

IN BOARD OF SELECTMEN  
MONDAY, MAY 14, 1984

Present: Chairman Anne W. Donald, Myron J. Fox and Josiah F. Frost.

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

Order of Taking - Powder Mill Road

It was on motion by Selectman Fox unanimously

VOTED: To sign an Order of Taking relative to Street Acceptance, Powder Mill Road, under Article 40 of the 1984 Annual Town Meeting.

Class 2 License Application - Automotive Diagnostic Center

At its May 7th meeting, the Board tabled action on the application of George M. Gordon, d/b/a Automotive Diagnostic Center, for a Class 2 License to Buy, Sell, Exchange or Assemble Second Hand Motor Vehicles or Parts Thereof, for property located at 100 Boston Post Road, in order to allow the applicant to discuss several issues raised by the Board with Town Counsel.

Part of the discussion at the Board's May 7th meeting was on a previous site plan application by Mr. Gordon for the installation of gasoline tanks which were never installed but which Mr. Gordon is still considering having installed.

There was some question as to whether or not Mr. Gordon needed to have Board of Appeals approval for his repair business; it was noted that he would definitely need Board of Appeals approval for the sale of vehicles.

Responding to a general question by Selectman Fox, Selectman Frost stated that there are two alternatives regulated by the State regarding the disposition of underground storage tanks which are no longer being used - they can either be removed or pumped out and filled with sand and left in the ground. The gasoline station owner has to notify the Fire Chief within 60-90 days, after the gasoline station has ceased operating as such, as to how he will dispose of the tanks.

Executive Secretary Richard E. Thompson informed the Board that Mr. Gordon had been into the office and had spoken to Assistant Town Counsel Thomas M. French, and that it had been determined that he should apply to the Board of Appeals for a hearing, therefore, it was not necessary for the Selectmen to take any action on Mr. Gordon's application at this time.

The Selectmen directed Mr. Thompson to forward reports from the Building Inspector, the Fire Chief and the Police Administrative Assistant, dated May 4, May 1, and May 3, respectively, to the Board of Appeals for its public hearing on Mr. Gordon's license application.

Roof for Minuteman School Building

Present: Finance Committee Chairman Marjorie Wallace.

In accordance with the recommendations of the Finance Committee (vote of May 10) and of MRVTS Representative James Kates (May 8 telephone conversation with the Executive Secretary), it was on motion by Selectman Fox unanimously

VOTED: To endorse Alternative #1, the one-year construction for the replacement of the Minuteman Regional Vocational Technical School roof with bond financing and State aid paid in annual installments from FY 1985 through FY 1989, as noted in an April 25, 1984, communication from MRVTS Chairman John P. Donahue,

and it was further

VOTED: To endorse the above alternative without calling a Special Town Meeting locally, so that after thirty days from a bond issue vote, the Regional Committee could implement that approach, subject to Town Counsel's concurrence that it is proper to do so.

Security Loan Pledge - Colonial Spirits

It was on motion by Selectman Fox unanimously

VOTED: To approve the action of DuRobtrater, Inc., d/b/a The Colonial Spirits, of pledging its package store license and stock of the company as loan security with BayBank Middlesex for the new liquor store at 474 Boston Post Road in Sudbury, as requested in a letter dated May 2, 1984, from Stephen P. Steinberg, The Colonial Spirits.

September 18, 1984, Primary Election

It was on motion by Selectman Frost unanimously

VOTED: To set the time and place of the polls for the State Primary Election at 7:00 a.m. to 8:00 p.m. on September 18, 1984, in the Peter Noyes School for all four precincts, by groups, in accordance with Chapter 53, section 42.

Ballot Question

In accordance with the Board's vote of April 11, 1984, to put before the Town at the November 1984 general election a ballot question, in accordance with c.641 of the Acts of 1983, s.4. paragraph (k), to determine whether the Town should exempt from the provisions of Proposition 2½ the debt liability incurred by the purchase of development rights on Stone Tavern Farm voted under Article 31 of the 1984ATM and endorsed by the Finance Committee, it was on motion by Selectman Fox unanimously

VOTED: To approve wording of a question to be placed on the November ballot, as follows:

"Shall the Town of Sudbury be allowed to exempt from the provisions of proposition two and one-half, so-called, the amounts required to pay for the bond issued in order to acquire the development rights in Stone Tavern Farm as voted under Article 31 of the 1984 Annual Town Meeting?"

At the suggestion of Chairman Donald, Mr. Thompson stated he would ask the Conservation Commission to provide public information regarding the above so that voters will know what they are being asked to vote on.

In the interest of having the broadest possible Town support, Selectman Fox suggested that Mr. Thompson contact the Planning Board, the Finance Committee, and the Conservation Commission, seeking their support to jointly sponsor an advertisement prior to the November election asking for a favorable vote on the above-noted ballot question.

#### Bid - Vehicle for Fire Chief

Present: Fire Chief Michael Dunne.

In conjunction with the Selectmen's vote of May 7 "To accept a bid from Natick Ford, Inc., to furnish one 1984 Ford LTD Crown Victoria vehicle to be used by the Fire Chief, in the amount of \$10,802, less a \$600 trade-in allowance for a 1978 Chevrolet Malibu, for a net delivered price of \$10,202, per a collective bid award by the Greater Boston Police Council under M.G.L.c.7, s.22B; with the suggestion that the Chief's trade-in vehicle be offered for sale at \$600 to the Highway Surveyor and/or any other Town official, to be determined by the Executive Secretary, to replace a Town vehicle which may be in worse condition", it was on motion by Selectman Fox unanimously

VOTED: To accept the recommendation outlined in a communication, dated May 11 from Fire Chief Michael Dunne to transfer his 1978 Chevrolet Malibu to the Health Director for his immediate use, and subsequently to the Police Department, and that \$600 from the Fire equipment account be applied to the purchase of the new vehicle, and that a transfer to replace the \$600 be requested by the Board of Health and the Police Department if and when it is needed in FY85.

#### Growth Advisory Group

Executive Secretary Richard E. Thompson stated that he had begun to contact the people appointed by the Selectmen at their May 7th meeting to serve (subject to their acceptance) as a Growth Advisory Group, to work with the Planning Board's consultant in connection with the grant award to update the Master Plan, and possibly to continue to work as a permanent group with the Town Planner after July 1.

Mr. Thompson informed the Board that three additional people had expressed interest in serving with the group. They were G. Burton Mullen, James F. Goodman, and Jo August Hills.

During discussion, the Board agreed to limit the number of people on the committee to those who accept of the eleven suggested regardless of their limited capacity to serve, in some cases, because it is a short-term appointment, and, rather than appoint alternates, any interested persons will be contacted if the group is made a permanent group later.

The Executive Secretary was directed to report back to the Board next week with a final list of those willing to serve.

Public Hearing - Wayside Package License

Present: Thomas L. McManus, Wayside Package; Joseph S. Lank, license applicant, and Atty. Howard J. Wayne; Vito Spadea, a previous license applicant; and Atty. Lawrence Blacker, former counsel for The Mugar Group before the Board.

Chairman Donald convened a Public Hearing on the application of Wayside Package Store, Inc., 119 Boston Post Road, for renewal of its 1983 All Alcoholic Package Store License.

Town Counsel Paul L. Kenny stated that when Mr. McManus filed the above-noted renewal application it was for the premises located at 119 Boston Post Road, which had actually been sold prior to the submission of the application; therefore, it was Town Counsel's opinion that it should be treated as an application for a new license.

Atty. Howard Wayne gave the following testimony:

- On November 18, 1983, Mr. McManus applied for renewal of his existing license - a license which had been exercised by the McManus family for thirty-nine years at 119 Boston Post Road (On December 23, 1983, the Selectmen denied renewal of this license.);

- The package store had been sold (July, 1983) but Mr. McManus still owned approximately 6600 square feet (or 1½ acres) of land adjacent to the building;

- Mr. McManus had applied for renewal to keep the equity of his liquor license in effect so that it could be sold;

- Mr. McManus entered into negotiations to sell (transfer) his liquor license with Mr. Joseph Lank in October, (although the first agreement drafted has a November date on it);

- Because the liquor license was part of an estate, of which Mr. McManus' family was a party, there was some delay in filing the application and a subsequent agreement to sell sometime in December;

- With the agreement in hand, on December 12, 1983, Mr. McManus applied for a hearing to transfer his liquor license.

Responding to the Selectmen, Town Counsel stated that, if Mr. McManus had applied for a renewal on his liquor license in November, 1983, (when all local liquor licenses are normally considered for renewal), and if he still owned the premises which were licensed, and if the Board had no reason not to renew the same for reason of violation, etc., the license would have been renewed automatically. However, because of the sale of the licensed premises, Mr. McManus' application would have to be treated as an application for a new license. The fact that Mr. McManus owned adjacent property was not an appropriate vehicle for which to apply for a renewal. Mr. McManus could have applied for a transfer of a liquor license, which requires a public hearing and time for advertising the same, in order to keep it in his own name but at

a different location, or if he wanted to "transfer" it to a different owner at a different location.

Selectman Fox stated that the Selectmen could not have given Mr. McManus a renewal of his license for a package store he no longer owned; 119 Boston Post Road had been sold in July of 1983 to Sudbury Auto Parts. He could not understand how Mr. McManus could apply for a renewal license for that location. Chairman Donald later added her opinion that Mr. McManus should have realized in July when he sold the property that in order to renew his license in November he would have had to have another location.

Atty. Howard Wayne stated that a renewal could have been issued for the purposes of keeping the license alive as a "pocket license". He stated that in certain circumstances - exceptions - this is an acceptable procedure. One exception, he stated, is the Urban Renewal situation. (Another exception mentioned later was the loss of premises by cause of fire; a license would then remain as a "pocket license".)

Selectman Fox asked Atty. Wayne if it was his opinion that Mr. McManus belonged under some exception.

Atty. Wayne felt it was a question of "fairness" to Mr. McManus, who had operated his licensed package store in Sudbury for so many years, indicating that the Selectmen were "snipping off" Mr. McManus' license in his attempts to use the Urban Renewal pocket license approach for the purposes of transferring the license, reiterating that Mr. McManus had been in business for thirty-nine years and had built up a certain amount of equity in the license.

Selectman Fox expressed his opinion that the Selectmen had tried to help Mr. McManus even though Mr. McManus did not think so. Selectman Fox pointed out that there were no emergencies or exceptions; as he understood it, Mr. McManus voluntarily sold his property of his own free will and at his own convenience.

Mr. Wayne expressed his opinion that the Alcoholic Beverages Control Commission (ABCC) did not feel Mr. McManus' was an unusual situation - thirty-nine years in business is a persuasive argument, indicating that it was good enough reason for making an exception.

Selectman Fox stated that the statute is very clear insofar as the Selectmen making a judgement with regard to exceptions - it does not address exceptions! Also, he questioned Mr. McManus' decision to sell the property before properly assessing/weighing the value of the sale of the property and the value of the sale of his license. Selectman Fox added his opinion that Mr. McManus should have rented a store front to which his license could have been transferred until such time as he could sell it or he could have held up the sale of the property until he sold the license. Selectman Fox felt it was unfair of Mr. McManus to suggest that the Selectmen shade the statute because of a timing problem of Mr. McManus' which perhaps occurred from person(s) backing out on a transfer/sale of the license.

Mr. McManus presented the background of record of Wayside Package Store, Inc., and his involvement in this family business; how the business had been sold on July 18, 1983, from his daughter's trust to Sudbury Auto Parts; his

unsuccessful attempts to find a store front on Route 20 to which he could transfer his liquor license, his various attempts to negotiate for the sale of the liquor license, and how he had filed for renewal of his liquor license on November 18 in the Selectmen's office. Mr. McManus stated that he did not sign the back of the renewal application (affidavit section) because he thought money was owing to the State Department of Revenue. Mr. McManus stated his feelings that the Selectmen had not received him cordially, to which Mr. Thompson later responded that, through several telephone conversations with Mr. McManus, he was aware that the Selectmen did not have him on the agenda, but that the Chairman would allow him 5-10 minutes to speak with the Selectmen, and this did occur on November 28, December 5, and December 12. Mr. Thompson added that each time he spoke to Mr. McManus he alerted him to the fact that a transfer hearing process requires a certain period of time to advertise.

Mr. McManus went on to say that nothing was resolved even after a transfer application had been filed on December 12 in conjunction with Mr. Lank's attorney, Howard Wayne. Mr. McManus felt that he acted in good faith, did everything he possibly could have, and felt the Selectmen should have considered the transfer application request by allowing a hearing on the same. Mr. McManus stated that five generations of his family have lived in Wayland, he is not asking for anything that his family is not entitled to, that they run successful businesses in Wakefield and Reading, and that he would like to put this case to bed - he did not want to get into a long litigation on this, but added his feeling that it seemed to be going in that direction. He stated that, had the Board been more receptive, the Town would have had an excellent successor.

Atty. Wayne read an excerpt of the March 15, 1984, ABCC hearing on the Wayside Package License, which he felt substantiated the opinion that Mr. McManus may have "goofed up" involving this license renewal and transfer, but the underlying feeling of the two sitting ABCC Commissioners was that the Selectmen were anxious to punish and issue Mr. McManus' license to someone else.

Mr. Thompson stated he attended the above-noted ABCC hearing at which he felt the Selectmen and their staff were being chastised. Town Counsel stated to the Commissioners he was offended, on behalf of himself, Mr. Thompson and the Town as a whole, by certain accusations and statements of the Commissioners.

Selectman Fox felt the Chairman of the ABCC was wrong in his thinking that the Selectmen had other plans for this license, substantiated by the fact that they did not issue any license after the first of the year when several people came forward to try and legalize a liquor license, because the Selectmen felt the Town had enough liquor licenses.

Atty. Wayne asked why the Selectmen did not allow Mr. McManus a hearing on his December 12 application for a transfer of his valid, existing license to Mr. Lank to another location. He stated that, if a hearing had been held, he could have responded to the issue of the location.

Mr. Thompson confirmed that an application had been submitted at that time, as Atty. Wayne stated, and also referenced an affidavit which was signed

at that time by Administrative Secretary to the Selectmen Janet Silva stating the deficiencies on the application, i.e., no probation record, no floor plan, absence of a lease/location (at the time of this application, Mr. McManus did not own 119 Boston Post Road).

Atty. Wayne stated that he would have responded to the location question; it was to be at the old Colonial Spirits Package Store at Star Market Plaza, whose license had already been approved by the Selectmen for transfer to its new location across the street.

Town Counsel stated that Colonial Spirits had a valid license and was going to be at the Star Plaza location for some time after the first of the year.

Selectman Fox pointed out that Mr. McManus applied for a transfer of his license on December 12; his license would have expired in nineteen days, and it was clear that the Colonial Spirits license for January 1, 1984, at the Star Market location was going to remain there since its new building was not finished. Colonial Spirits had applied for, and received, renewal of its liquor license by the November, 1983, deadline. Also, Selectman Fox pointed out that approval of Colonial Spirits' transfer license to its new location was subject to completion of its new building and the move to the new building across the street.

Atty. Wayne felt his client could have moved in when the Colonial Spirits Package Store was available at Star Plaza.

Town Counsel stated that as of December 12, the premises formerly occupied by Colonial Spirits at Star Plaza were not available to Mr. Lank, as noted on Mr. McManus' application, and that an affidavit to that effect, had been signed by the person in charge of the shopping center and had been filed in Superior Court and with the ABCC.

Atty. Wayne reiterated that he would have dealt with that issue at the hearing, had one been scheduled. Atty. Wayne pointed out that the Selectmen had held a hearing for Mr. Vito Spadea, one of the two people interested in obtaining Mr. McManus' license, for the premises at Star Plaza occupied by Colonial Spirits. This liquor license was denied, not because Colonial Spirits was still at that location, but because the Board felt the Town had enough liquor licenses. Atty. Wayne again pointed out that Mr. McManus was denied a hearing by the Selectmen.

Town Counsel stated that The Mugar Group (owners of the Star Plaza shopping area) had indicated that they would give a lease to Mr. Spadea prior to the hearing being scheduled.

Selectman Fox added that, when Mr. McManus applied on December 12, the Town had information that Mr. Lank did not have permission or an agreement from The Mugar Group to occupy the same Colonial Spirits Package Store when it was vacated.

Atty. Wayne stated that the Selectmen had affirmation from the applicant that The Mugar Group would enter into a lease with him and that was true and was on the application.

Town Counsel stated he knew on December 14 that those premises were not available to Mr. Lank because he was contacted by the manager of the shopping center and two days later he had a signed affidavit to that effect.

Atty. Wayne stated that Town Counsel was wrongfully advised, that he had a letter from Star stating that they would lease to Mr. Lank, and that, had he had a chance to have a hearing, the letter would have been forthcoming at that time.

Town Counsel stated there is a long history involved and he did not want to debate that the property at the Star shopping center is available for leasing now or if it would have been had the Selectmen granted a transfer. In addition to Town Counsel being notified on December 14 that the property was not available to Mr. Lank, the Selectmen had already renewed an application for Colonial Spirits. The transfer of the agreement to lease to Mr. Lank would not have been agreed to until after such time as the Selectmen denied the application for a new license in January of 1984 to Mr. Spadea.

Mr. Joseph Lank reiterated that an application had been submitted on December 12 to transfer Mr. McManus' license to him at the Colonial Spirits former location. Mr. Lank stated that the day before he had met with The Mugar Group, owners of the property, and asked for floor plans, etc., which they willingly gave him, in order to proceed to the Board of Selectmen for a hearing. The hearing never took place and the license then lapsed at the first of the year. Mr. Lank felt he had no other choice but to appeal it with the ABCC. He felt the opinion of the ABCC as a result of that hearing was that it felt that the Town had a right to process a lapsed license because it had existed for so many years.

Responding to Chairman Donald, who stated that the application submitted had deficiencies as noted in the affidavit signed by Mrs. Silva, Atty. Wayne again stated that he never had a chance to respond because the Selectmen did not have a hearing, and that it is not necessary to have a lease in order to apply for a liquor license transfer.

Town Counsel responded that the location is the most important thing in issuing a liquor license, and it is obvious that the Selectmen would ask for proof that an applicant has a right to the premises to be licensed, such as a lease, etc.

Atty. Wayne stated that, if the Selectmen gave him a hearing now, he would prove to them that he has a location to transfer the license to.

Mr. Vito Spadea stated he applied for a liquor license in January of 1984, which the Selectmen denied; that The Mugar Group had made a decision to enter into an agreement with him for a package store, and that Mugar still has not agreed to negotiate with anyone else.

Atty. Lawrence Blacker stated that, at the hearing for Mr. Spadea, he represented him and The Mugar Group, and on the question of who had a lease for the premises, Mr. Mark J. Brennan of Mugar stated that Mr. Lank did not have a right to those premises at the time.

Atty. Wayne stated that the point is everybody is entitled to a hearing.



Selectman Fox stated that this hearing is for the purpose of deciding whether or not in hindsight the Selectmen can renew Mr. McManus' 1983 liquor license - it has nothing to do with transferring the license. Selectman Fox further stated he had great problems with the renewal but not nearly as great a problem on the transfer.

Atty. Wayne felt that no matter what action the Selectmen took this evening, under G.L.c.138, s.67, the license is going to be deemed valid and in effect at least until there is an ABCC hearing. Atty. Wayne requested that the Board allow him a hearing on the transfer of the license and stated that he would then be willing to dismiss the law suits.

Town Counsel explained three hearings held, as follows:

- before the ABCC, March 15, requesting the Selectmen to hold a hearing on the renewal of the 1983 All Alcoholic Package Store License, formerly held by Wayside Package Store, Inc.;

- in Superior Court, January 3, 1984, a preliminary injunction to enjoin the Selectmen from transferring the license or granting it to anyone else, and

- in Superior Court, December 16, 1983, to require the Selectmen to have a hearing prior to December 31, 1983, on the renewal license application.

Following further discussion, it was on motion by Selectman Fox unanimously

VOTED: To take under advisement until June 4, the November 1983 renewal application of Wayside Package Store, Inc., referred back to the Board by the ABCC, so that the Selectmen may have time to consult with Town Counsel.

#### Taufiq/Peters Dog Hearing

Present: Complainant Zubair Taufiq; dog owners Arthur and Odelle Peters; and Dog Officer Betsy DeWallace.

Chairman Donald convened a public hearing on telephone complaints from Zubair Taufiq to the Dog Officer, who initiated this action before the Selectmen, relative to the disposition of the German Shepherd dog, Arnold, owned by Mr. and Mrs. Arthur Peters, 53 Easy Street.

Town Counsel Paul L. Kenny swore in everyone planning to testify.

Executive Secretary Richard E. Thompson stated that notice of tonight's public hearing had been given by certified mail to both the Peterses and Mr. Taufiq under date of May 1, return receipts received, pursuant to the Board of Selectmen's vote of November 21, 1983, and for the reason of repeated complaints concerning the barking of said dog.

Mr. Thompson stated that this is the fifth hearing on this dog; that four previous hearing had been held by Boards of Selectmen on the following dates: April 22, 1974, September 13, 1976, and January 18, 1982, all for vicious disposition of said dog; and on November 21, 1983, because of the dog's continuous barking and the uncooperativeness of the dog's owners.

Dog Officer Betsy DeWallace stated that she kept a running account of March and April, 1984, complaints regarding the dog's barking from Mr. Taufiq and commented on the difficulty she had in verifying the complaints of frequent, random barking since the Peterses live on a dead-end street and as soon as the dog hears her truck he barks as a reaction to it.

Mrs. DeWallace continued to say that she had not received complaints from any other neighbors but that, in her opinion, the dog's barking would be muffled at anyone's house other than the Taufiqs' because of the location of the houses and the area the dog is penned in. She added that the complaints seemed to come in during the day and on weekends, but not late at night, and that the complaints were constant.

Mrs. DeWallace stated that when she tried to talk to Mrs. Peters, she would not talk at all but would hang up.

Responding to Selectman Fox, Mrs. DeWallace stated that two previous hearings were initiated by three older people who lived across the street from the Peters and who were deathly afraid of the dog.

Also responding to Selectman Fox, Mrs. Peters stated her dog is 14 years old.

Mr. Taufiq stated that when he moved in four years ago, the dog was always loose and a bother whenever he had guests, and that after the January 18, 1982, hearing the Peters kept their dog restrained; however, since then, the dog has been barking. Mr. Taufiq stated he cannot read a book or watch television because of the barking and added that, after receipt of the notice of tonight's public hearing, the dog has been out after 8:00 p.m. and as late as 9:30 p.m.

Selectman Frost stated he has a problem with the fact that this is the fifth hearing on the same dog and he felt the previous Boards of Selectmen had bent over backward to take care of this dog. Selectman Frost further stated he is an animal lover and he can understand the Peterses' love of their old dog, but that he feels there is a responsibility to the neighborhood - that the neighborhood has the right to peace and quiet. If the neighbors cannot work it out between them it becomes the statutory requirement of the Selectmen to do something about it. Selectman Frost stated he personally could not justify in his mind five hearings on one animal.

Mr. Peters stated that Mr. Taufiq's testimony is false, that his dog does not bark all day long/incessantly; that this is a neighborhood controversy and Mr. Taufiq is asking the Selectmen to adjudicate it; that Mr. Taufiq has animosity toward this dog; that no one has proved that this dog barks incessantly, not even the Dog Officer, but that he knows because he is there.

Mrs. Peters pointed out that their property backs up to the Boy Scout Reservation, indicated that her dog doesn't bark when she has company, and expressed displeasure with the accusations against her dog.

Chairman Donald stated there is evidence of hearings against her dog back to 1974 proving that there are problems associated with her dog and Mrs. Peters' uncooperative attitude.

Also, responding to Mrs. Peters, Chairman Donald added that, if there is any discrimination in this case, it has been against her neighbors.

Selectman Fox referenced the problems in the past, pointing out that three previous hearings for the vicious disposition of the dog had been dealt with by the fence and 24-hour-a-day restraint of the animal by vote of the Selectmen in January of 1982; the November 30, 1983, hearing was dealt with by vote of the Selectmen to restrict the dog to the house during specific evening hours.

Selectman Fox went on to say that it is difficult for the Selectmen to make any further decision on the disposition of the dog based on one gentleman's testimony against another's and suggested that the Dog Officer try to monitor the situation more thoroughly by walking down the street or checking with other neighbors.

Mr. Taufiq stated that there were times when he was speaking to the Dog Officer when he put the telephone to the window so that she could hear the dog barking.

Mrs. DeWallace stated she has been down there and the dog starts right in when she pulls up in her truck; that he is bored and looking for an excuse to bark.

Mr. Peters commented that it is the nature of a dog to bark when vehicles or people approach.

Following further discussion, the Board agreed to accept a further report from the Dog Officer relative to the extent of barking when there is not a lot of movement going on, i.e., vehicles approaching, children noises, etc.

It was on motion unanimously

VOTED: To continue this public hearing to June 4, 1984, in order to allow the Dog Officer some time to further monitor the situation as noted above and report back to the Board.

Utility Petitions - 84-15 and 84-16

Present: Robert Malis, Boston Edison.

In conformity with General Laws, Chapter 166, Sections 21 and 22, the Board considered Utility Petitions 84-15 and 84-16 of Boston Edison Company and New England Telephone and Telegraph Company, as follows:

UP84-15 for permission to erect or construct, and a location for, a pole and such other fixtures including anchors and guys as may be necessary to sustain or protect the wires of the line, to be used in common by them, upon, along and across the following public way of the Town:

Union Avenue - westerly side, approximately 590 feet north of  
Boston Post Road, One (1) pole. One (1) hip guy  
and anchor. (One existing JO pole to be removed)

UP84-16 for permission to erect or construct guy wires and anchors to be used in common by them, upon, along, and across the following way of the Town:

Mossman Road - northeasterly side approximately 25 feet north-west of Ledge Road, One (1) guy wire and anchor;

Mossman Road - northeasterly side approximately 105 feet south-east of Farm Lane, One (1) guy wire and anchor.

Executive Secretary Richard E. Thompson stated that all appropriate abutters had been notified, and that a favorable joint recommendation had been received from the Wiring and Building Inspectors for the two petitions, dated May 10, 1984.

Following a brief explanation by Mr. Malis of Boston Edison, it was on motion unanimously

VOTED: To approve Utility Petitions 84-15 and 84-16 of Boston Edison Company and New England Telephone and Telegraph Company, as noted above, and as shown on the following plans:

UP84-15. "Plan of Union Ave., Sudbury, Showing proposed pole relocation, hip guy & anchor", dated December 21, 1983, and

UP84-16. "Plan of Mossman Rd., Sudbury, Showing proposed location of guy wire & anchors", dated February 13, 1984, and "Plan of Mossman Rd., Sudbury, showing proposed location of guy wire & anchor", dated February 13, 1984.

Hall Site Plan 83-271 - Mill Village

The Board acknowledged receipt of a May 11, 1984, memorandum to the Building Inspector from Assistant Town Counsel Thomas M. French informing him that the Halls plan to appeal his decision to go before the Board of Appeals with regard to proposed construction of Building "I" in the flood plain.

It was on motion unanimously

VOTED: To confirm the May 10, 1984, dating, and signing by Selectmen Donald and Frost, of the above-captioned site plan; said site plan was initialed by the Town Engineer and the Building Inspector on May 7 indicating their endorsement for signing.

It was further on motion by Selectman Fox unanimously

VOTED: To accept a May 8, 1984, letter from Maple Avenue residents requesting permission to address the Selectmen before signing the above-noted site plan for the proposed Building "I", it being their feeling that the developer has not fulfilled the stipulations set forth by the Selectmen and because the Planning Board questioned the legality of the site plan.

Chairman Donald acknowledged Mr. James Watterson of 14 Maple Avenue, who asked to make a statement, which is, in summary, as follows:

Maple Avenue residents oppose the Selectmen's action to sign the above-noted site plan for proposed Building "I" at Mill Village, and they consider the Selectmen's actions in considering and approving said site plan to be "illegal" for the following reasons:

- certificate of compliance not issued for the original "as built" development, possibly because the developer has not complied with the original Order of Conditions placed on the site or even his own design proposals noted on the plan;

- the Selectmen ignored the Planning Board's request for a new site plan and instead allowed the developer to make changes on the original; further stating that State law requires a registered architect or engineer to sign and stamp projects of this size; and

- the Selectmen have failed to ensure the developer will comply with any of the requests of the abutters, i.e., parking lot lights have not been redirected away from neighbors, screening has not been provided, and striping of parking lot does not comply with minimum zoning standards.

In conclusion, Mr. Watterson stated that the Selectmen are setting a dangerous precedent; namely, that zoning bylaws and conditions of approval need not be adhered to by developers.

Selectman Fox responded to some of Mr. Watterson's points by explaining how the process works. Selectman Fox stated that, in order for a developer to go to the Board of Appeals, he needs to have a signed site plan by the Board of Selectmen. All of the Selectmen's site plans are subject to compliance with all bylaws, both State and local, and the conditions of the individual site plans. A building permit will not be issued until compliance is met including, in this case, any past non-compliance under the Wetlands Protection Act hearing. Selectman Fox stated further that, after meeting, the Town Engineer, the Building Inspector, and the Executive Secretary determined that the proposed Building "I" is located in the flood plain and will require the Halls to go before the Board of Appeals. Selectman Fox concluded by stating that Mr. Watterson's statement that the Selectmen have allowed this developer to run contrary to the Town bylaw is not accurate; furthermore, the Selectmen have not overlooked the neighbors' objections and conditioned the vote of approval on many of the issues raised by the abutters.

Mr. Watterson interjected that Mr. Hall did receive a building permit and built Buildings "G" and "H", which are within the flood plain (certificate of compliance not received).

Mr. Watterson expressed his opinion that, on the recommendation of the Selectmen by signing the site plan and allowing it to go to the Board of Appeals, this is automatically an indication of the Selectmen's stamp of approval - that the Selectmen have approved the site plan.

Selectman Fox stated that was absolutely incorrect, that many times the Selectmen have approved a site plan and the Board of Appeals have subsequently denied it. He stated the Selectmen have no authority as to what the Board of Appeals decides.

Mr. Watterson argued the point that the Selectmen are allowing a signed site plan to go before the Board of Appeals when it is not in compliance with the original conditions that were put on that plan, and, he stated, that is what the Building Inspector had told the Maple Avenue residents.

Selectman Fox stated that the Building Inspector had not said that to the Selectmen.

Chairman Donald stated that, if the Building Inspector feels that way, he will so inform the Board of Appeals.

Mr. Watterson stated that the Town officials (Building Inspector), who are in charge of enforcing this, have given the residents answers to their questions that the Halls are not in compliance, therefore, the site plan is illegal. He stated it is the responsibility of the Selectmen not to ignore the fact that it is illegal and sign the site plan. The Maple Avenue residents feel, he stated, that through omission, or for whatever other reason, the Selectmen signed the site plan, and that they have to take some recourse to see that the Town reverses that procedure; otherwise, a serious precedent is being set for other developers who come in with incorrect site plans.

Chairman Donald stated that the Selectmen did not care to listen to hearsay, and that, if there is any substance to Mr. Watterson's information regarding Town officials, he should put it in writing for the Selectmen's consideration.

At Mr. Watterson's request, Mr. Thompson stated he would be happy to meet with him and/or other Maple Avenue representatives and review any further details or statements they may wish to discuss.

Mr. Thompson added with regard to Mr. Watterson's earlier statement relative to State requirements that a registered architect or engineer sign and stamp site plans, that this is not a State requirement, but is the discretion of the Selectmen under their policies and procedures.

Mr. Watterson stated it is also in the zoning bylaw, and felt that the Selectmen should have taken that discretion when the site plan was filed.

Selectman Fox pointed out that, at the initial hearing (Maple Avenue residents were present), the Selectmen had requested that the Halls bring their site plan back because there was not enough information/material on it. Also, he reiterated, Mr. Watterson was incorrect when he implied that the Selectmen have skirted the issue or have not asked that the site plan meet with Town and State bylaws.

In conclusion, Mr. Thompson gave Mr. Watterson a copy of Assistant Town Counsel memorandum, above-noted, and agreed to meet with Mr. Watterson, as he had requested.

Loring School Lease

Present: President Myra Snyder, Thomas Travers and Lawrence Blacker, B'nai Torah; Laurie and Vicki Hammel and William J. Adelson, SCAC; and approximately sixty residents.

Chairman Donald convened a meeting for continued discussion (from May 7, 1984) with representatives of the SCAC and B'nai Torah relative to the granting of a lease of Loring School to commence July 1, 1984.

Executive Secretary Richard E. Thompson stated, that subsequent to the Board's meeting of May 7, the following communications had been received:

- from the the Board of Directors of the Sudbury Community Arts Center (SCAC), dated April 30, 1984 (received today), proposing that the Selectmen lease the Loring School to them; and

- from Assistant Assessor Daniel A. Loughlin, dated May 14, 1984, providing information relative to lease options for the Loring School.

Additionally, Mr. Thompson responded to several questions which had been raised by the Board at the May 7 meeting, as follows:

- three rooms are available at Fairbanks School for possible expansion of the SCAC;

- financial statement received from B'nai Torah, dated February 29, 1984;

- the amount of money in arrears (owing by SCAC) is \$3,500, payable within thirty days - total outstanding obligation through June 30, 1984, as noted in a communication from the Building Inspector, dated May 4, 1984, is \$9,819.80 (Mr. Hammel of SCAC stated the amount in arrears is less); and

- projected major repairs total approximately \$5,000 (see communication from Douglas Lewis, Superintendent of Town Buildings).

Atty. Lawrence Blacker stated that B'nai Torah has agreed to sub-let a total of eight rooms to SCAC, provided that B'nai Torah negotiates a lease for the whole building, as follows:

- six rooms to be sub-let at \$2,100 per room; and

- two rooms to be sub-let at \$1.00 per room, for a total of \$12,602 annually, with an option that, with 90-days' notice in subsequent years, SCAC may lease from 1-6 rooms at \$2,100 per room - two rooms will always be available for the duration of the lease to SCAC at \$1.00 each.

Dr. William J. Adelson, SCAC, confirmed Atty. Blacker's statements.

Selectman Frost commented on the way the situation was handled by both organizations, stating that it is a credit to both the SCAC and the Congregation.

Responding to Patricia Siff, 195 Woodside Road, Mr. Thompson stated that the playground would be open as usual this summer.

Relative to how the Town proposes to have access to the bathrooms, Selectman Frost stated that the outside door to the bathroom would be left open during the daytime for summer recreation programs.

Frank Van der Kerkhove, 130 Woodside Road, asked if the neighbors could see a copy of the lease in advance of signing. Selectman Fox suggested that the neighbors outline whatever concerns they have and send them to the Executive Secretary prior to the signing of the lease; that it would not be appropriate for the Selectmen to negotiate with another party.

Responding to one neighbor who pointed out that indefinite postponement was voted at the 84ATM in the spirit of giving everyone in Town the opportunity to determine the best use of the property, Chairman Donald replied that the Selectmen would like to hear from anyone who has suggestions for consideration prior to the lease being signed.

Mrs. Margaret Urgotis, 79 Woodside Road, alerted the Selectmen to the fact that parking is a problem and priority of the same should be considered in the lease arrangements. Selectman Fox responded that the neighbors should get together and submit all concerns to the Selectmen who will take all concerns into consideration before drawing up the final lease.

Mrs. Santa Jean DeSantis, 25 Wright Road, expressed her opinion that a better financial arrangement could have been reached so that the Town would have profited from the leasing of the Loring School.

Responding to comments by Mrs. DeSantis, Dr. William J. Adelson, SCAC, stated that \$15,000 is the total rental for the building, and that, plus anticipated annual maintenance, represents the budget; SCAC's payment to B'nai Torah represents SCAC's defrayment of B'nai Torah's budget. Dr. Adelson went on to say that, if SCAC had leased a portion of the building from the Town, it would have had to maintain that portion, paid utilities and collect rentals for that portion, and B'nai Torah would have had to bid much less than \$15,000. He said it would have come out to a total of \$15,000 anyway.

After discussion, it was on motion by Selectman Frost unanimously

VOTED: To accept the proposal offered by Mr. Blacker, on behalf of B'nai Torah, as noted above (noting also the Selectmen do not have it in writing); to accept the proposal from B'nai Torah, dated May 4, 1984, to the extent of agreeing to a five-year lease of the Loring School to B'nai Torah in the amount of \$15,000 yearly, with the proviso that the Town will retain access to the ballfields and adjacent parking area, and to the bathroom facilities during summer recreation activities, with all further wording of the lease to be drafted by Town Counsel in conjunction with final approval by the Board of Selectmen.

#### National Women's Road Race

Following discussion, it was on motion by Selectman Fox unanimously

VOTED: To approve the use of Fairbank School facilities in conjunction with the National Women's 25KM road race, on June 3, from 7:00 a.m. to 3:00 p.m., requested in a communication dated May 3, 1984, from Elydia P. Siegal of the



Greater Boston Track Club, subject to said organization providing the Town prior to the race with personal injury and property damage insurance coverage and subject to Fire and Police Chief approvals; the seventy-five dollar fee may be waived if mandating the insurance coverage creates a hardship.

The Selectmen agreed that anyone who uses any Town facility should have this coverage. Town Counsel Paul L. Kenny suggested that the wording be in line with the indemnity coverage language required on the utility companies' petitions.

#### 84ATM Follow-up

The Board acknowledged receipt of a May 3 report from the Executive Secretary relative to follow-up items resulting from the 84ATM.

#### H.B.5604 Court Rentals

It was on motion by Selectman Frost unanimously

VOTED; To support H.B.5604, which addresses court rentals, as requested in a communication from Commissioner Thomas J. Larkin, State Office of Court Commissioners, dated May 2, 1984, by directing the Executive Secretary to contact, on behalf of the Board, Senator Chester Atkins and Representative Lucile Hicks.

#### Minutes

It was on motion by Selectman Fox unanimously

VOTED: To approve the minutes of the Regular Session of May 7, 1984, as corrected.

#### Drainage Easements

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

VOTED: To accept and sign two drainage easements from Paola DaPrato and Barry Construction Co., Inc., on Lots 99 and 105, off North Road, shown as "Prop. 20' Wide Drain Easement" on plans entitled, "Plan of Land in Sudbury, Mass. owned by: Estate of Alfred DaPrato", by Colburn Engineering, Inc., dated August 18, 1983, and "Definitive Subdivision Plan of DaPrato Farms, Sudbury, Mass.", by Colburn Engineering, Inc., dated July 15, 1983, revised September 21, 1983 and January 24, 1984, respectively.

#### Executive Session

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

VOTED: To enter into Executive Session for the purposes of discussing strategy for collective bargaining and litigation where open discussion of the same may have a detrimental effect.

(Roll call vote: Chairman Donald, in favor; Selectman Fox, in favor;  
Selectman Frost, in favor.)

There being no further business to come before the Board, the meeting was  
adjourned at 11:55 p.m.

Attest:

Richard E. Thompson  
Executive Secretary-Clerk