



**Board of Selectmen
Minutes
January 19, 2010
Town Hall Meeting Room**

The meeting was called to order at 7:00 P.M. by Chair, Ron Ricci in the Town Hall Meeting Room. Ron Ricci, Lucy Wallace, Tim Clark, Marie Sobalvarro and Peter Warren were all in attendance.

SENATOR ELDRIDGE & REPRESENTATIVE BENSON –

Senator Jamie Eldridge was present and provided a handout highlighting legislation that could affect Harvard. He mentioned the extension of the quarterly tax bill deadline to February 1, mini procurement legislation and local options excise taxes and eliminating the poles & wires exemption as a few items of interest. Senator Eldridge said he also included cherry sheets from the last few years as a reference regarding local aid cuts. He explained during the senate caucus Senator Panagiotakas (Ways and Means Chairman) said cities and towns should expect a 10% cut in local aid and recommended providing cities and towns with local aid resolutions as early as February. Lucy Wallace wondered if reports of higher revenue than projected may help. Eldridge said unfortunately revenues are still lower than they were. He stressed the most challenging piece will be the loss of stimulus funds for education this year. Marie Sobalvarro asked if there would be 9C cuts for fiscal 2010. Eldridge said he is confident there will be no mid-year cuts for local aid and said to watch for the Governor's budget due on January 27th. Tim Clark asked if it is realistic to expect local aid resolution as early as February. Eldridge said he is confident this is possible. Clark briefly referenced the board's support of the bottle bill and asked for an update on the wastewater bill. Representative Benson said the wastewater bill was enacted in the Senate last week and will go to the House. Clark thanked both Representative Benson and Senator Eldridge for their continued support in moving the bills forward.

Representative Jen Benson said she is hopeful to provide cities and towns with an accurate local aid number as soon as possible. She also agreed with the Senator in stating education aid will be more challenging this year. She gave a quick update on possible grant funds coming to Harvard and stressed the importance for communities to work aggressively toward obtaining grant funds whenever possible. Representative Benson gave a quick overview on the advantages to Harvard regarding the passage of the bill to address the achievement gap in education. Marie Sobalvarro asked if charter assessments would be looked at as well. Benson said this will be handled separately because it is a large problem. She also gave a brief update requested by Tim Clark on the possible regionalization of schools between Ayer, Shirley and Lunenburg. She indicated Ayer and Shirley are moving forward without Lunenburg and plan to act this spring. Ron Ricci reminded Senator Eldridge and Representative Benson of the Request for Reconsideration filed with DEC by the town and stated the hearing would be held on January 26th. He also thanked the Senator and Representative for their continued support and understanding for the residents of Harvard who are affected. Tim Clark noticed Senator Eldridge is the chairman for the Water Infrastructure Finance Commission and asked for a little more detail. Eldridge said the commission's initial goal is to examine how to pay for aging water systems as well as investigate alternative sources. Lucy

Wallace suggested this newly formed commission keep the individual watershed associations informed.

Peter Warren commented on the policy for fire chiefs and the importance of the Student Awareness Federal Education grant and the Fire Safety Equipment grant programs to Harvard. Warren also asked for support on house bill 2295. This bill is regarding the development of standards and qualifications for the position of fire chief. He said the program is now voluntary but the fire chief association highly endorses the program becoming mandatory. Representative Benson reminded the Selectmen to extend an invitation if any issues come up they would be more than happy to come out to the district.

FOURTH OF JULY COMMITTEE– Chairman Steve Miller was present to discuss the lack of enthusiasm and interest from residents in town. Miller explained he and his wife have been involved for a number of years and are ready to pass the torch on. He said they have tried numerous approaches to reach out to the community with no success. He feels he has no choice but to ask the board for guidance. Miller indicated he is happy to mentor any new comers but does not want to continue in the leadership role. The discussion included possibly separating the fireworks piece from the parade and day events held on the common. Marie Sobalvarro suggested maybe contacting MassDevelopment to possibly work something out with them. The Selectmen and Miller agreed the Fourth of July parade and day events have been a tradition for many years and feel it is extremely important to find a solution. The Selectmen agreed to each work on finding a citizen or two to volunteer for the traditional July 4th events and parade, and relay those names to Steve Miller. Ron and Marie will work on alternative ways to fund the fireworks.

LIQUOR LICENSE HEARINGS
Continued from December 15th
7:45pm

Ron Ricci reopened the hearing by asking the Town Administrator if any correspondence was received from the neighboring churches. He confirmed the only responses he received were verbal and did not voice any opposition. Bragan also confirmed receipt of a letter from the School Superintendent and the Police Chief but indicated nothing was received from the Board of Health.

Town counsel Mark Lanza was present to guide the Selectmen through the process clarifying items that can or can not be addressed relative to the application, appropriate conditions and criteria for basing decision. Lanza explained the process is similar to an on-premise license the differences are legal standards set forth in Chapter 138 Section 23. The decision must be made taking into consideration public need and in such a manner as to protect the common good and, to that end, to provide, in the opinion of the licensing authorities, an adequate number of places at which the public may obtain, in the manner and for the kind of use indicated, the different sorts of beverages for the sale of which provision is made.

Lanza confirmed no public input could be acknowledged after the public comment section of the hearing was closed. He indicated a vote does not need to be taken as the Chairman has the authority to run the hearing as he sees fit. Bragan confirmed the board did request letters from the Board of Health, Police Chief, and School Superintendant which Lanza said could be considered because they were specifically requested. Tim

Clark and Lucy Wallace expressed concern to not include additional public input after the public comment section of the hearing was closed. Lanza strongly advised against this. Unfortunately, Bragan said due to an error in a newspaper article the public was misinformed of having more time to submit comments. The extra time was to meet the 30 day requirement for the churches.

Lanza explained the three options the board has are to approve the license, deny the license or approve it with conditions and the board can not act arbitrary or capriciously. He indicated typical conditions are hours of operation, control over who sells liquor, proper training of individual selling liquor, premise lighting, and parking. Lanza was very clear in stating the board must be mindful of the other authority (ABCC) who will be vigilant in verify all conditions made and process taken to get there.

At this time, Ron Ricci asked the first applicant to come up and field any further questions from the board.

The Grapevine – Applicant Bob Hirsch – Attorney Roy Pastor

Tim Clark opened by asked for clarity on the form 43(application) relating to the owner of record. Attorney Roy Pastor stated his client has no intention of causing any referendum between the General Store and the commercial district. He expressed concern stating Tim Clark presented himself to his client Mr. Hirsch and tried to persuade him to withdraw his application. Clark quickly objected to the statement but did confirm he met with Mr. Hirsch earlier. Pastor asked the board to consider asking Clark to recues himself from the hearing. Ron Ricci asked if any board member had visited Mr. Hirsch. Clark said he did but did not ask Mr. Hirsch to withdraw his application and only spoke to him regarding some of his concerns with town records he reviewed. Ron Ricci deferred to Town Counsel Mark Lanza for his advice. Lanza said Clark could recuse himself if he feels he can not objectively review and act on this application. Pastor said his client is only looking to be treated fairly. Upon being specifically asked by the Chair, Clark made the decision to not recuse himself.

Tim Clark asked for clarity on the owner indicated on the application. The applicant confirmed the property is dedeed to the trust.

Lucy Wallace asked for clarity on form A relating to the number of hours on premise. Wallace asked what the long term intentions for store and property are. Hirsch said he intends to operate as a beer and wine store with related sundry items. He explained his long term plans would be to develop the property with possibly a supermarket or pharmacy. He said he would be willing to transfer the license to the supermarket if so desired. Attorney Pastor said he did not understand the relevance of the questions to the application but did say naturally considering the large 50 acre parcel Hirsch owns he would be interested in future development. He would be required to seek approval from the board if in the future Mr. Hirsch desired to transfer the license. Lastly, Wallace asked if Mr. Pastor's office was located in the plaza and if he had a financial interest in the application. Pastor said his office is located directly across from the plaza on Ayer Road and he does not have a financial interest in the property.

Marie Sobalvarro asked where returns would be stored. Hirsch said he intends to keep them in the building as he does in Boxborough. He said the recycling company that is approved by the state is not reliable so he does foresee building a small shed in the future. She also asked about improving the lighting in the parking lot. Hirsch indicated he has a contract to replace posts with identical lighting to the Rollstone Bank and upgrade lights at entrance to be in compliance.

Peter Warren said his concern was also the lighting in the parking lot. He asked if there is lighting in the rear of the building and Hirsch confirmed there was.

Tim Clark indicated the lighting in the parking lot and the parking lot itself is not in compliance with the site plan approval from 1974. Clark suggests lighting be in compliance by consulting with the building commissioner. Pastor said he is not sure what the compliance was in 1974 but assured the board Mr. Hirsch is taking the appropriate steps to be in compliance now. Clark said a site plan and modification approval from the Planning Board in 2005 recommends the building commissioner meet with the site owner. Clark said currently the site is not in compliance with site plan approved by the town and asks any modifications made accordingly to make remainder of site in compliance to meet lighting standards and requirements this board may request. Clark said he is hopeful any report from Board of Health is read into record. He said currently there is no certificate of compliance, current permit for the septic system and suggests this be a requirement of the approval. Clark also indicated a request to repair system was issued in 2003 which was not acted upon. Pastor was not sure what Clark was referring to considering Mr. Hirsch has a Title 5 Certificate which was issued in 2008. Board of Health Chairman Tom Philippou was present and stated the Board of Health does not have any issues considering the applicant has a current Title 5 certificate. Mark Lanza said it is perfectly acceptable for the board to have a condition requesting adequate documentation relating to this issue. Next, Tim Clark noted in a bankruptcy document \$15,000 in fines was charged to RDJ Realty Trust from DEP generated initially from the Board of Health which Clark could not confirm had been paid. Attorney Pastor said the fine was against the applicant's brother David Hirsch and stated Mr. Hirsch purchased his interest in the trust from the bankruptcy court and this has nothing to do with him. Pastor said there is nothing outstanding against Mr. Hirsch relating to the property on Ayer Road.

Ron Ricci asked if the space is handicapped accessible and Hirsch confirmed it is. Ricci asked how much experience he has in operating a liquor store and he stated thirty seven months. Ricci asked how many parking spaces are available to serve the building. He said 112 spaces with plenty of space available for the new store. Ricci did indicated the Chief of Police included in his letter a recommendation for each establishment have sufficient lighting in parking areas to deter the opportunity of the purchase of alcohol by an adult to be transferred to a minor waiting outside. Ricci said he would support this as a condition and Mr. Hirsch agreed. Ricci also said the Chief of Police recommends the installation of cameras. Hirsch said he intends to have cameras along with warning signs to underage purchasers. He has prosecuted two underage residents in Boxborough.

At this time, Tim Bragan read into record a letter from Patrick Doherty supporting the General Store but not the Grapevine. Bragan also read aloud letters from the Police Chief

and School Superintendent. Both letters indicated no great concern with the establishments. Ron Ricci asked the Board of Health to submit a letter in writing.

The Harvard General Store – Applicants Adam and Lynn Horowitz

Marie Sobalvarro began the questioning with handicapped accessibility. Adam Horowitz said the building is grandfathered to allow retail sales on the second floor. She asked about returns which Horowitz confirmed would be stored onsite.

Lucy Wallace asked for more detail on the handicapped accessibility. The Horowitz's indicated a computer would be located on the first floor to allow patrons to view products for sale on the second floor. Wallace asked for confirmation regarding no underage employees would be selling alcohol. Horowitz's said an employee eighteen years old or older would always be onsite and responsible for the sale of alcohol.

Peter Warren asked if a cash register would be located on the second floor. Adam Horowitz said the intention is for all alcohol sales to be sold on the second floor. Horowitz said they would prefer both floors be licensed.

Tim Clark asked about the septic system and if there were any issues as he observed a current certificate of compliance. He asked Mr. Horowitz to comment on the verbal commitments made to the Board of Health to maintain the septic permit. Horowitz said to satisfy the Board of Health the system would have two Title 5 inspections in a 12 month period and pump the system once a year. Horowitz indicated Blue Water will be coming on the 30th of March. Board of Health Chairman Tom Philippou came forward to say the General Store has been cooperative. Ron Ricci asked for the Board of Health to submit this in writing.

Tim Clark asked for clarity on hours of operation and separation of wine/malt areas. Adam Horowitz said hours requested are Monday thru Saturday 10:00am-7:00pm and Sunday 12:00pm – 7:00pm. Horowitz said during the hours when malt/wine would not be sold the retail areas in the store used to display will be corded off and clearly demarcated. Clark also asked about lighting according the Police Chief's concerns. Horowitz said they have to be careful to maintain historic compliance but would work with the Police Chief.

Ron Ricci asked about the handicapped accessibility to the second floor and Mr. Horowitz again stated the building is grandfathered to allow operation as is. Ricci asked Mrs. Horowitz if she has experience in managing a liquor store and she indicated she does not. Ricci asked how many parking spaces they have. Mr. Horowitz said all the parking is on land the town owns so technically they do not own any parking spaces. He said he does not believe the increased business due to wine/malt sales would hamper the current parking situation. Lastly, Ricci asked about how lighting in the parking lot would comply with the Police Chief's recommendation. Horowitz said he would be happy to meet with the Police Chief to accommodate his requests.

Ron Ricci stated Marie Sobalvarro is working on draft rules and regulations for the board to adopt at an upcoming meeting regarding liquor licensing in Harvard.

On a Warren/Sobalvarro motion, the Board voted unanimously to close the public hearing.

Board deliberation

Marie Sobalvarro asked how a property becomes Title 5 compliant if no work has been done to become compliant. Town Counsel Mark Lanza said his understanding is the work requested to become compliant must be completed. The board members asked questions of Town Counsel Mark Lanza regarding conditions and if a timeframe can be implemented for fulfillment. He said a timeframe can be included. Tim Clark asked if it is proper to request all properties permits are in compliance prior to issuance of permit. Lanza said that is an acceptable condition. Sobalvarro asked for clarity on the process stating once the license is issued from the ABCC then the town would issue the license to the applicant once all conditions are met. Lanza concurred. Tim Clark asked when the board must take final action on the license request. Lanza suggested the board members receive written approval from the applicants granting an extension because application must be acted on within 30 days. Lucy Wallace asked for clarity on the phrase “public need”. Lanza said the strong presumption would indicate three is required for public need. Lanza said public need can be determined geographically within the town but analysis usually is necessary. Wallace also asked if the transferring of a license allows more or less discretion to the town. Lanza said less but stated transfer of location is much different than transferring ownership of license.

Ron Ricci asked for a consensus from the board members if they would approve request to issue a liquor license to Bob Hirsch, Grapevine. Peter Warren, Ron Ricci and Marie Sobalvarro said yes with conditions. Lucy Wallace said no and Tim Clark abstained.

Ron Ricci asked for a consensus from the board members if they would approve request to issue a liquor license to Adam & Lynn Horowitz, Harvard General Store. Peter Warren, Lucy Wallace, Ron Ricci and Marie Sobalvarro said yes with conditions. Tim Clark abstained.

Bob Hirsch’s attorney Roy Pastor said his client would agree to an extension and conditions if consistency with both establishments. Both applicants agreed to an extension to Tuesday, February 2nd Bob Hirsch 8:30pm and Adam & Lynn Horowitz 9:00pm.

Ron Ricci asked board members to submit conditions to Tim Bragan no later than Tuesday, January 26th for him to compile a draft to be distributed to all members and applicants prior to the February 2nd meeting.

PUBLIC COMMUNICATION – Jay Wallace, 62 Old Mill, reminded the board members of the January 26th DEC public hearing and asked all residents to show up for support. He said Appeals Designee Ruth Silman would be meeting with neighbors prior to the hearing.

AFFORDABLE HOUSING PLAN – Planning Board Chairman Joe Sudol attended the meeting to ask for approval from the board on the final version of the Affordable Housing Plan. He intends to submit the plan to DHCD once the Planning Board votes to approve at their meeting next week. Lucy Wallace congratulated the Planning Board and Master Plan Implementation Committee for their efforts. Sudol anticipates the 2010 census data would not change much from previous years and expects goals to be similar for the next ten years.

On a Wallace/Warren motion, the Board voted unanimously to accept the amended affordable housing plan dated January 2010 subject to Planning Board concurrence and authorize Tim Bragan to sign.

ZONING BYLAW CHANGES PROPOSED BY PLANNING BOARD – Joe Sudol also spoke to the board requesting final approval of the proposed bylaw amendments he presented at the last meeting.

On a Clark/Warren motion, the Board voted unanimously to support definition of building and bylaw amendments.

MINUTES – On a Warren/Clark motion, the Board voted unanimously to approve the minutes of 1/5, as presented.

CONSERVATION COMMISSION APPOINTMENT – On a Clark/Warren motion, the Board voted unanimously to appoint Patrick Doherty as a full member to replace Joshua Gould with a term expiring in 2012.

SET WARRANT ARTICLE DEADLINE – On a Wallace/Warren motion, the Board voted unanimously to set the deadline of noon on Friday, February 12th for placeholders for the Annual Town Meeting warrant.

VICKSBURG SQUARE – Ron Ricci informed the board members he has spoken with Meg Delorier from MassDevelopment to have her attend a future JBOS meeting.

DISCUSS CREATING RULES AND REGS FOR LIQUOR LICENSES – Marie Sobalvarro said she has been working on this and will distribute to all members what she is working on for their review. The board agreed to have Tim Bragan compile the information along with comments from the other members to create a working draft to be discussed at the February 2nd meeting.

TOWN ADMINISTRATOR UPDATE – Tim Bragan informed the members of the municipal building workshop to be held on January 30th in the former library starting at 8:30am. He informed the members he may come to them for permission to access funds from the Rantoul account if necessary.

Tim Bragan informed the board resident Jeff Ritter will be working with him as an unpaid intern through the end of June.

On a Clark/Warren motion, the Board voted unanimously to appoint Jeff Ritter to position of unpaid intern to the Town Administrator term ending in June 30, 2010.

The meeting was adjourned at 10:24pm.