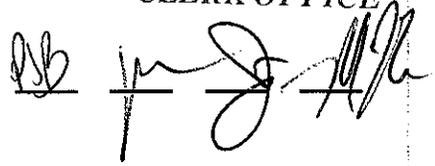


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LUNENBURG TOWN  
CLERK OFFICE

BOARD OF SELECTMEN  
MEETING MINUTES  
1/21/2014

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**6:00PM EXECUTIVE SESSION:** A. M.G.L. Chapter 30A, Section 21A (3), to discuss strategy with respect to collective bargaining or litigation if an open may have a detrimental effect on the government's bargaining or litigating position, and the Chair so declares. Discussion of IBPO/Police Arbitration Cases. B. M.G.L. Chapter 30A, Section 21A (6), to consider the purchase, exchange, lease or value of real property, if the Chair declares that an open session may have a detrimental effect on the negotiating position of the public body for discussion of value of Lane Property.

The Board of Selectmen met in the Joseph F. Bilotta meeting room at Town Hall as scheduled with Chairperson Tom Alonzo, Vice Chairperson Paula Bertram, Dave Matthews, Jamie Toale, Robert Ebersole, and Town Manager Kerry Speidel. Regular Meeting opened at 7:02 PM

**7:00PM PUBLIC COMMENT**

Mr. Alonzo welcomed all to this evenings meeting and thanked all who participated in the recent Special Town Meeting and Election. He stated that he was happy to see that the school building project had passed and applauded the School Building Committee along with all others who were involved in bringing this project to fruition.

Ms. Bertram spoke to say that she had received an email from Lunenburg resident Steve Powell suggesting the possibility of organizing a football game for the Lunenburg Blue Knights this Spring. Ms. Bertram stated that after the alleged hate crime had occurred the community showed that they can come together to unite and would like to see the community and School Department mobilize again to support the team and try to put together this game in the Spring. Ms. Bertram stated her support for this endeavor and hopes that others in the community will do the same.

Mr. Matthews added that he had spoken to the School Superintendent about this matter and she was going to explore the possibility of doing this. He went on to say that not only do we want to recognize the fact the football team, students and entire community had a "black mark" put upon them, but the kids also got a lot of criticism which was not right. He understands the "public safety" aspect of canceling the football games but thinks that people should come together to support the kids and that he supports this effort of having this game if it is possible.

**ANNOUNCEMENTS**

Mr. Alonzo announced that the Boys & Girls Club will be holding a fundraiser called "Are You Smarter Than a 6<sup>th</sup> Grader" on 3/7/2014 at Lunenburg High School and they are looking for participants along as sponsors for this event.

**APPOINTMENTS**

**7:30 PM Alcoholic Beverages License Hearing, License #063600039, B&H Corporation, 324 Electric Avenue-Incident Report filed by Lunenburg Police Department regarding alleged violation of MGL Chapter 138, Section 69 (Sale or delivery of alcohol to intoxicated person); 204 CMR Section 2/01 (2) (Permitting and disorder, disturbance or illegality of any kind in or on the licensed premises); Section 1.04 (a) of License Regulations of the Lunenburg Licensing Commission (Operating and allowing drinks to be consumed after mandatory closing hour) and Section 1.10 (d) of the Regulations (Consumption of alcoholic beverages on licensed premises by manager or employee). Date of alleged incident – 11/01/13:** Mr. Alonzo read into record the Alcoholic Beverages License Hearing notice for License #063600039, B&H Corporation, 324 Electric Avenue regarding an incident that happened on 11/1/2013 which was filed by the Lunenburg Police Department.

Ms. Speidel stated for the record that notice of the hearing was sent via certified mail and 1<sup>st</sup> class mail and we do have the return receipt on the certified mail.

Mr. Alonzo asked all witnesses who would be testifying this evening to come forward and state their names for the Board Secretary.

Mr. Herrick was not present at this time.

Lunenburg Police Officer Sergeant Jack Hebert & Lunenburg Police Officer Jonathan Broc stepped forward and were duly sworn in by Mr. Alonzo. Mr. Alonzo explained the hearing procedure to all in attendance.

Attorney Brian Riley from Kopelman & Paige spoke to remind the board that there is just 1 Officer report for each of the hearings this evening. It was then recorded that Sergeant Hebert would be testifying for the 7:30PM hearing and Officer Broc will be testifying for the 8PM hearing.

Sergeant Hebert gave his testimony on the events that happened on 11/1/2013 at 324 Electric Avenue. Sergeant Hebert stated that they had been called regarding an intoxicated person leaving the premises in a vehicle. He responded to the call at approximately 2:11AM, drove around the building but did not see the vehicle matching the description given but there were 8 vehicles in the parking

lot. He left and returned at approximately 2:26AM and there were still 8 vehicles in the parking lot. He stopped in front of the window of the establishment, saw people inside, and entered the bar through the front door. The front door was opened by a male who Sergeant Hebert could not identify, but then was approached by the owner's (Robert Herrick) daughter Lindsey Achilla, Manager of Mickey Shea's. Ms. Achilla told Sergeant Hebert that she had just got there to pick up her father and Sergeant told her that it was past closing time and everyone had to leave. Sergeant Hebert saw 11 people in the bar at this time and there were 3 drinks on the bar. Sergeant Hebert recognized 4 of the people as Ms. Achilla, Mr. Herrick, the bartender Julia, and another employee Eric Hickman. None of the other people in the establishment were employees. He advised Ms. Achilla that it was past closing and everyone had to leave. Ms. Achilla went to speak to her father and Sergeant Hebert heard Ms. Achilla explain to Mr. Herrick what time it was, why it was time to go and why Sergeant Hebert was there. Sergeant Hebert observed Mr. Herrick get off of a bar stool and said that he was extremely unsteady on his feet, he heard him slur his speech, but did not speak to him and remained 15-20 ft. away from him. Mr. Herrick then left through the rear door along with everyone else except for one other male who Sergeant Hebert observed to be extremely intoxicated. Sergeant Hebert asked the bartender if this person was driving, she replied no and that she was giving him a ride home because of his condition. Sergeant Hebert stated after that everyone left and the establishment closed.

Mr. Alonzo asked Sergeant Hebert how many times he entered the building and if the door was locked. Sergeant Hebert replied once and yes the door was locked.

Town Counsel, Brian Riley of Kopelman & Paige spoke and asked Sergeant Hebert to clarify for the record, is the closing hour for this establishment 2AM. Sergeant Hebert replied yes and that it was 2:26AM when he entered the establishment.

Attorney Riley asked if he had observed both employees and other persons inside.

Sergeant Hebert replied yes.

Attorney Riley asked when Sergeant Hebert is on that shift is it standard procedure to go by all of the liquor license holders to see if they are closed.

Sergeant Hebert replied we try to go by as many as we can and he believes that there are 11 of them in town that stay open until 2AM and we try to drive through around 2AM.

Mr. Alonzo asked if the license holder was here tonight to present his/her case.

Mr. Alonzo stated let the record show that the license holder and the manager of the establishment are now present. We have already heard the Town's case concerning this incident on 11/1/2013 and reviewed Sergeant Hebert's testimony with everyone.

Robert Herrick, owner of Mickey Sheas, came forward to identify himself and was duly sworn in by Mr. Alonzo.

Mr. Herrick spoke and said that the notice he received states that tonight's meeting was at 8PM

Mr. Alonzo replied that there are 2 hearings, the first at 7:30PM concerning an incident on 11/1/2013 and the other at 8PM concerning an incident which happened on 12/15/2013.

Mr. Herrick said that he has the 2 incident reports and 1 paper that states the hearing begins at 8PM.

Ms. Speidel replied that there were separate notices sent. A letter sent on 12/23/2013 by certified mail and by 1<sup>st</sup> class mail advising the hearing was to be held on 1/14/2014 at 7:30PM. That meeting was rescheduled to 1/21/2014 and she is in possession of the return receipts by certified mail.

Mr. Alonzo established the fact that Mr. Herrick was in receipt of both notices and at this time we are dealing with the 11/1/2013 incident.

Mr. Herrick stated that on 11/1/2013 there was a Halloween Party at his establishment which went off without incident. Last call was given at the usual time and perhaps even a little earlier at around 1:30AM. At that point there were 2 doormen, 1 out front and 1 out back, and they are there to insure that there are orderly exits from the parking lot. At approximately 1:45AM as patrons were leaving, someone came in who we did not know and he was not a patron there that evening. This person wanted "last call" and he did not receive it. We recognized that he probably should not be driving and we attempted to get him to take a taxi home and he refused because he needed his vehicle in the morning. Approximately 5-6 minutes later we convinced him to let us drive him home, and we had a person that would follow him. When this individual got outside of the building he jumped into his car and took off. We had told him that if he tried to leave we would call the station and when he left in his car we called dispatch and Sergeant Hebert arrived somewhere around 2:07AM. Sergeant Hebert was met outside by Alex the doorman who gave him a description of the car and the person. At this point Sergeant Hebert left and the doorman returned inside and at this time it was approximately 2:10AM.

At this time there were 11 people in the bar and they were the 2 doormen, 2 bartenders, 2 entertainers, the Manager, Ms. Achilla, myself, and the person that we were giving a ride home to. Within 10-15 minutes Sergeant Hebert came back to the front door and told the doorman that he was unable to locate the person and it was time for everyone to leave. Within 2-3 minutes everyone was gone except for Julie the bartender who was cleaning up and the gentlemen that she was bringing home. In terms of things on the bar and the people sitting there, on a night like that when you are relatively close to capacity it is not uncommon for 10—15 minutes after closing that the doormen take the bottles from the tables and put them on the bar and I have no doubt that there were probably empty bottles and cups there. To my knowledge no one was served or drank after 2AM.

Mr. Herrick added that he thinks the confusion came when Alex called the dispatch, he did not identify himself as our doorman. When Sergeant Hebert came he spoke to Alex, Alex was the person that called and he gave him the description of the car and the person.

Mr. Matthews asked what time last call was at.

Mr. Herrick replied 1:30AM and possibly even a few minutes before that.

Mr. Matthews asked what the normal procedure for emptying the bar out was.

Mr. Herrick replied that employees are out at 2AM and often times on a Saturday night if we have entertainment they usually stop playing around 10 minutes before 2AM. Depending on who is playing and how much equipment they have to break down and then get paid we are generally out of there between 2:20AM – 2:30AM. There are functions you do at the end of the night to prepare for the

following day such as cleaning, stocking, wiping things down and securing the building. The only people that would be in there would be the employees who worked that night.

Mr. Alonzo asked Mr. Herrick to repeat again who the 11 employees were in the building.

Mr. Herrick replied there wasn't 11 employees. There were 2 bartenders, 2 doormen, 2 entertainers, and the 3 people who were not working or employed that night were the 2 people that I had asked to drive this gentlemen, 1 being Ms. Achilla's husband and the other was the boyfriend of the bartender. The only other person that shouldn't have been there was the person that Julie was bringing home. In terms of the 2 people who were driving, when Sergeant Hebert left we were not sure if he needed information or was coming back and those 2 people were there for just a very short while and left.

Mr. Matthews asked Sergeant Hebert based on his observations were people closing down or were they hanging out.

Sergeant Hebert replied that nobody was aware that he was there until the door was opened, everybody was still sitting with their backs to the door at the bar.

Mr. Matthews asked if anyone was putting away equipment.

Sergeant Hebert replied that they were all sitting at the bar talking.

Mr. Alonzo asked Sergeant Hebert what time he was there the first time.

Sergeant Hebert answered that he drove through the parking lot at 2:11AM and at that time I did not speak to anybody. I drove around the back of the building, came back, did not see a grey Chevy, I left out of the lot and drove around the area for about 15 minutes looking for the grey Chevy, and then went back. I did not talk to anyone the first time I was there.

Ms. Bertram asked Sergeant Hebert if he spoke to Alex the second time he arrived.

Sergeant Hebert replied no, I did not.

Mr. Matthews asked Sergeant Hebert if he knew Alex the doorman.

Sergeant Hebert replied no I do not.

Mr. Alonzo asked Sergeant Hebert how confident he was that it was 2:26AM when you were there.

Sergeant Hebert replied that he was positive.

Mr. Alonzo spoke to say that the hearing is about 4 potential violations and reviewed them to the board as follows:

1. Sale or delivery of alcohol to intoxicated person
2. Permitting any disorder, disturbance or illegality of any kind in or on the licensed premises
3. Operating and allowing drinks to be consumed after mandatory closing hour
4. Consumption of alcoholic beverages on licensed premises by manager or employee

He then asked Sergeant Hebert what types of items he saw on the bar.

Sergeant Hebert replied he remembers 1 draft beer, a clear plastic cup sitting in front of one female, and I don't know exactly what the other 2 were, I don't want to make anything up, but there was one specific draft beer in front of 1 female that I can remember.

Mr. Alonzo asked if he witnessed anyone drinking any of those beverages while he was standing in the doorway inside.

Sergeant Hebert replied no, I did not.

Mr. Herrick spoke and said that one of the charges had to do with the Manager. Lindsey was on duty that night and was not drinking

Mr. Matthews asked Mr. Herrick if he was on duty that night as the owner.

Mr. Herrick answered he was dressed as Dracula and was not on duty. I did perform some managerial functions as we closed. I batched out the credit cards did the Keno but that was it.

Mr. Matthews states so then you were working.

Mr. Herrick replied that he just did it to expedite.

Mr. Ebersole mentioned that our regulations talk about hours of operation and say that no patrons shall be on the premises before the opening or after the official close. Customers must be up and out once the closing hour of the licenses are reached. He questioned whether anyone other than the employees can be there and questioned if a performer can be there during that time because they would not be considered an employee.

Ms. Bertram spoke to say that if that is how we are interpreting that regulation there will many establishments in the town that will be in violation. If the establishment is open until 2AM and there are bands set up they are not going to "take down" 45 minutes prior to the closing of the establishment. There is a lot of time associated with breaking down of equipment and you don't do that when the establishment is open during the function.

Mr. Matthews added that we heard that they were not breaking down equipment.

Mr. Ebersole questioned if a customer is someone who is consuming a drink and if somebody who is breaking down is consuming a drink do they turn into a customer at that point.

Mr. Toale asked Mr. Herrick if his entertainers are allowed to consume alcohol while they perform.

Mr. Herrick replied they do from time to time.

Mr. Herrick spoke and said that the gentlemen who came in at 1:45AM posed no threat to us, but he did pose a threat to other people. I can't physically stop him from leaving but I can do what ever I can to discourage him. At the point that I lose control of that, is when I'm supposed to call the station. I couldn't keep him there but if I did he would have been there after 2AM. Its one of those situations that the other gentleman we were bringing home was there after 2AM and that was to prevent him from driving.

Mr Alonzo asked at what point did you call the station for the person who left.

Mr. Herrick replied that this all happened in a very short time span. He went outside with the 2 people who were to drive him; I'm not sure what happened at that time but he got in his car and took off. Alex the doorman was also out there and that's when he got on the phone and called dispatch.

Mr. Alonzo asked if Sergeant Hebert would like to make a closing statement.

Sergeant Hebert said that the door was opened for me by Lindsey and she told me that she had just got there to pick up her father.

Mr. Herrick spoke and said that she had left for 3 or 4 minutes to give someone a ride but she had been there all night.

Lindsey Achilla stepped forward, stated her name, and was duly sworn in by Mr. Alonzo.

Ms. Achilla spoke and said that she was the Manager on duty that night and was there all night. I left to bring a patron home and was gone maybe 7-8 minutes and in that time frame that I was gone was when the guy in the car showed up and that incident occurred. When I came back I spoke to Sergeant Hebert outside briefly and told him I just came back to get my Dad and get everything situated. I went inside, saw everything that was going on, told my Dad it was time to go, the bartenders were cleaning, there were still a couple of things left on the bar. I didn't observe anyone drinking, all my bartenders know they are not supposed to, and it's something I've been trying to instill in them. We are trying to do everything as we are supposed to, it does take a long time to break down entertainment, count banks, pay people etc...its a process to close the bar. Its not unusual for employees to still be there at 2:30AM depending on how busy it was and how much work we have to do.

Mr. Ebersole questioned the process of removing bottles from the bar.

Ms. Achilla replied that we clean off all the tables first, wipe the tables down then line the bottles up on the bar. Behind the bar we have empty cases and they have to be sorted between clear bottles, green bottles, and brown bottles and she explained the sorting process to the board. It's not unusual to have bottles on the bar. We don't have a dish washer, we have a hand one so it's not unusual for us to have a line of empty drink cups in our dish area and on top of the bar.

Mr. Ebersole asked if glasses and bottles are removed from in front of people.

Ms. Achilla replied yes. Our bar clock is typically set 10-15 minutes ahead of schedule so we can make sure we have everybody out when they are supposed to be. I have had instances at last call when people don't listen and I have to physically take the drink out of their hand. There is no alcohol served after 2AM. When an incident like this occurs, when someone shows up intoxicated, our focus shifts off of cleaning to make sure that this situation is being taken care of. We wanted to make sure that we didn't get in trouble, we didn't serve them and there was a lot of talk about this incident going on afterwards. To testify to what Sergeant Hebert said about us sitting around, we were going over what had just occurred and discussing what we did and if it was the right thing. I was just trying to reassure my employees that they did the right thing.

At this time Mr. Alonzo asked for closing remarks and there were none.

Mr. Alonzo declared this hearing closed and opened up board deliberation.

Ms. Bertram spoke to say that this was a big event, it was 2:26AM and as the Manager stated there is a lot to clean up after an event such as this. There was an incident that probably shook up the staff and they were talking about it when the Officer arrived. There were 2 or 3 individuals in the bar that should not have been there but based on what I've heard, I'm not concerned that they were being served alcohol at that point in time. The majority of the individuals on the premises at that time were employees or entertainers, and I don't believe that a violation occurred.

Mr. Matthews said that he thought that was plausible but there were indications that the licensee was over served and he's not sure how someone can manage a process even if their not on duty if they are over served so that's a caution. Ultimately at this point I would generally agree with Ms. Bertram.

Mr. Ebersole said his only concern was the liquor bottles on the counter in front of the patron or an employee, as opposed to in front of the sink. Since we don't have any evidence of actual drinking I'm not sure if we can give a warning. I think they took the appropriate action by calling the police and trying to get the person not to drive and that could have interfered with the normal flow. I think that last call means last call and as you get closer to the end you make sure there are no bottles in front of anyone.

Mr. Toale spoke and said in consideration of what Ms. Bertram said I agree that there were some extenuating circumstances but I believe that having people there that shouldn't have been there and the potential over serving the licensee could be considered violations that deserve a warning or a penalty.

Mr. Alonzo spoke and said that of the 4 points he thinks that the only one that is possible is Section 1.10 (d) of the regulations and that non-employees were there after hours. I don't see any indication that the Manager or an employee were drinking. I am more than willing to allow for extenuating circumstances with the disruption of someone who is clearly not able to drive afterward which would take 20 minutes away from the closing time. I'm not willing to allow for the defense that it was a big event and would take a while to clean up. You have the onus to close on time with the proper people being out or in. He believes that it is a fine line that the licensed owner was saying he wasn't on duty but did some managerial work. He recommended that in the future if Mr. Herrick was going to attend one of his own parties he does not do any managerial or ownership activities that might be construed as being an employee. He went on to say that he also does not believe that there is a violation in this case.

Ms. Bertram noted that the regulations under 1.04 (b) does state that they have 60 minutes after closing hour to complete what ever task they need to and in this case it was 2:26AM.

Ms. Bertram moved that the board finds that there was not a violation related to the incident report filed by the Lunenburg Police Department. There has not been a violation of MGL Chapter 138, Section 69; 204 CMR Section 2.01 (2); Section 1.04 (a) of the License Regulations of the Lunenburg Licensing Commission and Section 1.10 (d) of the same Regulations on 11/1/2013.

Mr. Matthews seconded for discussion.

Mr. Ebersole stated that he had 2 problems with this. The first being whether Mr. Herrick is being considered an employee or a manager when the manager is on duty. It states that a manager or employee is not allowed to consume alcoholic beverages and if he is operating as a manager there is a violation there.

We did not have evidence of drinks being consumed but a drink being in front of somebody on the bar is what concerns me.

Mr. Matthew said the indication was that the clean up was done and that this was just a regroup to discuss the events of the evening and the work should have been done but there were still drinks on the bar and there's a contradiction there.

Mr. Alonzo said that what he heard in the testimony, was that what was being discussed, was the latter incident.

Ms. Bertram said that what she heard during the testimony, was that clean up was going on and they were discussing the incident that had happened. There is no testimony that anyone was seen consuming beverages. She did not hear that the clean up had been completed at 2:26AM.

Mr. Ebersole asked for general clarification on what license holders are allowed to sit around the bar afterwards. Customers are supposed to be out, employees can be there, but the question is someone sitting around the bar with drinks in front of them. Who is supposed to be in the bar, I assume it's supposed to be only employees. If the entertainers are sitting at the bar too, I believe they have turned into customers. I'm struggling with how we are supposed to give guidance to license holders about what they are supposed to be doing. At last call they are supposed to be taking the drinks away, at closing time there should be no drinks out and there should be no patrons other than employees.

Attorney Riley spoke to say that Chapter 138 section 12 states that a manager can be on the premises at any time but employees after hours are only allowed to be on for the purpose of cleaning, making renovations/repairs, preparing food or otherwise closing down for that day or preparing for the next day. The board's regulation add that employees can only be there for 1 hour after closing, but only to do those things. Any employee that's there after 2AM should be doing their job and when the jobs done they need to leave.

Mr. Ebersole spoke to say that there were indications that some of the people there were not employees. He believes that there was indication of drinking which cannot be proven but believes the violation comes with people in the building other than employees.

Mr. Alonzo asked Attorney Riley if there was any determination in the statute about what a license holder qualifies as. Attorney Riley replied that it says the licensee or the manager should not be prohibited from being on the licensed premise at any time. They are not allowed to be consuming alcohol after hours but they can be there.

Mr. Toale spoke to say that he believes that what he heard in the testimony was that there was 3 drinks in front of 3 specific people. There were people in the bar that shouldn't have been in the bar and that's where the violation is. Because of the extenuating circumstances I'm fine with perhaps a warning but I do believe there was a violation.

After due and diligent discussion concerning the interpretation of the 4 potential violations, board members agreed that there was a "technical" violation committed concerning the Lunenburg License Commission Regulation of Section 1.04 (a).

At this time Ms. Bertram withdrew her previous motion and Mr. Matthews withdrew his second of that motion.

Mr. Ebersole moved that the board finds that there was a violation of the Lunenburg License Commission Regulation 1.04 (a) and no other. Mr. Toale seconded. On vote motion carried, 5 in favor, 0 opposed.

Mr. Matthews moved to recommend a written warning be issued to the license holder concerning the violation of the Lunenburg License Commission Regulation 1.04 (a). Mr. Ebersole seconded. On vote, motion carried, 3 in favor, 2 opposed (Alonzo & Bertram).

**8:00 PM Alcoholic Beverages License Hearing, License #063600039, B&H Corporation, 324 Electric Avenue-Incident Report filed by Lunenburg Police Department regarding alleged violation of MGL Chapter 138, Section 69 (Sale or delivery of alcohol to intoxicated person); 204 CMR Section 2/01 (2) (Permitting and disorder, disturbance or illegality of any kind in or on the licensed premises); Section 1.04 (a) of License Regulations of the Lunenburg Licensing Commission (Operating and allowing drinks to be consumed after mandatory closing hour) and Section 1.10 (d) of the Regulations (Consumption of alcoholic beverages on licensed premises by manager or employee). Date of alleged incident – 12/15/13:** Mr. Alonzo read into record the Alcoholic Beverages License Hearing notice for License #063600039, B&H Corporation, 324 Electric Avenue regarding an incident that happened on 12/15/2013 which was filed by the Lunenburg Police Department. He asked all who were testifying to approach the board to state their names for the record. Officer Broc of the Lunenburg Police Department, Robert Herrick, owner of Mickey Sheas and Lindsey Achilla, manager of Mickey Sheas all stepped forward, stated their names, and were duly sworn in by Mr. Alonzo. Mr. Alonzo then preceded to explain the procedure of the hearing to all present.

Officer Broc began his testimony on the events that happened concerning this hearing. Officer Broc stated that on the morning of 12/5/2013 at approximately 2:45AM he along with another officer who was in a cruiser in front of him were responding to a call. The other Officer, Officer Ayles notified Officer Broc that there were a few cars in the parking lot of Mickey Sheas, assured Officer Broc that he would handle the call and asked Officer Broc to look into the vehicles in the parking lot. Officer Broc pulled into the parking lot and

saw that there were 8 cars in the parking lot, 3 of which were running. He noted that there was a substantial amount of snow at that time. He entered the establishment, the lights were on, and the bar was being cleaned up at that time. There were approximately 11 people in the bar, he saw Mr. Herrick, and informed him it was well after closing time. Mr. Herrick replied that he knew that, everyone is leaving now and they are cleaning off their vehicles. Officer Broc informed Mr. Herrick that he had 10 minutes to have everyone out of the establishment and then left the premises. Officer Broc went to assist Officer Ayles and when he returned to the establishment approximately 10 minutes later all had left the premises. Officer Broc noted that there were no alcoholic beverages on the bar or on the tables and he did not see anyone drinking. The only items on the bar were food from a party.

Mr. Ebersole asked Officer Broc if he found out who the parties were that were inside of the establishment.

Officer Broc replied that he did not. When he walked in he saw that Mr. Herrick was behind the bar, spoke only to him, did a quick observation and then left.

Mr. Matthews asked Officer Broc besides Mr. Herrick, what were the 11 people doing.

Officer Broc replied they were getting their coats on and preparing to leave. I was responding to a call, which I was concerned with, and I just wanted to get in to let them know it was past closing time and people had to leave.

Mr. Alonzo asked Officer Broc if he was familiar with the people who work there.

Officer Broc replied that he was familiar with Mr. Herrick, Lindsey, and Julia. He did not see Lindsey and he believes that Julia was off to the side of the bar and once he saw the owner, spoke to him only about the fact that it was well after closing and that people needed to leave. Officer Broc said that Mr. Herrick was well aware of that and people were leaving as he was going in to the establishment.

Mr. Herrick began his testimony by saying that on the 15<sup>th</sup> of December was our 1<sup>st</sup> significant snow storm. We had pre-arranged an employee Birthday party, there was a lot of food brought in, and because of the inclement weather we only had 5 employees with their guests. Last call was done and nothing was served after 1:45AM. What I did do, and it was my decision, was to let the guys go out to clean off and start the cars and to shovel out the area. While that was going on, we were packaging up the food. We could have been out of there earlier. Earlier that evening the person who plows the plaza for Lakeview stopped by to make sure there would be no cars left in the parking lot. The guys that were there were the ones who went out to clean off the cars and shovel them out and while that was going on, inside we broke down the buffet tables and put the chairs and tables back. We could have probably gotten out of there at 2:20AM or 2:30AM but there was a lot of snow and ice and we let the cars warm up before we left.

Mr. Alonzo asked Mr. Herrick who the 11 people in the bar were that evening.

Mr. Herrick replied that pretty much it was the 5 female bartenders with their significant others. There was nobody there that didn't work there or come with a spouse and I did not have a customer walk in.

Mr. Alonzo said that our Licensing Regulation is pretty clear that you can only be an employee.

Mr. Herrick replied that he understands that. I'm the one that made the decision that they could stay longer to let the cars warm up. Everyone was plowing and seemed to make sense to let the cars defrost.

Mr. Alonzo asked Mr. Herrick if it had crossed his mind that considering the weather and the fact closing time is 2AM that they should have started that at 1:45AM.

Mr. Herrick replied that it did not.

Attorney Riley spoke to say that in respect to this notice there are probably a couple of charges in there that do not belong there and we are looking at regulation 1.04 (a) again which concerns non-employees on the premises. He went on to say that the Town's regulation and State Law says employees are only allowed to be there if they are working, and this was 45 minutes afterwards.

Mr. Alonzo asked for any closing remarks, there were none, he declared this hearing closed, and the board entered deliberation.

Mr. Alonzo began by saying that this hearing is completely different then the previous one. Mr. Herrick knew it was snowing and that is not an extenuating circumstance. There was ample time to get an ample start so that everyone was out that did not need to be there, by 2AM. Mr. Herrick's decision to allow them to stay until closing time and beyond to attend to their vehicles is a clear violation of this particular section of our regulations.

Mr. Ebersole spoke to say that he agrees and moved that the board find that there was a violation of the Lunenburg License Commission Regulation 1.04 (a) and no other charges. Mr. Matthews seconded. On vote motion carried, 5 in favor, 0 opposed.

Discussion ensued among the board members regarding what penalty should be determined for this violation.

Mr. Matthews viewed this issue similar as the previous hearing felt that a warning should be issued.

Mr. Alonzo said that he disagrees and said that unlike the previous hearing, this is a clear violation.

Ms. Bertram stated that she agrees with Mr. Matthews. She said that she did not agree in the previous hearing because she felt there were extenuating circumstances and in this case I feel that there was a violation and I feel that a warning in this case would be appropriate.

Mr. Ebersole spoke to say that warnings do constitute an action taken by this board so if there is a violation in the future we can refer back to this as an action that we took. He assumes that if this activity continues then we can certainly escalate the violation penalty at a later point.

Attorney Riley spoke to say that the statutes don't talk about this but cited section 1.14 (a) regarding Liquor License Sentencing Guidelines in the Lunenburg Regulations. He went on to say that in case you have found a violation and you're choosing to give a warning which he thinks is entirely appropriate. These warnings are on their record now.

Mr. Toale stated that he agrees with Mr. Ebersole and that in the future a similar offense on this statute would constitute a 3<sup>rd</sup> offense.

Mr. Alonzo noted that the repeal of the previous appeal would make this the 3<sup>rd</sup> violation in approximately 6-9 months.

Mr. Toale clarified that his point was the 3<sup>rd</sup> violation in this particular statute.

Mr. Alonzo said that he believes that the penalty must be more punitive than a warning. Mr. Herrick made the voluntary decision to let people stay there and it's the 2<sup>nd</sup> violation. Technical violations are violations and we need people to follow the guidelines.

Mr. Alonzo asked Counsel if part of the penalty be that the establishments closing hours be changed.

Attorney Riley replied that what the statute says is that you have to allow any on premises license to stay open until 11PM. Between 11PM & 2AM is local discretion. You can reduce someone's operating hours but it takes a separate hearing with a separate notice.

Mr. Alonzo clarified his question to say change the hours for just 1 day.

Mr. Riley answered that he is hesitating because in chapter 138 section 12 it specifically talks about "permanently" but you would need to give someone specific notice that this was to happen and right now he cannot answer that question.

Ms. Bertram spoke to say that given the circumstance there was no alcohol, she agrees there was a violation and an action is warranted. Ms. Bertram moved to issue a warning to the license holder. Mr. Ebersole seconded.

Mr. Matthews spoke and said that on 9/17/2013 we were here discussing the change of manager, 11/1/2013 was the 1<sup>st</sup> offense of after hours activity, and 12/15/2013 was the one after. We are here every 45 days to re-visit. I'm in favor of this but obviously there is some history and trends and we don't want to be back here again.

Mr. Alonzo spoke to say that concerning the prior appeal to suspend the Alcoholic Beverage license of this establishment, he feels it was an incredibly generous suspension that was given by the BOS and this is yet another generous lack of suspension given by this board. He will vote for it but thinks it should have been suspended for at least part of the day if not the entire day.

On vote, motion carried, 5 in favor, 0 opposed.

Mr. Alonzo also informed Mr. Herrick of the suspension dates of the previous matter concerning the license suspension stated that they will also be notified by mail.

Mr. Matthews noted that we spend a lot of time going through our policies, including alcohol policies, and he feels that if there are policies in there that board members feel are just technicalities that are not worth enforcing then perhaps we should eliminate them. He feels there is no point in burdening establishments in town with policies if they are just technicalities and not worth enforcing.

Mr. Alonzo replied that he did find them in violation on the 2<sup>nd</sup> one and that were extenuating circumstances on the 1<sup>st</sup> one.

Mr. Ebersole suggested having a workshop to review the policies of enforcing liquor license laws and violations.

Attorney Riley spoke and said that Kopelman & Paige do come in to do seminars, generally free of charge for the client, on a variety of things. The ABCC will do regional things on occasion.

Ms. Speidel added that the ABCC's training is very infrequent and more for staff in processing the paperwork.

Mr. Ebersole also added that he would like for the training to give guidance to Police Officers in how the board will vote and that they know what they should or should not be doing, as well as something for the license holders.

Ms. Bertram revisited the comments regarding it being a "technical" violation saying that she found that in the 2<sup>nd</sup> hearing it was a technical violation but that in the 1<sup>st</sup> hearing there were extenuating circumstances. Although she did find that there was a violation she did not feel it was appropriate to issue a warning. She believes it is a good regulation and it needs to be enforced which is why she voted to issue a warning on the 2<sup>nd</sup> hearing.

## **CURRENT BUSINESS**

**1. Acknowledgment of Appeal of BOS decision on 9/17/13 to suspend Alcoholic Beverages License #063600039, B&H Corporation, 324 Electric Avenue and/or vote to re-impose 2 day suspension:** The applicant, Robert Herrick, was not present for this procedure. Ms. Speidel reviewed the history of this item with the board. She explained that Mr. Herrick had the opportunity to appeal the BOS decision with the Alcoholic Beverages Control Commission (ABCC) and he did file a timely appeal with them and on the advice of Counsel, the BOS decided to stay the 2 day suspension pending the outcome of that appeal. The appeal was scheduled before the ABCC for 1/15/2014 and on 1/10/2014 Mr. Herrick decided that he did not want to go forward with the hearing and it was cancelled.

Ms. Speidel stated that the BOS may now go forward with choosing a new date for imposing the 2 day suspension.

After due and diligent discussion Mr. Matthews moved to suspend the Alcoholic Beverage license #063600039, B&H Corporation, 324 Electric Ave on February 14, 2014 and February 15, 2014. Mr. Toale seconded. On vote, motion carried, 5 in favor, 0 opposed.

**2. Review & Approve Automatic Amusement Device & Weekday Entertainment Licenses for Primetime Pub, 5 Summer Street, Unit 10:** Ms. Speidel explained that the requests before the BOS this evening were for automatic amusement device licenses for 5 machines and for a weekday entertainment license. The applicant was not required to attend the meeting this evening, the application is complete and the fee for the licenses will be paid upon issuance.

*Discussion:* Mr. Matthews stated that everything looks to be in order and he would support this request.

Ms. Bertram moved to approve the Automatic Amusement Device and Weekday Entertainment Licenses for Primetime Pub, 5 Summer Street, Unit 10. Mr. Matthews seconded. On vote, motion carried, 5 in favor, 0 opposed.

### **3. Open Warrant for Annual Town Meeting & Review Schedule:** Continued to the 2/4/2014 BOS meeting.

Ms. Speidel informed the board that the schedule for the warrant has not been completed yet. She requested to have a special BOS meeting on 1/28/2014 to take care of this matter and mentioned that there was another of other items that could be added to that agenda such as Board/Committee appointments, Public Access Cable Committee (PACC) quorum issues, and negotiating a new Cable License Franchise.

After discussion among the board members they all agreed to not post a meeting for 1/28/2014.

Mr. Alonzo reminded all of the openings on the Personnel Committee and PACC and encouraged people to get involved.

### **4. Minutes/Warrants/Action File Issues**

Minutes: 12/17/2013

Warrants: 1/21/2014 W#38-14 \$544,404.78

Action File Issues: Mr. Ebersole requested that a status update regarding the abandoned gas station in the center of Town be placed on the BOS agenda for further discussion. He also requested an update on the status of the Bylaws Codification.

### **5. Committee Report: Board of Health; Building Reuse Committee; Capital Planning Committee; Finance Committee; Library Board of Trustees; MPO; Planning Board; PACC; School Advisory Committee on Acceptance & Diversity; School Committee; School Building Committee; Sewer Commission; MA Broadband:**

Board of Health – Mr. Ebersole reported that the Board of Health (BOH) had met for normal review of several items. They asked for clarification if they had the authority to not issue a Food Service Permit before the BOS issue a Common Victuallers license, if the applicant's taxes were unpaid.

Ms. Speidel replied that it's a Local Acceptance Statute and it is State law that the Town can withhold licenses and permits for failure to pay taxes or fees and this would cover the BOH permit process as well.

Building Reuse Committee – Mr. Toale reported that this committee is awaiting any future charter as result of the recent vote. Mr. Toale requested that this should be a BOS agenda item for discussion on whether or not to continue with the same committee and how to conduct the activities of this committee in the future.

Capital Planning Committee – Mr. Toale reported that this committee has presented its final prioritizations to the Town Manager and their task is completed until the budgeting cycle begins.

Ms. Bertram requested the Prioritization List be distributed to the BOS for examination before the Town Manger budget recommendations were given.

Ms. Speidel agreed to do this.

Finance Committee – Mr. Toale reported that this committee continues to work on their Policies and Procedures, they had reviewed the Snow & Ice deficit with the Town Manager, set the agenda for the 1/23/2014 meeting to do a deficit spending authorization, and are preparing a schedule for the budget season.

Library Board of Trustees– Mr. Ebersole reported that this board met last Thursday where they adopted their budget and will be requesting no more than the required amount to meet State requirements.

In regards to technology, they are looking forward to the Broadband access and are looking to terminate the Comcast service. They were also curious as to what the cost will be to them by the provider through Mass Broadband.

The Library Director's Evaluation form is in the process of being updated.

A new "robust" webpage will be released for the Library very soon which will allow the public more access to the C/W MARS system.

MPO- Ms. Bertram reported that discussions have begun regarding the 2016/2018 Transportation Improvement Program (TIP). The 25% Design Analysis has been submitted for the Summer St. project and is currently being reviewed by the Massachusetts Department of Transportation (MassDOT). Concerns arose regarding the funding for this project that come from a variety of different sources and in order to make sure the project will qualify under all of the standards Montachusett Regional Planning Commission (MRPC) will need a copy of the Functional Design Analysis which they have not received yet.

There is also a list of projects that all have numbers but have not been slated for funding, in any of the funding years yet. After reviewing the list, Ms. Bertram did not see the Chase Rd. project listed. Ms. Bertram met with Jack Rodriquenz, Lunenburg Public Works Director, to discuss this issue, Mr. Rodriquenz followed up with Trish Domigan from VHP and she indicated that she would forward the Functional Design Analysis so it can be qualified.

An engineer had submitted a "Project Need" for Chase Rd. and MassDOT raised concerns with crash data associated with the intersection at Chase & Northfield Rd. along with the intersection at Chase & West Townsend Rd. Ms. Bertram is hoping that this will not trigger another review with additional design work because it originally was considered a "book job" which would mean basically "resurfacing" vs. a "full blown design". She is currently waiting to hear on how this will proceed.

Planning Board- No report

PACC- Mr. Ebersole reported that PACC will be meeting on 2/3/2014 and a member has announced that she will be resigning at that meeting. Two other members terms will be ending in June and this committee will be looking at quorum issues regardless of how many people are left on this committee.

School Advisory Committee on Acceptance & Diversity- Mr. Ebersole reported that this committee had met, organized their officers and discussed various things that they would be covering. He mentioned that the School has already done a great deal of work on this subject along with the parents, students and teachers. This committee will be working with them in an "advisory" capacity.

School Committee- No report

School Building Committee- Mr. Matthews reported that this committee met last week and they updated all of the contracts. The next phase will be the final design of the building. He noted that there is an opportunity for local vendors who are qualified to be involved and if they have an interest they should stay on top of this to see when the pre-qualifying bid process will begin.

Sewer Commission- Mr. Ebersole reported that this commission met on 1/14/2014 where they reviewed a request to extend the sewer district beyond what was mapped out in the Comprehensive Waste Water Treatment Plan. They have asked the applicant to bring in documentation of why it would need to be extended.

There is a meeting scheduled to review their budget and they are also looking at the flow meter reading remotely and how we are actually going to be charged for the amount of sewerage going into Fitchburg & Leominster as opposed to the water that goes into the various houses and how to maintain the quality of the meter readings so as not to get overcharged.

In regards to the grease trap process the schools have done all of their cleaning & reporting but there are still some properties that are still not in compliance with the reporting requirements.

MA Broadband- Mr. Alonzo reported that the initial project is coming to an end. Almost the whole project is lit and whatever is not will be done by the end of this month. The first thing to be connected will be the community anchor institutions (public buildings) which have lines directly to the buildings. It will then become just a matter of working with the service providers. Mass Broadband has handed off the running of this to Axia, which is the company that is running the fiber network. Axia is working with service providers who will be connecting the public buildings which will come at a cost. Mr. Alonzo has signed off of this project and has given all information to the Town IT Director, Steve Melandrinis, and he will be working with them from now on. The next phase of the project is waiting for funding at the State House and is called "The Last Mile".

## **6. Town Manager Reports or Department Reports:**

**\* Update on Solar Projects/Net Metering Credits:** Ms. Speidel stated that originally we were going to purchase Net Metering credits from both projects. When NuGen bought both projects requested that the Municipal project be moved to Chase Rd. and they do a private project on West St. Because of the size of the project on Chase Rd., it was able to be classified as a Class III project and the result is that instead of us working with credits, Unitil will determine what the electricity is worth and will pay that over to the Town in a check. We will receive 100% of the value of the electricity, turn 85% of that over to the developer, and we will retain the remaining 15%. We will not be working with credits, we will be working with cash. This is the same deal for the Town but we will receive 100% of the excess value and we will not have credits to sell which will make it easier on the Town.

Assuming that the project is going to produce what it says it will, approximately 2.85kw hrs on an annual basis, with the estimated value of 18.6 cents per kw, we are looking at about an \$80,000 savings to the Town on an annual basis.

The Town of Townsend was notified today of this development.

Mr. Alonzo asked if Unitil was the sole determining factor in whether we get credits or they buy out in cash.

Ms. Speidel replied yes. Because of the size of the project it's now a Class III and this is the way they handle Class III projects.

Mr. Ebersole asked how Unitil values the electricity and how do we document that it is being done correctly.

Ms. Speidel answered that they produce on a monthly basis a report that shows what the value is for each of those items. She will research this further with John Londa, Facilities Director of Schools.

**\* Update on Eagle Heights Project:** Ms. Speidel reported that she has been in touch with the Developer and they are working with MassDevelopment along with related entities to try to secure State financing. Currently they are struggling to finance this project. Ms. Speidel informed him that the BOS is anxious for a resolution on this and that they are nearing the end of the land development agreement. The Developer will be able to update the board at the 2/4/2014 BOS meeting. She also mentioned to him the Passios building and he seemed interested in looking at that building. Ms. Speidel requested that he look at it before the 2/4/2014 BOS meeting.

Ms. Bertram commented to say that while she thinks that Eagle Heights is a good project that she supports, she remains concerned about the length of time that the building has been vacant. She would like to see firm date on whether or not this project is viable and explore what the other options are. She would be willing to listen about the Passios building but would not be willing to enter into an agreement that would hold that building vacant. We can't afford to wait years for them to secure funding and we need to start looking at proposals for the Passios and the Primary School building.

Ms. Bertram asked if there were any definitive concessions that the developer was requesting from the Town and would like for them to bring them to the 2/4/2014 meeting.

Ms. Seidel replied that the developer had mentioned water/sewer connection fees & building permit fees. The Sewer Commission is willing to waive what they could.

Ms. Bertram mentioned that they were also looking for a PILOT (Payment In Lieu of Taxes) agreement and would like to see a list of concessions at the next meeting for review.

Mr. Matthews and Mr. Alonzo both agreed with Ms. Bertram's concerns.

Ms. Speidel informed the board that the Town has applied for 2 District Local Technical Assistance (DLTA) grants through the Montachusett Regional Planning Commission (MRPC). MRPC receives funding that they allocate out to communities to do work on our behalf. The Planning Board has put in a 3<sup>rd</sup> application to assist with the work they are doing on the Master Plan and Ms. Speidel has submitted one for Regional Animal Control. She has spoken with Town Manager's and Administrators in other communities about this and there seems to be some interest. There is a grant available State wide for Regionalization projects and if this is approved there could be funding for building a facility and for additional costs of animal control.

Ms. Speidel reported that the representative from MIIA (Massachusetts Interlocal Insurance Association) informed her that the Town will be receiving an "Excellence in Loss Control" award for our efforts over the last several years in implementing different programs and improvements in the DPW (Department of Public Works). This is an honor for the DPW and a representative will come to Lunenburg sometime in February to present the award locally. These programs and improvements were made possible to do with grants from MIIA.

**APPOINTMENTS/RE-APPOINTMENTS/RESIGNATIONS:** None

**PUBLIC COMMENT**

Mr. Ebersole mentioned that he had watched the last Planning Board meeting on television and they spoke about meeting with the BOS to improve communication concerning the difference in the BOS votes vs. theirs. He would like to have the BOS reach out to them in order to help this effort.

**EXECUTIVE SESSION:** Mr. Alonzo asked for a motion to enter into Executive Session citing A. M.G.L. Chapter 30A, Section 21A (3), to discuss strategy with respect to collective bargaining or litigation if an open may have a detrimental effect on the government's bargaining or litigating position, and the Chair so declares. Discussion of IBPO/Police Arbitration Cases. and B. M.G.L. Chapter 30A, Section 21A (6), to consider the purchase, exchange, lease or value of real property, if the Chair declares that an open session may have a detrimental effect on the negotiating position of the public body for discussion of value of Lane Property.

Mr. Matthews moved to enter into Executive Session. Ms. Bertram seconded.  
Roll call vote: Ebersole Aye; Toale Aye; Matthews Aye; Bertram Aye; Alonzo Aye

Regular Scheduled Meeting adjourned at 9:21PM

**UPCOMING MEETING SCHEDULE**

February 4, 2014  
February 11, 2014  
February 18, 2014

*Respectfully Submitted,  
Susan Doherty, Recording Secretary  
Board of Selectmen*