

IN BOARD OF SELECTMEN
MONDAY, DECEMBER 5, 1977

Present: Chairman John C. Powers and William F. Toomey

The statutory requirements as to notice having been fulfilled, the meeting was called to order at 7:30 p.m. by Chairman John C. Powers.

Massachusetts School Finance Laws - Litigation Report

Executive Secretary, Richard E. Thompson, reported that the Board had received a memorandum, dated November 28, 1977, to J. Harold Flannery from Terry S. Kogan relative to state constitutional challenge to Massachusetts School Finance Laws. Mr. Thompson reported that the memorandum stated that the draft of the complaint challenging the Massachusetts School Finance Laws was to be filed December 2.

Mr. Thompson reported that he had attended a meeting November 29 at the office of the Massachusetts League of Cities and Towns in his capacity as Vice President of the Massachusetts Municipal Management Association. Mr. Thompson further reported that \$30,000 has been pledged to date for the suit, and that there was a question as to whether or not Boston would participate in the suit because of the uncertainty of the benefits to the city.

Selectman Toomey expressed concern that the reports referenced in the November 28 memorandum had not been included with the memorandum. Mr. Thompson assured him that a more complete report would be forthcoming which would indicate Boston's decision.

Dog Pound Facilities - Report by Dog Officer

Present: Dog Officer, Francis E. White

Executive Secretary, Richard E. Thompson, reported that at the December 3 budget meeting he had requested Dog Officer, Francis E. White, to report to the Board this evening in preparation for possible submission of a monied article by December 31. Mr. Thompson also discussed the cost of dog control since July 1.

Mr. White had previously been requested to go to Monson and Northboro to inspect new dog pound facilities. Mr. Thompson reported that the Board had received a report dated November 29, from the Dog Officer in which he furnished information on the Monson and Northboro facilities, made certain recommendations with regard to site locations and provided drawings for the proposed facility prepared by the Engineering Department.

Mr. White reported that Monson's facility was more suitable to meet Sudbury's needs, but he stated that with this type of facility, we will have to rid ourselves of stray dogs after ten days. Mr. Powers said that at that time the dogs can be offered to Buddy Dog and if they decide that they are unable to take the dog in question at that time, we will have no alternative but to dispose of the dog.

In response to Chairman Powers' question, Mr. White stated that the maximum capacity of the suggested facility was 16 dogs.

Selectman Toomey asked about the cost factor for the facility on a seven-day week basis. Mr. White stated that the Assistant Dog Officer would feed the dogs once a day, seven days a week. Every time the dogs are fed, the area would be cleaned. The building would be heated and ventilated in hotter weather. An appointment would be needed to pick up a dog and otherwise the facility would not be manned.

Mr. White suggested that a facility near the Park and Recreation Building at Featherland Park is the best location. Mr. Toomey expressed concern about vandalism at that location. The Board expressed preference for the area near the trailer at the Landfill. Mr. White replied that the banking is eroding at that location and he would hesitate to erect a building there.

Mr. Toomey stated he would like to see a recommended site and specific information included in the article for Town Meeting. Chairman Powers also asked for figures showing operating costs to be included. Mr. Thompson said that his office would draft an appropriate article for the Board to review on December 19, 1977.

Walkway Easement - 243 Morse Road

The Board reviewed a walkway easement. After review and discussion, on the recommendation of Town Counsel, it was on motion by Selectman Toomey

VOTED: To accept and execute a walkway easement from Allyn R. and Suzanne Greenburg of 243 Morse Road, Sudbury, shown on a plan entitled: "PLAN OF LAND IN SUDBURY, MASSACHUSETTS SHOWING WALKWAY EASEMENTS Morse Road", dated March 17, 1977 by the Town of Sudbury Engineering Department.

Non-Monied Articles - 1978 Annual Town Meeting

Executive Secretary, Richard E. Thompson, reported that 27 non-monied articles had been received in his office by the deadline, December 1, 1977, and that summaries of said articles were available tonight but that copies of the articles themselves would be available at a later date. The Board commented that it was still awaiting reports from the Committee on Town Administration concerning the articles proposed by the Selectmen with regard to the Industrial Development Financing Authority and the Historical Commission/Historic Structures Commission. Chairman Powers expressed concern with the article proposed by the Goodnow Library Trustees with regard to an increase in the number of Trustees (from an odd number to an even number which would cause difficulty in the case of tie votes) and requested that the Board receive additional information on this matter. Town Counsel, Mr. Kenny, stated that the reason for this article was for compliance with state law.

Selectman Toomey stated that he wished more information concerning the Selectmen-proposed article entitled, "By-law: Elected Officials/Time of Taking Office".

Selectman Toomey also wanted information concerning each of the petition articles and those articles proposed by the Planning Board.

Town Counsel is to review and give a report on the above-referenced petition articles.

Chairman Powers stated that it is possible some of these articles may be withdrawn following further discussion.

It was on motion by Selectman Toomey unanimously

VOTED: To receive the non-monied articles for the 1978 Annual Town Meeting submitted to the Board of Selectmen under the December 1st deadline.

Minutes

It was on motion unanimously

VOTED: To approve the minutes of the regular and executive sessions of November 21, 1977 and the regular session of November 28, 1977 as submitted.

Area Dispatch Center

Executive Secretary, Richard E. Thompson, contacted the Concord Town Manager, as earlier requested by Chairman Powers, regarding the proposed consolidation of its police and fire departments and as to whether it would create a problem concerning their participation in the Area Dispatch Center. It was Mr. Thompson's opinion that there would be no problem with a consolidation of the Concord Fire/Police Department, but that Concord's position is dependent upon Acton's participation and that of the other towns within the region. In response to a question from Selectman Toomey, Mr. Thompson stated that the consolidation of Concord's Fire and Police Departments should have no effect on the mutual aid agreement with Sudbury.

1976 Annual Town Report - Award Received

Chairman Powers reported that a letter, dated November 30, 1977, had been received from the Massachusetts Selectmen's Association stating that the 1976 Annual Town Report had received a 3rd Place Award.

Middlesex County Advisory Board - Budget Hearings

Chairman Powers announced that notice, dated November 29, 1977, had been received from the Middlesex County Advisory Board and that the budget review process for the fiscal year 1978 would begin shortly. They will meet in the Superior Court House on December 7, 8, 9, 12, 14 and 15, 1977. Chairman Powers will represent the Board at the Highway budget hearings on the 14th of December.

Finance Committee - Non-Monied Article Hearings

Selectman Toomey asked the Executive Secretary to request a copy of the minutes of the Finance Committee's December 5, 1977 meeting to be submitted to the Board for their review as soon as possible.

Resignation - Recording Secretary to the Selectmen

Chairman Powers expressed regret on behalf of the Board at Recording Secretary Barbara Edwards' resignation. He thanked her for the outstanding work she has done recording the minutes of the Selectmen's meetings for the past five years.

Executive Secretary, Richard E. Thompson, on behalf of the Board of Selectmen, presented Mrs. Edwards with a certificate for dinner for two at the Wayside Inn.

Public Hearing - Application for Transfer of a Package Goods Store License for the Sale of All Alcoholic Beverages from M. Claire McManus, Manager, Wayside Package Store, Inc., to John C. Turner, Manager, Sudbury Liquors, Inc., for property located at 119 Boston Post Road

Present: John C. Turner, Manager, Applicant; Attorney Joseph T. Turner, representing Sudbury Liquors, Inc.; Attorney Edward Newell, representing Colonial Spirits and Sudbury Super Market, d/b/a MacKinnon's Liquor Store; John MacKinnon, owner, Sudbury Super Market, d/b/a MacKinnon's Liquor Store; David Steinberg of Colonial Spirits; Francis E. White, Building Inspector; approximately four interested citizens.

The Board, acting as the licensing authority for the Town of Sudbury, held a hearing on the following application: For a Transfer of a Retail Package Goods Store License for the Sale of All Alcoholic Beverages, under Chapter 138 of the General Laws, from M. Claire McManus, Manager, Wayside Package Store, Inc., to John C. Turner, Manager, Sudbury Liquors, Inc., for premises located at 119 Boston Post Road, Sudbury, Massachusetts.

Executive Secretary, Richard E. Thompson, read the legal notice of proper hearing and reported that appropriate abutters and town officials had been notified (return receipts received) of tonight's hearing and the following reports had been received from the Police Chief, dated November 29, which stated that he had no objection to said transfer; from the Fire Chief, dated November 29, who stated that he had no objection to said transfer; from Town Counsel, dated December 2, on the subject of liquor license procedures and a second report, dated November 21, from Town Counsel, relative to liquor license transfers; and from the Building Inspector, dated November 30, which stated that: "1. If the retail sales area is enlarged to encompass the rear of the building, it would be in violation of Sudbury By-law IX (I, C, 3) and would need Board of Appeals approval. 2. For the same reason, it would also need Board of Appeals action to expand into an area where it would not be a permitted use in an industrial zone. 3. Because the retail business would be expanded in ground area, site plan approval would be required.", and further recommended that the above items be adhered to prior to the Board's approval.

Mr. Thompson reported that when he received the Building Inspector's November 30 letter, he contacted Attorney Joseph Turner and indicated that the transfer covering the entire premises as indicated on their floor plan could only occur after the conditions set forth in that letter had been met, and that Mr. Turner contacted him the following day and stated that

he wished to withdraw the application. Mr. Thompson stated that he informed Mr. Joseph Turner that he could not postpone the public hearing because it had been advertised and officials had been invited to attend.

In response to Chairman Powers' questions, Attorney Turner made the following statements:

- the application for transfer of liquor license, dated November 3, 1977 had been filed by John C. Turner, Manager, Sudbury Liquors, Inc.

- that an application for license to sell alcoholic beverages, dated October 1977, was filed by John C. Turner, Manager, Sudbury Liquors, Inc.

Chairman Powers stated that the only subject properly before the Board at tonight's hearing is the request for the transfer of the liquor license. Town Counsel was in agreement.

Attorney Turner stated that the applicant still intended to withdraw his application without prejudice (based on Mr. White's letter) for transfer of the liquor license and submitted a letter, dated December 5, 1977, from Joseph Turner in this regard.

Blanche Dickey, Dewey Kadra and members of the McManus family were not represented.

Mr. Thompson reported that he did have a certified vote from Thomas L. McManus, Clerk of Wayside Package Store, Inc., which set forth a vote of the Directors on November 9, 1977, requesting the transfer of the license from M. Claire McManus, Manager, Wayside Package Store, Inc., to John C. Turner, Manager, Sudbury Liquors, Inc., at 119 Boston Post Road, Sudbury, Massachusetts.

In response to Chairman Powers' questions, Attorney Turner made the following statements:

- the store is operated physically by Wayside Package Store, Inc.

- that the Corporation currently exists as Wayside Package Store, Inc.

- existing personnel and inventory, to his knowledge, do not belong to Sudbury Liquors, Inc., or Thrifty Liquors, Inc.

- Sudbury Liquors, Inc., is a corporation for which he had filed the application; date of incorporation was October 28-29, 1977.

In response to Selectman Toomey's questions, Attorney Turner stated that there is a Purchase and Sales Agreement involved in this operation, and Selectman Toomey commented that it would appear that the inventory of the premises includes bottles bearing Thrifty Liquors, Inc., labels. Selectman Toomey stated that the Board had signed a license which will become effective January 1, 1978, in the name of Wayside Package Store, Inc.; he further stated that Wayside Package must go before the Board of Appeals for a variance to enlarge the retail sales area.

Selectman Toomey stated that he would like proof of who is running and paying the bills for the present operation, and he asked whether it was Wayside Package Store, Inc., or Thrifty Liquors, Inc.

Attorney Turner stated that to the best of his knowledge the operation was being run and bills were being paid by Wayside Package Store, Inc.

Chairman Powers then asked whether Attorney Turner could clarify for the Board Thrifty Liquors, Inc. Attorney Turner stated that he did not represent Thrifty Liquors, Inc. He further stated that he did not have any interest in any liquor store in Massachusetts.

In response to further questioning by Chairman Powers, Attorney Turner stated that:

- he had not been a party to the Purchase and Sales Agreement,
- there were no terms dealing with the interim operation of the premises,
- as far as he knew, the operation is being run by Wayside Package Store, Inc.,
- he does not represent Wayside Package Store, Inc.

Then Selectman Toomey asked against whom action should be taken if at this particular time liquor should be sold to minors, and Attorney Turner stated that action would be taken against the present licensee.

Selectman Toomey noted that the new All Alcoholic Beverages License application indicated that the applicant has been involved in three other similar operations (Thrifty Liquors, Inc., since 1969 in Cambridge; Medford Thrifty Liquors, Inc., since 1970 in Medford; and International Ltd., Inc., since 1974 in Medford); he stated that when and if the applicant was able to receive a variance from the Board of Appeals, Assistant Town Counsel has given us a detailed memorandum, dated December 2, 1977, relating to qualifications to receive a package store license under General Laws, Chapter 138, section 15--one being that a corporation does not directly or indirectly already hold three such licenses in the Commonwealth.

Chairman Powers stated that the applicant may expect many questions on this matter and the aforementioned concerns indicated by the Board tonight when he resubmits an application for the license. Chairman Powers expressed his willingness to agree with Attorney Turner to withdraw without prejudice the license request, dated October 1977 (received November 10, 1977).

Attorney Edward F. Newell, One Court Street, Boston, representing Colonial Spirits and Sudbury Super Market, d/b/a MacKinnon's Liquor Store, stated that he did not know whether it was at this time appropriate to make a statement of objection; however, he did wish to bring before the Board objections to the transfer as a whole.

Town Counsel, Paul Kenny, stated that the Board could preclude discussions as to objections mentioned by Mr. Newell at this time.

Chairman Powers said we would not like to hear anything at this time which might prejudice the Board as the applicants are not present. Mr. Newell stated that it was not his wish to make objections to the transfer as such, but as to whether or not at the present time the conduct of the business was by Wayside Package or any other person(s).

Mr. Toomey asked Mr. John Turner whether he or Mr. McManus was presently paying the bills for stock and utilities at Wayside Package Store, Inc. Mr. John Turner responded that in his opinion Mr. McManus was paying the bills.

Mr. Thompson said that ownership of Wayside Package Store, Inc., is in the estate. At that point, Mr. John MacKinnon asked where the Thrifty "Private" labels came from that are presently in the store.

Attorney Joseph Turner then stated that he and the applicant had come tonight to submit the withdrawal of the license application, that they had tried to submit it on December 2, 1977, which had been impossible, that their purpose in attending tonight's meeting was only for said withdrawal and not to be interrogated.

Selectman Toomey said it is the function of this Board to make certain that businesses are being properly conducted under the license as granted.

Chairman Powers stated that the Board is seriously concerned about this matter.

Attorney Turner stated that Mr. McManus indicated December 2, 1977, that application would be made before the Board of Appeals.

Chairman Powers asked the applicant when he intended to reapply. Attorney Turner stated that he would contact Mr. McManus on December 6 and try to get an answer to that question.

Selectman Toomey commented that action necessary by the Board of Appeals would take approximately 45 days. Attorney Turner stated that to his knowledge, the McManuses intended to operate that business until a transfer of license was effected.

It was on motion by Selectman Toomey unanimously

VOTED: To accept without prejudice withdrawal of application for transfer of a Package Goods Store License for the sale of All Alcoholic Beverages from M. Claire McManus, Manager, Wayside Package Store, Inc., to John C. Turner, Manager, Sudbury Liquors, Inc., for property located at 119 Boston Post Road.

Attorney Turner thanked the Board for its time and apologized for any inconvenience he may have caused.

Mr. Newell expressed that, in the opinion of his clients, unfair competition is now existing and will continue to exist with regard to possible discounting of Thrifty Liquors until the matter is again before the Board, and he asked what, if anything, could be done by the Board in this regard.

Selectman Toomey stated that, in his opinion, there is sufficient indication that the Board should investigate the present operation and that this is a matter that the Board will want to consider.

Selectman Toomey further stated that, in his opinion, the Board could indicate to the Zoning Enforcement Agent that all by-laws will be enforced and, if conditions are not proper, we will forward this information to the Alcoholic Beverages Control Commission.

Selectman Toomey further stated that the property owner has the right to sell his business but must be within the confines of the State laws.

Attorney Newell again stated that it has been suggested that Thrifty Liquors, Inc., is now operating the premises, a matter which greatly concerns his clients.

Request for Change of Manager of Yu Lin Restaurant, Inc. d/b/a Pacific Gate Restaurant, from Dong P. Wong to Gock L. Wong

Present: Gock L. Wong, representing Pacific Gate Restaurant

Executive Secretary, Richard E. Thompson, reported receipt of a petition, dated November 9, 1977, for a change of manager of Yu Lin Restaurant, Inc., d/b/a Pacific Gate Restaurant, from Dong P. Wong to Gock L. Wong. Mr. Thompson further reported that the Board had also received a communication, dated November 9, 1977, which set forth the unanimous vote of the Board of Directors of Yu Lin Restaurant, Inc., to change the Manager as requested and both documents had been properly signed by all necessary parties.

Mr. Thompson also reported that response had been received from the Bureau of Probation.

After brief discussion, it was on motion by Selectman Toomey unanimously

VOTED: To approve a request for a change of manager of Yu Lin Restaurant, Inc., d/b/a Pacific Gate Restaurant, from Dong P. Wong to Gock L. Wong, subject to approval by the Alcoholic Beverages Control Commission.

Operating Budget - Legal

Discussion was held with Town Counsel, Paul Kenny, with regard to the budget appropriation for the fiscal year 1978-79 for the law department.

Executive Secretary, Richard E. Thompson, explained that the \$11,000 general expense account requested last year, upon recommendation of Paul Kenny, is this year being requested in the amount of \$18,200. Mr. Thompson reported that in addition to expenditure of last year's account, it was necessary to transfer \$3,608.21 from the Reserve Fund for additional unanticipated expenses related to labor relations counsel fees for collective bargaining negotiations.

Paul Kenny explained that because Town Counsel had changed during the past year, litigation had proceeded at a slower pace, and that cases were now being tried again.

Mr. Kenny further stated that last year, the Town was fortunate in having the slower pace because money for the labor relations counsel might not have been available had litigation continued at its normal pace during the year. He further stated that he has no indication that expenses for the labor relations counsel in connection with collective bargaining will be less this year and perhaps they may be more.

Selectman Toomey stated that the Town presently has the services of Town Counsel, Assistant Town Counsel and Labor Relations Counsel, and he questioned whether it might be better to submit a separate budget for the Labor Relations Counsel as, in his opinion, there are areas in which Town Counsel and Labor Relations Counsel overlap.

In response to Chairman Powers' question, Town Counsel stated that there were approximately 30 cases ready for trial and including appellate tax cases, the number would be 75 to 100.

Mr. Thompson stated that the Board should address the subject of Town Counsel's retainer and would recommend that Town Counsel come back to the Board prior to December 12 with his thoughts concerning the amount of his retainer.

Mr. Thompson stated that he would pursue this matter and the question of the work load in Town Counsel's office during the week.

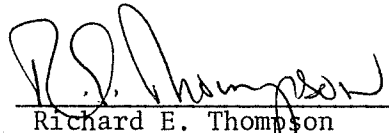
Executive Session

At 8:55 p.m., it was, following unanimous roll call, voted to enter into executive session for the purpose of discussing current litigation, and then Chairman Powers announced that the public session would not resume after the executive session.

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

VOTED: To adjourn the meeting at 9:20 p.m.

Attest:


Richard E. Thompson
Executive Secretary-Clerk