

SELECTMEN'S MEETING
Wednesday, December 10, 2008

On December 10, 2008, the Board of Selectmen held a meeting at 7:00 PM at the Town Office Building in Lakeville. The meeting was called to order by Chairman Evirs at 7:00 PM. Selectmen present were: Selectman Evirs, Selectman Maksy and Selectman Yeatts. Also present were: Rita Garbitt, Town Administrator, and Tracie Craig, Executive Assistant.

7:00 PM Continuation of Liquor License Hearing – Lakeville Virtual Entertainment Group

Mark Kitchen of Lakeville Virtual Entertainment Group was present for the discussion. Also present was Aaron Burke, Esquire, Mr. Kitchen's legal counsel.

Upon a motion made by Selectman Yeatts and seconded by Selectman Maksy, it was:

VOTED: To reopen the hearing for the wine and malt beverage General On Premises Liquor License for Lakeville Virtual Entertainment Group.
Unanimous in favor.

Chairman Evirs stated at the original hearing the Board had given Mr. Kitchen a list of items to work on prior to the continuation. Attorney Aaron Burke said Mr. Kitchen was informed of the DEP Public Water Supply issues. He has hired a Certified Water Operator to be in compliance with DEP. The tests have come back satisfactory. The final inspection of DEP is tomorrow for water certification. Mr. Kitchen said the Board of Health is aware of the situation. Selectman Yeatts asked if the nitrates test had come back. Attorney Burke said it passed Ecoli but he is not sure on the nitrates. He said DEP has scheduled the final inspection tomorrow and perhaps the Certified Water Operator has received the results. Selectman Yeatts said we have not seen anything in writing. She would like to see the results. Mr. Kitchen said he would get them to the Board.

Attorney Burke asked, other than the DEP issue, what other concerns did the Board have. Chairman Evirs asked if all the food service establishment permit applications had been turned in to the Board of Health. Attorney Burke said we understand that Mr. Kitchen cannot serve beer and wine until all requisite permitting has taken place. Chairman Evirs said in regards to zoning, the Building Commissioner reviewed the operation and said he would not have issued the building permit without this being an allowed use. He considers this to be a retail use or service or commercial amusement. So the zoning issue has been clarified. Attorney Burke said that was our understanding as well. The ABCC requires the licensing authority to consider zoning and an individual's ability to obtain a license (criminal record). It is my understanding that the zoning component is satisfied, and the applicant component is satisfied. He asked that the Board take this into consideration in making the determination. Selectman Maksy asked what about public need. Attorney Burke said to a certain extent, there is some latitude in terms of need as well. Mr. Kitchen has spoken to some of the abutters regarding some of the issues raised at the last meeting. He lives within two (2) miles of the property. While limiting the license may have been considered as a way to mitigate the issues, the ABCC has said that its best for the business

owner to do that through policy. Perhaps only serving drinks to players that are playing golf, it will be up to review from the ABCC on whether this will even be allowed. We are asking for no contingencies to be part of this because of the ability to appeal to the ABCC. Chairman Evirs said you cannot go to the Log Cabin and sit there and just consume alcohol. You must have food at some point. It is the policy of the restaurant owner. Attorney Burke said Mr. Kitchen has said that he would not encourage people to sit and drink. However, that is not a restriction that we can put on. People are going there to play golf. That is the primary focus. Having a beer or glass of wine is secondary.

Selectman Yeatts said it is not Mr. Kitchen that she was worried about. She is worried once the license is approved, if his business does not succeed, someone else could come along and continue the wine and beer with another use. It would be a legal cost for us to stop it. Chairman Evirs said this is a business zone; any property that is located in a business zone has a right to apply. Selectman Yeatts said its different from buying liquor in a store versus serving alcohol and drinking it there. Someone could come along and change it to a tavern that only serves alcohol and plays music. Attorney Burke said you must look at the facts of each applicant. This is not a nightclub. Mr. Kitchen said closing time would be at 10:00 PM at the latest, it could be scaled back. Attorney Burke said this is more like a bowling alley, it is commercial entertainment. You need to focus on just the facts presented regarding this applicant. To say what if, is not fair to this applicant. You need to stay within the ABCC guidelines. You are free to say no if it is a different applicant or use. Selectman Yeatts said it is my duty to look forward for the Town. Is this the best use for the Town of Lakeville? Attorney Burke said he totally agreed with that, but future possible use should not be considered in your equation. Selectman Maksy said if we impose certain conditions, it could cause disorder with the ABCC. There is a possibility that they could kick it back or not take it at all. We do have Town Counsel saying we can impose reasonable requirements upon businesses. If the business changes, it would require another application. If Mr. Kitchen decides tomorrow that he wants to have batting cages, that is a change and he would have to come back to us. Chairman Evirs said any renovation to the interior has to come back to us.

Chawner Hurd of 161 County Street asked if the Board got clarification on ABCC's interpretation on the two (2) conditions: how we can restrict passage of the license to another enterprise and restricting the serving of alcohol to players. Chairman Evirs said an application would need to be filed for a transfer of the license. They would come back before us. As far as only serving customers that are playing, the ABCC says you cannot restrict it. We can agree to it, and he can have a business policy that says he won't do it, similar to the Log Cabin, but we cannot restrict it. Ms. Garbitt said Town Counsel confirmed that serving of alcohol cannot be restricted to only people that are playing golf. Selectman Maksy said regarding Mr. Hurd's first question, we did ask Town Counsel. According to the ABCC, a new Form 43 is required for an alteration. Chairman Evirs said you cannot have the liquor license without the proper food permit and the Public Water Supply certification. Mr. Hurd said that he sent him a letter of support if we can get some agreement on the conditions. He has a great business plan and this is a nice low impact use for the neighborhood. It's about what could happen if the business does not work. The Board is not looking at a virtual golf establishment, you are looking at a wine and beer bar. You would have a hard time convincing a court that someone else could not operate. Public accommodation means anyone can walk in off the street and get a beer. Both those things

lend this to a continuing use as a bar in the future. He would like the Board to take this into consideration. Mr. Kitchen has said the license is a bit of an added incentive to lure customers. If he is not allowed to serve alcohol, they would go to another place that does. All the restrictions are still somewhat in jeopardy if there is a next level. It sounds good to agree to it, you have set a precedent that beer and wine is served there. Mr. Hurd asked if the Building Commissioner looked at this as a bar or golf establishment. Chairman Evirs said the ABCC will argue that public need is not being met. The closest place is Nephew's Restaurant in the next town. The public need argument is hard to argue with the ABCC. We do not want to blatantly think about the what ifs and have the ABCC deny our decision, and then we could have to defend this legally. He needs to be aware of the legal expenses.

Attorney Burke said there may be a political precedent, but not a legal one. The Board of Selectmen are not a court. This goes back to the particular applicant. Mr. Hurd said there is a tendency to follow precedent. He was confused about the Public Water Service. When the bank building came on as the second facility, there was an issue with the barber shop not being able to continue because of the water usage. The Public Water Service issue has lingered out there and one thing that has always come back is the zone of protection. Chairman Evirs said that is a Board of Health issue, not a Selectmen's issue. Selectman Maksy said the zone is 100' clear all the way around. Selectman Yeatts said this is non-conforming due to the parking lot location. Chairman Evirs said if the Board of Health does not approve it, the liquor license is moot. Mr. Hurd said we need to raise these issues, since they will say the Board of Selectmen already approved this. Chairman Evirs said we will make the Board of Health aware of these concerns.

Jessica Wright of 169 County Street said this property is in a residential area. It is different from Nephew's. Chairman Evirs said this is a perfect example on why we really need a Neighborhood Business zone. You are located across the street from a Business zone. This type of zoning would buffer between straight Business and Residential uses. Ms. Wright said she has lived there for nine (9) years. Chairman Evirs said this was a business zone when you moved there. The Business zone is larger than you think. We have a lot of areas much the same where Business and Residential are right next to each other. Ms. Joan Capobianco of 173 County Street said this area has not always been Business zoned. She is for business, just not alcohol. There are no sidewalks. Cars are speeding, and the street has become more busy. It seems dangerous to put in a beer and wine license. True, a new person would have to apply for a new permit. However, transfers are seldom denied. It will be harder for the Town to fight it. Chairman Evirs said the key to the fight is public need. Nancy Vanlaarhoven of 165 County Street asked Mr. Kitchen how far away is another establishment for virtual golf. Mr. Kitchen said they are in Halifax and Plymouth. Ms. Vanlaarhoven said so people would go to Halifax or Plymouth. Mr. Kitchen said yes, people that come from out of town will go elsewhere if there is no liquor. Ms. Vanlaarhoven said that she and her husband went to Plymouth and checked out the facility. Players were there for two (2) to four (4) hours. We estimated consumption at two (2) to four (4) beers while they are there. The Plymouth operator has a lot of four (4) people groups. Mr. Kitchen said since this is a specialized business, you cannot survive on Lakeville and Middleborough residents. You have to pull from other towns. Ms. Vanlaarhoven said she hoped the Board takes the neighbor's concerns into consideration. She is always going to be worrying about the consumption. Mr. Hurd said when the last tenant was selling alcohol, we had multiple

people rolling backwards through our hedge. In the neighbor's views, we are very supportive of the business. However, what you are permitting goes beyond Mr. Kitchen.

Upon a motion made by Selectman Maksy, seconded by Selectman Yeatts, it was:

VOTED: To close the hearing .
Unanimous vote.

Selectman Yeatts said the thing that sticks in her mind is that when she talked to Town Counsel, is it in the public good for the Town of Lakeville as a site suitable for that type of establishment. Selectman Maksy said he doesn't think there is public good in drinking or driving. Selectman Yeatts said if we deny this, and it went to ABCC and they disagreed, they kick it back to us with recommendations. Chairman Evirs said the ABCC cannot issue the license. However, he felt it would cost the Town for legal representation. He does not agree that future Selectmen would rubber stamp a transfer if one was proposed. They would do their due diligence. This is in a properly zoned area. If you argue that it doesn't meet a public need, Mr. Kitchen needs the license to be competitive with the other two (2) nearby facilities. People come from all over to play virtual golf. We have four (4) golf courses in Lakeville, but Lakeville residents are not the only ones that play on the courses. The same thing would happen for virtual golf. If players can go to another one that is more accommodating, they will. Machines are a machine. All of our concerns seem to be answered. We can't consider what if the business doesn't make it, and we aren't the three (3) people sitting here. Selectman Maksy said he thinks this is a great business. He understands that there was a business there before that sold beer and wine. He is not seeing this as a tavern. He is trying to look at the people that would go to this establishment, but this is a tough decision. It's your neighborhood, not mine, but he is pro business.

Chairman Evirs said that Mr. Hurd brought up concerns about past visitors of the convenience store. At least with an on premises license, someone has control over what is being consumed on the property as opposed to someone that has no control over what condition someone is when they show up. The owner has to go through certain training through the ABCC: Selectman Maksy asked about hours. Mr. Kitchen said he is proposing a 10:00 PM closing with an opening time of 8:00 AM on the weekends and 10:00 AM on weekdays. Chairman Evirs noted that this isn't the only establishment with an on premises liquor license that is adjacent to residential properties. He noted that The Back Nine Golf Club, Poquoy Brook, Lakeville Country Club, LeBaron Hills Country Club, Camp Joe Hooker, and the Lakeville Eagles all have on premise liquor licenses. This is not unique to have this in the Town of Lakeville. Selectman Maksy said he sees it as a low use for alcohol. Hours are the key thing. Selectman Yeatts said she has seen it repeatedly with the Board of Health, Zoning Board of Appeals and the Planning Board with setting precedent. Selectman Maksy said you have to be consistent with hours. Selectman Yeatts said she is concerned with setting a precedent about serving alcohol. Chairman Evirs said a restaurant use is allowed zoning wise. They would have to go through different hoops regarding water. Mr. Kitchen said he is getting a food license from the Board of Health.

Selectman Maksy said he felt that this gentleman would run this business appropriately. He was concerned about the next person to come along. He really would like to see this business get

off the ground. This is a great idea since there are four (4) golf courses in Lakeville. He does not believe this is as bad as it could be. Chairman Evirs pointed out that beer and wine is served at Chuckie Cheese, which is a children's arcade. Adults don't typically go there to play the games. We have a very successful golf team at the High School that this may become a practice facility. Selectman Maksy noted this building cannot be expanded since there is a Zoning Board of Appeals Special Permit. Chairman Evirs said they could renovate the inside, not the outside. Selectman Maksy said he believes the business will be pretty closely watched. It is not a large area. Chairman Evirs said if you have ever watched golf on television or a golf tournament, you have to be quiet. You cannot have this type of business in a bar room environment. Chairman Evirs said this has to be renewed every year. Ms. Garbitt said if there are violations, the Board would address them. Selectman Maksy said if there were problems, he would not vote to renew it.

Upon a motion made by Selectman Maksy, seconded by Selectman Yeatts, it was:

VOTED: To approve the wine and malt General On Premise License for Lakeville Virtual Entertainment Group subject to an acceptable water test; Public Water Supply certification; Title 5 Board of Health certification; DEP approval; hours of operation: 11:00 AM to 10:00 PM; last call at 9:45 PM; all patrons out by 10:15 PM, seven (7) days a week; permitted for the current business only; and not to exceed 26 person occupancy load.
Selectman Evirs and Selectman Maksy in favor; Selectman Yeatts opposed.

Mr. Hurd asked that the intent of the Board be recorded, by saying this license is only for this building. He was not sure of the status of the two (2) petitions to change the zoning to business. He would thoroughly expect this Board to be behind the petition to change the entire side of County Street to business. Chairman Evirs said we are on record of telling the residents of this area that we would support the rezoning of County Street as far as the neighbors want. Eleanor Hurd of 161 County Street asked if they are rezoning the entire side of the road. Chairman Evirs said rezoning would be by petition at the Annual Town Meeting. Selectman Maksy said there are two (2) options. Option One is the entire side of the street and Option Two is only two (2) pieces of property. Selectman Yeatts said the Planning Board said everyone needed to be in favor of it. Chairman Evirs said there needs to be a consensus of the neighborhood, but the petition would get our support.

At 8:20 PM, upon a motion made by Selectman Yeatts; seconded by Selectman Maksy it was:

VOTED: To enter into Executive Session and not to return to Open Session for the purpose of discussing strategy regarding contract negotiations with non-union personnel.
Polled vote: Selectman Yeatts - aye, Selectman Maksy - aye, and Selectman Evirs - aye.