

TOWN OF FOXBOROUGH
SELECTMEN'S MEETING
MINUTES
NOVEMBER 19, 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
Attorney Mark Stopa, Saga Hibachi Steakhouse
Mr. Steve Lin, Saga Hibachi Steakhouse
Ms. Annie Chen, Saga Hibachi Steakhouse
Attorney Peter Tam, Showcase Cinema De Lux
Mr. Joseph Norman, Showcase Cinema De Lux
Mr. Graham Sillman, Tavolino
Mr. Thomas Perruna, Tavolino

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 – Saga Hibachi Steakhouse, 295 Patriot Place, Foxborough, MA

Attorney DeLuca swore in everyone that would be testifying at the hearing.

Attorney DeLuca stated to the Board that they have Sergeant Noonan present to provide each of the hearings they have scheduled for the evening. The intention is for Sergeant Noonan to provide that in a summary fashion.

Each of the license holders are stipulating the happening of the event itself is not in dispute.

Each of the license holders will be given the opportunity to address the Board directly with any information they feel is relevant in the facts of their cases.

Ms. Coppola read the public hearing notice for Saga Hibachi Steakhouse.

Attorney DeLuca asked Sergeant Noonan to give his name and assignment.

Sergeant Noonan stated his name and that he was with the Foxborough Police Department.

Attorney DeLuca directed Sergeant Noonan's attention to September 25, 2014 and asked if Sergeant Noonan was engaged in an operation in Foxborough. Sergeant Noonan stated he was.

Attorney DeLuca asked Sergeant Noonan to give the Board a brief description of the nature of that operation.

Sergeant Noonan stated under the direction of Chief O'Leary Sergeant Noonan conducted an alcohol compliance check of all the licensed establishments in the Town of Foxborough.

During this alcohol compliance check Sergeant Noonan had a 19 year old underage operative enter each of the establishments following the guidelines of Sergeant Noonan's department. When the underage operative entered the establishment he was under the careful observation of an undercover police officer.

During this night they had visited twenty-nine (29) establishments of which nine (9) failed.

Attorney DeLuca asked Sergeant Noonan if he had that operative here tonight in which Sergeant Noonan stated yes and pointed him out in the audience.

Attorney DeLuca stated to Sergeant Noonan that he had said this was an operation and procedure according to certain guidelines and a plan set out by the department. Sergeant Noonan stated yes. Attorney DeLuca asked Sergeant Noonan to briefly describe what that was.

Sergeant Noonan explained that they follow the ABCC regulations in regard to conducting compliance checks with identification. During this procedure Sergeant Noonan, the underage operative and the uncover officer review the rules and regulations outlined in the procedures to be followed during this operation.

The underage operative and the undercover officer are explained completely and thoroughly what they are supposed to do and what they are to expect during the operation.

Attorney DeLuca asked if the operative has any identification on him. Sergeant Noonan stated he did his true authentic and valid Massachusetts license which indicates that he is nineteen (19) years old. Attorney DeLuca asked if that was true here in which Sergeant Noonan stated correct.

Attorney DeLuca asked Sergeant Noonan how he positions himself when he undertakes that operation. Sergeant Noonan stated that he is somewhere in the general area. Based on Sergeant Noonan's interactions with most of the establishments he is highly recognizable so he has the undercover officer maintain view of the underage operative.

Attorney DeLuca asked if that undercover officer is in the establishment. Sergeant Noonan stated that he is either in the establishment or within close proximity to the underage operative.

Attorney DeLuca asked if he keeps the operative in his sight line the entire time. Sergeant Noonan stated to the best of his ability.

Attorney DeLuca asked what other instructions does the operative receive with respect to requesting service. Sergeant Noonan stated just to approach the bar or in the case of a package store bring a six-pack to the counter but in this case going to liquor serving establishments he is to approach the bar. When asked if he would like anything he is to request a Bud Light and if he is requested for his identification he would present his true, authentic and valid Massachusetts license. If he was not requested his license then he would proceed with his order.

Attorney DeLuca asked if his order was paid for in which Sergeant Noonan responded yes.

Attorney DeLuca asked if generally a receipt is requested. Sergeant Noonan stated that he asks if he can cash out. They will present a receipt at which time he will make payment and receive cash back and try to obtain a receipt. Attorney DeLuca asked if this operation was undertaken at this location in which Sergeant Noonan stated it was.

Attorney DeLuca asked Sergeant Noonan to give the Board the details of that event.

Sergeant Noonan stated at approximately 6:30pm the underage operative entered Saga Hibachi Steakhouse and made his way to the bar, upon walking up to the bar he engaged the bartender in conversation at which time the bartender asked what he wanted; the underage operative requested a Bud Light. The bartender asked if he wanted a draft or bottle and the underage operative requested a draft at which time the bartender poured him a draft beer, and then left the beer in front of the underage operative. The underage operative took possession of the beer and then asked the bartender if he could cash out at which time the bartender presented a receipt to the underage operative. The underage operative paid for the beer and left the establishment with the receipt.

Attorney DeLuca asked Sergeant Noonan if there was any request for identification in that exchange. Sergeant Noonan responded there was not.

Attorney DeLuca stated he had no further questions for Sergeant Noonan.

Attorney Stopa stated that he had no further questions for Sergeant Noonan and they are willing to stipulate that there was a violation that evening but he had other information to share before punishment gets meted out.

Ms. Coppola asked Sergeant Noonan how crowded the bar was in which Sergeant Noonan responded not crowded at all.

Ms. Coppola asked what night this was, Sergeant Noonan responded Thursday.

Ms. Coppola asked if the manager was on duty. Sergeant Noonan stated he was not sure.

Ms. Coppola asked what the disposition of the bartender was. Was the bartender terminated? Sergeant Noonan stated that to the best of his knowledge he made contact with the manager that next day and advised him of the violation. Sergeant Noonan later spoke to the bartender later in the week that.

Attorney Stopa stated that the Saga Hibachi Steakhouse takes very seriously their obligations regarding liquor violations and their obligation to check for identification. All of the personnel are properly trained.

The unfortunate part of the formula in every business is that if you are the owner you pay attention to detail; you hope that you have good employees and that they are going to address their responsibilities as well. Attorney Stopa can suggest to the Board that the bartender who was in fact fired was a very good bartender. He was extremely conscientious. He will be missed in the establishment because he was the kind of bartender that was fully engaged. He would keep an eye on the tables. If there was a table that looked like someone was going to be approaching being over-served he would pull the waiter or waitress aside and say no more to that table, keep an eye on these people.

Attorney Stopa stated that if the bartender was here and offered testimony, he would tell you that he had a really bad day personally and he was off his game.

The prior practice was if someone didn't appear to be forty (40) years old or older you had to ask for identification. In working with his clients they have now changed that. They are taking identification from everyone irrespective of how old they look and there is a cost and there is a time value to all of that but nonetheless they are addressing it that way.

They are making sure that all their people are being certified or recertified earlier than otherwise necessary and Mr. Chen, Restaurant Manager just went through recertification and they are trying to address the problem that way.

Attorney Stopa stated that these compliance checks are not intended to be a practice of "gotcha". The ABCC has stated that this is a tool to help licensees regarding the perils of serving alcoholic beverages.

This needs to be taken into consideration when you are looking at a business like Saga. They have been open for not even a year. They had very good policies in place; they did everything they were supposed to do and they had one very good employee have a very bad day and made a mistake.

Attorney Stopa understands the Board's frustration that there were nine (9) failures out of twenty-nine (29) establishments but to punish his client to the maximum available under the first offense simply because there were nine (9).

Attorney Stopa wanted the Board to understand that his client had nothing to do with those other eight (8) operations.

Attorney Stopa stated that looking back at how the Board has handled meting out punishment therein lies some of the problem. Last November the Board had four (4) exact same violations as Attorney Stopa's client and they received a letter of reprimand in their file. His client should receive the exact same punishment.

Attorney Stopa reiterated the ABCC's policy on sting operations.

Attorney Stopa didn't feel it helpful to blanket everyone and for the Board to say they were not going to look at the specifics of any one case; all nine (9) that come before them were going to get the same punishment which isn't fair or just.

Attorney Stopa feels that if the Board is trying to make a statement about the severity and how serious the town takes these issues, you have to let people know what the Board is going to do. His clients as well as the other establishments need to fairly understand what is at risk.

Attorney Stopa heard that the Board had some discussion that they were going to start arresting the servers. If that is the way the Board wanted to go terrific; maybe that would make it more serious but he felt that they have to tell people that's what they are going to do.

Attorney Stopa stated that the Board had stated on prior occasions that there needs to be a case by case analysis; a careful decision needs to be made. Attorney Stopa cited the Board as stating last November that the license holder did everything they could and the employee blatantly violated it. Attorney Stopa stated that sounds hauntingly familiar to the exact same scenario his client stands before them this November.

Attorney Stopa stated that his client, Saga Hibachi Steakhouse is before the Board with no prior violations. They did absolutely everything they could to manage their restaurant and bar in the appropriate way; everyone was trained. Irrespective of that an employee screwed up, he was fired; he had a family and lost his job. They have done everything they could possibly do to try and sharpen their business so it doesn't happen again and all they are asking is that they be treated the exact same way those other businesses that went through this last year with the exact same fact pattern were treated because that is ultimate fairness.

Mr. DeVellis stated that he has been consistent. Attorney Stopa had brought up a lot of good precedence; with what has been done in the past and what one establishment expects based on what another establishment got for punishment.

Mr. DeVellis stated that he was going to be consistent and recommend a three (3) day suspension.

Mr. Gray asked if the management was on duty at this time. Attorney Stopa stated that the restaurant manager was there.

Mr. Gray asked if the restaurant manager was able to see the operative. Attorney Stopa stated would she be able to see him at some point, likely; was she on post at the bar no.

Mr. Gray stated that it is painfully obvious that the operative is underage. Attorney Stopa stated that he didn't disagree with Mr. Gray and that it is shocking that the bartender even having a bad day would not pick up on that.

Mr. Gray stated that management hired the bartender, trained the bartender, managed the bartender, and supervised the bartender. Isn't the responsibility fair.

Attorney Stopa stated that the management of the restaurant and bar isn't trying to escape liability. They understand that they are fully responsible for everything that happens in that bar. Attorney Stopa was just suggesting that there has to be acknowledgement that they have to rely on people to do their jobs. You can't possibly watch your employees every minute of every day because restaurant managers have a lot of obligations.

Attorney Stopa stated that his clients jumped to his defense by saying that he helped maintain their responsibilities and the entire establishment not just at the bar but watching the tables making sure that people weren't being over-served. He was diligent.

Mr. Feldman stated that he was not on the Board last November. Mr. Feldman assumes that Mr. Stopa's client received a copy of the rules and regulations of the town as far as liquor licenses. Clearly a first violation allows the Board some latitude up to three days. The Board takes this very seriously.

Mr. Feldman asked Sergeant Noonan if he, Mr. Feldman, had a bad day and goes in for a few drinks and gets pulled over, he's over the legal limit what happens to my license. Sergeant Noonan stated that if he was arrested his license would be suspended.

Mr. Feldman stated that a bad day is not an excuse.

Attorney Stopa stated that he is not saying that it excuses anything he is just suggesting that there is a reason why this Board has discretion and latitude on how to mete out punishment. Attorney Stopa's impression of that is that you take a look at the factual scenario that is before you and you determine on one end of the spectrum there is a certain fact pattern and on the other end of the spectrum is more egregious behavior. Attorney Stopa believes his clients are on the lower end of the spectrum. He believes the Board hit it right on the nose last year when they meted out punishment under the exact same factual scenarios with letters of reprimand and he thinks that is appropriate.

Ms. Coppola asked Sergeant Noonan if the id was asked for in which Sergeant Noonan stated that it was not.

Ms. Coppola asked Sergeant Noonan what day of the week was it. Sergeant Noonan replied Thursday.

Ms. Coppola stated if it was a Thursday night, no one was in the bar and id was not asked for what happens on a weekend when it is very busy. How do you know the bartender can't have a bad day on a Friday or Saturday.

Attorney Stopa stated it was a fair comment but he doesn't know. His clients are stipulating that this violation happened that night just as Sergeant Noonan suggested it did.

Ms. Coppola stated that when you receive a license, the manager's name is on the license as are the individual names of the Board of Selectmen so they all have a stake in this. The Board relies on that the manager is going to properly train their people. A properly trained person doesn't need their boss standing beside them.

Your bartender failed to comply with the laws of Massachusetts and the rules and regulations of the Town of Foxborough. He didn't do his job even though they were TIPS trained and they are reminded all the time. When the kid came in he was not asked for his license.

Ms. Coppola stated that if Attorney Stopa calls this a learning experience at what point do you learn.

Attorney Stopa stated that is why there are subsequent violations, we have discretion within the first violation as to how egregious the facts are and then you have subsequent violations so if someone doesn't learn, very clearly this Board knows how to mete out punishment to do that.

Attorney Stopa stated they are not trying to hide from the facts here he is just trying to suggest that no matter how good the employee is they are still a human being and human beings make mistakes all the time. This bartender made a mistake; he lost his job. Nobody got hurt, it was part of a compliance check, his bosses are getting hurt because they have to be here and deal with this and now they have to ramp up their efforts.

Ms. Coppola stated when this obviously young looking person comes in asking for a Bud Light, how can he possibly say that the bartender was properly trained and following his training.

Attorney Stopa stated that he didn't say that he was following his training. He was saying that he was properly trained and he had previously performed well at his job. Attorney Stopa has no idea how he could have possibly looked at that young man and say yeah here is a beer and neither does his client. They are very frustrated by that because they had asked Attorney Stopa what else could they have done. They had no idea that this man was going to screw up this way.

He could have been the all-star bartender of the United States and out of the blue screws up or he could be the guy Ms. Coppola suggested and screwing up every week but his clients didn't see that and those facts aren't before this Board so Attorney Stopa can't say that happened before. What Attorney Stopa can say is that they believed in his confidence and they know he was properly trained because they saw to that.

Ms. Coppola stated that the name that is on the license has the responsibility for the functions of the establishment. Attorney Stopa stated without question and they are standing up and taking that responsibility seriously.

Ms. Coppola stated the rules and regulations are given with every license and it is incumbent upon the manager whose name is on the license to read these. Knowing what the options are on the license. The Board has the option of meting out the discipline, that is the Board's option and she believes they have exercised their options in the past.

Attorney Stopa said there is no question. All they are asking is that the Board treats them as they did those four (4) licensees that were before this Board last year on those exact same facts. Those people had the exact same responsibilities; they got those rules and regulations; they each had an employee who surprised their boss by screwing up and all but one of those employees got fired and Attorney Stopa understands in one circumstance where the employee wasn't fired that licensee wasn't treated the same way. They got a little more punishment because perhaps they didn't fire that employee.

Attorney Stopa stated that it is this Board's prerogative to state that from this point forward they are going to give out three (3) day suspensions on every violation. Attorney Stopa's comments to the Board is that it is colossally unfair in the middle of it to change their mind and say whatever they did last November we aren't going to do, you are already here so we are going to suspend you for three (3) days. Attorney Stopa doesn't think that educates and he doesn't think that is good for business and if the Board's good sense tells them that's what they are going to do going forward then they should proclaim that is what they are going to do but treat the people who are before you as fairly as you did the last one's that came through with the exact same circumstances that is where Attorney Stopa is trying to go with his comments.

Ms. Brue stated in the actions that were taken to make corrections so all patrons are being carded now does Attorney Stopa think his clients would be open to self-conducted compliance checks. Attorney Stopa asked Ms. Brue to define what that is. Ms. Brue stated for example the manager could spot check and make sure that everyone's license has been checked. Attorney Stopa stated they would certainly welcome that.

Mr. DeVellis wanted to remind the Board that when people talk about precedence of what the Board did last year or the year before, this Board is made up of five (5) individuals and each year they have members that could potentially be leaving and new members coming in. To look back at what they did as a Board last year, keep in mind that this was not the same Board as last year nor the same Board as it was two (2) years ago. So to hold the Board to a standard of whatever anybody did the year before is not really fair because that is not what this system is made up.

Mr. DeVellis further stated that if they are talking about precedence, the Board has tried the letters of reprimand before. Mr. DeVellis is looking at this not from the nine (9) violations or the numbers from before, but this individual one. It has been less than a year, we have a violation regardless of what happened a year, two or three years ago, it is a new situation. If it was crowded, a bad id, the lighting or something but not to ask for it Mr. DeVellis stated he didn't know how much more of a violation you could get by not even asking to start the process. That is paramount. Mr. DeVellis wishes there was an excuse that it was too crowded but that it is a bad day doesn't even come close to being an excuse.

Mr. DeVellis keeps hearing that it is a learning experience; the Board is learning as they go along as well. If there was one beer and the kid sat there for two or three more beers and he drove out and killed somebody or himself would the Board be having this same argument. What does it take to be a serious issue.

Mr. DeVellis believes that not asking for the id is probably the most serious violation that you can get with these violations.

Ms. Brue stated what she is hearing is that anything could be considered a first violation. Over-serving could be the first violation. The sting which is correctly stated is an educational tool by the ABCC. Ms. Brue believes that is the difference of what is trying to be explained here.

Ms. Brue believes that is why the discretion is in the regulations these are guidelines and a terrible first violation could jump up to the third level potentially. Ms. Brue thinks what she is hearing that on the scope of what is a first violation there is a wide range of events that could happen.

Mr. DeVellis agreed that he is not disputing that there is some subjectivity here. Mr. DeVellis stated that he hasn't been a bartender but he thinks it would be more difficult to understand if someone was drunk or not; that is probably less in Mr. DeVellis' eyes because it is more subjective. Not asking for an id is blatantly a violation. Mr. DeVellis was hoping that there would be some circumstance that it was a mistake but it was negligence.

Motion made by Ms. Brue the Board had finding of fact the employee of Hong Yi Inc. d/b/a Saga Hibachi Steakhouse served alcohol to a minor as outlined in a letter to the Board of Selectmen dated October 20, 2014 and also the testimony as presented and the business owner accepting these facts as well we accept the findings in the letter as presented. Seconded by John Gray. **Vote 5-0-0**

Attorney Stopa inquired if the Board was going to hear the other two cases and then reconvene. Ms. Brue stated yes.

7:45 pm - Public Hearing Alleged Alcohol Violation – Showcase Cinema De Lux, 24 Patriot Place, Foxborough, MA

Ms. Coppola read the Public Hearing Notice.

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

Attorney DeLuca swore in all individuals testifying at this hearing.

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

Attorney DeLuca drew Sergeant Noonan's attention to September 25, 2014 and asked if he was engaged in a sting operation. Sergeant Noonan responded that he was. Attorney DeLuca asked Sergeant Noonan to describe that to the members of the Board.

Sergeant Noonan stated this night under the direction of Chief O'Leary Sergeant Noonan conducted an alcohol compliance of all the licensed establishments in the Town of Foxborough.

During this alcohol compliance check Sergeant Noonan used an underage operative who is 19 years old which was verified by his authentic, true and valid Massachusetts driver's license and was assisted by a plain clothes undercover officer.

Attorney DeLuca asked if Sergeant Noonan had occasion to visit the licensed establishment that is identified as Showcase Cinema De Lux. Sergeant Noonan stated he did.

Attorney DeLuca asked Sergeant Noonan to describe the premises for the Board.

Sergeant Noonan stated Showcase Cinema De Lux is the movie theater located at Patriot Place. The bar that they entered was on the first floor of the establishment and when you walk into the foyer to the right is the bar and to the left where you purchase tickets and straight ahead are the concession stands.

Attorney DeLuca asked Sergeant Noonan where he positioned himself in this particular instance. Sergeant Noonan stated that in this instance he was in the lobby watching the operative through a glass window.

Attorney DeLuca asked Sergeant Noonan what he saw.

Sergeant Noonan stated that he saw the underage operative enter the bar area engage in a conversation with the bartender at which time Sergeant Noonan observed the bartender serve him a draft of beer.

Attorney DeLuca asked following that observation if Sergeant Noonan did any further investigation to determine whether or not there was any identification requested. Sergeant Noonan stated that based on his observations he did not see the underage operative produce any identification and upon talking to him after he left the establishment he confirmed that he was not asked for any identification.

Attorney DeLuca asked if there was a receipt recovered in this instance. Sergeant Noonan responded there was. The underage operative asked if he could cash out at which time the bartender presented him with a receipt, he made payment, received change and left the establishment with both the change and the receipt.

Attorney DeLuca stated that he had no further questions for Sergeant Noonan.

Attorney Peter Tam introduced himself as Special Counsel for National Amusements, in this case Quincy Amusements Inc., stating with him is Joseph Norman, Manager of Record Showcase Cinema De Lux.

Attorney Tam stated to the Board he was not going to repeat any objections the others have made in the context of first time incidences with respect to any of these establishments.

Attorney Tam stated that Mr. Norman was there fully accepting of responsibility and will outline very briefly the actions he has taken since he was notified by the Sergeant and by Chief O'Leary of this incident. Attorney Tam believes the actions he has taken from his perspective reflect the degree of seriousness and responsibility.

They collectively take this with utmost seriousness. Attorney Tam wanted to convey that to all of them. Attorney Tam hasn't been before some of the Board members but his involvement with some of these establishments goes back many years and he worked with the Chairman of the Board and Chief O'Leary on the revisions of these very regulations for which they were discussing tonight.

Mr. DeVellis is correct in that discretion is broad that this Board has to impose. At the same time there is a word that has some meaning in the regulations and it goes to your discretion as a Board and as a license granting authority and that is the word grievousness. Attorney Tam believes that the Chairman is correct in that ultimately there is an incremental concept contemplated by the regulations and he knows the Board is all fully aware of that but in this instance the primary concern that he has heard from the Board and others including the Chief is in the sheer number of violations here.

The Board can look back to see how many but Attorney Tam hasn't seen how many are first time violations such as with the Cinema. The Board's frustration and communities frustration is understandable but at the same time with compliance checks and previous counsels point about these compliance checks being for education is in fact true. Those aren't Attorney Tam's words or his; those are the words of Ted Mahoney of the ABCC, the Chief Investigator. They are intended to ensure vigilance but the Board's discretion is broad.

Attorney Tam completely agrees with Mr. DeVellis' concern about this Board being different from Boards of the past and consistency amongst similar categories for this Board seems to carry some logic.

Attorney Tam also appreciates the concern about due process and expectations and that is something that the Chairman and he had discussed in the past and that is why it was so important to establish some expectations. Attorney Tam believes that is what the Board is hearing from some of these restaurants who are extremely beneficial to the town. In this instance there are no previous incidents and no complaints. This is a relatively quiet restaurant which is an amenity for the movie theater and without this young gentleman coming in they would have gone about their business.

Without there being a compliance check it is conceivable that they would have never made a single violation. There would have never been one of the egregious examples that Mr. DeVellis indicated.

The egregiousness of the offense, the grievousness of it as your regulations suggest really is the key word when you talk about escalation and your discretion. That being said Attorney Tam wants to give Mr. Norman the opportunity to convey what he has conveyed to the Chief in terms of what he's done in terms of his review. He has outlined it in a letter that he believes the Board has. Mr. Norman provided that to both Mr. Keegan and Chief O'Leary.

Mr. Norman thanked the Board for allowing him to speak regarding their failed compliance check at the theater occurring on September 25, 2014.

Mr. Norman wanted to assure the Board and community that he takes full responsibility for what occurred and understands and appreciates the frustration that everyone feels this evening. Ultimately the results of the failed compliance check falls squarely on the shoulders of the person whose name is on the liquor license and that person is Mr. Norman.

Mr. Norman takes responsibility of his staff member that night. His actions that evening do not represent how seriously National Amusements and Mr. Norman approach alcohol service and literally go against the grain of the extensive training their staff receives.

Mr. Norman wanted to recap the events that have taken place since the failed compliance check and review what their training protocols are.

The employee in question was terminated by Mr. Norman personally before the employee could work another shift. Additionally Mr. Norman scheduled an alcohol awareness class for all employees that engage in the sale of alcohol. The class was conducted by Master TIPS Trainer, Mike Marcantonio and in Mr. Norman's opinion he is the best in the business.

The class took two hours to complete and focused on carding, identifying levels of intoxication and how to handle real life situations regarding liquor service.

Chief O'Leary was gracious enough to meet with Mr. Norman and reviewed the steps that they had taken and Mr. Norman asked him if he felt they should do any additional steps. At that time Chief O'Leary stated that he felt that he was comfortable with the actions they had taken.

Mr. Norman recapped everything in a letter to the Chief which again Attorney Tam stated that he had provided to the Board.

The company and Mr. Norman hosted three (3) annual training sessions for the Norfolk County District Attorney's Office as part of their annual Alcohol Awareness Drive and TIPS training. They literally just completed a class within the last two to three weeks. They have also hosted two (2) Foxborough Senior Graduation All Night Parties in an attempt to promote underage drinking on graduation night and they are actively starting the planning of a third.

Finally, all of Mr. Norman's staff are required to attend semi-annual meetings at that point they always review alcohol awareness so twice a year they also receive a refresher in alcohol awareness.

In addition to those points they also schedule police officers for Friday and Saturday nights at the theater imparting the law enforcement presence available to make it known that the theater is a safe and an inviting place to go where activities such as underage drinking will not be tolerated or condoned.

Mr. Norman hopes the Board will look at all of the points just mentioned and understand that the actions of the bartender that night do not reflect at all the mindset of the company. His actions are not in line with their expectations and should not be construed in any way of their corporate culture or their level of complacency that they allow or tolerate in any of their locations.

Attorney Tam stated that they will be accepting of the consequence and decision that the Board makes. Attorney Tam doesn't expect that the opinion of the Board is going to change, he thinks this is reflective of Mr. DeVellis' comment in terms of consistency. At the same time Attorney Tam wanted to caution the Board that the incremental ratcheting that he mentioned and that is contemplated is real and it's built in and that doesn't change based on the composition of this Board. Generally Attorney Tam has only seen that ratcheting go one way. Attorney Tam has only seen penalties get more severe and he shares in their frustration. It is surprising that there is this sheer number of notices of violation. Each one of them they as a Board have to struggle with independently. Attorney Tam asks himself why this many. He reread and went through the Chief's order and it looked very clear to him that all the guidelines were followed. Mr. Norman indicated that he received notice. The publication in the paper was there, it was very broad it seemed to focus on the shoulder tap versus the actual compliance check within restaurants and it was very early.

Attorney Tam believes the Board will have varying issues of compliance from year to year but ultimately the frustration that he has heard from at least one Board member was that they are tired of this, the letter of reprimand doesn't seem to be working. Attorney Tam doesn't believe that this is the case but will leave that up to the Board. In this instance you don't know if it's working if you have never gotten it, the point being Mr. Norman will never know if it works if he never receives it.

If Mr. Norman doesn't have the opportunity to fix his problem, if the Board just slaps a very onerous sanction on him which has big economic consequences and he knows the Board is aware of that. This is an entertainment complex, there are cinemas, people pay a lot of money for a Lux level seat where there is some expectation. Mr. Norman will have to deal with that. Attorney Tam doesn't expect the Board to have a lot of sympathy but it is a real impact and Mr. Norman will have to deal with that impact at a much larger level than a simple restaurant.

Attorney Tam's point being that this Board whether it being comprised of you five (5) or another five (5) in a couple of years may have to deal with a repeat violation and he thinks it's fair to express frustration at those incidents. Attorney Tam believes it is less justifiable to take it out and react on a first time offense.

Mr. Feldman stated in his comments that underage drinking will not be condoned. Mr. Feldman asked why now, why wasn't that their stance before. Mr. Norman stated that it has never been condoned and that was the point that he was trying to make. They go through countless training sessions, every six months they do the refresher, they have TIPS certification for all of their staff; they don't tolerate it. He was simply trying to state with the police on site hopefully underage people look at that police officer as a deterrent.

Mr. Feldman asked what their average turnover for servers is. Mr. Norman stated that they maintain over half his staff and the server in his restaurants have been there since they opened.

Mr. Feldman stated in his opinion the most egregious offense is serving a minor. Attorney Tam stated that he would not disagree with Mr. Feldman but that in his opinion there are much more serious offenses and he doesn't believe those are before the Board this evening and Mr. Feldman hasn't had to deal with them. Attorney Tam has been a bartender so he knows there are much more serious offenses than serving a minor.

Attorney Tam takes this seriously. This is an issue that is important to him as he has children as well but at the same time he disagrees with Mr. Feldman in that over-service which leads to a horrendous accident is in some way less serious than serving a minor during a compliance check.

Ms. Coppola stated once again there was no id asked for. Once again how crowded was the establishment on a Thursday night. Mr. Norman stated that it was not crowded at all.

Ms. Coppola asked how this bartender would have handled a crowded weekend night. If when there is hardly anyone in the bar and a very young looking person comes in and he doesn't ask for id.

Ms. Coppola stated that they might not think something like this is a grievous offense but it really is. The Town of Foxborough goes through a lot of time trying to do programs with the schools and trying to stop underage drinking and it is so easy for a bartender to say "let me see your id". This is the simplest thing you can do. It doesn't take much training for someone to know that if they are serving alcohol to someone that person should be twenty-one (21) years of age.

Attorney Tam didn't disagree with Ms. Coppola he wanted to make it clear that in his terms about the word grievous in the regulations and having meaning and significance the chair will acknowledge that in this instance if you take the position that the first instance in a sting operation is grievous and therefore warrants a very punitive sanction, the most punitive sanction then what do you do, there is a scale ultimately and he knows this Board will have to deal with some repeat incidents. Ultimately if you start the floor at a very high scale it is going to become very difficult for the Board to deal with those ultimately that are most grievous.

Attorney Tam doesn't disagree with Ms. Coppola or Mr. Feldman of the seriousness of this. This is Attorney Tam's personal opinion and not that of Mr. Norman or his organization. The reason why he brought it up is that he has had that context over the past dozen years. He has

worked very hard with Ms. Brue and others in order to allow and facilitate the economic development that has occurred in town. The meals tax and the significant new tax revenue that comes with these restaurants and yes with it comes compliance checks and ultimately violations. It is a very difficult issue and he doesn't disagree with any of this.

The Board is going to have to struggle with this for years to come. There are a number of licenses in town. Attorney Tam maintains that they serve a very valuable benefit and he knows that Ms. Coppola agrees with that in advocating for additional licenses to facilitate further economic development. Attorney Tam's only point is that it needs to be a manageable process and the frustration that this Board feels he thinks is best directed at those that do not learn from past mistakes, that is his only point.

Attorney Tam stated that they are going to be accepting of the consequences that the Board ultimately deems necessary.

Ms. Coppola stated that the rules and regulations do provide for the remedies for a second and third offense and they do go up. The Board will have no problem if someone commits a second offense meting out what the Board feels is proper for a second, third or fourth violation.

Mr. DeVellis stated for clarification as Ms. Coppola stated that there are first, second and third violations but nowhere in those first, second and third does it talk about grievous. The place that grievous comes in is "if the Board finds at its hearing that the license holders actions were grievous the Board made add an additional violation to this."

If it isn't grievous then the Board is still within their bonds. If the Board feels that it was grievous they are within their bonds plus they can add something.

Mr. DeVellis doesn't want the Board to say that we can't do this because it is not grievous. Grievousness is above and beyond these regulations.

Attorney Tam stated that they are guidelines and that he agrees with Mr. DeVellis. Grievousness enters into and can be a plus factor for this Board. That was the understanding. It is written a little awkwardly in the paragraph following the violation.

Attorney Tam's only point was that ultimately it becomes very, very burdensome on someone that hasn't learned a lesson and that is intentional.

Attorney Tam stated having heard from Mr. Norman that the Board knows how seriously he takes this. They are going to be accepting of the consequence. Attorney Tam fully expects that it will be consistent with the other violations tonight. Attorney Tam knows that this Board has acknowledged that they are changing their perspective on these first time incidents and in fact there will be no more letters of reprimand for a first time incident as long as this Board is of this consensus.

Ms. Coppola stated that the Board will also be sending a letter of reprimand in addition to the suspension but also they know that Mr. Norman is taking this very seriously but the Board is taking it very serious to, that is the Board's job they are elected to do that.

Ms. Brue asked if they had a discussion about carding all customers. Mr. Norman stated that during their TIPS training they were trained to card anyone under the age of 40 that didn't have lines on their face. At their Lux level they card everyone that goes upstairs and they have since implemented that at their Studio as well so everyone that purchases a drink at Patriot Place Cinemas now get carded.

Ms. Brue asked if they would be open with working with the Chief on conducting self-compliance checks. Mr. Norman stated that he is open to anything that will help him better manage liquor service to include working the Chief.

Motion made by Lorraine Brue in finding of fact that the employee of Studio 3 Restaurant Showcase Cinema De Lux served alcohol to a minor as outlined in the letter to the Board of Selectmen dated October 20, 2014 and the testimony given and we accept the findings and testimony as presented. Seconded by John Gray. **Vote 4-1-0 with Lorraine Brue Opposing**

8:10 pm - Public Hearing Alleged Alcohol Violation – Tavolino, 274 Patriot Place, Foxborough, MA

Ms. Coppola read the Public Hearing Notice.

Attorney DeLuca asked if they have agreement from the license holder to move forward with the hearing ahead of schedule.

Attorney DeLuca swore in all parties testify at this hearing.

Attorney DeLuca asked Sergeant Noonan to state his name and assignment.

Sergeant Noonan introduced himself to the Board

Attorney DeLuca asked Sergeant Noonan if he was engaged in a compliance check operation in September of 2014. Sergeant Noonan stated he was on September 25, 2014 under the direction of Chief O'Leary Sergeant Noonan conducted an alcohol compliance of all the licensed establishments in the Town of Foxborough.

Attorney DeLuca asked Sergeant Noonan if he had occasion to visit Tavolino at 274 Patriot Place. Sergeant Noonan stated he did.

Attorney DeLuca asked Sergeant Noonan to describe the premises. Sergeant Noonan stated that Tavolino is a restaurant that provides liquor service and also has a bar area within the restaurant area. Attorney DeLuca asked how big is the premises. Sergeant Noonan stated that it is a pretty good size restaurant. The bar is semi-circular with seats around the bar inside and outside.

Attorney DeLuca asked Sergeant Noonan if he had an operative with him that evening in which Sergeant Noonan replied he did.

Attorney DeLuca asked Sergeant Noonan to describe to the Board how the operation commenced.

Sergeant Noonan stated that prior to commencing this compliance check they reviewed the department's policy on conducting a compliance check with identification the underage operative was explained to him in detail what was expected of him. Also the undercover police officer was explained what to do.

Attorney DeLuca asked Sergeant Noonan how this operation commenced.

Sergeant Noonan stated at approximately 6:18pm the underage operative entered Tavolino's and made his way to the bar. Upon speaking to the bartender, the bartender asked what he would like to drink; the underage operative responded a Bud Light bottle at which time the bartender proceeded to serve him a Bud Light Bottle.

Attorney DeLuca asked Sergeant Noonan where he was located during this operation in which Sergeant Noonan responded that he was out in the bar area.

Attorney DeLuca asked if there was an additional officer present inside the premises.

Attorney DeLuca asked if information was obtained from speaking with that officer. Sergeant Noonan responded yes, the undercover police officer observed the underage operative to be in possession of an alcoholic beverage, a Bud Light bottle.

Attorney DeLuca asked if the underage operative was asked to produce identification. According to the underage operative at no time was he asked to produce his identification.

Attorney DeLuca asked following the service of producing the alcohol to the operative was there then payment made for the beverage. Sergeant Noonan replied there was, he asked the bartender after being served the Bud Light bottle if he could cash out at which time the waitress presented him with a receipt at which time he made payment, received change and then left the establishment.

Attorney DeLuca stated that he had no further questions for Sergeant Noonan.

Mr. Sillman stated to the Board that they have no attorneys. Mr. Sillman stated that he was the owner of Tavolino's and Mr. Perruna is the Manager of Record. They work very closely in the operation and management of the restaurant. If the Board goes back to when they were first licensed they didn't retain counsel then either. They are a very small operation.

They will be presenting basically the facts. They do not dispute any of the presentation and they apologize to the Selectmen. They didn't want to be taking up their time doing this tonight. Their

intention is to spare them from ever having to talk to us in any other hearing like this in the future and they are taking steps to make sure that happens.

They want to do better than that and the fact that they didn't was kind of a wakeup call for them.

They are going to outline at this point some of the steps they have taken. They include some lasting changes in their operation not just that they sent this person for training right now.

In a larger sense they did step back and took a look at their own policies and procedures. They did review Foxborough's rules and regulations and they did look up outside also for some advice and feedback.

We later spoke with outside parties including an ABCC Investigator Nick Bellis. A risk manager from their insurance company, Mike Marcantonio, Chief Paul McDonald from the Hyannis Police Department, The Hyannis main street district as kind of a hospitality district and later in the process we reviewed our plans for incident reporting, internal compliance checks and training with Chief O'Leary. Just to review some of the steps that they decided to take at that point Mr. Perruna is going to go over that.

Mr. Perruna apologized for taking up their time tonight. It is embarrassing for them to have to do this but it happened and we have to move forward. He has been the General Manager of the restaurant for 5 ½ years and has been employed at Tavolino and Better Foods for six years. This is their first violation also.

They have been a good community leader in our restaurant for both alcohol service and in the community. They take great pride in having their business in Foxborough and want to continue that.

Some of the steps he is going to go over are steps they have done in the past and some that have been revised and improved so that this does not happen again.

Mr. Perruna thought the biggest thing is a cultural thing they are doing in the restaurant getting their staff to be more vigilant in the service of alcohol and understand even more how important every drink that we serve is. Every guest that comes in whether it is over-serving someone or not over-serving someone or serving a minor.

They established a cultural vigilance towards responsible alcohol service. All managers, all servers and bartenders have all completed TIPS and they are in 100% compliance of all TIPS certification right now.

They set up an in-house training for all their staff which included busboys, food server, hosts and kitchen staff that he conducted personally over the last couple of weeks. This was because prior to our servers and bartenders a host greets people at the front door and observes behavioral cues that might set them off so that they could go to a manager, bartender or server to say something.

They have an open kitchen and a customer could walk into the kitchen and get lost on the bathroom or front door so that is why we trained every employee in the restaurant in our in-house training.

They did review their alcohol policy and they have made some changes to it. They have implemented an alcohol incident report log that was recommended to me by Mike Marcantonio and we are checking every day in the log the closing manager is responsible to sign their name saying they had no alcohol incidents today and if they did have they would log it and refuse service to guests sitting at table 92 had an expired license, underage or if they had an incident where they observed bad behavior in a person that we could assume had too much to drink we decided to shut someone off they are logging that so that will be done on a daily basis.

We have current 2014 id checking books available to the staff. Mr. Sillman and Mr. Perruna met a few weeks ago with Chief O'Leary to have him review what they have done in the past and what we are doing going forward and to seek his advice and recommendations on what we are doing. He did hire Mike Marcantonio also. He came to Tavolino's and ran a private TIPS certification for all of management and staff that needed to be retrained. Mr. Perruna personally reviewed the Foxborough rules and regulations for alcohol service and shared that with their serving staff.

On a daily basis they always do pre-shift meetings at the restaurant and we will include the proper and responsible training of alcohol service at the pre-shift meetings. They also participate in the designated driver program at Patriot Place and internally they also always offer complimentary refillable soft drinks to anyone that tells them they are a designated driver.

That is what they have done to improve their alcohol service at the restaurant.

Mr. Sillman stated that just to add a few things to that they mentioned that this was kind of a wakeup call and they wanted to change some of their policies. Honestly they thought they were a good operation before then so this was a hard thing at first for us to approach because we were saying what else do we do. In talking with some very savvy and knowledgeable people who have dealt with this from different angles whether it was a police department or the risk manager from the insurance company one thing that we kept coming back to was that we still think this is a vulnerability and we still need to work on this.

There is a one on one interaction that can happen over and over constantly all day long and it happens so constantly and so rapidly you can't come up with a system that monitors it every single time. Mr. Sillman can't be the owner and watch every single one. They have to instead develop some sort of an arrangement that makes sure that these one on one interactions occur in the best possible way. Again, that gets to everything they got including from Mike Marcantonio was all about rules compliance and we were trying to get past that and being more of a culture where everyone has the right mindset and you are just vigilant, you are on your toes. One of the issues that came up that night that we haven't addressed is what happened to Amy, the bartender. She was suspended immediately and remember this is a wakeup call this is something they had to investigate and in fact the initial reaction to the manager on duty was that she has to be terminated. They feel that they as a restaurant owner have some responsibility there, they don't

necessarily have the best data on what to do with a particular employee based on a single incident because it actually isn't based on a single incident. Her employment file she has worked more than 1,300 shifts at the restaurant since she was hired. She has an exemplary record including some documented incidents where she has done the right thing in the right way in some sticky situations. She is not just someone that has been around and they are just fond of this person. She is a good employee and we used her to train other people and of all people to fail it can happen to anybody. So what do they do, are they just sitting ducks. This was a very hard question with us so they felt that they must make everyone more aware and on their toes and they had to figure out ways to get to that.

They actually restructured some of the bartender's jobs. The Board has asked a lot of questions tonight focusing on "it wasn't a busy night was it". They would tell the Board in their own risk analysis of their operations a busy night is one of the safest possible nights. When there is a game night they don't have to tell everyone to be on their toes, they already are. When it is a busy night instead of one bartender on the bar, there are three bartenders on the bar and they divide their jobs and we have special teams like NFL has special teams. Everyone is doing different things someone is just doing service bar. On a quieter night you are all a jack of all trades. There might be a late delivery and the POS computer system is a bit buggy and it's not working so everyone's orders coming into the kitchen is wrong. You are by yourself.

Also, on a busier night they have food runners so at their particular restaurant almost all of their orders even at the bar come with food, it's not just a drinking place so it gets more complicated if you don't have a food runner. You have to leave the bar and retrieve the food. A point to out there and it was just one element of what they were talking about in that they need to streamline the bartender's job to cut down on distractions and simultaneous multiple plans on attention. That was pointed out to them by their risk manager. Believe it or not what appears to the bystander as a quieter night could be a more hectic shift for that bartender compared to a busy night with three bartenders, food runners, extra hosts and two managers.

A final thing about the incident report log that Mr. Perruna talked about beyond reviewing and managing specific cases the manager look together at the full book once a week so beyond sides a case by case they are looking for trends at our Saturday pre-meal meeting that is a special one where they do go things we looked at in the past week.

Again, instead of just saying look at every id or instead of saying at everyone shift meeting okay everyone be aware of alcohol service they are trying to be very specific and bring up very specific instances like this is the type of thing that could happen. You say to a cook that says what do I have to do with alcohol service. You say well that was really funny when that guy stumbled into the kitchen wasn't it. Instead of you just saying that this was funny and laughing together get out there and alert a manager that there is something wrong with this guy and head to that table.

Overall again, they want to go beyond following a list of rules because they are very worried about that one on one interaction. They thought they had good operation before and they fell down here.

Mr. Sillman wanted to point out that they passed every other compliance check and there have been others.

At this point understanding how this hearing is going Mr. Sillman understands that they are not going to get a chance to speak at the hearing again so I will briefly express what has emerged as a pattern that everyone is bringing up in the Selectmen's decision on each of these hearings.

From the January 17, 2014 letter from Chief O'Leary that was in the hearing packet. They point to what has been their relationship with the town in managing their operation. As the Chief stated they look forward to continuing our partnership in the Town of Foxborough. Even what happens outside of here we have already continued that with the Chief after their very embarrassing incident.

This was a serious violation, they are taking it seriously and they do work with the police department.

Mr. Sillman wanted to address that there is a concern that nine (9) failed on one night. Tavolino's is not part of any group of nine (9). Tonight here you are addressing a single licensee not the Patriot Place liquor licenses, not the Route 1 restaurants and not the Kraft Group it is Tavolino's. It has always been them. This was the licensee before there was a violation and this is a licensee now they aren't all at the meeting they still have one manager at the restaurant right now because we are open.

Just to give the Board some perspective I feel I have an obligation to do this because they are very concerned about the position being taken by the Selectmen in terms of how they operate in the Town in the long term. Mr. Sillman shared with them a conversation they had with the Town of Barnstable. Mr. Sillman initiated this because he has connections on Cape Cod and he saw this in the newspaper. They did a compliance check and they had one failure out of fifty (50). Mr. Sillman called Chief McDonald and asked how he does that and his answer was that this was a very good year don't think it is always this way. They did have fourteen (14) failures two years ago.

Mr. Sillman told the Board that there are a lot of ways of managing the relationship with their licensees and they can work with them a lot of different ways it just doesn't have to be one lever that's pulled called the punishment lever.

Mr. Sillman stated that it was noted that "we have given out a lot of letters of reprimand" and on that basis Mr. Sillman is actually on the side that a suspension is warranted. As Selectmen you do have the right to be frustrated however if your point is "we have given out a lot of letters of reprimand" that that is relevant to Tavolino's case here tonight they would respectfully disagree. They have never ever appeared before you previous to this episode and there have been compliance checks in the past and they have been involved in them and they have never appeared before the Board.

They are unhappy with the latest compliance check, they have been subject to them before, the results are a matter of public record. In preparing the record and thinking about this the Board

can say that there were nine (9) failures on one day but Mr. Sillman would argue with them that it is equally valid to state that each licensee has had “x” number of complied compliance checks, passes and that could have valid place in the record you consider but it was not added.

In addition outside of compliance checks Mr. Sillman provided the Board with hard data about their everyday performance. Tavolino’s has served more than 500,000 alcohol beverages without one violation before they had their compliance check. If any of the Board members work in the health field or you are in manufacturing that is better than six sigma quality. Amy the specific bartender in question worked more than 1,300 shifts without a violation and she did have a documented record of taking correct and appropriate actions in other situations.

Getting back to Amy Mr. Sillman will address you expressed concern over the actual service person. Don’t think that there wasn’t considerable debate about what to do with this bartender. What settled it for us was this; this has happened we need to operate going forward and again we kept on returning to the fact this one on one interaction that happens constantly over and over is really where we are most vulnerable. We can do all kinds of planning and structural changes and operational changes but there are going to be individual employees where they can’t hear what they are saying in front of a customer taking an order. They can’t micro-manage that all the time.

Besides all the other information about their past record the point was made from all the other employees we have now we can point to one least likely to ever make this mistake again. If we had terminated this employee we would have been faced with hiring someone else or putting them in the position and that will be an unknown person. Of course we would train them and tell them about all of our policies and we would be dealing with a bit of a wild card there.

We were very unhappy and Amy did suffer some consequences and she had to attend retraining. Beyond that there was a very deep discussion about how we operate and again we also took some responsibility ourselves because they realize that some of the situations that we put an employee in operationally make it harder for them to do their job really well and they are not just going to parrot a policy and then throw them out if something goes wrong. They had some things that they had to change as well.

Mr. Sillman wanted the Board to know it was taken very seriously. Addressing that about the bartenders it has also been said that looking at criminal prosecution is a better way for the Board to send a message.

Mr. Sillman wanted to suggest to the Board of this is how it could really play out. In Mr. Sillman’s analysis the best employee that they can get is a smart ethical professional with great people skills. They think it is in the town’s interest also to be in line with ours in looking for people like that.

Unfortunately people like that are in high demand and can pick their jobs. Yesterday alone on the local Craig’s List there were 24 new hospitality jobs posted in one day. So here is how it plays out, you call these people criminals but Foxborough is not an island. If a server or bartender looks at Craig’s List and sees us hiring well Foxborough has made it clear that they

will pursue criminal prosecution if you ever make a mistake in their job. That good person looking for a job will go to Legacy Place, Tavolino's will get the left overs. You need to think about the totality of your actions and we understand your role, there are a lot of levers that you can pull, there are a lot of things that you can do to ensure compliance you can reach beyond the license holder to individual employees but remember we want to keep the best possible people and we think that is in your interest as well. They are willing to work with the Board on how to do that and they understand the Board's issue that they stand before the people of Foxborough and have to say to them we are watching out for the town, they get that. There may be a lot of ways to do this.

If you look at the original recommendations we understand from Mr. Keegan and Special Counsel and Chief O'Leary these were consistent with previous decisions. Even if the Board states that the punishment contemplated is within guidelines developed by the Town and Tavolino's did participate in those we agree they are within the guidelines but we would further observe that the punishment is at the farther end of the spectrum and has already additional stipulations added in terms of timing and specific dates.

Understand that part of Tavolino's questioning maybe not before you tonight but it is something that we would inevitably have to ask is, is this the worst offense that can be contemplated because that is where your position is landing.

The risk management exposure that Tavolino's has and the people that they have talked to honestly there are worse things than can be contemplated tonight. He is not saying that to make light of it but they challenged people who advise them. They could serve someone to the point that they are intoxicated and we could let them go out and get into an accident.

There are worse scenarios that we can be called in front of you for. That is not to say what they did wasn't bad but just to tell the Board, yes we agree that what we did is wrong and it was a violation and it is the worst possible thing that you can contemplate to serve a minor. Then you can serve minors in worse ways than even that though.

In terms of thinking about as a practical matter how do we run the restaurant going forward. They actually had to contemplate that and develop scenarios for all of the worst possible things that could happen. They are doing that to protect ourselves, protect the town and protect guests and protect our employees.

The final thing to say is we can understand the pressures the Board is under and they can understand how upset they are. The Board has a range of options. They will say that with complete respect to the Board and with full intentions of working for a very long time with the town and with the Chief collaboratively to be the best corporate citizen that they can be in the town they may appeal this. They say that with heavy hearts. There is no lawyer there, nobody here is from the corporate office with time to work on this. They all run the restaurant every day. They don't have much time to do this. It is very costly to them and they ask the Board to please be aware of that. It is not just costly to them it is something that according to the State they will be required to file an appeal jointly with the town and that would be working with your Counsel so they will be working with them. All of their time will be matched by the town's retained

counsel. They do believe that they can prepare an appeal that contains 100% facts that both parties will agree on. He won't go into details because he doesn't think the Board wants to spend the time on that but they can ask your outside counsel about this process.

All of this is costly time that could be spent on other things in other ways that could contribute to a productive partnership to quote the Chief between Tavolino's and the town or even better possibly between all license holders and the town.

When the town reviewed and rewrote the rules for license holders a few years ago they were at the meetings and they contributed with comments. They are an active partner at every possible level to make things go well.

When Mr. Sillman has a chance to speak and a response on an administrative matter because this can only be decided by the Selectmen under the way things work in Massachusetts. Should they file an appeal remember that in its preparation the state requires the town and the licensee to work collaboratively. They ask that the town would be willing to hold the license suspensions in abeyance until an appeal could be completed following the state procedures.

Ms. Coppola asked Sergeant Noonan all the alleged liquor license violations that they have had in this series of three nights of hearings, were they all as a result of the sting. Sergeant Noonan stated correct.

Ms. Coppola asked if they had ever found a sale of alcohol to a minor other than during a sting. Sergeant Noonan stated not at this establishment.

Ms. Coppola stated so that in other words the only way that the police can establish that an establishment is selling alcohol to a minor is through a sting. Sergeant Noonan stated that they do a reverse sting as well and look for youthful people that are consuming alcohol and that is through identifications.

Ms. Coppola stated that this does not result in any violations against the establishment. Sergeant Noonan responded yes it would. Would they come before us. Sergeant Noonan stated they have. Ms. Coppola stated but not this year.

Ms. Coppola stated that they had a sting at twenty-nine establishments and nine (9) of them failed. Sergeant Noonan stated correct. They failed because it was a sting so Ms. Coppola's question is what happens on the other nights when the police don't conduct a sting. Possibly liquor is being sold to minors and you just haven't caught them. Sergeant Noonan stated correct.

Ms. Coppola stated that her concern is the Town of Foxborough has a lot of establishments and she doesn't want the town of Foxborough to become a mecca of underage drinking because we conduct a sting once a year. Under twenty-one age of people think they can come to Foxborough and word gets around pretty quickly which establishments they can go to because they are lax. That is what the Board is trying to avoid. The Board wants to make sure that these establishments in Foxborough that are licensed by us are not lax and that is the whole purpose of these hearings and the whole purpose of the discipline.

What bothers Ms. Coppola when we conduct the stings that is when we find the violations what happens when they don't conduct a sting, are these violations going on anyway.

Mr. Sillman stated that they had considerable debate about this saying they got caught was this going on all over the place. They had met with the Chief and they were working on trying to make internal compliance checks work. They are harder than you think if you want to make them go well. The one thing they can't do is use an underage operative. They have been a little creative and they have already started to do it.

Tavolino's policy and they have tightened it up with their own employees is they are never going to get caught because if you are someone doing this you are going to be out of the building before the police show up, they are going to catch them. That is basically what they are going to do with the internal compliance.

As far as disciplining Mr. Sillman would also suggest again that you say your role here is discipline. The Board's role is a lot of things. They work with the police department and they are going to continue to work with the police department.

The other point is and this may be too subtle a point but it is really valid. There are things that you can do to make you less of a target. There are shot glasses at the bar that are used for measuring, they are not used for serving, you can't be served a drink in a shot glass. You cannot get a red bull at their bar. You cannot get a Yaegermeister at their bar. They have done things kind of structural in what they offer so if you are really young you might want to go somewhere else. Those are the choices we can make. They do get orders for each of those things from time to time, not a lot of them but we forgo that business. That is a message to people that this isn't the place you want to go to.

Ms. Coppola stated that all they have to do is ask a person that looks young for their id. That is all we are asking these establishments to do is to follow the law of the State of Massachusetts and the rules and regulations in the Town of Foxborough. If you do that you won't be coming before this Board. That is all we are asking and I hope it doesn't fall on deaf ears.

Mr. DeVellis thanked Mr. Sillman for speaking so eloquently on this and thanked them for coming here with a lot of research. The owner of the establishment obviously took a lot of time thinking about this and it means a lot to the business and Mr. DeVellis thinks that some businesses could take note of that.

Mr. DeVellis stated that he was surprised that he said that they were not going to fire the bartender and having heard why I might not necessarily disagree with that. I thought you made a good point and I think if I was hiring someone and they did that and was a good employee and they understood the ramifications that they probably wouldn't do it again so Mr. DeVellis is learning a little bit as well.

Mr. DeVellis appreciated them reaching out to the different towns and you had that dialog and he thought that was helpful.

Mr. DeVellis stated that they kind of lost him on the appeal part he was hoping they wouldn't even have to talk about that in the dialog. Mr. Sillman stated that this was the only time he can speak.

Mr. DeVellis stated that he does go into restaurants in Foxborough and he was in Tavolino's last week with two other couples because I want to see how it operates. His children go to the cinemas and they try to visit as much as we can. You are good business people and you are good in the community and I have been involved in some of the charities that you and others have done.

Mr. DeVellis looks at this as a tool. People that get in trouble will they listen or back away. Mr. DeVellis can tell them that with the discussions that they have had people are listening. Ms. Coppola got the point that all the training in the world is great but just ask for the id. It didn't happen and Mr. DeVellis believes the Board is within its right to get angry about it. Forget about the other eight and look at you and say this three day or two day or whatever we decide is relevant to that.

The appeal part aside Mr. DeVellis is confident in his understanding and his understanding how he got to that point. He thinks it is important how the businesses are coming and speaking confidently and if they can learn from us and the Board can learn from them this will be a lot better moving down the road.

Mr. Feldman stated that some of the Board's frustration is that they are calling the licensees to task here. The Board's frustration is that how do they get the employees to buy in. He believes that this is where the struggle is because ultimately it is the employees who are making the mistakes. Mr. Feldman doesn't know what the answer is. He does not that if you leave a decision up to an employee who is going one hundred miles an hour and whether this person you see here appears to be under 35 doesn't have wrinkles, what does that mean it is up to interpretation. The fact is if everyone was carded we wouldn't be sitting here today. You can have all of the training you want but the simple thing is to card everyone.

Mr. Sillman stated that there are a couple of things about that. First of all in the instance of the sting you wouldn't have needed to card them all you would need to say is how old are you if you really want to rub it in.

The second point is in understanding the psychology of what it means to work day in and day out and they have a lot of employees that stick with us for a long time. If you have employees card everyone including Mr. Sillman's 92 year old father the employee is going to lose respect for the vigilance process. Mr. Sillman looked into this very carefully. They knew that this was an easy thing for us to declare as a policy and chances are the Selectmen are going to like that. It doesn't work because the employee is going to say "oh here we go I have to ask a 92 year old man for an id don't I feel like an idiot." This is something that is done very frequently in large corporate operations. Any of the airport bars run by Marriott for example and it is very clear that the management of that operation is a thousand miles away and just has no clue what is going on in our bar here today.

Again if you want your people to be vigilant and they get the sense that management is vigilant as well, we tread a fine line. It would be very satisfying to put the hammer down and say you are going to do this all the time that is our answer because now we know everyone is being carded. At a particular level that is very satisfying and there was a debate about that kind of thing. They have decided to step away from that. What they want is a thinking, ethical savvy professional with great people skills and if you have that kind of person. If you have that type of person you don't want to have them carry out mindless policies you want to turn them into thinking people because again our biggest vulnerability is little small transactions that happen all the time that we can watch every second.

Mr. Feldman asked what the answer is. That is what this Board is reaching out to the business owners, what is the answer. Mr. Perruna stated that being in the restaurant five days a week he believes the answer is to talk to your employees every single day, share the importance of it. Our employees know the importance of it right now. They knew it pretty well before but this is all we have talked about for a month now, every single day at every pre-meal. It is posted in the back of the house, there are signs that are dated that were given to us by our Budweiser distributors hung up at the wait stations. It will just be part of our language constantly going forward. Every house staff member that serves alcohol 100% understands the importance and what the consequences are going to be. Our restaurant is going to be more severe going forward.

We take this as seriously as you do we love the restaurant business, work hard at it and we want to be not in front of you again. It is their daily job to do that.

Mr. Sillman stated that one interesting thing that they observed is probably a good thing is that when you now hear one employee telling another employee or you hear a new employee being trained and they are sitting there learning how to learn the computer and they say oh yeah by the way you rang in drinks, this is the way we think about how you have to handle alcohol service. They all got it in the training booklets but when it is one employee to another again it is an unguarded one on one transaction; that is a positive reinforcement, not a risk. That wasn't a service that was one employee on the same level talking to another employee. We think that this is a positive development.

We are not trying to hit every one over the head with rules they have to comply with, we want to change the culture of the business.

Ms. Coppola asked if that is what is happening now. Mr. Sillman stated they have seen it a few times, they like it. That is one of the benefits. It's never going to be perfect. We don't throw up our arms and give up. We chip away at it and we try to be creative about it. One of the big lessons we learned recently is that if you really want to get good at this is you get beyond rules creating you have to think of scenarios like you are writing tv dramas or something. This is why the cooks get involved.

You think of things that can really happen.

Ms. Coppola stated that the absolute simplest thing they can do when a young person comes up to the bar and asks for a Bud Light you ask for an id.

The simplest thing was the one that was blown and that is what the Board is trying to prevent.

Mr. Sillman stated that is why they call that a wakeup call.

Mr. Gray stated that they have been in business awhile and what the Board is trying to wrestle with did nine (9) individual establishments have a moment of complacency or is it a cultural complacency.

Mr. Sillman stated they are not a tavern most of their liquor sales go with food. Some of it is that they focus on so much on being structurally the right kind of place we put all those things in place. They don't get many police calls, they don't feel that they ever have much of a call to have a detail at the restaurant.

There is a one on one transaction between two individuals that you can't monitor every time.

The stadium had an incident where they had a renegade employee who wanted to serve two women that were clearly underage and he wanted to impress them. They have twenty cameras on that person. That isn't going to happen to them.

Mr. Perruna wanted to inform the Board that they have 10-13 employees in the audience tonight that they did not know were coming and he thinks that shows that they are taking this serious.

Ms. Brue stated having worked on the liquor license regulations with all the business owners and Chief O'Leary and Dave Brown from the community who has experience in that area. Chief O'Leary was really ahead of the times, a couple of years back he was talking about hospitality zones at that very time we were reviewing these regulations. As part of our presentation they actually used that term and talked about how really the way for to manage that type of development is really for the community to become more of a resource to the businesses as opposed to a punitive source for the businesses.

In hindsight Ms. Brue feels that they have may fallen down on that job because she would like them to go back and look at that approach that they had discussed a few years back and revitalize that concept .

She would like to see the Board work with Chief O'Leary to really move forward and take that concept to the next level because it hasn't gone there. She thinks what they have done in terms of their research is just speaks volumes as to what Chief O'Leary was talking about at the time.

She appreciates that they have done this it was a wakeup call to her. Everyone knows how frustrated the Board is. Hearing this presentation takes her back to the Boards responsibility also. They are partners in this to and they have to be willing to work to prevent this from happening in a constructive way.

Motion made by Lorraine Brue that they have finding of fact that the employee of Better Foods, LLC d/b/a Tavolino served alcohol to a minor as outlined in the letter to the Town of Foxborough Board of Selectmen dated October 20, 2014 and in the testimony they accept the findings of the letter and testimony as presented. Seconded by John Gray. **Vote 5-0-0**

Attorney DeLuca stated that they have taken all three of the hearings under advisement and now is their opportunity to discuss as a group how it is they would dispose of each of those license matters and they should address each one of them as each are entitled to disposition of their own matter.

They do have matters from a week ago where the Board did make a decision relative to those and they will revisit the actual days that had been suggested from last week from those that were heard last week. Obviously you have that matter from those that you have heard tonight.

Saga

Ms. Coppola stated she is in favor of a letter of reprimand and three day suspension. They can choose their days but one of those days has to be on a Friday or a Saturday and completed prior to January 31, 2015.

Mr. Feldman was in favor of a letter of reprimand and three day suspension. They can choose their days but one of those days has to be on a Friday or a Saturday and completed prior to January 31, 2015.

Mr. Gray stated going back to the fundamentals of all three establishments where a bartender, waiter or waitress fails to ask for identification from someone so young. Asking for identification to a bartender should be as normal as breathing. He has seen a trend and it is this slipping into complacency and then all of a sudden they are caught and then all of a sudden they are caught and there are lots of apologies.

The most fundamental role of a waiter, waitress or bartender is to make sure that underage drinkers don't get served. The most fundamental obligation of these people in these establishments was ignored. It wasn't as if they asked for a license and it was false and it wasn't as if they lied, it was as plain as day and they failed.

Mr. Gray knows they are making strides to improve but again he worries about slipping into complacency and that is why he is going to stay consistent with the three day suspension.

Mr. DeVellis stated they have owners that want to chase down the employee to the next job because they are so angry and they have owners that want to give them a second chance; some were suspended or relieved of hours. These are all business decisions and he is not in their shoes and he honestly wants to wish them all luck.

At the end of the day that is their business and the Board has the regulations so he agrees with John that whatever training that they go down and whatever methods to make their business successful they better ask for the id.

As much as you favor one process over the other at the end of the day these are these are the regulations and this is all I am responsible for and Mr. DeVellis is going to be consistent and not asking for that id it warrants a three day suspension.

Ms. Brue stated she is going to be the minority again and disagree with this level of sanction. She believes that they have a responsibility as the Board to make sure that people comply with their regulations and she thinks the Board does have to take into account on a scale of seriousness. This is very serious, all of them are very serious but knowing that the ABCC uses stings as an educational tool Ms. Brue truly believes that a letter of reprimand and a one day suspension held in abeyance for a year as originally recommended by the Chief, Town Manager and Special Town Counsel really is a reasonable sanction and she will continue to support that.

Ms. Brue feels the Board has a responsibility to revisit their regulations working with Chief O'Leary and the business owners to see what we can do to team up and see what they can do to team up in making this a better situation for everyone involved.

Motion made by Lorraine Brue that the sanction to be applied to Saga Hibachi Steakhouse, Showcase Cinema De Lux and Tavolino Restaurant be a three (3) day suspension and a letter of reprimand and that the three days be prior to January 31, 2015 with one of those three days occurring on a Friday or Saturday. Seconded by John Gray.

Lorraine Brue withdrew her motion.

Motion made by Lorraine Brue that Showcase Cinema De Lux receive a sanction that includes a letter of reprimand and three (3) day suspension rolling sixty days from the date of the written decision to be served by February 7, 2015 including one weekend day either Friday or Saturday to be served as one of those days. Seconded by John Gray. **Vote 4-1-0 with Lorraine Brue Opposing.**

Motion made by Lorraine Brue that Saga Hibachi Steakhouse be administered a sanction of a letter of reprimand and three (3) day suspension to be served prior to January 31, 2015 with one suspension day occurring on a Friday or Saturday. Seconded by John Gray. **Vote 4-1-0 with Lorraine Brue Opposing.**

Motion made by Lorraine Brue to revisit Saga Hibachi Steakhouse for the purpose of changing the date from January 31, 2015 to February 7, 2015. Seconded by Virginia Coppola. **Vote 5-0-0**

Motion made by Lorraine Brue that Saga Hibachi Steakhouse be the recipient of a sanction of a letter of reprimand and three (3) day suspension including one weekend day either Friday or Saturday to be served prior to February 7, 2015. Seconded by John Gray. **Vote 4-1-0 with Lorraine Brue Opposing.**

Mr. DeVellis stated that the license was not asked for and although he commends the steps taken after and the passion for the business the fact was the license was not asked for and that is in

direct violation of the regulations. Mr. DeVellis would recommend a three (3) day suspension and letter of reprimand to be administered 60 days from the date of issuance.

Mr. Gray stated that they take no enjoyment in doing this.

Mr. Feldman stated he struggled with this one and they are supposed to be treating these all individually and the presentation that was made is showing buy in and he thinks this is what the Board wants from their licensees but then in going back that the id was not asked for. It is not acceptable so he would recommend a three (3) day suspension as well.

Ms. Coppola agreed that a letter of reprimand and three (3) day suspension with one of the days either being on a Friday or Saturday.

Ms. Brue stated that she will stay with her original recommendation.

Motion made by Lorraine Brue that Tavolino's receive as a sanction a letter of reprimand and three (3) day suspension including one weekend day either Friday or Saturday to be served prior to February 7, 2015. Seconded by John Gray. **Vote 4-1-0 with Lorraine Brue Opposing.**

Attorney DeLuca extended an invitation for the license holders to contact him or his office with the dates that they would suggest for themselves within the parameters that the Board set for the dates for the suspensions to be imposed.

If the Board will do that Attorney DeLuca would look to get that correspondence, have it prepared for the Board and the Board will then finalize each of these decisions for those dates.

Ms. Brue asked Saga, Showcase Cinema and Tavolino to please notify the Board's Special Counsel David DeLuca of the three (3) dates that they have selected and they will review them at their next meeting.

Mr. Keegan suggested to the Board to place the Stay issue on the next agenda.

Ms. Brue stated they have received notification from three of the four businesses regarding the dates selected.

Motion by John Gray to accept the dates of suspension as presented by Chickie Flynn's on November 27, 2014, December 1, 2014 and December 26, 2014. Seconded by Virginia Coppola. **Vote 5-0-0**

Motion by John Gray to accept the dates of suspension as presented by the Lafayette House on January 5, 2015, January 12, 2015 and January 30, 2015. Seconded by Virginia Coppola. **Vote 5-0-0**

Attorney DeLuca stated there was one suggested amendment to Demetri's. They had originally given us a suggested date of January 3, 2015 but they are now requesting January 2, 2015 which is a Friday.

Motion by John Gray to accept the dates of suspension for Demetri's Red Snapper of Friday, Friday, January 2, 2015, Tuesday, January 6, 2015 and Thursday, January 8, 2015. Seconded by Virginia Coppola. **Vote 5-0-0**

Ms. Brue asked Attorney DeLuca if they had any information on the Renaissance. Attorney DeLuca stated that he requested the information again and they declined the invitation to supply dates so they are entirely at your discretion with the parameters that you have set.

Ms. Coppola stated that they were concerned that the Renaissance may have functions. Attorney DeLuca stated that they have functions every weekend and he was told that they functions planned for every weekend until the end of January but there is no good time.

Mr. Gray asked if the Renaissance had communicated that to Attorney DeLuca in which he stated yes.

Mr. Gray asked if Attorney DeLuca could guide them.

Attorney DeLuca stated that they have some dates that other license holders deemed to be reasonable so they could take instruction from that.

Ms. Brue stated that given the fact that they have those designated events can the Board approach them for an open Friday or Saturday as soon as possible after that timeframe.

Mr. Keegan stated they the Board offered them the opportunity to provide them with dates and they chose not to so it is now at your discretion.

Attorney DeLuca agreed and stated their decision already confined themselves to January 31, 2015.

Mr. Gray stated that if they look at the Lafayette House dates those are as far away from the Christmas holidays and New Year's as one could be.

Mr. Keegan stated that they should add in their motion that after having offered this establishment to select dates and having declined that these are the dates that you have chosen. Mr. Keegan feels that this is important given the proposed actions following this.

Mr. DeVellis stated that he would like to hear from Counsel how that dialog went (letter, phone call). Attorney DeLuca stated there were a couple of different phone calls over the course of the last two days that he had with Counsel from the Renaissance Hotel. They found no ability to find dates that would work for them within the parameters that you had set so for that reason they were inclined not to suggest dates. The other statement that was made which may or may not be relevant is their intention was to appeal whatever the finding was. Attorney DeLuca understood from the outset that this would be the result here.

Motion made by John Gray that given that the Board of Selectmen have offered the Renaissance Hotel the opportunity to submit dates when they could serve the suspension and having received none from the Renaissance Hotel, the Board of Selectmen will impose the following dates of suspension: Monday, January 5, 2015, Monday, January 12, 2015 and Friday, January 30, 2015. Seconded by Virginia Coppola. **Vote 5-0-0**

Motion made by John Gray that the Board of Selectmen accept the proposed dates from Tavolino's of November 27, 2014, December 25, 2014 and February 6, 2015.

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