

**Board of Selectmen
Minutes of April 17, 2012
Bourne Community Building
Bourne, MA 02532**

.....

TA Guerino

Don Pickard, Chairman
John Ford, Vice-Chairman
Peter Meier, Clerk
Earl Baldwin

Guests: Linda Marzelli, Financial Director

Members of the Press: Diana Barth, Bourne Enterprise and Paul Gately, Bourne Courier

List of documents

- None

Baldwin MOVED and SECONDED by Meier to go into Executive Session to discuss LIUNA Contracts and litigation and to reconvene into public session. Roll Call – Ford – yes; Baldwin – yes; Meier – yes; Pickard – yes.

Meeting called to order

7:00 pm by Chm. Pickard

Note this meeting is being televised and recorded. If anyone in the audience is recording or video-taping, they need to acknowledge such at this time

Moment of Silence/Salute the Flag

Public Comment

Donna Deitsch, Buzzards Bay, of Wednesday Night (Buzzards Bay AA) requesting fees to be reduced. TA Guerino responded to an email of last week relative to the fee structures. He discussed with Building Director Lisa LaPlante. Special meetings using the kitchen fee can be waived; the room fee cannot be waived. TA Guerino will follow up with Ms. Deitsch.

Approval of minutes – Executive Session minutes of 4/3/12 and regular meeting minutes of 4/3/12

Meier MOVED and SECONDED by Ford to approve minutes of Executive Session minutes of 4/17/12 as amended. VOTE 4-0.

Baldwin MOVED and SECONDED by Ford to approve minutes of 4/3/12 as submitted. VOTE 4-0.

Correspondence

Meier read correspondence into record. Copies of correspondence are available at the Town Administrator's office.

Signing of the Bond

Anticipation Note and Clerk's Certificate for Bournedale School

Ford MOVED and SECONDED by Meier to accept and authorize Bond Anticipation Note as presented by the Finance Director with Century Bank. VOTE 4-0.

Town Financial Policies – third reading and adoption

Meier MOVED and SECONDED by Baldwin to adopt Town Financial Policies as presented by the Finance Director and third reading. VOTE 4-0.

Licenses/Appointments/Easements

a. Hearing T.J.'s Bar & Grille – liquor violation

Selectmen opened envelopes at this time containing information with regard to said liquor violation. Chm. Pickard opened the public hearing and stated hearing was coming from TA Guerino's office and read letter sent to Ms. Judy Tubbs with regard to violation dated 3/17/12. A copy of said letter went to the ABC; James Curtin, III of Cape Pine Road; and Lauren Hawkenberry on Lafette Avenue. Chm. Pickard swore in all parties.

Police Lt. Silvestro took testimony of both Officers MacDougall and Desrosiers of incident that occurred at T.J.'s Bar & Grille. Officer MacDougall was questioned first.

Officer MacDougall responded to a call that came in at T.J.'s

Grille & Bar and observed a male named James Curtin actively vomiting. He was sitting in a vehicle with his feet on the parking lot with a pile of vomit on the ground in front of him. Officer MacDougall formed the opinion that Mr. Curtin was intoxicated. He then notified Bourne paramedics for an evaluation as Mr. Curtin could possibly be a danger to himself. Officer MacDougall questioned Mr. Curtin and was told he was drinking prior to T.J.'s. While at T.J.'s, Mr. Curtin had approximately 4-5 beers. Mr. Curtin told Officer MacDougall he was "drunk and the mixing of beer with tequila had made him ill." Mr. Curtin refused any medical treatment, and was allowed to make arrangements to be driven home and his girlfriend took custody of him. Mr. Curtin's girlfriend arrived a short time later. Officer MacDougall spoke to the bartender on duty, Lauren Hockenberry, who was the only bartender tending at that time. T.J.'s manager Ms. Tubbs not at the bar area at the time of Officer MacDougall's arrival. He stated there was also kitchen help in attendance.

Officer MacDougall said Ms. Hawkins recalls serving Mr. Curtin three-to-four 16-oz draft beers. Ms. Hawkins believed Mr. Curtin arrived at approximately 2:00 pm and cashed out at 3:10 pm for a total of an hour and a half. This cash out time was confirmed by the pre-printed receipt. Officer MacDougall did not obtain a copy of said receipt as Ms. Hawkins didn't know how to print it out. After speaking with Ms. Hawkins, Officer MacDougall left the building and

responded and spoke with Ms. Tubbs at her hotel. Officer MacDougall has been a police officer for several years and is familiar with drunk people. He stated Mr. Curtin was “very drunk.”

Ford – as if there were video cameras in the bar area inside T.J.’s. Officer MacDougall said he was not aware of any and didn’t ask the condition of Mr. Curtin at the time he was being served alcohol.

Lt. Silvestro said Mr. Curtin was subpoenaed and was not present tonight for the liquor hearing.

Officer Desrosiers also responded to a call to T.J.’s Grille & Bar of a reported violently ill person. He observed a person seated in the driver’s seat of a car with his feet on the pavement with vomit on the pavement at his feet. A Bourne ambulance was present. As Officer Desrosiers approached Mr. Curtin, he formed the opinion that he was “extremely drunk and having a strong alcoholic odor.” Mr. Curtin was unsteady on his feet. Officer Desrosiers has been a police officer and is familiar with drunk people. He stated Mr. Curtin was “extremely drunk.” Officer Desrosiers observed Miles Tubbs, the son of manager Ms. Tubbs, in the T.J.’s parking lot who walked by and said “This is great for (expletive) business.”

Ford – reiterated that Officer Desrosiers questioned Mr. Curtin and did not wish to be transported to the hospital. Officer Desrosiers said Mr. Curtin could stand on his own.

At this time, manager of T.J.’s Bar & Grille Ms. Tubbs questioned Officer MacDougall. She stated she has a very good relationship with the Police Department and it is hard to ask questions she has tonight.

Officer MacDougall interviewed Mr. Curtin the night of the call to T.J.’s Grille & Bar and spoke with Ms. Tubbs the next day to sum up loose ends.

Officer MacDougall did not check for empty bottles in Mr. Curtin’s vehicle as he didn’t have reason for search. He conducted a plain view search. Officer MacDougall was called to T.J.’s at 6:35 pm. He was told Mr. Curtin left T.J.’s around 4:00 pm. Ms. Hockenberry told Officer MacDougall that Mr. Curtin had between 3-4 beers and confirmed by adding numbers it was a total of 5 beers total.

Ford – questioned if 5 beers were on the slip where time was estimated between 2:00 pm – 3:10 pm when he paid bill.

Pickard – at this time asked if anyone wanted to call a person as a witness and to make a statement.

Ms. Tubbs - Lauren Hawkinberry is not the bartender. The bartender tending was Lisa Gino at the time the party was served; Lisa Primo came on at 5:00 pm.

Ms. Biagiotti was called as a witness by Ms. Tubbs at this time. A copy of said receipt was given to Ms. Tubbs; copies of Ms. Biagiotti’s testimony was handed to the Selectmen. Ms. Biagiotti

read her testimony into record. Mr. Curtin was at T.J.'s with a party of three other people. She noticed Mr. Curtin appeared intoxicated and left shortly after 3:00 pm and then saw him again at 6:00 pm.

Ford – asked how Ms. Biagiotti knew Mr. Curtin left the premises and came back. Ms. Biagiotti said she assumed. Ms. Tubbs said video cameras inside are inoperable.

Ms. Biagiotti said she saw Mr. Curtin leave T.J.'s shortly after 3:00 pm and was not sure of time, but knew he was in the parking lot. She was busy at the time but being a manager she tends to pay attention to details and noticed Mr. Curtin was not staggering at the time. All employees are TIPS. The round on the said receipt was the last round to the table which included three Blue Moon beers, a Bicarid drink and a Budweiser beer.

Pickard – asked and was told there were four men at the bar in the party who paid in full for each round. Chm. Pickard said this is not accurate account of all consumption, but rather the last round. Ms. Biagiotti said she served Mr. Curtin between 3-4 Blue Moon beers.

In Ms. Tubbs' statement, she said she takes her patrons safety seriously. She has been in business since 1999 and customers have made it home at night. Employees are told customers' safety is of the utmost priority. Ms. Biagiotti told Ms. Tubbs she had served 3-4 Blue Moon beers to Mr. Curtin. The four men in the party paid for each round and that is why she noticed when Mr. Curtin left. Mr. Curtin was seen outside sitting in a vehicle for at least 2 ½ hours; she doesn't know if he took anything while in his vehicle and was left by friends. The four men in the party did not appear intoxicated. If her employee noticed Mr. Curtin was intoxicated, he would not be allowed to leave in that condition.

Ford – asked about the tequila drinks. Ms. Tubb said the tequila wasn't given at T.J.'s; if the employees observe a patron to be intoxicated, they are not allowed into the establishment.

Chm. Pickard asked Lt. Silvestro if there were any closing remarks. Officer MacDougall said Ms. Tubbs called the next day for clarification of events that occurred that night. Officer MacDougall said Mr. Curtin told him drinking tequila prior to coming to the bar and drinking the beer at T.J.'s "put him over the edge," making him drunk and violently ill.

Ford – asked what items were clarified. Officer MacDougall said Ms. Tubbs wanted it to be made known that she didn't see him leave for 45 minutes and wanted to clarify if another round served after his absence.

Ford – if had cameras, that would be her defense against this case and recommends working cameras in the future.

Chm. Pickard – told Ms. Tubbs she has the right to appeal under the Massachusetts General Laws Chapter 138, Section 67.

Meier MOVED and SECONDED by Ford to close hearing at 8:00 pm. VOTE 4-0.

Discussion

Baldwin – Mr. Curtin was seen at 6:30 pm in the parking lot and can only assume what he was doing. Four beers in an hour and a half is excessive.

Meier – he said he will listen and use common sense being his first hearing.

Ford – mentioned the 2-hour period of not knowing the whereabouts of Mr. Curtin.

Chm. Pickard – by admission of employee present, Mr. Curtin was served 4 beers and there is the possibility someone else having served Mr. Curtin, but is excessive for 1 ½ hours.

Meier – asked if this is the first violation. No violation on record said TA Guerino. In the past, any action the Board can act upon is to suspend the liquor license and what is proposed by the MMA.

Chm. Pickard – Ms. Biagotti is manager and all employees are TIPS are trained. The Police Chief is put on the list to look into employees being TIPS trained in the future. He believe offense warrants a suspension.

Baldwin MOVED and SECONDED by Meier to vote a one-day suspension on 4/27/12 of the all alcoholic license of TJ's Grille & Bar LLC. VOTE 4-0. *Ford – Ms. Tubbs to turn in license by midnight on 4/26/12. TA Guerino added the restaurant can remain open during said suspension.*

Meier recuses himself for the rest of the evening due to a prior commitment.

b. Hearing Monument Beach Wine & Spiritis, Inc. – transfer of ownership

Ford MOVED and SECONDED by Baldwin to open hearing of Monument Beach Wine & Spirits at 8:10 pm. UNANIMOUS VOTE.

Chm. Pickard read into record hearing of Monument Beach Wine & Spirits, Inc. newspaper advertisement.

Rob Chamberlain for transferee. He said the expansion was less than enthusiastically received when last before the Board. Before the Board is an amended petition; he worked with the landlord and now seeks only the transfer of the existing store as is. He respectfully requests the Board grant the transfer.

Landlord, existing owner and manager of the store are present for hearing tonight.

Chm. Pickard – no abutter notifications needed. Applicant has the right to appeal under Section 138 to the ABC if the Board does not approve transfer.

Ford – said he supported the prior change, but had asked if the sale depended on the expansion. It was unfortunate it did not go as planned but is happy applicant has a change of heart.

Mr. Chamberlain said statement was accurate.

Ford MOVED and SECONDED by Baldwin to close hearing. UNANIMOUS VOTE.

Discussion

Baldwin – has no issues.

No further Board comments.

Ford MOVED and SECONDED by Baldwin to approve year-round change in management as outlined in the routing slip; and paperwork from the ABC; and to transfer ownership to Bourne Liquors, Inc. to Luke's Liquors with Michael Patterson as Change of Manager. UNANIMOUS VOTE.

c. Gas Storage Hearing – Jean Maier

Ford MOVED and SECONDED by Baldwin to open hearing for Gasoline storage at 80 Cranberry Highway. UNANIMOUS VOTE.

Chm. Pickard – opened hearing, Jean Maier application received to install two (2) underground storage tanks for gasoline – a 10,000 gallon tank; and a 30,000 gallon tank at 80 Cranberry Highway.

Atty. Michael Ford for applicant Jean Maier present. Applicant obtained certified copies of abutters list and was given to TA Guerino; including legal ad in Cape Cod Times. All abutter cards came back. Atty. Ford also represents the holder of the permit for construction of a gas station that has a purchase and sale agreement to purchase the property. A copy of the special permit of site approval is included in documentation.

Bill Taber, site engineer from VHB also present.

Deputy Fire Chief approved applications and were sent to the TA Guerino's office.

Baldwin – asked how far the gas station will be from Adams Street. As indicated on the map, it is further down the road.

Mr. Tabor – proposing 4 dispenser fueling facility consisting of two (2) tanks for regular and premium gas; mid-grade is at dispensers. There will be two (2) double walled fiberglass tanks; in between the tanks is a brine-filled solution for monitoring tanks 24/7. Alarm is in the store; all sumps around tanks; spill buckets. There will be no net loss of vapors to the atmosphere. Cameras are at each dispensing location; emergency switch at attendant's station; fire alarm with attendant for issues; fire suppression system over entire fueling area. Over-fill protection valves; leak detectors; shear valves; oil/water separator for storm water run off and other environmental safety features.

Atty. Chamberlain said the next step would be to get Fire Department approval and State Fire Marshall approval moving forward.

Chm. Pickard – added the application has Planning Board approval and the Fire Chief signed off the routing slip.

Baldwin MOVED and SECONDED by Ford to close hearing. UNANIMOUS VOTE.

Baldwin MOVED and SECONDED by Ford approve underground storage tanks totaling 40,000 gallons for Jean Maier at 80 Cranberry Highway. UNANIMOUS VOTE.

d. MMA – One Day Liquor

Meier MOVED and SECONDED by Ford to approve MMA request for two one-day liquor license on 5/23/12 and 9/14/12 for a Reception and a Gala respectively; in addition, nine (9) one-day all alcoholic licenses on: 4/20/12 from 12:00 pm - 5:00 pm; 4/26/12 from 5:00 pm – 10:00 pm; 5/1/12 from 5:30 pm – 10:30 pm; 5/16/12 from 4:00 pm – 10:00 pm; 6/2/12 from 5:00 pm – 10:00 pm; 8/3/12 from 6:00 pm – 10:00 pm; 8/11/12 from 5:00 pm – 10:30 pm; 9/22/12 from 5:00 pm – 10:30 pm; and 10/13/12 from 3:00 pm – 8:00 pm per routing slip. VOTE 4-0.

e. Bourne Taxi – public livery license

Meier MOVED and SECONDED by Baldwin to approve Bourne Taxi request for additional public livery license 2009 Dodge Caravan per routing slip. VOTE 4-0.

f. Weary Travelers Club

David Robinson, Manager. Taxes haven't been paid previously by predecessor. License was approved today, paid first down payment made on payment plan and three subsequent payments to be cleared up by 7/17/12. Mr. Roger Murphy has no issues with liquor license and will release Mr. Robinson's name in July. Mr. Robinson will drop paperwork at the TA office for the file. The Weary Traveler's Club will be put on a future agenda item close to 7/17/12 to name Mr. Robinson as manager on license.

g. Sandy's Restaurant – continuation

Ford MOVED Baldwin to open hearing. UNANIMOUS VOTE.

Ford - hearing was tabled pending site plan approval by Planning Board. The Board has a 30-day period to act and have to move upon tonight. In the future, Ford request to have all paperwork at the time of hearing. Chm. Pickard requested on certain licenses have whether or negative or positive motions to move forward.

Chm. Pickard read into liquor license hearing advertisement in the newspaper. Applicant looking to amend license to include a 20'x73' patio for outside dining.

Judy Tubbs, applicant present tonight.

Chm. Pickard - any vote vote tonight is pending Planning Board approval. TA Guerino handed out Sales by Product Category document – 1 page dated 4/3/12; and restaurant menu – 1 sheet.

Ms. Tubbs said she is not increasing seating; there is already ample parking needed for said patio.

Ford MOVED and SECONDED by Baldwin to close hearing. UNANIMOUS VOTE.

Ford MOVED and SECONDED by Baldwin approve Sandy's Restaurant request under Judy Tubbs, Manager, of the addition of a 20'x73' for outdoor dining per complete application on file at TA office pending Planning Board special permit approval. UNANIMOUS VOTE.

h. Capital Outlay Committee appointment

Meier MOVED and SECONDED by Baldwin to appoint Rich Mastria to the Capital Outlay Committee for a term to expire 6/30/14. VOTE 4-0.

Town Administrator Report

a. Council on Aging Director

TA Guerino appointed Ms. Grace Nadeau and has accepted a position as Council on Aging Director in Bourne. He briefly reviewed her credentials. Hiring Committee consisted of TA Guerino, Director of Human Resources, Mr. Thompson, Estelle Blake and Interim Director Lois Carr voted unanimous in choosing Ms. Nadeau.

TA Guerino will use Selectmen stamps for signatures with tonight's livery and liquor licenses.

Continuing on contracts. All contractual language has been agreed to in negotiations will be in the budget at the time of Town Meeting.

Selectmen's business

a. Signing of warrant for annual and special town meetings

Ford – pleased with the Pre-Town Meeting.

Ford MOVED and SECONDED by Baldwin to approve Special Town Meeting and Annual Town Meeting Warrants on 5/7/12. UNANIMOUS VOTE.

b. Establish Designer Selection process for DPW Building Committee

Ford MOVED and SECONDED by Baldwin to Design build-out option and asking to appoint the current Public Works Design Building Committee to keep at current pace. VOTE 4-0.

Ford – met with Executive Officer of Public Safety on 4/11/12 for 100th anniversary in 2014. Several events will be held that last week in July 2014. Traffic will be main concern and coordinating with State Police, State Marine Division and the Coast Guard in getting help with offsetting some of the costs. This is a three-town event (Sandwich, Bourne and Wareham) working together; Wastewater concerns of County government will be a future agenda; Attended Pre-Town Meeting; Town Meeting will be 5/7/12 @ 7:00 pm and encouraged people to attend and come early.

TA Guerino added every year try to get warrant out quicker and seems to finish around the same time. Ms. Sundman to be commended for getting Handbook prepared.

Baldwin – Kickoff of the 100th Anniversary for the Canal will be Father's Day weekend this year.

Chm. Pickard – attended meeting with the School Committee Chairman and State Senate President Therese Murray to discuss Town of Bourne pothole money to supplement funds we have received to assist in education process of parents who are assigned on the AFNB; Attended meeting at the base on the Brach closures – MMR Homeland Security Coalition, Steering Committee as Pickard being a representative discussing the economic impact by losing positions at the military base; TA Guerino evaluation to be done in May, the new contract states December. *Ford - contract states review this fiscal year; TA in discussions with his attorney; Ford – evaluation to be done before town elections.*

Adjournment

Baldwin MOVED and SECONDED by Ford to adjourn meeting. Meeting adjourned at 9:00 pm. UNANIMOUS VOTE.

Respectfully submitted,
Lisa Groezinger, sec.