TOWN OF BURLINGTON, MA
BOARD OF SELECTMEN
MINUTES
General Session - 6:00 p.m.
Burlington Town Hall, Main Hearing Room

MONDAY OCTOBER 22, 2018

Board of Selectmen Present:  Christopher Hartling, Chairman; Robert Hogan, Vice-Chairman; Joseph Morandi; James Tigges
Not Present:  Mike Runyan
Also Present:  John Petrin, Town Administrator

GENERAL SESSION
The Chairman called the Board of Selectmen (BOS) meeting to order followed by the Pledge of Allegiance followed by a moment of silence in recognizing the recent passing of Virginia Mooney.

204  Appointments:  DPW
Police / Special Police
Boards & Committees
Audit Committee

DPW
John Sanchez was present recommending David Swift to the position of full time Building Maintenance Craftsman Laborer.  Mr. Swift has been working part-time with the Town.  Town Administrator John Petrin (T.A. Petrin) agreed with this recommendation and appointed Mr. Swift to the position and recommended the BOS waive the standard fifteen-day waiting period.

Motion:  Selectman Morandi moved to waive the standard fifteen-day waiting period.  Seconded by Selectman Tigges and approved.  (4-0-0)

Police
Chief Michael Kent submitted a recommendation that Frank G. Bourgeois be appointed as a Special Police Officer.  T.A. Petrin agreed stating that Mr. Bourgeois is a retired Lieutenant from the Nashua Police Department and a long-time Burlington resident and recommended the BOS waive the standard fifteen-day waiting period.

Motion:  Selectman Hogan moved to waive the standard fifteen-day waiting period.  Seconded by Selectman Tigges and approved.  (4-0-0)

Boards & Committees
Audit Committee - postponed.
205 Review/Approval: Draft Town of Burlington Complete Streets Policy
Town Engineer Tom Hayes explained that this policy includes the complete listing of those streets accessible by the public. In an effort to make streets more accessible, the state has created a program whereby towns and cities vote on a policy of streets and aid through grants will be provided to improve and upgrade accessible streets, similar to the Chapter 90 program.

Motion: Selectman Hogan moved to accept the Town of Burlington Complete Streets Policy as submitted. Seconded by Selectman Morandi and approved. (4-0-0)

206 Approval: Health Insurance 2019 Rates
The BOS annually reviews for approval on a calendar year basis the rates for the health insurance for the town employees. The town works well with the unions. T.A. Petrin said the rates include a 3% increase for Blue Cross active employee plans and a 3% increase for Harvard Pilgrim active employee plans. The retired plans are community rated and they provide rates that are not set by the BOS, but are factored into the total health insurance budget which is appropriated at Town Meeting. Also provided was historical data on the budget, the trust fund balance and active plan rates.

Motion: Selectman Hogan moved to approve the health insurance rates for 2019 as submitted with a 3% increase for Blue Cross active employee plans and a 3% increase for Harvard Pilgrim active employee plans. Seconded by Selectman Morandi and approved. (4-0-0)

207 Public Hearing Transfer All Alcohol Liquor License
(New)

Transfer All Alcohol Liquor License
From: Pepper Dining Inc. d/b/a Chili’s Grill & Bar
To: Yard House USA, Inc. d/b/a Yard House
Same Location: 108 Middlesex Turnpike
Approval: Alteration of Premises
Approval: New Manager

Attorney Joseph Devlin was present representing Yard House with David Campo, who has been in the restaurant business for many years. Mr. Campo will be the temporary manager while the restaurant is under construction. He said he understands the town’s alcohol rules and regulations and that alcohol is served secondary to the serving of food. They were present seeking approval of a transfer of Chili’s All Alcohol liquor license, approval of the alteration of premises as well as the manager. The building will be raised with new construction to begin in the spring.

Attorney Devlin continued that Yard House is owned by Darden Restaurants, Inc. which also owns many other restaurants in Burlington. There will be one floor with 8,421 square footage and sixteen rooms and a mezzanine with 1,146 square footage and four rooms. Two patios have 50 seats each. There is a knee wall barrier around the patio. The entire restaurant is full service with servers taking orders for alcohol from patrons. Alcohol will not be served in the waiting area.

The Building Department had thoroughly reviewed the floor plan and was satisfied and other staff members did not have any issues with the transfer. The Planning Department approved a Special Permit for Yard House at this location.

There were no comments from the public.
Motion: Selectman Tigges moved to close the public hearing. Seconded by Selectman Morandi and motion was approved. (4-0-0)

Motion: Selectman Hogan moved to approve the transfer of the Pepper Dining Inc. d/b/a Chili’s Grill & Bar All Alcohol liquor license to Yard House USA, Inc. d/b/a Yard House at 108 Middlesex Turnpike. Seconded by Selectman Morandi and approved. (4-0-0)

Motion: Selectman Hogan moved to approve the alteration of premises and David Campo as temporary manager. Seconded by Selectman Morandi and approved. (4-0-0)

208 Public Hearing: Transfer All Alcohol Liquor License

(New)

From: Bonefish Grill, LLC d/b/a Bonefish Grill
To: PK, LLC, d/b/a/ The Treasury
Same Location: 4 Wayside Road, Wayside Shopping Center
Approval: Alteration of Premises
Approval: New Manager

Attorney Dan Wilson was present representing PK, LLC, d/b/a The Treasury with owners Prakash Khot, who is the proposed manager and Devendra Patil, who is an LLC member and experienced restaurant business manager. They are seeking approval of a transfer of Bonefish’s All Alcohol liquor license, approval of an alteration of premises, and approval for the manager. Mr. Khot said that The Treasury will be fine Indian dining with a touch of New England flavor. Minimal renovations were being made to the dining area and entry. The restaurant will consist of one floor with 5,538 square footage and eleven rooms. The patio area is 829 square feet. The proposed seating is 144 with 120 being interior and 24 on the patio.

They understand the conditions from the Building Department to install gating with crash bar on the patio if alcohol is to be served. Other departments had no issues and the Planning Board had approved their Special Permit.

As manager, Mr. Khot has limited experience, but understands the town’s alcohol rules and regulations, and Mr. Patel, who is a serve-safe trainer, will also be present to address assist with any alcohol issues.

Construction is expected to start after the first of the year, upon approval from the ABCC.

There were no comments from the public.

Motion: Selectman Hogan moved to close the public hearing. Seconded by Selectman Morandi and the motion was approved. (4-0-0)

Motion: Selectman Tigges moved to approve the transfer of the Bonefish Grill, LLC d/b/a Bonefish Grill All Alcohol license to PK, LLC, d/b/a/ The Treasury, 4 Wayside Road, Wayside Shopping Center with the conditions as requested from the Building Department. Seconded by Selectman Hogan and approved. (4-0-0)

Motion: Selectman Tigges moved to approve the alteration of premises and Prakash Khot as the manager of record. Seconded by Selectman Hogan and approved. (4-0-0)
209 Public Hearing
Grant of Location
Crown Castle Fiber for Proposed Conduit Installation
53 Third Avenue (Second Avenue)

Present was Bob Walls, Fiber Construction Engineer, Crown Castle Fiber seeking BOS approval to place 24’ of (1) 4” PVC Communication Conduit from Telephone MH#59/29C on Second Avenue northeasterly to a proposed Crown Castle 3’x3’ Handhold and continuing 220’ northwesterly on Second Avenue to Electric MH#27164 for service to Wegman’s

Since the road was paved approximately four years ago, they will work with Engineering on agreements for paying the fees and for the work Crown Castle will be doing for re-pavement of curbs. Engineering also informed them of the upcoming moratorium and Mr. Woods said he expects the work to be done in the spring during normal business hours with a police detail.

There were no comments from the public.

Motion: Selectman Morandi moved to close the public hearing. Seconded by Selectman Tigges and the motion was approved. (4-0-0)

Motion: Selectman Hogan moved to approve the Grant of Location for Crown Castle Fiber for the proposed conduit installation as discussed at 53 Third Avenue pending any conditions as set forth by DPW/Engineering. Seconded by Selectman Morandi and approved. (4-0-0)

210 Approval: Condo Trash Policy
John Sanchez, Director of DPW, was present. Also present was Attorney Mark Burke representing the petition for trash and recycling pickup at the Oakridge condominium units

Selectman Tigges had been appointed liaison to this issue and after discussions with DPW, he said the following recommendations were being made:

- Any individual complex wishing to have its trash and recyclables picked up under the town's contract, must submit applications in writing during budget discussion periods;
- New applications will be handled administratively;
- Applications that meet all guidelines will be scheduled for pick in July during the first week of the new fiscal year. (The budget will be studied for the financial impact for this implementation);
- Individual complexes shall be required to enter a legal agreement exempting the town from any liability to the complex property;
- Residents must use either new town-issued toters or toters they currently own that comply with town specifications;
- Each individual resident should have the ability to store their toters inside or immediately adjacent to their unit. (No congregate toters such as would be the case with apartments);
- Residential units must be toter compliant and no dumpsters will be allowed;

They were reminded that any units not plowed may be by passed for trash and recycling pickup.
T.A. Petrin added that the town needs to ensure that the policy for residents to recycle is followed. Therefore the complexes being recommended are those that can store toters by their unit or their garages in the same manner as single family homes. Town Counsel has advised that changes may be made to any approved policy.

**Motion:** Selectman Tigges moved to approve the recommendations as read, presented and discussed at the meeting. Seconded by Selectman Morandi and approved. (3-0-1 with Chairman Hartling abstaining)d. Seconded by Selectman Morandi and approved. (3-0-1 with Chairman Hartling abstaining)

Attorney Burke said he would work with the town to apply for consideration.

### 211 Approval: Charge / Scholarship Committee

T.A. Petrin reviewed Town Meeting's approval for a Charge for a Scholarship Committee responsible for distributing and providing funds through donations from residents through the check-off system on municipal bills in accordance with MGL Chapter 60. The committee must consist of the Superintendent of Schools, or designee, and no fewer than four members of the community appointed by the BOS. Advertisements will be placed by the BOS office to fill these four voluntary positions.

**Motion:** Selectman Morandi moved to approve the Charge for the Scholarship Fund Committee as submitted. Seconded by Selectman Tigges and approved. (4-0-0)

### 212 Review/Approval: Draft Town of Burlington Policy for Applications for Small Cell Wireless Installations

Town Counsel Karis North was present. She and Selectman Tigges, liaison to the Small Cell Equipment Committee reviewed the FCC regulations, the FCC Declaratory Ruling and Third Report and Order dated September 27, 2018 as well as the draft Town of Burlington Policy Applications for Small Cell Wireless Installations on the town's rights of ways. Health concerns are specifically excluded as a reason to deny an application. The policy was created through the work of the Small Cell committee and Selectman Tigges and Attorney Karis North. This is the first phase of the policy, and the next step for the committee to review will be design standards to add to the policy as well as an application to submit with each submission.

Because of the FCC regulations, the complicated applications, the short time frame and severe consequences set by the FCC for review, Attorney North agrees with the committee's recommendation to consider a contract employee be in place dedicated to reviewing all future applications. Because of strict FCC guidelines, a court ruling could force the town to install the equipment if too many days pass. If the BOS denies an application, the petitioner may still appeal in court.

The BOS was disappointed that a letter of concern on some of the items on the draft policy was received only a few hours before the start of the meeting. Attorney North said their biggest concern was the request and nominal fee for annual recertification for each small cell unit.

**Motion:** Selectman Tigges moved to approve this first phase of the Town of Burlington Policy for Applications for Small Cell Wireless Installations in its current form. Seconded by Selectman Morandi and approved. (4-0-0)
Selectman Hogan stated for the record that his vote in favor of the policy is to ensure that the town has steps in place for future applications.

The small cell equipment committee, Selectman Tigges and Attorney North were all thanked for the great deal of work and research done for the policy.

213 Public Hearing
Continued:
(7/25/18, 8/13/18 & 9/17/18)

Approval: Grant of Location on Seven (7) Utility Poles
Attachment of Small Cell Communications Equipment (From Verizon Wireless for Installation of Small Cell Units)

The Chairman reopened the continued public hearing. Attorney Dan Klasnick was present representing Verizon Wireless and the seven submitted applications to be placed on utility poles in town. He said additional information has been submitted as requested including a set of orders, plans and authorization letters from Eversource - the owner of the pole, and structural reports certifying the locations will support the requested equipment. The objective he said for the installation of the small cell equipment is to improve Verizon's wireless service. Also submitted was a health compliance study certifying each location will be in full compliance with FCC regulations. He asked that the BOS consider the seven submitted requests based upon any policies in place at the time they were submitted.

Chairman Hartling said that the intent of the BOS is to work with any proponent but noted that Verizon did not send their issues and concerns to the BOS until a few hours before the meeting.

Regarding these applications, Attorney North said that although they were received prior to the approval of a policy and since the FCC guidelines are strict, there are certain conditions that can be set that fall within legal frameworks.

Selectman Tigges noted that Verizon's coverage map does not show any gaps in coverage. Verizon’s representative replied that there is a disclaimer on the coverage map.

James Perloff, resident and nurse, said he is concerned with health risks poses by wireless and had also submitted a report to the BOS. FCC regulations he said are based on 1996 standards and new studies are not being addressed. Ruth Rin expressed the same concern. She said she was not aware this issue was being discussed, and Attorney North said this had been well advertised including public hearings and abutter notices. Selectman Hogan added that meetings had been meeting and stories had been in the newspapers for many months.

With respect to the seven current applications in place prior to the approval of the policy, Selectmen Tigges said the small cell committee, he and the attorney are recommending the following conditions which Town Counsel agreed were reasonable.

- No apparatus on double poles;
- An agreement to annual recertification;
- Equipment shall be located on top of the poles, colored similarly to the poles so as to blend in;
- Equipment shall not interfere with other equipment on the pole, nor obstruct or interfere with access to or operation of street lights or traffic control devices on the pole;
- Poles must meet ADA standards.
It was noted that at this time the BOS could consider their options to approve, approve with conditions, or deny.

Attorney Klasnick said Verizon reviewed the conditions and were not satisfied with moving forward with an agreement to pay an annual fee for recertification of each location. Selectmen Hogan and Morandi agreed that the fee would assist with recertification to ensure equipment was still in use and because the town does not have the staff capacity to supervise this equipment. Attorney Klasnick said Verizon would agree to remove unused equipment, but if it was the BOS's will to include the annual fee, he was not authorized to move forward with the seven applications, and his client would rather respectfully request to withdraw the petitions rather than agree to a fee which could set a precedence.

Attorney North said these are their applications and if they are opting to withdraw, then this would end the process of the public hearing. A statement in writing regarding the withdrawal was requested, and Attorney Klasnick agreed and thanked the board for their consideration.

214 Approval: Disability Access Commission / Recreation Funds / Portable Restrooms

The Disability Access Commission recommended a request in the amount of $2,610 from the handicapped parking funds to offset the cost difference of regular units and handicapped accessible units of portable restroom units for parks under the control of the Recreation Department.

Motion: Selectman Hogan moved to approve the amount of $2,610 be used from the Handicapped Parking Fund for the cost difference between handicapped accessible and regular portable restroom units for parks which are under the control of the Recreation Department. Seconded by Selectman Morandi and approved. (4-0-0)

215 Approval: Electricity Aggregation

Postponed.

216 Approval: Minutes:

September 10, 2018

Motion: Selectman Hogan moved to approve the September 10, 2018 minutes as submitted. Seconded by Selectman Morandi and approved. (5-0-0)

September 17, 2018 Special Session on National Grid and Small Cells

Postponed.

September 24, 2018 Regular Session

Postponed.

October 1, 2018 Regular Session

Postponed.

217 Subcommittee Reports
Selectman Tigges noted the passing of retired Burlington Police Sergeant Gene Knowles. He was thanked for his many years of service to the town.

Selectman Hogan reminded the public that early voting and absentee voting was currently taking place.

218    Town Administrator’s Report
T.A. Petrin said the Veterans Day ceremony being held on Sunday, November 11, 2018 would be taking place at Burlington High School. The theme is remembering the 100th Anniversary of the end of WWI. Selectman Hogan noted that the Millican MacKenzie American Legion Post #273 is named for the two Burlington residents were killed in WWI,

219    Chairman’s Report:
The passing of Virginia Mooney was again mentioned. She was involved with Town Meeting and was a former member of the BOS.

220    Old/New Business: None.

Adjourn:
Motion: Selectman Hogan moved to adjourn at 8:30 p.m. Seconded by Selectman Morandi and approved. (4-0-0)

EXECUTIVE SESSION
To discuss strategy with respect to collective bargaining or litigation as an open meeting may have a detrimental effect on the bargaining or litigating position of the public body. Contracts: Police Command and Fire

Executive session postponed.

Submitted by,

Betty McDonough
Recording Clerk