

**BOARD OF SELECTMEN
MEETING MINUTES - DECEMBER 8, 2008**

7:00 p.m. - Selectmen's Meeting Room, 63 Main Street, Northborough, MA

MEMBERS PRESENT: Dawn Rand, Chairman
Jeff Amberson, Vice Chairman
Leslie Rutan, Clerk
Fran Bakstran
William Pantazis

Also present: David Doneski of Kopelman & Paige

*Pledge of Allegiance

APPROVAL OF MINUTES – NOVEMBER 24, 2008 REGULAR MEETING

Selectman Rutan moved the Board vote to accept the Minutes of the November 10, 2008 Regular Meeting; Selectman Bakstran seconded the motion; all members voted in favor.

7:00 p.m. - PUBLIC HEARING

Consideration of Application to Alter Premises as submitted by Tom's Gourmet, Inc. for premises located at 4 West Main Street where an All Alcoholic Beverages Restaurant License is in effect.

Tom Ormondroyd of Tom's Gourmet Marketplace at 4 West Main Street came before the Board to request an alteration of the premises. The proposed alteration is to the bar and service area, expanding the bar by 10 feet providing room for an additional 8 bar stools for a total of 12. The application and plan have been reviewed and approved by Lt. Lyver, the Fire Chief and Building Inspector. He indicated he was requesting this alteration to maximize the use of his liquor license.

Chairman Rand closed the Public Hearing with Tom's Gourmet Marketplace.

Selectman Pantazis moved the Board vote to approve the application for an "Alteration of Premise" for an All Alcoholic Beverages Restaurant License as submitted by Tom's Gourmet, Inc. for premises located at 4 West Main Street; and further that the Board has determined that the proposed alterations will not be detrimental to the educational and spiritual activities of the Trinity Church of Northborough located at 23 Main Street; Selectman Bakstran seconded the motion; all members voted in favor.

REPORTS

William Pantazis

- Asked for an update from the Town Administrator on the Avalon Bay & Loop projects.
- Requested a status on the landfill, transfer station and trash collection issues that were brought up in Selectman Bakstran's report on behalf of the Solid Waste Advisory Committee. Mr. Coderre indicated that Town Engineer Fred Litchfield would be on a future agenda and could address those concerns at that time.

REPORTS CONT...Fran Bakstran

- Announced that interviews had been conducted for positions on three committees this evening.

Selectman Bakstran moved the Board vote to appoint Patricia Griffin to the Community Affairs Committee for a partial two year term; Selectman Amberson seconded the motion; all members voted in favor.

Selectman Bakstran moved that the Board vote to appoint David Putnam to the Recreation Commission for a partial three-year term; Selectman Amberson seconded the motion; all members voted in favor.

Selectman Bakstran moved that the Board vote to appoint Kelly Moran to the Scholarship Committee for a partial one-year term; Selectman Amberson seconded the motion; all members voted in favor.

- Selectman Bakstran mentioned that O'Brien's 5 & 10 held their pre-holiday sale at St. Rose of Lima Church, and indicated there was a great turnout for the sale. They were very appreciative of the temporary space they were provided.

Leslie Rutan, Clerk

- Read Pat Griffin's letter and appreciated all her kind comments.
- Noted the Toys for Tots Program is coming to a close on December 18th, and donation boxes are at the Town Hall and the Fire Station. Captain Theve had indicated to her that donations are down, and the need is up.
- Spoke of receiving emails from residents on the Verizon service. She requested someone come in to give an update on the progress to date, and notifying the Board when the local channels would be up and running. Mr. Coderre stated the local channels were to be available 2-3 months from approval of the license, except for certain underground issues. He said he would request a written report for the Board from Verizon.
- Mentioned the Musical Nonsense being performed at the High School with a great female cast. She added that the band concert was the next evening.

Mr. Coderre took this opportunity to mention the repairs going on at the Town Hall at the front of the building. He stated that the temporary repairs were being started now and would be finished in the Spring. Right now, the loose debris over the front door had been removed for safety reasons, and the surface covered so it could cure.

Selectman Rutan asked about the status of the current Senior Center when the new Senior Center is completed. Mr. Coderre stated there was a long-term lease with the Housing Authority, and it would revert back to the Housing Authority.

Jeff Amberson, Vice Chairman

- Also noted the Toys for Tots Program.

REPORTS CONT...

- Mentioned that between the National Honor Society and other groups in Town, who used to donate food to the food bank in Worcester, decided to redirect the food to Northborough and Southborough so it was being used locally.

Dawn Rand, Chairman

- No report.

John Coderre, Town Administrator

- Noted that traditionally Town Hall has closed at 12 Noon on Christmas Eve, but it is not automatically done. The request comes before the Board of Selectmen and includes the Town Hall, Senior Center and Department of Public Works.

Selectman Pantazis moved to close Town Hall on Christmas Eve at 12 Noon; Selectman Bakstran seconded the motion; all members voted in favor.

7:15 p.m. - PUBLIC HEARING

To consider action against JJ's Sports Bar & Grill for service of an alcoholic beverage to an intoxicated person in violation of MGL Chapter 138, Section 69; improper management of the licensed premises in violation of MGL Chapter 138, Section 23; and failure to comply with Section 26 of Chapter 138 regarding a change of manager of licensed premises for their All Alcoholic Beverages Restaurant License for premises located at 380 Southwest Cutoff.

Chairman Rand stated that the Board may take action at the end of the meeting. At this time, she opened the hearing and asked anyone who would be providing testimony to stand, raise their right hand and be sworn in. Lt. Bill Lyver, Police Chief Mark Leahy, Detective Brian Griffin, and JJ's owner Vincent Maiuri took the oath.

Lt. Bill Lyver presented evidence regarding the four charges of service of an alcoholic beverage to an intoxicated person. He identified four arrests made by the Police Department on March 2, June 7, June 29 and August 5, 2008 for operation of a motor vehicle under the influence of alcohol in which the persons operating the vehicles identified JJ's Sports Bar & Grill as the last place they had consumed alcohol.

On November 19, 2008, the Police Department conducted an investigation of JJ's in conjunction with the Alcoholic Beverages Control Commission. As a result of that investigation, it was learned that JJ's Sports Bar & Grill had been under operation since sometime in June of 2008 without a manager approved by the Board of Selectmen, as required by G.L. c.138, §26. The manager previously approved by the Board had resigned in June of 2008, as confirmed by a letter from Gabriele Stipo to Lt. Lyver dated November 21, 2008.

The Board acknowledged receipt on December 8, 2008, of a letter from Vincent Maiuri dated December 5, 2008 to the Board, regarding reports of persons arrested for operating

PUBLIC HEARING CONT...

motor vehicles under the influence of alcohol, the change in manager at the licensed premises, and changes in procedure for operation of the restaurant.

Mr. Maiuri stated that everything presented by Lt. Lyver regarding the failure to notify the Board regarding the change in manager of the premises was true. He also informed the Board that he had received notices from the Westborough District Court, under G.L. c.90, §24J, regarding persons found guilty of operating a motor vehicle under the influence of alcohol who identified JJ's Sports Bar & Grill as the place they last consumed alcohol. Mr. Maiuri indicated notification of five incidents that occurred in the period of January to March, 2008, and that he had determined that there was a problem with alcohol service practices at the restaurant. He informed the Board that the hour of last call has been changed to an earlier time as follows: Sunday through Wednesday 11:00 p.m., Thursday 11:45 p.m., Friday and Saturday 12:45 a.m.

Mr. Maiuri further informed the Board that, upon review of the section 24J notices and review of service procedures at the restaurant, it was determined that two servers were not following proper procedure in the service of alcohol and that those employees were terminated. He also informed the Board of a new procedure whereby a person of management level status would spend time on the restaurant floor on Wednesday through Sunday nights to observe service and interact with customers. In addition, he stated that a second floor doorperson has been added to the staffing plan in order to provide observation of alcohol service and customer behavior.

Mr. Maiuri described the situation regarding service of alcohol to intoxicated persons as troubling and acknowledged his responsibility, as president of the license holder, for the operation of the restaurant. He put himself in front of the Selectmen and acknowledged his sincere remorse on the whole issue. He was at the Board's mercy, and would take whatever punishment the Board gave him, even if it was revocation of the license.

Board members expressed their concern and frustration at the number and nature of the violations. Chairman Rand commented on the embarrassing investigation report by WBZ Channel 4 News which detailed the high number of OUIs.

Mr. Coderre clarified that some of the violations and issues which Mr. Maiuri was referring to were not relative to tonight's hearing, but part of the Police Department's investigation and will require a subsequent disciplinary hearing notice.

Lt. Lyver commented that Mr. Maiuri, as the president, has to take all the responsibility. He is supposed to be in control of the establishment at all times. This was very irresponsible of him with multiple infractions – this was very serious.

Selectman Amberson moved the Board vote to find JJ's Sports Bar & Grill in violation of M.G.L. Ch. 138, section 69 – service of an alcoholic beverage to an intoxicated person, and responsible for improper management, in violation of Ch. 138, section 23, in the overservice of alcoholic beverages, for the incident that occurred on March 2, 2008, as

PUBLIC HEARING CONT...

detailed in the November 26, 2008 hearing notice to the Licensee; Selectman Rutan seconded the motion; all members voted in favor.

Selectman Amberson moved the Board vote to find JJ's Sports Bar & Grill in violation of M.G.L. Ch. 138, section 69 – service of an alcoholic beverage to an intoxicated person, and responsible for improper management, in violation of Ch. 138, section 23, in the overservice of alcoholic beverages, for the incident that occurred on June 7, 2008, as detailed in the November 26, 2008 hearing notice to the Licensee; Selectman Rutan seconded the motion; all members voted in favor.

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Selectman Amberson moved the Board vote to find JJ's Sports Bar & Grill in violation of M.G.L. Ch. 138, section 26 – operation of premises licensed for service of alcohol without an approved manager, for the period of approximately June 2008 to the present; Selectman Bakstran seconded the motion; all members voted in favor.

Chairman Rand explained the options of possible disciplinary action the Board may take.

Chairman Rand suggested they discuss each violation with its own motion determining what each violation merited. Mr. Coderre clarified if they vote to suspend the license for a certain number of days, it should be a certain number of days for each violation. The specific days of the suspension is at the Board's discretion.

Selectman Bakstran felt the biggest single infraction was the lack of a manger – if there had been a manager on board, then possibly the four violations would not have happened. If there had been only one incident, she would have gone along with a verbal or written warning, but with five infractions, the disciplinary motion should be more significant.

Selectman Rutan expressed her anger at the four OUI violations since the public was put at risk. She indicated she would like to see a suspension of 2 weeks to 1 month.

The Board discussed various options from starting with a written warning for the first violation to progressively increasing the number of days' suspension starting with the
PUBLIC HEARING CONT...

second violation of 1 day, third violation of 2 days, fourth violation of 3 days, fifth violation of 4 days for a total of 10 days.

Selectman Amberson saw the rationale of cumulative days suspension. The licensee said he knew he had a problem and still did nothing to solve the problem. Selectman Amberson did not like saying one violation was worse than another.

The Board discussed the suspension options further noting that one month may be too much given that employees would also be impacted too.

Chairman Rand deferred to Lt. Lyver for his recommendation. He felt the Board needed to be fair to protect the Town, but send a clear message. He believed 2 days per violation was fair and a strong message, and would prefer consecutive days, but it was up to the Board.

Selectman Amberson moved the Board vote to suspend the All Alcoholic Beverages Restaurant License for 2 days for JJ's Sports Bar & Grill for violation of M.G.L. Ch. 138, section 69 – service of an alcoholic beverage to an intoxicated person, and improper management in the overservice of alcoholic beverages, for the incident that occurred on March 2, 2008, as detailed in the November 26, 2008 hearing notice to the Licensee; Selectman Bakstran seconded the motion; all members voted in favor.

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Selectman Amberson moved the Board vote to suspend the All Alcoholic Beverages Restaurant License for 2 days for JJ's Sports Bar & Grill for violation of M.G.L. Ch. 138, section 26 – failure to operate without an approved manager, for the period of

PUBLIC HEARING CONT...

approximately June 2008 to the present; Selectman Bakstran seconded the motion; all members voted in favor.

Chairman Rand noted a 10 day suspension had been imposed – now the Board needed to discuss the parameters of the dates.

Mr. Coderre suggested the Board hear from Town Counsel David Doneski.

Mr. Doneski stated there were two options: impose dates of the Board's choosing, or offer the licensee the right to select dates of suspension of his own choosing if he waives the right to appeal after the written decision is issued.

PUBLIC HEARING CONT...

Chairman Rand deferred to Mr. Maiuri for his comments. Mr. Maiuri stated he would waive his right to appeal. The only issue he had was letting his employees know right away – this was a financial impact to about 35 staff and perishable food on order. He stated he would rather see the suspension as soon as possible 10 days in a row.

Mr. Maiuri was concerned about the change of manager process, but Chairman Rand indicated the Police Department could be finished with their background check within two weeks.

Chairman Rand suggested that, in consideration of Mr. Maiuri's statement to waive his appeal rights, the Board should look at the requested suspension dates of December 15th through December 24th.

Selectman Rutan was firm in stating these were horrible infractions, especially with WBZ doing a report indicating JJ's was the second in the state for infractions. She wants the public to see that Northborough took the issue seriously.

Selectman Pantazis agreed with Chairman Rand and moved the Board vote to suspend the JJ's Sports Bar & Grill license for 10 days continuously from December 15th through December 24th; Selectman Bakstran seconded the motion; all members voted in favor.

Mr. Coderre wanted it again clearly stated for the record that Mr. Maiuri was formally waiving his right to appeal. Mr. Maiuri stated he was formally waiving his right to appeal.

Chairman Rand stated this concluded the public hearing.

8:35 p.m. **VIRGINIA SIMMS GEORGE, CHAIR**
COMMUNITY AFFAIRS COMMITTEE
Presentation on Holiday Trolley Program.

Ms. Simms George and Patty Murphy came to speak about this year's Holiday Trolley Program scheduled for Saturday, December 13th.

HOLIDAY TROLLEY PROGRAM CONT...

Ms. Murphy stated this was the 4th year that the Trolley Program was being run from Noon to 6:00 p.m. with the tree lighting ceremony at 5:30 in the center of Town. She mentioned the seven stops the trolley would be stopping at and noted that riding was for free.

Chairman Rand said she always enjoyed the celebration and thanked the Community Affairs Committee for sponsoring the event. She asked Ms. Simms George about the Winter Ball that the Community Affairs Committee also sponsors. Ms. Simms George stated it would be held on January 31st at White Cliffs with the band Radiance at a cost of \$50/person. Choices would be chicken, fish or pasta primavera with a black and white theme. Tickets will be on sale at Lowe's and the Town Clerk's office.

Selectman Rutan asked what notification the Committee could provide if the Trolley Program had to be cancelled. Ms. Simms George indicated they would put updates on cable.

Selectman Bakstran moved the Board vote to authorize the operation of the Holiday Trolley on December 13, 2008 from Noon to 6:00 p.m., and to authorize the proposed trolley stop locations; Selectman Amberson seconded the motion; all members voted in favor.

8:45 p.m. **RENEWAL OF SELECTMEN'S LICENSES**

Chairman Rand stated all licenses were reviewed for the Board's approval, with all taxes and fees up to date, and all premises having been inspected either by the Police Department and/or the Fire and Building Departments. She noted it was recommended that all licenses be renewed, with the exception of Guisepppe's Grille, West Side Grill and the Comfort Inn per the Fire Chief and Building Inspector's memo dated December 3, 2008; along with Beezers and Tougas' subject to a satisfactory inspection in the Spring.

Mr. Coderre recommended that the Board's motion reflect holding JJ's licenses pending future approval of the change of manager with all complete and appropriate documentation.

Selectman Bakstran moved the Board vote to approve the renewal of the annual licenses by the Board of Selectmen for the calendar year 2009, as indicated on the attached "2009 License Renewals" List, subject to the following conditions:

- For Beezers and Tougas Family Farm Kitchen: Due to the businesses being seasonally closed, subject to the condition of a satisfactory inspection prior to their re-opening in the Spring;
- For Guisepppe's Grille, West Side Grille and Comfort Inn: Subject to the conditions as specifically outlined in the memo from the Fire Chief and Building Inspector dated December 3, 2008;

LICENSE RENEWAL CONT...

And to hold all the licenses for JJ's Sports Bar & Grill pending future approval of the change of manager with all complete and appropriate documentation; Selectman Pantazis seconded the motion; all members voted in favor.

8:50 p.m. BOB GILES AND JOE McNAMARA
Presentation by Wind Committee.

Mr. Coderre stated that, earlier in the year, the Board and the Town Administrator's office were approached by a group interested in wind turbine. They took it upon themselves to get the project going and bring it to the Board of Selectmen and Town departments to see if the group could be sanctioned by the Board as an official committee.

Mr. Coderre indicated that their presentation tonight can be uploaded from the Town's website, and is reflective of what is in the Board's packet. First, they would like to go over the work they have done so far, and secondly, to ask approval to go the next step to submit an application to the Massachusetts Technology Collaborative for a site survey of potential sites at no cost to the Town. If the Board is in agreement to actually make this group a formal committee, then we would open up the application process to get residents interested in serving. Town Engineer Fred Litchfield would serve as Staff Liaison to the group.

Mr. Giles began the presentation noting that all this was exploratory, unique and the first in Northborough. They have observed other wind turbines in operation and feel it is a money maker for the Town and the Schools in funds returned from National Grid.

He outlined the 6 potential sites they were interested in: Algonquin High School, the new Senior Center, Mt. Pisgah, Castle Road, Davidian Brothers Farm, and Tougas Farm.

Mr. McNamara said they have a 3-4 year timeline, with a 3 step process: site survey, feasibility study and approval/construction. He knew that Hull, for example, recouped a lot of money.

The Board was impressed with their work, and especially with there being no cost and no commitment at this point in the process. Selectman Rutan also noted that, with their not being a formal committee, to do such a formal presentation, the Town would be silly not to look into it. Selectman Amberson agreed it was one of the best presentations he had ever seen.

Selectmen Rutan moved the Board vote to authorize the Chair of the Board of Selectmen to sign and submit the Municipal Wind Turbine Site Survey Application to the Massachusetts Technology Collaborative, following final review by the Town Administrator; Selectman Amberson seconded the motion; all members voted in favor.

Selectman Rutan moved the Board vote to establish a seven person "Wind Committee" to investigate the feasibility of constructing a wind turbine in Northborough. The new Committee shall be advertised and interested individuals may apply to the Board of
WIND COMMITTEE PRESENTATION CONT...

Selectmen for appointment to a 3-year term. The new Wind Committee shall work in coordination with the Town Administrator's Office and through his designee; Selectman Amberson seconded the motion; all members voted in favor.

PUBLIC COMMENTS

Mike Gorman, Facilities Manager of Algonquin Regional High School, was excited about what the Wind Committee could be bringing to the Town.

APPROVAL/EXECUTION OF CEMETERY DEED A794.

Selectman Pantazis moved the Board vote to approve/transfer Cemetery Deed A794; Selectman Bakstran seconded the motion; all members voted in favor.

OTHER BUSINESS

None.

ADJOURNMENT

Selectman Amberson moved the Board vote to adjourn; Selectman Rutan seconded the motion; all members voted in favor.

Meeting adjourned at 9:15 p.m.

Respectfully submitted,

M. J. Fredette, Executive Assistant to the
Board of Selectmen & Town Administrator