

SELECTMEN'S MEETING MINUTES
January 22, 2013

Members Present: James DeVellis, Chairman
Mark Sullivan, Vice Chairman
Lorraine Brue, Clerk
Lynda Walsh
Ginny Coppola

Others Present: Town Manager Kevin Paicos
Police Chief Ed O'Leary
Atty. Brian Falk of Mirick O'Connell
Attorney Frank Spillane, Co-owners Mark Rohleder and Paul McKenna and Manager Joseph Lothrop of Waxy O'Connor's
Police Sgt. Richard Noonan
Fire Chief Roger Hatfield

The meeting was brought to order at 7:10 p.m. by James DeVellis, Chairman. Chairman DeVellis reviewed the agenda.

Mr. Paicos brought to the attention of the Board that a guest was present. Flat Stanley is visiting from the John Fuller School of North Conway New Hampshire as part of a class project. One of the Town Hall's employee's niece attends this school and Flat Stanley will report back about Foxboro to the class in New Hampshire.

Chairman's Update

The Board had a moment of silence for former Collector/Treasurer Barbara Germaine.

Invensys will be attending a future meeting to discuss a business opportunity in town.

The Tri-Town Chamber of Commerce will be meeting this week to offer assistance in the sewer expansion effort. The Superintendent of Mansfield DPW, Lee Azinhera will be present. The meeting will take place at their office on School Street.

The concept of an electronic sign will be on the Historical Commission's agenda next Monday, January 28th. They will bring the results of that meeting to the Board's February 5th meeting.

In regards to the abuse victims of William Sheehan, Mr. DeVellis stated that the issue is still under investigation and that it is still an important topic for the Board. Mr. DeVellis and Mr. Sullivan will be meeting with some of the victims this week. In addition, the Board of Selectmen, Town Manager, Police Chief and Town Counsel are working on a sexual abuse policy for Town employees.

The Board will be discussing the Town Manager act on February 26th. This will be a panel discussion with members of the Town Government Study Group. Any questions for this discussion should be forwarded to Ms. Brue in advance of the meeting.

Additional future items include the Annual Town Meeting; there will be a meeting this Thursday with the Moderator and the Advisory Committee Chairman to discuss how to have an effective Town Meeting and the possibility of having the meeting on a Saturday.

The Mass Gaming Commission will be at the February 26th meeting at 7:30.

Breathalyzer Grant Receipt

Police Chief Ed O'Leary met with the Board to inform them that the Police Department has received a grant from the MIIA, thanks to the efforts of Deputy Chief John Chandler, for Breath Testing Machines. The department obtained five portable devices that will help officers to perform preliminary testing of suspected incapacitated individuals. Mr. O'Leary showed one of the devices to the Board. He stated that all test results are recorded as per state regulations. They will not be used for random stops, only if a person's behavior warrants their use.

The police and fire departments will also be participating in Driver Simulators at the end of the month to make personnel aware of impaired driving dangers.

Mr. Paicos stated that the MIIA funds efforts such as these to help reduce claims.

Action Items

The minutes of January 8th were reviewed.

A motion to approve the minutes of January 8, 2013 as amended was made by Ms. Walsh and seconded by Mr. Sullivan. **The motion carried 5-0-0.**

Hussein Shuman of On Time Taxi Service is applying for a Taxicab License. The application has been approved by the Police Department.

A motion to approve a one year Taxicab License for Hussein Shuman of On Time Taxi Service was made by Mr. Sullivan and seconded by Ms. Brue. **The motion carried 5-0-0.**

The Board has received a resignation notice from Peter St. Laurent of the Recreation Board.

A motion to accept the resignation of Peter St. Laurent from the Recreation Board was made by Mr. DeVellis and seconded by Mr. Sullivan. **The motion carried 5-0-0.** The Board would like a letter sent to Mr. St. Laurent thanking him for his years of service to the Recreation Board.

An application has been received from Paul Dionne of the Reach the Beach Relay for a running relay that will pass through Foxboro on May 17th and 18th. There will be 200-300 runners coming through town between the hours of 7:45 a.m. to 2:15 p.m. This will not require any road closures in town.

A motion to grant permission for the Reach the Beach Relay on May 17, 2013 and May 18, 2013 as outlined in the application was made by Mr. Sullivan and seconded by Ms. Brue. **The motion carried 5-0-0.**

A vote is needed by the Board to petition the General Court to amend Chapter 5 of the Acts of 2004 which provides for a Selectmen-Town Manager form of government.

A vote to petition the General Court to Amend Chapter 5 of the Acts of 2004 in accordance with the vote on Article 8 of the Special Town Meeting on December 11, 2012 and to authorize Town Counsel to prepare the necessary documents was made by Ms. Brue and seconded by Mr. Sullivan. **The motion carried 5-0-0.**

Special Town Meeting Cancellation

A Special Town Meeting was to be held in March to vote on the Intermunicipal Agreement for sewers. The Town has been informed that the other towns involved, Mansfield and Norton will not be holding special meetings and will take it up at their annual Town Meetings in the spring. This will allow for Foxboro to take up the vote at their Annual Town Meetings also so a Special Town Meeting will not be necessary.

A motion to cancel the Special Town Meeting on March 4, 2013 was made by Mr. Sullivan and seconded by Ms. Brue. **The motion carried 5-0-0.**

Continued Public Hearing – Liquor Violation – Waxy O’Connor’s 121 Main Street

Ms. Brue read the Public Hearing notice.

Atty. Brian Falk of Mirick O’Connell will be the Special Town’s Counsel on this matter. Attorney Frank Spillane represented Waxy O’Connor’s and was present along with co-owners Mark Rohleder and Paul McKenna. Manager Joseph Lothrop was also present.

Mr. Paicos reviewed the procedures for this hearing. Counsel for the Town and the defendants have been negotiating and do have a settlement to present to the Board. If the Board accepts this settlement, then no further testimony will be necessary. If the Board does not accept the settlement then testimony will proceed.

Atty. Falk swore in the witnesses.

Sgt. Richard Noonan summarized the events of that evening. He noted that a written notice that the department would be conducting compliance checks was given to the establishment in early August and a notice was also published in the Foxboro Reporter on August 30th as well as the Sun Chronicle on April 23rd.

A nineteen year old female from out of town as well as a police officer from her town assisted Sgt. Noonan in conducting the compliance checks. At 7:10 p.m. the operative entered the establishment and took a seat at the bar. An older gentleman saw her waiting and waved the bartender over. She then ordered a Bud Light which the bartender gave her and then went to help another patron. The operative then left to use the bathroom. The operative stated that she was never asked for any identification or her age.

Atty. Spillane noted that there is a new manager, Joseph Lothrup, at Waxy O'Connor's and paperwork will be filed with the town. Atty. Spillane stated that the description of the incident is accurate in that a regular patron waived down the bartender to serve the operative. The bartender assumed the operative was with this patron's group and did not ask for an ID. Atty. Spillane stated that the owner's take this situation very seriously and the bartender in question was fired. The remaining staff was retrained and TIPPS trained and a license scanner has been obtained to verify ID's. The procedures have been reviewed by the new management and will continue to be improved.

The biggest change at Waxy's is the change of manager. Mr. Gordon Hyde, the previous manager and also part owner has been let go and bought out of the business. The ownership was not aware of the seriousness of the situation until this past summer. The other owners live in Florida. There are eight Waxy O'Connor locations on the east coast, with two others located in Massachusetts.

Owner Mark Rohleder addressed the Board and acknowledged the seriousness of the incident. He stated that the emphasis will now be on food service and less on a nightclub type atmosphere. They have changed the menu and hired new cooks. The cameras in the establishment will now also be used to keep an eye on patrons. New security staff has been hired especially on Friday, Saturday, Sunday, during Patriot's games and other special occasions as needed.

Mr. Rohleder stated that this is a family owned business and this incident as well as the others at the Foxboro location is a poor reflection on their business and they are committed to making changes.

The Police Chief noted that there have been fewer incidents in 2012 than there were in 2011.

The Town Manager and Town Counsel are recommending the proposed settlement. This settlement states that the owners of Waxy O'Connor's agree to the violation and will not appeal this decision to the ABCC. They shall gift the town reimbursement of costs associated with the investigation, develop and maintain an electronic ID scanner at the premises, develop and improve a policy of ID checks and provide a copy to the Board within one month. They shall conduct in house training for all employees every six months, employ security staff and police detail officers on weekends and special events as necessary. The agreement also requires the Manager to appear before the Board in one month for a status report on compliance with the agreement. The

agreement calls for License suspension of sixteen days to be served immediately beginning on January 23, 2013 to February 7, 2013, which would include Superbowl weekend.

Mr. Rohleder stated that they have an impeccable record at all the other locations and would like to move forward and stay in Foxboro and make a difference in the community. He apologized to the community and asked that their efforts be taken into consideration.

Resident Dave Brown of 17 Merrigan Way questioned if any of the settlement requirements were in the previous settlement and how the scanner would be used.

Resident John Rominowski of 30 Cross Street stated that he has noticed the changes to the establishment and would like to see them stay in town.

The Board discussed whether they were interested in the settlement or proceeding with the hearing. The management has changed and they are accepting responsibility this time.

Mr. Paicos noted that this could be used as a fourth violation and their license revoked but recommends the suspension since the owners are making a sincere effort to change the atmosphere of the location. The suspension will be on the record and if there is another event within the next two years they will be out of business.

Atty. Falk stated that it is at the Board's discretion to impose sanctions as they see fit. This will not set precedence as every establishment is entitled to be heard on its own merit.

The Board asked if the Police Chief is satisfied with the changes. Chief O'Leary speaking on behalf of himself and the Fire Chief stated that the calls for service at the location have decreased lately which they feel is evidence of better efforts on the part of management.

Mr. DeVellis does not feel a settlement is warranted given the past history of the establishment.

Atty. Falk noted that condition #10 states that if they fail to comply with the settlement the Board may seek additional penalties against the Licensee including further suspension or revocation of their License.

Mr. Sullivan would like to see an additional monetary donation of \$10,000 that could be used for police training or given to an appropriate charity such as MADD or SADD.

Mr. Rohleder stated that they have been having financial difficulties at this location due to the previous management not paying bills over the past year.

Resident Deb Stewart of Neponset Height Avenue stated that she was here for their last violation hearing and noted that they had no apologies or responsibility last time. Tonight she sees a difference of attitude and notes that there are many conditions on top of the sixteen day suspension. She feels that the Board should look at the merits of the settlement.

A straw pole motion to find out the feelings of the Board on working towards a settlement was made by Ms. Walsh and seconded by Ms. Brue. **The motion carried 4-1-0 with Mr. DeVellis opposed.**

It was noted that the finding of violation can be included as part of the settlement agreement and the agreement has seventeen conditions in it.

A motion to accept the amended Settlement Agreement between Waxy O'Connor's and the Board of Selectmen finding a violation of serving an alcoholic beverage to a person under 21 years of age on September 27, 2012 was made by Mr. Sullivan and seconded by Ms. Brue. **The motion carried 5-0-0.**

Mr. DeVellis stated that he decided to support the agreement and commended Atty. Spillane on his negotiation work.

Atty. Spillane stated that he met with town employees and town departments and the Police Chief and he believes the owners of Waxy's are committed to the conditions negotiated.

A motion to close the Public Hearing was made by Mr. Sullivan and seconded by Ms. Brue. **The motion carried 5-0-0.**

Town Asset Review Update

Ms. Brue as a representative of the Town Asset Review Committee presented a Powerpoint to the Board on the activities of the committee. Other members of the committee are Bill Casbarra, Randy Scollins, Kevin Weinfeld, Gary Whitehouse, Bill Yukna and Lisa Sinkus.

This committee was appointed by the Board of Selectmen to determine which town properties could be sold so the funds could be used for future Capital projects. They reviewed and photographed 280 properties and narrowed it down to six properties that could be sold.

The properties are: the old Fire Station, the former funeral home at 21 Market Street, land on Garrett Spillane Road, a land locked area on Pine Acres Road/Cranberry Road , five Form A lots on Camp Lincoln Hill/Oak Street and the former auditorium on Payson Road.

Ms. Walsh noted that the auditorium was restricted to recreational and non-profit use only through state legislation, the Oak Street property has a history to it and if the Historical Commission needs to be consulted on the Fire Station.

Mr. Sullivan thought that the Market Street and Fire Station properties should be pursued first and then work on the other sites.

Mr. Paicos stated that the Planning Board's Master Plan work has been focusing on the downtown area and advised the Board wait until that work is done to see what their conclusions are.

With regard to The Garrett Spillane Road property, Mr. Sullivan asked if there could be a covenant that it not be used to access the twenty or so acres behind it.

The Oak Street property would need a compromise from town departments in order to be sold.

To get the auditorium through Special Legislation could take a year or more.

Planning Board member Bill Grieder stated that in regards to the auditorium, the Planning Board met with the Recreation Department on that property and an adjoining property that contained the laundry building. The Rec Dept. is not interested in these properties as the cost of rehabilitation would be extensive.

The Garrett Spillane Road land is on a private road so if it were to be used for development it would require Site Plan Review by the Planning Board and the road would need to be brought up to town standards.

Mr. Grieder recommends no action for the next three to four months while the Master Plan work is completed.

The Oak Street land was purchased in 1974 after Town Meeting recommended the purchase and wanted it used for recreational and conservation purposes. However, the land was not recorded as recreation/conservation land. This would need to go to Town Meeting to either record as Conservation/Recreation land or to sell the lots. Town Counsel is reviewing the format of the vote and will provide recommendations or options available.

Judy Johnson of the Conservation Commission stated that the Marbled Salamander has been located on the Oak Street land. This species is protected under the Endangered Species Act and would require a study by the state on preserving its habitat. The Conservation Commission voted in opposition to the sale of this property.

Formation of Plainville Gaming Proposal Review Committee

Mr. DeVellis stated that on the January 5, 2013 state deadline, eleven proposals for gaming facilities were submitted. One of those was for Plainridge Racing in Plainville.

This committee would look at potential impacts to the Town in regards to businesses, traffic, etc.

The Mass Gaming Commission is coming to the BOS meeting on February 26th to explain the legislation. This committee would be formed after that meeting.

Mr. Sullivan suggested if any townspeople are interested in serving on the committee they fill out a form at the Board of Selectmen's office. Members will be appointed at a future meeting.

Mr. Paicos stated that the committee needs to know what they will be charged with.

Chris Mitchell of 9 Spruce Street stated that he feels that this would impact the entire town, not just the Route 1 area. He suggested that the Committee be made up of people from all parts of town. He also would like to know how far down the road they would be able to go.

Fire Department Fees

The Board met with Fire Chief Roger Hatfield on the Fire Department fees. These fees were last updated five years ago. Once he started looking at other towns fees, he was asked to assess the fees for Norfolk County.

Mr. Paicos stated that most other town departments updated their fees two years ago but for some reason the Fire Department fees were not done. The biggest proposal would be for a Master Box fee of \$200 per year; there are 130 businesses in town tied into the Master Box. Most of the businesses connected seven years ago so now an amortized fee could be charged or it could be kept as a taxpayer expense.

A small group could be formed to study the recommendations and come forth with a final determination. The additional revenue could be used to offset training requirements in the Fire Department contracts.

Board members questioned why some of the fees had large increases if they are only meant to cover the departments costs.

The Board will take the matter under advisement.

Board of Selectmen Fee Increase

Mr. Paicos stated that there are three fees that he is recommending be increased. Commercial Parking per space be increased from \$7.00 to \$7.25 and Commercial Parking spaces for charity be increased from \$3.50 to \$3.65, the third increase would be for 7 Day All Alcohol Licenses which would increase from \$2,500 to \$3,000.

The parking space fees increase are to offset inflation. The Liquor License increase is to help offset the cost of Police services to the town at liquor pouring establishments.

The Board would like to see what other towns charge and will take the matter under advisement.

A motion to adjourn the meeting to enter into Executive Session and not return to regular session at 10:38 p.m. was made by Ms. Walsh and seconded by Ms. Brue. **The motion carried 5-0-0.**

Respectfully Submitted,

Diana Gray

Lorraine Brue, Clerk