

**Selectboard
May 30, 2018
Town Offices
Open Session
6 pm**

The open session of the Selectboard of the Town of Whately was called to order on May 30, 2018 at 6:00 pm by the Chair, Frederick Orloski with Selectboard members Jonathan Edwards and Joyce Palmer-Fortune present. Town Administrator Brian Domina was also present.

The Board approved the meeting minutes of May 9, 2018.

There were no comments from the public in attendance.

Public Hearing – Liquor License Transfer from Demetrios Konstantopoulos to Whately Investments, LLC

Selectboard Chairperson, Frederick Orloski read aloud the public hearing notice published in the Greenfield Recorder on May 18, 2018.

Chairperson Orloski asked the applicants to present their matter before the Board.

Attorney Edward Ryan representing Demetrios Konstantopoulos address the Board. He stated that Mr. Konstantopoulos has operated business for the last forty-five years and has decided to sell the business and to transfer the all alcoholic beverage license.

Attorney Tom Lesser representing Nicholas Spagnola and Julius Sokul addressed the Board. Mr. Lesser told the Board that his clients have experience in the field of operating restaurants and bars. He stated that his clients hold a liquor license in Boston for a restaurant and bar that seats 200 people. His clients do not intend to make any changes to the property at this time and he requested that the transfer of the license be granted.

Julius Sokul introduced himself as one of the co-owners.

Nicholas Spagnola introduced himself as the other co-owner and the manager of the establishment.

Mr. Edwards asked which restaurant the applicants own.

Mr. Sokul stated that he is the owner of the Kingston Bar and Grill located in the Financial District in Boston.

Mr. Orloski asked who would manage the establishment.

Mr. Spagnola replied that he intends to move to Whately or another location in Franklin County and will be the manager of the establishment.

Mr. Domina confirmed that the application to transfer the alcohol license appears to be in order. Mr. Domina confirmed that the certificate of good standing had been provided to the Town by the applicant.

Mr. Orloski invited those from the public to provide comments.

Joe Zewinski (59 Christian Lane) questioned the Board as to whether there were two licenses to be transferred tonight. He indicated that he only received notice for the alcohol license transfer in the mail.

Mr. Domina replied that the notification mailed to abutters should have contained two envelopes – one with notice of the alcohol license transfer public hearing and the other with the notice of the entertainment license

public hearing. Mr. Domina stated that it was his understanding that abutter notification is not required for the issuance of an entertainment license.

Mr. Lesser addressed the Board stating that public notice was provided appropriately and that nothing in the entertainment statute requires the Town to mail public hearing notices to abutters. He stated that there is abutter notification required for the alcohol license transfer, but not for the entertainment license.

Paul Newlin (Conway Road) questioned the Board as to what are the appreciable differences between the proposed establishment and the existing one, in terms of hours of operation, possible expansion, and the services offered.

Mr. Spagnola replied that the main work to be completed initially is to improve the exterior look of the building and to renovate the bathrooms to meet ADA standards. After seeing how the business operates, Mr. Spagnola indicated that he may try to bring good pub food to the establishment. Mr. Spagnola reiterated that there would be no nudity on Sunday.

The Board clarified the current hours of operation on the current license as 8:00 am to 1:00 am Monday through Saturday and 12 (noon) to 1 am on Sunday.

Joe Zewinski (59 Christian Lane) questioned whether the Board would allow the new owners to operate on Sunday because the establishment is currently closed on Sunday and Monday. Mr. Zewinski is concerned that the owners will operate the establishment seven days a week seeking to make back their investment and this will increase impacts on his property.

Mr. Edwards stated that he believes the Town is able to impose conditions on the alcohol license transfer, but not issue an outright denial.

Mr. Lesser commented to the Board that the entertainment license application is limited to Monday through Saturday and if open on Sunday will be operated similar to a sports bar with no nude dancing.

Paul Antaya (50 Weber Road) suggested that the Board put off the public hearing until town counsel can come to a meeting and assist the Board.

Mr. Domina informed the Board that it is within its rights to continue the public hearing or take time to think about the situation and make a decision at a subsequent meeting

Paul Newlin (Conway Road) expressed concerns about the safety of the Christian Lane and Route 5/10 intersection on which the establishment is located, especially with alcohol being served at the establishment. He suggested that if the license is transferred then the Town should look into improving this intersection.

Mr. Orloski expressed concerns about parking at the establishment and he wants to ensure that the vehicles are not obstructing the line of site for motorists passing through the intersection.

Mr. Edwards asked the public if they had concerns with the alcohol license transfer if, hypothetically, the entertainment license was not granted.

Joe Zewinski (59 Christian Lane) informed the Board that he would have still have concerns because of the noise from the establishment. He stated that his backyard is not usable for guests because of the foul language coming from the establishment and the motorcycles ripping out of the parking lot late at night. He believes that much of the noise comes from the smoking lounge and his belief that alcohol is being brought out their which he believes violates the agreement for having the lounge.

Sheila Zewinski (59 Christian Lane) informed the Board that in the interest of being neighborly when there was a noise issue in the past she would personally call the establishment and ask them to stop the noise so she did not

call the police. Ms. Zewinski expressed concerns about expanding the hours of operations and suggested that the Board consider the identity of Whately and what it is as a community.

Mr. Spagnola stated that he will be very responsive to the concerns of abutters and neighbors and is always reachable if concerns are raised. He stated to the Board that he is looking to make a substantial investment in the property and intends to be a good operator and is committed to finding solutions.

Rebecca Jones (185 Chestnut Plain Road) stated that as a woman she would love not to have a strip club in Whately.

Mr. Lesser reminded the Board that the existing alcohol license is a seven-day week license and the current operator is simply choosing not to operate it in that manner.

Mr. Edwards expressed his belief that there is room for discussion to work with neighbors and abutters and to address their concerns.

Ms. Palmer-Fortune made a motion to continue the public hearing to June 13, 2018 at 6:00 PM at the Whately Town Offices located at 4 Sandy Lane, Whately, MA. Second by Fred Orloski. Unanimous vote to continue the public hearing.

Public Hearing – Entertainment License to Whately Investments, LLC, Manager Nicholas Spagnola

Selectboard Chairperson, Frederick Orloski read aloud the public hearing notice published in the Greenfield Recorder on May 18, 2018

Chairperson Orloski asked the applicants to present their matter before the Board.

Attorney Tom Lesser presented the application and recited the applicable standard for the decision under M.G.L. c. 140 § 183A. He stated that his clients have no plans to conduct the business in any other manner than how it has been conducted in the past. He stated there is no anticipated increase in noise and no unreasonable increase in the level of vehicular traffic. He stated that the Board cannot deny the license because it is first amendment protected, but the Board can place reasonable restrictions on signage and on the activity itself. He stated that the establishment has been there for forty-five years and people in Whately have co-existed with it.

Mr. Orloski asked who the manager of the establishment would be.

Mr. Spagnola indicated that he would be the manager of the establishment

Paul Newlin (Conway Road) expressed concern that the employees be treated fairly and are protected. He expressed his concern that sometimes this type of entertainment can become shadowy and he wanted to be assured as a resident that people are well treated and not abused.

Mr. Spagnola stated that he had conducted interviews with the existing management and staff and he indicated that those he interviewed felt that the establishment has a lot of potential and they are excited for new ownership.

Sheila Zewinski (59 Christian Lane) told the Board that expanding the operations from five days to seven days will create significantly more noise because the new owners will want to operate the establishment daily and with that comes an increase in noise and traffic and because of this the Board should not grant the license.

Paul Antaya (50 Weber Road) questioned what type of experience do the applicants have in the adult entertainment business?

Mr. Spagnola replied that he and his partner have no experience in the adult entertainment business. He sees this as a great business opportunity and that he believes people in town want to see the business cleaned up.

Fred Baron (120 North Street) requested that the Board talk with town counsel about any case law that is instructive on this issue in terms of precedent in denying an entertainment license and also to determine what the costs might be of significant litigation.

Susan Baron (120 North Street) commented to the Board wondering why the applicant isn't proposing to run the same type of establishment that it operates in Boston? Why not operate a family friendly establishment with good food in Whately?

Mr. Spagnola indicated that he will be looking to find a balance in the operations between entertainment and food.

Paul Newlin (Conway Road) queried whether there was any requirement that entertainers be U.S. citizens and over 21 years old?

Mr. Edwards, speaking to the applicants, wondered how does the Board gain confidence that your skills in the restaurant business can transfer to something that is different and there exists the potential for a good amount of abuse.

Mr. Sokul replied that he has been operating businesses since he graduated college at 23 years old. He is a lawyer and has managed a real estate company with over twenty employees. He stated that this is a difficult business to get into, but that he and his partner have clean backgrounds and the knowledge to make it work.

Neil Abraham (194 Chestnut Plain Road) stated that he hears two different changes to the business. The first is an increase in the hours of operation and the second is an increase in customers due to the planned improvements. He wondered whether the applicants have a business plan that projects the anticipated increase in customers and how does one measure this increase against a reasonableness standard?

Mr. Orloski stated that the entertainment license is renewable each year and if it gets out of control the Board can refuse to renew the license.

Mr. Lesser commented to the Board that the statutory language reads that the business "can't be conducted in such manner under any circumstances". He stated that the five days of operations is the choice of the existing owner, but the existing licenses allow for more.

Mr. Sokul commented that in the restaurant business it is difficult to close one day and that it is important to have the ability to remain open seven days a week.

Mr. Konstantopoulos stated that he started closing on Mondays likely since the 1980s.

Sean Allen (Laurel Mountain Road) commented that regulations in state law and local zoning limit the lot size and potential expansion of the building, occupancy, etc... He wondered whether the Town could project what the increased traffic would be based on that.

Mr. Edwards wondered what the fire code allows for occupancy and whether there was an operational kitchen in the building?

Mr. Spagnola responded that there is space for a kitchen.

Mr. Lesser commented that the peak traffic time for the intersection adjacent to the establishment is likely 7:30 am to 9:30 am and 4:30 pm to 6:30 pm which does not coincide with the peak traffic time for the club.

Joe Zewinski (59 Christian Lane) commented that Attorney Lesser was making uninformed statements about traffic and that the Board should not rely on generalizations about traffic to make decisions. He stated that he needs to see traffic data before believing those statements.

Mr. Orloski questioned why the applicants were seeking to stay open until 2:00 am when the existing license ends at 1:00 am. Mr. Orloski expressed his concern about how the applicants would control liquor during that hour. Mr. Orloski asked the applicants why they applied for the additional hour.

Mr. Sokul replied that the entertainment license covers other forms of entertainment such as recorded music, djs and lights shows.

Mr. Edwards made a motion to continue the public hearing for the entertainment license to June 13, 2018 at 6:30 pm at the Whately Town Offices located at 4 Sandy Lane, Whately, MA.

Ms. Palmer Fortune questioned Mr. Spagnola on his plans to move to Whately from Boston and as to what makes Whately a special place that he wants to move here?

Mr. Spagnola responded that this is a good business opportunity and that he would like to pursue additional businesses in Whately based on recent zoning amendments that were adopted at the recent town meeting. He stated that he wants to live in the town to oversee the business and to be accountable.

Mr. Orloski seconded the motion made by Mr. Edwards. All three members voted in favor of continuing the public hearing.

Appointments:

John Hannum, the Whately Fire Chief, came to discuss the idea of requiring some type of permit for events that take place in town that either use town property or impact the public roads. Mr. Hannum felt that communication about the Mother's Day Half Marathon was lacking and would like for communication to be improved for future events. The Board agreed and asked the Town Administrator to look into what other communities are doing.

Tony Cignoli, Amy Royal and David Horgan came to discuss their plans to pursue the opening of a holistic themed marijuana establishment to be located in the Sugarloaf Shoppes. The Board encouraged the group to continue pursuing its idea and when plans are further along to return to the Board to discuss a host community agreement and to hold its community outreach meeting.

Stephen Herbert from Urban Grown, Inc. came to discuss his plans to open a marijuana establishment (cultivation) at 149 Christian Lane. Mr. Herbert requested the Board review the host community agreement previously submitted by his attorney. The Board discussed the agreement briefly and agreed that additional time was needed. The Board asked the Town Administrator along with Ms. Palmer-Fortune, Paul Antaya and Chief Sevigne to review the host community agreement and prepare a template document for the town to use.

Old Business:

The Town Hall project is continuing forward with the main focus now on the site work and finishing up work on the interior of the building,

The bidding on the 2009 Chevy Impala will end tomorrow so the Board will review the results at its next meeting.

New Business:

The Board signed the annual election warrant.

The Board signed the contract with FRCOG for the Highway Collective Purchasing program.

The Board voted to appoint Katherine Fleuriel to fill the vacancy on the Board of Assessors for the remainder of the term.

Town Administrator Updates:

None presented at this time

Executive Session:

Mr. Orloski read the executive session notice and the Board voted to go into executive session per M.G.L. c. 30A, § 21(a)(6) to consider the sale or purchase of real estate located at 219 Christian Lane, Whately, MA.

Roll Call Vote: Mr. Edwards – Yes, Ms. Palmer-Fortune – Yes, Mr. Orloski – Yes

Open session closed at 9:27 PM

Respectfully Submitted

Brian Domina, Town Administrator

Document List

Meeting Minutes – May 9, 2018

Application for Retail Alcoholic Beverages License from Whately Investments, LLC

All Alcohol License (2018) – Demeterios Konstantopoulos

Public Hearing Notice – Greenfield Recorder – May 18, 2018

Entertainment License Application from Whately Investments, LLC

Entertainment License (2018) - Demeterios Konstantopoulos

Whately General Bylaws – Adult Establishments

M.G.L. c. 140 § 183A

Public Hearing Notice – Greenfield Record – May 18, 2018

Email from John Hannum, Whately Fire Chief to Town Administrator, Brian Domina – May 15, 2018

Urban Grown “Draft” Host Community Agreement

Municipal Guidance – Cannabis Control Commission

Selectboard
May 30, 2018
Town Offices
6:00 PM

Executive Session Minutes

The executive session opened at 9:27 PM.

Mr. Orloski provided a brief update on the status of the sale of the Blue School between Frontier Regional School District and Bob Obear. The two parties are working on a purchase and sale agreement. The Town does not know when to expect notice from Frontier as to begin the period during which the Town would need to exercise its right of first refusal.

Mr. Domina reminded the Board that for the Town to exercise its right of first refusal it takes a town meeting vote to authorize the Board to purchase the property and to appropriate money for the purchase.

Ms. Palmer-Fortune emphasized the importance of having some type of development agreement with Obear before the Board agrees to sell the adjacent town-owned lot. Ms. Palmer-Fortune suggested that the town look to see if Obear has a development agreement with the Town of Montague.

Mr. Edwards expressed his desire that the Board be ready to move quickly when the notice from Frontier does arrive so that the town does not delay the process.

The Board agreed to wait for notice from Frontier before deciding on its intended course of action.

The meeting was adjourned at 10:03 PM

Respectfully Submitted

Brian Domina, Town Administrator

Document List

None