

Present: Chairman Jeffrey D. Jones, Selectman Mark W. Lynch, Town Administrator Brendhan Zubricki, Town Counsel Thomas McEnaney, and Selectmen's Assistant Pamela J. Witham.

Also present: Police Chief Peter G. Silva, Police Sergeant Paul Francis, Officer Tom Shamshack, Officer Ryan Davis, Attorney for The Farm Jeff Scuteri, Attorney for the Filias' Isaac Wilhelm, Bradley Atkinson, Noah Goldstein, Ryan Cox, Mr. and Mrs. Filias, Walter Ewaschuk, and several members of public.

Location: The Cafetorium at the Essex Elementary School on Story Street.

At approximately 7:37 p.m., Chairman Jones entertained a motion to open the public hearing. The motion was moved, seconded, and unanimously Voted.

Chairman Jones read the following statement: "This notice has been sent to you to inform you about the Licensing Board's decision to hold a public hearing on Wednesday, December 16, 2009 at 7:30 p.m. at the Essex Senior Center, 17 Pickering Street, regarding your weekday entertainment license.

The purpose of the hearing is to consider the renewal and/or modification and/or suspension and/or revocation of the Farm Bar and Grille's weekday entertainment license for the balance of calendar year 2009 and for the upcoming calendar year 2010, based upon numerous complaints that the license is adversely affecting the public health and/or safety and/or order through excessive noise and other disturbances, under the auspices of Section 183a of Chapter 140 of the General Laws."

"This notice has been sent to you to inform you that the venue for the December 16, 2009 public hearing referenced in our December 1, 2009 public hearing notice to you has been changed from the Essex Senior Center to the Essex Elementary School on Story Street. All other aspects of the December 1, 2009 notice remain the same."

The Chairman announced that he would wait about ten minutes before beginning the public hearing in case someone had gone to the Senior Center first. Mr. Zubricki was at the Center from a little before 7:30 until about 7:40 to forward anyone looking for the hearing and upon leaving the Center, he placed a large sign on the door directing interested parties to the school.

At 7:45, the Chairman introduced Town Counsel, Attorney Thomas McEnaney, who will be acting as mediator/facilitator during the hearing.

Attorney McEnaney stated the procedures that the Board will follow in conducting the hearing. He said: "This is a public hearing to consider the possible renewal, modification, suspension and/or revocation of the entertainment license exercised by BN Farm, LLC d/b/a The Farm at the premises located at 233 Western Avenue, Essex, MA based on alleged noise complaints. In my role as Town Counsel, I will provide advice to the Board upon the Board's request, and will ensure that the hearing proceeds in an orderly fashion. Given the limited scope of tonight's hearing, all testimony or evidence will be limited to the issue that is before the Board, which again is whether the

entertainment license should be renewed, modified, suspended or revoked based on alleged noise complaints. If you wish to raise issues related to other matters, I will rule that any such testimony is beyond the scope of this hearing, and you will be instructed to limit your testimony to the matter that is before the Board.”

“This is an administrative hearing conducted by the Board of Selectmen acting as the Town’s local licensing authority. While we fully anticipate that all parties and witnesses will conduct themselves civilly and in a manner consistent with that which would be expected in a court of law, this is not a court proceeding, and as a result, strict rules of evidence do not apply. The Board will allow in all evidence to the extent that it relates to noise complaints associated with the exercise of the entertainment license and will then assign it the weight that it determines is appropriate.”

“The hearing will proceed in 3 phases:

First, the Board will hear testimony from representatives of the Police Department concerning any noise complaints that they have received and/or investigated.

Second, the Board will hear testimony from any persons complaining about noise violations.

Third, the Board will then hear testimony from representatives of the license holder.”

“For each person who intends to testify, I will ask him/her to identify him or herself by stating his/her name and address for the record. After each officer or person testifies, the Board may ask any questions of the witness. Following any questions from the Board, the parties will then have an opportunity to cross-examine the witness.”

“After the evidence has been presented, I will allow a representative of the complaining parties and the license holder to make a brief closing statement if they so desire. The hearing will then be closed, and the Board will begin its deliberations. Although the deliberations will be conducted in open session, members of the public are not permitted to address the Board unless invited to do so by the Chair.”

Mr. McEnaney then asked if there was anyone present who wished to testify at the hearing. Several people raised their hands. He asked anyone intending to testify to stand, raise his/her right hand and swear that “the testimony that you are about to give in this matter before the Board of Selectmen acting as the Town’s local licensing authority is the truth, the whole truth and nothing but the truth so help you God.” Several people stood, raised their right hands and replied in the affirmative.

Attorney McEnaney introduced Attorney Jeff Scuteri, who will be representing The Farm and Attorney Isaac Wilhelm, who will be representing the Filias family. He said the attorneys would be allowed to each make an opening statement and reminded them that only items relative to noise issues would be discussed.

Attorney Scuteri made an opening statement on The Farm’s behalf, followed by Attorney Isaac Wilhelm’s opening statement for the Filias family. Attorney Wilhelm said that he

would like to go on record that he felt it is a mistake to limit the discussion to only noise related issues.

Town Counsel McEnaney asked Police Chief Silva to begin the testimony. Chief Silva read a list of the dates of noise complaints that have been received by the Police Department since The Farm opened in April 2009. The dates of calls complaining about noise are as follows: 4/25, 5/24, 6/4, 6/11, 6/12, 6/13, 6/15, 6/18, 6/30, 8/30, 10/15, 10/17, 10/23, 10/31, 11/7, 11/8, 11/19, 11/20/, and 11/29. The Department also received related noise complaints on 7/11, 8/15, 8/21, 9/27, 10/2, 10/18 and 11/29 involving motor vehicle situations such as burning rubber, screeching tires, and revving engines. Chief Silva introduced a letter of concern from Daniel Mayer of Liberty Street in Essex that he had received that day. Mr. Zubricki read the letter into the record. Mr. Zubricki said that he had called Mr. Mayer to ask permission to use his name at the hearing and that Mr. Mayer had responded by asking Mr. Zubricki to read his letter at the hearing. Chief Silva said that he would like to submit copies of the minutes from the Selectmen's meetings on August 24th, September 28th, and November 16th, 2009, for the record and requested permission to allow two officers to speak.

Attorney McEnaney clarified that following testimony by each witness, the Board of Selectmen and the attorneys for each side would be able to ask questions of the witness.

Attorney Scuteri then proceeded to ask the Chief questions regarding the complaints received by the Police Department, followed by questions from Attorney Wilhelm, Selectman Lynch and Chairman Jones.

Officer Tom Shamshak was called by Attorney McEnaney and said that he remembered four separate noise incidents to which he had responded. Officer Ryan Davis testified next. As a detective with the Police Department, he described four incidents at The Farm that he had investigated for the department. Both officers were questioned by the attorneys for each side.

Attorney McEnaney announced that that concluded the Police testimony or the first phase of the hearing. He turned the meeting over to Attorney Wilhelm to present witnesses for the Filias family and said that following their testimony, he would allow anyone else not represented by Mr. Wilhelm to voice their complaints about noise.

Paula Filias introduced herself and briefly reviewed the events leading up to the Filias family's complaints regarding the noise emanating from the Farm. Mrs. Filias presented two letters to the Selectmen from tenants that moved from her apartment because of the noise. She read a letter from another tenant that will be leaving, but who wished to remain anonymous at the hearing.

Attorney Scuteri read excerpts from four letters from Filias tenants who had no problem with noise coming from The Farm.

Mrs. Filias presented a petition to the Board and Mr. Zubricki read the petition into the record.

Amy Beth Richmonds of 238 Western Avenue testified, followed by Keith Mello of 238 Western Avenue, Chris O'Neil of 236 Western Avenue, Keith Collins of 236 Western Avenue, and Karen Birch of Patriot's Landing. All said that they have been bothered on several occasions by the noise, and all except Karen Birch have never called the Police. They were questioned by each attorney.

Attorney Wilhelm said that he would like to go on record again as protesting that the hearing testimony is limited to only noise issues.

There was no one else who wished to testify regarding the complaint about loud music at The Farm. Town Counsel asked Attorney Scuteri to present witnesses for The Farm.

Bradley Atkinson, co-owner of The Farm, testified next about the extensive sound-proofing and blockers that they have installed over the last eight months and other measures that Farm management has taken to reduce the noise impact on the surrounding neighborhood. Mr. Atkinson said that they have voluntarily stopped having music on Thursday nights.

Noah Goldstein, also co-owner of The Farm, was sworn in and testified regarding the pattern of liquor sales over the course of an evening when the music is playing and when it is not.

Christian Peyla of 234 Western Avenue, Rebecca Evans of 236 Western Avenue, Mike Jordan of 161 Western Avenue, Matt Crew of 256 Green Street, Stoneham, Jim Haskell of 58 Martin Street, Mike Francis of 180 Newbury Street, Danvers, Teresa Cox of 427 Essex Avenue, Gloucester, Gina Karlin of 114 Western Avenue, Will Faust, 10 Burgess Street, Danvers, Matt Miller of 43 Story Street, and Tom Gussler of 23 Story Street all spoke in favor and support of The Farm and have never been bothered by noise.

Attorney Scuteri said that he has five statements from other residents in the area of The Farm who have not been bothered by noise and copies of those statements have been furnished to Town Counsel.

There being no one else who wished to testify, a motion was made, seconded, and unanimously Voted to close the hearing at 10:00 p.m. Town Counsel said that the evidentiary portion of the hearing is now completed and announced that there would be a five minute hearing recess.

Chairman Jones, Selectman Lynch, Town Administrator Zubricki and Selectmen's Assistant Witham met to take care of two other business matters.

The Selectmen discussed a proposed policy for the disposition of supplies valued at less than \$5,000. A motion was made, seconded, and unanimously Voted to approve the policy which is attached at the end of these minutes.

At the recommendation of the Assessors a motion was made, seconded, and unanimously Voted that the Town of Essex accept Chapter 183 of the Acts of 2009 to extend the time for mailing the actual tax bills for fiscal year 2010 until January 30, 2010, if necessary.

The Selectmen were reminded that the next Board of Selectmen's meeting will be held on Monday, December 28th, at 7:00 p.m. in the T.O.H.P. Burnham Public Library.

At 10:05 p.m., Town Counsel said that the public hearing would resume and that the Board will now begin its deliberations.

After some discussion between Chairman Jones and Selectman Lynch, Selectman Lynch said that based on testimony heard at this hearing, he moves to find that BN FARM, LLC d/b/a The Farm has failed to prevent an unreasonable increase in the level of noise in the area caused by the licensed activity or caused by patrons entering or leaving the premises, which has adversely impacted public health, safety or order as set forth in G.L.c.140, section 183A regarding its entertainment license. The motion was seconded by Chairman Jones and Voted unanimously.

Selectman Lynch also said that based on the findings of the Board, in order to preserve and protect the public health, safety and order, he moves that The Farm weekday entertainment license be modified to only include Friday and Saturday nights with any live music or recorded music ending at 12:00 midnight. In addition, he moved that the license reflect that no noise coming from live or recorded music be audible beyond the property limits of The Farm. The motion was seconded by Chairman Jones and Voted unanimously.

Selectman Lynch said further that he moves that the Board adopt the following statement of reasons in support of its decision:

- a. Testimony from Essex Falls Apartment residents, a resident from Patriots Landing, and other surrounding neighbors, a written testimony from a home owner on Liberty Street which revealed that there was an unreasonable level of noise at times.
- b. Also based on testimony from police officers visiting the scene.
- c. Discussion that should have taken place in April 2009 and parameters set at that time.

The motion was seconded by Chairman Jones and Voted unanimously.

There being no further business before the Board, Town Counsel requested that the meeting be adjourned. A motion was made, seconded, and unanimously Voted to adjourn the meeting at 10:18 p.m.

Prepared by: _____
Pamela J. Witham

Attested by: _____
Mark W. Lynch

TOWN OF ESSEX
WRITTEN PROCEDURES UNDER G.L. c. 30b, § 15
DISPOSITION OF TANGIBLE SUPPLIES – LESS THAN \$5,000

The following shall constitute the written procedures of the Town of Essex for the disposal of tangible supplies having an estimated net value of less than \$5,000 pursuant to G.L. c.30B, § 15(f):

The department of the Town having custody and control over the supply shall notify the procurement officer of any supply deemed no longer useful to the department, and having an estimated net value of less than \$5,000. If the procurement officer determines that the supply is no longer useful to the Town and has an estimated net value of less than \$5,000, the procurement officer shall post written notice of the proposed disposition of the supply on the main bulletin board located in Essex Town Hall for at least ten calendar days. The procurement officer may, in its sole discretion, also advertise the proposed disposition of said supplies on the Town's website, or in a newspaper of general circulation within the community, but such method of advertisement is not required. The notice shall identify (1) the supply and (2) the date and time until which the procurement officer will accept written offers to purchase the supply. All offers will be publicly opened and read aloud at the date and time stated in the notice. The supply will be sold to the person offering the highest price. The Town reserves the right to reject any and all offers if the procurement officer determines that the highest offer is not reasonable for acceptance without further competition, or for any other reason permitted by law.