

TOWN OF FOXBOROUGH
SELECTMEN'S MEETING
MINUTES
NOVEMBER 25, 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, Special Counsel, Town of Foxborough
Attorney Peter Clark, Fusion
Mr. Vick Patel, Fusion
Ms. Falguni Janek Patel, Fusion
Chief O'Leary
Mr. William Casbarra, Building Commissioner
Ms. Jess Stephenson, Gillette Stadium
Mr. George Bell, Stadium Advisory Board
Mr. Mike Ashapa, Stadium Advisory Board
Mr. Randy Scollins, Finance Director
Ms. Hannelore Simonds, Chief Assessor
Mr. Mike Laracy, Board of Assessors
Mr. Thomas Buckley, Board of Assessors
Mr. Dennis Naughton, Town Resident
Mr. Bill Yukna, School Administrator

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

Ms. Brue reviewed the agenda.

7:00pm – Citizen's Input – No one was present for Citizen's Input.

7:00pm – Selectmen's Update – Ms. Brue wished everyone a Happy Thanksgiving.

Ms. Brue cautioned everyone on South Street being blocked off because of a telephone pole repair.

Mr. DeVellis thanked the student athletes for passing out turkeys to the Veterans on Saturday.
Mr. DeVellis hopes this program will grow in the future.

Action Items

Motion made by Virginia Coppola to approve the \$2,000 grant to the Council on Aging from the National Council on Aging to be used for the Aging Mastery Program. Seconded by John Gray.
Vote 5-0-0

Information

Comcast/Xfinity is adjusting their pricing.

Wrentham Planning Board is holding a Public Hearing on 12/3/14 at 7:15pm for a site plan approval application for 10 Cushing Drive.

Foxborough Planning Board granted a special permit for an accessory apartment for 10 Revere Drive.

Foxborough Planning Board granted a special permit for an accessory apartment for 2 Austin Lane.

Ms. Brue informed everyone that the Walpole Board of Selectmen would be holding a public hearing on 12/2/14 for a presentation by MassDOT on the Foxborough Commuter Rail.

Mr. Keegan informed everyone that the Town Hall would be closing at 12:30pm on Wednesday, November 26, 2014 and will be closed on Friday, November 28, 2014.

Mr. Keegan informed the Board that he will update them on the commuter rail and would like as many questions as possible.

7:15pm – Public Hearing – Fusion – Alleged Violations (Alternation of Premise/Improper Storage of Alcohol) - Ms. Falguni Janek Patel, Mr. Vick Patel, Attorney Peter Clark

Ms. Coppola read the Public Hearing Notice for Fusion.

Attorney Clark informed the Board that his clients were not there yet and asked for a delay of the hearing.

The Board took a break.

7:18pm – Re-Opened Fusion Hearing

Ms. Brue stated that Special Counsel for the town had not yet arrived.

Mr. Keegan swore in the Fusion attendees.

Chief O’Leary stated that Fusion is adding new rooms to their hotel. Chief O’Leary requested Sergeant Noonan to go and take photographs of the establishment. As a result of this investigation and the Building Inspectors inspection it was found that there uncapped bottles of alcohol coated with dust and debris which is a violation of Chapter 138.

Mr. Casbarra stated that the applicant applied for a building permit to destroy the night club and add on to the hotel. It was brought to Mr. Casbarra's attention that the bar was still there (it was not being used).

Mr. Casbarra informed Mr. Patel that he would have to go for an Alteration of Premises.

Mr. Gray asked how long the renovations would take.

Mr. Casbarra stated that they had started the renovations in July and Mr. Casbarra had done a rough inspection a few weeks ago.

Ms. Coppola asked if the Alteration of Premises approval would be needed first before alterations could commence. Mr. Casbarra stated not to his knowledge and that he had notified the proper departments.

Ms. Coppola stated that Fusion is considered under the liquor license laws. If they are doing any alterations where alcohol is being stored they need to get an Alteration of Premises.

Attorney Clark stated they were about to do that but the Patel's were under the impression that where they were making the bar smaller they could apply for the Alteration of Premises at a later time. This wasn't an intentional disregard for the Board of Selectmen regulations.

Attorney Clark further went on to explain that the Patel's current franchise with America's Best Value Inn expires in 2015 and they want to upgrade the hotel significantly. They are presently talking to Best Western, etc., to possibly go under a different "flag".

The problem is they have 49 rooms and the cut off for a new franchise is 50 rooms which would be a break even. It made sense to take the Fusion lounge room and turn it into twelve (12) new hotel rooms bringing their rooms up to 62.

This will be an upgrade and the Patel's are making a significant investment. They are further along in the construction process than when Mr. Casbarra was last there in October. They will be ready to go when National Grid is done with their work.

They realize they should have come in beforehand but again they misunderstood the rules and thought they could do it later.

Attorney Clark has had the Alteration of Premises paperwork completed for about a month. Ms. Herrmann had told them they had to come in for the hearing first and they will file the paperwork by next Monday at the latest.

The alcohol was in a storage closet. The project ended up being messier than was expected and the alcohol will be destroyed when the ABCC Inspector comes out for his inspection.

The alcohol is in the same closet as when Sergeant Noonan came and took the pictures.

Attorney Clark presented the Board with a copy of the plans for the project which showed the first floor layout of the hotel. This included a lounge, office, kitchen and bathrooms.

Attorney Clark went on to further explain the plans to the Board.

Mr. Gray asked Sergeant Noonan if Mr. Patel represented himself as the Operator of the establishment. Mr. Gray further stated that Falguni Janek Patel is listed on the license as the Operator.

Sergeant Noonan stated that he had asked Mr. Patel when Ms. Patel would be at the establishment. Mr. Patel had told him that she would be in later that evening. Sergeant Noonan returned to the establishment and Ms. Patel was still not present.

Ms. Patel stated that she will be working the majority of hours at this location and that she had been ill and out on maternity leave. Ms. Patel further stated that they have never had a violation with regard to service.

Mr. Feldman asked when they expected to have the work completed.

Attorney Clark stated that the rooms would be done in six weeks and the bar would be done by the first of the year.

It was stated that ABCC approval takes 6-8 weeks.

Ms. Coppola stated that Fusion was before this Board in 2012 for selling alcohol to an intoxicated person and received a three day suspension.

Mr. DeVellis stated the license remains in their possession but cannot be used, how does the Board address that.

Ms. Brue stated they aren't abandoning their license.

Mr. DeVellis stated that they have no premise to serve alcohol.

Mr. DeVellis asked when the project would be completed. Attorney Clark stated again that it would be completed by the end of the year and would be ready before the Alteration of Premise will be approved.

Ms. Brue asked if the alcohol was secure. Attorney Clark stated yes, that it was in a locked cabinet.

Ms. Coppola stated that in Attorney DeLuca's Memorandum to the Board stating the potential violations to state law and Foxborough Rules and Regulations were:

- Change in the premises – MGL Chapter 138 Sections 12 and 23 and Foxborough Rules II.3, II.5 and II.10.
- Failure to keep premises clean and sanitary – 204 C.MR. 2.05(8) and Foxborough Rules II.7.

Attorney Clark stated that he had spoken briefly with Attorney DeLuca regarding the Patel's thought process and a possible resolution.

Attorney Clark explained that the ownership of the establishment is the corporation which consists of Falguni Janek Patel, Vick Patel and their father. This was completely disclosed to the Board. Attorney Clark will be happy to provide Attorney DeLuca with the paperwork showing the stock is owned by the Patel family.

Attorney Clark wanted to assure the Board that there are no hidden investors and that they plan to keep the business running as a family.

Ms. Brue asked the other Board members if they should continue this hearing once Attorney DeLuca arrived.

Mr. Gray asked if the hotel was occupied. Attorney Clark stated yes, except for the new rooms.

Motion made by James DeVellis to continue the Fusion hearing until later that evening.
Seconded by John Gray. **Vote 5-0-0**

7:50pm – Public Hearing – One Direction Concert – Jess Stephenson, Mike Ashapa, George Bell

Ms. Coppola read the Public Hearing Notice for the One Direction Concert.

Ms. Stephenson explained that this concert would take place on September 12, 2015 and would be the same type of show as they had this past August.

The gates would open at 5:30pm and the primary event would start at 7:00pm They would not exceed the mandatory curfew of 11:15pm

They expect 42,000 people to attend and there would be no General Admission seating.

This will be an easy event to monitor from a public safety aspect.

Mr. Bell stated that he had reviewed this application one and half weeks ago and has no issues.

Mr. Bell stated that the Stadium Advisory Board recommends Board of Selectmen approval.

The stadium plans to continue the taxi service and will allow the taxi's in the parking lot.

Mr. Gray asked what the age demographic was. Ms. Stephenson stated 10-16 years old. At the last concert they did not have many unattended minors without parents.

Chief O'Leary stated that at the last concert for One Direction they had their lowest numbers ever recorded of issues as there was tremendous parental control. They only issue they ran into was the traffic when parents came to pick up their children. The Chief encourages the taxi service.

Ms. Coppola asked Chief O'Leary about the problem on North Street with taxis and limos idling. Ms. Coppola would like to see the stadium allow taxi and limo parking in the parking lot and not on North Street.

Ms. Stephenson stated they planned on continuing the taxi/limo service just not on game days.

Mr. Ashapa stated that anything on North Street is the towns' responsibility not the stadium.

Mr. Gray stated that it is the residents on North Street pulling people in to park. The situation is worse now.

The situation is worse now and the Board needs to address it. They had talked about permits and stickers for cars.

Ms. Coppola stated they should make this an agenda item after the holidays.

Motion made by Virginia Coppola to close the Public Hearing for the One Direction Concert. Seconded by John Gray. **Vote 5-0-0**

Motion made by Virginia Coppola to approve the One Direction Concert application. Seconded by John Gray. **Vote 5-0-0**

8:10pm – Gillette Stadium – Kenny Chesney & Jason Aldean Concerts - Jess Stephenson, Mike Ashapa, George Bell

Ms. Coppola read the Public Hearing Notice for the Kenny Chesney/Jason Aldean Concert.

Ms. Stephenson stated that the Kenny Chesney/Jason Aldean concerts are scheduled for August 28 & 29, 2015. The start time will be 5:00pm but the gate and lot times will be set closer to the dates of the concert.

The end time will not exceed the 11:15pm curfew and they expect 250,000 attendees on each date.

This concert presents unique operational challenges and they work each year to make it better.

They hold a commentary three (3) days before the event.

Instructions will go out to every household in Foxborough.

The stadium will continue their public safety standards for tailgating and they will reduce the amount of hawkers and cutoff time for serving alcohol.

The issue is the tailgating and the bus area. Chief O'Leary is working with the State Police to have more presence and work on that area from a public safety standpoint.

The Chief was happy to hear that the stadium has an app that assists attendee's right down to bathrooms.

The Chief recommends the Boards approval for the two (2) concerts and that both Chief's feel comfortable.

Ms. Brue stated that they had received complaints from neighbors of people relieving themselves on their property. This happens every year.

Chief O'Leary stated that they have had different stations provide port-a-johns.

Chief O'Leary had spoken with the State Police Captain and they will have bicycle officers managing the bus and coach area.

There are two (2) different traffic flows which are the heart of Rt. 140 and the Common Rotary. Once the Common is locked up it takes a tremendous amount of time to unblock it.

Mr. Keegan received a letter from Walpole looking for enforcement help. Ms. Stephenson stated that they do include Walpole in all of their meetings.

Ms. Coppola asked if taxi parking would be included and can it be stipulated on the license. Mr. Keegan stated that it could be. Chief O'Leary stated they want taxi access to get people off the property as quickly as possible. Ms. Coppola stated that right now they are being dropped off on North Street and asked if the stadium had an area for them. Ms. Stephenson stated they will be in the back of the East Parking Lot.

Ms. Coppola stated that the town needed signage stating "no parking/idling".

Ms. Coppola stated that they want to eliminate taxis and limos on North Street. Mr. Ashapa stated the problems are not just North Street.

Ms. Coppola stated that complaints have come to her about North Street. Mr. Ashapa stated that this was brought up two and half years ago at Town Meeting about no parking on North Street and it has not been enforced.

Ms. Brue stated that the opening times of the parking lots are a concern. They should all open at the same time.

Mr. Keegan stated that this is an issue that is attempting to be rectified.

Ms. Stephenson stated that they work with the satellite owners and requested that they all open at the same time.

Motion made by Virginia Coppola to close the Public Hearing for the Kenny Chesney/Jason Aldean Concerts. Seconded by John Gray. **Vote 5-0-0**

Motion made by Virginia Coppola to approve the Kenny Chesney/Jason Aldean Concert application. Seconded by John Gray. **Vote 5-0-0**

8:40pm – Public Hearing - Assessors Classification – Randy Scollins, Hannelore Simonds, Mike Laracy, Thomas Buckley

Ms. Coppola read the Public Hearing Notice for the Assessors Classification Hearing.

Mr. Scollins explained to the Board that the Assessors have come before them to give them a brief overview on whether or not to eliminate/modify the tax rate or whether or not to split the tax rate.

Mr. Scollins explained that the classification made by the Board this evening would be sent to the Department of Revenue either this week or next week to ensure that the tax bills go out on time.

Mr. Scollins explained to the Board the Executive Summary that was included in their packets.

The tax levy for FY '15 is increasing by \$1.71M or 4.3%. Foxborough has no general overrides built into the levy where other communities have an average additional override of \$4.4M.

Property values have increased by 2.2%.

Mr. Scollins explained that assuming the tax rate is maintained there are multiple scenarios which Mr. Scollins supplied in the Boards packets.

Chairman Buckley stated that the Board of Assessors are recommending the split.

A lengthy discussion ensued as to the lack of information on the IE Report and getting people to understand that the information they are trying to get from them is not public information.

Mr. Naughton asked if the people who failed to supply this information is public record. Ms. Simonds said she thought so but would have to check.

Mr. Naughton hoped the Board would support a split rate.

Motion made by Virginia Coppola to close the public hearing on the Assessors Classification Hearing. Seconded by John Gray. **Vote 5-0-0**

Motion made by Lorraine Brue to adopt the residential factor of .963876. Seconded by Virginia Coppola. **Vote 5-0-0**

MIAA – Waiving of Fees - Bill Gaines, Richard Pearson, Attorney Joseph Scardino

Attorney Scardino came before the Board to explain the legal/tax status of MIAA.

The documents explained to Attorney Scardino were:

1. Exhibit 1 represents the Articles of Organization.
2. Exhibit 1A is from the Department of the Attorney General stating they are a charitable organization.
3. Article 2 from the IRS dictates the limit that they are not a private foundation.
4. Exhibit 2A under “Deductibility Status “PC” means Public Charity.

Attorney Scardino stated there was no higher status than these documents. They are public record and have not been put together for this meeting. This is a corporate birth certificate.

Attorney Scardino read a passage from Exhibit 3 which was a passage amendment to the Constitution not Mass General Law.

Section 8 of the Lease (Exhibit 4) between the Town of Foxborough and Gillette Stadium states the Landlord can exempt charitable events at the stadium from ticket fee payments.

Mr. Keegan stated from the outset that this is a great organization and he understands their position.

Mr. Keegan had looked back over all of the information several weeks ago and informed the Board that he could not support this.

The event waiver being sought is not a charity event.

MIAA charges an admission fee and not a donation.

Mr. Keegan stated that he did receive the E-Mail from the stadium and they endorse this.

Reduced fees would have to go to Special Town Meeting. The value would be \$50,000 if granted. This is tax revenue to the town and Mr. Keegan cannot recommend this.

Ms. Coppola stated that in past years she had voted against this. This is tax money owed by the stadium (\$2.55 per ticket sale for tax money) and she will not support this waiver.

There was further discussion on the face value of the ticket sales/fees.

Mr. DeVellis stated that this is not wrong or right but this is tax revenue to the town.

Mr. Gray asked by MIAA leveeing their fees last year by \$2 if they had noticed a drop off in sales in which they replied no. Mr. Gray asked why they could not do this again.

Ms. Brue stated that another community also did not support this waiver.

Ms. Brue stated that it was not right for the residents and not appropriate for the town.

A Foxborough resident who is a retired teacher commented that he hoped that MIAA would not come back next year asking for a waiver of \$40,000 - \$50,000 waiver from the town, that this is just wrong.

Motion made by Virginia Coppola to grant the waiver of the ticket assessment. Seconded by John Gray. **Vote 0-5-0 All Opposed.**

10:05pm - Town Hall Project – Bill Yukna

Mr. Yukna came before the Board for their approval in hiring Lerner, Ladds & Bartel as the Architect/Design and also The Vertex Companies, Inc. as the OPM.

Mr. Yukna explained that the last vote of the Board approved the two (2) applicants from the Town Hall Working Group for the Architect and Overall Project Manager. They had requested a total package price for Phase I and Phase II. This only happens once and then they will go to Town Meeting next fall to basically lock in the pricing.

Motion made by Virginia Coppola to approve the contract for hiring Lerner, Ladds & Bartel Seconded by John Gray. **Vote 4-0-1 with James DeVellis abstaining**

Motion made by Virginia Coppola to approve the contract for hiring The Vertex Companies, Inc. Seconded by John Gray. **Vote 4-0-1 with James DeVellis abstaining**

10:10pm – Public Hearing – Fusion (Cont'd)

Mr. Gray stated to Attorney DeLuca that they have already gone through the discovery phase and wanted clarification from him.

Ms. Coppola stated that they had read the memorandum from Attorney DeLuca and wanted clarification from him and that is why they delayed the hearing. Ms. Coppola then read an excerpt from Attorney DeLuca's memo on Potential State Law and Foxborough Rules and Regulations Violations. Ms. Coppola stated that what was in question was the failure to disclose all persons who have a direct or indirect beneficial interest in the license. Attorney DeLuca stated that there was some lack of clarity about the facts that were developed by the Foxborough Police. The police report indicated that the person present and interviewed in this

case would be Mr. Vivek Patel was present on the several occasions that the Foxborough Police investigated and Mr. Patel indicated that himself to the Foxborough Police that he was in charge; that it was his operation and he was in charge of all of the details of the operation of the club. There was a lack of clarity insofar as the license indicated that it was his sister who in fact was the manager but evidently she was not present at the time the Foxborough Police had investigated.

Insofar as beneficial interest, that's all Attorney DeLuca had based on the police report. Subsequent investigations showed that in fact the corporate structure for this property is a close family held corporation so there is no indication that there are other interests other than the Patel family.

When Attorney DeLuca wrote the memo it was a course of potential violations as they were surveying all of that they had from the police report.

Ms. Coppola stated that this answered the Board's concern.

Attorney DeLuca stated that the Foxborough Police did a very thorough job in investigating this particular premise and the reports that they have indicate that they had investigated or at least visited this property going back to December of 2013. The report that was written in September does reference other information that was developed in the winter and spring of 2014. This is a matter that has really been under investigation for about a year based on the reports. What they have which Attorney DeLuca thinks is undisputed is a license that frankly has not been operational; has not been put to the public good since approximately April 2014 and now is before the Board on these multiple issues that were brought forward having to do with potential violations of law and of the towns own regulations.

Based on Attorney DeLuca's conferencing of the matter; Attorney DeLuca took the opportunity to speak with the applicant and counsel it appears as though they are still several weeks away from putting this license back into operation. There are significant renovations being done on the property that prompts the need for some review by the Board to determine whether or not the Board would grant an Alteration of Premises to the license making sure again that its operation will be in the public good and in the public's interest. For the moment this license is not operational. Attorney DeLuca has suggested to counsel and to the applicant that for that reason that this Board should suspend the license until such time that this applicant gets back before the Board with the proper request to alter the premises and if approved then find a date which the license will again be operational.

Ms. Brue asked Attorney DeLuca if the Board would be finding that there was a change in premises without prior written approval of the local licensing authority and the Board would be finding that there was an issue with an absentee manager on this license. Attorney DeLuca stated that the applicant can speak for themselves on that but Attorney DeLuca thinks it is abundantly clear from the police investigation that each and every time the Foxborough Police went to the premises the named manager was not present and not in control of the premises as required.

Ms. Brue asked about the open/dust covered liquor inventory. Attorney DeLuca stated that there is certainly sufficient evidence of the lack of clean and sanitary conditions required under the town's rules. Attorney DeLuca cited the rules in his memo all of which were supported by the police investigation.

The one item that Attorney DeLuca thinks they can agree is there is no evidence of a lack of beneficial interest to anyone other than as disclosed in the corporate filings.

Ms. Coppola asked Attorney DeLuca if the ABCC would have to witness the destruction of the open bottles. Attorney DeLuca stated there is any number of opportunities. Either the ABCC or their investigator, the Department of Public Health or the town's own Alcohol Control Agent. Attorney DeLuca's advice to the Board is that they should be satisfied with any of those three with certification that in fact the product was disposed of properly.

Ms. Coppola stated that she would rather not wait for the ABCC; something has to be done with that liquor. Attorney DeLuca agreed. Attorney DeLuca stated that the Foxborough Police are very capable with handling that.

Mr. Keegan stated that he was going to recommend to the Board that was to get certification that this act had actually been performed so the Board will be comfortable knowing that work had been done.

Mr. Gray stated that before Attorney DeLuca had gotten to the meeting they had covered a lot of issues which one of the reasons given for the absentee owner was that she was on maternity leave. Mr. Gray asked if Attorney DeLuca was aware of that. Attorney DeLuca stated that is what he was told but this has been extending for almost a year.

Mr. DeVellis stated that they have to vote on finding of facts.

Attorney Clark asked for a point of clarification in that if keeping the premises clean and sanitary isn't something that should apply if the license is in operation; if the facility/bar is in operation. At the time that it wasn't clean and sanitary it was when construction was underway and when the bar wasn't operating. Attorney Clark explained that clean and sanitary would be something that he would think for example would be a Board of Health type of issue; an unclean kitchen, an unclean bar. This doesn't quite fit in the situation.

What Attorney Clark heard from the Board in t Motion made by John Gray to suspend Fusion's license indefinitely until Fusion cures all legal and regulatory defects. Seconded by Virginia Coppola.

he earlier session of the hearing was that the Board was concerned that there would be some kind of service of beverages going on while the construction was continuing and Attorney Clark had already informed the Board that would not be the case. The way that Attorney Clark was hoping that this would be treated because he does not want to give the perception to the outside world a connotation or idea that this license might be available because there is a lot of speculation on licenses in Foxborough right now. What Attorney Clark's suggestion is that given that the

renovations are going to be completed hopefully by year end and they will have the application filed with the Board in essence that they escrow the license with the Board. Rather than suspending the license which is a negative that they turn the license over to the Board of Selectmen and that they hold it. They will have the application for the Alteration of Premises to the Board by next Monday at the latest and maybe that would be a better way to proceed.

Attorney DeLuca stated that this was the most unusual request that he is familiar with. Attorney DeLuca stated that he is guided by Section 23 which tells them that they have the right to modify, amend, suspend, revoke or cancel a license. Attorney DeLuca's recommendation is within that range, he is not familiar with escrowing a license. Ms. Coppola asked isn't a suspension that they still have license but they can't use it. Attorney DeLuca stated that is true. Ms. Coppola stated as opposed to revoking their license where the Board would take away their license. Attorney DeLuca agreed. Attorney DeLuca stated that it is a modification and it is not the death penalty that might otherwise be the case.

Mr. Gray stated that the Board fully expects that Fusion will cure these conditions. Attorney Clark stated absolutely. Mr. Gray stated that Fusion has already laid out a schedule for when they are going to come back with the premises alterations and then the Board will regroup and consider reinstating them.

Ms. Brue had one question about the failure to keep the premises clean and sanitary and if this was related to the construction. Attorney DeLuca stated yes, that it was abundantly clear from the photographs that it was unkept, unclean and unsanitary at the time this license was in effect. Ms. Brue stated even though there was not service happening at that time. Attorney DeLuca stated that there was not service because of the conditions but the license was in effect and service could have occurred.

Mr. Keegan stated that the statement that the Board wants to convey is that you can't operate the business with a license in full operation. They should have been more responsible on how they handled it. That is the reason why the Board has to cite those reasons.

Ms. Coppola asked if the Board could also include the immediate disposition of the unused and unsanitary packaged alcohol by the Foxborough Police Department.

Attorney Clark stated that he will arrange for that. Attorney Clark was told that the ABCC was the only one that could certify it but if Foxborough has an officer that is willing to do that and to make that certification they will do that forthwith as soon as there is an Officer available Monday or next week. Ms. Brue stated that she knows the Chief has individuals who are designated as those officers. Attorney Clark stated that they will gladly do that. This is not something they will object to at all.

Motion made by Lorraine Brue that the Board of Selectmen has found that the finding of facts to be true and accurate that there was an illegality by storing alcohol on premises in an unsanitary manner and also find that there was an absentee manager and failure to keep the premises clean and sanitary as well as finding of fact that there was a change in premises without prior written approval of the local licensing authority. Seconded by John Gray. **Vote 5-0-0**

Motion made by Virginia Coppola to close the Public Hearing on Fusion. Seconded by John Gray. **Vote 5-0-0**

Motion made by John Gray to suspend Fusion's license indefinitely until Fusion cures all legal and regulatory defects. Fusion could cure defects by obtaining approval for changes of the premises, completing the approved changes to the premises, disposing of all bottles of liquor stored in an unsanitary fashion under the guidance of the Foxborough Police Department and obtaining approval of Mr. Patel as the manager. This would protect the public's interest in insuring that Fusion's license is accurate and the premises are safe. Seconded by James DeVellis. **Vote 5-0-0**

10:30pm – Vote to Declare Fire Station Surplus Property

Mr. Keegan presented the Board with a motion for the fire station only as the Market Street property was actually a tax taking so the Board does not need to take any action on that basis. The action is to declare that the fire station property is surplus property which would then allow them to continue on with the process of doing the RFP. Ms. Brue stated that there are two parcels that comprise that. Mr. Keegan stated yes, but the Board only needs to vote on the fire station property.

Motion made by Lorraine Brue that 40 School Street otherwise known as the "Old Fire Station" be declared as surplus property. Seconded by Virginia Coppola. **Vote 5-0-0**

10:31pm – Delay or Impose Sanctions on Liquor Violations

Attorney DeLuca stated that he had correspondence last week from the three license holders that the Board had heard last week and the dates that were preferred. Attorney DeLuca had sent an E-Mail earlier but he does have dates from those three license holders that were preferred for suspension based on the Board's findings from a week ago. The Board needs to vote on accepting these dates.

Motion made by Lorraine Brue to accept Saga's three dates of closing on 11/27/14, 11/28/14 and 1/26/15. Seconded by John Gray. **Vote 5-0-0**

Motion made by Lorraine Brue to accept Showcase Cinema DeLux three dates of closing on 12/5/14, 12/8/14 and 12/10/14. Seconded by Virginia Coppola. **Vote 5-0-0**

Motion made by Lorraine Brue to accept Tavolino's three dates of closing on 11/27/14, 12/25/14 and 2/6/15. Seconded by Virginia Coppola. **Vote 5-0-0**

Attorney DeLuca stated that they are in the process of drafting those decisions and he has them completed enough and expects to have them to the Town Manager tomorrow morning.

Mr. Gray asked if there was any correspondence from the Renaissance Hotel. Attorney DeLuca stated that the correspondence they received from them earlier was that they intended to appeal

the decision of the Board though technically their appeal doesn't ripen until they receive the written decision. They indicated they would send the appeal directly to Attorney DeLuca within a couple of days of that hearing which was on November 12, 2014. That is the only party Attorney DeLuca has heard from on the record of an intention to appeal. He has heard mixed thinking from other license holders, it is impossible to know since they don't have the written decision yet. Attorney DeLuca has every expectation to get those out tomorrow.

Mr. DeVellis asked once they go out tomorrow and they get delivered how many days do they have. Attorney DeLuca stated that they have five (5) days to notify the Board of their intention to appeal. Mr. DeVellis asked if it was five working days. Attorney DeLuca stated that it is five business days.

Attorney DeLuca wanted to know if the Board would agree to place a stay on the suspensions during the time of appeal. It is obvious that with the dates of suspension scheduled to go into effect in these cases sometime in November, December or January there is no likelihood of the ABCC being able to hear any of those appeals any time within at the earliest six months or so.

That presents the question that your Board and other Boards that sit as local licensing authorities have to determine for themselves after issuing the suspension whether or not they would issue a stay during the pendency of an appeal.

Ms. Coppola asked if all the people had requested a delay. Attorney DeLuca stated that it is impossible to say without knowing whether or not there is going to be an appeal. The only one he knows of is the Renaissance and they have requested the stay during the time that they pursue their appeal. Attorney DeLuca feels that is reasonable to assume that any of those license holders that do choose to appeal that they would have a similar request. It is only logical otherwise the appeal could be mooted if those suspensions go into effect and weeks and months later you're pursuing an appeal at the ABCC.

Mr. Gray asked if the only way a stay would kick in is if they made an affirmative appeal to the ABCC. Attorney DeLuca stated that this is his advice to the Board that if there is an appeal then they would have to make that determination as to whether or not they would issue a stay. Ms. Coppola asked why those were on the Board's agenda tonight. Mr. Keegan stated that the Board needed to discuss it so they wouldn't upset the process.

Mr. Keegan stated that there is no action for the Board tonight per say. Attorney DeLuca stated that the question that was presented earlier at least on behalf of the Renaissance was whether or not the Board would entertain a stay of the suspension that they now have dates for during the pendency of their appeal. That is the one appeal that Attorney DeLuca knows about. The others are likely to have the same request in the event of an appeal which of course they will not let them know until the Board gets their written decisions out.

Ms. Coppola asked if the Board has to wait until they come back to them and asks them. Attorney DeLuca stated that they have the question already from Renaissance. Ms. Brue asked if they could hold off on a decision. Attorney DeLuca stated as to the others. Mr. Keegan stated that the only one before the Board tonight is Renaissance.

Mr. DeVellis asked if they said no to the stay of the dates and then they appeal it. Mr. Gray stated that the appeal is going to happen well after those dates. Attorney DeLuca knows it may be counterintuitive to think that this suspension could go in effect even with the appeal but it is the last standing order that exists in the case is if the suspension goes into effect. The appeal does not automatically stay the suspension. Mr. Gray asked what would happen if they win the appeal what happens to the lost business that the Board imposed. Attorney DeLuca stated that, that business is not coming back, those are days that are lost. The one incentive that a license holder might have to continue to pursue an appeal even after the suspension is served is in order to cure the record.

Attorney DeLuca stated that if they win the appeal the ABCC may get back to the Board and say members of the Board we think that you were in error in ordering that result or this result and it would have the effect of curing the record. That all important record that the Board has all seen becomes pretty important.

Mr. DeVellis asked how about a different avenue if they went to clear the record or they were saying that the Board's decision was arbitrary and capricious are there damages due them because of their closed business. Attorney DeLuca stated no.

Mr. Gray asked Attorney DeLuca for guidance on this. Boards in similar circumstances. Attorney DeLuca stated that he has seen it go both ways. It is usually looked at this way; if the Board declines to issue a stay the Board can be fairly well assured that an aggrieved license holder will go to superior court and request a temporary restraining order. Temporary restraining orders usually turn on one or two things: one whether or not there is irreparable harm, in this case a loss of business or property that is not coming back Attorney DeLuca thinks they win on that. The other element in these cases is to determine for the court whether or not there is a good likelihood of success on the merits by the applicant for the TRO. Attorney DeLuca suggested to the Board that they lose on that. Of those two elements that are most important in the analysis of whether or not they are going to get a TRO, Attorney DeLuca stated he thinks they are good on one and not the other. It depends upon the judge and what that judges determination or experience may be on whether or not they would issue a TRO, it could go either way.

Mr. Feldman asked what harm would it cause if they granted the stay. Attorney DeLuca stated that everything would stay the way it is. The suspension days that have been determined would not go into effect. For those that made the appeal the suspension would not go into effect as planned. The appeal would go forward, there would be some determination from the ABCC and if the ABCC affirms the Boards decision then those dates could go into effect at some later time. If the ABCC comes back to the Board with a contrary opinion about the action that the Board took, then the Board would be free to follow the advice of the ABCC at that time.

Mr. Keegan asked if there was a question of equity here that if you have six other people going through and taking their medicine if you will and absorbing those three days and the one person decides not to appeal it. Mr. DeVellis stated that he would take it a step further in that the one business that will appeal is the only business that has not given the Board dates so the Board had to impose dates. Mr. DeVellis is comfortable with the process that they did and the reasoning

behind it and the regulations. Mr. DeVellis stated that the Board set it and they set it for a reason so if they appeal fine, the Board will go through that process but Mr. DeVellis is not in favor of a stay.

Mr. Gray stated that he wondered if the Board did vote on approving the stay for the Renaissance tonight would that open the flood gates for others to say “I am going to appeal” and take the stay. Mr. Gray stated that he thinks the Board has to be uniform in handling stays for everyone. Mr. Gray is not in favor of the stay.

Mr. Feldman stated that the Board debated this and spent a lot of time discussing this, the Board has the dates and it is time to move forward. Mr. Feldman stated no stay.

Ms. Coppola agreed no stay.

Ms. Brue suggested there should be a stay, the Renaissance stated that they had events booked for every single weekend in the near future and just thinking about the on the wedding potentially that might be happening on one of the evenings that the Board picked. Ms. Brue suggested that they reconsider and see what the ABCC decides for this type of situation. Ms. Brue understands how a majority of the Board came to their conclusion on the penalty but the nature of this particular business has tremendous impact.

Mr. DeVellis stated that he understands that every single day and every single weekend is booked but what is unusual is that the Board reached out. All the other businesses he was sure had other business and obligations and they caucused and came back with something that would work for them and that one particular business has not come back with any dates.

Ms. Brue stated that they have made their decision to appeal so that is probably part of what went into them not coming up with any dates. Certainly it impacts the business of a restaurant or theater but this is a venue that could be having a significant function for people. Ms. Brue is very concerned that the Board would be putting themselves in some type of risky position.

Mr. Keegan suggested approaching the Renaissance. Mr. Keegan asked Attorney DeLuca if he could approach their counsel and see if there is a date, maybe it is not within the sixty days for the weekend so it doesn't impact a wedding. Mr. Keegan understands that impact also. If you have a booked wedding for that weekend you can't change that easily.

Mr. Gray asked if the Renaissance has responded to the dates the Board imposed. Attorney DeLuca stated that he did speak with their attorney and he told him what the Board had done. Attorney DeLuca didn't get any reaction one way or the other. It was just in the context of the telephone conversation the day following the last hearing (last Thursday). Attorney DeLuca did let him know that the Board set those dates consistent with the dates of the Lafayette House.

Mr. Keegan stated that a couple of the establishments had chosen Thanksgiving and Christmas as dates. Obviously those would be low business days but in this particular case Mr. Keegan thinks the Renaissance is the only one that would really do a wedding type business (maybe the Lafayette House). The question is would they be the only ones affected in that way.

Mr. DeVellis stated that the unfortunate thing is that they are speculating and guessing and the opportunity was to have that discussion at the last meeting or tonight. The Board specifically asked at the last meeting if anyone had heard and the answer was “yes we heard” through counsel that they weren’t interest in giving the Board dates. Mr. DeVellis thinks the Board should move forward and if there is a really big issue and it is a really big hardship any business can come back to the table and ask the Board to reconsider.

Ms. Coppola stated that the Board was accommodating enough to let them choose their dates with just the proviso that one date be a Friday or a Saturday. Certainly they could look at their calendar and block off something that says definitely don’t book anything because this is the day that we are going to do the suspension. Mr. Keegan stated even a date outside the sixty day window just to at least make that request.

Motion made by John Gray approve a temporary stay until the Renaissance has gone through the appeal process with the ABCC. Seconded by Virginia Coppola. **Vote 1-4-0 with Lorraine Brue voting in the affirmative.**

Attorney DeLuca stated that the last two hearings would be coming up in a week or two and Attorney DeLuca will not be able to make those hearings but Brandon Ross an attorney for his firm would be attending the hearing instead.

The Board will be going through the same process with the hearing but those two establishments will be a little trickier by way of disposition. One of the things that Attorney DeLuca and Mr. Keegan had talked about was the possibility of taking it all under advisement and maybe getting some type of dispositional memorandum from both sides on what the Board thinks might be reasonable. That way it would give the Board some time to think about it. Unless the Board feels comfortable enough to decide it after hearing the facts.

10:50pm – Town Manager Update

Mr. Keegan had sent an E-Mail to everyone stating that he had drafted a letter to David Mohler from the State and Mr. Keegan just wanted to get the Board’s reaction. Mr. Keegan stated that he had included everyone’s questions to those that responded to him. The town is seeking information and this is the opportunity to do it. Mr. Keegan asked the Board to communicate to him directly and he will respond back to them directly.

Motion made by James DeVellis to adjourn at 11:00pm Seconded by John Gray. **Vote 5-0-0**