



## Board of Selectmen Public Meeting Minutes December 13, 2016

*The regular meeting was called to order at approximately 6:30 p.m. in the Town Hall Hearing Room by Chairman Jim Quirk. Selectmen present: Tracy Post, Mike Stone, Norman Holcomb, and Erik Tolley. Also attending: Interim Town Administrator, Robert Lawton.*

### 1. Public Announcements & Comments

*Ms. Andrea St. Germaine, D-Y School Committee, updated the Board members on the following items: On December 14th at 7 pm, there will be a 4th grade holiday concert at Mattacheese Middle School; on December 20th at 2:15 pm there will be a Pre-K holiday concert at M. E. Small Elementary School; also on December 20th is the Winter Theatre at the Wixon School; on December 21st at 10 am is a holiday concert at Ezra H. Baker Elementary School; on December 21st at 7 pm is a 6th grade holiday concert at Mattacheese Middle School; and on December 22nd at 2:15 pm is the 2nd and 3rd grade holiday concert at M. E. Small Elementary School.*

*The Holiday Cookie Express will be held at the high school by the Music Honor Society on Saturday, December 17th from 9 am - 1 pm. On Friday, December 16th, Mattacheese Middle School will have their honor roll recognition ceremony for the 6th and 7th grade students at 1 and 2 pm.*

*Ms. Vida Morris commented on an agenda item from last week's meeting concerning the FY18 operating and capital budgets. She stated she could not locate the operating budget in the packet and is interested in seeing a line item which reflects the savings from the town administrator salary since the town had no town administrator in place for nearly a year. Selectman Holcomb explained that the budget she was expecting to see is the FY18 budget, not the FY17 budget where any savings would be reflected and would become part of free cash. Ms. Morris also commented on the fine work the Cemetery Ad Hoc Committee has done and expressed her opinion that any restoration work to be done in the Ancient's Cemetery should be funded with CPA funds.*

*Mr. Tom Nickinello, Yarmouth Chamber of Commerce, thanked the Board members for their work throughout the year and wished them Merry Christmas.*

### 2. Public Hearings

a. Anthony's Cummiquid Alcohol License Renewal Hearing. Chairman Quirk turned over the meeting to Licensing Chairman, Mike Stone. Mr. Stone commented on a notice sent to Anthony's Cummiquid to show-cause whether or not that license should be renewed for 2017. The application to renew the license was received by the town in time but the Inn's attorney sent a letter to Interim Town Administrator Lawton requesting an extension to the hearing due to exceptional personal circumstances to a date in mid- or late January 2017. Mr. Stone explained that the business has paid the license fees but has not been operating the business and would not be able to operate until back taxes are paid and the alleged building and fire code violations have been corrected at which time the license would be issued.

Mr. Lawton explained that the state would assume that the town has renewed the license but we would need to have either a renewal hearing or a show-cause hearing due to the substantial

building and fire violations. Selectman Stone asked Building Commissioner Mark Grylls to provide an overview of the building code violations. Mr. Stone officially opened the hearing by reading the legal ad into the record. Mr. Michael Watson, general manager of Anthony's Cummiquid, was present for the hearing.

Building Commissioner Grylls explained the timeline of inspections and violations found within the structure. Mr. Grylls' first inspection in 2012 resulted in the structure being in complete disrepair and described the violations; subsequent inspections over the next three years showed little to no improvements.

Selectman Tolley commented that he is uncomfortable with proceeding with this hearing since no legal representation is at the hearing to defend the allegations, and the business' attorney has submitted a request for an extension to the hearing. Mr. Stone explained that he is not placing any weight on the alleged violations but wanted the Board members to have an overview of the issues surrounding this business.

**MOTION: To move that the Board of Selectmen continue the hearing to a date certain on February 7, 2017, subject to the license being held and the business cannot operate until after the hearing.**

**Motion by: Jim Quirk**

**Seconded by: Tracy Post**

**Yea 5**

**Nay 0**

b. Acapulco's Mexican Family Restaurant and Cantina Show-Case Hearing. Mr. David Brambila, one of the owners of La Playa's, Inc., dba Acapulco's, was present for the hearing. Licensing Chair Stone read the legal ad into the record. Mr. Stone read a letter from Katherine Mendiola dated December 10, 2016 stating she cannot attend tonight's hearing, she is no longer the manager for Acapulco's, and will not seek or renew the license in her name.

Officer Phil Magnuson, Chief Frank Frederickson, and Mr. David Brambila were sworn in by Licensing Chair Stone. Officer Magnuson provided the Board members with an overview of the incidents of July 4, 2016 at the restaurant which led up to this hearing, including Mr. Gilberto Mendiola being included on a list of managers as an assistant manager for the restaurant that had been provided to YPD. Officer Magnuson testified that Mr. Mendiola had been taken into protective custody by YPD on four previous occasions due to extreme intoxication. Chief Frederickson provided testimony on the events of July 4, 2016 when a call was received by YPD regarding one person in the restaurant who was passed out on the bar. Mr. Gilberto Mendiola was the individual at the bar, extremely intoxicated. The police contacted Mrs. Mendiola to come to the restaurant to secure the building.

Officer Magnuson did a follow-up investigation and compliance check on July 8th, 2016. The restaurant was open and staffed; Katherine and Gilberto Mendiola were both present. Mrs. Mendiola informed Officer Magnuson that the restaurant was not open for business on July 4th as they had no manager to work at the restaurant that day. Mrs. Mendiola stated Mr. Mendiola has keys, let himself into the restaurant, and drank to the point of intoxication. Officer Magnuson briefed the Board on his conversation with Mrs. Mendiola regarding her involvement in the business, her desire to remove Mr. Mendiola from the business, and ultimately her desire to leave the restaurant business as she had another job.

Selectman Tolley asked Officer Magnuson who the caller was on July 4th; Officer Magnuson stated it was a passerby/patron who made the call to YPD. It was Mrs. Mendiola's intention that the restaurant not to be open that day due to lack of a manager or assistant manager to work that day. Mr. Tolley asked if the restaurant was open and if Mr. Mendiola let himself in and proceeded to serve himself alcohol; Mr. Tolley is trying to determine what the violation is that resulted in this hearing. Mr. Stone stated an employee drinking or in an intoxicated state while working is a

violation of the license rules and regulations, in addition to some other minor reporting violations. Chief Frederickson described the condition he and two other police officers found Mr. Mendiola in when they arrived at the restaurant.

Selectman Holcomb and Selectman Post also commented on what the actual violation was and whether the Board had previously approved the restaurant closing. Further, Ms. Post commented on the potential issues that might have occurred had others come into the restaurant without any supervision or management present due to the door being unlocked.

Mr. Lawton informed the Board that the Town received a letter from Acapulco's today advising they would be closed until April 2017.

Licensing Chair Stone asked Mr. David Brambila to comment. He stated that Katherine and Gilberto Mendiola are no longer affiliated with Acapulco's. It is the restaurant's intent to reopen in April under completely new management. An application is pending to transfer the license to new management as the Mendiola's shares in the company have been bought out. Mr. Lawton explained to the Board that a change of manager hearing will need to be held and possibly a change in corporation structure. As of today, the license is renewed but it cannot be issued due to other issues (taxes, management, etc.). Ms. Post asked why Mr. Mendiola was allowed to remain in a management position after being made aware of the issues surrounding Mr. Mendiola's conduct. Mr. Brambila explained that he and his partner were not aware of Mr. Mendiola's behavior as Mrs. Katherine Mendiola was the manager of the restaurant.

The Board members further discussed the status of the restaurant at the time of this incident and whether this violation will or should reflect on new management in the future. Licensing Chair Stone explained that in his view if someone in a management position was on the premises, the door was unlocked for customers to enter, he believes a violation has occurred; Selectman Post stated she agreed with Mr. Stone.

The Board members questioned Officer Magnuson further on whether the restaurant was in fact opened or closed as the police report of an incident on July 3rd indicated that the Manager, Mrs. Katherine Mendiola, stated the restaurant would be closed on July 4th due to not having a manager available to work on the 4th.

**MOTION: To move that the Board of Selectmen close the public hearing.**

**Motion by: Jim Quirk**

**Seconded by: Tracy Post**

**Yea 5**

**Nay 0**

**MOTION: To move that the Board of Selectmen find a violation of Yarmouth's Alcohol and Victualer License rules and regulations, Section 1.03 §F - Admission of Intoxicated Person on the premises occurred.**

**Motion by: Tracy Post**

**Seconded by: Erik Tolley**

**Yea 4**

**Nay 1**

**MOTION: To move that the Board of Selectmen issue a warning to Acapulco's Mexican Family Restaurant and Cantina.**

**Motion by: Tracy Post**

**Seconded by: Jim Quirk**

**Yea 4**

**Nay 1**

### **3. Proposed Yarmouth Disposable Plastic Bag Ban Bylaw**

Ms. Susan Starkey and Carol Ewing from the Cape Environmental Action group were present for this discussion. Ms. Starkey explained to the Board that she and her group took the input from the Board members at the last meeting when this item was discussed, submitted the revised proposed bylaw to DPW Director Jeff Colby, who sent it to town counsel for review. Ms.

Starkey mentioned that she has also discussed the bylaw with Health Director Bruce Murphy who indicated he needed more time to work with the Board of Health on some of their concerns. Ms. Starkey then stated she and Ms. Ewing are at this meeting tonight to ask the Board members for their support in sponsoring this as a warrant article for the 2017 annual town meeting.

Chairman Quirk asked Ms. Starkey and Ms. Ewing what was missing for the revised bylaw that the Board needs to be aware of before they discuss and vote on the article. Ms. Starkey stated that the Board of Health took exception to the deferment section which was added by town counsel that seemed too complicated and too extensive (this section would allow a business an exemption for a period of time). The Board of Health felt the length of time for an exemption was too long a time (up to two years); the Board of Health wanted the exemption period shortened to 3-6 months.

Health Director Bruce Murphy informed the Board of Selectmen that the Board of Health did review the earlier version of the bylaw on November 21st. Their comments are included in the agenda packet; among their concerns were that handles should not be included in the bylaw as that would open up the issue to more bags; it was not clear if the loss of license was a penalty if fines are not paid and the Board of Health does not support that as a penalty; and the Board of Health has not had an opportunity to review the revised edition of the bylaw. Mr. Murphy felt the deferment section added by town counsel was too lengthy a deferment. In general, the Board of Health supports the bylaw.

Chairman Quirk asked what the wishes of the Board members are; Ms. Post stated she is supportive of the bylaw and that the matter deserves a discussion at town meeting. Mr. Holcomb stated he also supports the bylaw. Ms. Post and Mr. Stone stated they are not prepared to take a position on the bylaw until they see the final version.

**MOTION: To move that the Board of Selectmen place the proposed disposable plastic bag bylaw on the annual town meeting warrant.**

**Motion by: Tracy Post**

**Seconded by: Norm Holcomb**

**Yea 4**

**Nay 0**

#### **4. Board of Selectmen**

a. Upcoming Agenda Review. Interim Town Administrator Lawton informed that Board of their upcoming meeting schedule stating there are no meetings over the next two weeks. There is a proposal, depending on the Board members' availability, to hold a meeting on January 3, 2017. The agenda items for a meeting on the 3rd of January would be starting to talk about warrant articles and possibly some budget issues. The January 10th meeting will be the first meeting after the petition articles have been submitted, as well as the budget. The Board members were in agreement to add a meeting on January 3, 2017. Mr. Lawton also stated that the February 7th meeting will include the Anthony's Cummaquid and possibly Acapulco's hearings.

Chairman Quirk stated a Charter Review Committee needs to be placed on a future agenda as he believes we are overdue for a charter review.

##### b. Individual Items

1) Selectman Holcomb stated the budget schedule was published some time ago but he has many questions regarding the capital budget and some memos outlining service enhancements that are not included in the capital budget numbers. Finance Director Senteio stated he can have the capital budget ready for Selectmen review at the January 3, 2017 meeting but he would like to confirm that with the Capital Budget Committee. Mr. Senteio informed the Board

members that we do have a balanced budget, so far, but he is still waiting on additional information such as what the health insurance increases will be, among other items, such as the school budget. He also informed the Board members that the service enhancements Mr. Holcomb referred to are not included in the budget as they would have put us over Proposition 2-1/2. Mr. Holcomb commented that any service enhancements that the staff deems necessary should be prepared to come before the Board with detailed data to support their request.

2) Selectman Stone wished everyone a Merry Christmas and a Happy New Year, and all the other holidays that people celebrate in their traditions.

3) Selectman Post commented on the Polar Plunge being sponsored by the Council on Aging to be held at noon on Smuggler's Beach on New Year's Day and invites everyone to attend. Ms. Post also wished everyone a happy and health holiday season.

4) Chairman Quirk thanked the Board members for their support and the time and effort they devote to the civil discussion. His regular Christmas message is from St. Mother Teresa: "few of us can do great things, but all of us can do little things with great love."

## 5. Town Administrator's Items

### a. Consent Agenda

- Letter to Town of Yarmouth from Eversource Energy dated November 7, 2016 re: License Agreement to NSTAR for electric facilities at the Water Department

**MOTION: To move that the Board of Selectmen approve the consent agenda.**

**Motion by: Norm Holcomb**

**Seconded by: Mike Stone**

**Yea 4**

**Nay 0**

b. Town Administrator Updates. Mr. Lawton informed the Board of his discussion with town counsel on the Cemetery Committee appointments and that the Board may do as they wish without restrictions.

## 6. Adjourn

**MOTION: To move that the Board of Selectmen adjourn the meeting.**

**Motion by: Tracy Post**

**Seconded by: Norm Holcomb**

**Yea 4**

**Nay 0**

**Meeting adjourned at approximately 8:55 p.m.**

Respectfully submitted,



Linda Dennehy

## **DISTRIBUTED MATERIAL AGENDA PACKET**

- Anthony's Cummaquid License Renewal Hearing Documents
- Acapulco's Mexican Family Restaurant and Cantina Show-Cause Hearing Documents
- Memo to Interim Town Administrator from Health Director dated December 8, 2016 re: Proposed Disposable Plastic Bag Ban Bylaw
- Proposed Yarmouth Disposable Plastic Bag Ban Bylaw
- 2016 BOS Upcoming Agenda Item Review
- Letter to Town of Yarmouth from Eversource Energy dated November 7, 2016 re: License Agreement to NSTAR for electric facilities at the Water Department
- Cape Cod Healthcare Blood Drive Flyer
- 7th Annual Polar Plunge Flyer
- Board of Health Meeting Agenda for December 5, 2016