Ms. Kavalier said she never went to the Sulkowskis and said she wanted them removed. She asked if they could be moved further away do something to buffer. She said the Sulkowskis have a substantial piece of property. It just seemed odd that their (Kavalier) house and the birds are in this front section. Ms. Kavalier said she has always hoped for a more neighborly outcome but was just unable to just get a neighborly rapport going. She said the Sulkowskis felt their way of living was being attacked. Ms. Kavalier said they were literally becoming unable to sleep in our home from July until mid November when they slaughtered some of the birds and gave some of them away.

In October a noise consultant was hired to monitor the noise levels at the property line. The report indicated the noise level was well in excess of EPA standards for the State.

Ms. Kavalier said the reason they went to Mr. Kelly and started working with him is because a permit gives someone the opportunity to apply setbacks. The roosters were living on the other side of their fence in full view. Periodically they came onto their property. Ms. Kavalier said they have had peacocks in their driveway. She reiterated that in no way does she want the Sulkowskis to get rid of what's going on on their property. She was just asking the Board to support Mr. Kelly so some regulations on the animals being kept can be put in place.

Ms. Kavalier said now they are able to sleep at night and that's great, but the Sulkowskis had 17 roosters at one time and they were not able to sleep. She did not want to go back to that situation again. It seemed to her that if issue a permit is issued, it can set conditions as to how many animals are acceptable to be kept. She said while they can now sleep through the night, they are not able to enjoy the outdoors of their property. They can't go outside without being inundated by the sound. Even with the 4 roosters, there is still an ongoing problem.

Mr. Sulkowski took issue with some points in the report from the noise consultant. He felt protocol wasn't followed and that the report was done before the roosters were slaughtered.

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John Donovan said he has been a resident of Sudbury for over 40 years and moved here because of the ambience of living in an agricultural or farm town. He said he has had neighbors who have raised chickens as a hobby and that was fine with him. He suggested the neighbors learn that they live in a rural community and it should be enjoyed for what it is and not change it.

Leah Armstrong, 379 Concord Road said she has chickens and they all have names. Whether this would be considered commercial or a family farm, when one can identify every single chicken with a different name, to her they are pets. She said her roosters don't crow at night and felt the neighbors should try to work together to resolve this issue.

Gary Christelis, 16 Raynor Road said he lives three houses away from the Sulkowskis and is a neighbor to Kavalers as well. He said there is nothing more important to us as homeowners and as residents of Sudbury to want to protect a very special nature and character of Sudbury that made us want to come here. He said he has lived at 16 Raynor Road for 6 years. and he and his family have experienced many times, the crowing of the roosters, the howl and screeching of the peacocks, the peacocks wandering onto his property and defecating on his walkway. He has had neighbors talk to him about peacocks going through their property or the noise of the birds. He said he has never really done much about it except call the animal control officer when the peacocks were wandering onto his property because he has young children who he was worried about. Although his property is a significant distance from the Sulkowskis, he can still hear the noise, especially in the spring and summer when the peacocks are mating. Because of the topography he felt the sound projects more towards Raynor Road because a lot of his neighbors hear the sound of the birds.

Mr. Christelis would like to see resolution to this. He did feel that there needs to be some ordinance that regulates the raising of the animals. More importantly, he felt that people must acknowledge that Sudbury is not the farming community it was in 1939 or 1927. He said the Sulkowski's property was once a huge farm. His street is now a subdivision since the 1960s – there are now 15 or more houses there. It's more like an urban area now than a rural area, at least Raynor Road is because of the proximity of the houses. Mr. Christelis said if his neighbors immediately decided that they wanted to raise chickens, he would be concerned in terms of wanting to know what the setback is from the property line, how many they were allowed to have, and would they be inspected periodically. He just wanted to make his voice heard as somebody who is concerned about the situation but also wanting the neighbors to be able to get along together and accommodate everybody's needs.

Mr. Athanas said there is a bylaw and we are here with regard to that bylaw, so there is a regulation in place. The question is, with respect to this particular property whether the Sulkowskis fall within the ambit of that bylaw. If they do, then we have a regulatory mechanism. If they don't, then it goes back to the neighbors and hopefully you all can address between yourselves.

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Paula Adelson, Animal Inspector for the town of Sudbury said she is employed by the town under the Board of Health and also employed by the State to do animal barn inspections. Whatever the Board decides, she would ask for a ruling as to how to deal with complaints that she gets from now on

Mr. Klofft said it would depend upon the situation. It could be a pre-existing case in which case there may be little that could be done. It could be a case where there is an existing special permit, the question being whether they are complying with the conditions specified in that permit, or it a use which is totally non-permitted. He did not think the Board could give a concrete answer which would apply generally.

Mr. Adelson said she would then need to know who to go to when she gets calls.

Mr. Richmond said the Board might be able to provide some guidance depending upon how they decide.

Joel Novak has lived at 11 Raynor Road for 27 years. To the best of his recollection, there have always been animals on that property

Jim Hodder, Hudson Road felt the neighbors should sit down and work things out.

Charles Detwiller, 54 Moore Road, moved to Sudbury 15 years ago from Wellesley. They moved here because they liked the atmosphere where there were backyard farms exactly like the Sulkowskis. He said his family has raised various animals over the past years and intends to raise additional animals in the future. He said it's a disaster that Sudbury is trying to put a damper on backyard farms.

Kellie Kavalier said while doing research she came across permits that have been granted in the past. She asked on what basis they were brought before the Board.

Mr. Sulkowski said all those cases were for those who wanted to start up. He said his was a pre-existing use.

Mr. Gossels said that was one of the key issues the Board will have to wrestle with - whether or not it is a pre-existing use.

Ms. Kavalier asked whether she would need a permit if she wanted to raise poultry.

Mr. Klofft said she would because there would be no obvious evidence of a pre-existing prior use. There is a difference between starting something and something which exists.

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Ms. Kavalier asked whether the Board's decision would be based on whether or not the use was pre-existing.

Mr. Klofft said the Board will have to wrestle with whether or not they believe this is a condition that existed prior to the restriction of it at some point in the zoning bylaw. There was also the issue as to whether this is considered “raising”.

Discussion followed on recollections of residents of the existing building on this property as well as the relevant year in time to which the Sulkowskis would have to demonstrate that chickens were raised on the property.

Mr. Klofft felt the Board had enough information to decide on the question of “raising”. He did not think they had enough information to determine whether or not it’s pre-existing.

Further discussion followed on how to proceed.

Mr. Richmond felt if the Board decides on the question of raising poultry they might be able to provide some guidance to the animal control officer.

Mr. Gossels questioned whether that should be the highest priority. He felt the highest priority should be resolving the application before them. However, he said he was comfortable taking the raising question first.

Mr. Klofft said the Board doesn’t have any hard facts in terms of pre-existing non-conforming use. What we have is an oral history that indicates that there have been chickens on this property going back a long while. The question was how far back research would have to be done .

Mr. Richmond felt the facts exist. We just don’t know them.

Mr. Klofft said there is one piece of evidence that as of the 50s this farm was subdivided into property.

Ms. Taylor asked if there were zoning maps which cover 1939. No one knew,

Mr. Kelly said there was no agricultural zone in Sudbury. It was all residential and then in the 30s they incorporated industrial districts and business districts. All agricultural use was permitted in Sudbury. It still is. He said this is a permitted use which just needs a special permit.

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Mr. Gossels asked how far back should the documentation go in order to decide that this was a pre-existing non-conforming use.

Mr. Athanas felt it should go back to the point at which it was lawful, and it may be prior to 1939. Then you need to trace it forward again and show that it's been a continuous use since the time that it was lawful.

Mr. Richmond said the Board still hasn't gotten to the question of whether this is raising poultry. If it is raising poultry, then there are lots of things in town that require a special permit.

Ms. Taylor said the Board can say that raising chickens on less than 5 acres requires a special permit unless it can be demonstrated that it is a use going back to 1939.

Mr. Gossels felt that in cases where it can't be documented that it's a pre-existing use, which will be many other cases on the smaller lots, then the Building Inspector's interpretation would be correct and a special permit would be required.

Mr. Sulkowski asked where the assumption comes from if the Bylaw applies.

Mr. Athanas said this gets to the burden of proof question. He said Mr. Sulkowski would have to prove the exception. The bylaw traces back to 1939 and perhaps beyond. He told Mr. Sulkowski that he will have to find a point in time where chickens were not regulated or, if it was regulated, if he fell into some sort of exemption to that condition at that time and then traced it forward. That would be a pre-existing lawful use. The use is not lawful until the Sulkowskis come back to the point at which they were not regulated.

Mr. Gossels felt it might be harder to prove the history than to deal with the special permit.

Mr. Klofft preferred to discuss the issue of "raising" before discussing the special permit issue.

Mr. Richmond said Section 2313 regulates the raising of poultry, the question being is this use considered the raising of poultry.

Mr. Gossels considered it the raising of poultry. Mr. Klofft agreed.

Mr. Richmond said the argument is that we're talking about the commercial raising vs. what the Sulkowskis consider to be the raising of pets.

Mr. Klofft said we're not talking about one chicken here, or even one rooster. The situation would then be different. Even though one resident's previous comment that she has names for all her chickens and considers them pets, Mr. Klofft did not consider them pets.

The Board was unanimous in their opinion that the Sulkowskis were raising poultry on their property as pertains to the bylaw.

Mr. Richmond said the next question since we're saying the bylaw would apply would be whether it is a pre-existing non-conforming use. He still didn't think the Board had enough information.

Mr. Klofft felt in this particular case the potential exists. Mr. Gossels agreed.

Mr. Sulkowski felt if the Board was going to use 1939 to trace back and say before 1939 for a pre-existing use, the 1939 version talks about commercial enterprise.

Mr. Athanas said the way it's written prohibits all personal use whatsoever because it gives an exception for commercial use, no exception for domestic use.

Mr. Sulkowski said the context of the 1939 bylaw refers to swine and furbearing animals – it's clearly about commercial enterprises which involve breeding, which he would consider that's why they call it raising. It's not keeping

Mr. Richmond said the Board has made a decision and believes that this is the raising of poultry. As to whether the bylaw applies if this is a pre-existing nonconforming use, he said Mr. Sulkowski is hearing that the Board doesn't have enough facts. He told Mr. Sulkowski that he would have to understand and present to the Board when the bylaw was first enacted – and it's looking like it was 1939 at least. Then he has to show that there was continuous use all the way up to today. Mr. Richmond felt there is plenty of information since about 1975, maybe a bit earlier that there has been a continuous use. What the Board doesn't have is information that shows from 1939 to 1975 that there was a continuous use.

Mr. Sulkowski asked whether the Board would be satisfied with a window from 1939 to 1975.

Ms. Taylor said the Board doesn't know whether it's 1939, which is the problem. Mr. Sulkowski would have to go back and explore it.

Mr. Athanas said as of 1939 it was prohibited. Mr. Sulkowski would have to go back to the time when it was not prohibited.

Or, Mr. Klofft said Mr. Sulkowski can show that that property wasn't in one of the excluded districts at which point the text of that bylaw wouldn't apply at all.

Mr. Sulkowski said the property was over 5 acres up to 1955. So they were exempted through that point.

Mr. Klofft asked when the lot went from greater than 5 acres to less than 5 acres.

Mr. Sulkowski was not sure. He said he could do some more research on that and the zoning status of the neighborhood. He could find out how many acres and at what point the acreage fell. Then he could also look up everything else the Board wants. He felt he should ask for a continuance.

Further discussion on definition of raising. Board said they were unanimous that this is raising unless Mr. Sulkowski could find something in case law to the contrary.

The public hearing continued to March 2.

Jonathan G. Gossels, Chairman

Stephen M. Richmond, Clerk

Elizabeth A. Taylor

Jeffrey P. Klofft

Constantine Athanas, Alternate

