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MINUTES  
TOWN OF BELMONT  
BOARD OF SELECTMEN  
SELECTMEN'S MEETING ROOM  
Monday, January 9, 2017  
7:00 PM

APPROVED  
BOARD OF SELECTMEN  
DATE: 04-03-2017

## CALL TO ORDER

A regular meeting of the Board was called to order in open session at 7:05 p.m. by Chair Mark Paolillo in the Selectmen's Meeting Room. Selectmen Sami Baghdady and Jim Williams were present. Town Administrator David Kale was present; Assistant Town Administrator Phyllis Marshall was not present. Town Counsel, George Hall present.

Chair Paolillo reviewed the agenda and then turned to the first item.

## COMMUNITY ANNOUNCEMENTS

- **Cardboard Recycling Event** – The next event will be held on Saturday, February 4, from 9 am – 12 noon at the Town Yard. Mr. Kale provided some details.
- **Tree Pick Up:** This is the last week that the DPW will pick up Christmas trees.
- **Opioid Update:** Tuesday, January 10, 2017, 2:30–4 pm - the Health Department will hold a community conversation concerning the opioid epidemic and its impact on Belmont.
- **The Vision 21 Implementation Committee is presenting “Talk of the Town”.** This event will be held on Tuesday, March 21, from 7–9 pm at the Chenery Middle School.

## QUESTIONS FROM TOWN RESIDENTS

[There were none.]

## ACTION BY CONSENT

### **Public Hearing on an Application from The Loading Dock, Inc., 11 Brighton Street, for a license to serve All Alcoholic Beverages**

Chair Paolillo requested that respect is shown throughout the evening's hearing. He then referenced a letter from the Town Counsel's office concerning the alcohol licensing and the non-transferability provisions; the letter stipulates the statutory standards on the governance of all alcohol licenses.

Selectman Baghdady read a statement 'for the record' concerning his prior relationship with Mr. Mukarker. He stated that he has never had any business or personal dealings with Mr. Mukarker, his family, or any of his companies, including, but not limited to, The Loading Dock. Furthermore, he did file a "Notice of Appearance of Conflict of Interest" with the Town Clerk on April 30, 2014 because Mr. Mukarker had made a donation to my political campaign three years

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ago. However, since that time I have not received any additional donations from Mr. Mukarker  
to my campaign, or otherwise.

Selectman Williams read a statement from ABCC concerning the residents' petition regarding the transfer of the license to Star Market. He stated that the Board did not proceed inappropriately when it allowed the transfer.

Mr. George Hall, Town Counsel, Mr. Faud Mukarker, The Loading Dock owner and applicant, and Mr. Thomas Orlandi, attorney for the applicant, appeared before the Board to discuss the Loading Dock, Inc.'s application for a license to serve All Alcoholic Beverages. Mr. Orlandi provided a brief summary of the license application. He offered background information as well as details on the seating, the lease, and the need for the all-alcohol license. He stated there is wide community support for the business, that the owner has never had an alcohol violation, and that he has run businesses in Belmont since 2005.

Mr. Orlandi also stated that he and Mr. Mukarker are offering to conform to the following three conditions: there will be no license transfer request for two years; there will be no pledge of the license (e.g., to a lender) within a year; and the owner will appear before the Board concerning the above two conditions if needed (e.g., should Mr. Mukarker become unable to run the business).

As his final point, Mr. Orlandi noted that a competitor has opposed this license, but that the Board should not consider this as meaningful opposition as it is from a competitor. Chair Paolillo agreed.

Chair Paolillo then raised the issues of non-transferability and use of the license as collateral (pledging). Town Meeting, he said, may revisit both these issues – Mr. Hall provided some background information on the language he is crafting for that body concerning these issues. Chair Paolillo stated that he hopes that the license can be granted with no ability to transfer it at all. Again, this issue will be raised at Town Meeting.

Selectman Williams asked from where the conditions originated. He stated that he was unaware of the non-transferability condition on this license. He clarified with Mr. Mukarker that he will not sell cigarettes or lottery tickets, as well. Mr. Orlandi agreed, but added that he would like to be able to revisit the selling of cigarettes and lottery tickets in one year.

The Board discussed this additional conditional as well as the Board's intention with regard to the non-transferability clause.

There followed some audience member feedback.

Ms. Elizabeth Dionne, a TMM, spoke in opposition to this license. She asserted that this business is clearly not viable. She raised a concern about the allowance for license transferability in two years and stated that transferability should be outright prohibited.

Ms. Anne Mahon, TMM Pct. 4, spoke in support of the license and stated that the license will

help the business to continue to succeed. She then asked a legal question about the license. Mr. Hall and the Board briefly discussed.

Ms. Carol Babikyan, Stony Brook Road, spoke in favor of the license application.

Mr. Ken Hamilton, CFO of The Loading Dock, provided some background information on The Loading Dock's intention for the alcohol licenses (selling and pouring). He explained the renovation debt and the refinancing plan as they relate to the license request. He then explained that the business will continue to prosper once the pouring license is granted.

Mr. Kevin Cunningham, TMM Pct. 4, asked a question about the framework for making this decision as it relates to Town Meeting's intentions. Does TM's declaration have a role in the decision making process? Chair Paolillo provided some background information on his thought process. Mr. Hall explained TM's role, of some years back. The Board, he said, is informed by the TM discussion, but is not bound by it. Selectman Baghdady offered some insights and noted that the town would have been vulnerable to litigation. Mr. Cunningham then noted that license transferability enables a private gain and such gain does not transfer to a public good.

Dr. Ralph Jones, TMM Pct. 3 and former Selectman, noted that The Loading Dock is still on a payment plan with its utilities. He asked for more information on the business's liabilities and debt. Mr. Hamilton provided some information on the fiscal plan. Belmont Light is the one bill that is delayed, he said, but there is a payment plan in place.

Ms. Erin Lubien, Belmont resident, stated that to probe the business's finances this way was a "disgusting" line of questioning. Chair Paolillo disagreed and stated that it is appropriate to know the financial viability of businesses. Selectman Williams added that The Loading Dock is not on the Treasurer's list of vulnerable businesses and that the Light Department is fine with the payment plan. She asked follow-up questions concerning the process as well. She stated that she is in full support of this license.

Mr. Adam Dash, TMM Pct. 1 and WC member, stated that, while he appreciates this business, the non-transferability condition should be accepted by the applicant. He said he was very disappointed to hear of the proposal to adhere to non-transferability for only two years. The Board, he said, should exercise the right to place the full non-transferability condition on this license. He added that, more generally, Belmont needs to tighten up its licensing process.

Mr. Mukarker stated that he was disappointed with Dr. Jones' letter to the newspaper. He said he would have appreciated it if Dr. Jones had approached him personally. He said it was never his intention to sell the "alcohol selling" license.

Ms. Lucia Gates, TMM Pct. 4, said she supports what Mr. Dash said about examining the whole license process.

Selectman Baghdady stated that the process works in town, but that he is concerned with the viability of this business. Upon receiving the money from Star, he said, the town should have been paid. He said the Board cannot restrict the transferability of the license, by law. However,

he stated that he is concerned with the outstanding balances and he suggested that Mr. Mukarker withdraw the application and re-apply in six months – once the outstanding debt is settled. The finances were then discussed. Mr. Hamilton, the CFO, explained the business's viability.

Chair Paolillo suggested that, rather than the applicant's proposed conditions, the following two conditions be applied: 1) that The Loading Dock pay its debt to the town within 30 days (e.g., pay the Light Department) and 2) that a permanent non-transferability clause be applied. The spirit and intent of the town and the Board is that these licenses are not transferable, he stated. Selectman Baghdady added that the non-transferability clause could be voluntarily agreed to (much like Star Market did).

Selectman Williams explained why a license is pledged. He noted again that the business is deemed viable. The Board, he asserted, is proceeding in a way that it should not.

Mr. Mukarker stated that building a restaurant business is difficult. He said he would like to be able to sell the license. However, he would abide by a TM ruling.

Selectman Baghdady suggested that Mr. Mukarker state officially that he will abide by what TM decides. Chair Paolillo agreed with this suggestion, and further suggested that this hearing be continued for two weeks while the Light Department balance is paid. Selectman Williams objected to the continuance; Mr. Orlandi also objected to the continuance.

The Board moved to approve the Loading Dock, Inc.'s application for a license to serve All Alcoholic Beverages, subject to the stipulation that the license shall not be pledged or transferred, as to person or as to location until the Belmont Town Meeting has acted on a home rule petition to the legislature for restrictions on the transferability of alcoholic beverages licenses, and if that vote is in the affirmative, until the legislature acts on that petition.

#### Statement of Conditions:

The following are conditions imposed by the Board of Selectmen as part of the approval of the retail sale of alcoholic beverages by the applicant.

1. All outstanding fees due and payable to the Town of Belmont, including, without limitation, to the Belmont Light Department, shall be paid in full at the time of the issuance and delivery of the license to the Applicant.
2. The applicant agrees that it will not seek to pledge or to transfer the license herein granted until the Belmont Town Meeting has an opportunity to vote (not later than the end of the 2017 Annual Town Meeting) on a home rule petition to limit the transferability of alcoholic beverages licenses in Belmont, and if such a home rule petition is approved, until such time as the General Court acts on the home rule petition.

The Board took a five-minute recess.

### **Town Administrator's Report**

Mr. Kale reported on the following item:

- **Special Legislation Alcohol License Transfer Update:** Mr. Kale noted that he discussed the non-transferability and non-pledging issues with Senator Brownsberger. Language will need to be drafted for a Warrant Article. Feedback is being solicited on this language (from Representative Rogers and Senator Brownsberger's legislative processes) so that the town and the Board will be more informed when this issue is brought to Town Meeting. Mr. Hall summarized some of the language concerning the prohibition on the transferability of the license and prohibition of pledging the license. Mr. Kale will follow up with Representative Rogers' and Senator Brownsberger's offices and report back to the Board on January 23. Selectman Williams suggested that the Board decide the direction it wants to go (concerning these issues) as opposed to waiting to hear from the legislature. The Board briefly discussed the language, the intent of the language, as well as the best way to approach this type of home-rule petition.

### **Acceptance of Donation from the Friends of BHS Boys Hockey, Friends of Belmont High School (BHS) Girls Hockey, Belmont Boosters, and Belmont Youth Hockey Association for a new scoreboard for the Viglirolo Rink**

Mr. Curtis Cole, of Belmont Boosters, Ms. Erica Greer, of Belmont Youth Hockey, and Mr. Mike Santoro, Assistant Director of the DPW, appeared before the Board to discuss the donation from the Friends of Belmont High School (BHS) Boys Hockey, Friends of BHS Girls Hockey, Belmont Boosters, and Belmont Youth Hockey Association for a new scoreboard for the Viglirolo Rink. Mr. Cole stated that the scoreboard (clock) is 50 years old and is now malfunctioning. Belmont Boosters and Youth Hockey, he said, are funding the majority of this new scoreboard.

Chair Paolillo confirmed that the scoreboard would be transferrable to a new rink, should one be built.

*The Board moved:* To accept the \$10,000 donation from the Friends of BHS Boys Hockey, the Friends of Belmont High School (BHS) Girls Hockey, Belmont Boosters, and the Belmont Youth Hockey Association for a new scoreboard for the Viglirolo Rink. The motion passed unanimously (3-0).

### **Revised Inventory Presentation by the Historic District Commission (HDC)**

Mr. Jeffrey Wheeler, Office of Community Development, and Ms. Lauren Meier, HDC Co-Chair, appeared before the Board to discuss Belmont's Revised Inventory list of historic properties. Ms. Meier introduced the other members of the HDC. Mr. Kale introduced the newest Town Planner, Mr. Spencer Gober, Staff Planner.

Ms. Meier provided some background information on the Historic Resources Survey. The goal of the survey was to update the list of historic properties in Belmont. The last list was compiled in 1982. The important factors include, age, integrity, significance. Ms. Meier provided some background information on the process for compiling the list of historic properties. She then reviewed some of the specific listed properties.

The Board and Ms. Meier discussed next steps. She stated that she would like to have a bylaw approved (related to the Demolition Delay) concerning these properties. She will work with the Planning Board to solidify the updated list and to create the exact language of the bylaw.

The Board thanked the HDC on their great effort in updating the list.

**Approve a Notice of Award to Homer Contracting Inc. for a contract in the amount of \$161,000 for Phase IV Masonry Repairs and Window Replacement at the Butler School, and that the Town Administrator is hereby authorized to execute said contract on behalf of the BOS**

Mr. Gerry Boyle, Director of Facilities Management, appeared before the Board to discuss the Award to Homer Contracting Inc. for a contract in the amount of \$161,000 for Phase IV Masonry Repairs and Window Replacement at the Butler School. Mr. Boyle explained the need and the scope of the project.

*The Board moved:* To approve the notice of the award to Homer Contracting Inc. for a contract in the amount of \$161,000 for Phase IV Masonry Repairs and Window Replacement at the Butler School, and that the Town Administrator is hereby authorized to execute said contract on behalf of the BOS.

The motion passed unanimously (3-0).

**Approve a Notice of Award to Independent Mechanical Contractors Inc. for a contract in the amount of \$344,000 for 2017 HVAC Maintenance and Repairs at Various Locations, and that the Town Administrator is hereby authorized to execute said contract on behalf of the BOS**

Mr. Gerry Boyle, Director of Facilities Management, remained before the Board to discuss the Notice of Award to Independent Mechanical Contractors Inc. for a contract in the amount of \$344,000 for 2017 HVAC Maintenance and Repairs at various locations. Mr. Boyle explained the need and the scope of the project, as well. He noted that HVAC is a cost driver. Mr. Kale then explained the notion of hiring an HVAC technician so that, going forward, some of these repairs could be handled in house.

The Board discussed this request briefly.

*The Board moved:* To approve the award to Independent Mechanical Contractors Inc. for a contract in the amount of \$344,000 for 2017 HVAC Maintenance and repairs at various locations, and that the Town Administrator is hereby authorized to execute said contract on behalf of the BOS.

The motion passed unanimously (3-0).

**Appointment of Town Clerk Ellen Cushman as Records Access Officer, and Town Department Heads as Records Access Facilitators**

Mr. Kale noted that a new Public Records Law went into effect this month (January). Under the new law, a Records Access Officer and Records Access Facilitators need to be designated – the Board will appoint these.

*The Board moved:* To approve the appointment of Town Clerk Ellen Cushman as Records Access Officer.

The motion passed unanimously (3-0).

*The Board moved:* To approve the appointment of the Town Department Heads as Records Access Facilitators, as listed in the Memo.

The motion passed unanimously (3-0).

**One Day Wine and Malt Liquor License Application from the First Church in Belmont, 404 Concord Avenue, for a Fundraiser Auction and Dinner on Saturday, February 4, 2017 to be held at the First Church in Belmont.**

*The Board moved:* To approve the One Day Wine and Malt Liquor License Application from the First Church in Belmont, 404 Concord Avenue, for a Fundraiser Auction and Dinner on Saturday, February 4, 2017.

The motion passed unanimously (3-0).

**Town Administrator's Report (*continued*)**

Mr. Kale reported on the following item:

- **BOS March 20 Schedule Conflict:** The League of Women Voters Candidates' Night will be held on March 20, 2017. Therefore, the Board meeting will be moved to March 27.

**Committee Liaison Reports / Other**

*Budget Meetings/Development*

Selectman Williams noted that it might be a worthy exercise to have the departments keep overall budget increases to 3%. This will be important especially given the Prop. 2 ½ constraints. Mr. Kale provided additional context for the budget development, noting that the Override money is intended for use through FY19. Therefore, budget tightening is already underway. In addition, continued reviews of revisions to expenditure increases and additional revenues such as new growth and state aid are still pending which will change budget growth and the net amounts used from the general stabilization fund.

Selectman Williams added that the Board needs to plan for the remaining capital projects as well as for the OPEB liability. Chair Paolillo noted that the OPEB study group will be present when the Board meets again on January 23.

**NEXT MEETINGS**

Monday, January 23, 2017 at 7:00 p.m. Selectmen's Meeting Room Town Hall  
Monday, February 6, 2017 at 7:00 p.m. Selectmen's Meeting Room Town Hall  
Monday, February 13, 2017 at 6:00 p.m. Selectmen's Meeting Room Town Hall - Joint Meeting with the Warrant Committee and the School Committee

The Board moved to adjourn the meeting at 9:55 p.m.



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Phyllis Marshall, Interim Town Administrator