

November 9, 2015

Present was James Lehan, Scott Bugbee, Jack Hathaway, Town Administrator, and Marian Harrington, Executive Assistant. Jeffrey Palumbo was not present.

The meeting was held in Room 124, Town Hall. Jim Lehan opened the meeting at 7:00 p.m. Jim announced that the meeting was video and audio taped. Jack read the agenda contents.

### **JULIE MCCARTHY, DIRECTOR OF FINANCE**

Jack introduced Julie who is our new Director of Finance. She has been here for a few weeks. She has been in this position for 14 years, coming to us from the Town of Lynnfield. She is working with Julie Siewko who will retire in January.

### **MICHAEL BROGAN, RUN & GUN RANCH – ENTERTAINMENT LICENSE APPLICATION**

Present was David DeLuca, Town Counsel. Also present was Michael Brogan, 123 Seekonk Street.

Abutters were present. Jim Lehan told the audience that this is a meeting to discuss an Entertainment License.

David mentioned MGL 40A, Section 3 – Dover Amendment – general bylaws or zoning ordinances may not prohibit or unreasonably regulate primary purpose of agriculture. He said we have to define agriculture. MGL c128, S1A which mentions raising of livestock, including horses, as keeping and raising horses as a commercial enterprise. David said as a Board, we do not have the right to prohibit or restrict the use of this property. The premises do enjoy the privilege of having an agriculture use.

A working farm with a festival event seasonably centered around a commercial venture; it is still agriculture. The activities put forward for the subject of our entertainment license, falls around the protected agricultural. This is not untouchable as to our ability to restrict it. David said we are here to hear the appl., decide the merits and see if the license should be issued to allow the activity to go forward. It is Agricultural, but subject to restrictions.

David said we have scheduled a public hearing tonight, and should listen to the owner to see what he plans to do.

Jim said the license tonight would be through December 31<sup>st</sup>, because that is what the period of time is on this license. Anything scheduled further than that into the new year, would require a new license.

Michael Brogan said he has two events scheduled for this Sunday, November 15th and next Sunday, November 22nd. Both are barrel races, and begin at 11

a.m. The first run is 1:30 and will finish by dark, which is now 4:30. It is a three hour timed event. These are the only two events until the end of the year. Michael said the last barrel event was 17 people, but the spectators made about 30. They come and go; they don't stay. Parking is on the property – none on the roads. There is no food. There is a PA system for the announcer for the person and time. They run 6-8 seconds, load up and are done. It's a small sanctioned event. It's a small warm up for a much larger event.

Jack said he talked with the Police Chief. He hasn't had any complaints with traffic concerns. Jim said we are here only to discuss these two events.

Larry McEachern, 113 Seekonk Street. He asked why do you need a PA system for 17 people? Mike said because people are doing other things, and they need to be announced.

Larry Clarke, 130 Seekonk Street. Barrel races have nothing to do with your raising of horses. National Barrel Racing Assoc. puts this on, and you are the host. Whoever is putting this on should be applying for the license.

Jim said we have consulted with Town Counsel that he needs to apply for an entertainment license ONLY for these two events. Next year he would have to apply for other events he intends to hold.

David DeLuca said we have a premise only. He is the proper applicant. The Selectmen holds accountable the owner, as the event is being held on his premise.

Jim said the safety of the entering and exiting of the property would be a concern.

Dr. Carpenter, 120 Seekonk St. He has a host of concerns the Board needs to consider before granting this license regarding public safety and public health.

He said the location is 6.05 acres. 2 acres left for parking and 2 acres for contestant staging, etc. The max would be 35 trailers, 34 people per truck, and not even counting spectators. He thinks this number in this location would be a safety nightmare.

Dr. Carpenter wonders what type of liability Mr. Brogan would need associated with this license.

He said regarding the public health factor – any food services would require a permit by the Board of Health. Sanitation – is there adequate facilities for the number of bodies? The State must require so many porta-potties per persons. What about the horse manure?

Dr. Carpenter mentioned Environmental – what about the noise? This must be more than allowed by State. Dust? You need to water things down, but not enough. Has photos of what dust has been produced in the past and it's significant. Some trucks are diesel. May bother a person with COPD. Some big trailer will come over the hill and strike someone or an animal. Four to six cars a minute travel that road. It is a neighborhood with significant traffic. Did you consider facilities for spectators? What about alcohol? Contestants themselves. This is a rodeo event. You need adequate EMT and ambulance present. These riders could be injured or even killed. There can be significant damage by a horse. What about an evacuation route? What if there is an issue? How would you get them out? It spells disaster. Event control is needed and emergency personnel. It needs to be considered within the Town of Norfolk. The fact that Mr. Brogan has spent a lot of money on his property is not a concern that should be considered in granting this license.

Jim said that this is the first entertainment license that the Board has issued. It is new to us, and that is why we have asked Town Counsel to be present. In terms of the appropriateness of the site, we have no vote on that. It is within the agricultural use of the premises. The location is within the scope of the protected use.

Larry McEachern asked in terms of the appropriate use of agricultural, what is the definition, keeping of horses, or rodeo? Town Counsel has had similar interactions with this, how many have involved rodeo events and guns.

Jim explained that Town Counsel is very experienced throughout the State. There have been items that we do not have the privilege to debate this evening. That is why we have Town Counsel here. Town Counsel is advising the Board on this matter. Mr. Bullock is our Zoning Officer and has had advice from Town Counsel in making his decision. If you are not satisfied, you go to the Zoning Board of Appeals. If you are unhappy with them, the next step is you can go to Superior Court. That is your recourse if you do not like the outcome.

Jim said with respect to noise, traffic, etc., Chief Stone does not feel there is a need for a detail. There are no food services. We prohibit alcohol on this site. Jim asked Town Counsel what is the Boards consideration regarding safety. David said use your judgment based on what you have been given. See if it's reasonable. You may not feel it is necessary because of the nature of this event. You could have a small number of contestants, and expect emergency services to be needed. David said you are entitled to some help on this. Get help from people who have had more expertise on this than you have. Maybe the owner or applicant has access to more promoters who ran these events in the past, and have that comparison. Exercise the best judgment you can.

Scott said we have to craft all this by this Sunday, as that is the next event. Michael said the contestants can just show up, so he would have no idea how many people will be there.

Michael said they go to events in Tennessee, and there are 675 shooters present, and there are no emergency vehicles on site. He said if they get 35, he would be very excited. Maybe 25; it is not a big event.

Michael said he has liability insurance. He has event coverage throughout the year. He has boarders. They have porta-potties brought in for events, or they have facilities for the boarders. He will give the Board a copy of his liability insurance.

They have a \$15,000 sprinkler system that they run in the summer that takes care of the dust. It is run 16 hours in the heat. It's in the back arena, which is the main arena. They haven't run the sprinklers during the day. They run the area at night in the summer to control the dust.

Larry McEachern asked if you didn't require insurance, would the town be liable? Jim said we would require one day liability insurance in order to get the entertainment license. We do not need to be named. It's private property. We would require proof of coverage. Larry asked if you require a dollar amount? Jim said we would have a pretty good idea based on what we have done for other events.

Dr. Carpenter said he has extensive experience on rodeos, as he grew up with it. Accidents happen and some are very serious. If a 16 ton horse fell on you, it would be a very bad situation. Jim said he is required by law to have a paramedic on site at a hockey game. He is not sure we have to require medical staff at this event. Jim said the Fire Chief does not support needing medical staff at this event.

Larry asked if by issuing an event license and having made an informed decision not to have a medical person there, does it fall on the town. David said the Town knowing what it knew, it rests on whether the Town acted appropriately when it made its decision based on facts known at the time when the decision is made. David agreed this is not a typical event, and you should talk to someone informed to make the decision.

Michael said that in Raynham, the Town owns the land where the races are held. The Town is liable and they do not have medical personnel present.

Larry said Raynham is 138 acres, not 6 acres. You also said you are setting a precedent here, and you said you only have 5 days to make the decision here. Jim said we are not making the decision to whether he can or cannot have the event. We have no authority to prevent the event. We issue the license with restrictions around it.

David it is an agricultural event and within the scope of the Board's actions.

Larry said he thought we would be notified of any hearing. Jack said this is not a public hearing. He told everyone that our meetings are always posted online and you can register to have a notice sent to you regarding all meetings.

Karen Clarke, 130 Seekonk St. She mentioned the dust and irrigation system. Two acres of his property is his driveway. She is concerned about the dust and the huge amount. Michael said it is recycled asphalt that acts like asphalt. No more dust than Dr. Carpenter's dust driveway. Michael said he cannot control the weather, or the dust.

Karen wanted to give the Board information on decibel levels. The group all contributed to having a professional test the decibel levels. Jim said that we couldn't rely on your testing because we did not do it. We have to do our own testing. MGL, c 140, Sec. 181. The noise exceeded the DEP's noise guidelines – the crowd, the cheering, background noise of the event, P.A system, etc. They would like the Board to demand Mr. Brogan do the testing. Jim said we are protecting our rights, and Mr. Brogan's rights. We are trying to mitigate and we cannot go around the law.

Karen said she heard Mike does not need an entertainment license. Jim said no, he does need one. We would regulate hours, food, alcohol, traffic, liability, etc. We will do everything we can to try to not create any issues.

David agrees. It's protected by the agricultural exemption. You can reasonably regulate the activity. In the rare case that you cannot make the activity safe, I caution the Board that if you could not achieve some level of safety, he would not advise them to turn down a request for a license for an agricultural activity. It's quite strict.

Scott asked how can you monitor the noise. We have our own noise bylaw. David said while he respects the DEP and their standards, it is not a MGL that they recite. It is a standard or a policy. Norfolk has their own noise bylaw. David cautions the Board to not quote a noise standard.

David said any license is modifiable, suspendable, revocable, whatever. If circumstances arise, you can always go back and look at whatever is the license.

Karen thinks the town's noise bylaw is antiquated – 1960's. We do not have equipment for this. We would have to contract it out.

David said the standard cited by DEP is not a state law. It is a standard. The Town needs to be guided by the ordinance, as it is still our ordinance, even if it is outdated.

Bill Archibald, 127 Seekonk read a standard by DEP. Jim said the State makes many comments and policies and standards. It is only a recommendation. It is not law. Town Counsel has determined that.

Jim said we are all learning tonight. This is only the two barrel races we are discussing, not the events that brought you here originally.

Jim said we couldn't arbitrarily decide. Anything with traffic and public safety, we refer to the Chief. We asked the Police Chief about the safety of these events. He does not feel that details are necessary for these events. We do not overrule him. He is the public safety officer and we do ask him on every event.

Jack said they will draft the license so that if the Chief needs a detail or whatever, the license will give him latitude to do what he feels is required.

Someone asked what happens if the event happens without a license. David said that requires any like event be authorized. We could seek court assistance in a temporary injunction. We could shut down the event. These events require a license because he is charging an entry or admission fee.

On days he is practicing, we do not have the right to license him because he is not charging fees, and is not being compensated.

Jack said it has to be a show. Riding lessons or training is not a show. It would not require an entertainment license.

Dr. Carpenter asked is it the realm of the Board to require some type of noise testing. Jim said it is the discretion of the Board, but David said it is not a requirement and you should take caution in doing this. It is not consistent with other requirements you are putting on the license.

Dr. Carpenter is referencing the event noise, not the shooting itself. Is there a method where we request you do it? Can we request the Board do this? Jim and David said you have just done it.

Karen said noise is an environmental issue.

David said he prefers not to get into a debate with the constituents here. He said he has looked at the 7.0 that she mentioned. It is NOT a law. It is a policy.

Bill Archibald. You are aware of Chapter 11, sec 125A – above and beyond of normal use of farm equipment – such as spreading manure etc. Public is protected against nuisances. David said he didn't have it in front of him. Jack said it is under the Board of Health, and not an issue before this Board. It cannot be part of the license we are issuing.

Jim said he appreciated everyone coming in tonight, and said he hoped they understood the parameters we had to work with. We have boundaries we have to stay within. They can view the license in the office when it has been issued.

Jack asked Mike about events for next year. Mike said no events until an April timeframe. Jack said we need 45 days notice prior to each event, by law.

Scott Bugbee moved to issue an Entertainment License for Michael Brogan, Run and Gun Ranch, 123 Seekonk Street with conditions outlined for events on November 15, 2015 and November 22, 2015 as follows:

- Please provide the Board with a copy of your liability policy that will need to meet town standards. This must be in our office on or before Thursday, November 12<sup>th</sup>.
- No alcohol may be consumed on premises during event hours.
- A detail can be required at the Police Chief's discretion – before, during or after such event.
- Only one P.A. speaker is allowed.
- All parking must be on the property and not on the street.
- No food may be served unless a proper permit from the Board of Health is obtained.
- Hours for this event are 11 a.m. to 4:30 p.m.
- Water controls must be in place to minimize dust in all areas, including the driveway before, during, after the event.
- You must provide adequate access for public safety vehicles for the entire event area.

Jim Lehan seconded, and it was **so voted**.

## **TOWN ADMINISTRATOR REPORT**

### **Action Items**

Scott Bugbee moved to approve the Norfolk Lions Club Santa Parade for Sunday, December 6, 2015. Jim Lehan seconded, and it was **so voted**.

Scott Bugbee moved to hold the Special Fall Town Meeting on Tuesday, December 1, 2015 at 7 p.m. at the King Philip Middle School. Jim Lehan seconded, and it was **so voted**.

### **Discussion Items**

Jim would like an annual process to recognize an individual who has given a good deal amount of service to the Town. We would memorialize it for future boards. We will need to do it now and continue annually at the annual meeting.

Scott moved to approve a 4% increase on fees for plowing and sanding private roads and the KP Middle School for the winter of 2015-16. Jim Lehan seconded, and it was **so voted**.

Jack discussed the School Project. We are waiting for funding from the MSBA and then we will close out the project. Jack said that the neighbors are still complaining about the noise. A wall board was installed, but it isn't helping. We are hiring a Facilities Manager for the Schools and see if we can make this

sound issue a project that we will deal with, with Bob Bullock and the new Facilities Manager.

The Board discussed the Facilities Manager position with Jack, and how he planned on overseeing this individual. Jack said he and Ingrid would be the people over this position.

Jack said money coming back from the MBSB will be a half million to a million dollars. We had told the taxpayers we would give the funds back to offset taxes or whatever we feel necessary. Jack said we would find a way of giving it back. We could be putting it toward the public safety building, or another way. That gives it back to the residents.

Jack discussed the health insurance. Jim had gone to the meeting last week, and MIIA explained we are looking at a double digit increase. We are going to look at options, such as increasing co-pays etc.

Jim said he attended a CPC meeting to discuss the community garden. He will work with them to get this going. It is in the beginning stages and the Norfolk Lions have volunteered to get this started and do all the heavy work.

Jim discussed the Weeber property right-of-way. We need an access into the property. We would take this by eminent domain and give the state \$10,000 to hold. We never did anything to that. Now the Municipal Housing Trust has said they will put up the \$10,000 because they have two lots for affordable housing that they need the access road for in order to build on their lots. CPC fully supports this. We will put an article on the annual town meeting.

Jim said he would like to consider the old Town Hall and possibly restoring the building to its original state. We might have to fund some of this. It is not ADA compliant. It could be used for meetings maybe. We would try to put an article on town meeting, so we can do the work in the summer. We should try to get an estimate, and stay on this.

At 10:05 p.m., Scott Bugbee moved to adjourn the meeting. Jim Lehan seconded, and it was **so voted**.

This is a true and accurate report of the Selectmen's Meeting of November 9, 2015.

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Scott Bugbee, Clerk