



APPROVED
RELEASED

MINUTES
PUBLIC HEARING
REMOTE PARTICIPATION ONLY
Wednesday, May 12, 2021
5:30 P.M.

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

ALSO PARTICIPATING: Town Administrator Joseph Powers.

CALL TO ORDER

Mr. Ballantine explained that he first called the meeting to order at 5:10 pm and went into Executive Session, where they discussed litigation strategy with respect to the case of 3137, LLC, et al. (Ember and Port) v. Town of Harwich, et al., United States District Court, C.A. No. 1:21-CV10473, if discussing the matter in open session will have a detrimental effect on the Town's litigating position and the chair so declares.

Mr. Ballantine said before they move on to the public hearing, he will read the rule of necessity, and will do that now. Next on the agenda is the public hearing involving the Port Restaurant. The Port Restaurant has filed suit against the Town of Harwich in court case 3137, LLC, et al. (Ember and Port) v. Town of Harwich, et al, in which each member of the Board of Selectmen is named individually as a defendant, and may have a financial interest the litigation. The Board of Selectmen is the Town's executive authority and no other Board or official can represent the Town in this matter. Therefore, on the advice of Town Council, he is invoking the rule of necessity, in order for the Board to act on this matter.

Mr. Ballantine said that his financial interest is that he is named personally as a defendant. He asked that each other member identify their financial interest. He said that once this is done all board members will be eligible to participate in the discussion of this litigation.

Mr. MacAskill said that his financial conflict is that he is named personally as a defendant in this lawsuit.

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Mr. McManus said that his financial conflict is that he is named personally as a defendant in the lawsuit. Mr. McManus pointed out that Mr. Howell had joined them when they went into Executive Session.

Mr. Howell said, his financial interest is that he is named personally as a defendant in the lawsuit.

Mr. Ballantine asked if Mr. MacAskill could open the hearing?

Mr. MacAskill said that he moved that they open the public hearing and read the public hearing notice. The Board of Selectmen of the Town of Harwich, will hold a Public Hearing on Monday, March 22, 2021, for the purpose of hearing applications for renewal of the Annual Entertainment and Seasonal All Alcoholic Beverages licenses for Port Restaurant and Bar, Inc., 541 Route 28 in Harwich Port. The Board will hear evidence and testimony from interested parties, including from members of the public, and will decide whether to renew, not renew or to modify said licenses. The hearing will be held via remote video streaming only. All members of the public having an interest in the topic are cordially invited to log-in and view the hearing. Information for logging into and viewing the hearing is below and will be posted on the Town's website prior to the hearing. Mr. MacAskill provided the GoToMeeting access code and information. He pointed out that the original hearing date was March 22nd, it's been moved, or continued, up until tonight May 12th, 2021, no earlier than 5:30 pm.

Mr. Ballantine asked for a roll call vote to open the public hearing.

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

PUBLIC HEARING

- A. Port Restaurant and Bar, 541 Rt. 28 - Public hearing on applications for renewal Seasonal Entertainment License; discussion and possible vote to order discipline based on Town Administrator's February 8, 2021 findings and recommendations.

Mr. Ballantine said that he wanted to point out that Mr. Joseph Powers, Town Administrator, had joined them remotely. He asked if Mr. Powers wanted to open this up and then they would on to Mr. Blake?

Mr. Powers had some echo issues and said that he had not heard Mr. Ballantine's statement.

Mr. Ballantine repeated that he had asked if Mr. Powers wanted to make a statement now, or they can go directly to Mr. Blake?

Mr. Powers said that he will defer to Mr. Blake.

Mr. Ballantine turned it over to Mr. Blake.

Mr. Blake said that this is a continuation of a of a liquor license disciplinary hearing, and a hearing to renew an entertainment license. He said that at the hearing last week, they had closed the hearing with respect to the renewal of the all alcohol seasonal license, and granted that license. Tonight they are there for the liquor disciplinary hearing, and the renewal of the entertainment license. He suggested that the hearings, and the factual part of the hearing, are all one. So, they will be able to take everything they heard last week, and take that into consideration for their deliberations tonight, on the disciplinary hearing and the renewal of the entertainment license.

Mr. Blake said that he believes the status of the meeting, is that the Town has heard all of its witnesses that were opposed to the adoption of the renewal of the liquor license and they were presented evidence from their Hearing Officer, Mr. Powers, regarding the disciplinary hearing, and the various violations. He said at the last hearing they had gone through a number of witnesses in favor of the renewal for the Port's entertainment license and in opposition to the disciplinary findings, that were found by Mr. Powers. Mr. Blake suggested that they continue on that path. However, he said that he would like to read again the lengthy rules of the road, because they have a bunch of people there that may not have been there before.

Mr. Blake read, good evening members of the Board, as you know my name is Jeffrey Blake, and I will be presenting the case to the Board of Selectmen tonight, that is with respect to the entertainment license and the disciplinary hearing, with respect to the ABCC issues. As I indicated to the board last week the rules of evidence do not apply to a hearing before this board regarding license renewals, revocations, or suspensions, nor do they apply with respect to the entertainment license renewals, revocations, or suspensions. The touchstone here is due process, and an opportunity to be

heard. That does not mean that counsel for the applicant has the right to object and interrupt or threaten witnesses during their testimony. Mr. chair this is your meeting and you have the authority to stop any interruptions. The open meeting law states that no person shall address a meeting of a public body without permission of the Chair, and all persons shall at the request of the Chair, be silent. No person shall disrupt the proceedings of the meeting of a public body, if after clear warning from the Chair, a person continues to interrupt the proceedings, the Chair may order the person to withdraw from the meeting, and if the person does not withdraw, the Chair may authorize a constable or other officer to remove the person from the meeting. That is MGL ch. 30A, s 20g. The Attorney General describes this provision as clear authority to the Chair of the public body to conduct public meetings, of the body, without disruption. As a result of this authority, and the conduct that we have witnessed at prior hearings the Chair has the authority to prevent any destruction of witnesses. For the meeting he suggests that prohibiting objections during the testimony of the witnesses, and requiring both sides to refrain from any interruption during the testimony, is within the authority of the Board.

Mr. Blake said that he knows this was adopted at the last hearing, and he suggested that it gets carried forward. He said that the Chairman has the clear authority to stop any interruption, which includes the muting of microphones and ultimately logging off an offender if there is an interruption. He said that the law requires that a clear warning is given to the offender, before taking these measures. He said that additionally, at a prior hearing, there were threats made by counsel for the applicant, regarding the failure to provide personal email addresses, and the applicant's social media sites have posted personal addresses of citizens, who have complained about the noise at the establishment. This is unacceptable and the Chairman does not need to allow this line of questioning, during any examination of the witnesses. He said that it is within the Chairman's authority to stop the line of questioning and instruct the witness not to answer. This hearing is to determine whether the Port Restaurant's entertainment license should be renewed, and whether there was a violation of the liquor license, last season. This hearing is not about neighboring restaurants or other establishment's violations of their licenses, this is about the Port Restaurant. He said that it is within the Chairman's authority to prevent that type of irrelevant testimony, questioning, or evidence.

Mr. Blake said with respect to the entertainment license, since the Board will also be reviewing the applicants request for renewal of the entertainment license, pursuant to MGL ch. 140 s. 183a. Both licenses involve the same facts and circumstances, and they had heard testimony regarding both, but again, they are going to separately vote. They closed the liquor license portion of this last week, and granted the renewal. He suggested that anything they heard last week, should still be considered in both the entertainment license renewal deliberations and the disciplinary action. He said that with regard to the entertainment license, the standard is that the license must be granted, unless the board finds that the license, alone, or in combination with other licensed activity on the premise, would adversely affect the public health, safety or order, because it cannot be conducted in a manner so as to (a) protect employees, patrons, and members of the public inside or outside the premises from disruptive conduct, from criminal activity, or from health, safety or fire hazards; (b) prevent an unreasonable increase in the level of noise in the area caused by the licensed activity or caused by patrons entering or leaving the premises; or (c) prevent an unreasonable increase in the level of pedestrian or vehicular traffic in the area of the premises or an unreasonable increase in the number of vehicles to be parked in the area of the premises.

Mr. Blake said that he suggested that they turn this over to Mr. Tomlinson to continue with his calling of witnesses, and examination of those witnesses, with respect to the renewal of the entertainment license and the disciplinary hearing.

Mr. Ballantine said thank you to Mr. Blake, and asked Mr. Tomlinson for his comments and then witnesses.

Mr. Tomlinson said he just wanted to ask a question, from the last hearing on May 4th. He said that it was his understanding, that Mr. Blake had closed his direct questioning of Mr. Powers, and the other witnesses brought forward by the Board. As a result, tonight's proceeding, is that the Port can proceed with their supporting witnesses. He said that he just wanted to make sure that he understood that clearly.

Mr. Ballantine said that they have a question from Mr. Howell.

Mr. Howell said, as a point of order, they did not close the hearing. He said that he had specifically said, at that time, that they could have people show up that could not make the other hearing. He said that they carried this over, so

that if people showed up, they could be recognized, because this is not a witness list and this is not a courtroom.

Mr. Ballantine asked Mr. Blake to comment that they weren't closing the hearing, that it was just that they were through questioning Mr. Powers.

Mr. Howell said, that he didn't want the implication to be, any and all other witnesses.

Mr. Ballantine asked if he was correct?

Mr. Blake said that the way he understands it, is that he is correct. However, at this point, he does not believe that there will be any further witnesses for the Town, unless someone that had not been able to attend, comes forward tonight.

Mr. Blake said that he suggests that they ask everybody in the audience, as they did last time, to unmute themselves, and show their faces to be sworn in.

Mr. Tomlinson said that seemed to create a lot of cross talk and respectfully he said that he did not think there would be that many witnesses tonight. He assumed that they could cover that briefly with each witness.

Mr. Ballantine said that there are not that many witnesses and told Mr. Tomlinson that they can just get it done.

Mr. Ballantine asked anyone who wished to speak to unmute themselves. He then asked if they swear to tell the truth, nothing but the truth, and only the truth, so help you god?

The group of individuals said they did.

Mr. Blake said to Mr. Tomlinson, that if his witnesses were not involved in that, he could certainly ask them if they took the oath. He also said that he noticed that there were some people that spoke previously and when Mr. Tomlinson is done, the Chairman could ask if those people have something new to add, that they didn't already provide to them at the last hearing rather than hear addition or repetitive testimony.

Mr. Ballantine said that is a good point. He said that if people have made the point before, they do not need to hear it again, they understand the concerns.

Mr. Tomlinson said that he had one final housekeeping matter and said that at the last hearing, before they recessed, there was the agreement that in order to streamline the process, that he would reserve objections until the close. He said that he would like to renew that request tonight, with their permission and he will make objections after the close, before the Board's deliberation.

Mr. Ballantine said okay, that sounds good.

Mr. Blake said that there are no rules of evidence here. He said that Mr. Ballantine can let Mr. Tomlinson speak and make objections at the end, if he wishes, but there is no requirement that he does that.

Mr. Tomlinson said that it was decided in the last hearing that the Board would afford him that right. He said that in reliance upon that, he did not make objections at the close of the last hearing. Therefore, he is going to renew that request tonight, and if it is not going to be granted then he will object throughout the hearing.

Mr. Blake said that first of all, it is Mr. Ballantine's meeting. He said that he laid down the rules and if Mr. Tomlinson thinks that he can override those rules and object throughout the remainder of this hearing, he is wrong. He said that he does not recall him reserving to the end and he does not know if this is an academic exercise. He said that it is within Mr. Ballantine's discretion to allow him to say something at the end and make whatever objections he wants, and make whatever closing arguments he wants, if the Board needs it. However, it is not something that Mr. Tomlinson can say, if you don't let me do this, then I am going to do that.

Mr. Ballantine said that he agrees with that. He said that he will afford Mr. Tomlinson some short comments at the end.

Mr. Tomlinson said thank you and that he had just another quick housekeeping matter. He said that he noticed, that the notice of public hearing that Mr. MacAskill read into the record, from March 11, 2021, which was published in the Cape Cod Chronicle, made no mention of any discipline related to the July 16th or 17th memorandum from the ABCC. He said that obviously, he is going to object to any disciplinary discussion, because that's

not properly noticed before this Board. He said that with respect to entertainment, as Mr. Blake did note, the Board's requirement is to find good cause. The packet that was published for the public, in advance of this meeting, had not notice that gives reason that the Board has good cause to deny the renewal and its presumptive right to renewal under the statute. He said that there is no fair description of any entertainment violations, which might constitute good cause. He would object to any non-renewal for a good cause because there is no good cause noticed. He said, further, with respect to Mr. Power's statement, and his February 8, 2021 findings, there's no recommendation in there with respect to entertainment, and also this procedure is unlawful and violates the statutory procedure.

Mr. Blake said that he thought that Mr. Tomlinson was going to reserve those to the end. If Mr. Tomlinson is saying that he is done with his witnesses, then that's fine, and they can move forward.

Mr. Tomlinson interrupted and said that he has not even called a witness yet. He said that he afforded him respect of not interrupting, and would appreciate the same.

Mr. Ballantine said that Mr. Tomlinson that he has made the same comments over and over, and asked him to please call his witnesses, so that they can hear from them.

Mr. Tomlinson called for Ms. Carly Tefft.

Ms. Tefft said that she was there.

Mr. Tomlinson asked Ms. Tefft if she was on the line earlier, when the Chairman, or when Mr. Blake read the oath?

Ms. Tefft said yes.

Mr. Tomlinson and did you agree to that oath yes okay so the testimony you're going to provide tonight is the truth the whole truth and nothing but the truth and to the best of your knowledge

Ms. Tefft said yes

Mr. Tomlinson okay um are you a musician that performs at the Port restaurant in bar?

Ms. Tefft said yes.

Mr. Tomlinson for how many years have you performed at the Port?

Ms. Tefft said since the summer of 2017.

Mr. Tomlinson asked how many times each summer she performed at the Port?

Ms. Tefft said that each summer, she has about eight to ten shows, from May through September.

Mr. Tomlinson asked if performing at the Port is a substantial part of her livelihood and incoming?

Ms. Tefft said yes, when she books those shows, she depends on them for her income.

Mr. Tomlinson asked when she books shows at the Port, does she turn down bookings or reservations at other establishments?

Ms. Tefft said yes.

Mr. Tomlinson asked what happened last year when COVID struck, with respect to her bookings at the Port?

Ms. Tefft said that 2020 was hard enough, for the independent local musicians. She was excited to book seven shows with the Port in 2020, starting on July 23rd. However, on July 21st, she was informed that there would be no live shows at all that summer, and the seven shows would be cancelled.

Mr. Tomlinson asked if that was a significant impact to her livelihood?

Ms. Tefft said, yes it was.

Mr. Tomlinson asked when she books shows with the Port, does that happen a year in advance, or more?

Ms. Tefft said that it usually starts in February of the calendar year.

Mr. Tomlinson asked if that was the case for that season, for that summer?

Ms. Tefft said correct.

Mr. Tomlinson asked if that is consistent with any other establishments or bookings that she has, if they call begin booking around the same time?

Ms. Tefft said yes, February and March is when bookings start for her Cape Cod touring dates.

Mr. Tomlinson asked if she has booked all of her dates with the Port for this season?

Ms. Tefft said that she has.

Mr. Tomlinson asked how many how many dates she has booked?

Ms. Tefft said she believed there are four.

Mr. Tomlinson asked if she had performed last summer, at all at the Port?

Ms. Tefft said no.

Mr. Tomlinson asked if she had performed anywhere?

Ms. Tefft said that she did.

Mr. Tomlinson asked um what other what others any other establishments in Harwich

Ms. Tefft said no other places in Harwich.

Mr. Tomlinson asked if those were live performances or recorded performances?

Ms. Tefft said that they were live.

Mr. Tomlinson asked if the performances were indoors or outdoors?

Ms. Tefft said outdoors.

Mr. Tomlinson asked if that was during COVID?

Ms. Tefft said yes.

Mr. Tomlinson asked if she could describe the type of performance that she offers at the Port, is it amplified, acoustic, do you play with other musicians, or a solo performing artist? He asked if she could just describe for the Board, how she performs at the Port?

Ms. Tefft said that she is a solo singer and songwriter. She accompanies herself on acoustic guitar and she also sings. She does use a sound system that just amplifies her acoustic guitar and her vocals at a reasonable level.

Mr. Tomlinson asked, during the performances since 2017, has she ever been told that her performance was too loud by police or neighbors?

Ms. Tefft said no.

Mr. Tomlinson asked if she has ever been cautioned by management or ownership at the Port that her performances were too loud?

Ms. Tefft said no, that it has always been about being respectful of the neighbors and she has never had an issue.

Mr. Tomlinson asked if she brings her own speakers and amplification system to the Port?

Ms. Tefft said that she does.

Mr. Tomlinson asked if she could explain her stage set up at the Port, where she is located and how the speakers are positioned, etc.?

Ms. Tefft said that she has two speakers and they are always positioned towards the Port, with her back at the fence, so that the speakers face towards the Port.

Mr. Tomlinson asked if she has ever played acoustically, without amplification at the Port?

Ms. Tefft said no.

Mr. Tomlinson asked why?

Ms. Tefft said no one would be able to hear her, and she would not be able to hear herself.

Mr. Tomlinson asked that if she can't hear herself, are there other noises that drown out her music?

Ms. Tefft said yes, from other local establishments and frankly she does not want to scream.

Mr. Tomlinson asked if she sometimes struggles to hear herself, over music of other establishments?

Ms. Tefft said yes.

Mr. Tomlinson asked if it is her notion that the amplified music, from other establishments, is actually louder than the music that she is playing at the Port?

Ms. Tefft said yes, at times it has been. She has done her best to have a reasonable volume for her acoustic performance, for the Port's customers.

Mr. Tomlinson asked if she has a social media page, where her followers can follow her at the different establishments?

Ms. Tefft said yes.

Mr. Tomlinson asked if her followers will follow her to the different establishments and like to know her schedule in advance?

Ms. Tefft said yes and that she is very grateful for her Cape Cod following, from locals and from people that come to the Cape for the summer. She said that she has gained even more performances from just performing at the Port and it has really blossomed her career, not only on the Cape, but throughout the Country.

Mr. Tomlinson asked if there is anything else that she would like to offer to the Board, in the way of how important outdoor entertainment is to her at the Port?

Ms. Tefft said that it is her job, and she is so grateful to bring her talents to Harwich Port. She said that she has done it summers of 2017, 2018, and 2019, and she provides a service to help people relax and enjoy their time. She said that she is very grateful for what she does, in a safe and reasonable environment. Ms. Tefft said that she is just grateful for the opportunity to speak there on behalf of not just herself, as a musician, but also her other musician friends that also perform at the Port. She said that they are just really grateful for the opportunity, because this is their livelihoods and not a hobby. She said that is something she would love to get across, this is how they make their living and they are excited and grateful for the opportunity to do it again.

Mr. Tomlinson thanked Ms. Tefft for coming tonight, and asked Mr. Blake if he had any questions for her.

Mr. Blake said that should come from the Chairman.

Mr. Ballantine asked if anyone had any questions, and then turned it over to Mr. Blake.

Mr. Blake introduced himself and said that he had a couple of questions for her. He said that Ms. Tefft had said that she does eight to ten shows at the Port every summer.

Ms. Tefft said sometimes there's more, sometimes there's less. She said that it depends on when they can start, but yes.

Mr. Blake asked how many shows she does annually, all over the place? He said that she had said that she has a following nationwide, all over the country.

Ms. Tefft said that she does not have an exact number, because COVID definitely threw off those numbers last summer. She said that she is a traveling and touring musician and she splits her time between here and Nashville, TN.

Mr. Blake asked if she could give him a guess.

Ms. Tefft said no.

Mr. Blake asked is it 10 or is it?

Ms. Tefft said no, it's more than 10, but it depends. She said that her Cape Cod performances have been based around the Port for the last few summers, and the Port has been a very important place for her.

Mr. Blake asked if she is from the area?

Ms. Tefft said that she is from Sandwich.

Mr. Blake asked how she does not know how many shows that she does on an annual basis?

Ms. Tefft said that she does, she just is not sure how this is a relevant question.

Mr. Blake said that she told him it was a substantial part of her income, so he is trying to get an idea of how many shows that does and how important the Port is. He said that he does think it is a relevant inquiry.

Ms. Tefft said that her performances at the Port, are about a third of her summer performance income.

Mr. Blake said that she does about thirty shows a summer, and asked about the Fall and the remaining months of the year?

Ms. Tefft said that in the Fall, and the remaining months, she does have some shows, but as the weather dwindles, the outdoor performances aren't as common. She said that she prefers to perform in outdoor places and she would say that for the remainder of the year, she does not have as many shows, because summer is her prime time for touring.

Mr. Blake asked if she does not perform inside?

Ms. Tefft said that she does, but summer is her bigger touring season, and that is how she is trying to answer his question.

Mr. Blake asked if she has ever performed inside at the Port?

Ms. Tefft said no.

Mr. Blake asked if she knew if there is an ability to perform inside at the Port?

Ms. Tefft said that she does not.

Mr. Blake asked if she would agree with him, that if she performed inside that the amplification of music and sound would be easier to control, which is not.

Mr. Tomlinson objected.

Mr. Ballantine said that they are not in court, and he thinks that they can ask that question.

Mr. Tomlinson began to ask a question to Ms. Tafft.

Mr. Blake said to Mr. Ballantine that council said that he was not going to interrupt. He said that he would suggest that he warn Mr. Tomlinson to not interrupt and that he can ask his questions later. He said that he is trying to ask his question right now and trying to get an answer.

Mr. Ballantine asked if she could respond to the question, please.

Ms. Tefft said she wanted to ask if he could rephrase his question, so that she can answer it properly.

Mr. Blake said that she means that he wants her to just restate it, because she forgot the question. What he asked is if she would agree that it is easier to control sound inside a building, than it is outside?

Ms. Tefft said that she has not personally looked at the acoustics in the Port. She does not know where it would be set up, but it's hard for her to judge. She

said she has gone inside to the bathroom, but that is it, she has not looked to perform inside and does not have the ability to answer the question.

Mr. Blake said, okay fair enough, and asked if she has done any sound checks and walked away from the property to see how far your sound travels?

Ms. Tefft said that personally, she has had a manger or bartender give her a thumbs up, or thumbs down, before they start.

Mr. Blake asked if she knew how that manager, or bartender, came to that conclusion?

Ms. Tefft said that she did not.

Mr. Blake said that he had nothing further for this witness.

Mr. Howell said that, as he has said before, he had a band for 20 years and he played through an agent. He asked Ms. Tefft if there are any contracts with the Port, or is this a gig by gig arrangement?

Ms. Tefft said that this is through a text message, which states the time slots and dates, as well as the compensation.

Mr. Howell asked if there was no consideration up front for a deposit of any type?

Ms. Tefft said no.

Mr. MacAskill said that he had a question for Mr. Tomlinson, and said that in the past cross examination, or correcting of Mr. Howell, he had alluded to the Port having their own house system, and his question is, do they have a house system, or don't they?

Mr. Tomlinson said that he can't speak for the nature of the house system, and he is not a witness there tonight.

Mr. MacAskill said that the comment that Mr. Tomlinson made about the Port having a house system, within the same conversation about the parking spots, you are not going to answer that?

Mr. Tomlinson said that he is going to take offense to Mr. MacAskill's question. He said that he is not a witness, and he does not testify for the establishment. He said that he has stated that the establishment would be willing to upgrade its house system, to be able to control performers. That is a statement that he made and he does not appreciate him twisting it.

Mr. Ballantine asked if his statement now, is that they do not have a house system?

Mr. Tomlinson said no. He said that is not his statement and they are twisting his words and that is inappropriate.

Mr. Ballantine said that Mr. Tomlinson said that they would build one in the future and asked how he should interpret that?

Mr. Tomlinson said, that the Chairman was misinterpreting his statement. He said that he stated that the Port has a house system, and that they would be able to update that system to be able to control performers music.

Mr. Ballantine said so then that answer is yes?

Mr. Tomlinson said that he is not making any other statements about that.

Mr. Ballantine asked Ms. Tefft if she had chosen to use her own system, rather than the house system?

Ms. Tefft said that she was not given an option to use a house system, and that she did not believe that the Port had that ability during 2017 or 2018 or 2019.

Mr. Ballantine said that they've had some discussion in past years and that using the house system where they had multiple speakers encircling the entertainment area so each speaker was at a lower volume, was fairly effective in decreasing the noise. His question is if she had any experience with a house system like that?

Ms. Tefft said that she had not.

Mr. Ballantine said okay, thank you. He asked Mr. Tomlinson if he wanted to call his next witness?

Mr. Blake said that he would like to ask this witness a couple of more questions.

Mr. Ballantine said to please go ahead.

Mr. Blake said to Ms. Tafft that he had been able to go to her website, while they were talking and said it was a pretty nice website. He said that he saw that she has past performances in Sandwich, at Tomatoes, in Mashpee, and then in Saugus. He said that he believed she testified that this was her only Cape gig, and that is not really true, is it?

Mr. Tomlinson said that he did not think that was her testimony.

Ms. Tafft said that she never said that.

Mr. Blake said that he thought she had, and said that he had no further questions.

Mr. Ballantine asked Mr. Tomlinson to call his next witness.

Mr. Tomlinson asked if Ms. Paula Ribeiro was on the phone?

Ms. Ribeiro said, yes I am.

Mr. Tomlinson confirmed she could be on the video, and asked if she was a musician or a performer at the Port?

Ms. Ribeiro said no, that she is a server at the Port.

Mr. Tomlinson asked how the outdoor entertainment affects her livelihood or her income?

Ms. Ribeiro said it has a huge impact on her season at the Port. She said that it was about four years ago, that the Brackett's started really curating their summer season, with performers for the restaurant. She said that year by year, over the past four years, that working the same shifts, her income has gone up tremendously. She said that she attributes that growth to something different being offered at the restaurant. She said that people are looking for outdoor entertainment and being able to sit outside to enjoy their meals and listen to musicians. Those things have really drawn people in.

Mr. Tomlinson asked if she has had the opportunity to watch multiple performers at the Port, including Ms. Tafft?

Ms. Ribeiro said that she has.

Mr. Tomlinson asked if she has ever been tasked by management to perform sound checks of the musicians, to make sure that the sound is maintained at a reasonable volume?

Ms. Ribeiro said that they are all asked to keep their ears open, and to make statements to the people that are in charge, regarding the volume. She said that is certainly something, as a server, that she takes into consideration, because if she can't hear what people are saying to her, it makes it difficult to do her job. She said that if customers are sitting at a table with each other, and they can't hear each other talk, that can be annoying. So, certainly, the volume is something that they pay attention to, because they need it to be such, that they can hear what is happening with their patrons.

Mr. Tomlinson asked how many hours per week she works at the Port, during the summer season?

Ms. Ribeiro said that in the high season, she could be there anywhere from 30 to 60 hours, depending on staffing needs.

Mr. Tomlinson asked if she was there on nights when there was outdoor entertainment?

Ms. Ribeiro said that she is definitely there, and that she works Fridays and Saturdays every year.

Mr. Tomlinson asked if there was any live entertainment at the Port last summer?

Ms. Ribeiro said that they had been given permission for one week, she believed, out of the season, and they had one performer.

Mr. Tomlinson asked if there was one occasion last summer, where they had a live performer, performing amplified music at the Port?

Ms. Ribeiro said, yes and he was a solo artist who sings and plays guitar. She said it is amplified but he is not the kind of amplified music, where there's like electric guitars or a lot of other accompaniment playing.

Mr. Tomlinson said okay, so it was a single performing musician?

Ms. Ribeiro said correct.

Mr. Tomlinson if it is her experience that musical performers at the Port are typically limited to single musicians, that they are rock bands?

Ms. Ribeiro said that some of the musicians cover some classic rock music, but they are not rock and roll bands. She said that she does not believe that they have ever had more than a three-piece band play, and it is generally a guitarist, a singer, and maybe someone on a keyboard, at most.

Mr. Tomlinson asked when musicians perform at the Port, typically, besides the rear of the deck, is she aware of any other location at the Port?

Ms. Ribeiro said no, she is not.

Mr. Tomlinson asked if there is a sound stage, or a music stage, inside the Port?

Ms. Ribeiro said that there is not. She said that the building is old, so everything is really separated, there is not one large great space. She said if they were ever going to consider putting somebody inside, there would be very few people who would actually be able to watch or enjoy the performer, because of the divisions and separate rooms. She said that apart from that, their seating, tables and everything else, are not particularly movable, so she does not really know where they would put a performer. She said that the ceilings are low and she can't imagine it being a good experience.

Mr. Tomlinson asked if they were to put a musician inside, isn't it true that the only location would be essentially in front of the emergency exit doors?

Ms. Ribeiro said that truly would be the only spot, where she feels they could be visible to almost everybody and also not make them remove a tremendous amount of seating. She said that since musicians generally play through dinner hours, it would be lost revenue for not only the restaurant but, for

herself also, if 10 seats were taken away from her section for a performer and that would be hard on her wallet.

Mr. Tomlinson said that Ms. Tefft had been asked a question about the house music system, and he asked Ms. Ribeiro if she was familiar with the music system at the Port?

Ms. Ribeiro said that they do have a house music system, and there are small speakers distributed inside the restaurant. She said that there is one small speaker on the deck for ambient dinner music, and beyond that they don't have speakers anywhere else. She said that there are no speakers in the parking lot, and there were never any speakers in the tent.

She said that she believed the confusion, maybe, with the house system, is that it's not set up currently to be plugged into a musician's amplifier, so that they could control the volume of their music through the system. However, she said that she knows an upgrade of that nature is something that the Brackett's have discussed wanting to do, and it is very simple, though she would have no idea of what the cost of something like that would be.

Mr. Tomlinson thanked Ms. Ribeiro for her time.

Mr. Ballantine said that he had a question and said that a lot of their concern and discussion has been regarding noise, and he appreciates the discussion that she had on music. However, in addition to music, they have crowd noise and he said it can get quite loud. He said that they got one video, which he was sure was put into the packet, but said that it shows a crowd, obviously having a good time, throwing beach balls around and he would gather being very noisy. He asked if something like this occurs, what is the step that management can do to try and hold the noise down?

Mr. Tomlinson said to Ms. Ribeiro, as an employee of the Port, he is going to ask her not to speculate as to the Chairman's question. He said that she is not management, or an owner, and she does not have any personal knowledge of this, so she should not feel compelled to answer the Chairman's question.

Mr. Ballantine said for the record, there's no speculation, they have it on tape and they have all seen it.

Mr. Tomlinson said to Mr. Ballantine that respectfully, the establishment has not seen it, despite requests, nor has Ms. Ribeiro. He said that he is asking her about something that she has no personal knowledge of and that it is not relevant. He said that in the Chairman's words, the entertainment license was already discussed last week.

Mr. McManus said that Ms. Ribeiro talked about being given direction by management on other areas, and he is wondering if Mr. Ballantine's question goes to what direction she would be given if the crowd was getting too noisy? He said, what was the server supposed to do in cases like that?

Mr. Tomlinson said to Mr. Ribeiro, that if she understood Mr. McManus's question, she could answer it.

Ms. Ribeiro said that she thinks there are actually two levels that she feels they are speaking of, and if they are asking for a general rule of thumb, for patrons getting too rowdy, they have a doorman at night, who will assist them if they are having a hard time getting people to listen, and they also have management that they can go to. She said that as far as crowd noise, from last year, she thinks that there are a lot of factors that should be considered, and first and foremost, people had been cooped up for quite a long time and they were very excited to be out. She said that there was certainly a different level of excitement for people to be seeing each other, and to be social then she has seen in the past. She said that she does not think that anybody could have been prepared for what happened. Ms. Ribeiro said that the volume of business, they had last year, there were a lot of people on the Cape and it looks like there will be again this year. However, she thinks that the situation last summer is not going to be mirrored in the future, because it was a once in a lifetime season. She said it's changing and it's getting better already, and they can only do better from there.

Mr. Ballantine thanked her for that.

Mr. Howell said that there has been a conversation about lost income, both in the preceding witness and he believe that she had brought it up. He asked Ms. Ribeiro if it would surprise her to hear that there was no outdoor entertainment at all on their license listed until 2017, and further that there was no outdoor seating to go along with that, until COVID occurred. He said that it was just the request, as he recalled, for outdoor entertainment, such as steel drums on a patio deck for people waiting, and he asked if she was aware of that?

Mr. Tomlinson interrupted, and Mr. Howell said that he had not been recognized.

Mr. Tomlinson said that Ms. Ribeiro is an employee of the Port, and as such, is his client and therefore he is entitled to counsel her.

Mr. Ballantine said that they have an opportunity now to ask a question of the witness, and she can choose to answer it, or not, but they didn't ask him the question and they will proceed with that and follow those rules.

Mr. Howell said that his point of order was that this is controlled by the Chair and anyone who wishes to speak, has to be recognized, through the Chair, and cannot just interject. He said that they have made that point numerous times and this is not the first time that it has been brought to Mr. Tomlinson's attention. He said that if Mr. Tomlinson does not get the Chairman's attention to be recognized, he has no particular right to speak, at all.

Mr. Tomlinson said, nor do you Mr. Howell.

Mr. Howell said, excuse me a point of order, I do, and said that he had apparently not read Robert's Rules of Order recently.

Mr. Tomlinson said as of last week, neither had Mr. Howell, and said let's continue and began to address Ms. Ribeiro.

Mr. Ballantine said that they will continue to keep muting him until they can get this in order.

Mr. Ballantine asked if Ms. Ribeiro was able to answer the question.

Ms. Ribeiro said that she cannot speak to what licensing or any of that would have looked like in the past, she is not privy to that information.

Mr. Howell said that he is still asking questions and said that was the point of his question is that ultimately she does not really have any idea about what the expectation of the patron level would be for outdoor entertainment?

Ms. Ribeiro said no, that is not her job.

Mr. Blake said that he had one quick question. He introduced himself and asked if she had taken the oath at the very beginning of the meeting?

Ms. Ribeiro said no.

Mr. Blake asked if she would affirm that the testimony that she has given and was about to give is the truth the whole truth and nothing but the truth so help you god?

Ms. Ribeiro said that she does.

Mr. Blake said that she had indicated earlier that she and other employees do sound checks on volume, and asked if she can could tell him how they would perform those sound checks?

Ms. Ribeiro said that she does not believe that she said that she performs sound checks. She said that what she said was that she has been asked by management to be aware of the volume of the music. She said for her, that means that if she is standing four feet away from someone who is asking for something, can she hear them. Also, if she has customers that are having a conversation at their table and it seemed they were having a hard time hearing each other, that would mean that she should speak to management. She said that those are the things that she said she would do.

Mr. Blake asked if she ever walked the property line, or 150 feet away from the property line, to determine whether or not she could hear any noise?

Ms. Ribeiro said that she is not a manager, she is a waitress, and that's not her responsibility.

Mr. Blake said that he had nothing further to ask.

Mr. Tomlinson asked if there was anyone else on the line who wished to speak in support of outdoor entertainment at the Port?

Mr. John Dillon said that he would like to say a few things.

Mr. Tomlinson if Mr. Dillon was a musician who performed at the Port and then said that he wanted to back up for a second, and asked if he was present for the oath at the beginning?

Mr. Dillon said he was not.

Mr. Tomlinson asked if Mr. Dillon was willing to take the oath?

Mr. Dillon said yes.

Mr. Tomlinson asked if everything he was about to testify to the truth, the whole truth, and nothing but the truth, as far as the best of his knowledge?

Mr. Dillon said yes, it is.

Mr. Tomlinson asked if Mr. Dillon is a musician, or employee, of the Port?

Mr. Dillon said that he has performed at the Port for the past three years.

Mr. Tomlinson asked on how many occasions he has performed at the Port over the last three years?

Mr. Dillon said that he performed every weekend, and that he was the Saturday night guy, so whatever that added up to.

Mr. Tomlinson asked in his past experience, if he negotiated his contract over a text messages or email, or some form of writing with ownership about his performance and compensation?

Mr. Dillon said yes.

Mr. Tomlinson asked if he had performed at all last summer, during COVID?

Mr. Dillon said that there was one week where it was allowed and he performed. He said that he was easily 30 plus feet away from anyone, but sadly it was only one time.

Mr. Tomlinson asked if he is a solo musical artist or if he performs as part of a group, trio, or band?

Mr. Dillon said it's just him, with his acoustic guitar and his voice.

Mr. Tomlinson asked if his acoustic guitar is amplified?

Mr. Dillon said yes it is.

Mr. Tomlinson asked if he gets reminded by ownership, or management, to keep his volume within a reasonable level?

Mr. Dillon said that is one of the things that he wanted to say, the Port is one of his favorite places to play because of the low-key nature of it. He said it is very intimate and it is relatively early for his line of work. He said it is usually a happy hour, 5:00pm to 8:00pm, or 6:00pm to 9:30pm, kind of sets at the Port. He said that he likes that it is not the rowdy crowd, he likes to sit and play intimate songs and some of his own music. He said that towards the end the energy may pick up a little, but for the most part, he appreciate the low-key nature of the shows.

Mr. Tomlinson asked if he performs at other gigs, outside of the Port?

Mr. Dillon said yes, that he plays all over the Cape, like the Woodshed, Chapin's Fish and Chips, and Ember. He has also played in Key West and San Diego, all over the place.

Mr. Tomlinson asked if his standard Saturday night summer gig is at the Port?

Mr. Dillon said yes.

Mr. Tomlinson asked how many other times a week, does he play other gigs at other locations?

Mr. Dillon said that he is usually playing anywhere from five to seven times per week, but last summer it was a big hit to him, not being able to play at any of those places. He said last summer he was lucky if he got to play three times a week.

Mr. Tomlinson asked if he played at other establishments on the Cape last summer?

Mr. Dillon said yes, that he played at Chapin's Fish and Chips and Pelham House Resort.

Mr. Tomlinson asked if during the gigs that he played at the Port, how would he characterize the income that he received? Is that a substantial part of your income?

Mr. Dillon said yes, and honestly it is huge, he thinks that it is about half of his yearly income, it is a lot.

Mr. Tomlinson asked if he was already booked to play at the Port this summer?

Mr. Dillon said yes, that Griff (Brackett) had hit him up a few months ago, before all of this transpired. He really appreciates the he is always ahead of the curve, he is really looking forward to playing there.

Mr. Tomlinson asked if he was denied the ability to play, because the Board denies outdoor entertainment at the Port, will you lose those weekends, or will you be able to pick up other gigs?

Mr. Dillon said that's the thing, there are so many places that are struggling with all the COVID regulations, they don't really know what they will be allowed to do, or if they have the space to do it. So, if he does not have the Port, it will be a big hit, no matter how you slice it.

Mr. Dillon asked if the size of the Port affords greater flexibility, during COVID, to be able to play, is that what he is saying?

Mr. Dillon said yes.

Mr. Tomlinson said that what he is really dealing with here is an impact to his livelihood?

Mr. Dillon said 100%, yes. He said also, he brings his younger brother, who is his manager and has special needs. It means so much for his brother to be able to get out and he helps to load in and load out, and Mr. Dillon said that he gives him some money. He said that it is more than just himself that it is affecting.

Mr. Tomlinson said that is all that he had for Mr. Dillon.

Mr. Howell asked if there was a reason that they could not see him as a witness?

Mr. Dillon said that he has never used this, and Mr. Howell explained where the video button could be found. Mr. Dillon's video was still dark, but Mr. Howell moved on.

Mr. Howell said that he had asked Ms. Tafft earlier, which he may have heard, but he has played hundreds and hundreds of gigs over the years, and even if they had a contract, if there was no deposit, he asked Mr. Dillon if he has had any experience with having a cancelled gig and needing to go to small claims court and made them pay for the missed gig? Or is that a solid booking that has a deposit on it?

Mr. Dillon said there is really no deposit, and honestly he's been doing this for three years and he has never really had any big contract, or official contract, just because it is a small operation.

Mr. Howell asked if anyone has ever cancelled on him?

Mr. Dillon said, not that he can think of.

Mr. Howell said that he is a lucky musician.

Mr. Dillon said I am yes.

Mr. Ballantine turned it over to Mr. Blake for questions.

Mr. Blake introduced himself, and asked Mr. Dillon, if besides his brother, if anybody else helps him?

Mr. Dillon said no.

Mr. Blake asked, when he does sound checks, if he walked the property line to see if he could be heard from the property line?

Mr. Dillon said, that would be kind of hard for him to do, because he is the one making the music.

Mr. Blake asked, what about 150 feet away from the property line?

Mr. Dillon said again, if he is playing music, he can't check himself.

Mr. Blake said, okay, fair enough, thank you.

Mr. Ballantine turned it over to Mr. Howell.

Mr. Howell said that he had just one other question, and asked Mr. Dillon what his rig is when he is playing the equipment?

Mr. Dillon said that it is just an acoustic guitar, and the only other thing that he has ever used at the Port, is a single Bose S1 sound system. He said that if you talk to any music gear guys, they will tell you it is not loud enough for a big venue, it's more of like a coffee shop thing.

Mr. Howell said he is familiar with it.

Mr. Ballantine turned it back to Mr. Tomlinson.

Mr. Tomlinson asked Mr. Dillon, for as long as he has been performing at the Port, has he ever been the subject of a noise complaint, that's been brought to his attention by neighbors, or the police?

Mr. Dillon said that he has not, but said that management is very diligent in making sure that his sound is not too loud, because it is an intimate setting and he said that people appreciate it being that way and not blowing eardrums out.

Mr. Tomlinson said thank you to Mr. Dillon.

Mr. Ballantine said that before Mr. Dillon leaves, there is one more question.

Mr. McManus asked when he plays at the Port, when does his sets end?

Mr. Dillon said that he thinks the misspoke earlier, but that it is till 10:00pm, but that is a sharp cut off time. He said that maybe managers come out at 9:55pm, to tell him to wrap it up.

Mr. Ballantine told Mr. Tomlinson that the floor is his, for his next witness.

Mr. Tomlinson said that he is waiting for Mr. Dillon to exit, and mute himself.

Mr. Tomlinson asked if there was anyone else on the line, that wished to speak in support of the Port's outdoor entertainment? No response. Mr. Tomlinson explained that unfortunately this was the first night that the Port has been open, and most of its patrons are trying to enjoy that atmosphere tonight. So, it looks like they do not have 250 people there tonight, to speak in support of the Port.

Mr. Ballantine said thank you and that as he had said he will forward it to Mr. Tomlinson for some brief comments at the end. However, before they go there, as Mr. Blake said earlier, there are some people who have concerns that would like to speak, and they will do that now. He asked that people not repeat comments that have been made before.

Mr. Ballantine after some confusion of trying to get speakers to be unmuted, he recognized Mr. Bob Cohn to speak, and asked if he had been sworn in?

Mr. Bob Cohn said that he was sworn in, and that he has two things. He said that last summer may have been different than other summers, but when Mr. Dillon was performing they could hear him on Pleasant Street, and they called the restaurant three times. He said that this is a testimony that he gave earlier, and on one of those nights they called three times and nothing was done about it. Mr. Cohn said that they could hear him on Pleasant Street, for that full week, but then after that it got quiet, which may be because he was 30 feet away from the tent. He said that is all he has.

Mr. Ballantine asked if Mr. Bob Nickerson was able to unmute and speak? No response. He then called on Mr. Joe Ganley to speak and asked if he had been sworn in?

Mr. Ganley said that he was sworn and introduced himself and said that he is an abutter of the Port, on Sea Street, Harwich.

Mr. Ballantine asked him for his brief comments and asked him not to repeat what they have heard before.

Mr. Ganley said that he won't repeat the testimony that he has given to the Board before, except to say that he wanted to speak tonight because as he understands it there are two issues before the Board. One is the entertainment license, and the other is the discipline associated with the COVID violations,

that have been found to be true by the by the Town Administrator, as the finder of facts. He said that he really wanted to speak mostly to the COVID violations. He thinks that it is telling that there were COVID violations found by the ABCC's State Investigators on July 16th, and that according to the sworn testimony of the ABCC investigator, there was a discussion with the Manager of the Port on that evening related to those COVID violations, and then when the ABCC investigators returned to the Port the very next day on July 17th, they found fundamentally the very same violations.

Mr. Ganley said that he would suggest to the Board, that at some point, the credibility of the applicant has to come into question here. He said that there was a discussion with the investigator about the violations, there is not a question of notice, there is not a question of, "we didn't know what the rules were". They were put on notice the night before, and the very next day, they were found in violation of the very same regulations that they were found in violation of the day before. He thinks at some point, this Board, has to understand that this is the approach of this establishment. They look at violations, as a cost of doing business, and they are willing to push the envelope and do whatever they need to do to maximize their business and their revenue, and regulations and rules be damned. Mr. Ganley said that at some point, the fact that they have ABCC Investigators, who visited the establishment on two consecutive days, and found the very same violations, that should be relevant to this discussion, with respect to discipline.

Mr. Ballantine said thank you and asked if there were any questions for Mr. Ganley?

Mr. MacAskill said that he did not have a question for Mr. Ganley, but did have one for Mr. Blake. He said that at the start of this meeting, Mr. Tomlinson raised concern about the public hearing notice, related to the subject of the violations. He asked if Mr. Blake could speak to that?

Mr. Blake said that it is his understanding, that the public notice, with respect to the violation indicated, that there was going to be discussions regarding that during the February 8, 2021 disciplinary hearing. Therefore, they were on notice, and they had the package.

Mr. Tomlinson said that he had questions for Mr. Ganley, and asked if he was a lawyer?

Mr. Ganley said that he is not a practicing lawyer, no.

Mr. Tomlinson said he is not a bar admitted attorney, but he did attend law school?

Mr. Ganley said correct.

Mr. Tomlinson asked if he has had any ex parte communications, with any member of the Board, Mr. Powers, or the Chief of Police?

Mr. MacAskill asked for relevance?

Mr. Ballantine said that he did not know why that is relevant, Mr. Tomlinson?

Mr. Tomlinson said that Mr. Ganley, himself, claimed that his testimony was relevant to the issue of the COVID violations, and he is simply asking him questions related to that. Therefore, he does believe that it's relevant, and he thinks that he should afforded some leeway.

Mr. Howell said, to the point that's being raised right here, what would be the fine point difference between ex parte communication, and lodging a complaint, which any citizen has the right to make. He asked Mr. Blake, where is the delineation?

Mr. Tomlinson said that Mr. Blake is not there to answer Mr. Howell's legal questions on the record. He said that he has a question pending for Mr. Ganley and he would like for him to answer the question.

Mr. Blake said that is his exact role there, he is Town Council, and he advises the Board with respect to legal questions, that is his role. He said that the answer to Mr. Howell's question is that there is not a difference. He is right, they have a right as a citizen to petition their government, with complaints, and the like. He said that it is his understanding that Mr. Ganley has done just that.

Mr. Ballantine asked if Mr. Tomlinson had another question?

Mr. Tomlinson said that he does have more questions for Mr. Ganley. He said that Mr. Ganley has repeatedly testified, over numerous occasions in the past few weeks, including in his written correspondence with the Town, that he

has no concern with music at the Port, but that his issues stem from crowd noise and patron noise, under the tent. He asked, that has been his testimony, previously, correct?

Mr. Ganley said correct.

Mr. Tomlinson asked if he had no objection to outdoor entertainment at the Port?

Mr. Ganley said that he has no objection to outdoor entertainment, at any establishment in Harwich, so long as it is done in compliance with the Town's noise bylaw.

Mr. Tomlinson asked if he had a chance to read the noise bylaw?

Mr. Ganley said that he has.

Mr. Tomlinson asked, given his legal training, if he found any concern with the noise bylaw?

Mr. Ganley said that he is not sure what he means by, concern with the noise bylaw?

Mr. Howell said he's not in this position.

Mr. Tomlinson said excuse me Mr. chairman, I am in the middle of a question.

Mr. Howell said, not if it's not relevant.

Mr. Ballantine said that he does not think that's particularly relevant.

Mr. Tomlinson said that the question was not directed to him, it is directed to Mr. Ganley and he would appreciate some respect and not being interrupted, by Mr. Howell. He said that he is going his level best to not interrupt him.

Mr. Tomlinson asked Mr. Ganley given his legal training and his review of the noise bylaw, has he identified any procedure in the noise bylaw whereby a neighbor can raise a complaint to the police department, or otherwise, about noise which you believe disrupts your quiet comfort?

Mr. Ballantine said that there is a point of order.

Mr. Tomlinson asked if Mr. Ganley could answer the question, before he interrupts him?

Mr. Ballantine said that he may not.

Mr. Tomlinson asked if he was going to instruct a neighbor, to not answer his questions? He said that he is cross-examining a person here, and that he cannot instruct him not to answer.

Mr. MacAskill said that his point of order, and asked to be heard now. He said that Mr. Ganley's legal training, is not known to this Board and Mr. Tomlinson is questioning him based on his legal training. He said that he would completely object to that line of questioning and he thinks that Mr. Tomlinson is getting completely off track. He does not think that Mr. Ganley's past legal knowledge, has any stake in this whatsoever. He is not testifying as an attorney, he never said he was. He would ask that Mr. Tomlinson stop this questioning.

Mr. Tomlinson asked Mr. MacAskill if Mr. Ganley had communicated with him?

Mr. MacAskill said to Mr. Tomlinson, that he should not address him, that he needs to address the Chair.

Mr. Tomlinson continued to speak, but it was not audible. Mr. Tomlinson then directed his comments to the Chairman, and asked if Mr. Ganley communicated in writing with the Board, and gave legal analysis, upon which this board relied.

Mr. Blake suggested that the Board take a five minute recess, and let the temperature come down.

Mr. Howell moved that they take five minute recess.

Mr. Tomlinson said that he would ask that Mr. Blake refrain from any ex parte communications, with any member of the Board, during the recess.

Mr. Blake said that he is their attorney, and will communicate with anybody that he feels appropriate. He said that he will not violate the open meeting law, but this ex parte communications is not relevant. He said that it is a word that Mr. Tomlinson and Mr. Kelley have thrown out, along with unconstitutional and the like, and he would suggest that they take a five minute recess so that they can discuss this.

Mr. Ballantine said that they have a motion and a second.

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

They went on recess for five minutes.

Mr. Ballantine said that he understands that they have one resident who has not testified previously and he would like to give him a chance. He asked if Mr. Bob Reed could join them.

Mr. Tomlinson said that he was not finished with his questioning of Mr. Ganley and he just has a couple of more questions.

Mr. Ballantine told Mr. Tomlinson that he has decided to move on.

Mr. Tomlinson objected and said that he was not done with the questioning of Mr. Ganley.

Mr. Ballantine said for clarification, Mr. Tomlinson is done with that witness. He said that they are moving on to Mr. Reed and asked Mr. Reed if he would like to testify and if he had been sworn in?

Mr. Reed said that he had been not sworn in.

Mr. Ballantine asked Mr. Reed if he swears to tell the truth, nothing but the truth and only the truth, so help you god help you god?

Mr. Reed said he did, and that he just had a couple of points to bring to the Selectmen's attention. He said that last summer, when he, and his wife, were working in their retail establishment, which is the building closest to the Port, across Sea Street, while they were open, they could hear loud music. He said that he did not know where it was coming from, so he walked outside and

observed that it was a single singer playing at the Port, with his system directed towards the tent. Mr. Reed said that the singer was outside, so he spoke with him briefly during a break and asked if he could turn the volume down slightly. He said that the singer was uneasy and suggested that I talk to the manager. He asked a server to speak with the manager and a few minutes later, the manager came out and identified himself as Jake. He said that when he told the manager his issue, the manager launched into a massive stream of profanities and told me that he knew the noise regulations and that they had all of the appropriate permissions, and that basically I could pound sand. Mr. Reed said that he was pretty upset with how he was treated because he was very pleasant when he went over. He then went back to their store and called the police and stood in our back parking lot. He added is the lot, that the Port referred its dinner customers to park in, even though it is a private parking lot, because their parking lot was no longer available because of the tent. Mr. Reed said that a few minutes later, a couple of police cars did in fact arrive and start talking to them. He said that the point he wanted to make, is that the earlier testimony, given under oath, by the people at the Port, that they were never aware of any complaints, is simply not true. He said that he had other things to add, as far as complaints about their operations, but to keep the hearing short, he said that is it for now.

Mr. Ballantine said, that is all the witnesses they are going to call. He said to Mr. Tomlinson that he would be given a chance for a brief comment, before closing the public hearing.

Mr. Tomlinson said that he had a couple questions for Mr. Reed.

Mr. Ballantine said yes two questions, and for them to be relevant.

Mr. Tomlinson asked Mr. Reed how far his store was from the Port, and said it is directly across Sea Street, correct?

Mr. Reed said yes.

Mr. Tomlinson said so that is about 40 feet total?

Mr. Reed said no, that their building is a commercial building with eight retail establishments on the ground floor, and offices upstairs. He said that it is fairly large and they are in the farthest diagonal position of any of the

establishments in the building. He said that it would be at least six to eight times further away than the closest part of the building.

Mr. Tomlinson asked what time it was that he went to the Port to speak to the musician? Was it early afternoon, or 10:00pm?

Mr. Reed said no, it was not 10:00pm, it was late afternoon.

Mr. Tomlinson asked if he had made complaints to the police before, about any music noise at the Port?

Mr. Reed said no, that he had not.

Mr. Tomlinson said, that the one time he did make a complaint, the police did arrive and the music was turned down. He asked if it was during COVID, when the musician was playing, with, as he had indicated, the speakers pointing towards the tent?

Mr. Reed said yes, it was the only time he ever recalled seeing outdoor musicians in the parking lot there. He said that last summer, was the only summer of the tent, so he never experienced that before, and this was the early part of the summer.

Tomlinson asked if when Mr. Reed had spoken with Mr. Jake Domos, did he appear to be working very hard to control a lot of the COVID concerns at a restaurant?

Mr. Reed said that he could not read anything from his appearance, except that he seemed furious that I was concerned about the level of the noise.

Mr. Tomlinson asked how far would you estimate your store is from the Port, in feet?

Mr. Ballantine said that he had answered that already, and he asked him before to be ask the same questions, in different formats. He said one more questions.

Mr. Tomlinson said that it is not the same question, and he would just ask for an opportunity to have a brief and reasonable examination of a witness, without interruption.

Mr. Ballantine said that he has asked it in different ways.

Mr. Tomlinson said he never answered how far. He simply said that his store was at the other end, and he was simply asking how far, is it 100 feet, 125 feet?

Mr. Ballantine said that's your last question, and directed Mr. Reed to answer and then said that they will move on.

Mr. Tomlinson said he is going to object to the Chairman's instruction.

Mr. Reed said in terms of walking from the entrance of their store, to the Port property, one has to walk on a sidewalk along one side of the building, make a turn, and walk in the other way. He said that he never thought he would need to measure the distance, but now that he is thinking about it, it is probably about 80 paces, or a little more from their door to the Port.

Mr. Tomlinson continued to try and ask Mr. Reed a question.

Mr. Ballantine had Mr. Tomlinson muted, so that he could speak and said that he would give him a chance to make a closing comment. Mr. Nickerson attempted to speak again, but could not be heard. Mr. Ballantine continued to Mr. Tomlinson and asked if he had closing comments?

Mr. Tomlinson said he does.

Mr. Ballantine interrupted that they had one more witness that wished to testify, who has not yet. He asked Mr. Bob Piantadosi to unmute and asked if he had been sworn in?

Mr. Bob Piantadosi, resident on Bank Street, Harwich Port, said that he had been. He said that he is not an attorney, so they can put that question to rest. He said that his comment is a little more generic but it speaks to the noise issue and the entertainment.

He said that he had been listening to the testimony over the last few weeks, and his perspective is that most of these issues would evaporate if they had not issued entertainment licenses. He said that he is not opposed to entertainment, but when they sit on their patio, over the last few years, and last year has been a bit of an exception because of COVID, but they spent a

lot of money on their patio and they have to go indoors because of the different venues.

Mr. MacAskill called for a point of order, and said that he would ask that they get to a question or comment about the Port, or the violations at hand. He said that they are not there to have a generalized talk about noise licenses or what has happened in the past. He said that this hearing is specific to the Port Restaurant, and very specifically to the entertainment license, and the violations, and they have had hours and hours of hearings. He said that he is sure there will be another venue for them to talk about the in general comments, but tonight is not the time for them.

Mr. Piantadosi said that this is this is his one opportunity, and when he went to the noise hearings.

Mr. Ballantine interrupted, and said to Mr. Piantadosi that they will move on. He said that they have heard a lot of pros and cons, and they are at a spot that they can address the issues tonight, which is the entertainment license for the Port, and the violations. He thanked Mr. Piantadosi for the additional points.

Mr. Ballantine turned it over to Mr. Tomlinson for his brief comments before they close the hearing, and move into their deliberations.

Mr. Tomlinson said thank you and addressed Mr. Piantadosi, saying that he is sorry that the Board did not afford him the opportunity to speak.

Mr. Ballantine said that they have asked Mr. Tomlinson for his closing comments, so that they can continue and close the hearing. If he would like to do that, otherwise they will move ahead without his closing comments.

Mr. Tomlinson said that he will not be denied his closing comments, and that he was afforded that and reserved that at the last hearing.

Mr. Ballantine said to do his comments now.

Mr. Tomlinson said that the Chairman has given him the floor and he would like to be able to speak without interruption.

Mr. Ballantine said for him to go ahead.

Mr. Tomlinson again began to address Mr. Piantadosi.

Mr. Ballantine said for Mr. Tomlinson to either go through his closing comments, or they will close the hearing without him having that opportunity.

Mr. Tomlinson said that Mr. Ballantine is interrupting him and he had given him the floor.

Mr. MacAskill called for a point of order. He said that the speaker, whom Mr. Tomlinson was addressing, had started to make general comments that the Board did not take up that discussion. Therefore, addressing him now, is completely off base, and he does not understand why Mr. Tomlinson cannot make his closing arguments.

After some back and forth, Mr. MacAskill added that the witness had not testified against his clients, and asked if they could please move on.

Mr. Ballantine said to Mr. Tomlinson that if he wants to make a closing comment, he is offering him that opportunity, but it has to be a closing comment.

Mr. Tomlinson said that he will define what is his closing comment, and he will offer it now. He said that he respectfully requests that they not interrupt him, it will only take thirty seconds. He said that the only lawful action that the Board can take tonight is the renewal of the entertainment license, as it existed in 2020. He said that the notice from March 12, 2021, made no reference to Mr. Power's February 8th findings or anything with respect to COVID. He said that is a blatant open meeting violation, and the only lawful action the Board can take tonight is renewal of the entertainment license, as it existed. The public notice is defective with respect to the entertainment license. He said that there was no clear notice that the Board intended to deny renewal of the entertainment license, as issued in 2020, and there are no stated reasons in that notice packet which showed the Board had good cause to deny renewal of the entertainment license, or other fair description which might constitute good cause. The Port has had no noise violations in three years, the Board issued the entertainment license without conditional restriction in 2020.

Mr. Tomlinson said that COVID presented a unique set of challenges, that is without question. He said that whatever concerns the public may have with respect to that, are essentially noted by the fact that the Board took away any

opportunity to offer an outdoor tent. He said that the renewal can only be denied for good cause, public need is not the renewal standard, contrary to their attorney's statement, or Mr. Ganley's written communications with them, giving legal analysis about public need. He said that the Ballarin Factors do not apply, they are not relevant to a presumptive right of renewal of the entertainment license. There was no recommendation made by Mr. Powers, concerning the entertainment license and this Board's procedure is unlawful, it's not in accordance with the statutory procedure, and it violates the clearly established constitutional rights of the licensee. They have evidence of ex parte communications outside of the formal record, witnesses and neighbors are talking directly with members of this Board, when they are not sitting as the Board and only serving their own selfish biased agenda. He said that the Selectmen's packet was updated with no prior notice, or opportunity to be heard by the license holder, and the updated packet was rejected and intentionally omitted documents that the licensee wished to be including, which were relevant to the public's review. Therefore, each Selectmen and Mr. Powers engaged in this unlawful procedure, as they each and collectively considered adverse action against the license holder.

Mr. Ballantine interrupted and said that he appeared to be arguing a court case, rather than a hearing tonight for the entertainment license, so they.

Mr. Tomlinson said that he is entitled to make a closing statement, and he reserved his objections and he is making them now.

Mr. Ballantine said that he is done with his closing statement at this point.

Mr. Tomlinson asked if he was denying him the ability to close his final statement?

Mr. Ballantine said that his not.

Mr. Tomlinson asked if he was denying him the ability to close his final statement, and said that he has been denied the ability to questions witnesses, he has also been denied the ability to make his objections.

Mr. Blake asked if he could comment, and said that he had said that he needed thirty seconds, they gave him thirty seconds, and it is well within the rights, as the Chairman, to not give him any time, but they gave time, and he should tell him to wrap it up.

Mr. Tomlinson said that he heard that Mr. Blake is advising that they give him more time to wrap it up, that is what he was hearing.

Mr. Ballantine said, very quickly.

Mr. Tomlinson said that this Board's biased and selective enforcement against the Port has violated its constitutional rights, and that is the basis of the lawsuit, and the public needs to know that. The public also needs to know that you have unfairly invoked the rule of necessity, at their convenience.

Mr. Ballantine said at this point, he will entertain a motion.

Mr. Howell moved to close the public hearing. Seconded by Mr. MacAskill.

Mr. Blake said that they can close the public hearing, and then he can provide them with the standard. He will add that Mr. Tomlinson mischaracterized what he had told them with respect to the entertainment license, and said that the standard is not the Ballarin Factor, and he had never suggested that, this time around. He said that they can close the public hearing portion and then he will provide them with the standard for the entertainment license for their deliberation of the entertainment license and the violations found by the ABCC inspectors.

Mr. Howell said that he still made that motion, in so far as they can confer with their lawyer, and he is not testifying after this.

Mr. Ballantine said ok and asked if they had a second. Mr. MacAskill confirmed he had seconded.

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

Mr. Ballantine said that the public hearing is now closed, so they will take no other comments from the public. He said that they will have Mr. Blake and Mr. Powers join them.

Mr. Blake said that he did just want to reiterate for the Board that the board is going to review the applicant's request for renewal of its entertainment license under MGL c.140 s.183a, and with respect to that license, the standard is that

the license must be granted, unless the board finds that the license alone or in combination with other licensed activity on the premise would adversely affect the public health, safety or order, because it cannot be conducted in a manner so as to protect employees, patrons, and members of the public inside or outside the premises from disruptive conduct, from criminal activity, or from health, safety or fire hazards; (b) prevent an unreasonable increase in the level of noise in the area caused by the licensed activity or caused by patrons entering or leaving the premises; or (c) prevent an unreasonable increase in the level of pedestrian or vehicular traffic in the area of the premises or an unreasonable increase in the number of vehicles to be parked in the area of the premises. He said, that is the standard for granting the renewal of an entertainment license. However, he said, that never in the beginning of this hearing was it the so-called Ballarin Factors. Therefore, when they are making their deliberation, with respect to the entertainment license, he would caution the Board on one thing. It says that the license must be granted, unless, and it's typical that courts would look at whether or not the license can be conditioned such that any of the concerns that are properly before the Board can be alleviated.

Mr. Ballantine asked Mr. Blake if you could reiterate, that they can issue the license with conditions, and the conditions again are public safety noise or order?

Mr. Blake said it would be, protect employees, patrons, and members of the public inside or outside the premises from disruptive conduct, from criminal activity, or from health, safety or fire hazards; (b) prevent an unreasonable increase in the level of noise in the area caused by the licensed activity or caused by patrons entering or leaving the premises; or (c) prevent an unreasonable increase in the level of pedestrian or vehicular traffic in the area of the premises or an unreasonable increase in the number of vehicles to be parked in the area of the premises.

Mr. Ballantine said that those are the factors, and he will take any input.

Mr. Howell said that he thought that they would take the matter of any kind of license infraction in violations first.

Mr. Ballantine said yes, and asked if Mr. Powers wished to comment on the violations?

Mr. Tomlinson objected.

Mr. Ballantine said that he is not a part of this, and needed to remain muted.

Mr. Powers said that he will continue, as their duly appointed representative as Town Administrator, in all matters that the Board as referred to him, including the matter which they just spoke of. He said that if they would like for him to continue, he would remind the Board, that they can rely on the memorandum dated February 8, 2021, which gives a brief recap of the hearings which took place regarding the alleged violations, that were brought to the town's attention, in the spring and summer of 2020. He said to also remind the Board that his conclusions, as contained in that memorandum, are that the alleged violations that were presented to him as the hearing officer. The testimony that was provided, had led him to conclude that in fact the establishment did violate, or did cause three violations, of the laws of the Commonwealth.

Mr. Tomlinson said that he is, again, going to object to Mr. Powers giving testimony.

Mr. Ballantine said that Mr. Tomlinson can listen, but he is not a part of the deliberations at this point, and he has had his chance.

Mr. Tomlinson said that Mr. Powers is not a part of this either, as he is not a member of the Board.

Mr. Powers asked if he could comment. He said the absurdities of Mr. Tomlinson notwithstanding, the Board has recognized him as the presiding officer of the public body, known as the Board of Selectmen, and he said that he has responded to the direction of the Chairman and the members of the Board.

Mr. Ballantine said thank you.

Mr. Tomlinson said that it does not make it lawful.

Mr. Powers said neither does his actions of speaking without being recognized.

Mr. Ballantine told Mr. Tomlinson that if he interrupts one more time, they will have to lock everyone out so that he is absolutely prevented from commenting. He added that Mr. Tomlinson can listen, but he cannot interrupt, they have closed the public hearing and he hopes that Mr. Tomlinson understands that.

Mr. Howell asked to speak.

Mr. Tomlinson asked to respond.

Mr. Ballantine said no to Mr. Tomlinson and gave the floor to Mr. Howell.

Mr. Howell said that before he makes a motion in the matter of discipline, he would like to hear if Mr. Blake has anything to add, prior to making the motion, relative to any kind of disciplinary action.

Mr. Blake said that at the hearing last week, there was a decision by the ABCC, which indicated that at the end of their decision that the commission suspends the license for a period of six days, which will be held in advance for a period of two years, provided no further violations of MGL c.138, or the commission regulations occur. The decision was dated December 6, 2018. He said that obviously these violations occurred within the two-year time frame, from that particular decision, so he believes that they can take that into account, when they are issuing a determination, or during the penalty phase or suspension phase, if any.

Mr. Howell said that he would like to make a motion for a consideration, and for discussion. He moved that there has been sufficient finding of facts to uphold the Town Administrator's findings that liquor license violations occurred at the Port Restaurant. Based on those infractions, the suspension in duration of six days, shall be imposed at the local level, on that license except that imposition shall be held in advance for 60 days, in order to refer the matter to the Alcoholic Beverage Control Commission. He said that should that body impose its own sanctions, then their suspension action would be deemed to have been superseded by their action. If no action is taken by the Alcoholic Beverage Control Commission, the Town of Harwich shall impose its own suspension penalty of the license to commence no later than August 2nd, and run through August 7, 2021, for a total of six days.

Mr. McManus said for discussion, he will second it.

Mr. Ballantine asked if Mr. McManus had a discussion on it?

Mr. McManus said that he did not.

Mr. Ballantine asked if Mr. MacAskill had something to discuss?

Mr. MacAskill said that his only discussion is that the ask of six days in a row for him seems excessive. He does think that the ABCC was clear, and that they came up with the six days, but as far as he is concerned, the action of this board does not have to match the action of ABCC. He said that in keeping in concert with his motion for Ember, in suggesting a warning, based on their violation, he would be willing to give one of the three dates, May 22nd, a warning. Then putting two violations in the books and he would shorten the term to three days instead of six, and would give them two months to serve those three days. However, it would have to be meaningful, so December, or January, would not work, it has to be meaningful, it has to be a punishment. He would be willing to support a three-day suspension from the town, whatever ABCC does, they do, but he thinks they should lighten that if they can.

Mr. Ballantine said that he liked that, but they still hold this in advance.

Mr. Howell said that he would point out that the dates he picked were only to be one weekend day/night, but in fairness to protract this out, he could see going for three, but then you would have to do August 2nd, 9th, 16th, and those are only Mondays, he is not sure that is sufficient penalty.

Mr. MacAskill said that his sense is that he is not downplaying COVID, and quite frankly he is a bit disgusted by the report from the ABCC with the manager of record, Jake Domos' comments. He said he is also a bit disgusted that there has been no admission of doing anything wrong at all. He said that he still thinks that a punishment has to be given, but three days without a liquor license in August, in his mind, is excessive.

Mr. Howell said that the reason he was willing to do the six, is because it is clear that the manager of the facility was calling three separate ABCC investigators liars. He said that is a matter of testimony, it is not just what happened with Mr. Powers, he said it to us directly. Also, hearing Mr. Reed and the string of epithets he received as a response and they had been told that

one had ever complained, and that was a quote. He said that behavior is behavior, and he heard the people that were being disruptive, and they are not made us, they are mad at the inability of the people who employed them, for having an inability to confine their activities to within the four corners of the law and their license. Mr. Howell said that he would be willing to go for three, but he it has to be more substantial than just a Monday night, because the peak times are at the end of the week, and he tried to take every precaution to not do Friday, Saturday, and Sunday. He said that if he were to go for three dates, it would have to be three dates, like three Fridays or else he wouldn't modify the motion at all.

Mr. Ballantine said that he is in favor of the three days.

Mr. Howell said, if McManus is willing to withdraw his, second he would be willing to make the motion as, three days and everything else would be the same; 60 days to be able to have the ABCC to opine to them, and that the three dates would be August 7th, 14th, and 21st, those are successive weeks.

Mr. McManus said I'd be willing to withdraw his initial second.

Mr. Howell questioned that would be the replacement and the actual assessment of penalty would be three dates, only if they do not hear from the ABCC, because this is moot if they actually take up a penalty of their own. We are not imposing this, in addition to that. So, should that not occur, then August 7th, 14th, and 21st is what he is motioning.

Mr. Ballantine asked if Mr. McManus was willing to second that?

Mr. McManus asked to confirm the dates as August 7th, 14th, and 21st, and those being three Saturdays.

Mr. Howell said he was not looking to do Saturdays, so they will do, August, 6th, 13th, and 20th, which are Fridays.

Mr. McManus said that he will again second it for discussion.

Mr. MacAskill said that his only comment would be that maybe they do two consecutive days, but he was not sure about taking away three Fridays in August. He said that he did agree with Mr. Howell and his comments about being lied to. He also agrees that the manager there seems to be extremely

disrespectful, and not willing to admit anything. He said that it is also not lost on him, that they have not heard from the actual owners of the establishment. They have heard from a lot of their employees, their managers, their families, and they have heard from public. However, they have not heard one word from the actual manager of record and applicant. He said that he would think that maybe two consecutive days of a Thursday, Friday, and then another Friday.

Mr. Howell said that he is willing to go with August 5th, 6th, and 13th, that would be Thursday, Friday, and Friday.

Mr. McManus withdrew his second.

Mr. Howell said that the motion is intact except that the suspension should the ABCC not exercise their intent to violate that would be August 5th, 6th, and 13th. He also said that he made a big deal about the premises description last time, and said that it means something to him. He held a liquor license himself, at one point, for packaged goods. He said that they were responsible to stop people, because it was packaged goods, from using their premises to take wine or malt, and open the container while they were eating a sandwich that they bought from them, because they did not have an on-premises pouring license.

Mr. Howell said that he is disturbed that there could be any allegation that, if that is alcohol, "we didn't sell it to them", because they are responsible for the entirety of the activities on their facility, especially with a pouring license. It is their obligation on the State Law, to stay within the licensed premises, and they cannot cause somebody as a patron to walk out with a wine glass. He said that it does not matter if it is in the parking lot or anything else. They took great pains last week to describe what the licensed premise was, so that rubbed him the wrong way that people were waiting for their food, out by the supposed wait station, and they were drinking, but the establishment didn't serve it to them. Mr. Howell said that he wanted to make the point, that in the future, that is something he would have a zero tolerance for, if they start thinking that the parking lot is ok to serve in.

Mr. McManus said that it is not only their responsibility to keep customers from walking off of their premises with beverages they serve them, but it is also their responsibility to keep those clients from walking onto the premises with beverages they acquired elsewhere.

Mr. Ballantine said that they have a motion and a second and he will take a roll call vote.

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

Mr. Ballantine said that they will have a discussion about the entertainment.

Mr. Howell said given what their legal counsel had said and to prevent an unreasonable increase in noise in the area, as he pointed out they have given them this increase and it is reverting back to similar licenses, in similar establishments. This year he objected to a number of these expansions due to COVID, and he is really trying to get to the point that they can control it. He said that he is not going to not renew the license, but the conditions that he is suggesting is that he makes a motion that they approve weekday entertainment from 6:00pm - 10:00pm outside, with unamplified acoustic music, because there is no seating right now so they are not going to be competing with a crowd, 10:00am - 12:00am inside, with recorded or live music with amplification but consistent with the noise bylaw in terms of it being heard off the premises. He further moves that Sunday's entertainment license be granted from 6:00pm to 10:00pm outside, with unamplified acoustic music and 10:00am to 12:00am inside with recorded or live music with amplification, and again consistent with the noise bylaw in its restrictions.

Mr. MacAskill said that he will second it for discussion.

Mr. MacAskill said that the only comment he has, is that they need to address is that at the last hearing they had a conversation ambient music, non-live music, for the tables on the porch outside. He said they did approve the background music last week and asked Mr. Howell if that was off the table for him?

Mr. Howell no, that he would be willing to grant that outside, if it is ambient music, but not live music. He said if there is live music, it needs to be acoustic.

Mr. MacAskill asked if Mr. Howell would add that ambient into his motion?

Howell said yes, and again the weekday would be 6:00pm - 10:00pm outside, with unamplified acoustic music only or ambient amplified music, 10:00am -

12:00 am inside with recorded live music with amplification consistent with our noise bylaw and on Sunday from 6:00pm - 10:00pm outside with unamplified acoustic music only or ambient amplified music, and also 10:00am - 12:00am inside with recorded or live music and amplification consistent with our noise bylaw.

Mr. MacAskill said that he seconded.

Mr. Ballantine said thank you and before they vote, he wanted to check with Mr. Blake to be sure that they were in order with their motions.

Mr. Blake said that he believed that they are.

Mr. MacAskill said that he had one more discussion to have. He said that Mr. Tomlinson made a lot of comments at the end, which were more related to when they go to court, but he said a lot about what the public should know. He said that he thinks that one thing that is fair to say, is that he would ask any member of the public, that thinks they are out of bounds to go back to the May 8, 2017 hearing and then the February 26, 2018 hearing. He said that at the May 8th hearing, the Manager of Record, Justin Brackett sat before them with their attorney, Mr. Kelley, and said that the deck outdoors of the Port, was going to be a jazz band or a steel drum band for waiting patrons. He said that questions were asked and answered, but his representation was that it was going to be jazz band/steel drum band, on the deck for patrons waiting to get tables inside. Mr. MacAskill said that based on the testimony which they received tonight, from the two musicians that play at the Port, they both testified that they started in 2017. Therefore, as soon as they gave that license, the owners of this establishment decided to grow this entertainment license into what it is now, which has received numerous complaints. He said that they can split hairs about violations, but they still had noise complaints, so it is not a quiet thing out there. He said that when members of the public speak about their quality of life being destroyed by the decisions of the Board, it is their obligation to have this conversation and it is their obligation to act on it. Therefore, to all of those that disrupted the meetings over the last three or four weeks, people using ethnic slurs and swearing, and getting muted from it, this process is being deteriorated and taking away from the public being able to speak freely. That is disgusting. If you go back and look at the sincere comments made by the manager of record, that it was for a jazz band/steel drum band, and then to February 26, 2018, after there was complaint about the expanded offerings outside, and they had to come back with a site plan.

That site plan still showed that the music outside was for waiting patrons, and this was after these bands were already hired to play outside, based on their own testimony. Mr. MacAskill said that he and Mr. Kelley had gotten into it at that meeting a little bit, because they differed on their ideas of a jazz steel drum, but it was pointed out to the public on the May 8, 2017 and February 26, 2018 meetings. He said to watch the meetings and see what the public approved. They had a public hearing, the Board approved what was pitched, and it has now morphed into this. They are being completely attacked for doing what they are supposed to be doing. He said that was all and the rest he will save for court.

Mr. Howell said that he totally agrees with everything Mr. MacAskill said. He said that he has played a lot of gigs in his life, both outdoors and indoors, and he has built a dozen sound systems for churches and theaters. He knows how sound travels. He said that it is not a secret that he has made comments about the place, the license that was issued to the Claddagh, and about Ember. He said that none of them are in an area that is this densely packed and adjoining residences as this one. He said he took the opportunity to look up Reed Books on Google maps and it happens to be 170 feet away from the Port's front door, never mind the back parking lot. Mr. Howell said that the challenge here is, where they are, and they have to take that into account because that is what is inferring itself onto the community and creating an unreasonable increase in noise in that area. He said it just happens to be where their place is, that's the place they chose to establish. He said that he was there when they first were granted a license in the early 2000s, and so was Mr. McManus, and this has morphed into something much bigger through the years. He said that Mr. MacAskill is absolutely right the words steel band and jazz band were used and that's not what we got.

Mr. Ballantine said that this has been uncomfortable for them, and that they understand in the area that they live there is always an inherent conflict between restaurants, businesses and abutters. However, it is their hope that they always work together, compromise and help each other out. He said that the problem this time, is that obviously did not happen, based on the heated hearings they have had. He is hoping they will pay attention and move in that direction going forward.

Female speaking asked for a point of information please.

Mr. Ballantine aid that he is afraid not, they have closed their public hearing. He said that he is going to take a vote on the motion.

Mr. McManus said that he had reviewed the recordings of that meeting, and it was presented as background music, to provide music for guests waiting for their dining experience. It was also asserted that they were not looking at programming music as a major attraction and that it what it has turned into. He said that he remembered that year's before he had served on the Assembly of Delegates as a Selectmen, and all of the hearings were about the Cape Cod Claddagh Inn. He said that he was not around in the early years of them having music by the pool, it was a little afternoon light thing, and nobody cared about it, but then it grew into something else that became a major disturbance of the neighborhood. He said that they went through hearing after hearing to try and work out a compromise with the neighborhood, and what they realized is that had become the driving force, behind the building, and it was the business and it was basically had become inconsistent with the neighborhood it was in. He said that the Claddagh, as it stands now, has had six significant restrictions and conditions placed on their outside music, which is limited to acoustic only. He said that the Port's entertainment offerings started out as simply background music to for people waiting in line to get seated, and turned into the major driving force behind running the operation, and it's become again, inconsistent with the neighborhood.

Mr. Ballantine said that they have a motion and a second, and said they would do a roll call vote.

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

ADJOURNMENT

Mr. MacAskill moved that they adjourn at 7:51 pm. Seconded by Mr. Howell.

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

Respectfully submitted,
Lisa Schwab
Board Secretary