

IN BOARD OF SELECTMEN
MONDAY, MAY 13, 1985

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

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

Proclamation/High Blood Pressure Month

In accordance with a request dated May 6, 1985, from Mary Keaveny-Miller, Executive Director, Sudbury Visiting Nurse Association, Inc., it was on motion unanimously

VOTED: To authorize the Chairman to sign a proclamation, jointly with the Executive Director of the Sudbury Visiting Nurse Association, designating the month of May as High Blood Pressure Month.

Bay Circuit Tourist Route

The Board acknowledged receipt of a communication dated April 18, 1985, from the Department of Environmental Management, requesting information regarding the "Bay Circuit", a tourist route supposedly set up and marked by the Department of Public Works around 1957 running through Sudbury.

Following a brief discussion, the Board directed the Executive Secretary to follow up and provide any pertinent information.

Utility Petitions

Present: Robert L. Blake, Boston Edison.

In conformity with General Laws, Chapter 166, Sections 21 and 22, the Board considered the following joint utility petitions of Boston Edison Company and New England Telephone and Telegraph Company for permission to erect or construct, and a location for, poles, and such other fixtures including anchors and guys as may be necessary to sustain or protect the wires of the line, to be used in common by them upon, along and across the following public way of the Town:

UP85-13 - Boston Post Road - northeasterly approximately 340 feet southeast of Lafayette Drive, a distance of about 6 feet - conduit, as shown a Boston Edison Engineering, Planning and Research Department "Plan of Boston Post Rd., Sudbury, Showing Proposed Conduit Location", dated February 12, 1985, and "Plan for Conduit Location to Accompany Petition of New England Telephone and Telegraph Company", dated May 2, 1985; and

UP85-14 - Boston Post Road - northeasterly side approximately 340 feet southeast of Lafayette Drive, One (1) pole, one (1) existing JO pole to be removed, as shown on a Boston Edison Company Engineering and Construction Department "Plan of Boston Post Rd., Sudbury, Showing proposed pole relocation", dated March 1, 1985.

Executive Secretary Richard E. Thompson stated that all appropriate Town officials and abutters had been notified and that a joint, favorable recommendation had been received from the Wiring and Building Inspectors, dated May 9, 1985.

Following discussion it was on motion by Selectman Frost unanimously

VOTED: To approve Utility Petitions 85-13 and 85-14 of Boston Edison Company and New England Telephone Company, as described above.

Appointment-Assistant Dog Officer

Present: Applicant Michael Leighton.

Chairman Fox welcomed Mr. Michael Leighton who was applying for the position of Assistant Dog Officer. During his interview with the Selectmen, Mr. Leighton indicated that he works full-time on the 3:00-11:00 p.m. shift and, therefore, has mornings and early afternoon free which, he stated, would be when the Dog Officer indicated she would need his assistance. Mr. Leighton stated he would be available to cover for the Dog Officer during her vacation.

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

VOTED: To appoint Michael Leighton, 196 North Road, Sudbury, as Assistant Dog Officer, for a term to expire April 30, 1986.

Order of Taking/Winter Street

On the general subject of street takings and responding to Chairman Fox, Town Counsel Paul L. Kenny explained that, except for recording fees, there is no money involved for the taking of a street - if the Town accepts a road as a public way (taking) any money needed for repairs would be appropriated at the same time. On the other hand, if the Town needed to repair a private way to bring it up to standards, the abutters would have to pay for those expenses, not the Town.

It was on motion by Selectman Donald unanimously

VOTED: To sign an Order of Taking pursuant to the 1985 Annual Town Meeting vote under Article 8 accepting Winter Street as a public way.

Minuteman School Training Hotel

The Board acknowledged receipt of a communication dated May 2, 1985, from the Arlington Board of Selectmen requesting that the Sudbury Selectmen join them in making a plea to Lexington to reconsider the matter of a Minuteman School training hotel.

Selectman Frost stated that he personally would like to send a letter to Lexington supporting the hotel training facility, it being his feeling that the school has been receiving some excellent reviews in terms of ingenuity and

programs; that the staff of the school has been able to control the student body to the extent that it is a privilege to go there.

The Selectmen agreed and following a brief discussion, it was on motion by Selectman Fox unanimously

VOTED: To send a letter of support to the Town of Lexington supporting the idea of a hotel training facility on the confines of the Minuteman School for the reasons stated above by Selectman Frost.

Outdoor Dining/Marrone's Bake Shop, 418 Boston Post Road

Present: Building Inspector Joseph E. Scammon; applicant Mary V. Marrone.

Chairman Fox convened a public hearing on the request dated April 29, 1985, from Mary V. Marrone, Marrone's Bake Shop, 418 Boston Post Road, to allow placement of three tables (twelve seats) for dining on the sidewalk in front of the Bake Shop during the months of May through September.

Executive Secretary Richard E. Thompson stated that all appropriate Town officials and abutters had been notified, return receipts requested, and that communications had been received from the Building Inspector, the Police Chief, the Fire Chief, and the Board of Health, dated May 10, 13, 3 and 10, respectively, all recommending approval with some concern expressed about the limited space, protection against vehicular traffic, and cleanliness. The Building Inspector indicated that the floral buckets on the edge of the walkway would help prevent cars from encroaching on the 9-foot walkway.

Mr. Thompson stated the Town Engineer had verbally reported that, if the request were granted, it should be on a temporary basis, i.e., outdoor dining monitored and reviewed after one month.

During the Selectmen's discussion of these mutual concerns, Selectman Frost pointed out that another local restaurant has been operating for some time with a double row of tables outdoors on a walkway which is only 1½' wider than this one with no apparent problems and that he, therefore, had no problem with this request.

Following some discussion, it was on motion

VOTED: To approve a request dated April 29, 1985, from Mary V. Marrone, Marrone's Bake Shop, 418 Boston Post Road, to allow placement of three tables (twelve seats total) for dining on the sidewalk in front of the Bake Shop, as shown on a plan dated April 29, 1985, submitted by Mrs. Marrone, for forty-five days (to approximately July 1), at which time appropriate Town officials/boards will be asked for individual recommendations as to the extension of the permit through the month of September.

Chapter 90 Construction Funds

In accordance with a communication from the Highway Department dated May 8, 1985, it was on motion by Selectman Frost unanimously

VOTED: To sign an Initial Advisory Report (#6033-8028) for a Chapter 90 Bond Issue Project, for resurfacing work on Dudley, Horse Pond, Lincoln, Marlboro, Powers and Willis Roads.

Accept Donation/Council on Aging

It was on motion unanimously

VOTED: To accept on behalf of the Council on Aging miscellaneous donations in the amount of ninety-four dollars to be used for the Council on Aging van transportation program.

Sale of Poppies

In accordance with a request from Guy L. Dietrich, Chaplain, Sudbury American Legion Post 191 and Sudbury VFW Post 8771, dated May 6, 1985, it was on motion by Selectman Frost unanimously

VOTED: To amend the Board's vote of May 6, 1985, authorizing the sale of poppies by the American Legion and the Veterans of Foreign Wars on May 23, 24 and 25 by adding the locations of Sudbury Crossing and Sudbury Marketplace.

Minutes

It was on motion by Selectman Donald unanimously

VOTED: To approve the minutes of the Regular Session of May 6, 1985, as amended.

Extension SP84-274 - Mullen/Fafard, 410 Boston Post Road

Present: Building Inspector Joseph E. Scammon; and Applicant Ronald S. Killian for Howard A. Fafard and G. Burton Mullen.

Chairman Fox convened a public hearing on the question of granting an extension of time for completion of Site Plan 84-274 of G. Burton Mullen and Howard A. Fafard, for the Sudbury Inn Marketplace, property located at 410 Boston Post Road.

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

- letter accompanying application from Ronald S. Killian, The Fafard Companies, dated April 18, explaining the reason for the extension request;

- from the Conservation Coordinator noting that the Commission did not have a meeting scheduled in time to formally report to the Selectmen prior to this hearing and offering her personal comments on the status of the site in conjunction with the existing Order of Conditions and requirements of the Commission with regard to the site plan revisions;

- from the Fire Chief and the Board of Health, dated May 6 and 2, respectively, offering no objection to the extension;
- from the Town Engineer, dated May 2, 1985, recommending approval subject to submission of an "as built" plan upon completion of the project;
- from the Planning Board, dated May 13, recommending approval contingent upon approval by applicable Town boards and department; and
- from the Building Inspector, dated May 10, 1985, explaining minor revisions to the original site plan to show current site conditions (with two revision dates) and recommending approval of the extension.

Mr. Ronald S. Killian stated that a curb cut permit, required by the State Department of Public Works had never been granted for this property to the previous owner. Fafard Companies applied to the State and a permit was issued on April 3 requiring a 20' curb cut, instead of a 12' curb cut, which placed an existing telephone/electrical pole within the curb cut. Mr. Killian explained that they have submitted a request for a modified curb cut to move the easternmost curb cut approximately thirteen feet so as to place the existing pole outside the curb cut. Additionally, the permit required that one fire hydrant and one light pole be moved, and that four parking spaces be moved eastward. Mr. Killian stated that as soon as the modified curb cut permit is received from the State, he would submit an "as built" plan to the Board, which would also show other minor revisions to the plan which, he stated, he had already discussed with the Building Inspector. He requested a six-month extension because of the uncertainty of obtaining the modified curb cut permit from the State.

Chairman Fox asked Mr. Killian to submit an "as built" plan at the completion of the project for the Selectmen's approval (and signature).

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

VOTED: To grant a six-month extension of time (to October 18, 1985) for completion of Site Plan 84-274 of G. Burton Mullen and Howard A. Fafard, for the Sudbury Inn Marketplace, property located at 410 Boston Post Road, subject to Conservation Commission approval.

Later in the evening, Conservation Coordinator Deborah Montemerlo indicated the Commission had met briefly with Mr. Killian a little while ago, that the Commission did have some concerns regarding compliance to the original Order of Conditions and getting full cooperation from the applicant, but that there was no objection to the extension of the site plan.

The Selectmen then signed the plan.

Rainbow Covenant for Peace

It was on motion by Selectman Frost unanimously

VOTED: To approve a request from Laury Hammel, Committee Chairman, for the use of the Town Hall steps and grounds for a Rainbow Covenant for Peace on May 19th sponsored by The Sudbury Interfaith Committee Against Nuclear War.

Conservation and Drainage Easements/Great Pond Woods, Fairbank Road

On the recommendation of Town Counsel, it was on motion by Selectman Frost unanimously

VOTED: To approve a Conservation Restriction and accept a Drainage Easement for the Great Pond Woods subdivision off Fairbank Road given May 10, 1985, by Webster Cutting Jr., et al. Both documents were signed.

Temporary Alcoholic License/Rotary Club

The Board was in receipt of a request for a one-day liquor license, dated May 13, 1985, from William Duckett, on behalf of the Rotary Club, and a letter from the Innkeeper, dated April 20, 1985, authorizing use of the Wayside Inn's East Field.

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

VOTED: To grant a temporary license to William Duckett, President, Sudbury Rotary Club, to sell alcoholic beverages at the East Field of the Wayside Inn during a Rotary Club dinner dance on Wednesday, July 3, 1985, and to waive the fee for the same, subject to approval from the Fire and Police Chiefs, the Board of Health, and the Building Inspector for the erection of a tent.

Resignation/Sudbury Housing Authority

The Board acknowledged receipt of a May 10, 1985, communication from Jo-anne Howe, Executive Director of the Sudbury Housing Authority (SHA), enclosing a letter of resignation, dated May 8, 1985, from Cheryl Rogers from the Sudbury Housing Authority, effective June 1, 1985; the Board directed the Executive Secretary to send an appropriate letter of appreciation to Ms. Rogers for her services on the SHA.

In accordance with the above-noted communication from Mrs. Howe, the Board further directed the Executive Secretary to schedule a joint meeting, in accordance with G.L.c.41,s.11, with the SHA, Monday, June 10, at 8:30 p.m., for the purpose of appointing by roll call vote a new member to fill the vacancy, caused by Ms. Rogers' resignation, until the 1986 Annual Election.

September Special Town Meeting

At its April 29th meeting, the Board had tentatively scheduled a Special Town Meeting for September 9. Executive Secretary Richard E. Thompson stated that the Assistant Assessor and the Town Clerk preferred September 19, which the Board indicated was agreeable to them.

The Board agreed not to encourage any articles other than the three previously agreed to - Retirement, Blue Cross/Blue Shield and Adjustment of Wrap Up Motion - all of which are of an emergency nature.

Communication/Victoria Road Residents

Executive Secretary Richard E. Thompson brought the Board's attention to a communication from residents of Victoria Road, dated May 7, 1985, addressed to the Building Inspector, concerning activities taking place in a tree house in their neighborhood and requesting removal of the tree house on the basis that it is a nuisance to the neighborhood and it does not have the legal permit for the electric underground cable.

The Building Inspector was present and stated that the Town Bylaw does not specifically address this type of structure and that he had referred the matter to the Wiring Inspector who is the enforcement agent for electrical permits.

New England Tinman Triathlon

As requested by the Board at its April 29th meeting, the Executive Secretary reported the following with regard to personal injury and property damage insurance coverage in conjunction with the New England Tinman Triathlon which was authorized by the Selectmen, subject to proper insurance coverage, to be held in Sudbury on Sunday, July 14:

- there is a \$5,000 insurance policy on each runner;
- the Town is named as co-insurer; and
- the cost for \$1,000,000 coverage is \$600 this year, compared to \$300 for \$2,000,000 coverage last year.

The Selectmen agreed that a \$2,000,000 insurance coverage should once again be provided, it being their opinion that it would not be too much to ask of the applicant if the cost of the same were as much as \$750; the Selectmen asked Mr. Thompson to find out the cost and report back to the Board.

Chamber of Commerce Meeting

Both Selectmen Frost and Donald will attend the Sudbury Chamber of Commerce meeting Wednesday, May 15; it was agreed to invite representation from the Chamber of Commerce to the May 28 Town Fathers Forum and to do so for all future Forums.

Blue Cross/Blue Shield

With reference to a May 10, 1985, communication to the Town Accountant from the Executive Secretary requesting that the Town Accountant notify all Town employees, who have double coverage for health insurance, that they must drop one carrier, in accordance with M.G.L., c.32B,s.16, Selectman Frost questioned the Town's right to enforce the same until there are distinct statutory regulations.

Selectman Frost expressed his opinion that a Town employee, especially a union employee, through his contract, is entitled to certain health benefits and what he does financially away from his job, either through himself or his spouse to obtain additional insurance, is his right. For example, Selectman Frost stated that he himself, while working for the Town, carried an additional health insurance policy.

Chairman Fox questioned whether the Massachusetts Municipal Association was doing anything about the issue and both Town Counsel and the Executive Secretary stated it was not. Town Counsel stated there was no case law on the subject. Selectman Fox felt that a group of towns could ask for a clarification on a declaratory judgment basis.

Chairman Fox suggested this be discussed with the Sudbury Employee Group Insurance Advisory Committee. He also suggested that the unions be notified of the Town's dilemma because of the \$100,000 that had been cut from the Blue Cross/Blue Shield budget by Town Meeting; that they be asked to cooperate, as the Town is trying to give the same coverage and, at the same time, save money by eliminating the "double dipping" which is costing the Town \$40,000-60,000 a year. He suggested that, without the cooperation of Town employees, there is a very reasonable possibility that the Town will be laying people off.

Chairman Fox suggested discussing this in Executive Session; specifically, the success of litigation, if the Town's enforcement of the State statute were to be litigated.

Following further discussion, Town Counsel Paul L. Kenny stated that, because the law is very vague there is a wide area of interpretation and gave the following options of success in litigation:

- if the spouse has coverage with another town, then it (c.32B,s.16) may apply;
- if the spouse has coverage with a state or governmental agency, it may apply;
- if the spouse has coverage with a private company it may not apply; and
- if both spouses are with the same company, it definitely applies.

The Board agreed to continue discussion in Executive Session later in the evening.

Joint Meeting/General Procedures - Issuance of Occupancy Permits

Present: Building Inspector Joseph E. Scammon, Town Engineer James V. Merloni, Planning Administrator Lee Newman; Conservation Coordinator Deborah Montemerlo; and Fire Chief Michael Dunne.

Chairman Fox convened a joint meeting with the Building Inspector, the Town Engineer, the Fire Chief, the Conservation Coordinator, and the Planning Administrator concerning issuance of Certificates of Occupancy (CO) and related zoning matters.

Chairman Fox stated the purpose of addressing this subject is so that there is a better understanding of what the Building Inspector's role is in

the issuance of COs and so that there can be a better overall coordination in the issuance of them. Selectman Fox referenced a May 10, 1985, communication to the Board from the Executive Secretary reporting on the preliminary, May 8th meeting on this subject and noting success in the following areas: agreed to hold monthly meetings of this nature on a trial basis for the next 3-4 months, that future meetings will include the Highway Surveyor and the Police Chief, a new CO form will be used in the future with a sign-off section by appropriate Town officials/committees (Selectman Fox stated he assumed this will mean that the Building Inspector will not issue a final CO until he receives these sign-offs).

The Building Inspector stated that, as he pointed out at the May 8th meeting, if someone refuses to sign off, that person will have to let him know why, and if he regards the reason as frivolous or of no merit he will not agree; he stated further that he does not want these to get hung up on someone's desk.

Chairman Fox stated that, hopefully, there would be a satisfactory resolution between that person and the Building Inspector as to why he/she is not checking off.

Selectman Fox asked under what circumstances the Building Inspector might issue a temporary permit and under what circumstances he would issue a permanent one.

The Building Inspector said that when a house is not completed but is habitable he would issue a temporary occupancy permit. If a house is completed except for landscaping, a permanent CO would be issued since the Building Department is not interested in landscaping.

The Building Inspector cited an example last fall when a temporary CO was issued (with approval from Health Director) because of incomplete construction of a septic system; after completion of the system, the permanent CO was issued.

Chairman Fox asked what leverage the Town had if, for example, the above situation had not been corrected/completed.

The Building Inspector said that the owner would never receive a permanent CO - this would hinder resale/bank transactions down the road.

Responding to Selectman Fox, Mr. Scammon stated that, if any item he considered to be essential for the habitability of an unfinished house was not in place and functioning, a temporary CO could not be issued.

The Fire Chief expressed concern that temporary COs should be clearly marked as such so that all parties involved - builder/buyer/bank - understand that there are items to be completed before a permanent CO can be issued.

Town Counsel stated that there is not too much of a chance of a court saying that people have to move out (because they do not have a permanent CO) but there are provisions under the building code for fines to be assessed (to the builder) by the courts. The Town Engineer pointed out that there is a

real problem with that procedure in the case of a builder who is no longer in business, i.e., because he filed for bankruptcy.

Following further discussion, the Fire Chief expressed his agreement that there are many situations where temporary COs are reasonable.

The Building Inspector stated that he writes "temporary" in a felt pen so that it is very prominent and unlikely that the person receiving it does not know it is a temporary CO.

Selectman Fox questioned whether Town Counsel might draft some wording for a temporary CO which spells out a specific period of time during which the permit would be in effect. Town Counsel expressed his opinion that the homeowner would receive it at a closing with a bunch of other papers that never get read!

Selectman Fox stated that his experience is that a CO is issued within hours of closing, that the buyer should notice whether it is a temporary CO or not, and, if it is temporary, he should understand at that time the reasons why it is such.

Selectman Fox suggested that at the group's next meeting wording for a temporary CO be discussed and, if necessary, Town Counsel could assist in the wording.

Pertaining to commercial properties, Mr. Thompson pointed out that the Water District would like to be included in site plan reviews; the Building Inspector confirmed to questioning by Selectman Fox, that there is no on-going communication through his department with the Water District but water meters are in place before a CO is issued and in order for plumbing permits to be issued.

On the subject of enforcement, the Building Inspector stated that he is behind in some of his enforcement; Chairman Fox asked if there was anything the Selectmen or other Town officials/boards could do to help. He stated that it is important for everyone to have a better idea of what he has to go through in order to issue occupancy permits and carry through in the area of enforcement. There appeared to be a consensus that the issue of enforcement could be discussed at the upcoming meetings, as each individual probably had areas in which he felt there could be more or better enforcement.

Selectman Fox commented that if it appears we are getting nowhere with the courts because they are not imposing fines he would be glad to meet with the justices; he felt the Town would lose its credibility if the courts were not listening to us.

Selectman Fox commented further that, if builders are abusing the system, with a coordinated effort of Town officials/boards, the Town could prove to these particular people that it is more worth their while to pay attention to the rules and work with the Town. He pointed out that the Selectmen, as well as other Town officials/boards, go out of their way to accommodate people; also, that the Selectmen have given individual people a hard time when they learn that they have been violating Town bylaws.

At the conclusion of discussion, Chairman Fox thanked everyone for their attendance.

Appointment/Council on Aging

Following a brief discussion and in accordance with a May 6, 1985, recommendation from the Council on Aging, it was on motion by Selectman Donald unanimously

VOTED: To appoint Eleanor Guerin, 55 Hudson Road, Apartment 9D, to the Council on Aging, to fill the vacancy created by the expired term of Sibyl Drake, and to reappoint Eleanor Kelley, 430 Peakham Road, both terms to expire April 30, 1988.

The Board directed the Executive Secretary to forward a letter of appreciation to Mrs. Drake for her services over the past years on the Council.

Appointment/Personnel Board

The Board tabled review and discussion regarding the appointment to the Personnel Board; one candidate who had applied did not appear for the scheduled interview. The Executive Secretary will follow up.

Summer Schedule

Chairman Fox suggested a tentative change in the Board's summer meeting schedule (meet August 12th instead of August 19th) and stated he would confirm the need for the same at the Board's next meeting.

Communication/State Auditor

The Board acknowledged receipt of a communication dated April 29, 1985, from the State Auditor's office in regard to a decision by the Division of Local Mandates concerning Norfolk's required sanitary landfill design and construction being subject to the anti-mandate provisions of G.L.Ch.29, s.27C(c).

Executive Session

At 9:40 p.m. it was on motion by roll call

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

(Chairman Fox, in favor; Selectman Frost, in favor; Selectman Donald, in favor.)

Chairman Fox announced that Open Session would not reconvene following the Executive Session.

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There being no further business to come before the Board, the meeting was adjourned at 10:10 p.m.

Attest: _____
Richard E. Thompson
Executive Secretary-Clerk