

TOWN OF FOXBOROUGH
SELECTMEN'S MEETING
MINUTES
NOVEMBER 12, 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 DeLuca
Chief Edward O'Leary
Sergeant Richard Noonan
Mr. James Kelley, Chickie Flynn's
Ms. Christine Kelley, Chickie Flynn's
Attorney Phil Mackey, Demetri's Red Snapper
Mr. Nicholas Panagopolous, Demetri's Red Snapper
Mr. Ronald Young, Lafayette House
Attorney Steven Miller, Renaissance Hotel
Mr. Norman Demers, Renaissance Hotel
Mr. Scott Williams, Renaissance Hotel
Mr. Vic Khokha, Renaissance Hotel

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

Ms. Brue reviewed the agenda.

Attorney DeLuca was notified some weeks ago of a number of hearings to be scheduled here in Foxborough and they have been scheduled sequentially.

There are four license holders scheduled to be heard tonight. In the notice that was given to each license holder there was a suggestion that they contact Attorney DeLuca's office to discuss the nature of the proceedings scheduled before the Board.

He spoke with each of the license holders or their representatives that are scheduled this evening. At the same time he did have the opportunity to speak with Mr. Keegan and Chief O'Leary to discuss the various hearings and the nature of the violations and there will be recommendations from them as a group to the Board.

Attorney DeLuca does expect that each of these hearings will proceed on an agreed statement of facts. He has heard from each of the license holders that there is no dispute as to the happening

of the alleged violation. Therefore, this considerably shortens the nature of the hearing. This is not a disputed hearing.

We will have facts provided by Sergeant Noonan by way of a summary as to each of the violations as to each license holder. Each license holder will have the opportunity to address the Board with their own issues or concerns or any remedies that they have undertaken themselves.

Following that it will be the Boards opportunity to deliberate on a proper disposition of each of these alleged violations. The Board can do that following each of the hearings or the Board can take the hearing under advisement and decide at some later time what the appropriate disposition will be.

Each of the license holders are all here now. Because of the nature of this public hearing, one that does not include any testimony or evidence from other members of the public so long as each of the license holders is willing to agree to proceed in advance of the scheduled time we can move right through them.

Attorney DeLuca called Sergeant Noonan to the table who would give the Board an outline as to the facts at least as to that first license holder.

Attorney DeLuca asked Sergeant Noonan to give the Board a statement of his assignment and the scope of this operation.

Sergeant Noonan stated on September 25, 2014 under the direction of Chief O'Leary Sergeant Noonan conducted an alcohol compliance check of the licensed establishments in the Town of Foxborough.

Attorney DeLuca asked how many licensed establishments there were in the Town of Foxborough and Sergeant Noonan responded forty-two (42).

Attorney DeLuca asked how many establishments Sergeant Noonan was able to check. Sergeant Noonan believed twenty-nine (29).

Attorney DeLuca asked if the others were either not open or unavailable in which Sergeant Noonan responded "correct".

Attorney DeLuca asked what the nature was of the operation generally.

Sergeant Noonan stated he followed his department's orders on conducting a compliance check with a valid and authentic identification. They have the underage operative go through the rules and regulations that are spelled out clearly and explained to him.

They have a plain clothed undercover officer watch the interaction between the under-aged operative and the establishment staff.

During this operation they had the under-aged operative go in with his valid true and authentic under-aged vertical license which clearly indicates that he is under the age of 21 and spells out in red lettering that he is under the age of 21 and tells the date when he will turn 21. In this case he will turn 21 in 2016. He is supplied with money to purchase alcohol.

Attorney DeLuca asked if Sergeant Noonan has an undercover officer in the establishment at the same time. Sergeant Noonan stated either in the establishment or within an eyes view outside the establishment.

Attorney DeLuca asked Sergeant Noonan if he positioned himself somewhere. Sergeant Noonan stated he does, within close proximity to the establishment.

Attorney DeLuca asked if the operative was here this evening. Sergeant Noonan stated he was and pointed him out in the audience. Attorney DeLuca stated that Sergeant Noonan had pointed out the operative Mr. Marinelli who is under the age of 21.

Attorney DeLuca asked Sergeant Noonan how this operation generally proceeds after the operative enters the establishment.

Sergeant Noonan stated that he is explained thoroughly what he is to do, their goal is not to trick anyone and ask for an alcoholic beverage. If he is asked to produce his identification, he produces his valid, true and authentic under 21 identification. If he is not asked for his identification he will then attempt to purchase an alcoholic beverage.

Attorney DeLuca asked if there is a preselected beverage that he has to order. Sergeant Noonan stated they made it simple and he continually asked for a Bud Light Beer.

Attorney DeLuca asked with respect to any publicity of this type of operation was that undertaken at any time.

Sergeant Noonan stated that a letter was sent out to each liquor license holder dated January 27, 2014 outlining a series of goals they had for the year as well as also advising them throughout the year they would be conducting an alcohol compliance check. There was also an article written in the August 28, 2014 Foxboro Reporter outlining again their goals to combat underage drinking and compliance checks.

Attorney DeLuca stated that concludes the background information and thought it would be appropriate at that time to call the first license holder, Chickie Flynn's.

7:00pm – Public Hearing Alleged Alcohol Violation – Chickie Flynn's, 94 Washington Street, Foxborough, MA

Ms. Coppola read the public hearing notice for Chickie Flynn's

Attorney DeLuca asked Sergeant Noonan to tell the Board how the operation at Chickie Flynn's proceeded.

Sergeant Noonan reviewed the facts of the case. At approximately 8:00pm the under-aged operative entered Chickie Flynn's and made his way up to the bar and ordered a Bud Light. The bartender requested his identification. The under-aged operative presented his true, valid under-aged driver's license which was a vertical driver's license that represents him being under the age of 21. He produced that to the bartender and the bartender looked at it, returned it back to him and then proceeded to pour him a glass of beer which he served to him. The under-aged operative took possession of the beer, made payment for the beer and then left the establishment.

Sergeant Noonan took possession of the receipt then they left the area. When Sergeant Noonan got back to the establishment it was closed so he contacted the owner the next day and advised him of the violation.

Attorney DeLuca stated that they do have representatives of the establishment there who would like to address the Board.

Attorney DeLuca swore in the representatives of Chickie Flynn's.

The representatives for Chickie Flynn's were Jimmy and Christine Kelley. Attorney DeLuca advised the Kelley's now was the time if they had any information or a statement for the Board.

Mr. Kelley stated that on September 25, 2014 one of his bartenders served a drink improperly. The licensee was under-age. It shouldn't have happened and it won't happen again.

Mr. Kelley stated they have put new rules in place to deal with it and presented the Board with these rules.

Mr. Kelley stated that he has had a liquor license for thirty-five (35) years and this is the first time this has ever happened.

Mr. Gray asked if all of Mr. Kelley's staff is TIPS Certified. Mr. Kelley responded yes.

Ms. Brue asked if the rules were posted in which Mr. Kelley responded yes.

Ms. Brue asked if his employees had to sign off on them in which Mr. Kelley responded yes.

Ms. Brue asked how often the rules are reviewed with the employees. Ms. Kelley stated they have to sign it every single year and rules 1 through 3 have been enforced since they have been open.

Mr. DeVellis asked what the status of the employee (bartender) is at this point. Mr. Kelley stated that he was cut three shifts and he does not want to fire him, he is a long time employee (25 years or so), his best employee. Mr. Kelley doesn't know why it happened; he is the sharpest person that has ever worked for him.

Mr. Kelley stated that Ms. Kelley will be teaching the first class (safe service of alcoholic beverages by manager) and his bartender will have to teach the rest of them.

Mr. Feldman asked if the bartender has gone through recertification in which Mr. Kelley responded yes.

Ms. Kelley stated how sorry they were even though it didn't seem appropriate at this point. They are a very small business who are new to Foxborough and they have been here 4 ½ years and they have tried to do a lot for the community.

The first time they were before the Board was to ask for the license and they feel they have become a very strong part of the community in many different aspects and asked the Board to please take that into consideration.

Mr. DeVellis asked on that Thursday night with respect to capacity was it a quiet night. Ms. Kelley stated that there was nobody there.

Mr. Gray asked if their staff asks for identification on people they judge to be young or do they ask for identification from everyone.

Ms. Kelley stated for a judgment call it is at least 30 years old. On Patriots game days they do have TIPS certified doormen specifically just for that and every single person is id'd.

Mr. Feldman asked what the harm would be of carding everyone regardless of age.

Ms. Kelley stated that they actually did do that at the beginning and because now 95% of their customers are regulars meaning that they are there 3-4 times a week. Mr. Kelley stated they were also over 40 years old.

Ms. Coppola stated that Mr. Marinelli looks definitely under 30 and if their establishment has regular customers she felt that Mr. Marinelli coming in and asking for a beer would cause Ms. Coppola if she was behind the bar to take notice. Ms. Coppola stressed again the vertical license and it being clearly marked.

Mr. Kelley stated that he has no explanation for it and that he is still mad.

Attorney DeLuca stated this concludes the hearing for this particular license holder and now it is the opportunity for the Board to take this into advisement and move on to the next or decide by way of disposition this particular matter.

Attorney DeLuca stated that this license holder as well as the others that have come here tonight they have found have no prior history with respect to alleged violations of this nature or any nature.

Insofar as a recommended disposition, Attorney DeLuca, Mr. Keegan and Chief O'Leary would have a range of disposition options and again either now for this license holder or again at the conclusion of the hearings throughout the rest of the evening.

Mr. DeVellis stated since the issues are not being contested the Board would have plenty of time to discuss it. He did not have a preference as to when to deliberate.

Ms. Brue asked Attorney DeLuca in terms of keeping each one isolated if that is something the Board should consider in dealing with them one at a time.

Attorney DeLuca stated they are their own facts. Each one may vary in some respects and the Board certainly has the right to consider the facts of each case individually. Attorney DeLuca stated the point he made earlier was that they all have come to the Board and have agreed that the violation has occurred and have no prior history. Only in that respect do they bear similarities.

Ms. Brue stated that her preference would be to close each one out as they go and treat them individually so she will not carry forward any comparisons of any kind.

Mr. Gray stated that he would like to hear all of the cases and deliberate at the end.

Mr. Feldman would like to hear them all and then deliberate at the end.

Ms. Coppola stated she would prefer to deliberate each one individually.

This resulted in a tie which Mr. DeVellis stated he would prefer to deliberate at the end.

Mr. DeVellis stated that they do have a public input component and that should be done individually rather than at the end.

Attorney DeLuca stated this is not normally a component of a disciplinary hearing under Section 34 which is where this proceeding is held. The license holder has the right to address the Board. It isn't the same as a hearing to issue a license where the issue of public good is before the Board. This is purely an issue of discipline before the Board and the license holder.

Motion made by Virginia Coppola to close the public hearing on Chickie Flynn's alleged liquor violation. Seconded by John Gray. **Vote 5-0-0**

Mr. DeVellis asked when the Board would vote in the facts.

Motion made by Virginia Coppola to reopen the public hearing on Chickie Flynn's. Seconded by John Gray. **Vote 5-0-0**

Motion made by Lorraine Brue that there is a finding of fact that an employee of One More Time, LLC d/b/a Chickie Flynn's served alcohol to a minor in accordance with the letter dated

October 20, 2014 and we accept the facts of the case as mentioned. Seconded by James DeVellis. **Vote 5-0-0**

Motion made by Virginia Coppola to close the public hearing on Chickie Flynn's alleged liquor violation. John Gray seconded. **Vote 5-0-0**

7:24pm – Public Hearing Alleged Alcohol Violation – Demetri's Red Snapper, 2 Washington Street, Foxborough, MA

Ms. Coppola read the public hearing notice for Demetri's Red Snapper.

Attorney DeLuca asked the attendees for Demetri's Red Snapper if they were willing to waive the timing for the hearing in which they stated yes.

Attorney DeLuca stated that they again would start with an agreed statement of facts provided by Sergeant Noonan.

Sergeant Noonan stated that on September 25, 2014 at approximately 5:46pm an under-aged operative working with the Foxborough Police Department entered Demetri's Red Snapper.

The under-aged operative made his way to the bar and ordered a Bud Light at which time the female bartender served the under-aged operative a Bud Light. At no time did the bartender ask for identification.

The under-aged operative asked to cash out at which time he proceeded to pay for the beer, receive change and a receipt.

This transaction was seen by an undercover plain clothed officer.

Sergeant Noonan stated the receipt was recovered and Sergeant Noonan spoke to the owner as well as the bartender.

Mr. Gray asked if the identification was never asked for. Attorney DeLuca responded that in this instance it was never asked for.

Attorney DeLuca informed the license holders that they could address the Board.

Attorney DeLuca swore in the license holders.

Attorney Phil Mackey introduced himself as Counsel for Demetri's Red Snapper along with Nicholas Panagopolous, owner of Demetri's.

Attorney Mackey agreed to the facts as presented by the Foxborough Police Department, there is no dispute as to what happened and there is no dispute as to what happened was wrong.

Attorney Mackey stated that Mr. Panagopolous took control of the license several years ago at significant cost, well over and above what a normal license would go for these days because of the issues with Intoccia and that problem.

Nevertheless Mr. Panagopolous understands about the value of the license and he understands what had happened was wrong and he understands the responsibility that goes with the license. Accordingly, he has discussed this with the bartender who did serve the under-age operative and her shifts have been cut down from five (5) to two (2). This is not a disciplinary measure it is more of a measure of letting her have more time to rest and be alert on the job and function as one should expect.

They have further reaffirmed basically a “card everyone” policy. As was submitted by the Foxborough Police Department identification was not asked for, they understand the problem with that and they are taking steps to make sure that it doesn’t happen again.

Additionally even though the restaurant staff in its entirety had been certified on June 10, 2014 with the STOP Training, personnel changes over fairly often in the industry and they are scheduling again recertification of everyone that works in the restaurant basically forthwith. As soon as they can schedule a class all of the employees will be required to recertify.

This is a first time violation for Demetri’s Red Snapper and the first violation for Mr. Panagopoulos, he has operated restaurants for quite a while in Foxborough. He is somewhat of a fixture on Route 1 and would like to remain as such.

They are asking for the Boards consideration and whatever leniency they may be able to grant. No one is disputing what happened and steps are being taken to make sure nothing like this happens again and they would like the Boards consideration of those when they deliberate as to what happened.

Attorney Mackey stated that the only request they have is that after a period of whatever the Board feels appropriate (1 year, 2 years) if in fact there are no further violations as this is a one-time offense they would ask if the Board would expunge the record after whatever remedial measures the Board feels necessary have been taken.

Attorney Mackey stated again, there is a proven track record of no violations and full compliance with the rules and regulations of the ABCC and Town of Foxborough and the State of Massachusetts.

Ms. Coppola stated again, it was a Thursday night, was the premises busy. Sergeant Noonan stated there was one other patron at the bar and there were patrons in the restaurant area.

Mr. Feldman stated that turnover is pretty standard in the industry. He asked if they were aware that each new employee has to be certified within 45 days. Attorney Mackey stated “yes”. Mr. Feldman stated that you cannot wait for the next training.

Attorney Mackey stated that he did not want to insinuate that the training for the entire wait staff was the only training they do. They are going to make sure that not only are the new employees trained but rather the entire wait staff even if they have been trained.

Mr. Feldman asked if they think annual training is enough.

Mr. Panagopoulos stated yes, he will never stop training people.

Mr. DeVellis asked Attorney Mackey if they had spoken to the bartender on why the person wasn't carded.

Mr. Panagopoulos stated yes, in front of the Officer he asked why she did not check the id.

Ms. Brue asked if Mr. Panagopoulos had signs up for his employees reminding them. Mr. Panagopoulos stated yes.

Ms. Coppola asked if they had a calendar showing dates of when you are 21. Mr. Panagopoulos stated no. Attorney Mackey asked if he would put one up and Mr. Panagopoulos stated yes.

Motion made by Lorraine Brue to accept the findings of fact that the employee of D&N Corporation, LLC d/b/a Demetri's Red Snapper did in fact serve alcohol to a minor as outlined in the letter dated October 20, 2014 and the Board accepts the letter as presented. Seconded by John Gray. **Vote 5-0-0**

Motion made by Virginia Coppola to close the public hearing on Demetri's Red Snapper in regard to alleged liquor violations. John Gray seconded. **Vote 5-0-0**

7:41pm – Public Hearing Alleged Alcohol Violation – Lafayette House 109 Washington Street, Foxborough, MA

Ms. Coppola read the public hearing notice for Lafayette House.

Attorney DeLuca asked Mr. Young if he agreed to waive his right for a hearing at a later time than was initially advertised. Mr. Young replied yes.

Attorney DeLuca swore in Mr. Young.

Attorney DeLuca stated that they will proceed again with a statement of facts from Sergeant Noonan.

Sergeant Noonan stated that on September 25, 2014 the under-age operative entered the Lafayette House Restaurant at approximately 8:09pm.

He made his way to the bar and ordered a Bud Light. The female bartender served him a Bud Light draft without asking for identification.

The under-aged operative took possession of the beer, made payment and received a receipt.

A plain clothed undercover police officer was in the establishment and witnessed the transaction.

Attorney DeLuca asked if there was a recovery of a receipt made in this case. Sergeant Noonan stated there was no receipt recovery in this case the under-age operative left it at the bar at that time.

Mr. Gray asked if the bar was busy at that time.

Mr. Young stated that the bar was not busy as he looked at his cameras. Mr. Young stated that whether the bar was busy or wasn't busy there is no excuse. When Sergeant Noonan called Mr. Young the next day he fired the bartender immediately.

Mr. Young suggested to Special Counsel that the town should consider arresting the bartenders. She served a minor and if he was involved in an accident afterwards I think we all have a problem at that point.

Also, because the bartenders know they will be fired, now his business is at risk; she could steal money from him because she knows she is gone. If you also have a disgruntled employee and they give their notice; they know it's a sting and they do it. There are no repercussions; you don't see her here today.

As far as notifying the employees, Mr. Young does notify them. When they get a letter from the town, they make a copy of it and attach it to every paycheck. We make a copy of the letter, post it on the bulletin board, highlight it and we reiterate it. For some reason, Mr. Young doesn't know why, they did not get this last letter. Mr. Young stated this is not an excuse.

Mr. Young actually liked it when the police officer would walk into the bar and hand him the letter. The employees then ask why the police officer was there and Mr. Young explains to them that there is a sting operation going on within the next three months and the employees will get a copy of the letter. This literally drives it home when you have a blue shirt standing in your building.

Mr. Young stated he has a couple of policies:

1. If they are under thirty (30) card them.
2. If they come in later in the evening find out how old they are.

If it is a game day and the game is getting out at 8:20pm they close at 8:30pm because nothing good is going to happen when those people come out of that stadium.

Mr. Young stated that everyone is TIPS certified. November is the month that most of his employees TIPS expire and Campbell & Trent has already been in to get that done. I don't wait forty-five (45) days I tell them it is a condition of employment, Mr. Young gives his employees fourteen (14) days. They can either take the class online or do it in a class.

Mr. Feldman asked if Mr. Young thought annual training was enough.

Mr. Young stated that he doesn't have employee turnover as much as some other places. I think with those letters and the training it does help. Mr. Young's wife is very rarely there and Mr. Young makes her get TIPS certified.

Mr. Feldman asked Mr. Young how he determines who is thirty (30) years old and who is not. Mr. Young pointed to the under-aged operative and stated that gentleman is obviously not thirty (30) years old.

Mr. Feldman asked if he thinks that policy is good enough. Mr. Young stated it is for people that can think.

Mr. Feldman asked what the harm would be of carding everyone.

Mr. Young stated in his business probably 99% of the people are fifty (50) years old.

Mr. Young stated sometimes they have a funeral collation so you will get a mixed audience that normally isn't in his business and it is very obvious who is not twenty-one (21).

Lafayette House has a family who is having a party there this Saturday and they stated to him that they have a child who is seventeen (17) and Mr. Young asked them to point him out to them so they definitely know who he is. Mr. Young stated to the family that no one better buy him a drink which has happened where an adult tries to buy a child a drink and they don't allow it.

Motion made by Lorraine Brue to accept the findings of fact that an employee at Lafayette House served alcohol to a minor as outlined in the letter dated October 20, 2014 and the Board accepts the findings of the letter as presented. Seconded by John Gray. **Vote 5-0-0**

Motion made by Virginia Coppola to close the public hearing on Lafayette House in regard to alleged liquor violations. John Gray seconded. **Vote 5-0-0**

8:01pm – Public Hearing Alleged Alcohol Violation – Renaissance Hotel 28 Patriot Place, Foxborough, MA

Ms. Coppola read the public hearing notice for the Renaissance Hotel.

Attorney DeLuca swore in Mr. Demers from the Renaissance Hotel.

Attorney DeLuca asked Mr. Demers if he agreed to waive his right to the timed hearing of 9:15pm in which Mr. Demers stated yes.

Attorney DeLuca asked Sergeant Noonan to give the facts to the Board concerning the Renaissance Hotel.

Sergeant Noonan stated that on September 25, 2014 at approximately 6:58pm the under-age operative entered the Renaissance Hotel bar area.

He made his way to the bar and ordered a Bud Light at which time the female bartender served it to him. The under-aged operative took possession of the Bud Light draft and at no time did the bartender ask for identification.

The under-aged operative cashed out and received a receipt. During that time Sergeant Noonan walked into the bar area and saw the under-aged operative in possession of the beer.

Sergeant Noonan took possession of the receipt.

Attorney Miller introduced himself, Mr. Norman Demers and Mr. Scott Williams, Assistant General Manager and Mr. Vic Khokha who is the Food and Beverage Manager.

Attorney Miller stated that they do not dispute the facts. Attorney Miller stated that this is a very upsetting situation. Mr. Demers is going to explain to the Board what action the Renaissance Hotel has taken.

Attorney Miller stated they own four (4) other hotels in the Commonwealth and other jurisdictions and to Attorney Miller's knowledge they have never had a violation in any of the establishments. The Renaissance has very strict policies but based on this incident they are even more strict.

Mr. Demers wanted to publicly apologize to the Board on behalf of the ownership and management of the Renaissance Hotel for failing a recent compliance check conducted on September 25, 2014.

Mr. Demers indicated to his entire team at that time any and all of the work at that time accomplished since opening in May of 2009 was immediately compromised when they let their guard down and allowed this to occur.

Mr. Demers further stated that every member of the team there is aware of the impact this has on our ownership and their business, our Patriot Place partners as well as our standing in this community.

Mr. Demers wanted to briefly summarize to the Board the measures they immediately enacted as well as those that are in process for the property to continually address our management responsibility.

With regard to the night of September 25, 2014, upon learning of the infraction at approximately 11:30pm the restaurant manager alerted Mr. Demers, Mr. Williams, Assistant Manager; and Mr. Khokha, Food & Beverage Director, either through E-Mail or a phone call which is their protocol if something happens.

The bartender in question that evening that served the guest was immediately notified of the infraction, they explained the situation and following company guidelines was suspended immediately and then employment was terminated in due process per their company's zero policy that is in place for all of their hotels.

Mr. Demers stated that the Food & Beverage Manager on duty that evening was documented for lack of oversight during the timeframe of this event. The management team is required to always be present on the floor during peak service times in the outlets. Their responsibility regarding the management is very clear.

Over the span of two days following the incident two mandates were enacted per Mr. Demers direction. First, all beverage service staff were scheduled for a mandatory alcohol awareness retraining that took place on Tuesday, October 7, 2014. This was conducted by Mike Marcantonio an alcohol policy training expert who specializes in this area and is a resource who the Renaissance has used proactively in the past.

Secondly, he also scheduled their company's Loss Prevention Officer to conduct TIPS training classes that took place on October 14, 2014 for all their beverage service associates.

All staff per their company is required/must be TIPS certified and they require everyone to immediately be recertified due to this incident taking place.

In addition, they currently have an event day policy to check all id's for all guests and they have changed that to every day regardless of events at the stadium or not. They have had an event day id check policy in place since the summer of 2013 per Mr. Demers conference with his Food & Beverage Director and now they require as of September 26, 2014 id check for any and all guests requesting alcohol service.

Mr. Demers stated this is their zero policy service in place.

Mr. Demers stated that they also have daily standups. They have an alcohol awareness session conducted with all our staff for every shift, every day.

Mr. Demers stated in recapping this was and has been extremely frustrating and certainly an embarrassment to Mr. Demers and the hotel management staff.

Since opening in 2009 they have been very successful in the management of their beverage licensing guidelines. They took significant pride as a team each time a compliance check happened and we correctly identified the individual and did not serve them.

The entire management and service team was devastated when this single incident based on the poor judgment and decision making by one individual erased five (5) years of 100% cohesive and focused efforts.

Mr. Demers stated that their relationship with the Town of Foxborough and their cooperative efforts with the Foxborough Police Department as well as their standing with their Patriot Place partners was immediately tarnished and they know this will be very difficult to erase.

Mr. Demers stated that they will however continue to be diligent in their responsibility for the privilege of serving alcohol beverages in this location. They are fully committed to continue this successful operation into the future and believe that the measures put in place now and their concentrated efforts daily will ensure that they are responsible and compliant in operating a business in the Town of Foxborough.

Mr. Demers thanked the Board for their time and any and all considerations.

Mr. Gray asked if they received the letter. Mr. Demers stated yes.

Mr. Gray asked if they make their staff aware that these stings are inevitable. Mr. Demers stated absolutely and that it is part of their daily conversation and it has been. Mr. Demers has been on the property since October 2012 as has been his Food & Beverage Director and they are both a proponent of intense beverage awareness.

Mr. Feldman asked how they communicate their daily shift awareness to their staff.

Mr. Demers stated the Shift Manager and Food & Beverage Director go over what the rule is, they check every id, they look for not only the birth date but the expiration date as well. Since this has happened they have found two incidents where the identification that they had was the correct birthdate but not the correct issuance date so it was an old id. They go over that every day and the message to the staff is very clear.

Ms. Coppola asked if they had asked the bartender why she failed to ask for an id from an obviously very young patron.

Mr. Demers stated that there was no excuse; it was a busy period of the evening. They aren't typically busy on a Thursday night. Her reply was that she thought he was one of the members of a company that they have in their hotel a lot. She thought she recognized him as one of the attendees who had been in the hotel before and obviously it was not.

Ms. Coppola asked if it was rather a busy Thursday evening as opposed to not many people at the bar.

Mr. Demers stated typically not but at that particular time they got a few extra people in and there was a rush. Mr. Demers was not there at the time but typically Thursday nights are not overwhelmed like a Friday or a Saturday.

Mr. Demers stated that this was just poor decision making on that persons part.

Ms. Brue asked in addition to all of the pre-shift conversations, at the workstations where the bartenders or servers go to are there any signs or reminders to help keep them away.

Mr. Demers stated that information is posted that they have to check for anyone that is under forty (40) and the postings are on every bulletin board that they have in the back area. Mr. Demers feels that they do a lot to make everyone aware of it.

Mr. Gray asked how long this individual had been employed by them.

Mr. Demers stated this individual had been there for about two years. She was one of their bar supervisors which again put more of an impact on them. This individual has had a great record for the two years she has been there and when we told her she didn't have a job she knew exactly why and didn't have any issues.

Mr. Keegan stated that in his previous experience there is a verification machine that is often purchased by a lot of establishments that is utilized to check id's which gets the issue of the date being incorrect. Have any of these establishments considered doing that.

Mr. DeVellis stated they have had that in front of them before and they have been told no because of the expense. The Board has been told that it jams up the system.

Mr. Gray stated that some places with high volume have them.

Mr. Feldman stated that verification only works if they ask for id.

Attorney Miller stated that his client has discussed it at length and one of the things that has come up is people totally rely on the machine and they swipe the license and it comes out green and they actually don't look at the picture. For the most part good hard work trumps the machine.

Motion made by Lorraine Brue to accept the findings of fact that an employee at Colwen Management, Inc., d/b/a Renaissance Hotel at Patriot Place served alcohol to a minor as outlined in the letter dated October 20, 2014 and the Board accepts the findings of the letter as presented. Seconded by James DeVellis. **Vote 5-0-0**

Motion made by Virginia Coppola to close the public hearing on Renaissance Hotel in regard to alleged liquor violations. John Gray seconded. **Vote 5-0-0**

Ms. Brue asked Attorney DeLuca in the memo that he had presented to Mr. Keegan there was a section that talks about the range of reasonable disciplinary actions to consider and Ms. Brue asked Attorney DeLuca to go through them with the Board.

Ms. Brue was interested in Item #2.

Attorney DeLuca stated that with respect to all of the hearings that the Board conducted tonight Attorney DeLuca wanted to reiterate that each of those license holders had no previous history that the Town of Foxborough is aware of.

Attorney DeLuca stated that the first place the Board should look would be to their own rules and regulations which are very thorough and very clear with respect to progressive discipline where and when a violation occurs.

Attorney DeLuca further stated that it is very clear from their regulations that this Board has the ability to impose up to a three day suspension and/or reprimand in any of these cases where there is no history of any other violations. That has been consistent all along here in the Town of Foxborough.

Attorney DeLuca stated that in addition to that with some consultation with the Town Manager and with the Chief of Police there has been also discussion of other options in these instances. One which Attorney DeLuca thinks the Board already heard briefly from the manager of the Lafayette House. It is quite clear from the law that it is a strict liability statute. That is, if there is delivery or sale of alcohol to an under-aged person there is exposure to criminal liability. Attorney DeLuca has suggested to the Town Manager and to Foxborough Police with the cooperation of the Norfolk County District Attorney's Office that if there is a complaint for criminal liability sought against the individual there could be a greater sense of accountability on the servers who undertake the irresponsible act of serving under age twenty-one (21).

We could make that recommendation; it would be up to the Foxborough Police and ultimately the District Attorney's office if they will continue to pursue that avenue.

Our judgment is that it is a strict liability statute there is criminal responsibility for personal sale and delivery to an under aged person.

Mr. Gray asked if this was independent of these proceedings in which Attorney DeLuca stated yes.

Attorney DeLuca stated where there is clear evidence of delivery there is a very serious criminal penalty by statute.

Attorney DeLuca stated that in addition to that they have recommended there be a repeat compliance check but this time unannounced. There has been very clear testimony about the fact that there was publication in the newspaper and direct mail to all license holders. With respect to at least those that were noncompliant in addition to all license holders another spot check by the Foxborough Police would be advisable as an element or an option in the disposition of these cases.

Attorney DeLuca stated that they have recommended the strengthening of the alcohol recertification and education classes that are routinely provided to all license holders. They are obligated by way of an issuance of a license here in Foxborough to undertake at least annual if not more frequent recertification and it would be reasonable in part your disposition in these and other cases to insist that this certification be provided to you. That you as a Board would be allowed to check and inspect how complete or thoroughly or how satisfactory that certification is to you as members of the Board. This is something that should be undertaken and should be undertaken at the expense of those license holders.

Attorney DeLuca stated that if the Board is interested that in part is their recommendation. If the Board is ready to deliberate, they can deliberate those cases tonight or they can take them under advisement and wait until they have heard the other cases in their entirety, it is up to the Board's discretion.

Ms. Coppola asked Attorney DeLuca on the Board's sanctions of violations that the Board has on the last page of the Rules & Regulations under three suggestions there is the optional liquor closing hours. On the memo that Attorney DeLuca gave to the Board on page 2 roll back of operating hours set in accordance with Section 12 of Chapter 138 must be the subject of a separately noticed hearing as to the public need for each decrease.

Ms. Coppola asked if they changed the liquor closing hours would they have to have a separate hearing for that.

Attorney DeLuca stated yes, there is a little bit of a technicality in that operating hours are subject to a different section of the statute than the disciplinary section that the Board is operating under tonight.

The operating hours is a matter for your consideration for the public good but it requires a hearing under Section 12 as opposed to Section 34 which the Board is operating under tonight.

Ms. Coppola suggested that the Board adds to the Sanctions and Violations with a separate hearing, wording to that effect.

Mr. DeVellis asked Attorney DeLuca if the hours are changed that is a separate hearing but what about when a lot of the establishments have come in and asked the Board for earlier opening days on special occasions for Patriot games and News Year Eve, is that the same situation.

Attorney DeLuca stated that it is. Under Section 12 you have the opportunity to make a judgment of what is in the public's interest, keeping in mind safety, economy and other concerns the Board might have that is entirely within their discretion and really not a matter of disciplining that you have before you tonight.

Mr. Gray asked Attorney DeLuca for clarification that in their guidelines they can suspend a license for up to three days, if the Board were to decide that, would those days be of the operators choosing or could they be of the Boards choosing.

Attorney DeLuca stated that it would be entirely up to the Boards discretion.

Attorney DeLuca stated there are methods of operation when it comes to suspensions. A lot of Boards and the Alcohol Beverage Control Commission target the same or a similar date as to when the violation occurred as an appropriate date for a suspension. There is no set rule, it is entirely up to the Board.

Ms. Coppola asked if the Board asked for a suspension that would be strictly for alcohol service, it doesn't close the place down, they are still open. Attorney DeLuca stated yes.

Ms. Coppola asked how is the public notified of this.

Attorney DeLuca stated that the license is due back to the Town Hall so there would be no alcohol service. If a patron asks for alcohol service then they will be denied alcohol service. For their own convenience they may be inclined to provide some kind of posting or notice or maybe not open at all. This is entirely up to the license holder.

Ms. Coppola asked if there is a suspension do the Police go and check to make sure that it definitely is being suspended.

Chief O'Leary stated that they will make the Officers aware who are on that particular shift that they don't have a liquor license and make sure that we do an inspection walkthrough.

Mr. Gray asked Attorney DeLuca that one of the operators asked that after two years that this violation be expunged.

Attorney DeLuca stated that this would be a highly unusual action to be taken. The record of past violations is a critical piece of information for any town Board to have at its disposal. Attorney DeLuca is pleased to see here in Foxborough that we have a very accurate record of past violations. These were not among those that were included in the past twenty (20) years so Attorney DeLuca would advise the Board not to take that kind of action, it would only confuse the record going forward.

Mr. DeVellis explained to Mr. DeLuca that in the past they have had a situation where they were reviewing a local violation from a Foxborough operation and they have been in front of us. Concurrently there has been a situation where the State also had a violation against the establishment and the left hand didn't know what the right hand was doing and Mr. DeVellis believes it was set up that way.

Mr. DeVellis wanted to know if they had any indication if these establishments are under review right now from a state sting operation that the Board is not made aware of right now.

Attorney DeLuca stated that he has no information to confirm or deny any action taken by the ABCC independent of what the Board has heard here this evening. Attorney DeLuca stated that they can certainly check.

Chief O'Leary stated that ordinarily when the Chief Inspector has a team working within the community he has always provided the Chief with information of their activities and more importantly when there has been a violation he has made the Chief aware of it so that the Chief's staff is cognizant of it. The Chief has not heard of anyone.

Independently the Chief had seen Chief Inspector Mahoney earlier this week and they have had phone conversations about some of the operations they have done in cooperation with us; the

Country & Western Show as well as recently he has had people doing an inspection at Gillette Stadium so he hasn't let the Chief know of any of these establishments having any problems.

Mr. DeVellis asked the owners that appeared before the Board this evening if any of them were under investigation by the state and they all replied that they were not.

Attorney DeLuca stated that he has had an opportunity to meet with Mr. Keegan and Chief O'Leary in order to provide a comprehensive recommendation to the Board if they are inclined to hear it.

Mr. Gray stated unilaterally these establishments, not the operators but the employees have made egregious decisions, a very cavalier attitude in serving alcohol. This may or may not have a reflection on the owners of these establishments but the fact that nine (9) establishments failed this compliance check in one night is disturbing. They didn't even get to all of the establishments in town so there is a pattern.

These may have been the first violations that a sting has produced; clearly other violations may have taken place that a sting doesn't pick up. It is the fact that nine (9) failed in one night that is disturbing.

Ms. Brue asked Chief O'Leary how frequently he could conduct unannounced stings.

Chief O'Leary stated they could certainly expedite and enhance these activities. In discussions with Attorney DeLuca and Mr. Keegan that was one of the questions that the Chief had been asked. They could certainly accelerate and enhance the number of compliance checks that they do within the community and schedule them so that they would have a higher percentage of challenges and not have 13-19 businesses that weren't open during the time of these compliance checks.

The Chief believes that under the Towns liquor regulations under the penalty phase the Chief believes there is wording as to a mandatory look back within a certain timeframe. In the last two years they had completely rewritten the liquor regulations with Ms. Brue on the committee and they had good input with the licensees to try and make them as clear as possible; both for them to follow and more importantly for the Town to then enforce them.

Ms. Brue stated when they were working on the regulations they had talked about just how to collaborate with the businesses to try and always maintain the high standard that everyone is striving for and maybe this is the time to reconvene a group to talk about can there be additional training in terms of doing internal stings to continue to enhance awareness for the employees.

Chief O'Leary stated there was actually a group that was developed through a result of compliance checks the Police had done in the '90's called "Foxborough Cares" in which Ron Young was involved. Mr. Young was certainly an active member as were other establishments in town and they at times did conduct their own stings. They had red and green cards that they would give out, green being they were challenged and asked for an id and red being that they

failed. At the next meeting after that event there might have been some red faces if they didn't pass amongst their peers.

There is nothing that prevents them from helping one another to be successful so that their staff is aware of it.

In future compliance checks the Chief had a conversation and is awaiting a reply from the District Attorney's Office that perhaps they will go that one step further and the individual that makes that sale has a personal consequence instead of passing it off to the license holder that may or may not have had anything to do with that transaction and has been doing the right things in terms of the mandated trainings, the reviews prior to shift just talking about this important issue.

Ms. Brue asked Attorney DeLuca that if they did actually go in that direction of criminal prosecution would that need to be written into the regulations or is that totally independent of the liquor license regulations that he could initiate that action.

Attorney DeLuca would recommend that the regulations be amended but that it is not entirely up to the discretion of the Board. It would be a matter for the courts to determine. What they are suggesting as part of their recommendation is that the Board would publicly urge the Police and District Attorney's Office to pursue that application process and then put it before those authorities to determine whether or not there is a reason to pursue it.

Ms. Coppola asked if it would be a matter of policy whenever there is an alleged violation like this to submit the paperwork to the District Attorney's Office. Attorney DeLuca stated absolutely.

Attorney DeLuca stated that the facts in these matters are unassailable in terms of the quality of evidence that was obtained here. There is no question whatsoever in terms of the responsibility for that action. Attorney DeLuca would assume that the District Attorney's Office would accept this as a good running start on pursuing a complaint.

Ms. Coppola asked if part of the Town's sanctions and violations it would be noted that the information would be sent off.

Attorney DeLuca stated yes, with a request or recommendation to pursue a criminal matter.

Mr. Keegan stated that the most compelling piece of that information is what Mr. Young had stated earlier was that the person who actually made the mistake is not even here. There is no accountability for that other than the fact that they could possibly lose their position or get suspended.

Ms. Brue agreed with Mr. Keegan and stated that you hear how hard the business owners are working to keep this in compliance.

Attorney DeLuca stated after discussions with Mr. Keegan and Chief O'Leary, their recommendation is:

1. One day suspension to each of the violators to be held in abeyance for a period of six months to a year. During that time the Foxborough Police would do an unannounced compliance check to confirm compliance with all alcohol rules and regulations.
2. The Board makes a request through the Foxborough Police to the Norfolk County District Attorney's Office to pursue criminal prosecution of any person who delivers alcohol to an under-aged person.
3. Each of these license holders report back to the Board with any positive changes or results and recertification or reeducation within that same six months to one year period so that the Board can confirm that all applicable rules are being adhered to.

Ms. Brue asked if their suggestion is that after six months there would be a report from the people that fall into this category demonstrates what actions have been taken and the Board would have another hearing at that point and determine whether they are acceptable.

Mr. Keegan stated that in the meantime there would be unannounced inspections and if in fact we revealed any further actions, any disposition invoked from here would be considered as well.

Mr. Gray stated that everyone agrees the unannounced inspections will take place within the six months. Mr. Keegan stated yes.

Mr. Gray stated that if they fail again everyone will be back at this table with an entirely new issue.

Mr. DeVellis stated that he has had bad experiences with holding things and if you do better it goes away because we are dealing with other situations where they are coming back again with different violations.

Mr. DeVellis stated that sometimes you are only as good as your staff and Mr. DeVellis feels that the staff has let the people down.

Mr. DeVellis looks at the first violation of a letter of reprimand and/or a suspension of three days or both and Mr. DeVellis would like to recommend a letter of reprimand and a three day suspension.

Mr. DeVellis stated that he doesn't have a lot of interest in people coming back to the Board to let them know how they are doing with the new rules and regulations.

Mr. DeVellis stated that he wants the three day suspension. He doesn't say it with any happiness as he knows some of the people but at some point you have to say enough is enough. If you ask for a license and you can't do your job it falls on someone else to say what is it going to take for

you to do your job and Mr. DeVellis feels with a three day suspension the chances of them coming back with whatever rules that they have not working again is a lot better if there is some hard punishment.

Mr. DeVellis stated that he is not in the business of which days are good and which are not for a business they can choose but Mr. DeVellis is recommending a three day suspension and a letter of reprimand.

Ms. Brue asked if Mr. DeVellis wanted this held in abeyance and Mr. DeVellis stated no.

Mr. DeVellis stated that he was also going to suggest that they put a sign at the bar stating they card everyone and if we don't let the manager know.

Mr. Gray stated that they had some other violations this time last year, he believed there were four. The Board had given one establishment a one day suspension and Mr. Gray had to recuse himself from the discussion and he was a little disappointed that they allowed that operator to choose the day they were going to close. It happened to be a time that they were closed in the winter anyone so it really didn't have much teeth in it.

The fact that nine (9) establishments failed in one night and there were a number of establishments that weren't even visited he wondered if they had been visited would we have twelve (12) failures.

Mr. Gray feels there should be teeth in the penalties. He doesn't want to be cruel but the fact is the Board has given a lot of letters of reprimand.

Mr. Gray is on the side that suspension is warranted not to say that the operators don't train their employees and in a lot of cases it was an employee's bad judgment but ultimately management is responsible for it.

Mr. Gray will wait to discuss the amount of suspension but he is agreeable that a suspension is warranted.

Mr. Feldman stated there is obviously a disconnect between the education and training and what is being filtered down to the line staff. There are forty-two (42) liquor licenses in this town, which is a lot. Liquor licenses are not given by right, they are privileges. There are rules and regulations they should be bound to.

We have to send a message. There should be zero tolerance.

Mr. Feldman feels there should be a suspension. Letters are a slap on the wrist, they have no value and it will happen again.

Ms. Coppola stated that she agrees a suspension is warranted. These things happened on a Thursday evening, not a weekend when it is busy and mistakes can happen. This was done purposely so there was no confusion.

Ms. Coppola can't get over not asking for a license or that a license was provided. That license was a vertical license, far different from a horizontal license. This was complete negligence on the part of the servers.

Ms. Coppola stated a letter of reprimand definitely and a three day suspension. She was hoping for at least a minimum of one day but she was open for up to three. Ms. Coppola feels that if her other Board members are on that same page she will go along with that.

This is very serious, last year there were four (4) and this year there are nine (9). When is the message going to get out. This isn't the first time that they have done the sting; they have done the stings in previous years. The owners of the establishments should be expecting it. They should be following the laws anyway and asking for an id.

Ms. Coppola wants a letter of reprimand and three day suspension.

Ms. Brue wanted to clarify with Attorney DeLuca and Chief O'Leary that the three recommendations that were provided to the Board, criminal charges can be initiated at this point.

Attorney DeLuca stated the request that they pursue criminal charges certainly can be made from the Board.

Ms. Brue stated that she understands the frustration of the Board where they find themselves in this position especially this year with so many of these violations happening.

Ms. Brue's concern is that she listened to how hard that management works in keeping their businesses in compliance and her concern is that these are obviously not what they wanted to have happen and she thinks sending the message to the owners is missing the mark; it is the employees that have to be brought up to that same level of accountability and making that request to have that considered for criminal prosecution is a better way to send a message as to how serious this Board takes this.

Ms. Brue believes that each business in this case, it is their first violation, many of them have no history at all and maybe there is one from twenty (20) years ago for one of them. Ms. Brue is just concerned that the Board has to balance their expectation of accountability with what the reality is that the business owners are dealing with.

Ms. Brue supports the recommendation of Chief O'Leary, Mr. Keegan and Attorney DeLuca a one day suspension held in abeyance. She could be open to a one day suspension and initiating the request for criminal prosecution.

The different ways that each of the businesses handle their business as to whether or not they keep those employees on, they have established their level of risk tolerance and so if another sting occurs and they have another problem that is a whole different story.

Mr. Gray stated that when these businesses are granted a license from this Board, they have been in this business for a long time so they know the responsibility of that license and ultimately the responsibility to select and train employees is borne by them.

Mr. Gray is of the mind that the responsibility is shared.

Mr. DeVellis doesn't want to hang his hat on saying we are going to be tough and we are going to make recommendations for criminal prosecution and by 8:30 tomorrow morning we are going to get letters from all of their attorneys saying that it is not possible.

Mr. DeVellis keeps going back to if something happens and the Board doesn't do anything in their control to address it on a community wide basis how do you answer that if an eighteen year old kid drives out and kills someone.

Mr. DeVellis thinks a suspension when they leave this room is going to change their business for the better. Mr. DeVellis stressed that he does not take pleasure in it.

Ms. Coppola stated that when people come before the Board for a new license or change of Manager the Board always states that they are very strict about licensing and they will hold them to a standard.

We really have not held them to a standard. If you are going to hold them to a standard then you do for the first violation a letter of reprimand and up to a three day suspension.

Motion made by Lorraine Brue that Option 1 – Letter of Reprimand and 3 Day Suspension that this is the suggested sanction. Seconded by Virginia Coppola. **Vote 4-1-0 Lorraine Brue was opposed.**

Mr. Gray asked for clarification with regard to assigning dates for the suspensions, what is the mechanism for that.

Mr. Keegan and Attorney DeLuca stated that this is up to the Board's discretion.

Mr. Gray gave a recommendation that given that Monday through Wednesday would not have an impact. He would suggest Thursday through Saturday.

Another option would be to have subsequent Friday nights.

Mr. Gray stated that he is going to make a recommendation that they choose a date on the calendar of a Thursday through Saturday suspension.

Mr. DeVellis stated he is okay with them picking the days as this is a harsh penalty, maybe one day on the weekend.

Mr. Feldman stated that they have to be cognizant of functions at some of these establishments that could impact paying customers and large parties.

Ms. Coppola stated Mr. Feldman made a good point. Ms. Coppola stated that one day on the weekend.

Ms. Brue stated that it could be on a Thursday night as mentioned earlier as this is the night that the offense happened on and they can pick the other two nights.

Mr. Keegan stated that after just speaking with Counsel that the establishments could advise the Board as to what the dates would be. The Board has another meeting scheduled for November 19, 2014. They could advise the Board through Counsel or send us a letter indicating what dates they are. The Board could then invoke that action that night because there is an appeal process they have to be cognizant of as well. Whatever process the Board takes is subject to appeal.

Attorney DeLuca stated that it would be necessary for the license holder to know exactly which of the dates are being imposed because this is relevant as to whether or not they are going to appeal.

Motion made by James DeVellis as part of the violation phase to require a 3 Day Suspension from the sale of all alcohol plus a letter of reprimand and the 3 days to be agreed to by the Board with a recommendation from the license holder. Those three days will be held prior to January 31, 2015 and one of those will be a Friday or Saturday. Seconded by John Gray. **Vote 4-1-0 with Lorraine Brue opposed.**

Attorney DeLuca stated the Board is back here on November 19, 2014 where the Board will have the opportunity to consider that along with the additional hearings they have scheduled for that night.

There will be the matter to take up as to whether the Board will issue a stay. Once the Board does set the dates the Board will need to decide whether or not it will agree to a stay of the imposition of the suspension itself given time to pursue the appeal.

Ms. Brue asked Attorney DeLuca to explain that.

Attorney DeLuca explained that in every instance where the Board issues a suspension there is a right of hearing before the ABCC, it is an appeal that has to be recognized within five (5) days after the imposition of the Board's suspension. If the suspension is scheduled to go into effect imminently, typically the ABCC doesn't have the ability to hear that appeal within the first 30-90 days so it is incumbent upon the license holder to make a request to your Board whether or not you would consider a stay of that penalty during the time the appeal is pending. We are unable to tell the Board how long it would take for the appeal to be heard but at a minimum it is 30-90 days out before we could have a hearing before the ABCC.

Mr. Keegan stated that it is five (5) days with a written decision. Whatever action comes out of November 19, 2014 will be put into a formal letter that will be then issued to the various license holders and they will have five days within receiving that letter to exercise their appeal.

Town Manager Update

Mr. Keegan informed the Board that he had supplied them with copies of the bids for Town Counsel. He provided them also with a letter of a suggestion process in which the Board could have a discussion at the next meeting.

There is still time and perhaps the Board could hold interviews before January 31, 2015.

Motion made by John Gray to adjourn at 8:55pm. **Vote 5-0-0**