

IN BOARD OF SELECTMEN
MONDAY, JANUARY 12, 1976

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.

Minutes

It was on motion unanimously

VOTED: To approve the minutes of the regular meeting and the executive session of January 5, 1976, the former as amended.

MAPC Water Quality Project Workshop

The Board received a communication dated December 31, 1975 relative to a Water Quality Workshop to be held at 7:30 p.m. on Wednesday, January 21, 1976 in the Sudbury Lower Town Hall.

Selectman Toomey requested that the Administrative Secretary contact the Town boards and committees relative to their notification of and attendance at the workshop.

1976 Annual Town Meeting - Proposed Highway Articles and Budget

The Board received a communication dated January 7, 1976 from the Highway Commission and reviewed a related communication to the Highway Commission from the Executive Secretary, dated January 7, 1976, relative to scheduling a joint meeting to review the highway articles and budget proposed for the 1976 Annual Town Meeting.

It was agreed to request the date of January 27 for this meeting, as suggested in the Executive Secretary's letter. Town Counsel was also requested to attend.

Goodnow Library - Program for Preservation of Ancient Documents

Present: Robert Stocking, Library Trustee

The Board received a communication dated January 6, 1976 from George D. Max relative to a request to use monies from the Goodnow Library Trust Fund for the preservation of certain ancient documents.

After discussion, it was on motion unanimously

VOTED: Subject to the approval of the Town Treasurer, as Co-Trustee of Town donations, to permit the Goodnow Library Trustees to expend the sum of \$100 for the preservation of ancient records, as set forth in their letter of January 6, 1976, said amount to be paid from the income of the Goodnow Library Fund.

Selectman Powers requested that the Trustees consider earmarking, yearly, a certain sum of the Fund's interest income for reinvestment in the Fund as the Library has considerably expanded since John Goodnow's bequest in 1861, and he suggested \$500 as a possible figure.

1976 Annual Town Meeting - Library Repairs

Present: Robert Stocking, Chairman of the Goodnow Library Trustees

The Board received a communication dated January 7, 1976 from Robert Stocking, Chairman, Goodnow Library Trustees, relative to a proposed article for the 1976 Annual Town Meeting on the subject of appropriating funds for the repair of the brick exterior walls and the replacement of eleven window sills and frames in the 1894 addition.

Selectman Powers suggested that as the proposed article had not been submitted by the December 31 deadline, the repairs be handled through an increase in the Library's budget maintenance account rather than through an article, and he stated that he had so advised Library Trustee George Max.

Chairman Taft asked whether it was necessary that these repairs be done at this time or whether the next Special or Annual Town Meeting would be soon enough to consider the article.

Mr. Stocking stated that he was not qualified to answer this question.

Selectman Toomey stated that, in his opinion, an amendment to the Library's budget maintenance account could be discussed within the scope of the article at the 1976 Annual Town Meeting, and he suggested that Mr. Stocking present this request at his meeting with the Finance Committee later in the evening.

Chairman Taft and Selectman Powers concurred, and Mr. Stocking agreed to proceed in this manner.

1976 Annual Town Meeting Warrant Article - Town Counsel

Town Counsel stated that he had submitted a proposed article for Bylaw amendments at the request of the Planning Board and others. Mr. Turner stated that various situations had been called to his attention by various persons and recent case decisions, and he had submitted the article not as a sponsor but to allow the voters of the Town a chance to decide on whether such amendments should be made.

Selectman Powers stated that as a member of the Board of Selectmen he was unaware that this article had been submitted for the warrant.

Sections of the article were then reviewed and the following questions and comments were made:

Section A. - Amendment to Article IX, I, B, "Basic Requirements" --
Selectman Powers questioned the two-thirds vote requirement of the amendment and commented that, in his opinion, the article would sacrifice the flexibility of passing municipal buildings by exempting municipal purposes by a two-thirds vote of the Town.

Town Counsel suggested that the wording be changed to state that municipal purposes are exempted from all districts by a simple majority vote of the Town.

In response to Selectman Toomey's question, Town Counsel stated that he had initiated this section of the article.

Section B - Article IX, I, C, "Non-Conforming Buildings and Uses"

Item 1 - To amend Article IX, I, C, 1, "Continuation" -- Town Counsel stated that this section was inserted to correct a situation which, in his opinion, is deficient and that it had been initiated by him.

Item 2 - To amend Article IX, I, C, 4, "Abandonment" - Mr. Powers asked if knowledge of an existing situation had been the reason for inclusion of this section. Town Counsel responded in the affirmative, naming the Dingley operation, but stated that he was unaware how many others might also be applicable.

Item 3 - To amend Article IX, I, C by adding a new Paragraph 5, "Modification" - Town Counsel responded in the negative to knowledge of an applicable property.

Section C - To amend Article IX, I by adding a new Section H. entitled "Definitions"

Item 2 - Dwelling - Selectman Powers expressed his concern that this definition could easily be interpreted to include properties intended for other purposes and asked if there was an issue for this section, to which Mr. Turner responded in the negative;

Item 3 - Farm Products - In response to the Board's question, as to the reason for this section, Town Counsel stated that some members of the Planning Board are concerned with this subject and that, in his opinion, the situation under Section D was inappropriate.

Item 7 - Single Residential Unit - Selectman Toomey stated that this item had been included in the article at his suggestion and that it would give the Town the opportunity to decide on a limit to a group of non-related persons residing in a single residential unit.

Chairman Taft noted that the article under discussion had not been included on the Selectmen's list of non-monied articles which were received by the December 1 deadline, and Selectman Toomey questioned the Acting Executive Secretary as to when it had been submitted.

Mrs. Sampson stated that she had first seen it last week, but that she had only recently returned to work.

Town Counsel stated that he had included it on his list of non-monied articles and had left the article in the Selectmen's offices on December 1.

Section D - To amend Article IX, IV, A, 4, "Height Limitations" and Section E - To amend Article IX, IV, B, "Schedule of Intensity Regulations" were briefly discussed, and Selectman Toomey suggested that the article be referred back to Town Counsel for his narrative report.

Members of the Planning Board, who were present at this time in advance of the joint meeting on Taylor Rental Center, were asked whether they were aware of Town Counsel's article, and Mr. McNally stated that the Planning Board had recently received the article, but had not yet discussed it as a Board.

On the subject of a second article, Mr. McNally reported that during the Planning Board's meeting with the Finance Committee earlier this evening, the Finance Committee had been unaware of their article relative to funds in the

amount of \$14,650 for professional planning services, which had been submitted for inclusion in warrant of the 1976 Annual Town Meeting.

In checking the Board's list of monied articles received by the December 31 deadline, Chairman Taft stated that he could find no records that it had been received and, as there was the similar question concerning Town Counsel's article, it was agreed to discontinue further discussion on the subjects until receipt of a report on the same from the Executive Secretary.

Taylor Rental Center

Present: Paul McNally, Chairman, Eben Stevens, Edward Connors, and Albert St. Germain of the Planning Board; Emmanuel Tiliakos, Planning Director; Normand Martel, owner of Taylor Rental Center; David Gadbois, Attorney for Mr. Martel, Francis E. White, Zoning Enforcement Agent

Chairman Taft stated that the Board was tonight meeting on the matter of the Planning Board's letter dated November 14, 1975, which set forth that Board's 3-2 vote to request legal counsel to initiate litigation to determine the correct interpretation of Article IX, Section IX, V, E. "Enclosure of Uses" of the Town Bylaws.

Chairman Taft stated that the Board had also received a copy of a letter, dated November 6, 1975, from Robert E. Cooper, acting as an individual, to the members of the Planning Board, to which Mr. Powers, acting as an individual, responded on December 2, 1975.

Mr. McNally stated that it was the opinion of the three members of the Planning Board that the zoning bylaw referenced above is not being enforced at the Taylor Rental Center and are concerned that the matter has continued for almost two years. Mr. McNally stated that the Planning Board took a stand on this matter and requested that the Selectmen enforce this particular bylaw and that the Board of Selectmen then voted to take no action other than to refer the matter back to the Planning Board for suggested changes to the bylaw. Mr. McNally stated that it was the consensus of a majority of the Planning Board that a violation exists at Taylor Rental Center which should be corrected, and, as it would appear that the Boards are at an impasse, the Planning Board sees no choice but to take the matter to court for judgment. Mr. McNally further stated that the trucks are presently parked in violation of the site plan, as they are parked perpendicularly to the manner shown on the plan.

Referring to the earlier meeting, Chairman Taft reported that there had been a 2-1 vote of the Selectmen that a bylaw article to clarify "commercial vehicles" was needed.

Town Counsel referred to his letter of April 11 and his letter of May 23, 1975, in which he set forth his opinion that "...commercial vehicles", a term which includes trucks, trailers and other motor and non-motor vehicles used for commercial purposes, must be parked and stored so that the enclosure provisions of the bylaw are observed."

Selectman Powers read a portion of his December 2, 1975 letter to Mr. Cooper relative to his position on Taylor Rental Center, which set forth his opinion that the U-Haul operation does not fall into the prohibition about "commercial vehicles" and that he agreed with Mr. Gadbois' view that the application of the commercial fleet designation to the U-Haul trailers, etc., was unwarranted and extreme.

Mr. McNally stated that he disagreed that commercial vehicles are part of storage and that, in his opinion, Mr. Martel's outside storage was probably equal to his building size. Mr. McNally commented on the restraints which have been placed on other businesses on the Post Road such as the proposed location of the Norton Van Systems at the Gulf Service Station.

The site plan was then reviewed, after which Mr. Connors commented that he had been present when the site plan had first been reviewed by the Planning Board for their recommendation. Mr. Connors stated that he remembered seeing trucks at Mr. Martel's former location and that the subject of trucks was discussed at that time. Mr. Connors stated that also at that time the Planning Board had encouraged the installation of a canopy to increase his inside area, which has since been built, and had also told him that his outside storage would be 100% of the inside area, which was in error. Mr. Connors further stated that there was no doubt in his mind but that trucks were to be parked at that location.

Chairman Taft stated that when he last saw the site, there was no question in his mind that it did not conform with the site plan, and he suggested that the vehicles might be parked elsewhere in Town.

Selectman Powers stated that while there is disagreement between the Boards, there is also a party who has been wronged, a problem which should be addressed before proceeding with court action.

Mr. Gadbois stated that his concern is that his client will be hurt, that rental of these vehicles and related items account for between 25% - 33% of his business, and he contended that Mr. Martel would not have moved to this location if he had thought he would have a problem. Mr. Gadbois stated that, in his opinion, the recommendation to clarify the zoning bylaw is valid, and that if Mr. Martel loses his rental business, he will be in financial trouble. Mr. Gadbois stated that if the Boards wished Mr. Martel to park the vehicles as shown on the site plan, he will do so.

Mr. Gadbois stated that the division of opinion among Boards and counsels should also be considered. He further stated that there is, in his opinion, a private citizen who is trying to cause his client problems; otherwise, Mr. Martel would apply for a variance.

Mr. Stevens stated that the issue of interpretation of the bylaw should not affect Mr. Martel and that he would support Mr. Martel before the Board of Appeals.

Chairman Taft stated that he would be glad to go before the Board of Appeals in support of a variance for Mr. Martel, and Selectman Powers and Mr. McNally concurred.

Selectman Toomey commented on the possibility that a variance might be denied.

Mr. St. Germain stated that he agreed that the percentage of storage is in violation, but that he also agreed with Selectman Powers that Article IX, Section III, B, l, k (incidental storage) is applicable. Mr. St. Germain expressed his opinion that a variance would not be granted.

Town Counsel concurred with Mr. St. Germain that no variance could be obtained and stated that he was opposed to taking any action.

Mr. Gadbois stated that, in his opinion, hardship could not be substantiated.

Mr. Turner stated that it would be very unfortunate to take Mr. Martel before the Board of Appeals with a case which, in his opinion, he would probably lose because he could not meet all three basic requirements for obtaining a variance. Mr. Turner stated that a disagreement between Boards would indicate that there is a deficiency in the bylaw and suggested that the "grey areas" of the bylaw be clarified. Mr. Turner stated that towns have until 1978 to bring their bylaws up to the standards of the new Zoning Enabling Act. Mr. Turner suggested that the Planning Board articles to amend the bylaw and his article, which was discussed earlier in the evening, be withdrawn from the 1976 Annual Town Meeting warrant, be reviewed, along with the existing bylaws, in light of the new Zoning Enabling Act and that clarification articles be included in the next Special or Annual Town Meeting.

Chairman Taft stated that Town Counsel's suggestion was appropriate, but that this particular case was still before them.

Selectman Toomey asked if agreement could be reached as to the number of vehicles and the proper parking of the same.

Mr. Martel stated that he had never exceeded storage of the nine vehicles for which spaces were indicated on the site plan.

It was pointed out that the site plan shows parking spaces for eight vehicles and there were reports given that there had been, at times, ten - twelve vehicles parked at that location.

Selectman Toomey asked Mr. Martel if he would stipulate that he would park no more than eight vehicles and those in accordance with the site plan.

Chairman Taft asked if there was any hope that these vehicles could be parked elsewhere.

Mr. McNally suggested that a fence might be erected to screen them.

Mr. Gadbois stated that his client would voluntarily erect a fence and a brief discussion followed with regard to a chain link fence with screening material woven through it.

Mr. Stevens stated that, in his opinion, Mr. Martel should not have to go to that expense and that if Mr. Martel agrees not to exceed eight vehicles, he will have shown good faith.

Chairman Taft stated that, in his opinion, litigation might damage Mr. Martel's business and would not solve his problem and suggested that Mr. Turner's earlier thoughts relative to reviewing the bylaws, with a view to the new Zoning Enabling Act, be considered.

Chairman Taft further stated that between now and the time the new Zoning Enabling Act is reflected in the Town Bylaws, in his opinion, the boards will be watchful for any similar problem in any future site plan.

Mr. Stevens stated that he would change his vote of November 14, 1975 in favor of litigation to opposition of the same, as, in his opinion, there was no reasonable alternative. Mr. Stevens stated that he would want Mr. Martel to be limited to eight vehicles and to park as shown on his site plan, and, if parking could not be accomplished in accordance with the site plan, then, in his opinion, a modification should be made to the plan to reflect the present parking angle.

Mr. Martel and the Selectmen were in agreement with these suggestions, and Chairman Taft also asked that Mr. Martel look at his site from the Boston Post Road with a critical eye and to try to make the site look as attractive as possible.

Massachusetts Growth Patterns Commission

Chairman Taft noted receipt of a letter dated January 12, 1976, concerning appointment of citizens for a local growth policy committee, and he requested that the letter be scheduled for discussion on the agenda of the January 19 meeting.

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

VOTED: To adjourn the meeting at 10:20 p.m.

Attest: Phyllis A. Sampson
Phyllis A. Sampson, Acting Executive
Secretary/Clerk