

SELECTMEN'S MEETING AGENDA*

Donn B. Griffin Room, Town Hall

732 Main Street, Harwich, MA

Executive Session 5:30 P.M.

Regular Meeting 6:30 P.M.

Tuesday, September 7, 2021

**As required by Open Meeting Law, you are hereby informed that the Town will be video and audio taping as well as live broadcasting this public meeting. In addition, anyone in the audience who plans to video or audio tape this meeting must notify the Chairman prior to the start of the meeting.*

I. CALL TO ORDER

II. EXECUTIVE SESSION

- A. Executive Session pursuant to G.L. c. 30A, sec. 21(a)(2) to conduct strategy sessions in preparation for negotiations with non-union personnel and to conduct contract negotiations with non-union personnel – Water/Wastewater Superintendent.
- B. Pursuant to MGL,c.30A section 21 (a) paragraph 3 to discuss with respect to collective bargaining for all town unions if an open session would have a detrimental effect on the town's bargaining position and the chair so declares; including, but not limited to International Associations of Machinists and Aerospace Workers (IAMAW) and Service Employees International Union (SEIU)
- C. Executive Session pursuant to G.L. c. 30A, §21(a) (3) to discuss litigation strategy with respect to the case of Ember Pizza, Inc. et al vs. Town of Harwich, et al., Suffolk County Superior Court - Civil, Docket No. 2184CV01461, if discussing the matter in open session will have a detrimental effect on the Town's litigating position and the chair so declares

III. PLEDGE OF ALLEGIANCE

IV. PUBLIC COMMENTS/ANNOUNCEMENTS

- A. Current vacancy list and how to apply for a committee
- B. Update from the Health Director on COVID-19 in our community
- C. Update from Eversouce on Integrated Vegetation Management Program – Herbicide use in the region
- D. September 11th Remembrance Ceremony 20th Anniversary at Robert A Peterson Firehouse, 175 Sisson Road

V. CONSENT AGENDA

- A. Vote to approve the Board of Selectmen Public Hearing Minutes from May 4, 2021
- B. Vote to accept the gift of a memorial bench to be placed at Saquatucket Harbor

VI. OLD BUSINESS

- A. Discussion and possible vote on re-opening the Treasure Chest

VII. NEW BUSINESS

- A. Discussion and possible vote to approve the Committee Appointments recommended by the Interview Committee:
 1. Joseph Beasley – Alternate Position – Board of Appeals – Term Expires June 30, 2024
 2. Charlene Pilon – Full Position – Bikeways Committee – Term Expires June 30, 2024
 3. Benjamin Hall – Full Position – Agricultural Commission – Term Expires June 30, 2022
- B. Update on Annual Committee Presentations
- C. Discussion and possible vote to amend the Personnel By-Law to delete references to Water/Wastewater Superintendent within classification plan
- D. Discussion and possible vote to affirm the vote of the Superintendent of Water and Wastewater contract agreement discussed in Executive Session
- E. Discussion and possible vote to hold a Public Hearing for the following alleged violations;
 1. Perks – Alleged violation on July 24, 2021
 2. Brax Landing – Alleged violation August 16, 2021
 3. Port Restaurant and Bar – Alleged violation on August 19, 2021
 4. Seal Pub & Café – Alleged violation on August 25, 2021
- F. Discussion and possible vote to authorize the Town Administrator to be the Hearing Officer for the Public Hearing for the following alleged violations;
 1. Perks – Alleged violation on July 24, 2021
 2. Brax Landing – Alleged violation August 16, 2021
 3. Port Restaurant and Bar – Alleged violation on August 19, 2021
 4. Seal Pub & Café – Alleged violation on August 25, 2021
- G. Discussion – 2021 Special Town Meeting draft Warrant
 - Fund costs related to updating the Comprehensive Wastewater Management Plan (CWMP)
 - Fund costs related to additional Wastewater Collection System Design
 - Fund costs related to Route 28 Wastewater Collection System Design
 - Amend room tax rate per M.G.L., Chapter 64G, §3A
 - Create a Wastewater special purpose Stabilization Fund
 - Create an Affordable Housing special purpose Stabilization Fund
 - Fund Non-Union Personnel wage increases
 - Fund negotiated contract – Fire Fighters
 - Fund negotiated contract – Water Department
 - Ambulance Replacement
 - Transfer of Surplus Bond Proceeds

- Land taking by Eminent Domain
- Unpaid Bills
- H. Discussion and possible vote to send a letter of support to Eversource and/or Verizon to fix double poles in Harwich
- I. Discussion and possible vote to determine whether to continue or disband the Community Center Facility Committee

VIII. **CONTRACTS**

- A. Discussion and possible vote to execute a contract with New England Recreations Group for the purchase of playground equipment for the Community Playground behind the Elementary School in the amount of \$71,217.00.
- B. Discussion and possible vote to execute a contract with Childscapes for the purchase of playground equipment for the Community Playground behind the Elementary School in the amount of \$123,220.41.

IX. **TOWN ADMINISTRATOR’S REPORT**

X. **SELECTMEN’S REPORT**

XI. **CORRESPONDENCE**

XII. **ADJOURNMENT**

**Per the Attorney General’s Office: The Board of Selectmen may hold an open session for topics not reasonably anticipated by the Chair 48 hours in advance of the meeting following “New Business.” If you are deaf or hard of hearing or a person with a disability who requires an accommodation contact the Selectmen’s Office at 508-430-7513.*

Authorized Posting Officer:

Ellen Powell, Executive Assistant

Posted by: _____

Town Clerk

Date: _____

September 2, 2021

PUBLIC
COMMENTS /
ANNOUNCEMENTS

OFFICE OF THE TOWN ADMINISTRATOR

Phone (508) 430-7513

Fax (508) 432-5039

Joseph F. Powers, *Town Administrator*
Meggan M. Eldredge, Assistant Town Administrator

732 MAIN STREET, HARWICH, MA



MEMO

TO: Joseph F. Powers, Town Administrator

FROM: Ellen A. Powell, Executive Assistant *ef*

CC: Board of Selectmen
Meggan M. Eldredge, Assistant Town Administrator
Danielle Delaney, Executive Assistant

RE: Committee Vacancies; Application and Resignation Process for Committees

DATE: September 2, 2021

This memorandum corresponds to the attached Committee Vacancy list as of September 2, 2021, along with the application and resignation process.

Residents interested in submitting a Citizen's Committee Vacancy Form can find the form in the following locations: Town of Harwich Website (Board of Selectmen Page, the Work Opportunities Page, and the Voter Information Committee Page), the Annual Town Report, and at Town Hall Administration Office. Applications are submitted to the Selectmen's Office and directed to the Board of Selectmen Interview Committee. Interviews are completed and recommendations are then presented to the Board of Selectmen at a public meeting. Once recommendations are approved, the resident will be notified by mail. All appointed residents must be sworn in at the Clerk's office to complete the appointment process to a Committee/Board/Commission. Applicant term limits are determined by the Interview Committee. Near the end of an applicant's term, a letter will be sent to let the applicant know that their term is ending. The applicant has the opportunity to say they are not interested in serving any longer this is not the same as a resignation. Applicants still interested are submitted to the Board of Selectmen for possible reappointment.

Applicants who no longer wish to serve and would like to resign from a Committee/Board/Commission must submit a signed written letter to the Town Clerk's office.

**Town of Harwich
Board of Selectmen Committee Vacancies
September 2, 2021**

Agricultural Commission (4 Full / 1 Alternate)	5
Bikeways	2
Brooks Academy Museum Commission	1
Capital Outlay Committee (Board of Selectmen Appointee/Finance Committee)	2
Community Preservation Committee (Board of Selectmen Appointee)	1
Conservation Commission (1 Associate Member)	1
Council on Aging	1
Finance Committee	1
Forest Committee	3
Harwich Accessibility Rights Committee	3
Harwich Cultural Council	2
Harwich Energy Committee	1
Historic District/Historical Commission (1 Full Member - 5 Associate Members)	6
Planning Board (1 Alternate)	1
Treasure Chest Committee (3 Full / 1 Alternate)	4
Voter Information Committee	1
Youth Services	2
Zoning Board of Appeals (2 Alternate)	2

Citizen's Committee Vacancy Forms are available on our website

From: Goldstein, Ronit [<mailto:ronit.goldstein@eversource.com>]

Sent: Tuesday, August 31, 2021 9:48 AM

To: Chief David J. Guillemette ; David LeBlanc ; Joe Powers Link Hooper Meggan Eldredge

Subject: Update on Integrated Vegetation Management Program- Herbicide use in the region

Good morning,

I hope you are well.

As part of Eversource's Integrated Vegetation Management Program (IVM), approved by the Massachusetts Department of Agricultural Resources (MDAR), Eversource will be completing vegetation maintenance where herbicide treatment will be applied on targeted areas in 10 transmission and distribution Rights of Way throughout the region.

Property owners along the Rights of Way are being notified of this upcoming work and our vegetation management team will communicate directly with abutters as needed.

Please let me know if you have any questions or need additional information.

Warm regards,

Ronit

Ronit Goldstein

Community Relations and Economic Development

Cell: 617-966-8459

247 Station Drive, Yarmouth

Westwood, MA 02090

EVERSOURCE
ENERGY

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Harwich Fire Department

Fire Suppression

Prevention

Emergency Services



David J. LeBlanc, **Chief of Department**

Craig W. Thornton, **Deputy Fire Chief**

September 11 Remembrance Ceremony 20th Anniversary

The Harwich Fire Department will hold a brief ceremony on Saturday, September 11th in remembrance of the victims killed in the September 11, 2001 attacks.

The ceremony will be held in front of the Robert A Peterson Firehouse, 175 Sisson Road at 10am. We ask that those attending assemble by 9:45.

Light refreshments and coffee will be available immediately following the ceremony in the Robert Johnson Training Room.

Harwich Fire Personnel:
Assemble at 09:30
Uniform of the day is Class B – Red Shirt.

CONSENT AGENDA

**MINUTES
PUBLIC HEARING
REMOTE PARTICIPATION ONLY
Monday, May 4, 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 opened the meeting at 5:40 pm, and called to order the Public Hearing. He explained that he first called the meeting to order at 5:00 pm for 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 that next on the agenda is the deliberation involving the 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, as stated.

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 notice.

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

Mr. McManus said that his financial conflict is that he is named personally as a defendant in the lawsuit brought by the applicants.

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

Mr. Ballantine said that they will now make a motion to move into the public hearing for the Port Restaurant and read the hearing notice.

The Board of Selectmen of the Town of Harwich, will hold a Public Hearing on Monday, March 22, 2021, which was continued to tonight, May 4, 2021 at 5:30 pm, 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. Ballantine provided the GoToMeeting access code and information.

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 of the Seasonal All Alcoholic Beverages License and the Seasonal Entertainment License; discussion and possible vote to order discipline based.

Mr. Jeffrey Blake, Attorney, KP Law, said that he will be presenting this case to the Board of Selectmen tonight. He said that this will be conducted differently than last time, due to the interruptions of counsel. He said that, as he indicated last week, the rules of evidence do not apply to a hearing before this Board regarding license renewals, revocations or suspensions. The touchstone here is due process. Notice and an opportunity to be heard. It does not mean that counsel for the applicant has the right to object, interrupt or threaten witnesses during their testimony. He said to the Chairman, that this is his meeting and he has the authority to stop any interruptions. He said that in fact, the open meeting law states, in part, 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 a meeting of a public body. If, after clear warning from the chair, a person continues to disrupt 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. From MGL ch. 30A, s 20g. Mr. Blake said that this is clear and provides the Chair of the public body the authority to authority conduct public meetings without disruption. As a result of this authority and the conduct that was witnessed at the last hearing, the Chair has the authority to prevent any disruption at the meeting. Mr. Blake suggests that prohibiting objections during testimony of the witnesses and requiring both sides to refrain from any interruption during testimony is within the authority of the chair. Mr. Blake asked Mr. Ballantine, as Chairman, here and now, to adopt that as a rule moving forward with this hearing.

Mr. Ballantine agreed and at advice of counsel will adopt that moving forward.

Mr. Blake said that Mr. Ballantine has the clear authority to stop any interruptions as outlined above. He said that it includes the muting of microphones, and ultimately logging off any offender. He said that the law only give clear warning to the offender before taking these actions. Additionally, he said that at the last hearing, there were threats made by counsel for the applicant, regarding the failure to provide personal email addresses, and he understands that the applicants social media site has posted personal email addresses of citizens that have complained about noise at the establishment. He said that this is unacceptable and the Chairman does not need to allow this line of questioning during any examination of a witness. It is well within to stop that questioning and instruct the witness not to answer. This hearing is to determine if the Port Restaurant Seasonal All Alcoholic Beverages License should be renewed, and if the Entertainment License should be renewed and whether there was a violation of the liquor license.

Mr. Blake said that this hearing is not about neighboring restaurant or other establishment violations of their licenses. He said that this is about the Port Restaurant and that it is within the rights of the Chairman to prevent that type of irrelevant questioning, testimony or evidence. He suggested that the Chairman could interrupt either party, if the questioning or evidence is irrelevant.

Mr. Ray Tomlinson, Attorney, attempted to inform the Board that they could not be heard. He was not recognized to speak and after some back and forth, the Board took ten minutes recess.

Mr. Ballantine said that they were going to restate that people need to be recognized before they can speak. He said that is the only way to move forward and hear both sides. He said that people will be locked out if it continues and that it needs to be a controlled meeting with a reasonable discussion. He asked Mr. Blake to continue his statement.

There was an audio problem with the Boards microphones and after discussion, it was fixed. Mr. Tomlinson asked if they could reiterate what they spoke about from the beginning, because he could not hear anything.

Mr. Blake said that what was discussed at Executive Session would not be discussed in open session. He said that they read through the meeting notice and the rules of necessity.

Mr. Tomlinson interrupted without being recognized, but said that he wanted to make an objection on the record and stated that he did not hear anything that Mr. Ballantine said from the opening.

Mr. Tomlinson was muted and Mr. Ballantine asked Mr. Blake to continue his statement.

Mr. Blake said that he outlined the evidentiary requirements and now he wanted to speak about the liquor license renewal. He said that in reviewing and rendering a decision on this application, the Board will consider the applications for request for renewal of the seasonal all alcoholic beverages license under MGL c.138. He said that in evaluating the renewal application, the courts have determined that there are a number of factors that are the legitimate concern of a local licensing authority regarding the issuance of the license. Consequently the violation of these concerns, would be good cause to not renew the license or condition the renewal of the license. These have become known as the Ballarin factor. The Ballarin factors are: 1) Public need, meaning a consideration of the public want and the appropriateness of a liquor license at a particular location 2) Consideration of the number of existing dispensaries in a locality; 3) Views of the inhabitants of the locality in which a license is sought; 4) Traffic; 5) Noise; 6) Size; 7) The sort of operation that carries the license; 8) Consideration of the reputation of the applicant. Mr.

Blake said that since the Board will also be reviewing the applicants request for renewal of the entertainment license, pursuant to MGL ch. 140 s 183a, because both of these involve the same facts and circumstances, the board will hear testimony on both, but will vote separately on each. 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 will now go forward and present the matter to the Board and that there are three different matters before them: 1. The renewal of the Seasonal All Alcoholic Beverages License, 2. Renewal of the Seasonal Entertainment License, and 3. Complaint and disciplinary hearing that was conducted by the Town Administrator on February 8, 2021. The Town Administrator had taken testimony under oath and provided the packet of information to the Board, and has also been provided to the applicant. The applicant had been given notice and an opportunity to be heard, but the applicant did not show at the hearing. Mr. Blake said that he would like to turn it over to Mr. Powers, Town Administrator for his findings and recommendations with respect to the violations at the Port Restaurant.

Mr. Tomlinson requested to be heard. Mr. Ballantine said, not at this moment.

Mr. Blake said that he would like to swear everyone in who will be testifying tonight and asked that each person show their face and unmute.

Mr. Tomlinson objected.

Mr. Ballantine said that he will swear each person in and asked, if they swear to tell the truth the whole truth so help you god? The individuals acknowledged with an I do. Mr. Ballantine said that when each person testifies they will confirm that they had been sworn in.

Mr. Blake asked Mr. Powers if he took the oath. Mr. Powers confirmed that he did.

Mr. Powers identified the memorandum in the packet to the Board of Selectmen, and David J. Guillemette, Chief of Police and Gregg J. Corbo, Esq., KP Law on copy. He said that the subject matter was his recommended action following disciplinary hearing held on January 12, 2021 re: Port Restaurant and Bar, Liquor License Violations. He said that the memorandum was dated February 8, 2021. Within the memorandum, he had detailed the alleged violations, a narrative on the hearing summary, the legal standards which were applied, and the recommended disciplinary action.

Mr. Powers said that he would be happy to read any of it into the record but he does have a correction he would like to note for the record in the recommendation for the disciplinary action. He read under the heading; Recommended disciplinary action: Based on the facts admitted into evidence at the public hearing, I find that three (3) violations of the laws of the Commonwealth have been violated. The licensee does not have a history of violations occurring within two years of the date of the violations described herein. Mr. Powers stated that after review of the town records, he has become aware of a matter that was adjudicated by the Commonwealth of Massachusetts Alcoholic Beverages Control Commission, a decision that was sent to the Town of Harwich on Dec 17, 2018 .. the decision notice was dated Dec 6, 2018 and it outlines to the Port Restaurant & Bar a violation date of August 17, 2018, that was heard by the ABCC on December 4, 2018. There is a recitation and finding of facts and a conclusion. He said that it is the conclusion that would cause him to correct statement that he had made, states that “the Commission suspends the license for a period of six (6) days which will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur”. Mr. Powers said that he is also aware of a prior violation that was heard by the ABCC relative to this establishment.

Mr. Powers said that was the only correction and continued to read through the remainder of his recommendation, stating; “However, the Hearing Officer is aware of numerous public complaints about the manner in which the establishment is operated, and that the Board intends to conduct a public hearing to determine whether or not the license should be renewed. Therefore, I will hold my recommendation in abeyance until after that hearing.”

Mr. Blake requested to ask Mr. Powers some questions. Mr. Ballantine approved.

Mr. Blake asked Mr. Powers about the packet of information he had indicated providing regarding this hearing. He asked if Mr. Powers has reviewed that packet and if it is a true representation and depict what happened at that hearing and the exhibits that were presented at that hearing? Mr. Powers said it does.

Mr. Ballantine recognized Mr. Tomlinson.

Mr. Tomlinson stated that before he asked a question of Mr. Powers, he wanted to state the applicant's objection to their ruling regarding admission of evidence or objections. He said that is a clear violation of the applicant's constitutional rights.

Mr. Ballantine said he will not accept that at this time and to move forward with his questions.

Mr. Tomlinson asked Mr. Powers if he could bring his attention to an affidavit that he had submitted to the Federal Court on April 9, 2021. He said that he had a couple of questions on some of his findings from the show cause hearing on August 2020 and January 2021. Mr. Tomlinson said that in the affidavit, Mr. Powers indicated that he became the Town Administrator for the Town of Harwich on February 1, 2021, is that correct? Mr. Powers said that is correct, he did become the Town Administrator on that day.

Mr. Tomlinson asked prior to that day, what authority did he have pursuant to the Board.

Mr. Ballantine interrupted and stated that he does not see the relevance for this hearing. Mr. Tomlinson said that it is relevant because it speaks to if Mr. Powers had the authority pursuant to town charter to even hold the show cause hearing on which he is basing his recommendation and findings. Mr. Ballantine said that they judged this before and he does have the authority as Assistant Town Administrator, as Interim Town Administrator and now as Town Administrator. He will not allow further questioning on this. He asked if Mr. Tomlinson has other questions.

Mr. Tomlinson asked Mr. Powers what authority he has to conduct the show cause hearings? Mr. Ballantine stated that is the same question and is not relevant. Mr. Tomlinson said that he objects to the determination of relevance.

Mr. Ballantine said he will not allow any further questions on that subject. Mr. Tomlinson said that he was trying to cross examine the witness and asked if he was denying his clients their constitutional rights?

Mr. Howell stated that he has not provided any testimony whatsoever to challenge, he said that Mr. Ballantine recognized the Town Administrator and he suggested that he continue to be recognized. He said that this is not an objection, this is a premature interrogation.

Mr. Ballantine asked Mr. Powers if he had anything to add?

Mr. Tomlinson requested the opportunity to continue his cross examination of Mr. Powers. Mr. Ballantine asked if he had other questions that are relevant to the hearing? Mr. Tomlinson said that they are all relevant.

Mr. Powers said he would like to answer the questions, and that he had nothing further at this time, unless the Board had questions for him.

Mr. Howell asked if Mr. Powers commenced the hearing on his own, or if it was referred to him by vote of the Board of Selectmen? Mr. Powers confirmed that it was referred to him by vote of the Board. Mr. Howell said that he asked the question because it goes to his authority, whether he was the acting Town Administrator or the full time Town Administrator.

Mr. Ballantine asked Mr. Blake if he was within his rights to request that Mr. Tomlinson ask questions relative to the Port and not about their appointment of the Town Administrator. Mr. Blake said that he was within his rights, but Mr. Tomlinson should be able to make further inquiry provided they are relevant questions.

Mr. Ballantine said to Mr. Tomlinson that if he can continue in regards to the packet and to the Port hearing, he would appreciate it.

Me. Tomlinson said that he was trying to do so. He said to Mr. Powers that in his affidavit he indicated that on March 23, 2020, Governor Baker issued

the COVID-19 Emergency Order No. 13, in which he allowed restaurants to be open to the public for take-out and delivery only, but prohibiting the on-premises consumption of food and beverages. He said that his question is if at any point in time did himself, or any other municipal officer provide a copy of that guidance to any licensed establishment in Harwich?

Mr. Powers said that it is not a requirement of the Town, the establishments are notified by the ABCC directly. However, on the direction of the Board of Selectmen, both himself and staff had endeavored to be engaged with establishments and any other entities that were impacted by the pandemic. He said that their standard operating procedure would have been to send a follow up notice to the establishments, and he said that he stands by the affidavit that he swore to under oath. He said that if it is stated in the affidavit, he stands by it.

Mr. Tomlinson said that in the affidavit, Mr. Powers stated that on May 22, 2020, Harwich Police Officer Nolan observed numerous individuals congregating on the outdoor patio area of the establishment, drinking from open containers, as well as the operation of what appeared to be a full service bar, and asked if Mr. Powers recalled that testimony.

Mr. Powers said to the Chairman, that he already testified that he stands by the affidavit and is confused by that question.

Mr. Tomlinson asked again if he recalled that testimony. Mr. Ballantine said he already testified under oath that he had.

Mr. Tomlinson asked Mr. Powers if he knows if Officer Nolan qualified his statement about the fact that he was not aware if the containers which he observed patrons consuming and whether or not they were alcohol?

Mr. Powers said that he would have to go back to his notes, but that he stands by his affidavit and report to the Board on February 8, 2021.

Mr. Tomlinson asked if Mr. Powers was aware if the Port had a full service outdoor bar in use last year?

Mr. Powers said he was not sure what he is referring to as a full service bar. Mr. Tomlinson said that the affidavit stated that Officer Nolan observed numerous individuals congregating on the outdoor patio area of the

establishment, drinking from open containers, as well as the operation of what appeared to be a full service bar, but Mr. Tomlinson said that there is no evidence or testimony that those open containers were alcohol, and asked Mr. Powers if that is correct?

Mr. Ballantine stated that Mr. Tomlinson was asking the same questions that have been answered.

Mr. MacAskill asked for a point of order and stated that in Officer Nolan's report he stated that a patron was drinking from a brown bottle marked Budweiser. He asked if there is something that he is missing?

Mr. Tomlinson said yes, that in Mr. Powers affidavit, it does not indicate alcohol, it just simply says an open container and what appeared to be a full service bar. So, his question was that there is no actual testimony that the container being consumed was actually a Budweiser?

Mr. Ballantine said that he thinks what Mr. MacAskill just read shows it is not true.

Mr. Tomlinson said that he is asking Mr. Powers the question.

Mr. Howell asked for a point of order. He said that Mr. Powers was not testifying, he was a finder of facts and the statement read by Mr. MacAskill indicated where that fact came from. Mr. Powers was chronicling the testimony of someone that was onsite, and was not testifying to what he saw.

Mr. Tomlinson said that he was not asking him about what he saw, but what he heard during the January 12th show cause hearing, that happened while he was hospitalized and his clients were quarantined and could not attend. He is not aware of what Mr. Powers saw, but his testimony of his findings stated that Officer Nolan gave testimony that a patron was viewed consuming from an open container.

Mr. Ballantine said that he has the testimony in front of him, so he knows what the testimony is and that he is not getting anywhere by repeating the same question.

Mr. Tomlinson said that is allowed to question the witness that submitted finding of facts to them that this Board has adopted. If he may he would like to continue his questioning of Mr. Powers.

Mr. Powers stated that he was yielding because there was a point of order that had not been dispatched by the Chair and the Board.

Mr. Howell said that he is not a witness at this point, he is a finder of facts.

Mr. Ballantine said that the question has been answered at this point, as much as they wish to.

Mr. Tomlinson said to Mr. Powers if he is not a witness, but a finder of facts, he included those facts in his affidavit and he stands by that is that true?

Mr. Ballantine said he already testified to that many times and that Mr. Tomlinson is not helping move things forward by asking the same questions.

Mr. Tomlinson said that he said he also said that he has no personal knowledge and was not a witness, but he attested to an affidavit.

Mr. Blake asked about the affidavit and did not see it in his packet.

Mr. Tomlinson said that he had requested documents to be included in the packet, including this affidavit, which was omitted from the packet that was updated this morning. He said that he has the right to question Mr. Powers on this because he did ask the Board to include it.

Mr. Blake said that this was a hearing that was held after numerous attempts to go forward with the applicant. The applicant was unable or refused to attend the hearing. The cross examination and questioning that he is asking should have occurred at that point.

Mr. Tomlinson said that Mr. Blake knew that he was in the hospital..

Mr. Blake said that he was not aware where he was and had not been handling that case, but that they would not get into a place where they are yelling over each other. If he has relevant question about this, then he can continue but the applicant has three attorneys and there were numerous attempts at allowing them to go forward.

Mr. Tomlinson asked Mr. Powers if he first held the show cause hearing on August 12, 2020?

Mr. Ballantine said point of order on this. This has already been explained, you had numerous attempts and they got the information just this morning.

Mr. Tomlinson said he was not finished and asked Mr. Powers what was the cause of the delay between August 2020 and January 12, 2021 for the show cause hearing?

Mr. Powers said that he testified this evening that he has presented to the Board as the local licensing authority on the memorandum dated February 8, 2021 of which all those pertain that the counsel is asking him, and his response is contained in the memorandum dated February 8, 2021.

Mr. Ballantine said that answer is in the memorandum in the packet.

Mr. Tomlinson said if that does not answer the question it'll ask it differently, he asked Mr. Powers when he requested three days before January 12 and indicated that the hearing would move forward despite his hospitalization and Mr. brackets quarantine you were advised that the applicant did not have sufficient time to obtain counsel to appear and represent the applicant is that correct?

Mr. Powers so that he stands by his answer that has already been given.

Mr. Ballantine asked to get another line of questions is going over the same things that have already been answered.

Mr. Tomlinson asked if Mr. Powers is refusing to answer the question?

Mr. Powers so they his testimony isn't he already answer the question that he relies upon his memorandum dated February 8, 2021.

Mr. Tomlinson asked if his memorandum explain the four month delay?

Mr. Ballantine said this is becoming irrelevant because you are asking the same question over and over in a different format and unless he has a different line of questioning they will move on.

Mr. Tomlinson said he has a couple more questions and asked Mr. Powers if he was aware in June 15, 2020 Megan Eldridge the former health agent now the ATA had issued a written guidance to the restaurants that stated that food must be available while alcohol is being served, but that many of the restaurants had questions about staying open and serving drinks once the kitchen was closed or serving patrons without placing a food order. Her guidance was that they were not allowed to serve drinks if the kitchen was closed. She said that you do not need to provide a full menu, but food must be provided, Do you recall that guidance being issued to restaurants?

Mr. Powers said that the material is contained in the overall packet that was relied upon and shared with both councils. He is not in a position to speak for Ms. Eldredge this evening, but he can speak to the materials presented. He said that he already testified that he relied upon his memorandum dated February 8th, and stands by that document and the previous documents that were included. He would have nothing further to add.

Mr. Tomlinson said on July 1, 2020, you issued a letter of guidance on TA letterhead which provided a bullet list of guidance and his interpretation thereof, including that all gets must be seated in order to be served, no walk up bar service or standing at bars allowed.

Mr. Ballantine said that this would fall under the same category and Mr. Powers has responded to.

Mr. Tomlinson asked if Mr. Powers acknowledges sending the guidance to restaurants concerning his interpretation of coven guidance in July 2020?

Mr. Ballantine said Mr. Powers has answer these questions and they're going to move on and ask the chief of police for his comments.

Mr. Tomlinson objected they're continuing into his not done with this questions. Mr. Blake told the Chairman that he should allow Mr. Tomlinson to complete his questioning

Mr. Ballantine ask Mr. Tomlinson to continue.

Mr. Tomlinson so then Mr. Powers in your affidavit you indicate that investigators from the ABCC visited all licensed establishments in Harwich over July 16 and 17, is that his testimony?

Mr. Powers said that it has been his sworn testimony this evening that he stands by the affidavit that counsel is referencing. He said it is a repetitive questioning and the chairman has ruled him out of order several times, but he again said that he stands by his affidavit.

Mr. Tomlinson asked Mr. Powers if his affidavit references the other establishments that the ABCC visited?

Mr. Ballantine said those questions for event answered in the memorandum and after get any other questions that were not on that line?

Mr. Tomlinson said that he is going to continue his questioning.

Mr. Ballantine said he may, but his questions have been answered and will likely continue to be a yes or no.

Mr. Tomlinson said he appreciates what Mr. Ballantine may think is the answer, but his questions are for Mr. Powers. He continued and asked Mr. Powers that in his affidavit he indicated that during his time as both Interim Town Administrator and Town Administrator, he has held hearings to address bylaw violations and liquor license violations for numerous establishments in Harwich other than the port. He asked what other establishments has he held show cause hearings or public hearings for violations?

Mr. Howell called point of order. He said that the guideline was established in the beginning that they were not going to relitigate any other establishments it is solely pertaining to this.

Mr. MacAskill called point of order.

Mr. Tomlinson said that he was not able to hear that guideline and he objects to that guideline. He tried to continue to ask a question to Mr. Powers.

Mr. MacAskill said that there is a point of order. He said to Mr. Tomlinson that it was the witnesses testimony that he stands by his affidavit, nothing is going to change. He asked if they can move on, and not prolong the meeting?

Mr. Tomlinson said that he is not trying to prolong the meeting, however, Mr. Powers is standing by a memorandum that lacks substance, and therefore is objectionable. He said that he is asking him to fill in the gaps of his memorandum, which he is refusing to do.

Mr. Tomlinson attempted to ask another question to Mr. Powers.

Mr. Howell said that there is a point of order, and Mr. Tomlinson has not been recognized.

Mr. McManus said that a decision was made, even if he does not like it. The rules of trials and testimony do not apply here, so you can save them for another venue.

Mr. Ballantine asked Mr. Blake for some guidance on the repetitive questioning.

Mr. Blake said that the examination of an affidavit that was used in the US District Court, he does not believe is germane to the matter at hand. He suggested that they instruct counsel to move on. If he does not, they will have to make a determination on whether or not he can continue.

Mr. Tomlinson said that he had one final question for Mr. Powers and asked at the hearing on January 12th, 2021, the final show cause hearing, was he aware of the continuance that was requested by the applicants, due to himself being hospitalized and they were not able to secure counsel?

Mr. Ballantine said that has been asked before and he is going to stop that line of questioning. He said he is moving on and is going to recognize the Chief of Police.

Mr. Tomlinson asked if they are moving on without him being able to finish questioning the witness? Mr. Ballantine said that they are moving on, at this point.

Mr. Tomlinson noted his objection. Mr. Blake said that he had indicated he had one final question. Mr. Tomlinson said that he was denied an answer, therefore it was not his final question.

Mr. Blake suggested if he was going to move on to a different topic that they allow him to continue his examination.

Mr. Tomlinson asked Mr. Powers, on October 15, 2020, was he aware that his office corresponded with all licensees and advised that it would be a policy of the board to automatically extend to those establishments that had been previously approved for outdoor dining and on premise consumption, that those would be automatically extended for the calendar year 2021, the extent afforded under state guidance?

Mr. Blake said that he is not sure the relevance of this question.

Mr. Ballantine agreed and does not think it is relevant to the issues they have tonight.

Mr. Tomlinson said that the packet contains complaints from neighbors about the noise under the tent that was provided as part of the outdoor dining afforded under Governor Baker's guidance. Therefore he would submit that this is entirely relevant.

Mr. Ballantine said he is not going to accept that, the point of having outdoor seating is not viewing that to be relevant to noise factor.

Mr. Howell asked for a point of order and said that there is no relevance to this because the Governor's order had absolutely nothing to do with their Noise Bylaw or anything else besides outdoor serving. If there was an infraction of that, nothing superseded any of the other regulations that they had to operate under.

Mr. Tomlinson objected and argued that Mr. Powers needs to answer the question.

Mr. Ballantine said he had recognized Mr. McManus at the moment, and instructed Mr. Tomlinson to be muted.

Mr. McManus said the three items that are before them tonight are consideration of the liquor license, the entertainment license and the complaints outlined in the memorandum by Mr. Powers. He said they are not taking up the issues of extended outdoor seating, that is not a matter before this hearing.

Mr. Tomlinson said he had a question for Mr. Powers. He asked when Mr. Powers issued his findings and recommendations on February 8th, was that the same day that you provided notice to the licensee?

Mr. Howell and Mr. Ballantine stated point of order. Mr. Ballantine said that none of this is relevant. He said he is trying to give him the opportunity to ask questions.

Mr. Tomlinson said that the Mr. Blake indicated that the touchstone of this hearing is due process and that included notice and an opportunity to be heard. He said that his question to Mr. Powers was what advance written notice did he give to the licensee of his recommendations and findings.

Mr. Blake said that this is an issue of law and that they were given ample notification and opportunities to be heard. He said that if they are going to continue on this path at some point Mr. Ballantine will have to choose to move on.

Mr. Tomlinson objected.

Mr. Ballantine asked Mr. Tomlinson if he has questions about the violations, otherwise he will ask that they can move on.

Mr. Tomlinson said that he does not appreciate the efforts by the Board to narrow his scope of questioning and he objects to that. The applicant is entitled to a meaningful opportunity to question the witness and he is being denied that opportunity. He asked Mr. Powers if he gave advanced notice to the applicant of his February 8th findings?

Mr. Ballantine ruled that irrelevant on the basis of councils statement that is not relevant to what is before them this evening.

Mr. Tomlinson objected and said it is relevant if the applicant had advanced notice of the recommendations and findings of facts that are before the board tonight. The Board adopted Mr. Powers findings of fact without any notice to the applicant or opportunity for the applicant to be heard. He objects to the inclusion of those findings in the packet.

Mr. Ballantine called a point of order and Mr. Tomlinson argued his objections and asked the Chairman to note his objections.

Mr. MacAskill said to Mr. Tomlinson that he has continued to go down this path, however, tonight is the finding of facts, the due process and the hearing. He said that a hearing officer presenting the finding of facts triggered this hearing. He said he is confused and perhaps Mr. Tomlinson could explain how they are not getting their due process. He said they have been crucified on social media and one sided arguments that the due process has not happened. Mr. MacAskill said the due process was that the Board of Selectmen appointed a hearing officer, a hearing officer conducting a hearing, witnesses testifying and tonight is for the Board to hear this, the board has read all of the documents and all of the email and has done its homework. He said that Mr. Tomlinson is not giving them a chance with all of his objections and his questions have been to prolong the meeting and he does not understand why.

Mr. Tomlinson said he is not. Mr. MacAskill said he is. Mr. Tomlinson said he is entitled to his opinion and has voiced that numerous times against his clients.

There was a point of order and Mr. Ballantine said that he is now calling on the Chief of Police for his testimony.

Mr. Tomlinson said that if they are moving on, he is not completed with his questioning and of the three matters in front of them tonight the only lawful action permitted under the statutory scheme is the renewal of the seasonal liquor license and entertainment license as issued in 2020 any other action fails to comply with action mandated by State law, it is unlawful and in violation of his clients constitutional rights.

Mr. Ballantine said that was so noted, but that will be there decision after the close the public hearing and after they hear all of the testimony.

Mr. Tomlinson began to explain how renewal can be denied.

Mr. Blake said that in order to hold this meeting orderly and timely, Mr. Tomlinson can hold his objections until the end. They have indicated that there was not going to be any objections and the constant back and forth is disrupting the hearing. If he has any relevant questions, he suggested that Mr. Ballantine have him ask them rather than the arguing back and forth.

Mr. Tomlinson began speaking.

Mr. Howell said point of order, he has not been recognized and he refers back to the original rules of this meeting. If he does not wait to be recognized and they continue to repeatedly warn him, he will be removed from the meeting.

Mr. Tomlinson said he was simply asking the Board, Mr. Howell said point of order.

Mr. Ballantine said that what he understands from counsel is that Mr. Tomlinson will have a chance to raise his objections at the end, but right now he is recognizing Chief David J. Guillemette, Chief of Police Harwich.

Mr. Blake asked Chief Guillemette, if he took the oath when it was administered? Chief Guillemette said that he did.

Mr. Blake asked Chief Guillemette if he knows why he is there tonight? Chief Guillemette said yes, to offer testimony on the public hearing for the Port for liquor and entertainment license renewals.

Mr. Blake said he was looking through a packet of information that was provided and in there is a memorandum from him, dated March 17, 2021, he asked if the chief remembered drafting that memorandum?

Chief Guillemette said yes and confirmed it was for the entertainment license.

Mr. Blake asked if he drafted that? Chief Guillemette said yes.

Mr. Blake said that in the memo the Chief stated that he had major concerns about issuing the entertainment license to the Port, he asked what the concerns are?

Chief Guillemette said primarily noise. He said that last season they had multiple noise complaints and most of them related to the tent that was in the rear lot, so a lot of it was a combination of crowd noise and music. He said that his primary concern was that if there was going to be any music or entertainment in the expanded seating area that the complaints were just going to continue to increase and get worse.

Mr. Blake said that he also said in his memo that “this resulted in increased complaints of noise from crowds inside the tent”, so those are the people outside, is that correct? Chief Guillemette said that is correct.

Mr. Blake said that he also mentioned increased traffic on Sea Street and asked what he meant by that. Chief Guillemette said that he had also been receiving correspondence from residents in the area citing increased traffic and parking problems as a result of the reduced parking, because the tent was taking up the parking lot in the rear of the Port.

Mr. Blake asked if the patron parking was then spilling out onto the Street? Chief Guillemette said yes, along Sea Street was his understanding.

Mr. Blake asked if that caused a dangerous situation? (an objection was stated by someone) Chief Guillemette said that he was not aware of any hazards that were reported, it was a general form of concern voiced by the neighbors.

Mr. Blake said that he also mentioned ongoing reports of COVID violations, and asked if those are the violations that they just heard, or if there were other ones? Chief Guillemette said that he believes it is a combination of both. Some of the residents reported to him that they did not feel that the COVID regulations were being followed and that it was more of a nightclub masquerading as a restaurant and that they had serious concerns about that.

Mr. Blake said that he further stated that there were reports of intoxicated individuals causing disturbances at closing time. Can you elaborate on that as well? Chief Guillemette said that there were some examples from the people that he had communicated with that lived in the area and reported intoxicated and loud people, urinating on bushes ,and when asked not to do that, they would use profanity. Though eventually leave the area. He said that at closing time it was very difficult for the neighbors in the immediate area. (someone chimed in saying “what about Perks”)

Mr. Blake said that the Chief had indicated that there were noise complaints, how many noise complaints were directed to the Port in 2020?

Chief Guillemette said that in 2020, they had approximately 11, but two of those were identified to be from an apartment above the Port, so he would say nine were directly related to the establishment.

Mr. Blake asked if there was anything else that the chief would like to tell the Board of Selectmen about the renewal of the entertainment license, just speaking about the entertainment license for now.

Chief Guillemette said just that what he had already stated his primary concern was that if a tent remains and there's any former music it was just going to be an ongoing problem. He said noise has been an issue with the neighbors in the area for quite a while. 2020 saw a marked increase in complaints and correspondences to him regarding noise and a lot of that involves music as well. Anything that can be done to mitigate that I am sure the neighbors would appreciate it would probably result in fewer complaints.

Mr. Blake asked in his opinion as chief of police, if reducing or disallowing the entertainment license to be used outside would that in his opinion alleviate these concerns?

An objection was stated.

Mr. Ballantine said not recognized, and asked Chief to go ahead.

Mr. Blake said to the Chairman, that in the beginning we had indicated that we would not be objecting and counsel has ignored that he certainly at a hearing uh before a superior court or other court didn't to the extent that he appeals can make some of these objections but it is for you to set the ground rules we set the ground rules and council is not abiding by those ground rules. He suggested that Mr. Ballantine let him know that you do have the ability to ask him to leave the meeting and if he continues to interrupt then we'll have to we'll we can talk about how we address that.

Mr. Ballantine said thank you for that obviously we aren't accepting interruptions you'll have a chance to question later. He asked the chief to respond to that.

Chief Guillemette said yes, that he thinks reducing the amount of entertainment or eliminating it entirely would definitely have an impact.

Female asked Mr. Ballantine if she could ask Chief Guillemette a question.

Mr. Ballantine said not at this point, right now he has recognized Chief Guillemette.

Mr. Ballantine asked Mr. Blake if he had further questions for Chief Guillemette?

Mr. Blake asked, with respect to the all-alcohol license that is for renewal tonight, does he have any opinion on the propriety, or concerns with the renewal of the all-alcohol license?

Chief Guillemette said that he thinks that based on what last season showed them, which was obviously a unique season because of COVID, and the expanded seating, but the problems were seen especially at closing time. He said that his concern would be that there should be a requirement to have better monitoring in the lots at closing time, and better monitoring of patrons leaving the establishment.

Mr. Blake said that in the Chief's report, he talked about the renewal of the entertainment license and he talked about intoxicated individuals causing disturbances at closing time. Mr. Blake asked if that was equally applicable to the liquor license renewal as well?

Chief Guillemette said yes, that's what he was trying to get at and he believes that is part and parcel of the responsibility of the licensee to control their premises. He said especially at closing time, and to keep the noise down and the disorderly people moving along.

Mr. Blake said okay, and do you know how many complaints they have gotten about intoxicated individuals?

Chief Guillemette said that he was not sure if they have any of those logged in their official log. He said that the majority of those came from correspondence with people who lived in the area.

Mr. Blake said that he had nothing further for the Chief at this point, and said to Mr. Ballantine that the Board of Selectmen is welcome to examine or ask questions of Chief Guillemette.

Mr. Ballantine asked if there are there any further questions from the Board?

Mr. MacAskill, Mr. Howell and Mr. McManus all said not at this time.

Mr. Ballantine said he assumed at this point, they would give Mr. Tomlinson a chance to ask relevant questions.

Mr. Tomlinson said he had a few quick questions your memorandum dated march 17th uh you also issued a memorandum dated February 25th 202, wherein you indicate that there, you have identified issues with the following establishments and you also included Perk's on that list?

Mr. Howell called for a point of order, and said that they had established that they are not going to put other establishments on trial here. He said that this is solely about violations that may or may not have occurred on the premises of the Port, period.

Mr. Ballantine asked that Mr. Tomlinson restrict his questions to the Port.

Mr. Tomlinson said that he did not ask a question about Perk's, he was simply asking what was provided for in the memorandum. He asked if he may proceed.

Mr. Ballantine said as long as it is specific to the Port.

Mr. Tomlinson said, chief you indicated obviously that the outdoor tent that was installed in the parking lot was highly relevant to the concerns you raised in your March 17, 2021 memorandum, are you aware that there was no music offered in the tent at the Port?

Chief Guillemette said that he reviewed reports that cited having speakers out there.

Mr. Tomlinson repeated, they cited having speakers out there?

Chief Guillemette said, yes.

Mr. Tomlinson said, okay and were those reports from your officers or were those reports from neighbors?

Chief Guillemette said that he believed it was mentioned in at least one of the officers reports or log entries.

Mr. Tomlinson said okay, do you know if that was a speaker that belonged to a patron, or if it was actually owned by the Port?

Chief Guillemette said that he did not know.

Mr. Tomlinson asked the Chief if he was not actually personally aware of any speakers in there, only that it was referenced in the report?

Chief Guillemette said, that is correct.

Mr. Ballantine warned Mr. Tomlinson to be careful that his questions are relevant.

Mr. Tomlinson said to the Chief, that his testimony a moment ago was that the tent is relevant, to both the liquor license and the entertainment license, as he viewed it for the coming season, is that true?

Chief Guillemette said, yes

Mr. Tomlinson asked if he was aware that the tent had already been denied by the Board?

Chief Guillemette said, yes

Mr. Tomlinson asked about the noise complaints that that he had received from neighbors, if the Port was ever cited for any of those noise complaints?

Chief Guillemette said, no

Mr. Tomlinson asked if any of those noise complaints were ever referred to the Board for discipline?

Chief Guillemette said, no.

Mr. Tomlinson asked if he was aware that in the last three years, there have been no noise citations or violations at the Port?

Chief Guillemette said that he believed that three years ago there was a letter, and added that Mr. Tomlinson had handled the case.

Mr. Tomlinson asked, if he submitted to the Chief that that it was not him, would the Chief believe that there might have been another attorney involved in that?

Chief Guillemette said no, and that he had read it recently, and it had his name on it.

Mr. Tomlinson asked if he might be referring to a matter that was handled by Attorney Matthew Kelly? He said that he will submit that he did not handle a noise violation for the Port within the past three years. He said that the Chief mentioned patron noise in the tent was an ongoing problem, and asked if the department ever raised that concern to the to the licensee last season?

Chief Guillemette said yes, that he believed on site they did mention that there was a complaint about the noise.

Mr. Tomlinson asked if he was referring to an isolated complaint or a series of complaints?

Chief Guillemette said that he would have to review the reports again, but there were between correspondence and official calls to the department there were several complaints of patron noise.

Mr. Tomlinson asked if it is his memory, as he has said today, that those were communicated to the establishment

Chief Guillemette said some of them, yes.

Mr. Tomlinson asked if he knew, when they were communicated?

Chief Guillemette said, no.

Mr. Tomlinson asked if he suggested to the Chief that they were communicated after the close of the season, and that that would have prevented the applicant from taking any steps to mitigate the crowd noise.

Chief Guillemette said that he can suggest what he wants.

Mr. Tomlinson said that his question to him was if the if the concerns were raised promptly to the to the applicant, does the Chief believe that the applicant would have taken steps to mitigate that?

Chief Guillemette said no.

Mr. Ballantine said let's move on from that, he's answered that question. He asked Mr. Tomlinson for his next question.

Mr. Tomlinson asked the chief why he believed the applicant would not have attempted to mitigate noise concerns in the tent?

Chief Guillemette said that it was just a series of ongoing complaints, that didn't seem to be addressed.

Mr. Tomlinson asked do you know whether or not the concerns or the increased complaints about crowd noise, in the parking lot and pedestrians walking on Sea Street, does the Chief have reason to believe that all of those people were patrons of the Port, or could they have been patrons from other establishments?

Mr. Ballantine said that's irrelevant, because he is trying to expand and they are considering the Port right now and asked for another question.

Mr. MacAskill asked for a point of order, and stated that he believed that is a relevant question.

Mr. Ballantine asked Mr. Tomlinson to proceed.

Mr. Tomlinson asked if the Chief would agree that the increased traffic on Sea Street, limited parking and reports of intoxicated individuals causing disturbances outside of the premise, that that those complaints could be directed towards patrons leaving other establishments, and not exclusively the Port, would he agree with that statement?

Chief Guillemette said that they could be, however he had correspondences with residents who were telling him that they were coming from the Port.

Mr. Tomlinson said that he understands that but, asked if he had any personal knowledge, as to whether or not those residents could confirm that they were coming from the Port?

Chief Guillemette said, no.

Mr. Tomlinson said that he had previously indicated that there was a general concern about increased traffic on Sea Street. He asked if he was aware that the parking areas, municipal and otherwise, surrounding the Port, are used by numerous establishments?

Chief Guillemette said, yes.

Mr. Tomlinson said that he previously mentioned that he thought that one way to mitigate the noise might be to require some kind of monitoring by the establishment and asked if Chief Guillemette was aware that one of his officers raised that issue to the Port last summer?

Chief Guillemette said, no.

Mr. Tomlinson asked if he was aware that Officer Keith Lincoln had demanded that the Port install monitors and Officer Lincoln said that he did not want to be babysitting the Port.

Chief Guillemette clarified that he meant doormen, actual people monitors, and said yes, he remembers that.

Mr. MacAskill called for a point of order.

Mr. Tomlinson asked if he was referring to another form of monitoring?

Chief Guillemette said that he thought he was talking about things like decibel monitors or something like that.

Mr. Ballantine said he needed to interrupt for a second because they have a point of order from Mr. MacAskill.

Mr. MacAskill asked Mr. Tomlinson you just said on the record that uh Officer Keith Lincoln demanded that they add doorman was that an accusation made by your clients was it found is there a witness to that accusation and

chief uh two-part question chief you were you made aware of that and is there anything disciplinary-wise that happened or was that just another um letter we got from Mr. Tomlinson related to this establishment He said he would start with Mr. Tomlinson was it a demand with witnesses that was found

Mr. Tomlinson said that he is not a witness there to testify. He said that he is simply asking the Chief a question about whether he was aware of a statement made by his officer.

Mr. MacAskill said that as the local licensing authority, he is cross-examining him and it has nothing to do with him being on trial or not, if Mr. Tomlinson is making unfactual statements. He said that he and the rest of the board want clarification, if that is not too much to ask of him.

Mr. Tomlinson said that is not a point of order, and he is not going to make a witness out of himself. He said that Mr. MacAskill could question any witness about that, including Officer Lincoln or the Chief. He said that he will direct his question again to the Chief.

Mr. MacAskill said that the point of order still exists. He asked Chief Guillemette if that is something that there was a discipline on, or if Officer Lincoln was questioned by him? He also asked if he found that to be a found accusation?

Chief Guillemette said, yes there's a report that exists that Officer Lincoln witnessed somebody with an open container. The officer was investigating and went to two different establishments, one of which was the Port. During the exchange with staff at that establishment, he did mention the fact that they needed doorman to monitor people, to prevent people leaving with open containers

Mr. MacAskill asked if that was a suggestion then in his mind, or was that a demand?

Chief Guillemette said that he did not know. He said that the report did not read that he demanded it, the report reads that he told them they needed to have better monitoring at the doorway at closing time, or all the time actually

Mr. MacAskill said that he would suggest that they take that as the answer and strike demand from any record.

Mr. Ballantine said yes and thanked Mr. MacAskill and asked Mr. Tomlinson for his next question.

Mr. Tomlinson said to Mr. Ballantine that the subjective judgment of Mr. MacAskill is not an issue and he will redirect his question to the Chief.

Mr. Ballantine said it is, but to go ahead.

Mr. Howell said that he has not ruled on the point of order and Mr. Tomlinson cannot continue.

Mr. Ballantine said that he can continue with a different question.

Mr. Tomlinson asked Chief Guillemette if on July 10, 2020, the Port submitted a letter to him complaining about Officer Lincoln's actions where he accused the Port of allowing a patron to leave with an open container and in fact that was unfounded and the open container originated from an establishment next door, is that true?

Chief Guillemette said that they did submit the letter.

Mr. Ballantine told Mr. Tomlinson that was a question you answered yourself so he was going to say that's not relevant to this line of questioning and asked if he had another question?

Mr. Tomlinson said to the Chairman that it is highly relevant and that the Chief discussed and has testified to noise, open containers, and intoxicated individuals, so he said that his question is relevant.

Mr. Tomlinson asked the Chief if he ever determined the location of that order?

Mr. Howell said point of order, and said that Mr. Tomlins is objecting to the Chairs ruling.

Mr. Ballantine told Mr. Tomlinson to ask another question and as he has said that is not relevant because you have asked and answered the same question yourself. He said to ask a question that the Chief can respond to.

Mr. Tomlinson asked Chief Guillemette if the allegation of an open container that Officer Lincoln investigated on July 10th, was confirmed that it did not originate at the Port?

Chief Guillemette said that is what Officer Lincoln's report seemed to reflect, yes.

Mr. Tomlinson asked if the Port was not cited for an open container?

Chief Guillemette said that is correct.

Mr. Tomlinson asked if he could identify the people with whom he spoke, or who wrote complaints, regarding the concerns that he raised in his March 17, 2021 letter?

Mr. Ballantine said that he is going to overrule that, because he does not want to identify witnesses. He said that after the difficulty they had last week, people have seen it as a threat and it has limited the number of witnesses coming forward. He said he is not going to allow him to ask that questions and said if he had another question to ask it.

Mr. Tomlinson asked if the complaints to which the Chief referred to were included in the packet that was made available tonight as part of the public hearing?

Chief Guillemette said that he did not believe so.

Mr. Tomlinson asked if he was in possession of complaints from other people that were not included in the public hearing packet tonight?

Chief Guillemette asked if he meant complaints that were emailed or of that nature.

Mr. Tomlinson said that in his memorandum he referred to complaints, so he assumed that he received them in one manner of communication or another, whether oral or written?

Chief Guillemette said yes.

Mr. Tomlinson said that his question, is if he made available to the Board copies of the written complaints that he received?

Chief Guillemette said that a lot of those complaints were cc'd to the Board, or he was cc'd.

Mr. Tomlinson asked if he knew whether or not those complaints were provided to the licensee?

Chief Guillemette said that he did not know.

Mr. Tomlinson said that there is a statement about concerns about ongoing reports of COVID violations. He asked if the Chief received complaints about ongoing COVID violations at locations other than the Port?

Mr. Ballantine said, again they have asked that he restrict these questions to the Port, and asked for the next question.

Mr. Tomlinson asked Chief Guillemette if the complaints about ongoing reports of COVID violations, those aren't limited solely to the Port, are they?

Mr. Ballantine said that's the same question, asked in a different way. He asked Mr. Tomlinson to please restrict his questions to the Port.

Mr. Tomlinson asked Chief Guillemette if he was aware of complaints for establishments other than the Port?

Mr. Ballantine said that is the same question and he has said that it is not relevant. He asked Mr. Tomlinson to ask another question, if not, they will conclude his questioning.

Mr. Tomlinson asked Chief Guillemette if he ever cited the Port for any violations of COVID guidance?

Chief Guillemette said, yes, it was in May, they were involved in an issue that was brought before the licensing authority.

Mr. Tomlinson asked if that was that a liquor violation or was that a COVID violation?

Chief Guillemette said it was COVID.

Mr. Tomlinson asked what the basis was for that violation?

Chief Guillemette said that he believed it was consuming on the premises when it was supposed to be to go.

Mr. Tomlinson asked if he was aware that patrons were.

Mr. Howell called for a point of order and said that it's in the materials that we have actually already verified that we're available and that we're not going to get into questioning

Mr. Ballantine thanked Mr. Howell and asked Mr. Tomlinson if he understood that information was already in the packet and they have already ruled on it.

Mr. Tomlinson said that he understood, but he has the constitutional right to examine the Chief, and he will proceed to do so.

Mr. Howell said point of order, and said that Mr. Tomlinson is not running this meeting. He said that it is their meeting and that the Chairman makes rulings, not counsel.

Mr. Ballantine said that they have answered that question and for Mr. Tomlinson to move on to the next question.

Mr. Tomlinson said that the Chief testified earlier that last season was unique because of COVID. He said that with the use of the outdoor tent, he had made a statement about better monitoring and he was confused by that and asked if he was referring to decibel monitors for noise, or what kind of monitoring was he suggesting?

Chief Guillemette said of the patrons, especially at closing time.

Mr. Tomlinson asked if he was suggesting that solely limited to the Port, or is that something he would be suggesting town wide?

Mr. Ballantine said, again you keep coming back to trying to pull the whole town in, this is a hearing on the Port. He said he is not going to accept that as relevant and asked for is next question.

Mr. Tomlinson said that he is not trying to pull the whole town in. He said that the Chief was asked by Mr. Blake what his opinion was to mitigate some of the concerns, and he is asking the Chief.

Mr. Ballantine said that he can answer that regarding the Port.

Mr. Howell said point of order, that's already been ruled on.

Mr. Ballantine asked for his next question.

Mr. Tomlinson asked the Chief how he believed the Port could mitigate concerns about noise during this continuing COVID season?

Chief Guillemette said that he thinks their outside entertainment has to be limited, and there can't be any music under expanded seating, which he already stated. He said further monitoring and that last year they saw a dramatic increase in people mentioning crowd noise and as a result of that he thinks monitoring of just simply the crowd noise, and trying to get a handle on that, as well as the level of any entertainment.

Mr. Tomlinson asked if he thought that if there was sufficient monitoring of crowd noise, that the tent would still be a viable option, and a value and a service to the community?

Mr. Howell said, point of order that is not his decision to make.

Mr. Ballantine said he was just going to get to that. He said, that is what the hearing is for to get all the input they can for them to make that decision. He said that is not the Chief's decision, and he has already given us his opinion and input. He said that he does not want to extend this meeting forever and asked that Mr. Tomlinson wraps up his questioning for the Chief. He said he would like to move on and give the witnesses a chance to speak.

Mr. Howell said that he would like to actually ask a question after Mr. Tomlinson.

Mr. Tomlinson said that Attorney Blake asked for the Chief's opinion on what would be beneficial or helpful to mitigate these issues. He said that he is simply expounding upon that, and he believes that information would be

valuable to the board and he would not want to deny the Chief the opportunity to be able to answer.

Mr. Ballantine said that he believes that the Chief has answered that.

Mr. Tomlinson said that his final question is if the Port is allowed to expand its outdoor dining again, do you agree that crowd monitoring and keeping the crowd noise at a sufficient level is valuable to the community?

Mr. MacAskill called a point of order.

Mr. Howell said that's not his decision to make, and what is in the public interest is theirs.

Mr. Ballantine said that they can all answer that, they are all there to try to contain the noise to acceptable levels in the neighborhood. He said that is one of the main factors that they are looking at as a Board.

Mr. MacAskill said that his only comment is that he thinks Mr. Tomlinson has the wrong venue for this line of questioning. He said that the tent which he is speaking of was the one in the back parking lot that took up all the parking spots, and he thinks that his argument for this should probably be made whenever he makes whatever next appeal they are going to make. However the tent in the parking lot right now is not the question, the tent is not what they are there for tonight.

Mr. Ballantine asked if there were other questions from the Board.

Mr. Tomlinson said that he wanted to respond to Mr. MacAskill's comments.

Mr. Howell said that he does not get to respond, that this is not his hearing.

Female voice said, that he does not get to respond to anything.

Mr. Ballantine asked if Mr. Howell had a question.

Mr. Howell said yes, and asked the Chief, going back to the COVID violations, if he was aware of any violations that might have been cited by any other jurisdiction other than the Harwich Police Department, against the Port?

Chief Guillemette said yes, the ABCC found violations when they did a compliance check.

Mr. Howell asked when would that have been, roughly?

Chief Guillemette said that it was some sometime in July.

Mr. Howell said okay, so this is in excess of just your jurisdictional aegis, correct? It is not just your force that is citing these violations?

Chief Guillemette said yes.

Mr. Howell asked, in terms of him, and his men and women, being out there physically have there been any other sites in that area since they have been talking about all of this and trying to bring everyone else on trial, that had the magnitude of expansion that was granted to the Port in consuming their parking lot in that kind of real estate, is there anything comparable to that?

Female voice chimed in and said that nobody else owns their parking lot.

Mr. Howell said actually I'm sorry I did not ask anyone but the Chief that question, and you have not been recognized, whoever you are.

Mr. Ballantine asked the Chief to go ahead and answer.

Chief Guillemette said no, not that he is aware of.

Mr. Ballantine recognized Mr. McManus.

Mr. McManus asked the Chief when he referred to music under the tent, or music from the tent, was he only referring to actual musicians there, or music also being piped through a speaker system?

Chief Guillemette said yes.

There was interruption with background noise. Mr. Howell said that this person is out of order, they have not been recognized. People were asked to mute their laptop if they have not been recognized to speak.

Mr. Howell said to Mr. McManus' point, and asked Chief Guillemette when they respond to a noise complaint from a particular site, is it relevant to you know that someone says well I can't do anything about it because someone else brought speakers onto my site to use them, or do you hold the responsible party to be the actual establishment where the noise is emanating?

Chief Guillemette said the licensee is responsible to control their premise.

Mr. Howell said, okay thank you.

Mr. Ballantine told Mr. Tomlinson that he can have a chance to ask one or two more questions, then he wants to move on to witnesses, who are anxious to speak.

Mr. Tomlinson said that he does have a few follow-up questions for the Chief. He asked if he had made requests to the Harwich Police Department on various occasions over the summer, for them to produce documents regarding complaints against the Port?

Chief Guillemette said that he believe so, yes.

Mr. Tomlinson said, okay and asked if he believed that Chief Guillemette had complied with those?

Chief Guillemette said yes.

Mr. Tomlinson said that the Chief had mentioned in response to the Board's questioning, about the term magnitude of expansion, and asked if he knew how large the tent was in the parking lot?

Chief Guillemette said no.

Mr. Tomlinson asked if he suggested that it did not take up all the parking spaces, would he agree with that statement?

Chief Guillemette said that he does not think that he has ever actually viewed it in person.

Mr. Tomlinson asked, if he suggested that there were at least five parking spaces that remain in the parking lot, would the Chief have any reason to dispute that?

Chief Guillemette said that he does not know either way, he has never reviewed it.

Mr. Tomlinson asked the Chief, when he had responded to the Board's question about the magnitude of the expansion, did he have any personal knowledge of what the tenants are

Mr. Ballantine interrupted and said that he is going to rule that not relevant. He said that he asked that question before and the response from the Chief was that it interfered with parking and that provides the information we need. He said that Mr. Tomlinson could ask one final question, then they will move on to the witnesses.

Mr. Tomlinson said that he was not completed with his questioning of the Chief.

Mr. Ballantine said that he wants him to conclude his questions to the chief so they can move on to witnesses, while they still have a bit of night left.

Mr. Tomlinson asked the Chief if it was his belief that the Port hosted live entertainment throughout the summer, last year?

Chief Guillemette said no.

Mr. Tomlinson asked if it was his understanding.

Mr. Ballantine said that the whole line of questioning has not been relevant, and asked if he has another line of questioning

Mr. Tomlinson said to Mr. Ballantine that he is trying to get into that question. He said that the Chief testified in response to questions from the Board about who was liable for speakers on site, and his question is going to directly get to that, if he can be afforded the opportunity.

Mr. Ballantine told him he could ask it.

Mr. Tomlinson asked if he could continue to question the witness?

Mr. Howell called a point of order, and said that Mr. Tomlinson had previously introduced the thought that perhaps someone had brought some amplification into that site and he was responding to that when he raised his question and was not putting words into the Chief's mouth. He was trying to allege that someone outside had brought that music in, and if that were the case he was asking who is responsible for that.

Mr. Ballantine told Mr. Tomlinson to ask another question on another subject.

Mr. Tomlinson asked Chief Guillemette, if the Port were to upgrade its house sound system, so that it could control the volume of entertainment offered outside, does he believe that would help mitigate noise at the establishment?

Chief Guillemette said, that has been suggested but he has no experience as to how that actually works, either way.

Mr. Tomlinson said that he won't ask about other establishments, that have newly installed house systems, but asked if the Chief knew if the Port has a house sound system in place currently?

Chief Guillemette said that he does not.

Mr. Tomlinson asked if he were to suggest that it does, and it has the ability to be able to upgrade that system to control performing noise; whether recorded, live, or acoustic, would that help in his opinion about being able to control noise at this establishment?

Mr. Howell called for a point of order and said that it is under their jurisdiction and has always been. He said that they do not ask the police for their opinion on what would ameliorate sound violations.

Mr. Ballantine thanked him for that point and said that it has been a discussion and that they will take it into a discussion later.

Mr. Tomlinson questioned Mr. Ballantine, that Mr. Blake can ask the witness for his opinion as to mitigating circumstances, but the applicant is not able to, is that is that your ruling tonight?

Mr. Ballantine said that is not what is happening, and said that he has asked his opinion on numerous occasions and the Chief has responded to those. He said that his concern is that Mr. Tomlinson is asking the same question in different formats on his opinion, and he has answered.

Mr. Tomlinson said that each time he asks him for his opinion, a member of the Board pipes up to take a point of order, to interrupt him from answering.

Mr. Ballantine said that he is going to rule that they have been responded to, and asked if you have another line of questioning otherwise I'm going to ask you to conclude the question so we can get to the witnesses I want to give the witness a chance to speak tonight as well as you

Mr. Tomlinson told Mr. Ballantine that he may like to ask the advice of counsel, as to whether or not he is entitled to ask the Chief's opinion.

Mr. Ballantine said that he has no problem with that, and asked Mr. Blake to weigh in.

Mr. Blake said that he believes as long as it is relevant, he is entitled to ask for that opinion. He said that he will note that he did ask the Chief for his opinion if there was a sound system that would mitigate the noise, or control the noise, and whether or not that would help, and the chief said yes, he thought it would. He said that Mr. Tomlinson asked if he know that the Port had such a sound system and the Chief said no. Mr. Tomlinson then went on to ask if the Chief knew if that would help, and the questioning is being a little redundant. He certainly can ask for relevant opinions.

Mr. Ballantine said that he thinks the key word there is relevant, that's the concern he has with Mr. Tomlinson.

Mr. Tomlinson said that as Mr. Blake noted, at the last hearing the discussion of relevance is a legal matter for the court, so he is going to make a general objection to his repeated referral to something being relevant.

Mr. Ballantine said that they are not listening to objections tonight, so they will move ahead with his question.

Mr. Tomlinson said that Chief Guillemette had indicated that music in the tent was an ongoing problem throughout the season, and asked if he had suggested

that there was only one week where there was music allowed under the COVID guidance, would he have any reason to dispute that?

Chief Guillemette said that he did not know.

Mr. Tomlinson asked if the Chief had read the letters of support from the delivery companies that supply food and provisions to the Port, regarding their need to park on Sea street?

Chief Guillemette said no.

Mr. Tomlinson asked if he was aware that delivery companies are not able to use the Port's parking lot to make deliveries, and have used Sea Street, for the entire existence that the Port has been in operation?

Chief Guillemette said no.

Mr. Tomlinson said, you're not aware of that?

Chief Guillemette said no.

Mr. Tomlinson said that he presumes that he is also not aware that other delivery companies for other establishments also park on Sea Street?

Chief Guillemette said that is correct.

Mr. Tomlinson asked if he has ever had an opportunity to view the Port's late night menu?

Chief Guillemette said no.

Mr. Tomlinson said that he is not aware of what food offerings the Port makes available after 10:00 pm?

Chief Guillemette said that he is not.

Mr. Tomlinson said that his earlier testimony was that he had complaints that it was a nightclub masquerading as a restaurant, does he recall that testimony?

Chief Guillemette said correct.

Mr. Tomlinson said that is not his opinion or the opinion of his officers, but of complaints that they have received from other people?

Chief Guillemette said yes.

Mr. Tomlinson asked if they ever investigated those complaints about whether or not the Port was a nightclub masquerading as a restaurant?

Chief Guillemette said that their officers would respond to any calls for service there and do the best they could to determine what the situation was.

Mr. Tomlinson said okay, but despite having eleven noise complaints in 2020, the Port was not cited for any violation of the noise bylaw?

Chief Guillemette said correct.

Mr. Tomlinson said that he is done with the witness, unless the Board has any further questions to which he might rebut, and he thanked the Chief for his time tonight.

Mr. Ballantine asked if anyone had further questions?

Mr. Howell said he did and asked the Chief if he was familiar with the alcohol beverage pouring license for this site? He said if he were to say that the license at this establishment was 84 people, would that sound about right?

There was disruption from background noise and Mr. Ballantine asked people to mute themselves.

Mr. Howell repeated his question.

Chief Guillemette said that he was not sure. He said that he has never really gotten into the numbers, that it is not really their area.

Mr. Howell said that it is listed as 84 and in his judgment, would four or five parking spaces be sufficient to sustain that kind of capacity, without parking elsewhere?

Chief Guillemette said no.

Mr. Howell said thank you.

Mr. Tomlinson said if there were no further questions from the Board, he would like to ask the Chief a follow up question.

Mr. Ballantine said to go ahead.

Mr. Tomlinson said that the Chief indicated that the seating capacity or occupancy limits are not within his purview, is that true?

Chief Guillemette said yes, they don't enforce those and believed it was building or fire.

Mr. Tomlinson said, okay and asked if he was aware of the site plan that has been approved for the Port, with respect to the parking that is made available at the Port?

Chief Guillemette said no.

Mr. Tomlinson said okay, and so when Mr. Howell asked you questions about your judgment, regarding four or five parking spots, you really don't have any substantive basis to make a determination, as to whether or not that parking is sufficient, with respect to the extended outdoor dining, is that true?

Chief Guillemette said that he knows if it was five spaces alone, it wouldn't be enough.

Mr. Tomlinson said that he can appreciate that, but asked if he was aware of other establishments that have on-site parking?

Chief Guillemette said yes.

Mr. Tomlinson asked if he knew if those establishments also had outdoor expanded dining in their parking area?

Mr. Ballantine said that he thinks that's beyond the questions that they are having about the Port, and said to conclude his follow up questions.

Mr. Tomlinson said no, that the Chief was muted and he wasn't able to respond to his question.

Mr. Ballantine said that he is asking the Chief to make a survey of the town on all of their parking and the question was specifically for the Port and he would like to keep it to that.

Mr. Tomlinson said that his question is limited to the Port and said that he would rephrase his question. He asked the Chief if he was aware of any Municipal parking that is within close proximity to the Port?

Chief Guillemette said yes.

Mr. Tomlinson asked if that Municipal parking was used by other establishments as well?

Chief Guillemette said yes.

Mr. Tomlinson asked whether or not those establishments have on-site parking?

Chief Guillemette said I believe so.

Mr. Tomlinson asked if he was aware of other establishments that had expanded outdoor dining, where the dining or tents occupied parking spaces on their own property, the Lanyard, for example?

Chief Guillemette said yes.

Mr. Tomlinson said that he was done with the witness, unless there is the need for any rebuttal questions.

Mr. Ballantine said thank you and that they will move on. He asked the witnesses that are sworn in to confirm that.

Mr. Blake said that he would suggest that that they limit, like they did at the last hearing, that those members of the public that wish to speak should only speak with respect to opposition to the renewal of this of these licenses, and then when the Port gets their opportunity to respond, then those people can

speak. He would ask that if they are going to open it up to the public, that they do so for those that are opposed to the license.

Mr. Ballantine thanked Mr. Blake and said that they will do that, and his other request is that the witnesses that speak, in the interest of time, that they make their point concise and if someone before them has made a point not to repeat it. He said that they are listening and paying attention.

Mr. Ballantine said that he would read from the list and after discussion, he would read through the list and ask if they were in opposition.

He called for a Ms. Patricia Iafrate, and asked if she wished to testify in opposition?

Ms. Iafrate said no, that she is in support.

Mr. Ballantine called for Ms. Leanne (last name was not audible) and asked if she wished to testify in opposition?

Ms. Leanne (last name was not audible) said that she did not.

Mr. Ballantine called for Mr. Bob Cohn.

Mr. Bob Cohn said yes I do. He said he is from Pleasant Street and as he had mentioned last week, he had conducted an informal noise survey in 2019. He said that he had presented it at a noise committee meeting a year ago while he was on the committee, but these comments are his alone, as a resident. He asked if he could share his screen to show the map which shows the noise readings for the Port only.

Mr. Ballantine asked if Mr. Powers needed to do something to share the screen?

Mr. Powers said that he would suggest that there should be an acknowledgment of the Board to do that, and then either himself or the manager of Station 18 could actively name them as a presenter.

Mr. Ballantine said, okay but it's up there now thank you.

Mr. Powers said that was done without the knowledge of staff or of the Board.

There was no objection.

Mr. Cohn said this is a map of noise that he recorded during his survey in July 2019. He said that he recorded a quick overview and the red dot is for Ember's performance area and the light blue.

Mr. Ballantine said to keep it about the Port.

Mr. Cohn said, okay the light blue area is the Port's lot and the green circle is 150 feet from the source. He said for comparison, with the bylaw standard, the dark blue rounded rectangle approximates the permitted noise range. There should actually be a little bit less in the top corner to take account for this notch and again the small red diamonds are individual noise incidents and the larger diamonds represent multiple incidents on different nights. Mr. Cohn explained that most of the readings occur in the north-south, along Schoolhouse Road and Sea Street, because that was the route he traveled in taking the survey. He said that they can assume easily enough that the noise propagated to the west and to the east as well. He said that these were readings for a single venue, for basically a single month. He stopped doing surveys at the end of July, but still recorded noise he heard from his house over the entire season. He said that he recorded at least 15 nights when noise from the Port was playing audible at 800 feet or more away. Mr. Cohn said that he wouldn't want to suggest that these are extreme distances, but when looking at maps like these, it's easy to decide just how much space is involved. He said that it is an overlay map which shows the actual space that they are talking about. He said the football field is 300' x 160' and 1.1 acres, and there are about four football fields inside the permitted noise range. He said, if you can picture standing in the middle of the football field, and then add three more fields to the picture, you might agree that is a considerable range.

He said he would hope that reasonable levels of outdoor entertainment particularly considering their neighbors nearby by contrast the actual noise range at 500 feet encompasses 18 acres, 750 feet encompasses 40 acres, 1,000 feet encompasses 72 acres and much of the village, from Bank Street to Doane Park, from north of Pleasant to almost the bottom of Sea Street. He said more importantly audible at 800 feet, which is five times more than allowed under the loud nuisance level under the bylaw and for close by neighbors, it's been that much louder and at times intolerable.

Mr. Cohn said to the Port's credit, they did seem to get quieter at the end of the 2019 season, but by the next year the excessive noise had resumed and for a full week in July 2020 they heard music from the Port on Pleasant Street, now almost a thousand feet away from the new performance area in the parking lot. He said that one evening he called the Port three times asking to turn down the volume, but the noise continued unchanged until 10 pm. He said that it was loud enough to keep them awake. He said that the crowd noise from the tent seemed to have been a problem for much of the season. When the Port first came before the Board requesting an entertainment license they had said that the music was to keep people entertained while waiting for a table, and that it would be acoustic only and they would do everything to keep it under control. He said that this would be in the best interest of everyone. Fast forward a few years, and levels were too often out of control. He said that he does not think that makes the Port bad necessarily, and he can understand how it was easy for entertainment to grow, but the thing is that this is a licensed activity. The license is put in place in order to strike a balance between the interests of the venue and the neighbors, who are the primary stakeholders in this. He said that it is hard enough to strike a balance, without entertainment, in close quarters. It's that much harder for the Board, when the balance they do strike is ignored, so he hopes that in the future the Board can devise a method to deal with this problem.

Mr. Cohn said that at last week's Ember hearing, he was truly moved by Mrs. Brackett's testimony and truly feels bad for her and her family. However, he hopes that she and her family understands that it is a two-way street and that the noise and disruption has made life difficult, and sometimes miserable, for neighbors of both restaurants. He said that neighbors are only asking that the noise be turned down, that's all, just turn the volume down. He wants both the Port and Ember to succeed, they are important to the community, they employ a lot of people, they are a draw for their town. He has enjoyed going to both of them and hopes that they can find a way. However, over the last several days, he has come to doubt whether they actually can be good neighbors. He does not do social media, but had been forwarded a number of screenshots from the Port's Instagram account. He showed an image where on the left it says, we got a list Vranos check, Ganley check, Cohn check. He said that this is in reply to a lead up by the Port, which targeted each of us individually criticizing the things we said from the Ember Hearing. He said that he is not sure how much they got wrong and mischaracterized about Mr. Vranos and Mr. Ganley, but he assumed a fair amount. In his case the criticism is mostly based on being misquoted in the chronicle. He never said

that Ember was allowed in 2020, his survey was done entirely in 2019. He said that the screen shot on the right shows Mr. Ganley being targeted. He understands that people get worked up, and vent on the internet, but this is shameful targeting of individuals. He said that this crosses the line, not so veiled threats and plotting about knowing where someone's house is, is beyond unacceptable. Mr. Cohn said that none of this has any place in their community and at this point he does not know what should be done with the Port.

Mr. Cohn had thought the ideal long term outcome for the Port would be to reduce their entertainment and crowd noise and to figure out how to comply with the license terms, and be reasonably good neighbors. However, he said that he no longer knows if this is possible. He hopes it is, but he no longer knows if it is possible. He said that he can't speak to the crowd noise issues, and the issues surrounding the tent, but as far as the entertainment license goes and trying to be consistent if the Port is permitted outdoor entertainment again, he would suggest the same conditions that he mentioned for Perk's and Ember. He said that live outdoor entertainment should be limited to evening hours, other outdoor entertainment should be limited to ambient background and levels for live music should be played only through a house audio system. The Port should self-regulate with security personnel and decibel monitors and noise limits should be more strictly enforced.

Mr. Cohn said that finally he wanted to repeat a point that Mr. Bob Nickerson made last week, and that is that a lot of people have been intimidated by the carrying on at the Ember hearing, and perhaps also tonight, and some continue to be. He said that it's unfortunate that their open meeting isn't as open as it ought to be. He said that he appreciates the Board taking the time to consider this.

Mr. Ballantine thanked Mr. Cohn and turned it over to Mr. Blake.

Mr. Blake introduced himself to Mr. Cohn and said that he has a couple of questions. He said that Mr. Cohn indicated that he heard noise and knew that it came from the "Port only", and asked how he knew that?

Mr. Cohn said that when he did his survey he would walk down and stand across from the Port and Perk's, and determine which kind of music was being played, if they were male or female and the style of music. He said that based

on that, he could determine where the music was coming from, when he could not determine, he didn't add it to his figures.

Mr. Blake said he stood in front of the restaurant to make his determination, and asked if he walked a certain distance and listen again?

Mr. Cohn said yes, he would start at his house on Pleasant Street and then walk down to Schoolhouse Road. He made notes about the sound he heard and determine where it was coming from, then walk down Sea Street as far as he could hear the noise. He said that he then continued his survey down Route 28, passed Ember to Freeman Street and then back down Pleasant Street. So he said he did the same loop every time, with some variations.

Mr. Blake said that he thinks that Mr. Cohn testified that for 15 nights that it was plainly audible at 800 feet away, is that correct?

Mr. Cohn said that's correct. He said that there was another seven incidents, which he wasn't able to determine whether it was Port or Perk's.

Mr. Blake asked how he knew it was 800 feet?

Mr. Cohn said it was based on a Google measurement.

Mr. Blake asked how far away he lives from the Port Restaurant?

Mr. Cohn said about 800 feet from the performance area which was in the parking lot this last year.

Mr. Blake said okay and asked if he called three times in one night to ask them to quiet down?

Mr. Cohn said yes he did.

Mr. Blake asked if he was inside his house, and could still hear them at almost a thousand feet away?

Mr. Cohn said yes, and they couldn't sleep.

Mr. Blake asked if that is a regular occurrence?

Mr. Cohn said it has been too regular, yes, and not just from them but from Ember as well, and others. He said different years, different folks.

Mr. Blake said okay, but we're talking about Port tonight, so he doesn't want to go into anything else.

Mr. Cohn said in July on his map, it showed eight times from their house.

Mr. Blake said that he talked about a website or Instagram, which he showed a picture of it, and asked if that was the Port's Instagram?

Mr. Cohn said that was his understanding.

Mr. Blake said okay and asked if the threatening posts were posted after his testimony during the Ember's hearing?

Mr. Cohn said yes, in this last week.

Mr. Blake asked if he felt threatened by those posts?

Mr. Cohn said that he initially did, yes. He communicated that to the Chief, and told him he was going to install a security camera at his house.

Mr. Blake asked if he still felt threatened?

Mr. Cohn I hadn't been, but now I am again so yes

Mr. Blake asked if he received any calls or emails, or anything of the like, regarding his testimony?

Mr. Cohn said just the screenshots from the Instagram account.

Mr. Blake said that he had no further questions and thanked Mr. Cohn for coming forward.

Mr. Cohn said it was his pleasure.

Mr. Tomlinson asked if he could question Mr. Cohn?

Mr. Ballantine said that he could.

Mr. Tomlinson asked Mr. Cohn to join the video again.

Mr. Cohn said he is there, his hand was a little shaky.

Mr. Tomlinson said that he had a few quick questions, just about the informal nature of the study he mentioned performing. He asked if that was his own work and had not shared it with the noise committee?

Mr. Cohn said that he had, a year ago.

Mr. Tomlinson asked if he recalled when he shared that with the noise committee?

Mr. Cohn said roughly a year ago.

Mr. Tomlinson asked if could recall the month?

Mr. Cohn said that he would guess April, but he could be off. He said that he thinks it was just before the pandemic, he said he thought it was the last meeting before the pandemic.

Mr. Tomlinson said okay.

Mr. Cohn said that he could be off on that a bit.

Mr. Tomlinson said that's okay, and said the Noise Committee didn't vote to refer his study to the board, correct?

Mr. Cohn said no, it didn't and that they barely voted on anything at all.

Mr. Tomlinson asked if he would agree that there's a significant divide on the noise committee as to the interpretation of the term plainly audible

Mr. Cohn said that he would agree that there's considerable polarity on the Noise Committee. He said that based on some recent legal input, there ought to be no difference between the plainly audible definition, or understanding of plainly audible, in the Town anywhere. He said that is a new understanding that he has come to recently, and believes that the noise committee wasted an awful lot of time on that.

Mr. Tomlinson said that he said there was a some legal input, and asked if he had received any legal input on the definition of plainly audible?

Mr. Cohn said yes.

Mr. Tomlinson asked if that was from Town Council, or from his own personal attorney?

Mr. Cohn said his personal attorney.

Mr. Tomlinson said that he is not going to ask him to identify the personal attorney, but asked if he had voiced his concerns or has the personal attorney spoken with the Town's attorney, or any of the members of the Board?

Mr. Cohn said that he sent in a letter.

Mr. Tomlinson asked if the letter was sent to the Board?

Mr. Cohn said yes, in the last couple weeks.

Mr. Tomlinson asked if the letter had been disclosed as part of the public hearing packet, to his knowledge?

Mr. Cohn said no, but that it is scheduled to be under review at an upcoming Selectmen's meeting, where noise will be on the agenda. He said this will be at a general meeting, not a public hearing.

Mr. Tomlinson asked if he requested that general meeting before the board?

Mr. Cohn said no he did not, but said that he had several months ago. He said that he had spoken with Mr. MacAskill and it was their understanding that once they got through these hearings, they would approach that, and try to get in before the season.

Mr. Tomlinson asked if his conversations with Mr. MacAskill occurred as part of a convened meeting of the Noise Committee, or was he having private conversations with him?

Mr. Cohn said that Mr. MacAskill used to be the liaison to the committee.

Mr. Tomlinson said that his question was a little different, and asked if he was having private conversations with him, or was it part of his role as the liaison to a convened meeting of the Noise Committee?

Mr. Cohn said that he was trying to figure out what to do about how to dissent to some of the decisions about the Noise Committee, so it's part of Mr. MacAskill's job, as liaison, to speak with him.

Mr. Tomlinson asked how recent was this conversation with Mr. MacAskill?

Mr. Blake interrupted and said to Mr. Ballantine, that they are going to be there all night. He said that the issue is whether or not there is noise coming from the Port, not whether or not they have a liaison talking with a member of the Noise Committee. He said that he would suggest that Mr. Tomlinson start to focus his questions.

Mr. Tomlinson said that his questions are focused.

Mr. Blake said that they are not, not at all.

Mr. Tomlinson said he is entitled to examine this witness.

Mr. Blake said that he is not entitled to ask irrelevant questions and waste a lot of time.

Mr. Ballantine asked if Mr. Tomlinson has another line of questions, if not he is going to ask the next witness to testify.

Mr. Tomlinson said that he has not concluded his questioning of Mr. Cohn. He said that Mr. Cohn had presented an informal study and occupied more than 10 minutes of the Board's time, and he is asking for the opportunity to simply ask him a few questions about his qualifications, and about the methodologies of this study. He believes that is highly relevant to this Board.

Mr. Tomlinson continued and told Mr. Blake that he hasn't asked a question and that he is leading the witness and obstructing his questioning. He said that he would ask the Chairman to direct him to stand down, while he preceded with his question.

Mr. Ballantine said that if he can ask a question that's relevant, and not about the direction of the Board on the Noise Committee. He said for him to be careful, because they need to move on.

Mr. Tomlinson asked Mr. Cohn what qualifications he has to perform this study? He asked if he is trained in any way professionally, as an audiologist or a noise engineer?

Mr. Cohn said no, but that the beauty of the plainly audible standard, is that anyone can use it. In fact, he said that he was trained somewhat, by a police officer in 2018. He explained that he had called the police for a noise complaint and the officer had trained him that it was not above ambient noise. He said to the extent that someone could be trained in plainly audible, he had been trained.

Mr. Tomlinson asked if he used the decimal meter to measure sound at various locations, correct?

Mr. Cohn said that he does not know where he got that idea, he uses the plainly audible standard exclusively.

Mr. Tomlinson asked when he was using the plainly audible standard exclusively, could he understand the lyrics of what this is.

Mr. Ballantine said that he is going to overrule that, and beyond that, because they are not getting anywhere. He said that Mr. Cohn has given his impression of the noise and that gives them the information to make some decisions about that. He said at this point it seems like he is trying to intimidate the witness. He said if Mr. Tomlinson has another line of questions to ask, otherwise he wants to get to another witness.

Mr. Tomlinson said that the study is dated 2019, and asked Mr. Cohn if he had performed any plainly audible informal noise studies in 2020?

Mr. Cohn said that he witnessed, but did not write this down into his spreadsheet. He said that he witnessed a week's worth of noise coming from the Port, and went down and checked it out and he saw the guy standing out in the parking lot wailing away. He said that it was the same guy her heard at his house and that it was quite loud sometimes and could be heard a thousand

feet away. It was not part of the survey, but it is something that he noted in July, but it only lasted a week.

Mr. Tomlinson asked apart from that one week,

Mr. Tomlinson asked if there were no music or noise complaints to his knowledge at his home last summer?

Mr. Cohn said that he did not recall.

Mr. Tomlinson said that he had raised an issue about feeling threatened by social media, Instagram posts, he asked if he understood what the Port posted was simply a copy of his letter and informal study, correct?

Mr. Cohn said that the list that was up there with their names and check marks is not what he is suggesting. He said that is borderline threatening, when someone's going after someone's house online, that's borderline threatening, it crosses a line, and it has no place in their community.

Mr. Tomlinson asked if he contacted the Port, and asked them to remove that post?

Mr. Ballantine told Mr. Tomlinson to move on from that and said that Mr. Cohn has already give them his impression of that post. He asked if Mr. Tomlinson had another line of questioning?

Mr. Tomlinson said that Mr. Cohn said he had been misquoted in the paper, which he knows all too well, and asked if he would agree that the freedom with which he is sharing his story here today, is a freedom of speech, that is shared by other people that support the establishment, correct?

Mr. Cohn said that he would suppose, he does not really know and said that Mr. Tomlinson would know better.

Mr. Tomlinson said that he is simply asking if he feels that he has the freedom to be able to share his thoughts with them?

Mr. Ballantine said that he is going to stop that line of questioning. He said that is getting them nowhere and that Mr. Cohn had testified his impression

of the noise and that should end that discussion. He asked if Mr. Tomlinson had another line of questioning?

Mr. Tomlinson said that he does, and said to Mr. Cohn that he had indicated that these establishments could be good neighbors and that this is simply a situation where we need to turn down the volume. He asked if he still believed that this is true, that if the volume were turned down, that noise complaints throughout Harwich Port would likewise decrease?

Mr. Cohn said that he did not he thought that, he had said he hoped that, and yes, he believes that if people turn down the volume, they can all live together.

Mr. Tomlinson said that last night, he had supported outdoor entertainment at Perk's, is that true?

Mr. Ballantine said that's going back to a non-Port question.

Mr. Tomlinson said that it goes to whether or not Mr. Cohn supports all businesses equally, and he believes that's a fair and relevant question.

Mr. Cohn said that the standards he suggested are the same for all three venues. He said that there may be some slight differences, but they are essentially all the same.

He said that if they use house systems, that they only have outdoor entertainment in the evening hours, live outdoor entertainment in the evening hours and other times it should be ambient background music. The noise limits should be more strictly enforced with decibel monitors and/or security details if that is appropriate.

Mr. Ballantine interrupted and said that he wants to move on to the next witness at this point. He asked if Ms. Molly Spalt was there and wished to speak in opposition?

Ms. Spalt said that she did not wish to speak in opposition.

Mr. Tomlinson said that he wanted to note his objection that he had not concluded his questioning of Mr. Cohn.

Mr. Ballantine said, again they decided early on that they are not entertaining objections tonight. He said that he can keep repeating that, but it is just wasting time.

Mr. Ballantine asked Mr. Joe Ganley if he wished to testify in opposition.

Mr. Ganley said that he does. He thanked them for the opportunity to testify and said that he is a resident and taxpayer in Harwich Port. He explained that himself and his wife own property in close proximity to the Port and the issues of this establishment have been well documented to the Board. From the ABCC, Harwich Police, and also extensive photo, video, audio, and written testimony submitted by residents. He said contrary to the report of the Ad Hoc Noise Committee, the noise problem last summer was not better because of COVID, it was meaningfully worse than it had ever been in the past two years. Mr. Ganley pointed out that there were 28 calls to the Harwich Police Department, regarding the Port last summer alone. He said that there were 15 police calls between May 22nd and Labor Day. That is 15 calls, in 15 weeks. That is not including the two ABCC inspections, which both found violations. He said that this is contrary to what had been reported, the Port did have a documented noise violation on September 27, 2019, for which it was issued a written warning by Lieutenant Sullivan. He would submit this is the very definition of being a focal point of police attention. Mr. Ganley said that when the police have to go to the establishment and ask that the music be turned down, or when they have to instruct the staff to ask patrons to leave the premises more quietly, these should be violations. The noise ordinance and license regulations are clear; if noise, whether from entertainment or from patrons, is plainly audible at 150 feet from the establishment, it should be a violation period. He said regardless of what time of day it is, 150 feet is a violation.

Mr. Ganley thanked the board for denying the privilege of expanding the outdoor footprint at this establishment, and said that he believes that they abused that privilege last summer. He believes that this will be a game changer, in terms of noise, from this establishment going forward.

He said that there is no reason that this business cannot thrive, while maintaining respect for its residential neighbors, and he is certainly not suggesting that they should be shut down, or that their liquor license should be revoked. He is also not interested in getting pulled into a social media war with my neighbor, or the ridiculous Hatfield and McCoy dispute going on

between the Port and Perk's. He said that all he is asking for is that the Board hand down appropriate discipline to the violations, and use their authority to set conditions on the entertainment and/or liquor licenses. He said that this will compel this business to fully comply with the rules and regulations that the Town has established; in particular the noise bylaw, nothing more nothing less.

Mr. Ballantine thanked Mr. Ganley and asked if there were any questions for him from the Board?

Mr. MacAskill said that he will reserve his questions for later.

Mr. Howell began to ask Mr. Ganley a questions. Female voice interrupted saying, are you kidding me.

Mr. Blake interrupted and said that he didn't get a chance to ask the witness a question.

Mr. Ballantine said that he would let Mr. Howell finish and then get to him.

Mr. Blake apologized stating he thought it was Mr. Tomlinson speaking.

Mr. Howell said that Mr. Ganley had made some comments about noise emanating from there, and asked if he had the occasion to actually walk down Sea Street or peer in to see if there was any live music, or was that just from afar?

Mr. Ganley said that the vast majority of the noise that he had observed, which had disrupted them last summer was not music, that it was music on a couple of occasions, but it was mostly patron noise.

Mr. Howell asked where that appeared to be coming from?

Mr. Ganley said that it came from the Port, without question, in the tent area. He said that the outdoor tent was a game changer, because it took whatever crowd noise would normally be associated with the full capacity of the establishment and moved it out into the parking lot, closer to residential neighborhoods and created a raucous and loud environment.

Mr. Howell said thank you and that he is going to reserve more questions for later.

Mr. Ballantine turned it over to Mr. Blake.

Mr. Blake apologized to the Board that he was mistaken as to who was speaking before. He introduced himself to Mr. Ganley and said he had a couple of quick questions.

Mr. Blake said that Mr. Ganley testified that he lived in close proximity to the Port, and asked how far away from the Port did he live?

Mr. Ganley said he was not sure, that he has never measured it, but they are across Sea Street.

Mr. Blake said that he is not familiar with the area, and asked if he could give an estimate, if it is 20 feet, or 200 feet?

Mr. Ganley said, no it's maybe 100 yards, or maybe 90 yards. He said he was sorry, but he has not measured it, and does not want to be called a liar on Instagram.

Mr. Blake asked if most of his complaints last year, were about patron noise or crowd noise?

Mr. Ganley said that he had never made a noise complaint ever before, until the tent went up last summer.

Mr. Blake asked how many complaints he made?

Mr. Ganley said that they called the police a couple of times, and then they started recording the noise from their front yard, to document it so that they could bring it up with the Board of Selectmen.

Mr. Blake asked if they could hear the noise from inside their house?

Mr. Ganley said, absolutely.

Mr. Blake asked if it kept them up at night?

Mr. Ganley said, absolutely and that they have an eight-year-old and it was difficult to get the kids to go to bed at night.

Mr. Blake asked if that was the crowd noise, or the music, or both?

Mr. Ganley said that last summer it was crowd noise in particular.

Mr. Blake asked if he has sat through this entire hearing?

Mr. Ganley said yes.

Mr. Blake asked if he heard him asking the Chief some questions, and that the Chief had indicated in a memorandum that he had gotten reports of intoxicated individuals causing disturbances at closing time. He asked if Mr. Ganley had ever observed any intoxicated individuals causing disturbances at closing time?

Mr. Ganley said many times, in the parking lot behind the Port center, which is across the street from the Ports parking lot. He said that he would routinely have to go out into the parking lot and ask them to keep their voices down, or move along because they were causing a disturbance. He said that they would have people go into their backyard while they were sitting there and relieve themselves, in the middle of their backyard. He said that happened two or three times last summer.

Mr. Blake asked if it was in front of his children?

Mr. Ganley said that it was usually after his children had gone to bed.

Mr. Blake asked what other type of disturbances he observed after closing?

Mr. Ganley said just very loud conversations, yelling and screaming, and arguing in the parking lot. People fighting about who's going to drive home, just the sort of disturbances you would expect with drunk patrons coming out of a bar.

Mr. Blake asked if he knew they were coming from Port?

Mr. Tomlinson said, objection.

Mr. Ganley said, yes, they often hear them walking across the street and they could hear the conversation as they left the Port and continuing as they walked across Sea Street and into the parking lot.

Mr. Blake said that he has no further questions.

Mr. Tomlinson said to the Chairman that he has a technological issue that he wanted to bring to the Board's attention. He said that he is receiving emails that Mr. Powers has locked the meeting and some people have left and they're trying to join again. He said if Mr. Powers could unlock the meeting, so that participants can freely participate?

Mr. Ballantine said that Mr. Powers did not do that. He said that individuals were interrupting the meeting and as soon as they stop interrupting, it could be completely unlocked

Mr. Tomlinson said that the people that are writing to him have not spoken a word during this hearing, and they have been locked out, and cannot rejoin the meeting.

Mr. Blake said that it looks like about 20 or 25 people just joined.

Mr. Ballantine said that if people speak one at a time, that is the only way, so that they can control things and the witnesses are heard.

Mr. Ballantine asked if Mr. Tomlinson had questions for Mr. Ganley?

Mr. Tomlinson said that he does, and said to Mr. Ganley that he is hearing something different from him that he has not heard from him in the past.

Mr. Ballantine said again they have someone on the line, and they can't hear him. He said in order to keep everyone on the meeting, they need people to mute themselves or be quiet, otherwise those speaking cannot be heard.

Mr. Tomlinson said he was hearing something different from Mr. Ganley tonight, that is new and encouraging. He said that what he is hearing is that Mr. Ganley is not opposed to the operation, and not opposed to the entertainment, he is opposed to the proximity of the tent to his property. Mr. Tomlinson said however, what he has not heard are suggestions on how Mr. Ganley believes the crowd concerns and patron noises under the tent may be

mitigated. He asked if Mr. Ganley had any suggestions on that because he believes that there are numerous patrons that park in the Port Center parking lot near his home, that come from different establishments.

He said that he thinks Mr. Ganley would agree with him, that they are not all strictly from the Port. He said that he knows that his wife and him have dined at the Port and also at the other establishments, so this question is does he have any suggestions for the Board as a neighbor living very close to the establishment, that shares air with Perk's, who recently had its entertainment license renewed, that the Port can likewise remain relevant as a business and survive, but also be more cognizant of the concerns that he raised tonight?

Mr. Ganley said that first of all that is quite the question, he does not agree with the summary of his testimony, so he would take issue with that. However, he said that he would say it is obviously a mixed commercial and residential area, and he thinks it is completely possible for restaurants and residents to coexist peacefully. In his opinion, it requires two things, it would require mutual respect for your neighbors, and absent mutual respect, it requires the town to enforce the laws that it put in place to regulate these kinds of mixed use areas. He said that he would suggest that it is not incumbent upon him to suggest to the Port how they should comply with the law. There is a noise ordinance and there are liquor license and entertainment license regulations that they are required by law to comply with. He is not the manager of the Port, or their licensing attorney, it is not his job as a resident to make suggestions to them, as to what procedures they should put in place to ensure that they are in compliance with those laws and regulations.

Mr. Tomlinson asked if he ever spoke with the manager, or owner, at the Port regarding his concerns?

Mr. Ganley said no.

Mr. Tomlinson asked if he ever raised a concern with the police department that his concerns were not being met, or not being heard, or not being referred to the establishment?

Mr. Ganley said that those are three different things, his concerns were not being met, heard, or referred to the establishment?

Mr. Tomlinson said that he will simplify the question, and asked if he ever complained to the police department, that his complaints were not being heard?

Mr. Ganley said yes.

Mr. Tomlinson asked, how did they respond?

Mr. Ganley said that he complained to the Police Department, the Board of Selectmen, the Town Administrator, and to the Noise Committee. He said that this is all related to last summer. He had never raised a noise complaint, any other year that they have been here.

Mr. Tomlinson asked if he had raised a complaint to the Noise Committee from last summer?

Mr. Ganley said yes.

Mr. Tomlinson asked how he raised that complaint, because it was his understanding that the noise committee had not met since before lockdown?

Mr. Ganley said that they had a meeting in October.

Mr. Tomlinson asked if that was October 2019?

Mr. Ganley said no its October 2020.

Mr. Tomlinson asked if he had raised his concern then?

Mr. Ganley said yes.

Mr. Ballantine said he wanted to make a comment at this point. He said that the questions that Mr. Tomlinson was asking about the action is why they were meeting tonight and why they have asked their Town Administrator, as he had testified to preside as hearing officer several months ago. He said that he thinks this has come up before and those meetings were delayed for some time, for several reasons. He said that they are not questioning the reasons they were delayed but that's the reason they are here tonight is to hear the testimony and see if action needs to be taken to move forward. He said that he

was trying to give some insight into that and into their procedure as a Board of Selectmen.

Mr. Tomlinson said thank you and that he would resume his questioning of Mr. Ganley, if that's okay?

Mr. Ballantine said yes.

Mr. Tomlinson asked Mr. Ganley if he had any complaints about any other establishments?

Mr. Ganley said no.

Mr. Tomlinson said, so you did not have any noise complaints or crowd noise complaints at Perk's, which is immediately adjacent to the Port, and which shares the same air?

Mr. Ganley said no.

Mr. Tomlinson asked if he would agree that if the noise bylaw is clear, and that a violation should be issued, what is it about the noise bylaw that is ineffective, as he sees it?

Mr. Ganley said that he thinks that the Town has been lenient on businesses, out of a desire to help those businesses and not issue violations. A police officer would go to a restaurant, and instead of citing them for a violation, they would be asked to turn the music down, which is fine, if they do, but there has already been a disturbance.

Mr. Tomlinson asked if it is his position that it's up to the police officer, whether to issue a violation?

Mr. Blake interrupted and said that this witnesses opinions and thoughts on how to mitigate noise, and the like, are irrelevant.

Mr. Tomlinson said to Mr. Blake that he led the witness as to threats and he led the witness as to what he witnessed.

Mr. Blake said that you can lead a witness because this isn't a proceeding that's governed by the rules of evidence and that is not his objection. He said that

his objection is not about the form of the question, it is to the back and forth. They are trying to determine whether or not to renew the license, because of the noise violations, so this back and forth and talking about what this witness thinks, or about the enforcement of noise is really not relevant to this whole thing and it's just prolonging this hearing.

Mr. Ballantine said that he will take this opportunity, as Chair, to move on and asked Mr. Tomlinson, if he had another line of questions.

Mr. Tomlinson said to Mr. Ballantine that he should direct his counsel to refrain from attacking him on the record, and said that his behavior is deplorable. He said that he is treating him with respect.

Mr. Ballantine said that they have asked Mr. Blake to help them and provide counsel and that is what he's done. He said that this back and forth is not giving them direction, so they can hear everyone's testimony

Mr. Tomlinson said that he is trying to ask questions, so that the Board can be educated, but at every turn he is being denied the opportunity, by the claim that the question is not relevant.

Mr. Tomlinson said that he appreciate that everyone has an opinion tonight and that everyone will be afforded the opportunity to speak. He said that he assures the Board to the extent that they have requested, that they should make an effort to allow everyone to speak. The board has put this process in motion, and should see it through to completion and that what he would ask.

Mr. Ballantine said that is their intent.

Mr. Tomlinson said that he is still speaking.

Mr. Howell said that he gets recognized, the Chairman does not need to be recognized.

Mr. Tomlinson said that he was recognized.

Mr. Howell said not at this point.

Mr. Ballantine asked Mr. Tomlinson to ask one more relevant question, because they are not moving forward with this back and forth.

Mr. Tomlinson said to the Chairman, that he would ask to the extent that he is going to limit his questioning, that you also direct your fellow members of the Board to show some decorum and not interrupt when people are speaking, that is only further contracting the process.

Mr. Tomlinson said that he just had a couple final questions for Mr. Ganley, and asked if he had submitted the videos that he made from his property to the Board?

Mr. Ganley said yes, that he put them on YouTube and sent an email.

Mr. Tomlinson said that he had indicated that the crowd noise from the Port's tent carried over into the parking lot, and that you heard that from your property because those people were on Sea Street, but you don't have any direct knowledge as to whether or not they came from the Port do you?

Mr. Ganley said, I do.

Mr. Tomlinson asked what the basis for his direct knowledge is?

Mr. Ganley said that there were many evenings where they would hear or they would be in their yard, or they'd be walking the dog and hear a loud conversation, and they would look in the direction of the Port and see the group of people having that loud conversation exiting the Port and walking across Sea Street into the parking lot.

Mr. Tomlinson asked if he was aware that people walk through the Port to cut off the corner of Sea Street, on a regular basis?

Mr. Ballantine said to Mr. Tomlinson that he's answered that question, twice now. He said he would like to recognize another witness.

Mr. Blake asked if he could ask the witness if he was sworn under oath?

Mr. Ganley said he was.

Mr. Blake asked if he could also ask Mr. Cohn, to confirm if he had been sworn in. Mr. Cohn confirmed that he was.

Mr. Ballantine said that they will move to the next witness, and called for Ms. Francis Rich, and asked if she wished to speak in opposition?

Mr. Cohn said that he believed that Ms. Rich had to leave for another meeting.

Mr. Ballantine said all right is there anyone on the line that wishes to speak in opposition? After hearing no one, he said that they will move on to those that wish to speak.

A female voice and other voices chimed in, including someone saying hello this is Jeff Blake's temper.

Mr. Ballantine asked who was speaking and if she was in opposition?

Ms. Maura Sharry said that she is in opposition and confirmed that she was sworn in at the beginning of the meeting. She said that she did not want to be repetitive and that Mr. Cohn and Mr. Ganley had pretty much summed up everything that she has experienced. She said that she has reached out to the Port many times, but has never received a response. She has also called the police and the Board of Health. Ms. Sharry said that she has experienced the same things that they stated, nothing different because it has been the same experiences for all abutters. She said that the issue at hand is really sad, because first she would like to recognize that the Port is an asset to the Town, and she wants them to be successful, as does everyone listening. However, she said that their lack of respect for their neighbors has brought us to this point. She said that it is unfortunate because she has reached out to them, before the police, before the Board of Health, and there has been no effort by them to meet the neighbors. She added that it is very profitable, and this this past summer has been even more profitable, to be able to expand their space and reinvent themselves, but the way that they reinvented themselves really was at the cost of the neighbors. Ms. Sharry said that it did disrupt their quiet enjoyment and it was offensive to not hear back from them, when she politely called to try and speak with them to come up with some kind of resolution.

Mr. Ballantine said he was going to turn it over to Mr. Blake, then onto Mr. Tomlinson.

Mr. Blake asked Ms. Sharry how close she lives to the Port.

Ms. Sharry said she lives very close, and that she is an abutter on Sea Street.

Mr. Blake said that she echoed the complaints that they heard from the two earlier witnesses and asked what kind of noise she hears, is it crowd noise, music noise, or both?

Ms. Sharry said it's both. She said that the music noise may bother people more who go to bed early, but it is more the crowd noise, which has always been a problem when it closes and people leave, but the last year was even worse because they were always in the parking lot. She said as far as COVID, she did have to send something to the Board Of Health, which she didn't hear back from them either, but they had flagrantly ignored a protocol, by having beachballs that they were tossing back and forth, and the patrons were walking around without masks on, and it actually encouraged them to interact. Ms. Sharry said that it is just a lack of control of the patrons, and that she had heard that they had speakers, and that it would not fall on the onus of the Port to tell the patrons not to have speakers. She said they need to have some control over their patrons.

Mr. Blake asked if she had sat through the earlier hearing, when he was examining the Chief of Police?

Ms. Sharry said yes.

Mr. Blake asked as an abutter, if she has had any issues with traffic?

Ms. Sharry said that has not been anything that has affected her personally, it may affect other people, but has not affected her.

Mr. Blake said that the Chief and also the prior witness had testified about intoxicated individuals causing disturbances after closing time, and asked if she had experienced any of that?

Ms. Sharry said just their boisterous volume. She said that she could actually join in conversations if she needed to, she could hear them so clearly as if they were sitting on her property.

Mr. Blake asked how she knew that they were coming from the Port Restaurant?

Ms. Sharry said yes, and that she knew because she can see over the fence. She said that is when she took the video that she sent to the Board of Health. She said that the noise was so loud at 11:50 p.m. and it was during COVID. She said it sounded like people were sitting down having a meal, which of course they were not having a meal at ten minutes to midnight. She said that she also could not figure out if they were serving food or not and that it is news to her that they have a menu after 10:00 p.m. Ms. Sharry said that when she looked over, and videotaped, they had beachballs and they were hitting them back and forth, and running and catching them. She said that she thought here we go, that is why the numbers are going up in Harwich Port.

Mr. Blake said that he does not have any further questions at this time.

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

Mr. Tomlinson asked her to confirm the spelling of her name and asked for her address.

Ms. Sharry confirmed the spelling of her name and said that her address is 43 Sea Street.

Mr. Tomlinson asked if she resided with Mr. Vranos?

Ms. Sharry said no, she is at 43a, there are two properties there.

Mr. Tomlinson asked if Mr. Vranos is her neighbor?

Ms. Sharry said yes.

Mr. Tomlinson asked if Mr. Ganley is also her neighbor?

Ms. Sharry said yes.

Mr. Tomlinson asked if she had spoken with either of them before tonight's hearing?

Ms. Sharry said no, but that she had spoken with Mr. Vranos, but not recently, just in the shrugging shoulders, like, can you believe that.

Mr. Tomlinson said that she had submitted a video to the Board of Health, that included beachballs, he asked if she could tell him when she submitted that video?

Ms. Sharry said that she did not have that information, but that it was the night that it had happened, she can't recall exactly but it was in August.

Mr. Tomlinson asked if she had sent that in via email?

Ms. Sharry said yes, and that she actually has some of the beachballs that landed in her yard.

Mr. Tomlinson said that he is having a hard time believe this, only because it is his understanding that none of that activity ever occurred. He said that he would want to see a copy of the video.

Ms. Sharry said that she can send him the video, if he is having trouble believing it.

Mr. Tomlinson said that he had requested that the Board produce all of the information, and that he is hearing about this for the first time. He said that he is not accusing her.

Ms. Sharry said that she sent it to the Board of Health.

Mr. Tomlinson said that he understood, but he had made the request of this Board to produce all information that it had, from all of its departments, and that information was never provided to him. He asked if she ever called the Port directly?

Ms. Sharry said yes many times, and she asked them to call her back. She said she asked them if they would like to talk to her about ways that they could behave better and she told them that she wanted them to be successful, because she does want them to be successful. She said that they are a great asset to Harwich Port, but it is how they behave to their neighbors that is the problem and why they are there speaking tonight. She said it is not a mystery and their behavior is deplorable and disrespectful. It's a great place, if she didn't live near them, she would love to go there.

Mr. Tomlinson asked her if she does not go to the Port?

Ms. Sharry said that she has been there and she wants the Town to succeed, she wants them to do the right thing, but they continually don't. She said that is why I have reached out to them and she thinks it is bizarre that they have never said, hey you're our neighbors why don't you before we open let's just have a talk about how things could go better, never.

Mr. Tomlinson said that he appreciates that because they have gone on record before the Noise Committee to say if anybody has concerns to reach out directly, and you know I do understand.

Ms. Sharry said that they don't call her back.

Mr. Tomlinson said that he appreciates that, but what he is asking is if she made those calls last summer?

Ms. Sharry said yes, last summer, and the year before.

Mr. Tomlinson said that it would be interesting to note the times and asked if she had those times reported on her phone, from when those calls were made?

Mr. Ballantine said that's not relevant.

Ms. Sharry said that it is not, and that is ridiculous.

Mr. Tomlinson said that he is affording her an opportunity to speak, and he would just ask that she afford him the same courtesy.

Ms. Sharry asked if he thought that she would keep a record of the times that she called the Port in her life?

Mr. Tomlinson said that he didn't say in your life, he said last summer. He said that she took a video that he wasn't aware of and he is not suggesting that she didn't make the calls. He said that he is suggesting that if she typed the phone number in her phone it might show the last time she called them, that's all.

Ms. Sharry said that he should ask them how many times neighbors have politely called them to just have a chat about how their behavior is and ask them why they don't respond to the neighbors. She said that she does not

want to be doing this right now. She said that she was actually intimidated by this whole situation. She does not want her name to be out there, and she sees that there are 182 people there and who is going to put her on Instagram, and now they know where she lives and they know her name. She said that is uncomfortable and the Port has put her in this position, where she has to speak as a member of the Town. She said that is the only thing she can do, because calling them privately has not benefited her at all.

Mr. Tomlinson asked if she made any calls to the police?

Ms. Sharry said yes.

Mr. Tomlinson asked if she ever called the police to follow up with their reaction to her call and whether they visited, or did they ever get back to her?

Ms. Sharry said that she usually calls them. She said that she called them and asked why they couldn't do anything about what she thought was very risky behavior during this past summer, during COVID. She said that they told her that they didn't have the authority to deal with that, or go on the premises for that. So, that is why she sent it to the Health Department.

Mr. Tomlinson asked her to save the video of the beachballs.

Ms. Sharry said that she would send it to him.

Mr. Tomlinson said that he would appreciate that and said that she mentioned crowd noise under the tent was an issue. He said he would ask her the same question that he asked the other witnesses about what suggestions she may have, to help mitigate that and also preserves the Port as an asset to the community, and the many people who are employed there, whose livelihoods depend on being able to work at the Port?

Ms. Sharry said showing respect for their neighbors and said that he had asked her before if she had dined there, and she said that she has and that she has dined often at Ember. She said that she likes the establishments and thinks that the employees are wonderful, however it's the management that has a problem.

Mr. Tomlinson asked if she has ever made a noise complaint against Perk's?

Ms. Sharry said no.

Mr. Ballantine said to Mr. Mr. Tomlinson, that he keeps asking him to restrict this to the Port, and asked him to ask his final question because he wants to get to the witnesses that are in support.

Ms. Sharry said that she can tell him why she has never complained about Perk's, is because she believes they shut down at a certain time; if she is not mistaken. She thinks that the Port says open later.

Mr. Ballantine began to speak.

Mr. Tomlinson asked the Chairman if he could allow her to finish. He said that it would be appreciative, if he could allow a public participant and resident to finish what she has to say, he said that he believes that's appropriate.

Mr. Ballantine said the appropriate response is to follow their direction that he restrict this to the Port, and he keeps trying to violate. He said that is not acceptable in this hearing.

There was background noise and difficulty hearing. Mr. Ballantine again asked everyone to mute their microphones.

Mr. Tomlinson said that he was muted by mistake, and had one final question for Ms. Sharry.

Mr. Ballantine said to go ahead and ask one final question.

Mr. Tomlinson said to Ms. Sharry that she had mentioned that she had witnessed intoxicated patrons leaving the Port, and asked how she was certain that they were from the Port?

Ms. Sharry said because when the noise gets so loud, she leaves her house to look over the fence to see what is going on. She said that she can see the behavior taking place and it's just not a mystery, there's no mystery.

Mr. Tomlinson asked where her fence is located?

Ms. Sharry said that there is a fence between 43 Sea Street and the Port, and the noise travels to her house. She said that she walks over to look where the noise is and that's where the noise is emanating from, and she could see the people making the noise, it's a bar outside, there's no mystery.

Mr. Tomlinson said that Perk's has a bar outside, and it's right next door and you can see them from your fence as well.

Mr. Ballantine said that he has asked over and over again to restrict it to the Port. He asked if he had another question, because he wants to move on and give the witnesses that support a chance to talk tonight.

Mr. Tomlinson said that he appreciates that, but when they are talking about an establishment that is being viewed by an abutter, and that abutter can see both establishments, he thinks that it is important to identify whether or not she.

Mr. Ballantine said that Ms. Sharry testified that she could identify the noises coming from the Port

Ms. Sharry said that she actually does not mind a small amount of noise, and her house is situated a little bit off, so it is only when the noise is incredibly excessive. She said that she tolerates it because she knows that she is in a mix zone area and she tolerates some ambient noise, and sometimes it's not unpleasant, but when it gets incredibly unpleasant and incredibly loud, she goes to find the source. She said that she is not going to call the police if it is not really awful. She said this might not be the answer that he wants to hear, but that's usually where most of the noise is coming from that would draw someone out of their house to think what the hell is going on at this time of night.

Mr. Tomlinson asked if she would agree that more uniform enforcement would be beneficial to her as a neighbor?

Ms. Sharry said that she hopes that he will take away also the respect, and said that it would have gone a long way to even get an apology. When she called to say that it was out of hand and to please deal with it, if someone from the Port could have called back and said geez, you know we are really sorry, just once.

Mr. Tomlinson said that she does not know whether or not those messages were actually received by ownership, and that it's possible during a busy evening where that message wasn't conveyed? So, you don't know whether or not the ownership is actually ignoring you, do you?

Ms. Sharry said that she would assume with the many times that she has called that would be something that anyone who works there could convey to the managers.

Mr. Tomlinson asked if she had ever tried to communicate with ownership via email?

Mr. Ballantine said that he is going to stop this now, because they are talking about noise, not the communication within the Port management.

Mr. Ballantine said he is going to ask now for those who wish to testify in support to come forward. He called on Ms. Patricia Iafrate, and asked if she wished to speak now?

Ms. Iafrate said yes, that she is there.

Mr. Ballantine asked if she was sworn in at the beginning of the hearing?

Ms. Iafrate said yes, she was. She said that she has been a nurse for 46 years and a quarter of that time in infectious disease, and she has been working throughout the pandemic. She said that there are heated emotions and political agendas. She said that regarding this issue, she would like to state several facts. First, she said that she attended a birthday celebration at the Port in July, under the tent, and Governor Baker's guidelines were adhered to strictly. She said that she witnessed two patrons gravitate to a neighboring table and staff re-explained the rules and the patrons returned to their own table. She said that at all times the staff were professional and forthcoming regarding COVID regulations, alcohol could only be served with food, a maximum of six persons per table, and a time limit of 90 minutes. She said that she saw cleaning of the adjacent tables as people left.

Ms. Iafrate said her second fact, is that she arranged a retirement party for a nurse colleague in October and the event details changed as the Governor's guidelines changed. Again, staff was professional, they all had the appropriate face coverings and seating restrictions were enforced. She said that all of the attendees at the party were nurses and they were all impressed

with the COVID safety and felt safe. Ms. Iafrate said also, beyond the two events, there were other times that she was a patron at the Port and did not observe inappropriate activity regarding COVID restrictions. She said she is only one person, but witnessed the adherence to rules and prompt remediation of infringement and professional behaviors of wait staff, during extremely difficult times. She said that she appreciated the opportunity to express her support.

Mr. Ballantine thanked her and asked in an effort to be consistent, if she could give them her address for the record?

Ms. Iafrate said, 103 Main Street, Orleans.

Mr. Ballantine asked if the Board had any questions.

Mr. Howell said that his first question would have been, if she lived nearby, so she is not in proximity and therefore not aware of any other times, other than the ones that she physically visited?

Ms. Iafrate said no, she could only speak to the times that she was there.

Mr. Howell asked if she was present when the ABCC cited the Port for violations of the Governor's masking regulations?

Ms. Iafrate no.

Mr. Howell asked is she was aware of that?

Ms. Iafrate said that she did not believe that she was there, and asked what the dates were?

Mr. Howell said it's a matter of the record, and that he was just questioning whether she was there. He said that it was July 17th, for the record, but he did not believe that she had been there consistently enough to be able to make that kind of a judgment, that they were always and consistently masking.

Ms. Iafrate said that she only stated, that while she was there.

Mr. Howell asked her about her testimony, if there was anything else relating to this in terms of entertainment and if she had ever been there at night, where

should could make a judgement about nighttime noise, say at 10:00 pm, 11:00 pm or 12:00 am?

Ms. Iafrate said the party she attended in July, was certainly outside under the tent, but there was not any entertainment that occurred actually.

Mr. Howell said that he was asking about her being there in the later hours of 10:00 pm to midnight, and if she would have personal information about that?

Ms. Iafrate said no, that she is in bed at that time.

Mr. Howell said thank you.

Mr. Ballantine asked Mr. Blake if he had any questions for the witness?

Mr. Blake said that he had no questions for this witness.

Mr. Tomlinson said to Ms. Iafrate that Mr. Howell suggested that she was not present enough to be able to make a judgment about whether or not their operation was compliant all the time, but, his question is on the occasions that she did frequent the Port, was it her experience that the Port complied with the COVID guidance at that time? He added that she is experienced in that, because she works as a nurse in infectious disease.

Ms. Iafrate that's correct thank you

Mr. Tomlinson said that he did not have any further questions and thanked her for her time.

Mr. Ballantine asked if Ms. Leanne (last name was not audible) wished to testify in support. No response.

Mr. Jake Domos spoke up and said that he would like to testify in support.

Mr. Ballantine asked Mr. Domos if he was sworn in earlier?

Mr. Domos said he was.

Mr. Ballantine said thank you and that he looked forward to hearing his testimony.

Mr. Domos said good evening to the Board of Selectmen, Town of Harwich and anyone else present. He said that he is the Manager of the Port, and also a lifelong Harwich resident. He submitted a letter to the Town and local newspapers regarding his feelings on all this and said that it is also located in the agenda packet. He said that he would like a moment to give his first-hand experience in regards to these false accusations, and the ongoing bias against the Port. He said that he read all of these untrue complaints from the same small contingency of people, and tirelessly watched how the Board of Selectmen have been completely biased against the Port and Ember. He said that Mr. Ballantine's public comments stating that the Port had flagrantly violated and ignored COVID protocols, was just outright wrong and he actually took a lot of offense to it. He said that he was the one running the show day and night, working over 100 hours a week, all summer, just trying to make it. He said that daily he would meet with ownership to discuss their newest updates on safety requirements, given to them by the Town and State. He said that he would then immediately instruct staff on their responsibilities, whether it be via a group staff text message, or in the daily staff meetings before service. He said that they would make sure the whole team was aware and properly prepared.

Mr. Domos said that safety was their first concern and his comment was not only hurtful, but quite frankly it affected his livelihood. He said that his wife also works there and their sole income is the Port, and not just his family, but also the over 100 other employees that the Brackett's employee. He said that his entire year has been consumed with following the protocols. He was usually a bartender and bar manager, but did not make any drinks this year. The bars were not open despite false reports that they were. He said, instead he was the host greeting everyone and immediately explaining COVID rules to them. He was the one reminding the customers over and over to put their masks on, to sit down, to spread out. He said that it was hard but he made it his mission.

Mr. Domos said that they were granted permission to have people dining outside in their tent, which was on a site plan. He said that an enormous part of their business is from 10:00 pm - 1:00 am, where the squeeze in two more dinner turns and they offer a full menu. He said that all of their staff depend on those hours and they are already in a shortened season, and already

completely financially affected by all this. He said that they need those turns to make it work and to provide for their families. Regarding the complaints about the takeout shed and it being a bar, he said that's completely untrue. He said that it not being approved is also untrue. He was present with the building inspector and his father, who built the shed, when it was approved. He also added that if they were to look at it, it clearly does not affect any parking spots. Also, despite false complaints regarding noise, there was no music from the tent, there's no speaker system out there, or live music. Mr. Domos said, just to be clear, that over the past three years, they have had zero noise violations at the Port, zero. As the person who is in charge of making sure they don't receive any violations, he said that he takes a lot of pride in that.

Mr. Domos said why they are being targeted is beyond him. Last year they could not have live music, due to COVID. He named some entertainers, and said that tons of people come to see them, and said that is their business and their livelihood depends on it. He said that he joined the Ad Hoc Noise Committee because he saw all the members were completely against them. He said that it was his effort to help come to an understanding with those complaining, and give a perspective from someone whose livelihood depends on it. However, you can't reason with the unreasonable. He said that what they did end up agreeing to, and suggesting to the Board, was nothing. He said that the committee is disbanded now, and there were no suggestions made to the Board of Selectmen. He said that they did their best this year, and he is proud of what they did. He said that not one patron got COVID at the Port, not one. He hopes that they will listen to the supporters, thank you.

Mr. MacAskill said that he just had a few questions for clarification and asked Mr. Domos if it his testimony now that they had no live music at all this summer?

Mr. Domos said that they were granted permission, for maybe a week, and then yes, all summer they had no live music.

Mr. MacAskill asked if they were granted permission.

Mr. Domos said he that he thinks they had a person perform once, and then they learned that there was no live music this year.

Mr. MacAskill asked Mr. Domos, if as the Manager, he was aware of the report that was submitted to the Port Restaurant and Bar Inc on Friday, July

17, 2020 from the Alcoholic Beverages Control Commission, and if he had read it?

Mr. Domos said that he was there, and he was the one who was speaking to them.

Mr. MacAskill asked if he denied the allegations in that report from the ABCC, and said that his testimony was.

Mr. Domos said that he absolutely does.

Mr. MacAskill asked if he absolutely denied the testimony of the two ABCC investigators, or the three ABCC investigators?

Mr. Tomlinson said that he was going to just jump in here, as Counsel for the licensee, and ask Mr. MacAskill if he had a specific question about a factual allegation that he could direct that to Mr. Domos?

Mr. Howell said to the Chairman, that this is entirely out of order. He said that Mr. Tomlinson cannot step into anything, he is not the counsel for this person.

Mr. Ballantine said he would like the witness to respond to that.

Mr. Tomlinson said that he is the council for the licensee.

Mr. Ballantine said that Mr. Tomlinson is out of order right now, and that he has not recognized him. He said that he has recognized Mr. Domos.

Mr. Tomlinson said that he was his counsel.

Mr. MacAskill asked Mr. Domos if he could tell him about the food service, he thinks that the report stated that pizza would be delivered, or pizza is left behind, is that is that his testimony?

Mr. Domos said that is part of the food that they offered and they also offered a raw bar, chowder, bread, dessert and countless other things. He said that all they were doing during those times, was just following the guidelines that Harwich, Mr. Powers, Meggan Eldredge, and the State were giving to them. He said that they were very conflicting, so yes, to answer his question, as they

person who was there and following every single guideline that they were given.

Mr. MacAskill said that he really sympathizes with him, and he thinks that this summer was a very challenging summer. He said that it was interesting to really review the pictures that Mr. Tomlinson had sent in and the screenshots and material in the packets, he said that it was interesting to see that many of those were retracted. He asked who does the social media page, and said as the manager that he thinks it is appropriate to ask him that question?

Mr. Domos said that he absolutely does not have to answer that.

Mr. Tomlinson directed Mr. Domos to not answer that question.

Mr. MacAskill said that he will stop there, he thinks that Mr. Domos has told him enough in the report, and the report speaks for itself.

Mr. Ballantine turned it over to Mr. Howell.

Mr. Howell asked if the kitchen ever closes, or is it just straight out to 1:00 am?

Mr. Domos said yes, it would go until 1:00 am, every night.

Mr. Howell asked if the kitchen was always open until 1:00 am, for ordering?

Mr. Domos said yes, that is what he just said.

Mr. Howell asked if it would be fair to say, based on the prior testimony, that if there was someone who might have been responsible for not conveying the information where somebody was calling in a complaint, could that possibly have been you?

Mr. Domos said that he has never heard a complaint from the lady who just spoke, and he absolutely would have. He said that he welcomes any conversation with neighbors, but he has never been approached, or spoken to a neighbor. He said he is there 100 hours a week and he would absolutely do that.

Mr. Howell asked if he is there 100 hours a week, was he aware of anyone else that ever received a complaint, ever in the establishment?

Mr. Domos said to Mr. Howell that if he ever received a complaint, he would have absolutely responded to it.

Howell said that's not what he asked.

Mr. Domos said that's absolutely, and that's my absolute answer to what you asked.

Mr. Howell said no, he was asking if he was there 100 hours a week, was he ever aware of anyone else receiving a complaint, whether it was acted upon or not?

Mr. Domos said that if they ever received the complaint they would have responded to it that is that exactly what he just said. He said that he is sorry if Mr. Howell does not like his answer, but that's his answer and it's true.

Mr. Ballantine said that they got his answer. He asked Mr. Blake if he had any questions?

Mr. Blake said that the Board members had asked all the questions that he was going to ask.

Mr. Ballantine asked Mr. Tomlinson if he had any follow-up questions?

Mr. Tomlinson said yes and thanked Mr. Domos for his testimony tonight. He asked if Mr. Domos had an opportunity to read the internal memorandum of the ABCC, and if he knew when the Port received it?

Mr. Domos said, off the top of his head, he is not sure of the date.

Mr. Tomlinson asked if he had receive any guidance, written guidance, or other documentation, from the ABCC when they visited on July 16th or 17th?

Mr. Domos said no.

Mr. Tomlinson asked if he had a conversation with ABCC Investigator. Jamie Benienda?

Mr. Domos said correct.

Mr. Tomlinson asked if he had relationship with him, meaning that he would know him by sight?

Mr. Domos said for sure, and that he went up and actually said hi to Mr. Benienda, and acknowledged him, first because he does know him. He said that he immediately asked how he could help, or assist, and if he needed anything.

Mr. Tomlinson said that Mr. Benienda had suggested in the memorandum, which was forwarded to the Board, that Mr. Domos had struck a certain tone with him and quite frankly didn't paint Mr. Domos in a very positive light. He asked Mr. Domos if he would like to speak to his interaction with Mr. Benienda, for the Board?

Mr. Domos said that when the ABCC came and approached, he went up to greet them. He said that they told him that the outdoor bars were not allowed to seat people, but they had just received a letter from the Town that said they could as long as the waitress was serving them. They also stated that tables needed food, and he said that all tables were getting food. Mr. Domos said that this was at peak dinner hours, so if he came across as stressed, he absolutely was. He said that he was trying to run a restaurant and trying to follow every single COVID protocol, and above and beyond that.

Mr. Tomlinson said, so given his relationship with Mr. Benienda, he would not have taken a joking tone with him, or tried to insult his authority or purpose for being there?

Mr. Domos said no, and he absolutely wasn't speaking in a joking tone. He said that he was taking it dead serious and that this is my livelihood, this is my family's livelihood.

Mr. Tomlinson asked if the ABCC went inside the premise to see where the service bars were located?

Mr. Domos said no.

Mr. Tomlinson asked if the ABCC went into the kitchen, to see if the kitchen was open?

Mr. Domos said nope.

Mr. Tomlinson asked if he had a chance to speak with the other ABCC investigators that accompanied Mr. Binienda?

Mr. Domos said I did.

Mr. Tomlinson said okay, and asked if he had a conversation with any of them about patrons that were mask-less, as the ABCC investigators alleged?

Mr. Domos said he was not sure, and asked if Mr. Tomlinson could you repeat that?

Mr. Tomlinson sure the ABCC report indicates that there were 25 people milling about without wearing masks. He asked if he had a conversation with any of the investigators, about those patrons not wearing masks?

Mr. Domos said that he did not recall.

Mr. Tomlinson asked if he knew from what vantage point the ABCC investigators viewed those patrons? He asked if it was at the host stand on Sea Street, or were they walking up and directly speaking with patrons under the tent?

Mr. Domos said this was from the hostess stand area by Sea Street, and they had mentioned that they were sitting across the parking lot.

Mr. Tomlinson asked roughly how far away from where they were parked across the street in the Port Center parking lot, how far is that distance to the tent?

Mr. Domos said probably like a football field.

Mr. Tomlinson asked if there are any physical barriers to obstructing views of the tent, between the tent and the Port Center parking lot?

Mr. Domos said yes, there's a fence a couple trees.

Mr. Tomlinson asked if is there a dumpster, or is there the septic treatment facility do those also obstruct view of the tent from across the street?

Mr. Domos said yes, depending on where you are they could for sure.

Mr. Tomlinson asked if he witnessed any of the ABCC investigators speak with any patrons?

Mr. Domos said no.

Mr. Tomlinson asked if they identified patrons by name, that were walking around mask-less?

Mr. Domos said no.

Mr. Tomlinson said that the ABCC had pointed out that there were a couple of tables with seven patrons at the table. He asked if they indicated to him whether or not those patrons were standing, seated, or walking by?

Mr. Domos said that they didn't indicate any of that, no.

Mr. Tomlinson asked if they struggled with patrons last summer, ignoring his repeated efforts to enforce COVID guidance?

Mr. Domos said yes, he said that he thinks himself and all other local restaurant managers struggled all year trying to get people to adhere to the guidelines. He said it was new for everybody, but for him, it was his sole job the entire year, what he was employed to do.

Mr. Tomlinson asked if there were occasions where patrons were rude and objectively defied his requests to mask themselves?

Mr. Domos said absolutely.

Mr. Tomlinson asked if there were occasions where patrons were rude to his staff?

Mr. Domos said yes.

Mr. Tomlinson asked if he had the occasion to speak with any of those staff about the difficulties that they had, ensuring a safe environment for themselves, but also for patrons?

Mr. Domos said yes, it was hard for all of us to balance it. He said that waitressing, bartending, or working in a restaurant is hard enough and to have to also be a COVID police officer; it makes it quite a difficult job.

Mr. Tomlinson asked if there were any reported occasions where patrons spit on staff, or got right in staff's face to say am I making you uncomfortable because I'm talking directly in your face?

Mr. Domos said yes, my sister-in-law was spit on.

Mr. Tomlinson said okay

Mr. MacAskill called a point of order.

Mr. Ballantine said that they take the point that it was very rough job, and that all efforts were made. He asked if they could move on from this so that they could hear from other witnesses?

Mr. Howell asked Mr. Ballantine to recognize Mr. MacAskill's point of order.

Mr. Tomlinson said that he just has a couple more.

Mr. Ballantine said he was going to recognize Mr. MacAskill.

Mr. MacAskill asked Mr. Tomlinson to clarify for the record, if these questions that he is asking Mr. Domos, were all instances related to the Port Restaurant, or are you just speaking generally for Mr. Domos' opinion? Was his sister-in-law related to other restaurants across the Cape, or are we specifically talking about the Port?

Mr. Tomlinson said that his questions are directed to Mr. Domos' experience with the Port and staff at the Port.

Mr. MacAskill okay and Mr. Domos' answers?

Mr. Domos said that all of his answers were 100% about the Port solely, that is why they are there.

Mr. MacAskill said thank you, and that he is glad that Mr. Domos recognizes that because a lot of people do not, including his attorney.

Mr. Tomlinson said excuse me Mr. MacAskill what do I not recognize.

Mr. MacAskill said that Mr. Domos' comment was "that's why we're here" as related to all of his answers were to the Port, and I said that that you do not recognize the same which is why we'll be here until breakfast.

Mr. Tomlinson said that he does not tell Mr. MacAskill what he recognizes and asked that he provided him the same courtesy.

Mr. Ballantine asked him to wrap up.

Mr. Tomlinson asked if Mr. Domos was aware of complaints about crowd noise under the tent?

Mr. Domos said yes, he would be the one responding to every single complaint. He said that if a police officer came in for a noise complaint, then he was the one talking to him. He said once again that they had zero violations.

Mr. Tomlinson said that earlier he had asked a question of the Chief of Police, as to whether or not an officer came to the Port, and demanded that the Port provide personnel to monitor patrons leaving at the end of the evening. He asked if he responded to that officer's statement?

Mr. Domos said yes, the officer stopped somebody on the street who had a blue Nantucket Seltzer can, and he came and asked if I had the blue Nantucket Seltzer because he said that I let someone walk out of our establishment. I said that I did not because we do not sell those, so it is impossible. He said that he was not going to be babysitting the Port and I needed to have adequate staff, but I was the staff and I feel like my services were absolutely adequate.

Mr. Tomlinson asked if he felt that this officer was attacking him?

Mr. Domos said 100%.

Mr. Tomlinson asked if he filed a complaint with the Chief of Police?

Mr. Domos said yes.

Mr. Tomlinson was that approximately one week before the ABCC was called to perform a compliance check at the Port?

Mr. Domos said it was.

Mr. Tomlinson said earlier there was testimony that the ABCC visited all other licensed establishments in Harwich, do you know that to be true?

Mr. Ballantine said that they have an objection from a Board member of going into other establishments. He asked Mr. Tomlinson to wrap this up to give a chance for other witnesses as well.

Mr. Howell said that the ABCC question was misleading. He said that the ABCC was not brought in to investigate them, they were doing their due diligence, as they were to other establishments and they found what they found when they were there, they were not investigating them.

Mr. Domos said that's not true at all.

Mr. Tomlinson said that the only violations which he is aware of, involved the police reports over Memorial Day weekend and the ABCC compliance check on July 16th and 17th, is that correct?

Mr. Domos said correct.

Mr. Tomlinson said that it was not brought to his attention prior to this hearing, the noise complaints brought by neighbors, written or otherwise, through the Chief of Police? He asked, those were not brought to your attention, as the manager, prior to this hearing?

Mr. Domos said correct.

Mr. Ballantine recognized Mr. Blake.

Mr. Blake said that he had a few questions, and introduced himself to Mr. Domos.

He said that earlier they were talking about a memo that was sent by the ABCC, regarding an inspection that they did on July 16th and 17th, is that correct, do you remember that?

Mr. Domos said yes, that Mr. Tomlinson just asked him that, and he does.

Mr. Blake said yes, he did, and you indicated that they were observing you from about a hundred yards away, with some trees and some other obstructions in the way, is that correct?

Mr. Domos said yes.

Mr. Blake said that he was going to read from the memo, and it says that Nicole Smith, who is the special investigator, pointed out to the Manager that several customers were walking around without facial coverings, to which he responded, if I wasn't talking to you I would be telling them to wear their mask masks.

Ms. Smith also pointed out a table of six individuals, where at least four other individuals without facial coverings stopped to engage in conversation and the waitress did not take any corrective action. He said, that didn't happen from 100 yards away, did it sir?

Mr. Domos said in referring to his earlier question, they stated to me that they had been across the parking lot viewing us for 40 minutes, or something like that, not sure the exact time. He said that they said so, and that is what he was referring to when asked if they were watching from there. He said he was not going to let Mr. Blake twist his words like he did anything wrong here, he absolutely did not and he is answering truthfully to everything.

Mr. Blake said that he was simply trying to get clarification, because the report seemed to infer that they were actually speaking with you, and that you spoke back, and that wasn't happening from 100 yards away, correct?

Mr. Domos said correct, he was next to them, speaking to them.

Mr. Howell said, just to follow up, since they are talking about the ABCC, he asked Mr. Domos if he was aware that there was a an ABCC judgment that was based on a violation of 8/17/2018, because you just said that there were no other violations. He added that they had entered that into evidence earlier and it has been in the packet.

The violation was adjudicated, but they did find that there was underage pouring that was going on, are you aware of that?

Mr. Domos said, no I'm not aware, I don't recall

Mr. Howell said, okay thank you.

Mr. Tomlinson asked if he could follow up to Mr. Howell's questions?

Mr. Tomlinson said to Mr. Domos that he was asked a question by Mr. Howell, about a violation that resulted in a suspension, and the question earlier when you made a statement about no violations were you referring to noise, that there have been no noise violations in three years?

Mr. Domos said correct, and he said that in his statement.

Mr. Tomlinson asked if after the suspension, which was deferred and held in advance, and issued by the ABCC, is that the only liquor violation that the Port has had in 18 years?

Mr. Domos said yes, that he knows of, but he is not entirely sure.

Mr. Tomlinson asked to his knowledge if the Port hasn't had any other liquor violations, other than the one Mr. Howell referenced from 2018?

Mr. Domos said correct.

Mr. Tomlinson asked if since that time, the Board has issued the Seasonal All Alcohol Licenses and Entertainment Licenses, year after year, since that suspension in 2018?

Mr. Domos said yes.

Mr. Tomlinson thanked Mr. Domos.

Mr. Ballantine said thank you and moved on to the next person on the list. He called for Rebecca Scanlan and asked if she wished to testify and support?

Ms. Scanlan said yes.

Mr. Ballantine asked if she was sworn in at the beginning of the hearing?

Ms. Scanlan yes she was sworn in.

Mr. Ballantine asked for her address, to be consistent.

Ms. Scanlan said 2 Birch Drive, Harwich.

Mr. Ballantine reminded everyone to mute themselves, as there was a lot of interference.

Mr. Tomlinson requested a five minute restroom break.

Mr. Ballantine said just five minutes and they took a recess.

Mr. Ballantine said that they are coming back from recess and it is his druthers at this point, since the Board has been there since 5:00 pm, and the hearing has been going on since 5:30 pm. He said that it is approaching 10:00 pm and it is his direction to stop the meeting at 10:00 pm. He said that they will continue to a date certain, so they can finish and give the Board a chance for a reasonable deliberation. He said that they would stop without closing the hearing we'll continue with our closing hearing, which will allow them to have one or two more witnesses and then they will continue to a date certain.

Mr. Tomlinson said that he would just like to ask if there is anybody that would like to speak tonight, he knows they already opened for Ms. Scanlan, but he knows that Ms. Dina Browne has a potential conflict and would like to be heard tonight. He said that he would ask that the Chairman ask if there is anyone else that would like to be heard tonight. Mr. Tomlinson said that the Board has had the opportunity to present its witnesses, and the applicant should be afforded the same. He said that he realizes this is going long, but they object to any further continuance. He said that this has been continued for a month and a half already and the licensee is not able to open and the licensee has lost 30 days of this season already. It would have been open by

now and this is affecting the livelihoods of numerous people, and their families, to continue this charade and keeping them out of work.

Mr. Ballantine said to Mr. Tomlinson that part of the reason that this has been so delayed, and so lengthy tonight, is due to his continued and detailed interruptions. He said that quite frankly they could move this much faster, but they are running out of time. He said that they will go through Ms. Scanlan and then Ms. Browne, as he suggested. He said that the only option on this point is if witnesses do not want to speak and that's

Mr. Tomlinson said that he would like to know how many more people are on the list, who have registered? He asked if they can answer that question?

Mr. Ballantine said sure, and that Ms. Jamie Goodwin, Station Manager, Channel 18, just informed him that they have a couple more that have called in, so this could continue longer.

Mr. Tomlinson asked how many on the list for tonight?

Mr. Ballantine said six.

Mr. Tomlinson said that if they can conclude the next six in 30 minutes, don't you think that's in the best interest of the both the town the public and the licensee? He said that any further delay costs the licensee significant money and it puts people out of work and takes food out of people's mouths.

Mr. MacAskill said that he for one would listen to the six, if Mr. Tomlinson is putting a 30-minute timeline on it. He said that he thinks there should be a little bit of recognition here, that it's Mr. Tomlinson that is holding this up, it's not the Board that has consistently held this up. He said that he needs to take a little bit of responsibility for something at some point, he would think.

Mr. Ballantine tried to speak with

Mr. Tomlinson said to the Chairman, that he was attacked by his Board member, and should be allowed to speak.

Mr. Tomlinson said that Mr. MacAskill attacked his character that is unacceptable. He said that Mr. MacAskill has a personal conflict with the Brackett's, for which he refused to recuse himself, and now he attacks their

counsel that is unacceptable. He said that he would encourage the Board strongly to hear the next six witnesses on the list.

Mr. Ballantine said if Mr. Tomlinson would give him a chance to speak, they might be able to move ahead. He said that Mr. Tomlinson is holding this up and they are all getting tired, but let's complete this if they can.

Mr. Tomlinson said that he is getting tired of your interruptions as well.

Mr. Ballantine asked Mr. Tomlinson to keep quiet for a minute.

Mr. Howell said that the issue is not six more witnesses, because they can't control how long that's going to be. He said that even after they close the hearing, there will have to be a deliberation, there will have to be a motion. That would likely mean that this is not going to be done in a half hour. It is clearly going to take much longer than that.

Mr. Ballantine asked if they can hear the witnesses and then they could continue to do their deliberation?

Mr. Howell said that he would not vote in favor of closing the hearing at that point, because just as he pointed out there's a couple of people that can only testify tonight. He said that they don't know who wished to testify, but could not do it tonight and I'm not going to be voting to close the hearing in that event.

Mr. Ballantine said that he does not want to close the hearing public hearing.

Female voice interrupted, and said what about the 100s of livelihoods.

Mr. Howell said that she has not been recognized, and he continued that this is not a court of law, and they are not presenting a list of witnesses. He said, this is a public hearing and anyone could call in during the course of that public hearing or show up and testify. He said that if they could not do it tonight, they have to go forward on a continuance, then whoever might be available, has the ability to do so, it is not restricted to this list.

Mr. Ballantine said let's do this, and said that they will hear from Ms. Scanlan and Ms. Brown.

Ms. Scanlan said that her narrative is very short and that she is a server at the Port. She said that she chose to speak on behalf of herself, and her fellow staff members, this evening. She said that when she refers to we, she is speaking about herself and her staff. Ms. Scanlan said that they chose to come back to work, even though there was Federal and State support offered during COVID, which could have allowed them to stay home, but they chose to go back to work. She said that that they are an honest, hard-working group, who are very dedicated to their job and extremely supportive of each other like a big family. She said that they were very scared, unsure, and fearful, every day of the possibilities of getting sick for not only themselves but also for their families. However, they still came to work, because it was the right thing to do, but also because it was important to all of them to provide a service for their community. She said that in coming back to work, they were punished. They were being labeled as non-compliant, being told that they ignored the COVID 19 regulations, and their reputations are being tarnished. She said that they have been disrespected by the insinuation of not caring. Trying to navigate through the constant changes of COVID regulations was no easy task, but they were not guided by their local health department. She said that they were applauded on many occasions, for what a good job they were doing and they truly believed that they were doing a good job and they were doing what was required of them. Ms. Scanlan said that it makes no sense that they would jeopardize, not only their well-being, but again the well-being of their families and their clientele. They rely on this job, they are the single mom who relies on this income to provide for her child, they are the mom and son who work side by side in the dish room that rely on this income to put food on their family's table, they are the married managerial team who rely on this income to maintain their Harwich Port business and to one day help them realize their dream of being a Harwich homeowner, and there is also herself a server and a Harwich business owner whom also relies on this income to help maintain her personal business.

Ms. Scanlan said that the accusations placed against them are not only insulting, but heartbreaking. They have a very short window of opportunity to make their living, and due to all these accusations and the false narrative that the town has created, their window of opportunity is growing shorter and shorter and while you all go home tonight and get a good night's rest, they will all be lying awake losing another night's sleep thinking about the fate of their job.

Mr. Howell asked if Ms. Scanlan was under the assumption that the only complaint is about COVID violations?

There was noise and background disruption causing more of a delay.

Mr. Howell asked based on what you said, are you under the assumption that the only thing that they are there about are violations of COVID?

Ms. Scanlan said no, she does understand that this is for noise violations and she is just speaking about her personal experiences with the COVID.

Mr. Howell said that his heart goes out to her and her story, and he recognizes that people make a living off of this. He said that if the context was better, they would be celebrating the operation. He asked if she was thoroughly aware of everything else that's going on? He said that he knows she had testified that she is going to be short on income, and for that he is sorry, but is she aware that jurisdictionally there's more than just the police that is involved with this, the ABCC has been involved with this, and that there have been numerous unaddressed noise complaints. He asked if she was just addressing the fact that it would be sad to lose income?

Ms. Scanlan said yes, absolutely she is aware of all of that.

Mr. Howell said thank you.

Mr. Ballantine asked Mr. Blake if he had questions? Mr. Blake said that he had no questions.

Mr. Tomlinson said that went very smoothly and in two minutes, and added that he received a notification from a musician who tried to register tonight, and she would like to be heard very briefly.

Mr. Ballantine said yes, we'll go ahead and listen to one more and then it looks like they will move on with the continuation.

Mr. Ballantine asked Ms. Browne if she had been sworn in?

Ms. Browne said that she was not sworn.

Mr. Ballantine said that he will swear her in now, and asked if she swears to tell the truth, the whole truth, and nothing but the truth, so help you god?

Ms. Browne said yes I do.

Mr. Ballantine asked if she could give her address?

Ms. Browne said that she lives at 10 Lewis Lane, and for those who don't know that is the cut-through street behind the banks and is in close proximity to Harwich Port and all the stores and restaurants.

Ms. Browne said that she is a little bit confused about this hearing this evening because she does not understand why the disciplinary action for something that happened last year and the renewal of the license for this year are being tied together. She said that everything is getting combined together, when they should be done separately. The action that they are speaking about for discipline occurred last summer, why it's taking all the way to May to handle it, she just doesn't understand. She thinks that what they really need to be focusing on is the renewal of the licenses so that people can get back to work and the Board can deal with disciplinary action for anything that happened last summer, at another time, because they have already delayed that significantly. She said that she has read the 280 pages in tonight's packets including the ABCC's inspection report, the complaint filed in federal court, the letters in support for the Port and the letters complaining about the noise. She said that she has done this because she cares about this town, she loves Harwich Port and she cares about the Brackett family, Molly and Mr. Domos, and of the other employees. She said that she also cares about the neighbors. The Port is like a home to many of them and they go there every Friday night. She said that her husband and herself have met a lot of people they have become friendly with a lot of people and even before COVID, they felt it was a safe and comfortable place to be.

Ms. Browne said that what they need to do right now, is take a step back and assess this situation. They saw how political divisiveness tore apart this country and they don't need that in their quaint and friendly town. If they take away the emotions, the personal hard feelings, the insults and the pandemic anxiety that everyone is facing, then can't they just simply ask themselves why they are there?

She said that the first item on the agenda is the Board of Selectmen being tasked with the authority to renew the Seasonal All-Alcoholic Beverage License and the Seasonal Entertainment License for the Port for 2021. The Board has routinely renewed these licenses for over a decade, if not longer, and this year should not be any different, in fact it should be simpler because the COVID restrictions that were in place last year, are not the same this year. The Port has not been accused of over-serving alcohol, of serving alcohol to a minor, or letting an intoxicated individual leave to get behind the wheel of a car, or to let patrons exit the premises with an open container. The issues in the Town Administrator's recommendations all stem from Governor Baker's ever changing orders pertaining to COVID. In 2020 patrons were not allowed to have an open container on the outdoor patio in 2021, they can, in 2020 patrons were not allowed to consume alcohol without food, in 2021 they can, in 2020 patrons were required to wear masks while outside, in 2021 masks are no longer required outside, in 2020 only six people could sit at a table together, but effective may 29, 10 people can sit together. People can have weddings of up to 200 people, 250 people outdoors. All of the allegations for violations by the Port are COVID related, and not applicable in 2021. She said that they just asked the previous witness if she thought it all had to do with COVID, but the noise issues that occurred this summer, were in fact COVID related, because there was no outdoor music.

She said that there were a lot of people trying to let go of the stress that they've experienced, and not being able to go anywhere, or do anything. She said to the extent that there are any allegations for violations against the Port, those should be addressed through the disciplinary measures. She said it's not grounds for non-renewal of a license for a business that has had a clean track record prior to COVID. For these reasons the alcohol license must be renewed. With regard to the entertainment license, this Board must follow the same logic. This Board renewed the Ports entertainment license year after year up to 2020, and you really should only be looking at any violations of the of the entertainment license during the 2020 season, because anything that happened in 2017, 18 or 19, did not affect their renewal for 2020. She said that there was no music or entertainment in 2020 at the Port, with the exception of one week or weekend in May. Ms. Browne also pointed out that she has sat at the shack in the back and it was not a bar, it was not all full bar, it was not a mini bar, it was an area where the Port sold shirts, sweatshirts or even at times blankets so their clients could be warm.

Ms. Browne said that reports of loud music and sing-alongs did not happen in 2020. She said that she would presume that that the individuals complaining about that noise were referring to prior years, which is evidenced by the photos that were submitted. A lot of people took photos off of Instagram, from earlier years, showing waiters or waitresses without masks, large groups and then you would see comments about no masks. When the Port posted, we'll see you here for the music, that was before they found out there couldn't be any music. The complaints were heard by this Board prior to 2020, and the Board issued the entertainment license in 2020. The Board must not, and cannot, go back now and examine music that was played in 2019 or 2018 and say that is a violation. There is no history of problems at the Port. She said that the Port did not violate its entertainment license in the 2020 season, and there is therefore no justification to not renew it. An entertainment license, in short, involves music and or amplification and they must not confuse patrons voices talking or singing happy birthday as entertainment.

Ms. Browne said that she listened to last night's hearing where a member of this Board stated that Perk's had approximately five to six violations, but since they bought their own audio system at least they were trying. The license was then granted. She said that the Port has had its own audio system for years, they have been trying. If anyone thinks that what went on in 2020, with COVID, and trying to serve patrons while people were being impatient and not kind was something easy to do, you need to think again. Finally, she asked the Board, how many times in this past year have they gotten out of their car, heading to a store, and said oh blank, I forgot my mask. No one in this hearing room is perfect. Adjusting to COVID regulations has been a challenge to all of them, but do not let it destroy the Brackett family, their staff, and their patrons. Finally, she would ask, in the interest of having the Port's license reviewed, and renewed quickly, that if there are any other people that were considering speaking in support of the Port, that maybe they reconsider and withdraw their request to speak so that this meeting could be closed tonight, and the issues could be voted on.

Mr. Howell said unless they want to forego questioning also, he still makes the request that they try and find out what date the lawyers would be available for continuation. He is not going to sit there for another half hour to an hour deliberating over what they might do.

Mr. Ballantine asked Mr. Blake if there was a time that they could continue, that would work in his schedule?

Mr. Blake said that he is available on the 12th and 13th next week and would not be available Wednesday or Thursday this week.

Mr. Tomlinson asked if he could make a suggestion?

Mr. Ballantine said that he may.

Mr. Tomlinson asked if the Board would consider making a preliminary vote tonight, with respect to the renewal, and then they can continue the discussion with respect to discipline, at a future date. He said to place these people continually out of work, does far greater harm, than any public interest served, by delaying this. The Board has already indicated, at the outset, that it would take the issues separately. He would encourage the Board to vote on that renewal, so the Brackett's can return to work and their staff can return to work, as quickly as possible, and they can get this decision to the Court where proper process and procedure will follow.

Mr. Ballantine said that he is looking to the other Board members.

Mr. Howell said that he had surgery two weeks ago, and he is absolutely not going to sit there for six hours so, no. He said to Mr. Tomlinson, that the problem is that he feels they need some deliberation, because although they are very sympathetic to the Port, and the timing of that, they are walking the line of also being sympathetic to the those who have complained about noise and other concerns. They want to have some chance to see if they can reach a compromise that is best for all parties in town, and they can't just shortcut that.

Female voice, asking Mr. Ballantine, if she may speak for one moment?

Mr. Ballantine said let me let me finish this. He said that their concern is to be fair to all residents and he is afraid that they just had this hearing and what Mr. Tomlinson is suggesting is that they basically ignore all the testimony of the hearing and just make a decision without any deliberation.

Mr. Tomlinson said that he is not suggesting that and that the Board can very quickly deliberate, whether or not to renew, which is proper under the statute. He said to adhere to that statutory scheme, which does two things, one it helps to mitigate the Board's legal liability to for this, for its failure to follow the

proper statutory scheme, it also furthers Mr. Blake's view, that quite frankly this discipline and the Board's concerns about whether or not the public issues and concerns raised tonight, will still be available to be addressed by the Board at a subsequent hearing. He said to deny renewal tonight of the entertainment and seasonal licenses is a death sentence for this establishment, it will not be able to reopen and that further delay will cause it to lose the limited staff that it still has. He said that they are essentially signing and sealing a death warrant on this establishment, and that is on their watch.

Mr. Tomlinson said that the Board has an opportunity now to vote. He said that he appreciates Mr. Howell's concern about his recent surgery, but he had the same struggles that Mr. Powers cared less about, when he continued the January 12th hearing. So he would ask Mr. Howell to buck up and to do his public duty tonight which benefits everyone equally. They can then continue the third part of this hearing, with respect to discipline. However, he objects to any further movement on this and he will immediately run to the court and indicate that this delay was designed to foreclose the opportunity for people to have a meaningful discussion about the renewal tonight. This has been a charade from day one, and he would encourage the Board to take an active relief on the first two items which he noticed tonight.

Mr. Ballantine said that they heard him, but that he stands by his statement. He said that they are trying to do the best they can.

Female voice asked, Mr. Ballantine may I speak for one moment please?

Mr. Ballantine asked who's speaking, and said that he will recognize the person, very quickly. He asked who is speaking and were you sworn in?

Ms. Lucy Brackett said her name and that she was sworn in earlier. She said that as the Harwich Board of Selectmen that serves their community, which is a seasonal community of servers, restaurant workers, fishermen, purveyors, their entire community, they cannot postpone this meeting. She said that would carry out the further unemployment of hundreds of people, of mothers, fathers, townspeople, this cannot happen. She said the excitement in Mr. Howell's and Mr. MacAskill's voices and the energy that they brought forth jumping into cross-examination, that energy needs to carry out in a conversation and decision tonight. She said if they continue this further, and you get into Memorial Day weekend, and that they think that they are

representing the Town of Harwich, in a seasonal restaurant community, they are so disconnected.

Mr. MacAskill called a point of order.

Ms. Brackett continued and said you must move forward, you must move forward, there are lives and livelihoods at stake here.

Mr. MacAskill said that he will stay there until tomorrow morning at breakfast and continue to go over this. So, for Ms. Brackett to say Mr. Howell and Mr. MacAskill's energy, that is funny to him given their Facebook posts and the Port's Facebook posts completely attaching each Board member on a one-sided argument, and threatening people that live in the Town of Harwich. He said that Mr. Tomlinson's suggestion to just end that, and grant the licenses, he will go back to his original statement, a lawsuit was filed that caused them to have to meet, to discuss it, and another lawsuit, that will continue your personal attack.

Ms. Brackett spoke over Mr. MacAskill and said please move forward to vote for the people of this town, if you care about this town, you will vote tonight.

Mr. MacAskill said that he does care about this town. He will stay till tomorrow morning, but it's not his decision. He asked Mr. Tomlinson if there is any compromise being offered, from the other side, or is it just to get your way and get the licenses without finishing the hearing? He thinks that's a reasonable question.

Mr. Tomlinson said to Mr. MacAskill that he appreciate that question. He said that he has made overture of overture to counsel for the town to suggest a compromise, to allow the Board to follow proper procedure, by renewing the licenses, and then taking up discipline which is the proper procedure. However, the Board refuses to do that, he has offered that compromise

Mr. Ballantine tried to speak and Mr. Tomlinson said he was not finished, and that he was directed a question by his Board and he answering it. He said that Mr. MacAskill directed a question to him, and the question was, is there a compromise available. The answer is yes, please renew the licenses, they have already taken away the outdoor tent, and that issue will be taken up in the future.

Mr. Ballantine said to hang on, that he is taking the floor now. He said that the compromise that he is sure they are asking right now, is if they were to deliberate, the disciplinary action is a separate action, that's not holding up the licenses, and that would be quick. The compromise is

Mr. Tomlinson told Mr. Ballantine that is not the compromise that they are looking at. He said that Mr. MacAskill just mentioned that he'll stay here all night, until a decision was reached, but he's not in control of that and he also mentioned that he's not willing to grant a license. He said that Mr. MacAskill essentially admitted to Ms. Brackett that the board is not going to grant any licenses, because of the Federal lawsuit.

Mr. Ballantine said that they are not getting anywhere right now. He recognized Mr. Howell to speak.

Mr. Howell said that he is putting words in Mr. MacAskill's mouth and they are not getting anywhere right now. He said that he is making a motion that they continue the hearing to May 12th at 5 30 p.m.

Mr. Tomlinson said here's the compromise that I proposed.

Female voice said, are you paying their bills until then?

Mr. Ballantine said I'm sorry there's a motion on the floor, is there a second?

Female voice said that they are taking food out of her child's mouth, and that she needs to work.

Mr. Ballantine said that what Mr. Tomlinson suggested is to forget the disciplinary action that's not holding anything up, but that they ignore the interest of the people who have been concerned about the other noises, the ABCC violations, and I think in the end the noise is the one that we have to look at. What is the compromise on that?

Mr. Rob West, asked to speak and said that he owns a home at 632 Route 28, across from Ember. He wanted to make comment on the latter point that he was very surprised and encouraged to hear Mr. Ganley, Mr. Cohn, and Ms. Sharry, say that they did not want to see the demise of the Port, they did not want to see people's lives impacted, and they did not want to see their liquor license revoked, or not renewed. He said that when they talk about protecting

the interests of the people, that are complaining, why don't they bring that back, because they already told you that they're in support of extending this liquor license.

Mr. Ballantine said that he is not disputing that. They also mentioned that there are better ways to control the noise for the neighborhood as they condition the entertainment license.

Mr. Howell said that they have been continuously changing the times, and the conditions, of every other license and it is not likely that they are just going to blanketly renew it. He said that he renews his motion and if they do not want to do it then he will have to leave.

Mr. Ballantine said before Mr. Howell leaves, he asked if it is an option to adopt the entertainment license from 6:00 pm to 10:00 pm, and restrict that as they did with the others.

Mr. MacAskill said that the board's heard testimony tonight, and he could give 100 reasons why this has been continued, and Mr. Tomlinson just misrepresented what he said, yet again, but he would go back and.

Mr. Tomlinson said to Mr. MacAskill that is not productive, and you know it.

Mr. MacAskill said that he is proposing something, so it is very productive, but Mr. Tomlinson speaking over him and putting words in his mouth, and misrepresenting his words, that is not productive.

He said looking at the entertainment license, and the liquor license, he said that they still have to deliberate, they still have their own comments and need to hear closing arguments. He said that he sympathizes with the business, he absolutely does, but there are still some conversations to him about the attacks that are going on, the attacks on the residents and on the Board Members. He still sympathizes, and he has never heard once out of any of the board members that they want to take the liquor license, yet, that is what is being portrayed, that is what people are spewing. He asked if there was an option to get the license approved tonight, does it have to be in conjunction with the entertainment license? Why do we have to do entertainment tonight?

Mr. Tomlinson asked if he may respond to Mr. MacAskill's request?

Mr. Ballantine asked if he could just answer the question, right now, because they are going to lose one of the Board members.

Mr. Tomlinson said that he is offering a compromised position, if Mr. Ballantine would allow him to finish. He said that the Brackett's are willing to install a vegetative buffer around their outdoor tent in the back of the parking lot, in the form of eight to ten foot tall Leland Cypress trees, which is a \$23,000 investment. He said that if they had known about the complaints, they would have accelerated that process. Mr. Tomlinson said that they made that request for proposal earlier and he has offered and made numerous overtures to town counsel and this Board to try and resolve this issue so that this business can reopen.

Mr. Ballantine said okay, thank you for that compromise.

Mr. Tomlinson said that they want him to make a compromise, but then when you don't hear what you want, you cut me off. He said, please allow me to finish.

Mr. Tomlinson continued and said that they have a sound system that can control musicians, they are willing to install \$23,000 of Leland Cypress trees to add privacy and help deflect noise, they already aim their entertainment at their building and not towards their neighbors, unlike an abutter. He asked what more would this Board like from tonight? They are without entertainment, without a liquor license, and the Board has already taken away their tent. Diners do not want to dine inside, they want to dine outside and without the tent they will not be able to open. He said that he cannot state that affirmatively enough, you are putting these people out of work and closing their business. He said the compromise tonight, is the board renews the alcohol license, and the board renews the entertainment license to the same conditions as granted to Perk's yesterday. The Brackett's will install by the end of May the Leland Cypress trees at the back of their property, but they need to have their tent. They will have a monitor to control crowd noise and they simply ask that if there are noise complaints that they'd be brought to their attention timely, so they can do something about it. The Board can then continue to hold its discussion and further discipline with respect to the issues raised tonight. He said that nobody is denying anyone an opportunity to have that heard, but to take this action now during the pandemic.

Mr. Ballantine said to Mr. Tomlinson, that they got his point.

Mr. Howell said that this isn't as simple as just closing this and walking away. He said that he has made the point in the past, and has been making this point in successive requests for renewals, that they need to tighten up what they are doing with entertainment and with pouring. They have morphed into a site with two outdoor bars, two inside bars, live entertainment in both places and maybe they are opening up more. There is going to be a major discussion about this, and he is not willing to just simply renew what has changed over the years.

Female voice asked, is this the first time that you thought about this?

Mr. Ballantine asked her to wait a minute and let him finish the discussion.

Female voice asked again, is this the first time that you thought about this?

Mr. Powers said that the Board established rules, as is their right, at 5:47 pm, and they have not been honored.

Mr. Ballantine said that they have a motion to continue, and asked if there is a second?

Female voice asked if there is any chance that they can continue tomorrow?

Mr. Ballantine said that they are not going to get anywhere if she keeps interrupting. He turned it over to Mr. MacAskill.

Mr. MacAskill said that he would like a three-minute recess to speak to their council and asked if they can do that, and would they have to reconvene into executive session?

Mr. Blake said that they cannot go into executive session, but can certainly have one or two members come and discuss it so they can take a recess.

Mr. Ballantine said for Mr. MacAskill to go ahead and that they will be in recess for three minutes.

Mr. Howell said that he would like to be a part of the conversation, because he is leaving soon.

They went on recess for three minutes.

Mr. Ballantine said that they had a recess and two of Board members met with council.

Mr. Howell said that he withdrew his motion.

Mr. Ballantine said to Mr. Tomlinson, that where they are at, from the quick discussion after the meeting, is that they would ask that all of the folks online cease entering into their discussion. He said that so it is clear and open, they will stop the witnesses at this point. He said that they will look at making a motion to close the public hearing so that they can deliberate on their next step regarding the liquor license.

Mr. Blake said that what he is trying to do, if they are going to deliberate on the liquor license, Mr. Tomlinson will need to close his case. He asked Mr. Tomlinson if he is done with his case?

Mr. Tomlinson said that he had emailed them during the recess, though he is sure they may not have looked at it. He said that they have a compromise that he thinks preserves the Board's interest in continuing a discussion, with respect to alleged COVID violations from last year, and allow the Board the opportunity to reconvene this public hearing to address the public's concerns. He would like to present the proposal to the Board and he thinks that it fairly addresses a lot of the concerns raised tonight and on balance it serves the best public interest. He said that he would like to make this proposal for the Board's consideration and to take up on a motion, if that is their blessing.

Mr. Ballantine said that it would be their motion, but Mr. MacAskill has a comment. He said that they have at least one member of the Board that still wants to adjourn and go home tonight, but has graciously stayed. He would ask Mr. Tomlinson to just make a statement, the bulk of the callers are obviously in support of the Port, but the constant interruptions and yelling out in the meeting will put another motion on the floor to close this hearing. He said he could not be any clearer than that.

Mr. MacAskill said that he, as one board member, will listen to what Mr. Tomlinson's proposal is, but that by no means says that he is going to agree to it, and that he has his own proposal to throw out. He said that the Board could certainly deliberate on that, and they do not have to close anything until those two things are said. However, he is not interested in hearing anymore

of the outcries and the public outbursts, or anything else that's going to prolong this meeting, and they have to agree on that first.

Mr. Tomlinson said to Mr. MacAskill that he cannot agree more. He said that he would like to thank the Board for entertaining this continued discussion, because he believes it is in the best public interest. He also said to Mr. Howell that he sympathizes with his medical condition and appreciates his efforts to put in the extra work. He said to Mr. MacAskill's point and said that he still shows 144 people still dialed in and recognized that many of them have appeared in support of the Port and the Brackett family. Mr. Tomlinson said that he cannot thank enough the neighbors and abutters who appeared tonight, to share their concerns, after not being heard by the establishment. He said to please allow him to express his condolences for that, because the Brackett's want to make sure that they are good neighbors and they will happily exchange direct email addresses with any neighbor, so that there is no concern about a phone call not being returned. He said that they are free to exchange email addresses and contact them with any concern, because there needs to be improved communication at every level. He said that he has some thoughts on how the Board can alleviate significant concerns that were raised tonight, and strike a very fair balance that gets people back to work, that provides a valuable service, but also protects and addresses the concerns that were raised by people, neighbors and abutters that appeared tonight.

Mr. Tomlinson said that the Port would be willing to first and foremost be willing to accept the same limitation of hours on entertainment as Perk's, and secondly, they will upgrade their house sound system to include control over live performances, that is controlled by the house system, and third, they will seat their last turn by 10:00 pm and clear their outdoor tent by midnight. He said that they will have a dedicated employee to monitor sound, that is not a wait person, this is not a manager, this is a dedicated employee to ensure that sound remains constant and non-offensive throughout the night. They are going to exchange email communications with abutters and last they are going to install vegetative shade trees along the rear of their property, which will help alleviate some of the noise concerns.

Mr. Tomlinson reiterated to make sure he was not missing anything and said that he believes that it represents a very fair compromise, and allows this establishment to open and to continue to serve the community, its staff, and also be respectful of the concerns raised tonight. He said the Board is certainly

free to continue this hearing with respect to any additional conditions based upon the discussions raised here tonight.

Mr. Ballantine said thank you and asked if Mr. MacAskill wished to follow up?

Mr. MacAskill said that he appreciates what Mr. Tomlinson presented and he believes that they can get somewhere. He said that where he thinks they are stuck, is that their proposal would be quite different from that.

Their proposal would be to grant the liquor license, and the only condition would be that the only bar to serve alcohol outdoors is the front bar. He said that is anything that's morphed into the back parking lot, or any other pouring place out back, whether it's true or not true, and they haven't been able to deliberate that, but that would cease immediately. Pouring is only to happen at the front bar indoors, the two bars inside and the one bar outside, that would be their condition.

Mr. Tomlinson said that is completely acceptable, the only licensed bars on the permitted premises are the two indoor bars and the outdoor bar. He said that there are no other bars, so that would be an acceptable condition.

Mr. McManus asked, just to clarify, the back part that they are trying to reach a compromise on, he said that every advertisement he has seen on Instagram etc. talks about being four bars, two inside and two outside.

Mr. Tomlinson said that when they discuss the outside bar, that is referred to as the Nauti Bar. He said that when they refer to more bars that is their ice buckets and a marketing engine, nothing more.

Mr. MacAskill said that they agree that there would be no pouring in the back parking lot, and that they have the Nauti Bar and the two bars inside.

Mr. Tomlinson said that is crystal clear.

Mr. MacAskill said that he had said that his proposal would be quite different and it's based on what he thinks will pass tonight and what will not pass tonight. He said that if they get stuck, and they need to go to motions, he fears that not enough conversation is going to happen and they will not get there. His proposal would be the bars, they approve the liquor license and that they

delay, until the 12th or until a regular published meeting, to have the conversation about the outdoor entertainment. The Board can then kick around and deliberate ideas outside of what was just mentioned. He said that what Mr. Tomlinson mentioned about the shade trees and the house system and other mitigating things, sound good to him. He said he is willing to work with the establishment, but he has to address some of the concerns raised by the people that spoke tonight, and some of the letters that they got. Mr. MacAskill said that his proposal sounded good, but he is not sure about the 12:00 am under the tent, but he thinks they can debate that as a Board at the next meeting, with comments as the Chair would allow. They would have to close the public hearing tonight, vote the liquor license, and agree to bring back the entertainment at the very next board meeting. He said not to delay it anymore, and then hopefully move on from there.

Mr. Howell said that these are separate issues and they can close the hearing, as to the liquor license, and come to a conclusion with that, but he is not going to vote to close the hearing as to entertainment.

Mr. Ballantine said that would give the same end point, and they can continue the entertainment to the next meeting. He said that he would just want to hear if that's true from Mr. Blake?

Mr. Blake said that in his opinion they could close the public hearing, with respect to the renewal of the liquor license only, and then continue the other two hearings to a time and date certain.

Mr. Ballantine asked if Mr. Tomlinson had a comment on that?

Mr. Tomlinson said that he had a question, and asked if the compromise agreement that Mr. MacAskill proposes is to close the public hearing tonight with respect to the liquor license only, and based upon based the conditions that he indicated which basically reflect the hours as applied for on the liquor license and the three bars.

Mr. Ballantine asked Mr. MacAskill to confirm that was correct.

Mr. MacAskill said that he is fine with that, and just with the caveat that as they talk about the entertainment, as they have with other restaurants in town, they have an open conversation about conditions that will make it more peaceful for their Police Chief and some of the residents that spoke tonight.

Mr. Tomlinson said that he had a follow-up question, and thanked Mr. MacAskill for your clarification with respect to the continued public hearing on entertainment. He asked if there is a compromised position that the board would be willing to take, that would allow the establishment to simply to have ambient music? He said that without an entertainment license it can't even turn on the television. They would like the opportunity to offer ambient entertainment and television because they are able to offer interior dining and given the number of complaints that Ember received when they did not have any entertainment, is a significant concern. He said that obviously there would be no live outdoor entertainment, this would be a temporary grant until the Board takes up the issue again, at its next duly public hearing in a week.

Mr. MacAskill asked if they can just agree that the ambient music or television would be inside entertainment only?

Mr. Tomlinson said that they can seat on the patio, and said that there are loudspeakers on the patio. He said that he is happy to discuss that with them, but he does not have the authority to and they had not discussed that at break. He asked if they could have a brief recess to speak with his clients?

Mr. Ballantine said that at this point, he would like to follow through and asked if Mr. McManus was ready to make a motion?

Mr. McManus said no, he just wanted to make a comment. He said that he thinks they are in an okay position, with the two bars inside and one bar outside. He said, to be clear, the license will only include the inside of the building, the front deck on Route 28, and the Nauti Bar. It will not be including the seating on the rear parking lot, because that's only a grant of a temporary nature, due to the Governor's emergency regulations. He said that his concern with the landscaping and why he would not be prepared to move ahead with that, because at some point those temporary expansions go away, and that needs to be able to be returned to a parking lot.

Mr. Tomlinson asked if he could respond to the vegetation, and said that it would be a permanent installation, and a continued benefit to the abutters, even after the COVID expanded outdoor dining services is terminated. He said that he did confirm with his clients that what will be installed on the fence line, will not impact parking, it is all vegetated land there. He said that his

clients also agree to entertainment inside only, until further discussion by the Board.

Mr. McManus said that he would like to see a plan, that shows the vegetation, to be sure that it is not going to infringe in the parking lot. He said that he does not know the parking lot layout and what it is now, and what it will be after this vegetation is in place.

Mr. Howell said that he needs to be clear, because Mr. McManus actually expanded it again. He said that he has a packet of a half a million licenses that go back in time, when they got to the point of granting any outdoor pouring or serving in the back, that is when all hell broke loose. He said that the only thing he is willing to approve right now, and so that they can get to the point where they can open, and they can reset where the public's expectations are, is serving in the front, where Route 28 is, and serving inside. Anything beyond that, he will not vote for.

Mr. Ballantine said thank you and that he thinks they are getting close to that.

Mr. MacAskill said to Mr. Tomlinson that he thinks that what they heard and what they have been talking about for the last five minutes, they are pretty clear on that right?

Mr. Tomlinson said to Mr. MacAskill that one of the fundamental issues here, is that while you have been to the establishment, and understand the layout, other members of the Board have not. He said to be clear, the only bar that they are discussing is what is affectionately referred to as the Nauti Bar, and it is right up on Route 28. He said that there is no bar, the merchandise shed, is not a bar. There is no other bar located in the parking lot. There would simply be a service bar, where it has always been located and there is no additional expansion. He also wanted to be clear that the tent, which is located in the parking lot, was cited on a plan that was provided and showed the number of picnic tables and size of the tent, and was approved by the Board last year.

Mr. Ballantine said that he wanted to just interrupt him, and said that it looks like they have reached a place where they can move ahead. He asked Mr. MacAskill if he could state where they are and be sure we have a concise statement of what we will make an action on?

Mr. MacAskill said that it is his understanding that they will close the public hearing as it relates to the liquor license, then they will continue to date certain for the entertainment and the part of this hearing will be on the 12th. The Board will permit the liquor license tonight, based on the three bars that they have discussed, the two inside, and the Nauti Bar. There will be no serving in the back, and they would approve the entertainment license for ambient background music, inside and on the deck, until they finish the public hearing and figure that out. He asked Mr. Tomlinson if that sounds correct?

Mr. Tomlinson said that what he is hearing from Mr. MacAskill, he agrees with everything and said he would just parrot it back.

He said that they are going to close the public hearing tonight on the liquor license, for which the board will grant the renewed liquor license, on the same hours as last year, it will continue discussions about entertainment and other violations raised and concerns raised tonight, before the public until the next hearing on May 12th, the three bars at the Port, include two interior bars and one exterior bar that is located closest to route 28. There will be no other bar outside or table service under the tent, however, a waitperson will be able to take a beverage order from the outdoor bar or the interior bar and deliver it to a seated patron under the tent, but there will be no entertainment under the tent. The only entertainment will be ambient music inside and on the patio.

Mr. MacAskill said that he agrees with everything that Mr. Tomlinson just said, the only disagreement that they have right now is the tent. He said that last week the Board voted to not approve the tent permit and he had asked if there was an ability for them to reapply. Mr. MacAskill said that now is not the appropriate time for them to add the tent back into the mix. However, he would certainly be open to having that conversation, as one Board member, he would be open to have that conversation related to the bigger picture. His only suggestion is that they are trying to reach a compromised position, and he would suggest to the Board that this affords the applicant the opportunity, over the next two weeks, to demonstrate how committed they are to being a good neighbor. He said that he thinks that would go a long way to affording the public an opportunity to take a view on that as well, at the next continued hearing.

Mr. Tomlinson said that if they are not able to have their tent, they will be very limited in order to be able to socially distance under the current COVID guidance, they would be extremely limited to what they would be able to offer

for outdoor dining on the existing deck. He said that all he is suggesting is that they have an opportunity to be able to demonstrate that they can be very good neighbors and asks for the board indulgence to demonstrate that. He said that they will be back in two weeks, and if the Board decides that it is not appropriate at that time, then they can revisit the tent at that time. He said that he is simply asking for an opportunity to prove it up.

Mr. MacAskill asked when the next scheduled Board meeting is? It was answered that the next regular Board meeting is Monday, May 10th.

Mr. MacAskill said that he has to be frank, and he said based on the majority of the conversation tonight, he will give you his view is that a large part of this is the noise complaints related to the tent. He thinks that as they discuss outdoor entertainment, it is his opinion that it will be related to the outside in its entirety, and how they can compromise to make it work. He is certainly not opposed to tents, but he wants to have the conversation in more detail, then the Board members are willing to have tonight. He said that he would ask Mr. Tomlinson's clients to wait until the 10th, so that they can have that conversation and maybe have a new plan and new drawings to submit.

Mr. Blake spoke up to say that he is not available on the 10th, or the 11th, because he has town meetings.

Mr. MacAskill said that he thinks they would be okay and would not need Mr. Blake, because that is part of the Town's COVID relief package for the tent, so they can have that conversation about the tent on the 10th. The disposition of the disciplinary hearing will come back on the 12th.

Mr. Tomlinson said, to Mr. MacAskill's point, he just simply wanted to reassure the Board that this is an opportunity for the Board to afford the applicant the opportunity to demonstrate its commitment. He said that he thinks the Board owes that to the public, and he said that the neighbors who have come and have spoken, have indicated that they want to see the business succeed and they don't want to harm the business. The Port wants to be good neighbors and this is an opportunity to demonstrate that. He is not suggesting that there isn't any opportunity in the future for the Board to revisit the tent, or to revisit any noise, or COVID relief. He said that he is simply asking, as part of a compromise tonight, to afford the applicant the opportunity to do this and for the Board to include it as part of their motion. He said that as

additional concessions for the last seating at 10:00 pm, they will install the trees.

Mr. Ballantine said that he appreciates it and they understand, but they want to move this along to get to an end point.

Mr. Howell and Mr. Tomlinson both tried to speak. Mr. Howell asked him to stop interrupting him and allow him to speak.

Mr. Howell said that somehow there is a misunderstanding here, and he is going to be very explicit about this. They were acting responsibly and they had an opportunity to demonstrate that for a number of years when they had a license for inside the facility and then wound up pouring or serving in front on Route 28. He said that the trouble began when serving started occurring in the back, and he is not willing to go beyond anything that is beyond the exterior of the southern wall of the Port. He said that he will go for a license that has serving going on along Route 28 and internally, because they have demonstrated that they can reasonably conduct that. He said that beyond that, he will not vote for anything that expands that and then try and pull it back, that is the whole point of these continued hearings. He said that beyond that he will not vote for anything that expands that and then have to try and pull it back.

Mr. Ballantine said that he thinks they are in a place now with enough information to move forward with a motion.

Mr. MacAskill said to Mr. Tomlinson in the spirit of moving along and in the spirit of trying to figure this all out, that he would respectfully ask that they withhold the request for the tent permit. He said that today is May 4th, their next meeting is May 10th, and the continued public hearing is May 12th. He said that they are not talking about enough time to not have a little bit of harmony here. He said that they just heard Mr. Howell's comments, and he thinks that they are there except, for basically an eight day ask, and demonstrating to the public, and each other, that they are working together.

Mr. Tomlinson apologized to Mr. Howell and said that he did not realize he was speaking over him and thought he had the floor from the Chairman. He said he apologizes but did not appreciate his tone with him.

Mr. Howell said that he does not appreciate his either.

Mr. Tomlinson said that it is obviously in his client's best interest to continue to have the tent. He said that if that is not a motion that's going to carry tonight, and no one's willing to make that, he can't force the Board to make a motion. He said that to the extent that Mr. MacAskill is working his level best, as this as the source of reason, he appreciates that, and his clients appreciate that. There is an effort here to make the motion and if he can make the further motion on the tent, and then he can't say he didn't try.

Mr. Ballantine said just to clarify what Mr. MacAskill suggests, is that they bring the tent back on the 10th, after they have had some timing. Then they can have the entertainment on the 12th and continue that. He asked if Mr. MacAskill wished to make a motion?

Mr. MacAskill said before he makes a motion, he asked Mr. Blake if both sides had to close?

Mr. Blake said that they have to close their public hearing with respect to the renewal of the liquor license. He asked the applicant, Mr. Tomlinson, if he rested his case and is he done presenting evidence with respect to the renewal of the liquor license?

Mr. Tomlinson said in acceptance of the compromised position, that Mr. MacAskill has presented, yes.

Mr. Ballantine said with that, he will entertain a motion to close the public hearing on the liquor license.

Mr. Howell moved that they close the public hearing, as it relates to the liquor license only. Seconded by Mr. McManus.

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

Mr. MacAskill moved that they continue the public hearing related to violations and entertainment for the Port Restaurant, until May 12th, no earlier than 5:30 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.

Mr. MacAskill moved that they approve the seasonal all-alcohol alcoholic beverages license for the Port restaurant and bar, with the conditions, 8:00 am to 1:00 am weekdays, 10:00 am to 1:00 am Sundays, and holidays, inside and 12:00 pm to 12:00 am.

Mr. Howell called a point of order and said that the motion doesn't cover what it is going to entail. He said that it would cover the serving area indoors, which would be for 200 square feet, with two rooms, three entrances, four exits, and outdoors would be restricted to the Route 28 façade of the building. He said that is what the motion would pertain to, with those hours.

Mr. MacAskill said that is in addition to his motion, if that is okay?

Seconded by Mr. Howell.

Mr. Ballantine asked Mr. Tomlinson if he got that or should they repeat it?

Mr. Tomlinson said that Mr. Howell spoke very quickly and so his understanding would be that the it would be approved in conformance with the premise as approved by the Town, and the ABCC?

Mr. Howell said that the description that he is referencing was that the indoor area consisted of a 4,200 square foot restaurant with two rooms, three entrances, and four exits, with an outdoor area consisting of the exterior front of the building along Route 28. There is no reference at all, to serving in the rear of the building.

Mr. Tomlinson asked Mr. Howell if he was referring to the parking lot?

Mr. Howell said, the rear of the building.

Mr. Tomlinson said beyond the rear of the building, that is correct that the description of the premises does not include beyond the rear of the building.

Mr. Howell said the confines of the exterior wall at the back of the southern wall of the building, to be explicit.

Mr. Tomlinson said yes, that's the description of the premise, as I understands it.

Mr. Howell said there's another description that had been used variously for 780 square feet of exterior deck, in bar on the south side of the building, that he is not including.

Mr. Tomlinson said that they are including the exterior deck and that the only exterior bar under discussion, is the bar that is at the front of the building on Route 28.

Mr. Howell said that he is talking about the service area, not where the bar is. The original licenses that were issued, did not include that and he is not seconding anything beyond the south exterior wall of the building. He said to be explicit, serving would be north side of the building, which would be Route 28.

Mr. MacAskill said that this is the same as they have with Roots Market and everything else that they have approved. That is just what the premise is, they are not saying they are going to serve, that is the description and it was like Roots yesterday.

Howell said that he's assuming that the patio deck is part of the serving area.

Mr. MacAskill said that he personally does not have a problem with that.

Mr. McManus said that he does not either.

Mr. Howell said that he is trying to be honest and it and he is not voting for the exterior serving area.

Mr. MacAskill said for the record, the motion did include the decking, as a description of the premise.

Mr. Ballantine asked if they have a second?

Seconded by Mr. McManus.

Mr. McManus said that they are on the verge of approving the liquor license and as Mr. MacAskill said earlier, they are in this position because from the

get-go, the board has been vilified as wanting to take and rescind the license. He said that has never been mentioned in public or in any conversation of the Board at any time. He said that their concern was based on complaints and reports from the neighbors. He said that things have just gotten out of control, and they needed to be brought back in control. Mr. McManus said, as a former café and pub owner in California, he knows what it takes to run a successful bar that is tight with residential areas. He said that it takes being in constant contact with all of the residents, and not waiting for them to contact you. It also takes monitoring your place of business during the hours of operation, so you understand what the impact is. He knows that can be done, because he has done it in the past. He knows that the folks that have run the Port restaurant can do that too, and I'm just hoping that with the compromise that they are reaching here that they'll take that to heart and do that in the coming season.

Mr. Howell said that while he won't be voting for this, he just wants to be explicit about it. He said that the workers, and the manager of that facility, it is incumbent upon them to be able to control this. He said it is a pouring establishment, not a packaged goods store, so if anybody takes a beverage off the deck or goes into the lot, they are in violation of their liquor license, at that very moment. He wants to be explicit about that, because that's not part of the description of the premises. It is incumbent upon the license holder to stop people from violating the terms of their license. He said that they are not granting them the ability to have people wander with an open container of alcohol into the parking area.

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

Roll Call Vote: Mr. MacAskill - Aye, Mr. McManus - Aye, Mr. Howell - No, Mr. Ballantine - Aye. Motion carried at a vote of 3-1-0, with Mr. Howell against.

Mr. Ballantine said that he thinks they have, after many hours, made progress.

Mr. McManus said he has just one comment, so they are all on the same page of what the plan going forward is. As he understands it, Monday night they will take up the question of granting the extended COVID relief application, which is what the tent was approved under last year and is under reconsideration.

Mr. MacAskill said if he can make a comment, not to prolong things, but just to Mr. Tomlinson and anyone else still listening, if the Chair agrees to put it on the agenda for Monday night, to discuss, he is not guaranteeing by any stretch of the imagination that it won't flow into the 12th, where they have the continued public hearing. They can talk about what compromises they might want to make. He is willing to have the conversation on Monday night, but it may extend to two days later, to the 12th when they talk about the big picture.

Mr. Blake asked what time they will continue it on the 12th, and confirmed that it was 5:30pm.

Mr. Ballantine said that Monday night be their normal starting time, but Mr. Blake is busy then.

Mr. Howell said that Wednesday would be related to both entertainment and possible discipline, right?

Mr. McManus asked if they could get a diagram indicating what they want in the way of the tent, and the landscaping, so they can see how that all works?

Mr. Tomlinson asked to confirm the meeting time for the 10th, and asked if 6:30 is their regular scheduled meeting time?

Mr. Powers said yes, and asked if he may inquire of Mr. McManus, if the item that he just referenced is needed for Monday evening?

Mr. McManus said yes.

Mr. Powers asked that they have that to staff then no later than noon on Friday, so that it can be included in the boards packet for the weekend.

Mr. Howell said to Mr. Tomlinson, to be clear, the way the agenda works it would be placed on the agenda for no sooner than 6:30, but it doesn't assure 6:30 pm.

Mr. Tomlinson said that he understood and said that noon on Friday is acceptable. He asked if it needs to be a scaled drawing, because they used an architect to prepare the scale drawing and he can't speak to the architect's schedule. However, if they are able to modify the earlier drawing, to show the

vegetation that they propose, with a hand drawing is that going to be sufficient?

Mr. McManus said yes, and if they sketch it in and then give an explanation of what the plantings are and what their expected height will be, what the characteristics of the plantings will be, how they mature.

Mr. Ballantine confirmed that they do not need an engineered drawing, a sketch will do.

ADJOURNMENT

Mr. McManus moved that they adjourn at 11:15 pm. Seconded by Mr. MacAskill.

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


Mr. Ballantine thanked Mr. Blake and all and said it has been a long night.

Respectfully submitted,

Lisa Schwab
Board Secretary

Town of Harwich
Harbormaster's Office
715 Main Street – PO Box 207
Harwich, MA 02646
Phone (508) 430-7532
Fax (508) 430-7535

Memo

To: Chairman, Board of Selectmen
Via: Joseph F. Powers, Town Administrator
From: John C. Rendon, Harbormaster 
Date: August 29, 2021
Subject: Memorial Bench – Mort Terry

I strongly support and recommend Board of Selectmen approval of the attached request from Mr. David Terry for a Memorial Bench to be placed at Saquatucket Harbor in honor of his father Mort Terry who recently passed away.

On board the well-known boat named FISHTALE, Mort Terry operated a charter fishing business out of Saquatucket Harbor for over 30 years. He was a professional mariner who was well known and highly respected throughout the local maritime and fishing community. In addition to providing a great charter fishing service that brought so many people to Harwich over the years, Mort also volunteered his time as an active member of the Waterways Committee for many years. Mort loved Saquatucket Harbor and his daily presence is certainly missed.

Mort's family is requesting to have a granite memorial bench placed in the west corner of the property near the bulkhead that overlooks the harbor. If approved by the Board, I will continue to work with the family to facilitate placement and installation. Thank you for your consideration.

Enclosure (1) David P. Terry letter dated Aug 22, 2021

Copy (1) Chairman, Waterways Committee

August 22, 2021

David P. Terry
45 Clarence Street
Brookline, MA 02446

John Rendon
Harbormaster
Town of Harwich
715 Main Street - P.O. Box 207
Harwich Port, MA 02646
jrendon@town.harwich.ma.us

Dear John,

Thank you very much for taking the time to meet with me, my wife Emily and our friend Jody Fidler to discuss the opportunity to have a memorial bench installed in my father's name at the marina. It was comforting to be with someone who knew Mort well and shared his passion for the water. I also appreciated the familiar faces from the marina at his memorial service.

As you know, Mort's connection to Saquatucket and the harbor was strong as his slip for Fishtale was there for over 3 decades. Through the years, Mort volunteered his time and served on committees to protect the place he loved the most. He was particularly proud of the work he did with you and your team on the Harwich Waterways Committee to help rebuild the docks, deck and offices. Providing a lasting bench for visitors to sit and enjoy Mort's sacred place, the sea, would be a meaningful way to share his love of the water.

I am hopeful that the proposal of a bench in Mort's honor near the existing memorial bench will be considered by the Board of Selectmen and approved. I would like to attend the meeting where this proposal will be discussed and would appreciate your letting me know once it is on the agenda. If there is anything further you would like from me in order to start the approval process, please give me a call.

Thank you very much for your assistance.

Sincerely,

Dave

David P. Terry
Cell 617-285-9246

OLD BUSINESS

Minutes of the Treasure Chest Committee

August 24, 2021: 4:30 PM

Harwich Town Hall: Small Meeting Room

Committee Members Present: Liz Watkins, Heather Bolinder, Sheila Eldridge & Eric Fahle

Alt. Committee Member Present: Mella Navickas.

Selectmen Present: Larry Ballantine

Other Town Officials Present: Joseph F. Powers: Town Administrator

Jonathon Idman: Director of Planning & Community Development

Treasure Chest Volunteers Present: Norma Razinha, Beverly Gomes, Cynthia Nunes, Janet Evans

1. Quorum:

A quorum of Treasure Chest Committee members were present at the meeting and the meeting was opened.

2. Old Business:

- Treasure Chest Committee members need to make sure that they are up-to-date with mandatory ethics training required by the Town of Harwich.

3. New Business:

Selectman Ballantine started the discussions relative to restarting the Treasure Chest operation and informed the Committee on how the DPW had been using the Treasure Chest building for municipal vehicle storage and fabrication of wooden structures for the Town. "This is all about Location-Location-Location!" he explained. The DPW has been using the facility since the Treasure Chest operation closed in the Spring of 2020 due to the pandemic and they are reluctant to give up the space.

Selectman Ballantine then provided the Committee with two main items for further discussion:

- *Going forward, how does the Treasure Chest Committee function as a Committee? and*
- *How does the Treasure Chest function as an operation?*

Town Administrator Powers commented on the importance of how and where the Treasure Chest operates and was quick to acknowledge the DPW and their efforts on behalf of the Town. No disagreement from anyone in the room regarding the DPW's efforts on the Town's behalf and those statements helped to move the discussion forward.

- *Going forward, how does the Treasure Chest Committee function as a Committee*

Appointment of new Treasure Chest Committee members.

Currently, there are three vacancies on Treasure Chest Committee that need to be filled. Eric Fahle stressed the need for Treasure Chest Committee members to be able to perform the duties of a Chair, Vice chair, Clerk or other duties of a Committee member, as required.

Selectman Ballantine outlined the process for a Harwich resident to become a member of the Treasure Chest Committee such as filling out a form requesting to become a member of the Treasure Chest Committee and interviewing with the Selectmen. Selectman Ballantine also noted the Selectmen can replace Committee members if they determine that a Committee member does not function well and cannot perform the basic functions required of the Committee.

- *Going forward, how does the Treasure Chest function as an operation*

Since the DPW and the Treasure Chest would both like to continue operating at the current location, Treasure Chest Committee members Heather Bolinder and Sheila Eldridge thought the Committee should explore the opportunity to share the facility with the DPW to accommodate both operations. That led to the following assessment:

- What are the DPW's Needs – Vehicle Storage and fabrication.
- What are the needs of the Treasure Chest – Facility to operate out of.
- Can the DPW and the Treasure Chest both operate out of the same building – To be determined.

The discussion of the accommodating both operations led to the question:

- Should the Treasure Chest switch to a seasonal operation so the DPW can continue to use the building in the Winter for storage of municipal vehicles?

Operating the Treasure Chest on a seasonal basis seemed to be a reasonable option that the Committee could like to explore. Janet Evans suggested opening in the Spring would provide more time to appoint new Treasure Chest Committee members and volunteers.

Since there is no funds available for the hiring of a Treasure Chest Coordinator, Shift Supervisors would continue oversee facility operations as before.

Stickers:

If the Treasure Chest reopens, stickers would be required as before. Heather Bolinder suggested that the Town charge a fee for the sticker which had been free to help cover operational costs.

Town Administrator Powers acknowledged that there are costs associated with the creation and distribution of the stickers and also noted that operating the Treasure Chest on a seasonal basis would help in the creation and distribution of stickers. Selectman Ballantine asked if it was fair to charge residents for stickers. Liz Walkins was of the same opinion and did not believe that residents should have to pay a fee to obtain a sticker.

A vote was taken by the Treasure Chest Committee to support the concept of a fee for the sticker. The motion passed 4 to 1 with Liz Walkins not supporting the motion.

Jonathon Idman, the Town's Director for Planning and Community Development spoke of the benefit that the Treasure Chest provides the community by keeping items out of the waste stream and thereby reducing disposal costs. Jonathon noted that the Massachusetts Department of Environmental Protection's Solid Waste Master Plan encourages reuse and that the Town should be rewarded for its efforts in keeping reusable items out of the waste stream.

Selectman Ballantine indicated that the Selectmen would be discussing whether or not to restart the Treasure Chest operation at the Selectmen's meeting scheduled for September 7, 2021. It was suggested that the Treasure Chest Committee also post a meeting for the same time and place so that a quorum of Treasure Chest Committee members can be present at the Selectmen's meeting without being in violation of the Open Meeting Law.

4. **Open Session:**

No Topics were discussed.

5. **Set Date for Next Meeting:**

A meeting of the Treasure Chest Committee will be scheduled to coincide with the Selectmen's meeting scheduled for September 7, 2021.

6. **Adjournment:**

Adjourned the meeting at 5:45 PM



TOWN OF HARWICH

DEPARTMENT OF PUBLIC WORKS

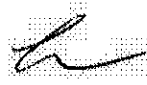
273 Queen Anne Road • P.O. Box 1543 • Harwich, MA 02645

Telephone (508) 430-7555

Fax (508) 430-7598

MEMORANDUM

TO: Board of Selectmen

FROM: Lincoln S. Hooper, Director 

DATE: July 7, 2021

RE: Treasure Chest

The purpose of this memo is to provide the Board information regarding the current state of the Treasure Chest (TC) building, the cost to operate the TC and to provide any recommendations that I may have.

The TC building is a two bay space building constructed in 1968 that used to be the operations center of the former landfill. It was turned into the TC in 2001 after the landfill was capped and the new 4 bay space building was constructed. Since the TC was closed due to COVID-19 in March of 2020, the DPW has utilized the space for various purposes including a construction shop for our Facility Maintenance team and winter storage for equipment that would have otherwise been left outside (beach cleaner, 2 sweepers and roadside mower). In fact, the Facilities team is currently constructing 11 new lifeguard stands there as an ongoing project (see attached pictures).

The cost to operate the TC is relatively minor and includes utilities (electric, gas & water) from 2019 at a cost of \$2,417 and disposal of unwanted items (19.23 tons) at a cost of \$2,307, for a total cost of \$4,724. This figure excludes the estimated 2 hours per week that DPW employees spend dumping the rolloff container for the trash and picking up the area. An estimated cost of this fully allocated labor would be \$4,524 ($\$30 \text{ per hr} \times 45\% \text{ benefits} \times 2 \text{ hrs wk} \times 52 \text{ weeks} = \$4,524$). The total previous operating cost of the TC would have been \$9,248.

Given that the DPW has fully utilized the TC building during its closure, I have conflicting feelings about what my recommendation should be to the Board. On one hand, DPW staff utilized the space effectively during the closure and will continue to do so until the TC is reopened. On the other hand, the TC serves multiple purposes including providing opportunities to those in need to find free stuff, an outlet for residents to donate items they think others may want and provide an opportunity for residents to volunteer. The one recommendation I do want to make is to hire a part-time TC

Coordinator to be onsite during operating hours each weekend if it is reopened. The purpose behind this recommendation is that, in my view, volunteers should not have to take the abuse from patrons that they have been subjected to in the past, particularly while enforcing the Harwich only policy. The cost of this would be \$16,640 per year (\$20 per hr x 16 hrs per week x 52 weeks = \$16,640).

I have included the TC Committee Charge, that was adopted by the Board of Selectmen on February 26, 2018, TC Operational Guidelines and TC Volunteer Rules of Etiquette for your review. I would be remiss if I did not extend credit to the TC Committee for working on and adopting these documents and pay special thanks to former TC Committee Chairman Tom Caruso for his service.

Thank you for your time and consideration in this matter.

Attachments: 2 pictures

Treasure Chest Committee Charge

Treasure Chest Operation Guidelines

Treasure Chest Volunteer Rules of Etiquette

Cc: Joe Powers, Town Administrator





TREASURE CHEST COMMITTEE CHARGE

The purpose of the Treasure Chest is to provide a place where useable items can be diverted from the waste stream and be made available to others in our community. Items can be picked up by individuals for their use or by charitable organizations for their clients. It is not the intent of the operation of the Treasure Chest to provide a supply of items for resale for private business.

The Treasure Chest Committee shall consist of seven (7) members and two (2) alternate members appointed by the Board of Selectmen to staggered 3 year terms, which run from July 1 to June 30. The board will appoint members and the Treasure Chest Committee will elect a chair, vice chair, and clerk at their first meeting in July.

The purpose of the Treasure Chest Committee is to oversee the on-site operation of the Treasure Chest and to make recommendations to facilitate the orderly drop off and pick up of reusable items in designated areas. Recommendations will be forwarded to the DPW Director. The committee will adhere to the implementation of rules adopted by the Board of Selectmen and to any instructions as given by the DPW Director.

Volunteers who participate at the Treasure Chest will be appointed by the Director, in consultation with the Committee. The Treasure Chest Chairperson will appoint individuals who will be designated as Shift Leaders to supervise volunteers during hours of operation.

The DPW Director, at his discretion or at the request of the Treasure Chest Committee, after meeting with the affected party, may determine that an individual may no longer volunteer at the Treasure Chest. The individual may request an appeal hearing with the Board of Selectmen.

Draft - Treasure Chest Committee meeting, January 19, 2018

Approved by the Board of Selectmen on February 26, 2018

Treasure Chest Operational Guidelines

- 1) Volunteers should be respectful to all patrons and volunteers at all times. Should a problem arise, volunteers should contact the shift leader on duty.
- 2) Each 3 hour shift will have an inside and outside shift leader to provide leadership to all volunteers and handle any questions or issues that should arise. Shift leaders will be noted on the posted schedule.
- 3) The Treasure Chest shall be open from 9am to 3pm Saturdays and Sundays throughout the year, except December 25th and January 1st.
- 4) Emergency closures due to inclement weather or other needs of the Town shall be communicated to the DPW and the Scalehouse by phone, and to volunteers via email and/or phone.
- 5) Only approved volunteers may staff the Treasure Chest. All volunteers must read and sign the rules of etiquette form.
- 6) All volunteers shall park on the right side access road – opposite the fencing. (Except for handicap parking)
- 7) No items shall be placed in the exit lane.
- 8) Both exit gates shall remain open during hours of operation.
- 9) Donations will be accepted from 9am to 3pm on Saturday and Sunday.
- 10) Patrons will have first option to take donated items.
- 11) Volunteers shall use discretion in taking a limited number of donated items and shall do so only at the end of their shift.
- 12) No smoking allowed at the Treasure Chest.
- 13) No dogs allowed at the Treasure Chest, except service dogs.
- 14) The Treasure Chest Committee will meet at least 3 times per year. All meetings shall be posted and are open to all volunteers and the public.
- 15) Volunteers are encouraged to call another volunteer if they can not do their shift to attempt to find sub. Volunteers can also mark the calendar to signify a future date of absence.
- 16) Volunteers who do not comply with the rules of etiquette or these guidelines may have their privileges revoked.

17) The Treasure Chest will accept most donated items in good condition. Items not accepted include: Items that are broken or stained, TV and TV cabinets, stereo speakers, computers, printers, scanners, particle board furniture, disassembled furniture, encyclopedia sets, Christmas trees, gas grills and propane tanks, rims and tires, cribs, mattresses, large appliances (stoves, refrigerators, washers, dryers), snowthrowers, riding lawn mowers, toilets, sleep sofas, car batteries, air conditioners, children car seats, playpens, large or heavy furniture, treadmills, weapons, or any hazardous materials.

Please note that this list may be revised as needed and final determination on acceptance of any questionable item will be the prerogative of the shift leader on duty.

Revised 1/25/18

Treasure Chest Volunteer Rules of Etiquette

1/24/18

The Town of Harwich appreciates your time and energy to volunteer with a goal of continuing the success of the Treasure Chest and its mission. Being a volunteer at the Treasure Chest is a wonderful way to serve the Town of Harwich. As a volunteer, you will help divert usable items from being disposed of at the Transfer Station and you will assist in providing and maintaining a venue for the transfer of re-usable items to the general public.

As a Treasure Chest volunteer, it's essential to understand that you are representing the Town of Harwich and therefore being a volunteer comes with the same type of responsibility and etiquette guidelines you would have with a paid job. When you commit to being a volunteer for the Treasure Chest, you need to be on your best behavior because the Town of Harwich and the other Treasure Chest volunteers are counting on you to be pleasant, courteous, professional and helpful at all times.

To further that goal, here are seven rules of etiquette for Treasure Chest volunteers to follow:

1. Respect for Treasure Chest Volunteers and Patrons

Treasure Chest volunteers must treat other volunteers and patrons of the Treasure Chest with RESPECT! Your attitude directly reflects on the Treasure Chest and the Town of Harwich. While you may not always agree with the other volunteers or patrons, you must at all times be courteous and treat them with respect. Remember the mission, you are volunteering at the Treasure Chest to help divert usable items from being disposed of at the Transfer Station and to assist in providing and maintaining a venue for the transfer of re-usable items to the general public.

2. Follow the Rules

Treasure Chest volunteers should always follow the proper rules and procedures. Those rules are in place to protect the Town of Harwich, the Treasure Chest volunteers, and patrons of the Treasure Chest. Not following the rules may cause problems for the Town thus putting the continued operation of the Treasure Chest at risk and most likely resulting in the dismissal of the volunteer.

3. Show up for Your Shift on Time and Work Your Shift

The Treasure Chest needs volunteers who are dependable. Prove your dependability and strong work ethic by showing up on time. Being late shows a lack of respect for the other volunteers and the operation. While emergencies might make you miss a shift, please honor your commitment to volunteer. The other volunteers are counting on you and missing a shift makes extra work for the other volunteers.

4. Show up Ready to Work

Be ready to work to the best of your ability. You may be volunteering at the Treasure Chest, but treat it as you would a job. The Treasure Chest deserves nothing less than your best effort. Volunteers should give it their best effort and do everything they can to contribute to the success of the operation.

5. Take Initiative

Operating and maintaining the Treasure Chest takes a lot of time and effort and there are times when a lot of work needs to be done with only a few volunteers to do it. Please take the initiative and do what you can to keep the operation running smoothly.

6. Be Discreet

While volunteering at the Treasure Chest, you may see or hear private information that no one else needs to know about. Keep it to yourself. Do not speak poorly or gossip about the Town of Harwich, other Treasure Chest volunteers or patrons you come into contact with at the Treasure Chest.

7. Volunteer With a Good Attitude

You've committed yourself to something that you're passionate about, so put a smile on your face when you are volunteering at the Treasure Chest and show that you want to be there. Your efforts as a volunteer directly reflect on your character and your desire to be a Treasure Chest volunteer.

The Town of Harwich thanks you for your volunteer efforts at the Treasure Chest. Please abide by these etiquette rules to make your volunteer experience at the Treasure Chest trouble free and memorable.

Treasure Chest

205 Queen Anne Rd., Harwich, MA 02645
508-430-7584

Effective July 1st 2018 the Treasure Chest will be open to Harwich residents only. Harwich residents may pick up a Treasure Chest sticker, at no cost, at the Harwich Community Center or the Harwich Town Hall beginning June 11th, 2018.

This new policy was adopted by the Board of Selectmen at their June 5th meeting. It was made necessary by the significant increase in customers and the corresponding increase in items brought to the Treasure Chest, some of which ends up in our waste stream adding cost to the town.

The purpose of the Treasure Chest remains the same: to provide a place where useable items can be diverted from the waste stream and be made available to others in our town. Items can be picked up by Harwich residents for their use or for use by charitable organizations of their choice. No charge is made to drop off acceptable items, nor is any charge made when individuals pick up items.

The Treasure Chest is staffed by volunteers and is open to Harwich residents on each Saturday and Sunday from 9am to 3pm throughout the year, except on Christmas day, New Years day, or Easter should those dates fall on a Saturday or Sunday, or due to inclement weather.

The Treasure Chest accepts most items: clothes for all ages, shoes, toys and games, most small furniture, lamps, housewares(dishes, glasses, pots, pans etc.), small kitchen appliances, books, tools, rugs, radios, clocks, etc.

We do not accept items that are broken or stained, TV and TV cabinets, stereo speakers, computers, printers, scanners, particle board furniture, disassembled furniture, encyclopedia sets, Christmas trees, gas grills and propane tanks, rims and tires, cribs, mattresses, large appliances(stoves, refrigerators, washers, dryers), snowthrowers, riding lawn mowers, toilets, sleep sofas, car batteries, air conditioners, children car seats, playpens, large or heavy furniture, treadmills, weapons, or any hazardous materials. Many of these items can be brought to the transfer station.

From: Brett Fortin <b.fortin21@gmail.com>

Sent: Thursday, June 3, 2021 10:22 PM

To: Larry Ballantine

Subject: Treasure chest

Hello Mr. Ballantine,

I am writing to express my desire for the treasure chest to reopen at the earliest & safest date. It is a loved fixture in our community that is solely missed.

Thank you.

Best,

Brett Fortin
Cove Road
Harwich
203-685-3955

From: Fran Salewski <fransalew@gmail.com>

Sent: Wednesday, June 9, 2021 5:45 PM

To: Larry Ballantine

Subject: Treasure Chest

As the town returns to normal after the Covid restrictions phase please consider reopening the Treasure Chest. It has been a staple in Harwich for over twenty years. I am certain many of the Harwich residents would enjoy the facility reopening

Fran Salewski
42 Beach Plum Cir.
Harwich

From: Nancy St.germaine <nancy.stgermaine@yahoo.com>

Sent: Wednesday, June 9, 2021 7:23 PM

To: Mary Anderson; Don Howell; Larry Ballantine; Michael D. MacAskill

Subject: Treasure Chest

I was told that the opening of the TC is being decided by the board of selectman ...I am hoping that you all decide to reopen it ...a lot of people depend on the TC... The TC has been around for so many years it would be sad to see it close.

Thank you

Nancy St.Germaine

From: jean bulger <jbulger2001@yahoo.com>

Sent: Wednesday, June 9, 2021 7:43 PM

To: Michael D. MacAskill; Don Howell; Mary Anderson; Larry Ballantine

Subject: Treasure Chest

To the Board of Selectman: the Treasure Chest has been a favorite place for many residents to drop off usable items and to search for items they need. It would be a shame if it were not to reopen. It's been a long wait to be able to get back out and I know it is one place many would enjoy. On the Harwich Cape Cod Facebook group I posted the question as to who would like to see it open and received almost 200 responses. The overwhelming response was "Yes". I hope this is not the time to end this tradition. We can make it a positive experience for all.

Thank you, Jean Bulger

From: larosec@aol.com <larosec@aol.com>

Sent: Friday, June 11, 2021 8:22 AM

To: Larry Ballantine

Subject: Treasure Chest

Dear Selectman Ballantine,

I would like to voice my vote in favor of the Treasure Chest reopening. It was wonderful for my family whenever cleaning out clothes and attic. We never felt bad in donating things there knowing someone else could use it even if we couldn't. These items were too good to throw out.

Whenever I would drop things off I would also look around. I would always find a good book, a shirt or two for my grandchildren or a decorative piece that would be perfect in my home. My granddaughter's first bike came from there and now she keeps it at my house.

Please consider reopening for the benefit of the town.

Thank you,

Catherine LaRose

14 Lakeside Terrace

From: Debera First <deberafirst@gmail.com>

Sent: Friday, June 11, 2021 10:22 AM

To: Michael D. MacAskill; Larry Ballantine; Don Howell; Mary Anderson

Subject: Treasure Chest

Hi. As a full time resident of Harwich, I ask you to reopen the Treasure Chest!

There are many reasons to do so: keeping things out of the landfill, allowing unwanted items that are still useful a renewable life cycle, helping people who need something to pick it up and get it for free, etc. All of which I believe out way the negative, which two of the most heard were traffic on Queen Anne is heavy on Sat and Sun, and volunteers picking through the incoming items and taking them home for resale.

Perhaps the Treasure Chest can be relocated to another area behind the dump to eliminate traffic on QA and if people complain about volunteers getting free stuff first maybe they would like to volunteer.

May I suggest that residents of Harwich receive a free sticker with their dump sticker to drop off or pick up items at the Treasure Chest, and charge non residents a daily fee, via the internet prior to their visit, to come in and pick up items void of any drop off privileges.

The Treasure Chest has been missed by many. Whenever I have taken home items there to be given away, my grandchildren enjoyed going and looking through the toys and books..... it was like going on a Treasure Hunt and winning a prize! I have also found myself finding items which I put to good use.

Thank you for your time and considering this. I hope to see it on the agenda soon before the summer ends!

Create a wonderful day!

Debera First

From: Melanie Bradley <mewbradley@gmail.com>

Sent: Tuesday, June 15, 2021 6:53 AM

To: Larry Ballantine

Subject: Treasure chest

Good morning, I hear you may be considering the opening of the treasure chest. I hope you all decide in favor of that. It has been sorely missed. Thank you
Melanie wurst

Sent from my iPad

From: Joan Canterbury <joan.canterbury2@verizon.net>

Sent: Thursday, June 24, 2021 4:36 PM

To: Larry Ballantine

Subject: Re-open the Treasure Chest

Dear Sir,

For years, the Treasure Chest, next to the town transfer station, was an effective way for residents to donate household items for re-use. This system kept usable items out of the trash stream, and made items available to residents who could not have afforded them otherwise. Win-win.

Please find a way to re-open the Treasure Chest, and return this service to the residents of Harwich.

Sincerely,

Joan M. Canterbury

30 Wyndemere Bluffs Rd.

Harwich Port

From: Pamela Bosko <pbosk@comcast.net>

Sent: Sunday, July 11, 2021 10:50 AM

To: Larry Ballantine

Subject: Treasure Chest

>

>> Please reinstate the Treasure Chest. It provides a wonderful avenue to recycle clothing and many household items especially for residents with a range of incomes. It is a Harwich gem.

Sincerely,

Pam Bosko

38 Ridgeport Drive

Harwich Port

From: Moody, Mary <mmoody@monomoy.edu>

Sent: Monday, July 12, 2021 11:58 AM

To: Larry Ballantine

Subject: Treasure chest

Please reinstate the Treasure Chest. It provides a wonderful avenue to recycle clothing, children's toys, nursery items, mobility equipment, small appliances and furniture and many household items. Residents with a wide range of incomes donate to and shop at the Treasure Chest. I have a few friends with a very limited income who have obtained most of their clothing and household supplies such as bedding and kitchen equipment at the Treasure Chest.

I feel that a resource such as the treasure chest is a wonderful fit for the reduce, reuse and recycle program as well as allowing social justice warriors contribute gently used goods to their fellow man. If fees are incurred certainly a small charge could be assessed. I think there is more to be gained for the community by providing a space for this well used resource.

Thank you for giving this every consideration to reopen the Treasure Chest!

Mary Moody

From: Diane LeDuc <dianejleduc@comcast.net>

Sent: Tuesday, July 13, 2021 6:52 PM

To: Larry Ballantine; Michael D. MacAskill; Mary Anderson; Don Howell

Subject: The Treasure Chest

Dear Honorable Harwich Selectmen,

I attended last night's meeting because I feel strongly that The Treasure Chest should reopen asap. I love the idea of rerouting access to the area via the main gate, so that only Harwich people can get in.

I don't like the idea of paying someone to run it. The whole idea is to save money by not sending as much stuff to Bourne - or where ever we're sending it these days.

As for the maintenance dept. needing the building - where did they get things done before Covid? I'm sorry, but just because they moved in doesn't mean they have to stay.

Harwich is the number 1 town on the Cape for recycling. Let's continue to help Mother Nature in every way we can.

Thank you.

Diane LeDuc

From: Martha Crane <mbcrane88@icloud.com>

Sent: Thursday, July 15, 2021 5:26 PM

To: Larry Ballantine

Subject: Treasure Chest

Hi Larry. We just saw the article in the Chronicle. YES please reopen the treasure chest. We have given things that were taken right out of our trunk to happy people. We have gotten bikes for our grandson and return them when he grows out of them. The sense of community and wise reuse of articles is phenomenal. I don't know why you have to pay a weekend supervisor \$16,000 as stated in the article. ??

Thank you for your help in opening up our Treasure Chest.

Martha and Don Crane.

From: Helena Nossal <hpnossal@aol.com>

Sent: Friday, July 16, 2021 2:40 PM

To: Larry Ballantine

Subject: Treasure Chest

Hello Larry,

Please add my name to your list of Harwich residents wanting the Treasure Chest to re-open I also have a really hard time throwing "useable stuff" that I no longer need.

Helena Nossal
58 Noreast Dr

From: Carolyn OLeary <carmaol@yahoo.com>

Sent: Saturday, July 17, 2021 2:55 PM

To: Larry Ballantine

Subject: treasure chest

Larry, I echo Maureen Davis' thoughts about the importance of reopening the Treasure Chest. We are all aware of the grave importance of recycling (so many people in need and what doesn't get recycled will be in the landfill). I'm sure the town can find other spots to store that equipment. Carolyn OLeary.

From: Michael Crowe <michaelacroweesq@gmail.com>
Sent: Tuesday, July 20, 2021 11:46 AM
To: Michael D. MacAskill; Larry Ballantine; Don Howell
Subject: Treasure Chest

Please reinstate the Treasure Chest. It is environmentally sound and it is an alternative to prevent items from cluttering our landfill! It provides a wonderful avenue to recycle especially clothing and many household items. Residents with a wide range of incomes donate to and shop at the Treasure Chest. Children learn the value of recycling and repurposing unwanted items as well.

Thank you for giving this every consideration to reopen the Treasure Chest!

Maria and Mike Crowe

7 Gordon Road

Harwich, MA

Aug 15, 2021



Harwich Selectmen - Michael MacAskill (Chair)
Donald Howell
Tarcy Ballantine
Mary Anderson

I've watched the selectmen's meetings regarding the Treasure Chest and wish I had the courage to get up and speak to you in person. I don't do very well speaking in public but I am very passionate about the subject of the T.C. I do understand the need for it to be closed last yr due to covid, but the fact that it did not reopen is a TRAGIC DISSERVICE to the townspeople of HARWICH.

There are many people in Harwich of low income who are in need of many items that the Treasure Chest provides free of charge. The amount of people eligible for the family pantry should give all of you an indication of need.

The items of clothing, shoes, household items (dishes, glasses, pots/pans), domestic items (blankets, sheets, pillows), in addition to food, toys, lamps, furniture, etc. I go to the Treasure Chest every Sat and Sunday - for books and I've seen puzzles and also to donate many items, too good to throw away.

It is a great meeting place - all the volunteers are friendly - everyone gets along.

The stickeriest I've ever limited the attendance to just Harwich residents

ounded like a great idea but it meant
that someone had to check each car
AND they had many confrontational
disputes with many folks.
I don't feel stickers or checking
cars is necessary.

I never saw a traffic problem
either. The parking lot gets busy but
no trouble or fighting.

AND I DO NOT THINK A SALARY PERSON
IS NECESSARY. There should be a person
in charge BUT for all these years
it was never a paid position.

years ago - an older woman, (I
think her name was Oleen or
the treasure chest person), then
she moved from Harwich to Bourne
(I think) which was a sad thing
to see her leave.

Please, seriously consider the
positive aspects of reopening
this wonderful facility. It
was a great place for many to
donate items that were too nice
to throw away, and many people
are in great need in this
town for a helping hand.

Thank you for your time, and
reading my letter. Sincerely,
Kathleen Rocco
116 Pleasant Rd.
West Harwich, MA.
02071
(508 432-6206)

From: Contact form at harwichma [<mailto:cmsmailer@civicplus.com>]
Sent: Monday, August 16, 2021 7:06 PM
To: Joe Powers <jpowers@town.harwich.ma.us>
Subject: [harwichma] Treasure Chest (Sent by Jennifer AVery, jenavery22@gmail.com)

Hello jpowers,

Jennifer AVery (jenavery22@gmail.com) has sent you a message via your contact form (<https://www.harwich-ma.gov/user/1733/contact>) at harwichma.

If you don't want to receive such e-mails, you can change your settings at <https://www.harwich-ma.gov/user/1733/edit>.

Message:

Good evening Mr. Powers,

As a Harwich resident for over 20 years, I am writing for the first time to express my hope that you allow the Treasure Chest to reopen. We have used the Treasure Chest regularly, as our children have grown, to share toys and items that they have outgrown with other families. We take items there that maybe aren't good enough to take to a thrift store, but aren't in bad enough shape to throw out. The Treasure Chest has been a valuable resource to reuse items & keep them out of the waste stream, and its return to use will serve our community greatly.

Thank you for your time,

Jen Avery

From: Contact form at harwichma [<mailto:cmsmailer@civicplus.com>]

Sent: Friday, August 13, 2021 3:03 PM

To: Joe Powers <jpowers@town.harwich.ma.us>

Subject: [harwichma] Reopening the Treasure Chest (Sent by Paula Myles, carefulhands@earthlink.net)

Hello jpowers,

Paula Myles (carefulhands@earthlink.net) has sent you a message via your contact form (<https://www.harwich-ma.gov/user/1733/contact>) at harwichma.

If you don't want to receive such e-mails, you can change your settings at <https://www.harwich-ma.gov/user/1733/edit>.

Message:

Dear Mr Powers

If the scores of comments in the FB Old Timers site are any indication of how our community feels about the Treasure Chest, you can see that it has long been a necessary reminder to all of us to REDUCE RECYCLE AND REUSE. Here are Sandra Bayliss Hall's compelling thoughts, one of many posts on that site :

"...the Treasure Chest Committee is appointed by the Board of Selectmen. That building is a town building that happens to reside on the same property as the Highway Barn and the Landfill but was turned over for the use of the TC Committee when the "new" Highway Barn was built. It has been run under the jurisdiction of the Treasure Chest Committee for something like 20 years...but closed down when the rest of the town buildings were closed for covid. Given these facts, how is it that this is the only facility that was not allowed to re-open when the rest of the town buildings were? As far as I can tell, that decision did not come from the BOS or administration or the vote of the TC Committee."

I ask you please to sort out the problems and facilitate the reopening of our Treasure Chest.

With thanks for your consideration,

Paula Myles

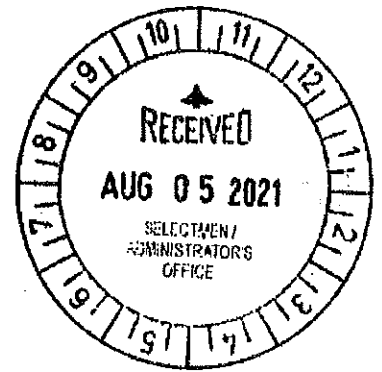
163 Main Street (since 1968)

NEW BUSINESS

Recommendations from the Board of Selectmen Interview Committee

Following posted interviews held on Wednesday, August 25, 2021 we would like to recommend to the Board the following appointments:

<u>Applicant:</u>	<u>Vacancy</u>	<u>Term/Recommendation</u>
Joseph Beasley	Board of Appeals	Recommend Appointment to Alternate Position Term to Expire 6.30.2024
Charlene Pilon	Bikeways Committee	Recommend Appointment to Full Position Term to Expire 6.30.2024
Benjamin Hall	Agricultural Commission	Recommend Appointment to Full Position Term to Expire 6.30.2022



**CITIZEN'S COMMITTEE VACANCY FORM
VOLUNTEER NOW -- SERVE YOUR COMMUNITY**

Town government needs citizens who are willing to give time in the service of their community. This form was adopted by the Selectmen as a means of compiling names of interested citizens to serve, on a voluntary basis, on Boards and Committees and Commissions

Vacancy Forms are updated to include categories consistent with the changing needs of the Town. Indicate your order of preference and return this form to:

**CITIZEN'S COMMITTEE VACANCY FORM
BOARD OF SELECTMEN
732 Main Street, Harwich, MA 02645**

Name Joseph Beasley Street/P.O. Box _____ Town Harwich Zip 02645

Occupation Human Resources Email _____ Telephone _____

(LIST IN ORDER OF PREFERENCE)

PLANNING AND PRESERVATION

- Agricultural Commission
- *Board of Appeals
- Brooks Academy Museum Commission
- Building Code Board of Appeals
- By-law/Charter Review Committee
- Community Preservation Committee
- *Conservation Commission
- Cultural Council
- Historical/Historic District Commission
- *Planning Board
- Real Estate, Open Space Committee
- Town Forest Committee
- Traffic Safety Committee
- Trail Committee
- Harwich Energy Committee
- OTHER _____

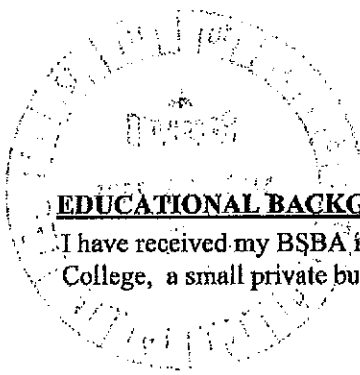
OTHER

- *Board of Assessors
- *Board of Health
- Capital Outlay Committee
- Cemetery Commission
- Community Center Facilities Committee
- Constable
- Council on Aging
- Disability Rights Committee
- Finance Committee
- Harwich Housing Committee
- Herring Supervisor (Voluntary)
- Saquatucket Development Committee
- Shellfish Constable (Voluntary)
- Treasure Chest Committee
- Wastewater Support Committee
- Youth Services Committee
- Voter Information Committee

RECREATION

- Bikeways Committee
- Golf Committee
- Recreation & Youth Commission
- Waterways Committee

* Please include a resume with form



EDUCATIONAL BACKGROUND:

I have received my BSBA in Human Resource Management and MBA with a focus in Human Resources from Nichols College, a small private business school located in central MA.

RELEVANT SKILLS:

- Attention to detail
- Strong communication skills
- Excellent customer service
- Confidentiality
- Strong written skills
- Fast learner
- Technology enthusiast
- Team player

REASONS FOR INTEREST IN COMMITTEE/COMMISSION/BOARD:

I believe that giving back to the community you live in is an important thing to do. Having been born and raised on the Cape, I have grown to love it more every day. My employer is heavily involved in the community and supports my efforts. I find that affordable housing may be the saving grace to help young professionals afford to live on Cape and keep certain business/industries afloat. As a part of my job, I run an intern program. This program is composed of 40-50 interns, which are all college students, looking to gain experience to become a young professional. Many of the interns wish to join my employer, and others like mine, but all run into the same issue - no where to live affordable as a recent graduate. I was fortunate enough to live with my parents until I could afford a down payment on a house with my now wife. Not everyone has this luxury. I worked in the town of Dennis (where I lived for about 17 years throughout my life) as part of the Economic Development Committee where we worked a lot on 40b's and affordable housing. I am aware of the issues with building affordable housing complex's due to the current waste water issues the Cape is and has been facing. I can go on and on, but would rather discuss further in a meeting of sorts when/if selected for an interview. I hope you consider my application. Thank you.

JOSEPH BEASLEY

Harwich, MA 02645

EXPERIENCE

Talent Management Specialist, Cape Cod 5, Hyannis, MA 10/2020 - current

- Utilizes an array of sourcing techniques to build a pipeline of qualified candidates to meet the Bank's staffing needs, including sourcing passive candidates via LinkedIn, search engines, resume databases, etc.
- Identifies, screens and interviews qualified candidates for select non-exempt roles.
- Completes detailed pay analysis and recommends appropriate placement of candidates utilizing internal data and market compensation surveys.
- Extends job offers to selected candidates and prepares/sends offer letters and benefits information for the candidate to review.
- Builds and cultivates relationships with local community organizations to support a diverse talent pool, utilizing tools such as LocalJob Network/Circa.
- Serves as liaison for the Bank's Internship Program. Onboards Interns, hosts Intern activities, and is the dedicated resource to the Interns.
- Acts as a point of contact for employment candidates. Assists with answering candidate inquiries and scheduling employment interviews as needed.
- Serves as administrator for the Bank's applicant tracking system (ATS), including drafting requisitions for approval, posting and closing requisitions, user management, notifications, reporting functions, and updating hiring determinations to ensure accurate candidate reporting for the Bank's Affirmative Action Plan.
- Responsible for submitting job advertisements to various websites, newspapers and professional associations. Utilizes social media to ensure job postings are visible to target groups.
- Coordinates job fairs, open houses, college recruiting and other creative sourcing initiatives.
- Conducts credit checks and required employment screenings for prospective employment candidates and new hires.
- Assists with creation, tracking, and updating of job descriptions across the organization.
- Assists in the preparation and submission of data for the Bank's Affirmative Action Plan, including EEO-1 and Applicant Data reporting.
- Assists the HR team to onboard new hires. Prepares new hire packages, meets with new hires to complete paperwork, and files required checklist.
- Works independently on special nonrecurring and ongoing projects. Acts as project team member for special projects, which may include planning and coordinating multiple tasks and disseminating information.
- Designs and prepares department level reports for members of the HR management team, including regular talent management reports.
- Collects and analyzes Talent Management data for reporting purposes in order to measure outcomes and identify patterns and trends.

Talent Management Administrative Coordinator, Cape Cod 5, Hyannis, MA 5/2018 – 10/2020
Human Resources Administrative Coordinator, Cape Cod 5, Orleans, MA 8/2017 – 5/2018
Human Resources Intern, Cape Cod 5, Hyannis, MA 4/2017 – 8/2017

Senior Human Resource Coordinator (Contractor), Dell, Hopkinton, MA 6/2016 – 10/2016

- Background Checks (Initiation, evaluate, escalate)
- Employment offer letter generation

(REFERENCES AVAILABLE UPON REQUEST)

- Interview scheduling
- Software used: BrassRing (ATS), Sterling, Outlook, PeopleSoft
- General knowledge and input on VCE's policies and procedures
- Express Requisition Approver for Global Talent Acquisition

Corporate Recruiter/Assistant, Gentex Optics, Dudley, MA

9/2015-4/2016

- Perform a wide variety of regular and confidential Human Resources duties such as: Recruiting, training, drug and vision screens, and maintenance of employees' files.
- Post jobs on College Career Services sites, as well as newspaper ads, and online recruiting.
- Assist in open enrollment, benefit packages, retention, event planning, training, Social Security checks, Data Quest, and employee relations.
- Support the facility's policies and procedures; responsible for a healthy and safe environment.
- Work with program such as Workday (HRIS), Career Builder, Indeed, Wedoo (Google Docs/Email), TMS (Talent Management System), and Kronos.

EDUCATION

Nichols College, Dudley, MA

MBA with a focus in Human Resources

May, 2021

Nichols College, Dudley, MA

BSBA Degree in Human Resource Management

May, 2016

Fluent in *American Sign Language*

Cape Cod Human Resources Association (CCHRA)

VOLUNTEER WORK

Big Brothers Big Sisters of the Cape & Islands

2017 – Present

Economic Development Committee, Town of Dennis

2019-2020



**CITIZENS ACTIVITY VACANCY FORM
ACT NOW -- SERVE YOUR COMMUNITY**

Town government needs citizens who are willing to give time in the service of their community. The Citizens Activity Record program was adopted by the Selectmen as a means of compiling names of interested citizens to serve, on a voluntary basis, on Boards and Committees.

Activity records are being updated to include categories consistent with the changing needs of the Town. Indicate your order of preference and return this form to:

**CITIZENS ACTIVITY VACANCY FORM
BOARD OF SELECTMEN
732 Main Street, Harwich, MA 02645**

Name: CHALLENGE PILON
Town/Zip: HARWICH
Email: _____

Street/P.O. Box: _____
Telephone: _____
Occupation: RETIRED PHYSICAL THERAPIST ASSISTANT

(LIST IN ORDER OF PREFERENCE)

PLANNING AND PRESERVATION

- Agricultural Commission
- *Board of Appeals
- Brooks Academy Museum Commission
- Building Code Board of Appeals
- By-law/Charter Review Committee
- Community Preservation Committee
- *Conservation Commission
- Cultural Council Committee
- Forest Committee
- Harwich Energy Committee
- Historic District and Historical Commission
- *Planning Board
- Real Estate and Open Space Committee
- Traffic Safety Committee
- Trail Committee
- OTHER _____

RECREATION

- Bikeways Committee
- Golf Committee
- Recreation & Youth Commission
- Waterways Committee

OTHER

- Affordable Housing Trust
- *Board of Assessors
- *Board of Health
- Capital Outlay Committee
- Cemetery Commission
- Community Center Facilities Committee
- Constable
- Council on Aging
- Finance Committee
- Harwich Accessibility Rights Committee
- Harwich Center Initiative Committee
- Harwich Housing Committee
- Harwich Port Parking Committee
- Herring Supervisor (Voluntary)
- Noise Containment Committee (Ad Hoc)
- Shellfish Constable (Voluntary)
- Treasure Chest Committee
- Voter Information Committee
- Wastewater Support Committee - Inactive
- Youth Services Committee
- Voter Information Committee

* Please include a resume with form.

EDUCATIONAL BACKGROUND:

BACHELORS OF PHYSICAL EDUCATION/RECREATION (B.P.E.)
ASSOCIATES DEGREE OF SCIENCE - PTA

RELEVANT SKILLS:

TEAM PLAYER

GOOD VERBAL + WRITTEN COMMUNICATION SKILLS

HARD WORKER.

COMFORTABLE WITH COMPUTERS + MICROSOFT OFFICE (POWERPOINT, EXCEL + WORD)

WORKED IN THE FIELD OF PUBLIC RECREATION FOR 20+ YRS
MANAGING FACILITIES, COMMUNITY DEVELOPMENT + PROGRAM DEVELOPMENT

REASONS FOR INTEREST IN COMMITTEE/COMMISSION/BOARD:

BEFORE I RETIRED I LIVED IN CENTRAL MASS AND CHAIRED THE GROUP THAT RAISED FUNDS + BUILT A COMMUNITY SKATEPARK.

SINCE RETIRING TO OUR NEW HOME ON THE CAPE ALMOST 3 YRS. AGO

I AM VERY INTERESTED IN GETTING INVOLVED AND CONTRIBUTING TO MY COMMUNITY. SINCE CYCLING IS A LONG TIME PASSION OF MINE I FEEL THE BIKEWAYS COMMITTEE WOULD BE A GREAT FIT.



**CITIZENS ACTIVITY VACANCY FORM
ACT NOW – SERVE YOUR COMMUNITY**

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**CITIZENS ACTIVITY VACANCY FORM
BOARD OF SELECTMEN**

732 Main Street, Harwich, MA 02645

Name: Benjamin Alan Hall Street/P.O. Box: _____
Town/Zip: Harwich 02645 Telephone: _____
Email: _____ Occupation: manufacturing/cranberries

(LIST IN ORDER OF PREFERENCE)

PLANNING AND PRESERVATION

- Agricultural Commission
- *Board of Appeals
- Brooks Academy Museum Commission
- Building Code Board of Appeals
- By-law/Charter Review Committee
- Community Preservation Committee
- *Conservation Commission
- Cultural Council Committee
- Forest Committee
- Harwich Energy Committee
- Historic District and Historical Commission
- *Planning Board
- Real Estate and Open Space Committee
- Traffic Safety Committee
- Trail Committee
- OTHER _____

RECREATION

- Bikeways Committee
- Golf Committee
- Recreation & Youth Commission
- Waterways Committee

OTHER

- Affordable Housing Trust
- *Board of Assessors
- *Board of Health
- Capital Outlay Committee
- Cemetery Commission
- Community Center Facilities Committee
- Constable
- Council on Aging
- Finance Committee
- Harwich Accessibility Rights Committee
- Harwich Center Initiative Committee
- Harwich Housing Committee
- Harwich Port Parking Committee
- Herring Supervisor (Voluntary)
- Noise Containment Committee (Ad Hoc)
- Shellfish Constable (Voluntary)
- Treasure Chest Committee
- Voter Information Committee
- Wastewater Support Committee - Inactive
- Youth Services Committee
- Voter Information Committee

* Please include a resume with form

EDUCATIONAL BACKGROUND:

Monomoy Regional School K-12
graduated 2018 Diploma

Cape Cod Community College
construction trades training certificate
manufacturing certificate

RELEVANT SKILLS:

Work on family's Cranberry Farm
in North Harwich.

Also have worked with other Cranberry growers
in Harwich and surrounding towns.

REASONS FOR INTEREST IN COMMITTEE/COMMISSION/BOARD:

continue to promote & support
agriculture in the town of Harwich.



HARWICHPolice

DEPARTMENT

183 Sisson Road, Harwich, MA 02645

Tel 508-430-7541 Fax 508-432-2530




DAVID J. GUILLEMETTE
Chief of Police

KEVIN M. CONSIDINE
Deputy Chief

Memorandum

TO: Board of Selectmen
Joseph Powers
Town Administrator

FROM: David J. Guillemette 
Chief of Police

DATE: August 30, 2021

SUBJECT: Potential Violations at Perks

Mr. Powers and members of the Board:

Attached please find a number of police reports regarding potential liquor regulation violations at Perks on various dates in July and August. Reporting of the July 24th incident was delayed because a follow up investigation was being conducted by Det. Sgt. Brackett.

Please do not hesitate to contact me should you have any questions.

For Date: 07/24/2021 - Saturday

<u>Call Number</u>	<u>Time</u>	<u>Call Reason</u>	<u>Action</u>
21-9187	0107	SUSPICIOUS ACTIVITY	Investigated
Call Taker:		4004 - PSD Telecommunicator Theodore Monteiro	
Primary Id:		156 - Patrol Keith E Lincoln	
Location/Address:		{HAR 393} RT 28	
Involved Party:		3 - HARWICH, MA 026	
Involved Party:			
Involved Party:			MA 01106
Involved Party:			MA 0110
ID:		156 - Patrol Keith E Lincoln	Arvd-01:07:00 Clrd-01:25:10
ID:		198 - Patrol Daniel J Donovan	Disp-01:08:07 Enrt-01:08:11 Arvd-01:12:10 Clrd-01:23:33
Narrative:		07/24/2021 0108 PSD Telecommunicator Theodore Monteiro	
Modified By:		PSD Telecommunicator Theodore Monteiro	
		Flagged down by homeowner for a Party who fell through their fence.	
Narrative:		07/24/2021 0125 PSD Telecommunicator Theodore Monteiro	
		Parties involved were identified and agreed to pay for damage.	
Narrative:		07/24/2021 0204 Patrol Keith E Lincoln	
		Flagged down the homeowner. He was restraining and reporting the male party fell through his fence. Parties identified, peace restored. See formal report.	
Refer To Incident:		<u>21-9187-OF</u>	

This report is by Officer Keith Lincoln regarding a disturbance in front of [redacted]. Damage was reported to their front fence do to the crowds from the closing liquor establishments in the area.

On the morning of July 24, 2021 at approximately 1:00am, I was flagged down by a male subject, later identified as [redacted]. He was reporting vandalism to his family property, the front fence of their family owned [redacted]. [redacted] was restraining another male, identified as [redacted], by holding him in place with a hand on his chest. [redacted] yelled out that [redacted] had fallen through his front fence. Due to traffic in the area, I needed to go west to find a place to turn and return to [redacted] and Mr. [redacted].

Exiting my cruiser in front of 547 Rt 28, I observed two groups of people arguing about the fence. [redacted] and a female were yelling at [redacted] and his brother, identified as [redacted]. [redacted] was telling [redacted], he was going to jail for breaking the fence and [redacted] was offering to pay for the damage using his Venmo account. I was able to separate the two males and collect information and get statements.

[redacted] was complaining about the large crowd gathered on the sidewalk in front of his parents house. There was a large number of patrons from Perks and the Port standing on both sides of the road after closing. [redacted] stated, [redacted] and his group were standing by the fence and [redacted], who was highly intoxicated, fell through a section of fence, a 4x8 PVC picket style fence. [redacted] was demanding immediate action be taken. I was then able to speak with [redacted] and his brother [redacted] though intoxicated stated, he lost his balance when he was standing in the group and fell through the fence. [redacted] was more than willing to pay at the moment using his Venmo account, but was not able to make rational decisions at the moment. Another male, [redacted] brother [redacted] spoke with me. [redacted] was not showing any signs of intoxication and restated, that his brother and a group of friends were standing by the fence and [redacted] got his feet caught up in the group and lost his balance do to his intoxication. [redacted] also stated, they were more than willing to pay for any damages as it was an accident.

The owner of the [redacted] in came out front after [redacted] went inside to get her. She was not happy with the fact no one was being arrested and was filming with her cell phone. I explained to her the fence was broken do to an accident and not done maliciously. I told her both the males involved were more than willing to pay to have the fence repaired. She began getting agitated and complaining about all the issues in the area and past issues she's had on her property. I told her there needs to be some changes, but the proper channel for her was to attend all the hearings going on involving the establishments next door. [redacted] was advised to get a copy of the report on or after July 27th and reach out to the males involved to work on getting her fence repaired.

Neither Perks nor the Port had any easily recognizable staff out on the side walks monitoring or dispersing the large crowds after closing their establishments. The area the fence was broken was just east of the entrance to Perks.

This report is respectfully submitted by;
 Officer Keith Lincoln #156
 Harwich Police Department

SUPPLEMENTAL NARRATIVE FOR PATROL KEITH E LINCOLN

Ref: 21-9187-OF

This supplemental narrative is by Officer Keith Lincoln regarding a follow up phone call with about the events on the morning of July 24, 2021 at 1:07am.

On July 28, 2021 at 1:00pm, I made contact with on his cell phone to further talk to him about the events of July 24th concerning the damaged fence belonging to Main st. Harwichport.

I wanted to speak with N about where he had been prior to him accidentally falling through the fence. He was near two of the local liquor establishments, Perks and The Port, when I first made contact with him. It was clearly apparent was highly intoxicated by his slurred speech, his unsteadiness and strong odor of an alcoholic beverage standing in front of me.

I directly asked M: where he had been and how he was served underage. was more than cooperative and stated, "I was at the Port". He continued to on stating, he had dinner at the Port with family and never left. I asked him if anyone of the staff of the Port checked his ID inside the establishment and he stated "no".

N asked me what he should do next about getting the fence repaired. I told him, he was free to reach out to the homeowners and again try to resolve the issue. stated, "I'll even repair it myself" As stated in the original report, tried to use his Venmo account at the time of the incident to pay for the damage he caused.

This report is respectfully submitted by;

Officer Keith Lincoln#156
Harwich Police Department

ESTIMATE



Carter's Landscaping Services

P.O. Box 761
N Eastham
MA 02651

BILL TO

28
Harwich Port MA 02646

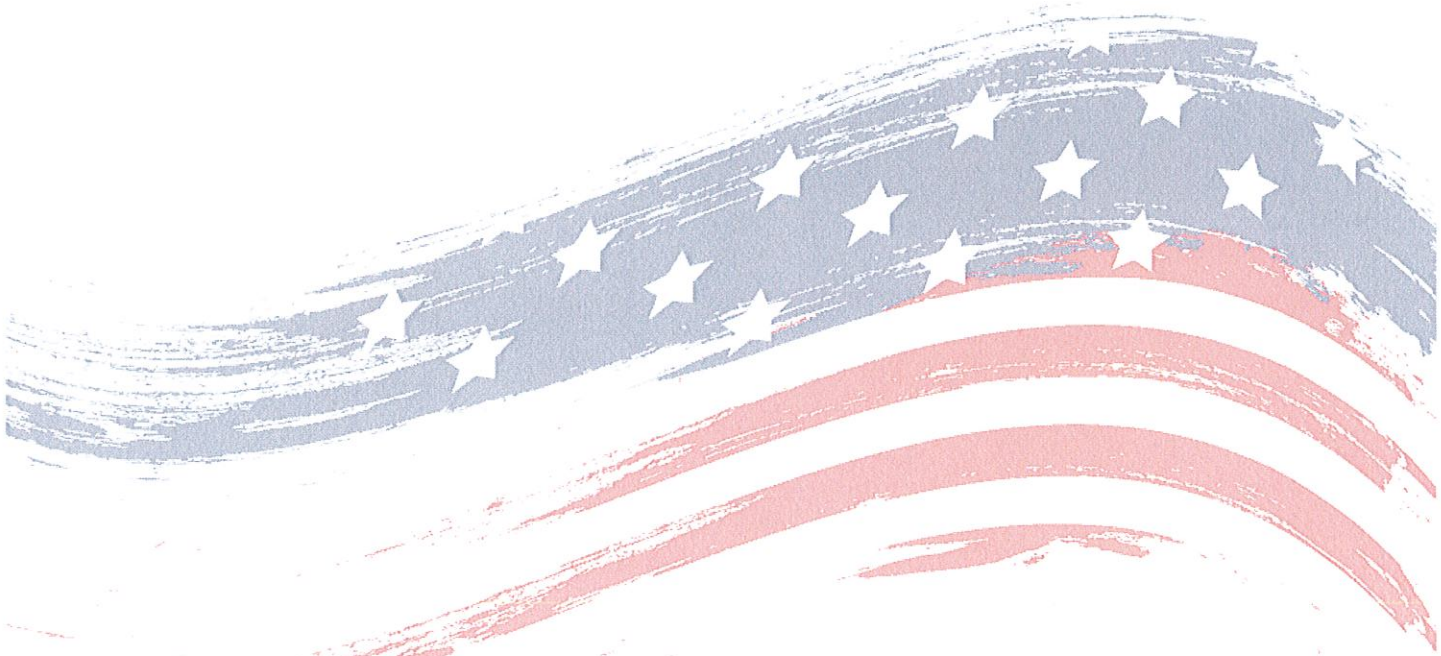
ESTIMATE #

1227

ESTIMATE DATE

08/14/2021

DESCRIPTION	AMOUNT
Replacing one fence panel.	147.00
Labor.	250.00
	Subtotal 397.00
	MA 6.25% 24.82
	TOTAL \$421.82



Thank you | **TERMS & CONDITIONS**
Your payment is now due.

NARRATIVE FOR DETECTIVE SERGEANT ROBERT C BRACKETT

Ref: 21-9187-OF

To: Harwich Police Department Case Number 21-9187-OF

From: Detective Sergeant Bob Brackett

Date: August 24, 2021

Subject: Conversation with [redacted] on July 30, 2021

1. On Tuesday July 27, 2021, Detective Sergeant Brackett was asked by Harwich Police Chief David Guillemette to contact [redacted] Route 28 in Harwich Port, Ma. Chief Guillemette stated that [redacted] had further information regarding an incident that had been reported to the Harwich Police Department on July 24, 2021 (Harwich Police Department Case #21-9187-OF).
2. On Friday July 30, 2021, Detective Sergeant Brackett spoke with [redacted] via telephone. [redacted] advised that his family are the owners of the residence located at [redacted] Route 28 in Harwich Port, Ma. The residence is located next door to, and is an abutter of Perks Coffee Shop and Beer Garden located at #545 Route 28 in Harwich Port, Ma. [redacted] went on to explain that they had an incident at his residence on July 24, 2021 at approximately 1:00am where an intoxicated individual had broken a section of fence in front of his family residence. This incident was investigated/handled by Officer Keith Lincoln. Officer Lincoln identified the intoxicated individual as being [redacted] of Longmeadow, Ma. It was learned during the investigation that [redacted] is only 20 years of age and that he had no forms of identification on his person. Officer Lincoln also described [redacted] as being heavily intoxicated. It should be noted that the residence is not only located directly next door to Perks Coffee and Beer Garden, but that The Port Restaurant is located directly next door (#541 Route 28 Harwich Port, Ma) to Perks Coffee and Beer Garden to the West. Both of these establishments serve alcohol and have a 1:00am closing time. This incident was occurring as both establishments were in the process of closing.
3. [redacted] stated that due to the on-going issues at the closing time of these establishments, a member of his family makes it a point to stay out on the front porch at closing time in an effort to help deter any property damage and/or unruly behavior. [redacted] stated that at the time of this incident he believed that [redacted] had come from Perks Coffee and Beer Garden. [redacted] stated that earlier in the evening on the night of the incident his [redacted] had taken video from inside an out building on their property. This outbuilding is a 2 story building that has windows that directly overlook the outdoor bar of Perks Coffee and Beer Garden. [redacted] had been taking video in an effort to document the noise and activities at closing time to demonstrate the impact of the establishment on her residence. [redacted] additionally stated that [redacted] had pictures of Officer Lincoln interacting with [redacted].
4. [redacted] stated that he and [redacted] were subsequently reviewing the video she had taken on that night from Perks Coffee and Beer Garden and found video of [redacted] inside of Perks Coffee and Beer

NARRATIVE FOR DETECTIVE SERGEANT ROBERT C BRACKETT

Ref: 21-9187-OF

Garden. Detective Sergeant Brackett requested copies of any video and/or photographs to be sent.

5. [REDACTED] was also concerned that he believed that [REDACTED] had subsequently stated to Officer Lincoln that he had been drinking at The Port and had not been at Perks Coffee and Beer Garden. [REDACTED] believed that [REDACTED] was a regular customer of Perks and that [REDACTED] was intentionally claiming to have been drinking at The Port so as to shift the blame onto The Port as there have been on-going issues between The Port and Perks.
6. On Friday July 30, 2021, at approximately 5:23pm, Detective Sergeant Brackett received Four (4) images and One (1) video via e-mail from [REDACTED].
7. The first image reviewed by Detective Sergeant Brackett was labeled "Officer Lincoln". The image appears to be a still photo taken from a video. The image is date stamped "Saturday" and time stamped 1:10am. This time would be consistent with the time that Officer Lincoln would have been investigating the incident on Saturday July 24, 2021. It should also be noted that the images appear to be from an Apple "iPhone". It is known that an iPhone does not "date stamp" until the image is a week old. Therefore an image taken on a "Saturday" will be date stamped "Saturday" up and until you get to the next Saturday and then images/videos from the prior Saturday will have an actual Date (i.e. July 24). As this image is date stamped "Saturday" and it was screen shot on or before Friday July 30, 2021 it is reasonable to conclude that the "Saturday" would be Saturday July 24, 2021. In this image you can depict two (2) individuals speaking with Officer Lincoln. Based upon the background imagery and the direction of the camera footage that the image was taken in and around the vicinity of [REDACTED] Route 28 in Harwich Port, Ma. The individuals speaking with Officer Lincoln were identified by Officer Lincoln as being [REDACTED] and his brother [REDACTED]. [REDACTED] in the photo is seen wearing a reddish/cranberry colored long sleeve T-Shirt, dark colored shorts and has brownish blond hair and a full beard.
8. The next two (2) images reviewed by Detective Sergeant Brackett were labeled "IMG_0174 and IMG_0177" respectively. These images appear to be still photos taken from a video and zoomed in. Both images are very similar in appearance and background and show numerous people both seated and standing at a bar presumably the outside bar at Perks Coffee and Beer Garden, although there is nothing in these images to identify that. These two (2) images have no date and/or time stamps. In the images it can clearly be seen that the same individual that had been identified as being [REDACTED] in the prior image speaking with Officer Lincoln, could be observed standing at the bar in these images holding a cup/beverage.
9. The next image reviewed by Detective Sergeant Brackett was labeled "IMG_0178". The image also appears to be a still photo taken from a video. The image is also date stamped "Saturday" and time stamped 12:39am. This time would be consistent with the time that [REDACTED] stated that his mother [REDACTED] had been taking video of the outdoor bar area of Perk Coffee and Beer Garden. This image shows the same as prior images labeled "IMG_0174 and IMG_0177" but is not as zoomed in. The only significant difference is that this image carries a date/time stamp.


NARRATIVE FOR DETECTIVE SERGEANT ROBERT C BRACKETT

Ref: 21-9187-OF

10. Detective Sergeant Brackett then reviewed the video that was provided. The video was labeled "video" and was not date and/or time stamped. The video is approximately 38 seconds long. Although the video did not have a date/time stamp it was clearly evident that the video was the same that was used to produce the prior still images that were, in fact, date/time stamped. It should be noted that the screen shots used for the prior still images showed this video and this video was, in fact date and time stamped "Saturday" at 12:39am.. This video did not have the date/time stamp due to the format it was sent. As evidenced in the prior images the video was, in fact date and time stamped in the iPhone that it was taken on. The video provided was clearly being taken through a window that was overlooking what appeared to be the outdoor bar at Perks Coffee and Beer Garden. The bar can clearly be identified in the video. There is a television playing behind the bar that is airing what appears to be the Red Sox/Yankees game on NESN. It should be noted that the Red Sox did, in fact, play the Yankees on the night of this reported incident. Although official box scores from Major League Baseball list the game as finishing at approximately 10:36pm, it should be noted that NESN routinely replays the "Sox in 2" at midnight following every Red Sox game. "Sox in 2" is a condensed 2 hour replay of the earlier game. In the video it can clearly be observed that the individual presumably identified as [REDACTED] is standing at the bar with a female. [REDACTED] is wearing the same clothing as in the image speaking with Officer Lincoln. At approximately the 10 second mark of the video the female bartender is observed to serve two (2) drinks to [REDACTED]. The drinks are in what appear to be clear plastic cups. One drink appears to be clear in color and the other appears to have a green/yellow tint to it. [REDACTED] is observed to pick up the drink with the green/yellow tint and the female picks up the drink that is clear in color. Both [REDACTED] and the female then walk away from the bar and out of the frame of the video. It should be noted that the video goes out of focus at the time [REDACTED] is served the drinks. Although it is still plainly identifiable that he is served the drinks you can not identify whether [REDACTED] or the female paid for the drinks. Although it may have been done at a prior time, at no time in this video does it appear that the bartender inquires of identification of [REDACTED].
11. It should be noted that the videos and images referenced in this report and provided to Detective Sergeant Brackett were produced from videos taken by [REDACTED] at approximately 12:39am and approximately 1:10am. [REDACTED] took the videos and the videos appear to have been time stamped for "Saturday" at 12:39am and 1:10am. These time stamps are based off of the phone from which they were taken and could not be verified. These videos were subsequently used to produce the still images. The videos as provided to Detective Sergeant Brackett may or may not have been edited for the length of time of the video. At the time, the video of inside of Perks was not being taken for purposes of [REDACTED]. The incident involving [REDACTED] had not yet happened. The video was being taken for general purposes to memorialize and document the general conditions that the [REDACTED] family deal with regarding Perks Coffee and Beer Garden. It was only after the incident involving [REDACTED] in which another video was taken, that [REDACTED] was able to identify that the same gentleman that Officer Lincoln was speaking with was also in the video that [REDACTED] had taken earlier. The identification of [REDACTED] inside of Perks at approximately 12:39am is based upon him being identified by Officer Lincoln outside of the [REDACTED] residence at approximately 1:10am.
12. Although the video's can not be authenticated by Detective Sergeant Brackett for exact times and dates and what may or may not have been edited out, there is nothing to suggest that what was presented is not an accurate representation of what occurred on the night of this incident. There is enough detail in the video's to

identify the locations and separate corroboration of the times of the incident based upon records from the Harwich Police Department and the report of Officer Lincoln. It is important to note that when the term "edited" is being used in reference to the video there is nothing to suggest that anything other than shortening the video may have been done. There is no suspicion of any other type of editing being conducted.

13. Although _____ stated to Officer Lincoln that he had been at The Port, the only evidence to place _____ anywhere shows him to be at Perks Coffee and Beer Garden.
14. Detective Sergeant Brackett made attempts to contact _____ by phone to further discuss where he had been drinking on the night of this incident. These calls have gone unanswered and the voicemail box of _____ is full and messages were unable to be left.
15. All images and video were saved on HPD server.

Respectfully Submitted by,


*Detective Sergeant Robert Brackett
Harwich Police Detective Division*

For Date: 08/07/2021 - Saturday

<u>Call Number</u>	<u>Time</u>	<u>Call Reason</u>	<u>Action</u>
21-9890	0108	GENERAL SERVICES	Investigated
Call Taker: 4005 - PSD Telecommunicator JADE ROSS			
Primary Id: 181 - Patrol Supervisor Keith T Kannally			
Location/Address: HAR 39			
Calling Party: - HARWICH, MA 026			
ID: 181 - Patrol Supervisor Keith T Kannally			
Disp-01:09:30 Enrt-01:09:33 Arvd-01:10:05 Clrd-01:12:25			
ID: 116 - Patrol Robert D Hadfield			
Disp-01:09:35 Enrt-01:09:37 Clrd-01:12:25			
Narrative: 08/07/2021 0110 PSD Telecommunicator JADE ROSS			
RP had some men come out from perks and urinate on their lawn.			
Narrative: 08/07/2021 0113 PSD Telecommunicator JADE ROSS			
Clear, guys left prior to arrival in an uber			
Narrative: 08/07/2021 0240 Patrol Supervisor Keith T Kannally			
Rp stated a female urinated beside the building, Rp stated female and male companions left in an Uber headed East on Rt 28. See formal report.			

Refer To Incident: 21-9890-OF

This report submitted by Officer Keith T. Kannally regarding the report of Public Urination at the

On Saturday August 7, 2021 at approximately 0108 hours I was dispatched to the _____ for the report of a male urinating on the property, the reporting party said the male walked out of Perks Beer Garden and onto her property. I arrived a short time later and spoke with the reporting party L_____. _____ told me the people just left in an Uber headed east. _____ showed me where on the side of the building the female was urinating, I advised _____ that I was told it was males, _____ stated it was a female. _____ asked her to stop she did not and the male parties waiting for her were laughing. It should be noted that it was closing time for the bars in the area, there were a small group of people in front of Perks who appeared to be waiting for Ubers, I was unable to decipher if there were any Perk's employees out front with the group.

_____ only description was a young female with a halter top and was last seen in the Uber headed East on Rt. 28.

Respectfully Submitted

#181

Officer Keith T. Kannally

For Date: 08/19/2021 - Thursday

<u>Call Number</u>	<u>Time</u>	<u>Call Reason</u>	<u>Action</u>
21-10584	2228	Noise Complaint	Investigated
Call Taker:		199 - Patrol Charles Brooks	
Primary Id:		135 - Patrol Supervisor Derek J Dutra	
Location/Address:		[HAR 1638] PERKS COFFEE SHOP - 545 RT 28	
Calling Party:		- HARWICH, MA 0264	
Involved Party:		- HARWICH, MA 026	
ID:		199 - Patrol Tyler J vermelle	
		Disp-22:30:27 Enrt-22:30:31 Arvd-22:39:57	Clrd-23:21:27
ID:		135 - Patrol Supervisor Derek J Dutra	
		Disp-22:30:29 Enrt-22:31:13 Arvd-22:39:51	Clrd-23:21:25
ID:		127 - Sergeant Aram V Goshgarian	
		Disp-22:44:01 Enrt-22:44:04 Arvd-22:44:05	Clrd-23:21:20
Narrative:		08/19/2021 2230 Patrol Charles Brooks	
		RP states there is loud voices and screaming coming from Perks. When asked if it could possibly be coming from a different establishment she said she was right next to Perks and said it was them. RP wished to remain anonymous but provided her address.	
Narrative:		08/19/2021 2321 Patrol Charles Brooks	
		Clear, investigated.	
Narrative:		08/19/2021 2339 Patrol Supervisor Derek J Dutra	
		See formal...	
Refer To Incident:		<u>21-10584-OF</u>	

This report is submitted by Officer Dutra regarding a noise complaint called in against Perks Coffee Shop located at 545 RT 28 in Harwichport on August 19, 2021.

While assigned to the 4-12 shift Officer Vermette and I were dispatched to Perks Coffee Shop regarding a report of loud crowd noise coming from the business. The Rp in this case was [redacted] RT 28. On arrival M [redacted] met us at the front of her property, facing RT 28, and advised us we could hear the crowd noise coming from Perks more distinctly in her back yard. For context Perks Coffee Shop is on the west side of her property and inside the 150 foot rule. When Officer Vermette and I made it to her backyard we could both hear what would be described as normal crowd noise coming from Perks. [redacted] stated that level of crowd noise was not the reason for her call. She stated people were signing happy birthday and he's a jolly good fellow very loudly prior to our arrival. Officer Vermette and I were in the backyard and spoke to [redacted] for approximately 15-20 minutes. During that time we did not hear that type of crowd noise/signing coming from Perks.

I advised [redacted] the incident would be documented and looked it to see if this would be considered a violation for Town purposes.

After we left her residence we met Sgt. Goshgarian in front of Perks Coffee Shop. Sgt. Goshgarian was speaking to one of the owners, Sarah Powell. He had already notified her of the noise complaint. Sarah said she did not hear signing of any kind while she was on the property and assured us if that had happened she would have addressed it.

For Date: 08/26/2021 - Thursday

<u>Call Number</u>	<u>Time</u>	<u>Call Reason</u>	<u>Action</u>
21-10941	2345	Noise Complaint	Investigated
Call Taker:		2373 - PSD Telecommunicator IRIS G MCINALLY	
Primary Id:		205 - Patrol Christopher R Arrigo	
Location/Address:		[HAR 1638] PERKS COFFEE SHOP - 545 RT 28	
Calling Party:		- HARWICH, MA 02	
Involved Party:		- HARWICH, MA	
ID:		205 - Patrol Christopher R Arrigo	
Dispatched By:		181 - Patrol Supervisor Keith T Kannally	
Enroute By:		4006 - PSD Telecommunicator Kyleigh Sears	
Arrived By:		4006 - PSD Telecommunicator Kyleigh Sears	
Cleared By:		4006 - PSD Telecommunicator Kyleigh Sears	
ID:		198 - Patrol Daniel J Donovan	
Dispatched By:		181 - Patrol Supervisor Keith T Kannally	
Enroute By:		4006 - PSD Telecommunicator Kyleigh Sears	
Arrived By:		4006 - PSD Telecommunicator Kyleigh Sears	
Cleared By:		4006 - PSD Telecommunicator Kyleigh Sears	
Narrative:		08/26/2021 2347 PSD Telecommunicator IRIS G MCINALLY	
		Rp complaint of loud voices, screaming and loud noises including a car horn, at Perks.	
Narrative:		08/27/2021 0011 PSD Telecommunicator Kyleigh Sears	
		All quiet, nothing loud going on, doorman at Perks reported that a driver was traveling up and down the road honking his horn earlier- potentially the source of the complaint. Clear.	
Refer To Incident:		<u>21-10941-OF</u>	

The following is a narrative regarding an unfounded noise complaint at Perk's Coffee:

On August 26, 2021 at approximately 2347 hours, I, Officer Christopher Arrigo, was dispatched to 545 Rt 28, Perk's Coffee, for a report of loud voices and screaming coming from the restaurant as well as a car beeping in the area.

Upon my arrival to the area, I could not hear any loud voices emanating from the restaurant. I exited my cruiser and approached the restaurant. I was not able to hear the voices of the patrons of the restaurant until I was on the sidewalk located directly in front of the establishment. I spoke to a doorman and informed him why I was there and I requested to speak to a manager. The doorman informed me that he would get an owner, and he informed me that the beeping car horn came from a passing motor vehicle.

A short time later, Sarah Powell, the owner of Perk's, came out to speak with me. I informed her why I was there and informed her that there was no violations. This was a positive interaction.

Respectfully Submitted,

Officer Christopher Arrigo #205



HARWICHPolice

DEPARTMENT

183 Sisson Road, Harwich, MA 02645

Tel 508-430-7541 Fax 508-432-2530




DAVID J. GUILLEMETTE
Chief of Police

KEVIN M. CONSIDINE
Deputy Chief

Memorandum

TO: Board of Selectmen
Joseph Powers
Town Administrator

FROM: David J. Guillemette
Chief of Police 

DATE: August 30, 2021

SUBJECT: Potential Violation at Brax

Mr. Powers and members of the Board:

Attached please find a police report regarding a potential liquor regulation violation at Brax on August 16, 2021.

Please do not hesitate to contact me should you have any questions.

For Date: 08/16/2021 - Monday

<u>Call Number</u>	<u>Time</u>	<u>Call Reason</u>	<u>Action</u>
21-10396	1916	SUSPICIOUS ACTIVITY	Investigated
Call Taker: 4006 - PSD Telecommunicator Kyleigh Sears Primary Id: 135 - Patrol Supervisor Derek J Dutra Location/Address: [HAR 96] BRAX LANDING - 705 RT 28 Calling Party: ASSISTANT HARBOR MASTER ***UNKNOWN** @ ***UNKNOWN*** - HARWICH, MA 026 Involved Party: - HARWICH, MA 0264			
ID:	135 - Patrol Supervisor Derek J Dutra	Disp-19:21:41 Enrt-19:24:14 Arvd-19:48:01	Clrd-20:00:11
ID:	190 - Patrol Tyler J Vermette	Disp-19:34:43 Enrt-19:34:45 Arvd-19:45:26	Clrd-20:00:11
Narrative:	08/16/2021 1919 PSD Telecommunicator Kyleigh Sears Assistant Harbor Master reporting that patrons waiting for tables at Brax Landing (left-hand side of the building when facing it) are spilling into the Harbor parking lot, and walking around with alcoholic beverages. RP states he spoke with patrons to tell them that they cannot be in the municipal lot with open containers from Brax to no avail.		
Narrative:	08/16/2021 2000 PSD Telecommunicator Kyleigh Sears No issues seen upon arrive, units spoke with Brax's owner as well as the assistant harbor master, they will be handling the issue going forward. clear.		
Refer To Incident:	<u>21-10396-OF</u>		

This report is submitted by Officer Dutra regarding a complaint called in by the Assistant Harbor Master regarding a few patrons from Brax Landing leaving the property and walking in the Town parking lot area with alcoholic beverages.

While assigned to the 4-12 shift on August 16, 2021 Officer Vermette and I were dispatched to Saquatucket Harbor to check on restaurant patrons from Brax Landing possibly leaving the restaurant property with drinks in their hands and walking around the parking lot and near the harbor. The call was placed by Assist Harbor Master _____, who was on duty that evening.

Officer Vermette was the first officer to arrive in the area. Officer Vermette said in the time he was there before I arrived he only saw one male patrol briefly leave the restaurant property with a drink in his hand and that was only for the purpose of corralling his young child who wandered into the parking lot. During my observation I did not see anyone from the restaurant wander into the parking lot.

For the purpose of this report Brax Landing has a waiting area on the lower area of their property near the parking lot. The area has a few adirondack chairs and tables for the patrons. The area also has few sections of fencing.

I spoke with Assist Harbor Master _____ about the matter. One of his concerns had to do with a group of younger girls sitting around and talking on the small road in front of the harbor area (no drinks on their persons). When he spoke to them he learned they were with their parents, who were waiting for a table at Brax. He told them to move along. The second issue he had from Brax had to do with a small group of adult patrons from Brax hanging near the harbor, not too far from the restaurant property but on Town property, with drinks in their hands. He advised them they could not drink on Town property and asked them to head back to the restaurant.

I advised the restaurant owner, J _____, and the Manager of the complaints. Both were very concerned and said they will address the matter. N' _____ s said he did have a few signs up advising people not to leave the property with drinks but it appeared someone had removed them.

This is the first complaint I believe this department has ever received against Brax especially regarding this concern.



HARWICHPolice
DEPARTMENT
183 Sisson Road, Harwich, MA 02645
Tel 508-430-7541 Fax 508-432-2530




DAVID J. GUILLEMETTE
Chief of Police

KEVIN M. CONSIDINE
Deputy Chief

Memorandum

TO: Board of Selectmen
Joseph Powers
Town Administrator

FROM: David J. Guillemette
Chief of Police 

DATE: August 30, 2021

SUBJECT: Potential Violation(s) at Port

Mr. Powers and members of the Board:

Attached please find a police report regarding potential liquor / entertainment regulation violations at Port on August 19, 2021.

Please do not hesitate to contact me should you have any questions.

For Date: 08/19/2021 - Thursday

<u>Call Number</u>	<u>Time</u>	<u>Call Reason</u>	<u>Action</u>
21-10586	2322	Noise Complaint	Investigated
Call Taker:	199 - Patrol Charles Brooks		
Primary Id:	127 - Sergeant Aram V Goshgarian		
Location/Address:	[HAR 48] THE PORT - 541 RT 28		
ID:	127 - Sergeant Aram V Goshgarian		
		Arvd-23:22:00	Clrd-23:22:35
Narrative:	08/19/2021 2322 Patrol Charles Brooks		
	Noise Complaint per G10, clear.		
Refer To Incident:	<u>21-10586-OF</u>		

On Thursday, August 19, 2021 I was assigned as the 4-12 Shift Supervisor. At approximately 2240hrs I was speaking with Sarah Powell who is an owner of Perks. Officers Dutra, Vermette, and I were investigating a noise complaint at Perks and I was advising Mrs. Powell of the complaint. We were standing on the sidewalk in front of Perks when I observed a male subject exit the left side of the Port. The subject was carrying a drink in his hand and he proceeded to exit the Port property and make a right turn and walk onto the property owned by Perks. The Port and Perks share a common fence and as the male walked along the Perks side of the fence Mrs. Powell advised him it was private property and the subject turned around and went back into the Port. I did not make contact with this person and do not know what the drink contained.

As I was standing on the sidewalk I could hear the sound of music coming from inside the Port. At this time all of the doors and windows were closed however I could hear the music while standing outside on the sidewalk. I was going to make contact with someone inside the Port when a patron exited a side door marked "emergency exit." This door is located on the left side of the building and is attached to the "Oyster Bar" section of the restaurant. The patron walked out to the sidewalk however the door was left wide open allowing the music to escape the premises. The door remained open until I walked over and shut it.

Officer Dutra and I walked into the back bar area and I asked to speak with whoever was in charge of the restaurant. A subject identified as Jon Ricotta said that he guessed that he was in charge. I explained the issues to Jon and he said he would take care of the music. I advised him of the "emergency door" matter and the patron who exited with a drink and walked onto the Perks property. Jon was very cooperative and told me that he was by himself working the door tonight. There were no additional complaints regarding the Port this evening.



HARWICHPolice

DEPARTMENT

183 Sisson Road, Harwich, MA 02645

Tel 508-430-7541 Fax 508-432-2530




DAVID J. GUILLEMETTE
Chief of Police

KEVIN M. CONSIDINE
Deputy Chief

Memorandum

TO: Board of Selectmen
Joseph Powers
Town Administrator

FROM: David J. Guillemette
Chief of Police 

DATE: August 30, 2021

SUBJECT: Potential Violation at Seal

Mr. Powers and members of the Board:

Attached please find a police report regarding a potential noise violation at The Seal Pub on August 25, 2021.

Please do not hesitate to contact me should you have any questions.

Selective Search From: 08/25/2021 Thru: 08/25/2021 2228 - 2229 Printed: 08/26/2021

For Date: 08/25/2021 - Wednesday

<u>Time</u>	<u>Name(s)</u>	<u>Duty</u>	<u>Unit</u>	<u>Post</u>
1554	Buttrick , Richard	Patrol	G14	R - ROVING
1554	Dutra , Derek	Patrol Supervisor	G11	S - SUPERVISOR
1554	Vermette , Tyler	Patrol	G16	E - EAST
1554	Griffiths , Thomas	Patrol	G19	W - WEST
1554	Monteiro , Theodore	Dispatcher		DP - Dispatcher

<u>Call Number</u>	<u>Time</u>	<u>Call Reason</u>	<u>Action</u>
21-10883	2228	Noise Complaint	Investigated
Call Taker: 4004 - PSD Telecommunicator Theodore Monteiro			
Primary Id: 191 - Patrol Thomas G Griffiths Jr			
Call Modified By: 191 - Patrol Thomas G Griffiths Jr			
Location/Address: [HAR 2686] SEAL PUB AND CAFE - 703 MAIN ST			
Involved Party: - HARWICH, MA 026			
ID:	191 - Patrol Thomas G Griffiths Jr		
	Disp-22:37:25	Arvd-22:37:31	Clrd-22:43:50
ID:	134 - Patrol Richard E Buttrick Jr		
	Disp-22:37:33	Enrt-22:37:37	Arvd-22:41:29
ID:	135 - Patrol Supervisor Derek J Dutra		
	Disp-22:37:40		Clrd-22:37:55
Narrative:	08/25/2021 2228 PSD Telecommunicator Theodore Monteiro		
Modified By:	08/25/2021 2239 PSD Telecommunicator Theodore Monteiro		
	Louds kids in parking lot. RP requested to be anonymous		
Narrative:	08/25/2021 2244 PSD Telecommunicator Theodore Monteiro		
	Confirmed violation		
Refer To Incident:	<u>21-10883-OF</u>		

This is the formal report of Officer Thomas G. Griffiths Jr. regarding the noise violation at the Seal Pub and Café.

On Wednesday, August 25, 2021, at approximately 2228 hours, I was dispatched to the Seal Pub and Café for a noise complaint saying there were loud kids in the parking lot. Upon arrival I entered the rear lot with my windows down and could hear patrons singing. I then exited my vehicle and saw a male party playing music with a guitar on the deck outside. The guitar was not amplified but the patrons were singing which increased the volume. I advised the security at the door and the guitarist discontinued play. The employee stated that he believed that it was approximately 2130.

Respectfully submitted,

Officer Thomas G. Griffiths Jr.

DRAFT
SPECIAL TOWN MEETING
WARRANT
With
RECOMMENDATIONS



Monday, October 18, 2021
6:30PM
Harwich Community Center
Gymnasium
100 Oak Street

Face coverings - mandatory

[SAVE FOR TABLE OF CONTENTS]

VOTING PROCEDURES

- I A quorum, 150 registered voters, must be present in order to conduct business. The only motion in order when no quorum is present is a motion to adjourn.
- II A two-thirds majority of the Town Meeting shall be required for inclusion of any Capital Outlay, unless it was included in the Capital Outlay Plan adopted at the preceding Town Meeting.
- III All motions introduced at the Town Meeting shall be in writing when required by the Moderator.
- IV Voters are limited to two times speaking on any one question; the total time speaking not to exceed 10 minutes.
- V Only registered voters shall occupy the meeting “floor”.
- VI No voter will be allowed to speak until he or she is recognized by the Moderator.
- VII Motion requiring more than a simple majority to pass:
 - A. To reconsider a vote on a motion – $\frac{3}{4}$ majority (this motion must be made prior to the next adjournment of the meeting).
 - B. To consider articles in an order other than as appears on the warrant – $\frac{3}{4}$ majority.
 - C. To pay unpaid bills – $\frac{4}{5}$ majority at the Annual Town Meeting, $\frac{9}{10}$ majority at a Special Town Meeting.
 - D. To move the previous question (terminate debate) – $\frac{3}{4}$ majority.
- VIII Quorum cannot be questioned after a motion has been made and seconded.

MOTION CHART Section 1-211
 (Application of Rules is indicated by an X)

Motions	Debatable	Non Debatable	Amendable	Non Amendable	Second Required	Second Not Required	Majority Vote	2/3 Vote	3/4 Vote	May Reconsider	Cannot Reconsider
Adjourn	X		X		X		X				X
Adjourn (in a time certain)	X		X		X		X			X	
Amendment	X		X		X		X			X	
Adopt a Resolution	X		X		X		X				X
Accept & Adopt	X		X		X		X ¹			X	
Postpone Indefinitely	X		X		X		X			X	
Previous Question		X			X			X			X
Terminate Debate											
Reconsider ²	X			X	X			X			X
Consider Articles	X		X		X			X			X
Out of Order											
Point of Order		X				X					
1. Unless a greater than simple majority required by General Laws of Town of Harwich by-laws.											
2. See section 1.207											

MUNICIPAL FINANCE TERMS

APPROPRIATION: An authorization granted by a town meeting, city council or other legislative body to expend money and incur obligations for specific public purposes. An appropriation is usually limited in amount and as to the time period within which it may be expended.

AVAILABLE FUNDS: Balances in the various fund types that represent nonrecurring revenue sources. As a matter of sound practice, they are frequently appropriated for unforeseen expenses, capital expenditures, or other one-time costs. Examples of available funds include free cash, stabilization funds, overlay surplus, water surplus, and retained earnings.

CHERRY SHEET: Named for the cherry-colored paper on which they were originally printed, the Cherry Sheet is the official notification to cities, towns, and regional school districts of the next fiscal year's state aid and assessments. The aid is in the form of distributions, which provide funds based on formulas and reimbursements that provide funds for costs incurred during a prior period for certain programs or services.

FREE CASH: Remaining, unrestricted funds from operations of the previous fiscal year, including unexpended free cash from the previous year, actual receipts in excess of revenue estimated on the tax recapitulation sheet, and unspent amounts in budget line items. Unpaid property taxes and certain deficits reduce the amount that can be certified as free cash.

OVERLAY (Overlay Reserve, or Allowance for Abatements and Exemptions): An account that funds anticipated property tax abatements, exemptions, and uncollected taxes. Additions to the overlay reserve need not be funded by the normal appropriation process but instead raised on the tax rate recapitulation sheet.

RESERVE FUND: An amount (not to exceed 5 percent of the tax levy for the preceding year) set aside annually within a community's budget to provide a funding source for extraordinary or unforeseen expenditures. In a town, the finance committee can authorize transfers from this fund for "extraordinary or unforeseen" expenditures. Other uses of the fund require budgetary transfers by town meeting.

STABILIZATION FUND: A fund designed to accumulate amounts for capital and other future spending purposes, although it may be appropriated for any lawful purpose (MGL c. 40 § 5B). Communities may establish one or more stabilization funds for different purposes and may appropriate any amounts into them. A two-thirds vote of town meeting is required to establish, amend the purpose of, or appropriate money from a stabilization fund. A majority vote of town meeting is required to appropriate money into a stabilization fund.

MUNICIPAL FINANCE TERMS RELATED TO CAPITAL IMPROVEMENTS

CAPITAL ASSETS: – Any tangible property used in the operation of government that is not easily converted into cash and that has an initial useful life extending beyond a single financial reporting period. Capital assets include land and land improvements; infrastructure, such as roads, bridges, water and sewer lines; easements; buildings and building improvements; vehicles, machinery and equipment. Communities typically define capital assets in terms of a minimum useful life and minimum initial cost.

CAPITAL BUDGET: An appropriation or spending plan that uses borrowing or direct outlay for capital or fixed asset improvements. Among other information, a capital budget should identify the method to finance each recommended expenditure (e.g., tax levy or rates) and identify those items that were not recommended.

CAPITAL IMPROVEMENTS PROGRAM: – A blueprint for planning a community's capital expenditures that comprises an annual capital budget and a five-year capital plan. It coordinates community planning, fiscal capacity, and physical development. While all the community's needs should be identified in the program, there is a set of criteria that prioritize the expenditures.

CAPITAL OUTLAY: The exchange of one asset (cash) for another (capital asset) with no ultimate effect on net assets. Also known as "pay as you go," it is the appropriation and use of available cash to fund a capital improvement, as opposed to incurring debt to cover the cost.

FIXED ASSETS: – Long-lived, tangible assets, such as buildings, equipment and land, obtained or controlled as a result of past transactions or circumstances.

MUNICIPAL FINANCE TERMS RELATED TO PROPOSITION 2 ½ TERMS

Chapter 59, Section 21C of the Massachusetts General Laws commonly referred to as Proposition 2 ½ (Prop. 2 ½) or the Tax Limiting Law for Cities and Towns in Massachusetts.

CAPITAL OUTLAY EXPENDITURE EXCLUSION: A temporary increase in the tax levy to fund a capital project or to make a capital acquisition. Such an exclusion requires a two-thirds vote of the selectmen or city council (sometimes with the mayor's approval) and a majority vote in a communitywide referendum. The exclusion is added to the tax levy only during the year in which the project is being funded and may increase the tax levy above the levy ceiling.

CONTINGENT APPROPRIATION: An appropriation that authorizes spending for a particular purpose only if subsequently approved in a voter referendum. Under MGL c. 59 § 21C (m), towns may make appropriations from the tax levy, available funds, or borrowing contingent on the subsequent passage of a Proposition 2½ override or exclusion question for the same purpose. If initially approved at an annual town meeting, voter approval of the contingent appropriation must occur by September 15. Otherwise, the referendum vote must occur within 90 days after the town meeting dissolves. The question may be placed before the voters at more than one election, but if the appropriation is not approved by the applicable deadline, it is null and void. If contingent appropriations are funded through

property taxes, DLS cannot approve the tax rate until the related override or exclusion question is resolved or the deadline passes, whichever occurs first.

DEBT EXCLUSION: An action taken by a community through a referendum vote to raise the funds necessary to pay debt service costs for a particular project from the property tax levy but outside of the limits under Proposition 2^{1/2}. By approving a debt exclusion, a community calculates its annual levy limit under Proposition 2^{1/2}, then adds the excluded debt service cost. The amount is added to the levy limit for the life of the debt only and may increase the levy above the levy ceiling.

LEVY: The amount a community raises through the property tax. The levy can be any amount up to the levy limit, which is reestablished every year in accordance with Proposition 2^{1/2} provisions.

LEVY CEILING: – A levy ceiling is one of two types of levy (tax) restrictions imposed by MGL c. 59 § 21C (Proposition 2^{1/2}). It states that, in any year, the real and personal property taxes imposed may not exceed 2^{1/2} percent of the total full and fair cash value of all taxable property. Property taxes levied may exceed this limit only if the community passes a capital exclusion, debt exclusion, or special exclusion.

LEVY LIMIT: A levy limit is one of two types of levy (tax) restrictions imposed by MGL c. 59 § 21C (Proposition 2^{1/2}). It states that the real and personal property taxes imposed by a city or town may only grow each year by 2^{1/2} percent of the prior year's levy

NEW GROWTH: The additional tax revenue generated by new construction, renovations and other increases in the property tax base during a calendar year. It does not include value increases caused by normal market forces or revaluations.

OVERRIDE: A vote by a community at an election to permanently increase the levy limit. An override vote may increase the levy limit no higher than the levy ceiling. The override question on the election ballot must state a purpose for the override and the dollar amount.

OVERRIDE CAPACITY: The difference between a community's levy ceiling and its levy limit. It is the maximum amount by which a community may override its levy limit.

Note: The glossary definitions found on pages 4, 5 and 6 of this Warrant were derived from the *Municipal Glossary* published the Division of Local Services (January 2020).

The entire glossary can be found at:

<https://www.mass.gov/info-details/municipal-governance-training-and-resources>

**COMMONWEALTH OF MASSACHUSETTS
TOWN OF HARWICH
SPECIAL TOWN MEETING WARRANT
OCTOBER 18, 2021**

BARNSTABLE, SS:

To either of the Constables of the Town of Harwich in said County,

Greetings:

In the name of the Commonwealth of Massachusetts you are hereby directed to notify and warn the inhabitants of said Town qualified to vote in elections and Town affairs to meet in the Community Center Gymnasium, 100 Oak Street in said Town on Monday, October 18, 2021 at 6:30 P.M., then and there to act on the following articles:

**FUND COSTS RELATED TO UPDATING THE COMPREHENSIVE WASTEWATER
MANAGEMENT PLAN (CWMP)**

ARTICLE #: To see if the Town will vote to raise and appropriate or transfer from available funds a sufficient sum of money to obtain engineering services needed to update the Comprehensive Wastewater Management Plan (CMWP), including all costs incidental and related thereto; and to act fully thereon. By request of the Board of Selectmen. Estimated cost: \$250,000.00.

FINANCE COMMITTEE RECOMMENDS

ROLL CALL VOTES:

Finance Committee:

To accept and adopt:

Yeas:

Nays:

Board of Selectmen:

To accept and adopt:

Yeas:

Nays:

**FUND COSTS RELATED TO ADDITIONAL WASTEWATER COLLECTION SYSTEM
DESIGN**

ARTICLE #: To see if the Town will vote to raise and appropriate or transfer from available funds a sufficient sum of money to obtain engineering services for additional wastewater collection system in the East Harwich area, including permitting and design, including all costs incidental and related thereto; and to act fully thereon. By request of the Board of Selectmen. Estimated cost: \$YET TO BE DETERMINED.

FINANCE COMMITTEE RECOMMENDS

ROLL CALL VOTES:

Finance Committee:

To accept and adopt:

Yeas:

Nays:

Board of Selectmen:

To accept and adopt:

Yeas:

Nays:

**FUND COSTS RELATED TO ROUTE 28 WASTEWATER COLLECTION SYSTEM
DESIGN**

ARTICLE #: To see if the Town will vote to raise and appropriate or transfer from available funds a sufficient sum of money to obtain engineering services for Route 28 wastewater collection system, including design and permitting, and all costs incidental and related thereto;, and to act fully thereon. By request of the Board of Selectmen. Estimated cost: \$750,000.00.

FINANCE COMMITTEE RECOMMENDS

ROLL CALL VOTES:

Finance Committee:

To accept and adopt:

Yeas:

Nays:

Board of Selectmen:

To accept and adopt:

Yeas:

Nays:

AMEND ROOMS TAX RATE PER M.G.L., CHAPTER 64G, §3A

ARTICLE #: To see if the Town will vote to accept the provisions of M.G.L., Chapter 64G, §3A to amend the local excise rate from 4% to 6% to take effect on January 1, 2023; or to act fully thereon. By request of the Board of Selectmen.

FINANCE COMMITTEE RECOMMENDS

ROLL CALL VOTES:

Finance Committee:

To accept and adopt:

Yeas:

Nays:

Board of Selectmen:

To accept and adopt:

Yeas:

Nays:

CREATE A WASTEWATER SPECIAL PURPOSE STABILIZATION FUND

ARTICLE #: To see if the Town will vote to accept M. G. L. Chapter 40, Section 5B, Paragraph 4, thereby creating a Wastewater Special Purpose Stabilization Fund, with monies in said Fund to be used, subject to appropriation, to implement the Town's Comprehensive Wastewater Management Plan, including the development of wastewater infrastructure; provided that twenty-five (25) percent of the rooms excise tax collected by the Town in accordance with M.G.L., Chapter 64G, §3A, be dedicated to the Wastewater Special Purpose Stabilization Fund, without further appropriation, to take effect in the fiscal year beginning on July 1, 2022; or to act fully thereon. By request of the Board of Selectmen.

Two-Thirds Vote Required.

FINANCE COMMITTEE RECOMMENDS

ROLL CALL VOTES:

Finance Committee:

To accept and adopt:

Yeas:

Nays:

Board of Selectmen:

To accept and adopt:

Yeas:

Nays:

CREATE AN AFFORDABLE HOUSING SPECIAL PURPOSE STABILIZATION FUND

ARTICLE #: To see if the Town will vote to accept M. G. L. Chapter 40, Section 5B, Paragraph 4, thereby creating an Affordable Housing Special Purpose Stabilization Fund, with monies in said Fund to be used, subject to appropriation; provided that twenty-five (25) percent of the rooms excise tax collected by the Town in accordance with M.G.L., Chapter 64G, §3A, be dedicated to the Affordable Housing Special Purpose Stabilization Fund, without further appropriation, to take effect on July 1, 2022; or to act fully thereon. By request of the Board of Selectmen.

Two-Thirds Vote Required.

FINANCE COMMITTEE RECOMMENDS

ROLL CALL VOTES:

Finance Committee:

To accept and adopt:

Yeas:

Nays:

Board of Selectmen:

To accept and adopt:

Yeas:

Nays:

FUND NON-UNION PERSONNEL WAGE INCREASES

ARTICLE #: To see if the Town will vote to raise and appropriate or transfer from available funds a sufficient sum of money to be added to the FY 2022 budget to fund cost-of-living adjustments (COLA) for non-union personnel covered under personal service contracts and/or the Personnel Bylaws; and to act fully thereon. By request of the Board of Selectmen. Estimated cost: \$YET TO BE DETERMINED.

FINANCE COMMITTEE RECOMMENDS

ROLL CALL VOTES:

Finance Committee:

To accept and adopt:

Yeas:

Nays:

Board of Selectmen:

To accept and adopt:

Yeas:

Nays:

FUND NEGOTIATED CONTRACT – FIRE FIGHTERS

ARTICLE #: To see if the Town will vote to raise and appropriate or transfer from available funds a sufficient sum of money to be added to the FY 2022 Fire Department budget to implement the new contractual agreement between Harwich Permanent Fire Fighters, Local 2124, International Association of Fire Fighters and the Town of Harwich; and to act fully thereon. By request of the Board of Selectmen. Estimated cost: \$YET TO BE DETERMINED.

FINANCE COMMITTEE RECOMMENDS

ROLL CALL VOTES:

Finance Committee:

To accept and adopt:

Yeas:

Nays:

Board of Selectmen:

To accept and adopt:

Yeas:

Nays:

FUND NEGOTIATED CONTRACT – WATER DEPARTMENT

ARTICLE #: To see if the Town will vote to raise and appropriate or transfer from available funds a sufficient sum of money to be added to the FY 2022 Water Department budget to implement the new contractual agreement between the International Association of Machinists and Aerospace Workers, Local Lodge 264 of District 38, A.F.L.-C.I.O. and the Town of Harwich, and to act fully thereon. By request of the Board of Selectmen. Estimated cost: \$YET TO BE DETERMINED.

FINANCE COMMITTEE RECOMMENDS

ROLL CALL VOTES:

Finance Committee:

To accept and adopt:

Yeas:

Nays:

Board of Selectmen:

To accept and adopt:

Yeas:

Nays:

TRANSFER OF SURPLUS BOND PROCEEDS

ARTICLE #: To see if the Town will vote to appropriate \$_____ to pay costs of acquiring a fire quint apparatus, and to determine whether this amount shall be transferred from surplus bond proceeds, or otherwise provided; or take any other action relative thereto. By request of the Finance Director.

FINANCE COMMITTEE RECOMMENDS

ROLL CALL VOTES:

Finance Committee:

To accept and adopt:

Yeas:

Nays:

Board of Selectmen:

To accept and adopt:

Yeas:

Nays:

LAND TAKING BY EMINENT DOMAIN

ARTICLE #: To see if the Town will vote to authorize the Board of Selectmen to acquire by purchase, gift, eminent domain, or otherwise, a parcel of land consisting of 2 acres, more or less, located off Pleasant Lake Avenue, Route 124, identified as Assessor's Map 82, Parcel R5, for affordable housing purposes; and to raise and appropriate or transfer from available funds a **sufficient** sum of money for said acquisition, including all costs incidental and related thereto, provided that upon acquisition of said parcel by the Town, said parcel be transferred to the Harwich Affordable Housing Trust to be held for affordable housing purposes; and to authorize the Board of Selectmen to enter into all agreements and take any and all actions as may be necessary or convenient to accomplish the foregoing purposes; and to act fully thereon. By request of the Board of Selectmen.

Two-thirds vote required.

FINANCE COMMITTEE RECOMMENDS

ROLL CALL VOTES:

Finance Committee:

To accept and adopt:

Yeas:

Nays:

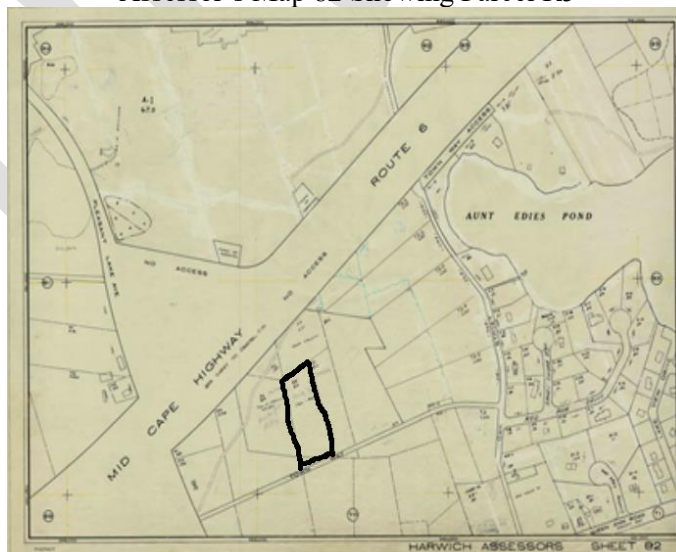
Board of Selectmen:

To accept and adopt:

Yeas:

Nays:

Assessor's Map 82 Showing Parcel R5



DRAFT

Board of Selectmen:

To accept and adopt:

Yeas:

Nays:

(Date)

By virtue of this Warrant I have this day notified and warned the inhabitants of the Town of Harwich, qualified to vote in elections and town affairs, to meet in the Community Center Gymnasium, 100 Oak Street in said Town on Monday, October 18, 2021 at the time and place for the purpose herein named by posting up attested copies thereon in the four (4) Post Office buildings and in Town Hall in the Town of Harwich, which covers all four precincts, at least fourteen (14) days before the time of said meeting as within directed, and causing an attested copy thereof to be published in the Cape Cod Chronicle published in Barnstable County and having its circulation in the Town of Harwich.

Constable



HARWICH FIRE DEPARTMENT

MEMORANDUM

David J. LeBlanc, **Chief of Department**
Craig W. Thornton, **Deputy Fire Chief**

Date	August 24, 2021
To:	Joseph Powers, Town Administrator
From:	David LeBlanc, Fire Chief
Subject:	Ambulance Replacement

We have been advised by Specialty Vehicles that the lead time for Ford F550 Chassis has pushed ambulance construction out to almost a year.

Currently we have an ambulance scheduled to be replaced in the Spring Annual Town Meeting. The impact of this delay in construction would be an almost 10 month delay in replacing the ambulance. This delay would add mileage to the current first due ambulances in each station, that would normally be moved into a reserve status after two years. Additionally the current cost adjustment per quarter is \$2000, meaning the ambulance would cost \$4,000 more in the spring.

We would like place an article in the Special Town Meeting to purchase this replacement ambulance. By moving the purchase to the fall, with the anticipated delay, we would be on schedule with this replacement vehicle.

The price for a Fall Town Meeting would be \$378,676.00.

HARWICH TOWN ROADS DOUBLE POLE LIST

Location	Pole #
Across from 202 Queen Anne Rd	67/54
Power Lines on Queen Anne Rd	67/13
Main / South Westgate Rd	42/???
182 Main Street	42/7
Main St/ Denwich Rd	697/1
211 Sisson Rd	No #
145 Sisson Rd	37/513
Sisson Rd / Harold St	37/488
South St / Elementary School	28/8
South St / Sisson Rd	28/21
South St / Miles St	28/62
Forest St / Golf Course	53/33
Forest St / Golf Course	53/26
Forest St / Main St	53/1
Parallel St / South St	29/1
2 Parallel St	29/2
25 Parallel St	29/6
58 Parallel St	29/13
Parallel St / Winstead Inn	37/543
Main St / Lonesome Way	27/1
Main St / Memory Ln	38/1
Main St / Fairview Ave	38/6
Main St / Lothrop Ave	38/17
Main St / Power Lines	38/19
Main St Power Lines	38/20
231 Lothrop Ave	5
Lothrop Ave Water Tower	6
Lothrop Ave	21
Lothrop Ave	22
130 Gilbert Ln	107/8 1/2
175 Gilbert Ln	2VC
Cross St / Miles St	15/13
Oak / Old Colony Way	10/5
Oak / Old Colony Way	10/7
11 Mocking Bird Ln	296/1
3 Mocking Bird Ln	296/2
708 Queen Anne Rd	67/126
Queen Anne Rd / Oak St	67/10
Queen Anne Rd / Cranhaven Cr	67/100
376 Queen Anne Rd	67/80

148 Route 124	24/29
Route 124 North of Jenkins Bogs	24/73
417 Route 124	24/85
Route 124 / Sequattom Rd	24/94
474 Route 124	24/97
482 Route 124	24/98
490 Route 124	24/99
494 Route 124	24/100
Route 124 / Punkhorn Rd	24/101
510 Route 124	24/103
512 Route 124	24/104
518 Route 124	24/105
522 Route 124	24/106
532 Route 124	24/110
Route 124 / Bike Crossing	24/111
547 Route 124	24/112
Route 124 / Prince Charles	24/114
567 Route 124	24/117
567 Route 124	24/117S
Route 124 / Hinckley's Pond	24/118
581 Route 124	24/121
Route 124 / Brewster Town Line	24/123
9 Keldan Way	519/2
Cahoon Rd at the Beach	132/2
Long Pond Drive / Fontaine Medical Center	186/62
Long Pond Drive / Kettle Pond Dr	186/26S
Route 137 / Field House Ln	66/51 1/2
Route 137 / Mary Beth Ln	No #
Route 137 / Sherwood Dr	66/32
14 Harden Ln	181/2
49 Christopher Way	512/12
27 Kendrick Rd	4/173
35 Kendrick Rd	4/174
44 Kendrick Rd	4/175
44 Kendrick Rd	4/175S
29 Bay Rd	76/46
6 Bay Rd	76/49
290 Pleasant Bay Rd	5/17
259 Pleasant Bay Rd	5/22
21 Pleasant Bay Rd	5/58
13 Elm Dr	531/3
184 Depot Rd	24
88 Uncle Venies Rd	20
Old County Rd	74/8
101 Neel Rd	60/2

179 Gorham Rd	12/41
Gorham Rd / Leslie Ln	12/5
37 Cornerwood Dr	7/T
8 Howard Rd	298/3
41 Chatham Rd	37/57
83 Chatham Rd	37/181
Chatham Rd / Mowhawk Ln	37/627
1770 Route 39	3/36S
Route 39 / Randolph Ln	26
Route 39 / Lily Ln	106/12
Route 39 / Bascom Hollow	106/13
Route 39 / Bucks Pond Rd	4/65
1057 Route 39	No #
779 Route 39	37/560
45 Bank St	4
26 Bank St	83/9
Union St / Central Ave	40/1
9 Union St	40/2
7 Edgewood Rd	19/5
35 Wah Wah Taysee Rd	6
25 Patrica Ln	252/9
25 Gray Neck Rd	26/13
Grey Neck Rd / Shore Rd	77/1
18 Damon Rd	196/4
Riverside Dr / Harbor Way	18/1
Riverside Dr / Herring Run	44/21
145 Riverside Dr	44/6
Belmont Rd / Lower County Rd	49/2 1/2
Division St / Lower County Rd	49/1
11 Division St	94/23
19 Division St	94/22
91 Division St	94/6
62 Kelley St	92/13
35 Elinor Ln	198/2
6 Chase St	47/27
49 Chase St	47/18
89 Pleasant Rd	89/5
88 Pleasant Rd	89/6
56 Pleasant Rd	93/11S
18 Archibald Cr	155/6
Lower County Rd / Wyndymere Dr	49/77
423 Lower County Rd	49/75
400 Lower County Rd	49/71
400 Lower County Rd	49/70
Lower County Rd / Kildee Rd	49/69

360 Lower County Rd	49/63
Brooks Rd / Lower County Rd	68/11
298 Lower County Rd	49/52S
Victory Ln / Lower County Rd	49/49
Hudson Ln / Lower Count Rd	49/34
Pleasant Rd / Lower County Rd	49/32
Chase Rd / Lower County Rd	49/19
Herring River / Lower County Rd	49/18
131 Depot Rd West	23
81 Bells Neck Rd	87/17
501 Depot St	43/8
Depot St / Deerfield Rd	43/13

COMMUNITY CENTER FACILITIES COMMITTEE

The Community Center Facilities Committee is made up of five members appointed for three – year staggered terms, one from the Council on Aging, one from the Youth and Recreation Commission and three at large charged to:

- (1) Establish communications with the Council on Aging, the Recreation and Youth Commission and other community groups and organizations to determine the potential demand for use of the Community Center.
- (2) Develop, implement, and oversee policies and procedures for the use of shared areas of the Community Center and for the general operation of the buildings and grounds, including, but not limited to, procedures for providing balances access to various shared areas; distribution of information as needed to community groups and citizens with respect to those policies; development of procedures for dispute resolution. Adoption of any such policies, including additions or amendments to existing policies, shall be subject to the prior approval of the Board of Selectmen.
- (3) Develop and submit to the Town Administrator, in accordance with established practice, an annual budget for the maintenance and operation of the facility.
- (4) Undertake such other responsibilities relative to the use and maintenance of the facility as the Board of Selectmen may from time to time direct or charge. 18
- (5) Periodically update the Board of Selectmen as to status of its operations and current or potential problems.
- (6) Meet no less than once per month and maintain minutes of all meetings and file copies of those minutes in a timely fashion with the Town Clerk and the Board of Selectmen.
- (7) No later than December 31st of each year, submit to the Board of Selectmen an annual report suitable for inclusion in the Town Report.
- (8) Observe the requirements of the Open Meeting Law, the Charter of the Town of Harwich, and Roberts Rules of Order in the conducts of its business.
- (9) Refrain from entering into any negotiations, contracts or other discussions or activities which might be perceived as a commitment of an obligation on the part of the Town without prior consultation with and an affirmative vote of the Board of Selectmen.

**HARWICH COMMUNITY CENTER
FACILITIES COMMITTEE AGENDA**

March 13, 2020

10:00 AM

**Harwich Community Center
100 Oak Street, Harwich MA 02645**

1. Call meeting to Order
2. Approve minutes from January 10,2020 meeting
3. Report from COA

Report from Recreation
4. Old Business
Birthday Party
Gym Blowers – Sean Libby
5. Budget
Saturday Selectmen Budget meeting March 7, 2020
6. New Business
Requests
Reorganization of Facilities Committee
Selectmen Liaison – Don Howell

Director's Update
Room Reservations for next fiscal year – length of use
Egg Hunt April 10th
7. Other
8. Next meeting April 10, 2020 at 10:00 AM

Authorized posting officer:

Posted by: _____

Town Clerk

Signature

Date: _____

Agendas

- CANCELLED Community Center Facilities Committee Meeting 03/13/2020
March 13, 2020 - 10:00am
- CANCELLED Community Center Facilities Committee Meeting 02/14/2020
February 14, 2020 - 10:00am
- Community Center Facilities Committee Meeting 01/10/2019
January 10, 2020 - 10:00am
- Community Center Facilities Committee Meeting 12/13/2019
December 13, 2019 - 10:00am

FACILITIES COMMITTEE MINUTES

December 13, 2019

10:00 AM

Harwich Community Center

100 Oak Street, Harwich MA 02645

Members present: Brian Power, Ralph Smith, Angie Chilaka

Also present: Carolyn Carey (*Community Center Director*)

1. The meeting was called to order at 10:09 AM
2. Angie Chilaka made a motion to approve the Facilities Committee meeting minutes from the November 8th, 2019 meeting. The motion was seconded by Ralph Smith. Motion passed unanimously.
3. **Department Reports**

No report from the COA

No report from the Rec Department due to Lee Culver being absent.
4. **Old Business** – *Nothing to report under Old Business*
5. **Budget**
 - A. The Committee reviewed the Community Center's Budget, which is down 1.94% from last year. Ms. Carey has a meeting later today (Dec 13, 2019) at 3PM to discuss the budget with the acting Town Administrator. She will report back about this at the next Facilities Committee meeting.
6. **New Business**
There were three new requests.
 - A. **Request One:** Sheila House made a request to pay \$75 for two community members to get a Winter Weight Room membership (winter memberships are usually \$100). The family in question needs financial assistance, and this is something they could benefit from.
 - i. The Committee discussed it, and saw value in extending this opportunity to the members. A vote was made and the request was approved.
 - B. **Request Two:** Carol Ann of Ashley's Music would like to teach a music class at the Community Center for two days a week. She filled out her application and sent a letter to the Committee.
 - i. The Committee asked that Ms. Carey follow up with Ashley's Music and find out what the cost of the class would be, as it is important that classes be kept at a reasonable rate for members of the community to afford.
 - C. **Request Three:** Don MacAskill asked about a brick he had purchased that is not in the walkway yet. Angie Chilaka agreed to reach out to the person making bricks and check on when it would be available.

7. Director's Update

- A. **Mitten Tree:** All of the mittens on the tree have been taken. The Community Center is in the process of wrapping all the gifts. There were over 45 kids this year, and the Center received great support from the community, unions, and individual groups (such as the Harwich Cranberry Festival).
- B. **After Prom:** Ms. Carey reported that the After Prom Committee was under the impression that they weren't welcome to use the Community Center building for their event. The reality is that Ms. Carey was previously informed by the After Prom Committee that they would be holding their next party at the Chatham Cultural Center. When the Prom Committee later reached out to Ms. Carey about having their party at the Harwich Community Center instead, the Center is unfortunately already booked up for the year.
- C. **Cape Cod Cares for Our Troops:** The Center sent out four boxes of donations collected from the community for this year's *Support the Troops* donation drive.
- D. **Cole's Socks for Smiles:** This collection drive was a huge success. The Community Center has finished collecting socks, and all donations have been delivered to all participating hospitals.
- E. **Lights:** The Harwich Cultural Center is all lit up for the holiday season, and on Dec 18th, from 4:20pm-9pm, the Cultural Center will be outside collecting donations for Family Pantry. Ms. Carey reported that they will be in touch with radio stations and schools to advertise this program.

8. Other

- A. Ralph Smith asked about the make-up of the Committee, and how at the last few meetings, there have only been a few members present. He expressed his concern about the attendance rate for future Facilities Committee meetings.
- B. Angie Chilaka asked that Ms. Carey look into if Harwich's senior population are in need of anything, and that perhaps a program can be set up where seniors can submit requests and people can donate to those requests (similar to the Center's Mitten Tree drive). Ms. Carey will follow up with Emily Mitchell (The COA Director), and will report back at the next Facilities Committee meeting.

9. The meeting adjourned at 10:46AM.

10. The next meeting is January 10, 2020 at 10:00AM

CONTRACTS

OFFICE OF THE TOWN ADMINISTRATOR

Phone (508) 430-7513

Fax (508) 432-5039



Joseph F. Powers, Town Administrator
Meggan M. Eldredge, Assistant Town Administrator

732 MAIN STREET, HARWICH, MA

MEMO

TO: Joseph F. Powers, Town Administrator
FROM: Meggan Eldredge, Assistant Town Administrator *ME*
RE: Playground equipment for the Community Playground behind the Elementary School
DATE: September 7, 2021

This memorandum corresponds to *Contracts Agenda Items A and B:*

Discussion and possible vote to execute a contract with New England Recreations Group for the purchase of playground equipment for the Community Playground behind the Elementary School in the amount of \$71,217.00.

Discussion and possible vote to execute a contract with Childscapes for the purchase of playground equipment for the Community Playground behind the Elementary School in the amount of \$123,220.41.

Annual Town meeting 2021 Article #37 appropriated \$500,000.00 for the installation of a new playground behind the Elementary School. The Monomoy Regional School has raised funds in the amount of \$82,519.51, all of which has been gifted to the Town of Harwich for the purpose of supplementing the CPC funding. In addition to the cost of the design and construction, the project also must fund the equipment that is to be installed. Quotes for playground equipment have been procured from three vendors: Childscapes, New England Rgreation Group and Park Street Playgrounds, LLC. Each of these vendors will provide different pieces of equipment to make up the entire playground structure.

The total cost of equipment, engineering and installation will not exceed the available funding. Playground equipment is listed on the State Bid list and it is acceptable to purchase from this list without soliciting quotes, as the prices and contracts are controlled and reviewed by the State.

Due to long manufacturing times and delays in shipping, the equipment is expected to take approximately 12 weeks to be delivered. The final step in the construction of the playground requires a rubber "poured in place" groundcover. The groundcover must be installed when ambient temperatures do not drop below 48°F for a period of 48 hours. Because of the long lead time and the temperature requirement, construction of the playground is expected to begin in the spring of 2022.

I recommend the Board's approval and execution of these contracts.

PROCUREMENT CHECKLIST & APPROVAL FORM

STAFF LEAD: Meggan Eldredge DEPARTMENT: Administration

FUNDING SOURCE: 2021 ATM Article #37

Appropriated amount: \$500,000.00 Estimated cost: _____ Actual cost: _____

PROCUREMENT METHOD:

30 B Supplies and Services State Contract FAC 104

PURCHASE DESCRIPTION:

Purchase descriptions should contain the following components (see document on purchase descriptions):
Description of supplies or services required; quantities required; schedule for performance and delivery terms.

Playground equipment from New England Recreation Group Total cost is \$71,217.00 including shipping.
Equipment includes:
custom GFRC Nautical Themed Playground: \$66,650.00
FAC 104 discount: -\$3,333.00
Freight: \$7900.

80271292/620037

PROCUREMENT MAY PROCEED ONLY IF SIGNATURES PROVIDED BELOW

Funds Available: Finance Director: Carol Coppola Account # _____
DocuSigned by: 48C32039D33D434...

Approved to proceed: Town Administrator or Designee: _____

AGREEMENT FOR TOWN OF HARWICH

The following provisions shall constitute an Agreement between the Town of Harwich, acting by and through its Board of Selectmen, hereinafter referred to as "Town," and New England Recreation Group with an address of PO Box 1503, Westboro, MA 01581 hereinafter referred to as "Contractor", effective as of the 31st day of August 2021. In consideration of the mutual covenants contained herein, the parties agree as follows:

ARTICLE 1: SCOPE OF WORK:

The Contractor shall perform all work and furnish all services necessary to provide the Town with playground equipment outlined in Attachment A.

ARTICLE 2: TIME OF PERFORMANCE:

The Contractor shall complete all work and services required hereunder commencing September 1, 2021 through June 30, 2022.

ARTICLE 3: COMPENSATION:

The Town shall pay the Contractor for the performance of the work and equipment outlined in Article 1 above the contract sum of \$71,217.00 The Contractor shall submit monthly invoices to the Town for services rendered, which will be due 30 days following receipt by the Town.

ARTICLE 4: CONTRACT DOCUMENTS:

The following documents form the Contract and all are as fully a part of the Contract as if attached to this Agreement or repeated herein:

1. This Agreement.
2. Amendments, or other changes mutually agreed upon between the parties.
3. All attachments to the Agreement.

In the event of conflicting provisions, those provisions most favorable to the Town shall govern.

ARTICLE 5: CONTRACT TERMINATION:

The Town may suspend or terminate this Agreement by providing the Contractor with ten (10) days written notice for the reasons outlined as follows:

1. Failure of the Contractor, for any reason, to fulfill in a timely and proper manner its obligations under this Agreement.
2. Violation of any of the provisions of this Agreement by the Contractor.
3. A determination by the Town that the Contractor has engaged in fraud, waste, mismanagement, misuse of funds, or criminal activity with any funds provided by this Agreement.

Either party may terminate this Agreement at any time for convenience by providing the other party written notice specifying therein the termination date which shall be no sooner than thirty (30) days from the issuance of said notice. Upon receipt of a notice of termination from the Town, the Contractor shall cease to incur additional expenses in connection with the Agreement. Upon such termination, the Contractor shall be entitled to compensation for all satisfactory work completed prior to the termination date as determined by the Town. Such payment shall not exceed the fair value of the services provided hereunder.

ARTICLE 6: INDEMNIFICATION:

The Contractor shall defend, indemnify and hold harmless the Town and its officers, agents, and all employees from and against claims arising directly or indirectly from the contract. Contractor shall be solely responsible for all local taxes or contributions imposed or required under the Social Security, Workers' Compensation, and income tax laws. Further, the Contractor

shall defend, indemnify and hold harmless the Town with respect to any damages, expenses, or claims arising from or in connection with any of the work performed or to be performed under this Agreement. This shall not be construed as a limitation of the Contractor's liability under the Agreement or as otherwise provided by law.

ARTICLE 7: AVAILABILITY OF FUNDS:

The compensation provided by this Agreement is subject to the availability and appropriation of funds.

ARTICLE 8: APPLICABLE LAW:

The Contractor agrees to comply with all applicable local, state and federal laws, regulations and orders relating to the completion of this Agreement. This Agreement shall be governed by and construed in accordance with the law of the Commonwealth of Massachusetts.

ARTICLE 9: ASSIGNMENT:

The Contractor shall not make any assignment of this Agreement without the prior written approval of the Town.

ARTICLE 10: AMENDMENTS:

All amendments or any changes to the provisions specified in this Contract can only occur when mutually agreed upon by the Town and Contractor. Further, such amendments or changes shall be in writing and signed by officials with authority to bind the Town. No amendment or change to the contract provisions shall be made until after the written execution of the amendment or change to the Contract by both parties.

ARTICLE 11: INDEPENDENT CONTRACTOR:

The Contractor acknowledges and agrees that it is acting as an independent contractor for all work and services rendered pursuant to this Agreement and shall not be considered an employee or agent of the Town for any purpose.

ARTICLE 12: INSURANCE:

The Contractor shall be responsible to the Town or any third party for any property damage or bodily injury caused by it, any of its subcontractors, employees or agents in the performance of, or as a result of, the work under this Agreement. The Contractor and any subcontractors used hereby certify that they are insured for workers' compensation, property damage, personal and product liability. The Contractor and any subcontractor it uses shall purchase, furnish copies of, and maintain in full force and effect insurance policies in the amounts here indicated.

- 1) General Liability of at least \$1,000,000 Occurrence/\$3,000,000 General Aggregate. The Municipality should be named as an "Additional Insured". Products and Completed Operations should be maintained for up to 3 years after the completion of the project.
- 2) Automobile Liability (applicable for any contractor who has an automobile operating exposure) of at least \$1,000,000 Bodily Injury and Property Damage per accident. The Municipality should be named as an "Additional Insured".
- 3) Workers' Compensation Insurance as required by law. Include Employers Liability Part B with a limit of \$1,000,000
- 4) Builders' Risk Property Coverage for the full insurable value. It should include "All Risk" insurance for physical loss or damage including theft.
- 5) Property Coverage for materials and services being transported by the contractor, as the Town's Property Contract provides coverage for personal property within 1000 feet of the premises.
- 6) Umbrella Liability of at least \$2,000,000/ occurrence, \$2,000,000/aggregate. The Municipality should be named as an Additional Insured.
- 7) Architects and Engineers Professional Liability (applicable for any architects or engineers involved in the project) of at least \$1,000,000/occurrence, \$3,000,000 aggregate.

Prior to commencement of any work under this Agreement, the Contractor shall provide the Town with Certificates of Insurance which include the Town as an additional named insured and which include a thirty day notice of cancellation to the Town.

ARTICLE 13: SEVERABILITY:

If any term or condition of this Agreement or any application thereof shall to any extent be held invalid, illegal or unenforceable by the court of competent jurisdiction, the validity, legality, and enforceability of the remaining terms and conditions of this Agreement shall not be deemed affected thereby unless one or both parties would be substantially or materially prejudiced.

ARTICLE 14: ENTIRE AGREEMENT:

This Agreement, including all documents incorporated herein by reference, constitutes the entire integrated agreement between the parties with respect to the matters described. This Agreement supersedes all prior agreements, negotiations and representations, either written or oral, and it shall not be modified or amended except by a written document executed by the parties hereto.

ARTICLE 15: COUNTERPARTS:

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be a counterpart original.

CERTIFICATION AS TO PAYMENT OF STATE TAXES

Pursuant to Chapter 62C of the Massachusetts General Laws, Section 49A(b), I, Mark Gallagher, authorized signatory for the Contractor do hereby certify under the pains and penalties of perjury that said Contractor has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

04-3287739

Social Security Number or
Federal Identification Number

DocuSigned by:

Mark Gallagher

Signature of Individual or
Corporate Name

By:
Corporate Officer
(if applicable)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

CONTRACTOR

TOWN OF HARWICH

By

by its Board of Selectmen Over \$50,000

DocuSigned by:

Mark Gallagher

EDC2142A477C472...

Mark Gallagher Vice President

Printed Name and Title

Approved as to Availability of Funds:

by its Town Administrator Up to \$50,000

DocuSigned by:

Carol Coppola

\$71,217.00

(\$ _____)

Finance Director

Contract Sum

Town Administrator

80271292/62003

7



August 26, 2021

Meggen Eldridge
Assistant Town Administrator
Town Hall
Harwich, MA 02639

Dear Ms. Eldridge

Please find enclosed the following revised Custom GFRC Nautical Themed Playground Proposal from New England Recreation Group for the Harwich Elementary School Project.

- | | |
|---|----------------|
| A. Custom GFRC Nautical Themed Playground # 19-162-5: | \$ 66,650.00 |
| - Includes: | |
| * Custom Fish/Dock Shack Play Structure (48" & 60" decks) | |
| - 5' Slide (color: BLUE) | |
| - ADA Transfer-48" (wood crate & stair custom design) | |
| - Composite wood dock ladder to 5' deck | |
| - GFRC Lobster crate climber to 48" deck | |
| - Corrugated Roof | |
| - Cable core ropes under deck to post | |
| - Weathervane, Lantern, Sign, Wall fish, Life Ring, Seagull | |
| * Custom Pier Post w/ Cable Core Net and Grid Net | |
| * Classic Rock Boulder #CR-011 (6' W x 7' L x 6'6" H) | |
| - includes cable core net from ground to rock | |
| * Custom Shark (42" W x 70" L x 32" H) | |
| * Custom Buoy Steppers (2 ea.-10" W x 16" L x 12" H) | |
| * Nets available in Black or Tan color choice | |
| B. FAC 104 Contract (VC6000181993) Discount: | \$- (3,333.00) |
| C. Freight: Harwich, MA 02645 | \$ 7,900.00 |

TOTAL: \$ 71,217.00 Delivered

P.O. Box 1503
Westboro, MA 01581

P.O. Box 1050
Tolland, CT 06084

800.861.1209
508.393.1963
F 508.393.1927
www.nerecgroup.com
nerg@nerecgroup.com



- Pricing is equipment supply only good for 14 days and may be subject to change due to current Industry raw material and fuel/freight volatility.
- Prices and do NOT include any applicable tax, installation, assembly, safety surfacing, additional equipment/materials not listed or lift gate/machine for receiving & offload by customer.
- Delivery at this time is approximately 10-12 weeks + ARO and may be subject to change without notice due to seasonal volume, transportation and/or supply chain interruptions.
- Custom GFRC Design Orders will require Deposit per Manufacturer- Terms TBD/agreed upon

Should you have any questions, require additional information or Design options please do not hesitate to contact me at 508-393-1963 or mark@nerecgroup.com.

I look forward to the opportunity to assist you with this Project and thank you for your consideration.

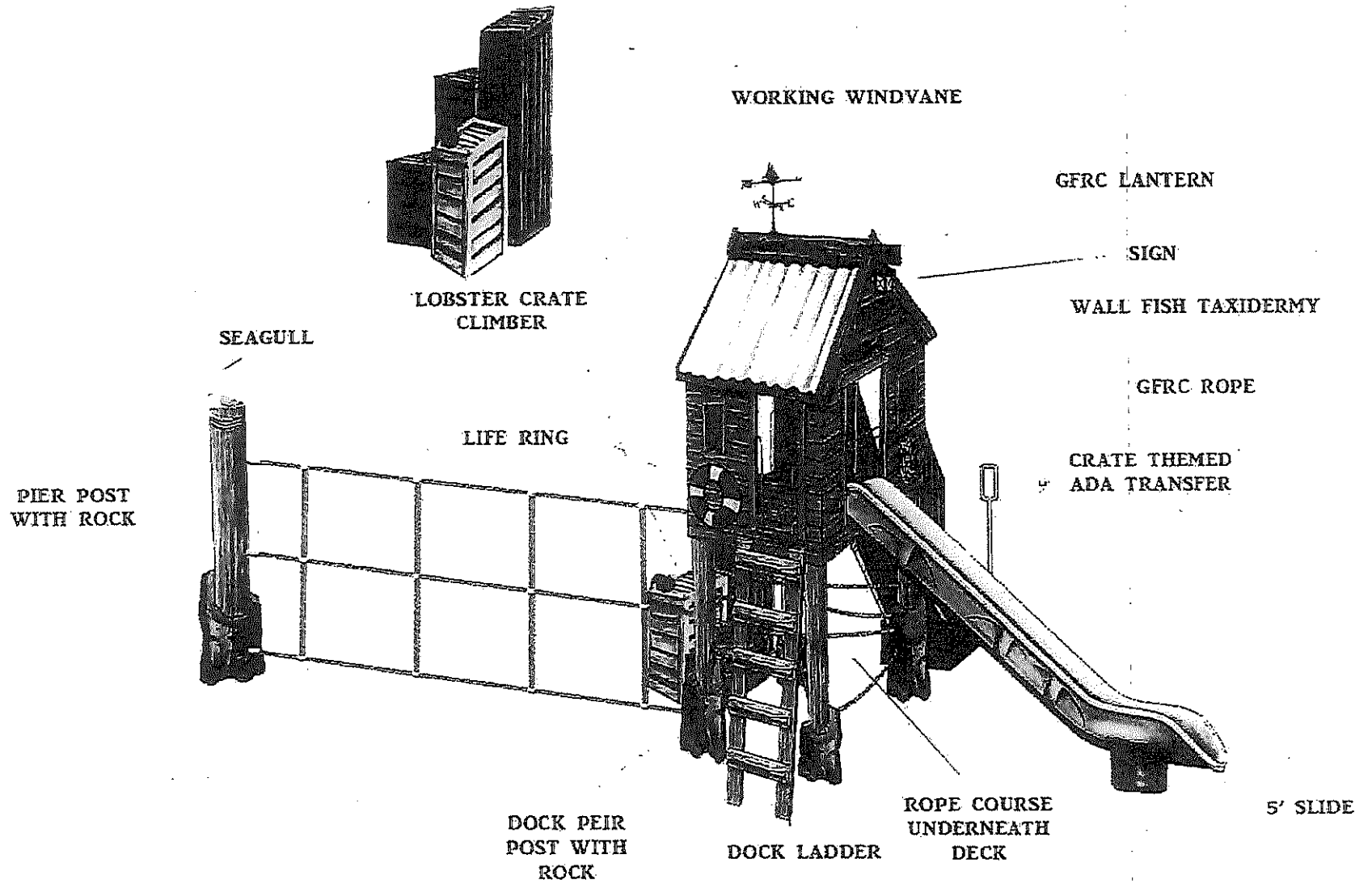
Sincerely yours,

Mark Gallagher
Vice President

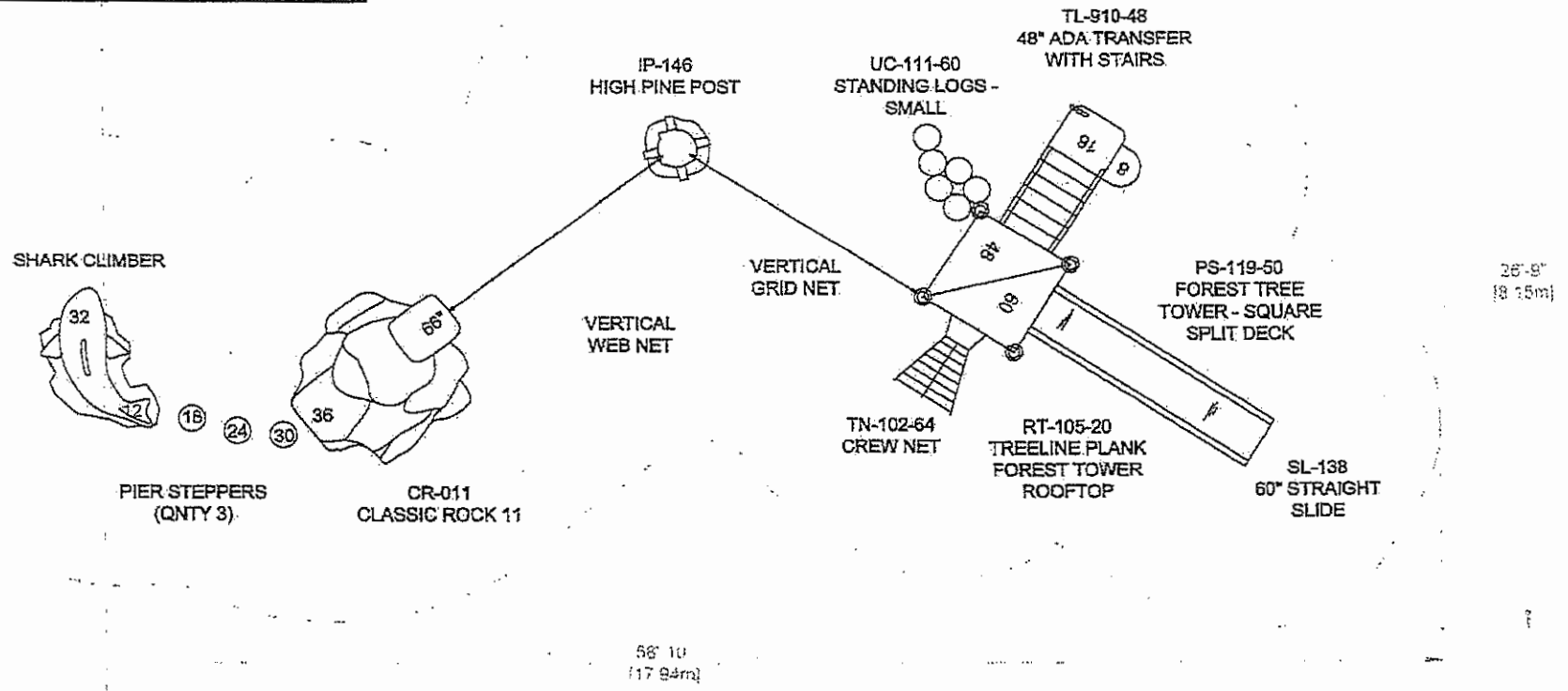
P.O. Box 1503 Westboro,
MA 01581

P.O. Box 1050
Tolland, CT 06084

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508.393.1963
F 508.393.1927
www.nerecgroup.com
nereg@nerecgroup.com



**THEMED CONCEPTS
REP FIRM NERG
HARWICH ELE
6-21**



PINE - CONSULTANT

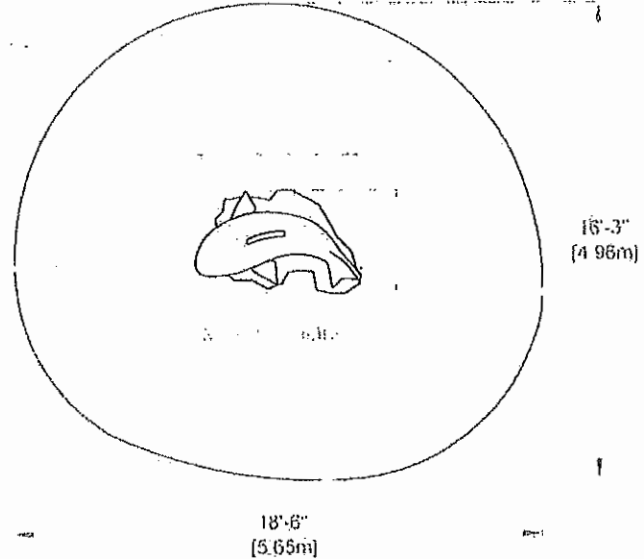
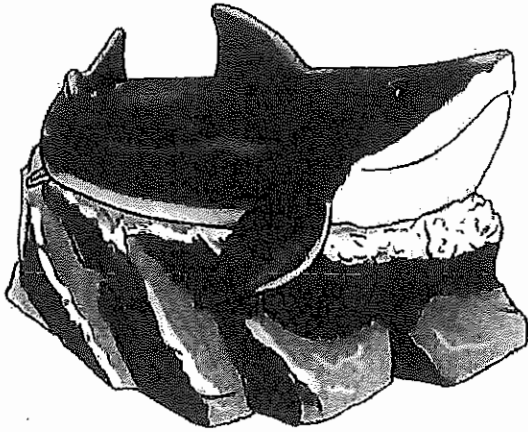
*Due to the custom nature of the product, all dimensions are approximate. Actual sizes may differ slightly.

Cthemed

Setting the standard in custom environments since 1971.

U-Climb CUSTOM
Shark Climber

Shark Climber



ThemeCrate® Specifications

Themecrete® formula is a mixture with a Glass Fiber Reinforced Concrete (GFRC) base. GFRC is a cement/aggregate slurry reinforced throughout with chopped glass fibers. Cement used is Type 1 Portland cement meeting the requirement of the ASTM C 150, Sand used is washed silica sand passing a U.S. No.20 sieve, and conforming to ASTM C 144. Glass Fibers used are alkali-resistant (AR) fiber specifically designed for use in concrete and chopped to 1"-2" lengths. Thickness of the cast and built up surfaces and panels shall be a minimum of 5/8" and up, depending on the face configuration.

Backup Material

Shall be galvanized steel "diamond lathe", tied in place with annealed steel wire and reinforced with #3 or #4 steel reinforcing rods. Minimum physical properties shall be: 1500 pounds per square inch for tension and 5000 pounds per square inch for compression.

Cement Plaster Specifications

Embossing Mortar and Cement Plaster is site mixed cement/aggregate meeting the same criteria as GFRC, but omitting the glass fibers; for filling the irregular voids between mold cast panels and/or special themed features.

Coloring Agents

All rockwork and colored paving construction shall be colored integrally and/or colored with dust on color hardeners or acid stain surface coloring or concrete water based stain.

1. Integral Color: Shall be "Chromix", as manufactured by L.M. Scofield Co; Los Angeles, CA or equal.
 2. Dust: on color hardeners shall be "Lithochrome" Color Hardener by L.M. Scofield Co, Los Angeles, CA or equal.
 3. Acid Stain: Shall be "Lithochrome" acid base stains as manufactured by L.M. Scofield Co.; Los Angeles, CA
 4. Modified exterior latex paints: As needed for final color highlighting equal to Sherwin Williams outdoor concrete stain.
 5. All other special features: Shall be colored with owner approved materials submitted by specialty Contractor.
- E. Miscellaneous Special Materials: All features created by Specialty Contractor shall have drawings indicating materials to be used and shall be submitted and approved by owner prior to construction.

Description: Shark themed climbing feature

Part No: U-Climb CUST	Weight: 3000lbs	Length: 5'-10"	Use Zone: 18'-6" x 16'-3"
Ages: 2-12	Height: 32"	Width: 3'-6"	Category: U-Climb

Cthemed
CONCEPTS
themedconcepts.com
855-724-3270

PROCUREMENT CHECKLIST & APPROVAL FORM

STAFF LEAD: Meggan Eldredge **DEPARTMENT:** Administration

FUNDING SOURCE: 2021 ATM Article #37

Appropriated amount: \$500,000.00 **Estimated cost:** _____ **Actual cost:** _____

PROCUREMENT METHOD:

30 B Supplies and Services State Contract FAC 104

PURCHASE DESCRIPTION:

Purchase descriptions should contain the following components (see document on purchase descriptions):
Description of supplies or services required; quantities required; schedule for performance and delivery terms.

Playground equipment from Childscapes Total cost is \$123,220.41 including shipping. Equipment includes:
BCI Burke Custom Playground Equipment: \$124,495.03
Shipping: \$6,862.95
FAC discount: -\$8,137.57

80271292/620037

PROCUREMENT MAY PROCEED ONLY IF SIGNATURES PROVIDED BELOW

Funds Available: Finance Director: Carol Coppola Account # _____
DocuSigned by:
48C32039D33D434...

Approved to proceed: Town Administrator or Designee: _____

AGREEMENT FOR TOWN OF HARWICH

The following provisions shall constitute an Agreement between the Town of Harwich, acting by and through its Board of Selectmen, hereinafter referred to as "Town," and Childscapes with an address of 835 Plain Street, Suite 21, Marshfield, MA 02050 hereinafter referred to as "Contractor", effective as of the 31st day of August 2021. In consideration of the mutual covenants contained herein, the parties agree as follows:

ARTICLE 1: SCOPE OF WORK:

The Contractor shall perform all work and furnish all services necessary to provide the Town with playground equipment outlined in Attachment A.

ARTICLE 2: TIME OF PERFORMANCE:

The Contractor shall complete all work and services required hereunder commencing September 1, 2021 through June 30, 2022.

ARTICLE 3: COMPENSATION:

The Town shall pay the Contractor for the performance of the work and equipment outlined in Article 1 above the contract sum of \$123,220.41. The Contractor shall submit monthly invoices to the Town for services rendered, which will be due 30 days following receipt by the Town.

ARTICLE 4: CONTRACT DOCUMENTS:

The following documents form the Contract and all are as fully a part of the Contract as if attached to this Agreement or repeated herein:

1. This Agreement.
2. Amendments, or other changes mutually agreed upon between the parties.
3. All attachments to the Agreement.

In the event of conflicting provisions, those provisions most favorable to the Town shall govern.

ARTICLE 5: CONTRACT TERMINATION:

The Town may suspend or terminate this Agreement by providing the Contractor with ten (10) days written notice for the reasons outlined as follows:

1. Failure of the Contractor, for any reason, to fulfill in a timely and proper manner its obligations under this Agreement.
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ARTICLE 7: AVAILABILITY OF FUNDS:

The compensation provided by this Agreement is subject to the availability and appropriation of funds.

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The Contractor acknowledges and agrees that it is acting as an independent contractor for all work and services rendered pursuant to this Agreement and shall not be considered an employee or agent of the Town for any purpose.

ARTICLE 12: INSURANCE:

The Contractor shall be responsible to the Town or any third party for any property damage or bodily injury caused by it, any of its subcontractors, employees or agents in the performance of, or as a result of, the work under this Agreement. The Contractor and any subcontractors used hereby certify that they are insured for workers' compensation, property damage, personal and product liability. The Contractor and any subcontractor it uses shall purchase, furnish copies of, and maintain in full force and effect insurance policies in the amounts here indicated.

- 1) General Liability of at least \$1,000,000 Occurrence/\$3,000,000 General Aggregate. The Municipality should be named as an "Additional Insured". Products and Completed Operations should be maintained for up to 3 years after the completion of the project.
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- 5) Property Coverage for materials and services being transported by the contractor, as the Town's Property Contract provides coverage for personal property within 1000 feet of the premises.
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Prior to commencement of any work under this Agreement, the Contractor shall provide the Town with Certificates of Insurance which include the Town as an additional named insured and which include a thirty day notice of cancellation to the Town.

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If any term or condition of this Agreement or any application thereof shall to any extent be held invalid, illegal or unenforceable by the court of competent jurisdiction, the validity, legality, and enforceability of the remaining terms and conditions of this Agreement shall not be deemed affected thereby unless one or both parties would be substantially or materially prejudiced.

ARTICLE 14: ENTIRE AGREEMENT:

This Agreement, including all documents incorporated herein by reference, constitutes the entire integrated agreement between the parties with respect to the matters described. This Agreement supersedes all prior agreements, negotiations and representations, either written or oral, and it shall not be modified or amended except by a written document executed by the parties hereto.

ARTICLE 15: COUNTERPARTS:

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be a counterpart original.

CERTIFICATION AS TO PAYMENT OF STATE TAXES

Pursuant to Chapter 62C of the Massachusetts General Laws, Section 49A(b), I, Timothy Pesko, authorized signatory for the Contractor do hereby certify under the pains and penalties of perjury that said Contractor has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

27-2951639
Social Security Number or
Federal Identification Number

DocuSigned by:
Timothy Pesko
Signature of Individual or
Corporate Name

By:
Corporate Officer
(if applicable)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

CONTRACTOR

TOWN OF HARWICH

By

by its Board of Selectmen Over \$50,000

DocuSigned by:
Timothy Pesko
250516047077463...
Timothy Pesko President
Printed Name and Title

Approved as to Availability of Funds:
DocuSigned by:
Carol Coppola \$123,220.41
48C320399930434 (\$ _____)
Finance Director Contract Sum
80271292/620037

by its Town Administrator Up to \$50,000

Town Administrator



835 Plain Street, Suite 21
Marshfield, MA 02050
781-837-6412 Fax: 781-837-9229

8/27/2021
ESTIMATE #
2019-118-6R

MEGGAN ELDREDGE, ASST TA
TOWN OF HARWICH - TOWN HALL
HARWICH, MA 02639

HARWICH ELE SCHOOL
236 SOUTH ST.
HARWICH, MA 02639

Rep	Job Name	Customer Name	Customer Phone	
TP	Harwich Etpl	Nancy White		
Description		Qty	Rate	Total
<p>Childscapes is pleased to provide our proposal for a new BCI Burke playground at the Harwich Elementary School in Harwich, MA.</p> <p>1. Supply BCI Burke Custom Playground Design # 38-136338-6 (attached.) All other equipment supplied by others. 2. Shipping & Handling - Dedicated Truckload Freight to Harwich, MA. 3. FAC104 MA State Contract Discount</p> <p>CURRENT LEAD TIMES - 10-12 Weeks.</p> <p>24 HR B-4 DELIVERY CALL TIM PESKO</p>		1	124,495.03	124,495.03
		1	6,862.95	6,862.95
			-8,137.57	-8,137.57
<p>1. Contractor/Customer is responsible for quantity and color confirmation. 2. Prices are valid for 15 days from date of Estimate and subject to review thereafter. 3. Installation, if quoted, excludes rock/excess debris removal and other unforeseen conditions. 4. Due to the current volatility in the transportation industry, this freight quote is valid for 15 days. Re-quotes will be necessary if ordered after that date.</p>				
Signature _____		Date _____		Subtotal \$123,220.41
Printed Name & Title _____				Sales Tax (0.0%) 50.00
As titled, I am an authorized signer for the above named entity, empowered to execute this contract.				Total \$123,220.41
E-mail	Web Site	Thank you for the opportunity to be of service.		
botsy@childscapes.net	www.childscapes.net			

13

PLAY THAT MOVES YOU

HARWICH ELE. SCHOOL PLAYGROUND



Nancy A White CPSI,
Consultant for Devellis Zrein Inc
Playground Inspections of NE
7.21

**Meggan M. Eldredge, Asst.
Town Administrator
Town Hall - 732 Main Street
Harwich, Massachusetts
(OWNER)**

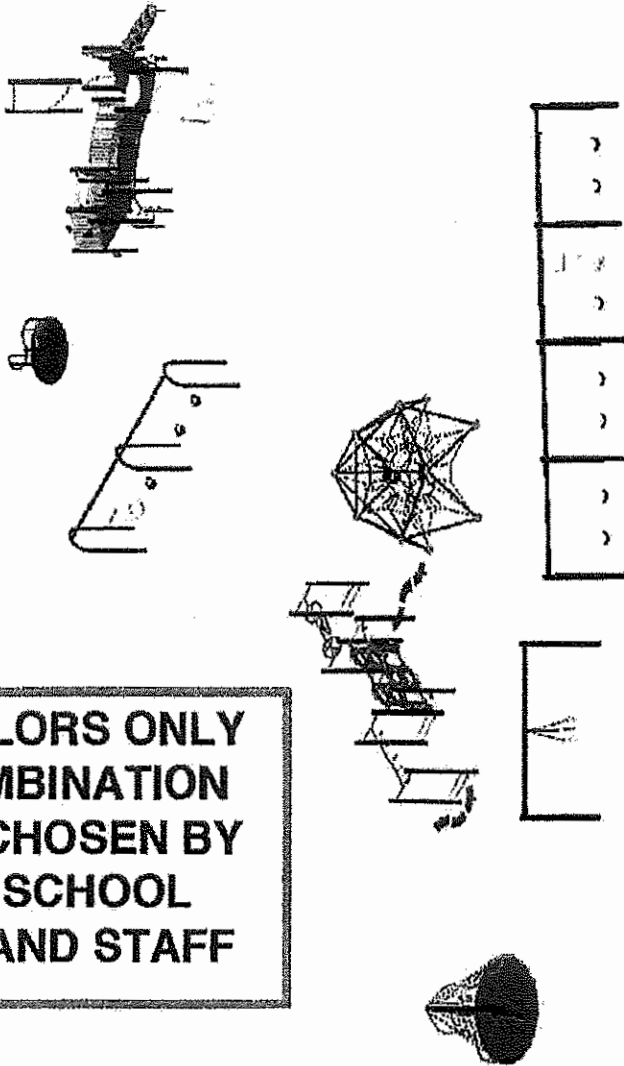
This design was developed with your specific needs in mind, and we look forward to discussing this project further with you to ensure your complete satisfaction. Childscapes is confident that this proposal will satisfy Playground Inspections of N.E.'s functional, environmental, and safety requirements - and most importantly, bring joy and excitement to the children and families directly benefiting from your new playground.

You have our personal commitment to support this project and your organization in every manner possible. We look forward to continuing to develop a long-standing relationship with Playground Inspections of N.E.. We appreciate your consideration and value this opportunity to earn your business.

Sincerely,

Timothy Pesko
Childscapes
835 Plain Street
Marshfield, MA 02050

**FYI- 3D INCLUDES ONLY BURKE EQUIPMENT.
SEE DEVELLIS ZREIN INC.
FULL LAYOUT.**



**SAMPLE COLORS ONLY
COLOR COMBINATION
HAS BEEN CHOSEN BY
HARWICH SCHOOL
PRINCIPAL AND STAFF**

Burke

July 12, 2021

SERIES: Basics, Fitness, Nucleus

Harwich Elementary

Childscapes

ISOMETRIC PLAN

263 South Street

38-136338-5

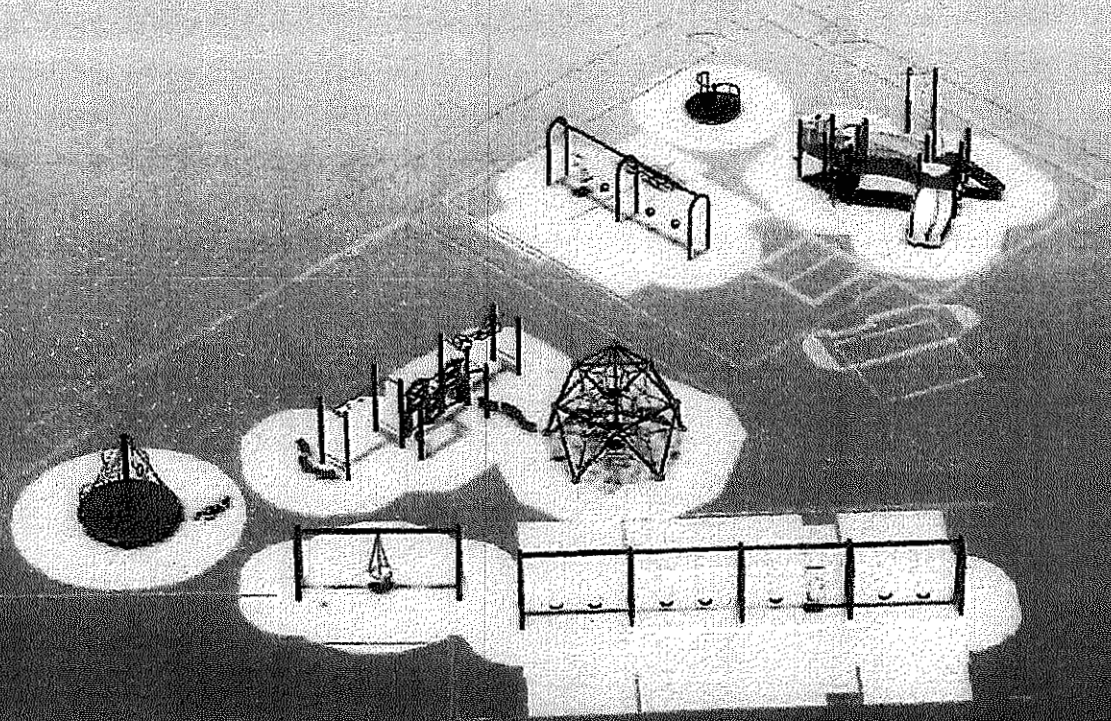
DRAWN BY: John Uelmen

Harwich, MA 02645

Proposal # 38-136338-6

Harwich Elementary Childscapes

Burke



DESIGN SUMMARY

Childscapes is very pleased to present this proposal for consideration for the Harwich Elementary located in Harwich. BCI Burke Company, LLC has been providing recreational playground equipment for over 90 years and has developed the right mix of world-class capabilities to meet the initial and continuing needs of Playground Inspections of N.E.. We believe our proposal will meet or exceed your project's requirements and will deliver the greatest value to you.

The following is a summary of some of the key elements of our proposal:

- Project Name: Harwich Elementary
- Project Number: 38-136338-6
- User Capacity: 151
- Age Groups: Ages 2-5 years, 5-12 years
- Dimensions: 104' 10" x 132' 0"
- Designer Name: John Uelmen

Childscapes has developed a custom playground configuration based on the requirements as they have been presented for the Harwich Elementary playground project. Our custom design will provide a safe and affordable playground environment that is aesthetically pleasing, full of fun for all users and uniquely satisfies your specific requirements. In addition, proposal # 38-136338-6 has been designed with a focus on safety, and is fully compliant with ASTM F1487 and CPSC playground safety standards.

We invite you to review this proposal for the Harwich Elementary playground project and to contact us with any questions that you may have.

Thank you in advance for giving us the opportunity to make this project a success.

BURKE GENERATIONS WARRANTY®

The Longest and Strongest warranty in the industry

BCI Burke Company, LLC ("Burke") warrants that all standard products are warranted to be free from defects in materials and workmanship, under normal use and service, for a period of one (1) year from the date of shipment.

We stand behind our products. In addition, the following products are warranted, under normal use and service from the date of shipment as follows:

- One Hundred (100) Year Limited Warranty on aluminum and steel upright posts (including Intensity®, Synergy™, Nucleus®, Voltage®, Little Buddies®, ELEVATE®, ACTIVATE®, INVIGORATE™) against structural failure due to corrosion, deterioration or workmanship.
- One Hundred (100) Year Limited Warranty on KoroConnect® clamps against structural failure due to corrosion, deterioration or workmanship.
- One Hundred (100) Year Limited Warranty on Hardware (nuts, bolts, washers)
- One Hundred (100) Year Limited Warranty on bolt-through fastening and clamp systems (Synergy™, Intensity®, Nucleus®, Voltage®, Little Buddies®, ELEVATE®).
- Twenty-five (25) Year Limited Warranty on spring assemblies and aluminum cast animals.
- Fifteen (15) Year Limited Warranty on structure platforms and decks, metal roofs, table tops, bench tops, railings and barriers against structural failure due to materials or workmanship.
- Fifteen (15) Year Limited Warranty on all plastic components including StoneBorders against structural failure due to materials or workmanship.
- Ten (10) Year Limited Warranty on ShadePlay Canopies fabric, threads, and cables against degradation, cracking or material breakdown resulting from ultra-violet exposure, natural deterioration or manufacturing defects. This warranty is limited to the design loads as stated in the specifications.
- Ten (10) Year Limited Warranty on NaturePlay® Boulders and GFRC products against structural failure due to natural deterioration or workmanship. Natural wear, which may occur with any concrete product with age, is excluded from this warranty.
- Ten (10) Year Limited Warranty on Full Color Custom Signage against manufacturing defects that cause delamination or degradation of the sign. Full Color Custom Signs also carry a two (2) year warranty against premature fading of the print and graphics on the signs.
- Five (5) Year Limited Warranty on Intensity® and RopeVenture® cables and LEVEL X® flex bridge against premature wear due to natural deterioration or manufacturing defects. Determination of premature wear will be at the manufacturer's discretion.
- Five (5) Year Limited Warranty on moving parts, including swing components, against structural failure due to materials or workmanship.
- Five (5) Year Limited Warranty on PlayEnsemble® cables and raillets against defects in materials and workmanship.
- Three (3) Year Limited Warranty on electronic panel speakers, sound chips and circuit boards against electronic failure caused by manufacturing defects.

The warranty stated above is void only if the equipment is erected in conformity with the layout plan and/or installation instructions furnished by BCI Burke Company, LLC using approved parts; have been maintained and inspected in accordance with BCI Burke Company, LLC instructions. Burke's liability and your exclusive remedy hereunder will be limited to repair or replacement of those parts found in Burke's reasonable judgment to be defective. Any claim made within the above stated warranty periods must be made promptly after discovery of the defect. A part is covered only for the original warranty period of the applicable part. Replacement parts carry the applicable warranty from the date of shipment of the replacement from Burke. After the expiration of the warranty period, you must pay for all parts, transportation and service charges.

Burke reserves the right to accept or reject any claim in whole or in part. Burke will not accept the return of any product without its prior written approval. Burke will assume transportation charges for shipment of the returned product if it is returned in strict compliance with Burke's written instructions.

THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ANY OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IF THE FOREGOING DISCLAIMER OF ADDITIONAL WARRANTIES IS NOT GIVEN FULL FORCE AND EFFECT, ANY RESULTING ADDITIONAL WARRANTY SHALL BE LIMITED IN DURATION TO THE EXPRESS WARRANTIES AND BE OTHERWISE SUBJECT TO AND LIMITED BY THE TERMS OF BURKE'S PRODUCT WARRANTY. SOME STATES DO NOT ALLOW THE EXCLUSION OF CERTAIN IMPLIED WARRANTIES, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

Warranty Exclusions: The above stated warranties do not cover "cosmetic" defects, such as scratches, dents, marking, or fading; damage due to incorrect installation, vandalism, misuse, accident, wear and tear from normal use, exposure to extreme weather, immersion in salt or chlorine water, unauthorized repair or modification, abnormal use, lack of maintenance, or other cause not within Burke's control; and

Limitation of Remedies: Burke is not liable for consequential or incidental damages, including but not limited to labor costs or lost profits resulting from the use of or inability to use the products or from the products being incorporated in or becoming a component of any other product. If, after a reasonable number of repeated efforts, Burke is unable to repair or replace a defective or nonconforming product, Burke shall have the option to accept return of the product, or part thereof, if such does not substantially impair its value, and return the purchase price as the buyer's entire and exclusive remedy. Without limiting the generality of the foregoing, Burke will not be responsible for labor costs involved in the removal of products or the installation of replacement products. Some states do not allow the exclusion of incidental damages, so the above exclusion may not apply to you.

The environment near a saltwater coast can be extremely corrosive. Some corrosion and/or deterioration is considered "normal wear" in this environment. Product installed within 500 yards of a saltwater shoreline will only be covered for half the period of the standard product warranty, up to a maximum of five years, for defects caused by corrosion. Products installed in direct contact with saltwater or that are subjected to salt spray are not covered by the standard warranty for any defects caused by corrosion.

Contact your local Burke Representative for warranty information regarding Burke Turf® and Burke Tile products.

Terms of Sale

Pricing: Prices published in this catalog are in USD, are approximate and do not include shipping & handling, surfacing, installation nor applicable taxes. All prices are subject to change without notice. Contact your Burke representative for current pricing. Payments are to be made in USD.

Weights: Weights are approximate and may vary with actual orders.

Installation: All equipment is shipped unassembled. For a list of factory-certified installers in your area, please contact your Burke representative.

Specifications: Product specifications in this catalog were correct at the time of publication. However, product improvements are ongoing at Burke, and we reserve the right to change or discontinue specifications without notice.

Loss or Damage in Transit: A signed bill of lading is our receipt from a carrier that our shipment to you was complete and in good condition upon arrival. Before you sign, please check the Bill of Lading carefully when the shipment arrives to make sure nothing is missing and there are no damages. Once the shipment leaves our plant, we are no longer responsible for any damage, loss or shortage.

For more information regarding the warranty, call Customer Service at 920-921-9220 or 1-800-356-2070.

01/2021

HARWICH ELEMENTARY SCHOOL PLAYGROUND 2021

BURKE

(CHILDSCAPES)

DECKS Gray

POSTS Navy

1 COLOR PANELS Gray

2 COLOR PANELS Gray over black

POLY SLIDES for 2-5, Granite

POLY ADA SWING SEATS Yellow with granite harness

ANY OTHER POLY granite

5-12 SWINGS Navy

2-5 SWINGS Silver

REV 8 yellow bottom powdercoat rim around decks, navy post and supports

ROPE VENTURE Silver with navy balls

TITAN CHIMES Navy post, silver horizontal

INCLUSIVE ORBIT Silver post navy powdercoat, yellow/black 2 color HDPE

NUVO STEPS, 3 Yellow powdercoat, Gray HDPE and 3 navy and powder coat and Gray HDPE

NUVO STEPS ON STRUCTURE, Yellow powdercoat and gray hdpe

OFFST FABRIC SHADE, Navy Fabric Silver post

DOOR JAM KNOB/RING AND WHEEL OVERHEAD all navy with panel gray

THEMED CONCEPTS- GFRC

(NERG)

BARK FINISH - pine

STONE FINISH granite

POLY blue

SHARK, Per spec

PERCUSSION AND PLAYVENTURES

(PARK STREET PLAYGROUNDS)

STANDARD COLORS

TOWN
ADMINISTRATOR'S
REPORT

PROCUREMENT CHECKLIST & APPROVAL FORM

STAFF LEAD: Meggan Eldredge DEPARTMENT: Administration

FUNDING SOURCE: 2021 ATM Article #37

Appropriated amount: \$500,000.00 Estimated cost: _____ Actual cost: _____

PROCUREMENT METHOD:

30 B Supplies and Services State Contract FAC 104

PURCHASE DESCRIPTION:

Purchase descriptions should contain the following components (see document on purchase descriptions):
Description of supplies or services required; quantities required; schedule for performance and delivery terms.

Playground equipment from Park Street Playgrounds, LLC. Total cost is \$24,084.32 including shipping.
Equipment includes:
Custom Boat shaped accessible sandbox: \$4,170.00
Rainbow trio musical unit: \$4,030.00
Playhouse/clubhouse: \$15,269.00
Fish Shack: \$654.00
FAC 104 discount: -\$1,897.68
Freight: \$1,850.00

80271292/620037

PROCUREMENT MAY PROCEED ONLY IF SIGNATURES PROVIDED BELOW

Funds Available: Finance Director: Carol Coppola Account # _____
DocuSigned by: Carol Coppola
48C32039D33D434...

Approved to proceed: Town Administrator or Designee: _____

AGREEMENT FOR TOWN OF HARWICH

The following provisions shall constitute an Agreement between the Town of Harwich, acting by and through its Board of Selectmen, hereinafter referred to as "Town," and Park Street Playgrounds, LLC with an address of 263 Park Street, North Reading, MA 01864, hereinafter referred to as "Contractor", effective as of the 31st day of August 2021. In consideration of the mutual covenants contained herein, the parties agree as follows:

ARTICLE 1: SCOPE OF WORK:

The Contractor shall perform all work and furnish all services necessary to provide the Town with playground equipment outlined in Attachment A.

ARTICLE 2: TIME OF PERFORMANCE:

The Contractor shall complete all work and services required hereunder commencing September 1, 2021 through June 30, 2022.

ARTICLE 3: COMPENSATION:

The Town shall pay the Contractor for the performance of the work and equipment outlined in Article 1 above the contract sum of \$24,084.32. The Contractor shall submit monthly invoices to the Town for services rendered, which will be due 30 days following receipt by the Town.

ARTICLE 4: CONTRACT DOCUMENTS:

The following documents form the Contract and all are as fully a part of the Contract as if attached to this Agreement or repeated herein:

1. This Agreement.
2. Amendments, or other changes mutually agreed upon between the parties.
3. All attachments to the Agreement.

In the event of conflicting provisions, those provisions most favorable to the Town shall govern.

ARTICLE 5: CONTRACT TERMINATION:

The Town may suspend or terminate this Agreement by providing the Contractor with ten (10) days written notice for the reasons outlined as follows:

1. Failure of the Contractor, for any reason, to fulfill in a timely and proper manner its obligations under this Agreement.
2. Violation of any of the provisions of this Agreement by the Contractor.
3. A determination by the Town that the Contractor has engaged in fraud, waste, mismanagement, misuse of funds, or criminal activity with any funds provided by this Agreement.

Either party may terminate this Agreement at any time for convenience by providing the other party written notice specifying therein the termination date which shall be no sooner than thirty (30) days from the issuance of said notice. Upon receipt of a notice of termination from the Town, the Contractor shall cease to incur additional expenses in connection with the Agreement. Upon such termination, the Contractor shall be entitled to compensation for all satisfactory work completed prior to the termination date as determined by the Town. Such payment shall not exceed the fair value of the services provided hereunder.

ARTICLE 6: INDEMNIFICATION:

The Contractor shall defend, indemnify and hold harmless the Town and its officers, agents, and all employees from and against claims arising directly or indirectly from the contract. Contractor shall be solely responsible for all local taxes or contributions imposed or required under the Social Security, Workers' Compensation, and income tax laws. Further, the Contractor

shall defend, indemnify and hold harmless the Town with respect to any damages, expenses, or claims arising from or in connection with any of the work performed or to be performed under this Agreement. This shall not be construed as a limitation of the Contractor's liability under the Agreement or as otherwise provided by law.

ARTICLE 7: AVAILABILITY OF FUNDS:

The compensation provided by this Agreement is subject to the availability and appropriation of funds.

ARTICLE 8: APPLICABLE LAW:

The Contractor agrees to comply with all applicable local, state and federal laws, regulations and orders relating to the completion of this Agreement. This Agreement shall be governed by and construed in accordance with the law of the Commonwealth of Massachusetts.

ARTICLE 9: ASSIGNMENT:

The Contractor shall not make any assignment of this Agreement without the prior written approval of the Town.

ARTICLE 10: AMENDMENTS:

All amendments or any changes to the provisions specified in this Contract can only occur when mutually agreed upon by the Town and Contractor. Further, such amendments or changes shall be in writing and signed by officials with authority to bind the Town. No amendment or change to the contract provisions shall be made until after the written execution of the amendment or change to the Contract by both parties.

ARTICLE 11: INDEPENDENT CONTRACTOR:

The Contractor acknowledges and agrees that it is acting as an independent contractor for all work and services rendered pursuant to this Agreement and shall not be considered an employee or agent of the Town for any purpose.

ARTICLE 12: INSURANCE:

The Contractor shall be responsible to the Town or any third party for any property damage or bodily injury caused by it, any of its subcontractors, employees or agents in the performance of, or as a result of, the work under this Agreement. The Contractor and any subcontractors used hereby certify that they are insured for workers' compensation, property damage, personal and product liability. The Contractor and any subcontractor it uses shall purchase, furnish copies of, and maintain in full force and effect insurance policies in the amounts here indicated.

- 1) General Liability of at least \$1,000,000 Occurrence/\$3,000,000 General Aggregate. The Municipality should be named as an "Additional Insured". Products and Completed Operations should be maintained for up to 3 years after the completion of the project.
- 2) Automobile Liability (applicable for any contractor who has an automobile operating exposure) of at least \$1,000,000 Bodily Injury and Property Damage per accident. The Municipality should be named as an "Additional Insured".
- 3) Workers' Compensation Insurance as required by law. Include Employers Liability Part B with a limit of \$1,000,000
- 4) Builders' Risk Property Coverage for the full insurable value. It should include "All Risk" insurance for physical loss or damage including theft.
- 5) Property Coverage for materials and services being transported by the contractor, as the Town's Property Contract provides coverage for personal property within 1000 feet of the premises.
- 6) Umbrella Liability of at least \$2,000,000/ occurrence, \$2,000,000/aggregate. The Municipality should be named as an Additional Insured.
- 7) Architects and Engineers Professional Liability (applicable for any architects or engineers involved in the project) of at least \$1,000,000/occurrence, \$3,000,000 aggregate.

Prior to commencement of any work under this Agreement, the Contractor shall provide the Town with Certificates of Insurance which include the Town as an additional named insured and which include a thirty day notice of cancellation to the Town.

ARTICLE 13: SEVERABILITY:

If any term or condition of this Agreement or any application thereof shall to any extent be held invalid, illegal or unenforceable by the court of competent jurisdiction, the validity, legality, and enforceability of the remaining terms and conditions of this Agreement shall not be deemed affected thereby unless one or both parties would be substantially or materially prejudiced.

ARTICLE 14: ENTIRE AGREEMENT:

This Agreement, including all documents incorporated herein by reference, constitutes the entire integrated agreement between the parties with respect to the matters described. This Agreement supersedes all prior agreements, negotiations and representations, either written or oral, and it shall not be modified or amended except by a written document executed by the parties hereto.

ARTICLE 15: COUNTERPARTS:

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be a counterpart original.

CERTIFICATION AS TO PAYMENT OF STATE TAXES

Pursuant to Chapter 62C of the Massachusetts General Laws, Section 49A(b), I, Margie salt, authorized signatory for the Contractor do hereby certify under the pains and penalties of perjury that said Contractor has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

26 4531387

Social Security Number or
Federal Identification Number

DocuSigned by:

Margie Salt

Signature of Individual or
Corporate Name

By:
Corporate Officer
(if applicable)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

CONTRACTOR

By

DocuSigned by:

Margie Salt

A745E4C4D81A479...

Margie Salt Manager

Printed Name and Title

TOWN OF HARWICH

by its Board of Selectmen Over \$50,000

Approved as to Availability of Funds:

DocuSigned by:

Carol Coppola

48C32039D33D434...

Finance Director

\$24,084.32

(\$ _____)
Contract Sum

80271292/620037

by its Town Administrator Up to \$50,000

Town Administrator



Park Street Playgrounds, LLC

263 Park St
 North Reading MA 01864
 978-664-0239 Fax: 978-664-5999
 Msalt@parkstreetplaygrounds.com

Quote Number: 2021-24
 Quote Date: 8/30/2021

Customer:

Town of Harwich Attn Meggan Eldridge
 732 Main Street
 Harwich, MA 02645

Delivery Address:

Tim Pesko: Harwich Elementary
 835 Plain Street Unit 21
 Marshfield, MA 02050

Phone

Delivery Time	PO Number	Tax Exempt ID	Sales Contact
TBA			Margie Salt
Customer Contact	Shipping Method		Payment Terms
Meggan Eldridge Asst TA Nancy White	ASAP		50% Deposit, balance due on delivery

Thank you for giving me the opportunity to provide this proposal for your playground. If you have any questions feel free to contact me.

Quantity	Item #	Description	Unit Price	Price
		17961-2 Custom "Boat" Shaped Accessible Sandbox		\$ 4,170.00
		Rainbow trio- inground mount Rainbow Bongos, Rainbow Metallophone, and Rainbow Chimes		\$4,030.00
		Playhouse/clubhouse 18201 2" x 6" trex deck boards		\$15,269.00
		Harwich Fish Shack Panel		\$645.00
		FAC 104 discount		-\$1,879.68

Sincerely,

Margie Salt

Playground Consultant

Surfacing is not included in the pricing and is required under and around all play equipment.

Sub Total	\$24,114.00
FAC 104 discount	-\$1,879.68
Freight	\$1,850.00
Total Order	\$24,084.32

This quote is valid for 60 days.

Payment Terms and Breakdown

Deposit required to place order, 50 % of total cost
 Balance, due on delivery.....

Terms and Conditions:

- Prices quoted are good for 60 days from the date of this document



PARK STREET PLAYGROUNDS

Park Street Playgrounds, LLC

263 Park St

North Reading MA 01864

978-664-0239 Fax: 978-664-5999

Msalt@parkstreetplaygrounds.com

- Allow 11-13 weeks lead time for equipment delivery
- Contractor/Customer is responsible for quantity confirmation.
- Prices based on quantities listed. Any change to quantities may impact prices quoted.
- Prices are for materials only unless otherwise noted.
- If installation is quoted, it is assumed that the site has been prepared and that any grade slope in any direction does not exceed 2%. In the event that unexpected soil conditions, such as subsurface rock, are encountered during installation, additional costs to the customer will be applicable.
- State and local sales tax will be added to the invoice unless a tax exempt certificate is present with the order and deposit
- Delivery receipt and off-loading of equipment is customer's responsibility.
- Standard manufacturer's design, colors, specifications, and construction apply.
- If ordered, upon receipt inspect entire delivery carefully, noting on delivery receipt ANY damage so a freight claim can be filed if damage is found after opening package.
- The acceptance signature below serves as authorization to order the items quoted and indicates acceptance of the prices listed. All terms are subject to credit approval.
- Upon acceptance of this Quote by Contractor/Customer the contract between the parties shall include the Additional Terms and Conditions attached hereto.

Acceptance of Agreement Signatures _____

Date: _____

Margie Salt
Manager
Park Street Playgrounds LLC
North Reading MA 01864

Contractor/Customer Representative

PO# _____ Printed Name: _____

Amount: \$ _____

Ship to business name _____

Ship to address _____

Contact Name _____ Telephone _____

Bill to business name _____

Bill to address _____

Contact Name _____ Telephone _____

Tax Exempt ID# _____ *Provide ST-2 Mass State Form

PARK STREET PLAYGROUNDS LLC - QUOTE # _____



Park Street Playgrounds, LLC
263 Park St
North Reading MA 01864
978-664-0239 Fax: 978-664-5999
Msalt@parkstreetplaygrounds.com

ADDITIONAL TERMS AND CONDITIONS

1. Independent Contractor; Payment of Taxes and Other Expenses

Park Street Playgrounds, LLC ("PSP") shall be deemed at all times to be an independent contractor and nothing herein contained shall be construed as creating an employment or agency relationship between Contractor/Customer and PSP.

2. Insurance

PSP shall maintain in force, during the full term of this Agreement, Comprehensive General Liability Insurance with limits not less than \$1,000,000.00, for any one person and \$1,000,000.00 Aggregate Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations. Contractor/Customer is responsible for installation and shall maintain all required Workers' Compensation Insurance.

3. Liability of PSP

PSP'S OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PURCHASE PRICE PAID, OR AT PSP'S OPTION, THE REPAIR OR REPLACEMENT OF THE SUBJECT PLAYGROUND EQUIPMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL PSP BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT. ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY EXCLUDED, AND CONTRACTOR/CUSTOMER HEREBY ACKNOWLEDGES THAT THE ONLY WARRANTY REGARDING THE SUBJECT PLAYGROUND EQUIPMENT SHALL BE THE MANUFACTURER'S WARRANTY ATTACHED HERETO AS APPENDIX A.

4. Bankruptcy

In the event that either party shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, then at the option of the other party this Agreement shall terminate and be of no further force and effect, and any property or rights of such other party, tangible or intangible, shall forthwith be returned to it.

5. Non-Waiver of Rights

The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

6. Modification of Agreement

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

7. Entire Agreement

This Agreement sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions.

8. Interest and Costs of Collection

Any amount due to be paid by Contractor/Customer hereunder that remains unpaid after the due date thereof shall bear interest at the rate of 1 1/2% per month, and Contractor/Customer agrees to pay all costs and expenses including but not limited to all attorney's fees paid or incurred by PSP in collecting amounts due hereunder whether or not any suit is instituted.

9. Miscellaneous

This Agreement shall inure to the benefit of and be binding upon the Contractor/Customer and PSP and their respective heirs, administrators, successors and assigns. In case any provision in this Agreement shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

10. Governing Law; Jurisdiction; Waiver of Jury Trial

This Agreement, including the validity hereof and the rights and obligations of the parties hereunder, shall be construed in accordance with and governed by the laws of the Commonwealth of Massachusetts. Contractor/Customer, to the extent that it may lawfully do so, hereby consents to service of process, and to be sued, in the Commonwealth of Massachusetts and consents to the jurisdiction of the courts of the Commonwealth of Massachusetts and the United States District Court for the District of Massachusetts, as well as to the jurisdiction of all courts from which an appeal may be taken from such courts, for the purpose of any suit, action or other proceeding arising out of any of its obligations hereunder, expressly waives any and all objections it may have as to venue in any such court, agrees that a summons and complaint commencing an action or proceeding in any of such court shall be properly served and shall confer personal jurisdiction if served personally or by certified mail to it as set forth above or as otherwise provided under the laws of the Commonwealth of Massachusetts, and irrevocably waives all right to a trial by jury in any suit, action or other proceeding instituted by or against it in respect of the its obligations hereunder or the transaction contemplated hereby.

PROCUREMENT CHECKLIST & APPROVAL FORM

STAFF LEAD: Eric Berbe DEPARTMENT: Recreation

FUNDING SOURCE: ATM 2018 - \$333,500 / ATM 2021 \$125,000

Appropriated amount: TOTAL - \$458,500 Estimated cost: \$24,900 Actual cost: \$24,900

PROCUREMENT METHOD:

PURCHASE DESCRIPTION:

Purchase descriptions should contain the following components (see document on purchase descriptions):
Description of supplies or services required; quantities required; schedule for performance and delivery terms.

FUNDING FOR HIRING OF THOMPSON ENGINEERING COMPANY IN THE AMOUNT OF \$24,900. WILL INCLUDE SITE SURVEY, CD PHASE, PERMIT DOCUMENTATION, BIDDING PHASE, CAS PHASE AND COST ESTIMATE. (SEE ATTACHED CONTRACT)

THIS IS THE ENGINEERING AND DESIGN FOR THE BROOKS PARK LIGHTING PROJECT PREVIOUSLY FUNDED AT 2018 AND 2021 ANNUAL TOWN MEETINGS

PROCUREMENT MAY PROCEED ONLY IF SIGNATURES PROVIDED BELOW 80271292/618054

Funds Available: Finance Director: Carol Coppola Account # _____
DocuSigned by: 48C32039D33D434...

Approved to proceed: Town Administrator or Designee: Joseph F. Powers
DocuSigned by: 0823C0C5799644E...

**AGREEMENT FOR PROFESSIONAL
ENGINEERING SERVICES
BETWEEN
THE TOWN OF HARWICH, MASSACHUSETTS
AND
THOMPSON ENGINEERING COMPANY, INC.
FOR BROOKS PARK LIGHTING
ELECTRICAL ENGINEERING AND CONSTRUCTION ADMINISTRATION
SERVICES**

THIS AGREEMENT made this 30th day of August, 2021 between Thompson Engineering Company, Inc., a Massachusetts corporation with a usual place of business at 89 Newbury Street, Suite 103, Danvers, MA 01923, hereinafter called the "ENGINEER," and the Town of Harwich, MA, acting by its Board of Selectmen, with a usual place of business at Harwich Town Hall, 732 Main Street, Harwich, MA hereinafter called the "TOWN".

The ENGINEER and the TOWN, for the consideration hereinafter named, agree as follows:

1. Scope of Work

The ENGINEER shall perform the work set forth in the Scope of Services attached hereto as Exhibit A.

2. Contract Price

The TOWN shall pay the ENGINEER for services rendered in the performance of this Agreement a fixed fee of \$24,900.00, subject to any additions and deductions provided for herein at the hourly rates subject to mutual agreement. The amount to be paid to the ENGINEER shall not exceed \$24,900.00 without the prior written consent of the TOWN.

3. Commencement and Completion of Work

A. This Agreement shall commence upon the date of the AGREEMENT and shall expire on June 30, 2022, unless terminated sooner in accordance with this Agreement.

B. Progress and Completion: ENGINEER shall commence work promptly upon execution of this Agreement and shall prosecute and complete the work regularly, diligently and uninterruptedly at such a rate of progress as will insure completion in a timely manner.

4. Performance of the Work

The ENGINEER shall supervise and direct the Work, using his best skills and attention, which shall not be less than such state of skill and attention generally rendered by the engineering/design profession for projects similar to the Project in scope, difficulty and location.

A. Responsibility for the Work:

- (1) The ENGINEER shall be responsible to the TOWN for the acts and omissions of his employees, subcontractors and their agents and employees, and other persons performing any of the Work under a contract with the ENGINEER. Consistent with the standard of care referenced above, the ENGINEER shall be responsible for the professional and technical accuracy for all work or services furnished by him or his consultants and subcontractors. The ENGINEER shall perform his work under this Agreement in such a competent and professional manner that detail checking and reviewing by the TOWN shall not be necessary.
- (2) The ENGINEER shall not employ additional consultants, nor sublet, assign or transfer any part of his services or obligations under this Agreement without the prior approval and written consent of the TOWN. Such written consent shall not in any way relieve the ENGINEER from his responsibility for the professional and technical accuracy for the work or services furnished under this Agreement.
- (3) All consultants must be registered and licensed in their respective disciplines if registration and licensure are required under the applicable provisions of Massachusetts law.
- (4) The ENGINEER and all consultants and subcontractors shall conform their work and services to any guidelines, standards and regulations of any governmental authority applicable to the type of work or services covered by this Agreement.
- (5) The ENGINEER shall not be relieved from its obligations to perform the work in accordance with the requirements of this Agreement either by the activities or duties of the TOWN in its administration of the Agreement, or by inspections, tests or approvals required or performed by persons other than the ENGINEER.
- (6) Neither the TOWN's review, approval or acceptance of, nor payment for any of the work or services performed shall be construed to operate as a waiver of any rights under the Agreement or any cause of action arising out of the performance of the Agreement.

- B. Deliverables, Ownership of Documents: One (1) reproducible copy of all drawings, plans, specifications and other documents prepared by the ENGINEER shall become the property of the TOWN upon payment in full therefor to the ENGINEER. Ownership of stamped drawings and specifications shall not include the ENGINEER's certification or stamp. Any re-use of such documents without the ENGINEER's written verification of suitability for the specific purpose intended shall be without liability or legal exposure to the ENGINEER or

to the ENGINEER's independent professional associates, subcontractors or consultants. Distribution or submission to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as an act in derogation of the ENGINEER's rights under this Agreement.

- C. Compliance With Laws: In the performance of the Work, the ENGINEER shall comply with all applicable federal, state and local laws and regulations, including those relating to workplace and employee safety.

5. Site Information Not Guaranteed; Contractor's Investigation

The TOWN shall furnish to the ENGINEER available surveys, data and documents relating to the area which is the subject of the Scope of Work. All such information, including that relating to subsurface and other conditions, natural phenomena, existing pipes, and other structures is from the best sources at present available to the TOWN. All such information is furnished only for the information and convenience of the ENGINEER and is not guaranteed. It is agreed and understood that the TOWN does not warrant or guarantee that the subsurface or other conditions, natural phenomena, existing pipes, or other structures will be the same as those indicated in the information furnished, and the ENGINEER must satisfy himself as to the correctness of such information. If, in the opinion of the ENGINEER, such information is inadequate, the ENGINEER may request the TOWN's approval to verify such information through the use of consultants or additional exploration. In no case shall the ENGINEER commence such work without the TOWN's prior written consent. Such work shall be compensated as agreed upon by TOWN and ENGINEER.

6. Payments to the Contractor

- A. Cost incurred on this project shall be billed lump sum by task completed as outlined in the attached Scope of Services. Payment shall be due 30 days after receipt of an invoice by the TOWN.
- B. If there is a material change in the scope of work, the TOWN and the ENGINEER shall mutually agree to an adjustment in the Contract Price.
- C. If the TOWN authorizes the ENGINEER to perform additional services, the ENGINEER shall be compensated in an amount mutually agreed upon, in advance, in writing. Except in the case of an emergency, the ENGINEER shall not perform any additional services until such compensation has been so established.

7. Reimbursement

Except as otherwise included in the Contract Price or otherwise provided for under this Agreement, the ENGINEER shall be reimbursed by the TOWN: (a) at 1.0 times the actual cost to the ENGINEER of consultants retained to obtain information pursuant to Article 5 hereof or otherwise. No such reimbursement shall be made unless the rates of compensation have been approved, in advance, by the TOWN; (b) at 1.0 times the actual cost of additional or specially authorized expense items, as approved by the TOWN.

8. Final Payment, Effect

The acceptance of final payment by the ENGINEER shall constitute a waiver of all claims by the ENGINEER arising under the Agreement.

9. Terms Required By Law

This Agreement shall be considered to include all terms required to be included in it by the Massachusetts General Laws, and all other laws, as though such terms were set forth in full herein.

10. Indemnification

- A. General Liability: The ENGINEER shall indemnify and hold harmless the TOWN from and against any and all claims, damages, losses, and expenses, including attorney's fees, to the extent arising out of the performance of this Agreement and to the extent the same relate to matters of general commercial liability, when such claims, damages, losses, and expenses are caused, in whole or in part, by the negligent or wrongful acts or omissions of the ENGINEER or his employees, agents, subcontractors or representatives.
- B. Professional Liability: The ENGINEER shall indemnify and hold harmless the TOWN from and against any and all claims, damages, losses, and expenses, including attorney's fees, arising out of the performance of this Agreement and to the extent the same relate to the professional competence of the ENGINEER's services, when such claims, damages, losses, and expenses are caused, in whole or in part, by the negligent acts, negligent errors or omissions of the ENGINEER or his employees, agents, subcontractors or representatives.

11. Insurance

- A. The ENGINEER shall at his own expense obtain and maintain a Professional Liability Insurance policy for errors, omissions or negligent acts arising out of the performance of this Agreement in a minimum amount of \$1,000,000.00.
- B. The coverage shall be in force from the time of the agreement to the date when all construction work for the Project is completed and accepted by the TOWN. If, however, the policy is a claims made policy, it shall remain in force for a period of six (6) years after completion.

Since this insurance is normally written on a year-to-year basis, the ENGINEER shall notify the TOWN should coverage become unavailable.

- C. The ENGINEER shall, before commencing performance of this Agreement, provide by insurance for the payment of compensation and the furnishing of other benefits in accordance with M.G.L. c.152, as amended, to all its employees and

shall continue such insurance in full force and effect during the term of the Agreement.

- D. The ENGINEER shall carry insurance in a sufficient amount to assure the restoration of any plans, drawings, computations, field notes or other similar data relating to the work covered by this Agreement in the event of loss or destruction until the final fee payment is made or all data are turned over to the TOWN.
- E. The ENGINEER shall also maintain public liability insurance, including property damage, bodily injury or death, and personal injury and motor vehicle liability insurance against claims for damages because of bodily injury or death of any person or damage to property.
- F. Evidence of insurance coverage and any and all renewals substantiating that required insurance coverage is in effect shall be filed with the Agreement. Any cancellation of insurance, whether by the insurers or by the insured, shall not be valid unless written notice thereof is given by the party proposing cancellation to the other party and to the TOWN at least fifteen days prior to the intended effective date thereof, which date shall be expressed in said notice.
- G. Upon request of the ENGINEER, the TOWN reserves the right to modify any conditions of this Article.

12. Notice

All notices required to be given hereunder shall be in writing and delivered to, or mailed first class to, the parties' respective addresses stated above. In the event that immediate notice is required, it may be given by telephone or facsimile, but shall, to the extent possible, be followed by notice in writing in the manner set forth above.

13. Termination

- A. Each party shall have the right to terminate this Agreement in the event of a failure of the other party to comply with the terms of the Agreement. Such termination shall be effective upon seven days' notice to the party in default and the failure within that time of said party to cure its default.
- B. The TOWN shall have the right to terminate the Agreement without cause, upon ten (10) days' written notice to the ENGINEER. In the event that the Agreement is terminated pursuant to this subparagraph, the ENGINEER shall be reimbursed in accordance with the Agreement for all work performed up to the termination date.

14. Miscellaneous

- A. Assignment: The ENGINEER shall not assign or transfer any of its rights, duties or obligations under this Agreement without the written approval of the TOWN.

B. Governing Law: This Agreement shall be governed by and construed in accordance with the law of the Commonwealth of Massachusetts.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals, the TOWN by its authorized representative who, however, incurs no personal liability by reason of the execution hereof or of anything herein contained, as of the day and year first above written.

THOMPSON ENGINEERING COMPANY,
INC.:

TOWN OF HARWICH:

By: DocuSigned by: Kevin W Murphy
D818F24C843E438...
Name: Kevin W Murphy
Type or Print
Title: President

By: DocuSigned by: Joseph F. Powers
0628C0C5799644E...
Town Administrator

Approved as to the Availability of Funds:

DocuSigned by: Carol Coppola 8/27/2021
48C32039D33D434... (\$)
Finance Director Contract Sum

519856/KOPE/0003

ATTACHMENT A
SCOPE OF SERVICES

Scope of Services

Contractor will provide the engineering services, as stated below:

1. A site survey to review existing conditions with the Town and Musco Lighting rep.
2. Design all required electrical systems for the new lighting.
3. Provide the required electrical drawings and electrical specifications for bidding and permitting.
4. It will be the responsibility of the contractor during the design period to properly coordinate with the Town during the project.
5. Provide 100% CD review documents for owner review.
6. Design all electrical systems in accordance with the Owner's requirements and the latest applicable electrical codes.
7. Coordinate all aspects of the design of the electric with the Owner's staff to ensure compliance with their standards.
8. Provide Construction Administration Services including shop drawing review, site visits and punch lists.
9. Contractor will engage the services of a cost estimator to update the estimate.

10. Construction Documents

11. TEC will prepare procurement level electrical drawings and specifications. TEC will present the documents to the Town for final approval. Changes (if any) will be incorporated into the final construction documents.

12. Bidding

13. TEC will attend bid walk, answer contractor questions, review the bids submitted, and make a recommendation on awarding the contract.

14. Construction Administration

15. TEC will review shop-drawings submittals, and answer contractor questions. TEC will attend Zoom job meetings with the contractor. TEC will perform site visits to inspect the electrical installation.

16. Meetings

17. We have included the following TEC meetings for the project:

- 18. Survey: One (1) site visit with TEC staff members
- 19. CD Phase: Up to three (3) Zoom meetings with TEC staff members
- 20. CAS Phase: Up to three (3) site meetings with TEC staff members
- 21. Up to five (5) Zoom job meetings with TEC staff members

Scope of work does not include the following services:

- 1. All code reviews.
- 2. Any environmental/hazmat review.
- 3. Any permitting process required by the Town Conservation Committee or other boards/committees.
- 4. LEED Green Design Services
- 5. Schematic Design through Design Development

ATTACHMENT A
SCOPE OF SERVICE



August 16, 2021

Ms. Meggan M. Eldredge
Town of Harwich
732 Main Street
Harwich, MA 02645

Subject: Brooks Park
New Athletic Field Lighting
Engineering Services Proposal

Dear Ms. Eldredge:

In accordance with your request, Thompson Engineering Company, Inc. (TEC) is pleased to submit a Scope of Services and Proposed Fee for the above referenced project.

Project Understanding

Per your emails and the Brooks Park Study, it is our understanding that our scope of work is to provide construction documents and Construction Administration Services for the new athletic field lighting at Brooks Park. The project scope of work includes:

1. Removal of the existing wood pole mounted lighting fixtures serving the tennis, pickleball and basketball courts.
2. New Musco Lighting pole mounted fixtures with controls to serve the tennis, pickleball and full court basketball courts, playground and parking lots.
3. Lighting design including footcandle coverage per the 2020 Study.
4. Receptacles at various locations along fence.
5. All required trenching and backfilling by project.
6. Town will patch all paved area and grass areas.

The following is our understanding of the proposed process:

1. The Town will procure the new lighting system equipment via the Sourcewell program.
2. The manufacturer will be Musco Lighting.
3. TEC will prepare the required electric specifications and drawings for bidding per MA State Bidding laws for installation.
4. TEC will provide drawings for permitting. Applying for the permit by others.
5. The Town will provide all Division 1 bidding documentation. TEC will assist the Town in preparing these documents.
6. TEC will attend and lead the bid walk.
7. TEC will answer all bidding RFI questions.
8. TEC will review all bids and assist the Town in selecting the successful contractor.

ATTACHMENT A
SCOPE OF SERVICE

9. TEC will provide construction administration services including zoom meetings, shop drawing review, respond to RFIs, and site visits.
10. TEC will engage the services of a cost estimator to update the estimate

Scope of Services

TEC will provide the engineering services, as stated below:

1. A site survey to review existing conditions with the Town and Musco Lighting rep.
2. Design all required electrical systems for the new lighting.
3. Provide the required electrical drawings and electrical specifications for bidding and permitting.
4. It will be our responsibility during the design period to properly coordinate with your office during the project.
5. Provide 100% CD review documents for owner review.
6. We will be responsible for designing all electrical systems in accordance with the Owner's requirements and the latest applicable electrical codes.
7. We would coordinate all aspects of the design of the electric with the Owner's staff to ensure that we are in compliance with their standards.
8. We will provide Construction Administration Services including shop drawing review, site visits and punch lists.
9. TEC will engage the services of a cost estimator to update the estimate.

Scope of work does not include the following services:

1. All code reviews.
2. Any environmental/hazmat review.
3. Any permitting process required by the Town Conservation Committee or other boards/committees.

LEED Green Design Services

Not included.

Schematic Design through Design Development

**ATTACHMENT A
SCOPE OF SERVICE**

Not included

Construction Documents

TEC will prepare procurement level electrical drawings and specifications. TEC will present the documents to the Town for final approval. Changes (if any) will be incorporated into the final construction documents.

Bidding

TEC will attend bid walk, answer contractor questions, review the bids submitted, and make a recommendation on awarding the contract.

Construction Administration

TEC will review shop-drawings submittals, and answer contractor questions. TEC will attend Zoom job meetings with the contractor. TEC will perform site visits to inspect the electrical installation.

Meetings

We have included the following TEC meetings for the project:

Survey:	One (1) site visit with TEC staff members
CD Phase:	Up to three (3) Zoom meetings with TEC staff members
CAS Phase:	Up to three (3) site meetings with TEC staff members
	Up to five (5) Zoom job meetings with TEC staff members

Engineering Fee

We propose that our engineering fee for the preparation of the drawings and specifications to be a fixed fee of Twenty-Four Thousand Nine Hundred Dollars (\$24,900).

We provide the following breakdown of services:

Site Survey	\$800.
CD Phase	\$9,200.
Permit Documentation	\$400.
Bidding Phase	\$5,000.
CAS Phase	\$6,500.
Cost Estimate	<u>\$3,000.</u>
Total Fee	\$24,900.

ATTACHMENT A
SCOPE OF SERVICE

Any requested CAS site by the Town will be performed as an additional service at a rate of One Thousand Dollars (\$1,000) per visit.

The engineering fee stated above will be invoiced by task. Reimbursable expenses such as reproduction, travel, and express mail/courier services are included in the above engineering fee.

CAD and Modeling

Our CAD system utilizes AutoCAD MEP 2020 and Revit MEP 2020 software as well as the latest load calculating software. We will be using AutoCAD 2020 for this project.

Optional Services

If requested or required, the following services can be provided as an optional service:

1. Expansion of the scope of the project.
2. Commissioning services.
3. As-built record drawings for electrical systems.
4. Extensive technical assistance at start-up of equipment and systems.
5. Preparation of major revisions to the Contract Documents caused by design changes initiated by the Owner.

Standard Terms and Conditions

The above stated services will be performed in accordance with the attached *Standard Terms and Conditions to Letter Agreement*, dated January 13, 2021.

If you are in agreement with the scope and terms in this proposal, please sign in the space provided below, and return a signed copy for our files.

Thank you for considering our firm for this project. If you have any questions or need additional information, please feel free to call.

Very truly yours,

Thompson Engineering Company, Inc.

Kevin W. Murphy

Kevin W. Murphy
President

Accepted by:

Town of Harwich

Name:
Date:

PLANNING DEPARTMENT • 732 Main Street, Harwich, MA 02645



ph: 508-430-7511 fax: 508-430-4703

TO: Building Conservation Health Highway
Fire Department Police Department Water Administration

FROM: Elaine Banta, Planning Assistant

Re: Planning Request for Comments
Case No. PB2021-18, Map 84 Pcl A3, Nathan Walker Road/ 0 Cherokee Road

DATE: August 27, 2021

Michael London, applicant and prospective buyer (Daniel Sylver, owner) intends to build a single-family residence and appurtenances on the above-referenced, unimproved lot. The property is accessed from and bisected by Nathan Walker Road, which is private, dirt, 'ancient' way. Nathan Walker Road comes off of Samoset Road and travels to Spruce Road (both town ways).

Because of the character of the way, and the definition of 'frontage' in the Harwich Zoning Bylaw (Harwich Code Chapter 325), the applicant needs a determination pursuant to Harwich Code §400.8.B. & C. from the Planning Board to confirm that Nathan Walker Road provides "Safe and Adequate Access" for vehicular travel and utilities to serve the proposed single family residential use on the lot, prior to the issuance of a building permit. The Planning Board is scheduled to review the matter at its meeting on September 14, 2021.

Please provide your opinions, suggestions and any concerns in regards to the road and utility access/availability matters discussed above. In particular, please provide any recommendations about road work like grading or clearing to allow for adequate vehicle access. As you might recall, it is the Planning Board's policy that such unimproved ways should have a cleared width and height of at least 16'.

Finally, I call your attention to the fact that Nathan Walker Road passes through and over two large town properties, including one at the end of Cherokee and Samoset Roads. Access to the lot would thus likely be over the latter town property. One who has rights in a private way or easement has the authority to improve the easement for its allowed purpose, like vehicular access, even if the road is located on or traverses publicly owned land. However, in this case, because of the town's ownership, the town should be aware of any proposed work by the applicant on the easement that might be necessary or desirable to facilitate its allowed use.

Thank you for your in advance for a speedy return of this page!

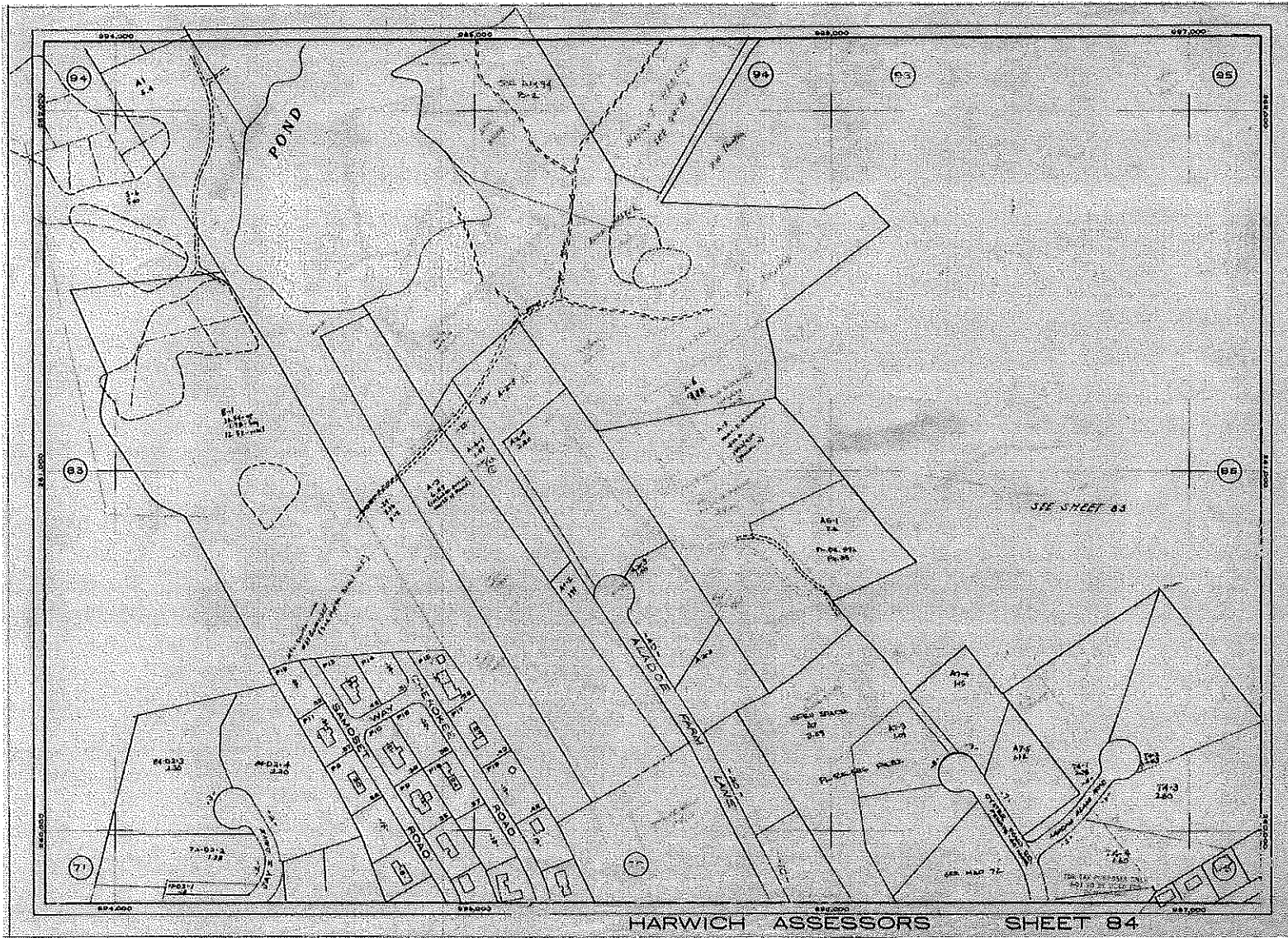
Comments may also be e-mailed to ebanta@town.harwich.ma.us.

Please note the following concerns/ recommendations:

_____No concerns or recommendations.

Reviewed by (Dept/Initials):_____

ENC: Field Card K12645
Assessors Map 84
Harwich Code Section 400-9
Planning Board Road Policy dated 11/5/2009
81X Plan 383-97



The following Code does not display images or complicated formatting. Codes should be viewed online. This tool is only meant for editing.

§ 400-9 Approval not required (ANR) plan.

- B. Determination of safe and adequate access. In determining whether or not existing access meets the standards as defined in these rules and regulations, the Planning Board will examine evidence as follows:
- (1) The applicant will provide all items listed in Appendix 4.
 - (2) The Planning Board will circulate the application to the Town Engineer and Surveyor for general comments. When necessary, additional comments may be requested from the following departments:
 - (a) Department of Public Works.
 - (b) Fire Department.
 - (c) Police Department.
 - (3) All ways which are neither Town ways nor ways shown on a plan approved and endorsed in accordance with the Subdivision Control Law (existing private ways) must meet the minimum standards for new ways in the Town of Harwich as specified in Table 1 of these rules and regulations in order to be considered frontage for building purposes or the division of land for which approval under the Subdivision Control Law is not required. If such way is substandard, approval may be granted if the applicant agrees to complete the necessary improvements to the substandard way, said agreement to be filed in the form of a covenant at the time of approval of the definitive plan (MGL c. 41, § 81FF).
- C. Satisfaction of safe and adequate access. When in the opinion of the Planning Board the existing condition of the roadway does not meet the minimum standards for roadways in the Town of Harwich in order to be considered frontage for building purposes, and the necessary roadway improvements do not substantially change the nature, layout or composition of the roadway, the Planning Board may determine, without a public hearing, that submission of a subdivision plan for approval is not required by an affirmative vote of a majority of the Planning Board present, and in no event fewer than four members. Once the improvements have been made, the applicant may submit his request for determination of safe and adequate access. Improvements to Town roadways must also meet the requirements of Town of Harwich General Bylaws Chapter 255, Streets and Sidewalks.

Policy on Waivers for Ways and Minor Streets
November 5, 2009

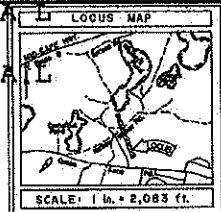
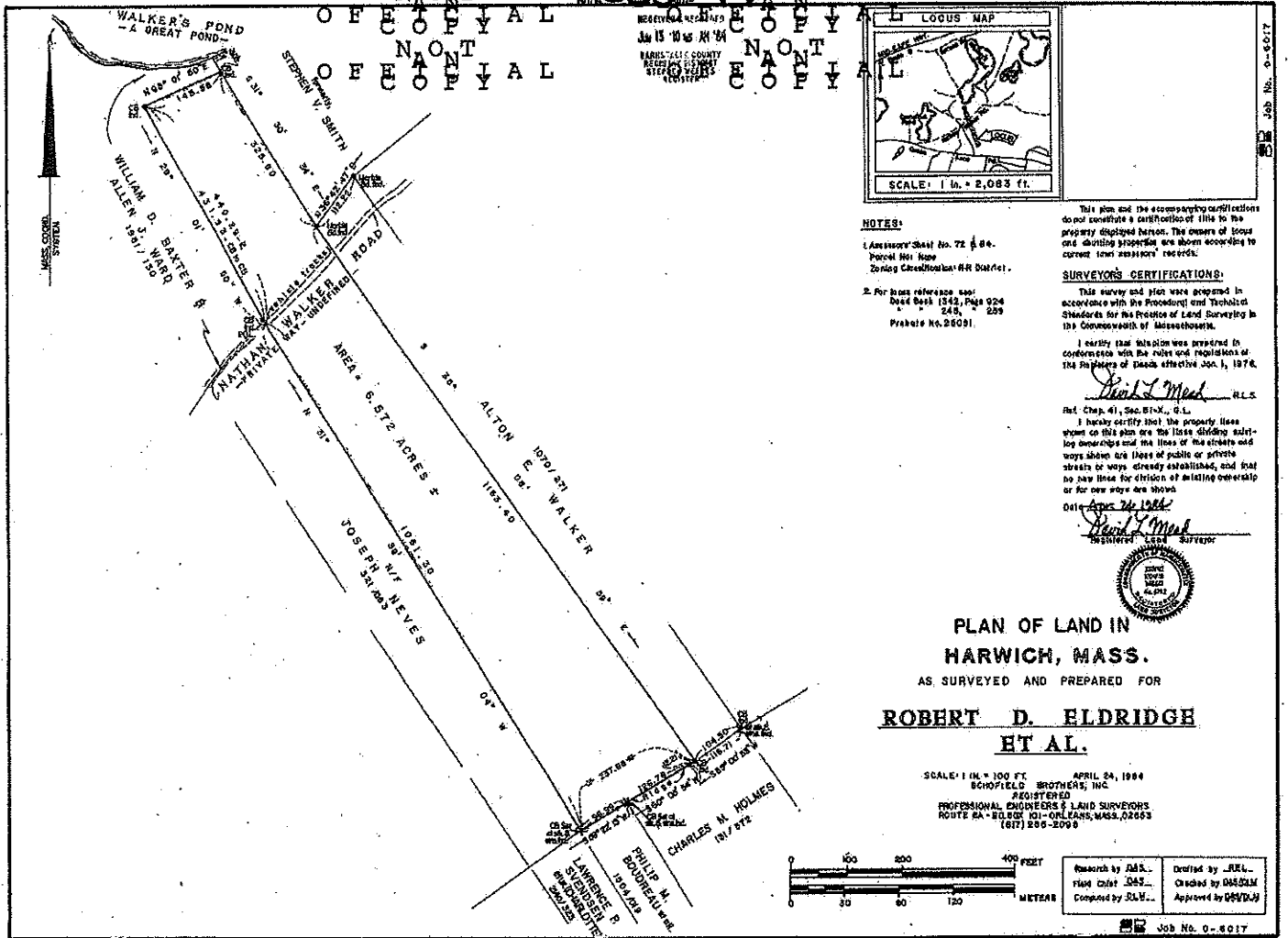
This policy is based on input from Fire, Police, Highway and Engineering Departments. It shall apply when the Planning Board considers waiver requests for a residential subdivision plan, designed to be in keeping with the rural character of the surrounding area, as specified in Section 5.E of the Harwich Rules and Regulations Governing Subdivisions.

Whenever a dead-end street or way with a cul de sac is proposed, regardless of the length of the street or way or the number of homes served, a circular turn-around shall be required. The turn-around shall be designed in accordance with Appendix 3, Figure 1 of the Harwich Rules and Regulations Governing Subdivisions. For a way or minor street, an unpaved area with a 25 foot radius may occupy the center of the circular turn-around, leaving a 20 foot wide travel lane around the unpaved area.

Normal standards for a way or minor street are found in Appendix 3, Figure 3 of the Harwich Rules and Regulations Governing Subdivisions. The Planning Board, at its discretion, may permit waivers for a new way or minor street to allow construction based on minimum standards for a "passable" road. The minimum standard for determining that a road is passable is a cleared width of 16 feet and a cleared height of 16 feet. Within that cleared width, the surfaced area shall be at least 12 feet for an existing road and 14 feet for a new way or minor street. Generally, it is recommended that such waiver be approved only if the new way or minor street will serve no more than 2 homes and if the length of the new way or minor street is not excessive.

The Highway Department reserves the right to deny snow and ice removal services if a way or minor street is not maintained to its current Private Roads Standard for Snow and Ice and will also not accept responsibility for any damages that may occur during this process.

383-97



NOTES:
 1. Assessor's Sheet No. 72 of 84.
 Parcel No. 104
 Zoning Code (Residential #1 District).
 2. For base reference see:
 Deed Book 1342, Page 924
 245, 259
 Plate No. 26091.

This plan and the accompanying certifications do not constitute a certification of title to the property depicted hereon. The owners of locus and adjoining properties are shown according to current town assessor's records.

SURVEYOR'S CERTIFICATION:
 This survey and plan were prepared in accordance with the Procedural and Technical Standards for the Practice of Land Surveying in the Commonwealth of Massachusetts.

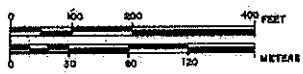
I certify that this plan was prepared in accordance with the rules and regulations of the Board of Registration of Professional Engineers and Surveyors of the Commonwealth of Massachusetts.

Robert D. Eldridge
 R.D. Eldridge, S.L.S.
 I hereby certify that the property lines shown on this plan are the lines dividing adjoining ownerships and the lines of the streets and ways shown are lines of public or private streets or ways already established, and that no new lines for division of existing ownerships or for new ways are shown.
 Date: April 24, 1984
Robert D. Eldridge
 Registered Professional Surveyor



**PLAN OF LAND IN
 HARWICH, MASS.**
 AS SURVEYED AND PREPARED FOR
**ROBERT D. ELDRIDGE
 ET AL.**

SCALE: 1 in. = 100 FT. APRIL 24, 1984
 SCOPFIELD BROTHERS, INC.
 REGISTERED
 PROFESSIONAL ENGINEERS & LAND SURVEYORS
 ROUTE 2A • BELLEVILLE 101 • ORLEANS, MASS. 02653
 (617) 286-2090



Research by <u>ABK</u>	Drawn by <u>REL</u>
Plan Color <u>045</u>	Checked by <u>DM/DAM</u>
Computed by <u>RLV</u>	Approved by <u>DM/DAM</u>

383-97

Meggan Eldredge

From: Amy Usowski
Sent: Monday, August 30, 2021 11:53 AM
To: Elaine Banta; Bruce Young; Chris Nickerson; Dan Pelletier; David LeBlanc; Kathleen O'Neill; Deputy Chief Kevin Considine; Link Hooper; Meggan Eldredge
Cc: Jon Idman
Subject: RE: PB2021-18 London Safe and Adequate Access Application
Attachments: Map 84, Parcel A-6 Deed.pdf; Map 84, Parcel A-6 Maps.pdf; Special Town Meeting 2002.pdf; Map 84, Parcel B1 Deed.pdf; Map 84, Parcel B1 Maps.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Good morning,

The only comment I have from the Conservation perspective is that access to the parcel will likely be via Nathan Walker Road, which cuts through 2 pieces of Town property under the care and custody of the Conservation Commission – Map 84 Parcels B1 and A6. If they wish to simply fill in holes in the existing dirt road that would be fine, but any additional clearing on the side of the road that would be on Town Conservation land would need approval from the Conservation Commission. I have attached the deeds, maps, and warrant articles I have on file for the Town properties on this email for your convenience.

Amy Usowski
Conservation Administrator
Town of Harwich

From: Elaine Banta
Sent: Friday, August 27, 2021 12:17 PM
To: Amy Usowski <ausowski@town.harwich.ma.us>; Bruce Young <byoung@harwichfire.com>; Chris Nickerson <cnickhighway@comcast.net>; Dan Pelletier <dpelletier@harwichwater.com>; David LeBlanc <d.leblanc@harwichfire.com>; Kathleen O'Neill <koneilli@town.harwich.ma.us>; Deputy Chief Kevin Considine <kconsidine@harwichpolice.com>; Link Hooper <lhooper@harwichdpw.com>; Meggan Eldredge <meldredge@town.harwich.ma.us>
Cc: Jon Idman <jidman@town.harwich.ma.us>
Subject: PB2021-18 London Safe and Adequate Access Application
Importance: High

Hello all.

Please review the attached at your earliest convenience. We will be meeting on the subject at our next meeting.

Please contact Planning with any questions.

Thanks in advance for a speedy reply.

Elaine Banta
Planning Assistant | 508-430-7511

Town Hall hours: Monday – Friday 8:30 AM – 4:00 PM

Town of Harwich | Planning Department | 732 Main Street | Harwich, MA 02645

QUITCLAIM DEED

I, MARY ANN HARWOOD, Trustee of Eldridge Pond Nominee Trust, u/d/d September 13, 1995 and recorded in Book 9841, Page 174, of 155 Crowell Road, Chatham, MA 02633

For consideration paid and in full consideration of FOUR HUNDRED EIGHTY THOUSAND AND 00/100 (\$480,000.00) DOLLARS

Grant to The Town of Harwich, a Massachusetts municipal corporation with an address of 732 Main Street, Harwich, MA 02645, to be under the jurisdiction of the Conservation Commission pursuant to M.G.L. c.4 0 Sec. 8C, as authorized by the vote under Article 71 of the Annual Town Meeting held on May 3, 2000, a certified copy of which is attached herewith as Exhibit A.

with QUITCLAIM COVENANTS

The land in Harwich, Barnstable County, Massachusetts, located off Samoset Road and Cherokee Road in Harwich, MA shown on the Harwich Assessor's Map 84 as Parcel B-1 and also shown as Lot 1 on plan recorded in Barnstable Plan Book 527, Page 37, excluding, however, a strip of land located along the northerly boundary thereof conveyed to James G. Marcelino by deed recorded in Book 12024, Page 333. For title reference see deed recorded in Book 12024, Page 337.

Said lot is conveyed subject to any rights of others that may exist in the "vehicle tracks" and "Nathan Walker Road" as shown on said plan.

Said lot is subject to restrictions of record insofar as the same are in force and effect.

Pursuant to the requirements of Chapter 293 of the Acts of 1998, as amended by Chapter 127 sec. 211 of the Acts of 1999, the Cape Cod Open Space Land Acquisition Program, the within grantee, by accepting delivery of this deed, agree that the land is subject to the following permanent deed restriction, which shall run with the land and shall be enforceable in accordance with Section 3 of the Cape Cod Open Space Land Acquisition Program: Said premises may be used only for preservation, open space, conservation and passive recreation purposes.

Property Address: OFF QUEENE ANNE RD
HARWICH MA

84/B1

Queen Anne RD

B13230 P076

For title see Book 953 Page 385 and Estate of Alton E. Walker (Barnstable Probate No. 87P-0377).

WITNESS MY HAND AND SEAL this 8th day of September, 2000.

Mary Ann Harwood

Mary Ann Harwood, Trustee
Eldridge Pond Nominee Trust

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss.

DATE: September 8, 2000

Then personally appeared the above-named MARY ANN HARWOOD and acknowledged the foregoing instrument to be her free act and deed, before me.

Martha Shuster
Martha Shuster, Notary Public

My commission expires: March 18, 2005



TOWN OF



HARWICH

Anita N. Doucette, CMC/AE/CMMC
Town Clerk

732 Main Street
Harwich, Massachusetts 02645
Tel. 508-430-7516
FAX 508-432-5039

**TOWN OF HARWICH
ANNUAL TOWN MEETING
MAY 3, 2000**

ARTICLE 71. ACQUIRE LAND OF MARY ANN HARWOOD, TRUSTEE

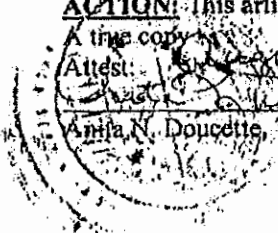
ARTICLE 71. To see if the Town will vote to authorize and direct the Board of Selectmen to acquire by gift, by purchase, by eminent domain or otherwise, for preservation, open space, agricultural, conservation and passive recreation purposes, all or a portion of the property, situated in Harwich off Samoset Road and Cherokee Road, shown on Harwich Assessor's Map 84 as Parcel B-1, and also shown as Lot 1 on plan recorded in Barnstable Registry of Deeds Plan Book 527 Page 37, containing 12.52 acres, more or less, excluding, however a strip of land located along the northerly boundary thereof conveyed to James G. Marceline by deed recorded in Book 12024 Page 333; and to raise and appropriate, or transfer from available funds, or borrow a sufficient sum of money for such acquisition. Said property is more particularly described in Barnstable County Registry of Deeds Book 12024 Page 337, being now or formerly owned by Mary Ann Harwood, Trustee. Provided that the Conservation Commission be authorized to file on behalf of the Town any and all applications deemed necessary for grants and/or reimbursements from the Commonwealth of Massachusetts deemed necessary under the Self-Help Act (Chapter 132A, §11) and /or any others in any way connected with the scope of this article, and that the Board of Selectmen be authorized to negotiate the purchase of the property and be authorized to make the decision to enter into any agreement to purchase the property and to execute any and all instruments as may be necessary on behalf of the Town and to act fully thereon. By request of the Real Estate and Open Space Committee.

Estimated cost: \$ 480,000.00.

MOTION: (Carol Thayer, Chairman-Finance Committee) I move that this article be accepted and adopted and that the sum of \$480,000.00 be appropriated for the purpose of purchasing and/or taking by eminent domain for preservation, open space, conservation, agricultural and passive recreational purposes, all the property described in the article and that to raise such appropriation the Treasurer, with approval of the Board of Selectmen, is authorized to borrow the sum of \$480,000.00 pursuant to Section 7 of Chapter 293 of the Acts of 1998 entitled "An Act Relative to the Establishment of the Cape Cod Open Space Land Acquisition Program" as amended, or any other enabling authority, and to issue bonds or notes of the Town therefore, said property to be managed and controlled by the Conservation Commission pursuant to General Laws Chapter 40 Section 8C and further that the Board of Selectmen and the Conservation Commission be authorized to take all actions necessary to carry out the purchase of the property in accordance with the provisions of the article and this vote. (Duly seconded)

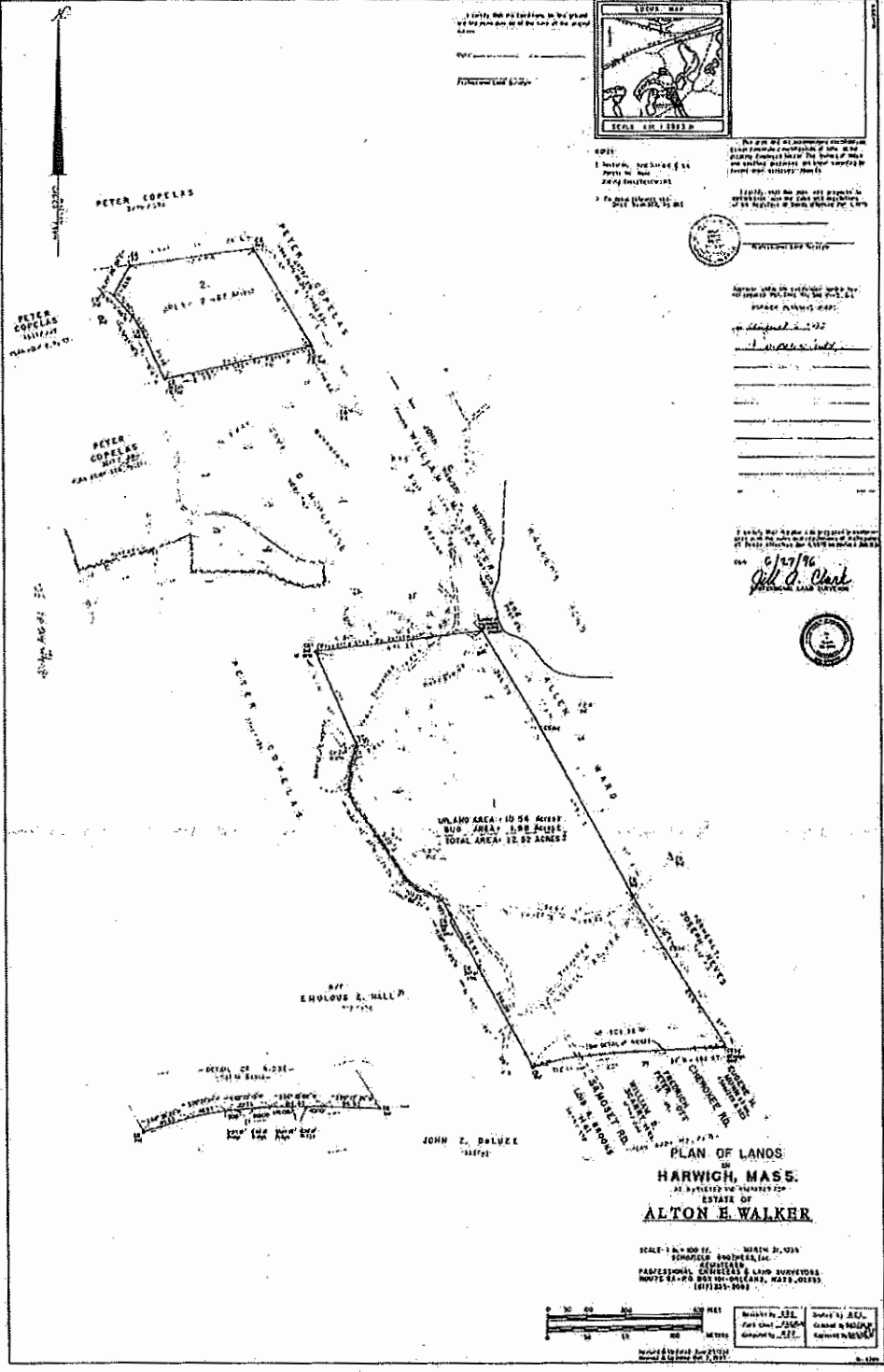
ACTION: This article needs a 2/3 majority vote to pass. It is a unanimous vote, so declared.

A true copy
Attest: *Anita N. Doucette*
Anita N. Doucette, Town Clerk



BARNSTABLE REGISTRY OF DEEDS

BOOK PAGE 27



1. I certify that the boundaries shown on this plan are the true and correct boundaries of the land shown thereon as shown by the records of the Registry of Deeds for the County of Barnstable, Massachusetts.

2. I further certify that the area of the land shown on this plan is correct as shown by the records of the Registry of Deeds for the County of Barnstable, Massachusetts.



Approved by the Registrar of Deeds for the County of Barnstable, Massachusetts, on this 1st day of August, 1976.

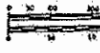
[Signature]

Prepared by the firm of
[Signature]
 RICHARD S. WHEELER, INC.



**PLAN OF LANDS
 OF
 HARWICH, MASS.
 AS PART OF THE ESTATE OF
 ALTON E. WALKER**

SCALE 1" = 100' ... METERS BY USA
 RICHARD S. WHEELER, INC.
 PROFESSIONAL CIVIL AND LAND SURVEYORS
 ROUTE 1A - P.O. BOX 100 - HARWICH, MASS. 02543
 (508) 235-9081



Drawn by *[Signature]* Date of *[Date]*
 Checked by *[Signature]* Date of *[Date]*

Real Estate and Open Space Committee. Estimated cost: \$202,000.00

MOTION: (James Higgins-Finance Committee) I move that this article be accepted and adopted and that the sum of \$202,000.00 be appropriated for the purpose of purchasing and/or taking by eminent domain for preservation, open space, conservation and passive recreational purposes, all the property described in the article, and that to raise said appropriation the Treasurer, with approval of the Board of Selectmen, is authorized to borrow the sum of \$202,000.00 pursuant to Section 7 of Chapter 293 of the Acts of 1998 entitled "An Act Relative to the Establishment of the Cape Cod Open Space Land Acquisition Program" as amended, or any other enabling authority, and to issue bonds or notes of the Town therefore, and further that the Board of Selectmen and the Conservation Commission be authorized to take all actions necessary to carry out the purchase of the property in accordance with the provisions of the article and this vote. (Duly seconded)

ACTION: This article needs a 2/3 majority vote to pass. It is a unanimous vote, so declared.

ARTICLE 71. ACQUIRE LAND OF MARY ANN HARWOOD, TRUSTEE

ARTICLE 71. To see if the Town will vote to authorize and direct the Board of Selectmen to acquire by gift, by purchase, by eminent domain or otherwise, for preservation, open space, agricultural, conservation and passive recreation purposes, all or a portion of the property, situated in Harwich off Samoset Road and Cherokee Road, shown on Harwich Assessor's Map 84 as Parcel B-1, and also shown as Lot 1 on plan recorded in Barnstable Registry of Deeds Plan Book 527 Page 37, containing 12.52 acres, more or less, excluding, however a strip of land located along the northerly boundary thereof conveyed to James G. Marceline by deed recorded in Book 12024 Page 333; and to raise and appropriate, or transfer from available funds, or borrow a sufficient sum of money for such acquisition. Said property is more particularly described in Barnstable County Registry of Deeds Book 12024 Page 337, being now or formerly owned by Mary Ann Harwood, Trustee. Provided that the Conservation Commission be authorized to file on behalf of the Town any and all applications deemed necessary for grants and/or reimbursements from the Commonwealth of Massachusetts deemed necessary under the Self-Help Act (Chapter 132A, §11) and /or any others in any way connected with the scope of this article, and that the Board of Selectmen be authorized to negotiate the purchase of the property and be authorized to make the decision to enter into any agreement to purchase the property and to execute any and all instruments as may be necessary on behalf of the Town and to act fully thereon. By request of the Real Estate and Open Space Committee. Estimated cost: \$ 480,000.00.

MOTION: (Carol Thayer, Chairman-Finance Committee) I move that this article be accepted and adopted and that the sum of \$480,000.00 be appropriated for the purpose of purchasing and/or taking by eminent domain for preservation, open space, conservation, agricultural and passive recreational purposes, all the property described in the article and that to raise such appropriation the Treasurer, with approval of the Board of Selectmen, is authorized to borrow the sum of \$480,000.00 pursuant to Section 7 of Chapter 293 of the Acts of 1998 entitled "An Act Relative to the Establishment of the Cape Cod Open Space Land Acquisition Program" as amended, or any other enabling authority, and to issue bonds or notes of the Town therefore, said property to be managed and controlled by the Conservation Commission pursuant to General Laws Chapter 40 Section 8C and further that the Board of Selectmen and the Conservation Commission be authorized to take all actions necessary to carry out the purchase of the property in accordance with the provisions of the article and this vote. (Duly seconded)

ACTION: This article needs a 2/3 majority vote to pass. It is a unanimous vote, so declared.

ARTICLE 72. ACQUIRE LAND OF LOUISE D. CARUSO ET AL

ARTICLE 72. To see if the Town will vote to authorize and direct the Board of Selectmen to acquire by gift, by purchase, by eminent domain or otherwise, for preservation, open space, conservation and passive recreation purposes, all or a portion of the property, situated in Harwich off Hall's Path and Seth Whitefield Road shown on Harwich Assessor's Map 86 as Parcel B-18 containing 4 acres, Map 95 as Parcel B-16 containing 5.7 acres, and Map 96 as Parcel D-11, containing 1.3 acres, for a total of 11 acres, more or less; and to raise and appropriate, or transfer from available funds, or borrow a sufficient sum of money for such acquisition. The property is more particularly described in Barnstable County Registry of Deeds Book 5828 Page 81, being now or formerly owned by Louise D. Caruso, Alice M. Fritz and Susan J. Conte. Provided that said property be conveyed to the Town under the provisions of M.G.L. c. 40 §8C, and as it may hereafter be amended and other Massachusetts Statutes relating to Conservation, to be managed and controlled by the Conservation Commission; and the Conservation Commission be authorized to file on behalf of the Town any and all applications deemed necessary for grants and/or reimbursements from the Commonwealth of Massachusetts deemed necessary under the Self-Help Act (Chapter 132A, §11) and/or any others in any way connected with the scope of this article, and that the Board of Selectmen be authorized to negotiate the purchase of the property and be authorized to make the decision to enter into any agreement to purchase the property and to execute any and all instruments as may be necessary on behalf of the Town and to act fully thereon. By request of the Real Estate and Open Space Committee. Estimated cost: \$70,200.00

May - 2000
Art. 7

Donna L. Rubino	147	164	176	487
Richard F. Rubino	153	168	182	503
Mildred I. Walker	145	158	170	473
Ann M. Viau	149	158	166	473
Velna M. Zuzick	150	155	172	477
Blanks	9,487	13,283	11,394	34,164

LIBERTARIAN PARTY

PRESIDENTIAL PREFERENCE

Kip Lee	0	0	0	0
Harry Browne	0	0	0	0
Edison P. McDaniels, Sr.	0	0	0	0
Larry Hines	0	0	0	0
David Lynn Hollist	0	0	0	0
L. Neil Smith	1	0	0	1
No Preference	0	0	0	0
Blanks	0	0	0	0
Others	2	1	1	4

STATE COMMITTEE MAN

Blanks	3	1	1	5
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STATE COMMITTEE WOMAN

Blanks	3	1	1	5
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TOWN COMMITTEE

Blanks	3	1	1	5
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*denotes successful vote

TOWN OF HARWICH

ANNUAL TOWN MEETING WARRANT
MAY 1, 2000
COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss:

To either of the Constables of the Town of Harwich in said County.

Greetings:

In the name of the Commonwealth of Massachusetts you are hereby directed to notify and warn the inhabitants of said Town qualified to vote in elections and Town affairs to meet in the Community Center Gymnasium, 100 Oak Street in said Town on Monday, May 1, 2000, at 7:00 P.M., then and there to act on the following articles:

Hereof fail not to make return of this Warrant with your doings thereon at the time and place of said meeting.

Given under our hands this 13th day of March, 2000.

s/Dana A. DeCosta, Chairman
s/Peter J. Luddy
s/Peter S. Hughes
s/Cyd Zeigler
s/Sylvia Laffin

BOARD OF SELECTMEN

A true copy Attest:

s/James M. Noonan

CONSTABLE

April 10, 2000

By virtue of this Warrant I have this day notified and warned the inhabitants of the Town of Harwich, qualified to vote in elections and town affairs, to meet in the Community Center Gymnasium, 100 Oak Street in said Town on Tuesday the 16th of May, 2000 at the time and place for the purpose herein named by posting up attested copies thereon in the four (4) Post Office buildings in the Town of Harwich, at least 7 days before the time of said meeting as within directed.

s/James M. Noonan
CONSTABLE

Exhibit A

Bk 15858 Pg 344 #98148

TOWN OF



HARWICH

Anita N. Doucette, CMC/AE/CMMC
Town Clerk

TOWN OF HARWICH
SPECIAL TOWN MEETING
AUGUST 26, 2002

732 Main Street
Harwich, Massachusetts 02645
Tel. 508-430-7516
FAX 508-432-5039

ARTICLE 2. ACQUIRE LAND OF KRUMIN - WALKER'S POND

ARTICLE 2. To see if the Town will vote to authorize and direct the Board of Selectmen to acquire by gift, by purchase, by eminent domain or otherwise, for any of the purposes specified in Chapter 293 of the Acts of 1998, as amended by Section 211 of Chapter 127 of the Acts of 1999 (An Act Relative to the Establishment of the Cape Cod Open Space Land Acquisition Program), all or a portion of land shown on Harwich Assessor's Map 84 as various parcels, or portions thereof; said parcels are also shown on a plan of land in Harwich Massachusetts prepared for Flora A. Krumin dated September 22, 2000, containing approximately 13.32 acres, more or less, which plan is recorded in the Barnstable County Registry of Deeds in Plan Book 561, Page 96 and are further described in Barnstable Registry of Deeds Book 778, Page 445, and to raise and appropriate, or transfer from available funds, or borrow a sufficient sum of money for such acquisition, and further to authorize the Board of Selectmen and/or the Conservation Commission to file on behalf of the Town any and all applications deemed necessary for grants and/or reimbursements from the Commonwealth of Massachusetts deemed necessary under the Self-Help Act (Chapter 132A, §11) and/or any others in any way connected with the scope of this article, and further to authorize the Board of Selectmen to negotiate the purchase of the land and to make the decision to enter into any agreement to purchase the land and to execute any and all instruments as may be necessary on behalf of the Town and to act fully thereon. By request of the Real Estate and Open Space Committee. Estimated cost: \$725,000.00.

MOTION: (Brian Widegren-Chairman, Finance Committee) I move that this article be accepted and adopted and that the sum of \$725,000.00 be appropriated for the purpose of purchasing and/or taking by eminent domain for preservation, open space, conservation and passive recreational purposes, the land described in the article, being the land containing approximately 13.32 acres shown on a plan of land in Harwich Massachusetts prepared for Flora A. Krumin dated September 22, 2000, which plan is recorded in the Barnstable County Registry of Deeds in Plan Book 561, Page 96, which land is to be managed and controlled by the Conservation Commission under the provisions of G.L.c40, sec 8C, and that to raise said appropriation the Treasurer, with the approval of the Board of Selectmen, is authorized to borrow the sum of \$725,000.00 pursuant to section 7 of Chapter 293 of the Acts of 1998 entitled "AN ACT RELATIVE TO THE ESTABLISHMENT OF THE CAPE COD OPEN SPACE LAND ACQUISITION PROGRAM" as amended, or any other enabling authority, and to issue bonds or notes of the Town therefore; provided that the Board of Selectmen and the Conservation Commission be authorized to take all actions necessary to carry out the acquisition of the land in accordance with the provisions of the article and this vote, including, without limitation, the authority to grant a conservation restriction to the Harwich Conservation Trust, which conservation restriction shall contain such terms and conditions as the Board of Selectmen deem appropriate.

Duly seconded

Report of the Real Estate and Open Space Committee :

The Real Estate and Open Space Committee (Land Bank Committee) voted at a meeting held on July 25, 2002 to recommend to Town Meeting that the Town acquire the Krumin property so-called, for the sum of \$725,000.00, in accordance with the provisions of Article 2 of the Special Town Meeting Warrant dated August 28, 2002.

Date: August 26, 2002

Isable Smith, Chair
Real Estate and Open Space Committee

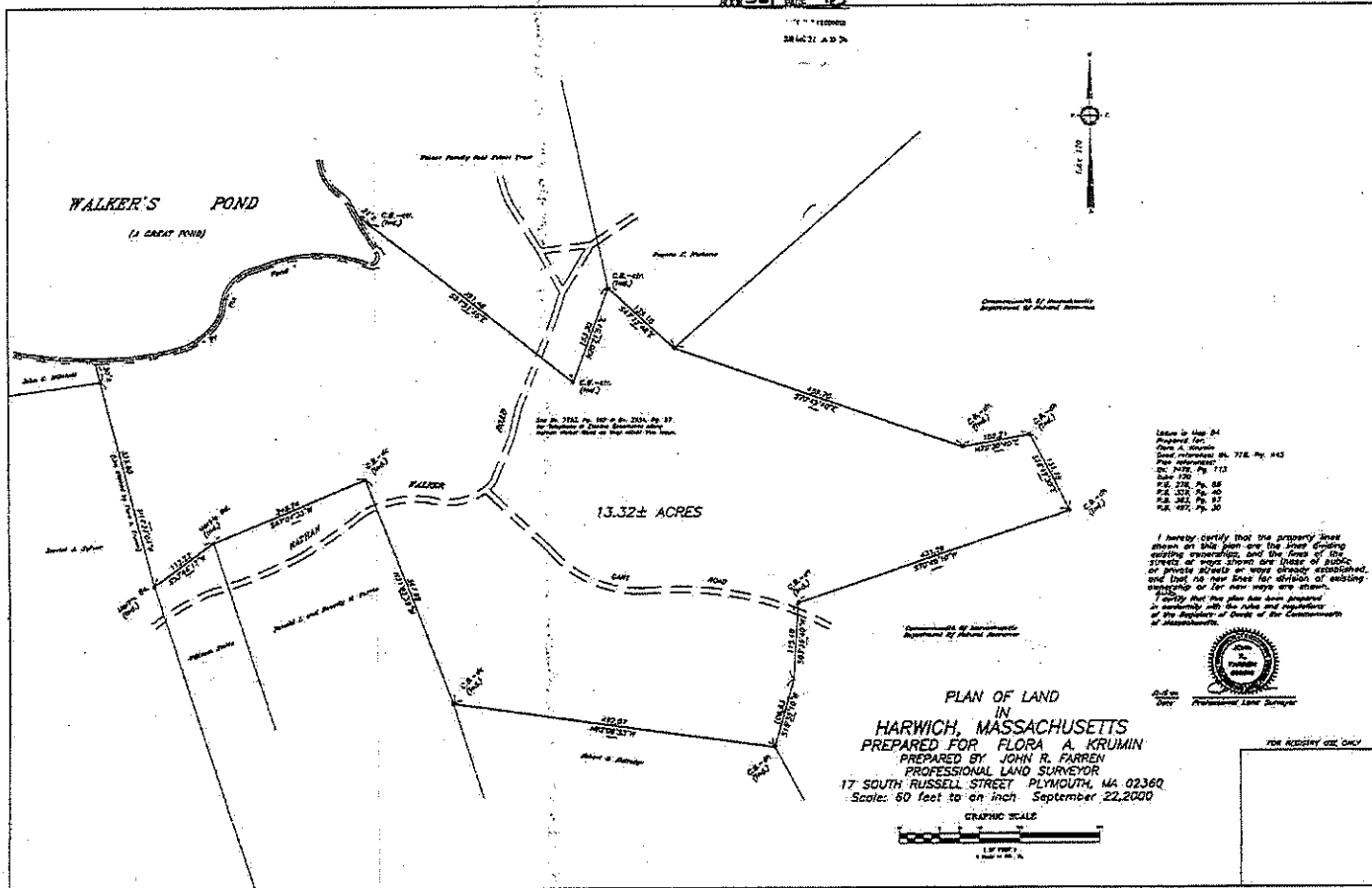
... needed a 2/3 majority vote to pass, it did get the necessary 2/3 vote.



25 2002

Attest: *[Signature]*
Amid N. [Signature], Town Clerk

RECORDS
BRANCH A & B



Issue to Map 24
 Maped 1st
 Date A. Spaulding
 Date corrected Pl. 718, No. 443
 Plan corrected
 Pl. 718, No. 713
 Map 130
 Pl. 718, No. 68
 Pl. 718, No. 40
 Pl. 718, No. 57
 Pl. 718, No. 30

I hereby certify that the property lines
 shown on this plan are the lines existing
 existing structures, and the lines of the
 streets, or ways shown are lines of public
 or private streets or ways already established,
 and that no new lines for division of existing
 ownership or for new ways are shown.
 I certify that this plan has been prepared
 in conformity with the rules and regulations
 of the Registrar of Deeds of the Commonwealth
 of Massachusetts.



PLAN OF LAND
 IN
 HARWICH, MASSACHUSETTS
 PREPARED FOR FLORA A. KRUMIN
 PREPARED BY JOHN R. FARRIN
 PROFESSIONAL LAND SURVEYOR
 17 SOUTH RUSSELL STREET PLYMOUTH, MA 02360
 Scale: 60 feet to an inch September 22, 2000



Bk 15858 P342 #98148
11-04-2002 @ 02:51p

QUITCLAIM DEED

aka Flora Krumin
I, **FLORA A. KRUMIN**, as surviving joint tenant, of 26-9 Meadow Village, Carver,
Massachusetts 02330

For consideration paid and in full consideration of **SEVEN HUNDRED TWENTY-FIVE
THOUSAND AND 00/100 (\$725,000.00) DOLLARS**

Grant to **THE TOWN OF HARWICH**, a Massachusetts municipal corporation, with a
mailing address of 732 Main Street, Harwich, Massachusetts 02645, to be under the jurisdiction
of the Conservation Commission pursuant to M.G.L. c.40, section 8C, as authorized by the vote
under Article 2 of the Special Town Meeting held on August 26, 2002, a certified copy of which
is attached herewith as Exhibit A.

WITH QUITCLAIM COVENANTS the land situated in Harwich, Barnstable County,
Massachusetts, bounded and described as follows:

Containing 13.32 acres, more or less, as shown on a plan of land entitled, "Plan of Land in
Harwich, Massachusetts Prepared for Flora A. Krumin Prepared by John R. Farren, Professional
Land Surveyor 17 South Russell Street Plymouth, MA 02360 Scale: 60 feet to an inch,
September 22, 2000," which plan is recorded at the Barnstable County Registry of Deeds in Plan
Book 561, Page 96.

Pursuant to the requirements of Chapter 293 of the Acts of 1998, as amended by Chapter 127,
section 211 of the Acts of 1999, the Cape Cod Open Space Land Acquisition Program, the within
Grantee, by accepting delivery of this deed, agrees that the land is subject to the following
permanent deed restriction, which shall run with the land and shall be enforceable in accordance
with Section 3 of the Cape Cod Open Space Land Acquisition Program: Said premises may be
used only for preservation, open space, conservation and passive recreation purposes.

I do hereby on oath depose and say that at the time of death of Harold A. Krumin there had been
no divorce, My husband, Harold A. Krumin died on June 8, 1977.

For my title, see Deed recorded at the Barnstable County Registry of Deeds in Book 778, Page
445.

Property Address: Nathan Walker Road, Harwich, Massachusetts 02645

3271

84/A6

Nathan Walker Rd

4
B15858 P342

WITNESS my hand and seal this 4th ^{November} day of ~~October~~, 2002.

Flora Krumin
FLORA A. KRUMIN

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.
(County)

^{November 4}
~~October~~, 2002

Then personally appeared the above named FLORA A. KRUMIN and acknowledged the foregoing instrument to be her free act and deed, before me,

[Signature]
Notary Public

My Commission Expires: 10/9/2003

George B. Cavanaugh