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MINUTES  
SELECTMEN'S MEETING  
TOWN HALL  
GRIFFIN ROOM  
TUESDAY, DECEMBER 14, 2021  
4:00 PM PUBLIC HEARING

RELEASED

APPROVED

**SELECTMEN PARTICIPATING:** Michael MacAskill, Julie Kavanagh, Donald Howell and Mary Anderson

**ALSO PARTICIPATING:** Town Administrator Joseph F. Powers

**CALL TO ORDER:**

Chairman MacAskill opened the Board of Selectmen's meeting related to Public Hearings to order at 4:00 PM. The purpose of this meeting is to hold 5 Public Hearings no earlier than 4:00 PM on 5 businesses alleged violations. These hearings will be held individually, the Board will open the public hearing and close the public hearing for each one. These are related to the Board of Selectmen assigned our Town Administrator as a Hearing Officer. There is information in the packet, transcripts, recommendations and a memo from the Town Administrator and all documents leading to today.

**PUBLIC HEARINGS**

Ms. Anderson read the Public Hearing Notice.

Mr. MacAskill opened the Public Hearing.

A. Brax Restaurant Management, Inc. d/b/a Brax Landing, 705 Main Street - Public hearing on alleged violations of the Annual, All Alcoholic Beverages License; discussion and possible vote to order discipline based on Town Administrator's December 10, 2021 findings and recommendations.

Town Administrator Powers read his memorandum and his Findings of Fact dated December 10, 2021, which was included in the packet.

Jeffrey Gomes owner of Brax Landing explained the events of the evening of the violations.

Mr. Howell moved to close the Public Hearing, 2nd by Ms. Anderson. Vote 4:0 in favor. Motion carried unanimously.

Mr. MacAskill referred to the packet and the recommendation for disciplinary action of a warning. He explained that the Board can take the Hearings Officer's recommendation or the Board can change it.

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Ms. Anderson commented on the events of that evening and that Mr. Gomes had not attended the hearing. She feels the warning is fair and justified.

Mr. Gomes replied that he received a letter but he had the incorrect date. He did attempt to contact the Town Administrator.

Ms. Kavanagh agrees with a warning. She suggested having a staff member outside during the summer months.

Mr. Howell moved to accept the Administrator's recommendation and impose a warning on a first time offense, 2nd by Ms. Anderson. Vote 4:0 by roll call in favor. Motion carried unanimously.

B. Port Restaurant and Bar, Inc., 541 Route 28 - Public hearing of alleged violation of the Seasonal, All Alcoholic Beverages License; discussion and possible vote to order based on Town Administrator's December 10, 2021 findings and recommendations.

Due to a law suit involving the Port Restaurant, Inc., Mr. MacAskill read the Rule of Necessity and noted his financial interest as he is named personally as a Defendant.

Mr. Howell noted his financial interest as he is named personally as a Defendant.

Mr. MacAskill noted that the other Board members are new and not part of this law suit yet.

Ms. Anderson read the Public Hearing Notice.

Mr. MacAskill opened the Public Hearing.

Town Administrator Powers read his memorandum and his Findings of Fact dated December 10, 2021 which was included in the packet.

Joseph Ganley spoke of the evidence presented at the hearing and language of the liquor license and the noise by law. He asked the Board to enforce the law.

Attorney Jeffrey Blake of KP Law responded that the Board has empowered Town Administrator Powers to act as the Hearing Officer and he is required to weigh the evidence.

Town Administrator Powers noted the points he would like the Board to consider regarding the liquor license and the noise by law. He stated that the previous speaker noted events that had not been established as having occurred because of the establishment. He noted that the Board's regulations require them to have these hearings this evening and the Board is the sole arbiter of discipline.

Attorney Ray Tomlinson who represents the Port Restaurant and Bar spoke to the show cause hearing and Mr. Ganley and his view of the evidence from the hearing which are inadmissible to



the extent that his characterization of the evidence does not import with the Town Administrator's findings.

Mr. Ganley responded that there was no invitation at the hearing for members of the public to offer testimony and he was not called as a witness.

Town Administrator Powers replied that it is not the Hearing Officer's role to assemble witnesses or exhibits, it is the towns and the establishments.

Ms. Kavanagh moved to close the public hearing, 2nd by Mr. Howell. Vote 4:0 by roll call in favor. Motion carried unanimously.

Ms. Anderson commented on the report of underage drinking and that they can't really prove that she drank at The Port. She agrees with the Town Administrator's decision.

Mr. Howell noted that unless there was hard evidence introduced at the hearing, everything is hearsay. He does understand how the neighbors are feeling and that they are concerned. In this incidence, they don't have the evidence to support the violation.

Ms. Kavanagh agrees that the Board needs the evidence. An allegation that proves to be true of underage drinking is a real concern and impacts the entire town.

Mr. MacAskill commented that the Board has taken the neighbors seriously. The increase of Police presence, this process and making this process public and listening to the neighbors comments have led to great improvement in Harwich Port.

Mr. Howell moved to affirm the findings and determinations of the Hearing Officer and as a consequence we adopt his recommendation of insufficient evidence to warrant a finding illegal activity and there will be no discipline, 2nd by Ms. Anderson. Vote 4:0 by roll call in favor. Motion carried unanimously.

C. Wychmere Harbor function Lp d/b/a Wychmere Harbor Beach and Tennis Club, 23 Snow Inn Road - Public hearing on alleged violations of the Seasonal, All Alcohol Beverages License, discussion and possible vote to order discipline based on Town Administrator's December 10, 2021 findings and recommendations

Ms. Anderson read the Public Hearing Notice and opened the public hearing.

Town Administrator Powers read his memorandum and Findings of Facts dated December 10, 2021 which was included in the packet.

Attorney Andrew Singer on behalf of the Applicant spoke to inform the Board that both he and Christopher Kolwitz, the manager of the establishment, are present.

Ms. Anderson moved to close the public hearing, 2nd by Mr. Howell.

Vote 4:0 by roll call, in favor. Motion carried unanimously.

Mr. Howell moved that the Board affirms the findings and determinations of the Town Administrator that therefore no disciplinary action will be imposed on the Wychmere Harbor Club, 2nd by Ms. Anderson.

Vote 4:0 by roll call in favor. Motion carried unanimously.

D. Lucky Labrador Inc.d/b/a Perks, 545 Route 28 - Public hearing on alleged violations of the Seasonal, All Alcoholic Beverages License; discussion and possible vote to order discipline based on the Town Administrator's December 10, 2021 findings and recommendations.

Ms. Anderson read the Public Hearing Notice and opened the Public Hearing.

Town Administrator Powers read his memorandum and his Findings of Facts dated December 10, 2021 which was included in the packet.

Attorney Ben Zehnder is present on behalf of the applicant to answer questions.

Mr. Howell moved to close the Public Hearing, 2nd by Ms. Anderson.

Vote 4:0 by roll call in favor. Motion carried unanimously.

Ms. Kavanagh commented that she struggles with banning music, she feels it has done a lot for Harwich Port.

Ms. Anderson commented that, regarding underage drinking, there is a preponderance of evidence that it happened. She believes there is underage serving and over serving and feels the entertainment may lead to that. She is unsure if banning it is the right thing to do.

Mr. Howell commented that people should enjoy quiet in their homes and sound does travels on Cape Cod. He asked the Town Administrator if there were any physical fake IDs.

Chief Guillemette of the Harwich Police Department stated that in this incidence it was an intoxicated person who fell through a fence and it was later proven that he was under age.

Mr. Howell expressed his appreciation for the Board and the Police Department for making this a high priority. He asked the Hearing Officer if they can adopt a recommendation for one license that includes a recommendation for all licenses.

Town Administrator Powers replied that he would refer to council.

Mr. MacAskill commented that he also struggles with this on many levels and explained his reasons. He believes it is a policy discussion punishing the rest of the businesses because of one



hearing. He cannot support this as written but does understand the hours and tax payer's money that has been put in to this.

Attorney Blake replied to the question of a global penalty for a violation of a single and unique established. There are establishments who haven't had these issues. He feels the penalty should be focused on this individual establishment.

Atty. ZeHnder commented regarding what was not brought up tonight but was at the hearing. Underage service at any of these establishments is a very difficult thing for them deal with and he stated the reasons and also the establishment's procedures and protocols.

Mr. Howell moved that the Board affirms the findings and determination of the Town Administrator but the Board imposes the issuance the punishment of a warning letter for the establishment Perks, 2nd by Ms. Anderson.

Ms. Anderson expressed that she is not sure a warning is enough and suggested possibly a suspension of entertainment for Perks.

Ms. Kavanagh noted that Perks had suspended their outside music in June, there is difficulty with the bylaws and the density issues. She suggested that communication on both sides could get to a happy medium. There is so much involved and she agrees with the warning but commented that there is a lot of work to do.

Mr. Howell commented that the Board had agreed to a policy of progressive punishment. For the record, from his recollection from that Planning District, the depth of the Commercial District happens to be 150 feet. The margin for error is almost nonexistent. In general, everyone must understand that the Board is not going to tolerate things that may have been tolerated in the past.

Vote 4:0 by roll call, in favor. Motion carried unanimously.

E. Beachlight, LLC d/b/a Seal Pub, 730 Main Street - Public hearing on alleged violations of the Annual, All Alcoholic Beverages License; discussion and possible vote to order discipline based on the Town Administrator's December 10, 2021 findings and recommendations.

Ms. Anderson read the Public Hearing Notice and opened the public hearing.

Town Administrator Powers read his memorandum and his Findings of Fact dated December 10, 2021 which was included in the packet.

Josh Winston, one of the owners of The Seal Pub Cafe thanks the Board and the Town Administrator for working with them on issues which he feels have been rectified.

Mr. Howell moved to close the public Hearing, 2nd by Ms. Anderson.

Vote 4:0 by roll call, in favor. Motion carried unanimously.

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Mr. Howell referred to the progressive discipline, this was 1 hearing for 4 violations. He noted that Harwich is the place to go now which comes with responsibility. It's still the license holder's burden to control over serving.

Atty. Blake responded that there were a couple of different hearing Authority hearings. There are 4 separate allegation and the regulations allow the Board to deviate up and it's inherent in the Board's ability to also deviate down.

Ms. Kavanagh commented on the different violations and aspects of the violations. There haven't been more recent issues and suggests a warning. If this continues to happen, it's not tolerable.

Ms. Anderson commented that they can't legally prove it happened but she feels it did happen there. She suggests taking the entertainment away for 4 days.

Mr. MacAskill noted that it's a hearing on the Liquor License so they are unable to punish the entertainment license.

Mr. MacAskill commented that he appreciates Josh Winston, one of the 3 owners for his willingness to work with the town. He feels a warning on 4 violations is not fair to the other businesses. He suggests a 1 or 2 day suspension.

Mr. Howell moved that the Board affirms the findings and determination of the Town Administrator as to the matter of the first offense of drinking in the establishment after hours that a warning letter is issued to the establishment. Based on compound violations of the entertainment license that the Board assesses a penalty of suspension the liquor license for pouring the First Friday of June, 2nd by Ms. Anderson.

Ms. Kavanagh noted that moving forward they should not combine all the violations into one hearing.

Vote 4:0 by roll call, in favor. Motion carried unanimously.

## **NEW BUSINESS**

A. Summation of the Show Cause Hearing process and discussion on the future hearing process going forward presented by the Town Administrator.

Town Administrator Powers emphasized that as the Hearings Officer, his role as governed by the Board was to hear, it was not his rule to adjudicate. He appreciated where they ended up on the town wide ban. He detailed his objections over drinking and encouraged further discussion pertaining to the noise bylaw. He noted the high standard of the ABCC and if Harwich wants to prevail, the level of care that needs to be taken to treat a crime scene is tremendously high. His role is to have people come before him to give him facts and can make determinations, He takes that role seriously.



Atty. Blake commented that outdoor entertainment is a policy decision.

Mr. Howell suggested they look at the districts, how deep they are and if there's any buffer.

Mr. MacAskill asked each Board member to send him their thoughts and will agenda it.

Chief D. Guillemette noted the changes and the memos he has sent to the Board for this season. He listed calls for help regarding this issue. The Police Department has made every effort and forwarded those to the Board. They will continue to work hard and train, he noted statistics including the costs to the Department regarding hearings. He suggested that the only things that will reduce the violation is lengthy suspensions of the liquor license for a confirmed violation and the modification of licenses to repeat offenders. He disagrees that the noise by laws and the liquor licenses conflict he suggests they lever lap and gave his reasoning.

Mr. MacAskill commended the Police Department and noted they are one of the best in the state. He noted violations and the cost to the town. The hearing process will be on the agenda soon so the Board can vote policy on that process. They hear the Chief, the residents and the business owners and they are working on it.

Ms. Kavanagh reiterated that the Police Department has the full support of the Board.

Mr. Howell also thanked the Chief. He feels word has got to get out that's overall excessive.

Ms. Anderson moved to adjourn, 2nd by Ms. Kavanagh. Vote 4:0 in favor. Motion carried unanimously.

Respectfully submitted,

Judith R. Moldstad,  
Recording Secretary

