

TOWN OF FOXBOROUGH
SELECTMEN'S MEETING
DECEMBER 29, 2015

Members Present: James J. DeVellis, Chairman
Christopher P. Mitchell, Clerk
John R. Gray
Virginia M. Coppola

Others Present: William G. Keegan, Jr., Town Manager
Ms. Mary Beth Bernard, Assistant Town Manager
Mr. Gary Whitehouse, Foxborough Planning Board
Mr. Kevin Weinfeld, Foxborough Planning Board
Mr. Ronald Bresse, Foxborough Planning Board
Mr. Gordon Greene, Foxborough Planning Board
Deputy Chief Steven Bagley
Chief Roger Hatfield
Attorney David DeLuca
Sergeant Richard Noonan
Chief Edward O'Leary
Attorney Mark Stopa, Saga Hibachi Steakhouse

David Feldman was not present for this meeting.

The meeting was brought to order at 6:30 p.m. by James DeVellis.

A motion to enter into Executive Session to conduct strategy sessions in preparation for negotiations for Lease Negotiations relative to Gillette Stadium land. (G. L. c. 30A, §21 (a) (6)) and to review Board of Selectmen Executive Session Minutes for 2014/2015 for Release/Non-Release was made by Christopher Mitchell. Seconded by John Gray. **The motion carried 4-0-0. Roll Call Christopher Mitchell – yes, James DeVellis – yes, John Gray - yes, Virginia Coppola – yes**

Mr. DeVellis stated that the Board just got out of a half hour Executive Session and the two items discussed were strategy discussions for the lease negotiations relative to the Gillette Stadium land. They didn't quite finish so at the end of this meeting they will go back into Executive Session to review the 2014/2015 Executive Session Minutes; they have all been approved but the Board needs to see which ones can be released yet.

James DeVellis read the agenda.

7:04pm – Citizen's Input

No one was present.

7:05pm – Selectmen’s Update

Mr. DeVellis stated that he hopes everyone has a very safe and happy New Year’s this weekend and he hopes everyone had a nice holiday celebration. Mr. DeVellis wanted to thank the Board members; they had a very productive year. Mr. DeVellis also thanked Mr. Keegan, Ms. Bernard and all of the volunteers, committees and groups in town. A lot of things have been going on in town and if you look at the Board of Selectmen meetings a lot of times they start early and end late and every meeting has been packed. If anyone is looking for a New Year’s resolution February 23, 2016 is their Special Town Meeting and that is where everything comes together. A lot of the Boards are involved (Advisory Committee; Planning Board; and Zoning Board). There are warrant articles on building; contracts; and child advocacy up there. When he hears complaints or suggestions from residents but they don’t take the time to come to any of the meetings that is fine, but if you don’t come to town meeting at least for one or two hours out of the whole year please do it, you will learn a lot and you will get to voice some of the things that everyone has been working hard on all year so if you could do that, that would be great.

If you saw the sign on the common that was a nice thing that happened in a relatively short time. The flagpole funds were raised and the nice thing about that is 25% of the funds that were raised or the contributions are coming from the town; the labor and the materials and 75% is coming from the people and the businesses. It is kind of the mantra that they have been saying at the flagpole meetings “For the People/By the People” and it is something that they felt strongly that, this is the one thing in the town that people can step forward and do. Last week it was topped off with the Partners in Patriotism’s \$12,000 donation which made them reach their goal. They are there and they are shooting for Memorial Day to have a new flag up and worst case Founder’s Day to have everything all set. He is very proud of the people who worked in the community to bring that forward.

Be safe on New Year’s. We will have the Winter Classic which there is going to be a lot of eyes on Foxborough from the country and Canada looking at it so it will be a nice weekend for Foxborough.

7:11pm – Foxborough Planning Board – Appointment of Gary Whitehouse

Mr. Weinfeld opened up their meeting.

Mr. DeVellis stated that in the Board’s packet there was a letter dated December 7, 2015 describing the action and the request from the Planning Board.

Mr. Whitehouse stated that he has been an Associate Member on the Planning Board for three years and he has enjoyed it and he thinks he is learning and has been a valuable member and with Bill Grieder’s retirement it left a large void on this committee. With the help of the committee members he would like to help fill that void.

Mr. Weinfeld stated that they think it is appropriate and Mr. Whitehouse has definitely been there just about every meeting over the last 3 year period. He is the most likely person to fulfill

this. It is a short term appointment by the Board of Selectmen to allow him to fulfill that position until the May election in which case he would have to run for the position either on his own or against anyone else who thought they were going to run for the slot. That election will only keep for one more year because Mr. Greider will have had a year left as of May on his term. If it is Mr. Whitehouse terrific and if it is another party who wins that election they will have to run again a year from May for a three year seat.

Mr. Greene stated that this is a joint meeting and a joint vote; this is not a Board of Selectmen vote. Mr. Weinfeld stated that it is not; it is an appointment by the Board of Selectmen for the position; it is not an appointment by the Planning Board, they are coming to the Board of Selectmen with a request. They have the right to appoint a blank seat of any nature of a board that has a vacancy so they get to be there but they don't get to vote, it is strictly a Board of Selectmen vote.

Mr. Gray asked Mr. Weinfeld if Mr. Whitehouse ascends to full time will they also then look for an Associate in which Mr. Weinfeld stated yes, that is their plan. They thought they had someone but that person is involved with other things and doesn't have time right now. Mr. Gray asked if they had one opening or two in which Mr. Weinfeld stated just one and that after the New Year they will get active in trying to find individuals that may be interested. Mr. Bresse stated at that point they will have to come back in front of the Board of Selectmen.

Mr. Mitchell asked how many other boards Mr. Whitehouse was on now in which Mr. Whitehouse responded six boards and most of them are not as active as the Planning Board. Mr. Mitchell asked if he was planning on staying active on all of them in which Mr. Whitehouse stated yes.

Motion by Christopher Mitchell to appointment Gary Whitehouse as a full time member of the Planning Board expiring 5/1/16. Seconded by Virginia Coppola. **Vote 4-0-0**

7:16pm – Citation – Deputy Fire Chief Steven Bagley

Mr. DeVellis thanked Deputy Chief Bagley for coming. Mr. DeVellis stated that obviously he is nearing the end of his career here and he is going into retirement so the Board thought it would be nice to have him in front of them a little bit for his longevity and his service and just to say thank you. They did put a citation together and they will have Mr. Mitchell read it and then have a discussion.

Mr. Mitchell read the citation.

**OFFICIAL CITATION
FOXBOROUGH BOARD OF SELECTMEN**

The Board of Selectmen on the occasion of retirement commends

Deputy Fire Chief Steven M. Bagley

for his thirty-seven years of service to the Town of Foxborough Fire Department.

Recognition is given to Steven M. Bagley for your dedication to fire prevention and fire safety for the residents and businesses in the Town of Foxborough.

As you began your career in 1978 and becoming a permanent firefighter in 1984, you have worked your way through the ranks becoming Lieutenant, Captain and then in 2002, Deputy Fire Chief. We also acknowledge and are grateful for your service as Acting Fire Chief in 2005.

We appreciate your personal commitment to development by retaining many certifications and for obtaining your Bachelor's Degree and Master's Degree in Fire Science while working and attending to your customary duties.

As a lifelong resident of Foxborough you have demonstrated a sense of deep responsibility and pride while providing the town with fire service and emergency medical services.

We acknowledge your contributions to the community in the many and varied projects and committees, and the Town has appreciated and relied on your historical knowledge.

We wish to commend your dedication, and efforts towards safety and protection to the Town of Foxborough. Congratulations on your retirement on January 2, 2016. We wish you and your family health and happiness.

This citation is given under the seal of the Town of Foxborough on this 29th day of December 2015.

Mr. Bagley thanked the Board. Mr. Bagley stated that over the years he has been very fortunate to meet a lot of good people in Foxborough; all the residents and a lot of businessmen and have established a lot of great relationships and that he is very grateful for that. It has been a good career and he is very happy to have been able to serve in the town that he grew up in. Right out of high school he was hoping that someday it would be the town that he lived in and it would be the town that he would get a job in and it worked out that way and he was very fortunate. He met a lot of good people along the way and he is very thankful for their relationships.

Mr. DeVellis thanked him for his service and stated that for someone that has been here since 1978 he has certainly seen a lot and he carries himself quietly and humbly and he commands a lot of respect and not for being loud but for doing his job. Mr. DeVellis stated that he knows he put the town in front of himself on many occasions and did the right thing and led by example so he appreciates it. Mr. DeVellis stated at their table they have seen people retire after many years and it isn't even the institutional knowledge they lose, it is their integrity and the love of Foxborough and when someone after so many years leaves; new people come in and they learn the ropes but after so many years it is hard to replace. They will miss him and he definitely left his mark on Foxborough in a very nice way.

Mr. Bagley stated that it was his pleasure and he couldn't stress enough the thanks that he has for everyone that he has met along the way for their support and guidance. He had learned a lot

from the people that had retired before him and he can only hope that maybe some of the younger guys will take a little bit from what he tried to portray.

Mr. Gray stated when the public safety sector of our town retire you really have to tip your hat and say thanks for looking after us for all these years and keeping us safe and we will see you around town.

Ms. Coppola stated she first met Mr. Bagley when she was volunteering at Foxboro Cable Access many years ago and Mr. Bagley did the Fireman's report and that was the first time she met him and they have been friends since.

7:24pm – Action Items

Motion by Christopher Mitchell to approve the 2016 Automatic Amusement license for Bass Pro for 2 machines. Seconded by John Gray. **Vote 4-0-0**

Motion by Christopher Mitchell to approve Bass Pro Uncle Buck's Common Victuallers license nonalcoholic restaurant for a term expiring 12/31/16. Seconded by John Gray. **Vote 4-0-0**

Motion by Christopher Mitchell to approve the Common Victuallers license nonalcoholic restaurant for Sal's & Mal's from a term of 1/1/16 expiring 12/31/16. Seconded by John Gray. **Vote 4-0-0**

Motion by Christopher Mitchell to approve the Sunday Entertainment license for Foxboro Funway from 1/1/16 expiring 12/31/16. Seconded by John Gray. **Vote 4-0-0**

Motion by Christopher Mitchell to approve the Class II for Winslow's Auto Clinic from 1/1/16 expiring 12/31/16. Seconded by John Gray. **Vote 4-0-0**

Motion by Christopher Mitchell to approve the Hackney license of Nicholas P. Lennerton expiring on 12/29/17. Seconded by John Gray. **Vote 4-0-0**

Mr. Gray asked if this was a renewal or new application in which Ms. Jarvis responded that it was a new application. Mr. Mitchell asked if Chief O'Leary did the background check in which Ms. Jarvis responded yes. Seconded by John Gray. **Vote 4-0-0**

Motion by Christopher Mitchell to approve the 6th Annual 5K/10K Road Race for 10/22/16 9:00-10:30am for the Foxborough Regional Charter School. Seconded by John Gray. **Vote 4-0-0**

Motion by Christopher Mitchell that they approve the gift donations of \$3,408 from various donors to the Friends of the Flagpole. John Gray seconded.

Mr. DeVellis stated that brings the total to almost \$28,000 and then with the \$12,000 from the Partners of Patriotism that brings them up to \$40,000 and then the town contribution puts them at the top. Even though they are at the top if someone still wants to make a donation they are keeping it open. It seems like it is a personal gift for a lot of people and also to be part of it.

They met the other night and they are thinking about putting some type of time capsule underneath the flowerbed and then also putting all the names on a white flag and raising it for a week so it will be part of history so by all means if you want to make a donation send it into the Selectmen's office and hopefully it all comes together by May.

Vote 4-0-0

7:30pm – Public Hearing – Saga Hibachi Steakhouse – Alcohol Violation – Attorney Stopa, Attorney Dave DeLuca, Sergeant Richard Noonan

Christopher Mitchell read the Public Hearing notice.

Attorney DeLuca stated that he was representing the Town of Foxborough and he had with him Sergeant Noonan who will provide the Board with testimony regarding the allegations made in this violation.

Attorney DeLuca stated that counsel for Saga was there and representatives for Saga are also there. Attorney DeLuca has talked with counsel and he has talked with the Officer and they are prepared to give the Board all of the facts that they have available to them and they may also get some further information from Attorney Stopa and his clients in this matter.

Mr. DeVellis stated from a clerical perspective one of the other times they swore in anyone who was going to speak and asked if Attorney DeLuca needed to do that in which Attorney DeLuca stated yes.

Attorney DeLuca swore in Sergeant Noonan and Attorney Stopa.

Attorney Mark Stopa stated that counsel and he had discussed the matter before the Board tonight and they are in agreement as to most of the essential facts that give rise to the four delineated specifics of the violation notice. In an effort to make this more efficient and easier they are waiving actual testimony and cross examination on those facts and are willing to accept what the Police Officer has to offer by way of summary in regard to those facts but do want to be heard with regard to the events that evening because he thinks there are some other facts that are necessary for this Board to have in order to make its decision.

Mr. DeVellis stated that he appreciated that and Attorney DeLuca would present and Attorney Stopa is not going to challenge it and they are agreeing to what he is going to present. Attorney Stopa stated that if there were any specific facts that he thinks need comment he will. He is telling the Board that those essential facts for those four charges are acceptable to his clients and they understand the basis for those but he does want to be heard with regard to certain things that are not apparent from the police report.

Attorney DeLuca asked Sergeant Noonan to give his name and assignment. Sergeant Noonan stated that his name was Sergeant Richard Noonan from the Foxborough Police Department and he was also a Liquor Control Agent for the Town of Foxborough. Attorney DeLuca asked

Sergeant Noonan how long he has served in that capacity in which Sergeant Noonan responded 16 years as a Police Officer and about 6 years as a Liquor Control Agent.

Attorney DeLuca referred his attention to November 24, 2015 he asked Sergeant Noonan if he was on duty at that time in the vicinity of Patriot Place in which Sergeant Noonan stated he was and was working the New England Patriots Monday Night Football detail. Attorney DeLuca asked if that was a Monday night in which Sergeant Noonan responded correct, it was a night detail and he believed it was a Monday night. Attorney DeLuca asked if he was called relative to an alleged violation of alcohol service in which Sergeant Noonan responded he was. Attorney DeLuca asked Sergeant Noonan to tell the Board what the nature of that was. Sergeant Noonan stated that at approximately 1:15am he received a telephone call from the Command Booth that was a Team Ops Security Guard that he was reporting that he observed service of alcohol at the Saga Steakhouse and based on that information Sergeant Noonan responded to the Saga Steakhouse with four Attleboro Police Officers who were also assigned to the detail. When Sergeant Noonan arrived at the Saga Restaurant he observed a couple of Team Ops Security Guards as well as the four Attleboro Police Officers and he made observations of the inside of Saga Restaurant from the outside. Attorney DeLuca asked what Sergeant Noonan's understanding of the closing time that is required for an alcohol serving establishment in Foxborough. Sergeant Noonan responded that closing hours are 1:00am with all alcohol removed by 1:05am as well as all empty containers removed at 1:05am and all patrons have to be off the establishment within 15 minutes so that would be 1:15am. Attorney DeLuca stated that is by rules and regulations of the Town of Foxborough in which Sergeant Noonan responded that is correct.

Attorney DeLuca asked Sergeant Noonan what he found when he got to the scene. Sergeant Noonan stated that when he went up to the window he observed several patrons within the establishment still eating and consuming alcohol. Upon entering the establishment, Sergeant Noonan made contact with one of the managers and asked why there were still patrons inside of the establishment and he was unable to give an answer. Sergeant Noonan made observations of the patrons were still eating and consuming alcohol. At some point in time Sergeant Noonan made a count of the number of patrons within the establishment and he counted 37 patrons in this establishment. Attorney DeLuca asked if there was a front room and a back room in which Sergeant Noonan stated correct. Attorney DeLuca asked if he found alcohol present at all of those tables. Sergeant Noonan responded a good majority of them, yes. Attorney DeLuca asked if he also had occasion to at least handle one or more of the containers of alcohol in which Sergeant Noonan responded yes. Attorney DeLuca asked if that was a bottle of beer. Sergeant Noonan stated that there were bottles of beer, glasses of beer and he observed a Scorpion Bowl with a liquid in it as well as glasses containing what appeared to be mixed drinks of alcohol. Attorney DeLuca stated that with respect to the bottles of beer, were any of them cold in which Sergeant Noonan stated they were. Attorney DeLuca asked what happened next after he made those observations. Sergeant Noonan stated that he asked the manager to remove all of the alcohol from the establishment from the tables and at that time he directed his staff to remove the alcohol however after he cleared the alcohol from the front bar area Sergeant Noonan entered the back room and observed that none of the alcohol was removed from any of the tables. Attorney DeLuca asked approximately what time in the early morning hours was that in which Sergeant Noonan responded that he arrived at the scene at 1:18am. Attorney DeLuca stated as a result of

those observations did you determine there had been violations of the local rules and regulations in which Sergeant Noonan responded he did. Attorney DeLuca asked specifically what where they in which Sergeant Noonan responded that he made an observation that the following rules and regulations were violated:

1. Patrons still had possession of and were actively consuming alcoholic beverages later than the established 5 minutes past the closing hour of 1:00am
2. The establishment failed to clear all bottles, glasses, etc., from all tables and bar within the allotted time of the established time of 5 minutes past the closing hour of 1:00am
3. The establishment failed to have all the patrons off the licensed premises within 15 minutes of the established closing hour of 1:00am
4. The establishment failed to prevent patrons from entering the premises after the official closing hour of 1:00am

Attorney Deluca stated that following the determination of those violations did Sergeant Noonan make any orders with respect to the patrons on the premises. Sergeant Noonan stated that at some point in time because of the fact that it looked like they had just received their food and there were 37 patrons there he didn't want to create a scene or disturbance so he allowed them some time to consume their food. After about 20 minutes he notified the manager that he was going to have to start moving the patrons off of the premises. At no time prior to that did he attempt to make anyone leave.

Attorney DeLuca asked if at some point in time did Sergeant Noonan confirm that the premises had been vacated in which Sergeant Noonan stated he did. Attorney DeLuca asked what time was that in which Sergeant Noonan responded at approximately 2:00am.

Attorney DeLuca stated that he didn't have any further questions and if the Board had questions for Sergeant Noonan he was certainly available for that.

Mr. DeVellis stated that they would have the counsel for Saga make his presentation and what was going to happen was that they will get to a point where they are going to close the public hearing after hearing if there are any comments from the public they will close the hearing and then the Board will deliberate but before they close the public hearing the Board will ask questions back and forth.

Attorney Stopa stated that after conferring with his clients, the last call for alcohol that evening was given in compliance with the rules and regulations. No alcohol was served after that point. Mr. Gray asked what time was that in which Attorney Stopa stated that last call was about 20 minutes of 1:00am. The restaurant end was shutting down their food service during this time period and they had one of the assistant managers, a fellow by the name of Ricky (didn't have last name) he was to be at the front door to make sure no new people were coming in. The doors to the front of the restaurant don't have the spring loaded locks so that people can leave once the doors are locked; someone would have to be there with the key. Their preferred method of

handling that is to have someone on the front end to do just that. Immediately after this happened his client contacted Attorney Stopa even before this matter was presented by the Chief at the Board's last meeting because there was serious concern about how this could have possibly happened and they began to do a bit of an investigation to try to figure out what was different about this night than any other night that they experienced in their roughly two plus years of operating at Patriot Place and they were able to piece together pretty much what had happened.

Their experience generally on other night games has been that when the game ends there are very few patrons in the restaurant, the ones who are there are generally at the bar virtually never having any at the restaurant portion in the back (there is a bar area in the front and there is a restaurant area in the back). Generally their experience has been that there is no one in the restaurant; everyone is at the bar and it is easy to clear the bar and then hustle those people out of the establishment within the time period that is allotted. They never had any problem with that previously. They started looking at what had happened during other night games and what was different about this one. This night game ran 32 minutes over (most NFL games run three hours). In addition to that the weather was 29 degrees and the wind chill was 21 degrees; it is cold but notably colder than it had been in prior weeks so Attorney Stopa thinks there is some significance to that. As a result of the 32 minute delay in the game time, the whole cycle for what happened at the end of the evening with people leaving the stadium, going to the restaurant to get some food or a drink and then going home got pushed out. The employees at Saga did not even realize that this shift had happened because it was just a normal course of human affairs seemed to be going the way it had always gone. Attorney Stopa stated he would share with the Board the other prior dates because he actually did the research to see what other night games there were and how long the games had run. Before they could even realize they had an inordinate number of people coming at least 32 minutes later and Attorney Stopa suggested to the Board because of the cold weather people have a tendency to move slower when they are cold that this even got pushed out a little bit more so now they have got these cold people sitting in the restaurant. Attorney Stopa stated that he is joined this evening with Annie Chen and Steve Lin; Steve Lin is the manager on the license and Annie Chen is the restaurant manager in charge of most of the operations there. She quite candidly stated to Attorney Stopa that it was strange; people were ordering food and drinks and just sitting there; they weren't eating and they weren't drinking because they were cold. There was one woman in particular that was notable to Ms. Chen when she was recounting this to Attorney Stopa; it was towards the end when Sergeant Noonan was trying to get people to move along, her comment was that "they were cold and they weren't doing anything wrong can't we just sit here for a few minutes". It had to be explained that no, the law doesn't allow them to do that, you have to be gone so you can see that there is almost a perfect storm of problems that caused an issue that evening so here we have all of these people just sitting there and by the time they realized that you have a problem, it became a bigger problem because the time allotment had passed and even if they were trying to do all the right things to get the place closed down you have 37 people; which was a lot more people than their general experience was during a night game.

One other complicating factor was that the computer at the front desk because of some power outages previously the time that was on that said 6:46am so that was worthless. When Sergeant

Noonan asked Ms. Chen what time it was she had to pull out her telephone to double check the time and the seriousness of the situation became obvious at that point.

With regard to the prior experiences Attorney Stopa stated that it was interesting to go back through this; there is a website called Pro-Football-reference.com and it has all the statistics that you would ever want including all of the game statistics. Attorney Stopa was more interested in how long the games went, what the temperature was and so forth. Attorney Stopa stated that the November 23, 2015 game ended on November 24, 2015 the day of the violation, it started at 8:30pm and ran 3 hours and 32 minutes so it ran over. Attorney Stopa stated that he thinks it is important to understand what their experience has been with night games going back to when they first opened.

The next night game was Thursday, October 29, 2015 which started at 8:26pm and ended in 3 hours and 2 minutes so clearly that is about 33 minutes shorter time wise than the game at issue here. Prior to that was Thursday, September 10, 2015 and that was a game which started at 8:40pm, so it started late and went 3 hours so that was still 25 minutes shorter than their experience that night. Similarly on October 16, 2014, also a Thursday night game, that started at 8:25pm and ran 3 hours and 4 minutes so it would have been finished within that three hour time period of 8:30pm that they are all used to. January 11, 2014 similarly started at 8:15pm and went 3 hours and 12 minutes so it finished more than 32/33 minutes before this game on this evening.

Attorney Stopa found one anomaly in the spirit of candor, about two weeks after they opened the restaurant in November 2013, it was a Sunday night game, that actually ran later than this one and Attorney Stopa couldn't quite figure out how that could be without having this same sort of experience and then it occurred to him that they were only open for two weeks and no one even knew that they were there and that the game ran 53 minutes long and the result of that was that it ran so late that people didn't even think about going out afterwards so he thinks that is why this evening, November 23rd into the 24th, 2015 became the perfect storm because it was just late enough to disrupt that regular business cycle and throw things out of kilter but not long enough that you can get by it because people were just not even paying attention and go home. That became the new experience for that night. Attorney Stopa stated that after a distorted sense of reality once again, that is not likely to ever happen; however, now that it has happened they are better prepared for the issue because they experienced it. Irrespective of that, they sat down and talked about what things could be done better so that this absolutely will not happen again and one of the things that they have done already and again, it was before the notice of violation was even received this change took place is that they moved their last call back to 12:30am to give themselves an extra buffer of time. They have also retrained the staff to emphasize the importance of having the restaurant cleared.

They know that in the rules and regulations that there are the time periods that have already been discussed tonight that are set out in there and unfortunately in Paragraph 16 without any particular labels they are not necessarily highlighted for people to understand; however, and Attorney Stopa was pleased to see this, when the new alcohol licenses were issued for this year there was a distinct change in the verbiage on the face of the license in as much as previously it said what the closing time was but the new license says when the last call has to be given and that all bottles and glasses have to be cleared and the time periods for all that so it is prominently

displayed and he thinks that is a very excellent thing that has happened and he thinks it will be helpful not just for his client but also for one of his other clients that might have the same experience.

You can see that this was a very unusual set of circumstances that night and there was nothing purposeful about what they did, it was just that business cycle that got pushed forward and it caught them off guard and the key features of what they are supposed to do by shutting down alcohol operations were all met, ostensibly they just didn't get the premises cleared in the manner that they were supposed to.

They know there was a violation in November 2014; a very different violation from this one and what Attorney Stopa is asking of this Board is that they treat this circumstance very differently than that one and consider this as a first violation because it is so distinctly different from the other and he thinks understandably and explainable given the circumstances as they spun out that evening.

Mr. Gray asked Sergeant Noonan if the Sushi Chefs were still preparing food. Sergeant Noonan responded that they were behind the counter and they still had food out. Mr. Gray stated that Attorney Stopa had stated that his client had met the regulations when it came to last call so at that point in time they could tell time. Attorney Stopa stated that the bartenders knew when last call was supposed to be and the person that he was commenting about was Annie Chen who was the Restaurant Manager, she did not have the correct time at the front counter and that was the limit of his comment on that. They did make the last call when they were supposed to.

Attorney Stopa stated that the shutting down of a Sushi operation is very different than shutting down a regular kitchen operation. Mr. Gray stated that where he was going with this is he is trying to take this as a whole picture and he listened to Sergeant Noonan's testimony and when he walked in it looked like the restaurant was a going concern; that there didn't appear to be any effort to be winding up operations. Attorney Stopa stated that is why he wanted to comment on the shutting down the Sushi operation because if you were looking at it you would see the Sushi Chefs putting things up on the work surfaces. The process for shutting down a sushi facility is very different than shutting down a regular restaurant where you just take things and throw them into the refrigerator and then you are done. In order to preserve the integrity of the sushi, it has to be wrapped and stored in a different way. There is a very complex process that has to be done and it might appear if someone was just looking at that sushi station, it might look like they were putting things up on the counter to be served but they were in fact not doing that, they were shutting down that aspect of the operation in the way that they had to. There could be a misdirect on that, no one was being served food.

Mr. Gray stated that some of them have worked in restaurants and retail and at closing time employees want to go home; they know the time and he is really surprised that the employees didn't tell the management that it was getting really late and they needed to shut down; they know the drill, they do it every night so why did it continue. Attorney Stopa stated that his representation was accurate in that, that cycle got pushed out and he thinks it consumed everyone because they were dealing with their customers before realizing that the time had gotten so late. Attorney Stopa thinks that actually it lends itself to that explanation that had they realized that

the cycle had been moved and the time was getting on, then more than one of them would have said something so what happened was just a very odd set of circumstances and it caught everyone by surprise; apparently even the employees who would otherwise be demanding to leave.

Mr. Gray stated the cold beverages roughly 40 minutes after the last call is concerning. Attorney Stopa stated that his client didn't take the temperature of the drinks. He understands what Sergeant Noonan said and he does not have a response to that but he can tell him that no one got served after the time period they were supposed to be served. There was one table in particular that his client noted and she said that people just literally sat there with the drinks and food at the table doing nothing ostensibly they guess because they were cold and they just wanted to sit there. Maybe they ordered the food and beer out of habit and just let it sit there; he doesn't have an explanation for that. Mr. Gray asked if there were other establishments open that night. Attorney Stopa stated that his understanding for the night games there are only two or three establishments that are open and he didn't know which ones they were.

Mr. Mitchell asked if Attorney Stopa had seen Sergeant Noonan's report as well as his client in which Attorney Stopa responded yes. Mr. Mitchell stated that Attorney Stopa had stated that they were adamant that they gave last call at 12:40am in which Attorney Stopa stated absolutely. Mr. Mitchell stated that in the report it stated "the bartenders identified as Rachel Conti, Kristen Noone and Lis Ton all stated that they did not serve alcohol after 1:00am." Mr. Mitchell stated that the sentence below that stated "when I asked them the approximate time of the last service of alcohol they were not able to provide me with an answer." Mr. Mitchell asked Attorney Stopa how they could not provide Sergeant Noonan with an answer but they could provide Attorney Stopa with that they guarantee at 12:40am they gave last call. Attorney Stopa stated that he thought there was a reference that they gave last call at the time period they said they were supposed to. Mr. Mitchell stated that the report said "they couldn't provide him with the time they gave last call." Attorney Stopa stated that he is not familiar with the specific jobs that each of those people has, he just knows from what the managers of the establishment got from their bartenders and that is that no alcohol was served after the time period that it was supposed to have been served. Attorney Stopa stated that they are acknowledging that the alcoholic beverages remained on the tables and people were not out of the establishment at the time they were supposed to be and the specific allegations of the violation are not that they served alcohol after that time period but that the alcohol was still out. Had the violation been stated differently he might not have been so quick to accept the essential facts as they were being presented but there was no notice of violation for actually serving alcohol after that time period. That seemed to coincide with what his clients were saying happened that evening.

Mr. Mitchell stated that the other thing that Attorney Stopa mentioned that the new license that you have in front of you that has the times and Attorney Stopa alluded to that they weren't sure of the times before that. Attorney Stopa stated that what he was suggesting was that was handed to him tonight and he wanted to comment that he thought that was a very good thing because when he sat down with his clients he went through the rules and regulations and they were aware of what was in there, but one of his comments to them was it was unfortunate that there are not labels for each of the paragraphs to tell you what is in that paragraph and those requirements (he is pretty sure that it is paragraph 16 of the rules and regulations) so when he saw the new license

because he had just received it yesterday, he wanted to point out to the Board that he thought that was a brilliant idea to put that on there because it makes it prominent because not everyone is going to read as they might otherwise want them to all the rules and regulations to understand every line and paragraph that is in them; that was the nature of his comment. Mr. Mitchell stated that any restaurant or bar their number one liability is the liquor so that should be engrained in their head. Attorney Stopa stated that clearly they knew.

Mr. Mitchell asked Sergeant Noonan what other establishments are open late at night up there. Sergeant Noonan responded for that night in particular he didn't go around. Mr. Mitchell stated in general. Sergeant Noonan responded depending on the event some establishments will stay open and some close; it depends on what time the event gets over; they don't want to deal with the rush so they will close early. Everyone has different operating procedures for different events.

Ms. Coppola asked Sergeant Noonan if he was in uniform when he entered the premises in which Sergeant Noonan responded he was. Did they ask you what was the problem and why you were in there. Sergeant Noonan responded no and explained that he went in there and he explained to them that they were operating after hours and he was inquiring as to why they were still operating. Ms. Coppola stated that Sergeant Noonan had stated that when he asked that question the manager was unable to give him an answer. Sergeant Noonan stated that he just couldn't state why there was still alcohol on the tables past operating hours and why people were still in the establishment past operating hours. After asking several times he finally stated that people came in late and he thought he was going to be able to get them out in time. Ms. Coppola asked if that time Sergeant Noonan referenced the rules and regulations of the Town of Foxborough in regard to serving of alcohol. Sergeant Noonan stated that he referenced the times. Ms. Coppola stated that when Sergeant Noonan was speaking to him after he entered he was aware that he was serving after hours. Sergeant Noonan stated not serving because he didn't see the service after hours it was having the alcohol out past the hour. Ms. Coppola stated that people were still there after 1:15am in which Sergeant Noonan stated correct. Ms. Coppola stated at that point the manager did not go and try and get people out. Sergeant Noonan stated that they started with the front room and after the front room was cleared of alcohol; and again, Sergeant Noonan didn't want the matter rushed so he didn't make them evacuate the building; he just told them to get the alcohol off of the tables and then they went to the back room to remove the alcohol and after some point he told them they had to start getting people out of there.

Ms. Coppola stated that also people entered the premises. Sergeant Noonan stated that two people came in. Ms. Coppola stated that in Sergeant Noonan's report it stated that no one approached them and said they are sorry but they are closed in which Sergeant Noonan stated correct. Sergeant Noonan stated that two people came in and sat on the couch and stayed there for a little bit. Ms. Coppola asked if Sergeant Noonan was not quite sure if any other establishments were open. Sergeant Noonan responded that after that event he did not go to any other establishments. Ms. Coppola asked if he knew if any other establishments were open in which Sergeant Noonan responded on that night he did not. Ms. Coppola asked if there was a clock in the restaurant and if people wore watches. Sergeant Noonan stated that he did not take notice of any clocks and the only clock he asked to look at was the cash register which the date and time was wrong on the cash register of the bar area.

Ms. Coppola stated that this is a second violation and it is not considered a first violation. Ms. Coppola stated that the timeframe is three years and last year was the first violation and this is the second time that something has happened so this is considered to be a second violation even though it is different from the previous year's alleged violation. Attorney Stopa stated that he is aware of that but with all due respect he was asking this Board to consider it separately and distinctly because it is a distinctly different type of violation and the circumstances are such that he thinks it can be explained because of the circumstances that led up to this violation. There was no purposeful action, it was just the lateness of the game and it may very well be that there were other establishments open and maybe they got more customers in. Attorney Stopa did not do that type of investigation, he is just suggesting to the Board that they didn't do anything overtly here, it was a happenstance that caused a problem that they had never experienced before and that natural cycle of the people caused the problem. Ms. Coppola asked how many employees were in the restaurant at that time. Attorney Stopa stated around 15. Ms. Coppola asked how many of those employees should be aware of the rules and regulations of the Town of Foxborough with regard to serving alcohol; Ms. Coppola stated that the Board knows the managers should have been. Attorney Stopa stated Mr. Lin the liquor license manager and Ms. Chen who runs the restaurant operations and the bartenders for sure know. Attorney Stopa stated that now everyone is familiar. Once they got towards the end of the situation there, they were trying to get people out and the Board might well understand that some of the customers did not understand what was going on and why they had to do what they were being asked to do. They didn't know that they have to be out of there by 1:15pm so even though they were telling people to leave they were getting some pushback and unfortunately Sergeant Noonan recognized that and he spoke up and stated words to the effect that they were past the closing time and everyone has to go and it was a nice gesture to allow some people to finish some of their food before having to leave.

Ms. Coppola stated that the rules and regulations say that last call is at 12:40am and liquor has to be removed from the tables and bar areas by? Attorney Stopa stated at 1:05am and people have to exit the building by 1:15am. Ms. Coppola stated that Sergeant Noonan showed up at 1:18am, well past the three deadlines and none of the employees didn't even think that they were running a little late and why are the police here. Attorney Stopa stated that he thinks they already recognized that everything had run late and that was about the same time as Sergeant Noonan showed up and it became a far more focused issue but they had the understanding that there was this odd circumstance going on that they had to try to handle to get people out of there and when Sergeant Noonan showed up it just continued. Ms. Coppola stated that she doesn't understand if your place is supposed to be closing down around 1:00am that is in the rules and regulations and you abide by that 364 days of the year and this 365 day no one was aware of the time; she doesn't understand that. She stated last year they stated that the bartender had a bad day and was this that the whole staff had a bad day. Attorney Stopa stated that in the restaurant operation, they go to work and the place gets opened and they get to the end of the night and it gets closed. It happens, everything goes along very smoothly and it is a well-oiled machine and every prior night game when it came down to the end of game time and the end of the night when people are supposed to be going home the natural cycle was there was no one in the restaurant; there were a few people at the bar and it was easy to take the glasses and bottles off the bar and swoosh people out of the place. This circumstance was different; all of a sudden there were 37 people in

the establishment and he believes 30 or more of them were in the restaurant, this was an unusual circumstance and it caught them off guard. Ms. Coppola asked if the restaurant is usually busy on the weekends in which Attorney Stopa stated yes but not pushing towards closing. Ms. Coppola asked if around 1:00am if there is a lot of people there in which Attorney Stopa stated no; that is a night game sort of a thing and all of the night game prior experiences they never had an issue and there were never people in the restaurant that they had to deal with when it came to the push time of shutting things down and getting people out was always the remnants of people left at the bar and that was truly a different experience on this night and caught them totally off guard. Ms. Coppola stated that the rules and regulations are the rules and regulations; no one has a watch. She doesn't understand the group thing that no one is going to look at their watch. Attorney Stopa stated that he is not suggesting that; the servers of the alcohol clearly knew what time it was for purposes of giving last call and stopping service. The problem here as laid out in the violations that are noticed is that people didn't leave. Ms. Coppola stated because they weren't asked to leave.

Mr. DeVellis stated that he is hearing two things; Sergeant Noonan's report was based on what he saw and what was told him. He got notified by the State Police that people were serving by Team Ops when he got there and in his report he said "the Security Guard identified as James Ziniti stated to him that he observed the bartender serving drinks after 1:00am" so that is in your report and that is definitive. Sergeant Noonan responded correct, that is what was reported to him. Attorney Stopa stated that person is not here and can't testify as to what he observed that was outside through a window. Attorney Stopa stated that there was further inquiry about that with the bartender and the bartender unequivocally said that he did not sell alcoholic beverages and that what he did do was give a person in a Styrofoam cup hot tea so that explained what that observation may have seen. Attorney Stopa didn't want any misinterpretations and that was not one of the violations here is that anyone got served after the time ostensibly they didn't kick people out and didn't clear the tables off and they are owning up to that.

Mr. Gray asked Sergeant Noonan when he asked if they would clear the patrons from the establishment, what was the reaction the patrons had; was it a bit incredulous that they would be asked to leave so early and did he get the sense that the patrons were accustomed to staying that late. Sergeant Noonan stated that based on it was after the Patriots game he doubts that anyone is a frequent customer there, they looked like they just came from the game and there were some expressions of concern when the staff was going around taking the drinks at which time Sergeant Noonan made the announcement that they were serving after hours and all alcohol had to be removed and there were no issues with that. Mr. Gray stated that they understood that it was getting late in which Sergeant Noonan stated correct. Sergeant Noonan stated instead of asking them to leave which would have caused more problems he allowed them to finish their dinner after which some time he asked the staff to get people moving at which time they did. Mr. Gray stated that there was no push back and no one made a scene in which Sergeant Noonan stated no, they had one individual that had to be escorted off the premises but that was one out of 37.

Mr. DeVellis stated that before he closed the hearing he wanted to do one of two things Mr. DeVellis wanted to ask Mr. Keegan if there was anything that the Board was not aware of that he wanted to bring to the Board's attention before they close the hearing in which Mr. Keegan stated he did not.

Mr. DeVellis asked if anyone from the audience had any questions or comments in which there were none.

Mr. Mitchell stated that Attorney Stopa and his client were basically saying that they agree that they violated those four parts of the town's license that are in this report in which Attorney Stopa stated correct there is no question that people were still in the establishment past the given time and that the tables had not been cleared. Mr. Mitchell stated that there are four different violations that are stated in the report and they are agreeing to all of them. Attorney Stopa stated yes.

Motion by Christopher Mitchell to close the public hearing. Seconded by John Gray.

Discussion

Mr. DeVellis stated that the next step there would be "Finding of Facts" and then the Board will deliberate and if the Board is comfortable with making a decision or recommendation tonight they will do it and if not they will extend it until the next meeting.

Mr. DeVellis asked Attorney Stopa if he or his clients had anything to add that they did not have an opportunity to in which Attorney Stopa stated no.

Vote 4-0-0

Finding of Facts Discussion

Mr. Mitchell stated that they definitely admitted guilt on all four of the violations.

Mr. Gray asked Attorney DeLuca or Mr. Keegan to remind the Board what the schedule of penalties is. Attorney DeLuca stated that according to the rules and regulations for holders of alcoholic beverages in the Town of Foxborough the final section on those regulations are entitled "Sanctions for Violations". If you were to find indeed that there has been a violation of any of the rules and regulations and they have referred to Paragraph 16 of the rules and regulations which essentially is the articulation of the four separate violations noted by Sergeant Noonan.

For the first violation there are a range of penalties that include a Letter of Reprimand and/or suspension up to 3 days or both and then there was optional liquor closing hours of 11:00pm for 10 days.

A second violation there is a range of penalties from a suspension of a license from 3-10 days with closing hours of 11:00pm for 30 days.

The Board has much more significant violations for third and fourth.

Attorney DeLuca stated as indicated by Ms. Coppola, it is violations which have occurred within the past 3 years that would be counted as serial violations (a first or a second violation needs to

be within three years of the first). There is no indication in the rules and regulations relative to the type of regulation or any distinguishing between violations that would occur with respect to the number of violations; it just clearly indicates a violation is a violation without any distinction between one violation or another.

Mr. Keegan stated that there are essentially two actions that the Board needs to take here tonight if they so choose to act on this matter tonight. The first would be to determine if they believe a violation of their rules and regulations has occurred and the second would be what would be the discipline.

Mr. DeVellis asked if Mr. Keegan knew of any other ABCC violations that the Board was not aware of over the last two years. Attorney DeLuca stated that they did not have any record of anything from the ABCC.

Mr. DeVellis stated that if the Board looked at their rules and regulations there are a number of general provisions that go up to 37 and then it goes into the sanctions. You also have a report from the Foxborough Police Department that names four violations and he is not sure how they correspond from one to the other. Going through the rules and regulations he tried to match one to the other and he saw the reference of violation to #16, #17, #18 and #11 generally but he doesn't think the Board has to be that specific in their findings. Their findings could be an agreement to what the Foxborough Police Department found in their report, Items 1,2, 3, and 4.

Mr. DeVellis stated that #11 in the Board's violations - A licensee shall be responsible for all rules and regulations.

#16 Last Call and that goes into Clearing and Removing Drinks

#17 Do not dispose or consume any alcohol on the premises after a certain time

#18 All patrons must be off the premises after 15 minutes after official closing hour.

Mr. Mitchell stated the first thing that they said was that there was no doubt that they violated the Board's policy so they definitely violated the policy. Do we have to vote on did they violate the policy. Mr. Keegan stated that there are really two votes that the Board should take and one is to determine that does the Board believe that this particular entity violated the rules and regulations. If the answer is yes, then the Board goes to the next step.

Motion by Christopher Mitchell that after hearing testimony from our counsel, Sergeant Noonan and the defendants counsel that there is sufficient evidence and fact that they violated our liquor license policies. Seconded by John Gray. **Vote 4-0-0**

Mr. DeVellis stated that the second part is if the Board wants to deliberate and decide if there is under their rules and regulations sanctions for violations.

Mr. Gray stated that ultimately management is responsible for training their staff and ultimately management is responsible because their names are on the license. This seems that they were almost purposely lax and he knows that Attorney Stopa had said that there were extenuating circumstances because there was quite a crowd that came in but the fact that they did pay

attention to time as Attorney Stopa had said, they did have last call and there is other testimony that said that didn't quite happen but Attorney Stopa had said that they paid attention to the time. It is a privilege to have a liquor license in this town; it is worth a lot of money and you really have to be responsible and the reasons Mr. Gray asked the questions to Attorney Stopa was that he was wondering if there was a pattern where management said hey we have a good crowd tonight let's keep it going and he was hoping that was not the case. These types of things the Board has to keep them tight and they have to hold management accountable for this and can you say this was on the edge of egregious Mr. Gray stated yes, it kind of is. Everyone have all seen big crowds in restaurants but management also knows there is a time to close and they begin to work on that well ahead of time. From the testimony Mr. Gray heard he really didn't see that there was an effort made to do that.

Mr. Mitchell stated going back to whether it should be a first or a second violation he thinks it is undoubtedly a second violation of the Board's policies. To use the weather and to use that the game went late it is clear to him it seems like they didn't follow the Board's rules and regulations. Like Mr. Gray stated, a liquor license is a privilege and he didn't think that they took it seriously.

Ms. Coppola stated that their name is on the license and so is the Board's names and she thinks that the Board of Selectmen takes violations very, very seriously. This is the second violation the second year in a row and they have only been open for 2 ½ years and this is their second violation.

Mr. DeVellis stated that listening to the reasons, he understands late game but cold temperatures, people move slowly in cold weather, the clock was broken, the print was too small on the regulations coupled with the fact that he reached out to Fox Cares which is a group primarily made up of all volunteers and liquor establishment owners and they said they have repeatedly reached out to Attorney Stopa's client to participate in that group and it has fallen on deaf ears; the E-Mails are not returned and the telephone calls are not returned which tells Mr. DeVellis either they don't care or they don't get it but to hear excuse after excuse going down to the clock was broken and if the clock said it was 6:00 in the morning like Attorney Stopa said did they really think it was 6:00 in the morning. Mr. DeVellis has no patience for this. Undoubtedly it is a second violation.

What the Board's regulations show is that the Board may consider the following:

Attorney DeLuca said that a second violation is a suspension of license for 3-10 days with liquor closing hours of 11:00pm for 30 days and in the past the Board has upheld that and gone stronger and they have also gone weaker.

Ms. Coppola stated that last year when Attorney DeLuca was there and they were going over the violations he had noted that under the liquor closing hours that actually would require another hearing because it would be a change in the license and as Chief O'Leary, Dave Brown, Lorraine Brue and she were reviewing the regulations, that was one of the things the Board was going to change so she thinks that the changing of the hours to 11:00pm should really be off the table for a sanction unless the Board does another hearing because it changes the license.

Attorney DeLuca stated that he has a copy of a 1979 case and it is called the Casa Loma case and this was a case that was decided by the SJC and it was on this very issue of whether or not abbreviated closing hours could be among the range or universe of penalties the Board could impose for a violation of this sort. The SJC clarified that under circumstances where only a public hearing concerning a public need for decrease in hours could the Board take that kind of action. It very clearly distinguishes between the range or universe of actions they could take to modify a license under Section 23 but that in so far as modifying hours, hours can only be determined as a result of a hearing that is based upon public need. The answer is quite clear that the Board would have to hold a separate hearing on whether or not there was some kind of public need for abbreviated hours in this or other circumstances in order to take that sort of action. Ms. Coppola stated that change was going to be presented to the Board after the first of the New Year when they tweak the regulations.

Attorney DeLuca stated that it is quite possible that they wouldn't have to have a bifurcated hearing; it could be a hearing that included both issues so long as the applicant was notified on both issues at the time of the hearing. They could have a blended hearing that would have a disciplinary action as well as a public need type of action.

Mr. Gray stated that the first violation they suspended the license for 3 days with a Letter of Reprimand.

Attorney Stopa thanked the Board for making reference to that first violation and stated as some of the Board members will recall from that hearing he was on behalf of his client rather distraught over the fact that they were approaching the issue from that perspective because from a purely fairness standpoint other establishments who had been brought before this Board on that same exact violation had been treated very differently, much more softly where they only had a Letter of Reprimand and no suspension of license. While he understands the Board's frustration with some of the liquor establishments in town particularly with regard to the compliance checks or the sting checks annually, that the numbers seem to be going up and his concern at that point was that his client was being painted with the ills and disdain of other establishments when that was their first foray and they got treated very harshly simply because of the timing of when they happened to be before the Board. The reason that he is making comment on that is because he would ask that they take that into consideration when talking about what sort of discipline should be here. His clients were mortified that this happened. They took it very seriously from the first minute and really worked hard trying to figure out why these set of circumstances happened. These are not excuses that they decided to come before the Board and try to deflect, they owned up to the fact that they have these issues.

Mr. DeVellis stated that the hearing is closed and they are deliberating.

Mr. Mitchell stated with the second violation does it have to be the suspension and the closing hours. Mr. DeVellis stated that it could be one or the other. Mr. Mitchell stated that they should just take the closing hours off. Mr. Gray stated what they need to do is to decide if they are going to suspend the license for anywhere between 3-10 days. Given that the Board was elected by the citizens of Foxborough to manage these licenses and to look out for public safety and

because management was on site that night he still considers this to be egregious; they were aware. They are intelligent people and they are business people so they were aware. Mr. Gray stated that he would like to suggest that the Board suspends their license for 10 days.

Mr. Mitchell stated that he would definitely go along with Mr. Gray just for the fact that they are dealing with four separate violations the same night so he would definitely support 10 days.

Mr. Gray asked Attorney DeLuca if they suspended their license for 10 days how would those days be determined. Attorney DeLuca stated that the Board has the option of setting the dates themselves. In the past the Board has sought the input and cooperation of the applicant allowing the license holder to cooperate in the choice of those days and that is entirely within the Board's discretion.

Mr. Gray asked if Mr. Mitchell made the motion he guesses the days would be determined or they would have to determine them now. Attorney DeLuca stated that it is always best if they are doing the context of their decision establish the dates. On the other hand if the Board wanted to invite the license holder to provide to the Board preferred dates they could do that.

Mr. Gray stated that it is 10 days and he would recommend that 4 of those days are Fridays and Saturdays and that those days would have to be served before the end of March. Mr. DeVellis stated that he has a different opinion on that. If what threw them for a loop was that it was game day there should be no serving on game day until they figure this out; we have playoffs coming up and why take that chance. Mr. Gray stated that there are a number of potential game days. Mr. Mitchell stated that the way he sees it is that if you lost your driving license for 10 days it would be 10 consecutive days; it wouldn't be that I want to drive on Monday, Wednesday and Friday so he would say that it should be 10 consecutive days. Mr. DeVellis stated that they have done it different ways; they have had applicants go out in the hallway and come up with days that work for them (this happened last November) and the Board wasn't happy with some of those days. Mr. Gray stated that the Board did that because closing dates were going to be around Christmas last year. Mr. Mitchell stated again, if you lost your license for drunk driving for 10 days they aren't going to give it to you so you can go Christmas shopping. Mr. Mitchell says 10 consecutive days and it doesn't matter when it is and that is just his opinion. Ms. Coppola stated that even if you do 10 consecutive days one day will be a Friday and one day will be a Saturday so you are going to get that weekend in. Mr. Keegan stated that the Board could actually do it starting effectively on 1/8/16 and going through to 1/18/16. Mr. Gray asked what the potential for the first playoff game was. Mr. Keegan stated that he thinks it is within that range (the weekend of 1/16/16). Mr. DeVellis stated that he is all for keeping it simple and he liked Mr. Mitchell's idea; set a date and go from 10 days and deal with it. Mr. Gray asked Mr. Keegan what the timeframe was in which Mr. Keegan stated the 8th through the 18th includes two Fridays and Saturdays which Mr. Gray specified earlier. Mr. DeVellis asked if the 8th worked for whatever process this takes to go through their state/town process. Mr. Keegan stated that they just issue a letter. Attorney DeLuca stated that there is a five day appeal. Mr. Gray stated that this would satisfy him.

Motion by Christopher Mitchell to suspend Saga Hibachi Steakhouse liquor license from January 8, 2016 to January 18, 2016, 10 consecutive days inclusive. Seconded by John Gray.

Mr. DeVellis stated that he heard a bunch of excuses but he wants to make sure that when they open up on the 18th that these regulations are understood and that these letters are big enough that they all can read it and that they have a different protocol so Mr. DeVellis was wondering if they could have a provision that they come back in front of the Board; they can bring counsel but he wants to hear from the management that they understand it this time so they are not sitting there with a third violation that people don't understand what this is all about because they did it a year ago. Mr. Mitchell asked if the Board had a meeting within the 8th through the 18th window that they could come and let the Board know. Mr. Keegan stated that he believes the Board is meeting 1/12/16. Mr. Gray stated how much hand holding must the Board do. Mr. DeVellis stated that is his point to give them 10 days and go on their way, he wants to make sure what is going to change when they open up. Attorney Stopa stated that in his presentation he explained what changes they have already made and that is to move the last call to 12:30am and they have already retrained their staff. Ms. Coppola asked if they have gotten the cash register fixed and Attorney Stopa stated that he believes the timeframe has been fixed on that. Attorney Stopa stated that this isn't the sole timekeeper in there; it was just a piece of the puzzle. Mr. DeVellis stated that he understands what Attorney Stopa is saying but he would feel more comfortable if he could have a dialog with the manager and they can tell the Board; Attorney Stopa is not there every day. Attorney Stopa stated that he is representing to the Board what they have already explained to him about the changes that they have already implemented. They made those implementations and those changes prior to even receiving notice of violation. Attorney Stopa was at the board meeting the night Chief O'Leary presented the summary report to the Board.

Mr. Keegan stated that the Board also has a meeting on 1/26/16 as well that month so 1/12/16 is while they are actually serving their suspension and 1/26/16 is when the suspension will actually be over so the choice is the Board's whether they want to have it while it is being served or after it has been completed. Mr. DeVellis asked that they be put on the agenda for 1/12/16.

Attorney Stopa asked for a point of clarification if the Board was suggesting that 1/8/16 is the first day of the suspension in which Mr. DeVellis stated yes. Attorney Stopa stated the last day of suspension would be 1/17/16. Mr. Keegan stated that it would be through 1/17/16 and reopening on 1/18/16.

Mr. DeVellis asked if the Board would consider amending the motion to include that the applicant returns on 1/12/16 to explain to them what the changes are with a report.

Motion by Christopher Mitchell to amend the motion that he made and have the applicant come in to the Board of Selectmen's meeting on 1/12/16 to discuss what changes they are going to make going forward. Seconded by John Gray. **Vote 4-0-0**

8:40pm – Discussion/Vote Steelworker's Contract

Ms. Bernard stated this agreement was just recently ratified by the union. This contract is from July 1, 2014 to June 30, 2017 where negotiations took well over a year. It was a first contract and it was a diverse group of people covered and this contract covers two groups; Unit A and Unit B and eventually it will be separated out into two separate memorandum agreements.

A couple of the key points that are important to note is that this contract maintains significant management rights and this group of employees was formally covered by the bylaw so as in a first contract they used labor counsel to ensure that they did retain significant management rights. In the spirit of the Personnel Bylaw, the grievance procedure, vacation policy, personal and the holiday language those all mirror exactly the personnel bylaw. They did something unique in both the Library contract and this one; they have recognition of employees that work 52 weeks a year less than 20 hours per week and they are entitled to a small accrual of holiday pay on a day that they are scheduled and longevity on a prorated basis; .5 sick day accrual with a limit of accrual of 42 days and are not eligible for sick leave by back and they can also use those days for bereavement days if needed. They are in keeping with the state's new sick leave law and had the town adopted it, this group would have been entitled to 5.2 sick days per year anyway and this gives them 6. They also increased the longevity schedule; they are trying to create some uniformity among all the contracts so this group was behind in a concept that hadn't been increased in about 17 years, they were given a \$25 increase in longevity. All of the leave language; FMLA, bereavement, jury duty and military leave all mirror the Personnel Bylaw. They had to clarify some interesting things, most of these people are typical either department managers or office workers but they do have the public works supervisors in this group so they had to do some clarification language around snow emergencies and overtime related to that and include that in the contract; it is a really a diverse group of employees covered by this. They had to talk about weekend duty and licenses for DPW supervisors making sure they retained what they would have maintained what they would have had under the bylaw.

They clarified the process of reimbursement of certifications and they defined a process for out of grade compensation that never existed before so if an employee were to cover for their supervisor due to an illness or something like that they have a very specific language that they can get anywhere between 2 ½% to 5% if it is an absence of a certain amount of time so they were very specific on that language. They defined overtime using an FLSA standard. This contract does include an agency fee so those employees that decide to opt out of the Steelworkers contract still are required to pay an agency fee.

They also clarified the process of reclassification. Concurrent with the negotiations they are undergoing a classification study and they are looking at job descriptions so they wanted to define that jobs shouldn't come before the Town Manager more than once every two years for reclassification and they outlined a process that includes the department manager, the town manager and even the Personnel Wage Board just to make sure that it is a very fair process for reclassification.

The wages portion of this as Ms. Bernard stated the contract begins on July 1, 2014 so that is retroactive from the beginning of discussions and negotiations so this group was granted a step increase for FY15 of 2 ½%. FY16 was just a general increase so the first year didn't include a COLA in the contract. The second year is a 2% general increase and then in FY17 they will reopen when their compensation study is completed.

By doing this contract they also were able to reduce the sick leave accrual from 2 days per month to 1.75 and that is something they have been trying to do for all of the contracts and it is a really

generous sick leave policy. Mr. Gray asked if there was a cap on sick leave in which Ms. Bernard stated 240 days and that is in lieu of short term disability.

By agreeing to this contract there were two pending cases at the DLR with this group and those get resolved by settling this contract. It was at times painful and in the end very much an engaging process where everyone was involved and came to the table every time really trying to get this solved. They had their differences but all in all it was a respectful process and it was a lot of work and they are happy to say that it is resolved and they think the people are happy with it. There were very few “no votes” in this. Mr. Gray asked if they presented this to the Steelworker’s Union and it has been ratified in which Ms. Bernard stated yes, it has been ratified.

Mr. DeVellis stated that the copy they have in front of them has one signature and wanted to know if that was all that was required. Mr. Keegan stated that is the Steelworker’s representative. Ms. Bernard stated that he came by and signed it and the idea is to break it off into Units A & B agreements and then insert the pay plans and they will give the Board a consolidated document at some point but this will work for going forward to town meeting.

Ms. Coppola stated that Ms. Bernard had stated that #13 resolves the DLR case; what is a DLR case. Ms. Bernard stated that there were two unfair labor practices filed against the town with the Department of Labor Relations and they were stemming on miscommunications about when step increases should happen and was this group covered by the bylaw or were we bargaining for increases so those things were resolved within the language of the contract and that FY15 step was one of those things.

Mr. DeVellis stated that the FY15 equated with 2 ½% and FY16 is 2% and then FY17 is going to be predicated on when they come with the study. Mr. DeVellis asked Ms. Bernard to explain the timing of that study and who is going to do it where that is open-ended on the study. Ms. Bernard stated that the study has begun and they have a consultant, Mark Morse who is doing it and he is one of the really qualified municipal consultants and he has done hundreds of these studies. They actually brought him into bargaining so he could explain his process. He did do a compensation classification study for the town back in ’06 or ’07 and people were very pleased with that salary plan. In fact in discussions with the Personnel Wage Board one of the things that they discussed is couldn’t they go back to that old plan as that is when people were happy and things felt fair so they brought him back and he is currently doing a market study of all of these positions. He has gathered all of the data and then he introduced to them some graphs and charts of how he works and then he is looking at how the positions rate internally as well so it is an external equity and internal equity and then he is going to put together a classification plan that they will sit down and bargain with this group. They also intend for the Personnel Wage Board to be involved and Mr. Keegan will have a big role in that as well. The study has begun and he has collected the data and they are supposed to sit down with him in January to look at it and then concurrent with that they are looking at all of the job descriptions to make sure those are accurate before they are placed on the compensation plan.

Mr. DeVellis stated so in FY15 it is defined as a step and then in FY16 there is no step, is that just a cost of living step. Ms. Bernard stated that is just the general cost of living increase and there is no step in FY16. Mr. DeVellis stated that when they get to FY17 that adjustment will be

based on the study. Mr. Keegan stated that will still be negotiated. Mr. DeVellis asked if that was a step or a cost of living or if that was going to be combined. Ms. Bernard thinks it will be where the positions are placed on the compensation plan that will probably be the increase. The consultant did tell this group that there is a risk that some positions might end up not seeing an increase, and they may be determined that they are being paid very competitively and almost over the top and then there are some that will warrant adjustment. Mr. Mitchell asked how they anticipate that is going to go if they are all overcompensated now. Ms. Bernard stated that she doesn't think it will be that general that all of them would be and she thinks what would happen is that the incumbent would be held harmless so if a position were to be downgraded the incumbent wouldn't be, it would be when it is vacant in the future they would do that so you would probably do a red circle rate just for fairness.

Mr. DeVellis thanked Ms. Bernard stating that he knows that she inherited a lot of this. Ms. Bernard stated that it is a big relief for all of them and they can feel the tone lighten already at the Town Hall.

Mr. Keegan wanted to say thank you to Mary Beth and to Attorney Peloquin and to all the employees who participated in this process and were part of this process. Both bargaining teams for the unions were professional but sometimes they disagreed strongly at times which is normal and part of the process but they were respectful throughout and he just wanted to say thank you to them for completing this process in what he thinks was a reasonable manner. It is never as short as people anticipate it to be but in terms of their collective experience has been that this is actually pretty normal.

Motion by Christopher Mitchell to approve the Steelworkers contract. Seconded by John Gray.
Vote 4-0-0

8:53pm – Special Town Warrant Review/Changes – William G. Keegan, Jr.

Mr. Keegan stated that there are no further changes to report.

8:54pm – Town Manager's Update – William G. Keegan, Jr.

Mr. Keegan wished everyone a Happy New Year and they are very excited about what will happen in 2016. 2015 had been a very productive year as the Board will see shortly. Mr. Keegan wanted to thank everyone for working closely with them and he wanted to thank the Board for their cooperation and working with them throughout this entire year. It has been a great experience for all of them and they want to keep that trend going obviously in hoping that relationships will continue to improve and their business relationships are developing quite nicely. There are a lot of exciting things happening on the economic development side of things so he anticipates 2016 to be a very good year for all of them again.

8:55pm – 2015 Year in Review – William G. Keegan, Jr.

Mr. Keegan stated that what they have done for this year (this is something that is new) was to prepare a presentation which summarizes a lot of the major events and issues that have occurred

throughout the year. This is a very positive presentation and a lot of good things have happened during the past year. They wanted to give the Board a summary of those events and he wanted to say thanks to Foxboro Cable who actually were very helpful to them and they will give special thanks at the end to specifically to the individuals that helped them with this. It was Ms. Bernard's idea to put this together so he wanted to give her credit for that.

This is their first try at doing this. They both said at the beginning of this that this is really just the start and they will do a much better job to plan it out for the years to come.

Mr. Keegan showed the Board a video presentation of various events that happened during 2015. (Blizzard of 2015, Sam Berns Memorial, H.U.G.S. Walk, Veteran's Day, Flagpole Fund, Retirees, New Employees etc.).

Mr. Keegan gave special thanks to Jillian Larson who really put this together in no time at all.

Mr. Keegan stated that each month going forward in the new year they will collect pictures so they put everyone on notice that if they see something, take a picture of it, give it to Mr. Keegan or Ms. Bernard and they will hold onto it and they will show it at the end of the year showing it next year.

Mr. Keegan read a list of several things that the Board issued several proclamations; one to Sandra Herrmann the former Executive Assistant to the Board of Selectmen's Office; Ken Levy who was a COA retiree; Colin Pearson who was an Eagle Scout; Brendan Lally, Eagle Scout; Luke Pascucci, Eagle Scout; Jonathan Rice, Eagle Scout; Frank Mortimer, Reporter for the Foxboro Reporter; Daniel Gawronski, Eagle Scout; Bill Grieder, Serving on many committees and retiring; Normandy Farms, 2015 Large Park of the Year Award; Steven Bagley, Deputy Fire Chief Retirement; Entrepreneurial Spirit Month; St. Mark's Episcopal Church, 125th Anniversary; the National Night Out Against Crime and Drugs; and Childhood Cancer Awareness Month. They had a pretty full year with lots of things going on so there is a lot to be thankful for.

Mr. Keegan thanked everyone for helping them.

Mr. DeVellis stated that this will be a piece of history and hopefully every year they can do it. What he liked about it was some of the things that you forgot about like the Blizzard and it pops up in your mind again and there were a lot of achievements that the town collectively does and it is nice to see them in one place quick. Mr. Keegan stated that it is a great piece for the Chamber of Commerce because of all the great things we do with all of the parades and celebrations that we have and all of the things that go with that including the Patriots so it is all a great piece of information for the town. Mr. DeVellis asked if that would be a link that people can get from our website in which Mr. Keegan stated that they can put that on our website that people can look at for the year in review and he is sure that once people see this they will give them more ideas throughout the year.

9:08pm – Assistant Town Manager’s Update – Mary Beth Bernard

Ms. Bernard stated she wanted to wish everyone a very Happy New Year. They had a great holiday breakfast with their employees. Ms. Bernard stated that this was a tradition that Mr. Keegan had started in Dedham and he brought here to Foxborough. This year surpassed last year for attendance and it was a lot of fun.

Motion by Christopher Mitchell to adjourn the Board of Selectmen’s meeting at 9:09pm.
Seconded by John Gray. **Vote 4-0-0**