

**Board of Selectmen
Meeting Minutes
June 3, 2014**

Executive Session (Room A)

1. Discuss collective bargaining in relation to the Firefighters Local 2122

The regular meeting was called to order at 7:00p.m. in the Town Hall Hearing Room by Chairman Erik Tolley. Selectmen present: Tracy Post, Jim Quirk, Norm Holcomb and Michael Stone. Also Attending: Town Administrator William Hinchey. The Board of Selectmen gave the pledge of allegiance with the local Boy Scout troop.

Board Reorganization (Hearing Room)

MOTION: To move that the Board of Selectmen nominate Erik Tolley as Chairman

Motion by: Tracy Post **Seconded by:** Norm Holcomb Yea 5 Nay 0

MOTION: To move that the Board of Selectmen nominate Tracy Post as Vice Chairman

Motion by: Norm Holcomb **Seconded by:** Mike Stone Yea 5 Nay 0

MOTION: To move that the Board of Selectmen nominate the full position slate as stands.

Motion by: Jim Quirk **Seconded by:** Norm Holcomb Yea 5 Nay 0

Public Announcements & Comments

Ms. Vida Morris spoke to the Board about the solar panel project and her opposition to having it located at Mattacheese. Ms. Morris spoke to the Board about the previous night's School Committee meeting and the budget update.

The Board discussed the school budget gap.

Revenue Team Update and Town Beautification & Promotion Policy

Represented by Liz Hartsgrove and Mona Solmonte. Ms. Hartsgrove reviewed the history of the revenue team. Ms. Solmonte described the Boardwalk plank program which has generated approximately \$42,000 in revenue to date. Mr. Holcomb suggested the team to look into selling the handrails. Ms. Hartsgrove described merchandise program, of which over 2000 items have been sold in a year generated over \$12,500. Ms. Hartsgrove then reviewed the proposed Town Beautification & Promotion policy that describes how the Revolving funds generated by the plank and merchandise programs can be spent through applications from either public or private organizations/individuals on projects which either proposes to beautify or promote the Town and town properties. The Board did not have any issues with the draft policy.

MOTION: To move that the Board of Selectmen approve the Town Promotion and Beautification Policy.

Motion by: Jim Quirk **Seconded by:** Norm Holcomb Yea 5 Nay 0

Ms. Hartsgrove spoke about two test pilot programs. The first program is a Town logo bike rack, two have been purchased and will be placed at Town Hall and at the South Yarmouth library. Ms. Post asked if a business could purchase a bike rack to be placed on their properties or even sponsor one to be purchased and placed on a town property. Ms. Hartsgrove stated the test racks will allow for the community to give feedback and see if the program would be beneficial to the Town. Mr. Holcomb spoke about renting bicycles. Ms. Hartsgrove stated that she already has looked into that type of business and will begin working on leasing out space at beaches to a similar program. Ms. Post agreed that type of operation will fit into their long-term plan of getting people out of their cars.

Ms. Hartsgrove spoke about the new Public Art Works program. A call for artists was sent out for original art incorporating the 375th logo to then be transferred to 3M vinyl wrapping and placed

around 8 town owned traffic signal boxes. A Selection Committee will be reviewing the submitted artwork. This test program will again allow the community to provide feedback on how successful and receptive the program is. A number of cities and federal organizations have this program in place already all over the country. Mr. Quirk spoke about a program years ago that allowed people to paint fire hydrants. Ms. Hartsgrove mentioned the traffic signal boxes is similar to the sand castle program where, she anticipates, will become an attraction and grow each year. She plans on having a map of the locations posted on the website so people can easily find them. If the program is successful with positive feedback from the Community she will then begin to pursue working with the State on approval to cover the traffic signal boxes along Route 28 and at the exit 8 gateways. Mr. Holcomb asked if the Chamber plans on promoting the 375th anniversary, specifically with banners or plaques.

Mr. Quirk wanted to thank Ms. Hartsgrove's daughter for singing at the Memorial Day ceremony.

The meeting was turned over to Licensing Chairman Mike Stone.

Licensing Discussion

1. Annual All Alcohol On Premise License

To discuss and determine whether or not a condition was placed on the License for AB Pizza II, Inc., d.b.a. Royal II Restaurant and Grill located at 715 Route 6A.

Represented by Mr. Paul Bolanos and his manager Brigitta Petrutus. Chairman Stone read the legal ad. Mr. Tolley asked why it was advertised yet not a public hearing. Mr. Hinchey stated that this is for discussion only but the legal ad was to notify the public due to the number of resident input regarding the property. Mr. Stone mentioned the Board was provided a link to the hearing at the time the licenses were approved. The Board discussed the hearing and the conditions placed on the licenses to plant arbevtyties with Old Kings Highway approval. Mr. Stone reviewed the packet of information. Mr. Bolanos spoke about the fence conditions when the property was purchased. Mr. Hinchey stated the reason behind tonight's discussion began with a complaint from a neighbor that the conditions of the license were not in compliance. A letter in support from James and Brenda Hagerty was read. Tanya O'Hanian spoke in favor of the license holder. Mr. Peter Carnes spoke in favor of the license holder and the operation. Mr. Ted Weisburger spoke in favor of the operation and how Mr. Bolanos has contributed to the Town in various capacities. Ms. Petrutus read a letter in favor. Photos were provided to the board showing the upgrades to the property. Mr. Holcomb stated his personal observation was favorable.

MOTION: To move that the Board of Selectmen clarify that the original hearing motion's intent for the rear of the property was to increase the plantings to assist in creating a buffer and that from today's photos and going by the property it is in compliance with the original transfer motion and further that the construction of a fence was not intended to be a requirement.

Motion by: Jim Quirk

Seconded by: Norm Holcomb

Yea 5 Nay 0

Public Hearing

1. Show Cause Hearing – Annual All Alcohol On Premise License

Red Face Jack's Inc., d.b.a. Red Face Jack's, 585 Route 28, W.Y., Kerry Nealon, mgr.

Establishment was represented by Ted Zambelis and Atty. Lloyd who was prepared to discuss the report, and requested to call as witnesses Ted Zambelis, Kerry Nealon, Ben Surro, Michael Murphy, Ben Lawlor and Chris Grasso. Chairman Stone swore in all of the witnesses, read the legal ad notice, explained the hearing process and read the redacted police report. Atty. Lloyd commented on the report questioning the traffic pattern the vehicle cited in the report, the vehicles car lights not being turned on at 1 o'clock in the morning, no mention of the vehicle weaving or other motor vehicle infractions during the ½ mile observation, the number of tests that occur, as well as other issues he felt were questionable. Atty. Lloyd stated that Red Face Jack's was more than accommodating. Chairman Stone marked the Police report as Exhibit One and a photograph of the intersection as Exhibit Two. Mr. Tolley asked if attorney was questioning the legitimacy of the traffic stop? Atty. Lloyd stated that it was his opinion that they were summoned to the Show cause hearing based upon the fact that Yarmouth Police conducted this investigation, with no chapter 90 section 24J notice that was provided, an arrest was made and a follow up was done. A statement from the

bartender was made, the case was still pending; the pre-trial is scheduled for June 11th. Chairman Stone stated that the hearing is not a criminal hearing but to determine if more likely than not that something happened. Mr. Quirk asked if the base of Red Face's testimony is that at a certain time, the person in question left Red Face Jack's, drank afterwards but never went back into Red Face Jack's before he got into the vehicle, which Atty. Lloyd affirmed that was the base of their testimony. Mr. Holcomb asked where Exhibit Two depicted. The board discussed what should be focused on during the hearing, and Chairman Stone asked that a witness speak. Mr. Michael Murphy was asked a series of questions by Atty. Lloyd which he answered. He did admit that he had been at Red Face Jack's the night in question and was picked up by Chris Grasso. They spent approximately 1 hour at Mr. Grasso's house and then was dropped back at Red Face Jack's where his car was. He then proceeded to drive home where he was pulled over by Yarmouth Police during the commute. Mr. Quirk asked how long Mr. Murphy was a patron at red Face Jack's that evening which Mr. Murphy stated a couple of hours and had approximately 5 beers, possibly more. He stated he had one beer after he left the establishment. He took the Breathalyzer test freely and voluntarily and was aware that his blood alcohol limit was twice the legal limit. The Board questioned Mr. Murphy additional questions regarding his sobriety that evening and the service he received at Red Face Jack's. Mr. Murphy stated that the bartender did ask if he was driving in which he replied that he was not driving and he would be picked up.

Mr. Chris Grasso was then asked a series of questions by Atty. Lloyd and the Board regarding the evening in question and his interaction with Mr. Murphy.

Mr. Ben Surro, a bartender at Red Face Jack's, was then asked a series of questions by Atty. Lloyd. He is TIPS trained and certified. Mr. Surro stated that he served Mr. Murphy was served draft Coors Light and count remember how many beers he served Mr. Murphy. Nothing out of the ordinary stood out that evening in comparison to past evenings Mr. Murphy would be a patron at Red Face Jack's. Mr. Surro was suspended for two days without pay, after Mr. Nealon and Mr. Zambelis was notified of Mr. Murphy's citation that evening. Atty. Lloyd submitted the letter of suspension, dated May 15th, as Exhibit Three, and was read by Chairman Stone and reviewed by the Board. Mr. Surro did not feel the suspension was fair, then said it was fair and stated he did not protest it. Chairman Stone then asked Mr. Surro a series of questions revolving around how the suspension was or was not fair. Mr. Stone read from the police report that Mr. Surro stated to the officer that Mr. Murphy had probably 6-7 beers and Mr. Stone wondered what Mr. Surro based upon that response on. Mr. Surro could not answer Mr. Stone's question. Mr. Quirk asked if Mr. Murphy appeared or acted different than other nights. Mr. Surro stated there was no difference in behavior, does not believe that Mr. Murphy was served by any other bartenders that evening. Mr. Surro stated that Mr. Murphy said that he never drives down on the Cape when he is drinking. Mr. Surro stated that he never did ask him after the 2 hour patronage of being served, if Mr. Murphy was going to drive or be picked up. Mr. Tolley asked if Mr. Surro was aware that Red Face Jack's was called in back in March for a Last Call discussion, which Mr. Surro stated he was aware. Mr. Surro stated there are approximately 3-4 bartenders per shift. Mr. Quirk asked if Chief Frederickson could make a recommendation, which Mr. Stone stated there should be a motion to close the hearing and have the Board determine if a violation had occurred.

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

Motion by: Jim Quirk

Seconded by: Norm Holcomb

Yea 5 Nay 0

Mr. Stone generally remarked that this is not a criminal hearing or probable cause if the stop was proper. Ms. Post reiterated that the Last Call was a discussion, not a hearing and should not be considered as a first offense. Mr. Stone agreed that this is a first offense hearing. Mr. Stone stated that he feels there is evidence that serving an intoxicated person violation had occurred. Mr. Quirk mentioned that he believes the bartender served Mr. Murphy under the impression that Mr. Murphy was not driving and that every individual handles alcohol different. Mr. Quirk was impressed with the extensive amount of checking by the Police officer in order to determine intoxication. Mr. Holcomb feels the police report demonstrated too much alcohol was provided to Mr. Murphy and expressed concern that it was stated by the bartender that it appeared that Mr. Murphy was not intoxicated. Mr. Holcomb

stated the bartender should exhibit closer attention and use commonsense to the amount being served, not just how a person appears to be sober. Mr. Holcomb stated a two day suspension for one server probably did not provide a clear message to all of the servers.

MOTION: To move that the Board of Selectmen agrees there is adequate evidence to prove a violation of c.138, specifically serving an intoxicated person, based upon the exhibits and the creditable testimony.

Motion by: Erik Tolley

Seconded by: Tracy Post

Yea 4 Nay 1

The Board then discussed options of a penalty which Mr. Stone reviewed three different possibilities: issue a warning, suspension of the license or suspend the license and hold the license in abeyance for a period of time. Mr. Tolley reminded the board that Mr. Surro was told by Mr. Murphy that he would not be driving and the board should only focus on the number of beers sold at the establishment. Ms. Post stated that with the bartender's suspension the establishment acknowledges the violation yet does not signify the magnitude of the violation. Mr. Holcomb expressed concern if the Board does not serve a strong penalty because of the magnitude of the violation and the potential occurrences if a calamity had happened due to the found violation.

MOTION: To move that the Board of Selectmen issue a 7 day suspension and hold it in abeyance for until December 31st.

Motion by: Tracy Post

Seconded by: Erik Tolley

The vote was held until a recommendation by Chief Frederickson. Chief Frederickson stated that he too is torn on what to do. 40% of the drunk driving deaths occur from coming from licensed establishments. The last show cause hearing regarding alcohol was 7 years ago, so the YPD efforts have been working. Chief Frederickson stated he was in favor of a suspension placed in abeyance until the end of the year. He would also like to add that there will be written direction from Mr. Zambelis of what precautions will be put into place from now on. Chief Frederickson also added that he was in favor of having an added manager on the floor to monitor over-serving. He did state that they do deserve a chance because of the reputation and feels that they understand the gravity of the violation.

Mr. Quirk requested that Chief Frederickson's recommendations be added to the motion for the duration of the suspension and abeyance. The Board discussed the rationality of having an additional manager rather than already expecting a prior established protocol for a manager solely designated for alcohol service management/observation. Mr. Holcomb expressed concern with setting precedent. Mr. Stone then reminded the Board that Mr. Zambelis has been a proprietor for over 37 years. Mr. Tolley acknowledged that he is friends with Mr. Zambelis and his wife used to be an employee however he could not forgive himself if something happened if the board did not take any action.

Original motion withdrawn

AMENDED MOTION: To move that the Board of Selectmen issue a 7 day suspension and hold it in abeyance for until December 31st and incorporate Chief Frederickson's recommendation of a submitted plan and have an additional bar manager on duty for alcohol service observation.

Motion by: Tracy Post

Seconded by: Erik Tolley

Mr. Zambelis acknowledged that he never got a chance to speak during the hearing but he is fully aware of the severity of the violation and "his hat is in his hand". Mr. Holcomb offered an amendment to the motion to reduce the suspension to 2 immediate days rather than 7, and 5 days of deferral.

Second to the amended motion withdrawn by Erik Tolley but then seconded by Mike Stone.

Tracy Post withdrew her motion and Mike Stone withdrew his second.

2nd AMENDED MOTION: To move that the Board of Selectmen issue an immediate 2 day suspension, hold it in abeyance for 5 days for the duration of the license and incorporate Chief Frederickson's recommendation of a submitted plan and have an additional bar manager on duty for alcohol service observation.

The board discussed the motion and the right for appeal.

Motion by: Norm Holcomb **Seconded by:** Tracy Post Yea 3 Nay 2

2. New Famers Market Winery License

David W. Neilson d.b.a Coastal Vineyards to sell wine at the Bass River Farmers Market, 311 Old Main Street, S.Y. on Thursdays from June 12th – October 9th, 9am-1pm.

The legal ad was read by Ms. Post. Application was represented by David Neilson who reviewed his proposal. They are TIPS trained and will be serving at the Bass River Farmers Market. No one spoke in favor or against the application.

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

Motion by: Jim Quirk **Seconded by:** Tracy Post Yea 5 Nay 0

MOTION: To move that the Board of Selectmen grant the farmers market winery license.

Motion by: Jim Quirk **Seconded by:** Tracy Post Yea 5 Nay 0

3. Revocation of Gasoline Storage Permit

Kings Way Golf Course, Inc., 64 Kings Circuit, Y.P., underground storage of 4,000 gallons and 2,000 gallons.

The legal ad was read by Ms. Post. Mr. Stone read the letter submitted by Kings Way. Chief Simonian stated the Fire Department does inspect tanks. Mr. Stone noticed there was a receipt from a vendor indicating the tanks have been removed. This is the final step in finalizing the process.

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

Motion by: Norm Holcomb **Seconded by:** Tracy Post Yea 5 Nay 0

MOTION: To move that the Board of Selectmen revoke the gas storage license.

Motion by: Jim Quirk **Seconded by:** Norm Holcomb Yea 5 Nay 0

The meeting was turned back to Chairman Tolley.

Board of Selectmen

1. FY15 Goals

The goals were tabled to a future meeting.

2. Town Administrator Evaluation

The evaluation was briefly discussed, primarily by Mr. Holcomb stating he would meet individually with Mr. Hinchey to review specifics of his concern. Mr. Hinchey requested placing Wastewater on a future agenda because it was mentioned in the evaluation and needs direction from the Board in order to meet their expectations. Mr. Stone stated he was impressed with Mr. Hinchey's abilities to adjust rapidly when unexpected budgetary items pop up.

Town Administrator's Items

1. Consent Agenda

- Yarmouth Police Supervisors Association Agreement (2012-2015)
- Board of Selectmen Meeting Minutes
 1. May 14, 2013
 2. June 4, 2013
 3. June 18, 2013
 4. July 9, 2013
 5. July 23, 2013
 6. August 6, 2013
 7. August 20, 2013
 8. September 10, 2013
- Land Use Restrictions
 1. 30 Conservation parcels
 2. 2 Recreation parcels
- Affordable Housing Standards
- Donations
 1. Parks & Recreation
 - Clyde Taakala (920 Golf Balls) \$460.00

\$460.00

2. Senior Services

▪ Medical Equip.	\$10.00
▪ Linda Donovan	\$45.00
▪ Misc.	\$10.00
▪ Rose Fisler	\$8.00
▪ Anonymous	\$109.00
▪ Margaret Taylor	\$39.50
▪ Tax Donation	\$10.00
	<hr/>
	\$231.50

Total \$691.50

▪ Fee Waiver Requests

1. Packet Landing Boat Ramp Permits

▪ Paul & Mark Palmer	\$90.00
▪ Michael Castine	\$90.00
▪ Teddy Dimacopoulos	\$90.00
▪ David Weston	\$90.00
▪ Kevin Murray	\$90.00
▪ Allen Bragdon	\$90.00
▪ Donald Costa	\$90.00
▪ Ollie Naas	\$90.00
▪ Michael Peters	\$90.00
▪ William Lawrence	\$90.00
▪ James Nahill	\$90.00
▪ Patrick O'Connell	\$90.00
▪ Joe Francis	\$90.00
▪ David Grew	\$90.00
▪ Dan & Patricia Arthur	\$90.00
	<hr/>
	\$1,440.00

2. Taylor-Bray Farm Preservation Association

▪ Tent Permit	\$50.00
▪ Food Service Permit	\$15.00
	<hr/>
	\$65.00

3. Yarmouth Art Guild

▪ Occupancy Permit	\$50.00
▪ Sign Permit	\$40.00
	<hr/>
	\$90.00

4. Habilitation Assistance Corp.

▪ Tennis Court Usage Fees	\$137.50
	<hr/>
	\$137.50

TOTAL \$1,732.50

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

Motion by: Jim Quirk

Seconded by: Tracy Post

Yea 5 Nay 0

Adjourn

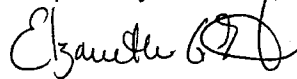
MOTION: To move that the Board of Selectmen adjourn the meeting at 10:23pm

Motion by: Jim Quirk

Seconded by: Tracy Post

Yea 5 Nay 0

Respectfully submitted,



Elizabeth G. Hartsgrove