

IN BOARD OF SELECTMEN
WEDNESDAY, APRIL 1, 1992

Present: Chairman David A. Wallace, John C. Drobinski, and Judith A. Cope.

The statutory requirements as to notice having been met, the meeting was convened at 7:30 p.m. by Chairman Wallace at the Senior Center, 40 Fairbank Road.

Utility Petition #92-4 - Hudson & Dutton Roads Conduit

Present: Joseph Bausk and Judith Gemma, New England Telephone.

A public hearing was convened in accordance with General Laws Chapter 166, Sections 21 and 22, with abutters having been mailed notices of the hearing, to consider the petition of New England Telephone and Telegraph Company for location of approximately 218 feet of conduit in Hudson Road and approximately 212 feet of conduit in Dutton Road. A report dated March 25, 1992, recommending approval had been received from the Wiring and Building Inspectors.

Mr. Joseph Bausk, representing New England Telephone and Telegraph Company, stated that this request is a continuation of a previously approved petition to further improve service.

On motion by Chairman Wallace, it was unanimously

VOTED: To approve and sign Utility Petition #92-4 of New England Telephone and Telegraph Company for permission to lay and maintain underground conduits and manholes, with the wires and cables to be placed therein, under the surface of the following public ways: **Hudson Road** - on the Southerly side, beginning at Pole No. 97, in an Easterly direction, 218 feet to a point; and **Dutton Road** - on the Easterly side, beginning at Pole No. 136, in a Northerly direction, 212 feet to a point; as shown on N.E.T. & T. Co. No. 92-3 Plan for Conduit, dated March 10, 1992.

Minutes

It was on motion unanimously

VOTED: To approve the regular session minutes of March 16, 1992, as drafted.

Expenditure from Hosmer Fund

On request of the Sudbury Historical Commission, it was on motion unanimously

VOTED: To approve an expenditure of \$200.79 from the Edwin Barrett Hosmer Memorial Fund for payment to Clay Allen Services for electrical supplies and service and rug purchase.

Council on Aging Van Donation

It was on motion unanimously

VOTED: To accept \$106.50 in miscellaneous donations for deposit into the Council on Aging Van Donation Account; and to authorize the Council on Aging to expend the same for purposes of operating and maintaining the Council on Aging vans.

Sudbury Bowl - Bowling and Billiards Licenses

It was on motion unanimously

VOTED: To renew the following licenses for the Northeast Recreation Co., Limited Partnership, d/b/a Sudbury Bowl, 136 Boston Post Road:

- a) License to operate twenty-four bowling alleys on weekdays from 8:00 a.m. to 12 Midnight and on Sunday from 9:00 a.m. to 11:00 p.m., and six pocket billiard tables on weekdays from 8:00 a.m. to 12 Midnight, for the period commencing May 1, 1992 through April 20, 1993; and
- b) Sunday Entertainment Licenses for billiard tables (six) and Automatic Amusement Devices (six) for the period March 29, 1992, through March 21, 1993, from 1 p.m. to 11 p.m., subject to the approval of the Mass. Dept. of Public Safety.

American Legion

In response to a letter received March 25, 1992, from Sudbury American Legion Post #191, the Board granted permission to the Post to sell paper poppies May 20-25, 1992, at Star Market, Sudbury Farms, and MacKinnon's Liquors; and to serve hot dogs and tonic to Cleanup Day workers and Memorial Day marchers at the Town Hall on May 2 and May 25, 1992.

Eagle Scout Award

The Board signed a letter of congratulations to Jonathan Daniels for attaining the rank of Eagle Scout and agreed to discuss which of the Selectmen might attend the dinner in his honor on April 15 at a later time.

AIDS Education and Prevention

The Board was in receipt of a communication dated March 23, 1992, from the Lincoln-Sudbury Regional High School Committee concerning AIDS education and prevention, and suggesting that consideration might be given to a townwide effort to prevent the disease.

Selectman Judith Cope presented a rough draft of a proposed announcement to be published by the Selectmen which would explain the steps being taken by each school system and the Selectmen's recently enacted Policy as an advisory to keep the subject in the forefront. It was agreed that the Executive Secretary would finalize the announcement and bring it back to the Board for approval.

Sudbury Village Study - League of Women Voters

The Board acknowledged receipt of the report dated March 1992, prepared by The League of Women Voters of Sudbury, entitled "Sudbury Village Study", and the Executive Secretary commented that it was an excellent report and requested the go ahead to work with the Traffic Management Committee and Town Planner to try to use monies granted by The Sudbury Foundation to initiate the project and phase the drainage study into the same during the summer. The Board agreed to this approach to rework the scope of use of the grant and the Executive Secretary will report back to the Board as progress is made.

Release of Executive Session Minutes - Unisys property

On recommendation of Town Counsel, it was on motion unanimously

VOTED: To release and make public portions of the following Board of Selectmen executive session minutes relating to the Unisys property only:

October 5, 1989	February 6, 1991 (remaining 2 paragraphs not released previously)
March 12, 1990	
April 3, 1990	March 11, 1991
April 5, 1990	April 29, 1991
April 17, 1990	May 6, 1991
April 23, 1990	September 3, 1991 (including portion calling Special Town Meeting re Unisys)
May 7, 1990	
May 14, 1990	September 16, 1991
June 4, 1990	October 15, 1991
June 11, 1990	October 21, 1991
June 25, 1990	January 21, 1992
July 11, 1990	
August 13, 1990	

Donation - Ambulance

In accordance with letter dated March 30, 1992 from Fire Chief Michael Dunne, it was on motion unanimously

VOTED: To accept with thanks a donation of \$25 from the Shusman family, 34 Wagonwheel Road, to be deposited in the Ambulance Gift Account and expended under the direction of the Fire Chief.

Donation - D.A.R.E. Program

In accordance with letter dated March 30, 1992 from Juvenile Officer Anthony M. Deldon, it was on motion unanimously

VOTED: To accept with thanks a donation of \$400 from the Kiwanis Club of Sudbury, to be deposited into the D.A.R.E. program special account and to authorize expenditure of the same by the Police Chief for the D.A.R.E. program.

Fire Department Payroll

In accordance with request dated April 1, 1992 from Fire Chief Dunne, it was on motion unanimously

VOTED: To authorize Fire Lt. George Moore to sign the Fire Department payroll of April 23, 1992, in the absence of the Fire Chief.

Common Victualler License - Pastel Pizza

The Board was in receipt of a letter and application for Common Victualler License, dated March 27, 1992, relative to transfer of ownership of the restaurant, Pastel Pizza, 730 Boston Post Road. Also received were verbal communications from the Building, Health, and Fire Departments recommending approval of the issuance of the requested license.

It was on motion unanimously

VOTED: To grant a Common Victualler License to new owners John T. Kehayoglous and Jason M. Deitz, d/b/a Pastel Pizza, 730 Boston Post Road, for a period to expire December 31, 1992.

Volunteers for Sub-Committees - Initiatives for Change

The Board was in receipt of a letter dated March 26, 1992, from the Finance Committee Chairman concerning the six subcommittees it is establishing in concert with the Board of Selectmen. Executive Secretary Thompson asked the Board to consider which committees the Selectmen would serve as liaisons for, suggesting consideration of the Increasing Volunteerism and Joint Town/School Sharing of Administrative Services committees.

It was agreed to continue discussion of this matter when the new Selectman is on board.

Town Hall Use - First Parish Church

Executive Secretary Thompson advised the Board that a request had been received from the First Parish of Sudbury to use the Town Hall on Sundays starting in September for Sunday School classes. The Board concurred with this request and authorized the Executive Secretary to make the appropriate arrangements.

Annual Town Meeting Warrant Review

Present: Town Moderator Thomas G. Dignan, Jr., and Town Clerk Jean M. MacKenzie.

At 8:00 p.m., Chairman Wallace turned the meeting over to Town Moderator Thomas G. Dignan, Jr., who conducted the Warrant Review for the 1992 Annual Town Meeting which will commence April 6. Those persons who will present each article and those who desired advance recognition to speak on certain articles identified themselves for the Moderator and Town Clerk in order to expedite the town meeting.

Concerning Article 34, petitioner L. M. Meixsell stated he intended to request postponement until after Article 38 is considered, and might also request the question to be divided in three parts. The Moderator stated he had legal questions with regard to Article 34, but none on Article 38.

Mr. James A. Kieffer, 22 Virginia Ridge, stated he would like an opportunity to speak under Article 36. Executive Secretary Thompson explained that Article 36 was going to be moved for indefinite postponement; however, he requested the Moderator to allow Mr. Kieffer to speak even though it may not be totally germane to the motion under the article.

Street Acceptances - Continued Hearing

Present: Chairman Frances Clark, J. Stephen Yeo, Robert Lancaster, and Coordinator Deborah Montemerlo, Conservation Commission; Town Engineer I. William Place; Michael Meixsell, Ursula Lyons and Town Planner Jody Kablack, Planning Board; and approximately twenty-four residents.

Chairman David A. Wallace opened a public hearing, continued from March 16, 1992, to receive public input on the question of laying out streets and accepting them as public ways at the upcoming Annual Town Meeting. On March 16, the Board had approved the layouts of the nine proposed streets, subject to further review and approval by the Selectmen, and had scheduled continuation of the hearing to seek resolution of various issues of concern to the Conservation Commission. Chairman Wallace asked Frances Clark, Chairman of the Conservation Commission, to update those in attendance on the outstanding issues before the Commission in regard to the streets in question.

Chairman Clark reported that the Commission does not presently have a voted position because Town Counsel's Office is reviewing the matter, and the final decision/vote will be taken tomorrow night (April 2). She stated that the Commission is leaning toward releasing the Order of Conditions on the subdivision roads and drainage and issuing Certificates of Compliance for individual lots, but there is still the issue of Conservation Restrictions which affect a different group of homeowners and which they will be obligated to enforce. She gave a chronological report on the events which led to the current state of affairs, as follows:

On January 31, the Commission was contacted by the bank's engineer relative to the Westway Hills subdivision (Carding Mill Road and Bigelow Drive) to have a Certificate of Compliance approved, and because as-built plans were required by the Town Engineer it was not until March 14 that a site walk was scheduled to check culvert and Conservation Restriction issues and compliance with the Order of Conditions. Two days later, the Commission did meet with the Selectmen, and since that time, has researched the various related issues, which are: 1) Planning Board subdivision compliance and 2) the Order of Conditions on the roads and drainage, and drainage independent of the Wetlands Protection Act but under the jurisdiction of the Conservation Commission; 3) the street acceptances requiring the approval of the Selectmen and Town Meeting, and 4) the additional problem of the original Order of

Conditions which involves violated Conservation Restrictions. The remaining lots in the subdivision are owned by Maillet, tied up in bankruptcy court which has control. The (original) bank lawyer has expressed willingness to work with the Commission but now there is no-one to talk to.

On March 30, Mrs. Clark reported, she met with Assistant Town Counsel, the Town Planner, and Executive Secretary and it was determined that there were no longer any bond issues outstanding which require further holding of the bond. It was also determined that the two issues of the Order of Conditions and Conservation Restrictions can be separated. And, although a culvert was put in the wrong place, the Conservation Commission Monday night decided this was not an issue because it would be best to leave it where it is. Therefore, she believes the best way is to release the Order of Conditions on the roads and drainage and then pursue Conservation Restriction violations independently with the individual homeowners as soon as possible. She mentioned that Joel Lerner, Secretary, Dept. of Environment, had indicated in-kind exchanges to further conservation goals might be in order, where it appears land exchanges may not be available. Mrs. Clark referenced her March 31, 1992 memorandum to Assistant Town Counsel detailing the various outstanding issues on the individual lots, which was given to counsel to review.

Next, in response to request by the Executive Secretary, Town Engineer I. William Place provided his recommendations for Town Meeting accepting or not accepting each streets in question, as follows:

Jason Drive - Recommend acceptance.

Trailside Circle and Bridle Path - Recommend the Selectmen withdraw these streets from consideration, as there are some outstanding issues relative to the detention basin and conservation restriction. The slopes of the basin will need to be stabilized throughout one or two growing seasons, and thus this area will not be ready for acceptance by this year's Town Meeting.

Carding Mill Road and Bigelow Drive - Recommend acceptance conditioned upon a letter of approval from Town Counsel following review of conservation issues.

Tavern Circle and Cranberry Circle - Recommend acceptance conditioned upon a letter of approval from Town Counsel following his review of Conservation Commission Order of Conditions and superseding Dept. of Environmental Protection Order which required gas and oil traps in all basins. The DEP Order resulted in the need to modify and submit new plans to the Planning Board and this has not been done.

Webster Circle and Phillips Road - Recommend acceptance conditioned upon receipt of easements from lot owners. Mr. Place noted there are also Conservation Restriction issues, but did not include resolution of these as a condition of acceptance.

Executive Secretary Thompson stated that an opinion from Town Counsel would be needed to determine whether Town Meeting vote could be conditioned upon receipt of these easements.

Chairman Wallace indicated the Board's intention of following the advice of the Town Engineer provided technical requirements as indicated can be met. He asked the audience if there were further questions or comments.

Several residents, in particular those in the Westway Hills subdivision (Carding Mill Road and Bigelow Drive) expressed concern about what the Conservation Commission's schedule will be to expedite the remaining issues, the fact that these issues have suddenly cropped up when they, as homeowners - many of them not the first buyer - had no knowledge of the problems, the fear that once these issues are resolved they might be brought up again by the Conservation Commission, and also the belief the Commission should not have assisted in siting a driveway where there was a conservation easement.

The Commission responded that they would sit down with each of the eight homeowners as soon as possible but could not immediately give them a schedule; also that they have now had the opportunity to give the areas and documentation a thorough review and they do not believe there will be any new problems; they cautioned, however, that new changes could create new violations which would create additional enforcement issues. It was further emphasized that once a Certificate of Compliance is recorded at the Registry of Deeds, which becomes part of the Title, there can be no change to the order. The Commission also brought out that the engineer for the property owner had not made known there was a conservation easement on the lot where the driveway location became a problem and the Commission had no knowledge of the easement at that time.

Following a lengthy discussion of individual questions and concerns addressed to the Conservation Commission, it was on motion unanimously

VOTED: To recommend streets for acceptance at the Annual Town Meeting as proposed above by the Town Engineer.

And it was further unanimously

VOTED: To accept on behalf of the Town, under Section 3 of Article XII of the Sudbury Bylaws, a Drainage Easement granted by Richard J. and Marie E. Foley, dated March 17, 1992, shown on Lot 26 on definitive subdivision plan entitled "GREAT POND WOODS IN SUDBURY, MASS.", dated December 21, 1984, revised May 7, 1985, drawn by Colburn Engineering, Inc., located on the westerly side of Phillips Road.

Vehicle Use Policy

Selectman Cope presented the Board with a rough draft of a proposed policy she would like the Board to implement to suspend the use of certain town vehicles except for specified business hours or authorized business trips and require compliance with federal and state tax laws. The Executive Secretary will follow up on details of the same for the Board's further review.

Town Counsel Appointment

Present: Finance Committee Chairman Roy Sanford; Town Moderator Thomas G. Dignan; Eric Elfman, Legal Services Review Committee; Robert Sheldon, Sudbury Water District Commissioner; and several other interested committee members, officials, and residents.

Chairman David A. Wallace opened discussion on the subject of making an appointment to the position of Town Counsel for a period commencing May 1, 1992, pursuant to previous applications received and interviews for the same. He stated that the process in coming to this point had been a long one, greatly assisted by Mr. Eric Elfman, who was present, and the other members of the Legal Services Review Committee, and that he believed it to be a valuable process providing a review of the services the Town presently has and of what is available. He explained that the Legal Services Review Committee had also helped review applications prior to interviews, and the result was four good finalists [current Town Counsel Paul L. Kenny, S. Peter Gorshel, the firm of Tyler & Reynolds, and the firm of Murphy, Hesse, Toomey and Lehane (MHTL)]. Chairman Wallace said that applications were methodically reviewed with an open mind and the goal of obtaining the best value for the Town, and friendship had no basis in the review, only what a given person or firm could do for the Town. He thanked the Legal Services Review Committee for its help.

Chairman Wallace asked the audience for any comments before the Board began its deliberations.

Eric Elfman, Legal Services Review Committee, spoke highly of his committee members and the helpfulness of everyone during the public hearing process they conducted before furnishing their report.

Selectman John Drobinski stated the process was educational and no matter who is selected, some of the ideas and techniques put forth by the applicants could be used. He stated, however, that contrary to advice of some of the applicants, he favored making legal services directly available to other town boards. He mentioned that some of the interviewees had different perspectives on control of Town Counsel, some attitudes and approaches which he did not like. Chairman Wallace differed somewhat on the subject, agreeing access for other boards should be provided as much as possible, but that Town Counsel should not be following instructions from anyone received - the Selectmen pay the bills and need to control the assignment of work in order to control costs - therefore, there must be a combination of access and management. He said that turnaround time must be reasonable for all boards with particular attention to important requests, and therefore, the work must be funneled through the Selectmen's Office. He noted the budgetary problems that would result in calls being made to Counsel at will by any department, particularly if contract is on an hourly basis.

Selectman Judith Cope read a statement she had prepared which contained the following: 1) her long-standing concern that the legal services should be thoroughly evaluated and her satisfaction that this has now been done; 2) notation that according to chart provided in Legal Services Review Committee (LSRC) report, the Town of Danvers where Paul Kenny is also counsel, has the highest cost and they also have in-house clerical staff, as does the Town of Milford; 3) her calculations that 1991 legal cost for Town Counsel and Labor Relations Counsel and related expenses including clerical and benefits equaled approximately \$160,000; 4) her comparisons of costs with other towns; 5) her concerns regarding the present Town Counsel about lateness in attending court appointments, certain advice given, and backlog of work; 6) question of the necessity for in-house counsel; 7) her belief services should be consolidated

and in-house counsel abandoned; 8) her report that references she had checked on applicants Gorshel and MHTL provided very good reports; 9) notation that both of the foregoing applicants had indicated "better deals were available"; and 10) MHTL has indicated to her they are willing to negotiate and would agree to add 200 hours to the retainer; litigation is \$120/hour but she believes that is negotiable even further.

Selectman Drobinski stated that he had done some calculations which show that for Murphy, Hesse, Toomey and Lehane to provide the same number of hours as Mr. Kenny has, the cost would be \$225,000 under their Proposal #1 and \$216,000 under their second option, and that while he was impressed with the firm their business proposal doubles the legal cost for equivalent services.

Selectman Drobinski also stressed the importance of having Counsel on the premises for face-to-face consultations.

Chairman Wallace concurred that the cost per hour would be more to use the firm of MHTL, regardless of a revision of its retainer provisions of hours as Selectman Cope had mentioned. He also agreed with Selectman Drobinski that provision must be made for Counsel to be in the Town offices, as all business cannot be done by FAX or telephone. He mentioned the added cost of travel which would be an additional bill from the other two applicants. Chairman Wallace further commented that he appreciated the concern regarding tardiness at two hearings, but, unless Selectman Cope had complaints about the quality of work, that could be considered insignificant in the scope of Mr. Kenny's entire performance.

Roy Sanford, Chairman of the Finance Committee, made note that during the last few years the law budget has been singled out for Reserve Fund transfers; that it is difficult to get a handle on services which need to be provided a year in advance; and that the two lawyers on the Finance Committee think we are getting a fair value with our current legal counsel. He expressed his belief that costs can be controlled through competition and by setting a definitive set of ground rules against which to compare the competition and against which to evaluate performance.

Selectman Drobinski expressed his grave concern about the fairness of last minute changes in proposals. He responded to Mr. Sanford's train of thought by saying that he also believed control of costs was based upon control of retainer and control of litigation through risk management.

Lawrence Blacker added that you can get a fair comparison of retainers, but a factor in litigation control is to ascertain the philosophy or method of operation with regard to paperwork (legal filings).

Chairman Wallace made the point that it is unclear the number of hours Paul Kenny puts in under his retainer and although he could not substantiate it he suspected the Town was getting a bargain. He warned that 400 hours can be quickly used up when you think of items such as town meetings.

Chairman Wallace suggested that an alternative of a combined approach could be considered. He stated he was happy with the work of Paul Kenny and recommended retaining Mr. Kenny, and on an as-needed basis if a unique case comes up which needs a particular expertise we would not be tied to Mr. Kenny, but could use special counsel. In that way, he explained, the Town could get the best results for the least money; perhaps a firm might be engaged and the Selectmen would be the authority in deciding upon its use but would be open to the desires of the other boards. He stated engaging counsel totally on a

cost per hour basis is not cost effective and he preferred to stay with the present arrangement where the Selectmen can regulate and control hours.

Selectman Cope questioned Mr. Dignan regarding his requirement to have Town Counsel present during Town Meeting as one of the applicants for Town Counsel had suggested that it was not necessary, that in fact he could sit at home and be available by telephone. Town Moderator Thomas Dignan responded in no uncertain terms that the manual assumes Town Counsel is present and he could not think of running Town Meeting without counsel present.

Robert Sheldon, Water District Commissioner, asked if anyone has posed cost saving questions to Paul Kenny and questioned the fairness of the appointment process where Mr. Kenny was not formally interviewed.

Selectman Drobinski reiterated his position that the cost factor is clear - Mr. Kenny's proposal is the lowest of the finalists and he provides decent services. He also cautioned that there would be a learning period with a new counsel. Additionally, he expressed his opinion that if either MHTL or Mr. Gorshel are to be considered, they should both be asked for their best and final offer, stating retainer hours, litigation cost, and support cost.

Chairman Wallace agreed.

Finance Committee Chairman Roy Sanford asked if there would be a reduced cost with two firms, and Chairman Wallace replied in the negative although it might make them more competitive, but there would be an increase in the "comfort level" of the various boards - a way of saying the Board is responding to their concerns.

Town Moderator Thomas Dignan made a statement in support of Mr. Kenny, saying that he believed he was a superb Town Counsel, who is on top of everything. He stated that he has always performed superbly in responding to questions on the floor of Town Meeting, and that recent comments in the newspapers were out of line.

Chairman Wallace agreed with the comments of the Moderator. He stated that his proposal for a combined approach was for accommodation purposes, and it would be his intention that other counsel would be used only for unique cases.

Selectman Drobinski expressed agreement with this line of thought.

Moderator Dignan responded that he believed Chairman Wallace's idea was basically right - the Town should retain general counsel and use special counsel when an unusual problem comes up; and cautioned that the Board should not be tied to a particular firm or individual for special counsel as it should be able to search out counsel with the most experience in the field in question for each particular case.

Eric Elfman asked if consideration had been given to consolidation of departments - a package deal with schools and Town.

Resident Patrick Delaney commented on the Board's reluctance to hire special counsel, and Selectman Drobinski responded that it was not reluctance, but a judgment made. He explained by saying that many times cases were not as complex as perceived, and mentioned that he himself was probably the driving force in deciding special counsel was not needed in the Unisys case because of his knowledge in the matter, but it was decided one should be hired for the Wastewater Advisory Committee.

Following further discussion, it was on motion by Selectmen Drobinski, seconded by Chairman Wallace,

VOTED: To reappoint Paul L. Kenny as Town Counsel for a period of one year, for a term to expire April 30, 1993, and to publicly go on record that the Board will engage special counsel more often on an as-needed basis.

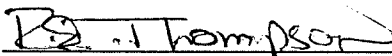
(Chairman Wallace and Selectman Drobinski in favor; Selectman Cope opposed.)

Town Meeting Matters

The Board took positions in support of Articles 3, 9, 24, 29, 35 and indefinite postponement of 36, and in opposition to Articles 32, 33 and 34.

It was agreed that Selectman Cope would speak on Articles 32, 33, and 34 and Selectman Drobinski would speak on Article 38.

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

Attest: 
Richard E. Thompson
Executive Secretary-Clerk