



**Board of Selectmen
Minutes
February 2, 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, Marie Sobalvarro and Peter Warren were all in attendance. Tim Clark was not present.

Tim Bragan opened the meeting by reading an email sent by Selectmen Tim Clark at his request. Clark apologized for his absence but explained he could not attend because he had a sick child and his wife was out of town. He asked the Board to consider postponement of deliberations and beginning the entire process over due to the confusion over the public comment section being closed.

FINANCE COMMITTEE CANDIDATE INTRODUCTION - Moderator Robert Eubank was present to introduce Heidi Frank as a candidate for one of the two open associate member positions on the Finance Committee. Frank gave a brief background of her qualifications and expressed her interest in volunteering her time to the town.

TOWN CAUCUS – On a Wallace/Sobalvarro motion, the Board voted unanimously to set Saturday, March 6th at 7:00pm in the Town Hall Meeting room as the date to hold the Town caucus.

MINUTES - On a Sobalvarro/Wallace motion, the Board voted unanimously to approve minutes of 1/19, as amended.

REVIEW OF BOARD OF SELECTMEN, PUBLIC BUILDINGS AND OTHER BUDGETS DEVELOPED BY THE TOWN ADMINISTRATOR –Tim Bragan informed the members that the other departments would be available at an upcoming meeting to review and discuss their budgets.

Bragan began by reviewing the level funded budget for FY11 explaining a few adjustments. He explained there are a total of three full-time equivalents under the charge of the BOS office and Public Buildings. The amount of the benefits increase that needs to be absorbed with the first budget submitted is equal to \$2,567. He indicated a reduction of \$1,000 from the town report budget, \$1,000 from the Building Repairs account and \$600 from the Wastewater Treatment Plant. One noticeable increase is to the purchase of services account which he said directly relates to the cost of hosting the new town website, future video streaming, and email accounts. Bragan said this was an increase the Finance Committee expected. He also stated to maintain the level funded budget it was once again necessary to forgo his contractual increase. He stated all other budgets under the Selectmen remained level funded but cautioned the potential for increases when new cost amounts are eventually received. This includes the Town Audit, Public Buildings Liability Insurance and finally the Montachusett Regional Vocational Technical School budget.

Next, Bragan said in order to meet the 5% reduction requirement set forth by the Finance Committee a reduction of \$37,100 must be realized across the five budget areas. Reductions as follows:

- \$8,220 reduction to Personnel by requiring 13 unpaid furlough days for the three full time employees. Town Administrator Tim Bragan, Executive Assistant Julie Doucet and Building Maintenance Eddie Stoffel
- \$13,620 reduction to Public Buildings account by cutting \$4,000 from Building Repairs, \$1,000 from Gas account, \$9,000 from the Wastewater Treatment Plant.
- \$2,550 reduction to the Legal Account
- \$11,150 reduction to the Miscellaneous account which resulted in a total cut to for the Town Audit
- \$1,560 reduction to the Selectmen account by taking \$60 from the postage account and \$1,500 from the purchase of services account.

Selectmen Lucy Wallace, Marie Sobalvarro and Ron Ricci commented stating the 5% reduction budget is unacceptable. Bragan concurred and stated reserve fund transfers would most likely be inevitable. Peter Warren expressed his concern with reducing the building repairs account considering the condition of the town buildings. Bragan did indicate the Community Preservation Committee (CPC) is recommending \$100,000 for town hall renovations. Ricci and Wallace both expressed their concern and gratitude toward Bragan for foregoing his contractual increase and thanked him for his hard work on the budget. Wallace did ask for the rationale behind the Finance Committee requesting a 5% reduction budget. Bragan said the 5% was to address budget issues if there was a sudden down turn in revenue. The next step in the budget process is to hear from the other departments at the February 16th meeting.

LIQUOR LICENSE RULES AND REGULATIONS - Marie Sobalvarro updated the board on her progress developing rules and regulations for liquor licensing. She has been researching the ABCC requirements as well as contacting surrounding communities. Combining the existing documentation for on-premise liquor license policies and other communities' feedback she has prepared a standard application and process for both on-premise and off-premise liquor licenses. Sobalvarro indicated she did not receive much feedback from the other board members and had a few questions. She asked for direction from the board regarding one-day licensing, fees to be charged and checkpoint for new applications. She indicated in some communities the Town Clerk is responsible for receiving and dating the application when it initially comes in. Tim Bragan suggested the application be checked in by the Selectmen's office and reviewed by the Town Administrator for completion. He said in order to meet the thirty day requirement adequately this makes the most sense. Sobalvarro also encouraged the board to think about developing a policy for "carry in" also known as "BYOB" bring your own bottle. Peter Warren complimented Sobalvarro on her efforts thus far.

PUBLIC COMMUNICATION – Paul Green, 288 Old Littleton Road, attended the meeting on behalf of the Congregational Church to notify the town that the church reserves the right to close the walkway between Still River Road and the Bromfield High School parking lot until completion of their construction project. He stated they anticipate the project to take about six to eight months. Lucy Wallace stressed the importance of the area being appropriately marked as to avoid any accidents.

On a Wallace/Warren motion, the Board voted unanimously to temporarily waive easement from Feb. 28th until notified construction is complete. All parties agreed the DPW department would clearly mark the path as closed.

WITHDRAWAL OF REQUEST FOR RECONSIDERATION – Tim Bragan informed the board he received a memo from DEC Director Peter Lowitt, dated January 27th, stating the commission voted to convene a public meeting on the Permanent Daytime and Nighttime Sound Monitoring System Protocol if the Harvard BOS voted to withdraw its Request for Reconsideration. Bragan presented a draft letter withdrawing the request for the board to review. Bragan stated the memo requires written responses by February 9th to be posted on their website for review prior to the hearing. Lucy Wallace wondered if public comment could also be accepted at the hearing on February 23rd. Jay Wallace, 62 Old Mill Road, was present to give a brief description of how the process has gone in the past. Wallace suggested adding language to the letter stating the allowance of public comment during the hearing to be positive this will occur. The board members agreed. Deborah Skauen-Hincliffe, Still River Road, said she agreed this language should be added as she does not trust Peter Lowitt. Ron Ricci confirmed the \$1,000 filing fee was refunded.

On a Wallace/Warren motion, the Board voted unanimously to withdraw request for reconsideration to DEC for approval of Sound Monitoring Protocol and authorize chair to sign the letter to Peter Lowitt with the recommended changes.

Jay Wallace said the protocol being reviewed had two critical elements used to set reference limits for sound monitors. The limits were set with the idea of protecting the public and keeping Evergreen Solar in compliance but the question is with how the limits were calculated. He said a legal opinion is necessary to review regulations to determine how the waiver changes those regulations. Ron Ricci stated limits based on normal noise and low frequency and where it is measured needs clarification. The board agreed to have Town Counsel Mark Lanza review both documents to determine clarity. Ron Ricci asked Jay Wallace to prepare the technical information and forward onto Mark Lanza.

**Continuation of Liquor hearing
Robert Hirsch/ The Grapevine
8:38pm**

Chairman Ron Ricci opened the hearing by stating the applicant consented to an extension at the January 19th meeting to continue this evening. Town Counsel first addressed the letter Selectmen Tim Clark wrote to the Harvard Press. In the letter Clark demanded the entire process start from the beginning due to confusion over the public comment section of the hearing. Lanza explained as he had at the prior meeting that the Chair or the board could limit the public comment section of the hearing. He said the public was given sufficient opportunity to be heard. He said the comments specifically requested from other boards/committees as well as the churches allowable. Lanza stated he understands the concern but legally there was no procedural defect in the process. Lucy Wallace said perhaps there was nothing legally inappropriate but due to the fact of an error in the newspaper maybe the additional public comment should be included. She is concerned about equity given to the public. She made reference to the public comment accepted during the hearing for Fruitland's and asks the same courtesy be given to the public now.

Peter Warren said the meeting of December 15th when the initial hearings began has been recorded and run on cable and feels the public has been given amply opportunity to provide comment. Marie Sobalvarro asks about residents who do not have cable and commented on the misinformation in the newspaper article. Warren said the board is not liable for newspaper mistakes. Ron Ricci said the hearing was adequately advertised and during the December 15th meeting he asked for a motion to close public comment and was told by another board member a motion was not required, so he as the Chairman closed the public comment section of the hearing at that time. Lanza said the board could decide to accept the other public comment into record but cautioned this can go both ways what about individuals who did not submit comment because they were adhering to the initial dates provided. Lucy Wallace asked about Tim Clark's request to postpone deliberations until the next meeting when he can attend. The applicant's attorney Roy Pastor said his client would not agree to an additional extension.

At this time, Ron Ricci said the board has three options; approval, approval with conditions or denial. Lanza explained possible courses of action moving forward. He suggested handling each application separately. The board confirmed all requested correspondence had been received except from the Board of Health. Lanza stated the verbal manner in which the Board of Health supplied their information is acceptable but the board can include a condition requesting documentation be provided prior to issuing permit. Lanza said the board could not ask for additional comment from the applicants or public. Once the hearing is closed, the Selectmen deliberate applying common knowledge and then vote to approve or not. If the vote is affirmative to approve then the next step is to finalize the conditions. Lanza said he has prepared draft findings and conditions for both applications based on information provided by the Town Administrator from the board members. He confirmed the open meeting law was not violated in any way because the members only supplied their input no discussion ensued through email. He said in the event the board decides to not grant a license they must supply reasons related to the absence of public need or common good or other substantial reasons. Tim Bragan reminded the board members of the closure of the public hearing at the January 19th meeting and the board members took a consensus vote at that time. Bragan suggested board members review findings and conditions to decide if satisfactory.

Findings

1. There is public need to in the area of the Town of Harvard lying north of route 2 for a package store at which wine and malt beverages may be purchased.
2. The issuance of a package store license to Robert Hirsch d/b/a The Grape Vine for the sale of wine and malt beverages to be exercised at Unit 3, 285 Ayer Road, Harvard, MA, subject to the conditions and limitations set forth below will protect the common good.

Conditions

1. There is a public need in the area of the Town of Harvard lying north of Route 2 for a package store at which wine and malt beverages may be purchased.
2. Alcoholic beverages that are accessible to the public shall be kept in places that are either in the same room as the manager or store clerk or monitored by a functioning video monitoring system, approved by the Police Chief that can be monitored by the manager or store clerk. The video monitoring system shall also monitor the parking area.

3. Wine tasting and/or malt beverage sampling events are only permitted if a TIPS (Training and Intervention Procedures for Servers of alcohol) certified store clerk or manager at all times during the event.
4. Any attempted purchase of alcoholic beverages by a minor or an individual who appears to be under the influence of alcoholic beverages shall be immediately reported to the Harvard Police Department.
5. Alcoholic beverages may not be sold and the license shall not be delivered to or picked up by the applicant until written evidence of the following has been received by the Board of Selectmen showing that:
 - a. Board of Health:
 1. There are no outstanding unresolved Title V or other public health issues, including but not limited issues relative to the water supply system serving the licensed premises.
 - b. Building Inspector-Zoning Enforcement Officer:
 1. The licensed premises, including exterior signage and the access to the property at 285 Ayer Road, comply with current provisions of the Town of Harvard Protective Bylaw, or, alternatively, written evidence of prior nonconforming status or an exemption is provided.
 2. The areas used for retail sales are handicapped accessible or, if not, written evidence of prior nonconforming status or an exemption is provided.
 3. All renovations and improvements to the interior of the licensed premises must be completed and approved by the Building Inspector.
 - c. Fire Chief:
 1. The building in which the licensed premises are located meets all applicable, current laws and codes relative to fire escapes, lighted exit signs and sprinklers.
 - d. Police Chief:
 1. The parking areas adjacent to and serving 285 Ayer Road are properly lighted with functioning light fixtures approved by the Police Chief and compliant with the Town's Bylaws.
 2. All employees consummating sales of alcoholic beverages, including the manager, are at least 18 years old and TIPS certified as required above.
6. The building floor area used for retail sales of alcoholic beverages and associated items shall not exceed 2,200 square feet.
7. If, after the expiration of six months after the foregoing license, the applicant has not complied with all of the conditions imposed by the Board of Selectmen, the license shall be null and void without further action by the Board and the license application fee shall be refunded in full. If the applicant wishes to re-apply it shall be considered a "new applicant".

8. All returns of alcoholic beverage containers shall be stored inside in the licensed premises.
9. All deliveries of alcoholic beverages shall occur during daylight hours only, Monday thru Friday.
10. Alcoholic beverages may be sold between Mon.-Wed. 10am-7pm, Thurs.-Sat. 10am-10pm, Sun. 12pm-6pm

Lanza said it is essential the applicant completes the application completely and accurately. Lucy Wallace asked about the validity of the lease agreement submitted and Lanza confirmed it was sufficient. Wallace also asked about the trust document. Lanza said it is not required but he did locate and review it. He said this explained some of the inconsistency with the official name of the trust because it was prepared in New Hampshire. Tim Bragan asked if all employees need to be TIPS certified if not serving. Lanza said as long as the employee interacting with customers is certified that is sufficient. Wallace asked to be sure if manager not present employee must be at least 21 years of age. Marie Sobalvarro again expressed concern regarding the lighting. Sobalvarro wondered about possibly limiting the hours to address this concern. Ron Ricci and Peter Warren were confident the conditions agreed upon would address this issue. Lanza said once the board officially approves policies and procedures for liquor licensing the applicants must adhere to these rules as well even though their application has been approved prior to the policies being instituted. Sobalvarro again expressed her concern about the lighting and asked if enforcement can be taken to ensure conditions are maintained. Lanza said a hearing can be held to suspend, modify or revoke a license. Peter Warren suggested adding to the policies and procedures the ability to effectively discipline. Lanza said the board can always take action if any conditions are violated. Sobalvarro was still uneasy and recommended limiting hours of operation. Warren said hours must be reasonable. The applicant was asked to confirm that his statement at the previous hearing about the lighting being ordered and delivered was indeed true. Mr. Hirsch confirmed. Tim Bragan and Mark Lanza assured the board members noncompliance with any of the conditions could be addressed by holding a hearing. Lanza encouraged the board members to attach a diagram indicating the premise to the actual license along with conditions.

On a Warren/Sobalvarro motion, the Board voted to grant license to Robert Hirsch d/b/a as The Grapevine at 285 Ayer Road Unit 3 subject to conditions listed in document provided by Attorney Lanza with the following changes:

Condition 1: change word approval to review and change age to 21

Condition 5: (a) (1) specific documents to be provided

Condition 5: (d) (1) add applicable light fixtures

Condition 5: (d) (2) change age to 21

Condition 7: change to application fee will not be refunded.

Condition 10: hours of operation Mon.-Wed. 10am-9pm, Thurs.-Sat. 10am-10pm, Sun. 12pm-6pm

(Warren – Aye, Ricci – Aye, Sobalvarro – Aye, Wallace – Nay, Clark – Absent)

Lucy Wallace said she was not satisfied that the public need or common good standards were met and that is why she voted against granting the license. Town counsel Mark Lanza said he would prepare final Findings and Conditions by tomorrow morning and send to the Town Administrator.

**Continuation of Liquor hearing
Adam & Lynn Horowitz/ the Harvard General Store
9:30pm**

Bragan reminded the board at the last meeting they took a straw vote in favor of granting license with conditions. He also stated that applicants Adam and Lynn Horowitz were present but decided to exit the hearing once Bragan informed them they could not provide any comment. On a Wallace/Warren motion, the Board voted to approve with conditions and began review of findings and conditions. Mark Lanza agreed maintaining consistency between both applicants' conditions was preferable.

Findings

1. There is a public need in the Town Center for a package store at which wine and malt beverages may be purchased.
2. The issuance of a package store license to Harvard General Store, Inc. for the sale of wine and malt beverages to be exercised at 1 Still River Road, Harvard, MA, subject to the conditions and limitations set forth below, will protect the common good.
3. The licensed premises are not detrimental to the educational activities of the schools or the spiritual activities of the churches which are located within 500 feet of the premises.

Conditions

Mark Lanza reviewed conditions stating mostly identical but will accent the differences for discussion. He indicated the following:

Condition 2: add *video monitoring system shall also monitor the parking area.*

Condition 5: (a) (1) does not mention specific documents or water supply.

Condition 5: (d) (1) Police Chief's memo was referenced and exterior lighting requirement approval by Harvard Historical District Commission before installation.

Condition 5: (d) (2) change age to 21

Condition 6: was eliminated after discussion

Condition 7: only relative for this license, sales only on second floor except for sales to customers who are unable to access the second floor, which sales shall be consummated on the first floor.

Condition 8: change to application fee will not be refunded.

Condition 9: designates basement area

Condition 11: hours of operation Mon.-Sat. 10am-7pm, Sun. 12pm-7pm

Lanza again recommends a diagram of the premise be attached with conditions to license when issued.

On a Wallace/Warren motion, the board voted unanimously to grant the license to the General Store Inc.'s for the sale of wine and malt beverages in accordance with findings and conditions presented by Mark and as amended this evening. (Clark – absent)

Mark Lanza exited the meeting at 10:28pm.

VICKSBURG SQUARE UPDATE – Ron Ricci informed the board that he attended the MassDevelopment meeting held on January 11th. He said notes were taken and sent to Ed Starzec for his approval and he plans to present information at the JBOS meeting on February 11th.

AMBULANCE APPOINTMENT - Peter Warren said Ambulance Director Steve Beckman has requested Steve Powell be recommended to restored to probationary full member. The squad voted to this with terms and conditions. Lucy Wallace asks why probationary and asks to be advised of conditions before voting to appoint.

**** On a Wallace motion, the Board voted unanimously by a roll call vote (Sobalvarro – AYE, Wallace – AYE, Ricci – AYE, Warren – AYE) to enter into executive session at 10:33pm, as authorized by Chapter 39, Section 23B of the Massachusetts General Laws, at a meeting for which 48-hours notice has been given, to discuss personnel issues. Following the executive session, the Board will reconvene into open session.***

On a Wallace/Warren motion, the Board voted unanimously to appoint Steve Powell subject to conditions by Ambulance Director Steve Beckman and Police Chief Ed Denmark.

The meeting was adjourned at 10:45pm.