

July 10, 2017

6:00 PM RSA 91-A:3,II, (a), (c), (d) & (e) Non-public session

PRESENT: Jim Waddell, Chairman  
Regina Barnes, Vice-Chairman  
Rick Griffin, Selectman  
Phil Bean, Selectman  
Rusty Bridle, Selectman  
Frederick Welch, Town Manager  
Mark Gearreald, Town Attorney

On MOTION of Selectman Bridle, SECONDED by Selectman Barnes, the Board of Selectmen voted unanimously by roll call (5-0) to go into a non-public session at 6:00PM under RSA 91-A:3, II (a), (c), & (e) [personnel, reputation, and litigation].

[Minutes Sealed for non-public session.]

On MOTION of Selectman Barnes, SECONDED by Selectmen Bridle, the Board of Selectmen voted unanimously to reconvene the public session at 6:55PM.

On MOTION of Selectman Bridle, SECONDED by Selectman Barnes, under RSA 91-A:3, III, the Board of Selectmen voted unanimously by roll call (5-0) to seal the minutes as it would affect adversely the reputation of any person other than a member of this Board, or jeopardize the effectiveness of the action to be taken.

7:00 PM Public Meeting reconvened in the Selectmen's Conference Room

SALUTE TO THE FLAG

I. Public Comment Period (5:31)

Charlie Preston: Gerald Dignam passed away and his services will be at Remick & Gendron on Wednesday from 4-6, he was a great guy.

Moment of Silence for Mr. Dignam

II. Announcements and Community Calendar

Selectman Bridle: Public Safety did a good job at the beach on the July 4<sup>th</sup> weekend.

Selectman Bean: condolences to the Al Fleury family on losing his mother.

Selectman Griffin: condolences to Gerald Dignam's wife Marg; Gerry was my campaign manager; everyone will miss him.

Chairman Waddell: donation of wheelchairs with the huge tires to assist getting people on the beach.

III. Consent Agenda (7:30)

1. 3 Colby Street Petition for underground gas line - Unitil
2. Library Trustee Appointment: Elizabeth Keroack
3. License for Coin Operated Amusement Devices: Tidewater Campground, Best Western & The Inn at Hampton
4. Pool Table Permit: Water's Edge Yacht Club LLC
5. Road Closure Request: 9 Crest Street
6. Solicitation Permit: Hampton Local 2664 & Local 3017 MDA Boot Drive & Burn Boot Drive
7. Perambulation: Exeter, North Hampton & Stratham

Selectman Bridle MOTIONED to MOVE the Consent Agenda SECONDED by Selectman Barnes.

VOTE: 5-0-0

IV. Approval of Minutes (8:30)

1. June 26, 2017 Non-public Session and Public Session

Selectman Barnes MOTIONED to APPROVE the Minutes of June 26, 2017 Non-public Session and Public Session SECONDED by Selectman Bridle.

VOTE: 5-0-0

V. Appointments (8:50)

1. ~~Senator Innis~~, Representatives Bean, Cushing, Edgar, Emerick, and ~~Tilton~~
  - a. Legislation Pending and Proposed

Chairman Waddell: Senator Innis is unable to attend due to illness.

Representative Edgar: HB25 is supposed to be signed tomorrow; Nancy Stiles really pushed it from the very beginning and beneficial to the town; got the building but not the furniture; we have the bridge coming up, scheduled to be done in 2024.

Representative Cushing: thanks to Mike for being at all the meetings; little foreign aid coming from Concord for the cities and towns; \$120,000,000 for the Department of Corrections and \$80,000,000 for the State University system.

Representative Emerick: support Nancy's persistence for the courthouse; additional funding coming Hampton's way, gives \$1,000 per kindergarten student as a baseline and then the introduction of keno was part of the bill; any revenue from keno will add on top of the \$1,000 per student, not adequacy payment, but grant. Electric grills as well as gas grills are illegal to have on balconies in multi-family dwellings. State paying raises for caregivers for the developmentally disabled and additional funding for opioid epidemic. DRED was split into two departments; Economic Development and Tourism and Parks and Cultural Affairs. An additional \$39,000,000 for municipalities for bridges and roads; room and meals tax staying at 2.85%; Sununu Center will be split into two parts, one drug rehabilitation center for youths. Firefighters and Police training continue to be paid for by the state; ticket volume down, so funding is down; no increase in road toll.

Representative Bean: privilege to serve; work together as delegation; budget has passed; Town of Hampton has been a significant contributor to the revenue source; met with Minority Leader to address the operational challenges that exists in Hampton. Senator Stiles and Representative Rice has done a fabulous job; Representative Cushing was quoted about the seawall; privilege to serve on the Labor Committee. A young woman from Rye working on a carcinogenic in water pollution threats; water pollution control act; millions of dollars robs the state upwards of \$3,000,000 per year; partisan issues.

Selectman Barnes: doing a great job; in process of drafting a letter to outline to apply for some major infrastructure issues; major one is the wastewater pipes under the marsh; we do not have the money. Hampton sustains the State of NH; great state to live in and work for; will copy; they need to know what is going on; needs to go higher; hopefully additional funding available.

Selectman Bridle: I appreciate what you do; Hampton does its share, every once in a while need to help out too; you mentioned meeting with DPW on crosswalks.

Representative Edgar: yes, been in communication with DOT about it.

Selectman Bridle: old Ocean Boulevard, which goes down by the state pier many potholes; do not know if it is DOT or Port Authority, needs to be addressed; C Street has a number of potholes close to the sidewalk. You spoke about the grills, there was smoke coming from a building and the Fire Department went down and there were grills on every floor of the apartment place; need to have grills away from building.

Representative Emerick: there was a bill passed to allow the liquor store to sell their properties in Hampton to DOT, they will put together gas station, liquor store, restaurants, will be converting them; the two Hampton liquor stores are the top producing liquor stores in the state.

Representative Cushing: \$27,000,000 for the conversion of the two Hampton liquor stores and the one in Portsmouth.

Selectman Griffin: so it is now illegal to have an electric grill. Representative Emerick: on the balcony of a multi-family, you can have it in the driveway you just cannot have it in the building.

Selectman Griffin: people are raising questions on what the town can do about the flooding, it is what is draining off the street, as the drains do not work that the state owns, complicates the matter; town and state needs to come up with answers or suggestions. If you live near marsh need alternative place to park your car; get a tide chart; these streets have always flooded; town is working on it; no place for people to get quarters for meters. From Boars Head to Winnacunnet Road has been dropped from the plan, for a measly \$28,000 we do not have and cannot be part of the plan; needs to be continued up to North Beach; big problems here.

Selectman Bean: speaks to leadership; I have called for resignation from Director Bryce and Commissioner Rose; the way the beach looked in May; no customer service with change items; bathroom situation disgrace, no maintenance building; improve condition of park facilities; long term viability; revenue generated by parks.

Selectman Griffin: working on this for six years with the HBAC then at the last minute dropped it out; eight elected officials asked that it be done at least to Winnacunnet Road. When

we had a microburst on Saturday, the roadway filled up with water; someone in a wheelchair was coming in and had to be assisted to enter facility; people became sprayed by water.

Selectman Bridle: we asked for a crosswalk in the area of Little Jacks so that people can cross over there, but has been denied; no crosswalk from south of Boars Head to Winnacunnet Road.

Selectman Barnes: have seen accidents at the rotary on Winnacunnet/Ocean Boulevard; dangerous

Town Manager Welch: they told us it is too dangerous to put in crosswalks as it is four lanes and people might get hit. We asked 5 years ago to have the crosswalks painted at North Beach and the then commissioner came back in a letter saying we would not need crosswalks there if the town of Hampton had not encouraged people to build homes there

Representative Edgar: who is responsible for the crosswalk lights at North Beach?

Town Manager Welch: we are responsible for some and the state for others; would have to look

Representative Cushing: Phil mentioned the fact that there is \$100,000,000 in the rainy day fund, to me that is nothing to be proud of; maybe fat city in Concord but raining here in the cities and towns. Much rather seen that money distributed to the cities and towns; proposal 4013; contributing to public safety and teachers, would have been easy way to provide property tax relief to towns.

Representative Emerick: from the finance standpoint, having \$100,000,000 lowers our bond.

Chairman Waddell: thank you; where is the courthouse going to be.

Representative Emerick: by the Timberswamp Park and Ride; courthouse parking lot will also be a park and ride.

Chairman Waddell: the NH legislator make \$100 per year; they do a lot for very little.

Dyana Martin, Director Recreation and Parks (56:20)

- a. Waiver from Purchasing Policy Section 718-4 B.2 Bid 2017-008 Tuck Field 1 Repair (less than 3 bid received)

Director Martin: assessed need; put bid together for scope of services; sent to ten possible bidders; put on our website in hopes someone else might see it and went to publications also; we only received back one bid and one other company said no bid. I think part of the problem is it is specialized work.

Chairman Waddell: how much money

Director Martin: \$26,574.72; fall project

Selectman Bridle MOTIONED to APPROVE the Waiver from the Purchasing Policy Section 718-4 B.2 Bid 2017-008 Tuck Field 1 Repair SECONDED by Selectman Barnes.

VOTE: 5-0-0

2. Chris Jacobs, Director DPW & Jennifer Hale, DPW Deputy Director (58:58)
  - a. Waiver from Purchasing Policy Section 718-4 B.2 Bid 2017-010 Crack Sealing (less than 3 bid received)

Director Jacobs: have list of everyone sent out too; we did open bids for crack ceiling; asking for our recommendation to award and asking for waiver as we only received two bids back, sent out 10 bids

Chairman Waddell: is this a specialty work? Director Jacobs: yes, the investment of the blower, router tools; there is plenty of work, so not as profitable for them to drive this far.

Selectman Bridle: is this the same company we used last year? Director Jacobs: yes.

Selectman Bridle: when we do this can, we put signage out, as slippery for motorcycles.

Selectman Bean: is there limit on this. Director Jacobs: it is some portion of our paving budget; we tried to allocate approximately \$40,000.

Selectman Bridle MOTIONED to APPROVE the Waiver from the Purchasing Policy Section 718-4 B. 2 Bid 2017-010 Crack Sealing SECONDED by Selectman Barnes.

VOTE: 5-0-0

b. Waiver from Purchasing Policy Section 718-4 B.2 Bid 2017-011 Purchase & Delivery of Aggregates (less than 3 bid received)

Director Jacobs: purchase and delivery of aggregates; sand, crushed stone, processed gravel; got one bid; sent out to 7 vendors; same vendor we have currently/last year; amount is \$13,000 for our sand budget, also money for crushed stone and processed gravel.

Selectman Bean: budget is \$13,000. Director Jacobs: on sand, which we will be buying this year, but did not buy any last year.

Selectman Barnes MOTIONED to APPROVE the Waiver from the Purchasing Policy Section 718-4 B.2 Bid 2017-011 Purchase & Delivery of Aggregates SECONDED by Selectman Bridle.

VOTE: 5-0-0

c. Waiver of Sewer Fees for SAU 90 Hampton Academy Project

Director Jacobs: upcoming project with the Hampton Academy; traditionally in the past we have waived the sewer connection fees for various projects; clearly states board sets fees and Director will charge fees. I did copy Ms. Murphy of the SAU; not inclined to waive the excavation permits, as that is something that is taken out by the excavation contractor and the sewer access fees.

Selectman Bridle MOTIONED to APPROVE the Waiver of the Sewer Fees for SAU 90 Hampton Academy Project SECONDED by Selectman Barnes.

VOTE: 5-0-0

d. Atlantic Avenue Parking Layout (1:06:50)

Director Jacobs: based upon responses that came a year ago; took measurements and looked at site plan; only two properties that have gone before the Planning Board process; spoke with Fire Captain and Fire Chief to make sure they have access; before making lines thought it was prudent to come before the board.

Selectman Bridle: thinks it is smart to do all the streets down there.

Selectman Bean MOTIONED to APPROVE the Atlantic Avenue Parking Layout in accordance with the schematic dated July 7, 2017 SECONDED by Selectman Bridle.

VOTE: 5-0-0

Chairman Waddell: High Street, July 10. Director Jacobs: yes, they are going to replace the sidewalk; once curbing is reset and the sidewalk has been replaced then we repave the street; we can get paving reflectors down the center of the road to guide traffic.

3. Bernie's Bar and Grill Acoustic Review (1:10:25)

Chairman Waddell: we have two groups speaking tonight; Mr. Bell.

Selectman Bean: I would like to abstain.

Chairman Waddell: yes, please introduce yourselves.

Douglas Bell, acoustical consulting firm, Attorney Larry Gormley representing neighbors and Patricia Murphy, 4 Haverhill Avenue.

Mr. Bell: 28 years of experience; reviewed reports, sound measurements and looked at the system. The town does have a noise ordinance that applies to venues such as this; 75dba at the lot line of the property until 11PM, then from 11PM-1AM drops to 50dba. There never were conditions applied to the proponent that assured compliance with the noise ordinances. They have done a very good job of picking, selecting and tuning the equipment, achieved very sophisticated and good control over the sound; however, it does not prevent it from exceeding the noise limits and have not been any controls applied to that. There were several recent modifications that even further helped to enhance and control off-site sound, but report moves into another area about agreements between the neighbors and the venue. During a demonstration, he sound was played at 80db at the property line and neighbors agreed it was acceptable. I do not know how the neighbors or I could suggest that exceeding the limits of the noise ordinance, it fails to pass a reasonable test. The noise applies to the entertainment venue not to indigenous sources of noise; control noise emanating from these entertainment venues so the local population can enjoy the sounds of the indigenous sources without it being drown out. The fact that it is unachievable is not even true; entertainment venue can control their noise to 50dba, by erecting walls and doors. My firm was able to conduct measurements at the facility and in the surrounding community; the 75db level was exceeded within the 5 minute test; noise ordinance violated at the lot line. Did another test across the street while music was playing over 75db, when music stopped it was 65db; this was during the one month temporary license period; if you stand in front of the facility after 11PM and hear music it is in excess of the 50db limit.

Selectman Barnes: all the reading were from the same spot, except for the last one. Mr. Bell: the first two is from the edge of the balcony at the railing, the last was across the street.

Selectman Barnes: I was there that night and the Police Department was taking readings that night also.

Attorney Gormley: everyone agrees we are dealing with unique premises; open 7 nights per week, live entertainment outdoors; the band shell playing music in commercial zone, ending earlier and not 7 days per week. You have a noise ordinance; if you knew then what is known now the Planning Board or Select Board would have limited hours and/or days of playing and not provided an unrestricted right to play outdoor music 7 days per week. The statute requires

the licensee to be responsible for his nuisance; abutters are required to plead with the town to enforce it statute. Issue has arisen as to how this statute is to be enforced; been informed by the HPD that it is interpreting the statute to indicate if someone complains they go out there to take a measurement; unworkable interpretation of the statute; sound must be measured at its source. Consistent with legislative intent, this is to preserve the peace and quiet of Hampton. We want the town to enforce the statute passed by the town's people, overwhelmingly. Al Fleury is a great guy who spent a lot of money; everyone else that has become before you have also spent a lot of money; objective standards; municipal obligation to enforce ordinance, which is by monitoring the sound. The other way to control this is to limit days and hours; maybe problems with monitoring; require monitoring for 60 days and see what the numbers are, will allow people to see if ordinance is being observed. You have full authority to require the licensee to monitor his premises for that amount of time; only way to make decisions and have facts. The abutters just want the law enforced; I believe the statute is clear and be measured at its source; the numbers were set at town meeting and cannot be changed without a town meeting. I think it is important to have objective criteria that can be compared and decisions can be made based on that.

Selectman Bridle: to correct you, the seashell is 7 days per week.

Selectman Griffin: Marylee Twomey who owns the Sea Ranch said 100% onboard with your side of this argument, but it is somewhat better and she would be better off if it ends at 11PM. The people at Boars Head understand that they are not getting the 75db there; they are not interested in hearing all the songs and words to the music until 1AM.

Ms. Murphy: what we have learned is if the ordinance is enforced, as it is written, we can live with it.

Chairman Waddell: there are two interpretations to the ordinance, goes to a judge and they settle the interpretation, we do not want to go that far; but there is not always an absolute right saying I know what the interpretation is; I am not saying that I agree with either interpretation.

Attorney Gormley: I agree, I am not saying that I can guarantee that we are correct, but have provided you some basis to find that I am correct, and trying to obviate the time and expense for both us to go have a judge to do that.

Chairman Waddell: I agree 100%; thank you for your testimony.

Ms. Murphy: received a report from RPM via email this afternoon which asserts erroneously that on May 2, 2017 when we did a volume test on the system at Bernie's, there was no agreement amongst the neighbors that the sound measured at the edge of the property line was 80db. There was no agreement; had no live music; no consensus; no agreement.

Jim Roesse from RPM Dynamics Audio & Stephen Ells, Attorney.

Attorney Ells: Al Fleury could not be here tonight as he had a Memorial Service for his mother today, so will not attend tonight; Jim has submitted a report and will go through it.

Mr. Roesse: I know I am correct and am hoping that Chief Sawyer remembers as he was there, when we were done with the testing and the consensus was this level seems acceptable and the conclusion was let's run the music at this level and see how it works. The first and second meeting here when asked questions the Chief said the ordinance of 75db and 50db were unenforceable based on the fact of the levels the beach runs at. The board as a whole including

Ms. Murphy and their side said the numbers are not the problem; it is the perceived volume at our property that we are hearing music. The concerns was what can Bernie's do to alleviate that problem so that both the business can operate properly and the people that live in that area not be subjected to excessive noise. When the PA was designed for the first season, it was designed at full capacity covering all the seating in the venue; does not always run that way; when not full the sound flies, as we found out. I spoke with Al and we made a lot of major changes; Al tried to do everything right and spent \$100,000 more to try to fix problems the neighbors were seeing. When Regina was talking, was really proud to talk to the State that Hampton Beach is the #1 money maker of this state; 10:30-close is the money maker for the entertainment bar industry. Tourists want to go out at 10:00PM to have drinks, fun and let loose, after their beach time; talking about second floor metering; third floor acoustic music going on; standing on deck and measure on noise, which also includes ambient noise of people speaking and vehicles, getting erroneous readings. There is still going to be 75db due to cars and people yelling; if you put monitoring into place at Bernie's you need to put monitoring in to everyplace that has entertainment. I sent an engineer to Hampton Beach and they walked around with a monitoring system, he set up a microphone and on the property line of the Seashell is running at a 90db, which is in violation; the Playland Arcade was 84. We are half way through the summer and to my knowledge, no violations have been filed regarding noise. Al has gone above and beyond to try mitigate this problem; not about money, about making this right.

Attorney Ells: preamble to the ordinance includes the enhancement of the prosperity of the town; venue in middle of business/seasonal zone; ran last year without violations; ran this far without violations. Al has said what is going to do; the problem it sounds to me has been solved through the testing. I drove by Bernie's on Wednesday night and could not hear the music, just could hear the people and motorcycles; he would be open to monitor this through the summer by hiring a police detail.

Selectman Bridle: with the meters, does it differentiate from a motorcycle or a crowd going by. Mr. Roese: if you do not have a spectrum analyzer, just looking at frequencies; just says it is that range.

Mr. Bell: I agree that a meter measures all sounds; where you can differentiate is when you have a measurement with music or without music, then you can see the change; extract the background out.

Mr. Roese: I agree with him on that, but in a heavy beach night, ambient noise and that are so close, you are going to be spending all day trying to figure out, which it is.

Selectman Bridle: monitoring it even at the glass wall you are still going to pick up motorcycles, people hollering and screaming on the beach. Mr. Roese: absolutely.

Mr. Bell: we made measurements from across the beach and the background sound levels throughout that period were below 75db; occasionally a loud motorcycle goes by, but the ordinance covers that; there are places where you can infer compliance.

Mr. Roese: the night of the concert, we were running an 88db at front of the house, which was  $\frac{3}{4}$  way on the back of the deck; the question was the higher number going to be deemed as the perceived volume that was not a nuisance.

Chief Sawyer: I am quite dismayed by some of the behavior tonight and on previous meetings when people are trying to offer their opinion and people from the audience are shouting out, it is unacceptable and that is not what Hampton is about; I just wanted to point that out as a resident. To sum it up I would not use either one of them; found significant issues; I was hoping these reports would give me some insight into the sound. The Police Department is put into an impossible position, as I do not have the training of either of these two individuals; most of the reports do not deal with the sound; they deal with their viewpoints on how it should be enforced. I heard counsel say it is very clear the intent of the ordinance was to be measured from there, sorry to disagree with you in public, but you could not be more wrong. I was part of the group that put that ordinance together and that was never the intent, which is also why since this ordinance went into effect, I have spoken out about the confusing language of this ordinance. The intent was not having people walking around to every entertainment establishment, measuring if it is going over, and then shutting it down; why would we do that if it is not an affront to the abutters and causing a nuisance. Obviously, with Bernie's we have that issue, but when you walk down the boulevard it is not; we have music at the Band Shell 7 days per week, and it is by far the loudest noise source in the Town of Hampton, not even close, it is louder than the Casino; I just wanted to correct your statement. It was never the intent for officers walking around with a sound meter and going from establishment to establishment. We have a brewery on the west side of town that runs entertainment and they are blasting the music at 100db and no one is complaining, why would we stop that, it does not make sense, it is when it becomes a nuisance. People coming up talking about the legislative intent; most are not voters in town and were not part of the process, so do not know what our legislative intent was; the intent was when we received a complaint the officer would go take the complaint. The line I am amazed that we keep leaving out is: a. noise levels, it shall be unlawful for any licensee to admit or cause to be permitted, any noise to be beyond the boundaries of his/her/its premises in excess of the noise levels established in these regulations. The next one down is noise level standards: sound from any entertainment source controlled by this ordinance shall not exceed the following limits at the nearest lot line of the receiving private or public property. You have language that conflicts, so how anybody could believe that this ordinance clearly states that we are going to measure from the wall, the language conflicts where the measurement is going to be taken. When this ordinance was conceived, the intent had always been to receive the complaint, go to the source of the complaint and make the measurement from that location to see if the nuisance was a nuisance by town ordinance, then it establishes the levels. Every person that has spoken here has been over 50db, so to say that 50db is controllable, I do not agree with that, how do we determine 52db of music as opposed to a box truck driving by. I am not sure what part of our operation they would recommend we do away with as opposed to dealing with this nuisance as opposed to dealing with how to deal with drunk drivers, safely handle needles, opiates and other things that are life threatening or possibly causing property damage. I do not mean to minimize this nuisance, but with the staffing level I have; this is my 4<sup>th</sup> or 5<sup>th</sup> meeting here and been down to the beach, going out at night taking measurements. Some point we need to recognize this ordinance, as it is currently construed does not work for the problem we have.

Selectman Bridle: the noise ordinance, is that just as much for private residents? Chief Sawyer: the noise ordinance is a separate ordinance; we are talking about is the entertainment ordinance; hearing a radio outside of the vehicle, squealing tires, starting construction before

certain hours are violations of the noise ordinance. This is a licensed activity, so we needed a separate ordinance, as it is a licensing issue.

Selectman Bridle: music from a house. Chief Sawyer: they are not licensed so that would be covered by the noise ordinance or state statute for disorderly conduct.

Selectman Griffin: if there is a big party coming from a private home, what time is acceptable for them not being noisy after? Chief Sawyer: we are talking about the disorderly conduct statute, which is the state statute; our biggest concern is minors and alcohol; music has to be an affront to somebody, there has to be somebody to complain; police cannot be the offended party.

Selectman Griffin: when are the construction people allowed to make noise; stop? Chief Sawyer: they have to stop by 7PM, will check ordinance; the weekends are a later time to start

Selectman Griffin: earlier it was mentioned, he would like people to call when they have a complaint; last year they were told because of the Board of Selectman's vote they were allowed to have this license and there was nothing to do about it. What needs to happen for them to make a complaint and feel that their side of the issue is being dealt with? Chief Sawyer: it is a Board of Selectmen issue; do not like hearing my officer's say there is nothing we can do; we can go out and take a measurement; have limited equipment and training. I wrote a memo to the Assistant Town Manager a summary in reference to the entertainment at Bernie's Beach Bar from May 1-July 10; Hampton Police responded to Bernie's for 13 calls classified as disorderly conduct, 5 of which were alleged violation of the entertainment license ordinance:

May 28, 2017 at approximately 12:02AM monitored activities from Bernie's at Haverhill Avenue; music coming from Bernie's in violation of the time restriction of 11:59PM on outdoor entertainment; an officer responded to Bernie's and informed them they were in violation; music was terminated.

May 12, 2017 complaint from Boars Head at 10:16PM officer investigating found not to be in violation of ordinance.

June 25, 2017 at 9:54PM complaint from L Street and Ocean Boulevard supervisor monitored and found no levels above ordinance level; various readings were taken that evening from numerous locations and found no violations of ordinance identified.

July 2, 2017 complaint from beach in front of Bernie's for blaring music; I took readings from the Boardwalk and Haverhill Avenue and found no violation of ordinance; dispatched advised that complainant would meet me there; no one arrived; asked for call back and found the number was not from any complainant.

July 3, 2017 complaint at 11:43PM from Haverhill Avenue that music was too loud for that time of night; determined music was not unreasonable, at that time.

Chief Sawyer: only have 2 sound meters, which cost \$3,000 per unit; need to rework ordinance; would take legislative change in ordinance for that to occur.

Selectman Griffin: everyone needs to work together; contacted by several other people who have live entertainment and they are happy of no complaints. Chief Sawyer: we did an analysis of the complaints and the most came from Bernie's, which also goes back to two owners ago, as they have abutters the other facilities do not have; most are facing out to ocean and does not come back and bother abutters; unique outdoor facility; busiest late night spot on beach.

Selectman Griffin: there is a time limit for the band shell. Chief Sawyer: their music is done by 10:00PM, but is self-imposed as they are a state park and declared that our town ordinance does not apply; it is by far the loudest venue we have.

Selectman Griffin: at one point, the Casino was held to 11PM. Chief Sawyer: that is a different issue; inside entertainment; indoor facility ordinance; outside entertainment has to end one hour before the inside; inside entertainment needs to buffer the music, if windows were open, they were told to close windows and doors.

Selectman Griffin: there have not been many complaints about the noise until Bernie's came along. Chief Sawyer: the hope was by moving the stage to the middle the music would go straight out over the water; consequences that landed on these people; issue is what to do about it to address it; intent was always from the receiving property.

Selectman Griffin: there are people who like the music; not everybody is unhappy for it.

Chairman Waddell: the board is not going to vote until July 24, 2017; thank you for coming tonight, your testimony and your interpretations and we will look at it all.

Someone from the audience asked to speak; Chairman Waddell told him public comment was in the beginning.

Selectman Griffin: come in for public comment on July 24, 2017 at about 7:00PM

4. Attorney Saari (2:21:04)

a. 1088 Ocean Blvd – Request to acquire Town Property

Attorney Saari: various encroachments; wetlands buffer; buy through lease program; 5 year lease sufficient; need permission from this board to allow encroachments to stand; association met this past weekend; wood deck can and should be removed; prong off unit 2 should be removed. Conservation would like everything removed from the buffer; all encroachments are not environmentally threatening; lease enough areas around to meet the setbacks.

Attorney Gearreald: what were the areas you wanted to lease for purposes of setbacks; the setback is what under the ordinance? Attorney Saari: all of the wood deck between units 8-9 and encroachment off unit 2; ordinance is 10'

Attorney Gearreald: the board would have the ability to lease up to 5 years property that is not needed by the town; if something longer is wanted then would resort to the RSA41:14a. This involves getting input from Planning Board and Conservation Commission, you have gotten, followed by two public hearings spaced as required and then a third hearing. Do you want to consider the up to 5-year lease, which the board can do; or consider the RSA41:14a process; the encroachments did not arrive through any permits, but came without approval. Of all the structures, only a portion of Lot 2s rear deck that encroaches, impacts to any extent.

Selectman Barnes: I would say that we should go the RSA approach.

Selectman Bridle: the decks and walkways were put in without any permits. Attorney Gearreald: that is correct; board has ability to say remove all of them.

Selectman Bridle: is there room if they chose to keep their walkways, to put back on their property and get off encroachment. Attorney Gearreald: in part, yes.

Selectman Bridle: would have to take part of the deck off Unit 8 and part off Unit 8.

Attorney Gearreald: yes, part of the wooden boardwalk behind units 4 & 5 could be relocated onto the property; not the wood deck

Selectman Bridle: the wood deck would have to be made smaller and get a permit for it.  
Attorney Gearreald: correct.

Selectman Bean: what is your reference for a period for any easement? Attorney Saari: 5 years would be sufficient

Selectman Griffin: one of the things that happened here is about 20+ years ago; they all washed out; evidently, when they put them back they were not in the right spot.

Chairman Waddell: why weren't building permits and site plans done; I do not have any sympathy as they did not do this correctly. Attorney Saari: we do not know if the current owners were responsible

Chairman Waddell: someone knows when the decks were there.

Selectman Bridle: in 1972 they were not there, as they were washed out in 1978.

Chairman Waddell: what did the Conservation Committee say? Attorney Gearreald: their view is the encroachments be removed; whether it can be done; utility panel

Selectman Bridle: I think you can correct the decks and walkway, not sure with the utility panel.

Selectman Barnes MOTIONED to proceed with the RSA41:14a process SECONDED by Selectman Bean.

VOTE: 4-1(Waddell)-0

Attorney Saari: will need a plan of what it is we are talking about acquiring from the town.

Selectman Bridle: we need to know what you are actually looking for, as we only have a rough sketch

- b. 595 Ocean Blvd – Request to acquire Town Property, Attorney Saari & Jerry Flynn, Owner

Attorney Saari: this one is definitely a RSA41:14a matter; was a restaurant; plan to bring property back from where it is now; property abutted in rear by vacant land with access to that land. Looking to acquire land for the use of where we can park out back there; we also at one time had an agreement with the abutter to acquire that property and make a larger type project.

Selectman Bridle: the piece in question was a parking lot to the restaurant; always had use of that property; land called back there was owner unknown; lived next door for 44 years, sold in 2001; state filled that in.

Selectman Bean: I am sympathetic to what was there for years and years; urban renewal is a way forward.

Selectman Griffin: everyone misses that place.

Attorney Gearreald: this came to the towns ownership via a tax collectors deed; formerly owned by Warren Hobbs Estate; if town takes by tax collectors deed land that is marsh land, this property is placed in hands of the Conservation Commission, then problem utilizing

RSA41:14a; would be exception to RSA41:14a; statute problem. Resort to Probate Court as it is owned in trust.

Selectman Bridle: used to be a number of owners, part of was unknown and part was a number of owners; need to look into that. Attorney Gearreald: title talks about stables; people parking on left side.

Selectman Bean: Rusty asserts that there is fill in there; preexisting use, parking lot; are the parking lot remnants still there.

Selectman Bridle: if the remnants are not there, the old road that the state dumped out there, is in part of that stuff.

Selectman Bean: I get what you are saying about Article 28 of the 1994 Town Meeting; all title and fresh water marshland; seems to be a difference of opinion both in terms of precedent and current use of the subject land. Has the Conservation Commission asserted any rights on this property during the time that the town took it. Attorney Gearreald: when the former restaurant wished to utilize some spaces back there, a survey was done that showed a line of wetlands and some spaces that were not in the wetlands were leased on a short-term basis by the Selectmen; still under town ownership; the Conservation Commission complained about the spaces being leased.

Town Manager Welch: the question is this part of the property that was acquired by tax collectors deeds; whoever had the title in their name at the time for the tax bill.

Chairman Waddell: what is our option right now? Attorney Gearreald: the question is to pursue or not pursue RSA41:14a, because something else should be pursued.

Selectman Griffin: are you suggesting that he do the same thing that they did at the cornerstone; they had to come up with other conservation land to donate to the town in order to get what they wanted; is that what you are suggesting? Attorney Gearreald: that is one approach; the AG office is an entity involved, not just the town; how much of an encroachment would this be and what is the return.

Selectman Griffin: that is called mitigation. Town Manager Welch: it could be there is no mitigation; talking a sliver of land out of a gigantic piece of land.

Selectman Griffin: I was on the board when they agreed to rent it to Lupo's and it was the Board of Selectmen's idea to make him lease the spots; neighbors were complaining; problems there.

Attorney Gearreald: have applicant indicate what they would offer in mitigation and see if that is something that would fly; Conservation Commission has expressed opposition to this; get the Selectmen and Conservation Commission on board with an idea that includes mitigation.

Selectman Bean: can addressing mitigation be included on the RSA41:14a process. Attorney Gearreald: no

Selectman Bridle: we need to find out if it is Conservation land; town has already rented space there before, so that might preclude it from Conservation land.

Selectman Bean: have as part of the discovery process of doing the 41:14a.

Town Manager Welch: only if you were going to do a title search and a plan; maybe a search of the property the building is located on and find out how big that lot is and measure it.

Selectman Bean: I just see this as something that was an eyesore for years; the town has allowed the use in the past.

Selectman Griffin: worked with the town to rip building down, as had rats; would like to see someone back there.

Selectman Bean MOTIONED to conduct hearings under RSA41:14a SECONDED by Selectman Griffin.

VOTE: 5-0-0

VI. Town Manager's Report (2:53:45)

1. Please note that Drakeside Road is closed to all through traffic. The railroad abutments are in the process of being removed and the roadway reconstructed. The closure will be for an extended period of time.
2. Work on the installation of the new water main on Lafayette Road continues.
3. Peter MacKinnon our Animal Control Officer will be retiring on August 31, 2017 after 30 years of service to the Town of Hampton and its citizens. Theresa McGinnis will be retiring at the end of July and has 43 years of service.
4. The Town has applied for Fiscal Year 2017 Clean Water State Revolving Funds totaling \$17,750,000 for the Wastewater Treatment Facility and Church Street Pumping Station Force Mains Upgrades.

Selectman Griffin: you are hoping to get the force main, what does that mean. Town Manager Welch: the facility is getting older and things need to be replaced and recondition; looking at doing that and trying to get the state to pay at least 20% of it.

Selectman Griffin: is that what the revolving fund part means. Town Manager Welch: yes.

Selectman Griffin: in the past there has been even higher amounts, but now is as low as 20%? Town Manager Welch: yes, used to be 95%; we will be applying to the Federal Government too.

Selectman Griffin: even if this is a dream wish, we would be willing to do it if we could; settle for whatever part of it. Town Manager Welch: would be happy and delighted with that idea.

Selectman Griffin: once we have some type of a commitment, we start looking for people to do all this. Town Manager Welch: yes, we have plans to change a lot of materials that are down there now; have construction plans for the main's to be replaced; could start doing tomorrow if we had the money.

Chairman Waddell: people could write to Congressmen and Senators saying they support it.

VII. Old Business (2:58:17)

1. Vote on RSA 41:14-a Proceedings "Amend and Release of Town owned Deed Restrictions on formerly Leased Land"
  - a. Paul M. Ahlin and Dana J. Mogauro 4A and 4B Atlantic Ave: Request to amend Deed Restriction #3 "No Fences may be erected upon said premises other than ornamental fences of no more than a three foot height" to install a six-foot fence.

Selectman Bridle MOTIONED that the Board modify deed restriction #3 regarding fence height as contained in the quitclaim deed from the Town to William P. Callagy and Virginia E. Callagy dated November 18, 1985 and recorded in Rockingham County Registry of Deeds Book 2575, Page 1915, so that said restriction will now read: “3. No fences may be erected upon said premises other than ornamental fences of no more than a four-foot height” SECONDED by Selectman Griffin.

VOTE: 5-0-0

- b. Ms. Kara Eder, 911 Ocean Blvd: Request to amend Deed Restriction #4 “The Grantee will not erect any building upon the premises within seven (7) feet of any boundary line”

Selectman Griffin MOTIONED that the Board modify the first phrase of deed restriction #4 regarding boundary line setbacks as contained in the quitclaim deed from the Town to Evelyn P. Gillespie dated July 9, 1984 and recorded in Rockingham County Registry of Deeds Book 2501, Page 1507, which in pertinent part now reads “The Grantee will not erect any buildings upon the premises within seven (7) feet of any boundary line,” so that said part will now read: “The Grantee will not erect any buildings upon the premises within the setbacks prescribed in the Hampton Zoning Ordinance except to the extent allowed by the Hampton Zoning Board of Adjustment by variance once said variance becomes final,” but leaving intact the remainder of deed restriction #4 SECONDED by Selectman Bean.

VOTE: 5-0-0

2. Vote on to RSA 41:14-a Proceedings “Donation of Land to the Town” Second Hearing (2:51:40)
  - a. Tuck Realty Corporation “Parcel A” Land to be Deeded to the Town of Hampton and Combined with Map 150 Lot 52”, containing 1.33 acres

Attorney Gearreald: since the public hearings were held, there were corrections to make to the deed; board cannot vote to accept a deed tonight from the particular applicant, as they do not have an ownership; owner of records was Carl Mason; Tuck Realty Corp is not an owner. You could vote to accept donation to the point when Tuck Realty does become an owner. One of the conditions of the approval is the quitclaim deed is recorded with the site plan, which means they would have to be the owner at that point.

Selectman Bridle MOTIONED to ACCEPT the Tuck Realty Corporation donation of “Parcel A” to the Town of Hampton Map 150 Lot 52”, containing 1.33 acres once Tuck Realty Corporation becomes the owner SECONDED by Selectman Bean.

VOTE: 5-0-0

## VIII. New Business

1. SAU 90 Hampton Academy Project (2:18:09)

Town Manager Welch: have given the exemption for the utilities; provision in statute that provides holding a public meeting by the Board of Selectmen or the Planning Board shall hold a public meeting on the improvements be made to the Hampton Academy. The Planning Board has held that meeting and has approved it; ask the Board of Selectmen to waive the fact that they do not wish to hold a public meeting on this subject

Selectman Waddell MOTIONED to waive the Public Meeting on SAU 90 the Renovation Project SECONDED by Selectman Bridle.

VOTE: 5-0-0

Attorney Gearreald: I have prepared a deed on the two lots and sent it off to your counsel, we are at the point where we do not need the lot line adjustments, do not need this hearing, just want you to proceed and follow the will of the town's peoples vote. Get in touch with him and want to be sure it was accomplished; what you need by next meeting let us know that it suits.

2. Vote not to use PA-28 Inventory of Taxable Property Form for 2018 (3:01:00)

Town Manager Welch: ask board to approve so we do not have to mail tax inventory forms to every property owner and those who not return have to put penalty on taxes.

Selectman Bean MOTIONED to Vote not to use PA-28 Inventory of Taxable Property Form for 2018 SECONDED by Selectman Bridle.

VOTE: 5-0-0

3. Exeter Road between I-95 and Rt. 101 Road Construction Cost Estimate, Acceptance

Town Manager Welch: request board to approve acceptance of \$126,816.80.

Selectman Bridle: they are doing all this work. Town Manager Welch: yes, that is the lump sum amount and the contingency; dealing with paving, paving markings, and miscellaneous requirements dealing with town property.

Selectman Bridle: so long as it is done in accordance with the rules and does not cost the town anything. Town Manager Welch: that is the purpose of the bond.

Selectman Bridle MOTIONED to ACCEPT the Road Construction Cost Estimate for Exeter Road between I-95 and Rt. 101 SECONDED by Selectman Griffin.

VOTE: 5-0-0

4. Seafood Festival use of Town Parking Lots: High Street Municipal Lot, Town Offices; and Old Town Hall Lot on September 8<sup>th</sup>, 9<sup>th</sup>, & 10<sup>th</sup>

Selectman Barnes MOTIONED to APPROVE the Seafood Festival use of the Town Offices; and the Old Town Hall Lot for parking on September 8<sup>th</sup>, 9<sup>th</sup>, & 10<sup>th</sup> SECONDED by Selectman Griffin.

VOTE: 5-0-0

IX. Closing Comments

X. Adjournment

At 9:59PM, the meeting adjourned on MOTION by Selectman Bean, SECONDED by Selectmen Barnes.

VOTE: 5-0-0

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Chairman