

SELECTMEN'S MEETING AGENDA*

Donn B. Griffin Room, Town Hall

732 Main Street, Harwich, MA

Executive Session 6:00 P.M.

Regular Meeting 6:30 P.M.

Monday, September 13, 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. Executive Session pursuant to G.L. c. 30A, § 21(a)(7) to comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements (“Purpose 7”)- the Open Meeting Law, G.L. c. 30A, §§ 22(f), (g)-- To review, approve and/or discuss the possible release of executive session meeting minutes dated March 22, 2021, April 27, 2021, May 10, 2021, May 12, 2021, June 7, 2021, June 14, 2021, July 26, 2021, September 7, 2021; votes may be taken.

III. PLEDGE OF ALLEGIANCE

IV. PUBLIC COMMENTS/ANNOUNCEMENTS

- A. Single-Use Plastic Bottle Bylaw

V. PUBLIC HEARING

- A. Discussion and possible vote to approve – M.G.L Chapter 138, Section 12, General – On Premise Seasonal Wine and Malt liquor license for Ashwood Food Services Incorporated d/b/a Jake’s at the Harbor located at 715 A Route 28, Harwich Port

VI. CONSENT AGENDA

- A. Vote to approve the Assistant Town Administrator’s recommendation to grant permission of NSTAR Electric Company D/B/A Eversource Energy for the purpose to install 50’ +/- of 1-3” conduit under the public road from proposed handhole #202/H3A to handhole 202/H3B to provide new underground electric service to 149 Clearwater Drive
- B. Vote to recognize the month of September as National Suicide Prevention month and authorize the Chair to sign the National Suicide Prevention Month Proclamation
- C. Vote to accept donation in amount of \$55,000 to the Fire Department from Nicholas and Trina Stavropoulos in memory of their daughter Nicole

VII. NEW BUSINESS

- A. Discussion and possible vote to determine whether to continue or disband the Community Center Facility Committee
- B. Discussion and possible vote to approve the Board of Selectmen Public Hearing Minutes – May 12, 2021
- 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 finalize the 2021 Special Town Meeting Warrant and send to Finance Committee for recommendations;
 - 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
 - Create a Wastewater Special Purpose Stabilization Fund

- Create an Affordable Housing Special Purpose Stabilization Fund
 - Amend Rooms Tax Rate Per M.G.L., Chapter 64G, §A
 - Fund Non-Union Personnel Wage Increases
 - Fund Negotiated Contract – Fire Fighters
 - Fund Negotiated Contract – Water Department
 - Transfer of Surplus Bond Proceeds
 - Land Taking By Eminent Domain
 - Purchase and Equip A Fire Department Ambulance
 - Fund Prior Year’s Unpaid Bills
- F. Board Discussion – Housing
- G. Discussion – Harwich Affordable Housing Trust Housing Coordinator
- H. Discussion – Harwich Housing Committee Make-up and Charge
- I. Discussion procurement process – Brooks Free Library Board of Trustees letter
- J. Status of Request for Proposals
1. Bank Street
 2. Bells Neck
 3. Willow Street

VIII. **TOWN ADMINISTRATOR’S REPORT**

IX. **SELECTMEN’S REPORT**

X. **CORRESPONDENCE**

- A. Single-Use Plastic Bottle Bylaw Letter
- B. Community Center Facilities Committee letter from Ralph Smith
- C. Resident letter to the board regarding music
- D. Notice to town departments from Historic District and Historic Commission

XI. **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:

Danielle Delaney, Executive Assistant

Posted by: _____
Town Clerk

Date: _____
September 9, 2021

PUBLIC HEARING



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

A handwritten signature in blue ink, appearing to read "D. Guillemette", is written over the printed name and title.

DATE: August 25, 2021

SUBJECT: Application for a seasonal On-Premises Wine and Malt Beverages license for Ashwood Food Service, Inc. d/b/a Jakes at the Harbor 715A Main Street, Harwich Port MA 02646, Katherine Lomask, Manager.

The Police Department has no objections regarding the above listed application for a Wine and Malt Beverages License. A background investigation of the proposed individual(s) indicates no liquor code violations or disqualifying history.

If you have any questions or need further clarification, please feel free to contact me at your earliest convenience.

NOTICE OF PUBLIC HEARING
TOWN OF HARWICH
BOARD OF SELECTMEN
APPLICATION FOR LIQUOR LICENSE

Notice is hereby given under Chapter 138 of the General Laws as amended that application has been made to this Board for a Seasonal, General On-Premise, Wine and Malt Liquor License for Ashwood Food Service Inc. d/b/a Jake's at the Harbor, Katherine Lomask, Manager, on the following described premises located at 715 A Route 28, Harwich Port, MA 02646. A food concession service with fifty outdoor seats. The building is 540 square feet.

The Board of Selectmen will hold a hearing on the application on Monday, September 13, 2021 no earlier than 6:00 P.M in the Griffin Room at the Harwich Town Hall, 732 Main Street, at which time all interested parties are cordially invited to attend.

BOARD OF SELECTMEN
LOCAL LICENSING AUTHORITY

Cape Cod Times
August 30, 2021



The Commonwealth of Massachusetts
 Alcoholic Beverages Control Commission
 95 Fourth Street, Suite 3, Chelsea, MA 02150-2358
 www.mass.gov/abcc

APPLICATION FOR A NEW LICENSE

Municipality

1. LICENSE CLASSIFICATION INFORMATION

ON/OFF-PREMISES	TYPE	CATEGORY	CLASS
<input type="text" value="On premises"/>	<input type="text" value="General - On Premises"/>	<input type="text" value="Wine and Malt Beverages"/>	<input type="text" value="Seasonal"/>

Please provide a narrative overview of the transaction(s) being applied for. On-premises applicants should also provide a description of the intended theme or concept of the business operation. Attach additional pages, if necessary.

Is this license application pursuant to special legislation? Yes No Chapter Acts of

2. BUSINESS ENTITY INFORMATION

The entity that will be issued the license and have operational control of the premises.

Entity Name	<input type="text" value="Ashwood Food Services Incorporated"/>	FEIN	<input type="text"/>
DBA	<input type="text" value="Jake's at the Harbor"/>	Manager of Record	<input type="text" value="Katherine Lomask"/>
Street Address	<input type="text" value="715 A Route 28, Harwichport, MA 02646"/>		
Phone	<input type="text"/>	Email	<input type="text" value="jakeroneys12@yahoo.com"/>
Alternative Phone	<input type="text"/>	Website	<input type="text"/>

3. DESCRIPTION OF PREMISES

Please provide a complete description of the premises to be licensed, including the number of floors, number of rooms on each floor, any outdoor areas to be included in the licensed area, and total square footage. You must also submit a floor plan.

Total Square Footage:	<input type="text" value="540"/>	Number of Entrances:	<input type="text" value="2"/>	Seating Capacity:	<input type="text" value="50"/>
Number of Floors	<input type="text" value="1"/>	Number of Exits:	<input type="text" value="2"/>	Occupancy Number:	<input type="text" value="50"/>

4. APPLICATION CONTACT

The application contact is the person whom the licensing authorities should contact regarding this application.

Name:	<input type="text" value="Kate Lomask"/>	Phone:	<input type="text" value="0"/>
Title:	<input type="text" value="Manager"/>	Email:	<input type="text" value="jakeroneys12@yahoo.com"/>

APPLICATION FOR A NEW LICENSE

5. CORPORATE STRUCTURE

Entity Legal Structure	<input type="text" value="Partnership"/>	Date of Incorporation	<input type="text" value="1994"/>
State of Incorporation	<input type="text" value="Massachusetts"/>	is the Corporation publicly traded? <input type="radio"/> Yes <input checked="" type="radio"/> No	

6. PROPOSED OFFICERS, STOCK OR OWNERSHIP INTEREST

List all individuals or entities that will have a direct or indirect, beneficial or financial interest in this license (E.g. Stockholders, Officers, Directors, LLC Managers, LLP Partners, Trustees etc.). Attach additional page(s) provided, if necessary, utilizing Addendum A.

- The individuals and titles listed in this section must be identical to those filed with the Massachusetts Secretary of State.
- The individuals identified in this section, as well as the proposed Manager of Record, must complete a CORI Release Form.
- Please note the following statutory requirements for Directors and LLC Managers:
On Premises (E.g. Restaurant/ Club/Hotel) Directors or LLC Managers - At least 50% must be US citizens;
Off Premises (Liquor Store) Directors or LLC Managers - All must be US citizens and a majority must be Massachusetts residents.
- If you are a Multi-Tiered Organization, please attach a flow chart identifying each corporate interest and the individual owners of each entity as well as the Articles of Organization for each corporate entity. Every individual must be identified in Addendum A.

Name of Principal	Residential Address	SSN	DOB
<input type="text" value="Peter Klaus"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Title and or Position	Percentage of Ownership	Director/ LLC Manager	US Citizen	MA Resident
<input type="text" value="President"/>	<input type="text" value="100"/>	<input checked="" type="radio"/> Yes <input type="radio"/> No	<input checked="" type="radio"/> Yes <input type="radio"/> No	<input checked="" type="radio"/> Yes <input type="radio"/> No

Name of Principal	Residential Address	SSN	DOB
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Title and or Position	Percentage of Ownership	Director/ LLC Manager	US Citizen	MA Resident
<input type="text"/>	<input type="text"/>	<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> Yes <input type="radio"/> No

Name of Principal	Residential Address	SSN	DOB
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Title and or Position	Percentage of Ownership	Director/ LLC Manager	US Citizen	MA Resident
<input type="text"/>	<input type="text"/>	<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> Yes <input type="radio"/> No

Name of Principal	Residential Address	SSN	DOB
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Title and or Position	Percentage of Ownership	Director/ LLC Manager	US Citizen	MA Resident
<input type="text"/>	<input type="text"/>	<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> Yes <input type="radio"/> No

Name of Principal	Residential Address	SSN	DOB
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Title and or Position	Percentage of Ownership	Director/ LLC Manager	US Citizen	MA Resident
<input type="text"/>	<input type="text"/>	<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> Yes <input type="radio"/> No

Additional pages attached? Yes No

CRIMINAL HISTORY
 Has any individual listed in question 6, and applicable attachments, ever been convicted of a State, Federal or Military Crime? If yes, attach an affidavit providing the details of any and all convictions. Yes No

APPLICATION FOR A NEW LICENSE

6A. INTEREST IN AN ALCOHOLIC BEVERAGES LICENSE

Does any individual or entity identified in question 6, and applicable attachments, have any direct or indirect, beneficial or financial interest in any other license to sell alcoholic beverages? Yes No If yes, list in table below. Attach additional pages, if necessary, utilizing the table format below.

Name	License Type	License Name	Municipality
Peter Klaus	Full Liquor License	Jake Rooney's Restaurant	Harwich Port

6B. PREVIOUSLY HELD INTEREST IN AN ALCOHOLIC BEVERAGES LICENSE

Has any individual or entity identified in question 6, and applicable attachments, ever held a direct or indirect, beneficial or financial interest in a license to sell alcoholic beverages, which is not presently held? Yes No If yes, list in table below. Attach additional pages, if necessary, utilizing the table format below.

Name	License Type	License Name	Municipality

6C. DISCLOSURE OF LICENSE DISCIPLINARY ACTION

Have any of the disclosed licenses listed in question 6A or 6B ever been suspended, revoked or cancelled? Yes No If yes, list in table below. Attach additional pages, if necessary, utilizing the table format below.

Date of Action	Name of License	City	Reason for suspension, revocation or cancellation

7. OCCUPANCY OF PREMISES

Please complete all fields in this section. Please provide proof of legal occupancy of the premises.

- If the applicant entity owns the premises, a deed is required.
- If leasing or renting the premises, a signed copy of the lease is required.
- If the lease is contingent on the approval of this license, and a signed lease is not available, a copy of the unsigned lease and a letter of intent to lease, signed by the applicant and the landlord, is required.
- If the real estate and business are owned by the same individuals listed in question 6, either individually or through separate business entities, a signed copy of a lease between the two entities is required.

Please indicate by what means the applicant will occupy the premises

Lease

Landlord Name

Landlord Phone

Landlord Email

Landlord Address

Lease Beginning Date

Rent per Month

Lease Ending Date

Rent per Year

Will the Landlord receive revenue based on percentage of alcohol sales?

Yes No

APPLICATION FOR A NEW LICENSE

8. FINANCIAL DISCLOSURE

A. Purchase Price for Real Estate	
B. Purchase Price for Business Assets	
C. Other * (Please specify below)	
D. Total Cost	

*Other Cost(s): (i.e. Costs associated with License Transaction including but not limited to: Property price, Business Assets, Renovations costs, Construction costs, Initial Start-up costs, Inventory costs, or specify other costs):"

SOURCE OF CASH CONTRIBUTION

Please provide documentation of available funds. (E.g. Bank or other Financial institution Statements, Bank Letter, etc.)

Name of Contributor	Amount of Contribution
Total:	

SOURCE OF FINANCING

Please provide signed financing documentation.

Name of Lender	Amount	Type of Financing	Is the lender a licensee pursuant to M.G.L. Ch. 138.
			<input type="radio"/> Yes <input type="radio"/> No
			<input type="radio"/> Yes <input type="radio"/> No
			<input type="radio"/> Yes <input type="radio"/> No
			<input type="radio"/> Yes <input type="radio"/> No

FINANCIAL INFORMATION

Provide a detailed explanation of the form(s) and source(s) of funding for the cost identified above.

9. PLEDGE INFORMATION

Please provide signed pledge documentation.

Are you seeking approval for a pledge? Yes No

Please indicate what you are seeking to pledge (check all that apply) License Stock Inventory

To whom is the pledge being made?

10. MANAGER APPLICATION

A. MANAGER INFORMATION

The individual that has been appointed to manage and control the licensed business and premises.

Proposed Manager Name Date of Birth SSN

Residential Address

Email Phone

Please indicate how many hours per week you intend to be on the licensed premises

B. CITIZENSHIP/BACKGROUND INFORMATION

Are you a U.S. Citizen? Yes No *Manager must be a U.S. Citizen
If yes, attach one of the following as proof of citizenship US Passport, Voter's Certificate, Birth Certificate or Naturalization Papers.

Have you ever been convicted of a state, federal, or military crime? Yes No
If yes, fill out the table below and attach an affidavit providing the details of any and all convictions. Attach additional pages, if necessary, utilizing the format below.

Date	Municipality	Charge	Disposition

C. EMPLOYMENT INFORMATION

Please provide your employment history. Attach additional pages, if necessary, utilizing the format below.

Start Date	End Date	Position	Employer	Supervisor Name
3/1/2015	present	General Manager	Jake Rooney's restaurant	Peter Klaus
3/1/2013	3/1/2015	Owner	Everleaf Design Inc	Self Employed
1/1/1998	3/1/2013	Marketing, HR, Documentati	Buxco Electronics	Joe Lomask

D. PRIOR DISCIPLINARY ACTION

Have you held a beneficial or financial interest in, or been the manager of, a license to sell alcoholic beverages that was subject to disciplinary action? Yes No If yes, please fill out the table. Attach additional pages, if necessary,utilizing the format below.

Date of Action	Name of License	State	City	Reason for suspension, revocation or cancellation

I hereby swear under the pains and penalties of perjury that the information I have provided in this application is true and accurate:

Manager's Signature Date

11. MANAGEMENT AGREEMENT

Are you requesting approval to utilize a management company through a management agreement?

Yes No

If yes, please fill out section 11.

Please provide a narrative overview of the Management Agreement. Attach additional pages, if necessary.

IMPORTANT NOTE: A management agreement is where a licensee authorizes a third party to control the daily operations of the license premises, while retaining ultimate control over the license, through a written contract. *This does **not** pertain to a liquor license manager that is employed directly by the entity.*

11A. MANAGEMENT ENTITY

List all proposed individuals or entities that will have a direct or indirect, beneficial or financial interest in the management Entity (E.g. Stockholders, Officers, Directors, LLC Managers, LLP Partners, Trustees etc.).

Entity Name	Address	Phone
<input style="width: 95%;" type="text"/>	<input style="width: 95%;" type="text"/>	<input style="width: 95%;" type="text"/>

Name of Principal	Residential Address	SSN	DOB
<input style="width: 95%;" type="text"/>	<input style="width: 95%;" type="text"/>	<input style="width: 95%;" type="text"/>	<input style="width: 95%;" type="text"/>

Title and or Position	Percentage of Ownership	Director	US Citizen	MA Resident
<input style="width: 95%;" type="text"/>	<input style="width: 95%;" type="text"/>	<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> Yes <input type="radio"/> No

Name of Principal	Residential Address	SSN	DOB
<input style="width: 95%;" type="text"/>	<input style="width: 95%;" type="text"/>	<input style="width: 95%;" type="text"/>	<input style="width: 95%;" type="text"/>

Title and or Position	Percentage of Ownership	Director	US Citizen	MA Resident
<input style="width: 95%;" type="text"/>	<input style="width: 95%;" type="text"/>	<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> Yes <input type="radio"/> No

Name of Principal	Residential Address	SSN	DOB
<input style="width: 95%;" type="text"/>	<input style="width: 95%;" type="text"/>	<input style="width: 95%;" type="text"/>	<input style="width: 95%;" type="text"/>

Title and or Position	Percentage of Ownership	Director	US Citizen	MA Resident
<input style="width: 95%;" type="text"/>	<input style="width: 95%;" type="text"/>	<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> Yes <input type="radio"/> No

Name of Principal	Residential Address	SSN	DOB
<input style="width: 95%;" type="text"/>	<input style="width: 95%;" type="text"/>	<input style="width: 95%;" type="text"/>	<input style="width: 95%;" type="text"/>

Title and or Position	Percentage of Ownership	Director	US Citizen	MA Resident
<input style="width: 95%;" type="text"/>	<input style="width: 95%;" type="text"/>	<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> Yes <input type="radio"/> No

CRIMINAL HISTORY

Has any individual identified above ever been convicted of a State, Federal or Military Crime?

Yes No

If yes, attach an affidavit providing the details of any and all convictions.

11B. EXISTING MANAGEMENT AGREEMENTS AND INTEREST IN AN ALCOHOLIC BEVERAGES

LICENSE

Does any individual or entity identified in question 11A, and applicable attachments, have any direct or indirect, beneficial or financial interest in any other license to sell alcoholic beverages; and or have an active management agreement with any other licensees?

Yes No If yes, list in table below. Attach additional pages, if necessary, utilizing the table format below.

Name	License Type	License Name	Municipality

11C. PREVIOUSLY HELD INTEREST IN AN ALCOHOLIC BEVERAGES LICENSE

Has any individual or entity identified in question 11A, and applicable attachments, ever held a direct or indirect, beneficial or financial interest in a license to sell alcoholic beverages, which is not presently held?

Yes No If yes, list in table below. Attach additional pages, if necessary, utilizing the table format below.

Name	License Type	License Name	Municipality

11D. PREVIOUSLY HELD MANAGEMENT AGREEMENT

Has any individual or entity identified in question 11A, and applicable attachments, ever held a management agreement with any other Massachusetts licensee?

Yes No If yes, list in table below. Attach additional pages, if necessary, utilizing the table format below.

Licensee Name	License Type	Municipality	Date(s) of Agreement

11E. DISCLOSURE OF LICENSE DISCIPLINARY ACTION

Has any of the disclosed licenses listed in questions in section 11B, 11C, 11D ever been suspended, revoked or cancelled?

Yes No If yes, list in table below. Attach additional pages, if necessary, utilizing the table format below.

Date of Action	Name of License	City	Reason for suspension, revocation or cancellation

11F. TERMS OF AGREEMENT

- a. Does the agreement provide for termination by the licensee? Yes No
- b. Will the licensee retain control of the business finances? Yes No
- c. Does the management entity handle the payroll for the business? Yes No

d. Management Term Begin Date e. Management Term End Date

f. How will the management company be compensated by the licensee? (check all that apply)

- \$ per month/year (indicate amount)
- % of alcohol sales (indicate percentage)
- % of overall sales (indicate percentage)
- other (please explain)

ABCC Licensee Officer/LLC Manager

Signature:
 Title:
 Date:

Management Agreement Entity Officer/LLC Manager

Signature:
 Title:
 Date:

ADDITIONAL INFORMATION

Please utilize this space to provide any additional information that will support your application or to clarify any answers provided above.

A large, empty rectangular box with a thin black border, occupying most of the page below the text. It is intended for the applicant to provide additional information or clarify previous answers.

APPLICANT'S STATEMENT

I, Kathleen Lomas the: sole proprietor; partner; corporate principal; LLC/LLP manager
Authorized Signatory

of Ashwood Food Service
Name of the Entity/Corporation

hereby submit this application (hereinafter the "Application"), to the local licensing authority (the "LLA") and the Alcoholic Beverages Control Commission (the "ABCC" and together with the LLA collectively the "Licensing Authorities") for approval.

I do hereby declare under the pains and penalties of perjury that I have personal knowledge of the information submitted in the Application, and as such affirm that all statements and representations therein are true to the best of my knowledge and belief. I further submit the following to be true and accurate:

- (1) I understand that each representation in this Application is material to the Licensing Authorities' decision on the Application and that the Licensing Authorities will rely on each and every answer in the Application and accompanying documents in reaching its decision;
- (2) I state that the location and description of the proposed licensed premises are in compliance with state and local laws and regulations;
- (3) I understand that while the Application is pending, I must notify the Licensing Authorities of any change in the information submitted therein. I understand that failure to give such notice to the Licensing Authorities may result in disapproval of the Application;
- (4) I understand that upon approval of the Application, I must notify the Licensing Authorities of any change in the ownership as approved by the Licensing Authorities. I understand that failure to give such notice to the Licensing Authorities may result in sanctions including revocation of any license for which this Application is submitted;
- (5) I understand that the licensee will be bound by the statements and representations made in the Application, including, but not limited to the identity of persons with an ownership or financial interest in the license;
- (6) I understand that all statements and representations made become conditions of the license;
- (7) I understand that any physical alterations to or changes to the size of the area used for the sale, delivery, storage, or consumption of alcoholic beverages, must be reported to the Licensing Authorities and may require the prior approval of the Licensing Authorities;
- (8) I understand that the licensee's failure to operate the licensed premises in accordance with the statements and representations made in the Application may result in sanctions, including the revocation of any license for which the Application was submitted; and
- (9) I understand that any false statement or misrepresentation will constitute cause for disapproval of the Application or sanctions including revocation of any license for which this Application is submitted.
- (10) I confirm that the applicant corporation and each individual listed in the ownership section of the application is in good standing with the Massachusetts Department of Revenue and has complied with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting of child support.

Signature: Kathleen Lomas

Date: 7/31/21

Title: Manager



The Commonwealth of Massachusetts
 Alcoholic Beverages Control Commission
 95 Fourth Street, Suite 3, Chelsea, MA 02150-2358
 www.mass.gov/abcc

RETAIL ALCOHOLIC BEVERAGES LICENSE APPLICATION
 MONETARY TRANSMITTAL FORM

APPLICATION FOR A NEW LICENSE

APPLICATION SHOULD BE COMPLETED ON-LINE, PRINTED, SIGNED, AND SUBMITTED TO THE LOCAL LICENSING AUTHORITY.

ECRT CODE: RETA

Please make \$200.00 payment here: [ABCC PAYMENT WEBSITE](#)

PAYMENT MUST DENOTE THE NAME OF THE LICENSEE CORPORATION, LLC, PARTNERSHIP, OR INDIVIDUAL AND INCLUDE THE PAYMENT RECEIPT

ABCC LICENSE NUMBER (IF AN EXISTING LICENSEE, CAN BE OBTAINED FROM THE CITY)

ENTITY/ LICENSEE NAME

ADDRESS

CITY/TOWN STATE ZIP CODE

For the following transactions (Check all that apply):

- | | | | |
|--|--|---|---|
| <input checked="" type="checkbox"/> New License | <input type="checkbox"/> Change of Location | <input type="checkbox"/> Change of Class (i.e. Annual/Seasonal) | <input type="checkbox"/> Change Corporate Structure (i.e. Corp / LLC) |
| <input type="checkbox"/> Transfer of License | <input type="checkbox"/> Alteration of Licensed Premises | <input type="checkbox"/> Change of License Type (i.e. club / restaurant) | <input type="checkbox"/> Pledge of Collateral (i.e. License/Stock) |
| <input type="checkbox"/> Change of Manager | <input type="checkbox"/> Change Corporate Name | <input type="checkbox"/> Change of Category (i.e. All Alcohol/Wine, Malt) | <input type="checkbox"/> Management/Operating Agreement |
| <input type="checkbox"/> Change of Officers/
Directors/LLC Managers | <input type="checkbox"/> Change of Ownership Interest
(LLC Members/LLP Partners,
Trustees) | <input type="checkbox"/> Issuance/Transfer of Stock/New Stockholder | <input type="checkbox"/> Change of Hours |
| | | <input type="checkbox"/> Other <input type="text"/> | <input type="checkbox"/> Change of DBA |

THE LOCAL LICENSING AUTHORITY MUST MAIL THIS
 TRANSMITTAL FORM ALONG WITH
 COMPLETED APPLICATION, AND SUPPORTING DOCUMENTS TO:

Alcoholic Beverages Control Commission
 95 Fourth Street, Suite 3
 Chelsea, MA 02150-2358

CONSENT AGENDA

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: Board of Selectmen

FROM: Meggan M. Eldredge, Assistant Town Administrator *ME*

RE: Utility Hearing September 8, 2021
NSTAR Electric dba Eversource Electric
149 Clearwater Drive

DATE: September 13, 2021

A Utility Hearing was held on Wednesday, September 8, 2021 at 10:00 AM at the request of NSTAR/Eversource for the purpose of the installing 50' +/- of 1-3" conduit under the public road from proposed handhole #202/H3A to handhole 202/H3B to provide new underground electric service to 149 Clearwater Drive.

Legal ads were published and notifications were given. There were no abutters present. There were no objections to installing 50' +/- of 1-3" conduit under the public road from proposed handhole #202/H3A to handhole 202/H3B to provide new underground electric service to 149 Clearwater Drive.

There were no other questions, concerns or objections and the Hearing was adjourned at 10:05 AM. After careful review, I recommend that the Board approve Eversource Plan No. 5342493 Dated August 5, 2021 – WO#5342493.



Phone (508) 430-7513

Fax (508) 432-5039

TOWN OF HARWICH

732 MAIN STREET, HARWICH, MA 02645

MINUTES Utility Hearing – 149 Clearwater Drive Wednesday, September 8, 2021

THOSE IN ATTENDANCE: Meggan Eldredge Assistant Town Administrator, Ellen A. Powell, Administrative Secretary, Representative from Eversource: Marissa Jackson. Peter Biciunas and Julia Biciunas from 149 Clearwater Drive. There were no abutters.

The Assistant Town Administrator called the hearing to order at 10:00 A.M. and read the Utility Hearing Notice.

Marissa Jackson from Eversource, confirmed the work to be performed which is proposed to install 50' +/- of 1-3" conduit under the public road from proposed handhole #202/H3A to handhole 202/H3B to provide new underground electric service to 19 Clearwater Drive. Ms. Eldredge confirmed no pole needed for work. Marissa Jackson explained poles are already existing and jointly owned by Eversource and Verizon.

The Assistant Town Administrator asked if the road would need closure during the work. Marissa stated one-side would be closed with detail available.

Mr. Biciunas stated he was the one building at 149 Clearwater Drive and asked that the work be approved.

Mrs. Eldredge advised that she would recommend to the Board of Selectmen at the September 13, 2021 meeting to approve the installation of one 50' +/- conduit under the public road from proposed handhole #202/H3A to handhole 202/H3B to provide new underground electric service to customer at 149 Clearwater Drive.

The hearing was adjourned at 10:04 A.M.

Submitted by:
Ellen A. Powell
Administrative Secretary

Attachments

PETITION FOR
UNDERGROUND CABLE AND CONDUIT LOCATIONS

WO# 5342493

Harwich, Massachusetts

August 5, 2021

To the Board of Selectmen for the Town of Harwich, Massachusetts.

NSTAR ELECTRIC COMPANY d/b/a EVERSOURCE ENERGY

request permission to locate underground cables, conduits, and manholes, including the necessary sustaining and protecting fixtures, in, under, along and across the following public way or ways:

Clearwater Drive, Harwich

Eversource to install 50' +/- of 1-3" conduit under the public road from proposed handhole #202/H3A to handhole 202/H3B to provide new underground electric service to 149 Clearwater Drive

Wherefore it prays that after due notice and hearing as provided by law, it be granted a location for and permission to install and maintain underground cables, conduits, and manholes, together with such sustaining and protecting fixtures as it may find necessary, said underground cables, conduits, and manholes to be installed in accordance with the plan files herewith marked Plan #. 5342493 Dated August 5, 2021.

NSTAR ELECTRIC COMPANY d/b/a EVERSOURCE ENERGY

By Marissa L Jackson

Right of Way Agent
Marissa L. Jackson

**FORM OF ORDER FOR
UNDERGROUND CABLE AND CONDUIT LOCATIONS
WO# 5342493**

IN BOARD OF SELECTMEN FOR THE TOWN OF HARWICH, MASSACHUSETTS.

Notice having been given and a public hearing held, as provided by law,
IT IS HEREBY ORDERED: that the NSTAR ELECTRIC COMPANY d/b/a EVERSOURCE ENERGY
be and it is hereby granted a location for and permission to install and maintain underground
cables, conduits and manholes, together with such sustaining and protecting fixtures as said
Company may deem necessary, in, under, along and across the public way or ways
hereinafter referred to, as requested in petition of said Company dated the 5th day of August
2021.

All construction under this order shall be in accordance with the following conditions:

Cables, conduits, and manholes shall be installed substantially at the point indicated
upon the plan marked Plan #. 5342493 Dated August 5, 2021 filed with said petition. The
following are the public ways or parts of ways under, along and across which the cables
above referred to may be installed under this order.

Clearwater Drive, Harwich
Eversource to install 50' +/- of 1-3" conduit under the public road from proposed handhole
#202/H3A to handhole 202/H3B to provide new underground electric service to 149 Clearwater
Drive

I hereby certify that the foregoing order was adopted at a meeting of the Board of
Selectmen of the Town of Harwich, Massachusetts held on the _____ day of
_____ 2021.

Clerk of Selectmen.

_____, Massachusetts _____ 2021.

Received and entered in the records of location orders of the Town of Harwich
Book _____ Page _____.

Attest:

Town Clerk

We hereby certify that on _____ 2021, at _____ o'clock,
_____ M. at _____ a public hearing was held on the
petition of the

NSTAR ELECTRIC COMPANY d/b/a EVERSOURCE ENERGY

for permission to install and maintain the underground cables, conduits, manholes and fixtures described in the order herewith recorded, and that we mailed at least seven days before said hearing a written notice of the time and place of said hearing to each of the owners of real estate (as determined by the last preceding assessment for taxation) along the ways or parts of ways upon which the Company is permitted to install underground cables, conduits, manholes and fixtures under said order. And that thereupon said order was duly adopted.

**Selectmen of the Town of
Harwich, Massachusetts**

CERTIFICATE

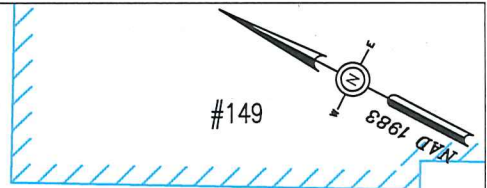
I hereby certify that the foregoing is a true copy of a location order and certificate of hearing with notice adopted by the Board of Selectmen of the Town of Harwich, Massachusetts, on the _____ day of _____ 2021, and recorded with the records of location orders of said Town, Book _____, Page _____.

This certified copy is made under the provisions of Chapter 166 of General Laws and any additions thereto or amendments thereof.

Attest:

Town Clerk.

Plan to accompany petition of EVERSOURCE ENERGY to install 1-3" conduit under public road from proposed handhole #202/H3A to handhole #202/H3B in order to provide new electrical service for customer at #149 CLEARWATER DR.



CLEARWATER DR.

73-S112-0
154 CLEARWATER DR.
N/F
KAPLAN, ANN W. TR
ANN W. KAPLAN LIVING TRUST

73-S148-0
149 CLEARWATER DR.
N/F
BICIUNAS, PETER A.
BICIUNAS, MARGARET

LF=30'± 1-3" SCH 40

⊕ 202/H3B

CLEARWATER DR.

APPROX. 410±' TO RAINBOW WAY

EVERSOURCE TO INSTALL HANDHOLE 202/H3A

EDGE OF PAVEMENT(EOP).

LF=20'± 1-3" SCH 80

⊕ 202/H3A

APPROX. RIGHT OF WAY(R.O.W.)

JO-VZ
202/3

73-S149-0
153 CLEARWATER DR.
N/F
MCNULTY, ROBERT F.
MCNULTY, BARBARA A.

73-S111-0
150 CLEARWATER DR.
N/F
SWORDS, AMY H. ET AL
SWORDS, DAVID A. ET AL

LEGEND

- ⊕ Proposed Hand Hole
- ⊕ Existing Hand Hole
- Proposed Conduit
- Existing Pole

R.O.W.

EOP

R.O.W.

R.O.W.

EOP

EOP

R.O.W.

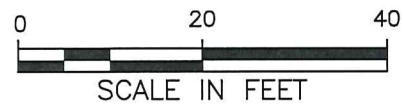
R.O.W.

R.O.W.

APPROX. R

#150

#154



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MASS. LAW

REQUIRES 72 HOURS ADVANCE NOTICE TO UTILITY COMPANIES BEFORE DIGGING BY ANYONE. CALL DIG-SAFE 1-888-344-7233

Plan #	5342493
Ward #	
Work Order #	5342493
Surveyed by:	N/A
Research by:	JC/SC
Plotted by:	SJ
Proposed Structures:	BP
Approved:	T THIBAUT
P#	

NSTAR EVERSOURCE
ELECTRIC
d/b/a
1165 MASSACHUSETTS AVE. DORCHESTER, MASS. 02125

Plan of	CLEARWATER DRIVE
Showing	PROPOSED HANDHOLE AND CONDUIT LOCATION
Scale	1"=20'
Date	August 5, 2021
SHEET	1 of 1

National Suicide Prevention Month Proclamation 2021 Town of _____

WHEREAS, September is known as Suicide Prevention Month, a time in which mental health advocates, individuals, prevention organizations, survivors, allies and communities around the country unite to promote suicide prevention awareness; and

WHEREAS, the past year has presented our communities with challenges and led to transitions that, expected or unexpected, welcomed or not, can be unsettling, disorienting, and stressful; and

WHEREAS, the pandemic has changed our fabric of life, and major life changes are environmental risk factors for suicide; and

WHEREAS, we know that connecting, working with, and supporting one another can help prepare us for the future; and

WHEREAS, according to the American Foundation for Suicide Prevention (AFSP), Suicide is the 10th leading cause of death among adults, and the 2nd leading cause of death among individuals between the ages of 10 and 34 in the US; and

WHEREAS, more than 48,000 people died by suicide across the United States in 2019, with an average of 132 suicides completed daily: and

WHEREAS, each suicide directly impacts a minimum of 100 additional people, including family, friends, co-workers, neighbors, and community members: and

WHEREAS, local organizations like the Cape and Islands Suicide Prevention Coalition encourage all residents to take the time to understand the importance of mental health education and recognize that taking care of ourselves and others includes taking care of mental health; and

WHEREAS, _____ [insert name of city/village and state] publicly places its full support behind those who work in the fields of mental health, education, and law enforcement;

WHEREAS, all Barnstable residents are urged to play a role in suicide prevention and promote mental health and wellness as we strive towards reducing suicides; and

WHEREAS, September is recognized across the United States as Suicide Prevention Month and provides the opportunity to educate our community about the warning signs for suicide and how to reach out and connect to those experiencing an emotional crisis;

NOW, THEREFORE, be it resolved that I, _____ [insert name of Mayor/President/Chairman], do hereby proclaim the month of September 2021, as National Suicide Prevention Month in the _____ [insert name of governing body].



HARWICH FIRE DEPARTMENT

MEMORANDUM

David J. LeBlanc, **Chief of Department**
Craig W. Thornton, **Deputy Fire Chief**

Date	September 8, 2021
To:	Joseph Powers, Town Administrator
From:	David LeBlanc, Fire Chief
Subject:	Donation to the Fire Department

The Department is in receipt of donation of \$55,000 from Nicholas and Trina Stavropoulos to honor the memory of their daughter Nicole.

After discussions with the department, the Stavropoulos' decided to make this donation to purchase of masks for the department's new Self Contained Breathing Apparatus. These masks contain a Bluetooth communication system that allows the user to hear and speak more clearly.

Both Nick and Trina felt that helping Harwich Firefighters communicate better, thus increasing their safety was a fitting tribute to their daughter Nicole.

I cannot adequately express the gratitude for this generous donation. Firefighter safety is always a concern and anything that can be done to improve it is critically important, but this upgrade is not one the department would consider without this donation.

I believe it is appropriate for the Board to accept this donation on behalf of the Fire Department, and would appreciate it being placed on the next agenda.

NEW BUSINESS

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

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

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

ALSO PARTICIPATING: Town Administrator Joseph Powers.

CALL TO ORDER

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

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

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

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

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

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

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

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

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

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

PUBLIC HEARING

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

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

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

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

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

Mr. Ballantine turned it over to Mr. Blake.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Ballantine asked if he was correct?

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

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

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

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

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

The group of individuals said they did.

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

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

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

Mr. Ballantine said okay, that sounds good.

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

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

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

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

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

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

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

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

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

Mr. Tomlinson called for Ms. Carly Tefft.

Ms. Tefft said that she was there.

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

Ms. Tefft said yes.

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

Ms. Tefft said yes

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

Ms. Tefft said yes.

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

Ms. Tefft said since the summer of 2017.

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

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

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

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

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

Ms. Tefft said yes.

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

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

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

Ms. Tefft said, yes it was.

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

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

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

Ms. Tefft said correct.

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

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

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

Ms. Tefft said that she has.

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

Ms. Tefft said she believed there are four.

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

Ms. Tefft said no.

Mr. Tomlinson asked if she had performed anywhere?

Ms. Tefft said that she did.

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

Ms. Tefft said no other places in Harwich.

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

Ms. Tefft said that they were live.

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

Ms. Tefft said outdoors.

Mr. Tomlinson asked if that was during COVID?

Ms. Tefft said yes.

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

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

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

Ms. Tefft said no.

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

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

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

Ms. Tefft said that she does.

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

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

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

Ms. Tefft said no.

Mr. Tomlinson asked why?

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

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

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

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

Ms. Tefft said yes.

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

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

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

Ms. Tefft said yes.

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

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

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

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

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

Mr. Blake said that should come from the Chairman.

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

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

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

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

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

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

Ms. Tefft said no.

Mr. Blake asked is it 10 or is it?

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

Mr. Blake asked if she is from the area?

Ms. Tefft said that she is from Sandwich.

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

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

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

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

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

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

Mr. Blake asked if she does not perform inside?

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

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

Ms. Tefft said no.

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

Ms. Tefft said that she does not.

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

Mr. Tomlinson objected.

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

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

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

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

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

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

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

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

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

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

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

Ms. Tefft said that she did not.

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

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

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

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

Ms. Tefft said no.

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

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

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

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

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

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

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

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

Mr. Ballantine said so then that answer is yes?

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

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

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

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

Ms. Tefft said that she had not.

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

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

Mr. Ballantine said to please go ahead.

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

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

Ms. Tafft said that she never said that.

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

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

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

Ms. Ribeiro said, yes I am.

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

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

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

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

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

Ms. Ribeiro said that she has.

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

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

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

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

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

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

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

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

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

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

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

Ms. Ribeiro said correct.

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

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

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

Ms. Ribeiro said no, she is not.

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

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

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

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

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

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

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

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

Mr. Tomlinson thanked Ms. Ribeiro for her time.

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

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

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

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

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

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

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

Mr. Ballantine thanked her for that.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Ms. Ribeiro said no.

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

Ms. Ribeiro said that she does.

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

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

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

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

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

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

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

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

Mr. Dillon said he was not.

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

Mr. Dillon said yes.

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

Mr. Dillon said yes, it is.

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

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

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

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

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

Mr. Dillon said yes.

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

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

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

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

Mr. Tomlinson asked if his acoustic guitar is amplified?

Mr. Dillon said yes it is.

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

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

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

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

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

Mr. Dillon said yes.

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

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

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

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

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

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

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

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

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

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

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

Mr. Dillon said yes.

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

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

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

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

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

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

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

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

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

Mr. Howell said that he is a lucky musician.

Mr. Dillon said I am yes.

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

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

Mr. Dillon said no.

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

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

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

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

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

Mr. Ballantine turned it over to Mr. Howell.

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

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

Mr. Howell said he is familiar with it.

Mr. Ballantine turned it back to Mr. Tomlinson.

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

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

Mr. Tomlinson said thank you to Mr. Dillon.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Ganley said correct.

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

Mr. MacAskill asked for relevance?

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

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

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

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

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

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

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

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

Mr. Ganley said correct.

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

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

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

Mr. Ganley said that he has.

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

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

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

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

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

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

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

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

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

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

Mr. Ballantine said that he may not.

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

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

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

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

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

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

Mr. Howell moved that they take five minute recess.

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

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

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

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

They went on recess for five minutes.

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Reed said yes.

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

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

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

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

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

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

Mr. Reed said no, that he had not.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Tomlinson said he does.

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

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

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

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

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

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

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

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

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

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

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

Mr. Ballantine said to do his comments now.

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

Mr. Ballantine said for him to go ahead.

Mr. Tomlinson again began to address Mr. Piantadosi.

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Ballantine said that his not.

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

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

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

Mr. Ballantine said, very quickly.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Tomlinson objected.

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

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

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

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

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

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

Mr. Ballantine said thank you.

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

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

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

Mr. Howell asked to speak.

Mr. Tomlinson asked to respond.

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

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

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

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

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

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

Mr. McManus said that he did not.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. McManus withdrew his second.

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. MacAskill said that he seconded.

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

Mr. Blake said that he believed that they are.

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

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

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

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

Female speaking asked for a point of information please.

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

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

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

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

ADJOURNMENT

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

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

Respectfully submitted,
Lisa Schwab
Board Secretary

DRAFT
SPECIAL TOWN MEETING
WARRANT
With
RECOMMENDATIONS



Monday, October 18, 2021
6:30PM
Harwich Community Center
Gymnasium
100 Oak Street

Face coverings - mandatory

11.1 - Draft 2021 Special Town Meeting Warrant

[SAVE FOR TABLE OF CONTENTS]

11.1 - Draft 2021 Special Town Meeting Warrant

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	¾ 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 Terminate Debate		X		X	X			X			X
Reconsider ²	X			X	X			X			X
Consider Articles Out of Order	X		X		X			X			X
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											

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11.1 - Draft 2021 Special Town Meeting Warrant

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.

Funding Source: The American Rescue Plan Act of 2021 (ARPA) or Free Cash

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: **\$2,100,000.**

Funding Source: Free Cash

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 WASTEWATER COLLECTION SYSTEM DESIGN ON
CONTINENTAL DRIVE AND WHIDAH DRIVE**

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 wastewater collection system of approximately 5,500 linear feet of gravity sewer main on Continental Drive and Whidah Drive, 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: **\$400,000.**

Funding Source: Free Cash

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: **\$200,000.**

Funding Source: The American Rescue Plan Act of 2021 (ARPA) or Free Cash

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; 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:

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, for the acquisition, creation, preservation, and support of affordable housing available for occupancy by low and moderate households earning less than 100% of area wide median income as most recently determined by the United States Department of Housing and Urban Development, adjusted for household size.; 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; 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:

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; and 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:

Commented [JG1]: This is suggested language to address Selectman Howell's concern that the Town not be limited to the definition of low income housing contained, for example, in the CPA, which defines low income as earning less than 60% of area wide medium income. The CPA, however, allows use of CPA funds for moderate income housing as well, which is defined as 100% of area wide medium income.

To ensure that the Town is expending money for a valid public purpose and not exposed to a ten taxpayers' suit, it would be better if this article tracks the definition of low and moderate income contained in the CPA, as I have provide.

If the Town wants to make housing available for households earning less than 125%, special legislation may be necessary.

The language "adjusted for household size" is a formula that HUD uses to increase the percentage of area medium income depending on the number of people residing in the household.

Commented [JG2]: The Board voted to place the two stabilization articles before the rooms tax increase article.

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: **\$39,843**

Funding Source: Raise & Appropriate (offset by FY 2022 estimated revenue – rooms tax) or Free Cash

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: **\$86,957**

Funding Source: Raise & Appropriate (offset by FY 2022 estimated revenue – rooms tax) or Free Cash

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: **\$38,245**

Funding Source: Raise & Appropriate (offset by FY 2022 estimated revenue – rooms tax) or Free Cash

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 **\$219,894.56** 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. **Estimated Cost: \$25,000**

Funding Source: Free Cash

Two-thirds vote required.

FINANCE COMMITTEE RECOMMENDS

ROLL CALL VOTES:

Finance Committee:

To accept and adopt:

Yeas:

Nays:

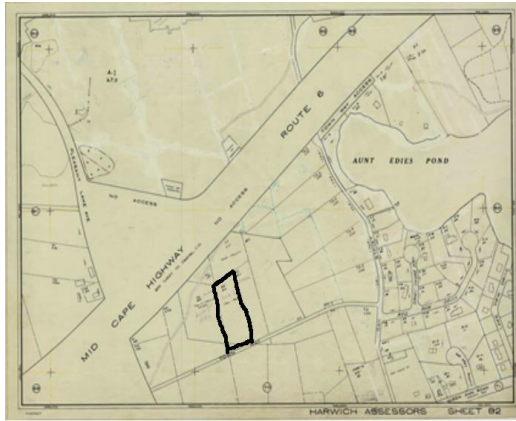
Board of Selectmen:

To accept and adopt:

Yeas:

Nays:

Assessor's Map 82 Showing Parcel R5



DRAFT

PURCHASE AND EQUIP A FIRE DEPARTMENT AMBULANCE

ARTICLE ##: To see if the Town will vote to raise and appropriate, transfer from available funds or borrow a sufficient sum of money as may be required to purchase or lease, and equip one ambulance for the Fire Department; and to act fully thereon. By request of the Fire Chief. Estimated cost: \$378,676.00.

Two-thirds vote required.

Funding Source: Free Cash

FINANCE COMMITTEE RECOMMENDS

ROLL CALL VOTES:

Finance Committee:

To accept and adopt:

Yeas:

Nays:

Board of Selectmen:

To accept and adopt:

Yeas:

Nays:

FUND PRIOR YEAR'S UNPAID BILLS

ARTICLE ##: To see if the Town will vote to raise and appropriate or transfer from available funds a sufficient sum of money to pay unpaid bills of prior years as provided for in M.G.L. Ch. 44, Section 64, and to act fully thereon. By request of the Finance Director. Estimated cost: **\$8,085.33**

Invoice/Debt	Description	Amount	Source
112	Rock Harbor Respite	300.00	Free Cash
308832	Baskin's Ace Hardware	8.98	Free Cash
50221	Horsley Whitten Group	6,865.13	Water Retained Earnings
5518-17680	National Grid	470.20	Free Cash
8773 10 273 0122241	Comcast	114.77	Free Cash
16992	Guardian Info. Technologies	326.25	Free Cash
	Total:	\$8,085.33	

Nine-tenths 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:

(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

FINANCE COMMITTEE The Finance Committee (Fincom) is responsible for providing budget and expenditure oversight, including capital expenditures. It also comments on and makes recommendations for all articles in the Annual and Special Town Meeting warrants. The nine members are appointed by the Town Moderator for three year terms (see Town Charter for details). Meetings are held monthly except during budget season (December through April) when they meet considerably more often and for longer. Residents who spend most of the winter here are most helpful to the Finance Committee's mission.

GOLF COMMITTEE

HARWICH HOUSING COMMITTEE

The Harwich Housing Committee is appointed by the Board of Selectmen and is charged by that Board to work toward diverse solutions in addressing the Town's affordable housing shortage as Harwich continues to make progress toward the 10% goal recommended by the Commonwealth of Massachusetts and adopted by the Town. The Housing Committee coordinates with the Harwich Housing Authority and other local and county housing entities in the development of affordable housing initiatives for the Town.

HARWICH HOUSING AUTHORITY (elected)

The Harwich Housing Authority was organized and exists pursuant to Massachusetts General Laws, Chapter 121B, Section 3, and is composed of a five-member Board of Commissioners responsible for policy making and general administration of the Authority. Four members are elected by Town voters and the fifth is appointed by the Commonwealth. The Harwich Housing Authority has a Management Agreement with the Chatham Housing Authority (CHA) to be jointly operated by the CHA staff and operates out of the CHA office at 240 Crowell Road in Chatham. The Harwich Housing Authority's mission is to build, maintain and administer affordable community housing to residents, with particular attention to the elderly, disabled and families. We assist those not only in Harwich but across the Commonwealth who have difficulty in finding affordable, safe and adequate housing to rent or buy.

HISTORIC DISTRICT/HISTORICAL COMMISSION

PLANNING BOARD

The Planning Board, as authorized and established in accordance with Chapter 7, Section 5 of the Town Charter, and in accordance with Chapter 41, Section 81A of the Massachusetts General Laws has been established to adopt a Master Plan and Official Map for the Town of Harwich. In addition it studies and makes recommendations to the Town Administrator and to the Board of Selectmen on matters concerning the physical, economic, and environmental development of the

Harwich Housing Committee Charge

The Harwich Housing Committee is an advisory committee appointed by and accountable to the Board of Selectmen. It is a five (5) member committee comprised of a chairman, secretary and an ex-officio member appointed to the Community Preservation Committee (CPC) by the Board of Selectmen in accordance with Section 3-6-2 of the Code of the Town of Harwich. Members have alternating expiring terms.

The purpose and mission of the Housing Committee is to provide and support diverse solutions in addressing the town's affordable housing shortage. The Housing Committee is also committed to keep working towards the goal of a 10% Affordable Housing stock which is recommended by the Commonwealth of Massachusetts and has been adopted by the Town.

The Housing Committee coordinates with the Harwich Housing Authority, the Planning department and other local and county housing entities in the development of affordable housing initiatives for the Town.

Approved by the Board of Selectmen
December 18, 2017

HARWICH HOUSING COMMITTEE

Background

The citizens of Harwich have maintained a proud history of caring for the housing needs of their families and neighbors. Through the years, efforts have been made in both the private and public sectors to ensure that Harwich would remain a place where decent, hard working citizens could place roots and raise their families. Of particular note, many private citizens from all walks of life (including Cape Verdians, members of the religious community, newcomers, and residents who trace their family roots back many generations) have continued to make this their highest priority. Some have dedicated their entire lives to working for this cause. Others have taken their own land holdings and extended lease-to-purchase options to tenants in a private, selfless effort to encourage affordable housing. Still others have volunteered to serve with their fellow Harwich citizens in efforts to have the town government actively pursue the purchase and development of land under the auspices of the Harwich CDC and other organizations to address the problem.

This ongoing struggle to provide decent housing was reenergized, as citizens throughout the Cape met in April of 2000 to champion the cause. They recognized, as those before them had, that the very existence of our society would be imperiled without the ability to house our commercial and town employees at a rate which could maintain the economic and social diversity and interdependence under which Harwich had thrived for literally hundreds of years.

Mission

The Harwich Board of Selectmen shall appoint a Harwich housing Committee of no less than five and not more than nine members to work in partnership with the Harwich Housing Authority, an independently elected body. The HHC shall work towards diverse solutions to the affordable housing shortage that will further our stated goal of 10% of such housing under the Harwich Local Comprehensive Plan. The terms of said members shall be overlapping to ensure the continuity of the committee membership. The HHC shall organize and meet sufficiently to deliver its findings and recommendations to the Board of Selectmen annually.

**HARWICH HOUSING COMMITTEE
CHARGE**

1. Identify the need for affordable housing in the Town of Harwich including:
 - Emergency cases
 - Handicap accessible housing
 - Rental and owner-occupant needs
 - Seasonal needs and issues
2. Review the Harwich LCP with regards to goals and objectives related to affordable housing.
3. Identify existing housing resources in Harwich
 - Available low and moderate housing stock
 - Commercial property with affordable housing potential
 - Current town property suitable for multiple and single unit housing
4. Identify potential remedies and courses of action to alleviate our affordable housing situation.
5. Develop financial analysis of candidate solutions.
6. Identify potential funding sources:
 - Local
 - State
 - Federal
7. Develop a written report for presentation to the Board of Selectmen **annually by December 15th**. The report shall include specific recommendations **with** a plan to address our affordable housing needs.

Committee Members:

Term Expires:

Richard Waystack	6/30/01
Richard Gomes	6/30/01
Robert Murray	6/30/02
Angelo S. LaMantia	6/30/02
Marie Seufert	6/30/03
Jean Ann McLaughlin	6/30/03
Lee Hamilton, Ph.D	6/30/03
Jeanne Heroux	6/30/04
Ed McManus	6/30/04

Strategy Meeting on Housing 8/27/2021

Attendees: Mary Anderson, Jon Idman, Joe McParland, Dave Nixon, Joe Powers

Goal: Discuss ways to restart/refocus Housing Committee

Discussion: There was general consensus that the Housing Committee stopped meeting because they lacked direction and a role in housing. There was also consensus that we needed the Housing committee to take an active role in creating affordable housing in Harwich. The Housing Trust and Authority each have relatively specific focuses and goals defined by statute or other independent authority; the Housing Committee is not redundant but rather a valuable supplement.

The group agreed that the role of Housing Committee should include at a minimum:

1. Setting goals and priorities
2. Outreach – perhaps quarterly meeting where all town members are invited to come and review and discuss housing options
3. Creating the RFPs for housing plans for the Town
4. Updating the Housing Production Plan

The group also agreed that the membership of the Housing Committee should include the following members:

1. A member of the Housing Authority
2. A member of the Affordable Housing Trust (not the Selectman nor the Town Administrator)
3. A member of the CPC
4. A member of the Planning Board
5. The Town Planning Director
6. Two citizens interested in housing

It was also agreed that the towns which are most effective in creating affordable housing have Housing Coordinators that are part of the Town's Administrative Staff so we recommend hiring a housing coordinator who should report to the Town Administrator or his designee in Administration as soon as possible. We also recommend that person spend time with the Brewster and Yarmouth Housing Coordinators who are both extremely effective.

The town should retain a consultant to assist the Housing Committee in preparing an update to the 2016 Housing Production Plan, which will be informed by housing and other goals and actions established in the Local Comprehensive Plan.

Next step: Mary Anderson to present this plan at the next Selectmen's meeting to get Selectmen approval.



Brooks Free Library

**739 Main Street
Harwich MA 02645
508-430-7562**

August 31, 2021

Board of Selectmen
732 Main St
Harwich, MA, 02645

Dear Chair MacAskill and members of the Harwich Board of Selectmen,

The Trustees of the Brooks Free Library are dismayed at the recent information about the proposed change in the procurement process. Currently the management of major projects and procurement are not the responsibility of department heads, most notably our Library Director.

Management of major projects and the formal procurement process are specialized skills, which are not normally found in a position such as Library Director. The skill set as contained within the position description of our Library Director does not contain engineering or purchasing skills. A few days course in procurement, with its heavy emphasis on regulations, will not give a novice the necessary skills to complete the oversight of a major project nor correctly follow the legal procurement regulations.

Several years ago, The Trustees and our Director spoke to the need for a centralized building maintenance function, with staff that had the appropriate experience and expertise to manage these projects. This Department of Public Works component under the direction of Sean Libby has proven to be invaluable to the town, its various departments and its residents. Having staff with the skills to complete maintenance tasks saves the town money, since the tasks get done right the first time. Experience has shown that when projects are managed by personnel who do not have the technical expertise to write detailed and comprehensive specifications and/or the work of contractors is not overseen by someone with the technical expertise in that area, the Town receives less than stellar results. This has been especially true in the facilities maintenance area.

It would appear to be shortsighted to think that one could transfer technical responsibilities to staff that do not have any expertise in those areas. A few dollars saved now will come back to cost the Town much more as projects do not get done properly, through no fault of the unskilled person.

The Trustees, as an elected body, have the responsibility for the position description of our Library Director. While the 20-year-old position description does reference construction projects, the skills to do so have changed from novice to professional. The Trustees will be removing

these from the description shortly as we are unwilling to have the Library Director be responsible for tasks that are not in the skill set of Professional Librarian.

Sincerely,

The Trustees of the Brooks Free Library

JoAnne Brown, Chair

William D Crowell, Treasurer

Linda Cebula

Jeannie Wheeler

Joan McCarty, Vice Chair

Kathleen Remillard, Secretary

Bernadette Waystack

JoAnne Brown
Joan McCarty
Bernadette C. Waystack
Jeannie Wheeler

W.D. Crowell
Kathleen Remillard
Linda Cebula

TOWN
ADMINISTRATOR'S
REPORT



Golf Department

Monthly Report for Selectman

August 2021

Golf Operations

- The golf course was open every day this month with no restrictions.
- 8,518 rounds of golf were played in August (8,747 in '20)
- Junior programs, The First Tee and PGA Junior League, both wrapped successful programs in mid-August
- Held Club Championship on August 8 & 9 with Flora Marie Gaudet winning the Women's division and Sam Russell winning the Men's division.
- Cancelled the Dennis Walters Golf Show event on 8/22, due to the predicted hurricane impact.
- Revenues remain strong, outpacing the FY20 through the end of August.

Golf Course Maintenance & Projects

- Charger grid project completed
- Currently adding wifi service to new cart barn, as required for electric cart fleet
- Re-stripped parking lot lines
- Golf course conditions remain high quality despite difficulties resulting from hot/humid weather pattern in August
- Fairways and tees aerated
- New electric cart fleet experiencing production delays. Expected delivery in mid-October

Respectfully submitted,

Roman Greer

Director of Golf

HARWICH HARBORMASTER DEPARTMENT

August 2021 Monthly Report

Operations

- Department patrol boats conducted 4 tows of disabled boats
- Responded aboard Marine 77 to a report of a 39' boat, taking on water and heading for Bass River. CG helicopter arrived on scene but operator did not want to slow down for a pump. Intercepted the boat approximately 3 miles south of Bass River and escorted it until safely inside the river and being assisted by Tow Boat US.
- Assisted Harwich PD with locating a person who was reported to be overdue from a fishing trip departing from Saquatucket Harbor (SAQ). With help from the Coast Guard it was determined that the person was safe and onboard a boat that was still offshore.
- At 1930 on 8/21 Marine 77 responded to a request from Coast Guard Sector SE New England to conduct a shoreline search for a jetski, with two people on board, overdue on a trip from SAQ to Monomoy and back.
- Conducted mooring/vessel enforcement checks (Herring River, Long Pond, Allen Harbor Yacht Club)

Administration

- Sent Boat Yard/Yacht Club mooring rental list to Assessing for Boat Excise Tax.
- Contacted Eversource regarding power outage at Fuel Dock, transformer failed, replacement needed.
- Worked with Blueport Network to improve signal strength of wireless internet signal, and had Comcast increase Bandwidth.
- Ordered Offloading, Ramp, Mooring, User Fee and Parking Permits for 2022.
- Ordered Shellfish Permits for 2022.
- Contacted Eastern Propane, Eversource and Comcast to change over utility billing to the Town for the opening of the Snack Shack.
- Notified mooring slip permit holders in LP-West, LP-Cahoon/Fernandes, Allen Harbor, Wychmere Outer Harbor, Wychmere Inner Harbor and Herring River who had no boat on mooring; reminded them of 30 occupancy requirement.
- Sent emails to slip and mooring permit holders to alert and encourage preparations for forecasted arrival of Hurricane Henri.
- Compiled paperwork for Pump-out Grant to cover June/July.
- Issued 29 Parking Tickets
- Issued 1 Non-Criminal Waterways Violation
- Processed 95 transient slip reservations.

Maintenance

- Designed and mounted corner bracket with bumper on the SAQ boat ramp dock.
- Had fiberglass repairs done to the overhead of 77A.
- Had the fuel pump and spark plugs replaced on 77C.
- Replaced the batteries on 77C
- Routine building and grounds maintenance.

Meetings

- Attended Town Clerk hearing for disputed parking ticket; complainant did not show.
- Provided Non-Resident Taxpayer department brief via CH 18.
- Attended Group Dept Head meeting with TA.
- Met with owner of Jake Rooney's in prep for opening of Snack Shack (Jakes at the Harbor).
- Conducted area familiarization on board Marine 77 with TA.
- Attend Dept Head meeting for Local Comprehensive Plan.
- Met with member of Allen Harbor Yacht Club to review preliminary plans for dock replacement project.
- Attended meeting with members of the Oyster Creek Association and the TA regarding the Association's request to have the Town responsible for dredging Oyster Creek.

District 5

Municipality Work Notification Form

MassDOT will be conducting work in your community in the near future. The following project information is being forwarded for distribution to appropriate Municipal Departments.

- For questions, please contact the District 5 Construction Office at 857-368-5099. Resident Engineer cell phone numbers are for the use of Municipal Officials only and should not be distributed to the general public. Please direct all public questions and complaints to the District 5 Construction Office.

Project Location (City/Town): HARWICH Route 6 EB mm 84.4 at Brewster Chatham Road overpass.

Location - Equipment - Mile Marker

6EB – CCTV/TCS – 84.4

Estimated Start Date of Work: 1/19/21

Resuming Work After Summer Restrictions: 9/13/21

Project Type: 108588 - Installation of ITS Equipment (Intelligent Transportation System) including CCTV Cameras, VMS (Variable Message Signs), TCS (Traffic Counting Stations) & CTDS (Continuous Traffic Data Stations).

Resident Engineer: Olga Lucia Ferreira 774-628-9728

Description of Work: Installation of concrete foundations, poles, cameras, cabinets and overhead message signs including conduit and hand holes for electric and communication.

Contractor: Liddell Brothers, Inc. Joshua Liddell 781-293-2100

Hours of Operation (Day/Night): Days: M-F 8 am - 3 pm Observing Traffic Restrictions

Nights: Sunday nights to Friday mornings 8 pm - 4 am

Description of Traffic Management: Various lane closures with occasional rolling stops as needed.

Estimated Duration of Work: 3 YEARS (Work will be on and off depending on contractor's schedule and weather conditions. All holiday and summer traffic restrictions as well as environmental conditions will be observed.



Quote

Date	Quote #
8/27/2021	Q-20211374

617-325-3993 Fax # 617-325-0238

Quote For
Harwich Fire Department Deputy Thornton 175 Sisson Road Harwich, MA 02645-2616

MA WBE certified with SDO
City of Boston's SLBE/MWBE
MA State Contract FIR04 VC6000185170

FOB	Terms
manufacturer	Net 30

Item	Description	Qty	Price E...	Total
Harw76C - BLK - ...	Kevin Duquette; Matt Eldredge; Dan SanGiovanni; Ryan Edwards; Shawn Piche; Ryan Avery; Quaker Coat 76C Radius Coat- Q5653 04/09/19 Radius Coat Outer Shell- Men's (with DRD) 76C 7B Armor AP Black Radius Coat Liner- Men's S4-99- Stedair 4000/Glide Ice 2-Layer 76CL New York City Style Trim- Radius NYC-R TRIM 3" Lime Scotchlite Triple One Line Sewn Patch OLP 7B Armor AP Black	6	1,399.00	8,394.00
Harw90P-BLK-19	Kevin Duquette; Matt Eldredge; Dan SanGiovanni; Ryan Edwards; Shawn Piche; Ryan Avery; Quaker - Axis Pant Armor AP -Black Q5653-04/09/2019 Axis Pant Outer Shell- Men's 90P 7B Armor AP Black Axis Pant Liner- Men's S4-99- Stedair 4000/Glide Ice 2-Layer 90PL	6	1,099.00	6,594.00
5555-21	Kevin Duquette - PRO Series NightHawk boots	1	389.00	389.00
5555-21	Matt Eldredge- PRO Series NightHawk boots	1	389.00	389.00
5555-21	Dan SanGiovanni- PRO Series NightHawk boots	1	389.00	389.00
5555-21	Ryan Edwards- PRO Series NightHawk boots	1	389.00	389.00
5555-21	Shawn Piche - PRO Series NightHawk boots	1	389.00	389.00
5555-21	Ryan Avery;- PRO Series NightHawk boots	1	389.00	389.00
Fire Armor-21	Kevin Duquette Fire Armor Gloves	1	99.00	99.00
Fire Armor-21	Matt Eldredge Fire Armor Gloves	1	99.00	99.00
Fire Armor-21	Dan SanGiovanni Fire Armor Gloves	1	99.00	99.00
Fire Armor-21	Ryan Edwards - Fire Armor Gloves	1	99.00	99.00
Fire Armor-21	Shawn Piche Fire Armor Gloves	1	99.00	99.00
Fire Armor-21	Ryan Avery; Fire Armor Gloves	1	99.00	99.00
KL23-20	Life Liners - Double Layer Navy Hood (Kevin Duquette , Matt Eldredge, Dan SanGiovanni , Ryan Edwards, Shawn Piche,Ryan Avery)	6	41.00	246.00

Quoted prices valid for 30 days	Subtotal	\$18,162.00
	Sales Tax (0.0%)	\$0.00
	Total	\$18,162.00

northeastrescue.com

droth@northeastrescue.com



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 **NorthEast Rescue Systems**, with an address of **280 Milton Street, Dedham, MA 02026**, 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 **Structural Firefighting Gear as detailed in Quote #Q-20211374**.

ARTICLE 2: TIME OF PERFORMANCE:

The Contractor shall complete all work and services required hereunder **as the products in Quote #Q-20211374 become available for delivery**.

ARTICLE 3: COMPENSATION:

The Town shall pay the Contractor for the performance of the work outlined in Article 1 above the contract sum of **\$18,162.00**. 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. The 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, Dorothy O'Connor, 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.

043394594

Social Security Number or
Federal Identification Number

DocuSigned by:

Dorothy O'Connor

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:

Dorothy O'Connor

3C13CABE09694C8...

Dorothy O'Connor President

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

\$18,162.00

(\$ _____)

Finance Director

Contract Sum

11222202/558000/0018

by its Town Administrator Up to \$50,000

DocuSigned by:

Joseph F. Powers

Town Administrator

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

DocuSigned by:

Joseph F. Powers

Town Administrator

5799644E...



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, 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 PPS

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 LAYGROUND 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 ½% 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.

**AGREEMENT FOR PROFESSIONAL
ENGINEERING SERVICES
BETWEEN
THE TOWN OF HARWICH, MASSACHUSETTS
AND
WOODARD & CURRAN, INC.
FOR MUNICIPAL STORM SEWER SYSTEM ENGINEERING SERVICES**

THIS AGREEMENT made this 7th day of September, 2021 between Woodard & Curran, Inc., a Massachusetts Corporation with a usual place of business at 40 Shattuck Road, Suite 110, Andover, MA 01810, 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 02645 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 lump sum of \$47,000.00, subject to any additions and deductions provided for herein at the hourly rates set forth in Exhibit B. The amount to be paid to the ENGINEER shall not exceed \$47,000.00 without the prior written consent of the TOWN.

3. Commencement and Completion of Work

- A. This Agreement shall commence upon execution 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 monthly on an hourly basis 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

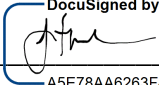
- A. Assignment: The ENGINEER shall not assign or transfer any of its rights, duties or obligations under this Agreement without the written approval of the TOWN.

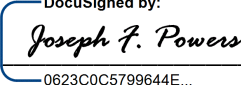
B. Governing Law: This Agreement shall be governed by and construed in accordance with the law of the Commonwealth of Massachusetts.

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.

WOODARD & CURRAN, INC.:

TOWN OF HARWICH:

By: 
 DocuSigned by:
A5E78AA6263F48C...

By: 
 DocuSigned by:
0623C0C5799644E...

Name: Scott Medeiros, PE

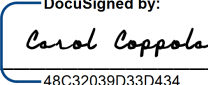
Name: Joseph F. Powers

Title: Vice President

Title: Town Administrator

Approved as to Availability of Funds:

Contract Sum: \$47,000

By: 
 DocuSigned by:
48C32039D33D434...

Name: Carol Coppola

Title: Finance Director

01411A2/621015

519856/KOPE/0003

Via Electronic Mail

August 31, 2021



Meggan Eldredge
Assistant Town Administrator
Town of Harwich Town Hall
723 Main Street
Harwich, MA 02645
Email: meldredge@town.harwich.ma.us

RE: Proposal for Professional Engineering Services, MS4 Permit FY2022 Compliance Program

Dear Ms. Eldredge:

Woodard & Curran, Inc. is pleased to provide this proposal for professional engineering services in support of the Town of Harwich's MS4 Permit compliance program. As discussed with your office, the Town of Harwich is requesting assistance with NPDES MS4 Permit activities in FY2022.

SCOPE OF SERVICES

Woodard & Curran will complete the following tasks:

1. Permit Year 3 Annual Report Preparation
2. Permit Year 3 Stormwater Management Plan Update
3. BMP Inventory, Mapping, and Inspections
4. BMP Retrofit Evaluation
5. Low Impact Development Program Assessments
6. MS4 Mapping Support
7. DPW Staff Training
8. General MS4 Compliance Support

The scope of services for the above tasks are discussed in more detail below.

Task 1: Permit Year 3 Annual Report Preparation

Under this task, Woodard & Curran will complete the following:

- Attend one (1) meeting with Town personnel to document activities performed in the Permit Year.
- Facilitate a self-assessment review of compliance with permit conditions, which will include an assessment/evaluation of:
 - The appropriateness of the identified Best Management Practices (BMPs)
 - Progress towards achieving the statutory goal of reducing the discharge of pollutants to the maximum extent practicable
 - The identified measurable goals for each of the Control Measures
- Obtain and summarize any outfall screening and sampling or other IDDE results.
- Summarize stormwater activities planned to be undertaken during the next reporting cycle.
- Identify any change in identified BMPs or measurable goals and justification for those changes.



Woodard & Curran will finalize the annual report using the EPA's standard template, deliver the Annual Report to the Town for certification by the Town Administrator and, pending certification, submit them to the EPA and the MassDEP by September 28, 2021.

Task 2: Permit Year 3 Stormwater Management Plan Update

Woodard & Curran will update the annual Stormwater Management Plan (SWMP) to meet the requirements in Part 1.10.2 of the MS4 Permit. The update will document changes to BMPs, the names and titles of people responsible for BMP implementation, and the results of efforts to complete the required Year 3 activities. Woodard & Curran anticipates that the update will include changes to the text of the SWMP document and inclusion of work products as appendices, as appropriate. Additionally, the changes will be documented in an amendment log and summary of modifications.

Woodard & Curran will provide an electronic draft of the SWMP for the Town's review and comment. We would appreciate comments within the document itself in red-line strike out or comment format. Woodard & Curran will address applicable comments and provide a final SWMP in electronic format.

Task 3: BMP Inventory, Mapping, and Inspections

Using the municipal facility inventory developed as part of previous MS4 Permit compliance work completed by others as the basis for this task, Woodard & Curran will provide technical support for the Town's mapping program to identify, map, and inspect Town-owned BMP structures. Woodard & Curran understands that some of these features may be in the Town's existing GIS layers, but it is not complete, and the features do not include information on the BMP type, characteristic, or condition.

Woodard & Curran will meet with the DPW and other Town staff (as appropriate) to identify known or potential locations for Town-owned BMPs. Once locations have been identified, Woodard & Curran will conduct a field inspection in accordance with Permit Part 2.3.7.a.iii.6 to evaluate the type, characteristics, and condition of each BMP. A separate GIS layer will be created to document the BMP locations and information obtained during the inspections. This layer will contain information related to the BMP type and conditions observed during inspections and will serve as the key deliverable for this task. It is anticipated that the Town will provide assistance with identifying available design drawings for stormwater BMPs.

Due to the uncertainty with the extent of BMPs that will be mapped and inspected, Woodard & Curran has established this task as a Time & Materials allowance that will provide flexibility for more or less effort at the Town's discretion. We have established an allowance for up to 60 hours of GIS effort and field mapping/inspection under this task in addition to a commensurate effort for project management, analysis, and meeting time to complete this task as described.

Task 4: BMP Retrofit Evaluation

Using the municipal BMP inventory and inspection information obtained during the implementation of Task 3, Woodard & Curran will evaluate existing Town-owned BMPs to determine suitability and ranking preference for the Town to implement modifications or retrofits to reduce stormwater impacts. The evaluation will focus on the suitability of BMPs to reduce stormwater runoff frequency, volume, and pollutant loads through the reduction of impervious area, with preferential consideration of BMPs located in areas with significant impervious area.

The deliverable for this task is an evaluation of at least 5 BMPs that could be modified or retrofitted, including recommendations and costs to implement these modifications/retrofits. To complete this task, Woodard & Curran will meet with the Town Planner, DPW, and other staff (as appropriate) to discuss the



Town's preferences for future BMP modification/retrofit locations and means to enable and/or barriers to implementation.

Task 5: Low Impact Development Program Assessments

During Permit Year 4, several assessments of local requirements and/or regulations are required to understand where these requirements/regulations support or could be improved to support low impact design. Specifically, Woodard & Curran will review pertinent requirements and regulations related to the following areas to support Permit compliance:

- Impervious Cover Creation Assessment: Current street design and parking lot guidelines and other local requirements that affect the creation of impervious cover; and
- Green Infrastructure Implementation Assessment: Local regulations related, at a minimum, to the implementation of green infrastructure practices such as green roofs, infiltration practices (e.g. rain gardens, porous/pervious pavement, etc.), and water harvesting devices (e.g. rain barrels, use of stormwater for non-potable sources, etc.)

Where the results of these assessments indicate changes can be made to facilitate low impact design, Woodard & Curran will prepare reports summarizing the findings of each assessment, recommended procedures to facilitate the use of low impact development, and changes suggested to remove barriers to low impact development. To complete this task, Woodard & Curran will meet with the Town Planner and other staff (as appropriate) to determine the relevant regulations, policies, and procedures that relate to the implementation of this task.

Task 6: MS4 Mapping Support

Woodard & Curran will assist the Town with storm drain system map updates based on newly identified information and/or discrepancies with existing MS4 information, as well as additional information that may be identified by the Town during operational and maintenance activities.

Upon completion of this task, Woodard & Curran will provide a GIS database suitable for integration into the Town's GIS system as a deliverable. This work will be completed on a time and materials basis to support GIS data updates within the budgeted allowance.

Task 7: DPW Staff Training

Woodard & Curran will conduct refresher training sessions for staff in Engineering, Highways and Maintenance, and Water that may encounter illicit discharges or partake in municipal operations that have the potential to pollute stormwater during their day-to-day operations. This training is intended to help Town staff understand the Town's obligations under the Clean Water Act and MS4 General Permit, their role in the program, and what to look for in the field.

The DPW staff training will utilize the PowerPoint presentations developed for the Town in Permit Year 3. We anticipate that the training will be conducted virtually during a single day with one or more sessions, based on the Town's preference and staff availability.

Task 8: General MS4 Compliance Support

Under this task, Woodard & Curran will provide MS4 General Permit compliance support, as requested by the Town. This task may be utilized to support the Town in completing the following activities and/or other activities requested by the Town: educational messaging updates (content and/or format); meeting



with and presentation of progress related to compliance with the MS4 General Permit requirements to meet MS4 General Permit required public notice obligations; and other MS4 program compliance support as needed.

PROJECT SCHEDULE AND COST

Woodard & Curran is prepared to begin this work within two weeks of notice to proceed and all work is anticipated to be completed by June 30, 2021. The cost to complete this work is summarized below.

Task	Cost
1: Permit Year 3 Annual Report Preparation	\$ 4,000
2. Permit Year 3 Stormwater Management Plan Update	\$ 3,500
3. BMP Inventory, Mapping, and Inspections*	\$10,000
4. BMP Retrofit Evaluation	\$10,000
5. Low Impact Development Program Assessments	\$ 7,000
6. MS4 Mapping Support*	\$ 5,000
7. DPW Staff Training	\$ 2,500
8. General MS4 Compliance Support*	\$ 5,000
Total	\$47,000

*This task will be billed on a time and materials basis. All other tasks will be billed on a lump sum basis.

This work will be completed in accordance with both the Town's Agreement for Professional Engineering Services and the attached Standard Terms and Conditions. If this proposal is acceptable to you, please sign this letter and the Standard Terms and Conditions and initial each page and return a copy for our files.

We greatly appreciate this opportunity to offer our consulting services and support the Town's MS4 Permit compliance program. Please feel free to call Scott Medeiros at 860-627-0314 or Rich Niles at 978-482-7891 if you have any questions regarding this proposal or require any further information.

Sincerely,

WOODARD & CURRAN, INC.


Scott Medeiros, PE
Vice President


Rich Niles
Project Manager

PN: 0233366.01

Attachment: Woodard & Curran Standard Terms and Conditions

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized agents as of the date indicated below.

AUTHORIZATION BY:



WOODARD & CURRAN, INC.

TOWN OF HARWICH, MA

[Handwritten Signature]
 _____ August 31, 2021
 Signature Date
 Scott Medeiros, PE

 Name (printed)
 Vice President

 Title

DocuSigned by:
Joseph F. Powers 9/9/2021 | 8:41:45 AM EDT

 Signature Date
 Joseph F. Powers

 Name (printed)
 Town Administrator

 Title

TOWN OF HARWICH, MA

DocuSigned by:
Carol Coppola 9/3/2021 | 9:08:55 AM PD

 Signature Date
 Carol Coppola

 Name (printed)
 Finance Director

 Title

Approved as to Availability of Funds

01411A2/621015



WOODARD & CURRAN TERMS & CONDITIONS

STANDARD TERMS & CONDITIONS

The following Standard Terms and Conditions, together with the attached Scope of Services dated August 31, 2021 (“Scope of Services”), constitute the terms of this agreement (“Agreement”) between Woodard & Curran, Inc. (“Engineer”), with an address of 40 Shattuck Rd, Suite 110, Andover, MA 01810, and the Town of Harwich (“Client”), with an address of 723 Main Street, Harwich, MA 02645, with respect to the performance of the Scope of Services (the “Project”) and any additional services.

WHEREAS, it is the desire of the Client to contract the services described in the Scope of Services; and Engineer desires to perform the services described in the Scope of Services.

NOW THEREFORE, the parties hereto agree as follows:

1. Scope of Services

Engineer, as representative of the Client, shall perform the services described in the attached Scope of Services.

- 1.1 Assumptions. The Engineer’s Scope of Services and the compensation are conditioned upon, and are subject to, the assumptions set forth in the Scope of Services.
- 1.2 Change in Scope of Services. Client may, at any time, by written order, request changes to the Scope of Services or work to be performed. If the Scope of Services is changed in a manner that will increase or decrease Engineer’s costs or the time required to perform the services under this Agreement, there will be an equitable adjustment to this Agreement that must be signed by both parties.

2. Engineer’s Responsibilities

Engineer shall be responsible for the following:

- 2.1 Engineer will perform all work in accordance with the attached Scope of Services.
- 2.2 Engineer will perform all work in a professional manner that is consistent with other professionals performing similar work in the geographic area at the time services are rendered. No warranty, express or implied, is made or intended by Engineer’s undertaking herein or its performances of services, and it is agreed that Engineer is not a fiduciary or municipal advisor to the Client.
- 2.3 Engineer shall comply with all laws and regulations applicable to Engineer’s performance of the Scope of Services.
- 2.4 Engineer shall assign a project manager to act as Engineer’s representative with respect to services to be rendered under this Agreement.
- 2.5 Engineer shall have all licenses and permits required to perform the Scope of Services.

3. Client’s Responsibilities

Client shall do the following in a timely manner so as not to delay the services of Engineer:

- 3.1 Designate in writing a person to act as Client’s representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define Client’s policies and decisions with respect to Engineer’s services described in the Scope of Services. Such person shall have complete authority to bind Client financially with respect to the payment of services to be rendered under this Agreement.
- 3.2 Provide all criteria and full information as to Client’s requirements for the Project, including design objectives and constraints, performance requirements, and any budgetary limitations; and furnish copies of all design and construction standards which Client will require to be included in any drawings and specifications.
- 3.3 Provide Engineer with all available information pertinent to the Project including previous reports and any other documents and data relative to design or construction of the Project, all of which Engineer shall be entitled to use and rely upon with respect to the accuracy and completeness thereof, in performing the services under this Agreement.
- 3.4 Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by Engineer; and provide written comments within a reasonable time so as not to delay the services of Engineer.
- 3.5 Give prompt written notice to Engineer whenever Client observes or otherwise becomes aware of any development that may affect the Scope of Services or timing of Engineer’s services.
- 3.6 Ensure Engineer, its agents and representatives have safe access to the Project site, buildings thereon, and other locations as required to perform the Scope of Services.
- 3.7 If applicable, retain its own Independent Registered Municipal Advisor (“IRMA”) pursuant to the Municipal Advisor Rule of the Securities and Exchange Commission, and rely upon such advisor, it being the understanding that Engineer is not providing the services of an IRMA. Client shall retain and consult with an IRMA prior to acting on any information and material under the Agreement.



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4. Subcontracts

- 4.1 If requested by Client, the Engineer will recommend the Client's engaging the services of laboratories, testing services, subconsultants, or third parties to perform suitable aspects of the Services. Invoices for such third-parties will be reviewed by the Engineer, and the Engineer will make recommendations to the Client regarding payment. Payment to these third-parties will be made directly by the Client. The Engineer will recommend the use of such third parties with reasonable care, but does not guarantee their services and will not be liable for their errors or omissions.
- 4.2 In the alternative, Engineer may subcontract any portion of the Scope of Services to a subcontractor approved by Client, and the Engineer will add a 10% surcharge on invoices paid directly by the Engineer for laboratories, testing services, subconsultants, or other third-parties, and that surcharge will be reflected on Engineer's monthly invoices submitted to Client.

5. Billing and Payment

- 5.1 Client shall pay Engineer in accordance with the payment methods, rates, and charges set forth in the Scope of Services or otherwise agreed upon. Engineer will submit monthly invoices for services rendered and expenses incurred during the previous period.
- 5.2 Payment will be due upon receipt of Engineer's invoice. Payments due Engineer and unpaid under the terms of this Agreement shall bear interest from thirty (30) days after the date payment is due at the rate of one and one half (1.5) percent per month (18 percent per annum) until paid in full. In the event that Engineer is compelled to take action to collect past due payments, the Client will reimburse Engineer for all costs and expenses of collection including, without limitation, all court costs and reasonable attorney's fees and costs.
- 5.3 Reimbursable Expenses include actual expenditures made by Engineer, including, but not limited to:
 - 5.3.1 transportation and living expenses incurred in connection with travel on behalf of the Client;
 - 5.3.2 overnight or priority postage and costs for special handling of documents;
 - 5.3.3 renderings and models requested by the Client;
 - 5.3.4 expense of overtime work requiring higher than regular rates;
 - 5.3.5 expense of any additional insurance coverage or limits, including professional liability insurance,

requested by the Client in excess of that normally carried by Engineer and Engineer's consultants;

5.3.6 automobile expenses for personal vehicles at the prevailing Internal Revenue Service (IRS) reimbursement rate, plus toll charges, for travel in conduct of the work, or rental of vehicles plus gasoline and toll charges for traveling to conduct the work;

5.3.7 use of company field vehicle will be charged according to Engineer's current rates;

5.3.8 charges for materials and equipment provided directly by Engineer will be billed according to Engineer's current rates;

5.3.9 purchase or rental of specialized equipment and other supplies necessary to conduct the work;

5.3.10 computer, drafting, typing and other services or labor provided by outside contract personnel or vendors.

- 5.4 Miscellaneous Direct Expenses will be billed to your project(s) each month at 3% (or as otherwise set forth in the Scope of Services) of the current month's labor fee (including project contract labor fee). This will cover expenditures for miscellaneous telephone, fax, photocopying, postage, digital camera, and computer expenses incurred on your project(s).
- 5.5 If the Project is suspended or abandoned in whole or part, Engineer shall be compensated for all services performed prior to receipt of written notice from the Client of such suspension or abandonment, together with Reimbursable Expenses and Miscellaneous Direct Expenses then due plus Project closeout costs actually incurred. If the Project is resumed after being suspended for more than three (3) months, Engineer's compensation shall be equitably adjusted between the Client and Engineer.
- 5.6 No deductions shall be made from Engineer's compensation on account of sums withheld from payments to contractors, nor shall payment to Engineer be contingent upon financing arrangements or receipt of payment from any third party.
- 5.7 If the Client fails to make payment when due Engineer for services, Reimbursable Expenses, or Miscellaneous Direct Expenses, Engineer may, upon seven days' written notice to Client, suspend performance of services under this Agreement. Unless payment in full is received by Engineer within seven days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, Engineer shall have no liability to Client for delay or damage caused Client or others because of such suspension of services.



WOODARD & CURRAN

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5.8 If Client objects to all or part of any invoice, Client shall notify Engineer in writing within two weeks of the date of the invoice, and shall pay that portion of the invoice not in dispute within 30 days after the date of receipt of the invoice. Provided that an objection is made in good faith, the parties shall immediately make every effort to settle the disputed portion of the invoice. If the dispute is resolved in favor of Engineer, interest shall accrue on the unpaid portion of the invoice in accordance with Section 5.2 of this Agreement.

5.9 If circumstances or conditions not originally contemplated or known to Engineer are revealed, and affect the Scope of Services, compensation, schedule, allocation of risks or other material terms of this Agreement, Engineer shall be entitled to an appropriate adjustment in its schedule, compensation or other terms of the Agreement in accordance with its standard rates. Changed conditions include, but are not limited to, the following: (i) change in the instructions or approvals given by Client that necessitate revisions in the instruments of service; (ii) decisions of the Client not rendered in a timely manner; (iii) significant change in the Project including, but not limited to, size, quality, complexity, Client's schedule or budget, or procurement method; (iv) failure of performance on the part of the Client or the Client's consultants or contractors; (v) revision of documents (drawings and/or specifications) to reflect construction cost modifications; (vi) modifications to any construction phase drawings and specifications due to changes in program, size, quality, complexity, schedule, construction cost, financing, or method of bidding; (vii) additional program, feasibility or planning studies for this or other project sites; or (viii) enactment or revision of codes, laws or regulations or official interpretations which necessitate changes to the Scope of Services.

6. Ownership and Use of Documents

6.1 All documents including drawings and specifications prepared or furnished by Engineer (and Engineer's independent professional associates, subcontractors and consultants) pursuant to this Agreement are instruments of service in respect of the Project and Engineer shall retain an ownership and property interest therein whether or not the Project is completed. Client may take and retain copies for information and reference in connection with the use and occupancy of the Project by Client and others. However, such documents are not intended or represented to be suitable for reuse by Client or others on extensions of the Project or on any other project. Any reuse without written verification or adaptation by Engineer for the specific purpose intended will be at Client's sole risk and without liability or legal exposure to Engineer or to Engineer's independent professional associates, subcontractors and consultants from all claims, damages, losses and expenses including attorney's fees arising out of or resulting therefrom. Any such verification or

adaptation will entitle Engineer to further compensation rates to be agreed upon by Client and Engineer.

6.2 Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of Engineer's rights under this section.

7. Limitation of Liability

7.1 The total liability, in the aggregate, of Engineer and Engineer's officers, directors, employees, agents, and independent professional associates and consultants, and any of them, to Client and any one claiming by, through or under Client, for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of or in any way related to Engineer's services, the Project or this Agreement, from any cause or causes whatsoever, including, but not limited to, the negligence, errors, omissions, strict liability, breach of contract, breach of warranty of Engineer or Engineer's officers, directors, employees, agents or independent professional associates or consultants, or any of them, shall not exceed the total covered amount available under Engineer's applicable insurance policy limits set forth herein.

7.2 Neither party shall be responsible or held liable to the other for special, indirect, or consequential damages, including, but not limited to, loss of profit, loss of investment, loss of product, business interruption, or liability for loss of use of facilities or Client's existing property, however the same may be caused.

8. Insurance

8.1 Engineer is protected by Workers' Compensation Insurance in statutory amounts; General Liability Insurance of \$1,000,000 per occurrence and \$2,000,000 in the aggregate; and Professional Liability Insurance of \$1,000,000 per claim and in the aggregate. Engineer will furnish client a certificate of insurance, upon written request, evidencing such coverage and limits. The Client and Engineer waive all rights of subrogation against: 1) each other and their subconsultants, subcontractors, agents and employees, each of the other, and 2) the Client's contractor (if any) and its subcontractors, for damages caused by fire or other perils to the extent covered by property insurance maintained by the Client or its contractor. The Client shall require a similar waiver from any contractor.

9. Indemnification Hold Harmless

9.1 Engineer agrees to indemnify and hold Client, its directors, shareholders, employees, and assigns harmless from and against all claims, damages, causes of actions, and fines to the extent such claims, damages, causes of action and fines are based on or arise out of Engineer's negligent acts or negligent omissions.



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9.2 Client agrees to indemnify and hold Engineer, its directors, shareholders, employees, and assigns harmless from and against all claims, damages, causes of actions, and fines to the extent such claims, damages, causes of action and fines are based on or arise out of Client's negligent acts or negligent omissions.

10. Delays/Force Majeure

10.1 Except as specifically set forth in this Agreement, neither party shall hold the other responsible or liable for damages or delays in performance caused by acts of God, interruptions in the availability of labor, or other events beyond the control of the other party, or that could not have been reasonably foreseen or prevented. For this purpose, such acts or events shall include unusually severe weather affecting performance of services, floods, epidemics, war, riots, strikes, lockouts, or other industrial disturbances, protest demonstrations, unanticipated Project site conditions, and inability, with reasonable diligence, to supply personnel, equipment, or material to the Project. Should such acts or events occur, both parties shall use their best efforts to overcome the difficulties arising and to resume as soon as reasonably possible the normal pursuit of the Scope of Services. Delays within the scope of this provision which cumulatively exceed thirty (30) days in any six (6) month period shall, at the option of either party, make this Agreement subject to termination or to renegotiation. Both parties acknowledge that Engineer does not have control over the review and approval times required by any public authorities that may have jurisdiction over the Project and any Project times shall be equitably adjusted by the parties to account for such review and approval process.

10.2 COVID-19: As a result of the global COVID-19 pandemic, Woodard & Curran may experience supply chain disruptions and/or interruptions, travel restrictions and other limitations that may impact its ability to perform hereunder. In addition, Woodard & Curran has been and will continue to implement necessary health & safety procedures in response to the pandemic. As a result, there could be a delay in the provision of services and/or goods, including but not limited to the delay of work product deliverables, product and spare part deliveries and installations, maintenance and repair work, and technical support, among others. Woodard & Curran will take reasonable steps to try to mitigate the effect that this pandemic – force majeure event - may have; however, based on the breadth and extent of this event, both parties acknowledge and agree that Woodard & Curran cannot be held responsible for any anticipated performance, performance milestone dates, delays, and/or additional costs as a result thereof. The Client acknowledges and accepts these risks.

11. Notice

11.1 All notices authorized or required between the parties, or required by any of the provisions herein, shall be given in writing and shall be sent by certified mail, return receipt requested, and deposited with an accepted postal service, postage prepaid, and addressed to the intended party at the address set forth in the first paragraph of these Terms and Conditions. Notices sent in this manner shall be deemed given seven business days being after mailed. Notices may also be given by personal delivery, sent via a regionally recognized overnight carrier (i.e. FedEx, UPS), and shall be deemed given when delivered.

12. Dispute Resolution

12.1 Step Negotiations. The parties shall attempt in good faith to resolve all disputes ("Controversy") promptly by negotiation, as follows. Any party may give the other party written notice of any Controversy not resolved in the normal course of business. Managers of both parties at levels at least one level above the Project personnel involved in the Controversy shall meet at a mutually acceptable time and place within five business days after delivery of such notice, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the Controversy. If the matter has not been resolved within thirty days from the referral of the Controversy to the managers, or if no meeting has taken place within ten days after such referral, either party may initiate mediation as provided hereinafter. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and state Rules of Evidence.

12.2 Mediation. In the event that any Controversy arising out of or relating to this Agreement is not resolved in accordance with the procedures provided herein, such Controversy shall be submitted to mediation with a mutually agreed upon mediator. The mediation shall be filed at the regional office of the agreed upon mediator closest to the Project site. The mediation shall take place at an Engineer's office unless otherwise agreed to by the parties. If the mediation process has not resolved the Controversy within thirty days of the submission of the matter to mediation, or such longer period as the parties may agree to, the mediation process shall cease. All mediation documents and discussions pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and state Rules of Evidence. Nothing herein shall limit the rights and remedies that the parties may have under this Agreement or under other legal and equitable proceedings.

13. Termination

13.1 Either party shall have the right to terminate this Agreement with respect to the Project for convenience, at



WOODARD & CURRAN

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its option, by sending a written Notice of Termination to the other party. The Notice of Termination shall specify when and which services will be discontinued and when termination shall be effective, provided that no termination shall be effective less than ten (10) calendar days after receipt of the Notice of Termination. No later than thirty (30) calendar days after termination, Client shall pay Engineer for all Services performed and charges incurred prior to termination, including, without limitation, costs and expenses related to putting Project documents and analyses in order and rescheduling personnel and equipment.

13.2 Either party shall have the right to terminate this Agreement with respect to the Project for cause if the other party commits a material breach of this Agreement and fails to cure such breach within ten (10) days. A Notice of Default, containing specific reasons for termination, shall be sent to the defaulting party, and both parties shall cooperate in good faith to cure the default or defaults stated in the Notice of Default. Termination shall not be effective if the breach has been remedied within ten (10) days after the defaulting party's receipt of the Notice of Default or the later date specified in the Notice of Default, or, if the defaulting party has begun to cure such default within such period and such default cannot reasonably be cured within such period, if such defaulting party diligently prosecutes curing such default to completion (provided that such provision shall not apply to Client's failure to timely pay an invoice). In the event of termination for cause, Engineer shall be paid the same as in the case of termination for convenience and the parties shall have their remedies at law as to any other rights and obligations between them, subject to the other terms and conditions of this Agreement.

14. Construction Contract Responsibilities

14.1 When Engineer's services include the performance of any services during the construction phase of the Project, it is understood that the purpose of any such services (including any visits to the Project site) will be to enable Engineer to better perform the duties and responsibilities assigned to and undertaken by it as an experienced and qualified design professional, and to provide the Client with a greater degree of confidence that the completed work of Client's construction contractor(s) ("Contractor") will conform generally to the contract documents and has been implemented and preserved by Contractor(s). Engineer shall not, during such visits or as a result of any observations of construction, supervise, direct or have control over Contractor's(s') work nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by the Contractor(s) or safety precautions and programs incident to the work of Contractor(s) or for any failure of Contractor(s) to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor(s) furnishing and performing its

(their) work. Engineer does not guarantee the performance of the construction contract by the Contractor(s), and does not assume responsibility for Contractor's(s') failure to furnish and perform its (their) work in accordance with the contract documents.

14.2 If Engineer's contract with the Client so requires, Engineer shall review (or take other appropriate action in respect of) shop drawings, samples and other data which Contractor(s) is (are) required to submit, but only for conformance with the design concept of the Project and compliance with the information given in the contract documents. Such review or other actions shall not extend to means, methods, techniques, sequences or procedures of manufacture (including the design of manufactured products) or construction, or to safety precautions and programs incident thereto. Engineer's review or other actions, as described above, shall not constitute approval of an assembly or product of which an item is a component, nor shall it relieve the Contractor(s) of (a) its (their) obligations regarding review and approval of any such submittals; and (b) its (their) exclusive responsibility for the means, methods, sequences, techniques and procedures of construction, including safety of construction.

15. Health and Safety

15.1 Engineer and its employees shall follow health and safety precautions which meet federal, state and local regulations. If asked to conduct any activities which do not conform to said regulations, or which Engineer determines in its sole discretion to be unsafe or unhealthy, Engineer shall have the option to stop work immediately and inform Client of unacceptable health and safety conditions, and both parties shall enter into good-faith negotiations to remedy the unacceptable conditions. If no remedy can be agreed upon, Engineer and Client may terminate this Agreement with respect to Scope of Services in accordance with the terms stated herein.

15.2 Engineer will not implement or be responsible for health or safety procedures other than for its own employees. Engineer shall not share any responsibility for the acts or omissions of other parties on the Project or have control or charge of, or be responsible for safety precautions and programs of Client or other contractors. Unless otherwise agreed in the Scope of Services, Engineer's observation and testing of portions of the work of other parties on a project site shall not relieve such other parties from their responsibilities for performing their work in accordance with applicable plans, specifications and health and safety requirements. Client agrees to notify such contractors or other parties accordingly.



WOODARD & CURRAN

TERMS & CONDITIONS

16. Environmental Conditions and Subsurface Risks

16.1 Where the Scope of Services includes or requires on-site work, visits, investigations, or explorations, Engineer and Client agree to the following:

16.1.1 Hazardous Substances. Client acknowledges that Engineer has neither created nor contributed to the creation of any hazardous waste, hazardous substance, radioactive material, toxic pollutant, asbestos, or otherwise dangerous substance (collectively referred to as "hazardous substance"), or dangerous condition at the Project site. Consequently, Client agrees to defend, indemnify and hold Engineer harmless from and against any and all claims, damages, losses, fines, suits or causes of action (collectively referred to as "claims") relating to personal injury; property damage; non-compliance or liability arising under environmental laws including, but not limited to, RCRA, CERCLA or similar federal or state laws, to the extent the claims are based on or arise from the existence or release of any hazardous substances. The term "property" as used herein means all real and personal property, including, without limitation, tangible and intangible rights and interests, economic or other losses, or other rights with respect thereto.

16.1.2 Client's Duty to Notify Engineer of Hazards. Client shall provide Engineer with all information known to Client with respect to the existence or suspected existence of any hazardous substances at, on, or in close proximity to the Project site. Client will advise Engineer immediately of any information which comes into Client's possession regarding the existence of any such potentially hazardous substances, or any condition known to Client to exist in, on, under or in the vicinity of the Project site which might present a potential danger to human health or the environment.

16.1.3 Engineer shall take reasonable precautions for the health and safety of its employees while at the Project site with consideration for the available information regarding existing hazards.

16.1.4 Control of Project Site. Client acknowledges that it is now and shall remain in control of the Project site at all times. Engineer shall have no responsibility or liability for any aspect or condition of the Project site, now existing or hereafter arising or discovered. Engineer does not, by entry into an agreement with Client or its performance of services under any such agreements, assume any responsibility or liability with respect to the Project site; nor shall any liability or responsibilities be implied or inferred by reason of Engineer's performance of any work at the Project site.

16.1.5 Right of Entry. Unless otherwise agreed, Client will furnish right-of-entry on the land for Engineer to make the planned borings, explorations, or field tests.

Engineer will take reasonable precautions to minimize damage to the land from use of equipment, but has not included in its fee the costs for restoration of damage that may result from Engineer's operations, or the operations of any person or entity engaged by Engineer in the performance of services under this agreement. If Engineer is required to restore the land to its former condition, such work will be accomplished and the costs, plus fifteen percent (15%), will be added to Engineer's fee.

16.1.6 Subsurface Risks. Client recognizes that special risks occur whenever engineering or related disciplines are applied to identify subsurface conditions. Even a comprehensive sampling and testing program, implemented with appropriate equipment and experience by personnel under the direction of a trained professional who functions in accordance with a professional standard of practice may fail to detect certain hidden conditions. For similar reasons, actual environmental, geological, and geotechnical conditions that the Engineer properly inferred to exist between sampling points may differ significantly from those that actually exists. The Client acknowledges these risks.

16.1.7 Engineer will exercise reasonable and professional care in seeking to locate subterranean structures in the vicinity of proposed subsurface explorations at the Project site. Engineer will contact public utilities and review plans and information, if any, provided by public utilities, public agencies and Client. So long as Engineer observes such standard of care, Engineer will not be responsible for any unavoidable damage, injury, or interference with any subterranean structures, pipe, tank, cable or any other element or condition if not called to Engineer's attention prior to commencement of services or which is not shown, or accurately located, on plans furnished to Engineer by Client or by any other party, or which could not have been reasonably identified by Engineer.

17. Samples

17.1 Non-Hazardous Samples. Engineer will dispose of all soil, rock, water, and other samples thirty (30) days after submission of Engineer's initial report. Client may request, in writing, that any such samples be retained beyond such date, and in such case Engineer will ship such samples to the location designated by Client, at Client's expense. Engineer may, upon written request, arrange for storage of samples at Engineer's offices at mutually agreed storage charges. Engineer will not give Client prior notice of intention to dispose of samples.

17.2 Hazardous Samples. Although the Client shall have the obligation to dispose of any "hazardous" samples, if samples collected from the Project site contain substances defined as "hazardous" by federal, state, or local statutes, regulations, codes, or ordinances, Engineer shall, at its



WOODARD & CURRAN

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option, have the right to: (1) dispose of samples by contract with a qualified waste disposal contractor; (2) in accordance with Client's written directions, ship such samples by an appropriately licensed transporter to a licensed disposal site; or (3) return such samples by an appropriately licensed transporter, to Client. Client shall pay all costs and expenses associated with the collection, storage, transportation, and disposal of samples. If Client requests in writing, that any such sample be retained for a period in excess of thirty (30) days, Engineer will store such samples at Client's expense and Client will pay an additional fee as charged by Engineer in accordance with its standard laboratory schedule for storage of samples of a "hazardous substance."

Since Engineer has no control over the cost of labor, materials, equipment or services furnished by others or over competitive bidding or market conditions, it cannot guarantee that proposals, bids or actual Project costs or construction costs will not vary from any estimates or opinions of costs prepared by Engineer. Similarly, since Engineer has no control over building operation and/or maintenance costs, Engineer cannot and does not guarantee that the actual building system operating or maintenance costs will not vary from any estimates given by Engineer. No fixed limit of construction costs is established as a part of this Agreement.

18. Miscellaneous

(Signatures on next page)

- 18.1 This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Massachusetts.
- 18.2 Any action to enforce or interpret this Agreement shall be commenced or maintained only in the judicial or administrative tribunal in the jurisdiction of the Commonwealth of Massachusetts, and each party waives any venue, convenient forum, removal, jurisdiction, or other rights to the contrary.
- 18.3 Section headings in this Agreement are included herein for convenience of reference only, and shall not constitute a part of the Agreement or for any other purpose.
- 18.4 The Client and Engineer respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such party with respect to all covenants of this Agreement. Neither the Client nor Engineer shall assign, sublet or transfer any interest in this Agreement without the written consent of the other.
- 18.5 This Agreement represents the entire and integrated Agreement between the Client and Engineer, and supersedes all prior negotiations, representations or agreements, either written or oral, and may be amended only by written instruments signed by both Client and Engineer.
- 18.6 If any provision of this Agreement is held invalid or unenforceable by any court of final jurisdiction, it is the intent of the parties that all other provisions of this Agreement be construed to remain fully valid, enforceable and binding on the parties.
- 18.7 Any estimates or opinions of Project or construction costs are provided by Engineer on the basis of Engineer's experience and qualifications as an engineer and represents its best judgment as an experienced and qualified engineer familiar with the construction industry.




WOODARD & CURRAN TERMS & CONDITIONS

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below:

ENGINEER:

WOODARD & CURRAN, INC.

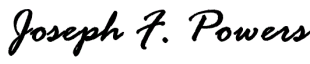
By: 
Printed: Scott Medeiros, PE
Title: Vice President

Thereunto duly authorized

Date: August 31, 2021

CLIENT:

TOWN OF HARWICH, MA

DocuSigned by:

By: 0623C0C5799644E
Printed: Joseph F. Powers
Title: Town Administrator

Thereunto duly authorized

Date: 9/9/2021 | 8:41:45 AM EDT

CORRESPONDENCE

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 02645



September 1, 2021

To Whom It May Concern:

The Single-Use Plastic Bottle Bylaw became effective on September 1, 2021. This citizen initiated Bylaw was adopted in an effort to reduce plastic waste and therefore promote environmental health in our community. Having said that, the Administration office recognizes that this Bylaw may have a detrimental impact on the economic health of the businesses that rely on this product to support their livelihoods. In addition, this unfunded mandate requires staff time which we currently cannot spare.

In response to the business and citizen inquiries regarding the process in which this Bylaw will be handled, the Town will utilize an educational approach that will inform businesses of the Bylaw and the reasons behind it. This approach will be by way of electronic communications to commercial permit holders and complaint driven on-site inspections by Health Department Staff. This adjustment period will allow both the Town and the business community to assess the impacts of this Bylaw. In the meantime, businesses are expected to comply with the Bylaw. As the Town Administrator, I am contemplating an amendment to the Bylaw to be presented at Annual Town Meeting.

Sincerely,

Joseph F. Powers
Town Administrator

From: brcapecod@aol.com <brcapecod@aol.com>
Sent: Sunday, September 5, 2021 3:56 PM
To: Michael D. MacAskill; Larry Ballantine; Don Howell
Subject: Fwd: Community Center Facilities Committee

-----Original Message-----

From: brcapecod@aol.com
To: mmacaskill@townofharwich.com <mmacaskill@townofharwich.com>;
lballantine@townofharwich.com <lballantine@townofharwich.com>; dhowell@townofharwich.com
<dhowell@townofharwich.com>
Sent: Sat, Sep 4, 2021 7:34 pm
Subject: Fwd: Community Center Facilities Committee

-----Original Message-----

From: brcapecod@aol.com
To: manderson@townofharwich.us <manderson@townofharwich.us>
Cc: ccarey@town.harwich.ma.us <ccarey@town.harwich.ma.us>; achilakacapecod@aol.com
<achilakacapecod@aol.com>; bgpower23@yahoo.com <bgpower23@yahoo.com>;
slibby@townofharwich.us <slibby@townofharwich.us>; katchy@comcast.net <katchy@comcast.net>
Sent: Fri, Sep 3, 2021 4:27 pm
Subject: Community Center Facilities Committee

Hi, Mary

As a member of the above committee, I wonder why there is talk of disbanding it. I submit that it serves an important purpose in helping Carolyn, the Director, and providing citizen input into operation of the Center. There are decisions to be made relating to room rentals, staff needs, equipment needs, and so on and we provide an active and interested sounding board. Further, while Carolyn does an outstanding job, it's good to have some direct and close oversight and to show appreciation when appropriate. I do not see how distancing her from observation by town officials such as the Town Administrator or Selectmen is prudent or good government. While we have not met recently due to COVID, discussion was initiated within the past 10 days or so to have a meeting.

On another subject, let me urge your support for reopening the Treasure Chest. As a serious recycler and regular user of freecycle.org which is very useful in brokering free exchange of otherwise trash-bound items, I am sickened by seeing perfectly good furniture, household and gardening items thrown over the side at the landfill.

Thanks for your attention and all the best in your new and well deserved post.

Respectfully,
Ralph

Smith



August 22, 2021

To the Board of Selectmen,

A large number of Harwich Port residents would like to request that Harwich Port restaurants be allowed to have outdoor live music again. It seems that a small minority of residents have complained, preventing the large majority from enjoying music in the summer. The music typically was from 6-10 p.m. and not overly loud. Summers are short on Cape Cod - it's not as if the music is played all year round. We have always all looked forward to walking into town for dinner and live music after dinner. We all pay taxes, not just the small minority. I believe most residents are up until 10 p.m. on weekends. If children are sleeping, a

for in the room would block the music, you and family friendly
The music is relaxing, you and family friendly
such as Eagles, Brown Eyed Girl, Sweet
Caroline, Wagon Wheel, country.

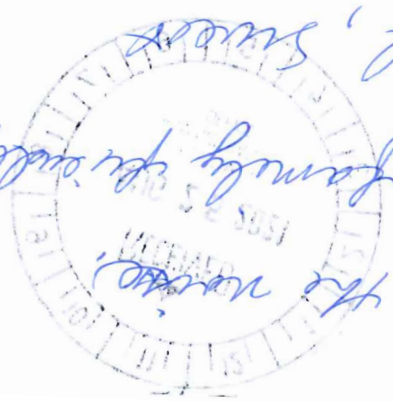
Everyone is talking about how there's
nothing going on in New York Port
anymore. The musical style isn't the
same either. 5-8:30 p.m. is too early.

By the time people leave the bar, eat
and get dressed, it's 6:30 at the
least. Lots of us would go about

7, drop in the area, listen to music, then
at a meet somewhere for live music
and a great time until 10 -

Also, the music on Wednesday nights and
weekends is much better than most of
the bands that play at the store.

I sincerely hope you allow music
to be played and enjoyed so we can
all enjoy time together in the summer.



It was always fun to go to the Port,
Ember, or Beer Garden and run into
friends and hear great music. All winter,
we look forward to summers on the Cape.
Thank you,

Barbara Conover
(25 Sequatten Lane)

Mary Ellen Shea
(Sequatten Lane)

Lee & Vinny Mc Intyre
& family
(Sequatten Lane)

Cindy & Ed Doherty &
family
(Sequatten Lane)

Catherine Thineault
and family
(Pilgrim Rd.)

Sandy Carlson (Ayer Lane)
& family

Betsy Minon Carothers
& family
(Quason Lane)

Jackie Brova & Matt Farrell
(Quason Lane)

**Notice to Certain Town Departments
Historic District & Historical Commission**



You are being notified of this public hearing pursuant to the Code of the Town of Harwich §131-9.B:

- | | |
|---|---|
| <input type="checkbox"/> Historical Society | <input type="checkbox"/> Conservation Commission |
| <input checked="" type="checkbox"/> Board of Selectmen | <input type="checkbox"/> Planning Board |

The Historic District and Historical Commission (HDHC) will hold a public hearing on Wednesday, September 15, 2021 in the Small Hearing Room, Town Hall, at 732 Main Street, Harwich, MA to consider the following applications. The public hearing will begin at 6:00 p.m. followed by a public meeting. Any member of the public having an interest in these applications is invited to attend and provide information and comment relevant to this matter or may submit the same in writing.

HH2021-11 Notice of Intent (NOI) has been received for 212 Bank Street, Map 32, Parcel N7, in the MR-L zoning district. The application proposes new windows, removing and replacing slider and replacement of entry doors. Construct new dormer and firewood shelter in addition to exterior improvements. Mary Deblois as Owner, Linda Thorp, Project Coordinator, Miller Starbuck Construction Services, Inc. as Applicant.

HH2021-12 Notice of Intent (NOI) has been received for 36 Cross Street, Map 14, Parcel D2, in the RM zone. The application proposes 100% demolition of existing dwelling and a freestanding garage. Oliver Homes, LLC as Owner, Kent Drushella as Applicant.

Mary Maslowski, Chairman

Please return any comments on the above case(s) to the HDHC @ Building Department.	
<input type="checkbox"/> No Comment	
<input type="checkbox"/> Comments:	
_____ Signature:	_____ Date: