

APPROVED

MINUTES
SELECTMEN'S MEETING

RECEIVED
TOWN CLERK
HARWICH, MA

REMOTE PARTICIPATION/GRIFFIN MEETING ROOM

Monday, April 11, 2022

5:30 P.M.

RELEASED

SELECTMEN PARTICIPATING: Mary Anderson, Larry Ballantine, Donald Howell, Julie Kavanagh, Michael MacAskill

ALSO PARTICIPATING: Town Administrator Joseph Powers

CALL TO ORDER

Mr. MacAskill, Chairman, called to order the Board of Selectmen meeting. He explained that they first opened the meeting at 5:30 pm for some interviews and then went into Executive Session at 6:07 pm to discuss collective bargaining for all town unions. He said that no decisions have been made and they will reconvene back into Executive Session after this meeting.

PUBLIC COMMENTS/ANNOUNCEMENTS

Mr. Jay Coburn, CEO, Community Development Partnership, and Ms. Hadley Letty, CEO, Homeless Prevention Council, introduced themselves and said they were there to announce that they were able to secure \$1 million in ARPA funds from the American Rescue Act, thanks to the efforts of their State Representative Sarah Peake. Mr. Coburn said that this is to help solve some of the short-term housing needs for the eight Lower Cape towns. He said that they are there to announce the creation of the Lower Cape Housing and ADU Resource Center, which is a joint project of the Homeless Prevention Council and the Community Development Partnership. He said that the project over the next three years will have a number of different components, such as, providing support for homeowners to create accessory dwelling units. Harwich has made major strides in reforming the ADU zoning bylaw to make it easier, and now they are planning to come in and help with financial incentives, technical assistance, and other resources to eligible homeowners.

Ms. Letty said that the other piece of this program that they are excited about is that there is a real focus on people. She said that once housing is developed and created, they will find some ways to additionally support residents and landlords, as they both develop and maintain housing. She said that will happen through a Housing Stability Fund, for residents, who are not otherwise eligible for current programs and supports, and also Resident Services, which will be offered to landlords as they develop housing through this program. She said that Resident Services is an example of an existing partnership with the CDP, and they have been able to maintain a lot of housing situations, because they were able to identify what the challenge is, before there becomes the chance of eviction. She said they will also have online resource libraries and trainings available, as well as ultimately a place that people can list their available rental in the eight towns of the Lower and Outer Cape.

Mr. Coburn said that they will leave a flyer with information, but residents in Harwich can learn more about the initiatives at lowercapehousing.org.

Mr. Ballantine asked how they will distribute this to everyone, besides the website?

Mr. Coburn said that as they roll out the program over the next month, they will be advertising on the radio and in newspapers, they will be appearing before all eight Select Boards, contacting folks in the Building Departments and the Zoning Departments. He said there are a lot of different avenues to get the word out about this program.

Ms. Letty said that they also both do quite a bit of community outreach, so there will be a lot of opportunities and existing efforts with both of the organizations to distribute this information.

Ms. Kavanagh said that this is great news and added that they should add a link to their building and planning department websites.

Ms. Anderson and Mr. Howell both thanked them and said this is great news.

PUBLIC HEARING/PRESENTATIONS

A. Presentation - Report of Findings and Recommendations for Allen Harbor Jetty Rehabilitation – GEI Consultants, Inc.

Mr. John Rendon, Harbormaster, said a couple years ago they entered into a contract with GEI Consulting to take a look at the Allen's Harbor West Jetty. He said that the contract called for a site study and an initial design with some alternatives that will be presented to you tonight. He said that the initial design, final design, and permitting, are all part of that contract that they have with GEI Consulting. He turned it over to Mr. Russell Titmuss from GEI Consulting to go through his findings and recommendations.

Mr. Titmuss said that their study was to the condition and how the jetty is performing. He said that the challenge is that the jetty is letting sand through into the channel, so they are getting more frequent needs for dredging. He said that as part of the study they have developed some alternatives and provided a comparison and their recommendation. He shared a slide presentation and said that they did the site survey by drone and they divided the jetty into two zones, A and B Zones. The reason for that is because there is actually two different cross sections for the jetty. Zone A used to be a timber bulkhead and he said that there is Armor Stone on the jetty side and on the dune side there was small stone, but you can still see stubs of the original timber piles. Zone B is a more traditional jetty with a trapezoidal shape, the cross section, it's got Armor Stone and is in better condition. He said both zones are fairly porous, which is why the sand is getting through, and just old age. He said the original construction for Zone A goes back to 1957, when it was extended and then Zone B was added on. He said that the gaps in the Armor Stone are too big, and it's allowing the sand through. Mr. Titmuss said the other thing they looked at as part of

the evaluation is the wave conditions out there, and looking at the current 1% annual chance storm, the Armor Stone is a little undersized.

Mr. Titmuss continued through the slide presentation that was in the packet, and explained each of the photos and the condition of the jetty. He said that overall the inshore end of the jetty is in fairly poor condition, and the outshore end is in slightly better condition. He then reviewed the options and said for Zone A, option 1, this is what the original construction was in Zone A, with Armor Stone and a timber bulkhead. He said this is really reconstructing it back to the original configuration. Zone A, option 2 is a slight variation on that with using FRP, which is a composite sheet with reinforcement in it, so it has much more durability, and should last about 50 years. Lastly, for Zone A, is option 3, and this is just using all Armor Stones and getting away from the bulkhead altogether. The challenge with this is actually going as high as the other two options. The other two had the crest up at elevation 10, and without making this structure much wider than it is today, they are limited to an elevation of about 6 ½, which means that more sand would get over the top

Mr. Titmuss said for Zone B, option 1 is basically a patch up job. It is really taking the Armor Stone off the top, putting core stone back in the core to make it less porous and then replacing the Armor Stone. He said that this is the cheapest option, which is really just trying to reconstruct and re-rehabilitate what is existing. Zone B, option 2, is full reconstruction, but back to the original cross-section. He said it does not raise it or increase the Armor Stone at all, but it would restore the ability to trap sand. Zone B, option 3, is basically just building it a foot higher than the existing. He said that the goal is to try and trap more sand. Zone B, option 4, is upgrading the Armor Stone size, so that they use larger Armor Stone. He said if they do that, then the sensible thing to do is to actually design it for sea level rise, so the Armor Stone will have an indefinite life, if it is maintained. He said they designed it for the increased water depth, which means you get bigger waves at the site as well, and this is the most expensive option.

Mr. Titmuss reviewed the cost of each of the options and said that for Zone A, the area without the bulkhead is the cheapest, and although the FRP is slightly more expensive than timber, it's probably got twice the expected life. So, it's a relatively small cost increment for the extra lifespan. He said for the four options for Zone B, the cheapest is just patching up the existing to match the original construction, it's a much shorter length than Zone A, which is why it comes out cheaper. He said however, options 3 and 4 for Zone B, are basically increasing the performance of it by raising the height, and the last version that actually upgrades the Armor Stone size, so it will last longer as well. He said there is annual dredging of the channel, and the average volume that's been coming out over the last 10 years, is about 8,000 cubic yards every year. Therefore, reconstructing the jetty will help with that, although it won't help with the area beyond the jetty further outshore. He said that for Zone A, option 2 is the recommendation because it gives the longest life, so it's the biggest bang for the buck. He said using the bulkhead there means they can actually consider raising the top elevation, which will improve its performance. There will be a limit on how high they can go, and the FRP sheet pile will only be able to stand a certain height above the stone. For Zone B, they would recommend option 4, although it is the highest cost, but if they are going to go in there and get the permits and do this, then it

would make sense to actually do it, and do it for the long term. The total cost for the two alternatives he has recommended is about \$2.35 million, for the complete reconstruction end to end.

Mr. Titmuss said that the next steps to move this forward would be permitting, because it's a complete reconstruction, it's fairly extensive permitting and would probably take close to nine months. He said if the town chose not to do it all, or to phase the construction, or to do just a repair option the same permits would actually allow you to do that.

Mr. Ballantine said that he has a couple of questions, and said that he talked about sea rise only for Zone B, option 4, and asked why he didn't consider sea rise on any parts of Zone A?

Mr. Titmuss said that is really what he meant when talking about raising the bulkhead height. He said it is fairly easy to raise it by a couple of feet, but you wouldn't really want to raise it a lot more than that because it would be too exposed.

Mr. Ballantine asked what Mr. Titmuss meant by Zone B, option 4 having the greatest impact on resources?

Mr. Titmuss said that the greatest impact on resources is just because of the slightly bigger footprint, so if you go higher it inevitably gets wider.

Mr. Ballantine asked if that would be more of a problem getting through conservation commission?

Mr. Titmuss said that it is an expansion, so it will take a little bit more effort, but said that one of the things that all of the agencies like to see in any application is actually accounting for resiliency and sea level rise. He said that if you ignore it, then you'll get sent back to the drawing board and asked to do something about it.

Mr. Ballantine asked what his recommendation would be on phasing, if they can do one side first, and then the other?

Mr. Titmuss said that they could do either Zone A or Zone B first, however, Zone A is in worse shape and really needs the work. Therefore, he would suggest prioritizing Zone A and then they could come back and do Zone B.

Mr. Ballantine asked what the practical impact would be, if the channel would be closed during part of this during construction, or is it very limited?

Mr. Titmuss said it should be limited, because the construction can all happen from Landsat. He said that it would be subject to time of year restrictions, for at least the in-water portion of it, which typically means that you can't work between January to the beginning of July.

Mr. Ballantine asked Mr. Rendon if they get any restrictions on shellfish?

Mr. Rendon said that will be one of the considerations throughout the permitting process, but he does not see that there would be a problem. He said that he thinks they would require to go in and fish what is there and then maybe come back and reseed after the project is over.

Ms. Kavanagh said this was a lot of information and asked if they were to go to an elevation of 14, because they are at 13 for the flood, how high would you go up? One more quarter?

Mr. Titmuss said that the top elevation right now is about 7 ½, so they are talking about a couple feet higher to only about 9 ½.

Ms. Kavanagh asked if the 9 ½ would still make it flat flood resilient? She also asked if they were to pick the better of the two different options, second option in Zone A and fourth option in Zone B, she asked if the \$2.35 million is just the construction portion, and does he have any idea about the permitting costs?

Mr. Titmuss explained that she was correct and that the costs are all included in their contract right now.

Ms. Anderson asked what the lifetime would be for Zone B, option 4? She said she understood in the first one, that if they picked the most expensive option it would have a 50 year life, what about B and what's the difference?

Mr. Titmuss said that they based it on about 50 years, but at the end the end of the day the rock stays around for a long, long time. He said it was 1954 when it was last reconstructed, and it just needs maintenance to be able to keep it up. He said again, at least 50 years, and that is what they based the sea level rise figure on.

Ms. Anderson asked if it is his belief, that this is the time to do it?

Mr. Titmuss said that is correct, and certainly with Zone A, because it is just letting all the sand through at the moment. He said Zone B is very porous, which can be seen by the shoaling that happens in the channel.

Mr. Howell said he does not really have anything, except to say that it would seem like Zone A, option 2 gets you a lot more years and it addresses somewhat more resiliency.

Mr. Rendon said that he would like to point out a few things, and said that obviously this issue has been around for a long time. He said that they did a study of the West Jetty back in 2000 to look at what to do, because every year they have to dredge or it would choke off the entrance to Allen Harbor. He said it is not even an option not to dredge, so they are spending now on the dredge costs to the County up to \$12 cubic yard. He said this coming year they will dredge 8,000 cubic yards, so that is \$96,000 a year to keep that channel open. He said the need is there, however, he did also point out that there is an upside to dredging,

which is that all that sand is very good sand, and that goes to nourish their public beaches, and there's a huge demand for that. He said that if they dredge two channels in a year and they have a surplus of sand, they can go out and sell it. Mr. Rendon said he thinks this is needed, and there are great options, but if they choose to go forward with this himself and other staff members could look at grant options to help with funding. He said the Cape Cod Commission and the whole Municipal vulnerability piece, he said one of the things they have identified in their submission, was jetties as a vulnerability, so there may be some funding available. This is something that the town has looked at for many years, they have spent money on studies and he would hate to have this study put on a shelf with nothing being done.

Mr. MacAskill asked what the amount was, that was put on the Capital Plan for this?

Mr. Rendon said \$2 million, so \$57,000 was spent on engineering services of GEI, which includes the permitting and design. He said it does not include the construction oversight, so if they wanted to go out to bid, and wanted an on-site engineer for construction oversight, that is not included in that \$57,000.

Mr. MacAskill asked to confirm that they budgeted for \$2 million? Mr. Rendon confirmed.

Mr. MacAskill asked what the value is of the sand that we're selling from dredging every year? He said it is \$96,000 to dredge, but what is the value to the town for its beaches, and what are we getting from selling it?

Mr. Rendon said that he did not have his file, but he can say that last year they did two channels and put a lot of sand on public beaches, but they also went out to bid and generated about \$130,000 selling that sand to private homeowners. He said there when they do sell the sand there is a huge demand for it, and he has a folder with a list of homeowners who have said they would like to purchase sand the next time they dredge. So, that is something to consider. He said that the only other piece, is that he wants to make sure people understand that this will certainly help the situation, but they will still have to maintenance dredge every three years or so. He said especially on the outer end, because there is a section that shows near buoy one and two coming in, which is not protected by the jetty. This isn't going to solve the whole thing, but it certainly will help.

Mr. MacAskill said that they will bring this back for a further conversation, because tonight it is listed as a presentation.

Mr. Ballantine said that he had one follow-up question, and asked if there a point when that fails, meaning the projections on dredging and selling is kind of the assumption, the status quo, is there a guess on if it fails entirely, then the game changes, right?

Mr. Titmuss said it would be a game changer, but it would be almost impossible to say. He said it could come down to one big storm and as the condition gets worse and worse, it will come down and they won't have a jetty.

Mr. MacAskill asked if anyone from the public wished to comment?

Mr. Bruce Nightingale said that he has been following this for a lot of years, and Mr. Rendon answered a lot of his questions. He said that his biggest concern is the sand, and without the sand nourishment, their public beaches will starve, and they will end up with a lot of rocks. He said he knows the jetty has to be repaired, but he is worried about the sand and what it will do to their beaches, which are the most important thing in this town.

Mr. MacAskill thanked everyone and said that they will work on the timing to bring this back.

B. Public Hearing – 2022 Seasonal Liquor License renewal for Chase Escape Cape Cod LLC d/b/a The Summer House Café, Thomas Paulini, Manager – 126 Route 28

Ms. Anderson read the following public hearing notice into record:

HARWICH BOARD OF SELECTMEN NOTICE OF PUBLIC HEARING
APPLICATION FOR RENEWAL OF LIQUOR LICENSE MONDAY, APRIL 11, 2022.
The Harwich Board of Selectmen will hold a Public Hearing under Massachusetts General Laws Chapter 138 on Monday, April 11, 2022 no earlier than 6:30 p.m. in the Donn B. Griffin Room located at Harwich Town Hall, 732 Main St., Harwich, for the purpose of considering the Seasonal, All Alcohol, Liquor License Renewal Application submitted by Chase Escape Cape Cod d/b/a The Summer House Café, 126 Route 28, Harwich. All members of the public having an interest in this topic are cordially invited to attend. Remote participation is also offered. Please see the posted agenda for dial in information. Signed by the Local Licensing Authority Harwich Board of Selectmen. Cape Cod Times March 28, 2022

Mr. MacAskill announced that the public hearing is open.

Mr. Powers said, for the record, that they will see in the packet that the certified letter was addressed to Mr. Thomas Paulini, who is the Manager of Record. He said that they are joined this evening by his business partner, Mr. Fiorillo, and said he would ask Mr. Fiorillo to explain Mr. Paulini's absence. He said he does not want to violate any privacy laws, but his partner would be able to explain his absence.

Mr. Fiorillo asked if he could ask the board a couple of questions.

Mr. MacAskill asked him to state his name for the record, and answer the Town Administrator's request. Then he can ask questions.

Mr. Nicholas Fiorillo, introduced himself and said he was there for the Summer House Café, and Chase Escape Cape Cod LLC. He said that Mr. Thomas Paulini, who is the Manager on the license currently has been suffering with an illness and has been back in the hospital. He said he is working as he can and communicating the best he can.

Mr. MacAskill asked if that was satisfactory for Mr. Powers? Mr. Powers confirmed it was.

Mr. Fiorillo asked if there was a vote in front of them tonight?

Mr. MacAskill said that there could be, it would depend on where they end up.

Mr. Fiorillo said that he would like to set it up as an informational discussion, because he thought he was coming here today to discuss the status of the building permit. He said that the various emails he got from the Town, basically positioned that unless he had a building permit, he could not renew, or have issued a liquor license. He said that he believes he is there to inform the Town about the status of the building project and the permit. He said that he didn't know it was conditioned upon whether or not he had a building permit, or did not have a building permit, or could not just renew the liquor license that they had approved last year. Mr. Fiorillo said that they all know that the project is under redevelopment and because of Mr. Paulini's health, and the situation with the building permit, they were not in a position to open. He said if they just go back in history, it's the same situation that they had before when he came in, and the place wasn't open. He said it was licensed and they filed for permits, which they did receive and they have been in the process of reopening and working diligently. He said that he does not believe it is fair or reasonable for this to turn into a vote, to either approve or deny tonight. He is not prepared for it, nor got proper notice and they are making a prerequisite, or condition, that they have a building permit. He questioned why the town would not just renew a liquor license that he already had, that it is his. He said with these things under discussion, he is here to openly discuss, but he would like to inform that Board that he would like to obtain counsel, if it is going to a vote. He said that he hopes it will just be an informational session, and he can explain where they are at with the project, and address some of the issues through various emails that he got from various departments.

Mr. Fiorillo said that ultimately, minus the entertainment license which is a different discussion, he thinks that it is vital to the rehabilitation and the project that it has a liquor license, like it has had for 53 years. He said as they look to reopen, and repurpose it into what it was way back when it was an Inn, offering food and beverage and less of a focus on entertainment. He said he knows the Town is very concerned about entertainment and the interruption with the neighbors. Mr. Fiorillo said he would like to have an open dialogue with the Town and what they would like to see and what the Town is looking to do. He said he would like to know what the actual intent of the Town is for the liquor license. He restated again, that this is a license that was issued to them, it is theirs, and they came in to simply renew that license. He said he received a plethora of emails from different departments that say that he can't renew.

Mr. MacAskill interrupted and said that they, the Board of Selectmen, are the Local Liquor Licensing Authority. So, no other department gets to decide if he has a liquor license.

Mr. Fiorillo said that he didn't realize that, and said that is good.

Mr. MacAskill said that other departments can decide whether or not they can be open, so they certainly would not be able to exercise the use of their liquor license. He said that he will explain why they are there and try and shorten some of the conversation. He said that the Harwich Board of Selectmen Liquor License Regulations Section 1.19, under section C, it states if the Licensing Authority becomes aware of a license that is not being exercised, it may conduct a hearing to obtain a status update. Therefore, Public Hearing – 2022 Seasonal Liquor License renewal for Chase Escape Cape Cod LLC d/b/a The Summer House Café, Thomas Paulini, Manager – 126 Route 28, gets us to that point. Mr. MacAskill said he is not sure what Mr. Fiorillo received besides that, which led him to believe he was not properly noticed. This is a public record and has been the agenda item since before they advertised the Public Hearing.

Mr. MacAskill said he was going to read part of an email they received on the liquor regulations from their Attorney, Jeffrey Blake, and will share the email with him as well.

Mr. Fiorillo began to speak and Mr. MacAskill asked him to allow him to finish.

Mr. MacAskill read from the email, which stated; while in my opinion the regulations clearly provide that the Board can revoke the license at any time it deems that public good is not being served or for failure to notify the Board of a temporary closure. He said that is part of it, if the establishment did not notify the Board of the closure, which is his opinion, not the Board's opinion, is that they did not notify the Board of the closure, because they were never open, and that is grounds for revocation. If the establishment did notify the Board of the closing under the above cited regulations, the Board, in my opinion, is authorized to require the establishment to attend the renewal hearing, which was done, and provide the Board with an update of the scheduled reopening of the establishment. At that hearing, the Board can, and should, put the establishment on notice that it is considering revocation. In the event that the license is not exercised, in either event, if that's the route the Board wants to take, it should schedule another hearing in three months, for a further status update on the opening. If at that time, the establishment is not open, the Board could schedule a final hearing three months after the status relegation hearing, at which it can revoke the license. Mr. MacAskill said that he will share this with Mr. Fiorillo via email, but said that it goes on to the ABCC and their normal rulings. He said that they are there right now to find out what they are doing.

Mr. Fiorillo said that Mr. MacAskill did reference that it is a status hearing, and said that he has been getting a lot of communication from different departments referencing this hearing, and it has been a lot of mixed signals. He said that he should give them a status of where the project is at, and said that unfortunately based on the health of Mr. Paulini.

Mr. Powers said for the purpose of the record, the Board of Selectmen, as the Licensing Authority, directs himself, as Town Administrator, to send any notices of hearing to establishments. He said that there was a letter sent, via certified mail, and email dated March 24, 2022, and was sent to the Manager of Record, Mr. Paulini. He said it was noticed that it is a Public Hearing regarding Chase Escape Cape Cod LLC d/b/a The Summer House Café. Mr. Powers read the notice, which stated, Dear Mr. Paulini, On

Monday, April 11, 2022, no earlier than 6:30 pm, the Harwich Board of Selectmen, acting as the Local Licensing Authority will conduct a public hearing in accordance with MGL c.138, in order to consider the renewal of the Section 12 Seasonal All Alcohol Liquor License, held by Chase Escape Cape Cod LLC d/b/a The Summer House Café, 126 Route 28, Harwich. Specifically, the Local Licensing Authority will investigate your failure to open the Summer House Café for business during the entire prior licensing period 2021, as required pursuant to the Harwich Board of Selectmen Liquor Regulations and MGL c. 138 s.77. You are invited to participate in the hearing, and be represented by counsel at your own expense, if you wish. The manager of record for the establishment is required to attend. Mr. Powers said that is under his signature and title as Administrator. He said that is why he asked the question in the beginning, and Mr. Paulini had responded immediately that he was aware of the notice, and that while he was unable for health reasons to attend, he indicated that the establishment would be represented this evening. He said, through the Chairman, to Mr. Fiorillo, who is representing the Summer House Café, he would ask why he claimed there was no notice given, when they have proof that this notice was received by the Manager of Record?

Mr. Fiorillo said that he heard in the beginning of his statement reading the letter aloud for the record, that it said it is in front of the Board to be heard for revocation. He said if he read that sentence again, it is different than what Mr. MacAskill had read, saying status.

Mr. MacAskill said he was just reading what is true and he said his belief.

Mr. Powers said that the Town would have a pertinent question for Mr. Fiorillo, and that is, did the establishment receive the letter that was just read, or not?

Mr. Fiorillo asked if they could just tell him what they are doing, then they can just do what they need to do and move forward.

Mr. MacAskill asked again if Mr. Fiorillo received the letter?

Mr. Fiorillo said no, that he did not. He said with Mr. Paulini's health conditions and he needs to be there, and they need counsel. He said what Mr. Powers is saying and what he has received notice on are two completely different things.

Mr. MacAskill said that he is reading off of what his agenda says, and he does not believe it is two different things.

Mr. Fiorillo said that the agenda that brought him there, says give us a status. However, the letter stated in specific language that you are going to consider the renewal today.

Mr. MacAskill said that they have Public Hearing – 2022 Seasonal Liquor License renewal for Chase Escape.

Mr. Fiorillo asked if Mr. Powers could read that again?

Mr. Powers said that he does not work for him, he works for the Board. Mr. MacAskill asked Mr. Powers if it says renewal or revocation?

Mr. Powers said that it actually says, hearing for purpose of renewal and specifically to investigate failure to open. Failure to open is what council referred to, in his document to the Board.

Mr. MacAskill asked Mr. Fiorillo to go ahead and tell them what they are doing, and then they will get into Board deliberation.

Mr. Fiorillo said that he does not want to have the Board deliberate. He said he is entitled to have an attorney there.

Mr. MacAskill asked if he can get a motion to close the Public Hearing?

Mr. Howell asked if they would want to continue it, rather than close it?

Mr. MacAskill said that they would have to re-advertise, if they close it and the Board members discussed what to do.

Mr. Fiorillo said if they can just be open and honest, this will go really easy.

Mr. MacAskill said he is not going to monopolize the meeting and has not been recognized to speak.

Mr. Powers said that the Board has given appropriate notice to the public, and to the establishment, that the Board has the right to have this discussion this evening. He said that whether the applicants, or any of their representatives, wish to participate or not it does not minimize the fact that the Board, through council's direction, is doing the appropriate actions.

He said that if they were to continue the hearing tonight, based on claims that the Town can very easily prove are incorrect, then they are giving the establishment more time to flout the law. The Board has given legitimate and applicable notice and they have the right to do any action that they see fit under the hearing, which could be to continue, to close, or to take any action under the notice. However, for Mr. Fiorillo to stand here this evening, with the number of times that he, and every other representative of the establishment, be it family members, himself, or Mr. Paulini, to claim that the establishment does not have notice, is not something that the Town would support. He said that the Town would be clearly upheld should this matter ever find its way to the Alcoholic Beverages Control Commission. The Licensing Authority has the right to proceed, as they see fit this evening, if they so choose.

Mr. MacAskill said that the options are closing the Public Hearing, which will get rid of any discussion, and the Board will continue to have its conversation and then decide if they want to continue it or not.

Mr. Fiorillo said that is why he was brought here in the first place.

Mr. MacAskill said that is not what you were brought here for, and continued to explain that he was brought there for exactly what was noticed in the Public Hearing and exactly what his partner consented to. He said that the Board may decide to take him at his word on where they are at, and decide to give them time, or they may not. He said that Mr. Fiorillo was brought here for a very specific reason and it's on the agenda, they advertised a public hearing, and his partner acknowledged getting the letter. Mr. MacAskill said he is going to ask one more time, if Mr. Fiorillo would like to continue?

Mr. Fiorillo said that he would like to continue, but that if the Boards intent. Mr. MacAskill said that he does not know what their intent is, but he just heard it.

Mr. Fiorillo continued and said that he is entitled to have counsel, and he believes that there is a discrepancy in the notice given to them. Mr. Paulini was hospitalized, so that was not good notice, and he did not know what was going on tonight.

Mr. MacAskill asked if Mr. Fiorillo read what he was here for tonight?

Mr. Fiorillo said yes, that he read what Mr. MacAskill had read.

Ms. Kavanagh said that while they are in the midst of this public hearing, and without making a decision yet whether we close or continue, can they ask a couple of questions after the public has an opportunity to speak, or should they go first?

Mr. MacAskill said that he was going to have Mr. Fiorillo give his speech on where they are at, then call on the public, then close the Public Hearing, then the Board will deliberate.

Ms. Kavanagh said that is fine, but she was going to see if they should ask questions based on the information they received, because of what Health had given them.

Mr. MacAskill said he did not want to get into that.

Mr. Fiorillo continued to interrupt. Mr. MacAskill said he was going to have him removed from the meeting if he interrupted one more time, he said he will call on him when it is his turn.

Mr. Fiorillo said that he would like to have an attorney present. He said he does not have one and he has the right, it is his first amendment right.

Mr. MacAskill asked if he could get a motion?

Mr. Powers said that he would urge the Board, as the Licensing Authority, to go through their discussion points tonight, whether it's with Mr. Fiorillo, with himself, or with anyone else that is present, because the individual claiming to represent the establishment, is now

claiming that they did not receive ample notice. He said that he is not an attorney, but he does not believe that the United States Constitution First Right Amendment is what is at play here. He said that it is the Commonwealth of Massachusetts Open Meeting Law Public Records and Hearing Laws, and the Town has demonstrated that there was receipt by the establishment on March 24, 2022, clearly stating that the Board, as the Licensing Authority, as is noticed on the agenda, is discussing the renewal of the liquor license. In addition to that, the Board has also given notice that specifically the Licensing Authority will also investigate the failure of the establishment to open last year, and lastly they were invited to participate, they're not required, and they were offered to have representation of council at their own expense. They chose not to avail themselves.

Mr. MacAskill asked if procedurally it makes sense to close the Public Hearing, given his first amendment speech, and his right to counsel? He asked if it makes sense to end that part of it, and get to the Board conversation, because he agrees that the Board needs to have the conversation tonight, and a liquor license holder is not going to tell them how to run their meetings.

Mr. Powers said that under the Open Meeting Law, the presiding officer of the public body is the sole determiner of who shall present and speak at a public meeting, at which this hearing is being held. So, no member of the Board, himself, or anyone else present, can speak without leave of the Chairman. Therefore, they have the right, whether in public hearing or simply public meeting, to decide who speaks, and when.

Mr. MacAskill asked if there was anyone in the public, or online, that wished to comment on this topic?

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

Roll Call Vote: Mr. Howell - Aye, Ms. Anderson - Aye, Mr. Ballantine - Aye, Ms. Kavanagh - Aye, Mr. MacAskill - Aye. Motion carried at a vote of 5-0-0.

Mr. Howell said that in fact they are all in agreement that it wasn't open last year. He said he drove past it numerous times, and never saw it open at any point. He said that the application that Mr. Paulini submitted, under penalties of perjury, asks if the premises are now open, and if not to explain below. He said that it is completely blank, and the workers compensation insurance affidavit states that they have 18 employees, but it was not open.

Mr. Fiorillo said that they all know it wasn't open. They all know that and said that it is just like when he applied for the license in 2020, and they all knew it was not going to open in 2020. He said that what Mr. Howell is saying now is like Groundhog Day, if they went back, but it is December and they didn't open, they would all know they would not be able to open in the calendar year during construction.

Mr. Howell said for point of information, he is not saying anything, he is quoting from the application that was submitted, and maintains that it was open.

Mr. Fiorillo attempted to speak and interrupt and Mr. MacAskill continued to ask him to stop and wait to be acknowledged.

Mr. Fiorillo asked if they were having a closed meeting at the commission debating whether or not that they have.

Mr. MacAskill said that he wanted to have him removed.

Mr. Fiorillo said that everyone needed to just relax.

Mr. MacAskill said that they can't relax, and asked Chief of Police, David Guillemette to remove him.

Mr. Fiorillo said that he will just watch it on TV and call in then.

Mr. Howell said just to state that there is a difference between what he is saying, and what was on a piece of paper that was submitted under penalties of perjury.

Ms. Anderson said that this is pretty much a non-starter for her. She said that the last time they saw this gentleman was June or July, and it was described as Disneyland of Harwich, and he was going to be open in August. Now it is almost a year later, and nothing is going on there, and she is not inclined to approve anything.

Ms. Kavanagh said that she could not agree more, but the main question here is that none of this is even worth discussing, if Health says he needs a new septic system and he has not filed anything yet with Conservation. She said that not even Building and Fire gave them good feedback. She said that she agrees that there is no action for them to take, they need to take the action.

Mr. Ballantine said that they have too many letters, they can't take action. He said that they can't move because there's too many things that they need to do to open. He said that he is still trying to understand if they try to take action, because if it didn't open last, when he said it would, is that a separate discussion they should be having?

Mr. Powers said no, it is all supposed to be wrapped up together. He said that the Board, through Administration, received an application for renewal, as did every establishment that has a seasonal liquor license in the Town of Harwich. He said it is the form that comes on ABCC letterhead and it indicates 2022 retail license renewal, and has all the descriptive information about the establishment. He also said he wanted to add for the record, to the questions and statements made by Mr. Howell, the applicant, Manager of Record, Mr. Paulini, signed the form, dated the form, and submitted the form, and under item number four it says the premises are now open for business, if not explained in the box below. He said that Administration staff was aware that the establishment was not operational during the previous season. Staff inquired of council what the requisite steps that staff and or the Board should take, and that's what the Chairman referred to earlier with the direction by

council. He said that they gave notice and willing to talk about the renewal. They also gave new notice that you had to investigate why the license was not used for the entire season of 2021. He said that the Board should vote to set another hearing and he has the date and time to recommend for that for three months from now, where the establishment is allowed to come back and give another status update. He said all of that is not only appropriate, it's necessary and required, if the Board is going to operate in accordance with regulations and state law.

Mr. MacAskill said that he could not have said it better, and he will refrain from the many comments he would like to make.

Mr. Ballantine asked if they need a motion to come back?

Mr. MacAskill said regardless of the letters that they received, because that's outside of what they are doing, they already have a liquor license. Therefore, the action that the Board needs to take is a to start the process of taking the liquor license back, or giving them the process as outlined by KP Law. He said that the process is another hearing in three months, and then a future hearing in three more months, if they don't exercise the use of their liquor license within the six months it's appropriate for this Board to take the liquor license back.

Mr. MacAskill said that he thinks Mr. Fiorillo is under the assumption that he has what's referred to in other places as a pocket license, and that he can keep that license as long as he wants without using it. He said that is only an assumption, but that is not how it works here. He said that the process has been laid out, and he would recommend to the Board, that since they already have a license, they have another hearing in three months for a status of where they are at, and they would get an update from the rest of the departments to verify that. Then they would have a future hearing six months out from tonight, where they would then vote to revoke the license, if they're not open.

Mr. Howell said that his only concern about this, is that at a point in time when you have a license and then you call them in and say you haven't been using your license and you call them in again and talk about possibility of revocation, they can't revoke something has expired. He said that they would have to renew it in order to go through the process of the three months, and three months, so that they could pull it back. He said that does not even address the fact that they lied on the application form, at least by an omission.

Mr. Powers said that the next action for the Board is to affirm that there should be a Public Hearing on Monday, July 11, 2022, no earlier than 6:00 pm.

Ms. Anderson asked if he is suggesting that they take no action on the license?

Mr. Powers said that what Mr. Howell said is that council has opined that while this is a seasonal license the ABCC still takes a very long view towards any licensee, annual or seasonal, and the recommended course of action is what you're doing this evening, and potentially again three months from today.

Mr. MacAskill said that ultimately they took them at their word that they were going to open and gave them a license, when they weren't open. He said that council spelled out the proper way to revoke a license, and it is exactly what Mr. Powers has said, and what he read to the gentleman that couldn't follow the rules earlier.

Ms. Anderson asked if they are revoking a license that they haven't renewed?

Mr. MacAskill said that they are not revoking it until up to six months from now. They will have another hearing, for a status update, on the renewal part. He said it is his understanding that they will be renewing the license, because they have no grounds and haven't given proper notice not to renew the license. Following their own liquor regulations, and advice of counsel, it would be six months from now that they would revoke that license, after following the proper steps.

Ms. Kavanagh said that she does not know how they renew it, when Health says that they can't do anything?

Mr. MacAskill said that just because they hold a license, they can't use it unless they have an establishment to use it in. He said it is no different than last year, when they gave them a license with the promise that they would be open. So they would be renewing a license for a restaurant that is not actually open, that is under construction, but has high hopes of opening. He said that they have not followed the process unless they do this process.

Mr. Ballantine said that he thinks they should follow Mr. Powers recommendation, and meet in three months and follow the process. He said that they can't operate without the building and fire permits, and the septic, so it is a non-issue.

Mr. Powers said it would simply be on the follow-up hearing and said that he would ask the Board to vote to establish Monday, July 11, 2022 as another hearing, in three months for a further status update.

Ms. Anderson moved to schedule another hearing in three months for a further status update on the opening, with date of Monday, July 11, 2022, no earlier than 6:00 pm. Seconded by Mr. Howell.

Roll Call Vote: Mr. Howell - Aye, Ms. Anderson - Aye, Ms. Kavanagh - Aye, Mr. Ballantine - Aye, Mr. MacAskill - Aye. Motion carried at a vote of 5-0-0.

Mr. MacAskill said that he will bring back the renewal license.

CONSENT AGENDA

Mr. Howell said he just wanted to interject with a sad note for the Town of Harwich. He said that it came to his attention today that Ms. Dolly Parkhurst had passed away. She had been a long time treasurer for the Town, and did a terrific job. She will be missed.

A. Vote to approve the following Board of Selectmen Meeting Minutes:

1. December 14, 2020
2. September 27, 2021
3. October 12, 2021

B. Vote to approve Caleb Chase requests for the following amounts:

1. \$1,000
2. \$1,000
3. \$800

Ms. Anderson moved to approve items A and B, as listed above. Seconded by Mr. Howell.

Roll Call Vote: Mr. Ballantine - Aye, Ms. Kavanagh - Aye, Ms. Anderson - Aye, Mr. Howell - Aye, Mr. MacAskill - Aye. Motion carried at a vote of 5-0-0.

NEW BUSINESS

A. Discussion and possible vote to approve the Committee Appointments recommended by the Interview Committee:

1. Emily Brutti – Planning Board – Full member – Term expires on June 30, 2022

Ms. Anderson moved to approve the Committee Appointments recommended by the Interview Committee of Emily Brutti, Planning Board – Full member –Term expires on June 30, 2022. Seconded by Mr. Howell.

Mr. Ballantine said that she was a candidate he and Mr. Howell interviewed for the Recreational Committee, though they had more candidates then openings. He said she will be a great fit for planning.

Mr. Howell said that they could still use a couple applicants for alternates, if someone in the public is interested.

Roll Call Vote: Mr. Ballantine - Aye, Ms. Kavanagh - Aye, Ms. Anderson - Aye, Mr. Howell - Aye, Mr. MacAskill - Aye. Motion carried at a vote of 5-0-0.

B. Discussion and possible vote on next steps for 203 Bank Street

Mr. Powers said that they have in their packet an appraisal from Mr. Joseph M. Clancy, MRA, Clancy Appraisal Company, Inc, which was completed for the property they refer to as 203 Bank Street, which includes one parcel of about a quarter of an acre with a building. He said that Mr. Clancy was directed to have that parcel be the predominant parcel, even though there are an additional three other parcels that relate to the overall properties to be disposed of. He said that in the proposal Mr. Clancy indicated that he

concludes that a fair appraisal for that building and that property inclusive is \$467,000. Mr. Powers said that the next step would be for the Board to have him proceed with the RFP, built around those properties with the understanding of the appraised value, or take any other action

Mr. Ballantine asked if that was just for 203, and when the RFP goes out, how would they handle the other parcels?

Mr. Powers said that the RFP will make reference to all four parcels, and will say which parcel is the quarter acre that has the building on it, but that the town also values the entire property to be at least \$467,000.

Mr. Ballantine questioned that he saw the appraisal coming in at \$597,000?

Mr. Powers said that what he was looking at is the combination of the original property records, and that's why they sought the appraisals, because they recognized that not all of the parcels had the value that they're presently assessed at. He confirmed that all of the parcels would be presented in the same RFP.

Ms. Kavanagh said she knows it is hard to get an appraiser, and that it must have taken a bit of time, but she is just questioning \$467,000, for two acres walkable to Harwich Port. She feels like it is kind of a lower value.

Ms. Anderson said she wondered the opposite. She said that none of the comps that were quoted had a building on it, and this one is old and probably has asbestos. She said that if people are going to build, they would have to take it down. She said that also none of them had wetland issues, and some of the property is not usable. She wondered if \$467,000 is a little bit high.

Mr. Howell said the only way to know is to put it out there.

Mr. MacAskill asked if they have the assessed value?

Mr. Powers said that he thinks that is what Mr. Ballantine was referring to, and said if he looked at the combination of the four property cards, it was in excess of \$500,000. He said that is why they sought the appraisal to be more accurate for the realities of the property in question.

Mr. Ballantine said that he does not want to see 203 and then disregard the values of the other sites, and in essence give them away. He said they are responsible for getting the revenue they can from that wherever it is, and that is why he is concerned about trying to piecemeal it.

Mr. Powers said that in the cover letter that Mr. Clancy provided, he confirmed that the property consists of 4 lots with a combined total site area of 89,891 SF or 2.06 acres per Plan of land prepared by Paul E. Sweetser on September 16, 2021. The 6,700 SF former

harbormasters building will be included in the marketing of the site. So, he is referencing all four lots, and the appraisal is \$467,000,

Mr. Richard Waystack said that he was concerned if they were trying to piecemeal those individual lots, versus combining them as one parcel under the RFP.

Mr. Powers said that is what he thought he was explaining, that it is being looked at as one property.

Mr. Ballantine said that clears it up for him, but he wants to make sure they get full value for the property.

Mr. MacAskill said to be clear, the appraised value is \$467,000, that's in its entirety. The assessed value is \$597,000, and that's in its entirety. He asked if it is the pleasure of the Board to move forward with the appraisal and sell 203 Bank Street? He said that they will certainly put the appraised value and the recognized value in the RFP.

Mr. Powers said that the way it would be constructed is that they would say that the town is looking to sell the property known as 203 Bank Street, which consists of 4 lots, with a total of 89,891 sq. ft., or roughly 2.06 acres. The Town understands that to be valued at no less than \$467,000, with a recently assessed value. He said that is in total of whatever the property cards read. So, they are saying that the Town is looking at the appraisal here.

Mr. MacAskill asked if under the procurement laws, they had to say no less than the appraised value?

Mr. Powers said that what the appraisal has done is because they are a Municipality, they had the right to go off of the assessed value, simply as is. He said that the discussion amongst the Board was that they thought that it may be too high given the unique characteristics of all the properties. He said that is why they commissioned the appraisal, and he would argue under 30b, that they have to go to the appraisal.

Mr. MacAskill asked if any further direction was needed?

Mr. Powers said just the sense of the Board. He asked if it is there understanding that an RFP will be created to sell the four lots, including, the building as is, with a value understood to be no less than \$467,000. He said if that is the case, they will build their evaluative criteria around that pricing structure, as well as, some other discussion about the board. He said he thinks they are you're interested in what the potential uses are, so they could talk about anything that is related to community efforts or things of that nature. So, whatever the board wants to consider we put in it for evaluated criteria. They could talk about it now, or have it come back next week for a further discussion?

Mr. MacAskill said he does not want to discuss it next week, he is ready to get it done.

Mr. Waystack said that they had gone through this process in West Harwich, and when the RFP was put out, they got very little response and had to put it out again. He said he would just caution them, as someone who deals with value all of the time, he thought it was a little rich with the appraisal. He said that if you set that as a minimum, you may be just kicking the can down the road, and may not get responses at that number, and have to put it out again. He said he would just caution them on using that appraised value as their basic base to go out for your RFP.

Mr. MacAskill said that he thinks he is hearing their Chief Procurement Officer saying, that is the appraisal, and that is what they have to put for a minimum?

Mr. Power said that 30b requires the Town to establish a value for the property. They could have done the assessed values, which are higher, but they are relying on the appraisal.

Mr. MacAskill said that it is a starting point, though he agrees with Mr. Waystack and does not want to kick this down the road for 30 years, like they did before.

Ms. Kavanagh said that she appreciates that there are a lot of wetlands on the property, but they are talking about 2 acres. She said that although they don't have the breakdown of what is buildable and what's not the buildable, but it is 2 acres, close to Harwich Port and has a lot of potential. She thinks there is value that is maybe not visible, but value based on the size.

Mr. Tom Evans, President of the Harwich Conservation Trust, said that this is an abutter property, and their immediate interest would be in parking and visitor access to that 66-acre property. He said that is really central to the life, vitality, and natural environment of that area, and a Town resource that they want to continue to be available. Mr. Evans said that acting alone, they would look at that appraisal and think it is pretty high number, but they recognize that this is a Board decision and they are in control of the property. He said that they look forward to responding to that RFP, when it comes out.

Mr. Howell said that he does not think that anything precludes Harwich Conservation Trust, from partnering with some other entity to enter a bid.

Mr. Evans said if that is the way the RFP is written, they would absolutely have that option, so thank you.

Mr. MacAskill asked Mr. Powers if there was a way to look into if they have to put the minimum number? He asked if they could look at the procurement laws, before they write this, and see if there is a way, because he would hate to single out, or not have a chance for Harwich Conservation Trust to at least partner with someone.

Mr. Howell asked if there was a way of putting that figure in, saying that it is the Town's assessed value, without using the word "minimum"?

Mr. Powers said that under 30b, the Town has to derive a value, and if it comes in lower than the appraisal, then the Board would need to give him direction as to why they believe the value is lesser, and for what reasons. He said if there is ever a routine audit by the Inspector General's office, because they are a Municipality and have the right to sell for less than the appraised value but they have to be very clear in how they have determined that. He said that in Mr. Clancy's appraisal, under the property data (page 27), the present assessed value is \$597,200, and the appraised value is \$467,000.

Mr. Howell said that is self-defining, and you can't know if someone might have had an interest in it for \$422,000, unless you drop the word minimum, because they are not going to bid on it. He said that the only way to know if there is a possibility that they overshot the appraisal is if they state the appraisal number and people respond, and if they all respond under, then there is a reason to question whether the appraisal was legitimate.

Mr. Waystack said that there are a number of values in a property, there is the assessed value, appraised value, and then there is the emotional value that is always attached. He said the only value that is any semblance of fact whatsoever, is market value. The only way to get to market value, is putting it out, and if you put something too high you have to put it back out, as they did in West Harwich. He said that he thinks if they put it as a minimum, they will scare off a lot of potential bidders.

Mr. MacAskill said that perhaps they should bring this back, and said that there are two criteria where they could lessen the value of the appraisal, such as the conservation restriction and the age and shape of that building. He said those are two weighing factors on why it might be worth less, but to Ms. Kavanagh's point, it is two acres walking distance to Harwich Port.

Mr. Powers said, in response to some of the previous comments, he thought he heard the Board ask him, as their Chief Procurement Officer, what the best practice is, and his response to that would be that they have an appraisal and they have an assessed value. He said that they can also entertain evaluative criteria, that speaks to why the Town would consider and value higher respondents that do something for the community.

Ms. Anderson said that plays right to what she wanted to ask, which is if they could put something in there, like they did for West Harwich, that it was highly advantageous if they did the Historic Preservation? Could they put something to that effect?

Mr. Powers said that they could do things like that, and they could also say things about if the proposed re-use of the building is meant to invite the community, or meant to enhance the residential aesthetic of the area. He said there is any number of things they could do, but for the best practice, he needs to be directed by the Board, as to how they want the RFP to be setup. He said that they can talk about those other elements, and the different statements of value, but what he will tasked with, and then what the Board will be tasked with, is evaluating everything. He said that they can construct it in such a manner and that's why he thinks it would be advantageous to give staff a moment to be more thoughtful about this and certainly to reach out to the Inspector General's office for guidance. He said that

they do want to send it out once, and it needs to be complete to have it come back and be as most advantageous to the Town, however they choose, as possible.

Mr. MacAskill asked if they can aim for two weeks?

Mr. Powers said yes.

C. Update from the Town Administrator on expanded outdoor table service

Mr. Powers said that they will see in their packet a single sheet from the Alcoholic Beverages Control Commission, dated April 1, 2022, regarding the further expansion of patio service, and takeaway and delivery of alcohol, by on-premise licensees. He said that there is a second page April 7, 2022, with a follow-up by the ABCC, and the resulting guidelines that go with that. He said there is also an update from KP Law and their summation of what the Governor signed into law, and lastly the recommended form that staff has established for a request for continued expansion of outdoor table service. Mr. Powers said that the reason they emphasize continued, is that they understand that the law allows establishments that were previously given that ability, to continue that ability, so that's why we're talking about continued expansion of outside. He said that this is just to make the Board aware of it, and if the Board has any follow-up or discussion on recommendations to the form of the process.

Ms. Anderson said she is just shocked that they want to continue take-away liquor, but she thinks what he did is fine.

D. Discussion and possible vote to write a letter of support for the Aquatic Center

Mr. MacAskill said that they had young lady in here that was pitching a pool at the community center, and all she is looking for is a letter saying that they endorse the concept, so that she can share that with other towns.

Consensus was provided.

Mr. Powers said that the letter is in the packet for the Board Members to sign.

E. Discussion and possible vote to approve the 2022 Seasonal Common Victuallers License for Sundae School Inc. d/b/a Sundae School Ice Cream – 606 Route 28

Ms. Anderson moved to approve the 2022 Seasonal Common Victuallers License for Sundae School Inc. d/b/a Sundae School Ice Cream – 606 Route 28. Seconded by Mr. Howell.

Roll Call Vote: Mr. Ballantine - Aye, Ms. Kavanagh - Aye, Ms. Anderson - Aye, Mr. Howell - Aye, Mr. MacAskill - Aye. Motion carried at a vote of 5-0-0.

- F. Discussion and possible vote to authorize the Chair to execute the Commonwealth of Massachusetts Department of Environmental Protection Grant award

Mr. Powers said that this is not a contract that falls under the authority that the Board has granted to him. He said that the procedure would be, in this instance, the Commonwealth has a grant which relates to operations at the disposal area, and our DPW. In order to participate it needs to be signed, according to the State, by the Chief Executive Officer, which is the Board, and the Chief of the Chief Executive Officers, is the Chair.

Ms. Anderson moved that they authorize the Chair to execute the Commonwealth of Massachusetts Department of Environmental Protection Grant award. Seconded by Mr. Howell.

Roll Call Vote: Mr. Ballantine - Aye, Ms. Kavanagh - Aye, Ms. Anderson - Aye, Mr. Howell - Aye, Mr. MacAskill - Aye. Motion carried at a vote of 5-0-0.

OLD BUSINESS

- A. Discussion and possible vote to reconsider the 5-0 vote of approving the following 2022 Weekday and Sunday Entertainment License for Lucky Labrador Inc. d/b/a Perks – 545 Route 28

Requesting: Weekday 11:30 a.m. – 10:00 p.m. outside & 12:00 p.m. – 12:00 a.m. inside. Sunday 6:00 p.m. – 10:00 p.m. outside, 3:00 p.m. – 12:00 a.m. inside, 1:00 p.m. – 12:00 a.m. inside*

Entertainment Type: Jukebox, Radio, TV, dancing by patrons & live performers, live/recorded music, amplification. *Ambient music and/or TV only

2021 License: Weekday 12:00 p.m. to 12:00 a.m. inside and 11:30 a.m. to 10:00 p.m. outside Sunday 3:00 p.m. to 12:00 a.m. inside, 1:00 p.m. to 12:00 a.m. inside* and 6:00 p.m. to 10:00 p.m. outside

Entertainment Type: Live or recorded music with amplification and dancing. *Ambient music and/or TV

Mr. MacAskill explained that they were bringing this back tonight at the request of one of the Board Members for discussion and possible re-vote because they have been doing acoustic only in other restaurants in Harwich Port. He said he will turn it over to Ms. Anderson, but would like to have a conversation before any motion is made.

Ms. Anderson said that her only reason for requesting the motion to reconsider is that she wanted to have it look exactly the same as their next door neighbor. She said that Perks and the Port are right on top of one another and she felt to be fair to both restaurants they should be worded exactly the same way. She said that the Port's wording is just a little clearer. She said that she fully respect what Perks has done to try to work with the neighbors, and they brought in those small speakers on individual tables, and have been

receptive to working with people. She said it is in no way a negative on them, it's just trying to make sure they've got the same rules as right next door.

Mr. MacAskill turned it over to Ms. Powell who was on remote participation.

Ms. Sarah Powell said that she and her husband Taylor own Perks, and said that they did put in a speaker system and spent a lot of money on it. They work hard to keep things copacetic with the neighbors, and they most likely would end their music at 9:00 pm. She said they would not do it every single night of the week. She said she hopes that they will pass it for the same license that they have always had and said that they did not have a single violation last year.

Mr. Ballantine said that he agreed with Ms. Anderson's comments and thought that they were trying to be consistent.

Ms. Kavanagh said that she also agreed with Ms. Anderson's comments.

Ms. Anderson said that she wanted to make sure that Ms. Powell understood her reasoning, and that it is not negative on their operation whatsoever. She said it is just trying to be consistent between Perks and their next-door neighbor.

Ms. Powell said that she understands, but she does not think that they should be punished for something that their next-door neighbor did. She said that she believed that it was made clear that not all of the licenses needed to be uniformed. She said that it does not matter to her what her neighbor is doing, she is concerned about her own business. She said to take away amplified music will have a big effect on their business. If people can't listen to amplified music, they will go somewhere else to listen to it. She added that amplified music does not always mean live music, it is also their speakers.

Mr. MacAskill said that his only comment is that he does not believe that they need to treat everyone the same, but base it on behavior. He said that this particular restaurant has, per their recommendation, added a house sound system which is a significant investment. They also made significant investments on shade umbrellas to block the music, fencing, and are willing to stop at 9:00 pm. Mr. MacAskill said that he sat through the same hearings and the neighbors had individual complaints but the one takeaway was people that were willing to work with them. He said this establishment has shown that they're willing to work with the neighborhood, and he feels like they are punishing them for good behavior. He said that the music in Harwich Port is enjoyed by many and hated by some, based on things getting out of control. However, they have done a lot to reign that in and the police have done a lot. His position is that they will be punishing a business that has shown to do exactly what they have asked them to do.

Mr. Howell said for the sake of discussion that if they left it the way they voted, aren't they still subject to the same noise regulations that they are subjecting everybody to?

Mr. MacAskill said absolutely, if they make too much noise and the police department's down there, then they are subject to everything that we have talked about for the last year and putting their own license at risk. He said that they are voting a license that they voted last year, exactly the same, and he does not think there is anything to preclude the other applicant from coming back at some point and demonstrating that they're making these decisions. He said he does not take it as forever, it was the Board trying to get things under control, and they have. He said that someone would have to make a motion to reconsider and they would have to do a new vote.

Mr. Howell asked to be clear, if this is a change to the license, not just a change from last week but a change to the existing license that they voted last week?

Ms. Anderson said since she brought it up, she thinks that if they had that last year and were ok, she is okay with letting it ride.

Mr. Ballantine said that Mr. MacAskill made a good argument, and he would give it a try.

Ms. Kavanagh said that she did not have a problem giving it a try, she just thinks that in terms of continuity and uniformity, they have talked a lot about unamplified music outside. However, they did not have any violations last year, and that is excellent.

Mr. Howell said that he applauded Ms. Anderson's effort to try and get them consistent, but does not feel that you punish someone for another's bad behavior.

Mr. MacAskill said that the Board has taken it very seriously, and if things get out of hand they have not option. However, prior to the noise complaints and private things getting out of hand in Harwich Port, a lot of people loved what was going on down there, a lot of people love the music. He said that the Powell's have heard very clearly that there's a zero tolerance, and if they're willing to risk their license, that's on them, but they have demonstrated by purchasing the house system that they're willing at least to try things to not exceed the property lines, and not to go beyond 150 feet.

Mr. Howell said that was the first time he heard about the sound system, and that is not an insubstantial thought, somebody has to design it and then somebody has to deploy it, so it wasn't a cheap fix.

No motion was made.

CONTRACTS

- A. Discussion and possible vote to approve a contract with Vanasse Hangen Brustlin, Inc. in the amount not to exceed \$100,000.00 for on-call engineering services to include work on subdivision and MS4 permit review.

Ms. Anderson moved that they approve a contract with Vanasse Hangen Brustlin, Inc. in the amount not to exceed \$100,000.00 for on-call engineering services to include work on subdivision and MS4 permit review. Seconded by Mr. Howell.

Roll Call Vote: Mr. Ballantine - Aye, Ms. Kavanagh - Aye, Ms. Anderson - Aye, Mr. Howell - Aye, Mr. MacAskill - Aye. Motion carried at a vote of 5-0-0.

TOWN ADMINISTRATOR'S REPORT

Mr. Powers said that he has a pending request, and if approved he will be on vacation next week for April vacation with his family. However, he will be participating in a voter information committee exercise on Wednesday, on Channel 18.

SELECTMEN'S REPORT

No reports.

ADJOURNMENT

Ms. Anderson moved that they adjourn open session at 8:19 pm, to return to Executive Session. Seconded by Mr. Howell.

Roll Call Vote: Mr. Ballantine - Aye, Ms. Kavanagh - Aye, Ms. Anderson - Aye, Mr. Howell - Aye, Mr. MacAskill - Aye. Motion carried at a vote of 5-0-0.

Respectfully submitted,

Lisa Schwab
Board Secretary