

APPROVED

**MINUTES
SELECTMEN'S MEETING
REMOTE PARTICIPATION ONLY
Monday, May 10, 2021
6:30 P.M.**



SELECTMEN PARTICIPATING: Larry Ballantine, Donald Howell, Michael MacAskill, Edward McManus.

ALSO PARTICIPATING: Town Administrator Joseph Powers

CALL TO ORDER

Mr. Ballantine opened the meeting at 6:30 pm, and called to order the Board of Selectmen. He explained that he first called the meeting to order at 5:45 pm for Executive Session, where they discussed the litigation strategy with respect to case of 3137, LLC, et al. (Ember and Port) v. Town of Harwich, et al., United States District Court, C.A. No. 1:21-CV-10473, if discussing the matter in open session will have a detrimental effect on the Town's litigating position and the chair so declares.

WEEKLY BRIEFING

A. COVID-19 Updates

Dr. Kathleen O'Neill, Health Director, said that it was really nice to see everyone in person at Town Meeting this past weekend. She said that she actually has some good news tonight, for the first time in a while. She said that as of today, they are only tracking three active cases, as of last Friday the positivity rate has dropped to 3.02%, and they have 6,639 fully vaccinated individuals in town, which is great progress. Dr. O'Neill said that last Thursday the Board of Health met to discuss the current mask mandate on Route 28, from Bank Street to Lower County Road, from 9 am to 10 pm. She said that the board unanimously voted to uphold the current order, for the time being, they will revisit this again at a later date. She said that they wanted to be cautious and make sure that the numbers remain trending in the right direction before they make any changes. The state announced that effective today, some outdoor venues can be reopened such as ballparks, road races,

and other amateur sports, and singing indoors is also allowed, with strict distancing. She said that another exciting update is that Brooks Free Library will resume allowing patrons back inside the library for grab-and-go visits, starting next Monday, May 17th. The initial schedule will be Monday through Thursday 3:00 pm to 7:00 pm, and then Friday and Saturday 10:00 am to 4:00 pm. Masks will be required and patrons will have access to materials on both the first and second floors, including the public computers. The full plan can be found on the library's website, as well as by phone if someone would rather call to get the details. Dr. O'Neill said that things are certainly moving in the right direction, and feeling a little more normal.

B. Update on ongoing efforts by the Town in support of the business community

Ms. Cyndi Williams, Executive Director, Harwich Chamber of Commerce, said that they are starting to work on the plan to reopen the visitor center, for Memorial Day to Columbus Day. She said that they will be open and will once again be doing welcome bags. They have started to collect member brochures, menus from the restaurants, the walking map and the new magazine. She said that they have also expanded their distribution of the magazine this year, and it will be located at TF Green Airport, as well as Bass Pro in Foxborough, and for the third year Mystic, CT Visitor Center. She said that Harwich Chamber is the only local Cape Cod Chamber that are in those locations. It is not exclusive, but they are the first to be down in all of those locations, so they are excited for that. Ms. Williams said that the Chamber will once again be selling beach stickers for both residents and non-residents, and the transfer station access, and getting the safety protocols in place for that. They also have four new members joining the chamber and they are excited for them to get started with their businesses. Ms. Williams said that there are job postings on their website which members have shared with them. She said that she hopes that everyone will show patience, because it is going to be a busy year, and the businesses went through a lot to stay open and to get ready to welcome all of the guests.

Mr. McManus asked if she could say who the new members were?

Ms. Williams said yes, that they have Ms. Tessa LeBlanc, who is a realtor and joining as a full business, a new bookstore that is going in next to the Mad Minnow and Three Monkeys, Bernadette Waystack, a wonderful artist who has a studio in the Cultural Center, and a boutique called Haberdash.

Mr. McManus said that it looks like the Cranberry Festival will be able to put on some activities this summer, and asked if they could produce a slip to go into the welcome bags?

Ms. Williams said absolutely, they are encouraging all members to provide them with information and they will be having an assembly line to put these together. So, yes, please do and she said that she will be negotiating a table at the festival to sell the Harwich-opoly game.

PUBLIC COMMENTS/ANNOUNCEMENTS

No public comments.

NEW BUSINESS

A. Discussion and debrief with the Town Administrator on the 2021 Annual Town Meeting

Mr. Powers said that he had a quick recap of the outcome of the Articles, but the thing he would like to highlight is the exceptional work, as always, of their Town Moderator for getting them through the cold. From the moment the first motion was made to the motion to adjourn was voted, it was 2 hours and 43 minutes, and within that time there was ample discussion. He said that he was very pleased with the outcome and now they are on to the Annual Town Meeting of 2022, which will be in 357 days.

Mr. Howell said that he felt compelled to say this, because Mr. Powers is too modest, the Town Clerk was involved, all sorts of departments were involved, Administration staff was involved, and certainly Mr. Powers as the Town Administrator. He said that he thought everybody did a superb job, it was really the second Town Meeting in a row, where he felt like they represented really well.

Mr. Ballantine said that this is the second meeting where Mr. Powers put together for them a Town Meeting notebook, with all the motions. He said that it helps them a lot and he knows it is not easy to do.

Mr. Powers said thank you, and he believes that the output and value of it, makes the exercise well worth it. He said to add to what Mr. Howell just said,

he agrees that the success of town meeting is because of the team that worked on it. He said that it was truly a team effort, a collaborative effort, and that's from Administration, Finance, the Board of Selectmen, and straight down throughout the organization. He is thrilled with the way they comported themselves and he looks forward to having an indoor Town Meeting someday in the future.

Mr. Ballantine said that they need to applaud those who attended, because it was absolutely freezing.

Mr. McManus agreed about applauding those who attended and that the book which was produced was really helpful, despite the wind blowing the pages forward.

Mr. MacAskill said hats off to everybody, and he thought the Town Meeting went very smoothly, other than the cold. He said that he would ask that they bring back sooner, rather than later, Article 33. He said that the intent at Town Meeting was very clear, and he said that he thinks they want to pursue the purchase of the 31 acres. He believes that calls for a meeting with the Harwich Conservation Trust as well as the CPC, and the Board, and the Real Estate and Open Space, so that they can really come to terms with what went wrong.

He said that the CPC has taken a bit of a hit on this, and he would say in his opinion, it is not the CPC's fault because there was a change in the Article. He said that he would ask that it come back sooner, rather than later, because he thought that the sellers of that property are on a deadline. He said that he does not want to give up their right at first refusal, 61A, and maybe get a Fall Town Meeting, to approve this if that's what the voters want. Mr. MacAskill said that the second one he would ask that they bring back is the East Harwich Methodist Cemetery. He said that they got late legal opinion on that, and it would be nice to do some work in a cemetery that could use the work. Lastly, he said that although he was against the Article for the Sand Pond Revitalization Project, he thinks that there is some merit to site improvement. He said that there was a suggestion made, that that money should be coming out of the Rec budget, but given that they are only talking about dead trees and removal of a building, he thinks that DPW should be able to look to get the site work done and fence purchased, even if they need to come back with CPC funds.

OLD BUSINESS

A. Discussion and possible vote to reconsider the 2021 Request for continued Expansion of Outdoor Table Service for The Port Restaurant and Bar – 545 Route 28

Mr. Ballantine said that he was reading the rule of necessity before they got into this discussion. He said that next on the agenda, is the deliberation involving the court case 3137, LLC, et al. vs. Town of Harwich et al., in which each member of the Board of Selectmen is named individually as defendant, and may have a financial interest in the litigation. Unless conflict of interest, the Board is the Town's executive authority and no other board or official can represent the town's interests in this matter. Therefore, upon the advice of Town Council, he said that he is invoking the rule of necessity, in order for the Board to act on this matter. Mr. Ballantine said that his financial interest is that he is named personally as a defendant. He asked he member to identify themselves for the record and what their financial interest is, and once that is done, all board members are eligible to participate in the discussion of this litigation.

Mr. Howell said that his financial interest is that he is named individually in the lawsuit.

Mr. McManus said that his financial interest is that he is also named individually in the lawsuit.

Mr. MacAskill said that his conflict is also financial, as he is named in the lawsuit.

Mr. Ballantine said the first item on the agendas is the discussion and possible vote to reconsider. He said that he wanted to remind everyone that they do have a hearing on Wednesday, and this is not that, this is much simpler. They took a vote at the last meeting and this is a discussion to see if they wish to reconsider that vote. He asked Mr. Powers to read for the record what they voted last meeting.

Mr. Powers said in his recollection, when the Board came upon the application for a request for expansion for 2021, the Board did not adopt that. Therefore, it was not accepted by the Board, for this particular establishment.

Mr. MacAskill said that in the eleventh hour, they had agreed to give the liquor license to this establishment and he said it was a strong push by Attorney Tomlinson to get them to approve the tent, which was not adopted. There was discussion however, by Mr. Tomlinson, and his clients, to provide the Board with a site plan so that they could discuss it this week. He said that at the same conversation, he said that he would not be voting on anything additional at this meeting, it would more likely go the 12th. However, he said he would certainly entertain a conversation about the proposed site plan, and questions from the Board and a narrative by Mr. Tomlinson. He said that he is not interested in the behavior that they received at the last meeting, and given that this is a public meeting, not a public hearing, only the chair decides who speaks and when. Mr. MacAskill said that they were given a list of people who wanted to speak tonight, but given that this is not a hearing, that is coming up on Wednesday, he is hoping that they can do away with interruptions and just have a general conversation. He said otherwise, he would personally ask the Chairman to end the discussion, and move it on to Wednesday night.

Mr. Howell said that he agrees with Mr. MacAskill and frankly he is listening to hear what circumstances would have changed, from the vote they took, relative to what this property with the tent contributes to the problems they are actually discussing in the hearings on Wednesday.

Mr. Ballantine said that the way it is now, is that the tent is not approved.

Mr. Howell said that's correct, and the tent not only housed additional seats, but, additional patrons, additional pouring capacity, and entertainment. He said that to him it is part and parcel of what they are discussing and about how much they can control it. He said that he is waiting to hear tonight, if there is anything new to be added to the discussion.

Mr. Ballantine said that he would give Mr. Tomlinson a chance to weigh in.

Mr. Tomlinson said that as requested by the board, he emailed last week a proposed or revised site plan which illustrates certain improvements to the outdoor expanded dining operation at the Port. He said that he would be happy to go over it and he hopes it will address some of the comments and questions that were raised last time, in particular about the size of the tent, capacity, and locations of the outdoor bar.

He said that as Mr. MacAskill noted last time, there is only one outdoor bar, and Mr. Howell's reference to four outdoor bars is simply incorrect. There is only one outdoor bar, which is affectionately referred to as the Nauti Bar, and it is located at the rear of the main structure, close to Route 28.

Mr. Ballantine interrupted and said that Mr. Howell has a point of order.

Mr. Howell said, as a point of information, he never said that there were four outside bars. He said that the Instagram site, that the Port maintains, said that there were two outside bars, and two inside bars. He said he repeats that again for point of information.

Mr. Tomlinson said that he should have said that his comment was reflected more towards the magnitude of the expansion. He said that he is simply suggesting that there has been no expansion of the licensed premise other than the outdoor tent, which was reviewed and approved by the Board last year. He said that the Board met on October 5th in continuous discussion to October 19th, where a written policy was approved by this Board, to automatically extend the outdoor expanded dining for all those licensees who had previously applied and were approved by the Board. He said the Port was one of those. Mr. Tomlinson said that the tent that is illustrated on the drawing measures 20' x 60', and that is unchanged from last year. The tent this year, as much as is physically possible is being shifted away from the rear boundary, which is closets to the abutters. Additionally, there will be a plastic end on the tent to help control the noise and the tree wall, which will be installed along the perimeter and corner of the property, which will include 8' to 10' Leyland Cypress trees and will make a nice vegetative buffer. He said that those are not only very costly, but they are permanent and will improve the privacy to neighbors, as well as help deflect sound. Mr. Tomlinson said that the establishment is preserving seven parking spaces, in addition, there are operational constraints being placed by the applicant that are voluntary and should go a long way to improving the patron noise that was the concern last year. He added that if the establishment had been afforded more timely notice, they certainly would have made operational improvements to address those issues. He said that as they stare down the final week before the weather turns nice, they would note that the establishment relied on the Board's automatic extension from last October, and secured its tent.

Mr. Tomlinson said that Mr. MacAskill had made a comment during the October 5th hearing, that licensees needed to rely on the Board's action to secure leases on the tents. He said that the pandemic was of an urgent nature and tents became very hard to come by with weddings reopening this summer. Therefore, the establishment secured its extended lease of this tent, which costs nearly \$4,000 per month, and that is a cost that they are contracted to bear. Likewise, shifting the tent ten feet in the parking lot.

Mr. Ballantine interrupted and said that he thinks they are getting a little off topic, and that the primary concern they have with the tent is related to the noise issues, which would be part of their discussion next week on the entertainment license. He said that he appreciated Mr. Tomlinson's comments and his point is that it would be better off going back to the hearing. Mr. Howell said as far as he understands it, the application that Mr. Tomlinson and the people that he represents, submitted does not call for service to commence until May 28th, not next week. He said that they have the form right there and if that is not correct, that it would be for next week.

Mr. MacAskill said that as a Board, they did not vote to support the extension of outdoor table service. He said that they did put it on the agenda tonight, for a discussion, and he thinks they have vet out as much as they can tonight. He said again, that he is not inclined to make a decision tonight. He said that another Board member would certainly have to make the recommendation for reconsideration to go forward, but he does not see any reason why they should add the tent into the entertainment conversation on Wednesday night. The tent is a standalone, and it's a COVID gift package. Mr. MacAskill said about the, voted by the Board of Selectmen part of tonight's conversation. He said that they have received emails with complaints and support, about the tent. He said that on Wednesday, they will take up the Entertainment License, so he does not see why they cannot have the conversation tonight about the tent permit. The Board may end up deadlocked and not vote it, regardless of the conversation, but this is a stand-alone issue and not related to the entertainment license inside the premises.

Mr. Tomlinson said to Mr. MacAskill's point, the last two hearings did not focus on music, but on patron noise. He said that obviously the establishment and its owners and managers want to be good neighbors. He said that they reached out to the neighbors to try and invite a conversation, to discuss their proposed improvements to management and the operation, to ensure compliance with reducing patron noise. Mr. Tomlinson said that the

neighbors were not inclined to meet with management at this time. He said that was really disappointing, given the fact, that last week, ownership did express the desire to be good neighbors. He said that with respect to the tents operation, the establishment is willing to offer the following improvements to its operational process to help reduce crowd noise. 1. The last seating in the tent will occur at 10:00 pm. He said that is important because that means that more and more of the seating capacity from diners that had sat prior to 10:00 pm, will vacate their seats and the seats will remain empty. Therefore, the number of patrons in the tent will reduce as the night proceeds, and that has a direct correlation to patron noise. 2. They are proposing that the tent close at midnight, regardless of the operating hours of the establishment. Mr. Tomlinson said that the staff will be fully instructed and educated to make sure that patrons are aware of limiting their noise to respect the neighbors. He said that they will be looking at essentially moving all patrons out of the tent, when they are done dining, and either into the establishment or onto the outdoor deck, as permitted. He said that the Board is well aware that they are looking to the Town to be partners in this, and the Town has repeatedly indicated its desire to be partners with businesses, and to do all that they can to ensure the safety of patrons. He said that this is a public health issue and the tent is temporary. They are all in this together and they are simply asking that the Board afford them the opportunity to demonstrate that it will do all that it can to ensure a reduction in patron noise, now that it has the notice of complaints. He said that they will also take very costly steps to improve their outdoor space, and their operation, to be able to limit that patron noise. However, the tent size was previously approved by the Board, and there has been no expansion of outdoor seating beyond the capacity of the restaurant. They are simply shifting seating from inside to the tent, which is a benefit because regardless of the current guidance, patrons are still not willing to go inside. He said that the tent is necessary to serve that public need, it is temporary, it is part of the Governor's guidance, and it was approved by the Board. Mr. Tomlinson added that it was automatically extended by the Board, and that the efforts now to try and take away the tent, and he said he won't get into the legal issues with that, but he is simply suggesting that the Board take an action tonight to approve the tent. The location of the tent is being moved to the extent possible and the owners are taking all of the necessary steps to improve the acoustics to minimize patron noise, but still provide a safe place for people to gather, who are not willing to dine inside.

Mr. Ballantine said that he understands the business aspect, but that Mr. Tomlinson is arguing that they are starting now as a good neighbor, when they

have had difficulties this past year. He said that he wished he had confidence in that. He said he will hear from the rest of the Board.

Mr. MacAskill asked Mr. Tomlinson if he could answer how many seats the Port has inside?

Mr. Tomlinson said that the Port is licensed for 85 seats, and that includes an offset seating plan, to be able to shift seats inside and outside. He said to note on the drawing, they have established where they can sort of disperse that throughout the property, to stay within that 85 person seating capacity limit.

Mr. MacAskill asked if he had any idea of what the actual inside capacity is?

Mr. Tomlinson said that he did not know the answer to that, and he would have to confirm with his clients. However, the way that the seating is constructed inside, it is largely fixed booths, that cannot be moved to afford socially distant dining. He said that this significantly and severely limits the amount of interior dining available. He said that people are not allowed to sit at the bar, so he thinks that there may be four booths in each location, which he guessed would be 16 to 24 tables. He said that the size of this establishment, it would not be financially viable to the restaurant to even be open to serve that limited number of patrons.

Mr. MacAskill said that he would certainly debate the booths and being able to properly socially distance. He said that he has not missed an opportunity to go out to dinner at many restaurants, and they are making it work inside. He said that he will move onto the seating plan in the chart, unrelated to the back parking lot. Mr. MacAskill counted the areas and said that it came to a total of 44 seats. He said that one thing that they have not discussed in any of their hearings and he does not see it on any of the plans, but he knows it had existed is the roof top table, which was noted as a VIP table and was accessible through the upstairs apartment. He asked if that still existed?

Mr. Tomlinson said that there is no roof top seating, that it is a private apartment. He said that he does not know if in years past, it was used as a VIP table, but it is not there now. He said in regards to Mr. MacAskill's comment about the sidewalk, when Ms. Eldredge was the Health Director, there was concern about the proximity of tables next to the sidewalk, and my understanding is, that the Port only used two tables, for a total of four seats. He said that they are tiny two tops given the proximity of the sidewalk, they

were not used exhaustively last summer. He said, also on the rear of the deck, there are 32 seats depicted, because of the amount of foot traffic and staff bringing takeout orders back and forth, they limited the use of those tables on the rear deck. He said that is why the tent is so important, because patrons preferred to dine in the tent because they felt that was a more socially distant atmosphere.

Mr. MacAskill said that he will save some of his comments for the next public hearing. However, he said that it is his understanding that there is room for 80 plus inside, room for 44 outside, and if they want to get into carving up the front, because the newest diagram, unless he hears otherwise from the health agent, shows the tables out there. He added that it is a very nice look for the restaurant. He said that he is not sure if Mr. Tomlinson gets where he is going, but as they navigate, he said compromise, is a great word for him. He said that as they try and navigate this, they are looking at 160 plus seats. He added that if they had seen the beach ball video, which he saw today, every single table had more than four people, and he does not see it has a compromise in any way, shape, or form, for them to be considering that tent, with that many tables, with the understanding that they will clear it out by 12 midnight. Mr. MacAskill said that he took the time to call several other restaurants to see how they were seating in their tents, and other than the trees, he is not sure he is seeing a huge compromise. He said that one thing that he had extended in the past, is why not take that outdoor expanded service and slide it into as much of the Nauti Bar as possible? He said to him, that is another argument for Wednesday.

Mr. Tomlinson said he appreciates that and asked why he is not sharing the comments from other licensees? He said that he appreciated him reaching out to tour the establishment last week, and it was unfortunate that he was not able to do so, but he was encouraged that he was willing to do that. He said that the Board has a statutory obligation to visit spaces annually to make sure that they comply with their licensed premise. He said he does not think it has been done there and it is contributing to the sense of confusion about the outdoor operation. Mr. Tomlinson said that moving spaces to the outdoor deck is not feasible right now under the current guidance, to provide for socially distant dining. He said regardless of how many seats may be depicted, the offset seating plan approved by the Board of Health, with respect to the septic system, limits the number of seats to 85. It doesn't matter if there are 200 seats available, the establishment is only permitted to seat 85 people at a time. He said in order to do that, and be socially responsible, the outdoor tent is the

only way. He said that patrons do not want to dine inside, and he thinks that it is inappropriate for this Board to force patrons to choose indoor dining, at the expense of their public health.

Mr. Ballantine interrupted and said that he has made that point before, they have that part.

Mr. Powers said that he had a comment and information for the Board. He said that it has been the Town's position that the seating capacity for the establishment in question this evening, is 84. He said that is stated on the license, and that comports with the Board of Health, and septic requirements. He said also, there was a reference to the former health director, and guidance regarding the chairs out front, he wanted to remind the Board that she is on the call, and is certainly ready, willing, and able to answer any questions.

Mr. Tomlinson apologized if he had been mistaken to the capacity, that he had taken it off of the license that was posted and it may have simply been a typo.

Mr. MacAskill said that he appreciated Mr. Tomlinson's willingness to shift his schedule and meet on a Sunday. He said that it was not until he had learned of the personal attack on his family, that he and his family had decided not to put himself in a position to have more false allegations made. He said he has been to the establishment, although it has been a couple of years, his recollection of what he saw, he would disagree with the number, or ability to get 32 seats in that space and be able to socially distance, and to keep the servers from being safely able to serve food there. He said it may be an argument for another venue, but he is not sure if it is because that is the music area, which is why there is an unwillingness to make that table dining. Again, he said he is trying to compromise. Mr. MacAskill said that he had heard a willingness at the very end of the last meeting, from the establishment to work with the neighbors. However, he heard through the testimony of the manager of record, Mr. Jake Domos, that they had no violations and had done nothing wrong, and works 100 hours per week, and did not recall any beach balls. Mr. MacAskill said that the beach balls were a real, and the overcrowded tent, with just drinks in front of people is very real. He said that the noise complaints, whether violations or not, but the number of complaints is significant. He said it may not be significant to the owners of the restaurant, but it's significant for the people that live around it. He said that whether Mr. Tomlinson's clients think that they are being picked on, or people like other establishments better, or not, there was an issue and this Board is taking up a

lot of time discussing it and trying to offer some compromise. Mr. MacAskill said he is not seeing compromise on the other side, and quite frankly, once people talk about quality of life being ruined, and not being able to enjoy their own homes, he thinks that everyone needs to take a step back, and ask, what if this was my backyard. He said he will leave it at that, and he thinks that everyone is clear where he is at, at this point.

Mr. Tomlinson asked to respond to Mr. MacAskill, so that everyone's comments are fresh in his mind, before Mr. McManus spoke.

Mr. Ballantine said, as long as he is not repeating himself.

Mr. Tomlinson said that heard Mr. MacAskill's comment, about trying to offer a compromise, and he suggested to the Board significant operational improvements, that were designed directly to reduce patron noise. He said that they have offered to communicate with the neighbors, who were not responsive.

Mr. Ballantine interrupted and said that he had asked Mr. Tomlinson not to repeat his assertions.

Mr. Tomlinson said that Mr. MacAskill said he was not hearing a compromise from the establishment, and that's certainly not true. He said that Mr. MacAskill is also not making a proposal, he is suggesting to eliminate the tent entirely, and the tent is temporary.

Mr. Ballantine said that he is moving on.

Mr. Tomlinson asked to finish and said that he will be very brief.

Mr. Howell said to Mr. Ballantine that this is not a hearing, and he could recognize, or not.

Mr. Ballantine said that they are moving on, and now you have made these points over and over again, and they understand.

Mr. McManus said he has made this point before, about owning and operating a café and pub, in a heavily residential area. He said that a responsible manager and operator can operate that successfully, even if they have a very vibrant and noisy entertainment schedule, by reaching out consistently and

proactively to the neighbors. He said that he is amazed that in this instance, that has not happened in the past and he does not see anything coming in at this late hour that encourages him to expect that it's going to happen in the future.

Mr. Howell said that he asked this question at the hearing, and asked if anybody knows who controls their Instagram page, because he did not come up with the two outdoor bars on his own, it was being advertised, as recently as this past week. He said he has absolutely no control over that, and it would behoove them to make sure that is correct.

Mr. Tomlinson said that he will not discuss who controls the Instagram there due to the pending litigation. He said that if people rely on Instagram for information, then they are of the mindset that they believe everything on the internet. He said that the license premise, as approved by this Board, and the ABCC, includes one outdoor bar, regardless of what Instagram says. Mr. Tomlinson added in respect to the late hour, or the 11th hour notice, that there has been no more late notice than what the licensee has in this case. He said that they are asking for the opportunity to be a good neighbor, with the information that was late noticed to them.

Mr. Ballantine said that he would like to counter that, and say that this has been going on since last Fall. He asked how can they have advertising stating more than what he is saying is real? Mr. Ballantine said he also had another question about the capacity that Mr. MacAskill had brought up. He said he is a little confused, because as Mr. Powers pointed out, the total capacity is 84 people, but it doesn't compare to the number of seats shown in the diagram, both outside and inside. He said that he gathered from Mr. Tomlinson's statement that there are more seats, but you actually control the use of those seats to 84. He asked with everything else going on, management can do that?

Mr. Tomlinson said, that is the obligation of management, and ownership, to do that. He said that the septic system is limited to what it can handle, and yes it does control those seats its point of sale system knows how many people are seated at any one time, so they can control those number of seats. He said that seating capacity is different than occupant load and that is an issue that this Board has struggled with. He said that Mr. Ballantine commented about this being discussed since last Fall, but it was not a discussion with the licensee. He said that is an important issue, because, these complaints were not brought to the licensee's attention until this March. He said that the only

thing that they can do is to try and give the Board confidence that it is equipped to be able to remedy those issues going forward. He said that the Board has noted that it is going to take a zero tolerance position with respect to noise, and the licensee should be afforded that opportunity. If there is going to be swift action by the Board, it can take that action under the noise bylaw.

Mr. Tomlinson said that they are talking about patron noise, which was expected under the Governor's guidance, and is a necessary relief during the state of pandemic and is temporary. He said that the establishment already paid for this tent, and explained that the property is in excess of 300 persons, regardless of the seating capacity of 84. He said that information can be provided to the Town later; by a stamped fire engineer. Mr. Tomlinson said that he is suggesting that the seating capacity remains at 84. there is an offset seating plan that allows the establishment to flow patrons to either inside or outside, for seating patrons who do not want to dine inside. He said that if they are going to take away the tent, they are putting, quite frankly and respectfully, the concerns of a few neighbors, which can be mitigated, over the need for public health and safe distance dining.

Mr. Ballantine asked if anyone wished to make a motion to reconsider?

Mr. MacAskill said that he would make a motion to reconsider the expansion of outdoor tables. Mr. McManus seconded, for discussion.

Mr. MacAskill said that his proposal is very much what he was talking about, and he would support outdoor expanded table dining, though he does not agree with Mr. Tomlinson's assessment of what they need, and what they are willing to manage. He said that he also does not agree with them, that patrons do not want to dine inside. He said that he took his mother to lunch yesterday, and the restaurant did have a tent with six tables under it, which were full and the entire restaurant was full and the tables were separated. He said there were lots of laughs and smiles, so he does share a different view with them on that. He said that what he thinks they are asking for with the tent, based on the patron noise, will be too much. He said that the area for outdoor table expansion already exists at the Port. He said that there is a way to creatively add more, they are currently listing 32 tables out back, and 12 out front. He added that if there is an order from the Board of Health on the front tables, they could address that, but based on the diagram, he does not believe they had ordered them to take anything away. He said that outback, there is no way they can't get proper social distancing in that area, and then it would be

incumbent upon the owners or managers to determine when the other part of the business starts. He said that given the diagram, he thinks that there is still room for a band. He would support expanded outdoor table dining for this restaurant, with some creativity behind the building, in the Nauti Bar area, but not a tent in the parking lot.

Mr. Ballantine asked if there was any other discussion?

Mr. Howell said that this motion doesn't pertain to that, this motion pertains to a reconciliation of the tent, just to point that out to everybody.

Mr. MacAskill said that his motion is what is on the floor and it is the reconsideration of a tent.

Mr. Ballantine said right, but then that would open this up for this sort of further discussion.

Mr. McManus said that he had some thoughts, if this motion passes.

Roll Call Vote: Mr. McManus - Aye, Mr. Howell - No, Mr. MacAskill - Aye, Mr. Ballantine - Aye. Motion carried by a vote of 3-1-0, with Mr. Howell against.

Mr. Ballantine said to Mr. Tomlinson that this may be with mixed blessings, because they are going to want some pretty severe restrictions going forward.

Mr. MacAskill just to be clear now that it has passed, the next agenda item is to reconsider, and he believes that they can add the extra conditions. He said that he had explained that is what he would vote for, so he can make a motion to that effect, or another Board member could chime in, but that would be the only thing that he would support.

Mr. Ballantine asked Mr. Tomlinson if he understood what the proposal was?

Mr. Tomlinson said that there is no proposal, there was simply a motion and a second. He said if the Board is going to make a motion to add restrictions, then he would encourage the Board to consult Robert's Rules on how to do that.

Mr. Howell said that there are no current restrictions, because there's no current approval.

Mr. Ballantine asked if Mr. MacAskill could repeat the motion.

Mr. Tomlinson apologized for the interruption, and said that what he had heard is a motion to reconsider the approval of the tent and that has passed. There is no notice before about imposing conditions on the tent.

Mr. Howell said that this merely releases them from their previous vote denying that, and yes there still would have to be an affirmative vote of some sort. He said that this only opened up a discussion.

Mr. Tomlinson said that the vote at the last hearing, where every other establishment that was before them, was approved pursuant to the Board.

Mr. MacAskill said that he moved to reconsider his last motion, to reconsider the outdoor expansion of outdoor table dining at this point.

Mr. Ballantine said that they had a second to that, and they voted on it.

Mr. Tomlinson tried to ask further questions and was muted at the request of the Chairman.

Mr. Powers said if he may help the Board. He said that what he heard is that the action that the Board took at 7:30 pm tonight, was to reconsider their previous action from an earlier meeting. He said that Mr. MacAskill now wishes to reconsider that action, for the purpose of rescinding, or something along those lines. He said that the motion for reconsideration must be made by someone on the prevailing side, so that would be Mr. MacAskill, Mr. McManus or Mr. Ballantine, and all members can vote on this.

Mr. Ballantine asked if Mr. MacAskill was making a motion to reconsider, to start again?

Mr. MacAskill stated that he was making a reconsideration motion. Seconded by Mr. McManus.

Roll Call Vote: Mr. MacAskill - Aye, Mr. Howell - Aye, Mr. McManus - Aye, Mr. Ballantine - Aye. Motion carried by unanimous vote.

Mr. Ballantine asked if Mr. MacAskill wished to make a second motion.

Mr. MacAskill said no, that he is just pulling his motion off of the table. He said that all his motion did was create more argument from Mr. Tomlinson. He said that he had made the motion to reconsider the outdoor table dining, or expanded outdoor table service, so that they could have a conversation and make a proposal, to bring the noise inside the gate. However, Mr. Tomlinson took it that they were done and that the motion was to reconsider the tent in the back parking lot.

Mr. MacAskill said that the agenda is extremely clear, and they had voted it down last week, and they made a vote tonight to reopen it to have a discussion, and offer some sort of compromise. He said that is obviously not how Mr. Tomlinson received it.

Mr. Ballantine asked if anyone cared to make a motion.

Mr. McManus said no.

Mr. Ballantine said hearing none, they have no reason to move on to item B.

- B. If Item A is reconsidered than discussion and possible vote to approve the 2021 Request for continued Expansion of Outdoor Table Service for The Port Restaurant and Bar – 545 Route 28

No discussion.

CONTRACTS

- A. Discussion and possible vote to authorize Chairman of the Board of Selectmen to execute Change Order #1 with Robert B. Our Company for Round Cove concrete bulkhead repairs for \$19,874.73

Mr. MacAskill moved that they authorize Chairman of the Board of Selectmen to execute Change Order #1 with Robert B. Our Company for Round Cove concrete bulkhead repairs for \$19,874.73, as presented in the packet. Seconded by Mr. Howell.

Mr. Ballantine asked if Mr. Powers could give more information, because there was nothing in the packet that said if it was just additional concrete, or if there was something unforeseen?

Mr. Powers said that they have the Harbormaster on the line.

Mr. John Rendon, Harbormaster, said that the part of the ramp project was the replacement of a section of the bulkhead, and that that's been done. However, there's an adjacent bulkhead that ties to that new bulkhead, which is failing and has failed even more so with the work that has been done onsite. This is to repair with rebar and concrete the adjacent bulkhead, it's not a replacement bulkhead, it's just a repair. He said that in his mind, and the mind of the contractor and engineer, it is a safety issue, because the top of the bulkhead is crumbling, and it's old. Mr. Rendon said that he does have on the Capital Plan, in future years to re-look at the entire bulkhead system, but this needs to be done while they have the contractor there to improve that section of the bulkhead.

Roll Call Vote: Mr. MacAskill - Aye, Mr. McManus - Aye, Mr. Howell - Aye, Mr. Ballantine - Aye. Motion carried by unanimous vote.

- B. Discussion and possible vote by the Board of Selectmen to execute contract with Partner Solutions General Contracting Corp. for Comfort Station Janitorial Services for \$51,587.39

Mr. MacAskill moved that they execute contract with Partner Solutions General Contracting Corp. for Comfort Station Janitorial Services for \$51,587.39. Seconded by Mr. McManus.

Mr. Powers said that when the bids went out, the costs came back in excess of \$50,000, therefore the Board needs to sign and approve.

Mr. MacAskill asked if any of it is reimbursable under the Cares Act?

Mr. Powers said that he wouldn't be able to say definitively this evening, but can circle back on that question.

Roll Call Vote: Mr. MacAskill - Aye, Mr. McManus - Aye, Mr. Howell - Aye, Mr. Ballantine - Aye. Motion carried by unanimous vote.

- C. Discussion and possible vote by the Board of Selectmen to execute contract with Vanasse Hangen Brustlin, Inc. for Route 28 Saquatucket to Harwich Port Sidewalk Design Engineering Services for \$167,550.00

Mr. MacAskill moved that they execute contract with Vanasse Hangen Brustlin, Inc. for Route 28 Saquatucket to Harwich Port Sidewalk Design Engineering Services for \$167,550.00. Seconded by Mr. Howell.

Mr. Powers stated for the record that many folks may know them more colloquially as VHB.

Roll Call Vote: Mr. Howell - Aye, Mr. McManus - Aye, Mr. MacAskill - Aye, Mr. Ballantine - Aye. Motion carried by unanimous vote.

- D. Discussion and possible vote for the Board of Selectmen to authorize the Chairman of the Board of Selectmen to execute Firefighter Safety Equipment Grant award contract with the Commonwealth of Massachusetts Department of Fire Services for \$12,172.00

Mr. MacAskill moved that they authorize the chairman of the Board of Selectmen to authorize the Chairman of the Board of Selectmen to execute Firefighter Safety Equipment Grant award contract with the Commonwealth of Massachusetts Department of Fire Services for \$12,172.00, as presented. Seconded by Mr. McManus.

Mr. Powers said that he knows that the Chief would want to emphasize the work of the staff that has done a great job.

Roll Call Vote: Mr. Howell - Aye, Mr. McManus - Aye, Mr. MacAskill - Aye, Mr. Ballantine - Aye. Motion carried by unanimous vote.

TOWN ADMINISTRATORS REPORT

Mr. Powers said that as he had indicated they are 357 days away from what would be anticipated as a “normal” Annual Town Meeting to occur, on a Monday evening indoors at the Community Center. He said that he brings this up because, as they close the books on the 2021 Annual Town Meeting, and FY22, the Assistant Town Administrator, Finance Director and himself, will be reaching out to Department

Heads, Boards, Committees, and Commission Chairs, to start the dialogue on the development of anything to come before a town meeting. That would be specifically discussions on operating budgets, presumptive community preservation applications, and certainly capital. This effort will be for FY23 and also to get into a broader discussion for the additional four years after that. As he has said many times before, this is so he can develop a five-year outlook for the Board, as it relates to operating budgets, capital budgets, and perhaps envision some relief through community preservation. Mr. Powers added that regarding community preservation, that the expectation would be that any applications of the Town, would first go before the Board, for the Board to either endorse, or understand, that a certain department or committee would be going forward with that application. He said that he is looking to get as much information in front of the Board, before they get too far afield of that process.

Mr. Ballantine said to add to that comment, and to Mr. MacAskill's comment, the CPC has their own schedule, but they can act before that schedule to bring things forward for discussion. So, that is a good reminder.

Mr. Powers said that he has been in constant contact with Chairman Nixon, CPC, and he believes that Mr. Nixon takes some relief that Administration would be doing that effort ahead of their application schedule. Mr. Powers said that lastly, that three weeks from today is the unofficial beginning of summer and the Memorial Day holiday. He said that Administration will be working with Public Safety, and a number of representatives from the regulatory authorities within the town, to resume their annual discussion with licensees, before they get into the full license season. He said that more information will be delivered to the licensees, and he hopes to give a more formal update to the board next week.

Mr. Ballantine said that speaking of Summer, normally they take some weeks off, which they did not do last year, and he is hoping that they can move back to that this summer.

Mr. Howell said that he would appreciate that, but they are going to be reorganizing.

Mr. Powers said to bring up one sad comment, but he wanted to inquire of the Board, if he should be looking to schedule a special election to fill the vacancy caused by the passing of Selectman Ford? He asked if they wanted to do that at the next meeting?

Mr. Howell said that he thinks that is something that Mr. McManus will not be there after next meeting, and that they should take this up with the new Board.

Mr. Ballantine said that he is fine with that, but it should be the meeting after that, because he does what to get that started.

Mr. Howell said that the people who have a horse in the race, should actually be the ones who have the discussion about it.

Mr. McManus said that he served with Mr. Ford for the time he was with them, and he would like to participate in ensuring that that process of replacing him happens. He said he knows that Mr. Ford would want that done expeditiously and with as little fuss as possible. He said that he has spoken with his wife about this and informed her that it might be an issue that the Board would be taking up soon.

Mr. MacAskill asked if they could get a memo outlining the process? He said he understand that they have one week left of a sitting selectman, but he thinks the sooner they can lay out the process, and get a rough timeframe on the dates for him would be good.

Mr. Ballantine said that is where he was going with it as well and they need to get the process.

Mr. Powers said that concluded his report.

SELECTMEN'S REPORT

Mr. Howell said that he is going to defer to Mr. MacAskill for more about this, but they need to get on the agenda for next week for the Investigative Committee, which was established. He said that he wanted to publicly express his frustration with KP Law, for not cooperating with Mr. MacAskill. He said that they work for the Board, and the Board is asking a question under a duly organized Investigative Committee, under the Charter, then it's incumbent upon them to reply.

Mr. MacAskill said that he would expand on Mr. Howell's comments. He said that to date he has received nothing from KP Law, and he had asked Attorney Shirin Everett to provide anything and everything that she had weeks ago. He said that he had a conversation with John Giorgio, Attorney, KP Law, and had asked him what he was looking for. He believes that Mr. Giorgio had a conversation with Mr.

Powers about it. Mr. MacAskill said that he would ask for the Board to support tonight to re-emphasize the vote that was taken over a month ago, to have the Investigative Committee, which consists of himself and Mr. Howell. He also would ask Mr. Powers to relay that to Mr. Giorgio, and all of the other attorneys involved. Mr. MacAskill said that they need to bring this up soon, because all they are doing is giving the other side time to get everything in a row. He said that it is not happening fast enough, and they have given a fair amount of latitude because of Town Meeting and the hearings that they have been involved in, but that time is up. He said that the residents want answers and they have an obligation to figure out what's going on, what went on, and what went wrong. He asked the Board to affirm the decision of doing an investigation, and that they get the full and quick cooperation,

Mr. Howell said more specifically, there are other law firms out there and that needs to be conveyed to them. He said that this was something where Mr. MacAskill had called on behalf of the Board, and the Board employs them, so it's not up to them to decide who they want to listen to.

Mr. Ballantine asked Mr. Powers if they could invite KP Law to the next meeting and put it on the agenda, so that they can respond to this?

Mr. Powers said that he would emphasize that it would not be an invitation per se, it doesn't have to be.

Mr. Ballantine said that it doesn't have to be executive session, that they can have a discussion during open meeting.

Mr. MacAskill said that they are not at that point yet and he does not want to waste anyone's time. He said that he does not need to have the same conversation that they will have as a full Board. He said that that they just need cooperation and some speed. They pay KP Law a lot of money, they are their counsel, and they need to respond quickly. Mr. MacAskill said then once they get that response along with information from Mr. Powers, they can present to the Board and then invite people in, as they need to.

Mr. Ballantine said his only point is that if it is not forthcoming, then they should bring KP Law in.

Mr. MacAskill said he thinks that Mr. Powers has the message and he can make it loud and clear.

Mr. Powers confirmed that he understands.

Mr. MacAskill said that he just does not want to waste any more of the Board's time, until they have something concrete to discuss.

Mr. McManus said that when Mr. MacAskill brought this up, he would have loved to have volunteered, but he feared it was going to take longer than his term in office, which has happened. He said that it is an incredibly important issue to be resolved, and that the committee that they appointed to do their investigation and be able to bring that report back to the full Board of Selectmen, so an action can be taken.

Mr. MacAskill said that he had one more thing. He said that Mr. Powers mentioned how many days until the next Town Meeting, and he had mentioned about going back to evenings. He said that one request that he would make for next year, is to have the conversation, as requested by several taxpayers and voters, is to consider a Saturday Town Meeting. He said a one day Town Meeting, during the daytime, to try and draw more people to come. He said that a fair number of seniors do not like to be out that late at night, and he thinks that they should at least explore a one-day weekend Town Meeting.

ADJOURNMENT

Mr. MacAskill moved that they adjourn at 7:50 pm. Seconded by Mr. Howell.

Roll Call Vote: Mr. Howell - Aye, Mr. McManus - Aye, Mr. MacAskill - Aye, Mr. Ballantine - Aye. Motion carried by unanimous vote.

Respectfully submitted,

Lisa Schwab
Board Secretary