

SELECTMEN'S MEETING AGENDA*

Donn B. Griffin Room, Town Hall

732 Main Street, Harwich, MA

Public Hearings 4:00 P.M.

Tuesday, December 14, 2021

I. **CALL TO ORDER**

II. **PLEDGE OF ALLEGIANCE**

III. **PUBLIC COMMENTS/ANNOUNCEMENTS**

IV. **PUBLIC HEARINGS (NO EARLIER THAN 4:00 P.M.)**

- A. Brax Restaurant Management, Inc. d/b/a Brax Landing, 705 Main Street - Public hearing on alleged violations of the Annual, All Alcoholic Beverages License; discussion and possible vote to order discipline based on Town Administrator's December 10, 2021 findings and recommendations.
- B. Port Restaurant and Bar, Inc., 541 Route 28 - Public hearing on alleged violations of the Seasonal, All Alcoholic Beverages License; discussion and possible vote to order discipline based on Town Administrator's December 10, 2021 findings and recommendations.
- C. Wychmere Harbor Functions Lp d/b/a Wychmere Harbor Beach and Tennis Club, 23 Snow Inn Road - Public hearing on alleged violations of the Seasonal, All Alcoholic Beverages License; discussion and possible vote to order discipline based on Town Administrator's December 10, 2021 findings and recommendations.
- D. Lucky Labrador, Inc. d/b/a Perks, 545 Route 28 - Public hearing on alleged violations of the Seasonal, All Alcoholic Beverages License; discussion and possible vote to order discipline based on Town Administrator's December 10, 2021 findings and recommendations.
- E. Beachlight LLC d/b/a Seal Pub, 703 Main Street - Public hearing on alleged violations of the Annual, All Alcoholic Beverages License; discussion and possible vote to order discipline based on Town Administrator's December 10, 2021 findings and recommendations.

V. **NEW BUSINESS**

- A. Summation of the Show Cause Hearing process and discussion on the future hearing process going forward presented by the Town Administrator

VI. **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: _____
December 10, 2021

**HARWICH BOARD OF SELECTMEN
NOTICE OF HEARING**

**ALLEGED VIOLATIONS OF CONDITIONS OF LIQUOR LICENSE
DECEMBER 14, 2021**

The Board of Selectmen, will hold a hearing on Tuesday, December 14, 2021 at 4:00 P.M., for the purpose of consideration of alleged liquor license violations by Port Restaurant and Bar, Inc., located at 541 Route 28 in Harwich Port. The Board of Selectmen will consider possible penalties including modifications, suspension, revocation or cancellation of said license. All members of the public having an interest in the topic are cordially invited to attend. The Hearing will be held in the Griffin Room at Harwich Town Hall located at 732 Main Street, Harwich 02645.

Board of Selectmen
Local Licensing Authority

Cape Cod Times
November 30, 2021

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: Joseph F. Powers, Town Administrator 

CC: Meggan M. Eldredge, Assistant Town Administrator
Jeffrey T. Blake, Esq., KP Law

RE: Port Restaurant and Bar, Inc., 541 Rt. 28 - Public hearing on alleged violations of the Seasonal, All Alcoholic Beverages License

DATE: December 10, 2021

The Board of Selectmen as Local Licensing Authority (LLA) for the town received a memorandum from Chief David Guillemette of the Harwich Police Department on July 6, 2021 (see attached) outlining violations alleged to have occurred on July 1, 2021 and July 3, 2021 at the licensed establishment known as Port Restaurant and Bar Inc. operating at 541 Route 28 in Harwich Port.

On July 26, 2021 the Board of Selectmen voted to remand the allegation to me, as Town Administrator, to conduct a show cause hearing for the purpose of determining whether there is cause for the LLA to hold a hearing to determine whether the facts support a finding of allegation(s) and to recommend to the LLA any potential discipline if the facts so warrant.

Based on the Board's vote, a show cause hearing was scheduled for September 10, 2021 at 1:00pm in the Griffin Room at Harwich Town Hall. **Please note:** the hearing on September 10, 2021 was opened and continued due to a scheduling conflict. Subsequently the Board received a memorandum from Chief David Guillemette of the Harwich Police Department on August 30, 2021 outlining violations alleged to have occurred on August 19, 2021. The Board voted on September 7, 2021 to remand those allegations to me, as Town Administrator and a hearing was convened on October 20, 2021 concerning all allegations up to that point.

Allegation(s) of violations:

The Town, acting through Attorney Jeffrey T. Blake, presented witnesses and exhibits supporting the claim of violation.

The establishment, acting through Attorney Raymond H. Tomlinson, Jr., presented witnesses and testimony refuting the alleged violations.

Events of July 1, 2021:

The allegation relating to events of July 1, 2021 is that an underage person used a false identification card to obtain liquor service allegedly at Port Restaurant and Bar, Inc. to the point of overconsumption (or over-service from the licensee standpoint) and further engaged in behavior elsewhere in Harwich Port for which the Harwich Police Department was alerted.

Finding(s)/Determination(s):

I find that the Town did not provide evidence sufficient enough for the Town to succeed on appeal to the Alcoholic Beverages Control Commission (ABCC) as would be the licensee's right of appeal.

Recommendation of discipline (if any):

Whereas, I find that there is not sufficient evidence to warrant a finding of illegal activity by the licensed establishment, I do not have any recommendation on discipline.

Events of July 3, 2021:

The allegation relating to the events of July 3, 2021 is that a complaint of loud noise was called into the Harwich Police Department for noise allegedly emanating for Port Restaurant and Bar, Inc.

Finding(s)/Determination(s):

I find that the witness for the Town confirmed that the complaint was lodged at 9:50pm. The licensed establishment has an outdoor entertainment license which allows for outside entertainment up to 10:00pm. Additionally, the Town's noise bylaw states, in part, that noises that are "...plainly audible at a distance of 150 feet from their source between 10:00 p.m. and 7:00 a.m." would constitute a violation of the noise bylaw. Based on the sworn testimony and exhibits provided, I find that the Town failed to demonstrate a violation of the outdoor entertainment license and therefore failed to find a violation of the licensed establishment's liquor license.

Recommendation of discipline (if any):

Whereas, I find that there is not sufficient evidence to warrant a finding of illegal activity by the licensed establishment, I do not have any recommendation on discipline.

Events of August 19, 2021

The allegation relating to the events of August 19, 2021 is that, while investigating a complaint at a neighboring establishment, officers of the Harwich Police Department became aware of noise emanating from Port Restaurant and Bar, Inc.

Finding(s)/Determination(s):

I find that a witness for the Town confirmed that the music within the confines of the licensed establishment were "not unreasonable" but that when the emergency door was opened the music "blasted". This is understood to have occurred at 10:40pm. I further find that an exhibit for the Town indicated that, upon notice by the police, a representative from the licensed establishment "was very cooperative" and that "There were no additional complaints regarding the Port" that evening.

I find that the noise emanating from the licensed establishment occurred after 10:00pm however I do not find that there is sufficient evidence to suggest that the noise was

“plainly audible at a distance of 150 feet from their source between 10:00 p.m. and 7:00 a.m.”. Therefore do not find that the noise **does not** constitute a violation of the noise bylaw and does not constitute a violation of the licensed establishment’s liquor license.

Recommendation of discipline (if any):

Whereas, I find that there is not sufficient evidence to warrant a finding of illegal activity by the licensed establishment, I do not have any recommendation on discipline.

This concludes my findings, determinations and recommendations regarding alleged violations to have occurred at Port Restaurant and Bar, Inc. during the timeframe referenced within.

In The Matter Of:
Port Restaurant and Bar, Inc.

Show Cause Hearing
October 20, 2021

Beacon Court Reporting Services
100 Independence Drive, Suite 7
Hyannis, Massachusetts 02601
www.beaconcourtreporting.com
(774) 678-4255



Original File 2021-1020_Port.txt

Min-U-Script®

Volume: 1 of 1
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*****X

IN RE:

PORT RESTAURANT AND BAR, INC.

*****X

SHOW CAUSE HEARING
BEFORE JOSEPH F. POWERS, TOWN ADMINISTRATOR
Harwich Town Hall
Griffin Room
732 Main Street
Harwich, Massachusetts
Wednesday, October 20, 2021
10:08 a.m. - 1:58 p.m.

Reported by: Janet L. Wynne, CSR No. 131793
Registered Professional Reporter

Beacon Court Reporting Services
100 Independence Drive, Suite 7
Hyannis, Massachusetts 02601
www.beaconcourtreporting.com

APPEARANCES:

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jblake@k-plaw.com
for the Town of Harwich

Raymond H. Tomlinson, Jr., Esq.
Tomlinson Law Office
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West Barnstable, Massachusetts 02668
(508) 348-9030
rht@tomlinsonlaw.com
for Port Restaurant and Bar, Inc.

Present:

Danielle Delaney, Executive Assistant
Town of Harwich Licensing

Jamie Goodwin, Videographer
Town of Harwich Channel 18

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P R O C E E D I N G S

(Hearing called to order Wednesday, October 20, 2021, at 10:08 a.m.)

THE HEARING OFFICER: Seeing as it is 10:08 a.m. on October 20, 2021, I will call this hearing to order. This is a hearing relative to a finding of facts for a disciplinary action, if any, against the Port Restaurant.

My name, for the record, is Joe Powers. I'm the Town Administrator for the Town of Harwich, and I have been expressly directed by the Board of Selectmen, the licensing authority, to sit in this matter today, again, for the purpose of finding -- for assessing and amassing facts for findings to be made at a later date.

For the record, I am joined by the Town of Harwich Administration Department employee Danielle Delaney. She is our executive assistant for licensing matters for the Town.

I'm going to go around the room and ask everybody, then, to identify themselves and the purpose for which they're here. For example, we have attorneys, we have a stenographer, we have police officers, and we may have folks that are here just as general public; so

1 you can identify yourself in that manner as well.

2 I will tell you that this proceeding,
3 this hearing, this discussion today is being videotaped
4 for purposes of referring back to the record. It is not
5 being broadcast. It is not a meeting carried on
6 Channel 18. And it is a resource that will be available
7 at the conclusion of this.

8 And I am very pleased to announce that we
9 are joined this morning by our stenographer, and her
10 purpose here today is to create a record of the
11 proceedings that all parties can rely upon for future
12 reference.

13 So with that, Attorney Blake, I'll start
14 with you, if you could identify yourself for the record,
15 please.

16 MR. BLAKE: I'm Jeffrey Blake. I'm your
17 Town counsel, and I will be prosecuting the case for the
18 Town.

19 THE HEARING OFFICER: And you are here on
20 behalf of?

21 MR. BLAKE: The Town.

22 THE HEARING OFFICER: And your firm. I'm
23 sorry.

24 MR. BLAKE: Oh. KP Law.

1 THE HEARING OFFICER: Thank you.

2 Janet?

3 THE STENOGRAPHER: My name is Janet
4 Wynne. I'm from Beacon Court Reporting. I'm the
5 stenographer today.

6 THE HEARING OFFICER: Jamie?

7 THE VIDEOGRAPHER: Jamie Goodwin, Harwich
8 Channel 18.

9 THE HEARING OFFICER: Thank you.

10 SPEAKER: Joe Daly, resident.

11 THE HEARING OFFICER: Thank you.

12 SPEAKER: Aram Goshgarian, Harwich Police
13 Sergeant. I'm here to give testimony.

14 THE HEARING OFFICER: Thank you.

15 SPEAKER: Thomas Griffiths, Harwich PD.

16 THE HEARING OFFICER: Thank you.

17 SPEAKER: Officer Ronald Ruggiero,
18 Harwich Police. I'm here to give testimony as well.

19 SPEAKER: Bob Brackett, Harwich Police
20 Department.

21 THE HEARING OFFICER: Thank you.

22 SPEAKER: Adam Hutton, Harwich Police
23 Department.

24 THE HEARING OFFICER: Thank you.

1 SPEAKER: Kevin Considine, Deputy Chief.

2 THE HEARING OFFICER: And Attorney
3 Tomlinson?

4 MR. TOMLINSON: Attorney Ray Tomlinson on
5 behalf of the licensee.

6 THE HEARING OFFICER: Thanks, everybody.

7 I know procedurally -- Danielle was just
8 about to tell me -- we would ask everybody that is not
9 present at this table to please come forward and please
10 print legibly your name.

11 And are you looking for an email address
12 or a phone number?

13 MS. DELANEY: I guess email.

14 THE HEARING OFFICER: Thank you.

15 So if you could provide a printed version
16 of your name for the record, and an email address, that
17 would be greatly appreciated. So it will be everybody
18 but the -- one, two, three, four -- five of us at the
19 table. And Jamie is excluded as well. And, again,
20 please print legibly.

21 (Audience complying.)

22 THE HEARING OFFICER: Actually, you can
23 leave it there for now in case anyone else joins us.
24 Thank you.

1 So it appears that everybody has -- when
2 I say "signed in," I mean printed legibly your
3 information. Thank you.

4 So we'll get underway at this point;
5 however, I would ask everybody that, if you have any
6 electronic devices, that you certainly silence those.
7 We don't want them to become a distraction during this
8 process.

9 I will now read into the record the
10 notice related to this show cause hearing. First is
11 Harwich Board of Selectmen Notice of Show Cause Hearing,
12 Alleged Violations of Conditions of Liquor License,
13 dated September 10, 2021.

14 "The Town Administrator, acting as the
15 Hearing Officer for the Board of Selectmen, will hold a
16 Show Cause Hearing on Friday, September 10, 2021, at
17 1:00 p.m., for the purpose of consideration of alleged
18 liquor license violations by Port Restaurant and Bar,
19 Incorporated, located at 541 Route 28 in Harwich Port.
20 The Hearing Officer will consider possible penalties,
21 including modifications, suspension, revocation, or
22 cancellation of said license. All members of the public
23 having an interest in the topic are cordially invited to
24 attend. The hearing will be held in the Griffin Room at

1 Harwich Town Hall, located at 732 Main Street in
2 Harwich." That was under my name, Joseph F. Powers, as
3 Town Administrator. It was published in the Cape Cod
4 Times on August 18, 2021.

5 That matter was continued on
6 September 10, 2021, to this morning, today, 10:00 a.m.,
7 October 20, 2021. A subsequent notice was also
8 published: Harwich Board of Selectmen Notice of Show
9 Cause Hearing, Alleged Violations of Conditions of
10 Liquor License, October 20, 2021.

11 "The Town Administrator, acting as the
12 Hearing Officer for the Board of Selectmen, will hold a
13 Show Cause Hearing on Wednesday, October 20, 2021, at
14 10:00 a.m., for the purpose of consideration of alleged
15 liquor license violations by Port Restaurant and Bar,
16 Incorporated, located at 541 Route 28 in Harwich Port.
17 The Hearing Officer will consider possible penalties,
18 including modifications, suspension, revocation, or
19 cancellation of said license. All members of the public
20 having an interest in the topic are cordially invited to
21 attend. The hearing will be held in the Griffin Room at
22 Harwich Town Hall, located at 732 Main Street in
23 Harwich," again under my name, Joseph F. Powers, as Town
24 Administrator, published in the Cape Cod Times

1 September 27, 2021.

2 I want to add further to the record the
3 following statement of disclosure: I, Joseph Powers,
4 Town Administrator, am named individually as a defendant
5 in several state and federal court cases relative to the
6 Port Restaurant. The Town and I are being represented
7 in litigation by legal counsel appointed by the Town's
8 insurers.

9 In my capacity as Town Administrator I
10 work with and carry out my duties at the direction of
11 the Board of Selectmen and pursuant to the Town Charter
12 and Code. The Board may request that I perform certain
13 actions that are related to the litigation in which I am
14 named individually as a defendant and the plaintiffs are
15 seeking damages.

16 Today I am serving on behalf of the Board
17 of Selectmen as a hearing officer for the purpose of
18 accumulating facts of the show cause hearing relative to
19 the matters before us today.

20 With that, I will now start by
21 recognizing Attorney Jeff Blake to begin the process.

22 Attorney Blake, the floor is yours. And
23 I would imagine that you're looking to potentially add
24 documents as exhibits --

1 MR. BLAKE: I am.

2 THE HEARING OFFICER: -- and potentially
3 maybe witnesses who will be sworn at a certain time.

4 MR. BLAKE: I am. I absolutely am.

5 MR. TOMLINSON: Mr. Town Administrator,
6 if I could just state an objection to you serving as the
7 hearing officer here calling on the record given your
8 disclosure, that the licensee is being denied its
9 constitutional right to a fair, impartial decisionmaker
10 and fact finder. Thank you, Mr. Blake.

11 THE HEARING OFFICER: So, Attorney
12 Tomlinson, objection so noted and recorded. In response
13 to that I will read a ruling that was recently issued by
14 the Barnstable Superior Court, Judge Mark Gildea.

15 Judge Mark Gildea, Justice of the
16 Barnstable Superior Court, ruled on October 15, 2021,
17 that the Port's request for a preliminary injunction
18 relative to this hearing today was denied.

19 I'll further read into the record the
20 Superior Court Civil Action Decision by Judge Gildea.
21 This is under Commonwealth of Massachusetts, Barnstable
22 County Superior Court, Civil Action No. 2172CV00349,
23 "Ember Pizza, Incorporated, and another --" footnote,
24 the "other" is -- "and another" is The Port Restaurant

1 and Bar, Incorporated -- "the Town of Harwich and
2 others" -- footnote, the "others" are members of the
3 Board of Selectmen and nominal defendant of the
4 Alcoholic Beverage Control Commission of the
5 commonwealth.

6 "Decision and Order on Motion Per
7 Preliminary Injunction: Plaintiff, The Port Restaurant
8 and Bar, Incorporated, herein referred to as Port,
9 requests a preliminary injunction, one, quashing any,
10 quote, show cause, close quote, hearing scheduled with
11 respect to the Port and all such future hearings; and,
12 two, restraining the Town Board of Selectmen, BOS,
13 herein referred to, from delegating to the Town
14 Administrator the BOS's investigation of an incident
15 involving the Port.

16 "The Port points to, one, claimed bias
17 and conflict of interest on the part of the Board -- of
18 the BOS and the Town Administrator, and, two, contends
19 that the Town Charter and General Laws Chapter 138
20 preclude the BOS from delegating to the Town
21 Administrator show cause hearings investigating claimed
22 alcohol violations.

23 "After hearing, upon review of the
24 parties' submissions, including the Port's voluminous

1 motion and attachments and its reply brief and
2 nine-page, single-spaced affidavit of the Port's
3 president, the Court finds:

4 "The Court, Suffolk County --
5 parenthesis, Suffolk County, where the Port filed its
6 third action against the Town and from which this matter
7 was transferred to this Court, close parenthesis,
8 parenthesis, Mulligan, comma, J, close parenthesis,
9 previously found, upon substantially similar
10 allegations, that money damages would adequately
11 compensate for any harm that the Port may suffer before
12 final judgment and that the Port did not allege
13 nonmonetary damage.

14 "This Court does not find that the Port's
15 amended complaint alleges anything different so as to
16 warrant a different result. Even if it did, the Port
17 has not shown a likelihood of success on its claims
18 that, one, the BOS and the Town Administrator's claimed
19 bias and conflict of interest precludes them from acting
20 on matters involving the Port; or, two, that the Town
21 Charter and General Laws Chapter 138 preclude the BOS
22 from delegating to the Town Administrator show cause
23 hearings investigating claimed alcohol violations.

24 "Order: For the foregoing reasons, it is

1 hereby ordered that the Port's request for a preliminary
2 injunction is denied; October 15, 2021, under the
3 signature of Mark C. Gildea, Justice of the Superior
4 Court."

5 Attorney Tomlinson's objection was noted
6 for the record and recorded. Going forward, I will just
7 remind everybody that this is a hearing for the purposes
8 of me obtaining as many facts as any party who is
9 present here today wishes to convey to me as facts.

10 This is not a judicial hearing, and the
11 rules of evidence do not apply in this matter. And,
12 therefore, I will be advising both attorneys on behalf
13 of both parties that I will not be entertaining
14 objections going forward. Rather, you are directed and
15 encouraged to rely upon your opportunities to present
16 facts today to me, as hearing officer, whereby you can
17 refute anything that was provided by the other party.

18 So we will now turn to Attorney Blake,
19 who will provide his list of documents that he wishes to
20 have as exhibits, his list of witnesses that he wishes
21 to have provide testimony today. I'll swear those folks
22 in. Attorney Blake will start. Attorney Tomlinson will
23 have an opportunity to redirect with the witnesses and
24 offer his facts, documents, exhibits, and witnesses, if

1 any.

2 Having said that, Attorney Blake, the
3 floor is yours.

4 MR. BLAKE: Thank you.

5 MR. TOMLINSON: Attorney Blake, before
6 you begin, Mr. Powers, are you denying me an opportunity
7 to respond to the statement you just read into the
8 record?

9 THE HEARING OFFICER: I am not. I'm
10 offering Counsel the opportunity to incorporate that
11 into the facts of the matters today to be brought
12 forward.

13 MR. TOMLINSON: You will agree with me
14 that none of the witnesses here were present during the
15 hearing before the Court or with you. And I'll note for
16 the record, just because it's a public meeting of a
17 public body, you were appointed by the local licensing
18 authority at a public hearing to host this. The liquor
19 regulations require a public meeting. This is a duly
20 noticed public meeting.

21 The hearing before Judge Gildea and the
22 order that issued on October 15th is not an affirmative
23 ruling on the merits. It's not a substantive
24 determination of the merits of the dispute. It is not a

1 substantive determination of whether you or any member
2 of the Board of Selectmen that has a personal financial
3 conflict of interest in the ongoing federal civil rights
4 lawsuits and state board actions is in any way -- it is
5 not in any way a determination as to your statutory
6 conflict of interest under General Laws Chapter 268A,
7 and nor is it a determination of any findings of a
8 complaint pending before the State Ethics Commission
9 about your proceeding, you know, with these proceedings
10 as a show cause officer. Thank you.

11 THE HEARING OFFICER: Thank you, Attorney
12 Tomlinson.

13 Attorney Blake, the floor is yours.

14 MR. BLAKE: Thank you. Thank you,
15 Mr. Hearing Officer.

16 And with respect to the two notices that
17 you read into the record, I would like to have those
18 marked as Exhibit A and Exhibit B.

19 THE HEARING OFFICER: So, to note, the
20 Cape Cod Times -- excuse me -- the notice dated
21 October 18, 2021, as published in the Cape Cod Times,
22 will be understood to be Exhibit A. The notice --

23 MR. BLAKE: August 18th.

24 THE HEARING OFFICER: Say again.

1 MR. BLAKE: August 18th.

2 THE HEARING OFFICER: Sorry, August 18,
3 2021, is Exhibit A. And the one published in the Cape
4 Cod Times September 27, 2021, is Exhibit B.

5 (Exhibit A, Notice of Show Cause Hearing
6 published August 18, 2021, so marked.)

7 (Exhibit B, Notice of Show Cause Hearing
8 published September 27, 2021, so
9 marked.)

10 MR. BLAKE: Additionally, I would like to
11 have the order and notice that you just read into the
12 record from the Barnstable Superior Court marked as
13 Exhibit C.

14 THE HEARING OFFICER: So this will be the
15 Superior Court Civil Action No. 2172CV00349; is that
16 correct?

17 MR. BLAKE: That's correct.

18 THE HEARING OFFICER: It will be
19 Exhibit C.

20 (Exhibit C, Decision and Order on Motion
21 for Preliminary Injunction, so marked.)

22 MR. TOMLINSON: And, Mr. Powers, that
23 will be appealed, and so we'll supplement the record
24 with a notice of appeal and the appellate record

1 concerning that decision.

2 THE HEARING OFFICER: So, Attorney
3 Tomlinson, I'd ask you to do that when we get to your
4 exhibits, please. Thank you.

5 Attorney Blake?

6 MR. BLAKE: All right. And so for
7 Exhibit D I would like to introduce into the record an
8 August 11, 2020, letter to -- actually, I think that's a
9 typographical error; right?

10 MS. DELANEY: Oh, yes.

11 MR. BLAKE: So in our packets there is a
12 letter that was sent to Mr. Justin Brackett, the manager
13 of the Port Restaurant and Bar, August 11 -- it says
14 2020, but it should be 2021 -- notifying Mr. Brackett of
15 the Friday, September 10, 2021, 1:00 p.m., show cause
16 hearing before you. I'd like to have that marked as
17 Exhibit D.

18 THE HEARING OFFICER: Thank you. So the
19 letter dated April 20 -- excuse me -- April [sic] 11,
20 2020, which we understand 2020 to be a scrivener's
21 error -- it should actually read 2021 -- is now entered
22 as Exhibit D.

23 (Exhibit D, letter dated August 11, 2021,
24 re notice of liquor license disciplinary

1 hearing, so marked.)

2 MR. BLAKE: I would also like to have
3 entered, as E -- as Exhibit E, a September 8, 2020,
4 letter -- 2021 letter -- to Justin Brackett, Manager of
5 Record for the Port Restaurant and Bar, again giving him
6 notice of the continuance of the September 10th hearing
7 and continued to today's date, which is October 20,
8 2021, at 10:00 a.m.

9 THE HEARING OFFICER: Thank you. That's
10 Exhibit E.

11 (Exhibit E, letter dated September 8,
12 2021, re notice of disciplinary hearing
13 continuation, so marked.)

14 MR. BLAKE: And then, finally, I have a
15 letter dated September 14, 2020, which again should be
16 2021, which outlines -- to Justin Brackett, Manager of
17 the Port Restaurant and Bar, which outlines -- which
18 notifies him of a liquor license disciplinary hearing
19 for today's date, October 20, 2021, at 10:00 a.m.

20 THE HEARING OFFICER: Thank you. So the
21 letter dated September 14, 2020, known to have a
22 scrivener's error for the year 2020, which should read
23 2021, is entered as Exhibit F.

24 (Exhibit F, letter dated September 14,

1 2021, re notice of liquor license
2 disciplinary hearing, so marked.)

3 MR. BLAKE: Exhibit G, I would like to
4 have entered into the record the license for the Port
5 Restaurant and Bar, No. 00074-RS-0506, and that is a
6 seasonal common victualer's license to expose, keep for
7 sales, and to sell all kinds of alcoholic beverages.

8 THE HEARING OFFICER: Counsel, before you
9 proceed -- and I believe Attorney Tomlinson would have
10 the same, Attorney Blake and Ms. Delaney -- the packet
11 that we have, the cover memo says "Police Memo and
12 Reports." And so could you identify again what you plan
13 on having entered as Exhibit F because I didn't follow
14 along.

15 MR. BLAKE: Yeah. I apologize. What
16 I've done is I've skipped to the licenses because, when
17 I do exhibits -- the police reports, I'm going to have
18 them admitted at the same time or during the testimony
19 of the officers.

20 THE HEARING OFFICER: Sure.

21 MR. BLAKE: So I skipped ahead, and I
22 apologize.

23 THE HEARING OFFICER: Thank you.

24 Before we proceed, it's under the

1 heading -- what was heading again, now? "Licenses"?

2 Would that be --

3 MR. BLAKE: Yes.

4 THE HEARING OFFICER: It's after the
5 police memo but before Harwich --

6 MS. DELANEY: Yes.

7 THE HEARING OFFICER: -- license
8 regulations?

9 MR. TOMLINSON: So to be clear, Exhibit G
10 is the license?

11 THE HEARING OFFICER: Give me one second,
12 Attorney Tomlinson. I just want to make sure I'm on the
13 same page as everybody.

14 MR. TOMLINSON: Only because there are
15 three licenses included in the packet first produced
16 today.

17 THE HEARING OFFICER: So now we are under
18 "Licenses" in the packet -- under that. And so I just
19 want to show it visually. So, Attorney Tomlinson, this
20 is what I'm looking at.

21 Attorney Blake, this is what I'm looking
22 at.

23 MR. BLAKE: Yeah.

24 THE HEARING OFFICER: Underneath that,

1 the first thing I see is "License, Alcoholic Beverages,
2 Seasonal Common Victualer, No. 0074-RS-0506."

3 MR. BLAKE: That's correct.

4 THE HEARING OFFICER: Is that the item?

5 MR. BLAKE: It is.

6 THE HEARING OFFICER: And the lettering,
7 again, is letter G?

8 MR. BLAKE: G.

9 THE HEARING OFFICER: All right. Thank
10 you.

11 (Exhibit G, Seasonal Common Victualer
12 License for the Port Restaurant and Bar,
13 so marked.)

14 MR. BLAKE: And the next would be H, and
15 that is a license for the Town of Harwich, a common vic
16 license, No. 19-09S. And I would want that to be H.

17 THE HEARING OFFICER: Thank you. That is
18 Commonwealth of Massachusetts, Town of Harwich, License
19 for Innholders, Common Victualers, and Other Keepers of
20 Restaurants and Other Establishments, No. 19-09S. And
21 just to be clear, Attorney Blake, this is the document
22 you're referencing?

23 MR. BLAKE: It is.

24 THE HEARING OFFICER: Attorney Tomlinson?

1 MR. TOMLINSON: Yes.

2 THE HEARING OFFICER: All right. And
3 that is letter...

4 MR. BLAKE: H.

5 THE HEARING OFFICER: H. Thank you.

6 (Exhibit H, License for Innholders,
7 Common Victualers and Other Keepers of
8 Restaurants and Other Establishments, so
9 marked.)

10 MR. BLAKE: And then, finally for
11 licenses, I would like to introduce the license for
12 public entertainment on Sundays. And that is -- give me
13 a second. I'm looking for a number on it. I don't see
14 a number on it.

15 THE HEARING OFFICER: The lower --
16 Form 90, Revised 2015?

17 MR. BLAKE: Yes, Form 90 in the footer.

18 THE HEARING OFFICER: Yeah.

19 MR. BLAKE: I believe --

20 MR. TOMLINSON: I don't believe that's a
21 license number.

22 THE HEARING OFFICER: No. I'm --

23 MR. BLAKE: It's not.

24 THE HEARING OFFICER: Right. I'm relying

1 upon that as an identifying mark. So the form that says
2 in the footer "Form 90" on the left and on the right
3 parenthetically "Revised 2015" is License for Public
4 Entertainment on Sunday. Is that the document --

5 MR. BLAKE: That is correct.

6 THE HEARING OFFICER: -- you wish to
7 introduce --

8 MR. BLAKE: Yeah.

9 THE HEARING OFFICER: -- as Exhibit I?

10 MR. BLAKE: Yes.

11 THE HEARING OFFICER: All right. And,
12 again, visually, gentlemen? Attorney Blake?

13 MR. BLAKE: Yes.

14 THE HEARING OFFICER: Attorney Tomlinson?

15 MR. TOMLINSON: Yes.

16 THE HEARING OFFICER: Thank you.

17 (Exhibit I, License for Public
18 Entertainment on Sunday, so marked.)

19 MR. BLAKE: And for J I would like to
20 introduce as a -- I think I will do J-1, -2, and, at
21 least, -3. These are past disciplinary --

22 THE HEARING OFFICER: So, Attorney Blake,
23 if I may, in the packet we're going to proceed to
24 documents -- if you can see visually here, we're going

1 to proceed under the packet --

2 MR. BLAKE: Yes.

3 THE HEARING OFFICER: -- under that
4 heading?

5 MR. BLAKE: Yes.

6 THE HEARING OFFICER: Attorney Tomlinson?

7 MR. TOMLINSON: That's fine.

8 THE HEARING OFFICER: Thank you.

9 So under "Past Disciplinary Actions" we
10 have documents there. So, Counsel, what do you have as
11 an item -- presumed to be item J?

12 MR. BLAKE: J-1, I want to introduce the
13 September 27, 2005, decision finding no cause to take
14 any further action on a request for a noise compliant at
15 the Port Restaurant.

16 THE HEARING OFFICER: So, Counsel, if I
17 may -- just a question for my purposes -- the first page
18 we see is a headline of "Port Restaurant and Bar," a
19 summary of past disciplinary actions?

20 MR. BLAKE: I'm not using that one, no.

21 THE HEARING OFFICER: At all?

22 MR. BLAKE: No.

23 THE HEARING OFFICER: Thank you. Okay.

24 So then we have a letter dated

1 September 27, 2005, from Office of the Selectmen, signed
2 by members of the board at that time. That's J-1?

3 MR. BLAKE: Yes.

4 THE HEARING OFFICER: Thank you.

5 (Exhibit J-1, no-cause letter dated
6 September 27, 2005, re noise complaints,
7 so marked.)

8 MR. BLAKE: J-2 will be a November 7,
9 2017, letter to Justin Brackett, Port Restaurant and
10 Bar, regarding a warning incident at the -- at your
11 establishment. That will be J-2.

12 THE HEARING OFFICER: Thank you. And I'm
13 noting it as J-2, for what it's worth.

14 (Exhibit J-2, notice of warning letter
15 dated November 7, 2017, re warning
16 incidents at the Port, so marked.)

17 MR. BLAKE: J-3 would be a decision by --
18 it looks like the ABCC -- for violations of allowing
19 underage drinking. And the date of the violations were
20 August 17, 2018. And the date of the ABCC decision is
21 December 6, 2018. That would be J-3.

22 THE HEARING OFFICER: Thank you.
23 Counsel -- sorry, Attorney Blake --

24 MR. BLAKE: Yes.

1 THE HEARING OFFICER: -- it appears that
2 J-3 encompasses three pages in total.

3 MR. BLAKE: Yes, it does.

4 THE HEARING OFFICER: We have the page
5 that says "Decision"; we have the page that has "Dated
6 December 6th"; and then we have a page -- and I would
7 note that pages 2 and 3 are numbered, and that one says
8 "This document is important and should be translated
9 immediately," and it shows the carbon copy recipients.
10 Is it your intention that J-3 consists of three pages?

11 MR. BLAKE: It is, yes.

12 THE HEARING OFFICER: Thank you.

13 (Exhibit J-3, Decision of the ABCC re
14 violation date of August 17, 2018, so
15 marked.)

16 MR. BLAKE: And I would also like to have
17 introduced into the record J-4, which is a decision from
18 the Town regarding violations of a May 22nd, July 16th,
19 July 17th liquor license for the Port Restaurant and
20 Bar. The letter is dated May 20, 2021. It is four
21 pages -- four pages.

22 THE HEARING OFFICER: Thank you. That is
23 J-4, and J-4 consists of four pages.

24 (Exhibit J-4, Decision and Order on the

1 May 22, July 16, and July 17, 2020,
2 violations, so marked.)

3 MR. BLAKE: And, finally -- well,
4 additionally I would like to have the Harwich liquor
5 license regulations introduced into the record as
6 Exhibit K.

7 THE HEARING OFFICER: And, Counsel, if I
8 may, that document would start with what appears to be a
9 table of contents, a header of which says "Harwich Board
10 of Selectmen, Liquor License Regulations Adopted at a
11 Public Hearing on June 13, 2011; Amended at a Public
12 Hearing on January 9, 2017; Amended at a Public Meeting
13 on August 23, 2021; Effective July 21, 2011," and,
14 additionally, beyond that, pages numbered 1 through 20;
15 is that correct?

16 MR. BLAKE: That is correct.

17 THE HEARING OFFICER: And that was
18 Exhibit K?

19 MR. BLAKE: That is Exhibit K.

20 THE HEARING OFFICER: Thank you.
21 (Exhibit K, Harwich Board of Selectmen
22 Liquor License Regulations, so marked.)

23 MR. BLAKE: Now I would like to --
24 Mr. Hearing Officer, I would like to go forward with

1 some live testimony at this point. I think that we will
2 start with the July 6th memorandum of the chief, and I
3 would like to have that admitted as Exhibit L. The
4 memorandum is dated -- is to the Board of Selectmen and
5 you, Joseph Powers, as the Town Administrator, from
6 David Guillemette, Chief of Police. It's dated July 6,
7 2021, and its subject is "Alleged Noise Violation at the
8 Port."

9 And the memorandum says "In accordance
10 with the Town of Harwich Liquor License Regulation
11 Section 1.16, I would like to bring to the Board's
12 attention an alleged noise violation at the Port
13 documented by Officer Griffiths on July 3, 2021.

14 "I have also included an incident report
15 that is being investigated further regarding possible
16 over-service of a 20-year-old using a fake ID at the
17 Port. Once additional information is available, I will
18 forward it to the Board.

19 "The attached incident reports are for
20 your consideration as to whether to hold a public
21 hearing on the matter. Officers who were involved in
22 the incident -- incidents -- and documented their
23 findings will be made available for testimony if a
24 hearing is deemed necessary."

1 THE HEARING OFFICER: So, Attorney Blake,
2 that memorandum dated July 6, 2021, you're looking to
3 introduce as Exhibit L. The memorandum makes reference
4 to attached reports.

5 MR. BLAKE: That's correct.

6 THE HEARING OFFICER: Are you looking to
7 mark those separately?

8 MR. BLAKE: I will mark them separately,
9 and I will actually have the various officers testify
10 regarding those first.

11 THE HEARING OFFICER: Give me a moment
12 because I would like to have that memorandum introduced,
13 certainly, as Exhibit L.

14 (Exhibit L, memorandum dated July 6,
15 2021, re alleged noise violation at the
16 Port, so marked.)

17 THE HEARING OFFICER: However, I want to
18 make sure that -- as we go through these, it's going to
19 be helpful for me to be able to handle these
20 chronologically.

21 And so I know there is a reference to an
22 alleged violation on July 3rd of 2021. I know that the
23 next document has a date of July 1st. The document
24 after that is July 2nd. The document after that is --

1 refers to July 1st. The document after that is
2 July 3rd.

3 So what I would ask is, if we're starting
4 chronologically -- well, let me say it differently than
5 "chronologically." What I mean to say is, if we're
6 first starting with the allegation referenced in
7 Exhibit L, paragraph one, as July 3rd, I would ask that
8 we have exhibits entered related to that and witness
9 testimony related to that, rather than jumping around
10 dates. So --

11 MR. BLAKE: That's what I was going to
12 do. So can we admit the call log dated 07/03/2021 as
13 Exhibit M and then the narrative from Patrol Thomas
14 Griffiths, Jr., as N? And that would be regarding the
15 noise violations that are referenced in paragraph one.

16 MR. TOMLINSON: Mr. Blake, does it make
17 sense to make them M1 and M2?

18 MR. BLAKE: That's fine. I don't have
19 a --

20 THE HEARING OFFICER: Sure. Thank you.
21 So M1 is the document dated July 3rd. Mine is
22 truncated. And -- I forgot from the last times, what
23 did we --

24 MR. BLAKE: These are call logs.

1 THE HEARING OFFICER: Call log. Thank
2 you. So call log dated July 3, 2021, is introduced as
3 M, as in "Mary," dash, 1; and narrative for Patrol
4 Thomas G. Griffiths, Jr., reference 21-7992-OF, is
5 entered as M, as in "Mary," dash, 2; is that correct?

6 MR. BLAKE: That is correct.

7 THE HEARING OFFICER: Attorney Tomlinson,
8 is that what you understand?

9 MR. TOMLINSON: Yes. Thank you.

10 THE HEARING OFFICER: Thank you.

11 (Exhibit M-1, call log 21-7992 dated
12 07/03/2021, so marked.)

13 (Exhibit M-2, narrative for Patrol
14 Thomas G. Griffiths, Jr.,
15 Ref. 21-7992-OF, so marked.)

16 MR. TOMLINSON: Excuse me.

17 MR. BLAKE: And with that, I would like
18 to ask Patrol Thomas Griffiths, Jr., to come to the
19 podium so I can ask him a couple of questions. And I
20 believe you'll need to swear him in.

21 THE HEARING OFFICER: Yeah. Let me just
22 write for the record now your first witness is, again,
23 Officer Thomas G. Griffiths, Jr.

24 For the record I would say that I

1 personally know Officer Griffiths and I have been
2 referring to him by a nickname of TJ.

3 OFFICER GRIFFITHS: Correct.

4 THE HEARING OFFICER: We have talked
5 about the fact that J is not his middle initial, but I
6 just want to advise everybody, if I slip and refer to
7 "TJ," I'm speaking to Officer Griffiths.

8 Thank you, Officer. Please raise your
9 right hand, please.

10 PATROL OFFICER THOMAS G. GRIFFITHS, JR., sworn.

11 THE HEARING OFFICER: Attorney Blake, the
12 witness is yours.

13 MR. BLAKE: Thank you.

14 EXAMINATION

15 BY MR. BLAKE:

16 Q. All right. Patrol Griffiths, how are you
17 this morning?

18 A. Good. How are you?

19 Q. I'm very well. Thanks.

20 And my name is Jeffrey Blake. I
21 represent the Town in this matter, as you probably know.
22 And I want to draw your attention to July 3rd of 2021.
23 Do you remember that day?

24 A. I do.

1 Q. Okay. Did you -- were you made aware that
2 you would have to testify regarding your narrative
3 report?

4 A. I was.

5 Q. Okay. And did you review your narrative
6 report?

7 A. I did.

8 Q. Okay. And so you're familiar with your
9 narrative report?

10 A. I am.

11 Q. Okay. So can you tell the hearing
12 officer -- and I'm talking about a noise complaint at
13 the Port Restaurant on July 3rd. Were you dispatched to
14 that noise complaint?

15 A. I was.

16 Q. Okay. And were you alone?

17 A. I was.

18 Q. And can you explain to us -- it looks like
19 you were there at approximately 2150 hours.

20 A. Correct.

21 Q. And can you explain to us what happened as
22 you were dispatched.

23 A. I was dispatched to the area of Sea Street.
24 They stated that it was a noise complaint in regards to

1 the Port Restaurant. When I arrived, I parked on Sea
2 Street in the area of number 42.

3 Q. How far away is 42 from the Port Restaurant?

4 A. I don't know the exact distance.

5 Q. You know, give me a guess.

6 MR. TOMLINSON: Objection.

7 A. I don't know. A hundred, 200 feet -- around
8 there.

9 Q. Okay. All right.

10 A. I got out of the car. I could hear voices
11 and music playing. I ended up walking further down the
12 street to Cape Sea Grille.

13 Q. And when you say you could hear voices and
14 music playing, was it loud? was it audible? was it
15 muffled?

16 A. I could hear loud music playing over
17 speakers.

18 Q. Okay.

19 A. When I walked further down the street to the
20 Cape Sea Grille, which I looked, it's approximately --
21 well, it's over 400 feet away.

22 Q. How do you know that it's over 400 feet
23 away?

24 A. Through Google.

1 Q. Okay.

2 A. I measured through Google.

3 Q. Okay.

4 A. And I stood there and could still hear the
5 music playing over the speakers.

6 Q. Was that loud?

7 A. Yeah.

8 Q. So once you heard that, you investigated the
9 complaint --

10 A. Yes.

11 Q. -- you walked out 400 feet. Then what did
12 you do?

13 A. I walked back to the restaurant. I made
14 contact with an employee, advised him of the music
15 playing on the outdoor speakers, you know, that it was
16 too loud.

17 He stated that patrons were going to the
18 host stand, getting the remote for the speakers and
19 turning up the music. So he said that he would go turn
20 it off, and he subsequently did.

21 Q. Okay. When he turned it off, I mean,
22 obviously the music stopped, but was there still -- did
23 you go out -- back to the Sea Street location and listen
24 again, or --

1 A. I did not.

2 Q. -- were you content with the solution?

3 A. Yeah, I was content.

4 Q. Okay.

5 That night were you called back to the
6 establishment at all for a noise complaint?

7 A. We were not called back for another noise
8 complaint, no.

9 Q. Okay.

10 MR. BLAKE: All right. I have no further
11 questions for this.

12 THE HEARING OFFICER: Thank you.

13 Attorney Tomlinson, before you begin, I
14 will note that you uttered the word "objection."

15 MR. TOMLINSON: Yes.

16 THE HEARING OFFICER: I did not
17 acknowledge that. I would encourage you now, as part of
18 your redirect of the witness, to incorporate in your
19 questions what you would have had recorded as a
20 so-called objection.

21 The witness is yours, please.

22 EXAMINATION

23 BY MR. TOMLINSON:

24 Q. Officer, good morning. How are you?

1 A. Good. How are you?

2 Q. Good. Thank you.

3 How long have you been an officer with
4 the Harwich Police Department?

5 A. Approximately seven years.

6 Q. And prior to the Harwich Police did you
7 serve in law enforcement prior to?

8 A. I did not.

9 THE HEARING OFFICER: I apologize,
10 Attorney Tomlinson. Attorney Tomlinson, I couldn't hear
11 the last part of your question.

12 MR. TOMLINSON: I asked for how long he
13 served with the Harwich Police Department. He said
14 seven years. I asked if he served in law enforcement
15 prior thereto. He said no.

16 THE HEARING OFFICER: I'm sorry, the
17 second part was "prior to"?

18 Q. Prior to your service at Harwich did you
19 serve in law enforcement?

20 A. I did not.

21 THE HEARING OFFICER: Okay. Thank you.

22 Q. During the seven years that you've worked --
23 been employed as an officer -- patrol officer with the
24 Harwich Police Department have you received any formal

1 training with respect to noise violations?

2 A. I have not.

3 Q. Have you received any informal training with
4 respect to noise violations?

5 A. I have not.

6 Q. Okay. Do you know if there's a written
7 policy at the Harwich Police Department regarding the
8 protocol in which to respond to noise complaints?

9 A. There is.

10 Q. Okay. And when did that written policy come
11 into effect?

12 A. I do not know.

13 Q. Do you know whether or not that written
14 policy originated first this summer?

15 A. I do not.

16 Q. Have you read a copy of that written policy?

17 A. I have.

18 Q. Okay. When was the last time you read that
19 policy?

20 A. I do not know.

21 Q. Do you know if you read that policy prior to
22 you responding on July 3rd?

23 A. I believe so.

24 Q. Okay. Do you know how long before July 3rd

1 you would have read that policy?

2 A. I do not.

3 Q. Does that policy define noise?

4 A. I believe it does.

5 Q. Okay. Do you recall what is that
6 definition?

7 A. I do not.

8 Q. Are you familiar with the noise bylaw in
9 Harwich?

10 A. Yes.

11 Q. What's your understanding of the noise bylaw
12 in Harwich?

13 A. Amplified noise beyond 150 feet outside.

14 Q. And do you know whether or not the noise
15 bylaw applies to licensed establishments?

16 A. It does.

17 Q. It does. Would it surprise you to note that
18 the chief of police has repeatedly testified to the
19 Board that the Harwich Police Department is not applying
20 the noise bylaw to licensed establishments but is using
21 the definition of "noise" in the liquor license
22 regulations?

23 A. Okay.

24 Q. You're taking my word for it?

1 A. Sure.

2 Q. Okay. Have you had a chance to read the
3 Harwich liquor license regulations?

4 A. I don't believe so.

5 Q. Okay. So you wouldn't know what the
6 definition of "noise" is in the liquor license
7 regulations?

8 A. No, sir.

9 Q. Okay.

10 Can I ask, in the call log it's redacted
11 who was the caller who made the complaint. Can you
12 identify who was the caller?

13 A. I do not know.

14 Q. Okay. Did you speak with the caller?

15 A. I did not.

16 Q. Okay. Prior to today have you had an
17 opportunity to review your call log and officer
18 narrative report?

19 A. I have.

20 Q. When did you review those prior to today?

21 A. I reviewed it before I walked in.

22 Q. Okay. About how long did you review that?
23 A few minutes? A half an hour?

24 A. Yeah. I don't know. Ten minutes.

1 Q. Okay. Did you discuss your narrative or
2 your call log with any other of the officers?

3 A. I did not.

4 Q. Okay. Prior to your testimony today did you
5 have a chance to meet with Attorney Blake or Mr. Powers?

6 A. I did not.

7 Q. And did you discuss your testimony with
8 anyone here present in the room?

9 A. I did not.

10 Q. Okay. You said you parked your cruiser at
11 42 Sea Street. Do you know who owns that property?

12 A. I do not.

13 Q. And, I'm sorry, Mr. Powers indicated that he
14 has a personal relationship with you. What's the nature
15 of your relationship?

16 THE HEARING OFFICER: So I'm going to
17 answer that. It's my statement, and I'll address that
18 when the witness is done.

19 MR. TOMLINSON: Thank you. I'll rephrase
20 the question.

21 Q. What is the nature of your relationship with
22 Mr. Powers?

23 THE HEARING OFFICER: Again, I'll be
24 addressing that later on.

1 MR. TOMLINSON: Mr. Powers, I'll happily
2 question you after I'm done questioning Officer
3 Griffiths.

4 THE HEARING OFFICER: So --

5 MR. TOMLINSON: You made a statement on
6 the record.

7 THE HEARING OFFICER: -- Attorney
8 Tomlinson --

9 MR. TOMLINSON: You made a statement on
10 the record. I'm going to explore it.

11 THE HEARING OFFICER: Attorney
12 Tomlinson --

13 MR. TOMLINSON: I'm going to continue
14 with my question.

15 THE HEARING OFFICER: Attorney Tomlinson,
16 you will not. You will yield for a moment. I'm the
17 hearing officer for this hearing for the purpose of
18 gathering facts.

19 MR. TOMLINSON: With a stated disclosure
20 of a personal relationship with the officer. I'm
21 entitled to inquire as to the nature of that
22 relationship; so I'm going to ask Officer Griffiths to
23 testify to that, unless you instruct him not to. Are
24 you instructing him not to answer the question?

1 THE HEARING OFFICER: To continue, I am a
2 hearing officer for this hearing today for the purpose
3 of generating all of the facts that all of you provide
4 to me.

5 MR. TOMLINSON: Your statement's noted.

6 Q. Officer Griffiths --

7 THE HEARING OFFICER: Attorney
8 Tomlinson --

9 Q. -- will you answer the question, please.

10 THE HEARING OFFICER: -- I am not done,
11 and I will be allowed to finish my statements and I will
12 be allowed to say who speaks next.

13 Officer Griffiths is here testifying as a
14 police officer. I made a disclosure that I am going to
15 qualify later. I am aware of my disclosure, and those
16 facts are already known to me. Officer Griffiths will
17 not be answering any questions relative to how he and I
18 know each other because I will handle that matter. You
19 are encouraged to continue with questions unrelated to
20 that topic.

21 Q. Mr. Griffiths, do you have a personal
22 relationship with Mr. Powers?

23 THE HEARING OFFICER: Don't answer the
24 question.

1 MR. TOMLINSON: I'm going to note my
2 objection for the record.

3 MR. BLAKE: Let him answer the question.

4 MR. TOMLINSON: Thank you, Attorney
5 Blake.

6 MR. BLAKE: It's a two-minute question,
7 if that.

8 THE HEARING OFFICER: With all due
9 respect, Attorney Blake, Attorney Tomlinson, I am going
10 to make a statement -- I am not going to go down this
11 rabbit hole -- and I am going to address it. After I
12 address it, we can address that if I deem it
13 appropriate.

14 MR. TOMLINSON: I'm going to pause my
15 questioning of Officer Griffiths for the moment. I'm
16 going to ask you to finish your statement now.

17 THE HEARING OFFICER: Thank you.

18 MR. TOMLINSON: If you would like to
19 amend your disclosure, now is the time to do so.

20 THE HEARING OFFICER: Thank you.
21 Attorney Tomlinson, you may proceed.

22 MR. TOMLINSON: I'm going to ask you to
23 amend your statement now --

24 THE HEARING OFFICER: I understand what

1 you're saying.

2 MR. TOMLINSON: -- before I further
3 question the witness. I have a constitutional right to
4 question the witness and examine him with respect to
5 bias, including with respect to you as the hearing
6 officer.

7 You've made a stated disclosure as to
8 your bias and personal and financial conflict of
9 interest in several ongoing actions. You have now made
10 a personal disclosure that you are friendly with Officer
11 Phillips. I am entitled to ask him that question.
12 Excuse me, I apologize, Officer Griffiths. Excuse me.

13 You stated that you have a personal
14 relationship with him. You have also indicated that you
15 will update your statement after he is done testifying.
16 If you would like to update that statement now, you may
17 do so. If you're not going to update that statement
18 now, I'm going to continue with my questioning and
19 Officer Griffiths will answer the question.

20 THE HEARING OFFICER: The witness will
21 stand down.

22 MR. TOMLINSON: Are you --

23 THE HEARING OFFICER: The witness will
24 stand down.

1 MR. TOMLINSON: Officer Griffiths, you
2 are not dismissed.

3 I have a constitutional right --

4 THE HEARING OFFICER: The witness will
5 stand down.

6 MR. TOMLINSON: Mr. Powers, we can go to
7 court --

8 THE HEARING OFFICER: I'm not done --

9 MR. TOMLINSON: -- right now on this
10 issue.

11 THE HEARING OFFICER: I'm not done
12 talking.

13 MR. BLAKE: Then let's go. Let's go.

14 THE HEARING OFFICER: I am not done
15 talking.

16 MR. BLAKE: Let's go.

17 THE HEARING OFFICER: Gentlemen --

18 MR. TOMLINSON: We'll surrender the
19 hearing. We'll continue the hearing.

20 THE HEARING OFFICER: -- this hearing
21 will come to order.

22 I would ask the witness to take a seat.

23 I will continue speaking as the hearing
24 officer, and I will adjudicate, for lack of a better

1 word, this matter. My reference to Officer Griffiths as
2 being personally known to me was on the occasion of a
3 tornado, and the aftermath of a tornado, that struck the
4 town in July of 2019. Officer Griffiths introduced
5 himself to me, as the assistant town administrator, and
6 told me who he was and indicated that he is a family
7 friend of a family member of mine by marriage. That is
8 the extent of the personal relationship, so-called.

9 The purpose of my statement earlier was
10 to advise those assembled here today that, if I lapse
11 and refer to the witness as "TJ," that is the reason
12 why.

13 The witness may reappear at the stand,
14 please.

15 Attorney Tomlinson, you may continue.

16 Q. Officer Griffiths, my apologies for
17 misstating your name moments ago.

18 Did Mr. Powers accurately state the
19 nature of your relationship with him?

20 A. He did.

21 Q. Do you socialize with him outside of work?

22 A. I do not.

23 Q. Who is the family member of which he refers
24 of which you have a family connection?

1 A. I do not even know because it is a friend of
2 mine's uncle.

3 Q. Okay. So apart from the disclosure that
4 Mr. Powers made today, you don't socialize or have any
5 other personal relationship with him?

6 A. I do not.

7 Q. Okay. And, I'm sorry, we'll get back to the
8 questioning. You previously indicated you do not know
9 who owns 42 Sea Street?

10 A. I do not.

11 Q. Okay.

12 You said that you could hear music and
13 loud voices. Do you know whether or not the Port had
14 entertainment outside on July 3rd?

15 A. I believe that they had entertainment
16 inside.

17 Q. Okay. Did you go inside the establishment?

18 A. I did not.

19 Q. Okay. Do you know whether that
20 entertainment was live?

21 A. I believe it was.

22 Q. Okay. And do you know whether or not the
23 entertainment that was live inside was also being played
24 on the speakers outside?

1 A. I do not believe so.

2 Q. Okay. So it's your understanding that the
3 music that's played on the outdoor speakers is not the
4 same music that's played inside?

5 A. Correct.

6 Q. You said you could hear loud voices as well.

7 A. Correct.

8 Q. And you could hear that at a distance, you
9 guessed, between 100 and 200 feet from the parking lot?

10 A. Yes.

11 Q. Okay. And were those patrons located on the
12 outdoor patio?

13 A. They were.

14 Q. Okay. You said that you approached an
15 employee. Where did you speak with that employee?

16 A. In the parking lot area --

17 Q. Okay.

18 A. -- around on the back side of the building.

19 Q. Okay. Was that near the host stand outside?

20 A. I don't know if there's a host stand there.

21 It was by the -- that building -- that small bar out
22 back.

23 Q. You mean the merchandise shed?

24 A. The merchandise shed. I'm sorry, yes.

1 Q. You're aware that that building doesn't
2 have -- that outbuilding doesn't have a bar, it's not an
3 outdoor-serve bar?

4 A. Yeah.

5 Q. Do you recall the employee's name with whom
6 you spoke?

7 A. I do not.

8 Q. Okay. Do you recall if it was a man or a
9 woman?

10 A. It was a male.

11 Q. And how do you know he was an employee?

12 A. He had a Port shirt on.

13 Q. Okay. Did you notice if there were any
14 patrons wearing Port shirts?

15 A. I did not.

16 Q. Do you know if at the merchandise shed they
17 sell a lot of Port shirts and sweatshirts in that
18 building?

19 A. I do.

20 Q. And have you seen patrons dining at the
21 establishment wearing Port attire?

22 A. I don't recall.

23 Q. Okay. Did he announce himself as an
24 employee, or did you just identify he was an employee

1 based on his shirt?

2 A. I believe I spoke to a female prior and said
3 that I need to talk to someone. She went inside and
4 exited, and he came out and spoke with me.

5 Q. Okay. Do you recall what he looked like?

6 A. I do not.

7 Q. Okay. Short hair? Long hair? Tall? Thin?
8 Heavyset?

9 A. I don't know.

10 Q. Okay. At the time that you spoke with that
11 person could you hear music playing from the
12 establishment next door?

13 A. I don't recall.

14 Q. Do you know how many outdoor speakers there
15 are at the Port?

16 A. No idea.

17 Q. Do you know where they're located?

18 A. No.

19 Q. But you indicated that approximately 100 to
20 400 feet away you could hear speakers -- music over
21 loudspeakers outside?

22 A. Correct.

23 Q. Okay. And do you know whether or not Perks,
24 the establishment next door, if they had outdoor

1 entertainment?

2 A. I do not.

3 Q. Do you know whether or not they had outdoor
4 speakers?

5 A. I do not.

6 Q. As a general matter, have you ever responded
7 to a noise violation at Perks?

8 A. I don't believe I have personally.

9 Q. Not personally.

10 Have you discussed with any other
11 officers noise violations at that establishment?

12 A. No.

13 Q. Did you ask the employee to confirm whether
14 or not her remote control actually operated the outdoor
15 speakers?

16 A. I did not.

17 Q. Did you witness the employee touch the
18 remote control to turn the volume down on the outdoor
19 speakers?

20 A. I did not.

21 Q. Okay. On that occasion did you ask to speak
22 with management or ownership?

23 A. I did not.

24 Q. Okay. Is it -- my understanding is that

1 it's the chief's policy today that, if there are noise
2 complaints, that you are to speak with ownership or
3 management?

4 A. I'm not sure.

5 Q. Okay. Was that part of a memorandum that
6 the chief issued earlier this year in light of the
7 hearings that were held at the Port?

8 A. I'm not sure.

9 Q. But you don't have a recollection of reading
10 that memorandum?

11 A. I do not.

12 Q. I take it you never made contact with the
13 complainant?

14 A. I did not.

15 Q. Did the dispatcher ever inform you who was
16 the complainant?

17 A. They did not.

18 Q. As you sit here today, do you know who was
19 the complainant?

20 A. I do not.

21 MR. TOMLINSON: Officer Griffiths, thanks
22 for your time. I appreciate it.

23 THE HEARING OFFICER: Thank you, Attorney
24 Tomlinson.

1 Attorney Blake, do you have any follow-up?

2 MR. BLAKE: Nothing further.

3 THE HEARING OFFICER: So the witness is
4 thanked for his testimony but asked to remain.

5 Attorney Blake, your next witness.

6 MR. BLAKE: Okay. I would also like to
7 call Officer Ruggiero. And this is a little -- this
8 might be a little disjointed in trying to keep -- in
9 keeping with the exhibits that we have in the packet,
10 but I would like to call Officer Ruggiero. Do you want
11 to swear the officer in?

12 THE HEARING OFFICER: Are we going to
13 introduce exhibits as well?

14 MR. BLAKE: I am going to. I am going to
15 introduce what is known -- it looks like a -- what did I
16 call it? -- a call log -- two call logs, one dated the
17 1st, one dated the 2nd, and then a narrative of Officer
18 Ruggiero, reference 21-7897-OF, and those will be N1, 2,
19 and 3.

20 THE HEARING OFFICER: All right. And
21 those appear to have been the next ones in the queue
22 under the police memo and reports packet; is that
23 correct?

24 MR. BLAKE: I believe that they are.

1 THE HEARING OFFICER: All right. So N-1
2 is the call log dated 7/1/2021.

3 MR. BLAKE: Mm-hmm.

4 THE HEARING OFFICER: N, as in "Nancy,"
5 dash, 2 is the call log dated 7/2/2021; and N, as in
6 "Nancy," dash, 3 is the narrative for Patrol Ronald D.
7 Ruggiero, reference 21-7897-OF. Did I capture those?

8 MR. BLAKE: I believe you did. I believe
9 you did.

10 THE HEARING OFFICER: Thank you.

11 MR. TOMLINSON: Just so we're clear, N1
12 is the call log 1-7863?

13 MR. BLAKE: Yes.

14 MR. TOMLINSON: And N2 is 1-7897?

15 MR. BLAKE: That's correct.

16 MR. TOMLINSON: And N3 is the narrative,
17 21-7897-OF?

18 MR. BLAKE: That's correct.

19 MR. TOMLINSON: All right. Thank you.

20 THE HEARING OFFICER: Thank you.

21 MR. BLAKE: Do you want to swear the
22 witness in?

23 THE HEARING OFFICER: One moment,
24 Attorney Blake.

1 (Exhibit N-1, call log 21-7863 dated
2 07/01/2021, so marked.)

3 (Exhibit N-2, call log 21-7897 dated
4 07/02/2021, so marked.)

5 (Exhibit N-3, narrative for Patrol
6 Ronald D. Ruggiero, Ref. 21-7897-OF, so
7 marked.)

8 THE HEARING OFFICER: All right. Done.
9 Thank you.

10 PATROL OFFICER RONALD D. RUGGIERO, sworn.

11 THE HEARING OFFICER: Attorney Blake, the
12 witness is yours.

13 EXAMINATION

14 BY MR. BLAKE:

15 Q. Good morning, sir. How are you this
16 morning?

17 A. I'm doing well, Attorney Blake. How are
18 you?

19 Q. I'm doing very well.

20 A. Excellent.

21 Q. I think, having seen your colleague testify
22 before, you probably know what we're going to -- my
23 questions. Do you know why you're here today?

24 A. I do.

1 Q. And tell us why you're here today.

2 A. It's regarding a female who used a
3 fraudulent ID at the Port Restaurant.

4 Q. Okay. And that would have been on July 1st;
5 is that correct?

6 A. Yes, sir.

7 Q. Okay. And did you author a report regarding
8 that incident?

9 A. I authored a report, yes, based on a call we
10 received the following day.

11 Q. Okay. A narrative?

12 THE HEARING OFFICER: Attorney Blake, I
13 would ask you to yield for a moment. I just -- and if
14 the witness could stand down for a moment. I just have
15 a question for both you and Attorney Tomlinson.

16 Do either of you expect to present any
17 additional documentation or witnesses relative to the
18 alleged incidence of July 3rd?

19 MR. BLAKE: I was going to also ask
20 Sergeant Brackett to testify because he conducted a
21 follow-up and has provided us with a narrative for the
22 follow-up, but other than Ruggiero and Brackett, no.

23 MR. TOMLINSON: I'm sorry, are we talking
24 about the July 3rd noise complaint?

1 THE HEARING OFFICER: Correct.

2 MR. BLAKE: Oh, I'm sorry, then never
3 mind. No, I'm done.

4 THE HEARING OFFICER: All right. So what
5 I meant by "chronological" is I wanted to first go
6 through July 3rd both sides.

7 MR. BLAKE: Oh, okay. No, I have --
8 well, he doesn't have any witnesses, so...

9 THE HEARING OFFICER: Well, if I may --
10 so, Attorney Tomlinson, it now goes to you if you have
11 any witnesses or exhibits that you want to enter into
12 the record relative to the alleged noise violation for
13 July 3rd before we proceed to any other dates and any
14 other alleged violations.

15 MR. TOMLINSON: The -- obviously, I would
16 have liked to question the complainant; however, the
17 officer never spoke with him, it's redacted from the
18 report; so I have no ability to be able to confront that
19 accuser.

20 And other than the documentation that's
21 provided in here, I don't know the name of the employee
22 with whom he spoke. There were at least four members of
23 the Brackett family present at the establishment on that
24 night, none of whom spoke with the officer. So I don't

1 know how I'm able to present any additional information.

2 Thank you.

3 THE HEARING OFFICER: Thank you.

4 Attorney Blake, I'd ask you to then
5 proceed to your summation relative to the alleged
6 violation on July 3, 2021, before we proceed to other
7 exhibits, witnesses, and dates.

8 MR. BLAKE: I'm happy to.

9 SUMMATION

10 MR. BLAKE: You heard the officer
11 testify. He was called out there. He went out there.
12 Who called him, who he talked to -- all of the other
13 questions that were asked of him are, frankly,
14 irrelevant.

15 He testified he went out there, he
16 listened, he heard loud music and voices. He
17 specifically walked away to try to see how far away he
18 was. He was at least 400 feet. He went back and he
19 told them to turn it off -- or, turn it down. They
20 complied, and problem solved.

21 So to the extent that there are innuendos
22 that it was Perks or it was something else, I mean, it's
23 obvious that it was from the Port. He saw the issue,
24 went over, and asked them to turn it down.

1 It doesn't make -- it doesn't matter who
2 he spoke to. It doesn't matter if he spoke to anybody
3 at all. This officer is an officer of the law. He
4 swore under oath that this is what he heard on that
5 night.

6 I suggest that there is ample evidence to
7 find a violation of a noise -- of noise at the
8 establishment.

9 MR. TOMLINSON: Attorney Blake, are you
10 done providing fodder for the hearing officer?

11 MR. BLAKE: What did you just say?

12 THE HEARING OFFICER: Gentlemen --

13 MR. BLAKE: What did you just say to me?

14 THE HEARING OFFICER: Gentlemen --

15 MR. TOMLINSON: I'm happy to restate it
16 so the record is clear.

17 THE HEARING OFFICER: Gentlemen, yield,
18 please.

19 Attorney Blake, do you now rest your case
20 under the July 3rd violation?

21 MR. BLAKE: I am done with my closing,
22 yes.

23 THE HEARING OFFICER: Thank you.

24 Attorney Tomlinson, your summation of

1 events.

2 MR. TOMLINSON: Now I'm going to be
3 afforded a summation.

4 SUMMATION

5 MR. TOMLINSON: A noise complaint was
6 made to the Town by an unknown complainant. The
7 licensee has a constitutional right to be able to
8 cross-examine that accuser. It has been redacted from
9 the report with the intent to shield the licensee from
10 knowing who was the complainant.

11 I don't have any reason to know if the
12 complainant is here or not. Joe Ganley, who is an
13 attorney, is here, present. He does reside in the
14 vicinity of 42 Sea Street. However, he was not offered
15 to testify today. I cannot call him as a witness
16 because I do not have a good faith basis to because I do
17 not know whether or not he is the complainant. However,
18 he is an officer of the court.

19 I'll note that, when Officer Griffiths
20 responded, he guessed as to the location at which he
21 parked his vehicle. He guessed at that question based
22 upon Attorney Blake asking him to guess, to which I
23 objected. He didn't know whether it was a hundred feet
24 or 400 feet. He didn't know the location of outdoor

1 speakers, how many. He didn't know whether or not Perks
2 had outdoor entertainment that night.

3 He did identify that there was live
4 entertainment inside. He did not have any complaints
5 about the noise inside. He also identified that there
6 were no further complaints about the noise inside that
7 evening.

8 This was at 9:50 p.m., which is prior to
9 the curfew for ending outdoor entertainment, and there
10 was no indication that the noise was a nuisance or a
11 disturbance, only that he could hear it. He also could
12 hear patrons' voices, which is protected free speech.

13 And so I would suggest that there is not
14 satisfactory evidence of a violation. Thank you.

15 THE HEARING OFFICER: Thank you, Attorney
16 Tomlinson.

17 The question, then, to both gentlemen is
18 do we expect Officer Griffiths to be appearing on any
19 other matter today, or can the witness be released?

20 MR. BLAKE: I don't have him appearing on
21 anything else that I have, no.

22 THE HEARING OFFICER: Attorney Tomlinson?

23 MR. TOMLINSON: I don't show him
24 identified in any of the documents the Town has

1 produced.

2 THE HEARING OFFICER: And, then,
3 Attorney -- excuse me, sorry, I didn't mean to call you
4 that. Officer Griffiths, are you aware that you may be
5 called as a witness for any other matters coming before
6 us today?

7 OFFICER GRIFFITHS: I'm not aware of any
8 other.

9 THE HEARING OFFICER: Thank you. So I
10 would say thank you to you for your time and testimony
11 today.

12 And to the attorneys, before we wrap it
13 up, Attorney Tomlinson, I have one question on something
14 you had said in your summation. You referred to
15 Mr. Ganley as an officer of the court?

16 MR. TOMLINSON: Yes. He's a licensed
17 attorney. He is an officer of the court.

18 THE HEARING OFFICER: Thank you. That
19 was my question.

20 Thank you, Officer Griffiths. You are
21 free to go.

22 MR. TOMLINSON: Thank you, Officer.

23 OFFICER GRIFFITHS: Thank you, sir.

24 THE HEARING OFFICER: Attorney Blake,

1 given that this is the manner in which I am trying to
2 proceed, we have Exhibits N1 -- N-1; N-2; N-3 that were
3 entered into the record. We have a witness that has
4 been sworn and was prepared to provide testimony. How
5 are we going to make reference? Is this allegations on
6 July 1st, July 2nd, or any other date? Can it be
7 referred to -- and I'll ask the same thing of Attorney
8 Tomlinson.

9 MR. BLAKE: It's the fake ID allegation.

10 THE HEARING OFFICER: So it will be
11 referred to as the allegation of fake ID.

12 MR. BLAKE: Yes.

13 THE HEARING OFFICER: Thank you.

14 MR. TOMLINSON: I'll object to that
15 characterization, but thank you.

16 THE HEARING OFFICER: All right. So
17 then, to the Town, Attorney Blake, you have introduced
18 Exhibits N-1, N-2, N-3 presumably related to this
19 alleged violation; is that correct?

20 MR. BLAKE: That is correct.

21 THE HEARING OFFICER: And do you intend
22 to have Officer Ruggiero come forward to provide
23 testimony? And we're recognizing that he's already been
24 sworn.

1 MR. BLAKE: Yes.

2 THE HEARING OFFICER: All right.

3 Officer Ruggiero, thank you for your
4 patience. Welcome back. You will be reminded that
5 you're under oath.

6 OFFICER RUGGIERO: Yes, sir.

7 THE HEARING OFFICER: And then, Attorney
8 Blake, your witness.

9 MR. BLAKE: All right.

10 PATROL OFFICER RONALD D. RUGGIERO, resumed.

11 CONTINUED EXAMINATION

12 BY MR. BLAKE:

13 Q. Officer Ruggiero, thank you. Sorry for the
14 interruption.

15 I think you were telling me -- I asked
16 you why you think you're here today. Can you explain to
17 the hearing officer why you're here today -- your
18 understanding.

19 A. Yes. I understand that I'm here because a
20 patron of the Port used a fraudulent ID to be served
21 alcohol.

22 Q. An alleged patron; right?

23 A. Alleged patron.

24 Q. Right. And were you asked to investigate?

1 A. I was the following day. Correct.

2 Q. All right. And did you conduct an
3 investigation into the --

4 A. Yes.

5 Q. -- into the allegation?

6 A. Yes.

7 Q. And can you explain to the hearing officer
8 what you did.

9 A. So I was called to a residence the following
10 day. The evening which is in question of which the
11 alleged patron was at the Port was the night prior to my
12 investigation.

13 THE HEARING OFFICER: And, Officer, if I
14 could, that date is?

15 THE WITNESS: That date was July 1st.

16 THE HEARING OFFICER: Thank you. So the
17 alleged incident is July 1st, and you're now talking
18 about July 2nd. Thank you.

19 A. Yeah. So on July 2nd I was called to follow
20 up. This alleged patron had entered a home on Neel
21 Road. She was under the influence of alcohol. She went
22 into the wrong home. The homeowners there were trying
23 to find who she was, where she belonged.

24 Her phone eventually rang. I believe it

1 was a FaceTime call from a friend. The name "Parker
2 LeBlanc" popped up. I believe it was the homeowner's
3 daughter or daughter-in-law who ended up answering the
4 phone because the friend was so intoxicated she couldn't
5 figure out how to answer it. They were telling her that
6 her friend was on their couch intoxicated.

7 And the friend replied to her, "No, she's
8 here with me at the Port. We're all at the Port."
9 Eventually, I guess, she said she'd send someone to pick
10 the girl up. The girl then fled the house south on
11 Neel Road -- I'm sorry, north on Neel Road -- toward
12 Saquatucket Bluffs Road.

13 The family did some research. That all
14 had occurred on the night of July 1st; so this
15 information was just being relayed to me on July 2nd.
16 They were able to find -- look up Parker LeBlanc in the
17 LeBlanc household and find that they owned a house on
18 Saquatucket Bluffs Road -- 21, I believe.

19 I went to 21 Saquatucket Bluffs Road in
20 an attempt to speak with the family there to make sure,
21 one, the female made it home okay. They were unaware of
22 the incident. Their daughter was Parker LeBlanc, who
23 had called the unknown female at the time. They said
24 they would speak with their daughter and get to the

1 bottom of it.

2 I later received a call that day from a
3 Charlotte Seymour, who was the cousin of Parker LeBlanc.
4 She stated she had drank too much alcohol and went to
5 the wrong house. She was very apologetic, was going to
6 purchase a floral arrangement to send to the family of
7 that house that she had gone in.

8 I asked her if she would disclose where
9 she had been consuming alcohol, and she said the Port
10 Restaurant.

11 Q. Okay.

12 THE HEARING OFFICER: Attorney Blake, if
13 I may -- sorry, I was writing my notes.

14 Officer Ruggiero, you mentioned the name
15 "Parker LeBlanc" and you mentioned another name. Could
16 you repeat that for me, please.

17 THE WITNESS: Charlotte Seymour.

18 THE HEARING OFFICER: And does that
19 comport to your narrative where it says the cousin --
20 I'm sorry -- "I later received a call from blank"?

21 THE WITNESS: Charlotte Seymour.

22 THE HEARING OFFICER: Would be the name
23 to fill in the blank?

24 THE WITNESS: Correct.

1 THE HEARING OFFICER: Thank you.

2 Charlotte -- and I'm assuming S-E-Y-M-O-U-R?

3 THE WITNESS: Correct.

4 THE HEARING OFFICER: Thank you.

5 Thank you, Attorney Blake.

6 Q. Were you able to talk with this woman, the
7 20-year-old woman?

8 A. Charlotte Seymour?

9 Q. Yes.

10 A. Over the phone.

11 Q. Okay. And how do you know it was her? She
12 just identified herself?

13 A. She identified herself as Charlotte Seymour.

14 Q. And did she indicate that she used a fake
15 ID?

16 A. She did.

17 Q. And did you ask her how old she was?

18 A. I did.

19 Q. And did you get an opportunity to look at
20 that fake ID?

21 A. I did not.

22 Q. Did you actually see this young lady at the
23 Port Restaurant?

24 A. I was not working that night, no.

1 Q. To your knowledge, did any of the officers
2 that were involved in this see her at the Port
3 Restaurant that night?

4 A. I don't believe so.

5 Q. Okay. But she had indicated to you that she
6 had been there?

7 A. Correct.

8 Q. Did she tell you how many drinks she had
9 consumed?

10 A. She did not.

11 Q. All right. Did you -- did anybody get to
12 see her the next day -- any officer?

13 A. No, not to my knowledge.

14 MR. BLAKE: All right. I have nothing
15 further on this.

16 THE HEARING OFFICER: Thank you.

17 Attorney Tomlinson, your witness on
18 redirect.

19 MR. TOMLINSON: Thank you.

20 EXAMINATION

21 BY MR TOMLINSON:

22 Q. Officer Ruggiero, good morning.

23 A. Good morning.

24 Q. I'll ask you sort of the same initial

1 questions. How long have you been an officer at the
2 Harwich Police Department?

3 A. About five years, sir.

4 Q. And have you had any occasion to investigate
5 fraudulent identification matters in the past?

6 A. I don't recall.

7 Q. Okay. Is it safe to say that this was one
8 of the first that you investigated that you recall?

9 A. I wouldn't say so. I'd worked at campus law
10 enforcement for seven years; so I'm sure I've come
11 across some in the past.

12 Q. During your service as campus law
13 enforcement --

14 A. Yes.

15 Q. -- you ran into some fraudulent IDs?

16 A. From time to time.

17 Q. From time to time, okay.

18 Do you know if the Department has a
19 policy, if there's an allegation of underage service, to
20 collect the identification that was used?

21 A. That the Department has a policy?

22 Q. Yeah.

23 A. I don't believe we have a specific policy on
24 that.

1 Q. Not a written policy?

2 A. I don't believe so, no.

3 Q. In your law enforcement training is fake
4 IDs -- are fake IDs covered at all in terms of
5 investigatory practices?

6 A. No.

7 Q. Okay. Do you have any formal training with
8 Harwich with respect to investigating allegations of
9 underage service?

10 A. No.

11 Q. Okay. Prior to coming today did you have
12 the opportunity to review your narrative and the call
13 log?

14 A. Yes, sir.

15 Q. Did you review those this morning or at an
16 earlier time?

17 A. I reviewed the narrative, not the call log.

18 Q. Okay. Just quickly turning to the
19 narrative, I notice that it's not signed. Is there a
20 signed copy with the Department?

21 A. There should be.

22 Q. Okay. Is it common practice for you to only
23 sign it after it's been reviewed by a superior officer?

24 A. It's common practice, if something's going

1 to go to court, to have a signature on it. If it's
2 something -- an OF, a report not going to court, it's
3 common practice that it -- it doesn't always get signed
4 if it's not leaving the computer, essentially.

5 Q. When you said "an OF report," what does that
6 acronym stand for?

7 A. OF, I'm not sure. I'm not sure.

8 Q. Okay. But there's a different -- is there a
9 different index for documents that you know are going to
10 court?

11 A. An AR.

12 Q. AR, okay.

13 And you helped fill in some of the blanks
14 on the narrative, and I'll get to those in a little bit
15 more detail. But I'm confused about the interplay of
16 some of the names that you've already suggested. You
17 indicated that Parker LeBlanc -- was that the FaceTime
18 caller calling the friend --

19 A. Right.

20 Q. -- or was that the friend's name?

21 A. That was the FaceTime caller --

22 Q. Okay.

23 A. -- calling the friend that was on this
24 party's couch.

1 Q. I see. What's the friend's name?

2 A. The friend's name is Charlotte Seymour.

3 Q. Okay. So I thought you previously testified
4 that Charlotte Seymour was the cousin. Oh, so she's
5 also the friend?

6 A. I'm sorry, she's the cousin. They didn't --
7 at the time, when the phone was -- when the person was
8 calling, they -- this was the information that they
9 relayed --

10 Q. Okay.

11 A. -- was that her friend -- the homeowners of
12 Neel Road, whose couch she was on, stated that she
13 received a call from a friend. It was later discovered
14 that that friend was the cousin, it wasn't a friend.
15 The homeowner had no idea who the person was in relation
16 to the person. They just stated friend because
17 Ms. LeBlanc never made it clear, when she was on the
18 phone with the homeowner's daughter or daughter-in-law,
19 what the relation was --

20 Q. I see.

21 A. -- between Parker and Seymour.

22 Q. There's no better place to start than at the
23 beginning because now I'm sufficiently confused.

24 Let's start with -- I just want to

1 identify -- so this 20-something-year-old female was
2 trying to break into a home on Neel Road. What's the
3 address of that home?

4 A. 6 -- 6 Neel Road.

5 Q. 6 Neel Road?

6 A. 6.

7 Q. 6 Neel Road. So 6 Neel Road is all the way
8 down at the end of the harbor. Yes?

9 A. Correct.

10 Q. Okay. Do you know the distance from the
11 Port to 6 Need Road?

12 THE HEARING OFFICER: Attorney Tomlinson,
13 if I may --

14 MR. TOMLINSON: Yes.

15 THE HEARING OFFICER -- before you go on,
16 can someone spell Neel.

17 THE WITNESS: N-E-E-L. I asked the same
18 question yesterday to make sure I had it right.

19 THE HEARING OFFICER: Thank you, Attorney
20 Tomlinson.

21 Thank you.

22 Q. So my question is do you know how far it is
23 from the Port to 6 Neel Road?

24 A. Would you like a guess?

1 Q. I can tell you what the distance is. I just
2 want --

3 A. I really don't know.

4 Q. Okay. Why don't you hazard a guess.

5 A. Probably 1.1 miles.

6 Q. Okay. If I told you that it was 1.3 miles
7 to -- Saquatucket Bluffs is a -- it's sort of a U-turn
8 road off of Neel Road; correct?

9 A. Correct.

10 Q. So at the top of the Saquatucket Bluffs,
11 okay -- as you travel down Neel Road, the first
12 Saquatucket Bluffs that you hit, that distance is
13 1.3 miles from the Port.

14 A. Okay.

15 Q. 6 Neel Road is another -- almost a half a
16 mile down, okay.

17 And so this call came in -- let's back up
18 for a second because I know that you were only
19 responding on Friday, July 2nd --

20 A. Correct.

21 Q. -- as opposed to the first call coming in on
22 Thursday, July 1st.

23 A. Correct.

24 Q. Who relayed all this information to you

1 about the suspicious person activity the night before?

2 A. I had read the call log the night before.

3 Q. Okay. Is it common practice for you to read
4 the call log when you take on a shift?

5 A. It is.

6 Q. Okay. And do all the officers read the call
7 log?

8 A. I believe so, to my knowledge, but I can't
9 speak for them.

10 Q. Did you express an interest in following up
11 on the case?

12 A. I did not.

13 Q. Okay. And so, when you said the information
14 was relayed to you, was it relayed to you strictly from
15 the call log, or was it relayed to you from another
16 person?

17 A. Information pertaining to...

18 Q. To the events occurring on Thursday night.

19 A. Well, when I said "the events pertaining
20 to," I explained it was the homeowner who had explained
21 it to me when I got there. As far as all the other
22 knowledge that I had, that the previous night they were
23 looking for a female who was kicking on a door on Neel
24 Road, that was from the call log.

1 Q. Okay. So you didn't speak with any other
2 officers or supervisors at the Department?

3 A. They might have mentioned that morning in
4 roll call what had happened the previous night, but I
5 don't specifically remember who I spoke to at that time.

6 Q. Okay. And then, according to your
7 narrative, you received a call from Dispatch to go meet
8 with the homeowner because they had additional
9 information.

10 A. Correct.

11 Q. Okay. And who is the homeowner at 6 Neel
12 Road?

13 A. "Judge" was the last name. If I may look...

14 Q. Please. Are you referring to an unredacted
15 copy of your narrative?

16 A. Correct.

17 Q. All right. May I have a copy of that?

18 A. That, I'm not sure.

19 Q. Okay.

20 A. Mary.

21 Q. Mary Judge?

22 A. Correct.

23 MR. TOMLINSON: Is there any objection to
24 me having that --

1 MR. BLAKE: It's under investigation at
2 this point, so yes.

3 Q. Is this matter still under investigation?

4 MR. BLAKE: Don't answer that.

5 Q. Attorney Blake's not testifying for you. Do
6 you have any personal knowledge whether this matter is
7 still under investigation?

8 A. I was advised by counsel not to answer.

9 Q. Is he your counsel?

10 A. Right now? He's the Town counsel.

11 Q. He's the Town counsel.

12 A. Right.

13 Q. You understand him to be Harwich Police
14 Department counsel?

15 A. I don't know.

16 Q. Did you speak with Attorney Blake before
17 testifying today?

18 A. No, sir.

19 Q. Have you spoken with Attorney Blake at any
20 time concerning these incidents?

21 A. No, sir.

22 Q. How about Mr. Powers? Have you spoken with
23 him concerning these incidents?

24 A. No, sir.

1 Q. Have you spoken with any member of the Board
2 of Selectmen concerning the incidents?

3 A. No, sir.

4 Q. Have you spoken with Chief Guillemette or
5 Deputy Chief Considine concerning this matter?

6 A. No, sir.

7 Q. Let's go through the call log, and then I'm
8 hoping you can fill in some information that's included
9 on the call log but seems to be missing from your
10 narrative.

11 The call log indicates that a call comes
12 in at 11:05 p.m. and that there is a -- I'm sorry,
13 that's on Thursday. I'll take you back to Thursday,
14 July 1st. This is call --

15 THE HEARING OFFICER: Attorney
16 Tomlinson --

17 MR. TOMLINSON: Yes.

18 THE HEARING OFFICER: -- is this
19 Exhibit N-1?

20 MR. TOMLINSON: Yes, Exhibit N-1. It's
21 call number 1-7863.

22 THE HEARING OFFICER: Thank you.

23 Q. Do you have that in front of you?

24 A. I do not.

1 Q. Okay. It indicates that there were four
2 officers on Thursday -- Patrol Officer Richard Buttrick,
3 Jr., Patrol Supervisor Mark Holmes, Patrol -- sorry --
4 Patrol Officer Charles Brooks, and Sergeant Paul
5 Boorack.

6 A. Correct.

7 Q. Did you speak with any of those officers
8 regarding this alleged incident?

9 A. I don't believe so, no.

10 Q. Okay. And so, when you saw the call log --

11 THE HEARING OFFICER: I couldn't hear the
12 response.

13 THE WITNESS: I don't believe so, no.

14 THE HEARING OFFICER: Thank you.

15 Q. When you read the call log on the morning of
16 Friday, July 2nd, you didn't have a chance to speak with
17 any of those officers. Were they on shift that day; do
18 you know?

19 A. I don't know.

20 Q. Okay. The call log indicates -- it says "RP
21 reporting unknown female..." Do you know who the RP
22 was? Is that Mary Judge?

23 A. I do not know.

24 Q. Okay. "...running towards Saquatucket

1 Bluffs, wearing a black tank top and jeans. Brown hair,
2 20's. Came to door unable to state what the problem
3 was. RP stated she then went to her daughter's house
4 and did the same, kicking the door and said she needed
5 to sleep there."

6 So -- now are there two houses here in
7 play?

8 A. There are three.

9 Q. There are three houses in play?

10 A. Correct.

11 Q. Are they all owned by the same family?

12 A. They are.

13 Q. Okay.

14 A. I believe it is all identified as 6 Neel
15 Road.

16 Q. Do you know if these are guesthouses or
17 condo units --

18 A. I believe so.

19 Q. -- on the property?

20 A. Yes.

21 Q. And the following day, on Thursday, when you
22 went to speak with the homeowner, was that Mary Judge
23 that you spoke with?

24 A. Yes, sir.

1 Q. Okay. Did you speak with anybody else
2 present?

3 A. Her husband was there as well.

4 Q. And his name is?

5 A. I don't know his first name.

6 Q. Okay. Did you address him as "Mr. Judge"?

7 A. I did.

8 Q. Okay.

9 THE HEARING OFFICER: Counsel, can you
10 repeat the last part of that question. I didn't hear
11 it.

12 MR. TOMLINSON: Did you address him as
13 "Mr. Judge"?

14 THE HEARING OFFICER: Mr. Judge. Thank
15 you.

16 Q. And approximately how old is Mary Judge?

17 A. Early 60's, maybe.

18 Q. Okay. And did you take a written statement
19 from her?

20 A. I did not get a written statement from her.

21 Q. How long was your conversation with her?

22 A. 15 minutes.

23 Q. Okay. And did she explain to you that she
24 had additional information from the night before?

1 A. She did.

2 Q. Okay. And did you speak with her over the
3 phone before you arrived at the property?

4 A. I believe I did.

5 Q. Okay.

6 A. I believe I called her ahead of time, and
7 she said that she had additional information. And I
8 believe I said I'd, obviously, come down there, which I
9 did --

10 Q. Okay.

11 A. -- to talk to her further about it
12 personally.

13 Q. Was that on a recorded line, that call, or
14 did you call from your cell phone?

15 A. I believe I called from an app on my cell
16 phone.

17 Q. Okay.

18 A. Yes.

19 Q. When you say you called from an app --

20 A. Yes. I have a -- it's called a 10-21, which
21 is an app which basically blocks the phone number.
22 It's, like, a phone number blocker. So this way here I
23 don't have to go back to the station and call someone.

24 Q. I see. So you can call from your personal

1 cell phone but block your --

2 A. Correct.

3 Q. -- identifying information?

4 A. Correct.

5 Q. But that's not a recorded line?

6 A. It's not a recorded line.

7 Q. This is your personal cell phone; it's not a
8 Department-issued cell phone?

9 A. Correct.

10 Q. And do you recall how long was that
11 conversation with Mary Judge?

12 A. It was pretty brief. She said she had
13 additional information. She wanted to speak to me about
14 it, or an officer about it. I said I would come down
15 and speak with her.

16 Q. Who assigned you for that detail that day?

17 A. The dispatcher.

18 Q. The dispatcher, okay.

19 A. Yes.

20 Q. And according to the call log from Thursday
21 night, at 11:37 p.m. it indicates that RP's daughter and
22 son-in-law are following the subject on Saquatucket
23 Bluffs. Did you have a chance to speak with the
24 daughter and son-in-law?

1 A. I did not.

2 Q. Okay. Were they present when you spoke with
3 Ms. Judge?

4 A. I don't believe so, no.

5 Q. The call log from the night before indicates
6 that -- it says "G10 advises family members lost sight
7 of the female, who took a right off Saquatucket Bluffs."
8 Who is G10?

9 A. The supervisor's vehicle, whoever the
10 supervisor was that night.

11 Q. Gotcha.

12 And the next report is at 11:52 p.m.
13 Again, "G10 reports units checked the area of
14 Saquatucket Bluffs. Unable to locate. G10 clear. G14
15 continuing to check the area." G14 is?

16 A. It's a vehicle that we have. It depends who
17 was assigned to that vehicle that night.

18 Q. Okay. So you don't know who was assigned to
19 that vehicle?

20 A. I do not.

21 Q. Okay. And then it indicates at 11:55 p.m.
22 that G14 is clear. It is your understanding that
23 "clear" means they just left the area?

24 A. Yes. Nothing further.

1 Q. Okay. So that was at 11:55 p.m. So the
2 first call comes in at 11:31 for a suspicious person,
3 and then G14 -- the supervisor of G10 clears at 11:52,
4 and then at 11:55 G14 clears. Do you have any knowledge
5 whether or not, of the four officers there, there was
6 anybody else still looking for this young woman after --

7 A. I have no knowledge.

8 Q. Okay.

9 THE HEARING OFFICER: Can you repeat your
10 answer.

11 THE WITNESS: I have no knowledge of
12 that.

13 THE HEARING OFFICER: Thank you.

14 Q. Sorry, it's an artificial record, and unlike
15 ordinary conversation, where we might speak over one
16 another, the stenographer has to take down everything
17 that you say and everything that I say. If we speak
18 over one another, it limits the record -- the ability to
19 be able to do that.

20 A. It sounds like a tough job. That's for
21 sure.

22 Q. I will try to allow you to finish your
23 answer.

24 A. Sure.

1 Q. Please afford me the courtesy of finishing
2 my question before you --

3 A. Okay.

4 Q. -- jump to the question [sic]. It's just --
5 it's artificial in conversation.

6 A. Okay.

7 Q. And so we have a young woman who is reported
8 to be intoxication -- intoxicated -- breaking into
9 multiple properties, and the Department responds at
10 11:30 and clears at 11:55 and doesn't find her. Is that
11 your understanding from the call log the night before?

12 A. I wasn't there but if that's what it says.

13 Q. Okay. And there is no narrative from any of
14 the four officers about their efforts related to
15 Thursday night looking for this young woman?

16 A. I do not believe so.

17 Q. Or their conversations with the caller?

18 A. I do not know.

19 Q. Or the caller's son or daughter-in-law or
20 husband?

21 A. I do not know.

22 Q. Okay. Because the only officer narrative
23 that's attached to this incident is yours. I just want
24 to make sure there aren't any other narratives available

1 that we haven't seen.

2 A. I believe there's one more following mine --
3 a supplemental report by Detective Sergeant Brackett.

4 Q. Yes. And we'll get to that after we get
5 through yours.

6 The call log from Friday morning,
7 July 2nd, begins at 11:05. It says "Suspicious
8 activity. Action: Investigated"; right?
9 "Investigated" --

10 A. Correct.

11 Q. -- is it your understanding that means the
12 matter is closed?

13 A. It means, as far as the call log goes, they
14 closed me out from that call --

15 Q. I see.

16 A. -- and it was investigated.

17 Q. I see.

18 THE HEARING OFFICER: Attorney Tomlinson,
19 can you say that again. I missed the reference.

20 MR. TOMLINSON: On the call log under the
21 term "Action" it says "Investigated," E-D. And so my
22 question was whether or not --

23 THE HEARING OFFICER: I'm sorry, so
24 Exhibit N-2?

1 MR. TOMLINSON: Yes.

2 THE HEARING OFFICER: Thank you. I see
3 it now. Thank you.

4 Q. And, again, it indicates that there is a
5 calling party on the call log, but that's redacted. Who
6 is that calling party?

7 A. That, I'm not sure.

8 Q. Okay. And then it says an involved party,
9 and that's redacted. Do you have the call log in front
10 of you?

11 A. I do not have the call log. I'm sorry.

12 Q. So the involved party -- do you know at this
13 time who was the involved party?

14 A. The calling party?

15 Q. Well, there's a calling, slash, involved
16 party.

17 A. I would think the calling party would
18 probably be Mary Judge.

19 Q. Okay. And then there's another line that's
20 also redacted that says "Involved Party."

21 A. I'm not sure.

22 Q. Okay. And it indicates that you were
23 dispatched at 11:43 a.m. It says "ENRT..." En route?

24 A. Yes.

1 Q. "...en route at 11:44." You arrived at
2 11:44, and you cleared at 12:01, noon -- just shortly
3 after noon. And so that's about seven minutes total.
4 Now, when it says "cleared," does that mean you had
5 already left 6 Neel Road?

6 A. If that's what it -- if that's the address
7 on the top of that -- 6 Neel Road --

8 Q. It doesn't have the address. It's blocked
9 out.

10 A. Oh. I would think. I'm not sure.

11 Q. If you were dispatched to the -- if you had
12 a conversation with Mary Judge and you then went to her
13 home at 6 Neel Road, according to the call log, it shows
14 when you were dispatched, when you were en route, when
15 you arrived, and when you were cleared. So "cleared"
16 means you left the property.

17 A. Correct.

18 Q. Okay. So you would have called Dispatch --
19 radioed Dispatch and said, "I'm clear from 6 Neel Road"?

20 A. Yes.

21 Q. And they would have recorded this time at
22 12:01?

23 A. Correct.

24 Q. Okay. So that's about seven minutes total.

1 The narrative indicates that the "RP
2 would like to follow up regarding last night's incident
3 with a female who entered her home. RP states that she
4 has photos of the female on the couch inside the
5 residence and may have further insight regarding where
6 the female lives." And did you ever see those photos?

7 A. I don't believe so, no.

8 Q. Did you ever ask for those photos?

9 A. I don't believe so.

10 Q. Okay. And the caller indicates that it was
11 her home, but you indicated that there were three homes
12 that the female tried to enter?

13 A. I believe she owns all three.

14 Q. She entered all three?

15 A. No. I believe the caller owns all three of
16 those homes --

17 Q. Oh, okay.

18 A. -- which encompass 6 Neel Road.

19 Q. So when she says "female who entered her
20 home," are you clear which structure she's referring to?

21 A. At that time, no.

22 Q. Okay. At some point did you become clear as
23 to which structure we're talking about?

24 A. Yes, sir.

1 Q. Okay. When was that?

2 A. While I was speaking to her at her home.

3 Q. Okay. And which structure did she
4 ultimately -- did the young woman enter?

5 A. She pointed to the middle home on her
6 property.

7 Q. Okay. And is that referred to as the
8 guesthouse?

9 A. One of them, I believe.

10 Q. So there may be two guesthouses on that
11 property?

12 A. Correct.

13 Q. And you don't know whether -- who took those
14 photos?

15 A. I do not.

16 Q. Do you know if those photos still exist?

17 A. I do not.

18 Q. Okay. If it were an active investigation,
19 would you have collected those photos?

20 A. Yes.

21 Q. It says "Spoke with all adults at..." The
22 address is blank. "All teens who reside at the home are
23 working, advised of situation." What did you mean
24 when -- what does that mean in the call log?

1 A. I'm not sure.

2 Q. Did you report to Dispatch that you spoke
3 with all the adults at the property?

4 A. I reported to Dispatch that I spoke with the
5 parents of LeBlanc -- Parker LeBlanc.

6 Q. Okay.

7 A. And the teens -- the children -- I believe
8 there were multiple people staying there. A cousin was
9 there, and the daughter, but they were both at work.

10 Q. Okay. So when you arrived at 6 Neel Road,
11 who was there?

12 A. Ms. Judge --

13 Q. Mm-mmm.

14 A. -- originally. And then she introduced me
15 to her husband, Mr. Judge.

16 Q. And other than maybe other people who were
17 staying there, they were the only people present?

18 A. Correct.

19 Q. Okay. So you didn't have a chance to speak
20 with any of the teens, any of the cousins, any of the
21 other family members, the son or the daughter-in-law?

22 A. No.

23 Q. Okay. Did you have the occasion to return
24 to speak to them?

1 A. I believe I called them, when I had an
2 identification, essentially, on who the female on the
3 couch was, to follow up with them.

4 Q. Gotcha.

5 A. I believe that was via a phone call later
6 that day.

7 Q. Okay. So walk me through the conversation
8 with Mr. and Mrs. Judge. Were you primarily speaking
9 with Ms. Judge, or was Mr. Judge -- was he just
10 listening in on the conversation, or was he offering
11 information?

12 A. Ms. Judge was the one who provided all the
13 information. Mr. Judge was just there.

14 Q. Okay. And what information did she provide
15 to you specifically?

16 A. She provided me with information of she had
17 done some research on the LeBlanc family, specifically
18 traced Parker LeBlanc back to the LeBlanc family who
19 owned the house -- I believe it was 21 Saquatucket
20 Bluffs Road.

21 Q. And did she indicate whether they knew the
22 LeBlanc family?

23 A. She did not.

24 Q. Okay. Or whether they knew Parker LeBlanc?

1 A. She did not.

2 Q. And did you ever identify how old was Parker
3 LeBlanc?

4 A. I did not.

5 Q. Okay. And did you ever have a chance to
6 speak with Parker LeBlanc directly?

7 A. I did not.

8 Q. When you spoke with Ms. Judge and she said
9 that all of the teens are at work, did she identify
10 where they worked?

11 A. Ms. Judge?

12 Q. Yes.

13 A. Ms. Judge did not state that. That was the
14 LeBlanc family.

15 Q. I see. Okay. Again, I'm sufficiently
16 confused as to who's who in all of this.

17 After you -- what additional information
18 did Ms. Judge provide you regarding her research into
19 Parker LeBlanc or her family -- I'm sorry, is Parker a
20 man or a woman?

21 A. Parker is, I believe, a female. I've never
22 met her, or him.

23 Q. But you didn't speak with her; so you don't
24 know?

1 A. I did not.

2 Q. And so take me through the conversation with
3 Ms. Judge where she's providing you with further
4 information.

5 A. Once again, Ms. Judge --

6 Q. Yes.

7 A. -- had stated that she did some research,
8 conducted research on her own --

9 Q. Mm-hmm.

10 A. -- and found Parker LeBlanc was tied to the
11 LeBlanc family who owns 21 Saquatucket Bluffs Road in
12 Harwich.

13 Q. Did she say how she gathered that
14 information?

15 A. She did not.

16 Q. Did she use the Google engine or -- she
17 didn't go into any detail about how she got that
18 information?

19 A. No, sir.

20 Q. Okay. Take me through what happened next.

21 A. Next I proceeded to clear 6 Neel Road --

22 Q. Okay.

23 A. -- and informed Dispatch I would be heading
24 over to 21 Saquatucket Bluffs Road to possibly speak

1 with the person who was involved in the previous night's
2 incident, knocking on the doors.

3 Q. Okay. Did Ms. Judge give you a phone number
4 or anything over to the LeBlanc household?

5 A. I don't believe so, no.

6 Q. Okay.

7 THE HEARING OFFICER: Attorney Tomlinson,
8 can you repeat your last question, please.

9 MR. TOMLINSON: I asked whether Ms. Judge
10 gave him a phone number to the LeBlanc household.

11 THE HEARING OFFICER: And your response?

12 THE WITNESS: I don't believe so.

13 THE HEARING OFFICER: Thank you, both.

14 Q. Do you know whether the LeBlanc family is
15 related in any way to the chief -- fire chief, David
16 LeBlanc?

17 A. I have no idea.

18 Q. Okay.

19 So you next head over to 21 Saquatucket
20 Bluffs?

21 A. Yes, sir.

22 Q. When you arrived at that property, how many
23 people were there?

24 A. When I pulled into the driveway, there was a

1 vehicle that was pulling in -- that pulled in behind me.
2 I believe that was the father. And the mother then saw
3 the cruiser pull into the driveway; so the mother exited
4 through the front door and came out to the driveway, so
5 two.

6 Q. Okay. So Mr. and Mrs. LeBlanc were -- came
7 out to speak to you?

8 A. The people who identified themselves as
9 Parker LeBlanc's parents.

10 Q. Okay. You didn't get their first names?

11 A. I don't believe so.

12 Q. Take me through your conversation with
13 Mr. and Mrs. LeBlanc.

14 A. I informed them of the incident that had
15 happened the previous night, that there was a female who
16 was kicking on doors on Neel Road, trying to gain entry,
17 who was intoxicated. It was later found that that
18 female did gain access into a home and was laying on the
19 couch, sleeping on the couch.

20 A -- that female on the couch received a
21 phone call, or a FaceTime video, from Parker LeBlanc, at
22 which time they said, "That's our daughter."

23 Q. Mm-mm.

24 A. The family spoke to Parker LeBlanc and said

1 they were going to -- she was going to send someone to
2 pick her up. At that time --

3 Q. I'm sorry, I don't mean to interrupt you.
4 Did Mr. and Mrs. LeBlanc then call their daughter while
5 you were speaking with them?

6 A. Not at this time.

7 Q. Okay. They said that they would call their
8 daughter, Parker?

9 A. Well, do you want me to finish what I was
10 saying --

11 Q. I'm sorry.

12 A. -- or do you want me to answer that?

13 Q. I didn't mean to cut you off. I was
14 confused by your statement when you said they would call
15 their daughter. I didn't know if that meant Mr. and
16 Mrs. LeBlanc calling Parker or someone else.

17 A. So, again, I'm confusing -- I'm probably
18 confusing more than just you here.

19 Q. Okay.

20 A. So I'm still speaking to them, explaining to
21 them what happened -- that someone from the Port
22 Restaurant, Parker LeBlanc, who stated she was at the
23 Port, called this person on the couch.

24 Q. Yes.

1 A. The person who called, Parker LeBlanc,
2 called the person on the couch. Parker LeBlanc stated
3 to the Judges, or whoever they spoke with at the Judge
4 residence, that she would be sending someone or calling
5 someone to come pick up the party who was on their
6 couch.

7 Q. And we identified the party on the couch as
8 Charlotte Seymour?

9 A. Later on, yes.

10 Q. Okay. Take me -- when you're explaining
11 that Parker had called this then-unknown female, what
12 did the parents offer about their knowledge of the
13 whereabouts of their daughter the night before?

14 A. They had no idea. They stated they had no
15 idea.

16 Q. Did they claim that Parker was at work?

17 A. That day? Yes.

18 Q. Okay.

19 Proceed. I'm sorry. Thank you.

20 A. So after I explained to them what had
21 happened the previous night -- and we did not know who
22 the female was, but I explained to them we wanted to
23 make sure that that female was okay -- they said, "It
24 could have been our niece," who they believed was with

1 Parker LeBlanc the night before, "Charlotte." They said
2 they were both at work at Chatham Bars Inn and they
3 would reach out to their daughter to find out who
4 exactly was with her.

5 Q. Okay. And did they reach out to Parker,
6 their daughter, in your presence?

7 A. They did not.

8 Q. Okay. Did you ask them to?

9 A. I did not.

10 Q. Okay. Did they provide you with any
11 additional information subsequent to identifying that it
12 may have been their niece, Charlotte Seymour, who was
13 with Parker and that they both worked at Chatham Bars
14 Inn?

15 A. They did not.

16 Q. And was that the point where you cleared
17 that residence?

18 A. Yes.

19 Q. Okay. Did you -- did this conversation
20 occur outside?

21 A. It did.

22 Q. Okay. And this wasn't a recorded
23 conversation?

24 A. No.

1 Q. Okay. Did you take a written statement from
2 either of the parents --

3 A. No.

4 Q. -- Mr. or Mrs. LeBlanc?

5 A. No.

6 Q. At some point did you have an opportunity to
7 speak with Charlotte Seymour or Parker LeBlanc?

8 A. Charlotte Seymour.

9 Q. Okay. When did you next -- when did you
10 speak with Charlotte Seymour?

11 A. She called me maybe an hour or two later
12 after clearing from Saquatucket Bluffs.

13 Q. Okay.

14 A. I should say she called the police
15 station --

16 Q. Okay.

17 A. -- who got her to me.

18 Q. And what did she say? By the way, was this
19 on a recorded line -- this conversation?

20 A. Originally, when she called the station,
21 yes. When it's transferred over to the officers'
22 phones, I don't believe it is.

23 Q. Okay. And when you say "officer phone," is
24 this a desk phone or your cell phone?

1 A. No, the desk phone. There are several
2 phones in our report office.

3 Q. And you don't know whether that's a recorded
4 line?

5 A. It could be. I'm not sure.

6 Q. Okay. And you spoke with -- it was at that
7 point that you spoke with Charlotte Seymour, or did you
8 call her back?

9 A. Yes, sir, at that point in time I spoke with
10 Charlotte Seymour.

11 Q. Recall for me your conversation with her,
12 please.

13 A. She had called me. I identified myself as
14 Officer Ruggiero with the Harwich Police. She said,
15 "Hi. My name is Charlotte." She said, "I believe you
16 were looking for me." She said that she was okay,
17 because I asked her -- I wanted to make sure she was
18 okay.

19 I said, you know, "Are you okay?"

20 She said, "Yes. I'm at work." Her aunt
21 and uncle had called her -- or, one of them had called
22 her to let her know that the police, myself, wanted to
23 speak with her.

24 Q. And what did she tell you about the night

1 before?

2 A. She told me that she had drank too much
3 alcohol and she doesn't remember much of what had
4 happened that night.

5 Q. Did you ask her if she was at the Port?

6 A. I asked her where she had consumed the
7 alcohol from, and she stated at the Port.

8 Q. Did she state whether or not she had been to
9 any other establishments?

10 A. She did not.

11 Q. Did she state whether or not she had been to
12 Perks?

13 A. She did not.

14 Q. Did you ask whether or not she had been to
15 Perks?

16 A. I did not.

17 Q. And did you ask whether or not she had been
18 to any other establishment?

19 A. I did not.

20 Q. Okay. So she could not recall for you why
21 she was lost or why she was trying to enter someone
22 else's property?

23 A. She could not.

24 Q. Okay. What other questions did you ask of

1 her?

2 A. I asked her, because of her age, how she was
3 served the alcohol.

4 Q. Okay. And how did she respond?

5 A. She said that she used a fake ID.

6 Q. And this was on Thursday -- excuse me -- on
7 Friday, July 2nd --

8 A. Correct.

9 Q. -- in the afternoon?

10 A. Yes.

11 Q. Did you ask her to come to the station and
12 deliver to you the fake ID?

13 A. I did not.

14 Q. Did you ask her to save the fake ID?

15 A. I did not.

16 Q. And did you ask her what was her age?

17 A. I did.

18 Q. And what did she respond?

19 A. 20 years old.

20 Q. Okay. Did you ask her any details about the
21 fake ID?

22 A. I did not.

23 Q. Did you ask her when she left the next
24 morning -- when she left the house that she was sleeping

1 on the couch?

2 A. Can you restate that?

3 Q. Sure. So you've now learned that Charlotte
4 Seymour was the female who tried to break and enter
5 6 Neel Road and slept on the couch.

6 A. Yes.

7 Q. Okay. And did you ask her when she left
8 that morning or who picked her up?

9 A. No. She had run off that night.

10 Q. Okay.

11 A. Yes.

12 Q. Did she tell you she had run off that night?

13 A. No.

14 Q. Okay. So after they found her asleep on the
15 couch, did they -- the family didn't call EMS or the
16 fire department to come and collect her because they
17 didn't then know who she was, and at some point she fled
18 in the middle of the night?

19 A. I believe it's paragraph 3 or 4 in my
20 report -- I'm sorry, paragraph -- paragraph 3, where she
21 states, "While attempting to figure her out -- figure
22 out who she was, the phone began ringing. She was
23 unable to figure out how to answer it due to her
24 condition."

1 In the next paragraph, "She received a
2 FaceTime call by a person named Parker LeBlanc."

3 If you go down a little bit more -- it's,
4 I think, the last -- second to last line of
5 paragraph 4 -- "Ms. Judge said that the female then
6 stood up and ran out of the house toward Saquatucket
7 Bluffs Road."

8 Q. Sorry, I have a redacted copy here.

9 A. Okay.

10 Q. It says "Blank said that the daughter..."
11 "Blank" meaning Mrs. Judge?

12 A. Correct.

13 Q. "Mrs. Judge said that her daughter answered
14 the FaceTime call from a person by the name of..."
15 Parker LeBlanc?

16 A. Correct.

17 Q. "...stated that her daughter kept trying to
18 tell...", and then that's blank. Tell who? Tell
19 Parker? "Her daughter kept trying to tell..."

20 A. Ms. Parker.

21 Q. Uh-huh. "...that her friend was on their
22 couch and they needed to get her home. Blank kept
23 replying..."

24 A. Yes. That should read: "Ms. Judge stated

1 that her daughter kept trying to tell Ms. LeBlanc on the
2 phone that her friend was on the couch and they needed
3 to get her home."

4 Q. And then it says "Blank kept replying..."

5 A. "Ms. LeBlanc kept replying, 'No, she's here
6 with me at the Port. We're all here at the Port.'"

7 Q. Okay. "Eventually the female told blank..."

8 A. Ms. Judge.

9 Q. "...that she would send her brother to pick
10 her friend up. Blank said that the female..."

11 Mrs. Judge said that the female?

12 A. Correct.

13 Q. "...then stood up and ran out of the house
14 toward blank."

15 A. Saquatucket Bluffs Road.

16 Q. And then it says "Blank said that she was
17 not looking for the female to be charged for the B and
18 E."

19 A. Ms. Judge.

20 Q. Ms. Judge.

21 Again, carrying on through your
22 narrative, just so we can complete it, "Blank said that
23 she was able to find that..." Is that Mrs. Judge?

24 A. Correct.

1 Q. "...said that she was able to find that
2 blank family..."

3 A. Parker LeBlanc's.

4 Q. "...owned..." That's 21 Saquatucket?

5 A. Correct. -- Bluffs.

6 Q. "I proceeded to..."

7 A. 21 Saquatucket Bluffs.

8 Q. "...and spoke with the parents of..."

9 Ms. LeBlanc? Parker LeBlanc?

10 A. Correct.

11 Q. "They were unaware of the incident and who
12 it could have been as their daughter was working today
13 at..."

14 A. Chatham Bars Inn.

15 Q. Thank you. "They informed me they would get
16 to the bottom of it. I later received a call from..."

17 A. Charlotte Seymour.

18 Q. "...the cousin of..."

19 A. Parker LeBlanc. "Ms. Seymour..."

20 Q. Thank you. "...stated that she had drank too
21 much alcohol and went to the wrong house."

22 A. "Ms. Seymour..."

23 Q. "...was very apologetic and said that she
24 was in the process of purchasing a floral arrangement to

1 deliver to the..."

2 A. Judge.

3 Q. "...Judge family and offer an in-person
4 apology. I asked if she would be -- I asked blank..."

5 A. Ms. Seymour.

6 Q. "...if she would be willing to disclose
7 where she had been drinking alcohol."

8 A. "Ms. Seymour..."

9 Q. "...stated she used a fake ID at the Port.
10 I followed up with..."

11 A. Ms. Judge.

12 Q. "...Ms. Judge."

13 THE HEARING OFFICER: Can you finish the
14 rest of that sentence, please, Officer Ruggiero.

15 THE WITNESS. "...who was pleased with
16 the end result."

17 THE HEARING OFFICER: Thank you.

18 Q. What was the end result?

19 A. The end result was that we had identified
20 who had come into her home.

21 Q. Okay. It indicates that she was in the
22 process of purchasing a floral arrangement to deliver to
23 the Judge family and offer an in-person apology. Do you
24 know whether or not that occurred?

1 A. I do not.

2 Q. Okay.

3 Okay. Let's back up to your conversation
4 with Ms. Seymour. She had indicated that she was okay,
5 that she drank too much, she doesn't remember that
6 night, but she remembers that she was at the Port.

7 A. Correct.

8 Q. How did she remember that she was at the
9 Port?

10 A. I do not know.

11 Q. Okay. Did you have a chance to visit the
12 Port and ask for -- to access their video surveillance?

13 A. I did not.

14 Q. Do you know whether or not the Port has
15 video surveillance?

16 A. I do not.

17 Q. Okay. Did you ask her for any copies of any
18 credit card or debit card receipts or other proof of
19 purchase?

20 A. I did not.

21 Q. What about from Parker LeBlanc? Did you
22 request copies of receipts or any proof of purchase from
23 Ms. LeBlanc?

24 A. I did not.

1 Q. Did they either identify the other people in
2 their party allegedly at the Port?

3 A. They did not.

4 Q. Okay. Do you know whether or not -- who was
5 Parker's brother -- or, excuse me -- Charlotte Seymour's
6 brother?

7 A. I do not.

8 Q. You never spoke with Charlotte Seymour's
9 brother?

10 A. I did not.

11 Q. Okay. Are there any other people with whom
12 you spoke that aren't included within your report?

13 A. I don't believe so.

14 Q. Okay. And this narrative -- this officer
15 narrative is not signed, but do you recall when you
16 prepared it?

17 A. It would have been that day.

18 Q. It would have been that day.

19 Is there a policy to prepare narratives
20 before the end of your shift?

21 A. We do.

22 Q. Okay. Do you submit those to a supervisor
23 for review?

24 A. I do.

1 Q. Okay. Who was the supervisor who reviewed
2 this?

3 A. Sergeant Aram Goshgarian.

4 Q. Okay. And before it was submitted in the
5 system does Sergeant Goshgarian -- does he have to sign
6 off on that?

7 A. He has to review it and press a button, I
8 assume.

9 Q. Okay. Excuse me.

10 You indicated that you had a subsequent
11 phone call with Ms. Judge. Are you referring to the
12 phone call where she was pleased with the result?

13 A. I was.

14 Q. Okay. Did you have any other subsequent
15 phone calls with the Judge family or the LeBlanc family?

16 A. I did not.

17 Q. How about Ms. Seymour?

18 A. I did not.

19 Q. Did you ever speak with Ms. Seymour's
20 parents?

21 A. I did not.

22 Q. Okay. Did the Department ever send a
23 written letter to Ms. Seymour's parents concerning the
24 allegation of underage service at the Port?

1 A. I do not know.

2 Q. Do you know whether or not the law requires
3 the Department to send a written letter to the parents
4 of an underage person?

5 A. I do not know.

6 THE HEARING OFFICER: Officer Ruggiero,
7 can you repeat your answer.

8 THE WITNESS: I do not know.

9 THE HEARING OFFICER: Thank you.

10 Q. When you investigated underage incidents
11 through campus law enforcement, did you ever have to
12 send a written letter to parents if there was an
13 allegation that their son or daughter was alleged to be
14 served underage?

15 A. I personally never did.

16 Q. Okay. Do you know whether or not that was
17 done by a supervisor?

18 A. I know that there have been occasions, when
19 I was in campus law enforcement, that there was -- were
20 letters that were sent for underage drinking.

21 Q. Do you know if that was a campus policy or
22 if that was by law?

23 A. Per campus policy at that time.

24 Q. Okay. What campus was that, if I may ask?

1 A. Regis College --

2 Q. Okay.

3 A. -- as well as Merrimack College.

4 Q. Officer Ruggiero, if I just may have a
5 moment to review my notes.

6 And no written statement from Ms. Seymour
7 or from Parker LeBlanc?

8 A. No.

9 Q. No written statement from any person whom
10 you interviewed regarding this incident?

11 A. No.

12 MR. TOMLINSON: Officer Ruggiero, I think
13 I'm done. Thank you very much.

14 THE WITNESS: Thank you.

15 THE HEARING OFFICER: Thank you.

16 Attorney Blake, any further questions for
17 the witness?

18 MR. BLAKE: I have nothing further.

19 THE HEARING OFFICER: Officer Ruggiero,
20 thanks for your testimony. You may be seated, but we'd
21 ask you to remain in the room.

22 MR. TOMLINSON: Thank you, Officer.

23 THE WITNESS: Thank you.

24 THE HEARING OFFICER: At this point it is

1 noontime. This hearing will stand in recess until
2 1:00 p.m. today, and we will resume at that point in
3 time.

4 (Lunch Recess from 12:00 noon until
5 1:02 p.m.)

6 AFTERNOON SESSION

7 THE HEARING OFFICER: Seeing it is now
8 1:02 p.m., I will call this hearing relative to the Port
9 Restaurant and Bar, Incorporated, back into session. We
10 are resuming. We last met prior to noontime. We had
11 heard testimony from Officer Ronald D. Ruggiero.

12 And if memory serves correctly, Attorney
13 Tomlinson, you were finished with your cross-examination
14 of that witness?

15 MR. TOMLINSON: Yes.

16 THE HEARING OFFICER: And, Attorney
17 Blake, you have no further --

18 MR. BLAKE: I have no further questions.

19 THE HEARING OFFICER: Thank you.

20 And is there a need for this witness to
21 remain?

22 MR. BLAKE: I have no need for this
23 witness to remain.

24 MR. TOMLINSON: I may wish to recall him

1 after Detective Sergeant Considine.

2 THE HEARING OFFICER: So, Officer
3 Ruggiero, you have been asked to remain, and you are
4 under oath.

5 So now we will pick up with Attorney
6 Blake if you have any further -- sorry, before we
7 proceed I want to just emphasize for the record that I
8 am referring to the matter presently before us as
9 "allegation relative to events of July 1, 2021," now
10 knowing that the central date was July 1st. There are
11 subsequent dates, as we have heard testimony. This is
12 how I'm going to refer to it, so "allegation relative to
13 events of July 1, 2021."

14 With that, Attorney Blake, do you have
15 any further witnesses to come before the hearing at this
16 time on this matter?

17 MR. BLAKE: I do but first I want a
18 housekeeping matter. The Harwich Board of Selectmen
19 liquor license regulations that I had submitted earlier
20 had been amended on August 23, 2021. The allegations in
21 all of these complaints predate that; so I have
22 copied -- have had copied for the packet the requisite
23 and the then-applicable regulations, which I would like
24 to substitute at this point. And those regulations were

1 adopted at a public hearing on July -- June 13, 2011;
2 amended at a public hearing on January 9, 2017; and
3 effective July 1, 2011.

4 So we'll just substitute those. There
5 has been no argument and no reference to them; however,
6 I want to make sure that it's correct.

7 THE HEARING OFFICER: All right. So do I
8 have a copy?

9 Thank you.

10 MR. BLAKE: You do now.

11 THE HEARING OFFICER: And that will be
12 Exhibit K?

13 MR. BLAKE: K.

14 THE HEARING OFFICER: And, Attorney
15 Tomlinson, do you have copies of the same?

16 MR. TOMLINSON: I do. Thank you.

17 THE HEARING OFFICER: And you understand
18 that to be Exhibit K?

19 MR. TOMLINSON: Yes.

20 THE HEARING OFFICER: Excellent.

21 Thank you, gentlemen.

22 Attorney Blake?

23 MR. BLAKE: I would like to -- as an
24 exhibit, I would like to admit into evidence a

1 memorandum to the Board of Selectmen and Joseph Powers,
2 Town Administrator, from the Chief of Police, dated
3 July 21, 2021, and the subject is a follow-up report to
4 case number 21-7897-OF. And that is -- I'll read it.

5 "Mr. Powers and Members of the Board:
6 Attached please find a follow-up report regarding the
7 investigation of an alleged over-service of an underage
8 female using a fake ID at the Port. The preliminary
9 report on this incident was forwarded to you on July 6,
10 2021. Please do not hesitate to contact me with any
11 questions."

12 That would be Exhibit O.

13 THE HEARING OFFICER: Give me one second,
14 Counsel. I co-mingled my exhibits here. And is it your
15 understanding to be O-1, O-2?

16 MR. BLAKE: If that would be easier, then
17 the next one that I would be submitting would be the
18 narrative of Detective Sergeant Robert Brackett, so if
19 we want to do O-1 and O-2.

20 THE HEARING OFFICER: Attorney Tomlinson,
21 does that work for you?

22 MR. TOMLINSON: That's consistent and
23 works well.

24 THE HEARING OFFICER: Thank you.

1 (Exhibit O-1, memorandum dated
2 July 21, 2021, re follow-up report to
3 case No. 21-7897-OF, so marked.)

4 (Exhibit O-2, narrative for Detective
5 Sergeant Robert C. Brackett,
6 Ref. 21-7897-OF, so marked.)

7 THE HEARING OFFICER: O-1 and O-2 are now
8 added to the record. Thank you.

9 And then, with that, Attorney Blake, do
10 you have a companion witness, so to speak?

11 MR. BLAKE: I do. I want to bring up
12 Detective Sergeant Robert Brackett.

13 THE HEARING OFFICER: Detective Sergeant,
14 if you would raise your right hand, please.

15 DETECTIVE SERGEANT ROBERT C. BRACKETT, sworn.

16 EXAMINATION

17 BY MR. BLAKE:

18 A. Good afternoon.

19 Q. Good afternoon, sir. How are you this
20 afternoon?

21 A. I am well.

22 Q. I'm glad.

23 So you sat through a couple of these; so
24 you probably know where we're going with all of this.

1 You just sat through the testimony of Griffiths --
2 Mr. Griffiths -- regarding the -- let me make sure I've
3 got the right -- no, Ruggiero -- regarding his
4 investigation into an underage -- or, an alleged service
5 of an underage minor -- over-service of an underage
6 minor at the Port back on July 1st; is that correct?

7 A. Correct.

8 Q. Okay. With respect to that case, what was
9 your involvement?

10 A. I was contacted by Chief Guillemette, I
11 believe, on Tuesday, it would have been, July 6th.

12 Q. Mm-hmm.

13 A. He advised -- asked -- inquired of me if I
14 could try to attempt to contact Charlotte Seymour in an
15 attempt to obtain the fake license that was alleged to
16 have been used by her to gain service at the Port
17 Restaurant.

18 Q. Okay. And did you ultimately get a copy of
19 that license?

20 A. I did not.

21 Q. Okay. Can you explain to the hearing
22 officer what you did to investigate? And I guess you
23 also memorialized that in a memorandum or a narrative
24 report on July 7, 2021.

1 A. Of course. I -- upon getting
2 instructions from Chief Guillemette to try to obtain
3 that license, I ended up going down to 21 -- just for
4 the record, the residence in question on Saquatucket is
5 actually 21 Saquatucket Point Road, not Saquatucket
6 Bluffs Road. It's very confusing, but it is a
7 different --

8 Q. Are they two different roads?

9 A. They are two different roads, but it's very
10 tough to ascertain that. 21 Saquatucket Point -- or,
11 Saquatucket Point is just a little road off of
12 Saquatucket Bluffs that contains a couple of houses.
13 But I had trouble finding 21 Saquatucket Bluffs.

14 Q. And that's why you know.

15 A. That's why I know.

16 So I responded to that residence. When I
17 went to that residence, I subsequently located Parker
18 LeBlanc. I spoke to Parker LeBlanc. I asked her --

19 Q. And what's the significance of Parker
20 LeBlanc? I know we've heard it before, but can you --
21 is she the minor -- the underage --

22 A. No, she's not.

23 Q. Okay. Who is she?

24 A. Parker LeBlanc is the cousin of Charlotte

1 Seymour.

2 Q. So it seems like all roads go through Parker
3 LeBlanc.

4 A. The residence at 21 Saquatucket Point --

5 Q. Yeah.

6 A. -- is owned by Parker LeBlanc's family.

7 Q. Okay. Go ahead, I'm sorry.

8 A. And Charlotte Seymour had been staying with
9 them during the time of this incident --

10 Q. Gotcha.

11 A. -- over July 4th weekend.

12 I spoke to Parker LeBlanc. I inquired --
13 I said that I was here following up on the incident that
14 occurred the weekend prior. She was well aware of the
15 incident. I asked her if Charlotte was home at the
16 house. She said no, that she was working at Chatham
17 Bars Inn. I said okay.

18 And she asked what it was in regards to.
19 I said that I was there to try to obtain the ID that she
20 had used that night in question. Parker then stated
21 that she believed that Charlotte had already destroyed
22 that ID.

23 Q. Did Parker tell you that she was with her
24 that night at the Port?

1 A. So I did not get that from Parker.

2 Q. Okay.

3 A. But Parker did say that she believed that
4 she had destroyed that ID.

5 Q. Uh-huh.

6 A. I asked her if she was aware of what the ID
7 was, whether it was a license of a family member that
8 resembled Charlotte or whether it was a fraudulent ID in
9 question. I was trying to obtain what type of ID that
10 it actually was.

11 Many times it's not uncommon for somebody
12 to -- an underage person to use an older brother or
13 sister that they resemble -- to use; so I was trying to
14 determine what that was. And Parker stated that it was
15 a completely fraudulent Virginia driver's license that
16 had been obtained down in college.

17 Q. How did Parker know that?

18 A. I believe she was aware of it. I did not
19 question her as far as how she knew that.

20 Q. Okay.

21 A. But she said that she would get in contact
22 with Charlotte and have Charlotte subsequently contact
23 me.

24 I left there. I subsequently left a

1 voicemail message for Charlotte.

2 Q. Mm-hmm.

3 A. Subsequently it was -- we played phone tag
4 for a couple days back and forth. I subsequently did
5 speak to Charlotte, and she did identify that it had
6 been a Virginia driver's license -- a false Virginia
7 driver's license and that she had been at the Port
8 Restaurant, just like she had advised Officer Ruggiero,
9 but she said that she had subsequently destroyed -- cut
10 up that license.

11 Q. Okay. And did she tell you where she got
12 the license?

13 A. She did not.

14 Q. Did you ever actually lay eyes on her?

15 A. I did not.

16 Q. It all was telephone conversation?

17 A. Just, with her, phone call.

18 Q. Okay. And did you believe her to be
19 testifying truthfully?

20 A. I found no reason to not find what she said
21 to be credible --

22 Q. Okay.

23 A. -- not credible.

24 Q. Right. But you never saw the driver's

1 license?

2 A. I did not.

3 Q. And did you ever do any further
4 investigation with the Port to determine whether or not
5 they had any video, audio --

6 A. I was only asked to try to obtain the
7 license. I was not advised or asked to investigate any
8 further than that.

9 Q. And when she said she didn't have it
10 anymore, did you do anything further or did you
11 close the -- is this case closed right now?

12 A. As far as I'm concerned, it is.

13 Q. Yeah. But has the Police Department
14 officially closed it?

15 A. As far as I believe, it is.

16 Q. Okay. All right. But you don't know for a
17 fact?

18 A. So because it's a noncriminal matter, we
19 don't have a formal mechanism of closing cases out.

20 Q. Wouldn't it be a criminal matter to use a
21 fake ID?

22 A. It's not entered into -- it's not in our
23 system as a criminal matter. It's in there as a
24 no-crime matter --

1 Q. Okay.

2 A. -- as a license violation.

3 Q. Now, would a no-crime -- could a no-crime
4 matter turn into a criminal matter?

5 A. It could.

6 Q. Okay.

7 A. And then we would re -- we would re --

8 Q. -- code it or whatever?

9 A. Recode that into our system, but there's not
10 a mechanism for closing out noncriminal cases.

11 Q. Okay. Do you know why the reports that we
12 received were redacted?

13 A. I do not know.

14 Q. Okay.

15 MR. BLAKE: I have nothing further at
16 this point.

17 THE HEARING OFFICER: Thank you.

18 Attorney Tomlinson?

19 EXAMINATION

20 BY MR. TOMLINSON:

21 Q. Detective Sergeant, good afternoon.

22 A. Good afternoon.

23 Q. How are you?

24 A. I'm well.

1 Q. Just to clear the elephant in the room here,
2 you are in no way related to the Bracketts who own the
3 Port?

4 A. Contrary to popular opinion, there's no
5 relation.

6 Q. I just want to take you through sort of your
7 conversation with the chief about following up on this.
8 You previously testified that you were not asked to
9 further investigate beyond the existence --

10 A. Correct.

11 Q. -- of the identification. Did Chief
12 Guillemette give you specific instructions only to get
13 the identification?

14 A. He asked me to try to obtain the license.

15 Q. Okay. Can I ask what was the reason to
16 obtain the license if it's a noncriminal matter?

17 A. I do not know his rationale behind that, no.

18 Q. Do you have experience investigating
19 allegations of underage service or fake IDs?

20 A. I believe I have in the past.

21 Q. Okay. Anything current or recent to this
22 incident?

23 A. Not -- not anything fairly recent, no.

24 Q. Okay. Is it common to not try and collect

1 the ID when you first learn about it?

2 A. It's usually -- an attempt is usually made
3 at the time that you learn about it to obtain that.

4 Q. Okay.

5 A. That's the general best practice.

6 Q. Okay. So the Department learned about the
7 potential use of a fake ID at least as early as
8 July 2nd, but you did not go out there until July 7th?

9 A. Correct.

10 Q. And Ms. Seymour -- sorry, Parker LeBlanc
11 indicated her belief that Ms. Seymour had discarded the
12 license?

13 A. Correct.

14 Q. Did Ms. Seymour actually affirm to you that
15 she had discarded the license?

16 A. She did.

17 Q. Okay. Did she explain where she discarded
18 the license?

19 A. No, she did not.

20 Q. Okay. Did you ask her, if it was still in
21 the trash, could she go get a copy of it?

22 A. I believe I asked about that -- if it was
23 still possible to obtain any fragments of it. She
24 stated no. But I didn't ask her the mechanism. Her

1 words were she cut it up.

2 Q. Okay.

3 A. I asked if there were any pieces available.
4 She said no. I didn't inquire whether -- where it was
5 disposed of or anything further than that.

6 Q. Did you inquire of whether or not she was --
7 I am understanding that the chief's instruction was
8 limited to collecting the ID, but did you follow up with
9 any additional questions of her about, you know, who
10 were the other people in her party, any proofs of
11 purchase so that she was actually at the Port?

12 A. I did not.

13 Q. Okay. You don't have any independent
14 evidence to corroborate that she was at the Port?

15 A. I don't.

16 Q. Okay. And to your knowledge, the Department
17 doesn't have any evidence to corroborate that she was at
18 the Port?

19 A. To my knowledge, no.

20 Q. Okay. And to your knowledge, the Department
21 never collected any sworn written statement from any
22 person concerning -- especially Charlotte Seymour or
23 Parker LeBlanc -- concerning whether or not they were
24 actually at the Port?

1 A. I am unaware of that.

2 Q. Okay. Have you had -- you're aware that the
3 Port has surveillance of their licensed establishment?

4 A. Very much aware.

5 Q. Okay. How are you aware of their
6 surveillance?

7 A. I've used their system in the past.

8 Q. Okay. And have they voluntarily given you
9 access to their system?

10 A. Yes.

11 Q. Okay. And they've been cooperative with
12 you?

13 A. They have been.

14 Q. Okay. And did you report to the chief that
15 potentially that surveillance might offer some
16 information about Parker LeBlanc or Charlotte Seymour
17 being there?

18 A. I believe we are aware that there was
19 surveillance at the restaurant. I did not have a
20 specific conversation with the chief in regards to that.
21 It would not be of any benefit to me whatsoever to have
22 reviewed that because I have no idea what Charlotte
23 Seymour would look like.

24 Q. Okay. So other than a phone conversation

1 with her, you never got a copy of her -- even her -- I
2 guess you could call it a driver's license even though
3 she is under 21.

4 A. From wherever.

5 Q. Okay. So you don't have -- and you never
6 reviewed the photographs that apparently were taken of
7 her lying on the couch over at the Judge household?

8 A. I have no knowledge of those.

9 Q. Okay. I know the chief came to you on
10 July 6th. Do you have any knowledge about why there was
11 such a delay in terms of him asking you to follow up
12 with respect to the ID?

13 A. I don't other than I don't believe I was at
14 work.

15 Q. I see.

16 When Parker LeBlanc said that she
17 believed she had destroyed the ID, did she go into any
18 more detail about how the ID was destroyed?

19 A. She said she cut it up. I believe I just
20 stated that.

21 Q. That Parker said that Charlotte cut it up.

22 A. Oh, I apologize.

23 Q. Yes.

24 A. Parker did not say.

1 Q. Okay. Parker said she only believed that
2 Charlotte had destroyed it?

3 A. Correct.

4 Q. But Parker -- to your knowledge, did Parker
5 give you any information about how the ID was destroyed?
6 Only that she knew that it was destroyed?

7 A. No specifics.

8 Q. Okay. And your conversation -- your
9 conversation with Mr. and Mrs. Parker -- I'm sorry, did
10 you speak with the parents when you arrived at the
11 property?

12 A. The parents weren't present.

13 Q. Okay, the parents were not present.

14 A. According to Parker, almost all family
15 members -- they had a large family gathering there for
16 the July 4th weekend at that house. It's a very large
17 estate house. And she said everybody had gone home
18 after the holiday weekend.

19 Q. I see.

20 A. So I believe, if I'm not mistaken, it was
21 just Parker and Charlotte that were remaining at that
22 house because they were working on the Cape, staying on
23 the Cape.

24 Q. I see. So the other family members, the

1 adults, weren't there after --

2 A. There was nobody there.

3 Q. -- after July -- on July 6th?

4 A. I do not know the date that they left.

5 Q. Oh, I see. Okay. But on the date in
6 question, on July 1st, the family was there?

7 A. I have no idea who was present. I just --
8 it was small talk with Parker in regards to, you know,
9 who was staying at the -- who was at the house, and she
10 said that they had, you know, a lot of family members
11 down for the holiday weekend. I didn't ask specifics as
12 to who, what family members arrived when or left when.

13 Q. And to your knowledge, the chief never asked
14 you to follow up to see whether or not surveillance
15 could actually identify whether or not Charlotte Seymour
16 was actually at the Port?

17 A. He made no request of me.

18 Q. Okay.

19 Is there an official or written policy or
20 informal policy that, to the extent that surveillance
21 exists, that there is an effort to collect that
22 surveillance?

23 A. There's no specific policy to that.

24 Q. And to your knowledge, there isn't any

1 documentary proof that she was actually at the Port?

2 A. I do not have any knowledge of that.

3 Q. Do you have any knowledge as to whether she
4 might have been at another establishment?

5 A. None whatsoever.

6 Q. Were there -- to your knowledge, the
7 weekend -- the July 4th weekend, were there allegations
8 of underage service at any other establishments?

9 A. Not to my knowledge.

10 Q. Are you investigating allegations of
11 underage service at Perks?

12 A. Am I currently?

13 Q. Yes.

14 A. No.

15 Q. Have you in the past?

16 A. I have, yes.

17 Q. Okay. From the July 4th weekend?

18 A. No.

19 Q. Okay. Are you aware of video surveillance
20 at Perks which show underage patrons at the
21 establishment?

22 A. Yes.

23 Q. And do you know if that's recent video
24 surveillance?

1 A. Yes. Well, what do you consider recent?
2 The past couple months.

3 Q. This season.

4 A. Yes.

5 Q. Okay.

6 MR. BLAKE: I think we're at a hearing
7 for Port, aren't we, Mr. Hearing Officer?

8 THE HEARING OFFICER: We are.

9 MR. BLAKE: Then why are we asking --

10 THE HEARING OFFICER: If I may, I'm
11 allowing Attorney Tomlinson to question the witness; I'm
12 hearing facts presented; and I'm going to make a
13 determination whether these facts are relevant --

14 MR. BLAKE: Thank you.

15 THE HEARING OFFICER: -- when I review
16 the documents.

17 Q. Do you have any knowledge as to whether or
18 not the underage individuals involved in the alleged
19 service of those individuals at Perks are connected in
20 any way to Parker LeBlanc or to Charlotte Seymour?

21 A. No knowledge whatsoever.

22 Q. You don't know if they're friends?

23 A. I have no idea.

24 Q. Okay. In your investigation of underage

1 service at Perks are you aware of testimony to you --
2 or, statements to you that patrons are told to report
3 that, if they're caught, they were at the Port?

4 A. I have heard statements such as that, yes.

5 Q. And have you heard those statements from
6 those underage persons who were caught at Perks?

7 A. No.

8 Q. Have you heard those statements from anyone
9 connected to the Port?

10 A. No.

11 Q. Okay. Can I ask the source of those
12 statements?

13 A. The source of those statements were an
14 uninvolved witness to the incident involved in the
15 underage drinking.

16 Q. At Perks?

17 A. At Perks.

18 Q. And so this was an uninvolved witness who
19 had indicated that they were told to report that, if
20 they were caught, then they came from the Port?

21 A. Yes.

22 Q. And that uninvolved witness, were they told
23 by their friends or were they told by the establishment
24 owners at Perks to make that statement to the police?

1 A. I don't believe they were told -- instructed
2 by anybody.

3 Q. Detective Brackett, I need one moment to
4 review my notes. I think I may be done.

5 Thank you, sir. I'm all set. Thank you
6 very much.

7 THE HEARING OFFICER: Detective Sergeant,
8 can you yield, please.

9 THE WITNESS: Yes.

10 THE HEARING OFFICER: First I would
11 remind both counsel there are no objections in this
12 matter today. So I would remind counsel that, if you
13 have concerns about testimony, that you incorporate
14 those in either your redirect or your summation.

15 MR. BLAKE: Thank you.

16 THE HEARING OFFICER: Do you have
17 anything further on the follow-up for Detective Sergeant?

18 MR. BLAKE: I do not.

19 THE HEARING OFFICER: All right.

20 Detective Sergeant, thank you. We would
21 ask you to remain.

22 Attorney Blake, any further witnesses
23 regarding the alleged violation to have occurred on
24 July 1st?

1 MR. BLAKE: None.

2 THE HEARING OFFICER: All right.

3 Attorney Blake, the floor is now yours as
4 it relates to the allegation of the events of July 1st.
5 Do you have any witnesses you wish to call, and/or
6 exhibits?

7 MR. BLAKE: You mean Attorney Tomlinson.

8 THE HEARING OFFICER: Sorry, I apologize.

9 So everything I said I'm going to say for
10 Tomlinson. Do you have any witnesses, exhibits, or
11 anything that you'd like to offer regarding this matter
12 on the allegation of the events related to July 1st?

13 MR. TOMLINSON: No. The police reports
14 that were delivered to the licensee were wholly
15 redacted; so we were unaware of the witnesses and were
16 unable to call them for today. And so, as a result, I
17 do not have any testimony to present other than the
18 officers who are here to testify.

19 The Town has not called any of the
20 witnesses that were known to them; and so, as a result,
21 we're left with the inopportune notion of relying upon
22 strictly one-sided testimony from the officers. Thank
23 you.

24 THE HEARING OFFICER: Thank you.

1 That was later confirmed by Sergeant Brackett after
2 speaking with this young lady.

3 I think that the facts are clear that she
4 was at the Port Restaurant drinking. The allegations
5 and the facts that came out through the police reports
6 regarding her obvious over-intoxication and actually
7 getting into somebody else's house and being on their
8 couch is sufficient to show that she was over-served as
9 well.

10 THE HEARING OFFICER: Thank you. Was
11 that your summation?

12 MR. BLAKE: That's my summation.

13 THE HEARING OFFICER: Attorney Tomlinson,
14 your summation, please.

15 MR. TOMLINSON: Thank you, Mr. Powers.

16 SUMMATION

17 MR. TOMLINSON: With respect to the
18 allegation of underage service stemming from July 1st,
19 there is an utter lack of any satisfactory proof. The
20 statements offered by the officers today all lack an
21 indicia of reliability with respect to the witness
22 statements conveyed to them. There's no contemporaneous
23 witness statements -- sworn. There's no independent or
24 other corroborating evidence. There's no proof of

1 purchase. There was no effort to procure any
2 surveillance. And there's no effort to pursue a
3 criminal action; therefore, there's no illegality at
4 issue here from the liquor license regulations. Quite
5 contrary to Mr. Blake's representation, there is an
6 utter lack of satisfactory proof to support this alleged
7 violation. Thank you.

8 THE HEARING OFFICER: Thank you.

9 Before we proceed I do have questions for
10 both counsel regarding everything centered around the
11 alleged events of July 1st. I'm going to rely upon
12 Exhibits D, E, and F in this moment. Sorry, I'm going
13 to rely upon D and F -- I don't need to rely upon E,
14 excuse me -- for those exhibits.

15 Exhibit D, to remind you, is the letter
16 to the establishment from me, as administrator, dated
17 August 11th, and we now know that to be 2021. And I'm
18 going to be asking questions regarding the second
19 paragraph of that letter, as well as the second
20 paragraph under Exhibit F, which we now understand to be
21 a letter dated September 14, 2021.

22 So what I believe I have been hearing --
23 excuse me -- with regard to the alleged violations
24 related to events of July 1st is an allegation of the

1 use of a false identification for a party to procure
2 liquor service at a licensed establishment. I offer
3 that. And in a moment I'll ask each of you if there's
4 any sort of cleaning or refutation that you would have
5 of that.

6 But my question, first, to Attorney
7 Blake: Under the paragraph -- the second paragraph on
8 both letters D -- excuse me, Exhibits D and F -- it says
9 that the specific charges are as follows: "Violation of
10 204 CMR 2.05, parenthesis, 2, close parenthesis:
11 Permitting a disorder, disturbance, or illegality to
12 take place on the licensed premises."

13 It goes on, "The Town reserves the right
14 to consider and/or levy additional charges that may
15 arise during the hearing process."

16 In looking at Exhibit F, I ascertain that
17 to be an identical statement.

18 My question to you, Attorney Blake, is:
19 Is the Town contemplating any allegation of
20 over-serving?

21 MR. BLAKE: I -- at this point I do not
22 believe that that is something that's being
23 investigated; however, I do not know that. That would
24 be something that would come from the police, and I am

1 not aware of that.

2 THE HEARING OFFICER: Thank you.

3 Attorney Tomlinson, any comments or
4 statements you'd like to make relative to my question?

5 MR. TOMLINSON: Yes. I mean, as your
6 cover letter dated August 11, 2020 -- I realize that's a
7 typo for Exhibit D, and it's replicated on Exhibit F --
8 indicates the specific charge as a violation of 204 Code
9 of Mass Regulations 2.05, sub 2, permitting a disorder,
10 disturbance, or illegality to take place on the licensed
11 premises; and, again, there's no evidence to suggest
12 that any disorder, disturbance, or illegality took place
13 on the licensed premise.

14 There is a post hoc statement by a
15 witness, by someone that said that they were at the
16 premises only, and that's uncorroborated,
17 unsubstantiated, and not sworn. And so I would suggest
18 to you that the charge fails for the lack of evidence.

19 THE HEARING OFFICER: Thank you, both.

20 MR. TOMLINSON: Thank you.

21 THE HEARING OFFICER: Give me a further
22 moment. I apologize, my phone didn't ring, but it did
23 buzz; so I need to put that on airplane mode. I almost
24 said airport. Airplane mode. I am so not hip.

1 All right. Thank you. So then let me
2 reassemble my exhibits so I can refer to them later on
3 if necessary -- or, as necessary.

4 And so now we turn our attention to what
5 may be exhibits and witnesses related to, as I
6 understand it and reserve the right to correct my
7 reference to it, to alleged violations to have occurred
8 on August 19, 2021.

9 To that end, Attorney Blake, do you have
10 any exhibits and any witnesses you wish to call --

11 MR. BLAKE: I do.

12 THE HEARING OFFICER: -- relative to that
13 date and those allegations?

14 MR. BLAKE: I do. I do.

15 The first exhibit I would like to have
16 marked -- and we'll mark this one P1 -- is a memorandum
17 from the Chief of Police to the Board of Selectmen and
18 the Town Administrator dated August 30, 2021, regarding
19 potential violations at Port.

20 The memorandum says "Mr. Powers and
21 Members of the Board: Attached please find a police
22 report regarding a potential -- regarding potential
23 liquor, slash, entertainment regulation violations at
24 Port on August 19, 2021. Please do not hesitate to

1 contact me should you have any questions." We'll mark
2 that as P1.

3 And then there is a call log for a noise
4 complaint, again dated August 19, 2021. We'll mark that
5 P2.

6 And then, finally, there is --

7 THE HEARING OFFICER: Counsel, if I may
8 in further, it looks like the call number is 21-10586.

9 MR. BLAKE: That is correct.

10 THE HEARING OFFICER: Thank you.

11 MR. BLAKE: And then there is a narrative
12 for Sergeant -- Aram? Did I get that right?

13 SERGEANT GOSHGARIAN: You sure did.

14 THE HEARING OFFICER: Aram V.
15 Goshgarian.

16 MR. BLAKE: Yes. And the reference
17 number is 21-10586-OF, and that would be P3.

18 THE HEARING OFFICER: All right. So we
19 have P-1, P-2, and P-3 are now entered as exhibits.

20 Give me a moment, folks.

21 (Exhibit P-1, memorandum dated
22 August 30, 2021, re potential violations
23 at Port, so marked.)

24 (Exhibit P-2, call log 21-10586 dated

1 08/19/2021, so marked.)
2 (Exhibit P-3, narrative for Sergeant
3 Aram V. Goshgarian, Ref. 21-10586-OF, so
4 marked.)

5 MR. TOMLINSON: Mr. Powers, do you want
6 to release Detective Sergeant Brackett?

7 THE HEARING OFFICER: Oh, yes. Thank
8 you, Attorney Tomlinson.

9 Do we want to release the detective
10 sergeant?

11 MR. BLAKE: I'm fine with it.

12 THE HEARING OFFICER: Detective Sergeant,
13 thank you again. I appreciate seeing you.

14 DETECTIVE SERGEANT BRACKETT: Thank you.

15 THE HEARING OFFICER: Take care. Stay
16 well.

17 Thank you, Attorney Tomlinson.

18 The same for Officer Ruggiero as well.

19 OFFICER RUGGIERO: Thank you.

20 THE HEARING OFFICER: Thank you. Sorry
21 about that.

22 Thanks, Ray.

23 All right. So now you have introduced
24 your exhibits. And please call your witnesses.

1 MR. BLAKE: Sure. I'd like to call
2 Sergeant Goshgarian.

3 THE HEARING OFFICER: Good afternoon,
4 Sergeant.

5 SERGEANT GOSHGARIAN: Thank you.

6 THE HEARING OFFICER: Please raise your
7 right hand.

8 SERGEANT ARAM V. GOSHGARIAN, sworn.

9 THE HEARING OFFICER: Attorney Blake.

10 EXAMINATION

11 BY MR. BLAKE:

12 Q. Sergeant, good afternoon.

13 A. Good afternoon.

14 Q. How are you this afternoon?

15 A. Great. How are you?

16 Q. Could you state your full name for the
17 record, and spell it.

18 A. Sure. Aram Goshgarian, A-R-A-M
19 G-O-S-H-G-A-R-I-A-N.

20 Q. Thank you.

21 So you have been sitting here the entire
22 morning and now into the afternoon; is that correct?

23 A. I sure have.

24 Q. And you've heard the testimony; so you got a

1 flavor for what I'm about ready to ask you?

2 A. I think so.

3 Q. Do you recall a noise complaint that was --
4 that you received on August 19th regarding the Port
5 Restaurant?

6 A. I do.

7 Q. Did you get an opportunity to review your
8 narrative report regarding that particular incident?

9 A. Yes.

10 Q. And can you explain to the hearing officer
11 exactly what happened that day.

12 A. So we were actually at -- myself and the
13 other members of the shift were at a complaint at Perks,
14 next door.

15 Q. Mm-hmm.

16 A. And one of the owners of Perks, I was
17 explaining to her out on the sidewalk in front of Perks
18 what the complaint was and how to go about trying to
19 remedy it in the future when I could hear noise coming
20 from the Port Restaurant from inside. All the windows
21 and doors were closed, but you could hear, basically,
22 bass -- that's what it sounded like -- coming out the
23 doors and windows. You could hear the bass music.

24 Do you want to -- there's a noise thing

1 that's tied in to --

2 Q. Yeah. Let's back up a little bit. So you
3 were at Perks --

4 A. Yeah. We were at Perks on a separate
5 matter.

6 Q. -- investigating a noise complaint.

7 A. Yeah.

8 Q. Was there noise from there?

9 A. I don't know what they ended up finding. I
10 think that had to do with some singing or something. I
11 can't recall.

12 Q. All right. So you notified the owner of
13 Perks --

14 A. I was actually talking to her, one of the
15 owners, out on the sidewalk in front of Perks.

16 Q. Okay. So -- and then you noticed a patron
17 from Port --

18 A. So, yeah, that was part of it. Somebody
19 walked out of -- they kind of -- I mean, I'm sure we all
20 know they kind of share -- they share a common border.

21 Q. Okay.

22 A. And someone had walked out of the Port side
23 carrying something in a clear plastic cup.

24 Q. All right. But you don't know if that was

1 alcohol or not?

2 A. I do not.

3 Q. Okay.

4 A. And I actually didn't see the person --
5 Mrs. Powell did -- because I was facing her. And the
6 person sort of went onto Perks' property, was trying to
7 go onto the private side, not the side -- the business
8 side. She just said, "Excuse me, can you go back.
9 That's private. You don't belong there."

10 Q. Okay.

11 A. So when I turned around, the kid went back
12 to wherever, went back into the Port, I guess.

13 Q. Okay. And, you're right, they kind of
14 intermingle here. So let's stay with that. Did you --
15 after noticing that, did you go over to Port and let
16 them know that you saw people coming out of there with
17 alcohol?

18 A. Not at that point.

19 Q. Okay. So what did you do?

20 A. Well, talking to Mrs. Powell, I could hear
21 the music. And then --

22 Q. From the Port?

23 A. From the Port.

24 Q. Yeah.

1 A. And then somebody came out -- if you're
2 familiar with the Port, the left side of the building,
3 if you're looking at it, says "Oyster Bar." Someone
4 came out of the side door at the Oyster Bar and went
5 onto the sidewalk to use their phone. Unfortunately,
6 they let the door that says "Emergency Exit" on it swing
7 wide open.

8 Q. Yeah.

9 A. And then the music -- you could hear it, but
10 it wasn't, in my opinion, unreasonable initially. It
11 was now blasting out --

12 Q. Okay.

13 A. -- onto the sidewalk.

14 Q. Okay. But with the door closed it was
15 not --

16 A. With the door closed I wouldn't have
17 classified that as unreasonable, to be honest. I'm a
18 reasonable person.

19 Q. Yeah.

20 A. But when it opened up, it was like, okay,
21 this is kind of -- so I went over and shut the door.

22 Q. All right.

23 A. And at that point myself and another officer
24 went into the back -- back bar of the Port. And there

1 was a bartender standing there, and I said, "Could you
2 get me somebody who's in charge." Like, "Who's
3 responsible for the --" I do it on every complaint. I
4 do it with every establishment. I try to seek out
5 somebody who's in charge that I can explain to them. If
6 it's not a violation, I tell them it's not a violation.
7 I do it every single time.

8 Q. Yeah.

9 A. So there happened to be a kid standing
10 there, who I recognized over the course of the summer,
11 wearing a blue shirt. I'd seen him out front as a
12 doorman, I guess, throughout the summer. His name is
13 Jon. He said, "I guess that's me."

14 Q. Okay.

15 A. And I said, "Okay. So here are the issues
16 we just came across."

17 And he said, "Well, I'm the only person
18 working tonight."

19 I said, "Okay. I'm not here to tell you
20 you're a terrible person. I'm just letting you know
21 someone came out with -- I don't know if it was -- it
22 was a drink in a plastic cup. I don't know what was in
23 it, but --" and then the door swung open and someone had
24 come outside.

1 He said, "Okay. I understand." He went
2 inside and turned the music way down so you could barely
3 hear it, and that was it.

4 Q. And then you left?

5 A. And then I left, yeah, Perks.

6 Q. Okay. So you never saw any other people
7 coming out of the establishment with cups or whatever in
8 their hands?

9 A. No.

10 Q. So we just have the one?

11 A. Just that one.

12 Q. And the fact that the emergency door was
13 being used by patrons and left open, causing the music
14 inside to spill out --

15 A. Right.

16 Q. -- outside?

17 A. Right.

18 Q. And at that point it was loud?

19 A. Yeah. When the door opened, I, quite
20 frankly, didn't know how you could have carried a
21 conversation inside with that music. But it was loud
22 when the door was open. Not so when the door was
23 closed. Probably across the street on 28 you wouldn't
24 even have heard the music. As soon as that door opened,

1 it was pretty clear it was an issue.

2 Q. You could hear it into the bay, huh?

3 All right. Were you called back to the
4 property at all?

5 A. Not that night.

6 Q. Okay. And did he turn down the music?

7 A. Yes.

8 Q. And you were satisfied with the response
9 that you got from him?

10 A. Yes. As far as the music went -- I don't
11 know how they control their -- it was actually pretty
12 quiet in there, so --

13 Q. Yeah.

14 A. But the music, yeah, they turned the music
15 down. I just gave them a heads-up. I don't who the kid
16 was. I never talked to whoever came out with their cup.
17 It was just that "Go back to where you came from. Go
18 back inside."

19 Q. Okay.

20 A. He went back into the Port.

21 Q. But do you know if there was -- that door
22 had been -- was manned? Was there somebody there? When
23 the guy told you he was the only one, does that mean he
24 was at the front and there was nobody at the back?

1 A. When he told me he was the only one, he was
2 standing behind the bar with the bartender in the back
3 of the -- like I said, the bar in the back of the Port,
4 the outside bar.

5 Q. Okay.

6 A. He said, "I'm the only guy on tonight." So
7 I don't know if there was anybody at that door when it
8 happened, but I would imagine probably not. But I don't
9 know.

10 Q. You would hope not; right?

11 So how many entrances in and out of the
12 restaurant?

13 A. I mean, there's a lot of doors. Typically
14 people come out -- they come in and out between the
15 Perks and Port. There's a little -- you can see it from
16 28. There's a walkway where they come in off of Sea
17 Street and walk in the back. That's been my experience.

18 Q. So there's at least two public entrances?

19 A. That's been my experience where the people
20 come and go.

21 Q. Plus this emergency door?

22 A. Yeah. Well, it said "Emergency Door" on it.
23 I don't see that as a typical point of entry or exit for
24 people.

1 Q. Right.

2 A. So...

3 Q. Okay.

4 MR. BLAKE: I have nothing further for
5 this witness.

6 THE HEARING OFFICER: Thank you.

7 Attorney Tomlinson?

8 EXAMINATION

9 BY MR. TOMLINSON:

10 Q. Sergeant, good afternoon. How are you?

11 A. Good. How are you?

12 Q. We haven't had the pleasure of meeting.

13 I'll be brief.

14 The call log references noise complaint.

15 There wasn't actually a complaint about noise at the

16 Port; correct? The complaint was at Perks?

17 A. The complaint at Perks got me to the -- when

18 I was standing at Perks, I typed on site, if you will.

19 Q. Sure.

20 A. There was no caller for the Port complaint.

21 The reason -- I'm getting to that. There was no caller

22 at the time. It was me hearing it.

23 Q. I gotcha. Because it says "noise complaint

24 per G10." I'm assuming you were G10.

1 A. Yes.

2 Q. And so you were the sergeant -- as I see,
3 sergeant in charge --

4 A. Yes.

5 Q. -- supervising that shift. Okay.

6 And you were there speaking with Sarah
7 Powell with three other officers? They were on shift?

8 A. There were two other officers that were on
9 the Sowens' [phonetic] property talking to them, because
10 I think they were the ones who complained.

11 Q. I see. So when you were speaking with
12 Ms. Powell, was it just you, or was there somebody with
13 you?

14 A. At that point it was just me.

15 Q. Okay. And so, when the door opened, the
16 emergency exit door, it was just you and Ms. Powell?

17 A. Yes.

18 Q. Okay. And you previously indicated that you
19 didn't see the actual -- you didn't see a patron exit
20 the Port; you only saw -- you only -- Ms. Powell made
21 reference to someone walking into --

22 A. Yes.

23 Q. The other side of the fence was where you
24 saw someone coming out of the Port?

1 A. I didn't see them coming out of the Port.

2 Q. I see. You saw them go back into the Port?

3 A. Correct.

4 Q. Did they go back into the emergency exit
5 door, or did they go back in through the walkway that
6 goes to the outdoor patio?

7 A. They used the walkway. The emergency door
8 does not open from the outside.

9 Q. Okay. So there's no handle on the outside?

10 A. Correct.

11 Q. And that's not usually a point of access for
12 patrons, to your knowledge?

13 A. Not in my experience.

14 Q. Okay. Do you have any knowledge as to
15 whether or not that door has a self-closing mechanism on
16 it?

17 A. I don't know. Certainly, if it did, it
18 didn't work that night.

19 Q. My question only was I don't know if you had
20 noticed whether or not there was a self-closing
21 mechanism.

22 A. No.

23 Q. Does that door open into the pedestrian
24 walkway that goes to the outdoor patio, to your

1 knowledge?

2 A. I don't know. It looks like -- I think it
3 has its own sort of egress. It goes into the same area,
4 yes. It dumps into the same area.

5 Q. In other words, when you exit that door,
6 there's a step -- a stair or two down --

7 A. Yes.

8 Q. -- to that same --

9 A. Correct. It doesn't block the pedestrian --
10 the side -- you know, when you're looking at the Port,
11 on the left side of the building, 28, there's, like, a
12 walkway to the back. It doesn't get in the way of that.

13 Q. Okay. So the door doesn't -- to your
14 knowledge, if the door was left open, would it impede
15 safe egress from the patio?

16 A. No.

17 Q. Okay. And when you spoke with -- you
18 mentioned Jon, the man who was working that day. Did --
19 was he confrontational in any way?

20 A. No.

21 Q. Okay. You considered him to be polite?

22 A. Yes.

23 Q. And responsive?

24 A. Yes.

1 Q. And did he indicate whether or not the door
2 was broken?

3 A. He didn't say anything about the door.

4 Q. Okay.

5 And when you were speaking with
6 Ms. Powell before the door opened, you said you could
7 sort of feel the bass.

8 A. Yeah. You could hear -- with the door and
9 the windows closed, you could feel it, if you want to
10 use that word. There was definitely bass.

11 Q. Okay.

12 A. You could hear it on the sidewalk. But as I
13 had said before, I did not consider that unreasonable at
14 that point.

15 Q. Okay. And to your knowledge, there were no
16 other noise complaints directed towards the Port that
17 night from any neighbors?

18 A. Not that I know of.

19 Q. Okay.

20 When you were talking with Ms. Powell,
21 how far were you from the door that opened?

22 A. 30 feet. 40 feet maybe.

23 Q. And when that door opened, was it in your
24 direct line of sight?

1 THE HEARING OFFICER: Hold on.

2 MR. TOMLINSON: I'm sorry.

3 THE HEARING OFFICER: I couldn't hear the
4 end of --

5 THE WITNESS: I'm sorry. 30 or 40 feet.

6 THE HEARING OFFICER: Thank you.

7 Q. Was that in your direct line of sight to the
8 sound that was coming out, in other words?

9 A. Yes. That door opens to the east side of
10 the building, if you will, and that's the side -- Perks,
11 as we all know, is on that side. And we were in front
12 of Perks. So, yes, so it opens towards Perks.

13 Q. So when the door opened, it was in direct
14 line of sight for you?

15 A. Yes.

16 Q. Okay.

17 And when you -- did you have the occasion
18 to go around to the back patio at all?

19 A. We accessed the back bar by going from the
20 entrance/exit on 28. We did not go around Sea Street,
21 but we got to the same place.

22 Q. So when you spoke with -- I'm just trying to
23 ascertain, when you spoke with the employee named Jon,
24 was he located at the bar inside or the bar outside?

1 A. Outside.

2 Q. Okay. So he was at the bar outside?

3 A. Yes.

4 Q. And do you know whether or not there are
5 hostesses at the points of entry at the other location
6 if you were to walk around the back to Sea Street?

7 A. I don't know if there was -- I didn't see
8 anybody. I didn't go that way.

9 Q. Okay. Was he behind the bar, or was he
10 standing at the bar?

11 A. He was behind the bar.

12 Q. Okay. And when you spoke with him, how long
13 was that conversation?

14 A. One minute.

15 Q. Okay.

16 A. I just explained to him what the issues
17 were, and he said he would -- like I said, he said he
18 was by himself and he would address the noise issue.

19 Q. Did he say whether or not he was aware that
20 the door was even open?

21 A. He didn't say either way.

22 Q. Okay. But he complied immediately with the
23 request?

24 A. Yes, he did.

1 Q. And you were satisfied with that?

2 A. Yes.

3 Q. Okay. And if he -- he represented himself
4 as the person in charge? Yes?

5 A. Correct. I asked, like I do every time,
6 "Give me somebody who is responsible for this place."

7 Q. Is that your policy, or is that the
8 Department's policy?

9 A. That is how I do it --

10 Q. Okay.

11 A. -- so there can be no misunderstandings on
12 who I spoke with.

13 Q. Right. And I noticed that your officer
14 narrative does include his name.

15 A. Yes.

16 Q. Okay. It says "Officer Dutra and I walked
17 into the back area." At some point did he --

18 A. Yes.

19 Q. Officer Dutra joined you after --

20 A. Yes. Derek was dealing with the Perks
21 issue, and he went to the back bar with me. But he
22 wasn't present when the other stuff happened. He just
23 went in with me.

24 Q. Okay. And so he didn't -- you said that,

1 when you saw the person walk back into the Port, they
2 were carrying a clear plastic cup?

3 A. Yes.

4 Q. Okay. And do you know whether or not --
5 what was the color of the beverage that was in there?

6 A. It was clear.

7 Q. It was clear, okay.

8 Did you notice whether there was a straw
9 in there or a little party top --

10 A. I did not.

11 Q. -- or a martini hat or anything fun like
12 that?

13 A. No.

14 Q. Okay. So you have no knowledge one way or
15 the other whether or not it was even an alcoholic
16 beverage?

17 A. Correct.

18 Q. Okay. And you didn't make contact with that
19 person?

20 A. I did not.

21 Q. You didn't speak with them?

22 A. No.

23 Q. Okay. And when they went back to the Port,
24 you said they walked down the pedestrian walkway into

1 the back. They didn't go back -- they didn't re-enter
2 through the emergency exit?

3 A. Correct. Yes.

4 Q. Was that because you had already closed the
5 door?

6 A. That -- no. That happened before the door
7 got pushed open. The kid -- whoever it was with the cup
8 happened, and then the door was pushed open afterwards.
9 So he had already gone inside.

10 Q. Oh, so the kid carrying the cup, he pushed
11 the door open?

12 A. No. No, no, no, that's not correct.

13 Q. Okay.

14 A. The door couldn't be opened from the
15 outside.

16 Q. I see. So somebody could have bumped the
17 door open. And did you actually see somebody exit
18 the --

19 A. Yes.

20 Q. -- emergency exit? Okay.

21 And that person went out to take a phone
22 call?

23 A. It looked like he was on his cell phone.
24 Yes.

1 Q. I see. Okay. And you didn't speak to that
2 person either?

3 A. I did not.

4 Q. Okay. And you don't know whether or not
5 Perks suffered a violation for the noise complaint that
6 caused you to arrive there?

7 A. No, I don't.

8 Q. Have you been asked to testify regarding
9 your report in that?

10 A. Not that I'm aware of. I haven't been
11 asked.

12 Q. Did you fill out a report, a call log and
13 officer narrative, for that noise complaint?

14 A. I did not for that one.

15 Q. Okay. Do you know if any of the officers
16 that were with you that night did?

17 A. I don't know.

18 Q. Okay. Thank you, Sergeant. I appreciate
19 your time.

20 THE HEARING OFFICER: Thank you.
21 Attorney Blake?

22 MR. BLAKE: Nothing further.

23 THE HEARING OFFICER: Sergeant, just a
24 moment, please. Thank you.

1 I'm reading from what we know to be
2 Exhibit P-3, which is your narrative. Do you have that?

3 THE WITNESS: Yes.

4 THE HEARING OFFICER: Thank you. And,
5 excuse me, I want to get to a word that appears in your
6 narrative at least three times, and it sort of falls on
7 some of the questions that Attorney Tomlinson just
8 asked, but I want to make sure I'm clear on this. You
9 used the word "drink" to talk about that. "A subject
10 was carrying a drink." You did not make contact with
11 the person and do not know what the drink contained.
12 And then you talked about the patron who exited with a
13 drink. And I heard you just say that you -- you
14 referred to a clear plastic cup containing a clear
15 liquid. Is that what you meant by "drink"?

16 THE WITNESS: Yes.

17 THE HEARING OFFICER: All right. So it
18 can be understood that "drink" was a clear plastic cup
19 containing clear liquid?

20 THE WITNESS: Yes.

21 THE HEARING OFFICER: Okay. Thank you.
22 I don't have any further questions. You may be seated,
23 but please remain.

24 Attorney Tomlinson -- excuse me, Attorney

1 Blake, do you have any other witnesses or exhibits to
2 present regarding alleged violation, or violations, to
3 have occurred on August 19, 2021?

4 MR. BLAKE: I do not.

5 THE HEARING OFFICER: Okay.

6 Attorney Tomlinson, do you have any
7 exhibits or witnesses you wish to present?

8 MR. TOMLINSON: No. Thank you.

9 THE HEARING OFFICER: So then, Attorney
10 Blake, your summation, please.

11 MR. BLAKE: Sure.

12 SUMMATION

13 MR. BLAKE: As you heard from the
14 eyewitness testimony of the witness -- of the officer,
15 the sergeant who just testified, there were a -- there
16 are a number of egress and ingress at the Port
17 Restaurant. The Port Restaurant did not have
18 sufficient --

19 THE HEARING OFFICER: I'm sorry, I
20 apologize, I realize that I do have one more question
21 for the sergeant, rather than have you continue on. Any
22 objection if I ask my question?

23 MR. BLAKE: No. Go ahead.

24 THE HEARING OFFICER: Attorney Tomlinson,

1 I have an additional question.

2 MR. TOMLINSON: Okay. Thank you.

3 THE HEARING OFFICER: So, Sergeant, if
4 you would please come forward. I'm sorry, I apologize,
5 I asked about a drink, and now I just want to ask about
6 noise. I heard you say, I believe, under examination by
7 Attorney Blake that relative to noise it was, quote,
8 "not unreasonable. When the emergency exit door opened,
9 then the music blasted."

10 THE WITNESS: Yes.

11 THE HEARING OFFICER: Can you elaborate
12 for me what you mean by "blasted."

13 THE WITNESS: Really loud, extremely
14 loud -- I don't know a better way to quantify it -- to a
15 point where I --

16 THE HEARING OFFICER: You have an
17 opportunity to offer a phrase or a word.

18 THE WITNESS: Yeah. I would say it was
19 extremely loud. I don't know how people could hear
20 themselves talk inside, so that's how loud.

21 THE HEARING OFFICER: Thank you.

22 Thank you, both.

23 Attorney Blake, back to you please.

24 MR. BLAKE: Sure.

1 THE HEARING OFFICER: I thank you for
2 that.

3 MR. BLAKE: There were at least three
4 means of entrance and exit to the Port Restaurant. As
5 we saw, the Port was understaffed that particular time
6 and there were patrons that were allowed to go in and
7 out of the emergency exit with nobody knowing.

8 Now, there was a clear drink in one of
9 their hands. We don't know if that was alcohol, but the
10 simple fact of the matter is that the establishment must
11 have control over the establishment such that alcohol
12 cannot be taken off premises.

13 It could very easily have been -- very
14 easily have been alcohol that was being taken off
15 premises, and for all we know, that could have been
16 going on all night because, at the admission of Jon, he
17 was understaffed and he was the only one there. So
18 there's no way he could have -- he could have minded
19 three doors.

20 With respect to the noise, again, while
21 the club may have been closed up, there was no loud
22 noise; however, clubs open and close their doors
23 frequently. The purpose behind no noise or reduced
24 noise is so that the neighbors and the abutters don't

1 have to listen to this.

2 It's clear that the noise was so loud, as
3 the sergeant testified, that it was blasting when the
4 doors were opened. As you can imagine, the doors are
5 opened many, many, many times throughout the night; so
6 that music goes from a 2 to a 10, which is, again, a
7 violation.

8 THE HEARING OFFICER: Thank you, Attorney
9 Blake. Is that your conclusion?

10 MR. BLAKE: Yes, it is.

11 THE HEARING OFFICER: Thank you.
12 Attorney Tomlinson, your summation
13 please.

14 MR. TOMLINSON: Yes, Mr. Powers.

15 SUMMATION

16 MR. TOMLINSON: There's no direct
17 testimony that the Port was understaffed that night.
18 There's no direct testimony that either of the entrances
19 or exits were not well staffed. The fact that somebody
20 may accidentally exit an emergency exit is not
21 necessarily within the reasonable control of the
22 establishment.

23 There is no evidence that a patron exited
24 with alcohol. And, in fact, the sergeant was very clear

1 that he had no knowledge one way or the other. And if
2 he was concerned that it was alcohol, he certainly could
3 have made contact with the person.

4 The notion that alcohol might have been
5 taken off the premises all night long is an egregious
6 overstatement of the testimony and it panders to the
7 allegations that we have suffered through this entire
8 season.

9 The sergeant testified that, when the
10 door was closed, he did not consider the noise to be
11 unreasonable, that he could feel the bass. He also
12 testified that it wasn't busy that night at the Port,
13 although loud inside.

14 And I said -- so there plainly is no
15 evidence to support, given the testimony that it was not
16 busy, although loud inside, that there was any evidence
17 of understaffing. There is also no requirement that the
18 establishment have a person at every door of every
19 establishment -- every means of egress. There is a lack
20 of sufficient evidence to satisfactorily prove the
21 charge today. Thank you.

22 THE HEARING OFFICER: Thank you, Attorney
23 Tomlinson.

24 So we have heard testimony this morning

1 and this afternoon, by my recollection, of what I
2 understand to be three alleged violations, the first
3 relative to events on July 3, 2021; the second on an
4 allegation relative to events of July 1, 2021; and then,
5 as we just concluded, alleged violation related to
6 events of August 19, 2021.

7 And so my question first to the Town, to
8 Attorney Blake: Is there any other matter, material, or
9 information you wish to have discussed or just disbursed
10 at this point in the hearing?

11 MR. BLAKE: No.

12 THE HEARING OFFICER: Attorney Tomlinson,
13 the same question to you.

14 MR. TOMLINSON: Yes. I believe that the
15 testimony for the hearing that was to begin today for
16 Perks is material and relevant to the incidents
17 occurring over the July 4th weekend and would reserve
18 the opportunity to question the officers related to this
19 and, therefore, request a continuance of this hearing
20 until after further testimony is given on November 10th
21 concerning Perks.

22 THE HEARING OFFICER: Thank you, Attorney
23 Tomlinson. I want to be clear. I believe I heard you
24 say the show cause hearing for alleged violations

1 regarding Lucky Labrador, Incorporated, d/b/a Perks,
2 which was continued today, contains matter -- so that
3 hearing contains matter relative to this?

4 MR. TOMLINSON: Yes. The witness
5 statements and the statements of the officers is
6 material and relevant to the July 4th weekend alleged
7 incidents at the Port, and I believe it's material to
8 the Board's full consideration in its factfinding duty.

9 THE HEARING OFFICER: Thank you.
10 Is there anything further to present at
11 this time?

12 MR. TOMLINSON: At this time, no.

13 THE HEARING OFFICER: Thank you.

14 MR. BLAKE: If I may be heard on the
15 request for the continuance?

16 THE HEARING OFFICER: Well, I'm actually
17 going to relate to that right now.

18 MR. BLAKE: Okay.

19 THE HEARING OFFICER: So having heard the
20 witness testimonies I was provided today, the exhibits
21 that were presented, this hearing will now be adjourned
22 at 1:58. I will take all the materials under advisement
23 and report out at some point in time to the Board of
24 Selectmen and, after doing so, will be reporting out to

1 counsel for both parties.

2 I want to thank everybody for their time
3 and participation today. This hearing now stands
4 adjourned.

5 MR. BLAKE: Thank you.

6 MR. TOMLINSON: Thank you, Officers.

7 (Whereupon the hearing was adjourned at
8 1:58 p.m.)

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C E R T I F I C A T E

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss.

I, Janet L. Wynne, CSR No. 131793, Registered Professional Reporter, a Notary Public in and for the Commonwealth of Massachusetts, do hereby certify that the foregoing transcript, pages 6 through 180, is a complete and accurate transcript of my stenographic notes.

I further certify that I am not related to any of the parties to this action by blood or marriage and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 1st day of November, 2021.

/s/ Janet L. Wynne

Janet L. Wynne, Notary Public
My Commission Expires:
February 15, 2024

EXHIBITS

**HARWICH BOARD OF SELECTMEN
NOTICE OF SHOW CAUSE HEARING**

**ALLEGED VIOLATIONS OF CONDITIONS OF LIQUOR LICENSE
SEPTEMBER 10, 2021**

The Town Administrator, acting as the Hearing Officer for the Board of Selectmen, will hold a Show Cause Hearing on Friday, September 10, 2021 at 1:00 P.M., for the purpose of consideration of alleged liquor license violations by Port Restaurant and Bar, Inc., located at 541 Route 28 in Harwich Port. The Hearing Officer will consider possible penalties including modifications, suspension, revocation or cancellation of said license. All members of the public having an interest in the topic are cordially invited to attend. The Hearing will be held in the Griffin Room at Harwich Town Hall located at 732 Main Street, Harwich.

Joseph F. Powers
Town Administrator

Cape Cod Times
August 18, 2021

B

**HARWICH BOARD OF SELECTMEN
NOTICE OF SHOW CAUSE HEARING**

**ALLEGED VIOLATIONS OF CONDITIONS OF LIQUOR LICENSE
OCTOBER 20, 2021**

The Town Administrator, acting as the Hearing Officer for the Board of Selectmen, will hold a Show Cause Hearing on Wednesday, October 20, 2021 at 10:00 A.M., for the purpose of consideration of alleged liquor license violations by Port Restaurant and Bar, Inc., located at 541 Route 28 in Harwich Port. The Hearing Officer will consider possible penalties including modifications, suspension, revocation or cancellation of said license. All members of the public having an interest in the topic are cordially invited to attend. The Hearing will be held in the Griffin Room at Harwich Town Hall located at 732 Main Street, Harwich.

Joseph F. Powers
Town Administrator

Cape Cod Times
September 27, 2021

C

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss.

SUPERIOR COURT
CIVIL ACTION
No. 2172CV00349

EMBER PIZZA, INC. and another¹

vs.

TOWN OF HARWICH and others²

DECISION AND ORDER ON MOTION FOR PRELIMINARY INJUNCTION

Plaintiff, The Port Restaurant and Bar, Inc. (Port), requests a preliminary injunction 1) quashing any “show cause” hearing scheduled with respect to the Port, and all such future hearings; and 2) restraining the Town Board of Selectmen (BOS) from delegating to the Town Administrator the BOS’s investigation of an incident involving the Port. The Port points to 1) claimed bias and conflict of interest on the part of the BOS and the Town Administrator; and 2) contends that the Town Charter and G.L. c. 138 preclude the BOS from delegating to the Town Administrator show cause hearings investigating claimed alcohol violations.

After hearing, upon review of the parties’ submissions, including the Port’s voluminous motion and attachments and its reply brief and 9 page, single spaced affidavit of the Port’s President, the court finds:

The Court (Suffolk County, where the Port filed its third action against the Town, and from which this matter was transferred to this Court) (Mulligan, J.) previously found, upon substantially similar allegations, that money damages would adequately compensate for any harm that the Port might suffer before final judgment and that the Port did not allege non-

¹ The Port Restaurant and Bar, Inc.

² Members of the Board of Selectmen and nominal defendant ABCC

monetary damage. This court does not find that the Port's amended complaint alleges anything different so as to warrant a different result.

Even if it did, the Port has not shown a likelihood of success on its claims that 1) the BOS and Town Administrator's claimed bias and conflict of interest precludes them from acting on matters involving the Port; or 2) that the Town Charter and G.L. c. 138 preclude the BOS from delegating to the Town Administrator show cause hearings investigating claimed alcohol violations.

ORDER

For the foregoing reasons, it is hereby **ORDERED** that the Port's request for a preliminary injunction is denied.

October 15, 2021



Mark C. Gildea
Justice of the Superior Court

OFFICE OF THE TOWN ADMINISTRATOR

Phone (508) 430-7513

Fax (508) 432-5039

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

732 MAIN STREET, HARWICH, MA 02645



August 11, 2020

VIA CERTIFIED MAIL AND EMAIL

Justin Brackett, Manager
Port Restaurant and Bar, Inc.
541 Route 28
Harwich Port, MA 02646

Re: Notice of Liquor License Disciplinary Hearing
Port Restaurant and Bar, Inc.

Dear Mr. Brackett:

On Friday, September 10, 2021, at 1:00 pm, acting on behalf of the Harwich Board of Selectmen as local licensing authority, I will conduct a Show Cause Hearing, in accordance with Massachusetts General Laws, Chapter 138, Sections 23 and 64, to determine whether you have violated the terms of the Alcoholic Beverages License for Port Restaurant and Bar, Inc. The Hearing will be held in the Griffin Room at Harwich Town Hall located at 732 Main Street, Harwich.

The specific charges are as follows: Violation of 204 CMR 2.05 (2): Permitting a disorder, disturbance or illegality to take place on the licensed premises. The Town reserves the right to consider and/or levy additional charges that may arise during the hearing process.

The facts underlying these allegations arise from an incident occurring on or about July 3, 2021, as described in detail in the Harwich Police Incident Report attached hereto. Also, attached are the Town of Harwich Liquor License regulations.

You are invited to participate in the hearing and be represented by counsel at your own expense if you wish. At that time you may produce any documentation and/or witnesses which show that you did not commit the violations described herein. Please provide copies of any documents and a list of participants to Danielle Delaney at ddelaney@town.harwich.ma.us by the close of business on September 3, 2021.

The allegations, if proven, may result in a recommendation to the Board of Selectmen for disciplinary action, including warning, suspension, revocation or modification of the above-referenced license.

Very truly yours,

Joseph F. Powers
Town Administrator

CC: Board of Selectmen
Licensing File
Certified mail #7002 2030 0004 0933 4333

3

OFFICE OF THE TOWN ADMINISTRATOR

Phone (508) 430-7513
Fax (508) 432-5039



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

732 MAIN STREET, HARWICH, MA 02645

September 8, 2021

VIA CERTIFIED MAIL AND EMAIL

Justin Brackett, Manager of Record
Port Restaurant and Bar, Inc.
541 Route 28
Harwich Port, MA 02646

Re: Notice of Disciplinary Hearing – Continuation
Port Restaurant and Bar, Inc.

Dear Mr. Brackett:

Please be advised that due to a scheduling conflict, the disciplinary hearing scheduled for September 10, 2021 at 1:00 P.M. will not be going forward. The hearing is to be rescheduled for October 20, 2021 at 10:00 A.M. The Hearing Officer will open the disciplinary hearing on September 10, 2021 at 1:00 P.M. for the sole purpose of continuing the hearing on the record to October 20, 2021 at 10:00 A.M. You are welcome to attend the continuation hearing, but your presence is not needed and there will be no testimony taken or any evidence presented by either you or the Town.

Sincerely,

Joseph F. Powers
Town Administrator

CC: Board of Selectmen
Licensing File
Certified mail #7002 2030 0004 0933 4364

F

OFFICE OF THE TOWN ADMINISTRATOR

Phone (508) 430-7513

Fax (508) 432-5039



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

732 MAIN STREET, HARWICH, MA 02645

September 14, 2021

VIA CERTIFIED MAIL AND EMAIL

Justin Brackett, Manager
Port Restaurant and Bar, Inc.
541 Route 28
Harwich Port, MA 02646

Re: Notice of Liquor License Disciplinary Hearing
Port Restaurant and Bar, Inc.

Dear Mr. Brackett:

On Wednesday, October 20, 2021, at 10:00 a.m., acting on behalf of the Harwich Board of Selectmen as local licensing authority, I will conduct a Show Cause Hearing, in accordance with Massachusetts General Laws, Chapter 138, Sections 23 and 64, to determine whether you have violated the terms of the Alcoholic Beverages License for Port Restaurant and Bar, Inc. The Hearing will be held in the Griffin Room at Harwich Town Hall located at 732 Main Street, Harwich.

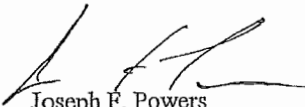
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The facts underlying these allegations arise from an incident occurring on or about August 19, 2021, as described in detail in the Harwich Police Incident Report attached hereto. Also, attached are the Town of Harwich Liquor License regulations.

You are invited to participate in the hearing and be represented by counsel at your own expense if you wish. At that time you may produce any documentation and/or witnesses which show that you did not commit the violations described herein. Please provide copies of any documents and a list of participants to Danielle Delaney at ddelaney@town.harwich.ma.us by the close of business on October 13, 2021.

The allegations, if proven, may result in a recommendation to the Board of Selectmen for disciplinary action, including warning, suspension, revocation or modification of the above-referenced license.

Very truly yours,


Joseph F. Powers
Town Administrator

CC: Board of Selectmen
Licensing File
Certified mail #7002 2030 0004 0933 4395

9

No.: 00074-RS-0506

LICENSE
ALCOHOLIC BEVERAGES
THE LICENSING BOARD, TOWN OF HARWICH, MASSACHUSETTS
HEREBY GRANTS A
SEASONAL COMMON VICTUALER
License to Expose, Keep for Sales, and to Sell
All Kinds of Alcoholic Beverages

To Be Drunk On The Premises

To: Port Restaurant and Bar

Date: 05/05/2021

License Duration Type: Seasonal All Alcohol

Manager: Justin Brackett

License Conditions (description of premise)

541 Route 28, Harwich

First floor, exterior deck and exterior seating along Route 28. Three entrances/exits, one along Route 28, one off kitchen adjacent to parking and one to exterior deck. Exterior licensed premise to include one bar (Nauti Bar) with a deck and front patio. No alcohol to go beyond the decking. Capacity: 84

On the following described premises:

This license is granted and accepted upon the express condition that the licensee shall in all respects, conform to all the provisions of the Liquor Control Act, Chapter 138 of the General Laws, as amended, and any rules or regulations made expires **January 15, 2022**, unless earlier suspended, cancelled or revoked.

IN TESTIMONY WHEREOF, the undersigned have thereunto affixed their official signatures.

The Hours during which Alcoholic Beverages may be sold are From:

8:00AM – 1:00AM WEEKDAYS
10:00AM – 1:00AM SUNDAYS & HOLIDAYS

LICENSE
granted by:

_____ *J. Ballapent* _____
 _____ *[Signature]* _____
 _____ *[Signature]* _____

This License Shall be Displayed on the Premises in a conspicuous position where it can be easily read

LICENSING AUTHORITIES

#

NUMBER
19-09S

THE COMMONWEALTH OF MASSACHUSETTS
TOWN OF HARWICH

FEE
\$75.00

**LICENSE FOR INNOLDERS, COMMON VICTUALLERS
AND OTHER KEEPERS OF RESTAURANTS AND OTHER ESTABLISHMENTS**

In accordance with the provisions of Chapter 140 of the General laws as amended by Chapter 299 of the Acts of 1926, and amendments thereto, LICENSE is hereby granted to:

The Port Restaurant

to conduct the amusements as herein described in connection with his regular business of innholder, common victualler, or owner, manager or controller of a café, restaurant or other eating or drinking establishment, on the premises owned by Same

of Harwich located at 541 Route 28, Harwich Port

Description of Premises: Same

Description of amusements to be conducted: Recorded or live music with amplification inside only.

Unamplified, acoustic music only or ambient music with amplification outside.

To be conducted on week days between the hours of: Monday to Saturdays

6:00 PM – 10:00 PM Outside & 10:00 AM – 12:00 AM Inside

This LICENSE is granted as subject to the provisions of the General Laws, chapter one hundred and forty, sections twenty-two to thirty-two inclusive, and of chapter two hundred and seventy-two, sections twenty-five to twenty-seven inclusive, and amendments thereto, and shall not be valid for a location other than as herein described.

Date: 05.13.2021

License granted by:

L. Ballantine
[Signature]
[Signature]

EXPIRES DECEMBER 31, 2021

THIS LICENSE MUST BE POSTED IN A CONSPICUOUS PLACE

Inside Entertainment - Noise from entertainment may not create a nuisance or be heard outside the boundaries of the premises.

Outside Entertainment – Noise from entertainment must be at reasonable sound levels which are not plainly audible at a distance of 150 feet from boundary line or source of sound amplification system whichever is further.

Suggested Minimum Regulations which will be required by the Licensing Authorities before approval of Licenses issued in accordance with the provisions of Chapter 299, Acts of 1926 and amendments thereto.

1. This license is granted and approved subject to compliance with the laws of this Commonwealth relative to the exposing, sale and keeping of liquor or other intoxicating beverages and with compliance with the following conditions: —
2. The premises shall be open at all times to inspection by any police officer or constable of the town, or by any State Police Officer.
3. No person or persons under the influence of intoxicating liquor or other intoxicating beverage, or having the appearance thereof, shall be granted admittance to or be permitted to remain in or upon any of the premises described in this license.
4. No dialogue, gesture, song, language or conversation of any description which is directly or indirectly obscene, lascivious or suggestive, shall be permitted to be used by any person or persons while in or upon the premises.
5. Muscle or suggestive dancing or any description or form is prohibited.
6. Gaming of any description, games at which a prize is offered, any game where money is exposed as a prize or inducement, wheels of change and jingle boards are prohibited.
7. Private dining rooms, booths or enclosures for the accommodation of less than four persons shall not be permitted and not less than four persons shall be allowed or permitted to occupy any such room or enclosure.
8. Rooms used for dining rooms and for dancing shall be so lighted as to render it possible to distinguish any person by every other person therein at all times.
9. The license will be suspended for non-compliance with any of the laws of this Commonwealth relating to this particular establishment, and may, after a hearing, be revoked.
10. Non-compliance with the provisions of any of the above regulations will be sufficient cause for suspension, and after hearing the license may be revoked.

By authority of and in compliance with the provisions of Chapter 299, Acts of 1926, and amendments thereto, the above minimum rules and regulations are hereby prescribed and approved.

Board of Selectmen

I

THE COMMONWEALTH OF MASSACHUSETTS
TOWN OF HARWICH



State Fee: \$ 50/\$100
Municipal Fee: \$ 85/\$175

LICENSE

For
PUBLIC ENTERTAINMENT ON SUNDAY

The Name of the Establishment is The Port Restaurant and Bar in or on the property at No. _____
541 Route 28, Harwich Port MA 02646 (address)

The Licensee or Authorized representative, Justin Brackett in

accordance with chapter 136 of the General Laws, as amended, hereby request a license for the following program or entertainment:

DATE	TIME	Proposed dancing or game, sport, fair, exposition, play, entertainment or public diversion
Sundays	10AM-12AM	Inside – Recorded or live music with amplification
Sundays	6PM-10PM	Outside – Unamplified live acoustic music or ambient music with amplification

Hon. J. Ballantyne Mayor/ Chairman of Board of Selectman, Harwich (City or Town)

Fees per occurrence (Individual Sunday(s)): Regular Hours (Sunday 1:00pm – Midnight): \$2.00 Special Hours (Sunday 12:00 am- Midnight): \$5.00. Annual Fee (For Operating on every Sunday in calendar year): Regular Hours (Sunday 1:00pm – Midnight): \$50.00 Special Hours (Sunday 12:00 am- Midnight): \$100.00

This license is granted and accepted, and the entertainment approved, upon the understanding that such entertainment that the licensee shall comply with the laws of the Commonwealth applicable to licensed entertainments, and also to the following terms and conditions: The licensee shall at all times allow any person designated in writing by the Mayor, Board of Selectmen, or Commissioner of Public Safety, to enter and inspect his place of amusement and view the exhibitions and performances therein; shall permit regular police officers, detailed by the Commissioner of Public Safety or Chief of the local Police Department to enter and be about this place of amusement during performances therein; may employ to preserve order in his place of amusement only regular or special police officers designated therefore by the Chief of Police, and shall pay to said Chief of Police for the services of the regular police officers such amount as shall be fixed by him; shall permit at all times to enter and be about his place of amusement such members of the Fire Department as shall be detailed by the Chief of the Fire Department to guard against fire; shall keep in good condition, go as to be easily accessible, such standpipes, hose, axes, chemical extinguishers and other apparatus as the fire department may require; shall allow such members of the fire department in case of any fire in such place, to exercise exclusive control and direction of his employees and of the means and apparatus provided for extinguishing fire therein; shall permit no obstruction of any nature in any aisle, passageway or stairway of the licensed premises, nor allow any person therein to remain in any aisle passageway or stairway during an entertainment; and shall conform to any

other rules and regulations at any time made by the Mayor or Board of Selectmen. This license shall be kept on the premise where the entertainment is to be held, and shall be surrendered to any regular police officer or authorized representative of the Department of Public Safety. This license is issued under the provisions of Chapter 136 of the General Laws, as amended, and is subject to revocation at any time by the Mayor, Board of Selectmen, or Commissioner of Public Safety.

Do not write in this box

This application and program must be signed by the licensee or authorized representative of entertainment to be held. No Change to be made in the program without permission of the authorities granting and approving the license

THIS LICENSE MUST BE POSTED IN A CONSPICUOUS PLACE ON THE PREMISES

OFFICE OF THE SELECTMEN

PHONE (508) 430-7513
FAX (508) 432-5039

732 MAIN STREET, HARWICH, MA 02645



September 27, 2005.

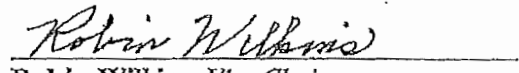
Mr. Justin Brackett, Manager
The Port Restaurant
541 Route 28
Harwich Port, MA 02646

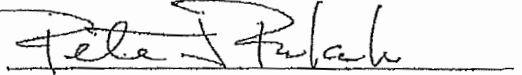
Dear Mr. Brackett:

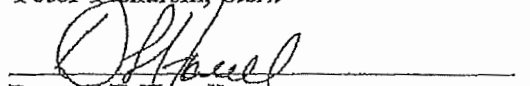
This letter is to confirm that the Board of Selectmen found no cause to take any further action on the request to consider noise complaints at The Port Restaurant. The determination was made at a Public Hearing held at a regular Board of Selectmen's meeting on September 26, 2005.

Sincerely,


Ed McManus, *Chairman*


Robin Wilkins, *Vice Chairman*


Peter Piekarski, *Clerk*


Donald F. Howell

Board of Selectmen
Town of Harwich, MA

J-2

OFFICE OF THE SELECTMEN

PHONE (508) 430-7513
FAX (508) 432-5039

732 MAIN STREET, HARWICH, MA 02645



November 7, 2017

Mr. Justin R. Brackett
Port Restaurant & Bar

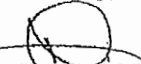
Dear Mr. Brackett:

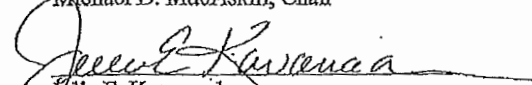
At a meeting of the Harwich Board of Selectmen held on Monday, November 6, 2017, the Board voted to issue you the following notice of warning regarding incidents at your establishment:


It is hereby stipulated that the Port Restaurant & Bar did violate the terms of its licenses by exceeding noise limitations on three occasions – August 31, 2017, September 2, 2017 and September 3, 2017. As a result of these violations, the Licensee is hereby issued a written warning that the Board will not permit such misconduct with respect to the management of the licensed premises. The Board expects that in the future you will exercise sufficiently close supervision so that you will comply with the terms of your licenses and the statutes, bylaws and regulations applicable to the licensed business. Please be advised that any further violations may result in penalties, up to and including revocation of your entertainment and/or alcoholic beverages license. Please be further advised that, while the Board supports the use of its progressive discipline guidelines as set forth in Section 1.17 of its Regulations, the Board reserves the right to use its discretion in determining whether the facts surrounding a violation warrant a penalty which is more lenient or severe than suggested by the guidelines.

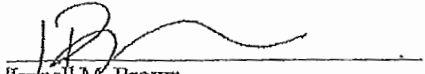
The Board has the highest expectation that in the future you will comply with the conditions of your licenses.

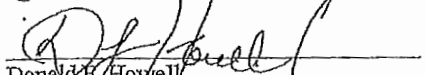
Sincerely,


Michael D. MacAskill, Chair

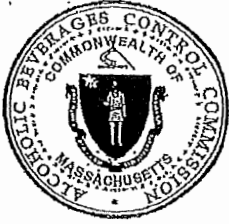

Julie E. Kavanagh


Larry G. Ballantine


Jarnell M. Brown


Donald F. Howell

cc: Chief D. Guillemette, Harwich Police Department
Mr. Gregg Corbo, K-PLaw
Mr. Raymond Tomlinson



Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
239 Causeway Street
Boston, Massachusetts 02114
Tel. (617) 727-3040
Fax: (617) 727-1510

Jean M. Lorizio, Esq.
Chairman



DECISION

PORT RESTAURANT & BAR INC.
541 ROUTE 28
HARWICH, MA 02646
LICENSE#: 0506-00074
VIOLATION DATE: 8/17/2018
HEARD: 12/4/2018

Port Restaurant & Bar Inc. (the "Licensee" or "Super Liquors") holds an alcohol license issued pursuant to M.G.L. c. 138, § 12. The Alcoholic Beverages Control Commission (the "Commission" or "ABCC") held a hearing on Tuesday, December 4, 2018, regarding an alleged violation of 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: M.G.L. c. 138, § 34C – Possession of an alcoholic beverage to a person under twenty-one years of age (3 counts). Prior to the commencement of the hearing, the Licensee stipulated to the facts alleged in Investigator Temple's Report.

The following documents are in evidence:

- 1. Investigator Temple's Investigative Report; and
- 2. Licensee Stipulation of Facts.

There is one (1) audio recording of this hearing.

The Commission took Administrative Notice of the Licensee's record.

FINDINGS OF FACT

- 1. On Friday, August 17, 2018, Investigators Binienda, Velez, and Temple ("Investigators") conducted an investigation of the business operation of Port Restaurant & Bar Inc. to determine the manner in which its business was being conducted.
- 2. At approximately 11:20 p.m., Investigators entered the licensed premises and observed four youthful appearing females, located in the back-patio area of the licensed premises, in possession of alcoholic beverages. Investigators identified themselves and asked to see proof of legal age.
- 3. Underage #1, actual date of birth 11/04/1997 (age 20), was in possession of a cranberry vodka. She presented to Investigators a fraudulent New York license although she stated that she was not asked for identification when she entered the premises.

4. Underage #2, actual date of birth 8/26/1999 (age 18), was in possession of a Cape Cod beer. She presented to Investigators a fraudulent Rhode Island driver's license.
5. Underage #3, actual date of birth 9/27/1999 (age 18), was in possession of a cranberry vodka drink. She stated that she was not asked for identification when she entered the premises. She presented to Investigators a fraudulent identification.
6. Underage #4, actual date of birth 12/02/1998 (age 19), was in possession of a cranberry vodka drink. She presented to Investigators a fraudulent Massachusetts driver's license. Investigators determined that the Licensee reasonably relied on this identification; therefore, they did not charge the Licensee with committing a violation for this additional minor in possession of an alcoholic beverage.
7. Investigators spoke to the manager, Jake Domos, and identified the underage individuals to him.
8. Investigators informed Domos of the violations and that a report would be filed with the Chief Investigator for further action.
9. The Licensee has been in business for 14 years with no previous violation.

CONCLUSION

Based on the evidence, the Commission finds the Licensee violated 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: M.G.L. c. 138, § 34C – Possession of an alcoholic beverage to a person under twenty-one years of age (3 counts). Therefore, the Commission suspends the license for a period of six (6) days which will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorzio, Chairman

Jean M. Lorzio

Elizabeth A. Lashway, Commissioner

Elizabeth A. Lashway

Kathleen McNally, Commissioner

Kathleen McNally

Dated: December 6, 2018

You have the right to appeal this decision to the Superior Courts under the provisions of Chapter 30A of the Massachusetts General Laws within thirty (30) days of receipt of this decision.

This document is important and should be translated immediately.
Este documento es importante y debe ser traducido inmediatamente.
Este documento é importante e deve ser traduzido imediatamente.
Ce document est important et devrait être traduit immédiatement.
Questo documento è importante e dovrebbe essere tradotto immediatamente.
Το έγγραφο αυτό είναι σημαντικό και θα πρέπει να μεταφραστεί άμεσα.
这份文件是重要的，应立即进行翻译。

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Christopher Temple, Investigator
Jamie Binienda, Investigator
Matthew P. Kelley, Esq. via facsimile 508-430-8662
Administration, File

5-4

OFFICE OF THE TOWN ADMINISTRATOR

Phone (508) 430-7513

Fax (508) 432-5039

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

732 MAIN STREET, HARWICH, MA 02645



May 20, 2021

Justin Brackett
Port Restaurant and Bar, Inc.
541 Route 28
Harwich, MA 02646

COPY ATTEST:
Anita M. Durette
TOWN CLERK OF
HARWICH, MASS.

Re: Decision and Order on the May 22, July 16 and 17, 2020 violations of the Liquor License for Port Restaurant and Bar, Inc.

Dear Mr. Brackett:

As you are aware, the Town of Harwich Town Administrator, acting under the authority of the Harwich Board of Selectmen held hearings regarding liquor license violations observed by ABCC investigators at your Port Restaurant and Bar, Inc. establishment. Specifically, there were three (3) violations of 204 CMR 2.05(2), permitting a disorder, disturbance or illegality to take place on the licensed premises, to wit: violations of the Governor's COVID-19 orders and guidance on May 22, May 24, and July 17, 2020. Upon the recommendation of the Town Administrator, the LLA, the Harwich Board of Selectmen duly noticed a disciplinary hearing on March 23, 2021 and after two nights of hearings (May 4th and 12th) the matter was ultimately concluded on May 12, 2021. As result of the May 12, 2021 hearing, the LLA makes the following Findings and Order.

Hearing summary:

The hearing before the Harwich Town Administrator was originally commenced on August 12, 2020, with all participants joining the hearing via the Go to Meeting remote video platform. Participating in the hearing were four members of the Harwich Police Department: Chief Guillemette, Deputy Chief Considine, Officer Nolan and Officer Dutra; the General Counsel of the Alcoholic Beverages Control Commission, Kyle Gill, Alcoholic Beverages Control Commission Investigator Binienda, the licensee and his attorney, Raymond Tomlinson, Jr.

At various times during the original hearing, it became apparent that Attorney Tomlinson's connection to the Go to Meeting platform was not working. He repeatedly claimed that he was unable to hearing witnesses, Town Counsel and the Hearing Officer. No other participants appeared to have the same level of difficulty. However, as a result of Attorney Tomlinson's alleged inability to effectively participate in the hearing, the Hearing Officer decided to suspend the hearing.

The hearing was reconvened on January 12, 2021. To alleviate the difficulties experienced by Attorney Tomlinson, the Hearing Officer made arrangements to have him and his client participate from a separate location within Town Hall, connected to the other participants by a closed-circuit video feed.

The arrangement was reviewed and approved by the Town's Health Director. Attorney Tomlinson, however, refused to participate in the hearing, claiming that he would be unavailable until March, 2021 due to a medical condition. Based on the numerous delays already experienced, the Hearing Officer chose not to reschedule the hearing and informed Attorney Tomlinson of his decision in writing.

Neither Attorney Tomlinson nor his client appeared for the hearing on January 12, 2021. The Hearing Officer commenced the hearing from the beginning (without reference to anything that occurred during the original hearing), and heard oral testimony from ABCC Investigator Binienda, Officer Nolan and Officer Dutra. In addition to the above described testimony, there were numerous documents provided regarding the violations.

As a result of the above described hearing, on March 23, 2021, the Local Licensing Authority, the Harwich Board of Selectmen noticed a hearing to make a determination on the violations outlined above. Due to actions not within the LLA's control, that March 23, 2021 hearing was continued and ultimately, on May 4 and May 12, 2021, a duly notice hearing was conducted, at which the applicant was represented and provided an opportunity to be heard.

Findings:

As a result of the above described May 4 and May 12, 2021 hearings and all evidence provided at said hearing, the LLA finds as follows:

- 204 CMR 2.05(2), prohibits license holders from permitting any disorder, disturbance or illegality to take place on the licensed premises.
- On March 10, 2020, Governor Baker declared a State of Emergency in the Commonwealth due to the COVID-19 pandemic, and he issued numerous executive orders designed to prevent the spread of the virus.
- The Governor's orders have the force of law.
- On March 23, 2020, the Governor issued COVID-19 Emergency Order No. 13, in which he allowed restaurants to be open to the public for take-out and delivery only, but prohibiting the on-premises consumption of food and beverages.
- On April 3, 2020, the ABCC issued an advisory informing all license holders that all alcohol sales must be part of a take-out order.
- On May 18, 2020, the ABCC issued an advisory reminding all license holders that all on-premises consumption was prohibited until June 8, 2020 at the earliest.
- On June 1 and June 6, 2020, the Governor issued orders allowing restaurants to open for outdoor table service on June 8, 2020, and on June 19, 2020, the Governor issued COVID-19 Emergency Order No. 40 in which he allowed restaurants to be open for indoor dining on June 22, 2020, subject to guidance and standards issued by the Department of Public Health.
- On June 22, 2020, the Department of Public Health issued guidance for indoor table service, which included requirements that tables be spread at least six feet apart, that table sizes be limited to six guests, that customers may not be seated at bars or served while standing, that gaming areas remain closed and that all customers and employees be wearing masks when not seated at tables.
- On July 6, 2020, the Department of Public Health issued updated safety standards for restaurants which clarified that establishments must provide seated service of food that is prepared on site if they wished to open for indoor table service.
- On August 10, 2020, the ABCC issued an advisory reminding all licensees that they were required to provide seated food service along with the sale of alcohol.

The licensed establishment (Port Restaurant) permitted a disorder, disturbance or illegality to take place on the licensed premises by violating the Governor's orders and guidance relative to the operation of restaurants during the COVID-19 State of Emergency on three of the four dates in question, May 22, July 16 and 17, 2020, as follows:

- On May 22, 2020, Harwich Police Officer Nolan observed numerous individuals congregating on the outdoor patio area of the establishment, drinking from open containers, as well as the operation of what appeared to be a full service bar in violation of the Governor's orders prohibiting on-premises consumption.
- On May 24, 2020, Harwich Police Officer Dutra observed an individual on the outdoor patio area of the establishment with a container that appeared to contain an alcoholic beverage in violation of the Governor's orders prohibiting on-premises consumption. Although Officer Dutra's initial call log indicated that he observed this individual drinking from the container, during hearing he clarified that he did not observe the container to be open and he did not observe the individual taking a drink. Therefore, no violation for this was found.
- On July 16, 2020, investigators from the ABCC observed numerous violations of DPH guidance for on-premises service, including the consumption of alcohol without food, the service of alcohol without food prepared on site, and individuals standing at outdoor bar areas consuming alcoholic beverages.
- On July 17, 2020, investigators from the ABCC observed numerous violations of DPH guidance for on-premises service, including patrons walking around the establishment without facial coverings, customers playing in gaming areas, more than six people at tables and customers consuming alcoholic beverages without food prepared on site.

These observations are described in greater detail in reports admitted into evidence at the hearing, which reports are consistent with the sworn testimony offered by the witnesses establishing that the licensee permitted disorders, disturbances or illegalities to take place on the licensed premises.

Order

Based on the facts admitted into evidence at the May 4 and May 12, 2021 public hearings, the LLA finds three (3) violations of G.L. c. 138 at the establishment. The licensee has a history of violations found by the ABCC within the last two years.

Specifically, in a decision dated December 6, 2018, the Commission found that "the Licensee violated 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: M.G.L. c. 138, s 34C- Possession of an alcoholic beverage to a person under twenty-one years of age (3 counts). Therefore, the Commission suspends the license for a period of six (6) days which will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur." The conduct that gave rise to the ABCC finding occurred on Friday, August 17, 2018. The conduct that gives rise to the violations found here occurred on May 22, 2020, July 16, 2020 and July 17, 2020, all with a two (2) year period.

As a result of the violations, the LLA voted 4-0 to suspend the Liquor License of the Port Restaurant for three (3) days said suspension to be held in abeyance for sixty (60) days to allow the ABCC to determine if it will enforce its December 6, 2018 six (6) day suspension. In the event that the ABCC does enforce its suspension, the three (3) days ordered by the LLA will run concurrent with that suspension. In the event that the ABCC fails to enforce the December 6, 2018 six (6) day suspension, the LLA orders that the Port Restaurant shall surrender its Liquor License for three (3) days, August 5, 6 and 13, 2021.

Pursuant to Massachusetts General Laws Chapter 138, §67, you may appeal this decision to the Alcoholic Beverages Control Commission within five (5) days of your receipt of the decision.

Sincerely,



Joseph F. Powers
Town Administrator

K

**HARWICH BOARD OF SELECTMEN
LIQUOR LICENSE REGULATIONS
Adopted at a Public Hearing on June 13, 2011
Amended at a Public Hearing on January 9, 2017
Amended at a Public Meeting on August 23, 2021
Effective July 1, 2011**

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**HARWICH BOARD OF SELECTMEN
LIQUOR LICENSE REGULATIONS
Adopted at a Public Hearing on June 13, 2011
Amended at a Public Hearing on January 9, 2017
Amended at a Public Meeting on August 23, 2021
Effective July 1, 2011**

INTRODUCTION

In issuing regulations, the Board of Selectmen, as the liquor licensing authority of the Town of Harwich, is setting forth the expectations of the citizens of Harwich as to the conduct of the Town's liquor license holders. A significant objective of the regulations is the prevention of violations. In familiarizing themselves with these regulations, license holders will realize that much is expected of them. The Board of Selectmen believes that violations will be prevented because these regulations will require liquor license holders to operate in accordance with a clearly defined, higher standard.

1. Identification of the Town of Harwich Licensing Authority

1. The Licensing Authority for the Town of Harwich shall consist of the Board of Selectmen. This authority is granted to the Board of Selectmen pursuant to G.L. c.138.

2. Scope of and Statutory Basis for Promulgation of Rules

1. The statutory basis for the promulgation of these rules is set forth within the applicable sections of G.L. c.138. Each reference to a statute shall include any amendment thereto.
2. These rules are supplementary to any statutory requirements and to the rules of the Alcoholic Beverages Control Commission.

3. Definitions

1. Whenever the word "**Applicant**" is used herein it shall mean an individual applicant; each member of a partnership applicant; each officer, director, manager, and stockholder of a corporate applicant; and any agent of an applicant.
2. Whenever the word "**Licensee**" is used herein it shall mean an individual licensee and each member of a partnership licensee and each officer, director, manager, and stockholder of a corporate licensee and any agent of a licensee including those employees who work in the public areas of the premises.
3. Whenever the word "**License**" is used herein it shall mean a revocable privilege granted by a licensing authority.

4. Whenever the words “**Licensing Authority**” or “**Authority**” are used herein it shall mean those groups having legal authority to grant licenses and/or regulate the operation of the licensed premises. The specific licensing authority for the Town of Harwich shall be the Board of Selectmen.
5. Whenever the word “**Patron**” is used herein it shall mean a customer who is legally on the licensed premises.
6. Whenever the word “**Premises**” is used herein it shall mean all land and buildings associated with the operation of the license.
7. Whenever the word “**Rules and Regulations**” is used herein it shall mean a compilation of regulations and laws set up by a licensing authority to regulate the manner in which businesses under its authority shall operate.

SECTION ONE: GENERAL LICENSING RULES FOR LICENSEES

1.00 Applicability of Rules and Regulations

- a. This section shall apply to all Town licensees, unless specifically provided otherwise.

1.01 Availability of Rules and Regulations

- a. All licensees of the Licensing Authority for the Town of Harwich shall ensure that a copy of these Rules and Regulations is kept on the premises at all times and is available for inspection upon request by a member of the public or an agent of the Authority. These Rules and Regulations are to be kept in the office of the Manager or at the main cash register.
- b. The licensee is responsible for ensuring that all employees who work in the public areas of the premises read the Rules and Regulations of the Licensing Authority and comply with all rules and laws.

1.02 Liquor License Filing Procedures and Responsibility of Applicant

- a. New applications and applications for license modifications must be filed in the Town Administrator’s Office in accordance with the Alcoholic Beverages Control Commission’s Matrix for Retail Transactions along with the local filing fee and abutters list fee (when applicable). Applicant is responsible for advertising costs as well as abutter notification and associated mailing costs.
- b. Copies of applications will be submitted to the Chief of Police for appropriate background investigations.

- c. The Town Administrator will require at least 2 business days to review an application to determine whether the filing is complete. Once it is determined that the application is complete as presented, the Town Administrator will place the Advertisement and at the same time distribute copies of the filing to each member of the Authority for review.
- d. The Authority may require additional information from the applicant prior to the public hearing (i.e. lease agreements, financing information, and/or additional background information).
- e. The hearing shall not be held sooner than ten days after advertising.
- f. The Authority may, with the consent of the applicant, continue the hearing to a future date in order to allow the applicant to provide additional information, or the Authority to investigate and consider whether the application is in the best interest of the Town.
- g. The Authority reserves the right to obtain updated information about a renewal applicant/manager/owner at the time of renewal.

1.03 Posting and Signs

- a. Licenses issued by the Authority shall be posted in a conspicuous place easily seen by the public where they can read without difficulty and without the assistance of employees at the premises.
- b. All other licenses, permits, and certificates affecting the licensed premises shall be posted conspicuously; provided, however, that no such document shall be posted in such a way as to cover over any part of the license issued by the Authority.
- c. No dress code or preferred customer program or cover charge or other admissions policy shall be put into effect at the premises except upon proper posting pursuant to Section 1.04 below.
- d. The posting or presentation of any photographs, signs, posters, drawings or other matter that is of an improper or objectionable nature in the public areas of the licensed premises is prohibited. The material presented must be suitable for view by members of the general public in the same manner as if it were located in other public areas such as public ways, public parks, common carrier stations, other government offices, and business offices.

1.04 Admissions to the Premises

- a. No licensee shall permit any rule, policy, or action, express or implied, which makes any distinction, discrimination, or restriction on account of race, color, religious creed, national origin, sex, or ancestry, physical or mental disability, relative to the admission or treatment of persons from the general public or employees at the licensed premises; provided, however, that premises licensed pursuant to G.L. c.138, §12 may make rules regulating the admission of minors to the premises when such rules are not inconsistent with other rules and regulations stated herein; provided further that private club licensees shall not discriminate, as aforesaid, with regard to guests at the licensed premises or with regard to who may be invited to the premises as a guest.
- b. No licensee shall institute dress requirements of any kind except according to the following rules:
 1. A sign shall be posted at the entrance stating dress requirements or dress restrictions with specificity which may also include restrictions as to footwear. (Examples: "Jackets required"; "Ties and jackets required"; "Shirts with collars required, no sneakers").
 2. No signs shall be posted which state, "Proper dress required," or which otherwise announce a dress policy without stating specifically, item by item, what dress is required or what dress is prohibited.
- c. No licensee shall institute privileged entrance requirements of any kind except according to the following rules:
 1. A licensee may issue special passes.
 2. The special passes shall state the calendar year on the face of the pass.
 3. The special pass shall not entitle the passholder to free drinks or to a discount on drinks.
 4. The licensee shall keep a list of the names and addresses of all passholders and must have such list available if requested by the Authority.
 5. The licensee is responsible for ensuring that persons are picked to be passholders on a rational basis and not on any basis that is discriminatory in violation of law or these regulations.
- d. No licensee shall require any person to pay a minimum charge or cover charge unless a sign is conspicuously posted at every entrance to any dining room or rooms where such charge is required, in letters no less than one (1) inch in height, stating that a minimum charge or cover charge shall be charged and also stating the amount of charge; provided, however, that no such licensee shall require a

person under thirteen (13) years of age to pay a minimum charge or cover charge. Such cover charge shall not be collected in advance of gaining entrance to the licensed premises, and can only be charged upon a written or printed receipt, permanently recorded and numbered seriatim, presented to each individual customer or group of customers. Records of such receipts shall be kept by the licensee for a period not less than two (2) years. Cover charge shall mean all admission fees or admission charges. Such charges must also be posted on the outside of the licensed premises. Nothing in this regulation shall be construed to prohibit advance ticket sales.

- e. No minimum charge for the purpose of alcoholic beverages or minimum alcoholic beverage drinking requirement shall be imposed upon any customer of a G.L. c.138, §12 licensee.
- f. A licensee who charges a minimum charge for the purchase of food and/or non-alcoholic beverages shall include a specific statement in a posting stating that there is no minimum charge for alcoholic beverages. Such minimum charge for food and/or non-alcoholic beverages shall not be collected in advance of gaining entrance to the premises. No licensee shall impose a minimum charge for food and/or non-alcoholic beverages upon any customer who incurs charges for alcoholic beverages equal to or greater than the posted minimum charge for food and/or non-alcoholic beverages.
- g. Licensees shall refuse entrance to the premises to a person who appears to be intoxicated or unruly; and shall evict such a patron, except that in such a case the licensee should call the police and should offer assistance to an intoxicated person when possible.
- h. Licensees shall not permit entrance to the premises by more persons than the maximum occupancy limit established by the Building Department.
- i. Licensees who permit persons to wait in line for a table or a seat or for entrance to the premises shall obey the following rules:
 - 1. Persons who wait inside the premises shall be kept in an orderly line and must not be permitted to block fire aisles or exits. The number of such persons waiting inside the premises shall not exceed the number of persons allowed as standees.
 - 2. Persons who are permitted to wait in line outside the premises shall be supervised by an employee of the licensed premises. Such employee shall stand outside with the line during all times when the line exceeds ten (10) persons and shall announce no further admissions to the premises if persons in the line are being loud or disorderly or if the line is blocking the sidewalk or is of a size that could reasonably be expected to cause noise or

other problems for residents of the area or for passersby. To the extent that lines in front of a licensed premises become the subject of public complaints the licensee shall have been deemed to be inviting a public nuisance and shall be subject to disciplinary proceedings for same. It is recommended that licensees in residential areas discourage lines of more than ten persons.

- j. Licensees shall not lock the front door of the premises until the last patron has exited from the premises.
- k. Licensees shall not allow any patron or any guest or any employee who is not working that shift to enter the premises after the closing hour posted on the license or prior to the opening hour posted on the license.

1.05 Hours of Operation

- a. The hours of operation shall be restricted to those set by the Licensing Authority and stated on the face of the license. No patrons shall be on the premises before the official opening hours nor fifteen (15) minutes after the official closing hours. Customers must be up and on the way out once the closing hour of the licensed premises has been reached. No drink consumption time.
- b. The rules for employees on premises after closing hours are as follows: employees must be off the premises no later than sixty (60) minutes after the "Official Closing Hour," provided however, that such employees or other hired personnel may be on the premises at any time for the purpose of cleaning, making emergency repairs, providing security for the premises, or preparing food for the next day's business or opening or closing the business on an orderly manner. No other persons, friends or relatives may be on the premises with the owners, managers or employees of the licensed premises during the hours when the public is excluded from the premises.
- c. Licensees shall ensure that their patrons leave the premises in an orderly manner. Licensees who have a clientele that regularly fails to leave the area in a quiet and orderly manner should hire security personnel to police the leave-taking of the patrons at closing time.

1.06 Physical Premises

- a. No license shall be issued or shall be considered in good standing unless the licensed premises comply with all statutory requirements, including all applicable building codes and fire, health, safety, trash and other government regulations and laws.

- b. The licensed premises shall conform to the floor plan approved by the Authority with regard to the structures and the walls at the premises, as well as with regard to all tables, chairs, booths, bars, counters, bar stools, dance floors or areas, railing partitions, and other barriers at the premises. Any changes in the floor plan or any renovations of any kind shall not be made without notification to the Authority and the approval of the Authority. This includes substantial changes in the arrangement of moveable furniture.
- c.. All premises covered by the license shall be kept in a clean and sanitary condition, with specific reference to fruit flies contaminating open liquor bottles.
- d. No outside area shall be used as a gathering place for patrons unless approved by the Authority and the Alcoholic Beverages Control Commission if alcohol is consumed.
- e. The premises shall be lighted in all public areas in a manner sufficient for the safety of the patrons and in a manner sufficient for the agents of the Authority to make observations at the premises without the need to identify themselves or the need to seek assistance.
- f. The actual capacity of the licensed premises will be established by the Licensing Authority and shall be the lowest set by septic or building capacity. That capacity shall be stated on the license.
- g. Licensees shall not invite the members of the general public to private areas of the premises which are approved by the Authority for storage or for an office or for a kitchen or for a music or video projection room or for any similar non-public use. Only owners and employees of the licensed premises shall be in these areas.
- h. No advertising matter, screen, curtain or other obstruction, which in the opinion of the Licensing Authority or its Agents, prevents a clear view of the interior of the premises shall be maintained in or on any window or door thereof after the Authority has ordered the removal of such obstruction.
- i. The interior of the premises shall be sufficiently lighted at all times and all exits shall be properly designated by lighted signs, "Exit," as same may be mandated by the Building Inspector of the Town of Harwich or by the Fire Department of the Town of Harwich.

1.07 Business Arrangements of Licensees

- a. No person or entity shall obtain or renew a license unless the applicant for such license or for renewal of such license can demonstrate proof of a legal right to the licensed premises for the term of the license. Such proof shall include ownership papers or a tenancy document or a management contract; provided, however, that

all parties to such ownership or leasehold interest or management contract shall be known to the Authority and the terms of such agreements or contracts shall be made known to the Authority.

- b. No licensee shall hire any employee or contract for goods or services in any name other than that of the licensee, nor shall the licensee pay for any such employment, goods, or services by any means other than its own cash or bank accounts in its own name. Cash transactions shall be recorded in a manner suitable for review by the Authority. Such records shall be kept for a period of three (3) years.
- c. No licensee shall permit any person to have a direct or indirect financial or beneficial interest in the licensed business or to receive any revenue from the business or to manage the premises other than the persons properly approved of by the Authority and the salaried employees of such persons.
- d. No licensee shall permit any person to work at the licensed premises or to hold themselves out as a person in a position of authority at the premises except for those persons who are owners and officers or who are salaried employees for whom payroll records are available. No licensee shall pay an employee any percentage of the profits of the business or pay an employee in any manner other than by salary or hourly rate except upon approval of the Authority.
- e. No licensee shall pay a landlord or creditor of any kind a percentage of the profits of the business except upon complete disclosure to the Authority and the receipt of the Authority's approval.
- f. No licensee shall lease out any part of the premises or any part of the business without the approval of the Authority. No licensee shall lease out the food or beverage service without the approval of the Authority.
- g. No licensee shall enter into an agreement with an independent contractor to provide beverages or food or entertainment or management at the premises without the approval of the Authority.
- h. No licensee shall pledge the stock in the licensed business or the license itself without the approval of the Authority pursuant to G.L. c.138 §15A. No licensee shall pledge a license without obtaining the approval of the Authority pursuant to G.L. c.138, §15A and the Board of Selectmen's Policy on Pledging of Alcoholic Beverages Licenses.
- i. No licensee shall take a loan secured by any equipment at the premises or secured by any direct or indirect interest in the licensed business without the approval of the Authority. This includes kitchen equipment, video or audio equipment, lighting equipment, furniture, or any other type of equipment.

- j. No licensee shall contract bills for its licensed premises under any corporation or trade name other than that under which it is licensed.
- k. Managers in licensed premises shall not be changed until the Authority and the Alcoholic Beverages Control Commission have approved such change.
- l. Any licensee intending to close its place of business shall notify the Authority in writing before such closing and state the reason for such closing.
- m. Assignment of the stock of corporate licensees for purposes of collateralizing loans or notes, etc., gives no right to the assignee to conduct the business of the licensee. Licensees shall immediately notify the Authority when the assignee forecloses under such assignment of stock or when other proceedings are brought which affect the economic and financial rights and abilities of the licensee.
- n. Licensees shall enter into no agreement or understanding which sets a minimum requirement for gross sales of food and beverages at the premises.
- o. Licensees shall not use any trade name, assumed name, or abbreviated name in connection with the licensed business unless the same appears on the license certificate issued by the Authority or unless written permission is first obtained from the Authority. The use of any unauthorized name on the books, records, stationery, or interior or exterior of the licensed premises or for advertising purposes or telephone listing is prohibited unless permission is first obtained from the Authority.
- p. Licensees are responsible for maintaining a legal right to access to and control of the premises which is covered by the license. Failure to have a legal right to the named licensed premises shall result in the revocation or non-renewal of the license.

1.08 Alcoholic Beverages Sales and Laws

- a. No alcoholic beverages shall be sold for less than the actual cost of the beverage to the licensee. An admission charge shall not be credited towards the purchase price of any alcoholic beverage.
- b. All licensees shall maintain a schedule of the prices charged for all drinks to be served and drunk on the licensed premises or in any room or part thereof. Such prices shall be effective for not less than one calendar week.
- c. No licensee or employee or agent or a licensee shall:
 - 1. offer or deliver any free drinks to any person or group of persons;

2. deliver more than two (2) drinks to one person at one time;
 3. sell, offer to sell or deliver to any person or group of persons any drinks at a price less than the price regularly charged for such drinks during the same calendar week, except at private functions not open to the general public;
 4. sell, offer to sell, or deliver to any person an unlimited number of drinks during a set period of time for a fixed price, except at private functions not open to the general public;
 5. sell, offer to sell or deliver drinks to any person or group of persons on any one day at prices less than those charged the general public on that day, except at private functions not open to the public;
 6. sell, offer to sell or deliver malt beverages or mixed drinks by the pitcher except to two (2) or more persons at any one time;
 7. increase the volume of alcoholic beverages contained in a drink without increasing proportionately the price regularly charged for such drink during the same calendar week;
 8. encourage or permit, on the licensed premises, any game or contest which involves drinking or the awarding of drinks as prizes;
 9. advertise or promote in any way, whether within or without the licensed premises, any of the practices prohibited under this section.
- b. Nothing contained in the preceding section shall be construed to prohibit licensees from offering free food at any time; or to prohibit licensees from including a drink as part of a meal package; or to prohibit the sale or delivery of wine by the bottle or carafe when sold with meals or to more than one persons; or to prohibit those licensed under G.L. c.138, §15 from offering free wine tastings; or to prohibit those licensed under G.L. c.138, §12 from offering room services to registered guests.
- c. Licensees shall not permit alcoholic beverages to be brought on the licensed premises by patrons or employees.
- d. Licensees shall be responsible for ensuring that minors are not served alcoholic beverages and are not drinking alcoholic beverages on the licensed premises, whether served to them by an employee or handed to them by another patron. Licensees who do not have the ability to keep track of the drinking activity of minors at the premises shall exclude minors from coming onto the premises in order to meet the burden of ensuring that there is no underage drinking at the

premises. Licensees who choose to permit minors on the premises shall be accountable if minors are found to be drinking alcoholic beverages on the premises, whether or not the Authority's agents are able to prove that the licensee actually served the drink directly to the minor. Sufficient security personnel shall be employed to monitor the premises to ensure that patrons do not pass alcoholic beverages to minors.

- e. Any establishment licensed to sell alcoholic beverages to be drunk on the premises shall post a copy of the penalties for driving under the influence set forth in section G.L. c.90, §24. Establishments licensed to sell alcoholic beverages not to be drunk on the premises shall post a copy of the penalties for operating a motor vehicle while drinking from an open container. Said copies shall be posted conspicuously in said establishments. Said copies are available from the Alcoholic Beverages Control Commission.
- f. Food service shall be available in all areas of the licensed premises where alcoholic beverages are served, this to include dining areas and lounge areas. This does not include any area approved as a waiting area by the Licensing Authority.

1.09 Entertainment at Licensed Premises

- a. No licensee may provide entertainment of any kind unless the licensee holds an entertainment license issued pursuant to G.L. c.140, §183A. Such license must be held in the same name, by the same owners, and with the same manager as the food or beverage license; provided, however, that in cases where entertainment on the premises is to be conducted by a person or entity who is an independent contractor at the premises, the food or beverage licensee may seek the approval of the Licensing Authority for an exemption from this rule based upon a written contract with the independent contractor which gives control of the premises to the food or beverage licensee while allowing the independent contractor to book and/or to produce the entertainment.
- b. The food or beverage licensee shall be responsible for the actions of any independent contractor on the premises providing entertainment in addition to the responsibility held by the independent contractor pursuant to the entertainment license.
- c. The food or beverage licensee shall pay the independent contractor a fee according to the written contract, said fee to be commensurate with the market value of the services, and the independent contractor shall not be given any direct or indirect interest in the licensed premises other than the fee set out in the contract. Said fee shall not be based upon the number of patrons attending an entertainment event.

- d. Any food or beverage licensee who permits entertainment at the licensed premises pursuant to a license held by a person in violation of this rule will be subject to disciplinary action by the Authority.
- e. Inside Entertainment - No entertainment at the licensed premises may be conducted in a manner such that the noise from the entertainment is creating a nuisance and can be heard outside the boundaries of the premises.

Outside Entertainment – Noise from entertainment must be at reasonable sound levels which are not plainly audible at a distance of 150 feet from boundary line or source of sound amplification system whichever is further.
- f. No dancing by patrons is permitted except upon proper licensing pursuant to G.L. c.140, §183A, and confined to a particular dance floor area which has been approved by the Authority and which is not inconsistent with the entertainment license requirements.
- g. Entertainment shall not be conducted on the premises prior to the opening or subsequent to the closing hour set by the Authority for the exercise of the food or beverage license or during any period when the food or beverage license has been suspended.
- h. No licensee may have upon the premises any automatic amusement devices unless such machines have been approved and separately licensed by the Authority pursuant to G.L. c.140, §177A. Types of machines and location of machines upon the premises must be approved. The licensee must make application, not the distributor.
- i. Licensees shall not permit any games to be played at the premises for money, alcoholic beverages, or for any other prize. Games may be played for money at certain fundraising activities which have been approved by the Authority and for which the licensee holds other appropriate licenses.
- j. Licensees who hold licenses under G.L. c.138, §12 to serve alcoholic beverages for on premises consumption may petition the Authority for approval to allow dancing on Sundays between the hours of twelve midnight and one o'clock A.M. or two o'clock A.M. for the same hours for which the licensee is authorized to sell alcoholic beverages. (G.L. c.138, §33).

1.10 Environs of Licensed Premises

- a. It shall be the obligation of licensees to ensure that a high degree of supervision is exercised over the conduct of the licensed establishment at all times. Each licensee shall be accountable for all violations that are related to the licensed

premises to determine whether or not the licensee acted properly in the given circumstances.

- b. Licensees shall act reasonably and diligently to disperse loiterers or patrons who attempt to congregate in front of or at the licensed premises. Failure of the licensee to keep persons from congregating at the licensed premises may lead to disciplinary action against the licensee for allowing a public nuisance. Action to be taken by the licensee shall include: (1) maintaining the front door in a closed position; (2) asking loiterers to disperse; (3) promptly notifying the police if loiterers refuse to disperse; (4) hiring a security guard or stationing a security employee at the front door to disperse loiterers; (5) refusing to allow patrons to walk in and out of the premises at short intervals; (6) maintaining order in lines of patrons waiting outside to get in; (7) announcing that no further patrons will be allowed into the premises if lines become too long or disorderly or loud.
- c. Licensees shall take such steps as are necessary to ensure that patrons or employees do not leave the premises with alcoholic beverages. Such steps shall include having an employee stationed at the door to watch patrons as they leave. When patrons are observed leaving the premises with beer bottles, beer cans, or cups or glasses filled with liquids that smell like alcoholic beverages to the Authority's agents, it shall be presumed that the vessels contain alcoholic beverages.
- d. When any noise, disturbance, misconduct, disorder, act or activity occurs in the licensed premises, or in the area in front of or adjacent to the licensed premises, or in any parking lot provided by the licensee for the use of its patrons, which in the judgment of the Authority adversely affects the protection, health, welfare, safety or repose of the residents of the area in which the licensed premises are located, or results in the licensed premises becoming the focal point for police attention, the licensee shall be held in violation of the license and subject to proceedings for suspension, revocation or modification of the license.

1.11 Inspections and Investigations

- a. The licensed premises shall be subject to inspection by the members of the Licensing Authority and its duly authorized agents. Any hindrance or delay of such inspection caused by an employee of the licensee shall be cause for action against the licensee. It shall be the responsibility of the licensee to ensure that procedures are in place, be it posting a doorman or otherwise, to allow police and authorized agents of the Authority immediate entrance into the premises at any time employees are on the premises. Any delay in providing such access shall be cause for action against the license.
- b. Any person who hinders or delays any authorized investigator of the Alcoholic Beverages Control Commission or any investigator, inspector or any other

authorized agent of the Licensing Authority in the performance of his duties, or who refuses to admit to or locks out any such investigator, inspector or agent from any place which such investigator, inspector or agent is authorized to inspect, or who refuses to give to such investigator, inspector or agent such information as may be required for the proper enforcement of G.L. c.138, shall be punished by penalties as outlined in G.L. c.138.

- c. Licensees shall maintain a current list of all of their employees and shall have it available at all times for inspection upon the request of an authorized agent of the Authority. Licensees who contract with entertainment entities to provide entertainers must maintain a current list of the names of such entertainers and said entertainers shall be held to the same rules as other employees at the premises.
- d. No device or electronic equipment shall be utilized by a licensed premises for the purpose of signaling employees that agents of the Licensing Authority are present.
- e. All complaints and reports shall continue in force until they have been reviewed and disposed of by the Licensing Authority.

1.12 Standards of Conduct on the Premises

- a. It is forbidden to permit any employee or person in or on the licensed premises to promise, offer, suggest, or accept sexual acts or favors in exchange for money or for the purchase of any alcoholic beverages or other commodities.
- b. It is forbidden to encourage or permit any person in or on the licensed premises to touch, caress, or fondle the breasts, buttocks or genitals of any other person.
- c. No alcoholic beverages shall be sold to anyone under twenty-one (21) years of age. No service of alcoholic, wine/malt beverages shall be made to anyone under twenty-one (21) years of age.
- d. No manager or employee shall consume any alcoholic beverages while on the licensed premises while on duty or after the official closing hour.
- e. There shall be no disorder, prostitution, illegal gambling, illegal drug use or sales or possession, or other illegal activity on the licensed premises or any premises connected therewith by an interior communication.
- f. All other acts defined as criminal behavior by the Massachusetts General Laws are also prohibited on the premises.

1.13 Requirement to Monitor and Prevent Illegal Activity on the Licensed Premises

Licensees shall make all reasonable and diligent efforts to ensure that illegal activities do not occur at the licensed premises. Such efforts shall include:

- a. Frequent monitoring of restrooms and other nonpublic areas of the premises for signs of drug activity or other illegalities;
- b. Paying attention to activities on the premises of known drug users or drug dealers or prostitutes or others who are known to have been convicted of crimes which may be conducted at a licensed premises;
- c. Monitoring of activities of persons who talk about weapons or who appear to be hiding a weapon;
- d. Calling for police assistance as necessary to protect patrons against injury or to evict unruly patrons or to uncover unlawful conduct or to give medical assistance and providing police with requested information;
- e. Hiring security personnel to deal with chronic unlawful activity at the premises such as prostitution or gambling or larceny from patrons or assaults and batteries or other problems associated with the premises.

1.14 Injuries to Persons at the Premises

- a. Licensees shall instruct their employees and security personnel that they are not to make bodily contact with a patron unless to protect other patrons or themselves from being subjected to body blows from an unruly patron. In all other circumstances, employees and security personnel are to call the police to have patrons removed from the premises when such patrons are being disruptive and they are unable to convince the patron to leave the premises voluntarily.
- b. Licensees shall call the police and an ambulance and take all other reasonable steps to assist patrons or persons who are injured in or on the licensed premises or whose injuries have occurred outside the premises but have been brought to the attention of the licensee.

1.15 Other Causes for Revocation, Suspension, and Modification

- a. Any license issued pursuant to G.L. c.138 may be modified, suspended, or revoked for any of the following causes:
 1. Violation by the licensee of any provision of the relevant General Laws of the Commonwealth, of the regulations of the Alcoholic Beverages Control Commission or of the regulations of the Licensing Authority;

2. Fraud, misrepresentation, false material statement, concealment or suppression of facts by the licensee in connection with an application for a license or permit or for renewal thereof, or in connection with an application for the removal of the licensed premises or the alteration of the premises, or in connection with any other petition affecting the rights of the licensee, or in any interview or hearing held by the Authority in connection with such petition, request, or application affecting the rights of the licensee;
3. Failure to operate the premises covered by the license without prior approval of the Licensing Authority;
4. Failure or refusal of the licensee to furnish or disclose any information required by any provision of the General Laws, or by any rule or regulation of the Alcoholic Beverages Control Commission, or by any rule or regulation of the Licensing Authority;
5. Licensees shall not give or offer any money or any article of value or pay for or reimburse or forgive the debt for services provided to any employee or agent of the Authority either as a gratuity or for any service;
6. Licensees may not fail to comply with any condition, stipulation or agreement upon which any license was issued or renewed by the Authority or upon which any application or petition relating to the premises was granted by the Authority. It shall be the duty of the licensee to ensure that all appropriate personnel at the licensed premises are familiar with the rules and regulations of the Authority and with any conditions on the license.
7. A license may be suspended or modified or revoked for the refusal by any licensee and, if a corporation, by a manager, officer, or director thereof to appear at an inquiry or hearing held by the Authority with respect to any application or matter bearing upon the conduct of the licensed business or bearing upon the character and fitness of such person to continue to hold a license.
8. Licensees shall properly serve suspension and modification orders.

1.16 Violations; Hearing Procedure

- a. Upon written notice from the Chief of Police or other source that an illegality has allegedly occurred at a licensed establishment or other matters that the Chief of Police deems should be brought to the attention of the Licensing Authority, the Authority will consider in open session whether or not a public hearing should be held.

- b. If it is determined that a public hearing will be held by vote of the Authority, the Town Administrator shall send written notice to the licensee by Certified Mail, Return Receipt Requested.
- c. At the hearing the Authority will first hear evidence from the Police Chief and his agents and/or witnesses or from other complaining parties, as may be appropriate. Then the licensee and the licensee's counsel will have an opportunity to present their response and evidence.
- d. After all testimony has been given, the Authority reserves the right to question all witnesses and parties and, if necessary, take under advisement all facts and vote either to render their decision or continue the hearing to a subsequent meeting of the Authority.

1.17 Disciplinary Guidelines

- a. Licensees in violation of the applicable laws of the Commonwealth, regulations of the Alcoholic Beverage Control Commission and/or these regulations may be subject to the following range of discipline:
 - 1. First offense: warning to seven day suspension.
 - 2. Second offense: warning to thirty day suspension.
 - 3. Third and subsequent offenses: warning to revocation.
- b. Only offenses which have occurred within the two (2) years preceding the date of violation shall be used in calculating the number of offenses for purposes of the disciplinary guidelines.
- c. The disciplinary guidelines are only a guide. The Licensing Authority may use its discretion in determining whether the facts surrounding a violation warrant a penalty which is more lenient or severe than that suggested by the guidelines.
- d. The disciplinary guidelines shall not be construed so as to limit the Licensing Authority's authority to consider alternative dispositions, or further conditions on a license, or even alternate penalties (e.g. roll back of operating hours).

1.18 Service of Suspension Orders

- a. When the Authority suspends the license or licenses of any licensee, it shall provide the licensee with an order of suspension for public display that must contain the words, "No alcohol served per order of the Board of Selectmen for the Town of Harwich." Such order shall be publicly displayed by the licensee in the

following manner. If there is a door opening from the street into the licensed premises and a window facing the street upon which such door opens, such order shall be displayed in such window so that it may readily be seen from the street. If the licensed premises are otherwise located, such order shall be affixed to the door of the entrance to the premises and displayed in such a way that it may be readily seen from the street.

- b. Suspension orders of the Authority, as above, shall remain affixed throughout the entire period of suspension. The removal, covering, defacement, or obliteration of the order of suspension or the failure to maintain the order of suspension in the manner and place required prior to the expiration of the suspension period shall be deemed the act of the licensee and shall be cause for further suspension, modification or revocation of the license.
- c. Suspension periods shall not be used as a time to do renovations at the licensed premises unless such renovations have previously been approved by the Authority.
- d. No members of the public may be on the premises at any time during suspension periods, with the exception that restaurants may be able to continue to service patrons without serving alcohol, with the approval of the Licensing Authority.

1.19 Permission to Close Premises Required; Non-use of Licenses

- a. Licenses are granted to serve the public need and, to that end, licensees are expected to operate the license for a substantial number of hours on all days when the premises are permitted to be open under the terms of the license. In the case of alcoholic beverages licenses, the number of which are limited according to statute, no licensee may close its place of business for any reason other than the following:
 - 1. Upon approval of a request to the Licensing Authority for closing in order to do renovations for a reasonable time;
 - 2. For all holidays and religious days;
 - 3. A closing of one (1) or more days per week upon approval of a request to the Authority and a showing by the licensee that it does not have adequate business upon such days.
 - 4. A closing due to an act of God, natural disaster, illness or some other business problem for which request has been made to the Authority and approval granted.
- b. Any licensee intending to close a place of business, whether on a temporary or permanent basis, must notify the Licensing Authority in writing before such

closing stating the reason and length of such closing and obtain approval. Failure to provide such notice may result in the suspension or revocation of the license.

- c. If the Licensing Authority becomes aware of a license not being exercised, it may conduct a hearing to obtain a status update.
- d. The Authority reserves the right to require that the licensee appear before the Authority every three (3) months from that point until the business has commenced or resumed operations or the license has been transferred or turned back to the Town.
- e. The Authority reserves the right to revoke the license at any time if it deems that the public good is not being served.

1.20 Bankruptcy and Court Proceedings

- a. The licensee shall immediately notify, in writing, the Licensing Authority of any proceedings brought by or against the licensee under the bankruptcy laws or of any other court proceedings which may affect the status of the license.

1.21 Management

- a. Each corporate licensee must appoint a manager by a properly authorized and executed delegation.
- b. The responsibilities of every license holder and any manager shall be as follows:
 - 1. To obey all statutes of the Commonwealth, rules of the Alcoholic Beverages Control Commission, Rules and Regulations of the Licensing Authority;
 - 2. To promptly notify the police of any disturbances or illegal activity on the licenses premises of which he becomes aware;
 - 3. As to corporate licensees, to sign the annual application for renewal of license, unless unavailable;
 - 4. To cooperate with authorized agents of the Licensing Authority, including but not necessarily limited to, any police officer, in their investigation or inspection of the licenses premises.
- c. Any such notice sent to the manager as named in the records of the Licensing Authority or the owner at the address of the licensed premises shall constitute valid legal notice to the licensee.

- d. The licensee shall not change managers, change corporate officers, sell or transfer corporate stock, pledge corporate stock or liquor license as security, or accept a loan or credit from another licensee, without first obtaining the approval of the Authority. No person may have a direct or indirect beneficial interest in a license without first obtaining the approval of the Authority.

1.22 Service Training

- a. An employee training program on the proper procedures for verifying that patrons are at least twenty-one (21) years of age and not intoxicated shall be provided by the licensee. A written description of such program, along with a written policy outlining the employees' responsibilities and the disciplinary measures which will be taken against any employee for violating said policy, shall be provided to the Authority as part of the original or renewal application materials and maintained on the premises at all times.
- b. A signed certification of each employee who handles alcohol, indicating that the employee has received the described training and has reviewed and understands the written policy describing his or her responsibilities and the disciplinary action which will be taken for violations, shall be maintained on the premises at all times. Copies of all such documents and certifications shall be available to the licensing authority, or any authorized agent thereof, upon demand.
- c. Each new employee who handles alcohol shall obtain server training within thirty (30) days of commencing employment.
- d. Upon a finding by the Authority of a violation of the laws or regulations concerning service of alcohol to a minor or intoxicated person, the employees involved in the violation who continue to be employed by the licensee shall be retrained forthwith and receive a new server training certification.
- e. The training and certification referenced in Section 1.22 shall be pursuant to a training program approved by the Authority (e.g. TIPS or equivalent).



HARWICH Police

DEPARTMENT

183 Sisson Road, Harwich, MA 02645
Tel 508-430-7541 Fax 508-432-2530

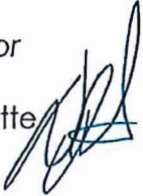


DAVID J. GUILLEMETTE
Chief of Police

KEVIN M. CONSIDINE
Deputy Chief

Memorandum

TO: Board of Selectmen
Joseph Powers
Town Administrator

FROM: David J. Guillemette 
Chief of Police

DATE: July 6, 2021

SUBJECT: Alleged Noise Violation at The Port

In accordance with Town of Harwich Liquor License Regulations section 1.16 I would like to bring to the board's attention an alleged noise violation at The Port documented by Officer Griffiths on July 3, 2021.

I have also included an incident report that is being investigated further regarding possible over service of a 20 year old using a fake ID at The Port. Once additional information is available I will forward it to the Board.

The attached incident reports are for your consideration as to whether to hold a public hearing on the matter. Officers who were involved in the incidents and documented their findings will be made available for testimony if a hearing is deemed necessary.

or Date: 07/03/2021 - Saturday

<u>Call Number</u>	<u>Time</u>	<u>Call Reason</u>	<u>Action</u>
1-7992	2150	Noise Complaint	Investigated
Call Taker:		4006 - PSD Telecommunicator Kyleigh Sears	
Primary Id:		191 - Patrol Thomas G Griffiths Jr	
Location/Address:		HWY 481 THE PORT - 541 RT 28	
Calling Party:		- HARWICH, MA 02645	
ID:		189 - Patrol Brendan R Brickley	
		Disp-21:52:25 Enrt-21:52:27 Arvd-21:52:48	Clrd-22:03:11
		191 - Patrol Thomas G Griffiths Jr	
Narrative:		07/03/2021 2151 PSD Telecommunicator Kyleigh Sears	
		RP states loud music can be heard from the Port restaurant	
Narrative:		07/03/2021 2158 PSD Telecommunicator Kyleigh Sears	
		Noise violation, G20 spoke with parties on location and they will be turning the music down	
Refer To Incident:		<u>21-7992-OF</u>	

This is the formal report of Officer Thomas G. Griffiths Jr. regarding the noise complaint on Saturday, July 3, 2021 at "The Port Restaurant."

On Saturday, July 3, 2021, at approximately 2150 hours, I was dispatched to the area of Sea St. for a noise complaint about "The Port Restaurant." Upon arrival I drove down Sea St. and parked my cruiser in front of Sea St. I could hear music and loud voices coming from "The Port Restaurant" as it was Saturday night on the weekend of the 4th of July. I then turned and started walking away from the restaurant and got to The Capé Sea Grille restaurant which is well beyond the 150 feet. I could still hear music playing over outdoor speakers.

I walked back to "The Port Restaurant" and advised an employee that the music was too loud and needed to be turned off. The employee stated that patrons were grabbing the remotes from the host stand and were the ones that were turning up the music. He stated that he would go turn it down right away. The music was soon turned off and no other complaints were called in.

Respectfully submitted,

Officer Thomas G. Griffiths Jr. #191

For Date: 07/01/2021 - Thursday

<u>Call Number</u>	<u>Time</u>	<u>Call Reason</u>	<u>Action</u>
1-7863	2331	Suspicious Person	Could Not Locate
Call Taker:	2333 - PSD Telecommunicator IRIS G MCINALLY		
Location/Address:	[REDACTED]		
Calling Party:	[REDACTED] - HARWICH, MA 0264.		
ID:	134 - Patrol Richard E Buttrick Jr		
	Disp-23:34:01	Enrt-23:35:16	Clrd-23:37:50
ID:	139 - Patrol Supervisor Mark T Holmes		
	Disp-23:34:14	Enrt-23:35:19	Clrd-23:40:43
Cleared By:	139 - Patrol Supervisor Mark T Holmes		
ID:	199 - Patrol Charles Brooks		
	Disp-23:37:43	Enrt-23:37:47	Arvd-23:42:12 Clrd-23:55:20
ID:	130 - Sergeant Paul P Boorack		
	Disp-23:37:58	Enrt-23:38:01	Arvd-23:42:37 Clrd-23:50:45
Narrative:	07/01/2021 2333 PSD Telecommunicator IRIS G MCINALLY		
Modified By:	PSD Telecommunicator IRIS G MCINALLY		
	Rp reporting unknown female running toward Saquatucket Bluffs, wearing black tank top/jeans. Brown hair, 20's, came to door unable to state what the problem was. Rp stated she then went to her daughter's house and did the same, kicking the door and said she needed to sleep there.		
Narrative:	07/01/2021 2337 PSD Telecommunicator IRIS G MCINALLY Rp's daughter and son-in-law are following subject on Saquatucket Bluffs.		
Narrative:	07/01/2021 2343 PSD Telecommunicator IRIS G MCINALLY G10 advises rp's family members lost sight of female who took a right off Saquatucket Bluffs.		
Narrative:	07/01/2021 2352 PSD Telecommunicator IRIS G MCINALLY G10 reports units checked the area of Saquatucket Bluffs, unable to locate. G10 clear, G14 continuing to check the area.		
Narrative:	07/01/2021 2355 PSD Telecommunicator IRIS G MCINALLY G14 clear.		

Report Date: 07/02/2021 - Friday

<u>Call Number</u>	<u>Time</u>	<u>Call Reason</u>	<u>Action</u>
1-7897	1105	SUSPICIOUS ACTIVITY	Investigated
Call Taker:	4006 - PSD Telecommunicator Kyleigh Sears		
Primary Id:	195 - Patrol Ronald D Ruggiero		
Location/Address:	[HAR 312 - HARWICH, MA 02645]		
Reporting/Inv. Party:	J - HARWICH, MA 02645		
Involved Party:	- HARWICH, MA 02645		
ID:	195 - Patrol Ronald D Ruggiero DOB: 0. Disp-11:43:42 Enrt-11:44:02 Arvd-11:54:29 Clrd-12:01:06 [Modified: 07/02/2021 1143]		
Location Change:	[Modified: 07/02/2021 1143]		
Narrative:	07/02/2021 1106 PSD Telecommunicator Kyleigh Sears RP would like to follow up regarding last night's incident with a female who entered her home, RP states that she has photos of the female on the couch inside of the residence, may have further insight regarding where the female lives.		
Narrative:	07/02/2021 1202 PSD Telecommunicator Kyleigh Sears Spoke with all adults at [redacted], all teens who reside at the home are working, advised of situation.		
Narrative:	07/02/2021 1328 Patrol Ronald D Ruggiero See formal report.		
Refer To Incident:	<u>21-7897-OF</u>		

NARRATIVE FOR PATROL RONALD D RUGGIERO

Ref: 21-7897-OF

The following is a narrative from a suspicious event which occurred on July 1, 2021:

On Friday, July 2, 2021 at 1105hrs. I, Officer Ron Ruggiero, received a call from dispatch asking that I return a call to [redacted], who had additional information regarding the suspicious person who was at her residence on the evening of July 1st.

On Thursday, July 1, 2021 at 2331hrs. officers responded to the area of [redacted] for a report of a female kicking their door, yelling to let her in so she could go to sleep. The female was said to have fled the area and officers were unable to locate her.

Today, I spoke with [redacted] who had additional information. [redacted] said that her son-in-law located the female sleeping on the couch of their guest house last night. [redacted] stated that the female was under the influence and not making any sense. While attempting to figure out who the female was and where the female belonged, [redacted] said that the females phone began ringing. [redacted] stated that the female was unable to figure out how to answer it, due to her condition.

[redacted] said that her daughter answered the face time call from a person by the name of [redacted]. [redacted] stated that her daughter kept trying to tell [redacted] that her friend was on their couch and they needed to get her home. [redacted] kept replying, "No she's here with me at The Port, we're all at The Port". Eventually, the female told [redacted] that she would send her brother to pick her friend up. [redacted] said that the female then stood up and ran out of the house toward [redacted]. [redacted] said that she was not looking for the female to be charged for the B&E.

[redacted] said that she was able to find that [redacted] family own [redacted]. I proceeded to [redacted] and spoke with the parents of [redacted]. They were unaware of the incident and who it could have been as there daughter was working today at [redacted]. They informed me they would get to the bottom of it.

[redacted] later received a call from [redacted], the cousin of [redacted]. [redacted] stated that she had drank too much alcohol and went to the wrong house. [redacted] was very apologetic and said that she was in the process of purchasing a floral arrangement to deliver to the [redacted] family and offer an in-person apology. I asked [redacted] if she would be willing to disclose where she had been drinking alcohol. [redacted] stated that she had used a fake ID to drink at The Port.

[redacted] followed up with [redacted] who was pleased with the end result.

Respectfully Submitted,

Officer Ronald Ruggiero - #195



HARWICHPolice
DEPARTMENT

183 Sisson Road, Harwich, MA 02645

Tel 508-430-7541 Fax 508-432-2530

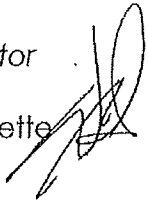


DAVID J. GUILLEMETTE
Chief of Police

KEVIN M. CONSIDINE
Deputy Chief

Memorandum

TO: Board of Selectmen
Joseph Powers
Town Administrator

FROM: David J. Guillemette
Chief of Police 

DATE: July 21, 2021

SUBJECT: Follow up report to case # 21-7897-OF

Mr. Powers and members of the Board:

Attached please find a follow up report regarding the investigation of an alleged over service of an underage female using a fake ID at the Port. The preliminary report on this incident was forwarded to you on July 6, 2021.

Please do not hesitate to contact me should you have any questions.

NARRATIVE FOR DETECTIVE SERGEANT ROBERT C BRACKETT
Ref: 21-7897-OF

To: Harwich Police Department Case Number 21-7897-OF

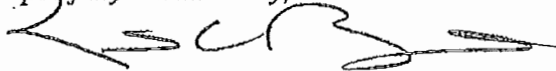
From: Detective Sergeant Bob Brackett

Date: July 7, 2021

Subject: Follow-up to Breaking and Entering Investigation

1. On Wednesday July 7, 2021, Detective Sergeant Brackett responded to [redacted] Saquatucket Point Road in Harwich Port, Ma for the purpose of following up with [redacted] in regards to the incident in which she had entered the residence of [redacted] Neel Road. During the incident on July 1, 2021, in which [redacted] was found intoxicated inside of a neighbors residence, it was learned that [redacted] had been previously drinking at The Port Restaurant located at #541 Route 28 in Harwich Port, Ma. It was also learned that [redacted] had used a fake ID in order to obtain service while at The Port.
2. Detective Sergeant Brackett attempted to speak with [redacted] in an effort to obtain the fake ID that she had used while at The Port. Detective Sergeant Brackett spoke with [redacted] and learned that [redacted] was working and not home. Detective Sergeant Brackett learned from [redacted] that she believed that [redacted] had destroyed the ID after the incident [redacted] was asked about the ID and whether it was the license of a relative or someone that looked like [redacted] that she may be using. [redacted] stated that the ID was a complete fake that was bought and was a copy of a Virginia Drivers License. [redacted] stated that she would have [redacted] bring the license to the Harwich Police Department if it had not already been destroyed.
3. Detective Sergeant Brackett subsequently spoke with [redacted] and confirmed that she had cut the ID into pieces and subsequently threw the ID away.

Respectfully Submitted by,



Detective Sergeant Robert Brackett
Harwich Police Detective Division



HARWICHPolice
DEPARTMENT

183 Sisson Road, Harwich, MA 02645

Tel 508-430-7541 Fax 508-432-2530

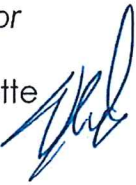


DAVID J. GUILLEMETTE
Chief of Police

KEVIN M. CONSIDINE
Deputy Chief

Memorandum

TO: Board of Selectmen
Joseph Powers
Town Administrator

FROM: David J. Guillemette 
Chief of Police

DATE: August 30, 2021

SUBJECT: Potential Violation(s) at Port

Mr. Powers and members of the Board:

Attached please find a police report regarding potential liquor / entertainment regulation violations at Port on August 19, 2021.

Please do not hesitate to contact me should you have any questions.

P-2

For Date: 08/19/2021 - Thursday

<u>Call Number</u>	<u>Time</u>	<u>Call Reason</u>	<u>Action</u>
21-10586	2322	Noise Complaint	Investigated
Call Taker:		199 - Patrol Charles Brooks	
Primary Id:		127 - Sergeant Aram V Goshgarian	
Location/Address:		[HAR 48] THE PORT - 541 RT 28	
ID:		127 - Sergeant Aram V Goshgarian	
		Arvd-23:22:00	Clrd-23:22:35
Narrative:		08/19/2021 2322 Patrol Charles Brooks	
		Noise Complaint per G10, clear.	
Refer To Incident:		<u>21-10586-OF</u>	

Harwich Police Department

NARRATIVE FOR SERGEANT ARAM V GOSHGARIAN

Ref: 21-10586-OF

On Thursday, August 19, 2021 I was assigned as the 4-12 Shift Supervisor. At approximately 2240hrs I was speaking with Sarah Powell who is an owner of Perks. Officers Dutra, Vermette, and I were investigating a noise complaint at Perks and I was advising Mrs. Powell of the complaint. We were standing on the sidewalk in front of Perks when I observed a male subject exit the left side of the Port. The subject was carrying a drink in his hand and he proceeded to exit the Port property and make a right turn and walk onto the property owned by Perks. The Port and Perks share a common fence and as the male walked along the Perks side of the fence Mrs. Powell advised him it was private property and the subject turned around and went back into the Port. I did not make contact with this person and do not know what the drink contained.

As I was standing on the sidewalk I could hear the sound of music coming from inside the Port. At this time all of the doors and windows were closed however I could hear the music while standing outside on the sidewalk. I was going to make contact with someone inside the Port when a patron exited a side door marked "emergency exit." This door is located on the left side of the building and is attached to the "Oyster Bar" section of the restaurant. The patron walked out to the sidewalk however the door was left wide open allowing the music to escape the premises. The door remained open until I walked over and shut it.

Officer Dutra and I walked into the back bar area and I asked to speak with whoever was in charge of the restaurant. A subject identified as Jon Ricotta said that he guessed that he was in charge. I explained the issues to Jon and he said he would take care of the music. I advised him of the "emergency door" matter and the patron who exited with a drink and walked onto the Perks property. Jon was very cooperative and told me that he was by himself working the door tonight. There were no additional complaints regarding the Port this evening.