

Approved July 19, 2011

A Special meeting of the Board of Selectmen was held on Tuesday, June 21, 2011 beginning at 7:30 p.m. in the Main Meeting Room of Town Hall. The following members were present.

Eric Kraus, Chairman  
Michael Berry, Vice Chairman  
Mark Gallivan, Clerk  
Christopher Timson  
Nancy Mackenzie

Also Present:  
Michael Boynton, Town Administrator  
Jeffrey Blake, Town Counsel

Mr. Kraus called the meeting to order at 7:35 p.m.

### **Pledge of Allegiance**

### **Request for Live Music**

The Board is in receipt of a request to have live music for a Family celebration on June 26, 2011 from 4 p.m. to 11p.m.

MOTION moved by Mr. Berry to approve the request for live music on Front Street from 4 p.m.-11p.m., seconded by Mr. Kraus

It was noted by Mr. Timson the Police Department recommends they only approve until 9 p.m. The Board discussed and decided to suggest 10 p.m.

MOTION by Mr. Berry to amend the motion to 4-10 p.m. , seconded by Mr. Timson  
VOTED 5-0-0

### **Liquor License Violations**

Mr. Timson stated that he is going to recuse himself from this discussion. He has never represented anyone who is before the Board this evening, but he has started representing someone who has an interest in one of the bars. I want to make sure there is no appearance of conflict due to the fact that that I am representing someone in my private law practice. He is leaving the meeting.

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Mr. Kraus stated that everyone on this Board is pro business, unfortunately when something like this occurs, we do not want to take business out of your pockets. We do not want to hear about an underage patron being served drinks. I hope this is the last time; the next time will be very severe.

Attorney Jeffrey Blake, Town Counsel stated that on May 20, 2011 the Walpole Police Department (WPD) conducted an underage sting operation on 29 establishments throughout town. In seven of the establishments an underage operative was served alcohol. The Board asked that a disciplinary hearing be opened and notices sent. Seven different establishments, we have talked to them about agreements we thought the Board would live with. I am happy to inform you six of the places have accepted what has happened and are willing to accept a penalty here. The Board will have to agree to a two day suspension of their liquor license. Days of their choosing and not be consecutive. He asked the Board to take up those six establishments first. They are Jimmy's Pizzeria, Ginjos Sushi and Hibachi, Clyde's Smokehouse, Kiehei Restaurant, Mandarin Cuisine, and Jalapenos Restaurant. They have all agreed to accept the penalty. I suggest that you take this up and get these folks up here and make the motions to accept the settlement agreements. There is a seventh establishment that wishes to have the hearing that being Applebee's.

MOTION moved by Mr. Kraus to open hearings for all six establishments, Jimmy's Pizzeria, Ginjos Sushi and Hibachi, Clyde's Smokehouse, Kiehei Restaurant, Mandarin Cuisine, and Jalapenos Restaurant. Seconded by Mr. Gallivan, VOTED 4-0-0

Mr. Kraus read the following statement into the record.

On May 20, 2011, an employee for each of the licensees sold alcoholic beverages to a person under the age of 21 years during a liquor license compliance check by the Walpole Police Alcohol Compliance Sting Operation Team. The service of alcohol to an underage person constitutes a violation of G.L. c. 138, §34 – sale of alcohol to a minor, Code of the Massachusetts Regulations 204 section 2.05(2)- permitting illegalities or disorders on the licensed premises, and improper management.

As a result of these violations, the Licensees, through their Managers of Record have agreed to a two day suspension of their liquor license. The Licensees shall determine the days of suspension. The suspension need not be served on consecutive days. The Licensees shall notify the Chief of Police within 7 days as to the exact dates of suspension. The suspension shall be served within 30 days from the date of this hearing and shall not include any days that the establishments are closed. The licensees agree not appeal this decision.

He requested that the managers or representatives identify themselves for the record and agree to the above.

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Ricardo Dorronsoro, Owner of Jalapenos's- accepts the Agreement on Liquor license violation

Ginjoes Sushi and Hibachi, David NG, Owner and accepts the Agreement on Liquor license violation.

Jimmy's pizzeria Dimitrios Exarhopoulos, owner deeply regrets what happened and will make sure it never happens again and accepts the Agreement on Liquor license violation.

Clydes Smokehouse, Scott, white, Manager of record, apologizes for this happening. He stated he did not know we had to do this within 30 days. Would you agree with a change?

The Board discussed and felt that 3 months/90 days is more than enough notice. They are willing to amend to 90 days for all suspensions.

Mr. White will accept the 90 days.

Kiehei Restaurant, John Coleman attorney for the Restaurant. We accept the Agreement on Liquor license violation.

Mandarin Cuisine, Yun Chuen Wang , manager of record and Judy and accept the Agreement on Liquor license violation.

Mr. Kraus asked if anyone else here is willing to adhere to these stipulations? No one responded.

MOTION moved by Mrs. Mackenzie to close the hearings, seconded by Mr. Gallivan, VOTED 4-0-0

MOTION moved by Mrs. Mackenzie to accept the agreements as outlined during the hearing with noted change, seconded by Mr. Gallivan, VOTED 4-0-0

MOTION moved by Mr. Berry that the Board take a brief 10 minute recess, seconded by Mrs. Mackenzie, VOTED 4-0-0

Mr. Kraus reopened the meeting at 7:55 p.m. and called the meeting to order.

Mr. Kraus read the notice to Applebee's into the record dated June 10, 2011 addressed to the Manager of Record, Gerald Mallgraf, Jr.

The Board of Selectmen has been notified by the Walpole Police Department that Applebee's, has allegedly violated the terms of its liquor license. It is alleged that on Friday, May 20, 2011, one of your employees sold alcoholic beverages to a person under the age of twenty-one (21) years during a liquor license compliance check by the Walpole

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Police Alcohol Compliance Sting Operation Team. A copy of the relevant police report setting forth the particulars is attached hereto.

The allegations, if proven, constitute violations of G.L. c. 138, §34 (sale of alcohol to minor), 204 CMR 2.05 (2) (permitting illegalities or disorders on the licensed premises) and improper management.

A hearing will be held by the Board of Selectmen regarding the alleged violation on **June 21, 2011 at 7:30 p.m.**, in the Main Meeting Room of Walpole Town Hall, 135 School Street, Walpole. You may appear on your own behalf, with your attorney if you choose, and with witnesses, if any.

**If the allegations are proven, the Board of Selectmen may modify, suspend or revoke the license.**

Attorney Jeffrey Blake swore in the witnesses for this hearing. Do you swear to tell the truth the whole truth and nothing but truth. They all replied I do.

Attorney Gregory Demarcus on behalf of Applebee's, we also regret what happened on May 20, 2011, we think there is extenuating circumstances regarding the way the sting took place.

Attorney Demarcus stated Applebee's has had an impeccable record in all communities in the state. They take compliance obligation seriously, zero policy. A ten year employee lost her job from this. Five of the seven violations, resulted from someone asking the operative for a license, I can not imagine what happened. She looked at it and she made a mistake. The manager has been there for five years, everyone is TIP certified. On a first offense, we do not think it merits a suspension. We think the sting violated guidelines of the ABCC not carried out properly. We would rather get a reprimand; we have learned from this experience, we want to continue a good relationship with the town. This sting was flawed and ABCC has a zero tolerance for stings that are not down by the guidelines. I will wait to hear what the police have to say.

Attorney Blake called Detective Songin to testify.

Detective Songin introduced himself and stated he works for the Walpole Police Department.

Attorney Blake asked him if knew why he is here.

Detective Songin stated we conducted a compliance check and seven facilities in town failed and we are here to address the consequences.

Attorney Blake stated this is for the sale of alcohol to underage person.

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Detective Songin stated, yes.

Attorney Blake asked him to explain to the Board the procedure of the sting, how it was set up.

Detective Songin explained the Police Department applied for a grant for \$5,000 and was awarded the grant. I attended a class held instructional mandatory class, several other towns attended. There were questions and answers and once that was done, I got the complete list of establishments and broke them down into areas and we searched for two underage people, one from RI and one from Franklin. We had them into station went over the guidelines and provided them with copies.

Attorney Blake asked who "we" is? Detective Songin, stated myself, Officer John White, and Detective Tim Sullivan

Attorney Blake asked with respect to Applebee's was that you or Tim Sullivan. Detective Songin replied it was Detective Sullivan.

Attorney Blake, we are talking about guidelines, do you have guidelines? Detective Songin, Yes. Attorney Blake asked did you adopt them. Detective Songin replied yes.

Attorney Blake offered into evidence as an exhibit the guidelines, also add into the evidence, the notice the Chairman read into the record.

Attorney Blake reviewed the guidelines with the Detective.

(1)A notice of intent to conduct an underage compliance check or sting operation will be announced in the local media prior to the start date. Did you do that? Detective Songin, Yes. Attorney Blake Is this the letter? Detective Songin stated yes. Attorney Blake entered into the record as exhibit #3.

(2,3,4)The underage operative should reasonably look their age and efforts to make them appear older shall be avoided. Shall have no criminal involvement with any police department and should not be a relative or close friend of any police department member. Attorney Blake asked did you comply. Detective Songin stated yes, we had him dress in regular clothes, no glasses or beard, took a picture of him and we have his actual license.

Attorney Blake questioned the operatives age. Detective Songin stated he is 19.

(5) The operative shall be provided training on the guidelines of operations prior to any involvement. Did you comply? Detective Songin stated, yes. Attorney Blake you briefed him on the guidelines. Do you have a copy of the signed version? Detective Songin, Yes I do. Attorney Blake put into evidence (will have copy made after the hearing.

(6) Shall not carry any form of identification on their person, during any part of the compliance checks. I read the police report, the operative handed a license, the one we showed a picture of and he was served anyway. Did you comply with this? Detective Songin explained during the meeting at ABCC we asked if we could have the operative show the ID they said yes. I called the ABCC and explained what I was doing and he indicated to me if you are handing them an id and saying they are fewer than 21 it is probably worse than not asking for id. Attorney Blake, so based on the ABCC you went that extra step, why? Detective Songin explained I felt I have done a lot of work. have been a bartender, some people grab them and do not really look at them, check and make sure it is that person and they are over 21. Attorney Blake asked Mass license under 21, is it different? Detective Songin explained it says under 21 it is vertical. This document he is handing to them says under 21 until April 30, 2012.

Detective Songin handed in exhibit of the Different Massachusetts licenses.

(7) The underage operative may not carry currency on their person. Only cash provided by the ABCC officer for alcohol purchases will be permitted. Attorney Blake asked if they complied. Detective Songin stated yes.

(8) The operative shall enter a licensed premise under the observation of an investigator and attempt purchase alcohol. The underage operative will then exit the premises under the observation of the investigator whenever possible. Detective Songin stated that Detective Sullivan took care of that.

(9) The underage operative should be asked prior to entering a liquor establishment if there is any prior knowledge of the establishment. Detective Songin stated they complied, yes we did that.

(10) Will not be put in any unsafe situation and will be instructed to immediately exit the premises if he/she feels the need to do so. Complied

(11) Will not wear or exhibit clothing that indicates any law enforcement affiliation. under no circumstances, will any weapons be carried by an operative. Detective Songin stated they complied with that.

(14) The Underage Operative will not: (A) misrepresent his/her age or provide any identification. Attorney Blake stated they did provide identification. Detective Songin explained he conferred with the ABCC. He further stated the guidelines are framework and leaves room for adjustment and no one had a problem with that.

(15-25) Attorney Blake asked, have you complied with remaining guidelines. Detective Songin, yes.

Detective Songin stated that Deputy Chief Carmichael also sent letters to all liquor license holders and in the letters it states that the operative may produce a license.

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Attorney Gregory Demarcus questioned who was that letter addressed to? Attorney Blake stated, it is addressed to license holder.

Attorney Gregory Demarcus, who is that letter coming from? Attorney Blake replied, Deputy Chief Carmichael. Attorney Demarcus stated he is not familiar with that letter.

Attorney Demarcus wanted to ask a few questions. The underage operative you stated was 19 years old but he was 20 years old. Detective Songin, he is 20.

Attorney Demarcus, on the license you talk about vertical, a driver under 21, correct. Detective Songin stated yes.

Attorney Demarcus, someone could be over age 23 and have a vertical license correct?

Attorney Demarcus, you spoke to ABCC can you tell me who that was. Detective Songin stated he usually speaks to Carol but she was not there so he spoke with another investigator, he does not know his name.

Attorney Demarcus, are you familiar with ABCC guideline, are you familiar with the guideline from the ABCC that once they are asked for an ID, the underage operative should leave the establishment.

Detective Songin stated, Yes I am familiar. I was not with this individual

Attorney Demarcus the guidelines state the underage operative will not provide any Id there is no dispute that he showed his ID. Do you know whether Cindy Coyne knew the Operative? Detective Songin stated they had no connection.

Attorney Demarcus, thank you very much.

Attorney Blake called Detective Sullivan to testify.

Detective Sullivan knows why he is here.

Attorney Blake you were in charge of the sting and operative. Detective Sullivan, yes

Detective Sullivan explained he controlled the license id I gave him his license, if he was asked to show his license he was to show it and if they served him he was then to leave and come outside. Attorney Blake, did he come outside? Detective Sullivan stated a few seconds later, I asked if he was asked to show his license, he said yes and he was served.

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Detective Sullivan stated he made him identify the bartender that served him. Attorney Blake, did you speak to the bartender? Detective Sullivan stated, no the manager. Attorney Blake, you offered a report. Detective Sullivan, Yes I did. Marked as exhibit # 1 . Show you what is exhibit 4. Is that the operative you worked with and his license? Detective Sullivan, yes.

Attorney Blake showed exhibit # 2 guidelines for the town with respect to stings. #8, your testimony shows that did happen. Detective Sullivan, yes.

Attorney Blake, (12) upon entering the licensed establishment, the underage operative will attempt to purchase an alcoholic beverage. They should attempt to purchase the same item at each location. Attorney Blake, the testimony establishes that.

Attorney Blake with respect to guideline (13) your testimony establishes that as well

Detective Sullivan stated the license clearly states he is under the age of 21 and did have conversation with the manager and he said she miscalculated. It says on the license 4/30/2012.

Mrs. Mackenzie asked Deputy Chief Carmichael, if the letter he sent out went to all liquor establishments in town. He stated yes and he generated this letter and Detective Songin told him in the past they have done this.

Mr. Gallivan, believes Attorney Demarcus stated the employee was let go, is there any dispute that alcohol was served? Attorney Demarcus stated no.

Attorney Demarcus we do not condone this. This may be the only one to have let go an employee, they do not tolerate a mistake. It shows the board that they are making every effort.

Mr. Berry stated how an individual business handles this in has no bearing on the Board. I think they all recognize their mistake. They opted to act I think as cooperative businesses and did not seek to come before us, and have anything done away with. Miscalculations or perceived procedures, I am disappointed that Applebee's has continued this hearing, as one Selectman how your business decides in house how to handle this has no impact on how we handle this. We should not take that into consideration.

Attorney Blake stated he has nothing further.

Attorney Gregory Damarcus asked Detective Sullivan to read specific sentences from the guidelines. "These guidelines are intended to provide the basic framework, which will be used when conducting underage drinking compliance checks on licenses liquor holders in the Town of Walpole". Under purpose, the purpose of an underage sting operation is foremost educational in nature and the method of operation should reflect that purpose.



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Gregory Damarcus stated the manager is here and he will testify that everyone is TIP certified. Someone made a mistake

Gerald Malgraff, I feel we take this seriously and the way the perception I get that we are the ones trying to get a way with it, it was an error. She, the bartender, is a great person. We lost a good person, as the detective testified, she made a mistake and he made a mistake with the date of the license. We tried so hard I know the penalty is we lost this great person, no matter how hard you try, people make mistakes. The license says it is good until 2012, she screwed up, we do not want this to ruin our relationship with the Town. I believe we have always enjoyed a relationship.

Mr. Kraus stated, all seven establishments, at the end of the day an underage drinker was served and you were notified, you were given a vertical license that should have brought to the attention of the bartender. I applaud the action you took.

Attorney Blake asked if anyone else has anything to add.

Mr. Boynton reminded everyone it is important to note the issuance of the license is a privilege not a right, and there are conditions that go along with that. The fact the employee was terminated by Applebee's is not the license holder. The town has gone to great lengths at sending police to programs and working with the ABCC. The matter may end up back to the ABCC. Every intention this was done to live up to the guidelines.

Gregory Damarcus stated that one thing I had Detective Sullivan read was from own guidelines. They are education in nature. Applebee's is not saying that it did not happen, given their history, given their procedures, given this is to be educational, we think a two day suspension is unacceptable. If the others had not agreed to the two days stipulation. Applebee's is a chain, I think it has a disproportionate impact on them. I just think we should not get a suspension.

Guidelines, I have six to seven cases there. Any violation of these guidelines makes the sting invalid. She, the bartender, made a mistake. The same thing can be said about the Police dept. One called the ABCC. They say you can't have an id card. We all make mistakes. We are asking for less than a suspension. A suspension of Applebee's will be a very heavy thing, reconsider not doing this or take it under advisement. I appreciate your attention to this matter.

Attorney Blake told the Selectmen you have seen the evidence no one denies that this happened. The ABCC guidelines are typically from a warning to three days. I think you can do that. The punishment you gave to the other restaurant They accepted responsibility. Any punishment you give should be in line with the others. Take a look at the license; it is a difficult mistake to make. It happened after a letter was sent to them warning them. I find it ironic that they are asking for second chance, they did

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not give their employee a second chance. I believe you should give them the penalty that the others received.

I have had the opportunity to look at ABCC cases, there are some that say the guidelines were not followed. The issue is whether or not resulted in entrapment. Someone giving someone a license that shows under 21. Your officer took the right steps. Had they not gone the extra steps, five of the seven would not be here. A two day suspension is difficult, six others took their two day suspension and I see nothing here for leniency.

MOTION moved by Mrs. Mackenzie to close the evidentiary portion of the hearing, seconded by Mr. Berry, VOTED 4-0-0

MOTION moved by Mrs. Mackenzie that after hearing testimony regarding the alleged violations of Applebee's Restaurant, and deliberation, the Board of Selectmen finds the following facts:

1. That the licensee was notified of the Town's compliance checks
2. That notwithstanding the notice, the licensee was found to have served an under aged person. This is a violation fo G.L. c. 138, Section 34-sale of alcohol to a minor, Code of the Massachusetts Regulations 204 section 2.05 (2) permitting illegalities or disorders on the licensed premises and improper management,

seconded by Mr. Kraus, VOTED 4-0-0

MOTION moved by Mrs. Mackenzie as a result of the previously detailed violations the following penalty be issued to Applebee's Restaurant, located at 990 Boston Providence Highway, a three day suspension of the liquor license for and shall serve the entire suspension within 90 days from the date of the hearing, seconded by Mr. Berry

Discussion:

Mr. Berry does not feel they should face a heavier sanction just because they asked for the hearing. He would support the same sanctions and guidelines as the others agreed to.

Mark Gallivan believes a two day suspension is warranted, I appreciate you work well with Walpole and you're a good Chain, you made a mistake. I support a two day suspension

Mrs. Mackenzie I think the fact that they did receive a letter, mistake was made, the employee paid the price for that mistake. She paid the price, the big business is trying to get around that, I do not feel it is the right way to go, not a policy to follow; the other bus realized and accepted that their ability to have a license in this town is

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something they need to work for. There were 7 children served and would have been drinking

VOTED 1-3-0 (Mr. Berry, Mr. Gallivan and Mr. Kraus opposed)

MOTION moved by Mr. Berry as a result of the previously detailed violations the following penalty be issued to Applebee's Restaurant, located at 990 Boston Providence Highway, a two day suspension of the liquor license for the restaurant to be served within 90 days of the hearing and maybe served in non consecutive days. Applebee's shall notify the Chief of Police as to the dates of the suspension within seven days. The suspension need not be served on consecutive days, seconded by Mr. Berry, VOTED 3-1-0 (Mrs. Mackenzie opposed)

MOTION moved by Mr. Berry to adjourn 8:55 p.m., seconded by Mr. Gallivan  
VOTED 4-0-0

Respectfully submitted,

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