

BOARD OF SELECTMEN MEETING

JANUARY 25, 2016

Chairman Michael L. Champoux called the meeting to order at 7:00 p.m. in Room 9 of the Town Hall. Present were Selectmen Louis Cimaglia, IV, Michael V. McCoy, Michael J. Newhouse and Judith L. O'Connell. Also present was Town Manager Jeffrey M. Hull.

Chairman Champoux asked those present to rise and Selectman O'Connell led the pledge of allegiance.

TREASURY WARRANTS

Chairman Champoux asked for a motion to accept the Treasury Warrants. A motion was made by Selectman McCoy, seconded by Selectman Cimaglia and by the affirmative vote of all, it was

VOTED: That the Board of Selectmen accept Treasury Warrants 29, 29A, 30 and 30A.

MALAK SOLIMAN, SAINT MOSES, INC. DBA RIZZO'S ROAST BEEF & PIZZA, RE: REQUEST TO OBTAIN A COMMON VICTUALER LICENSE FOR PROPERTY LOCATED AT 3 CHURCH STREET, UNITS 1 & 2

Mr. Soliman was present before the Board seeking a Common Victualer's License. He advised the Board that he and his two brothers have been in the restaurant business for a number of years and are seeking another opportunity as their family expands. Chairman Champoux asked if there is a change in ownership and was advised that Mr. Soliman purchased the business from Mr. George Rozopoulos.

Chairman Champoux asked Town Manager Hull to provide the Board with recommendations from applicable department heads. Town Manager Hull advised that the application was reviewed by Al Spaulding, Inspector of Buildings, who advised he had no outstanding zoning issues. Director of Public Health, Shelly Newhouse, reviewed the application and recommends approval.

Chairman Champoux asked if there were any questions, comments or a motion. Selectman Newhouse asked Mr. Soliman when he expects to change ownership. Mr. Soliman advised that he expects the closing to take place between January 26 and February 1.

A motion was made by Selectman McCoy, seconded by Selectman Cimaglia and by the affirmative vote of all, it was

VOTED: That the Board of Selectmen grant a Common Victualer License to Saint Moses, Inc. DBA Rizzo's Roast Beef & Pizza for property located at 3 Church Street, Units 1 and 2.

MARY DELAI, SUPERINTENDENT OF SCHOOLS, AND SHARON GEORGE, TOWN CLERK, RE: PROPOSED CHANGE TO POLLING LOCATIONS

Superintendent DeLai apologized to the Board of Selectmen for not being present at the Board's last meeting. She stated that, based upon what she read, it would be helpful for the Board to hear the School's perspective.

Ms. DeLai stated that when she began in Wilmington she had the opportunity to speak to constituents including the staff and directors of the Early Childhood Centers. Ms. DeLai recognized that Ms. Mahan and Ms. Phillips, Early Childhood Directors, were present as well as School Committee Chairman Margaret Kane and School Committee member Mary Jane Burns. She stated that safety concerns were raised regarding the level of access granted to the building during elections. She noted that at the Wildwood School, the bathroom closest to the cafeteria is also used by students and there is no other bathroom for members of the public to use. In the case

of the Boutwell School, its circular nature lends to the public exiting doors other than the main doors, roaming the hallways and having access to the classrooms. Ms. DeLai stated that she heard concerns about the level of traffic when children are going out to recess or during drop-off and pick-up.

Ms. DeLai stated that she was aware that there was significant discussion by the Board that pre-school and Kindergarten is non-compulsory and thereby cancelling school on that day removes safety concerns. She stated that it was her understanding that there are times that school is in session during elections and the students eat their lunches in the classrooms. Due to a policy implemented on life threatening allergies, lunches are not allowed to be served in the classrooms. She stated that while kindergarten and pre-school is not compulsory, there are curriculum standards. There are 177 school days in the early childhood calendar. Ms. DeLai noted that the school district has invested significant monies in the curriculum at the early childhood level and it takes 177 days to implement. She stated that there are assessments conducted to make sure students are making progress.

Ms. DeLai advised the Board of Selectmen that they do not take the elimination of a school day at that grade level lightly. She noted that parents pay tuition for pre-school and when school is cancelled parents need to find alternate day care.

Ms. DeLai stated that when she first engaged in conversation with Town Clerk Sharon George, Town Manager Hull, and Public Buildings Superintendent George Hooper, it was believed there was potential for cost savings as there is more room at the high school gymnasium than the Boutwell and Wildwood Early Childhood Centers combined. She said that the School Department did not want to imply that they care any less about high school students noting that they are bigger, self-sufficient and not easily “scooped” up and manage their food allergies in a different way than the younger students. Ms. DeLai stated that the request was made as a result of feedback she received and felt an obligation to bring forward to see if there was a mutually satisfactory way to address the concerns.

Chairman Champoux thanked Ms. DeLai and asked if there were any questions or comments from the Board. Selectman O’Connell thanked Ms. DeLai for coming before the Board. She stated that she addressed some of her concerns with Ms. George and those concerns included voter confusion, administrative tasks of making the change. Selectman O’Connell stated that Board members also brought up valid concerns relative to parking and handicapped parking. She stated that she understands the goal and objectives trying to be achieved, but she is concerned with the potential of 8,000 voters with the student population and she is concerned how people with physical challenges will navigate to get to the building. Ms. DeLai stated that in terms of the November election, it is historically used as a full day professional development day for staff, so that no school is in session.

Ms. DeLai stated that the staff would be asked to park at the Swain School lot, as they did during construction of the High School, which would free up parking spaces. She advised that the issue was brought to the School Committee to determine their level of support.

Selectman O’Connell voiced her concern that there will be large crowds of people in a concentrated area and voters will be deterred. She is concerned that people will say it is too complicated to vote.

Selectman McCoy stated that he recognizes that we live in a sick society but he believes that the lives of all students matter. He commented relative to monitoring food allergies and his belief it would be better in a small, controlled setting. Selectman McCoy stated his opinion that he has

more faith in the police department and the school teachers. He believes a majority of people in this community vote after work when students are not in school. He also opined that there would be a major disruption if the Board changes the polling locations.

Ms. DeLai wanted to make it clear that the safety of ALL the children in Wilmington Public Schools matter to her.

Selectman Cimaglia stated that the safety of all the children is paramount and rather than introducing people into schools who would not typically be there during the day, it is easier to close the two early childhood centers. The dates of the elections are known well in advance.

Selectman Newhouse stated that members of the Board formed an opinion. He defers to the School Superintendent and School Committee regarding decisions that have been made relative to policy. He believes there is a price to be paid from the municipal side in terms of voter confusion, voter convenience and in terms of parking. He acknowledged the points that Ms. DeLai made and appreciates the advocacy. He views it not to be an improvement but to be less convenient and less efficient. Selectman Newhouse noted that Ms. George advised the Board at the previous meeting that the Town should be expecting a mandated change, based upon trends and projected increases in population, and it is likely in the next few years wherein the Town will have to create an additional precinct. Changes may become necessary, now is not the time to change the status quo if we may have to change polling locations again.

Chairman Champoux stated that he has a gut feeling that at the high school primary parking lot, residents will be walking through the cafeteria to the gymnasium. It seems like a long way to go. He stated that he takes the Town Clerk's and the Superintendent of School's recommendation seriously but does not believe that a change is warranted at this time. He recognizes that canceling school is not the ideal scenario.

Town Manager Hull stated that he believes that if the polling location were to change, the Town Clerk's office and the Police Department can manage the change. Town Manager Hull reviewed different polling locations.

Ms. George noted that state elections occur every two years.

Chairman Champoux asked Chief Begonis if there is an impact on Police Department personnel and resources if the Town reduced polling locations. The Police Chief advised that a request was made to have a police officer to cross pedestrians at the Town Common.

Selectman McCoy described the traffic in the area of the high school on a regular business day and believes it will turn away voters. Ms. DeLai stated that the high school was proposed because she learned it was a polling location in the past. She stated that she is responsible to bring the concerns forward and is not discouraged if the Board does not change. She is discouraged at the lack of understanding of how things operate in the schools.

Town Manager Hull advised that the proposal was for precincts 1-4 to vote at the High School and precincts 5 and 6 will continue to vote at the Town Hall. Ms. George advised that this year will be the first year for early voting and expects it will be highly publicized by the Secretary of State's office. Ms. George believes it will be a success because voters may not want to stand in line, or deal with traffic and one does not have to be out of town to participate in early voting.

There being no further discussion, a motion was made by Selectman McCoy, seconded by Selectman Newhouse and by the affirmative vote of all, it was

VOTED: That the Board of Selectmen keep the voting process as is with Precincts 1 and 2 voting at the Boutwell School; Precincts 3 and 4 voting at the Wildwood School and Precincts 5 and 6 voting at the Town Hall.

MICHAEL R. BEGONIS, POLICE CHIEF, RE: RECOMMENDATION RELATIVE TO POTENTIAL PANHANDLING BY-LAW

Chief Begonis advised that he was asked to research establishing a by-law that would prohibit or limit panhandling in the Town of Wilmington. Specifically, panhandling at Wilmington Plaza. Chief Begonis stated that whether a by-law or ordinance is established it will be subject to successful litigation regarding its constitutionality. Chief Begonis cited recent cases where the U.S. District Court of Massachusetts has ruled that the act of panhandling is protected under the First Amendment as free speech.

Chief Begonis noted that there are Massachusetts General Laws which may be enforced when appropriate. MGL Chapter 85 Section 17A prohibits stopping of a vehicle or “accosting” the occupant for the purpose of solicitation; Chapter 275 Section 53(b) Disorderly Conduct; Chapter 265 Section 13A Assault & Batter and Chapter 266 Section 120 Trespass. Chief Begonis advised the Board of Selectmen that the property owner could establish a no trespass. He cautioned that the laws he cited do not apply for the mere holding of a sign which asks for money. It is his recommendation that the Town not establish a by-law at this time.

Town Manager Hull stated that Town Counsel was consulted and agrees with Chief Begonis’ comments. Town Counsel advised that laws established in Worcester and Lowell have been invalidated and noted that the American Civil Liberties Union is aggressively challenging such by-laws.

Chairman Champoux stated that he understands the desire to minimize the presence of panhandlers at the plaza, perhaps they make the shoppers feel uncomfortable or unsafe. Chairman Champoux asked if there were any questions or comments from the Board. Selectman McCoy expressed his desire to have something the Town could “sink its teeth into”. Selectman O’Connell thanked Chief Begonis for following through on a request from a Board member. Though she was enlightened by the information Chief Begonis provided, she was not surprised.

Chief Begonis encouraged all citizens who may have questions or concerns to reach out to the Police Department. He stated that members of the Police Department will respond and at least have a conversation with the individuals. He noted that many of them have sad, interesting stories and the department will offer them help.

COMMUNICATIONS

Town Manager Hull reviewed a letter from Daniel Veerman, Board of Appeals member, regarding the proposed July 4th carnival. Mr. Veerman advised the Board that he voted against a similar application in 2013 due, in part, to inadequate preparation of the application and insufficient safeguards being in place for the immediate neighborhood. He advised that to avoid the same situation, he met with the Town Manager and the Chairman of the 4th of July Committee to see if safeguards could be put in place to protect the property interests of the direct abutters. Mr. Veerman stated that he proposed 1) procuring temporary insurance for the direct abutters for damages caused by third party attendees at the carnival, 2) the possibility of the Town indemnifying the direct abutters against these types of claims and 3) a bond posted by the applicant, the Town and/or Fiesta Shows to protect against these risks and damages. Mr. Veerman noted that these proposals were rejected for a variety of reasons, some of which he

agreed with. Rather than vote against the application, he moved to continue the hearing to allow discussions to continue. Mr. Veerman met with Town Manager Hull and members of the 4th of July Committee where he proposed that an escrow fund be established in the amount of \$20,000 to be available to pay for 1) any modest property damage to a direct abutter and 2) to reimburse a direct abutter for any increase in the property insurance or deductible that might be incurred due to a larger claim which would need to be referred to their insurance carrier. Mr. Veerman advised the Board that he has concerns whether the site is appropriate for a carnival under any circumstances. He requested that the Board of Selectmen consider his proposal under “Board to Consider” at their meeting of January 25, 2016.

Town Manager Hull reviewed the Town of Wilmington’s reply to the Surface Transportation Board regarding the Environmental Protection Agency’s letter dated November 6, 2015. The Environmental Protection Agency’s letter stated, in part, there was no reason from their perspective for the STB to continue to defer action on the environmental review regarding New England Transrails’s proposed development of the Olin property.

Town Manager Hull reviewed correspondence from the Massachusetts Bay Transportation Authority notifying communities of public meetings to be held to receive comments regarding the MBTA Fare Proposal and Proposed Commuter Rail Schedule Changes.

BOARD TO CONSIDER REQUEST FROM DEBORAH CIPRIANI, RECREATION DIRECTOR, TO USE THE TOWN COMMON AND GAZEBO FOR THE SUMMER CONCERT SERIES ON WEDNESDAYS, JULY 6, JULY 13, JULY 20 AND JULY 27 (*RAIN DATE THURSDAYS, JULY 7, JULY 14, JULY 21 AND JULY 28 RESPECTIVELY*)

Chairman Champoux asked if there were any questions, comments or a motion. A motion was made by Selectman Newhouse, seconded by Selectman Cimaglia and by the affirmative vote of all, it was

VOTED: That the Board of Selectmen grant the request of the Wilmington Recreation Department to use the Town Common and Gazebo for the Summer Concert Series on Wednesdays, July 6, July 13, July 20 and July 27. In the event of rain, the concert will be held on the following Thursday.

BOARD TO CONSIDER DANIEL VEERMAN PROPOSAL, RE: JULY 4TH CARNIVAL

Town Manager Hull stated that the letter that was submitted provides a description by Mr. Veerman of efforts on his part to address concerns on behalf of neighbors who abut the Swain School property. Town Manager Hull stated that there was a meeting of the Board of Appeals on January 13 to consider whether to issue the special permit. Town Manager Hull stated that for the past two years the Fun on the Fourth has been held at the Shriner’s Auditorium due to the high school being under construction and the fields were off limits. In 2013 the attempt was made to have the carnival at the Swain property, the Board of Appeals rejected that proposal. The festivities took place on the Town Common and it was a very different event than what had taken place over the previous 30 years.

Town Manager Hull advised that it was clear that there was a sentiment expressed by many to try to bring the event back to the Town Common. He said he has had a number of conversations with Scott Garrant, Chairman of the Fourth of July Committee. Initially discussions took place to try to locate the carnival at the high school parking lot. He and Superintendent DeLai expressed concern due to the configuration of the parking lot, the traffic islands, lighting fixtures and landscaping.

The former Swain School site became the potential site with the idea that all the Fourth of July events could be incorporated in the Town Common area. From a police perspective it is helpful to have the carnival at that location because the focus can be on that side of the common, making it easier to monitor. Town Manager Hull said that he appreciates the concern of the neighbors but the Fourth of July Committee scaled down the rides and the hours that the carnival would be operating.

Mr. Veerman indicated that he believed there ought to be a mechanism to compensate, or to make sure, direct abutters would not be financially impacted. As the Town Manager, he cannot recommend that the Town indemnify abutters to the property. He believes that will establish a bad precedent. Town Manager Hull advised that Town Counsel has been consulted and is in agreement.

Town Manager Hull stated that Mr. Veerman offered a proposal that the Town, Fiesta Shows and/or the Fourth of July Committee establish a fund of \$20,000 for abutters to access if they have damage. Town Manager Hull reiterated that he did not believe the Town should be contributing to the fund. He asked what the implications are, who runs it, tax consequences, filing with the IRS. He stated that somebody will be tasked with determining what claims are appropriate. Town Manager Hull noted that Scott Garrant submitted a letter addressing the issue and outlines the Fourth of July Committee's efforts to address the abutters concerns.

Chairman Champoux clarified what is being proposed by Mr. Veerman.

Selectman Cimaglia stated that because he is a member of the Fourth of July Committee, he will be abstaining from discussion.

Selectman McCoy stated that he supports the Town Manager and the Town's position.

Selectman Newhouse stated that from his perspective, the interest in requiring a financial assurance mechanism by any board or committee is pretty common. He stated that he is not familiar with the economics of the carnival, if the special permit is passed, it will be in that location for a matter of days. He does not understand why the company that will be profiting from the special permit, is the company opposed to a financial assurance mechanism.

Selectman Newhouse asked whether this has been proposed to them and their response. Mr. Garrant stated that the question is whether it is even necessary. He noted that Chief Begonis has stated on more than one occasion that there are not the incidents that Mr. Veerman has referred to. Mr. Garrant stated that he spoke with Fiesta Shows and they are willing to establish a fund up to \$10,000 but there are a number of questions that need to be answered including who will administer it, what types of claims will be considered, what amounts will be considered, what relationship will this fund have with an abutters homeowner's insurance, how do you deal with fraudulent claims, what is the window for filing a claim.

Selectman Newhouse stated that he understands the questions Mr. Garrant raised, he is not trying to substitute his judgement for a member of the Board of Appeals. He acknowledges the general community interest and is also aware that the Board of Appeals as the special permit issuing authority has certain criteria that they must consider and the impact to the neighborhood is central to that consideration. If a member of the Board of Appeals can feel comfortable casting a vote favorably provided there is a financial assurance mechanism, then the town should be trying to solve that problem. Selectman Newhouse stated that he believes the Board of Selectmen should be trying to help solve the problem.

Selectman Newhouse noted that it is commonplace for there to be funding mechanisms and noted that the Planning Board may give their approval for subdivisions but there is a mechanism in place and if it doesn't get completed, the funds are used to complete it. The Board of Selectmen had an agreement with the developers of Shawsheen Commons and when it wasn't completed, that is how the town sought redress to protect those that already purchased their homes.

Chairman Champoux stated that he fears the precedent. He complimented Mr. Veerman for his efforts to look for a way to accommodate the protection he feels is necessary and convey a "yes" vote for the carnival at that site.

Selectman O'Connell stated that the Board is looking for a perfect solution to an imperfect situation and the concerns that have been raised. It is not something the Town should engage in. She noted that the Town is supporting the Fourth of July event through other means including Police, Fire and Public Works personnel. Selectman O'Connell stated that she was present at the Board of Appeals meeting and her interpretation is that unless the financial mechanism is in place to protect abutters, Mr. Veerman will not issue his vote.

Selectman Newhouse understands that the operator of the carnival makes money, then contributes money to the Fourth of July Committee, the Committee, in addition to donating their time, donates funds to offset costs of the fireworks and the event in general. Mr. Garrant clarified that the Fourth of July Committee raises money to pay the expenses. Selectman Newhouse stated that it has been his understanding that it is primarily the fireworks which cost the money and the town absorbs personnel costs. Mr. Garrant stated that the fireworks is the biggest check but there is more expense that goes into the celebration. Selectman Newhouse stated that the Board has discussed being prepared to be able to fund the event regardless of what iteration it may take. He suggested that \$10,000 should be appropriated at Town Meeting to put the Board of Appeals and the Fourth of July Committee in a position to answer some of the questions.

Chairman Champoux stated that his concern is not about the dollar value. He does not want to move funds into an account that the Town maintains or administers. Selectman Newhouse noted that the Town did it in 2014 when there was uncertainty about the location and amount of revenue that may be generated. He believes the amount was \$15,000 and it was a general appropriation for Fourth of July Festivities. Selectman Newhouse stated that if the Town appropriates \$10,000 it may free the Fourth of July Committee to negotiate a financial mechanism.

Mr. Garrant noted that the hearing before the Board of Appeals will take place on February 10, Town Meeting is scheduled for April 30 and the Fourth of July Committee cannot make that commitment to the Board of Appeals.

Town Manager Hull asked if it is Selectman Newhouse' intention to appropriate \$10,000 to provide to the Fourth of July Committee to supplement the activities. Selectman Newhouse confirmed that it would be a general appropriation and he believes it is a legitimate municipal expense. Mr. Garrant asked whether the Fourth of July Committee would have to work in conjunction with the Town to put the fireworks, bands, clowns and other vendors out to bid. Town Manager Hull stated that he does not believe so based upon his understanding of the proposal.

Frank West, Birchwood Road, stated that he attended the Board of Appeals meeting and commented about Mr. Veerman holding the Town hostage. He asked what the limitations would be in regards to residents who are not direct abutters who have property damage. Fiesta Shows is not the only profit making venture, the applicant is the Fourth of July Committee.

A motion was made by Selectman Newhouse, seconded by Selectman O'Connell and by the affirmative vote of four with Selectman Cimaglia abstaining, it was

VOTED: That the Board of Selectmen support the appropriation of \$10,000 to be applied to the Fourth of July activities in accordance with an article to be prepared by the Town Manager and Town Counsel.

Mr. Garrant stated that the motion by Selectman Newhouse and appropriation of the Board of Selectmen assumes the willingness of the Fourth of July Committee to fund this account. He advised that he cannot commit to that and Selectman O'Connell stated that it was understood that it would be brought back to his committee for discussion.

PUBLIC COMMENTS

Mr. West commented regarding the need for a super majority to approve a special permit and in the past there were alternate members of the Board of Appeals. He asked whether the Board would consider reinstating alternate members of the Board of Appeals. Town Manager Hull advised that there were alternates when there was a three member Board of Appeals.

Selectman Newhouse stated that with the smaller boards, the votes had to be unanimous. The Board of Appeals wished to change from a three member board with Associate members to a five member board.

Mr. West requested that the Board of Selectmen consider having alternate members to the Board of Appeals.

Chairman Champoux advised Mr. West that he would commit to having a conversation with Town Manager Hull regarding the merits of Associate members. Mr. West suggested that the Chairman of the Board of Appeals, Mr. Boyle, be contacted.

NEW BUSINESS – COMMITTEE REPORTS

Chairman Champoux advised that he attended the MMA Annual Meeting and Trade Show. He noted that the conference was opened by Governor Baker. He participated in a couple of break-out sessions as well as discussion on the KinderMorgan pipeline.

Chairman Champoux stated that he attended a discussion on the opioid addiction problem in the Commonwealth and the MMA produced a comprehensive, well written document offering 10 steps that communities can begin taking.

Town Manager Hull stated that the Town was one of 10 communities that received the Excellence in Loss Control Award from MIIA. He advised that this is the second year the Town has received this award and it recognizes the Town for its efforts to reduce claims. Town Manager Hull recognized Jamie Magaldi as Chairman and members of the Safety Committee for their efforts.

Town Manager Hull stated that Governor Baker spoke on Friday and he is committing funds to cities and towns in terms of local aid. He stated that the amount for Chapter 70 and Unrestricted Government Assistance will be slightly higher. In addition, Town Manager Hull stated that at the MIIA luncheon discussion was held regarding the impacts of self-driving vehicles including the potential to reduce accidents. Self-driving vehicles can be programmed to drive you to work and return home, potentially reducing the demand for vehicles thereby reducing excise tax.

IMPORTANT DATES

Town Manager Hull reviewed important dates including:

- February 1 – Board of Selectmen – Town Hall – Room 9 – 7:00 p.m.
Town Manager's FY 2017 Budget Presentation
- February 2 – Finance Committee Meeting – Town Hall – Room 9 – 7:00 p.m.
FY 17 BUDGET OVERVIEW; INFORMATION TECHNOLOGY, REVENUE; GENERAL GOVERNMENT
- February 4 – Finance Committee Meeting – Town Hall – Room 9 – 7:00 p.m.
PLANNING & CONSERVATION; BUILDING INSPECTOR/BOARD OF APPEALS; BOARD OF HEALTH
- February 5 – Last Day to Submit Petitioned Warrant Articles for Inclusion on the Warrant
for the Annual Town Meeting – April 30, 2016
- February 8 – Board of Selectmen – Town Hall – Room 9 – 7:00 p.m.
- February 9 – Finance Committee Meeting – Town Hall – Room 9 – 7:00 p.m.
DEPARTMENT OF PUBLIC WORKS, PUBLIC BUILDINGS
- February 10 – Last Day to Register to Vote in Presidential Primary
- February 11 – Finance Committee – Memorial Library – Banda Room – 7:00 p.m.
RECREATION, LIBRARY, ELDERLY SERVICES
- February 17 – Yentile Farm Development Committee – Town Hall – Room 9 – 6:30 p.m.

There being no further business to come before the Board, a motion was made by Selectman Cimaglia, seconded by Selectman Newhouse and by the affirmative vote of all, it was

VOTED: That the Board of Selectmen adjourn.

Meeting adjourned at 9:10 p.m.

Respectfully submitted,

Recording Secretary