

BOARD OF SELECTMEN – MEETING OF AUGUST 14, 2012  
HARMONY HALL

PRESENT – Cathy Richardson, Chairperson, Joseph DiRocco, Vice-Chairman, George A. Malliaros, Clerk, John J. Zimini, Glen Edwards, Asst. Manager/Town Planner, James A. Hall, Town Counsel and Barbara Souza, Recording Secretary.

The Chairman called the meeting to order at 7:00 p.m.

ABSENT – Recorded absent were Selectman Robert O. Cox and Dennis E. Piendak, Town Manager.

The Pledge of Allegiance was recited followed by a moment of silence being observed for all those currently serving in the military.

WARRANT APPROVAL – Motion by Mr. DiRocco and seconded by Mr. Malliaros, **it was unanimously voted to sign the warrant.**

Community Input – No one signed up to speak under community input.

Town Manager's Report – It was noted that the town manager is on vacation and Mr. Edwards would give a brief report on his behalf.

Mosquito Problem – Mr. Edwards said that many communities in the State are experiencing problems with either Triple E or West Nile Virus as is Dracut. Spraying was conducted in the Loon Hill Road area for about a mile radius and he cautioned residents to take protective measures against mosquitoes. Information may be obtained on the town's website. Mr. Edwards said that the traps will be continually monitored and more spraying may occur; surveillance capture areas are located in different areas of the town. He said information may also be obtained by contacting the Board of Health. More discussion and comments followed. High School Construction – The schedule and progress and how the phasing might impact the parking and such at the high school can be found on the town's website under "related links" on the home page; it will give the construction plans going forth. Town Hall- The architect firm of Johnson Roberts has been signed; he said they are the same architect who did the Parker Memorial Library and also noted that several town halls in other towns were visited to get some ideas.

AGENDA ITEMS – Tami M. Dristiliaris, President/Dracut Library Foundation re: Acceptance of Donation - Ms. Richardson read the correspondence which indicated that the Foundation voted to allot funding in the amount of

\$2,145.00 for the purchase of four additional computers for the Dracut Library and also voted to allot funding in the

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amount of \$1,665.69 for the purchase of durable signage for the library shelves.

On a motion by Mr. DiRocco and seconded by Mr. Zimini, **it was unanimously voted to accept the donations.**

James Volianites, 5-J's Chauffeur Service, 1696 Lakeview Avenue – Request for renewal of Livery License – Motion by Mr. Zimini and seconded by Mr. DiRocco, **it was unanimously voted to approve.**

Corinne C. Hickey, Actor's Inc. – Request for six one-day Wine & Malt Licenses – Ms. Richardson read the correspondence explaining that the Dracut Historical Society will be hosting a fall dinner/cabaret at Harmony Hall; there will be six performances, November 2, 3, 4, 9, 10 & 11, 2012 and the event will benefit the U.S.M.C. Toys for Tots Program.

Mr. Thomas Hickey addressed the board and noted that he is Burlington's assistant town manager but tonight he is here as a representative of Actor's Inc. seeking approval of a temporary license for the performances just outlined.

Mr. DiRocco said he seems to remember a problem a while back about alcohol at Harmony Hall on town owned property and wondered whose name and who would be liable.

Attorney Hall said he would have to research it again as it was a while back; he's not sure if it was amended after the fact but said he will check into it noting that he believes there was a bylaw change as a result of that issue.

Mr. Hickey noted that Actor's Inc. does have liability insurance and said also, in a previous and similar case where the Actor's Inc. did a performance in Tewksbury, for those dates Actor's Inc. took out additional liability insurance just for that specific event held at the Tewksbury Senior Center.

Ms. Richardson asked Mr. Hickey if Tewksbury requested anything in addition to what they did. Mr. Hickey replied that Tewksbury requested that they take out an additional liability policy, which they did, specific to those dates. Discussion continued.

Attorney Hall suggested that the board could vote it subject to him researching the matter and if he finds that there is no prohibition to have

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alcohol on town property, the board could vote it tonight subject to him determining that.

Mr. Zimini moved that it be allowed pending verification from Town Counsel and also that it include that liquor liability insurance be added.

Mr. Zimini asked if the license would be in Actor's Inc. name to which Mr. Hickey replied in the affirmative.

Mr. DiRocco said if Town Counsel feels that that is appropriate he would go along with it. More discussion followed.

**Mr. DiRocco seconded Mr. Zimini's motion to approve subject to Attorney Hall's recommendation. Motion passed unanimously.**

PUBLIC HEARING – MR5-A, LLC – Amendment to Meadow Creek Golf Course Planned Development – Ms. Richardson opened the public hearing by reading aloud the notice of hearing that appeared in the Lowell Sun on July 31<sup>st</sup> and August 7<sup>th</sup>, 2012. Said hearing is to review two proposed amendments to the Meadow Creek Golf Course Planned Development. (1) For Stipulation 24(8) a waiver request is being made for the development of a constructed roadway to less stringent construction standards and (2) a modification is requested to the roadway layout of the previously proposed East Richardson Road connection to a newly proposed cul-de-sac "Tamarack Road".

Mr. (Thomas) Tavenner stated that he and Town Counsel had a discussion earlier today about a letter that the board received and said he did not want to continue with this if there were some issues that were created by that and said he would defer to Mr. Hall.

Attorney Hall stated that he has no problem continuing.

Mr. Tavenner said that he will turn it over to Matt Hamor from the engineering firm of Hancock Associates.

Tamarack Road - Mr. Hamor explained that they are here this evening to modify the existing special permit for the Meadow Creek Residential Golf Course Development; tonight they are specifically focusing on a redesign of what is known as East Richardson Road to a newly configured cul-de-sac shown as Tamarack Road. He indicated that a department review meeting was held and they met with various municipal departments. Mr. Hamor proceeded

with his presentation pointing out on a plan (definitive plan) and went over the proposed lot line revisions and how it affects the

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existing right of way that extends to East Richardson. Mr. DiRocco asked if the town will end up with any more lots because of the cul-de-sac or if it will be the same amount of lots. Mr. Hamor said it will be the same amount of lots. Mr. Tavenner offered a brief history on how this came to be.

Mr. Zimini said he would like to hear from someone from the town to tell us why we want to have this as a cul-de-sac opposed to a straight through road; he asked what if someday we want to use that property, is it going to be landlocked?

Mr. Edwards explained that in the original permit either the town or Dracut Land Trust had purchased 48-acres and was known as Parcel Y; town meeting approved the town purchasing Parcel Y allowing the Selectmen at that time to split off three lots and auction those lots off in order to help pay for Parcel Y – so the three lots that were to be developed were auctioned off and the rest had to go under a conservation restriction because we were lucky enough to be awarded a \$250,000 state grant to put a conservation restriction on the remaining 45-acres which is now know as the East Richardson Preserve. Following some additional comments, Mr. Edwards said they do agree that the cul-de-sac would be better then having this go through; there are no more houses that can be developed in there. Discussion continued.

Mr. Hamor proceeded to explain and demonstrate on the plan for the benefit of the abutter's who were in attendance.

Dick Lepine of 190 E. Richardson Road – After several brief comments, Mr. Lepine indicated he was okay with this.

Mr. Hamor continued to explain that East Richardson is a right of way in existence now; they are not going to discontinue it or abandon it, they are going to leave the right of way there and all the easements associated with it; there are utility easements to cover any utilities that may need to be extended at some future point and said they are not going to be eliminating the right of way of East Richardson that connects to obviously East Richardson that's been improved near the intersection of Macintosh Drive; they are proposing to modify the previously approved improvement of East Richardson and it is now going to be called Tamarack Road; it will come up and terminate at a cul-de-sac leaving the variable width right of way that extends to East Richardson Road. Mr. Hamor continued pointing out and explaining the proposal on the plan noting that no additional lots are going to be created, they are

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readjusting the lot lines; they are not touching any of the existing easements or the right of way to East Richardson Road.

Mr. Malliaros asked if Tamarack Road is a dirt road.

Mr. Hamor said it has been cleared so you can drive up there; it was cleared back when Premiere Homes had done the project. Mr. Malliaros questioned entry to the East Richardson Land Preserve. Following some discussion, Mr. Hamor indicated that all that is going to remain and said they are not going to touch anything beyond that cul-de-sac and beyond the lot. A lengthy discussion continued. Mr. Hamor suggested that the town put up a sign that provides direction; put up a couple of placards on trees that instruct where people need to go if they want to access the same way currently accessed. Discussion continued regarding the availability for the public to access and solutions.

Mr. Hamor added that this configuration also provides utility services for lots 78 and 79 which currently obtain their access from Jones Avenue; they are currently on septic systems right now so they will be able to get full utility access to the system that they are creating.

Rich Bradley, 6 Cedar Creek Drive – Said he understands the Macintosh people's concerns and is totally in favor of blocking that off and making a cul-de-sac but wanted to know if that cul-de-sac is going to have a center island consistent with the rest of the center islands.

Mr. Hamor replied that there will be a landscaped center island and will look similar to all the other landscaped cul-de-sacs within the subdivision.

Mr. Bradley stated that he is okay with it.

Dick Lepine, 190 E. Richardson Road – Said from what he understands, what you see now at the end of E. Richardson Road is what you're going to see in the future; that won't be effected whatsoever. His question is about the 3 houses on Cortland Circle and wondered if those are the homes that will be given an easement. The answer was no, not those homes. Mr. Lepine continued to say that he thinks this is a good thing because if you were to open up the road it would just be cars constantly cutting through and would take a lot away from the preserve that is there. He feels it would be a good idea.

Steve Wakefield, 11 Cortland Circle – Said he is just curious about what drove the change in the proposal; he thinks it is probably favorable but is  
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just curious from the developer's prospective on what it is that made the recommendation for the change of the design.

Mr. Tavenner said the primary and really only factor that drove this is just that it was never completed as part of the original special permit process; when the special permit was granted (they weren't the developer at the time) but what happened he believes is there were 8 lots that were basically severed from the original plan and there was an arrangement where the three lots were auctioned off by the town; the five were put into conservation and he is sure there was a clear desire to not have that be a direct throughway anymore because it was the access for this open space conservation land. He said it really necessitated the fact that they create some kind of a cul-de-sac in the turn around area because otherwise you just can't have a road end, sort of speak, without anyway to have vehicles turn around. Mr. Tavenner said they always knew that at some point in time they would have to address this it was just the timing because this is in the later stages of the project, they didn't do it until now.

Mr. Zimini asked Mr. Tavenner where things stood on the golf course.

Mr. Tavenner explained that there is a potential purchaser however he does not have the authority to disclose his or her identity but he is very hopeful that it will come together; hopefully there will be a purchase and sales agreement executed in the next couple of weeks and is hopeful that he along with the Bank of New England, who owns the six golf course parcels, if that all comes together that the golf course will be owned by one buyer.

Mr. Zimini said that as one Selectman, he feels it is kind of embarrassing that it sits there closed and he personally would like to see that done ASAP, if not yesterday.

Mr. Tavenner said he also does not like to see it in its current status and will do everything within his power to make it happen but said there is only so much he can control; part of this is the Bank of New England that owns the land; they have to reach a meeting of the minds with the potential purchaser. Hopefully he said it will all come together.

With regard to the letter from Jeff Brem, Mr. DiRocco asked Town Counsel if the board was on solid ground.

Attorney Hall replied that he read over the letter and the responses from Mr. Tavenner, he researched the law and the record and from the votes

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of the Selectmen back in 2008, he believes that Mr. Tavenner's group has every authority to do what they are doing this evening. After a brief explanation of what occurred back then, Attorney Hall said he feels they have every right to be here and make these suggested changes at the will of the board and after reading the other sides argument, doesn't feel they are effective.

WAIVER REQUEST (Parcel "P") – Mr. Hamor said that Parcel P was briefly discussed at a previous meeting before the board; they have had department head meetings to discuss what the town would feel comfortable with in terms of modifying stipulation #24 of the special permit which allows for the town to grant a waiver for the full construction of a roadway within Parcel P that would extend all the way up to the town owned parcel. Mr. Hamor proceeded to explain by pointing out on the map. He also noted that Kathy Fox was present representing the portion owned by Warren and Richard Fox. He proceeded with his presentation. He also noted that there was some tree clearing at Parcel P and since last meeting with the board, there has been some more tree clearing along the entire Brentwood Drive for the development of the homes along Brentwood Drive. Mr. Hamor passed out some photos to the board noting that not only does it show that the trees are not there but the litter layer for the tree portion has been removed. He said after they construct the apron and after the Fox's construct their driveway there is going to be 25-feet between half of the 50-foot access point to the lot line that will presumably need to be re-vegetated and in some way restore what was inadvertently cut within that parcel. Mr Hamor said obviously there has been a wrong there and hopefully they can get past that and just get to try and remediate or re-vegetate that area to restore it back to its what would be its condition after the improvements are made, not only by the curb cut coming into the parcel but also presumably what the Fox's would do with their half to get their driveway in.

Mr. Malliaros expressed his concern that this doesn't give the town owned land, approximately 9-acres or more, any access to Brentwood Drive.

Mr. Hamor said that's correct; it was said at the department head meeting they didn't want to provide access up to the town owned lot; they wanted to preserve it as wooded area so that there was no formal access into the parcel.

Mr. Malliaros asked if he recalled who said that on behalf of the town to which Mr. Hamor replied it was Harvey Gagnon from the Historical

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Society. Mr Malliaros said that is all well and fine but he wants to make sure that in the event that changes, namely if the town decides to do something with our acreage, which is adjacent to the highest point on the golf course which is also skiable down hill, he'd like to be able to guarantee that we could drive through and get access to Brentwood Drive if need be. To Mr. Malliaros' satisfaction, Attorney Hall stated that we (town) own Parcel P.

Ms. Richardson said that the part that bothers her a little bit is that now on two occasions, trees have been inadvertently cut down; her concern is that now, as we move forward, that there is not a third inadvertence of same.

Mr. Hamor said that one of the stipulations in the comments provided in correspondence from the Manager's office was that there will be additional verbiage on lot 24 and lot 25 that there will be no encroachment onto parcel P; they will put stone bounds on the front corners of parcel P as well and also put those stipulations on the two adjacent deeds. More questions followed as Mr. Hamor demonstrated on the plan.

Kathy Corey Fox, Pelham, NH – Stated she was here representing Warren and Richard Fox and said they appreciate working with Matt (Hamor) and Mr. Tavenner on this parcel and said it has been a little contentious in the past to say the least but they look forward to working with them going forward and appreciates the consideration and respect to the property.

Ms. Richardson asked Ms. Fox if she was all set with how they laid out this particular easement to which Ms. Fox replied “yes we are.”

Mr. Edwards at this point offered some comments about several access points to the 45-acre East Richardson preserve and pointed out parking areas. He said the second item is a little more contentious in that Dan McLaughlin submitted a letter (agenda page 8) and a follow-up today indicates he has the same position that he believes we need to be given a restoration plan for that lot and it needs to be reviewed by our tree warden and the town manager to see if it is acceptable.

Mr. Zimini said he totally agrees and he was going to make that as part of the stipulation.

Ms. Richardson noted again that this was another issue we had earlier on when the trees were cut between the Ogonowski's and the golf course and asked if that matter has been fulfilled and resolved.

Mr. Tavenner said he believes that issue was between Mr. Brem's company and the Ogonowski's after he purchased the golf course in 2008 and said he (Tavenner) had no involvement in that. However, he will tell the board for the record that he had nothing to do with this, he didn't know about it until after the fact but he will make sure that this gets taken care of and whatever plans subject to approval from the tree warden is provided, he will make sure that that gets done. He said it didn't make him too happy but he can't put trees back in the ground however what he can do is give this board his assurances that this will get taken care of.

Mr. DiRocco said the only thing he would like to add is the board doesn't have in front of them all the departmental head comments and is sure those need to be incorporated into whatever vote we take.

Mr. Edwards explained that Chief Brouillette was in attendance at the departmental review meeting and they also met with the Fire Chief previously just to make sure that they were going to meet his conditions.

Mr. Hamor added that all those comments are carrying over to the Planning Board for definitive subdivision approval.

Motion by Mr. DiRocco and seconded by Mr. Malliaros, **it was unanimously voted to close the public hearing.**

Mr. DiRocco moved to approve subject to including all of the department's comments and plan for restoration; Mr. Malliaros seconded the motion.  
**Motion passed unanimously.**

PUBLIC HEARING/A. J. LEAVER CORP. D/B/A BACK TO THE BOATHOUSE, 294 TYNGSBORO ROAD – Request for a change in the description of the All Alcoholic Beverages Licensed premises by adding a 22x26x16 outside deck – Chairperson Richardson opened the public hearing by reading aloud the hearing notice that appeared in the Lowell Sun on Friday, August 3, 2012.

Owner Andrea Leaver addressed the board and reading from a prepared statement, proceeded to outline her reasons for seeking approval to alter her premises and add a deck for the purpose of dining, viewing of the lake and sharing a beverage with friends from the hours of 9:00 a.m. to

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9:00 p.m. Monday through Saturday and 11:00 a.m. to 9:00 p.m. on Sundays for the months of April through October. She noted that Police Chief Richardson recommended 8:00 p.m. and said she is willing to cooperate and understands his reasoning; however, after thinking it through she feels people eat later in the summertime so she thinks 9:00 p.m. is reasonable and the bands do not start inside until 10:00 p.m. Ms. Leaver continued to explain the high costs and expenses of the business and feels she needs to do something to help her business thrive. She also explained improvements done to the property on a yearly basis and this year would like to add a deck to enhance the property. Ms. Leaver continued with her presentation noting all the charities they donate to. She proceeded to explain how the deck will be laid out and also noted that there will not be any music whatsoever on the deck; she explained her security and also what steps are taken to assure proper parking in the area.

Mr. DiRocco noted that the Planning Board stipulated that “the hours shall be 9 -8”.

Attorney Hall said that would be in direct conflict with what the petitioner is asking for. Mr. Malliaros said “wouldn’t that be a problem?” to which Mr. Hall replied in the affirmative.

Ms. Leaver stated that they (Planning Board) had said that the ultimate decision was up to this board is what they had stated at the meeting.

Mr. Malliaros said “that’s not what this says.”

Mr. Edwards said that he doesn’t remember it that way; he attended the meeting and they went with the Police Chief’s recommendation which was in writing for an 8:00 p.m. closing; he said the applicant was agreeable to that in order to get the special permit approved at that time and said this is a change he never heard of.

Mr. DiRocco stated that the reason he pointed this out is he doesn’t think we can change it.

Ms. Leaver said that’s fine; she can seek it later through other departments if that’s the case and said she must have misunderstood them at the time because they had mentioned that the ultimate decision lies with the Board of Selectmen is what she was under the impression of.

Mr. Malliaros pointed out that the first paragraph of their vote says “the hours of operation of the outdoor deck year round shall be Monday through Saturday 9:00 a.m. to 8:00 p.m. and Sundays 11:00 a.m. to 8:00 p.m.”

Ms. Richardson added that this is how it was presented to us so we can't vote differently than what the Chief recommends at this point.

Attorney Hall said that if this board said nine, she would have to go back to the Planning Board and have it changed to that.

Mr. Zimini said we can't extend it further but asked if we could restrict it further. Attorney Hall said he believes so. Mr. Zimini said in other words, this says the outdoor deck would be open year round and asked if they could restrict it to April through October as she requested.

Ms. Leaver said that was stated at the Planning Board meeting and doesn't know how that got in there and can't remember what was said because it was a very long meeting.

Mr. Malliaros said #3 states “no music or sound amplification is allowed to be played or broadcast to person or by persons on the deck.” Ms. Leaver agreed there will be none. Mr. Zimini said it also states “no smoking on the deck.” Ms. Leaver said “correct.” It was noted that if there is food then you cannot allow smoking.

At this time, Ms. Richardson announced that if there was anyone who wanted to speak on this to come forward.

Debra Burke addressed the board and stated that she and her husband John own the property and said she has lived on both sides of the lake for sixty years and said she personally knows of all the noise that goes along with the busy lake in the summer. It includes motorcycles up and down the streets as well as motorboats, jet skis on the water and music on the shores. She said that comes along with summer and does not necessarily mean it comes from all the bars in the area. Mrs. Burke, reading from a prepared statement, proceeded to explain a lot of the activities that occur along the lake and area that do not generate from just one place. She has done business successfully in that same area for 30-plus years with no major problems whatsoever. She proceeded to explain all the benefits she has sponsored and donations given over the years to both the towns of Dracut and Tyngsboro and noted that her daughter is now carrying on with all her transitions as successfully and making things even better. Mrs. Burke continued with her presentation.

Mr. Zimini asked Mrs. Burke what her address is to which she replied 39 Woodlawn Street in Tyngsboro.

At the request of Ms. Richardson, Ms. Leaver demonstrated on a map where the deck will be located and also explained what occurred at the town meeting when she was trying to rezone her property so her entire property would be business zoned but got denied.

Attorney Gregg Haladyna addressed the board and stated he was here tonight representing the Katsikas family which owns the Lakeshore Realty Apartments directly next door to the Boathouse and directly across the street as well and is here with the manager, Mary Katsikas. He said this is the second attempt by the Boathouse within the last 10-months to expand the facility for outdoor purposes by way of a deck; the first attempt was as mentioned previously which is the rezoning. They went to the Planning Board on October 11<sup>th</sup> and at that point indicated in response to a question by his client, “what’s the purpose of the rezoning?” and the answer was “well we may do some renovations or we may want to add a deck off the back.” He said the matter went before town meeting and the discussion was about a deck and it was voted down. This now second effort started at the Planning Board where they were seeking a special permit to alter or extend what is a preexisting non conforming structure and use; the special permit was granted by the Planning Board. He continued to say that at the hearing, according to the minutes, Chairman Flynn pointed out “the Planning Board is only reviewing the proposed deck and the operation of the facility under the terms and provisions of the license are permitted by the Selectmen; if there are issues with the business they should be brought to the attention of the Selectmen.” Mr. Haladyna said that is why they are here opposing the expansion of the bar out to the outdoor deck area. He said the issue the Selectmen have to face is, will this serve the public need in such a manner as to protect the common good and said the Planning Board only looked at the issue when you’re changing a pre-existing, non conforming use of structure and said they have to determine if that is going to be more detrimental to the neighborhood than the existing non conforming use. Attorney Haladyna continued to say that their main concern is the noise and believes that allowing the building to expand outdoors would just exasperate that; he continued expressing reasons why they are opposed and also issues with the parking and the loss of parking spots. Following additional comments, Mr. Haladyna said they are not trying to shut down their business, they just feel that there is no public need for this and are just trying to keep it from expanding outdoors and they don’t think it would be protecting the public good by permitting outdoor use of the premises on the lake.

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Kelly Strickland, 331 Tyngsboro Road – Stated his apartment is directly across the street and said his concerns are exactly what the attorney said; who’s going to patrol the deck to make sure it’s closed down; what about the noise with people going in and out, when the door opens you can hear the music playing; he’s all for people expanding their business but he has to live and sleep there so what about the residents?

Joann Camilli, 778 Hildreth Street - Stated she wants to make a few comments about what everyone is saying and “they are just not listening, it’s going to be during the day; it’s not going to be at night time.” She said no matter what these people do and complain, you are not going to stop noise and proceeded to name other establishments in the area. “The deck, they are not going to allow drinking.” She goes there, she sees the manager’s there and sees that the bartenders have everything in control. Following some additional comments favoring the petition, Ms. Camilli said it’s to please her, when she gets out of work she wants to eat, relax outside and have a drink and enjoy the fresh air.

Dennis Murphy, 344 Tyngsboro Road – Stated he and his wife live there and rent from Lakeshore for over nine years; they are three buildings out from the club. They started going there and enjoying the folks who own the place (Burkes). They saw them take a club that was mediocre at best and saw them get rid of the hard-core bikers; they still do biker rallies to benefit the town and the people in the neighborhood, they have enhanced the property as has Lakeshore Realty; they did it to enhance the property and make it comfortable for its residents and give them a good safe place to live and they like it there but they also like the Boathouse and said its like a family for a lot of people. Mr. Murphy continued commenting about why he feels the addition of a deck will be a benefit.

Kelly Ann Robertson, 147 Tyngsboro Road – Stated she is currently employed at the Boathouse. Some of her comments included that the deck is for daytime; they have plenty of surveillance and have strict policies; the fire exit door is not used and they look out for everything going on; they are not there to cause problems and said they all work as a team and that they will follow the rules and not break the law to have this deck put in. She asked that they be given a chance and said she wouldn’t work there if it was that chaotic.

Mr. DiRocco asked what the size of the deck is as he sees two different things.

Ms. Leaver stated that originally what was planned was the 22x26; after going over some contractors about the boards that need to be bought and

sizes to utilize the amount of materials that are being purchased, they decided to see if they could extend it a little farther and so she called the Planning Board; it's official size will be 24x32.

Mr. DiRocco asked Ms. Leaver if she realizes that she would have to go back to the Planning Board if she was changing the size.

Ms. Leaver stated she called the Planning Board and asked them and they said as long as its okay with Dan, she does not have to go back because it's not substantial enough to increase more tables or more space.

Mr. DiRocco asked who on the Planning Board told her that to which Ms. Leaver replied to be honest, she doesn't know who she spoke to, but she also spoke to Dan McLaughlin (Building Inspector) and he said he has no problem with that and she said it has also been approved and amended through the Conservation.

Mr. Zimini asked Ms. Leaver what size she is looking for to which she replied 24x32.

Mr. Malliaros asked Town Counsel, if a bar wants to increase its space and they need to come before this board for permission, what is the standard of review?

Attorney Hall replied that the basis for a decision is that you've heard comments tonight about the effect it would have on the neighborhood, they're enlarging a non conforming use, a place that is not properly zoned but has been in existence prior to the zoning bylaws; you probably want to look at the impact to the neighborhood, public need, you might decide that it's on the lake and the deck is something that the public needs and would enjoy or maybe if it wasn't on the lake you might decide that it isn't something that is a public need. Attorney Hall continued to say that you decide all those things; what's the effect in the neighborhood, what's the effect on the business and all the things you would consider before granting a permit.

Mr. Malliaros asked if the fact that the Planning Board granted clearly a 22x26x16 foot deck and that's in writing in their findings, can we (board) just ignore that?

Attorney Hall said this is not a minor extension where you go from 26x16, you're going to 24x32; he doesn't know what the building inspector decided, we're hearing that he said he thought it was a minor

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increase; it's his decision to make but this board can make a decision here this evening as to what you want the deck to be.

Mr. DiRocco felt it is the call of the Planning Board and not this board and asked Town Counsel if that were so.

Attorney Hall said he feels this board could decide that a deck of this nature is too big; it could be smaller or larger.

Mr. Malliaros said the thing that concerns him is the parking spaces lost because there is obviously a need for X amount of cars to be able to park there.

Ms. Richardson agreed and said the parking was certainly one of the issues brought up at town meeting and threw out the idea of a possible site visit.

Mr. DiRocco said the Planning Board is specific on a 22x26x16 and if a 24x32 is okay, then he feels something should have been given to us from either the Building Department or from Planning Board.

James Enwright, 32 Mills Drive – Stated he was a business owner in Dracut and frequents the Boathouse and said he has gone over the plans with Dan McLaughlin, the Building Inspector and the original 16 you see was only the measurement from the existing deck out to where the new deck was going to go so all they actually added was two-feet to the length of the deck; he said originally the deck was supposed to come out 22-feet and the 16-feet you see, there is an existing deck that is there now which he believes is 8-feet which is the existing entrance which has to be taken off for handicapped accessibility so that deck became from 22 to 24 so all they actually added was 2-feet to that deck. She (Andrea Leaver) talked to the Planning Board and they told her to go talk to the Building Inspector, which Andrea did and Dan said “I do not see a problem with that, you're not encroaching any more or taking any more parking spots”.

He said Conservation said it was okay also.

Mr. DiRocco said he is only going by what he is reading here.

Discussion regarding the measurement continued.

Mr. Zimini indicated he was confused as was Ms. Richardson. Ms. Richardson indicated that what we are trying to decipher here is we have two sets of propositions here; we have the written version and the one you're giving us.

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Mr. Zimini said he would like to hear from Mr. Edwards.

Mr. Edwards said if you look at condition #2 it cites a very specific plan that has to be built according to; if it's built according to that plan then it should be acceptable; if it's different from that plan then it's not, it must be in compliance, it doesn't say close to. Mr. Edwards said he never heard this, as the Town Planner it was never brought to his attention that they were changing the size of the deck just like the times of their business operation, he said this is all news to him. There is a specific plan here and it needs to be built to that plan unless they go back and have another public hearing where many people testified on both sides of the issue.

Mr. Malliaros said he watched some of that Planning Board meeting, we don't have that plan in front of us but he is going to assume that the deck is 16x26 in the plan.

Mr. Edwards said to the best of his recollection, yes, but it says "to specific plan" and if they presented that maybe we could see what exactly they are asking for; that's what was approved.

Mr. DiRocco said the difficult part is that the Planning Board gave all these orders of condition; in the orders of condition they specifically have it marked 16x26; so if that is an error that still needs to be corrected by them. Mr. DiRocco said he doesn't have a problem whatever size it is but he needs what they are telling him what is acceptable and this is just not doing that.

Ms. Leaver said she will go with the 22x26x16.

Mr. Zimini said his concerns are that conversations with the Conservation Commission says its okay; conversations with the Planning Board said its okay and said there is not one person who has that kind of authority to say you can change the plan and we have nothing in writing and feels this is so confusing as it is. Mr. Zimini said it got to be right before he is willing to take a vote on anything.

Mr. DiRocco said if we were to be taking a vote tonight we would have to be taking it on a 16x26 unless it got changed by the Planning Board and it were to come back to us. Ms. Leaver said "that's fine".

Mr. DiRocco said as far as he is aware, there have been no problems with that establishment; Mr. Edwards stated that he did receive a report from the police department and it was very favorable; they reviewed their

records over the past year and they had sixteen calls for service at the Boathouse but they said the majority of the calls were initiated by Boathouse staff and said the staff has been very proactive in identifying problematic patrons and notifying police.

Following some additional discussion, Mr. DiRocco said he doesn't feel we have had any issues and noted that enforcement is still before this board; if we were to approve it and it ends up being a problem then they can come back to this board.

Ms. Richardson reiterated that when these permits are given, people always have the ability to come back to the board for a further review.

Mr. DiRocco asked Ms. Leaver how many tables she anticipated putting out on the deck to which she replied "eight tables of four".

Mr. Malliaros said what he finds persuasive is Mr. Murphy who lives in the contiguous building owned by the Katsikas' has no problem with it whatsoever; the deck is on the other side and no music will be played outside and also noted that there have been no problems out there; he said we know where the problem establishments are but this isn't one of them. Mr. Malliaros also said he is not comfortable going with any other size other than what the Planning Board specified. Mr. DiRocco added that if he approves anything, it will be a 16x26 deck.

On a motion by Mr. Zimini and seconded by Mr. DiRocco, **it was unanimously voted to close the public hearing.**

Discussion ensued regarding the Planning Board stipulations. Mr. DiRocco pointed out that the only thing this board can vote on is what is in front of us noting that we can put stipulations on the liquor license.

Mr. DiRocco moved to approve with all of the stipulations outlined from the Planning Board and his motion is for exactly what he sees in front of him, 16x26. Mr. Malliaros seconded the motion.

Under discussion, Mr. Zimini said he heard from other people who are not here tonight or perhaps are here tonight but did not get up to speak; but he has heard from people on the outside who are not favorable to this particular thing. He also heard loud and clear what town meeting voted; it was a zoning issue but feels the crux of that whole town meeting discussion was about the deck and said he doesn't feel comfortable voting for it and won't be voting for this tonight based on that and based on some of the other things we've heard here tonight strictly because he

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doesn't see it as a benefit to the neighborhood or a benefit to the town; so he will be voting no on this. Following some additional comments, Mr. Zimini said again he will be voting against this.

Ms. Richardson commented about the town meeting vote noting it was about zoning but again, it certainly was about the deck at that point and thinks there have been a number of concessions or considerations that have been put in place during this (Ms. Leaver's) presentation that addressed some of those concerns; certainly she doesn't think this board in general is against business but she does know that, as Mr. Zimini said, town meeting was very loud about not being in favor of having something on the outside.

Mr. Malliaros stated that with all due respect, he was also at that town meeting and there was an uproar against this but it was about the expansion of the business zone; this is within the business zone; a 16x26 deck to him is not much of a change and it's not going to be used that much it's really just a summer thing to sit outside and look at the beautiful lake. Mr. Malliaros continued to say that he suspects it could have been much larger had the town meeting approved the zoning change and feels it was probably prudent for people to come out and articulate their feelings that they didn't want that and feels this is within the zone and will be supporting it.

Ms. Richardson said again, she knows the town was very concerned and people were very upset about the fact that people were going to be outside and she wants people to know that this is something that the board will be watching very carefully if it passes and brought up the idea of a site visit because she knows the parking is an issue; her suggestion might be to at least hold off until the next meeting only to get the parking issue delineated because there is only a certain amount of parking that has been a problem there. Ms. Richardson said her suggestion would be to hold off on a vote or table it until our next meeting to have a site inspection and make sure that the parking is at least satisfied with the number of folks it's going to hold out there.

Discussion about the parking continued. Mr. Edwards noted that the Building Inspector did attend the review meeting and he didn't have any issues with the parking; the Planning Board Chairman did indicate that this would take away a couple of parking spaces but said no action was taken after that statement was made.

Following some additional comments, Ms. Richardson called for a vote.

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Mr. DiRocco and Mr. Malliaros voted in favor. Mr. Zimini and Ms. Richardson voted no. Motion failed 2 – 2.

Ms. Richardson stated that it is the parking that really concerns her to some degree because that was the issue at town meeting that several people had brought up; she asked if this can be re-visited at the next meeting in September noting that there were a bunch of different things that were discussed and weren't written, they weren't in the actual permit and three different things were talked about.

Mr. DiRocco, directing his question to town counsel, asked if the board could re-consider the vote until the next meeting.

Attorney Hall said if Madam Chairwoman wanted to change her vote to approve she would have to ask for reconsideration at least at this meeting or by nine o'clock tomorrow morning and said he would have to check the statute; there is a very immediate time span.

Mr. Malliaros said it appears it is defeated as of now and since she and Mr. Zimini voted against it, either one of them could make a motion to reconsider this at the next meeting. Mr. Zimini added "or to make known intentions to do that before the next meeting".

Ms. Richardson said she certainly will reconsider at the next meeting and said that certainly will be her intent, but again said with the parking issue, she wants to physically see and envision where the deck is going to be because the parking is her biggest concern. Ms. Richardson said that the fact there is no music on the deck is a good thing and said that was a huge issue for the folks at town meeting.

Attorney Hall said that Madam Chairwoman would have to actually memorialize her request and give it to the secretary preferably before the end of the evening noting that Ms. Richardson as already announced her intentions.

Following some brief comments, it was agreed to conduct a site visit on Wednesday, August 22<sup>nd</sup> at 5: o'clock p.m.

AGENDA ITEMS (Continued) – Alan Kazanjian, President/Kazanjian Enterprises - Request to transfer special permit #03-2 to Lakeview Gas Station d/b/a Jay's Food Mart and also amendment to Special Permit #04-3 @ 1264 Lakeview Avenue – On a motion by Mr. Malliaros and seconded by Mr. DiRocco, **it was unanimously voted to approve with amendment.**

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Thomas Tavenner, General Counsel/MR5-A, LLC – Re: Meadow Creek Golf Course Request for transfer – Ms. Richardson noted that Mr. Tavenner indicated they will not be going forward with this tonight.

Mr. DiRocco said he feels we need to look at a time frame as to when they will make an announcement and also feels they should iron these issues out beforehand.

Ms. Richardson apologized if anyone was here but said that did get taken off the agenda and said Mr. Tavenner did touch upon it briefly when we had a discussion earlier about the amendments.

Kevin Richardson, Chief of Police – Request for Approval of Stop Sign

Locations:

1. Schiripo Way @ Regency Drive (north) & Schiripo Way @ Broadway Road (south);
2. Gagnon Drive @ Hildreth Street (north)

Motion by Mr. Zimini and seconded by Malliaros, **it was unanimously voted to approve request #1.**

Motion by Mr. Zimini and seconded by Mr. DiRocco, **it was unanimously voted to approve request #2.**

Approval of Minutes/Meeting of July 10, 2012 – On a motion by Mr. Malliaros and seconded by Mr. DiRocco, **it was unanimously voted to approve the minutes of July 10, 2012.**

Old Business – Town Charter – Mr. DiRocco noted that they have been meeting with different people and just wanted to let people know that the process has begun. Mr. Zimini commented that he hopes they will also speak to some of the members from the original charter committee noting that they worked very hard on it and feels their input is important.

Subcommittee Reports – Committee for a Healthy Dracut – Ms. Richardson passed out some information to the board regarding a grant that Chief Richardson applied for.

Bylaw Committee – Ms. Richardson noted that that committee will be meeting on August 30<sup>th</sup> and they are doing bylaw reviews and actually have two or three bylaws that they are looking at and are actively pursuing to present to town meeting in November.

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Dr. McNamara's Finance Sub/Committee (approved at June 2012 Town Meeting) – Ms. Richardson reported that she believes most of the folks are assembled for that; they only need one resident with financial expertise (anyone interested should contact the town manager's office). The first meeting is scheduled for August 23<sup>rd</sup> at 7 pm.

London Olympics – Mr. DiRocco noted that an article appeared in the Lowell Sun regarding a resident of Dracut by the name of Ruban Sanca, a UMass Lowell graduate, who participated in the 2012 Summer Olympics in London. Mr. Sanca was representing his native Cape Verde and placed 21<sup>st</sup> in the 5,000 meters. Mr. DiRocco felt his accomplishment should be recognized and it was the consensus of the board to send a congratulatory letter and to also invite him to a Selectmen's meeting to be formally recognized.

The Community Calendar was read.

Adjournment – Motion by Mr. DiRocco and seconded by Mr. Zimini, **it was unanimously voted to adjourn the meeting at 9:35 p.m.**

BOARD OF SELECTMEN

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Cathy Richardson, Chairperson

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Joseph DiRocco, Jr., Vice-Chairman

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George A. Malliaros, Clerk

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John J. Zimini

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ABSENT  
Robert O. Cox

