

IN BOARD OF SELECTMEN
MONDAY, SEPTEMBER 26, 1983

Present: Chairman John E. Murray, Anne W. Donald, and Myron J. Fox.

The statutory requirement as to notice heving been fulfilled, the meeting was called to order at 7:30 p.m. by Chairman Murray.

Alcoholic License Transfer - Pizza Alla Pietra

Chairman Murray reconvened a public hearing on the application for a Transfer of a Restaurant License for the Sale of All Alcoholic Beverages from Antonio Giovane, Manager, Giovane & Manion, Inc., d/b/a Pizza Alla Pietra, for property located at 447 Boston Post Road, to Dimitri James, d/b/a Dimitri's Pizza & Restaurant. Also, before the Board was the question of approving a loan and pledge of the above liquor license as collateral to Antonio Giovane in accordance with G.L.c. 138, s.23, and an application for a Common Victualler License for said transferee.

Following information from the Executive Secretary that Mr. Giovane had called the office and stated that he would not be present tonight because the sale of the restaurant had not been consummated, it was on motion by Selectman Fox unanimously

VOTED: To deny without prejudice the above-noted applications.

Town Gift - Santucci Land

On the recommendation of the Executive Secretary, it was on motion by Selectman Fox unanimously

VOTED: To approve and sign acceptance of a deed giving the Town approximately 3.87 acres of land located between Tanbark and Meadowbrook Roads conveyed under the provisions of G.L.c. 40, s.8C, to be managed and controlled by the Conservation Commission, from Ronald F. and Joanne L. Santucci.

Executive Secretary Richard E. Thompson stated that the Santuccis would sign the deed and it would then be recorded.

Campus Hotel - Minuteman Vocational Technical High School

The Board acknowledged receipt of a letter dated September 14 from the Town Manager of Concord, enclosing a copy of his letter to the Minuteman Vocational Technical School Representative, Kenneth W. Marriner, Jr., expressing concern regarding the recent publicity given to plans for construction of a hotel on that School's property, and requesting clarification of that proposal.

The Board briefly discussed the communications and directed the Executive Secretary to reply to Concord that the Sudbury Selectmen would likewise be interested in the answers to the questions he raised when that information is available.

Employee Maximum Optional Life Insurance

In accordance with recommendations from the Town Accountant, dated September 22, 1983, and Town Counsel's office, dated September 26, 1983, it was on motion by Selectman Fox unanimously

VOTED: To authorize Chairman Murray to sign and execute the Request for Change form, authorizing an increase in the maximum amount of optional life insurance coverage available to employees under Group Policy #G-3125 with the Boston Mutual Life Insurance Company to \$74,000, in accordance with the schedule of insurance in Section 11A of Chapter 32B of the General Laws, as amended by Chapter 578 of the Acts of 1981.

MAPC Working Committee Appointee

In accordance with communications from the Metropolitan Area Planning Council (MAPC), both dated July 21, 1983, and on recommendation by Executive Secretary Richard E. Thompson, it was on motion by Selectman Donald unanimously

VOTED: To appoint Sudbury's MAPC Designee, David F. Grunebaum, as representative to a Working Committee for regional planning by the Town of Southborough, Framingham, Natick, Ashland, Sudbury, Wellesley, Weston and Wayland - towns adjacent to Route 495; and to authorize said representative to request assistance from the MAPC to study and seek solutions to growth-connected problems, including, but not limited to, traffic.

Responding to Selectman Donald, Mr. Thompson stated that Mr. Grunebaum had indicated his willingness to serve on the Working Committee.

Public Hearing - Ephraim's, 8 Village Green

Present: Donald Wagoner, owner and manager Ephraim's Restaurant and Atty. Burton Boyer, Receiver for Todd-Wagoner Corp; Atty. Robert W. Tennant, Robert G. Lyons, President, and Thomas Nadolski, Treasurer, for Kenbo, Inc.

Chairman Murray convened a continued public hearing (taken under advisement on September 19, 1983) on the application for a Transfer of a Restaurant License for the Sale of All Alcoholic Beverages from Donald Wagoner, Manager, Todd-Wagoner Corporation, d/b/a/ Ephraim's of Sudbury, for property located at 8 Village Green, Hudson Road, to Thomas Lyons, Manager, Kenbo, Inc., d/b/a Ephraim's Restaurant. Also before the Board were:

- a) question of approving a loan and pledge of the above liquor license as collateral to the South Shore Bank, as required under G.L.c. 138, s.23;
- b) question of approving an application for a Common Victualler License for the above transferee;

- c) question of approving an application for a Weekday Entertainment License for taped background music and live music (three musicians) from 6:00 p.m. to 12:00 midnight, Monday through Thursday, and from 6:00 p.m. to 1:00 a.m., Friday and Saturday; and
- d) question of approving an application for a Sunday Entertainment License for live music (three musicians) from 3:00 p.m. to 12:00 midnight.

The above subject matter had been taken under advisement in order to request Town Counsel's opinion on several issues raised by the Selectmen, which Executive Secretary Richard E. Thompson responded to on behalf of Town Counsel, as follows:

- 1) The financing of the new buyers is not relevant with regard to the transfer.
- 2) Since the Receiver, Atty. Burton Boyer, approves of the transfer, the question relating to listing of the license as an asset in the Court Order is not a problem.
- 3) A license by its issuance is always subject to licensee's control of premises (lease information is provided on the application on top of page 3, #12); however, tenancy could be "at will", in which case there would be no document (lease) - the question of lease is not relevant to the transfer.
- 4) The issue of the creditors is not relevant to the transfer.
- 5) The public hearing notice was in correct form - the Receiver did not need to be mentioned.
- 6) Selectman Murray can vote at the continued hearing of September 26, 1983, although he was not present at the September 19th hearing, after review of the file, the application and the minutes of the September 19th hearing.

Mr. Thompson noted receipt of the following communications:

- from Atty. Joseph Krinsky, for Paramount Fountain & Restaurant Supply Corp. (creditor), dated September 22, 1983, stating no objection to any transfer of the alcoholic beverages license from Donald Wagoner, Todd-Wagoner Corporation, d/b/a Ephraim's to Thomas Lyons, Manager, Kenbo, Inc. d/b/a Ephraim's;
- from Atty. Anthony M. Cardinale, for Todd-Wagoner Corporation, dated September 23, 1983, enclosing a certified copy of a Motion and Order entered by Superior Court Judge Paul G. Garrity on September 21, 1983, clarifying the order allowing the Receiver to sell assets and stating that the Receiver is authorized to transfer the liquor license (hand-delivered); and

- from the Board of Health, dated September 19, 1983, listing violations and putting the owners of the property on fourteen-day notice to remedy the same.

Atty. Robert Tennant stated on behalf of his client that the items listed in the Board of Health's communication are being taken care of.

Selectman Fox stated that the license(s) would be held until those conditions had been met.

It was on motion by Selectman Fox unanimously

VOTED: To approve the application for a Transfer of a Restaurant License for the Sale of All Alcoholic Beverages from Donald Wagoner, Manager, Todd-Wagoner Corporation, d/b/a Ephraim's of Sudbury, for property located at 8 Village Green, Hudson Road, to Thomas Lyons, Manager, Kenbo, Inc., d/b/a Ephraim's Restaurant; and to approve a loan and pledge of the above liquor license as collateral to the South Shore Bank, as required under G.L.c.138, s.23, subject to all five renovations/health corrections being done, as stated in the September 19th Board of Health letter and that the furniture being stored on the outside balcony, noted in the Fire Chief's letter of September 19th, which is not being used for outside dining be removed, as it is a fire hazard.

And it was further on motion by Selectman Donald unanimously

VOTED: To approve the application for a Common Victualler License for the above transferee subject to the above-noted conditions.

On the question of approving entertainment licenses (both weekday and Sunday), Selectman Donald referenced the Town Bylaws, section IX, III, B 1, h, prohibiting mechanical or live entertainment, and i. requiring a special permit from the Board of Appeals for the same.

Selectman Fox addressed concerns raised by Mr. Richard F. Brooks at last week's hearing and stated he would not oppose the application(s) for the reasons stated, namely because 1) although the restaurant is bounded on three sides by residential districts, it is a proper location for an entertainment license because the entertainment is not heard outside the building; 2) regarding the hours of operation, people do eat up to closing and, therefore, it would be appropriate to issue the entertainment licenses for the hours requested so long as these licenses are conditioned on special permits from the Board of Appeals.

Selectman Donald suggested reducing the hours of operation to 11:00 p.m., but following remarks by Selectman Fox that the license can be reviewed at the time of renewal as to whether or not any complaints of noise had been received, the Selectmen expressed agreement with the hours requested on the application(s).

Mr. Thompson noted for the record that the Selectmen could use their discretion in pro-rating the cost of the license. The liquor license expires December 31, 1983.

Responding to Mr. Wagoner, the Selectmen agreed that it was their mistake to issue the entertainment license four and five years ago to him but that they had no choice now except to notify the Zoning Enforcement Agent that Ephraim's (and approximately three other establishments in the same situation) are in violation of the Town Bylaws. Selectman Fox added that the Board of Appeals process is about a three-month process.

Receiver Burton Boyer indicated that a three-month waiting period would be very difficult for the prospective buyers to cope with.

Town Counsel Paul L. Kenny pointed out that the situation of the entertainment licenses applies to the applicant as well as to the present owner of Ephraim's.

Mr. Thomas Nadolski stated that this situation drastically affects their coming in and operating the restaurant and that these conditions would pertain as well to any new prospective buyer. He stated that, although he did not understand the legalities of the situation, he felt there may be some exception under extenuating circumstances, particularly when the Selectmen themselves made the mistake in the issuance of the licenses, and respectfully requested that special consideration be given to this situation.

Atty. Tennant, on behalf of his client, Kenbo, Inc., stated that this action of the Board raises serious doubts as to whether his client would buy Ephraim's.

Atty. Boyer stated that this subject had not been brought up before, and that, needless to say, they have made several commitments and urged the Selectmen to reconsider their action.

Mr. Wagoner expressed his disappointment stating that if there is no sale, there will be no Ephraim's in Sudbury.

Mr. Richard F. Brooks interrupted and adamantly stated that that would not disappoint too many people in Sudbury.

Mr. Nadolski replied that he did not think that that was the sentiment since many Sudbury residents regularly patronized the restaurant.

Mr. Nadolski reiterated that, under extenuating circumstances, the Selectmen should have some power to remedy this situation, and suggested that it would be in the public's best interest to have Ephraim's continue to operate. He also pointed out that Kenbo met all the requirements of the Town and would be willing to go to the Board of Appeals, while the license continues to be in affect.

Town Counsel explained the technicalities of enforcing the Town bylaws; he stated that the licenses to operate the restaurant would be in existence, and that the only question before the Board is the zoning violation relative to the entertainment licenses. Selectman Fox expanded that explanation by explaining the appeal process if a local cease and desist were to issue regarding activation of entertainment at the establishment. Selectman Donald suggested, and the Board concurred, that perhaps the Planning Board should address the bylaw prohibiting the issuance of an entertainment license to establishments located in Limited Business Districts and inform the Board of any recommended re-wording of the same.

At the conclusion of discussion, it was on motion by Selectman Fox unanimsously

VOTED: To approve applications by Kenbo, Inc., for a Weekday Entertainment License for taped background music and live music (maximum three musicians) from 6:00 p.m. to 12:00 midnight, Monday through Thursday, and from 6:00 p.m. to 1:00 a.m., Friday and Saturday; and for a Sunday Entertainment License for live music (maximum three musicians) from 3:00 p.m. to 12:00 midnight; both license approvals being subject to Board of Appeals' approval of a special permit.

Town Fathers Forum

At 8:00 p.m. Chairman Murray convened the 151st Session of the Town Fathers Forum, a copy of which is attached and made part of these minutes.

At the conclusion of the Town Fathers Forum, Chairman Murray recessed the meeting for coffee and conversation.

Joint Meeting, Finance Committee - STM Articles

Present: Chairman James A. Pitts, Thomas G. Dignan, Jr., Marjorie Wallace, Bettie H. Crawford, John T. Hannan, William H. Maurhoff, William Gervais and Walter H. Stowell.

Finance Committee Chairman James A. Pitts reported the Finance Committee's position on the following Warrant Articles for the October 3, 1983 Special Town Meeting:

- Article 1, Unpaid Bills; amend amount to pay William L. Miles for tuition reimbursement (Fire) from \$232.75 to \$222.75 and, accordingly, the total amount of the article from \$823.93 to \$813.93. Finance Committee recommends approval.
- Article 2, FY84 Budget Adjustment, Debt Service; the amount of the article will be amended on the floor of Town Meeting from \$20,000 to \$35,000 by the Town Treasurer. Finance Committee recommends approval.

- Later, Article 3, LSRHS Drainage; the Finance Committee met briefly with representatives of the Lincoln-Sudbury Regional School District Committee and return to the Selectmen's meeting and reported that the Finance Committee had a split vote (4/3) and, therefore, has no recommendation on this article. The basis of the vote was that the High School has a Six Million Dollar budget and is only two months into that budget. Mr. Pitts stated that the Finance Committee would discuss and vote on it again next Monday night prior to STM.
- Article 4, Free Cash; the reduction amount is amended from \$347,614 to \$332,624 and the Finance Committee recommends approval.
- Article 5, Accept G.L. c59, s.5, Clause 37A; Finance Committee recommends approval.
- Later, Article 6, Accept G.L. c59, s.5, Clause 41B; the Finance Committee met privately to discuss the financial aspect of this article - it impacts on the tax rate by \$15,000 yearly, and upon return to the Selectmen's meeting, indicated its approval of this article.

During review of the above articles, it was on motion unanimously

VOTED: To support above-noted Warrant Articles 1, 2, and 4, as amended, and Articles 3, 5, and 6, as printed in the Warrant for the October 3 STM.

Mr. Pitts reviewed with the Board several charts comparing Town fiscal year appropriations and projected FY85 levy projections, specifically stressing under the FY85 levy projection chart the Town's dependence on the use of free cash to stay within Proposition 2½ limitations and still allow for salary increases and modest expense increases. Mr. Pitts further pointed out that, if Special Town Meeting does not rescind a portion of the free cash used at the 83ATM, then in the ensuing year we will find ourselves in a weaker financial posture, probably resulting in reduction of service and cuts in personnel.

Lincoln-Sudbury Regional School District Committee member Richard F. Brooks explained in detail the reasoning behind the Regional School Committee's decision to have included Article 4 on the Warrant for the emergency Special Town Meeting dealing with repairing the drainage around the football field bleachers, which have been condemned by the Building Inspector. Mr. Brooks explained the work involved to repair the drainage and stated that if this drainage scheme does not work, it would cost an additional \$8,000-10,000 to correct the situation.

The Board confirmed its support of Article 4.

Resignation - Long Range Capital Expenditures Committee

It was on motion by Chairman Murray unanimously

VOTED: To accept the resignation of Alan Silver from the Long Range Capital Expenditures Committee, dated September 18, 1983, effective immediately, and to direct the Executive Secretary to forward an appropriate letter of appreciation to Mr. Silver for his years of service on said committee.

Appointment - Police Matron/Crossing Guard

In accordance with a recommendation dated September 22, 1983, from Police Administrative Assistant Peter Lembo and Safety Officer William B. Carroll, it was on motion by Selectman Donald unanimously

VOTED: To appoint Rosemary A. Langmaid, 81 Landham Road, as Police Matron/Crossing Guard, to replace Helen E. Nadeau, for a term effective immediately and to expire April 30, 1984.

Minutes

It was on motion by Selectman Donald unanimously

VOTED: To approve the minutes of the Regular Session of September 19, 1983, as drafted.

Maintenance - High School

Chairman Murray stated he had discussed with Mr. Richard Santella, Director of Buildings and Grounds at the High School, some of the on-going maintenance problems there. Mr. Santella had indicated that he may speak to the Park and Recreation Commission regarding the possibility of the Commission taking over the maintenance of the playing fields at the High School as they do for the Sudbury Schools.

Middlesex County Advisory Board

Selectman Donald informed the Board that the Middlesex County Advisory Board (MCAB) may vote a supplemental budget - one of the factors being an unexpected court ordered payment. Selectman Donald stated they will meet and take a vote and make a recommendation to the full Board; that she was not sure how that would affect the individual communities if, for example, the budget was amended upward by \$100,000.

Set Tax Rate

Selectman Fox had expressed his very strong concern last week (Selectmen's September 19th meeting) that setting the tax rate for FY84 should be the most important priority of the Town. He stated that Town Counsel had met with the Assessors and given his opinion relative to their contract with Magee and Magane, and that, hopefully, in the very near future, the necessary information to be recorded on the Assessors' cards will be forthcoming from Magee and Magane and the tax rate can be set.

Fire Department Pumping Fees

Selectman Fox referenced a schedule of pumping fees charged by the Town of Wellesley in accordance with that Town's Bylaws, and expressed his opinion that Sudbury should consider following the same schedule; namely, that there would be no charge for the first call, the second call would cost the homeowner twenty-five dollars and a third call would cost one hundred dollars.

Agreeing with Chairman Murray, Selectman Fox stated those fees could be waived in extenuating circumstances - in case of need, at the discretion of the Fire Department.

The Executive Secretary was requested to obtain a written recommendation for appropriate action from the Fire Chief.

Executive Session

At 10:10 p.m. it was on motion by roll call

VOTED: To enter into Executive Session for the purpose of discussing litigation and transactions in real property where open discussion of the same may have a detrimental effect.

(Selectman Murray, in favor; Selectman Donald, in favor; Selectmen Fox, in favor.)

There being no further business to come before the Board the meeting was adjourned at 10:50 p.m.

Attest: _____

Richard E. Thompson
Executive Secretary-Clerk