

IN BOARD OF SELECTMEN
TUESDAY, OCTOBER 2, 1979

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

The statutory requirements as to notice having been fulfilled, the meeting was called to order at 7:00 P.M. by Chairman John E. Murray.

Reimbursement Anticipation Note

Following a brief discussion it was on motion by Chairman Murray unanimously

VOTED: To confirm the action of the Board on September 24, 1979, of signing a Reimbursement Anticipation Note for the Landham Road reconstruction in the amount of \$240,000, dated October 10, 1979, and due February 10, 1980, as follows:

Guaranty First Trust Co.	4.55%	\$240,000
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This action was taken in accordance with Article 11 of the 1978 Annual Town Meeting and amended by Article 1 of the 1978 Special Town Meeting.

Site Plan Application #79-211 - Wendworth Corporation, 103-119 Boston Post Road

Present: Thomas Saltsman, Vice President and Patrick J. Mallowney, The Wendworth Corp; John C. Powers, attorney for The Wendworth Corp; Judith A. Cope, Chairman of the Conservation Commission; Arna K. Freedman, 133 Concord Road; Christopher Pappas, Attorney, and Peter Thomas, owner, both of Dairy Queen; Frederick R. Kobrick.

Chairman Murray stated that on the question of approving Site Plan application #79-211 of The Wendworth Corporation, for property located at 103-119 Boston Post Road, owned by Albert E. McManus Trust, discussion will be limited to the Selectmen only for the purpose of making a decision, since the matter was taken under advisement after a full hearing on September 24, 1979.

Chairman Murray stated that, by previous request, he will allow the attorney for The Wendworth Corp., John C. Powers, to make a brief statement due to the importance of this entire matter. A complete copy of Atty. Powers' statement is attached and made a part of these minutes.

Atty. Powers stated that the formal hearing was an ample vehicle for decision purposes on the site plan, but due to a recent Town Crier article (September 27), which stressed opposition to the establishment of Wendy's, which he quoted in part, he defended the establishment of a Wendy's as follows:

- property owners are entitled to protection under the zoning bylaws and referenced the Constitution, Article I, section 1, regarding possession and protection of property. He stated that for forty years, taxes have been paid by the owners of this property, zoned for business in 1939, changed in 1951 to Industrial, and taxes adjusted upward accordingly.

- property owners are covered by the protection of existing bylaws and referenced the Constitution, Part I, article 10.

- owners' right to the use of their property for which it is zoned cannot be overruled by the Selectmen's power in accordance with section 5A of the Town's zoning bylaw - that "reasonable use", as stated in the bylaw, applies to safety.

- owners have the right to reasonable use of their property, equal to other property owners in the same zone, according to the existing Town zoning bylaws.

In conclusion, Atty. Powers thanked the Selectmen for allowing him to make his statement, and asked that they would render their decision in accordance with the facts of record, based on the existing zoning bylaws and permitted uses.

Both Mr. Pappas and Mr. Kobrick questioned the Board's decision to limit discussion to the Selectmen only; with the concurrence of Town Counsel, the Board reminded them that the matter was taken under advisement last week (September 24). It was noted that Mr. Kobrick submitted further data and reports to the Board at 5:30 P.M. this evening.

Executive Secretary Richard E. Thompson referenced the following communications, received subsequent to the September 24th hearing: - dated September 26, 1979, from the Maintenance Engineer of the Department of Public Works (DPW), showing evidence of curb cut permits;

- dated September 27, 1979, from Dick and Shirley Fennell, expressing opposition to Wendy's; and

- dated October 2, 1979, from JT's Steak House, expressing support of Wendy's.

On the recommendation of Selectman Hotch, Mr. Pappas was allowed to make a statement which is, in part, as follows:

- questioned the Board as to its satisfaction with the traffic study subsequent to last week's discussion.

- suggested that a large investment such as this (Wendy's restaurant) would have to generate sales accordingly; thereby, increasing traffic volume;

- water flow in the direction of Dairy Queen, currently a problem, will be compounded when the area is paved.

The Executive Secretary stated that Mr. Pappas' last point is on record and has been satisfactorily addressed by the Town Engineer.

Selectman Cossart stated that the Selectmen have not collectively discussed this issue in the last eight days, and that he would like to tell what he had experienced during that time:

1. No data or any other information, which would dispell any of the concerns of the traffic study, has been received; therefore, the traffic study, in his opinion, still has the inefficiencies of eight days ago. In addition, Selectman Cossart stated that he received no telephone calls in support of the establishment. He pointed out that, during Mr. Bezkozovainy's presentation last week, he had

mentioned the discharge of one of his men because he inaccurately performed a portion of the traffic study, which was disregarded; therefore, Selectman Cossart criticized the presentation and questioned the validity of the study conducted on two separate Saturdays.

2. Privatized industry reports show markets and sales to be off during the same period of time of the traffic study and he concluded that traffic counts were probably lower than they would be after the economic condition (gas shortage) was removed.

3. No answer to his concern raised at the last hearing regarding the holiday weekend time of the traffic study;

4. pointed out that in the second traffic count taken, Saturday counts came in lower than weekdays, which seemed inconsistent to Saturday traffic patterns in Sudbury;

5. the type of business success, generated by Wendy's throughout the country, would indicate a greater volume of traffic.

Chairman Murray stressed the safety issue, although, he said, it is not addressed specifically in the bylaw; he expressed concern of safety with the curve on the west end of the proposed site on the approach to the site; and he called attention to the basic question of "permitted use".

Responding to Selectman Hotch, Town Counsel stated that the Building Inspector/Zoning Enforcement Agent has determined the site plan proposal to be a "permitted use", but emphasized that the zoning bylaw allows the Town to exclude "any types of use" within zones not so specified in the bylaws.

Selectman Hotch suggested looking into a change in the zoning bylaw to exclude, without being discriminatory, fast food services/take-out restaurants.

Selectman Hotch went on to say that, although safety is an important issue, he has problems denying the site plan, since it is within the permitted use of zoning bylaw. Addressing his concerns, Selectman Hotch pointed out the following:

- he would like to mandate a police officer;
- refuse should be completely enclosed, and the use of the Sanitary Landfill prohibited;
- he suggested researching a change, as mentioned before, in the zoning bylaw to exclude take-out/fast food restaurants in Sudbury.

Mr. Thompson confirmed that The Wendworth Corporation had previously agreed to: enclosing the refuse area, not using the Sanitary Landfill, and having a traffic officer on duty, if necessary.

Responding to the Selectmen, Town Counsel stated that if a restaurant is not a take-out restaurant - food is served to people sitting at tables or counters - it would be within the permitted use.

Selectman Cossart stated that, although the take-out window has been eliminated, it is apparent that a great deal of Wendy's business will be take out, or fast food service, and the bylaw specifically prohibits take-out food in the Industrial Zone.

Selectman Hotch stated that he now has serious reservations about approval of the site plan until such time that there is a clearer presentation or interpretation of the zoning bylaw relating to permitted uses in industrial districts.

Responding to the Selectmen's concerns of other establishments in the area conducting this very type of business, Town Counsel replied that these restaurants are probably operating under a so-called 'Grandfather Clause', or they are permitted uses.

Selectman Hotch said that perhaps what the Board needs is data showing the total amount of sales and number of seats per day divided by the number of people who can sit down per hour and the number of sales per hour to determine the type of restaurant (sit down or take-out).

Mr. Kobrick questioned why the Board would consider allowing a restaurant which seats 92 people, when Wendy's corporate reports, on national average volume of sales for individual restaurants, indicate that the proposed facility will be inadequate unless there is a large take-out business.

In response to a question from the Board, Town Counsel stated that the Building Inspector/Zoning Enforcement Agent has the responsibility to make the determination as to whether or not a proposed establishment is a permitted use within the meaning of the zoning bylaw.

Selectman Cossart stated that he would like more time to speak to the Building Inspector and the Planning Board regarding their interpretation of the bylaw in conjunction with their recommended approval of Wendy's site plan.

By mutual consent of all parties concerned, it was on motion unanimously

VOTED: To table Site Plan application #79-211 of The Wendworth Corp., for property owned by Albert E. McManus Trust, located between 103-119 Boston Post Road, until October 9, 1979, so that the Board may further evaluate its decision.

Application to Store Inflammables at Lincoln-Sudbury Regional High School (LSRHS)

Present: Ralph E. Brooks, Applicant; Josiah F. Frost, Fire Chief; Royce Greenwood, Maintenance Department at LSRHS, and Virginia M. Menge, 345 Lincoln Road.

In accordance with Chapter 148 of the General Laws of Massachusetts, Chairman Murray convened a public hearing on the application dated July 1, 1979, of Lincoln-Sudbury Regional School District, for a license to store inflammables - 35,500 gallons of fuel oil - at property located at 390 Lincoln Road, Sudbury.

Executive Secretary Richard E. Thompson stated that all appropriate Town Officials and abutters had been notified and noted receipt of the following communications:

- from the Building Inspector, dated September 18, 1979, stating "no problems are foreseen by the issuance of the permit requested";

- from the Fire Chief, dated September 14, 1979, stating no objection to the issuance of a license to store 35,000 gallons of #4 fuel oil and 500 gallons of #2 fuel oil underground at the LSRHS.

The Executive Secretary gave abutter Virginia M. Menge, at her request, a copy of the plan showing the location of the three tanks for the underground fuel storage.

Mrs. Menge asked if the tanks were double-wall tanks. The Fire Chief stated that he was not sure if they were double-wall tanks, but was sure they met safety requirements when installed 4-6 years ago; that his recommendation to allow the storage was based on the former Fire Chief's approval of the same, and that the reason for the application at this time is to request a change in the type of fuel oil to be stored. (#6 fuel oil is presently stored in the tanks.)

The Fire Chief responded to concerns expressed relative to the safety of tanks which have been underground for several years, by stating that the tanks can be air pressure tested to determine any leakage. He said this procedure has not been routinely followed by his Department because it has never been required (except in the case of Coatings Engineering, which was a new tank), but that it appears to be a procedure which some towns are adopting or looking into.

Responding to Selectman Hotch, the Fire Chief stated that he would obtain information for the Selectmen relative to the cost involved and other technicalities of having pressure tests required on all tanks requested in the future for underground storage of inflammables.

Fire Chief Frost further commented that LSRHS very carefully monitors its tanks with the use of visual controls, etc., and would know immediately if there were a leakage.

Following further discussion it was on motion by Selectman Cossart unanimously

VOTED: To approve the application of the Lincoln-Sudbury Regional School District to store underground 35,000 gallons of #4 fuel oil in 20,000 and 15,000 gallon tanks and 500 gallons #2 fuel oil in 500 gallon tank, for a total allowed storage of 35,500 gallons at property located at 390 Lincoln Road. This license to store 35,500 gallons replaces and makes null and void any previous storage licenses granted for 390 Lincoln Road.

Utility Petitions #79-97 and #79-98 Pelham Island Road

Present: Robert L. Blake, Boston Edison Company.

In conformity with General Laws, Chapter 166, Sections 21 and 22, the Board considered Utility Petition #79-97 of Boston Edison Company and New England

Telephone Company for permission to erect or construct, and a location for, a pole, and such other fixtures including anchors and guys as may be necessary to sustain or protect the wires of the line, to be used in common by them upon, along and across the following public way of the Town: Pelham Island Road,

southwesterly side, approximately 27 feet
northwest of Beckwith Street, One (1) pole (Two
(2) existing JO poles to be removed); and

Utility Petition #79-98 of Boston Edison Company and New England Telephone and Telegraph Company for permission to lay and maintain, and a location for, such a line of conduits and manholes with the necessary wires and cables therein, under the following public way of the Town: Pelham Island Road,

at and northwesterly from Beckwith Street,
a distance of about 11' - Conduit.

Executive Secretary Richard E. Thompson reported that all appropriate Town officials and abutters had been notified, and that a report dated September 4, 1979, from the Wiring Inspector, had been received, recommending approval.

Following a brief explanation of the utility petitions by Robert L. Blake of the Boston Edison Company, it was on motion by Selectman Hotch unanimously

VOTED: To approve Utility Petition #79-97 - Pelham Island Road, as described above, and as shown on a plan entitled "Plan of Pelham Island Road, Sudbury, Showing proposed pole relocation and removal", dated July 12, 1978; and Utility Petition #79-98, Pelham Island Road - as described above, and as shown on a plan entitled "Plan of Pelham Island Road, Sudbury, Showing Proposed Conduit Location", dated July 12, 1979.

Landham Road Reconstruction - Payment Statements for Reimbursement

Following a brief discussion it was on motion by Selectman Hotch unanimously

VOTED: To sign a Payment Statement, confirming payments by the Town of Sudbury to R. Bates & Sons, for the construction of Landham Road, for the period beginning June 6, 1979, and ending August 31, 1979, for submission to the Department of Public Works for reimbursement.

Utility Petition #79-96 - Peakham Road

It was on motion by Chairman Murray unanimously

VOTED: To sign Utility Petition 79-96, dated July 5, 1979, approved by the Board of Selectmen on September 10, 1979, which has been revised by the Boston Edison Company and the New England Telephone and Telegraph Company, in accordance with the Board's vote of September 10, 1979.

Chapter 521 of the Acts of 1979 - State Building Code

Present: Fire Chief Josiah F. Frost.

On the recommendation of the Fire Chief's communication dated September 20, 1979, requesting that the Board vote to reject the provisions of Chapter 521 of the Acts of 1979, an act facilitating the use of alternate energy home heating equipment, and to impose those provisions of the State Building Code and the one and two-family dwelling code concerning labelling prior to January 1, 1980, in the Town of Sudbury, and a recommended motion in a communication dated September 28, 1979, from Town Counsel, it was on motion by Selectman Hotch unanimously

VOTED: That the provisions of the State Building Code and the one and two-family dwelling code concerning the labelling of solid fuel burning appliances and factory-built chimneys be imposed in the Town of Sudbury, in accordance with section 2 of Chapter 521 of the Acts of 1979.

Sudbury Nonprofit Housing Corporation

Present: President Helga Andrews, Sylvia Throckmorton, Susan Boak, Nancy J. Moore, Barbara Twombly, Judy Mack, Stanley G. Russell, Sudbury Nonprofit Housing Corporation; Susan Berry, League of Women Voters; and William Roop, McNeil & Associates.

Chairman Murray welcomed the members of the Sudbury Nonprofit Housing Corporation (SNPHC).

President Helga Andrews introduced the members of the SNPHC. She said that, following the disapproval of their housing article at the 1978 Annual Town Meeting, the SNPHC agreed that they would need a professional to answer the types of questions asked by Town Meeting before returning to Annual Town Meeting with another proposal. Following their review of several different firms, the SNPHC chose the services of McNeil & Associates because they were most impressed with their work. Mrs. Andrews introduced Mr. Roop of McNeil & Associates.

Mr. Roop gave a brief history of his company and submitted a photograph album to the Board showing various designs of various housing units, single and multi-family, developed in other suburban communities.

Mr. Roop explained that, as owners, they have a genuine interest in the quality of their designs, structure, development and management of their housing projects. He emphasized his company's interest in working closely with Town officials and the SNPHC in all phases of development. He invited the Selectmen and other Town officials, departments, boards, etc. to attend an upcoming open house of a housing development recently completed in the Town of Wellesley.

Chairman Murray cautioned Mr. Roop to be well prepared for the many questions and concerns surrounding the issue of nonprofit housing and not to hurry into a Town Meeting without sufficient publicity, exchange of views, and information relative to the same. Chairman Murray suggested that Mr. Roop review the minutes of the 1978 Annual Town Meeting so that he could be well aware of the concerns which surfaced at that time, and which may still be the concerns of many at this time.

Mr. Roop stated that he had already reviewed those minutes and that Chairman Murray's advice was well taken. He said that many of the concerns voiced are the same as his own concerns and that his firm is, and will be, sympathetic to the concerns of the Town of Sudbury.

Mr. Roop stated that the SNPFC is presently considering a site in Sudbury, but that until the problems on the site are worked out, he would not recommend giving publicity to a site not yet approved.

Mr. Roop indicated that he has found it very successful to approach a town's Board of Appeals for approval of this type of project without the vehicle of Annual Town Meeting; following discussion, it was the unanimous position of the Board that any such housing project should go back to the Town Meeting for their decision on the same.

Mr. Roop expressed his experience with the ineffectiveness of a request for a low/moderate income housing bylaw change at an Annual Town Meeting without strong local support, and he would keep open the Board of Appeals route to recommend to the Sudbury Non-profit Housing group if it appears later it would be necessary to do so. He further informed the Board that he had discussed the preceding alternatives with the Sudbury Housing Authority.

Responding to the Selectmen on both points, Mr. Roop stated that he is working with the Board of Health relative to specifications for a disposal system, and that he would hire an appropriate design person to handle such plans for approval.

Responding to Selectman Hotch, Mr. Roop explained the criteria for mixed income units as follows: 30% low income in the \$5-6,000 range; 50% middle income in the \$17,000 range; and 20% full or market income. Mr. Roop stated that there is no stigma of low income families; also, that the number of families with children are controlled somewhat.

Susan Berry, League of Women Voters, stated their support and that the League is glad to hear that the Selectmen are in agreement in the need of such a housing project.

It was the Board's unanimous decision that the SNPFC should work on their approach in addressing specific concerns of the Town at Town Meeting, and that publicizing information about the housing project and getting local Board and Commission support vital if success is going to be reached through Town Meeting action.

Chairman Murray thanked everyone for attending tonight and for their presentation.

Chairman Murray recessed the meeting at 9:00 P.M. for a five minute coffee break; the meeting was called back to order at 9:05 P.M.

General Discussion Relative to Filling Positions Of: Building Inspector,
Zoning Enforcement Agent, Wiring Inspector, Sealer of Weights and Measures,
and Dog Officer

Present: Warren E. Boyce, Deputy Wiring Inspector; Earl D. Midgley Deputy Building Inspector; James V. Merloni, Town Engineer; Millie Fullam, Secretary, Engineering Department; and Dorcas LeMoine, Office Supervisor, Building Department.

Dog Officer

The Board reviewed a communication dated September 21, 1979, from the Dog Officer requesting, on the recommendation of Assistant Dog Officer Betsy M. DeWallace, the appointment of Donna C. Mahlowitz for back-up coverage.

Following discussion it was the consensus of opinion that the Board would hold on the recommended appointment for the following reasons: 1. to review the application of Donna C. Mahlowitz and another received in the Selectmen's office today; and 2. to determine the capacities of the duties of the Assistant Dog Officer and compensation, if any, for the same.

It was on motion by Chairman Murray unanimously

VOTED: To appoint Betsy M. DeWallace to the position of Dog Officer, effective October 6, 1979, for a term to expire April 30, 1980.

Executive Secretary Richard E. Thompson distributed copies of Assistant Town Counsel's communication of September 27, 1979, responding to questions raised by the Board concerning the filling of the several positions currently held by Francis E. White.

Sealer of Weights and Measures

The Board agreed to table discussion relative to the filling of the position of Sealer of Weights and Measures. Selectman Cossart generally commented that a Civil Service examination might be required; Mrs. LeMoine stated that Mr. White had taken this Civil Service examination in conjunction with the position of Sealer of Weights and Measures.

Building Inspector/Zoning Enforcement Agent

Mr. Thompson recommended that the Board appoint the Town Engineer, Acting Building Inspector, Zoning Enforcement Agent on a part-time basis, until such time as the Board takes a position on the appointment of a full-time Building Inspector; Zoning Enforcement Agent Mr. Boyce and Mr. Midgley, as Deputies, upon their consent, to continue in that capacity, with the understanding that there is the possibility of a heavier work load until the full time appointment is made. Mr. Thompson stated that he had spoken individually to both Mr. Boyce and Mr. Midgley and requested that they evaluate their positions and make a recommendation to the Board regarding compensation for additional Town work.

Responding to Chairman Murray, Mr. Boyce stated that he would be willing to take over the position of Wiring Inspector upon mutual agreement as to his duties

and compensation for the same. He stated that he renews his Master Electrician License yearly.

Mr. Midgley stated that he could have a personal conflict with his own work in his capacity as Building Inspector if it were to be on a permanent basis. He stated further that as long as he is helping out in the Building Office, he would function to the best of his ability and that, following the appointment of a full-time Building Inspector, he would be willing to assist him, in any way possible, and then continue his previous assignment workload as Deputy Building Inspector.

Selectman Hotch expressed some concern relative to the inconveniences to these men by temporarily accepting these more demanding part-time positions and suggested conducting interviews, as soon as possible, to fill the full-time positions held by Mr. White.

Responding to Selectman Cossart, Mr. Midgley stated that it would not be a problem for him to open the Building Office at 7 a.m., and that he would be available generally from 7-9 a.m., which is the busiest time in the Building Office.

The Town Engineer offered his assistance and stated his willingness to work with the Deputy Officers in the administration of the Building Office. Mr. Merloni stated that there would probably be no reason to change his office hours which are currently 8 a.m. - 4:30 p.m.

It was on motion by Selectman Hotch unanimously

VOTED: To appoint James V. Merloni as Acting Building Inspector/Zoning Enforcement Agent, effective October 6, 1979 for an indefinite term.

Mr. Thompson informed the Board that sixteen applications have been received, and that the office has acknowledged all of them. Mr. Thompson continued to say that he is waiting for some response to an employment advertisement placed in the State-wide publication The Beacon. Mr. Thompson also suggested that the Selectmen stop into the office to look over the applications received and make recommendations for interviews.

Mrs. LeMoine asked the Selectmen to explain her position as far as the operations of the Building Office are concerned and from whom she should take direction.

Following a lengthy discussion it was mutually agreed that any procedural problems should be handled through the Selectmen's office, since the Building Department is under their jurisdiction and any technical and/or zoning problems should be handled by Mr. Merloni, who will be available on a daily basis; Mrs. LeMoine should continue to answer any statutory, zoning or other questions, because of her familiarity of the same; the only real change in the operations of the office would be that Mrs. LeMoine should no longer use Mr. White's stamp on Building and Wiring Permits, but should hold them, and issue them, after being signed by Mr. Merloni, Mr. Midgley (Building Permits) or Mr. Boyce (Wiring Permits).

There being no further discussion, Chairman Murray thanked everyone for attending; Mr. Thompson reminded Mr. Boyce and Mr. Midgley to respond to him

that week with the information he requested regarding remuneration, so that the Board can submit the same to the Finance Committee if necessary for its approval of appropriate Reserve Fund transfer, and stated he would consult with Town Counsel regarding Civil Service examinations in conjunction with the position of Sealer of Weights and Measures.

Tax Anticipation Notes

Present: Frank H. Grinnell, Tax Assessors.

Following a brief discussion it was on motion by Chairman Murray unanimously

VOTED: To approve a request dated September 27, 1979, from the Town Treasurer to borrow \$1,000,000 in Tax Anticipation Notes, with concurrence by the Town Accountant, in his letter dated September 27, 1979.

Proclamation - United Nations Day, October 24, 1979

It was on motion by Chairman Murray unanimously

VOTED: To issue a proclamation in observance of United Nations Day on October 24, 1979.

Reserve Fund Transfer

Present: Edward L. Glazer, Chairman of the Finance Committee.

The Board reviewed Request No. 0846 for Reserve Fund transfer, October 2, 1979, to Surveys and Studies Account No. 501-81, in the amount of \$1,887.50. Executive Secretary Richard E. Thompson explained that the purpose for this transfer is to provide funds to be expended for the Hosmer House project, which will be reimbursed by the State and returned to the Town's General Fund.

Following a brief discussion it was on motion by Chairman Murray unanimously

VOTED: To approve Reserve Fund Transfer Request No. 0846, dated October 2, 1979, for the Surveys and Studies Account (No. 501-81), in the amount of \$1,887.50, for the purpose stated above.

Appointments - Town Report Preparation Committee

The Board agreed to table appointments to the Town Report Preparation Committee, since names of candidates had not been received by the Selectmen.

Current Items of Interest

School Committee Purchase - LSRHS

Chairman Murray informed the Board that the LSRHSD School Committee voted to purchase a computer rather than lease and will save \$8,000 by doing the same. Mr. Thompson stated this would be on the Selectmen's agenda for action on October 9, 1979.

Knights of Columbus Request to Solicit Donations

Executive Secretary Richard E. Thompson referenced a communication dated September 26, 1979, from William E. Kneeland, Jr., Grand Knight, Sudbury Council #5188 of the Knights of Columbus, requesting permission to solicit donations in front of Star Market, MacKinnon Liquors and the First National Store on Friday, October 5th from 4-9 p.m. and Saturday, October 6th from 9 a.m. to 6 p.m. Town Counsel stated that by statute two things are required in order to solicit donations: 1. owner's permission; and 2. Selectmen's approval. The Selectmen discussed whether or not they should require permission in writing from the various business establishments, but agreed that it was the concept they were approving, and that it may create a hardship on charitable organizations to require formal written approval from local merchants.

It was on motion by Chairman Murray unanimously

VOTED: To allow the Sudbury Council #5188 of the Knights of Columbus to solicit donations in front of Star Market, MacKinnon Liquors and the First National Store in Sudbury, Friday, October 5th from 4-9 p.m. and Saturday, October 6th from 9 a.m. to 6 p.m., in accordance with a communication from William E. Kneeland, Jr., Grand Knight, dated September 26, 1979.

The Washingtons' Portraits

In accordance with the Board's vote of September 24, 1979, the Executive Secretary reported that the portraits of the Washingtons will be owned by the Trustees of the Museum of Fine Arts, and the Trustees have agreed to loan the portraits out to other museums.

Police Station Leaching Field

Executive Secretary Richard E. Thompson referenced a communication dated September 26 from the Permanent Building Committee (PBC) requesting that the Selectmen request the Board of Health to physically locate the existing Police Station leaching field and negotiate the purchase of additional land for that purpose, if necessary. The Board so concurred and Chairman Murray suggested that abutters be notified of the Town's possible interest in obtaining easements from them for that purpose.

Sudbury Telephone Case

On the subject of Sudbury's telephone Case No. 18153 before the Department of Public Utilities, the Board directed the Executive Secretary to respond to Estelle V. Simon's letter of September 17, 1979, informing her that the Board had received her letter and that the Selectmen do not believe it would be in the Town's best interest, or the petitioners', to seek a writ of mandamus against the Massachusetts Department of Public Utilities involving Case 18153, and further informing her that Mr. Murray has learned from the DPU that a decision on this case is imminent.

Bussing Communication

The Executive Secretary referenced a communication dated September 27, 1979 from Angela Moncrieff, S. L. Anderson, and Linda J. Kerville, relative to the

school bussing problem, and was directed by the Board to acknowledge the same.

Special Constable for Traffic Duty Only at Raytheon Company

In accordance with the Board's vote of September 24, 1979, the Executive Secretary reported that he contacted the Security Officer at Raytheon Company and informed him of the Board's concerns relative to procedure of appointing traffic officers. Chairman Murray reported that he had discussed the matter with the Chief of Police, and on his recommendation, the Board directed the Executive Secretary to place this matter on the future agenda.

Town Planner

The Executive Secretary referenced his letter to the Planning Board dated September 26, 1979 dealing with the possibility of obtaining federal Chapter 701 planning funds and/or state funds from the Office of Administration and Finance, copy of which the Board was in receipt of. After discussion on the same, the Board agreed to pursue the matter after response from the Planning Board.

Chairman Murray requested that if and when they do pursue the matter, he definitely feels the title should change to reflect actual job duties.

Zoning Bylaws

Selectman Cossart, in responding to an article referring to his comments after the Selectmen's meeting of September 24 dealing with restrictive zoning, suggested to the Board that Town Counsel's Office pursue reviewing the definitions of permitted uses in various zones in the Zoning Bylaw and make recommendations for updating, clarifying or amending the same for a possible warrant article for the next Annual Town Meeting. After discussion, the Board concurred to authorize Counsel's office to pursue the same and report back to the Board.

Chemical Contaminations

Selectman Cossart recommended that the Executive Secretary obtain more copies of a booklet put out by a Special Legislative Study Commission entitled, "Chemical Contaminations, September 1979", so that copies might be distributed to interested Town boards and commissions. Selectman Cossart commented that it was an excellent publication categorizing statewide water supply problems.

Minutes

It was on motion unanimously

VOTED: To approve the minutes of the regular session of September 24, 1979, as amended.

There being no further business to come before the Board, the meeting was adjourned at 11:25 P.M.

Attest: _____

Richard E. Thompson
Executive Secretary-Clerk

JOHN CHRISTOPHER POWERS, ESQ.
ATTORNEY AT LAW

SUITE 5, 22 UNION AVENUE
POST OFFICE BOX 305
SUDBURY, MASSACHUSETTS 01776

TELEPHONE
AREA CODE 617
443-8655

To the Honorable Board of Selectmen
Town Hall
Sudbury, Massachusetts 01776

Re: Site Plan, Wendworth Corporation

Gentlemen:

I am appreciative of the fact that the hearing upon the Wendworth Corporation site plan for the Boston Post Road site has closed and that in accordance with your vote, the matter was "taken under advisement."

Under normal protocol I would not submit further written argument. The formal hearing provided an ample vehicle for the presentation of evidence. That evidence represents the basis upon which the application must be judged. We believe that record, including approvals by the Building Inspector, the Town Engineer, the Planning Board, the Board of Health, etc., is compelling in showing that the petitioners have complied with the existing by-laws and rules and regulations of the Town. No contrary evidence exists on that record.

I am prompted to submit further, brief argument to your Board only because of the facts revealed in The Sudbury Town Crier of September 27, 1979, as appears on Page 2 under the title "Ban Fast Foods." Apparently, in our absence, after the hearing was closed, but in front of the public press a Board member (who has specifically advised us during the hearing that there was no prejudice against the type of business in which the petitioner is engaged), discussed "violent" opposition by "some" residents and proposed that your Board should offer changes in the Zoning By-Law to prohibit such a use.

I am sure you can appreciate my concern. No such "violent opposition" occurred at the hearing - in fact, no opposition occurred except for a brief statement made by counsel for the Dairy Queen, concerning traffic

data presented by the petitioners. As the use we propose is clearly within the permitted uses for which the property is zoned, I could only expect that such questions were properly closed.

Under these circumstances, it is at least in order for me to add somewhat to the argument (not the evidence) which was presented to your Board during the formal hearing.

I would stress the following points:

FIRST: THE PROPERTY OWNER IS ENTITLED TO THE PROTECTION OF THE ZONING BY-LAWS

Our Constitution, in Article 1, Section 1, provides that "all people" have certain natural, essential and unalienable rights, among which may be reckoned "that of acquiring, possessing and protecting property."

"It is the constitutional right of a person in the community to acquire and possess property and to transact legitimate business." (4. Opinion of Attorney General (1914)).

The owners of this property have owned it, and paid taxes upon it, under one title or another for more than forty years. From the original zoning in 1939, when this property was designated as "Business District One" through its rezoning in 1951 to industrial uses, those tax payments were based upon the commercial uses permitted, as you know, at a higher rate than other property in town. Now that these owners have grown old and wish to sell this property to provide for their advanced years, they are entitled to a recognition by your Board of their rights.

SECOND: THE PROPERTY OWNERS ARE ENTITLED TO THE PROTECTION OF THE EXISTING ZONING BY-LAWS

Our Constitution, in Part One, Article X, provides "Each individual of the society has a right to be protected by it in the enjoyment of his .. property, according to standing laws."

"In fine, the people of this Commonwealth are not controllable by any other laws than those to which their constitutional representative body have given their consent."

In this case, acting under the police power of the Constitution, the Town of Sudbury, by a two-thirds' vote of a town meeting has clearly stated that the proposed use is proper and permitted. The owner's rights exist now. They are vested now. And they are not subject to some sort of suspension while someone who disagrees with that law seeks to change it.

THIRD: THE OWNER'S RIGHT TO USE HIS PROPERTY FOR THE PURPOSE FOR WHICH IT IS ZONED CANNOT BE OVERTURNED BY SITE PLAN RULE-MAKING POWER OF THE BOARD OF SELECTMEN

It is important to consider the exact wording of Section VA of the Zoning By-Law, and at the clearly worded intent of that By-Law.

It states, "The Selectmen shall adopt reasonable rules and regulations governing the submission, form and procedures for site plan approval ... These rules and regulations shall in no way conflict with other provisions of the laws of the Town..."

And it goes on to say:

"In considering a site plan under this subsection, the Board of Selectmen shall assure to a degree consistent with a reasonable use of the site for the purposes permitted by the regulations of the district in which it is located ... etc."

In using this language, the Town was specifically recognizing the fundamental principles of property laws as set forth in the Consitution; principles stated in another way by the Supreme Judicial Court in Sperry & Hutchinson Company v. McBride (1940) 307 Mass. 408 - "... cannot under the guise of protecting the public arbitrarily interfere with private business or prohibit lawful occupations or impose unreasonable and unnecessary restrictions upon them."

Any concern under the site plan provisions to address "convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent streets and land" is consequently conditioned upon the generally protective language which aims at securing to the owner his right to use the property reasonably for the uses which are recognized by the general zoning by-laws pertaining to the district in which it is located.

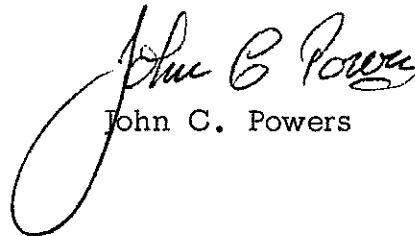
FOURTH: THE OWNERS ARE ENTITLED TO FAIR AND EQUAL TREATMENT WITH ADJACENT OWNERS OR THEY ARE NOT BEING ALLOWED THE REASONABLE USE OF THEIR PROPERTY

"Equal protection of the laws requires that all persons in the same category and in the same circumstances be treated alike" - In re Opinion of the Justices (1955) 332 Mass. 769.

Suffice it to say that the adjoining properties contain two restaurants - the very use sought by the petitioners. The difference in zones does not matter, as the use requested is the same, and in all cases is permitted by the existing zoning by-laws of the Town for these districts. The tests applied to one should be the same as for the others. No one should have a greater burden to carry than the others.

I thank the Board for their courtesy for myself and my clients. We have every confidence that your Board, in performing its duty, will fully recognize that the rights of the public and the rights of the owners are matters of equal importance in your deliberations and that a duty is owed to each. We are further confident that these concerns are clearly not at odds with each other, and that the recognition of both public concerns and private ownership do not conflict. We are confident that your Board will render its decision based upon the facts contained in the record and upon the existing law, and will approve the site plan as submitted.

Very truly yours,



John C. Powers

JCP/jem