



APPROVED

MINUTES
PUBLIC HEARING
REMOTE PARTICIPATION ONLY
Monday, May 4, 2021
5:30 P.M.

RELEASED

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

ALSO PARTICIPATING: Town Administrator Joseph Powers.

CALL TO ORDER

Mr. Ballantine opened the meeting at 5:40 pm, and called to order the Public Hearing. He explained that he first called the meeting to order at 5:00 pm for Executive Session, where they discussed litigation strategy with respect to the case of 3137, LLC, et al. (Ember and Port) v. Town of Harwich, et al., United States District Court, C.A. No. 1:21-CV10473, if discussing the matter in open session will have a detrimental effect on the Town's litigating position and the chair so declares.

Mr. Ballantine said that next on the agenda is the deliberation involving the court case 3137, LLC, et al. (Ember and Port) v. Town of Harwich, et al, in which each member of the Board of Selectmen is named individually as a defendant, and may have a financial interest the litigation. The Board of Selectmen is the Town's executive authority and no other Board or official can represent the Town in this matter. Therefore, on the advice of Town Council, he is invoking the rule of necessity in order for the Board to act on this matter, as stated.

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

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

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

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

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

The Board of Selectmen of the Town of Harwich, will hold a Public Hearing on Monday, March 22, 2021, which was continued to tonight, May 4, 2021 at 5:30 pm, for the purpose of hearing applications for renewal of the Annual Entertainment and Seasonal All Alcoholic Beverages licenses for Port Restaurant and Bar, Inc., 541 Route 28 in Harwich Port. The Board will hear evidence and testimony from interested parties, including from members of the public, and will decide whether to renew, not renew or to modify said licenses. The hearing will be held via remote video streaming only. All members of the public having an interest in the topic are cordially invited to log-in and view the hearing. Information for logging into and viewing the hearing is below and will be posted on the Town's website prior to the hearing. Mr. Ballantine provided the GoToMeeting access code and information.

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

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

PUBLIC HEARING

- A. Port Restaurant and Bar, 541 Rt. 28 - Public hearing on applications for renewal of the Seasonal All Alcoholic Beverages License and the Seasonal Entertainment License; discussion and possible vote to order discipline based.

Mr. Jeffrey Blake, Attorney, KP Law, said that he will be presenting this case to the Board of Selectmen tonight. He said that this will be conducted differently than last time, due to the interruptions of counsel. He said that, as he indicated last week, the rules of evidence do not apply to a hearing before this Board regarding license renewals, revocations or suspensions. The touchstone here is due process. Notice and an opportunity to be heard. It does not mean that counsel for the applicant has the right to object, interrupt or threaten witnesses during their testimony. He said to the Chairman, that this is his meeting and he has the authority to stop any interruptions. He said that in fact, the open meeting law states, in part, no person shall address a meeting

of a public body without permission of the chair, and all persons shall, at the request of the chair, be silent. No person shall disrupt the proceedings of a meeting of a public body. If, after clear warning from the chair, a person continues to disrupt the proceedings, the chair may order the person to withdraw from the meeting and if the person does not withdraw, the chair may authorize a constable or other officer to remove the person from the meeting. From MGL ch. 30A, s 20g. Mr. Blake said that this is clear and provides the Chair of the public body the authority to authority conduct public meetings without disruption. As a result of this authority and the conduct that was witnessed at the last hearing, the Chair has the authority to prevent any disruption at the meeting. Mr. Blake suggests that prohibiting objections during testimony of the witnesses and requiring both sides to refrain from any interruption during testimony is within the authority of the chair. Mr. Blake asked Mr. Ballantine, as Chairman, here and now, to adopt that as a rule moving forward with this hearing.

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

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

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

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

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

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

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

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

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

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

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

Mr. Blake said that he will now go forward and present the matter to the Board and that there are three different matters before them: 1. The renewal of the Seasonal All Alcoholic Beverages License, 2. Renewal of the Seasonal Entertainment License, and 3. Complaint and disciplinary hearing that was conducted by the Town Administrator on February 8, 2021. The Town Administrator had taken testimony under oath and provided the packet of information to the Board, and has also been provided to the applicant. The applicant had been given notice and an opportunity to be heard, but the applicant did not show at the hearing. Mr. Blake said that he would like to turn it over to Mr. Powers, Town Administrator for his findings and recommendations with respect to the violations at the Port Restaurant.

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

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

Mr. Tomlinson objected.

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

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

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

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

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

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

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

Mr. Ballantine recognized Mr. Tomlinson.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Ballantine ask Mr. Tomlinson to continue.

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

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

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

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

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

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

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

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

Mr. MacAskill called point of order.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Tomlinson objected.

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Tomlinson began speaking.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

An objection was stated.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chief Guillemette said, yes.

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

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

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

Chief Guillemette said that he did not know.

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

Chief Guillemette said, that is correct.

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

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

Chief Guillemette said, yes

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

Chief Guillemette said, yes

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

Chief Guillemette said, no

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

Chief Guillemette said, no.

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

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

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

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

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

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

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

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

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

Chief Guillemette said some of them, yes.

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

Chief Guillemette said, no.

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

Chief Guillemette said that he can suggest what he wants.

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

Chief Guillemette said no.

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

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

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

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

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

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

Mr. Ballantine asked Mr. Tomlinson to proceed.

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

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

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

Chief Guillemette said, no.

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

Chief Guillemette said, yes.

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

Chief Guillemette said, no.

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

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

Mr. MacAskill called for a point of order.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chief Guillemette said that they did submit the letter.

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

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

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

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

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

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

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

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

Chief Guillemette said that is correct.

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

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

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

Chief Guillemette said that he did not believe so.

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

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

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

Chief Guillemette said yes.

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

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

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

Chief Guillemette said that he did not know.

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

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

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

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

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

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

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

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

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

Chief Guillemette said it was COVID.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Ballantine asked for his next question.

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

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

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

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

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

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

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

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

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

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

Mr. MacAskill called a point of order.

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

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

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

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

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

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

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

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

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

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

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

Chief Guillemette said that it was some sometime in July.

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

Chief Guillemette said yes.

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

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

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

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

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

Mr. Ballantine recognized Mr. McManus.

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

Chief Guillemette said yes.

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

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

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

Mr. Howell said, okay thank you.

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

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

Chief Guillemette said that he believe so, yes.

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

Chief Guillemette said yes.

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

Chief Guillemette said no.

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

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

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

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

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

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

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

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

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

Chief Guillemette said no.

Mr. Tomlinson asked if it was his understanding.

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

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

Mr. Ballantine told him he could ask it.

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

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

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

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

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

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

Chief Guillemette said that he does not.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chief Guillemette said that he did not know.

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

Chief Guillemette said no.

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

Chief Guillemette said no.

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

Chief Guillemette said no.

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

Chief Guillemette said that is correct.

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

Chief Guillemette said no.

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

Chief Guillemette said that he is not.

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

Chief Guillemette said correct.

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

Chief Guillemette said yes.

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

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

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

Chief Guillemette said correct.

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

Mr. Ballantine asked if anyone had further questions?

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

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

Mr. Howell repeated his question.

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

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

Chief Guillemette said no.

Mr. Howell said thank you.

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

Mr. Ballantine said to go ahead.

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

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

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

Chief Guillemette said no.

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

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

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

Chief Guillemette said yes.

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

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

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

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

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

Chief Guillemette said yes.

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

Chief Guillemette said yes.

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

Chief Guillemette said I believe so.

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

Chief Guillemette said yes.

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

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

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

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

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

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

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

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

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

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

Mr. Ballantine called for Mr. Bob Cohn.

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

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

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

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

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

There was no objection.

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

Mr. Ballantine said to keep it about the Port.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Cohn said yes he did.

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

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

Mr. Blake asked if that is a regular occurrence?

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

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

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

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

Mr. Cohn said that was his understanding.

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

Mr. Cohn said yes, in this last week.

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

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

Mr. Blake asked if he still felt threatened?

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

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

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

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

Mr. Cohn said it was his pleasure.

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

Mr. Ballantine said that he could.

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

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

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

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

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

Mr. Cohn said roughly a year ago.

Mr. Tomlinson asked if could recall the month?

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

Mr. Tomlinson said okay.

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

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

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

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

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

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

Mr. Cohn said yes.

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

Mr. Cohn said his personal attorney.

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

Mr. Cohn said that he sent in a letter.

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Tomlinson said that his questions are focused.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Tomlinson asked apart from that one week,

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

Mr. Cohn said that he did not recall.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Ballantine turned it over to Mr. Blake.

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

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

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

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

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

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

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

Mr. Blake asked how many complaints he made?

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

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

Mr. Ganley said, absolutely.

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

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

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

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

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

Mr. Ganley said yes.

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

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

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

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

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

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

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

Mr. Tomlinson said, objection.

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

Mr. Blake said that he has no further questions.

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Ganley said no.

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

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

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

Mr. Ganley said yes.

Mr. Tomlinson asked, how did they respond?

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

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

Mr. Ganley said yes.

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

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

Mr. Tomlinson asked if that was October 2019?

Mr. Ganley said no its October 2020.

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

Mr. Ganley said yes.

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

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

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

Mr. Ballantine said yes.

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

Mr. Ganley said no.

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

Mr. Ganley said no.

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Ballantine said that is their intent.

Mr. Tomlinson said that he is still speaking.

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

Mr. Tomlinson said that he was recognized.

Mr. Howell said not at this point.

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

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

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

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

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

Mr. Ganley said, I do.

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

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

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

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

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

Mr. Ganley said he was.

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

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

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

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

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

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

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

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

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

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

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

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

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

Ms. Sharry said yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

Ms. Sharry said yes.

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

Ms. Sharry said yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Ballantine said that's not relevant.

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

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

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

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

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

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

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

Ms. Sharry said yes.

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

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

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

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

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

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

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

Ms. Sharry said no.

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

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

Mr. Ballantine began to speak.

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

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

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

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

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

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

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

Mr. Tomlinson asked where her fence is located?

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

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

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

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

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

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

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

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

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

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

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

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

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

Ms. Iafrate said yes, that she is there.

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

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

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

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

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

Ms. Iafrate said, 103 Main Street, Orleans.

Mr. Ballantine asked if the Board had any questions.

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

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

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

Ms. Iafrate no.

Mr. Howell asked is she was aware of that?

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

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

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

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

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

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

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

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

Mr. Howell said thank you.

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

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

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

Ms. Iafrate that's correct thank you

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

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

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

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

Mr. Domos said he was.

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

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

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

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

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

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

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

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

Mr. MacAskill asked if they were granted permission.

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

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

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

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

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

Mr. Domos said that he absolutely does.

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

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

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

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

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

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

Mr. Tomlinson said that he was his counsel.

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

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

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

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

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

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

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

Mr. Ballantine turned it over to Mr. Howell.

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

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

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

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

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

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

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

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

Howell said that's not what he asked.

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

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

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

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

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

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

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

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

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

Mr. Domos said no.

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

Mr. Domos said correct.

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

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

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

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

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

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

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

Mr. Domos said no.

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

Mr. Domos said nope.

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

Mr. Domos said I did.

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

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

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

Mr. Domos said that he did not recall.

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

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

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

Mr. Domos said probably like a football field.

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

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

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

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

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

Mr. Domos said no.

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

Mr. Domos said no.

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

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

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

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

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

Mr. Domos said absolutely.

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

Mr. Domos said yes.

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

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

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

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

Mr. Tomlinson said okay

Mr. MacAskill called a point of order.

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

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

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

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

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

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

Mr. MacAskill okay and Mr. Domos' answers?

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

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

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

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

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

Mr. Ballantine asked him to wrap up.

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

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

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

Mr. Domos said yes, the officer stopped somebody on the street who had a blue Nantucket Seltzer can, and he came and asked if I had the blue Nantucket Seltzer because he said that I let someone walk out of our establishment. I said that I did not because we do not sell those, so it is impossible. He said that he was not going to be babysitting the Port and I needed to have adequate staff, but I was the staff and I feel like my services were absolutely adequate.

Mr. Tomlinson asked if he felt that this officer was attacking him?

Mr. Domos said 100%.

Mr. Tomlinson asked if he filed a complaint with the Chief of Police?

Mr. Domos said yes.

Mr. Tomlinson was that approximately one week before the ABCC was called to perform a compliance check at the Port?

Mr. Domos said it was.

Mr. Tomlinson said earlier there was testimony that the ABCC visited all other licensed establishments in Harwich, do you know that to be true?

Mr. Ballantine said that they have an objection from a Board member of going into other establishments. He asked Mr. Tomlinson to wrap this up to give a chance for other witnesses as well.

Mr. Howell said that the ABCC question was misleading. He said that the ABCC was not brought in to investigate them, they were doing their due diligence, as they were to other establishments and they found what they found when they were there, they were not investigating them.

Mr. Domos said that's not true at all.

Mr. Tomlinson said that the only violations which he is aware of, involved the police reports over Memorial Day weekend and the ABCC compliance check on July 16th and 17th, is that correct?

Mr. Domos said correct.

Mr. Tomlinson said that it was not brought to his attention prior to this hearing, the noise complaints brought by neighbors, written or otherwise, through the Chief of Police? He asked, those were not brought to your attention, as the manager, prior to this hearing?

Mr. Domos said correct.

Mr. Ballantine recognized Mr. Blake.

Mr. Blake said that he had a few questions, and introduced himself to Mr. Domos.

He said that earlier they were talking about a memo that was sent by the ABCC, regarding an inspection that they did on July 16th and 17th, is that correct, do you remember that?

Mr. Domos said yes, that Mr. Tomlinson just asked him that, and he does.

Mr. Blake said yes, he did, and you indicated that they were observing you from about a hundred yards away, with some trees and some other obstructions in the way, is that correct?

Mr. Domos said yes.

Mr. Blake said that he was going to read from the memo, and it says that Nicole Smith, who is the special investigator, pointed out to the Manager that several customers were walking around without facial coverings, to which he responded, if I wasn't talking to you I would be telling them to wear their mask masks.

Ms. Smith also pointed out a table of six individuals, where at least four other individuals without facial coverings stopped to engage in conversation and the waitress did not take any corrective action. He said, that didn't happen from 100 yards away, did it sir?

Mr. Domos said in referring to his earlier question, they stated to me that they had been across the parking lot viewing us for 40 minutes, or something like that, not sure the exact time. He said that they said so, and that is what he was referring to when asked if they were watching from there. He said he was not going to let Mr. Blake twist his words like he did anything wrong here, he absolutely did not and he is answering truthfully to everything.

Mr. Blake said that he was simply trying to get clarification, because the report seemed to infer that they were actually speaking with you, and that you spoke back, and that wasn't happening from 100 yards away, correct?

Mr. Domos said correct, he was next to them, speaking to them.

Mr. Howell said, just to follow up, since they are talking about the ABCC, he asked Mr. Domos if he was aware that there was a an ABCC judgment that was based on a violation of 8/17/2018, because you just said that there were no other violations. He added that they had entered that into evidence earlier and it has been in the packet.

The violation was adjudicated, but they did find that there was underage pouring that was going on, are you aware of that?

Mr. Domos said, no I'm not aware, I don't recall

Mr. Howell said, okay thank you.

Mr. Tomlinson asked if he could follow up to Mr. Howell's questions?

Mr. Tomlinson said to Mr. Domos that he was asked a question by Mr. Howell, about a violation that resulted in a suspension, and the question earlier when you made a statement about no violations were you referring to noise, that there have been no noise violations in three years?

Mr. Domos said correct, and he said that in his statement.

Mr. Tomlinson asked if after the suspension, which was deferred and held in advance, and issued by the ABCC, is that the only liquor violation that the Port has had in 18 years?

Mr. Domos said yes, that he knows of, but he is not entirely sure.

Mr. Tomlinson asked to his knowledge if the Port hasn't had any other liquor violations, other than the one Mr. Howell referenced from 2018?

Mr. Domos said correct.

Mr. Tomlinson asked if since that time, the Board has issued the Seasonal All Alcohol Licenses and Entertainment Licenses, year after year, since that suspension in 2018?

Mr. Domos said yes.

Mr. Tomlinson thanked Mr. Domos.

Mr. Ballantine said thank you and moved on to the next person on the list. He called for Rebecca Scanlan and asked if she wished to testify and support?

Ms. Scanlan said yes.

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

Ms. Scanlan yes she was sworn in.

Mr. Ballantine asked for her address, to be consistent.

Ms. Scanlan said 2 Birch Drive, Harwich.

Mr. Ballantine reminded everyone to mute themselves, as there was a lot of interference.

Mr. Tomlinson requested a five minute restroom break.

Mr. Ballantine said just five minutes and they took a recess.

Mr. Ballantine said that they are coming back from recess and it is his druthers at this point, since the Board has been there since 5:00 pm, and the hearing has been going on since 5:30 pm. He said that it is approaching 10:00 pm and it is his direction to stop the meeting at 10:00 pm. He said that they will continue to a date certain, so they can finish and give the Board a chance for a reasonable deliberation. He said that they would stop without closing the hearing we'll continue with our closing hearing, which will allow them to have one or two more witnesses and then they will continue to a date certain.

Mr. Tomlinson said that he would just like to ask if there is anybody that would like to speak tonight, he knows they already opened for Ms. Scanlan, but he knows that Ms. Dina Browne has a potential conflict and would like to be heard tonight. He said that he would ask that the Chairman ask if there is anyone else that would like to be heard tonight. Mr. Tomlinson said that the Board has had the opportunity to present its witnesses, and the applicant should be afforded the same. He said that he realizes this is going long, but they object to any further continuance. He said that this has been continued for a month and a half already and the licensee is not able to open and the licensee has lost 30 days of this season already. It would have been open by

now and this is affecting the livelihoods of numerous people, and their families, to continue this charade and keeping them out of work.

Mr. Ballantine said to Mr. Tomlinson that part of the reason that this has been so delayed, and so lengthy tonight, is due to his continued and detailed interruptions. He said that quite frankly they could move this much faster, but they are running out of time. He said that they will go through Ms. Scanlan and then Ms. Browne, as he suggested. He said that the only option on this point is if witnesses do not want to speak and that's

Mr. Tomlinson said that he would like to know how many more people are on the list, who have registered? He asked if they can answer that question?

Mr. Ballantine said sure, and that Ms. Jamie Goodwin, Station Manager, Channel 18, just informed him that they have a couple more that have called in, so this could continue longer.

Mr. Tomlinson asked how many on the list for tonight?

Mr. Ballantine said six.

Mr. Tomlinson said that if they can conclude the next six in 30 minutes, don't you think that's in the best interest of the both the town the public and the licensee? He said that any further delay costs the licensee significant money and it puts people out of work and takes food out of people's mouths.

Mr. MacAskill said that he for one would listen to the six, if Mr. Tomlinson is putting a 30-minute timeline on it. He said that he thinks there should be a little bit of recognition here, that it's Mr. Tomlinson that is holding this up, it's not the Board that has consistently held this up. He said that he needs to take a little bit of responsibility for something at some point, he would think.

Mr. Ballantine tried to speak with

Mr. Tomlinson said to the Chairman, that he was attacked by his Board member, and should be allowed to speak.

Mr. Tomlinson said that Mr. MacAskill attacked his character that is unacceptable. He said that Mr. MacAskill has a personal conflict with the Brackett's, for which he refused to recuse himself, and now he attacks their

counsel that is unacceptable. He said that he would encourage the Board strongly to hear the next six witnesses on the list.

Mr. Ballantine said if Mr. Tomlinson would give him a chance to speak, they might be able to move ahead. He said that Mr. Tomlinson is holding this up and they are all getting tired, but let's complete this if they can.

Mr. Tomlinson said that he is getting tired of your interruptions as well.

Mr. Ballantine asked Mr. Tomlinson to keep quiet for a minute.

Mr. Howell said that the issue is not six more witnesses, because they can't control how long that's going to be. He said that even after they close the hearing, there will have to be a deliberation, there will have to be a motion. That would likely mean that this is not going to be done in a half hour. It is clearly going to take much longer than that.

Mr. Ballantine asked if they can hear the witnesses and then they could continue to do their deliberation?

Mr. Howell said that he would not vote in favor of closing the hearing at that point, because just as he pointed out there's a couple of people that can only testify tonight. He said that they don't know who wished to testify, but could not do it tonight and I'm not going to be voting to close the hearing in that event.

Mr. Ballantine said that he does not want to close the hearing public hearing.

Female voice interrupted, and said what about the 100s of livelihoods.

Mr. Howell said that she has not been recognized, and he continued that this is not a court of law, and they are not presenting a list of witnesses. He said, this is a public hearing and anyone could call in during the course of that public hearing or show up and testify. He said that if they could not do it tonight, they have to go forward on a continuance, then whoever might be available, has the ability to do so, it is not restricted to this list.

Mr. Ballantine said let's do this, and said that they will hear from Ms. Scanlan and Ms. Brown.

Ms. Scanlan said that her narrative is very short and that she is a server at the Port. She said that she chose to speak on behalf of herself, and her fellow staff members, this evening. She said that when she refers to we, she is speaking about herself and her staff. Ms. Scanlan said that they chose to come back to work, even though there was Federal and State support offered during COVID, which could have allowed them to stay home, but they chose to go back to work. She said that that they are an honest, hard-working group, who are very dedicated to their job and extremely supportive of each other like a big family. She said that they were very scared, unsure, and fearful, every day of the possibilities of getting sick for not only themselves but also for their families. However, they still came to work, because it was the right thing to do, but also because it was important to all of them to provide a service for their community. She said that in coming back to work, they were punished. They were being labeled as non-compliant, being told that they ignored the COVID 19 regulations, and their reputations are being tarnished. She said that they have been disrespected by the insinuation of not caring. Trying to navigate through the constant changes of COVID regulations was no easy task, but they were not guided by their local health department. She said that they were applauded on many occasions, for what a good job they were doing and they truly believed that they were doing a good job and they were doing what was required of them. Ms. Scanlan said that it makes no sense that they would jeopardize, not only their well-being, but again the well-being of their families and their clientele. They rely on this job, they are the single mom who relies on this income to provide for her child, they are the mom and son who work side by side in the dish room that rely on this income to put food on their family's table, they are the married managerial team who rely on this income to maintain their Harwich Port business and to one day help them realize their dream of being a Harwich homeowner, and there is also herself a server and a Harwich business owner whom also relies on this income to help maintain her personal business.

Ms. Scanlan said that the accusations placed against them are not only insulting, but heartbreaking. They have a very short window of opportunity to make their living, and due to all these accusations and the false narrative that the town has created, their window of opportunity is growing shorter and shorter and while you all go home tonight and get a good night's rest, they will all be lying awake losing another night's sleep thinking about the fate of their job.

Mr. Howell asked if Ms. Scanlan was under the assumption that the only complaint is about COVID violations?

There was noise and background disruption causing more of a delay.

Mr. Howell asked based on what you said, are you under the assumption that the only thing that they are there about are violations of COVID?

Ms. Scanlan said no, she does understand that this is for noise violations and she is just speaking about her personal experiences with the COVID.

Mr. Howell said that his heart goes out to her and her story, and he recognizes that people make a living off of this. He said that if the context was better, they would be celebrating the operation. He asked if she was thoroughly aware of everything else that's going on? He said that he knows she had testified that she is going to be short on income, and for that he is sorry, but is she aware that jurisdictionally there's more than just the police that is involved with this, the ABCC has been involved with this, and that there have been numerous unaddressed noise complaints. He asked if she was just addressing the fact that it would be sad to lose income?

Ms. Scanlan said yes, absolutely she is aware of all of that.

Mr. Howell said thank you.

Mr. Ballantine asked Mr. Blake if he had questions? Mr. Blake said that he had no questions.

Mr. Tomlinson said that went very smoothly and in two minutes, and added that he received a notification from a musician who tried to register tonight, and she would like to be heard very briefly.

Mr. Ballantine said yes, we'll go ahead and listen to one more and then it looks like they will move on with the continuation.

Mr. Ballantine asked Ms. Browne if she had been sworn in?

Ms. Browne said that she was not sworn.

Mr. Ballantine said that he will swear her in now, and asked if she swears to tell the truth, the whole truth, and nothing but the truth, so help you god?

Ms. Browne said yes I do.

Mr. Ballantine asked if she could give her address?

Ms. Browne said that she lives at 10 Lewis Lane, and for those who don't know that is the cut-through street behind the banks and is in close proximity to Harwich Port and all the stores and restaurants.

Ms. Browne said that she is a little bit confused about this hearing this evening because she does not understand why the disciplinary action for something that happened last year and the renewal of the license for this year are being tied together. She said that everything is getting combined together, when they should be done separately. The action that they are speaking about for discipline occurred last summer, why it's taking all the way to May to handle it, she just doesn't understand. She thinks that what they really need to be focusing on is the renewal of the licenses so that people can get back to work and the Board can deal with disciplinary action for anything that happened last summer, at another time, because they have already delayed that significantly. She said that she has read the 280 pages in tonight's packets including the ABCC's inspection report, the complaint filed in federal court, the letters in support for the Port and the letters complaining about the noise. She said that she has done this because she cares about this town, she loves Harwich Port and she cares about the Brackett family, Molly and Mr. Domos, and of the other employees. She said that she also cares about the neighbors. The Port is like a home to many of them and they go there every Friday night. She said that her husband and herself have met a lot of people they have become friendly with a lot of people and even before COVID, they felt it was a safe and comfortable place to be.

Ms. Browne said that what they need to do right now, is take a step back and assess this situation. They saw how political divisiveness tore apart this country and they don't need that in their quaint and friendly town. If they take away the emotions, the personal hard feelings, the insults and the pandemic anxiety that everyone is facing, then can't they just simply ask themselves why they are there?

She said that the first item on the agenda is the Board of Selectmen being tasked with the authority to renew the Seasonal All-Alcoholic Beverage License and the Seasonal Entertainment License for the Port for 2021. The Board has routinely renewed these licenses for over a decade, if not longer, and this year should not be any different, in fact it should be simpler because the COVID restrictions that were in place last year, are not the same this year. The Port has not been accused of over-serving alcohol, of serving alcohol to a minor, or letting an intoxicated individual leave to get behind the wheel of a car, or to let patrons exit the premises with an open container. The issues in the Town Administrator's recommendations all stem from Governor Baker's ever changing orders pertaining to COVID. In 2020 patrons were not allowed to have an open container on the outdoor patio in 2021, they can, in 2020 patrons were not allowed to consume alcohol without food, in 2021 they can, in 2020 patrons were required to wear masks while outside, in 2021 masks are no longer required outside, in 2020 only six people could sit at a table together, but effective may 29, 10 people can sit together. People can have weddings of up to 200 people, 250 people outdoors. All of the allegations for violations by the Port are COVID related, and not applicable in 2021. She said that they just asked the previous witness if she thought it all had to do with COVID, but the noise issues that occurred this summer, were in fact COVID related, because there was no outdoor music.

She said that there were a lot of people trying to let go of the stress that they've experienced, and not being able to go anywhere, or do anything. She said to the extent that there are any allegations for violations against the Port, those should be addressed through the disciplinary measures. She said it's not grounds for non-renewal of a license for a business that has had a clean track record prior to COVID. For these reasons the alcohol license must be renewed. With regard to the entertainment license, this Board must follow the same logic. This Board renewed the Ports entertainment license year after year up to 2020, and you really should only be looking at any violations of the of the entertainment license during the 2020 season, because anything that happened in 2017, 18 or 19, did not affect their renewal for 2020. She said that there was no music or entertainment in 2020 at the Port, with the exception of one week or weekend in May. Ms. Browne also pointed out that she has sat at the shack in the back and it was not a bar, it was not all full bar, it was not a mini bar, it was an area where the Port sold shirts, sweatshirts or even at times blankets so their clients could be warm.

Ms. Browne said that reports of loud music and sing-alongs did not happen in 2020. She said that she would presume that that the individuals complaining about that noise were referring to prior years, which is evidenced by the photos that were submitted. A lot of people took photos off of Instagram, from earlier years, showing waiters or waitresses without masks, large groups and then you would see comments about no masks. When the Port posted, we'll see you here for the music, that was before they found out there couldn't be any music. The complaints were heard by this Board prior to 2020, and the Board issued the entertainment license in 2020. The Board must not, and cannot, go back now and examine music that was played in 2019 or 2018 and say that is a violation. There is no history of problems at the Port. She said that the Port did not violate its entertainment license in the 2020 season, and there is therefore no justification to not renew it. An entertainment license, in short, involves music and or amplification and they must not confuse patrons voices talking or singing happy birthday as entertainment.

Ms. Browne said that she listened to last night's hearing where a member of this Board stated that Perk's had approximately five to six violations, but since they bought their own audio system at least they were trying. The license was then granted. She said that the Port has had its own audio system for years, they have been trying. If anyone thinks that what went on in 2020, with COVID, and trying to serve patrons while people were being impatient and not kind was something easy to do, you need to think again. Finally, she asked the Board, how many times in this past year have they gotten out of their car, heading to a store, and said oh blank, I forgot my mask. No one in this hearing room is perfect. Adjusting to COVID regulations has been a challenge to all of them, but do not let it destroy the Brackett family, their staff, and their patrons. Finally, she would ask, in the interest of having the Port's license reviewed, and renewed quickly, that if there are any other people that were considering speaking in support of the Port, that maybe they reconsider and withdraw their request to speak so that this meeting could be closed tonight, and the issues could be voted on.

Mr. Howell said unless they want to forego questioning also, he still makes the request that they try and find out what date the lawyers would be available for continuation. He is not going to sit there for another half hour to an hour deliberating over what they might do.

Mr. Ballantine asked Mr. Blake if there was a time that they could continue, that would work in his schedule?

Mr. Blake said that he is available on the 12th and 13th next week and would not be available Wednesday or Thursday this week.

Mr. Tomlinson asked if he could make a suggestion?

Mr. Ballantine said that he may.

Mr. Tomlinson asked if the Board would consider making a preliminary vote tonight, with respect to the renewal, and then they can continue the discussion with respect to discipline, at a future date. He said to place these people continually out of work, does far greater harm, than any public interest served, by delaying this. The Board has already indicated, at the outset, that it would take the issues separately. He would encourage the Board to vote on that renewal, so the Brackett's can return to work and their staff can return to work, as quickly as possible, and they can get this decision to the Court where proper process and procedure will follow.

Mr. Ballantine said that he is looking to the other Board members.

Mr. Howell said that he had surgery two weeks ago, and he is absolutely not going to sit there for six hours so, no. He said to Mr. Tomlinson, that the problem is that he feels they need some deliberation, because although they are very sympathetic to the Port, and the timing of that, they are walking the line of also being sympathetic to the those who have complained about noise and other concerns. They want to have some chance to see if they can reach a compromise that is best for all parties in town, and they can't just shortcut that.

Female voice, asking Mr. Ballantine, if she may speak for one moment?

Mr. Ballantine said let me let me finish this. He said that their concern is to be fair to all residents and he is afraid that they just had this hearing and what Mr. Tomlinson is suggesting is that they basically ignore all the testimony of the hearing and just make a decision without any deliberation.

Mr. Tomlinson said that he is not suggesting that and that the Board can very quickly deliberate, whether or not to renew, which is proper under the statute. He said to adhere to that statutory scheme, which does two things, one it helps to mitigate the Board's legal liability to for this, for its failure to follow the

proper statutory scheme, it also furthers Mr. Blake's view, that quite frankly this discipline and the Board's concerns about whether or not the public issues and concerns raised tonight, will still be available to be addressed by the Board at a subsequent hearing. He said to deny renewal tonight of the entertainment and seasonal licenses is a death sentence for this establishment, it will not be able to reopen and that further delay will cause it to lose the limited staff that it still has. He said that they are essentially signing and sealing a death warrant on this establishment, and that is on their watch.

Mr. Tomlinson said that the Board has an opportunity now to vote. He said that he appreciates Mr. Howell's concern about his recent surgery, but he had the same struggles that Mr. Powers cared less about, when he continued the January 12th hearing. So he would ask Mr. Howell to buck up and to do his public duty tonight which benefits everyone equally. They can then continue the third part of this hearing, with respect to discipline. However, he objects to any further movement on this and he will immediately run to the court and indicate that this delay was designed to foreclose the opportunity for people to have a meaningful discussion about the renewal tonight. This has been a charade from day one, and he would encourage the Board to take an active relief on the first two items which he noticed tonight.

Mr. Ballantine said that they heard him, but that he stands by his statement. He said that they are trying to do the best they can.

Female voice asked, Mr. Ballantine may I speak for one moment please?

Mr. Ballantine asked who's speaking, and said that he will recognize the person, very quickly. He asked who is speaking and were you sworn in?

Ms. Lucy Brackett said her name and that she was sworn in earlier. She said that as the Harwich Board of Selectmen that serves their community, which is a seasonal community of servers, restaurant workers, fishermen, purveyors, their entire community, they cannot postpone this meeting. She said that would carry out the further unemployment of hundreds of people, of mothers, fathers, townspeople, this cannot happen. She said the excitement in Mr. Howell's and Mr. MacAskill's voices and the energy that they brought forth jumping into cross-examination, that energy needs to carry out in a conversation and decision tonight. She said if they continue this further, and you get into Memorial Day weekend, and that they think that they are

representing the Town of Harwich, in a seasonal restaurant community, they are so disconnected.

Mr. MacAskill called a point of order.

Ms. Brackett continued and said you must move forward, you must move forward, there are lives and livelihoods at stake here.

Mr. MacAskill said that he will stay there until tomorrow morning at breakfast and continue to go over this. So, for Ms. Brackett to say Mr. Howell and Mr. MacAskill's energy, that is funny to him given their Facebook posts and the Port's Facebook posts completely attaching each Board member on a one-sided argument, and threatening people that live in the Town of Harwich. He said that Mr. Tomlinson's suggestion to just end that, and grant the licenses, he will go back to his original statement, a lawsuit was filed that caused them to have to meet, to discuss it, and another lawsuit, that will continue your personal attack.

Ms. Brackett spoke over Mr. MacAskill and said please move forward to vote for the people of this town, if you care about this town, you will vote tonight.

Mr. MacAskill said that he does care about this town. He will stay till tomorrow morning, but it's not his decision. He asked Mr. Tomlinson if there is any compromise being offered, from the other side, or is it just to get your way and get the licenses without finishing the hearing? He thinks that's a reasonable question.

Mr. Tomlinson said to Mr. MacAskill that he appreciate that question. He said that he has made overture of overture to counsel for the town to suggest a compromise, to allow the Board to follow proper procedure, by renewing the licenses, and then taking up discipline which is the proper procedure. However, the Board refuses to do that, he has offered that compromise

Mr. Ballantine tried to speak and Mr. Tomlinson said he was not finished, and that he was directed a question by his Board and he answering it. He said that Mr. MacAskill directed a question to him, and the question was, is there a compromise available. The answer is yes, please renew the licenses, they have already taken away the outdoor tent, and that issue will be taken up in the future.

Mr. Ballantine said to hang on, that he is taking the floor now. He said that the compromise that he is sure they are asking right now, is if they were to deliberate, the disciplinary action is a separate action, that's not holding up the licenses, and that would be quick. The compromise is

Mr. Tomlinson told Mr. Ballantine that is not the compromise that they are looking at. He said that Mr. MacAskill just mentioned that he'll stay here all night, until a decision was reached, but he's not in control of that and he also mentioned that he's not willing to grant a license. He said that Mr. MacAskill essentially admitted to Ms. Brackett that the board is not going to grant any licenses, because of the Federal lawsuit.

Mr. Ballantine said that they are not getting anywhere right now. He recognized Mr. Howell to speak.

Mr. Howell said that he is putting words in Mr. MacAskill's mouth and they are not getting anywhere right now. He said that he is making a motion that they continue the hearing to May 12th at 5 30 p.m.

Mr. Tomlinson said here's the compromise that I proposed.

Female voice said, are you paying their bills until then?

Mr. Ballantine said I'm sorry there's a motion on the floor, is there a second?

Female voice said that they are taking food out of her child's mouth, and that she needs to work.

Mr. Ballantine said that what Mr. Tomlinson suggested is to forget the disciplinary action that's not holding anything up, but that they ignore the interest of the people who have been concerned about the other noises, the ABCC violations, and I think in the end the noise is the one that we have to look at. What is the compromise on that?

Mr. Rob West, asked to speak and said that he owns a home at 632 Route 28, across from Ember. He wanted to make comment on the latter point that he was very surprised and encouraged to hear Mr. Ganley, Mr. Cohn, and Ms. Sharry, say that they did not want to see the demise of the Port, they did not want to see people's lives impacted, and they did not want to see their liquor license revoked, or not renewed. He said that when they talk about protecting

the interests of the people, that are complaining, why don't they bring that back, because they already told you that they're in support of extending this liquor license.

Mr. Ballantine said that he is not disputing that. They also mentioned that there are better ways to control the noise for the neighborhood as they condition the entertainment license.

Mr. Howell said that they have been continuously changing the times, and the conditions, of every other license and it is not likely that they are just going to blanketly renew it. He said that he renews his motion and if they do not want to do it then he will have to leave.

Mr. Ballantine said before Mr. Howell leaves, he asked if it is an option to adopt the entertainment license from 6:00 pm to 10:00 pm, and restrict that as they did with the others.

Mr. MacAskill said that the board's heard testimony tonight, and he could give 100 reasons why this has been continued, and Mr. Tomlinson just misrepresented what he said, yet again, but he would go back and.

Mr. Tomlinson said to Mr. MacAskill that is not productive, and you know it.

Mr. MacAskill said that he is proposing something, so it is very productive, but Mr. Tomlinson speaking over him and putting words in his mouth, and misrepresenting his words, that is not productive.

He said looking at the entertainment license, and the liquor license, he said that they still have to deliberate, they still have their own comments and need to hear closing arguments. He said that he sympathizes with the business, he absolutely does, but there are still some conversations to him about the attacks that are going on, the attacks on the residents and on the Board Members. He still sympathizes, and he has never heard once out of any of the board members that they want to take the liquor license, yet, that is what is being portrayed, that is what people are spewing. He asked if there was an option to get the license approved tonight, does it have to be in conjunction with the entertainment license? Why do we have to do entertainment tonight?

Mr. Tomlinson asked if he may respond to Mr. MacAskill's request?

Mr. Ballantine asked if he could just answer the question, right now, because they are going to lose one of the Board members.

Mr. Tomlinson said that he is offering a compromised position, if Mr. Ballantine would allow him to finish. He said that the Brackett's are willing to install a vegetative buffer around their outdoor tent in the back of the parking lot, in the form of eight to ten foot tall Leland Cypress trees, which is a \$23,000 investment. He said that if they had known about the complaints, they would have accelerated that process. Mr. Tomlinson said that they made that request for proposal earlier and he has offered and made numerous overtures to town counsel and this Board to try and resolve this issue so that this business can reopen.

Mr. Ballantine said okay, thank you for that compromise.

Mr. Tomlinson said that they want him to make a compromise, but then when you don't hear what you want, you cut me off. He said, please allow me to finish.

Mr. Tomlinson continued and said that they have a sound system that can control musicians, they are willing to install \$23,000 of Leland Cypress trees to add privacy and help deflect noise, they already aim their entertainment at their building and not towards their neighbors, unlike an abutter. He asked what more would this Board like from tonight? They are without entertainment, without a liquor license, and the Board has already taken away their tent. Diners do not want to dine inside, they want to dine outside and without the tent they will not be able to open. He said that he cannot state that affirmatively enough, you are putting these people out of work and closing their business. He said the compromise tonight, is the board renews the alcohol license, and the board renews the entertainment license to the same conditions as granted to Perk's yesterday. The Brackett's will install by the end of May the Leland Cypress trees at the back of their property, but they need to have their tent. They will have a monitor to control crowd noise and they simply ask that if there are noise complaints that they'd be brought to their attention timely, so they can do something about it. The Board can then continue to hold its discussion and further discipline with respect to the issues raised tonight. He said that nobody is denying anyone an opportunity to have that heard, but to take this action now during the pandemic.

Mr. Ballantine said to Mr. Tomlinson, that they got his point.

Mr. Howell said that this isn't as simple as just closing this and walking away. He said that he has made the point in the past, and has been making this point in successive requests for renewals, that they need to tighten up what they are doing with entertainment and with pouring. They have morphed into a site with two outdoor bars, two inside bars, live entertainment in both places and maybe they are opening up more. There is going to be a major discussion about this, and he is not willing to just simply renew what has changed over the years.

Female voice asked, is this the first time that you thought about this?

Mr. Ballantine asked her to wait a minute and let him finish the discussion.

Female voice asked again, is this the first time that you thought about this?

Mr. Powers said that the Board established rules, as is their right, at 5:47 pm, and they have not been honored.

Mr. Ballantine said that they have a motion to continue, and asked if there is a second?

Female voice asked if there is any chance that they can continue tomorrow?

Mr. Ballantine said that they are not going to get anywhere if she keeps interrupting. He turned it over to Mr. MacAskill.

Mr. MacAskill said that he would like a three-minute recess to speak to their council and asked if they can do that, and would they have to reconvene into executive session?

Mr. Blake said that they cannot go into executive session, but can certainly have one or two members come and discuss it so they can take a recess.

Mr. Ballantine said for Mr. MacAskill to go ahead and that they will be in recess for three minutes.

Mr. Howell said that he would like to be a part of the conversation, because he is leaving soon.

They went on recess for three minutes.

Mr. Ballantine said that they had a recess and two of Board members met with council.

Mr. Howell said that he withdrew his motion.

Mr. Ballantine said to Mr. Tomlinson, that where they are at, from the quick discussion after the meeting, is that they would ask that all of the folks online cease entering into their discussion. He said that so it is clear and open, they will stop the witnesses at this point. He said that they will look at making a motion to close the public hearing so that they can deliberate on their next step regarding the liquor license.

Mr. Blake said that what he is trying to do, if they are going to deliberate on the liquor license, Mr. Tomlinson will need to close his case. He asked Mr. Tomlinson if he is done with his case?

Mr. Tomlinson said that he had emailed them during the recess, though he is sure they may not have looked at it. He said that they have a compromise that he thinks preserves the Board's interest in continuing a discussion, with respect to alleged COVID violations from last year, and allow the Board the opportunity to reconvene this public hearing to address the public's concerns. He would like to present the proposal to the Board and he thinks that it fairly addresses a lot of the concerns raised tonight and on balance it serves the best public interest. He said that he would like to make this proposal for the Board's consideration and to take up on a motion, if that is their blessing.

Mr. Ballantine said that it would be their motion, but Mr. MacAskill has a comment. He said that they have at least one member of the Board that still wants to adjourn and go home tonight, but has graciously stayed. He would ask Mr. Tomlinson to just make a statement, the bulk of the callers are obviously in support of the Port, but the constant interruptions and yelling out in the meeting will put another motion on the floor to close this hearing. He said he could not be any clearer than that.

Mr. MacAskill said that he, as one board member, will listen to what Mr. Tomlinson's proposal is, but that by no means says that he is going to agree to it, and that he has his own proposal to throw out. He said that the Board could certainly deliberate on that, and they do not have to close anything until those two things are said. However, he is not interested in hearing anymore

of the outcries and the public outbursts, or anything else that's going to prolong this meeting, and they have to agree on that first.

Mr. Tomlinson said to Mr. MacAskill that he cannot agree more. He said that he would like to thank the Board for entertaining this continued discussion, because he believes it is in the best public interest. He also said to Mr. Howell that he sympathizes with his medical condition and appreciates his efforts to put in the extra work. He said to Mr. MacAskill's point and said that he still shows 144 people still dialed in and recognized that many of them have appeared in support of the Port and the Brackett family. Mr. Tomlinson said that he cannot thank enough the neighbors and abutters who appeared tonight, to share their concerns, after not being heard by the establishment. He said to please allow him to express his condolences for that, because the Brackett's want to make sure that they are good neighbors and they will happily exchange direct email addresses with any neighbor, so that there is no concern about a phone call not being returned. He said that they are free to exchange email addresses and contact them with any concern, because there needs to be improved communication at every level. He said that he has some thoughts on how the Board can alleviate significant concerns that were raised tonight, and strike a very fair balance that gets people back to work, that provides a valuable service, but also protects and addresses the concerns that were raised by people, neighbors and abutters that appeared tonight.

Mr. Tomlinson said that the Port would be willing to first and foremost be willing to accept the same limitation of hours on entertainment as Perk's, and secondly, they will upgrade their house sound system to include control over live performances, that is controlled by the house system, and third, they will seat their last turn by 10:00 pm and clear their outdoor tent by midnight. He said that they will have a dedicated employee to monitor sound, that is not a wait person, this is not a manager, this is a dedicated employee to ensure that sound remains constant and non-offensive throughout the night. They are going to exchange email communications with abutters and last they are going to install vegetative shade trees along the rear of their property, which will help alleviate some of the noise concerns.

Mr. Tomlinson reiterated to make sure he was not missing anything and said that he believes that it represents a very fair compromise, and allows this establishment to open and to continue to serve the community, its staff, and also be respectful of the concerns raised tonight. He said the Board is certainly

free to continue this hearing with respect to any additional conditions based upon the discussions raised here tonight.

Mr. Ballantine said thank you and asked if Mr. MacAskill wished to follow up?

Mr. MacAskill said that he appreciates what Mr. Tomlinson presented and he believes that they can get somewhere. He said that where he thinks they are stuck, is that their proposal would be quite different from that.

Their proposal would be to grant the liquor license, and the only condition would be that the only bar to serve alcohol outdoors is the front bar. He said that is anything that's morphed into the back parking lot, or any other pouring place out back, whether it's true or not true, and they haven't been able to deliberate that, but that would cease immediately. Pouring is only to happen at the front bar indoors, the two bars inside and the one bar outside, that would be their condition.

Mr. Tomlinson said that is completely acceptable, the only licensed bars on the permitted premises are the two indoor bars and the outdoor bar. He said that there are no other bars, so that would be an acceptable condition.

Mr. McManus asked, just to clarify, the back part that they are trying to reach a compromise on, he said that every advertisement he has seen on Instagram etc. talks about being four bars, two inside and two outside.

Mr. Tomlinson said that when they discuss the outside bar, that is referred to as the Nauti Bar. He said that when they refer to more bars that is their ice buckets and a marketing engine, nothing more.

Mr. MacAskill said that they agree that there would be no pouring in the back parking lot, and that they have the Nauti Bar and the two bars inside.

Mr. Tomlinson said that is crystal clear.

Mr. MacAskill said that he had said that his proposal would be quite different and it's based on what he thinks will pass tonight and what will not pass tonight. He said that if they get stuck, and they need to go to motions, he fears that not enough conversation is going to happen and they will not get there. His proposal would be the bars, they approve the liquor license and that they

delay, until the 12th or until a regular published meeting, to have the conversation about the outdoor entertainment. The Board can then kick around and deliberate ideas outside of what was just mentioned. He said that what Mr. Tomlinson mentioned about the shade trees and the house system and other mitigating things, sound good to him. He said he is willing to work with the establishment, but he has to address some of the concerns raised by the people that spoke tonight, and some of the letters that they got. Mr. MacAskill said that his proposal sounded good, but he is not sure about the 12:00 am under the tent, but he thinks they can debate that as a Board at the next meeting, with comments as the Chair would allow. They would have to close the public hearing tonight, vote the liquor license, and agree to bring back the entertainment at the very next board meeting. He said not to delay it anymore, and then hopefully move on from there.

Mr. Howell said that these are separate issues and they can close the hearing, as to the liquor license, and come to a conclusion with that, but he is not going to vote to close the hearing as to entertainment.

Mr. Ballantine said that would give the same end point, and they can continue the entertainment to the next meeting. He said that he would just want to hear if that's true from Mr. Blake?

Mr. Blake said that in his opinion they could close the public hearing, with respect to the renewal of the liquor license only, and then continue the other two hearings to a time and date certain.

Mr. Ballantine asked if Mr. Tomlinson had a comment on that?

Mr. Tomlinson said that he had a question, and asked if the compromise agreement that Mr. MacAskill proposes is to close the public hearing tonight with respect to the liquor license only, and based upon based the conditions that he indicated which basically reflect the hours as applied for on the liquor license and the three bars.

Mr. Ballantine asked Mr. MacAskill to confirm that was correct.

Mr. MacAskill said that he is fine with that, and just with the caveat that as they talk about the entertainment, as they have with other restaurants in town, they have an open conversation about conditions that will make it more peaceful for their Police Chief and some of the residents that spoke tonight.

Mr. Tomlinson said that he had a follow-up question, and thanked Mr. MacAskill for your clarification with respect to the continued public hearing on entertainment. He asked if there is a compromised position that the board would be willing to take, that would allow the establishment to simply to have ambient music? He said that without an entertainment license it can't even turn on the television. They would like the opportunity to offer ambient entertainment and television because they are able to offer interior dining and given the number of complaints that Ember received when they did not have any entertainment, is a significant concern. He said that obviously there would be no live outdoor entertainment, this would be a temporary grant until the Board takes up the issue again, at its next duly public hearing in a week.

Mr. MacAskill asked if they can just agree that the ambient music or television would be inside entertainment only?

Mr. Tomlinson said that they can seat on the patio, and said that there are loudspeakers on the patio. He said that he is happy to discuss that with them, but he does not have the authority to and they had not discussed that at break. He asked if they could have a brief recess to speak with his clients?

Mr. Ballantine said that at this point, he would like to follow through and asked if Mr. McManus was ready to make a motion?

Mr. McManus said no, he just wanted to make a comment. He said that he thinks they are in an okay position, with the two bars inside and one bar outside. He said, to be clear, the license will only include the inside of the building, the front deck on Route 28, and the Nauti Bar. It will not be including the seating on the rear parking lot, because that's only a grant of a temporary nature, due to the Governor's emergency regulations. He said that his concern with the landscaping and why he would not be prepared to move ahead with that, because at some point those temporary expansions go away, and that needs to be able to be returned to a parking lot.

Mr. Tomlinson asked if he could respond to the vegetation, and said that it would be a permanent installation, and a continued benefit to the abutters, even after the COVID expanded outdoor dining services is terminated. He said that he did confirm with his clients that what will be installed on the fence line, will not impact parking, it is all vegetated land there. He said that his

clients also agree to entertainment inside only, until further discussion by the Board.

Mr. McManus said that he would like to see a plan, that shows the vegetation, to be sure that it is not going to infringe in the parking lot. He said that he does not know the parking lot layout and what it is now, and what it will be after this vegetation is in place.

Mr. Howell said that he needs to be clear, because Mr. McManus actually expanded it again. He said that he has a packet of a half a million licenses that go back in time, when they got to the point of granting any outdoor pouring or serving in the back, that is when all hell broke loose. He said that the only thing he is willing to approve right now, and so that they can get to the point where they can open, and they can reset where the public's expectations are, is serving in the front, where Route 28 is, and serving inside. Anything beyond that, he will not vote for.

Mr. Ballantine said thank you and that he thinks they are getting close to that.

Mr. MacAskill said to Mr. Tomlinson that he thinks that what they heard and what they have been talking about for the last five minutes, they are pretty clear on that right?

Mr. Tomlinson said to Mr. MacAskill that one of the fundamental issues here, is that while you have been to the establishment, and understand the layout, other members of the Board have not. He said to be clear, the only bar that they are discussing is what is affectionately referred to as the Nauti Bar, and it is right up on Route 28. He said that there is no bar, the merchandise shed, is not a bar. There is no other bar located in the parking lot. There would simply be a service bar, where it has always been located and there is no additional expansion. He also wanted to be clear that the tent, which is located in the parking lot, was cited on a plan that was provided and showed the number of picnic tables and size of the tent, and was approved by the Board last year.

Mr. Ballantine said that he wanted to just interrupt him, and said that it looks like they have reached a place where they can move ahead. He asked Mr. MacAskill if he could state where they are and be sure we have a concise statement of what we will make an action on?

Mr. MacAskill said that it is his understanding that they will close the public hearing as it relates to the liquor license, then they will continue to date certain for the entertainment and the part of this hearing will be on the 12th. The Board will permit the liquor license tonight, based on the three bars that they have discussed, the two inside, and the Nauti Bar. There will be no serving in the back, and they would approve the entertainment license for ambient background music, inside and on the deck, until they finish the public hearing and figure that out. He asked Mr. Tomlinson if that sounds correct?

Mr. Tomlinson said that what he is hearing from Mr. MacAskill, he agrees with everything and said he would just parrot it back.

He said that they are going to close the public hearing tonight on the liquor license, for which the board will grant the renewed liquor license, on the same hours as last year, it will continue discussions about entertainment and other violations raised and concerns raised tonight, before the public until the next hearing on May 12th, the three bars at the Port, include two interior bars and one exterior bar that is located closest to route 28. There will be no other bar outside or table service under the tent, however, a waitperson will be able to take a beverage order from the outdoor bar or the interior bar and deliver it to a seated patron under the tent, but there will be no entertainment under the tent. The only entertainment will be ambient music inside and on the patio.

Mr. MacAskill said that he agrees with everything that Mr. Tomlinson just said, the only disagreement that they have right now is the tent. He said that last week the Board voted to not approve the tent permit and he had asked if there was an ability for them to reapply. Mr. MacAskill said that now is not the appropriate time for them to add the tent back into the mix. However, he would certainly be open to having that conversation, as one Board member, he would be open to have that conversation related to the bigger picture. His only suggestion is that they are trying to reach a compromised position, and he would suggest to the Board that this affords the applicant the opportunity, over the next two weeks, to demonstrate how committed they are to being a good neighbor. He said that he thinks that would go a long way to affording the public an opportunity to take a view on that as well, at the next continued hearing.

Mr. Tomlinson said that if they are not able to have their tent, they will be very limited in order to be able to socially distance under the current COVID guidance, they would be extremely limited to what they would be able to offer

for outdoor dining on the existing deck. He said that all he is suggesting is that they have an opportunity to be able to demonstrate that they can be very good neighbors and asks for the board indulgence to demonstrate that. He said that they will be back in two weeks, and if the Board decides that it is not appropriate at that time, then they can revisit the tent at that time. He said that he is simply asking for an opportunity to prove it up.

Mr. MacAskill asked when the next scheduled Board meeting is? It was answered that the next regular Board meeting is Monday, May 10th.

Mr. MacAskill said that he has to be frank, and he said based on the majority of the conversation tonight, he will give you his view is that a large part of this is the noise complaints related to the tent. He thinks that as they discuss outdoor entertainment, it is his opinion that it will be related to the outside in its entirety, and how they can compromise to make it work. He is certainly not opposed to tents, but he wants to have the conversation in more detail, then the Board members are willing to have tonight. He said that he would ask Mr. Tomlinson's clients to wait until the 10th, so that they can have that conversation and maybe have a new plan and new drawings to submit.

Mr. Blake spoke up to say that he is not available on the 10th, or the 11th, because he has town meetings.

Mr. MacAskill said that he thinks they would be okay and would not need Mr. Blake, because that is part of the Town's COVID relief package for the tent, so they can have that conversation about the tent on the 10th. The disposition of the disciplinary hearing will come back on the 12th.

Mr. Tomlinson said, to Mr. MacAskill's point, he just simply wanted to reassure the Board that this is an opportunity for the Board to afford the applicant the opportunity to demonstrate its commitment. He said that he thinks the Board owes that to the public, and he said that the neighbors who have come and have spoken, have indicated that they want to see the business succeed and they don't want to harm the business. The Port wants to be good neighbors and this is an opportunity to demonstrate that. He is not suggesting that there isn't any opportunity in the future for the Board to revisit the tent, or to revisit any noise, or COVID relief. He said that he is simply asking, as part of a compromise tonight, to afford the applicant the opportunity to do this and for the Board to include it as part of their motion. He said that as

additional concessions for the last seating at 10:00 pm, they will install the trees.

Mr. Ballantine said that he appreciates it and they understand, but they want to move this along to get to an end point.

Mr. Howell and Mr. Tomlinson both tried to speak. Mr. Howell asked him to stop interrupting him and allow him to speak.

Mr. Howell said that somehow there is a misunderstanding here, and he is going to be very explicit about this. They were acting responsibly and they had an opportunity to demonstrate that for a number of years when they had a license for inside the facility and then wound up pouring or serving in front on Route 28. He said that the trouble began when serving started occurring in the back, and he is not willing to go beyond anything that is beyond the exterior of the southern wall of the Port. He said that he will go for a license that has serving going on along Route 28 and internally, because they have demonstrated that they can reasonably conduct that. He said that beyond that, he will not vote for anything that expands that and then try and pull it back, that is the whole point of these continued hearings. He said that beyond that he will not vote for anything that expands that and then have to try and pull it back.

Mr. Ballantine said that he thinks they are in a place now with enough information to move forward with a motion.

Mr. MacAskill said to Mr. Tomlinson in the spirit of moving along and in the spirit of trying to figure this all out, that he would respectfully ask that they withhold the request for the tent permit. He said that today is May 4th, their next meeting is May 10th, and the continued public hearing is May 12th. He said that they are not talking about enough time to not have a little bit of harmony here. He said that they just heard Mr. Howell's comments, and he thinks that they are there except, for basically an eight day ask, and demonstrating to the public, and each other, that they are working together.

Mr. Tomlinson apologized to Mr. Howell and said that he did not realize he was speaking over him and thought he had the floor from the Chairman. He said he apologizes but did not appreciate his tone with him.

Mr. Howell said that he does not appreciate his either.

Mr. Tomlinson said that it is obviously in his client's best interest to continue to have the tent. He said that if that is not a motion that's going to carry tonight, and no one's willing to make that, he can't force the Board to make a motion. He said that to the extent that Mr. MacAskill is working his level best, as this as the source of reason, he appreciates that, and his clients appreciate that. There is an effort here to make the motion and if he can make the further motion on the tent, and then he can't say he didn't try.

Mr. Ballantine said just to clarify what Mr. MacAskill suggests, is that they bring the tent back on the 10th, after they have had some timing. Then they can have the entertainment on the 12th and continue that. He asked if Mr. MacAskill wished to make a motion?

Mr. MacAskill said before he makes a motion, he asked Mr. Blake if both sides had to close?

Mr. Blake said that they have to close their public hearing with respect to the renewal of the liquor license. He asked the applicant, Mr. Tomlinson, if he rested his case and is he done presenting evidence with respect to the renewal of the liquor license?

Mr. Tomlinson said in acceptance of the compromised position, that Mr. MacAskill has presented, yes.

Mr. Ballantine said with that, he will entertain a motion to close the public hearing on the liquor license.

Mr. Howell moved that they close the public hearing, as it relates to the liquor license only. Seconded by Mr. McManus.

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

Mr. MacAskill moved that they continue the public hearing related to violations and entertainment for the Port Restaurant, until May 12th, no earlier than 5:30 pm. Seconded by Mr. Howell.

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

Mr. MacAskill moved that they approve the seasonal all-alcohol alcoholic beverages license for the Port restaurant and bar, with the conditions, 8:00 am to 1:00 am weekdays, 10:00 am to 1:00 am Sundays, and holidays, inside and 12:00 pm to 12:00 am.

Mr. Howell called a point of order and said that the motion doesn't cover what it is going to entail. He said that it would cover the serving area indoors, which would be for 200 square feet, with two rooms, three entrances, four exits, and outdoors would be restricted to the Route 28 façade of the building. He said that is what the motion would pertain to, with those hours.

Mr. MacAskill said that is in addition to his motion, if that is okay?

Seconded by Mr. Howell.

Mr. Ballantine asked Mr. Tomlinson if he got that or should they repeat it?

Mr. Tomlinson said that Mr. Howell spoke very quickly and so his understanding would be that the it would be approved in conformance with the premise as approved by the Town, and the ABCC?

Mr. Howell said that the description that he is referencing was that the indoor area consisted of a 4,200 square foot restaurant with two rooms, three entrances, and four exits, with an outdoor area consisting of the exterior front of the building along Route 28. There is no reference at all, to serving in the rear of the building.

Mr. Tomlinson asked Mr. Howell if he was referring to the parking lot?

Mr. Howell said, the rear of the building.

Mr. Tomlinson said beyond the rear of the building, that is correct that the description of the premises does not include beyond the rear of the building.

Mr. Howell said the confines of the exterior wall at the back of the southern wall of the building, to be explicit.

Mr. Tomlinson said yes, that's the description of the premise, as I understands it.

Mr. Howell said there's another description that had been used variously for 780 square feet of exterior deck, in bar on the south side of the building, that he is not including.

Mr. Tomlinson said that they are including the exterior deck and that the only exterior bar under discussion, is the bar that is at the front of the building on Route 28.

Mr. Howell said that he is talking about the service area, not where the bar is. The original licenses that were issued, did not include that and he is not seconding anything beyond the south exterior wall of the building. He said to be explicit, serving would be north side of the building, which would be Route 28.

Mr. MacAskill said that this is the same as they have with Roots Market and everything else that they have approved. That is just what the premise is, they are not saying they are going to serve, that is the description and it was like Roots yesterday.

Howell said that he's assuming that the patio deck is part of the serving area.

Mr. MacAskill said that he personally does not have a problem with that.

Mr. McManus said that he does not either.

Mr. Howell said that he is trying to be honest and it and he is not voting for the exterior serving area.

Mr. MacAskill said for the record, the motion did include the decking, as a description of the premise.

Mr. Ballantine asked if they have a second?

Seconded by Mr. McManus.

Mr. McManus said that they are on the verge of approving the liquor license and as Mr. MacAskill said earlier, they are in this position because from the

get-go, the board has been vilified as wanting to take and rescind the license. He said that has never been mentioned in public or in any conversation of the Board at any time. He said that their concern was based on complaints and reports from the neighbors. He said that things have just gotten out of control, and they needed to be brought back in control. Mr. McManus said, as a former café and pub owner in California, he knows what it takes to run a successful bar that is tight with residential areas. He said that it takes being in constant contact with all of the residents, and not waiting for them to contact you. It also takes monitoring your place of business during the hours of operation, so you understand what the impact is. He knows that can be done, because he has done it in the past. He knows that the folks that have run the Port restaurant can do that too, and I'm just hoping that with the compromise that they are reaching here that they'll take that to heart and do that in the coming season.

Mr. Howell said that while he won't be voting for this, he just wants to be explicit about it. He said that the workers, and the manager of that facility, it is incumbent upon them to be able to control this. He said it is a pouring establishment, not a packaged goods store, so if anybody takes a beverage off the deck or goes into the lot, they are in violation of their liquor license, at that very moment. He wants to be explicit about that, because that's not part of the description of the premises. It is incumbent upon the license holder to stop people from violating the terms of their license. He said that they are not granting them the ability to have people wander with an open container of alcohol into the parking area.

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

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

Mr. Ballantine said that he thinks they have, after many hours, made progress.

Mr. McManus said he has just one comment, so they are all on the same page of what the plan going forward is. As he understands it, Monday night they will take up the question of granting the extended COVID relief application, which is what the tent was approved under last year and is under reconsideration.

Mr. MacAskill said if he can make a comment, not to prolong things, but just to Mr. Tomlinson and anyone else still listening, if the Chair agrees to put it on the agenda for Monday night, to discuss, he is not guaranteeing by any stretch of the imagination that it won't flow into the 12th, where they have the continued public hearing. They can talk about what compromises they might want to make. He is willing to have the conversation on Monday night, but it may extend to two days later, to the 12th when they talk about the big picture.

Mr. Blake asked what time they will continue it on the 12th, and confirmed that it was 5:30pm.

Mr. Ballantine said that Monday night be their normal starting time, but Mr. Blake is busy then.

Mr. Howell said that Wednesday would be related to both entertainment and possible discipline, right?

Mr. McManus asked if they could get a diagram indicating what they want in the way of the tent, and the landscaping, so they can see how that all works?

Mr. Tomlinson asked to confirm the meeting time for the 10th, and asked if 6:30 is their regular scheduled meeting time?

Mr. Powers said yes, and asked if he may inquire of Mr. McManus, if the item that he just referenced is needed for Monday evening?

Mr. McManus said yes.

Mr. Powers asked that they have that to staff then no later than noon on Friday, so that it can be included in the boards packet for the weekend.

Mr. Howell said to Mr. Tomlinson, to be clear, the way the agenda works it would be placed on the agenda for no sooner than 6:30, but it doesn't assure 6:30 pm.

Mr. Tomlinson said that he understood and said that noon on Friday is acceptable. He asked if it needs to be a scaled drawing, because they used an architect to prepare the scale drawing and he can't speak to the architect's schedule. However, if they are able to modify the earlier drawing, to show the

vegetation that they propose, with a hand drawing is that going to be sufficient?

Mr. McManus said yes, and if they sketch it in and then give an explanation of what the plantings are and what their expected height will be, what the characteristics of the plantings will be, how they mature.

Mr. Ballantine confirmed that they do not need an engineered drawing, a sketch will do.

ADJOURNMENT

Mr. McManus moved that they adjourn at 11:15 pm. Seconded by Mr. MacAskill.

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

Mr. Ballantine thanked Mr. Blake and all and said it has been a long night.

Respectfully submitted,

Lisa Schwab
Board Secretary

