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IN BOARD OF SELECTMEN  
MONDAY, NOVEMBER 7, 1988

Present: Chairman David A. Wallace, John C. Drobinski and Judith A. Cope.

The statutory requirements as to time and place having been fulfilled, Chairman Wallace called the meeting to order at 7:30 p.m. at lower Town Hall.

Kenbo, Inc. d/b/a Ephraim's Restaurant - Change in Corporate Officers

Present: Darlene Fagan, Treasurer, Clerk, Director, Manager and Shareholder of Kenbo's, Inc. d/b/a Ephraim's Restaurant; Brenda L. Schafer, Attorney.

The Board reviewed application received October 17, 1988, for a change in corporate officers, directors and stockholders of Kenbo, Inc., d/b/a Ephraim's Restaurant, holder of a Restaurant License for the Sale of All Alcoholic Beverages, for property at 8 Village Green, Hudson Road, to Raymond A. Johnson and Darlene M. Fagan.

Executive Secretary Richard E. Thompson reported that this public hearing was duly advertised and posted and that all information and documents required have been received and are in order.

Mr. Thompson brought to the Board's attention a long-standing matter that has still not been resolved between Kenbo's, Inc. and the Historic Districts Commission concerning placement of brick veneer on a chimney. Although this is not an expensive or overly-burdensome matter for the company, Mr. Thompson stated, Mr. Johnson has failed to have this taken care of over many years. Mr. Thompson reminded the Board that license renewal for Ephraim's Restaurant is coming up this month, and suggested that Mr. Johnson be warned that the Selectmen will be looking to see if the matter has been cleared up. Mr. Thompson concluded by stating that he has spoken with the Chairman of the Historic Districts Commission, who remained hopeful that the matter would be resolved and indicated that he believed Mr. Johnson might be attending the Commission's meeting this evening.

Brenda L. Schafer, Attorney representing Kenbo's, Inc., explained that the company was purchased by Mr. Johnson, and the company manages only Ephraim's Restaurant. In response to Mr. Thompson's statement concerning the chimney, Attorney Schafer stated that she had thought the matter had been taken care of, but since she does not represent Mr. Johnson in all matters, she did not know for certain what was happening with regard to this situation. However, she assured the Board she would relate this discussion to Mr. Johnson and to her father, who is the attorney that does represent Mr. Johnson in most matters.

It was on motion of Chairman Wallace unanimously

VOTED: To approve an application received October 17, 1988, for a change in corporate officers, directors and stockholders of Kenbo, Inc., d/b/a Ephraim's Restaurant, holder of a Restaurant License for the Sale of All Alcoholic Beverages, for property at 8 Village Green, Hudson Road, to 1) Raymond A. Johnson, President, Director and Shareholder; and 2) Darlene M. Fagan, Treasurer, Clerk, Director, Managers and Shareholder; subject to approval by the Alcoholic Beverages Control Commission.

Action Required - 10/3/88 Special Town Meeting

The Board acknowledged receipt of memorandum prepared by the Executive Secretary which outlined the follow-up items from the Special Town Meeting that will require action by the Selectmen.

Executive Secretary Thompson explained that he submitted this list as a reminder of the status of the various articles. The Selectmen stated they will review same and submit comments to the Executive Secretary's Office.

State Election - Sale of Alcoholic Beverages

It was on motion of Selectman Judith A. Cope unanimously

VOTED: To allow the sale of alcoholic beverages by common victuallers and retail package stores during the polling hours of the State Election of November 8, 1988, in accordance with G. L. c. 138 § 33.

Utility Petitions 88-13 and 88-14: Hemlock/Willow Rds; Pratt's Mill/Peakham Rds

Present: Joseph D. Bausk, New England Telephone.

The Board reviewed Utility Petition Nos. 88-13 and 88-14 submitted by New England Telephone and Telegraph Company for conduit installation on Hemlock and Willow Roads and Pratt's Mill and Peakham Roads in order to provide cross-connecting terminals at those locations.

Executive Secretary Thompson noted that all appropriate abutters had been notified and approval had been recommended by the Inspector of Buildings and Wiring Inspector under date of November 1, 1988.

New England Telephone and Telegraph Company representative Joseph D. Bausk explained that the box location for the Hemlock/Willow Roads area (UP88-13) will be on a public way and thus presents no special problems. However, Mr. Bausk explained that the box location for Pratt's Mill/Peakham Roads (UP88-14) will be on school property and thus will require an easement. Since approval for such an easement will have to be voted at Town Meeting, Mr. Bausk requested that the utility petition be approved now so they may proceed with the necessary work, and then obtain approval for the easement at Town Meeting.

It was on motion of Selectman Cope unanimously

VOTED: To approve Utility Petition 88-13 of New England Telephone and Telegraph Company for permission to install a cross-connecting terminal and conduit under the following public way of the Town: Hemlock Road - easterly side, conduit from existing Pole 164/7 and crossing roadway a distance of about 73 feet to Willow Road - existing Pole 175/11, thence continuing about 25 feet to and including one (1) Pad and Service Terminal Location; as shown on New England Telephone and Telegraph Company's "Plan For Conduit, Pad & Service Terminal Location", N.E.T.&T.Co. No. 88-9, dated August 16, 1988, revised October 14, 1988; and it was further

VOTED: To approve Utility Petition 88-14 of New England Telephone and Telegraph Company for permission install conduit under the following public

ways of the Town: Pratt's Mill Road - easterly side, from existing Pole 87/2 and continuing southerly about 140 feet to P.87/1 and private property and extending about 98 feet to a point at intersection of Peakham Road; Peakham Road - northerly side, from Pratt's Mill Road and extending southerly then easterly a distance of about 169 feet to and including Manhole to be known as ISOL MH 47P; Peakham Road - also, from northerly side, existing Pole 47S and continuing southerly crossing roadway to Pole 47 a distance of about 25 feet, and easterly a distance of about 47 feet to proposed manhole; Peakham Road - from a proposed Manhole extending easterly, a distance of about 87 feet thence, crossing roadway about 25 feet to existing Pole 46; as shown on New England Telephone and Telegraph Company's Plan No. 88-8 entitled "Plan For Conduit & Manhole Location", dated October 13, 1988, revised October 25, 1988.

Evergreen Meadow Subdivision - Drainage Easement

Executive Secretary Thompson reported that further investigation of agenda item concerning a possible drainage easement located on the northerly side of Jason Drive off Landham Road from Beth Montoni, Trustee of Landham Road Trust, relative to the Evergreen Meadow Subdivision, reveals that the land in question is incorporated within the layout and therefore will not require an easement.

It was therefore on motion of Chairman Wallace unanimously

VOTED: To table the question of accepting a drainage easement located on the northerly side of Jason Drive off Landham Road from Beth Montoni, Trustee of Landham Road Trust, relative to the Evergreen Meadow Subdivision.

Reserve Fund Transfer Request No. 89-7 - Selectmen

The Board reviewed Reserve Fund Transfer Request No. 89-7, dated November 1, 1988, for Account No. 501-510, Selectmen Equipment, in the amount of \$800, for purchase of a used word processor and printer.

Executive Secretary Thompson stated that at the inquiry of the Selectmen's Office, resident Marge Wallace asked her employer, New England Life, if it would sell or donate a used IBM Displaywriter system, which includes keyboard, diskette unit and letter-quality printer to the Town. It was offered at \$800. Mr. Thompson explained that this is the same system presently in use in the Selectmen's Office and would be useful not only as a "back-up" if the one currently in use breaks down, but would allow greater productivity in his office as well as Town Counsel's Office.

It was on motion of Chairman Wallace unanimously

VOTED: To approve Reserve Fund Transfer Request No. 89-7, dated November 1, 1988, for Account No. 501-510, Selectmen Equipment, in the amount of \$800, for purchase of a used word processor and printer.

Reserve Fund Transfer Request No. 89-5 - Building Maintenance

The Board reviewed Reserve Fund Transfer Request No. 89-5, dated October 28, 1988, for Account No. 340-320, Building Maintenance, for remodeling the Police Station for a juvenile detention center that will meet standards of

the Department of Public Health and Department of Youth Services, in the amount of \$15,000.00.

Executive Secretary Thompson reminded the Board that he has been working with Lt. Nix on the matter concerning the juvenile detention facilities at the Police Station, and he brought to the Board's attention letter dated October 18, 1988, from Police Chief Peter B. Lembo outlining the most recent developments concerning inspections made of the facility by the Department of Public Health and the Division of Youth Services. Mr. Thompson also reminded the Board of copy of letter dated October 3, 1988, from Carmen S. Pizzuto, Ph.D., Consultant, Department of Youth Services, to Police Chief Lembo, which explicitly sets forth required changes. Mr. Thompson concluded by stating that there is a genuine concern about the Town's liability should something happen to a juvenile while detained at the Police Station; especially since the Department of Youth Services has in effect "put the Town on notice" of what it perceives as a number of conditions that need to be remedied.

The Board acknowledged receipt of memorandum dated November 4, 1988, from Assistant Town Counsel outlining his opinion of how procurement of the goods and services necessary to effectuate the remodeling should be handled.

After discussion, it was on motion of Chairman Wallace unanimously

VOTED: To approve Reserve Fund Transfer Request No. 89-5, dated October 28, 1988, fro Account No. 340-320, Building Maintenance, for remodeling of juvenile detention center at the Police Station, in the amount of \$15,000.00.

Reserve Fund Transfer Request No. 89-6 - Conservation Maintenance

The Board reviewed Reserve Fund Transfer Request No. 89-6, dated October 28, 1988, for Account No. 360-310, Conservation Maintenance, in the amount of \$2,000, to construct a new wooden bridge and steel plate crossing at Haynes Meadow.

Executive Secretary Thompson explained that the Town has a situation which he believes requires immediate attention. A local service vehicle discovered that the steel plate and lumber bridge which is placed over the outlet of the pond to allow vehicles access to the house is unsafe. Upon inspection, it was confirmed that the steel plate has shifted and the lumber under the plate is rotting.

It was on motion of Chairman Wallace unanimously

VOTED: To approve Reserve Fund Transfer Request No. 89-6, dated October 28, 1988, for Account No. 360-310, Conservation Maintenance, in the amount of \$2,000, to construct a new wooden bridge and steel plate crossing at Haynes Meadow.

Police Department - Resignation of Sergeant Wesley M. Woodward

It was on motion of Chairman Wallace unanimously

VOTED: To accept the resignation of Sudbury Police Sergeant Wesley M. Woodward, dated September 16, 1988, effective 4:00 p.m., December 1, 1988; to

direct the Executive Secretary to forward an appropriate communication on the Selectmen's behalf to Sgt. Woodward expressing the Town's gratitude for his tenure on the Sudbury Police Department; and to request the Executive Secretary to plan an appropriate means of honoring Sgt. Woodward in a more prestigious and public way.

Police Department - Appointment of Police Sergeant

Present: Police Chief Peter B. Lembo; Appointee Bruce C. Noah.

The Board reviewed memorandum from Police Chief Peter B. Lembo dated October 26, 1988, outlining the criteria he follows in making recommendations for the position of Police Sergeant and expressing his strong recommendation, concurred with by Executive Officer Lt. Nix, that Officer Bruce Noah be promoted to the position to fill a vacancy created by the retirement of Sgt. Wesley M. Woodward on December 1, 1988.

Police Chief Lembo was present and reminded the Board that Officer Noah had been before them on prior occasions for promotion; and because of Chief Lembo's policy of "going right down the list", and the concurrence by the Selectmen, Peter Fadgen was appointed Sergeant in 1987 and Thomas Miller was appointed Sergeant in August of this year. Chief Lembo concluded that in his opinion Officer Noah has more than earned the promotion.

After discussion, upon recommendation of the Police Chief and Executive Secretary, it was on motion unanimously

VOTED: To promote and appoint Police Officer Bruce C. Noah to the position of Police Sergeant for the Town of Sudbury, effective December 2, 1988, from Certification List No. 882924, replacing Wesley M. Woodward, subject to approval by the Commonwealth's Division of Personnel Administration; and to authorize the Executive Secretary to sign all Civil Service documents necessary to effectuate such appointment.

Minutes

It was on motion of Selectman John C. Drobinski unanimously

VOTED: To approve minutes of the September 26, 1988, Town Forum, as amended.

And it was on motion of Chairman Wallace unanimously

VOTED: To approve minutes of the regular meeting of October 31, 1988, as amended.

Wayland Highway Department - Proposed Joint Composting Project Meeting

The Board reviewed Memorandum dated October 31, 1988, from the Wayland Road Commission concerning a meeting scheduled for Thursday, November 17, at 8:00 p.m. in the Senior Center, Wayland Town Office Building, to discuss a regional composting facility, and accompanying DEQE composting policies and guidelines.

Executive Secretary Thompson stated that he plans to attend. Selectman Drobinski indicated that he will be unable to attend since he will be in New York. Selectman Cope stated she will be attending a MetroWest meeting that evening and will thus be unable to attend.

Upon request of the Selectmen, Mr. Thompson will ask Highway Surveyor Robert Noyes and a representative of the Resource Recovery Committee to attend.

Mr. Thompson pointed out that the Memorandum from the Wayland Road Commission implies that they wish the Town's representatives to come ready to make a commitment. The Board concurred they wish to proceed "lightly" and not commit the Town to anything without further data.

In response to inquiry from Selectman Drobinski, Mr. Thompson stated that he believes there is a Bill pending which will allow some State funding and reimbursement; and that the new Regulations have not yet been printed and forwarded to the cities and towns. Mr. Thompson stated his belief that the State may give this project an early commitment of funding; and if so, and not too much "up front" money is involved, the Finance Committee may approve a small preliminary amount.

#### Board of Selectmen - Wish List

The Board reviewed preliminary Wish List prepared by the Executive Secretary's Office which listed ten items of concern to the Selectmen.

Selectman Cope stated that she has made "subcategories" under each major category. For example, under Item 1, Better zoning enforcement, Selectman Cope adds that better control of new development and re-structuring of procedures, as well as stricter site inspections, be emphasized.

With regard to Item 2, Education - maintain high quality, Selectman Cope believes it is important to stress that a stronger education in basic skills and a strong administration is needed.

With regard to Item 3, Equal housing solution, Selectman Cope stated that she is frustrated about the talk of lack of affordable housing, and Executive Secretary Thompson pointed out that the Planning Board is working on an Inclusionary Zoning bylaw.

With regard to Item 4, Town beautification, including Route 20, Selectman Cope stated that she would like to see the Traffic Management Committee be invited to join this discussion as they have proposed some creative and effective ideas.

With regard to Item 6, Water quality, Selectman Drobinski pointed out that the Massachusetts Water Resources Authority is in the process of assessing water needs for the future and it is not unreasonable to expect them to claim the presently unidentified Town's water resources.

With regard to the Traffic Management Committee, as discussed in Item 4 above, Chairman Wallace pointed out that he believes they have come up with a good plan for Sudbury Farms area. A meeting was held with the manager of Sudbury Farms and that manager was impressed with the plan, especially traffic

flow. Upon request of Chairman Wallace, Mr. Thompson stated he would contact the Traffic Management Committee and ask them to come before the Board for an update, if they are ready to do so.

Chairman Wallace said that he would like to add an item to the Wish List concerning the hiring of Town personnel. Chairman Wallace expressed personal knowledge of the problem since his wife Linda resigned from her position as secretary to the Zoning Board of Appeals. Although she resigned some months ago, Mrs. Wallace is still involved in attempting to find a replacement for her position and in fact has "filled in" as needed. Chairman Wallace stated that he has spoken with Budget and Personnel Officer Terri Ackerman about this problem, which he believes is town-wide, and suggested she might be more of a full-time personnel administrator.

Mr. Thompson pointed out that in-roads regarding the Personnel Board and administrative functions have been made. Although concurring that this is a problem throughout the Town's offices - the Atkinson Pool being one example - he believes the tight market in the area contributes to the situation. The problem, Mr. Thompson continued, is that the Town is so decentralized, what is needed is a good personnel office and system. Mr. Thompson concluded by stating that there is communication between the schools and the Town, but this can be greatly improved upon. At any rate, all concurred that it should not fall on the departing employee to find his/her own replacement, and commended Mrs. Wallace for being civic-minded enough to not just "walk away" from the problem.

The discussion concluded with Mr. Thompson stating he will speak with Schools Superintendent David Jackson concerning this problem and will report back to the Board. Selectman Cope stated that she would work on the Wish List and submit a revised "Master" one.

#### Police Department - Appointment Of Two Officers

Present: Police Chief Peter B. Lembo; Applicants Alan Joseph Hutchinson and Timothy A. Smith.

Executive Secretary Thompson introduced police officer applicants Alan Joseph Hutchinson and Timothy A. Smith to the Selectmen, who come before the Board upon recommendation of Chief of Police Peter B. Lembo.

Mr. Thompson explained to those present that prior to the appearance of the two individuals before the Board this evening, there were background checks, psychological testing, etc., and that all available data has been received by the Selectmen. Mr. Thompson explained that the interview process ordinarily involves the Police Chief, Lt. Nix and himself. Although Mr. Thompson was able to participate in the interview of applicant Hutchinson, he apologized to applicant Smith for not having been available, as he was out of state at the time.

Police Chief Lembo stated that extensive background checks on both applicants were conducted, which included talks with neighbors, investigation of criminal records and inquiry to the Registry of Motor Vehicles. Chief Lembo was pleased to report that he found absolutely nothing but good feedback on both of these applicants.

Chief Lembo stated that, with regard to applicant Smith, he is 21-years old, his father is a Boston Police Officer, and he already has one degree and is working toward another.

Chief Lembo stated that with regard to applicant Hutchinson, he is 25-years old and strikes the Chief as being very mature. Chief Lembo informed that Framingham Police Chief Brent Larabee gave applicant Hutchinson high marks and expressed disappointment that Sudbury has the opportunity to hire him over Framingham.

Chief Lembo stated that although the psychological examinations have been given to both applicants, the results have not yet been received. However, Chief Lembo informed that he sent a training officer to observe the testing, and that training officer stated he thought these two applicants were far superior to the others being evaluated in the "role playing" portion of the testing; and that both applicants handled themselves very well.

Because of the recent problems being experienced by the Police Training Academies, Chief Lembo stated there can be no guarantees as to when the two applicants could begin their Academy training. Chief Lembo stated that if the two applicants are approved for the positions of Police Officers, he hopes and believes there will be two openings for the Academy in Needham by January 4, 1989.

Selectman Cope asked each applicant why they would like to work in Sudbury as Police Officers. Applicant Hutchinson stated that he believes it is better to work in a town other than where one lives. Also, Mr. Hutchinson continued, he wants to go to a Police Department where he could move up the ladder. Mr. Hutchinson pointed out that in Framingham there are 120 police officers, compared with Sudbury, which has 30. Mr. Hutchinson believes that in the next five to six years, there will be quite a few positions available due to retirements. Mr. Hutchinson concluded by stating that the Sudbury Police Department comes highly recommended; and the community is certainly one which he would be happy to serve. Applicant Smith concurred with Mr. Hutchinson's response and added that since he lives in nearby Wayland, he feels he knows Sudbury.

Selectman Drobinski asked each applicant what special attributes he brings to Sudbury. Applicant Smith stated that his experience as an Auxiliary officer in Wayland and as a summer Patrolman for the Falmouth Police Department is important. Mr. Smith further stated that he believes his ability to use good common sense, and his ability to deal with the community, are assets. Applicant Hutchinson stated that if you are going to be protecting/serving the public, you have to have a deep concern for the problems in the community; and he has always been honest and fair with people, and thinks that he will bring that to his job in Sudbury.

Chairman Wallace related to the applicants a recent incident that occurred on Halloween Eve, wherein a number of groups of young adults got out of hand and intimidated younger children as well as throwing eggs at police officers. Mr. Wallace asked each applicant how they would have dealt with the situation. Applicant Smith responded by saying that he believes it would be very important to try and meet with the intimidated youngsters and the parents to assure them there was no particular or continuing threat to the child. Based on what Chairman Wallace related, Mr. Smith stated he would definitely ask for

"back-up"; otherwise, it would be hard to say what he would do without having been there. Applicant Hutchinson concurred that it would be difficult to say for certain what one would do without being there; but that he would have to "take it as it happens".

On recommendation of Police Chief Peter B. Lembo and the Executive Secretary, in consideration of two Police Officer appointments from Certification List No. 882094, dated August 18, 1988, it was on motion of Chairman Wallace unanimously

VOTED: To appoint Alan Joseph Hutchinson of 36 Day Hill Road, Framingham, as Police Officer for the Town of Sudbury, replacing Thomas S. Miller; subject to satisfactory physical and psychological examination reports, and satisfactory completion of training at the Massachusetts Criminal Justice Training Academy; and further subject to approval by the Commonwealth's Department of Personnel Administration; Mr. Smith's employment to commence upon entrance into said Police Training Academy, to be scheduled as soon as possible, and shall be subject to a twelve-month probationary period; and it was further

VOTED: To appoint Timothy A. Smith of 28 Edgewood Road, Wayland, as Police Officer for the Town of Sudbury, replacing Bruce D. Noah; subject to satisfactory physical and psychological examination reports, and satisfactory completion of training at the Massachusetts Criminal Justice Training Academy; and further subject to approval by the Commonwealth's Department of Personnel Administration; Mr. Smith's employment to commence upon entrance into said Police Training Academy, but not before December 2, 1988, and shall be subject to a twelve-month probationary period; and it was further

VOTED: To authorize the Executive Secretary to sign all Civil Service documents necessary to effectuate such appointments.

Following the vote, the Selectmen congratulated Messrs. Hutchinson and Smith, who introduced family and friends who attended the meeting.

#### Household Hazardous Waste Collection Program

The Board acknowledged receipt of memorandum dated October 27, 1988, from Wayland Hazardous Waste Coordinator Bob Loring, advising that Cassandra Goldwater of the Massachusetts Department of Environmental Management has been invited to the Wayland town building on Wednesday, November 16th at 7:30 p.m., to discuss the status of efforts to set up permanent household hazardous waste collection sites within the community.

The Board requested the Executive Secretary to ask Board of Health member Michael W. Guernsey or some other representative to attend and report back to the Board.

#### Halloween Eve Incident

The Board discussed the incident that occurred on Halloween Eve, which resulted in the arrest of a number of young adults who were alleged to have committed acts of vandalism, as well as throwing eggs at police officers.

Per request of the Selectmen, Executive Secretary Thompson will keep in touch with the Police Department regarding prosecution of these cases and will report developments as they occur.

Salary For Assistant Assessor - Incentive Pay

The Board acknowledged receipt of memorandum dated October 24, 1988, to James Vanar, Supervisory Association Representative, from the Board of Assessors regarding salary classification of Assistant Assessor; and response dated November 1, 1988, from the Executive Secretary.

Per request of the Selectmen, the Executive Secretary will speak with Labor Relations Attorney Richard Murphy concerning this matter, as well as the Personnel Board, and report back to the Selectmen with comments and recommendations.

Plympton Road Speed Limit - Discussion Draft of Resident

The Board acknowledged receipt of Discussion Draft dated October 21, 1988, of resident Ralph Tyler, questioning the newly-posted 25-mile-per-hour speed limit on Plympton Road and requesting reconsideration of the ticket issued to his wife for travelling 42-miles-per-hour on said road, which was previously posted for 40-miles-per-hour.

The Board further acknowledged receipt of copy of memorandum dated November 2, 1988, from Town Counsel concerning this matter and requested the Executive Secretary to resolve the matter in conjunction with the Police Department.

Cutler Trust Land - Chapter 61A First Refusal Option

The Board acknowledged receipt of the following:

1. Letter dated October 7, 1988, from Gerald Caruso, Esquire, of the law offices of John D. Gibney, P. O. Box 358, 323 Boston Post Road, Sudbury, advising that they represent Kenneth R. Cutler and Joseph S. Cutler, Trustees of the Cutler Trust of Sudbury, and informing of an intended sale of the land, a portion of which is currently valued, assessed and taxed on the basis of its agricultural use;
2. Memorandum dated October 24, 1988, from the Board of Assessors, advising that in their opinion, where the purchase and sale agreement does not specify a dollar amount purchase price for the property, the Town would not be in a position to match the "offer";
3. Copy of Vote of Sudbury Valley Trustees dated November 2, 1988, stating its willingness to accept assignment of the Town of Sudbury's Chapter 61 purchase option, if offered.
4. Memorandum dated November 2, 1988, from Town Counsel, advising among other things that the purchase and sale agreement executed between the Cutler Trust and Eligius Land Company, Inc., as Buyer, is structured such that it is now now, nor even with the 120-day period of first refusal, possible for the Town to meet the offer's price terms.

Executive Secretary Thompson stated that he has not received response from the Conservation Commission and Planning Board concerning this matter. Mr. Thompson further advised that he has been contacted by the Sudbury Valley Trustees, who are interested in becoming involved, and submitted their vote as outlined above to show their interest.

The Selectmen concurred that when all reports and information have been accumulated, copies of same will be forwarded to Attorney Caruso and a meeting will be scheduled.

Executive Secretary Thompson expressed his opinion that he believed the interest and involvement of the Sudbury Valley Trustees will be good for the Town and the property owners as well.

Joint Meeting With Planning Board and Board of Appeals

Present: Board of Appeals Chairman Lawrence L. Blacker and member Thomas Phelps; Planning Board Chairman Russell P. Kirby and members Lael M. Meixsell and James P. Watterson; Town Planner Lee Newman.

Chairman Wallace convened a joint meeting with the Planning Board and Board of Appeals, as requested by the Planning Board in its letter dated September 19, 1988, to discuss bylaw interpretations and ambiguities and administrative procedures related thereto.

Chairman of the Planning Board Russell P. Kirby stated that the purpose of the Planning Board's institution of legal action concerning the Raytheon tower situation was not to enter into a contest of wills with the Board of Appeals but to illustrate the Planning Board's belief there is a long-standing problem with the zoning regulations of the Town which apparently have gone by the wayside.

Mr. Kirby reiterated the Planning Board's position concerning the Raytheon tower situation and cited two separate sections of the bylaws, and concluded by stating that the essence of the problem is the question of interpretation of the zoning regulations. Mr. Kirby went on to say that he believes there is much evidence to indicate that the interpretation of the bylaw has been very broad, generally speaking, over a long period of time; and that it is the general position of the Planning Board that the Town would be better off if a policy was established to interpret bylaws in a strict or narrow sense. Mr. Kirby explained that the Planning Board believes that if this strict interpretation results in a great burden to the applicant, there is always the appeals process. Conversely, he stated, if the interpretation is too broad, then there is virtually no teeth to the bylaw.

Selectman John C. Drobinski acknowledged and sympathized with the problems concerning bylaws, but pointed out that many inconsistencies have been corrected at Town Meeting.

Chairman David A. Wallace opined that the Town has had this particular bylaw around for quite awhile and he can understand why each Board interpreted it as it did. However, Chairman Wallace does not believe a certain policy should be adopted by the Town, as this would almost certainly invite litigation.

Mr. Kirby reiterated that the property owner has an appeal to the Board of Appeals. Mr. Kirby stated that he thinks the intent of the bylaws needs to be taken into account; and that he would be the first to acknowledge that there are problems with the language of the bylaw. However, Mr. Kirby continued, what appears to be the case is that the weaknesses of the bylaw have resulted in ignoring its strengths.

Mr. Kirby further stated that where the Board of Selectmen is the Executive Branch of the Town and is able to establish policies, the Planning Board is requesting they take a position that the bylaws shall be enforced based upon a strict interpretation. Mr. Kirby added that the Planning Board is not trying to single out the Board of Appeals or Board of Selectmen.

Chairman Wallace stated the Selectmen's appreciation for the conciliatory nature the Planning Board is exhibiting in not wanting to subject the Town to the expense of litigation. Chairman Wallace stated that it was his personal opinion that bylaws or zoning regulations that are clear and obvious should be enforced strictly. The problem comes up when there are interpretation difficulties; if there is a situation where there is a nebulous bylaw, then it is not a question of strict enforcement, but depends on who is viewing it.

Chairman Wallace continued that the easiest and clearest way to solve the problem is to take the bylaw with proposed changes to Town Meeting and thus bring it to the people. In other words, Mr. Wallace stated, let the townspeople decide what the Town wants. In addition to the bylaw which was the subject matter of the litigation, Mr. Wallace stated, there are many bylaws which might be better worded and perhaps should be reviewed. Change or clarification of these bylaws at Town Meeting would make them a lot easier to interpret and apply. In conclusion, Mr. Wallace stated that he believes the Board of Selectmen would be very happy to urge strict interpretation where the bylaw is clear and unambiguous.

Selectman Drobinski stated that he has mixed feeling on the issue, and believes it is commendable that the Planning Board is trying to make certain nothing falls through a loophole. Mr. Drobinski stated that he concurs that a re-reading of the bylaws and a presentation to Town Meeting would be extremely valuable.

Mr. Kirby pointed out that he believes one key player is not present this evening and that is the Zoning Enforcement Officer; and that if any improvement is possible, the Zoning Enforcement Officer should be brought into the discussion, since the interpretation of the bylaws should be jointly understood among all appropriate departments.

Selectman Drobinski stated that the point is very well taken that the bylaw needs to be reviewed. If we can work with Town Counsel to review the bylaw and determine where it fails, and in fact may even be in conflict with today's State laws, it would be helpful.

Board of Appeals Chairman Lawrence Blacker asked hypothetically whether a resident may have two kitchens in his house. Attorney Blacker explained that the Town has taken the position that two kitchens mean another apartment and therefore would be illegal. However, Attorney Blacker explained, the Supreme Court has come down squarely stating that no zoning regulation may have any

effect on the interior of the building. Attorney Blacker stated that reasonable people can differ on the meaning of some of the words of the bylaws, and he acknowledged that the Planning Board's position with regard to the Raytheon tower matter is not an unreasonable one. Attorney Blacker concluded by stating that he concurs that the better way to deal with the problem is to amend the bylaws.

Planning Board member Lael M. Meixsell pointed out that even if the bylaw is unambiguous and fairly clear, there still exists the situation where an applicant can request a variance. Mr. Meixsell was concerned that the Board of Appeals often only hears an applicant's version and thus takes that as gospel. Chairman Wallace pointed out that there is an opportunity for the presentation of opposing views, and that is why abutters and other interested parties are notified. Town Counsel Paul Kenny further explained that other Town departments may bring experts or others in and present them to the Board of Appeals. What is strictly prohibited by law, Attorney Kenny explained, is the Board of Appeals going outside the hearing to make its determination.

Attorney Kenny wished to clarify some points raised and stated that Mr. Kirby's assertion that an applicant has the right to appeal for a variance is not well received by the courts. Attorney Kenny pointed out that in the history of the Commonwealth, there have been maybe five variances that have been granted by the courts. The fact that so many variances are granted by communities, is in reality more of an accommodation to the applicant and the particular situation.

With regard to rewording the bylaws in a strict and narrow sense, Attorney Kenny cautioned that this may prove troublesome to the Town and cause other problems down the road. Attorney Kenny expressed his belief that it is better to leave some bylaws with enough leeway to allow flexibility. In conclusion, Attorney Kenny stated that the Town must look on the bylaws as an imperfect animal and understand that it cannot make it into a perfect tool.

There followed a lively conversation among the Planning Board and Board of Appeals, each reiterating its interpretations and positions on the zoning bylaw which is the subject matter of the Planning Board litigation in particular, and the conduct of public hearings by the Board of Appeals in general.

Selectman Cope informed that in a side conversation with Town Counsel, Attorney Kenny has agreed to review the zoning bylaw in question with a view to correcting any glaring ambiguities.

Selectman Cope continued by expressing serious concern that there is another unnamed party to the pending litigation that has not been taken into consideration - the abutters. Ms. Cope stated that it was her understanding that the case was partially filed to cover the rights of abutters; and that the Planning Board had been doing this in concert with those abutters. Ms. Cope stated that she therefore believes that before any withdrawal of the lawsuit by the Planning Board is finalized, the abutters should be consulted with and brought up to date on what has been discussed so that they may give their comments. Then, Ms. Cope concluded, on an official basis, the Planning Board should proceed to do what it thinks best.

Selectman Drobinski added that he felt that in all the dialogue between counsel and Mr. Kirby, he has detected tones of agreement between the two; and that, really, the end purpose in all these discussions is to put together a document that all parties can agree to and work with in harmony.

Chairman Wallace stated that he understands Town Counsel's opinion that by not re-wording a bylaw too strictly would allow one to be flexible to adapt to something that may want to be changed. However, Mr. Wallace stated it is his feeling that you have to look over what you have and ask if it serves the purposes of the Town, or does it accomplish what you see as a vision of the Town and where it is going. Chairman Wallace added that there are certain tenets of the law which cannot be circumceded by anything; for example, pre-existing non-conforming uses. But, he stated, you do not debate over what something means; just put it before the Town and let the Town decide what it wants. If the bylaw is what the Town's vision is for the future, put it before the townspeople and then any inconsistencies are cleared up.

Chairman Wallace stated that he does not think it should be that difficult to do. Mr. Wallace pointed out that Town Counsel says this could be a problem because then the exception might come up which may want to be allowed. Chairman Wallace opined that that is the whole reason for having a Board of Appeals to accommodate the need for an occasional variance. Chairman Wallace stated that it seems that what he is hearing is that people are upset because of the vagueness of a particular case; and Chairman Wallace is suggesting that the way to handle it is to go through these bylaws one by one, even if it takes four or five years. In order words, look at the bylaw wording and ask, is there an inherent conflict? That is, he stated, the way he would prefer to do it, because then the Town has spoken. He stated that hopefully there will have been an informed judgment by those who are proposing the change or those who would be opposing it. A two-thirds vote, he stated, is a pretty clear mandate of what the Town wants.

Chairman Wallace concluded by stating what he suggests would simplify everything, and would obviate the need for experts and high costs of litigation, etc. Chairman Wallace believes that if the Town does not want Raytheon towers any longer, there is an opportunity here to end it with a vote of the Town. When their special permit comes up, it may not be renewed any further.

Executive Secretary Thompson, in attempting to summarize the meeting, said that he would propose to strongly consider setting up a zoning bylaw revision committee, representing a broad section of the Town. Mr. Thompson informed that this is a practice the Town has used in the past to update its zoning bylaws and it is still the current practice in most cities and towns. Mr. Thompson stated that he does not recommend that Town Counsel's Office singularly take on the task of such a complete revision; that it needs not only legal opinion, but technical and common sense as well. Mr. Thompson stated that there are people in Town that were members of the last zoning bylaw review committee that could lend some further input.

Board of Appeals member Thomas W. H. Phelps stated that, at the sake of not upsetting his colleague, he wanted to express that at the hearing concerning the Raytheon tower, the total conversation focused on emission of radio frequencies and radiation, and did not address the "use" issue. In Mr. Phelps opinion, if the "use" issue had been brought up at that hearing, there may have been a different decision.

Mr. Kirby discussed the subject of the past codification of bylaws that was presented at the Annual Town Meeting and asked if the Selectmen would support doing this again. The Selectmen responded in the affirmative. The Executive Secretary added that the Board of Selectmen co-sponsored this codification article at the last annual Town Meeting and in his opinion the codification of the local zoning bylaws and a complete zoning bylaw revision could be done in tandem.

In summary, Chairman Wallace concurred with the suggestion of the Executive Secretary and stated he would work with Mr. Thompson to follow-up with this and report back to the Selectmen with a more detailed recommendation for the Board to consider.

The meeting concluded with Chairman Wallace thanking those present for their attendance and input.

There being no further business to come before the Board, the meeting was adjourned at 11:30 p.m.

Attest:

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Richard E. Thompson  
Executive Secretary-Clerk