

IN BOARD OF SELECTMEN
MONDAY, FEBRUARY 9, 1987

Present: Chairman Josiah F. Frost, Anne W. Donald, and David A. Wallace.

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

Minutes

It was on motion by Chairman Frost unanimously

VOTED: To approve the minutes of the regular session of February 2, 1987, and the executive session of February 2, 1987, as drafted.

Sudbury Water District - Salt Abatement

Prompted by a letter from the Sudbury Water District, there was a discussion concerning the use of salt on sections of Route 20 and Raymond Road. Executive Secretary Richard E. Thompson recommended that the Board contact the State Department of Public Works (DPW) requesting abatement of the use of salt and installation of appropriate signs along the area of concern on Route 20. In further support, Mr. Thompson mentioned that this was also a recommendation of the Route 20 Task Force. The Board agreed with Chairman Frost that the sand would not stay on the road without some salt.

It was on motion by Selectman Wallace unanimously

VOTED: To adopt the recommendation contained in the letter received February 4, 1987, from the Sudbury Water District relative to its concern that salt usage be abated (1) along Route 20 between Dudley Road and Union Avenue, subject to approval by the State, and (2) along Raymond Road from Feeley Field to Warren Road; and to request that the Department of Public Works and Sudbury Highway Department use a minimum of salt in said areas; and it was further

VOTED: To request comments from both the State Department of Public Works and Highway Surveyor Robert Noyes as to what the ramifications would be if they went to "no salt" on both areas; and it was further

VOTED: That the Town put up signs stating "Warning: Limited Salt", such signs to be placed on Raymond Road, between Warren Road and Route 20.

League of Women Voters - Long-Range Planning

It was on motion by Chairman Frost unanimously

VOTED: To respond to a communication dated February 2, 1987 from the League of Women Voters, requesting input from the Board concerning the most critical, long-term issues facing the Board, in connection with its committee organized to study long-range planning for orderly growth and development in Sudbury, by informing them the Board feels there are three main issues, in order of priority:

1. Landfill;
2. Affordable Housing; and
3. Route 20 Task Force report items.

Sudbury Garden Club - Placement of Sign

In response to a communication from the Sudbury Garden Club dated February 2, 1987,

it was on motion by Chairman Frost unanimously

VOTED: To approve a free-standing sign on the plot in front of the Town Hall between the Town Hall and the flagpole, for the purpose of advertising the Sudbury Garden Club's Annual Plant-White Elephant Sale to be held at the Town Hall on Saturday, May 16, 1987.

Massachusetts Municipal Association - MBTA Reimbursement

There were questions posed by members of the Board as to the precise meaning of the letter dated February 3, 1987 from Massachusetts Municipal Association concerning reimbursement of the MBTA 1986 assessment. It was agreed by the Board that its primary interest is in keeping the reimbursement for the towns that do not have MBTA service.

It was on motion by Chairman Frost unanimously

VOTED: To instruct Executive Secretary Thompson to send the letter dated February 3, 1987 from Hillary A. Sale, Fiscal Policy Analyst for Massachusetts Municipal Associates back to her for further explanation of what they are trying to get the Board to respond to with regard to the MBTA reimbursement for 1987.

Annual Town Meeting - Acceptance of Further Articles or Withdrawals

Executive Secretary Thompson recommended that the Board accept two petition Articles which were in proper form. These were initially submitted, sent back, and now re-submitted in proper form. Assistant Town Counsel David Doneski confirmed that he helped draft the two Articles numbered "43" (concerning transfer of land off Horse Pond Road to Park & Recreation Commission) and "44" (concerning transfer of Parcel F06-001 off Fairbank Road to Park & Recreation Commission). Executive Secretary Thompson noted that the Board had previously voted that any Articles that came in after the ordering should be numbered consecutively at the end of the Warrant. Mr. Thompson made it clear that he was not asking the Board to support them, but just to note that they are in proper form as Petition Articles that must appear on the Warrant. Mr. Thompson did indicate that the purpose of both Articles are to defeat the Sudbury Housing Authority Articles on affordable housing.

After further discussion, it was on motion of Chairman Frost unanimously

VOTED: To accept the following Articles submitted by petition for the Annual Town Meeting, and to number them as indicated:

43. Transfer Land off Horse Pond Road to Park & Recreation Commission (Petition)

44. Transfer Parcel F06-001 off Fairbank Road to Park & Recreation Commission (Petition)

It was on motion of Chairman Frost unanimously

VOTED: To accept withdrawal of the following Petition Articles submitted on December 23, 1986 for the Annual Town Meeting:

A. Transfer ownership of Parcel F05-140 of Willis Lake Drive to abutters;

B. Sell Park & Recreation Commission Parcel C07-020, off Longfellow Road;

C. Sell Park & Recreation Commission Parcel G04-437, off Middle Road/Firecut Lane; and

D. Feasibility study of golf driving range on Davis Land (\$3,000);

and to accept the following Articles as replacements for those Petition Articles just withdrawn:

30. Transfer Tax Possession Land off Willis Lake Drive to Selectmen for Purpose of Sale (Petition);

31. Transfer Park & Recreation Commission Land off Longfellow Road and off Middle Road/Firecut Lane to Selectmen for Purpose of Sale (Petition);

32. Sell Lands: (1) Off Willis Lake Drive; (2) Off Longfellow Road; and (3) Off Middle Road/Firecut Lane (Petition); and

33. Golf Driving Range Feasibility Study (Petition) (\$3,000).

Executive Secretary Thompson recommended that the Board submit an Article to Amend Zoning Bylaws, Articles IX, IV, C - Intensity Regulations, and ask the Planning Board tonight to jointly sponsor it with them. Mr. Thompson also asked the Board to approve the wording of the Article and the report; place the Article in the Warrant as 22A; and also vote to refer it to the Planning Board. Executive Secretary Thompson explained that this would take the district the Sperry property is in and downzone it to 300,000 square feet, based upon a new gross floor area. The reason Executive Secretary Thompson recommended 300,000 square feet is because the Town of Concord has a similar zone and it is limited to 300,000 square feet. Executive Secretary Thompson stated that he did not feel the Town should wait for a traffic study to be completed before considering downzoning the property. He expressed his opinion that a traffic study will only give you options--the study may say it should be 250,000 or 300,000 square feet, but it is a value judgment.

Chairman Frost moved to accept the Article concerning the amendment of Zoning Bylaws as outlined in the paragraph above. Selectman Wallace recom-

mended that the Board wait until the Planning Board arrived so the Board may get their input. Chairman Frost agreed and withdrew his motion for the time being.

Joint Meeting With Park & Recreation Commission

Present: Chairman Peter A. Berkel, Jane A. Neuhauser and Rosalyn J. Drawas, Park and Recreation Commission; Chairman John C. Drobinski, Morton L. Brond and Russell P. Kirby, Planning Board; Lee Newman, Town Planner.

Chairman Frost called a joint meeting with the Park & Recreation Commission to discuss the Commission's Annual Town Meeting Articles, as follows:

Article 30 - Willis Lake Drive

Park & Recreation Commission Chairman Berkel explained that this property consists of .11 acres, which had been used as a basketball court several years ago and is overgrown with weeds, etc. The Park & Recreation Commission wishes to consolidate most of its facilities to the main areas in Town, and thus believes it would best serve the Town's interests and the abutters to the property to sell this small parcel to the abutters.

Executive Secretary Thompson recommended that the Board support this Article; and also that the proceeds of this sale, as well as all the properties which Park & Recreation wishes to sell, be used for Park & Recreation purposes.

Park & Recreation Commission Chairman Berkel explained as follows. The Park & Recreation Commission had been discussing possible uses for the proceeds; one possibility would be for the proceeds of one of the pieces of property (Longfellow Road--Article 31) to go to the Conservation Commission, who would, in turn, use that money--as opposed to asking at Town Meeting for additional funds--to work against their "hot list" or areas or places they would like to see preserved. The properties currently held by Park & Recreation are not on any of the Conservation Commission's lists, high or low. If that happened, it satisfies the needs of Park & Recreation and satisfies the needs of the Conservation Commission.

Executive Secretary Thompson opined that every Board and Commission should stand on their own; if Park & Recreation land is found to be salable land, the proceeds from that sale should be used for Park & Recreation purposes. He noted the Conservation Commission has its projects and priorities and its five-year plans and these are not in them. It is Mr. Thompson's opinion that the Finance Committee would not be recommending certain items for the Park & Recreation budget, and there are things requested by Park & Recreation that should be provided for, such as a groundskeeper. Executive Secretary Thompson wished to make it clear that he strongly supports the Conservation Commission, as has the Board of Selectmen, but because of a tight budget this year, Park & Recreation would do well to use any proceeds for special projects down the road.

Article 31 - Longfellow Road and Middle Road/Firecut Lane

Chairman Frost voiced his agreement with Executive Secretary Thompson regarding the use of the proceeds of sales. Chairman Frost's only question was with regard to Longfellow Road. It was his understanding that the Conservation Commission stated there would be an easement; and that might affect the sale of the property. Park & Recreation Commissioner Neuhauser assured the Board that the Conservation easement would be just for the lakefront parcel. There is presently a right-of-way.

The discussion turned once again to the use of the proceeds of sale. Executive Secretary Thompson felt the Finance Committee would not agree to the proceeds going to Park & Recreation; that they would direct the proceeds to go to whatever has the highest priority. If the Town Meeting decides the schools are more important, then they would want the proceeds to pay, for instance, teachers' salaries. Whatever the Selectmen and Park & Recreation decide is merely a recommendation.

Park & Recreation Commission Chairman Berkel informed the Board that this parcel is basically a building lot, a vacant lot, on the street, which is a dead-end cul-de-sac. In reviewing the Land Map of the Conservation Commission, they discovered that the parcel is Wetlands. If so, Mr. Berkel felt this Article should be withdrawn from the Warrant for the Town Meeting.

Executive Secretary Thompson recommended that Park & Recreation look at the matter closely before giving up. He mentioned a court decision dealing with land similar to this, where the Court ruled a building permit should issue.

Park & Recreation Commission Chairman Berkel asked who in the Town makes the final decision as to declaring a parcel buildable. Executive Secretary Thompson stated it would be the Board of Health. Chairman Frost further explained that the Conservation Commission can make other determinations, so in effect the decision-making is dovetailed between the Conservation Commission and the Board of Health. It was agreed, however, that the Board of Health is the main agency, in that it determines whether the land can accommodate a septic system.

It was on motion unanimously

VOTED: That the Board of Selectmen support Article 30, Transfer Tax Possession Land off Willis Lake Drive to Selectmen for Purpose of Sale; and it was further

VOTED: That the Board of Selectmen support Article 31, Transfer Park & Recreation Land off Longfellow Road and Off Middle Road/Firecut Lane to Selectmen for Purpose of Sale; and it was further

VOTED: That the Board of Selectmen support Article 32, Sell Lands Off Willis Lake Drive; Off Longfellow Road; and Off Middle Road/Firecut Lane; and that the proceeds of sale be used for Park & Recreation purposes; and it was further

VOTED: That the Board of Selectmen support Article 33, Petition for Golf Driving Range Feasibility Study (\$3,000).

Article 24 - Enterprise Funds

This Article relates to the Town Pool. Executive Secretary Thompson stated that it was his understanding the Park & Recreation has met with the Finance Committee and has agreed to segregate the budget for the pool. Mr. Thompson further stated the Finance Committee supports the Enterprise Fund Article. Because this legislation is available, Executive Secretary Thompson suggested that Park & Recreation support this now at Town Meeting, it being his personal opinion that it would be nice to get the pool operating under this fund as soon as possible; because, if the Town does not start operating under the Enterprise Fund this year, the money would have to be appropriated. Mr. Thompson recommended against the full appropriation; that instead Park & Recreation should ask the Town Meeting to give it some seed money to start, and then proceed to operate under the Enterprise Fund.

Executive Secretary Thompson recommended that the Board of Selectmen vote to re-order the warrant, to bring the Enterprise Fund Article before the Budget, because of the language of the statute. This will assure passage prior to the Budget in the event it is not passed under the Consent Calendar. He stated the Finance Committee also recommends this re-ordering.

Executive Secretary Thompson explained that the statute states that an estimate of the pool's income be submitted to the Selectmen and Town Meeting. There is a time limit of 120 days from the beginning of the fiscal year for this to be done, i.e., by March 1st. The Selectmen have copies of the Park & Recreation budget, so the first part of the statute is complied with. Park & Recreation must now resubmit to the Board an analysis of the receipts Park & Recreation anticipates. This must be done because there is no history of receipts. The Board must, before Town Meeting, go to the State and ask them to approve the business plan.

Executive Secretary Thompson wished to emphasize that there is only one purpose for doing this: so that Park & Recreation can run the pool in the easiest, best and most accountable fashion.

It was on motion unanimously

VOTED: To accept the recommendations of Executive Secretary Richard E. Thompson to renumber Article 24 as Article 3.

The Board requested the Park & Recreation Commission to resubmit to the Board of Selectmen an analysis of the receipts it anticipates from the use of a pool in the Town.

Dog Complaint Hearing - Beauregard/Murdock

Present: Mr. Robert R. Beauregard, Mrs. Sharon Beauregard, Mr. Thomas Murdock, and Mrs. Janice C. Murdock.

At 8:30 p.m., the Board of Selectmen conducted a public hearing to consider the complaint dated January 8, 1987, of Ms. Sharon Beauregard of 27 Chanticleer Road, against two dogs harbored by Mr. and Mrs. Thomas Murdock, 55 Chanticleer Road. It was noted that notice of this hearing had been sent

to the parties involved by Certified Mail and receipts received. Also, a report dated February 6, 1987 had been received from the Dog Officer, which stated that the Murdocks had placed the chow, one of the two dogs that killed the cat owned by the Beauregards, in a home; and when she went to see the Lab, he was good and very quiet.

The Murdocks confirmed that the chow is permanently out of Sudbury.

Executive Secretary Thompson explained that this was an official hearing of the Board of Selectmen, and that although the Board attempts to keep the hearing informal, those giving testimony would have to be sworn in, whereupon Mr. and Mrs. Beauregard and Mr. and Mrs. Murdock were sworn in.

Mrs. Sharon Beauregard testified first, as follows: She stated that the incident occurred January 7, 1987. She had been taking a shower and then heard a great commotion. She wrapped a towel around herself and went to the window and saw two dogs "right at my cat". Mrs. Beauregard ran downstairs and out her front door. A large black dog would not let her out the door. He stood there with a very mean look on his face, "like he was going to tear into me." She got a shovel from nearby, and was prepared to hit him if he attacked her. He kept standing there, so she ran in the house and called the police. When she telephoned, she told them she thought [the dead cat] was a poodle that somebody had thrown in her front yard. After the call, she was able to get outside--the two dogs went over to her front door. The policeman came up and she said that it was not a poodle, but one of her cats. He suggested that she call the Dog Officer, which she did. She told Betsey [DeWallace, Dog Officer] that she was new to the neighborhood, so she knew where she had seen the dogs, but she did not know who the owners were. Ms. DeWallace asked Mrs. Beauregard to check the numbers of the houses. She did so and telephoned Ms. DeWallace with the information that the two dogs were in the driveway of the Murdocks' home.

Mrs. Murdock then acknowledged that that was the story she was told, and testified as follows: She was home at that time. The Dog Officer called her. Mrs. Murdock immediately walked down the street, apologized and asked if she could make restitution. Relying upon the Dog Officer's information, she thought her dogs killed the cat.

Chairman Frost asked Mrs. Murdock if it has been the practice in the past for the dogs to leave their property during the day. Mrs. Murdock replied that she normally worked during the day but was home with a migraine that day and let them out for an hour; they usually were in the house. Chairman Frost asked if there had been previous complaints, to which Mrs. Murdock responded, "no".

Mr. Thomas Murdock next testified as follows: He stated that they have lived in Sudbury eleven years, they have had dogs and animals in their home for all that time and at the present time, prior to the incident, they had three dogs in their home: a chow, a Labrador, and a Lhasa Apsu. The Murdocks have five children. Many children come into the home, as well as neighbors, and they never had any problems with the dogs.

Mr. Murdock testified that based upon information they assumed was reliable, and based on the assumption that the identities were correct, they

immediately took action with regard to the dog that might possibly have been more aggressive than any dog they have ever had. They took that dog--the chow--and removed it from Sudbury immediately, because they would not tolerate that kind of action from any dog. The other dog, the Lab, is the most docile, unthreatening pussycat, he said.

Mr. Murdock submitted an unsolicited letter from a neighbor. He said that apparently the incident was the "talk of the neighborhood", and there was such a good feeling about the Lab, one of the neighbors saw fit to express his own feelings, even though they were not more than acquaintances.

Mr. Murdock informed the Board that he had brought to the attention of the Dog Officer that there had been additional complaints about a chow in the neighborhood. This disturbed Mr. Murdock because two days after the incident occurred, the chow in the neighborhood was not theirs. When the Dog Officer came to their home, statements made by her led Mr. Murdock to believe there were still complaints about a chow. He was upset to think that if this was a case of mistaken identity, he brought financial and emotional loss to his family by believing it was their dog that caused the distress to their neighbors.

Chairman Frost called upon Betsey DeWallace, Dog Officer, for her comments. Ms. DeWallace stated that Mrs. Beauregard had said something about having pictures of the dogs who did the killings. When she visited the Murdocks, Ms. DeWallace stated, the Lab did not bark, that the dog was "definitely a nice dog." When asked by the Board if there were any other chows registered in the vicinity, Ms. DeWallace stated that she was not aware of any, but that Mr. Beauregard[sic?] mentioned something about other dogs.

Mr. Beauregard next testified as follows: He proffered some photographs. He stated he believed "without a question" that the Town has a Leash Law and therefore felt there were two issues: (1) violation of the leash law; and (2) the incident itself. He said there was no doubt the dogs were on his property. Mr. Beauregard informed the Board that he jogs, and that when he passes the Lab, he barks. He acknowledged the dog may be docile, but he has no way of knowing that. He related an incident when a guest of his attempted to go jogging, but could not get down the block because the dog was barking at him. Mr. Beauregard told the Board there is no question that the dog roams the neighborhood. He offered to obtain letters from neighbors if the Board requires them to establish this fact.

Executive Secretary Thompson informed Mr. Beauregard that, technically, the Town does not have a Leash Law. The Town has a "Dog Control Law", whereby the dogs must be under control of the owner between the hours of 7:00 a.m. and 8:00 p.m. That means that if your dog is out somewhere and does something wrong, then he is not under your control.

Mrs. Beauregard then stated that they have a little girl of six years. She expressed her concern of what would have happened if her little girl had been holding the cat. She also informed the Board that she has another cat, which was so frightened that they could not find it until 7:00 or 7:30 that night and it is afraid to go off their front porch.

Mr. Murdock stated that the neighborhood has four black Labs, and two chows. He believes there is a great deal of mistaken identity. As an example, he cited a situation where there are two nice ladies who walk around the neighborhood; as they walk, if they see the Murdocks' black Lab, they will bring him back, and occasionally, they will bring the wrong one back. He said the concern is over the chow, and based on assumption that the chow did it, they removed the chow and it will never return. Mr. Murdock questioned whether the black Lab was involved. The Murdocks have had the black Lab in their home for four years and this is the first incident.

Selectman Donald noted that the Complaint stated the dogs were not licensed in 1986. Mr. Murdock stated they are now licensed.

Mr. Murdock stated the Lab is four years old, grey on the muzzle. Mr. Murdock also stated the dogs are in the cellar while the children are at school and the parents are at work; when the children are home, the dogs are either in the home or in the front yard.

Mrs. Murdock acknowledged that the dogs do go out of the yard.

Mrs. Beauregard stated that she, personally, and her oldest son, have chased the dogs back to the Murdocks' home--the dogs go right to their driveway.

When asked how long the Murdocks had the chow, Mrs. Murdock stated one and one-half years, and Mr. Murdock stated four months.

Selectman Wallace asked Mr. Murdock what led him to believe the chow was the principal aggressor. Mr. Murdock stated that the chow by nature is an aggressive dog. He acknowledged this type of dog can be a problem dog, saying if you take a chow to an animal hospital or place for boarding, they will always make you put a muzzle on him. He stated the chow can and has a history to be potentially dangerous; that is why he took that action against the chow. But he reiterated that he has a very hard time believing the black Lab was involved, because it is the most docile dog they have ever had.

Selectman Wallace asked Mrs. Beauregard about the other cat. She stated that the cat is petrified and will just go onto the screened-in porch. She has seen the dogs on her porch. She had heard that one of their mailmen had been bitten by a dog on the street. Her concern is that so many dogs roam the street all day long.

Chairman Frost asked Mr. Murdock if he was aware of the Dog Control Law. Mr. Murdock responded "yes." Chairman Frost then stated that when the youngsters come home and let the dogs out, the Murdocks are liable for their actions because the dogs are not under control. Chairman Frost stated he realized that it is very difficult to say the Lab is going to stay on the property, but under the law it has got to be under their control.

Chairman Frost clarified that if the dog is on their property and barks, so long as the barking does not amount to a nuisance, there is no problem with violating the Dog Control Law.

The Board asked the Dog Officer if she had a recommendation. She did not.

Executive Secretary Thompson recommended that, since the family has been very cooperative by taking one dog out of the Town, the other dog be restrained under the control of the Murdocks during the hours as provided in the Dog Control Law, and that, if another complaint ensues, the Board reconvene for further action. He said this should be considered a "first warning."

Selectman Wallace stated that this kind of hearing is difficult because the Board understands the feelings on both sides. He commented as follows: As docile as Labs are or can be, dogs and cats are natural enemies. Whether or not the Lab participated in the act of killing is maybe moot. He believes what the Beauregards are asking for is enforcement. Mr. Wallace reinforced and reiterated that dogs should be restrained according to the Dog Control Law. If the dog does appear in the Beauregards' yard, they should be afforded an opportunity to reconvene the hearing on this complaint. He suggested that if such a situation occurs, the Beauregards' complaint immediately be placed on the next Selectmen's agenda.

Executive Secretary Thompson amplified Selectman Wallace's position by stating that if there is another complaint where there is a feeling of harassment or danger to the person bringing the complaint, the next step of the Board of Selectmen may be to permanently restrain the dog.

Selectman Donald stated that she believed that whereas the Murdocks removed the chow from the Town, she would be willing to give them an opportunity to obey the Dog Control Law. She requested the Murdocks to impress upon all their children that they must not let their dogs out by themselves because, if the complaint comes back to the Board, the Labrador retriever will be permanently restrained or ordered out of Town. She stressed that those are the options the Board has and it will exercise them.

It was on motion by Chairman Frost unanimously

VOTED: That the Murdocks, residing at 55 Chanticleer Road, confine their dogs in accordance with the conditions of the Dog Control Law, which states, in part: "All dogs in the Town of Sudbury shall be restrained, kept on a leash or under the direct and complete control of a responsible person between the hours of 7:00 o'clock a.m. and 8:00 o'clock p.m. No dog in the Town of Sudbury shall be allowed to run at large during these hours."; and that if this case comes before the Board of Selectmen again, a hearing will be convened immediately to impose continuous and permanent restraint on their Labrador retriever; and that the chow, formerly residing at 55 Chanticleer Road, not be allowed to come back into Sudbury.

Executive Secretary Thompson concluded the hearing by stating all parties concerned have certain rights under the Statute and Bylaw to appeal their decision to the District Court. He informed the parties that they will be notified in writing, and the time for appeal will not commence until the parties are so notified in writing.

The photographs submitted by the Beauregards were returned to them. Mrs. Beauregard asked the Board what she should do if a situation arises and she is

unable to reach the Dog Officer. Executive Secretary Thompson suggested to her that, if she feels she has some danger, she telephone the police. If no immediate danger, she may then call the Selectmen's Office.

A five-minute recess was called at 9:05 p.m., after which the Board reconvened for a joint meeting with the Planning Board.

Planning Board - Annual Town Meeting Articles

Present: Morton L. Brond and Russell P. Kirby, Planning Board; Town Planner Lee Newman.

Re: Intensity Regulations:

It was on motion unanimously

VOTED: To submit an article to amend Zoning Bylaws, Art. IX, IV, C - Intensity Regulations for the Annual Town Meeting Warrant subject to final review of wording by Town Counsel and the Town Planner; to number said Article as 22A and to approve the Warrant Report as revised; and further, to refer said Article to the Planning Board for its hearing and report as required by G.L. c. 40A, §5.

Re: Cluster Zoning (Article 36):

At the outset, Executive Secretary Thompson informed the Planning Board that the Board of Selectmen had voted unanimously to support the Cluster Zoning Article (No. 36). At the request of Selectman Donald, Planning Administrator Lee Newman read the latest changes to the Article.

Re: Kiosks (Article 38):

Planning Board member Russell Kirby began this discussion by stating that the sum and substance of the Article is to prevent the indiscriminate placement of small buildings within the parking lots in the Town.

It was pointed out that there are presently two kiosks in the Town, with the possibility of a third: BayBank has one opposite its facility on Union Avenue; the Fotomat store in 1776 Plaza (Sudbury Farms); and BayBank has been approved for a location in Star Market Plaza. There was an approval of a kiosk in Sudbury Crossing, but it was thought that the time limit has expired for exercising that right to construct.

Planning Board member Morton L. Brond expressed his personal opinion that the structures are unsightly, create a traffic problem, and he felt that by putting in these additional abutments in the Town's parking lots, additional problems will be created.

Assistant Town Counsel David Doneski expressed his concern that the overly-broad language of the Article as it now stands is problematic if its sole purpose is to eliminate these structures from the parking lots.

Executive Secretary Thompson recommended that the Board support the Article, subject to Town Counsel working out proper language in order to avoid litigation in the courts.

In response to Selectman Wallace's inquiry as to whether this Article would apply to the various newspaper stands, such as the ones in Star Market Plaza, the Planning Board stated emphatically that the Article was not meant to restrict any rights guaranteed under the First Amendment to the United States Constitution.

Planning Board member Russell Kirby pointed out that it would prevent soda machines in parking lots. He expressed his concern that although one soda machine outside a building against a wall may not be a problem, there is nothing to prevent placing five or more out there. The purpose of the Article is to "close the door" on this type of thing before it happens.

Chairman Frost stated that unless the wording is clarified, there would be problems. He felt that some Townspeople may feel that although they do not want a "kiosk" per se, they may want, for example, an ice machine that can be accessible after usual store hours. He pointed out that, if it is right up against the building, it almost becomes part of the building and he did not believe the Article could take that away.

It was suggested that the wording might be phrased so that kiosks would be prohibited only if they are a certain distance from the building.

It was further strongly suggested that the wording be taken care of before the Warrant goes to press.

For the information of any persons present who did not have the most recent version of the proposed Article, Assistant Town Counsel David Doneski explained that the substance of the changes was that publications were eliminated and what would be excluded are those structures which are more than ten feet from the building. Attorney Doneski stated he had consulted with Town Counsel Paul Kenny, and it was their opinion that it is really a question of exactly what is desired to be eliminated. It is not so much what can or cannot be done, but the language must be worked on. As an example, he explained that the word "kiosk" is subject to various interpretations.

Selectman Wallace stated that the "kiosk" troubled him because the Town has had nothing to prevent the building of one. Mr. Wallace felt that this is an issue that cannot be arbitrarily decided; that it is something to let the Town decide, whether these are the types of structures the Town does or does not want. Mr. Wallace stated the Board is looking for guidelines as to what the Townspeople want, regardless of personal prejudices for or against these structures; and that as to soda machines, or ice machines, or dispensaries of any kind, it was Mr. Wallace's opinion that these are separate issues.

Planning Board member Brond suggested that dispensing machines could be eliminated from the proposed Bylaw. The Planning Board's focus is on eliminating the free-standing structure or building that dispenses something.

Planning Board member Kirby pointed out that for the most part, the soda dispensing machines have a "back-lighted" sign, which may relate to the application of another provision in the Bylaws.

It was on motion of Chairman Frost unanimously

VOTED: To support the concept of Article 38 to Amend Zoning Bylaws, Art. IX, III, B, I, m, (a) and Art. IX, III, B, 2, i, (a) - Kiosks, and to suggest that Town Counsel be consulted as to wording that will properly reflect the intent of the Article.

Re: Use Variance Guidelines:

The Planning Board expressed its concern with the present procedure is that if the Board of Appeals grants a use variance on the property for which it is sought, that variance goes "with the land" and there is no provision whereby that decision could be reversed; whereas, if the use of the property can be determined by zoning, and the Town Meeting takes action on it, that decision is reversible by another action at another Town Meeting.

Selectman Donald questioned whether the Board has the right to remove this power from the Board of Appeals. Town Planner Lee Newman referred the Board to Chapter 40A of the General Laws, and stated as an example that the Town of Concord does not allow the Board of Appeals to grant use variances.

Executive Secretary Thompson recommended that the Board not support the Article, stating that it was his opinion that there is a place for the use variance. Mr. Thompson stressed that he did not believe the power should be free-wheeling, but the option should at least be there for the Board of Appeals. Mr. Thompson commented that he could think of no instance where the Board of Appeals has abused their power to the harm of anyone.

Planning Board member Kirby wished to make it clear that the proposed Article was in no way a criticism of the way the Zoning Board of Appeals has exercised their power. Mr. Kirby pointed out that the night of the joint meeting between the Planning Board and the Zoning Board of Appeals, the members of the Board of Appeals were themselves divided as to whether this authority should remain with the Board. There had been action concerning a particular piece of property in the Town, and some of the members of the Board would have preferred that the action taken had not been done; but the Town was powerless to change it.

Selectman Donald stated that before she took a position on this Article, she would like to see both the Planning Board's report and the Board of Appeals' report.

Chairman Frost indicated that it was his impression that the majority of the Board of Appeals did not want to relinquish that power, and that he would like to further investigate it. Chairman Frost expressed his reticence to take away power from another Board. He further stated he felt there is a certain appeal for a landowner to be able to use this statute and he believes that is why the statute was originally placed in there.

Selectman Wallace explained that it was his understanding that under the Use Variance, as it stands now, someone may apply for a use that is not otherwise permitted in a zone. He cited Route 20 as an example of residential areas back to back with commercial zones. The purpose of the use variance would be to allow, for example, a doctor or other professional who owns a piece of property that is residentially zoned but abutting a commercially-zoned area, to apply for a variance for his/her specific professional use only. Mr. Wallace further stated it was his understanding that this would run with the land. Once it is granted, it is in perpetuity. It is recorded with the Registry of Deeds and from that point, it may be used only for that particular purpose; and any variation from that specific use would be in violation of the zoning laws.

Mr. Wallace attempted to summarize the Planning Board's opposition to the procedure he outlined above by suggesting the reason the Planning Board wishes to eliminate this authority of the Board of Appeals is that once the use variance is granted and recorded, in spite of what a subsequent Town Meeting might want to do concerning that particular parcel, it is legally binding to the point that it could not be changed back no matter what the Town may wish to do.

Planning Board member Brond agreed with that assessment and stated it was his opinion the authority as it now stands is de facto rezoning without Town approval.

Selectman Wallace continued that some members of the Board of Appeals believe that one of the purposes of the Board of Appeals is to consider on a case-by-case basis because of the particularity and specialization of the items that do come up; not as an overall policy-making Board, but taking "hardship" cases and deciding if there is a particular hardship to a particular landowner in that particular situation. An abutter is notified that a zoning issue is before the Board of Appeals and is taking place--that person does have a right of appeal. There are avenues of appeal to the Superior Court and to the Massachusetts Appeals Court and ultimately, the Massachusetts Supreme Judicial Court. There is no de facto rezoning per se. Selectman Wallace said the question becomes whether or not the Planning Board wishes the Board of Selectmen to decide if it wants philosophically to think about whether these things ought to be allowed at all.

Selectman Wallace stressed that although the variance is not appealable within the Town Meeting, or by the Board of Appeals, it is appealable to the various courts.

Planning Board member Brond suggested another way to handle this matter is through a special permit process. He believed that this would at least allow a limitation and may place certain restrictions. Mr. Brond further stated this approach would allow the Town to "take another look", as opposed to a use variance, which would be an almost permanent change.

Executive Thompson suggested that the Board of Selectmen obtain a report from Town Counsel, since the issue may not only be philosophical, but legal as well.

The discussion concluded with an observation by Chairman Frost that there is still a lot of property in the Town owned by families for a long time, sandwiched in between industry and business. Those people have a right of appeal that just cannot be taken away from them as property owners. It was Mr. Frost's feeling that it would not be the American way, nor is it the Sudbury way.

It was on motion of Chairman Frost unanimously

VOTED: That the Board of Selectmen comment on and also recommend a report from the Board of Appeals at Town Meeting concerning Article 39, To Amend Zoning Bylaws, Art. IX, VI, C, 6 - Use Variance Guidelines; and further, to suggest that Town Counsel review and advise as to what effect this would have and whether use variances could be replaced by the Special Permit process.

Re: Sales [Farm] Stands (Article 40):

Planning Board member Kirby stated the purpose behind this Article is that at the last Town Meeting, there were several definitions that were incorporated into the Bylaws. One that was not included was what constituted a "farm stand". Because of the discussion on the floor, it was deleted from the Article. At that time, the Planning Board indicated that it would address this at a subsequent meeting. Thus, this Article is an effort to define what a "farm stand" is in this Town.

Chairman Frost suggested the Board study the situation in the neighboring Town of Stow. Mr. Frost indicated Stow has a Bylaw with regard to farm stands that has been in and out of the courts, still with no resolution. Mr. Frost stressed that the Town of Sudbury was originally a farming community and that fact must not be forgotten.

Re: Walkways (Article 41):

It was on motion of Chairman Frost unanimously

VOTED: To approve Article 41, Walkways, in the amount of \$67,166 for Goodman's Hill Walkway, and in the amount of \$2,214 for an engineering survey for Maynard Road.

At the close of discussion, Selectman Donald requested that the Planning Board submit its reports, together with input from its public hearings, so that the Selectmen can take positions on remaining zoning articles.

Action/Positions/Speakers - Annual Town Meeting

It was on motion of Chairman Frost unanimously

VOTED: To renumber Article 22, Amend Zoning Bylaws, Art. IX, 11, C - Delete Research District #1 (Sperry property) to Article number 22(B).

It was on motion of Chairman Frost unanimously

VOTED: That the Board of Selectmen report at Town Meeting on the following Articles:

Article 34, Establish Traffic Committee;

Article 35, Undergrounding of Utility Wires.

It was on motion of Selectman Donald unanimously

VOTED: That the Board of Selectmen oppose Petition Articles 43 (Transfer Land off Horse Pond Road to Park & Recreation Commission) and 44 (Transfer Parcel F06-001 off Fairbank Road to Park & Recreation Commission).

For those Articles which have not as yet been designated, it was unanimously

VOTED: That the Selectman liaison to the particular department involved be assigned to speak on the remaining Annual Town Meeting or Special Town Meeting Articles.

April 6, 1987 Special Town Meeting

It was on motion of Chairman Frost unanimously

VOTED: To order the Warrant for the April 6, 1987 Special Town Meeting to read as follows:

- | | | | |
|----|--|-------------|-----------|
| 1. | FY87 Budget - Town Insurance | (\$26,000) | Selectmen |
| 2. | FY87 Budget - Health Insurance | (\$20,000) | Selectmen |
| 3. | FY87 Budget - Salary Adjustment | (\$10,000) | Selectmen |
| 4. | Petition Legislature to Authorize LSRDSC
to Incur Debt for Outside Facilities | | LSRDSC |
| 5. | Approve LSRHS Indebtedness for Improving
Outside Facilities | (\$155,000) | LSRDSC |
| 6. | Approve LSRHS Indebtedness for Building
Renovations/Equipment | (\$595,000) | LSRDSC |

Offsets to Reduce Tax Levy For FY88

It was on motion of Selectman Donald unanimously

VOTED: To approve offsets to reduce the tax levy for FY88 to be acted upon at the 1987 Annual Town Meeting, as follows:

<u>Source</u>	<u>Amount</u>	<u>To Offset</u>
Federal Revenue Sharing	\$12,500	310-110 Fire Salaries
Federal Revenue Sharing	12,500	320-110 Police Salaries
 Cemeteries:		
Sale of Lots	2,800	410-110 Highway Salaries
Mt. Wadsworth	2,400	410-110 Highway Salaries
Mt. Pleasant	2,600	410-110 Highway Salaries
North Sudbury	2,600	410-110 Highway Salaries
New Town	1,100	410-110 Highway Salaries
Old Town	4,500	410-110 Highway Salaries
	<u>\$16,000</u>	

and to concur with use of the following offsets:

State Aid	\$10,800	600-520 Library - Books
Dog License Refund	2,000	600-520 Library - Books
Abatement Surplus	100,000	950-807 Reserve Fund
Sale of Town Land	84,500	400-510 Highway Equipment (indirectly to offset Conservation Fund)
Free Cash	1,117,401	Budget line items

Transfer Request No. 87-53 - Fire Department

It was on motion of Chairman Frost unanimously

VOTED: To approve Request No. 87-53, dated February 3, 1987, to transfer \$870 from 310-110 Salaries to 310-100 Chief's Salary, Fire Department, for payment of the Fire Chief's EMT stipend.

Special Voter Registration Sessions

It was on motion of Chairman Frost unanimously

VOTED: To authorize the following voter registration sessions to be held at Town Hall under the provisions of Chapter 51, sections 27, 28, and 30 of the General Laws, for the Annual Town Election and Meeting:

Monday, February 23, 1987	7:00-9:00p.m.
Monday, March 2, 1987	7:00-9:00p.m.
Saturday, March 7, 1987	Noon-8:00p.m.
Tuesday, March 11, 1987	9:00a.m.-10:00p.m.
	(Close of Registration)

ICMA Newsletter re: Pledge

It was on motion of Chairman Frost unanimously

VOTED: To request an opinion from Town Counsel as to whether the Town can contribute a token amount to show support for the International City Management Association's State and Local Legal Center.

There being no further business to come before the Board, the meeting was adjourned at 11:00 p.m.

Attest:

Richard E. Thompson
Executive Secretary-Clerk