

IN BOARD OF SELECTMEN  
MONDAY, MARCH 9, 1987

Present: Chairman Josiah F. Frost, Anne W. Donald, 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.

Appointment of Police Sergeant

Pursuant to the joint recommendation of Chief of Police Peter B. Lembo and Executive Secretary Richard E. Thompson, on motion of Selectman Anne W. Donald, it was unanimously

VOTED: To appoint from Division of Personnel Administration Certification List #86-1017, dated February 3, 1987, Peter F. Fadgen of 14 Clamshell Road, Clinton, Massachusetts, a permanent fulltime Police Sergeant to fill the position vacated by Ronald J. Nix, to be effective March 10, 1987, subject to approval by the Division of Personnel Administration; and further, to authorize the Executive Secretary to sign all appropriate documents required by the Division of Personnel Administration relating to said appointment.

Appointment to Route 20 Task Force

Selectman David A. Wallace recommended Judith A. Cope be appointed to fill the vacancy in the Route 20 Task Force, as also recommended by the Route 20 Task Force. Chairman Frost noted that Robert Cooper has expressed a continuing interest in serving on this Task Force and recommended he be interviewed so that he may be placed on a list for the next vacancy that occurs.

On motion of Selectman Wallace, it was unanimously

VOTED: To appoint Judith A. Cope of 80 Plympton Road a member of the Route 20 Task Force to fill the position vacated by Peter Anderson; and further to arrange an interview with Robert Cooper of 28 Revolutionary Road for the purpose of placing him on a list for the next vacancy that occurs.

Two Hundredth Anniversary of Massachusetts Constitution

The Board reviewed a communication received February 27, 1987, from the Sudbury Historical Commission relative to the appointment of a Bicentennial Group to organize commemorative activities in recognition of the 200th anniversary of the signing of the Massachusetts Constitution during 1987. Executive Secretary Thompson acknowledged that this anniversary is an important event and offered to act as coordinator if needed for this purpose; however, in recognition of the current and future commitments of the many committees and departments of the Town, Mr. Thompson recommended formation of this Group be tabled at the present time.

On motion of Selectman Wallace, it was unanimously

VOTED: To table for the present time the appointment of a Bicentennial Group to organize commemorative activities in recognition of the 200th anniversary of

the signing of the Massachusetts Constitution during 1987; and further that Executive Secretary Thompson be appointed coordinator of activities as needed.

Resignation of Jan Soron/350th Anniversary Celebration Committee

The Board reviewed the letter of resignation submitted by Jan Soron, received March 5, 1987, as a member of the Sudbury 350th Anniversary Celebration Committee, and expressed its appreciation for the work she has contributed to this Committee. Executive Secretary Thompson suggested Mrs. Soron be asked to recommend a member of her Quilt Group as her replacement.

On motion of Selectman Donald, it was unanimously

VOTED: To accept the resignation of Jan Soron of 524 Concord Road as a member of the Sudbury 350th Anniversary Celebration Committee; and further, to contact Mrs. Soron for the purpose of expressing the Town's thanks for her contributions to the Committee and to request her to recommend a member of her Quilt Group to fill the position being vacated by her.

Police Mutual Aid Agreements/S.O.P. for Concurrent Jurisdiction

The Board reviewed letter of Police Chief Peter B. Lembo dated March 4, 1987, together with copy of a proposed Mutual Aid Agreement and copy of proposed Standard Operating Procedure relating to Concurrent Jurisdiction and Mutual Aid.

In response to inquiries by Selectman Anne W. Donald, Executive Secretary Thompson explained the term "shift commander" in Paragraph "A. Assistance from MSP & Local Police Departments" of the two-page draft "Standard Operating Procedure: Concurrent Jurisdiction & Mutual Aid" presumably means a sergeant of the Town's Police Department; and "Executive Officer" in Paragraph "B. Aid to Surrounding Communities" would be Lieutenant Ronald J. Nix.

Town Counsel Paul Kenny expressed no problems with the drafts, but pointed out that as drafted, the town sending such assistance shall be held harmless for anything that may occur in the requesting town.

On motion of Chairman Frost, it was unanimously

VOTED: To approve the form of Police Mutual Aid Agreements to be entered into with neighboring communities, as submitted by Police Chief Peter B. Lembo under cover letter dated March 4, 1987, together with draft "Standard Operating Procedure: Concurrent Jurisdiction & Mutual Aid".

Grant of Restriction/land off Thoreau Way

The Board, together with Town Counsel Paul Kenny, reviewed Grant of Restriction executed February 24, 1987, by Robert W. Shoemaker, III, of 28 Paddock Way, to the Town for an interest in land off Thoreau Way, for the purpose of a building and wastewater or sewage disposal restriction.

On motion of Selectman Donald, it was unanimously

VOTED: To accept on behalf of the Town from Robert W. Shoemaker, III, interest in land off Thoreau Way, as shown on a plan as Lot 2, and entitled "Plan of

Land in Sudbury, Mass., Prepared for Robert Shoemaker III", dated December 9, 1986, in the form of a building and wastewater or sewage disposal restriction, dated February 24, 1987.

Sale of Alcoholic Beverages During Polling Hours of Town Election

After discussion by the Board, wherein it was noted that this has been allowed in the past without incident, on motion of Selectman Donald, it was unanimously

VOTED: To allow the sale of alcoholic beverages by common victuallers and retail package stores during the polling hours of the Town Election on March 30, 1987, in accordance with General Laws Chapter 138, Section 33, as amended.

Approval of Minutes

On motion of Selectman Donald, it was unanimously

VOTED: To approve the minutes of the meeting of March 2, 1987, as amended.

Purchase of Police Cruisers/Indemnification Agreement

The Board reviewed the "Hold Harmless and Indemnification Agreement" proposed by the City of Newton, Massachusetts, with respect to the purchase of cruisers for the Police Department. In response to query by the Board, Town Counsel Paul Kenny expressed reservation about such an indemnification. Attorney Kenny believed the document is overly-broad and would be deemed unconscionable and therefore unenforceable. After discussion, on motion of Selectman Donald, it was unanimously

VOTED: To sign the Hold Harmless and Indemnification Agreement drafted by the City of Newton and to return such executed Agreement with a notation that it is the opinion of Town Counsel that such an Agreement would be unenforceable as overly-broad and unconscionable under the laws of the Commonwealth of Massachusetts.

Transfer of Liquor License--Wayside Package Store to Sudbury Wine & Spirits

Present: Howard J. Wayne, Esquire, Lawson & Wayne, 425 Summer Street, Boston, Massachusetts 02210, representing Sudbury Wine & Spirits, Inc.; Joseph S. Lank, Manager of Sudbury Wine & Spirits, Inc.; Thomas McManus, Wayside Package Store, Inc.; Ellen Lee, The Mugar Group Incorporated.

At 8:00 p.m., Chairman Frost convened a public hearing on the application for transfer of an All Alcoholic Package Goods Store License from Wayside Package Store, Inc. to Sudbury Wine & Spirits, Inc., for property at 513 Boston Post Road.

Executive Secretary Thompson requested a copy of the transcript of the hearing as being recorded by Judith R. Goodridge, Flynn & Sloan Reporting, 390 Main Street, Suite 940, Worcester, Massachusetts 01608, who was present at the direction of Attorney Wayne.

Executive Secretary Thompson read into the record the Notice to Abutters which was duly mailed and timely published. Upon recommendation of the Executive Secretary, the hearing was turned over to Town Counsel Paul Kenny.

Attorney Kenny informed the Board and public that a judgment of the Middlesex Superior Court directed the Town of Sudbury to renew the license of Wayside Package Store, Inc. and to hold a hearing to determine whether such license may be transferred to Sudbury Wine & Spirits, Inc. He further informed those present that the question of the license renewal is presently on appeal to the Appeals Court for the Commonwealth of Massachusetts and a decision is not expected for some time. Mr. Kenny explained that since the Order of the Court did not require transfer but only required a hearing be held on that issue, the Town did not seek a Stay in this matter. Thus, it is the Town's position that any decision of the Board relative to transfer of the license is subject to the final outcome of the matter now before the Appeals Court.

Howard Wayne, Esquire, identified himself to the Board as attorney for Sudbury Wine & Spirits, Inc. Attorney Wayne indicated that he has been involved in this matter on behalf of Sudbury Wine & Spirits, Inc. since the original application filed December 12, 1983, and reiterated Attorney Kenny's summary of the Court Order. Attorney Wayne stated that it was understood the hearing was going forward at the applicant's peril, not at the Town's risk.

In support of applicant's claim, Attorney Wayne pointed out the following:

- (1) The location in Sudbury Plaza already has been licensed as a package store;
- (2) A view of its location shows there is plenty of parking in that area;
- (3) Sudbury Wine & Spirits, Inc. would be the only package store in the Town on the East side of Route 20; traffic travelling toward Boston would not have to cross Route 20 to get to other package stores in the area;
- (4) Joseph Lank [Manager of Sudbury Wines & Spirits, Inc.] is extremely expert in the field, presently runs a top-notch store, and plans to run a different type of store than a "Kappy's";
- (5) The location is for a 3,600 square foot store, which is much smaller than the 14,000 square feet housing Kappy's.

Attorney Wayne concluded by stating that Mr. Lank has been made to wait three years, that the time to act upon this matter is now, and he would hope that the Board would grant the transfer.

Ellen Lee, representing The Mugar Group, then submitted to the Board the blueprints of the "Bottle Shop" dated March 12, 1974, and the Site Location Plan dated October 20, 1986. Ms. Lee indicated that because of its location within Sudbury Plaza, it was in her opinion not necessary to submit anything relative to parking plans.

Mr. Joseph S. Lank next spoke on his own behalf. Mr. Lank stated the operation he intends to run is a specialty/fine wine type shop. Because of its proximity to Sudbury Farms and gourmet shops, he does not intend to sell cheeses. Mr. Lank assured the Board that he operates good, clean, reputable establishments.

The Board next heard from Thomas McManus, who stated that Wayside Package Store, Inc. was anxious to make the transfer and would like this accomplished as quickly as possible.

Attorney Wayne summed up applicant's presentation by reiterating what he feels is a public need for this type of store being located on the East side of Route 20; that the traffic moving toward Boston needs to be serviced as much as the traffic out of Boston. Attorney Wayne also pointed out that Sudbury Plaza exceeds \$20Million in business yearly, and those customers would not have to travel out of the Plaza to take care of their package store needs.

In response to inquiry from Selectman Donald, Executive Secretary Thompson stated that the deficiencies in the application, as pointed out in his letter dated February 19, 1987, to Attorney Wayne, have not been corrected. Thereupon, Attorney Wayne submitted to the Board a certified check in the amount of \$25.00, a certification from the Secretary of State as to the incorporation of Sudbury Wine & Spirits, Inc. in this Commonwealth on December 14, 1983, and Mr. Lank submitted to the Board a Verification of "No Record" from the Central Probation Department he states he received in the mail earlier in the day. Attorney Wayne stated he believed what he has submitted complies with the statute. With regard to the \$100 application fee, Attorney Wayne stated does not believe the fee was required in 1983 when the application was originally submitted, but would be glad to submit same if required.

Selectman Wallace opined that the basic question is whether the public need and convenience would be served by a third package store. He does not feel that the fact that this would be the only package store in the east-bound lane of Route 20 is overwhelmingly convincing of such a need. Selectman Wallace pointed out that Colonial Spirits chose to leave the Plaza for a location across the street.

Selectman Donald added that in the intervening years since this application process began, the Town had another application and at that time it was turned down for that very reason [no public need]. At the time of denial of that application, the Board made it clear that if it heard complaints or requests from the townspeople for another package store, it would reconsider. To her knowledge, the Board never received a single request. Mrs. Donald stated it was therefore her belief that the people are adequately served and thus, there is no need.

Chairman Frost indicated his concern that the materials requested were not submitted with the application, rather than being partially submitted this evening.

On motion of Chairman Frost, it was unanimously

VOTED: To deny the transfer of Package Goods Store License for the Sale of All Alcoholic Beverages, from Wayside Package Store, Inc. to Sudbury Wine & Spirits, Inc., to be exercised at 513 Boston Post Road, Sudbury, based upon the fact that the applicant has not demonstrated public need or convenience would be served by a new liquor store.

Petition for Pole Attachments-Digital Equipment Corporation/NYNEX

Upon inquiry by Chairman Frost, Executive Secretary Thompson reported that he has not heard from Cynthia Leary, Project Manager of NYNEX, as promised at the Board's meeting of March 2, 1987, concerning the availability of underground ducts for installation of a fiber optic network.

Transfer Request No. 87-58--Highway Department

Citing the icing situation in the Flynn Building parking lot and resultant hindrance especially to town employees, the handicapped and senior citizens, Executive Secretary Thompson recommended that the Board co-sponsor with the Highway Department Reserve Fund Transfer of \$3,000 to Account 410-218-Roadwork to alleviate the problem.

On motion of Selectman Donald, it was unanimously

VOTED: To co-sponsor with the Highway Department Transfer Request No. 87-58, dated February 24, 1987, for the transfer of \$3,000 to Account 410-218-Roadwork.

Expenditures from Discretionary Fund Petty Cash Account

Executive Secretary Thompson recommended that the Board approve expenditures from the Discretionary Fund Petty Cash Account as follows: \$100 for food assistance on February 25, 1987; and \$50 for food assistance on March 4, 1987.

On motion of Selectman Donald, it was unanimously

VOTED: To confirm expenditures from the Discretionary Fund Petty Cash Account in the amounts of \$100 and \$50 respectively, for food assistance, as more particularly set forth in the Discretionary Fund Petty Cash Account Expenditure Report dated March 9, 1987.

Dedication of Swimming Pool

Executive Secretary Thompson advised the Board that he has received notice that ground breaking ceremonies of the Town swimming pool has been scheduled for Sunday, March 29, 1987, at approximately 2:30 p.m.; and that the expected completion date is September or October 1987. Mr. Thompson stated he suggested to Mr. Taft and he agreed to advertise this event in the press so that the general public might attend.

Department of Public Works Program of Projects

Executive Secretary Thompson informed the Board that the Commonwealth of Massachusetts Department of Public Works "Program of Projects to be Advertised, January 1987 thru December 1988", lists the Route 20 project on page 50.

Route 20 Task Force--Meeting with DPW

Executive Secretary Thompson confirmed with the Board that a meeting has been scheduled for Wednesday, March 18, 1987, at 2:00 p.m., Ten Park Plaza, Suite 3170, Boston, with Commissioner Tierney. Mr. Thompson reported that the Chairman of the Route 20 Committee will have two members attend, and that I. William Place, the Town's new Town Engineer, should also attend.

School Committees - Collective Bargaining

The Board approved the letter from Executive Secretary Thompson dated March 6, 1987, to the School Committees regarding Collective Bargaining.

Affordable Housing--Response to letter from William Johnson

The Board reviewed draft of a letter prepared by Executive Secretary Thompson to William Johnson of Six Phillips Road. Mr. Johnson had sent a letter dated February 15, 1987 to the Board and said letter was discussed at the Board's meeting of March 2, 1987. Selectman Wallace suggested the Board's responsive letter should attach a copy of the flyer previously prepared by the Sudbury Housing Authority. Selectman Donald suggested that the word "complete" on line 5 of the first paragraph be changed to "significant".

On motion of Chairman Frost, it was unanimously

VOTED: To approve the draft letter prepared by Executive Secretary Thompson to William Johnson of Six Phillips Road with substitution of the word "complete" on line 5 to "significant"; to attach the flyer previously prepared and distributed by the Sudbury Housing Authority to such letter; and to have each member of the Board sign the letter.

Water Quality Meeting with City of Marlborough

Executive Secretary Thompson reported that a meeting was held Friday, March 6, 1987, with the Mayor of the City of Marlborough, Commissioner of DPW and others concerning three ponds (Gristmill, Carding Mill and Hager Pond, and Stearns). Attending on behalf of Sudbury were Winthrop Fairbank, Executive Secretary, Sudbury Water District; Deborah Montemerlo, Coordinator for the Conservation Commission; Michael J. Sullivan, Director of Public Health; Richard E. Thompson, Executive Secretary, Anne W. Donald, Selectman; and Michael W. Guernsey, Board of Health. Mr. Thompson indicated that the meeting was very successful and there was a consensus that Sudbury conduct a study of the three ponds, with assistance from Marlborough by providing certain water testing and sampling data, as to the ponds present conditions. Mr. Thompson stated there is money available in the Board of Health budget this year, if approved. Mr. Thompson noted that Marlborough is doing weekly samples as far downstream as the Sudbury River, and Selectman Donald stated they offered to make these reports available to Sudbury. Mr. Thompson was pleased to further note that Marlborough retains the consulting services of Metcalf & Eddy.

S & H Trucking--Increase in Rates

Executive Secretary Thompson reported that he received a note from a resident concerning a rate increase from S & H Trucking for the collection of

rubbish. Mr. Thompson recommended the Board send a communication to S & H Trucking stating their surprise at the increased fees, and to strongly urge the company to reinstate their reduced fees for the elderly. Chairman Frost voiced his opinion that he feels this rate must be set by the Department of Public Utilities, and therefore questions the lawfulness of this increase.

On motion of Chairman Frost, it was unanimously

VOTED: To send a written communication to S & H Trucking, Inc., requesting that they reinstate their senior citizen discount.

#### Conservation Commission--Annual Meeting

Selectman David A. Wallace informed the Board that the Annual Meeting for Conservation Commissions throughout the State was held Saturday, March 7, 1987, at Holy Cross in Worcester. Also attending were Executive Secretary Thompson, Mike Meixsell of the Sudbury River Citizens Advisory Committee, Win Fairbank of the Sudbury Water District and Deborah Montemerlo, Conservation Coordinator. Of particular interest to Selectman Wallace was the morning program concerning the protection of aquifers and the afternoon session concerning landfills.

#### Proposed Bike Trail

Executive Secretary Thompson noted that a hearing on House Bill No. 1455 supporting creation of the bike trail is presently scheduled for Wednesday, April 1, 1987.

Conservation Coordinator Deborah Montemerlo informed the Board that the preliminary feasibility study has been completed and drafted regarding the proposed bike trail, and that this study was restricted only to the physical aspects of the trail. She reported that she attended a meeting in Concord of the Regional Advisory Committee and they have reported that, aside from some areas where alternate trails would have to be looked into (such as crossing Route 2), there were no major problems. Ms. Montemerlo indicated the final feasibility study is the next phase, and she must submit her comments by Tuesday, March 17, 1987. She basically has two comments: (1) the study started the trail on the south side of Route 20 and she will be suggesting it begin at the north side (Crumble Station area). She stated the parking lot adjacent to Crumble Station is owned by the railroad and will provide a number of parking spaces; (2) She would like to see a State agency bear maintenance costs. It has been projected that these costs will run \$2,000 per mile per year. Ms. Montemerlo stated maintenance costs include patrolling the trail. Executive Secretary Thompson asked the Board to keep an open mind concerning the maintenance issue and indicated that even if no outside funding is available, he does believe the costs of maintenance would be far outweighed by the existence of a lovely trail. Selectman Donald opined that if the State could provide funding for the first few years, it would be easier for the towns to take over the costs. The Board indicated their support of Ms. Montemerlo's comments and recommendations.

Chairman Frost voiced his concern on effects to abutters. Ms. Montemerlo stated Nancy Clinton attended the meeting and she was concerned that the study



did not address abutters' issues. It has been suggested that a preliminary design document can be prepared and the abutters' may review it. She believes this is a good idea because the costs of landscaping, etc., could then be figured into the Bond Issue.

Ms. Montemerlo explained the House Bill No. 1455 proposed the trail to be designated "the Bruce N. Freeman Memorial Bike Path." It is her understanding Bruce Freeman was a representative who was very instrumental in bringing this concept together. He passed away recently and the legislature therefore would like the trail named after him.

Ms. Montemerlo stated that it was made very clear at the meeting by the Department of Public Works, Planning Agency, and Department of Environmental Management that at any point in time a town can drop its support of this Bill. Executive Secretary Thompson commented that unless all the towns agree, the trail would not be successful.

Ms. Montemerlo submitted to the Board a memo from the Town of Wayland dated March 3, 1987, which enclosed a copy of a report on the Burke-Gilman Trail in Seattle which pertains to some of the questions raised by abutters. The recently-completed study concluded (1) that any residence located near the trail but not directly abutting it, showed an increase in fair market value of six percent; (2) abutting property values did not increase significantly but tended to sell faster; and (3) there was no increase in crime. Another fact brought up in the report was that those persons who purchased their homes after the trail was constructed were much more positive about it than those living in their homes prior to and during construction of the trail; however, no one expressed displeasure with the trail.

In conclusion, Ms. Montemerlo stated that the next meeting of the Regional Committee has not been scheduled. The final version of the preliminary feasibility study will come out in early May and at the end of May each planning agency (CTPS and NMAC) will hold a public meeting in their particular region. Following that, the towns will be formally asked by the planning agencies if they wish their town to be included in the proposed bike trail.

Chairman Frost suggested that this matter be placed on the agenda for Thursday morning's meeting at 8:00 a.m. with State Senator Paul Cellucci. Ms. Montemerlo stated that Lucile Hicks very much supports the trail and that Senator Cellucci also supports it.

The discussion concluded with the unanimous assurance that the abutters' concerns would not get pushed aside.

The Board expressed their appreciation to Ms. Montemerlo for all her work on this project.

There being no further business to come before the Board, the meeting was adjourned at 9:10 p.m.

Attest: \_\_\_\_\_  
Richard E. Thompson  
Executive Secretary-Clerk