

IN BOARD OF SELECTMEN
MONDAY, SEPTEMBER 29, 1975

Present: Chairman John E. Taft, William F. Toomey, and John C. Powers

The statutory requirements as to notice having been fulfilled, the meeting was called to order at 7:30 p.m by Acting Chairman William F. Toomey.

Jurors

Present: Betsey M. Powers, Town Clerk

The Board drew the names of Harold C. Fleming, 10 Allen Place and Meribeth Germanotta, 289 Hudson Road, to serve as jurors at Cambridge Court and Richard O. Bell, 24 Austin Road, and Herbert J. Holroyd, 72 Willow Road, to serve as jurors at Lowell Court, all to commence November 3, 1975.

Presidential Preference Primaries

Present: Betsey M. Powers, Town Clerk

In response to the request of Town Clerk, it was on motion unanimously

VOTED: To authorize the Town Clerk to group precincts for voting in the Noyes School auditorium for the presidential preference primaries, as allowed by Section 70C, Chapter 53 of the General Laws.

Hearing - Application for Underground Storage of Fuel, Arthur C. McHugh, Jr.
Lot 53, Colburn Circle

Present: Arthur C. McHugh, Jr., applicant, Francis E. White, Building Inspector

In accordance with the provisions of Chapter 148 of the General Laws, the Selectmen held a hearing on the application of Arthur C. McHugh, Jr., 257 Mossman Road, for a license to store 1000 gallons #2 fuel oil underground at Lot #53, Colburn Circle.

Mrs. Phyllis Sampson, Acting Executive Secretary, reported that the hearing had been properly advertised, appropriate departments and abutters notified, and return receipts received.

Chairman Taft reviewed the application, which had been approved by the Fire Chief on September 11, 1975.

Mr. McHugh explained that his application had been made for the purpose of heating his home.

The Building Inspector reported that there were a number of 1000 gallon storage tanks for this purpose in the Town which had been installed many years ago.

Following discussion, it was on motion unanimously

VOTED: To approve the application for license for underground storage of 1000 gallons of #2 fuel oil by Arthur C. McHugh, Jr., at Lot 53, Colburn Circle, for home heating purposes only.

Minutes

It was on motion unanimously

VOTED: To approve the minutes of the regular and executive sessions, the latter as amended, and the Town Fathers' Forum of September 22, 1975.

Resignation - Permanent Building Committee

The Board received a communication dated September 22, 1975, from Craig Parkhill relative to his resignation from the Permanent Building Committee, effective September 17, 1975.

It was on motion unanimously

VOTED: To accept the resignation of Craig Parkhill, with regret, and to direct the Acting Executive Secretary to acknowledge Mr. Parkhill's communication, expressing the Board's appreciation for his years of service on that Committee.

Proclamation - National Federation of Business and Professional Women's Club, Inc.

A proclamation was signed by the Selectmen, which designated October 19 - October 25, 1975, as National Federation of Business and Professional Women's Clubs Week in the Town of Sudbury.

Proclamation - 4-H Club Week

At the request of Stephen Mullen, in a communication dated September 24, 1975, County Extension Agent in 4-H Club Work, it was on motion unanimously

VOTED: To sign a proclamation designating October 5 - October 11, 1975, as 4-H Club Week in the Town of Sudbury.

Tax Possession Land - Lot #97 Lillian Avenue - Board of Health

The Board considered a request from the Board of Health set forth in a communication dated September 5, 1975, which had been earlier received by the Board, relative to the withholding from public sale of Lot #97, Lillian Avenue, in order that the Board of Health might, through use of an observation well, monitor the groundwater table during different periods of the year.

Following discussion the Selectmen directed the Acting Executive Secretary to request additional information from the Board of Health, to include:

- 1) what factors influence the design of a satisfactory septic system;
- 2) what procedure will the Board of Health follow to insure public safety relative to the test site; and
- 3) what care of the lot will be taken by the Board of Health during the test periods.

After further discussion it was the consensus of the Board to request the Acting Executive Secretary to arrange for the sale of this particular parcel, as interest in such sale has been expressed by an abutter, reserving the right of the

Board of Health to conduct periodic tests at that location.

The Acting Executive Secretary was also directed to inform the Director of the Board of Health of the Board's decision in the matter.

Taylor Rental Site Plan - Review

Present: Normand Martel, owner of Taylor Rental, David Gadbois, attorney for Mr. Martel, Francis E. White; Zoning Enforcement Agent; Paul McNally, Chairman, Eben Stevens, and Albert St. Germain of the Planning Board; Emmanuel Tiliakos, Town Planner; Edward A. Sokoloff, abutter, and approximately 12 Townspeople

Chairman Taft reported that the Board has discussed the matter of possible zoning violations at the site of Taylor Rental, 712 Boston Post Road, and that all interested parties had received recent correspondence on the matter, including a copy of a communication from Town Counsel dated August 11, 1975, which set forth his opinion that Taylor Rental Center was not, at that time, violating Section V, E, or Section V, K of the Zoning Bylaw and that the site plan, approved by Selectmen (November 12, 1973) meets the requirements of the Zoning Bylaw, provided, however, that no commercial vehicles are regularly parked on the premises.

Chairman Taft further reported that Town Counsel responded on May 23, 1975, to the Zoning Enforcement Agent relative to his request for a definition of the term "commercial vehicles", in which he defined the term as "trucks, trailers, and other motor and non-motor vehicles used for commercial purposes". The Board had then received a memorandum dated July 30, 1975, from the Zoning Enforcement Agent which stated that he could not find any zoning violations at that site and that the operation, in his opinion, was within the zoning bylaw. The Board had also received a letter from the Planning Board, dated August 22, 1975, which set forth that Board's vote that a violation does exist at this location with regard to the overnight parking of commercial motor vehicles.

The Zoning Enforcement Agent stated that he had recommended approval of the site plan at the time of its consideration by the Board.

Mr. McNally stated that the Planning Board had recently voted 4-1, based on Town Counsel's opinion, that a violation exists at the Taylor Rental site with regard to the parking of trucks overnight because the trucks are parked within 1,000 feet of the residential zone (Article IX, Section V, E.)

The Zoning Enforcement Agent, in response to Selectman Powers' question, stated that the number of trucks parked at that location varies from none to eight or nine box-bodied trucks.

Mr. Martel explained that the trucks under discussion were Econoline 12'-, 16'- and 20'-box trucks, rental vehicles.

The Zoning Enforcement Agent reported that Mr. Martel has no control over the number as they are rental vehicles and come and go.

Mr. Martel stated that he regularly stations one 12'- and two 16'-vehicles at his site.

In response to Chairman Taft's questions, Mr. Martel replied that he does park trailers at that location, that the number varies, and that at the moment he has nine parked there, but usually five or six (6' height for trailers and 11' clearance for trucks).

In response to Chairman Taft's question, Mr. Martel stated that the area is screened by a 6' high chain-link fence with green slats, as specified on the site plan.

Mr. McNally, referring to Town Counsel's April 11, 1975, opinion, specifically to Article IX, Section 5, E, "Enclosure of Uses", contended that, in the Planning Board's opinion, this section contains no exception which would allow parking of vehicles as they are now parked.

Chairman Taft then read Town Counsel's May 23, 1975 letter to the Zoning Enforcement Agent, which reaffirmed his opinion of April 11, 1975.

Town Counsel stated that his April 11 and May 23 letters are in harmony and say basically the same thing and refer to two sections of the Bylaws -- Article IX, V, E, "Enclosure of Uses", and Article IX, V, K, "Screening of Open Uses". Mr. Turner stated that Mr. Sokoloff and others have argued that under "Enclosure of Uses", all commercial business uses must be inside a building. Mr. Turner stated that he does not read the bylaw that way and, in his opinion, the history of development of the Bylaws and of businesses bear this out. Town Counsel further stated that, in his opinion, the "Enclosure of Uses" section excludes those activities in contrast to the "Permitted Uses" section.

Referring to page three of his April 11 letter, Town Counsel stated that a question had been raised at that time as to the definition of "commercial vehicles" and that Mr. White and others brought to his attention the U-Haul trailers and trucks -- a circumstance which provoked his May 23 letter. Town Counsel then stated that if Mr. Martel is parking trailers and U-Hauls at his site, they must be enclosed.

The Zoning Enforcement Agent expressed his disagreement with this statement and questioned Mr. St. Germain, as former Fire Chief, whether there were limits pertaining to the total gallonage of gasoline that can be housed in an enclosure.

Mr. St. Germain's response was in the negative.

Mr. Sokoloff referred to his letter dated June 4, 1975, from the Executive Secretary in which Mr. Thompson stated that the Board of Selectmen had accepted Town Counsel's opinion, and Selectman Powers then read this letter to those present.

Selectman Toomey stated that in November of 1973 the Board considered a site plan for Mr. Martel which had been approved by various Town boards and committees. He further stated that it was his understanding when the plan was signed that the Board was aware that Taylor Rental had parked these vehicles at their previous location (82 Boston Post Road) and would again park these vehicles at their new location.

Mr. Toomey further stated that, in his opinion, the Board had discussed the plan with Mr. Martel in good faith and if the matter was not handled properly at that time, the Board has a moral obligation to rectify this in some manner.

Chairman Taft stated that the site plan was approved subject to conditions by the Board on November 12, 1973, and discussion followed concerning the fact that the Selectmen, in their consideration of the plan, had used as guidelines for their approval the various board recommendations, all of which were favorable.

Mr. Gadbois stated that Mr. Martel had received a letter dated November 21, 1973, from the Executive Secretary regarding the November 12, 1973 meeting, which set forth the Board's vote relating to approval of the site plan for Taylor Rental, subject to conditions.

Chairman Taft read the above-referenced letter which cited the following conditions:

- 1) that the westerly employee parking area be redrawn;
- 2) that the extension of the 7' chain-link fence to the rear of the equipment parking area be shown; and
- 3) that a provision be placed on the plan to indicate that the trees growing on the residentially zoned land, owned by the applicant, which is contiguous to the business site, shall be maintained as a visual screening, and shall not be removed or altered except for pruning and selective cutting without notice and hearing by the Board of Selectmen and subject to the imposition of other visual screen requirements.

Chairman Taft stated that the main concern expressed at the site plan consideration had been for the aspect of adequate visual screening.

Mr. McNally stated that the Planning Board's recent vote relative to the violation was in response to Town Counsel's May 23, 1975 opinion. He referred to the minutes of the Planning Board's August 18, 1975, meeting at which the Taylor Rental operation and varying opinions on the subject of trailers were discussed prior to that Board's above-referenced vote. Mr. McNally stated that he did not believe the subject of trailers had been discussed in 1973, as there is no record of such discussion in their minutes, and that the Planning Board members were unable to recall the same.

Mr. Stevens stated that he did remember the earlier meetings on the matter and that, in his recollection, the Planning Board did discuss the subject of trailers with Mr. Martel. Mr. Stevens stated that Town Counsel had verbally stated at that time that trailers were non-commercial vehicles, but that he (Mr. Stevens) did not remember any discussion regarding trucks. Mr. Stevens stated that they had also discussed this matter with the Zoning Enforcement Agent at that time.

Mr. Gadbois read the October 24, 1973 Planning Board minutes, which reported the Zoning Enforcement Agent's statement that registered vehicles do not constitute outside storage which would indicate to him (Mr. Gadbois) that a discussion on rental trailers had taken place.

Town Counsel, referring to Mr. Stevens earlier statement regarding his verbal opinion, stated that he did not recall such discussion.

Selectman Powers stated that, in his opinion, the boards had full knowledge of the operation at the time of site plan approval and that it was now a determination of the definition of "commercial vehicles". Selectman Powers further stated that he did not agree with Town Counsel that those vehicles constitute commercial vehicles as thought of in the bylaw and in his opinion, that this is an unfair statement to Mr. Martel.

Chairman Taft stated that his recollection of the Taylor operation at the time of site plan consideration was that it did include trailers but that he did not remember the trucks.

Selectman Toomey stated that he did remember the trucks at the previous location, and Mr. Martel stated that he had opened his business in his old location in October of 1971 and by January of 1972 he had both trucks and trailers.

In response to the question if at any time during his previous operation anyone had suggested that these vehicles were improperly parked, Mr. Martel answered in the affirmative and stated that he had parked most of the vehicles behind the building and only two near the front.

The Zoning Enforcement Agent stated that he had requested Mr. Martel to park these vehicles to the rear because of the traffic hazard at the entrance to the adjacent car wash.

Mr. McNally asked if Mr. Martel's former site plan had allowed him to park these vehicles, and Mr. Martel stated that he had not had a site plan for that location.

In response to Selectman Powers' question as to the date that Town Meeting passed Article IX, Section V, E, the Planning Board responded that it was their belief that it was before 1970.

Mr. Stevens commented that the business zone at the Old Taylor location overlaps with Industrial Zone 12 and that the operation might have been legal there in any case.

Mr. Gadbois stated that Mr. Martel owns the real estate involved and that Mr. Martel buys his equipment from the Taylor Rental people. Mr. Gadbois further stated that the U-Haul operation is approximately 30% of Mr. Martel's business and that he also rents dollies, furniture protection covers and other related products, and that without this business he could not have invested in his new location.

Mr. Gadbois stated that the Zoning Enforcement Agent and the various Town boards considered these factors during 1973 and questioned what interpretation was given to the zoning bylaw at that time. Referring to Article IX, V, E, Mr. Gadbois commented that these vehicles were not incidental to Mr. Martel's business, they were his business and that it was considered an allowed use by the local boards at that time.

Mr. McNally stated that, in the opinion of the Planning Board, to allow the trucks to remain there would be a violation of the bylaws and that he would recommend that Mr. Martel, at least, should not be allowed to park his commercial trucks.

Mr. Sokoloff stated that, in his opinion, the sign bylaw is also being violated because of the signs painted on the trucks and that Mr. Martel should not be allowed to continue his operation if the Town boards were in order. Mr. Sokoloff also stated that, in his opinion, it was unfair to the gasoline station owners, who usually have such franchises as U-Haul, that Taylor Rental has a monopoly sanctioned by the Town boards.

Mr. Sokoloff further stated that it was his belief that the Town boards had made a mistake in approving the Taylor Rental site plan and that before Mr. Martel had begun construction, he (Mr. Sokoloff) had told him that he was in violation and requested that he contact the boards in this regard.

Mr. Gadbois questioned the Planning Board minutes relative to that Board's discussion of registered vehicles.

Mr. McNally stated that for clarification there was never any mention of trucks, that the opinion for which they were looking was whether trailers were motor vehicles. Mr. McNally further stated that, in the Planning Board's opinion, this operation constitutes a clear violation of the bylaws and that they were talking trucks, not trailers.

Selectman Powers stated that, in his opinion, there was not anyone here tonight who was sitting on any board at that time who thought that Mr. Martel's operation -- the regular parking of commercial vehicles -- would be in violation and that the disagreement lies in interpretation of the bylaw. Selectman Powers stated that he would like to hear, from Mr. Gadbois, his interpretation of "commercial vehicles" and requested that he submit a brief on the subject.

Mr. Gadbois was in agreement.

Chairman Taft thanked those present for their attendance tonight, and stated that the Board would expect to hear from Mr. Gadbois, after which there would be further discussion of the matter with Town Counsel.

Receipt of Bids for #2 Fuel Oil and Burner Service - 1975-76 Heating Season

Chairman Taft reported that the Town had mailed to the bidders' list and had advertised invitations to bid for supplying to Town buildings a total of 44,000 gallons of #2 fuel oil and the servicing and cleaning of burners and boilers. Chairman Taft reported that five bids had been received and opened on September 18, 1975.

The Board also received a related communication from the Building Inspector dated September 25, 1975.

After the Board's review and discussion of the lack of uniformity in the

bid response, it was on motion by Selectman Powers unanimously

VOTED: To reject all bids without prejudice;

and it was further

VOTED: To resubmit and readvertise the invitations to bid with revised specifications, to be drafted by Town Counsel, to standardize bidders' responses relative to tank car prices, increments, and service policies.

Application for State Funding - Local SudbuS Operation

Present: Robert Coe, Chairman, and Paul Buxbaum of the Sudbury Bus Transportation Committee; Emmanuel Tiliakos, Town Planner

As requested by the Board at its September 22 meeting, Messrs. Coe, Buxbaum, and Tiliakos met with the Board to review the draft proposal prepared for submittal to the State for funding of a demonstration transportation system.

Several revisions were discussed and agreed upon, after which it was on motion unanimously

VOTED: To approve the proposal for SudbuS service, as revised, for submittal to the Executive Office of the Secretary of Transportation and Construction.

On the subject of Wayland's request to traverse Pelham Island Road and a portion of Landham Road, Mr. Tiliakos reported that Mr. Hearne, a member of the transportation committee in Wayland had informed him that Wayland wants not only to traverse those Sudbury streets but also wishes to supply service to the Sudbury residents in that area. Mr. Tiliakos reported that he had suggested that Mr. Hearne's committee contact the Selectmen in this regard.

Mr. Buxbaum reported that there is presently a vacancy on the Sudbury Bus Transportation Committee, and Chairman Taft requested that they supply the Board with the names of candidates for possible appointment.

Raymond Land - Conservation Commission

Present: John Cutting and Olga Reed of the Conservation Commission

The Board received a communication dated September 10, 1975, from the Conservation Commission, which requested that they be notified of the Selectmen's review of the disposition of the Raymond land, in order that the Commission may have input for their budget preparations. Their communication also requested the Selectmen's feelings for continuing the Commission's authority for granting hunting permits on the westerly portion of the Raymond land.

Mrs. Reed, speaking as an abutter of the Raymond land, stated that she had no objection to the continued issuance of hunting permits.

The Board suggested that the Commission consult with the area residents and with the Water District on the matter, and it was on motion unanimously

VOTED: To authorize the Conservation Commission to issue permits in accordance with Article V, Section 8 of the Town Bylaws for the portion of the Raymond property which lies west of Raymond Road, with the understanding that the Conservation Commission will hold a public meeting with the abutters to discuss the matter and advise them of their plans.

On the matter of the disposition of the Raymond Land, it was noted that the Executive Secretary had inquired by memo dated September 15, 1975, of the Town Engineer as to the status of the same. It was the consensus of the Board to request that the Executive Secretary follow up this matter.

Massachusetts Selectmen's Association - Photography Contest Awards

The Board received a communication dated September 24, 1975 from the Massachusetts Selectmen's Association, which congratulated the Town of Sudbury for the awards won in their recent photography contest by Victor Neumeier and Jean Gogolin.

Hawkers and Peddlers Regulations

After discussion on the matter of Hawkery and Peddlers Regulations, which was a subject on the Selectmen's agenda of September 22, 1975, it was on motion by Selectman Powers, unanimously

VOTED: To take no further action on the matter of regulating hawkers and peddlers, leaving the present regulations as they now stand.

Chairman Taft directed the Acting Executive Secretary to so advise the parties present at the September 22 discussion.

Executive Session

At 10:25 p.m., it was on motion unanimously

VOTED: To enter into executive session for the purpose of discussing matters of litigation.

There being no further business to come before the Board, it was on motion unanimously

VOTED: To adjourn the meeting at 10:40 p.m.

Attest: Phyllis A. Sampson
Phyllis A. Sampson
Acting Executive Secretary-Clerk