

IN BOARD OF SELECTMEN
MONDAY, AUGUST 21, 1978

Present: Chairman William F. Toomey, John E. Murray and Robert J. Hotch.

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

Public Hearing - Dog Complaint

Present: Francis E. White, Dog Officer; John M. Ludgey, owner; and Mr. and Mrs. Richard P. Corley, complainants.

Chairman William F. Toomey convened a Public Hearing under G.L. Chapter 140, s.157 on the Dog Complaint dated August 3, 1978, of Mrs. Mary G. Corley, 258 Dutton Road, against three dogs owned by Mr. John M. Ludgey, 347 Dutton Road; said complaint states that for two years these dogs have terrified the Corley children and that the dogs are not leashed.

Executive Secretary Richard E. Thompson stated that the complaint was filed in the Town Clerk's Office on August 3, 1978, that both parties were notified of the public hearing by certified mail, and that the following reports, relative to the same, have been received: 1) a report dated August 15, 1978, from the Dog Officer recommending that the dogs owned by John M. Ludgey be in a secure run any time that Mr. Ludgey does not have direct control of them; and further recommending that Mr. Ludgey be reprimanded for not licensing his dogs on a timely basis; 2) a report dated August 15, 1978, from the Assistant Dog Officer stating that the three dogs owned by Mr. Ludgey have been a problem for three years by barking and running after cars, bicyclists, joggers and walkers; that the dogs have been picked up twice; and that she has trouble every year getting Mr. Ludgey to license his dogs.

Mrs. Mary G. Corley, complainant, stated that two of her three children must pass the Ludgey residence each morning on their way to and from the swim and tennis club, and that they have a genuine fear of the Ludgey dogs, who are not leashed, and who bark and run after the children. Mrs. Corley said that on occasion she, too, has been afraid of the dogs for the same reason.

Mr. Richard P. Corley added that he has witnessed the dogs terrifying his children, because the dogs not only chase and bark, but show their teeth while barking, which instills more fear in the children.

Mr. John M. Ludgey, owner, said that his dogs are docile, friendly and good-natured. He said that Dutton Road is heavily trafficked, and that, although the dogs do bark, he has never seen them run out to the road after anyone.

Chairman Toomey asked the Dog Officer to explain the Dog Control Law to Mr. Ludgey.

The Dog Officer stated that the Town Dog Control Law states that a dog shall be under control between the hours of 7:00 a.m. and 8:00 p.m. Mr. White explained that "under control" means that a dog can be loose in his yard under the owner's control, but cannot be left alone in the yard unleashed.

Mr. Ludgely stated that he has several fenced areas where the dogs are kept while not under his control. He said that he did have some trouble with the dogs roaming for a period of time while his mother was in charge of watching the dogs.

In answer to Selectman John E. Murray, the Dog Officer stated that there have been other complaints about the dogs, and that he has also seen them around the Stearns Lane area.

Mr. Ludgely stated that when he lived on Stearns Lane, he did have some complaints against the dogs but none were complaints of a "vicious dog".

Selectman Robert J. Hotch confirmed, through personal experience, the complaints about the Ludgely dogs filed by the Corleys.

Selectman Hotch referred to the Assistant Dog Officer's letter dated August 15, 1978, regarding the licensing problem and asked what recourse the Town has regarding unlicensed dogs.

The Dog Officer stated that after notification is sent out to dog owners, several follow-up telephone calls are made, and if at this point a dog is still not licensed, the Dog Officer has the authority to pick up and destroy the dogs. Mr. White said that the Assistant Dog Officer is presently working on the licensing of approximately two hundred and fifty (250) dogs.

Following further discussion, on the recommendation of the Dog Officer in his letter of August 8, 1978, it was on motion by Selectman John E. Murray

VOTED: To restrain the three dogs owned by John M. Ludgely, 347 Dutton Road, in a secure run anytime that Mr. Ludgely does not have direct control of them, between the hours of 7:00 a.m. and 8:00 p.m. in accordance with the Town Dog Control Law;

and it was further

VOTED: To take further action to permanently restrain or destroy the dogs owned by Mr. Ludgely if another complaint is filed against the dogs.

(Selectmen Toomey and Murray in favor; Selectman Hotch abstained.)

Minutes

It was on motion unanimously

VOTED: To approve the minutes of the regular session of August 7, 1978, as amended.

CETA Title VI Program Application

On the recommendation of the Executive Secretary, in conjunction with the Town Engineer, it was on motion by Selectman John E. Murray unanimously

VOTED: To authorize the Executive Secretary to file an application under CETA Title VI Program for a Sudbury Engineering, Planning, Construction and Drainage in Parks Project in the amount of \$75,589 for the proposed contract period from October 2, 1978, to September 30, 1979; and to sign all necessary documents related thereto.

State Primary Election

It was on motion by Selectman Robert J. Hotch unanimously

VOTED: To set the time and place of the polls for the State Primary Election at 7:00 a.m. to 8:00 p.m. on September 19, 1978, in the Peter Noyes School for all four precincts.

Warrant for State Primary

It was on motion by Selectman John E. Murray unanimously

VOTED: To sign the Warrant for the State Primary on September 19, 1978, for posting, as presented.

Sale of Alcoholic Beverages during Polling Hours

It was on motion by Selectman John E. Murray unanimously

VOTED: To allow the sale of alcoholic beverages by common victuallers and retail package stores during the polling hours of the State Primary Election on September 19, 1978, in accordance with General Laws, Chapter 138, sec. 33, as amended.

Digital Equipment Corporation Newsletter

The Board acknowledged receipt of a communication dated August 7, 1978, from Digital Equipment Corporation of Waltham informing the Board of their new newsletter entitled Digital in Local Government (DEC-LOG).

The Executive Secretary informed the Board that the first mailing of DEC-LOG will announce a seminar entitled "Symphony of Solutions" to be held on September 19, 1978, and encouraged the Selectmen to attend.

The Selectmen commended Digital Equipment Corporation for becoming more involved with the local governments.

Public Hearing - Todd-Wagoner Corp., Village Green

Present: Bernard B. Rome, attorney for Coolidge Bank and Trust; Donald G. Wagoner of Todd-Wagoner Corporation, Manager of Ephraim's of Sudbury; Francis Pozzi, attorney for Todd-Wagoner Corporation; Lamonte Griswold and George R. Hanow, abutters; Debra J. Martin, Manager of the West Newton Savings Bank, and Karl H. Michels, owner of The Optical Place.

Chairman William F. Toomey stated that, along with the Executive Secretary, the Fire Chief, the Health Director, the Building Inspector and Mr. Donald G. Wagoner, Manager of Ephraim's of Sudbury, the Board met at 6:30 p.m. to view Ephraim's of Sudbury, Village Green, relative to tonight's license hearings of the Todd-Wagoner Corporation, d/b/a Ephraim's of Sudbury, 7 and 8 Village Green, Hudson Road, for a license to sell all alcoholic beverages as a common victualler, a common victualler's license and a weekday entertainment license.

Executive Secretary Richard E. Thompson reported that all appropriate abutters and Town officials had been notified, and that reports had been received as follows: 1) a report from the Board of Health dated August 17, 1978, noting that an approved septic system had been installed and stating that all kitchen equipment installation shall be complete and operating prior to final approval of the Common Victualler License; 2) a report from the Building Inspector dated August 15, 1978, recommending approval upon final completion of the buildings; 3) a report from the Fire Chief dated August 17, 1978, stating conditional approval; 4) a report dated August 14, 1978, from Town Counsel indicating the number of alcoholic beverages licenses that the Town can issue; and 5) a report dated August 14, 1978, from Town Counsel's office regarding all license appeal rights.

Attorney Francis Pozzi introduced himself as an attorney in the Town of Sudbury representing the applicant, Donald G. Wagoner, whom he commended for both his personal and professional reputation. Attorney Pozzi stated that Mr. Wagoner has made a large investment in this community, and that, in his opinion, the restaurant, Ephraim's of Sudbury, will be a great asset to the Town of Sudbury.

Mr. Donald G. Wagoner, Manager of Ephraim's, presented the Board with a "Questionnaire/Ephraim's of Sudbury" containing signatures of those Sudbury residents who support the Todd-Wagoner Corporation and Ephraim's. Mr. Wagoner stated that he has been in the restaurant business for ten years.

His presentation included plans showing the layout of Ephraim's and a description of the cocktail lounge, gazebo salad bar and dining rooms. He concluded by asking for questions and/or comments.

Mr. Bernard B. Rome, attorney for the Coolidge Bank and Trust Company, stated that, although they are in support of the proposition that a liquor license should be issued, the Coolidge Bank and Trust Company has not yet negotiated a lease with Todd-Wagoner Corporation. Mr. Rome stated that he is confident that negotiations will be completed soon, but requested, if the Board deems it desirable, that issuance of such licenses be postponed until such time as negotiations are completed for the lease.

Chairman William F. Toomey asked Assistant Town Counsel, Thomas M. French, if it is necessary that the applicant be an owner or lessee of record in order for the Selectmen to issue him a license.

Assistant Town Counsel answered in the negative and stated that a license specifies a location and is issued to a manager/person for that specific location only.

Selectman Robert J. Hotch questioned the issuance of a license without a certificate of occupancy, and Assistant Town Counsel stated that the Board's vote to issue said licenses should be subject to the issuance of an occupancy permit provided by the Building Inspector.

Later Attorney Rome questioned the issuance of an occupancy permit without an executed lease, and Assistant Town Counsel stated the matter of the occupancy permit and the subject of the lease are two independent questions, and that it would be up to the Building Inspector to issue an occupancy permit upon completion of the premises, and in accordance with the provisions of the Board's vote.

Mr. Wagoner indicated that he is presently reviewing a lease, prepared by the Coolidge Bank and Trust Company, for final negotiations.

Attorney Pozzi stated that there should be no question that the petitioner is a tenant since Mr. Wagoner has been at the Village Green for several years.

In answer to Selectman John E. Murray, Attorney Rome stated that, at the present time, no rent is being paid by Todd-Wagoner Corporation or anyone else for the property located at 7 and 8 Village Green.

Ms. Debra J. Martin, Manager of the West Newton Savings Bank, Village Green, stated her concurrence with a letter she presented to the Board dated August 21, 1978, from the owner of the Village Decorator, Village Green, who could not be present tonight, asking the Board to favorably consider the applications for licenses from Todd-Wagoner Corporation, d/b/a Ephraim's of Sudbury.

Abutter George R. Hanow, 24 Hudson Road, expressed his opinion that the licenses should not be issued without an executed lease, and later expressed his concern regarding anticipated noise in the neighborhood if and when liquor is served at Ephraim's.

Tax Assessor Frank H. Grinnell spoke in favor of completion of the buildings and the issuance of the licenses for tax purposes.

Karl H. Michels, owner of The Optical Place, Village Green, stated that a restaurant creates good potential for business, and on behalf of all the shop owners at the Village Green, stated his hope that the licenses be issued as soon as possible.

Mr. Thompson mentioned a former letter received from Mr. and Mrs. Terry E. Carlson, 78 Cedar Creek Road, supporting the need for a restaurant such as Ephraim's in the Town of Sudbury.

Chairman Toomey asked abutter Lamonte Griswold if he had any comments.

Mr. Griswold stated that he has no comments on the description of the buildings, but that he does not approve of the Alcoholic Beverages License. Mr. Griswold said that he is against liquor being served at the establishment, based on the fact that he is an abutter and anticipates commotion in the area.

Mr. Wagoner stated that he has compassion for Mr. Griswold's concerns and tried to reassure him of the type of establishment that Ephraim's of Sudbury would be. Mr. Wagoner said that there are ways to discourage rowdy drinking crowds, and encourage the restaurant crowd, and that is his plan for Ephraim's. He said, further, that a liquor license would be imperative in order to have a successful restaurant operation.

Selectman Hotch asked when the restaurant would open if the licenses were granted tonight.

Mr. Wagoner stated that he expected Ephraim's of Sudbury to open by late September.

Following further discussion it was on motion unanimously

VOTED: To grant a Common Victualler's License to Donald G. Wagoner, Manager, Todd-Wagoner Corporation, d/b/a/ Ephraim's of Sudbury, 7 and 8 Village Green, Hudson Road, upon the condition that the license shall issue after Board of Health approval and an occupancy permit provided by the Building Inspector.

(The Executive Secretary noted the Common Victualler's License fee has been paid.)

and it was further unanimously

VOTED: To grant a License to Sell All Alcoholic Beverages as a Common Victualler to Donald G. Wagoner, Manager, Todd-Wagoner Corporation, d/b/a Ephraim's of Sudbury, 7 and 8 Village Green, Hudson Road, at a license fee of Seven Hundred Fifty (\$750.00) Dollars, upon approval of the Board of Health and the issuance of an occupancy permit by the Building Inspector; and further subject to approval of the Fire Chief, in accordance with his communication dated August 17, 1978.

(The Executive Secretary stated that there is no provision for proration of the license fee.)

Mr. Thompson further stated that in addition to this license being held until such time as notification of approval from the Board of Health is received and an occupancy permit is issued by the Building Inspector, the final required document, a probation check on the other two individual names of the directors of the corporation, must be received. Mr. Wagoner expressed his concurrence and agreement to follow up on the same.

Following further discussion it was on motion unanimously

VOTED: To grant a weekday entertainment license (for background music and television only) to Donald G. Wagoner, Manager, Todd-Wagoner Corporation, d/b/a Ephraim's of Sudbury, 7 and 8 Village Green, Hudson Road, to be issued simultaneously with the Common Victualler and Alcoholic Beverages Licenses noted above, and in accordance with the same conditions contained in the votes. (The Executive Secretary noted there is no fee for this license.)

In answer to Selectman Hotch, Mr. Thompson stated that on November 1st, the Board will review all Town liquor licenses and any license not automatically renewed, requires a new public hearing and review of the license in question.

Public Hearing - License to Store Inflammables, Dominic John and Susan Vingiano, 50 Marlboro Road

Chairman William F. Toomey convened a Public Hearing under G. L. Chapter 148 on the application of Dominic John and Susan Vingiano to store inflammables (2000 gallons #2 fuel oil) underground, for home heating purposes, on property located at 50 Marlboro Road.

Executive Secretary Richard E. Thompson stated that notice of the hearing had been published in the South Middlesex News on August 1, 1978, and notices had been sent to abutters by certified mail and the following reports were received: 1) a report dated August 2, 1978, from the Building Inspector, recommending approval; and 2) a report dated August 1, 1978, from the Fire Chief, recommending approval.

Following discussion it was on motion by Selectman John E. Murray unanimously

VOTED: To grant to Dominic John and Susan Vingiano a license to store 2000 gallons #2 fuel oil underground, for home heating purposes only on property located at 50 Marlboro Road, subject to installation being done with the approval and under supervision of the Fire Chief.

1979 Cherry Sheet

Present: Tax Assessor, Frank H. Grinnell; Edward L. Glazer, Finance Committee; John H. Wilson, Town Accountant; Ronald L. Blecher, Chairman, and Alan H. Grathwohl, Lincoln-Sudbury Regional High School Committee.

The Board reviewed a recap of the fiscal year 1979 Cherry Sheet prepared by th Town Accountant and the Executive Secretary at the suggestion of Selectman Murray.

Executive Secretary Richard E. Thompson stated that the general public has been misled by a recent South Middlesex News article (August 8, 1978) which indicated that Sudbury received an additional \$591,000 in local aid. The actual increased local aid figure is \$217,654 according to the recent analysis by the Town Accountant which shows an overall loss on the Cherry Sheet and takes into consideration increased local aid to the Lincoln-Sudbury Regional High School.

Tax Assessor, Frank H. Grinnell, stated that the tax rate cannot be set until the Lincoln-Sudbury Regional School Committee has determined what their assessment to the Town should be.

Lincoln-Sudbury Regional School Committee Chairman Ronald Blecher stated that the Committee will be working on a re-analysis of what their assessment to the Town should be, and that, within a few hundred dollars, Sudbury's share will be approximately \$268,000 and Lincoln's share, approximately \$50,000. Mr. Blecher added that the Committee's first formal meeting to confirm the assessments, as required by statute, to the towns of Sudbury and Lincoln will be held on September 12, 1978. After some discussion, on the subject of the approximately \$100,000 in excess funds Lincoln-Sudbury Regional High School closed out this past June 30, Mr. Blecher agreed that the Lincoln-Sudbury Regional High School Committee's Counsel will contact Town Counsel before any final decision is made regarding the possible present or future use of these funds. Mr. Blecher indicated that this matter will be a topic of discussion at the next meeting of the Lincoln-Sudbury Regional High School Committee.

Mr. Thompson referenced Chapter 367 of the Commonwealth of Massachusetts Acts of 1978, which states that all new additional state local aid to schools must be used for its intended purpose to offset the local property taxes.

Chairman Toomey thanked those who attended and stated that the discussion had been very informative.

Amendment to Sudbury Traffic Rules and Orders

Present: Jewett W. Hulbert and Mr. and Mrs. Augustus Mantia, Residents of Brimstone Lane.

Executive Secretary Richard E. Thompson reviewed that at the Board's meeting on July 24, 1978, it was voted to submit for approval an amendment to the

Traffic Rules and Orders of the Town of Sudbury for the restriction of motor vehicles on Brimstone Lane from 9:00 p.m. to 6:00 a.m. to the Massachusetts Department of Public Works (D.P.W.).

Mr. Thompson stated that the purpose of tonight's meeting is to review the Traffic Regulation Permit B-3348 from the D.P.W. dated August 3, 1978, authorizing, under Chapter 90, section 18 of the General Laws, the amendment to the Traffic Rules and Orders of the Town of Sudbury (made by the Board of Selectmen on July 24, 1978) contingent upon local advertisement and posting before enforcement.

Mrs. Barbara G. Mantia read and presented to the Board of Selectmen a letter dated August 21, 1978, from all the residents of Brimstone Lane, recording individual incidences of abuse on Brimstone Lane; reaffirming their feeling that Brimstone Lane should be a restricted road, contrary to Selectman Hotch's previously stated opinion that a precedent would be set in restricting the road; and thanking the local Police Department and the Board of Selectmen for their support in responding to their problems.

The Executive Secretary stated that, at the direction of the Selectmen, he had consulted with Town Counsel regarding the matter of setting a precedent, and that Town Counsel had commented that legally the Selectmen would not be setting a precedent but in practicality a precedent would be set; however, each petition brought before the Board would be discussed and a decision would be made based on the particular set of circumstances. (Brimstone Lane is a dead-end street off Route 20 with a limited amount of residential structures.)

Selectman Robert J. Hotch asked how the adoption of this traffic amendment would affect the Police Department.

Assistant Town Counsel commented that a motor vehicle on Brimstone Lane during the restricted hours could result in the Police Department issuing a citation for a traffic violation to the driver of the vehicle; however, passengers and/or other trespassers on foot would not be in violation of this new traffic amendment because it restricts motor vehicles only during the specified hours of 9:00 p.m. to 6:00 a.m.

When Selectman Hotch repeated his statement that he did not think it was a good idea to close Brimstone Lane from dusk to dawn because of the precedent it would set, Assistant Town Counsel commented that some streets are appropriate to this type of action, such as a dead-end street, and others are not.

Selectman Hotch suggested that speed bumps be considered, as Mrs. Mantia had previously stated this was one of the original suggestions of the petitioners.

Following further discussion it was on motion by Chairman William F. Toomey

VOTED: To direct the Executive Secretary to proceed with the advertisement of the amendment to the Traffic Rules and Orders of the Town of Sudbury, made by the Board of Selectmen on July 24, 1978, and approved by the Massachusetts Department of Public Works on August 3, 1978, Permit No. B-3348;

and it was further

VOTED: To authorize the Highway Surveyor to prepare and post signs on Brimstone Lane relative to the use restriction.

Contract for Sand Seal and Leveling Under Local Public Works E.D.A.
Grant #01-51-26415

Executive Secretary Richard E. Thompson stated that bids for Contract No. 3 under Local Public Works E.D.A. Grant No. 01-51-26415 were opened on August 11, 1978, in accordance with the Invitation to Bid for this contract. Two bids were received: one from Starrett Paving Corp., Marlboro, Massachusetts, at the unit price of \$23.50/ton for leveling and \$0.355/sq. yd. for sealing, an estimated computed total bid of \$18,114; and the other from Bell and Flynn, Inc., Stratham, New Hampshire, at the unit price of \$30.00/ton for leveling and \$0.40/sq.yd. for sealing, an estimated computed total bid of \$21,220.

The Board reviewed a communication dated August 14, 1978 from Town Counsel relative to his review of the bid documents which recommended that the contract be awarded to Starrett Paving Corp. and that submission of the Certificate of Corporate Bidder, missing from the bid documents, be waived as a Certificate of Vote had been submitted.

Mr. Thompson further stated that a communication dated August 17, 1978 was received from the Town Engineer, as well as a communication dated August 17, 1978 from the Highway Surveyor, both recommending that the low bidder, Starrett Paving Corp. be awarded the bid.

It was on motion by Selectman John E. Murray unanimously

VOTED: To award Contract No. 3 for Sand Seal and Leveling under Local Public Works E.D.A. Grant No. 01-51-26415 to Starrett Paving Corp. of Marlboro, Massachusetts, at the unit rate of \$23.50/ton for leveling and \$0.355/sq. yd. for sealing as stated in their bid proposal received and opened August 11, 1978, and that submission of a Certificate of Corporate Bidder be waived in accordance with the recommendation of Town Counsel as set forth in his communication dated August 14, 1978.

Award Bid for Furnishing Fuel Oil and Servicing Boilers and Burners for Town Buildings

The Board reviewed a communication dated August 17, 1978, from Janet Silva, Administrative Secretary, regarding bids for furnishing fuel oil and servicing boilers and burners for Town buildings for a term to expire September 1, 1979.

The Board concurred to table the matter until the Board's next meeting on September 11, 1978, so that the Executive Secretary could obtain the requested data to substantiate the recommendation of the Building Inspector in his letter dated August 17, 1978, and the recommendation of the Fire Chief of the same date, to award the bid to Interstate Gas and Oil Corp.

Department of Public Utilities (DPU)-Sudbury/New England Telephone Case 18153

Executive Secretary Richard E. Thompson updated the Board on the DPU Telephone Case 18153 and hearings held on August 14, 16, and 21. Mr. Thompson suggested the Board commend Mrs. Estelle Simon, petitioner, and Town Counsel Paul Kenny for their representation at the hearings. The Board voiced its sincere appreciation to both and urged a speedy resolution of the Town case for Extended Local Service.

Mr. Thompson informed the Board that the hearings for the Sudbury DPU Case 18153 had been continued today to September 12 and 14, and that a cost projection

for the same would be given to the Board at their upcoming regular meeting on September 11.

Resignation

The Board accepted the resignation of Walter F. Cybulski, effective immediately, and directed the Executive Secretary to acknowledge Mr. Cybulski's letter dated August 7, 1978 and to express the Board's appreciation for his service on the Permanent Building Committee.

Chairman William F. Toomey suggested that the Executive Secretary invite any candidates interested in serving on the Permanent Building Committee to a future meeting of the Board, for the purpose of being interviewed.

Appointment

The Board reviewed a communication dated August 11, 1978, from Michele Singer, chairman of the Town Report Preparation Committee, recommending the appointment of Patricia Huston, 92 Barton Drive, to the committee, and based on this recommendation, it was on motion by Selectman John E. Murray unanimously

VOTED: To appoint Patricia Huston, 92 Barton Drive, to the Town Report Preparation Committee, for a term to expire April 30, 1979.

Vandalism - Cemeteries

Present: Frank H. Grinnell, Assessor and Veteran's Agent.

Mr. Frank H. Grinnell reported that extensive damage had been done in the Mount Pleasant Cemetery and North Cemetery over the weekend and recommended a reward be posted for information leading to the apprehension of the juveniles involved in the vandalism.

Chairman William F. Toomey stated that Town Counsel would look into the matter and report back to the Board regarding the same.

Committee on Town Administration

Executive Secretary Richard E. Thompson gave Selectman Robert J. Hotch his official letter of invitation and some back-up information concerning the upcoming meeting of the Committee on Town Administration, to which he is invited to attend as liaison. (The meeting is Tuesday, August 22nd at 8:00 p.m.)

Selectman Hotch said that he will attend the meeting.

Executive Session

At 10:15 p.m. it was on motion by roll call unanimously

VOTED: To enter into Executive Session for the purpose of discussing litigation where open discussion of the same may have a detrimental effect.

(Roll call vote: Chairman Toomey in favor; Selectman Murray in favor; Selectman Hotch in favor.)

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

There being no further business to come before the Board, the meeting was adjourned at 11:00 p.m.

Attest: _____

Richard E. Thompson
Executive Secretary-Clerk