



## Board of Selectmen Public Meeting Minutes May 7, 2019

*The regular meeting was called to order at approximately 6:00 p.m. in the Town Hall Hearing Room by Chairman Norm Holcomb. Selectmen present: Erik Tolley, Tracy Post, Mike Stone, and Mark Forest. Also attending: Yarmouth Town Administrator Dan Knapik and Yarmouth Assistant Town Administrator, Chris Dwelley.*

### 1. Public Announcements and Comments

*Yarmouth Delegate to the Assembly Suzanne MacAuliffe reported that the County budget was passed, although amendments are expected to reduce operating costs. The total budget increased less than 2%. \$800,000 in OPEB funding is proposed. A new dredge purchase is also being proposed. Charter Review will begin in June, and suggestions are welcome.*

### 2. Public Hearing

a. Comcast License Renewal Hearing. Licensing Chair Mike Stone read the legal notice into the record. The Board reserves the right to hold additional hearings if deemed necessary. Terry Duenas, Director of Cape Cod Community Media Center, which is funded through cablevision fees, reviewed the mission of public access television. Over 3,000 hours of original programming are produced every year. There are also robust equipment rental and training programs. Total value of services returned to the community in 2017 was almost \$4 million. Sarah Colvin offered a presentation on Cape Media News.

Mr. Duenas responded to questions from the Board regarding the funding received by the media center, viewership; impacts of new technology; social media; and cord-cutting. Selectman Post asked for a copy of the current contract with the media center.

Special Cable Counsel William Solomon provided a brief history of the cablevision/ community relationship with regard to licensing. He then explained that this public hearing meets a federal requirement to ascertain the needs and interests of the community and begin the cable re-licensing process. Other hearings may be directed toward government, education, and/or town departments to fully explore the community needs. He explained the parameters of negotiations within the licensing process. He then responded to questions from the Board and offered a variety of negotiation scenarios.

Municipal Operations Director Rich Bienvenue explained the flow of Comcast fees through town budgets. Selectman Forest clarified that cable revenues should be used for community cable-related expenses, not the general fund.

Selectman Stone asked for public comment. Tom Nickinello of South Yarmouth complained about the quality of local Channel 18. There was no other public comment.

**MOTION: To move to close the public hearing, subject to the right of the Board to hold additional hearings.**

**Motion by: Tracy Post**

**Seconded by: Mark Forest**

**Yea 5 Nay 0**

b. Continuation of Show Cause Hearing for Grand Café. Jackson Paguay stated that he is fluent in Spanish and English and will serve as his father's, Luis Paguay, interpreter. Manuel Carchi was also present. Licensing Chair Michael Stone explained that this hearing is continued from two weeks ago, and testimony and evidence taken at that hearing is part of the record. Officer Phil Magnuson confirmed that he gave Mr. Paguay copies of the police reports. He provided copies to the Board and clarified a statement made by Officer Wenberg regarding Exhibit 2. The officers were present.

Selectman Stone reviewed the police reports. Through his interpreter, Mr. Luis Paguay agreed that a family party with DJ was going on after his licensed closing time of 11:00 p.m. on February 10. He believed that because it was not open to the public, it was permissible. He stated that alcohol was not consumed after 11:00 p.m.; the bottles were left over from earlier in the evening. Officer Marino reported that he observed open containers of alcohol, but did not have a specific conversation about them. He did explain the 1:00 a.m. By-law. Officer Magnuson noted that there was no entertainment license, but even if there had been one, the by-law requires that all alcohol be removed by 1:15 a.m. and all patrons out of the building by 1:30 a.m., regardless of whether or not the patrons are friends or family members. He cited Section 1.04, Hours of Operation, and Section 1.04(c).

Officer Wenberg completed a compliance check on March 1, 2019, and found one violation, a case of beer purchased at Becker's Package Store. Selectman Stone reviewed the March 1 police report, which stated that Mr. Paguay bought the beer from Becker's because he had run out. Through his interpreter, Mr. Paguay stated that he bought the beer for personal consumption on his March 2<sup>nd</sup> birthday and did not know that he could not have it in the restaurant. Selectman Stone asked if he disputed the police officer's statement, that he bought the beer because he ran out. Mr. Paguay stated that some of the beer was served to patrons. Officer Magnuson reported that Mr. Paguay and Mr. Carchi have attended the required seminars, but the language barrier is a significant problem. He argued that common sense dictates that patrons do not put down half-consumed beverages at 11:00 p.m. and continue to dance and celebrate until 1:45 a.m. without consuming any more. His concern is whether or not these business people are able to conform to the law, noting an ABCC violation from earlier in the year.

Officer Magnuson offered a summary of potential violations for the Board to consider:

1) On February 10, 2019, permitting an illegality on the licensed premises, to wit: violation of MGL Chapter 38, Section 12: service of alcoholic beverages beyond the hours fixed by the local licensing authority for that license, which is also a violation of Yarmouth Rules and Regulations, Section 1.04;

2) On February 10, 2019, permitting an illegality on the licensed premises, to wit: DJ entertainment and amplified music without an entertainment license as required by Chapter 240, Section 183(a), also a violation of Yarmouth Entertainment Rules and Regulations, Section 2;

3) On March 2, 2019, permitting an illegality on the licensed premises, to wit: violation of Chapter 138, Section 23, sale of alcoholic beverages purchased from a package store under Chapter 15.

Selectman Stone asked if Mr. Paguay had anything more to say prior to deliberations. Mr. Paguay apologized and stated that he is trying to do everything correctly, but didn't understand the law due to the language barrier. He has had some food and beverage experience, but not as an owner or manager.

**MOTION: To move to close the public hearing.**

**Motion by: Tracy Post**

**Seconded by: Mark Forest**

**Yea 5 Nay 0**

**MOTION: To move to find a violation on February 10, 2019 of 204 CMR 2.052, permitting an illegality on the licensed premises, violation of MGL Chapter 138, Section 12, service of alcoholic beverage beyond the hours fixed by a local licensing authority for that license; which is also a violation of Yarmouth Rules and Regulations, Section 1.04(a), (c), (d), and (e).**

**Motion by: Tracy Post; not seconded.**

Deliberations continued regarding the strength of the circumstantial evidence of alcohol service after licensed hours. Officer Magnuson considered it very strong. Selectman Holcomb expressed frustration at having issued the license in the first place, due to Mr. Paguay's lack of experience and language barrier. Selectman Stone advised that the potential violations would be taken separately, and in order. By a vote of: **Yea 2 Nay 3**, there was no finding of a violation of Chapter 138, Section 12.

**MOTION: To move to find a violation on February 10, 2019 of Yarmouth Rules and Regulations, Section 1.04(a), (d), and (e).**

**Motion by: Tracy Post**

**Seconded by: Erik Tolley**

**Yea 5 Nay 0**

**MOTION: To move to find a violation on February 10, of 204 CMR 2.05, permitting an illegality on the licensed premises, to wit: DJ, entertainment and amplified music without an entertainment license under MGL Chapter 140, Section 183(a); also a violation of Yarmouth Rules and Regulations Section 2(a).**

**Motion by: Tracy Post**

**Seconded by: Erik Tolley**

**Yea 5 Nay 0**

**MOTION: To move to find a violation on March 1, 2019, of 204 CMR 2.052, permitting an illegality on the licensed premises, to wit: violation of Chapter 138, Section 23, sale of alcoholic beverages purchased from a Section 15 package store.**

**Motion by: Tracy Post**

**Seconded by: Erik Tolley**

**Yea 5 Nay 0**

Regarding disposition, Officer Magnuson advised that the establishment already has an ABCC violation for serving a minor, and reviewed the penalty options under the guidelines. There was consensus that language appears to be the main problem. Mr. Paguay stated through his interpreter that he intends to seek more training with regard to the laws, and to apply for an entertainment license. Jackson Paguay stated that he will be working at the establishment more often.

Selectman Stone noted that the Transfer of License hearing is next on the agenda. The Board stressed that someone on the property must have a complete understanding of the rules, regulations, and laws at all times. Mr. Paguay stated that the chef can help him. Selectman Stone suggested treating the findings as one offense, and issuing a warning, possibly a one-day suspension held in abeyance. Officer Magnuson advised that there is currently a two-day suspension being held in abeyance by the ABCC. Mr. Tolley suggested evidence of Mr. Paguay's understanding as a condition of the suspension held in abeyance. Discussion followed regarding how to monitor and ensure compliance. Officer Magnuson offered to meet with Mr. Paguay to confirm his understanding of the laws.

**MOTION: To move to issue a three-day suspension of license to be held in abeyance for one year, conditioned upon Luis Paguay demonstrating a full understanding of the laws and attending the May**

**20, 2019 seminar with Jackson Paguay. Full suspension to be served if there is no written understanding of the laws after 30 days.**

**Motion by: Erik Tolley**

**Seconded by: Tracy Post**

**Yea 5 Nay 0**

c. Continuation of Transfer of License and Change of Hours Application for Grand Café  
The applications were continued to June 18, 2019.

### **3. Elderly and Disabled Tax Aid Committee Charge**

Director of Assessing Andy Machado reviewed the purpose and composition of the Committee. The Chair of the Assessing Committee and the Treasurer/Collector are members by statute.

**MOTION: To move that the Board of Selectmen establish the Elderly and Disabled Tax Aid Committee.**

**Motion by: Mark Forest**

**Seconded by: Erik Tolley**

**Yea 5 Nay 0**

### **4. Commercial Valuations Update**

Director of Assessing Andy Machado reported that the consensus of Water Resource Advisory Committee, UMASS Donahue Institute Study, and the Assessor's Office is that the Town's commercial/industrial valuation decline is due to the lack of wastewater infrastructure. Selectman Holcomb did not feel that this explanation adequately responded to his original email request for data on if and why the valuation of Yarmouth's commercial property has declined, particularly in relation to other Cape towns. Mr. Machado noted a reluctance of property owners to invest in their properties until the wastewater issue is resolved. Finance Director Ed Senteio, Mr. Machado, and Selectman Holcomb discussed methods for finding and reporting the type of data requested. Another update will be provided in the future.

### **5. Stronger Shield Presentation**

Police Chief Frank Fredrickson and Deputy Chief Steve Xiarhos explained that after the death of Officer Gannon on April 12, 2018, donations began rolling in to the police department, and the idea to substantially upgrade training facilities arose. The Yarmouth Police Foundation has assisted with the project. The first phase was improvements in the MILO Firearms Simulation and Judgement Training System, and a Taser training room. Phase 2 will be an improved K9 training area; Phase 3 will be a Simunition Training building. Phase 4 will be a live-fire shooting container.

Chief Fredrickson responded to questions from the Board regarding maintenance costs, lead removal, the permitting process, and the absence of a building committee. The Board was asked to approve Phases 2 and 3 as presented. There was considerable discussion around the lack of public input. While the Board supported the project, it concurred that a policy discussion is needed to address whether and how a town department may or may not develop town-owned land using private funds. There was also discussion and clarification on the funding procedure, insurance, and future funding of maintenance and operations. Selectman Holcomb expressed concern about the process and procurement regulations. Town Administrator Dan Knapik confirmed that Town Counsel has reviewed and affirmed the proposal.

**MOTION: To move that the Board of Selectmen approve the construction of Phases 2 and 3 as presented.**

**Motion by: Tracy Post**

**Seconded by: Mark Forest**

**Yea 5 Nay 0**

## **6. Board and Committee Actions**

### a. Committee Appointments

**MOTION: To move to accept the resignations of Gerald Garnick from the Board of Appeals and Wayne Kivi from the Golf Enterprise Committee, with thanks and appreciation.**

**Motion by: Tracy Post**

**Seconded by: Erik Tolley**

**Yea 5 Nay 0**

b. Approval of Minutes for September 25, 2018 and October 2, 2018 and Executive Session Meeting Minutes of March 26, April 1, and April 9, 2019.

**MOTION: To move to approve the minutes of September 25, 2018, and October 2, 2018.**

**Motion by: Tracy Post**

**Seconded by: Mike Stone**

**Yea 4 Nay 0 Abstain 1**

**MOTION: To move to approve and hold the minutes of Executive Sessions on March 26, April 1, and April 9, 2019.**

**Motion by: Tracy Post**

**Seconded by: Erik Tolley**

**Yea 4 Nay 0 Abstain 1**

c. Upcoming Agenda Review: The Board reviewed the upcoming agenda.

d. Individual Items: Selectman Erik Tolley announced Committee Volunteer Appreciation Day on May 15 at Lorusso Lodge at Flax Pond, 8:00 a.m.

## **7. Town Administrator Items**

a. Consent Agenda: The \$400,000 donation from the Yarmouth Police Foundation will not be voted on.

**MOTION: To move to approve the Consent Agenda, excluding the Yarmouth Police Foundation donation.**

**Motion by: Erik Tolley**

**Seconded by: Mike Stone**

**Yea 5 Nay 0**

b. Town Administrator Updates:

c. Water Resources Planning: A planning grant of \$50,000 was received to continue funding the DHY Wastewater group.

d. Dennis – Yarmouth School Agreement: None

e. Mattacheese School Project: None

f. Cape Tech: None

g. DPW Facility: Selectman Tolley reported that design is 75% complete; materials and colors are being considered.

## 8. Adjourn

**MOTION:** To move that the Board of Selectmen adjourn the meeting.

**Motion by:** Tracy Post

**Seconded by:** Mike Stone

Yea 5 Nay 0

Meeting adjourned at approximately 10:15 p.m.

Respectfully submitted,



Linda Dennehy

## DISTRIBUTED MATERIAL AGENDA PACKET

- Legal Ad for Public Hearing on Comcast License Renewal
- Transfer of Annual Wine & Malt License and Change of Hours Applications from Grand Café Restaurant, Inc.
- Show Cause Hearing ICO Grand Café
- 2018 Annual Town Meeting Article on Real Estate Taxes of Low Income Elderly and Disabled Persons and Elderly and Disabled Taxation Aid Committee Charge
- Memo to BOS from Town Assessor dated May 1, 2019 re: Commercial Property Valuations
- Stronger Shield PowerPoint Presentation
- Email to Chairman, ZBA from Gerald Garnick dated April 25, 2019 re: Resignation
- Letter TO BOS from Wayne Kivi dated April 26, 2019 re: Resignation
- Draft Board of Selectmen Meeting Minutes of September 25, 2019
- Draft Board of Selectmen Meeting Minutes of October 2, 2019
- Draft Executive Session Meeting Minutes of March 26, 2019, April 1, 2019, and April 9, 2019 **(under separate cover)**
- 2019 BOS Upcoming Agenda Items Schedule
- Memo to BOS from Recreation Division dated May 1, 2019 re: Donations to Recreation Division
- Letter to BOS from Director of Bands, DYRHS, dated April 22, 2019 re: Request to hold Donation Drive at the Yarmouth Transfer Station
- Memo to BOS from YPD dated April 22, 2019 re: Donation Approval Request
- Blood Drive Poster