

IN BOARD OF SUDBURY SELECTMEN  
TUESDAY, JULY 10, 2012

Present: Chairman Lawrence W. O'Brien, Vice-Chairman Robert C. Haarde, Selectman John C. Drobinski and Town Manager Maureen G. Valente

The statutory requirements as to notice having been complied with, the meeting was convened at 7:34 p.m. in the Lower Town Hall, 322 Concord Road.

**Opening Remarks**

At 7:34 p.m., Chairman O'Brien opened the meeting. On behalf of the Board, he extended condolences to the family and friends of Lester Holtzblatt.

Chairman O'Brien announced the Governor has signed the State budget, and the legislative session will conclude on July 31, 2012. He reported the Sudbury's Senior Tax Relief bill is working its way through the legislative process, and State Representative Tom Conroy is helping to oversee its progress. Town Manager Valente stated the Department of Revenue has been provided with additional information regarding the implementation of the bill in Sudbury.

Chairman O'Brien announced the Town has received notification it will receive a \$250,000 Department of Energy Resources Grant rather than the estimated \$80,000 towards the \$350,000 Natatorium project approved at the 2012 Town Meeting. He thanked everyone who worked on this grant application. Town Manager Valente also thanked the Energy and Sustainability Green Ribbon Committee and Building Inspector Jim Kelly for their work on the grant.

**Reports from the Town Manager**  
**NStar – Tree Cutting Update**

Town Manager Valente attended a regional leadership meeting with NStar representatives to further discuss the company's tree-cutting practices and the impact on residents. She stated the group is sharing information to ensure communities and residents are treated equitably. Town Manager Valente also stated State Representative Conroy is working to establish State rules and regulations related to this issue.

**State Aid - Update**

Town Manager Valente provided the Board with the estimated net increases for the Town and Sudbury Public Schools and for Lincoln-Sudbury Regional High School (L-SRHS) from State Aid expected for FY13.

**Blood Drive**

Town Manager Valente announced a blood drive will be held on July 16, 2012 at Congregation Beth El, 225 Boston Post Road, sponsored by the Sudbury Medical Reserve Committee.

**Massachusetts School Building Authority's (MSBA) Green Repair Program – Nixon School Roof Project - Update**

Town Manager Valente stated Sudbury has now been invited by MSBA to participate in its Green Repair Program for the Nixon School roof project. If successful, the Town could be reimbursed approximately 35-37% of the estimated total project cost for an estimated \$250,000. Ms. Valente stated that, following a November 2012 MSBA meeting, if Sudbury is notified that the project is accepted, the Town will have 90

days to conduct a Special Town Meeting. She thanked the Permanent Building Committee (PBC) and the Energy and Sustainability Green Ribbon Committee for their work on this project.

#### **Landfill – Solar Panel Update**

Town Manager Valente announced work is ongoing regarding the proposed installation of solar panels at the landfill. Selectman Drobinski has been helping to obtain approval from the Department of Environmental Protection (DEP) for further testing. Ms. Valente stated Department of Public Works (DPW) Director Bill Place has reported that initial work has been positive as a viable site.

#### **Development – Mitigation Funds Update**

Town Manager Valente announced Sudbury has received a check for \$94,000 from Alexan-Concord as mitigation funds for potential impacts from a Town of Concord development planned on the Sudbury border.

#### **Pantry Brook Farm - Update**

Town Manager Valente announced a Land Grant application was submitted by Director of Planning and Community Development Jody Kablack related to the Pantry Brook Farm land acquisition.

#### **Chapter 90 – Road Projects - Update**

Town Manager Valente stated Chapter 90 funds have been released and road projects have commenced. She reported the State has also begun work on repaving Route 20 and work will be done primarily between 7:00 p.m. and 5:00 a.m.

#### **Reports from the Board of Selectmen**

Selectman Drobinski reported he is catching up on communications after returning from vacation.

Vice-Chairman Haarde participated in the July 4<sup>th</sup> Parade. He said the event was well organized and well attended. He also attended a SPS Executive Session meeting tonight regarding collective bargaining discussions. Vice-Chairman Haarde reported the Route 20 Sewer Steering Committee will meet this week.

Chairman O'Brien stated a meeting was held two weeks ago regarding collective bargaining discussions with L-SRHS. Due to the summer schedule, the next meeting is not expected to be scheduled until late August.

#### **Friends of the Bruce Freeman Rail Trail – Donation Proposal**

Present: Friends of the Bruce Freeman Rail Trail representative Tom Michelman and several "Friends" and several members of the Rail Trail Conversion Advisory Committee

At 7:47 p.m., Chairman O'Brien opened the discussion regarding next steps related to the proposal presented to the Board of Selectmen from the Friends of the Bruce Freeman Rail Trail to raise funds for the 25% design phase of construction for the northernmost portion of a rail trail in Sudbury. He stated votes from a Town Ballot and two non-binding resolutions at Town Meeting indicated resounding interest for a rail trail from the community. As a result of these votes, the Board now needs to determine next steps in the process. Chairman O'Brien noted concerns had previously been brought to the Board's attention regarding potential conservation and habitat impacts and parking issues. In addition, he noted Park and Recreation is

completing a resource study and information from this study could be useful. Chairman O'Brien stated the Friends are interested in knowing where the Board stands on this project before it begins fundraising efforts.

Selectman Drobinski stated the offer from the Friends is intriguing and the message from residents through the recent votes taken on this topic is clear that the Board should push the project forward. He noted many have asked what the trail would look like. Selectman Drobinski stated it would be appropriate for next steps to include a design concept that fits the needs of Sudbury's residents. He believes the offer from the Friends should be considered. However, Selectman Drobinski noted maintenance and operational costs for a trail also need to be considered. He suggested Town staff be instructed to move this project forward. Selectman Drobinski emphasized it will be important to address the concerns of abutters, and the possible need to deviate a trail from the rail bed.

Vice-Chairman Haarde believes a shorter northern section of a rail trail should be discussed as well as a full rail trail through Sudbury. He noted there is a difference between a donation and an incentive. Vice-Chairman Haarde believes the offer from the Friends should not be dismissed, nor should it influence the Town's decision on its choices for a rail trail. He believes the Town needs to first decide if it wants a trail along the entire corridor and, if so, then move forward in this direction. However, if the Town decides it does not want to pursue a full rail trail, then the Town should decide if it wishes to complete the smaller northern trail section. In order to make these decisions, Vice-Chairman Haarde believes the big issues need to be addressed, such as working with large land-owner abutters and the possible unintended consequences which could arise from the development of a rail trail.

Chairman O'Brien suggested Ms. Kablack, Mr. Place and Conservation Coordinator Debbie Dineen prepare some information regarding alternative routes other than following the rail bed for the Board to review.

Selectman Drobinski stated that, if the trail does not follow the rail bed, it would need to be constructed in the public way and/or easements would need to be obtained. He suggested the Town first consider whether to construct a full rail trail through Sudbury.

Town Manager Valente stated Town staff has proposed identifying the toughest locations for development of a rail trail along the entire Sudbury route. Selectman Drobinski stated once this information is discussed, a design concept and costs will need to be developed.

Town Manager Valente also stated it will be important to review what Park and Recreation identifies as planned uses for Davis Field and other recreational facilities. She noted recent legislative changes have been made to the Community Preservation Act (CPA) to allow for broader uses of funds for existing recreational resources which might also impact decisions.

Selectman Drobinski stated Park and Recreation has a consultant working on its study. If the CPA guidelines have been revised to allow for restoration of existing recreational fields, then he suggested the consultant be asked to include this in its report. Town Manager Valente stated Mr. Place believes Feeley and Davis Fields could both benefit from CPA funding, if eligible.

Chairman O'Brien noted surface types and width of a trail will also need to be included in discussions. He asked that Town staff be instructed to provide information to the Board at its July 31, 2012 meeting regarding the entire Sudbury rail corridor.

Town Manager Valente suggested staff could present an overview of the issues which will need to be addressed, which segments of the trail could be problematic and/or need to come before the Conservation

Commission for permitting, whether an alternative plan to one which complies with Department of Transportation (DOT) guidelines is possible to develop which would better reflect Sudbury, and a possible timeline for the process.

Selectman Drobinski and Vice-Chairman Haarde repeated that abutters' issues will need to be identified and addressed.

Chairman O'Brien suggested recent changes to the CPA guidelines and how they may be relevant to this project also be discussed on July 31, 2012. Town Manager Valente stated she would instruct Town staff to be prepared to discuss the CPA revisions, report on the Park and Recreation field assessment and report on what information/actions are needed to move forward on a rail trail project at the July 31, 2012 Board meeting.

Sudbury resident Robert Abrams, 48 Horse Pond Road, stated the issue of parking is a key factor in assessing the smaller northern half-mile section of a trail. He also questioned if the \$50,000 offer from the Friends would still be available if there were a condition stating no parking is allowed at Davis Field.

Chairman O'Brien stated the Board needs to hear more information from Park and Recreation regarding preferred uses for Davis Field and the recommendations of Town staff. He stated the Board would deliberate the parking issues because the Town would not want to create an amenity that has accompanying safety hazards.

Friends of the Bruce Freeman Rail Trail President Tom Michelman clarified no fundraising efforts would begin until the Board provides clear direction for the project. Although the Friends voted for a specific donation proposal, Mr. Michelman encouraged the Board to also discuss other options with them. Chairman O'Brien assured Mr. Michelman the Board would maintain communication with the group.

Sudbury resident Dick Williamson, 21 Pendleton Road, cautioned the Town from presenting hypothetical plans for discussion with the Massachusetts Highway Division. He believes more would be accomplished with this office by presenting a specific design for review. Mr. Williamson noted the overhead to do a 25% design for the smaller trail section would be similar to the overhead required for a full trail. He urged the Board to work with Mass. Highway for a specific design of a full trail.

Sudbury resident Betsy Hunnewell, 17 Lombard Lane, has lived in Town since 1974, and she has always had to ride her horses in other communities. From her experiences in Weston, she believes the surface chosen for a trail is very important. Ms. Hunnewell stated she is opposed to the use of macadam which would not be suitable for horses and or handicap accessibility. She also noted liability concerns.

Chairman O'Brien emphasized the issues of location, width and surface type will need to be extensively discussed.

Sudbury resident Lenny Simon, 40 Meadowbrook Circle, stated he and several members of the Friends participated in the July 4<sup>th</sup> Parade and were cheered by onlookers. He stated the response from Parade attendees was very enthusiastic, and people asked when the project would commence. Mr. Simon urged the Board to take action now to bring this project to fruition.

Sudbury resident Laura Abrams, 48 Horse Pond Road, asked that it be clarified for a previous speaker that it has previously been determined that no horses would be allowed on a Sudbury trail. Chairman O'Brien stated no decisions have been made at his point. Ms. Abrams disagreed, stating it is her recollection that it was decided that there would be no horses on a rail trail in Town, and she does not want Ms. Honeywell to

have a misunderstanding of this tonight. Ms. Honeywell stated her comments were not focused on whether horses would be allowed.

Selectman Drobinski reiterated the message from residents is clear that the Board should move this project forward. The Board concurred, and at 8:30 p.m., Chairman O'Brien concluded the discussion, and he announced a two-minute recess.

At 8:32 p. m., Chairman O'Brien resumed the meeting.

Mr. Abrams asked if an exchange which had just occurred was posted on tonight's agenda, and he questioned why some people are allowed to speak during a meeting and others are not. He opined there seem to be different rules for different people.

Chairman O'Brien explained that citizens always have the option of submitting a citizen's petition as described on the Town website. He further explained that, during the recess, Sudbury resident Mara Huston had delivered an envelope to him which contained her application submission to be a member of the Sudbury Housing Trust, which he passed along to Town Manager Valente. Chairman O'Brien proceeded to introduce the Consent Calendar agenda items.

### **Minutes**

Selectman Drobinski asked that this agenda item be held until the next meeting to allow him sufficient time to review the meeting minutes.

### **Department of Public Works - Annual and Renewal Contracts**

It was on motion unanimously

VOTED: To approve the award by the Town Manager of Department of Public Works annual and renewal contracts for materials and services as they are submitted for FY13, award to be made to the lowest eligible bidder(s) in accordance with the requirements set forth in the bidding documents and as reviewed by Town Counsel.

<u>Contract Number</u>	<u>Contract Name</u>
2013-ER-1	Street Sweeping
2013- BM-1	Bituminous Materials
2013- CM-1	Mowing/lawn and landscape
2013-G-1	Gasoline
2013-DF-1	Diesel Fuel
2013-M-3	Borrow Materials
2013-T-1	Trees & Stumps: Removal & Disposal
2013-M-2	Bituminous Concrete Type 1 in place
2013-TLP-1	Traffic Line Painting
2013-SLM-1	Street Light Maintenance
2013-SALT-1	Winter Salt

**Unaudited FY12 Third Quarter Financial Reports - Acceptance**

It was on motion unanimously

VOTED: As co-trustees of Town funds, to accept the unaudited FY12 third quarter Financial Reports for the Town Trust Funds for the period ended March 31, 2012, as requested by the Finance Director, Andrea Terkelsen.

**Boy Scout Troop 61 – Eagle Scouts**

It was on motion unanimously

VOTED: To enter into the Town record and congratulate Samuel Douglas Bajgot, 43 Brookdale Road, Charles Matthaues Schrenk-Eyerman, 44 Silver Hill Road and Rowan Ziliang Lowe-Yelton, 167 Pratt's Mill Road, of Troop 61, who were honored at a Court of Honor held June 2<sup>nd</sup> for having achieved the high honor of Eagle Scout.

**FY 13 Capital Budget - Lease Purchase Awards**

It was on motion unanimously

VOTED: Pursuant to ATM12/Art.5, FY13 Capital Budget, to approve the award by the Town Manager for the lease-purchase of one 2012 Freightliner Model 114SD six-wheel dump truck with accessories to Freightliner at a net purchase price of \$105,549 after trade-in, and one 2012 Prinoth Model SW 45 multi-purpose Track Sidewalk Tractor with accessories from Chadwick-BaRoss at a purchase price of \$139,020; said purchases to be financed over a five-year period at an interest rate acceptable to the Town, the Town Manager to execute all documents related thereto inclusive of the Lease-Purchase Agreements as negotiated by Town Counsel's Office.

**Youth Commission and the Green Landscaping at the Dump Committees – Dissolution**

At 8:37 p.m., Chairman O'Brien opened the discussion regarding dissolution of the Youth Commission and the Green Landscaping at the Dump (GLAD) Committee. The Board was previously in receipt of copies of relevant Board meeting minutes from February 11, 1985, the Town website information for the Youth Commission and listings of members and term expirations for both groups.

Town Manager Valente explained the mission of the Youth Commission is now addressed by the Youth Coordinator Jessica Bendel and the Teen Center Director Anna Wood. In addition, the terms of the last two members expired in April 2010. Town Manager Valente stated the Commission members voted to release remaining funds to the Youth Programs revolving account. She further reported the GLAD Committee has not had active members since 2009, and its work is now accomplished by the Department of Public Works.

It was on motion unanimously

VOTED: To dissolve two committees: the Youth Commission as its mission of youth direction is being carried out by Youth Coordinator Jessica Bendel and the Teen Center Director Anna Wood; and the Green Landscaping at the Dump (GLAD) Committee, as there are no longer any members, and the work is now carried out by the Department of Public Works

**Police Department - Lavender Asian Cuisine - Violation Discussion**

Present: Lavender Asian Cuisine Manager Tim Fong and Attorney Stephen Grande

At 8:38 p.m., Chairman O'Brien announced that, on the advice of Town Counsel, he is recusing himself from this agenda item, as he had done at the last two meetings. Chairman O'Brien reviewed the appropriate protocol for recusal, which includes leaving the Hall.

The Board was previously in receipt of copies of a memorandum from Executive Assistant Mary McCormack dated July 6, 2012 and accompanying information related to closing hours for Lotus Blossom, a letter to the Board from Town Counsel Paul Kenny dated July 6, 2012, regarding the official closing time for Lavender restaurant, a letter from Lavender restaurant manager Tim Fong to the Board received February 11, 2009, requesting an extension of serving hours, and an email from Sudbury Access Corporation Executive Director Lynn Puorro, dated July 5, 2012, stating she does not have a copy of the DVD for the Board's February 24, 2009 meeting.

Vice-Chairman Haarde stated this agenda item is a continuation of discussion held at the last Board meeting. He reviewed guidelines for tonight, asking that the discussion be conducted respectfully and with civility, and that the issues be limited to the violation letter issued to Lavender by the Police Department.

Selectman Drobinski asked that the letter received from Town Counsel Kenny be read into the public record. Vice-Chairman Haarde stated he did not wish this to be done at this point in the meeting. Selectman Drobinski stated he thinks it is important for the content of the letter to be read into the record to clarify the confusion expressed by several people regarding the official closing hours for the restaurant. Vice-Chairman Haarde noted that he was now charged with running the meeting, not Selectman Drobinski, and he reiterated he did not want the letter broached at this time. However, he stated the letter would be addressed later. Vice-Chairman Haarde stated Town Counsel Kenny wrote an opinion, without being asked to do so by the Board, regarding the restaurant's closing hours. He opined that this was an unprecedented and proactive submission of a legal opinion. Vice-Chairman Haarde asked the guests to introduce themselves, and Lavender Asian Cuisine Manager Tim Fong and his attorney Stephen Grande did so.

Vice-Chairman Haarde stated the regulation of laws for dispensing alcohol is taken very seriously because there is a potential for negative safety consequences. Vice-Chairman Haarde believes it is important to discuss the violation and attempt to determine the root cause of the problem and to identify ways to avoid it ever happening again. He referenced Police Chief Glavin's comments from the last meeting, stating Sudbury has a good record dealing with these issues, and in all cases, when the Police Department has issued a warning, there has not been a second offense. Vice-Chairman Haarde asked Mr. Fong to explain what happened on the evening of the violation.

Mr. Fong's attorney Stephen Grande stated there has been a lot of confusion and rumor generated about what occurred at the restaurant. Mr. Grande stated he has represented Lavender before this Board for its initial license request and for the requested extension of its closing hours. He believes it is important to clarify the information once and for all tonight. Mr. Grande stated, that when Lavender came before the Board for its requested extension of closing hours, there was discussion about special events and karaoke, but the license was eventually approved allowing Lavender to serve alcohol Mondays through Thursdays until 1:00 a.m., and the regulations call for clearing all patrons from the premises by 1:15 a.m. He further stated Lavender typically closes at 10:00 a.m. on those same nights, unless there are enough customers to justify staying open later. On the evening in question, Mr. Grande stated a West Coast basketball playoff game brought customers to the restaurant and kept them there wanting to watch the conclusion of the game.

Vice-Chairman Haarde asked if it is Mr. Fong's intent to have Mr. Grande speak for him tonight. He emphasized to Mr. Fong that there is no possibility of further penalty from anything that might be said tonight. Vice-Chairman Haarde asked if the restaurant offered karaoke on the night of the violation. Mr. Fong stated it did not, but he noted there was the special event of the playoff game. Thus, Mr. Fong stated it is his prerogative to decide whether circumstances justify staying open or closing at a certain time within the hours allowed under his license.

At the request of Vice-Chairman Haarde, Mr. Fong described the activity of the restaurant on the evening of May 8, 2012. He stated an early crowd came to watch the games and then more patrons arrived and he decided to continue operations. Mr. Fong further stated a couple arrived later in the evening, but they were turned away because he believed the woman to be too intoxicated, so he told them that the other patrons in the restaurant were a private party in order to encourage them to leave.

Vice-Chairman Haarde asked if there had been other occasions when patrons stayed for playoff games beyond the typical closing time. Mr. Fong stated this is a common practice and helps the restaurant's business.

Vice-Chairman Haarde asked if Mr. Fong believed the closing time was 1:00 a.m. Mr. Fong responded affirmatively. Vice-Chairman Haarde asked then why did the restaurant request from this Board in November 2011 permission to stay open until 1:00 a.m. on November 23, 2011, if it already was able to serve until 1:00 a.m. He stated this is reflected in the minutes of the November 15, 2011 Board meeting. Mr. Fong stated the restaurant has asked permission to serve until 2:00 a.m. on Thanksgiving Eve and New Year's Eve to accommodate the many college students who return to the area to see family and reunite with friends. Vice-Chairman Haarde repeated the request was to stay open to 1:00 a.m. Mr. Grande and Mr. Fong stated the minutes may include an error because their request was for November 23, 2011 was specifically for a 2:00 a.m. closing. Selectman Drobinski stated there has been a tradition in Town of offering the later closing time on those two pre-holiday evenings.

Mr. Fong continued his description of the events on the night of the violation. He stated Chairman O'Brien and others arrived around 11:00 p.m. and asked if the restaurant was open. Mr. Fong stated it was. Mr. Fong stated that, later in the evening, a police officer arrived and informed him there had been a car accident of someone who had been at the restaurant earlier. Mr. Fong described Chairman O'Brien as being in the process of trying to get folks to settle their bills. He stated two officers arrived later and he told them he had conducted last call at 12:45 a.m. In response to a question from Vice-Chairman Haarde, Mr. Fong stated he had sent the last employee home at 1:00 a.m., and he was trying to attend to everyone settling the bill, which was approximately \$200, and he lost track of time. He believes this occurred about 1:35 a.m. Mr. Fong emphasized he is TIPS-certified and he will be sure to never let this happen again.

Vice-Chairman Haarde read aloud a relevant section of the Board meeting minutes of November 15, 2011. Mr. Grande reiterated that the restaurant's request had been to serve until 2:00 a.m. on November 23, 2011 and that the minutes might include a misprint. He asked what Vice-Chairman Haarde is insinuating. Vice-Chairman Haarde stated that when he voted to extend the closing time to 1:00 a.m., he believed it was only for karaoke nights and that he would not have voted affirmatively for a 1:00 a.m. closing for all Tuesday evenings. He suggested the intent of the Board needs to be better codified. Mr. Grande stated there was discussion of special events and karaoke with the Board at the time of the extension request, but it was never understood by him or his client that the approval was only for karaoke, nor is it in the license language. Thus, they have functioned under the language of the approved license.

Vice-Chairman Haarde asked if Chairman O'Brien's group was a private party. Mr. Fong responded it was not. Vice-Chairman Haarde referenced earlier remarks by Mr. Fong stating he had told others it was a



private party. Mr. Grande explained that Mr. Fong used the excuse of a private party to graciously remove the intoxicated woman and her companion from the premises. Vice-Chairman Haarde stated he finds it confusing as to whether a private party was or was not in progress. He opined that Mr. Fong does not need any other reason to remove an intoxicated person other than they have had too much to drink.

Mr. Grande emphasized that, as a businessman, Mr. Fong assesses whether he has reason to stay open more hours to make more money, and that this is the case when special events/games occur. Selectman Drobinski noted the restaurant does not need to request permission to stay open to its approved 1:00 a.m. time. Mr. Grande concurred, stating he believes there is complete clarity on the closing time issue and that there is nothing to be gained from continuing to rehash the topic.

Selectman Drobinski stated he has never spoken to either Mr. Fong or Mr. Grande about the violation or events of the evening. Mr. Grande and Mr. Fong confirmed this to be true.

Selectman Drobinski stated Mr. Fong is a good businessman in Town and he understands how it could be time-consuming to settle the bill with several parties by himself at the end of the night. He stated it is the Board's place to discuss the reason for the violation and to suggest bills be processed more quickly in the future to avoid this situation.

Vice-Chairman Haarde asked if Selectman Drobinski still wanted Town Counsel Kenny opinion on the closing hour read into the record. Selectman Drobinski stated it is no longer necessary because Mr. Grande already summarized the opinion, which clearly states the closing time on the license as 1:00 a.m. He also stated he believes that, as a community, we need to move on from this to attend to other important matters and to support our businesses. Selectman Drobinski stated Chairman O'Brien could have used better judgment, and that he wished he had, but it is time to move on.

Vice-Chairman Haarde asked, as a matter of full disclosure, whether Selectman Drobinski was at Lavender that evening. Selectman Drobinski stated he was, but not at the time of the violation.

Vice-Chairman Haarde asked Mr. Fong if he continued to stay open when people arrived at 11:00 p.m. Mr. Fong stated he did, because as a small business, he has to make these types of decisions all the time. Vice-Chairman Haarde asked if he kept his full staff on in the late hours, and if Chairman O'Brien had told Mr. Fong in advance that he would be coming to the restaurant. Mr. Fong responded that he did not keep the full staff on duty and that he did not know in advance that Chairman O'Brien would be coming to the restaurant.

Selectman Drobinski cautioned Vice-Chairman Haarde that he is perhaps broaching discussion which is beyond the scope of the agenda item and may jeopardize Sudbury. Vice-Chairman Haarde disagreed, but thanked him for his warning.

Vice-Chairman Haarde asked if Mr. Fong kept the full kitchen open and served the full menu late that night. Mr. Fong stated he did not, but he had appetizers and chips, etc. available.

Vice-Chairman Haarde asked if 30 strangers had arrived at the restaurant that night, would he have kept the bar open for them no matter who they were. Mr. Fong stated he would make the same decision to remain open.

Vice-Chairman Haarde asked if last call was announced to patrons at 12:45 a.m. Mr. Fong stated it was. Vice-Chairman Haarde asked what Mr. Fong did between 1:00 a.m. until 1:15 a.m. Vice-Chairman Haarde asked if Mr. Fong asked patrons to leave between 1:00 a.m. and 1:15 a.m., and Mr. Fong replied, "Yes I

did,...once or twice.” Vice-Chairman Haarde asked Mr.Fong if he asked patrons to leave between 1:15 a.m. and 1:30 a.m., and Mr. Fong replied, “Yes, I told people it was time to go,...and tried to get them out the door as fast as we could.” Mr. Fong stated he began to clear glasses of alcohol, leaving water glasses out, and that around 1:10 a.m. he presented the final check. He believes it is around this time that two officers arrived, they came inside and saw there was no alcohol being served and then they left. Mr. Fong stated he did not feel he could rush people to leave who were actively trying to resolve payment. Vice-Chairman Haarde asked if Mr. Fong made any announcements between 1:15 a.m. and 1:30 a.m. to encourage people to be on their way, and he asked if Mr. Fong thought the patrons heard him. Mr. Fong stated he was chatting with the patrons as well as working on payment because, due to his culture, he found the conversation some were having about roosters interesting. Vice-Chairman Haarde opined that it seemed to take a very long time to clear the restaurant after last call and visits from the Police Department. Mr. Fong stated that, in his business, it is important to always be polite, and he did not want to rush people out.

Vice-Chairman Haarde stated the police officers noted that the restaurant lights were dimmed when they came at 1:35 a.m., and he asked whose idea this was. Mr. Fong explained the lighting is on an automatic timer.

Vice-Chairman Haarde noted the police officers came a third time at 1:47 a.m. and he asked why the people were still inside the restaurant. Mr. Fong stated at this time, the patrons were at the door on their way out, and he was not going to be rude to them.

Vice-Chairman Haarde asked if water was being served. Mr. Fong stated only soda, water and chips were left out and the officers observed no alcohol being consumed.

Vice-Chairman Haarde asked what other practices were used to clear the restaurant, such as were the interior lights flashed. Mr. Fong stated he usually shuts off the television as a signal to patrons, which he believes he did around 1:25 a.m.

Mr. Grande stated he and his client are here because of a violation of the rules, that people had stayed late in the restaurant, and that it could have been handled differently, which they have already stated earlier tonight. He further stated he and his applicant are appreciative of the Police Department’s warning letter.

Vice-Chairman Haarde asked if Mr. Fong has ever had a problem before with patrons not leaving after being asked to do so. Mr. Fong replied, “No.” Mr. Grande noted the patrons were made up of a Selectman and Town employees and that Mr. Fong counts on these people for business, so he was “between a rock and a hard place.”

Vice-Chairman Haarde agreed that Mr. Fong was in a difficult position, and he asked if Mr. Fong was perhaps a bit more lax in clearing the restaurant because Chairman O’Brien, who is also the chair of the liquor license authority, was present. Mr. Fong nodded affirmatively and said “that won’t happen again.”

Vice-Chairman Haarde thanked Mr. Fong for his answers tonight, and he announced he would now open the discussion to public comments.

Mr. Grande asked why this discussion would be open to public questions, and he stated he believes this to be inappropriate.

Vice-Chairman Haarde stated he has decided to include public comments because he believes the Board is “limping along” in its ability to exert authority over this establishment. He opined that there is an appearance of a conflict, since Selectman Drobinski was at the restaurant on May 8<sup>th</sup>, and that questions from the public

should be heard, since it is likely that if a vote is needed on this topic, the vote would be split between himself and Selectman Drobinski.

Mr. Grande stated he would not allow his client to be directed questions from the public, that this is unprecedented and not why they are here tonight. He stated his client is here to discuss only the violation with the Board. Vice-Chairman Haarde stated public questions would be directed to him and not to Mr. Fong.

Selectman Drobinski expressed his concern again that the discussion is moving in an unprecedented direction. He stated the Board has never subjected a licensee to this type of process. Selectman Drobinski again noted Chairman O'Brien's lack of judgment, and he stated Mr. Fong should be allowed to move on with his business having already received the warning letter. He further stated any other questioning of Mr. Fong tonight would be salacious in nature and he believes it goes beyond tonight's agenda item.

Vice-Chairman Haarde acknowledged Sudbury resident Arthur Gutch, 64 Silver Hill Road, in the audience, and he asked him if he wanted to speak because he was speaking to those around him, and he offered to him to speak at the microphone. Mr. Gutch responded he did not. Vice-Chairman Haarde continued to ask him if he wanted to speak. Mr. Gutch repeated he did not want to speak, and he asked Vice-Chairman Haarde if he was calling him out. He asked Vice-Chairman Haarde, "Are you serious?" Selectman Drobinski suggested the discussion be closed. A few other members of the public urged Vice-Chairman Haarde to accept Mr. Gutch's answer and to proceed with hearing public comments from others.

Sudbury resident Rick Johnson, 38 Bent Road, opined that he is still confused about the facts of the liquor license language. He stated he produced a letter from February 2009 from Mr. Fong, which requested the closing time extension for special events and karaoke, and he asked that the letter be read into the record, which Vice-Chairman Haarde did.

Mr. Grande repeated that there was other discussion at the meeting about the closing time extension, but the license which was approved did not list any limitations. Vice-Chairman Haarde read aloud again the vote taken by the Board regarding the closing time extension. Mr. Johnson suggested a future agenda should review all closing times listed on licenses.

Sudbury resident Bob Stein, 7 Thompson Drive, speaking as a private citizen, and not as a member of Sudbury's Finance Committee, opined that Mr. Fong seems to have reminded patrons several times of last call and the need to settle the bill. However, Mr. Stein noted that in Chairman O'Brien's statement he said he lost track of time, yet it seems the patrons were reminded of the late hour. He further noted Chairman O'Brien did not apologize in his statement.

Vice-Chairman Haarde stated that, although the series of events seems hard to believe, he chooses to take Mr. Fong at his word.

Mr. Stein stated he is having trouble deciding who to believe because some of the timing and facts vary between the account given by the Police Chief and the one given tonight by Mr. Fong.

Vice-Chairman Haarde stated there are some discrepancies in the recollections given, but, in the end, any patrons present after 1:15 a.m. constitutes a violation.

Sudbury resident Laura Abrams, 48 Horse Pond Road, opined that the person who can answer the questions and clear up the discrepancies is Chairman O'Brien, but he has chosen to recuse himself.

Ms. Abrams stated she is confused as to why Chairman O'Brien has been advised that he has a conflict of interest, and that he should recuse himself if nothing is being voted.

At the request of Vice-Chairman Haarde, Town Counsel Paul Kenny stated it is up to each person to decide on recusal. He further stated a person does not need a reason or a written opinion to choose recusal. Vice-Chairman Haarde concurred and elaborated briefly on this point, stating a person does not have to prove they have a conflict of interest. Town Counsel Kenny concurred.

Sudbury resident Susan Bistany, 21 Old Meadow Road, has lived in Sudbury for 50 years, and she stated she has never witnessed a more contentious issue. Ms. Bistany stated it is difficult for her to agree with much of what is being presented because she was not there. However, she does believe there seems to be an appearance of impropriety and an appearance of a cover-up. Ms. Bistany opined that everyone will probably not be able to agree on what happened, and she is having difficulty knowing where this issue is headed. However, she also stated she has a problem with Chairman O'Brien's recusal. Ms. Bistany suggested one way for the Board to try to diffuse the issue could be by the Chairman appointing Vice-Chairman Haarde as Board Chairman.

Sudbury resident Anthony Fortunato, 101 Moore Road, stated he asked the Police Chief what time the patrol car drives by Lavender, and he was told 1:15 a.m., which is the time the Department believes is the closing time. Mr. Fortunato stated there are probably many other establishments which have patrons still on the premises after 1:15 a.m.

Sudbury resident Jan Haardenbergh, 7 Tippling Rock Road, opined that there seem to be a lot of questions being asked not with the intent of ascertaining information, but more for the purpose of harassment. In the current climate, Mr. Haardenbergh believes it will be difficult to resolve anything, and he suggested discussion be postponed until "heads are cooler."

Vice-Chairman Haarde stated he would not assume what people's intentions are with their questions. He further stated that he believes the best way to put this matter to rest is to allow people to speak.

Sudbury resident Ursula Lyons, 157 Wayside Inn Road, stated she is having trouble reconciling the language variances between the Board vote for the closing time extension and the license, and she questions whether a favor was done for Lavender.

Mr. Stein asked if Chairman O'Brien has spoken to Mr. Fong since May 9, 2012 to get their stories straight.

Mr. Grande said he would allow Mr. Fong to answer. Mr. Fong stated he has spoken to Chairman O'Brien about the weather or his children, but not about the events surrounding the violation.

Mr. Fortunato asked if any other establishment has been put through this type of inquisition or is something special being pursued because of who was involved.

Vice-Chairman Haarde stated this is new territory for the Board, and he described it as a situation when the people who make the rules also break the rules.

Mr. Fortunato asked why Mr. Fong, as a businessman, is being involved in this.

Mr. Johnson expressed his concern with the lack of communication within the Town government because he believes Vice-Chairman Haarde should have been notified sooner by the Town Manager and/or his colleagues about the incident. He asked Vice-Chairman Haarde of what he was notified, and when.

Vice-Chairman Haarde stated he was never contacted by Town Manager Valente, and that he was informed of the situation in late May by Rob Fucci from Sudbury Patch. He further stated Chairman O'Brien left a voicemail for him five days after the violation, leaving limited information. Vice-Chairman Haarde stated he assumed the matter was insignificant because he was unaware of the details and he assumed the violation occurred much earlier in the evening.

Mr. Johnson opined that it is no wonder this issue will not go away, and he believes it is embarrassing that the Town Manager did not contact the Vice-Chairman of the Board.

Selectman Drobinski stated Vice-Chairman Haarde was informed of the situation before he was. He expressed his discomfort again regarding the direction of the discussion, noting the Board has never broached issues in this manner. Selectman Drobinski repeated he is concerned that Sudbury could be jeopardized from a legal perspective, and that this approach gives a negative message to businesses. He emphasized the Board and Town has more important work to do. Selectman Drobinski further noted that karaoke would fall under the jurisdiction of an entertainment license, which is different from a license to serve alcohol. He stated Sudbury's Town government is transparent and it has many hard-working individuals working on behalf of the Town's citizens.

Mr. Johnson disagreed, stating he does not believe there is transparency if the Town Manager could not talk with the Board's Vice-Chairman regarding this matter and how it should be handled. He does not understand why Vice-Chairman Haarde was not communicated with, and he opined that it seems like a cover-up. Mr. Johnson presented an example of how he would have handled the situation if he were the Town Manager.

Sudbury resident Scott Nassa, 36 Clark Lane, stated that, at this point, he believes the Police Chief handled the situation well, and he is willing to accept what Mr. Fong and Mr. Grande have stated tonight. However, he noted there did seem to be some pressure felt by Mr. Fong, and he questioned whether there is any way for the public to address Chairman O'Brien on the many other issues related to the events surrounding the violation by Lavender.

Vice-Chairman Haarde stated the Board has no method for dealing with another Board member.

Mr. Nassa asked if Chairman O'Brien should be allowed to govern liquor licenses in the future.

Mr. Fortunato questioned Vice-Chairman Haarde regarding whether he knows when Lavender closes and whether he knows for sure what happened that night and who was there. Mr. Fortunato noted that Vice-Chairman Haarde keeps stating that Selectman Drobinski was there when Selectman Drobinski has repeatedly stated he had left before the violation occurred. He asked Vice-Chairman Haarde if he has any reason to believe Selectman Drobinski is lying because Mr. Fortunato believes Selectman Drobinski is telling the truth.

Vice-Chairman Haarde stated he has questions as to what time the violation happened and whether other violations may have also occurred. For example, he stated he is concerned that the restaurant kitchen was not kept open, as is required while serving alcohol.

Mr. Fortunato noted Mr. Fong stated food was available in various forms. Mr. Fortunato also told Vice-Chairman Haarde that it now appears as if he has begun a witch hunt.

Vice-Chairman Haarde stated it is possible from what he has heard that another violation occurred by not having the full kitchen open after 10:00 p.m. Mr. Fortunato repeated food was available, that appetizers are food, and he believes Vice-Chairman Haarde is making a lot of assumptions.

Sudbury resident Mara Huston, 578 Peakham Road, agreed with Selectman Drobinski that, based on her experience, there has typically been no public comment allowed during similar discussions. However, she noted Mr. Fong's reaction when asked if Chairman O'Brien's presence was a factor when closing his operations. She suggested Chairman O'Brien answer public questions, or that he ask for a written opinion by Town Counsel to then be sent to the State Ethics Board.

Mr. Grande emphasized that he and his client never stated that the reason the restaurant remained open was because of Chairman O'Brien's presence. He further emphasized Chairman O'Brien did not control the situation, and the mistake of having patrons on site after the allowed time was Lavender's mistake.

Sudbury resident Christine Hogan, 49 Blueberry Hill Lane, thanked Mr. Fong for his honesty tonight. Ms. Hogan stated she disagrees with Selectman Drobinski's suggestion that it is time for the Town to move on because she believes people need to pay for their mistakes. She further stated she expects elected Town officials to hold themselves to an even higher standard than everyone else, and she is disappointed with what has happened.

Selectman Drobinski repeated that he too is unhappy with Chairman O'Brien's lack of judgment on this occasion. He stated he has been willing to listen to citizens and has taken all the comments quite seriously. Selectman Drobinski stated he hopes Chairman O'Brien presents an explanation and he believes the licensing procedure can be better assessed in the future. He emphasized the events were very unfortunate, that he has always behaved personally and professionally with great care and that he takes his reputation very seriously.

Sudbury resident Phil Connors, 33 Dudley Road, suggested the Board issue a verbal reprimand to Chairman O'Brien for not using sufficient discretion in his actions.

Vice-Chairman Haarde stated Mr. Fong was in a tough position, since someone who regulates his license was present. He emphasized Mr. Fong should never have been put in this awkward position, and he is unsure what he would have done differently if it were him. Vice-Chairman Haarde stated Mr. Fong was understandably conflicted with the circumstances. He encouraged Mr. Fong to solicit the help of the Police Department in the future, if he needs assistance clearing the restaurant at closing time. Vice-Chairman Haarde noted many people have commented how much they value Mr. Fong and his restaurant. He stated he appreciates how difficult this has been for Mr. Fong, and he stressed that "we collectively made a mistake," not just Mr. Fong.

At 10:14 p.m., Vice-Chairman Haarde stated he considers this matter closed.

There being no further business, the meeting adjourned at 10:14 p.m.

Attest: \_\_\_\_\_

Maureen G. Valente  
Town Manager-Clerk