

Present: Chairman Jeffrey D. Jones, Selectman A. Raymond Randall, Selectman Mark W. Lynch, Town Administrator Brendhan Zubricki, Selectmen's Assistant Pamela J. Witham, Town Counsel Gregg Corbo, Walter Ewaschuk, Jennifer Goudreault, and Douglas Felix.

Chairman Jones called the meeting to order at 7:00 p.m. in the T.O.H.P. Burnham Public Library on Martin Street and announced that the Board would hear public comment. No one offered any public comment.

Jennifer Goudreault and Douglas Felix of 31 Eastern Avenue came before the Selectmen to request a waiver of the application filing deadline for a student clamming license. A motion was made, seconded, and unanimously Voted to grant the waiver and the Selectmen signed the clamming license application. The Selectmen's Assistant will notify the Shellfish Constable and the Advisory Commission of the Selectmen's decision to waive the deadline for Douglas. Ms. Goudreault and her son left the meeting.

Police Chief Peter G. Silva appeared before the Selectmen to introduce Daniel Bruce and to ask the Selectmen to consider his recommendation to appoint Daniel Bruce to the position of Part-Time Police Officer. A motion was made, seconded, and unanimously Voted to appoint Mr. Bruce to the position of Police Officer, Part-Time, pending Mr. Bruce's successful completion of the required medical screens. The Selectmen congratulated Mr. Bruce and signed his appointment card. Mr. Bruce left the meeting.

At 7:05 p.m., the Chairman entertained a motion to open a Public Hearing regarding The Farm restaurant.

Selectman Lynch said that he must disclose that his daughter is employed by The Farm as an ice cream server and that she may have a direct financial interest in the Board's consideration of this matter. Selectman Lynch wished to publicly disclose this potential conflict of interest on the record and stated that the fact that his daughter is employed by The Farm will not in any way affect his vote of this matter.

Selectman Randall also announced that he must disclose that his step-daughter is employed by The Farm as a wait-person and that she may have a direct financial interest in the Board's consideration of this matter. Selectman Randall said he would like to publicly disclose this potential conflict of interest on the record and stated that the fact that his step-daughter is employed by The Farm will not in any way affect his vote of this matter.

Chairman Jones said that because of the Disclosures just made, he found that the Board would be unable to act on this matter because it will lack the number of members required to take an official vote if Selectman Lynch and Selectman Randall are disqualified due to the potential financial interests of their immediate family members. Therefore, because the Board of Selectmen is the only body of the Town that can vote on this matter, Chairman Jones moved that the Board invoke the Rule of Necessity and

allow Selectman Lynch and Selectman Randall to participate in this matter. The motion was seconded and Voted unanimously.

A motion was made, seconded, and unanimously Voted to open the public hearing regarding the request by BN FARM, LLC, d/b/a The Farm, to alter their premises to include a recently fenced-in area in their licensed premises to serve alcohol. Farm business owners Bradley Atkinson and Noah Goldstein joined the meeting as well as about fifteen members of the public and Police Sergeant Francis. Chairman Jones explained that he would like Brad or Noah to begin the hearing with a summary of their request, to be followed by those present wishing to speak in favor of the request, and then by those wishing to speak against granting the request. After everyone has had a chance to speak, the hearing will be closed and the Selectmen will discuss the issue and make a decision regarding the request.

Brad Atkinson said that they have fenced an area containing picnic tables, a volley ball court and a horseshoe pit behind the restaurant that can be accessed from an enclosed patio and the parking lot. They would like the newly fenced area included under their alcohol license so that people may consume alcohol that has been served on the patio or in the restaurant in the fenced area. The gate to the parking lot will have a padlock placed on it. Noah Goldstein said that they have recently spent a lot of money cleaning up the back yard and installing the horseshoe pit and volley ball court.

Peter Passias, a restaurant patron, said that he likes to bring his grandchildren to the restaurant to play in the fenced area and likes to have a beer while he watches them. Matt Herbster, a restaurant employee, also spoke in favor of The Farm's request. While many others that were present had raised their hands in favor of the request, no one else wished to speak in favor.

Walter Ewaschuk, an abutter of the property said that he has had to pick up papers, bottles and cans and other refuse from the restaurant two or three times a week. His tenants at the property have reported Farm customers drinking in cars in the parking lot and throwing the containers under the vehicles or over the fence dividing the two properties. Mr. Ewaschuk said that the owners of The Farm have dumped stones and other items on Mr. Ewaschuk's land where there is a designated conservation area. Mr. Ewaschuk has discussed these issues as well as Farm patrons parking in his parking lot with the Farm owners in the past, however, the situation continues.

Brad Atkinson said that he has been policing the parking lot, and telling offenders that drinking is not allowed in the parking lot. He has also been having employees periodically sweep the lot for debris.

Alex and Paula Filias, the owners of an apartment house across the street, said that they have lost one tenant because of noise at The Farm and that others have asked to move to units at the rear of their property to be away from the noise. Farm patrons have been parking in the apartment parking lot and leaving no room for tenant parking.

The Chairman asked The Farm owners what steps they have taken to safeguard the public and respond to the concerns of the neighbors and the Police Department. Mr. Atkinson said that they now have sound blockers that they install in the front windows during the periods of live entertainment. They have had signs made to discourage their customers from parking at the apartment house. Since the surprise visit in July by an agent from the Alcoholic Beverage Control Commission and the Essex Police Department when twelve people had alcohol in the now fenced-in area that is not part of the licensed premises and four minors were arrested for possession of alcohol, The Farm owners have purchased a scanner that can detect forged or fake IDs. Every night at 9:00 p.m. when the entertainment starts, the bouncers are positioned at each of the doors and all IDs are checked. Anyone under age 21 is asked to leave. Mr. Atkinson checks the parking lot from time to time. He also said that all the bartenders have had TIPS training.

Chief Peter Silva listed the several incidents, the noise complaints, and the motor vehicle accidents that have occurred since the middle of last April when the restaurant opened. The Chief said that despite the efforts being made by The Farm, the owners need to do more to control the actions of their customers. Chief Silva invited The Farm owners to meet for a discussion about ways to avoid and prevent these situations from arising in the future.

No one else wished to offer comment either for or against.

It was mentioned that there is doubt as to the actual occupancy limit number for the restaurant. The restaurant has not had an inspection by the Building Inspector since the current operators of the business assumed control of the property. The Farm owners recently hired an engineer to perform a study of the property to determine optimum capacity. Mr. Zubricki said that the plan needs to be submitted to the Building Inspector, the Fire Department, and the Board of Health for final approval and determination of the permitted occupancy number.

The Selectmen said that they felt that The Farm has to demonstrate their respect for their license and the Licensing Board. The Selectmen said that the owners need to seek out advice from the Police Department and others on how to conduct their business in a more responsible manner. They were advised that it is not a good practice for the business owners to consume alcohol during the hours of business operation as it impairs judgment.

A motion was made and seconded to continue the hearing until 7:30 p.m. on Monday, September 28, 2009, in the T.O.H.P. Burnham Library in order to afford the Selectmen the opportunity to review a pending ABCC decision regarding the ABCC hearing held on August 11, 2009. The ABCC decision may be rendered prior to that date and has a definite bearing on the alteration of premises application presently before the Selectmen. Chairman Jones voted against the continuation; Selectman Lynch and Selectman Randall voted for the continuation. The motion was carried and the hearing was continued until September 28th.

Police Chief Silva, Sergeant Francis, Mr. Atkinson, Mr. Goldstein, and members of the public left the meeting. Town Counsel Corbo remained and was joined by Town Counsel John Giorgio.

At 8:20 p.m., citing the need to discuss pending litigation and the value of real property, a motion was made, seconded, and per a unanimous Roll Call Vote, the Board of Selectmen moved to Executive Session. The Chairman invited Mr. Zubricki, Attorney Corbo, and Attorney Giorgio to attend and said that the Board would be returning to Open Session.

The Board returned to Open Session at 9:35 p.m. Attorney Corbo and Attorney Giorgio had previously left the meeting during the Executive Session.

Mr. Zubricki presented his Town Administrator's Report for the period covering August 8th, 2009 through August 21st, 2009, regarding the following items:

Fire Department Air Pack Lease/Purchase: Mr. Zubricki presented the lease/purchase paperwork regarding the air packs for the Fire Department for the Selectmen's review. A motion was made, seconded, and unanimously Voted to approve and sign the papers.

Essex River Basin Water Quality: Mr. Zubricki reported on his discussion with Dave Roach from the Division of Marine Fisheries concerning rainfall closures and distributed an analysis comparing closure thresholds in other towns to thresholds used in Essex. The Selectmen desire to monitor potential improvements to clamming restrictions over the upcoming year.

Selectman Randall said that Stephan Gersh would like to meet with the Selectmen and it was agreed that Mr. Zubricki would contact Mr. Gersh to schedule an appointment for 7:05 p.m. at the next Selectmen's meeting on September 14th, 2009.

In other business, a motion was made, seconded, and unanimously Voted to approve and sign the warrant for the week of August 24, 2009, in the amount of \$64,370.29.

A motion was made, seconded, and unanimously Voted to approve and sign the minutes for the August 10th, 2009, Selectmen's Open Meeting and the August 10th, 2009, Selectmen's Executive Session.

A motion was made, seconded, and unanimously Voted to accept the resignation of Dawn Burnham from the Town Clerk Search Committee.

Acting in their capacity as the Licensing Board, a motion was made, seconded, and unanimously Voted to approve an Auction Permit for Michael March, d/b/a Blackwood March Auctions for use on Wednesday, September 16th, 2009, between the hours of 4:00 p.m. and 11:00 p.m. within the confines of 125 Main Street.

The Selectmen were reminded that the Essex Division of the Cape Ann Chamber of Commerce will meet on Tuesday, August 25th, 2009, at 8:00 a.m. at Essex River Cruises, 35 Dodge Street. Mr. Zubricki and Selectman Randall will attend.

The Annual Essex Music Festival will take place this Saturday on August 29, 2009 behind the Town Hall at Memorial Park. (<http://essexmusicfestival.com>) Mr. Zubricki discussed the food providers to the Music Festival with the Selectmen. The Farm, the Lions Club, and Woodman's will be providing food for the festival. At the Selectmen's request, Mr. Zubricki said he would contact Dana King, the organizer of the festival, and let him know that in the past, those providing the food have made a donation to the Centennial Grove Revolving Fund out of their proceeds from the event.

The Selectmen are invited to attend an Open House at the new Manchester Essex Middle High School on Monday or Tuesday, August 31 or September 1, from 4:00 to 7:00 p.m.

The next Board of Selectmen's meeting will be held on Monday, September 14th, 2009, at 7:00 p.m. at the T.O.H.P. Burnham Public Library.

There being no further business before the Board, a motion was made, seconded, and unanimously Voted to adjourn the meeting at 9:55 p.m.

Prepared by: _____
Pamela J. Witham

Attested by: _____
A. Raymond Randall, Jr.