



## Board of Selectmen Regular Meeting Minutes December 19, 2017

*The regular meeting was called to order at approximately 6:00 p.m. in the Town Hall Hearing Room by Chairman Tracy Post. Selectmen present: Mike Stone, Erik Tolley, and Mark Forest. Also attending: Yarmouth Town Administrator Dan Knapik; Yarmouth Assistant Town Administrator, Chris Dwelley; Officer Phil Magnuson; Director of Natural Resources Karl von Hone; and Shellfish Constable Conrad Caia.*

### 1. Executive Session.

**MOTION:** To move that the Board of Selectmen enter into executive session pursuant to MGL c 30A 21(a)(3) to discuss collective bargaining.

Motion by: Mark Forest

Seconded by: Mike Stone

Yea 4    Nay 0

Roll call vote: Mr. Stone - yea; Mr. Forest - yea; Ms. Post - yea; Mr. Tolley - yea.

At approximately 6:40 p.m., the Board of Selectmen returned to open session.

### 2. Public Announcements & Comments. None.

### 3. Public Hearings

a. Show-Cause Hearing for Lobster Boat, 681 Rt. 28, West Yarmouth. Licensing Chair Mike Stone read the legal ad into the record. Attorney Paul Tardif and Angela Asimakopoulos, co-owner of the Lobster Boat Restaurant, were present. All witnesses were sworn. Officer Magnuson provided an opening report. Attorney Tardif acknowledged receipt of the letter dated October 31, 2017 from Officer Magnuson to Mr. Stone.

Sergeant Britt testified that while on patrol he heard noise and music from, and saw approximately 30 cars in the parking lot, of the Lobster Boat Restaurant. He called for backup, and Officers Coville, Brule, and Batchelder responded. Officer Britt entered the restaurant and observed a live band playing, people drinking at the bar, \$1 bills on the ground, and patrons dancing. He asked to speak to a manager and was introduced to Ms. Asimakopoulos, who explained that this was a private party for patrons and employees. Officer Britt asked if she had a special permit, as it was after 2:00 a.m. She stated that there was a sign on the door stating that they were closed to the public. He remembered seeing the sign. All patrons but one were cooperative while being escorted out of the establishment. Officer Britt reported that there were still several cars in the parking lot at approximately 2:56 a.m., but there did not appear to be any activity inside the establishment. Neither Officer Magnuson nor Attorney Tardif had any questions for Sergeant Britt.

Sergeant Steve Renzi testified that at approximately 3:30 p.m. on October 3, 2017 he conducted a follow-up visit and routine compliance inspection at the Lobster Boat Restaurant with Officer Erica Wenberg. There were some minor compliance issues, and then the officers outlined the following violations that were determined to have occurred during the after-hours party: noise violation; live music and dancing without an entertainment license; no guest list; active alcohol consumption at 2:00 a.m.; and no TIPS certification for a server. The owners could not produce a record indicating that employees are familiar with Town Liquor Rules and Regulations, nor a Model Policy with employee sign-off. Officer Renzi noted that signs explaining drunken driving penalties were

obscured by a television. The owners also could not produce record of employee dates of hire. On October 9, 2017 Officer Renzi phoned Ms. Asimakopoulos, but she had not located the employee records. Upon questioning by Attorney Tardif, Officer Renzi described Ms. Asimakopoulos' record-keeping as "very good." Officer Renzi acknowledged that he had seen several manuals at the establishment which may have contained the missing certificates. Officer Renzi did not know whether or not there was further follow-up.

Attorney Tardif explained that the Asimakopoulases' leased the Lobster Boat in 2004 and bought it in 2005. They have also owned Cook's Seafood in Mashpee for 17 years with no violations at either property. They were hosting an employee appreciation party featuring traditional Greek food and entertainment consisting of a 3-person band. After the restaurant closed to the public on the night of September 30, the "private party" sign was posted on the door. Attorney Tardif addressed the violations noted in the November 16 letter to the Town, admitting that alcohol was served beyond the licensed hours; that the alcohol was served free of charge, as it was a private employee appreciation party; admitting to unlicensed entertainment, however two certified crowd control managers were present; admitting audible noise outside the building; admitting patron dancing without a license. He produced a TIPS certificate for one server, and explained that the second server's certification is expired. Attorney Tardif also produced manuals that include employee dates of hire and alcohol-awareness policy. He explained that the traditional Greek method of tipping the band is to throw dollar bills on the floor.

Attorney Tardif noted that Section 107 (C) 5 and Section D of Chapter 60 of the Rules & Regulations contain some contradictory provisions which may have led to a misunderstanding. Although the party ran late, it does appear to be permissible under those rules. He also cited Section 2 on Page 8, Section A, noting that private functions are excluded from the regulation. There have been no other violations; the owners and patrons were cooperative; no minors were served; and there were no injuries. The owners believed that they could host a private party with entertainment and free drinks per the cited rules and regulations. Ms. Asimakopoulos has already addressed some of the recordkeeping issues.

Mr. Stone asked that Officer Magnuson review the employee manual. After reviewing it, Officer Magnuson stated that it is generally good, but incomplete. Ms. Asimakopoulos stated that it is not the manual proposed by the Town, but was provided by the previous owners and has been used for approximately 15 years. Documents provided by the Town are incorporated. Officer Magnuson noted that the policy has not been submitted to the Town for review or approval. Attorney Tardif provided a copy of the policy to the Board.

Officer Magnuson agreed that the rules surrounding entertainment licenses should be cleaned up, agreeing that under Section 107, there is an exception for private parties. The guest list requirement serves as proof that a particular event is a private party. The main issues, in his opinion, are operating after license hours, and the missing server certificate. He noted that Ms. Asimakopoulos has attended a liquor service seminar. He concurred with the violations acknowledged by Attorney Tardif and agreed that the business owners have been good citizens.

Mr. Stone suggested that future seminars emphasize centralized recordkeeping for quick inspection, and that private events are not exempt from liquor laws.

Mr. Stone dismissed the recordkeeping violations and asked the Board to consider whether there was a violation of being open and serving alcohol after the hours indicated on the license, that being 1:00 a.m.

**MOTION: To move that the Board of Selectmen find a violation of the liquor license issued to the Lobster Boat Restaurant for being in operation and serving alcohol after 1:00 a.m.**

**Motion by: Tracy Post                      Seconded by: Mark Forest                      Yea 4    Nay 0**

Mr. Stone also suggested there was a server who was not in compliance with the TIPS certification policy because his certification had expired. Ms. Asimakopoulos stated that the server was employed as a part-time fill-in, and renewal of his certification fell through the cracks.

**MOTION: To move that the Board of Selectmen find a violation of the liquor license issued to the Lobster Boat Restaurant for failure to comply with TIPS certification or its equivalent.**

**Motion by: Tracy Post                      Seconded by: Mark Forest                      Yea 4    Nay 0**

In view of the fact that there have been no prior violations, and the server has previously been certified but his certification expired, and the nature of the end-of-the-year private employee party, Mr. Stone recommended issuing a warning.

**MOTION: To move that the Board of Selectmen issue a warning to the Lobster Boat Restaurant for the aforementioned violations.**

**Motion by: Tracy Post                      Seconded by: Mark Forest**

**DISCUSSION: The Board discussed previous decisions in similar cases.**

**VOTE: Yea 4    Nay 0**

b. License for Psychic Readings and Mystical Astrology, 327 Rt. 28, West Yarmouth. Chairman Post read the legal notice into the record. Peter Eli and Chanel Rosario presented the application and responded to questions from the board. They also have locations at 120 West Main Street in Provincetown and another in Orleans.

**MOTION: To move that the Board of Selectmen approve the application as presented with hours of operation from 8:00 a.m. to 11:00 p.m. Monday through Saturday; 10:00 a.m. to 11:00 p.m. Sunday.**

**Motion by: Tracy Post                      Seconded by: Mark Forest                      Yea 4    Nay 0**

c. Transfer of License for Huzaifa Corp., dba Becker's Liquors, 55 Rt. 28, West Yarmouth. Attorney Tom Souza of Falmouth represented Huzaifa Corporation in its application for transfer of the existing license from Becker's Liquors. Mr. Hamid, proposed manager, was also present. Mr. Stone read the legal notice into the record. Mr. Hamid has fourteen years' experience in the retail liquor industry. There were no questions or comments from the public.

**MOTION: To move that the Board of Selectmen approve the license transfer.**

**Motion by: Erik Tolley                      Seconded by: Mark Forest                      Yea 4    Nay 0**

d. Trial Shellfish Lease. Mr. Stone read the legal notice into the record. John Reeve of 79 Wharf Lane, Yarmouth Port; Director of Natural Resources Karl von Hone; and Shellfish Constable Conrad Caia were present. Mr. von Hone reviewed the approval process which requires preliminary approval from the Board of Selectmen followed by a site survey by the Division of Marine Fisheries (DMF), Massachusetts DEP review, and Army Corps of Engineers review, prior to the issuance of an aquaculture license by the Board of Selectmen. This will be the Town's first lease in Cape Cod Bay.

Mr. Reeve explained the floating aquaculture system he intends to use, hopefully beginning this spring. Equipment will be removed during winter months, and Mr. Reeve has received the support of his neighbors. There was discussion about the location and the licensing process. The

Yarmouth Department of Natural Resources will participate in the site surveys with the DMF, and additional public hearings will be held.

**MOTION: To move that the Board of Selectmen preliminarily approve the application for Mill Creek Oyster Company and the proposed 3-acre aquaculture lease as presented.**

**Motion by: Tracy Post**

**Seconded by: Mark Forest**

**Yea 4 Nay 0**

#### **4. FY19 Budget Submission to Board of Selectmen**

Town Administrator Dan Knapik reviewed the draft budget materials presented to the Board and noted the memo from the Department of Revenue regarding the use of general levy accounts to pay for deficits in enterprise accounts. He thanked IT, Finance, Natural Resources, Police, Fire, and Administrator's Office for being the first departments to do the zero-based budget exercise.

Fire Chief Phil Simonian explained the \$30,000 request for retired firefighters injured in the line of duty. The Board asked for a detailed accounting of how the golf deficit arose and whether it could have been prevented. There was discussion about "recreational equity" and whether an enterprise fund is sustainable, particularly in light of Other Post-Employment Benefits (OPEB). New position requests are for a human resource administrator, a Senior Center van scheduler, summer library hours, and DPW summer staff for maintenance.

The Board will be able to hear more details after the Finance Committee review of departmental presentations.

#### **5. Board of Selectmen**

##### **1. Board and Committee Actions**

Appointments Chair Mark Forest recommended the reappointment of Gary Ellis and Tom Kelley as regular members to the Community Preservation Committee (CPC); and Nate Small as the Community Housing Committee representative to the CPC for three-year terms running through August, 2020.

**MOTION: To move that the Board of Selectmen reappoint Gary Ellis and Tom Kelley as regular members to the Community Preservation Committee (CPC), and Nate Small as the Community Housing Committee representative to the CPC for three-year terms running through August, 2020.**

**Motion by: Mike Stone**

**Seconded by: Erik Tolley**

**Yea 4 Nay 0**

Appointments Chair Mark Forest recommended the reappointment of Joyce Flynn as Yarmouth's representative to the Cape Light Compact, and to reappoint Dan Knapik as the Town of Yarmouth's alternate representative to the Cape Light Compact for one-year terms running through December, 2018.

**MOTION: To move that the Board of Selectmen reappoint Joyce Flynn as Yarmouth's representative to the Cape Light Compact, and to reappoint Dan Knapik as the Town of Yarmouth's alternate representative to the Cape Light Compact for one-year terms running through December, 2018.**

**Motion by: Mike Stone**

**Seconded by: Tracy Post**

**Yea 4 Nay 0**

2. Approval of Minutes for September 26, 2017 and October 3, 2017

**MOTION: To move that the Board of Selectmen approve the minutes of September 26, 2017 and October 3, 2017.**

**Motion by: Erik Tolley                      Seconded by: Mark Forest                      Yea 4    Nay 0**

3. Upcoming Agenda Review

Town Counsel updates on marijuana legislation on January 23<sup>rd</sup>; Mattacheese building project joint meeting on January 3<sup>rd</sup>; the Board discussed the status of the D-Y Agreement Subcommittee with regard to capital assessments. Town Counsel has issued a legal opinion that the middle schools are now regionalized. The memo will be provided to the full Board. The Board considered convening an Executive Session on January 23<sup>rd</sup> to discuss the matter further. The Tri-Town Regional Wastewater District will be rescheduled to a later date.

4. Individual Items. The Board wished Merry Christmas and happy holidays to all.

**6. Town Administrator Items**

1. Consent Agenda:

- Remaining 2018 Annual Alcohol Licensee Renewals for Board Approval
- Memo to BOS from YPD dated December 12, 2017 re: Donation Approval Request

**Donations:**

• YPD	
- Mr. & Mrs. John Lagadinos	\$ 100.00
- The Ethel Poulos Family Trust	<u>\$ 100.00</u>
<b>TOTAL</b>	<b>\$ 200.00</b>

**MOTION: To move that the Board of Selectmen approve the Consent Agenda.**

**Motion by: Tracy Post                      Seconded by: Erik Tolley                      Yea 4    Nay 0**

2. Town Administrator Updates: Dakota Partners has received State approval for its tax credits for the Cavalier redevelopment project. The site has been fully demolished and permit applications are being processed. Mr. Knapik thanked staff and the Board for their hard work in the past year, and wished happy holidays and merry Christmas to all.

3. Water Resources Planning: None.

4. Dennis-Yarmouth School Agreement: None.

5. Mattacheese School Project: None.

6. Drive-In Site Utilization Project: None.

7. Cape Tech Update: None.

## 7. Adjourn

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

**Motion by: Mark Forest      Seconded by: Erik Tolley**

**Yea 4 Nay 0**

**Meeting adjourned at approximately 8:49 p.m.**

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Linda Dennehy". The signature is written in a cursive, flowing style.

Linda Dennehy

## DISTRIBUTED MATERIAL AGENDA PACKET

- Alcohol License Show-Cause Hearing for The Lobster Boat, 681 Rt. 28, West Yarmouth
- License Hearing for Chanel Rosario dba Psychic Readings & Mystical Astrology, 327 Rt. 28, West Yarmouth
- Transfer of License for Huzaifa Corporation, dba Beckers Liquors, 55 Rt. 2, West Yarmouth
- Memo to Town Administrator from Director of Natural Resources dated October 5, 2017 re: Trial shellfish Lease
- FY19 Budget Presentation
- Memo to BOS from Appointments Chairman dated December 13, 2017 re: Community Preservation Committee Reappointments
- Memo to BOS from Appointments Chairman dated December 13, 2017 re: Cape Light Compact Joint Powers Agreement Representatives
- Board of Selectmen Meeting Minutes for September 26, 2017
- Board of Selectmen Meeting Minutes for October 3, 2017
- 2017 BOS Upcoming Agenda Items Schedule
- Remaining 2018 Annual Alcohol Licensee Renewals for Board Approval
- Memo to BOS from YPD dated December 12, 2017 re: Donation Approval Request
- Cape Cod Healthcare Blood Drive Flyer for 27th Annual Joshua Sears Memorial Blood Drive