

IN BOARD OF SELECTMEN
MONDAY, DECEMBER 3, 1984

Present: Chairman Anne W. Donald, Myron J. Fox and Josiah F. Frost.

The statutory requirements as to notice having been fulfilled, the meeting was called to order at 7:30 p.m. by Chairman Donald.

Utility Petition 84-42/Haynes Road

Present: Edmund F. Kelly, Boston Edison; and David Einis, owner.

In conformity with General Laws, Chapter 166, Sections 21 and 22, the Board considered Utility Petition 84-42 of Boston Edison Company and New England Telephone and Telegraph Company for permission to lay and maintain approximately 32' of conduit with the necessary wires and cables therein on Haynes Road, southeasterly approximately 650 feet north of Hadley Road, as shown on "Plan of Haynes Rd. - Sudbury, Showing Proposed Conduit Location", dated October 25, 1984, and "Plan for Conduit Location To Accompany Petition of New England Telephone and Telegraph Company", dated November 13, 1984.

Executive Secretary Richard E. Thompson stated that all appropriate abutters and Town officials had been notified and noted receipt of a joint communication dated November 29, 1984, from the Building and Wiring Inspectors recommending approval.

It was on motion unanimously

VOTED: To approve Utility Petition 84-42 of Boston Edison Company and New England Telephone and Telegraph Company as described above.

Transfer Requests

It was on motion by Selectman Frost unanimously

VOTED: To approve the following requests for transfer of funds from the Reserve Fund:

a. No. 14, dated December 3, 1984, for Account 501-12, Selectmen's Overtime and Extra Hire, in the amount of \$300, as explained on the numbered transfer; and

b. No. 15, dated December 3, 1984, for Account 501-13, Selectmen's Clerical Salary, in the amount of \$200, as explained on the numbered transfer.

Acknowledge Donation/Library

It was on motion by Selectman Fox unanimously

VOTED: To acknowledge receipt, as Co-Trustees of Town Donations under the provisions of Chapter 180 of the Acts of 1911, of \$91,546.75 received from Robert W. Skinner, Inc., for the sale of the Audubon Quadrupeds, to be deposited in the Goodnow Library Invested Income Fund.

Note: See vote of January 28, 1985, amending the above vote.

Accept Articles/December 3 Deadline

Executive Secretary Richard E. Thompson distributed a list of articles which he recommended the Board accept as submitted under the December 3 deadline, and following a brief discussion, specifically on the proposed article to Amend Bylaws, Art. V - Door-to-Door Sales, which needs legal clarification from Town Counsel regarding restricting/prohibiting same, it was on motion by Selectman Fox unanimously

VOTED: To accept the following articles for the 1985 Annual Town Meeting submitted under the December 3 deadline with the understanding that there will be further discussion by the Board relative to its support or non-support of all articles submitted:

- | | |
|--|--------------------|
| 1) Amend Personnel Classification and Salary Plans | Personnel Board |
| 2) Amend Personnel Bylaw, Art. XI - Merit Pay | Personnel Board |
| 3) Street Acceptance - Winter Street | Board of Selectmen |
| 4) Amend Bylaws, Art. V(A) - Removal of Earth | Board of Selectmen |
| 5) Amend Bylaws, Art. IX,V,J/V(B) - Signs | Board of Selectmen |
| 6) Amend Bylaws, Art. IX,III,C,2 - Technical Correction | Board of Selectmen |
| 7) Amend Bylaws, Art. IX,V,A - Site Plan Design Standards | Board of Selectmen |
| 8) Amend Bylaws, Art. XI(A) - Council on Aging | Council on Aging |
| 9) Amend Bylaws, Art. V - Door-to-Door Sales | Police Chief |
| 10) Sale of Parcel of Land off Pratt's Mill Road | Petition |
| 11) Land Bank Tax | Conservation |
| 12) Amend Bylaws, Art. IX - Access Driveways | Planning Board |
| 13) Amend Bylaws, Art. IX - Foundation Subdrains on Homes | Planning Board |
| 14) Amend Bylaws, Art. IX - Off-street Parking | Planning Board |
| 15) Amend Bylaws, Art. IX - Lot Configuration - Relationship Between Perimeter and Area of Lot | Planning Board |
| 16) Amend Bylaws, Art. IX - Minimum Building Envelope - Criteria for Area Surrounding Building | Planning Board |
| 17) Amend Bylaws, Art. IX,I,E, "Certain Open Space and Educational Uses" - Allow Appeals Board Permit before Site Plan approval. | Planning Board |
| 18) Amend Bylaws, Art. IX,IV, "Intensity Regulations" - Reduce Non-Percolating Surface Coverage and Reduce Maximum Building Coverage in BD and LBD and ID. | Planning Board |

Note: Text of articles listed above as articles 11-18 have not yet been received from the Planning Board and the Conservation Commission.

And it was further on motion unanimously

VOTED: To refer zoning articles, listed above as numbers 5, 6, and 7, to the Planning Board in accordance with M.G.L., Chapter 40A;

and it was further

VOTED: To refer the Street Acceptance Article - Winter Street - to the Planning Board for its report.

Minutes

It was on motion by Selectman Fox unanimously

VOTED: To approve the minutes of the Regular Session of November 26, 1984, as submitted, and the Town Fathers Forum of that date, as corrected.

(Chairman Donald abstained as she was not present at the November 26th meeting.)

Proceeds of Sale from State/Horse Pond School

Selectman Frost reported that proceeds from the sale of the Horse Pond School to the State Fire Academy are now expected during the first two weeks of January rather than in December as first anticipated, and that he would continue to keep abreast of the situation.

Hosmer House Expenditure/Pairpoint Glass Company

In accordance with a verbal request today from the Chairman of the Historical Commission, it was on motion unanimously

VOTED: To authorize the expenditure of \$1,657.52 from the Edwin Barrett Hosmer Memorial Fund to pay Pairpoint Glass Company for an order of glass cup plates, subject to funds being available.

Executive Secretary Richard E. Thompson reported that the SHC expects to deposit \$1,000 this week from the sale of glass cup plates.

Town-Wide Aquifer Study

The Board noted receipt of a November 26, 1984, communication from Planning Administrator Lee Newman relative to a project to have ground water aquifers in Sudbury mapped and enclosing a draft article for the 85ATM for a study for the same. The Planning Board also requested that the Selectmen attend its meeting of December 10 at 7:00 p.m. to discuss the same.

The Selectmen agreed to meet with the Planning Board as requested prior to their meeting on that date which begins at 7:30 p.m.

Selectman Fox asked Mr. Thompson to refer the following two questions to Ms. Newman, which, he stated, could be discussed at their joint meeting on the 10th: 1) how much money would such a study cost, and 2) why not put the money into the Planning Board budget rather than have a separate article.

Joint Meeting in Acton/MAPC Assistance

Selectman Frost reported on a meeting held in Acton, which he attended on behalf of the Board, for participation in joining twelve other area towns in requesting the Metropolitan Area Planning Council (MAPC) to conduct a sub-regional study, as recently prepared for the eight-town area called MetroWest. Selectman Frost said that the MAPC had run into financial problems

on the MetroWest project because of the amount of time required (more than the 75 hours of "free" time allotted to cities and towns), and that, although the MAPC had to complete the study because of the commitment to do so, it appears the MAPC is not willing to do so in the future. Selectman Frost stated that the meeting was well attended.

Communication from Stephen O. Rich

Selectman Fox referenced a communication from Stephen D. Rich, dated November 28, 1984, relative to his concern that a large tree at the corner of Dudley Road and Route 20, Dudley Square Development, had not been removed. Mr. Rich felt it was in a dangerous location.

It was on motion by Selectman Fox unanimously

VOTED: To direct the Executive Secretary to refer the communication to the Town Engineer to follow up on the following: 1) to determine whether the tree is on Town property; and 2) to determine whether it is a traffic hazard.

Site Plan #83-264 Renewal/Vanaria, 440 Boston Post Road

Present: Francis J. Vanaria, Jr., applicant; Building Inspector Joseph E. Scammon; and Fire Chief Michael Dunne.

Chairman Donald convened a Public Hearing the application of Francis J. Vanaria, Jr., for extension of Site Plan 83-264, for property located at 440 Boston Post Road (expired August 1, 1984).

Executive Secretary Richard E. Thompson stated that all appropriate Town officials and abutters had been notified and noted receipt of the following communications:

- from the Building Inspector, dated November 30, 1984, not recommending approval of the extension until the following are taken care of:

1. Parking: determine if the septic system distribution box protrudes above the pavement to the point that one parking space will be unusable; address deviation from site plan at East end of the existing building - addition reduces the width of the aisle servicing spaces #5-9;

2. Landscaping: two trees in front of the building are not in place; no landscaping in front of the propane tank (fenced with chain link fence);

3. Debris: many items need to be removed in the rear of the building including a semi-trailer.

- from the Board of Health, dated November 30, indicating that conditions outlined in its original letter of approval have been satisfied with the exception of submission of an "as built" plan.

- from the Planning Board, dated November 29, withholding approval until an "as built" plan is submitted and reviewed by all appropriate Town boards, necessitated because of a number of changes from the approved site plan;

specifically, landscaped area and parking lot configuration, an addition to the east side of the existing building which reduces driveway aisle width and with this increased building space, additional parking is now required.

- from the Conservation Commission, dated November 30, expressing no concern.

- from the Fire Chief, dated November 27, commenting as follows:

1. site plan does not show the 1,000 gallon propane gas tank located between this building and West Sport;
2. large trailer on property;
3. debris in rear making access difficult.

- from the Town Engineer, dated November 26, recommending that before an extension is granted an "as built" site plan be submitted and reviewed by all appropriate Town boards, and noting the following deviations from the original site plan:

- addition on east side requiring additional parking spaces;
- addition creates reduction in aisle and creates difficulty entering and exiting from parking spaces along the east boundary line;
- parking, landscaping, and driveway entrance have been changed in front and to the west side of the building;
- a portion of the distribution box has been installed above grade in the area of parking spaces 7 and 8 so that a protection barrier will have to be placed around and further reducing the number of available parking spaces.

Mr. Thompson stated that he spoke to Mr. Vanaria and he had no problems with complying with the conditions set forth by the various Town officials/boards and that, in time, he could accomplish the same.

The Building Inspector stated that an occupancy permit had not been requested, therefore, one has not been issued, and that there are occupants in the building. He added that, if one had been requested, he would have denied it for the reasons listed in his aforementioned report to the Selectmen.

Town Counsel stated that, without an occupancy permit, the Building Inspector could order the tenants out of the building. The Selectmen's alternatives on this application for extension are: they could grant the extension so that Mr. Vanaria can finish the work; if the Selectmen deny the extension, a new site plan would be required or the Building Inspector would be forced to order that the building be removed.

Selectman Fox stated that, according to more than one Town official/board, the approved site plan was not followed; all are asking for an "as built" plan. An occupancy permit has not been issued and should have been applied for and issued before the tenants moved in.

Mr. Vanaria stated it was his understanding that the building could be occupied after the septic system was complete. He asked if a temporary occupancy permit could be issued now.

Mr. Scammon stated that, among other conditions, the trailer on the property was to be removed before occupancy.

The conditions raised in the various reports to the Selectmen were reviewed and there was some discussion on the following issues:

- Parking: The Building Inspector's opinion was that there are sufficient parking spaces for the area of the building, according to the Town Bylaw, but the Town Engineer questions maneuverability. Mr. Vanaria asked if he could put in a section of parking for "smaller cars" only, but the Building Inspector stated the Town Bylaw did not address that.

- Landscaping: Mr. Vanaria stated he did not plan to put the trees in until spring, but would be willing to do so sooner if necessary.

- Clean-up of Area: Mr. Scammon stated that, in spite of the fact that the applicant had one year to clean up the area, there is a lot to be done in that regard.

Responding to questioning by Chairman Donald and Selectman Frost, Mr. Thompson stated that Mr. Vanaria had applied October 5 for an extension of his site plan which expired in August, and that it took the office some time to do the scheduling.

Selectman Frost expressed his opinion that the work done on Mr. Vanaria's property is a great improvement over what existed there before, and for that reason felt Mr. Vanaria should be granted approximately a two-week extension with the understanding that: 1) he apply, by 5:00 p.m. tomorrow, in writing for a temporary occupancy permit; and 2) the Building Inspector make an attempt to issue the same with a two-week deadline. If the work is not completed in two weeks, Selectman Frost stated, action should be taken to remove the tenants from the building.

Mr. Vanaria stated he felt he could comply within two weeks with the exception of any extensive engineering work; Selectman Frost stated that the only engineering work would be to provide an "as built" plan. The Executive Secretary stated that was a fairly simple task. Selectman Fox told Mr. Vanaria if he had any questions he could contact the Building Inspector.

It was on motion unanimously

VOTED: To grant the extension of Site Plan 83-264 of Francis J. Vanaria, Jr., for property located 440 Boston Post Road, to December 31, 1984, and that, if all conditions of the letters of the Town Engineer (November 26), the Board of Health (November 30), the Fire Chief (November 27), and the Building Inspector (November 30), as well as all the conditions set forth in the Selectmen's vote of August 16, 1983, relative to the Site Plan, are not met or modified by the Board by December 31st, this extension expires and the Building Inspector is authorized to take action to have the building vacated.

And it was further

VOTED: To direct Mr. Vanaria to immediately request a temporary occupancy permit in writing.

Building Department Budget FY86

Present: Building Inspector Joseph E. Scammon; Chairman Marjorie Wallace and John T. Hannan, Finance Committee.

Chairman Donald convened a meeting with the Building Inspector to review his budget for FY86; Selectman Fox added that this is only a preliminary review before it goes before the Finance Committee.

The following is a summary of the discussion relative to the Building Department budget:

- 1) The income netted to the Town after expenses reflects a department which pays for itself.
- 2) (p.1) The FY85 appropriation column is not adjusted so that the FY86 request column will not reflect the actual percentage change (increase) noted, i.e., the salary percentage will be 8.87% not 17.7%.
- 3) Line item 340-32, Town Building Maintenance is up 39% for FY86 compared to appropriation for FY85; an offset to that is -33, Excess Buildings, which is down 55%.

(p.6) 340-32: \$3,200 for new doors for Flynn Building may be deleted from FY86 budget if a line item transfer from -33 to -32 is approved by the Finance Committee prior to end of FY85 for that amount. This request for a line item transfer is subject to the Building Inspector getting a firm quote for the doors. The Board had no objection.

- \$10,000 to paint town buildings may be deleted from the FY86 -32 account by using excess funds within said account appropriated for FY85.

- 4) Question by Mr. Hannan: Of the \$26,200 appropriated for -32, FY85, \$15,000 was earmarked for Loring School; approximately \$4,342 as of October 30, 1984, has been spent. Is that why -32 reflects a reduction for FY86 from \$26,200 to \$11,700? How much more of that account will be needed? Will there be approximately a \$10,000 carry-over?

Mr. Thompson stated that approximately another \$5,000 (-32 FY85) will be needed for repair of the boiler at Loring School; and that -32 has been reduced by approximately \$15,000 for FY86 since there is a provision in the lease for Loring School which requires the tenant to pay for repairs (at the same time the amount paid out would be reflected by the same decrease in the rent to the Town). The unspent money in -32 (FY85) for Loring School will go into the General Fund (available funds/free cash); it cannot be used as a carry-over.

5. Mr. Hannan stated that \$1,440 was appropriated in FY85 for -14, Deputy Inspectors; as of October 30, the account is depleted. He questioned what the Building Inspector planned to do for the remaining nine months.

Mr. Scammon stated the account is depleted because of the extra workload in the Building Department due to the increase in construction, i.e., on-site inspections done by the Deputy Inspector while covering for the Building Inspector's vacation time. Mr. Scammon stated he is now using the over-time/extra hire account; that he might need a transfer; and, responding to Mr. Hannan, who stated that a \$2,000 transfer could net \$4,000 in permit fees, that \$8,825 had been collected during the month of November!

6) Mr. Hannan questioned the cost of fuel and asked if this might be another source of free cash. The Building Inspector stated he is now paying 82¢ per gallon; last year started at 86¢ and peaked at \$1.03. He is estimating the cost per gallon for FY86 at \$1 per gallon and stated that, although fuel is down, he anticipates repairs will offset any savings in this -32 account. He added that electricity and telephone costs are up.

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

VOTED: To preliminarily approve the Building Department budget (340) as submitted.

Police Department Personnel Matters

Present: Police Chief Peter Lembo.

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

VOTED: To table indefinitely the question of appointing an Acting Lieutenant for the purpose of consulting with Labor Relations Counsel relative to determining pay scale and hours of work for this position.

Mr. Thompson stated he would contact Murphy, Lamere and Murphy and set up an appointment.

And it was further on motion by Selectman Fox unanimously

VOTED: To grant Peter B. Lembo a leave of absence from his permanent position as a Civil Service Police Sergeant until April 30, 1986, in accordance with his request dated November 30, 1984.

Note: Mr. Thompson added that granting a leave of absence is a common practice and secures the Police Chief a position in the Department as Sergeant if he is not re-appointed as Chief.

And it was further on motion by Selectman Fox unanimously

VOTED: To appoint Officer Peter Langmaid as Acting Sergeant in the Sudbury Police Department until receipt of a certified list and appointment therefrom;

and to authorize the Executive Secretary to sign and file all documents with the Department of Personnel Administration related to this appointment and the requisition of a certified list for appointment of a Police Sergeant.

Following discussion, it was on motion by Chairman Donald unanimously

VOTED: To direct the Executive Secretary to file a requisition with the Department of Personnel Administration for the appointment of two patrolmen and to authorize him to sign all documentation relating thereto.

Police Department Budget FY86

Present: Police Chief Peter Lembo; Chairman Marjorie Wallace and John T. Hannan, Finance Committee.

Chairman Donald convened a meeting with the Police Chief for a preliminary review of the Police Department FY86 budget.

The following is a summary of the discussion relative to the same:

- Chief Lembo stated that the major problems are - he is under staffed, the call for service has doubled (176 calls received on the 8:00 p.m. - 4:00 a.m. shift last Saturday, i.e., arrests, accidents, disturbances), operating behind in the overtime account mostly due to court time.

Ms. Wallace supported the request for two additional patrolmen on the basis of a 1974 approval by Town Meeting to bring the Department to thirty-one men; Department now operates with twenty-nine.

Mr. Thompson recommended that the Selectmen delete the two extra positions and re-evaluate them next year. After some discussion, the Board agreed.

- (p.25) Chief's car: 320-51 - Chief Lembo responded to Selectman Fox that it is necessary to purchase a new Chief's car this year since his is a 1978, has 86,000 miles on it and needs repairs; he felt police vehicles should be traded in at 50,000 miles. During discussion, it was noted that the Chief might request a transfer of excess money in the FY85 salary account for the Chief's car and delete the amount from the FY86 budget. Ms. Wallace objected to this practice in general. She expressed her opinion that a vehicle is a capital expenditure and should be voted as such by Town Meeting. She said that she would not recommend to the Finance Committee that it approve a line item transfer for this purpose. Selectman Fox suggested that, should the Finance Committee adopt this as a general policy (line item transfers), a memo should be circulated all Town departments preparing budgets informing them of the same.

- (p.15) Collections FY84 - Copier: The Chief stated that this is the amount collected for copies of records per law (G.L.c.66,s.8) - charged on a per page basis and on the basis of records being sent out versus copies of records being picked up.

Selectman Fox asked Chief Lembo to give some consideration to regionalization, privatization, and user fees.

Mr. Hannan expressed his opinion that, if there is money left over (in the salaries account), this is the time to support the Police Chief, in this case, for the Chief's vehicle. He felt it was most important to support expenditures for police (and fire) protection over any other need.

It was on motion unanimously

VOTED: To preliminarily approve the Police Department budget (320) for FY86 minus two new patrolman positions and associated costs.

Joint Meeting Personnel Board

Present: Chairman Henry P. Sorett, Jane Carroll, Personnel Board; Finance Committee Chairman Marjorie Wallace, Police Chief Peter Lembo; and Fire Chief Michael Dunne.

Chairman Donald convened a general meeting with the Personnel Board including discussion of the Personnel Board articles for the 86ATM.

Re-classification - Clerical Personnel

Mr. Sorett stated that the Massachusetts Municipal Association is willing to do a classification study for clerical positions for \$6,500, Town Counsel's opinion is that it is not necessary to bid for proposals, he personally feels it is a lot of money and that the Personnel Board should make a request for proposals.

Lieutenant Position

Mr. Sorett expressed his view that 1) the creation of a lieutenant position is a major change in the structuring of the Police Department and should be approved by Town Meeting vote; 2) if the position is created, it should not be part of the bargaining unit but in the classification plan - he agreed with the persuasive argument that a senior officer whose responsibility is to discipline should not be bargaining in the same bargaining unit with those being disciplined; 3) there is a close legal question as to whether the Selectmen have the authority to create this position without coming to the Personnel Board; however, he feels the Town Bylaw is very clear that the salary for that position is under the jurisdiction of the Personnel Board. Mr. Sorett stated that, if the Selectmen create the position without the vote of Town Meeting, he felt the Personnel Board should set the salary at the same rate as a sergeant until such time as Town Meeting votes a lieutenant position.

Selectman Fox reported that Town Counsel has advised the Selectmen that they do have the authority to create this position, that the Selectmen had followed the advice of Counsel - that they agree with Town Counsel's advice, and he did not feel the Personnel Board was right to say that the Selectmen do not have the authority or that it will not classify the salary rate higher than that of a sergeant until Town Meeting votes the position. Selectman Fox agreed that the Personnel Board had the right to set the salary.

Mrs. Carroll stated that the Personnel Board had discussed this question at length, that she was still confused about the difference of opinion, and asked Town Counsel to clarify it.

Town Counsel Paul Kenny stated that the Selectmen have the authority and right to create a lieutenant position under the State Civil Service Commission law; and that position can be part of the collective bargaining unit under the existing collective bargaining law. Once the Selectmen do that, the local Personnel Bylaw then talks about the Personnel Board approving the salary for that position being in the Salary and Classification Plan until the next Town Meeting; the Personnel Board does not set the amount.

Mr. Sorett stated that the Personnel Bylaw states that no person shall be hired and no person shall be paid unless the position exists in the Salary and Classification Plan/Bylaw. He felt, therefore, that the Selectmen had no authority without the consent of the Personnel Board to create a position unless they do so through collective bargaining. Mr. Sorett continued to say that, since this is a major policy decision, he felt the Selectmen should: 1) submit an article to Town Meeting to create a lieutenant position, or 2) move to amend the Salary and Classification Plan during debate on Town Meeting floor to insert this position.

Mr. Sorett disagreed with Selectman Fox about following a lawyer's advice; he felt any individual who has a public mandate to serve, either an elected or appointed position, who has the knowledge and competence for that job, by virtue of the elected or appointed position, should use independent judgment.

Selectman Fox stated his argument is that he does not agree with Mr. Sorett's meaning of the powers of the Personnel Board. He stated it is his independent view, although he felt Town Counsel's advice was sound, is that the Selectmen certainly have the power to create this position; that the Personnel Board does not have that power; likewise, on Town Meeting floor, if there are two pieces of contrary advice, he would look to the person he is paying for that advice.

Mr. Sorett stated he would take the view that he would listen to the advice from all sides to determine which position is most sound, that he had grave reservations regarding whether the position should be created at all (also if the job of Police Chief should have remained in Civil Service), and will abide by the results of a well thought out debate on Town Meeting floor, which is where he felt this kind of issue belongs. He added that, if it is voted in April, commencing FY86, he would entertain creating the position prior to July 1.

There was some discussion regarding the involvement of Town Meeting in creating and funding this position.

Mr. Thompson pointed out that the position probably would not be filled until after the 85ATM.

Town Counsel pointed out that Town Meeting is the appropriating and legislative body of the Town; that it does not have the authority, for example, to tell the Selectmen who they are going to hire, but indirectly, through

its appropriation and making its feelings known, and because the Selectmen generally try to carry out the wishes of Town Meeting, Town Meeting does exercise authority.

Town Counsel added that under a provision of the collective bargaining law, once an agreement has been reached, it must be presented to the appropriating body within thirty days for funding, and if it is not funded by Town Meeting, it would have to go back to the bargaining table. Town Counsel went on to say that the statute of the Commonwealth decides who is going to appoint police officers and it clearly states the Selectmen are the appointing authority. If you took the position that if that is the case, then that statute (collective bargaining law) would supersede the Classification and Salary Plan. Also, the Classification and Salary Plan does not attempt to take away the authority of the Selectmen to determine what position they are going to establish and/or fill but sets forth all of the positions and salaries of the Town and says that unless you are in the Classification and Salary Plan you cannot be employed; then it says, however, if these positions are effective then the Personnel Board can approve the salaries until the next Town Meeting.

Responding to Mr. Sorett's question, Town Counsel stated that this position was created by the Selectmen because it was funded by Town Meeting in a budget line item at the 84ATM and the Personnel Board must insert it in the Salary and Classification Plan.

Selectman Fox stated it was presented to the Selectmen and to the Finance Committee in the Police Department budget for FY85. Mr. Sorett stated it was not in the Warrant. Ms. Wallace stated that no titles appear in the Warrant but are included within the total salary account.

Town Counsel stressed the point that his legal opinion in no way reflects a policy question, i.e., what the Town should or should not do. The statute clearly states that the Selectmen are the appointing authority for the Police Department, and if the Personnel Board wants to say, as a matter of policy, that Town Meeting should deliberate and determine what positions they want in the Classification Plan, that is fine, but that is not a question for Town Counsel to address.

Mr. Sorett stated his interpretation of the law was that Selectmen create the position, and the Personnel Board determines the salary and where it should go in the salary and classification plan.

Town Counsel stated he disagreed; he reiterated that the Personnel Board decides where it should go until the next Annual Town Meeting, but does not set the amount.

Mr. Sorett expressed his opinion that Town government should be a system of checks and balances and that the ultimate authority is Town Meeting.

Town Counsel reiterated that Town Meeting is the appropriating and legislative body in the Town; the Selectmen are the administrators of the Town. Town Meeting does not have legal authority to supersede that of the general court of the Commonwealth. The general court tells who will be the appointing authority and the Town Meeting only has a "back door" authority by virtue of

its appropriating authority. Generally the Selectmen will carry out the wishes of Town Meeting in any event.

Selectman Fox stated that the Personnel Board, in checks and balances, does not have the right to second guess the Selectmen, to have another shot at a Selectmen's decision, has no power regarding this position once the Selectmen create it. The Personnel Board has to set the salary if it has not been already set by Town Meeting.

Selectmen Fox stated that he could not recall it ever having been the majority position of the Personnel Board that the Selectmen could not create positions, and that he could never remember Town Meeting creating these individual positions within departments.

Ms. Carroll stated that part of the problem is that the Personnel Board does not understand its role. The Board does not want to cause friction between boards and would rather sit down and discuss these issues - that was the purpose of tonight's meeting.

Chairman Donald commented that the Personnel Board, like the Finance Committee, does not have authority, but has an advisory role to the Selectmen because of their expertise in their respective areas.

Mr. Sorett stated he had a real disagreement with that, in that the FinCom and Personnel Board did have power, i.e., the Selectmen need to have the authority of the FinCom between Town Meetings for the transfer of funds; likewise, the Selectmen cannot create positions and change salary rates without approval of the Personnel Board - and that is his understanding of the meaning of checks and balances of Town government. He, therefore, felt that the Selectmen did not have the authority to create the lieutenant position.

Ms. Wallace pointed out that in the FY84 Police Department budget under the salaries account, the breakdown indicated \$30,169 (not including salary adjustment) for a lieutenant position.

Selectman Frost stated he was quite concerned that Mr. Sorett continually expresses his personal opinion or standpoint, rather than the opinion or viewpoint of the Personnel Board. He added that tonight's meeting was supposed to be with the whole Board, not Mr. Sorett as an individual. Selectman Frost said he had never seen a Chairman like Mr. Sorett who tried to assume the responsibility of the department heads of the Town, who are being paid good money to run their departments. Selectman Frost stated that nowhere does it state that the members of the Personnel Board should not cooperate with department heads when they try to structure their departments. He did not feel Mr. Sorett should continually apply his opinion against the recommended procedures of department heads - that this is not the responsibility of a Personnel Board member. Selectman Frost stated he did not like the idea of Mr. Sorett giving the impression that, because his opinion differed, that he was necessarily correct.

Mr. Sorett stated that the Personnel Board consists of five votes and that he clearly states when it is his personal opinion or when something is a statement of the Board by way of a vote; also, he said that when a department

head comes to the Personnel Board with a well-thought-out, well-reasoned request, the Board usually supports it.

Selectman Frost commented further that the Personnel Board does not have the authority as to the need of the department, the need is the department manager's responsibility; the Board should be dealing with what the salary of that need is, i.e., classification of Town employees. He stated further that, if a department head has developed a reason why he needs someone, it is not up to the Personnel Board to say that the position is not necessary; it may, however, be the decision of Town Meeting not to fund it.

Personnel Board Warrant Articles

Selectman Fox stressed the importance of keeping the lines of communication open between boards when concerns come up, that it is very helpful for everyone to understand the issues surrounding the various positions and to discuss them jointly. He informed the Personnel Board of a joint meeting between the Selectmen and the Finance Committee to discuss the issue of why salaries for four individually-rated positions are historically raised after Town Meeting and the concern by many people that Town Meeting may not be as well informed as it should be prior to voting on these salaries in the budget, i.e., the use of the salary adjustment account to supplement salaries raised after Town Meeting appropriations. Selectman Fox stated that both the Finance Committee and the Selectmen agreed, after an hour's discussion, that the merits for this procedure are reason to continue the same procedure (but to present a clearer explanation to Town Meeting) on the basis that 1) it is not a good idea in collective bargaining years to set these salaries before collective bargaining negotiations are completed, which is usually after Town Meeting, because of the precedent it would set; if these were set differently in the off-bargaining year, it would change the review period every other year which is also not advisable; and 2) it is a busy time of year for the Selectmen and therefore would be difficult to hold performance reviews; also, usually department heads are evaluated on their performance through the budget and Town Meeting process.

Selectman Fox raised a concern regarding the Personnel Board's warrant article which sets forth a salary schedule for FY86 including the four individually-rated positions, which is contrary to past practice and which was done without consulting the Selectmen or the Finance Committee and without notifying the four people affected by it, inasmuch as this is not a practice of the last fifteen years.

Mr. Sorett stated that the warrant article had been attached to the Personnel Board's agenda for the meeting at which it would be discussed, and sent to all Town officials and departments, and that the Personnel Board felt that was an effective way of letting people know; anyone interested in commenting or giving input on the subject could have attended their meeting. (He stated that the Planning Administrator, the Fire Chief and the Police Chief had attended and stated he welcomed input from the Selectmen.)

There was a consensus by the Board of Selectmen that the four individually-rated positions continue to be funded as past practice, however, following remarks from Mr. Sorett, Selectman Fox suggested that a committee be formed to

help advise the Town Moderator (i.e., consisting of a CTA representative, the President of the League of Women Voters, etc.) on ways to better educate the voters. Selectman Fox stated that, hopefully, something can be prepared in time to be printed in the Warrant and, hopefully, the Finance Committee will make more of an attempt to help people understand the Warrant better.

Mr. Thompson clarified for the record that the Personnel Board's reference to certain individually-rated persons "expecting" certain percentage increases was not correct; that the individuals referred to in its Warrant Report had not been promised any specific percentage increase.

Selectman Frost stated his opinion that by setting a FY86 salary increase for these individually-rated people, as the Personnel Board is recommending, on the basis of less than a year's performance, is like pulling a figure out of a hat!

On the question of whether the positions of Town Counsel and Assistant Town Counsel should be included in the Salary and Classification Plan, Mr. Thompson suggested that, before the Personnel Board makes that decision, they should consult those two people.

Regarding the proposed amendment to the Personnel Bylaw, a policy for merit pay for non-union hourly and salaried and under \$30,000 individually-rated employees, there was some discussion regarding recommendations of department heads being subject to Personnel Board approval.

Mr. Sorett felt the Personnel Board should be given the opportunity to look at recommended merit increases and have the authority for final approval so that these do not become "automatic".

At the conclusion of discussion the Board directed Mr. Thompson to attend the Personnel Board's meeting of December 18th so that he could present to them the Board's input on both Personnel Board articles and Warrant reports.

Board of Registrars Communications

The Board noted receipt of the following communications from members of the Board of Registrars relative to the Xerox copying machine in the Town Clerk's office:

- from William S. Farrell and from Maureen G. Wiles, both dated November 28, 1984; and

- from Alan P. Thayer, dated November 27, 1984.

Executive Secretary Richard E. Thompson stated he was meeting tomorrow morning at 11:30 a.m. with the Board of Registrars.

Executive Session

At 11:20 p.m. it was on motion by roll call

VOTED: To enter into Executive Session for the purpose of discussing expenditures from the Discretionary Fund.

(Chairman Donald, in favor; Selectman Fox, in favor; Selectman Frost, in favor.)

Chairman Donald announced that public session would not reconvene following the Executive Session.

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

Attest:

Richard E. Thompson
Executive Secretary-Clerk