

**PORTSMOUTH TOWN COUNCIL MEETING
MARCH 14, 2016**

7:00 PM – TOWN COUNCIL CHAMBERS, TOWN HALL, 2200 EAST MAIN ROAD

MEMBERS PRESENT: Keith E. Hamilton, James A. Seveney, Kevin M. Aguiar,
Michael A. Buddemeyer, David M. Gleason, Joseph W. Robicheau
and Elizabeth A. Pedro

PLEDGE OF ALLEGIANCE

A moment of silence for the men and women around the world in harm's way.

SITTING AS THE PORTSMOUTH TOWN COUNCIL

SITTING AS THE BOARD OF LICENSE COMMISSIONERS

1. Request to Advertise for a Public Hearing:

Application to Transfer a Class BV Liquor License from SDT Enterprises, LLC, d/b/a Melville Grille, One Lagoon Way, Portsmouth, RI to Those Crazy Kids, LLC, d/b/a Gulf Stream Bar and Grille

2. Request to Advertise for a Public Hearing:

Application to Transfer a Class BV Ancillary Liquor License from NNGC Corp., d/b/a Newport National Golf Club, 324 Mitchell's Lane, Middletown, RI to Newport National Golf Club, Inc.

A motion by Mr. Seveney, seconded by Mr. Buddemeyer, to approve advertising for both petitioners to a date certain, April 11, 2016. All voted in favor of the motion.

3. Entertainment License:

St. Barnabas Church, Annual Festival and Carnival, 1697 East Main Road, June 24- 26, 2016

A motion by Mr. Seveney, seconded by Mr. Buddemeyer, to approve. All voted in favor of the motion.

4. Class F Daily Liquor License:

St. Barnabas Church, Annual Festival and Carnival, 1697 East Main Road, June 24-26, 2016

A motion by Mr. Seveney, seconded by Ms. Pedro, to approve. All voted in favor of the motion.

5. Victualler License – Specific Event With Fee Waiver Request:

St. Barnabas Church, Annual Festival and Carnival, 1697 East Main Road, June 24-26, 2016

A motion by Ms. Pedro, seconded by Mr. Seveney to approve with fee waiver. All voted in favor of the motion.

6. Victualler License – Specific Event With Fee Waiver Request:

Portsmouth Lions Club, PO Box 657, Portsmouth, RI for the Portsmouth Free Public Library Touch-A-Truck Fundraiser, Glen Park May 7, 2016

A motion by Mr. Seveney, seconded by Mr. Robicheau, to approve with fee waiver. All voted in favor of the motion.

7. Peddler License – Specific Event:

McGrath Clambakes, Inc., 64 Halsey Street #5, Newport, RI for the Beast of the East Rugby Tournament, April 16- 17, 2016

A motion by Mr. Seveney, seconded by Mr. Gleason, to approve. All voted in favor of the motion.

8. Peddler License – Annual:

Rhode Island Kona Ice, LLC, d/b/a Kona Ice of Warwick/EG, 4 Cider Lane, Greenville, RI

A motion by Mr. Seveney, seconded by Mr. Robicheau, to approve. All voted in favor of the motion.

A motion by Mr. Seveney, seconded by Ms. Pedro, to adjourn as the Board of License Commissioners. All voted in favor of the motion.

ADJOURN

PRESIDENT’S EXECUTIVE SUMMARY

President Hamilton thanked the City of Newport for hosting himself, Ms. Pedro, Mr. Gleason, and Mr. Kelly from the School Department at the St. Patrick’s Parade.

PRESIDENT'S EXECUTIVE SUMMARY- Continued

President Hamilton then reported that the Town Council met in Executive Session on February 22nd to discuss the litigation and a path forward and some direction on the Sakonnet River Bridge toll fight that they continue to be involved in at that point, no votes were taken on that issue. We also had a discussion on the Prudence Island Ferry and how far we were going to get involved in the increases. The Council voted 6-0 to argue that the increases were in excessive amounts and outside of what they had asked for in the previous year. And they also voted to become an intervener in the Aquidneck Reliability Project that National Grid is doing to replace all their poles up and down the middle of Aquidneck Island.

***At the Town Council Meeting of 3/28/16 Ms. Pedro requested these minutes be amended to add the following statement: "And they also voted 5-1 to become an intervener in the Aquidneck Island Reliability....."**

MINUTES

TCM 2/22/16 and Exec.

A motion by Ms. Pedro, seconded by Mr. Seveney, to approve the minutes of TCM 2/22/16. The motion carried 6-0 with Mr. Robicheau abstaining due to his absence.

A motion by Ms. Pedro, seconded by Mr. Seveney, to approve the Executive minutes of 2/22/16. The motion carried 5-0 with Mr. Robicheau and Mr. Aguiar abstaining.

BILLS

A motion by Mr. Seveney, seconded by Mr. Gleason, to pay all just and due bills in the amount of \$208,574.38. All voted in favor of the motion.

TAX VOUCHERS

Request Approval for Tax Vouchers #20160314-01 to #20160314-05. / M. Helfand

A motion by Mr. Seveney, seconded by Mr. Robicheau, to approve Tax Vouchers #20160314-01 to #20160314-05. All voted in favor of the motion.

TOWN ADMINISTRATOR'S REPORT

Mr. Rainer introduced and welcomed the Town's new Building Official Larry Desormier.

1. Facilities Management Partnership – The School Department’s Facilities Manager Mr. Davidson is retiring and Mr. Rainer is working with the School Department on a partnership to include a discussion of custodian services. There will be no effect on personnel in place and no out-sourcing of janitorial staff. There will be a 40-60 split in costs with the Town’s portion being 40%.
2. Comprehensive Community Plan Update – The Town’s strategy on the plan was presented to the State in March and approved. It was also approved by the Planning Board. A workshop by the Planning Board is scheduled for April 27th, with workshops to be held the last Wednesday of every month. Our current Comp. Plan is in effect until the new one is approved by the State. A citizen advisory committee will be organized. The Plan should be complete by the end of the year.
3. Matrix Tank Farm Study Update – Matrix presented its initial study to the Committee and will return to them on April 26th for a workshop. They intend to present their findings to the Council on April 27th in open meeting and executive session.
4. Transfer Station Update - The Solid Waste Recycling Committee is suggesting the re-installation of a container for E-Waste at the Transfer Station. They are also discussing the pros and cons of a private contractor for security; having workers to help people sort their trash; and investigating the viability of a carry in/carry out at Town parks.

RESIGNATIONS AND APPOINTMENTS

1. Resignations:

- a. Zoning Board of Review – J. Sherrod

A motion by Mr. Seveney, seconded by Mr. Robicheau, to accept with regret. All voted in favor of the motion.

- b. Board of Canvassers – J. Oltz Wilson

A motion by Ms. Pedro, seconded by Mr. Seveney, to accept with regret. All voted in favor of the motion.

2. Appointments:

- a. Conservation Commission (Re-Appt.) – A. Brown

A motion by Ms. Pedro, seconded by Mr. Seveney, to re-appoint Abigail Brown. All voted in favor of the motion.

b. Design Review Board (3 Vacancies)

A motion by Mr. Seveney, seconded by Mr. Aguiar, to appoint Cyrus Gibson. All voted in favor of the motion.

c. Zoning Board of Review (2 Vacancies)

Mr. Gleason recused himself from these matters.

1. Request Action to Elevate Kathleen Pavlakis to Full Member from 2nd Alternate

A motion by Mr. Seveney, seconded by Ms. Pedro, to elevate Kathleen Pavlakis to Full Member. The motion carried 6-0 with Mr. Gleason recused.

2. Appointment of 1st Alternate

A motion by Mr. Seveney, seconded by Mr. Robicheau, to appoint Eric Raposa as First Alternate. The motion carried 6-0 with Mr. Gleason recused.

d. Tax Assessment Board of Review (1 Vacancy)

1. Appointment of 2nd Alternate

A motion by Ms. Pedro, seconded by Mr. Seveney, to appoint Norbert Rattay as Second Alternate (Auxiliary) Member. All voted in favor of the motion.

e. Board of Canvassers (1 Vacancy – Must be a Bipartisan Board)

A motion by Mr. Seveney, seconded by Mr. Gleason, to appoint Regina Shers. All voted in favor of the motion.

A motion by Mr. Seveney, seconded by Mr. Gleason, to move all New Business forward to be heard before the Old Business. All voted in favor of the motion.

NEW BUSINESS

NB 1 - Request Approval and Financial Support to Relocate the Existing Scoreboard and Advance the Fence an Average of 17' to Bring the Lower Glen Softball Field in Compliance with Little League International Official Rules for Field Requirements.
/ S. MacDonald, VP Portsmouth Softball (10)

Ms. MacDonald reported that to meet the Little League requirements the field at Glen Park needs to be enlarged. This would require moving the fence, scoreboard, electrical and concrete as well as 60 yards of fill for right field. She has received quotes of \$7,940 to move the fence and \$4,560 to move the scoreboard, electrical and concrete. She stated that Little League International had granted them \$14,640 specifically for winter clinics, developmental instruction and to put a tunnel in (batting cage).

Finance Director Lathrop stated that the Town may have to go out to bid because the work is over \$10,000.

Mr. Gleason stated that he would feel better with three bids and Public Works Director Kehew involved.

A motion by Mr. Buddemeyer, seconded by Mr. Seveney, to approve up to \$10,000 to use from old capital projects and capital fund. All voted in favor of the motion.

President Hamilton added the caveat that the Little League must talk to Soccer since they would be taking some of the fields they use.

- a. Request Approval to Install a Batting Cage at the Lower Glen Softball Field.

A motion by Mr. Seveney, seconded by Ms. Pedro, to approve. All voted in favor of the motion.

NB 2 - Request Approval of Glen Farm Special Events Fields Applications. / T. Dunbar (10)

- a. Portsmouth Youth Soccer Assoc., Carlos Williams, 28 Prudence View Drive, Portsmouth, RI for Youth Soccer Tournament Dates of June 17-18, 2016; June 17-18, 2017; June 16-17, 2018; June 15-16, 2019; June 19-20, 2020

President Hamilton stated that this approval would not lock in the fees charged for future years.

A motion by Mr. Seveney, seconded by Mr. Robicheau, to approve. All voted in favor of the motion.

- b. UK Elite Soccer, Adam Corlett, 62 Main Street, Ste 201, Kingston, MA, for Summer Soccer Program August 1-5, 2016

A motion by Mr. Robicheau, seconded by Ms. Pedro, to approve. All voted in favor of the motion.

- c. John Tomlinson Soccer LLC, John Tomlinson, 114 Middle Road, Portsmouth, RI for Soccer Camp April 18-21, 2016

A motion by Mr. Robicheau, seconded by Mr. Seveney, to approve. All voted in favor of the motion.

- d. John Tomlinson Soccer LLC, John Tomlinson, 114 Middle Road, Portsmouth, RI for Soccer Camp July 18-21, 2016

A motion by Mr. Seveney, seconded by Mr. Robicheau, to approve. All voted in favor of the motion.

- e. John Tomlinson Soccer LLC, John Tomlinson, 114 Middle Road, Portsmouth, RI for Soccer Camp August 15-18, 2016

A motion by Mr. Robicheau, seconded by Mr. Seveney, to approve. All voted in favor of the motion.

NB 3 - Request from the Armenian National Committee of Rhode Island to Fly the Armenian Flag on April 24, 2016. / S. Elmasian (2)

A motion by Mr. Seveney, seconded by Ms. Pedro, to approve. All voted in favor of the motion.

OLD BUSINESS

1. PUBLIC HEARING: Discussion/Action – Proposed Amendments to Chapter 257 of the Portsmouth Town Code – Noise Ordinance: §257-5 Exceptions, Section L and §257-18 Sound Variances, Section C **Continued from: 12/14/15 (& 2/10/16 by Request of Petitioner)**
 - a. Petitioner’s Memorandum 12/8/2015. / R. Lantz, Owner, Bill’s Sales Firewood & A. Thayer, Esq., Sayer, Regan & Thayer
 - b. Petitioner’s Memorandum 2/2/2016. / R. Lantz, Owner, Bill’s Sales Firewood & A. Thayer, Esq., Sayer, Regan & Thayer
 - c. Objection to the Noise Variance Request 12/7/2015. / Mr. & Mrs. Tarney Waring, 30 Crossing Court

PUBLIC HEARING – Continued

- d. Addendum to Objection to the Noise Variance Request 2/1/2016. / Mr. & Mrs. Tarney Waring, 30 Crossing Court
- e. Letter in Support of Bill's Sales Request for a Commercial Sound Variance for Sound Beyond its Property Line of 75 Decibels from 7:00 am to 6:00 pm during their Business Days. / W. McGlinn, General Manager and Chief Engineer, Portsmouth Water and Fire District

President Hamilton stated that changing this ordinance would affect the entire community not just the location where Bill's Sales is located.

Attorney Adam Thayer, representing Bill's Sales, reviewed the changes in ordinances for that property over the past 35 years. He then listed the many remediation efforts done by the company including the moving of the splitter, the cement wall, and the acoustic fence. There would have to be a fundamental change to the business to keep the noise under 65 decibels. The Comprehensive Community Plan says that the job of the Town is to foster businesses like this.

Attorney Thayer asked the Council to grant an amendment to the Noise Ordinance to allow for a reasonable variance procedure and some sort of reasonable fee. He introduced sound engineer Joseph Fattore of VIBRA Sciences, Inc., Branford CT.

Mr. Fattore stated that he, at his first visit, had taken readings and recommended:

- a. The flexible sound barrier fence be increased by a height of four feet, which would bring the noise down ten decibels.
- b. The concrete barrier wall be heightened from 12 feet to 14 feet.
- c. All joints be mortared and fill with concrete.

Mr. Thayer stated that on the line of Bill's Sales' property abutting East Main Road the tire noise and the jake braking noise from trucks measures at 75 to 85 decibels.

Mr. Fattore stated that the kiln sounds measure at 44 decibels. Responding to questions from Mr. Gleason and Ms. Pedro, he stated that the sound barrier reflects the sound away from the home of Mr. Waring, the water department's tanks reflect noise as they are made of steel, and it would be a huge amount of money to lower the decibel level further. The concrete wall is about 15 feet beyond the building.

Mr. Thayer stated that the source of the noise is the wood entering the building and being processed by large machinery that is cutting wood and loading wood.

Mr. Fattore stated that a number of skid steers move the material in the back of the property.

Mr. Thayer added that they have now installed hydraulic arms on the skid steers so they do not rattle as they move around the property. And, in response to Mr. Aguiar, the loudest portion of the property at any given day is at East Main Road.

Mr. Fattore stated that the most excessive noise is less than a second in time.

Tarney Waring responded to President Hamilton that the noise level of the day to day operations has gone down with the new wall. The noise of the kiln fan is below the decibel levels but still goes throughout the night.

In response to Ms. Pedro, Mr. Waring stated that the Town should not amend the Noise Ordinance. As long as they stay true to form the noise has gone down.

In response to Mr. Robicheau asking Mr. Waring if he finds no reason now to complain that the activities and the noise resulting from Bill's Sales is a violation of the Noise Ordinance, that Bill's Sales has effectively corrected the problem, Mr. Waring answered, "right."

Mr. Waring stated that the business is certainly aware of past noise issues and consistent with past variances or special uses. There were conditions which should go into play, for example no machinery should be operational on holidays and Sundays a certain hour after the business day is done. Residents in the area need some peace.

President Hamilton stated that if we leave it the way it is and there are spikes we do not have enough police for monitoring that.

Peter Roberts, 80 Ormerod Avenue, asked why the Council wouldn't do anything about the Island Park noise and dust when there were complaints.

Attorney Thayer thanked Mr. Waring for the olive branch. He then stated their concern is if for some reason they fall out of favor or there's a momentary spike. He would like to request an annual variance for 67, 68 or 70 decibels where if they fail to comply with the variance it can be revoked so Bill's Sales doesn't have to come back again.

President Hamilton addressed his concerns that this would be an approval of a blanket change throughout the Town.

Mr. Thayer then asked the Council to make the ordinance better.

Mr. Robicheau suggested the Council make suggestions for the Solicitor to prepare and bring back for Council review and approval.

President Hamilton stated that the Comprehensive Community Plan is being reviewed and changes now may be in conflict with it.

Mr. Thayer suggested the Council just strike the \$50 fee. To initially take “the elephant in the room”, the fear of this massive fee, if they were to apply for a variance and be successful while still giving the Council time to draft some sort of comprehensive new ordinance.

Responding to President Hamilton, Town Clerk Mower stated that no applications for \$50 variances to the Noise Ordinances have come to the Clerk’s office.

Mr. Seveney stated that as we don’t do it for zoning why should we do it for this.

Mr. Buddemeyer suggested that we move forward with the Town Planner’s recommendation that he sent out to all of us.

Mr. Seveney stated that this could be fixed during regular business.

Ms. Pedro stated that we need a public hearing.

Solicitor Gavin stated if you wish to accomplish this tonight, you would just need to delete, under 257-18 Sound Variances Subsection C, the words “\$50 per day if granted” and “whether granted or denied.” Take out those words so then it would read “All applications shall be subject to a fee of an amount sufficient to cover advertising and notification.”

Ms. Pedro stated that that is not what was advertised.

President Hamilton stated that we need to have the Solicitor re-write the amendment. Since people may believe that this meeting is specifically for Bill’s Sales, he believes that we should at least put it out and advertise it as part of our normal agenda.

Solicitor stated that it doesn’t need to be advertised as it isn’t part of the Zoning Ordinance.

Nancy Howard, 16 Dianne Avenue, asked where we are in this meeting. What is happening to the request for a change in the Noise Ordinance?

President Hamilton stated that if we finish this public hearing and there is no action taken the public hearing will be closed and no action taken. The discussion between the Council right now is to go in and change the wording in the ordinance to remove the \$50 a day fee for a variance.

President Hamilton asked if there was any further public comment.

There was no further public comment.

A motion by Ms. Pedro, seconded by Mr. Seveney, to close the Public Hearing. All voted in favor of the motion.

No action taken.

CORRESPONDENCE

1. Outsourcing of Facilities/Maintenance Director. / A. Riley & R. Rainer
2. Letter of Appreciation on Behalf of the Extended Family of Pauline G. O'Brien. /M. O'Brien, Deputy Fire Chief
3. Resolution in Support of the Formation of a Coalition Among Rhode Island's Regional School Districts. / J. Christopher, Foster Town Clerk
4. Letter Stating that Rhode Island Housing Intends to File an Application With the Department of Agriculture, Rural Housing Service Under the Section 533 Housing Preservation Grants for Fiscal Year 2016. / C. Ventura, Deputy Director RI Housing
5. Invitation to Participate in the 33rd Annual Aquidneck Island National Police Parade, Sunday May 1, 2016. / G. George & F. Rosa, City of Newport

A motion by Ms. Pedro, seconded by Mr. Seveney, to receive all Correspondence and place on file.

A motion to amend by Mr. Gleason, seconded by Mr. Robicheau, to move item #1 to the next agenda. All voted in favor of the motion.

All voted in favor of the motion as amended.

FUTURE MEETINGS

March 28 7:00 PM – Town Council Meeting
April 11 7:00 PM – Town Council Meeting
April 27 7:00 PM – Town Council Meeting (Wednesday)

A motion by Mr. Seveney, seconded by Mr. Robicheau, to adjourn. All voted in favor of the motion.

ADJOURN

Joanne M. Mower, Town Clerk