

TOWN OF STERLING
BOARD OF SELECTMEN
January 7, 2014

MEETING:

Roll Call: Selectman Cutler - Present. Selectman Kilcoyne – Present. Selectman Patacchiola – Present. At 6:50 pm, Selectman Patacchiola called the meeting to order.

Selectman Patacchiola moved that the Board enter into Executive session Pursuant to Massachusetts General Law Chapter 30 A Section 21A. Selectman Cutler 2nd. Roll Call vote. Selectman Cutler – Aye. Selectman Kilcoyne Aye. Selectman Patacchiola Aye. The motion carried.

At 7:20 public session reconvened.

Minutes:

VOTE: Selectman Kilcoyne moved to accept the public meeting minutes from December 17, 2014. Selectman Cutler 2nd. Selectman Kilcoyne - Aye Selectman Cutler – Aye. Motion Carried. Selectman Patacchiola –Abstained. Motion carried.

Selectman Patacchiola read the following Public Hearing notice that had been published in the Telegram and Gazette:

The Sterling Board of Selectmen will conduct a public hearing on January 7 at 7:15pm, in Room 205 of the Butterick Building, 1 Park Street, Sterling. The purpose of the hearing will be to determine action to be taken in accordance with MGL Chapter 138, regarding allegations of liquor license violations at the B-Man's 140 Tavern at 344 Redemption Rock Trail in Sterling.

The owner of the B-Mans 140 Tavern, Barry White and the Bartender, Melissa Marrama, who was working on the day in question, were notified properly of this public hearing. Attorney John Dombrowski represented the B-Man's Tavern for this hearing. Chief of Police, Gary Chamberlain was also present. The witnesses worn sworn in.

Testimony:

Police

Chief Chamberland stated that the Police department filed the liquor license violation against the B-Mans 140 Tavern for allegedly serving alcohol to an intoxicated patron.

The filing of this violation has been brought before the Select Board due to a motor vehicle accident that resulted in the death of the driver, a patron of the B-Man's 140 Tavern, who had just left the establishment.

Chief Chamberland testified that on June 24, 2014 the Sterling Police received numerous calls regarding an accident on Route 140 in sterling. The accident involved a single vehicle. A witness reported that she had allowed the vehicle to exit the parking lot of B-Mans 140 Tavern ahead of her. Therefore, she witnessed the driver immediately losing control of the vehicle and hitting a house.

The driver was not wearing a seat belt.

He sustained multiple injuries and did not survive the accident.

The State police took blood samples and ultimately, it was determined that the drivers blood alcohol level was 0.14 g%.

The police are filing this violation based upon the toxicology report and the toxicology report was submitted into evidence, as were the receipts from the group with whom the victim had lunch.

The Chief reported that a blood alcohol level of 0.14 g% would manifest itself in blurred vision and slurred speech. Therefore, he surmised the following; since it had been established that the victim had immediately left B-Man's 140 Tavern, just prior to the accident and the establishment admittedly served the victim alcohol, (even if it was 1 drink) the establishment is responsible for having served alcohol to an intoxicated person.

Attorney Dombrowski

Attorney Dombrowski reported that he was acting as council for Mr. White and the B-Man's 140 Tavern in this hearing.

Attorney Dombrowski asked Melissa Marrama, the bartender at B-Man's 140 Tavern, who served the victim prior to his leaving the establishment, if she was TIPS certified. (Training for Intervention Procedures) Ms Marrama reported that she is TIPS certified and that the training enables her to assess intoxication. She reported that the victim did not exhibit signs of being intoxicated and that he had eaten lunch, while in the tavern.

Ms Marrama responded to questioning that the victim did not slur his speech, fumble with his wallet or show any other signs of being intoxicated.

Immediately following the accident, Ms Marrama called Barry White, the owner of the tavern, and he returned posthaste. (Mr. White had prepared the food for the victim and his friends.)

The police questioned Ms Marrama and Mr. White. They both cooperated fully with the police.

Attorney Dombrowski asked Mr. White if the victim seemed "Off" that day. Mr. White responded that the victim was a patron of the establishment and although he seemed more quiet than usual, he (the patron) exhibited no signs of being intoxicated Mr. White corroborated on everything that had been reported by Ms Marrama.

Rebuttal:

Chief Chamberland expressed his concern that, according to the sales slips from the Tavern, 3 people consumed approximately 19 drinks within 4 hours.

Ms Marrama reported that the group of friends was buying for other patrons in the tavern and therefore, all 19 drinks were not consumed by only 3 people.

The Chief submitted into evidence the medical examiners report that states the cause of death as Multiple Trauma Injuries.

Attorney Dombrowski expressed concern that the family had been notified that the cause of death was a heart attack and was willing to continue this hearing at a later date, in order to present that information.

Chief Chamberland stated that the medical examiners report did not state cause of death as a heart attack and further that if there is a completed autopsy report that declares the cause of death as a heart attack, he is not aware of it.

The consensus of the board was that the cause of death is not germane to this hearing. The purpose of this meeting is to determine the possible culpability of the establishment in serving an intoxicated patron.

Closing statements:

Chief Chamberland reiterated that his concern is that the victim of the accident was intoxicated as determined by the toxicology report. His blood alcohol level was 0.14g%. The victim had been served alcohol at the establishment, just prior to his death. The Chief voiced the concern that the bartender did not recognize the signs of intoxication, in this particular instance and may not recognize the intoxication of patrons in future instances, which could result in severe public safety issues. He stated that this is a serious violation and requested that the Board of Selectmen take some action.

Attorney Dombrowski reiterated that the 3 patrons who had met for lunch had drunk an undetermined amount of alcohol; per the bar tender's testimony that the group was buying drinks for other patrons as well. Neither the bar tender nor the owner observed signs of intoxication. The tavern staff/owner responded appropriately after the fact and fully cooperated with officials.

VOTE: Chairman Patacchiola moved to close the evidentiary portion of the hearing and move to the deliberation portion of the hearing. Selectman Kilcoyne 2nd. Chairman Patacchiola – Aye. Selectman Kilcoyne Aye. Selectman Cutler – Aye. Motion carried.

The Board deliberated on the facts of the hearing. The consensus of the Board is as follows:

- The Board commends the Chief for bringing this alleged violation to the attention of the Board.

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- The Board recognizes that their task is to consider the evidence and to determine whether the bartender knowingly served an intoxicated person.
- The Board believes that, per the testimony of the witnesses, the victim did not apparently show obvious signs of intoxication and therefore the bartender was not negligent beyond a preponderance of the evidence.

VOTE: Chairman Patacchiola moved that B-Man's 140 Tavern be found **not guilty** of a liquor violation. Selectman Kilcoyne 2nd. Chairman Patacchiola – Aye. Selectman Kilcoyne Aye. Selectman Cutler – Aye. Motion carried.

One day Alcohol License Approvals

After discussion: **VOTE:** Chairman Patacchiola moved that one day licenses for the following dates be approved for the Eight Point Sportsmen's Club:

January 23 from 4 pm – Midnight

January 31 from 4 pm – Midnight

February 7 from 4 pm – Midnight

February 28 from 4 pm – Midnight

Selectman Cutler 2nd. Selectman Patacchiola – Aye. Selectman Cutler – Aye. Selectman Kilcoyne – Abstained. Motion carried.

Town Administrator's Update

The Town has launched a new Website. Improvements will continue per the suggestions of the citizens and Town Staff members.

Budget deadlines are on track.

Congratulations to Representatives Ferguson and Naughton and to Senator Flanagan on their re-appointments.

Tonight is forecast to be one of the coldest nights in years. Should the need arise, the Senior Center will be used as an emergency shelter. Those watching the cable program this evening were reminded to bring their pets indoors as the temperature, with the wind chill factor, is expected to be well below 0.

The Town Administrator is looking for volunteers to help establish a new sign by-law. The Sign Bylaw Committee will consist of 5 voting members and the Town Administrator. (One member of the Planning Board. One member of the Economic Development Committee. One member of the Town's Inspectional Services. One Business owner. One member of the general public.) Anyone interested in assisting with this project is asked to contact the Town Administrator.

Adjourn

VOTE: Selectman Patacchiola moved to adjourn at 8:23pm. Selectman Kilcoyne 2nd. Selectman Kilcoyne - Aye. Selectman Cutler – Aye. Selectman Patacchiola – Aye. Motion Carried

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