

TOWN OF FOXBOROUGH
SELECTMEN'S MEETING
MINUTES
DECEMBER 16, 2014

Members Present: Lorraine A. Brue, Chairman
John R. Gray, Vice Chairman
Virginia M. Coppola, Clerk
James J. DeVellis
David S. Feldman

Others Present: William G. Keegan, Jr., Town Manager
Ms. Mary Beth Bernard, Assistant Town Manager
Attorney Frank Spillane, Waxy O'Connor's
Mr. Paul McKenna, Waxy O'Connor's

The meeting was brought to order at 7:00pm by Chairman Lorraine Brue.

Ms. Brue read the new statement for the Board of Selectmen agendas.

Ms. Brue asked Mr. Keegan if this statement was in response to just looking at the agenda times. Mr. Keegan stated yes. They have had a couple of discussions about this during recent meetings by the Board relative to time sensitive issues. It was correctly pointed out that we have listed times on the agenda and at times we have looked to take items earlier than posted. Mr. Keegan asked counsel for advice on this. The Board wants some level of flexibility to deal with these items. What has been done and recommended is this language be posted on the agenda prior to the meeting so everyone is aware that the times that are given are approximate times. In this particular case we have taken all of the times off except for the beginning of the meeting which is of course 7:00pm.

There may be times however where hearings are coming up where those are to be considered approximate times so that gives you the ability to take items a little bit earlier or later depending on how the item goes. This is a disclaimer that gives the public notice that those items might be taken earlier or later as the time prescribes.

This is a format that was recommended to Mr. Keegan by counsel so he has asked that it be included on the Board's agendas going forward so they are clear about how they should handle that.

Mr. DeVellis stated he thinks they could achieve the same thing by putting that statement on there but actually put the times and state "subject to change". If someone looks at the website and sees that something is at 9:30pm they won't show up at 7:00pm because it gets expensive for consultants.

Mr. Keegan stated that we could list reasonable times for items.

Ms. Brue read the agenda.

7:00pm – Citizen’s Input - There was no one present for Citizen’s Input.

7:05pm – Selectmen’s Update – With the holiday season here Ms. Brue wanted to remind the community that Toys for Tots has a donation box at the public safety building. Any donations are greatly appreciated.

The Discretionary Fund is going to be making deliveries this Thursday so any adults that are available to help with deliveries please contact the Discretionary Fund.

Ms. Brue wished everyone Merry Christmas, Happy Hanukah and Happy Kwanzaa and Happy General Holidays across the board and a Happy New Year.

Waxy O’Connor’s – Disposition of Liquor License Violations

Attorney Spillane provided the Board with update material.

The two meetings last week there were some issues that were brought up so Attorney Spillane provided the Board with information regarding that. Attorney Spillane dropped off a package with a letter from himself and Paul McKenna as well as back up information letters that Attorney Spillane had previously sent to the town.

The first issue had to do with the settlement agreement dated January 23, 2013. One of the questions had to do with compliance with that agreement with regard to Waxy O’Connor’s. Attorney Spillane went through Items 3 through 10 and he will be referring to a letter from Paul McKenna’s also.

Item #3

Items 1 and 2 had to do with agreeing that there was one violation and that the licensee, Waxy O’Connor’s would not appeal the violation.

Item 3 which is on page 2 of 5, “Licensee shall serve a 16 day suspension of the license. Waxy O’Connor’s served that sixteen day suspension from January 23 to February 7, 2013.

Item #4 – Page 2 of 5

Licensee shall reimburse the Town of Foxborough for the actual cost of investigating the violation in the amount of \$2,000. A check in the amount of \$2,000 was enclosed in Attorney Spillane’s letter dated January 30, 2013.

Item #5 – Page 2 of 5

Licensee shall make a gift to the Town of Foxborough in the amount of \$8,000 for the purposes of public safety training. This was enclosed in Attorney Spillane's letter dated February 22, 2013 to Kevin Paicos.

Item #6 – Page 2 of 5 – Line #1

Licensee shall maintain a functional electronic identification scanner on the premises. Waxy O'Connor's did purchase and has maintained a functioning scanner on the premises in which Attorney Spillane again refers to Mr. McKenna's letter which they will go through after they finish.

Item #6 – Page 2 of 5 – Sentence #2

Licensee shall develop a formal written policy governing the use of the scanner and the criteria for requesting identification from patrons and a current copy of said policy shall be filed with the Board, Town Manager and Police Chief. This was enclosed in Attorney Spillane's letter of February 22, 2013 letter to Kevin Paicos.

Item #7 – Page 3 of 5

States that the licensee shall require all servers maintain TIPS certification and shall conduct in-house training for all employees on the licensee's rules and procedures for serving alcohol. This was done in April 2014 and October 2014.

Item #8 – Page 3 of 5

The licensee shall employ security staff on Friday and Saturday nights between 9:00pm to 1:30am as well as during any special events drawing a large number of patrons; Mr. McKenna's letter addresses that.

Item #9

Licensee shall hire, pay for and maintain a detail police officer from the Foxborough Police Department as may be necessary in the judgment of the Chief of Police to maintain law and order upon the licensed premises including without limitation the parking lot. Attorney Spillane referred to Mr. McKenna's letter.

Item # 10

Licensee shall appear before the Board on March 5, 2013 for a status conference with regard to licensee compliance with the agreement and the terms of license thereafter licensee shall on June 1, 2013, September 1, 2013 and December 1, 2013 submit to the Board, Town Manager and the Chief of Police a written status report detailing the licensee's compliance with the agreement and the terms of the license. Enclosed in Attorney Spillane's packet was a letter dated April 16, 2013 from Attorney Spillane to the Board of Selectmen, James DeVellis, Chairman explaining that Waxy's had requested to be placed on the Board of Selectmen's agenda for March 5, 2013 and

March 19, 2013 but were not placed on either agenda because of limited time and numerous agenda items. In that letter Attorney Spillane indicated that Kevin Paicos advised them to provide a letter to the Board of Selectmen updating them on compliance with the agreement and said letter does that.

In May of 2013 Attorney Spillane met with Kevin Paicos updating him on Waxy's compliance with the agreement and requested to be put on an agenda around the first of June so they could provide the Board with an update to the compliance agreement. Mr. Paicos said at that time that the Board was very busy and there was no need for Waxy's to go before the Board. Attorney Spillane asked Mr. Paicos if he required any additional information with regard to the status report otherwise he would send him a letter similar to what he had sent him previously. Mr. Paicos stated that a status report wasn't necessary and Attorney Spillane was just to keep him updated.

Sometime in late June 2013 Attorney Spillane again spoke with Mr. Paicos regarding a written status report. He told him how Waxy's was keeping up-to-date on it and was told that a written status report was not necessary at that time. When Mr. Cutler was appointed Acting Town Manager Attorney Spillane updated Mr. Cutler with regard to the agreement giving him the background with regard to past violations and how the agreement came to be; the status of the compliance and that Mr. Paicos did not require a status report and they weren't planning on filing any written status reports. Mr. Cutler acknowledged that information and explanation and did not indicate that they had to file any reports at that time.

Attorney Spillane would like to go over Mr. McKenna's letter to the Board with regard to Items 6, 7, 8 and 9.

Item 6

Mr. McKenna's letter indicates that Waxy O'Connor's purchased the electronic identification scanner at the request of the Board and it has been on the premises and functioning properly since the purchase. This scanner is updated once a month by uploading software from their vendor Advanced ID Detection, LLC. The scanner is used at the front door on Friday and Saturday nights and any other days or evenings when they expect large crowds (Patriots Games, Home Games, Holidays, etc.). At all of those times the scanner is maintained behind the bar to be used by bartenders and management. When used at the front door every patron that comes into the facility their id goes through the scanner to make sure that they are not under-age.

When the scanner is behind the bar and if anyone gives an out-of-state license they also scan it at that time.

The staff uses this to confirm getting the identification matched to the person presenting it; they are of proper age and confirm the id or driver's license is in good standing. Once they are identified to be over the age of 21 the staff also makes a secondary determination whether the patron can be served alcohol. If they feel they cannot, they try taking reasonable steps to arrange that person gets home safely.

Item 7 – TIPS Certification Training

Under the agreement the licensee was required to maintain TIPS Certification for all employees and to have training done in April and October of 2013 and April 2014. Mr. McKenna outlines when the training was held. On June 10, 2013 even though it was not part of the agreement there was another in-house training with employees with regard to rules and procedures.

Bevintel Alcohol Patrol Service which conducts weekly audits of their inventory and provides staff with necessary training with regard to measures and weights and responsible dispensing of alcohol. This was a six month program which included training the staff with regard to dispensing alcohol responsibly.

During that time period they did have an in-house training on:

1. October 5, 2013 which was conducted by one of their representatives and the Manager of Record, Joe Lathrop and the rules and procedures of serving alcohol as well as the responsible dispensing of alcohol were reviewed.
2. Additional in-house training was provided to their employees on July 18th, September 10th, November 12th and December 14, 2014 and again that was part of the contract with them. During that time all staff were confirmed to be TIPS Certified.
3. In 2014 an in-house training session for all employees was held on April 18th with regard to the rules and regulations as well as responsible alcohol dispensing and all new staff were required to be TIPS Certified.

In June 2014 Waxy O'Connor's Group worldwide brought a new employees handbook which had updated policies and procedures. The training that occurred on June 26, 2014 included a refresher course on responsible alcohol service and there also was an alcohol service agreement which was signed by all the staff required for their employment. A copy of the responsible alcohol service policy and the alcohol service agreement was included in the Board's package. Again, everyone was required to be TIPS Certified.

Finally in-house training was conducted on October 21, 2014 by the new manager whom the Board met last week with regard to responsible alcohol policies and procedures. All new staff were required to be TIPS Certified.

Item #8 - Agreement concerning Security Staff

The agreement concerning the security staff being employed on Friday and Saturday nights between 9:00pm to 1:30am during special large events, Waxy O'Connor's employs a minimum of two (2) trained security staff on Friday and Saturday nights from 9:00pm to 1:00am during all events that draw larger than usual crowds.

The Police Chief recommended that Mr. McKenna take a Crowd Manager Training Program which he did take and the Board has a copy of the Crowd Manager Certificate in their packet.

Item #9 – Police Details

In the Board's packet there is a memo from the Police Chief stating that Waxy's has used the police detail on the premises when appropriate and their account is up-to-date.

Waxy O'Connor's constantly retains an open dialog with the Foxborough Police Department and hires the staff whenever required.

Attorney Spillane stated that is everything that they have provided the Board with regard to compliance with that agreement.

Ms. Brue asked if there were any questions with regard to compliance.

Mr. DeVellis asked if there was a file when a violation occurs. A lot of this would have been nice to have during the last hearing when we asked did you do this and did you do that. Some of these things were updated yesterday and today.

Ms. Jarvis stated that everything we had in the file within the three year period was given to the Board.

Mr. DeVellis stated that some of the things had a clerk's stamp on it and Mr. DeVellis didn't know if some of the things get from the clerk over to the Selectmen. Attorney Spillane stated that it was stamped at the Selectmen's window, he doesn't bring it to the Clerk he brings it to the Selectmen's window and they stamp it.

Ms. Coppola asked what Mr. McKenna's function was at Waxy's. Mr. McKenna stated that he was one of the owners. Ms. Coppola asked where Mr. Karnbach who is the new manager that they just approved was. Mr. McKenna stated that he is working at the location. Ms. Coppola stated that she expected Mr. Karnbach to be here tonight at the meeting. Mr. McKenna stated that he was scheduled to be at the location.

Attorney Spillane stated that another issue that Mr. DeVellis had mentioned was the use of the scanner on Thursday nights. Attorney Spillane thinks what Mr. DeVellis was referring to the January 22, 2013 hearing on the liquor license violation. Joe Lathrop who had applied to become the manager on the liquor license was subsequently heard in February of that year indicated that the policy for the id scanner was to be used on Thursday, Friday and Saturday nights and busy nights with larger than usual crowds. Monday through Wednesday nights the scanner would not be used at the door but be behind the bar and that was the initial policy back when Thursdays were a very busy night for Waxy's. Thursday nights aren't nearly as busy as the night of the sting indicated, there are very few customers in the bar at that night so they determined that someone at the door was not necessary on Thursday nights any longer so the scanner was put behind the bar. If a Thursday night is anticipated to be a busy night for a holiday or a Patriots night game for Thursday night they will have someone at the door with the scanner.

One of the last issues had to do with the sanctions violations. At a number of hearings the question with regard to violations and how they are used has come up. For example, at the hearing in February of this year with regard to the change of manager it was brought up with the manager about the strikes and it was discussed how at the time what certain strikes were still on the books. Mark Sullivan was the Chairman at that time and he asked Attorney Spillane if it came off the books after one year and Attorney Spillane stated no, some of the violations had come off, some of the violations are still there and some of the Board members had reminded that applicant because of the violation that if anything occurs it will not be a first violation but it will be on top of the one within the last three years.

Also, within the Board's meeting minutes back on March 13, 2012 when the Board was discussing the rules and regulations it specifically states that violations within three years would be counted and there is an explanation with regard to the dropping of violations. There have been extensive discussions with regard to members of this Board that were at those hearings with regard to how the rules and regulations work and how the three years work in particular with regard to Waxy's last February. Last February Mr. DeVellis did state that he had seen a change in how Waxy's had progressed in a year (changes in the customers, the food, the community outreach and that it quieted down quite a bit).

Ms. Brue stated that looking at Waxy's serving policy it says in there that anyone that appears to be under the age of 40 years of age will have their id checked so Ms. Brue's question is with that policy in place and the fact that someone that looked well under 40 was not checked have they given any further consideration to carding everyone that comes in to the restaurant. Mr. McKenna stated that they had talked about it at the last hearing; it is not something that Mr. McKenna believes is very practical. Mr. McKenna believes stricter enforcement amongst the bartenders would be a better approach as opposed to carding everyone.

Mr. Gray asked on the topic of using the scanner on Thursday night; that was in the policy not in the agreement, is that where that came from. Attorney Spillane stated that is how they used the scanner at that time. Mr. Gray stated that Attorney Spillane had stated at that time Thursday nights were a real busy night. Attorney Spillane stated yes. Mr. Gray stated that he had just looked through the agreement and he could not find any mention of the use of the scanner. Attorney Spillane stated that they had just procured the scanner recently when they came in because it was part of that agreement so that was their expectation that Thursday was a very busy night. There is nothing in the agreement as to how the scanner would be used but there is in the agreement the requirement to have the scanner. Mr. McKenna stated that it is hard to come to a family restaurant and have a 6' 5" bouncer carding kids on a Thursday night. He knows this happens at places like Bar Louie and places like that but they are high volume. They can afford to do that pretty easily but smaller establishments can't, that's why they took the approach that on Thursday evenings it wasn't feasible.

Ms. Brue stated at this point they need to start talking about the sanctions. This is viewed as a second violation within the three year period so in the Board's guidelines it talks about the Board having discretion of imposing sanctions from 3 to 10 days. There is also early closing potential there and Ms. Brue suggested that 5 days was adequate for this type of violation but

compromised on 7 days in the other similar situations. Ms. Brue wanted to suggest that the Board discuss a 7 day sanction at this time.

Ms. Coppola disagreed and thought the second violation should be 10 days and she agrees that it still should be 10 days.

Mr. Feldman stated that he went back and watched the hearing from January 22nd and every member of the Board at that time basically said this is it, this is your last chance and here we are again so at a minimum he would recommend 10 days.

Mr. Gray stated that given the look back period is three years and given that the situation was exactly the same as Skipjack's where both bartenders were caught in a sting serving an under-aged operative, he is recommending 7 days as well for this violation.

Mr. DeVellis stated Attorney Spillane had done a great job and he agrees with him that the look back is three years according to what the Board has in front of them. He also keeps going back to an item right before the sanctions which is that the Board of Selectmen have the ability to work outside of this if they feel that it is a public safety issue so these are guidelines based on the two steps of this process. The first step was finding of the facts and they didn't talk about anything other than what happened on this last violation but Mr. DeVellis thinks they need to talk about the other violations during this section.

This is the third time that Mr. DeVellis has been at this table listening to the testimony and what bothers him is Waxy's hired an attorney from Boston and Mr. DeVellis asked a specific question "was there any other violations that are pending". The Board was told no, when in fact the state had already sanctioned violations against Waxy's for twelve days (four of them to be served). Mr. DeVellis doesn't know if they ever served them; he believes they paid a fine rather than serving it. Eight days were to be held in abeyance and they would disappear after one year if there were no other violations. One of the first violations that they had in front of the Board was within that one year period. When the Board asks counsel and the owners are there any other violations and they say no and then compound that on the next violation in front of the Board (he remembers the excuse that they couldn't say anything because it was an ABCC issue), Mr. DeVellis has very little faith that the owners are being upfront when he is lied to at a meeting.

Waxy's proceeds then goes on to be found guilty of an over-serving situation by the ABCC and then negotiated it to a minor serving. When Waxy's is asked a question "can you use a scanner" and they say it is not feasible, Mr. DeVellis doesn't think it is feasible to have a business open if they can't figure out how to scan someone when a kid comes in and asks for a beer or a drink or two or three.

The Police went in and didn't take the beer and walked out and they are front of us, but what if a kid sits there and gets two or three or four drinks. Mr. DeVellis doesn't take that lightly, he puts that in the category of it is a public safety issue and unless an owner can tell us how they are going to do it and not tell us that scanning everyone that comes in there is an inconvenience or not practical Mr. DeVellis' suggestion is to rescind the license altogether. Let them figure it out and reapply for the license when they get their act together. It goes back to when you are sitting

at this table and the attorney says raise your right hand to God and swear to tell the truth and the attorney says no and the owners back him up the creditability is gone.

Mr. DeVellis wants to rescind their license. He is sure they are going to appeal it and the Board can deal with it at that time but he doesn't have any more patience for Waxy's. Mr. DeVellis stated to Attorney Spillane that he agrees that he did say that they have come a long way and Mr. DeVellis does go in there but he just can't do it anymore with the situation the way it is and it is unfortunate because it is a local pub and a local eating establishment.

Mr. Gray stated he had given a lot of thought to that as well and the Board does have the ability to leap frog over all the suggested tiers. In other words, the first violation if something is so egregious and something is deliberate and premeditated Mr. Gray's understanding of that is if Waxy's was selling half gallon jugs of rum out the back door to teenagers the Board could leap frog right over that because that is criminal but this was a sting and it was the same as Skipjack's so Mr. Gray doesn't know how Mr. DeVellis can take a body of evidence and leap frog over everything and come to the conclusion that he can rescind the license. Mr. Gray doesn't think it rose to that level. Mr. DeVellis stated that it is the fourth issue that he is dealing with for one company after they said they are going to card on Thursdays. He understands that Thursdays aren't busy so they decided they are not going to do it but their policy was card everyone on Thursdays or use the scanner and they aren't doing it.

Mr. DeVellis remembers that last meeting and quoted Ms. Walsh "take it as serious as a heart attack". For a Selectman to say one more time and that's it Mr. DeVellis doesn't think anyone was saying one more time a day after three years when the other one falls off and then that's it. In Mr. DeVellis book that's it. Mr. DeVellis wishes they were upfront about the ABCC it was painful to sit here knowing there was a violation going on and knowing that there were eight days you needed to serve and we were lied to. The clause that Mr. DeVellis is hanging his hat on is "and/or licensed premises where necessary to ensure public safety". Two times they are not carded; Mr. DeVellis doesn't want to wait for the third time. The other ones were over-serving and he hasn't been a bartender so he doesn't know who's drunk there and who comes in drunk but Mr. DeVellis knows for a fact that if someone comes in and they look the age that this kid looked you ask for the id period. If Waxy's can't get their act together to do that then you set the robot up to do it and they don't want to do that because it's impractical.

Mr. Gray asked that comparing where they were last week where they gave Skipjack's 7 days how is this situation any different than Skipjack's with regard to public safety. Mr. DeVellis stated that Skipjack's response to the Board was a little more forward thinking on what they were going to do without the background that Mr. DeVellis has. Mr. DeVellis doesn't have the background with Skipjack's with these repeated issues. Mr. Gray stated that Mr. DeVellis did say that they have come a long way so there is something positive. Mr. DeVellis stated that there is something positive and he was hoping today that it would end up that there would be a scanner because there was a realization that how many more times is this going to happen and whether it is the bartenders fault, the manager's fault or the owners fault the Board has heard all of it so far. They got rid of an owner, they got rid of a manager and now they have gotten rid of a bartender and there is nothing left.

Ms. Brue stated it is definitely a serious situation but she thinks the effort is being made to correct the problems. Ms. Brue thinks the new manager looks to be a very experienced individual who Ms. Brue hopes will be able to reinforce. Even though there has been so much training here Ms. Brue thinks it is something that can't be reinforced enough and having the oversight of whether it is the manager on the floor or the other bartenders to be constantly alert. If the decision is made not to card everyone coming in the door then you do run the risk of being in front of the Board again.

Ms. Brue believes that everyone has an obligation to work together and try and do what's going to prevent this from happening. The Board needs to create some type of resource to try and help. There are restaurants and bars out there that are successful every single time and skills could perhaps be learned from them. When they redid the liquor regulations Chief O'Leary had talked about having a group put together that was comprised of business owners and members from the community and the police to come up with an approach that would be more collaborative and supportive of trying to keep these types of things from happening. Ms. Brue believes the new manager clearly understands his marching orders from this Board and from the owners. Ms. Brue goes back to this is a second violation of this type and she would like to hear a motion made for a sanction at this point.

Mr. Feldman stated that they have to come back and look at this in six months anyway because they put a condition on the new manager's license so Mr. Feldman thinks ten days is adequate with a review in six months. Mr. Feldman thinks they should do some testing within that six month period. Ms. Brue asked if Mr. Feldman meant sting operations and Mr. Feldman responded yes, do a compliance check within that six month period and then after that six months if there is a failure then they rescind the license.

Ms. Coppola stated that she is a little disappointed that Mr. Karnbach was not there as he is the new manager. Ms. Coppola would expect a manager to be at a violation hearing because the Board wants to speak directly to the manager who will be running the establishment on a day to day basis.

Ms. Coppola is looking at this as a second violation. Those are the rules the violations roll off so because of the rules technically it is a second violation. Waxy's has had a very troubled past but that's past. Ms. Coppola believes a ten day suspension is warranted but she would like to also suggest in addition to the ten day suspension from now on the scanner is used Thursday, Friday and Saturday.

Ms. Coppola stated that she reviewed the tape from the last violation and what they said last year is exactly what they said this year which is very disturbing. Ms. Coppola is giving them the benefit of the doubt with a ten day suspension and use of the scanner.

Ms. Brue asked where the scanner is located if it is not at the door. Attorney Spillane stated that the scanner is behind the bar. The bartender is supposed to ask for an id and if it is a Massachusetts id if the person is thirty-five (35) years old, it is fine. If they get an out-of-state license or license that they question they then take it to the scanner behind the bar. It could be a military id license from any other state, those types of things that can go through and the scanner

is for all the states and it works for military id's. When it is at the front door from 9:00pm to 1:00pm no one under-age can then come in. Even if they were going to use the scanner on Thursday nights it probably wouldn't be until 9:00pm and then they wouldn't allow anyone under-age to come in, even if it was a family coming in for dinner. That is one of the concerns also; anyone coming in after 9:00pm typically wouldn't be bringing in a family that late for something to eat. Even if you have someone at the front door on Thursday, if it is similar to that night you may have no more than a dozen people there and you have an employee just sitting at the front door with the scanner with no one really coming in. It comes down to dollars and cents that they didn't have someone at the front door at that time.

Ms. Coppola stated that if they had someone at the door and that kid walked in and they took his license they would have seen that he was underage and not let him in and Waxy's would have passed the test. That was the whole reason why Waxy's flunked the test because they didn't ask for an id.

Attorney Spillane stated that if he had come in an hour earlier and they had had that policy there wouldn't have been someone at the door and this may or may not have occurred. What if the individual came and said that he wanted to get something to eat, they would still have to turn them away at that time if they had someone at the door with a scanner. Waxy's doesn't want to lose those customers. Ms. Coppola stated that the Board is asking them to use the scanner. One of the Selectmen wants to rescind their license so she thought it would be very wise of them to go along with the program that the Selectmen are suggesting.

Mr. McKenna asked in what capacity the scanner should be used i.e., (24/7), where it should be located, etc., so that he has a clear message to inform Mr. Karnbach. Mr. DeVellis stated that the minute they start to tell them how to run their business they step into something they shouldn't be. All the Selectmen want to make sure is that the people are carded and the last two times Waxy's has been in front of the Board they hadn't been carded. The Board wants Waxy's to tell them how it is going to happen. The Board is suggesting a scanner but Mr. DeVellis doesn't feel that it is the Board's say to put it at the bar at 8:00pm versus 7:00pm. Mr. DeVellis stated that he doesn't know how to deal with it so he is saying rescind the license.

Mr. McKenna stated that there should be more responsibility on the person that served the drink as that would be a big incentive not to do it. A lot of times it is a punishless crime for them. It wouldn't have happened if that person was going to be penalized to the same extent that the ownership is penalized.

Mr. DeVellis was asked if he meant the current bartender be penalized other than being fired. Mr. McKenna stated that he is probably employed somewhere else making the same if not more money at another establishment. Waxy's can't discriminate against the bartender. Mr. DeVellis stated that he thought Mr. McKenna had meant that he had taken actions against the bartender; Mr. McKenna is saying moving forward not just what happened. Mr. McKenna stated that the bartender was fired on the spot and what he was saying was stricter penalties against that person. That would be one way going forward from stopping this from happening.

Ms. Coppola asked stiffer penalties by the town. Mr. McKenna stated that it is not his place to say what that it is the question was posed to him that what do they do to stop this from happening and he is simply saying that more of a balance in the punishment to the holder of the license and the person that served the drink would probably stop this going forward.

Mr. Feldman asked what the one thing they could have done that could have prevented this. Mr. McKenna stated that the person that served the drink was educated, worked in the industry all of his life, was a fully salaried manager, TIPS certified, intelligent and bright; he doesn't have an answer. Mr. Feldman stated that the one thing that could have been done that should have been done to prevent this was "can I see your id". If that happens we aren't here. Waxy's needs to figure out how you get your bartenders and servers to say "can I see your id". It's that simple. You don't need a scanner to do that; just ask the question and whether it is a 40 year old, 30 year old, or 20 year old, that's immaterial, that's up to you but you have to ask the question. Mr. Feldman doesn't see it as an inconvenience. If his license is in peril, he would ask the question, he would have every one of his staff ask the question.

Mr. DeVellis stated that recently Waxy's put up a highway sign to direct traffic on Rt. 95 down to the establishment and at the time he had voted against that because he said that it was too early because they had just had a violation and let's give it some time. Mr. DeVellis would like that sign removed. There have been a lot of complaints about it and he thinks to put that sign up to grab more traffic off of Rt. 95 with a new manager and all of this stuff going on Mr. DeVellis doesn't know how the Board feels if it is overstepping what they are here to talk about tonight but Mr. DeVellis thinks that should be a consideration as well. Ms. Coppola asked if he meant taking down the sign permanently or just temporarily because any establishment that goes to the state for those signs, they pay for those signs and it is very expensive. It used to be \$10,000 but she doesn't know what it is now. The reason the Board okayed that was because the Board tried to be supportive of the business.

Ms. Brue stated that the Board has to continue to be supportive of the business. They are in front of them pleading their case and they are working to make things correct. The Board needs to give them the opportunity to do that and. Ms. Brue stated that personally she doesn't have the appetite for doing anything to remove that sign because she doesn't see it connected to what the Board is dealing with here which is a huge education process basically. It could possibly result in a bad public safety result for the Board. Ms. Brue believes that they should move forward and put faith in the new manager's approaches and if it works they won't be in front of the Board again.

Ms. Coppola asked Attorney Spillane if there were any regulations with regard to the state in regard to keeping the sign up there. Can they keep the sign until they have a violation. Attorney Spillane stated that he doesn't think there is anything but he couldn't guarantee it. Ms. Coppola asked if Attorney Spillane could check on that for the Board.

Attorney DeLuca stated that he doesn't have a clear answer on that but the sign was permitted by the Board or Commissioners that control signs and based on a criterion that may range from safety to appearance. The Board had a hearing and they approved it on that basis. If there is a connection between the sign and the use of the sign, the purpose of the sign and the Board's

active discipline and position there is a nexus there. Attorney DeLuca's recommendation would be that action against the sign makes sense to hold a hearing relative to the sign and whether the sign could be an effective tool in the discipline and disposition of the case. Unfortunately Attorney DeLuca believes to do it right would be to hold a hearing in their capacity as the sign commissioner.

Mr. Gray stated that given that Waxy O'Connor's have been cited with a second violation in two years Mr. Gray moves that the Board of Selectmen suspend Waxy's liquor license for seven days to be served within the next sixty days with two of those days being weekends. Seconded by Virginia Coppola.

Mr. Feldman stated that he didn't think that seven days is enough with their history. It is a second violation and because of the history the Board should do the maximum within their guidelines and that would be ten days. They are going to be back here within six months on the license anyway and Mr. Feldman stated he thinks the Board should keep them on a short leash. Mr. Gray stated to Mr. Feldman that the Board can vote on this and then he can propose that at another time. Ms. Coppola stated that they could amend the motion because she feels that ten days is warranted not seven days.

Mr. DeVellis stated that the ABCC handed out twelve days for over-serving. Mr. Gray asked what the date was on that. Mr. DeVellis stated that that was in 2010. Eight days was held in abeyance. In 2011 they got three days and last year there was a serving to a minor and they received a sixteen day suspension. That was in September of 2012 and it was served in January of 2013.

Vote 2-3-0 with James DeVellis, David Feldman and Virginia Coppola opposing.

Motion made by John Gray to suspend Waxy O'Connor's liquor license for ten days to be served within the next sixty days with three days being weekends. Seconded by David Feldman. **Vote 3-2-0 with Lorraine Brue and James DeVellis opposing.**

Ms. Brue asked for Attorney Spillane and Mr. McKenna to let Mr. Keegan know the dates. Attorney Spillane asked for clarification that two of the days had to be weekends. The Board stated three. Attorney Spillane asked if they had to be in one lump or if they could be spread out. Mr. Keegan stated to be clear for the record the weekends meaning Friday or Saturday night.

Attorney Spillane stated that it could be ten sporadic days. Mr. Gray stated yes but within the sixty days. Mr. Keegan stated that it is sixty days from tonight. Attorney Spillane asked if they could have it until the end of February to make it easier for them. Mr. Gray stated that he could amend the motion to be to the end of February.

Ms. Brue asked if there was a consensus that given they were asking for an additional weekend date and three additional days the Board can give them until the end of February. Mr. DeVellis stated that for consistency they have had nine violations and it has been sixty days.

Mr. Feldman stated that he didn't know why the Board was making all of these accommodations for Waxy's. It should be sixty days just like everyone else. Ms. Coppola stated that for everyone else they had done sixty days. Ms. Brue stated that for everyone else they had done seven days for the same violation. Ms. Coppola stated that this was a second violation and Ms. Brue and Mr. Gray stated so was Skipjack's.

Attorney Spillane asked if they forward the days to the Board and they approve them at the next meeting. Mr. DeVellis stated that what they have done in the past is they can leave the meeting open and they can go out in the hall and come back before the end of the night and the Board can approve the days. Ms. Coppola stated that they don't have to approve the ten days; the Board just has to know what they are and that three of the days are weekend days; the Board doesn't need to vote on them.

Ms. Brue stated for them to submit the list to Mr. Keegan and he will let the Board know what they are.

Skipjack's

Mr. Keegan stated that Skipjack's has notified them that Thursday, December 25, 2014, Thursday, January 1, 2015, Friday, January 2, 2015, Monday, January 5, 2015, Friday, January 23, 2015, Sunday, February 1, 2015 and Monday February 2, 2015 are the days that they want to serve.

Attorney DeLuca stated that they have already drafted a decision and it is ready to go and they will drop those dates in and the decision will go out tomorrow.

Ms. Coppola asked if Attorney DeLuca wanted to talk to them about the Lafayette House and Renaissance change. Attorney DeLuca stated that there has been a request to modify the dates that were imposed and that was the case that there was a Notice to Appeal and there was no suggestion from Renaissance on the dates so the Board picked dates that were consistent with one of the other license holders. Subsequently they have heard from Renaissance that they have reconsidered their position on the appeal and if the Board was able to adjust the dates by one day then this would resolve the matter. Mr. Keegan stated that it actually moves the date from January 12, 2015 to January 6, 2015 so it moves up the suspension.

Ms. Coppola asked if this was the same thing for the Lafayette House. Attorney DeLuca stated that there has been no appeal filed in this case and they are looking to adjust a day. In reviewing their event calendar they are asking for a different day than what was imposed. Mr. Keegan stated they are asking for a move from January 12, 2015 to February 2, 2015.

Attorney DeLuca wanted to confer with Waxy's and they would probably rejoin the meeting and they could resolve the issue.

Ms. Brue stated that she had invited Sandra Herrmann to the meeting this evening under the guise of asking her opinion about town counsel. The real reason Ms. Brue wanted Ms.

Herrmann to come to the meeting was to acknowledge that this evening was the last Selectmen's meeting that Sandra will be working for the Town of Foxborough.

Ms. Brue wanted to acknowledge Sandra's service to the town. Almost thirty years. Sandra's first adventure in the Selectmen's Office was working with Andy Gala for a long time; Kevin Paicos and then Bill Keegan. Sandra has been there all along through many a storm and Ms. Brue just wanted to say how much they appreciated everything Sandra had done for the town and thanked her again and told her she would be missed.

Ms. Herrmann stated that she would miss them all and it has really been an honor for her. She stated that she had worked for 31 Board members between the Board of Health for 18 years and then the Selectmen's office. It had been challenging at times and fun at times and she has made great associations through the years and wonderful friends. She loves her job but it is time. She feels that Bill Keegan and Mary Beth Bernard are going to be phenomenal for the town. She is thinking about working with the restaurants and all of the town's liquor license holders to bring back their organization. She feels that it is a place she can be useful and helpful.

Ms. Herrmann thanked the Board and applauded them for giving their time to a town she loves.

She stated that the staff at the town hall is the best and she hopes that they are valued through the years and that the Board sees in them what she sees in them.

Town Counsel RFP

Mr. Gray stated that he went through Kopelman and Paige's RFP and there was a self-reporting experience rating which asked for a rating of 1-3. They put in a lot of 1's and Mr. Keegan had told Mr. Gray that they were one of the most experienced law firms in the state. Mr. Keegan knows from personal experience that they represent the greatest number of communities in the Commonwealth. They have the greatest number of clients. Ms. Bernard stated that they listed four attorneys and each one gave its own individual experience rating so it started with the least experienced and went up to the most. Mr. Gray took it as those would be the attorneys assigned to Foxborough. Ms. Bernard believes there was an individual page of attorneys where some of the firms did a compilation of all their experience on that one page. There were four pages on Kopelman and Paige on their experience. Ms. Bernard had to do an average because they listed them all.

Ms. Brue wanted to give the public some information about what the Board is actually considering. In the RFP that went out this is some of the information that they asked to be provided with and have received.

- Identifying the name of who will be the town counsel for Foxborough and who will be their backup counsel
- They have attached resumes for all of their attorneys who the town could work with
- They provided information on minimum bar admission requirements
- All of the municipalities that they represented
- All of their experience with municipal law in general

- How accessible they are
- What they would do for backup
- Details on their billing proposals
- How they will deliver cost effective client services
- Talked about fees and expenses in detail and given the Board samples of their invoicing approaches
- Landmark cases that they litigated
- General copy of their billing statements

Mr. Gray has provided the Board with a grid that they had the opportunity to use to organize the information to review and the last time the Board spoke they talked about coming back with what each of the Board members thought would be their top three that they would be interested in interviewing as a next step.

Mr. Keegan stated that on an interim basis they will do further checking with other internal agencies to see what experience they have had with those top three.

Mr. Feldman stated that he looked at experience as a key factor and the number of attorneys on staff who would actually act as backup and whether it would be a single attorney or if it would actually be a whole law firm. Also cost; cost structure is important. In doing that Mr. Feldman came up with: Louison, Costello, Condon & Pfaff; Blatman Bobrowski & Mead, and Murphy, Hesse, Toomey & Lehane.

Mr. Gray stated his picks were: Louison, Costello, Condon & Pfaff; Murphy, Hesse, Toomey & Lehane and Blatman Bobrowski & Mead.

Mr. DeVellis stated that he was looking for counsels that had the ability to counsel rather than take a Selectmen's direction and run with it. Murphy, Hesse, Toomey & Lehane; Kopelman & Paige and Blatman Bobrowski & Mead.

Ms. Coppola stated her picks were: Murphy, Hesse, Toomey & Lehane; Deustch Williams and Petrini Associates.

Ms. Brue stated her picks were: Deustch Williams; Murphy, Hesse, Toomey & Lehane and Louison, Costello, Condon & Pfaff.

Mr. Keegan stated from a tally perspective Murphy, Hesse, Toomey & Lehane is the top vote getter collectively; Blatman Bobrowski & Mead is the second highest and Louison, Costello, Condon & Pfaff is the third.

Mr. Keegan stated that he will proceed with further investigation on their work and move to set up interviews in January. Ms. Brue stated that they have set up a special date of January 27, 2015 for those interviews.

Mr. Keegan will notify the others that the town appreciates their interest but that they didn't make the cut.

Ms. Coppola asked if Mr. Keegan would be collecting questions from the Board and he responded yes, if the Board had any questions they wanted to be asked to send them to Ms. Bernard.

Ms. Bernard stated that she will also E-Mail the other Boards for feedback.

Mr. Keegan informed the Board that Waxy O'Connor's made a decision on when they wanted to serve the ten (10) days.

Attorney Spillane stated that they wanted to recheck January 6, 2015 to see if there were any functions but right now they have chosen: Wednesday, December 24, 2014; Thursday, December 25, 2014; Friday, December 26, 2014; Monday, January 5, 2015; Tuesday, January 6, 2015; Monday, January 12, 2015; Tuesday, January 13, 2015; Monday, January 19, 2015; Friday, February 6, 2015 and Saturday, February 7, 2015.

The first five days are definite and they just want to check on the remaining five. Attorney Spillane wanted to make the Board aware that the three days in December Waxy O'Connor's planned on being closed. The remaining days they will remain open with no alcohol service, just food and nonalcoholic beverages. If that plan changes they will make the Board aware of this.

Spring Warrant Articles

Ms. Brue stated that recently she and Ms. Coppola were at a Planning Board meeting and they will be bringing a number of articles forward.

Ms. Brue asked if there was any additional topics that anyone wants to add.

Ms. Coppola asked if Mr. Keegan had been contacted by the Water & Sewer Commission in regard to a warrant article for amending legislation for the sewer district. Ms. Coppola went to the meetings and she suggested to them that they contact Mr. Keegan if they were thinking of doing a warrant article just to get on the list.

Revised General By-Law, Section 2, Paragraph 3

John Gray stated he would handle this.

Stabilization Fund for Southeastern Regional School

Mr. Keegan stated that the Board is not required to put this on the warrant for a Special Town Meeting but for an Annual Town Meeting they are.

Ms. Coppola stated that this allows them to set up a stabilization fund; it does not cost the town any extra money.

Additional Liquor Licenses

Ms. Coppola to pursue this with the Planning Board and Sharon Wason.

Personnel Wage By-Law Classification Review

Ms. Brue asked Ms. Bernard if they would be ready with this for Town Meeting. Ms. Bernard stated yes and that the Committee was meeting on January 7, 2015 and because the United Steelworkers Union has been organized they now have so few people under the town by-law so they will have fewer titles and they will come up with a compensation plan.

They have general changes that can be made easily.

As far as media items every member on the Wage Committee will take an item such as the Tuition Policy.

There are a lot of things that are just title changes (Town Manager versus Personnel Wage Board versus H.R. Director).

The bigger things each committee member will dig deeper into those and each take on a piece of that.

Ms. Brue stated that AdCom will want to take a look at this more closely because it is the first time this is being changed in a long time. They need adequate notice. Ms. Bernard stated that they have Thom Freeman on the Wage Board so he will have an active role and be a conduit between each group.

Ms. Bernard stated that they would love to have a member of the Board of Selectmen join them. Mr. Gray volunteered.

Planning Board Articles

The Board will ask Sharon Wason what these are going to be and divide them up at their next meeting.

Mr. DeVellis will be the liaison for these articles.

Sign By-Law Continuation

Ms. Brue will be handling the updates and work with Sharon Wason on this. She wants to make sure the last group of revisions has made it to the attorney for review and wants to make sure that they do any additional tweaking that needs to happen separate from the discussion around digital billboards because that will be the focus on the next warrant.

Mr. Keegan stated that he will check on the status of that and he has also heard back from members of the community that there is an interest in forming a group that would like to participate in this process. This will require more reaching out.

Ms. Brue stated that she will set up a meeting and if Mr. Keegan could come they can talk more about that.

Constables – General By-Law Change

Ms. Brue stated that Sandra Herrmann and Chief O’Leary had been working on this. Mr. Gray asked if this was to limit the number of Constables. Ms. Brue believed there was a whole list of things that needed to be worked on.

Mr. Keegan stated there was an issue on how many Constables there are and how they become Constables. There is a whole set of regulations that Dedham had with respect to this that he can get access to.

Ms. Bernard stated she can look at this.

Amending Legislation of the Sewer District

Ms. Coppola will be the liaison for this. Mr. Keegan stated that he will ask the Commission what the status is.

Mr. DeVellis stated that now being December and the meeting is in May he doesn’t see the town hall on this.

Mr. Feldman stated there was going to be a special town meeting in September.

Mr. DeVellis stated that he feels on the liquor licenses that it is a big task between now and April to wrap it up to get on town meeting. Ms. Coppola stated that it is not set in stone that they will have anything. They have the mechanism; it is just a matter of checking with the Planning Board and talking about providing certain liquor licenses for certain nodes like the Town of Mansfield did. Mansfield has actually just gotten their liquor licenses from legislation and it is for specific areas.

Ms. Coppola stated that the mechanism is easy it is just what you want to do and is this the right time to do it.

One of the things that the Board has always talked about was the development of the downtown area and selling off the old fire station. Would it be best to have everything in place to make the fire station more attractive.

Ms. Brue stated that the Planning Board raised that it was more important to have the sewer available to that property than it was to have a liquor license.

Ms. Coppola feels that it is better to have everything wrapped up and ready to go because if you are ready to go then the opportunity will come to you.

Mr. Keegan asked in regards to the liquor license was it the Boards pleasure to more define the process and then start the process now and see where it takes them.

Mr. DeVellis felt it would help if they had a joint meeting with the Planning Board or if a couple of the heads get together because they are reaching for the Master Plan. They talk about this on a routine basis and he would love to get their input.

Mr. Keegan stated they would coordinate a meeting between Sharon and Bill Grieder.

Mr. Gray asked Mr. Keegan if the budget is wrapped up and ready to be published. Mr. Keegan stated that the budgets are all in and Mr. Scollins is working on putting all the documents together now and they will start hearings in January. They are on schedule.

Town Manager Update

Mr. Keegan invited the Board to the Town Manager's Breakfast that he is holding for all of the employees next Tuesday from 9:00a.m. – 11:00a.m. It will be located at the Recreation Center on Mill Street. This is a tradition that he started in Dedham eleven years ago and it has turned out to be a very good thing that people look forward to every year. He thinks it will start out small initially but will grow. Eventually he would like to have the retirees and other Board members attend as well.

The old fire house and funeral home bidding process is well underway. They are expecting bids on December 22, 2014 at 2:00p.m. They have had some interest during the process where they had the information and open house. He is hoping to have some proposals to look at.

Regarding the train proposal responses, he had heard back from Mr. Mohler today and he is working on those questions and is halfway through the responses. They are taking a lot of time to make sure that they give us thoughtful, discernable answers as to what we asked. Mr. Mohler stated that he hopes to have all of the information back by the first of the year.

Mr. Keegan handed out a Regional Services Communication Study that they are working on. He would like to get everyone's response on that. Mr. Keegan would like that back by the first of the year.

Mr. Keegan stated that they are making good progress on the collective bargaining front. They are looking to have a meeting in January to make a presentation on the fire proposal so they want to have an hour long executive session with the Board along with the Firefighters and Fire Chief to go over what they are proposing. This will happen the first or second week in January.

Mr. Keegan stated that they had unfortunate news that the MSBA came back to them with their initial review. Mr. Keegan stated they had talked about the Burrell School being next in line but that it was a very long ended process where you have to apply early to get consideration even to be placed on the list for possible funding.

Mr. Keegan stated that the School did submit an Expression of Interest to the MSBA and unfortunately they heard back yesterday that they had rejected that proposal for this round of consideration. This means they have to wait another cycle for consideration.

Mr. DeVellis asked if the MSBA had offered feedback as to why. Mr. Keegan stated that he will forward them the letter that he received.

Ms. Bernard stated that they are very close with the Dispatchers. They have a joint presentation with the Fire Union and are also meeting actively with the DPW and Steelworkers. All of these things are ongoing.

A couple of things that they have been working on is the Executive Assistant position narrowing down the applications. They received 303 applications and they have gotten that down to a list of 30. They began telephone interviews and are now in the face-to-face interview stage. They hope to have someone in place by early February. They are looking to keep that moving quickly.

They are also working with Mr. Scollins on the Financial Analyst position but he has been so busy with the budget that they haven't really reviewed the resumes but will be doing that soon.

Ms. Bernard is working on accessing where they are with things. Working on cleaning up some policies and procedures and they are hoping in 2015 to roll out every month different trainings. They have worked really hard in pulling the worker's compensation and risk management piece together and come up with a guide that the school and town people have all agreed to and now Ms. Bernard is going to roll out some training.

In February they will be working on FMLA training with department heads.

At the December Department Head meeting they had a representative from EAP come out and do an overview with employees and they actually have some offline meetings scheduled regarding communication and respect and some of the residual fall out of a couple of years the employees have been through.

Ms. Coppola asked if they had someone to man the Housing Authority. Mr. Keegan stated that he can't do that. Mr. Keegan stated that it was his understanding that they had a candidate in mind but that the state has not come forward with a pay schedule that is competitive enough to hire a good candidate. They are working off a four year old pay schedule. Apparently the administration has actually been pushing for the regionalization of housing authorities so they haven't spent a whole lot of time supporting the effort of replacements.

Ms. Coppola wanted to know what the status was on the Tastings bankruptcy and have they gotten the liquor license back. Mr. Keegan will have to confirm with Attorney DeLuca.

Action Items

Motion made by Virginia Coppola to approve the change of the suspension date from January 2, 2015 to January 6, 2015 per the request of the Renaissance Hotel. Seconded by John Gray.

Vote 5-0-0

Motion made by Virginia Coppola to approve the change of a suspension date from January 12, 2015 to February 1, 2015 per the request of the Lafayette House. Seconded by John Gray. **Vote**

5-0-0

Motion made by Virginia Coppola to approve the request by Bay Colony Productions to transfer the license fee of \$50 from a canceled event of September 28, 2014 to the event to be held on Wednesday, December 31, 2014. Seconded by John Gray.

Mr. Gray wanted to know if administrative work had been done for this permit upon the original request which would have burned through the purpose of the fee. Ms. Jarvis stated yes work had been done.

Vote 4-1-0 with John Gray voting in the negative

Motion made by Virginia Coppola to accept the resignation of Alan F. Curtis from the Conservation Commission and the Recreation Board as of December 8, 2014. Seconded by John Gray. **Vote 5-0-0**

Motion made by Virginia Coppola to approve the recommendation of the Recreation Board to approve Kevin Powers to fill the vacancy on the Board. Seconded by John Gray. **Vote 5-0-0**

Motion made by Virginia Coppola to approve the acceptance of a \$500 gift to the Boyden Library from the IBM Matching Gift Program. Seconded by John Gray. **Vote 5-0-0**

Motion made by Virginia Coppola to approve the reappointment of Frederick Grossmith to the Agricultural Commission for a term expiring December 14, 2017. Seconded by John Gray.

Vote 5-0-0

Motion made by Virginia Coppola to accept the resignation of Paul Dumas from the Norfolk County Advisory Board. Seconded by John Gray. **Vote 5-0-0**

Mr. Gray asked what the Board should do about renewing Fusion's licenses where they have suspended their license. Mr. Keegan stated that the ABCC tells us to renew the license and keep it under an indefinite suspension.

Motion made by Virginia Coppola to approve the following renewals expiring on December 31, 2015:

- (1) Automatic Amusement Device License Establishments
- (6) Common Victuallers Licenses Non-Alcohol Restaurants
- (2) Common Victuallers Licenses for All Alcohol Restaurants
- (1) Innholders Licenses All Alcohol

- (1) Restaurants 7 Day All Alcohol Licenses
- (1) 7 Day Entertainment Licenses
- (4) Sunday Entertainment Licenses from the Commonwealth of Massachusetts
- (3) Class II Auto License
- (6) Limousine Licenses

Seconded by John Gray. **Vote 5-0-0**

Motion made by John Gray to adjourn at 9:12pm. Seconded by Virginia Coppola. **Vote 5-0-0**

Respectfully Submitted,

Debra A. Jarvis