

IN BOARD OF SELECTMEN  
MONDAY, DECEMBER 20, 1976

Present: Chairman William F. Toomey, John C. Powers, and Ira M. Potell

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

Minutes

It was on motion unanimously

VOTED: To approve the minutes of December 13, 1976.

Indemnification of Sudbury Police Officer - Medical Expenses

On the recommendation of the Executive Secretary and Town Counsel, it was on motion unanimously

VOTED: To declassify the executive session minutes of December 6, 1976 on the subject of Indemnification of Sudbury Police Officer - Medical Expenses.

Annual Inspections - Building Inspector, Fire Chief, Board of Health - License Renewals

The Board on November 22, 1976 and November 29, 1976, voted to issue renewal licenses for alcoholic beverages, common victualler, weekday entertainment, and weekday automatic amusement devices, with actual issuance after final Board review of departmental reports verifying completion of all work identified by the Building Inspector, the Fire Chief, and the Board of Health in their communications dated November 9, 1976, November 15, 1976, and November 19, 1976, respectively.

The Executive Secretary now reported that a follow-up report dated December 15, 1976, confirming correction of all violations, had been received from the Building Inspector.

After discussion, it was on motion by Selectman Powers unanimously

VOTED: To release the licenses approved at the Board's November 22 and November 29, 1976 meetings, upon payment of fees as required, to the following establishments: Pacific Gate, Sudbury House, American Legion, and Wayside Package Store.

The Executive Secretary also reported that the Board had received a follow-up report dated December 20, 1976 from the Director of the Board of Health, attesting to the below-named establishments' compliance with the State Sanitary Code.

After discussion, on the recommendation of the Executive Secretary, it was on motion by Selectman Powers unanimously

VOTED: To release the licenses approved at the Board's November 22, 1976 meeting, upon payment of fees as required, to the following establishments: Pizza alla Pietra and Paul Joseph's Restaurant.

The Board, on November 29, 1976, had voted to take no action on the application of Donald Wagoner, President, Todd-Wagoner Corporation for a Common Victualler's license and Weekday Entertainment license for his establishment known as Ephraim's, which is under construction, as it is not yet open to the public or accessible for inspections. The Executive Secretary was now directed to advise the aforementioned applicant that it will be necessary to reapply for these licenses.

#### Selectmen's 1977 Annual Town Meeting Appropriation Article

Executive Secretary Richard E. Thompson reported that there is only one appropriation article for the Board's approval for submission to the 1977 Annual Town Meeting--a request by former Town residents that the Town purchase two cemetery lots presently owned by them.

It was noted in the article report that the proposed Cemetery Rules and Regulations proposed for adoption by the Town at the 1977 Annual Town Meeting provide for such return of lots without a Town vote, and, if adopted, the article would be unnecessary and would be indefinitely postponed.

After discussion of the provision set forth above, it was on motion by Selectman Potell unanimously

VOTED: Not to insert the above-described appropriation article in the warrant for the 1977 Annual Town Meeting at this time.

#### Selectmen's Policies and Procedures--Deed and Easement Procedure and Fee Schedule - Amendments

After discussion, on the recommendation of the Executive Secretary, it was on motion unanimously

VOTED: To amend the Deed and Easement Procedure and Fee Schedule (Auctioneer, Sunday Entertainment, and Outdoor Amusement Licenses) portions of the Selectmen's Policies and Procedures, as set forth in a report dated December 20, 1976 from the Executive Secretary.

#### Appointments

After discussion, it was on motion by Selectman Potell unanimously

VOTED: To appoint J. Owen Todd, 363 Willis Road, to the Personnel Board for a term to expire on April 30, 1977 to fill the unexpired term of George Distler; and it was further

VOTED: To appoint Michele Singer, 7 Pilgrims Path, to the Town Report Preparation Committee for a term to expire on April 30, 1977.

Anti-Recession Fiscal Assistance Funds

In response to the Board's request to the Executive Secretary on December 13, 1976 for a memorandum and back-up information relative to the Executive Secretary's suggestion that the Title II money received under the Public Works Employment Act be used to offset the budget for the Highway Department, the Board received and reviewed the requested material dated December 16, 1976. Also received was a related informational report dated December 16, 1976 from the Town Accountant which broke down receipts, interest, and expenses related to Federal Revenue Sharing and projected revenues for application to the 1977-78 budgets for both Federal Revenue Sharing and Antirecession Fiscal Assistance.

After discussion, it was on motion by Selectman Powers unanimously

VOTED: To accept the Antirecession Fiscal Assistance funds provided by Title II of the Public Works Employment Act of 1976 for the calendar quarters beginning July 1 and/or October 1, 1976 and to recommend to the Town Meeting that the Board commit the sum of \$35,000 as an offset to the Highway Department budget for personnel services.

Selectman Potell suggested that a method might be found by which these funds could be accepted in advance, and the Executive Secretary was directed to look into this possibility.

Cemetery Rules and Regulations

Chairman Toomey reported that the Board, at its meeting on December 13, 1976 had received a letter dated December 12, 1976 on the subject of the proposed Cemetery Rules and Regulations from Donald Bishop, 80 Raymond Road, which the Board requested be reviewed by Town Counsel.

Chairman Toomey stated that a response dated December 15, 1976 had been received from Assistant to Town Counsel Thomas French and had been since reviewed by the Board.

Selectman Powers expressed his objections to Mr. French's second statement in his comments relating to Section XIII, Additional Regulations, and he suggested that it be deleted. (Section III, Additional Regulations, states that: "The Board of Selectmen may make such additional rules and regulations, not inconsistent with law or these Rules and Regulations, as it may deem necessary and appropriate for the proper administration and protection of the duties and responsibilities entrusted to it without further submission to the Town Meeting for approval.") Selectman Powers stated that, in his opinion, the additional rules and regulations referred to were administrative policies and procedures and not an alteration of the Town Meeting vote.

The Board requested that Assistant to Town Counsel's report be returned to him for further clarification on this point, after which it will be again reviewed by the Board and forwarded to Mr. Bishop.

Horse Pond Road School - Proposed Closing

The Board received and reviewed informational copies of interdepartmental correspondence on the subject of the proposed closing of the Horse Pond Road School.

After discussion, Selectman Powers suggested that, in the interest of clarity, the Board reiterate its position to the School Committee that unless and until the School Committee votes that this school property is "no longer needed", the Selectmen have no jurisdiction and no comment on the subject.

Chairman Toomey and Selectman Potell were in agreement.

Public Hearing--Application of Robert J. McCabe, d/b/a The Package Store, 466 North Road - Renewal of Package Store License for Sale of Wines and Malt Beverages

Present: Robert J. McCabe, applicant; Building Inspector Francis E. White; and Mr. and Mrs. Frederick O. Robinson, abutters

In accordance with Chapter 138 of the General Laws, the Board of Selectmen, acting as the Licensing Authority of the Town of Sudbury, held a public hearing on the application of Robert J. McCabe, d/b/a The Package Store, for 1) renewal of his retail package goods store license for the sale of wines and malt beverages and 2) transfer of said license from his individual ownership to The Package Store, Inc., Robert J. McCabe, Manager, at the same premises located at 466 North Road.

Executive Secretary Richard E. Thompson reported that notice of tonight's hearing had been published on December 9, 1976 in the local press, that appropriate Town departments and abutters had been notified, return receipts received, and the following reports received: from the Police Chief, dated December 8, 1976, who expressed no objection to the renewal, and from the Building Inspector, dated December 15, 1976, who reported that the establishment was not presently open to the public.

In response to the Board's question, Building Inspector Francis E. White stated that he had no additional report.

Chairman Toomey stated that it was his understanding that The Package Store has been closed since last August.

Mr. McCabe stated that his store has been closed for renovations since that time following the third robbery of the premises in the last one-and-one-half years. Mr. McCabe stated that he had not had the funds to finish the renovations until this time. Mr. McCabe also stated that he had boarded up the two rear windows on the building through which entry had been made, but was undecided as to how he would reconstruct the window in the front. Mr. McCabe stated that it was his plan to reopen in February or March.

Selectman Powers asked Mr. McCabe whether it was his intention to operate the establishment as a package store, commenting that, if this were not the case, a license should not be granted, as such a license is an obligation to serve the public.

Mr. McCabe responded in the affirmative, stating that he had not been aware that his license would be in jeopardy by closing as he had.

In response to further questions from the Board, Mr. McCabe stated that it was his intent to reconstruct the front picture window in some manner and to finish off the interior. Mr. McCabe stated that he wished the Board to realize that he wanted to put his business back into operation and to run it as it should be run, and he further stated that it was his hope to come back with a better proposal but that he was not ready at this time. Mr. McCabe stated that he would run the business as a full-time operation with regular hours.

Chairman Toomey suggested that the Board renew the license subject to the establishment's being run as a full-time operation as of February 1 or whatever date Mr. McCabe considered reasonable, and if the establishment were not run as a full-time operation, that the license be revoked.

Mr. McCabe stated that the date of February 1 would be acceptable to him.

Selectman Powers suggested that Town Counsel review the text of the appropriate statute to determine if the Board could condition the license.

Town Counsel suggested that the Board take the matter under consideration until later in the evening.

Mr. Frederick Robinson, an abutter, mentioned neighborhood problems with parking of automobiles and excessive noise at The Package Store and the adjoining Ye Olde 117 House.

Chairman Toomey stated that it was his belief that the late night noise would be associated with the pouring license at the adjoining business, as The Package Store would close at an earlier hour, but that the traffic problem could pertain to this establishment. Chairman Toomey stated that this complaint could be heard at some future hearing.

Mr. McCabe stated that he would discuss both problems with the owner of the adjoining business.

Mr. Thompson reported that the owner of the package store is trying to extend his parking lot and is working with the Conservation Commission with regard to some filling of the area.

After further discussion, it was on motion by Selectman Powers unanimously

VOTED: To table further consideration of the above-referenced application pending receipt of an opinion from Town Counsel on the question of the conditioning of a license.

Later in the evening, after further discussion, on the recommendation of Town Counsel, it was on motion unanimously

VOTED: To issue the renewal package goods store license to Robert J. McCabe, d/b/a The Package Store, 466 North Road, for the sale of wines and malt beverages under General Laws Chapter 138, Section 15, subject to the requirements that the license shall be exercised and that wines and malt beverages shall be sold during normal working hours six days a week on and after February 1, 1977 and that all renovations shall be completed on or before February 1, 1977;

and it was further

VOTED: To approve the transfer of The Package Store license from Robert J. McCabe, d/b/a The Package Store, to The Package Store, Inc., Robert J. McCabe, Manager.

Public Hearing--Application of John L. Trevisani, Manager, Sudbury Management Associates, Inc., d/b/a JT's Steak House, 120 Boston Post Road

Present: Building Inspector Francis E. White; John Trevisani, applicant, Genero L. Morte, attorney, representing the applicant

In accordance with Chapter 138 of the General Laws, the Board of Selectmen, acting as the Licensing Authority of the Town of Sudbury, held a public hearing on the application of John L. Trevisani, Manager, Sudbury Management Associates, Inc., d/b/a JT's Steak House for 1) late renewal of his license to sell Alcoholic Beverages as a Common Victualler, 2) approval of interior changes involving relocation of the bar and a food service window between kitchen and dining room, and 3) correction or approval of changes in the described entrances and exits, on premises located at 120 Boston Post Road.

Executive Secretary Richard E. Thompson reported that notice of tonight's hearing had been published on December 9, 1976 in the local press, that appropriate Town departments and abutters had been notified, and the following communications received: a letter from John L. Trevisani dated November 29, 1976, which requested permission to make certain interior changes at JT's Steak House; from the Building Inspector dated November 30, 1976, which confirmed that a building permit had been issued to Sudbury Management, Inc., to relocate the present bar and to remove twelve feet of bearing wall; and from the Board of Health Director, dated December 17, 1976, who recommended approval of the interior changes.

Mr. Thompson also reported that the Board, at its November 29 meeting, voted not to renew the annual license for this establishment and that the application under consideration was a new application.

Building Inspector Francis E. White reported that all violations earlier reported by him had been corrected.

Mr. Genero L. Morte, attorney for the applicant, reported that Mr. Trevisani had been ignorant of the fact that a building permit was necessary for interior changes and that it was his belief that Mr. Trevisani had not intended to violate Town regulations. Mr. Morte requested that the license be granted and he assured the Board that Mr. Trevisani would abide by all regulations in the future.

The Executive Secretary commented that the Board, as a matter of policy, periodically sends to all such applicants notices relating to the regulations which govern them.

Mr. Morte again stated that, in his opinion, Mr. Trevisani had not intentionally violated the regulations, but that he had not been aware of them.

In response to the Board's questions, Mr. Morte made the following statements:

- There is no change in the seating capacity of the restaurant.
- The building permit for interior changes was issued on November 30, 1976.
- There is no change in exterior exits or the toilet areas.

Mr. Trevisani, Mr. White, and Mr. Morte reviewed the floor plan with the Board and described the following changes: relocation of the bar, installation of a hardwood floor, rearranged seating, and the removal of a partition.

Selectman Powers requested that the Building Inspector make sure that the proposed half-wall complies with the Fire Prevention Code.

Mr. White responded that the half-wall was in compliance and that the building was fully installed with a sprinkler system.

The applicant was requested to indicate the partial partition and all other changes on the floor plan.

Chairman Toomey recommended that the revised floor plan be submitted to the Building Inspector on December 21, and he stated that if it was in compliance, he would schedule a Special Meeting to act on the application on December 23.

After further discussion, it was on motion by Selectman Potell unanimously

VOTED: To schedule a Special Meeting of the Board to be held at 12:00 Noon, Thursday, December 23, 1976, at the Loring Parsonage for the purpose of continuing the hearing on the above-referenced application.

Chairman Toomey again listed the additions which must be made to the plan to assure the satisfaction of the Building Inspector, to prevent any misunderstanding, and he stated that the Common Victualler license for this establishment would also be considered at that time.

Selectman Powers again requested from the Building Inspector at the December 23 meeting specific answers relating to the proposed interior changes being in compliance with the Fire Prevention Code and Mr. White was in agreement.

#### Selectmen's Departmental Budgets

After discussion, it was on motion unanimously

VOTED: To approve a reduction in the Building Inspector's budget, Account 340-13, Salaries, in the amount of the difference in salary between that of Administrative Secretary and that of Principal Clerk.

#### Military Reservation Land - Dedication

The Executive Secretary reported that he had been notified by the State that the Military Reservation Land recently exsessed to the Department of Natural Resources was to be dedicated on January 7, 1977 at 11:00 a.m. and it was hoped that members of the Board could attend.

#### Firefighters Association -- Factfinding Session

The Executive Secretary advised the Board that a factfinding session for the Firefighters Association had been tentatively scheduled for Tuesday, January 11, 1977, at 6:00 p.m.

Conservation Commission - RADIN Subdivision - Marlborough's Request for Support of Wetlands Act Amendment

Present: John Cutting, Chairman, Olga Reed, and Kathleen Brown of the Conservation Commission

Members of the Conservation Commission met with the Board to discuss 1) the RADIN Subdivision - Compliance with Wetlands Protection Act Project 301-4 and their site plan and 2) the City of Marlborough's request for support of an amendment to General Laws Chapter 131, Section 40A, the so-called Wetlands Act.

RADIN Subdivision - Mrs. Olga Reed reported that the Order of Conditions for the RADIN subdivision had been written in 1973, had been extended once, and had expired on December 20, 1975. Mrs. Reed reported that Mr. Justin L. Wyner, President of RADIN, Inc., had requested that the Order of Conditions be again extended, but, in the opinion of the Commission, a second extension was unnecessary.

Mrs. Reed reported that Mr. Wyner began construction of drainage in his subdivision in August 1973, at which time a hearing had been held and an Order of Conditions given. Mrs. Reed stated that Mr. Wyner could not complete construction at that time because he could not get his ditch paved, for reasons of expense or asphalt availability, and the extension had been given.

Mrs. Reed further stated that the Conservation Commission had contacted Mr. Wyner, by letter dated November 10, 1976, calling to his attention that the Order of Conditions on his subdivision had expired on December 20, 1975 and that since that time he had been in violation for work not completed under the Order. The Commissioner's letter further advised Mr. Wyner that if no reply was received by December 24, 1976, the Commission would request that Town Counsel be instructed to initiate appropriate legal action. Mrs. Reed reported that Mr. Wyner had responded by letter dated November 22, 1976, in which he referred to a communication dated December 22, 1975 from RADIN to the Department of Public Works (DPW), a copy of which was sent to the Sudbury Conservation Commission on the subject of the Commission's earlier statement to the Department of Public Works that the Commission did not wish the Route 20 culverts to be enlarged or lowered as had been planned by the DPW, which would, in Mr. Wnyer's opinion, correct the drainage problem.

Mr. Wyner's letter contended that the original cause of the drainage blockage on the RADIN property was due to the Town's blockage of the drains on Union Avenue and that because of this fact and what he considered the Conservation Commission's unilateral action mentioned above, he suggested that Town Counsel immediately contact his attorney, Mr. David Parish, to arrange satisfactory resolution of the matter.

Mrs. Reed reported that the Conservation Commission responded to Mr. Wyner, by letter dated December 8, 1976, notifying him that the Selectmen would be requested to direct Town Counsel to act for the Commission in this matter and that this had prompted their request to the Board in this regard, which was dated December 8, 1976.

Mrs. Reed reported that the Commission wished Mr. Wyner to complete the Order of Conditions as originally approved or to submit a modified plan. Mrs. Reed also stated that other drainage systems in the subdivision were dependent on this as yet incompleated and non-maintained drainage system. Mrs. Reed further stated that the Town Engineer had sent a letter dated December 29, 1975 to Town Counsel relative to his recommendations that the drainage ditch should be paved and that the Route 20



culvert should not be changed or lowered until it could be proved that no damage would occur downstream without additional culvert changes.

After discussion, Town Counsel stated that he would contact Mr. Parish and arrange a meeting with him, Mr. Wyner, and the Conservation Commission.

Chairman Toomey stated that if no action by Mr. Wyner resulted from this meeting, the Selectmen would request a meeting with all parties and the Town Engineer, the Board of Health, and the Planning Board.

Selectman Powers requested that the Town Engineer be asked for his comments on what would happen if the drainage culvert on Union Avenue were to be unplugged.

After further discussion, it was on motion by Selectman Powers unanimously VOTED: To grant the request of the Conservation Commission to direct Town Counsel to initiate appropriate action to achieve the satisfactory completion of the Wetlands Protection Act project involving the RADIN subdivision.

The Board requested that the Executive Secretary obtain a copy of the report concerning the on-site inspections by representatives of the Department of Natural Resources which were referenced in Mr. Wyner's November 22, 1976 letter as well as a copy of the Town Engineer's December 29, 1975 report to Town Counsel and any additional pertinent material received from the DPW.

City of Marlborough's Request for Wetlands Act Amendment - Mrs. Kathleen Brown, referring to her letter dated December 7, 1976 to the Board, on behalf of the Conservation Commission, reported that the City of Marlborough's communication asking for support of that City's vote to request the State Legislature to amend Chapter 131, Section 40A of the General Laws, the so-called Wetlands Act, should not be confused with Chapter 131, Section 40 (the Hatch Act), which governs wetlands and is commonly called the Wetlands Protection Act. Mrs. Brown stated that Chapter 131, Section 40A governs the Massachusetts Wetlands Restrictions Program on Inland Waters, administered by the Department of Environmental Management, and that, as Marlborough's proposed amendment is concerned with whether a city or town may unilaterally allow activities and practices which result in pollution or flooding, it was the Commission's recommendation that the Town oppose the same.

After discussion, it was on motion unanimously

VOTED: To support the request of the Conservation Commission to oppose the amendment to GLc131, §40A proposed by the City of Marlborough;

and it was further

VOTED: To direct the Executive Secretary to advise the City of Marlborough and the Town's local representatives of the Board's action in this regard.

#### Middlesex County Advisory Board

The Board received, on December 10, 1976, a memorandum from the Middlesex Counsel Advisory Board on the subject of budget assignments, proposed legislation, and supplementary budgets.

Executive Secretary Richard E. Thompson reported that he, as a budget subcommittee volunteer, had been assigned to review the budgets of the Newton and the Waltham District Courts.

After discussion, it was on motion unanimously

VOTED: To authorize Executive Secretary Richard E. Thompson to represent the Sudbury Board of Selectmen on the Middlesex County Advisory Board until the completion of the 1977-78 County budget year.

An attested copy of the vote will be forwarded to the Middlesex County Commissioners.

On the subject of proposed legislation, on the recommendation of the Executive Secretary, it was on motion by Selectman Powers unanimously

VOTED: To support the legislation sponsored by the Massachusetts League of Cities and Towns and the Mayors' Association which would strengthen advisory boards by providing fiscal home rule for county government.

Lincoln-Sudbury Regional School Committee - Election

Chairman Toomey announced that Dante Germanotta, 280 Goodman's Hill Road, had been elected on December 16 to fill the vacancy on the Lincoln-Sudbury Regional School Committee.

Executive Session

At 9:40 p.m., following a unanimous roll call vote, it was on motion further unanimously

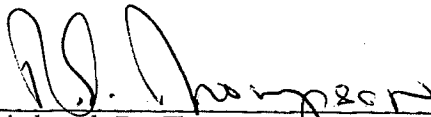
VOTED: To enter into executive session for the purpose of discussing the reputation and character, physical condition or mental health rather than the professional competence of a single individual.

Chairman Toomey announced that the public session would not reconvene following the executive session.

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

VOTED: To adjourn the meeting at 10:00 p.m.

Attest:

  
Richard E. Thompson  
Executive Secretary-Clerk