

IN BOARD OF SELECTMEN  
MONDAY, NOVEMBER 28, 1988

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

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

Accounting Department - Fiscal Year 1990 Budget

Present: James Vanar, Town Accountant.

The Selectmen reviewed the ten-page Fiscal Year 1990 Budget prepared by the Accounting Department. Executive Secretary Richard E. Thompson noted the following changes on page 1:

Personal Services - A Appropriated FY89 amount of \$96,410 changed to \$96,393; Requested FY90 amount of \$107,511 changed to \$106,340;

Totals: Appropriated FY89 amount of \$118,187 changed to \$118,170; Requested FY90 amount of \$150,999 changed to \$149,828.

Town Accountant/Director of Finance and Administration James Vanar stated that in accordance with his analysis, the only significant item in the Budget is the request for Comprehensive Fixed Asset Plan ("CAFR"). Other than that, Mr. Vanar explained, most of the items have been "level funded" or there have been small changes in the Line Items.

Mr. Vanar also informed that he had requested an upgrading of two of the people in his Department, and it is his understanding from Budget and Personnel Officer Terri Ackerman that she is confident the Personnel Board will concur with these requests.

In response to inquiry from the Executive Secretary, Mr. Vanar explained Line Item 255, Contract Services, referred to a request for an audit, which was not required last year. With regard to the CAFR item, Mr. Vanar stated that this is basically for development of a fixed asset accounting system for the Town; a long-term project which will, hopefully, be a one-time cost, with negligible maintenance costs.

Mr. Vanar also gave an update on the DEC computer and stated that thanks to the conscientious work of the Accounting Department staff, the system is very successful and they have experienced only normal computer system problems. The system involves the high school, local schools, and Water District. Mr. Vanar opined that the software should never become obsolete. Executive Secretary Thompson emphasized that it is important that the system bring all Town financial services together; and Mr. Vanar expressed his confidence that this can be accomplished.

It was on motion of Selectman Drobinski unanimously

VOTED: To approve the Fiscal Year 1990 Accounting Department Budget, as corrected.

Northeast Recreation Company d/b/a Sudbury Bowladrome - Request for Common Victualler License

Present: Carmen Ackerly, Representative of Sudbury Bowladrome.

The Board reviewed request by Northeast Recreation Company, d/b/a Sudbury Bowladrome, 136 Boston Post Road, for a Common Victualler License for the occasional use of a hot dog steamer. Applicant Carmen Ackerly described the desired location of the steamer and explained that its use would be principally for the bowling tournaments held three or four times a year, and for the teenagers who want to "grab a quick bite" before leaving for work, etc.

Executive Secretary Thompson reported that the Fire Department recommends approval.

It was on motion of Chairman Wallace unanimously

VOTED: To approve the issuance of a Common Victualler License for the occasional use of a hot dog steamer to Northeast Recreation Company, d/b/a Sudbury Bowladrome, 136 Boston Post Road; subject to approval by the Building Department and Board of Health.

Enforcement of Bylaws - Designation of Fire Department Members

The Board reviewed letter dated November 22, 1988, from Fire Chief Michael Dunne requesting the Selectmen to delegate the authority provided the "Enforcing Person" under bylaw Article VI Section 3(b) to certain members of the Fire Department. Executive Secretary Thompson explained that the reason for the request for the designation of eight individuals is to make certain that there will always be someone on duty at all times to enforce the bylaws and rules and regulations.

It was on motion of Selectman Drobinski unanimously

VOTED: To designate the following members of the Fire Department as enforcing persons relative to violations of bylaws and rules and regulations, in accordance with Town Bylaw Article VI, § 3(b), as requested by Fire Chief Michael Dunne in a letter dated November 22, 1988:

Captain James Devoll  
Captain Peter Devoll  
Captain Joseph Helms  
Captain Gerald Spiller  
Lt. Douglas Allan  
Lt. Michael Callahan  
Lt. Michael Carroll  
Lt. George Moore

Minutes

Upon review, it was on motion of Selectman Cope, seconded by Selectman Drobinski, with Chairman Wallace abstaining,

VOTED: To approve the regular and executive session minutes of November 14, 1988, as presented.

Upon review, it was on motion of Selectman Cope, seconded by Chairman Wallace, with Selectman Drobinski abstaining,

VOTED: To approve the regular and executive session minutes of November 21, 1988, as presented.

Lincoln-Sudbury Community Action Council Meeting

The Board noted receipt of cover letter dated November 18, 1988, from Lincoln-Sudbury Regional High School Human Relations Coordinator Nia-Sue Mitchum, enclosing letter dated November 17, 1988, from Superintendent of Schools Dr. David E. Jackson and Ms. Mitchum, informing the Selectmen of an initial meeting on Tuesday, November 29, 1988 from 3:30-5:00 p.m. at the Sudbury School Department regarding the development and implementation of a Comprehensive Health Education and Human Services program (k-12), funded by a Department of Education grant.

Executive Secretary Richard E. Thompson indicated his intent to attend said meeting.

Sudbury-Lowell Bike Trail

The Board noted receipt of letter dated November 25, 1988, from Bike Trail Abutters Committee representative David J. Roddy informing the Selectmen of a meeting on the Bike Trail issue on December 7, 1988, by the Commonwealth's Department of Environmental Management; and requesting the opportunity to meet with the Selectmen prior to or as soon as possible after the meeting.

Executive Secretary Thompson informed the Board that, in addition to Mr. Roddy's presence at the meeting, Bike Trail Committee member Deborah Montemerlo will also be attending and reporting back to the Selectmen.

At the request of the Selectmen, Executive Secretary Thompson will contact Mr. Roddy and explain the Selectmen's view that at this point they are still in support of the concept of the bike trail, and wish to review the information gleaned from the December 7th meeting before meeting with the Bike Trail Abutters Committee or other interested parties. The Selectmen pointed out that there were extensive public discussions concerning this issue last year and any reconsiderations or changes should likewise be put before the public.

Parker Academy Septic System Waste Vent

As a follow up to discussion held at the Selectmen's meeting on November 21, 1988, at the Board's request Executive Secretary Thompson will send a letter to The Parker Academy of 248 Concord Road requesting that they voluntarily screen the septic system waste vent which is visible from Concord Road, thus obviating the necessity of the Town taking formal action concerning this matter.

Town Forum

At 8:00 p.m., Chairman Wallace convened the 182nd Session of the Town Forum, a copy of the minutes of which are attached hereto and made a part hereof.

Chairman Wallace further announced that the Town Forum is being videotaped by CableVision and will be aired on Cable Television Channel 61 on Thursday, December 1, 1988, at 5:00 p.m., and on each Thursday thereafter at the same time.

Fiscal Year 1990 Budget For Debt Service, Treasurer and Collector

Present: Treasurer and Collector Chester A. Hamilton.

The Board reviewed the four-page Fiscal Year 1990 Budget for Debt Service with Treasurer and Collector Chester A. Hamilton.

With regard to the Debt Service Budget Summary, Item 200, Mr. Hamilton explained that in the past this has been an exact figure, except for a temporary loan, because the Town knew exactly what outstanding debts it had. Mr. Hamilton pointed out that this year the Town does not know the exact amount of outstanding debts because of the situation concerning the schools' architectural design fund. Although this amount is not part of the Budget as such, it is part of the total money that will have to be raised.

After further discussion, it was on motion of Selectman Cope unanimously

VOTED: To approve the Fiscal Year 1990 Budget For Debt Service, as prepared by Chester A. Hamilton.

The Board next reviewed the nine-page Fiscal Year 1990 Budget for the Department of Treasurer/Collector with Mr. Hamilton, who stated that because of the reorganization, this year's budget is essentially putting together what has in the past been two separate budgets.

Mr. Hamilton explained that with regard to page 5 of the Budget, Line item 130, the salaries for the Assistant Collector and the Clerk may be adjusted to reflect a total of \$463 higher than is shown.

Selectman Drobinski asked Mr. Hamilton why Mr. Hamilton's requested FY90 annual salary did not reflect any increase; to which Mr. Hamilton responded that he did not feel he has been in this newly-reclassified position long enough to warrant an increase. Upon recommendation by the Executive Secretary, the Selectmen concurred that they would amend that portion of the Budget to reflect a cost-of-living increase of six percent to Mr. Hamilton's annual salary of \$44,487.

It was on motion of Chairman Wallace unanimously

VOTED: To approve the Fiscal Year 1990 Budget for the Department of Treasurer/Collector; subject to a cost-of-living adjustment to Line Item 505-100, Chester Hamilton, Treasurer/Collector, to reflect a six (6%) percent increase over the FY89 annual salary.

Executive Session

At 9:25 p.m., it was on motion by roll call unanimously

VOTED: To go into Executive Session to discuss Christmas gifts from Discretionary Fund.

(Chairman Wallace, aye; Selectman Drobinski, aye; Selectman Cope, aye).

Chairman Wallace announced that public session would reconvene immediately following Executive Session.

Cutler Trust Land - Chapter 61A First Refusal Option

Present: Joseph and Kenneth Cutler, Trustees of the Cutler Trust, John A. Gibney, Esquire, Attorney for the Cutler Trust of Sudbury; Stanley Gordon, Esquire, Attorney for Buyers; Deborah Vana and M. Gamble, representing Hunneman & Co.; John E. Taft, Sudbury Valley Trustees; abutters to the property and other interested parties; representatives of the Conservation Commission; former Executive Secretary of the Sudbury Water District Winthrop Fairbank.

At 9:35 p.m., the Chairman convened a meeting regarding the question of the Town exercising its 120-day first refusal option in accordance with G. L. c. 61A, § 14, to purchase approximately 33.26 acres of land off Woodside and Landham Roads (Parcel #400 on Town Property Maps L9, L10, M9 and M10), owned by Kenneth R. Cutler and Joseph S. Cutler, Trustees of the Cutler Trust of Sudbury.

Chairman Wallace announced that this meeting was for informational purposes only and that a more formal public hearing will be held in the near future, after which time the Selectmen will make a decision as to whether or not the Town will exercise its option.

Executive Secretary Thompson stated that, although not required by statute to do so, the Selectmen attempted to notify immediate abutters and interested parties; and, the Selectmen invited representatives of the Sudbury Valley Trustees, who have officially requested the Selectmen to transfer the Town's option to them. As a point of information, Mr. Thompson notified those present that the Town's position is that the 120-day time period calculates to a deadline date of February 3, 1989.

By invitation of Chairman Wallace, John D. Gibney, Esquire, P. O. Box 358, 323 Boston Post Road, Sudbury, Attorney for Trustees of the Cutler Trust of Sudbury, made an introductory presentation of the pending purchase and sale of the subject property.

Attorney Gibney stated that on behalf of the Cutler Family Trust he has met with buyers and sellers and they have wrestled with quite a few options. Attorney Gibney further stated that he feels that if the Town or assignee or anyone wishing to exercise this option should, statutorily and in every other way, "stand in the shoes" of this particular buyer and do the things that this buyer says he can do. Attorney Gibney explained that there has never been an intent to confuse the Town concerning terms of the agreement, and that he understands Town Counsel's questions, concerns and positions. However, he continued, he believes the terms agreed upon are straightforward and necessarily on a sliding scale because of the vagaries of the market.

Attorney Gibney stressed that testing and drawings will be done by the buyers and the sellers will make certain they are done diligently; thus, he stated the sellers would expect the Town or its assignee to do the same thing. He explained that the problem with establishing a Fair Market Value is that in his opinion any appraisal done on any property is an appraisal based upon the number of lots.

Attorney Gibney stated that in his opinion there is a base price per lot stated in the purchase and sale agreement. He further stated that the sellers would expect the town to pay for any testing. Attorney Gibney opined that the statute says that when land is taken out of agricultural use and there is no sale, the formula to be used is Fair Market Value; but if there is a sale, the Town or its assignee must meet the terms of the offer. Attorney Gibney emphasized that he was certain that if a vote were taken here tonight, everyone would say open land is desirable; however, he stressed that what is being discussed is someone's land. Attorney Gibney stated that his clients, as trustees, have a statutory duty to maximize the property for the beneficiaries of that Trust. Attorney Gibney stated that this was the posture his clients are going to take if someone comes to them and says "we want to do that deal" or "we want to exercise this option".

In conclusion, Attorney Gibney reiterated the seller's position, that if the Town or any assignee exercises that option, the sellers expect that institution or Town or person or whomever to do what this buyer says he is going to do, to make certain the transaction is basically fulfilled. Summarily, Attorney Gibney stated, he and his clients do not believe this is something the Town wants to exercise; but if it does, the Town knows the position the sellers feel has to be taken pursuant to the statute.

Stanley Gordon, Esquire, of the law firm of D'Agostine & Levine, introduced himself as representing the buyers Greg Patterson and Peter Karassik, principals of Eligius Land Company, Inc. Attorney Gordon informed that the buyers met with sellers some time ago concerning their interest in this land. While he concurs with Attorney Gibney's comments, Attorney Gordon further stated that it is the buyers' intention to work with the Town boards and departments in order to develop this parcel, which in the end will benefit the Town as well as the buyers and sellers.

Sudbury Valley Trustees representative John Taft introduced himself, Attorney Greg Buesina and staff member Cynthia Shanks. Mr. Taft asked a question of Attorney Gibney concerning the notice provided the Selectmen concerning the Chapter 61A and Attorney Gibney's reference to Section 14. Mr. Taft stated that it appears notice was being given concerning two parcels, while only one appeared to come under 61A. In response, Attorney Gibney stated that the option refers only to one parcel, containing approximately 33 acres. Attorney Gibney explained that the two parcels make up the entire purchase and sale agreement; but for purposes of the Town's consideration, it is only the Cutler land that it can be concerned with.

Executive Secretary Thompson noted receipt of the following:

1. Letter dated October 7, 1988, from John D. Gibney, Esquire, advising of its representation of the Trustees of the Cutler Trust of Sudbury and informing of an intended sale of Chapter 61A land;

2. Memorandum dated October 24, 1988, from Board of Assessors, stating that it feels it cannot proceed to make a recommendation on the option without receipt of a bona fide offer;

3. Memorandum dated November 14, 1988, from the Conservation Commission, recommending that the Selectmen consider assigning the Town's option to the Sudbury Valley Trustees;

4. Memorandum dated November 2, 1988, from Town Counsel, interpreting the provisions of Chapter 61A and applying same to the Cutler property;

5. Letter dated November 24, 1988, from the Planning Board, recommending first that the Town act through the Sudbury Water District and/or Sudbury School Department to purchase the Cutler property; or second, to assign its option to the Sudbury Valley Trustees.

Two maps of the area in question were displayed and Attorney Gibney pointed out the particular area covering the 33.26 acres in issue.

Mr. Taft explained that the Sudbury Valley Trustees have in past years been in contact with the Cutlers concerning this property. Using the map as a guide, Mr. Taft pointed out surrounding areas that are included in the flood plain lines, land owned by Sudbury Valley Trustees, land owned by the Water District and Conservation Commission. Mr. Taft further pointed out that this land is approachable only from the Raymond Road side, as no access from Landham Road is available at this time (possibility of sale by private owners of property which could be developed into a road). Mr. Taft stated that the Town and the Sudbury Valley Trustees have a natural interest in this land and if possible, the Sudbury Valley Trustees would like to take care of the Town's interests and the Cutlers' financial interests. Mr. Taft concluded by stating that the Sudbury Valley Trustees would like to initially sit down with the Cutlers and try to negotiate their and the public's needs.

Thomas Hillery, who is a member of the Board of Assessors, but who stated that he was speaking as a private citizen, asked Mr. Taft if the Sudbury Valley Trustees were to acquire the land, would it be held in perpetuity or only for a set number of years. Mr. Hillery expressed his opinion that the Town may lose tax revenue if the land is not sold for housing. In response, Mr. Taft stated that although this may be true, one should also keep in mind that if left the way it is, there would be no additional burdens to the Town in terms of water use, school space and other Town services. Mr. Taft went on to say that he believed some development would be necessary and presumably it would be the property not in the Chapter 61A parcel. Mr. Taft further stated that he understands that the School Department might need additional land and thus may have an interest in this.

Attorney Gordon stated that it is his opinion that the statute provides that in the event the Town elects to transfer its option to purchase, and such option is exercised, the land must remain in its agricultural use. Attorney Buesina opined that he believes the statute reads that the major portion of the land must be so kept, but not all.

In response to inquiry by Chairman Wallace, Attorney Gibney stated that there are a total of approximately 55 acres involved in the sale. As a point

of information, Attorney Gibney stated that he believes that the buyers have done some preliminary site work and it appears that the Chapter 61A land is the more likely land to be the developable land.

Gordon Henley of the Conservation Commission referred those present to the Commission's letter as outlined above, and stated that he feels open space is a valuable resource to the Town.

Upon inquiry by Chairman Wallace, former Executive Secretary of the Sudbury Water District Winthrop Fairbank stated that that area was explored in the past and there appears to be no value in the property as a water resource. At the request of Mr. Taft, Mr. Fairbank pointed out the area on the map where the nearest well is located; and it was estimated that the nearest well is approximately 2,000 feet from the land in issue.

Upon inquiry by Selectman Drobinski, Messrs. Patterson and Karassik stated that their very preliminary testing of the soil indicates mostly sand and gravel.

Executive Secretary Thompson summarized the discussion by stating he believes it is important for the Sudbury Valley Trustees and all relevant parties get together as soon as possible to see if an assignment to them and an exercise of the option by them is feasible. If it is not, Mr. Thompson opined, there "is a whole new ball to re-string."

Selectman Drobinski concurred with Mr. Thompson's suggestion and re-emphasized that the area is adjacent to the Zone Two water supply.

Mr. Thompson further urged the attorneys for the parties to contact the Town Counsel's Office and re-discuss the issues raised in Town Counsel's memorandum of November 2, with the hope of some consensus of opinion being resolved.

Noelle DeVita of 32 Woodside Road asked if there will be an access road from Woodside Road onto the property. Executive Secretary Thompson indicated that it was far too soon to speculate on specific development of the property, and assured her that when and if it becomes appropriate, there will be ample opportunity for issues such as that to be addressed.

The meeting was concluded at 10:00 p.m. 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.

Attest:

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Richard E. Thompson  
Executive Secretary-Clerk