



**APPROVED**

**RELEASED**

**MINUTES  
SELECTMEN'S MEETING  
Monday, June 28, 2021  
6:30 P.M.**

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

**ALSO PARTICIPATING:** Town Administrator Joseph Powers

**CALL TO ORDER**

Mr. MacAskill, Chairman, opened the meeting at 6:00 pm and explained that they will first go into Executive Session, then will go into open session no later than 6:30pm.

Ms. Anderson moved that they go into Executive Session to discuss strategy with respect to litigation regarding Watkins, et al. v. Town of Harwich, et al., Probate and Family Court Case No. BA 18E0025QC72 votes may be taken, and 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. Seconded by Mr. Ballantine.

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

Mr. MacAskill opened the open session and explained that they first went into Executive Session at 6:02 pm and adjourned at 6:25 pm. In Executive Session they discussed strategy in regards to Watkins, et al. v. Town of Harwich. Mr. MacAskill explained, that it was related to sand rights regarding a lot that they may or may not have taken, a long time ago. The Board voted not to defend that action, which will mean that it will just go away. Mr. MacAskill also explained that they had a discussion 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 said that no action was taken.

**PUBLIC COMMENTS/ANNOUNCEMENTS**

APPROVED

- A. Ms. Carolyn Carey, Director, Harwich Community Center, wanted to let people know that the Seaside Marketplace will be open on Wednesday, and they have a full schedule. She said that booklets, with the schedule and information on each vendor, are available throughout the town and online.

## CONSENT AGENDA

- A. Discussion and possible vote to approve a gift of a Loops Equine Rescue System to the Harwich Police Department.
- B. Discussion and possible vote to accept a donation in the amount of \$25,000 from the Monomoy Regional School District to support the Harwich Elementary School playground design.
- C. Discussion and possible vote to approve the action recommended by Cape Light Compact relative to publicly owned outdoor street lighting and operation maintenance agreement from Siemens Mobility, Inc. to Yunex LLC.
- D. Discussion and possible vote to approve the Committee Appointments recommended by the Interview Committee:
1. Carol Fuller – Golf Committee – Full Position – Term expires 6.30.2024
  2. Bradford Chase – Conservation Commission – Full Position – Term expires 6.30.2024
  3. Jacqueline Leach – Cultural Council – Full Position – Term expires 6.30.2024
  4. Nina Schuessler – Cultural Council – Full Position – Term expires 6.30.2023
  5. Roger Peterson – Waterways Committee – Full Position – Term expires 6.30.2023
  6. James Atkinson – Real Estate, Open Spaces Committee – Full Position – Term expires 6.30.2024
  7. James Atkinson – Conservation Commission – Full Position – Term expires 6.24.2024

Ms. Anderson moved to approve the Consent Agenda, items A through D, as listed above. Seconded by Mr. Howell.

Mr. Ballantine said he does have a question about the donation to the school for the playground, regarding the procurement procedure. He asked, if this is for design only, and then they will go through a full RFP? He wanted to know if the design was done through a competitive bidding, for the design itself?

Mr. Powers said that it was his understanding that the RFP that went out was for the design and materials, and he believes that is due back later this week. He said that the gift would be comingled with the funding that was already available. Mr. Powers said that when the CPC article first came up, there was concern that there would not be sufficient funds within the CPC article itself, so they took the line that if there was more money needed, they would be seeking it from other sources. So, he said that this is meant to augment what is already available.

Mr. Ballantine asked if that was for the design, and then they will go for competitive process for the construction.

Mr. Powers said it is his understanding that this is for the design and materials, and the installation would be secondary. He said that he can check with the Assistant Town Administrator, and get back to them.

Mr. Ballantine said he would like to be comfortable knowing that they are going through a competitive bid process on this project.

Mr. Powers said that they are, and everything they are doing is in concert with c. 30b, and will all be done with the request for proposal procedures. Mr. Powers said that he just received confirmation from the Assistant Town Administrator, that the RFP is for the construction purposes.

Mr. Howell said that there was some rationale for this, because in Chatham, it was the same process but was basically geared to one company. He said that he would not be comfortable if it was not sufficiently wide to get competitive bids. He wants to sure that there are people to build what the spec says.

Mr. Powers said that it is the Town's priority, and preference, to do exactly that. They will find out through the RFP process how well it is written, and they always reserve the right to cancel it and go back out.

Mr. MacAskill wanted to thank Michael and Jennifer Lewis, of Westgate Farms, for their generous donation for the Loops Equine Rescue System to the Harwich Police Department. He said that this followed a tragic horse accident and this was equipment that was needed that day to pick up the horse.

All in favor, motion carried by a vote of 4-0-0.

## **NEW BUSINESS**

### **A. Discussion – Ad Hoc Noise Committee’s Noise Report, Noise By-law, any and all items relating to noise in the Town of Harwich**

Mr. MacAskill explained that this report has been a long time coming and they had cancelled it due to some litigation and hearings they were going through and most of that is behind them at this point.

Ms. Angela McNamara, Chair, Harwich Ad Hoc Noise Containment Committee, explained that the chief items on the list were:

- Lowering the volume;
- Self-regulation by businesses;
- How to minimize residents’ involvement in enforcement;
- “Plainly Audible” definition;
- How to improve communication between residents and businesses;
- How to get faster turn-around for violations;
- After hours noise by patrons.

Ms. McNamara said that the Noise Committee voted on the definition of “Plainly Audible” and said that the vote was five in favor of not changing the current language in the Liquor Regulations, and two votes in favor of using the Noise Bylaw’s definition, which is a new point now. She said that the Noise Committee voted unanimously to ban sing-alongs, cow bells, horns, karaoke, music generated from cell phones, and other noise enhancers. They also voted unanimously that a “fast track” process be used, whereby a violator could opt to pay a fine, or move forward to the hearing process.

Ms. McNamara said that they also discussed a quicker hearing process, stronger sanctions for violators, and began developing a penalty schedule, which they have not finished the discussion on yet.

She said that they felt it was important for establishments to have a contact number and name, which residents could report alleged excessive noise. She said that this person must have the authority to address the complaint before law enforcement gets involved, such as a manager.

Ms. McNamara explained that they briefly looked into decibel meters for enforcement, but it was felt the learning curve was too steep for now, but it might be worthwhile looking into it in the future. The Committee separately discussed the use of decibel monitors for self-regulation by businesses and she believed that the majority are in favor of this, although they have not thoroughly discussed it. She said that it was originally proposed by Chief Guillemette, prior to the Committee being formed. Ms. McNamara said that they also had received input from Chief Guillemette on a number of other topics: (a) he agreed that the introductory pre-season ABCC meeting be made mandatory for pouring establishments; (b) he said that the lyrics test would be eliminated for determination of Plainly Audible; and (c) that he would try, but couldn't promise to increase proactive policing in the last hour of performances.

Ms. McNamara said that the Noise Committee very briefly discussed the use of a paid security detail, at the expense of the establishment, to deal with crowd noise at establishments that are open later. She said that this was a very brief suggestion at their last meeting. She said that she feels it is worth looking into, and she believes that one of the establishments already started doing this.

Ms. McNamara said she also had a question, and asked where the measurement starts for the 150'? She asked if it is at the property bounds, or at the point where the performer is?

Chief Guillemette said that the wording in the liquor regulations has a clause in there, that states that the distance can be measured from the boundary or from the source of the amplification, whichever is further.

Ms. McNamara said that she had another question for the Board, and asked if amplification is still an option for these business, or is it acoustic only?

Mr. MacAskill said that is not broad, he said that some businesses are allowed amplification, and others are not.

Mr. MacAskill called upon Attorney Christopher Senie, who had written a letter to the Board of Selectmen.

Mr. Senie said that he is an attorney and lives in Brewster. He said that he has a small land use law practice, and over the years he has been involved with a number of nuisance cases, mostly involving noise. He said that he was hired by three members of the community, in Harwich Port, that have been impacted by the noise of the businesses there. He identified those three residents in the letter and said that they hired him to read the bylaw which was adopted by Town Meeting, and to read the liquor and entertainment license regulations. He said that he did that and provided them with a memo.

Mr. Senie said that he thinks they have very good regulations in their ordinance, and the use of the 150' and "plainly audible" standard, which is the standard used by all of the towns that abut Harwich. He said that the liquor and entertainment, also has similar protective language. He also stated that he thinks that they are doing well, in the way they are issuing the licenses and are doing it in a way that is supportive of their regulations. Mr. Senie said that the 150' is a good foundation, and although the residents and homeowners should still be considered, that live within the 150', he does not think there are any needs for changes. He said that it has been fair to the community. He said that citing a restaurant is not anti-business, it allows them to adjust how the business is done. Mr. Sensie said that he has told his clients this, as well as the letter to the Board, that he thinks they are doing things the right way.

Mr. Robert Cohn, Pleasant Street, Harwich Port, read through a letter that he wrote to the Board of Selectmen, found in the packet, and included examples of how Nantucket restaurants abide by the noise limitations. He thanked everyone for their time and efforts on the noise issue.

Mr. Bob Nickerson, Harwich Port, said that he wanted to hit on something that they have not really spoken about. He said first he wanted to thank the Board of Selectmen for putting the noise bylaws on the agenda for discussion. He also supports the uniform and consistent enforcement of the bylaw and liquor license regulations that appear to be the thrust of this discussion. Mr. Nickerson wanted to make a clarification on the noise bylaw, which he thinks they missed. He read that in MGL ch. 189, it states plainly audible at a distance of 150', and then you go to outside entertainment and it states not plainly audible at a distance of more than 150'. He said his key point to this is, if they are looking at 150', and the property is within 150', they are not

covered. That is not what the bylaw says, it says 150' and it does not recognize property lines. If you go around and define 150' points around the venue, then the venue can check those points throughout the night. The police would also have those specific points to check, and there would be no argument, it would simplify the process. He said that this is something that the Chief should consider doing.

Mr. Jay Psaros, Weymouth said that he wants to enter into this gently, because he is not part of the community here. He said that he is a music business professional that frequently plays for a few thousand people, and he handles all of the bookings at Perk's. He said that he has been listening to all of these bylaws and has seen the struggles that Perk's has been going through. He was to speak on behalf of the musicians, because his livelihood really depends on it. Mr. Psaros said that someone had mentioned decibel readers before, and he thinks that it is one of the only things that will draw a hard line of what is right and wrong. It is science and it is a fact. He said that plainly audible is a great term, but everyone's hearing is different. He thinks decibel readers are easy to use, they are not expensive, and you can go around the property and either you can hear it, or you can't.

Mr. Psaros explained that he runs a studio in Scituate, MA. He said that the space is overseen by a Historical Board and they originally did not want to lease the space to him, because they thought he would be loud. He said that he is a folk singer and a pretty gentle guy and now that time has gone on the situation has worked out great. He said that the think with music is that it can fluctuate, and the solution can be as easy as turning down a knob. Mr. Psaros explained that Perk's is installing a uniformed sound system, instead of one big speaker, they are putting in ten little ones. He said it costs a bit more, but the sound is better for everyone and something that other venues should consider. He said that he found some things in the bylaws that were weird, and said that the statements of non-amplified music or house music, is basically the same thing, and there is a discrepancy there.

Mr. Psaros said that musicians are terrified of losing work, especially after this year. He said that he does not think the consequences are that dire, if it is a little loud, it can be turned down. There are two easy solutions, a decibel reader, which is factual science, and can't be argued by someone else's bias. He said that, coupled with technology, and systems that can allow for lower volume spread throughout a greater area, could help solve a lot of these issues. He thanked the Board for the opportunity to speak.

Mr. Robert Piantedosi, 89 Bank Street, Harwich Port, said he wanted to keep the conversation going just a little bit. He said that 89 Bank is fairly close to Ember, and there are concerns as a resident. He supports all of the establishments, and he said that they go to all of them as much as they can. However, he said that it is a two way conversation and supporting the businesses and being able to live in Harwich Port and enjoy Harwich Port. He said that they have been there a long time and enjoy the fact that you have to pay a premium to be closer to the ocean and some days when the wind is blowing, they can hear the ocean. Mr. Piantedosi said that they want the businesses to survive and understands that there is a certain amount of time that they can make their money. However, that is also the same time that people have made major investments to their homes, and they should be able to enjoy their back yards, without the noise of the establishments. He said that he would like to keep the conversation going. They are supportive of the establishments, but would like the establishments to also be respectful of the fact, that their space is valuable to them. He said that the opportunity to listen to their own music in the evenings, or the rare occasion to be able to hear the ocean, is fabulous. That is why they paid a premium. Mr. Piantedosi said that as they continue the conversation, they need to consider each person's needs, and their wants, and he thinks that they can do it in a comfortable way.

Mr. Paul Manning, owner of Roots, The Mooring and the Pineapple House, said that he hopes they can come to a balance. He said that he grew up in this town and has been here for 50 years. He said that he thinks they have done a good job and the music in Town is valuable because everyone that they rent to love the music. He said that if they can come to a balance, it would be really important because they have distinguished themselves from other towns and the people who come here really like it. Mr. Manning said that he is sensitive to the people who live around the area, he can hear the music from Wychmere, at his home. He said that he likes that they are allowed to do it, because it brings so much livelihood to the community and the neighborhood. He said it is important and the town is great because of it. They hear it from the people that visit, and how much they love it. Mr. Manning said that the establishments have been great for the community, and added so much value, with increased rents and values of homes, and also has added value to the Town. He asked the Board not to underestimate how important it is and how much these owners have put into this. He said it is a cool Town and so much better than other areas and they need to be sensitive to both sides.



Mr. Taylor Powell, owner of Perks Coffee Shop and Beer Garden, at 545 Route 28, said that he was also there with his wife Sarah. He said that he appreciates everyone's thoughts and that they have been working really hard to try and make it right. He said that this year has changed, and they have cancelled all of their music because of the violations that they got. That means that Mr. Psoras has not been able to work for them, and their musicians are not playing, and they haven't played in a year and a half because of the pandemic. He said that to touch on the violations, the language in the music permit was always about live music, the ambient background music was not talked about. It was always about shutting this live music off. He said that ambient music you cannot hear past the property line, you could have a tv on, as long as it does not create a nuisance. He expressed the differences of indoor and outdoor noises and end times, and said that it is not the case, and not what their licenses say. He said that they should not get in trouble for playing light music that can't be heard or affecting the neighbors, but they got in trouble for it.

Mr. Powell said that when they discussed it in 2016, it was whichever is further, the source of amplification or the property line. He went to the hearings, he commented that Mr. MacAskill and Mr. Howell were on the board at that time, and they should refresh their memory of those hearings. It was said whichever is further.

Mr. MacAskill said that the chief had clarified exactly what he is saying earlier.

Mr. Powell said that he just wanted to be sure, because they got a violation within 150' of their property.

Mr. MacAskill said to be clear, they have an alleged violation.

Mr. Powell said that one thing they did not know, and the reason they cancelled the music this year is because they are scared. They do not want to disrupt the neighbors and they want to get this right. He said that they were never notified of the changes, and their permit still says plainly audible at 150'. He said that plainly audible was always interpreted by law enforcement, as, "can they hear the lyrics". He said that they have had it quieter then they have ever had it, they put in a new house system that cost \$9,000. He said they are trying and got small speakers, so that you can't hear it past the property line, but someone called and law enforcement showed up. He said

they were very professional and a great interaction, but they said that if it can be heard at all, at 150', it is now a violation and that is how they are interpreting it. Mr. Powell said that this affects them, because it is called a liquor license violation, and now they are getting pinged on that. He said he does not know if there is a disconnect there, but they are just trying to make it work and do not want to get in trouble for doing it.

Mr. Powell said that he also wants those voices that are not speaking tonight, that enjoy the music, to be counted as positive votes. He said there are negative votes, but they have a town festival every Wednesday and it draws in all of these people, and he does not understand why the businesses can't have that. The way it reads right now is that they can't have live music at all. They are up after this is for an indoor permit, and to move the music indoors, but they would still like to have live music outside. He said that people like it outside, and with the pandemic people are still not going indoors. He is there for his indoor permit and he hopes they will pass that for his TV and ambient music, so it can be contained. He said that he appreciates what everyone has said tonight.

Mr. Walter Mason, 76 Miles Street, said that he is also a member of the noise committee. He said that the biggest problem with the noise committee was this plainly audible definition. He said that they could not come to a consensus on it. It sounded to him that it was going in the direction of "if you can hear it" standard, but they went back and forth on it a lot. He said typically if he walks into town he will stop if there is music at Perk's. He said that he meets his parents, his dad is 92 and mom is 89, and they love meeting him at Perks and listening to the music. He said that he was there the night Mr. Powell got the violation and he had walked around checking the sound and said it could barely be heard. He said if they are going to enforce the "you can hear it" standard, then they might as well just take it out, because it is not going to be viable.

Mr. MacAskill asked Chief Guillemette to give his opinion on the plainly audible.

Chief Guillemette said that when the noise issues started some years back, his approach had always been the liquor licensing regulation, not the noise bylaw, but said that they overlap. He said that the liquor licensing regulation, which has the plainly audible, but the definition is not within the regulation. He said that he has asked their officers to be reasonable, but did not provide them with

any more of a definition. He said that this had evolved into the officers responding to these calls coming up with the “can you hear the words to the song”. However, that became very controversial in the Noise Containment Committee meetings, and the definition of “plainly audible”.

Chief Guillemette said that as things progressed, and the issues continued to grow, he decided that he would issue a directive to the officers. He said that it is not listed anywhere, that you have to hear the lyrics to the song, for it to be an alleged violation. He said so he re-read all of the material and the definition of plainly audible is clearly defined in the noise bylaw. When the liquor regulation was amended and the noise is not to exceed the premises, that is when the 150’ was brought into the regulation. He said that his comments to the officers was that if the definition of plainly audible is in the anti-noise bylaw, which applies to every citizen of the community, including in their private residences, then it stands to reason that it applies to establishments licensed under MGL ch. 138, which are more strictly regulated than a private residence.

Mr. Al Novak, 30 Harbor Road, said that he is Mr. Powell’s dad. He said that he has owned that property at 545 Main Street for about 18 years, and it went through a variety of businesses that lost a lot of money. He said, then Taylor came to him and got a liquor license, and they turned the business over to him. It is a big part of his life and he invested a lot of money and time and it is a difficult position. He said that his view of the solution has to be some objective measurement of what the ambient noise is, 150’ out plus something. He said that people should be held to some decibel measure, and it is objective, but at least it is something that the people can buy into. He is not sure if that is something the residents can buy into, but it is something that is measurable. He said that he is sensitive to this because they live on Wychmere Harbor and can hear the weddings, and he is also a member of the club there. However, he said that they celebrate to the bride and groom. They hear it and they live with it, and it is certainly within 150’ of where he lives. He said it needs to be a balance.

Mr. Joe Ganley, 42 Sea Street, said that he is wildly in favor of the idea of balance and said that they like Harwich Port because of the mix of commercial and residential, and often visit these establishments when they are in town. He said that the balance point, is an important point. However at some point there needs to be a standard. They cannot expect the police to enforce a vague standard, that does not have some hard and fast way to determine if there is a

disturbance or not. It is consistent that establishments are not supposed to cause a disturbance to its neighbors, that is the general idea of the noise law. If they had a big party in his backyard, the police would show up and tell him to shut it down if he was disturbing their neighbor. He thinks the Board should send the noise committee back to continue their work, and thinking about what is the right standard to achieve a balance.

Mr. Ganley added that there has to be a mention of crowd noise, beyond just live entertainment. He said that he submitted a number of videos to the Board where there was no live music, but a definite disturbance to the neighbors based on a rowdy crowd. That is well within the noise ordinance that should be considered. He said that he is an attorney and understands that there needs to be a strict standard, and the law has to be applied equally. However, different establishments operate differently, and they should look at the management of these establishments and judge for themselves if an establishment is trying to achieve balance and being a good neighbor, or not. He said that the character of the establishment, and how they are comporting themselves, is relevant. Not everyone is trying to do the things they are talking about tonight, in terms of speakers and lowering the volume, and policing themselves, and that is relevant. Mr. Ganley said that it is not fair to hold an establishment that is trying to do the right thing, accountable for another establishment that is not. It is a relevant consideration for the Noise Committee and for the Board.

Mr. Piantedosi, 89 Bank Street, wanted to add that there is also a consideration that when they issue licenses, they are clearly seeing the impact of traffic, outside of the noise. He said that the amount of traffic and late night traffic is going off the charts. He has years of traffic data on Bank Street.

Mr. MacAskill said that will need to be a separate conversation.

Ms. Frances Rich, 19 Towhee Lane, also a member of the Noise Containment Committee, said that what the Board is hearing tonight is just a little bit of what they had dealt with each meeting. She is a trained mediator and what she would like to see happen is a few of the business owners, sitting down with a couple mediators, and some of the residents, and let them hash out some of this. She said rather than just asking the Noise Committee to come back, they may be able to come up with some ideas that the committee had not thought of.

Mr. Mike Strangfeld, owner of The Mad Minnow and 3 Monkeys, said that they need their community to be together and be friendly. He said that one thing they would request is to be given a chance. They are not open late, but noise does travel. He said that if someone calls the police, he would like to be given the chance to turn it down, and not just get a violation. He said that they just want a chance.

Mr. MacAskill said harmony in Harwich seems to be a theme. They have gone through an incredible three years and said that he agrees with Mr. Manning on what the businesses have brought to the town. He said that the Board of Selectmen is very supportive of the businesses. However, some establishments, but not all, have abused that. He said that based on what he has heard tonight, they are trying to change things and they are here to talk about what they are doing and work with the neighbors. Mr. MacAskill said that it would be a shame to go backwards and not have entertainment. Harwich Port has become a great place to be, and he has heard it from other towns, but the neighbors need to have some peace and quiet too. People need to respect their neighbors. He said that people should be able to call an establishment, and not feel intimidated, the nonsense needs to stop. He is going to ask the Town Administrator for comments and then ask the Police Chief to review what they are doing right now to help with the noise, and increased actions, and why.

Mr. Powers, Town Administrator, said that he will reserve most of his comments to the next topic and his memorandum on dealing with all of the different versions of noise. He said that the Noise Committee started just before he did and he thinks there was a lot of effort put in by the committee. He said that he is encouraged by what he has seen this evening. It also occurred to him that matters were handled differently in years past. He thinks this Board has been very engaged in this issue, and he thinks this has been a positive conversation. Also, a start of a new conversation, in the new post pandemic world. He said that he will speak more specifically to how the Town should evaluate, analyze, and enforce its bylaws, both for licensed and non-licensed establishments.

Chief Guillemette said that as a result of everything that had transpired, he heard it loud and clear that there was a decent amount of lag time between an alleged violation occurring and it getting on the agenda for the Board. He said that on Mondays, he is personally reviewing the log from the previous week. He said that anything relating to an establishment, that could potentially result

in alleged violation, is going into the report sent to the Board. He said they should be seeing that now. It is his intent to speed up the process. He said that the plan is for the Board to have the information as quickly as possible, within a day or so of the occurrence, and then the Board can determine what to do with the information.

Chief Guillemette explained that his directive to the officers, this year, has been to use the plainly audible definition, in the noise bylaw. He said that the officers seem to understand that, and it is a noise heard at a distance beyond 150'. He said anything just beyond ambient noise, which could be a drumbeat, a cowbell, or yelling and screaming. He said there is also a lot more focus, through him to the officers, that they need much more detailed and timely reports any time they deal with a licensed establishment. He said that himself, the deputy and the operations lieutenant are involved and anything that would require more information, they would ask for a supplemental report. He said that this is a constant learning curve, because it is a confusing issue between the wording of the noise bylaw and the applicable regulations. He said that they are constantly working to ensure their reports include the necessary information. Chief Guillemette also explained that this year, different from past years, that the warnings did not seem to work, so there are no more warnings. He said his new approach is that any interaction the police have with a licensed establishment, is resulting in a memo to the Board describing what happened. He said that they tried to provide written warnings to the establishments, and that just didn't seem to work, given what transpired. Chief Guillemette said that he has also instructed the officers to ensure that they contact management, and inform them of the complaint and what their findings were. He also clarified that all entertainment has to cease at 10:00 pm, and anything beyond that is an alleged violation.

Ms. Carol Novak said that she just wanted to ask the Chief for clarification on what he mentioned as a violation for noise inside, after 10am or 10pm?

Chief Guillemette said that all entertainment outside, must cease at 10:00 pm, and indoors is typically midnight. However, if windows are open, and you can hear noise at 150' that would be an alleged violation.

Mr. Tony Gullotti, Owner, 3 Monkeys and Mad Minnow, asked if people calling in to complain are required to state their name and address? He also asked if they do not, then how would the police know if the person that is complaining is within the 150'?

Chief Guillemette said that they will still investigate an anonymous complaint. He said that it will be up to the officer to determine if the noise was extending beyond 150'. Chief Guillemette said that he also wanted to add another point, from the licensing meeting he attended, he said that he listened to the licensees frustration about just popping up on the agenda.

Mr. Powell, Perk's, asked if that meant that any place, throughout all of Harwich, would have to shut off their TVs and music, indoors by midnight, otherwise it would be an alleged violation? He asked if they could work on that and still have ambient music, or noise, that is not a nuisance, confined at the property, and not get written up to the Board? He said that the permits were always for live music, and was not about a Red Sox game or something. It said that it seems that they are going backwards.

Mr. Gullotti, said that he just wanted to be clear, if someone had to wait an extra minutes and leaves to go home to Hyannis, they could call in a complaint to spite an establishment. He said that he does not understand how they can figure that out, if they do not know the address or where the complaint is coming from. He said that it just does not make any sense to him.

Mr. MacAskill said he understood what Mr. Gullotti was saying, but he has faith in the Police Department to be able to investigate the 150 feet. He said that is why they are there, and the problems that have gone on in the Town. He said that the Board has been put in a position to make things crystal clear and to not waste the tax payers money with lawsuits. They are now in a position that they need to be absolutely clear, and he said that the police have an obligation to investigate any complaint that comes in, but he does have faith in them.

Mr. MacAskill asked Mr. Powers to provide an explanation of how he is doing things differently when it hits his desk, based on what the Chief said.

Mr. Powers said that with the Board's weekly schedule, he knows that on Monday's, he may hear from the Chief about something from the weekend. He will provide a memorandum with the status, which will go before the Board, to determine if the facts presented by the Police Department, warrants a hearing, and who they would have as a hearing officer. Mr. Powers said that they will see later on in the meeting, that they were made aware of an alleged violation, which was presented by the Chief. He said that it went to this Board

at the end of May, and they have met all of the requirements for public notice of hearing, which is 14 days. They turned it around last week, and they have a disposition to be considered this evening. He said that it is accurate to say that it cannot go faster than that.

Mr. Ballantine said his remarks will be brief, and that he is encouraged by the atmosphere and the way people respected each other tonight. He thinks it is going to take mutual respect and people policing themselves. He would like to see balance, and thinks that the Committee should keep a discussion going on regarding house speakers, for instance, and further discussion on the plainly audible. He thinks they need the discussion to be ongoing.

Ms. Anderson said that she thinks it is sad that it has gotten to this point. She said that she is a fairly new Selectman, but she has been watching it all transpire. She thinks it is sad, and that there are more important things besides noise to be discussing, but what has happened is dictating that they are taking these steps. She also added, just to reiterate, that the email letter that they all get on Mondays is always an alleged violation. She said that they are not all the same, and they are looked at individually. Some go to a hearing, and some do not. She thinks that they can move forward equitably.

Mr. Howell said he was going to echo what Ms. Anderson said. They would not be here if this had been a case of consistently reasonable behavior on the part of the businesses, and also the community. He said that he may be the only person in the room that has been told to turn it down, professionally, and he wishes he could tell everyone in the room that there was a silver bullet, a panacea for all of this. Mr. Howell said that there are sound treatments and panels, but the problem that you have on Cape Cod is that sound has a threshold mechanism and the wind can change the way that sound travels. He said if there was an objective way of handling this, they would have gone after that. He said that the way sound travels varies, so you could have the same exact volume on electronic amplification, and get different results measured at 150' out on any given day. Mr. Howell said that if the businesses were interested in being community members, that would help the situation hugely and that simply did not happen. The only way to reasonably get out of this, is by starting to enforce standards upfront, so that everyone knows they are serious about applying those standards. At some point or another, they will figure out who is trying to work with the neighborhood and those that don't care. He said that he hopes that everyone cares, but that is not the case.



Mr. MacAskill thanked those that spoke tonight, and said that they appreciated the feedback.

B. Discussion and possible vote on a proposed penalty structure for violations of Chapter 189 – Noise as outlined within the Town Code as well as noise from licensed establishments

Mr. Powers said that in anticipation of their previous discussion, the Board had directed him to analyze the noise bylaw. He said that he was directed to analyze MGL, c.138, the noise bylaw, on the general bylaws in Harwich, as well as liquor license regulations, as it as they pertain to noise emanating from licensed establishments for liquor service, as well as, noise from licensed establishments for liquor service that also have entertainment.

Mr. Powers said that in the memorandum, found in the packet, he said that he would argue that the disciplinary guidelines that exist presently, both in their license regulations, which would be noise that would come from a crowd and is completely separate and distinct from entertainment, as well as noise that is caused by entertainment, and then of course noise that relates to all other properties and residential and non-licensed establishments. He said that the Town's regulations are very well constructed and he finds them to be very well thought out. He said that the disciplinary guidelines, in the liquor license regulations, do several things; first, it gives fair warning to all establishments that the Board, acting as the local licensing authority, has a wide berth as to how they can determine punishment if an alleged violation is found to have occurred and whether it is a first or subsequent offenses. He said that his only recommendation to this is that it only refers to a third offense, and his recommendation would be to add the language, third and subsequent offenses. That would emphasize that it does not stop at three, that there can be more than three offenses. He said that the regulations were established 10 years ago and modified six years ago, so it is a good time that the Board, as an active local licensing, may want to consider reevaluating the regulations. If they were to do that for the next licensing season, January 1<sup>st</sup>, they may want to contemplate having that discussion by early Fall. However, he thinks the guidelines are very clear.

Mr. Powers said that he neglected to mention this when asked what I would be doing in my procedures, that may be different from the past, but in reading the liquor license regulations, there are sections that are about other actions or

inactions for the licensee. They have those actions or inactions to constitute additional violations, meaning, separate from noise. He said that there are the illegalities that if they have occurred and the absence of the establishment identifying to the Town, of an illegality, could constitute an illegality. He also discussed the reference on the first page, regarding noise that is caused by a crowd. He said that the regulation is very clear on the expectations on the establishment, and there is supposed to be, there must be, there shall be, a person from the establishment to be mindful of that crowd. That is something that has been in the regulations since it was established, it is not new. He said that is something that the Town has been lax in looking at and they may want to consider expanding upon their interpretation and execution of additional potential violations. He said that establishments have gotten away with things and they have to do things differently and be more stringent as these processes go through to get to a better end after that.

Mr. Howell said he thinks that he did a very thorough dive into where they are right now. Unless they were going to revise the whole thing, he suggests taking the path that Mr. Powers is recommending.

Ms. Anderson said that she had a question, where page two talks about proposed disciplinary guidelines for noise, separate from entertainment, but doesn't have any similar disciplines for noise from entertainment?

Mr. Powers said that one of the directives he took is, does the town want to consider disciplinary schedules separate and distinct from liquor license violations? He said that they know that the vast majority of establishments that have entertainment, also serve liquor, so they have been co-mingled over time. If the Board wanted to establish a standalone disciplinary guideline, relative only to alleged violations caused by entertainment, they can build it exactly as they do for any violation of the liquor license. So, if they wish to separate it, the recommendation would be to mirror what they have for any violation, under license establishments, and it would have to be the same for entertainment, if the board considers that. However, he said that it is very well laid out, presently. He said that was one of the directives if the Board wished to contemplate a disciplinary guideline for entertainment itself, and he believed that came from what the ad hoc committee was considering over the past years.

Ms. Anderson said she was still not understanding it. She said that it looked like it was giving a proposed disciplinary guideline for noise separate from entertainment.

Mr. Powers clarified that section follows the previous one, the previous one talking about noise coming from a licensed establishment, that has nothing to do with entertainment. A hypothetical would be, as seen under 1.04, if there're people amassing outside of an establishment, waiting in line to get in if that causes noise to be a problem for residents of the area, or passersby, that would be in violation of noise, separate and distinct from entertainment. The violation scheduled for that, would be as a liquor license infraction. He said that the bottom line is that he thinks the regulations as they are constituted are well-written to cover every scenario. That was also meant to set up the third topic, which is noise emanating from non-licensed establishments, meaning not licensed for liquor and not license for entertainment. The answer is to rely solely upon your bylaw because that's a non-criminal act. That is what it is meant to get to.

Ms. Anderson said that she had one other observation, considering the topics that are really important to them, like the budget and wastewater. She said they are spending all of their time on this, so perhaps in addition to warnings and suspensions, she wondered if they should put fines in there? They can put a fine structure together to put the money towards wastewater or something.

Mr. Powers said the problem with the fine structure with licensed establishments, it could be perceived by ABCC or other entities, that they are doing multiple punishments. A fine and a suspension could become problematic. However, the way the regulations are written right now, the Board, acting at the licensing authority, is not bound by the three ranges that are listed; 1. First offense: warning to seven day suspension. 2. Second offense: warning to thirty day suspension. 3. Third offense: warning to revocation." The local licensing authority, the Board, has the right to perceive the facts of the case, as it was presented to them, and levy the punishment that they find appropriate within those parameters. So they could consider a fine to be an appropriate discipline, however, they may want to vet that with counsel.

Mr. Ballentine said that it is a well-written document and agrees that they need to move forward with it for now, and they may have some options moving forward.

Mr. MacAskill said that he thinks *the third and subsequent offense* is a good line to add. He doesn't want to stop at three. However, he does hope they get to the point that there is harmony, and to start focusing on what is important to the Town.

Mr. Powers confirmed they will bring it back to review the language change at the next meeting.

- C. Town Administrator to present his Finding of the Facts from the Show Cause Hearing that was held on June 22, 2021 for Wychmere Harbor Beach and Tennis Club located at 23 Snow Inn Road

Mr. Powers said that this is indicative of a process change the Board has mandated and that staff is taking a heart. He said that this is from a meeting they had in May, when they were presented with an alleged violation, which emanated from the Police Department responding to a call at the Wychmere Harbor Beach and Tennis Club. Mr. Powers said that it was an alleged violation of their entertainment license.

The hearing was noticed, as is required, and the hearing was held on June 23, 2021. He said, as found in his memorandum, that he was pleased to find that the establishment raised no objection and they understood the facts as presented by the Police Chief. The licensee, through their attorney, made a statement that they admitted to the facts as outlined, and apologized to the Town for their transgression. Mr. Powers explained that because they admitted to the facts, they are then in violation of the regulations, specifically as it relates to noise. Therefore, he has found that they are in violation of the laws of the Commonwealth, and given that there is no record of prior violations or alleged violations, this constitutes their first offense. He said that given that the licensee fully cooperated and took responsibility without challenge, he recommends that the Board issues a warning, which is consistent with a first offense under 1.117 disciplinary guidelines, within the liquor license regulations.

Mr. Powers said that again, he had made note of the fact and told the establishment that he would highlight it here, they were found guilty and they

admitted to it. They did not drag the town through any unnecessary proceedings and the entire thing was handled with tact and diplomacy. He indicated to them that there had been a past practice that when the police issue a warning, it is a warning that does not go to their record, he had told them that he would research if that would be the case here. However, the past action of the Board, has been when they have found an establishment in violation and it is their first offense, a warning is standard, and the warning does impact them for two years as a found violation. If the Board supports this tonight, they will be sending out a letter from the Board, as early as tomorrow, telling them that they have been found guilty and it is a warning and now on the two year clock. If anything happens at that establishment, it will be a second violation. It was an expeditious process with all involved. The town should be pleased with that.

Mr. MacAskill said his comment is, that it is a breath of fresh air. He said that he is not sure if past practice should matter, as they are a new Board, and perhaps should be establishing new practices. He commented that based on the fact that it was a hearing scheduled timely, they came in, and said yes they did it, it speaks volumes of that business. He will open it up to the Board for comment.

Mr. Howell said as he mentioned earlier, conditions can change the result of noise, and they really can. He said that it matters more to him about the repetition. He said that if they leave a violation for noise on for two years, that is a lot of days. However, given that fact, he thinks it all hinges on what they decide to do. When the police go out, they do not try and de-escalate, they just report the facts. He said that they are not enforcing things uniformly and not getting to the Board level for months. Mr. Howell said, that he would go along with the warning with this.

Mr. MacAskill asked if they just issue a warning, does it have to be a warning with it on their record for two years?

Mr. Powers said that he would urge the Board to do that, and that it is the appropriate action to take. He said that he is also mindful of the fact that for however long the establishment has been there, there has been nothing on the books for them. The extenuating circumstances that they stated in their presentation, he found to be a legitimate. It was an outdoor event, where this was still impacted by COVID, and they have had not had an opportunity to change their practices yet. It was an outdoor event and they do not typically

have them outdoors. He thinks it is wise for the Board to keep it this way, because they do not know if management will change, or any number of things could change, and they do not want to deny themselves of the structure of their guidelines. He would respectfully suggest that they find them guilty, and issue the warning, with the understanding that it will be on their record for two years. Mr. Powers added that if they were looking to reduce that time, he would defer to counsel, because he is not a lawyer.

Mr. Howell said that he was not suggesting that they change that tonight. However, with the strict enforcement, and they are getting stricter, he said that he thinks it is an onerous structure. If an establishment gets one violation, then in six months from now they get another violation, they are close to the end, in terms of their discipline structure. The police department is taking it seriously and they know they are going to see more coming in from them, he thinks they should look into it. He thinks that parroting the liquor license may not be the right route to take. He thinks it is much more egregious if within a two year period, they served underage or someone got hurt from drinking, that is very different from a noise violation. Do they really want to be stuck with those two years, or maybe it should be at their discretion?

Ms. Anderson said that this is a problem for the two or three months of the summer. She said if they made that ninety days, she would be happy. She said that she is concerned about the two years as well.

Mr. MacAskill said to Mr. Powers that at least the three of them recommend talking to counsel about this.

Mr. Ballantine agreed about speaking with counsel as well. He also said that that they have been talking for years about how to speed things up. He said that has been the number one complaint and to have things move quickly is very positive. Mr. Ballantine said that he thinks the key to this will be management. The management can control the noise, and what happens in their establishment. They need to continue and this will provide them with the tools to do that. He said that with the reports and the discussions with management, and this time they came back in a positive way.

Mr. Howell moved that they accept the recommendation of the Town Administrator and issue a warning to the establishment, having had a hearing on the subject. Seconded by Mr. Ballantine.

Mr. Powers said that he understands that he will be working with Counsel to determine how long it is required to stay on the record.

All in favor, motion carried by a vote of 4-0-0.

D. Discussion on use and current policies of the town shooting range located on Depot Road, South Harwich

Mr. MacAskill said that he asked for this to be on the agenda after receiving several complaints this summer about noise and shooting there. He asked Chief Guillemette to provide an overview and comments, specifically on what led to the complaints they have had this summer.

Chief Guillemette said that he does have the dates that they were out there in 2020 and 2021, and noted that they are required to do live firearm training as part of their in service and is required by statute. They are also required to do more than just stand and shoot, which means things like low light, moving targets, reactive targets, decision making things etc. He said they are required to train and do two firearms qualifications per year, one in the Spring, and one in the Fall. The dates that they were out on the range reflect that. Chief Guillemette said that usually their process is that they will post it on social media, and the Chief Firearms Instructor will reach out to at least one of the neighbors before they ever shoot out there. That is due to the neighbors concern with the noise and the relationship they have with them. He said that a typical qualification is going to take about a week to a week and a half and they sometimes take days off in between. He said that it is usually during the day, however, they are required to do low light shooting and will typically do that in the Fall after daylight savings, when it gets darker earlier.

Chief Guillemette said that he believes that the complaints that came in stemmed from the police training with Cape Cod Municipal Police Academy. He said that this is a new academy, out at Camp Edwards. He said that this is a very good thing for the police departments on the Cape, because it is an additional training academy, and they can get police officers into the academy, trained up, and on the street sooner. He said that they received a request from the Director of the academy for two weeks of range time for their recruits. He said that they did approve this, but it did come with one night for low light shooting, which went late because it was in the springtime hours. He believes that this was likely the root of most of the complaints. They approved this request to maintain a good relationship with the academy, and to give them a

place to train. He said that this will continue, otherwise the academy may cease to exist.

Mr. MacAskill asked if there was anyone in the public that wished to speak. No reply.

Mr. MacAskill added that he put it on the agenda, so that people would know about it and why it happened. He said that the Chief went further, and put the range rules and regulations into a memo. He said that the Board of selectmen had done a revision in 2011, which ended a lot of the shooting. He said that right now the shooting can only happen on the weekends

Mr. Howell said that he understands the need for the Police to train in what might be considered odd hours, and he can delineate the caliber of the weapon. He said that his concern is that there are 60 - 70 acres of land, and he knows there are people discharging semi-automatic weapons out there, and there are dirt bikers getting in and out. He knows that they have been trying to stop that. He said that he is not sure the range is the biggest problem. He would hope that the folks out there know that public safety needs the training. He can hear it, and is not concerned when it is the public safety training going on.

Ms. Anderson said that it seems that they have done a lot to reduce the use, and not allowing other towns to be able to use it anymore. It seems that it has been contained as much as it can and they certainly do not want their police to be unable to train. She thinks it is a reasonable situation.

Mr. MacAskill added that it also saves the Town a lot of money. He said, otherwise, they would have to go to the base or alternate location, at an expense.

Mr. Ballantine asked if the area is prohibited from general access? Chief Guillemette said yes, it is, and said that there is a locked gate. When they are in their training there is a range flag up at the gate and the gate is left unlocked, but the police are there. On the weekends, people would have to go to the station to sign out the key.

Mr. MacAskill asked if a mechanism could be created to inform those that had complained, about when shooting would happen there?



Chief Guillemette said that they could start an email distribution list, without a problem. He would just need to know email addresses. He said that people could contact Ms. Kate Varely, Assistant to the Chief, and she can record the information.

Mr. MacAskill said that in regards to the Cape Cod Police Academy bringing so many extra shooters into town. He said that people did not know about that and next year, he asked Chief Guillemette to have it added to an agenda a few weeks prior, to get the announcement out to the public about it happening.

- E. Discussion and possible vote to approve a new 2021 Weekday and Sunday Entertainment license – Lucky Labrador Inc. DBA Perks, 545 Route 28, Weekday 12:00 P.M. – 12:00 A.M. inside and Sunday 1:00 P.M. to 12:00 A.M. inside. Recorded or live music with amplification. Pending Fire Department Approval

Ms. Anderson moved that they vote to approve a new 2021 Weekday and Sunday Entertainment license – Lucky Labrador Inc. DBA Perks – 545 Route 28 – Weekday 12:00 P.M. – 12:00 A.M. inside and Sunday 1:00 P.M. to 12:00 A.M. inside. Recorded or live music with amplification. Pending Fire Department Approval. Seconded by Mr. Ballantine.

Mr. Howell said that the sticking point for him is the Sunday start time. With the Church there, he would be more comfortable with a 3:00 pm or 4:00 pm start time.

Mr. Powell said that he is fine with any times that the Board would prefer. He said that his desire with the times listed, is not necessarily for live entertainment, but for any noise, such as recorded music or TV, and does not want to get into trouble. He is fine with any changes that they would like to make, to work with them, and the neighbors.

Ms. Anderson said that she is fine and has no problems.

Mr. Ballantine said that he is fine as well.

Mr. MacAskill asked if Mr. Howell would like to amend the motion. Mr. Howell said that he would like to hear the amplified music portion not be allowed to start until later in the afternoon.

Ms. Anderson and Mr. Ballantine withdrew the original motion and second, in order to revise the motion.

Ms. Anderson moved that they approve a new 2021 Weekday and Sunday Entertainment license – Lucky Labrador Inc. DBA Perks – 545 Route 28 – Weekday 12:00 P.M. – 12:00 A.M. inside and Sunday 3:00 P.M. to 12:00 A.M. inside for live music with amplification and from 1:00 P.M. to 12:00 A.M. inside for ambient music or television. Pending Fire Department Approval. Seconded by Mr. Ballantine. All in favor, motion carried by a vote of 4-0-0

Mr. MacAskill asked that they work on getting more consistency with the noise times going forward. Ms. Anderson also added that perhaps they should all have the difference between television and amplified music so that it is clear.

- F. Discussion and possible vote to approve a One Day Entertainment License for Reciprocity – 4 Cross Street – July 24, 2021 4:30 P.M. to 7:00 P.M. Live music outside

Ms. Andersson moved that they vote to approve a One Day Entertainment License for Reciprocity – 4 Cross Street – July 24, 2021 4:30 P.M. to 7:00 P.M. Live music outside. Seconded by Mr. Howell. All in favor, motion carried by a vote of 4-0-0

- G. Discussion and possible vote to approve a One Day Entertainment License for Harwich Inn and Tavern – 77 Route 28 – July 10, 2021 12:00 P.M. to 4:00 P.M. Live and/or recorded music with amplification outside

Ms. Anderson moved that they vote to approve a One Day Entertainment License for Harwich Inn and Tavern – 77 Route 28 – July 10, 2021 12:00 P.M. to 4:00 P.M. Live and/or recorded music with amplification outside, subject to conditions of liquor regulations currently in place. Seconded by Mr. Ballantine.

Ms. Virginia Doyle, West Harwich, asked about this being a special permit and what that means regarding the 150’?

Mr. MacAskill said that is why they added the “subject to the conditions of the liquor regulations”, so that they cannot be exempt from the noise bylaws.

Ms. Doyle said that they have had problems in West Harwich and have tried dealing with the establishment directly, and have been treated rudely, but seems they will have to go to the police first.

Mr. MacAskill added that he noticed that there was an alleged violation on their last special permit, which turned out to not be a violation. He said that he knows that people call on that establishment often, and that the police are paying attention. They do have to abide by the noise bylaws.

All in favor, motion carried by a vote of 4-0-0

H. Discussion and possible vote to approve a new 2021 Common Victuallers license – CDUT Corp. DBA Upper Crust Pizza – 1421 Orleans Road

Ms. Anderson moved that they vote to approve a new 2021 Common Victuallers license – CDVT Corp. DBA Upper Crust Pizza – 1421 Orleans Road. Seconded by Mr. Ballantine.

Mr. Matthew Porter, Attorney for the applicant, said as a correction, that the company name is CDVT Corp. and that was changed in the motion.

Mr. Porter said that with him is, Ms. Venislava Tomova and Mr. Christian Diaz, the two principles of the corporation. He said that this relates to the sale of Upper Crust Pizza, and that they are looking to close this week, and just looking to apply for the new Victuallers license. He said that Ms. Tomova will be the manager of the location, and is ServSafe certified, along with all employees. No major anticipated changes to the operation or the business. They are planning to retain the employees and no changes to hours, and no live music.

All in favor, motion carried by a vote of 4-0-0

I. Discussion and possible vote to approve the proposal from the Cape Light Compact Joint Powers Agreement letter dated June 17, 2021

Ms. Anderson moved that they vote to approve the proposal from the Cape Light Compact Joint Powers Agreement letter dated June 17, 2021. Seconded by Mr. Howell.

Mr. MacAskill explained that this is because they want to change language in the agreement on quorums. It has been vetted by their legal, and seems pretty straightforward.

All in favor, motion carried by a vote of 4-0-0

## **OLD BUSINESS**

- A. Discussion and debrief of the June 22, 2021 Planning Board discussion on the Halls Path Approval Not Required (ANR) application.

Mr. Powers said that he does not have much to add further then what was on the recorded meeting. He said that he purposely did not attend, but he does know that the findings of the Planning Board, is for the applicant to now go through the subdivision process. He said that they could avail themselves of the appeal process, but the Planning Board did not accept the application for ANR at their meeting, as submitted.

Mr. Howell said that he did attend the meeting as the new liaison, and did speak on the issue. He said that he started out by identifying himself as the liaison and his role as the liaison to bring back suggestions to the Board and to listen. In this occasion he pointed out that they did setup an investigative subcommittee, by vote of the Board of Selectmen. He said that much of the discussion hinged on that, as of today, it was a wide enough road for frontage on an ANR. However, it may not have been, which is when he brought up that the Board of Selectmen is still talking to legal counsel. He said that weighed heavily in their discussion and vote to turn it down. There was some question about the legitimacy of using a road that had been widened surreptitiously.

Mr. Howell said that one thing that is worthwhile to note is that they said that the Town Clerk had given a memo, which said it was listed in the list of town ways. He said that this is true, but it requires a second finding, of being maintained or frequently traveled by the public. The Town Clerk, had only certified that it was listed, but not that it was maintained or traveled. They can do this a different way, and this will allow them an opportunity to be consistent in the overall project.

Mr. MacAskill said that they are still waiting on legal with the deeds and their opinion.

Mr. Ballantine said that he appreciates Mr. Howells involvement, and said that they still need to watch it.

B. Town Administrator's debrief of the June 18, 2021, Dennis Harwich Yarmouth Clean Waters Community Partnership Working group meeting.

Mr. MacAskill said that they had several phone calls from other town officials and a lot of media attention on this. He said that he never said that Harwich was out of the DHY agreement, and he thinks the real point for the paper is that there is no agreement, so how can they be out. He said that it was never brought to the Board for a vote on anything, other than taking it off of Town Meeting this year. Otherwise, the working group was a debrief meeting to see what the other towns are doing. As they did not get many reports back from the DHY working group, he said that he had been a no, from the beginning, on the governance model that was being proposed. He said that he would vote against it, but that was as one board member, not as the board. So, to clear up any rumors, he said that he did not say it.

Mr. Powers said that the meeting minutes in the packet should have been labeled "draft". He said that they are a draft of the minutes that came from the DHY Clean Waters Community Partnership Working group meeting that did occur on June 18, 2021. He said that the items listed on page 2 were exactly as stated by him, except for the item listed as item VI, which had some inconsistencies. Mr. Powers said that the last time the group had met was March 19, 2021, and all towns were struggling with their own Town Meetings coming up and not knowing what would happen due to the pandemic. He said all of the towns had a desire to have community meetings that could be well attended and in person.

Mr. Powers said that each of the Towns were asked, what has happened since March 19<sup>th</sup>. He said that he indicated the items that are noted accurately and read through the list:

- I. Selectman Steven Ford passed away on April 9, 2021
- II. New Selectman Mary Anderson replaced Ed McManus who ran for Sewer Commission but was not elected.

- III. Griffin Ryder departed Harwich and is new Brewster DPW Director
- IV. Special Town Election for BOS Vacancy on 9/21
- V. BOS reorganized. Michael MacAskill is new Chair.

However, what they missed after that, is that he indicated that the Chair has authorized the Selectmen, that make up the subgroup, to remain in the subgroup. Also, Mr. Powers said that he was authorized, to continue the discussions, as he has done, with his colleagues, Liz Sullivan in Dennis and Bob Whritenour in Yarmouth.

He said that the question was asked if they thought they would be able to go forward in the Fall? His response was a little different then Dennis, he said that the Town of Harwich is actively engaged in sewer CAD modeling with GHD, because of the difficulties that they faced with the contracts in East Harwich. He said that if asked if they could go forward today, he does not have the votes, because the Board has not voted them. He said that there was ample discussion about what to do next, and he had told them that Harwich may be contemplating a special town meeting but he is not aware if that discussion would happen in the summertime. He said that discussion centered around where they are at, and he reminded everyone that there is no agreement. He has been a part of the committee for over 18 months, they have been struggling to come up with a structure or a framework. He has tried to leave it on as positive a note as he could, and that his Board would encourage him to continue the conversations. He thinks it may have been reframed inaccurately, but he stands by what he said. He said that the Dennis Harwich Yarmouth Clean Water Partnership has not made progress in two years.

Ms. Anderson asked if Mr. Powers was going to have the Minutes corrected?

Mr. Powers said that based on the meeting, it was unsure if they would be moving forward as the three town group.

Mr. MacAskill said that he thinks it is important to have a conversation as the Board, sooner than later, and to be able to send a message to the other two towns of where they are at in the process, what they are doing and why. His own sense is that they talk about this soon.

Mr. Ballantine said that he missed the meeting and was taken off guard by the minutes and appreciated the clarification. He said that they have had a lot of

discussion, that they have not come to a conclusion on. In part was the governance issues and trying to clarify it. He said that his hope is that they take it in perspective in what it brings them cost savings. He hopes they continue the three town discussion, even if they look at other options. He said that they need a discussion, he has no problem looking at everything, but it needs to keep going.

Mr. MacAskill said that they will bring this back.

Mr. Howell said that he spoke with the Cape Cod Times and had echoed what Mr. Powers had said. It would be hard for them to pivot away from a policy that was not adopted by any of the towns, at Town meeting. He said particularly because this is a brand new structure.

C. Discussion and possible vote on the Saquatucket Harbor Snack Shack license agreement

Mr. Powers said that he is pleased to announce that on July 1<sup>st</sup>, the Chronicle will be advertising an invitation for bids for mobile concession trucks, singular and plural, being contemplated. He said that the full docket of materials will be advertised also on their website on July 1<sup>st</sup> and any questions about the operations should be directed to the Harbormaster. He said that bids and submissions will be open on July 15<sup>th</sup>. Mr. Powers said that they also put together an invitation for bids for restaurant establishments to be contemplated within the property. This will give the Board the greatest number of opportunities to consider.

He said that the Board may want to consider a special meeting on Monday, July 19<sup>th</sup> to review and evaluate all of the proposals that come back, and possibly award a contract or contracts, as they see fit.

Mr. Powers said that the timeframe would be from the day after a contract is executed until October 11<sup>th</sup>, Columbus Day weekend. He said that it is likely the soonest anything could happen, and they are still working on the purchase of the equipment with the family, and have completed the inventory, but have not completed the purchase.

Mr. Ballantine asked about a list of the inventoried items. Mr. MacAskill said that it was emailed out, and he could email it again, if he did not have it.

Mr. MacAskill also commented on a discussion with Mr. Joseph Griffiths, Jr, and said that Mr. Griffiths, Jr had expressed his disappointment with the Board on how things had transpired and the need to vacate the building, when the father passed away. Mr. MacAskill apologized on behalf of himself, but had re-watched the video and understood why he was upset. He said that Mr. Griffiths had overpaid each year, and did a good job for the town. He also commented that their counsel had dragged their feet on this one.

It was discussed and agreed upon to send a condolence letter and apology for any confusion to the family.

Mr. Howell also commented on another issue with an attorney at KP Law.

## **CONTRACTS**

- A. Discussion and possible vote to authorize the Chair to sign a grant from Executive Office of Housing and Economic Development for dredging - \$36,000

Ms. Anderson moved that they vote to authorize the Chair to sign a grant from Executive Office of Housing and Economic Development for dredging - \$36,000. Seconded by Mr. Howell. All in favor, motion carried by a vote of 4-0-0

## **TOWN ADMINISTRATOR'S REPORT**

Mr. Powers said that he has had the opportunity to work with Mr. David Spitz, and the Brooks Academy Museum Commission, and also joined by retired Senator Paul Doane. He said that they are working on landscaping issues around Brooks Academy and also around the Crowell Barn. He said that this is in anticipation of the 150<sup>th</sup> anniversary of Elmer Crowell's birth which will be celebrated in 2022.

Mr. Powers said that next he has executed two contracts. The first is the renewal of the contract with the Gowrie group. They handle the injured-on-duty claims for public safety. He said that this contract was executed in the amount of \$6,600.

He said that he also executed an agreement under MGL ch. 30B with Seaside Arborists, and the total on that is not to exceed \$27,200.



Mr. Powers added a reminder that the Board will begin their summer schedule, which will begin July 12<sup>th</sup> with a meeting time of 6:00 pm.

Mr. Ballantine asked Mr. Powers about the claims with Gowrie, and said he has brought this up in years past. He asked if there was a formal training process on safety? He thinks it was required a couple of years ago from DPW, and he was hoping that concept would be spread across town.

Mr. Powers said that it would not be through Gowrie Group, that would be separate. However, operating through Maya, the insurance provider, there are any number of programs that they can run for them. He said that he will follow up with Maya on that.

Mr. Ballantine asked if they purchased a stump grinder? Mr. Powers said that they did and that is with the DPW. Mr. Ballantine asked if that is being used within the contract with the arborist. Mr. Powers was not sure, but said that the stump grinder is being used.

## **SELECTMEN'S REPORT**

Mr. Howell said it is July 4<sup>th</sup> coming up and said that fireworks are illegal, but people should also recognize that they are in a major drought and need to be careful.

## **ADJOURNMENT**

Mr. Ballantine moved that they adjourn at 9:07 pm. Seconded by Ms. Anderson. All in favor, motion carried by a vote of 4-0-0

Respectfully submitted,

Lisa Schwab  
Board Secretary

