

TOWN OF FOXBOROUGH  
SELECTMEN'S MEETING  
MINUTES  
DECEMBER 8, 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 David Ross  
Chief Edward O'Leary  
Sergeant Richard Noonan  
Attorney Frank Spillane, Waxy O'Connor's  
Mark Rholeder, Waxy O'Connor's  
Paul McKenna, Waxy O'Connor's  
Alfred Karnbach, Waxy O'Connor's

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

Ms. Brue reviewed the agenda.

**7:00pm – Public Hearing Alleged Alcohol Violation – Skipjack's, Patriot Place,  
Foxborough, MA**

Attorney Brendan Ross appeared before the Board representing the Town of Foxboro along with Sergeant Richard Noonan.

Virginia Coppola read the public hearing notice.

Attorney John Michelmore appeared before the Board representing Skipjack's.

Attorney Ross was going to go over the incident report. Sergeant Richard Noonan stated his name. Attorney Ross wanted to direct the Board's attention to the narrative report that was entered September 29, 2014. Attorney Ross asked Sergeant Noonan if he recognized the incident report in which Sergeant Noonan responded that he did. Attorney Ross asked Sergeant Noonan what this report was and Sergeant Noonan stated that this was an incident report documenting the sale of alcohol to a minor at Skipjack's.

Attorney Ross asked Sergeant Noonan to explain the nature of what lead to this incident report. Sergeant Noonan stated that under the direction of Chief O'Leary on September 25, 2014 he

conducted an alcohol compliance check of all the licensed establishments within the town of Foxboro.

Prior to conducting this compliance check he reviewed the department's rules and regulations on conducting compliance checks with identification with the underage operative. The underage operative was identified as being 19 years old based on his true valid and authentic Massachusetts driver's license. Attorney Ross asked if this operative was in the room this evening and Sergeant Noonan responded yes and pointed him out.

Attorney Ross asked in terms of guidelines in conducting compliance checks if these rules were followed in which Sergeant Noonan responded they were.

Attorney Ross asked how the operation commenced. Sergeant Noonan responded that after reviewing the regulations Sgt. Noonan and another plain clothed undercover police officer and the undercover operative went to Skipjack's Restaurant at approximately 7:14pm.

Attorney Ross asked what happened with the operative in Skipjack's. Sergeant Noonan responded that during this time the underage operative entered Skipjack's Restaurant and made his way to the bar and sat down and had a conversation with a female bartender at which time he asked for a Bud Light to which the female bartender responded by asking if he wanted a draft or bottle. The underage operative requested a draft at which time the female bartender poured him a draft of Bud Light beer and then put it in front of him. He then took possession of it and then subsequently asked for a tab and then eventually made payment and received change. Attorney Ross asked if there was a receipt received and recovered. Sergeant Noonan responded there was. Attorney Ross asked what happened after the undercover operative had received the receipt. Sgt. Noonan responded that he had made payment and left the establishment and made contact with Sergeant Noonan and the undercover officer. Attorney Ross asked if Sergeant Noonan had any contact with the establishment or bartender afterwards. Sergeant Noonan responded he did. Attorney Ross asked what was the result. Sergeant Noonan stated that by the time he went back that night the establishment was closed and he made contact with the manager, Peter Dowd the next morning and advised him as to what happened. Attorney Ross asked if he had any response to that. Sergeant Noonan stated he was very apologetic and upset that it happened and immediately terminated the employee. Attorney Ross stated no further questions.

Attorney Michelmores asked Sergeant Noonan if he observed this activity with the underage operative. Sergeant Noonan responded in this instance he had and he was looking through the windows and was able to see the transaction. Attorney Michelmores asked if the bar was busy at that time in which Sergeant Noonan responded it was not. Attorney Michelmores asked if it was fair to say the bartender was neither hurried nor rushed in which Sergeant Noonan responded that is correct.

Attorney Michelmores asked if Sergeant Noonan had subsequent conversations with Mr. Dowd about this incident in which Sergeant Noonan responded he had. Attorney Michelmores asked if during those subsequent conversations Sergeant Noonan had the opportunity to review his checklist. Sergeant Noonan responded not since this violation, he has in the past, he has reviewed his pre-meal presentations and talked with Mr. Dowd on numerous occasions just through his

course of walking through Patriot Place and he does advise him as to what he is doing on a daily basis and he does present his pre-meal presentations about serving minors and making sure that his staff is doing the right thing. Attorney Michelmore asked Sergeant Noonan if to the best of his knowledge have there been any other violations for the alcohol serving at Skipjack's other than the one approximately one year ago in which Sergeant Noonan responded no.

Mr. DeVellis asked what pre-meal presentations were. Sergeant Noonan responded at Skipjack's in many restaurants and bars the managers or shift leaders will talk to their staff and review specials for the night in Mr. Dowd's case Sergeant Noonan has seen his presentations and he does address this on a constant basis to make sure that they are doing their job incorrectly asking for identification and reading the identification.

Mr. Gray asked if this takes place before every shift in which Sergeant Noonan responded to the best of his knowledge. Mr. Gray asked with every employee in which Attorney Michelmore responded yes.

Mr. Gray asked how long the employee had been employed by Skipjack's. Attorney Michelmore responded 2 ½ years. Mr. Gray stated so for 2 ½ years the employee was fully trained. Attorney Michelmore responded yes.

Ms. Coppola wanted to know if Sergeant Noonan had ever had occasion in Skipjack's to find people under age that he asked for ID and it was either a false ID or in underage ID in which Sergeant Noonan responded he had not.

Mr. Feldman asked who administered this pre-meal presentation. Attorney Michelmore stated that it would be the shift manager.

Ms. Brue asked if there was follow up training after this incidence. Attorney Michelmore responded yes there was. Ms. Brue asked what type of training. Attorney Michelmore responded that a consultant group came in the following weekend and gave training to all of the staff.

Mr. DeVellis stated that looking back at violations over the last three years when Skipjack's was last in front of the Board; the Board had suggested an automatic card reader and they declined that. Is there one on the premises and do they use it. Attorney Michelmore stated no they don't in this instance it wouldn't have made any difference anyway the woman never asked for the license.

Attorney Michelmore stated that Skipjack's is a high-end restaurant that serves alcohol; it is not a bar that serves food. The configuration of the restaurant is set up to conform to that. The license has 214 seats and there are only 18 seats at the bar and there is also full meal service at the bar. There are very few alcohol only customers. They cater to business customers, families and customers who want a fine dining experience. Approximately 23% to 24% of their gross revenue is derived from alcohol both at the bar and the tables. They don't attract or cater to the younger drink and snack crowd. They are basically a food service restaurant. Although their

license permits them to be open until 1:00am, they have last call Monday through Thursday at 10:30pm. Last call on Friday and Saturday are at 11:30pm and Sunday is at 9:00pm.

They really tried to do all of the right things and Sergeant Noonan has expressed that and again Friday morning after the incident the server was immediately fired and the following weekend they had the complete training workshop group. All of the servers including this server had been retrained the prior year under the T.I.P.S. program after the incident one year ago. They have all signed an alcohol service contract which Attorney Michelmore presented to the Board. Attorney DeVellis asked if this was new or something they've always had in which Attorney Michelmore stated they have always had this. Attorney Michelmore stated that the Board can see clearly in the paragraph referring to serving the minors that not only is that grounds for immediate dismissal but it is their corporate policy so if they think they are under the age of 30 they are required to ask for identification.

On game days or days that there is a large event at the Stadium they do have an individual at the door checking everyone's identification. The people presenting proper identification get a stamp and are sent in but the service inside still required to ask for identification. The pre-meal and uniform check is done every day at 11:00am and 5:00pm which is roughly the beginning of the two shifts. Attorney Michelmore presented the Board with the checklist that the shift managers basically go over and under the featured wine and drink specials number two is identification, identification, identification. Three and four talk about wine and they even have people take their identification out of their wallets. Number thirteen states police sting be on high alert. The last thing that they did when they received notification from Chief O'Leary about this sting, a copy of that letter was put on the manager's door in plain view for everyone to see.

The server had been employed for about 2 ½ years and she had been through the T.I.P.S. training twice once within her first year of employment which is a local rule and then again recertified after the incident a year ago. She was certainly aware that the person who served the undercover operative a year ago was immediately fired. One of the cool ironies of this was that she was fired on Friday morning and Saturday she was hired at a bar in Franklin doing the same thing. They have absolutely no idea what if anything she was thinking. Although the night was slow she certainly was not hustling for tips, this was a two dollar draft beer not a \$10 martini.

This does not seem to be an issue of inadequate training or identifying a sophisticated false ID or an incident where an electronic device would've helped, she had to ask for a license and she didn't do that. It is baffling to the owners as well as Attorney Michelmore to not do this. Attorney Michelmore stated that he had said a few years ago when he was at a similar hearing that you can make something full proof but you can't make it sailor proof. It doesn't take an awful lot of brains or training to ask someone for an ID if you are serving liquor.

Attorney Michelmore stated that the next point he wanted to make was there really is a lot of people that can get hurt with any kind of suspension. Skipjack's employees approximately 85 people, they have two 6-hour shifts a day each shift has approximately 20 people in the front including the fire staff, the waiters, waitresses and bus staff; they have 10 to 12 people in the back including the cooks, dishwashers and those kind of people. The restaurant attempts to give all employees a minimum of five 6-hour shifts a week.

Typically a bar or waiter can earn approximately \$125 in tips on a weekday and in between \$200 and \$300 a shift on a weekend. Therefore if you have a three-day suspension as the board previously imposed on prior violations that could affect roughly \$400-\$500 in tips that a person could receive. Approximately one quarter of that is alcohol-related and they could lose between \$100 and \$150 assuming there was no loss of food business or any kind of staff reduction during this kind of suspension and that is pretty unlikely that this wouldn't happen. It is pretty reasonable to think on a three-day suspension that these innocent people are going to lose a couple hundred dollars out of their pockets and if you or someone who's working your way through college or grad school or someone working a second job to make ends meet which is what these people are that is a pretty tough hit. It could be a car payment or student loan payment or could be a portion of rent or mortgage payment.

As Attorney Michelmore had stated earlier this has been a very frustrating incident for his clients. Not to minimize the seriousness of this event but in reality SkipJack's is not a place that has any interest in the under-age drinking crowd. As the Board can see by the pre-meal checklist they are still constantly reminding employees of their responsibilities.

This appears to be the act of one negligent, lazy and careless employee. It is clearly not something that is encouraged or is even ingrained in the culture of the restaurant. Again, this is not a gin street establishment in a college town.

Again, the suspension does affect a lot of innocent people. As an aside his clients are fully for the idea of prosecuting the servers. There are a number of reasons for that, one is just the facts in this particular case it is really grossly unfair that this server didn't even lose a day's pay and some other people could be seriously hurt financially. Secondly, Attorney Michelmore is assured that these operations are going to continue and they ought to continue and hopefully if the people that are in the business know that there is a potential of being charged maybe in someone's head a light is going to come on next year or the year after and know that this isn't a joke that this is serious.

The final and most important point is that this person or any person is punished in some way for doing this may be in the future if they stay in the field and someone comes in that is under age and asks for a drink they are going to think about that and maybe that will save someone from doing that and save a life and that is really what the whole purpose of this program is, is to make sure that under age kids aren't drinking and out on the streets potentially causing harm to others.

This is a new world when Attorney Michelmore started practicing law when no one would ever see something like this. Now most employee's need a CORI to get basic jobs and the CORI would reveal even if this wasn't a guilty finding their criminal offense record. It may not disqualify someone from a job but it's something that someone would ask a question about. Attorney Michelmore really does feel that someone should be prosecuted in he knows the police don't like it and that it is expensive but it is worth the effort and his clients do agree with that also.

Mr. Gray asked Sergeant Noonan if there was any other employee in the vicinity of the bar area. Sergeant Noonan stated that he was just looking at the bar area watching the transaction and he doesn't remember seeing anyone in the general area. Mr. Gray stated that the reason he asked was Attorney Michelmore had stated that this is a restaurant that does not cater to a younger crowd and the point that Mr. Gray is trying to make is that when a young gentleman like that walks into the restaurant he stands out like a sore thumb. Guys like that aren't there all the time so he is wondering if there was anyone else in the bar area that could of said "hey hold on that guy is clearly underage". Attorney Michelmore stated probably not, there are only two people at the bar at the time and it could be that the shift manager could have been anywhere else in the restaurant and that this transaction probably only took about two minutes. Attorney Michelmore stated having dealt with the manager that if it had been the shift manager or anyone else it certainly would've been addressed. The employees were aware that this thing was happening and were supposed to be on high alert and this woman obviously wasn't but he thinks it's fair to say that everyone else was.

Mr. Feldman asked how does Attorney Michelmore know that everyone else was present during this pre-meal presentation. Mr. Feldman asked how they verified that everyone was there. Attorney Michelmore stated that it is done every day at least twice a day and it is likely that maybe one person could miss one of them but they are working five shifts a week and the chances are pretty good that if they don't get five they are going to get four. The process is those people coming into work the next shift go into that room because they have to know what the specials are that evening and there are some other specific things. If they don't get this information directly they are going to get it indirectly. Mr. Feldman stated obviously there is a disconnect because on a given week they could have 30 hours and it's not busy and someone like that walks in and cozies up to the bar and doesn't even get carded so where is the disconnect. Attorney Michelmore stated that no one knows, is it overtraining, over emphasis, clearly it is not under emphasis. If people aren't going to be charged it would be interesting to do some debriefing to ask them what they were thinking of. Attorney Michelmore doesn't think that anyone really in town wants to serve under age people. It is not the culture of the town or the area but obviously it does happen. If anyone has any answers clients would certainly love to know what because they didn't want this to happen. Mr. Feldman stated that as part of the frustration with the Board because everyone is coming in with all of these policies and procedures yet it is still happening. It seems to be escalating. Attorney Michelmore stated that he doesn't know if it is escalating in the five years this program has been running it has been up and down. Some years it's two, some years it's five; it is in a consistent growth. Mr. Gray stated when you see nine violations it's a pattern of consistency and that is really what is annoying the Board. Attorney Michelmore stated that one of the things the group is banking about doing is having a private sting and do this on a constant basis rather than do this once a year and in that one minute have someone go brain-dead on them. Mr. Gray stated given that the man is a younger looking 19-year-old for an operation they generally don't see kids in there and again he is standing out like a sore thumb. Mr. Gray stated the servers are the restaurants frontline and they are representing the company. The management trains them and the management hires them and the management puts them out there and this is a highly regulated industry and the manager's say that they trust this person and they meet all the requirements so they are willing to risk their license by putting that person out there. The management in this particular case failed by keeping someone like that employed. Mr. Michelmore stated that Sergeant Noonan had said

prior to this incident and after this incident this company does their best. You know a business that you could have the best management in the world but if you have one employee for one minute that doesn't pay attention it can cause problems.

Ms. Coppola stated that when they are given the license their name is on the license but also the Board of Selectmen's names are on the license and that is their big concern this happens once a year the Board's concern is what happens the other 364 days. Attorney Michelmore agreed with her but he said you have some restaurants that cater to this younger crowd but this establishment some 20-year-old is not going to go in there and have 10 beers and walk out and jump in his car and go hit someone, that is not going to happen in this type of a restaurant. Ms. Coppola stated that it did happen in a restaurant that caters to families and an older crowd and this kid walks in and it's not busy and he stands out like a sore thumb. Attorney Michelmore stated that the real issue is being served and served and served and then walking out the door. Ms. Coppola stated no, the real issue is following the law in Massachusetts and the regulations in Foxborough and asking for an ID when an obviously young looking person attempts to buy a Bud Light. Attorney Michelmore stated that his clients were confident that she was trained and that she was made aware of the sting and she knew about the person that got fired a year ago for this exact same thing and that if she wasn't paying attention she could get fired and for whatever reason for that minute and a half she went brain-dead. Attorney Michelmore stated they are certainly open to suggestions of what they can do and how to do it.

Motion made by Ms. Brue the Board had finding of fact that there was service to an underage person as described in the report dated September 25, 2014 addressed to Big Tuna, LLC d/b/a Skipjack's and that the Board agrees with the findings as presented. Seconded by John Gray. **Vote 5-0-0**

Motion made by Virginia Coppola the Board of Selectmen close the hearing for the alleged alcohol violation for Skipjack's at Patriot Place. Seconded by John Gray. **Vote 5-0-0**

**8:00 pm - Public Hearing Alleged Alcohol Violation – Waxy O'Connor's 121 Main Street, Foxborough, MA**

Ms. Coppola read the Public Hearing Notice.

Mr. Keegan stated that all interested parties waived the start time for the public hearing.

Mr. DeVellis asked that the hearing not start until the specified time of 8:00pm.

Attorney Ross stated that they will offer the testimony of Sergeant Noonan regarding the details of this event.

Attorney Ross swore in all individuals testifying at this hearing.

Attorney Ross asked Sergeant Noonan to identify himself, which he did.

Attorney Ross directed Sergeant Noonan's attention to the report dated October 1, 2014 and asked Sergeant Noonan if he was familiar with that report; Sergeant Noonan stated that he was. Attorney Ross asked what that report relates to in terms of Waxy O'Connor's. Sergeant Noonan stated that it reflects the under-age compliance check that they conducted at Waxy O'Connor's. Attorney Ross asked if there was an undercover operative that was present for that. Sergeant Noonan stated there was. Attorney Ross asked if he was in the room tonight in which Sergeant Noonan responded that he was. Attorney Ross asked Sergeant Noonan to describe the nature of that operation at Waxy O'Connor's. Sergeant Noonan stated that on September 25, 2014 under the direction of Chief O'Leary Sergeant Noonan conducted a compliance check of all the licensed establishments in the Town of Foxborough.

During this compliance check Sergeant Noonan used an underage operative who was identified as being 19 years old through his true and valid authentic Massachusetts driver's license was used to enter the establishment.

Attorney Ross asked Sergeant Noonan what happened during the operation. Sergeant Noonan stated that approximately 9:45pm the under-age operative entered Waxy O'Connor's and made his way to the bar. Attorney Ross asked if he ordered an alcoholic beverage. Sergeant Noonan stated that he did. Attorney Ross asked Sergeant Noonan if he was served an alcohol beverage in which Sergeant Noonan responded he was. Attorney Ross asked if there was a receipt for that order. Sergeant Noonan responded there was. Attorney Ross asked how the order was paid for. Sergeant Noonan stated with cash. Attorney Ross asked what happened after the undercover operative was served the alcoholic beverage. Sergeant Noonan stated that after making payment and receiving a receipt the underage operative left the establishment with the plain clothed undercover officer who observed the transaction and made contact with Sergeant Noonan and advised him as to what happened. Attorney Ross asked if there was any follow up with the establishment after that occurred. Sergeant Noonan stated there was. Attorney Ross asked how that proceeded. Sergeant Noonan stated that later that night he entered the establishment and made contact with the manager on duty. Attorney Ross asked what happened during that contact. Sergeant Noonan stated that during that contact he was able to identify who served the alcohol to the underage operative and was advised of the violation.

Attorney Ross stated that he had no further questions.

Ms. Coppola asked if identification was asked for. Sergeant Noonan stated that it was not. Ms. Coppola asked if the establishment was crowded. Sergeant Noonan stated that it was not. Ms. Coppola asked Sergeant Noonan if he was in sight of the transaction. Sergeant Noonan stated that he was in the parking lot as they had another undercover officer in the area. Ms. Coppola asked if he witnessed the transaction. Sergeant Noonan stated that it was his understanding that he didn't actually witness the transaction; he walked in a short time after and saw the underage operative in possession of the beer. Ms. Coppola asked if he was the only one in the bar at the time. Sergeant Noonan stated that there were several other patrons but he did not consider the bar area to be crowded. Ms. Coppola asked if this was a Thursday evening. Sergeant Noonan responded correct, at 9:49pm.

Attorney Spillane stated that they would stipulate as to the facts presented and do not dispute any of the facts.

Ms. Brue asked Attorney Spillane to describe what type of follow up happened once this was discovered that there had been an alleged violation. Attorney Spillane stated that Mark Rohlender who was an owner of Waxy O'Connor's was here with him as well as Paul McKenna who was also an owner and Alfred Karnbach who they applied to become the manager on the liquor license and are in front of this Board tomorrow night on that issue.

Attorney Spillane stated that they wanted to apologize to the Board of Selectmen and the town for the violation and for being in front of them a second time within a three year period. There is no excuse for an employee for serving an underage person and not asking for an id is unacceptable and they know that this Board takes all violations very seriously and Waxy O'Connor's also does. Both the owners and the management are quite disappointed that there was a violation and they will do everything in their power to correct anything that needs to be corrected.

On that night in question which was Thursday, September 25, 2014 it was a very slow night and as Sergeant Noonan indicated there were minimal customers in the establishment. The bartender never asked the operative for his id and served that underage individual. The bartender indicated to them that there was a group of regular drinking aged customers that were seated near the operative and he believed the operative was one of them and of drinking age. This is not an excuse for serving that individual but it is just the explanation they received as to why he served that individual who was under age 21 and why he did not ask for an id.

The employee was terminated the next day because of the violation. This employee had been hired on August 12, 2014 as a trainee. He is a smart, educated hard working professional and has a Master's degree in Business from Boston University and an undergraduate degree from Bentley College and has a long history of working in the liquor industry both in restaurants as a bartender and a bar manager and in sales and distribution with a distribution company. He regrets his action and understood the reason for his termination. He was only with the company for a couple of months as a trainee for August and was hired permanently in September and again the violation occurred at the end of September.

Attorney Spillane stated that Waxy O'Connor's has hired Mr. Karnbach to be the new manager on the liquor license. Mr. Karnach has a long history within the restaurant liquor license industry. He is currently reviewing all their procedures for policies with emphasis on the serving of alcoholic beverages in particular and for the next six months that is his number one priority.

All of the employees at Waxy's are T.I.P.S. certified and the employee that was hired was also T.I.P.S. certified and had been for a number of years as his long history in the restaurant industry indicates. He made a bad error in judgement that night but one bad judgement of an employee does not make a trend and does not indicate noncompliance by Waxy O'Connor's and their other employees however it does emphasize the need to continue reviewing, educating and acknowledging with their employees all of these rules, regulations and procedures that need to be followed.

Two years ago they were in front of this Board for an alcohol violation and all of their intentions were to never be before this Board again. A violation has occurred and they are here to work with the town in order to get through this. That action of that one employee was not in line with the expectation of all of the Waxy O'Connor's employees. They will accept the Board's decision with respect to the second violation that is within their guidelines as to whatever they decide tonight.

The responsibility of the violation is shared by the management, owners and the employee that occurred and management is responsible for that violation now and they will do everything within their power to ensure that all of their employees will not serve any underage individuals, intoxicated persons or cause any other violations.

Waxy O'Connor's apologizes for this violation and for being in front of the Board again and to the Town of Foxborough.

Mr. Rohleder stated that he is up from Florida again for the second time for the same violation and they take full responsibility for the violation. They have over 150 servers, bartenders and he is back in Foxborough again for the same violation. He hit the roof when he heard about it. Mr. McKenna called him and he couldn't believe it and more so he couldn't believe who served the drink because he personally interviewed the gentleman twice. As Attorney Spillane stated he had a Master's degree in business out of Boston University and he was a very young presentable guy. Mr. Rohleder stated that he was very good looking and every mother would like to have him as a son and he had very good manners, and was clean cut. He loved the liquor business and had served on the wholesale side of things which was another responsibility and he couldn't believe that he was the person that served the drink. The first thing that he had said to Mr. McKenna was that he hoped that he had terminated him and he said he did. He got an E-Mail from the bartender and he apologized and he stated that he would come to the hearing and he felt very bad about this. Mr. Rohleder stated that there is no excuse and it made him rethink the policies of their group; he talked to management and it comes from the top, from him and he has implemented another procedure through the P.O.S. when they clock in the first thing is to remind them to card. They can't clock their hours in. He is not making any excuses for it and he apologizes that it happened and that he is here again.

Attorney Spillane asked Mr. Karnbach to come up and talk about some of the procedures that they are going to implement. Mr. Karnbach stated that he has been in the restaurant business for over thirty years and he has liquor licenses in his name for over fifteen years. During those fifteen years he has never had an alcohol violation at any of his establishments. He is very conservative and a "by the book" guy and after reviewing the policies he will implement as many policies as he can and they will have everyone T.I.P.S. certified not just the bartenders. There will be the servers as well as the bartenders and that will be a condition of employment to work there that you will have to be T.I.P.S. certified. He does agree with having meetings every day with the staff just to remind them to be diligent about carding people; they want to protect everyone and they certainly don't feel that this should be a culture in this restaurant. He is also pushing the food angle of it a little bit more because they are trying to raise the food mix and lower the liquor mix in the restaurant because it is indeed a restaurant as well, not just a bar.

They are working diligently on that also; they did get another kitchen manager in to help with the food and raise that mix. Mr. Karnbach stated he was not here when this happened but moving forward that is his plan to comply, educate the staff, have regular meetings with them so there won't be any violations with him in charge that's for sure.

Mr. DeVellis asked Mr. Rholeder regarding the policy when they were in front of the Board in 2013 there was a settlement agreement and there was some concessions made at the meeting with the changes that they would do following the last violation and Mr. DeVellis asked if he could explain the policy changes that they have implemented since they were here in front of the Board the last time and how it relates to the settlement agreement. Mr. DeVellis asked if he had an understanding of what he had agreed to in 2013 and what they had to carry out for the year as far as their policy changes. Attorney Spillane stated that Mr. Rholeder is located in Florida so he is not involved in the day to day operations. Mr. DeVellis asked who he would ask that question to then. Attorney Spillane stated that the best person would have been the former manager who is not with the company any more. Mr. DeVellis stated that the settlement agreement wasn't signed by the manager; it was signed by Mr. Rholeder. Mr. DeVellis stated that there were some specific requirements that had to be done by Waxy O'Connor's over this past year between that settlement agreement and now. Some of it has to do with policy and some of it was expressed at the meeting that doesn't show up in the agreement. Attorney Spillane stated that there was supposed to be quarterly updates with the town; confirmation of T.I.P.S. certification and quarterly meetings with the staff with regard to T.I.P.S. certification and reviewing policies and procedures and through that time he would periodically go in there to confirm that they were doing those things and they did. Mr. DeVellis stated that there were reports supposedly being sent back to the town and a revisit to the Selectmen over this past year, did that happen. Attorney Spillane stated that he had forwarded some things to Mr. Paicos. Initially Waxy O'Connor's was going to come in and because of the Board's agenda they were told that they didn't have to come in and then when Attorney Spillane started meeting with Mr. Paicos about sending in the reports he indicated to Attorney Spillane that it wasn't necessary and that if he and Attorney Spillane had the discussions that was fine. Attorney Spillane asked him to make sure that it was okay with the Selectmen and he said it was. When Mr. Paicos left, Attorney Spillane did verbally speak with Mr. Cutler about it and told him the situation that was going on with Mr. Paicos and Mr. Cutler stated that this was fine with him as his plate was quite full and he didn't need anything else. Those were the circumstances but if the Board looks in their files the first meeting Waxy O'Connor's was supposed to come in Attorney Spillane had sent a letter with all of the information and they were told that they didn't have to come in and then thereafter Attorney Spillane always made sure that he went into Town Hall and went over everything with Mr. Paicos.

Mr. DeVellis stated that Item #10 of the written agreement states "the licensee shall appear before the Board on March 5, 2013 for a status conference with regard to the license". Mr. DeVellis asked if Attorney Spillane was saying that Mr. Paicos stated that the Board's agenda couldn't do this. Attorney Spillane stated that he couldn't remember if this was the one that he sent the letter in. Attorney Spillane stated that there was a letter in the file and they were eventually told that they didn't have to come in.

Mr. DeVellis asked if the letters were due to the Board on June 1, 2013, September 1, 2013 and December 1, 2013. Attorney Spillane stated that he had asked Mr. Paicos if he wanted him to put all of that together and Mr. Paicos stated that he didn't have to. Attorney Spillane went in to see Mr. Paicos and told him what was going on and that the meetings were being held and if memory serves Attorney Spillane correctly the first meeting was held on time. The second meeting was held shortly after the time it was supposed to and they had the subsequent ones. Attorney Spillane stated that they know they did one in April of this year and he is not sure if they had one in October because of the entire changeover. Mr. DeVellis asked if Attorney Spillane was talking about the in-house training in April and October. Attorney Spillane stated yes; all of those occurred but he can't say if the one in October occurred or not.

Mr. DeVellis asked if their file was complete; everything they have regarding this hearing and the last. Ms. Jarvis stated that they have everything within the last three years. Ms. Coppola stated that the only thing not in the Board's file was the ABCC violation which occurred in 2010. Mr. DeVellis stated that this one had nothing to do with the state and was strictly for the Board of Selectmen.

Mr. Gray asked Mr. DeVellis if the requirement was that they had card readers at the front door. Attorney Spillane stated yes, there was to be scanners and they do have the scanners. Mr. Gray asked if they were being used on Thursday, September 25, 2014. Attorney Spillane stated no, the scanners are typically used only on weekend nights when they expect large crowds or other holidays when they expect huge crowds. Mr. DeVellis stated that he did recall when they were here a year ago that there was a bartender that was the longest bartender that Waxy O'Connor's had. He said that Waxy O'Connor's purchased it and their policy was to use it on Thursday, Friday and Saturdays; Monday, Tuesday and Sunday they don't use it. Their policy is to use it Thursday, Friday and Saturday at the door so that everyone that comes in gets scanned. Mr. Rholeder stated that the scanner is only used on Friday and Saturday and Thursday if there is a special event and Mr. Rholeder does not recall it being Thursday, Friday and Saturday. Attorney Spillane stated that the scanner requires a person at the door and as indicated this particular Thursday evening was very slow so there was no need for someone to be at the door. What should happen is the bartender should ask for id. Mr. DeVellis stated that he would agree with that but he didn't make up the policy. When this was presented to the Board a year ago it was the same. Thursday nights were still quiet and it specifically said that they would use a scanner on a Thursday night. Mr. Rholeder stated that they still have the scanner 7 days a week behind the bar. Mr. Rholeder stated that it is behind the bar to be used. Mr. DeVellis stated and yet it was not used. Mr. McKenna stated that the scanner has been used 6,500 times since it has been put in.

Ms. Coppola asked if the manager was on the premises at the time. Attorney Spillane stated not the manager of record and not the manager of the facility. Ms. Coppola asked when Mr. Lathrop left. Attorney Spillane stated that he had left at the end of August. Ms. Coppola stated that she has been reading past information and what was interesting was that the excuse the bartender gave was that he thought this person was one of the regulars; this was the exact same excuse that was used the last time Waxy O'Connor's appeared before the Board. Attorney Spillane stated that she was absolutely right. Attorney Spillane stated that they are not using that as an excuse that is what they were told. Attorney Spillane stated that he could not tell the Board if anyone

was sitting near him. Ms. Coppola stated that all the Board is asking is that they follow the law; they ask for id especially a young looking person like that. You got caught in a sting one night what happens the rest of the 365 days a year; that is their concern. Ms. Coppola stated that their name is on the license and the Board's name is on the license and so they are as concerned about what goes on in the establishments as they are and that's why they are here before the Board today.

Mr. DeVellis asked if the manager had left in August and this happened at the end of September so there was no manager. Attorney Spillane stated that it was the manager of record but there was a manager for the whole restaurant and Mr. McKenna is around a lot. James O'Brien is the temporary manager. Ms. Coppola asked if they were supposed to get notice that Mr. O'Brien was the temporary manager. Attorney Spillane stated he is just running the facility he wouldn't be really the manager on the license. Mr. McKenna interviewed a lot of people to determine who they wanted to hire to become the manager. They went through the first group of applicants and didn't find anyone they thought was a fit and went through a second interview process and eventually they thought the best thing for Foxborough was to bring Mr. Karnbach up to use his many years of experience to really go through it and look at the rules and regulations to really get someone with that experience to take over. They expect Mr. Karnbach to be on the license for 6-12 months total and to hire someone else full time to have for a number of years on the license there. They thought it would be the best thing for Foxborough and Waxy O'Connor's for Mr. Karnbach to be the next one. They didn't want to get someone from the outside that they were not knowledgeable about to take over Foxborough.

Ms. Coppola stated that they already have the application for tomorrow night's meeting and they have already reviewed it and she wanted to ask where Mr. Karnbach resides. Mr. Karnbach responded East Hampton, CT. Ms. Coppola asked when he is going to be the Manager of Record for Waxy O'Connor's in Foxborough. Mr. Karnbach stated he would reside in Pawtucket, RI which is fifteen minutes from here. Ms. Coppola asked when he would be moving to Pawtucket. Mr. Karnbach stated next week, December 15, 2014.

Mr. Rholeder stated that the irony of the transition in August they had more managers in that month around Foxborough than they ever had. They were going through a period of transition and Mr. Rholeder was up for five days during the month of August to talk about changes and management and bar managers, etc., and this thing still happened.

Ms. Coppola asked why they have trouble keeping managers in Foxborough if they have other locations and they don't seem to have any problem. Attorney Spillane stated that it was not Foxborough per se; the initial person that was going to be moved down from the Woburn facility and he kept pressing upon Mr. McKenna that they needed to file for a change of manager and she wasn't giving us the detailed information that we needed and eventually either late in September/early October she left for another position at another restaurant business so that told Attorney Spillane that she had been looking and she didn't want to give him the information to file for the license and have to come down possibly for a hearing. Then they hired John who ran his own restaurant out in Utah and he had quite a background but he was in Foxborough and met with the Police Chief and talked over a number of different things and gave him the history of Waxy O'Connor's and he was going to be going on the license and eventually he went on to a

different offer also. That's when they started really going out and interviewing people. They went through two rounds and Attorney Spillane's opinion to their credit they decided to bring Mr. Karnbach up to Foxborough than bring in someone new and come in blind. Attorney Spillane thinks Mr. Karnbach will do a great job.

Ms. Brue asked what the ratio of alcohol to food sales is currently. Mr. McKenna stated that it is 55% alcohol and 45% food. Ms. Brue stated that just given that, has there been any discussion about just checking every person's id that comes in since they would typically have a younger crowd there. Mr. Rholeder stated that 30 has been the standard on the policy as to anyone that looks 30 or younger; sometimes you have to use a little bit of discretion. That is a general standard everywhere. To id everyone doesn't make sense.

Motion made by Ms. Brue the Board had finding of fact that there was service to an underage person as described in the report that was entered on October 1, 2014 for the incident on September 25, 2014 and the Board agrees with the facts as presented to them. Seconded by John Gray. **Vote 5-0-0**

Motion made by Virginia Coppola that the Board of Selectmen close the public hearing for Waxy O'Connor's Irish Pub on Main Street in Foxborough. Seconded by John Gray. **Vote 5-0-0**

Ms. Brue stated that they have a decision to make on whether they were going to discuss penalties for these two sites or to defer that discussion to their next meeting. Mr. DeVellis stated that he would prefer to do it this evening rather than prolong it to another meeting. Mr. Gray also agreed. Ms. Coppola stated that it was a suggestion by Attorney DeLuca last week to delay it only because these two hearings are a little different than the other hearings and Ms. Coppola would like some guidance from their counsel and she doesn't think that Attorney Ross is prepared for that right now. Attorney Ross stated correct. It is something he could talk to the Board about this evening but he does know from talking with Attorney DeLuca that separating between the liability and a sentencing phase seems to make sense in terms of splitting the two hearings. Ms. Coppola stated that this would be her preference. Mr. Gray asked if the hearing would be just the Board deliberating. Attorney Ross stated just deliberating.

Mr. DeVellis just wanted to be clear that they have everything from the files of things that were sent over. He would like to get in front of Waxy's an itemized list of have they complied or not so at that point we will at least have something in the file to discuss because part of that in the settlement agreement if those were not followed then there would be ramifications so he just wants it to be complete one way or another. Mr. Gray asked Mr. Keegan if he was aware of this file. Mr. Keegan stated that we do maintain files of all the licenses. Mr. Gray stated so that any correspondence that came in would typically be there. Ms. Bernard stated that they reviewed them this morning and everything the Board has here was from the file and the things that you don't have were prior to the three year look back period. Mr. Gray asked if they compared the content with the agreement and Ms. Bernard stated that they did not. Ms. Brue asked if there was no letter from Attorney Spillane because Ms. Brue remembers seeing the letter at the time they were coming in before them we had it with their first report and then she doesn't remember ever seeing a written report after that. Mr. DeVellis stated that there are reports but there are also

specific dates of training that they were supposed to do so if they have done it great and if they haven't it is what it is but Mr. DeVellis would be interested in getting a letter on Waxy's letterhead that says they either did these or didn't and he wants it notarized because it's a legal document and to move forward without that information they might as well of not followed the previous stipulations at all.

Ms. Brue asked Attorney Ross if in order for them to reconsider a piece of information like that would they have to reopen the hearing. Attorney Ross stated yes, not reopening the hearing on the liability phase essentially it would be receiving evidence from/on the applicant for the sentencing phase, disposition of the sanctioning phase. Mr. Gray stated that they could ask for this and use it as a tool in their deliberations. Ms. Brue stated that they would not have to post another public hearing. Attorney Ross stated that the safest thing is that they would have to post notice of the meeting per the opening meeting law but in terms of the public hearing itself, the hearing on the underlying violation itself is closed.

Ms. Coppola asked if the three year look back is January to December or if that violation was in March would it be from March to March. Attorney Ross stated that the three years is during any three year period because any applicant could theoretically have a violation just because it was in January early in the year it might have escaped it. Three years from the violation. Attorney Ross stated that it is per the Foxborough rules and regulations for holders of alcohol licenses it does say within the past three years (counted from date of last violation).

Mr. DeVellis stated that one of the letters Attorney Spillane had given the Board was in their file "All Employees Shall Carefully Check for Identification", this is their policy so that is one of the items. Ms. Coppola stated that she went back and checked the meeting minutes and everything they have on Waxy's. They came before the Board for continuances and everything on March 22, 2011, April 12, 2011, May 17, 2011, May 24, 2011, January 22, 2013 and February 5, 2013 so that is in the minutes.

Ms. Brue stated that they are looking at a second violation in a period of two years; September 27, 2012 was the last violation that was selling to a minor and there was a 16 day suspension from January 23 to February 7, 2013 that was served and at the time that was the third violation within a three year period. Now we are in a different place; second violation selling to a minor. Mr. Gray stated that according to our guidelines the maximum penalty is 10 days. Ms. Brue stated 3-10 days and Mr. Gray stated but the maximum is 10 days and Ms. Brue stated yes.

Mr. DeVellis stated that this came up the last time and the discussion they had in the past about this as well as these are guidelines and it isn't the minimum or the maximum if you look at Item #37 which is before the sanctions "if not withstanding these regulations the local licensing authority may impose different and/or more stringent requirements, conditions and/or penalties upon a particular license and/or license premise where necessary to assure public safety." When Mr. DeVellis asked this question at the last meeting someone had said that no, these are the guidelines and his opinion is that these are the guidelines and you can do more or less depending on the individual so they aren't rules.

Mr. Keegan stated that it is interesting to note that the last penalty was a 16 day suspension and the Boards maximum amount is 10 days. Under this particular violation it doesn't really jive with what the last penalty was. Ms. Brue stated that she thinks that is because it was within a three year period. Mr. Gray asked Attorney Ross for clarification on the look back period. Attorney Ross stated that the look back period itself is stated in the guidelines but that Paragraph 37 does present an opportunity for the Board if the Board determined it was necessary to assure public safety if they make that finding that it is appropriate for that reason then certainly the Board has the power to waiver/deviate from those suggested sanctions that is on the next page. Ms. Brue asked if the Board could require that all patrons be carded when they come in the door. Attorney Ross stated pursuant to Paragraph 37 that would be within a condition or a requirement as to being more stringent as is what is in there so the answer would be yes.

Mr. Gray stated that Waxy's has a very sordid history for violations and problems and the town is aware of it. Mr. Gray was wondering how can they have confidence going forward that no matter which sanctions that they choose to impose on Waxy's how can they give the Board confidence that someday they are going to get it right. Attorney Spillane stated that he understands where Mr. Gray is coming from with regard to the different settlements that they have had but if they look at the last two years it is much different than the years before that. Attorney Spillane met with Chief O'Leary today and just looked at a printout for activities during the different years within the last two years they are way down compared to the years before a certain owner and manager was dismissed, replaced and eventually bought out so he thinks the last couple of years the issues are not nearly what they were before. Any restaurant that serves alcohol run into issues from time to time. Can it still be improved, Attorney Spillane stated yes and that is why they brought Mr. Karnbach up here to really see where it can be improved; a new set of eyes that has that goal in the corporation to change that around. They do have that. All of their other sites don't have any violations so they do want to get it right and they don't want to be before this Board ever again not that this might not occur because of human error but that is their goal and they want to minimize that possibility or that error by making sure they hire the right people and they have the right oversight which includes all their procedures and management.

Ms. Coppola stated that this Board has tried to be supportive of Waxy's. They came before them asking for a directional sign, working with the state and as the Road Commissioners they approved the sign directing people to their establishment because they are supportive of businesses in town but not asking for an id she can't get over this. The simplest thing they asked them to do was not done. Other people have come before them stating they cater to an older crowd; Waxy's does cater to a younger crowd so if they cater to that kind of crowd then they should be even more aware of age especially on a night that is not busy on a Thursday night and that is why she is really concerned because the sting was one night but what happens the other 364 days of the year. Was this a fluke or if they did multiple stings during the year would they be before them again or any of the places in town be before them again. Ms. Coppola doesn't want to be in a position where someone says to her why did you let this happen; that's the Board's concern and it should be their concern also.

Ms. Brue asked if Mr. DeVellis wanted in writing what actions were taken in that agreement. Mr. DeVellis stated that they went through a settlement agreement and he wants to see where

they stand; what's been carried out and what hasn't. This is a starting point. If the settlement agreement wasn't adhered to there is a whole set of other stipulations in there that the Board could consider on the past violation. He isn't saying go back in time but it clearly says if that wasn't done then the Board has to revisit it independently as if nothing ever happened again. Ms. Brue asked Attorney Spillane to provide a summary of all the actions that were taken to comply with that agreement and they can have that as an agenda item at their next meeting. Mr. Keegan stated that it wouldn't be their next meeting it would be a week from tomorrow night. Attorney Spillane asked if the Board wanted them there or just provide the information. Ms. Brue asked them to be there so they could ask questions. Ms. Brue stated that they will have that on their agenda for 12/16/14.

### **Skipjack's Discussion**

Ms. Brue stated that in the Skipjack's case this is the second violation in one year. Mr. Gray stated that the other violation was serving to a minor also in a similar sting. Ms. Brue stated that they received a Letter of Reprimand that last year.

Mr. Gray stated Ms. Coppola's comment about what happens the other 364 days a year if someone gets caught up in a sting it is an indication of the culture of the business and whether or not minors would be served throughout the year they will never know but if you get caught up in a sting one has to assume that the systems aren't working or the training is not working. Last year Skipjack's had a list of initiatives that they were going to implement and obviously they are not working. Mr. Gray was wondering if during the testimony anyone had picked up that Skipjack's had laid out the groundwork for improvement because he really couldn't discern that they were going to do anything different other than training, training and more training. They did try to make the point that the bartender was lazy and the bartender made a mistake or the bartender was not paying attention; to Mr. Gray continues to maintain that whenever they had these hearings when the management of these companies are in front of the Board that at least the management has to own up that they have people who hired these folks and train them, support them and police them but to say it is just the bartender and not them rings a little hollow to him. In this case Skipjack's had a Letter of Reprimand last year which was probably appropriate because it was their first violation but here they are coming back almost 365 days later with similar circumstances; they fired the bartender but he doesn't really see that they are getting the message.

Mr. DeVellis stated he has a similar thought process and where is the disconnect and they stated they didn't know. They have had this discussion in past hearings who's responsibility is this, is it the Board's responsibility to figure out a system that works, do they work together or is it policing or more training but he doesn't want to be in the position to tell them where the disconnect is if they don't know where it is. Mr. DeVellis was quite offended when the argument of economics came up to be told that a day of closing or three days cost \$400-\$500. He was very surprised it came up because he knows that a mother would pay that in a heartbeat to get their child back. The economics was brought up with Skipjack's a year ago when the Board suggested to have a card reader and the answer was that they are \$2,000 or \$2,500 and they are too expensive and they share one with another company; whatever the arrangement or business plan they have is not working. It is not the Board's responsibility to find out where that

disconnect is and maybe they need two or three bartenders or someone to look over someone's shoulder. The board story the Board heard tonight is a repeat of what happened a year ago, it was almost verbatim and he doesn't see any change coming a year from now. He was really hoping that they were going to say they were implementing something else or they were investing in something but it was blame the bartender and it was insulting because what Mr. DeVellis was hearing was okay give us the day and move on to something else.

Mr. Feldman stated they asked him what they do; they asked for detail on the pre-meal check and they hand the Board a piece of paper saying this is all the things that they are doing. It is almost like once they leave that pre-meal check all bets are off. People are out on the floor doing their own thing. They need to self-police that out on the floor at the point-of-sale, they can't do it in a back room for them just to say this is what they do and we are going to use that piece of paper and we are going to train, train, train, it's not working. They talked about hurting the other staff members that weren't involved in it but you know what sometimes it takes a little pain to get the message across. Everyone has to buy into it, it's the only way you are going to self-police it.

Ms. Coppola stated that everyone came up to the Board with their plans saying this is what we are going to do but the thing is, it's a law that you can't serve anyone under the age of 21 and you are supposed to ask for ID when someone like that are under 21 and that goes for everyone. This wasn't done and that's all the Board was asking them to do is follow the law and it obviously wasn't done.

Ms. Brue stated that when she looks at these examples of pre-meal discussions that happened you wonder what can be done differently to somehow reemphasize or somehow wake up the people that are hearing this same message over and over again for their five shifts a week and she keeps going to a self-compliance check. She doesn't know how often managers that are present if they see someone that they think is under 30 do they double check. There has to be some other way of self-patrolling for employees that would heighten their awareness and there has to be consequences if that self-compliance check is failed internally.

Ms. Brue asked Chief O'Leary if he had any thoughts based on what he heard this evening for improvement. Chief O'Leary stated that unfortunately if he had any ideas he would put them out on the market. As much as the operators of the facilities are serious people and they are trying to do their best it goes back to just repetition. He knows that the Patriot Place team is in the process if they have not done it already about having their own compliance checks and he knows going back to the late 1990's the other liquor license holders in the community actually formed a support group called Foxboro Cares. They have meetings amongst themselves and talk about issues and they brought in speakers and Judge Winslow of Wrentham came to one of the meetings at the Ancient Marinere and all of the license holders were there and listened to what he had to say.

That type of community and dependence on one another so that they are all on the same page and doing their own compliance checks the person that didn't pass their compliance check, no he didn't lose his license from licensing authority but he got a real hard time from his peers that got the green cards showing that they had asked for identification.

As much as the Board has difficult decisions in terms of assessing an appropriate punishment and bring about change hopefully they can get more people involved in their 42 licensees themselves so that they can help check one another and make themselves successful.

Whenever Chief O'Leary is issuing a pistol permit to a novice shooter he always suggests to them just don't go to the range by yourself go with someone that is an experienced person so they can mentor you so that you will improve at a much faster pace and it's almost the same thing amongst the management team that they have to be able to help one another so that we are not having this repetition of coming before the Board with multiple offenders on something that is very simple, asked for identification, if there is any doubt at all just ask for it.

Ms. Coppola does remember in the 1990's very well the Fox Cares and they had fewer establishments at that time. They have a lot of establishments in the town of Foxborough and her concern is she does not want the town of Foxboro to become a mecca for under aged drinking. Ms. Coppola stated she knows kids know which establishments they can go to and she does not want Foxborough to have that reputation.

Mr. Gray stated that he wasn't sure if Attorney Michelmore knew this was a second violation because he was alluding to the maximum penalty of being a three day suspension but just so everyone knows this is a second violation that happened because they were here exactly one year ago.

Ms. Brue stated that their guidelines talk about a second violation being a suspension of 3 to 10 days and they also look at an option of liquor closing hours.

Mr. Gray stated to Attorney Ross if the Board could asked that they install card readers which he doesn't believe they've done to date and that they card everyone. Attorney Ross stated yes, if the Board makes a finding the particular requirements are necessary to ensure public safety and they make that finding based on the evidence that is before the Board, certainly the Board is entitled to do so pursuant to paragraph 37 of the rules and regulations. Mr. Gray asked in Attorney Ross's opinion if those actions are reasonable or would they be considered to be capricious. Attorney Ross stated those would seem reasonable based on the circumstances because they are part and parcel of the violation involved here. It's not an issue for example of over service. The issue is proper service to an individual of age to acquire a reader to ensure an individual, a patron, is of age.

Ms. Brue asked in terms of length of penalty she asked Mr. DeVellis to start with his comments. Mr. DeVellis stated was it so egregious that it went outside of the written second violation sanctions and he doesn't think so, he thinks it was agreed just that you can't ask for a license and what could've happened but he thinks if you look at the second violation suspension of the license for 3 to 10 days, he isn't interested in closing them early 11:00pm to 1:00am isn't the issue it is asking for identification. Mr. DeVellis would make a motion to the Board to suspend their license for 10 days in accordance with Item #2 of the second violation. Mr. Gray stated as well as the stipulation that they purchase and install readers at the front door and that they asked for identification from everyone that walks into the establishment.

Mr. Feldman stated that where they were only issued a letter of reprimand on the first violation and obviously this is their second violation within a year he would recommend a five day suspension and a fine put towards self-policing through a fund to help the police department do more frequent checks and require an identification machine.

Ms. Brue asked Attorney Ross about this type of approach can they require a license holder to at their own expense do that type of self-compliance check. Attorney Ross stated that it certainly requires a self-compliance check. The only caution he would have is requiring the licensee to pay a fine. Massachusetts Municipal Law he doesn't know if the town has an existing fund where money can go into and be spent for a specific purpose because usually money goes into the general fund and has to come back out through a town meeting which kind of controls the purse strings with some exceptions that would be the only potential caution he would have on that issue. Mr. Feldman stated that he thinks compliance is an issue here and it shouldn't be at the taxpayers' expense, it should be at the violator's expense and he is sure that they can come up with a mechanism to accept a gift or donation towards public safety. Mr. Keegan stated that if they find more paid to the town there is no mechanism to actually appropriate that money for the intended use. The only way that it could be done is through town meeting which you could then create an account where that money could be appropriated for that purpose.

Ms. Brue knows that they have had that situation in the past couple of years ago where they did something similar to that it just raises some concerns to her and terms of they have guidelines and they don't discuss monetary penalties as part of that. Attorney Ross stated that Massachusetts General Laws do limit when a town fines a particular person the limit by state law is \$300 per offense so there would be a cap pursuant to that. He believes that is Chapter 40, Section 1. Mr. DeVellis stated the Board discussed this in years past and it ended up being a donation to the general fund in that particular case it was to be used for their police department for further training. Attorney DeVellis stated that he had voted against it then and he would vote against it now because he doesn't think the board's purview is to have them spend money on their own training and on how to run their own business including having them buy card scanners. The Board has been through this before and it only works if it is turned on. It is not up to the board to tell them how to run their business it is up to them to give penalties so they change their way of doing things. More days speaks a little more volume than having a card reader that may or may not even get plugged in.

Ms. Coppola stated she would be looking at a 10 day suspension and she would not be interested in asking for a fine. She would go along with requiring a scanner but if they did that what about the other license in Foxborough. Is the Board requiring a scanner because this is a little egregious? Mr. Gray stated the only reason why he is suggesting this is that their systems in place are not going to change. This will put at least another layer of action in place. The way they describe their next actions there was nothing substantive that he saw that could actually change their culture. Ms. Coppola would go with the 10 day suspension along with the requirement of a scanner in the hopes that the manager would agree that a scanner is appropriate.

Ms. Brue stated that looking at the business she was inclined to a five day suspension of the license, the requirement of a scanner and checking identification. She agrees that it didn't seem that there were changes from the prior year. She believes once the self-compliance check goes

into place with the Patriot Place group assuming that does go into effect she feels that it will be helpful to all of the businesses that participate. She believes that 10 days she associates with something more egregious, this is serious but she thinks a penalty for business especially a high-end restaurant five days would be a significant impact to them. She thinks also part of the discussion they need to talk about what days would be required. She would ask the Board that they reconsider if they could meet somewhere in the middle at seven days. Mr. Gray stated that was the number he had in mind although he could be persuaded to go 10 days. Shutting down a business that has clientele and it's also a busy time of year but again they are a highly regulated business and they know what they're getting into. They know if they fail compliance checks what the penalty is going to be. Given that they only got a Letter of Reprimand last year is willing to go seven days. Mr. Feldman stated he would be open for seven days. Ms. Coppola stated she would go 10 days. Mr. DeVellis stated he is still at 10 days.

Ms. Brue stated they are looking at seven days and with that many days she would suggest it being over a period of three months as opposed to two months that they had set for the last one.

Mr. Gray stated that the last suspensions the Board had stated at least one day be on a weekend on either a Friday or Saturday. They can choose the weekend and they can choose the weekdays. Ms. Brue stated that part of it is giving consideration to the business whatever functions they may have going on, this is a very busy time of year but another way of looking at it is it does reinforce the punishment over a longer period of time. Ms. Coppola said it is a busy time of year for everyone but if they had just asked for that license they wouldn't be here. Mr. DeVellis stated if this had not happened a year ago and have the exact same thing happen and have the Board told that it was an investment issue where they didn't want to do the scanner and a year later the Board is worrying about the financial implications because an attorney had said that it's not fair to the business he goes back to the fact that if a kid goes in there for drinks and goes out onto the street they would be looking at this in a completely different light. Mr. DeVellis can take it a little easier if someone is overserved or something else happens that they don't have control over but when a business has 100% control over it and it's an employee that can't do a very basic thing and doesn't ask for identification from someone who looks very young he puts this at the top of the list of issues.

Mr. DeVellis didn't agree with a scanner because if you go into a restaurant with your family of five and you're not going to even order a drink he doesn't feel they should tell a business how to run their business. Mr. Feldman what about saying they must ask for identification from everyone ordering a drink. Mr. DeVellis stated the Board of Selectmen are owning it at that point and if something goes wrong and they told them what to do it is on the Board. Mr. Feldman stated obviously they are not doing it on their own.

Mr. Gray stated they should figure out the time frame. Mr. Feldman stated it should be seven days within 60 days. Mr. Gray asked if they needed to be weekends and Mr. Feldman stated absolutely. Mr. Gray asked how many, Mr. Feldman stated it should be at least two weekends. Mr. Gray agreed.

Ms. Brue stated seven days including two weekend days to be served in 60 days. Mr. Gray asked if they were going to allow the establishment to pick the days. Ms. Brue suggested that

they let the business choose the days. Mr. DeVellis stated the business could do a better job figuring out the days than the Board.

Motion made by John Gray to suspend the license of SkipJack's for seven days and that seven-day suspension has to be served within 60 days of the final notification and of those seven days at least two of those days have to be weekend days meaning either a Friday or a Saturday. Seconded by David Feldman. **Vote 3-2-0 with James DeVellis and Virginia Coppola opposing.**

Ms. Coppola stated she feels it should be 10 days.

Mr. DeVellis wanted the record to show that he feels this is too lenient.

Mr. Keegan stated since the last meeting of the Board he has received two inquiries from two establishments that had concerns about the dates and serving their penalties which they have already advised the Board. One of them the Board had imposed dates and they are asking for reconsideration of two dates possibly being moved to different times. Mr. Keegan asked them to put their request in writing and he did receive one request today and he is waiting for the other one and it is possible both of those requests will be before the board at their next meeting on December 16, 2014.

Motion made by John Gray to adjourn at 9:34pm. Seconded by Virginia Coppola. **Vote 5-0-0**