



**SELECTMEN'S MEETING**  
**MAY 14, 1996**

The Board of Selectmen held their regular meeting on Tuesday, May 14, 1996 at 7:30 P.M. Present were Chairman Nancy Tavernier, F. Dore' Hunter, Wayne Friedrichs William Mullin, Herman Kabakoff, , Town Manager Don Johnson, and Assistant Town Manager John Murray. {The meeting was televised by cable}.

**CITIZENS CONCERNS**

None expressed. Nancy Tavernier stated that she would like to thank voters and volunteers for their support and help on the two debt exclusion override ballot questions.

**PUBLIC HEARINGS AND APPOINTMENTS**

**TERRY MAITLAND**  
**ASSOCIATE MEMBER**  
**CONSERVATION COMMISSION**

Mr. Maitland has volunteered to be an associate member of the Conservation Commission. Nancy asked Mr. Maitland his interests in this position. Mr. Maitland stated that he has looked around at all the various committees and commissions and that his experience is aligned with conservation. The Board thanked Mr. Maitland for volunteering. BILL MULLIN - Move to appoint Terry Maitland to a one-year term as an associate member of the Conservation Commission. WAYNE FRIEDRICHS - Second. UNANIMOUS VOTE.

**BOSTON EDISON**

**GREAT ROAD/POPE ROAD**  
**GREAT ROAD/CONCORD ROAD**

WILLIAM MULLIN move to approve. HERMAN KABAKOFF - Second. UNANIMOUS VOTE.

**NAGOG DEVELOPMENT SITE PLAN  
#3/14/96-354  
31 NAGOG PARK**

WAYNE FRIEDRICHS - Move to continue the hearing to 9:00 PM. WILLIAM MULLIN - Second. UNANIMOUS VOTE.

9:00 PM

Kirk Ware, of Nagog Development, stated that this is a site remaining in Nagog Park that was previously approved for development in 1988. The permits have lapsed and are being re-applied for. The site plan application allows for the building to be the same size as approved in 1988 with some minor code revisions. Bruce Stamski, of Stamski & McNary, stated that this site will be located behind the existing shopping plaza and will be typical of the existing office buildings presently located on site. The area will have added landscaping in order to "green up" the area. Wayne Friedrichs stated that he has no major issues with this site plan application but did question sidewalks, runoff, lights, screening of dumpster and traffic study. The existing traffic study was rated a "D". A "D" rating is slightly less than average which gives the west bound travel lane a slight delay. Herman questioned when the building would be occupied. Mr. Ware stated approximately 3 months for construction, and 10 months for occupancy. The Board expressed their pleasure in seeing development in Acton. WAYNE FRIEDRICHS - Move to take site plan #3/14/96-354 under advisement. DORE' HUNTER - Second. UNANIMOUS VOTE.

**DONALD MACLENNAN  
CEMETERY COMMISSIONER**

Mr. MacLennan stated that he walks through the cemetery daily and is volunteering for this position to help keep this cemetery maintained. HERMAN KABAKOFF - Move to appoint Donald MacLennan to the Cemetery Commission to fill Walter George's term expiring June 28, 1998. WILLIAM MULLIN - Second. UNANIMOUS VOTE.

**J. JOHN MURRAY  
VOLUNTEER COORDINATING COMMITTEE**

J. John Murray is volunteering for the VCC. The Board asked Mr. Murray why he is interested. Mr. Murray stated that he has previously been on the Fincom and would like to jump back and volunteer now that he has more time. WILLIAM MULLIN - Move to appoint J. John Murray to the Volunteer Coordinating Committee expiring June 30th 1998. HERMAN KABAKOFF - Second. UNANIMOUS VOTE.

**MAKAHA  
LIQUOR LICENSE VIOLATION**

Herman Kabakoff stated that he had inadvertently received information related to this matter and would reclude himself from discussion. Police Chief George Robinson, Sergeant Rogers, and Ptl Cogan were present along with Makaha's Atty., Charles Kadison, William Lee and Chung Wong. Sgt. Rogers and Ptl Cogan were sworn in by Chief Robinson. Sgt. Rogers stated that he has been employed by the Acton Police Department for 21 years, 10 of which he has been a Sgt. and during the course of his employment has seen approximately 300 drunk driving cases. During the night in question Sgt. Rogers worked March 16 from 3:00 PM to 11:00 PM and March 17th from 11:00 PM to 7:00 AM. At approximately 11:51 PM all units were dispatched to Makaha for a fight involving approximately 20 people. Chief Robinson asked Sgt. Rogers if a copy of the police reports from all officers involved would help refresh his memory. Sgt. Rogers stated yes and the police report was distributed to the Board with names of involved blacked out in order to protect their rights. Ptl Prehl and Howe were told to clear the parking lot and Sgt. Rogers and Ptl. Cogan entered the Makaha lounge. Sgt. Rogers stated he heard angry yelling and all tables and chairs were full of people, approximately 40-50 in all. The person creating the disturbance was placed under arrest. Sgt. Rogers asked to speak with the manager and was pointed in the direction of Mr. Wong, who is a co-owner of the Makaha. Sgt. Rogers stated that he asked Mr. Wong to speak with him approximately five (5) times and Mr. Wong continued to count money and served a subject in an intoxicated state until Sgt. Rogers pulled the liquor license off the wall, which finally got Mr. Wongs attention. Sgt. Rogers asked Mr. Wong if he had training in recognizing intoxicated people and responded that he didn't know. At this point more yelling ensued and two more people were placed under arrest. One subject blew a .20 breathalyzer and the other blew a .17. The subjects stated that they had been drinking at a wedding reception prior to entering the Makaha lounge. Chief Robinson asked Sgt. Rogers how many times he asked Mr. Wong to speak with him. Sgt. Rogers stated in a seven or eight minute period - five (5) times. Dore' Hunter asked what the nature of disturbance was regarding the 2nd and 3rd arrest. Sgt. Rogers stated that angry yelling, obscenities, balance problems, red, glassy eyes and loud slurred speech caused these subjects to be placed under arrest. Dore' asked Sgt. Rogers why he didn't go behind the bar to get Mr. Wong. Sgt. Rogers stated that he hesitated to go behind the bar where liquor and money are kept and that he felt Mr. Wong should go to him. Dore' also asked Sgt. Rogers how he knew the individual that was served by Mr. Wong was intoxicated. Sgt. Rogers stated that the bar seemed to be holding him up, had difficulty in retrieving money, loud, glassy and watery eyes, and was continuously laughing. Dore' asked if Sgt. Rogers saw the alleged intoxicated individual drink the beer that Mr. Wong served him. Sgt. Rogers stated that he did not observe him. At this point the fourth individual placed under arrest was taken out of the bar for being loud and disorderly. It was asked how many Makaha employees were present. Sgt. Rogers stated that he saw three other employees and Mr. Wong. Sgt. Rogers stated that the lounge cleared with the fourth arrest. It was asked if this was a typical response by Makaha employees when there has been disturbances in the past. The answer was no. It was asked if Mr. Wong understood Sgt. Rogers request to speak with him.. Sgt. Rogers stated absolutely.

Charles Kadison, attorney for the Makaha, stated that this case is very unusual in size and veracity. Atty. Kadison stated that it would have been very easy for Mr. Wong

to become overwhelmed. The Makaha has been functioning for the past 3 1/2 years under the current owner. Makaha has had a clean record with the exception of its beginning 25 years ago. Atty. Kadison also stated that Mr. Wong is a Co-Owner not a manager of Makaha.

Mr. Wong stated that he had been working at the Makaha and that his shift was over at 8:30 PM. At 8:30 PM he sat down in the bar area and watched a baseball game and had dinner. Mr. Wong was sitting at the first table with some customers. Mr. Wong stated that it had been a quiet night until the wedding party arrived at approximately 11:00 PM. Mr. Wong stated that without warning screaming occurred and Mr. Wong stated that he got up and told the customers to sit down. Mr. Wong stated that he couldn't control the crowd and guessed he called police. Mr. Wong stated that the first police officer asked him if he was the manager and he stated that he guessed he was. Mr. Wong stated that he was asked why they were serving intoxicated people. Mr. Wong replied that he was sitting in the corner talking to friends not really observing the patrons, and asked the waitress if everyone was paid up. Mr. Wong stated that he proceeded to help the waitress by ringing up a large check for patrons who wanted to leave and was trying to finish processing this when Sgt. Rogers was calling to him. Mr. Wong stated that Sgt. Rogers asked him where the license was and Mr. Wong showed it to him and Sgt. Rogers proceeded to take it off the wall and asked him why they were serving intoxicated patrons. Mr. Wong stated that he had taken the TIPS course in 1991. Dore' asked Mr. Wong who was in charge since he was off-duty. Mr. Wong stated that the female part-owner should have been in charge. Dore' also asked Mr. Wong when he instructed staff to stop serving alcohol. Mr. Wong stated that he didn't think to stop serving. Dore' asked who was ringing up the checks previously. Mr. Wong stated that the bartender had been previously, however, he was too busy to ring this particular check up. Dore' also asked Mr. Wong when he thought he called the police what did he say to them. Mr. Wong stated that he thinks he said there is a disturbance, can you send someone. At any time was liquor not served. No. Dore' asked Mr. Wong what phone he used to call the police. Mr. Wong stated that he used the front desk phone. Dore' asked Mr. Wong if he was sure he called the police. Mr. Wong stated that he thought he did. Dore' asked Mr. Wong if he consumed alcohol. Mr. Wong stated that he had a couple of drinks.

Atty. Kadison stated that clearly the Makaha did not take the correct actions and that policies have been changed as a result of this incident. If another disturbance takes place the bar will immediately be shut down until the problem is solved and the Makaha did not have a policy to handle that size of an incident. Atty. Kadison also pointed out that Makaha recently passed the sting operation. Mr. Lee, Manager of the Makaha apologized for the incident. Mr. Lee was reminded that part of owning a liquor license requires the manager or designee to be on premises at all times. Clearly, there was not a designee or manager on duty this particular night. It was asked what percent is alcohol business. It was stated that it was 25%. It was asked if the 911 tape was available for review regarding who placed the call asking for help. Chief Robinson stated that the 911 tapes are erased every 30 days.

Dore' stated that clearly alcohol should not have been served during this disturbance. DORE' HUNTER - Move to take under advisement until May 28th when a

decision will be made. WAYNE FRIEDRICHS - Second. UNANIMOUS VOTE.  
(Herman Kabakoff recused himself.)

## ***SELECTMEN'S BUSINESS***

### **ACTON ARBORETUM BANNER REQUEST**

The friends of the Acton Arboretum have requested the placement of a banner/sign to be posted below the permanent sign located at the entrance of the Arboretum. WAYNE FRIEDRICHS - Move to approve sign request. WILLIAM MULLIN - Second. UNANIMOUS VOTE.

### **HAZARDOUS MATERIAL FEE WAIVER**

Superintendent of Schools, Isa Zimmerman, has requested a fee waiver of the renewal applications for the hazardous material storage fees from the Board of Health. There are presently eight sites at \$110.00 per site. The local schools under Class I of the Uniform Fee Policy are exempt from the fees which amounts to 5 sites at \$550.00. Therefore the regional schools are requesting a fee waiver of \$330.00. Supt. Zimmerman stated that this request is made due to the fact that this was not budgeted and that we are all part of the same infrastructure and do share the use of facilities when the need arises. Bill Mullin stated that we should not waive this fee, however, we should waive it this once and include a copy of the Uniform Fee Policy. Wayne stated that he could not see waiving this fee to the Regional Schools, due to the fact that the Town has been picking up costs of the regional side for a long time. The Board also stated that we have not budgeted \$1,899.91 billed to us by the schools for six nights of Town meeting. WILLIAM MULLIN - Move to waive \$330 hazardous materials fee to the Regional School Department and that a copy of the Uniform fee policy be given to the schools with the understanding that this is a one time occurrence. HERMAN KABAKOFF - Second. 4 - 1(with Wayne voting No) Motion passes.

### **MINUTEMAN TECH HOUSE BUDGET PROPOSAL**

Minuteman Tech has written to the Board of Selectmen asking us to write to Lt. Governor Cellucci, Honorable David Magnani, and Honorable Stanley Rosenberg seeking Senate action regarding the "late night" amendment that was recently passed by the House. The legislation states that all 95-96 tuition dollars are used to reduce 96-97 assessments to member towns. Half of the tuition billed in June and collected in July and August would sit unused to FY98 and that tuition shall be returned to the member communities. This bill would leave Minuteman with a FY97 budget deficit between \$794,000 and \$1,588,000, depending on interpretation. This bill impacts all other vocational regions serving tuition students. The Board discussed the impacts other communities are facing. WILLIAM MULLIN - Move to write letters of support to the

three entities listed above supporting the legislation needing Senate action. HERMAN KABAKOFF - Second. UNANIMOUS VOTE. The Board also stated that they would like to invite Minuteman in for a future meeting with the Board.

\* DORE' HUNTER ARRIVED 8:35 P.M.

#### **VETERAN'S LIST**

Nancy asked that a list of veterans be placed in her packet.

#### **ACTON BOXBOROUGH SCHOOL SUB COMMITTEE MEETING ON CABLE TV**

Nancy stated that there would be a AB Regional Sub-Committee meeting on Cable TV on May 20, 1996 at 7:30 PM. The Board stated that this was the same night as the Rosen Hearing, however, Dore' and Herman stated that they would attend from 7:30 to 8:00. The Board also discussed that these meetings should be televised on cable for Acton residents to watch, and a letter of support should be sent stating that any town that is able to have these meetings televised should be given the opportunity to view them.

#### **CONCORD AUTO AUCTION**

Dore' stated that the Concord Auto Auction is not in compliance with their existing site plan. The Board directed Garry Rhodes, Building Commissioner, to investigate change of operations, loading and unloading, noise levels, and amount of vehicles stored on site. The Board also questioned the recent solicitation to public at large.

#### **CHAPTER O**

Bill Mullin stated that there would be a meeting in Mid July regarding Chapter O and that the Chamber of Commerce will be involved in the process.

#### **CONSENT AGENDA**

WILLIAM MULLIN - Move to approve consent calendar as printed. WAYNE FRIEDRICHS - Second. UNANIMOUS VOTE. The Board stated that the gift from 3Com was especially thought out and generous.

**TOWN MANAGERS REPORT**

**BUILDING DEPARTMENT  
SELF FUNDING PROGRAM**

WILLIAM MULLIN - Move to accept self funding program. DORE' HUNTER -  
Second. UNANIMOUS VOTE.

**QUARTERLY REPORT**


Don stated that the 3rd quarterly report is ready and will be transmitted to Fincom tomorrow.


**VAILLANCOURT PROPERTY**

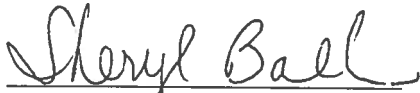
Don stated that a meeting with Peter Vaillancourt regarding the sale of his property (needed for Library Expansion) had been set up and that there have been interesting twists that need to be negotiated.

WAYNE FRIEDRICHS - Move to go into executive session for the purpose of discussing contract negotiations. All ayes.

The Board adjourned for executive session at 10:50 P.M.

  
Clerk

  
Date

  
Sheryl Ball  
Recording Secretary  
Min 5\_14. Doc

May 10, 1996

TO Board of Selectmen

FROM: Nancy E. Tavernier, Chairman

SUBJECT: Selectmen's Report

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**AGENDA  
Room 204  
MAY 14, 1996**

- I. **CITIZEN'S CONCERNS**
- II. **PUBLIC HEARINGS & APPOINTMENTS**
1. 7:31 **TERRY MAITLAND - CONSERVATION COMMISSION INTERVIEW** - Enclosed please find Mr. Maitland's Citizen Resource Sheet and comment from VCC regarding appointment as an Associate Member of the Con. Com for a term to expire 6/30/97 for Board Action.
2. 7:34 **BOSTON EDISON - Great Road/Pope and Great Road/Concord Road** - Enclosed please find a request and staff comment from Boston EDISON for Board action.
3. 7:35 **NAGOG DEVELOPMENT SITE PLAN #3/145/96-354 - 31 Nagog Park** - Enclosed please find materials and staff comment for Board review and action.
4. 7:45 **DONALD MACLENNAN - CEMETERY COMMISSIONER INTERVIEW** - Enclosed please find Mr. MacLennan's Citizen Resource Sheet and comment from VCC regarding appointment as a Cemetery Commissioner to fill Walter George's unexpired term until June 30, 1998 for Board Action.
5. 7:55 **J. JOHN MURRAY - VCC INTERVIEW** - Enclosed please find Mr. Murray's Citizen Resource Sheet and comment from VCC regarding appointment as a member of the Volunteer Coordinating Committee to fill Walter George's unexpired term until June 30, 1998 for Board Action
6. 8:00 **THE ACTON JAZZ CAFE - 452 Great Road - COMMON VICTULLER'S LICENSE** - Enclosed please find a request for a Common Victuller's License and an Entertainment License for The Acton Jazz Cafe' with staff comment for Board review and action.
7. 8:05 **THE ACTON JAZZ CAFE - 452 Great Road - TRANSFER OF AN ALL ALCOHOLIC BEVERAGE LIQUOR LICENSE** - Enclosed please find a request to transfer the Liquor license with staff comment for Board action. In addition, Mr. Rosenberg has requested approval of the Pledge of the License to David Vadenais.



7. 9:30 MAKAHA RESTAURANT - LIQUOR VIOLATION HEARING:

**III. SELECTMEN'S BUSINESS**

8. **ARBORETUM BANNER REQUEST** - Enclosed please find the request for placement of a banner permanent sign and staff comment for Board action.

9. **FEE WAIVER** - Enclosed please find a request from the School Supt. Regarding waving of fees in conjunction with Hazardous Waste Storage with staff comment for Board action.

10. **MINUTEMAN TECH** - Enclosed please find a request from Ron Fitzgerald for help regarding the Amendment passed by the House budget proposal and other Minuteman Tech issues for Board discussion and review.

**IV. CONSENT AGENDA**

11. **ACCEPT GIFT** - Enclosed please find a request from Wanda Null to accept a gift from 3Com of World Wide Web access and hardware for Board acceptance.

12. **ACCEPT GIFT** - Enclosed please find a request from Acton Boxborough Arts Council for acceptance of the "Field Stones" for Board action.

13. **TOWN FAIR - LION'S CLUB** - Enclosed please find a request from the Lion's Club regarding the Annual Town Fair.

**V. TOWN MANAGER'S REPORT**

14. **BUILDING DEPARTMENT SELF FUNDING PROGRAM** - Enclosed please find a request to increase expenses and revenues. The Town Manager will seek direction Tuesday night.

**VI. EXECUTIVE SESSION**

15. **There will be a need for Executive Session - See enclosed materials regarding NESWC.**

**MEETINGS**

**ADDITIONAL INFORMATION**

Enclosed please find additional correspondence that is strictly informational and requires no Board action.

**FUTURE AGENDAS**

To facilitate scheduling for interested parties, the following items are scheduled for discussion on future agendas. This IS NOT a complete Agenda.

May 28  
June 25  
July 16  
Aug 20  
Sept. 10