

IN BOARD OF SELECTMEN
MONDAY, DECEMBER 29, 1980

Present: Chairman John E. Murray, Anne W. Donald 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.

Holiday Pay - Fire Chief

Present: John H. Wilson, Town Accountant.

The Board tabled discussion at its last meeting until the Town Accountant could be present to discuss with the Board his communication of December 18, 1980, relative to holiday pay for the Fire Chief.

Executive Secretary Richard E. Thompson distributed copies of G.L., Chapter 147, s. 17F, Police Chiefs, et al; working on holidays; additional pay, and Chapter 48, s.57E, Fire Chiefs; working on holidays; additional pay.

Mr. Thompson stated that the main thing to be resolved is whether or not the Fire Chief can be paid beyond the maximum salary specified in the Town Bylaws for that position in order to be compensated for holiday pay over and above his regular salary, in accordance with G.L. Chapter 48, s. 57E.

Mr. Wilson responded to Chairman Murray that monies for holiday pay for the Chief would be taken out of the overtime account regardless of the fact that holiday pay is different than overtime. Mr. Wilson stated that this statute (Chapter 48, s.57E) is used widely throughout the State, but thought it was important to alert the Selectmen of the precedent that is being set by doing so. Mr. Wilson stated that if the Chief feels he will be working holidays in the future, some additional amount should be included in the overtime account. Mr. Wilson suggested, in addition, that the gap between the Chief's present salary and the maximum should be greater so that the maximum will not be exceeded to accommodate holiday pay, in accordance with the Town Bylaws.

Assistant Town Counsel Thomas M. French, responding to the question of what should prevail, the Town Bylaw or the Massachusetts General Laws, stated that in many cases a Town Bylaw may be more strict but as a rule the G.L. prevails. Mr. French stated that the question is whether or not there is actually a conflict, in this case, between the two or simply an added restriction by the Town Bylaw.

There was some discussion regarding the evolution of the salary for the Fire Chief, during which Mr. Wilson reiterated what was stated in his communication of December 18th, that the Fire Chief's salary already included a per diem rate for holidays in his base salary, beginning in 1978-79, as did the Police Chief's. The Selectmen expressed their recollection that the larger than usual increase for the Fire Chief that particular year was only to close the gap between his and the Police Chief's salary, not necessarily to include holiday pay.

Following further discussion, it was the consensus of the Board to refer the subject to Town Counsel for clarification.

Open Dump Inventory

Executive Secretary Richard E. Thompson referenced a communication dated December 18, 1980, from the Department of Environmental Quality Engineering relative to Sudbury's involvement with an Open Dump Inventory required under the Federal Resources Conservation and Recovery Act of 1976 under EPA guidelines.

Mr. Thompson commented that he was unsuccessful in obtaining more specific information from the DEQE regarding Sudbury's apparent violation to certain criteria under the Federal Resource Conservation and Recovery Act of 1976 "Open Dump Inventory" in accordance with guidelines set up by the EPA and conducted by the DEQE. Mr. Thompson stated, however, that he had obtained a copy of the Federal Register, dated September 13, 1979, by the EPA showing criteria for classification of solid waste disposal facilities.

Later in the evening, Mr. Thompson pointed out that this does not appear to be a very serious offense since the majority of the towns included in the Open Dump Inventory will be listed as having various violations. Mr. Thompson noted an upcoming meeting on January 8, 1981, which the Highway Surveyor will be attending at the DEQE, at which time he hopes to obtain further clarification regarding Sudbury's violation. Mr. Thompson stated that he would keep the Board informed.

Application - Agricultural Preservation Restriction Act

Present: Joan C. Irish, Chairman; H. Rebecca Ritchie and Judith A. Cope, Conservation Commission.

The Board reviewed and signed an application of Stephen Verrill under the Agricultural Preservation Restriction Act, which will be filed in conjunction with the Conservation Commission's 1981 Annual Town Meeting article for purchase of interest in development rights.

Site Plans #80-226, 23 Union Avenue and #80-228, 28 Union Avenue

Present: Joseph E. Scammon, Building Inspector; Chairman Joan C. Irish, H. Rebecca Ritchie, Judith A. Cope, Conservation Commission; G. Burton Mullen, applicant, and his attorney, John C. Powers.

In accordance with Article IX, Section V, Paragraph A of the Sudbury Bylaws, the Board considered the following site plan applications:

- #80-226 of G. Burton Mullen, for property located at 23 Union Avenue, Sudbury, Business Zone #5, owned by G. Burton Mullen and Boston & Maine RR (MBTA), for the purpose of building a storage shed for lumber, and erecting 6' high fences on the property; and
- #80-228 of Mullen Lumber Co., Inc., for property located at 28 Union Avenue, business and limited industrial zones, owned by Mullen Realty Trust, for the purpose of adding a shed to the existing building for retail sales.

Executive Secretary Richard E. Thompson reported that all appropriate abutters and Town officials had been notified, and that the following communications had been received:

Relative to Site Plan #80-226

- from Atty. John C. Powers (representing Mr. Mullen), received by the Board from the Building Inspector this evening, explaining that following this filing of the site plan with the Board of Selectmen, the applicant will file with the Board of Appeals for a use variance;
- from the Town Engineer, dated December 18, recommending conditional approval (a wetlands permit requirement by the Conservation Commission and a use variance requirement by the Board of Appeals);
- from the Building Inspector, dated December 4, 1980, recommending conditional approval (applicant must file for a use variance with the Board of Appeals).

Relative to Site Plan #80-228

- from the Town Engineer, dated December 18, recommending approval upon resolving the zoning problem through the Board of Appeals relative to the front setback requirement in that portion of the shed addition which lies in both the Limited Industrial Zone and the Business Zone.
- from the Building Inspector, dated December 4, 1980, recommending approval; and a subsequent communication, dated December 29, 1980, explaining that the addition crosses the zone line dividing a Business District and a Limited Industrial District and does not meet the front setback requirement in the Limited Industrial District of 125 feet; the applicant will, therefore, have to file with the Board of Appeals for a use variance.

Relative to both Site Plans #80-226 and #80-228

- from the Board of Health, dated December 29, 1980, recommending approval;
- from the Planning Board, dated December 18, 1980, recommending approval;
- from the Sign Review Board, dated December 19, 1980, with no recommendation at this time;
- from the Conservation Commission, dated December 21, 1980, requiring a Wetlands Protection Act hearing on both site plan applications. Conservation Commission member Judith Cope was present and stated on behalf of the Commission that a Wetlands Protection Act hearing would not be required on Site Plan Application #80-228.

Representing Mr. Mullen on Site Plan Application #80-226, Atty. Powers gave a brief presentation and showed the plans for the proposed construction of a storage shed and fence, explaining the intention of the applicant to file for a use variance with the Board of Appeals. Mr. Powers explained that by building the storage shed, the present storage location would be eliminated and become an additional parking area which would alleviate some of the traffic problems in that area of Concord Road by the Post Office. Also trucks entering Union Avenue will now only have to enter one lane of traffic heading toward Route 20, rather than two. In addition, it would be to Mr. Mullen's advantage to have the storage

shed abutting the ConRail Line for immediate off loading of lumber. This siding would mean the elimination of using a neighbor's siding and having to transport lumber across the street, which is presently the situation.

Mr. Powers responded to the Selectmen that Colburn Engineering has been working with Mr. Mullen on how to work out water problems in the area - one suggestion was to build a retention pond. Also, the grading and use of crushed stone will help alleviate drainage problems. (There will be no sanitary facilities needed in the shed location, since it will be used solely for storage.)

Relative to Site Plan Application 80-228, Mr. Mullen explained that this is for an addition to the existing building at 28 Union Avenue which will be similar to a two-car garage with overhead doors.

Responding to Mr. Mullen, Assistant Town Counsel Thomas M. French further explained the Building Inspector's concerns regarding the 125' setback requirement of the Limited Industrial District and indicated that there is a question of where retail sales will be taking place and whether that would be allowed in the Limited Industrial District. Mr. French stated that, if the retail sales take place in the Business District, there is no problem. Mr. Scammon read the statute confirming that retail sales in a Limited Industrial District require a permit from the Board of Appeals.

Mr. Mullen indicated to the Board that he would not be in favor of having the stigma of a variance on that property.

At the conclusion of discussion, the Board tabled taking any action on Site Plan Application #80-228, for property located at 28 Union Avenue, until Town Counsel submits his opinion in writing relative to the necessity of filing with the Board of Appeals for a use variance for that portion of the addition which will be located in the Limited Industrial Zone.

It was on motion unanimously

VOTED: To approve Site Plan Application #80-226 of G. Burton Mullen, for property located at 23 Union Avenue, Sudbury, Business Zone #5, owned by G. Burton Mullen and Boston & Maine RR (MBTA), for the purpose of building a storage shed for lumber, and erecting 6' high fences on the property, as shown on a plan entitled "Site Plan of Land in Sudbury, Mass", dated November 20, 1979, subject to the Town Engineer's and the Building Inspector's conditional approval, set forth in communications dated December 18 and December 4, respectively.

Community Bulletin Boards

The Board acknowledged receipt of, and discussed, a communication dated December 18, 1980, from the Sign Review Board relative to the community sign boards on Routes 20 and 117.

Selectman Cossart stated, on behalf of the Board, that the Sign Review Board would continue to be included in the approval process for any sign used at those two locations. However, Selectman Cossart pointed out that the Sign Review Board should understand there are no plans at this time for reconstructing the present sign boards, but that a smaller sign would be constructed, as they recommend in their communication of December 18, if, at any time, the sign boards are reconstructed.

The Board agreed with the Executive Secretary's comment that our "energy" and "speed control" signs should continue to be used, whenever the sign boards are not otherwise in use, rather than leaving the signs blank.

Hosmer Memorial Fund Donations

It was on motion by Chairman Murray unanimously

VOTED: To accept, on behalf of the Town, three checks totaling \$193.00, listed in a communication from the Town Treasurer, dated December 19, 1980, to be deposited to the Edwin Barrett Hosmer Memorial Fund.

Executive Secretary Richard E. Thompson stated that the balance in the Hosmer account is approximately \$3,250.50.

Chairman Murray recessed the meeting at 8:28 p.m. for a coffee break; the meeting was called back to order at 8:30 p.m.

Retail Package Goods Store License to Sell Wines and Malt Beverages - Richard J. Rogers, d/b/a Sudbury Variety, 621C Boston Post Road

Present: Richard J. Rogers, applicant; George L. Siegel, James McCarthy, Douglas Weymouth, Gregory Cannon, abutters and/or residents.

Chairman Murray convened a public hearing on the application of Richard J. Rogers, d/b/a Sudbury Variety, for a retail package goods store license to sell beer and wine at 621C Boston Post Road.

Executive Secretary Richard E. Thompson stated that all appropriate abutters and Town officials had been notified and the hearing was properly advertised on December 12. Mr. Thompson commented that Sudbury, according to its population, is entitled to five such licenses, and that only two have been issued, in accordance with G. L. Chapter 138, s. 17, paragraph 3. Mr. Thompson reported that following communications and documents have been received and/or are on file:

- a report from the State Probation Office, dated December 29;
- a December 8, 1980, application from Richard J. Rogers for a retail package goods store license to sell beer and wine at 621C Boston Post Road;
- a December 26, 1980, communication from the Building Inspector recommending approval;
- a December 18, 1980, communication from the Fire Chief (with fire inspection report attached) recommending approval subject to a further fire inspection, if the license is issued, in the storage areas.
- a December 16 communication from the Board of Health indicating that previous sanitary inspections revealed compliance with Retail Food Establishment Regulations.

- under Chapter 138, s. 123, a statement of interest, dated December 8;
- a copy of Mr. Roger's birth certificate; and
- a business certificate, filed with the State on December 3.

Selectman Donald commented that the applicant is registered to vote in Waltham; Mr. Rogers stated that as of one month ago, he is registered to vote in Sudbury, that he has been a resident of Sudbury for one year. Selectman Cossart stated that he finds himself opposed to this license based on the lack of need for it at that location on Route 20. Mr. Rogers stated that most of his customers are from the Horse Pond Road area of town, and that the convenience of being able to buy beer and wine at his store will eliminate additional traffic heading east on Route 20 to an already overcrowded traffic area.

Dr. George Siegel spoke in opposition of the issuance of this license, on behalf of the Trustees of the Sudbury Medical Center, which is located across the street from the establishment, based on 1) lack of need for another license; 2) the anticipated further traffic congestion at the intersection of Route 20 and Horse Pond Road and the entrance/exit of the Sudbury Medical Center; and 3) further littering problems of beer bottles in the parking lot of the Sudbury Medical Center.

In response to Dr. Siegel's comments, Mr. Roger stated that he lives in the neighborhood, and that it was his concern that the neighborhood did not become more run down. Mr. Rogers added that there is a traffic problem at that intersection but that it has been a problem and will continue to be a problem aside from the fact that he begins to sell beer and wine. As far as the parking lot at Sudbury Medical Center, Mr. Rogers felt that had nothing at all to do with the issuance of his license.

Mr. James McCarthy spoke for himself and his wife by stating that, in his opinion, if there is a license available in Sudbury, it should be issued to a young couple like the Rogerses who are dependable and responsible people.

Mr. Doug Weymouth, 168 Horse Pond Road, stated his opinion that the beer bottles being strewn over Horse Pond Road were from barrooms and not from package stores.

Selectman Donald commented that unless the Board takes a position not to issue any further licenses of this type, based on need, she did not feel justified in opposing Mr. Roger's application. Selectman Donald stated that it would not be fair to reject his application and then possibly issue a license to the next applicant.

Both Selectmen Murray and Cossart indicated that they did not want to take such a hard stand - not to issue any further licenses.

Mr. Gregory Cannon expressed his opinion that, although the need for alcohol is debatable, you cannot stop people from buying liquor. He spoke in favor of the Rogerses having this license and stated that it is better for them to have such a license than to buy liquor from people who do not look old enough to sell it.

At the conclusion of discussion, it was on motion

VOTED: To issue a retail package goods store license to sell wines and malt beverages under G.L. Chapter 138, s. 17, paragraph 3 on premises located at 621C Boston Post Road, Sudbury, to Richard J. Rogers, owner, d/b/a Sudbury Variety, subject to approval by the Massachusetts Alcoholic Beverages Control Commission.

(Selectman Cossart opposed.)

Selectman Donald informed the Board of a January 14, 1981, lecture at Emerson Hospital entitled "Alcohol and Your Child" from 7:00-9:00 p.m.

Selectman Cossart directed the Executive Secretary to forward to Mr. Rogers a copy of the Board's letter, recently sent to all holders of alcoholic beverages licenses, dealing with the mutual concerns in Town regarding the sale of alcoholic beverages to minors.

Chairman Murray thanked everyone for attending tonight.

Draft - Selectmen's Annual Report

Executive Secretary Richard E. Thompson distributed the Selectmen's July 1, 1979-June 30, 1980, financial report and statement reviewed by the Town Accountant and to be submitted as a separate report for the 1980 Annual Town Report.

The Board reviewed and directed the Executive Secretary to redraft the first draft of the Selectmen's 1980 Annual Report for the Town Report, prepared by him, using the suggested amendments.

Selectmen's Non-monied Annual Town Meeting Article

It was on motion by Selectman Cossart unanimously

VOTED: To withdraw the "Amend Bylaws, Art, IX, III - Permitted Uses" article from the original list of non-monied articles submitted by the Selectmen for the 1981 Annual Town Meeting.

Joint Meeting with Planning Board

Present: John C. Cutting, Chairman, Olga P. Reed, Susan Hayden, Secretary, Planning Board.

Chairman Murray welcomed members of the Planning Board to discuss 1981 Annual Town Meeting articles.

Chairman John C. Cutting stated that the Planning Board plans to submit a cluster zoning article, much like the one that was submitted two years ago. (Mr. Cutting briefly explained the changes and the additional background material for the presentation to the 1981 Annual Town Meeting.) Selectman Cossart later commented that he felt the Selectmen should participate more than they did two years ago in the presentation to the 1981 Annual Town Meeting.

The second article which the Planning Board plans to submit is a walkway article for an appropriation of \$55,000 for the completion of the walkway on Dutton Road. Mr. Cutting stated that, although the Planning Board favors walkway articles, they would withdraw this one as we get closer to Town Meeting, if there is something more worthy of a large appropriation.

During discussion it was mentioned that it may be necessary to have that walkway completed in view of the fact that the School Committee is thinking of doing away with more school busses.

At the conclusion of discussion, Mr. Cutting asked if the Board would be represented at their hearing on January 22 in order to discuss the Selectmen's zoning articles. The Board said that it would be represented.

Current Items of Interest

Communication from Maynard Board of Selectmen

The Board acknowledged receipt of a communication from the Maynard Board of Selectmen dated December 19 relative to the MBTA, and directed the Executive Secretary to refer the same to Senator Atkins, Representative Lucile Hicks and MBTA Designee Clifford Hughes. The Board expressed an interest in attending this meeting to be held on the subject of withdrawing from the MBTA.

Court of Honor - Troop 76

Selectman Donald stated that she would attend the Troop 76 Court of Honor on January 9, 1981, at 7:00 p.m. at Curtis Jr. High.

Travel Reimbursement - Police

Mr. Thompson confirmed, as previously requested by the Board, that the Police Contract implies that a patrolman, who is directed to attend courses as part of his job, must be reimbursed for traveling expenses - 18.5¢ per mile. The Executive Secretary was directed to bring this information forward for further consideration at future bargaining sessions.

Articles

The Board noted receipt of the Conservation Commission's land acquisition article for 54 acres on Old Marlboro Road as amended, and a petition article submitted under the direction of the South Middlesex Consumer Protection Office - an appropriation for the support of their services - under cover letter of December 10, 1980.

68 Butler Road

With regard to the neighborhood petition of September 20, 1980 relative to a possible safety hazard at 68 Butler Road, Executive Secretary Richard E. Thompson referenced a communication received from the Health Director, dated December 23, 1980, stating that an inspection was made and that a public health nuisance does not exist. Mr. Thompson added that the Building Inspector had reported that some progress has been made in locating the owners of the vacant property which is vandalized from time to time. Mr. Thompson stated that he would follow-up on this matter immediately with the concerned neighbors.

Town Bounds

Responding to the Selectmen's concerns regarding the form of the Town Engineer's communication relative to correcting the apparent problems of the condition and location of Town bounds, Mr. Thompson stated that he spoke to the Town Engineer and was reassured that everything possible would be done to correct the inadequate conditions of the bounds discussed following the perambulation of the bounds by the Selectmen. The Selectmen signed the communications prepared by the Executive Secretary relative to confirmation of Town bounds to be sent to the appropriate Town governments.

There being no further business to come before the Board, the meeting was adjourned at 9:30 p.m.

Attest: _____

Richard E. Thompson
Executive Secretary-Clerk