

## **MINUTES – SELECTMEN’S MEETING**

**Monday November 27, 2017**

**Seth Ventress Hall, 76 South River Street**

Present: Michael G. Bradley, Chairman; James J. Fitzgerald; Joseph E. Kelleher; Michael A. Maresco, Town Administrator

Mike Bradley opened the meeting at 7:05 p.m. and announced that the meeting is being recorded.

Town Administrator Report – Michael Maresco provided the Board with his weekly brief:

- November 14 – went to the state house to testify in support of the legislative act authorizing the Town to withdraw from the Metropolitan Area Planning Council.
- November 15 – held a new employee coffee at town hall to welcome all employees hired during 2017.
- November 16 – conducted interviews for Facilities Manager position.
- November 17 – attended Council on Aging legislative breakfast at the Senior Center.
- November 20 – attended dedication of the Robert Quigley room at Marshfield High School.
- November 21 – held his first Department Head meeting at the Emergency Operation Center.

Open Space Easement Donation – 955 Careswell Street – Steve Guard appeared before the Board and explained the reason for this request. Mike Bradley moved, seconded by Jim Fitzgerald, to accept the gift of an open space easement from Stuart Morris-Hipkins to be held by the Marshfield Conservation Commission on the parcel at 955 Careswell Street. The vote was unanimous.

Vote to Open and Close the Annual Town Meeting Warrant – Mike Bradley read the notice regarding the opening and closing of the Annual Town Meeting warrant which will open on January 2, 2018 and close on January 22, 2018. Mike Bradley moved, seconded by Jim Fitzgerald, to accept these dates. The vote was unanimous.

Roht Marine – Hearing on Noise Complaint – Mike Bradley disclosed for the record that he has filed an ethics disclosure form stating that he keeps his boat at Roht Marine. Mr. Bradley explained the process for this hearing and swore in all parties interested in speaking.

Jay Creed appeared before the Board to represent the petitioners and submitted some information and photographs for the record. Mr. Creed read from the Town of Marshfield general bylaws regarding noise, from the Massachusetts DEP Noise Control Regulation, and from Mass General Laws regarding entertainment licenses. Mr. Creed said that he understands that this hearing is just to discuss the entertainment license and that it is the Selectmen’s opinion that parking and traffic issues fall under the jurisdiction of the Zoning Board, but stated for the record that it is his opinion that parking and traffic are covered under the entertainment license. Mr. Creed described the photographs that he provided to the Board and gave some details on the concerns being raised by the petitioners.

Helen Burgess, 18 Littles Lane, described the issues she has experienced over the past two years related to noise, lights, and obscene and offensive language coming from Roht Marine and asked the Board to consider revoking Mr. Roht’s entertainment license.

Hazel Bacigalupo, 36 Littles Lane, read a statement written by her husband regarding the problems surrounding the business operated by Erich Roht. Ms. Bacigalupo said that her husband has health issues which are exacerbated by the stress of this situation. Ms. Bacigalupo said that she has called the Marshfield Police a number of times, and asked the Board to take appropriate action.

Daniel Wills, 2193 Main Street, said that he cannot sit outside or have his windows open. Mr. Wills said that the entertainment is structured to attract large crowds and parking is a problem. Mr. Wills said that he has complained to the police and to the manager at Roht Marine but nothing is done. Mr. Wills said that the property is not well maintained and the cars and crowds obstruct emergency vehicles from entering. Mr. Wills said that the situation has gotten progressively worse every year since Mr. Roht took over the business.

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Catherine Armstrong, 29 Littles Lane, read a statement regarding the negative impact that this business has had on her family’s quality of life. Ms. Armstrong described an incident when she called Roht Marine to complain about the music. Ms. Armstrong said that the music is often indecent, offensive and vulgar. Ms. Armstrong asked the Board to revoke the entertainment license and strictly enforce the liquor license regulations.

Pam Prescott, 50 Littles Lane, gave some details on her experiences with Roht Marine over the past two years. Ms. Prescott said that loud music can be heard inside her home as well as outside and added that she purchased property on a quiet street on a protected scenic waterway; she did not purchase a home next to a night club. Ms. Prescott asked the Board to revoke the entertainment license.

Robert Prescott, 50 Littles Lane, read a statement regarding the noise that is generated by Roht Marine and the effect it has had on his quality of life.

Jerry Duffy, 26 Littles Lane, said that he has no problem with the music played at Roht Marine and added that he does not understand the problems that the neighbors have with this business.

Peggy English, 4 Moors Circle Scituate, said that Wednesday nights are intolerable and described the effect this has had on her quality of life.

Ken Grondell, 45 Chief Justice Cushing Highway Scituate, spoke about how loud the music is and said that he has registered several complaints with the Selectmen’s Office and the Marshfield Police.

Paul Carroll, 16 Pleasant Spring Lane, said that he has had a boat at the marina since 1980 and noted that Mr. Roht has 50 employees; many of them are young college and high school students. Mr. Carroll said that Mr. Roht does a lot for the community, and has worked very hard to alleviate the parking issues with parking attendants and a water taxi. Mr. Carroll said that he feels that people are overdramatizing the effects of the noise.

Jay Creed said that he sent a video to the selectmen that proves that the petitioners are not exaggerating the noise and offensive language they have described. Mr. Bradley said that the Board members have seen the video and asked when it was made and from where. Catherine Armstrong said that it was filmed from 26 Littles Lane on September 27, 2017.

Erich Roht appeared before the Board with his attorney Steven Guard. Mr. Guard said that each time a complaint was logged with the Marshfield Police the complaint was investigated and there was no discovery that there was any violation of noise bylaws at Roht Marine. Mr. Guard said that in spite of this, Mr. Roht has developed a plan to address the complaints and read through Mr. Roht’s plans to address the issues. Mr. Roht said that he was surprised when he received this petition because he thought he had a good relationship with the neighbors, and said that they did not come to him with any complaints. Mr. Roht said that the claims are not even remotely factual, he is a good neighbor and would never want to offend his neighbors. Mr. Roht said that he does not see any evidence of a problem, the parking issues have been resolved through the hiring of a police detail and placement of signage. Mr. Roht said that this all started in September and it seems that it has become a personal vendetta which has had a negative impact on his business. Mr. Roht admitted that someone did climb up on the roof once during a performance in May, but he spoke to the performer and it has not happened again. Mr. Roht said that he has addressed each issue as it comes up, and added that the Eddie Murphy song with offensive lyrics was played once; he spoke to the performer and it has not been performed again. Mr. Guard said that Erich Roht addressed every issue as soon as he became aware of them.

Jim Fitzgerald said that Erich Roht said this all started in September, but the complaints have been coming in all summer. Mr. Fitzgerald said that the Selectmen’s office has received 13 complaints regarding noise at Roht Marine, and added that in his 8 years as a Selectman he does not remember receiving a noise complaint about any other licensed business. Mr. Fitzgerald said that the number of people attending events far exceeds the

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seating limits for this premise and noted that the pictures show evidence of drinking in the parking lot, which could be a liquor violation. Mr. Roht said that he has a legal right to serve alcohol in both areas and people can transport alcohol between the two areas.

Jim Fitzgerald said that Mr. Roht stated on his entertainment license application that he would have a sound system designed to be heard at close range with baffled sound to reduce noise overspill. Mr. Fitzgerald said that this year the overspill got out of hand and added that he is concerned with the fact that activities this year have overreached the terms of the license. Erich Roht said that he has gone up to Littles Lane and could not hear the music, and it did not register on the decibel reader.

Mr. Kelleher said that he has a different perspective since he was on the Board of Appeals when the Roht Marine hearings were conducted. Mr. Kelleher said that the pictures presented tonight do not show what was presented to the ZBA when they made their decision, and said that it appears that there are tables and people drinking alcohol in the parking lot. Mr. Roht said that he did not put tables in the parking lot, but patrons may have moved chairs to that area and he will ensure that does not happen in the future.

Mike Bradley said that patrons should not be allowed to walk from one bar to the other with an alcoholic beverage; they need to stay in the area where they were served. Mr. Bradley added that there is a big disparity between what Erich Roht is saying and what the petitioners are saying about the noise levels. Mr. Bradley asked what Mr. Roht is going to do to address the concerns of the neighbors. Erich Roht said that he can do an independent noise study to measure the decibels.

Steve Guard read through the list of steps that Mr. Roht has taken to address noise complaints. Joe Kelleher asked when this plan went into effect. Mr. Guard said the plan was developed two to three days after the complaint on September 27, 2017. Joe Kelleher asked the petitioners if the situation has improved since these steps were implemented. Several petitioners said that it has not.

Steve Guard read through the police reports which do not support the claims of excessive noise. Mike Bradley said that he saw the video and agrees that the lyrics were offensive. Erich Roht said that performers now have to sign a policy stating that there will be no offensive language. Mike Bradley asked if Mr. Roht is on the premises at all times. Erich Roht said that either he or a manager is there at all times.

Phil Barry, 6 Eagle Road, said that his son works at Roht Marine and the job has had a positive impact on his life. Mr. Barry said that he has picked his son up at work when Aldous Collins is playing and has never seen any inappropriate behavior or excessively loud music. Mr. Barry asked the Board to take the facts into account when making their decision.

Sue Kirdahy, 75 Salt Meadow Way, spoke in support of Erich Roht. Ms. Kirdahy said that she has two sons who are employed by Mr. Roht. Ms. Kirdahy said that it is a family atmosphere and the music has always been reasonable when she picked her sons up at work.

Tad Beagley, 822 Ferry Street, spoke in support of Erich Roht and said that his business provides a unique experience in Marshfield. Mr. Beagley said that Mr. Roht has been very generous in donating the use of his marina for local fundraisers.

Sue Walker, Quail Run, spoke in support of Erich Roht, and said that there needs to be some compromise rather than a revocation of the license.

Charlie Naff, Capt Luther Little Way, spoke in support of Erich Roht and said that he works within the guidelines of local ordinances and works hard at being a good corporate citizen.

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William Patten, 465 Pleasant Street, reiterated what Mr. Naff said about Mr. Roht being a good citizen and a hands-on manager. Mr. Patten said that safety and compliance with Town bylaws has been a priority for Mr. Roht.

William Boulter, 24 Eames Way Pembroke, said that he is a member of the Pembroke Board of Selectmen and also served as a police officer for 44 years. Mr. Boulter spoke in support of Mr. Roht.

Mark Scotia, 66 Chief Justice Cushing Highway, said that he lives directly across the street from Roht Marine and he feels that the petitioners complaints seem extreme since the music is only one day a week for a few hours during early evening.

Ivy Francis, 200 Damons Point Road, said that last summer the music was very loud. Ms. Francis said that Mr. Roht does business in a way that negatively affects the environment of the neighborhood.

Diane Ligrow, 15 Neal Gate Street Scituate, asked the Board of Selectmen to explore the concept of frequency when looking at decibels. Ms. Ligrow said that Mr. Roht is running a night club that is grossly inappropriate and has had a negative impact on quality of life and property values. Ms. Ligrow asked the Board of Selectmen to revoke the license or at least suspend it and enforce the laws.

Police Chief Phil Tavares gave an overview of the complaints the police department has received regarding Roht Marine over the past year. Chief Tavares said that the Town’s rules and regulations for an entertainment license apply to indoor entertainment; the Town’s bylaw regarding noise does not apply to licensed establishments. Chief Tavares read from MGH Ch. 272, Section 53 regarding disturbing the peace and said that the Town could adopt the DEP regulations. Chief Tavares said that the officers who responded to the complaints did not find the noise to be unreasonable. Chief Tavares said that he met with Erich Roht in the spring regarding parking and Mr. Roht hired a police detail to handle parking and traffic issues on busy nights. Chief Tavares reviewed the steps taken by Mr. Roht to alleviate the neighbors’ concerns. Chief Tavares noted that Erich Roht has volunteered to take all of these steps which are stricter than any rules placed on any other licensed establishment in Marshfield and reiterated that the Police Department does not find the noise to be unreasonable.

Jim Fitzgerald said that they need to scientifically assess what the noise levels are since it is subjective and opinions seem to vary greatly. Mr. Fitzgerald noted that it appears that there are still problems even after the plan to address complaints was implemented.

Joe Kelleher said that they heard a wide array of testimony tonight and asked Chief Tavares if he has used the new decibel readers. Chief Tavares said that they have been used twice and noted that there are a number of variables that come into play when measuring noise levels.

Mike Bradley moved, seconded by Jim Fitzgerald, to close the public comment portion of the hearing at 9:15 p.m.

Mike Bradley said that the Board has been advised by Town Counsel that they must determine whether credible evidence and testimony have shown that the licensed activities on the premises have adversely affected the public health, safety or order. Mr. Bradley said that credible evidence has both a quantitative and a qualitative component, quantitatively the evidence must provide specific factual support for each of the claims the complainant has made, qualitatively the evidence must be of a type on which a reasonable person could rely to conclude that there has been a violation. Mr. Bradley said that he does not believe that the complaints have shown that there is a violation.

Jim Fitzgerald said that they need to decide what is reasonable and what is unreasonable, and noted that this is a new use as opposed to something like the fairgrounds which has been there for 150 years. Mr. Fitzgerald said that a night club atmosphere does change the climate of the neighborhood and added that he hopes there is a way to bridge the gap

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between the two parties. Mr. Fitzgerald said that they would typically issue a warning and would not consider revocation without really good cause and noted that the problem appears to be the amount of amplification, which got out of hand this year. Mr. Fitzgerald said that the best way to deal with it is to have Mr. Roht work with the Chief to find a way to work with the neighbors and to find a way to quantify the sound levels that is scientific not subjective. Mr. Fitzgerald noted that this case is different than others because a new use was introduced into this location and that use appears to have expanded beyond what was intended with the liquor license.

Joe Kelleher said that they heard a wide array of opinions and need to come to some kind of objective way to address the situation. Mr. Kelleher said that he does not feel that there should be a revocation at this time.

Mike Bradley said that he does not see credible evidence for a revocation. Bob Galvin said that in order to take any action there has to be a finding that there was some adverse effect on the public and determine if the licensee has failed to prevent an unreasonable increase in the level of noise in the area caused by the licensed activity or by patrons entering or leaving the premises. Bob Galvin said that there seems to be a disconnect between the neighbors saying that they get no response from Mr. Roht and Mr. Roht saying that the neighbors should let him know if they have concerns.

Mike Bradley said that he does not feel that any action should be taken this evening since there was no credible evidence of a violation.

Jim Fitzgerald disagreed and said that based on the number of complaints received, he would like to issue a warning so that if they have to come back in the future it is on the record. Mr. Fitzgerald added that there were still problems after the mitigation plan was developed and said that he is not going to accept this many complaints on an entertainment license.

Joe Kelleher said that he is in favor of a final warning and added that he hopes that it does not come back before them, but agrees that it should be documented in case it does.

After a brief discussion, Jim Fitzgerald moved, seconded by Joe Kelleher, to find that there was enough credible evidence that the licensed activities have adversely affected the public and that the licensee has failed to prevent an unreasonable increase in the level of noise in the area. The vote was 2:0.

Jim Fitzgerald moved, seconded by Joe Kelleher, to issue a warning to the licensee, Erich Roht. The vote was 2:0.

Mike Bradley moved, seconded by Jim Fitzgerald to close the hearing at 9:40 p.m. The vote was unanimous.

The meeting was adjourned at 9:40 p.m. There was no executive session held.

Respectfully submitted,

Catherine Burke

*The following documents and exhibits were presented at the meeting: standard procedure for entertainment license hearing drafted by Town Counsel; DEP Noise Control Regulation; copy of application for entertainment license and current entertainment license for Roht Marine; complaint and accompanying information from Marshfield petitioners; complaint from Scituate residents and letter from Scituate Board of Selectmen; Notice of Hearing and revised Notice of Hearing with location change; plans developed by Erich Roht to address complaints; copies of police reports; pictures and other information submitted by Attorney Jay Creed on 11/27/2017; letter submitted by NSRWA on 11/27/2017; public notice regarding opening and closing of annual town meeting warrant; letter from Attorney Guard and accompanying information regarding open space easement at 955 Careswell Street.*