

MINUTES OF REGULAR SESSION –APRIL 7, 2014

ROOM 03 – TOWN HALL

7:00PM

PRESENT: Chairman William D. Buckley; Selectmen Dino B. DeBartolomeis and Brian W. Murray, Esq.; Town Administrator Richard A. Villani; and Minutes Recorder Jean M. DeTore.

1. Mr. DeBartolomeis, Senior Member, opened the meeting for re-organizational purposes. He called for a moment of silence to remember the two Boston Firefighters and Police Officer who recently lost their lives in the line of duty offering prayers and consolation to the families.

2. Mr. DeBartolomeis congratulated Mr. Buckley on his re-election and thanked both he and Mr. Murray for their support and confidence during the past year; Town Administrator Villani for a smooth transition as the new Administrator, his pleasing rapport as well as his accessibility to the public; and the staff of the Selectmen's Office for their support. He then turned the meeting over to the Town Administrator for the election of a new Chairman. Mr. Murray moved, seconded by Mr. Buckley: To nominate Mr. DeBartolomeis as Chairman, UNANIMOUS. Chairman DeBartolomeis thanked Mr. Murray and Mr. Buckley for their support and confidence in him as Chairman. He outlined his goals for the year including efforts to: Continue the town's fiscal policy of working within the guidelines and parameters of Proposition 2 ½, Maintain the Dual Tax Rate; Maintain and support a superior School System and Public Safety Department to educate our children and protect the safety of the residents with highly skilled, dedicated public safety personnel; Expand tax relief to eligible senior citizens, Protect and preserve the environment, Plan and strategize with the Town Planner, Town Engineer, Town Administrator, the Chamber of Commerce and the Industrial Development Commission in attracting good, clean industry; Continue the efforts to complete the Milford Pond project; Protect and preserve our valuable land for open space in perpetuity, the environment and work on improving the acoustics in upper town hall.

3. CITIZEN PARTICIPATION - None

4. Chairman DeBartolomeis called the hearing to order stating that the matter is a Public Hearing being held on Royal Buddha, Inc., 121 Depot Street, to consider whether or not to modify, suspend or revoke the license issued for the establishment, pursuant to Chapter 138, section 64 and also pursuant to G.L. c. 138 Section 12, to consider whether or not there is a public need for a decrease in the hours of operation permitted to the establishment as is set forth in the notice to the licensee. The reasons for the contemplated action are because of the events of March 7, 2014 which began at or about 2:12AM when the Milford Police Department received a call indicating there was a fight at the establishment. The events and activity

described in the police reports and statements attached to the notice indicate a failure on the part of the manager to manage the establishment consistent with the rules applicable to licensed alcoholic beverages establishments in Milford and in particular Section 1.01(a) and Section 1.01(e). In addition, your management of the establishment, including remaining open for customers after 2:00AM, when the hours under the establishment's licenses ended at 1:00AM, and all of the other activity implicate Section 1.05(a) (1) of those same regulations. In addition, all of the activities described would indicate violation of the Rules and Regulations of the Massachusetts Alcoholic Beverages Control Commission and in particular 204 CMR 2.05(2) which states that:

(2) No licensee for the sale of alcoholic beverages shall permit any disorder, disturbance or illegality of any kind to take place in or on the licensed premises. The licensee shall be responsible therefore, whether present or not.

Chairman DeBartolomeis explained the parameters of the hearing then called upon Town Counsel Gerald Moody who briefly outlined the events that took place on the night in question. He referenced the hours of operation listed on the Common Victualler All Alcoholic Beverages License and the hours for serving food listed on the Common Victualler's License. Town Counsel Moody noted that as the police reports indicate, customers were "waiting for food" past the allowed hours. As a consequence there was a serious brawl between multiple persons with personal injury and property damage.

Police Chief O'Loughlin stated that Mr. Eng was properly licensed to have a gun. He believes he did not act outside the law in the use of that gun.

The Licensee, Benjamin Eng was represented by Attorney Warren Heller. Atty. Heller, presented his statements noting that Mr. Eng accepts responsibility for civilians on the premise after the required closing time on the night in question. He further stated it was a misjudgment on his part but with mitigating circumstances. Atty. Heller then gave his history of the restaurant stating that since its establishment in 1985 it has been a closely held family business with very few incidents.

Atty. Heller asked the board's permission to post several photographs on the bulletin board. He then reviewed the events of the evening beginning at **12:50AM**. According to Atty. Heller he bartender Ariana Bently and her fiancé Kevin Kivior were in the bar. Mr. Eng had made last call and was reviewing cash receipts by the Tiki Hut and talking to a family friend Albert Acevedo. He stated he lost track of time because they were reminiscing about his late father Tong Yau Eng. As part of his normal closing procedures he doesn't lock the front door until the last person is out. He heard the bell at the front door. According to Atty. Heller it was 1:30AM when Mr. Steven Fraga, Tiaga DaSilva and Mario Pisani entered the bar. Mr. Fraga wanted a drink. Mr. Eng stated that he already gave last call. Mr. Fraga was persistent. He offered him free food. Mr. Eng told him that as soon as I give you the food you have to leave.

According to Atty. Heller at **1:55AM** the food was ready. Mr. Fraga asked for a drink. Mr. Eng again said no I already gave last call. Mr. Fraga again became agitated. Mr. DaSilva picked up the food and said "let's go everyone". Mr. Fraga punched Mr. DaSilva in the head. According to Attorney Heller Mr. Eng and another individual closed in on him. Mr. Fraga started throwing punches. He hit Mr. Eng in the jaw. Mr. Fraga looked at Mr. Eng and said "I'm going to kill you." Ariana Bently tried to be the peacemaker. Mr. Fraga grabbed one of the bar chairs and threw it at her. Mr. Kivior, Ms. Bently's fiancé stepped in front of her deflecting the chair. Mr. Fraga started throwing glasses hitting Mr. Eng and cutting him.

At **2:05AM** Mr. Eng unlocked his office and took out his gun. He went behind the Tiki Hut and called 911.

According to Atty. Heller at **2:10AM** Kevin Kivior and Steve Fraga were fighting. Mr. Fraga and Mr. Eng made eye contact. Mr. Eng ran behind the bar. Mr. Fraga came towards Mr. Eng, Mr. Eng began to slowly retreat. Mr. Fraga grabbed the phone and threw it on the floor. Mr. Fraga said I'm going to "F" you up. (Atty. Heller stated that Mr. Eng had taken gun safety and training courses from the Milford Police Station.) Mr. Eng said: "Steve stop-I have a gun". Atty. Heller stated that Mr. Eng did not have his finger on the trigger and the safety lock was on. Mr. Fraga punched Mr. Eng in the face. Again Mr. Eng said: "Steve stop, I have a gun". Mr. Fraga punched him in the eye. Mr. Eng brought the gun to eye level still pointing the gun down, finger off the trigger and pointing down. Atty. Heller further stated that Mr. Fraga seeing the gun put his hands in the air and stepped back. Mr. Eng saw the blue lights outside the bar and ran to meet the police. Atty. Heller feels that his client (Mr. Eng) took reasonable steps to defuse the situation by calling the police and using gun safety. He further noted that he now realizes that he now has to lock the front door at closing time and was not aware of Mr. Fraga's past history or he would have called the police sooner. He asked that as the board considers the penalty to impose that they consider the following:

- this was the first incident involving Mr. Benjamin Eng
- History of the establishment
- Mr. Fraga's behavior and past history
- Mr. Eng followed gun safety procedures
- called the Police
- steps taken to prevent a similar incident
- there was no alcohol served after hours on the night in question
- No food **sold**

Atty. Heller also noted that because of the incident Mr. Fraga was served a No Trespassing Order and a surveillance camera was installed inside the property and one will also be installed on the outside, the front door will be locked at 1:00AM and will adhere closing to the hours of operation.

Selectman Murray questioned the fact that there was no voluntary statement from Mr. Acevedo. Atty. Heller stated that Mr. Acevedo was friendly with both Mr. Eng and Mr. Fraga and did not feel the need to present a statement.

Selectman Buckley stated that he believed that there was consistency with all the statements and felt that the incident that occurred could have happened on any night.

Selectman Murray reviewed a list of previous violations and concerns that occurred at the Royal Buddha over the years.

Selectman Murray made a motion to reduce the hours of operation for the Royal Buddha, Inc. at 121 Depot Street to close at 11:00PM Monday – Thursday, Saturday and Sunday and 12Midnight on Fridays effective April 11, 2014, in addition with the Board to review hours of operation upon application by the licensee after a period of six (6) months. Mr. Buckley seconded for the purpose of discussion. He stated that in his opinion the behavior of the staff did not put anyone at risk and the penalty is far too excessive in this case. Chairman DeBartolomeis seconded the motion. Two in favor, One opposed. (Mr. Buckley in opposition). IT IS A VOTE.

5. Mr. Buckley moved, seconded by Mr. Murray: To sign the warrant, UNANIMOUS.

6. Mr. Murray moved, seconded by Mr. Buckley: To amend the minutes of March 24, 2014 by amending Item #1 of the regular session minutes as follows Mr. Murray stated that he will not be participating in executive session and also adding At 7:01PM Mr. Murray re-joined the meeting, and amending executive session minutes Item #1: Attorney Murray left the room prior to the discussion, and removing the sentence “The vote was One is favor with One abstention (Mr. Murray abstained)”, UNANIMOUS. Mr. Buckley also noted that he would like to discuss an amendment to the Executive Session minutes in executive session.

7. Mr. Tony Mitchell representing Miss Mello Palm and Tarot Card Readings, 20 Main Street was present requesting a change of location to 81 East Main Street. Mr. Murray moved, seconded by Mr. Buckley: To approve the change of location, UNANIMOUS.

8. The following members: Ms. Jennifer DeManche-Yohn, Kate Mastroianni and John Tehan of the Board of Directors for the Milford Farmers Market Association were present to discuss the new location for this year’s Farmers Market. Ms DeManche-Yohn thanked the Board for their support in providing the Town Hall parking lot for last year’s implementation of the Farmer’s Market. She also submitted a Draft Schedule of Events, A copy of the Milford Farmers Market 2014 Rules and Regulations, By-Laws of the Milford MA Farmers Market Inc. and noted that they are filing for 501 (c)(3) status Articles of Organization and will be offering WIC benefits. She also stated that the reason they are seeking the new location at the Milford Water Company property located on Dilla Street is that the asphalt was too hot at Town Hall which

made it uncomfortably warm for the workers and promoted spoiled product. Ms. DeManche-Yohn also noted that they are seeking a more centralized location for next year.

After a brief discussion of proposed locations such as Schools, Parks, etc,; Mr. Buckley suggested that the Town Planner work with the Town Administrator to amend the current zoning laws since currently the Schools are zoned residential and the present criteria for Farmer's Markets are that they be located in a commercial zone.

Chief O'Loughlin voiced his concerns regarding traffic on Dilla Street and the fact that there is only one 1 egress and 1 exit at the Water Company. He further noted that it is in close proximity to the Bike Trail, however any issues that arise will be addressed.

9. TOWN ADMINISTRATOR'S REPORT

1. Budgets – All Budgets under the jurisdiction of the Board of Selectmen are on target.
2. Windows – Nineteen (19) of the windows on the second floor of Town Hall have been removed. Ten (10) of those windows have been re-glazed, repainted and reinstalled. They still need to have balances installed and adjusted and have touch-up painting done. I expect the nine other windows to be reinstalled next week. At that time the remaining eight (8) windows will be removed and taken to GVW's shop to be worked on. Work should begin on the first floor and basement windows the beginning of May.
3. Chapter 90 – The Governor's Office has sent a letter certifying that the Town of Milford's Chapter 90 apportionment for Fiscal Year 2015 is provisionally \$817,285.00 based on the passage of the Transportation Bond Bill. Once the bill is passed this apportionment is automatically incorporated into our existing 10 Year Chapter 90 contract. At that time the Town will be able to obligate these funds.

10. After a review of the Annual Town Meeting articles, Mr. Murray moved to approve the May 19, 2014 Annual Town Meeting Warrant consisting of 37 articles. Mr. Buckley seconded for discussion. Mr. Buckley noted that he was not in favor of supporting Article 17 as written as well as Article 24.

Mr. Buckley moved to add an additional article submitted by the Capital Improvement Committee for proposed amendments to Article 18 of the Town By-Laws for a total of 38 articles, Chairman DeBartolomeis seconded. Two in favor, One opposed. (Mr. Murray in opposition). IT IS A VOTE.

11. Chairman DeBartolomeis recognized Mr. Jamie Wheelock, a resident of Milford after the opportunity to speak under the Citizen Participation portion of the meeting. He allowed Mr. Wheelock to voice his concerns relative to Article #17 of the Town Meeting Warrant. Mr. Wheelock stated that in his opinion no decision should be made until a comprehensive Land Use study is compiled and should all 200 acres be put into the trust.

12. Mr. Murray moved, seconded by Mr. Buckley: To approve the renewal of the following: **Second Hand Licenses** for 2014: Baza Jewelry and Gifts; Central Street Resale, Nathan Sophos, c/o Nathan's Jewelers, Gregory Bowser d/b/a Pandoras Box, Inc , UNANIMOUS. T.J. Collectibles, Inc., Mr. Nascimento Mendes d/b/a Mendes Antiques and This & That Thrift Shop, Two in favor, One abstention (Mr. Murray abstains) IT IS A VOTE.

Mr. Buckley moved, seconded by Mr. Murray: To approve the renewal of the following: **Pool Table License** for 2014: Fun Zone of Milford LLC, d/b/a Pinz, Hoboken Citizens Club, and Ty Tran d/b/a Lucky 9, UNANIMOUS.

Mr. Murray moved, seconded by Mr. Buckley: To approve the renewal of the following: **Bowling Alley License for 2014**: Fun Zone of Milford LLC, d/b/a Pinz, UNANIMOUS.

13. After reviewing correspondence from Scott Crisafulli, Highway Surveyor requesting removal of a "Deaf Child" Sign at 46 Sunset Road, Mr. Murray moved, seconded by Mr. Buckley: To remove the sign, UNANIMOUS.

14. Mr. Murray moved, seconded by Mr. Buckley: To approve the Annual Opening Day Parade for Youth Baseball for Sunday, April 27, 2014 from 11:30AM to 12:15PM, UNANIMOUS.

15. Mr. Murray moved, seconded by Mr. Buckley: To approve a "Poppy Days" permit for the John W. Powers Post 59, American Legion Auxiliary (May 23-26, 2014), UNANIMOUS.

16. Mr. Murray moved, seconded by Mr. Buckley: To accept the \$2,500.00 gift from Harold and Marcia Rhodes to be used to complete the Louisa Lake Accessible Fishing Platform with railings designed for accessible use and the balance deposited in the Commission on Disability Gift Account, UNANIMOUS.

17. Chairman DeBartolomeis requested that Town Administrator Villani find out who owns the fence around the pond that was damaged by a car accident on Fortune Boulevard and the status of repair.

18. Chairman DeBartolomeis submitted copies of a memo from former Town Planner Reno DeLuzio regarding 1999 priorities and Town of Milford Marketing Plan Outline along with the Town of Milford Business Development Prospectus 1998 and requested that copies be forwarded to Town Planner Larry Dunkin and distributed to the members of the Industrial Development Commission.

19. INFORMATIONAL CORRESPONDENCE

1. Deval L. Patrick, Governor, re: Chapter 90 funding
2. Milford Police Department, re: MassDOT, request for installation of speed limit signs

3. Milford Finance Committee, re: Minutes of February 10, 2014

20. Chairman DeBartolomeis read correspondence provided by Town Counsel to the board regarding Health Insurance Program Transition to Blue Cross Blue Shield from Harvard Pilgrim in which he also thanked Acting Treasurer Kelly Capece for her efforts in regard to working with the Insurance Advisory Committee putting together the concept that clearly gained support of the entire Insurance Advisory Committee.

21. Mr. Buckley requested that correspondence regarding painting of crosswalks on Congress Street be discussed at a future meeting.

22. Mr. Murray moved, seconded by Mr. Buckley: To adjourn the Selectmen's meeting at 9:28PM, UNANIMOUS. ROLL CALL VOTE: Chairman DeBartolomeis, Selectmen Murray and Buckley vote in the affirmative to go into Executive Session to discuss a claim and Employment Contract Proposal for the "new" Fire Chief, UNANIMOUS.

Respectfully submitted:

MILFORD BOARD OF SELECTMEN

Jean M. DeTore
Minutes Recorder

Dino B. DeBartolomeis, Chairman

Brian W. Murray, Esq.

William D. Buckley