

IN BOARD OF SELECTMEN  
MONDAY, DECEMBER 21, 1992

Present: Chairman John C. Drobinski, Judith A. Cope, Lawrence L. Blacker.

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

Minutes

It was on motion unanimously

VOTED: To approve the executive session minutes and the regular session minutes of December 7, 1992 as amended by Selectman Cope.

Council on Aging - Van Donation

It was on motion unanimously

VOTED: To accept \$69.25 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.

Sale of Alcoholic Beverages - Serving Hours Extended

It was on motion unanimously

VOTED: To grant permission to Alcoholic Beverages Restaurant and Club License Holders to extend serving hours on December 31, 1992, New Year's Eve, to 2:00 a.m. on January 1, 1993.

Sunday Entertainment License Renewal for Jukebox - Papa Gino's Acquisition Corporation

It was on motion unanimously

VOTED: To renew Sunday Entertainment License of Papa Gino's Acquisition Corporation, 104 Boston Post Road, for use of a jukebox, for calendar year 1993.

Projected Revenues and Expenses for Atkinson Pool Report

It was on motion unanimously

VOTED: To acknowledge receipt of a communication received December 11, 1992, from Acting Pool Director Jamie Lamoreaux setting forth revised projected revenues and expenses for FY93 of \$319,000 and \$335,537 respectively.

Resource Recovery Committee - Resignation

In response to a communication dated December 11, 1992 from Jeffrey Jacobson, it was on motion unanimously

VOTED: To accept and acknowledge the resignation of Jeffrey H. Jacobson, dated December 11, 1992, from the Resource Recovery Committee, and to send a letter of thanks for his service to the Town.

Boston West Pizza - License Renewal

It was on motion unanimously

VOTED: To delete Jason M. Dietz and John T. Kehayoglous, Owners, d/b/a Boston West Pizza, 730 Boston Post Road, from the list of licensees renewed on December 7, 1992, as it has been determined this business has closed and their renewal application for Common Victualler License was not filed.

Reserve Fund Transfer Request - Engineering Capital Expense - Account 502-901

It was on motion unanimously

VOTED: To table Reserve Fund Transfer Request for Account 502-901, Engineering Capital Expense, to replace the Engineering Department survey vehicle, in the approximate amount of \$4600 because, as reported by Secretary Thompson, other arrangements have been made with the Fire Department for a loaner vehicle. The Finance Committee is aware and concurs in the arrangement.

Assistant Town Accountant - Appointment

At the request of the Director of Finance/Town Accountant James Vanar in a memorandum dated December 14, 1992, it was on motion unanimously

VOTED: To appoint Suzanne L. Petersen, 123 Moore Road, to the position of Assistant Town Accountant, effective January 1, 1993.

Proclamation honoring Cecilia M. Curran - Assistant Town Accountant - Retirement

It was on motion unanimously

VOTED: To sign a Proclamation in honor of Cecilia M. Curran, retiring as Assistant Town Accountant on December 31, 1992.

Articles - Submission by the Board of Selectmen

The Board acknowledged receipt of drafts of Selectmen's Articles for the 1993 Annual Town Meeting with accompanying list dated December 21, 1992. The following comments were expressed:

With regard to No. 2 - **Accept Section 48 of Chapter 133 of the Acts of 1992 - Retirement Incentive**, Mr. Blacker asked if the Town Meeting adopts this Statute, will it require the Board to act on it. Mr. Thompson responded that they would not be required to enact an early retirement program.

With regard to No. 3 - **FY93 Budget Adjustments**, Mr. Blacker asked for clarification.

Mr. Thompson noted that on occasion the Town has need to adjust some line items in the budget. Town Accountant James Vanar believes he will have funds in the Unclassified Budget that he can transfer to pay for the FY93 audit. This Article would allow the Town to use FY93 monies in April of 1993 to adjust for the Audit if necessary and for any fluctuations that occur in the various budgets in order to offset accounts. It is not limited to just the Unclassified Budget.

Town Clerk Jean MacKenzie asked why a Warrant Article is not prepared directly and specifically for an audit as in the past. Mr. Thompson noted that it is in Mr. Vanar's budget as a line item this year, and the Finance Committee has recommended the Board proceed in this direction, as an audit is required every year because of the school's receiving federal funds. Mrs. MacKenzie commented that since an audit occurs every year, why not have a Warrant Article for it. Mr. Thompson acknowledged that the Selectmen can withdraw an article any time up to the first week in February, but did recommend the Selectmen approve the Budget Adjustment article as is, because it allows for any budget adjustments that may be needed and was recommended because of the tight budget situation. Mr. Thompson did add, however, he believes that this Article opens up the entire Town's budget, which is probably not a good idea.

Chairman Drobinski stated the Board would let it remain for now, but would like to review it further with the Finance Committee.

With regard to **No. 5 - Purchase Voting Equipment** - Mr. Thompson informed that there will be a joint meeting with the Town Clerk on January 4, 1993 to discuss this Article. Mrs. MacKenzie described the machines and the process to the Selectmen, and answered questions with regard to breakdowns, options available, and cost.

With regard to **No. 10 - Amend Zoning Bylaw, Art. IX.II.C - Add to Business District 12**, Selectman Blacker asked about the location. Town Engineer, I. William Place showed a map of the area and explained the zoning, as this Article is being recommended by Mr. Place. Mr. Thompson reported that, in addition, there is a separate petition article for rezoning another portion of BD12.

Chairman Drobinski noted that he has a few reservations when it comes to changing zoning, and would like to take a further look at this Article in an effort to determine what the impact may be.

Following discussion, it was on motion unanimously

VOTED: To submit following ten articles for inclusion in the 1993 ATM Warrant:

1. Hear Reports
2. Accept Section 48 of Chapter 133 of the Acts of 1992 - Retirement Incentive
3. FY93 Budget Adjustments
4. Street Acceptances
5. Purchase Voting Equipment
6. Special Act - Voter Information
7. Accept G.L.Ch. 40, sec. 8J - Create Commission on Disability
8. Amend Zoning Bylaw, Art. IX .VI.A - Administration/Enforcement
9. Flynn Building & Town Hall Architectural Services

10. Amend Zoning Bylaw, Art. IX.II.C - Add to Business District 12

G.L. ch.40, s.56 - Transfer of Restaurant License (Innholder) - Coach House Inn, Inc.

Present: John A. Hammerle III, Applicant, and Grace Desjardin, Manager, Coach House Inn, Inc.

Chairman Drobinski convened a public hearing, in accordance with General Laws Chapter 138, to consider the application for transfer of the Restaurant License (Innholder) for Sale of All Alcoholic Beverages from Coach House Inn, Inc., Grace Desjardin, Manager, to Commonwealth Hospitality Corporation of Sudbury, d/b/a Coach House Inn, John A. Hammerle, III, Manager, for property located at 738 Boston Post Road. Application also requests approval to pledge the license as collateral to secure obligations under management agreement. No change in the premises is entailed.

With regard to transfer of the Restaurant License for Sale of All Alcoholic Beverages, the Board is in receipt of 1) Approval from Fire Chief Michael C. Dunne dated December 2, 1992; 2) Approval from Police Chief Peter B. Lembo in a communication dated December 3, 1992; 3) Verbal approval from Building Inspector John B. Hepting on December 1, 1992; 4) Form 983, Petition for transfer of license signed by both parties; 5) Application for Alcoholic Beverage License; 6) Form A - Change of Manager; 7) Form C - Financing; 8) Certificate of Vote, dated November 13, 1992 by the Directors of the Coach House Inn, Inc., for the transfer of their liquor license; 9) Clerk's Certificate, dated October 15, 1992, and Votes by the Board of Directors, Commonwealth Hospitality Corporation of Sudbury, authorizing the application for transfer of license, and appointing John A. Hammerle, III, Manager, dated September 15, 1992; 10) A copy of the Articles of Organization for Commonwealth Hospitality Corporation of Sudbury; 11) Citizenship verification of all officers and directors of the Corporation; 12) Signed statements that state taxes have been paid currently; and 13) Signed acknowledgment regarding the licensing process required by the Alcoholic Beverages Control Commission.

On motion by Chairman Drobinski, it was unanimously

VOTED: To approve the transfer of the Restaurant License (Innholder) for Sale of All Alcoholic Beverages from Coach House Inn, Inc., Grace Desjardin, Manager, to Commonwealth Hospitality Corporation of Sudbury, d/b/a Coach House Inn, John A. Hammerle, III, Manager, for property located at 738 Boston Post Road, and it was further

VOTED: To approve the application requesting to pledge to 806 Massachusetts Avenue Corporation the license as collateral to secure obligations under management agreement.

Upon receipt of applications, it was on motion unanimously

VOTED: To grant an Innholder's (Common Victualler) License and Entertainment License for background music and live entertainment limited to four performers for private functions only, (license being the same as allowed for previous licensing) to Commonwealth Hospitality Corporation of Sudbury, d/b/a Coach House Inn, John A. Hammerle, III, Manager, for property located at 738 Boston Post Road, for a term to expire December 31, 1993.

Tax Classification Hearing - FY 1993 Tax Rate

Present: Chairman Thomas H. Hillery, David E. Tucker, Fred N. Haberstroh, Board of Assessors; Assessor/Appraiser Daniel Loughlin; approximately 25 residents and business property owners.

At 8:00 p.m. Chairman Drobinski convened a public hearing jointly with the Board of Assessors, in accordance with General Laws Chapter 40, s.56, to determine what percentage of the local tax levy will be borne by each class of real and personal property in setting the Fiscal Year 1993 tax rate. Notice of the hearing was published in the Sudbury Town Crier on December 10, 1992, and in The Middlesex News on December 10, 1992.

Assessor/Appraiser Daniel Loughlin distributed an informational handout which showed effects of possible shifts in the tax burden and compared property values by class. Previous to tonight's hearing, information dated December 17, 1992 was distributed to the Board, setting forth the considerations for setting the tax rate, which he explained in detail. Mr. Loughlin informed that Sudbury needs to raise approximately \$22,987,873.00 in order to cover Fiscal 1993 expenses. He stated there are three issues to take into consideration: (1) Open space classification, and (2) The residential exemption, and (3) Tax rate classification.

The open space classification consists of any land that is vacant, but also includes land beyond the minimum required zoning such as wetlands and land that is unbuildable. It allows the Town to set a lower tax rate for open space properties. The purpose is to encourage conservation and slow down development. Mr. Loughlin stated he believes that a lower tax rate for open space does not have the greatest impact on development, rather the market drives the sale of land. The law allows a maximum ceiling of a 25% reduction in the tax rate for open space properties. According to Mr. Loughlin, since the amount to be raised to meet the budget does not change, if the open space classification were adopted, the effect would drive up the homeowner rate. Mr. Loughlin cautioned this is not realistic for 1993, as there is not enough time to research and reclassify all land that is open space.

The residential exemption consideration provides a reduction in taxes for homeowner occupied residences. It allows up to 20% ceiling for reduction on an average assessed value. The non-owner occupied properties make up for the difference and this is not advantageous for tenant properties which make up less than 1% of the residential properties in Sudbury. This would result in a redistribution of the tax burden within the residential class with the higher assessed properties carrying the largest tax burden. This classification is mostly suited to larger cities and towns consisting of a large number of tenant properties, i.e. Waltham.

The tax rate classification is the one that the Town has adopted in the past. Mr. Loughlin explained that during this interim year, the Assessors have reassessed the Town for FY1993 which resulted in an uneven adjustment. Commercial properties have declined more rapidly than residential. The reasons for this decline are many and varied. Mr. Loughlin's theory is that commercial properties are traded because of a need to make money, and these properties are much more susceptible to economic changes. According to Mr. Loughlin, commercial property has declined as much as 30-50% compared to the 5-15% for residential. The result is a shift in the tax burden--the commercial share of a total Town budget has decreased.

Mr. Loughlin explained the Shift Impact Schedule and the impact on residential and commercial properties with regard to the commercial shift percentage, with 175% being the highest allowed by law. He explained that 100% would be a flat tax rate paid by all classifications. As assessments decline, the tax rate increases to meet the amount needed to be raised for the budget. The tax rate is determined by dividing the total Town value into the amount to be raised. As the budget increases, so do the taxes. Mr. Loughlin pointed out that a very small change in the residential tax shift can have a big effect on what the commercial taxpayer pays because residential taxpayers make up 90% of the total.

Mr. Ronald Stephan, Sudbury Chamber of Commerce President, spoke on behalf of the business community updating those present with the following information: 1) Only 7% of the 351 Towns assess a commercial tax rate of 165% or greater. Sudbury is 14th highest for the commercial rate of 26 surrounding towns including Boston, Lowell and Quincy; 2) Only 104 or 29% vary from the 100% factor; 3) Sudbury is third highest in its population class--of the surrounding 15 towns, only 8 charge a differential; 4) Sudbury is second highest by dollar amount behind Maynard; 5) Sudbury has the second highest by per cent of commercial tax rate versus the residential rate behind Marlboro and Marlboro has 2 1/2 times the population. Mr. Stephan reiterated the business communities' sentiments with regard to Sudbury that 1) they support the schools which are not over-crowded, and 2) they believe Sudbury can be better, and are working to make it better, but the Chamber feels the commercial tax rate has hurt the business community over the past 8-10 years, and on behalf of the business community, would like to see a more equal tax rate.

Mr. Joseph A. Klein, 45 Stone Road, on behalf of himself and other homeowners, commented that not only has business experienced difficult times, but the homeowner has also encountered economic hardships with the loss of jobs, etc., and he does not believe it fair to place the additional burden on the homeowner.

Mr. Michael Fitzgerald, Vice-Chairman of the Finance Committee, explained that the Finance Committee, in reviewing the FY1993 budget, noted that the Town budget is under the levy limit, thereby reducing the potential tax burden.

Secretary Thompson explained that the only thing the Board will decide tonight is what percent of the tax levy will be borne by each of the residential and commercial classifications. He also mention that every year there is a gap between the estimated and the actual levy limit, and this year it is approximately \$150-250,000. The Selectmen have, in the past, indicated negatively to holding a Special Town Meeting to spend the extra funds. Everyone is working together to come up with better projections, although, new construction and motor vehicle excise receipts are difficult to determine. The timeframe is too short at this point to call a town meeting and there would have to be a delay in sending out the tax bills, he concluded.

Selectman Blacker stated he would like to see a uniform rate, thus bringing down the tax rate for commercial taxpayers. He pointed out that a reduction in the rate for commercial would mean an additional cost to the homeowner not from zero but from \$187 as indicated on the chart. Mr. Blacker stated that he believes that many people have the idea that a reduction of the commercial tax will be a windfall to the commercial property owners. It is his opinion that the reduction will in fact benefit the store owners since most commercial leases contain tax escalation clauses which require the tenants to pay increases in real estate taxes. Since many of the tenants have occupied the premises for a number of

years, the tax reduction will reduce the amount of taxes that the store owners will pay. To the extent that buildings are vacant or semi-vacant, the reduction of the commercial tax would benefit the owners of said properties and these owners do need some help. There is a need to ease the pain until the economy gains ground, according to Mr. Blacker, and he believes it important to continually bring the commercial rate down.

The fact that the benefit is greater than it might otherwise be because of the shift factor caused by the differentiation of value decreases between commercial and residential, is not as relevant as his feeling that the commercial rate needs to be lowered, continued Mr. Blacker. When values have gone in the other direction, no one is quick to attempt to lower the rate. Mr. Blacker stated he would like to see the commercial shift be lowered to the 140% range which would mean an additional cost above the \$187 to the homeowner of \$105.

Selectman Cope commented that if the rate stays at 165, the increase in the residential factor will be 5% due to the increased budget, and only 1.8% would be due to property reclassifications. Her position as a Selectman is to try to make the decision that is in the best interests of the Town.

Mrs. Cope continued that Sudbury has limited business space, and that space when occupied should provide premium services which the Town could and should support. Several shops were mentioned by Mrs. Cope, noting that these shops cater to the needs of the people--they are happy to be in Sudbury and are willing to pay the taxes. When the Board has reviewed new site plans, Selectman Cope stated she could identify those that would survive and those that would not.

Mrs. Cope remarked that she is very pro business, and businesses help create the Town's character. She would like to see the Town attract businesses similar to those in Concord, and is committed to encourage this type of trend and businesses which will do well; and at the same time, work toward mitigating any traffic problems as a result.

While many businesses have prospered and some have failed, for one reason or another, it is not fair to ask the residential taxpayers to pay more for commercial errors in judgment. Mrs. Cope remarked that the Selectmen are sympathetic to business, but business property values have decreased more than homeowner values this year and business taxes will automatically be reduced if the line is held at 165.

Chairman Drobinski noted that, while the commercial values/rates have declined significantly, there is room to have it drop further, but not as low as what Mr. Blacker proposes to 140. He believes a more equitable solution would be at 155%. The business community is a very viable part of Sudbury. The residents as well as businesses contribute to the community and Sudbury is a very dynamic community. One of the major draws is the schools which are supported through the tax rate. Many businesses feel they do not derive much from the schools, but Sudbury is the community that it is in large part because of the schools.

Selectman Blacker mentioned last year's tax rate decision which amounted to \$60 of additional shift. If the same \$60 were applied this year, it would bring the amount to 150%. It is a question of perspective and who will be carrying the extra burden depending on what the commercial shift is. Mr. Blacker compromised by proposing to set the commercial factor at 150%, instead of his previous proposal of 140%.

Town Clerk Jean MacKenzie agreed that the business community needs everyone's support, but would personally like to keep the status quo. She explained that the records clearly show people who have outstanding credit and major obligations, in addition to loss of jobs. Even though some had been given severance salaries, their time is running out and they are in difficult situations. The amount of increase may seem small, but when you are unemployed and have all the same obligations, it becomes an additional burden. Mrs. MacKenzie asked that the Selectmen take these factors into consideration and not risk the possibility of several homes being lost.

Mr. Mike Fitzgerald commented that the Town budget is rising and services are also going up. The schools are being faced with increasing enrollments, and with regard to the Town's infrastructure, a number of capital items will need to be funded. He opined a proposition 2 1/2 override will be needed to cover these expenses. Mr. Fitzgerald noted that the budget needs to be fixed and reviewed over a three-year period.

Chairman Drobinski stated that these are not easy times for the Board, and that there is a lot of balancing that needs to be done. The question is how does the Board make it equitable for everyone, and right now business is not doing very well, and he is afraid of what the impact will be.

Mr. Joseph Klein reminded the Board that the commercial properties will receive a decrease because of their lower assessment. Selectman Blacker commented that this is not true--it has to be looked at from the dollar amount needed to be raised. The commercial rate needs to be brought down to be in parity with the residential.

Chairman Drobinski made a motion to set the commercial "shift" or factor at 155%, and also made a motion to assess no residential exemption and no open space exemption. Chairman Drobinski's motions did not receive a second.

Selectman Cope made a motion to set the commercial shift at 160%. Selectman Cope's motion did not receive a second.

Selectman Blacker made a motion to set the commercial shift at 150%. Selectman Blacker's motion did not receive a second.

On motion by Chairman Drobinski, based on a commercial shift of 155%, it was unanimously

VOTED: To assess no Residential Exemption and to assess no Open Space Exemption, and it was further

VOTED: To compute the Fiscal Year 1993 tax rate based on the minimum residential factor, .945342, which will result in a tax rate of approximately \$15.51 for residential (+6.1%) and a tax rate of approximately \$25.44 for commercial, industrial and personal property (-11.4%).

The Board signed the Bureau of Accounts form certifying the classification which will be forwarded by the Board of Assessors with the recap sheet to the Department of Revenue. After thanking the Assessors and Mr. Loughlin for his presentation, the hearing was adjourned at 8:45 p.m.



Howe Trust Property - Concord Road

Present: Town Planner Jody Kablack; Town Engineer I. William Place; Planning Board Chairman Lael M. Meixsell, Planning Board Members Ursula Lyons, John O. Rhome, Carmine L. Gentile, Richard A. Brooks; and Board of Appeals member Eben Stevens.

At the request of the Planning Board Chairman Lael M. Meixsell, Chairman Drobinski explained the purpose of the joint meeting tonight is to clarify the issues concerning the current status of the Howe Property in relation to land transactions authorized under Articles 17, 18 and 19 of the 1992 Annual Town Meeting, and to work out resolutions to move forward.

Mr. Meixsell explained that the Planning Board is considering a plan from the Howe Trust for proposed subdivision on the property adjacent to the new and old Town cemeteries which involves acquisition and transfer of real estate between the Town of Sudbury and the developer. The Planning Board is being requested to waive certain rules and regulations and the Board of Appeals is being requested to approve an application for a variance from the Town Cluster Bylaw.

Four questions were posed by Mr. Meixsell as follows:

1. Who made the initial contact with the land owner regarding the land swap (cemetery) article for last year's Annual Town Meeting.
2. How many house lots would the original property support before any transfer of property from the Town.
3. How many house lots is it intended that the property should support after negotiations and property transfers are completed.
4. How much value will this transaction provide for the Town and how much value to the other party--is the Town receiving property of comparable value.

Executive Secretary Thompson explained the process that took place prior to and during Town Meeting, noting that the Articles prepared for this acquisition and transfer passed at Town Meeting. One of the main objectives was the need to expand the Town cemetery. Several years previous the Bowrys were approached by the Conservation Commission Coordinator to gift the land to the Town. Mr. Thompson noted that when the Parkinson land came into possession of the Town, there was further conversation about the cemetery expansion and the possibility of swapping Parkinson land with the Bowry land to eliminate the purchase of land.

Mr. Thompson continued, because of a death in the Bowry family, the discussion was reactivated by Highway Surveyor Robert A. Noyes because of the need to expand the cemetery. Conversation was held with the Conservation Coordinator, Town Engineer and Highway Surveyor, and it was decided that this was an ideal situation to be able to swap land in order to expand the cemetery; thus, the Articles were drafted and it went to Town Meeting. The Selectmen have been following the progress since Town Meeting and have been involved in several meetings which concerned the type of subdivision plan and conservation easements. The Selectmen voted to agree to the Town Engineer providing engineering

services to offset the expense by the Bowrys for the development. This was put in writing and in a meeting afterward which included the Bowrys, there was some concern about the Town Engineer signing off on the plan. It was decided that the Town would develop a plan and the Bowrys would pay the \$1,000 expense of a land surveyor to certify the plan. Many discussions have taken place, but never was there any intent for the property to be overdeveloped. The idea was for some type of cluster development on this property. The problem with the cluster development, is that the Town's cluster bylaw does not cover what is intended on the plan, and that the plan will have to be presented to the Board of Appeals. As referenced earlier, a plan has to be developed clarifying the zoning for the Bowry homestead properties off Concord Road.

Town Engineer I. William Place reviewed and explained a plan which has been conceptually approved and includes 22 lots. According to the November 5, 1991 vote of the Board of Selectmen, in exchange for approximately 25 acres of land to be gifted to the Town, the Town would provide the following: 1) approved road access from Concord Road across town property to the southern most proposed subdivision; 2) full perimeter survey of the lands of the J.R.H. Trust including surveying out 1.4 acres to accompany Trust property known as 377 Concord Road; 3) services at no expense to the J.R.H. Trust to determine soil suitability and to obtain, research and create documents related to the proposed subdivisions and legal counsel at no expense to the J.R.H. Trust relative to the town gift portion only.

There was discussion with regard to the small portion of land (.30 acres) the Town will gift to the Bowrys to ensure that the non-conforming two front lots would gain more frontage and thus conform to the plan. There was concern by Mr. Meixsell that the Town receive fair value for what they were giving with regard to the portion of land. Selectman Blacker commented he did not understand why the number of lots being proposed before or after the Town's gift mattered. Mr. Meixsell responded that it did because it was originally intended to be a cluster development. It is not important to discuss what the variables are at this point, according to Mr. Blacker, because the plan proposed is what can be done with the property given by the Town and it should be the yardstick to go by.

Town Engineer I. William Place noted that the Bowrys only want 10 to 11 lots developed. The Planning Board is not in receipt of an application for this development as yet because the developer is waiting to have their variances for a cluster development approved at the Board of Appeals hearing set for January 7, 1993.

Mr. Eben Stevens explained that any plan presented to the Board of Appeals must be a plan that does in fact exist and the concern by everyone at this point should be what is the current status of the plans now. The Town Engineer expressed the best approach was to look at the plan drawn and identify lot count and then move into a cluster presentation to give the applicant what his minimum requirements are and meet the general intent of the Town's overall cluster bylaws.

Selectman Blacker asked if the applicant must present a plan that shows he owns the land at the present time and not in anticipation of the deed. If the answer is yes, Mr. Blacker moves that the Selectmen deed the property over to the developer "tomorrow", because if the plan presented to the Board of Appeals and the Planning Board has to be literally owned, then nothing will be accomplished.

Mrs. Kablack stated that she was under the impression that Town Counsel was working on the deed and that the Selectmen were going to finalize it and that there would be a reversal clause in that if the subdivision did not materialize as the Town expected, the Town could take back that portion of property they had given.

Mr. Blacker asked if it would not be easier to grant it subject to them obtaining title to that piece of property--whatever the approval let it be subject to them obtaining title.

Board of Appeals Chairman Eben Stevens noted that his Board cannot grant a variance unless there is something they are granting it from. He noted that he believes the applicant will be requesting a variance on a wetlands setback on a cluster, and if that is not part of the requirement that has been approved by the Planning Board, then they are asking approval on something that does not exist.

Mrs. Kablack showed a plan from the developer that has been before the Planning Board. Mr. Stevens stated that the Board of Appeals will need recommendations pro and con from the Planning Board and Selectmen regarding the plan. The plan presented by Mrs. Kablack is for the variances, and shows only the cluster design and not the surrounding property. The major problem is that they show a wetlands line that has not been confirmed by the Conservation Commission. The wetlands line relates to one of the variances, but it was noted that the Commission does not appear to have a problem with it.

The variances to be presented before the Board of Appeals include 1) Any lot under the jurisdiction of the Wetlands Protection Act has to have a full lot area consisting of 60,000 sq. ft. Lots 7, 8 and 9 will not consist of 60,000 sq. ft.; and 2) Reduce the buffer around the perimeter of the property from 100 ft. to 30 ft., which affects every lot. The latter is believed to be supported by the Conservation Commission.

Mr. Stevens remarked to the Boards that all homework needs to be done with all abutters within 300 ft. so that everyone is in absolute agreement, because any challenge to the hardship requirement for a variance may prevail.

The cluster development plan depicts 10 lots. Mr. Meixsell asked if the conventional subdivision plan could be designed to provide 10 house lots without access to Concord Road. Town Engineer reviewed the plan and noted it could but there would be the problem of having a dead end street, and it is not clear if the language of the law would allow such a dead end street.

Mr. Meixsell asked if the Town has looked at the value of the land that it has given compared to what the Town is receiving. He asked if there were any appraisals completed or assessments. Mr. Thompson responded that the Town cannot expand their cemetery elsewhere; and further, Town Meeting did not question the values. Chairman Drobinski commented that it was more than an equal value for the Town.

Mr. Brooks noted that there is a portion of the property that is not going to be developed. It was confirmed to Mr. Rhome that the application was received today and that it would be presented before the Board of Appeals on January 7. Mr. Stevens commented that if the application is complete, the Board could make a decision that night.

Mr. Blacker pointed out that there has been no filing of an application with the Planning Board as yet. The Planning Board needs an application for a cluster development before the Board of Appeals can vote on any variances.

Selectman Blacker asked why this is not like a site plan situation, where approvals are contingent upon each other but either could be done first. Mr. Stevens noted that they are dealing with something that does not exist and if the Planning Board decides to change it, it could change the whole variance. Special permits are a different situation and variances go with the land and cannot be tied to plot plans. Mr. Meixsell asked if the Board of Appeals acts on a plan that has been approved by the Planning Board. Mr. Stevens responded it must act on an approved plan or one in process of being approved. The Planning Board can only alter a plan approved by the Board of Appeals in those areas that do not relate to the variances.

Mr. Meixsell asked how the Town insures that the Town gets what it wants and should it be done before the Planning Board approves any subdivision plan. Mr. Drobinski noted that this happens through the list of approvals or conditions in the approval of the cluster plan. Mr. Thompson explained that Assistant Town Counsel is very good at drafting conditions of approval which can be done with the confirmation of the Town Planner.

Mr. Stevens asked if it was legal for the Board of Appeals to grant a variance to a preliminary plan. Mr. Brooks asked if a time has been determined when the land will be granted by Sudbury as part of the final approval process. Mr. Thompson explained that all aspects will be tied together in one document for a final vote by the Selectmen.

Chairman Drobinski assured that the Town will not be giving away more than they will gain. With regard to the portion of the property that will not be developed, there was some discussion as to whether it would be deeded to the Town or be included in a Conservation Restriction.

Mrs. Kablack noted that the Conservation Coordinator would like to know what the Bowrys decision will be with regard to the Trust's decision on a portion of the property—keep it in the trust, give it to a non-profit organization, or give it to the Town before approval. Mr. Thompson noted that the Town should care what happens to the land, and not necessarily allow it to be included in a conservation restriction, but keep future options open for Town purposes only. The Selectmen strongly suggested to the Town Planner that she work to get a preliminary abutter plan submitted as soon as possible.

Mr. Thompson will be reviewing this case with Town Counsel on Monday, December 28, 1992, and in the meantime, Selectman Cope requested the Board send a letter supporting the cluster plan to the Board of Appeals. The Board agreed to do so.

#### New Town Cemetery - Buyback Two Graves

In response to a communication dated December 15, 1992 from Superintendent of Cemeteries Robert A. Noyes requesting that the Town buy back two (2) graves in Section I, Lot 9A, as requested by Mr. & Mrs. William B. O'Brien, it was on motion unanimously

VOTED: To approve a buyback of two (2) graves in Section I, Lot 9A, purchased October 2, 1989, Deed #719, from Mr. & Mrs. William B. O'Brien in the amount of \$300 (\$75 from Sale of Lots, \$225 from Perpetual Care).

Cumberland Farms - 470 Boston Post Road

Selectman Blacker proposed that the Town file an unliquidated claim with Cumberland Farms to reserve the Town's rights for a possible liability under the 21E process because of the contamination disclosed during testing. Since this is a water resource concern, it was decided to send the information to the Water District and recommend that they file the claim because of the prior leaks.

Boston Edison Substation

Selectman Cope reported that she attended the hearing with regard to the Boston Edison Substation construction, and heard that Boston Edison had gone to all of the immediate abutters and offered to perform several tests to confirm that there were no outstanding issues with the new station. It was noted that the Town of Concord will be profiting a great deal from this new substation, but that Sudbury will be getting nothing. She continued that someone suggested working out a plan with Boston Edison for a walkway, since most of the savings from the substation will be benefiting Concord and Boston Edison. Following discussion the Board requested the Executive Secretary to send a letter to Boston Edison on the subject to seek some form of community relief.

Tax Collector Meeting - Selectman Blacker

Selectmen Blacker reported he had met with Treasurer/Collector Mary Ellen Dunn to continue discussion on the question of setting a policy with regard to tax collection and tax title procedures. The policy he would like to see would involve:

- 1) Including an explanation or notice of the commencement of tax title procedures and a plea for payment to be made to avoid same with demand notices which are sent to non-payers 14 days after taxes are due. . . a suggestion of Ms. Dunn.
- 2) Establishing a waiting period of one year between the close of the fiscal year and when tax title would go into effect. . . a suggestion of Mr. Blacker.

Mr. Blacker stated that procedures are still being reviewed and considered by Ms. Dunn.

Land Gifts

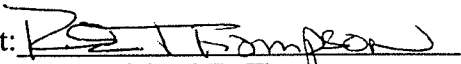
On the recommendation of Executive Secretary Thompson, it was on motion unanimously

VOTED: To authorize Chairman Drobinski to execute on behalf of the Town acceptance of deeds from McCart Children's Trust, Eisner Land Corporation, and North Sudbury Real Estate Trust, subject to verification of acceptable terms of the conveyances by Town Counsel.

Workers' Compensation

Selectman Blacker mentioned the memo from Town Counsel Paul Kenny to Budget and Personnel Officer Terri Ackerman, and asked if the Town has researched self insuring for workers' compensation because of the high costs involved with an outside insurer. Mr. Thompson reported that Mr. Kenny has been working on it. Mr. Blacker remarked that he, too, will be talking with Mr. Kenny and Ms. Ackerman and asked if he could receive copies of workers' compensation reports further back than 1988. Mr. Thompson said he would provide the same.

There being no further business, the meeting was adjourned at 10:30 p.m.

Attest:   
Richard E. Thompson  
Executive Secretary-Clerk