

SELECTMEN'S MEETING
Monday, October 11, 2006

On October 11, 2006, the Board of Selectmen held a meeting at 6:45 PM at the Town Office Building in Lakeville. The meeting was called to order by Chairman LaCamera at 6:45 PM. Present were: Selectman Evirs, Selectman LaCamera and Selectman Yeatts. Also present were: Rita Garbitt, Town Administrator and Tracie Craig, Executive Assistant.

6:45 PM Liquor law license violation-Joe's Gas

Michael Argiros, owner of Joe's Gas, Jeffrey Allen, Attorney for Michael Argiros, Police Chief Mark Sorel, Lt. Frank Alvilhiera, Officer Steven Leannues, and Antonio DeBarros, clerk for Joe's Gas are present for the hearing.

Upon a motion by Selectman Yeatts, seconded by Selectman Evirs, the Board:

VOTED: To open the continued hearing.
 Unanimous vote.

Chief Sorel recounted that he sent a letter to the Board of Selectmen regarding a violation of the liquor license at Joe's Gas. Lieutenant Alvilhiera had arrested four underage minors by watching the purchase of liquor at Joe's Gas and then stopping the vehicle. Officer Sean Joyce returned back to Joe's Gas and spoke to the clerk working at that time. At first, the clerk did not understand when Officer Joyce asked him if he had asked for identification from the minor purchasing the liquor. Then he said that he did in fact ask for identification. Lieutenant Alvilhiera reported that the subject that was arrested had no identification on his person, but was known to him thru other incidents. There was no identification on the person or in the vehicle so he could not have been carded by the clerk. Chief Sorel requested that some type of suspension be made of the liquor license.

Lieutenant Alvilhiera said that on September 1, 2006, he observed a vehicle pull into Joe's Gas. An individual that he knew to be under 21 from a previous incident, exited with a 30 pack of beer, held it up to show the occupants of the vehicle and got into the vehicle. The individual that went into Joe's Gas did not have either a fake ID or license in his possession. Officer Joyce said that he was asked by the Lieutenant to ascertain the identification of the clerk working. While doing so, he asked him if he was the only one working that night. The clerk responded that he was. Officer Joyce asked the clerk for identification and the clerk showed him a passport and Brazilian license; the clerk was identified as Abrocoail Cardozo. He asked if he had sold alcohol to minors or to anyone that might have purchased it for them. Office Joyce said he asked the clerk if he had checked for ID, but he didn't understand. He then asked if he checked identification, he said of course.

Attorney Jeffrey Allen asked Lieutenant Alvilhiera how he was sure that the individual did not have any ID. The Lieutenant answered that the person was searched, and the vehicle was searched, there was none on him or in the vehicle. Attorney Allen asked if all the individuals were searched; Lieutenant Alvilhiera responded yes. Attorney Allen asked if any of them had

legitimate or fake IDs. Lieutenant Alvilhiera said there were no fake IDs. Attorney Allen asked about the Lieutenant knowing the purchaser as being under 21 from previous incidents. Lieutenant Alvilhiera said he had dealings with him in a suspicious vehicle call the week prior. He was identified with a few other minors. Attorney Allen asked if there were any other involvement was regarding alcohol and alcohol purchases; Lieutenant Alvilhiera said yes, one prior. Attorney Allen asked if the person had previously had a fake ID, Lieutenant Alvilhiera said that is not correct. He had no knowledge of a fake ID. Attorney Allen asked about a booking record of the search; Lieutenant Alvilhiera responded there was a standard booking form with his property. Attorney Allen asked if the minor had a wallet, Lieutenant Alvilhiera responded he did not recall. Attorney Allen asked if the suspect was subpoenaed for this hearing; Lieutenant Alvilhiera responded no. Attorney Allen asked how was it verified he was under 21. Lieutenant Alvilhiera said the suspect told him, and he knew from the week prior, as well as, department records, such as his MasterCard, date of birth, social security card. Attorney Allen asked what documents did he see, besides what the suspect told him, to verify his age because a credit card and social security card wouldn't. Lieutenant Alvilhiera said on that night, he could say.

Attorney Allen asked that the complaint be dismissed. He said that the person in question is not present. We were unable to subpoena him because we are not allowed to have his identity, but the Board has not been presented any evidence, such as documents, that he was under 21. What the suspect said is inadmissible. The officer testified that he has not seen a document saying he is under 21. There is nothing to establish that he is under the age of majority. Chairman LaCamera asked if the police can verify the person's birth date. Lieutenant Alvilhiera said he did run a Board of Probation check, and it had the date of birth. Attorney Allen stated that this evidence must be presented to the Board. Attorney Allen stated this is an unnamed purchaser we are trying to defend against. Chairman LaCamera said he assumed that the Police Department has verified that the purchaser was under 21. Chief Sorel said that is CORI information for an ongoing investigation, we cannot give out the name. Attorney Allen said the critical element is not whether the Police Department has it, it is if the Board has the verification. You need to make the determination that the male was under 21. Ms. Yeatts said that the police chief says there is proof of age. Attorney Allen said the evidence was not presented to you. Selectman Evirs asked if his name is in the police report, Attorney Allen said no. Ms. Yeatts asked Chief Sorel if he had seen with his own eyes that the person is under 21; Chief Sorel said yes. Chief Sorel said he did not have to present the police record for this hearing; testimony is enough, according to the ABCC. Chairman LaCamera said there are three (3) officers that gave testimony. Attorney Allen said none of the Board has personal knowledge of his age. Chairman LaCamera said define personal knowledge. Attorney Allen said a copy of a driver's license or any other type of identification. There is a Board of Probation report, but the Board does not have that. Chairman LaCamera stated the officers testified that they have it. We did not ask for it. We have three (3) officers here that are telling us the person is under 21. You are saying that they arrested someone they should not have. Attorney Allen said there is a difference on what they did and what proof they have submitted. He had never been involved in a hearing that a purchaser was not present.

Chairman LaCamera asked Attorney Allen wasn't it true that the ABCC requires just testimony. Attorney Allen said no. Chairman LaCamera asked if there was a document proving

this. Attorney Allen said no. Chairman LaCamera said that Attorney Allen was contradicting himself. Attorney Allen replied that he was not going to belabor the point. You need a higher degree of proof before you. You have the power and have made clear that this is not an argument you are going to embrace. He said he was arguing a legal point. He did not come here knowing that the Board of Probation report would not be put into evidence, that there was testimony that they checked his driver's license that the arrested person was not going to be here.

Antonio DeBarros, Manager at the station, said he was hired to come and take over the station and correct the ongoing issues with theft. Some of this problem arose from that. The clerk is no longer working for them. He was questioned to see if what happened happened. The gentleman had purchased liquor there before, we have not seen the videotape surveillance yet, but the clerk mentioned that he had come in before to purchase with an ID because he remembered his face. That was why he sold it that time. As for his confusion with the identification, the clerk's English was not good and he panicked. Attorney Allen asked if the station has any equipment or apparatus that helps to verify age. Mr. DeBarros said they do, not sure if it was used. There is a machine that does an ID check. You run the ID thru and it tells you if they are of age. Attorney Allen said it is a swipe machine, does it check for fake IDs? Mr. DeBarros said if you bring an ID that is valid and the photo looks like you; it will come up as valid. Chairman LaCamera asked does the register tell you to scan the ID. Mr. DeBarros said yes for alcohol and tobacco. He takes pride in running the place by the regulations. Selectman Evirs asked if the scanning equipment is how the store takes inventory. Mr. DeBarros said yes. Selectman Evirs asked if you scan a six (6) pack of coke, it comes up as coke, but for a six (6) pack of beer it asks for ID. Mr. DeBarros said yes. Selectman Evirs asked who was working last Thursday night at 4:30 PM. Mr. DeBarros said he was there and another clerk. Selectman Evirs said he has heard that everyone was checking IDs. His daughter, who just turned 21 two (2) months ago, went in to buy a six (6) pack of beer. The clerk scanned it, age verification came up, she asked how much it was, she handed him \$10.00, took the six pack, change and left. No id was ever asked for; the clerk bypassed the prompt that said age verification. She then went down the street to another package store, bought something not available at your store, the clerk ran the id and I have the slip with her id information. This was just 11 minutes after she was at your store. I don't think the clerks are checking ids. Your procedure did not work. Mr. DeBarros said he cannot be there all the time to control things. He does train employees and reviews what is expected of them. Selectman Evirs asked is there a written policy that needs to be signed? Mr. DeBarros said he goes over it with them; they must id people period that appear under 30. Selectman Evirs said his daughter does not look 30. He said that in your situation, you would figure you would check everyone. Mr. DeBarros said we feel like there have been a lot of decoys; we have turned away a lot of people. Selectman Evirs asked how many fake ids do you find. Mr. DeBarros said if someone brings in a fake id that looks like them and is a real one; the system is not going to recognize it. I think that is what happened with us.

Chairman LaCamera addressed Mr. Argiros and said this is not a new problem. He was on the Board in 2002 and pulled out the minutes from the February 4th meeting. Just as Mr. DeBarros explained, you had the exact same problem in 2002 as today, talking about inventory missing, employees stealing and not checking IDs. You said "you inherited numerous problems when purchasing the station and am doing the best you can do to keep your employees in line". Mr. Argiros said there are always problems with a station like this. However, selling to a minor

is never acceptable. It has been four (4) years since the last problem. Chairman LaCamera said it did happen again in 2005. Mr. Argiros said there was no hearing. Chief Sorel said it is on record at the Police Station. Attorney Allen said he objected to an incident being brought before this Board with no issue on adjudication, there is no hearing, no place to go before this Board. The 2002 incident is relative; I have an objection that any alleged incident is inappropriate for discussion. Ms. Garbitt said it can be discussed but cannot be part of your decision. Chief Sorel said they fired an employee for this incident; the street listing has the person in question's date of birth as 1987. If there is no proof, why did you fire the employee? Selectman Evirs asked Chief Sorel about the 2005 sting. Chief Sorel said they went to each establishment, the ones that failed received either a phone call or he spoke to the owner personally. In this case, Mike Argiros. Selectman Evirs said in this unofficial sting, when the Chief brought it to the owner's attention, he fired the employee that sold the liquor. It did happen and Mr. Argiros knows it. Attorney Allen said if Chief Sorel was in the store and said he saw an employee treating someone poorly, he would probably be fired also. For the purposes of this hearing, it did not happen as there was no adjudication. We take responsibility. We do not condone this. Selling to a minor is an offense that cannot be condoned by anyone. The only good thing about this is that the Police were there and intervened and no one got hurt. We understand that if you sell to a minor, you are looking for someone to get hurt and that would be a real tragedy. We are serious about this. We would be here every four (4) months, not every four (4) years if we weren't serious about it. It happened and we are here and intend to make sure it doesn't happen again.

Upon a motion made by Selectman Yeatts, seconded by Selectman Evirs, the Board:

VOTED: To close the hearing. Unanimous vote.

Selectman Evirs said he would like to consider or look for a 90 day suspension. They had a four (4) day suspension previously four (4) years ago. They are not doing a very good job of checking IDs. Selectman Yeatts said I am not sure that the ABCC would uphold the 90 days suspension because they would consider it too harsh. Have you considered that? Selectman Evirs said he has no tolerance for selling to a minor. Selectman Yeatts said she doesn't want to slap a 90 day suspension on them that will not be upheld. Selectman Evirs said if they appeal to ABCC, then what happens. Ms. Garbitt said the ABCC would remand it back to Board of Selectmen. We would discuss the facts again and consider a suspension. Town Counsel said it would probably come back to us. Chairman LaCamera said that he said in 2002 that we were adamant that we would not tolerate selling to minors. Unfortunately, he thought the ABCC in my opinion is too lenient. They would say that 90 days is unreasonable. If you want to, it's fine with me. The question is if it would come back to them again. He has zero tolerance for this. It is inexcusable. Your employees are poorly trained. You have a computer system in place that we insisted on in 2002, it should be strictly enforced. It is up to you and your employees. It is common knowledge about Joe's Gas. We have been through this before.

Attorney Allen said that he assumes that from your discussion you have made a finding of responsibility. Selectman Yeatts said you have stated that they are doing the best you can. It's obviously not good enough. Can you say to us why we shouldn't suspend for 90 days. Mr. Argiros said he is an absentee operator; I have had a tremendous change of management and employees. The employee turnover has been the problem. If we were to ask the chief, he has

arrested a significant number of employees for theft. Maybe it is our screening. I have no tolerance. We make a \$1 or \$2 on those 30 packs. It's not worth it to have counsel here at a significant rate. Selectman Evirs said it's not the money; it's the situation that could occur because of this. Mr. Argiros said we aren't out there to sell to anyone for the dollar. He recognizes that, I will try to instill this to my employees. I'm a multi unit operator. I run four (4) or five (5) stations and try to run a respectable business. We have gone through managers and employees in this store. He said he lives in Newton, and Mr. DeBarros ran a car wash and a service department in Newton and was one of the most knowledgeable people on customer service. He recruited him from Newton to run the station. It is unfortunate that it is difficult to find help on this level of pay. We have extended our pay rate. We have the Plymouth County DA prosecuting someone who has stolen a lot of money from us. He has worked with Chief Sorel, and Officer Joyce was actually a customer at the station where the employee took money for beer, opened the register and did not ring the register till the next day. Mr. Argiros said he has tried to work with the police as much as he can and asks for some leniency. In the past, the suspension was four (4) days. He doesn't want to go through appeals and is willing to take a fair suspension. He doesn't want to have an aura in the Town that he's the guy selling booze to whoever comes in. Selectman Evirs said but that's the reputation you have.

Selectman Yeatts suggested that perhaps Mr. Argiros needs to spend more time here. Attorney Allen said he has other businesses that sell liquor. Selectman Evirs said if they cannot competently sell alcoholic beverages, then they shouldn't have the privilege of selling it. You violated that privilege the Town has granted you. Attorney Allen said there is no question that they were in violation. He does think respectfully that a 90-day suspension is odious. He understood it was the Board's responsibility to protect the youth in the community, but to leap from a four (4) day to a 90 day suspension is significant to say the least. This will force an appeal; we would rather cooperate. Selectman Evirs said make us an offer, how does 45 days sound? Mr. Argiros said he did not want a bargaining game. He was looking at the residents who depend on us for one stop shopping, gas, milk and a six (6) pack. He thought it unfair and would have to appeal; this is taking away from the convenience we are trying to supply. Selectman Evirs said these are the same people who are asking us what you are going to do to this guy. Selectman Yeatts said if it continues to happen, they will hold us responsible. She would feel responsible if a youth purchases alcohol and gets in an accident. Attorney Allen said a 45-day suspension would probably be the highest meted out in the state. It is very draconian. Chairman LaCamera said this is not a question of getting better; it's a question of being perfect. Attorney Allen said he was a Red Sox fan and knows that he is going to get carded in Fenway, it is a standard rule, and you show an ID. That is a policy Mr. Argiros must adopt. Mr. Argiros said that is what he's told managers, the unfortunate part is that when you depend on having one (1) or two people working they become very lazy. Attorney Allen said they were going to adopt a policy that everyone is ID'd.

Selectman Yeatts said she would not consider anything less than a 30-day suspension; that they have in place a scanner that works and that the liquor inventory will be locked up, Ms. Garbitt said it is important that there is a scanner on the cash register that scans the product and the back of the license. Mr. Argiros said this must be something new. Ms. Garbitt said you as an owner will be able to look at what transpired and make sure that they scanned the license. Selectman Evirs said the same scanner that scans the bar code scans the license, it even tells you

on the screen that it is okay to purchase. It does the math. Mr. Argiros said he is doing a software update on the credit cards for gas; he will check into it to see if they have anything like that and will add it into the program upgrade. Attorney Allen asked if this register was tied into the gas pumps. Selectman Evirs said no. Mr. Argiros said the gas station ties into one register. It's all tied into inventory. Selectman Evirs said this can only help you. It gives you proof that the ID was checked. Mr. Argiros said an additional safety that can be imposed is that we just purchased a high end DVD surveillance system that we have been trying to get the kinks out of. When we make a sale, it pops upon the monitor to see if they are selling what they are ringing up. I could have someone check to make sure that employees are carding everyone that buys liquor. Selectman Evirs said as a condition, he would like to see that put in place and periodically have the ability to see if it is being used by looking at past purchasing records. Mr. Argiros said he has requested that the Chief come and look at his system and Officer Joyce has looked at our system as well. Selectman Evirs said he would like to have the employee training verified by the Chief. Chief Sorel asked what type of training was done. Mr. Argiros said they do the We Card training.

Upon motion by Selectman Evirs, seconded by Selectman Yeatts, the Board:

VOTED: That there are significant facts that on September 1, 2006 Joe's Gas violated section 204.CMR 2.052 and MGB Chapter 138, Section 34 by selling alcoholic beverages to a person under 21 years of age.
Unanimous vote.

Chairman LaCamera said the Board needs to decide, based upon our findings, a suspension period to commence on a certain date and to expire on a certain date with any conditions that we want to include. Attorney Allen said that they have a concern on the period of time; we would work with you if you are going to impose a 30-day suspension, but it should be done immediately. We do not want to have the suspension happen over the holiday. It would be an economic hardship for us. You could even break it up over two (2) 15-day periods; we will not appeal. Chairman LaCamera said the suspension will start right away; 4:00 PM on October 13th with no appeal for 30 days.

Upon a motion made by Selectman Evirs, seconded by Selectman Yeatts, the Board:

VOTED: To suspend the Retail Wine and Malt Package Store license of Joe's Gas, d/b/a Petro Plus for 30 days with conditions, beginning on October 13, 2006 at 4:00 PM and ending November 13, 2006 at 9:00 AM. Conditions include: having an identification scanner system in place that records the sale, identifies the buyer, and that the Police Chief verify it is in place and working properly; provides a copy of the written training policy for the Chief to verify, all employees sign off on it, as well as, the supervisor and that the current employees at the end of the suspension are properly trained on how to use the equipment. Police Chief is to review training program and keep it on file at the station. The inventory is to be secured somewhere where it is not to be sold or moved. Liquor will need to be

either secured properly or removed from site. Chief Sorel to verify to his satisfaction. Right to appeal will be waived by the licensee and confirmed in writing.

Unanimous vote.

Appointment of Edward Bunn to Master Plan Implementation Committee

Chairman LaCamera noted that a request had been received by Edward Bunn to serve on the Master Plan Implementation Committee.

Upon a motion by Selectman Evirs, seconded by Selectman Yeatts, the Board:

VOTED: To appoint Edward Bunn to the Master Plan Implementation Committee for a term to expire July 31, 2007.
Unanimous vote.

Adjournment

Upon a motion made by Selectman Evirs; seconded by Selectman Yeatts it was:

VOTED: To enter Executive Session at 8:02 PM for the purpose of discussing pending litigation and not to return to Open Session. Polled vote: Selectman Evirs, aye, Selectman Yeatts, aye, and Selectman LaCamera, aye.