

IN BOARD OF SELECTMEN
MONDAY, FEBRUARY 8, 1982

Present: William J. Cossart and John E. Murray.

The statutory requirements as to notice having been fulfilled, the meeting was called to order by Acting Chairman William J. Cossart.

Utility Petitions #82-1 and 2 - Old Sudbury and Haynes Roads

Present: Edward F. Chisholm, Boston Edison Company.

In conformity with General Laws, Chapter 166, sections 21 and 22, the Board considered Utility Petitions #82-1 and 2 of Boston Edison 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 ways of the Town:

UP82-1 Old Sudbury Road, northwesterly, approximately 1,039 feet southeast of Concord Road, a distance of about 50 feet - conduit;

UP82-2 Haynes Road, southeasterly, approximately 70 feet northwest of Hadley Road, a distance of about 62 feet - conduit.

Executive Secretary Richard E. Thompson reported that the petitions have been submitted at the request of the Board of Selectmen to facilitate the installation of flashing School Zone signals and that all appropriate Town officials and abutters had been notified; also, favorable joint reports, both dated February 4, 1982, had been received from the Building and Wiring Inspectors.

Boston Edison representative Edward Chisholm explained that two additional petitions will be forthcoming relative to this project when plans are complete.

It was on motion unanimously

VOTED: To approve Utility Petition #82-1, as described above and as shown on Plan No. 00698, dated December 30, 1981;

and further unanimously

VOTED: To approve Utility Petition #82-2, as described above and as shown on Plan No. 00694, dated January 4, 1982.

Minutes

It was on motion unanimously

VOTED: To approve the minutes of the Regular Session of February 1, 1982, as amended and the Executive Session of that date as drafted.

Accept Bid - 1982 Annual Town Meeting Warrant

Following review of a February 3, 1982, communication from Administrative Secretary Janet Silva relative to the February 3, 1982 bid opening for the printing of the 1982 Annual Town Warrant (six bids were received ranging from \$15.85 to 91.625 per page), it was on motion unanimously

VOTED: To accept the bid dated January 27, 1982, from The Rene Press, Inc., for the printing of the 1982 Annual Town Meeting Warrant, at the cost of \$15.85 per page, in accordance with the Town's specifications dated January 18, 1982.

Resignation - Planning Board

The Board acknowledged receipt of a resignation dated February 3, 1982, from Bradley I. Reed from the Planning Board and directed that a letter of appreciation be sent to Mr. Reed for his services to the Town.

Current Items of Interest

Lincoln - Sudbury Regional High School Budget Hearing

Selectman Murray reported that he had attended the Lincoln-Sudbury Regional School Committee (LSRSC) budget hearings before the Lincoln and Sudbury Finance Committees and commented on the difficulties of budget preparation involved with a declining school population, contractual no RIF clauses and Proposition 2 1/2 restrictions, complimenting the Committee for the fine quality of the presentation.

The final recommendation of the Sudbury Finance Committee was \$3,746,279, which is an amount below the LSRHSC request; this recommended amount corresponds to a 3.69% increase in assessment to Sudbury and a higher percentage increase to Lincoln.

Selectman Murray expressed his concern with the fact that projected savings of \$10-20,000 in the transportation maintenance accounts were predicated on the assumption that Lincoln-Sudbury West would move to the Flynn Building, a matter which has not been brought to the attention of the whole Board for discussion and for which there is no agreement between the Board and the District Committee.

In response to Selectman Murray's suggestion that a meeting be held between the Executive Secretary and the present occupants of the Flynn Building to assess their needs and the impact of such an agreement if consummated, and with the Board of Assessors relative to the possibility of moving that department to the Flynn Building, Executive Secretary Richard Thompson stated that he already had held meetings with all Town departments relative to their needs.

After discussion, the Board directed the Executive Secretary to notify the District Committee that to date the Board is not in receipt of any formal request or specific requirements for the use of the Flynn Building by L-S West and will need such to facilitate discussion and fact-finding before coming to agreement, if any, for such use.

Selectman Murray commented that the Board should address this matter within the next three to four weeks with the District Committee because of the budgetary

impact if agreement is not reached for such use. It was noted by the Executive Secretary that a possible meeting between the District Committee and the Board could occur on Saturday, February 27, the date of the all-department ATM82 budget/warrant articles discussion session.

Cable Advisory Committee Applicants

Selectman Cossart suggested that when Committee applicants are notified by the Selectmen's office that final appointments have been made, applicants not appointed should be referred to the Talent Search Committee for possible service to the Town in other capacities.

Sale of Christmas Trees

Selectman Cossart stated that he had received a request from a Christmas tree seller for direction as to proper procedures to pursue to permit such sales from the Board of Selectmen before May 1 so that business planning can be accommodated.

It was noted by the Executive Secretary that the Selectmen had agreed to notify known Christmas tree sellers of the Town regulatory procedures by July 1982, but that the procedures have already been compiled and will be prepared by Town Counsel's office for Selectmen discussion in the near future.

Use of Fairbank School

Selectman Cossart reported that he had received a request from Elydia P. Siegel, 92 Willis Road, Sudbury, on behalf of the Greater Boston Track Club, for the use of the Fairbank School Gymnasium and restrooms on June 13, 1982, from 7 a.m. to 4 p.m., to accommodate the road race scheduled that day. It was noted that the group had paid for use of the facility in the past.

It was on motion

VOTED: To allow use of the Fairbank School gymnasium and restrooms by the Greater Boston Track Club on June 13, 1982, from 7 a.m. to 4 p.m. for a fee to be charged in accordance with prior use fees paid by the organization, provided that the Fairbank School is the property of the Town on that date.

The Board was also informed of the use of Fairbank gymnasium by an additional BAYS soccer team.

Personnel Board Warrant Articles

Executive Secretary Richard E. Thompson stated that he had been informed by Chairman Golder of the Personnel Board that the Board would not be submitting any amendments to the Personnel Administration Plan for the 1982 Annual Town Meeting; therefore, the warrant would state that the article was withdrawn.

Mr. Thompson also reported that the Personnel Board had requested that the Classification and Salary Plan article be printed in the warrant with current salaries and that the Board intends to submit two changes in positions and a warrant report. It was noted by Mr. Thompson that the rationale for printing

the Classification and Salary Plan article with the current salaries is that collective bargaining negotiations which have not been finalized at this time would not be jeopardized. The Board concurred with this approach.

Article 27, 1982 Annual Town Meeting Warrant - Extension of Insurance Coverage

After discussion, it was agreed to amend the warrant report accompanying Article 27; Accept M.G.L. Ch. 32B, s. 17 - Extension of Insurance Coverage for simplification and to amplify the report verbally at Town Meeting.

Site Plan #82-241, M&S Sudbury Realty Trust - 474 Boston Post Road

Present: Stephen P. Steinberg, Trustee, M&S Sudbury Realty Trust; Edward L. Morrill, Manager, The Colonial Spirits; Richard Skarinka, Schofield Brothers, Inc., Engineer; Building Inspector Joseph E. Scammon.

In accordance with Article IX, s. V, Paragraph A of the Sudbury bylaws, the Board considered site plan application #82-241 of M&S Sudbury Realty Trust, Stephen P. Steinberg, Trustee, for property located at 474 Boston Post Road, Business District #5, received in the office of the Building Inspector on January 12, 1982 and which expires on February 27, 1982. Executive Secretary Richard E. Thompson stated that all appropriate Town officials and abutters had been notified.

Mr. Steinberg explained that there is an existing multi-tenant building on the property which he intends to demolish in order to erect a two-story building which will be the new location of The Colonial Spirits liquor store now at 513 Boston Post Road. He explained further that the transfer of the license location to 474 Boston Post Road was approved by the Selectmen on June 1; one of the conditions imposed upon the transfer was site plan approval. Mr. Steinberg stated that the site plan shows a second floor which is not in accordance with the plan submitted with the change in location petition; this was added in response to storage needs resulting from the recent passage of the Bottle Bill. Mr. Steinberg noted that he may have to have the new building plan approved by the Selectmen when completed if required under the liquor licensing statutes, and has indicated this intent in a letter to the Executive Secretary dated January 13, 1982.

Mr. Thompson noted the following reports received:

- from the Conservation Commission, dated January 29, 1982, stating that a Wetlands Protection Act filing is necessary and a further notice of hearing for same scheduled for February 10, 1982;
- from the Building Inspector, dated February 4, 1982, noting that curb cut application has been made, stating concurrence with the Town Engineer's parking layout suggestions under date of January 22, and recommending approval upon parking layout improvement;
- from the Planning Board, dated February 2, 1982, agreeing with the concerns expressed by the Town Engineer and questioning whether the plan shows adequate access for emergency vehicles;

- from the Board of Health, dated January 29, 1982, noting septic system design compliance and recommending conditional approval based on no future interior physical expansion of the building (including use of the second floor for other than storage or activities which do not involve water use); and no future use involving food service operation or a beauty salon;
- from the Town Engineer, dated January 22, 1982, detailing his concerns with the parking configuration and suggesting either reduction in size of the building, therefore reducing parking requirements, or request of a waiver for reduced parking, both of which would require submission of a revised site plan which could be prepared with regard to the recommendations provided.

Mr. Steinberg explained that only one week has elapsed, instead of the usual two, since the Planning Board hearing and for that reason the amended plan (overlay) has been prepared for tonight's presentation incorporating some of the Town Engineer's recommendations, but without the benefit of further review by the Town Engineer. Mr. Steinberg stated that he hoped the Board would give consideration to the intent and expense involved on the part of the petitioner to vastly improve the property and, accordingly, approach the realities of the situation and difficulties in site preparation with flexibility.

Engineer Richard Skarinka explained the parking plans in detail, responding specifically to the Town Engineer's recommendations outlined in his letter of January 22, as follows:

- 1) Relative to the contention that spaces 21-25 could not exit toward the Boston Post Road if spaces 30-35 were occupied, Mr. Skarinka explained that space 29 had been eliminated and that, because of the traffic flow established, cars in the center angle-park aisle would be backing out only toward the perpendicular-park aisle and would have an adequate turning radius for the exit flow as proposed.
- 2) Mr. Skarinka agreed that spaces 9 and 10 would be difficult to exit from if space 42 was occupied; therefore, spaces 9 and 10 have been labelled for sub-compact cars only and space 42 has been eliminated.
- 3) Mr. Skarinka did not agree that spaces 1-8 would be difficult to enter or exit, explaining that the turning radius was adequate and that the elimination of space 42 and the use of spaces 9 and 10 for sub-compact cars would be of added benefit; also spaces 1-8 would be labelled for employee parking only and would, therefore, be used mostly as static parking.
- 4) Mr. Skarinka was in agreement with the potential for traffic back-ups and accidents relative to vehicles backing out of spaces 36 and 37 and, therefore, has eliminated them from the plan.
- 5) Mr. Skarinka expressed disagreement with the contention that trucks could not negotiate the parking lot to make deliveries at the building because of narrow aisle width and sharp turns. He explained that deliveries would only be made at the loading area at the southwest corner of the building

and none will be made to the rear of the building. Mr. Morrill added that deliveries are made by two and one-half-ton vehicles (approximately twenty feet long) which, in his opinion, would encounter no difficulty. Mr. Steinberg stated that deliveries are usually made in early morning and early afternoon.

Mr. Skarinka expressed his general disagreement with the Town Engineer's recommendations on aisle width, stating that the design chosen (aisle width of eighteen feet in areas of angle parking; twenty-three feet in areas of perpendicular parking) utilized an accepted engineering practice from a traffic engineer's textbook.

It was noted by Selectman Cossart that the Town Engineer stated in his letter that the problems as cited above were "but a few such examples" and that those unstated should also be resolved by consultation between the parties.

Mr. Steinberg stated that the reality of the situation is that forty-two spaces are required for the square footage of retail area, the Planning Board has suggested a possible reduction of spaces, and the amended plan shows a reduction of six, but that, at most, his actual need is twenty-four spaces, especially when one considers the small number of employees present at one time and the length of stay of the customers. He added that he hoped this would be an area of compromise.

It was noted by Mr. Morrill that usually twenty percent of the retail space in a liquor store can be considered as non-selling. In this case approximately one thousand one hundred square feet of the first floor would include restrooms, conveyor belt, electric trash compactor and stairway.

Building Inspector Joseph Scammon noted also that there was a possibility of a reduction in the number of spaces required if the mixed-use clause of the regulations was invoked, and that this would be considered when the new plan is reviewed again.

In general, Mr. Steinberg stated that he felt that the site had been visually improved by the addition of landscaping where parking spaces 35, 36 and 37 had been eliminated, by the four foot pedestrian walkway along the front of the building and by more open access to the building itself achieved by eliminating parking space 15 adjacent to the handicapped parking. It was noted that the paved area at the side of the building actually extends beyond the lot line, but that a berm may be constructed to separate parking spaces 38-41 from the adjacent property. In addition, he explained that careful consideration was given to the siting of the building with relation to the septic system, realizing that the abutter to the north would not be building in the wetlands adjacent to the property.

It was on motion on the recommendation of the Executive Secretary

VOTED: To take Site Plan application #82-241, M&S Sudbury Realty Trust, for property located at 474 Boston Post Road, under advisement until February 22, for the purposes of further review of the amended plan by the Building Inspector, Town Engineer and Fire Chief and their subsequent reports to the Board.

Site Plan Application #81-240 - Gold Star Nurseries, Codjer Lane

Present: Arthur Gaklis, Gregory Gaklis, General Manager David Wright, Engineer Carlton B. Colburn, Jr., Atty. John C. Powers, Esquire - Gold Star Nurseries; Building Inspector Joseph E. Scammon; Atty. Robert Dionisi, representing abutters, Mr. and Mrs. William Holden; Ms. Jill Holden, and others.

Executive Secretary Richard E. Thompson stated that in accordance with Article IX,V,A of the Sudbury Bylaws, the Board is continuing consideration from February 1 of Site Plan 81-240 of Gold Star Nurseries for property located in the Industrial Park off Codjer Lane, owned by Melgrove Realty Trust, of approximately 19 acres, to be used for a wholesale nursery business, to allow abutters, Mr. and Mrs. William Holden, who were unable to be present on February 1, to provide input; and to confer with Town Counsel.

Atty. Robert Dionisi, representing the Holdens, stated that his clients oppose the site plan based, in part, on the premise that the property to which it refers is not a legal lot inasmuch as it has no frontage on a public way.

Atty. Dionisi then proceeded to explain his case as follows:

Town Counsel had set forth in his 1976 memo that Codjer Lane is a public way only as the public has a right to use it. Under Chapter 41 criteria, however, a lot so divided must have frontage on a public way which is maintained as a public way; this has been reinforced by a decision in Casagrande v. Town Clerk of Harvard which stated that under the sub-division control law a private way used as a public way can not be used for frontage. Additionally, this lot was created with a right-of-way off Horse Pond Road which is less than the required frontage for a legal lot in a residential district (180'). At the time the Industrial Park was created by Town Meeting action in 1968, the frontage requirement was 0'; now, however, it is 50' and an Industrial Park can not be grandfathered. Therefore, since this lot has neither the required legal frontage for a Residential nor an Industrial Park District and is prohibited from claiming frontage on Codjer Lane under Chapter 41 criteria, it is not a legal lot and cannot be developed as such. Further, Town Meeting never intended that the Horse Pond Road portion of Codjer Lane be used to access the area of the Industrial Park as evidenced by the Resolution passed by Town Meeting in 1968 and the reports of the Industrial Development Commission and Planning Board on the subject.

In response to Mr. Dionisi's argument relative to the legality of the lot itself, Assistant Town Counsel Thomas M. French stated that the Casagrande decision was concerned with the creation of a lot under the sub-division control law which does not apply in this case.

Atty. Dionisi posed his second argument in opposition to the site plan on the premise that the use does not conform to those outlined under the allowed uses of Industrial Park Districts, Article IX, III, C,3, and questioned whether any other future industrial uses of the district would impact on Gold Star Nurseries. In addition he stated that dispossession, the right to erect barriers, and ownership of Codjer Lane ought to be considered, adding that, in his opinion, there has been de facto closing of the Horse Pond end of Codjer Lane since there is no current existing use.

Atty. Powers, responding to Atty. Dionisi's arguments, stated that no one is creating a lot - that the lot has had one line of ownership and that the lots along Horse Pond Road were, in fact, those created. The lot itself and Codjer Lane have had consistent use over the years as a gravel removal site and access thereto; therefore, reference to D'Orlando v. Board of Appeals of Danvers is not applicable since there has been no disjunctive use. Mr. Powers indicated his belief that Town Meeting would never have created an Industrial Park without legal access or frontage on a public way, i.e., Codjer Lane. In fact, at the time, he recalled, it was the only road serving the Industrial Park at the time of zoning. The 1968 Resolution read by Atty. Dionisi, he said, was proposed in terms of concern that Codjer Lane would become a shortcut, or through way, from Union Avenue onto Horse Pond Road, thereby avoiding the Boston Post Road, and the intent was to restrict it to emergency vehicles only at such time as the remainder of the road easterly to Union Avenue was "sufficiently improved to permit its use by motor vehicles of the type that now use the westerly part that would be closed to traffic by such prohibition." He added also that Codjer Lane is shown on the Official Town Map as a public way.

As to the effect on Gold Star Nurseries by other future users of the Industrial Park, Atty. Powers stated his expectation that good judgment would be exercised in the site plan application process.

Atty. Powers contended that the proposed use is, in fact, not different from industrial or manufacturing or storage use, in that plant material is being assembled by hand with containers and soil and then stored.

Building Inspector Joseph Scammon stated that processing, fabrication, assembling and storage noted in the bylaw are, in fact, only incidental to industrial or manufacturing use and that these by themselves do not constitute either industry or manufacturing. Mr. Scammon added that he considers the lot to be a legal lot.

Selectman Murray and Cossart indicated their agreement with the legitimacy of the lot itself.

Richard Brooks, Planning Board member at the time of the creation of the Industrial Park, stated that it was his recollection that at the time the Planning Board reports were being written, the intent was to restrict future access to the site via the Horse Pond end of Codjer Lane, anticipating that the easterly end would be improved.

Ms. Holden commented that when she and her husband purchased the property, the former owner had indicated that that portion of Codjer Lane would not be used as access to the Industrial District because of the 1968 Resolution.

Atty. French responded to Ms. Holden's comments relative to maintaining, specifically snowplowing, the road and question relative to responsibility of snowplowing a public way by stating that the Town has no legal duty to maintain a statutory private way considered a public way.

Ms. Holden also voiced her concern with the number of trucks other than those belonging to Gold Star which might use the Codjer Lane access in a residential district and queried Mr. Gaklis as to the Nurseries' Standard

Industrial Classification (SIC), noting that this is a criteria in Weston's bylaw where Gold Star had a location.

Selectman Cossart stated, in response to this query, that the SIC code is not germane to this application since the code is not referenced in the local zoning bylaw.

Mr. Gaklis added that the Nurseries would not be conducting the same type of activity in the Sudbury location as they are in Weston; the activity would be similar to that at the Cape location. Mr. Gaklis provided a photograph of this operation for the file.

Mr. Brooks commented that the Planning Board at the time of bylaw formation probably did not consider this type of use and asked if the plan met the outside storage provisions. When assured by the Building Inspector that it did, Mr. Brooks added that this use is not too dissimilar from Mr. Bartlett's operation in a residential zone for which he has an agricultural exemption.

After other questions specific to the work activity contemplated at the site, Selectman Cossart requested that any further comments or objections by the abutters be submitted to the Board in writing.

After consultation with the attorney for the applicant, it was on motion unanimously

VOTED: To take the matter under advisement to confer with Town Counsel and the Building Inspector on the question of applicability of use to the District, and to table Gold Star Nurseries Site Plan #81-240 hearing decision by mutual consent until February 16, at which time the hearing will be opened only for the purposes of discussion between the Selectmen and voting.

Shick Property

Present: Judith Mack, SVT; Chairman Richard O. Bell, Sara Bysshe, Conservation Commission; Judith Cope.

Executive Secretary Richard E. Thompson updated the Board on the status of the alternative option to the Town's plan to exercise its option under Chapter 61A to match the \$152,000 bid for the purchase and subsequent acquisition of development rights to the Shick property off Lincoln Road. He reported that the Massachusetts Farm and Conservation Lands Trust (MFCLT), a major party to the proposed offer to purchase, has been exploring the option of securing some undevelopable land and an Agricultural Preservation Restriction (APR) from the present high bidder, Mr. Watt, if his bid is accepted by the Farmers Home Administration. While Mr. Watt maintains that he believes in open space and would not be adverse to an APR after development of 6-9 lots, there is no firm commitment. Mr. Ward of the MCLFT will continue to pursue this option.

The Town financial package which will enable it to exercise its option is contingent upon:

- 1) approval by Town Meeting of an expenditure of \$42,000 from the Conservation fund;

- 2) approval by Town Meeting of a warrant article to submit legislation to the General Court to allow sale of the property;
- 3) 2/3 vote of the Legislature to allow sale; and
- 4) receipt of \$110,000 from the MFCLT.

Conservation Commission Chairman Richard O. Bell stated that the Conservation Commission had voted its approval by telephone to expend \$42,000 from the Fund for the purchase to acquire development rights in the land and would be taking a formal vote at its meeting on February 10.

Selectman Cossart noted that because of Commission action it is no longer necessary for the SVT to participate financially.

Ms. Mack stated her concern that, if the alternate option is pursued, development of the parcel frontage by a private individual would, in all probability, deny access to the public.

It was also recognized that if the Selectmen chose to pursue making an offer based on the current financial package, it would necessitate the submission of two petition articles to allow the necessary Town Meeting action.

After discussion, it was on motion unanimously

VOTED: To exercise the Town's option under Chapter 61A and, accordingly, to direct Assistant Town Counsel to confirm procedures and draft an offer to the Farmers Home Administration to purchase the property subject to the conditions as stated above for review by the Board of Selectmen on Wednesday, February 10.

The Conservation Commission was asked by Selectman Cossart to submit written documentation of its vote to expend the Conservation Fund monies to be submitted with the Town's offer to the Farmers Home Administration.

Ballot Questions - 1982 Town Election

Present: Town Treasurer Chester Hamilton.

Executive Secretary Richard E. Thompson reported that the Finance Committee at its meeting of February 4, voted to recommend to the Selectmen that action be taken to put on the ballot for the 1982 Annual Town Election a question for the exemption from the Proposition 2 1/2 levy limit of the bonding of Articles 30 and 31, Curtis and Noyes school roofs.

Mr. Thompson stated that Assistant Town Counsel Thomas M. French had drafted the questions before the Board at this time in accordance with G. L. Ch. 59.

Atty French, responding to the Board's question relative to the appropriateness of presenting a single question concerning the two schools, rather than two separate questions as drafted, replied that if the bonding was to be done singly, as one bond issue, then one question could be presented.

Town Treasurer Chester Hamilton confirmed that the bonding would be done singly.

In reply to Selectman Cossart, Mr. Thompson stated that, in the Finance Committee's opinion, exemption is desired because projected uses of the levy limit are pushing the limit, that in the future an exemption will help vis a vis 2 1/2, and that presently such exemption might help secure more advantageous bonding conditions.

Mr. Hamilton commented that on the basis of his experience he did not believe it would have any effect on the bonding itself.

It was noted that bonding cost must be included in either the articles or the Treasurer's budget. Mr. Thompson stated that if the budget articles are voted without these sums, unanimous consent of Town Meeting would be required to include the cost in the Treasurer's budget (reconsideration). Mr. Thompson reported that the Finance Committee's recommendation was to include all costs in the articles.

Atty. French commented that, should the Board wish, the law allows the bonding to be exempted even after issuance by a later ballot which could, if desired, include the bonding already issued for the police station addition/alterations.

After discussion, it was on motion

VOTED: To table a decision subject to further discussion with the Finance Committee Chairman, Mr. Cronin, and the Town Treasurer.

The Board directed the Executive Secretary to arrange a mutually convenient meeting.

Executive Session

At 11:00 p.m. it was on motion by roll call

VOTED: To enter into Executive Session for the purpose of discussing litigation, collective bargaining and an expenditure from the Charity Fund, where open discussion of the same may have a detrimental effect.

(Roll call vote: Acting Chairman William Cossart, in favor; Selectman Murray, in favor.)

Acting Chairman Cossart announced that Public Session would not reconvene following the Executive Session.

There being no further business to come before the Board, the meeting was adjourned at 11:30 p.m.

Attest:

Richard E. Thompson
Executive Secretary-Clerk