

BOARD OF SELECTMEN MEETING  
THURSDAY, JANUARY 19, 2012  
7:30 P.M.

Members present: Francis A. Hegarty, Chairman  
Steven P. Rose  
Robert F. Brady, Jr.

Others present: Michael McCue, Town Administrator  
Joseph Lalli, Town Counsel

Chairman Hegarty called the meeting to order at 7:30 p.m. with all members present.

Mr. Rose made a motion to accept the minutes of Thursday, January 5, 2012 (Regular Session) as written. Mr. Brady seconded the motion. The vote was unanimous.

Mr. Rose made a motion to approve the minutes of Thursday, January 5, 2012 (Executive Session) as submitted. Mr. Brady seconded the motion. The motion carried.

Mr. Brady made a motion to accept the minutes of Thursday, October 6, 2011 (Executive Session) as submitted. Mr. Rose seconded the motion. All were in favor.

Mr. Brady made a motion to accept the minutes of Thursday, September 15, 2011 (Executive Session) as written. Mr. Rose seconded the motion. The motion carried.

**UNFINISHED BUSINESS**

**Appointed Constable Policy**

Mr. Brady stated in view of new paperwork received, he would make a motion to table the discussion until the next Board of Selectmen's meeting scheduled for February 2, 2012. Mr. Rose seconded the motion. The motion carried.

**NEW BUSINESS**

A letter was received from Lynne Freedman requesting permission to hold the 17<sup>th</sup> Annual Janet McDonald Memorial Walk Against Cancer on Saturday, April 7, 2012, commencing at 9:00 a.m.

Mr. Brady made a motion to approve the event on Saturday, April 7, 2012. Mr. Rose seconded the motion. The vote was unanimous.

Mr. McCue was asked to coordinate the event date with the Police and Fire Department.

A temporary sign request application was received from Affordable Furniture at 75 Stockwell Drive to advertise a winter Blowout Sale from January 30 through February 20, 2012.

Mr. Rose made a motion to approve the temporary sign permit for Affordable Furniture for four (4) signs to be displayed from January 30 through February 20, 2012. Mr. Brady seconded the motion. All were in favor.

A temporary sign permit request application was received from Affordable Furniture at 75 Stockwell Drive for four (4) cardboard signs advertising "Tax Season Furniture Sale" to be displayed from March 12 through April 2, 2012.

Mr. Rose made a motion to approve the temporary sign permit request for Affordable Furniture for the period March 12 through April 2, 2012. Mr. Brady seconded the motion. The motion carried.

Meeting dates for the month of February were set as follows:

Thursday, February 2, 2012 at 7:30 p.m.  
Thursday, February 16, 2012 at 7:30 p.m.

The Board discussed setting a date for an interdepartmental meeting to discuss the FY '13 budget. After some discussion, it was agreed the meeting would be scheduled for Monday, January 30, 2012 at 7:00 p.m.

**7:45 p.m.—Opening of bids for printing of the Annual Town Report for 2011**

Mr. Rose, Clerk of the Board, opened up the following bids for printing of the Annual Town Report for 2011:

<b>Vendor</b>	<b>Location</b>	<b>600 copies</b>	<b>700 copies</b>
1. King Printing	Lowell, MA	\$2199.27	\$2425.92
2. Select Print Solutions	N. Brookfield, MA	\$1811.00	\$2106.00
3. Flagship Press	N. Andover, MA	\$3060.00	\$3453.00
4. J & R Graphics	Hanover, MA	\$3250.00	\$3699.50
5. TecDoc Digital	Hudson, MA	\$2694.00	\$3129.00

Mr. Rose made a motion to take the bids under advisement. Mr. Brady seconded the motion. The motion carried.

Chairman Hegarty added that as a bid requirement, samples of work must be submitted with bids.

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

Due to the merging of T-Mobile and AT&T, construction on the grounds of the cell tower, located at the Crowley School on Fagan Drive, will begin. T-Mobile will be in touch with the Town around mid-February.

Mr. McCue reported that talks on solar panels on Town buildings have been delayed. He will be meeting with staff from Constellation NewEnergy next week and will update the Board when information becomes available.

Mr. McCue announced a public records training will be held on Thursday, January 26<sup>th</sup> at noon in the Meeting Room at the Avon Town Hall. 20 attendees are needed for the training. That number will be fulfilled as department heads and one member of each Board/Commission is required to attend.

Mr. McCue informed the Board that he will attend a seminar on February 16<sup>th</sup> at 11:00 a.m. with Town Accountant Deb Morin and Fire Chief Bob Spurr to obtain information on the latest State-of-the-Art technology relative to communication systems. Voice Systems, a Canton-based company, will provide the seminar and will include a tour of their facility with an explanation of what support services they have available.

### **8:00 p.m.—Public Hearing on the application of Jeffrey Sinkiewicz, D/B/A Slap-Shotz for a public entertainment license and automatic amusement devices license at 39-43 East Main Street**

Mr. Jeffrey Sinkiewicz, owner and manager of Slap-Shotz Family Sports Pub, appeared before the Board regarding his public entertainment licenses. Mr. Sinkiewicz explained he has been running the business at 39-43 East Main Street for quite some time. His public entertainment would consist of a country band, oldies music, classic rock—he is interested in capturing a 35-45 age audience.

After some further questioning by the Board, Mr. Brady made a motion to approve the public entertainment license and licenses for automatic amusement devices for 2012. Mr. Rose seconded the motion. The motion carried.

At 8:15 p.m., Mr. Rose made a motion to recess until 8:30 p.m. at which time a public hearing is scheduled. Mr. Brady seconded the motion. All were in favor.

At 8:30 p.m., on a motion made by Mr. Rose, seconded by Mr. Brady, the Board reconvened in Open Session.

**8:30 p.m.—Public Hearing on the application of NN Business Development, LLC (Subway of Avon) for a Common Victualler’s license at 5 Stockwell Drive**

Mr. Nehal Patel and Mr. Ranganarayan Narastmhan, owners of NN Business Development, LLC, (Subway of Avon) appeared before the Board. They informed the Board that they bought the business last month at 5 Stockwell Drive. They run a similar operation in Waltham. The hours would remain the same.

After some further questioning by the Board, Mr. Brady made a motion to approve the application for a Common Victualler’s license for NN Business Development, LLC at 5 Stockwell Drive. Mr. Rose seconded the motion. The vote was unanimous.

On a motion made by Mr. Rose, seconded by Mr. Brady, it was unanimously voted to approve all vouchers for the payment of bills as submitted.

On behalf of the Board, Chairman Hegarty congratulated Chief Warren Phillips for his election to the presidency of the Southeast Chief of Police Association.

Chairman Hegarty announced that the Avon Cable Access & Media Corporation would be placed on the February 2<sup>nd</sup> meeting agenda to discuss a proposed contract between them and the Town.

Town Administrator Michael McCue informed residents that there are several openings on various Boards/Commissions. The Conservation Commission needs members to serve the Town. They meet once a month. There are two (2) vacancies on the Zoning Board of Appeals and several vacancies on the By-Law Committee as well as the Personnel Board. Please send a letter of interest to the Board of Selectmen if you wish to serve the Town of Avon. This information will be available on the Town’s website and the Cable Access Channel.

Chairman Hegarty stated a meeting will be scheduled during the second week of February to gather interested members to serve on the Anniversary Committee.

A resignation letter was received from Charles Kowalski, resigning his position on the Water Commission, effective January 18, 2012. Mr. Brady made a motion to accept Mr. Kowalski’s letter of resignation. Mr. Rose seconded the motion. The motion carried.

Chairman Hegarty reported the vacancy would present an open seat for a Water Commissioner on the Annual Town Election ballot in April, 2012.

At 8:40 p.m., Mr. Rose made a motion to call for a brief recess. Mr. Brady seconded the motion. The vote was unanimous.

At 8:45 p.m., on a motion made by Mr. Rose, seconded by Mr. Brady, it was unanimously voted to reconvene the meeting in Open Session.

**8:45 p.m.—Hearing—Avon’s Generations at 81 Memorial Drive**

Adam Silver, Manager of Generations, and Darcy MacDonald, Attorney for Generations, appeared before the Board. Avon’s Police Chief, Warren Phillips, was also present.

Chairman Hegarty reported that their attendance tonight was required to address a police report the Board received, indicating possible violation(s) on December 31, 2011, where a live entertainment function was held with no police detail present for the event.

Chairman Hegarty discussed a prior hearing with Generations on April 22, 2009. At that hearing on April 22, 2009, Chairman Hegarty stated this issue had been previously discussed. At the April 22, 2009 hearing a flyer was produced stating admission was available at the door the day of the event, thus making it a public function. The Board requires public functions to have a police detail.

Chairman Hegarty referred to a letter written by Police Chief Phillips, dated December 30, 2003, sent to Sean MacDonald, which stated “Please be advised that the Avon Police Department requires a police officer to work security during any live entertainment functions/events. We also have the right to add more officers if we see fit, depending on potential crowds, or other event specific situations.”

Attorney MacDonald asked: “what information does the Board have that resulted in cause for an investigation”?

Chairman Hegarty responded that he had in his possession an advertisement from the internet which posted a get-together/New Year’s Eve celebration on December 31, 2011 from 9:00 p.m. to 2:00 a.m. at Generations, 81 Memorial Drive, Avon, MA. Tickets were available online at \$60.00 per ticket through Metro PCS, 1656 Blue Hill Avenue, Mattapan, or online at [www.9alarm.com](http://www.9alarm.com). The advertisement stated “catering to a mature audience.”

Ms. MacDonald asked if there is anything in that document that indicates it is a public event?

Chairman Hegarty responded “paid tickets are available.” \$60.00 a ticket. Tables \$300.00- seats 4. Full table - \$500.00 seats 8.

Attorney MacDonald responded: 9alarm is not connected to anyone at Generations. It is my understanding that the legal definition of a public event is that it is open to the public. I don’t see anything in that document that indicates that the proprietors of Generations were in any way connected to that. That was a private function.

Chairman Hegarty responded: “If I can show up at the door”. . .

. . .

Attorney MacDonald stated: You can’t. Is there anywhere in there that says . . . Check with Town Counsel if you’d like.

Chairman Hegarty: If I can show up at the door . . .

Attorney MacDonald: You can't. That is not accurate, Mr. Hegarty. Is there anywhere there that says tickets will be sold at the door? A private function is a privately sold ticket. The tickets are controlled by the individual who books the function. The proprietors of the restaurant have absolutely no participation in the sale of the tickets. That was a fundraising benefit. A gentleman came into the establishment who contracted for a function. We have a copy of the function contract. The individuals of Generations were never involved in the sales of the tickets. They had nothing to do with that advertisement.

Chairman Hegarty asked: "Who collected the tickets at the door?"

Attorney MacDonald answered: The people who ran the function. There was somebody at the door with a private list of private guests who brought their own private security – and the only way you got through the door was if your name on the list on an iPad. And if the Chief or anybody else at the Police Department called Mr. Silver, he could have provided a copy of the function contract, he could have cleared up the confusion and he could have saved Mr. Silver the time and the money to have me come down and deal with this.

Chairman Hegarty: Counsel, I believe we have been through this before where we define what we believe to be the issue – which is if people are paying an admission to whomever . . .

Attorney MacDonald: But that's . . .

Chairman Hegarty: Counsel, we have been through this. We have statements signed by the applicants that there will be no operation unless there is a detail officer.

Attorney MacDonald: I'd like to see that. No operation unless there is a detail officer? What is that connected to?

Chairman Hegarty responded it was part of the public entertainment application.

Attorney MacDonald asked for Chairman Hegarty to define "operation." Does that mean if they have dinner for two? It doesn't say function.

Chairman Hegarty stated: Councilor: We have been over this before.

Attorney MacDonald: Yes, we have. We went over this in April of 2009. I directed a letter to the Board for specifics – for clarification of what we discussed. I got no response from my letter.

Chairman Hegarty: You did not get a letter in April? The Chief of Police did not send you a letter?

Attorney MacDonald: Nothing. I am sorry. The letter was dated December 30, 2003.

Chairman Hegarty read the letter as follows: "Please be advised that the Avon Police Department requires a police officer to work security during any live entertainment functions/events. We

also have the right to add more officers if we see fit, depending on potential crowds, or other event specific situations.”

Attorney MacDonald answers: Stop right there. There was no live entertainment. We can stop right there. There was no live entertainment with this. Live entertainment is a band.

Chairman Hegarty questioned: You don't consider a DJ “live entertainment?”

Attorney MacDonald: Live entertainment is a band as I understand it. We already went through this issue.

Adam Silver stated at this point: I do weddings with DJ's. Is that live entertainment?

Chairman Hegarty replied: No one to my knowledge pays an admission charge.

Attorney MacDonald: But there are fundraisers all the time. Can we back up here? We have several different issues here; we have live entertainment; we have a public event; there are several different issues that you are banding about and using them interchangeably and it's not appropriate.

Chairman Hegarty reiterated that there is a letter here that basically states that on the advice of the Avon Police Department for a live entertainment function, police detail is required to work security and the Police Department has the right to add more officers if they see fit.

Attorney MacDonald replied: We addressed this in April, 2009. There was an agreement between the owners and the Board and the Chief of Police that when he believed it was warranted, the Police Chief would contact Mr. Silver and tell him a detail was warranted. Is that your recollection? We went through all of this before. I specifically asked the Board for clarification about what was understood and never got a response.

Chairmen Hegarty responded: I believe this was agreed to be worked out mutually between the two.

Attorney MacDonald: Is that your understanding?

Chairmen Hegarty: Yes.

Attorney MacDonald: Maybe we can direct this to the Chief. Maybe the Chief can give us a clarification. My understanding from my client is that he was never contacted by the Chief – not in writing . . .

Chairman Hegarty: How would the Chief know they were having public entertainment at the facility?

Attorney MacDonald: They weren't having public entertainment. This is where we are getting hung up. Why would they contact the Chief? If someone comes into their establishment and

says “Mr. Silver, I want to have a function for 250 people; I want to serve Caesar salad, sliced sirloin, stuffed chicken, roasted potatoes and honey glazed carrots. I want to pay X amount of dollars for 250 people.” Does this Board reasonably expect its Mr. Silver’s responsibility to police the internet the way Officer Houhoulis does looking for ways to blow them up?

Mr. Rose responded: I don’t know why you’re bringing up Mr. Houhoulis at this point.

Attorney MacDonald: Because it was Mr. Houhoulis who sent the police officer down. Mr. Houhoulis was the person that picked up the phone and accused my client of being drunk.

Chairman Hegarty stated: Excuse me. You are totally off base here.

Attorney MacDonald: No, I’m not.

Chairman Hegarty: Excuse me. You are.

At 9:00 p.m., Mr. Rose made a motion to recess at this time for attitude. Mr. Brady seconded the motion. The motion carried.

At 9:02 p.m., Mr. Rose made a motion to reconvene the hearing in Open Session. Mr. Brady seconded the motion. The motion carried.

Chairman Hegarty reported that the issue goes back to the letter of December 30, 2003 which states police detail is required to work security during any live entertainment functions/events. The decisions/agreements that were reached in 2009 – it is my recollection that the owners were to work together with the Police Department to decide how many detail officers were needed and how many were available, and obviously that has not taken place.

Attorney MacDonald replied: I respectfully disagree with that statement, Mr. Hegarty.

Chairman Hegarty asked: when was the last time the Police Department was notified of any live entertainment or any live function taking place at Generations? Do you know off hand?

Attorney MacDonald asked Mr. Silver “how many police details have you had in 2011?”

Adam Silver replied: “I have had police details in 2011 – I don’t know – I would have to look at my bills – 4, 5, 6? When I think details are an issue, and I have always respected the Police Department, I would want them there. I would not want any of my patrons being in harm’s way or anyone else being in harm’s way – I have private security and we haven’t had a problem. There was one unfortunate incident – and when we came to this agreement, since then there hasn’t been one problem at Generations. I and the Chief never talk. I tried to call on the day of this eve. I called then to talk to the Police Chief when they brought forward a problem. I never knew there was a problem. There wasn’t one problem that night – not one phone call, not one problem – no safety issues.

Chairman Hegarty: Whether there was a problem or not, the issue becomes one in that the requirement is not been fulfilled.

Attorney MacDonald: Mr. Hegarty, with all due respect, when we came here in 2009, this was exactly the issue on the table. We discussed at that time with the Board and with the Chief, the circumstances that would trigger the need for a detail. Mr. Silver said he had engaged in private security because there were times when he didn't think a detail was warranted and private security was requested by the patrons. It was agreed that Mr. Silver would work with him on a number – if the capacity got beyond a certain number – my recollection is 350 people in the building, if that would trigger a phone conversation with the Police Chief. And if you want, we can postpone this hearing and get a transcript of that conversation that night.

Chairman Hegarty: I think we will postpone this hearing and we will schedule a date for February 2, 2012 at 8:30 p.m.

Attorney MacDonald: I would also like to request at that meeting that my letter, dated April 27, 2009, that I sent to this Board with copies of contracts that were addressed in that meeting, I ask for that letter to be addressed at that meeting as well. That letter speaks exactly to this issue before the Board.

Is the Chairman agreeing to address that letter?

Chairman Hegarty stated: Didn't I just state so?

Attorney MacDonald: I'm just asking.

Chairman Hegarty stated: If we have ample time, we will address it, Councilor. OK?

Attorney MacDonald: OK.

Chairman Hegarty: You have ample time to address your case. We are adjourned until February 2, 2012 at 8:30 p.m.

At 9:07 p.m., Mr. Rose made a motion to adjourn the meeting. Mr. Brady seconded the motion. The vote was unanimous.

Respectfully submitted,

Miriam Rothstein  
Secretary

