

IN BOARD OF SELECTMEN
MONDAY, MAY 3, 1976

Present: Chairman William F. Toomey, John C. Powers, and Ira M. Potell

The statutory requirements as to notice having been complied with, the meeting was called to order at 7:30 p.m. by Acting Chairman John C. Powers.

Jurors

Present: Town Clerk Betsey M. Powers

The Board drew the name of John V. Nikula, 25 Marlboro Road, to serve as Grand Juror, Cambridge Court, to commence July 6, 1976, and the names of Frederick H. Haartz, 155 Pantry Road, to serve in the Jury Pool for Lowell Court, to commence June 7, 1976 and Anne E. Rees, 29 Windmill Drive, and Paul T. Hammar, 293 Old Lancaster Road, to serve in the Jury Pool for Cambridge Court, to commence June 7, 1976.

Minutes

It was on motion unanimously

VOTED: To approve the minutes of the regular session and the Town Fathers Forum of April 26, 1976.

Orders of Taking Signed - Street Acceptances - Article 23, 1976 Annual Town Meeting

Following discussion, it was on motion by Selectman Powers unanimously

VOTED: To accept the layout as set forth in Item 8 of the agenda for May 3, 1976 and to adopt the separate Orders of Taking, incorporated herein by reference, that relate to each specific section of road in that item, all being the layout and street acceptances voted under Article 23 of the 1976 Annual Town Meeting, copies of which will be filed with the Town Clerk's office.

Proclamation Designating May 15, 1976 - Lincoln-Sudbury Scholarship Day

Following discussion, it was on motion unanimously

VOTED: To sign a proclamation dated May 3, 1976 designating Saturday, May 15, 1976 as Lincoln-Sudbury Scholarship Day in the Town of Sudbury.

Transfer Request - Engineering Accounts

Present: James Merloni, Town Engineer

After consideration, it was on motion unanimously

VOTED: To approve a request (#0674) for transfer of \$1,700 from Account 502-12, Engineering Overtime, to Account 502-14, Temporary Engineering Aides in order to maintain present Temporary Engineering Aides through June 30, 1976, at which time funding for this purpose will be available.

Reserve Fund Transfer Request - Fire Department

Present: Josiah F. Frost, Fire Chief

After consideration, it was on motion

VOTED: To approve a request for transfer (#0677) in the amount of \$1,000 from the Reserve Fund to Account 310-21, Fire Department General Expense, to cover payment of telephone bills for March through June 30, 1976 and the increased membership dues of the Chief to the International Fire Chief's Association and the Massachusetts Fire Chief's Association.

(Chairman Toomey and Selectman Powers in favor; Selectman Potell opposed, commenting that, in his opinion, the problem should have been made known and the transfer request submitted earlier.

Site Plan Application #76-164 -- Charles C. Calareso, 15 Union Avenue

Present: Building Inspector/Zoning Enforcement Agent Francis E. White; Charles C. Calareso, applicant

Under the provisions of Article IX, Section V, Paragraph A of the Sudbury Bylaws, the Board considered the site plan of Charles C. Calareso for location at 15 Union Avenue.

The Executive Secretary reported that all appropriate Town officials and abutters had been notified of tonight's hearing and that the following reports had been received: from the Board of Health, dated April 26, 1976, which recommended conditional approval; from the Conservation Commission, dated April 29, 1976, which stated that a Hatch Act hearing will not be required for the site; from the Planning Board dated April 27, 1976, with comments; and from the Building Inspector/Zoning Enforcement Agent, dated April 9, 1976, which recommended approval.

The Building Inspector/Zoning Enforcement Agent submitted the site plan, and the comments in the Planning Board's above-referenced report were reviewed and discussed.

First item: In response to the Planning Board's request for an opinion from Town Counsel as to whether the shrubbery display areas must meet the setback requirement of the District (BD#5), Town Counsel stated that, in his opinion, Article IX, IV, C, 3, c, did apply and would restrict the height of shrubbery for sale to three feet, if placed nearer to the center of exterior line of the street than seventy-five percent of the required setback and front yard distance, respectively.

Second item: Mr. Calareso agreed to extend the proposed split rail fence along the southern boundary of this property and to remove the dead pine trees.

Third item: Directional signs will be posted at the entrance and exit of the property, and the driveways made one-way. Mr. White stated that the zoning bylaw requires that the driveway have a dust-free surface, only, rather than a paved surface as had been requested by the Planning Board and agreed to by Mr. Calareso at their meeting on April 26.

Fourth item: The sign, including lighting of the same, will be indicated on the site plan, when approved by the Sign Review Board.

Fifth item: The Planning Board requested and Mr. Calareso agreed, at their April 26 meeting, that Mr. Calareso's site plan would be again reviewed in July 1976. If the site plan is approved by the Selectmen, this review will not be necessary.

Mr. Calareso stated that he plans to change the present driveway and parking area for his use of the premises as a farm stand, but that he does not propose to change the existing building at this time.

Selectman Powers questioned what methods would be used to keep customers from parking along Union Avenue.

Mr. Calareso stated that the proper parking area would be indicated.

Town Counsel's above-mentioned opinion relating to the necessity of the shrubbery display areas meeting the setback requirements for the district was again discussed, and Selectman Powers questioned Town Counsel's interpretation of the bylaw and whether such a limitation could be placed on the applicant.

After further discussion, it was on motion unanimously

VOTED: To approve the site plan dated April 3, 1976 of Charles C. Calareso for property located at 15 Union Avenue, subject to inclusion on the final plan, which will be presented for the Board's signatures on May 10, 1976, of the Board of Health's requirement for the precise location of the septic tank and the distribution box, the size of the leaching area and all connecting pipes or receipt of a letter of exemption of the above requirement from the Board of Health, and subject to the conditions set forth in the first three paragraphs only (first, second, and third items referenced above) of the Planning Board letter of April 27.

In response to Mr. Calareso's request for his possible opening on May 8, 1976, Selectman Potell suggested that if the conditions of the Board's vote, as stated above, have been complied with during the week, the Board, by telephone, could vote to allow the opening in advance of the signing of the plan.

Chairman Toomey and Selectman Powers were in agreement.

Hearing - Contemplated Termination of Robert L. Wenham, Patrolman, Sudbury Police Department

Present: Francis M. Keane, attorney, and David W. Downes, IBPO attorney, both representing Patrolman Robert L. Wenham; Police Chief Nicholas Lombardi; and George Distler, Chairman of the Personnel Board

The Executive Secretary read the notice dated April 23, 1976 from the Board of Selectmen to Robert L. Wenham relative to the contemplated termination, in accordance with G.L.c31, as amended, of his employment by the Town as a Patrolman with the Sudbury Police Department, because of physical injuries sustained by him, not during or associated with his employment, which have rendered him physically unable to perform the duties of his office.

Mr. Thompson reported that he had, today, received a call from Attorney David Downes, from the International Brotherhood of Police Officers, on behalf of Patrolman Wenham, who requested a continuance of the hearing until May 17 in order to present the Selectmen with his doctor's current report on his condition, following his appointment on May 11.

Chairman Toomey referenced the Personnel Board's April 16, 1976 letter to the Police Chief, which reported that Board's vote to terminate the "temporary limited duty" position which had been created for Patrolman Wenham for a 90-day period of evaluation.

The Executive Secretary reported that the letter referenced above had been discussed at the Board's special meeting on April 22.

Mr. Keane stated that he would join with Mr. Downes in requesting a continuance of tonight's hearing.

Mr. Downes commented that his records indicated that the last doctor's report of Patrolman Wenham's condition, which was considered by the Selectmen and the Personnel Board, was dated two months ago.

Town Counsel requested that, before the Board voted whether or not to continue this matter, the Board receive an indication as to whether Patrolman Wenham would be available for examination by a doctor of their selection.

Both attorneys responded in the affirmative.

In response to Selectman Powers' question concerning the present status of Patrolman Wenham, the Executive Secretary stated that in recent communication with the Police Chief, he had by letter dated April 22, 1976 requested that Patrolman Wenham remain off-duty, at home, until the matter is resolved. Mr. Thompson reported that Patrolman Wenham is still on the payroll until the conclusion of the hearing.

Mr. Downes stated that Patrolman Wenham is ready, willing, and able to perform his duties if the Chief will so allow.

Chairman Toomey stated that he wished to have it understood that there would be no further continuation following any continuation which might tonight be voted by the Board, and he stated that he would entertain a motion for continuation.

Selectman Powers questioned Town Counsel as to whether he could foresee any technical problems in continuing the hearing.

Town Counsel responded that he could not foresee any technical problems as the request had been made by Patrolman Wenham and that he would assume that Patrolman Wenham and his attorneys would waive any further notice.

Attorneys Keane and Downe were in agreement.

After further discussion, it was on motion unanimously

VOTED: That the Board grant a continuance of the hearing relative to the contemplated termination of Robert L. Wenham, Patrolman, Sudbury Police Department, in accordance with General Laws, Chapter 31, as amended, until 8:30 p.m. on May 17, 1976, with the understanding that Officer Wenham will stay on the payroll, but not engage in active duty until such time as that date and a determination is made at the hearing.

It is noted that Attorneys Keane and Downes have expressed willingness, on behalf of Patrolman Wenham, that Patrolman Wenham will submit to a physical examination by a doctor of the Town's choosing, arrangements for which will be made by the Selectmen's office.

Special Police Officers

Present: Police Chief Nicholas Lombardi

Chairman Toomey reported that, at an earlier Selectmen's meeting, Selectman Powers had requested of Town Counsel whether Special Police Officers may be given the power of arrest. Chairman Toomey reported that the Board had received a memorandum dated April 1, 1976 on the subject which was prepared by Assistant to Town Counsel and approved by Town Counsel.

Chief Lombardi stated that, as he had received this memorandum late this afternoon, he would like to discuss and review it with other police chiefs.

The Board was in agreement and it was further agreed to defer the matter until the Board's meeting on May 10, 1976.

Reserve Fund Transfer Requests - Fire Department

Present: Fire Chief Josiah Frost

#0676 - After consideration, it was on motion by Selectman Powers and reluctantly seconded by Chairman Toomey,

VOTED: To approve a request for a reserve fund transfer (#0676) to Account #310-12, Fire Department Overtime, in the amount of \$10,000 in accordance with the purpose set forth on the transfer request.

(Chairman Toomey and Selectman Powers in favor; Selectman Potell opposed.)

#0678 - After discussion, it was on motion by Selectman Powers unanimously

VOTED: To defer further consideration of a request from the reserve fund (#0678) until May 17 at 9:00 p.m.

Fire Department Fire Alarm Account #310-62

Present: Fire Chief Josiah Frost

The Board received a letter dated April 29, 1976 from Fire Chief Frost relative to use of \$2,500 in Account #310-62 to purchase the necessary cable to replace the present underground cable in Sudbury Centre which will tie into the overhead cable to be installed on Concord Road from Sudbury Centre to the Boston Post Road.

Fire Chief Frost now requested that the \$2,500 in Account #310-62 be encumbered for the necessary cable to implement the plan indicated for the next fiscal year.

The Executive Secretary referred to the Board's July 14, 1975 meeting, at which the matter was discussed and the Board suggested that Chief Frost's request be brought up at the Special Town Meeting planned for late last fall following conclusion of collective bargaining negotiations.

The Executive Secretary recommended that the Chief proceed to use the \$2,500 -- that to do otherwise would mean that the first phase would have to be taken out of the appropriation for next year which was approved at the 1976 Annual Town Meeting.

Following further discussion, it was on motion unanimously

VOTED: To approve the request of the Fire Chief to use the \$2,500 in Account #310-62 for the purpose set forth in the Fire Chief's letter of April 29, 1976.

April 20, 1976 - Declaration of State of Emergency - Fire Danger

In response to a communication dated May 3, 1976 from the Fire Chief, which advised the Board that he had inspected the Town-owned woodlands and found that, due to their greening-up and the recent rains, the forest fire danger to the population of the Town has been sufficiently reduced to declare that the State of Emergency has ended, it was on motion unanimously

VOTED: To declare that the State of Emergency with regard to forest fire danger no longer exists in the Town of Sudbury and that all Town woodlands are herewith reopened.

Annual Roadside Clean-Up - May 1, 1976

Chairman Toomey expressed his appreciation to Highway Surveyor Robert Noyes, the Sudbury Highway Department, the Girl Scouts, Brownies, Boy Scouts, Cub Scouts, Campfire Girls, Bluebirds, 4-H, and P.R.I.D.E, with special appreciation to Mrs. Janet Silva of the Selectmen's staff, for her efforts in coordinating the successful operation.

The Executive Secretary reported that there had been a good turnout for Clean-Up Day considering the Scout, church, school, sport, DeMolay paper drive and other events scheduled for that date. Mr. Thompson reported that Union Carbide Corporation had donated 960 heavy-duty rubbish bags, 850 of which were filled, and the remainder stored for next year. A letter of appreciation will be sent to Union Carbide Corp. for this generous contribution.

Mr. Thompson expressed the Board's appreciation to Mullen Lumber for donating space in their advertisement in Bentley's Calendar to include notice of Clean-Up Day, and he further reported that an estimated 40-45 yards of litter were collected and taken to the sanitary landfill.

Mr. Thompson reported that he had seen, shortly after the clean-up, a pile of litter and beer cans on Goodman's Hill Road and he recommended that the Board send a communication to the Police Chief relative to the fines for littering.

The Board was in agreement.

Appointments

Following consideration, it was on motion unanimously

VOTED: To make the following appointments:

Francis E. White as Building Inspector for a term to expire on April 30, 1977.

Francis E. White as Zoning Enforcement Agent for a term to expire on April 30, 1977.

Francis E. White as Wiring Inspector for a term to expire on April 30, 1977.

Rexford Moss as Deputy Building/Zoning Enforcement Agent for a term to expire on April 30, 1977.

Josiah Frost as Civil Defense Director for a term to expire on April 30, 1977.

Howard Kelley as Civil Defense Radio Operator for a term to expire April 30, 1977.

Earl Midgely as Deputy Building Inspector for a term to expire on April 30, 1977.

George Ey as Deputy Plumbing/Gas Inspector for a term to expire on April 30, 1977.

Warren Boyce as Deputy Wiring Inspector for a term to expire on April 30, 1977.

Richard E. Thompson as Executive Secretary for a term to expire on April 30, 1977.

William F. Toomey, John C. Powers, and Ira M. Potell as Fence Viewers for terms to expire on April 30, 1977.

Howard Porter as Gas Inspector for a term to expire on April 30, 1977.

Richard E. Thompson as Town Agent, Industrial Accident Board, for a term to expire on April 30, 1977.

Police Chief Nicholas Lombardi as Keeper of the Lockup for a term to expire on April 30, 1977.

Samuel Reed as Pound Keeper for a term to expire on April 30, 1977.

Alfred Bonazzoli as Public Weigher for a term to expire on April 30, 1977.

Francis E. White as Sealer of Weights & Measures for a term to expire on April 30, 1977.

Ralph Stone and Benjamin R. Walker as Surveyor of Lumber and Measurer of Wood for terms to expire on April 30, 1977.

John H. Wilson as Town Accountant for a term to expire on April 30, 1977.

James V. Merloni as Town Engineer for a term to expire on April 30, 1977.

Forrest D. Bradshaw and George D. Max as Town Historians for terms to expire on April 30, 1977.

Frank Grinnell as Veterans Agent and Director of Veterans Services for a term to expire April 30, 1977.

Frank Grinnell as Veterans Graves Officer for a term to expire on April 30, 1977.

Leon Zola to the Industrial Development Commission for a term to expire April 30, 1981.

John H. Wilson, Earl B. Hoyle and R. Barry Liner to the Insurance Advisory Committee for a term to expire April 30, 1977.

Frank Grinnell, Joan Meenan, and William Waldsmith to the Memorial Day Committee for terms to expire on April 30, 1979.

Maurice Fitzgerald to the Board of Registrars for a term to expire on April 30, 1979.

William Burns, Paul Leahy, Alfred Bonazzoli, Catherine Greene, and Thomas McDonough to the Veterans Advisory Committee for a term to expire on April 30, 1977.

Barbara Herrick, Jeanne McCarthy, Irene Mele, and Betsy Lawson as Policewomen, for terms to expire on April 30, 1977.

Village Green Shopping Center - Board of Appeals Hearing

The Selectmen requested that Thomas French, Assistant to Town Counsel, appear on behalf of the Selectmen for the purpose of recording information at the May 11, 1976 hearing on the application of Robert D. Quirk Realty Trust before the Board of Appeals on the matter of the Village Green Shopping Center.

Hearing - Contemplated Termination of Michael C. Dunne, Captain, Sudbury Fire Department

Present: Fire Captain Michael C. Dunne; Fire Chief Josiah Frost; and George Distler, Chairman, Personnel Board.

The Executive Secretary read the notice dated April 23, 1976 from the Board of Selectmen to Michael C. Dunne, relative to contemplated termination of his employment by the Town as Captain in the Fire Department, because physical injuries, sustained by him not during or associated with his employment, have rendered him physically unable to perform the duties of this office.

Mr. Thompson reported that the hearing had been scheduled in response to a request dated April 22, 1976 from Captain Dunne asking that the Board grant him a hearing on the matter of a leave of absence for medical reasons.

Mr. Thompson further reported that he had, today, received a letter dated May 3, 1976 from Michael Callahan, President of Sudbury Local No. 2023, International Association of Fire Fighters, which asked that the Board grant Captain Dunne his requested leave of absence.

In response to the Board's question, Captain Dunne stated that he was not tonight represented by counsel.

Captain Dunne restated his request that the Board allow him extended desk duty and, if this were not possible, a one-year's leave of absence. Captain Dunne reported that his doctor has indicated that he will make a full recovery.

Mr. Distler commented that Captain Dunne has indicated that he would waive his injury rights, but questioned the legality of the same.

Town Counsel stated that, in his opinion, such a waiver would have no force or effect other than a moral commitment.

Chief Frost restated his earlier written requests that Captain Dunne be used as a dispatcher and further stated that, if the Board could not agree to this, he would earnestly request that the Board grant his request for a one-year leave of absence.

Chairman Toomey expressed the Board's understanding that Captain Dunne is an outstanding firefighter and captain and stated that contemplation of his termination was a difficult step to take. Chairman Toomey further stated that the Board must also consider the remainder of the fire service.

Selectman Powers stated that, in his opinion, the Board has a very practical problem to deal with -- that being the structure of the Fire Department in an acting situation, which must be considered.

Selectman Potell stated that as a new Selectman he would have to concur with and defer to what has been said by Chairman Toomey and Selectman Powers. Selectman Potell stated that if there is a workable solution, he should like to listen to it.

Chief Frost stated that he had discussed the requested leave of absence with Acting Captain Hawes, who he believed, was agreeable and that, in his opinion, the tone of the letter from the Fire Fighters Association indicated their willingness to live with an acting situation. Chief Frost stated that he had also discussed the situation with the man who would be hired and that this man understands that he may be hired as a permanent firefighter or may be terminated at the end of a year. Chief Frost stated that all concerned have agreed to continue on this basis.

Chairman Toomey questioned the wisdom of hiring a man for a year, training him at the Town's expense, and perhaps terminating him at the end of the year.

Chief Frost stated that the training costs involve only 100 hours which the Town must cover.

Selectman Powers stated that the information received in the Selectmen's package on May 7 did not change his assessment of the nature of the problem, and he asked, as there is authorization in the contract for a leave of absence, what the Town might pick up in the way of grievances from others. (It was learned later in the evening that the section of the fire contract dealing with Selectmen approval of leave of absence is not subject to a grievance.)

Mr. Thompson commented that the Fire Chief had referenced the Association's letter and also discussion with Acting Captain Hawes, both of which were supportive of the leave of absence request. Mr. Thompson stated that, in his opinion, more than a single opinion was needed and, even with a signed statement, the Board would be put in a precarious position for setting policy and precedent.

Mr. Distler stated that, put very simply, in his opinion, the Personnel Board and the Board of Selectmen were very much in agreement that this is a situation in which no one feels comfortable with regard to making decisions. Mr. Distler further stated that, in his opinion, Acting Captain Hawes' statement is not truly relevant, as he did not want to jeopardize Captain Dunne's chances at his hearing. Mr. Distler suggested that action could be taken without prejudice and preference shown Captain Dunne when he is ready to come back to service.

Chairman Toomey stated that, in his opinion, this Board could not take a vote which would be binding on a future Board of Selectmen and that he could not support a resolution such as this in good conscience.

Selectman Powers stated that, in his opinion, the Board could not jeopardize "downstream", either with regard to this Board or the Fire Department. Selectman Powers stated that this Board was very pleased with the appointment of Michael Dunne to Captain, but was of the opinion that the Board could not jeopardize a future Board.

Captain Dunne stated that if the Board's main concern was the position of Captain, he would revert to his position of Senior Firefighter.

Chairman Toomey reiterated the Board's position that a vote on a matter which would bind a future board would not be good business practice, and he commented that the point had been brought up at their April 22 meeting that a policy on this situation must be set in the interests of the Town.

After further discussion, Town Counsel was directed to draw up a motion for the Board's consideration on May 10, and the Board advised Captain Dunne that if he could contribute any additional information, they would welcome it at that time.

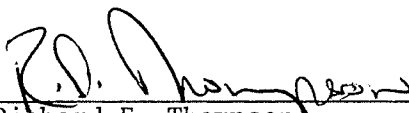
It was on motion unanimously

VOTED: To continue the hearing on the contemplated termination of Michael C. Dunne, Captain, Sudbury Fire Department, until 8:00 p.m., May 10, 1976.

There being no further business to come before the Board, it was on motion unanimously

VOTED: To adjourn the meeting at 10:10 p.m.

Attest:


Richard E. Thompson
Executive Secretary-Clerk