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HARWICH, MA

2022 MAY 17 A 9:50

MINUTES
SELECTMEN'S MEETING
TOWN HALL
GRIFFIN ROOM
MONDAY, DECEMBER 20, 2021
6:00 PM EXECUTIVE SESSION
6:30 PM REGULAR MEETING
REMOTE PARTICIPATION OPTIONAL

APPROVED

RELEASED

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 for December 20, 2021 at 6:00 PM. Ms. Anderson moved to enter into Executive Session, 2nd by Mr. Howell. Vote 5:0 in favor. Motion carried unanimously.

EXECUTIVE SESSION

A. Executive Session pursuant to G.L. c 30A s21(a)(3) to discuss litigation strategy with regard to the case of Ember Pizza, Inc. et al vs Town of Harwich et al. Suffolk County Superior Court - Docket No. 2184CV01461, if discussing the matter in open session would have a detrimental effect on the town's litigation position and the chair so declares.

B. Pursuant to MGL c30 section 21 (a)(3) to discuss with respect to collective bargaining for all town unions if an open session would have a detrimental effect on the town's bargaining position and the chair so declares.

Mr. MacAskill reopened the Board of Selectmen's Meeting reporting that in Executive Session the Board discussed 2 items as presented. On A. there was an update from the town's attorney. Mr. MacAskill invited attendees to join in the Pledge of Allegiance.

Mr. Howell reported the passing this past week of John O'Brien and Dr. Stanley Kocot

PUBLIC COMMENTS/ANNOUNCEMENTS

A. Announcement - The Board of Selectmen will not meet on December 27, 2021

Town Administrator Powers announced that the Board of Selectmen will not be meeting on December 27, 2021 and the next Board meeting will be on January 3, 2022. The Board has scheduled a chance for the public to hear a presentation on Tuesday, January 4, 2022 on proposed changes to the Monomoy Regional Agreement.

December 20, 2021

Cindy Williams Executive Director of the Harwich Chamber of Commerce announced that the Festival Tree Fundraiser raised \$12,525.00 for the Family Pantry. She thanked all the volunteers and donators.

Ed McManus President of the Lower Cape Kiwanis Club thanked everyone who made donations.

CONSENT AGENDA

- A. Vote to approve the Assistant Town Administrator's recommendation to grant permission of Verizon New England and NSTAR Electric Company D/B/A Eversource Energy for the purpose to place (1) jointly owned pole, P243/3.5 at Fourth Street in the public right of way as new pole needed to support low hanging wires currently tied to trees.
- B. Vote to approve a Caleb Chase request in the amount of (\$1,000.00) \$968.72
- C. Vote to approve the Board of Selectmen's Meeting Minutes - 5.24.2021
- D. Vote to accept a gift to the Police Department of a Gunner Transport Kennel

Ms. Anderson moved to approve the Consent Agenda as presented, 2nd by Mr. Howell. Vote 4:0 in favor. Motion carried unanimously.

NEW BUSINESS

- A. Annual Committee meeting
 - 1. Historic District/Historic Commission

No representatives present, the report is in the packet.

- 2. Harwich Hosing Committee

Mr. MacAskill noted that there will be no report tonight. The Housing Committee hasn't met in a year and is waiting for a meeting with the Affordable Housing Trust.

- B. Discussion and possible vote to approve the Committee Appointments recommended by the Interview Committee
 - 1. Eileen Garrity - Full Position - Harwich Accessibility Rights Committee - Term expires June 30, 2023
 - 2. Phyllis Thomason - Full Position - Recreation and youth Committee - Term Expires June 30, 2023
 - 3. Martha Donovan - Full Position - Conservation commission - Term Expires June 30, 2024
 - 4. Wayne Coulson - Alternate position - Conservation commission - Term Expires June 30, 2024

Mr. Howell moved to approve the Committee Appointments as presented with the exception of #2 which was omitted due to additional applicants, 2nd by Ms. Anderson.

December 20, 2021

Ms. Kavanagh commented that the Capital Outlay Committee had been added but it wasn't advertised and asked if they can still go forward.

Mr. MacAskill replied, yes, as long as the Board agrees.

Vote 4:0 in favor. Motion carried unanimously.

C. Discussion and possible vote on the Cultural Center Gymnasium use and fee schedule

Eric Beebe Director of Recreation explained the fees for winter and summer, inside and outdoors.

Mr. Howell commented that they are trying to create a business plan for the Cultural Center that is sustainable and he is not sure this will accomplish that.

Mr. Beebe explained that futsal is at the Cultural Center every Saturday and he is unsure if they are charge. Mr. MacAskill asked what the Cultural Center pays for maintenance, custodian etc.

Mr. Beebe doesn't know those figures. They price pickle ball to cover their costs.

Mr. MacAskill stated that Mr. Ballantine commented in an email and suggested fees be evaluated after receiving the detailed expense report. He referred to an email in which someone wanted to extend ice ball and they were getting the run around. He is not comfortable approving any extra time until the Board comes up with a reasonable fee for the gym. He is opposed to the current fee schedule knowing that it is not covering costs.

Ms. Anderson commented that there's a warrant article to get someone in charge of the Cultural Center including finances. If they are waiting for that, there's no harm in letting pickle ball use the gym.

Mr. Howell commented that the old lights use a lot of electricity and he doesn't feel the fees will cover that cost.

Town Administrator Powers understands that the Rec Department is the renter of the gymnasium to sponsor pickle ball. There will be a person covering in the office in a few weeks but there are others asking to use the gym. The Rec Department is using it at Rec Department rates but there are other groups that would pay a far greater rate. Another idea to explore is the Rec Department having another gym to rent.

Ms. Kavanagh agrees that the space could be used while they are deciding fees.

Ms. Anderson suggested they take January thru March to sort out fees and let the pickle ball players use the gym.

Eric Gordon, a pickle ball player, clarified that there is more one sign up for a few months and then another sign up with separate payments, not one payment for 6 months. He commented on the benefits and the numbers of people that pay to play.

Mr. MacAskill would like to see a real fee schedule and a proposal whether it's interim for three months or not and what the Cultural Center is actually getting. He feels it would be premature to vote on it tonight.

Town Administrator Powers referred to the packer and referenced adult pickle ball and the after school session and the fees.

Mr. Beebe stated that there are higher fees for the after school program due to the added costs of staff and supplies. The cost for pickle ball is minimal.

Town Administrator Powers commented that there is a gym at the Community Center and another gym the town owns that's \$100.00 for 3 hours. This should be normalized with a similar fee structure.

Mr. Beebe will come back with a schedule and a fee proposal.

D. Discussion and possible vote on the Cultural Center Resolution

Ms. Anderson moved to vote to approve the Cultural Center Resolution, 2nd by Mr. Howell. Vote 4:0 in favor. Motion carried unanimously.

E. Discussion and possible vote to participate in a Statewide opioid settlement

Mr. MacAskill noted his recollection is that according to council they would have to prove their losses.

Town Administrator Powers noted that the town was offered an opportunity to participate in a program, the National Opioid Consortium and this settlement relates to the Attorney General. The material is in the packet. He doesn't see a down side to participating but it won't be a windfall and he read Attorney Giorgio's recommendation.

Ms. Kavanagh moved to execute the applicable document for the Statewide opioid settlement, 2nd by Mr. Howell. Vote 4:0 in favor. Motion carried unanimously.

F. Discussion and possible vote to approve the new Request for Proposal for the sale of the West Harwich Schoolhouse.

Town Administrator Powers stated the Attorney General's Office confirmed that the town can sell 5 Bells Neck utilizing the listing of a realtor. Services of a realtor would have to be acquired after a Request for Proposal. There is nothing preventing them from listing with restrictions.

Mr. MacAskill would support a preference for the preservation of the facade and move forward with an RFP to sell the building.

Ms. Anderson moved to ask the Town Administrator to prepare 2 RFPs, one to obtain a realtor to sell the Bells Neck property and the second to put out a new RFP for sale of Bells Neck with a preference for exterior historical preservation, 2nd by Ms. Kavanagh.

Mr. Howell feels that if there's a question as to what Town Meeting said, it should be brought back to Town Meeting. He feels there is confusion.

Mr. MacAskill commented that he feels Town Meeting was clear and said they could sell the building with a preference for historical preservation.

Ms. Kavanagh commented that the discussion at Town Meeting did talk about the historical nature of the building but the warrant article was not amended.

Ms. Anderson commented that people she has talked to really don't care, they don't feel it's that fabulous a building. She agrees they should move on and sell the building.

Vote 3:1 in favor. Motion carried.

G. Discussion and possible vote to approve a 2022 Annual Common Victuallers License for Dent donuts d/b/a Dunkin Donuts - 481 Route 28

Ms. Anderson moved to vote to approve a 2022 Annual Common Victualers License as presented, 2nd by Ms. Kavanagh. Vote 4:0 in favor. Motion carried unanimously.

H. Discussion and possible vote to approve a 2022 Class II and Class IV Auto License for Bassil Brothers d/b/a United Gas - 520 Route 28

Ms. Anderson moved to approve a 2022n Class II and Class IV Auto License as presented, 2nd by Mr. Howell. Vote 4:0 in favor. Motion carried unanimously

I. Board discussion on the Chief of Police's memorandum and possible vote on the show cause hearing process

Mr. MacAskill noted the Chief's memo which is in the packet, related to the types of calls that the Police Department has had to respond to.

Ms. Anderson was disappointed that the Board was unable to do more than they did. The Chief's memo offered a lot of information and she feels the Board needs to do something.

Mr. Howell commented that this subject deserves a lot of discussion and they can't go on the way they have been going.

Ms. Kavanagh addressed Chief Guillemette to ensure that he understand they support him, the officers and all the hard work they are doing. She commented that there are a number of issues to address including neighbors and a new vibe that is helping the businesses. It will take some negotiations to ease the burden on the Police Department.

Ms. Anderson suggested that the amplified outside music was the game changer for the neighbors. Her suggestion is that downtown Harwich Port and possible the Seal are told no outside amplified music.

Mr. MacAskill noted that noise from outside entertainment has been a huge one for the last few years. He has supported it and feels it brings business to the town. The complaints started to come in when those were permitted. Inside noise is not as great a problem. He referred to other issues listed in the memo. This conversations about looking forward, processes, improvements, keeping the public safe, helping the neighbors and support the businesses. He asked the Chief what he needs and his suggestions and thoughts on the liquor regulations aside for the 150 feet noise restriction.

Chief Guillemette commented on the hearing process and the liquor regulations. If the business owners, the Board, the Town Administrator and the Police Department all agreed that they are operating off the Board of Selectmen's Liquor Regulations, it would be a huge start. The Police Department has agreed to additional in house training and possibly bring in an attorney who is well versed on how these regulations are written, it would be a big step forward.

Mr. MacAskill noted that for the record, the conversation that happened this morning, outside council and another word that was used was prosecutor. The person that's going to defend the town on their liquor regulations, whoever the Board decides to have be their prosecutor on the instances is who they will have common and train the police officers.

Chief Guillemette commented that situations such as underage drinking or over service are harder for a police officer uncover. They could also enlist the assistance of the ABCC and request they do compliance checks. He does not have the staff to send plain clothes officers out on weekends.

Mr. Howell asked that the Liquor Regulations be in the packet next week.

Mr. MacAskill spoke regarding the hearing process. Rather than having all the incidences sent to the Board in a memorandum, he feels it makes more sense to let the Police Chief decide which ones would require a hearing and which wouldn't rather than assuming everything needs a hearing.

Chief Guillemette commented that he thinks it's important for the Board, as a licensing authority to have information of all instances at all the establishments.

Ms. Anderson clarified that the Chief is suggesting he would send all the information on all instances and highlight those that he would recommend a hearing on.

Chief Guillemette replied, yes, that would be his suggestion.

Mr. Howell said that what they did this year served a purpose and the establishments are getting the message.

Mr. MacAskill note that the Town Administrator is the Hearings Officer and they don't have to have hearings at their meetings, they can be scheduled any time. He would like to stream line the amount offerings and make sure the Board has a case before they have a hearing.

Ms. Anderson commented that they should be done quickly so individual offenses can be dealt with separately.

Ms. Kavanagh feels they need to look forward to how they address the issues and also find themselves at a table with all the partners they are talking about. There has to be an all-inclusive conversation.

Mr. Howell noted the Harbormaster and the situation at Brax with the license holder who is at the harbor and how they can control people taking stuff to a boat.

Mr. MacAskill noted interested people in the audience. There are no representatives from the businesses.

Chief Guillemette noted that there is a lot on the business owners in the regulations regarding actions they shall take and actions they are recommended to take.

Town Administrator Powers stated that the Town of Harwich has very well defined and solid regulations. The focusing forward should be on the regulations.

Ms. Kavanagh commented that they should reach out to all parties involved and try to come to some agreements. If they don't respond, the result will be stricter hearings and restrictions.

Mr. Howell is in favor of notifying businesses directly.

Mr. MacAskill noted that managers sign the licenses and asked if, as they have hearings that they enter into the regulations that the manager of record be present for the hearing.

Town Administrator Powers replied that the ABCC has a significant amount of time devoted to who is the manager of record, does a CORI background check and looks to that person to be a representative of the establishment. The local Licensing Board should rely on that manager.

Mr. MacAskill requested that the Town Administrator get council's advice on requiring managers to be at hearings.

Chief Guillemette noted that there is a clause in the regulations regarding managers.

Mr. MacAskill commented that some towns have a compliance crew which is something he feels this Board should consider. He noted who they would be and their responsibilities.

Chief Guillemette commented that the capacity at establishment is directly related to the amount of noise. Because of capacity, that group would have to include the Fire Department. Chief LeBlanc is more than willing be involved.

J. Discussion and possible vote on entertainment License time and location.

Mr. MacAskill stated for viewers that the Board is not anti-business, they are as pro-business as possible. They have problems that need to be fixed and it's coming the town a lot of money.

Cindy Williams Executive Director of the Chamber of Commerce noted an annual program that is done with restaurants and the Police Department. She suggested everyone get together and agreed it starts with the regulations. She offered to send out an email and suggested the meeting be in March.

Bob Nickerson of Harwich Port comments that he was upset at the outcome of the last meeting. He suggested requiring security personnel at venues which is in the regulations. All increasing the budget for the Police Department to have more officers on the street.

K. Discussion and possible vote to approve the following 2022 Entertainment Licenses;

1. Blue Stripes LLC d/b/a Cape Sea Grille - 31 Sea Street - Weekday 4:00 p.m. to 11:00 p.m. inside and Sunday 1:00 p.m. to 11:00 p.m. inside.

Entertainment Tube: Recorded or live music with amplification

2021 License: Weekday 11:00 a.m. to 12:00 a.m. inside

Entertainment Type: Live or recorded music.

Mr. Howell is not willing to vote for anything that is more than what it was.

Ms. Anderson is in favor.

Ms. Kavanagh noted that they are adding Sundays.

Town Administrator Powers commented that they requester checked off "renewal" regarding Sundays. He will ask council if that requires a hearing or a different process under Chapter 140.

Mr. MacAskill replied that they will vote it without Sunday and then go back to the applicant.

Ms. Anderson moved to vote to approve the Entertainment License for Blue Stripe LLC d/b/a Cape Sea Grille - 31 Sea Street - Weekday 4:00 p.m., to 11:00 p.m. inside, 2nd by Ms. Kavanagh.

Vote 4:0 in favor. Motion carried unanimously

2. Ember Pizza, Inc. d/b/a Ember - 600 Route 28 - Weekday 11:00 a.m. to 12:00 a.m. inside and 11:00 a.m. to 10:00 p.m. outside. Sunday 1:00 p.m. to 12:00 a.m. inside and 1:00 p.m. to 10:00 p.m. outside.

Entertainment type, Concert, recorded or live music with amplification

2021 License: Weekday 10:00 a.m. to 12:00 a.m. inside & 6:00 p.m. to 10:00 p.m. outside. Sunday 10:00 a.m. to 12:00 a.m. inside & 6:00 p.m. to 10:00 p.m. outside.

Entertainment Type: Live or recorded music with amplification inside & unamplified recorded or live acoustic music only outside

Ms. Anderson is against amplification outside and increasing hours

Mr. Howell will not vote in favor of increasing hours.

Ms. Kavanagh agrees to not increase hours.

Attorney Ray Tomlinson on behalf of the licensee, Ember Pizza spoke to the issues of extended hours and acoustic limitations. He asked the Board to consider, if they are putting a restriction solely on Ember, how that will affect the future status of every licensee in this town and the further legal proceedings that will arise from that.

Mr. MacAskill is not in favor of outdoor amplification and unsure that a television needs an entertainment license.

Attorney Tomlinson suggested that, if there is going to be a policy exception by the Board that it be codified either in the noise bylaw or the entertainment license. He explained the entertainment license/television/game issue. The difference in how the entertainment license is being applied to different licensees is not uniform and that creates a problem for the town.

Mr. MacAskill is not talking about a policy decision, just clarification on what the town has in place. It is not the Board's intent to treat establishments differently.

Discussion followed regarding limiting the outdoor amplification and whether it would be addressed at this meeting or in the future.

Ed McManus commented on a few of the confusing terms in the regulations.

Attorney Tomlinson noted that this is a renewal of an existing license and there hasn't been notice of a public hearing on a retraction on a license. He suggested that if the Board is making a policy decision this evening to limit acoustic or outdoor entertainment, it should do so at all licensed establishments.

Ms. Anderson noted that they would apply the same standards to the 7 before them tonight and to others that come before them.

Bob Nickerson requested that if outside entertainment is allowed, it not start at 11:00 a.m.

Mr. Howell disagrees that all are the same and expressed why.

Ms. Anderson moved to vote to approve the 2022 Entertainment License for Ember Pizza, Inc. d/b/a Ember - 600 Route 28 - Weekday 11:00 a.m. to 12:00 a.m. inside and 11:00 a.m. to 10:00 p.m. outside Sunday 1:00 p.m. to 12:00 a.m. inside and 1:00 p.m. to 10:00 p.m. outside. The inside can be concert, recorded or live music with amplification and outside shall be acoustic music only, 2nd by Ms. Kavanagh. Vote 4:0 in favor. Motion carried unanimously.

3. Four Hundred East - 1421 Orleans Road - Weekday and Sunday 5:00 p.m. to 10:00 p.m. inside.
Entertainment Type: Recorded or live music
2021 License: Weekday 5:00 p.m. to 12:00 a.m. inside & 5:00 p.m. to 10:00 p.m. outside. Sunday 2:00 p.m. to 6:00 p.m. outside

Ms. Anderson moved to approve the 2022 Entertainment License for 400 East - 1421 Orleans Road, - Weekday and Sunday 5:00 p.m. to 10:00 p.m. inside, Entertainment Type recorded or live music, 2nd by Mr. Howell. Vote 4:0 in favor. Motion carried unanimously.

4. Hot Stove - 551 Route 28 - Weekday (Friday and Saturday only) 9:00 p.m. to 12:00 a.m. inside
Entertainment type: Concert
2021 License: This establishment did not apply for an entertainment license in 2021

Town Administrator Powers noted that this says renewal but they did not apply in 2020. Council would have to be consulted.

Mr. MacAskill omitted the Hot Stove from the list and he would like the word “concert” clarified.

5. Harwich Inn and Tavern, LLC d/b/a Harwich Inn and Tavern - 77 Route 28 - Weekday 12:00 p.m. to 12:00 a.m. inside and 4:00 p.m. to 8:00 p.m. outside. Sunday 1:00 p.m. to 12:00 a.m. inside
Entertainment Type: Recorded or live music with amplification and dancing.
2021 License: Weekday 12:00 p.m. to 12:00 a.m. inside and 4:00 p.m. to 8:00 p.m. outside. Sunday 1:00 p.m. to 12:00 a.m. inside
Entertainment Type: Recorded or live music with amplification and dancing.
Doors and windows must one shut during indoor entertainment.

Town Administrator Powers noted a scrivener’s omission on the Sunday entertainment license

Ms. Anderson moved to vote to approve the 2022 Entertainment License as presented with the understanding that they have to complete the application and the doors and windows must be shut during indoor entertainment, 2nd by Ms. Kavanagh. Vote 4:0 in favor. Motion carried unanimously.

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7. Villa Roma - 278 Route 28 - Weekday and Sunday 3:00 p.m. to 12:00 a.m.
Entertainment Type: Recorded or live music with amplification
2021 License: Weekday 4:30 p.m. to 10:00 p.m. inside
Entertainment type: Liv or recorded music

Town Administrator Powers noted the same scrivener's omission, they failed to answer yes or no.

Ms. Anderson moved to vote to approve the 2022 Entertainment License as presented, pending completion of the application, 2nd by Ms. Kavanagh.

Town Administrator Powers noted a conflict in times requested.

Ms. Kavanagh withdrew her 2nd.

Ms. Anderson withdrew her motion.

6. Lanyard Bar and Grill - 429 Route 28 - Weekday 12:00 p.m. to 10:00 p.m. inside and outside Sunday 1:00 p.m. to 10:00 p.m. inside and outside
Entertainment type: Recorded and live music with amplification
2021 License: Weekday 12:00 p.m. to 12:00 a.m. inside. Sunday 1:00 p.m. to 9:00 p.m. inside & outside
Entertainment Type: Recorded or live music with amplification and dancing

Town Administrator Powers notes the same scrivener's commissions on this application.

Mr. MacAskill stated, they will not vote on this, it'll come back. He asked they review applications going forward before they are brought before the Board.

OLD BUSINESS

A. Update regarding the Local Comprehensive Plan

Town Administrator Powers noted the update which is in the packet.

Mr. MacAskill noted how many applications vs openings were received. The advertising isn't working,

Ms. Anderson noted a previous discussion regarding extending into January beyond the holidays and suggested posting on Facebook.

CONTRACTS

A. Discussion and possible vote to award a contract to Coviello Electric & General Contracting Co., Inc. in the amount of \$138,795.00 for the installation of lighting at Brooks Park

December 20, 2021

Ms. Anderson moved to vote to approve the contract as presented, 2nd by Mr. Howell. Vote 4:0 in favor. Motion carried unanimously.

TOWN ADMINISTRATOR'S REPORT

Merry Christmas and Happy New Year

SELECTMEN'S REPORT

All wished for a Merry Christmas and Happy New Year.

Mr. MacAskill noted the next meeting is January 3rd.

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

Respectfully submitted,

Judith R. Moldstad
Recording secretary