

~ PLYMOUTH BOARD OF SELECTMEN ~

TUESDAY, JULY 10, 2012

TOWN HALL MAYFLOWER ROOM

The Selectmen held a meeting on Tuesday, July 10, 2012 at 6:00 p.m. at Town Hall in the Mayflower Room.

Present: Mathew J. Muratore, Chairman
John T. Mahoney, Jr., Vice Chairman
Belinda A. Brewster
Kenneth A. Tavares

Melissa Arrighi, Town Manager

Absent: Selectman Sergio O. Harnais

CALL TO ORDER

Chairman Muratore called the meeting to order at 6:00 p.m.

EXECUTIVE SESSION

At 6:01 p.m., the Board voted to enter executive session pursuant to Massachusetts General Laws, Chapter 30A, Section 21, Paragraph 3, to discuss strategy with respect to litigation, and Paragraph 5, to investigate charges of criminal misconduct or to consider the filing of criminal complaints, as an open meeting on this matter may have a detrimental effect on the negotiating position of the body. By roll call: Tavares – yes, Mahoney – yes, Brewster – yes, and Muratore – yes.

Chairman Muratore noted that the Board would reconvene in open session, following executive session.

RETURN TO OPEN SESSION

Chairman Muratore reconvened the meeting in open session at 7:00 p.m. and led the Pledge of Allegiance.

TOWN MANAGER'S REPORT

Executive Team Building Retreat – Town Manager Melissa Arrighi reported that a number of Town officials attended a full-day Executive Team Building Retreat at the

Center Hill Preserve on Saturday, June 20, 2012 to reaffirm the Executive Branch's commitment to working together, understanding committee and board roles in Town governance, and working to advocate for a team approach to better serve Plymouth's residents. The Selectmen, along with the Chairman and another member of the School Committee, the Chairman and Vice Chairman of the Finance Committee, the Committee of Precinct Chairs Chairman and Vice Chairman, and the Planning Board Chairman, attended a morning session led by State Representative (and professional executive coach) Tom Calter and an afternoon session facilitated by former Superintendent of Schools and current Professor Barry Haskell. Ms. Arrighi summarized the highlights from the retreat, noting the topics of discussion and the recommendations and accomplishments of the group. Overall, she said, the retreat was a very successful event that brought together key leaders and helped to promote the spirit of cooperation and connectivity, both of which can only enhance the community.

Downtown/Waterfront Welcoming Effort – Ms. Arrighi informed the Board that the Town has approached the Plymouth Area Chamber of Commerce to explore the possibility of offering free wi-fi in the downtown and waterfront areas to all visitors. The concept that is being explored, she said, is for the Chamber to purchase routers to establish wi-fi “hotspots” at participating businesses. The Chamber will then use the wi-fi hotspots as a marketing tool, with maps and signage advertising the free service at the participating businesses. If successful, Ms. Arrighi said, this will encourage visitors to the downtown/waterfront district.

July 4th Event – Ms. Arrighi commended and thanked Selectman Tavares and former Selectman Jeffrey Metcalfe for their efforts to produce another impressive and successful July 4th celebration. The Town's Police, Fire, and Public Works departments, she said, did an outstanding job of managing both the July 3rd and July 4th events, and the Sheriff's Department should be recognized for their assistance with post-event cleanup.

In addition, Ms. Arrighi reported, the Environmental Management Division allowed the Long Beach Crossover to remain open later on July 4th to allow residents to stay on the beach to view the fireworks display. With advance preparation (including the installation of additional signage, fencing, letters to property owners, and postings on the website), she explained, staff was able to manage the later closing of the beach and safely escort the remaining 25-30 vehicles off the beach within a half-hour after the fireworks display.

LICENSES

COMMON VICTUALLER (NEW)

On a motion by Vice Chairman Mahoney, seconded by Selectman Brewster, the Board voted to grant a Common Victualler License to the following applicant, as detailed, below. Voted 4-0-0, approved.

(continued on next page)

- ❖ **Twenty Two Court, LLC d/b/a Gunther Tooties** (22 Court Street, Tony Chen, Owner)

Issuance of the above license is subject to completion of all necessary paperwork.

PEDI-CAB OPERATOR LICENSE (NEW)

On a motion by Selectman Brewster, seconded by Vice Chairman Mahoney, the Board voted to grant a Pedi-Cab Operator License to each of the following applicants. Voted 4-0-0, approved.

❖ **For Plymouth Pedicab:**

- Patrick McPartlin (21 Chowdermarch Street, Marshfield)
- Mark Brown (7 Melix Avenue, Plymouth)

Issuance of above licenses is subject to the requisite CORI background check.

ONE DAY ALL ALCOHOL LIQUOR LICENSE*

On a motion by Selectman Brewster, seconded by Vice Chairman Mahoney, the Board voted to grant a One Day All Alcohol Liquor License to the following applicant, as detailed, below. Voted 4-0-0, approved.

- ❖ **Lisa Hufnagel** (6 Ann Way, Carver, MA) requested a One Day All Alcohol Liquor License for a wedding to be held at the Plymouth Center for the Arts (11 North Street) from 6.00 p.m. to 11:00 p.m. on July 27, 2012. Liquor liability will be in place before the license is released.

*One Day Liquor Licenses shall automatically cover the day before and the day after the event for the purpose of proper delivery, storage and disposal of alcoholic beverages purchased.

PLEDGE OF LICENSE (LIQUOR)

On a motion by Vice Chairman Mahoney, seconded by Selectman Brewster, the Board voted to approve a Pledge of License for the following holder of an All Alcohol Restaurant Liquor License, as detailed, below. Voted 4-0-0, approved.

- ❖ **Patsfan, Inc. d/b/a Main Street Sports** (39 Main Street) requested a Pledge of License to Rockland Trust Company.

ADMINISTRATIVE NOTES

Meeting Minutes – On a motion by Vice Chairman Mahoney, seconded by Selectman Brewster, the Board approved the meeting minutes of the February 14, 2012 and February

28, 2012 Selectmen's meetings. Voted 3-0-1, approved, with an abstention from Selectman Tavares, who was not a member of the Board when these meetings took place.

Fall Town Meeting Warrant – The Board voted to open the Saturday, October 20, 2012 Fall Annual Town Meeting warrant on Tuesday, July 31, 2012 at 8:00 a.m. and close it on Friday, August 10, 2012 at 4:00 p.m.

State Primary Election Warrant – The Board approved and signed the election warrant for the State Primary, scheduled for Thursday, September 6, 2012.

Lease Agreement for 318 Ryder Way – The Board discussed the terms of the *Lease Agreement* between the Town of Plymouth (as Lessor) and John Scagliarini (as Lessee) pertaining to Town-owned property at 318 Ryder Way (Plymouth Long Beach). The Selectmen have proposed a lease extension to Mr. Scagliarini for five years, starting May 1, 2012 and ending April 30, 2017.

Chairman Muratore allowed Attorney Lawrence Winokur to speak to the Board regarding Mr. Scagliarini's request for a ten-year lease extension.

Attorney Winokur questioned the rationale behind the Board's offer of only a five-year lease extension to his client, when the Board has the authority to grant an extension of up to ten years. Mr. Scagliarini, he said, is a lifelong resident of Plymouth with a history of stewardship of the beach and service on a number of Town committees, including the Conservation Commission. Attorney Winokur indicated that Mr. Scagliarini purchased the structure situated upon 318 Ryder Way in July of 1992, noting that the home has served as Mr. Scagliarini's year-round residence since that time. As part of the lease agreement, he said, Mr. Scagliarini is obligated to pay the taxes assessed on the property and maintain insurance. If the Town intends to cancel the lease at the close of the five-year extension, Attorney Winokur said, the Town will lose the tax revenue, and Mr. Scagliarini will be forced from his home and required to demolish or relocate the structure.

Attorney Winokur attempted to discredit the theory brought forth by DPW Environmental Manager David Gould that the Town could utilize the property at 318 Ryder Way to provide ten additional parking spaces for beachgoers. An engineer whom he hired to evaluate the proposal, he said, reports that, at best, the Town could be granted only six legal parking spaces, based on zoning regulations. If the driving factor behind the abbreviation of the lease extension (from ten years to five) is to utilize the property for parking, Attorney Winokur speculated, the Selectmen should consider whether the gain of six (or less) parking spaces is worth evicting a man from his home.

Attorney Winokur questioned whether the Board was aware that Mr. Scagliarini owns the structure on the Town's property at 318 Ryder Way before making its decision to offer only a five-year lease extension. If the Board intends to terminate the lease at the end of the five year period, he said, the Town (in his opinion) should compensate his client for the structure. Attorney Winokur expressed his belief that, though the Selectmen are charged with working for the common good of the Town's residents, the Board should temper any

impact that its decisions might have on any individual. Considering the “minimal return to the Town, loss of tax revenue, and impact on Mr. Scagliarini,” Attorney Winokur asked the Board to offer a lease extension of ten years to his client.

Mr. Scagliarini took an opportunity to speak to the Board on his own behalf, introducing himself as a lifelong resident of Plymouth and the owner of a local tree business. He stated that he has donated thousands of dollars of service (in tree work) to the Town and the State, and he noted the decades of service he has provided on the Town Forest Committee, Tidal Beaches Advisory Committee, and Conservation Commission. Mr. Scagliarini stated his belief that he has earned credibility through his actions, noting that, during his 18 years at 318 Ryder Way, he has been a protective steward of Long Beach. If, in fact, the property could serve as a large parking area that would truly expand access to the beach, he would consider relinquishing his lease for the good of many, but the Town’s plan, he said, does not seem legally feasible. Mr. Scagliarini indicated that he has invested a good deal of time and money into the maintenance of his home, and while he has always feared that Mother Nature might take his home from him, he never expected that Town Hall would.

Vice Chairman Mahoney spoke at length about the reasons why he feels it was important for the Board to consider returning the leased property at 318 Ryder Way to public use. Plymouth, he said, is a coastal community with a burgeoning population. As the population increases, he said, so does the demand for use of the beach, and the tension between public and private use of its beaches (White Horse Beach and Long Beach, in particular) has become more evident in recent years. Vice Chairman Mahoney reported that, when Mr. Scagliarini failed to uphold the terms of his lease several times over the course of a number of years, Town staff began to look at how the property might be utilized publicly, in keeping with the direction the Board has pursued in recent years to expand public access on Long Beach. Regardless of who owns the structure on the property and whether or not it can be used for parking, he said, the Board must dutifully consider how 318 Ryder Way might provide residents with enhanced access to the beach and nearby clam flats. Vice Chairman Mahoney questioned why Attorney Winokur has presented this situation with Mr. Scagliarini as the victim, when the Town has repeatedly accommodated Mr. Scagliarini’s failures to uphold the terms of his lease. The lease payment on 318 Ryder Way, he said, is only \$680 per month, which is not market rate. The Board’s decision to consider the future of 318 Ryder Way, he said, is part of an overall vision for the future of the beach – not a personal statement against Mr. Scagliarini.

Selectman Brewster acknowledged the vision that Vice Chairman Mahoney described for the beach, but expressed her concern that Mr. Scagliarini may be forced from his home. She advocated for a ten-year extension to the lease, with stronger language about keeping current with lease payments. Though she supports expanded public access to Long Beach, Selectman Brewster questioned the overall gain the Town would acquire from forcing Mr. Scagliarini off the property.

Selectman Tavares stated that he could never recall a time when the Board took someone’s home from them against their will. He agreed with Selectman Brewster that the Board

should be more compassionate and extend the lease at 318 Ryder Way for another ten years (as opposed to five). Mr. Scagliarini lives on the beach, year-round, he said, and he has been a good citizen and steward of the Town's efforts to maintain the beach in accordance with conservation standards. Selectman Tavares questioned the precedent that could be set if it were to begin terminating leases on properties where the Town owns the land but the lessee owns the structure(s) on the property.

Vice Chairman Mahoney recommended that the Board table its discussion on the matter until David Gould (DPW Environmental Manager) could be present to participate in the discussion and provide more information on the potential uses for the property. There is more to the proposal, he said, than merely providing additional parking spaces on the beach.

Discussion turned to the inclusion of this particular matter on the agenda as an Administrative Note. Chairman Muratore explained that it has always been standard procedure to include the final language of a modified lease as an Administrative Note, once the Board has given staff direction on how the modification or extension is to be drafted. The Board provided such direction at a previous meeting, he said, and, thus, the final lease extension has been brought forth before the Board in the usual manner.

Chairman Muratore opened the discussion to public comment.

Gene Lane urged citizens to exercise their rights to utilize the Town's public beaches. Mr. Lane asserted his belief that White Horse Beach is a Town-owned beach, despite any efforts made by private owners to block access. The issue with Mr. Scagliarini, he said, is irrelevant to the larger issue of expanding public access to the beach.

Wedge Bramhall, owner of property on Long Beach, talked about the ways by which Mr. Scagliarini has been a steward of the beach. Because Mr. Scagliarini lives on the beach, year-round, he said, he has protected both public and private interests during the winter months when Town staff is typically not available to provide oversight. Mr. Bramhall expressed his opinion that the Board should not take on more than it can handle (following the 2011 purchase of property on Long Beach from the Laughlin family), and he recommended that the Selectmen allow Mr. Scagliarini to remain on the beach until he chooses to leave.

Chairman Muratore noted that there is no clause in the Board's five-year lease proposal that prevents Mr. Scagliarini from requesting another extension.

Selectman Tavares asked that the Board reconsider its previous decision to limit the lease extension to five years. Chairman Muratore offered his understanding that, according to parliamentary procedures, the matter can only be brought forth for reconsideration by those who voted in the majority when the lease terms were previously established. Selectman Tavares contended that the Board has never followed such procedures. Chairman Muratore responded that he would ask Town Counsel for an opinion, to clarify the Board's ability to bring matters back for reconsideration.

Vice Chairman Mahoney again asked that DPW Environmental Manager David Gould be present to participate in the discussion on the lease at 318 Ryder Way. Chairman Muratore recommended that the Board table the Administrative Note related to the lease at 318 Ryder Way until July 17, 2012, at which Mr. Gould will be invited to speak.

PUBLIC HEARING: TRANSFER OF ALL ALCOHOL RESTAURANT LICENSE
FROM CAPITOL HOSPITALITY GROUP D/B/A ON THE ROCKS TAVERN, 42 COURT STREET
TO MESORACA CORP. D/B/A ON THE ROCKS TAVERN, 42 COURT STREET

Chairman Muratore opened a public hearing to consider the application for the Transfer of an Annual All Alcohol Restaurant Liquor License from Capitol Hospitality Group d/b/a On The Rocks Tavern, 42 Court Street to Mesoraca Corporation d/b/a On The Rocks Tavern, 42 Court Street. Chairman Muratore read a description of the premises and affirmed that notice of the hearing was given to the public in accordance with Chapter 138 of the Massachusetts General Laws.

Attorney Chris Maccaferri, representing Louis Rizzo of Mesoraca Corporation, reported upon his client's intent to purchase On the Rocks Tavern at 42 Court Street, thus prompting the request for transfer of the establishment's liquor license. Mr. Rizzo, he said, is a well-known resident of Plymouth who has a number of years experience as a local business owner. Attorney Maccaferri indicated that the establishment will retain the same name and continue to serve lunch and dinner.

Mr. Rizzo introduced himself to the Board and spoke briefly about his history and experience as a business owner.

Seeing no further questions or comments from the Board, Chairman Muratore opened the hearing to public comment. No citizens came forth, and, thus, Chairman Muratore closed the hearing to await a motion of the Board.

On a motion by Selectman Tavares, seconded by Vice Chairman Mahoney, the Board approved the Transfer of an Annual All Alcohol Restaurant Liquor License from Capitol Hospitality Group d/b/a On The Rocks Tavern, 42 Court Street to Mesoraca Corp d/b/a On The Rocks Tavern, 42 Court Street, as requested in the license transfer application. Voted 4-0-0, approved.

On a motion by Vice Chairman Mahoney, seconded by Selectman Brewster, the Board voted to grant the following licenses to Mesoraca Corp d/b/a On The Rocks Tavern (42 Court Street), in conjunction with the approved Transfer of Annual All Alcohol Restaurant License. Voted 4-0-0, approved.

- Comprehensive Entertainment – Jukebox, radio, TV, live entertainment
- Common Victualler
- Sunday Entertainment- Jukebox, radio, TV
- Early Sunday Sales – 10:00 a.m.
- Extension of Hours – 1:00 a.m.

PUBLIC COMMENT

Chairman Muratore opened the meeting to public comment. No citizens came forth.

OLD BUSINESS / LETTERS / NEW BUSINESS

Official Trip to Plymouth and London, England – Selectman Tavares noted that he received information on the cost of sending three representatives from the Town Manager / Board of Selectmen’s Office on the Chamber of Commerce’s trip to Plymouth and London, England. The expense of sending two Selectmen and the Town Manager at \$2,100 per person is too expensive, he said, and with no one serving in the post of Assistant Town Manager, the Town Manager should not go. Selectman Tavares stated his belief that, in the future, the process of choosing members to travel on official delegations should be done differently.

Request from Natural Resources & Coastal Beaches Committee – Chairman Muratore inquired about a letter that the Board recently received from the Natural Resources & Coastal Beaches Committee, in which the committee requested that the Town review public access points along White Horse Beach and add funds in the budget for dune preservation. Ms. Arrighi responded that she will consider the NRCBC’s recommendations when developing the FY2014 budget.

Letter of Thanks to Department of Public Works – Chairman Muratore acknowledged a letter of thanks from a resident who wished to express his appreciation for the repair work that the Department of Public Works performed on John Alden, Cochituate, and Priscilla Beach roads.

ADJOURNMENT OF MEETING

On a motion by Vice Chairman Mahoney, seconded by Selectman Tavares, the Board voted to adjourn its meeting at approximately 8:25 p.m. Voted 4-0-0, approved.

Recorded by Tiffany Park, Clerk to the Board of Selectmen

A copy of the July 10, 2012 meeting packet is on file and available for public review in the Board of Selectmen’s office.