

IN BOARD OF SELECTMEN
MONDAY, NOVEMBER 18, 1985

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

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

Old Wines De' La France, 410 Boston Post Road
Wines & Malt Beverages Package Store License

Present: Applicant Kathleen G. McGilvray, Russ McGilvray, and business partner Joyce Anne Stephen; property owner G. Burton Mullen; Building Inspector Joseph E. Scammon (arrived late); and resident Michael MacKinnon.

Chairman Fox convened a public hearing on the application of Old Wines De' La France, Inc., Kathleen G. McGilvray, Manager, d/b/a Old Wines De' La France, for a retail package goods store license to sell wines and malt beverages on premises located at 410 Boston Post Road, Sudbury Inn Marketplace.

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

- from the Fire Chief, dated November 13, 1985, offering no objection subject to the following:

- Sprinkler heads to be located within the store - those already in lobby to remain; new heads to be added in Old Wines De' La France store;

- The annunciator panel in the lobby to be properly labelled as per previous plans for this complex; and

- No portable space heaters or extension cords to be allowed.

- from the Building Inspector, dated November 14, 1985, recommending approval;

- verbally from the Police Chief, November 13, 1985, stating no objection; and

- from tenant Donald R. Oasis, dated November 18, 1985, objecting to the application on the basis of his understanding and opinion that the area adjacent to the lobby and the second floor was to be used exclusively for professional offices and that a retail package goods store will detract seriously from the professional image.

Chairman Fox noted for the record that the application, dated October 26, 1985, and the corporate records appear to be in order.

Applicant Kathleen G. McGilvray submitted to the Board a listing of the types and costs of the various French vintage wines they plan to sell; she indicated that approximately 50% of the sales would be retail; they also plan to sell small quantities of wine to chefs' unions, restaurants and hotels.

Responding to questioning by Chairman Fox, Ms. McGilvray stated that they would have storage space for the wine in the basement of the building; the store would be off the lobby enclosed by glass panels and a sliding glass door giving a greenhouse effect; it would not be visible from the parking lot because it is within the lobby area of the professional office building.

With regard to the Fire Chief's above-noted conditions; specifically, the installation of sprinkler heads in the wine store, the owner of the building, G. Burton Mullen, indicated his willingness to cooperate with the Fire Chief.

In the complex, located in a business district, retail sales are allowed. Selectman Donald questioned whether a wholesale business is also an allowed use in a business zone. This question did not appear to be answered in the Zoning Bylaw but Chairman Fox expressed approval of the proposed operation, and the Board and the Building Inspector agreed, since, as stated, 50% or more of the business would be retail sales. The size of the store prohibits bulk sales; therefore, due to the low volume of wholesale business, it would appear to be considered an allowed use.

Ms. Joyce Stephen stated she would be doing most of the marketing to area restaurants and hotels from off the premises.

Responding to Michael MacKinnon, who stated that a retail store cannot sell to restaurants without a wholesaler license, Chairman Fox stated that this is a totally different issue. The license, he stated, would have to be granted subject to the Zoning Bylaw; on the other hand, the license to sell at wholesale would be governed by state and federal laws.

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

VOTED: To approve the application of Old Wines De' La France, Inc., Kathleen G. McGilvray, Manager, d/b/a Old Wines De' La France, for a retail package goods store license to sell wines and malt beverages, on premises located at 410 Boston Post Road, Sudbury Inn Marketplce, subject to the conditions set forth in the Fire Chief's communication of November 13, 1985.

Chairman Fox directed that the applicant contact the Building Inspector in terms of what use is or is not permitted in the Business Zone, and obtain final approval from him relative to the Fire Chief's recommendations; further licensing may be needed from the state/federal government.

The license was signed and held pending resolution of the above.

Accept Bid/Print '85 Town Report

On the recommendation of the Town Report Preparation Committee, it was on motion by Selectman Frost unanimously

VOTED : To accept the bid, dated October 29, 1985, from Hi-Tech Graphics of Fitchburg, Massachusetts, low bidder, for the printing of the 1985 Annual Town Report, at a cost of \$49.50 per page for pages typeset by printer and \$32.00 per page for pages furnished camera-ready, in accordance with Town of Sudbury specifications entitled, "Printing 1985 Annual Town Report".

Accept Bid/Gasoline

It was on motion by Selectman Frost unanimously

VOTED : To award the contract for supplying the Town of Sudbury with gasoline for the calendar year 1986 (January 1, 1986, through December 31, 1986) to the low bidder and current supplier, Bursaw Gas & Oil, Inc., 94 Great Road, Acton, Massachusetts, in accordance with the Town of Sudbury specifications and Bursaw's bid dated November 6, 1985, as follows :

Tank car price per gallon	-	regular gasoline	.8240
	-	unleaded gasoline	.8440
Increment throughout supply period	-		.0300
Mass. tax	-		.1100
Total base price per gallon	-	regular gasoline	.9640
	-	unleaded gasoline	.9840

Minutes

It was on motion by Selectman Donald unanimously

VOTED: To approve the minutes of the Regular and Executive Session of November 13, 1985, both as corrected.

Change Name/TRPC

It was on motion by Selectman Donald unanimously

VOTED : To change the name of the Town Report Preparation Committee to Town Report Committee, as recommended by said Committee.

Sign Proclamation/Chet Delani Day

It was on motion by Selectman Donald unanimously

VOTED: To proclaim November 25, 1985, as Chet Delani Day in Sudbury in recognition of Chet Delani's service in the field of public education and his receipt of the Massachusetts Thomas C. Passios Award and the National Distinguished Principals' Award.

Selectman Frost will present the proclamation to Mr. Delani at a reception to be held in his honor, Sunday, November 24, from 6 00-9 00 p.m.

Cancel Meeting (1/20/86)

It was on motion by Selectman Frost unanimously

VOTED: To cancel the Selectmen's meeting, Monday, January 20, 1986, due to the State-wide observance of Martin Luther King's birthday.

The Board agreed to schedule a meeting for later that week if necessary.

Mill Village/Resolution of Remaining Site Plan Conditions

Present : William L. and Charles W. Hall, Mill Village Realty Trust; Building Inspector Joseph E. Scammon; Maple Avenue abutters, Pierre LaTour, Jr., James P. Watterson, Edith L. Hull, and Judith A. Finerty.

Chairman Fox convened a meeting with the principals of Mill Village Realty Trust; said meeting was requested by William L. Hall under date of October 10, 1985, to discuss a waiver of the condition of Site Plan 83-271, approved November 21, 1983, (property located at 361 Boston Post Road) requiring the installation of speed bumps; other issues to be discussed, as noted in a communication from Assistant Town Counsel James A. Dyrek, dated November 4, 1985, are the question of the Selectmen approving a waiver of a condition of the original site plan approval, SP#75-160, dated September 30, 1975, revised December 2, December 8, and January 6, 1976, requiring underground wiring, and discussion on the question of compliance to four conditions imposed by the Board of Appeals upon the issuance of a variance to Mill Village Realty Trust for the construction of Building I (7/3/84, case #84-24).

Executive Secretary Richard E. Thompson explained that the delay in scheduling this meeting was due to other commitments by all parties involved; he stated abutters had been notified by notice dated November 14, 1985. Mr. Thompson made reference to the above-noted November 4 communication from Mr. Dyrek which followed a meeting in the Selectmen's office concerning the status of the construction and remaining conditions of the site plan approvals - 1) underground wiring and 2) speed bumps; and conditions of the Board of Appeals variance - 1) lighting, 2) landscape screening, 3) berm construction in relation to drainage and erosion, and 4) handicapped parking.

Mr. Thompson noted for the record receipt of the following :

- a November 14 communication from the Police Chief indicating no police record of complaints of speeders, disturbances, or serious accidents at the Mill Village parking lot and that it would be difficult to determine if there were any complaints from the residents of Maple Avenue because reference numbers and reports are only assigned to more serious incidents or offenses;

- a verbal report from the Town Engineer on November 13 recommending waiving 1) the speed bumps requirement if the Police Chief indicates there is not a need for them; and 2) the underground wiring requirement so as not to disturb the paving which may cause changes and problems in the drainage;

- a communication dated November 14 from the Building Inspector recommending waiving both the speed bumps and the underground wiring requirements. The speed bump requirement, he stated, was not one of his

recommendations, and, to place the wiring underground at this time, he felt, would be a tremendous undertaking and the cost would be prohibitive.

- a communication dated November 4 from John C. Cutting, Sudbury Nurseries, Inc., addressed to the Building Inspector, giving his professional opinion on behalf of Mill Village Realty Trust, relative to fulfilling the requirement to provide evergreen screening across the back of the Mill Village shopping center, i.e., his recommendation of a specie based on cultural conditions and desire for fast-growing screen, the size and spacing of trees.

- several written and telephone communications from abutter Gary T. Finerty, the most recent being a communication dated October 3, 1985, expressing dissatisfaction with statements in Mr. Scammon's report of September 12, 1985, where he addresses issues raised by Maple Avenue residents regarding compliance by Mill Village Realty Trust to the Board of Appeals conditions.

Mr. James P. Watterson referenced his two communications to the Board of Appeals, copies of which, he stated, had been forwarded to the Selectmen, dated July 30, 1984, and July 2, 1985.

The following is a summary of the discussion on the various issues and conditions of the Mill Village Realty Trust site plan approvals and the conditions of the Board of Appeals variance:

Speed Bumps

Mr. William Hall stated that his investigations regarding speed bumps show 1) that it would be a significantly expensive installation, 2) at Mill Village there appears not to be the type of problem speed bumps are normally used to control (this is verified by Police records, he pointed out), 3) there is certain liability as speed bumps create opportunities for people to trip and fall especially in inclement weather, and 4) snow removal is a less efficient process.

Chairman Fox stated his recollection of the reason for this condition was based on residents' concern regarding the use of the parking lot (which is visible to their residences) late at night by young people - racing and related noise - and asked if this situation still exists.

On behalf of the Maple Avenue residents, Mr. Watterson stated that it does still exist.

Following further comments and discussion, and because no further solution to this problem was offered, Chairman Fox concluded that, in the best interest of Mr. Hall and the residents of Maple Avenue he would continue to support the installation of speed bumps.

Mr. Pierre LaTour, Jr., questioned why the installation of speed bumps is still being debated when it was a condition of the site plan approval in 1983 and should have been enforced. He pointed out that an occupancy permit has not yet been issued and there is already a tenant in Building I. Mr. LaTour stated his opinion that the Town should either have regulations and enforce them or not have them at all.

Mr. Watterson expressed his opinion that the implications of the letters noted earlier from Town officials are that it is only the Building Inspector who is recommending the waiver of the speed bumps.

Mr. Charles Hall stated the speed bumps condition was subject to the Town Engineer determining that speed bumps were warranted and, if so, the number and placement of the same, and, in the absence of that information having been provided, they assumed speed bumps were unwarranted. He referred to the Town Engineer's current position that, in the absence of a determination by the Police Chief that there be speed bumps, he recommends the requirement be waived.

The Building Inspector stated he has never seen any tire skid marks on the pavement in the Mill Village parking lot. During later discussion, Selectman Frost reiterated that statement and, based on police records, and the issue of liability to the Halls, and to the Town if it enforces a dangerous condition in a public area, supported waiving this requirement.

Selectman Donald stated that the Selectmen have heard the Town Engineer on the subject of speed bumps and speed humps over the years and he was not in favor of them; she felt this could have had something to do with his lack of direction to the Halls. Further, she questioned the potential difficulty and danger of driving and plowing, particularly because of the slope of the parking lot, after the installation of speed bumps.

Occupant/Building I

Responding to Chairman Fox, Mr. William Hall and Mr. Watterson stated that there is one tenant in Building I, and that he has been in the building since June or July, 1985.

Later: Mr. C. Hall stated that, as in the past, it was his understanding that occupancy permits were issued to tenants as individual space was inspected and approved by the Zoning Enforcement Agent; it was not necessary to complete the entire construction of the building and receive an occupancy permit before a tenant occupied the space leased in the building.

Chairman Fox pointed out that, for the past 2½ years, this Board has felt that the conditions of a site plan approval must be met and then an occupancy permit can be issued for the entire complex. Mr. Fox agreed that tenants must comply to zoning, and whatever State regulations may be required, as well, and then must receive their individual occupancy permits; also, he stated that the space can be leased subject to the same.

Following the above statement by Chairman Fox, Mr. Watterson stated that there appears to be a clear misunderstanding between the rationale of the Selectmen and that of the abutters of Maple Avenue. He stated that the issue here is one of enforcement. The Board of Appeals states, "no construction shall commence on this project until the (four) conditions have been satisfied", that Mr. Thompson had informed him that a certificate of occupancy

shall not be issued until all conditions are met, which implied to him lack of enforcement of the Board of Appeals conditions. Mr. Watterson stated he then called the Zoning Enforcement Agent on two-week intervals from January to May asking him to investigate and in June or July there was an occupant in the building. He said he received no reply from the Board of Appeals when he notified it that someone was occupying the building, and that the building had been substantially completed despite the Board of Appeals conditions that no construction shall "commence" without completion of the four conditions. Mr. Watterson went on to say that Mr. Finerty was in contact with Mr. Thompson at that time and that Mr. Thompson was quoted in the Town Crier as stating, "it was a safety issue and since there were no safety problems there is no problem with someone in the building". Mr. Watterson again questioned the enforcement of Town Bylaws by Town officials. He stated that two years have lapsed and questioned the Selectmen as to whether they felt the conditions of this site plan have been met and whether they have been enforced and, if not, why the construction was allowed to commence and continue and why is someone occupying the building.

Mr. W. Hall stated his opinion that it would be impossible to please Mr. Watterson. He felt Mr. Watterson did not want to discuss the necessity of the conditions imposed on the site plan, i.e., speed bumps - that his only concern is why they have not been enforced, not if they are really needed. Mr. Hall further stated that when it comes to building permits the Town of Sudbury is well regulated; Sudbury does not ignore its rules, particularly with regard to enforcement.

Lights

Mr. Hall indicated that the lack of cooperation from Boston Edison to install shields on the lights in the parking lot and to redirect them away from the Maple Avenue residences has been a continuing frustration to him. He submitted proof to the Board of his payment for the installation of shields on every light (memo to Boston Edison dated November 4 enclosing check), and indicated that approximately half of the lights have been shielded and no completion date scheduled by Boston Edison to date.

Mr. Scammon commented that some of the lights have been improved.

Mr. Watterson stated that there are still lights shining in his windows despite requests to have them redirected or shielded for the past two years.

Ms. Judy Finerty, 28 Maple Avenue, expressed her exasperation because for two years Maple Avenue residents have not had any satisfaction regarding the problem of lights despite the Board of Appeals decision.

Mr. C. Hall commented at length, pointing out the necessity of each of the light pole locations in the parking lot, and reiterating the effort which has gone into working with Boston Edison (and the fact that some progress has been made) in order to minimize the glare of all the lighting onto adjoining residences and that they have tried to demonstrate good faith to the residents of Maple Avenue.

Later in the evening, Chairman Fox stated he would be prepared to use whatever influence the Selectmen have when Boston Edison appears before them in the future with a request for approval of a utility petition; he directed the Executive Secretary to write a letter to Boston Edison (Jack Goggin) on behalf of the Maple Avenue residents.

Trees/Landscape Screening

Mr. Scammon stated that, using Mr. Cutting's above-noted communication as a guide, he recommends three trees be planted at the west end of the property near the bank along Hop Brook; he stated that the dead trees have already been replaced.

Responding to Chairman Fox, Mr. Scammon stated, other than the above, all conditions set forth by the Board of Appeals and the Board of Selectmen with regarding to the landscape screening have been met, i.e., along the southern boundary abutting Hop Brook.

Handicapped Parking

This is no longer an issue; handicapped parking has been provided as shown on the site plan dated May 10, 1984.

Berms/Drainage & Erosion

With regard to the Board of Appeals condition that "parking lot berms be inspected, restored and maintained so that no parking lot runoff enters Hop Brook other than through the catch basins; this requirement is necessary to prevent erosion of the Hop Brook bank", Mr. Scammon stated that, although Maple Avenue residents do not agree with his determination because a very small portion of the berm is earthen, the berms have been put in to his satisfaction.

Septic System (condition of site plan approval 11/21/83)

Mr. Scammon stated that the Board of Health has signed off, no system was required for Building I. Mr. W. Hall stated the septic system was in place before the construction of Building I started. Mr. Scammon stated there was a question of water usage but the Board of Health has been satisfied.

As-Built Plan

Mr. Scammon stated that an as-built plan has not yet been submitted.

Underground Wiring

Chairman Fox pointed out that the Selectmen's November 21, 1983, approval states nothing about underground wiring, but that reference was made in Mr. Dyrek's November 4 communication that the original site plan (1975-76) called for underground wiring. Mr. W. Hall stated that there is an engineering note on the original site plan about underground wiring.

Following the above comments, Mrs. Edith Hull, 15 Maple Avenue, made a general statement about the importance of the Selectmen's role in seeing that regulations which are laid down are carried out. She made reference to the "ineptness" of the Town's former Zoning Enforcement Agent who did not see to it that things were done. As demonstrated here, the wiring was all placed above ground. She stressed the importance of not just seeing that these regulations are carried out but that they are done so within a reasonable period of time, questioning what the Selectmen felt is a reasonable time. Mrs. Hull was critical of the enforcement to date, particularly with regard to this site plan, the overall system of building in Town, and the manner in which the Selectmen carry out their duties in a less serious manner than she felt they should. She stated that the residents of Maple Avenue care about preserving the Town and this is the reason why they frequently express their views.

Chairman Fox responded by stating that the Selectmen do take their duties seriously; for example, the Selectmen have just drafted a letter to be sent to all businesses along Route 20 regarding the numerous sign violations. He commented on the difficulty of constantly canvassing the Town and stated that whenever the Selectmen or the Building Inspector are aware or made aware of these violations immediate action is taken.

The Building Inspector responded to a question by Chairman Fox regarding the issuance of the building permit by stating that he had been satisfied with the degree of compliance by Mill Village Realty Trust to the conditions of the Board of Appeals but that the Maple Avenue residents disagreed with his opinion.

Upon questioning by Selectman Donald regarding admission of credit by Maple Avenue residents to the Halls for their efforts to resolve the lighting issue, understanding that they have no control over Boston Edison, Mrs. Hull stated it was difficult to give credit when the problem has not been resolved after two years. Mr. LaTour stated it is a fact that, at 2 00 a.m., one is able to read a newspaper in some of the bedrooms of homes on Maple Avenue due to the reflection of the lights from Mill Village. Mr. Watterson responded it is for the Selectmen to decide if the Halls have responded responsively, and, if the Selectmen agree they have, a precedent is being established that two years is a responsible time for response to site plan conditions; said precedent will apply, he stated, to others, i.e., Boston Edison for the undergrounding of wiring on Route 20, various developers will feel that in two years they can come back with requests to amend their respective site plans.

Selectman Frost stated that Mr. Dyrek's communication of November 4 indicates that the Selectmen have a right to modify the original site plan approval (SP Approval Rules and Regulations, Section 10); regarding the reference to the former Zoning Enforcement Agent, no judgment can be made at this time regarding the decision ten years ago to allow overhead wiring rather than enforce the site plan condition relative to underground wiring; the current Zoning Enforcement Agent/Building Inspector was aware of the Board of Appeals conditions and was of the opinion that they were taken care of to the point that he could legally issue a building permit; and that only one grey area remains, to his way of thinking, and that is the occupancy of the building; he referred that question to Town Counsel - whether it is legal or illegal and what steps should be taken, if any. Selectman Frost commented further that this Board of Selectmen has been very strong with regard to occupancy permits, and that it is unfortunate

that this got by them and, speaking for the Selectmen, stated it is their intention not to let it continue.

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

VOTED : To waive the condition of underground wiring for Mill Village Realty Trust, Site Plan 75-160, for property located at 361 Boston Post Road, noted on plan dated September 30, 1975, revised December 2, December 8 and January 6, 1976.

And it was further on motion by Selectman Frost

VOTED: To waive the condition of the November 21, 1983, approval of SP83-271 of Mill Village Realty Trust, for property located at 361 Boston Post Road, Limited Business District #4, which required the installation of speed bumps.

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

And it was further on motion by Chairman Fox unanimously

VOTED : To direct that three trees, comparable to the existing evergreen screen, be planted and maintained at the west end of the parking lot near the bank along Hop Brook, subject to the Building Inspector's approval.

And it was further on motion by Selectman Fox unanimously

VOTED : That all lights on the Hall property be directed away from the residences and that all lights be shielded and that this condition be met within 90 days; that no further occupancy of the building shall take place until that condition and the condition relative to the trees are met; if these conditions are not met within 120 days the Building Inspector shall order the present occupant of the building to cease and desist until an occupancy permit is issued and the conditions met.

Note: Mr. W. Hall stated he did not feel that restricting further occupancy would in any way affect the lifestyle of the Maple Avenue residents but would greatly affect his ability to pay his taxes. He felt that there was total agreement that he was at the mercy of Boston Edison and felt it was inappropriate to condition occupancy of his building on resolution of this particular problem.

CATV/Communication from CATV Committee Chairman

The Board acknowledged receipt of a November 12 communication from Anthony I. Kreisel, Temporary Chairman of the Cable Television Committee, commenting on a joint meeting with Adams-Russell regarding the installation and marketing of cable television in Sudbury.

It was on motion by Selectman Donald unanimously

VOTED : To refer the above-noted communication to Town Counsel, as requested, for an opinion regarding the obligation of funding for a part-time co-ordinator to help the community develop Sudbury programming and whether physically creating a studio at Lincoln-Sudbury High School should be included in the \$55,000 provision for local origination equipment.

Sign Violations/Route 20

With regard to a draft communication prepared by the Executive Secretary at the direction of the Board at its November 13 meeting notifying all businesses along Route 20 of the Board's concern of the various violations to the Town Sign Bylaw, the Executive Secretary was directed to prepare the letter for Chairman Fox's signing with his recommended corrections.

Budgets/Saturday Meeting

Executive Secretary Richard E. Thompson reminded the Board of budget meetings Saturday, November 23, beginning at 9 00 a.m., at the Loring Parsonage.

Raytheon/Traffic Improvements

Executive Secretary Richard E. Thompson updated the Board regarding his meeting with representatives of Raytheon, Town Counsel and the Town Engineer, relative to traffic improvements - widening of Route 20 (sixty feet east of Nobscot Road and sixty feet west of Nobscot Road, signalization at said intersection, and a proposed access road onto Union Avenue from the Raytheon property - an issue initiated during site plan approval for Raytheon to build a new building on its Route 20 property, as follows :

- It is their collective opinion that the Town should proceed to go out to bid for these improvements. Raytheon will provide an engineer to co-ordinate documents, wage rates, etc., for bidding purposes.

- Raytheon has already gone out to bid and their bids came back at approximately \$60,000 for the widening and approximately \$110,000-120,000 for the signalization. Part of the agreement was that Raytheon would pay 100 % of the costs of the widening. Since signalization costs came in so high, it may be necessary to use more than planned of the \$250,000, which Raytheon has pledged (for the access road, the lights and related traffic improvements) toward the signalization.

- On the basis that the access road is the most important improvement, if, when the Town's bids come in, they are too high for the widening and signalization, at that time, there may be a joint recommendation to hold the widening until the State's widening project (costs will be 50% less if State widens) and Raytheon will provide police detail until the widening and signalization takes place, hopefully, simultaneously.

- Mr. Thompson has been working with landowners on Codjer Lane regarding the access road; if that fails to go through, the Town will still have \$250,000 from Raytheon which can be applied to general traffic improvements; e.g., widening the road further west on Route 20, an extension to the State's widening.

Chairman Fox suggested if the State takes care of widening and related expenses that Raytheon add \$60,000, which would have been used for the widening, to the \$250,000. Mr. Thompson responded that he would bring it up during further discussions.

Executive Session

In the absence of Town Counsel the Executive Session, scheduled for this evening to discuss litigation, was canceled.

There being no further business to come before the Board the meeting was adjourned at 9 30 p.m.

Attest: _____
Richard E. Thompson
Executive Secretary/Clerk