

IN BOARD OF SELECTMEN
MONDAY, SEPTEMBER 19, 1983

Present: Acting Chairman Anne W. Donald, and Myron J. Fox.

The statutory requirements as to notice having been fulfilled, the meeting was called to order at 7:30 p.m. by Acting Chairman Anne W. Donald.

Site Plan 83-254 - Carolyn J. Mugar, Boston Post Road

Present: Engineer Bruce Ey; Atty. Robert Davis and James R. Walsh for Mugar.

On the recommendation of the Executive Secretary (who also confirmed approval by the Town Engineer and the Building Inspector by their signing of the plans), and after review of the revisions to the plans with Engineer Bruce Ey, it was on motion by Selectman Fox unanimously

VOTED: To approve revised plans C-1, C-2 and C-4 of Site Plan 83-254 for Carolyn J. Mugar, Sudbury Plaza Shopping Center, Boston Post Road, in connection with Planning Board recommendations made when approving the architectural design and the Board of Selectmen's vote of June 6, 1983, specifically under items 4, 6 and 7, subject to the Planning Board's letter of August 23, 1983, (received subsequent to the Selectmen's June 6, 1983 meeting).

Engineer Bruce Ey explained the revisions to the plans; correction of the easterly access on Route 20 to open it up; additional tree plantings on Route 20 side; lighting (carriage lamps) on front and Route 20 sides of building; two parking spaces eliminated against the Route 20 side of building and in their place two planters with birch trees; speed bumps on access road to Nobscot Road; also, Mr. Ey stated the Conservation Commission had approved the pitch of the roof so that only 1/6th of the water runoff will flow off the front of the building (and toward Route 20 drainage) but the majority of the runoff will flow off the back and into the wetlands.

Accept Covenants and Easement - Mugar Site Plan 83-254

Present: Engineer Bruce Ey; Atty. Robert Davis and James R. Walsh, Mugar.

It was on motion by Selectman Fox unanimously

VOTED: To accept covenants and an easement granted by Carolyn J. Mugar to the Town of Sudbury acting by and through the Conservation Commission in relation to Site Plan 83-254, subject to final approval by Town Counsel.

The covenants and easement were signed and held for final approval by Town Counsel.

Executive Secretary Richard E. Thompson stated that Chairman Murray would have his signature notarized on the documents in the Selectmen's office Wednesday.

Sub-lease - Sudbury Community Arts Center

Following discussion, it was on motion by Selectman Fox unanimously

VOTED: To approve a sub-lease agreement form to be used by the Sudbury Community Arts Center at the former Loring School, as amended by Selectman Fox, subject to review by Assistant Town Counsel.

Executive Secretary Richard E. Thompson stated he would point out the change to Selectman Murray and ask if he had any other comment.

Road Race - Sudbury Community Arts Center

Following discussion, it was on motion By Selectman Fox unanimously

VOTED: To approve a road race on Sunday, November 6, 1983, at 12:00 noon, from the former Loring School, sponsored by the Sudbury Community Arts Center, as requested in a communication dated September 11, 1983, subject to approval of the route by Police Administrative Assistant Peter Lembo, as well as his agreement to cooperate in terms of traffic control during the race; especially Route 20 area.

Exchange of Land - Article 16, 69ATM

On the recommendation of the Executive Secretary, it was on motion by Selectman Fox unanimously

VOTED: To execute a deed and also accept a deed in accordance with Article 16 of the 1969 Annual Town Meeting and the plan entitled, "Town of Sudbury, Massachusetts, Plan Showing Exchange of Land Between the Town of Sudbury and J. Philip & Winifred H. Ledger", relative to two parcels of land approximately 1,240± square feet each, situated on the northerly side of Mt. Wadsworth Avenue and adjacent to Mt. Wadsworth Cemetery, to be exchanged between the parties, subject to receipt of the executed deed conveying said portion of land to the Town.

Accept Walkway Easement - Article 17, 73ATM

It was on motion by Selectman Fox unanimously

VOTED: To accept a walkway easement in accordance with Article 17 of the 1973 Annual Town Meeting relative to 84 Concord Road, subject to receipt of the document.

Public Hearing - Ephraim's of Sudbury, 8 Village Green

Transfer of Liquor License, Approve Loan and Pledge,
Common Victualler License, Weekday and Sunday Entertainment Licenses

Present: Atty. Anthony M. Cardinale, Atty. Burton Boyer, Receiver for Todd-Wagoner Corp., and Donald Wagoner, owner and manager Ephraim's Restaurant; Atty; Richard Krinsky, Atty. Joseph Krinsky for creditor Paramount Fountain & Restaurant and Robert W. Tennant, Thomas J. Lyons, Manager; Robert G. Lyons, President; and Thomas Nadolski, Treasurer, all for Kenbo, Inc., and Robert D. Quirk, Beneficiary of Village Green Realty Trust; and Bruce T. Quirk.

Acting Chairman Anne W. Donald convened a public hearing on the application dated August 31, 1983, for a Transfer of a Restaurant License for the Sale of All Alcoholic Beverages, from Donald Wagoner, Manager, Todd-Wagoner Corporation, d/b/a Ephraim's of Sudbury, for property located at 8 Village Green, Hudson Road, Sudbury, to Thomas Lyons, Manager, Kenbo, Inc., d/b/a Ephraim's Restaurant. Also,

- a) question of approving a loan and pledge of the above liquor license as collateral to the South Shore Bank, as required under G.L.c, 138, s.23;
- b) question of approving an application for a Common Victualler License for the above transferee;
- c) question of approving an application for a Weekday Entertainment License for taped background music and live music (three musicians) from 6:00 p.m. to 12:00 midnight, Monday through Thursday, and from 6:00 p.m. to 1:00 a.m., Friday and Saturday; and
- d) question of approving an application for a Sunday Entertainment License for live music (three musicians) from 3:00 p.m. to 12:00 midnight.

Executive Secretary Richard E. Thompson stated that this was a publicized hearing requiring legal notice and such was given; abutters were notified and return receipt requested, a list of which is available on request. Mr. Thompson noted receipt (and distributed those not yet received by the Board) of the following communications and documents:

- from the Board of Health, dated September 19, 1983, listing violations and putting the owners of the property on fourteen-day notice to remedy the same;
- from the Fire Chief, dated September 19, 1983, indicating that Ephraim's has corrected all the deficiencies cited in his letter of September 16 with the exception of the furniture storage on the outside balcony. The proposed new owner has assured the removal of the furniture promptly upon ownership and, therefore, the Fire Chief expressed no objection to the transfer of the liquor license;
- from the Police Administrative Assistant Peter Lembo, dated September 16, 1983, stating no objection to the transfer of the liquor license;
- from the Building Inspector, dated September 16, 1983, recommending approval of said transfer;
- applications as listed above;
- required probation checks and birth records on the officers of the Kenbo Corporation;

- the Corporate Vote of Kenbo, Inc., to authorize and direct the President and/or Treasurer of the Corporation to negotiate and purchase from the Todd-Wagoner Corporation, Ephraim's of Sudbury, and to procure all licenses and permits to continue the operation of the restaurant, including leases; and certifying Robert G. Lyons as President and Clerk and Thomas W. Nadolski as Treasurer;
- the Corporate Vote of Kenbo, Inc., designating Thomas Lyons as Manager of Ephraim's; and
- Articles of Organization of Kenbo, Inc., under G. L. c. 156B, filed with the Secretary of State's Office, dated August 23, 1983.

Atty. Anthony M. Cardinale introduced himself as attorney for Todd-Wagoner Corporation and Atty. Burton Boyer, Receiver for said corporation.

Atty. Richard Krinsky introduced himself as representing the creditor, Paramount Fountain & Restaurant. With him were Atty. Joseph Krinsky and Robert O'Donnell, Vice President of Supply Corp., creditor.

Atty. Robert W. Tennant introduced himself as the attorney for Kenbo, Inc. He introduced the officers of the corporation.

Atty. Richard Krinsky stated there is an execution against the corporation, Todd-Wagoner (and the individual) in the amount of \$90,000 of which a large amount remains unpaid at this time. He expressed his understanding that tonight the transfer of the All Alcoholic Beverages License is from the Todd-Wagoner Corp. to the corporation, Kenbo, Inc., and on March 10, 1983, the Commonwealth of Massachusetts, Middlesex Court, issued an Order (#83-841) stating, in part, the following:

"2. That the said defendant, its officer, servants, agents and attorneys, and each of them, are hereby required and ordered to deliver to said receiver all the property, monies, stock in trade and effects of every kind and nature, belonging to the said defendant in their hands, possession, or control, together with all books, deeds, documents, vouchers, and papers relating thereto, and the said defendant and its officers, servants, agents and attorneys, and each of them, are hereby restrained and enjoined from collecting any of the debts or accounts due to the said defendant and from using, spending, injuring, conveying, transferring, selling, or in any manner disposing of or encumbering any of the effects or property aforesaid, except to deliver them into the hands of said receiver."

Atty. Krinsky stated that, in his opinion, this is a restraining order prohibiting said transfer of the All Alcoholic Beverages License from the Todd-Wagoner Corporation to the Kenbo Corporation.

Atty. Krinsky went on to say that the Receiver has issued an inventory (a copy of which he gave to the Board) showing liabilities in an amount close to one half million dollars and the assets of approximately \$50,000. He felt that the liquor license was one of the major assets of the corporation, that two of the major creditors are the Federal Government and the Commonwealth, and that it would be an injustice to the creditors if this license were transferred tonight.

Atty Burton Boyer referenced an "Order on Receiver's Motion For Leave to Sell Assets", Superior Court Docket #83-841, Raymond A. Johnson, Trustee, vs Todd-Wagoner Corp., d/b/a Ephraim's, authorizing Receiver Burton Boyer "to sell free and clear of all liens or other encumbrances", assets consisting of furniture, fixtures, equipment and inventory; this document was dated July 12, 1983.

Atty. Boyer stated that once he has the purchase price in his hands the creditors will be paid.

Atty. Krinsky pointed out that, under the July 12 court order, only the Receiver can transfer assets and tonight's agenda makes no provision for the licensing proceeds to go to the Receiver but for it to pass from one corporation to another. Selectman Fox stated the Selectmen have nothing to do with the proceeds of the license and that tonight's hearing is limited to the transfer of said license. He agreed that the two court orders are in conflict and indicated his opinion that the most recent one would prevail; Selectman Donald later pointed out that the July 12 court order makes no mention of the liquor license as being one of the assets which can be sold by the Receiver. Atty. Boyer stated that the license is an intangible item and as such was not itemized.

Mr. Bruce Quirk, appearing in his own interest, stated that, in light of the March 10 court order which prevents the transfer by Todd-Wagoner to another corporation, there is a fatal defect in tonight's hearing notice.

Mr. Thompson submitted there was no defect in the notice of hearing and that if Mr. Quirk feels there is, he can appeal it; also, if this transfer is approved tonight, it still has to go to the Alcoholic Beverages Control Commission to be approved and that approval can also be appealed.

Atty. Boyer reiterated that he was appointed by the judge to be the Receiver for the court. He stated that the money received from the sale is in excess of the liquidation price, the people who are attempting to purchase the license are of good reputation and character; therefore, when the proceeds are available, he will be able to pay the debts in priority by order of the court.

Mr. Donald Wagoner, owner and manager of Ephraim's, stated that in discussion with Atty. Boyer relative to the sale of the restaurant, he had indicated some criteria he was looking for personally, besides financially, in the type of people who would be coming involved with the restaurant. Mr. Wagoner stated that the members of Kenbo Corporation, who have petitioned to become owners of this restaurant, have fulfilled the criteria that he has tried to establish at Ephraim's in terms of operation and quality and feels they will be an added asset/contribution to the community.

Atty. Joseph Krinsky spoke in opposition of the application. He felt the Receiver does not have the right to transfer this property, that there is no commitment from any lending agency and that any transfer would be premature. If this transfer is entertained, they will then be in a position to get a loan and, Atty. Krinsky stated, "that is putting the cart before the horse." He went on to say that there is \$480,000 owed and the only asset (of Ephraim's) is this license. He felt it should not be altered at this time, and, since there are vital motions in the court, that this hearing be held over. He asked about the procedure the Selectmen would follow after considering this transfer, if they would so advise the court of their action.

Selectman Fox stated they can vote it tonight or put it off; Selectman Donald stated that when the minutes are approved one week from tonight, at that time the various parties would be appraised of what the Selectmen's vote was. Mr. Thompson stated that license would be held in "escrow" until the Selectmen have approved the action the following week by approving the minutes of that meeting.

Atty. Krinsky stated that upon further inquiry the Board would find that there is no commitment from a bank. Selectman Donald stated that does not concern the Selectmen. Atty. Krinsky stated he thought it did if there is representation that all their debt will be paid - that debts could not be paid until they have received a commitment from a bank.

Atty. Robert W. Tennant, for Kenbo, Inc., stated that, not only has Judge Garrity directed that the assets can be transferred free and clear of all encumbrances, as an attorney he would not allow his clients to buy encumbered assets.

Mr. Robert Quirk stated that there are on-going negotiations for the premises at the Village Green, to date there is no lease with Mr. Wagoner because for 4½ years he could never live up to the things that he was supposed to do, and before any transfer takes place, he would like to see that all the criteria be met by any new tenant, i.e., personal statements of the parties of Kenbo, Inc., and the Receiver's accounting for the last six months.

Atty. Tennant stated that they have been negotiating with Mr. Raymond A. Johnson, Trustee of the Village Green Realty Trust (under which Mr. Robert Quirk is the beneficiary), that they have reached a final draft of the lease, that the financial statements were mailed over one week ago to the Trustee and should be in his physical possession, and the probation records have been presented to the Board of Selectmen.

Mr. Wagoner pointed out that the legal question came up about 4½ years ago pertaining to the lease and Town Counsel's opinion at that time was that a license could be transferred whether or not a lease had been executed and said license or transfer could be conditioned on the signing of a lease.

(Mr. Thompson referenced minutes of August 21, 1978.)

Atty. Boyer stated he had drafted a lease with the new buyers in conjunction with Mr. Johnson.

Atty. Krinsky suggested it be signed tonight; Atty. Tennant stated Mr. Quirk did not have power to sign; Mr. Johnson was not present.

Selectman Fox stated that there are too many unanswered questions and that he would feel more comfortable if Town Counsel had been present. The issues as he saw them are financing, the orders of the court (the liquor license not included in listing of assets), whether having a lease is relevant, and whether the issue of the creditors is relevant to the issue of the liquor license.

At the conclusion of discussion on the application for a Transfer of the All Alcoholic Beverages License, it was on motion by Selectman Fox unanimously

VOTED: To take the matter under advisement until September 26 at 7:45 p.m. for the purpose of making a decision only, in order to request Town Counsel's opinion on the following issues:

- 1) whether financing of the new buyers is an issue with regard to the transfer of the liquor license;
- 2) orders of court: Superior Court #83-841, dated March 10, 1983, appointing Receiver Burton Boyer; and Superior Court #83-841, dated July 12, 1983, "Order on Receiver's Motion for Leave to Sell Assets" (question of why license is not listed as asset along with furniture, etc.);
- 3) whether the issue of a lease is relevant to the transfer;
- 4) whether the issue of the creditors is relevant to the transfer;
- 5) the appropriateness of the public hearing notice and its form - specifically the question of the transfer of the license from one corporation to another without going through the Receiver; and
- 6) whether Selectman Murray can vote at the continued hearing, September 26.

On the question of acting on an application for a Common Victualler License for the above transferee, Atty. Cardinale felt it was not appropriate to discuss the same at this point because affirmative action was not taken on the transfer.

On the question of approving an application for a Weekday Entertainment License and an application for a Sunday Entertainment License, Mr. Richard Brooks questioned expanding to 1:00 a.m. the weekday entertainment license request on Friday and Saturday nights stressing consideration should be given to the residential character of the neighborhood in which this facility is located.

At the conclusion of discussion Acting Chairman Donald announced that the continued hearing would be for the purposes of making a decision only and would be scheduled on next week's agenda for 7:45 p.m.

School Bus Signs - Route 20/Landham Road

It was on motion by Selectman Fox unanimously

VOTED: To request the installation of signs on both sides of Route 20 near Landham Road stating, "State Law - Stop When School Bus Stops", by the State Department of Public Works, in accordance with a communication dated September 13, 1983, from Patrick J. Delaney, III, 206 Boston Post Road.

Executive Secretary Richard E. Thompson stated that Safety Officer William B. Carroll had no objections to the request.

Special Town Meeting

Present: Richard F. Brooks, Lincoln-Sudbury Regional School District Committee.

It was on motion unanimously

VOTED: To confirm the following action of the Board on September 14, 1983:

- 1) Opening the October 3, 1983, Emergency Special Town Meeting Warrant to include an article submitted by the Lincoln-Sudbury Regional School District Committee for drainage work; and
- 2) Signing of the October 3, 1983, Emergency Special Town Meeting Warrant.

Job Training Partnership Act Grant

Following a brief discussion, it was on motion by Selectman Fox unanimously

VOTED: To endorse/accept a draft agreement between the Metro South/West Private Industry Council and The General Manager of the Town of Norwood, The Mayor of the City of Marlborough, and The Mayor of the City of Newton to be made under the Job Training Partnership Act of 1982 concerning procedures for development of the Service Delivery Area's Job Training Plan and the designation of an entity to be Grant Recipient of Job Training Partnership Act Funds and an entity to administer the Job Training Plan.

Proclamation

It was on motion by Selectman Donald unanimously

VOTED: To sign a proclamation honoring John V. Sullivan on the occasion of his retirement as Director of Health.

Schedule Meetings

It was on motion unanimously

VOTED: To schedule the Selectmen's October 3 meeting at 7:00 p.m., prior to the Special Town Meeting, at the library of the High School; to schedule a meeting on

Wednesday, October 5, at 7:30 p.m. in the lower Town Hall, and to cancel the regularly scheduled Monday meeting of October 10, due to the Columbus Day holiday.

Grant - Outreach Worker

It was on motion by Selectman Donald unanimously

VOTED: To confirm the signing by Chairman Murray of a grant application (FY84) to the Massachusetts Department of Elder Affairs, for funding assistance to hire an outreach worker under the Council on Aging, dated September 14, 1983.

Minutes

It was on motion unanimously

VOTED: To approve the minutes of the Regular and Executive Session of September 12, 1983, both as corrected.

Note: The executive session change is subject to Town Counsel's approval.

Tax Rate

Selectman Fox asked if a hearing had been set with the Assessors to set the tax rate. Executive Secretary Richard E. Thompson responded that Town Counsel had reviewed the contract with Magee and Magane and there appears to be some holdup, and that he was not very optimistic.

Selectman Fox directed the Executive Secretary to impress on Town Counsel and the Assessors that, in his opinion, there are very few things in this Town as important as setting the tax rate as soon as legally and practically possible. After commenting further, Executive Secretary Richard E. Thompson responded that he would forward Selectman Fox's comments to both Town Counsel and the Assessors and report back to the Board, hopefully, by September 26.

Powder Mill Road

The Board acknowledged receipt of an August 12 communication (received September 11) from the Middlesex County Commissioners' office to the Maynard Board of Selectmen noting receipt of that Board's petition appealing to the County Commissioners to take any possible legal action against Sudbury's closing of Powder Mill Road, and informing Maynard Selectmen that the first hearing for any interested parties had been set for October 18 at 7:00 p.m. at the Framingham District Court.

Selectman Fox directed the Executive Secretary to communicate to Town Counsel that he may find it necessary to contact the County Commissioners regarding the October 18 meeting following the September 23 court appearance on Powder Mill Road.

Exempt POWs - Excise Tax

Selectman Donald requested that the Executive Secretary obtain a copy of current local option legislation exempting POWs from paying excise taxes. Selectman Donald said she supported it on the face of it, but agreed with Selectman Fox to withhold any position on the same until studied further.

Clerk - MCAB

Selectman Donald informed the Board that she had been nominated as Clerk of the Middlesex County Advisory Board.

Resignation - Conservation Commission

The Board accepted with regret the resignation dated September 12 and effective immediately of Hugh Caspe from the Conservation Commission, and a related communication, dated September 15 from Conservation Commission Chairman Richard O. Bell.

The Board directed the Executive Secretary to forward a letter of appreciation to Mr. Caspe for his services on that Board.

Move House to Sudbury

At the direction of the Executive Secretary, it was on motion unanimously VOTED: To approve the intention of Kip Van Steenburg to relocate from the Town of Wayland (50 Cochituate Road) to the Town of Sudbury (corner Route 27 and Marlboro Road) his house and garage, subject to terms and conditions to be determined by the Highway Surveyor; said move is scheduled to take place on October 13.

Executive Secretary Richard E. Thompson noted receipt of various communications from the appropriate Town officials, Departments and Boards, all approving said move.

Development - Partial Barton Estate

The Board acknowledged receipt of a communication dated September 12, 1983, from residents of the Woodmere Estates development objecting to certain aspects of Creighton Hammill's proposed development on a portion of the Barton Estate which borders their respective properties and suggesting alternatives to the same; specifically, the use of a railroad right-of-way as an access to the development. The Board directed the Executive Secretary to forward said petition to the Town Engineer for comment, and to request comment back from the Planning Board and the Conservation Commission, as well.

MCSA Workshop

Both Selectmen Donald and Fox stated they would attend a Middlesex County Selectman's Association workshop on Saturday, October 1, beginning at 9:30 a.m. at the Minuteman Vo-Tech.

Mr. Thompson stated he would ask Selectman Murray if he planned to attend.

Transfer - Accounting Department

Following discussion, it was on motion unanimously

VOTED: To approve a Request for Transfer (NO. 4) from Line Item 521-42, Accounting Out-of-State Travel, to Line Item 521-81, Accounting Tuition, in the amount of \$450, in order for Town Accountant James Vanar and June Kelley to attend a Mass. Governmental Accounting course at Bentley College, and as further explained on the numbered transfer.

There being no further business to come before the Board, the meeting was adjourned at 9:27 p.m.

Attest:

Richard E. Thompson
Executive Secretary-Clerk