

**SELECTMEN'S MEETING AGENDA\*Revised 7/9/21 @ 11:30 A.M.**

*Donn B. Griffin Room, Town Hall*

*732 Main Street, Harwich, MA*

*Executive Session 5:00 P.M.*

*Regular Meeting 6:00 P.M.*

*Monday, July 12, 2021*

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

**I. CALL TO ORDER**

**II. EXECUTIVE SESSION**

- A. Pursuant to MGL,c.30A section 21 (a) paragraph 3 to discuss with respect to collective bargaining for all town unions if an open session would have a detrimental effect on the town's bargaining position and the chair so declares;
- B. Executive Session pursuant to G.L. c. 30A, sec. 21(a)(2) to conduct strategy sessions in preparation for negotiations with non-union personnel and to conduct contract negotiations with non-union personnel – Water/Wastewater Superintendent.
- C. Executive Session pursuant to G.L. c. 30A, sec. 21(a)(2)and (3) to conduct strategy sessions in preparation for negotiations with union personnel and to conduct contract negotiations with union personnel – SEIU

**III. PLEDGE OF ALLEGIANCE**

**IV. WEEKLY BRIEFING**

**V. PUBLIC COMMENTS/ANNOUNCEMENTS**

- A. Presentation from Mark Kelleher, Kelpheher Farms, regarding sugar kelp production and bay scallops

**VI. CONSENT AGENDA**

- A. Discussion and possible vote to approve the National Multiple Sclerosis (MS) Society walk to be held on September 10, 2021 from 9:30 a.m. to 2:30 p.m.
- B. Discussion and possible vote to approve resignation of Karin Larson from the Harwich Accessibility Rights Committee
- C. Discussion and possible vote to approve Board of Selectmen Public Hearing Minutes for April 26, 2021
- D. Discussion and possible vote to authorize the Chair to enter into a Memorandum of Understanding between the Town of Harwich and the Cape Light Compact to assist with preparation and planning efforts for the Regional Energy Planning Assistance Grant for 2022-2023

**VII. NEW BUSINESS**

- A. Discussion and possible vote to approve the change of manager application for Portside Liquors III, Inc. – 1421 Orleans Road
- B. Discussion – Treasure Chest
- C. Update by Town Administrator on the Chloe's Path project and next steps
- D. Update by Town Administrator - 5 Bells Neck Road Request for Proposal (2021 Annual Town Meeting - Articles 17 & 40)
- E. Update from Finance Director - The Cape and Islands Water Protection Fund Management
- F. Discussion and possible vote to appoint a member from the list of Democratic Town Committee to the Board of Registrars– Ray Gottwald, Susan Weinstein, Mary Eagan
- G. Discussion and possible vote to approve the Weekday and Sunday Entertainment License – Lucky Labrador, Inc. DBA Perks – 545 Route 28 – Weekday and Sunday 11: 00 A.M. to 1:00 A.M. Ambient background music and/or television outside and Sunday 6:00 P.M. to 9:00 P.M. Live and/or recorded music with amplification outside *\*Sunday license is a modification to what was previously approved*
- H. Discussion and possible vote to approve a new 2021 Weekday and Sunday Entertainment License – Chase Escape Cape Cod LLC DBA Summer House Café – 126 Route 28 – Weekday 10:00 A.M. to 12:00 A.M. and Sunday 3:00 P.M. to 12:00 A.M. Recorded or live music with amplification and dancing inside.
- I. Discussion and possible vote to approve renewal of a 2021 weekday and Sunday entertainment for trampolines – Trampoline Center – 296 Route 28 – Weekday 9:00 a.m. to 9:00 p.m. and Sunday 9:00 a.m. to 9:00 p.m. - *Pending Building Department Approval*
- J. Discussion and possible vote to approve a new 2021 Common Victuallers license – Seagulls LLC DBA Seagulls Ice Cream and Soda Fountain – 537 Route 28, Unit 1 C – *Pending Building Department Approval*
- K. Discussion and possible vote to approve a One Day Entertainment license for two private events to be held on August 21, 2021– 5 P.M. to 11 P.M. and August 28, 2021 4:00 P.M. to 11 P.M. – Live music with amplification outside –44 Chatham Road
- L. Discussion and possible vote to approve a One Day Entertainment license for a private fundraising event to be held on July 17, 2021 – 10 A.M. to 6 P.M. – Live music with amplification outside – 16 Route 28, Townline Plaza – *Pending Fire Department Approval*

- M. Discussion and possible vote to hold a Public Hearing for the alleged violations on June 26, 2021 at Seal Pub –730 Main Street
- N. Discussion and possible vote to authorize the Town Administrator to be the Hearing Officer for the Public Hearing for alleged violations on June 26, 2021 at Seal Pub – 730 Main Street
- O. Discussion and possible vote to amend Section 1.17 – Disciplinary Guidelines of the Harwich Board of Selectmen liquor license regulations to include a language change from “third offense” to “third and subsequent offenses”
- P. Discussion and possible vote to amend the Personnel By-Law to delete references to Water/Wastewater Superintendent within classification plan

VIII. **OLD BUSINESS**

- A. Discussion – Comprehensive Wastewater Management Plan (CWMP)

IX. **CONTRACTS**

- A. Discussion and possible vote to approve a contract with Mettler-Toledo, LLC for the replacement of the scale deck at the transfer station in the amount of \$69,188.24
- B. Discussion and possible vote to approve a three year contract with **Pk Valuations** for the Fiscal Years 2022, 2023 & 2024 Revaluation and Inspection services in the amount of \$132,000.00
- C. Discussion and possible vote to approve a Consent to Collateral Assignment for the Rooftop Photovoltaic Energy Facility Lease at the Cranberry Valley Golf Course Cart Barn
- D. Discussion and possible vote to approve a Consent to Collateral Assignment for the Ground Mount Photovoltaic Energy Facility Lease at Cranberry Valley Golf Course

X. **TOWN ADMINISTRATOR’S REPORT**

XI. **CORRESPONDENCE**

- A. Bob Cohn Letter for June 28 BOS Noise Meeting
- B. Mary Albis Letter for June 28 BOS Noise Meeting
- C. Frances Rich Letter for June 28 BOS Noise Meeting
- D. Memo - December 21, 2011 – Town Firing Range Report and Recommendations (Revised)
- E. Memo - Sands Pond indirect costs
- F. Memo - Harwich Fire Department – Massachusetts Governmental Ambulance Certified Public Expenditure
- G. Harwich Housing Committee Letter

XII. **SELECTMEN’S REPORT**

XIII. **ADJOURNMENT**

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

**Authorized Posting Officer:**

\_\_\_\_\_  
Ellen Powell, Executive Assistant

**Posted by:** \_\_\_\_\_  
Town Clerk

**Date:** \_\_\_\_\_  
July 9, 2021

**PUBLIC**  
**COMMENTS /**  
**ANNOUNCEMENTS**

May 21, 2021  
Harwich Select Board

Kelpeher Farms is proposing a modification to its existing permit for one 250 ft. longline for sugar kelp production to also include bay scallops at a site approximately 1.5 miles from shore (as per the request of Harwich Waterways /Harbormaster). Deployment of bay scallops will occur September 2021 ,and will be year round. See attached map.

Background Information:

- Previous approvals from DEP, Army Corps, and Division of Marine Fisheries. Both the Army Corps and DMF have indicated they would modify our existing permit for year round bay scallop/kelp use.
- Harwich has over 10,000 acres within a 3 mile limit for potential aquaculture use.
- Weir, and Conch fisheries use same area
- Bay Scallop restoration efforts on Long Island NY (based on Cornell University study) have contributed to >1000% increase in populations of juveniles/adult bay scallops
- Commercial fishery landings have increased over 1000% contributing millions of dollars to the local economy of Long Island.
- Kelpeher Farms LLC is owned by Harwich residents Mark Kelleher and Paul Wittenstein. Mark is a Commercial Shellfisherman, licensed Captain and an Aquaculturist with federal and state permits for the cultivation of sugar kelp in Nantucket Sound. Paul Wittenstein is a graduate of the University of Rhode Island Aquaculture Department and General Manager of Aquacultural Research Corp. (ARC). ARC is the primary supplier of seed clams and oysters to most of the aquaculture industry in Massachusetts and Rhode Island. Paul's work for Kelpeher Farms is independent from his employment with ARC.

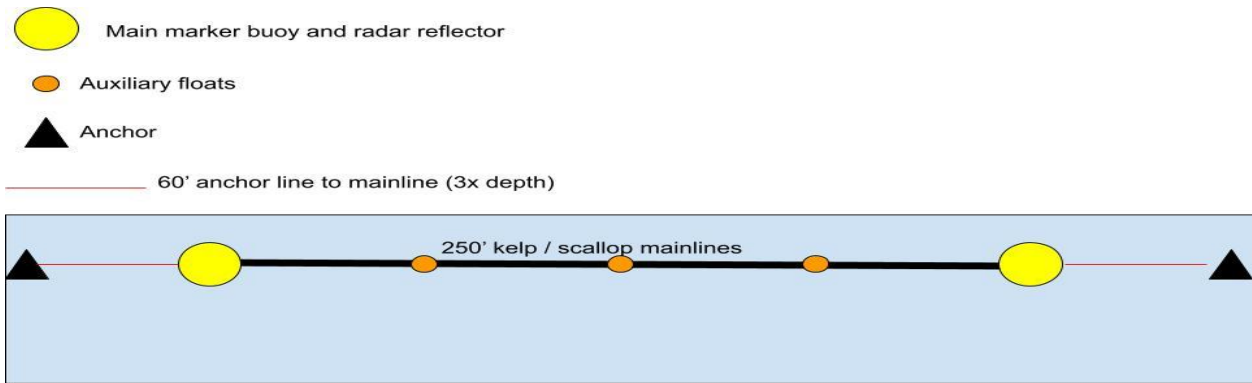
Location:

- The proposed location is approximately 1.5 miles south of Pleasant St. Beach in West Harwich. The site is less than 0 .5 acres. The dimensions of the site are approximately 300 ft by 30 ft.
- Coordinates: 41.630N, 70.092

Proposed Activity:

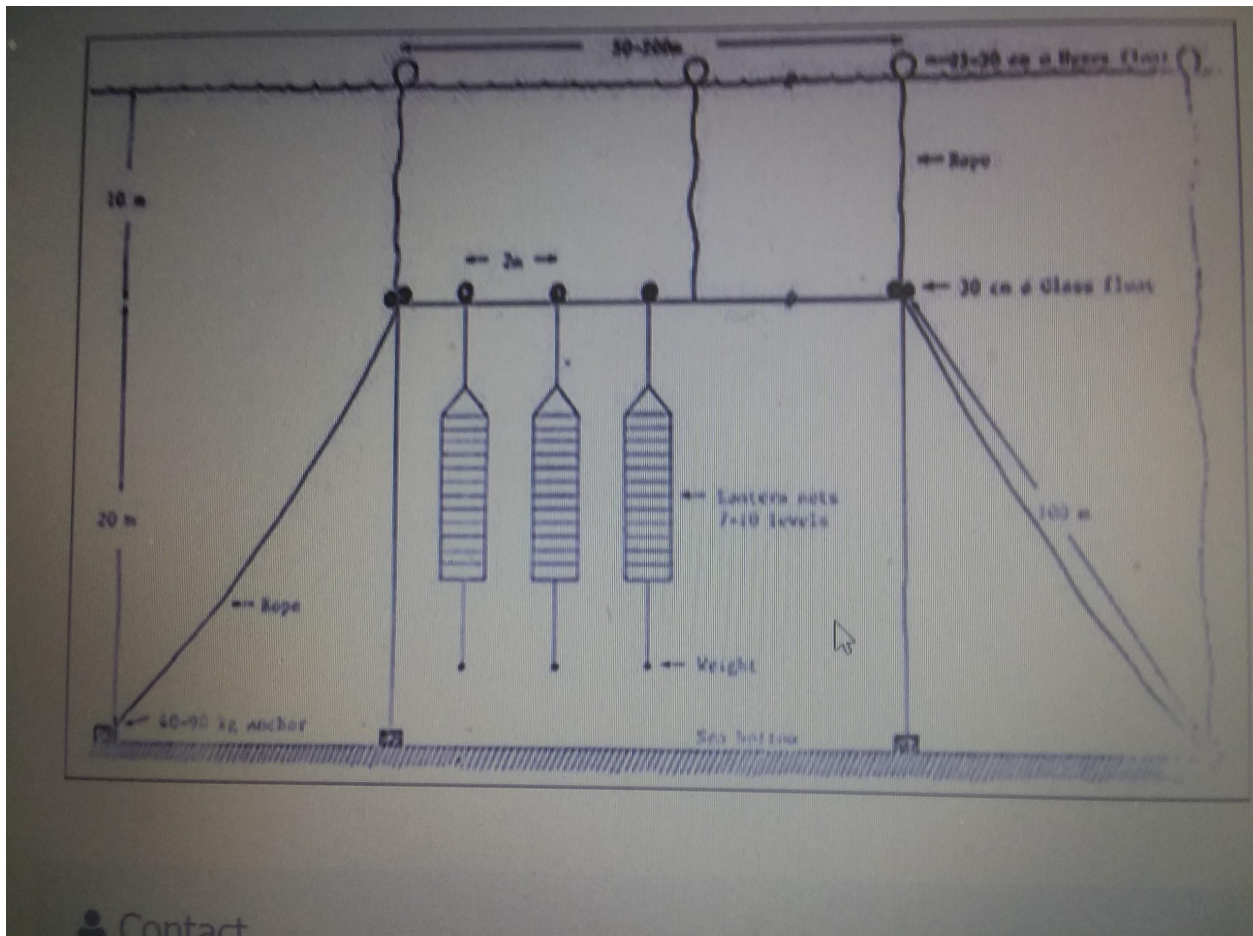
The work involves the deployment of one longline of 250 ft. length with endpoint and flotation buoys as well as anchors at each end. Individual long lines will be moored 8 ft. below the surface with flotation buoys at 50 ft. intervals. Corner buoys will delineate boundaries of the area. Navigational radar reflectors will be placed at the ends of the longline corners.

## Aerial view:



## Structures:

Below is the system design of a longline system with suspended nets designed by the Japanese for bi valve, bay scallop culture and used by Cornell in Long Island's Peconic Bay.



## Operational Plan:

Deployment of nursery bay scallops will be in early September 2021. Spawning will be in the following June which will benefit bay scallop restoration efforts in nearby waters. Harvest will be in late summer to Fall of 2022. We plan to use the existing kelp system and multiculture kelp and bay scallops on the same lines.

The marketing of the scallops is twofold: both market differentiation and local food. Most bay scallops are shucked and the meat(muscle) is sold bulk for up to \$35/lb. retail. We plan to primarily sell the scallops, which are color differentiated, whole in the shell tailored to high end sushi and seafood restaurants as done in Japan and previously had market acceptance in this country in the 90's. Our primary market with our limited acreage will be locally on Cape Cod.

We would like to emphasize that at this time this is a reality based experimental project. In the spirit of the Seaport Economic Grant the town received for Saquatucket Harbor, this project will "leverage the economic, educational, and recreational opportunities afforded by the vast ocean resources, in order to stimulate growth and improve climate resiliency. "

This is the epitome of a "Blue Economy" project that will develop food resources, improve water quality and provide employment and economic development for Harwich residents.

We look forward to further discussion, and answering any questions you may have.

Sincerely,

Mark Kelleher  
Paul Wittenstein  
Kelpheer Farms  
22 Gordon Ritchie Rd.  
West Harwich, Ma 02671

Addendum

Objections:

## Navigational Hazards and exclusive use of area.

Since our initial meeting with the harbormaster/natural resources we have reduced the scope of the project from 2 lines to one, moved the location from .8 of a mile off Pleasant St beach to 1.5 miles from shore and have converted our lines to the same thickness as lobster line or conch line. In terms of navigational hazards there are weirs (see photo) and hundreds of conch buoys in the same approximate location. As resident lobsterman, Glen Fernandes, explained he could put 30 conch buoys in this same area or each resident could install up to 10 lobster buoys each in this area.

Since our long lines are 8ft. below the surface there are no impediments to boats to travel in our area. The reference to exclusive use may pertain to floating aquaculture gear which we are not proposing.

A survey of other towns revealed the following. (Paul will speak to his experience in Barnstable and Wellfleet.)

- Provincetown/Truro has an ADA (Aquacultural Development Area) Approximately 50 acres located in deep water (see map) Spoke to Harbormaster Tony Jackett of Truro and Matt Weisbauer, Shellfish Constable: Only navigational issues mentioned are large draggers which sometimes drop gear as anchors and cause damage to grants. Both stated importance of yellow corner buoys to delineate areas. Boats are able to traverse in grant areas although there are some problems with boats chasing striped bass during the season.
- Falmouth: Spoke to Chuck Martinson, shellfish constable
  - Grants in Vineyard Sound and Buzzards Bay
  - No problems with navigation. Said buoys associated with aquaculture no different than lobster buoys
  - Eel River has extensive recreational boating with 3 aquaculture grants. No complaints from boaters.
  - Matt Weeks: 5 acre grant in Vineyard Sound. (near Washburn Island) Bottom gear, surface buoys, no problem with boaters.
- Dan Ward/ Wareham Aquaculturalist
  - Several grants in Buzzards Bay.
  - No problems with gear, recreational boating
  -
- Cottage City Oysters: Martha's Vineyard. Removes gear by May 15th per permit
- Chatham Kelp 40 acre permitted kelp farm located west of Stage Harbor entrance. Allowed by harbormaster to keep vertical end gear and buoys in during summer. No navigational issues. See attached photo.

Massachusetts **Division of Marine Fisheries - Designated Shellfish Growing Area**



**Shellfish Area Classification**

	Approved		Conditionally Restricted		Restricted
	Conditionally Approved		Prohibited		Management Close

**Map Features Legend**

	Municipal Boundary		Cranberry Bog		Reservoir
	Marsh/Bog		Salt Marsh		Tidal Flats
	Wooded marsh		Open Water		Beach/Dunes

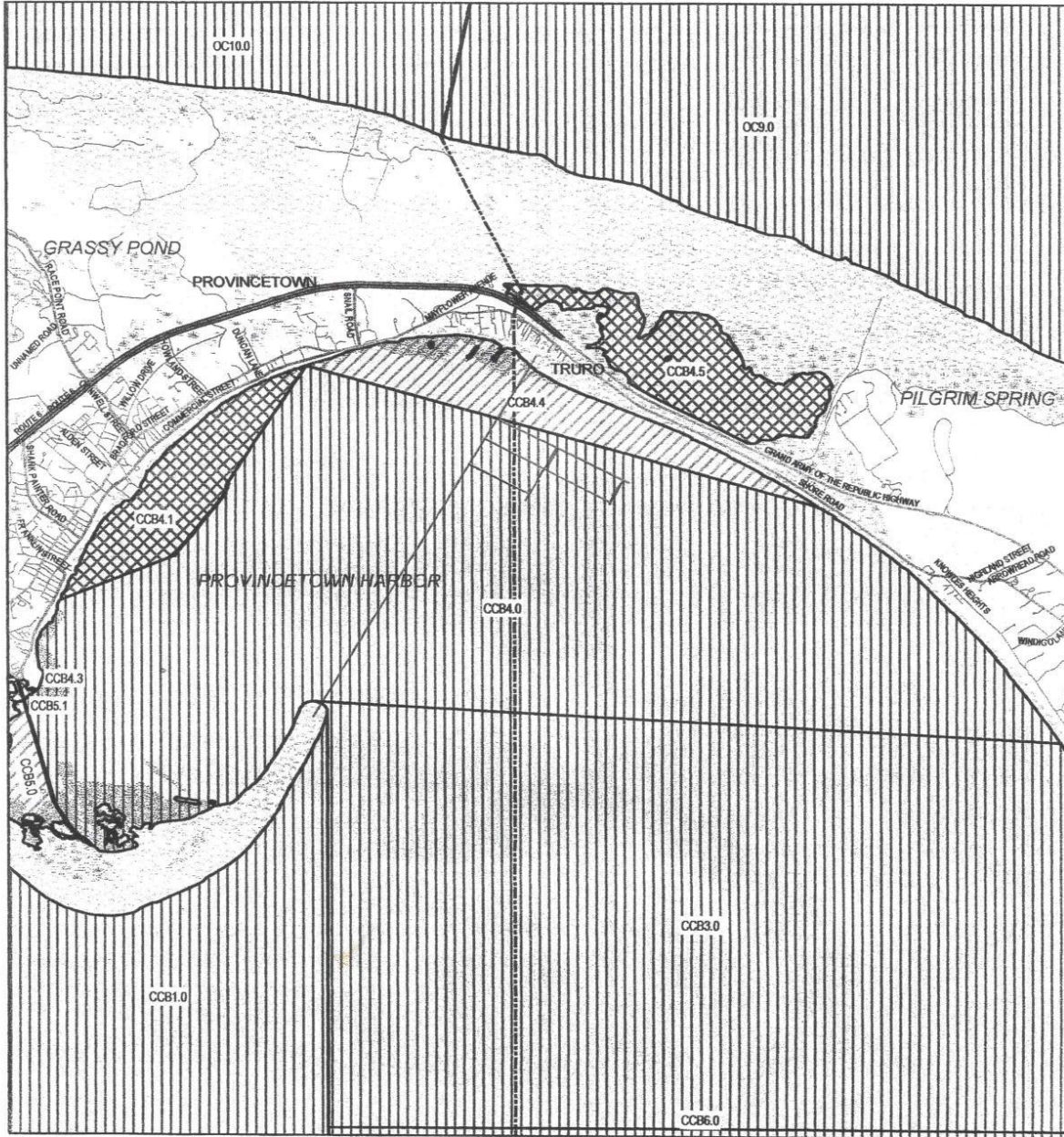


Produced: Sep. 10, 2009

Growing Area Code: CCB4  
 Area Name: PROVINCETOWN HARBOR  
 Area Town(s): Provincetown

600 x 750 or 1500 x 300

0.3 Miles



*This product is for planning and educational purposes only. It is not to be used by itself for legal boundary definition or regulatory interpretation.*

ADA/Aquaculture Development Area in waters off of Provincetown and Truro. Harbormaster Tony Jackett reported no issues with recreational boaters of concern to him.





Kelpeher Farms array on May 20. For the array in Fall 2021 four additional buoys in 250 ft. This area is approximately 50 ft in length. You can expand the photo to see our yellow buoys.

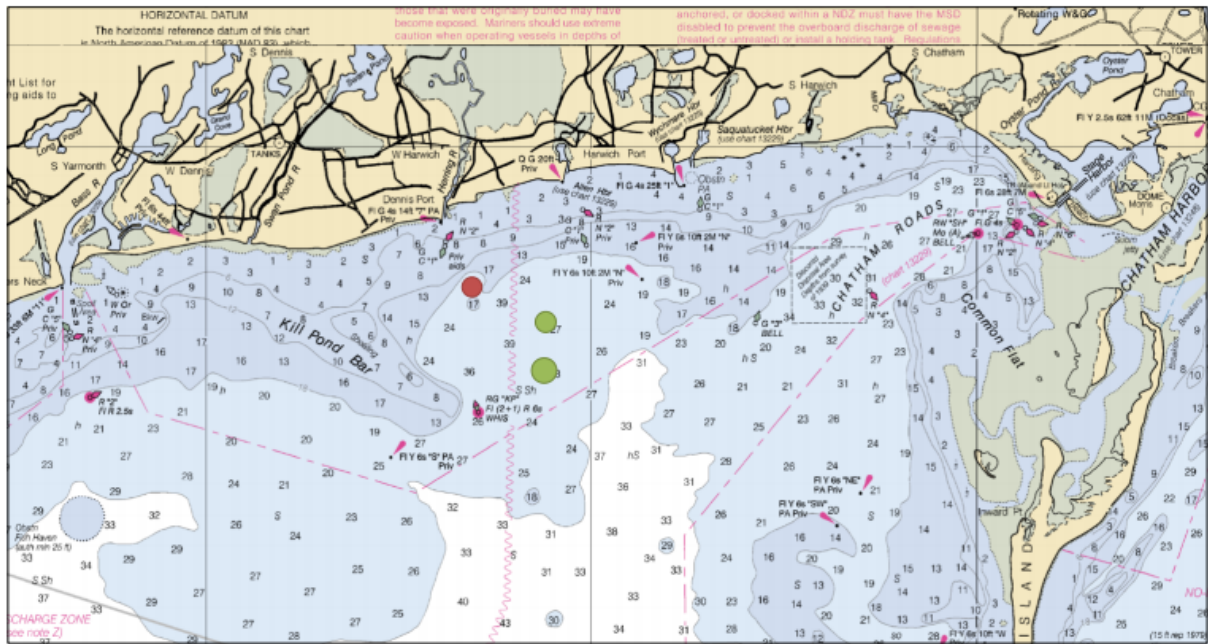


Weir located off Harwich.



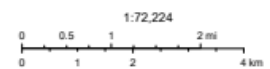
Chatham Kelp west of Stage Harbor entrance. End buoys (over 20) kept in water year round,

alternate areas



4/4/2021, 9:19:41 PM

Areas NOAA Raster Nautical Chart Blue: Band\_3  
 Override 1 Red: Band\_1  
 Override 2 Green: Band\_2



NOAA Office of Coast Survey, Earthstar Geographics

On the above map, the red dot is our present location at .8 mile off Pleasant St. beach in West Harwich. Our proposed new location is the larger of the green dots approx. 1.5 miles from shore.

**MAA Trustees 2021**

*Seth Garfield, Cuttyhunk  
Shellfish Farms, Gosnold,  
MA -President*

*Jared Hemmila, Barnstable  
Seafarms, Barnstable - Vice  
President*

*Stephen Wright - Chatham  
Shellfish Co., West  
Chatham - Treasurer*

*Bill Doyle – Plymouth Rock  
Oyster, Plymouth - Clerk*

*Chris Sherman – Island  
Creek Shellfish Farms,  
Duxbury – Past President*

*Mark Begley - Beach Point  
Shellfish LLC, West  
Barnstable*

*Joe Buttner, Salem State  
University, Salem*

*Andrew Cummings, Wash-  
Ashore Oyster Ranch,  
Wellfleet*

*Bob Field – Copper Beech  
Oyster Farm, Mattapoisett*

*Alex Hay - Wellfleet  
Shellfish Company,  
Wellfleet*

*Les Hemmila - Barnstable  
Seafarms, Barnstable*

*Dale Leavitt – Blue Stream  
Aquaculture, East Falmouth*

*Dan Martino - Cottage City  
Oyster Co., Oak Bluffs*

*Gregg Morris – 2 Rock  
Oyster Farm, Duxbury*

*Dave Ryan –Cape Cod  
Oyster, Marstons Mills*



May 6, 2021

Mr John Rendon  
Harbormaster  
Town of Harwich  
715 Main Street  
P.O. Box 207  
Harwich Port, MA 02646

Dear Mr. Rendon,

The Massachusetts Aquaculture Association (MAA) was established in 1986 to serve as the primary trade association for aquaculture in the Commonwealth of Massachusetts. Since that time, the MAA has continued to work to support aquaculture in Massachusetts by providing a broad range of services that encourage aquaculture development as an economic and environmental benefit to our Commonwealth and for the communities that host aquaculture activity. To that end, I am pleased to extend our support for a proposal by Kelpheer Farms to diversify their kelp farming operations by adding shellfish to their growing array.

I understand that Kelpheer Farms partners, Mark Kelleher and Paul Wittenstein, have an existing kelp permit in Nantucket Sound and that the project proponents have also managed an experimental bay scallop project using their kelp lines under the town's shellfish license. The work proposed by Kelpheer Farms will provide an important opportunity to diversify the Massachusetts aquaculture industry through a poly-culture approach that will make the most efficient use of the farm space and equipment. Furthermore, their poly-culture effort will also promote a diversification of farm income thereby strengthening the economy of coastal communities as well as the resiliency of our food system. In fact, such diversification strategies are being used abroad and here in our Commonwealth and despite the many uses of our coastal resources, an increasingly diverse aquaculture industry has been able to thrive through well planned and well managed operations.

It's likewise important to note that aquaculture has enjoyed a productive and complimentary co-existence with the many other coastal marine uses including recreational and commercial activities as well as near-shore infrastructure. In fact, whether enjoying fresh-from-the-farm oysters or learning more about aquaculture through agritourism opportunities, shellfish growers, such as myself, often develop a great synergy with recreational boaters and enhance their recreational experiences.

With the above in mind, I encourage your continued support of Kelpheer Farms and welcome the opportunity discuss further concerns you may have about their proposed work.

Best Regards,

A handwritten signature in blue ink that reads "Seth Garfield".

Seth Garfield  
President

cc: Harwich Board of Selectmen

Massachusetts Aquaculture Association - P.O.BOX 186 West Chatham, MA 02669

In summary, we believe our proposal for 1 line of 250 ft for bay scallop production is an insignificant hazard to navigation as compared to what other towns on the Cape have allowed. Furthermore, we believe this is an economic development opportunity for the Town of Harwich to develop an aquaculture industry as many other towns are enjoying.

# **CONSENT AGENDA**



**National  
Multiple Sclerosis  
Society**  
Greater  
New England  
Chapter

June 17, 2021

Joseph Powers  
Harwich Town Administrator's Office  
732 Main Street  
Harwich Center, MA 02645

Joseph Powers/Town Administration:

On behalf of the National Multiple Sclerosis Society, Greater New England Market, I would like to extend our heartfelt gratitude for the continuous support and cooperation the Town of Harwich has shown for our annual Challenge Walk MS: Cape Cod event. The funds raised from this three-day charity walk will continue to be used to advance our support of national research and to support local programming for the more than 25,000 people within Greater New England who are affected by multiple sclerosis.

We are holding our 20<sup>th</sup> annual Challenge Walk from September 10-12, 2021. The route has been updated slightly to ensure the safety of all participants, volunteers, and staff. I have attached the route here for your consideration. We are only going through Harwich on day one, Sept. 10.

We will hire police officers to work safety details where needed. We operate a support team consisting of medical personnel, support vehicles, and amateur (HAM) radio operators. Our lead HAM radio operator monitors all emergency radio frequencies, so that we can close or redirect our route should that become necessary.

We respectfully ask permission from the Town of Harwich Police Department for our walkers to pass through the town. If we can have your permission, please return one signed copy of this letter to me. If there are any other additional steps, permits or permissions I must take to assure approval for this event, please let me know. I have included a completed application for license/permit.

I thank you in advance for your support and please feel free to contact me with any questions or concerns.

Sincerely,  
*Samantha Boland*  
Samantha Boland  
Senior Specialist, Event Production  
978.987.7509



**National  
Multiple Sclerosis  
Society**  
Greater  
New England  
Chapter

The National Multiple Sclerosis Society of Greater New England has informed the Town of Harwich, Town Administrator of its intent to hold Challenge Walk MS: Cape Cod in which walkers will pass through the town on Friday, September 10, 2021. The Town of Harwich grants the National MS Society approval:

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Please return this form to Samantha Boland at the National MS Society:

- **Mail:** 101A First Ave, Suite 6, Waltham, MA 02451
- **Email:** [samantha.boland@nmss.org](mailto:samantha.boland@nmss.org)



**\*\*\*REGULATORY COMPLIANCE FORM\*\*\***

THE EVENT(S) TO BE LICENSED AS DESCRIBED HEREIN HAVE BEEN REVIEWED AND APPROVED BY:

DocuSigned by: <i>Kevin Conidine</i>	6/23/2021   7:31:23 AM	DocuSigned by: <i>Ray Chesley</i>	6/22/2021   12:12:08
Police Department	Date	Building Commissioner	Date

DocuSigned by: <i>Eric Buh</i>	6/22/2021   12:17:15 PM	DocuSigned by: <i>Kathleen O'Neill</i>	6/22/2021   11:57:48
Recreation & Youth Commission	Date	Board of Health	Date

DocuSigned by: <i>Ernie Young</i>	6/23/2021   12:33:15
Fire Department	Date

**\*\*\*Required signatures are to be obtained by the Applicant prior to submission of application with the Selectmen's Office.**

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For Office Use Only

FEE \_\_\_\_\_ CASH \_\_\_\_\_ CHECK \_\_\_\_\_

FOR \_\_\_\_\_

REVIEWED BY \_\_\_\_\_

DATE LICENSE ISSUED \_\_\_\_\_

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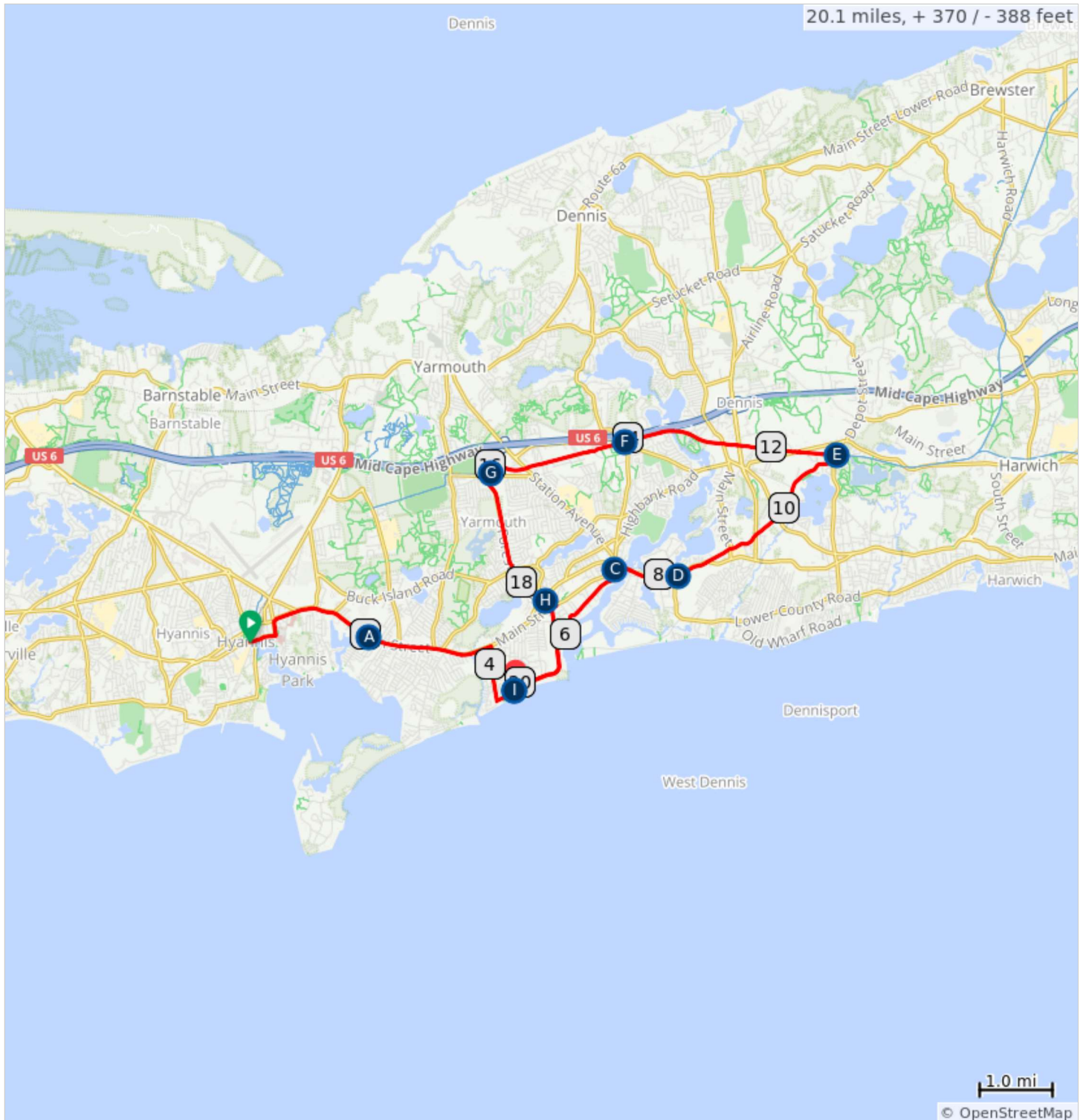
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





# 2021 Challenge Walk Cape Cod: Day 1


















A.	Rest Stop 1- Antique Center of Yarmouth	F.	Rest Stop 6- CCRT & N Main St
B.	Rest Stop 2-Seaview Beach	G.	Rest Stop 7- Peter Homer Park Parking Lot
C.	Rest Stop 3- Cultural Center of Cape Cod	H.	Rest Stop 8- Our Lady of the Highway Parking Lot
D.	Rest Stop 4- Royal Palace	I.	Finish- Parker River Beach Parking Lot
E.	Rest Stop 5-Big Rock Oyster		










Type	Dist	Note
	0.0	Start of route
	0.0	Right onto Ocean St
	0.0	Left onto South St
	0.4	Left onto Lewis Bay Rd
	0.6	Right onto Main St
	1.0	Slight right to stay on Main St
	2.0	Rest Stop 1- Antique Center of Yarmouth
	3.7	Right onto Seaview Ave
	4.5	Left onto S Shore Dr
	4.8	Rest Stop 2- Parker River Beach Parking Lot
	5.4	Continue onto South St
	5.8	Right onto River St
	6.3	Slight right onto Pleasant St
	7.2	Left onto Union St
	7.2	Rest Stop 3- Cultural Center of Cape Cod

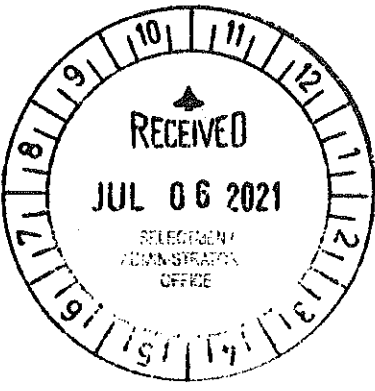
7.2 miles. +79/-91 feet

Type	Dist	Note
	7.3	Right onto Old Main St
	7.3	Right onto MA-28 S/Main St
	8.2	Rest Stop 4- Royal Palace
	8.7	Slight left onto Old Main St
	9.0	Slight right onto Center St
	11.0	Left onto Depot St
	11.1	Left onto Cape Cod Rail Trail
	11.1	Rest Stop 5- Big Rock Oyster
	11.6	Slight left to stay on Cape Cod Rail Trail
	12.3	Slight right to stay on Cape Cod Rail Trail
	14.1	Rest Stop 6- CCRT & N Main St
	16.1	Left
	16.1	Rest Stop 7- Peter Homer Park parking lot
	16.1	Slight right
	16.2	Right onto Old Town House Rd

9.0 miles. +275/-259 feet

Type	Dist	Note
	16.4	Left onto Forest Rd
	18.4	Rest Stop 8- Our Lady of the Highway
	18.5	Right toward Old Main St
	18.5	Right onto Old Main St
	18.6	Left onto South St
	19.5	Continue onto S Shore Dr
	20.1	Left
	20.1	Finish- Parker River Beach parking lot
	20.1	End of route

3.9 miles. +27/-51 feet



Anita,  
 I was told by a staff member that I should send in writing to you about the Harwich Accessibility Rights Comm. that because Matt Hart's ch. had resigned & I am the only member left. I myself can't re-constitute the Comm., so this is (Good wishes for summer '21!)

June 27, 2021  
 My notice that I also resign, Karin Larson. At least Harwich Main St. did have improvements made. I am working with neighborhood comm. on Neil Rd. to see about a walk path from Snow Rd. to Julian on the Harbor side + have been corresponding with County officials. 4 or 5 or 28 paths would be needed!

www.HarwichConservationTrust.org

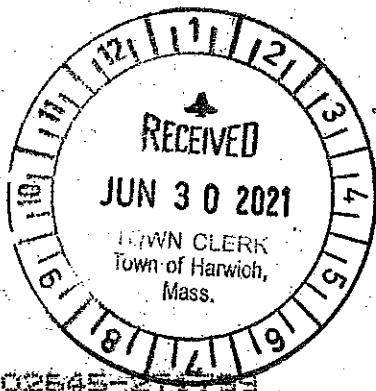
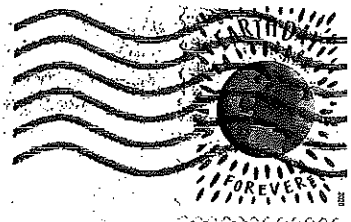


LARSON

PROVIDENCE RI 028

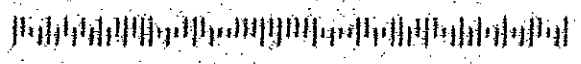
JUN 28 2021 PM 4 L

HARWICH PORT, MA 02646



Anita Dorcette, Town Clerk  
 Town Offices  
 732 Main St.  
 Harwich, MA 02645

02645-2144



**MINUTES**  
**PUBLIC HEARING**  
**REMOTE PARTICIPATION ONLY**  
**Monday, April 26, 2021**  
**5:35 P.M.**

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

**ALSO PARTICIPATING:** Town Administrator Joseph Powers.

**CALL TO ORDER**

Mr. Ballantine opened the meeting at 5:35 pm, and called to order the Public Hearing. He explained that he first called the meeting to order at 5:00 pm for Executive Session, where they discussed litigation strategy with respect to the case of 3137, LLC, et al. (Ember and Port) v. Town of Harwich, et al., United States District Court, C.A. No. 1:21-CV10473, if discussing the matter in open session will have a detrimental effect on the Town's litigating position and the chair so declares.

Mr. Ballantine said that he would like to read a statement, regarding the rule of necessity, before continuing the hearing. The public hearing is in regards to the Seasonal All Alcoholic Beverages License and the Seasonal Entertainment License, which was issued on March 22, 2021. The Board of Selectmen is the Town's executive authority and no other Board or official can represent the Town in this matter. Therefore, on the advice of Town Council, he is invoking the rule of necessity in order for the Board to act on this matter. As stated, his financial interest is that he is named personally as a defendant. Mr. Ballantine asked that each other member identify their financial interest. He said that once this is done all board members will be eligible to participate in the discussion of this notice.

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

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

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

Mr. Ballantine said that he will ask for the board to continue the notice of public hearing for Ember Pizza and the Port, which was first brought forward on March 22, 2021 and read the notice of public hearing for both the Port Restaurant and Bar and Ember Pizza. He asked for a roll call to open the hearing.

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

## **PUBLIC HEARING**

- A. Ember Pizza, 600 Rt. 28 – Public hearing on applications for renewal of the Seasonal All Alcoholic Beverages License and the Annual Entertainment License; discussion and vote and public hearing on reconsideration of January 24, 2021 decision to renew the Annual Wine and Malt Beverage License for said premises; discussion and possible vote to order discipline based on Town Administrator’s February 8, 2021 findings and recommendations.

Mr. Ballantine read the public hearing for Ember Pizza and took a roll call vote to open the hearing.

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

Mr. Powers said that in regards to the public hearing in regards to Ember Pizza, 600 Rt. 28, for the renewal of the Seasonal All Alcoholic Beverages License and the Annual Entertainment License. He said that they may also entertain discussion and vote in public hearing in reconsideration of their January 24, 2021 decision to renew the Annual Wine and Malt Beverage License for said premises; discussion and possible vote to order discipline based on his report dated February 8, 2021. Mr. Powers said to the Chairman and members of the Board, that they are acting this evening as the Board of Selectmen, as the local licensing authority and as such, they are operating under the Ballarin factors. This evening when reviewing and rendering decisions on these applications for liquor license, the Board will consider the applications for request for renewal of the seasonal all alcoholic beverages license under MGL c.138. In evaluating the renewal application the Board will also use the Ballarin factors in their deliberation.

The Ballarin factor comes from the Massachusetts appeals case; Ballarin, Inc. vs. Licensing Board Of Boston. The Ballarin case clearly articulates the factors that will be used by this board to form a basis in this application to determine the issuance or denial of the requested license. The Ballarin factors are: 1) Public need, meaning a consideration of the public want and the appropriateness of a liquor license at a particular location 2) Consideration of the number of existing dispensaries in a locality; 3) Views of the inhabitants of the locality in which a license is sought; 4) Traffic; 5) Noise; 6) Size; 7) The sort of operation that carries the license; 8) Consideration of the reputation of the applicant

Mr. Powers said that additionally since the Board will also consider request for the Entertainment License, pursuant to MGL c.140 s.183a, because both licenses involve the same facts and circumstances, they will hear testimony on both but will vote separately on each. With regard to the entertainment license, the standard is that the license must be granted, unless the board finds that the license alone or in combination with other licensed activity on the premise would adversely affect the public health, safety or order, because it cannot be conducted in a manner so as to protect employees, patrons, and members of the public inside or outside the premises from disruptive conduct, from criminal activity, or from health, safety or fire hazards; (b) prevent an unreasonable increase in the level of noise in the area caused by the licensed activity or caused by patrons entering or leaving the premises; or (c) prevent an unreasonable increase in the level of pedestrian or vehicular traffic in the area of the premises or an unreasonable increase in the number of vehicles to be parked in the area of the premises.

Mr. Powers stated that the following procedures will be followed:

- 1) Open the public hearing, by a motion;
- 2) Application documentation and comments from responding town departments will be reviewed;
- 3) The applicant will be given the opportunity to offer a presentation;
- 4) The board will have the opportunity to ask questions;
- 5) The board will hear comments from: a. those individuals present in favor of the application, and b. those individuals present in opposition of the application;
- 6) Close the public hearing, by way of a motion;
- 7) Discussion by the Board;
- 8) Motion will be made regarding the application.

Mr. Ray Tomlinson, Attorney for the applicants, spoke up and requested to introduce the council present on behalf of the applicants. He said that with him tonight is Mr. William Kelley, Attorney for the applicant, as well as Mr. Andrew Upton, Attorney for the applicant. Mr. Tomlinson asked to go on record that they had received short notice, on Thursday of last week for this hearing, and the request to produce documents was made to Attorney John Davis, they asked for documents to be produced and it appears that Mr. Powers is presenting documents that were not produced to the applicants and they have not had an opportunity to review them. He said that he is objecting to the use of those documents at this hearing. Mr. Tomlinson said that at this time he would like to have Mr. Kelley make any further objections before they proceed.

Mr. Ballantine said that he would like to proceed at this time and they will have a chance to speak at they move into the hearing.

Mr. Kelley interrupted and said that is not the proper lawful procedure. He said that the licensee, through its counsel has the right to be heard at every stage of this process.

Mr. Kelley and others spoke on top of each other regarding the procedure and the rights to be heard.

Mr. Powers made attempts to mute others and was finally able to be heard to explain that no member of the meeting may be heard without leave of the Chair. He would defer to the Chairman on who has the right to be heard. Mr. Kelley continued to interject that he has the right to speak and be heard with his objections and that it is not the call of the Chairman. He said that Mr. Ballantine does not have carte blanche, and must comport with the law and the constitutional rights of the licensee.

Mr. Ballantine asked for comment from the Town's legal counsel.

Mr. Jeffrey Blake, Attorney, KP Law, said that Mr. Kelley does not have the right to interrupt their meeting and talk whenever he sees fit. Mr. Kelley interrupted and said in rebuttal, that is not right and not correct.

Mr. Ballantine said that they are going to continue. Mr. Kelley said he would like to note his objection and that this is not a lawful procedure. He

said that it violates the constitutional rights of the licensees that are clearly established.

Mr. Ballantine said that he has been heard and they are moving on.

Mr. Blake said in reference to the documents that are being presented, the applicant had notice and opportunity to be heard during the hearing and during the conference that was held by the Town Administrator and applicant. The town attempted to help Mr. Tomlinson attend the hearing, but for some reason he was not able to and the town continued the hearing.

Mr. Kelley interrupted and said that he objected, and that none of this is relevant to the issues that are illegally before this commission, due to lack of a sufficient notice.

Mr. Ballantine asked Mr. Powers to comment on the documents.

Mr. Powers said that the documents he made reference to were the documents that were provided to the Board, in the packets in anticipation of the hearing on March 22<sup>nd</sup>. It is the Notice of Recommended action following disciplinary hearing, and dated February 8, 2021, which follows the hearing that was held January 12, 2021. Mr. Powers said that he also wanted to mention regarding procedure, that it is necessary to keep non-speakers who have not been recognized by the Chair, in mute mode due to the ambient noise. If an individual wishes to be heard, they can be recognized by the Chair. Otherwise, people will not be able to hear the proceedings.

Mr. Kelley objected and said it is not a lawful procedure to silence the legal counsel for the licensee, that has a right to be heard.

Mr. Powers said that his reference was to non-counsel people, that have had microphones open. He said that the Board has in the packet a memorandum from him dated February 8, 2021, regarding the Ember Pizza's liquor license violations. The statement of findings was that, he found that the licensed establishment did permit a disordered disturbance, or illegality to take place, by violating Governor Baker's order during the COVID-19 State of Emergency, on two dates in question, as described in his statement.



Mr. Kelley interrupted and said that he objected to this incompetent evidence. He said that while they have the right to accept hearsay in proceedings such as this, they do not have the right to have total hearsay.

Mr. Ballantine asked if Mr. Kelley understood the procedures that were outlined, and that he would have ample time. Mr. Kelley said that he understood the unlawful procedures that were urged upon the Board to follow, but he does not have to abide by that. He said his obligation is to object to the unlawful procedure and the introduction to inadmissible and unreliable hearsay, which Mr. Powers was speaking of.

Mr. Ballantine said that he will have ample time to respond to the allegations.

Mr. Kelley said that it is not sufficient to meet the constitutional rights of the licensee, to have an opportunity to respond. He said that the Chair must rule on his objections to the introduction of incompetent and irrelevant evidence.

Mr. Ballantine said they are moving on. Mr. Kelley asked that they note his objection.

Mr. Tomlinson said that the Chairman must rule on each objection and asked if he was refusing to do so.

Mr. Blake said that this is an administrative procedure, and the rules of evidence do not apply. He said that the fact the counsel for Ember are trying to make a rule of evidence argument and objection, they do not apply. The evidence is clearly relevant as the notice said that they were going to take up the Town Administrator's report of February 8<sup>th</sup>.

Mr. Kelley said that his objection is in regards to totem pole hearsay which is never admissible in any proceeding. Mr. Blake said it is. Mr. Kelley continued that it is not, and should not be admissible because it is unreliable and unreliable evidence is irrelevant. He said that the Board of Selectmen should be comporting themselves like judges which is their function tonight, and they must abide by all lawful procedures. They have not and he objects.

Mr. Ballantine said that his objection is noted, but he is intent on having an orderly discussion of this hearing, as they do with all licensee applications. He said that they are following their normal procedure to hear the notice of intent.

Mr. Kelley responded that if their practice and custom is not to comply with lawful procedures, in full accord with the constitutional rights that are afforded to existing license holders, and that is not any excuse or justification to continue that in this hearing. He said that he has brought to their attention the legal infirmities and the legal errors and the unlawful procedures of their processes.

Mr. Blake said that Mr. Ballantine has said they are moving forward and he is obstructing the process. Do they want the hearing to go forward or not?

Mr. Kelley stated that Mr. Blake should not accuse him of that without foundation, and he has the right, and obligation to make his objections known to this body.

Mr. Ballantine said it is in the best interest of everyone to continue.

Mr. Kelley asked for a ruling on his objection. Mr. Ballantine said the objection is in the record and they are moving forward.

Mr. Tomlinson asked to be heard, and said that if it is in the interest of the Town to move forward, as the Chairman had suggested, will he entertain a motion of the applicant to renew the licenses, so that the Board can properly proceed with the public hearing, with respect to modifications. He said that he suggested that the notice of and invocation of the Ballarin Factor is improper procedure, which is not supported by the Statutory Scheme. He said that the Ballarin Factors, as they have it noted for the public, is applicable not to renewal applications, but only to new licenses to be issued by the Town. He asked that the Chairman consider a motion by the applicant, to renew the licenses without objection so that the Board may proceed to properly invoke its regulatory process pursuant to the statutory schemes.

Mr. Ballantine said that he would not, because they have various allegations from neighbors, police and others, that would like to be heard

before they make a decision. He would like to hear Mr. Tomlinson's view and the applicants view at the same time, and does not want to short cut that.

Mr. Tomlinson said that they are not trying to deny the Board the opportunity to hear from the public, however, if the Board is considering whether or not to further expose the individual board members to further liability, he said that perhaps it makes sense to entertain a motion from the applicant to simply renew the licenses, so that the Board may proceed with proper public notice about any modification, or suspension, of those licenses. He asked again if the Chairman would entertain a motion from the applicant with respect to renewing the licenses, and then they may proceed in two-weeks, or later, with a public hearing that properly affords notice and the applicants ability to review the documents that was denied to them, as of Friday of last week.

Mr. Ballantine said that he will ask for guidance from their counsel, but he thinks that is what the public hearing tonight is for.

Mr. Blake said that they can move forward and the applicant will have an opportunity to bring this to the ABCC, or added to any of their court cases. He said that the Board can take the motion, but they are free to go forward, if they choose. He said that it seems the applicant's counsel's intent to prevent them from going forward, it sounds like they will be there all night going back and forth. He said that it is the Board of Selectmen's meeting and under the due process of the US Constitution and the Massachusetts Declaration of Rights and Constitution, they have notice and an opportunity to be heard. They do not have the right to disrupt this proceeding like they are. If they continue to do that, Mr. Ballantine has the right, as the Chairman, to ask them to stop and to be recognized. They can object, but the continuous speaking objections over and over again, it is clear what their purpose is, and it is their meeting and he can ask them to stop.

Mr. Kelley asked to be heard, on what he referred to as, Mr. Blake's intemperate and inaccurate comments, and asked for his objection to be noted.

Mr. Ballantine said he would like to move forward. He asked Mr. Powers to go back to his statement, and then move to the normal course of events for legal counsel's comments, and so forth.

Mr. Powers said that he would continue on from the memo dated February 8<sup>th</sup>, 2021. He read, "although the initial call log indicated that he observed this individual drinking from the container, during hearing it was clarified that the officers did not observe the container to be open and they did not observe the individual taking a drink. I, therefore, find no violation with respect to this report. 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 and which I credit as true and which establish that the licensee permitted disorders, disturbances or illegalities to take place on the licensed premises. He said that the recommended disciplinary action, based on the facts admitted into evidence at the public hearing, I find that one (1) violation of the laws of the Commonwealth has been established. The licensee has been found responsible for six (6) violations in the two years prior to the violations described herein. In addition, the Hearing Officer is aware of numerous public complaints about the manner in which the establishment is operated."

Mr. Kelley objected and moved to strike that comment and said it was not properly before them.

Mr. Ballantine asked Mr. Kelley not to interrupt the testimony. Mr. Kelley said that it is his obligation to object to incompetent irrelevant and unlawful procedures. He asked that his objection be noted. Mr. Tomlinson seconded the objection.

Mr. Powers continued and read "if the Board intends to conduct a public hearing to determine whether or not the license should be renewed. Therefore, I will hold my recommendation in abeyance until after that hearing."

Mr. Kelley asked to question Mr. Powers. Mr. Ballantine said that he would like to have their counsel go next. Mr. Kelley said that the licensee has the right to ask questions of anyone who speaks against them. Mr. Blake said that he is right and he can cross examine.

Mr. Kelley asked Mr. Powers if he is currently the Town Administrator for the Town of Harwich, and asked if that is his legal title. Mr. Powers responded that it is.

Mr. Kelley asked how long he has held that position. Mr. Powers said that on November 12, 2019, he was named Interim Town Administrator, then the Board named him Interim Town Administrator, separate from his role as Assistant Town Administrator, on September 1, 2020. He said, then the Board named him the Town Administrator on February 1, 2021.

Mr. Kelley asked if it is accurate to say that the Board of Selectmen, the four members there, have the decision on hiring or firing him. Mr. Powers said that he believes it is accurate to say that the full Board of Selectmen have the appointing authority of the Town Administrator, per their charter.

Mr. Kelley also asked if separate from the appointing authority from the Board of Selectmen does he have a written contract for a specified term of years. Mr. Powers said that he received a written contract on February 1, 2021. Mr. Kelley asked if that is in the public domain since it involves the expenditure of public monies. Mr. Powers said he believed it was. Mr. Kelley asked what the length is of his contract. Mr. Powers said that the contract expires June 30, 2024.

Mr. Kelley thanked him for his testimony and asked when the contract was signed. Mr. Powers answered again, February 1, 2021.

Mr. Kelley said that when the proceeding happened in January of 2021, he had no contract with the town, is that right? Mr. Powers said he had a temporary contract with the Board, that was executed on September 1, 2020, as Interim Town Administrator.

Mr. Kelly said when they had the first proceedings regarding certain allegations, in August of 2020, when Mr. Tomlinson had difficulty hearing and they adjourned that, did he have a contract then? Mr. Powers said that he was the Assistant Town Administrator, and in accordance with the charter, in the absence of the Town Administrator, the Assistant Town Administrator serves as the Town Administrator interim.

Mr. Kelley asked if he had just a single contract as Interim Town Administrator from September 2020, until he signed the contract as Town

Administrator in February 2021. Mr. Powers said yes. Mr. Kelley asked if it was about five to six months. Mr. Powers said that sounded right.

Mr. Kelley asked how many times he had reached out to Mr. Tomlinson to inform him that the hearing would proceed on January 12<sup>th</sup>, with or without him? Mr. Powers said that he would have to look back through his notes, he does not have that information with him.

Mr. Kelley asked if written notice was sent to the licensee, Ember and The Port, that the hearing was taking place on January 12th? Mr. Powers said he would have to go back through his notes and his information.

Mr. Kelley asked if they were not included in the Selectmen packet that was sent to the four members of the Board of Selectmen, sitting on the Board tonight? Mr. Powers said he would have to go through the packet. Mr. Kelley asked if he did send them a packet at some point? Mr. Powers asked for clarification who is referring to as “them”. Mr. Kelley clarified that he was asking if he had sent the four members of the Board of Selectmen a packet that had information concerning tonight’s event, which included what he had just read? Mr. Powers said that he does not know that he did, it is customary for staff to do that. Mr. Kelley asked if that would be his staff, acting on his behalf. Mr. Powers said it would be administration staff. Mr. Kelley asked if by administration staff, that would be the Town Administrator’s staff. Mr. Powers said it is the Administration Department, and they work for him as the Town Administrator, and the Board of Selectmen.

Mr. Kelley asked if Mr. Powers knows what ex parte communication is? Mr. Powers said no. Mr. Kelley said that he has never been counseled then, on having communications with individuals that are supposed to be fair and impartial fact finders on a particular dispute, and should never be communicated with about the substance of that event, outside of the formal record, when it begins? Mr. Powers said that he does not understand the question.

Mr. Kelley asked if he had any training in proper legal proceedings for hearings in the Commonwealth of Massachusetts? Mr. Powers asked, if he meant formal training, and said that only what the ABCC provided back in 2000 to 2010. Mr. Kelley asked if that was individual for the Town of

Harwich, or for a group of communities? Mr. Powers said for a group of communities.

Mr. Kelley asked if they had discussed in detail with him about the concept of ex parte communication, with the Board of Selectmen, who would be sitting to decide an issue. Mr. Powers said that he would have to defer to him, as one of the presenters previously. Mr. Kelley said that he would suggest that they did not, because you must never engage in ex parte communication with a fact finder, outside of the formal record.

Mr. Blake objected and asked if there was a question.

Mr. Kelley asked the Chairman, if Town Counsel would be subject to the same rules about speaking objections?

Mr. Ballantine said Mr. Kelley could continue, and then Town Counsel can raise his issue.

Mr. Kelley asked if it is fair to say, that he does not have any memory, of any specific instruction, at those ABCC trainings, for any discussion on ex parte communications? Mr. Powers said that he just testified that he is not aware of what is meant by ex parte communications.

Mr. Kelley asked about the proceeding of January 2021, and who administered the oath to the witnesses that they would be telling the truth, the whole truth and nothing but the truth? Mr. Powers said he would have to review his notes, but believed it would have been him, as hearing officer. Mr. Kelley asked if he would have done that from memory or have a written oath to be administered, in front of him at the time. Mr. Powers said that he has it committed to memory.

Mr. Kelley asked if that proceeding was video, or audio taped, or some type of video platform? Mr. Powers said that he believed that GoToMeeting would be considered a type of video platform, and that is how it was done. However, he said that he would have to go through his notes to confirm that he was not mixing up hearings.

Mr. Kelley asked if he had a memory of Channel 18 being present at that meeting in January 2021? Mr. Powers said that staff was present; but he

did not believe that it was Channel 18 recording, but staff working with a videographer.

Mr. Kelley further asked if he could recall if that event was being recorded, the way there was an announcement for this event tonight? Mr. Powers asked for him to repeat the question. Mr. Kelley asked if he had a memory as to whether there was an announcement at the time of the hearing, indicating that the proceeding was being recorded? Mr. Powers said yes, and that he heard that.

Mr. Ballantine said he was not sure where they are going with that, but he wanted to check with legal counsel, because he does not want this to go on all night.

Mr. Blake said that his concern earlier was due to Mr. Kelley testifying, but what he thinks that Mr. Kelley is trying to do here, is to try and explore the veracity of this witness. Mr. Blake said that he understand that there is a limited amount of time, but they do have the right to be heard, and question the witnesses for as long as they want to take. He said that if Mr. Kelley becomes repetitive, then they can speed it up. He said that if they need to continue the hearing, they may have to, but Mr. Kelley needs the opportunity to go through and question this witness.

Mr. Kelley asked for a moment to review his notes, and said that he has no further questions for Mr. Powers.

Mr. Blake said that he will not be long, and that he believes most of the testimony will come from the neighbors and abutters to the establishment. He asked if the Chief was on the call and asked if he could identify himself for the record.

Chief David J. Guillemette, Chief of Police Harwich recognized himself for the record.

Mr. Blake asked Chief Guillemette how long he has been the Chief for Harwich? Chief Guillemette said that he is approaching six years, in July.

Mr. Blake asked if part of his duties include responding to calls or overseeing the response to noise, nuisance and the like. Chief Guillemette said yes.



Mr. Blake asked the Chief if he knows why he is there tonight? Chief Guillemette said that he was there to comment on the public hearing for the entertainment and liquor licenses for the Port and Ember.

Mr. Blake asked if he typically comments on licenses or has been asked to comment on liquor or entertainment licenses in the Town. Chief Guillemette said this may be the first hearing of this type for him. Mr. Blake asked if his input is ever asked for with respect to an establishment's liquor or entertainment licenses. Chief Guillemette said yes, in regards to specific complaints or number of complaints etc.

Mr. Blake asked if the Chief reviewed his files at the Police Station before coming there tonight? Chief Guillemette said that he did review the statistical data, and some of the log entries from the past couple of years.

Mr. Blake asked if he was familiar with the establishment they are there about tonight, naming, Ember Pizza? Chief Guillemette said yes.

Mr. Blake asked if he could give a description to the neighborhood that Ember is part of, if the streets are wide or narrow, and if there is plenty or limited parking?

Mr. Kelley interjected and said that Mr. Blake's question is not relevant and said that he is unnecessarily prolonging the hearing that has the sole impact of driving up the cost to defend itself, from being born by the license holders.

Mr. Ballantine said that he allowed Mr. Kelley to make his statements and would like to allow their legal counsel to make his statements as well.

Mr. Kelley said that he understands, but respectfully, Mr. Blake's question is not relevant and therefore should not be allowed to be asked. He said that it is improper and therefore he objects, and asks for the Chair to make a ruling accordingly.

Mr. Ballantine said that he is trying to operate this as fairly as he can, and that Mr. Blake had the same objections to Mr. Kelley's questions, as he has to his. Therefore he would like this to supersede.

Mr. Kelley said that he does not believe that Mr. Blake had the same objections as his, being that they are not relevant. He said that Mr. Blake had acknowledged, as he must, that the license holder has a vested constitutional right to cross exam witnesses. He said that is not his objection. He said that his objection is more fundamentally to the fairness to this procedure, by Mr. Blake, asking irrelevant questions that would solicit irrelevant information and evidence.

Mr. Blake stated that Mr. Ballantine has the ability to overrule or sustain the objection. If he overrules, Mr. Kelley can take it up later. He said that as part of the Ballarin Factors, one of the factors is driving and parking, so therefore his question to the Chief about the nature of the neighborhood is very relevant.

Mr. Kelley said that the Ballarin Factor has no place in their decision of whether to deny renewal for good cause, under the renewal law for alcohol licenses, which is specific to MGL c. 138, s. 16A. He said that the licensee timely filed their application for renewal, there is no dispute about that. He said there is also no dispute that the law provides that the licensee has the right to an automatic renewal. He said that the only way that the automatic right to renewal can be delayed or denied, is if the licensing authority follows lawful procedure and issues a notice that they will have a hearing to determine if there is good cause to deny the renewal. Mr. Kelley said that they have not issued that notice, it is not on their agenda tonight, and that standard does not involve the Ballarin Factors whatsoever. He repeated that Mr. Blake's question is irrelevant, and luring them into committing an error of the law and further action, based upon unlawful procedure, and violations of the constitutional rights of the licensee.

Mr. Ballantine said that they will move ahead, because it affects the overall discussion on the liquor and entertainment license.

Mr. Kelley asked if he is ruling on his objection?

Mr. Ballantine said yes, it is overruled.

Mr. Blake asked Chief Guillemette to answer his question.

Chief Guillemette said that Ember is located on the corner of Bank Street and Route 28. He said that they are two fairly busy streets, and that it is a

mix use area; meaning that there are residential homes, as well as businesses there. He said that some are as close as within 150', and others are well outside of that distance. He said that it has a moderate size parking lot, which is right off of Route 28.

Mr. Blake asked if he knew about the exterior of the establishment, if they are currently allowing patrons in the parking lot now? Chief Guillemette said he does not believe so, they expanded picnic tables on the lawn, not on the parking lot. Mr. Blake asked to confirm that they are outside, Chief Guillemette said correct.

Mr. Blake asked Chief Guillemette, regarding the complaints he had reviewed, if he or any of his officers, had fielded any complaints for Ember Pizza?

Mr. Kelley objected. He said that it was a compound question and in improper form. He said that this witness can only testify as to what he himself knows, what he himself saw. He cannot engage in the speculation as to what others may or may not have seen.

Mr. Blake said that he can, and said that this is an administrative hearing and the rules of evidence do not apply.

Mr. Kelley said he cannot, and can only supply testimony that he has personal knowledge of.

Mr. Ballantine said he is going to go with the judgment of their counsel on this and the objection is overruled. Mr. Kelley said to note his objection.

Chief Guillemette said that they have responded to noise complaints there.

Mr. Kelley objected and moved to strike the answer as nonresponsive.

Mr. Ballantine said he answered the question. He overruled the objection. Mr. Kelley said to note his objection.

Mr. Blake asked Chief Guillemette where the complaints came from, if he knew? Chief Guillemette said from the surrounding neighborhood.

Mr. Blake asked if they were noise complaints?

Mr. Kelley objected. He said that counsel is leading the witness improperly and he knows it, and should not be doing it. He said that Mr. Blake knows how to conduct a proper direct examination. Mr. Kelley said that he objects and moved to strike Mr. Blakes appearance and said that he cannot serve as both counsel to the Board, as an impartial fact finder, and also serve as the prosecuting officer, conducting full examination of the witnesses who purport to present information and testimony against my client. Mr. Kelley said it is a further indication of the unlawful procedures that this Board is following, and has been lured into following. Mr. Kelley said to note his objection, he moved to strike his appearance. He said that they should move on to vote to renew the license.

Mr. Ballantine said he overruled that, and it was a direct question. He asked the Chief to respond to it.

Mr. Blake repeated the question, what were the nature of the complaints they received for Ember? Chief Guillemette said that an overwhelming majority of them were from loud music, from entertainment outside.

Mr. Kelley objected, and moved to strike. He said that it is not responsive and that it is opinion and character without foundation.

Mr. Ballantine asked if Chief Guillemette could respond to that with more information?

Chief Guillemette said that the majority of the nature of the calls were noise complaints.

Mr. Kelley objects to the Chief testifying to matters he did not personally witness. He said if they want that evidence, the proper witnesses would be the officers that responded and have direct information to share.

Mr. Ballantine said that he thinks that officers file a report, which the Chief is referring to. Chief Guillemette said that they do file a report.

Mr. Kelley said in certain circumstances, that type of information may be admitted into an administrative proceeding, but would have to have more explanation of the nature of the material.

Mr. Blake said that Mr. Kelley will have an opportunity to cross examine Chief Guillemette, and he can bring that all out. He said that the way the hearing is going, he doubts that they will vote on this tonight.

Mr. Kelley said that he would like to request the Chairman to direct Mr. Blake to stop issuing opinion regarding the conduct of these proceedings. He said that Mr. Blake knows very well, and has acknowledged that the licensee has the right to confront each and every witness against them, and to conduct cross examination, yet, he speaks against that. Mr. Kelley said that they have in the described procedures an opportunity to make a presentation, it is not a substitution, excuse, or justification to defy a meaningful cross-examination of the witnesses or other aspects of due process, which includes the objection to incompetent, irrelevant, and inadmissible information.

Mr. Ballantine said that they have heard his objection and requested that Mr. Kelley let Mr. Blake ask questions of the Chief, and after he will be allowed to cross examine. He said to interrupt each question is not getting them anywhere.

Mr. Kelley said that it is not his intent to prolong these proceedings, but when an improper question is asked, he is duty bound to bring it to his attention and ask for a ruling.

Mr. Ballantine said that they will move on.

Mr. Blake asked Chief Guillemette again if he could tell the Board what the nature of the complaints were for Ember Pizza? Chief Guillemette said, they were for loud music.

Mr. Blake asked if there were any other complaints with respect to talking or other complaints other than loud music?

Mr. Kelley objected and that he is leading the witness, the question has been asked and answered.

Mr. Blake said that Mr. Ballantine does not have to let him constantly interrupt the proceeding, and said that an overrule or sustain is sufficient.

Mr. Ballantine overruled and would like to move ahead. He said that Mr. Kelley will have a chance to cross examine. Mr. Kelley asked that his objection be noted.

Mr. Blake asked Chief Guillemette what the nature of the complaints were, if there were other complaints besides noise? Chief Guillemette said that the majority were noise.

Mr. Kelley objected that he already answered the question.

Chief Guillemette continued, but there were a handful of disturbance types of calls that had come in with crowd noise, around closing. However, the majority has been loud music for Ember.

Mr. Blake asked about the disturbance complaints around closing and asked if he knows what time the establishment closes?

Chief Guillemette said that they close at 1:00 AM.

Mr. Blake asked if Chief Guillemette could further explain the disturbance type complaints Chief Guillemette said loud, boisterous patrons leaving, loud outcries, and that type of thing.

Mr. Blake asked if there were any for fighting?

Mr. Kelley objected and said that he would ask the Chairman to direct council to stop leading the witnesses. He said that it is inappropriate, and underlines the unlawful proceedings that are happening there.

Mr. Ballantine said that they are trying to understand the situation.

Mr. Kelley said that they all are; however, it is becoming clear that council knows that he cannot lead a witness on direct examination but he continues to do so. He would request the Chair to direct council to stop and follow lawful procedure.

Mr. Ballantine said that he will not, he will allow their council to ask his questions. Mr. Kelley asked that they note his objection.

Mr. Blake said that the Chief had testified about the loud crowd noises around closing time, and that they close at 1:00 AM.

Mr. Kelley objected, and said that it is council's mischaracterization to the witness's testimony, and speaks for itself on the record. He asked that they move forward with proper direct examination.

Mr. Blake asked Chief Guillemette if there were any other complaints that were classified as disturbances?

Mr. Kelley objected, and said that Mr. Blake is now repeating himself when he complained about repetitive questions. He said, let's move on.

Mr. Ballantine said for the Chief to answer the question.

Chief Guillemette said that they do not have a major problem with fighting or anything of that nature. He said that it is the noise related to patrons and music.

Mr. Blake asked who makes the complaints, is it neighbors or abutters?

Mr. Kelley objected and said that Mr. Blake persists in leading the witness. He said that it is improper and is infecting this whole proceeding with its unlawful procedure. Mr. Kelley said that he objects and moved to strike the question, and any answer that may have snuck into the answer afterwards.

Mr. Ballantine said that he overrules, and that it is important to them to know who is making the noise complaints.

Mr. Kelley said that it is not a proper relevant issue before the Board, and he has made the objection. They are compounding the legal error through an improper direct examination.

Mr. Blake said that he will turn it over to the Board to ask questions and Mr. Kelley can object to the Board's questions. He said he is done with this witness.

Mr. Kelley asked if he can inquire of the witness. Mr. Ballantine agreed.

Mr. Kelley asked Chief Guillemette if Ember is located in an area of the town that is zoned for commercial use? Chief Guillemette said yes, there are business there.

Mr. Kelley asked if he was aware, that in fact others have been located in close proximity to Ember? Chief Guillemette asked what he meant by others? Mr. Kelley said other businesses that sell alcoholic beverages, that are in close proximity to Ember? Chief Guillemette asked what he meant by close proximity? Mr. Kelley asked if he was familiar with an establishment called Perks? Chief Guillemette said yes. Mr. Kelley asked where that was located in relation to Ember?

Mr. Blake objected and said it is irrelevant, because they are there for Ember.

Mr. Kelley said it is cross examination, and the credibility of this witnesses, as it relates to what he claims is complaints emanating from Ember. He said that it is clear there are many other licensed establishments, with similar operating hours, located in close proximity to such a degree that he suggested it is virtually impossible to segregate one from the other. Mr. Kelley said that he is entitled to test that, and in fact there are several within walking distance, and council opened this door on direct examination. He is entitled to cross examine the Chief on it.

Mr. Ballantine said he asked the question and he will let the Chief respond, but in his opinion Perks is not that close to Ember.

Chief Guillemette said that he would agree, it is not close. Mr. Kelley asked how close Perks is to Ember, in feet.

Chief Guillemette said that he is not sure. Mr. Kelley asked how far Hot Stove is from Ember? Chief Guillemette said about the same as Perks, he is not sure. Mr. Kelley asked how far in feet Three Monkeys is from Ember? Chief Guillemette said he is not sure the distance.

Mr. Kelley asked if it would be fair to say that those establishments are within walking distance to one another? Chief Guillemette said yes, that would be fair to say.



Mr. Kelley asked if it would be fair to say that those three establishments, Hot Stove, Perks and Three Monkeys, have similar closing times as Ember, of 1:00 AM? Chief Guillemette said that he believed so.

Mr. Kelley asked if would be fair to say that those establishments have also been the source of complaints to the Police Department, in the past three years. Chief Guillemette said that he does not believe that Three Monkeys had any complaints. Mr. Kelley said but Perks did? Chief Guillemette said yes. Mr. Kelley said and the Hot Stove did? Chief Guillemette said a couple.

Mr. Kelley asked if Perks has had their license renewed for calendar year 2021?

Mr. Blake objected.

Mr. Ballantine said he thinks they are getting beyond why they are there tonight, which is for Ember and The Port.

Mr. Kelley said that this is cross examination and he is entitled, as Mr. Blake has acknowledged during this proceeding, to test the credibility of this witness. He said that Chief Guillemette testified, both by being led by council and by appropriate direct questions, as to Ember. He is entitled to test the validity of his information by his knowledge of other similarly situated competitors in the area.

Mr. Blake said that he is not entitled to ask irrelevant questions. He is entitled to test the veracity of the Chief, and he has been doing that, but now he is going down a different path. Mr. Blake said that whether or not a different establishment licenses were renewed is irrelevant, they are not there to litigate that establishment.

Mr. Ballantine said he will sustain the question. Mr. Kelley attempted to repeat the question and Mr. Blake said that the Chairman had sustained the objection. With clarification, Mr. Ballantine said that he overruled the question, because he does not see how his questions are less misleading than their council's.

Mr. Kelley asked to note his objection to the ruling, and the reversal of Mr. Ballantine's earlier ruling which he stated as a misstatement.

Mr. Kelley said that there is a substantial difference in the standard in direct vs cross examination, particularly as it relates to leading questions. He said that leading questions are appropriate during cross, but never appropriate during direct. When council steps over the line, the only thing that can be done is an objection from the opposing side.

Mr. Kelley asked if Chief Guillemette recalled writing a memorandum to the Board of Selectmen, with recommendations or stated concerns about the renewal of licenses for three establishments? Chief Guillemette said yes. Mr. Kelley asked if Perks was one of the three? Chief Guillemette said yes. Mr. Kelley asked if Perks was renewed? Chief Guillemette said that he did not know.

Mr. Kelley checked his notes, and said he had no further questions for Chief Guillemette.

Mr. Ballantine asked if any of the Board of Selectmen members had any questions for the Chief? Mr. Howell, Mr. McManus and MacAskill had no questions at this time.

Mr. Ballantine said that they would ask the public if they had questions.

Mr. Kelley said to note his objection, and stated that they have no relevance in regards to the issue for the renewal of the alcohol license. He said that the participation of the public comes in the appropriate application of the so called Ballarin Factor, which is limited to transactions which involve a new license application, or an application to change the description of the license premises. Mr. Kelley said that public comment tonight is irrelevant and inappropriate and an unlawful procedure that violates the constitutional rights of the license holder.

Mr. Ballantine asked for Mr. Blake's comment.

Mr. Blake said that Mr. Ballantine is well within his rights to have testimony from any witness or testimony is well within his discretion. He said that he thinks their testimony about what they have had to live with, will be very relevant.

Mr. Kelley said that Mr. Blake has over stated the scope of relevant information, and if they have knowledge about a particular violation, it is not properly before this body, because it has not been incorporated into a notice of hearing that comports with the fair notice required of the board by MGL CH. 138, as well as the constitutional rights that are fully vested in the license holder.

Mr. Ballantine thanked him for that, he said he would like to hear from witnesses, that would like to comment. He asked that they keep their remarks brief and if someone has already made a comment, not to repeat it, because they are listening. He opened it up for those that would like to comment, both pro and con.

Mr. Kelley asked to note his objection, and continued his objection in regards to the fact that he has had no fair notice or information provided to him about who will be stepping forward to speak regarding the proceedings tonight, and that is unfair and not proper legal procedure. He said that it is unlawful and he objects.

Mr. Ballantine noted his objection.

Ms. Paula Ribeiro requested to speak, and said that she is an employee of Ember and The Port. She said that she would like to make reference to the event that was discussed earlier, at Ember on May 22<sup>nd</sup>, when an officer witnessed the outside bar being set up for full service. She said that she was the employee standing at that bar on that day, and her function was to greet patrons arriving to pick up takeout orders, because it was takeout service only. She said there were employees inside preparing orders, and the process for the day was that she would greet customers in that outside area, get their name, and would be the runner to get the food order. She said that the bar service at that time was takeout. Ms. Ribeiro explained that placing cans of beer in a bag is much faster than cooking food, therefore people were holding them outside to take with them. There were people waiting for a long time, because they were understaffed. She said if the police officer witnessed them holding cans, they were not given to the patrons to be consumed on the property. They were given to them to take with their takeout orders. The fire bar was not set up as a full service bar, she was not bartending, she was liaison between patrons and the inside staff. She said that she did not witness any patrons opening a can, which

was given to them closed. Ms. Ribeiro said that she can say that there were not people standing around, congregating and drinking that day.

Mr. Ballantine thanked her for that information.

Mr. Blake said that they were going to keep all people who wanted to speak about complaints and then those in favor. He thinks it will be less confusing to keep them separate.

Mr. Michael Heffernan, 20 Freeman Street, said that he is 800' from Ember and that he listens every day to the music, and it is not acceptable. He said they can run a fine business, but if the bylaws say 150', it is 150', and they should follow the rules.

Mr. Kelley asked to examine Mr. Heffernan. He asked Mr. Heffernan if prior to tonight, he had sent in any communication to the Board of Selectmen, or representative of the Town, regarding Ember? Mr. Heffernan said yes, he has. He said that he has noted the complaints with the Police and to the Board of Selectmen.

Mr. Kelly asked how he sent those complaints in, and if by email? Mr. Heffernan said that some were by phone and some by email. Mr. Heffernan said that it is not his responsibility to monitor the noise coming out of that establishment, and he does not need to hear it all summer long, every night.

Mr. Kelley moved to strike the individual comment as unresponsive to the question. He said that the question was if he knew if the Board of Selectmen has taken any action about his complaints prior to this evening?

Mr. Heffernan said that he knows that the Chief of Police has sent out officers to monitor the situation, and yes, members of the Board of Selectmen have responded to his concerns. Mr. Kelley asked how many Selectmen responded to his concerns? Mr. Heffernan said that he had no idea, he is not monitoring and this is not stuff he has time for.

Mr. Kelley asked if any Selectmen called him on the phone? Mr. Heffernan said no. Mr. Kelley asked if any of them had sent him a letter in the mail. Mr. Heffernan said no. Mr. Kelley asked if any Selectmen sent you an email? Mr. Heffernan said yes. Mr. Kelley asked how many emails?

Mr. Heffernan said that he already told him and that he does not remember, but it was several. Mr. Kelley asked how many email accounts Mr. Heffernan used to send communications to the Board of Selectmen? Mr. Heffernan said he sent emails to all members of the Board of Selectmen and the Chief of Police and he used one email address. Mr. Kelley asked what email address he used?

Mr. Blake objected and said that there is no relevance.

Mr. Kelley said that he is ambushed by the general public being invited into a public hearing, which they have no relevant evidence to offer. He is entitled to a full cross-examination of anyone who steps forward.

Mr. Ballantine said that he believes the question was answered, Mr. Heffernan used one email address. Mr. Kelley said that his question was to know what his email address is. Mr. Blake objected to relevance.

Mr. Heffernan said that he tried to answer but Mr. Kelley was talking.

Mr. Kelley said that he moved for immediate motion for the Board to renew the license. He said that this is a charade. The witness is not cooperating, he is violating the licensees constitutional rights. If he wants to expand this, and get involved in a lawsuit, he will take it there. Mr. Kelley said it was a simple question, what email address did he use to write to the Board of Selectmen?

Mr. Blake objected.

Mr. Ballantine said that it does not do any good for Mr. Kelley to threaten the witness.

Mr. Kelley said he was not threatening. Mr. Heffernan said that he did feel threatened.

Mr. Ballantine said that he would like to continue through the process, and explained that as one member of the Board he has received emails. He said that his personal procedure is to forward them to the Town Administrator and that he does not deal with them personally. Mr.

Ballantine said that he does not know where Mr. Kelley is going with this questioning, but there is not an action with the Board.

Mr. Kelley asked for a ruling on his question, asking Mr. Heffernan to tell us what his email address is. Mr. Ballantine said that Mr. Heffernan does not need to tell him his email address. Mr. Kelley asked to note his objection. Mr. Kelley said that he had no further questions.

Mr. Ballantine asked for further comments from the public. There were none. He then moved it over to Mr. Kelley for his case.

Mr. Kelley asked if the town rests and has nothing further to add to this case? Mr. Blake said they had nothing further.

Mr. Kelley asked if the town then rests their case in regards to presenting information for this licensee.

Mr. Bob Cohn, resident on Pleasant Street, asked to speak and to share his screen.

Mr. Kelley objected due to no prior notice of any screen sharing that would be made, and it is improper and unlawful procedure.

Mr. Ballantine overruled and noted his objection.

Mr. Cohn shared his screen and explained that in 2019 he conducted an informal noise survey, which he presented at a Noise Committee meeting a year ago. He said that the details of this are in the packet. Mr. Cohn said that he was on the Noise Committee, but these comments are his alone as a resident. Mr. Cohn showed on his screen a diagram, titled "Informal Noise Survey Harwich Port 2019 Ember data only, mainly July". He explained that the circles are centered around Ember's performance area and said that the blue circle is 350', which is 150' to the outside of Ember's eastern bounds. He said that is a very generous approximation of Ember's.

Mr. Kelley objected, and asked the Chair to direct the witness to keep his statements to facts, and not opinion.

Mr. Cohn tried to continue his statement. Mr. Kelley objected again.

Mr. Cohn said that he is saying facts. Mr. Kelley continued to object.

Mr. Ballantine said that he is testifying to data that he has recorded. Mr. Kelley said that he objects to his mischaracterization of the standards that he drew as “very generous”. He said that it is inappropriate, it has no base, it is not relevant, has no probative value.

Mr. Cohn tried to continue saying “very generous approximation of Ember’s”. Mr. Kelley objected, and said that Mr. Cohn is continuing unlawful behavior. Mr. Ballantine asked Mr. Cohn to avoid stating “very generous” statement.

Mr. Cohn said the small diamonds on the chart represent individual noise complaints or readings, and the large diamonds represent multiple noise complaints or readings. He said that what is shown on the map are noise readings for Ember only, for the single month of July 2019. Additional readings for other venues and for August and September are included in the spreadsheet in the packet. Mr. Cohn said that the chart shows pretty clearly that Ember’s entertainment noise often exceeded their permitted range, and more then that, these are extreme distances.

Mr. Kelley objected and moved to strike, based on opinion.

Mr. Ballantine asked Mr. Cohn to avoid characterization, use of extreme and just give the distances.

Mr. Cohn explained that 750’ is extreme, and five times the. Mr. Kelley objected, based on the characterization and stated that the witness continues to engage in improper statements despite a direct ruling from the Chair. He suggests he be dismissed and his entire submission be stricken.

Mr. Ballantine said no, that he wants to hear it. He asked Mr. Cohn to avoid using characterization, so that they can move on.

Mr. Cohn said that 750’ is five times the legal limit, simple math.

Mr. Kelley objected and stated that the first words out of his mouth was a characterization, which the Chair had directed him not to make.

Mr. Blake stated that Mr. Kelley is wrong with respect to the rules of evidence at an Administrative Hearing, like this one. Mr. Blake said that you can listen to hearsay, you can listen to the audience. He said that it is clear that the purpose behind these objections are to continue to bully and prevent other witnesses from coming forward. He said that Mr. Ballantine can overrule his objections, and tell him not to continue to interrupt.

Mr. Kelley objected to Mr. Blake's statements, and said that is not due process and not lawful procedure.

Mr. Ballantine told Mr. Kelley that he ruled with him in asking Mr. Cohn to avoid characterization, however, when Mr. Cohn spoke about it being five times their bylaw limit, that is in fact not a characterization, that is going back to data from their Town, and that needs to be allowed.

Mr. Cohn continued and said that throughout the season he recorded 15 separate nights, where the noise could be heard 1,200' or more away, which is eight times the limit. He said that the noise complaints for the Port are not shown on the map, but on the spreadsheet. He said that it shows that The Port's noise levels are also greatly excessive, and almost as frequently as for Ember. He said that between Ember and the Port, there were almost 40 nights within the 2019 season that he recorded music heard 800' or more away. He said that the noise can be heard loud enough on Pleasant Street, to keep them from sleeping. This would be 1,200' away from Ember and 800' away from The Port. Mr. Cohn said it was worse for the neighbors close to the venues, who had to endure incredible levels of noise.

Mr. Kelley objected stating he is speculating, and that he has no knowledge.

Mr. Ballantine asked Mr. Cohn to continue. Mr. Kelley asked to note his objection.

Mr. Cohn said that none of this includes the issues from last year, with after-hours crowd noises and COVID-19 violations, that others have reported. He said it seems clear that Ember and the Port have made little effort to be good neighbors.



Mr. Kelley objected and moved to strike. He said that Mr. Cohn is now issuing opinion, speculation, and conjecture.

Mr. Cohn tried to continue, Mr. Kelley continued to object.

Mr. Ballantine overruled and stated that he would like Mr. Cohn to continue, and that his testimony is relevant because they take input from the witnesses.

Mr. Kelley said he has made his objection to this unlawful procedure, and that it has no relevance to the question of renewal which was timely applied for.

Mr. Ballantine noted his objection.

Mr. Cohn said that he wants them both to succeed as businesses, however, just as importantly he wants them to succeed as good neighbors. He said that based on their past difficulties, and closeness to neighbors, he thinks it is important for them to be given stricter guidelines for managing their outdoor entertainment. He urges that new entertainment licenses be given certain conditions, such as; speakers be pointed away from neighbors, live outdoor entertainment be limited to evening hours, outdoor entertainment at all other times be limited to ambient background music, that live music be played only through house system. He said that this list is to better help the venues better manage performers, speaker placement, volume, etc. Mr. Cohn said that he believe that Perks had just purchased a house system for this reason.

Mr. Kelley objected. Mr. Ballantine directed Mr. Cohn to continue and noted the objection.

Mr. Cohn said that venues should be required to self-regulate with security details and/or decibel monitors. Lastly, he said that this standard needs to be enforced properly, and he would urge the town to provide Harwich Police Department the policy guidelines and directives to do so.

Mr. Ballantine asked Mr. Kelley if he would like to cross examine the witness. Mr. Kelley reviewed his notes, and said that he does not have any questions.

Mr. Bob Nickerson said it would have been good to know that they were all going to get harassed there. He said there are people that do not want to talk because of what is going on, and that is a sad story. What he will say is that he called a number of times, and some of his calls became approved or agreed to violations. He does not have those dates. He said that he lives 500' from Ember, and he can routinely hear the sound from the drums when he is in his bedroom. He said that they have routinely increased the sound from 9:30 pm - 10:00 pm, because they know the violations will not be taken care of, because police can't get out there in time. Mr. Nickerson said that last summer they were better because of COVID, but the noise is getting worse and worse. He said that he lost a mailbox one time, from a patron at Ember. He said that he does think that they should have their liquor license renewed, however, he does not think that they should have their entertainment license renewed for outside, unless restrictions are put on them. Mr. Nickerson said that he thinks they are being unfair in the way this is being handled. He said that they want to be part of the town, and this is not the way to do it.

Mr. Kelley reviewed his notes, and said that he did not have any questions for Mr. Nickerson.

Ms. Frances Rich, 19 Towhee Lane, said that she lives outside of the farthest circle on the noise map, at the very northeast corner. She said that she is not one that complains, nor has called the police, however, in 2019 she sat outside on her back deck and could sing along with the music coming from Ember. She drove over there to confirm that is where the sound was coming from. She said that if the noise continues she will be calling the police every time she hears noise, because she is way outside of the 1,200' circle.

Mr. Kelley said that he did not have any questions for Ms. Rich.

Mr. Ballantine asked if there were any other comments and hearing none, he turned it back over to Mr. Kelley.

Mr. Kelley said that at this time, he would like to make a motion. He said that there has been no competent evidence shown, through a lawful procedure, and that in fact there is any good cause not to renew the liquor

license, or in fact the entertainment license, for Ember. Mr. Kelley said that in fact, the only lawful action tonight, on the state of the information thus far, which is the only information they are going to get from those that want to take adverse action, the only lawful action is renewal of the alcohol license and the entertainment license. He said, as he mentioned before, they can only deny renewal for good cause. He said that it is not the public needs standard in the Ballarin Factors, and there is no evidence that shows that they have good cause to deny renewal of this timely filed renewal application.

Mr. Kelley said that he also submits, that it is clear from Mr. Powers comments tonight, that each of the Board members received and acted upon ex parte communication, which is unlawful. He said that as they conduct their quasi-judicial function there, the fact that they received the Selectmen packets, with just one side of the case, coming from Mr. Powers and those wanting them to take adverse action against the liquor and entertainment license renewals, that is an unlawful procedure. Mr. Kelley said that they cannot do that, and in fact, their duty is to fastidiously avoid any such ex parte communication, which was not done. He said that each Selectman, that is part of this call, has engaged in that, and in fact that alone suggests that their only lawful action is renewal of the license.

Mr. Kelley also noted that there was absolutely no recommendation from Mr. Powers, contrary to the stated report that had his findings, and recommendations. As he mentioned, Ballarin is not the standard. This is a standard of good cause to deny renewal, and that is not the Ballarin standard. This is not a new license application, it is a renewal to which the licensee has the right of automatic renewal. Mr. Kelley said, last and by no means least, not a single person who provided a statement tonight, did so under oath, and that is a manifest requirement of due process to protect the constitutional rights of the license holder, and in fact is a *sine qua non*, of a lawful procedure. He said that they did not do that tonight and this can only result of a single action, which is renewal of the liquor license and renewal of the entertainment license. He would ask that the Chair rule on his motion to dismiss any pending adverse action on the liquor license and the entertainment license, and to proceed immediately to vote to renew both licenses.

Mr. Blake said that Mr. Kelley does not have the ability to make a motion. He said that if the members from the public are still present on the call, Mr. Ballantine can swear them in. He said it is not too late.

Mr. Kelley said that it is too late, the case is already closed. If you don't follow lawful procedure, you don't get a do-over. He said the record is clear and they have no competent evidence in front of them to do anything other than renew the licenses.

Mr. Blake asked if the members of the public were on the call, and could turn on their microphones. Mr. Kelley said it was inappropriate and was too late.

Mr. Ballantine said he would follow advise from their counsel. Mr. Kelley said that the advice is luring them into further violations of the constitutional rights of the licensee, and having them act on unlawful procedures. The time to administer the oath is at the start of the hearing, not after the fact. He said, Mr. Ballantine stated himself that their case was closed and it is too late.

Mr. Ballantine said he would follow the advice from their counsel, and asked for the public members that spoke to turn on their microphones.

Mr. Bob Cohn, Mr. Bob Nickerson, Ms. Frances Rich and Mr. Michael Heffernan.

Mr. Ballantine asked for help with the language from Mr. Blake. Mr. Blake asked if they swear to the tell the truth, the whole truth, and nothing but the truth, so help you god?

Mr. Kelley said that Mr. Blake had no proper standing to administer an oath in this proceeding. Mr. Ballantine said he asked their counsel for the proper language to make sure it is correct, which he did so on his request.

Mr. Ballantine said for those to testify to swear to their testimony.

Mr. Bob Nickerson, I do; Mr. Bob Cohn, I do; and Mr. Michael Heffernan, I do; Ms. Frances Rich, I do.

Mr. Kelley continued his objection and request to note his objection, that they have not been sworn in, and they had closed their case.

Mr. Blake said it is his case and he had not closed it and told Mr. Ballantine to issue the oath again with the language.

Mr. Ballantine asked the public if they swear to the tell the truth, the whole truth, and nothing but the truth?

Mr. Bob Nickerson, I do; Mr. Bob Cohn, I do; and Mr. Michael Heffernan, I do; Ms. Frances Rich, I do.

Mr. Blake asked Mr. Heffernan that he had testified earlier about being 800' from Ember Restaurant and hearing music every day.

Mr. Kelley objected and said the Town's case is closed; he had made that ruling. He said it is not appropriate, and not lawful procedure to reopen it now.

Mr. Ballantine overruled and said that Mr. Blake can proceed. Mr. Kelley asked to note his objection.

Mr. Blake asked Mr. Heffernan if his earlier testimony was truthful under the pains and penalty of perjury?

Mr. Kelley objected and moved to strike the question. He said it was wholly inappropriate, and that the witness cannot vouch for his own truthfulness and that is for the Board of Selectmen to decide, in a lawfully noticed hearing, conducted under lawful procedure, with full protection of the licensee clearly established constitutional rights.

Mr. Ballantine overruled.

Mr. Blake asked Mr. Heffernan to answer the question. Mr. Heffernan said he was truthful, and that his backyard is 800' and the music is loud and clear.

Mr. Blake asked Mr. Cohn if the testimony he gave earlier was the truth, the whole truth and nothing but the truth? Mr. Cohn said, yes it was.

Mr. Kelley objected and moved to strike on the same grounds. Mr. Ballantine overruled and noted his objection.

Mr. Blake asked Mr. Nickerson if the testimony he gave earlier was the truth, the whole truth and nothing but the truth so help you god? Mr. Nickerson said yes.

Mr. Kelley objected and moved to strike on the same grounds. Mr. Ballantine overruled and noted his objection.

Mr. Blake asked Ms. Rich if the testimony she gave earlier was the truth, the whole truth, and nothing but the truth, so help you god? Ms. Rich said yes.

Mr. Kelley objected and moved to strike on the same grounds. Mr. Ballantine overruled and noted his objection.

Mr. Blake asked Chief David J. Guillemette, Harwich Police Department, if the testimony he gave earlier was the truth, the whole truth, and nothing but the truth, so help you god? Chief Guillemette said yes.

Mr. Kelley objected and moved to strike on the same grounds. Mr. Ballantine overruled and noted his objection.

Mr. Blake said that if there were no questions for the Board, the town will rest its case. Mr. Kelley said it already did.

Mr. Kelley said there is a motion in front of the Board.

Mr. Blake said to Mr. Ballantine that the motion by Mr. Kelley is inappropriate, it is their meeting and they make the motions. He said they listen to the evidence and Mr. Kelley can make an argument, but he cannot make motions for the Board to act on.

Mr. Kelley said that incorrect and the lawful procedure allows the licensee to test the validity and the competence of the evidence that has been submitted thus far, and it falls far short of the legal standard required. Therefore, he said it is highly appropriate for this request to be made to the Board to abandon this unlawful procedure, and the continuing violations

of the constitutional rights of the license holder, and let's get to renewal of the license. They should vote to renew these licenses.

Mr. Ballantine said according to his procedure everyone has had a chance to speak, and he will entertain a motion to close the public hearing.

Mr. Kelley asked when he would get to present his side of the case? Mr. Ballantine said he thought he did. Mr. Kelley said no that it was a motion that suggested that the information in this proceeding was far short.

Mr. Ballantine told him to go ahead, and that the motion will be done after they close the public hearing, and discussed within the Board.

Mr. Kelley asked that they note his objection, and he will proceed.

Mr. Kelley asked if Ms. Paula Ribeiro was still on the call? Ms. Ribeiro said that she was. Mr. Kelley asked if she took the oath administered by the Chairman? Ms. Ribeiro said no, that he did not ask her.

Mr. Kelley asked Mr. Ballantine to administer the oath to Ms. Ribeiro.

Mr. Ballantine asked if Ms. Ribeiro swears to tell the truth, the whole truth? Ms. Ribeiro said yes she does, and yes she did.

Mr. Kelley asked if Ms. Rebecca Cox was still on the call? No response.

Mr. Kelley asked if Ms. Lucy Brackett was still on the call? Ms. Brackett said she was. Mr. Kelley asked if she had been sworn in. She said she had not.

Mr. Ballantine asked if Ms. Brackett swears her answer is truthful and that she swears to tell the truth, and nothing but the truth? Ms. Brackett said that she is Mrs. Brackett, and she does.

Mr. Kelley asked if she has information she would like to share regarding the matters about the hearing his evening?

Mrs. Brackett said that she does not have anything specific, but would say that it has been very difficult to listen to the distaste coming from a Town that she has lived in for 35 years, and watch her family create businesses

and pour their blood, sweat, and tears, money, time, and family sacrifices, into this town. She said to see their hard work go so unnoticed, and disrespected, by a very small portion of loud people. She said that it takes away from the job of the work, the employment, the pride, and the entrepreneurial spirit, that it brings to the community, and the employees. She said that, as Mrs. Brackett, she gets to see the behind the scenes of the work that is done, the respect for the community, and the investment, both financially, emotionally and mentally.

Mrs. Brackett said that she gets to be the lucky one, that gets to hear people come up to her to share their stories of what the restaurants have meant to them. She has also seen the very hurtful experience by some town's people and town officials that have made it their point to cause disrespect, chaos, and untruths. This has been difficult to listen to, she said that she was not planning to speak, but has had a very difficult time just hearing the disregard for the livelihoods of so many families that these businesses contribute to. She said, including the disregard of Mr. Blake referring it to just a pizzeria, like it is some spot that just causes trouble. She said that she takes offense to the disregard and disconnect of what they represent.

Mrs. Brackett said that they can probably hear the emotion in her voice, but she has been in it, and outside of it, enough to see their family and their hard work really just disgustingly disregarded by a few of the same people. She discussed the earlier caller, who had a lot to say and then claimed that he did not have time to deal with it, and said that if they are investing the time to drag their business through the mud, then they should invest the time to have the details correct. Mrs. Brackett said that this is not just a game, it is much bigger, and it has been really difficult to listen to.

Mr. Kelley thanked Mrs. Brackett, and said that he had no further questions for her.

Mr. Kelley asked if Ms. Jennifer Dixon was on the call still? He said that he did not see her.

Ms. Rebecca Cox came online and explained that she was putting her son to bed, but heard they had called on her. Mr. Kelley explained where they were at in regards those that would like to speak in behalf of Ember. He said that he understood that herself and her husband had sent in a letter of



support. He asked if she wished to take the oath, so that she could tell the Selectmen her thoughts, about Ember.

Mr. Ballantine asked if Ms. Rebecca Cox swears to the tell the truth, the whole truth, and nothing but the truth? Ms. Cox said she does.

Mr. Kelley asked about the letter she had submitted in support of Ember and the Port, and if she knew when she had sent in the letter? Ms. Cox, resident on Sea Street, said that she has the letter in front of her, it is not dated, but she said that she sent it in a few weeks ago, when this all came up.

Mr. Kelley asked Ms. Cox if she had a chance to review the Selectmen's packet, dated March 22, 2021? She said that she did look through it.

Mr. Kelley asked if her letter was included in that packet? Ms. Cox said that she did not see it.

Mr. Kelley asked her to read the letter that she wrote. Ms. Cox read her letter of support for the restaurants and the Brackett family.

Mr. Kelley asked if she had any further information to share with the Board of Selectmen, this evening? Ms. Cox said that she did not, she covered it in her letter, and she just feels that this is wrong, intentional, and just really upsetting to see.

Mr. Blake noted for the record, that Mr. Kelley objected to not being given a list of witnesses, and they have not been given a list of witnesses either. For the record, neither side did that.

Mr. Kelley said that they had not been asked for one. He said that if they had been asked, they would have, because they want this to proceed on a fair basis, with lawful proceedings that fully protect the constitutional rights of the license holder. He said that they asked the Town for it, and were told flat out by the attorney, that he was not doing that. Mr. Kelley said that was wrong, illegal and unlawful procedure and violates the constitutional rights of the license holder.

Mr. Ballantine said that he would like Mr. Blake to react to that, and said that he thinks it is a mischaracterization of what the timing allowed them to do.

Mr. Blake said that the Administrative Procedure Act, says under Section 11, (2), “Unless otherwise provided by any law, agencies need not observe the rules of evidence observed by courts, but shall observe the rules of privilege recognized by law. Evidence may be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. Agencies may exclude unduly repetitious evidence, whether offered on direct examination or cross-examination of witnesses.” Mr. Blake said that as he has said all along, they are not subject to the rules of evidence. He said that if they were in a court, then Mr. Kelley would be right.

Mr. Kelley asked where Mr. Blake was going with this, and that he interrupted his presentation.

Mr. Ballantine asked Mr. Kelley to show some respect, and allow Mr. Blake to finish his statement.

Mr. Blake continued and said that Mr. Kelley has repeatedly said that they have not been following the law, with respect to the witnesses and evidence being presented, so he was merely giving him a citation to show where he got his contention. His point is that they are not subject to the rules of evidence.

Mr. Kelley asked if Ms. Gabby Swain was on the call? No response.

Mr. Kelley asked if Ms. Marna Bate was on the call? No response.

Mr. Kelley asked if Mr. Gary Sawin was on the call? No response.

Mr. Kelley asked if Mr. Scott McMahan was on the call? Mr. McMahan responded that he was present.

Mr. Ballantine asked Mr. McMahan if he swore to tell the truth, the whole truth, and nothing but the truth? Mr. McMahan said that he does.

Mr. Kelley asked Mr. McMahon where he was employed? Mr. McMahon said he was employed at Ember, as the General Manager.

Mr. Kelley asked him how long he has held that position. Mr. McMahon said nine years, he believed.

Mr. Kelley asked if he was familiar with the alleged incidents that had occurred back in May, 2020? Mr. McMahon said that he was.

Mr. Kelley asked if he had a chance to respond to the Town Administrator, or to the Police Department, regarding those incidents? Mr. McMahon said that he had not.

Mr. Kelley asked what his normal work hours are, that he is at the establishment? Mr. McMahon said probably about 3:00 pm until 2:00 am.

Mr. Kelley asked if he had any communication with the Board of Selectmen, by writing a letter at any time regarding the matters that are before them tonight? Mr. McMahon said that he wrote a letter to the Cape Cod Chronical and the Cape Cod Times.

Mr. Kelley asked if the letter that he wrote to the papers was shared with the Board of Selectmen at any time? Mr. McMahon said he did not know.

Mr. Kelley asked if Mr. McMahon was familiar with the daily operation of Ember? Mr. McMahon said yes he is.

Mr. Kelley asked if he was familiar with the compliance procedures that are in effect for the alcohol and entertainment licenses? Mr. McMahon said yes.

Mr. Kelley asked Mr. McMahon to describe what compliance procedures they have in place, to comply with the requirements for the alcohol and entertainment licenses? Mr. McMahon said that they are always strict telling musicians to be done before 10:00 pm, every night, and they are told and apply that the volume can only be in-house, and not anywhere outside of house.

Mr. Kelley asked what he does to ensure that those directives are being followed, in his capacity as General Manger? Mr. McMahon said that he

speaks with the bands beforehand, and if he thinks that the music is getting too loud he will go over and ask them to turn it down, and they do so immediately. Mr. Kelley asked if they comply with his directive? Mr. McMahan said yes they do.

Mr. Kelley asked if any neighbors in the vicinity of Ember, have ever called him or the restaurant? Mr. McMahan said that he has not received a call from them.

Mr. Kelley asked if he has made any operational changes in the last six months to better facilitate their compliance with the standards to operating their entertainment and liquor license. Mr. McMahan said that he has not personally.

Mr. Kelley asked if anyone else has taken any such steps? Mr. McMahan said that a while ago they built the music structure to deter the noise from going outside of the area. Mr. Kelley asked if he had a memory of when that was done? Mr. McMahan said he believed it was late July, early August, of 2019.

Mr. Kelley asked if they have a process in place to monitor any complaints that they become aware of, for the compliance of their entertainment and liquor licenses. Mr. McMahan said that he did not understand the question. Mr. Kelley asked if he was aware of any liquor license violations that were found to have been committed at Ember? Mr. McMahan said no. Mr. Kelley said that is during his entire nine years at Ember? Mr. McMahan said yes, pretty much.

Mr. Kelley said that he had no further questions for Mr. McMahan.

Mr. Blake said that he has some questions that he would like to ask, and introduced himself to Mr. McMahan.

Mr. Blake asked Mr. McMahan about when he said he has taken action when the music gets too loud, he asked how he determines that the music is too loud? Mr. McMahan said that he just makes sure that it does not get too loud. Mr. Blake asked if he has ever gone back 150' to listen to the music? Mr. McMahan said that he does not leave the premise when he is managing the restaurant. Mr. Blake said that he would not know then if the music is plainly audible at 150'? Mr. McMahan said correct.

Mr. Blake asked Mr. McMahon what the music structure is that he talked about? Mr. McMahon said that it is a built-in structure that helps to protect the noise, so they respect their neighbors. Mr. Blake asked if it was interior? Someone else was speaking in the background, and Mr. McMahon repeated that it is a sound wall, outside.

Mr. Blake asked who was speaking in the background helping with his answer? Mr. McMahon said nobody.

Mr. Blake asked if the sound wall has been in effect since August 2019? Mr. McMahon said yes. Mr. Blake asked him again that he was not aware of any violations or complaints of the entertainment or liquor license, is that true? Mr. Kelley objected and stated it was a compound question.

Mr. Blake asked if Mr. McMahon was not aware of any violations of the liquor license or the entertainment license? Mr. Kelley objected.

Mr. Blake said that the Chairman can overrule it. Mr. Kelley said that he can't because it is an improperly phrased question, it is a compound question.

Mr. Ballantine said that he will overrule it because he wants the question asked. Mr. Kelley said to note his objection, because it is compound, confusing, and has two facts in one question.

Mr. McMahon said that he will not answer the question.

Mr. Blake said that he believes that Mr. McMahon testified that he was not aware of any complaints in the nine years that he has been there, is that correct? Mr. McMahon said that he is aware of the complaints, but they are not valid.

Mr. Blake asked why he said that they are not valid? Mr. McMahon said because they follow all of the rules that they stand by.

Mr. Blake said that he had just told him that he never walks out 150' from the restaurant to see if the noise is actually too loud, does he? Mr. McMahon said no.

Mr. Blake asked when they close the restaurant, what time do they really close? Mr. McMahon said that everyone is out of the building by 1:00 AM.

Mr. Blake asked if they send anyone out into the parking lot to make sure that the patrons are leaving, and not hanging around making loud noises? Mr. McMahon said yes they do. Mr. Blake asked who they send out there? Mr. McMahon said sometimes he does and sometimes it is doormen. Mr. Blake asked if he has ever seen patrons hanging out in the parking lot and have had to ask them to leave? Mr. McMahon said no, never.

Mr. Blake asked how many days per week he works there? Mr. McMahon said that he works six nights. Mr. Blake said, so over the six nights, in nine years. Mr. McMahon said that everyone leaves orderly and in a good fashion. Mr. Blake asked if he has ever heard anyone making noise while leaving. Mr. McMahon said not loud enough to disturb people, no. Mr. Blake asked if he knew if any of the doormen? Mr. McMahon said no, they have had no issues with that.

Mr. Blake said he had one last question, he asked earlier if there was anyone in the background helping to answer questions, because he could hear someone answer the question, it sounded like a woman. He asked Mr. McMahon if he knew he was under oath, and if he still says there was no one with him? Mr. McMahon said yes, and that he is having dinner with his mother, and she is sitting next to him.

Mr. Blake said that he had nothing further.

Mr. Kelley asked if Mr. Chris Ward was on the call? Mr. Ward confirmed he was on the call.

Mr. Ballantine asked Mr. Ward if he swore to tell the truth, the whole truth and nothing but the truth? Mr. Ward said that he does.

Mr. Kelley asked Mr. Ward if he was familiar with Ember Restaurant? Mr. Ward said he was very familiar with it. Mr. Kelley asked how long he has been familiar with the restaurant? Mr. Ward said since it opened.

Mr. Kelley asked what the nature is of his familiarity, if he was a patron? Mr. Ward said yes, he is a patron.

Mr. Kelley asked if he lived in the vicinity of Ember? Mr. Ward said that he lives on Sea Street, which he would not really consider the vicinity, but it is walking distance, so yes, he would say he is.

Mr. Kelley asked if he has had any correspondence with the Board of Selectmen, or any other representative of the Town, regarding Ember? Mr. Ward said that he wrote an email to the Board of Selectmen, however, it was more specific to The Port.

Mr. Kelley asked if he could describe the nature of the email? Mr. Ward said that the nature of the email was that on his street, the noise concern seems to be less about music and more about people. He said that those people are coming from other places, besides Ember and The Port. He said that he knows people, plenty of people, that go to other bars and restaurants and walk by Ember, where these complaints are being heard. He cannot say they are not coming from Ember, but everyone is within walking distance, and there is plenty of noise that comes through, but it is coming from all of the restaurants.

Mr. Kelley asked if Mr. Ward has ever called Ember to complain about their operation at all? Mr. Ward said no, until the one woman on the north east corner mentioned how far away she lived, he was shocked to hear that anyone could hear Ember from more than 50 yards away. He has walked to the end of his street and has not been able to hear anything from Ember, from where he is at Sea Street.

Mr. Kelley asked if Mr. Ward has been contacted by any representative of the town in regards to problems with the operation of Ember? Mr. Ward said no, not at all, and added that he never got a response to the email he sent to the Board of Selectmen either. He said that he also had sent it to administration, to ensure they received it, and added that he noticed it also was not included in the packet. Mr. Ward said that he has not been contacted, he has seen emails going around from residents trying to mobilize about the noise at Ember, but he has not been contacted directly at all.

Mr. Kelley said that he had no further questions for Mr. Ward.

Mr. Blake said that he had a couple of quick questions for Mr. Ward. He asked Mr. Ward about the noise coming from people, and if he would agree that he is not sure if the noise is coming from other locations, or could be coming all from Ember, or could be none from Ember, he was not sure? Mr. Ward said that is correct, yes. He said that he knows in their neighborhood, people that have ordered an Uber driver, and have been told to meet them in the Sea Street parking lot, but those people had been at Three Monkeys, Hot Stove or Perks. He added that he is surprised that Perks is not on this call, because in his opinion, most of the noise is coming from Perks.

Mr. Blake asked if Mr. Ward was closer to Perks then he is to Ember. Mr. Ward said that he is closer to The Port, and then Perks and then Ember. Mr. Ward added that most of the noise that he hears is from Perks Beer Garden.

Mr. Blake asked how he would know that? Mr. Ward said that he can just tell, he knows which is which, because he lives two houses from The Port, and he can tell when one musician starts and another finishes.

Mr. Blake asked if he knew how far that is in feet? Mr. Ward said probably 30 to 50 yards from the Port parking lot.

Mr. Blake asked if he can hear music from the Port? Mr. Ward said yes, he can hear music from both places, The Port and Perks. He said that he cannot hear a thing from Ember, even if he was standing on Route 28.

Mr. Blake asked how he could distinguish if he was hearing noise coming from Ember? Mr. Ward said he has never heard anything from Ember, and he would know if he was hearing something from that far away. He said they would have to have a concert there for him to hear something.

Mr. Blake asked how far away he was to Ember? Mr. Ward said, he was not sure, maybe a little less than a half mile.

Mr. Blake said that he had no further questions.

Mr. MacAskill asked if the previous speakers, Mr. Ward and Ms. Cox could identify when they sent the emails to the Board, if it was prior to the



packet date of March 22<sup>nd</sup>? Mr. Ward said that he sent it on April 5<sup>th</sup>, then corrected himself, and said that he sent it on March 30<sup>th</sup>.

Mr. MacAskill asked if Ms. Cox was still on the call, but he believed she had stated she sent the email three weeks ago. Ms. Cox did not respond.

Mr. Ward asked if Perks was going through the same process with their renewals for their liquor and entertainment licenses? He said he knows they have received violations recently, and The Port has not, so he was wondering if they were going through the same hearing?

Mr. Ballantine said that the hearing tonight is for Ember and The Port. Mr. Ward asked when the hearing will be for Perks Beer Garden, he would like to make sure he has that date? Mr. Ballantine said that he would have to check with Administration on that.

Mr. Ballantine asked Mr. Kelley if they were getting close to being through the witness list, because they seem to be saying the same things right now.

Mr. Kelley disagreed and said each witness added a different perspective, but directly to his point, he does not believe he has any further witness to call to present any further information regarding Ember.

Mr. Kelley said he was not sure if there was anyone else on the call that would like to speak on behalf of Ember, if it would be the Chairman's practice to do so?

Mr. Jake Domos, Harwich resident, said that he would like to speak.

Mr. Ballantine asked Mr. Domos if he swore to tell the truth, the whole truth and nothing but the truth? Mr. Domos said that he does.

Mr. Howell asked if for the record Mr. Domos could answer what his relationship is with The Port or Ember?

Mr. Domos said that he has worked for the Brackett's at either Ember or the Port for over 10 years now. He said that he feels that this whole entire process has been really hard to watch. He said that all of the Board of Selectmen's body language seems so frustrated. He said that they have been doing everything they can to run respectful, good businesses. He said

he used to bartend and last year he was just the COVID police. Mr. Domos said that Mr. Ballantine was quoted as saying that they ignored COVID, and that is just wrong. He just wanted to second what Mrs. Brackett said, and how disappointed he is in how these two businesses are being treated.

Mr. Ballantine asked if there was anyone else that would like to be heard? There was no reply.

Mr. Ballantine asked Mr. Blake if they had heard from everyone and if it was appropriate to ask for a motion to close the hearing? Mr. Blake asked Mr. Kelley if he would agree with that?

Mr. Kelley asked if he was asking if he agreed with closing the hearing? Mr. Blake asked if he had presented all the evidence that he wanted to present? Mr. Kelley said that he had and had indicated that he had no further witnesses. Mr. Blake told Mr. Ballantine that he could entertain a motion to close the public participation portion of the hearing and move to deliberation.

Mr. McManus moved that they close the public hearing. Seconded by Mr. Howell.

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

Mr. Blake said that it is important that while they heard the evidence for both licenses, that it is important that they take a vote separately for each license. He said that they have the option to renew, the option to not renew or the option to renew with modifications. He said that Mr. Powers can read them the standards for the liquor license, and they could deliberate on that, and then go on to deliberate on the liquor license. He said that they also have the option to continue this hearing to a specified date to deliberate then.

Mr. Kelley asked to be heard. Mr. Blake said that the public portion was closed. Mr. Kelley said that he is counsel to the licensee and said that they have an obligation to provide the licensee with a fair hearing based upon lawful procedure, that protects their constitutional rights. There was

talking over each other. Mr. Kelley asked for a ruling for the Chairman on his objection and a motion to strike.

Mr. Ballantine overruled, so that they can move forward. Mr. Kelley asked for his objection to be noted.

Mr. Powers re-read the standards that he read in the beginning of the hearing.

Mr. Kelley said that he objected to Mr. Powers statements before, and repeated his objection. Mr. Ballantine said that he is going to ignore that at this point because they closed the public hearing, and are now in the Board of Selectmen's hearing.

Mr. Ballantine said that at this point it seems prudent to go through the eight Ballarin Factors, specifically to see where they stand.

Mr. Blake said that they do not need to go through all eight, to the extent that there was testimony that would implicate one or two, specifically noise. He said that they can certainly deliberate on that particular factor, or deliberate on all of them, it was up to them.

Mr. Ballantine said he likes that idea, and noise being the primary factor.

Mr. MacAskill said that he had a procedural question. He said that this hearing seems much different, then the next one will be, based on information provided. He asked if they have to use the Ballarin Factor on this case, or if they can vote not to use the Ballarin Factor to make a decision?

Mr. Blake said that it is his recommendation to use the Ballarin Factors, as these factors have been articulated by the Supreme Judicial Court, with respect to the denial of a license. He said essentially, that is what they would be doing here, is denying a license. These are the factors that have been tried and true, in a hearing. He said that they can deliberate and they can talk about these factors, he does not know what other factors they would be bringing into play, but these factors need to be considered in any non-renewal.

Mr. Kelley asked that his objection be noted on Attorney Blakes statement and move to strike and asked for a ruling on his objection.

Mr. Blake said that is not appropriate and Mr. Kelley no longer has an opportunity to speak.

Mr. Ballantine said they were moving ahead to the other Board members and asked if Mr. Howell.

Mr. Kelley interrupted, and asked Mr. Ballantine to note his objection. Mr. Ballantine said that he will not, because he is not a part of this discussion.

Mr. Kelley said that the quasi-judicial hearing continues unless and until they arrive at a decision, and said that Mr. Blake is completely misplaced on that position.

Mr. Ballantine said they were moving ahead. Mr. Blake said that he would suggest that they recess, or continue this until next week, and have Mr. Kelley provide them with a legal memo to support his position that he has the right to interject in the Board's deliberation of a license.

Mr. Howell moved to recess until 5:30 pm next Monday night.

Mr. Ballantine asked if there was a second. There was not second and Mr. Blake said that it was up to them, but the continued interruption was not appropriate at this stage of the proceeding. Mr. Ballantine said that he was not going to accept any more interruptions from Mr. Kelley, and if he does, he will recess and that will cost them all time and effort.

Mr. Ballantine asked if Mr. Howell has any comments on the noise issue?

Mr. Howell said that he retains his rights to add some comments later.

Mr. Ballantine asked if Mr. McManus had any comments? Mr. McManus said that it occurs to him that they have several issues they need to make motions on; the issue of the liquor license, the issue of the entertainment license, and the issue of any potential discipline over the complaint from last summer. He asked, if they take them up separately?

Mr. Ballantine said he believed they take up the issues of the liquor and entertainment separately, but they have not talked about the issues of the complaint

Mr. Blake said to discuss each separately, and take a separate vote on each one.

Mr. McManus said that based from the evidence, letters and reports from the noise committee, noise is an issue. He said that he does not think that the noise issue, rises to the level of denying the license. He said that he is not sure given the conflicting evidence, that it is purely music noise. He said if it was, that would indicate they should take care of it when considering the entertainment license, but it also could include the operational noise, which happens at the time that the establishment closes. If that is the case, then certain recommendations or conditions would seem appropriate. He would like to know what how his fellow Board members feel.

Mr. MacAskill asked if they were focusing on noise? Mr. Ballantine said yes, that noise seemed to be rising to the top.

Mr. MacAskill said he is going to take a different approach, and start from the beginning. He said that he wanted to thank everyone that talked tonight, and apologized and said except for Mr. Kelley, because often he got lost with the objections. However, he said that he understood what he was doing. Mr. MacAskill said that as far as the violations go, it was a violation. However, he also sympathizes with this business, and said that COVID has been tough for a lot of business and there was a lot of frustration. He said that he listened to Ms. Ribeiro's testimony, and that was the most striking to him. He said that is because she was the person on duty, she swore to tell the truth, and her testimony meant something to him. He understood what she was staying about delivering the food and beverages. Mr. MacAskill said absent the social media, which may not be appropriate about the Harwich tea party, this was a violation and they were found guilty of the violation. However, he is not willing to punish them with anymore then a warning. He said that if they polled all the businesses, there were probably more with violations during COVID. He said also as far as the liquor license, he is not willing to take away their liquor license, based on the testimony tonight. Mr. MacAskill said that also regarding to Mrs. Brackett's testimony, he agreed with a lot of it, but he thinks it goes

both ways. He said that he thinks that the Board, as the local licensing authority, has the responsibility to act on resident complaints. He added that the attack on the Board members, as they talk about the attorney's objection to everything, and an email from Attorney Tomlinson trying to present 250 emails to the Board for the record. He said he asked his question to Mr. Ward and Ms. Cox, because they did receive emails, but they were in blocks that were sent to the Town, that were sent after the original hearing date, and after they received their packet. He said that there were several emails that were sent on both sides, before or against and there has been a giant division. There is no mistake, from him at least, on what The Port and Ember have done for the Town and for Harwich Port. He said, to his detriment, he has fought for night life and the bands in Harwich Port. He said that to be attacked saying his against it, people are not reading minutes, or listening to meetings. He is not willing to take any motion against the liquor license, and he will support the license. For the last piece about the entertainment, he said that Mr. McManus outlined it, but there is a noise problem, and those that do not think so, are not paying attention. He does agree with some of the speakers tonight, and said that there are a lot of people that enjoy what is going on with the entertainment. He said there are also some that do not enjoy it, and believe their livelihood and quality of life have been interrupted by what the Board is allowing to happen in Harwich Port. He said that he will save those comments for the next hearing, as they have more to do with The Port.

Mr. MacAskill said that he asked the question prior to the hearing, and there were no noise violations this summer for Ember. He said that tonight's testimony unfortunately does not demonstrate that there is a problem at Ember. He will have a problem supporting anything that is not realistic. He does think that there is a noise problem, and there have been recommendations that have come out by the noise committee. He said that they have been criticized for not taking action, but he pointed out that they are in a pandemic, they all have their own lives, and their own businesses. He said that they may not be as timely as they should, but prior to the lawsuits being filed, it was coming forward for the Board to discuss about the noise throughout Harwich. These businesses have evolved, perhaps more then they should have, but is that something they decide tonight, or perhaps across the board? He reserves the right to make more comments later.

Mr. Howell asked if the current licenses, both liquor and entertainment, are conditioned in what way, in terms of inside/outside? He asked what was approved most recently?

Mr. Powers said that what he has presently, in the packet is the memo on Seasonal Entertainment renewals. He said that he does not have the file in front of him, but the application they were seeking, the Board had approved in 2020 for the annual entertainment, weekday: 6PM - 10PM for outside and Sunday: 10AM - 12AM for inside and 10AM - 10PM for outside. He said that they are requesting for this year: weekday 10AM - 10PM or outside and 10AM - 12AM for inside, and Sunday 10AM - 10PM for outside and 10AM - 12AM for inside.

Mr. Howell asked when the pouring ended inside/outside, the actual conditions for alcoholic beverages. He said that he is not prepared to vote without knowing what the current conditions are for the time, relative to what they had been.

Mr. MacAskill said that he thinks he knows where Mr. Howell is going with this, and when these restaurants were originally approved the outdoor bars did not exist. He said that they were added after the fact. He asked if that is where Mr. Howell was going?

Mr. Howell said yes, and that originally that was a relief that was granted, but not a permanent condition that they anticipated going forward. That is why he wanted to know what they originally agreed to. He said that the entertainment and service is intertwined.

Mr. MacAskill said that they had approved on February 26, 2018, the revised site plans, which shows the bars. However, he said that they never really went through any exercise for what Mr. Howell is talking about. He knows for the other establishment, that entertainment license was granted May 8, 2018 with a very specific criteria. He added that they had not actually come back and that it has completely morphed into something different than what they had actually approved. Mr. MacAskill said that as far as the outside bar, it was outside of their purview, and all they did was approve the revised site plan. He is not sure it makes sense to come back, but will leave that to the Board. A fair amount of anxiety has been created over this, and it has been daunting for those that wanted to speak tonight.

Mr. McManus said he is fine going either way; however, he would like to continue to plow ahead and take care of both of these hearings tonight.

Mr. Ballantine said he would agree, and the focus of their complaints is the noise issue. He agrees with Mr. Howell there are different contributors to it. He always hopes there would be good communication. He would be in favor of moving ahead, and he does not see a reason for digging into the liquor license but would like to hear some suggestions on the noise.

Mr. Joe Ganley expressed his desire to speak and said that there were 90 people on the call. He said that they had not given people the chance to speak. Mr. Ballantine said that he believed they gave everyone a chance to speak before they closed the public hearing. Mr. Ganley said that they did not.

Mr. MacAskill spoke up, through the Chairman, and stated that they had a public hearing going on since about 5:30 pm, about Ember, but have not spoken about The Port. He said that they absolutely, on more than one occasion, and with great objection from Mr. Kelley, they did close the public hearing, but they did offer for people to speak over and over. Mr. Ballantine thanked Mr. MacAskill and said they did offer everyone a chance to speak. Mr. Ganley expressed his disagreement.

Mr. MacAskill moved to approve the Seasonal All Alcoholic Beverages licenses for Ember d/b/a Ember, located at 600 Route 28 in Harwich Port,; for 2021 consisting with all last year's times and any and all restrictions put on the license. Seconded by Mr. McManus.

**Roll Call Vote: Mr. McManus - Aye, Mr. Howell - No, Mr. MacAskill - Aye, Mr. Ballantine - Aye. Motion carried by a vote of 3-1-0, with Mr. Howell against.**

Mr. Ballantine asked if Mr. Blake could review what their options are, in regards to the entertainment license?

Mr. Blake said that the options are very similar with respect to the liquor license. He also noted that there was a discussion about an earlier violation in regards to COVID, and asked if they were planning to take action on



that, or table it? Mr. Ballantine said they would table it for now, and move onto the entertainment license.

Mr. Blake said that they can deny the renewal, or renew it with conditions. He said that it is important for the Board to know that an entertainment license is a little bit different than the liquor license. He said that the Board can deny a license, and the standard is that the license must be granted, unless the Board finds that the license, taken alone or in connection with other license activity on the premises, would adversely affect the public health, safety or order, because it cannot be conducted in a manner so as to protect employees, patrons, and members of the public inside or outside the premises from disruptive conduct, from criminal activity, or from health, safety or fire hazards; (b) prevent an unreasonable increase in the level of noise in the area caused by the licensed activity or caused by patrons entering or leaving the premises; or (c) prevent an unreasonable increase in the level of pedestrian or vehicular traffic in the area of the premises or an unreasonable increase in the number of vehicles to be parked in the area of the premises. Mr. Blake said the burden of proof is on the Board to show that the license was an issue, due to one of those issues. That being said, a complete non-renewal would have a heavy burden. However, the Board can condition an entertainment license, such that it could issue the license with conditions that it protects the issues listed. He said that the court would typically uphold those.

Mr. Ballantine asked if there were any comments, and stated that in the past, they have discussed in other situations restricting to acoustic only, or inside only, with no music outside and house system with lower volumes. He would like suggestions, comments, or do we do nothing?

Mr. McManus said that he wanted to know what was approved for last year, and the year before. He said that he looked in the application that is in the packet, and the application for the entertainment license, there is no place for showing what the hours of operation is.

Mr. Powers explained that there is a memo from staff in the packet, and that information was compiled from a narrative provided by the applicants. Mr. Powers read through the memo, and stated that; the licensee below was contacted via email to outline the times and location, of whether it is for inside or outside, of where they are requesting to have entertainment. All information below was emailed directly to staff. For 2021, Ember

Pizza was requesting: Weekday 10am - 10pm, outside and 10am - 12am inside; Sunday 10am - 10pm outside, and 10am - 12am inside. This would be for recorded or live music with amplification. Mr. Powers explained that the Board had adopted for 2020, a condensed time with regard to weekday, which included; weekdays: 6pm - 10pm for outside, and Sunday: 10am - 12am inside and 10am - 10pm for outside.

Mr. Howell asked if that was for amplified? Mr. Powers said that was not indicated.

Mr. MacAskill said that the only change, going back two years, was that they are requesting for outdoor to go from 10am - 10pm, that is there request. And yes, both included recorded or live music with amplification.

Mr. Ballantine said that was his point, is that they are actually asking to increase the length of entertainment.

Mr. Howell said that if it is amplified, they have a general restriction about how far from any premise that amplification can go. His recommendation would be to restrict them outside with 6pm - 10pm, with acoustic, and amplified only inside.

Mr. McManus asked for clarification if Mr. Howell's recommendation was for weekday and Sundays, because they were approved last year for 10am - 10pm outside.

Mr. Howell said interestingly it has not come up to anyone that, as Mr. Kelley pointed out, the closeness to Sea Street, and the Church that is there and he thinks it is a mistake to have music going on during church service. He thinks it should be acoustic only starting at 6pm.

Mr. McManus moved that they grant a weekday entertainment license for 10am - 12am inside, and 6pm - 10pm outside, limited to acoustic, non-amplified music. Sunday 6pm - 10pm outside acoustic, non-amplified music and 10am - 12am outside. Seconded by Mr. Howell.

Mr. Macaskill said to clarify, the restriction allows for amplification indoors, but acoustic only outdoors? Mr. Howell said yes, but they will still be restricted with general noise ordinance with how far that can travel.

Mr. McManus said that there are still acoustic instruments that can be quite piercing, and they will have to make sure they will not override the Town's noise standards. He said quite a number of years ago, they went around and around with an establishment, and they wound up having to restrict the instruments that they were allowed to play. He said that this is not without precedence, in this town.

Mr. Howell said just to be clear, that he finds this business different from the other business, with their location. This is about this establishment in this particular place.

**Roll Call Vote: Mr. MacAskill - No, Mr. Howell - Aye, Mr. McManus - Aye, Mr. Ballantine - Aye. Motion carried by a vote of 3-1-0, with Mr. MacAskill against.**

Mr. Howell expressed his desire to continue the hearing for The Port to another time, as he is not able to continue it this evening due to health issues.

The parties discussed the continuation of the hearing for The Port, and how much time was needed to ensure each party had the time to share the documentation required. Mr. Kelley confirmed his availability, and requested to continue the hearing as soon as possible, for the licensee.

Mr. Howell moved to continue the hearing to time certain of 5:30 pm, on Tuesday, May 4, 2021. Seconded by Mr. McManus.

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

Mr. McManus asked about the violation that was still in question. Mr. Ballantine said that they could continue that topic till the next hearing.

Mr. MacAskill said that he was going to make a motion that they uphold the hearing officer's finding of facts, for the COVID violation from May 22<sup>nd</sup> and that it be punishable by a written warning. Seconded by Mr. McManus

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

## **ADJOURNMENT**

Mr. Howell moved that they adjourn at 9:00 pm. Seconded by Mr. McManus.

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

Respectfully submitted,

Lisa Schwab  
Board Secretary

## Danielle Delaney

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**From:** Sean Libby  
**Sent:** Friday, May 14, 2021 9:03 AM  
**To:** Joe Powers; Meggan Eldredge  
**Cc:** Danielle Delaney; Griffin Ryder; Link Hooper  
**Subject:** FW: May Meeting (cape Light)  
**Attachments:** Copy of DOER PON-ENE-2021-041 Budget Summary 05.11.21 (FINAL).xlsx; Regional Energy Planning Assistance 2022-2023.pptx

Joe/Meggan

I'm not sure if you reviewed the energy assistance e-mails that were sent earlier this week. However, I wanted to make sure you were aware of it as well as the benefits we have received working with the Compact. I can't express enough the amount of assistance that Margaret provides when it comes to applying for or reporting out for our Green Communities grants. They have provided the technical specifications, and draft reports ever since we became a Green Community.

As of today, we are preparing for the next round of grant opportunities. I expect this to be due sometime this fall. Without the Compacts assistance I feel that this endeavor will die. I am asking that when the time comes to submit the REPA and MOU that we do so without hesitation. Please let me know what questions (if any) you may have when the request comes in. Thank you.

Regards,  
Sean Libby  
Town of Harwich DPW  
Facilities Maintenance Manager  
Phone (508) 430-7555  
Cell (228) 365-3434

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**From:** Margaret Song [mailto:msong@capelightcompact.org]  
**Sent:** Thursday, May 13, 2021 8:05 PM  
**To:** Maggie Downey <mdowney@capelightcompact.org>  
**Cc:** robert e schofield <reschofield@comcast.net>; Carl Georgeson <clgeorgeson@gmail.com>; Janice Marks (jmarks@nplus.com) <jmarks@nplus.com>; Thomas Bott <thomas.bott@falmouthma.gov>; Megan Amsler <megan.amsler@falmouthma.gov>; Drake, Leanne <ldrake@sandwichmass.org>; Catherine Laurent <claurent@mashpeema.gov>; Brad Tripp <btripp@mashpeema.gov>; david.anthony@town.barnstable.ma.us; Senteio, Eduard <ESenteio@yarmouth.ma.us>; Lima, Amanda <Alima@yarmouth.ma.us>; Colby, Jeff <jcolby@yarmouth.ma.us>; Greg Rounseville <grouseville@town.dennis.ma.us>; Colin Odell <COdell@capelightcompact.org>; Chuck Hanson <chuckhansoncc@gmail.com>; Sean Libby <slibby@townofharwich.us>; wirtino@comcast.net; Kevin Galligan <kgalligan@galliganenergy.com>; Ron Collins <rcollins@town.orleans.ma.us>; Martin Culik <mculik@capelightcompact.org>; Suzanne Ryan <szeryan01@gmail.com>; Carol Magenau <carol.magenau@gmail.com>; Robert Higgins-Steele <rhigginssteele@capelightcompact.org>; Jarrod Cabral <jcabral@truro-ma.gov>; tfamulare@provincetown-ma.gov; Steven Wlodkowski <swlodkowski@provincetown-ma.gov>  
**Subject:** FW: May Meeting

All

Please see the email below and the attachments here. I wanted you to be aware of what to sent to the Town Managers/Administrators.

Best  
Margaret

**From:** Maggie Downey <[mdowney@capelightcompact.org](mailto:mdowney@capelightcompact.org)>

**Sent:** Thursday, May 13, 2021 7:35 PM

**To:** Robertc Lawtonjr <[rclawton@verizon.net](mailto:rclawton@verizon.net)>; [amorse@provincetown-ma.gov](mailto:amorse@provincetown-ma.gov); [andy.clyburn@town.barnstable.ma.us](mailto:andy.clyburn@town.barnstable.ma.us); [aschiavi@townofbourne.com](mailto:aschiavi@townofbourne.com); [balbert@barnstablecounty.org](mailto:balbert@barnstablecounty.org); [charleslsumner33@gmail.com](mailto:charleslsumner33@gmail.com); [csumner@provincetown-ma.gov](mailto:csumner@provincetown-ma.gov); [dgardner@provincetown-ma.gov](mailto:dgardner@provincetown-ma.gov); [dkalinick@brewster-ma.gov](mailto:dkalinick@brewster-ma.gov); [dtangeman@truro-ma.gov](mailto:dtangeman@truro-ma.gov); [esullivan@town.dennis.ma.us](mailto:esullivan@town.dennis.ma.us); [everde@provincetown-ma.gov](mailto:everde@provincetown-ma.gov); [gcannon@townofbourne.com](mailto:gcannon@townofbourne.com); [gduham@townofsandwich.net](mailto:gduham@townofsandwich.net); [gtivnan@nantucket-ma.gov](mailto:gtivnan@nantucket-ma.gov); [harry@outermostsystems.com](mailto:harry@outermostsystems.com); [hharper@townofsandwich.net](mailto:hharper@townofsandwich.net); [jack.yunits@barnstablecounty.org](mailto:jack.yunits@barnstablecounty.org); [jbeebe@eastham-ma.gov](mailto:jbeebe@eastham-ma.gov); [jgoldsmith@chatham-ma.gov](mailto:jgoldsmith@chatham-ma.gov); [jgrande@tisbury-ma.gov](mailto:jgrande@tisbury-ma.gov); [jhrmyers@gmail.com](mailto:jhrmyers@gmail.com); [jkelly@town.orleans.ma.us](mailto:jkelly@town.orleans.ma.us); [jmcgrail@marionma.gov](mailto:jmcgrail@marionma.gov); [jpowers@town.harwich.ma.us](mailto:jpowers@town.harwich.ma.us); [julian.suso@falmouthma.gov](mailto:julian.suso@falmouthma.gov); [ksclark@truro-ma.gov](mailto:ksclark@truro-ma.gov); [ksenatori@capecodcommission.org](mailto:ksenatori@capecodcommission.org); [lgibson@nantucket-ma.gov](mailto:lgibson@nantucket-ma.gov); [lsurdut@town.orleans.ma.us](mailto:lsurdut@town.orleans.ma.us); [maria.broadbent@wellfleet-ma.gov](mailto:maria.broadbent@wellfleet-ma.gov); [mark.ells@town.barnstable.ma.us](mailto:mark.ells@town.barnstable.ma.us); [markjoyce900@gmail.com](mailto:markjoyce900@gmail.com); [meldredge@town.harwich.ma.us](mailto:meldredge@town.harwich.ma.us); [pbarnes@yarmouth.ma.us](mailto:pbarnes@yarmouth.ma.us); [peter.johnson-staub@falmouthma.gov](mailto:peter.johnson-staub@falmouthma.gov); [plombardi@brewster-ma.gov](mailto:plombardi@brewster-ma.gov); [pmacura@town.harwich.ma.us](mailto:pmacura@town.harwich.ma.us); [rapalmer11@gmail.com](mailto:rapalmer11@gmail.com); [rbienvue@eastham-ma.gov](mailto:rbienvue@eastham-ma.gov); [rccollins@mashpeema.gov](mailto:rccollins@mashpeema.gov); [rcjr5@gmail.com](mailto:rcjr5@gmail.com); [rkday@nantucket-ma.gov](mailto:rkday@nantucket-ma.gov); [robinleal@aol.com](mailto:robinleal@aol.com); [rwhritenour@comcast.net](mailto:rwhritenour@comcast.net); [rwhritenour@oakbluffsma.gov](mailto:rwhritenour@oakbluffsma.gov); [suchenicz@verizon.net](mailto:suchenicz@verizon.net); [tomlynch430@gmail.com](mailto:tomlynch430@gmail.com); [wtaylor@mashpeema.gov](mailto:wtaylor@mashpeema.gov)

**Cc:** Margaret Song <[msong@capelightcompact.org](mailto:msong@capelightcompact.org)>

**Subject:** RE: May Meeting

Town Managers

It was good to see many of you at yesterday's monthly managers meeting. As I mentioned at the meeting, MA DOER announced their Regional Energy Planning Assistance (REPA) Program Opportunity Notice (PON). This round has allocated \$1M statewide with a cap of \$150,000 per regional entity. I have attached the Power Point presentation that DOER delivered earlier this week for background on this REPA round.

REPA is the grant program that Cape Light Compact (Compact) has utilized to fund Margaret Song's efforts to assist most of you with obtaining and maintaining your Green Communities designation.

DOER has added several new areas eligibility under the proposed funding categories. Each of the areas, and the award amounts, are listed on the attached spreadsheet. If you would like the Compact to work with your town and provide one of the services identified on the spreadsheet, please indicate your preference for which service(s) you would like the Compact to provide and return the spreadsheet to me by Tuesday June 1<sup>st</sup>. The deadline for submitting a REPA application is July 9<sup>th</sup> and each participating Town must execute an MOU with the Compact before the July 9<sup>th</sup> deadline.

Please note that we may not get awarded for all of the requested services, so we will provide updates as we get them.

If you have any questions or would like to discuss the details of REPA, please let me know.

Maggie

Margaret T. Downey  
Administrator  
Cape Light Compact JPE  
261 Whites Path, #4  
South Yarmouth, MA 02664  
[mdowney@capelightcompact.org](mailto:mdowney@capelightcompact.org)

MASSACHUSETTS DEPARTMENT OF ENERGY RESOURCES

REGIONAL ENERGY PLANNING ASSISTANCE GRANT FOR 2022-2023

MEMORANDUM OF UNDERSTANDING BETWEEN

Cape Light Compact (Compact) and the Town of Harwich (Town) for regional energy planning assistance. The Town hereby agrees to work with the Compact on the following scope of work (as marked) with financial assistance provided to the Compact by the Massachusetts Department of Energy Resources (DOER) through their Regional Energy Planning Assistance (REPA) grant.

PREPARE TO BECOME A GREEN COMMUNITY

(MAXIMUM \$7,500 PER MUNICIPALITY FOR THIS GROUP OF ACTIVITIES NOT TO EXCEED ONE HUNDRED 100 HOURS)

- Criteria #1 and #2 – Review existing by-laws and permitting; and assist in developing new by-law or amendments to existing by-laws as needed.
- Criterion #3 – Set up, review and enter data into MassEnergyInsight. Assist with preparation of the Energy Reduction Plan, including scheduling energy assessments and coordinating with municipal facility personnel.
- Criterion #4 – Drafting of fuel-efficient vehicle policy and/or assembling vehicle inventory.
- Consolidate documents in preparation for submitting Green Communities designation application.

FOR NEW AND EXISTING GREEN COMMUNITIES

(MAXIMUM \$4,000 PER MUNICIPALITY PER YEAR FOR THIS GROUP OF ACTIVITIES)

- Assist with grant application preparation – up to \$1,500 per municipality.
- Assist with Annual Report preparation – up to \$1,500 per municipality.
- Assist with incorporating **regional school districts** into existing communities' energy baselines and reduction plans for the purpose of participating in the Green Communities program – up to \$1,500 per municipality (single award only)

REGIONAL CLEAN ENERGY PLANNING/PROJECT SUPPORT

(MAXIMUM AWARD \$50,000 FOR THIS GROUP OF ACTIVITIES)

- **Capacity building** – convening **training events or workshops** that facilitate peer-to-peer learning and exchanges
- **Coordinate multi-town efforts** (e.g., alternative-fuel fleet deployment, HeatSmart/Solarize type campaigns, etc.). Projects that prioritize working with partners to engage with difficult to reach disadvantaged populations are highly encouraged.

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CLEAN ENERGY PLANNING ASSISTANCE – TASKS TO BE COMPLETED THE LOCAL PLANNING AGENCY

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(MAXIMUM AWARD \$12,500 PER MUNICIPALITY FOR THIS GROUP OF ACTIVITIES THAT INCLUDES THE FOLLOWING SERVICES):

- Developing a **net-zero emissions plan for municipal buildings and operations** - up to \$10,000 per municipality
- Preparing a **community greenhouse gas inventory**, including training local staff and/or volunteers to use the MAPC/DNV-GL GHG tool, or an alternative tool - up to \$3,000 per municipality.
- Preparation toward developing a **community-wide net-zero plan**, including preliminary scoping work, stakeholder surveys, community workshops, drafting scope for full plan – up to \$5,000 per municipality.

**TOWN RESPONSIBILITIES**

The Town agrees to provide the following to the Compact, where applicable:

- Identify a point person/people for the Town for review and coordination of applications, projects, and reports and/or access and authorization to work with applicable staff or vendors,
- Access to current town owned/leased vehicle lists (for reporting purposes) and access to any new vehicle policies,
- Access to invoices and paid receipts for approved projects (to assist with reporting and reimbursement for the Town),
- Access and authorization for MassEnergyInsight on behalf of the Town,
- Access to fuel bills (propane, oil, diesel and gasoline) for reporting purposes,
- Access to any renewable energy data that may affect building usage (i.e. behind the meter solar), and
- Access to data on permits for as-of-right siting.

**SUPPORT JUSTIFICATION**

- While the Town has a commitment to Green Communities, staff are often required to attend to multiple (and competing) projects and tasks, and thus it is difficult for staff to prepare, maintain and report on required tasks for Green Communities compliance when there are conflicting priorities.
- Assistance from a regional agency can provide cost and administrative efficiencies for all of the Towns that work toward similar goals.
- With assistance, the Town can maximize its resources and continue to work on energy reductions and Green Communities priorities.

**TOWN'S POINT OF CONTACT: SEAN LIBBY**

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**SIGNATURES**

Signed: \_\_\_\_\_  
Margaret Downey, Compact Administrator

Date: \_\_\_\_\_

Signed: \_\_\_\_\_  
Joseph F. Powers, Town Administrator, Town of Harwich

Date: \_\_\_\_\_

*Note: The grant specifies that the Chief Executive Officer should be the signatory. In some cases, this is the Town Manager or Town Administrator, but in other cases, it can be the governing body such as the Select Board.*



# Regional Energy Planning Assistance 2022-2023

Preview of Grant Opportunity

## **REPA Overview**

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- Assistance to *attain and maintain* Green Community Designation
- Assistance with Net Zero planning
- Assistance with Clean Energy Planning and Project Support

## Details

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- Posted on CommBuys – soon!
- Deadline – 6-8 weeks after CommBuys posting
- \$1 million over 2 years
- Process to amend scope/services after Year 1
- Max award = \$150k

## Green Communities Support (Designation)

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**Prepare to become a Green Community: (Maximum \$7,500 per municipality for this group of activities not to exceed one hundred 100 hours)**

- Criteria #1 and #2 – Review existing by-laws and permitting; and assist in developing new by-law or amendments as needed
- Criterion #3 – Set up, review and enter data into MassEnergyInsight. Assist with preparation of the Energy Reduction Plan, including scheduling energy assessments and coordinating with municipal facility personnel
- Criterion #4 – Drafting of fuel-efficient vehicle policy and/or assembling vehicle inventory
- Consolidate documents in preparation for submitting Green Communities designation application

## Green Communities Support (continued)

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**For new and existing Green Communities: (Maximum \$4,000 per municipality per year for this group of activities)**

- Assist with grant application preparation – up to \$1,500 per municipality
- Assist with Annual Report preparation – up to \$1,500 per municipality
- Assist with incorporating **regional school districts** into existing communities' energy baselines and reduction plans for the purpose of participating in the Green Communities program – up to \$1,500 per municipality (single award only)



**New**

## GC Assistance Applications to Include:

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- Identify specific task(s) the Applicant will be providing and identify steps taken by the municipality to initiate progress
- For assistance with adding regional school facilities to a municipality's baseline and energy reduction plan, Applicants and Green Communities staff will coordinate efforts to ensure that grant-funded work under this PON is **limited to compiling school energy data and amending energy reduction plans**
- MOU with municipality

New

## Clean Energy Planning Assistance

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Municipal clean energy planning services, in alignment with the recently released Massachusetts 2050 Decarbonization Roadmap that calls for reducing greenhouse gas emissions by 45% by 2030 and 85% by 2050. Applicants may utilize the EEA-funded net-zero “Playbook” developed by the Metropolitan Area Planning Council (MAPC)

<https://www.mapc.org/net-zero/playbook/>

## Clean Energy Planning Assistance

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**Maximum award \$12,500 per municipality for this group of activities that includes the following services:**

- Developing a **net-zero emissions plan for municipal buildings and operations** - up to \$10,000 per municipality
- Preparing a **community greenhouse gas inventory**, including training local staff and/or volunteers to use the MAPC/DNV-GL GHG tool, or an alternative tool - up to \$3,000 per municipality
- Preparation toward developing a **community-wide net-zero plan**, including preliminary scoping work, stakeholder surveys, community workshops, drafting scope for full plan – up to \$5,000 per municipality

## Clean Energy Assistance Applications to Include:

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- Identify specific task(s) the Applicant will be providing and identify steps taken by the municipality to initiate progress
- For assistance with net-zero plan preparation provide documentation that the municipality has articulated support toward net-zero plan development
  - Town Meeting and City Council resolutions
  - Select/planning board minutes
  - Other official memoranda
- MOU with municipality



## Regional Clean Energy Planning/Project Support

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**Maximum award \$50,000 for this group of activities**

- **Capacity building** – convening **training events or workshops** that facilitate peer-to-peer learning and exchanges
- This may also include **preparing and disseminating case studies and other outreach materials** showcasing municipal clean energy best practices
- **Coordinate multi-town efforts** (e.g., alternative-fuel fleet deployment, HeatSmart/Solarize type campaigns, etc.)
  - Projects that prioritize working with partners to engage with difficult to reach disadvantaged populations are highly encouraged

## Regional Planning Support Applications to Include:

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- Summary of the proposed activities, including (but not limited to): intended audience, partner organizations, demonstrated need of proposed activities, ability of staff to carry out projects, **plan for acquiring technical expertise outside of organization if needed**
- For projects with equity components, describe project requiring assistance and deliverable provided by the Applicant at the end of the assistance

## No Longer Funded

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- Energy data analysis & evaluation
- Procurement assistance



# **NEW BUSINESS**





# 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 2, 2021

**SUBJECT:** Application for change of manager at Portside Liquors III, Inc. 1421 Orleans Road Harwich MA 02645 George R. Metri manager.

The police department has conducted a background investigation on the above named applicant. The investigation revealed no disqualifying events.

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



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

RETAIL ALCOHOLIC BEVERAGES LICENSE APPLICATION  
 MONETARY TRANSMITTAL FORM

**AMENDMENT-Change of Manager**

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

ECRT CODE: RETA

Please make \$200.00 payment here: ABCC PAYMENT WEBSITE

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

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

ENTITY/ LICENSEE NAME

ADDRESS

CITY/TOWN

STATE

ZIP CODE

For the following transactions (Check all that apply):

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

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

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



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

**AMENDMENT-Change of Manager**

**Change of License Manager**

**1. BUSINESS ENTITY INFORMATION**

Entity Name	Municipality	ABCC License Number
Portside Liquors III, Inc	Barnstable	88849-PK-0506

**2. APPLICATION CONTACT**  
 The application contact is the person who should be contacted with any questions regarding this application.

Name	Title	Email	Phone
Zeina Metri	President		

**3A. MANAGER INFORMATION**  
 The individual that has been appointed to manage and control of the licensed business and premises.

Proposed Manager Name:  Date of Birth:  SSN:

Residential Address:

Email:  Phone:

Please indicate how many hours per week you intend to be on the licensed premises:  Last-Approved License Manager:

**3B. CITIZENSHIP/BACKGROUND INFORMATION**

Are you a U.S. Citizen?  Yes  No \*Manager must be U.S. citizen

If yes, attach one of the following as proof of citizenship US Passport, Voter's Certificate, Birth Certificate or Naturalization Papers.

Have you ever been convicted of a state, federal, or military crime?  Yes  No

If yes, fill out the table below and attach an affidavit providing the details of any and all convictions. Attach additional pages, if necessary, utilizing the format below.

Date	Municipality	Charge	Disposition

**3C. EMPLOYMENT INFORMATION**  
 Please provide your employment history. Attach additional pages, if necessary, utilizing the format below.

Start Date	End Date	Position	Employer	Supervisor Name
6/15/1998	present	assistant manager	Porside Liquors	Zeina B Metri

**3D. PRIOR DISCIPLINARY ACTION**  
 Have you held a beneficial or financial interest in, or been the manager of, a license to sell alcoholic beverages that was subject to disciplinary action?  Yes  No If yes, please fill out the table. Attach additional pages, if necessary,utilizing the format below.

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

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

Manager's Signature:  Date:

## APPLICANT'S STATEMENT

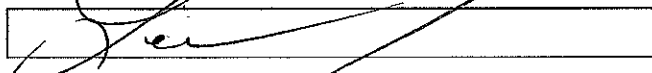
I, Zeina B Metri the:  sole proprietor;  partner;  corporate principal;  LLC/LLP manager  
Authorized Signatory  
of Portside Liquors III, Inc.  
Name of the Entity/Corporation

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

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

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

Signature:



Date:

3/3/2021

Title:

Zeina B Metri

**CORPORATE VOTE**

The Board of Directors or LLC Managers of   
Entity Name  
duly voted to apply to the Licensing Authority of   
City/Town and the  
Commonwealth of Massachusetts Alcoholic Beverages Control Commission on   
Date of Meeting

For the following transactions (Check all that apply):

Change of Manager

Other

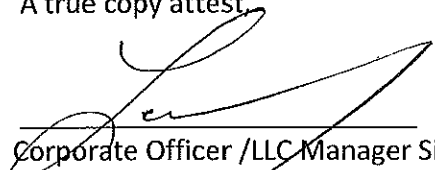
"VOTED: To authorize   
Name of Person

to sign the application submitted and to execute on the Entity's behalf, any necessary papers and do all things required to have the application granted."

"VOTED: To appoint   
Name of Liquor License Manager

as its manager of record, and hereby grant him or her with full authority and control of the premises described in the license and authority and control of the conduct of all business therein as the licensee itself could in any way have and exercise if it were a natural person residing in the Commonwealth of Massachusetts."

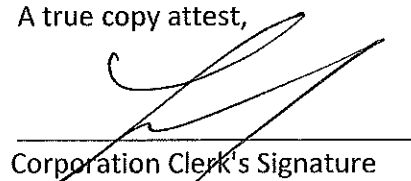
A true copy attest,

  
Corporate Officer /LLC Manager Signature

Zeina B. Metri  
(Print Name)

For Corporations ONLY

A true copy attest,

  
Corporation Clerk's Signature

Zeina B. Metri  
(Print Name)

## Payment Confirmation

### YOUR PAYMENT HAS PROCESSED AND THIS IS YOUR RECEIPT

Your account has been billed for the following transaction. You will receive a receipt via email and via text message.



Transaction Processed Successfully.

INVOICE #: 34e75327-fd3e-42f3-90c0-be504999a671

Description	Applicant, License or Registration Number	Amount
FILING FEES-RETAIL	Portside Liquors III Inc.	\$200.00
		<b>\$200.00</b>

Total Convenience Fee: \$0.35

Date Paid: 3/3/2021 10:51:04 AM EDT

Total Amount Paid: \$200.35

#### Payment On Behalf Of

**License Number or Business Name:**

Portside Liquors III, Inc.

**Fee Type:**

FILING FEES-RETAIL

#### Billing Information

**First Name:**

Zeina

**Last Name:**

Metri

**Address:**

**City:**

bourne

**State:**

MA

**Zip Code:**

02532

**Email Address:**



# TOWN OF HARWICH

## DEPARTMENT OF PUBLIC WORKS

273 Queen Anne Road • P.O. Box 1543 • Harwich, MA 02645

Telephone (508) 430-7555

Fax (508) 430-7598

### MEMORANDUM

**TO:** Board of Selectmen

**FROM:** Lincoln S. Hooper, Director

**DATE:** July 7, 2021

**RE:** Treasure Chest

---

The purpose of this memo is to provide the Board information regarding the current state of the Treasure Chest (TC) building, the cost to operate the TC and to provide any recommendations that I may have.

The TC building is a two bay space building constructed in 1968 that used to be the operations center of the former landfill. It was turned into the TC in 2001 after the landfill was capped and the new 4 bay space building was constructed. Since the TC was closed due to COVID-19 in March of 2020, the DPW has utilized the space for various purposes including a construction shop for our Facility Maintenance team and winter storage for equipment that would have otherwise been left outside (beach cleaner, 2 sweepers and roadside mower). In fact, the Facilities team is currently constructing 11 new lifeguard stands there as an ongoing project (see attached pictures).

The cost to operate the TC is relatively minor and includes utilities (electric, gas & water) from 2019 at a cost of \$2,417 and disposal of unwanted items (19.23 tons) at a cost of \$2,307, for a total cost of \$4,724. This figure excludes the estimated 2 hours per week that DPW employees spend dumping the rolloff container for the trash and picking up the area. An estimated cost of this fully allocated labor would be \$4,524 ( $\$30 \text{ per hr} \times 45\% \text{ benefits} \times 2 \text{ hrs wk} \times 52 \text{ weeks} = \$4,524$ ). The total previous operating cost of the TC would have been \$9,248.

Given that the DPW has fully utilized the TC building during its closure, I have conflicting feelings about what my recommendation should be to the Board. On one hand, DPW staff utilized the space effectively during the closure and will continue to do so until the TC is reopened. On the other hand, the TC serves multiple purposes including providing opportunities to those in need to find free stuff, an outlet for residents to donate items they think others may want and provide an opportunity for residents to volunteer. The one recommendation I do want to make is to hire a part-time TC

Coordinator to be onsite during operating hours each weekend if it is reopened. The purpose behind this recommendation is that, in my view, volunteers should not have to take the abuse from patrons that they have been subjected to in the past, particularly while enforcing the Harwich only policy. The cost of this would be \$16,640 per year (\$20 per hr x 16 hrs per week x 52 weeks = \$16,640).

I have included the TC Committee Charge, that was adopted by the Board of Selectmen on February 26, 2018, TC Operational Guidelines and TC Volunteer Rules of Etiquette for your review. I would be remiss if I did not extend credit to the TC Committee for working on and adopting these documents and pay special thanks to former TC Committee Chairman Tom Caruso for his service.

Thank you for your time and consideration in this matter.

Attachments: 2 pictures  
Treasure Chest Committee Charge  
Treasure Chest Operation Guidelines  
Treasure Chest Volunteer Rules of Etiquette

Cc: Joe Powers, Town Administrator







## **TREASURE CHEST COMMITTEE CHARGE**

The purpose of the Treasure Chest is to provide a place where useable items can be diverted from the waste stream and be made available to others in our community. Items can be picked up by individuals for their use or by charitable organizations for their clients. It is not the intent of the operation of the Treasure Chest to provide a supply of items for resale for private business.

The Treasure Chest Committee shall consist of seven (7) members and two (2) alternate members appointed by the Board of Selectmen to staggered 3 year terms, which run from July 1 to June 30. The board will appoint members and the Treasure Chest Committee will elect a chair, vice chair, and clerk at their first meeting in July.

The purpose of the Treasure Chest Committee is to oversee the on-site operation of the Treasure Chest and to make recommendations to facilitate the orderly drop off and pick up of reusable items in designated areas. Recommendations will be forwarded to the DPW Director. The committee will adhere to the implementation of rules adopted by the Board of Selectmen and to any instructions as given by the DPW Director.

Volunteers who participate at the Treasure Chest will be appointed by the Director, in consultation with the Committee. The Treasure Chest Chairperson will appoint individuals who will be designated as Shift Leaders to supervise volunteers during hours of operation.

The DPW Director, at his discretion or at the request of the Treasure Chest Committee, after meeting with the affected party, may determine that an individual may no longer volunteer at the Treasure Chest. The individual may request an appeal hearing with the Board of Selectmen.

Draft - Treasure Chest Committee meeting, January 19, 2018

Approved by the Board of Selectmen on February 26, 2018

# **Treasure Chest Operational Guidelines**

- 1) Volunteers should be respectful to all patrons and volunteers at all times. Should a problem arise, volunteers should contact the shift leader on duty.
- 2) Each 3 hour shift will have an inside and outside shift leader to provide leadership to all volunteers and handle any questions or issues that should arise. Shift leaders will be noted on the posted schedule.
- 3) The Treasure Chest shall be open from 9am to 3pm Saturdays and Sundays throughout the year, except December 25<sup>th</sup> and January 1<sup>st</sup>.
- 4) Emergency closures due to inclement weather or other needs of the Town shall be communicated to the DPW and the Scalehouse by phone, and to volunteers via email and/or phone.
- 5) Only approved volunteers may staff the Treasure Chest. All volunteers must read and sign the rules of etiquette form.
- 6) All volunteers shall park on the right side access road – opposite the fencing. (Except for handicap parking)
- 7) No items shall be placed in the exit lane.
- 8) Both exit gates shall remain open during hours of operation.
- 9) Donations will be accepted from 9am to 3pm on Saturday and Sunday.
- 10) Patrons will have first option to take donated items.
- 11) Volunteers shall use discretion in taking a limited number of donated items and shall do so only at the end of their shift.
- 12) No smoking allowed at the Treasure Chest.
- 13) No dogs allowed at the Treasure Chest, except service dogs.
- 14) The Treasure Chest Committee will meet at least 3 times per year. All meetings shall be posted and are open to all volunteers and the public.
- 15) Volunteers are encouraged to call another volunteer if they can not do their shift to attempt to find sub. Volunteers can also mark the calendar to signify a future date of absence.
- 16) Volunteers who do not comply with the rules of etiquette or these guidelines may have their privileges revoked.

17) The Treasure Chest will accept most donated items in good condition. Items not accepted include: Items that are broken or stained, TV and TV cabinets, stereo speakers, computers, printers, scanners, particle board furniture, disassembled furniture, encyclopedia sets, Christmas trees, gas grills and propane tanks, rims and tires, cribs, mattresses, large appliances(stoves, refrigerators, washers, dryers), snowthrowers, riding lawn mowers, toilets, sleep sofas, car batteries, air conditioners, children car seats, playpens, large or heavy furniture, treadmills, weapons, or any hazardous materials.

Please note that this list may be revised as needed and final determination on acceptance of any questionable item will be the prerogative of the shift leader on duty.

Revised 1/25/18

# **Treasure Chest Volunteer Rules of Etiquette**

1/24/18

The Town of Harwich appreciates your time and energy to volunteer with a goal of continuing the success of the Treasure Chest and its mission. Being a volunteer at the Treasure Chest is a wonderful way to serve the Town of Harwich. As a volunteer, you will help divert usable items from being disposed of at the Transfer Station and you will assist in providing and maintaining a venue for the transfer of re-usable items to the general public.

As a Treasure Chest volunteer, it's essential to understand that you are representing the Town of Harwich and therefore being a volunteer comes with the same type of responsibility and etiquette guidelines you would have with a paid job. When you commit to being a volunteer for the Treasure Chest, you need to be on your best behavior because the Town of Harwich and the other Treasure Chest volunteers are counting on you to be pleasant, courteous, professional and helpful at all times.

To further that goal, here are seven rules of etiquette for Treasure Chest volunteers to follow:

## **1. Respect for Treasure Chest Volunteers and Patrons**

Treasure Chest volunteers must treat other volunteers and patrons of the Treasure Chest with RESPECT! Your attitude directly reflects on the Treasure Chest and the Town of Harwich. While you may not always agree with the other volunteers or patrons, you must at all times be courteous and treat them with respect. Remember the mission, you are volunteering at the Treasure Chest to help divert usable items from being disposed of at the Transfer Station and to assist in providing and maintaining a venue for the transfer of re-usable items to the general public.

## **2. Follow the Rules**

Treasure Chest volunteers should always follow the proper rules and procedures. Those rules are in place to protect the Town of Harwich, the Treasure Chest volunteers, and patrons of the Treasure Chest. Not following the rules may cause problems for the Town thus putting the continued operation of the Treasure Chest at risk and most likely resulting in the dismissal of the volunteer.

## **3. Show up for Your Shift on Time and Work Your Shift**

The Treasure Chest needs volunteers who are dependable. Prove your dependability and strong work ethic by showing up on time. Being late shows a lack of respect for the other volunteers and the operation. While emergencies might make you miss a shift, please honor your commitment to volunteer. The other volunteers are counting on you and missing a shift makes extra work for the other volunteers.

**4. Show up Ready to Work**

Be ready to work to the best of your ability. You may be volunteering at the Treasure Chest, but treat it as you would a job. The Treasure Chest deserves nothing less than your best effort. Volunteers should give it their best effort and do everything they can to contribute to the success of the operation.

**5. Take Initiative**

Operating and maintaining the Treasure Chest takes a lot of time and effort and there are times when a lot of work needs to be done with only a few volunteers to do it. Please take the initiative and do what you can to keep the operation running smoothly.

**6. Be Discreet**

While volunteering at the Treasure Chest, you may see or hear private information that no one else needs to know about. Keep it to yourself. Do not speak poorly or gossip about the Town of Harwich, other Treasure Chest volunteers or patrons you come into contact with at the Treasure Chest.

**7. Volunteer With a Good Attitude**

You've committed yourself to something that you're passionate about, so put a smile on your face when you are volunteering at the Treasure Chest and show that you want to be there. Your efforts as a volunteer directly reflect on your character and your desire to be a Treasure Chest volunteer.

The Town of Harwich thanks you for your volunteer efforts at the Treasure Chest. Please abide by these etiquette rules to make your volunteer experience at the Treasure Chest trouble free and memorable.

# Treasure Chest

205 Queen Anne Rd., Harwich, MA 02645  
508-430-7584

Effective July 1<sup>st</sup> 2018 the Treasure Chest will be open to Harwich residents only. Harwich residents may pick up a Treasure Chest sticker, at no cost, at the Harwich Community Center or the Harwich Town Hall beginning June 11<sup>th</sup>, 2018.

This new policy was adopted by the Board of Selectmen at their June 5<sup>th</sup> meeting. It was made necessary by the significant increase in customers and the corresponding increase in items brought to the Treasure Chest, some of which ends up in our waste stream adding cost to the town.

The purpose of the Treasure Chest remains the same: to provide a place where useable items can be diverted from the waste stream and be made available to others in our town. Items can be picked up by Harwich residents for their use or for use by charitable organizations of their choice. No charge is made to drop off acceptable items, nor is any charge made when individuals pick up items.

The Treasure Chest is staffed by volunteers and is open to Harwich residents on each Saturday and Sunday from 9am to 3pm throughout the year, except on Christmas day, New Years day, or Easter should those dates fall on a Saturday or Sunday, or due to inclement weather.

The Treasure Chest accepts most items: clothes for all ages, shoes, toys and games, most small furniture, lamps, housewares(dishes, glasses, pots, pans etc.), small kitchen appliances, books, tools, rugs, radios, clocks, etc.

We do not accept items that are broken or stained, TV and TV cabinets, stereo speakers, computers, printers, scanners, particle board furniture, disassembled furniture, encyclopedia sets, Christmas trees, gas grills and propane tanks, rims and tires, cribs, mattresses, large appliances(stoves, refrigerators, washers, dryers), snowthrowers, riding lawn mowers, toilets, sleep sofas, car batteries, air conditioners, children car seats, playpens, large or heavy furniture, treadmills, weapons, or any hazardous materials. Many of these items can be brought to the transfer station.



**COMMITTEE MEMBERS**

**TREASURE CHEST COMMITTEE**

7 Members / 2 Alternates/3 year terms

<b>Organization Name Treasure Chest Committee</b>	<b>New Expiration Date</b>
<b>MEMBERS</b>	
Eric Fable	June 30, 2024
VACANCY	June 30, 2021
VACANCY	June 30, 2023
Sheila Eldredge	June 30, 2023
Elizabeth Watkins	June 30, 2022
Heather Bolinder	June 30, 2023
VACANCY	June 30, 2021
<b>Alternate</b>	
Mella Navickas	June 30, 2022
VACANCY	



## TREASURE CHEST COMMITTEE CHARGE

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The Treasure Chest Committee shall consist of seven (7) members appointed by the Board of Selectmen to staggered 3 year terms, which run from July 1 to June 30. The board will appoint members and the Treasure Chest Committee will elect a chair, vice chair, and clerk at their first meeting in July.

The purpose of the Treasure Chest Committee is to oversee the on-site operation of the Treasure Chest and to make recommendations to facilitate the orderly drop off and pick up of reusable items in designated areas. Recommendations will be forwarded to the DPW Director. The committee will adhere to the implementation of rules adopted by the Board of Selectmen and to any instructions as given by the DPW Director.

Volunteers who participate at the Treasure Chest will be appointed by the Director, in consultation with the Committee. The Treasure Chest Chairperson will appoint individuals who will be designated as Shift Leaders to supervise volunteers during hours of operation.

The DPW Director, at his discretion or at the request of the Treasure Chest Committee, after meeting with the affected party, may determine that an individual may no longer volunteer at the Treasure Chest. The individual may request an appeal hearing with the Board of Selectmen.

Draft - Treasure Chest Committee meeting, January 19, 2018

Approved by the Board of Selectmen on February 26, 2018

# Treasure Chest Volunteer Rules of Etiquette

Draft: 1/24/18

# DRAFT

The Town of Harwich appreciates your time and energy to volunteer with a goal of continuing the success of the Treasure Chest and its mission. Being a volunteer at the Treasure Chest is a wonderful way to serve the Town of Harwich. As a volunteer, you will help divert usable items from being disposed of at the Transfer Station and you will assist in providing and maintaining a venue for the transfer of re-usable items to the general public.

As a Treasure Chest volunteer, it's essential to understand that you are representing the Town of Harwich and therefore being a volunteer comes with the same type of responsibility and etiquette guidelines you would have with a paid job. When you commit to being a volunteer for the Treasure Chest, you need to be on your best behavior because the Town of Harwich and the other Treasure Chest volunteers are counting on you to be pleasant, courteous, professional and helpful at all times.

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## 3. Show up for Your Shift on Time and Work Your Shift

The Treasure Chest needs volunteers who are dependable. Prove your dependability and strong work ethic by showing up on time. Being late shows a lack of respect for the other volunteers and the operation. While emergencies might make you miss a shift, please honor your commitment to volunteer. The other volunteers are counting on you and missing a shift makes extra work for the other volunteers.

# DRAFT

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Be ready to work to the best of your ability. You may be volunteering at the Treasure Chest, but treat it as you would a job. The Treasure Chest deserves nothing less than your best effort. Volunteers should give it their best effort and do everything they can to contribute to the success of the operation.

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The Town of Harwich thanks you for your volunteer efforts at the Treasure Chest. Please abide by these etiquette rules to make your volunteer experience at the Treasure Chest trouble free and memorable.

# Treasure Chest Operational Guidelines

**DRAFT**

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- 2) Each 3 hour shift will have an inside and outside shift leader to provide leadership to all volunteers and handle any questions or issues that should arise. Shift leaders will be noted on the posted schedule.
- 3) The Treasure Chest shall be open from 9am to 3pm Saturdays and Sundays throughout the year, except December 25<sup>th</sup> and January 1<sup>st</sup>.
- 4) Emergency closures due to inclement weather or other needs of the Town shall be communicated to the DPW and the Scalehouse by phone, and to volunteers via email and/or phone.
- 5) Only approved volunteers may staff the Treasure Chest. All volunteers must read and sign the rules of etiquette form.
- 6) All volunteers shall park on the right side access road – opposite the fencing. (Except for handicap parking)
- 7) No items shall be placed in the exit lane.
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# DRAFT

17) The Treasure Chest will accept most donated items in good condition. Items not accepted include: Items that are broken or stained, TV and TV cabinets, stereo speakers, computers, printers, scanners, particle board furniture, disassembled furniture, encyclopedia sets, Christmas trees, gas grills and propane tanks, rims and tires, cribs, mattresses, large appliances(stoves, refrigerators, washers, dryers), snowthrowers, riding lawn mowers, toilets, sleep sofas, car batteries, air conditioners, children car seats, playpens, large or heavy furniture, treadmills, weapons, or any hazardous materials.

Please note that this list may be revised as needed and final determination on acceptance of any questionable item will be the prerogative of the shift leader on duty.

Revised 1/25/18



# TOWN OF HARWICH

## DEPARTMENT OF PUBLIC WORKS


273 Queen Anne Road • P.O. Box 1543 • Harwich, MA 02645

Telephone (508) 430-7555

Fax (508) 430-7598

### MEMORANDUM

**TO:** Board of Selectmen

**FROM:** Lincoln S. Hooper, Director 

**DATE:** February 13, 2018

**RE:** Treasure Chest Changes

---

Several months ago during a discussion about the Treasure Chest, the Board of Selectmen asked Selectman Brown to look into complaints they had received. After meetings with the Town Administrator and both Selectman Brown and Chairman MacAskill, I was tasked with addressing a number of issues related to the Treasure Chest Committee, Treasure Chest volunteers and the operation as a whole.

Over the past few months, I have worked closely with Tom Caruso, the new Treasure Chest Committee Chairman, and Eric Fahle, former Interim Chairman and current Clerk, to enact positive changes to the Treasure Chest. A central component to this goal has been the development of a new Treasure Chest Committee Charge, Treasure Chest Operational Guidelines and Treasure Chest Volunteer Rules of Etiquette, which are attached for your review.

Tom and Eric have done an enormous amount of work meeting with their Committee members and volunteers, soliciting input from them and building a consensus while developing these documents. More importantly, they appear to have already changed the culture at the Treasure Chest in a positive direction with a focus on customer service to its patrons. Although there are certainly more refinements to be made, I believe Tom and Eric are both committed to making the Treasure Chest the best swap shop it can be.

I would like to request that the Board of Selectmen vote to adopt the attached Treasure Chest Committee Charge, Operational Guidelines and Rules of Etiquette.

Thank you for your consideration.

Cc: Chris Clark, Town Administrator

Attachments: Treasure Chest Committee Charge  
Treasure Chest Operational Guidelines  
Treasure Chest Volunteer Rules of Etiquette



## Treasure Chest Committee Charge

The purpose of the Treasure Chest is to provide a place where useable items can be diverted from the waste stream and be made available to those in our community in need of such items. Items can be picked up by individuals in need for their use, charitable organizations for the use of their clients, and others for their use. It is not the intent of the operation of the Treasure Chest to provide a supply of items for resale for private business operations.

The Treasure Chest Committee shall be appointed by the Board of Selectmen to staggered three-year terms, which run from July 1 to June 30. The board will appoint seven members and at the first meeting held in July the Committee will elect a Chair, a Vice Chair and a Clerk.

The Purpose of the Treasure Chest Committee is to oversee the operation of the treasure chest and to make recommendations to facilitate the orderly drop off and pick up of reusable items in designated areas. The committee will adhere to the implementation of the rules adopted by the Board of Selectmen December 3, 2007 and instruction on operation as given by the Director of Highways & Maintenance.

Members of the committee shall recommend changes to the rules and instructions on operations as needs warrant. The committee shall make their recommendations to the Board and the Director. The Board will take action after receiving reports both from the committee and the Director.

Volunteers who participate at the Treasure Chest will sign up with the Director of Highways and Maintenance office. The Director will appoint, in consultation with the Treasure Chest Committee, volunteers who will operate the Treasure Chest. The Director also will appoint the individuals who will be designated Volunteer in Charge of the different days the Treasure Chest is in operation.

The Director of Highways and Maintenance, on his own or at the request of the Treasure Chest Committee, after meeting with affected parties, can determine that an individual not be allowed to volunteer at the Treasure Chest. The individual may request a hearing with the Board of Selectmen after such designation.

Adopted by the Board of Selectmen  
June 7, 2010

## RULES FOR THE USE OF THE HARWICH TREASURE CHEST

### I. Statement of Purpose

The purpose of the "Treasure Chest" located at the Harwich Transfer Station, is to divert additional refuse from the Transfer Station and Landfill and to provide a venue for transfer of re-usable items to interested residents, non-profit organizations and needy individuals and families.

### II. Treasure Chest Operation

- A. The Treasure Chest will be open Friday through Monday, 9:00 AM to 3:00 PM from May to October, and Saturday and Sunday, 9:00 AM to 3:00 PM from November to April. Schedule is subject to change due to weather conditions and/or the availability of volunteers.
- B. Visitors to the Treasure Chest will be limited to one visit daily, for a maximum of 60 minutes. Loitering will not be allowed.
- C. Donated items will be received only in the designated sorting areas, as determined by the Treasure Chest Chairman or his/her designee. Items may be refused for acceptance if they are not in good condition or working order or if they are on the list of unacceptable items.
- D. Resale of items on Town property is prohibited.

---

Anyone who violates these rules may be asked to voluntarily leave the premises by the Treasure Chest Chairman or his/her designee. If the person refuses to leave, the Chairman or designee shall contact the Disposal Area supervisor, who will enforce the Disposal Area Regulations, as adopted by the Board of Selectmen on September 6, 2005.

Adopted Board of Selectmen: December 3, 2007

## **Treasure Chest Volunteer Committee Charge**

The Treasure Chest Volunteer Committee shall be appointed by the Board of Selectmen. All terms shall expire on June 30<sup>th</sup> of each year.

The purpose of the Treasure Chest Volunteer Committee is to facilitate the orderly drop off and pick up of reusable items in designated areas.

The Committee by election shall designate one member of the committee to serve as chairman and coordinator for the committee. The Chairman or coordinator of the committee shall be responsible for the scheduling of committee volunteers to serve at the Treasure Chest.

Members of the committee shall adhere to the Treasure Chest Rules as adopted or amended by the Board of Selectmen and by the instruction of operation as given by the Director of Highways & Maintenance.

Members of the committee shall not add to, delete from, change, or alter any of the above existing rules or methods or operation, or if the committee needs further clarification on existing guidelines, the committee shall submit their proposal or request in writing to the Director of Highways & Maintenance, and wait for a response before proceeding.

After receiving written notice from the Director of Highways & Maintenance, the Board of Selectmen, as appointing authority, may after a public hearing, if requested, vote to rescind the appointment of any member of the Treasure Chest Volunteer Committee.

Adopted Board of Selectmen: December 3, 2007

## **RULES FOR THE USE OF THE HARWICH TREASURE CHEST**

### **I. Statement of Purpose**

The purpose of the "Treasure Chest" located at the Harwich Transfer Station, is to divert additional refuse from the Transfer Station and Landfill and to provide a venue for transfer of re-usable items to interested residents, non-profit organizations and needy individuals and families.

### **II. Treasure Chest Operation**

- A. The Treasure Chest will be open Friday through Monday, 9:00 AM to 3:00 PM from May to October, and Saturday and Sunday, 9:00 AM to 3:00 PM from November to April. Schedule is subject to change due to weather conditions and/or the availability of volunteers.
- B. Visitors to the Treasure Chest will be limited to one visit daily, for a maximum of 30 minutes. Loitering will not be allowed.
- C. Donated items will be received only in the designated sorting areas, as determined by the Treasure Chest Chairman or his/her designee. Items may be refused for acceptance if they are not in good condition or working order or if they are on the list of unacceptable items.
- D. Resale of items on Town property is prohibited.

Anyone who violates these rules may be asked to voluntarily leave the premises by the Treasure Chest Chairman or his/her designee. If the person refuses to leave, the Chairman or designee shall contact the Disposal Area supervisor, who will enforce the Disposal Area Regulations, as adopted by the Board of Selectmen on September 6, 2005.

Adopted Board of Selectmen: December 3, 2007  
Amended January 10, 2011 – Section II B to read "30 minutes"

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 *JFP*

CC: Meggan M. Eldredge, Assistant Town Administrator  
Jonathan D. Idman, Director of Planning & Community Development

RE: Update on Chloe's Path proposed development

DATE: July 12, 2021

---

I met recently with Andrew Singer, attorney for the group known as Chloe's Path Housing, and we shared information regarding actions and next steps on the proposed development at the property adjacent to Sisson Road.

Your packet material contains a sample letter representing what was mailed out to more than forty (40) property areas near the proposed development by Mr. Singer. The letter provides information on a community engagement discussion to be held on **Tuesday, July 20, 2021 at 6:00pm** at the public meeting room at the Public Safety Facility at 183 Sisson Road (Police and Fire headquarters).

Any and all interested parties who wish to engage in discussions with representatives of the property owners at Chloe's Path are welcome to attend this public event.

Additionally, Attorney Singer and I discussed the process around the *Local Initiative Program* (LIP) coordinated through the state's Department of Housing and Community Development (DHCD). This program incorporates local support for a proposed development from a town (via a Board of Selectmen) proceeding through state approval processes.

Mr. Singer and other representatives of Chloe's Path Housing are scheduled to appear before you on **Monday, July 26, 2021** to formally present the proposed development and engage in discussion on whether the town will support the proposal.

While much has occurred regarding this proposed development, there are many meetings in the months ahead before any substantive actions can or would occur.

Chloe's Path Housing  
c/o P.O. Box 67  
Dennisport, MA 02639

July 6, 2021

Name  
Address

Re: Invitation to Community Meeting

Dear Neighbor,

You will soon begin to receive notices regarding upcoming public hearings with the Harwich Board of Selectmen, Zoning Board of Appeals, and Conservation Commission regarding a proposed residential, affordable housing development on Chloe's Path in Harwich.

The 8.14-acre property is located off Sisson Road, next to the Police and Fire Department Complex and approximately across the street from the Harwich Community Center. An aerial photograph of the property is enclosed. The proposal includes two buildings containing forty-eight (48) rental apartments each, for a total of ninety-six (96) units. The mixed income community will consist of one, two, and three-bedroom apartments.

In advance of the public hearings, we would like to invite you to an informal meeting with our team and any other interested abutters to preview and discuss the project as it is currently designed. The meeting will be held on Tuesday, July 20, 2021, at 6:00 p.m. in the public meeting room at the Harwich Police Department, 183 Sisson Road in Harwich. Access to the meeting room is at the front left-hand side of the building.

We look forward to meeting you on the 20<sup>th</sup> to discuss the proposal and any questions or comments you may have.

Thank you.

Sincerely,

Chloe's Path Housing

By: \_\_\_\_\_  
Andrew L. Singer

## 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

RE: Update on 5 Bell's Neck Road

DATE: July 12, 2021

---

I am working within procurement to dispose of 5 Bells Neck Road consistent with the recent actions at the 2021 Annual Town Meeting under Articles 17 and 40.

Chapter 30B dictates that the town must determine the value of the property. I am in the process of validating the current assessment for this property as listed on the property card.

I expect to release a Request For Proposal (RFP) to seek purchase proposals for this property. Consistent with the Town Meeting action, the RFP will include language mandating that the successful proposer commit to an historic preservation restriction agreement on said property. RFPs of this nature must be advertised in *The Central Register* for no less than thirty (30) days as well as in *The Cape Cod Chronicle* for two (2) consecutive weeks.

Based on the filing requirements for *The Central Register*, the calendar of applicable dates is as follows:

- Advertisement in *The Central Register* on **Wednesday, July 21, 2021:**
- Advertisements in *The Cape Cod Chronicle* on **Thursday, July 22, 2021 and July 29, 2021.**
- Bid openings will occur on **Tuesday, August 24, 2021 at 2:00pm** thus meeting the 30-day notice requirement.

If this schedule holds, the award contract and historic preservation restriction agreement can be presented to you at your meeting on **Tuesday, September 7, 2021.**

## Danielle Delaney

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**From:** Carol Coppola  
**Sent:** Wednesday, June 23, 2021 12:05 PM  
**To:** Danielle Delaney; Ellen Powell  
**Cc:** Joe Powers  
**Subject:** July 12th board meeting

Hi Danielle and Ellen,

Please add an agenda item to the July 12<sup>th</sup> board meeting.

The Cape and Islands Water Protection Fund Management Board has awarded the Town of Harwich with a preliminary subsidy in the amount of \$1,388,404.25. The Massachusetts Clean Water Trust (MCWT) has awarded preliminary principal forgiveness to the Town totaling \$568,522. Both of these amounts will reduce the overall debt for wastewater construction from \$22,214,467 down to \$20,257,540.75 at a 0% interest rate. This is very good news for the Town of Harwich and its tax payers. No action is necessary on behalf of the Board of Selectmen to accept the subsidy and principal forgiveness.

Thank you,

Carol

Carol Coppola, CPA, CFE  
Finance Director/Town Accountant  
Town of Harwich  
732 Main Street  
Harwich, MA 02645  
508 430-7518 x 3335  
Harwich-ma.gov



Raymond Gottwald, Chairman  
Democratic Town Committee  
38 Huckleberry Path  
Harwich, MA 02645



June 25, 2021

Office of the Board of Selectmen  
732 Main Street  
Harwich, MA 02645

Dear Selectmen:

In accordance with Chapter 54, Section 15 of the Massachusetts General Laws, I would like to submit the following names of registered Democrats for your consideration, one of which to be appointed to the Board of Registrars to serve for a three year term.

Ray Gottwald,	, Harwich
Susan Weinstein,	South Harwich
Mary Eagan,	, South Harwich

Thank you for consideration

Respectfully,

*Raymond C. Gottwald*

Raymond Gottwald  
Chairman  
Harwich Democratic Town Committee

**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



# MEMO

TO: Board of Selectmen

FROM: Danielle Delaney, Executive Assistant – Licensing

CC: Joseph F. Powers, Town Administrator  
Meggan M. Eldredge, Assistant Town Administrator

RE: Entertainment License request – Perks

DATE: July 12, 2021

---

Per a phone conversation with Taylor Powell, Manager of Record for Lucky Labrador, Inc DBA Perks they are requesting the following addition to their Weekday and Sunday license for outside and are also requesting to modify their Sunday license for outside. Details provided below.

**Requesting Weekday**

11:00 a.m. to 1:00 a.m.

Ambient background and/or television outside

**Requesting Sunday**

11:00 a.m. to 1:00 a.m.

Ambient background and/or television outside

**Requesting Sunday (modification)**

6:00 p.m. to 9:00 p.m.

Live and/or recorded music with amplification outside

**2021 Entertainment Licenses previously approved by the Board of Selectmen**

**Weekday**

12:00 p.m. to 12:00 a.m.

Live or recorded music with amplification inside

11:30 a.m. to 10:00 p.m.

Live or recorded music with amplification outside

**Sunday**

3:00 p.m. – 12:00 a.m.

Live or recorded music with amplification inside

1:00 p.m. – 12:00 a.m.

Ambient music and/or television inside

6:00 p.m. to 10:00 p.m.

Live or recorded music with amplification outside

**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



# MEMO

TO: Board of Selectmen

FROM: Danielle Delaney, Executive Assistant – Licensing

CC: Joseph F. Powers, Town Administrator  
Meggan M. Eldredge, Assistant Town Administrator

RE: Entertainment License request – Summer House Cafe

DATE: July 12, 2021

---

Per a phone conversation and email exchange with Thomas Paulini, Manager of Chase Escape Cape Cod LLC DBA Summer House Cafe they are requesting the following for a Weekday and Sunday Entertainment License.

**Weekday**

10:00 a.m. to 12:30 a.m.

Live and/or recorded music with amplification and dancing inside

**Sunday**

3:00 p.m. to 12:30 a.m.

Live and/or recorded music with amplification and dancing inside

# TOWN OF HARWICH

## *Building Department*

732 Main Street  
Harwich, MA. 02645



Telephone: (508) 430-7506      FAX: (508) 432-4703

# Memo

**To: Danielle Delaney, Meggan Eldredge, Ellen Powell**

**From: Ray Chesley**

**Date: July 8, 2021**

**Re: Summer House Café Construction Update**

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Please be advised the Summer House Café has not called for any building department inspections as noted on their building permits. The fire department was called to do an inspection before July 4, 2021 but the premises was not ready for inspection.



OFFICE OF THE SELECTMEN  
732 MAIN STREET  
HARWICH, MA 02645  
508-430-7513

**APPLICATION FOR SUNDAY ENTERTAINMENT LICENSE**

- Music 1PM or After (Municipal Fee \$85/State \$50)
- Music prior to 1PM (Municipal Fee \$175/State \$100)
- Go Carts (\$50)
- Miniature Golf (\$50)
- Trampolines (\$25)
- Theater (\$150 per cinema)
- Automatic Amusement (\$100)
- Juke Box (\$100 each)
- Video Games (\$100 each)

- New application  *ITP*
- Renewal
- Annual
- Seasonal
- Opening Date \_\_\_\_\_

Other \_\_\_\_\_

Business Name Cape Escape LLC / B's Summer House Phone \_\_\_\_\_

Business Address 126 Main St. W. Harwich MA 02645

Mailing Address P.O. Box 1645 Harwich MA 02645

Owners Name & Address Nicholas Fierello  
Thomas Paulini

Email Address \_\_\_\_\_

Managers Name & Address Tom Paulini

**TIMES OF ENTERTAINMENT (Please specify where music will be located on your property and what type of entertainment such as live, DJ, recorded)**

Music located on inside stage or outside area adjacent to parking lot during Covid restrictions

**ENTERTAINMENT TYPE: (Check all appropriate boxes)**

- Concert  Dance  Exhibition  Cabaret  Public Show  Other
- Dancing by Patrons
- Dancing by Entertainers or Performers
- Recorded or Live Music
- Use of Amplification System
- Theatrical Exhibit, Play or Moving Picture Show
- A Floor Show of Any Description
- A Light Show of Any Description
- Any Other Dynamic Audio or Visual Show, Whether Live or Recorded

At any time during this concert, dance exhibition, cabaret or public show, will any person(s) be permitted to appear on the premises in any manner or attire as to expose to the public view any portion of the body as described in Mass. General Laws Chapter 140, Section 183A, Para. 3.

\_\_\_ Yes \_\_\_ No

If Yes, answer questions 1 through 4 below. Attach a separate sheet and/or exhibits if necessary:

1. Describe in complete detail the extent of exposure during the performance and the nature of the entertainment: \_\_\_\_\_
2. Furnish additional information concerning the condition of the premises and how they are suitable for the proposed entertainment: \_\_\_\_\_
3. Fully describe the actions you will take to prevent any adverse effects on public safety, health, or order: \_\_\_\_\_
4. Identify whether and how you will regulate access by minors to the premises: \_\_\_\_\_

Days/Hours of Business Operation \_\_\_\_\_

Pursuant to MGL, Chapter 62C, Section 49A, I certify under the penalties of perjury that I, to the best of my knowledge and belief, have filed all State tax returns, and have paid all State taxes under the law.

[Signature]  
Signature of applicant & title Federal I.D. # \_\_\_\_\_

Cape Escape Comedy LLC  
Signature of individual or corporate name Federal I.D. # \_\_\_\_\_

[Signature]  
Signature of Manager Federal I.D. # \_\_\_\_\_

[Signature]  
Signature of Partner Federal I.D. # \_\_\_\_\_

**REGULATORY COMPLIANCE FORM**

The premises to be licensed as described herein have been inspected and found to be in compliance with applicable local codes & regulations, including zoning ordinances, health regulations & building & fire codes.

[Signature] Building Commissioner      [Signature] Board of Health      [Signature] Fire Department

K.M.C. Police Department      comments: \* Food service permit must be issued prior to opening

Required signatures to be obtained by the applicant prior to submission of new applications.



OFFICE OF THE SELECTMEN  
732 MAIN STREET  
HARWICH, MA 02645  
508-430-7513

**APPLICATION FOR ENTERTAINMENT LICENSE**

- Weekday Entertainment (\$75) \_\_\_\_\_ 1 day (\$25)
  - Batters Box (\$50)
  - Go Carts (\$50)
  - Miniature Golf (\$50)
  - Trampolines (\$25)
  - Theater (\$150 per cinema)
  - Automatic Amusement:
    - Juke Box (\$100 each)
    - Video Games (\$100 each)
  - Other \_\_\_\_\_
- New application   
Renewal \_\_\_\_\_  
Annual \_\_\_\_\_  
Seasonal \_\_\_\_\_  
Opening Date \_\_\_\_\_

Business Name Cape Escape LLC dba Summer House Phone \_\_\_\_\_  
*as of*

Business Address 126 Main St. W. Harwich ma - 02671

Mailing Address Po. Box 1645 Harwich ma - 02645

Owners Name & Address Nicholas Ferrillo \_\_\_\_\_

Email Address \_\_\_\_\_

Managers Name & Address Tom Pauline \_\_\_\_\_

**TIMES AND DAYS OF WEEK FOR ENTERTAINMENT (Please note this application does not cover Sundays. You can obtain a Sunday license application at the Selectmen's Office):**

\_\_\_\_\_

**ENTERTAINMENT TYPE: (Check all appropriate boxes)**

- Concert
- Dance
- Exhibition
- Cabaret
- Public Show
- Other
- Dancing by Patrons
- Dancing by Entertainers or Performers
- Recorded or Live Music
- Use of Amplification System
- Theatrical Exhibit, Play or Moving Picture Show
- A Floor Show of Any Description
- A Light Show of Any Description
- Any Other Dynamic Audio or Visual Show, Whether Live or Recorded



At any time during this concert, dance exhibition, cabaret or public show, will any person(s) be permitted to appear on the premises in any manner or attire as to expose to the public view any portion of the body as described in Mass. General Laws Chapter 140, Section 183A, Para. 3.

\_\_\_ Yes \_\_\_ No

If Yes, answer questions 1 through 4 below. Attach a separate sheet and/or exhibits if necessary:

1. Describe in complete detail the extent of exposure during the performance and the nature of the entertainment: \_\_\_\_\_
2. Furnish additional information concerning the condition of the premises and how they are suitable for the proposed entertainment: \_\_\_\_\_
3. Fully describe the actions you will take to prevent any adverse effects on public safety, health, or order: \_\_\_\_\_
4. Identify whether and how you will regulate access by minors to the premises: \_\_\_\_\_

Days/Hours of Business Operation \_\_\_\_\_

Pursuant to MGL, Chapter 62C, Section 49A, I certify under the penalties of perjury that I, to the best of my knowledge and belief, have filed all State tax returns, and have paid all State taxes under the law.

Signature of applicant & title

Federal I.D. #

Signature of individual or corporate name

Federal I.D. #

Signature of Manager

Federal I.D. #

Signature of Partner

Federal I.D. #

### REGULATORY COMPLIANCE FORM

The premises to be licensed as described herein have been inspected and found to be in compliance with applicable local codes & regulations, including zoning ordinances, health regulations & building & fire codes.

Building Commissioner

Board of Health

Fire Department

Police Department

comments: \* Food service permit must be issued prior to opening.

Required signatures to be obtained by the applicant prior to submission of new applications.



OFFICE OF THE SELECTMEN  
 732 MAIN STREET  
 HARWICH, MA 02645  
 508-430-7513

**APPLICATION FOR ENTERTAINMENT LICENSE**

Weekday Entertainment (\$75)  1 day (\$25)  New application \_\_\_\_\_  
 Batters Box (\$50)  Renewal \_\_\_\_\_  
 Go Carts (\$50)  Annual \_\_\_\_\_  
 Miniature Golf (\$50)  Seasonal \_\_\_\_\_  
 Trampolines (\$25)  Opening Date \_\_\_\_\_  
 Theater (\$150 per cinema)  
 Automatic Amusement:  
 Juke Box (\$100 each)  
 Video Games (\$100 each)  Other \_\_\_\_\_

Business Name Trampoline Center Phone 508 432 8717  
 Business Address 296 Route 28 West Harwich MA 02645  
 Mailing Address \_\_\_\_\_  
 Email Address \_\_\_\_\_  
 Managers Name & Address Danna Smith

**TIMES AND DAYS OF WEEK FOR ENTERTAINMENT** (This application does not cover Sundays).

Mon-Sun (7 days a week) 9am-9pm

**ENTERTAINMENT TYPE: (Check all appropriate boxes)**

Dancing by Patrons  Use of Amplification System  
 Dancing by Entertainers or Performers  Concert  
 Recorded or Live Music  Other (Describe) seasonal recreational business

Days/Hours of Business Operation Mon-Sun (7 days a week) 9am-9pm

Pursuant to MGL, Chapter 62C, Section 49A, I certify under the penalties of perjury that I, to the best of my knowledge and belief, have filed all State tax returns, and have paid all State taxes under the law.

Danna W Smith  
 Signature of applicant & title Federal I.D. # \_\_\_\_\_

**REGULATORY COMPLIANCE FORM**

The premises to be licensed as described herein have been inspected and found to be in compliance with applicable local codes & regulations, including zoning ordinances, health regulations & building & fire codes.

Intention de Vill B. J. C.  
 Building Commissioner Board of Health Fire Department

Required signatures to be obtained by the applicant prior to submission of new applications.



OFFICE OF THE SELECTMEN  
732 MAIN STREET  
HARWICH, MA 02645  
508-430-7513

**APPLICATION FOR SUNDAY ENTERTAINMENT LICENSE**

- |   |  |
|---|--|
| <input type="checkbox"/> Music 1PM or After (Municipal Fee \$85/State \$50)   | New application <input type="checkbox"/>     |
| <input type="checkbox"/> Music prior to 1PM (Municipal Fee \$175/State \$100) | Renewal <input checked="" type="checkbox"/>  |
| <input type="checkbox"/> Go Carts (\$50)                                      | Annual <input type="checkbox"/>              |
| <input checked="" type="checkbox"/> Miniature Golf (\$50)                     | Seasonal <input checked="" type="checkbox"/> |
| <input checked="" type="checkbox"/> Trampolines (\$25)                        | Opening Date <u>June 18th</u>                |
| <input type="checkbox"/> Theater (\$150 per cinema)                           |  |
| <input type="checkbox"/> Automatic Amusement (\$100)                          |  |
| <input type="checkbox"/> Juke Box (\$100 each)                                |  |
| <input type="checkbox"/> Video Games (\$100 each)                             |  |
|   | Other _____                                  |

Business Name Trampoline Center Phone 508 432 8717

Business Address 290 Route 28 West Harwich MA 02645

Mailing Address \_\_\_\_\_

Owners Name & Address Donna Smith

Email Address \_\_\_\_\_

Managers Name & Address ~~Donna Smith~~ Donna Smith (same as above)

**TIMES OF ENTERTAINMENT (Please specify where music will be located on your property and what type of entertainment such as live, DJ, recorded)**

no music

**ENTERTAINMENT TYPE: (Check all appropriate boxes)**

- Concert
- Dance
- Exhibition
- Cabaret
- Public Show
- Other
- Dancing by Patrons
- Dancing by Entertainers or Performers
- Recorded or Live Music
- Use of Amplification System
- Theatrical Exhibit, Play or Moving Picture Show
- A Floor Show of Any Description
- A Light Show of Any Description
- Any Other Dynamic Audio or Visual Show, Whether Live or Recorded

At any time during this concert, dance exhibition, cabaret or public show, will any person(s) be permitted to appear on the premises in any manner or attire as to expose to the public view any portion of the body as described in Mass. General Laws Chapter 140, Section 183A, Para. 3.

\_\_\_\_\_ Yes                      \_\_\_\_\_ No

If Yes, answer questions 1 through 4 below. Attach a separate sheet and/or exhibits if necessary:

1. Describe in complete detail the extent of exposure during the performance and the nature of the entertainment: \_\_\_\_\_  
\_\_\_\_\_
2. Furnish additional information concerning the condition of the premises and how they are suitable for the proposed entertainment: \_\_\_\_\_  
\_\_\_\_\_
3. Fully describe the actions you will take to prevent any adverse effects on public safety, health, or order: \_\_\_\_\_  
\_\_\_\_\_
4. Identify whether and how you will regulate access by minors to the premises: \_\_\_\_\_  
\_\_\_\_\_

Days/Hours of Business Operation SUN - MON (7 days a week) 9am - 9pm

Pursuant to MGL, Chapter 62C, Section 49A, I certify under the penalties of perjury that I, to the best of my knowledge and belief, have filed all State tax returns, and have paid all State taxes under the law

Danna W. Smith (President)  
Signature of applicant & title

\_\_\_\_\_ Federal I.D. #

Danna W. Smith  
Signature of individual or corporate name

\_\_\_\_\_ Federal I.D. #

Danna W. Smith  
Signature of Manager

\_\_\_\_\_ Federal I.D. #

NONE  
Signature of Partner

\_\_\_\_\_ Federal I.D. #

**REGULATORY COMPLIANCE FORM**

The premises to be licensed as described herein have been inspected and found to be in compliance with applicable local codes & regulations, including zoning ordinances, health regulations & building & fire codes.

\_\_\_\_\_  
Building Commissioner

Matthew O'Neill  
Board of Health

B. C. H.  
Fire Department

K. M. A. L.  
Police Department

comments:

*Required signatures to be obtained by the applicant prior to submission of new applications.*



OFFICE OF THE SELECTMEN  
 732 MAIN STREET  
 HARWICH, MA 02645  
 508-430-7513

**APPLICATION FOR COMMON VICTUALLERS LICENSE**

Fee: \$50    New application     Annual     # of seats 6  
 Renewal     Seasonal     Opening date JULY 2, 2021

In accordance with the provisions of the Statutes relating thereto, application for a Common Victuallers license is hereby made by:

Business Name Seagulls LLC    Phone 781-848-1110

Doing Business As (d/b/a) Seagulls Ice Cream and Soda Fountain

Business Address 537 Route 28 Unit 1C, Harwich Port, MA 02646

Mailing Address P.O. Box 738, South Dennis, MA 02660

Email Address Seagulls ice cream@gmail.com

Name of Owner Ron Cote

(If corporation or partnership, list name, title and address of officers)

Ron Cote, Manager,

Connor Cummings, Owner,

[Signature] Manager

Signature of applicant & title    Federal I.D. #

Pursuant to MGL Ch. 62c, Sec. 49A, I certify under the penalties of perjury that to the best of my knowledge and belief I have filed all state tax returns and paid all state taxes required under law.

Seagulls LLC    By [Signature]  
 Signature of individual or corporate name    Corporate officer (if applicable)

**REGULATORY COMPLIANCE FORM**

The premises to be licensed as described herein have been inspected and found to be in compliance with applicable local codes and regulations, including zoning ordinances, health regulations and building and fire codes.

Building Commissioner    [Signature] O'Neill    [Signature]  
 Board of Health    Fire Department

Required signatures to be obtained by the applicant prior to submission of new applications.

**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



# MEMO

TO: Board of Selectmen

FROM: Danielle Delaney, Executive Assistant – Licensing

CC: Joseph F. Powers, Town Administrator  
Meggan M. Eldredge, Assistant Town Administrator

RE: One day entertainment license requests

DATE: July 12, 2021

---

The event information outlined below was shared with staff from the applicants via email and phone. Both applicants stated that they have notified their neighbors.

Date: Friday, August 21, 2021  
Time: 5:00 p.m. to 11:00 p.m.  
Location: 44 Chatham Road  
Entertainment: Live music with amplification outside event

Date: Saturday, August 28, 2021  
Time: 4:00 p.m. to 11:00 p.m.  
Location: 44 Chatham Road  
Entertainment: Live music with amplification outside for a private event

Date: Saturday, July 17, 2021  
Time: 10:00 a.m. to 6:00 p.m.  
Location: 16 Route 28 – Townline Plaza  
Entertainment: Live music with amplification and dancing outside for a private fundraiser



OFFICE OF THE SELECTMEN  
732 MAIN STREET  
HARWICH, MA 02645  
508-430-7513

**APPLICATION FOR ENTERTAINMENT LICENSE**

Weekday Entertainment (\$75)  1 day (\$25)  New application  Renewal  Annual  Seasonal  Opening Date \_\_\_\_\_

Batters Box (\$50)

Go Carts (\$50)

Miniature Golf (\$50)

Trampolines (\$25)

Theater (\$150 per cinema)

Automatic Amusement:

Juke Box (\$100 each)

Video Games (\$100 each)  Other \_\_\_\_\_

Business Name \_\_\_\_\_ Phone \_\_\_\_\_

Business Address \_\_\_\_\_

Mailing Address 44 Chatham Rd.

Owners Name & Address J. ALAIN FERRY 44 CHATHAM RD.

Email Address \_\_\_\_\_

Managers Name & Address \_\_\_\_\_

**TIMES AND DAYS OF WEEK FOR ENTERTAINMENT (Please note this application does not cover Sundays. You can obtain a Sunday license application at the Selectmen's Office):**

Friday Aug 27 5pm - 11pm

**ENTERTAINMENT TYPE: (Check all appropriate boxes)**

Concert  Dance  Exhibition  Cabaret  Public Show  Other

Dancing by Patrons

Dancing by Entertainers or Performers

Recorded or Live Music

Use of Amplification System

Theatrical Exhibit, Play or Moving Picture Show

A Floor Show of Any Description

A Light Show of Any Description

Any Other Dynamic Audio or Visual Show, Whether Live or Recorded

At any time during this concert, dance exhibition, cabaret or public show, will any person(s) be permitted to appear on the premises in any manner or attire as to expose to the public view any portion of the body as described in Mass. General Laws Chapter 140, Section 183A, Para. 3.

\_\_\_\_ Yes        X   No

If Yes, answer questions 1 through 4 below. Attach a separate sheet and/or exhibits if necessary:

1. Describe in complete detail the extent of exposure during the performance and the nature of the entertainment: \_\_\_\_\_  
\_\_\_\_\_
2. Furnish additional information concerning the condition of the premises and how they are suitable for the proposed entertainment: \_\_\_\_\_  
\_\_\_\_\_
3. Fully describe the actions you will take to prevent any adverse effects on public safety, health, or order: \_\_\_\_\_  
\_\_\_\_\_
4. Identify whether and how you will regulate access by minors to the premises: \_\_\_\_\_  
\_\_\_\_\_

Days/Hours of Business Operation \_\_\_\_\_

Pursuant to MGL, Chapter 62C, Section 49A, I certify under the penalties of perjury that I, to the best of my knowledge and belief, have filed all State tax returns, and have paid all State taxes under the law.

[Signature]  
Signature of applicant & title

\_\_\_\_\_  
Federal I.D. #

\_\_\_\_\_  
Signature of individual or corporate name

\_\_\_\_\_  
Federal I.D. #

\_\_\_\_\_  
Signature of Manager

\_\_\_\_\_  
Federal I.D. #

\_\_\_\_\_  
Signature of Partner

\_\_\_\_\_  
Federal I.D. #

**REGULATORY COMPLIANCE FORM**

The premises to be licensed as described herein have been inspected and found to be in compliance with applicable local codes & regulations, including zoning ordinances, health regulations & building & fire codes.

[Signature]  
Building Commissioner

[Signature]  
Board of Health

[Signature]  
Fire Department

[Signature]  
Police Department

comments:

*Required signatures to be obtained by the applicant prior to submission of new applications.*





OFFICE OF THE SELECTMEN  
732 MAIN STREET  
HARWICH, MA 02645  
508-430-7513

**APPLICATION FOR ENTERTAINMENT LICENSE**

Weekday Entertainment (\$75)  1 day (\$25)      New application   
 Batters Box (\$50)      Renewal   
 Go Carts (\$50)      Annual   
 Miniature Golf (\$50)      Seasonal   
 Trampolines (\$25)      Opening Date \_\_\_\_\_  
 Theater (\$150 per cinema)  
Automatic Amusement:  
 Juke Box (\$100 each)  
 Video Games (\$100 each)      Other \_\_\_\_\_

Business Name \_\_\_\_\_ Phone \_\_\_\_\_ †

Business Address \_\_\_\_\_

Mailing Address 44 Chatham Rd.

Owners Name & Address J. ALAIN FERRY 44 CHATHAM RD.

Email Address \_\_\_\_\_

Managers Name & Address \_\_\_\_\_

**TIMES AND DAYS OF WEEK FOR ENTERTAINMENT (Please note this application does not cover Sundays. You can obtain a Sunday license application at the Selectmen's Office):**

Saturday ~~July~~ August 28<sup>th</sup> 4pm - 11pm

**ENTERTAINMENT TYPE: (Check all appropriate boxes)**

Concert     Dance     Exhibition     Cabaret     Public Show     Other  
 Dancing by Patrons  
 Dancing by Entertainers or Performers  
 Recorded or Live Music  
 Use of Amplification System  
 Theatrical Exhibit, Play or Moving Picture Show  
 A Floor Show of Any Description  
 A Light Show of Any Description  
 Any Other Dynamic Audio or Visual Show, Whether Live or Recorded

At any time during this concert, dance exhibition, cabaret or public show, will any person(s) be permitted to appear on the premises in any manner or attire as to expose to the public view any portion of the body as described in Mass. General Laws Chapter 140, Section 183A, Para. 3.

\_\_\_\_\_ Yes       No

If Yes, answer questions 1 through 4 below. Attach a separate sheet and/or exhibits if necessary:

1. Describe in complete detail the extent of exposure during the performance and the nature of the entertainment: \_\_\_\_\_  
\_\_\_\_\_
2. Furnish additional information concerning the condition of the premises and how they are suitable for the proposed entertainment: \_\_\_\_\_  
\_\_\_\_\_
3. Fully describe the actions you will take to prevent any adverse effects on public safety, health, or order: \_\_\_\_\_  
\_\_\_\_\_
4. Identify whether and how you will regulate access by minors to the premises: \_\_\_\_\_  
\_\_\_\_\_

Days/Hours of Business Operation \_\_\_\_\_

Pursuant to MGL, Chapter 62C, Section 49A, I certify under the penalties of perjury that I, to the best of my knowledge and belief, have filed all State tax returns, and have paid all State taxes under the law.

  
\_\_\_\_\_  
Signature of applicant & title

\_\_\_\_\_  
Federal I.D. #

\_\_\_\_\_  
Signature of individual or corporate name

\_\_\_\_\_  
Federal I.D. #

\_\_\_\_\_  
Signature of Manager

\_\_\_\_\_  
Federal I.D. #

\_\_\_\_\_  
Signature of Partner

\_\_\_\_\_  
Federal I.D. #

### REGULATORY COMPLIANCE FORM

The premises to be licensed as described herein have been inspected and found to be in compliance with applicable local codes & regulations, including zoning ordinances, health regulations & building & fire codes.

  
\_\_\_\_\_  
Building Commissioner

  
\_\_\_\_\_  
Board of Health

  
\_\_\_\_\_  
Fire Department

  
\_\_\_\_\_  
Police Department

comments:

Required signatures to be obtained by the applicant prior to submission of new applications.



OFFICE OF THE SELECTMEN  
732 MAIN STREET  
HARWICH, MA 02645  
508-430-7513

**APPLICATION FOR ENTERTAINMENT LICENSE**

- Weekday Entertainment (\$75)  1 day (\$25)
- Batters Box (\$50)
- Go Carts (\$50)
- Miniature Golf (\$50)
- Trampolines (\$25)
- Theater (\$150 per cinema)
- Automatic Amusement:
- Juke Box (\$100 each)
- Video Games (\$100 each)
- New application
- Renewal
- Annual
- Seasonal
- Opening Date
- Other fundraiser

Business Name Kanna & Company Phone:   
Business Address 16 Route 28 Townline plaza W Harwich 02645  
Mailing Address (Same) 16 Route 28 W Harwich MA 02671  
Owners Name & Address Dana Palatadia 1  
Email Address   
Managers Name & Address (Same) Dana Palatadia 1

**TIMES AND DAYS OF WEEK FOR ENTERTAINMENT (Please note this application does not cover Sundays. You can obtain a Sunday license application at the Selectmen's Office):**

Saturday July 17th 10AM - 6PM

**ENTERTAINMENT TYPE: (Check all appropriate boxes)**

- Concert  Dance  Exhibition  Cabaret  Public Show  Other
- Dancing by Patrons
- Dancing by Entertainers or Performers
- Recorded or Live Music
- Use of Amplification System
- Theatrical Exhibit, Play or Moving Picture Show
- A Floor Show of Any Description
- A Light Show of Any Description
- Any Other Dynamic Audio or Visual Show, Whether Live or Recorded

At any time during this concert, dance exhibition, cabaret or public show, will any person(s) be permitted to appear on the premises in any manner or attire as to expose to the public view any portion of the body as described in Mass. General Laws Chapter 140, Section 183A, Para. 3.

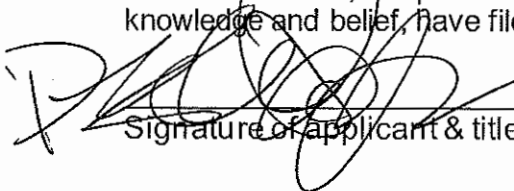
\_\_\_ Yes       No

If Yes, answer questions 1 through 4 below. Attach a separate sheet and/or exhibits if necessary:

1. Describe in complete detail the extent of exposure during the performance and the nature of the entertainment: \_\_\_\_\_  
\_\_\_\_\_
2. Furnish additional information concerning the condition of the premises and how they are suitable for the proposed entertainment: \_\_\_\_\_  
\_\_\_\_\_
3. Fully describe the actions you will take to prevent any adverse effects on public safety, health, or order: \_\_\_\_\_  
\_\_\_\_\_
4. Identify whether and how you will regulate access by minors to the premises: \_\_\_\_\_  
\_\_\_\_\_

Days/Hours of Business Operation \_\_\_\_\_

Pursuant to MGL, Chapter 62C, Section 49A, I certify under the penalties of perjury that I, to the best of my knowledge and belief, have filed all State tax returns, and have paid all State taxes under the law.

 owner/operator

Signature of applicant & title

Federal I.D. #

Signature of individual or corporate name

Federal I.D. #

Signature of Manager

Federal I.D. #

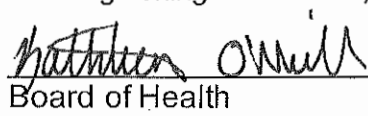
Signature of Partner

Federal I.D. #

**REGULATORY COMPLIANCE FORM**

The premises to be licensed as described herein have been inspected and found to be in compliance with applicable local codes & regulations, including zoning ordinances, health regulations & building & fire codes.

  
Building Commissioner

  
Board of Health

\_\_\_\_\_  
Fire Department

  
Police Department

comments:

Required signatures to be obtained by the applicant prior to submission of new applications.



# **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:** **June 28, 2021**

**SUBJECT:** **Alleged Noise Violation at the Seal Pub**

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 Seal Pub documented by Det. Sgt. Brackett on June 26, 2021.

The attached incident report is 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.

## NARRATIVE FOR DETECTIVE SERGEANT ROBERT C BRACKETT

Ref: 21-7554-OF

To: Town of Harwich Board of Selectmen

From: Detective Sergeant Bob Brackett

Date: June 26, 2021

Subject: Noise Violation at Seal Pub and Cafe located at #703 Main Street Harwich, Ma.

1. On Saturday June 26, 2021, at approximately 12:19am, Detective Sergeant Brackett was travelling East on Main Street in Harwich Center in the vicinity of Chapman Funeral Home located at #678 Main Street in Harwich, Ma. Detective Sergeant Brackett could observe in the distance a large number of people gathered in front of the Seal Pub and Cafe on the sidewalk. The Seal Pub and Cafe is located at #703 Main Street in Harwich, Ma.
2. Detective Sergeant Brackett pulled to the side of the road at the intersection of Forest St and Main St. Detective Sergeant Brackett was able to clearly hear *loud music* and *excessive yelling* coming from the Seal Pub and Cafe. Detective Sergeant Brackett also was able to hear voices yelling "last call" repeatedly. Detective Sergeant Brackett subsequently paced off the distance from the intersection of Forest St to the Seal Pub and Cafe and found it to be approximately +/- 450 feet.
3. Detective Sergeant Brackett proceeded to the Seal Pub and Cafe and observed approximately 20 people to be standing in front of the establishment on the sidewalk on Main Street as well as approximately 12 people to be standing in the driveway along the side of the building leading to the rear parking lot. The outside patio was also full of patrons. The interior was extremely full of patrons bringing into question capacity concerns. The music was found to be very loud emanating from the inside of the establishment. All of the external doors were open allowing the music to be heard outside. Due to the loud music the crowds outside needed to talk/yell over the music.
4. Upon the arrival of Detective Sergeant Brackett the music was shut off by personnel. Detective Sergeant Brackett spoke with Josh Winston and advised him of the noise violation. Josh was very apologetic and cooperative. It was again explained to Mr Winston the issues with having the external doors opened and the music coming from the interior. Mr Winston was also advised that having the front doors open along the sidewalk is inviting his patrons to congregate on the sidewalk adding to the noise. Mr Winston stated that they are trying to encourage people to leave via the front doors so as to limit the amount of people exiting to the rear parking lot. Mr Winston was encouraged to attempt to control the outside crowds and to keep the doors and windows closed when interior music is playing to help mitigate the noise. Mr Winston again apologized and stated that he would attempt to correct it.

Respectfully Submitted by,



Detective Sergeant Robert Brackett

**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  
Effective July 1, 2011

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- 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 offense: 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



**NON-UNION COMPENSATION PLAN**

**BY-LAW POSITIONS: FULL TIME MANAGEMENT**

<b>Grade</b>	<b>Position</b>	<b>Step 1</b>	<b>Step 2</b>	<b>Step 3</b>	<b>Step 4</b>	<b>Step 5</b>	<b>Step 6</b>	<b>Step 7</b>	<b>Step 8</b>	<b>Step 9</b>	<b>Step 10</b>
Contract	Town Administrator, Finance Director/Town Accountant, Fire Chief, Police Chief										
M-9	DPW Director	115,979	118,823	121,850	124,898	128,020	131,210	134,501	137,863	141,309	144,842
M-8	Water/Wastewater Superintendent	106,405	109,065	111,792	114,588	117,451	120,387	123,398	126,481	129,644	132,885
M-7	Assistant Town Administrator, Deputy Police Chief, Library Director, Deputy Fire Chief	97,617	100,057	102,558	105,123	107,753	110,445	113,207	116,036	118,937	121,910
M-6		89,557	91,795	94,092	96,444	98,853	101,327	103,858	106,453	109,114	111,842
M-5	Town Clerk	82,164	84,217	86,323	88,481	90,692	92,958	95,283	97,666	100,049	102,489
M-4	Personnel Director	75,378	77,263	79,194	81,175	83,204	85,284	87,416	89,600	91,785	94,024
M-3		69,155	70,883	72,656	74,471	76,334	78,242	80,198	82,204	84,209	86,263
M-2		63,447	65,030	66,657	68,321	70,019	71,780	73,575	75,415	77,254	79,139
M-1		50,754	52,024	53,325	54,657	56,025	57,427	58,862	60,332	61,840	63,387

# **CONTRACTS**

## MEMORANDUM

To: Joseph Powers, Town Administrator  
From: Sean Libby, Facilities Maintenance Manager *SL*  
Re: Bid review for DPW Scalehouse Deck  
Date: 24 June 2021

On Thursday June 10th 2021 sealed bids were opened for that project. There was only one bidder with Mettler Toledo coming in at \$69,188.24. The bidder has provided routine maintenance and scale calibration for the Town for a number of years and is very reputable. Part of the funding (\$55,000.00) will come from annual Town Meeting 2020 Article 12. The remaining \$14188.24 will come from purchased services line of accounting 014212 538000. The reason for the increase from the original estimate is the price of steel has dramatically risen since the estimate was completed. I am requesting that this contract be approved and signed so we can move forward with this project. Please let me know if you have any further questions.

CC: Lincoln Hooper, DPW Director

Low Bidder: Metko Toledo

Bid Price: \$ 69,188.24

### 12/13/18 Revised Procurement Checklist

Please complete checklist below for contracts requiring Selectmen\* signature **before Wednesday morning\*\*** in order to get sign-off approval from the Town Administrator or the Assistant Town Administrator.

\*Note: contracts (not grants) **below \$25,000** can be signed by Town Administrator.

- 1. Please provide a **separate page titled "Summary of Project"** which includes:
  - a. Provide how many bidders there were, the range of bids, and apparent low bidder.
  - b. Identify the funding source, such as article number and amount approved.
  - c. Include what you feel is pertinent, but keep this section to 4 sentences or less.

2. Finance Director has signed that funds are available: ATM 2020 #12 \$5,000.00 Account # 014212 53800 814188.24

3. Please provide a single **copy of the bid packet** along with all supporting documents.

4. Please use K-P Law provided standardized contracts.

<u>Buildings and Public Works</u>	<u>Goods and Services</u>
<input type="checkbox"/> C1. Please show Prevailing Wage was used. <input type="checkbox"/> C2. If construction is <b>near \$10,000</b> you also need: <ul style="list-style-type: none"> <li><input type="checkbox"/> a. Written spec sheet.</li> <li><input type="checkbox"/> b. Advertised for two weeks on Central Register and COMMBUYS.</li> <li><input type="checkbox"/> c. Apparent low bidder posted to Town website.</li> </ul> <input type="checkbox"/> C3. If construction <b>over \$25,000</b> you need C1, C2, as well as: <ul style="list-style-type: none"> <li><input type="checkbox"/> a. Show project was in the Capital Plan.</li> <li><input type="checkbox"/> b. Low bidder provides 50% payment bond after Selectmen's countersignature.</li> </ul> <input checked="" type="checkbox"/> C4. If construction <b>over \$50,000</b> you need C1, C2, C3, as well as: <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> a. Bid Bond of 5% of total value.</li> <li><input checked="" type="checkbox"/> b. Sealed Bids.</li> <li><input type="checkbox"/> c. End of Public Works construction requirements</li> </ul> <input type="checkbox"/> C5. If <b>Building</b> estimated construction costs are over \$300,000 <b>and</b> estimated design costs are over \$30,000 you'll need to follow the Designer Selection RFQ process: <ul style="list-style-type: none"> <li><input type="checkbox"/> a. Advertise in Central Register and local newspaper for two weeks.</li> <li><input type="checkbox"/> b. Set a designer fee or price ceiling.</li> <li><input type="checkbox"/> c. Use Standard Designer Application Form</li> </ul> <input type="checkbox"/> C6. If <b>Building</b> construction <b>over \$150,000</b> you'll need C1, C2, C3, C4, C5, as well as: <ul style="list-style-type: none"> <li><input type="checkbox"/> a. 100% payment bond was in bids.</li> <li><input type="checkbox"/> b. 100% performance bond was in bids.</li> <li><input type="checkbox"/> c. DCAMM certified bidders.               <ul style="list-style-type: none"> <li><input type="checkbox"/> i. DCAMM certified sub-bids if over \$25,000.</li> </ul> </li> </ul> <input type="checkbox"/> C7. If <b>Building</b> construction <b>over \$10,000,000</b> you'll need C1, C2, C3, C4, C5, C6, as well as: <ul style="list-style-type: none"> <li><input type="checkbox"/> a. Solicit qualifications prior to sealed bids.</li> </ul>	<input type="checkbox"/> GS1. If procured using the <b>State Bid List</b> : <ul style="list-style-type: none"> <li><input type="checkbox"/> a. Over \$25,000 please show project was on the Capital Plan.</li> </ul> <input type="checkbox"/> GS2. If project is <b>over \$5,000</b> : <ul style="list-style-type: none"> <li><input type="checkbox"/> a. Please provide written spec sheet used and who it was sent to.</li> <li><input type="checkbox"/> b. Maximum contract length is three years.</li> </ul> <input type="checkbox"/> GS3. If project is <b>over \$50,000</b> : <ul style="list-style-type: none"> <li><input type="checkbox"/> a. Show project was advertised for two weeks in a newspaper and on COMMBUYS.</li> <li><input type="checkbox"/> b. Show project utilized sealed bids.</li> <li><input type="checkbox"/> c. Apparent low bidder posted to Town website.</li> </ul> <input type="checkbox"/> GS4. If project is <b>over \$100,000</b> : <ul style="list-style-type: none"> <li><input type="checkbox"/> a. Show project was advertised for two weeks in COMMBUYS and Goods and Services Bulletin.</li> <li><input type="checkbox"/> b. Show project utilized sealed bids.</li> </ul> <p>Note 1: If lowest bidder was found to be either not responsive or not responsible, the Town may begin negotiations with next lowest bidder.</p> <p>Note 2: Bids may be negotiated downwards but never higher than original quote.</p> <p>Note 3: Municipalities shall not provide a down payment, deposit, or provide funding before possession of purchased item.</p>

Original for Accounting     Original for Procurement     Original for Vendor     Contract to Treasurer's

Signature of Town Administrator or Assistant Town Administrator: Joseph F. Powers

0823C0C5799644E...



\*\*Note: Failure to gain sign-off **before Wednesday at noon** results in the contract being delayed to the next meeting.

### Town of Harwich Bid Opening

Date, Time:	06/10/2021, 2 pm
Title:	DPW Scalehouse Deck

Vendor Name	Bid Deposit (5% - Y/N)	References (Y/N)	Bid Amount
Mettler Toledo	Y	Y	\$69,188.24

Commencement	14:01
Completion	14:09

	Name	Signature	Date
Bid Opener	Griffin Ryder		6.10.2021
Witness	Meggan Eldredge		6.10.2021

**TOWN OF HARWICH, MASSACHUSETTS**

**CONTRACT DOCUMENTS  
FOR**

**HARWICH TRANSFER STATION SCALE DECK REPLACEMENT**

May 26, 2021

Town of Harwich

Harwich Town Hall

732 Main Street

Harwich, MA 02645

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SECTION 00020

INVITATION FOR BIDS

Sealed bids for furnishing the following item will be received at the Office of the Town Administrator, Harwich Town Hall, 732 Main Street, Harwich, MA 02645 until the time specified below at which time the bids will be publicly opened and read.

Specifications and bid forms may be obtained from the Town of Harwich Procurement Webpage at the following address <https://www.harwich-ma.gov/home/pages/procurement>.

Bids will be opened in the Office of the Town Administrator on June 10, 2021, at 2 p.m. Each Bid must be accompanied by a bid security consisting of a BID BOND, CASH, or, CERTIFIED CHECK issued by a responsible bank or trust company in the amount of 5% of the bid price.

A payment (labor and materials) bond in an amount equal to 50 percent of the total amount of the contract price with a surety company qualified to do business in the Commonwealth of Massachusetts will be required for the contract.

All bids for this project are subject to applicable public bidding laws of Massachusetts, including, but not limited to G.L. c.30, §39M.

Attention is directed to the minimum wage rates to be paid as determined by the Commissioner of Labor and Workforce Development and the weekly payroll record submittal requirements under the provisions of Massachusetts General Laws, Chapter 149, Section 26 through 27D inclusive.

Selection of the contractor will be based upon bidder qualifications, including evidence of past performance in similar projects, and bid price. The contract will be awarded to the bidder deemed by the awarding authority to be the lowest responsible and eligible bidder.

The bidder agrees that its bid shall be good and may not be withdrawn for a period of 30 days, Saturdays, Sundays and legal holidays excluded, after the opening of the bids.

The Town reserves the right to waive any informalities, to accept or reject, in whole or in part any or all bids, or take whatever other action may be deemed to be in the best interest of the Town.

The Town of Harwich

By: Joseph F. Powers, Town Administrator



SECTION 00100

INSTRUCTIONS TO BIDDERS

1. Receipt and Opening of Bids

The Town of Harwich, Massachusetts, herein called the Owner, acting by and through its Board of Selectmen, will receive sealed Bids for the project known as the **Harwich Transfer Station Scale Deck Replacement Project**.

General bids shall be addressed to the Office of the Town Administrator, Harwich Town Hall, 732 Main Street, Harwich, MA 02645 and endorsed "**Bid for the Harwich Transfer Station Scale Deck Replacement Project**" (Project) will be received at the Office of the Town Administrator until 2:00 p.m. prevailing time, on Thursday, June 10, 2021 at which time and place said bids will be publicly opened and read aloud.

Any bid may be withdrawn prior to the above scheduled time for the opening of bids or authorized postponement thereof. Any bid received after the time and date specified will not be considered. The bidder agrees that its bid shall be good and may not be withdrawn for a period of 30 days, Saturdays, Sundays, and legal holidays excluded, after the opening of bids.

2. Location and Work to be Done

The Work consists of the removal, fabrication and installation of a steel deck weighbridge at the Town of Harwich Transfer Station and all work incidental thereto, in accordance with the Specifications and conceptual plans attached hereto.

Additional drawings showing details in accordance with which the Work is to be done may be furnished by addendum from time to time during the bidding period by the Owner or its Architect/Engineer, and shall then become a part of the Contract Documents.

The Contractor shall furnish all labor, services, materials, equipment, plant, machinery, apparatus, appliances, tools, supplies, and all other things necessary to do all work required for the completion of each item of the Work and as herein specified.

The Work to be done and paid for under any item shall not be limited to the exact extent mentioned or described but shall include all incidental work necessary or customarily done for the completion of that item.

3. Preparation of Bid

Each bid must be submitted on the prescribed form. All blank spaces for bid prices must filled in, in ink or typewritten, in both words and figures.

Each bid must be submitted in a sealed envelope bearing on the outside the name of the bidder, his address, and endorsed with the name of the project as specified in Receipt and Opening of Bids, above. If forwarded by mail, the sealed envelope containing the bid must be enclosed in another envelope addressed as specified in Receipt and Opening of Bids, above.

4. Bid Opening Procedure

The following list of requirements shall apply to each filed bid. Bids not meeting all the requirements for timeliness and security will be rejected; bids not meeting signature and addenda requirements will be rejected prior to checking of bid amounts.

Bids shall be filed at the place and before the time specified in Receipt and Opening of Bids, above.

Properly executed bid security shall be placed in a sealed envelope and shall be attached to the outside of the envelope containing the bid.

Bid signatures will be checked.

All addenda will be sent certified mail, with return receipt requested, and/or facsimile or e-mail to all prospective bidders. All bidders shall include with their bids the written acknowledgment form provided in Section 00300, FORM OF GENERAL BID.

The total dollar amount of each bid will be read, and the three apparent lowest bids will be selected for further consideration. These three apparent low bids will be read aloud for the benefit of the other bidders and the bid opening procedure will be closed. All those present at the bid opening may examine all bids after the bid opening and after the reading of the three apparent low bids.

5. Modification

Any bidder may modify his bid by written communication at any time prior to the scheduled closing time for receipt of bids. Any telegraphic communication must be received by the Owner prior to the closing time, and, provided further, the Owner must be satisfied that a written confirmation of the telegraphic modification over the signature of the bidder was mailed prior to the closing time. If written confirmation is not received within two days from the closing time, no consideration will be given to a telegraphic communication.

The communication shall not reveal the bid price but shall provide the addition or subtraction or other modification so that the final prices or terms will not be known by the Owner until the sealed bid is opened.

6. Ability and Experience of Bidder

No award will be made to any bidder who cannot satisfy the Owner that he has sufficient ability and experience in this class of work and sufficient capital and plant to enable him to prosecute and complete the work successfully within the time named. The Owner's decision or judgment on these matters will be final, conclusive, and binding.

The Owner may make such investigations as it deems necessary, and the bidder shall furnish to the Owner, under oath if so required, all such information and data for this purpose as the Owner may request.

7. Conditions of Work

Each bidder must familiarize himself fully with the conditions relating to the construction of the project and the employment of labor thereon. Failure to do so will not relieve a successful bidder of his obligation to furnish all material and labor necessary to carry out the provisions of his contract. Insofar as possible the Contractor, in carrying out his work, must employ such methods or means as will not cause any interruption of or interference with the work of any other Contractor.

8. Addenda and Interpretations

No interpretation of the meaning of the plans, specifications or other prebid documents will be made to any bidder orally. All information given to bidders other than by means of the plans, specifications, or by addenda, as described below, is given informally and shall not be used as the basis of a claim against the Owner.

Every request for such interpretation should be in writing via email addressed to Sean Libby, Town of Harwich DPW Facilities Maintenance Manager at [slibby@townofharwich.us](mailto:slibby@townofharwich.us) and to be given consideration must be received at least seven (7) days prior to the date fixed for the opening of bids. Any and all such interpretations and any supplemental instructions will be in the form of written addenda to the specifications which, when issued, will be emailed to all prospective bidders who have downloaded the IFB and entered their information. Failure of any bidder to receive any such addendum or interpretation shall not relieve such bidder from any obligation under his bid as submitted. All addenda so issued shall become part of the Contract Documents.

9. Security for Faithful Performance

Simultaneously with his delivery of the executed Contract, the Contractor shall furnish a surety bond as security for the payment of all persons performing labor and materials under this contract. The surety on such bond shall be a surety company qualified to do business under the laws of the Commonwealth and satisfactory to the Owner. The bond shall remain in force for one year after final acceptance of the work by the Owner, unless the Owner, in writing, releases the Contractor from the obligation sooner.

10. Power of Attorney

Attorneys-in-fact who sign Contract bonds must file with each bond a certified and effectively dated copy of their power of attorney.

11. Laws and Regulations

The bidder's attention is directed to the fact that all applicable State laws, municipal ordinances or bylaws, and the rules and regulations of all authorities having jurisdiction over construction of the project shall apply to the contract throughout, and they will be deemed to be included in the Contract the same as though written out in full.

12. Liquidated Damages for Failure to Enter into Contract

The successful bidder, upon his failure or refusal to execute and deliver the Contract and bond required within 10 days after presentation thereof by the Owner, shall forfeit to the Owner, as liquidated damages for such failure or refusal, the security deposited with his/her bid, but the amount forfeited shall not exceed the difference between his/her bid price and the bid price of the next lowest responsible and eligible bidder. In case of death, disability, bona fide clerical or mechanical error of a substantial nature, or other similar unforeseen circumstances affecting the bidder, his/her bid deposit will be returned.

13. Obligation of Bidder

At the time of the opening of bids, each bidder will be presumed to have inspected the site and to have read and to be thoroughly familiar with the Contract Documents (including all addenda). The failure or omission of any bidder to examine any form, instrument, or document shall in no way relieve any bidder from any obligation in respect of his bid.

14. Information Not Guaranteed

All information given in the Contract Documents relating to subsurface and other conditions, natural phenomena, existing pipes, and other structures is from the best sources at present available to the Owner. All such information is furnished only for the information and convenience of bidders and is not guaranteed.

It is agreed and understood that the Owner does not warrant or guarantee that the subsurface or other conditions, natural phenomena, existing pipes, or other structures encountered during construction will be the same as those indicated in the Contract Documents. It is further agreed and understood that no bidder or Contractor shall use or be entitled to use any of the information made available to him or obtained in any examination made by him in any manner as a basis of or ground for any claim or demand against the Owner or the Architect/Engineer, arising from or by reason of any variance which may exist between the information made available and the actual subsurface or other structures actually encountered during the construction work, except as may otherwise be expressly provided for in the Contract Documents.

15. Bid Security

Each bid and sub-bid must be accompanied by bid security in the form of a certified check, a bid bond, cash, or a treasurer's or cashier's check, payable to the Owner, in the amount of five (5) percent of the value of the bid. Such security of general bidders will be returned to all except the three lowest responsible and eligible bidders within five days, Saturdays, Sundays, and legal holidays excluded, after the opening of bids, and the remaining securities will be returned promptly after the Owner and the accepted bidder have executed the Contract, or if no notice

of intent to award has been presented to the selected contractor within 30 days, Saturdays, Sundays and holidays excluded, after the date of the opening of bids, upon demand of the bidder at any time thereafter.

16. Right to Reject Bid

The Owner reserves the right to waive any informalities in bids and to reject any and all bids, should the Owner deem it to be in the public interest to do so.

The Owner may also reject bids which in its sole judgment are either incomplete, conditional, obscure or not responsive or which contain additions not called for, erasures not properly initialed, alterations, or similar irregularities.

17. Time for Completion

The successful general bidder must agree to commence work within ten (10) days of the date of the Notice to Proceed and to fully complete the project within the time limit stated in Section 00300, FORM OF GENERAL BID.

18. Comparison of Bids

Bids will be compared on the basis of prices set forth in the bid forms. In the event that there is a discrepancy between the lump sum or unit prices written in words and figures, the prices written in words will govern.

19. Award of Contract

The Contract will be awarded to "the lowest responsible and eligible bidder" pursuant to General Laws Chapter 30, Section 39M, as amended. Such a bidder shall possess the skill, ability and integrity necessary for the faithful performance of the work, shall be able to furnish labor that can work in harmony with all other elements of labor employed, or to be employed, in the work, and shall otherwise comply with all applicable provisions of law. Contract award shall be subject to availability of an appropriation for funding.

20. Statutes Regulating Competitive Bidding

Any bid which does not comply with the provisions of Massachusetts General Laws Chapter 30, Section 39M, as amended, need not be accepted and the Owner may reject every such bid.

21. Wage Rates

Prevailing Wage Rates as determined by the Commissioner of Department of Labor and Workforce Development under the provision of the Massachusetts General Laws, Chapter 149, Section 26 to 27G, as amended, apply to this project. It is the responsibility of the bidder, before bid opening, to request any additional information on Prevailing Wage Rates for those tradespeople who may be employed for the proposed work under this contract.

22. Contractor Records

The Contractor shall comply with the provisions of Massachusetts General Laws, Chapter 30, Section 39R concerning Contractor records.

23. INSURANCE

The Contractor shall carry and continuously maintain until completion of the Contract, insurance as specified in Agreement and in such form as shall protect him performing work covered by this Contract, and the Town of Harwich and its employees, agents and officials, from all claims an liability for damages for bodily injury, including accidental death, and for property damage, which may arise from operations under this Contract. The Town shall be named as an additional insured. The Contractor covenants and agrees to hold the Town and its employees, agents and officials harmless from loss or damage due to claims for bodily injury or death and/or property damage arising from, or in connection with, operations under this Contract.

25. PROJECT MANAGER

The Owner may utilize the services of a project manager, whose duties shall be as set forth in an Agreement for Project Manager Services.

SECTION 00300

FORM OF GENERAL BID

Bid of Mettler-Toledo, LLC (hereinafter called "Bidder")\*

a limited liability company, organized and existing under the laws of  
Delaware

a partnership

a joint venture

an individual  
doing business as \_\_\_\_\_

To the Town of Harwich, Massachusetts (hereinafter called "Owner").

Gentlemen:

A) The undersigned Bidder, in compliance with your invitation for bids for the project known as Harwich Transfer Station Scale Deck Replacement Project, having examined the plans and specifications and related documents and the site of the proposed work, and being familiar with all of the conditions surrounding the construction of the proposed project including the availability of materials and labor, hereby proposes to furnish all labor, materials, and supplies, and to construct the project in accordance with the contract documents and the plans and specifications within the time set forth below, and at the prices stated below. These prices are to cover all expenses incurred in performing the work required under the contract documents, of which this bid is a part.

The Bidder hereby agrees to commence work on or before the date to be specified in written "Notice to Proceed" of the Owner, and to fully complete the project within 65 consecutive calendar days thereafter. The Bidder further agrees to pay as liquidated damages the sum of Zero (\$0) Dollars for each consecutive calendar day thereafter that the work is not complete as provided in the contract.

 Type text here

\*Specify corporation, partnership or individual as applicable.

B) Bidder acknowledges receipt of and this bid includes the following addenda:

No. \_\_\_\_\_ Dated: \_\_\_\_\_

No. \_\_\_\_\_ Dated: \_\_\_\_\_

No. \_\_\_\_\_ Dated: \_\_\_\_\_

No. \_\_\_\_\_ Dated: \_\_\_\_\_

C) The Bidder agrees to perform the bid work described in the specifications and shown on the plans for the following contract price: \$ 69,188.24.

Sixty nine thousand one hundred eighty eight dollars and twenty four cents.



The above unit prices shall include all labor, materials, bailing, shoring, removal, overhead, profit, insurance, etc., to cover the finished work of the several kinds called for.

The Bidder understands that all bids for this project are subject to the applicable bidding laws of the Commonwealth of Massachusetts, including General Laws Chapter 149 and Chapter 30, Section 39M, as amended.

The Bidder understands that the Owner reserves the right to reject any or all bids and to waive any informalities in the bidding.

The Bidder agrees that this bid shall be good and may not be withdrawn for a period of 30 days, Saturdays, Sundays and legal holidays excluded, after the opening of bids.

Within 10 days of receipt of the written notice of acceptance of this bid, the Bidder will execute the formal Agreement set forth in Section 00500 CONTRACT.

Bid security is attached in the sum of five percent (5%) of the total bid in accordance with the conditions of Section 00100 INSTRUCTIONS TO BIDDERS. The bid security may become the property of the Owner in the event the contract and bond are not executed within the time set forth above.

The selected Contractor shall furnish a payment bond in an amount at least equal to fifty percent (50%) of the contract price in accordance with Section 00620 PAYMENT BOND, and as stipulated in the contract.

The undersigned offers the following information as evidence of his qualifications to perform the work as bid upon according to all the requirements of the plans and specifications.

1. Have been in business under present name for 35 years.
2. The names and addresses of all persons interested in the bid (if made by a partnership or corporation) as principals, are as follows:

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(attach supplementary list if necessary)

3. The bidder is requested to state below what work of a similar character to that included in the proposed contract he has done, and give references that will enable the Owner to judge his experience, skill and business standing (add supplementary page if necessary).

<u>Completion Date</u>	<u>Project Name</u>	<u>Contract Amount</u>	<u>Design Engineer</u>	<u>Reference Name</u>	<u>Telephone No.</u>
a. July 2016	- MDTA Weigh Station Improvement	- \$12,614,067	- Anthony Tabasco	- 410-931-0110	
b. April 2021	- Scale Replacement	- \$77,852	- Jeff Olejniczak	- 508-384-3161	
c. May 2021	- Waste Management Scale Replacement	- \$87,200	- Chris Isakov	- 410-724-0181	
d.					
e.					
f.					

Bank reference Claudette J. Evert  
(Name)  
JP Morgan Chase  
(Bank)  
10 S. Dearborn Chicago, IL 60603  
(Address)  
312-732-1314  
(Telephone No.)

Pursuant to G.L. c.62C, §49A, I certify hereby in writing, under penalties of perjury, that the within named Bidder/Contractor has complied with all laws of the commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting of child support.

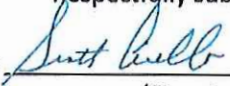
The undersigned Bidder hereby certifies under penalties of perjury, as follows: (1) that he/she is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed in the work; (2) that all employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration at the time the employee begins work and who shall furnish documentation of successful completion of said course with the first certified payroll report for each employee; and (3) that all employees to be employed in the work subject to this bid have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration.

The undersigned certifies under penalties of perjury that this bid is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this paragraph the word "person" shall mean any natural person, joint venture, partnership, corporation or other business or legal entity.

The undersigned bidder hereby certifies, under pains and penalties of perjury, that the foregoing bid is based upon the payment to laborers to be employed on the project of wages in an amount no less than the applicable prevailing wage rates established for the project by the Massachusetts Department of Labor and Workforce Development. The undersigned bidder agrees to indemnify the awarding authority for, from and against any loss, expense, damages, actions or claims, including any expense incurred in connection with any delay or stoppage of the project work arising out of or as a result of (1) the failure of the said bid to be based upon the payment of the said applicable prevailing wage rates or (2) the failure of the bidder, if selected as the contractor, to pay laborers employed on the project the said applicable prevailing wage rates.

Respectfully submitted:

Date: June 7, 2021

By:   
(Signature)

Type in Bidder

Mettler-Toledo, LLC

(Type Name of Bidder)  
Scott Aiello, Business Manager  
(Title)

1900 Polaris Parkway, Columbus, Ohio 43240  
(Business Address)

Columbus, Ohio  
(City and State)

+1 614 438 4972  
(Telephone Number)

SECTION 00500

AGREEMENT

THIS AGREEMENT made this 7th day of June in the year Two Thousand and Twenty-One, between Mettler-Toledo, LLC, with a usual place of business at 1900 Polaris Parkway, Columbus, Ohio 43240, hereinafter called the CONTRACTOR, and the Town of Harwich, acting by its Board of Selectmen, with a usual place of business at 732 Main Street, Harwich, MA 02645, hereinafter called the OWNER.

The CONTRACTOR and the OWNER, for the consideration hereinafter named, agree as follows:

1. Scope of Work

The Contractor shall furnish all labor, materials, equipment and insurance to perform all work required for the project known as the **Harwich Transfer Station Scale Deck Replacement Project**, in strict accordance with the Contract Documents and all related Drawings and Specifications. The said Documents, Specifications, Drawings and any GENERAL SUPPLEMENTARY CONDITIONS are incorporated herein by reference and are made a part of this Agreement.

2. Contract Price

The Owner shall pay the Contractor for the performance of this Agreement, subject to additions and deductions provided herein, in current funds, the sum of \$69,188.24.

3. Commencement and Completion of Work and Liquidated Damages

It is agreed that time is of the essence of this Agreement. The Contractor shall commence and prosecute the work under this Agreement upon execution hereof and shall complete the work on or before October 12, 2021.

- A. **Definition of Term:** The Term "Substantial completion" shall mean the date certified by the Owner when construction is sufficiently complete, in accordance with the Contract Documents, so the Owner may occupy the project, or designated portion(s) thereof, for the use for which it is intended.
- B. **Time as Essential Condition:** It is understood and agreed that the commencement of and substantial completion of the work are essential conditions of this Agreement. It is further agreed that time is of the essence for each and every portion of the Contract Documents wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the Contract Documents any additional time is allowed for the completion of any work, the new time fixed by such extension shall be of the essence of this Agreement. It is understood and agreed that the times for the completion of the work are reasonable, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.

- C. **Progress and Completion:** Contractor shall commence work promptly upon execution of this Agreement and shall prosecute and complete the work regularly, diligently and uninterruptedly at such a rate of progress as will insure Substantial Completion within the stipulated number of calendar days.
  
- D. **Liquidated Damages:** It is expressly agreed between the Contractor and the Owner that the Contractor will be responsible for all damages which may arise due to the Contractor's failure to substantially complete the work within the above specified time. If the Contractor shall neglect, fail or refuse to complete the work within the specified number of days, or any extension thereof authorized by the Owner, Contractor agrees, as a part of the consideration for the execution of this Contract by the Owner, to pay the Owner the amount specified herein, not as a penalty, but as liquidated damages for such breach of contract as hereinafter set forth, for each and every calendar day, excluding Saturdays, Sundays and legal Holidays, that the Contractor shall be in default of Substantial completion after the date specified in the Agreement. Due to the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain, said amount is agreed to be the amount of damages which the Owner would sustain, and said amount shall be retained from time to time by the Owner from current periodic estimates. The amount of liquidated damages shall be five hundred dollars (\$500.00) per day.

4. Performance of the Work

- A. **Direction of the Work:** The Contractor shall supervise and direct the Work, using his best skills and attention which shall not be less than such state of skill and attention generally rendered by the contracting profession for projects similar to the Project in scope, difficulty and location. The Contractor shall maintain adequate supervisory personnel at the project site during the performance of the Work. He shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Agreement.
  
- B. **Responsibility for the Work:** (1) The Contractor shall be responsible to the Owner for the acts and omissions of his employees, Subcontractors and their agents and employees, and other persons performing any of the Work under a contract with the Contractor. This obligation shall also extend to the presence on the Site of suppliers of materials or equipment, their employees, contractors, and agents engaged in the work.  
  
(2) The Contractor shall not be relieved from his obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the Owner in its administration of the Agreement, or by inspections, tests or approvals required or performed by persons other than the Contractor.
  
- C. **Permits and Fees:** Unless otherwise expressly provided, the Contractor shall secure and pay for all permits and fees, licenses and inspections necessary for the proper execution and completion of the Work which are customarily secured after execution of the Agreement and which are legally required at the time the bids are received, and the same shall at all times be the property of the Owner and shall be delivered to the Owner upon completion of the Project.

- D. Notices, Compliance With Laws: (1) The Contractor shall give all notices and comply with all federal, state and local laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work. The Contractor shall provide the Owner with reproductions of all permits, licenses and receipts for any fees paid. The Owner represents that it has disclosed to the Contractor all orders and requirements known to the Owner of any public authority particular to this Agreement.
- (2) If the Contractor observes that any of the Contract Documents are at variance with applicable laws, statutes, codes and regulations in any respect, he shall promptly notify the Owner in writing, and any necessary changes shall be accomplished by appropriate modification.
- (3) If the Contractor performs any Work which he knows or should know is contrary to such laws, ordinances, rules and regulations, and without such notice to the Owner, he shall assume full responsibility therefor and shall bear all costs attributable thereto.
- (4) In the performance of the Work, the Contractor shall comply with all applicable federal, state and local laws and regulations including those relating to workplace and employee safety. The Contractor shall notify the Owner immediately of any conditions at the place of the work which violate said laws and regulations and shall take prompt action to correct and eliminate any such violations.
- E. Project Superintendent: The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site at all times during the progress of the Work. The superintendent shall represent the Contractor and all communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be so confirmed on written request in each case.
- F. Progress Schedule: The Contractor, immediately after being awarded the Contract, shall prepare and submit for the Owner's information an estimated progress schedule for the Work. The progress schedule shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.
- G. Drawings, Specifications and Submittals:
- (1) The Contractor shall maintain at the site for the Owner one record copy of all Drawings, Specifications, Addenda, Change Orders and other Modifications, and "As-Built" Drawings and Specifications in good order and marked currently to record all changes made during construction, and approved Shop Drawings, Product Data and Samples. These shall be delivered to the Owner upon completion of the Work.
- (2) By approving and submitting Shop Drawings, Product Data and Samples, the Contractor represents that he has determined and verified all materials, field measurements, and field construction criteria related thereto, or will do so, and that he has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.
- (3) The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Owner's approval of Shop Drawings, Product

Data or Samples unless the Contractor has specifically informed the Owner in writing of such deviation at the time of submission and the Owner has given written approval to the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data or Samples by the Owner's approval thereof.

(4) The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data or Samples, to revisions other than those requested by the Owner on previous submittals.

(5) No portion of the Work requiring submission of a Shop Drawing, Product Data or Sample shall be commenced until the submittal has been approved by the Owner. All such portions of the Work shall be in accordance with approved submittals.

- H. Protection of the Work and Owner's Property: The Contractor shall at all times safely guard the Owner's property from injury or loss in connection with this Agreement. He shall at all times safely guard and protect his own work, and that of adjacent property from damage. The Contractor shall replace or make good any such damage, loss or injury. The Contractor shall clean the work area and restore it to its original condition upon completion of the work.
- I. Quality of the Work: The Contractor shall perform the work in a good, workmanlike manner. The Contractor hereby guarantees that the entire work constructed by him under the Agreement will meet fully all requirements thereof as to quality of workmanship and materials. The Contractor hereby agrees to make at his own expense any repairs or replacements made necessary by defects in materials or workmanship supplied to him that become evident within one (1) year after the date of the final payment, and to restore to full compliance with the requirements set forth herein any part of the work constructed hereunder, which during said one (1) year period is found to be deficient with respect to any provisions of the Contract Documents. The Contractor also agrees to hold the Owner harmless from claims of any kind arising from damage due to said defects. The Contractor shall make all repairs and replacements promptly upon receipt of written orders for same from the Owner. If the Contractor fails to make the repairs and replacements promptly, the Owner may do the work and the Contractor shall be liable to the Owner for the cost thereof.
- J. Warranty: The Contractor guarantees to Owner that all materials incorporated into the work will be new unless otherwise specified or agreed. Prior to final payment, the Contractor shall deliver to the Owner all manufacturers' warranties, together with such endorsements or assignments as are necessary to ensure to the Owner the full rights and benefits of such warranties.

5. Affirmative Action/Equal Employment Opportunity

The Contractor is directed to comply with all applicable State Laws, Ordinances, Bylaws, and rules and regulations regarding affirmative action/equal employment opportunity requirements. Failure of the Contractor to comply with any such law, rule or regulation shall constitute grounds for the Owner to terminate the Agreement.

6. Site Information Not Guaranteed; Contractor's Investigation



All information given in the Contract Documents relating to subsurface and other conditions, natural phenomena, existing pipes, and other structures is from the best sources at present available to the Owner. All such information is furnished only for the information and convenience of the Contractor and is not guaranteed.

It is agreed and understood that the Owner does not warrant or guarantee that the subsurface or other conditions, natural phenomena, existing pipes, or other structures encountered during construction will be the same as those indicated in the Contract Documents.

Contractor has familiarized himself with the nature and extent of the Contract Documents, work, locality, and with all local conditions and federal, state, and local laws, rules, ordinances, and regulations that in any manner may affect costs, progress, or performance of the work. Contractor has made, or has caused to be made, examinations, investigations, and tests and studies of such reports and related data in addition to those referred to in the paragraph above as he deems necessary for the performance of the work at the Contract Price, within the Contract Time, and in accordance with the other Terms and Conditions of the Contract Documents; and no additional examinations, tests, investigations, reports, and similar data are or will be required by the Contractor for such purposes.

Contractor has correlated the results of all such observations, examinations, investigations, tests, reports, and data with the Contract Documents. Contractor has given the Owner written notice of all conflicts, errors, or discrepancies that he has discovered in the Contract Documents, and the resolution thereof by the Owner is acceptable to the Contractor.

It is further agreed and understood that the Contractor shall not use or be entitled to use any of the information made available to him or obtained in any examination made by him in any manner as a basis of or ground for any claim or demand against the Owner, arising from or by reason of any variance which may exist between the information made available and the actual subsurface conditions or other conditions or structures actually encountered during the construction work, except as may otherwise be expressly provided for in the Contract Documents.

7. Project Architect or Engineer

There is not a project architect-engineer for this project. Except as otherwise indicated in the Contract Documents, the Architect/Engineer shall be a representative of the Owner and the Contractor shall direct all communications, questions and comments on the work and the performance thereof to the Architect/Engineer. Except as otherwise provided, the Architect/Engineer shall have all the authority of the Owner set forth in the Contract Documents. In general, the Architect/Engineer shall have the authority to review the performance of the work, reject work which is defective or otherwise does not comply with the Contract Documents and to order the Contractor to remedy defective work and take such actions which are necessary to make the work conform to the Contract Documents.

8. Wage Rates

Prevailing Wage Rates as determined by the Commissioner of the Department of Labor and Workforce Development under the provisions of Massachusetts General Laws, Chapter 149, Section 26 to 27G, as amended, apply to this project. It is the responsibility of the Contractor to provide the Town with certified payrolls and to comply with all requirements of the above-cited statutes.

The schedules of prevailing wage rates are included in the Contract Documents.

9. Payments to the Contractor

Within fifteen (15) days after receipt from the Contractor of a proper and satisfactory periodic estimate requesting payment of the amount due for the preceding month, the Owner shall have fifteen (15) days to make payment for:

- A. The work performed during the preceding month.
- B. The materials not incorporated in the Work but delivered and suitably stored at the site (or at some location agreed upon in writing) to which the Contractor has title, or to which a Subcontractor has title and has authorized the Contractor to transfer title to the Owner.
- C. Less the following retention items:
  1. A retention based on an estimate of the fair value of the Owner's claims against the Contractor.
  2. A retention for direct payments to Subcontractors, if any, based on demands for same in accordance with the provisions of Section 39F of Chapter 30 of the General Laws.
  3. A retention not exceeding five percent (5%) of the approved amount of the periodic payment.
- D. After the receipt of a periodic estimate requesting final payment and within sixty-five (65) days after the Contractor fully completes the Work, or substantially completes the Work so that the value of the Work remaining to be done is, on the estimate of the Owner, less than 1% of the original Contract Price, or substantially completes the Work and the Owner takes possession or occupancy, whichever occurs first, the Owner shall pay the Contractor the entire balance due on the Contract less:

1. A retention based on an estimate of the fair value of the Owner's claims against the Contractor and of the cost of completing the incomplete and unsatisfactory items of work.
2. A retention for direct payments to Subcontractors, if any, based on demands of same in accordance with the provisions of Section 39F of Chapter 30 of the General Laws, or based on the record of payments by the Contractor to the Subcontractors under this Contract if such record of payment indicates that the Contractor has not paid Subcontractors as provided in Section 39F of Chapter 30 of the General Laws.

If the Owner fails to make payment as herein provided, there shall be added to each such payment, daily interest at the rate of 3 percentage points above the rediscount rate than charged by the Federal Reserve Bank of Boston, commencing on the first day after said payment is due, and continuing until the payment is delivered or mailed to the Contractor; provided that no interest shall be due, in any event, on the amount of a periodic estimate for final payment until fifteen (15) days after receipt of such a periodic estimate by the Owner as provided in the first paragraph of this Article. The Contractor agrees to pay to each subcontractor a portion of any such interest paid in accordance with the amount due each subcontractor.

The Owner may make changes in any periodic estimate submitted by the Contractor and the payment due on said periodic estimate shall be computed in accordance with the changes so made, and such changes and any requirements for a corrected periodic estimate shall not affect the due date for the periodic payment or the date for the commencement of interest charges on the amount of the periodic payment computed in accordance with the changes made, as provided herein; provided further, that the Owner may, within seven (7) days after receipt, return to the Contractor for correction, any periodic estimate which is not in acceptable form or which contains computations not arithmetically correct, and in that event, the date of receipt of such periodic estimate shall be the date of receipt of the corrected periodic estimate in proper form and with arithmetically correct computations. The date of receipt of a periodic estimate received on a Saturday shall be the first working day thereafter.

- E. Changes in the Work: No changes in the work covered by the approved Contract Documents shall be made without prior written approval of the Owner. Charges or credits for the work covered by the approved change shall be determined by one or more, or a combination of the following methods:
- (a) Unit bid prices previously approved.
  - (b) An agreed lump sum.
  - (c) The actual cost of:
    - (1) Labor.
    - (2) Materials entering permanently into the work.
    - (3) The ownership or rental cost of construction equipment during the time of use on the extra work.

- (4) Power and consumable supplies for the operation of power equipment.
- (5) Wages to be paid.

To the cost under (c) there shall be added a fixed fee to be agreed upon but not to exceed fifteen percent (15%) of the actual cost of work. The fee shall be compensation to cover the cost of supervision, overhead, bond, profit and any other general expenses.

- F. Claims for Additional Costs: If the Contractor wishes to make a claim for an increase in the Contract Sum, he shall give the Owner written notice thereof within twenty days after the occurrence of the event giving rise to such claim. This notice shall be given by the Contractor before proceeding to execute the Work, except in an emergency endangering life or property. No such claim shall be valid unless so made. Any change in the Contract Sum resulting from such claim shall be authorized by Change Order.

The Contractor hereby agrees that the Contractor shall have no claim for damages of any kind against the Town on account of any delay in the commencement or performance of the work and/or any hindrance, delay or suspension of any portion of the work including, but not limited to, any claims or damages on account of having to perform out of sequence work, claims for damages on account of loss of production or other interference with the work whether such delay is caused by the Town or otherwise, except as and to the extent expressly provided under G.L. c.30, §390 in the case of written orders by the Town. The Contractor acknowledges that the Contractor's sole remedy for any such claim will be an extension of time as provided herein.

10. Final Payment, Effect

The acceptance of final payment by the Contractor shall constitute a waiver of all claims by the Contractor arising under the Agreement.

11. Contract Documents

The Contract Documents consist of the following, together with this Agreement:

- Invitation to Bid
- Instructions to Bidders
- This Contract Form
- Bid Form
- Labor & Materials Payment Bond
- Non-Collusion Certificate
- Tax Compliance Certificate
- Clerk's Certificate of Corporate Vote
- Certificate of Insurance
- Specifications and Addenda
- Schedule of Prevailing Wages

12. Terms Required By Law

This Agreement shall be considered to include all terms required to be included in it by the Massachusetts General Laws, and all other laws, as though such terms were set forth in full herein.

13. Indemnification

The Contractor shall indemnify and hold harmless the Owner from and against any and all claims, damages, losses, and expenses, including attorney's fees, arising out of the performance of this Agreement when such claims, damages, losses, and expenses are caused, in whole or in part, by the acts, errors, or omissions of the Contractor or his employees, agents, subcontractors or representatives.

14. Insurance

The Contractor shall purchase and maintain such insurance as will protect both the Owner and the Contractor from claims which may arise under the Agreement, including operations performed for the named insured by independent contractors and general inspection thereof by the named insured. In addition, the Contractor shall require its subcontractors to maintain such insurance. Coverage shall be provided for:

- .1 claims under workers' or workmen's compensation, disability benefit and other applicable employee benefit acts;
- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
- .3 claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
- .4 claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Contractor, or (2) by any other person;
- .5 claims for damages, including damages to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; and
- .6 claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.
- .7 claims involving contractual liability applicable to the Contractor's obligations under Article 13.

The limits of liability for coverage required under the preceding paragraph shall be as Specified in the Supplemental Conditions.

Except for Workmen's Compensation, all liability coverage shall name the Town as an additional insured and shall provide for 30 days prior written notice to the Town of any modification or termination of coverage provided thereby. The Contractor shall provide the Owner with appropriate certificate(s) of

insurance evidencing compliance with this provision prior to the commencement of any work under this Agreement.

15. Notice

All notices required to be given hereunder shall be in writing and delivered to, or mailed first class to, the parties' respective addresses stated above. In the event that immediate notice is required, it may be given by telephone or facsimile, but shall, to the extent possible, be followed by notice in writing in the manner set forth above.

16. Termination

- A. Each party shall have the right to terminate this Agreement in the event of a failure of the other party to comply with the terms of the Agreement. Such termination shall be effective upon seven days' notice to the party in default and the failure within that time of said party to cure its default.
- B. The Owner shall have the right to terminate the Agreement without cause, upon ten (10) days' written notice to the Contractor. In the event that the Agreement is terminated pursuant to this subparagraph, the Contractor shall be reimbursed in accordance with the Contract Documents for all Work performed up to the termination date, and for all materials or equipment not incorporated in the Work, but delivered and suitably stored at the site. Payment for material or equipment stored at the site shall be conditioned upon submission by the Contractor of bills of sale or such other evidence as is satisfactory to Owner to establish the Owner's title to such material or equipment or otherwise protect the Owner's interests.

17. Miscellaneous

- A. **Royalties and Patents:** The Contractor shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof, except that the Owner shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified; but if the Contractor believes or has reason to believe that the design, process or product specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the Owner, and thereafter the Owner insists on the use of the design, process or products specified.
- B. **Assignment:** The Contractor shall not assign or transfer any of its rights, duties or obligations under this Agreement without the written approval of the Owner.
- C. **Governing Law:** This Agreement shall be governed by and construed in accordance with the law of the Commonwealth of Massachusetts.
- D. By its signature hereon, the Contractor certifies, under the pains and penalties of perjury, that it has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

[Remainder of page intentionally blank.]

AGREED:

**TOWN OF HARWICH, MASSACHUSETTS**  
(Owner)

By its \_\_\_\_\_  
  
\_\_\_\_\_

**CONTRACTOR: METTLER-TOLEDO, LLC**

By \* *Scott Aiello*

Scott Aiello  
(Name)

Business Manager  
(Title)

1900 Polaris Parkway, Columbus, Ohio 43240  
(Address)

Columbus, Ohio  
(City and State)

Approved as to Form:

By \_\_\_\_\_  
(Owner's Counsel)

In accordance with G.L. c.44, Section 31C, this is to certify that an appropriation in the amount of this contract is available therefor and that the \_\_\_\_\_ has been authorized to execute the contract and approve all requisitions and change orders.

By <sup>DocuSigned by:</sup> *Carol Coppola*  
(Owner's Accountant)

Carol Coppola  
\_\_\_\_\_  
(Name)

\*Subject to the attached Addendum No.1

**Mettler-Toledo, LLC**

Address 1900 Polaris Parkway, Columbus, Ohio 43240

**SUPPLEMENT NO. 1 – METTLER-TOLEDO, LLC'S PROPOSAL TO INVITATION FOR BID # 00020 ("BID") – DATED MAY 26, 2021**

This Supplement No.1 is part of Mettler-Toledo, LLC's proposal in response to Invitation for Bid # 00020 ("Bid") for The Town of Harwich, Massachusetts ("the Owner") whereby Mettler-Toledo, LLC ("Contractor/MT") shall perform removal, fabrication and installation of a steel deck weighbridge at the Harwich Transfer Station Scale Deck Replacement ("Project").

Whereas, this Supplement No. 1 amends the Bid documents including the Agreement ("Agreement") and shall supersede all provisions of all the documents in Bid and the Agreement that conflict with this Supplement No. 1 or address the same topics that are addressed in this Supplement No.1. All other provisions of Bid documents shall remain in full force and effect.

Contractor's standard warranty is detailed in **Annex A** attached herewith. Contractor warrants that, under normal use, the products will be free from defects for twelve (12) months from date of original installation or 18 months from date of shipment, whichever occurs first. Contractor also warrants that services will be performed in a workmanlike manner consistent with industry standards for 30 days, and warrants replacement parts as free from defects for 90 days from delivery. **CONTRACTOR DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED (INCLUDING WITHOUT LIMITATION WARRANTIES AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE)**. Within the standard warranty period, the Owner must notify CONTRACTOR immediately when a problem arises so Contractor can resolve the issue. If a warranty issue arises, Contractor will have the option to either refund the purchase price or correct the defect and provide replacement parts and labor free of charge to the **Owner**.

Contractor shall be responsible solely for the damages caused due to Contractor's negligence, gross negligence, or willful misconduct in the provision or performance of providing the goods and services ordered by the Owner. Although Contractor will be responsible for the damages caused by Contractor, Contractor's total liability will not exceed the total value of the Agreement giving rise to the claim, and Contractor agrees that this limitation will not cause the agreement to fail in accomplishing its essential purpose. Neither the Owner nor Contractor will be responsible to the other or any third party for any type of consequential, indirect, punitive or similar damages.

Parties agree that time shall not be of essence. In the event of delay in delivery for reasons attributable to Contractor, Contractor shall immediately notify the Owner in writing of the probable length of any anticipated delay. Contractor shall undertake to shorten or make up the delay by all reasonable means, at Contractor's sole cost and expense and that this shall be sole remedy of the Owner for delay on Contractor's part. Both parties agree that no penalties, liquidated or other damages of any kind will apply to this Agreement.

Attached herewith is **Annex B** Certificate of Insurance indicating insurance coverage maintained by Contractor. Contractor may meet the insurance requirements set out in the Bid documents, through any combination of primary and excess/umbrella policies.

Shipping is FOB, Incoterms 2010. Payment by the Owner to Contractor shall not be subject to any retainage or contingent upon anything other than Contractor's timely delivery/ performance in accordance with the milestones and specifications as mutually agreed. The Owner agrees to pay the invoice amount in full within 30 days of the invoice date. Services will be deemed accepted upon completion and equipment will be deemed unequivocally accepted upon calibration. All other products are accepted upon delivery per the FOB origin shipping terms. This acceptance will not alter the Owner's warranty rights under this Agreement. Prices do not include any taxes, shipping, packaging, handling, insurance, duties, inspection fees, permit fees, installation, or other costs or services unless otherwise specified in the contractor order documents. Title and risk shall transfer upon shipment or delivery consistent with the Incoterm. The sale and performance of services hereunder will in no way transfer to the Owner any right of ownership in any patents, copyrights, trademarks, technologies, designs, specifications, drawings, or other intellectual property of Contractor. If during the term of this Agreement, parties suspect development of any discovery or invention, patentable or not, parties may mutually agree to execute an appropriate license or development agreement. Unless agreed to between the parties or required by law, Contractor will not be required to furnish any payment or performance bond. Although Contractor hopes to have a long relationship with the Owner, either Party may terminate this Agreement only upon 30 days' notice. Upon termination, in addition to paying for previously confirmed orders, the Owner agrees to pay us for the costs incurred through the date of termination. Contractor agrees to comply with all laws, ordinances and standards in force from time to time, which are applicable to the delivery of products or performance of services by Contractor. Both the parties agree that the terms of Bid and any Agreement thereafter shall be governed in accordance with laws of such State of United States wherein the products or services are to be delivered.

If you have any concerns or queries with respect to any of the terms incorporated in this Supplement, we welcome you to contact our legal department for further discussion and resolution.

Mettler-Toledo, LLC ("Contractor")



Signature Date

06/07/2021

Scott Aiello, Business Manager  
Print Name / Title



CERTIFICATE OF VOTE  
(to be filed if Contractor is a Corporation)

I, \_\_\_\_\_, hereby certify that I am the duly qualified  
(Secretary of the Corporation)  
and acting Secretary of \_\_\_\_\_ and I further certify that a meeting of the  
(Name of Corporation)  
Directors of said Company, duly called and held on \_\_\_\_\_, at which  
(Date of Meeting)

all Directors were present and voting, the following vote was unanimously passed:

VOTED:            To authorize and empower  
  
\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_

Anyone acting singly, to execute Forms of General Bid, Contracts or Bonds on behalf of the Corporation.

I further certify that the above vote is still in effect and has not been changed or modified in any respect.

By: Scott Kullb  
(Secretary of Corporation)

A True Copy:

Attest: \_\_\_\_\_  
(Notary Public)

My Commission Expires: \_\_\_\_\_  
(Date)

**CERTIFICATIONS REQUIRED BY LAW  
FOR PUBLIC CONSTRUCTION CONTRACTS**

You must **COMPLETE** and **SIGN** the following certifications. You must also print, at the bottom of this page, the name of the contractor for whom these certifications are submitted.

**TAX COMPLIANCE**

Pursuant to Chapter 62C of the Massachusetts General Laws, Section 49A(b), I, the undersigned, authorized signatory for the below named contractor, do hereby certify under the pains and penalties of perjury that said contractor has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

---

**NON-COLLUSION**

The undersigned certifies under the penalties of perjury that this bid is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this subsection the word "person" shall mean any natural person, joint venture, partnership, corporation or other business or legal entity.

---

**PUBLIC CONTRACTOR DEBARMENT**

The undersigned certifies under penalty of perjury that the below named contractor is not presently debarred from doing public construction work in the commonwealth under the provisions of section twenty-nine F of chapter twenty-nine, or any other applicable debarment provisions of any other chapter of the General Laws or any rule or regulation promulgated thereunder.

---

**OSHA TRAINING**

Pursuant to G.L. c. 30, §39S, the Contractor hereby certifies under penalties of perjury as follows:

- (1) Contractor is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed in the work;
- (2) All employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration at the time the employee begins work and they shall furnish documentation of successful completion of said course with the first certified payroll report for each employee; and
- (3) All employees to be employed in the work subject to this contract have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration.

**COMPLETE AND SIGN BELOW:**

  
\_\_\_\_\_  
Authorized Person's Signature

06/07/2021  
\_\_\_\_\_  
Date

Scott Aiello  
\_\_\_\_\_  
Print Name & Title of Signatory

METTLER-TOLEDO, LLC  
\_\_\_\_\_  
Name of Contractor

## SECTION 00900

### SPECIFICATIONS

#### Scope of Services - General Description

Remove and replace the truck scale steel decking for the transfer station. The existing scale deck has completely rusted through in some spots. Attention to the demolition portion of this contract is critical to ensure the existing load cells are not damaged. After the installation of the new deck the scale will be calibrated and tested by the county inspector. Contract includes all of the labor and equipment required to accomplish the project.

#### 1. GENERAL PROVISIONS

Furnish and install one Steel deck motor truck scale. (Weighbridge Only)

The scale shall have a clear and unobstructed weighing surface of not less than 60 feet long and 10 feet wide.

The scale must fit into the existing foundation and maintain a minimum clearance of 5". Clearance shall be measured from bottom of scale deck to top of scale foundation

The scale shall be designed to accept Mettler Toledo's SLC820 load cell system without the use of conversion kits that alter the original manufacturer's design.

The scale shall have metal conduits internal to the scale frame. These conduits shall be utilized to house and protect the load cell network cables.

The scale design shall not incorporate any mechanical weighing elements, check rods, or check stays.

The scale shall be designed to perform as a single weighing platform and shall be of flat-top design. Side rails are not acceptable.

The scale shall have a gross weighing capacity of 100 tons.

The scale shall be designed to accept vehicles that generate up to 55,000 pounds per tandem axle, and a Concentrated Load Capacity (CLC) rating of 60,000 pounds.

The scale shall be designed to accept an average daily traffic volume of up to 200 vehicles per day, 365 days per year, for 20 years assuming that 100% of the vehicles are fully loaded with the equivalent of 60,000 pounds on their dual tandem axle.

In order for the bid to be considered, the supplier must provide written confirmation of empirical testing data to validate the design of the weighbridge through actual life-cycle testing. During the testing process the weighbridge must see a minimum of 1 million cycles, with at least 60,000 pounds of test load, applied on the 8 contact points of a standard truck's dual tandem axle tires. This documentation must be provided with the proposal submittal. Failure to provide this information will result in the bid being considered non-responsive.

The scale shall be calibrated to 200,000 pounds by 20-pound increments. System configurations with increments greater than 20-pound increments will not be accepted; therefore scales with gross capacities in excess of 200,000 pounds will not be acceptable in order for the scale to meet National Type Evaluation Program (NTEP) Legal-for-Trade regulatory requirements.

The scale shall meet the requirements set forth by the current edition of the National Institute of Standards and Technology Handbook 44 (NIST H-44).

The scale manufacturer shall provide a Certificate of Conformance (NTEP Certification) demonstrating that the scale deck meets these requirements utilizing the Mettler Toledo Model SLC820 (CC No. 08-090) Load Cell.

The design and manufacture of the scale weighbridge, load cells, digital instrument, printer, and associated accessories shall be of one manufacturer to maximize compatibility and availability of components. Also, the manufacturer shall have a quality system that has been registered to the standards of ISO 9001.

The scale shall be a Mettler-Toledo, Inc. DigiTOL® Model 7560RD or equal.

## 2. WEIGHBRIDGE SPECIFICATIONS

The scale weighbridge shall be capable of weighing trucks that have dual-tandem axle weights (4 feet minimum between dual axles and at least 10 feet from next axle) of up to 55,000 pounds.

All welding shall be completed in accordance with the American Welding Society (AWS) D1.1 Structural Welding Code.

All welding shall be performed by welding operators who have been certified to the AWS D1.1 Structural Welding Code.

The weighbridge shall consist of prefabricated modules, no field welding or field fabrication of the scale structure will be permitted for installation.

All welding shall be performed in position 1F to ensure maximum weld integrity.

Longitudinal weighbridge members shall be welded continuously, using a high-penetration, submerged arc welding process. The use of intermittent welds on longitudinal members or deck tread plate is unacceptable.

The weighbridge shall be designed to allow access to the load cells, cables, base plates, and all foundation anchor bolts from the top of the scale platform.

The weighbridge and load cell mounting assemblies shall be designed to allow installation or replacement of a load cell with only one additional inch of clearance or less required between the top of the foundation and the bottom of the weighbridge on pit less installations.

There shall be no bolted connections between the load cell and weighbridge assemblies.

## 3. SURFACE PREPARATION AND FINISH

The weighbridge shall be shot blasted to a minimum SSPC-SP6 specification prior to painting.

All enclosed chambers created by joining two steel members must be hermetically sealed to eliminate internal corrosion.

All exterior surfaces of the scale shall have a two-component, high-build epoxy finish, impregnated with aluminum flake for increased corrosion resistance and UV protection, providing total Dry Film Thickness of 8-10 mils (International/Akzo Nobel Intergard 7562 or equivalent).

The finish shall be force cured in order to reduce risk of contamination and ensure durability of the surface.

#### 4. WARRANTY REQUIREMENTS

The scale manufacturer shall guarantee the scale weighbridge structure from failures due to a defect in manufacturing and workmanship.

The guarantee will warrant the product for a period of 5 years from date of installation or 62 months from date of shipment to the Town, whichever occurs first. Bidder shall promptly correct any such defect appearing within the warranty period.

The guarantee shall support 100% coverage of labor, travel time, and mileage from the available service location, or replacement of the product under warranty.

A service program of regular maintenance with the manufacturer and/or its local authorized representative is required. The level of service, to be determined at the time of sale, will depend upon the site and usage conditions, but should comply with the guidelines set forth by the manufacturer, local regulations, and NIST Handbook 44.





**HARWICH  
ASSESSORS  
OFFICE**  
508-430-7503

## Memo

To: Joseph Powers, Town Administrator  
Cc: Carol Coppola, Finance Director/Town Accountant  
From: Board of Assessors  
Date: July 7, 2019  
RE: Revaluation Updated Program

Subject: Proposal Evaluation and Recommendation for Fiscal 2022 through 2024  
Revaluation Program and Inspectional Services of Real and Personal  
Property

On June 10, 2021 the Town of Harwich issued a Request for Proposal (RFP) for Fiscal 2022 through Fiscal 2024 Revaluation Program and for Inspectional Services of Real and Personal Property. The RFP was posted in Goods and Services Bulletin on June 9, 2021. An advertisement was placed and published in the Cape Cod Chronicle on June 10 and June 17, 2021.

The objective of the RFP was to contract with qualified and experienced firm(s) to provide Fiscal 2022 through Fiscal 2024 Revaluation Program and for Inspectional Services of Real and Personal Property. In order to insure the objective was met, the RFP was issued with evaluation criteria addressed by the requirements in the RFP and questions answered by the Respondents. The Proposal was opened on June 28, 2021 at 2:00 o'clock, of the one proposal received, it was deemed responsive. The responsive firm is as follows:

pk Valuation Group  
Paul S. Kapinos & Associates, Inc.  
29 College St.  
South Hadley, MA 01075

The Proposal was evaluated by the Board of Assessors. Additionally the team evaluated the Proposal on responsiveness/compliance and cost. Based on the above objective the following Proposal evaluation was prepared. The total 3-year price is \$132,000 plus

approximately 1,500 inspections a year at a cost of \$30.00 for residential properties and \$50.00 for commercial properties

**PROPOSAL EVALAUTION PROCESS**

The Proposal was first examined to determine whether or not it met all the requirements of the RFP. Evaluation criteria was then used to evaluate the Proposal by categorizing the responses as “Highly Advantageous”, “Advantageous”, “Less Advantageous” and “Unacceptable” assigned each criteria.

<b>PROPOSAL EVALUATION PROCESS</b>			
Categories		Qualification	Rating
<b>A. Minimum Evaluation Criteria</b>			
Contractor Experience with other Valuation Update Programs in Massachusetts with a parcel count of 10,000 or greater.		118 communities	Highly Advantageous
Contractor Valuation Update experience with pkAssessment™ software system.		Yes	Highly Advantageous
Experience of Project Manager to be assigned to this project and a Member Appraisal Institute (MIA) certified employee on staff for Defense of Values.		40 years of appraisal experience not a member of Appraisal Institute	Not Advantageous
Level of satisfaction with Contractor's performance on other Massachusetts Cities and Towns for which Contractor has performed a Revaluation/Update.		Exceptional	Highly Advantageous



## SUBMITTED PROPOSAL

Listed below is a synopsis of the responsive Proposal submitted.

Paul S. Kapinos & Associates, Inc.

Excellent qualifications

Excellent knowledge of Cape Cod Properties (11 Communities out of 15) and other  
Massachusetts coastal towns

Excellent staff

## RECOMMENDATION

After a thorough evaluation by the Board of Assessors, they unanimously recommend an award be made to Paul S. Kapinos & Associates, Inc. The Town of Harwich has experience with this firm and believes the firm will continue to provide Revaluation and Inspectional Services for Real and Personal Properties with expertise.

Attest:

---

Departmental Manager

---

Date

Enclosures:

Request for Proposal

Respondent Proposal

Price Proposal

Certification of Good Faith

## TOWN OF HARWICH

### Requests for Proposals For

#### The Implementation of a Fiscal Year 2022 through Fiscal Year 2024 Revaluation Program and for Inspectional Services of Real and Personal Property

##### **I. General Information and Bid Submission Requirements.**

The Town of Harwich, acting by and through its Board of Selectmen is soliciting sealed proposals for Implementation of a Fiscal Year 2022 through 2024 Revaluation Update Program. The contract awarded pursuant to this Request for Proposal (RFP), shall be for a three year term commencing on July 1, 2021 and running through June 30, 2024. A specific scope of work is included as **Attachment A**.

Sealed Proposals shall be submitted to the Office of the Town Administrator, Town Hall, 732 Main Street Harwich MA, 02645 on or before 2:00 PM, Monday, June 28, 2021, at which time all bids shall be opened. If, at the time of the scheduled opening, the Town Hall is closed due to uncontrolled events such as fire, snow, ice, wind or unforeseen building closure, the bid opening will be postponed until 2:00 PM on the next business day on which the Town Hall is opened for business. Proposals will be accepted until that date and time.

Contractors shall submit separate price and non-price (or technical) proposals. The price proposal (Schedule D.) attached hereto must be completely filled out, signed, placed in an envelope and sealed. The non-price proposal must address and comply with all minimum requirements set forth in this Request for Proposals (RFP) in order to be considered responsive. Contractors shall not submit a copy of this RFP as part of the proposal. The non-price proposal shall also be signed, placed in a separate envelope, sealed and returned.

Both the envelope containing the price proposal and the envelope containing the non-price proposal must be marked with the contractor's name, description of proposal, and either PRICE PROPOSAL or NON-PRICE PROPOSAL.

The Town shall not be responsible for the inadvertent opening of any proposal not appropriately identified as required prior to the submission deadline. The contractor shall be solely responsible for the timely delivery of its proposal. Proposals shall be submitted on the Price Proposal Form attached to this Request for Proposal (RFP) as **Attachment C**. The Price Proposal Form must be signed as follows: 1) if the bidder is an individual, by him/her personally; 2) if the bidder is a partnership, by the name of the partnership, followed by the signature of each general partner; and 3) if the bidder is a corporation, by the authorized officer, whose signature must be attested

to by the Clerk/Secretary of the corporation and the corporate sealed affixed to the Certificate of Vote included in this RFP.

A contractor may correct, modify, or withdraw a previously submitted proposal by written notice received in the Town Administrator's office at the address indicated above prior to the time and date for the opening of bids. Proposal modifications must be submitted in a sealed envelope clearly marked, with the Contractor's name and address and the RFP title **FY22-FY24 Revaluation Program Update – Modification No. \_\_\_**".

After the RFP opening, a contractor may not change any provision of the proposal in a manner prejudicial to the interests of the Town or fair competition. Minor informalities will be waived or the contractor will be permitted to correct them. If a mistake and the intended proposals are clearly evident on the face of the Proposal Form, the mistake will be corrected to reflect the intended correct proposal, and the contractor will be notified in writing; the contractor may not withdraw the proposal. A contractor may withdraw its proposal if a mistake is clearly evident on the face of the Proposal Form, but the intended correct proposal is not similarly evident.

The contract will be awarded within thirty (30) days after the RFP opening. The time for the award may be extended for up to forty-five (45) additional days by mutual agreement between the Town and the apparent lowest responsive and responsible contractor. All prices submitted in response to this RFP must remain firm for thirty (30) days following bid opening, and for any extension of the time for award of the contract as provided above.

Questions concerning the terms of this RFP, must be submitted in writing by e-mail to: the Office of the Assessing Director, Donna Molino at [dmolino@town.harwich.ma.us](mailto:dmolino@town.harwich.ma.us) before 4:00 PM on Tuesday, June 22 2021. Responses to any such questions will be issued as an Addendum to this RFP and will be e-mailed to all parties who have requested a copy of this RFP.

Each RFP submission shall contain the Price Proposal Form (**Attachment C**), a Certificate of Non-Collusion (**Attachment D**), a Tax Compliance Certificate (**Attachment E**) and a Certificate of Vote (corporate companies only) (**Attachment F**).

The successful contractor must execute the contract within ten (10) days of the Town's delivery of the contract in substantially the form attached hereto as **Attachment G**. In the event the successful bidder fails to execute the contract in a timely manner, the Town reserves the right to rescind the award, and to make a new award to the next lowest bidder.

## **II. Purchase Description**

The Town is soliciting proposals for the Implementation of a Fiscal 2022 through Fiscal 2024 Revaluation Program and for Inspectional Services of Real and Personal Property more specifically described in **Attachment A**.

In general, any proprietary or brand name designation included in **Attachment A** is an indication of the quality required by the Town and is not intended to limit competition in any way. Contractors may fulfill the requirements of this RFP by providing an alternate supply of equal quality and performance. Determination of the equality of an alternate brand of supply shall be in the sole determination of the Town. Proprietary or brand name supplies marked with an asterisk in **Attachment A** indicate those supplies for which a particular brand name or proprietary product is required by manufacturer's specification or other requirements of the Town, and no "or equal" substitution shall be allowed in those instances.

### **III. Billing and Insurance Requirements**

The successful Contractor shall invoice the Town on a monthly basis for all services delivered pursuant to the contract. Payments shall be made to the contractor monthly, based on the portion of work completed and delivered to the Assessors during the preceding month. No payments will be made until the work is approved by the Assessors. The Assessors will review each monthly invoice and either recommend it for approval to the Board of Selectmen for payment as follows or return it to the Contractor with a written statement of reasons for its rejection.

The Contractor shall present the Town with a monthly written original invoice within a reasonable time following the month billed. Upon the Assessors' determination that the work performed for the preceding month has been satisfactorily completed according to the work-plan and time schedules, recommendation to the Board of Selectmen for a percentage payment representing eighty percent (80%) of amount billed for that month, shall be paid to the Contractor. The total amount paid on this monthly basis shall not exceed eighty percent (80%) of the total amount of the Agreement for each year.

The Contractor shall be responsible to the Town or any third party for any property damage or bodily injury caused by it, any of its subcontractors, employees or agents in the performance of, or as a result of, the work under this Agreement. The Contractor and any subcontractors used hereby certify that they are insured for workers' compensation, property damage, personal and product liability. The Contractor and any subcontractor it uses shall purchase, furnish copies of, and maintain in full force and effect insurance policies in the amounts here indicated.

1. General Liability of at least \$1,000,000 Occurrence/\$3,000,000 General Aggregate. The Municipality should be named as an "Additional Insured". Products and Completed Operations should be maintained for up to 3 years after the completion of the project.
2. Automobile Liability (applicable for any contractor who has an automobile operating exposure) of at least \$1,000,000 Bodily Injury and Property Damage per accident. The Municipality should be named as an "Additional Insured".
3. Workers' Compensation Insurance as required by law. Include Employers Liability Part B with a limit of \$1,000,000
4. Property Coverage for materials and services being transported by the contractor, as the Town's Property Contract provides coverage for personal property within 1000 feet of the premises.

5. Umbrella Liability of at least \$2,000,000/ occurrence, \$2,000,000/aggregate. The Municipality should be named as an "Additional Insured".

Prior to commencement of any work under this Agreement, the Contractor shall provide the Town with Certificates of Insurance which include the Town as an additional named insured and which include a thirty day notice of cancellation to the Town.

#### **IV. Rule for Award**

The contract shall be awarded to the contractor submitting the most advantageous proposal, taking into consideration each proposal's relative merits and relative prices.

The Board of Assessors has been appointed to evaluate the relative merits of the submitted non-price proposals before the Board of Selectmen review and award any contract.

The awarding authority will not award a contract to any contractor who cannot furnish satisfactory evidence of his ability and experience in this type of work and that he has sufficient plant and capital to enable him to execute and complete the work within the given time period.

The awarding authority may make such investigations it deems necessary to determine the above and the contractor shall furnish the TOWN with any information requested in this regard and shall furnish same under oath if required.

In addition to addressing each of the items in the specifications, the contractor must submit the following as part of the proposal:

1. A list of Massachusetts Municipalities for which the Contractor has completed Revaluation/Update Programs.
2. A list of the Revaluation/Update Contracts for which the Contractor is currently committed.
3. Listing of Massachusetts Municipalities for which the contractor has used the pk Assessment™ software
4. Written assurances that the Revaluation/Update will meet Department of Revenue Certification Requirements.

## Minimum Evaluation Criteria

Proposals will be evaluated using comparative criteria set forth as follows:

1. Contractor experience with other Valuation Update Programs in Massachusetts with a parcel count of 10,000 or greater:

<b><u>Unacceptable:</u></b>	No experience in Massachusetts.
<b><u>Not Advantageous:</u></b>	Less than Fifteen successful Valuation Updates in Massachusetts.
<b><u>Advantageous:</u></b>	Fifteen or more successful Valuation Updates in Massachusetts.
<b><u>Highly Advantageous:</u></b>	Fifty or more successful Valuation Updates in Massachusetts.

2. Contractor Valuation Update experience with the *pkAssessment*™ software system.

<b><u>Unacceptable:</u></b>	No experience.
<b><u>Not Advantageous:</u></b>	Less than Ten Valuation Update projects.
<b><u>Advantageous:</u></b>	Ten to Fifty Valuation Update projects.
<b><u>Highly Advantageous:</u></b>	Fifty or more Valuation Update projects.

3. Experience of Project Manager to be assigned to this project and a Member Appraisal Institute (MAI) certified employee on staff for Defense of Values

<b><u>Unacceptable:</u></b>	No Valuation Update experience.
<b><u>Not Advantageous:</u></b>	Less than Five Valuation Update projects performed by the Project Manager and/or no MAI on staff.
<b><u>Advantageous:</u></b>	Ten or more successful Valuation Update projects performed by the Project Manager and a MAI on staff.
<b><u>Highly Advantageous:</u></b>	Twenty or more successful Valuation Update projects performed by the Project Manager and a MAI on staff.

4. Level of satisfaction with Contractor's performance on other Massachusetts Cities and Towns for which Contractor has performed a Revaluation/Update.

**Unacceptable:** More than one Town or City reporting difficulty with Contractor performance.

**Not Advantageous:** One Town or City reporting difficulty with Contractor performance.

**Advantageous:** No Town or City reporting difficulty with Contractor performance and at least one Town or Town reporting high satisfaction.

**Highly Advantageous:** More than five Cities or Towns reporting high satisfaction and no Town or City reporting poor performance.

In order to fairly evaluate the above criterion, the contractors must submit sufficient documentation and references to substantiate any information provided in conjunction with the above requirements.

**ATTACHMENT A**  
(Purchase Description and Scope of Services)

**Scope of Project and Overview:**

**1. Profile of Harwich:**

The Board of Assessors seeks to implement a plan that will accomplish the following goals:

1. Complete Interim Year Valuation Updates for Fiscal 2022 through Fiscal 2024 on all classes of property;
2. Systematically Re-Inspect 5,400 parcels over a 3 year period, this shall include New Growth and Cyclical Re-Inspection Parcels;

Parcel Count, See FY21 LA4 attached hereto as **ATTACHMENT B**.

For the purposes of this RFP, RESIDENTIAL shall refer to the following State Classes; 101,102,103,104,105,106,109,130,131,132; while all 4 to 8 unit, apartments, mixed-use, commercial, and industrial properties, shall be referred to as CIM. Commercial personal property is also included.

**2. Scope of Services:**

The work of THE CONTRACTOR shall reflect a complete knowledge of the certification requirements of the Massachusetts Commissioner of Revenue, of Massachusetts law, whether of statutory or judicial origin, and of Massachusetts regulations, relating to property tax assessment administration, but in no event shall THE CONTRACTOR be required to perform services or provide products not currently necessary or contemplated by this Agreement or relevant regulations.

**3. Responsibilities of the TOWN:**

A. The TOWN shall provide “parcel identification data” for each parcel which shall consist of owner’s name and mailing address, property address, subdivision deed references, property classification, and land area in acres or square feet, sales history, building permits data, and all appraisal data, current to the most recent tax billing date.

B. The TOWN shall provide one set of zoning maps and a copy of zoning ordinances covering all parcels, correct and current as of the most recent tax year.

C. The TOWN shall provide two (2) sets of “tax maps”, covering all parcels, correct and current as of the most recent tax year. THE CONTRACTOR may rely upon the accuracy of the maps and is not responsible for any errors in the maps or any errors resulting from the use of the maps. Each map shall be drawn to scale, and shall be identified by map and parcel numbers.



D. The TOWN shall continuously and currently update the information referred to in this section by January 1, of each year.

E. The TOWN shall provide THE CONTRACTOR with the necessary office space and local telephone service for the duration of the project.

F. The TOWN will be responsible for the mailing, including postage, of all notices.

G. The TOWN is responsible for Public Relations including, but not limited to, periodic press releases and scheduling of appointments.

H. The TOWN is responsible for performing daily, weekly, and monthly system “back-ups” of the System.

#### **4 Deliverable Products**

All documents, reports, records, data or other material in whatever form, manual or mechanized, obtained or produced during the performance of this project shall be the sole property of the MUNICIPALITY and shall be delivered during an appropriated phase of or at the conclusion of the project, as required by the Assessor. The documents, reports, records, data and other materials shall include, without limitation, the following deliverable products:

- 1 Documentation of procedures used throughout the project.
- 2 All training materials and manuals used in any phase of the project.
- 3 The valuation manual which will enable the MUNICIPALITY to maintain and update its values.
- 4 The depreciation schedule and source of information used for its development.
- 5 Income and expense statements for parcels utilizing the income approach.
- 6 A property inventory record for each parcel.
- 7 All manual and computerized reports which support values and valuation formulas.
- 8 All materials and documentation used on the land valuation effort.
- 9 Any sales ratio studies used in this project.
- 10 Appropriate mechanized file of all properties, their identification, inventory of improvements, all computer-generated valuation and technical documentation describing the organization of data files and record format. This is necessary for user understanding.

At the conclusion of this project, the Contractor shall provide the MUNICIPALITY with a computerized list of all owners of record and new values to be utilized by the MUNICIPALITY for public disclosure.

### **5 Data Processing Facilities**

THE CONTRACTOR is responsible for procuring the necessary and appropriate data processing facilities for any off-site work required in the performance of this Agreement. However, THE CONTRACTOR shall have access to the TOWN'S Appraisal System during the Term of this Agreement both on-site (direct) and from off-site locations via the TOWN'S high speed internet connection.

### **6 Personnel**

THE CONTRACTOR agrees that at all times the number and qualifications of the personnel to be employed in this project will comply with 830 Code of Massachusetts Regulations regarding the minimum staffing requirements.

All personnel, including sub-contractors, shall be approved by the TOWN prior to performing any services under this Agreement.

### **7 Defense of Values**

It is expressly agreed and understood that "Defense of Values" is not included in the fixed fee of this Proposal. The CONTRACTOR shall include per diem defense of values price on **Attachment D**.

## **Statement of Services**

### **Schedule A**

#### **Interim Year Updates Fiscal Years 2022, 2023 and 2024:**

1. Market Analysis:

Analyze all qualified sales to determine assessment levels utilizing the system. Stratify sales and produce ratio analyses by class, neighborhood, quarter, price quartile, style, net living area, land size, etc. This shall include review of all sales, and follow-up on prior year vacancies and rentals, and recalculation of capitalization rates as required. Produce a narrative summary of findings and recommendations to the Board of Assessors.

2. Re-calibrate System Models and DOR Documentation:

Adjust valuation models on the Town's system to reflect current market conditions after review and approval by the Town as required. Produce all required DOR reports required for approval of Interim Year Valuation Adjustments.

3. PERSONAL PROPERTY UPDATE:

Perform data collection on all new accounts. Re-price all existing records as of January 1<sup>st</sup> of each year.

4. New Growth Review and DOR Forms Production:

Review data collection and pricing of all CIM permits. Tabulate and produce the following DOR forms: INTERIM YEAR ADJUSTMENT FORM, LA-4, and LA-13.

#### **Re-Inspection Program: Real Property**

##### Data Collection

Measure and List improved Real Property parcels as directed by the Town. This work shall be in accordance with the Town's existing methodology and Valuation System, including "call backs" on all appropriate parcels.

The Inspections will include:

- a. Measurement of all structures on each parcel, unless denied access by the party in residence (to be noted on the inspection log);
- b. A complete interior inspection of all structures, unless denied access by the party in residence (to be noted on the inspection log);
- c. Completion of a form to update or confirm information currently noted on the appropriate property record card for the parcel;
- d. Correction of the sketch on the appropriate property record card;
- e. Digital images in jpg format of all dwellings, front and rear photos; and a front photo of all accessory buildings other than sheds;
- f. A complete log of field activities showing date and time of inspection.

## Data Entry and Quality Control

Update all appropriate parcel records with changes resulting from the inspection and review the changes to insure accuracy.

All documents, reports, records, data or other material in digital format, obtained or produced during the performance of this project shall be the sole property of the TOWN and shall be delivered during an appropriated phase of or at the conclusion of the project, as required by the Assessors, with approval of the Board of Selectmen.

### **Schedule C: Project Workplan:**

TIMETABLE FY 2022, FY 2023 and FY 2024

#### Market Analysis:

	<u>Commence</u>	<u>Completed</u>
Re-calibrate System Models and DOR Documentation	ongoing	September 30
Personal Property Update	ongoing	August 31
New Growth Review and DOR Forms Production	ongoing	September 30
Analysis/Modeling Review	ongoing	August 31
DOR Review/Preliminary Certification	ongoing	October 20
Tabulate and Submit LA10, LA4 and LA13	ongoing	November 30
Real Property Re-Inspection and New Growth Inspections	ongoing	September 30
Commercial Personal Property Rediscovery	ongoing	September 30

Any proposal which cannot meet a September 30, 2021 completion date for the Fiscal Year 2022 Update will be rejected.

**Schedule D: Staffing:**

Organizational Structure

<u>NAME</u>	<u>PROJECT TITLE &amp; RESPONSIBILITIES</u>
	Project Manager
	Residential Appraiser
	Commercial / Industrial Appraiser

**Mandays This Project:** The Contractor shall perform the valuation update in the project time frame, utilizing the above staffing to achieve satisfactory results.

Resumes of each individual set forth in the organizational chart shall be provided to the Assessors as an exhibit hereto, which include prior work experience: dates, positions, responsibilities for each employer; education and professional affiliations for each individual. All personnel meet the qualifications required by the Commissioner of Revenue in 830 C.M.R.58.1A.1(3).

Any proposed changes in the project staffing plan submitted as part of the proposal will be submitted to the Assessors, in writing, for review and approval. The Assessors shall notify the Contractor of the acceptance or rejection of any staff substitutions within fifteen (15) business days of the receipt of the proposed changes. The Assessors shall reserve the right to make the final determination regarding the acceptability of proposed personnel changes.

## ATTACHMENT B

MASSACHUSETTS DEPARTMENT OF REVENUE  
DIVISION OF LOCAL SERVICES  
ASSESSMENT / CLASSIFICATION REPORT FY 2021

Extract: LA4  
Database: LIVE  
Filter:

HARWICH

as of January 1, 2020

City/Town/District

PROP TYPE	ACCT / PARCEL COUNT	CLASS 1 Residential Assessed Value	CLASS 2 Open Space Assessed Value	CLASS 3 Commercial Assessed Value	CLASS 4 Industrial Assessed Value	CLASS 5 Personal Property Assessed Value
101	8,591	5,023,432,500				
102	849	274,773,700				
MISC.103,109	157	161,326,900				
104	177	96,790,800				
105	4	3,087,700				
111 - 125	6	10,344,800				
130-132, 106	1,061	125,824,300				
200 - 231	0		0			
300 - 393	353			265,035,200		
400 - 442	48				23,074,100	
450 - 452	1				8,226,000	
CH.61 Land	0	0	0	0		
CH.61A Land	8	15	0	200,830		
CH.61B Land	3	4	0	1,240,640		
012 - 043	105	28,733,387	0	32,972,403	0	
501	4,633					41,139,730
502	110					4,956,540
503	0					0
504	4					91,173,600
505	2					3,551,800
506	0					0
508	4					1,758,030
550-552	0					0
<b>TOTALS</b>	<b>16,135</b>	<b>5,724,314,087</b>	<b>0</b>	<b>299,449,073</b>	<b>31,300,100</b>	<b>142,579,700</b>
<b>REAL AND PERSONAL PROPERTY TOTAL VALUE</b>						<b>6,197,642,960</b>
<b>EXEMPT EXEMPT COUNT</b>						<b>378,403,900</b> <b>761</b>

**ATTACHMENT C**

(Price Proposal Form)

Town of Harwich Fiscal Year 2022 through Fiscal 2024 Revaluation Program and Inspectional Services

Instructions: Each blank must be filled in and the completed section must be signed, identified as the Price Proposal, placed in a *separate envelope*, and sealed.

---

**Project Cost Itemization**

**Revaluation Services: To be level funded over three years**

<b>Fiscal Year</b>	<b>Service</b>	<b>Price</b>
FY22	Interim Year Update	
FY23	Interim Year Update	
FY24	Interim Year Update	
	<b>Total 3 year Price</b>	

**Inspectional Services (cost per parcel)**

<b>Fiscal Year</b>	<b>Service</b>	<b>Price Per Parcel</b>
FY22-24	Real Property Re-Inspection and New Growth Inspections	
FY22-24	Commercial Personal Property Rediscovery	

**All funding for this project is subject to appropriation by the Town.**

Per Diem Rates for Defense of Values: \_\_\_\_\_

The undersigned hereby agree to furnish the TOWN in conformity with this proposal, any or all of the above articles at the price listed above.

Company:

Authorized Signature:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ATTACHMENT D**

**CERTIFICATE OF NON-COLLUSION**

The undersigned certifies under penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

\_\_\_\_\_  
(Signature of person signing the bid)

\_\_\_\_\_  
(Name of Business)



**ATTACHMENT E**

**CERTIFICATE OF TAX COMPLIANCE**

Pursuant to Chapter 62C of the Massachusetts General Laws, Section 49A(b), I,

\_\_\_\_\_, authorized signatory for

\_\_\_\_\_, do hereby certify under the pains and penalties  
(Name of Contractor)

of perjury that said contractor has complied with all laws of the Commonwealth of  
Massachusetts relating to taxes, reporting of employees and contractors, and withholding and  
remitting child support.

CONTRACTOR

By: \_\_\_\_\_  
(Signature of Authorized Representative)

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2021

**ATTACHMENT F**

**CERTIFICATE OF CORPORATE AUTHORITY**

At a duly authorized meeting of the Board of Directors of \_\_\_\_\_  
(Name of Corporation)  
held on \_\_\_\_\_ it was VOTED that:  
(Date)

\_\_\_\_\_  
(Name) (Officer)

of this corporation, be and he/she hereby is authorized to execute contracts, deeds and bonds in the name and on behalf of said corporation, and affix its corporate seal hereto; and such execution of any contract, deed or obligation in this corporation's name on its behalf by such \_\_\_\_\_ under seal of the company, shall be valid and binding upon this corporation.  
(Officer)

A True Copy,

ATTEST: \_\_\_\_\_

TITLE: \_\_\_\_\_

PLACE OF BUSINESS: \_\_\_\_\_

DATE OF THIS CERTIFICATE: \_\_\_\_\_

I hereby certify that I am the clerk of the \_\_\_\_\_  
that \_\_\_\_\_ is the duly elected \_\_\_\_\_ of said  
corporation, and that the above vote has not been amended or rescinded and remains in full force  
and effect as of the date of this contract.

\_\_\_\_\_  
(Clerk)

CORPORATE SEAL:

**ATTACHMENT G**

**CONTRACT**

**AGREEMENT FOR Implementation of a Fiscal 2022 through Fiscal 2024 Revaluation Program and for Inspectional Services of Real and Personal Property**

The following provisions shall constitute an Agreement between the Town of Harwich acting by and through its Board of Selectmen hereinafter referred to as "Town," and \_\_\_\_\_, with an address of \_\_\_\_\_, hereinafter referred to as "Contractor", effective as of the \_\_\_\_ day of \_\_\_\_\_, 2021. In consideration of the mutual covenants contained herein, the parties agree as follows:

**ARTICLE 1: SCOPE OF WORK:**

The Contractor shall perform all work and furnish all services necessary to provide the Town with Fiscal Year 22 through Fiscal Year 24 Revaluation Program and Inspectional Services of Real and Personal Property as set forth in Attachment A.

**ARTICLE 2: TIME OF PERFORMANCE:**

The Contractor shall complete all work and services required hereunder commencing upon execution of the contract through June 30, 2024

**ARTICLE 3: TIME OF THE ESSENCE:**

It is agreed that time is of the essence for this Agreement. The Contractor shall commence and prosecute the work under this Agreement upon execution hereof and shall complete the work as listed in the Timetable included in the RFP.

A. Definition of Term: The Term "Substantial completion" shall mean the date listed in the Project Workplan.

B. Time as Essential Condition: It is understood and agreed that the commencement of and substantial completion of the work are essential conditions of this Agreement. It is further agreed that time is of the essence for each and every portion of the Contract Documents wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the Contract Documents any additional time is allowed for the completion of any work, the new time fixed by such extension shall be of the essence of this Agreement. It is understood and

agreed that the times for the completion of the work are reasonable, taking into consideration the average climatic range.

C. Progress and Completion: Contractor shall commence work promptly upon execution of this Agreement and shall prosecute and complete the work regularly, diligently and uninterruptedly at such a rate of progress as will insure Substantial Completion within the schedule included in the RFP.

**3: COMPENSATION:**

The Town shall pay the Contractor for the performance of the work outlined in Article 1 above the contract sum of \$\_\_\_\_\_. The Contractor shall submit monthly invoices to the Town for services rendered, which will be due 30 days following receipt by the Town.

**ARTICLE 4: CONTRACT DOCUMENTS:**

The following documents form the Contract and all are as fully a part of the Contract as if attached to this Agreement or repeated herein:

1. This Agreement.
2. Amendments, or other changes mutually agreed upon between the parties.
3. All attachments to the Agreement.

In the event of conflicting provisions, those provisions most favorable to the Town shall govern.

**ARTICLE 5: CONTRACT TERMINATION:**

The Town may suspend or terminate this Agreement by providing the Contractor with ten (10) days written notice for the reasons outlined as follows:

1. Failure of the Contractor, for any reason, to fulfill in a timely and proper manner its obligations under this Agreement.
2. Violation of any of the provisions of this Agreement by the Contractor.
3. A determination by the Town that the Contractor has engaged in fraud, waste, mismanagement, misuse of funds, or criminal activity with any funds provided by this Agreement.

Either party may terminate this Agreement at any time for convenience by providing the other party written notice specifying therein the termination date which shall be no sooner than thirty (30) days from the issuance of said notice. Upon receipt of a notice of termination from the Town, the Contractor shall cease to incur additional expenses in connection with the Agreement. Upon such termination, the Contractor shall be entitled to compensation for all satisfactory work completed prior to the termination date as determined by the Town. Such payment shall not exceed the fair value of the services provided hereunder.

**ARTICLE 6: INDEMNIFICATION:**

The Contractor shall defend, indemnify and hold harmless the Town and its officers, agents, and all employees from and against claims arising directly or indirectly from the contract. Contractor shall be solely responsible for all local taxes or contributions imposed or required under the Social Security, Workers' Compensation, and income tax laws. Further, the Contractor shall defend, indemnify and hold harmless the Town with respect to any damages, expenses, or claims arising from or in connection with any of the work performed or to be performed under this Agreement. This shall not be construed as a limitation of the Contractor's liability under the Agreement or as otherwise provided by law.

**ARTICLE 7: AVAILABILITY OF FUNDS:**

The compensation provided by this Agreement is subject to the availability and appropriation of funds.

**ARTICLE 8: APPLICABLE LAW:**

The Contractor agrees to comply with all applicable local, state and federal laws, regulations and orders relating to the completion of this Agreement. This Agreement shall be governed by and construed in accordance with the law of the Commonwealth of Massachusetts.

**ARTICLE 9: ASSIGNMENT:**

The Contractor shall not make any assignment of this Agreement without the prior written approval of the Town.

**ARTICLE 10: AMENDMENTS:**

All amendments or any changes to the provisions specified in this Contract can only occur when mutually agreed upon by the Town and Contractor. Further, such amendments or changes shall be in writing and signed by officials with authority to bind the Town. No amendment or change to the contract provisions shall be made until after the written execution of the amendment or change to the Contract by both parties.

**ARTICLE 11: INDEPENDENT CONTRACTOR:**

The Contractor acknowledges and agrees that it is acting as an independent contractor for all work and services rendered pursuant to this Agreement and shall not be considered an employee or agent of the Town for any purpose.

**ARTICLE 12: INSURANCE:**

The Contractor shall be responsible to the Town or any third party for any property damage or bodily injury caused by it, any of its subcontractors, employees or agents in the performance of, or as a result of, the work under this Agreement. The Contractor and any subcontractors used hereby certify that they are insured for workers' compensation, property damage, personal and product liability. The Contractor and any subcontractor it uses shall purchase, furnish copies of, and maintain in full force and effect insurance policies in the amounts here indicated.

- 1) General Liability of at least \$1,000,000 Occurrence/\$3,000,000 General Aggregate. The Municipality should be named as an "Additional Insured". Products and Completed Operations should be maintained for up to 3 years after the completion of the project.
- 2) Automobile Liability (applicable for any contractor who has an automobile operating exposure) of at least \$1,000,000 Bodily Injury and Property Damage per accident. The Municipality should be named as an "Additional Insured".
- 3) Workers' Compensation Insurance as required by law. Include Employers Liability Part B with a limit of \$1,000,000
- 4) Property Coverage for materials and services being transported by the contractor, as the Town's Property Contract provides coverage for personal property within 1000 feet of the premises.

- 5) Umbrella Liability of at least \$2,000,000/ occurrence, \$2,000,000/aggregate. The Municipality should be named as an "Additional Insured".

Prior to commencement of any work under this Agreement, the Contractor shall provide the Town with Certificates of Insurance which include the Town as an additional named insured and which include a thirty day notice of cancellation to the Town.

Prior to commencement of any work under this Agreement, the Contractor shall provide the Town with Certificates of Insurance which include the Town as an additional named insured and which include a thirty day notice of cancellation to the Town.

**ARTICLE 13: SEVERABILITY:**

If any term or condition of this Agreement or any application thereof shall to any extent be held invalid, illegal or unenforceable by the court of competent jurisdiction, the validity, legality, and enforceability of the remaining terms and conditions of this Agreement shall not be deemed affected thereby unless one or both parties would be substantially or materially prejudiced.

**ARTICLE 14: ENTIRE AGREEMENT:**

This Agreement, including all documents incorporated herein by reference, constitutes the entire integrated agreement between the parties with respect to the matters described. This Agreement supersedes all prior agreements, negotiations and representations, either written or oral, and it shall not be modified or amended except by a written document executed by the parties hereto.

**ARTICLE 15: COUNTERPARTS:**

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be a counterpart original.

**ARTICLE 16: LIQUIDATED DAMAGES:**

It is expressly agreed between the Contractor and the Town that the Contractor will be responsible for all damages which may arise due to the Contractor's failure to substantially complete the work within the above specified time. If the Contractor shall neglect, fail or refuse to complete

the work within the specified number of days, or any extension thereof authorized by the Town, Contractor agrees, as a part of the consideration for the execution of this Contract by the Owner, to pay the Town the amount specified herein, not as a penalty, but as liquidated damages for such breach of contract as hereinafter set forth, for each and every calendar day, excluding Saturdays, Sundays and legal Holidays, that the Contractor shall be in default of Substantial completion after the date specified in the Agreement. Due to the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Town would in such event sustain, said amount is agreed to be the amount of damages which the Town would sustain, and said amount shall be retained from time to time by the Town from current periodic estimates. The amount of liquidated damages shall be five hundred dollars (\$500.00) per day.



**CERTIFICATION AS TO PAYMENT OF STATE TAXES**

Pursuant to Chapter 62C of the Massachusetts General Laws, Section 49 A (b), I, \_\_\_\_\_, authorized signatory for the Contractor do hereby certify under the pains and penalties of perjury that said Contractor has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

\_\_\_\_\_  
Social Security Number or  
Federal Identification Number

\_\_\_\_\_  
Signature of Individual or  
Corporate Name

By:  
Corporate Officer  
(if applicable)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

CONTRACTOR

TOWN OF \_\_\_\_\_

By

by its Board of Selectmen

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Approved as to Availability of Funds:

\_\_\_\_\_ (\$ \_\_\_\_\_ )  
Finance Director                      Contract Sum

Instructions: Each blank must be filled in and the completed section must be signed, identified as the Price Proposal, placed in a **separate envelope**, and sealed.

**Project Cost Itemization**

**Revaluation Services: To be level funded over three years**

Fiscal Year	Service	Price
FY22	Interim Year Update	\$44,000
FY23	Interim Year Update	\$44,000
FY24	Interim Year Update	\$44,000
	<b>Total 3-Year Price</b>	<b>\$132,000</b>

**Inspectional Services (cost per parcel)**

Fiscal Year	Service	Price Per Parcel
FY22-24	Residential Real Property Re-Inspection and New Growth Inspections	\$30.00
FY22-24	Cim Real Property Re-Inspection and New Growth Inspections	\$50.00
FY22-24	Commercial Personal Property Inspections/Rediscovery	\$50.00

Per Diem Rates for Defense of Values: \$600 to \$1,600 per day

**All funding for this project is subject to appropriation by the Town.**

The undersigned hereby agrees to furnish the TOWN in conformity with this proposal, any or all of the above articles at the price listed above.

Company:  
pkValuation Group  
Paul S. Kapinos & Associates, Inc.  
29 College St.  
South Hadley, MA 01075  
Tel. 413.534.9191  
Fax. 413.534.9199

Authorized Signature



Paul S. Kapinos, President



made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club or other organization, entity or group of individuals.



Signature of individual submitting bid or proposal

Paul S. Kapinos & Associates, Inc. (d/b/a pk Valuation Group)

Name of business



Valuation  
Group

From: Matthew G. Feher  
Sent: Wednesday, July 7, 2021 9:23 PM  
To: Meggan Eldredge Cc: Michael D. MacAskill ; Joe Powers John Giorgio; Matthew G. Feher  
Subject: RE: CVEC Harwich Cran Valley - Solar Projects - Site Lease Assignment Consents

Good evening Meggan,

We reviewed the proposed Consents associated with each the Cart Barn Rooftop and Ground Mount Solar PV Leases at the Cranberry Valley G.C. and attach hereto our suggested comments to each. These comments appear as a redline against the most recent draft of each circulated and should be reviewed by the Town as designated throughout.

I note that CVEC's counsel negotiated certain changes consistent with those concepts I have advanced for some time on prior documentation including estoppels that the Town has previously delivered on other similar projects (i.e. Sections 4(j) and (k)). In fact, CVEC's counsel and I have developed a great working relationship over the past several months leading to what we hope will be a smooth process for future rounds whilst addressing the deficiencies embedded in Round 4 and 5 agreements which the Town did not have the opportunity to proactively negotiate with the solar developers. Greenskies' general counsel and I have also developed a good relationship addressing several of these same deficiencies and many of these comments are consistent with prior agreements we have reached with their legal team.

I trust that these comments are helpful and am available to discuss further.

Thanks very much,  
Matt

Matthew G. Feher  
Counsel  
KP | LAW  
101 Arch Street, 12th Floor  
Boston, MA 02110  
O: (617) 654 1818  
C: (781) 640-7568  
F: (617) 654 1735  
[mfeher@k-plaw.com](mailto:mfeher@k-plaw.com)  
[www.k-plaw.com](http://www.k-plaw.com)

**CONSENT TO COLLATERAL ASSIGNMENT**  
*(Town of Harwich, Massachusetts – Cranberry Valley Golf Course- Cart Barn)*

This CONSENT TO COLLATERAL ASSIGNMENT (this “Consent”), dated as of [\_\_\_\_], 2021, is made by and among the Town of Harwich, Massachusetts (“Consenting Party”), CF Lessee [ ] LLC, a Delaware limited liability company (the “Project Company”), and Wilmington Trust, National Association in its capacity as collateral agent (such entity, together with its successors and permitted assigns, the “Collateral Agent”).

RECITALS

WHEREAS, the Consenting Party and the Project Company have entered into that certain Lease Agreement for Rooftop Solar Photovoltaic Energy Facility by and between the Consenting Party and Greenskies Development Company LLC, dated on or about November 20, 2019, as assigned to Greenskies Clean Energy LLC as of December 24, 2019, as assigned to Clean Focus Yield LLC as of January 10, 2020, as assigned to CF Lessee F2 LLC as of September 1, 2020, as assigned to CF Lessee F4 LLC as of January 18, 2021, as assigned to CF Construction FT LLC as of February 11, 2021, as assigned to Project Company as of [\_\_\_\_], 2021 (as amended, restated, modified or otherwise supplemented from time to time in accordance with the terms hereof, the “Rooftop Lease”);

WHEREAS, in order to consummate the sale and leaseback (the “Transaction”) of the solar photovoltaic generating facility identified in the Rooftop Lease (the “Project”), the Project Company has entered into a master lease agreement and lease schedule (collectively, as amended, amended and restated, modified or supplemented from time to time, the “Lease” and, together with the other documents related thereto, the “Sale Leaseback Documents”) with, among others, [53 GSE Solar Trust] (the “Lessor”);

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

1. CONSENT TO COLLATERAL ASSIGNMENT, ETC.

a. Consent to Collateral Assignment. The Consenting Party (i) is hereby notified of and consents to the Transaction, (ii) consents to the pledge and assignment to the Collateral Agent for the benefit of the Lessor of all of the Project Company’s right, title and interest in, to and under the Rooftop Lease and (iii) acknowledges the right of the Collateral Agent or the Collateral Agent’s designee or assignee, as part of such assignment, to make all demands, give all notices, take all actions and exercise all rights of the Project Company in accordance with the Rooftop Lease to the same extent as the Project Company thereunder.

b. Substitute Owner. The Consenting Party agrees that, if (i) the Collateral Agent notifies the Consenting Party that an event of default under any Sale Leaseback Document has occurred and is continuing and that the Collateral Agent has exercised its rights to have itself or its designee or assignee substituted for the Project Company under any of the Rooftop Lease or (ii) the Collateral Agent and the Project Company notifies the Consenting Party in writing that the Project Company will return the Project to the Lessor or its designee at the end of the Lease term,

then the Collateral Agent, its designee or assignee (each, a “Substitute Owner”) shall be substituted for the Project Company under the Rooftop Lease without causing a breach or default thereunder so long as such Substitute Owner is directly or indirectly owned by, or promptly enters into an operations and maintenance agreement with, an entity that is technically and financially capable of performing the Project Company’s obligations under the Rooftop Lease, such capabilities to be equal to or greater than that of Project Company.

c. Right to Cure. Consenting Party agrees that the time periods afforded to the Collateral Agent under the Rooftop Lease to cure a Event of Default (as defined in the Rooftop Lease) shall be extended day-for-day for (i) the time taken to complete foreclosure proceedings, and (ii) any period of time during which the Collateral Agent is prohibited from curing by any process, stay or injunction issued by any governmental authority or pursuant to any bankruptcy or insolvency proceeding involving the Project Company or its affiliate; provided, however, Collateral Agent diligently and timely pursues cure of the Event of Default. In no event will the cure period be extended for more than six months unless Consenting Party consents in writing.

d. Replacement Agreement. In the event that the Rooftop Lease is rejected or otherwise terminated including as a result of any bankruptcy or insolvency proceeding affecting the Project Company, the Consenting Party shall, to the extent permitted by law, enter into a new agreement with the Collateral Agent or any Substitute Owner for a term equal to the remainder of the term of the Rooftop Lease and otherwise having terms substantially the same as the terms of the Rooftop Lease. The Collateral Agent shall have the right to assign its interest in any replacement agreement to a Substitute Owner pursuant to Section 1(b).

e. No Liability. The Consenting Party acknowledges and agrees that none of the Collateral Agent, Lessor or the Collateral Agent’s designee or assignee shall have any liability or obligation under the Rooftop Lease as a result of this Consent or otherwise, nor shall the Collateral Agent, Lessor or the Collateral Agent’s designee or assignee be obligated or required to perform any of Project Company’s obligations under the Rooftop Lease, except during any period in which such person is a Substitute Owner pursuant to Section 1(b).

2. PAYMENTS UNDER THE ROOFTOP LEASE. The Project Company hereby directs the Consenting Party to, and the Consenting Party acknowledges such direction, pay all amounts payable by the Consenting Party to the Project Company under the Rooftop Lease, if any, in lawful money of the United States of America, in available funds, directly into the account specified on Exhibit A attached hereto, or to such other person or account as may be specified from time to time by the Collateral Agent to the Consenting Party in writing.

3. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE CONSENTING PARTY

The Consenting Party makes the following representations, warranties and covenants:

a. Organization; Power and Authority. The Consenting Party is a municipal corporation existing under the laws of The Commonwealth of Massachusetts, and, in such capacity, possesses the requisite power and authority to enter into and to perform its obligations

under this Consent and the Rooftop Lease, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

b. Authorization. The execution, delivery and performance by the Consenting Party of this Consent and the Rooftop Lease have been duly authorized by all necessary action on the part of the Consenting Party and do not require any approval or consent of any other person or entity, except approvals or consents which have previously been obtained.

c. Execution and Delivery; Binding Agreements. Each of this Consent and the Rooftop Lease is in full force and effect, has been duly executed and delivered on behalf of the Consenting Party and constitutes the legal, valid and binding obligation of the Consenting Party, enforceable against the Consenting Party in accordance with its terms except as the enforceability hereof or thereof may be limited by (i) bankruptcy, insolvency, reorganization, or other similar laws affecting the enforcement of creditors' rights generally and (ii) general equitable principles (whether considered in a proceeding in equity or at law).

d. Litigation. To its actual knowledge, without the duty of inquiry, there is no action, suit, proceeding or investigation pending or, to the Consenting Party's actual knowledge, without the duty of inquiry, threatened against the Consenting Party before or by any court, administrative agency, arbitrator or governmental authority, body or agency which, if adversely determined, individually or in the aggregate, (i) could adversely affect the performance by the Consenting Party of its obligations under this Consent or the Rooftop Lease, or that could modify or otherwise adversely affect the governmental approvals required to be obtained by the Consenting Party in connection with the execution, delivery and performance of the Rooftop Lease or (ii) questions the validity, binding effect or enforceability of this Consent or the Rooftop Lease, any action taken or to be taken pursuant hereto or thereto or any of the transactions contemplated hereby or thereby.

e. Compliance with Other Instruments, Etc. To its actual knowledge, without the duty of inquiry, the Consenting Party is not in violation of its organizational documents, and the execution, delivery and performance by the Consenting Party of this Consent and the Rooftop Lease and the consummation of the transactions contemplated thereby will not result in any violation of, breach of or default under any term of its organizational documents, or of any material contract or agreement to which it is a party or by which it or its property is bound, or of any license, permit, franchise, judgment, writ, injunction, decree, order, charter, law, ordinance, rule or regulation applicable to it.

f. No Default or Amendment. To its actual knowledge, without the duty of inquiry, neither the Consenting Party nor any other party to the Rooftop Lease is in default of any of its obligations thereunder, and no party has claimed force majeure as an excuse for performance or experienced circumstances that could form the basis for a claim of force majeure. The Consenting Party has no existing claims for damages, indemnity payments or otherwise, or existing counterclaims against the Project Company or offsets or defenses to payments currently due, if any, by the Consenting Party to the Project Company. To the Consenting Party's actual knowledge, without duty of inquiry, it and each other party to the Rooftop Lease have complied with all conditions precedent to the respective obligations of such party to perform under the Rooftop Lease.

g. No Previous Assignments. Except as expressly reflected in the recitals hereto, the Consenting Party has no actual knowledge of notice of, and has not consented to, any previous assignment of all or any part of its right, title or interest in, to or under the Rooftop Lease. The Consenting Party acknowledges and consents to each such prior assignment reflected in the recitals hereto.

h. Representations and Warranties. All representations, warranties and other statements made by the Consenting Party in the Rooftop Lease were true and correct as of the date when made and are true and correct as of the date of this Consent.

i. Bankruptcy. To the actual knowledge of Consenting Party, without the duty of inquiry, there are no actions pending against the Consenting Party under the bankruptcy or any similar laws of the United States or any state.

j. Purchase Option. The Consenting Party has not taken any official action requiring or authorizing the exercise of any purchase option available to it under the Rooftop Lease, has not decided whether or not it will exercise any such purchase option, and is under no legal or economic compulsion to exercise any such purchase option.

k. Termination Right. To the actual knowledge of Consenting Party, without duty of inquiry, no event or condition exists that would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either the Consenting Party or the Project Company to terminate or suspend its obligations (or the performance of such obligations) under the Rooftop Lease. None of the Rooftop Lease has been amended, modified or supplemented in any manner except as expressly reflected in the recitals hereto.

l. Commercial Operation Date. The Consenting Party acknowledges and agrees that the Project Company has notified the Consenting Party that the Commercial Operation Date occurred on [\_\_\_\_\_].

#### 4. MISCELLANEOUS

a. Governing Law. This Consent and the rights and duties of the parties hereunder shall be governed by and shall be construed, enforced and performed in accordance with the law of The Commonwealth of Massachusetts without regard to principles of conflicts of law. The parties hereto acknowledge and agree that any dispute arising hereunder may only be submitted to a court of competent jurisdiction located in The Commonwealth of Massachusetts.

b. Notices. All notices and other communications hereunder shall be in writing, shall be deemed given upon receipt thereof by the party or parties to whom such notice is addressed, shall be sent by first class mail, by personal delivery, by a nationally-recognized courier service, by facsimile or by email (attached as a portable document file (.pdf) only), and shall be directed as follows:

If to the Consenting Party: Cape & Vineyard Electric Cooperative, Inc.  
Attention: Maria Marasco  
23H2 White's Path, Suite 2



South Yarmouth, MA 02664  
Phone: 978-475-5082  
Email: [mmarasco@cvec.org](mailto:mmarasco@cvec.org)

Town of Harwich  
Harwich Town Hall  
732 Main Street  
Harwich, Massachusetts 02645  
Attention: Town Administrator

With a copy to:

KP Law, P.C.  
101 Arch Street, Floor 12  
Boston, Massachusetts 02110

If to the Project Company: CF Lessee [ ] LLC  
c/o Greenskies Clean Focus LLC  
127 Washington Avenue  
West Building, Lower Level  
North Haven, CT 06473

With a copy to: [Legal@greenskies.com](mailto:Legal@greenskies.com)

If to the Collateral Agent: Wilmington Trust, National Association  
1100 N. Market Street  
Wilmington, DE 19890-1605  
Attention: Corporate Trust Administration  
Facsimile: (302) 636-4140  
Confirmation: (302) 636-6000

The above parties may, by notice given hereunder, designate any further or different addresses to which subsequent notices or other communications shall be sent.

c. Amendment, Waiver. Neither this Consent nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by the parties hereto.

d. No Waiver; Remedies Cumulative. The waiver of any right, breach or default under this Consent by any party must be made specifically and in writing. No failure or delay on the part of the Collateral Agent in exercising any right, power or privilege hereunder and no course of dealing between the Consenting Party and the Collateral Agent shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other exercise, or the further exercise, of any other right, power or privilege hereunder. No notice to or demand upon any party shall entitle such party to any further, subsequent or other notice or

demand in similar or any other circumstances. The rights and remedies herein expressly provided are cumulative and not exclusive of any rights or remedies that the Collateral Agent would otherwise have.

e. Counterparts. This Consent may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Consent by facsimile or portable document format (.pdf) shall be effective as delivery of a manually executed counterpart of this Consent.

f. Headings Descriptive. The headings of the several sections and subsections of this Consent are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Consent.

g. Severability. In case any provision in or obligation under this Consent shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

h. Successors and Assigns. This Consent shall be binding upon the parties hereto and their permitted successors and assigns and shall inure to the benefit of the parties, their designees and their respective permitted successors and assigns; provided, however, that the Consenting Party shall not assign any of its interest in this Consent except in connection with an assignment of its interests in the Rooftop Lease and then only to the same person(s) to which its interest in the Rooftop Lease is so assigned.

i. Survival. All agreements, statements, representations and warranties made herein by the Consenting Party herein shall be considered to have been relied upon by the Collateral Agent and the Lessor and shall survive the execution and delivery of this Consent.

j. Additional Consenting Party Provisions. The consent set forth herein is limited precisely as written and shall not be deemed (a) to be a consent to, or waiver of, any other term or condition of the Assigned Agreement or any of the agreements, instruments and documents referred to therein or executed in connection therewith or (b) to prejudice any contractual, legal or other right or rights which the Consenting Party may have or may have in the future under the Assigned Agreement or in connection with the Assigned Agreements or any agreements, instruments and documents referred to therein or executed in connection therewith. This Consent is being given based on information actually known to Consenting Party, without the duty of inquiry, on the date the Consent is delivered and Consenting Party is not obligated to inform the Project Company or Collateral Agent or Lessor of a change in any information in the Consent occurring after such date of signature and delivery. Regardless of any error, omission, inaccuracy or misstatement in this Consent, this Consent does not create liability on the part of Consenting Party to the Project Company. The Consenting Party hereby reserves all of its rights and remedies under applicable law and under Assigned Agreement or any of the agreements, instruments and documents referred to therein or executed in connection therewith with respect to any matters other than those addressed in this Consent. In addition, Consenting Party is a Massachusetts municipal

corporation, and certain legal privileges, defenses and remedies are available to it at law and equity. Nothing in this Consent shall be construed to waive any of these privileges, defenses or remedies.

k. Project Company Representation to Consenting Party. The Project Company hereby certifies to the Consenting Party that (i) any term or provision of this Consent that constitutes a material amendment of the Rooftop Lease could not reasonably be expected to have a material adverse effect, and (ii) the assignments consented to in Section 3(g) of this Consent were made in accordance with Section 11.1 of the Rooftop Lease because each assignee was an affiliated entity under common control or management with the assignor, and each such assignee agreed in writing to be bound by the terms and conditions of the Rooftop Lease. For the purposes of this Consent, “material adverse effect” means (a) a material impairment of the ability of Project Company to perform under the Rooftop Lease (which impairment cannot be timely cured, to the extent a cure period is applicable); or (b) a material adverse effect upon the legality, validity, binding effect or enforceability of the Rooftop Lease against the Project Company. The Project Company acknowledges that if any of the certifications contained in this Section 4(k) are proven to be false, Consenting Party shall be entitled to exercise any remedies it has under the Rooftop Lease.

l. Any reference herein to the Consenting Party’s knowledge, awareness, actual knowledge, notice or similar term shall refer solely to the actual knowledge, without duty of inquiry, of \_\_\_\_\_, in his/her capacity as Consenting Party’s \_\_\_\_\_ [and also of \_\_\_\_\_, in his/her capacity as Consenting Party’s \_\_\_\_\_] (the “Knowledge Party”) and not to any other agent, employee, representative, board, commission or other person or party associated with Consenting Party. Nothing herein or in said Rooftop Lease or otherwise shall create any personal liability for any Knowledge Party. Consenting Party, by signing this Consent, is not waiving any of its rights or defenses, and nothing herein shall serve to vary, modify or otherwise impair Consenting Party’s rights under the Rooftop Lease or otherwise.

*(Signature Pages Follow)*

IN WITNESS WHEREOF, the parties hereto have caused this Consent to be executed by their respective officers as of the date first above written.

**TOWN OF HARWICH, MASSACHUSETTS,**  
as a Consenting Party

By: \_\_\_\_\_  
Name:  
Title:

**CF LESSEE [ ] LLC,**  
as Project Company

By: \_\_\_\_\_  
Name:  
Title:

**WILMINGTON TRUST, NATIONAL ASSOCIATION,**  
as Collateral Agent

By: \_\_\_\_\_  
Name:  
Title:

**PAYMENT INSTRUCTION**

Bank: Wilmington Trust, National Association / M&T Bank  
ABA Routing Number: 031100092  
[Account Number: 145202-000]  
[Account Name: CF Lessee FT – Revenue AC]  
Attention: Steve Barone

**CONSENT TO COLLATERAL ASSIGNMENT**  
*(Town of Harwich, Massachusetts – Cranberry Valley Golf Course- Ground Mount)*

This CONSENT TO COLLATERAL ASSIGNMENT (this “Consent”), dated as of [\_\_\_\_], 2021, is made by and among the Town of Harwich, Massachusetts (“Consenting Party”), CF Lessee [ ] LLC, a Delaware limited liability company (the “Project Company”), and Wilmington Trust, National Association in its capacity as collateral agent (such entity, together with its successors and permitted assigns, the “Collateral Agent”).

RECITALS

WHEREAS, the Consenting Party and the Project Company have entered into that certain Lease Agreement for Ground Mounted Photovoltaic Energy Facility by and between the Consenting Party and Greenskies Development Company LLC, dated on or about November 20, 2019, as assigned to Greenskies Clean Energy LLC as of December 24, 2019, as assigned to Clean Focus Yield LLC as of January 10, 2020, as assigned to CF Lessee F2 LLC as of September 1, 2020, as assigned to CF Lessee F4 LLC as of January 18, 2021, as assigned to CF Construction FT LLC as of February 11, 2021, as assigned to Project Company as of [\_\_\_\_], 2021 (as amended, restated, modified or otherwise supplemented from time to time in accordance with the terms hereof, the “Ground Lease”);

WHEREAS, in order to consummate the sale and leaseback (the “Transaction”) of the solar photovoltaic generating facility identified in the Ground Lease (the “Project”), the Project Company has entered into a master lease agreement and lease schedule (collectively, as amended, amended and restated, modified or supplemented from time to time, the “Lease” and, together with the other documents related thereto, the “Sale Leaseback Documents”) with, among others, [53 GSE Solar Trust] (the “Lessor”);

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

1. CONSENT TO COLLATERAL ASSIGNMENT, ETC.

a. Consent to Collateral Assignment. The Consenting Party (i) is hereby notified of and consents to the Transaction, (ii) consents to the pledge and assignment to the Collateral Agent for the benefit of the Lessor of all of the Project Company’s right, title and interest in, to and under the Ground Lease and (iii) acknowledges the right of the Collateral Agent or the Collateral Agent’s designee or assignee, as part of such assignment, to make all demands, give all notices, take all actions and exercise all rights of the Project Company in accordance with the Ground Lease to the same extent as the Project Company thereunder.

b. Substitute Owner. The Consenting Party agrees that, if (i) the Collateral Agent notifies the Consenting Party that an event of default under any Sale Leaseback Document has occurred and is continuing and that the Collateral Agent has exercised its rights to have itself or its designee or assignee substituted for the Project Company under any of the Ground Lease or (ii) the Collateral Agent and the Project Company notifies the Consenting Party in writing that the Project Company will return the Project to the Lessor or its designee at the end of the Lease term,

then the Collateral Agent, its designee or assignee (each, a “Substitute Owner”) shall be substituted for the Project Company under the Ground Lease without causing a breach or default thereunder so long as such Substitute Owner is directly or indirectly owned by, or promptly enters into an operations and maintenance agreement with, an entity that is technically and financially capable of performing the Project Company’s obligations under the Ground Lease, such capabilities to be equal to or greater than that of Project Company.

c. Right to Cure. Consenting Party agrees that the time periods afforded to the Collateral Agent under the Ground Lease to cure a Event of Default (as defined in the Ground Lease) shall be extended day-for-day for (i) the time taken to complete foreclosure proceedings, and (ii) any period of time during which the Collateral Agent is prohibited from curing by any process, stay or injunction issued by any governmental authority or pursuant to any bankruptcy or insolvency proceeding involving the Project Company or its affiliate; provided, however, Collateral Agent diligently and timely pursues cure of the Event of Default. In no event will the cure period be extended for more than six months unless Consenting Party consents in writing.

d. Replacement Agreement. In the event that the Ground Lease is rejected or otherwise terminated including as a result of any bankruptcy or insolvency proceeding affecting the Project Company, the Consenting Party shall, to the extent permitted by law, enter into a new agreement with the Collateral Agent or any Substitute Owner for a term equal to the remainder of the term of the Ground Lease and otherwise having terms substantially the same as the terms of the Ground Lease. The Collateral Agent shall have the right to assign its interest in any replacement agreement to a Substitute Owner pursuant to Section 1(b).

e. No Liability. The Consenting Party acknowledges and agrees that none of the Collateral Agent, Lessor or the Collateral Agent’s designee or assignee shall have any liability or obligation under the Ground Lease as a result of this Consent or otherwise, nor shall the Collateral Agent, Lessor or the Collateral Agent’s designee or assignee be obligated or required to perform any of Project Company’s obligations under the Ground Lease, except during any period in which such person is a Substitute Owner pursuant to Section 1(b).

2. PAYMENTS UNDER THE GROUND LEASE. The Project Company hereby directs the Consenting Party to, and the Consenting Party acknowledges such direction, pay all amounts payable by the Consenting Party to the Project Company under the Ground Lease, if any, in lawful money of the United States of America, in available funds, directly into the account specified on Exhibit A attached hereto, or to such other person or account as may be specified from time to time by the Collateral Agent to the Consenting Party in writing.

3. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE CONSENTING PARTY

The Consenting Party makes the following representations, warranties and covenants:

a. Organization; Power and Authority. The Consenting Party is a municipal corporation, existing under the laws of The Commonwealth of Massachusetts, and, in such capacity, possesses the requisite power and authority to enter into and to perform its obligations

under this Consent and the Ground Lease, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

b. Authorization. The execution, delivery and performance by the Consenting Party of this Consent and the Ground Lease have been duly authorized by all necessary action on the part of the Consenting Party and do not require any approval or consent of any other person or entity, except approvals or consents which have previously been obtained.

c. Execution and Delivery; Binding Agreements. Each of this Consent and the Ground Lease is in full force and effect, has been duly executed and delivered on behalf of the Consenting Party and constitutes the legal, valid and binding obligation of the Consenting Party, enforceable against the Consenting Party in accordance with its terms except as the enforceability hereof or thereof may be limited by (i) bankruptcy, insolvency, reorganization, or other similar laws affecting the enforcement of creditors' rights generally and (ii) general equitable principles (whether considered in a proceeding in equity or at law).

d. Litigation. To its actual knowledge, without the duty of inquiry, there is no action, suit, proceeding or investigation pending or, to the Consenting Party's actual knowledge, without the duty of inquiry, threatened against the Consenting Party before or by any court, administrative agency, arbitrator or governmental authority, body or agency which, if adversely determined, individually or in the aggregate, (i) could adversely affect the performance by the Consenting Party of its obligations under this Consent or the Ground Lease, or that could modify or otherwise adversely affect the governmental approvals required to be obtained by the Consenting Party in connection with the execution, delivery and performance of the Ground Lease or (ii) questions the validity, binding effect or enforceability of this Consent or the Ground Lease, any action taken or to be taken pursuant hereto or thereto or any of the transactions contemplated hereby or thereby.

e. Compliance with Other Instruments, Etc. To its actual knowledge, without the duty of inquiry, the Consenting Party is not in violation of its organizational documents, and the execution, delivery and performance by the Consenting Party of this Consent and the Ground Lease and the consummation of the transactions contemplated thereby will not result in any violation of, breach of or default under any term of its organizational documents, or of any material contract or agreement to which it is a party or by which it or its property is bound, or of any license, permit, franchise, judgment, writ, injunction, decree, order, charter, law, ordinance, rule or regulation applicable to it.

f. No Default or Amendment. To its actual knowledge, without the duty of inquiry, neither the Consenting Party nor any other party to the Ground Lease is in default of any of its obligations thereunder, and no party has claimed force majeure as an excuse for performance or experienced circumstances that could form the basis for a claim of force majeure. The Consenting Party has no existing claims for damages, indemnity payments or otherwise, or existing counterclaims against the Project Company or offsets or defenses to payments currently due, if any, by the Consenting Party to the Project Company. To the Consenting Party's actual knowledge, without the duty of inquiry, it and each other party to the Ground Lease have complied with all conditions precedent to the respective obligations of such party to perform under the Ground Lease.



g. No Previous Assignments. Except as expressly reflected in the recitals hereto, the Consenting Party has no actual knowledge of notice of, and has not consented to, any previous assignment of all or any part of its right, title or interest in, to or under the Ground Lease. The Consenting Party acknowledges and consents to each such prior assignment reflected in the recitals hereto.

h. Representations and Warranties. All representations, warranties and other statements made by the Consenting Party in the Ground Lease were true and correct as of the date when made and are true and correct as of the date of this Consent.

i. Bankruptcy. To the actual knowledge of Consenting Party, without the duty of inquiry, there are no actions pending against the Consenting Party under the bankruptcy or any similar laws of the United States or any state.

j. Purchase Option. The Consenting Party has not taken any official action requiring or authorizing the exercise of any purchase option available to it under the Ground Lease, has not decided whether or not it will exercise any such purchase option, and is under no legal or economic compulsion to exercise any such purchase option.

k. Termination Right. To the actual knowledge of Consenting Party, without the duty of inquiry, no event or condition exists that would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either the Consenting Party or the Project Company to terminate or suspend its obligations (or the performance of such obligations) under the Ground Lease. None of the Ground Lease has been amended, modified or supplemented in any manner except as expressly reflected in the recitals hereto.

l. Commercial Operation Date. The Consenting Party acknowledges and agrees that the Project Company has notified the Consenting Party that the Commercial Operation Date occurred on [\_\_\_\_\_].

#### 4. MISCELLANEOUS

a. Governing Law. This Consent and the rights and duties of the parties hereunder shall be governed by and shall be construed, enforced and performed in accordance with the law of The Commonwealth of Massachusetts without regard to principles of conflicts of law. The parties hereto acknowledge and agree that any dispute arising hereunder may only be submitted to a court of competent jurisdiction located in The Commonwealth of Massachusetts.

b. Notices. All notices and other communications hereunder shall be in writing, shall be deemed given upon receipt thereof by the party or parties to whom such notice is addressed, shall be sent by first class mail, by personal delivery, by a nationally-recognized courier service, by facsimile or by email (attached as a portable document file (.pdf) only), and shall be directed as follows:

If to the Consenting Party: Cape & Vineyard Electric Cooperative, Inc.  
Attention: Maria Marasco  
23H2 White's Path, Suite 2

South Yarmouth, MA 02664  
Phone: 978-475-5082  
Email: [mmarasco@cvec.org](mailto:mmarasco@cvec.org)

Town of Harwich  
Harwich Town Hall  
732 Main Street  
Harwich, Massachusetts 02645  
Attention: Town Administrator

With a copy to:

KP Law, P.C.  
101 Arch Street, Floor 12  
Boston, Massachusetts 02110

If to the Project Company: CF Lessee [ ] LLC  
c/o Greenskies Clean Focus LLC  
127 Washington Avenue  
West Building, Lower Level  
North Haven, CT 06473

With a copy to: [Legal@greenskies.com](mailto:Legal@greenskies.com)

If to the Collateral Agent: Wilmington Trust, National Association  
1100 N. Market Street  
Wilmington, DE 19890-1605  
Attention: Corporate Trust Administration  
Facsimile: (302) 636-4140  
Confirmation: (302) 636-6000

The above parties may, by notice given hereunder, designate any further or different addresses to which subsequent notices or other communications shall be sent.

c. Amendment, Waiver. Neither this Consent nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by the parties hereto.

d. No Waiver; Remedies Cumulative. The waiver of any right, breach or default under this Consent by any party must be made specifically and in writing. No failure or delay on the part of the Collateral Agent in exercising any right, power or privilege hereunder and no course of dealing between the Consenting Party and the Collateral Agent shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other exercise, or the further exercise, of any other right, power or privilege hereunder. No notice to or demand upon any party shall entitle such party to any further, subsequent or other notice or

demand in similar or any other circumstances. The rights and remedies herein expressly provided are cumulative and not exclusive of any rights or remedies that the Collateral Agent would otherwise have.

e. Counterparts. This Consent may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Consent by facsimile or portable document format (.pdf) shall be effective as delivery of a manually executed counterpart of this Consent.

f. Headings Descriptive. The headings of the several sections and subsections of this Consent are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Consent.

g. Severability. In case any provision in or obligation under this Consent shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

h. Successors and Assigns. This Consent shall be binding upon the parties hereto and their permitted successors and assigns and shall inure to the benefit of the parties, their designees and their respective permitted successors and assigns; provided, however, that the Consenting Party shall not assign any of its interest in this Consent except in connection with an assignment of its interests in the Ground Lease and then only to the same person(s) to which its interest in the Ground Lease is so assigned.

i. Survival. All agreements, statements, representations and warranties made herein by the Consenting Party herein shall be considered to have been relied upon by the Collateral Agent and the Lessor and shall survive the execution and delivery of this Consent.

j. Additional Consenting Party Provisions. The consent set forth herein is limited precisely as written and shall not be deemed (a) to be a consent to, or waiver of, any other term or condition of the Assigned Agreement or any of the agreements, instruments and documents referred to therein or executed in connection therewith or (b) to prejudice any contractual, legal or other right or rights which the Consenting Party may have or may have in the future under the Assigned Agreement or in connection with the Assigned Agreements or any agreements, instruments and documents referred to therein or executed in connection therewith. This Consent is being given based on information actually known to Consenting Party, without the duty of inquiry, on the date the Consent is delivered and Consenting Party is not obligated to inform the Project Company or Collateral Agent or Lessor of a change in any information in the Consent occurring after such date of signature and delivery. Regardless of any error, omission, inaccuracy or misstatement in this Consent, this Consent does not create liability on the part of Consenting Party to the Project Company. The Consenting Party hereby reserves all of its rights and remedies under applicable law and under Assigned Agreement or any of the agreements, instruments and documents referred to therein or executed in connection therewith with respect to any matters other than those addressed in this Consent. In addition, Consenting Party is a Massachusetts municipal

corporation, and certain legal privileges, defenses and remedies are available to it at law and equity. Nothing in this Consent shall be construed to waive any of these privileges, defenses or remedies.

k. Project Company Representation to Consenting Party. The Project Company hereby certifies to the Consenting Party that (i) any term or provision of this Consent that constitutes a material amendment of the Ground Lease could not reasonably be expected to have a material adverse effect, and (ii) the assignments consented to in Section 3(g) of this Consent were made in accordance with Section 11.1 of the Ground Lease because each assignee was an affiliated entity under common control or management with the assignor, and each such assignee agreed in writing to be bound by the terms and conditions of the Ground Lease. For the purposes of this Consent, "material adverse effect" means (a) a material impairment of the ability of Project Company to perform under the Ground Lease (which impairment cannot be timely cured, to the extent a cure period is applicable); or (b) a material adverse effect upon the legality, validity, binding effect or enforceability of the Ground Lease against the Project Company. The Project Company acknowledges that if any of the certifications contained in this Section 4(k) are proven to be false, Consenting Party shall be entitled to exercise any remedies it has under the Ground Lease.

l. Any reference herein to the Consenting Party's knowledge, awareness, actual knowledge, notice or similar term shall refer solely to the actual knowledge, without duty of inquiry, of \_\_\_\_\_, in his/her capacity as Consenting Party's \_\_\_\_\_ [and also of \_\_\_\_\_, in his/her capacity as Consenting Party's \_\_\_\_\_] (the "Knowledge Party") and not to any other agent, employee, representative, board, commission or other person or party associated with Consenting Party. Nothing herein or in said Ground Lease or otherwise shall create any personal liability for any Knowledge Party. Consenting Party, by signing this Consent, is not waiving any of its rights or defenses, and nothing herein shall serve to vary, modify or otherwise impair Consenting Party's rights under the Ground Lease or otherwise.

*(Signature Pages Follow)*

IN WITNESS WHEREOF, the parties hereto have caused this Consent to be executed by their respective officers as of the date first above written.

**TOWN OF HARWICH, MASSACHUSETTS,**  
as a Consenting Party

By: \_\_\_\_\_  
Name:  
Title:

**CF LESSEE [ ] LLC,**  
as Project Company

By: \_\_\_\_\_  
Name:  
Title:

**WILMINGTON TRUST, NATIONAL ASSOCIATION,**  
as Collateral Agent

By: \_\_\_\_\_  
Name:  
Title:

**PAYMENT INSTRUCTION**

Bank: Wilmington Trust, National Association / M&T Bank  
ABA Routing Number: 031100092  
Account Number: [145202-000]  
Account Name: [CF Lessee FT – Revenue AC]  
Attention: Steve Barone

**TOWN**  
**ADMINISTRATOR'S**  
**REPORT**

# PROCUREMENT CHECKLIST & APPROVAL FORM

STAFF LEAD: KATHLEEN ONEILL DEPARTMENT: HEALTH

FUNDING SOURCE: OPERATING BUDGET

Appropriated amount: \$6,900.00 Estimated cost: \_\_\_\_\_ Actual cost: \_\_\_\_\_

**PROCUREMENT METHOD:**

CH 30 B supplies and services

**PURCHASE DESCRIPTION:**

Purchase descriptions should contain the following components (see document on purchase descriptions):  
*Description of supplies or services required; quantities required; schedule for performance and delivery terms.*

Health department contract inspector position for on call, as needed services to include witnessing soil tests, final inspections of septic systems, review of Title 5 inspection reports. Position funded within operating budget not to exceed \$6,900.00

**PROCUREMENT MAY PROCEED ONLY IF SIGNATURES PROVIDED BELOW**

Funds Available: Finance Director: Carol Coppola Account # 015102/538000  
48C32039D33D434...

Approved to proceed: Town Administrator or Designee: Joseph F. Powers  
0623C0C5799644E...



**AGREEMENT FOR TOWN OF HARWICH**

The following provisions shall constitute an Agreement between the Town of Harwich, acting by and through its Board of Selectmen, hereinafter referred to as "Town," and Mark Polselli, with an address of PO Box 1288, Eastham, MA, hereinafter referred to as "Contractor", effective as of the 6th day of July, 2021. In consideration of the mutual covenants contained herein, the parties agree as follows:

**ARTICLE 1: SCOPE OF WORK:**

The Contractor shall perform all work and furnish all services necessary to provide the Town with HEALTH DEPARTMENT INSPECTIONAL SERVICES, including the scope of services set forth in Attachment A.

**ARTICLE 2: TIME OF PERFORMANCE:**

The Contractor shall complete all work and services required hereunder commencing July 6, 2021 through JUNE 30, 2022.

**ARTICLE 3: COMPENSATION:**

The Town shall pay the Contractor for the performance of the work outlined in Article 1 PER THE ATTACHED PAYMENT SCHEDULE and not to exceed \$6,900.00. The Contractor shall submit monthly invoices to the Town for services rendered, which will be due 30 days following receipt by the Town.

**ARTICLE 4: CONTRACT DOCUMENTS:**

The following documents form the Contract and all are as fully a part of the Contract as if attached to this Agreement or repeated herein:

1. This Agreement.
2. Amendments, or other changes mutually agreed upon between the parties.

3. All attachments to the Agreement.

In the event of conflicting provisions, those provisions most favorable to the Town shall govern.

**ARTICLE 5: CONTRACT TERMINATION:**

The Town may suspend or terminate this Agreement by providing the Contractor with ten (10) days written notice for the reasons outlined as follows:

1. Failure of the Contractor, for any reason, to fulfill in a timely and proper manner its obligations under this Agreement.
2. Violation of any of the provisions of this Agreement by the Contractor.
3. A determination by the Town that the Contractor has engaged in fraud, waste, mismanagement, misuse of funds, or criminal activity with any funds provided by this Agreement.

Either party may terminate this Agreement at any time for convenience by providing the other party written notice specifying therein the termination date which shall be no sooner than thirty (30) days from the issuance of said notice. Upon receipt of a notice of termination from the Town, the Contractor shall cease to incur additional expenses in connection with the Agreement. Upon such termination, the Contractor shall be entitled to compensation for all satisfactory work completed prior to the termination date as determined by the Town. Such payment shall not exceed the fair value of the services provided hereunder.

**ARTICLE 6: INDEMNIFICATION:**

The Contractor shall defend, indemnify and hold harmless the Town and its officers, agents, and all employees from and against claims arising directly or indirectly from the contract. Contractor shall be solely responsible for all local taxes or contributions imposed or required under the Social Security, Workers' Compensation, and income tax laws. Further, the Contractor

shall defend, indemnify and hold harmless the Town with respect to any damages, expenses, or claims arising from or in connection with any of the work performed or to be performed under this Agreement. This shall not be construed as a limitation of the Contractor's liability under the Agreement or as otherwise provided by law.

**ARTICLE 7: AVAILABILITY OF FUNDS:**

The compensation provided by this Agreement is subject to the availability and appropriation of funds.

**ARTICLE 8: APPLICABLE LAW:**

The Contractor agrees to comply with all applicable local, state and federal laws, regulations and orders relating to the completion of this Agreement. This Agreement shall be governed by and construed in accordance with the law of the Commonwealth of Massachusetts.

**ARTICLE 9: ASSIGNMENT:**

The Contractor shall not make any assignment of this Agreement without the prior written approval of the Town.

**ARTICLE 10: AMENDMENTS:**

All amendments or any changes to the provisions specified in this Contract can only occur when mutually agreed upon by the Town and Contractor. Further, such amendments or changes shall be in writing and signed by officials with authority to bind the Town. No amendment or change to the contract provisions shall be made until after the written execution of the amendment or change to the Contract by both parties.

**ARTICLE 11: INDEPENDENT CONTRACTOR:**

The Contractor acknowledges and agrees that it is acting as an independent contractor for all work and services rendered pursuant to this Agreement and shall not be considered an employee or agent of the Town for any purpose.

**ARTICLE 12: INSURANCE:**

The Contractor shall be responsible to the Town or any third party for any property damage or bodily injury caused by it, any of its subcontractors, employees or agents in the performance of, or as a result of, the work under this Agreement. The Contractor and any subcontractors used hereby certify that they are insured for workers' compensation, property damage, personal and product liability. The Contractor and any subcontractor it uses shall purchase, furnish copies of, and maintain in full force and effect insurance policies in the amounts here indicated.

- 1) General Liability of at least \$1,000,000 Occurrence/\$3,000,000 General Aggregate. The Municipality should be named as an "Additional Insured".
- 2) Automobile Liability (applicable for any contractor who has an automobile operating exposure) of at least \$1,000,000 Bodily Injury and Property Damage per accident. The Municipality should be named as an "Additional Insured".
- 3) Workers' Compensation Insurance as required by law.

Prior to commencement of any work under this Agreement, the Contractor shall provide the Town with Certificates of Insurance which include the Town as an additional named insured and which include a thirty day notice of cancellation to the Town.

**ARTICLE 13: SEVERABILITY:**

If any term or condition of this Agreement or any application thereof shall to any extent be held invalid, illegal or unenforceable by the court of competent jurisdiction, the validity,

legality, and enforceability of the remaining terms and conditions of this Agreement shall not be deemed affected thereby unless one or both parties would be substantially or materially prejudiced.

**ARTICLE 14: ENTIRE AGREEMENT:**

This Agreement, including all documents incorporated herein by reference, constitutes the entire integrated agreement between the parties with respect to the matters described. This Agreement supersedes all prior agreements, negotiations and representations, either written or oral, and it shall not be modified or amended except by a written document executed by the parties hereto.

**ARTICLE 15: COUNTERPARTS:**

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be a counterpart original.

**CERTIFICATION AS TO PAYMENT OF STATE TAXES**

Pursuant to Chapter 62C of the Massachusetts General Laws, Section 49A(b), I, \_\_\_\_\_, authorized signatory for the Contractor do hereby certify under the pains and penalties of perjury that said Contractor has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

031-52-2480  
Social Security Number or  
Federal Identification Number

M. A. P. Polk  
Signature of Individual or  
Corporate Name

By:  
Corporate Officer  
(if applicable)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

CONTRACTOR  
By M. A. P. Polk  
Mark Polk  
Printed Name and Title

TOWN OF HARWICH  
by its Board of Selectmen Over \$50,000  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Approved as to Availability of Funds:  
DocuSigned by:  
Carol Coppola \$6,900.00  
(\$ \_\_\_\_\_)  
Finance Director Contract Sum

by its Town Administrator Up to \$50,000  
DocuSigned by:  
Joseph F. Powers  
Town Administrator

Attachment A



**Town of Harwich**

**Board of Health**

732 Main Street Harwich, MA 02645

508-430-7509 – Fax 508-430-7531

E-mail: health@town.harwich.ma.us

**HEALTH DEPARTMENT CONTRACT INSPECTOR**

**Payment**

Fee is a flat rate per inspection. The vendor is not considered a regular employee and is responsible for any tax liability incurred.

**Invoice**

This should be submitted at least monthly to the department. Required detail is to include a typed list of inspections, location, fee per inspection and monthly totals. The invoice should have the inspectors' name, mail address and must be signed and dated. Checks are mailed directly from the Treasurers' Office.

**Supplies**

Forms, maps, office supplies and special equipment such as sample kits and thermometers required for the performance of duties will be supplied by this office.

**Vehicle**

No mileage reimbursement or use of town vehicles is available with this program. Proof of valid drivers' license is required.

**Staff Access**

There is no regular access to support staff. Contract employees are expected to research documents, file reports, copy schedules, locate sites and input computer data as part of the inspection and reporting process. Orientation to the departments' computer system and reporting requirements will be arranged.

**Schedules**

Appointments will be scheduled via the Health Department staff in advance on prearranged days. Contractors are expected to notify the office in advance of any potential scheduling conflicts. Staff is not available to continue to rework the schedule should a cancellation occur. The schedule will be set to allow the contractor to *first* arrive at the office to verify appointments and collect paperwork and then to return to enter data / file paperwork at the close of the day.

**TEST HOLE & PERC TEST PROTOCOL**

The current day scheduled is Tuesday each week. First appointment will begin at 8:30 a.m.; thus allowing the inspector time to visit the office to finalize the day's schedule. It is hoped that data entry and filing can be tackled on the same day. Length of day for site work may change seasonally depending on hours of daylight.

Appointments are scheduled 1 hr apart for lots requiring 2 holes/1 perc and 1 ½ hrs apart for 4 holes / 2 percs. Engineers and excavators are expected to have holes open and ready to go upon Health Dept arrival in order to keep on schedule. (Exceptions to these requirements are arranged for subdivisions)

Attachment A

Fee:  
\$65 for 2 hole lots  
\$90 for 4 hole lots  
Fee to cover inspection and all associated office / data reporting

**TITLE 5 FINAL INSPECTIONS**

Scheduled as needed-generally prearranged to backfill staff vacations and to address seasonal surge. If the inspector is "on-call" for this service, they are requested to call early in the morning to verify status for the day. Inspections are scheduled to begin after 12:00 p.m. Contractor should plan to arrive to the office several minutes before to finalize details. Data entry/ report filing should occur before the close of the day.

Fee:  
\$40 per inspection  
Fee to cover inspection and all associated office / data reporting

**REAL ESTATE TRANSFER REVIEW**

All systems shall be classified according to the following criteria: a. Passes – System meets all requirements of Title 5 and Harwich Regulations. b. Conditionally Passes – System meets requirements of Title 5 and Harwich Regulations; however, minor repairs are necessary. Ex: garbage disposal not allowed; septic tank not watertight; tees missing, system distribution unequal. c. Needs Further Evaluation by Local Approving Authority – (system inadequate for intended use) i.e. inadequate size; system location such as not on same lot; within 100 feet of wetlands or well; excessive pumping. d. Fails – Criteria not met, Ex: Cesspools present; lack of required separation to groundwater; evidence of overflow or overload to system.

Fee:  
\$25 per RET reviewed

.....

I have read the protocol for contract inspectors and agree to abide by same. I understand that any deviations from this protocol must be discussed with the Health Director. I further understand that repeat infractions from this protocol will be cause for dissolution of the vendor relationship with the Health Department.

Mark Polelli 6/29/21  
SIGNATURE DATE

NAME (please print) Mark Polelli

ADDRESS Po Box 1288 Eastham, MA 02642

CELL # 508-280-7790

EFFECTIVE DATE: 7/1/21

Matthew O'Neill  
HEALTH DIRECTOR SIGNATURE DATE



Form **W-9**  
(Rev. October 2007)  
Department of the Treasury  
Internal Revenue Service

**Request for Taxpayer  
Identification Number and Certification**

Give form to the  
requester. Do not  
send to the IRS.

Print or type  
see specific instructions on page 2.

Name (as shown on your income tax return) **Mark Polselli**

Business name, if different from above

Check appropriate box:  Individual/Sole proprietor  Corporation  Partnership  
 Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership)  Exempt payee  
 Other (see instructions)

Address (number, street, and apt. or suite no.) **Po Box 1288**  
 City, state, and ZIP code **Eastham MA 02642**

Requester's name and address (optional)

List account number(s) here (optional)

**Part I Taxpayer Identification Number (TIN)**

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Social security number  
**031 52 2480**

or

Employer identification number

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

**Part II Certification**

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here Signature of U.S. person **M. Polselli** Date **7/5/21**

**General Instructions**

Section references are to the Internal Revenue Code unless otherwise noted.

**Purpose of Form**

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partner's share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partner's share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,

**ATTACHMENT F**

**CONTRACT**

**AGREEMENT FOR PINE GROVE CEMETERY GRAVESTONE CONSERVATION**

The following provisions shall constitute an Agreement between the Town of Harwich, acting by and through its Board of Selectmen, hereinafter referred to as "Town," and Village Green Restoration, Inc, with an address of 34 Currier Road, East Falmouth, MA , hereinafter referred to as "Contractor", effective as of the \_\_\_\_ day of \_\_\_\_\_, 2021. In consideration of the mutual covenants contained herein, the parties agree as follows:

**ARTICLE 1: SCOPE OF WORK:**

The Contractor shall perform all work and furnish all services necessary to provide the Town with Pine Grove Cemetery Gravestone Preservation and Conservation, as set forth in Attachment A.

**ARTICLE 2: TIME OF PERFORMANCE:**

The Contractor shall complete all work and services required hereunder commencing upon execution of this contract, through June 30, 2022.

**ARTICLE 3: COMPENSATION:**

The Town shall pay the Contractor for the performance of the work outlined in Article 1 above the contract sum of \$42,000.00 The Contractor shall submit monthly invoices to the Town for services rendered, which will be due 30 days following receipt by the Town.

**ARTICLE 4: CONTRACT DOCUMENTS:**

The following documents form the Contract and all are as fully a part of the Contract as if attached to this Agreement or repeated herein:

1. This Agreement.
2. Amendments, or other changes mutually agreed upon between the parties.
3. All attachments to the Agreement.

In the event of conflicting provisions, those provisions most favorable to the Town shall govern.

**ARTICLE 5: CONTRACT TERMINATION:**

The Town may suspend or terminate this Agreement by providing the Contractor with ten (10) days written notice for the reasons outlined as follows:

1. Failure of the Contractor, for any reason, to fulfill in a timely and proper manner its obligations under this Agreement.
2. Violation of any of the provisions of this Agreement by the Contractor.
3. A determination by the Town that the Contractor has engaged in fraud, waste, mismanagement, misuse of funds, or criminal activity with any funds provided by this Agreement.

Either party may terminate this Agreement at any time for convenience by providing the other party written notice specifying therein the termination date which shall be no sooner than thirty (30) days from the issuance of said notice. Upon receipt of a notice of termination from the Town, the Contractor shall cease to incur additional expenses in connection with the Agreement. Upon such termination, the Contractor shall be entitled to compensation for all satisfactory work completed prior to the termination date as determined by the Town. Such payment shall not exceed the fair value of the services provided hereunder.

**ARTICLE 6: INDEMNIFICATION:**

The Contractor shall defend, indemnify and hold harmless the Town and its officers, agents, and all employees from and against claims arising directly or indirectly from the contract. Contractor shall be solely responsible for all local taxes or contributions imposed or required under the Social Security, Workers' Compensation, and income tax laws. Further, the Contractor shall defend, indemnify and hold harmless the Town with respect to any damages, expenses, or claims arising from or in connection with any of the work performed or to be performed under this Agreement. This shall not be construed as a limitation of the Contractor's liability under the Agreement or as otherwise provided by law.

**ARTICLE 7: AVAILABILITY OF FUNDS:**

The compensation provided by this Agreement is subject to the availability and appropriation of funds.

**ARTICLE 8: APPLICABLE LAW:**

The Contractor agrees to comply with all applicable local, state and federal laws, regulations and orders relating to the completion of this Agreement. This Agreement shall be governed by and construed in accordance with the law of the Commonwealth of Massachusetts.

**ARTICLE 9: ASSIGNMENT:**

The Contractor shall not make any assignment of this Agreement without the prior written approval of the Town.

**ARTICLE 10: AMENDMENTS:**

All amendments or any changes to the provisions specified in this Contract can only occur when mutually agreed upon by the Town and Contractor. Further, such amendments or changes shall be in writing and signed by officials with authority to bind the Town. No amendment or change to the contract provisions shall be made until after the written execution of the amendment or change to the Contract by both parties.

**ARTICLE 11: INDEPENDENT CONTRACTOR:**

The Contractor acknowledges and agrees that it is acting as an independent contractor for all work and services rendered pursuant to this Agreement and shall not be considered an employee or agent of the Town for any purpose.

**ARTICLE 12: INSURANCE:**

The Contractor shall be responsible to the Town or any third party for any property damage or bodily injury caused by it, any of its subcontractors, employees or agents in the performance of, or as a result of, the work under this Agreement. The Contractor and any subcontractors used hereby certify that they are insured for workers' compensation, property damage, personal and product liability. The Contractor and any subcontractor it uses shall purchase, furnish copies of, and maintain in full force and effect insurance policies in the amounts here indicated.

- 1) General Liability of at least \$1,000,000 Occurrence/\$3,000,000 General Aggregate. The Municipality should be named as an "Additional Insured". Products and Completed Operations should be maintained for up to 3 years after the completion of the project.
- 2) Automobile Liability (applicable for any contractor who has an automobile operating exposure) of at least \$1,000,000 Bodily Injury and Property Damage per accident. The Municipality should be named as an "Additional Insured".
- 3) Workers' Compensation Insurance as required by law. Include Employers Liability Part B with a limit of \$1,000,000
- 4) Property Coverage for materials and services being transported by the contractor, as the Town's Property Contract provides coverage for personal property within 1000 feet of the premises.
- 5) Umbrella Liability of at least \$2,000,000/ occurrence, \$2,000,000/aggregate. The Municipality should be named as an "Additional Insured".

Prior to commencement of any work under this Agreement, the Contractor shall provide the Town with Certificates of Insurance which include the Town as an additional named insured and which include a thirty day notice of cancellation to the Town.

**ARTICLE 13: SEVERABILITY:**

If any term or condition of this Agreement or any application thereof shall to any extent be held invalid, illegal or unenforceable by the court of competent jurisdiction, the validity, legality, and enforceability of the remaining terms and conditions of this Agreement shall not be deemed affected thereby unless one or both parties would be substantially or materially prejudiced.

**ARTICLE 14: ENTIRE AGREEMENT:**

This Agreement, including all documents incorporated herein by reference, constitutes the entire integrated agreement between the parties with respect to the matters described. This Agreement supersedes all prior agreements, negotiations and representations, either written or oral, and it shall not be modified or amended except by a written document executed by the parties hereto.

**ARTICLE 15: COUNTERPARTS:**

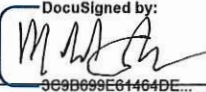
This Agreement may be executed in any number of counterparts, each of which shall be deemed to be a counterpart original.

**CERTIFICATION AS TO PAYMENT OF STATE TAXES**

Pursuant to Chapter 62C of the Massachusetts General Laws, Section 49A(b), I, Michael Gallaher, authorized signatory for the Contractor do hereby certify under the pains and penalties of perjury that said Contractor has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

84-5147711

Social Security Number or Federal Identification Number

DocuSigned by:  


Signature of Individual or Corporate Name

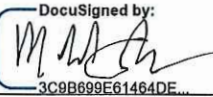
By:  
Corporate Officer  
(if applicable)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

CONTRACTOR

TOWN OF HARWICH

By

DocuSigned by:  


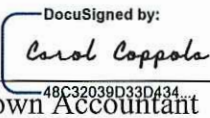
by its Board of Selectmen (over \$50,000)

Michael Gallaher Michael Gallaher President

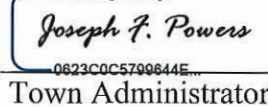
Printed Name and Title

Approved as to Availability of Funds:

by its Town Administrator Up to \$50,000

DocuSigned by:  


(\$ 42,000.00 )  
Contract Sum

DocuSigned by:  


Town Administrator

# Public Information Hearing Town of Harwich Community Preservation Committee Thursday, July 15, 2021, 6:00 pm

South Harwich Meeting House



Recreation at Brooks Park



Preservation of Muddy Creek



Brooks Free Library

The Harwich Community Preservation Committee (CPC) will hold a Public Information Hearing on **Thursday, July 15, 2021 at 6:00 pm** in the Donn B. Griffin Room, Town Hall, 732 Main Street, Harwich, MA 02645 pursuant to M.G.L. Ch.44B, Community Preservation Act (“Act”), Section 5(b)(1): “As part of its study, the committee shall hold one or more public informational hearing on the needs, possibilities and resources of the city or town regarding community preservation possibilities and resources, notice of which shall be posted publicly and published for each of two weeks preceding a hearing in a newspaper of general circulation in the city or town.”

Your attendance is encouraged to learn about the Act and to discuss possible projects consistent with the Act and to review the submittal guidelines. The Act includes projects related to open space, community housing, historic preservation and recreation. If you have an idea for a project that would meet the requirements of the Community Preservation Act, then please bring that idea forward.

Application information is available online at <http://www.harwich-ma.gov/community-preservation-committee>



United States Department of Agriculture

Marketing and Regulatory Programs

USDA-APHIS-Wildlife Services 9 Main St., Suite 1-M Sutton, MA 01590

T 508-476-2715 F 508-476-2749

Beginning on July 12, 2021 and lasting approximately 1 week, the Cape Cod & Southeast MA Rabies Task Force and the United States Department of Agriculture Wildlife Services (USDA WS) will be conducting Oral Rabies Vaccination (ORV) in your area in an effort to vaccinate wild raccoons to prevent the spread of raccoon-variant rabies on Cape Cod. In May of 2021, a raccoon rabies case was documented for the first time in over 8 years in Hyannis.

The rotary wing ORV operations will be based out of Plymouth Municipal Airport (PYM) and is tentatively scheduled to occur beginning July 13. The helicopter distribution will occur primarily in the immediate vicinity of and around: Bourne, Sandwich, Falmouth, Mashpee, Barnstable, Yarmouth, Dennis, Brewster, Harwich, Chatham, and Orleans (Figure 1; shaded in orange). The remainder of the ORV zone will be baited by hand out of vehicles.

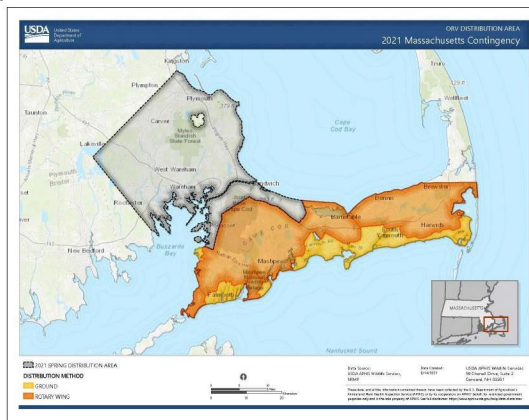


Figure 1. Summer 2021 proposed rotary wing emergency ORV area



The Cape Cod and Southeast MA Rabies Task Force and USDA will be utilizing a federally-owned helicopter to distribute baits. The helicopters are either red and black (similar to the one shown in the photo above) or white and orange. The helicopters will be flying approximately 300 feet above ground level while distributing baits and you may receive inquiries from the public regarding low-flying aircraft.

If there are any questions regarding any of the ORV operations please contact Wildlife Biologist and Cape Cod Rabies Program Coordinator Brian Bjorklund at 413-537-9394.

Sincerely,

Brian M. Bjorklund Wildlife Biologist & Cape Cod Rabies Program Coordinator, USDA-APHIS-Wildlife Services



# **CORRESPONDANCE**

June 25, 2021

Mr. Michael MacAskill, Chairman  
Harwich Board of Selectmen  
Harwich Town Hall  
732 Main Street  
Harwich Center, MA 02645

Re: Noise Containment Committee Report and Related Noise Issues

Dear Chairman MacAskill and Board Members Ballantine, Howell, and Anderson,

When the Noise Containment Committee voted on the plainly audible motion in March of last year, Frances Rich and I were in dissent. I planned to speak to the Board about it when the report was given, but a year has gone by and the issue seems to have been overtaken by events. In particular:

(a) The Port and Ember hearings underscored the extent of the noise problems and the need to improve noise management and enforcement. In response, the Board's recent statements and actions have shown its determination to use stricter measures to bring things under control.

(b) At the June 1 Selectmen's Meeting, Chief Guillemette announced new policies for handling noise incidents, including the use of the Bylaw's plainly audible definition, and this was accepted by the Board.

(c) In April, Bob Nickerson, Joe Ganley, and I hired Attorney Christopher Senie to help us better understand the Noise Bylaw and Entertainment License. Mr. Senie sent a letter to the Board with an analysis that supports Chief Guillemette's position. As I understand it, because there is no conflict between the Bylaw and the license, the Bylaw's plainly audible definition holds and does not need to be defined in the license.

Given the above, there doesn't seem to have been a basis for the Committee to vote on the plainly audible definition, and the Committee's recommendation on the issue and my dissent both now seem moot.

I hope and expect that we're done with this issue, but if not, I would ask to be able to speak to it again. For now though, I will assume there's no need to waste any more time on the topic. I support the Committee's other recommendations.

Over the last month or so, the Town has already begun better controlling noise with tighter enforcement and proactive management via license conditions. I'd only suggest that it continue what it's already doing with outdoor entertainment, namely:

- limiting *live* performances to evening hours;
- restricting *live* music to be either non-amplified or played only through house systems; and
- restricting all other outdoor entertainment to ambient music.

While stricter standards can be expected to reduce noise levels, the attached chart shows that nevertheless, there is more than adequate space provided for outdoor entertainment. Even Perks, with the smallest lot, has a permitted noise range of almost three and a half acres—a little more than the size of three full football fields. This is a very considerable area

especially given the closeness of its neighbors. All the other venues are allotted from four to six acres, which should easily be ample for moderate volumes. As such, when well-managed and well-enforced, the entertainment license should strike a pretty good balance between businesses and residents, allowing both to successfully coexist.

As an example of a nearby community that has restricted, but thriving, outdoor entertainment, I've included a map of Nantucket outdoor entertainment in 2018. Of the eight venues shown, some are self-restricted by distancing from neighbors, physical attributes such as tenting, or the nature of the venue itself. Venues that are more exposed to neighbors have either amplification or live music restrictions. It should also be noted that the island has plenty of loud music, but it all takes place inside.

Wrapping up, I want to thank my friends on the Committee, as well as Chief Guillemette and Deputy Chief Considine for all the long hours they put in. I also want to thank the Board for all the work it's done and for hopefully finding a fair and workable way to resolve the noise issues. Thank you all very much.

Respectfully,

Bob Cohn

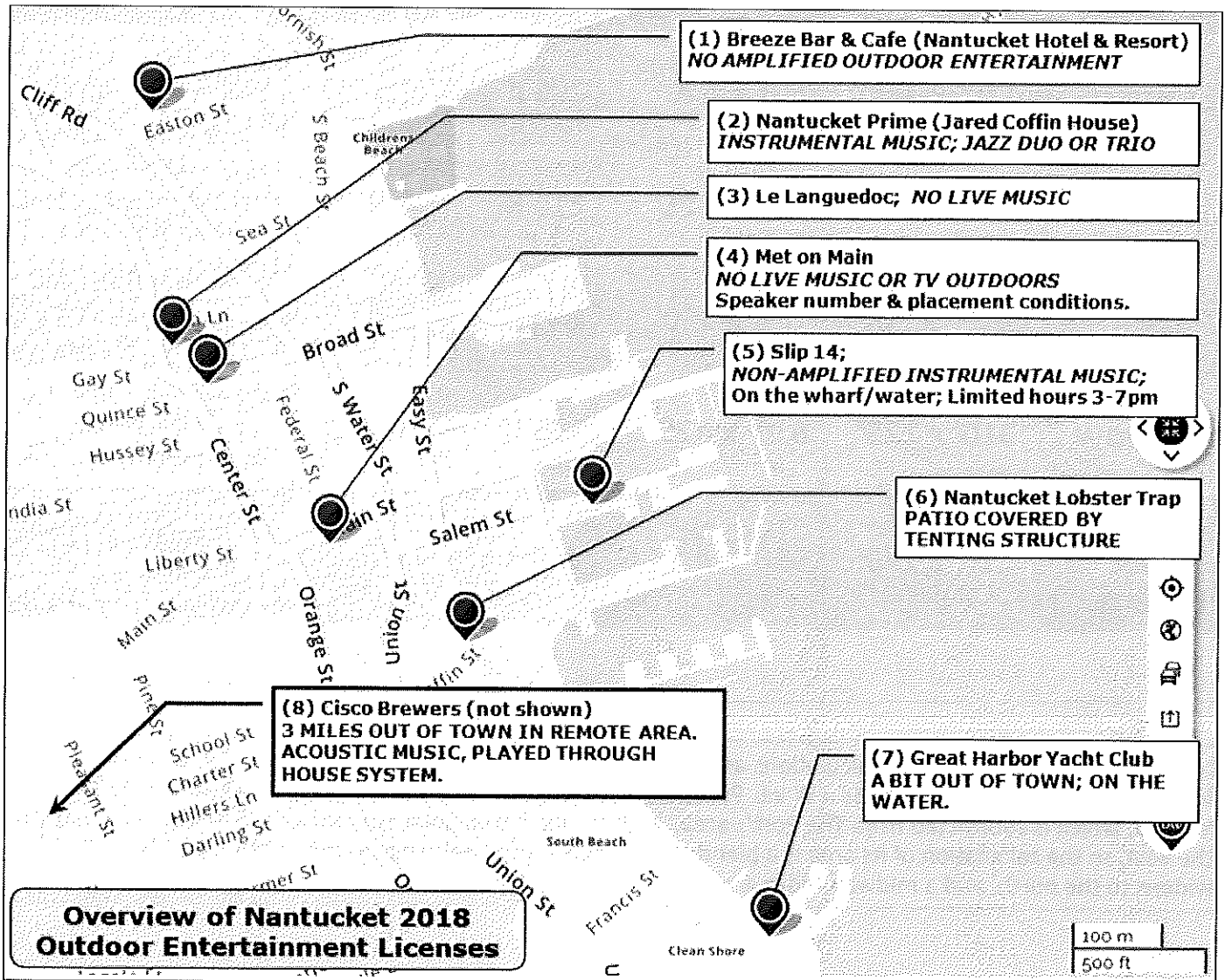
CC: Chief Guillemette, Harwich Police Department  
Deputy Chief Considine, Harwich Police Department  
Joseph Powers, Harwich Town Administrator  
Angela McNamara, Noise Containment Committee Chair  
Frances Rich, Noise Containment Committee  
Heather Murphy, Noise Containment Committee  
Walter Mason, Noise Containment Committee  
Jake Domos, Noise Containment Committee  
Christopher Senie, Senie & Associates, P.C.  
Bob Nickerson  
Joe Ganley

## Permitted Noise Areas for Outdoor Entertainment Venues

Venue	Lot Size	Permitted Range	Square Feet	Acres	Location Challenges
<b>Ember</b>	130' x 340'	430' x 640'	206 K	4.7	Range extends 80' into residential zone. Abuts senior living center.
<b>The Port</b>	220' x 125'	520' x 425'	215 K	4.9	Range extends 170' into residential zone. Residents abutting to E, S, & W.
<b>Perks</b>	125' x 50'	425' x 350'	149 K	3.4	Range extends 75' into residential zone. Residents directly abutting to east.
<b>Minnow</b>	310' x 125'	610' x 425'	259 K	6.0	Range extends 260' into residential zone. Located on parking lot.
<b>Harwich Inn &amp; Tavern</b>	310' x 140'	610' x 440'	268 K	6.2	Long history of noise problems at location.

Notes: All measurements and calculations are very approximate. Several lots are rectangular, and calculations for these are for simple rectangles =  $W \times L$ . Port's lot is rectangular with a rectangular notch where Perks is located, which is subtracted from The Port's area. Ember's lot is triangular-ish to the west and rectangular-ish to the east, so the calculation of its area is a blend of a triangle's and a rectangle's area =  $W \times L \times 0.75$ . HI&T's lot widens to the north, and a midway width is used.

# Nantucket Outdoor Entertainment Licenses, 2018



**From:** MARY ALBIS



**Sent:** Friday, June 25, 2021 5:55 PM

**To:** Don Howell; Ballantine Larry; Michael D. MacAskill; Mary Anderson

**Subject:** Noise in Harwich: please read into the meeting record for Monday, June 28, 2021

June 25, 2021

Dear Chairman MacAskill and the members of the Board of Selectmen,

I am not able to attend Monday night's discussion concerning noise in Harwich and the town's noise by-law. At this early stage of recovery from the pandemic, I am not yet comfortable attending crowded indoor events. I respectfully ask that this letter be read into the meeting's record.

The noise issue in West Harwich has a long history, dating back at least two decades. Despite ample evidence, the current owner of the business at 77 Route 28 in West Harwich refuses to believe that music from his outdoor bar is audible in our West Harwich neighborhood. While the volume of noise from the Harwich Inn and Tavern is not as excessive as that which came from the previous business located there, the current owner has always responded to some neighbors' efforts at cooperation and even conciliatory gestures with combativeness. We, the neighbors, have now abandoned our attempts to discuss a compromise with the current owner directly; we request that the town's noise by-law be fairly and consistently enforced across all the villages in the town of Harwich.

The following is a link to a video taken by my husband in our backyard of music emanating from the Harwich Inn and Tavern at 7:28 p.m. on Friday, June 18, 2021. Our property is located 1125 feet from that business – more than seven times farther than the 150 foot noise by-law designation. The music is plainly audible.

<https://youtu.be/QdDxpZln2t4>

It is a shame that certain businesses in Harwich have not found a way to capitalize on making money during the summer months without alienating their neighbors. We would be much more likely to give these establishments our business during the quiet months if we weren't harassed by them during the high season.

Thank you for your time and consideration.

Sincerely,

**Mary K. Albis**

Mary K. Albis  
West Harwich

**From:** Frances Rich >  
**Sent:** Monday, June 28, 2021 2:12 PM  
**To:** Michael D. MacAskill; Frances Rich  
**Subject:** Noise

To the Harwich Board of Selectmen,

I am one of several people who does not feel comfortable in attending the meeting this evening due to COVID concerns.

I would like to thank the BOS for taking the noise situation in town seriously and for their work in finding solutions to a problem that has adversely affected so many residents. I know there are additional issues to be addressed but I urge the Board to consider leaving the Noise By-law as written for at least a year to give both the businesses and residents an opportunity to compromise with their new understanding of what are now acceptable noise standards. I also encourage the Board to be strict in issuing one day entertainment licenses and in dealing with any violations, the best way to prevent further infractions.

I appreciated the opportunity to be a member of the Noise Containment Committee and would be happy to continue to serve the town in any such capacity in the future.

Frances Rich

**Harwich Police Department**  
**Memorandum**

**TO:** Board of Selectmen

**James R. Merriam**  
*Town Administrator*

**FROM:** Bill Mason  
*Chief of Police*

**DATE:** December 21, 2011

**SUBJECT:** Town Firing Range Report and Recommendations (Revised)

**Background**

**Please Note:** Due to the discussion with the Board of Selectmen during the regularly scheduled meeting on Monday, December 19, 2011, some minor revisions were made to the original report that had been submitted on December 14, 2011. This memorandum reflects those revisions.

The Town of Harwich Firearms Range (range) is located on Depot Street in South Harwich, Massachusetts on land owned and managed by the Town along with the land that surrounds it. This range has been in existence and consistently utilized for over 70 years and has been open to the public in addition to serving as the firearms training location for the Harwich Police Department. There are no buildings or other permanent structures at this location except the concrete bullet catchment berm that was installed in 2011 by the Town funded through an Annual Town Meeting Article for \$25,000 for this specific purpose. All range targets, equipment, vehicles, debris, trash, etc. are removed from the site at the conclusion of each training session.

Currently the Harwich Police Department conducts its mandated and additional firearms (pistol and rifle) training at this location including: the State qualification courses, low or no light, tactical, marksmanship, officer survival, decisional (shoot/don't shoot), remedial, and new hire necessary for the continued professional delivery of public safety services, officer safety, and appropriate utilization of firearms in the most cost efficient manner. In addition, the United States Coast Guard, Cape Cod Regional Law Enforcement Council Tactical Response Team, Dennis Police Department, and Chatham Police Department have utilized this facility for many of their training sessions.



Continuing a longstanding history with our community, this range has provide a place for citizens, that have completed an approved firearms safety course and register with the Police Department, a location for firearms shooting practice that reduces firearms discharge by citizens in other less desirable or illegal areas of the Town. The range is open to the public on the weekends during non-law enforcement scheduled training periods. In the past, the range has also been utilized by the Boy Scouts and other civic groups for approved shooting events.

Over the past few years, some citizens that have purchased homes in the adjacent areas have expressed their concerns regarding the noise from range operations. Lieutenant Barry Mitchell and I have met with these individuals to discuss their issues and develop strategies for their mitigation. This report will provide background information on these complaints and what steps have been taken by the Harwich Police Department to mitigate the issues.

## **Complaints**

1. Frequency of Utilization: Much of the concerns expressed to date by citizens relate to how often the range is utilized and the perception that it has increased. For over ten years, the Chatham, Brewster, and Dennis Police Departments as well as the United States Coast Guard have also utilized the range on occasion. Recently, the Cape Cod Regional Law Enforcement Council (Harwich is a member of this organization) Tactical Response Team (SWAT) has also used the range. With concerns regarding homeland security, increase in violent incidents involving weapons on the Cape, and civil liability issues, training in the use of firearms have increased. This resulted in the range being continuously used for several consecutive weeks.

Remediation: Effective immediately, other town law enforcement agencies will not be allowed to utilize this range for their weapons training. Use by the Cape Cod Regional Law Enforcement Council Tactical Unit and the United States Coast Guard will be restricted (anticipated to be a total of no more than five days in any given year). This will greatly reduce the number of days the range is utilized especially during the week, as the Harwich Police Department will be the only town law enforcement agency utilizing the range.

2. Noise Intensity: Several citizens stated that the noise level has increased and there appears to be full automatic fire on the range. The automatic fire was the result of training that was being conducted by the United

States Coast Guard and the Tactical Response Team. General intensity seemed to be higher due to the number of individuals firing at the same time. Other concerns expressed included the perception that different or more powerful weapons were being deployed that increased the noise levels.

Remediation: The United States Coast Guard and the Tactical Response Team utilize higher caliber and fully automatic weapons in their training. Since these agencies will be restricted in use of the range for their weapons training and the Harwich Police Department does not deploy fully automatic weapons, this source of noise has been greatly reduced. The Harwich Police Department has been utilizing the same caliber of weapons (both rifle and pistol) since the mid 1990's and most often utilizes small group training; therefore, noise is less intense during these training sessions.

3. Noise Mitigation: Some citizens requested that the Harwich Police Department utilize silencers on their firearms to eliminate the noise. Although this may appear to be a viable option, there are several factors that preclude implementation foremost that it is a violation of United States Federal Firearms Laws. Silencers are three to six inches long, attach to the muzzle of a firearm, act as a muffler, and have to be removed before the firearm can be placed back in a holster. This is functionally impractical, costly, and again illegal except under specifically approved tactical applications.

Remediation: The Harwich Police Department is investigating various sound reduction alternatives including earth berms, acoustic panels (similar to those utilized on highways), additional trees/vegetation, etc. Of particular interest is the west end of the range as it is open and faces a gradual slope towards Depot Street where many of the concerned residents are located. Once the data has been collected, options will be presented to the Town Administrator and Board of Selectmen for their consideration and funding.

4. Weekend Use of the Range: Some citizens expressed concern that the range seemed to be utilized every weekend and that this was excessive. As previously stated, this range has provided for citizens, that have completed an approved firearms safety course and register with the Police Department, a location for firearms shooting practice that reduces weapons discharge in other less desirable or illegal areas of the

**Harwich Police Department – Memorandum**

**Board of Selectmen - Town Firing Range Report and Recommendations (Revised)**

December 21, 2011

Page: 4

Town. In the past, this was allowed at anytime the range was not scheduled for law enforcement training. For approximately the last five years, this was reduced to the weekend days only such that greater control could be maintained. Qualified citizens must respond to the Police Department, sign in and obtain the range key and flag. While at the range, the flag must be attached and raised on the flagpole indicating the range is in use. When done, the citizen has to respond to the Police Department and return the flag/key, and sign out. Any other unauthorized use of the range is considered trespassing and is addressed appropriately. **It is important to note that the Police Department has received several complaints of weekend usage that upon investigation found that the Town range was not being used and that shooting was being conducted at other locations (including the sandpit on the Harwich/Chatham border).** As long as the citizen has permission of the property owner and it is not otherwise restricted, this is not a violation of law.

Remediation: The Police Department will monitor utilization by citizens and not allow firearm discharge after sunset by the public. If this does not prove to be effective, the Board of Selectmen may want to consider limiting the weekend hours available for Harwich citizens (i.e. 10:00 A.M. to 3:00 P.M. on Saturdays and Sundays) to utilize the range. Caution should be utilized in eliminating the use of the range by citizens, as this will cause firearms discharges in other less desirable, uncontrolled, or illegal areas of the Town.

5. Use of Other Ranges: Some citizens suggested that the Harwich Police Department utilize existing private ranges and/or facilities at the Massachusetts Military Reservation in Bourne. Both of these options would increase expenses in facility fees, overtime, vehicle utilization, and fuel estimated to be in the area of \$25,000 annually. In addition, Massachusetts Military Reservation will not allow their ranges to be utilized for law enforcement training.

Remediation: The Harwich Police Department has proposed the construction of a regional in-door firing range on three occasions. The cost of constructing a facility of this type has been estimated at \$1.6 million excluding land. This type of facility could feasibly support 10 Cape law enforcement agencies; therefore, each town, if divided evenly, would be responsible for an initial cost of \$160,000 in construction and an estimated \$6,000 annually for facility maintenance. To date no town has provided actual commitment/support for this concept.

6. Notification of Range Use: One citizen requested that notification be posted of the dates/time the Harwich Police Department is conducting firearms training at the range. Currently the Harwich Police Department utilizes the range for two rifle qualifications, two pistol qualifications, and two night shoots annually for all sworn personnel. Night shoots are essential as national statistics indicate that over 70% of all law enforcement firearms incidents occur in reduced/low light conditions; therefore, officers must be trained to respond in these circumstances.

Remediation: The Harwich Police Department will post its regularly scheduled training dates and approximate times on the Department's web site. It will also post the limited dates the United States Coast Guard and the Regional Tactical Unit schedule training at the range. On occasions it is necessary to provide remedial or new hire training outside the scheduled events; therefore, there may be limited occasions where some training is not posted. Current scheduling provides that night shoots will be conducted during the fall and early spring when sunset occurs earlier in the evening and should be concluded at a reasonable time.

National studies have indicated that police officers properly and consistently trained with firearms are less likely to deploy them when unnecessary. All of the citizens that have expressed concerns also realize the importance and support of proper firearms training of Harwich Police personnel in the most professional and cost efficient manner. The steps that have been outlined above have greatly reduced the utilization of the range and its related noise while maintaining this training standard and public safety mandate. Although the noise of the range cannot be eliminated, the Harwich Police Department will work to be good neighbors with the residents in the area regarding the use and administration of range activities. If you have any questions or need further clarification, please feel free to contact me at your earliest convenience.

**From:** Link Hooper  
**Sent:** Wednesday, June 16, 2021 11:59 AM  
**To:** Meggan Eldredge ; Eric Beebe  
**Subject:** RE: Sand Pond

Hi Meggan,

As Eric stated in his email to your Friday, there has not been a life guard stand at Sand Pond in years, ever since the swimming lessons were moved to Long Pond.

Fence replacement: Eric has agreed to cover the \$1400 cost of the materials for the DPW to construct the guardrail style fence we have at other beaches and parks. The materials have been ordered, but not received. Once received, we will place this job in the work order queue. The Estimated labor is 3 guys for 6 hours at \$26 per hour + 45% benefits (3 x 6 x \$37.70) = \$678. The job requires our high track skid steer with its auger attachment to dig the 10 holes. If we were renting the machine and attachment it would be \$475 for the day. Total fence / guardrail labor costs are \$1153 + \$1400 materials = Total Job \$2,553. Since the fence job is all labor, the cost for doing it are in our existing appropriation of salary and wages.

Demo the old boathouse: I anticipate this being one day, two man job with one guy on an excavator and one running our dump trailer. The anticipated expenses are an educated guess on my part and are follows:

- Excavator rental - \$1000
- Disposal of wood debris - \$3,000
- Disposal of concrete - \$500
- Disconnection of utilities - \$500

The **\$5,000** cost above would need to be paid for by someone. The DPW nor the Recreation Department has an appropriation for this as the failed article had \$5k in it for these costs.

Fully allocated costs for the demo would include the following:

- Labor – 2 guys at \$26 per hour + 45% benefits x 8 hours = \$603
- Dump trailer – We have this equipment, but a rental would be \$125 per hour x 8 hrs = \$ 1,000

Total demo costs (direct and indirect) of the old boathouse would be \$5,000 + \$1,603 = \$6,603

Please let me know if you require any additional information. Thank you,

Link

**From:** Meggan Eldredge  
**Sent:** Friday, June 11, 2021 3:27 PM  
**To:** Lincoln Hooper; Eric Beebe  
**Subject:** Sand Pond

Hi guys,

At the BOS meeting on Monday, the Selectmen asked a couple questions about Sand Pond that they would answers for.

There was mention of a new lifeguard stand.

Is this a replacement stand or an additional stand?

Work being done by staff.

They would like a breakdown of **indirect** costs associated with the work the DPW is doing there (fence construction, regrading, demo work)

They would like a breakdown of the other costs as well (demo disposal, block disposal, excavator rental, utility removal, etc)

Appropriation.

Are the costs for the fence, guard stand and other direct costs coming from an existing budget? They would like to know where the money is coming from to pay for this work.

If you could get this info to me sometime next week I would appreciate it.

Thanks and have a good weekend,

Meggan



# HARWICH FIRE DEPARTMENT

## MEMORANDUM

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

<b>Date</b>	July 01, 2021
<b>To:</b>	Town Administrator Joseph Powers
<b>From:</b>	Chief LeBlanc
<b>Subject:</b>	CPE Receipts

I was notified by the Finance Director that the Town received a deposit from the Massachusetts Governmental Ambulance Certified Public Expenditure program. The fire department began submitting for these funds three years ago. The program allows fire departments to calculate the actual cost of providing Emergency Medical Services and then apply for supplemental funding. Essentially receiving additional reimbursement beyond the baseline Medicare levels.

A significant amount of work is required by both the Department and Coastal Medical billing to gather the information required and complete the application on the portal. Deputy Thornton did an excellent job with this year's application, which requires a thorough review of our budget expenditures and then applying those expenditures to the correct category in the application.

Our receipts from the program for this year were \$172,564. This amount represents close to \$5,000 more than we were originally slated to receive. Our original request was for \$168,092.42 and the program office receives about 5% of that amount for processing the request. Due to additional COVID funding being available we received the full amount plus \$4472.

June 17, 2021

BOARD OF SELECTMEN

Mr. Michael D. MacAskill – Chair

732 Main Street

Harwich, Ma. 02645

Re: COMMUNITY ENGAGEMENT ACTIVITIES



The Harwich Housing Committee is tasked with Assisting and Promoting Community Engagement Activities as they pertain to Affordable Housing. During a recent Committee discussion on this subject it was concluded that With the rewriting of the Harwich Housing Production Plan, would benefit with a Community Engagement Effort. Therefore The Committee is committed in supporting the Town Planner with Public Outreach as needed for the New Housing Production Plan.

At the June 15, 2021 meeting of the Housing Committee, voted unanimously To Support and Promote Outreach Activities for the Housing Production Plan.

Sincerely:

Harwich Housing Committee

Arthur F. Bodin \_ Chair

Cc: Joe Powers – Town Administrator

Jon Idman – Town Planner