

CASE 10-27  
New Cingular Wireless Services  
Willis Hill Water Tank, 292 Maynard Road

MINUTES OF THE PUBLIC HEARING  
SUDBURY BOARD OF APPEALS  
Monday, June 7, 2010

The Board consisted of:

Elizabeth T. Quirk, Chair; Jonathan F.X. O'Brien, Acting Clerk; Stephen A. Garanin; Jonathan G. Gossels; and Jeffrey P. Klofft.

Notice was published in the *Sudbury Town Crier* on May 13 and May 20, 2010, posted, mailed and read at this hearing.

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

Attorney Susan Roberts of Anderson & Kreiger LLP, representing New Cingular Wireless Services, explained that the applicant is requesting renewal of case 05-10 to allow the continued operation of an 80-foot, 6 inch stealth monopole wireless communications facility at the Willis Hill Water Tank, 292 Maynard Road. Ms. Roberts provided a brief history of the operations of the pole at the site mentioning that there were a few modifications made in 2008 to replace antennas. Otherwise there have been no other changes to the facility.

Mr. Gossels asked about the current condition of the pole and how long of a design life the pole had. Ms. Roberts said that she and the Sudbury Building Inspector have an upcoming appointment scheduled for an inspection of the pole at which point Mr. Kelly will make a determination. To her knowledge it is in good condition. A report by Paul J. Fardin and Company has been filed.

Mr. Gossels suggested an extension of ten years.

Ms. Quirk asked about the life span of the pole. Richard Detch with AT&T said that poles can last up to 50 years. Structural reports are done to determine loading on AT&T's poles.

Ms. Quirk was also fine with a ten year renewal.

No abutters were present and there were no further questions from the Board. The hearing was closed.

The following motion was made and seconded:

MOTION: "To grant New Cingular Wireless PCS, LLC, as successor-in-interest to New Cingular Wireless Services of Massachusetts LLC and AT&T Wireless PCS, Inc., the continued operation of wireless communications services in accordance with Consent Decree, Order, and Judgment No. 98-10713NG, and provided that the Building Inspector finds no structural deficiency, property shown on Town Assessors Map E07 as Parcel 0003 (Willis Hill Watertank), Residential Zone A-1, as follows:

1. This permit will expire in ten (10) years on June 7, 2020. 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: 5 (unanimous) Opposed: 0

REASONS: The petitioner seeks renewal for continued wireless communications operation. This site has been in operation for the past ten years. The Board finds that a ten-year renewal term is appropriate.

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Elizabeth T. Quirk, Chair

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Jonathan G. Gossels

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Jonathan F.X. O’Brien, Acting Clerk

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Jeffrey P. Klofft

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Stephen A. Garanin

CASE 10-28  
Edward and Carolyn Anderson  
22 Woodmere Drive

MINUTES OF THE PUBLIC HEARING  
SUDBURY BOARD OF APPEALS  
Monday, June 7, 2010

The Board consisted of:

Elizabeth T. Quirk, Chair; Jonathan F.X. O'Brien, Acting Clerk; Stephen A. Garanin; Jonathan G. Gossels; and Jeffrey P. Klofft.

Notice was published in the *Sudbury Town Crier* on May 13 and May 20, 2010, posted, mailed and read at this hearing.

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

Edward Anderson, applicant and owner of the property, was present to request a special permit for a 936 square foot accessory dwelling unit at his property, 22 Woodmere Drive. He explained that when he and his wife initially purchased the house it had four small bedrooms. Two of the bedrooms have since been converted into an office and a library leaving only two bedrooms. Mr. Anderson explained that he would like to build an addition onto his house that would contain two additional bedrooms and a family room that would be used by family members. There would also be room for a kitchen to be considered at a later date. Since the new spaces in the addition would be self-contained and could include a kitchen Mr. Anderson wanted to obtain approval for an accessory dwelling at this time.

Ms. Quirk asked whether the Andersons plan to rent the space out to non-family members. Mr. Anderson said that he anticipated that the space would only be used by himself or his family.

The Board questioned whether or not Mr. Anderson needed a special permit at this time or whether the addition was allowable without a permit. Building Inspector Jim Kelly said that he had also questioned the need but Mr. Anderson was making an investment to potentially use the space as an accessory dwelling so had wanted approval by the ZBA.

Mr. Klofft suggested including a condition that the space would not be rented to non-family.

Mr. Gossels and Mr. Garanin both expressed concern that there was not an architectural rendering included in the application and asked Mr. Anderson to explain what the addition would look like. Mr. Anderson said that the addition would essentially be a second story built over the garage in a style that would blend into the existing colonial-style house. The height of the addition would be approximately eight feet. Mr. Klofft suggested that the addition might create a new roof-line that would be higher than the existing second story by about three feet. Mr. Anderson said that height estimate was accurate.

The Board then discussed the percentage that the apartment would measure in relation to the rest of the house. Mr. Gossels said that he would be willing to waive the size if family members were using the accessory apartment.

Ms. Quirk asked whether a separate entrance was planned and where its location would be. Mr. Anderson was not yet sure where to put a second entrance although he had thought about putting an enclosed egress on the side of the house with perhaps an elevator.

Mr. Klofft asked whether Mr. Anderson had spoken with his neighbors about the plan. Mr. Anderson said that he had spoken with a few of them and no one indicated that they had concerns.

Mr. Klofft reminded Mr. Anderson that the special permit expires when the ownership of the house is transferred to another party either through sale of the property or inheritance. Mr. Anderson said that he understood this.

No abutters were present and there were no further questions from the Board. The hearing was closed.

The following motion was made and seconded:

MOTION: "To grant Edward and Carolyn Anderson, applicants and owners of property, a Special Permit under the provisions of Section 5500 of the Zoning Bylaws in conformance with the application for the Special Permit dated April 30, 2010 and the plans submitted by the Applicant, to allow a 936 square foot Accessory Dwelling Unit for property located at 22 Woodmere Drive, Residential Zone A-1, as follows:

1. The Accessory Dwelling Unit shall be occupied by no more than four persons.
2. The Accessory Dwelling Unit shall be restricted to use by direct family members only.
3. There shall be only one main entrance at the front of the house.
4. Adequate provision shall be made for the disposal of sewage, waste and drainage generated by the occupancy of the Accessory Dwelling Unit in accordance with all requirements of the Board of Health.
5. There shall be at least two off-street parking spaces for the principal dwelling unit and at least one off-street parking space for the Accessory Dwelling Unit.
6. The property owner shall file a sworn affidavit with the Town Clerk, with a copy to the Board of Appeals, certifying such occupancy is consistent with the Special Permit, every four (4) years.
7. This permit shall be recorded at the Middlesex South District Registry of Deeds prior to issuance of a building permit for the accessory dwelling unit.
8. This permit will automatically terminate upon the sale, transfer, or other change in ownership of the principal dwelling unit."

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

REASONS: The petitioner requires a Special Permit to allow a single-family accessory dwelling unit. The Board finds that the petitioner has fulfilled the requirements of the Bylaw for the granting of a Special Permit.

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Elizabeth T. Quirk, Chair

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Jonathan G. Gossels

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Jonathan F.X. O'Brien, Acting Clerk

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Jeffrey P. Klofft

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Stephen A. Garanin

CASE 10-29  
Joseph and Paulette Onorato  
539 Hudson Road

MINUTES OF THE PUBLIC HEARING  
SUDBURY BOARD OF APPEALS  
Monday, June 7, 2010

The Board consisted of:  
Elizabeth T. Quirk, Chair; Jonathan F.X. O'Brien, Acting Clerk; Stephen A. Garanin; Jonathan G. Gossels; and Jeffrey P. Klofft

Notice was published in the *Sudbury Town Crier* on May 13 and May 20, 2010, posted, mailed and read at this hearing.

Ms. Quirk, as Chair, opened the hearing. She explained that if anyone is not satisfied with the Board's decision, they have the right to appeal to Superior Court or Land Court within twenty days after the decision has been filed with the Town Clerk, and that possible other appeals may exist under current law.

Mark Bobrowski, attorney with Blatman, Bobrowski & Mead, LLC, presented on behalf of his clients Joseph and Paulette Onorato (residents of 2 Lee Anne Circle and direct abutter to 539 Hudson Road), an appeal of determinations by the Sudbury Building Inspector, Jim Kelly, the first of which concluded that the operation of an outdoor wood boiler located at 539 Hudson Road that is owned and operated by Walter and Karen Bent is not in violation of Section 3425 of the Zoning Bylaws. The second decision that Mr. and Mrs. Onorato wish to appeal is Mr. Kelly's decision that the boiler does not violate Section 2210 of the Sudbury Zoning Bylaws, which states that no structure shall be erected or used except for uses specified by the bylaws. Mr. Kelly contends that the boiler is an appliance that is permitted and regulated under the Massachusetts Department of Environmental Protection and is not a structure. A letter outlining the above appeals was presented by Mr. Bobrowski to the Zoning Board of Appeals at the start of the hearing.

Mr. Bobrowski said that there is no specific mention of wood boilers in Sudbury's Zoning Bylaws. He suggested that the use of a wood boiler would be prohibited in Sudbury under Section 2210 simply by the fact that wood boilers are not mentioned in the bylaws. He described the location and physical characteristics of the boiler. He then referenced three land use cases to support this claim that the boiler is a prohibited use by way of its being a structure. He said that the State anticipated the use of wood boilers and said that while they regulate their use they also must comply with local zoning regulations. He reminded the Board of the definition of a structure.

In regard to Section 3425, Mr. Onorato's complaint is that the smoke and odor generated by the boiler has a direct impact on the atmosphere at his home, located at 2 Lee Ann Circle. Mr. Onorato described dense smoke that drifts toward his house at ten to twenty minute durations, from noon to 5:00 p.m. about six times a day. He presented the Board with photographs showing smoke surrounding his house and obscuring trees. A petition from about 24 neighbors was also submitted for the record, as was a fact sheet on the environmental detriments of wood boilers.

Sudbury Building Inspector Jim Kelly said that he feels that the wood boiler is an outdoor type of wood furnace that is sold for the home and marketed widely. A brochure showing the type of boiler used was submitted for the Board's review. He does not feel that the use is currently prohibited because the State does regulate wood boiler use. If the State did not regulate their use then Mr. Kelly felt that it would be

something that would have to be regulated by local town bylaws. He noted that when there was an initial complaint about the height of the smoke stack he did research into the installation of wood boilers, noted the required height, and went to the site to inspect it and to ensure that the smoke stack was fixed to the appropriate, regulated height.

Mr. Klofft asked why a special permit was not required for outdoor wood boilers. Mr. Kelly said that any point a petition could be submitted at Town Meeting to add or amend the bylaws to require special permits for wood boilers. He again said that the boiler was an accessory use for heating the Bent's home.

Mr. Gossels said that the boiler appeared to him to be a structure. He asked whether the smoke situation improved when the stack was raised. Mr. Onorato said that it did not help since the smoke is blocked by the trees and the wind then carries it downward and through the neighborhood. Mr. Gossels said he felt that the neighbors are paying a price for someone else's cost savings.

Mr. Bobrowski said he did not feel that the boiler fit the term of "accessory structure."

Mr. Klofft said that it appears that a homeowner can use a boiler by right, but in the area where this boiler is being used there are small lots with one acre zoning where its use affects the neighbors. Mr. Kelly said that special permits would then regulate where boilers could be used. Currently no permit is needed.

Ms. Quirk opened the floor to the audience, but noting that the Board already has an appreciation for the fact that odors are an issue. She asked whether anyone was present who was in support of the boiler.

Karen Bent, 539 Hudson Road, and owner of the boiler, explained that their brand of boiler is certified by the EPA and passes those requirements. The EPA even promotes the use of wood fuels by issuing users tax credits. She further pointed out that there are seasonal limitations on the use of wood boilers, which she runs only from December through April, the duration of which is less than allowed in order to accommodate to neighbors. She also mentioned that their boiler is not the only source of smoke in the area. There are a number of houses in the area that use indoor wood stoves and fireplaces to heat their homes as the primary source of heat. She pointed out that smoke-producing, indoor wood stoves are not EPA-certified.

Ms. Quirk asked Ms. Bent whether or not the boiler was the only source of heat for the home. Ms. Bent said that it was not.

Mr. Gossels said that it is unusual that so many neighbors are upset about the boiler smoke. He asked whether or not there was some reason that it was so smoky. Ms. Bent said that she went to the Board of Health, the Fire Department, and the Building Department and all said that the boiler was in compliance.

Ms. Quirk said that the Board was not implying that the Bents were doing anything wrong or illegal, but rather the byproduct was causing a problem for the neighbors.

Ms. Bent said that she and her husband had spent a lot of money on the boiler.

Mr. Gossels said that the boiler is not working for the neighbors, only for the Bents.

Mr. Kelly said that the boiler was inspected numerous times. During one inspection it was noted that the smoke was coming downward. He cautioned the Board to be careful though about making a decision based upon a picture if the boiler is not witnessed in operation.

Mr. Kelly questioned what would happen to the legality of other existing boilers in town if permits were required.

Mr. Gossels suggested that the Planning Board create a bylaw to address the issue of wood boilers. He said that he has changed his mind on a ruling because he had not appreciated how greatly it affected the neighborhood.

Mr. Kelly said that wood stoves consistently smoke a lot more than this boiler. Mr. Klofft said that a separate appliance is different than an allowed wood stove.

Robert McDonald, 23 Aaron Road, said that his property is approximately 300 feet from the boiler and there is increased smoke from it at his property. He said that it is intolerable, and uncomfortable to breathe. He likened it to a campfire from which one cannot get away. He said that even with closed windows the smoke gets into the house and the particulates accumulate there.

Walter Bent, 539 Hudson Road, referenced an e-mail that he obtained from Board of Health Director Bob Leupold, written from Gary Beagan (25 Laurel Circle) representing the West Sudbury Neighborhood Committee to Mr. Leupold, complaining about the smell of smoke from the boiler. Mr. Bent said that upon looking into the matter it was discovered that on the day of the complaint the boiler had not even been running.

Mr. Beagan was present and said that he is about 450 feet down-wind of the boiler, which he called a structure. He said that he has a wood fireplace in his house and occasionally gets permits to burn brush on his property but the smoke from the boiler has a smoldering effect that gets into his house. He also said that the wood was full of creosote. He said that he does appreciate the fact that the Bents have tried to fix the problem, but the neighbors are trying to get relief.

Mr. Gossels once again said that he was against the boiler because it appeared to be a nuisance.

Mr. Garanin said that the discussion was going in a circle. He said that he would not want the issue in his back yard, but he does not consider the boiler to be a structure even though it looks like a shed. He has a problem with the nuisance, but that leads to questioning the nuisance of all wood stoves in the area. He has a problem blaming all of the smoke on just one boiler. He said that perhaps the boiler was not a good fit for this environment of smaller lots. He suggested the Planning Board revise the bylaw.

Robert Boyd, 6 Birchwood Avenue, said that he has a wood burner that makes much more smoke than the Bent's boiler.

Mr. Onorato said that he was also concerned about his property values. He said that he spoke with a real estate agent who indicated that realtors do not want to know about boilers when selling a house because it would affect buyers. He indicated that he had a letter from a realtor who indicated that a wood boiler in the neighborhood could reduce the sale price of a home by \$50,000.

There were no further comments from the Board or audience. The hearing was closed.

The following motions were made and seconded:

MOTION: “To overturn the Determination of the Building Inspector on the grounds of Section 2210 of the Zoning Bylaws that the use is not expressly permitted or prohibited, property located at 539 Hudson Road, Residential Zone A-1.”

VOTED: In favor: 3 (O’Brien, Gossels, and Klofft) Opposed: 2 (Quirk and Garanin)  
MOTION DOES NOT PASS – NEEDS SUPER-MAJORITY

MOTION: “That the Board supports the Zoning Enforcement Agent’s opinion that the wood boiler located at 539 Hudson Road does not violate Section 3425 of the Zoning Bylaw.”

VOTED: In favor: 4 Opposed: 0 Abstained: 1 (Klofft) MOTION CARRIES

REASONS: Although 3 members of the Board find that the boiler is in fact a structure that should be regulated under the provisions of Section 2210 of the Zoning Bylaw, appeal of a decision of the Building Inspector requires a 4/5<sup>th</sup> majority vote of the board and therefore the motion did not carry.

The Board finds that Section 3425 of the Zoning Bylaw has not been violated, and upholds the decision of the Building Inspector that the wood boiler is not a building or facility regulated under Section 3425 as it does not require a building permit or occupancy permit from the Town of Sudbury, and is regulated and permitted under the Authority of the Massachusetts Department of Environmental Protection.

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Elizabeth T. Quirk, Chair

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Jonathan G. Gossels

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Jonathan F.X. O’Brien, Acting Clerk

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Jeffrey P. Klofft

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Stephen A. Garanin

CASE 10-30  
Sidney and Rita Bourne, Ralph and  
Barbara Mazza, Aina Apse, Claudio and  
Joan Delise  
10-20 Northwood Drive

MINUTES OF THE PUBLIC HEARING  
SUDBURY BOARD OF APPEALS  
Monday, June 7, 2010

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Elizabeth T. Quirk, Chair; Jonathan F.X. O'Brien, Acting Clerk; Stephen A. Garanin; Jonathan G. Gossels; and Jeffrey P. Klofft

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Ms. Quirk, as Chair, opened the hearing. She explained that if anyone is not satisfied with the Board's decision, they have the right to appeal to Superior Court or Land Court within twenty days after the decision has been filed with the Town Clerk, and that possible other appeals may exist under current law.

Sidney Bourne, Ralph Mazza, and Claudio Delise, residents of Northwood Drive, were present to appeal the Site Plan Modification decision made by the Board of Selectmen dated March 23, 2010 to modify Site Plan Application #97-337, and amend the Condominium Association documents relative to age-restriction and occupancy and care services.

Ms. Quirk questioned whether or not the appellants were in the appropriate forum to appeal the Board of Selectmen's decision. In her research of the Sudbury Bylaws, Section 6300, specifically in section 6390A, the section that deals with Site Plan review, she said the bylaws allow the Selectmen to make judgments on rules and regulations for site plan review. She felt that the appellants were not alleging that the Selectmen failed to follow rules but rather that they disagreed with their decision on the modifications.

Mr. Bourne, 20 Northwood Drive, said that he had been directed to the ZBA by Town Counsel after spending a great deal of time seeking out the appropriate venue through which to file the appeal. He eventually sent a letter of appeal to the ZBA per the instructions of Town Counsel.

Mr. Delise, 20 Northwood Drive, wanted to clarify Ms. Quirk's comment about the Selectmen's jurisdiction. He said that the appellants are, in fact, claiming that clearly the Selectmen did not have jurisdiction to make their decision.

Ralph Mazza, 10 Northwood Drive, said that if the ZBA itself is having such trouble finding out what the appropriate forum for the appeal, he requested that the ZBA hear the case, decide it, and then afterward if anyone wanted to challenge the problem of jurisdiction then it can proceed from there.

Ms. Quirk then addressed Attorney Mark Kablack, who was in attendance on behalf of the Northwood at Sudbury Condominium Association which opposes the appeal. He also introduced Mr. Markoff and Mr. Bartlett, attorneys for the contract purchaser of the property, Ralph Castagna. As to the jurisdictional issue, Mr. Kablack noted that the Sudbury Bylaws do provide that the ZBA does have review rights of certain site plan decisions related to substantive changes. He believes that there is a forum for appeal of site plan decisions as they relate to substantive provisions. He further said that the appeal that was first

submitted by the appellants to the ZBA dealt mostly with procedural issues, whether the Selectmen should have required a new site plan decision or whether they could have proceeded with a site plan modification. If the appellants were only appealing procedural issues then this would not be the appropriate forum through which to appeal, however, subsequent to their initial letter that raised only issues about the modification the appellants then submitted a lengthier letter dealing with other issues that did speak to substantive issues. Therefore the Condominium Association and Mr. Markoff requested that the ZBA hear the case in order to get to the substantive issues because he feels that as the developer goes for building permits or other permits in the future these issues will be brought before the ZBA again. The substantive issues deal with two things, age restriction and care services.

After much discussion it was decided that the appellants could proceed with their appeal before the ZBA, particularly because Town Counsel had deemed the ZBA the appropriate forum through which to hear it.

Mr. Bourne began by stating that the appellants feel that the decisions of the Board of Selectmen were completely devoid of rationale or reasoning because the Selectmen's Site Plan Modification dated March 23, 2010 was inconsistent with the decisions of the Selectmen and the Building Inspector dating from 1997. He said that he believes that if the ZBA were to examine the facts of the decision only by order of the law the Board would find that the Selectmen were egregiously wrong. In his letter to the ZBA dated May 30, 2010, he said that overturning the modification would be justified because in the appellants' opinions the Selectmen erred by approving Condition 2 (Age Restriction) and Condition 3 (Care Requirements) thus rendering Northwoods non-compliant with the Town Bylaws in regard to age and care requirements. He said that in 1997 the Selectmen, the Planning Board, and the Building Inspector Mr. Hepting said that the age should be restricted to owners ages 55 years and up, with the exception of a younger spouse. He said that the new language would make it possible for 20% of the units to be owned by those younger than age 55 and only 80% restricted to older residents.

He then went on to discuss the changes made to the care requirement. Care requirements, which in the 1997 Site Plan decision were mandatory, would now be determined at the Trustees' discretion. He said that this is a drastic reinterpretation of the bylaw made outside of Town Meeting. He noted as examples of reduced care, that the pool is being eliminated to make way for new housing and the clubhouse currently has locks on it. He is concerned that further care services may be eliminated and he said that he does not think that the developer is interested in creating a residential care facility because the words "residential care facility" is not noted in the developer's plans. He feels that the developer does not think that the pool or the clubhouse is an essential right of the residents. He said that the consequences are that Northwood is no longer in compliance with the bylaw and the residents may have no care services if care services are discretionary. He said that the Selectmen's recent modification decision degrades the care facility into a standard housing development located in a research district and the bylaw does not allow standard housing in a research facility. He suggested that the term "residential care facility" had been so redefined that any housing development in Sudbury would now qualify as a residential care facility.

Mr. Kablack argued that the age restriction is in compliance with the bylaw. He explained that the modifications to the 1997 decision were appropriate for Northwoods' present situation. To provide context he outlined the history of the site, explaining changes in developers' ownership due to construction difficulties, multiple appeals, and more than one developer bankruptcy. He also described how the site plan was altered over the course of time by past developers and noted the development is still incomplete. He said that the current developer, Mr. Castagna, will be purchasing the site now eleven years after the project started and needs to revise the site plan in order to complete the site. Mr. Kablack

acknowledged that the Condominium Association itself was initially taken aback by the proposed changes because it was so different from the original plan. However the Association then realized that the changes were necessary. The proposed site plan calls for nineteen town houses rather than towers, and a modified club house with the pool and gazebo removed. The owners, the Condominium Association, voted in late January or early February of 2010 and a supermajority prevailed in favor of Mr. Castagna's plan. Appropriate applications were made to the Selectmen. The Selectmen agreed. Mr. Klofft clarified for the record that the appellants were part of the minority of the Condominium Association voters.

Mr. Markoff added that Northwoods has been a troubled condominium project with governance issues. He then clarified earlier comments from the appellant, Mr. Bourne, regarding the bylaw's language regarding residential care facility. He said that there really is not much guidance in the town's bylaws about how these facilities are defined. Therefore the developer looked to Federal guidelines which allow 80% of all units to be 55 years or older in one or more buildings. Mr. Markoff said that the Board of Selectmen agreed. He sought to correct Mr. Bourne's statement that there would no longer be any care services provided by saying that they are in fact mandated by the Board of Selectmen. The Selectmen issued a condition that the developer "shall provide care services." Care services are not totally at the discretion of the trustees.

Mr. Kablack mentioned the Federal Fair Housing Act and HOPA, the Housing for Old Persons Act, acts that were developed because Congress recognized that there needed to be flexibility on age restrictions for occupancy. He said that 100% occupancy of residents that are 55 years of age or older is difficult to achieve. He said that Northwoods is marketed as an age-restricted community. He said the 1997 laundry list of "age needs" as listed in the initial permit, but which he reminded the Board are not in the bylaw, is out-moded today and does not necessarily fit the needs of the condominium association. He said that modifying the decision and therefore allowing the unit owners, through the condominium association, to decide the care services they want would be better for the unit owners rather than placing a list of restrictive requirements in the permit itself. Therefore, while the decision requires that care services be provided, there is more flexibility for the residents about what services will be provided. As one example the Council on Aging requested a condition that there be a dedicated room in the clubhouse for a visiting nurse, which Mr. Castagna has agreed to. In addition, to ensure enforcement of care services, there is a requirement of annual reporting to the Building Inspector and the Board of Selectmen and an annual meeting with unit owners. The plan proposed and approved by the Selectmen simply modified the specific terms of the 1997 decision.

Mr. Gossels asked for clarification on what services are available that would differentiate it from a condominium complex. Mr. Kablack said that there are three factors which differentiate it. One is that care services are voted on by unit owners. Another is that there shall always be a room in the clubhouse provided for occupational therapy or other nursing care. He then mentioned the various rooms and facilities within the existing clubhouse. He said that the pool, while part of the original proposal, is not mandated in the bylaw and it was determined that its maintenance had become a drain on the condominium association's funds and therefore took away from other care services. The Condominium Association agreed. The third factor is the required annual reporting to the Town so that if provision of services becomes an issue than it can be further addressed.

Mr. Klofft addressed the appellants by asking, if there was a vote among the condominium association to approve these changes and the appellants were in the minority, why they felt they had a right to appeal the Selectmen's decision. Mr. Mazza said that the process for determining changes, negotiations between the

Trustees and the developer, appeared to be done in secret and that the appellants, and perhaps other residents, knew nothing of the negotiations. He said that the new plan was presented to the residents one week prior to the vote. He said they were upset about the loss of the pool and its value to the residents and felt that the builder was building units that were unattractive. He acknowledged that the vote on the new plan did happen but he and the other appellants still feel that the financial interests of the residents are being trod upon. Mr. Klofft suggested that perhaps the appellants should be suing the Condominium Association and not presenting the appeal to the ZBA. Ms. Quirk reminded everyone that the ZBA is charged solely with voting on the actions taken by the Selectmen at its March meeting and should not get involved in the proceedings of the residents at Northwoods.

Mr. Kablack said that the developers set out to finish the project as it was approved at bankruptcy but the plan was just too costly. In today's market Mr. Castagna cannot proceed with the original plan.

Mr. Gossels asked whether everyone living in the residences had to be 55 years of age. He didn't support the argument that its being in a research district was a problem. He said that the pool is a lightning rod for problems.

Mr. Kablack said that it is going to take another three years to complete work on the project and until there is going to be a full complex. There will be only 43 units instead of 66 as originally proposed. Because there are 23 fewer units the annual operating budget will be lower. The pool, which is an expense and is little used by the residents, is a costly component.

Mr. Klofft then asked Building Inspector Jim Kelly to clarify his views on the percentage of age restricted units. Mr. Kelly said that he had responded to the proposal from the viewpoint of the 1994 Town Meeting Proceedings which showed that the Town voted for 100% age restriction of 55 years or older. He was also concerned that the care component was to be eliminated but subsequently saw that it was brought back into the proposal.

Mr. Klofft, Mr. O'Brien and Ms. Quirk agreed that the Federal Fair Housing Act requires the developer to market the units as 55 and older. Mr. Mazza said that he disagreed that the Federal standards are preemptive. He still felt that if the Town voted for 100% age restricted occupancy then the Town should determine the percentage. Mr. Klofft suggested that the Town may not have anticipated future needs and that is why there is the ability to make amendments.

Mr. Klofft noted that it becomes difficult to protect the rights of the minority when there is self-governance. In this case residents made purchase decisions based upon an original plan. It was pointed out that there are enforcement opportunities in place to deal with these concerns.

Ms. Quirk then took comments from the audience.

Elaine Wexler, an eight year resident of Northwood Drive, said that most of the owners are 90 years of age or younger. She said that in her opinion the site was never a specific care facility, however when there have been specific needs they have been brought up to the trustees and addressed. She said that there is a home-care system in place. She said that she herself enjoys having a pool but acknowledged that when she realized the great costs and noted the lack of participants she agreed that it was not a necessity. She said that the pool is not used by residents much, but in fact it is their grandchildren who use it frequently.

Rhoda Bronstein, also a resident, said that those who voted for the modifications felt that the information provided was compelling enough and obtained a lot of information through many meetings where many questions were asked. She said that she felt the Selectmen also made a thoughtful decision and came up with a better plan.

Rita Bourne just wanted to make a point that in the last five or six years, under three different owners, there have been fewer and fewer services.

There were no further comments from the Board or audience. The hearing was closed.

The following motion was made and seconded:

MOTION: "That the Board upholds the Board of Selectmen's decision dated March 23, 2010 to approve the request of the Northwood at Sudbury Condominium Trust to amend the Condominium Association documents relative to age-restriction and occupancy, Section 6-B-4 and any other related sections of the documents, and to similarly amend the Condominium Association documents relative to care services, Section 6-B-1 through 6-B-3 and any other related sections of the documents, as voted in the Site Plan Modification Decision of Northwood at Sudbury Site Plan #SP97-337, dated March 23, 2010, conditions 2 and 3."

VOTED: In favor: 5 (Unanimous) Opposed: 0 APPEAL DENIED

REASONS: The Board felt that the Selectmen were justified in their decision to modify Site Plan #97-337 because the Sudbury Zoning Bylaws allow for modifications to be proposed if initial conditions become onerous or outdated. This reasoning applies to the age and care requirements as well. The Board also felt that sufficient measures were put in place within the Selectmen's decision to ensure that the care needs of the residents would be met within the context of the Zoning Bylaw and the original Site Plan.

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Elizabeth T. Quirk, Chair

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Jonathan G. Gossels

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Jonathan F.X. O'Brien, Acting Clerk

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Jeffrey P. Klofft

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Stephen A. Garanin

CASE 10-31  
Robert A. Maier, D.C.  
265 Peakham Road

MINUTES OF THE PUBLIC HEARING  
SUDBURY BOARD OF APPEALS  
Monday, June 7, 2010

The Board consisted of:

Elizabeth T. Quirk, Chair; Jonathan F.X. O'Brien, Acting Clerk; Stephen A. Garanin; Jonathan G. Gossels; and Jeffrey P. Klofft.

Notice was published in the *Sudbury Town Crier* on May 13 and May 20, 2010, posted, mailed and read at this hearing.

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

Dr. Robert Maier, applicant and owner of property, was present to request a special permit to conduct a home business, specifically a chiropractic practice, at 265 Peakham Road. Dr. Maier explained that he has been a resident of Sudbury for nineteen years practicing chiropractic services in Sudbury for sixteen years at a medical office at Horsepond Road. He is interested in moving his practice from its current location to his home as affordability is a motivating factor. He would like to keep his practice in Sudbury however the economy and requirements of insurance companies have affected his ability to stay at his current location. His children will be attending college next year so he will have more space in his home to dedicate to his business.

Dr. Maier submitted a floor plan to the Board with modifications to his original proposal. He said that he did not want to change the footprint of the garage but would instead use the existing garage space to house a small reception area and two treatment rooms. He did not feel that the business would generate excessive noise, dust, etc. The parking plan would include three 13x28 foot parking spaces off to one side of his house. The existing driveway is a semi-circle so cars would enter and exit one way. A sign would be installed to guide clients. There would be no parking on Peakham Road. He acknowledged that Peakham Road is a busy road and estimated that there could be an average of twenty clients per day utilizing his practice. Dr. Maier submitted a proposed schedule of office hours. Office hours would range from five to eight hours per day beginning at 7:00 a.m. and on some days ending at 6:00 p.m. There would also be office hours on Saturday from 8:00 to 11:00 a.m.

Ms. Quirk expressed concern over the high volume of clients per day visiting a residential area on a busy road. She noted that twenty clients per day is more than has been allowed for other home businesses.

Mr. Maier said that doctors' offices have historically operated out of homes.

Robert Dionisi, attorney for Robert Mailly, the abutting neighbor at 271 Peakham Road, said that the application he reviewed was deficient because it did not show how much of the home was being used for the business. He said that the practice at Horsepond and Boston Post Roads was sizeable and too large for a home business. He felt that 20 clients per day added potentially dangerous traffic around the curves of Peakham Road. He also said that if large businesses were allowed in residential communities he could

foresee a mass exodus of businesses coming from Route 20 into residential areas. He also questioned whether or not Dr. Maier was considering having employees or additional telephone lines installed. He raised issues with the fact that there would be a marked entry when the bylaws specifically call for no expression of a business in a residential area. He said that the business would decrease property values of the abutting homes.

The Board discussed the fact that the original proposal was no longer a consideration, however the business would still consume between 30 and 40% of the home's square footage.

Mr. Gossels said that he shares the same concerns as had been raised by others.

It was noted for the record that Dr. Maier submitted a list of approximately eleven neighbors who are supportive of the proposed home business. He said that no ambulances would be coming to the home as he does not treat that kind of patient.

Lee Swanson, 55 Hudson Road, spoke in support of allowing Dr. Maier's proposal. Mr. Swanson is a client of Dr. Maier's and he said that Sudbury should not lose him.

Mr. Klofft said that he is not opposed to having a home business at that location but he is not persuaded by the proposal of twenty more cars on Peakham Road. He asked the Board what an agreeable number of clients might be. There was no conclusion.

Mr. O'Brien took issue with the 7:00 start time for office hours suggesting that it was too early. Mr. Gossels also noted that Saturday hours were also proposed. The Board discussed the fact that the bylaws require a lower volume to enable a home business to fit into a residential area. In the end the opinion was that there were simply too many cars and too lengthy office hours for the proposal to work.

Dr. Maier requested that the application for the Special Permit for a home business be withdrawn without prejudice.

There were no further questions from the Board or audience. The hearing was closed.

The following motion was made and seconded:

MOTION: "To accept a request from the Applicant to withdraw Case 10-31 without prejudice."

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

REASONS: The Board found that the proposal included too many clients per day which would add a significant number of cars on an already heavily traveled road. The proposed office hours were also considered too lengthy and could impact abutting neighbors on the weekends. In the end the Board did not feel that the petition as proposed fit the requirements of the bylaws for an unobtrusive home business in a residential neighborhood.

Robert A. Maier, D.C.  
265 Peakham Road  
10-31 Page 3

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Elizabeth T. Quirk, Chair

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Jonathan G. Gossels

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Jonathan F.X. O'Brien, Acting Clerk

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Jeffrey P. Klofft

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Stephen A. Garanin

CASE 10-32  
Stewart and Beth Renner  
21 Magnolia Road

MINUTES OF THE PUBLIC HEARING  
SUDBURY BOARD OF APPEALS  
Monday, June 7, 2010

The Board consisted of:  
Elizabeth T. Quirk, Chair; Jonathan F.X. O'Brien, Acting Clerk; Stephen A. Garanin; Jonathan G. Gossels; and Jeffrey P. Klofft.

Notice was published in the *Sudbury Town Crier* on May 13 and May 20, 2010, posted, mailed and read at this hearing.

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

Stewart Renner, applicant and owner of property, was present to request a special permit to construct a thirty-six by twenty-four foot attached garage addition on a nonconforming lot which would result in a front-yard setback deficiency of fifteen feet, property located at 21 Magnolia Road. The existing garage would be converted into a workshop space.

Mr. Renner submitted a list of signatures from at least eleven neighbors who were supportive of the garage addition.

In looking at the elevations Ms. Quirk questioned the number of intended garage bays with garage doors. The rendering showed a total of four. Mr. Renner said that in fact the rendering was not the updated version and so he amended the drawings to show only two bays facing Sycamore Street.

Mr. O'Brien asked about the location of the driveway and questioned the amount of paved surface there would be. Mr. Renner said that there would be additional paving to the street, but no more leading to the garage space.

Bruce McLeod, 24 Magnolia Road, asked about the number of vehicles the new addition could house. Mr. Renner said that the new addition would house three cars and two motorcycles.

There were no further questions from the Board or audience. The hearing was closed.

The following motion was made and seconded:

MOTION: "To grant Stewart and Beth Renner, applicants and owners of property, a Special Permit pursuant to Section 2420 of the Zoning Bylaws, to construct a garage addition measuring 36 feet by 24 feet on a nonconforming lot which will result in a front yard setback deficiency of fifteen feet with the modification to the plan as submitted June 7, 2010, property located at 21 Magnolia Road, Residential Zone A-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.”

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 garage, which will create a front yard setback deficiency, will not be substantially more nonconforming than the existing nonconformity to the neighborhood. No abutters were present to oppose the petition.

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Elizabeth T. Quirk, Chair

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Jonathan G. Gossels

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Jonathan F.X. O’Brien, Acting Clerk

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Jeffrey P. Klofft

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Stephen A. Garanin

CASE 10-33  
Elizabeth Orlando, d/b/a Betsy's Buddies  
163 Barton Drive

MINUTES OF THE PUBLIC HEARING  
SUDBURY BOARD OF APPEALS  
Monday, June 7, 2010

The Board consisted of:  
Elizabeth T. Quirk, Chair; Jonathan F.X. O'Brien, Acting Clerk; Stephen A. Garanin; Jonathan G. Gossels; and Jeffrey P. Klofft.

Notice was published in the *Sudbury Town Crier* on May 13 and May 20, 2010, posted, mailed and read at this hearing.

Ms. Quirk, as Chair, explained the requirements necessary to substantiate the granting of a special permit. She also explained that if anyone is not satisfied with the Board's decision, they have the right to appeal to Superior Court or Land 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 Orlando, applicant and owner of property, was present along with her attorney Michael Fee of Pierce and Mandell, P.C., to request a special permit to operate a home pet care business, a kennel, on the premises, property located at 163 Barton Drive.

Mr. Fee began by referencing a map of the neighborhood. He noted that the property abuts the Hop Brook Marsh Conservation Area and Ms. Orlando's address in the existing cul-de-sac. Ms. Orlando's proposal includes construction of a 16 by 16 ½ foot addition to her garage that would be soundproofed, heated, and air conditioned. Inside there would be spaces designated as pens for boarders and there is a double door egress. An outdoor play area would be enclosed by a fence sufficient to secure the dogs and deflect potential noise or visual nuisances. A shed would be relocated to a place that meets all setback requirements. He said that the applicant has taken significant measures to ensure that the proposed project is consistent with the purpose of the bylaws and is appropriate for the neighborhood and the community.

Mr. Fee said that Ms. Orlando plans to require identification collars to be worn by all dogs. To control barking ultrasonic bark control units will be installed in the interior kennel area and outside play area. A sample of the equipment was shown at the meeting. Prospective clients' dogs will be pre-screened to determine whether or not they are barkers and Ms. Orlando would not allow at her facility breeds that were known barkers. Stockade fencing will also help block sound. Waste disposal methods will ensure no impact on groundwater. He said that in developing her proposal Ms. Orlando has tried to anticipate potential problems and as noted in her application and is willing to ensure that the business is not more detrimental to the neighborhood than its current conditions.

Mr. Fee said that he was aware of one argument against the special permit from Brian and Barbara Clifton (45 Millpond Road) that was brought to the Board's attention that he wanted to clarify. The Cliftons noted in a letter submitted to the Board on June 1, 2010 that there was a deed restriction on the property dating from the 1959 subdivision that would prohibit use of the land for a kennel. However, Mr. Fee said in his letter submitted to the Board on June 7, 2010 that Massachusetts General Law Chapter 184, Section 23, states that the deed restriction is limited to a 30-year term, and has therefore expired.

Mr. Gossels said that he had concerns with the intended number of dogs on the property given that Ms. Orlando already has three dogs of her own. The count, as proposed, would be nine dogs and he said that he would feel more comfortable if there were only three boarding dogs plus Ms. Orlando's three pets, bringing the number to six total dogs.

Mr. O'Brien asked whether the business was seasonal. Ms. Orlando said that there might be fluctuations in the business around holidays and summer vacations but noted that the business would probably not run 24 hours, seven days a week, for the entire year.

Attorney Lawrence Blacker, representing Barbara and Brian Clifton, plus 23 other abutters in the 30 unit subdivision, said that Section 2310 of the Sudbury Zoning Bylaws was written so that an accessory use would be customarily incidental to the use of the land. He said that the use needs to be in harmony with the general purpose or intent of the property. He said that by the mere fact that there was a deed restriction, with the caveat that there be no livestock on the property, makes it unharmonious.

Mr. Klofft said that historically deed restrictions were put in place by builders and that livestock meant something akin to horses and cows and did not mean domestic animals such as dogs.

Mr. Blacker then pointed to section 6220(c) that describes that adequate facilities would be provided. He said that he did not question whether the physical structure would be adequate but noted that there are only four bays inside it. So he questioned whether or not it was appropriate. He then argued that nine dogs created a significant business and would contribute significant noise and odor to the neighborhood, and suggested that there would be a great deal of waste associated with that number of dogs.

Mr. Klofft noted that the Board was being asked to consider whether there should be no kennel on the premises or one that is smaller in scope. Mr. Blacker said that given that the proposal was for a significant business in a residential area it should fit the standards of a home occupation which would be more reasonable if there were only one or two dogs proposed. He argued that six dogs, plus three of the applicant's dogs was too many dogs.

A resident of Barton Drive, who said that she had lived in the neighborhood for thirty-five years, was against a kennel with nine dogs because it would affect the quiet neighborhood. She said that many people have dogs there and she herself has two. She said that she is not against dogs, but at night, because the neighborhood is typically so quiet, a dog barking really stands out. She felt that nine dogs, that would potentially be barking, would be a nuisance.

Eileen Murray, 34 Mill Pond Road, said that she has lived in the neighborhood since 1965. She described it as a special, quiet neighborhood with modest sized homes and with many neighborhood children riding their bikes or walking in the area. She did not feel that a kennel was appropriate near the conservation area and was further concerned about the effect on property values with a kennel nearby.

Barbara Clifton said that she has spoken with a realtor who indicated that if a kennel is approved, there is a percentage of the population of prospective house buyers who will not even consider buying properties in the area.

Mr. Blacker reminded the Board that the lots were modestly sized. Ms. Quirk said that the Board was familiar with the area.

Lisa Robinson, 8 Millpond Road, said that the Hop Brook trail heads are located near Ms. Orlando's property. She said that she frequently walks there with her toddler-aged children and asked whether or not the boarding dogs would be walked on the conservation trails. She also asked whether Ms. Orlando would be hiring employees or would be managing the dogs by herself. Ms. Orlando does not plan to hire employees.

Mr. Fee said that Ms. Orlando is very sensitive to the needs of the neighborhood and also loves the neighborhood's qualities. She has spent quite a lot of time and energy designing a facility that would be basically invisible to the neighborhood and said that he understood that there might be fears about things that might occur in the neighborhood. However, he suggested that there are several layers of regulation involved after a special permit is issued. For instance as a condition of the special permit the kennel would be subject to the nuisance laws and any issues that might arise with noise or odors, for example, should be immediately registered with the Dog Officer and remedied. Ms. Orlando is aware of this. He said that the point about property values is perhaps misplaced in this instance because it is not a valid consideration in evaluating the criteria in the bylaw for the special permit. He suggested that if the Board is more comfortable shortening the duration of the special permit to six months Ms. Orlando is willing to comply because she is confident that her preparation of the proposal is going to be acceptable. He also suggested that Ms. Orlando would be comfortable with the limitation of four dogs as well.

The Board then took some time to discuss an appropriate number of dogs allowed and permit duration. Mr. Klofft pointed out that six months may be too brief because it will take some time to get the facility built and the business operational. He felt that a year would allow a more accurate assessment. As to the number of dogs he said that the combination of the owner's dogs plus clients' dogs was too much. He suggested that if at any point she should have fewer of her own dogs then an additional client's dog could be substituted.

There were no further questions from the Board or audience. The hearing was closed.

The following motion was made and seconded:

MOTION: "To grant Elizabeth Orlando, applicant and owner of property, a Special Permit granted under the provisions of Section 2313 of the Zoning Bylaws, to operate a kennel on the premises, property located at 163 Barton Drive, Residential Zone A-1, subject to the following:

1. The Applicant shall construct an addition in accordance with the plans and specifications submitted with the Application and in conformity with all applicable codes and regulations.
2. The dogs shall not become a nuisance.
3. The maximum number of dogs allowed on the property shall be no more than six (including the Applicant's pets).
4. All boarding dogs shall wear tags which identify the business.
5. Any complaints shall be reported immediately to the Dog Officer.
6. Ultrasonic units shall be employed to deter excessive barking.

7. Compost bins shall be provided for disposal of dog waste, the number and capacity of which shall be appropriate for the number of dogs. Dog waste is to be picked up immediately.
8. No commercial activity consisting of breeding or sale of dogs will be conducted on the property.
9. No signs advertising the kennel will be allowed.
10. Dogs shall be dropped-off at the facility no earlier than 8:00 a.m.
11. Dogs shall be kept inside at night.
12. Dogs that are outdoors are to be supervised at all times.
13. Dogs are to be contained within the fenced area or by a leash at all times.
14. No more than two boarding dogs at a time may be on a leash.
15. Fencing shall consist of a chain link fence bordering the woods along the property and six foot stockade fencing at the front and back of the site.
16. This permit is non-transferable and will expire in one (1) year on June 7, 2011, at which time the Board will consider renewal upon receipt of proper application on or before that date."

VOTED: In favor: 4    Opposed: 0    Abstained: 1 (Gossels)

REASONS: The petitioner seeks a special permit to operate a kennel on the premises. The use is allowed in all districts by Special Permit from the Board of Appeals. The Board finds the use to be in harmony with the general purpose and intent of the Bylaw. Adequate and appropriate facilities will be provided for proper operation. The animals will be restricted to the area as shown in the plot plan which is made part of this decision in order to ensure that the use will not be offensive to the adjoining zoning districts or neighboring properties. The Board finds that a one-year renewal period will allow for review of operation and any impacts to the neighborhood.

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Elizabeth T. Quirk, Chair

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Jonathan G. Gossels

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Jonathan F.X. O'Brien, Acting Clerk

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Jeffrey P. Klofft

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Stephen A. Garanin