



Board of Selectmen Public Meeting Minutes February 7, 2017

The regular meeting was called to order at approximately 6:10 p.m. in the Town Hall Hearing Room by Chairman Jim Quirk. Selectmen present: Tracy Post, Mike Stone, Erik Tolley, and Norman Holcomb. Also attending: Town Administrator Daniel Knapik and Interim Assistant Town Administrator, Robert Lawton.

1. Public Announcements & Comments

Ms. Andrea St. Germaine, D-Y School Committee, reported that the high school is accepting financial donations for a locker painting project with a literary theme. Also, the district's English Language Learner program consists of students from 28 different cultures speaking 25 different languages. On February 17, there will be a presentation on sharks at Mattacheese Middle School featuring Dr. Burns from Veterinary Associates of Cape Cod. Several D-Y high school students have received awards in the National Scholastic Art Competition. Ms. Keith (ME Small School) obtained a grant in robotics.

Ms. Vida Morris commented that the cost of municipal building projects is too high and asked for an explanation of the process, particularly with regard to the proposed new Cape Cod Regional Technical High School. She also suggested that the Affordable Housing Trust should consider people currently on waitlists for the proposed Cavalier development.

2. Public Hearing

a. New Annual Wine & Malt License, Vagabond Chef, 1076 Rte, 28. Licensing Chairman Stone read the legal ad into the record. Mr. Yves Bainier, owner and applicant, explained that he took over the restaurant last May and began serving dinner in September. He has been in the food and beverage industry for 35 years. He is requesting a beer and wine license. The restaurant currently serves breakfast and lunch six days a week, and dinner two to three nights a week. If the license is granted, dinner will be served five nights per week beginning in the spring.

Selectman Stone asked for public comment; there was none. Selectman Stone referred to a letter of support from Mr. Dewitt Davenport, and also a memo from Officer Phil Magnuson stating that he has reviewed the local laws with Mr. Banier.

MOTION: To move that the Board of Selectmen close the hearing.

Motion by: Erik Tolley

Seconded by: Jim Quirk

Yea 5 Nay 0

MOTION: To move that the Board of Selectmen approve the application as presented.

Motion by: Norm Holcomb

Seconded by: Jim Quirk

Yea 5 Nay 0

b. Anthony's Cummaquid Alcohol License Renewal and Show-Cause Hearing. Mr. Michael Watson, operating manager, and Mr. Anthony Athanas, license holder, appeared. Attorney Maselan was not present. Selectman Stone explained that this License Renewal Hearing was originally scheduled for December 13, 2016 and was rescheduled to February 7, 2017 at the request of Attorney Maselan. The Show-Cause Hearing had previously been scheduled for the same date. Selectman Stone then swore in the witnesses.

There was discussion as to whether a license was in effect when the violations are alleged to have occurred. Building Commissioner Mark Grylls was asked to explain the history of the alleged violations. Mr. Grylls reported that a December 2012 inspection identified areas of the ceiling that were rotted and/or missing; rotted decking; kitchen floor tiles that were lifting; leaking sink traps; abandoned toilets that were allowing septic gases into the building; and stored furniture and carpeting that created a fire hazard. On the same day, Mr. Watson was made aware of the findings and worked with Mr. Grylls, John Sawyer of the Yarmouth Fire Department, Health Director Bruce Murphy, and Health Inspector Phil Renaud to establish a remediation plan and timeline. Inspections in 2013, 2014, and 2015 showed little improvement, and even further deterioration of the building, despite meetings between the contractor and representatives from the fire, health, and building departments. On January 5, 2016 a Permit to Demolish areas with water damage was issued. On April 7, 2016 a Permit for Repairs was issued. To date, no inspections have been made with regard to these permits.

Mr. Watson had no questions for Mr. Grylls. Selectman Quirk asked if any permits were issued between 2012 and the Permit to Demolish in 2016. Mr. Grylls responded that there were none. Selectman Quirk asked if the restaurant was operating during that period; Mr. Grylls replied that it was.

Selectman Holcomb asked when the restaurant closed. Mr. Watson replied that it closed December 31, 2015 and has not been open since. Mr. Grylls added that the last inspection was December, 2015.

Selectman Tolley asked if the Board of Selectmen were notified of the restaurant's closing. Mr. Watson stated that he did not notify the Board. Selectman Stone stated that the Town is supposed to be notified when a business will be closed and when it will be reopening. Mr. Tolley argued that if the business was closed, there would have been no need for the license to be renewed.

Captain Inspector James Armstrong reported that a ten-year review of the Fire Department records showed a history of non-compliance with the Fire Code year after year. Violations included expired fire extinguishers; uninspected fire alarm and fire sprinkler systems; cooking hoods not cleaned or inspected; emergency exit lights and signage not working; non-functioning exit doors; unsafe exit ways; lack of carbon monoxide detectors; and holes in the ceiling. In 2012 a violation letter was issued with orders to make corrections. Another violation letter and \$300 fine was issued in 2014. In January of 2015, Mr. Watson sought a fire department review for a building permit. Deputy Sawyer sent a letter stating that an engineer's report was required to extend the fire sprinkler system into the enclosed patio area and also an order to bring the fire alarm system up to code with a deadline of April 15, 2015. Mr. Watson did not return to pick up paperwork or return phone calls. During a December 2015 joint inspection with Building Commissioner Mark Grylls, Health Director Bruce Murphy, and John Sawyer of the Yarmouth Fire Department, ten fire code violations were identified, including: rotting floors in the garden room; failure to install fire sprinklers in large garden room; failure to install a carbon monoxide system; failure to maintain egress; non-functioning emergency lighting; numerous openings/holes in the ceiling; rotted exit stairway; failure to remove combustible waste; excessive storage of carpet and furniture in basement; and failure to maintain cooking hood. The fine of \$900 was paid. There has been no correspondence since then.

Selectman Stone asked if any of the violations have been remedied. Captain Armstrong stated that the department has not been notified of any changes at the building.

Chairman Quirk asked if the roof deck had been inspected. Captain Armstrong replied that it would fall under the building inspection, but he was concerned about a hole in the ceiling in the garden room with water leaking in.

Selectman Holcomb stated that he is surprised that it has taken five years for the matter to come before the Board. He asked if this scenario were typical. Captain Armstrong reported that it is not typical and the department's goal is to work with the owner or manager to become compliant with the codes.

Selectman Stone asked if a timeline had been established for bringing the violations into compliance. Captain Armstrong stated, "as soon as possible." Selectman Stone then asked Mr. Watson if he had any questions for Captain Armstrong; he did not.

Deputy Fire Chief Jon Sawyer of the Yarmouth Fire Department explained that smaller violations were addressed and re-inspected, but the larger, more expensive issues such as holes in the ceiling and floor were not. Chairman Quirk asked why the Selectmen were not made aware of the failures in 2013 at the time of re-licensing. Deputy Sawyer stated that he did not know how the licensing procedure works after a failed fire inspection.

Chairman Quirk recalled Building Commissioner Grylls who read a letter dated December 17, 2015 from Health Director Bruce Murphy to Mr. Watson outlining the Health Department violations identified by Inspector Renaud on December 15. Mr. Grylls also explained that the repetitive visits to the site occurred because there were repairs that were made to the ceiling that would be signed off, but the following winter there would be a water pipe leak and new damage to the ceiling. It appeared as though the owner was trying to come into compliance, so the Building Department was working with him to stay in business.

Officer Phil Magnuson of the Yarmouth Police explained that inspection sign-offs were not issued for the 2016 license and it was never released. He presented a copy of the license with a notation to that effect. He explained that because no 2016 license was issued and the business was not in operation during 2016, there is a question as to whether there is a license to renew. He also presented a copy of the Retail License Renewal, which was submitted and indicated that "the premises are now open for business" and "if not, explain below." He observed that there was no explanation below. It was his understanding that being in operation was a prerequisite for renewal. He also stated that rules and regulations require that "no license shall issue unless the premises comply with all applicable building and fire codes and requirements." He provided the Board with the documents for the record.

Officer Magnuson then summarized that the 2016 license was prepared but never released or physically issued because the inspections were never completed. Chairman Quirk further clarified that there has been no license issued since 2015. The 2016 license never got issued; the current application is for 2017.

Selectman Stone marked the Retail License Renewal dated November 30, 2016 as Exhibit No. 1; license with the licensing clerk's notations ("2016 license not issued...code violations not addressed") marked as Exhibit No. 2.

Selectman Stone asked Officer Magnuson if he was aware if Anthony's notified the town of its closure. Officer Magnuson was only aware of the notations made by Linda Hill.

Selectman Tolley asked if the license fee for the Retail License Renewal dated November 30, 2015 was paid. Officer Magnuson believed that the license would not have been prepared unless the fee was paid; but because it was never issued, Anthony's was not operating under the license for 2016. The license must be physically present on the wall of the establishment in order to serve alcohol. Every premise is physically inspected and cleared before the license is issued.

Selectman Holcomb asked Mr. Watson if he was aware that the license had not been issued to Anthony's because the violations had not been remedied. Mr. Watson replied that he was.

Chairman Quirk explained that despite an existing license or renewal application, there is a non-compliance issue which prevents it from being used. Mr. Watson asked if there could be a violation of a license that was never issued.

Selectman Stone provided Exhibits No. 1 and 2 to Mr. Watson for his review and asked that they be returned at the end of the hearing. He then asked Mr. Watson for his response.

Mr. Watson began by addressing the status of the health violations: the sewer line was cleaned; a new roof and ceiling were installed on or about February 24, 2016; the hood fan and filters were replaced; the leaks in the steam table and walk-in refrigerator have been fixed; the lower level has been cleared; an engineering plan has been completed to address the flooring under the walk-in freezer. Further, the whole subfloor under the walk-ins has been replaced in January, 2016.

Selectman Stone asked if they asked for an inspection after the work in early January. Mr. Watson left it to the contractor, Hostetter Complete Home Care.

Mr. Watson then addressed the fire code violations. Regarding the garden or patio room, a barrier has been erected to prevent access to the area of rotted flooring. The long-term architectural plans call for the roof to be removed and the space be used as outdoor seating, therefore, a sprinkler system will not be necessary. Carbon monoxide detectors have been installed; the blocked egress has been rectified; all emergency lighting has been replaced; stairways have been replaced; basement has been cleared out; kitchen hood has been corrected.

Selectman Stone asked if they contacted the fire department for an inspection after the work was done. Mr. Watson thought the contractor had done it.

Mr. Watson next addressed the building code violations. The exit door has been replaced; the stairs have been removed and will be replaced as soon as weather permits. Mr. Watson will have to look into the engineer's report regarding the stairs. Emergency lighting has been replaced; beams under the walk-ins have been replaced; basement demolition has been completed; and the kitchen hood has been corrected.

Chairman Quirk suggested continuing the hearing so that the fire, health, and building inspectors, along with Officer Magnuson, could make a full report back to the Board. Selectman Tolley suggested that because the business has been closed since December 31, 2015 and no license was issued in 2016, there was no violation of MA General Laws or Town of Yarmouth Rules and Regulations; therefore, the Board could act on a renewal application once the owner can demonstrate that all code violations have been corrected and inspections received. The members of the Board concurred.

MOTION: To move that the Board of Selectmen continue the hearing to March 28, 2017 with the condition that the violations are corrected and inspected.

Motion by: Jim Quirk

Seconded by: Erik Tolley

Yea 5 Nay 0

Town of Yarmouth
Board of Selectmen

February 7, 2017

Approved July 11, 2017

3. FY18 Police Budget Review

Chief Frank Fredrickson presented the police department budget, which had been through the Finance Committee Review. Using the instructions the department was given, there is a budget deficit of \$64,820, which will result in reductions in service. There are also some long-standing deficiencies that will not be addressed, such as summer staffing, overtime, expenses, and personnel. The department would need an additional \$748,320 in order to address all the deficiencies. Chief Frederickson explained that one event occurring 3,000 miles away changes everything the police do.

He recommended funding the \$64,820 in contractual changes and using \$38,000 from Free Cash to fund bike path patrols, beach patrols, and public records/evidence room requests. He also asked the Selectmen to endorse the outlined deficiencies as a priority for future budgets.

Selectman Holcomb suggested that beach and bike path patrols might be funded through a user fee. Selectman Stone asked about the areas of training that would be affected. Chief Frederickson explained some of the areas of training: Taser and baton, firearms, sexual assault investigations, communications/911, evidence collection, canine, mental health crisis intervention, professional development, accident reconstruction, drug recognition, active shooter, and many more. Some of the training is mandatory and re-certifications are necessary. He also detailed the process of destroying evidence, which is very complicated, and the importance of maintaining the evidence room.

4. FY18 Capital Budget Update

Sandy Fife, Chair of the Capital Committee, introduced the members of the Capital Budget Committee. The Board of Selectmen was provided with a summary report of responses to questions previously submitted to the Committee, including a comprehensive fleet list of vehicles and powered boats owned by all departments, and a seven-year history of ambulance receipts. The Committee also offered a timeline for the development of a Vehicle and Equipment Purchase Policy.

Ms. Fife explained that the 2018 Capital Budget Committee recommended the replacement of ten vehicles and the purchase of one new vehicle. All vehicles meet the current criteria spelled out in the Board's 2016 Replacement Policy. She requested that any money cut from the \$1.5 million of raise and appropriate be placed in the proposed Capital Stabilization Fund.

Selectman Holcomb would like to compare the fleet list with the Capital Improvements recommendations. Selectman Stone agreed and asked the Committee to get a more detailed report on the cost of maintenance and repairs to different vehicle models over a three to five year period.

The Capital Budget Committee intends to create a framework for replacement of vehicles and to "right-size" the fleet. They are also hoping to create a database to maintain accurate data on the fleet. Chairman Quirk noted that the town owns 245 pieces of equipment and 17 vessels.

5. Annual Town Meeting Article Review

a. CPA Articles. Gary Ellis of the Community Preservation Committee and Jen Copeland of the Community and Economic Development Department explained that the first article represents FY17 supplemental state matching funds; the second article appropriates the ten percent set-aside

Town of Yarmouth
Board of Selectmen

February 7, 2017
Approved July 11, 2017

in the Housing, Historic, and Open Space Reserves as required by state law. The Board was provided a spreadsheet detailing the budget.

Selectman Holcomb explained that he is a member of the Affordable Housing Trust and that the Trust voted, over his objections, to spend \$100,000 each for four homes. He does not believe it is a good use of funds, and the Community Preservation grant to the Trust will contribute to that program. He suggested there should be specific requirements as to how much can be spent on a single home. Mr. Ellis explained that the Community Preservation Committee brings articles to the voters to let them make the final decision. Mary Waygan, Affordable Housing Coordinator, provided the history of the Home Buy-down Program, which used \$2.3 million to subsidize the purchase of 14 homes, roughly \$86,000 per unit. That program is winding down, and the general deposit from the Community Preservation Committee will be used to fund rental programs.

Other housing articles included \$75,000 for Housing Assistance Corporation's home preservation program; \$118,000 for Harwich Ecumenical Council For Housing's home preservation loan program; and \$34,600 for Hands of Hope's rental assistance program.

The first Recreation Article is for \$343,000 for design and engineering of the Sandy Pond Recreation Area for increased parking, lighting, expanded tennis courts, new pickle ball courts, new basketball courts, a new synthetic-turf playing field, new restrooms, an upgraded play structure, a splash pad, shade shelters, rain gardens, and improved trails. Community Preservation funds cannot be used to pay for the synthetic turf. Dorcas McGurrian of the Recreation Commission explained that this proposal will completely renovate the park to be on par with Flax Pond. It received overwhelming support at a public meeting over the summer. In response to Selectman Holcomb's question, Ms. McGurrian stated that there is both need and demand for additional courts and fields, especially pickle ball courts.

The second Recreation Article is for \$60,000 to upgrade playground equipment at Peter Homer Park and install some handicapped-accessible playground equipment. Ms. McGurrian announced that there will be a public meeting tomorrow evening at 6:30 at the police station to discuss creating more handicapped-accessible recreation facilities throughout town.

Historic Resource projects include \$1.1 million to rehabilitate the dam, sluiceway, and fish ladder at the Baxter Grist Mill. Jeff Colby, DPW Director, stated that he is looking for state grants to help with funding. Mr. Colby confirmed that the sluiceway is an important historical element and will be maintained. Selectman Quirk added that as part of its easement agreement with the town, Maplewood will maintain part of the grist mill property.

6. Board of Selectmen

- a. Approval of Minutes for December 6, 2016.

MOTION: To move that the Board of Selectmen approve the Board of Selectmen Meeting Minutes for December 6, 2016.

Motion by: Tracy Post

Seconded by: Norm Holcomb

Yea 5

Nay 0

- b. Upcoming Agenda Review.

c. Individual Items. None.

7. Town Administrator's Items

a. Consent Agenda

- Memo to Interim Town Administrator from YFD dated January 19, 2017 re: Gift
- Memo to Interim Town Administrator from YFD dated January 24, 2017 re: Gift
- Memo to BOS from YPD dated January 24, 2017 re: Donation Approval Request

Donations:

- YFD
 - Cape Cod Area Philatelic Group \$ 100.00
 - Doris Lorch \$ 50.00
 - Theresa F. Ravalese \$ 253.25
- YPD
 - Theresa F. Ravalese \$ 236.96

TOTAL \$ 640.21

MOTION: To move that the Board of Selectmen approve the consent agenda.

Motion by: Norm Holcomb

Seconded by: Mike Stone

Yea 5

Nay 0

b. Town Administrator Updates. None.

8. Adjourn

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

Motion by: Norm Holcomb

Seconded by: Tracy Post

Yea 5

Nay 0

Meeting adjourned at approximately 9:55 p.m.

Respectfully submitted,



Linda Dennehy

DISTRIBUTED MATERIAL AGENDA PACKET

- New Annual Wine & Malt Restaurant License Application from Vagabond Chef
- Alcohol License Renewal Hearing from Anthony's Cummaquid Inn, Inc.
- Show-Cause Hearing in the case of Anthony's Cummaquid, Inn, Inc.
- FY18 Police Budget Review
- FY18 Capital Budget Update Presentation
- Memo to BOS from Department of Community Development dated February 1, 2017 re: FY17 CPA Warrant Articles
- Board of Selectmen Meeting Minutes of December 6, 2016
- 2017 BOS Upcoming Agenda Item Review
- Memo to Interim Town Administrator from YFD dated January 19, 2017 re: Gift
- Memo to Interim Town Administrator from YFD dated January 24, 2017 re: Gift
- Memo to BOS from YPD dated January 24, 2017 re: Donation Approval Request
- Email to Selectman Holcomb from Town Accountant dated January 31, 2017 re: Article 2 Motion FY16 and FY17 with Operating Budget Detail and Ambulance Fee History
- Letter to BOS from Director, Senior Services dated January 26, 2017 re: One Billion Rising Event
- ABCC Notice of Hearing ICO Bayside Resort Hotel
- Friends of Yarmouth Council on Aging Flyers