

IN BOARD OF SELECTMEN  
MONDAY, SEPTEMBER 19, 1977

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

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

Minutes

It was on motion unanimously

VOTED: To approve the minutes of the regular and executive sessions of September 12, 1977, as corrected.

Police Department Rules and Regulations - Request for Change

The Board received a request dated August 31, 1977 from Police Chief Nicholas Lombardi which requested the Board's approval for a change in the Department's Rules and Regulations as mandated in Chapter 41, Section 97A of the General Laws.

Selectman Toomey questioned the proposed procedure regarding transfer of recovered property, and, as the Police Chief was not present for clarification, it was on motion by Selectman Potell unanimously

VOTED: To table further consideration of the above-referenced request until a meeting could be arranged by the Executive Secretary with the Police Chief.

Acceptance of Income Bequest - Thomas F. Garfield Trust

Executive Secretary Richard E. Thompson reported that the Town Clerk had received a communication dated April 20, 1977 from the Worcester County National Bank, which stated that the Bank was to begin the general administration of a continuing trust under the Will of Thomas F. Garfield for the benefit of the Town's cemeteries.

Mr. Thompson stated that Mr. Thomas Garfield was born in Sudbury on December 18, 1853 and was brought to Sudbury for burial in the Old Town Cemetery after his death on July 19, 1934. Mr. Thompson further stated that Mr. Garfield's father, Francis, who died on June 12, 1921, was buried in Sudbury's Mt. Pleasant Cemetery.

After discussion, it was on motion by Selectman Potell unanimously

VOTED: To accept, as Trustees of Town Donations under Chapter 180 of the Acts of 1911, the income bequeathed to the Town of Sudbury under a testamentary trust of Thomas F. Garfield, with said income to be received from time to time from the Trustee, Worcester County National Bank, and applied to the purposes stated in said trust.

Acceptance of an Offer of Grant in the Amount of \$188,000 - U.S. Department of Commerce, Economic Development Administration

Executive Secretary Richard E. Thompson reported that the Board had received, on September 13, 1977, notification from the United States Department of Commerce, of an Offer of Grant issued pursuant to the Town's application for Federal assistance under the provisions of the Local Public Works Capital Development and Investment Act of 1976, as amended by the Public Works Employment Act of 1977, in the amount of \$188,000 to provide financial assistance for the Lincoln/Concord Road intersection reconstruction and various road resurfacing projects. Mr. Thompson recommended that the Board's vote in this matter be in the words of the agenda for this item.

Selectman Toomey stated that it was his impression that the Board had promised, at the last Annual Town Meeting, to return to the Town Meeting, if the money were granted, for authorization that the grant be expended.

Selectman Potell was in agreement and Chairman Powers stated he believed such authorization was granted at a subsequent Special Town Meeting.

The timing requirement of the grant that the on-site labor must commence within 90 days of the date of receipt of the Offer of Grant (September 13) with relation to the possible need of calling a Town Meeting and the bid requirements was discussed.

Town Counsel stated that, in his opinion, the project should be commenced within 90 days as the purpose of the Act, when enacted, was to make available work as quickly as possible.

Chairman Powers stated that the \$188,000 represents 100% Federal funding for this project, for which the engineering is completed and, in his opinion, it would be incumbent upon the Board to hold a Special Town Meeting within 90 days if one is necessary.

Town Counsel expressed his opinion that the 90-day period would be sufficient in which to hold a Town Meeting, if necessary, and to receive bids which specify that work must commence within 30 days.

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

VOTED: To authorize the Chairman of the Board to execute the acceptance of an Offer of Grant dated September 13, 1977 from the U.S. Department of Commerce, Economic Development Administration, in the amount of \$188,000 for Lincoln/Concord road intersection reconstruction, and other various Town road resurfacing projects under the Local Public Works Capital Development and Investment Act of 1976, as amended by the Public Works Employment Act of 1977;

and it was further

VOTED: To direct the Executive Secretary and Town Counsel to review the verbatim record of the last Town Meeting proceedings for the purpose of determining the need for a Special Town Meeting to authorize the expenditure of the above funds and to also recommend dates for a future Special Town Meeting if it is deemed that it will be necessary to do so.

Temporary License for the Sale of Wines and Malt Beverages, to be Drunk on the  
Premises - Our Lady of Fatima Parish - September 25, 1977

In response to a request received by the Board on September 12, 1977, it was on motion unanimously

VOTED: To grant a Temporary License for the Sale of Wines and Malt Beverages, to be drunk on the premises, to Victor G. Walsh, 60 Pokonoket Avenue, Sudbury, to accommodate Our Lady of Fatima Parish annual picnic on Sunday, September 25, 1977, from 1 p.m. to 4 p.m. at the Mossman Road Picnic Grounds, subject to the condition that no loud speakers, amplifiers, or any other noise-producing devices are used and to approval by the Police Chief.

Appointments - Labor Relations Counsel, Special Traffic Officer

It was on motion by Selectman Potell unanimously

VOTED: To make the following appointments:

Richard W. Murphy as Labor Relations Counsel for the 1978-1979 Town of Sudbury collective bargaining negotiation period for the following departments: Highway, Police, and Fire.

Robert V. Goudey, 26 Franklin Place, Sudbury, as Special Constable, non-paid, for traffic duty only at Raytheon Co., for a term to expire on April 30, 1978.

The Board agreed to defer consideration of their remaining 1977 appointments until the next meeting.

Bids Received - Police Department Vehicles

Executive Secretary Richard E. Thompson reported that, at the request of the Police Chief, he would ask that the question of awarding bids for three sedans and one station wagon to be used as Police Cruisers be tabled until the Board's September 26 meeting to enable clarification of notations on the low bidder's summary sheet.

After discussion, it was on motion unanimously

VOTED: To table the question of awarding bids for police vehicles until September 26.

Site Plan Application #77-182, Orion Realty Trust, 80 Union Avenue

Present: Zoning Enforcement Agent/Building Inspector Francis E. White; Ernest R. Schofield, applicant; Judith Cope, member, Conservation Commission

In accordance with Article IX, Section V, Paragraph A of the Sudbury Bylaws, the Board considered the site plan application of Orion Realty Trust for property located at 80 Union Avenue.

Executive Secretary Richard E. Thompson reported that appropriate abutters and department heads had been notified of tonight's meeting and that the following reports had been received: from the Zoning Enforcement Agent/Building Inspector, Francis E. White, who recommended approval and, by letter dated August 23, 1977, had requested that the recently approved stamp and signature requirement be waived,

as he had been working with the applicant for several weeks before the effective date of the regulation and because the plan under consideration is a modification of a previously approved site plan; from the Planning Board, dated September 14, 1977, which recommended approval and requested that the Selectmen lend whatever help necessary to the applicant in his effort to clean up the drainage ditch through his property; from the Board of Health, dated September 9, 1977, which recommended approval; and from the Conservation Commission dated September 14, 1977, which stated that a representative would attend the meeting. Mr. Thompson reported that the Sign Review Board had scheduled the Orion Realty Trust site plan on its agenda for September 20, 1977.

Conservation Commission member Judith Cope asked whether the property under consideration was a totally filled area.

Mr. Schofield, applicant, and Mr. White stated that, to the best of their knowledge, it was not a totally filled area and that the filling had been done more than twenty years ago, as it was filled when they became familiar with the property at that time.

Mr. White pointed out to Mrs. Cope and to the Board that the small addition to the existing building would have impact only on a paved area.

Discussion followed relative to Mr. White's August 23, 1977 request for waiver of the stamp and signature requirement regulation for Mr. Schofield's plan.

Mr. White stated that the plan under consideration is a renewal plan and, in his opinion, it should be "grandfathered".

Discussion continued as to when the cut-off period should begin, as other plans might presently be in the same status.

Mr. White stated that no other plan is presently in the same circumstances and that he had started talking with Mr. Schofield before the site plan policies were changed.

Mr. White was asked to review his complete file of site plans to determine and to list those plans that are and are not stamped by a Registered Professional Engineer or Land Surveyor and to report back to the Board.

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

VOTED: To accept the recommendation of the Zoning Enforcement Agent/Building Inspector and to waive Section I, l, h, (plan to indicate seal and signature of a Registered Professional Engineer and/or Registered Land Surveyor) of the Selectmen's Policies and Procedures with regard to Site Plan Application #77-182, Orion Realty Trust;

and it was further

VOTED: To approve Site Plan Application #77-182 of Orion Realty Trust, for property located at 80 Union Avenue, as shown on a site plan entitled "Orion Industrial Park".

With regard to the Planning Board's above-referenced recommendation that the Selectmen lend whatever help necessary to the applicant concerning the drainage ditch, on the recommendation of Selectman Toomey, it was agreed to direct the Executive Secretary to contact the Highway Surveyor and the Town Engineer relative to this matter and to report back to the Board.

Penn Central Railroad - Back Taxes

The Board, at its September 12, 1977 meeting, had discussed an article in the September 5, 1977 edition of The Boston Globe relative to back taxes owed to Massachusetts cities and towns. The Board, at that time, asked Town Counsel to research the question of whether, if Penn Central fails to pay its back taxes or interest, its rights-of-way could be seized for tax possession and to report back to the Board.

Town Counsel Paul Kenny now reported that it was his understanding that, if the Town were to accept the check recently received from Penn Central in payment for back taxes, the Town would, pursuant to a court order, effectively waive the interest on tax payment. Mr. Kenny further reported that it was his understanding that the Tax Collector does not have the right to accept the check without permission from the State Tax Commissioner, and, therefore, if it is decided that tax payment is to be accepted, permission must be so requested.

With regard to possible tax possession of the railroad's rights-of-way, Mr. Kenny stated that this could not be done and that there was an additional problem in that an injunction has been entered by bankruptcy court to enjoin the Directors of Penn Central from making these payments and that any action would require an opinion from the Federal District Court.

Mr. Kenny stated that the interest accrued on the back taxes amounts to \$1,800, that the taxes due through 1976 amount to \$4,197.75, and that the check received is in the amount of \$4,807.86.

Executive Secretary Richard E. Thompson stated that the Tax Collector is of the opinion that the Selectmen and Town Counsel should make the final decision with regard to acceptance of the check and that he would first recommend that a request for extension be made, as the date by which the check should be deposited is September 23rd, and that the check, if accepted, be accepted as partial payment only.

Chairman Powers commented that the newspaper article had stated that many of the communities who are owed small amounts appear willing to accept the checks, but those owed more than \$10,000 and receiving only token payments are seeking full payment plus interest through legal action.

Selectman Potell stated that it would appear that the check could be deposited and, if the suit against the railroad is successful, the money would have to be returned, and, if the suit is not successful, the Town would at least have \$4,800+. Selectman Potell stated that he would agree that he would like all of the interest and penalties charge, but was of the opinion that it might be better to accept this check.

Selectman Toomey was in agreement.

After further discussion, during which Town Counsel confirmed the Executive Secretary's earlier statement that, if the decision is in favor of accepting the check, an extension of the acceptance date should be requested, and he further advised that the Board suggest to the Tax Collector that she, through the Board of Assessors, request the Department of Corporations and Taxation for permission to accept and deposit the check from the Penn Central Railroad for payment of taxes through December 1976.

After further discussion, it was on motion by Selectman Potell

VOTED: To suggest that the Tax Collector take the appropriate steps to accept the check from the Penn Central Railroad in the amount of \$4,807.86 for back taxes owed through December 31, 1976.

(Selectmen Potell and Toomey in favor; Chairman Powers strongly opposed, stating that, in his opinion, Penn Central has no right as a corporation not to have to adhere to the same rules as other property owners.)

Dog Control - Updated Report

Present: Dog Officer Francis E. White and Assistant Dog Officer Betsy DeWallace

Dog Officer Francis E. White and Assistant Dog Officer Betsy DeWallace met with the Board to update the Board on the subject of dog control. Costs of dog control since July 1, 1977, when active patrolling ceased because of lack of kennel facilities, were reviewed.

In response to questions from the Board, Mrs. DeWallace stated that the 27 unlicensed dogs which had been picked up between July 1, 1977 and the present time compare with 30-35 dogs picked up per month prior to that time, the majority of them being picked up for control purposes.

It was noted that the costs of expenditures in this department are essentially the same as those for last year, although the rate of dog pick-up has greatly decreased, and the Board expressed its great concern that, at the present rate, the budget would be depleted by year's end without the benefit of full-time, active dog control.

Mr. White stated that he had been directed, as of July 1, 1977, to enforce the State Dog Control Law rather than the local law, and Executive Secretary Richard E. Thompson stated that it was his opinion the Selectmen had informally or formally agreed that problem dogs should also be picked up.

Mr. Thompson stated that, in a letter dated July 7, 1977 to the Dog Officer, he had acknowledged Mr. White's June 22, 1977 letter stating dog control procedure as of July 1 and the fact that Mrs. DeWallace had agreed to work on a part-time basis and would be paid at an hourly rate consistent with her then present salary. Mr. Thompson stated that the Board had agreed with this procedure at that time.

Mr. White stated that Mrs. DeWallace now works primarily by telephone and, instead of patrolling, calls the owners of all unlicensed dogs in an effort to have them licensed. Mr. White stated that the rate earlier discussed and agreed upon was a minimum of 15 minutes per call.

In response to the Board's question, Mrs. DeWallace stated that she calls the owner of each unlicensed dog each week.

Selectman Potell asked why office personnel could not be used for this purpose, suggesting that perhaps the Town Hall receptionist could handle this function.

Procedure relative to the care of the unlicensed dogs after pickup was next discussed, and Mr. White stated that the dogs are kept in Mrs. DeWallace's kennel for a period of ten days after which she holds them, without additional pay except for food costs, for an additional period of up to 10 days until they can get into the Buddy Dog facilities.

After further discussion, Selectman Toomey stated that, in his opinion, the figures presented tonight were completely unacceptable because at the present rate of expenditure the budget will be depleted by the end of the year and that he would ask that the Executive Secretary work with the Dog Officer to slow these expenditures down.

Mr. Thompson stated that this request is the subject of a weekly conversation with Mr. White. Mr. Thompson stated that he had never had a dog complaint until July 1, but has had quite a few complaints since that time. Mr. Thompson stated that he will again discuss the matter with Mr. White and that, in his opinion, the solution is a kennel, but that contracting for boarding of the dogs out of Sudbury has also been considered, but is more expensive.

Chairman Powers requested that the Board receive detailed records and costs for each dog picked up since July 1, and he further asked that the Executive Secretary look carefully at all telephone cost in this regard. Chairman Powers stated that he would agree that this is a difficult matter, but that the control law cannot be enforced without kennel facilities, and all were in agreement.

Election - Planning Board Vacancy - Paul McNally

Present: Edward Connors, Chairman, Eben Stevens, Albert St. Germain, William R. Firth of the Planning Board; L. Mike Meixsell and John C. Cutting, candidates for election

Executive Secretary Richard E. Thompson stated that, on September 1, 1977, he had addressed a letter to Planning Board Chairman Edward Connors in response to his earlier request dated August 8, 1977, asking confirmation for a meeting scheduled for this date for a joint session of the Board of Selectmen and the remaining members of the Planning Board for the purpose of interviewing candidates and electing a fifth member to the Planning Board in accordance with General Laws Chapter 41, Section 11, as amended.

Mr. Thompson reported that application forms containing a brief resume of each candidate had been made available to each board member for review.

On motion by Selectman Potell, seconded by Planning Board member Eben Stevens, it was on motion unanimously

VOTED: To appoint Richard E. Thompson, Executive Secretary, to serve as Clerk for the joint session of the Board of Selectmen and the Planning Board for the purpose of electing a new member to the Planning Board to fill an existing vacancy.

In response to Chairman Powers' request for purposes of the record, Planning Board Chairman Connors stated that that Board's other remaining members, Albert St. Germain, Eben Stevens, and William Firth, were present tonight, and Chairman Powers stated that Selectmen Ira Potell and William Toomey were also present, as was Town Counsel Paul Kenny.

Town Counsel read Chapter 41, Section 11 of the General Laws, as amended.

Mr. Thompson reported that candidate Paul McNally was unable to attend tonight's meeting because of business commitments, and it was noted that candidate William Dunn was not present.

Mr. Meixsell and Mr. Cutting were then interviewed relative to their interest and qualifications in serving on the Planning Board and their intention as to whether each would run at the next Annual Election and his availability to serve for an additional five years if elected at that time.

After the interviews, Chairman Powers asked whether the Planning Board and other Selectmen wished to adjourn the meeting until next week in order to interview candidates Dunn and McNally.

Selectman Toomey stated that, in his opinion, the elected member should have more than the four-month residency in the Town indicated by Mr. Dunn's application and that, as the Board was aware of Mr. McNally's past service as a member of the Planning Board, it would not be necessary to interview him.

Chairman Powers expressed his opinion that, as only half the candidates for the post were present tonight, he would prefer to reschedule the election until the remaining candidates could be interviewed.

Selectman Potell stated that he would defer to the wishes of the Planning Board.

Mr. Connors expressed his opinion that, if Mr. Dunn is still interested in the position, he could run in the Annual Election and that it would not be necessary to interview Mr. McNally.

Mr. St. Germain nominated Paul McNally, and Mr. Connors seconded the nomination.

Chairman Powers asked for other nominations and, there being none, he announced that nominations had closed and requested the Clerk to proceed with the roll call vote.

Mr. Thompson read the roll call of the members present and the following votes were cast:

Edward Connors voted for Paul McNally.

William Firth voted for Paul McNally.

Ira Potell voted for Paul McNally.

John Powers voted for Paul McNally.

Albert St. Germain voted for Paul McNally.

Eben Stevens voted for Paul McNally.

William Toomey voted for Paul McNally.



At the completion of the roll call vote, the Clerk declared that Paul McNally, having received the unanimous vote of the officers present and entitled to vote, was elected to fill the vacancy on the Planning Board until the next Annual Meeting, in accordance with Chapter 41, Section 11 of the General Laws, as amended.

Chairman Powers thanked Messrs. Meixsell and Cutting for their interest and attendance tonight.

#### Zoning Bylaws - Proposed Amendments

Executive Secretary Richard E. Thompson reported that the Chairman of the Planning Board had earlier forwarded to the Board two articles in draft form which would put the Zoning Bylaws of the Town into compliance with the revised Chapter 40A as required by Chapter 808, the Massachusetts Zoning Act of 1975. Mr. Thompson further reported that the Board, at its August 22, 1977 meeting, had voted to accept Assistant Town Counsel's recommendation set forth in his letter dated August 19, 1977 which suggested that the Planning Board's current review of the Zoning Bylaws be completed so that all recommended changes could be reviewed as a whole and submitted to the 1978 Annual Town Meeting for approval as a total package.

Planning Board member Eben Stevens stated that the Planning Board wishes to receive guidelines only from the Selectmen, at this time, as to whether the proposed changes are of concern to the Selectmen because of the nature of the technical changes.

Chairman Powers stated that the Selectmen would have a report back to the Planning Board on the matter of the proposed articles, and he requested that, if the Planning Board found a substantive change or an option in future review of revised Chapter 40A, to so inform the Selectmen.

Town Counsel Paul Kenny stated, for the information of the Planning Board, that he planned to have completed by October 4 a comprehensive review of Chapter 808.

Selectman Potell suggested that definitive answers with regard to all proposed zoning articles be prepared for any questions that might arise during Town Meeting.

#### Public Education Financing - Proposed Litigation

Present: Cornell Gray, Chairman, and Paul Langner, member, Sudbury School Committee

Executive Secretary Richard E. Thompson stated that Sudbury School Committee member Paul Langner had requested a meeting with the Board to discuss the School Committee's position on proposed litigation relative to financing public education and the Committee's possible participation in the cost of the suit as discussed by the Board at its meeting of August 22. Mr. Thompson stated that additional information had also been requested by the School Committee.

Mr. Thompson stated that he had called the Massachusetts League of Cities and Towns for additional information and that an article by Alfred G. Vidgerman, of the staff of the Joint Legislative Office, relative to the proposed suit to challenge the way public education is paid for in Massachusetts had been forwarded. Mr. Thompson stated that Mr. Vidgerman has agreed to come to Sudbury for a joint meeting of the Selectmen, the School Committee, and the Finance Committee on

October 11 and will answer questions at that time.

Chairman Powers stated that the Board would try to give the School Committee as much information as possible on this subject and would hope that its members would be willing to meet with the Selectmen on October 11.

Selectman Toomey asked whether material from the successful cases in Connecticut and New Jersey could be requested.

Chairman Powers stated that the Executive Secretary has been requested to obtain this material, and he also requested that Mr. Thompson contact Commissioner of Education Anrig's office for any available material in this regard.

School Committee Chairman Cornell Gray stated that the Committee is concerned with the fact that very rarely is anything received from the State without strings attached as to how the money is to be spent and that, in the opinion of the members of the Committee, there is nothing on the surface to make them think that this proposal would be any different. Mr. Gray expressed the School Committee's opinion that it is not necessary for the State to take over the financing of schools to be sure that everyone can pay for their teachers at the same rate.

Chairman Powers expressed the Selectmen's concerns with the escalating impact of State-mandated programs and the State's failure to meet the funding they are now supposed to meet and the fact that this extra burden has been pushed onto the property tax payers. Chairman Powers stated that the Board is looking for alternative ways to finance these programs, and he suggested that something must be done collectively in this direction.

Mr. Langner stated that it is the Committee's opinion that it is not wise to press ahead with the proposed suit because of the way in which the State operates, as they would still require that the funds be drawn from somewhere and the tax payer would either pay more State tax or a school tax. Mr. Langner stated that, in his opinion, the suit could also open the door to a clean sweep by powerful new organizations which could effect greater expense, and he expressed his further opinion that, if a suit is supported, it should be done by a parents' group.

Selectman Potell asked whether the successful states had since enacted legislation to enforce the decision, and Mr. Gray and Mr. Thompson reported that New Jersey has enacted such legislation.

Mr. Langner suggested that, if it is decided that a suit will be brought, it should specify that any mandated program must provide funds for its implementation.

#### Executive Session

At 10:00 p.m., following a unanimous roll call, it was

VOTED: To enter into executive session for the purpose of discussing transactions in real property where open discussion may have a detrimental effect on such transactions.

Chairman Powers announced that the public session would not resume 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 10:30 p.m.

Attest: Richard E. Thompson  
Richard E. Thompson  
Executive Secretary/Clerk