

Board of Selectmen Minutes
July 13, 2004

Chairman Gill called the meeting to order 7:30 PM at the Town Hall Auditorium with members Charles Coldwell, Joseph Gill, Doug Sears, Jerome Selissen and John Ryan present. Town Manager Dave Cressman, Town Counsel Charles Zaroulis and Recording Secretary Heather Tecce were also present.

1. Mass. Electric – Conduit Hearing East Street. Preservation Lane
Motion Mr. Selissen and second by Mr. Ryan to approve with work not commencing until Sept. 1, 2004. The board voted unanimously.
2. Mass. Electric – Verizon Pole Petition- Main Street. Crystals General Store
Motion by Mr. Coldwell and second by Mr. Sears to approve. The board voted unanimously.
3. Mass. Electric – Conduit Hearing – Main Street. Crystals General Store
Motion by Mr. Sears second by Mr. Coldwell to approve. The board voted unanimously.
4. Sullivan’s Auto Body – Transfer of Class III License and;
5. Sullivan’s Auto Body – Continued Revocation Hearing
Atty. Zaroulis clarified that this board should hear the case of the transfer, do not make a decision, than go to the prior hearing on the revocation make a decision there and than more on to the next one. Mr. Ryan received clarification from Town Counsel that he would be able to be included in the Transfer hearing. For the record the following people appeared for the petitioner Paul Kapitan; Richard O’Neill, Daniel Broe and Paul Kapitan. Mr. O’Neill began by explaining the matter before the board is for the transfer and the license is for a person whose principle business for buying and selling secondhand motor vehicles for the purpose of remodeling, taking apart, building and selling the same. With buying or selling parts secondhand motor vehicles or tires for the assembly of secondhand motor parts be granted a junk license. He continued that they must show that Mr. Kapitan is a proper person and that this business will be his principle business and that he has available a place of business suitable for the purpose. The premise has a present Class III license at that locus and has had a license from some considerable period of time. We have spoken with the Director of the Board of Health and Building Commissioner and with their help and some aerial photography the existence of this so called junkyard at this locus as early as 1973. From other testimony we have received this has been in Sullivan Family dating back to the mid 1920’s and for most part has a substantial portion of the area has been used as a junkyard. The license address is 102 Marston Street and further describes as the license being about 2 acres on the west side of Marston Street. After two meetings with residents and building commissioner at the police station, we said will restrict use of the license to the area as outline on the map. Mr. O’Neill continued that if you walked the site you would see that the map as outlined is the areas used for junkyard. Mr. Broe clarified the parcels as being

Map 19 Lot 51, Map 19 Lot 2, and Map 19 Lot 6 only a portion of this Lot 6 will be utilized behind an existing fence. Mr. O'Neill spoke of the residence on the premise and that the fence area delineates the end of use between residential and junkyard. Abutters meetings proved productive as certain conditions were agreed upon for this board to impose on this license. We propose these voluntarily to this board; limit the hours of operation from 8 AM to 6 PM Monday through Saturday, car carriers would only enter the premise at the Marston Street entrance, fencing would be completed around the property, on street parking would not occur on Marston Street, Parcel 5 restricted covenant from stacking cars on that locus, Rice and Johnson Road would remove vehicle and block entrance with two metal poles and a chain across. Mr. O'Neill spoke of the paper streets being discontinued and 6' fence (8' if approved) being placed around the perimeter. Mr. Kapitan said he has been repairing and working on cars since 1975. I have known Jimmy Sullivan since the late 1970's; I worked at the junkyard for 3-4 years in the early 1980's. Mr. Kapitan explained the procedure the cars being fixed went to the body shop, at the junkyard just taking cars apart and junking cars. Mr. Kapitan responded to Mr. Gill's questions of residue and length of stay; the residue is disposed of within 2 days to a week. The car goes to the shredder within 2 months to 2 years. Mr. Kapitan has not been involved in any site cleanup as a response to Mr. O'Neill's question. Mr. O'Neill continued about the fence and if the area were fenced it would be easier for Mr. Kapitan to maintain and the building commissioner to enforce. Attorney Zaroulis asked if the applicant could show us today what the locus was in 1947? Mr. O'Neill said the locus that has been submitted was the locus pre 1947 and he continued to elaborate on part being used and the consistency of these being used since pre 1947. Mr. Zaroulis asked whether or not there are any affidavits, these affidavits would be helpful? Mr. O'Neill said they have spoken to people that say the area was much larger than they are proposing for this license. Mr. Gill spoke of a letter from a resident of 64 years stating there have never been junk cars on lots 920-930 and 1072-1073 its heavily wooded. Mr. O'Neill agreed and referred to a restricted covenant being placed on those lots and these are not part of the proposed lots tonight. Attorney Zaroulis asked if the applicant has received a copy of a 21E contamination of the site? Mr. O'Neill received on Friday a portion of a 21E report. He also spoke with Mr. Carbone and he obtained what he believes to be the complete document. Mr. O'Neill explained that where they were digging test pits is where there was a delineation of use on the map presented tonight. Atty. Zaroulis again said what the premise was in 1947 and that anywhere else is irrelevant, and continued that Mr. Carbone will be filing this report with the state and that the applicant should have the ability to review this letter. Mr. Gill asked what reason is that this testing was done? Mr. O'Neill responded that the documents refers to Leonard Hallisey as a prospective buyer of the premise and as such Mr. Hallisey engaged these license site professional to take a 21E and this license professional references as being a limited study and it then becomes a private document of Mr. Hallisey. Mr. Sullivan's legal counsel takes the position today that they were not provided with a copy of the document. Atty. Zaroulis said this is relevant to the Class III license, if the transfer license is granted the board may wish to consider

that in review of that report the applicant will be taking remedial action at the sites of contamination, so this doesn't become worse. Mr. O'Neill responded okay. Atty. Zaroulis and this board did receive additional documents from Mr. Hallisey but the petitioner did not. The petitioner and this board received documents from Paul King. Atty. Zaroulis wanted to know if the person who submitted these documents was present. Resident Paul King, 94 Marston St. identified himself as being the party to submit these documents. Atty. Zaroulis wants a copy to be given to Mr. O'Neill. Atty. Zaroulis asked about hours of operation, the style of fence and entire parcel of land; Mr. O'Neill responded that the hours are 8 AM to 6 PM Monday – Saturday. The 1st fence abuts the King property and this fence will be completed with the recommendations of the building commissioner. The second fence (6') is the perimeter fence this will be constructed on the perimeter which is licensed by this board. Also included is Rice Road a paper street (presently in land court) if Rice Road is discontinued this will also be included. Atty. Zaroulis raised issue of whether or not anyone had the authority to block Rice Road with the gate as described earlier. Mr. O'Neill responded he didn't think so but it was an issue raised at the abutters meetings. Atty. Zaroulis spoke of rodent control and avoiding further contamination at all Class III locations in town that there be a requirement vehicles be placed on a concrete pad during processing. Mr. O'Neill responded that is would be appropriate for the fluids to be removed on a concrete pad. Mr. Sears asked how vehicles get to the property and whether or not you can put a car together on site. Mr. Kapitan responded only by flat bed or driven and I could put a car together there but couldn't paint it. Mr. Coldwell asked if Mr. Kapitan had any prior knowledge of this 21E. Mr. Kapitan said no, he received 2 copies by certified mail Friday. Mr. Ryan asked how long the petitioner has worked there. Mr. Kapitan worked there in the late 70s and early 80's. Mr. Ryan asked this is the first time you received notification of this 21E. Mr. Ryan tried to get clarification on how often the petitioner is at the junkyard working. Mr. O'Neill clarified that Mr. Kapitan was an employee at the yard and not in charge during his earlier employment and in the past two or three years he has been owner/operator of the yard. Mr. O'Neill continued that the 21E was prepared in 1999 or 2000, listing Mr. Sullivan as owner and Mr. Hallisey as the buyer, this would have preceded Mr. Kapitan involvement at this site. Mr. Kapitan has a warranty from Mr. Sullivan stating that there has not been any contamination reports filed at that site. Mr. Kapitan knowledge is the same as Mr. O'Neill in accordance with that document. Mr. Coldwell asked the petitioner if he was an employee of the establishment in Dec. 1999? Mr. Kapitan responded no. Mr. Gill opened for public discussion. Atty. Timothy Ebacher representing Paul King spoke of the environmental concerns and that Mr. Kapitan must show this is his principle place of business. Paul King of 94 Marston Street, spoke in opposition of the Class III license stating he has glass in his yard and has a list of 70 neighbors opposed. Terry Sullivan spoke on behalf of Mr. Kapitan stating that he drains all fluids from the cars at his Woburn Street shop; he goes to the yard on Sundays to do paperwork. There is no new contamination and he is renting the land from Mr. Sullivan. Kevin Regan spoke on behalf of Paul Kapitan that he is very qualified

in the field of auto body and that the operation is taking cars apart and selling these parts on the Internet. David Kupfrian, 61 Marston Street is opposed to the license and it has recently expanded to 50 or more cars. Ed Birch, 54 Marston Street is opposed stating environmental concerns. Don McKay, 81 Marston Street is opposed stating that he is operating illegally. Public Hearing portion completed at 9:20 PM. Mr. Selissen asked if they could get an affidavit stating the business existed before 1947.

Motion by Mr. Ryan for transfer of Class III License be denied, Mr. Coldwell second for reasons the applicant failed to show location of junk yard in 1947, the applicant has been operating on premise for two years without transferring of license, whether or not a proper person to operate, and operation has possibly expanded beyond original perimeters. The board voted unanimously.

Motion by Mr. Coldwell second by Mr. Selissen to revoke license for reasons the operator, Mr. Kapitan, failed to apply for transfer of license and operated without a license for approximately two years (Bill of Sale - Jan. 28, 2003). The board voted unanimously.

6. Residents: Harry Mulno, 32 Allen Road. Raised his concerns that the Town of Wilmington may allow MacDonald Road to have an access road to Allen Road in Tewksbury. **Motion** by Mr. Ryan and second by Mr. Coldwell to have Tewksbury Town Manager speak to Wilmington Town Manager to let them know this board will not support any access, this board will send a letter regarding this issue and that the police, fire chief or their designees appear at the July 20, 2004 in Wilmington to express their concerns for public safety in this area. The board voted unanimously.
7. Town Counsel (2) Invoices - **Motion** by Mr. Ryan and second by Mr. Sears to approve labor invoice, the board voted unanimously. **Motion** by Mr. Selissen second by Mr. Sears to approve invoice, the board voted unanimously.
8. Labor Counsel Invoice - **Motion** by Mr. Ryan and second by Mr. Sears to approve invoice. The board voted unanimously.
9. Water Treatment Plant Staffing - **Motion** by Mr. Mr. Coldwell and second by Mr. Ryan to postpone posting position until August 1, 2004 after the water committee review and the selectmen review the job description along with salary.
10. Administrative Assistant/Permit Technician-Building Dept. – **Motion** by Mr. Ryan and second by Mr. Coldwell to post. The board voted unanimously.
11. Heavy Motor Equipment Operator Position – Public Works – **Motion** by Mr. Ryan and second by Mr. Coldwell to post. The board voted unanimously.
12. Project Manager Position – **Motion** by Mr. Ryan second by Mr. Selissen to post. The board voted unanimously.

13. Down Payment Assistance Fund Application - **Motion** by Mr. Sears second by Mr. Ryan to apply. The board voted unanimously.
14. Three Year Road and Sidewalk Reconstruction Program - Mr. Selissen said it's a great report and the board agreed.
15. Motor Equipment Repairman Appointment - Town Manager is appointing Bernard Marion beginning August 2, 2004.
16. Auto Sales - Mr. Sears will be a (1) person committee and work in conjunction with the Building Commissioner on this situation.
17. MIAA Reward Program - This board agrees it is great for the town.
18. Minutes – **Motion** by Mr. Ryan and second by Mr. Selissen to approve minutes of April 6, 2004, April 15, 2004, May 18, 2004.

19. Reports:

Mr. Sears spoke of a meeting about the newsletter issue and what this can be mailed with. He also wanted to know how we could get all the department heads to contribute. Mr. Sears spoke of Andover receiving a 6 million dollar loan from the state for a water tank. Mr. Cressman had applied missing FY04, with hopes that the state will let communities that are ready for the loan get it now and the communities that are not ready have them wait. Mr. Sears continued that the Hospital land bill passed the House and the Senate, and he is asking that residents call the Governor and express their wishes for the bill.

Mr. Selissen spoke of the 4th of July being a great success. The sewer project traffic issues will be in the Town Crier, Advocate, Channel 10 and on the Website.

Mr. Gill spoke of the mailing of the water report, this must be done by 7-1-04, incorporating with the newsletter, and the parts not necessary to mail be put on the Website. He continued congratulating Marc Ginsburg for the Rotary Club announcing him as Man of the Year.

Mr. Zaroulis He would like for sewer contract #24 to be signed.

20. 2004 Annual Appointments:

Motion by Mr. Selissen and second by Mr. Coldwell to appoint Norman DeMarais and Rose McKenna to the Council on Aging. The board voted unanimously.

Motion by Mr. Coldwell and second by Mr. Sears to appoint Eleanor Corey, Donna Pacheco, Maria Galante, and Marylou Christoffels to the Mass. Cultural Council. The board voted unanimously.

Motion by Mr. Selissen and second by Mr. Ryan to nominate Kenneth Holden to the Memorial Committee. The board voted unanimously.

Motion by Mr. Coldwell second by Mr. Sears for discussion that recreation department should be added along with firefighters. The board agreed. The board voted unanimously to appoint firefighters and recreation dept. to Special Municipal Employees.

21. Motor Scooters by Law – **Motion** by Mr. Ryan to refer matter back to the police chief for further discussion. Mr. Selissen second and the board voted unanimously.
22. Vacate Foreclosure Decree – **Motion** by Mr. Ryan and second by Mr. Sears to vacate foreclosure decree at 26 Kenneth Lane upon taxes being paid. The board voted unanimously.

The next Board of Selectmen meeting will be August 17, 2004 at 7:30 PM Town Hall Auditorium.

Motion by Mr. Coldwell and second by Mr. Sears at 10:50 PM to adjourn. The board voted unanimously.

John Ryan, Clerk