



APPROVED

RELEASED

MINUTES
SELECTMEN'S MEETING

REMOTE PARTICIPATION/GRIFFIN MEETING ROOM

Monday, July 20, 2020
6:30 P.M.

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

ALSO PARTICIPATING: Interim Town Administrator Joseph Powers and Health Director Meggan Eldredge and Lieutenant Scott Tyldesly.

CALL TO ORDER

Lieutenant Scott Tyldesly introduced the remote meeting, and explained that if anyone wished to speak they need to send an email, specifying the certain agenda item, to comment@town.harwich.ma.us. He said that they currently have a couple in line for the public hearings.

Mr. Ballantine opened the meeting at 6:30 pm, and called to order the Board of Selectmen. He explained he first called the meeting to order at 6:00 pm and went into Executive Session, where they discussed two items. The first was regarding the collective bargaining for Harwich Employees Association (HEA) and the Highways and Maintenance Employees Association (HEMA), which will be carried forward for a couple more meetings. The second item was to discuss the strategy sessions for contract negotiations for nonunion personnel, namely the Finance Director, the Fire Chief-Designate and the Police Chief.

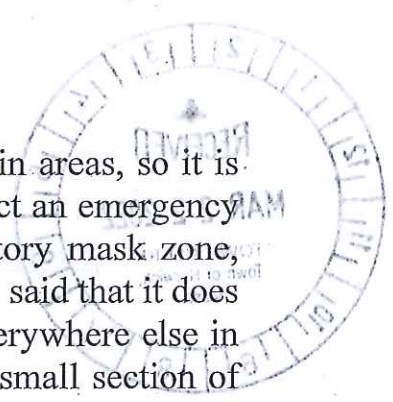
WEEKLY BRIEFING

A. COVID-19 Updates

Ms. Meggan Eldredge, Health Director, said that she had a few updates for them. She said first, she wanted to let everyone know that the Board of Health will be having a virtual meeting tomorrow night at 6:30 pm. She said that they will be discussing an emergency order to mandate the use of masks, or face coverings, on Route 28 in Harwich Port, from Bank Street to Lower County. She said that they have had many complaints, mostly in that area, of the public not wearing facial coverings when they should be, especially when

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walking past people. She said that the sidewalk is narrow in areas, so it is hard to social distance all the time. They are looking to enact an emergency order tomorrow night, which would put in place a mandatory mask zone, between Lower County Road and Bank Street. Ms. Eldredge said that it does not mean that masks, or facial coverings, aren't required everywhere else in town, when you can't social distance. She said that in this small section of town, which tends to be the busiest with walking and pedestrian traffic, they are hoping this mandate will help slow the spread. She said that they had five new cases, just since Friday. It has been two weeks since the fourth of July, and of course people got together and were not exactly social distancing over the holiday weekend. This has resulted in an uptick in the number of positive confirmed cases of COVID, not only in Harwich, but across the Cape.



Ms. Eldredge said that they have the five new cases since Friday, and of the now 136 cases total, they have seven that are currently active and in isolation. She said that this has also impacted several businesses in town, and not just in Harwich. She said that neighboring towns have had some businesses close for 24 hours, after some employees have tested positive. She said that any business that has been impacted, has immediately contacted the Board of Health, and gone through the proper steps to stay safe, as well as get their employees tested. She said that everybody has been doing the right thing and if the public needed to know about something, they would tell the public the details of the place and time, which have not always been restaurants.

Ms. Eldredge repeated that they need to continue to assume that everyone is positive and maintain social distance and keep masks on. She said that it is safe to go to restaurants and it is not the patrons that are affected as much as the co-workers being impacted by positive co-workers. She said a patron sitting at a table and socially distancing would not be considered a close contact and restaurants seem to be following the social distance and mask rules, as far as they can tell. She said that it is a good reminder that social distancing works, and if people are in close proximity and not outside, the virus can infect other people easily. Also, it is important to answer the phone if someone from the Visiting Nurse Association, or a phone number that comes up as Mass COVID Team is calling, because that means a person is close contact of someone who has tested positive. If someone is a close contact, that means that they need to quarantine, and also make sure that they don't have symptoms, and get tested if needed.

Lastly, their COVID Compliance Inspector from the county began a week ago, and has visited over a dozen businesses in Harwich. She said that they have been complaint driven, so he has not been randomly going places yet, but she is hoping that will happen eventually. So far, he has been met with little resistance and owners and operators have been respectful and responsive to his requests. They continue to get daily complaints about mask wearing and it's something that everybody needs to be mindful of, when they are in and around businesses. She said if it's a business that's not complying, that is when they can get involved and look to the business to step up their safety standards

Mr. Ballantine asked Ms. Eldredge how the training manual has been received?

Ms. Eldredge said that she has received over 150 signed forms from employees, and will be reviewing who is missing soon. She said that she has heard that it is easy to understand, easy to watch and listen to. She has not received any complaints and hopes that people can get a bit of information from it.

Mr. Ballantine said that they applaud of her teams efforts.

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

Ms. Cyndi Williams, Executive Director of the Chamber of Commerce, said that she that their businesses are forging ahead and they are doing all that they can. She said that she wanted to thank Ms. Eldredge, Mr. Powers and the Town for the way the reopening happened and the support to their businesses. She said that they are a very strong community and family, and they look forward to all of the businesses being successful.

Ms. Williams said that many of these businesses were closed for months and they have recently reopened, and have had to change how they do business. She said that masks and social distancing are safety standards and protocols out of respect for their staff, customers, and guests. She said that what she has seen on social media and heard regarding the way many of these businesses are being treated is sad, they are doing what is in the best interest of the community's safety. She asked everyone to please take a deep breath, and said that they all want to enjoy their favorite restaurants, shops and galleries, but please know that the owners and staff are showing the utmost

care for safety and this is new for everyone. She is so very proud of the businesses in town, and hopes that they can all follow the guidance and guidelines that they are all working with.

Mr. Ballantine said that they certainly all agree with that. He said that he hopes that everyone is respectful and helpful, because they are all in this together.

PUBLIC COMMENTS/ANNOUNCEMENTS

Mr. Ballantine said that they have a CPC public hearing on August 20th, at 6:00 pm, and will be for FY22. He said that for anyone that is interested in receiving CPC funds, they will be able to go to the website for log in information to join the meeting, as they get closer.

Mr. Ballantine also wanted to say what a great ceremony they had on Saturday for the Change of Command, with the departure of Chief Clarke and the arrival of Chief LeBlanc. He said that he is always impressed by the number of people from our community and across the Massachusetts that show up for these. He said that they congratulate Chief Clarke for his 43 year career.

Mr. McManus said that they also had a very nice event on Friday, a final coffee hour for the Chief. He said it was a good turnout of employees, and people from around Town, and ended with a double line of firefighters saluting him, as he walked out of the building and mounted up on the old Harwich fire rig.

Mr. Howell said that there were also a significant number of people who stepped up from probation, promoted to Lieutenant, and promoting the Deputy Fire Chief. He said congratulations to the department itself, and it really is a testament to whoever has been the chief, that they have people ready to move up.

CONSENT AGENDA

- A. Vote to approve - Annual Auto Repair Renewal 2020 for All Out Performance, DBA Joseph Lang 266 Queen Anne Road, Harwich

Mr. MacAskill moved to approve the Annual Auto Repair Renewal 2020 for All Out Performance, DBA Joseph Lang 266 Queen Anne Road, Harwich. Seconded by Mr. Howell.

All in favor, motion carried by unanimous vote.

NEW BUSINESS

A. Discussion of draft questions for Town Administrator applicants

Mr. Ballantine said that he had sent some questions that he had put together and he had received some emails from the other Board members and wanted to know how they wanted to proceed. He said that he wanted to keep the questions to around five, or ten at the most.

Mr. Ford said that he was pretty happy with the format. However, he asked if they could blend it together in some way, in order to reflect the questions of the other members, and still keep the questions at a reasonable workable number.

Mr. Ballantine said that it would depend on how much authority they are comfortable giving him. He said that he could put a composite of what he and Mr. MacAskill had put together as a starting point.

Mr. MacAskill said that he was comfortable with that, and there was one thoughtful questions that someone had brought up that he wanted to add.

Mr. Ballantine said that if he is comfortable and they agree to a total number of 10 questions, if that is not too many. He said that he would add the new ones he got and they can put it on the agenda. He is hoping they can start the interviewing next week.

Mr. Ford asked to confirm that the game plan is for each of them to take a question, or questions, that they would ask in this session. Mr. Ballantine agreed.

Mr. Howell said that he was not sure about an arbitrary number, because he is not sure that all questions are equal. He said that some of these things could

be answered in two sentences and others are going to require a thoughtful three to five minute explanation.

Mr. Ballantine said that he is trying to avoid debating this forever, but he is hoping that they could give him some authority, and he will put together 10 questions, and they will divvy them out and invite the candidates in and get going next week with the interviews.

Mr. McManus said that he thinks it would be good if they could find a day besides Monday for the interviews and then have some time to review and do some reference checks before launching into making a decision.

Mr. Ballantine does not know why they can't do it on Monday night.

Mr. Howell said that this is important enough to have its own meeting, because it may be tough to combine it if they had a lot of stuff already on the agenda for Monday.

Mr. Ballantine said that he will work with Mr. Powers on the agenda.

Mr. MacAskill said that the last question on the list seems like it has been asked and answered in the interview process with the committee. He said that it seems a little redundant because they have a very lengthy answer from them on that one.

Mr. Ballantine said that is a good point. He said that he actually did that on purpose, because he thought they answered it once, so could answer it in front of the public.

Mr. MacAskill said that is fine, but if they have better questions he would say that could be put off.

Mr. McManus said that he would assume that they will be giving each candidate the time to sort of have their own introduction and he would be surprised if nobody mentioned that.

Mr. Ballantine said that he will work with Mr. Powers on the agenda. He said that he thinks that it is best to do it on Monday for the public to participate, and confirmed that this would be done in person.

PUBLIC HEARINGS/PRESENTATIONS

- A. Continuation - Vote to approve the modification/addition to the entertainment license for Phoenix Park Inc. DBA Cape Cod Irish Pub – 126 Route 28, West Harwich – Weekday Entertainment 3 – 8PM outside, 3 – 1AM inside and Sunday 3 – 8PM outside.

Mr. Powers said that they should have in front of them an updated document, which included comments that were offered by staff today, which the board should be aware of. He said that this is a continuation from last week, and based on the board's direction last week they were looking for additional narrative, site plans, and staff comments. He said that staff accomplished that and they will continue tonight with hearing from representatives from the Irish Pub, and residents that have weighed in on this.

Mr. Ballantine said that he has some questions on the packet, but they will start with hearing from the Irish Pub.

Ms. Lisa O'Neill, Cape Cod's Irish Pub, said that they are continuing to pursue having outdoor entertainment and looking for a license from 3:00 pm to 8:00 pm. She said she will refer back to what Ms. Eldredge said about the virus spreading indoors and they are taking that seriously. She said that they are trying to be super creative with their indoor business, but it is not happening, and they want to move it outside. She said that they are trying to make it pleasing to the eyes as people drive by and they are not going into the late hours. Ms. O'Neill said that she thinks that they have put together a nice plan that will suit everyone. She asked if anyone had any questions.

Mr. Ballantine said that he had a question on the site plan and asked if she had spoken with Ms. Amy Usowski, Conservation Administrator, about their regulations for the wetlands and where their fence is, and if that would reduce the number of tables?

Ms. O'Neill said that they had approval to serve people outside, and that was approved several weeks ago. She said that this new application is for the modification to the entertainment license, and they were asked to give another site plan. She said that they are concerned about the safety of their customers and their staff, so they did put up fencing which is just vertical slats that you

just roll up. She said that it's a little cumbersome, but it's you know it's doable and it is not like they will be doing this on a daily basis. She said that they are just looking to do this one or two times a week, and the tent will also be taken down each day.

Mr. Ballantine asked if Ms. Usowski had determined that it is not a structure?

Ms. O'Neill said that she had spoken with Ms. Usowski and that she emailed her this morning that they had figured out a way to make it so that it is not a permanent structure. She said it was never going to be permanent, but they were trying to make it aesthetically pleasing to customers driving by. She said that there is a 100 person limit when they have entertainment, which includes the staff and the band. She explained that regardless of the number of tables, they will not go over that count of 100 people, including staff and band.

Mr. Ford asked what she meant by one or two days per week, and what they were looking to do?

Ms. O'Neill said that they are not looking to blow the neighborhood away for seven days a week, she promised. She said that they are just trying to make money and stay afloat. She understands that the neighbors have concerns, but they are reasonable and trying to be good neighbors.

Mr. Ford asked if they are feeling that they will not do this every day of the week?

Ms. O'Neill said that they will not do this every day, they are just looking for the opportunity to do it perhaps Thursday, Friday and Saturday. However, at this point they don't have plans to do it on all of those days, they are just trying to pay their bills and want the opportunity to open if needed.

Mr. MacAskill asked if they excluded a couple of days a week, for instance if they took Sundays and Mondays out, would that hurt them?

Ms. O'Neill said that it would be ok, but asked if they could leave Sunday. She said she is not sure about Sunday, but it would be nice to have that as an option. She said that they could take away Monday, Tuesday, and Wednesday.

Mr. MacAskill said that is just food for thought for the board, as they deliberate.

Mr. Powers recognized another voice being heard with Ms. O'Neill, and asked if that person could identify themselves and be on camera.

Ms. O'Neill said that it was her husband, and he apologized and said that his name was Dan O'Neill.

Mr. McManus asked about the tent, and what size it is.

Mr. O'Neill said that the tent is 12 x 12, and that it is really a little pop-up. He said that it is not a tent, it is a pop up that you can put up and take down in five minutes.

Mr. McManus asked if it will have sides and a back?

Mr. O'Neill said that right now they don't have any sides on the one they own at the moment, but it would not be a bad idea to help with the sound. He said that they can see on the site plan that the band will be faced out towards Route 28, not towards the river where people live behind.

Mr. Howell said that he would like to know the concerns of the people over the concerns of the owners.

Mr. Ballantine said that if there were no other comments from the Board, he would turn it over to comments from the neighbors.

Mr. Tom Dudeck said that he was joined by his wife, Bobby, and they were thankful to have the opportunity to share their perspective. He said that they live in proximity to the Irish Pub, and their observations basically are that in town, and a variety of communities in Massachusetts, Cape Cod, and elsewhere, businesses have struggled with the repercussions from COVID. He said that restaurants have basically had to look at ways to expand outside with a few tables on a sidewalk or grassy area etc. However, if you look at this in context, for what has historically been a very popular bar on Route 28, and putting up 40 tables with 100 people serving liquor, with amplified music, at the gateway of the herring river noise will travel. He said that he wants the businesses to succeed in Town, but he can't think of a worse place. He said that he can hear people talking in kayaks, which is the way it is, but here what they are talking about is basically having amplified music with a hundred people drinking outside, hopefully enjoying themselves, but it's going to be

very disruptive both to the residents of the area and to anyone who likes the peace and tranquility of the river. He said that he would put this in the context of the disruption that is going to cause in the community of the river. Mr. Dudeck said his final observation is that hopefully this is not setting a precedent, if they decide to grant any of the lengthy lists of things that are going on at the riverfront. He said he understands that businesses are impacted by COVID, but the last thing they need is an outdoor entertainment venue in an environmentally sensitive area. He said he is surprised that the Conservation Agent and Commission are not looking for someone to put in a letter of intent, so they can actually analyze what's going on there. He said that it is an expansion of a business into an environmentally sensitive area, and it should be looked at as such. Mr. Dudeck said that he understands that they have tough decisions to make, and he wishes nothing but the best for the Irish Pub. He said that if they look at this and balance the disruption of their community at the river, it far outweighs what is being asked for, and hopefully there is no precedent being set because they don't want this in the future.

Mr. Powers said that they can do this because of the emergency decree based on COVID 19, but that will expire when they go to phase four.

Mr. Dudeck said that he understands that, but there is a nose under the tent kind of thing. He said that he was in business for a long time, and once there's a nose under the tent and there is a history of something being done, it's frequently allowed on a going forward basis. He said that people look at it as natural, and to him, this is anything but natural on the river. Mr. Dudeck said he understands the emergency declaration, and the hoops one has to jump through to expand their entertainment and liquor license in Massachusetts, but he would never want to see this as a precedent because this frankly wrong for the river, and wrong for the residents who live on it.

Mr. Ballantine said that they don't know the future, but thanked him for his comments.

Mr. Bob Cohn read an email that he sent to the Board, as follows: "I sent the Board an email last week and had hoped it would be included in the packet but I don't believe it was, so I'd like to go over the main points now and some additional ones as well. As I mentioned, I'm on the Noise Committee, but these are my views only, not the committee's.

First off, having listened to Lisa of the Irish Pub last week, I have to say I feel bad for her and the Irish Pub's situation. At the same time, though, I also feel bad for the West Harwich neighbors who have had to put up with a great deal of unwelcome noise in the past.

I glanced at the Irish Pub's plan, and it seems like they're willing to make an effort to be good neighbors. Putting a band under a tent would be a first in town, and their willingness to monitor the noise shows their understanding and hopefully their good intentions.

However, a three-piece band sounds like it's asking for trouble. I also note that some tables are about 100 feet away from the band, which might mean that noise levels are apt to be louder than for a more intimate arrangement. Also if the Irish Pub eventually wants to go to 10 pm, then of course Harwich Inn and Tavern is going to want that too, which might create a new set of problems.

However, there's a fundamental problem with all of Harwich's outdoor entertainment licenses, which makes any new license difficult to support.

In the late fall of 2016 there was public hearing titled, in part, "Adoption of Noise By-Law Standard for Entertainment Licenses." A major outcome was a new outdoor entertainment license which uses the Noise Bylaw's 150-foot plainly audible standard.

Unfortunately, however, while "Plainly Audible" is a defined term in the bylaw, due to an apparent clerical error, that definition wasn't carried into the entertainment license, which is contained in the separate Liquor License Regulations. This left the term undefined.

Partly as a result of this, "Plainly Audible" came to be loosely, variably, and unpredictably interpreted for outdoor entertainment, and to this day no one knows or agrees on its meaning. As can be imagined, this creates a number of problems:

1. Venues and performers don't know how loud they're allowed to be and because of this, can't self-regulate. The Irish Pub can monitor noise levels all they want, but without an agreed-upon plainly audible definition, they won't know when they're exceeding the

limit. Without the definition, it's like saying, "Don't drive too fast," instead of saying the speed limit's 55 on the highway and 20 in school zones.

2. Neighbors similarly don't know the threshold for reporting violations.
3. Police officers have no clear, community-agreed-upon guidelines to know when to cite venues, putting them in a bind. Instead, subjective judgment prevails, resulting in inconsistent and unpredictable enforcement, which can encourage further noncompliance.
4. Successful and fair prosecution by the Town Administrator at entertainment license violation hearings is made difficult.
5. Interactions between the various parties becomes problematic as no one can agree on the basics.
6. In the absence of well-established limits, noise levels have grown. When one venue is allowed or "gets away" with louder levels, other venues are encouraged to do the same. Venues without outdoor entertainment, such as the Irish Pub, seek their own outdoor licenses in order to compete, and the outdoor entertainment scene grows. As outdoor entertainment grows, what seems normal and reasonable changes over time, and the town as a whole becomes used to the new levels. This can play into officers' judgment.
7. Ultimately, the 150-foot plainly audible standard that was originally agreed upon wasn't properly transcribed, allowing the meaning of what is plainly audible to erode, and causing the safeguards residents were initially promised to be lost.

I don't know if the Town has legal liabilities here, but (a) it created the problem when it dropped the plainly audible definition; (b) I believe it continues to use the incorrect standard for enforcement; (c) it continues to grant licenses with the incorrect standard; and (d) it hasn't corrected the problem promptly. I'm not interested in any legal action and don't mean this as a threat in the least. Still, the Town appears to be in the wrong here and might be liable under some combination of mis-, mal-, and/or nonfeasance.

Whether or not the Town has legal liabilities, however, I do believe it has a moral liability and a moral obligation to fix this. It has done a real disservice to neighboring residents for what is now going on a four-year period. The incorrectly written license has become increasingly accepted by businesses,

police officers, and outside visitors to our neighborhoods, and should never have been.

The fact is noise violations aren't victimless. Similarly, the failure to properly identify a noise incident as a violation is also not victimless.

Indeed, a number of people have lost significant enjoyment of their homes due to the noise. Some neighbors near Perks and The Port, have had their homes become unlivable for four or more hours almost every evening—the very hours in which most people want to get together with their families and enjoy their homes. Some of these neighbors have stopped or curtailed using their homes or portions of their homes. In effect, for these people, this has been a slow motion and improper taking by eminent domain.

To a lesser extent, the same holds true for a good many other residents in other areas of Harwich Port, as well as for residents in West Harwich in past years. All these people have found themselves at their wits' ends with the noise. Some feel that the noise is driving them out of Town and have seriously discussed leaving. And these are all people, who like everyone else in Harwich, love this town.

Given all this, residents have a right to be ticked with the Town for having put them through so much trouble. And West Harwich residents have a right to be wary of and unwelcoming to a new license holder.

The Town has let residents down repeatedly, and has created an outsized outdoor entertainment scene cheek by jowl with residences and far out of keeping with what is widely considered normal or reasonable in comparable communities in this and neighboring states. The Town has done this with little forethought, apparently accidentally, and with little concern and inadequate safeguards for residents.

To a very significant degree, much of the problem that residents have experienced can be attributed to the missing plainly audible definition and to

the subsequent relaxed and improper application of the 150-foot plainly audible standard.

Harwich residents shouldn't have to go through all this. They should be able to be confident that the Town has their backs and looks out for their interests.

- Residents shouldn't have to repeatedly plead their case before this Board, but should trust the Board to look out for them.
- They shouldn't have to plead with officers about whether noise is plainly audible or not, when in fact, if properly evaluated, it would be.
- Residents shouldn't have to work so hard writing letters, attending meetings, and putting together petitions to have their voices heard.
- And residents shouldn't have to jump through hoops making their case with the Noise Committee, when it's obvious the Town has screwed up.

In spite of all the foregoing, I'm not suggesting that outdoor entertainment be eliminated, rather, that we try to strike a better balance between businesses' and neighbors' interests. And it would seem that, for starters, the Town might try simply using the outdoor entertainment license as originally intended four years ago—specifically, with the plainly audible definition as given in the Noise Bylaw. This might be an opportune time to try it out.

Let me wrap up by saying that I understand that these are difficult times, and that I really feel for Irish Pub. As a community, we should all come together to help those in need. So I don't want to say that you should deny the license. But I also don't want to say that you should grant it. It's not my right to invite people to a party at someone else's house, particularly on a nightly basis, and I'm not happy with the job the Town has done inviting several loud parties to my back yard. So I don't feel it's my or any other outsider's place to invite a party of any type into West Harwich. Let West Harwich residents decide. Nevertheless, I am asking that if you do grant this or any other outdoor entertainment license, that you include the Noise Bylaw's plainly audible definition in the license. I also ask that to the extent that licenses are intended as temporary for the duration of the pandemic, that you require a new public hearing if the business requests a similar license next year.

Finally, let me apologize for criticizing the Town, I mean the criticism to be constructive. In fact I appreciate very much all that the Board, the police, and the rest of the Town's employees regularly do, particularly now during the pandemic. Thank you very much."

Mr. Ballantine thanked Mr. Cohn, and said that he seemed to realize some of their dilemmas and how to reach a compromise that will satisfy everyone. Mr. Ballantine asked if there was anyone else from the public that wished to speak, or they would open it up for Board comments.

Mr. Tyldesly said that there was no one else.

Mr. MacAskill asked if they should close the public hearing?

Ms. O'Neill asked if she could speak one more time to address what has just been said? She said that it is a pandemic, and she understands the frustration of the neighbors, and they are super frustrated as well. She said that the reality is that they will go out of business. She is a taxpayer and owns a home down the street and said that they work hard to keep the property clean and the area clean. They have tried to do their part and she is not sure what will happen if they go out of business. Ms. O'Neill said that she lives down the street and drives by those red x's and they are bothersome, and they are no longer looking for 10:00 pm and are just looking for 8:00 pm. She said that they are thinking about the neighbors and they do not need a three piece band. They are just looking for a three piece band for August 1st, for their annual road race, which is her husband and his business partner, and they play Irish music every road race. Ms. O'Neill explained that they belong to the Massachusetts Restaurant Association and they keep telling them to keep fighting the fight because it is a global pandemic, and they are impacted to the point that they will go out of business.

Mr. Ballantine asked for Ms. O'Neill's reaction about possibly eliminating Monday, Tuesday, and Wednesday, so it is not the full week, and also about hanging side curtains to try and contain the noise? Also, the option of having multiple speakers around, rather than a couple of big speakers, to do whatever they can to contain the noise?

Ms. O'Neill said that those are easy.

Mr. MacAskill said that he was going to move that they close the public hearing. Seconded by Mr. Ford. All in favor, motion carried by unanimous vote.

Mr. MacAskill thanked Ms. O'Neill for her explanation and said that what he is hearing is that she is willing to go the extra mile to try and make the neighbors happy. He said that it is important to put it out there, that they are trying to save their business. Mr. MacAskill moved that they approve the outdoor entertainment license for Phoenix Park Inc. DBA Cape Cod Irish Pub – 126 Route 28, West Harwich, for outside entertainment from 3:00 pm to 8:00 pm, Wednesday through Saturday. He said that he is approaching his motion with the compromise that they gave to the former Claddagh, and they had taken Sundays out, because of the strong argument made by the residents in West Harwich. He said that Wednesday, Thursday, Friday and Saturday gives them a lot of latitude to have as many bands as they can on those days.

Mr. Ford said he would second, but he had a question. He asked about the side curtains and if they had said no three piece band?

Mr. MacAskill said that he does not think that they need to condition that, because in the end they need to comply with the noise bylaw. He said that in the end, if the police are called due to the music, it will end up coming back before them. He said that everything that they have heard from Ms. O'Neill, they will control this and monitor the sound.

Ms. O'Neill confirmed their desire to allow for the three piece band and that it is her husband's Irish band and is enjoyable and all string instruments.

Mr. Ford said that as Mr. MacAskill had pointed out, everyone is restricted by the noise level. He said that he only brought this up because it was brought up earlier and was trying to establish some give back that that the residents can feel that they are at least responding to them.

Mr. McManus said that the other point that was brought up about the nose under the tent as a precedent. He said that this is a reaction to COVID emergency regulations and when those are rescinded this will all go away and they would need to amend their liquor license and go through a full hearing and a number of additional hurdles.

Mr. Howell said that he was ready to pitch a final sentence to the motion, which would be that this authority would expire at such a time that the Governor's relief would end.

Mr. Ballantine said that he did not think that was necessary.

Mr. MacAskill said that he knows where Mr. Howell is going with that and he would be fine with it, but they have not done it with any other license. He said that it is just the Governor's order, so when that is over, the ABCC rule will come back.

Mr. Ford agreed with Mr. MacAskill and that they are all subject to the same thing.

Mr. Howell said he had a question for Ms. O'Neill and explained that he owned a seasonal business for 10 years and he knows that days are worth different things in different months. He asked what a Wednesday is worth versus a Sunday, once they get past Labor Day?

Ms. O'Neill said that it was not worth anything.

Mr. Howell said that he would not be inclined to vote for this motion because of the way it was constructed. He said that if it was for Thursday, Friday, Saturday and also Sunday, to provide some relief, because after Labor Day people generally stay through Sunday night and Wednesday would not mean anything.

Ms. O'Neill said that they would like Thursday, Friday, Saturday, and Sunday, but she was not sure if they would open on a Sunday. She said that they are looking to add a certain amount of money and if they have to open on a Sunday, they may have to and would like that opportunity. However, they want to be a good neighbor, and would like it if their neighbors came over and talked to them.

Mr. Ballantine asked if she was ok with Wednesday through Saturday then?

Ms. O'Neill said yes, and that they do typically close after Labor Day weekend, but do the Sunday of that weekend.

Mr. MacAskill said that his motion was for only 28 days if they approve four days a week. He said that as far as Sundays go, he would go back to the conversations which they had about other restaurants with live entertainment in West Harwich and the neighbor's biggest concern was Sunday's. He said to Mr. Howell's point, he has owned small businesses for a long time as well,

and it had not seemed that Sundays was a problem from Ms. O'Neill, but would be a big concession for the neighbors.

Mr. McManus said that his inclination is to vote for this based on the history of the Irish Pub. He said that many years ago, before they put in the air conditioning system, there were many noise complaints, but they invested in the building and said that they have not had any noise complaints since then. He said unlike the issues with the Claddagh, the Irish Pub has kept their promises to be a good neighbor.

Mr. Powers said that there have been several questions that came up through the packet and staff materials, that he would like to have on record. He said that the application makes reference to outdoor on the deck, and the site plan does not show a deck. He said that it shows an area that says band, and asked if that is what is meant by the deck?

Ms. O'Neill said that they had made some changes because they cannot do the deck, so they moved it down onto the ground. She said that it seems that the band playing at the same level as the customers makes more sense, instead of the music going above the customer's heads. She said that they are super flexible with that, and their fencing will be rolled in and out to keep it safe.

Mr. Powers said he had one more question based on the site plan, and asked about the number of tables that have been identified and how many seats they expected to have at each table?

Ms. O'Neill said that when they open for example on a Saturday, they will open at 3:00 pm, they will want to have plenty of tables, so they don't have to say no to people, but they have to stop at 100 people, including the staff and the band.

Mr. Ballantine asked if they will set it up for a maximum at four per table, but that they would only seat to a maximum of 100 people?

Ms. O'Neill said that is correct.

Mr. McManus asked to confirm the rules, and said if they are limited at a maximum of six people per table, but are limited to a number of 100 people, including the staff and the band, for a performance, how they arrange those

people is up to them as long as they don't exceed the 100 people during a performance?

Mr. MacAskill said that was exactly his point, and it is unlikely that they're going to get 40 tables of six. He said that it will be up to Ms. O'Neill to control this, and if they go outside of that number it will be up to their new COVID compliance person to visit.

Mr. Powers said that the Health Director is available and he would just ask that the motion is contingent upon the various staff recommendations that were in the packet. He said that would include a permit for the tent, and that the same rules would apply as with a restaurant, meaning only seated table service, no bar service, and the need to have the one-way drive open at all times as per the fire department and the police department looking to have the entertainment rules and the liquor license apply in this case.

Mr. MacAskill confirmed that was all part of his motion, except the need for the tent permit. He said that no other businesses were made to get a permit for a 12 x12 pop-up, that's going to be picked up and taken down. He said that is a bit over the top for this business to have to get a permit, and he would reject that, but the rest was part of his motion.

Ms. Eldredge confirmed that everything that was stated was correct.

Mr. MacAskill repeated his motion and said that he moved that they approve the outdoor entertainment license for Phoenix Park Inc. DBA Cape Cod Irish Pub – 126 Route 28, West Harwich – Weekday Entertainment 3:00 pm to 8:00 pm outside, Wednesday through Saturday, and just to mention to be consistent with the Department Head notes, minus the permit fee for the tent.

Seconded by Mr. Ford.

Motion carried at a vote of 4-1-0, with Mr. Howell against.

Mr. Powers said that the public hearing had three different items, and the Board has dispatched two of them, but there was also a request for 3:00 pm to 1:00 am, for indoor entertainment.

Mr. MacAskill said that they did already vote 3:00 pm to 1:00 am, the last time they voted the entertainment license, and he does not think that they need to have another motion.

Mr. Howell said that they have an active application for Sunday, which was separate from the other days, which needs to be denied or approved.

Mr. MacAskill moved that they deny the Sunday 3:00 pm to 8:00 pm, outdoor entertainment license for Phoenix Park Inc. DBA Cape Cod Irish Pub – 126 Route 28, West Harwich. Seconded by Mr. McManus.

Motion carried at a vote of 4-1-0, with Mr. Howell against.

CONTRACTS

- A. Vote to authorize the Chair to sign Services Agreement between the Town of Harwich and the University of Massachusetts Dartmouth for Technical Support of the Town of Harwich Bank Street Bogs Pre-Construction Baseline Monitoring Plan, \$75,370.00.

Mr. Powers said that he will ask Mr. Griffin Ryder, Town Engineer, to present on this. He said that what Mr. Ryder outlined in the memorandum and what they are asking for is really an intergovernmental agreement between the Town of Harwich and the University of Massachusetts at Dartmouth. He said that this is related to the Colebrook project, specifically the CWMP Phase 2 for Colebrook. He said that he supports the recommendation.

Mr. Griffin Ryder, Town Engineer, said that this is a follow-up to the presentation from a few weeks back, where they had Brian Howes, some of the other folks from UMass Dartmouth, and other agencies who are working on this project. He said that they are working through the design phase now, and some pre-construction monitoring. He said that this will essentially give them a baseline for nutrients, most importantly nitrogen because that's what CWMP is aimed at removing. So, this this program will allow them to identify the influent nitrogen at a number of locations, along the corridor of this project, and then that information will be used in the future to compare to the post-construction monitoring. Mr. Ryder said that this will be coupled together in a final report after three years of post-construction monitoring, which will be submitted to DEP and EPA for approval. He said that the hope

is that they can capture more nitrogen than the CWMP even anticipated, which they will be able to take credit for it, because of this monitoring program. This program is the pre-construction, which he is keeping separate from the post-construction, just because of time frames for contracts. He said that the post-construction will be a three-year contract of which they'll be monitoring each of the three years. Mr. Ryder said that the pre-construction monitoring is about \$75,370 and then the post construction is basically that times three, plus a little bit for the final report. He said that he wanted to make sure that he has the budget moving forward and has made it clear to the team that the Town has appropriated \$2 million total for this project, and the Town will spend no more than \$2 million for this project. He said that the team has acknowledged that, and they will be keeping a log of this to date. He said that there are only two contracts which have been signed for a total of \$154,800, so they have \$1.8 million dollars left and that is where the \$75,000 will be deducted from.

Mr. MacAskill moved that they approve the Services Agreement between the Town of Harwich and the University of Massachusetts Dartmouth for Technical Support of the Town of Harwich Bank Street Bogs Pre-Construction Baseline Monitoring Plan, \$75,370.00, and authorize the Chair to sign. Seconded by Mr. Howell.

All in favor, motion carried by unanimous vote.

OLD BUSINESS

A. Discussion and possible vote of alternate sites and/or dates for the 2020 Annual Meeting due to potential COVID19 impacts

Mr. Powers said that items A and B are tied together, and he will make reference to the materials in the packet. He said that first, he wanted to apologize because they were missing a cover memo from him explaining what he is asking them to engage in and he hopes that it has not caused any confusion in the community as far as the warrant document that was presented. He said that has they have discussed and with the creation of the Joint Finance Subcommittee, they will now be turning their attention to their Annual Town Meeting, which will occur in September of 2020. He said that this is also the time that he tells them that they had made assumptions and made recommendations on actions to take, and tonight he wanted to tell them

that he has checked his assumptions and need to make further recommendations.

Mr. Powers said, specifically, the hope was that on Monday, September 28th at about 7:00 pm they would all be able to convene at the community center and have an Annual Town Meeting that although a different time of year, would feel like every other Annual Town Meeting. However, he said that they are not out of the pandemic yet and it is entirely unlikely that they would be able to convene a town meeting under those assumptions at that time. Therefore, he said that the intent of the first agenda item is to have a discussion to offer some insights and recommendations. He said that decisions do not have to be made this evening, but it will have an impact on what they do going forward, namely the need to look at an outdoor Annual Town Meeting in the Fall. Mr. Powers said that he had exchanged text messages with the Superintendent of the Monomoy School District about the availability and the use of the Monomoy high school football/soccer field, he also spoke with the Town Clerk, but has not had an opportunity to speak with the moderator on his availability. He said that he knows that the moderator and their council have dealt with town meetings of this sort, so this is really him pumping the breaks to have a different discussion on having an outdoor meeting. He is prepared to make a recommendation, if the moderator, the clerk, and others are available. They could conceive of a Town Meeting perhaps at 10:00 am, Saturday, September 26th on the field. He said this could also help the Board make later decisions on the warrant itself. He said that he had asked the Town Clerk if there were any restrictions on a rain date, which there were not, so he would suggest that the rain date would be at 1:00 pm on Sunday the 27th. He said that they have in their packet the latest guidance for town meetings to address COVID 19, which was published on June 11th, 2020 and he has some questions which he had just reached out to council on, and has not heard back yet. He said that on the first page, there are standards around attendance, and the potential for town meetings to be remote participation, and reduction of quorum. He said that he does not know if either of those can apply right now, and he is not suggesting those, he is suggesting an outdoor meeting first. He said that he wanted the Board and the public to be aware of the guidance document and also for everyone to be aware of the updated warrant timeline, for a late September Town Meeting.

Mr. Ford said that he had hoped that they would have considered this a while ago, but that he thinks they could use examples of what the other towns have done and maybe learn from what successes they had, and what difficulties

they had. He said that one of the other areas that was suggested when they were discussing this, some time ago, was the potential to use the field that's in the circle in front of the school, which is large and may be more accessible to power and other types of things. He said that is something they might want to consider beyond the football field, but it's not surprising that they are arriving at the same conclusion that a number of towns already have.

Mr. MacAskill said that that he thinks that the football field would be better, because of the AstroTurf for the chairs, which would be better than uneven ground, and also the option of lighting. He said that he thinks that they should make a decision tonight, based on the moderator's availability.

Mr. McManus said that doing an outdoor meeting makes sense, and they should check on the availability, which should be available since they should not be having any games this Fall. He also added that if power was a concern, that there is a 600 amp three-phase power supply on the front lawn that the Cranberry Festival had put in many years ago.

Mr. Howell said that he would be inclined to say let's make a decision, but they have already voted on this several times and he would like to get to a consensus that they all think that outdoors is a good idea.

Mr. Ballantine said that he thinks that what Mr. Powers is asking for tonight, is to explore the options.

Mr. Howell said that is what he is saying and does not want to vote for a specific plan until they have it, but he thinks that they are all shooting for that weekend outside. He said he agrees with Mr. Ford that it was going to come to this anyway.

Mr. Ballantine said that if he is understanding correctly, Mr. Powers would like at least consensus by them, to explore the options.

Mr. Powers said that he had checked out the site today, but will explore the front lawn, and also behind the Community Center. He said that his thinking is that the snack shack area by the football field could be used for check-in, and would allow for a nice flow of people from the parking lot. He said that it also has restroom facilities, bleachers and the AstroTurf and other places for chairs. He said that at this point, he would not recommend a reduction in quorum, therefore the next discussion will be on the warrant, which gives

them a better opportunity to have a more robust town meeting as far as articles for as much as the financial situation will allow.

Mr. Howell said to just to bolster what Mr. Powers said, based on their own collective experience, both here and elsewhere, GoToMeeting or Zoom would be nightmarish to have hundreds and hundreds of people queuing up to make comments on an article. He said that he could not imagine anything more cumbersome.

Mr. Ballantine said that was agreed and said that they would leave it in Mr. Powers hands to explore their possibilities.

Mr. Powers thanked them for the consensus and the direction.

B. Review of Draft Warrant for 2020 Annual Town Meeting scheduled for September, 28, 2020

Mr. Powers said that this is something that would have occurred regardless of where they are having the town meeting. He said what is included in the packet is really the first iteration, and he is asking the Board for direction or consensus on how to proceed. He said that being mindful that they can now hopefully plan on an outdoor town meeting, that is not going to be limiting to the number of people who could arrive, or the amount of time, because they are outdoors and distanced. He said really this is to get back into the discussion of what kind of warrant they want to have at Town Meeting. He said that he also included the timeline, which was confirmed by council, that because the Board has not closed the warrant process, the Board has a wide latitude as to what they can do with the actual warrant itself.

Mr. Powers said that the deadlines are shown on the additional sheet, and said that the Chairman of the Finance Committee is on the meeting and that is where the bulk of the work is. He said that the Board will have to go through the warrant, and make their recommendations, but then it will be time to hand it over to the Finance Committee to do any number of public hearings, both to the capital plan proposed as well as to the warrant itself with recommendations. He said that they have time, but not a lot of time, so he asks that they begin this process in earnest starting tonight.

Mr. Ballantine said that although Mr. Powers said he would like it more robust, he would like to keep it somewhat limited, because it's not going to be as comfortable on the football field as they are used to.

Mr. Powers said that when he said more robust, he knows that they had a conversation about the petitioned articles. He said that they would have a little backing to walk away from the petitioned articles that are in, but there is also no obligation to extend and add additional petitioned articles. Therefore, a robust warrant that he is talking about would be to include the previously submitted and vetted petitioned articles, and whatever else the Board feels appropriate to bring forward.

Mr. Ballantine said that he was coming from the reverse of that, because of the budget constraints. He said that they may want to postpone the capital budget items until the Spring, and some items that are not urgent, or non-financial.

Mr. Ford said that the with the petition articles, it's not really even a debate. He said that they are asking them to do it as a favor, so he thinks that they should accept that it will be added back in.

Mr. Ballantine said that he had a question on the warrant article. He said that on page nine of the warrant article, since they are in the 112th budget, and since things in September are still going to be in uncertain times, do they hold on a budget if something changes, just operationally, what does it all mean?

Mr. Powers said that he could not speak to that or what the 112th means. However, the effect of Town Meeting would be to finalize an operating budget, and that operating budget would go into effect after Town Meeting. He said that whatever they have done for July, August, September is in the books, and the operating budget is from that point forward. He said that if anything else happens that they need to revisit, they could do that at a Special Town Meeting.

Mr. McManus asked if the operating budget will include the money that they expended in the first three months?

Mr. Powers said that he expect so, and said that what they see on page eight, the language in the article will change because that was not inclusive of what

they have done so far with the 1/12th. So the normal language won't be there, it will factor in what they are doing.

Mr. Howell said that they had that discussion on the first joint meeting with the Finance Committee. He said that if for some reason, they go along on the 112th, and something happens during the course of this, they would have to get the whole amount reconciled with only nine months of the budget left.

Mr. Dana DeCosta, Finance Committee, said that he thought it was a good first stab at the budget and the warrant was good. He said that he would make one personal change, and that is to include the cemetery changes that they made, because it's a better law, than what they have on the books now. He said that he dropped his objections on that, but other than that this was a really good first draft. He said it will make 42 articles, maybe 45 articles, and that will be a really good Town Meeting. He said that one question they did discuss in the subcommittee, was the use of reserves, particularly the stabilization fund. He said that if they use any stabilization funds as part of their motion on the actual budget, then it becomes a two-thirds vote, instead of a majority vote. He said he would look at having a separate article, that they would fund some of the budget items with, just as a placeholder to have for now, if for some reason they don't get free cash certified between now and the 28th. He said that they have \$653,000 worth of free cash in the budget, and he would argue that it's better to pay just that amount alone in stabilization funds, and free up that free-cash for other items, whether they use those items as an adjustment like they have normally done or roll them into free cash the following year.

Mr. Ballantine said that he will leave that right now to the Finance Committee to come back with recommendations, and asked Mr. Powers what his recommendation is.

Mr. Powers said that there was an effort in mid-Spring to look at the reduced warrant if they were going to do it on June 22nd, and that was more strictly related to the financials. He said he had asked Ms. Elaine Banta to do that back then and he had done great work on it, so he would like to bring that version forward next week as a discussion point. He said that he believed that his directive was to focus on any article that did not have a financial implication to take out, and put to the side, to keep in the petitioned articles, and then anything that had a money or a dollar amount would be kept in for

discussion by the Board. So, they have that ready to go for next week, if that's what the board would like to do.

Mr. Howell said that one particular thing that he would like to be sure they put to rest is the revolving funds. He said that people are starting to notice it and they can take that out so that nobody thinks that they are doing an end around of some sort. He said unless there might be a closeout that he does not know about, he would assume that anyone listening wants to know if they are trying to bring it back, and again, they are not.

Mr. Ballantine said they are in agreement and will take Mr. Powers advice and bring it back next week.

- C. Discussion and possible vote to authorize the Interim Town Administrator to execute a Recognition & Acknowledgement document related to Monomoy Regional High School proposed photovoltaic array at 75 Oak Street, Harwich

Mr. Powers said that he can make this brief and said that if the project is to go forward, it has to be between the parties involved in the Town of Harwich, not the school district. He said that would be the Recognition and Acknowledgement document that Ms. Liz Argo had presented from the developer. He said that if the Board would direct him to work with council on the correction, they can get that done and either under his signature or back to the Board. He said that the effects for this memo is to have him work with council to get it done, so that it is corrected and they can go out for financing. He said that is why they did not want to wait until next week, but he will defer to whatever the Board would like to do.

Mr. McManus asked when it would come back?

Mr. Powers said that if they did the motion and the memo it would not come back to the Board, but if they took a different action, they would look to get it back on the 27th. He said that is with the understanding that CVEC and the other parties said that if it is not done by the end of July, it will not be done.

Mr. McManus moved that they authorize the Interim Town Administrator to execute on the Town's behalf, the Recognition and Acknowledgement Agreement, in substantially the same form as presented at this meeting, subject to further changes consistent therewith as determined by the Interim

Town Administrator, in consultation with legal counsel. Seconded by Mr. Howell.

Mr. Powers said that if this were to pass, he would present to the final product to Board, under the Town Administrator's report.

Motion carried at a vote of 4-1-0, with Mr. MacAskill opposed.

- D. Vote to approve the Assistant Town Administrator's Step Increase – from M7, Step 6 to Step 7 with corresponding increase salary from \$109,351 to \$112,086 retroactive to May 20, 2020 (one-year anniversary date)

Mr. Howell moved to approve the Assistant Town Administrator's Step Increase – from M7, Step 6 to Step 7 with corresponding increase salary from \$109,351 to \$112,086 retroactive to May 20, 2020, which is the one-year anniversary date. Seconded by Mr. Ford.

All in favor, motion carried by unanimous vote.

TOWN ADMINISTRATOR'S REPORT

A. Contracts signed by the Interim Town Administrator

Mr. Powers said that he was presenting contracts to the Board, which he signed, because they were \$25,000 or less. He said that there is one relative for the dump body truck, for the DPW. He said that funding was there, and it was for \$16,875.00. Next was for the GHD, which was presented earlier and ties to both Pleasant Bay Watershed Alliance and the Town to get an analysis of their flow commitments for both potential sewer projects. There were funds available under wastewater, and it's \$15,000. Last, is the TriTech Software Agreement, which is an updated program for the Police, and that dollar amount \$17,883.75.

Mr. Ballantine said he wanted to add a couple of sentences on the Wastewater monitoring. He said that the full commitments they have to Chatham for Pleasant Bay Watershed is based on the Massachusetts Environmental data from about 15 years ago. He said that now they have better water data, which may change their full commitments. This leads them into the same discussion

with DHY, and the water data they have indicates, at least preliminarily, that they may be overestimating what they need and what their commitment may be. Mr. Ballantine said this is money well spend and will hopefully save them money going forward.

Mr. Howell said he wanted to add that the review is not being done by the same firm that they have been using. He said that it is truly at an arm's length distance, and they are actually generating data, not just reviewing it. He said that if anybody wants to feel better, or more confident about it, that is why they are doing it this way.

ADJOURNMENT

Mr. MacAskill moved that they adjourn at 8:14 pm. Seconded by Mr. Howell. All in favor, motion carried by unanimous vote.

Respectfully submitted,

Lisa Schwab
Board Secretary

