

TOWN OF SALISBURY

BOARD OF HEALTH

JOHN W. MORRIS, DIRECTOR

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JILL TAPPER
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RON LAFFELY
SUE RING
DENISE PETERSON

October 27, 2020

BOARD OF HEALTH MEETING MINUTES

Due to audio problems,
the meeting began at approximately 7:20 PM
Salisbury Town Hall

Board Members Present:

Sue Ring, Ron Laffely, Dan Richard, Denise Peterson, Jill Tapper

Board Members Absent:

None

Staff:

John Morris-Health Director, Richard Berube-Deputy Health Director

Public Present:

Mr. Kevin Buswell, Dolphin Grille owner

Meeting called to order at 7:00 PM. Dan Richard introduces new member Jill Tapper.

Minutes

October 6, 2020 minutes to be approved.

(Mr. Laffely) makes a motion to accept the minutes as written. **(Ms. Peterson)** seconds that motion. 5 in favor, 0 opposed. Motion carries and is passed.

Old Business

None

New Business

Dolphin Grille Appeal – COVID-19 Violations

(Mr. Richard) explains that the public will not be let into the meeting because of state regulations concerning COVID; only the party involved can attend. He explained the meeting is also offering ZOOM participation at the end.

(Mr. Morris) explains all the Exhibits that both the Board has and also Mr. Buswell and gives a brief overview. He states they will look at both appeals together.

(Mr. Morris) states the (2) fines were issued for actions on 9/3/20 and 10/10/20 for violation of the Covid-19 state regulations and causing a public health nuisance. Mr. Morris and Mr. Berube visited the establishment on October 10th at approximately 7 PM and observed patrons inside and a DJ operating karaoke. A Cease and Desist order was issued and also a \$1300 fine on October 10th. The information on what led up to this visit is contained in the Exhibits. Mr. Morris continues that the Salisbury Police Department was sent to close the Dolphin Grille as it should not have been open; every establishment was closed per the Governor. A repeat visit was made on June 6th for serving indoors; again against COVID regulations. The visit on August 10th was in response to a complaint from the Department of Labor Standards; issuing complaints on (3) establishments; the Dolphin Grille was one of them. Mr. Berube then went to all and reviewed the rules for the establishments.

(Mr. Morris) explains that the Salisbury Police Department also received complaint calls on 6/14, 7/4 and 8/20 concerning noise disturbances and/or bands playing outside covered by tarps. He states another police visit had to shut down a card game. The COVID regulations state that no organized card games are allowed. Therefore, on September 3rd, another \$1300 fine was levied. On October 5th another incident was reported; another card game, again stopped by the Police Dept. On October 10th, there was a visible ad that the Dolphin Grille was advertising karaoke. Upon visiting the establishment, Mr. Morris and Mr. Berube noticed a DJ at the table operating the equipment but no one was singing yet. There was also an ad on the bathroom wall. Mr. Morris advised the DJ this was not allowed and the establishment was closed.

(Mr. Morris) states that Mr. Buswell was provided with the same exhibits that the Board Members had. He also states that the establishment poses a risk to public health, not only under the nuisance law, but under the Board of Health Food Service Permit.

(Mr. Morris) states it is recommended to revoke the food permit which in turn will take away the problem of the public health nuisance.

(Mr. Buswell) introduces himself and states he has read through everything.

(Mr. Richard) states that Mr. Buswell is appealing both fines and is seeking relief from the order that his establishment be closed. **(Mr. Richard)** continues that the Board has to make a decision on whether to rescind the order/and or fines. He continues that the situation has been ongoing since March and it seems Mr. Buswell is ignoring the order. The Board only follows the rules, it does not make them. **(Mr. Richard)** then asks each Board Member for any questions. J. Tapper, D. Petersen, S. Ring, and R. Laffely all reply 'no'. No questions.

(Mr. Buswell) speaks about the card game. He explains the establishment is not open to the public for the card games. It is a private group; he compares it to a birthday party. He continues that Mary Giordano runs it and the same people participate every week. All COVID rules are followed; COVID signs on all doors, no glassware, tables are (6) feet apart, approximately 40 attendees. He continues that he wishes someone would have given him a heads up that they were not allowed. No warnings were ever issued.

(Mr. Richard) inquires if anything is served? **(Mr. Buswell)** states both food and beverage which are ordered off the menu. Mr. Richard also confirms that the establishment is open to the public but not the card game. Mr. Buswell states the establishment is closed except for these people.

(Mr. Richard) confirms the establishment is still serving food and beverage and is open even though the public has to sit outside. He continues that on August 24th, the card game was shut down by police not the Board of Health. There was then another card game on October 5th.

(Mr. Buswell) states that no one told 'them' they could not have the card game. We were told we could have the game. **(Mr. Buswell)** states he spoke to (?Tim Hooten?) who investigated the bar and states the Liquor Commission had no problem with it.

(Mr. Richard) points out that the ABCC has no jurisdiction over the food establishment.

(Mr. Buswell) states he has called the health department with no call backs. He has done all the research.

(Mr. Morris) states the establishment was open when the police were there on March 20th.

(Mr. Buswell) states that they were employees and family members. This was 2 days after the Governor closed us down.

(Mr. Morris) asks if it is Mr. Buswell's belief that you can have people in if they are an employee and a family member?

(Mr. Buswell) replies he tries to enforce all the rules. He explains that there were (8) people in there; (4) were employees and the rest family. His reason for being there was to empty the coolers and take out the food/drink. **(Mr. Morris)** advises the Board to read the Police Report for that date; as it states the people were drinking inside, the owner appeared nervous etc. **(Mr. Morris)** states that police officers are trained to make these observations and this is a public restaurant that was ordered closed.

(Mr. Richard) states that if only Mr. Buswell and the chef were cleaning out, it would be no problem; but (8) people holding drinks is suspect.

(Mr. Buswell) speaks to the June episode. He went in June 5th to clean etc. for the next day opening. (2) other people were in there. There was a knock on the back door from where the Salisbury Police Department and (2) state inspectors; they got a report that the establishment was open. Mr. Buswell refers to the report as it states no other action was warranted. **(Mr. Richard)** states this visit is not an issue. There were more complaints on August 10th and 11th for noise. It seems they were addressed immediately. Mr. Richards continues that on August 24th, Mr. Buswell was fined \$1300 for another card game which Mr. Buswell appealed but could not make the meeting. He continues that after the state sent memos with regulations to all restaurants on Oct 1st another card game was stopped on October 5th.

(Mr. Buswell) states they did not stop the game; it was recommended to close it up.

(Ms. Ring) inquires as to how many people present to play cards? Answer: Same 40 people every week.

(Mr. Richard) addresses the October 10th advertisement of karaoke. (Mr. Buswell) states that after much research that since he has an entertainment license he though he was allowed to have a DJ.

(Mr. Morris) responded that this is a restaurant venue. You cannot have singers at all; and they can't have their own mike. When there, the DJ was quoted as saying they are not singing **yet**. **Mr. Morris** continues he never spoke to the owner about these issues and neither had Mr. Berube and has never gotten a call. Mr. Buswell states he has done a lot of research and he wasn't told karaoke not allowed; also, he has left messages with no return phone calls. Mr. Richard suggests to send an email and get something in writing.

(Mr. Morris) states another issue is serving and waiting on people, also ordering food when ordering a drink. When Mr. Morris was there, the PIC provided food checks/receipts and (2) were blank. Only drinks were noticeable. Why is one establishment out of 120 having such a problem.

Mr. Morris introduces ZOOM PARTICIPANTS:

Fred Knowles: states his daughter and him go once a week and the waitress always has a mask. He always orders food with drink. There was public singing approved by the Town on the common. We don't want to put businesses out of work.

Mary Giordano: states this has been unfair as Mr. Morris goes to the Dolphin often. It seems someone is sending notices/complaints to the Town Manager. It is not easy to get answers from Mr. Morris. Kevin has tried to follow all the COVID-19 rules. Masks are worn when not seated. All the rules are followed. Music was loud at Gracie's.

(Mr. Richard) states he is not sure of what type of license that bar has. We can only address what is before the board.

Georgiana (last name inaudible): states she is an employee at the grille and was there when it was shut down in March. She and others were there cleaning out the restaurant of food. Every employee wears a mask. Food is served as well as drinks. Every employee cares about the restaurant and we follow the rules.

Cammie (Billie??) inaudible: states customers are seated. She was at Sea Glass tonight and was offered drinks before she ordered food. It is splitting hairs.

Ron Giordano/Railroad Ave: states there were many opportunities to be there during COVID. A neighbor is emailing the Town Manager. He thinks there is a problem. Kevin has not violations on his record here or in Boston. He is asking the Board to be fair as there are no violations with the Town.

Dwayne Lock: states he can attest that the staff has taken the rules seriously and has enforced them. He was in there when the Dolphin was closed for the last time. He also is asking the Board to treat Buswell fairly.

John (last name inaudible): is one of the card players. He would not attend if the COVID rules were not followed. His senior citizen parents both attend these games. Police were called a lot and many times nothing was found.

Cheryl Papandrea: states she was also one of the card players but not since COVID hit. In speaking with other current players, they do follow the rules. The rules are very fluid. She has also called Jack for the rules; no return phone call. We need better communication. What is happening here should be a fine; not to shut them down. He is trying the best he can.

(Mr. Buswell) asks that in the future that if something like this happens, one person should not have the power to shut a business down for 2 1/2 weeks and put 7 people out of work.

(Mr. Richard) states that this does not come from the Board or the Health Department. It is a state mandate and the state decides who has the right to do this.

BOARD DISCUSSION:

(Mr. Richard) states the fines are in order here and realizes Kevin did not do these things on purpose but they were done. **(Ms. Tapper)** noticed there were a lot of noise complaints and was not sure if these were under the jurisdiction of the Board. **(Mr. Morris)** states they can purse that.

PER THE MEETING VIDEO, (3) MINUTES OF AUDIO WAS NOT RECORDED DUE TO TECHNICAL DIFFICULTIES

Audio returns and **(Ms. Ring)** asks what revenue was lost in those (2) weeks because of the cease and desist order. **(Mr. Buswell)** responds \$2000-\$5000 for the 2 weeks combined and then corrects himself that the loss was per week. Ms. Ring states she is in favor of the first fine of \$1300.

(Mr. Laffely) states that no business should be closed. The owner should be educated.

(Mr. Richard) states the Board is trying to be fair. Going forward things have to go well and Kevin needs to communicate more frequently with Jack and the office; especially if you are doing something new.

(Mr. Morris) requests that Mr. Buswell submit a Corrective Action Plan and is issued a fine and maybe a suspension.

MOTION

(Mr. Richard) suggests a motion to leave/uphold the fine from September 3rd as issued for \$1300; the Board will suspend the second fine (from October 10th) for one year. If there are no further infractions, that fine will be would be dropped. We will also rescind the order of suspension for the Food Service Permit.

(Mr. Morris) also requests that a condition be added that Mr. Buswell will submit the Corrective Action Plan stating what he is doing to stay compliant and to state any future plans (i.e., karaoke). **(Ms. Ring)** confirms the only issues are karaoke and card playing; both have to stop.

(Mr. Richard) states that Mr. Buswell will put his plan in writing and bring it to the Health Department and then he can open on Thursday, October 29th. There will be no karaoke and no card games. **(Mr. Laffely)** requests that Mr. Buswell also include in the plan that he will refer to the COVID information under the Mass.gov website as guidance.

(Mr. Richard) makes a motion that the first fine will stand in the amount of \$1,300.00 The second fine will be suspended for a year pending no new infractions. The Board will rescind the Cease and Desist Order and will reinstate the food service permit starting on October 29th; pending a Corrective Action Plan. **(Mr. Laffely)** seconds the motion.

(Mr. Morris) states the fine is due in (21) days.


VOTES: Ms. Petersen, Ms. Ring and Ms. Tapper vote in favor of the motion. Motion passes. All unanimous.


(Ms. Peterson) motions to adjourn, **(Ms. Ring)** seconds the motion. 5 in favor, 0 opposed.


Meeting is adjourned at 8:25PM

Date: _____


Daniel Richard


Ron Laffely


Sue Ring


Denise Peterson


Jill Tapper

Respectfully submitted by Teresa Mahoney


Teresa Mahoney


Date

