

IN BOARD OF SELECTMEN
MONDAY, MAY 10, 1976

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

The statutory requirements as to notice having been complied with, 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 the regular meeting of May 3, 1976, as amended.

Site Plan #76-164 -- Charles C. Calareso, 15 Union Avenue

The Board, at its meeting on May 3, 1976 voted to conditionally approve the site plan dated April 3, 1976 of Charles C. Calareso for property located at 15 Union Avenue, subject to inclusion on the final plan, which will be presented for the Board's signatures on May 10, 1976, of the Board of Health's requirement for the precise location of the septic tank and the distribution box, the size of the leaching area, and all connecting pipes or receipt of a letter of exemption of the above requirement from the Board of Health and subject to the conditions set forth in the first three paragraphs of the Planning Board letter dated April 27, 1976.

The Executive Secretary reported that the Board had received a letter dated May 5, 1976, from the Board of Health, which stated that the information as requested by that Board had been designated on the site plan.

Mr. Potell requested that the Executive Secretary convey to the Building Inspector/Zoning Enforcement Agent the Board's request that signs relating to Northern Farms not be placed at the intersection of Union Avenue and Route 20.

Following further discussion, it was on motion unanimously

VOTED: To confirm the action taken by the Board on May 3 and to sign the above-referenced site plan.

Appointments -- Growth Policy Committee

It was on motion unanimously

VOTED: To confirm the Board's May 4 telephone vote relative to appointment of John E. Taft, citizen-at-large, to the Growth Policy Committee; and it was further

VOTED: To appoint William F. Toomey, Chairman, Board of Selectmen, John Cutting, Chairman, Conservation Commission, Dallas Hayes, Chairman, Sudbury Housing Authority, and James Healy, Chairman of the Board of Health, to the Growth Policy Committee.

(Robert Cooper, Chairman, Planning Board, was appointed to the Growth Policy Committee on February 23, 1976.)

May 31, 1976 -- Memorial Day

It was on motion by Selectman Potell unanimously

VOTED: To cancel the Board's scheduled meeting on May 31, 1976, due to the observance of the Memorial Day holiday;

and it was further

VOTED: To schedule a meeting of the Board for 7:30 p.m., Tuesday, June 1, 1976, in the Lower Town Hall.

Sudbury Woman's Club -- Annual Pie Sale

In response to a request dated May 4, 1976, after discussion, it was on motion by Selectman Potell unanimously

VOTED: To approve the use of the Town Common, under the direction and control of the Executive Secretary, on July 5, 1976 by the Sudbury Woman's Club for their Annual Fourth of July Pie Sale, to be held, this year, on Monday, July 5.

HUD -- Sudbury's Pre-Application for 1976 Discretionary Funds

The Executive Secretary announced that the Board had received a communication dated April 29, 1976 from the Area Office of the Department of Housing and Urban Development (HUD), inviting the Town to submit a full application for Housing Rehabilitation in the amount of \$30,000.00.

The Executive Secretary reported that the Board had, on February 12, 1976, voted to authorize the Executive Secretary to file a pre-application based on the written proposal recommended by the Executive Secretary and the Town Planner in their memorandum dated February 9 and amended by the Town Planner's letter of February 11.

The Executive Secretary reported that the Selectmen's proposal, at that time, had included a request for funding in the amounts of \$40,000 for walkways, \$30,000 for a revolving rehabilitation fund, and \$30,000 for the Sudbury Non-Profit Housing Corporation.

Mr. Thompson reported that it was HUD's opinion that funding used for housing rehabilitation would have a more immediate impact. Mr. Thompson reported that he had informed Mr. Robert Williams of the Sudbury Housing Authority and Sudbury Non-Profit Housing Corporation, who had indicated he might file an appeal.

Mr. Thompson stated that he had brought this matter to the Selectmen's attention to ask for their concurrence that he proceed with the full application.

It was on motion by Selectman Potell unanimously

VOTED: To authorize the Executive Secretary to proceed with a full application to the Department of Housing and Urban Development for funds in the amount of \$30,000.00 for use in housing rehabilitation in accordance with that Department's communication to the Board dated April 29, 1976.

Transfer Request

After consideration, it was on motion by Selectman Potell unanimously

VOTED: To approve a request for transfer (#0680) from Account #340-14, Building Department, Deputy Inspector to Account 340-12, Building Department, Overtime, in the amount of \$300.00, to cover extra hire necessitated by unanticipated sick leave.

Reserve Fund Transfer Request

After consideration, it was on motion by Selectman Potell unanimously

VOTED: To approve a request for transfer (#0679) from the Reserve Fund to Account 501-71, Selectmen's Out of State Travel, in the amount of \$70.34 to reimburse an Engineering Department employee for expenses incurred in connection with an engineering workshop in Mystic, Connecticut.

Selectman Potell requested that the Executive Secretary issue a second memorandum to all department heads, explaining that out of state travel cannot be paid from the general travel account.

Heritage Park - Partial Payment to Dingley Contracting Co., Inc.

The Executive Secretary reported that work in Heritage Park performed under the contract awarded to Dingley Contracting Co., Inc., in the amount of \$5,889 has been found to substantially conform in scope to the terms of that contract. Town Engineer Merloni recommended that partial payment in the amount of \$5,300.10 be made to Dingley Contracting Co., Inc., at this time, with the remaining 10% to follow after a thirty-day period if no defects can be found following a second inspection.

After further discussion, it was on motion unanimously

VOTED: To approve the recommendation of the Town Engineer as to retention, for thirty days, of payment to Dingley Contracting Co., Inc., in the amount of \$588.90, in accordance with the Town Engineer's May 3, 1976 letter; and it was further

VOTED: To request that the Town Engineer notify the Board following the thirty-day period with regard to the release of the balance of payment.

Town of Arlington Suit - Binding Arbitration

The Board received a communication dated April 30, 1976 from the Massachusetts League of Cities and Towns relative to the Arlington Suit Cost Sharing. The communication advised the Town that, as a municipality that endorsed the position of the Town of Arlington in its suit relative to the constitutionality of the binding arbitration provision of the State's collective bargaining law, Sudbury's share of the cost would be \$30.00.

It was on motion unanimously

VOTED: To send \$30 to the City of Worcester as Sudbury's share of the cost of the Arlington Suit, said amount to be taken from Account 501-81, Surveys & Studies.

Utility Petition #76-50 - Boston Post Road

In conformity with the requirements of General Laws Chapter 166, Sections 21 and 22, Chairman Toomey convened a hearing on the belownamed utility petition:

UP#76-50 - Boston Post Road -- Petition of Boston Edison Company and New England Telephone Company for removal and abandonment of the location of pole 18/17S along the following public way:

BOSTON POST ROAD, southeasterly side, opposite
Goodman's Hill Road

After discussion, it was on motion unanimously

VOTED: To approve the above-referenced petition dated March 30, 1976.

Massachusetts "Litter Olympics"

The Board received a communication dated April 12, 1976 from the Secretary of Environmental Affairs, relative to a request for support of the Massachusetts "Litter Olympics", an environmental cleanup program open to all citizens of the Commonwealth.

The Executive Secretary recommended that the Board endorse the above letter and direct him to advise Secretary Murphy of Sudbury's recent cleanup activities as well as to forward to her newspaper clippings of this activity.

Selectman Potell requested that copies of Secretary Murphy's communication referenced above be sent to the Sudbury School Committee and the Lincoln-Sudbury Regional High School Committee.

It was on motion unanimously

VOTED: To proclaim the week of May 15 - 21, 1976 as "Litter Olympic Week" in the Town of Sudbury, in accordance with the request of the Secretary of Environmental Affairs.

Appointments

The Executive Secretary reported that a message had been received by his office on May 5, 1976 relative to requests from Earl B. Hoyle and R. Barry Liner that they not be reappointed to the Insurance Advisory Committee.

It was on motion unanimously

VOTED: To rescind the Board's vote of May 3, 1976, appointing Earl B. Hoyle and R. Barry Liner to the Insurance Advisory Committee for terms to expire April 30, 1977.

The Board accepted the above request with deep regret and requested the Executive Secretary to send an appropriate letter to both men, expressing the Board's appreciation for their service on that Committee.

Chairman Toomey also commended Fire Chief Josiah Frost for his service on that Committee prior to his appointment as Fire Chief and requested that the Executive Secretary also send a letter of appreciation to him in this regard.

The Board received a communication dated May 7, 1976 from William T. Rynne, who requested that he not be reappointed to the Long Range Capital Expenditures Committee, as business matters have forced him to curtail his outside activities.

The Board accepted the above communication with deep regret and directed the Executive Secretary to acknowledge Mr. Rynne's communication and to express the Board's appreciation for his years of service on that Committee.

After consideration, it was on motion unanimously

VOTED: To make the following appointments:

William Burns to the Memorial Day Committee for a term to expire on April 30, 1977.

Ira M. Potell to the Revolutionary War Bicentennial Committee.

John D. Nicholson and Z. Stanley Taub as Town Physicians for terms to expire on April 30, 1977.

William F. Toomey as representative to the Sudbury Public Health Nursing Association for a term to expire on April 30, 1977.

Dorothy Emmons and Malcolm Beers to the Sign Review Board for terms to expire on April 30, 1979.

(Selectman Powers joined the meeting at this time, following an earlier meeting with the Boy Scouts).

Hearing - Contemplated Termination of Michael C. Dunne, Captain, Sudbury Fire Department

Present: Fire Captain Michael C. Dunne; Fire Chief Josiah Frost; 10 Firefighters, and about 4 Townspeople

Chairman Toomey reported that the Board, at its May 3, 1976 meeting, had voted to continue the hearing on the contemplated termination of Michael C. Dunne, Captain, Sudbury Fire Department, until tonight's meeting by mutual consent. Chairman Toomey summarized the May 3 proceedings on the matter and reported that the Board had received a letter dated May 4, 1976 from Captain Dunne, asking that the Board consider his requested leave of absence, without pay, as a Firefighter rather than his present position as Captain, which would allow the Selectmen and the Fire Chief to permanently appoint a new Captain.

Chairman Toomey stated that the Board had also received a report dated May 7, 1976 from Marx Bowens, M.D., which stated that Captain Dunne has an excellent chance to resume his regular duties in 12-18 months.

Chairman Toomey reported that the Selectmen's office had been called by Captain Dunne's counsel today with the request for a continuance of the hearing until May 17, in order that he might appear before the Board. Chairman Toomey stated that, in his opinion, an appearance by counsel would not be necessary, as the Board was well aware of Captain Dunne's fine work record.

The Executive Secretary reported that he had informed Captain Dunne's counsel that the Board had agreed to a continuance, but if Captain Dunne were satisfied to proceed this evening, the Board was also in agreement.

Captain Dunne agreed to proceed with the hearing, and he stated that if the leave of absence were to be granted, he would resign as Captain and revert to his former position of Firefighter, which would allow the appointment of a full-time Captain. Captain Dunne referenced Dr. Bowen's May 7, 1976 report which expressed the opinion that Captain Dunne had an excellent change of recovery.

In response to Chairman Toomey's question as to how a new man would be hired for the position of Temporary Firefighter if this were to become available during any leave of absence which might be granted, Chief Frost stated that he had, today, spoken with the number one man on the eligibility list and informed him of the possibility of a one-year appointment. Chief Frost reported that the applicant expressed his willingness to accept an appointment as temporary firefighter.

Chief Frost further stated that G.L. Chapter 48, Section 42 and the firefighters' contract with the Town provide him with management rights which would enable him to hire personnel for one year. Chief Frost also stated that he has, as a policy, a job condition statement which employees sign when appointed.

Chief Frost restated Captain Dunne's intention to resign as captain if the leave of absence were granted, so that the Board could appoint a permanent captain.

Selectman Powers asked what would happen if Captain Dunne could not resume his duties until a period of 18 months, as was mentioned in Dr. Bowens' report.

Captain Dunne stated that he was requesting only a twelve-month leave of absence, as is mentioned in the contract.

Chairman Toomey expressed his disappointment with the telephone campaign during the past week relative to Mr. Dunne, stating that he had received numerous telephone calls requesting that the leave of absence be granted. Selectmen Powers and Potell confirmed Mr. Toomey's statement and expressed their dissatisfaction with such tactics.

Based on the stipulations that Captain Dunne made earlier--that he would step down as captain, which would allow the appointment of a full-time captain, and the point that no grievance would be brought before the Town at the end of the year--, Chairman Toomey moved that the Board grant Michael C. Dunne a medical leave of absence for one year. Mr. Toomey added, however, that his action on this motion and his later vote should not be interpreted that he is acquiescing to a telephone campaign, but that he is trying to salvage the career of a good fire department officer.

For purposes of discussion only, Selectman Powers seconded Chairman Toomey's motion.

Selectman Potell suggested that the motion be contingent on a letter from the firefighters' union, stating that they will not support a grievance in one-year's time for the individual who will be appointed to serve during the leave of absence.

The Executive Secretary stated that this section of the collective bargaining agreement is not subject to grievance.

Captain Devoll stated that under the contract the firefighters have no right to file a grievance, and Firefighter Michael Callahan, President of Local 2023, stated that the union would be willing to put the above statement in writing.

Selectman Powers asked under what circumstances the present contract or the statute establishing the Fire Department allows an officer of the Fire Department to relinquish the grade he holds to accept a lower grade.

Town Counsel responded that it was the election of the individual, who could request that he resign a particular grade and revert to his earlier rank and that the decision would be made by the appointing and contracting authorities.

It was established that the Fire Department is authorized to have twenty-four firefighters and four captains and that it now has four captains, one acting captain and twenty-three firefighters, leaving vacant one permanent position of Firefighter/EMT, to which Captain Dunne could be appointed.

Town Counsel stated that he had drafted a motion for the Board's consideration, which he read.

Captain Dunne stated that he would respectfully request that the leave of absence be granted to become effective after the vacation and accumulated holiday time which was due him.

Selectman Powers stated that the language of the proposed motion should be in accordance with the Fire Department's contract and the Personnel bylaw.

Following further discussion, it was on motion unanimously

VOTED: To table the above matter until completion of business under Item 3 of the agenda.

Hearing -- All Alcoholic Beverages -- Antonio Giovane, Pizza Alla Pietra Corp.
447 Boston Post Road

Present: Antonio Giovane, applicant

The Board, acting as the Licensing Authority of the Town, in accordance with Chapter 138 of the General Laws, considered the application of Pizza Alla Pietra Corp., Antonio Giovane, Vice President/Manager, for a license to sell all alcoholic beverages as a common victualer on premises located at 447 Boston Post Road.

The Executive Secretary reported that legal notice of tonight's hearing had been advertised in a local newspaper, that appropriate Town officials and abutters had been notified, and that the following reports had been received: from the

Board of Health, dated May 10, 1976, which advised that a commercial dishwashing machine with hot water temperature of 170°F. must be provided so that the utensils can be sanitized in an approved method; from the Chief of Police dated May 3, 1976, and from the Building Inspector, dated May 6, 1976, neither of whom expressed any objection to the granting of the license. The Executive Secretary stated that the Board had also received a communication dated May 5, 1976 from Attorney W. Barry MacDonald, which certified that Antonio Giovane, Gerardo Fabiano, and Giovanni Fabiano are sole stockholders of Pizza Alla Pietra Corp.

In response to Chairman Toomey's questions, Mr. Giovane stated that he had applied for the all alcoholic beverage license in order to increase his business by the ability to offer an increased selection of Italian wines and specialty liquors and that his present lease has five more years to run.

Mr. Giovane stated that he does not intend to stock a complete line of liquor, but would like to offer a more complete service to his customers.

Chairman Toomey advised Mr. Giovane that if an all alcoholic license were to be granted tonight, any change he made in his restaurant must have the approval of both the Board of Selectmen and the Alcoholic Beverages Control Commission.

Mr. Giovane stated that he was aware of this fact.

Selectman Powers stated that it was his recollection that at the time the Board granted Mr. Giovane his present beer and wine license, Mr. Giovane had stated that he did not intend to apply for an all alcoholic beverage pouring license in the future.

Mr. Giovane stated that this was the case, but that he would now like to be able to offer Italian specialty wines with a higher alcoholic content which are considered liquor, as well as other types of alcoholic beverages such as cordials.

Chairman Toomey explained that the Board is allowed to issue licenses and to transfer licenses. Chairman Toomey stated that he wished Mr. Giovane to be fully aware that the Board, in granting licenses, does not grant those licenses to enhance a particular piece of property for resale, but that the license is the property of the Town and that any request for transfer could be denied by the Board.

Mr. Giovane stated that he plans to continue his business and that he has no plans to sell.

Selectman Powers asked why, with six full licenses outstanding on the Boston Post Road, a seventh license should be granted in that area, and he questioned Mr. Giovane as to what part of the public he would serve that is not already being served.

Mr. Giovane responded that the Italian citizens of the Town would be served as would those who wished Italian specialty wines.

Selectman Potell asked whether Mr. Giovane's existing beer and wine license would be revoked if the all alcoholic license were granted.

Chairman Toomey and Selectman Powers responded in the affirmative.

Following further discussion, it was on motion

VOTED: To grant to Pizza Alla Pietra Corp., Antonio Giovane, Vice President/Manager, a license to sell all alcoholic beverages as a common victualer on premises located at 447 Boston Post Road, and described as follows: one floor; kitchen and dining area separated from the rest by a brick wall; two restrooms; one storage room, front entrance and rear service entrance. This vote is subject to the conditions imposed by the Board of Health in their letter of May 10, 1976 and will be issued following compliance with the same.

(Chairman Toomey and Selectman Potell in favor; Selectman Powers opposed, stating that, while he commended Mr. Giovane on his establishment, it was his opinion that there are too many outstanding all alcoholic licenses on the Boston Post Road and that they should be better distributed.)

The Executive Secretary advised Mr. Giovane that the cost of such a license would be \$750, which the Board stated could not be pro-rated.

Continued Hearing - Contemplated Termination of Michael C. Dunne, Captain, Sudbury Fire Department

It was on motion unanimously

VOTED: To again lay the matter of the contemplated termination of Fire Captain Michael C. Dunne on the table, as Town Counsel had not yet completed the proper motion.

One Day Beer and Wine License -- Frank H. Grinnell

In response to a request dated May 3, 1976 from Frank H. Grinnell, it was on motion unanimously

VOTED: To grant permission for use of the Town Hall parking lot and a one-day beer and wine license, under the control and direction of the Executive Secretary, to Frank H. Grinnell for Sunday, June 6, 1976, from approximately 2:00 p.m. to 6:00 p.m.

Appointments

Following consideration, it was on motion unanimously

VOTED: To make the following appointments:

Freda Doyle and James Doyle to the Talent Search Committee for terms to expire on April 30, 1978.

Priscilla Harding and Joseph Levesque to the Talent Search Committee for terms to expire on April 30, 1979.

Selectmen's Policies and Procedures

The Selectmen reviewed a revised copy of the Selectmen's Policies and Procedures dated October 14, 1975, following which it was on motion unanimously

VOTED: To accept the Selectmen's Policies and Procedures, dated October 14, 1975, as amended by tonight's action of the Board, with the exception of Section J. Proposed Deed and Easement Procedure, which will be further reviewed and discussed.

Continued Hearing-Contemplated Termination of Michael C. Dunne, Captain, Sudbury
Fire Department

It was on motion unanimously

VOTED: To take from the table the subject of the contemplated termination of Fire Captain Michael C. Dunne.

Town Counsel read his proposed motion for the Board's consideration, following which discussion took place relative to any necessary approval of the same by the Personnel Board.

Mr. Thompson stated that Mr. Distler, Chairman of the Personnel Board, was unable to be present this evening, but in telephone conversation with him earlier today had given no indication that he would object to the action proposed by the Selectmen.

Following a five-minutes recess to further amend the motion by adding Article V, it was on motion by Selectman Powers unanimously

VOTED: To approve the following agreement; as drawn up by Town Counsel:

AGREEMENT made this tenth day of May, 1976, by and between the BOARD OF SELECTMEN of the TOWN OF SUDBURY, a Municipal corporation located in Sudbury, Massachusetts, hereinafter called the Selectmen; MICHAEL C. DUNNE of Marlboro, Massachusetts, herein after called the Employee; and JOSIAH F. FROST of said Sudbury, the Chief of the Sudbury Fire Department, herein after called the Chief, upon the following terms and conditions:

ARTICLE FIRST: the Employee was injured in an accident, not in the line of duty, on August 13, 1975, and has been on sick leave and light duty since that date;

ARTICLE SECOND: the Employee is a Captain in the Sudbury Fire Department;

ARTICLE THIRD: the Employee, by letters dated April 22, 1976, and May 4, 1976, has requested a leave of absence because of his inability to perform the normal duties of Captain in said Department;

ARTICLE FOURTH: the Selectmen, the Chief and the Employee hereby agree to the following:

A. that the Employee will, and hereby does, resign as a Captain in the Sudbury Fire Department and does, by this action revert to the permanent position of Fire-fighter in said department;

B. that the Selectmen hereby grant to the Employee, as Firefighter in said department, a twelve month medical leave of absence, with such leave to commence on June 7, 1976, and to expire on June 6, 1977;

C. that the Employee hereby accepts the position of Firefighter and the twelve month medical leave of absence, aforesaid, and hereby waives future requests for additional leaves of absence arising out of the same injuries;

D. that the Chief of the Fire Department certifies that a vacancy of Firefighter now exists and that the Employee is hereby assigned as Firefighter in that position and that the aforesaid leave of absence is granted from that position. The vacancy caused by the leave of absence, aforesaid, will be filled by the Chief on a temporary basis.

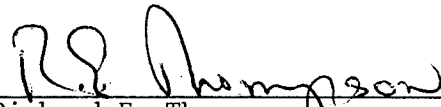
E. that the commencement of the leave of absence, aforesaid, is based upon the fact that the Employee is entitled to three weeks of paid vacation and a week of holiday time at the rate of a Captain.

ARTICLE FIFTH: This agreement is contingent upon the Personnel Board of the Town of Sudbury approving the changes in position set forth in this agreement and extending the pay period for the Employee from April 23, 1976, to and including May 10, 1976.

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

VOTED: To adjourn the meeting at 10:30 p.m.

Attest:


Richard E. Thompson
Executive Secretary/Clerk