

IN BOARD OF SELECTMEN
MONDAY, DECEMBER 21, 1981

Present: Chairman Anne W. Donald and William J. Cossart.

The statutory requirements as to notice having been fulfilled, the meeting was called to order at 8:00 p.m. by Chairman Donald.

Utility Petitions:

Present: Carole Clinton, Boston Edison Company; Robert A. Noyes, Highway Surveyor.

In conformity with General Laws, Chapter 166, Sections 21 and 22, the Board considered the joint Utility Petitions of the Boston Edison Company and the New England Telephone and Telegraph Company, as follows:

a) UP81-20, North Road

- for permission to erect or construct, and a location for, poles, 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:

North Road, southwesterly side, approximately 347 feet southeast of Haynes Road, One (1) pole.

It was on motion by Selectman Cossart unanimously

VOTED: To approve Utility Petition 81-20 of Boston Edison Company and New England Telephone and Telegraph Company, as described above and as shown on a plan entitled, "Private Property and Plan of North Rd., Sudbury, Showing proposed pole location guy wire and anchor", dated September 23, 1981.

b) UP81-21, Peakham Road

Present: Mrs. Sherry R. Fendell and Suzann Stadtfeld, abutters

- for permission to erect or construct, and a location for, poles, 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:

Peakham Road, southeasterly side from a point approximately 3,102 feet northeast of Old Garrison Road, Two (2) poles, (Two (2) existing J.O. Poles to be removed.)

Mrs. Sherry R. Fendell expressed opposition to the placement of pole #90 in front of her property, necessitating the relocation of the stone wall which was pointed out to be on Town property, and during a lengthy discussion it was determined that the original survey for the joint petition pertained to two poles (#90 and 91), but that a third pole, #92 had been excluded because of some breakdown in communication.

At the conclusion of discussion it was on motion unanimously

VOTED: To partially approve Utility Petition 81-21 of Boston Edison Company and New England Telephone and Telegraph Company, for the relocation of pole #91 only, approved according to a plan entitled, "Private Property and Plan of Peakham Rd., Sudbury, Showing proposed pole relocations, guy wire & anchor", dated August 26, 1981; and to hold action on the relocation of Pole #90, the necessity for which shall be reviewed by Boston Edison Company and the Highway Surveyor and brought back to the Board of Selectmen;

and it was further

VOTED: To approve, for the purpose of expediting the relocation of the same by the Boston Edison Company and the New England Telephone and Telegraph Company, the relocation of Pole #92, as discussed, subject to receipt of a joint petition.

Executive Secretary Richard E. Thompson reported that all appropriate Town officials and abutters had been notified and that a favorable joint report had been received for both of the above petitions from the Wiring and Building Inspectors, dated December 17, 1981.

Mr. Thompson referenced a communication dated December 18, 1981, from Highway Surveyor Robert A. Noyes urging the Selectmen to act favorably on Utility Petition #81-21.

Gasoline Bids - 1982 Calendar Year

On the recommendation of the Fire Chief, dated December 18, 1981, due to the high range and small number of bids received, it was on motion unanimously

VOTED: To reject all bids received on December 16, 1981, for furnishing the Town with gasoline for the 1982 calendar year, and to rebid immediately.

Penn Central Property - Haynes and Pantry Roads

Present: Chairman Joan C. Irish, Conservation Commission.

Executive Secretary Richard E. Thompson reported that both the Conservation Commission and the Park and Recreation Commission verbally expressed no interest in an inquiry from the Executive Office of Transportation and Construction as to Sudbury's interest in acquiring property being offered by the Penn Central Corporation in the location of Haynes and Pantry Roads. The Planning Board, on the other hand, expressed a firm interest on an application for the same. Mr. Thompson also noted receipt of a December 17, communication from the Highway Surveyor.

At the direction of Selectman Cossart, the Executive Secretary was directed to inform the Planning Board of the Board's position that, although the land would be fine to have as open space, it is not worth the asking price (\$12,000), and that unless there is something more substantial that the Planning Board can present to the Board justifying the purchase, the Board plans to respond that there is no interest on the part of the Town in this land.

The matter was tabled for one week; the Executive Secretary was directed to contact the Planning Board.

Sanitary Landfill - Cover Material

Executive Secretary Richard E. Thompson reported that Assistant Town Counsel Thomas M. French had reviewed the communication from the Town Engineer dated December 16, 1981, recommending the swapping of gravel at the Route 117 Water District site, now used by the Town, for clay to be trucked to the Sanitary Landfill by contractor S. F. Doyle from his building site on Route 20. In order to clarify that public bidding laws are not relevant to this transaction, Mr. Thompson stated that Counsel under date of December 21, recommends that, since the gravel is on land owned by the Water District, the District authorize Mr. Doyle to remove approximately 4,000 cubic yards of gravel, and that Mr. Doyle make a gift of the clay to the Town.

It was on motion by Selectman Cossart unanimously

VOTED: To concur with the recommendation of the Town Engineer, dated December 16, 1981, and to authorize the Executive Secretary to expedite this procedure with the Sudbury Water District and the Earth Removal Board in the manner suggested by Town Counsel.

Allowable Fees for Alcoholic Beverages Licenses

The Board noted receipt of a communication dated October 5, 1981, received December 15, 1981, from the State Alcoholic Beverages Control Commission advising the Town of increases in allowable fees for alcoholic beverages licenses, effective in 1982, in accordance with Chapter 351 of the Acts of 1981, sections 67 and 68.

It was on motion by Chairman Donald unanimously

VOTED: To make no further adjustments at this time to the Selectmen's Policies and Procedures Fee Schedule, revised by the Board November 3, 1980, effective July 1, 1981.

Moderator's Proposed Articles

The Board discussed, and held for comment by the Town Moderator, two articles for the 1982 Annual Town Meeting, drafted by Town Counsel's office on the recommendation of the Town Moderator and with the concurrence of the Selectmen, dealing with Town Meeting - Order of Articles, and Town Meeting Quorum.

Selectman Cossart stated that this wording of the article dealing with the manner in which Town Meeting takes up articles would have to be revised before he would support the same. Chairman Donald agreed.

Communication - Collective Bargaining

On the recommendation of the Executive Secretary, the Board tabled taking any action on a communication dealing with collective bargaining. Mr. Thompson stated that he was not prepared to report to the Board on the same, and that the subject had been placed on the agenda in error.

Minutes

It was on motion by Selectman Cossart unanimously

VOTED: To approve the minutes of the Regular Session of December 14, 1981, as amended.

Current Items of Interest

Cable Television

Chairman Donald stated that she had received several telephone calls from people interested in serving on a citizen's Cable Advisory Committee. Mr. Thompson stated that the office had also received some inquiries. The Selectmen directed Mr. Thompson to send an application form to all interested persons.

Massachusetts Farm and Conservation Lands Trust

Present: Chairman Joan C. Irish and H. Rebecca Ritchie, Conservation Commission.

Mr. Thompson reported that the Massachusetts Farm and Conservation Trust did not pass papers on the Barton property because of a temporary funding difficulty on the part of one of the concerned parties. The Trust is petitioning the Court Commissioner handling the partition for an extension, possibly to take place within sixty days, or by January 15, 1982. Mr. Thompson stated that the Preservation Restriction on the Barton barns will not be forthcoming for Selectmen's approval this evening. Ms. Ritchie was present and stressed the importance of having the restriction signed by the Selectmen prior to signing papers so that it can be recorded with the deed, and requested that Town Counsel contact her. Mr. Thompson stated that he would relay the message to Town Counsel.

Widening of Route 20

Mr. Thompson relayed a message from Selectman Murray that he had received information relative to the widening of Route 20 - expected to be scheduled for bid in October of 1982. Mr. Murray will report more to the Board at a later date.

Later in the evening, at the conclusion of all other business, the following current items of interest were discussed:

Boston and Maine Corporation - Horse Pond Road Crossing

With respect to a petition to the State Department of Public Utilities by the Boston and Maine Corporation to retire the present flashing light signals at the Horse Pond Road crossing, Mr. Thompson informed the Board, despite its opposition to said petition expressed at its meeting of December 7, 1981, the

hearing on the petition was held on December 16, 1981, and the Boston and Maine Corporation was granted the right to remove said light signals.

Mr. Thompson informed the Board that no notification of said hearing had been received in the Selectmen's office. He also noted Abandonment Order #70-250-m, issued by the U. S. District Court, Boston, on October 3, 1980, which confirms the Boston and Maine Corporation's abandonment of that portion of track on Horse Pond Road.

The Board directed the Executive Secretary to request Highway Surveyor Robert A. Noyes and Safety Officer William Carroll to evaluate all B&M track crossings in Sudbury and, if necessary, advise the Board as to the installation of safety markings.

Communication from Town Counsel

The Board acknowledged receipt of a communication dated December 17, 1981, from Assistant Town Counsel Thomas M. French to the Board of Assessors dealing with Advisory Questions pertaining to property taxation.

Police Budget

The Board concurred to submit the Police Department budget, with the changes explained by the Executive Secretary, upon receipt of a written confirmation from the Police Chief on the same; the change being an increase in the overtime account of \$20,000 to allow for full police cruiser coverage of the Town's three sectors.

Neelon Property

Mr. Thompson informed the Board that a meeting with the Wayland Board of Selectmen to discuss the Neelon property had been rescheduled to January 6, 1982, at 8:00 p.m. at the Loring Parsonage.

Site Plan #81-238, Vesta, Inc., 57 Codjer Lane

Present: Building Inspector Joseph E. Scammon; Chairman Joan C. Irish and H. Rebecca Ritchie, Conservation Commission; Stephen L. D'Angelo, Vesta, Inc., applicant; William A. Senecal, property owner; Atty. Philip Stevenson, for applicant; Atty. Sheldon H. Pitchel, for Codjer Lane abutters; approximately six abutters; and Christie Myrabo, botanist.

Chairman Donald reconvened a hearing, continued from December 7, 1981, by mutual consent, on Site Plan Application #81-238 of Stephen L. D'Angelo of Vesta, Inc., for property located at 57 Codjer Lane, owned by William A. Senecal.

Executive Secretary Richard E. Thompson noted that Town Counsel had responded to the Selectmen under date of December 21, 1981 (which the Executive Secretary distributed to the Board and attorneys) noting the Bylaw (section III.c.2.a.) which allows "Any wholesale storage, wholesale or retail lumber yard, industrial or manufacturing use, including processing, fabrication and assembly. . ."; and further stating that: "Retail lumber yards commonly produce quantities of sawdust and sell building materials other than

wood (e.g. nails, roofing shingles, hardware and drainpipes), kindling and cement. In my opinion the proposed use is similar to this and other allowed uses under paragraph 2.a. Since it is not, however, specifically allowed, a special permit is required under paragraph 2.d. of the Bylaw."

Executive Secretary Richard E. Thompson also reported that the Town Engineer's recommendation, in his November 16 communication, that provisions be made to prevent coal or sawdust from entering Wash Brook (actually Hop Brook at that location), was in relation to environmental esthetics of the site and not ground contamination. Chairman of the Conservation Commission, Joan C. Irish, was present and stated that the Commission is still concerned about the runoff, as noted in its communication of December 4, 1981.

Ms. Christie Myrabo, a botanist from IEP in Wayland, circulated a report, dated December 14, 1981, from the Vice President, Garrett G. Hollands, of IEP, regarding his inspection of the Vesta Site on Codjer Lane. Ms. Myrabo verbally reported that the vegetation in the area wetlands is in good shape at the present time - that there is no stress as far as health and pollution is concerned. Ms. Myrabo also stated that presently the coal and wood is carefully covered, resulting in fewer problems to the vegetation. Ms. Myrabo indicated that unless there were a lot of problems, it would not show up (in the vegetation) at this time.

Atty. Pitchel stated that everyone appears to be concerned with the environment, and asked, "What about the people?"

Atty. Pitchel referenced Town Counsel's reference to section III.c.2.a. which continues, "provided, however, that no use shall be permitted which would be seriously detrimental or offensive to adjoining districts, or tend to reduce property values by reason of dirt, odor, fumes, smoke, gas, sewage, refuse and other waste material, noise or excessive vibration or explosion or fire."

Questioning the intent of a bylaw, Atty. Pitchel stated the following: that Town Counsel made a statement (in his letter) that "retail lumber yards commonly produce quantities of sawdust and sell building materials other than wood, (i.e. nails, roofing shingles, hardware and drainpipes) kindling and cement", and stated the opinion that the proposed use is similar to this and to other uses under paragraph 2.a., stressing that this site plan involves uses not the same as a retail lumberyard. Atty. Pitchel said retail lumberyards do not just sell at retail, quantities of wood and coal for fuel; other things are sold. Atty. Pitchel again stated that the intent of 2.a. is that no use shall be permitted which will be detrimental or offensive or tend to reduce property values.

Atty. Pitchel quoted Section V,A., paragraph 3, item 1 - Special Regulations - regarding protection of adjoining districts. Atty. Pitchel stated that the intent of the bylaw is to protect the citizens who live in the area, and there is a residence within thirty feet, and stressing that in his opinion this is not a compatible use.

Dr. Irwin Leav of 21 Codjer Lane stated he has been living on Codjer Lane for 12 years, and that he purchased the property with full knowledge

that the property owned by Mr. Senecal was industrially zoned. After reading the bylaw regarding uses for industrial zones, Dr. Leav stated, he was satisfied that the same would be compatible to his life-style. However, over the years, other users have attempted to use that property for things other than what was intended. Dr. Leav asked how others would like to have chain saws operating two hundred to three hundred feet from their homes at various times during the day, or how they would feel about retail sales of wood and coal, etc., occurring on property that was clearly designated for industrial use. Dr. Leav added that he felt the key word is "detrimental" or "offensive" in relation to adjoining districts (which in this case is a residential district), and asked that the Board of Selectmen concur with that in light of what use Mr. Senecal and his associates are intending for that property.

Responding to Chairman Donald, Mr. D'Angelo stated that he moves the coal in an open dump truck.

Mr. Daniel Bortle of 53 Codjer Lane stated that he has lived on Codjer Lane for twenty years, and also expressed concern about people operating businesses on the site under special permits or variances. Mr. Bortle requested that the Town enforce the current zoning bylaw as it relates to Industrial Districts, stressing that it was intended for the protection of the area residents. Mr. Bortle added that the bylaw does not mention sale of wood stoves, wood and coal and trucks coming in and loading and unloading the fuel - the approval of the site plan would be a direct violation of the zoning bylaw. Additionally, Mr. Bortle stated that outside storage is in violation as well as outside storage in front of the building.

Atty. Stevenson (for the applicant) referencing the concern regarding the run-off, stated that the coal is washed before it is brought to the site and covered on site so that the elements do not get at it. Referencing the letter dated December 21 from Town Counsel, pointing out that a retail lumberyard is a permitted use, Atty. Stevenson stated that, although the proposed use is not precisely the same thing, it would seem that it would not generate any more traffic, noise and impact on the neighbors as a retail lumberyard.

Atty. Pitchel stated that even though the coal is washed and covered, at some point it is uncovered, and that it is dirty, sooty and prone to fly in the air especially when it is shoveled; additionally, this hard coal will chip.

Mrs. Lois Leav of 21 Codjer Lane referenced the advertisement for Vesta listing "a host of things for sale", which she understood was not allowed in this district.

Mr. D'Angelo stated that approximately 90% of the sales take place at persons' homes; also that they sell a variety of energy products, such as insulation, solar equipment, etc. Responding to the coal residue concern, Mr. D'Angelo stated that coal does not give off any fumes or soot until it is burned, and that there is only a minimal amount of dust when it is loaded into trucks - no more than when shoveling loam. Mr. D'Angelo stated he has received no complaints personally from any of his neighbors as far as the coal dust in their laundry and/or cars, adding his opinion that the pig farm on Codjer is more detrimental to the neighborhood than his business.

Selectman Cossart commented that the weeks' delay from the initial hearing on December 7 was helpful, enabling the superfluous issues to be resolved. Selectman Cossart stated he has no problem with the concerns regarding the use of the coal on site or with the contamination of Hop Brook because of any runoff. However, Selectman Cossart expressed his opinion that the difficulty is this particular lot on Codjer Lane, deeply situated into a residential area, and that, in his judgement, although certain industrial activities could be carried out on that property (such as the storage of coal and/or wood), the noise vibration by use of chain saws, dust, etc., which are inherent to this type of business operation, as are some in a retail lumberyard, could create the situation of a bad neighbor.

Chairman Donald concurred and added that her other concerns are that approval of the site plan is tantamount to endorsing a change in the zoning use, thus, avoiding the normal procedure established for seeking zoning bylaw changes (e.g. Planning Board hearing and Town Meeting approval and that it is not a specifically allowed use in this zoning district.)

At the conclusion of discussion, it was on motion by Chairman Donald unanimously

VOTED: To deny Site Plan Application #81-238 of Stephen L. D'Angelo, Vesta, Inc., for property located at 57 Codjer Lane, owned by William A. Senecal, for a retail business - sale of wood and coal, and the processing of wood for the following major reasons:

1. The proposed use is not allowed under the Zoning Bylaw, section III.c.2.;
2. Although the proposed use contains some activities which may be found in a permitted use, the proposed use is not similar to any permitted use; approval of the site plan would circumvent the protective purposes of the bylaw and deviate from the statutory procedures for bylaw changes; and
3. The adjoining district is zoned residential, and the noise, vibration, dust and waste material inherent in the proposed use would be seriously detrimental and offensive to the adjoining district, and tend to reduce property values.

Later in the evening, Mr. Senecal, Mr. D'Angelo and Atty. Stevenson returned and asked if the site plan could be resubmitted for further consideration, and if they could have a list of specific objections resulting in the denial of the same.

The Executive Secretary responded that the applicant could reapply and suggested that he confer with Town Counsel; also, that they would receive a copy of the minutes of tonight's hearing.

Responding to Mr. D'Angelo, Mr. Thompson stated that the Building Inspector had issued a "cease and desist" (and the Building Inspector confirmed he had) in October, subject to site plan submission, and that the Town's policy is to enforce the same.

There being no further business to come before the Board, the meeting was adjourned at 9:50 p.m.

Attest: _____

Richard E. Thompson
Executive Secretary-Clerk