

SPECIAL BOARD OF SELECTMEN'S MEETING
May 5, 2011 6:30PM

Quorum noted

6:30 PM: Meeting called to order by Chairman Fernald.

Roll Call: Mr. Fernald, Mr. Moynahan, Mr. McPherson and Ms. Place.

Pledge of Allegiance recited

Moment of Silence observed

6:32 PM

Executive Session

Mr. Moynahan moved, second by Mr. McPherson, to go into executive session, as allowed by 1 M.R.S.A

VOTE

3-0

Chair concurs

6:45 PM **Out of executive session.**

There was no decision.

6:46 PM

Mr. Moynahan moved, second by Ms. Place, to recess and reconvene at the Regatta.

VOTE

3-0

Chair concurs

7:30 PM

At this time, Mr. Fernald opened the Public Hearing on two proposed ordinances: Special Amusement and Adult Entertainment. Mr. Fernald said that they tried to get one of the schools and were unable to because they were having other functions. He thanked the management of the Regatta for letting them hold the hearing here at no cost. He said that they have their attorney with them from Bernstein & Shur, Geoffrey Hole, and that he would speak first.

Mr. Hole said that he and the Board met in executive session before this meeting just to talk about the Town's rights and duties regarding this issue and they encourage him to outline the ballpark for you folks, as he did for them. Mr. Hole said that he wanted to take a minute to tell them about himself. He said that he has devoted his whole life to representing municipalities, starting in Maine Municipal in 1970 as a legal intern. In 1973, he went to Bridgton, where he represented four towns and a water district, back to Maine Municipal as Director of Legal Services in 1975 and then, down to Bernstein, where he has represented numerous municipalities and districts since then. Mr. Hole said that he has probably handled about 25 cases for municipalities in the Maine Supreme Court and the one most relevant to tonight's meeting is Gabriel vs. Old Orchard Beach, which was a 1981 case that dealt with nudity in the presence of alcohol. He clarified that he doesn't pretend to be a constitutional scholar, as in representing towns, he deals with roads, general assistance, tax liens and whatever a town might need he does it. He added, however, he does have a working knowledge of this area, also. Mr. Hole said that there are really two central cases involved: one is the Gabriel case and the other is called DIVA, which is a 2005 case out of the City of Bangor. He said that he would take a couple of minutes to talk about the two cases and the concepts of the two cases. Mr. Hole said that the new special amusement ordinance had fairly standard language coming out of the 1981 case and that he did tinker with the adult entertainment ordinance a lot. Additionally, he said that when he thought about this thing and how fast it was moving, he thought it would be prudent to discuss the concept of a moratorium with the Selectmen to do this more deliberatively. He said that the Town has three ordinances on the books, now, that deal either directly or indirectly with the subject of nudity or entertainment and two ordinances proposed. He reiterated that he thought it would

SPECIAL BOARD OF SELECTMEN'S MEETING
May 5, 2011 6:30PM (continued)

be prudent in a deliberative sense go through all five ordinances and make sure they are coordinated and consistent with each other and regulate the concerns that the voters have. He discussed the special amusement area first and the Gabriel case. He said that a Town's ability to regulate nudity is broader in the presence of alcohol than it is outside the presence of alcohol and so special amusement ordinances, and this Town has one from, he believes, 1984, is a typical ordinance and requires opaque material, which means it does not allow total nudity and that concept has been upheld not only in Maine but also nationally. He added that it gets trickier when you try to regulate nudity outside the presence of alcohol. He said that the people should know that, while it has minimal protection under the law, nude dancing does have some First Amendment protection, as it is a form of expression. He said that the cases in the State of Maine, and nationally, so far as he could see, have kind of taken the position in that there must be some place in most towns for most things. For example, he said that, in the City of Bangor vs. DIVA case, the ordinance set out areas of town, spatial requirements that nude dancing could not take place within 500 feet of a church or a school or the traditional things that you would think about and also, of course, zoning regulates conduct of that type. Mr. Hole said that, in the Bangor case, the court basically said that, since nude dancing is allowed in some portions of Bangor, we can look at this under reduced scrutiny and focus on what are called the secondary effects, that the city's concern about secondary effects become more prominent in the discussion. He explained that, in two of the federal cases he looked at, one of them involved a state law that prohibited nudity anywhere. He added that, in fact, the other one involved a local ordinance – it was a big city like Cleveland – but also prohibited nudity anywhere so it didn't matter whether it was the beach or Hannaford Market or inside a club and, in those circumstances, the court said that since you weren't focusing on a particular form of nudity that bothered you, rather it was a blanket prohibition of nudity, then that was okay. He said that, in the meeting he had with the Selectmen he made the point that you already have, on the books, a special amusement permit ordinance that bans total nudity that is based on solid law, not only locally, but nationally. He made the further point that, if we wanted to stay within established law and not foster a test case, then we should consider whether there might be some place within Eliot where nude dancing would be acceptable outside the presence of alcohol. He added that, if a place has a liquor license, you have taken care of that with the 1984 ordinance and believes Eliot has that subject covered. He did add that he would tweak it some because it is so old. Mr. Hole said that the other part of this is and why he thought about a moratorium was that it was important to the concept of – if we were going to try to ban nudity outside the presence of alcohol, then it is important to consider seeing if there aren't some places in Town where it would be okay. He added that, more importantly, we need to examine, absorb and agree with the concepts of secondary effects because they are critically important to the concept. He said that typical secondary effects are that studies have shown total nudity can encourage people to engage in prostitution or sexual acts or breaches of the peace and so on. He added that it can create atmospheres within a town that are not acceptable, it can have an effect on the business climate, it can have an effect on residential and commercial property values. He explained that he said to the Board that it was really important to this process that we take the time to make sure that the Board can have access to some of the studies and to absorb and agree with the results of some of those studies. Mr. Hole said that the other thing is, to give us the strongest position possible with the concept of nudity outside the presence of alcohol, if we accept the concept that there must be some place in each town for that to be permissible, then the spatial things he talked about need to be studied and the reason is that it has to be real. As an example, he said you couldn't say **we'll allow total nudity outside the presence of alcohol within 3,000 square feet of a church or school and it turns out that that leaves 30 square feet** in the Town of Eliot for that possibility – that isn't real and it has to be a real possibility. Mr. Hole said that that really is a summary of what he has to say. He said that he encouraged the Selectmen, whichever way they decide to go, to make sure we take enough time to do this right. He explained that these ordinances are

SPECIAL BOARD OF SELECTMEN'S MEETING
May 5, 2011 6:30PM (continued)

straight police power ordinances, which means, if you folks pass these ordinances, they will regulate what's happening in your Town regardless of what may already be occurring. He reiterated that that was kind of the ballpark for you folks to know.

7:45 PM

Doug Keith thanked Mr. Hole for addressing many issues that were brought up in the first hearing. He asked if Mr. Hole would comment on his review of the Maine State Planning Office (MSP) document that talks to this issue and our legal strategy – why don't our ordinances look more like them.

Mr. Hole said that the modifications that he made to what you may have a copy of pick up some of those points. He added that it is very important that you deal with the secondary effects in your ordinance and it is very important that you deal with the concept of – is there a place in Town where total nudity might be allowed in the presence of alcohol. He said that his job was to be objective and then do what he was told. He said that one thing the Selectmen need to be concerned about and you folks need to be concerned about is that we don't mislead ourselves. He clarified that, if we pass an ordinance that is out beyond the Bangor case and out beyond some of the federal cases, then we may find after months or years of litigation that we, in fact, don't have an ordinance.

AmyLynn Maresolla asked if, when they put in for this request, did they request an alcohol license and live dancing. She asked if that meant they could not have live dancing.

Mr. Hole said that, as he understands it right now, the only thing that's been requested before the Planning Board (PB) is permitting for a restaurant. He said that there has been no application for either a special amusement permit, which is the entertainment side, or a liquor license application, to this point. He added that, as he had previously said, you folks already have in place an ordinance that deals with nudity in the presence of alcohol, which requires opaqueness on female breasts and genitals in front of men and women.

Ms. Maresolla clarified that they could still have a club with a certain form of that but they just couldn't have full nudity – but they still could have a “strip club” with alcohol in it.

Mr. Hole said that they could not have total nudity. He added that they could also consider having an operation that did not have alcohol with total nudity and we would have to decide if we were going to deal with that now or whether it is more realistic that establishments of this type typically want a liquor license and, therefore, want a special amusement permit and, therefore, face these other regulations.

Mr. Fernald pointed out that, as Mr. Hole said, there is no application for a special amusement permit from anyone before the PB.

Ed Strong (Police Chief, Kittery) said that Kittery has dealt with this same problem several times and we did pass the ordinance for total nudity ban when we had the Moonlight Reader. He said that we made it retroactive and put them out of business. He added that, since then, we have had several establishments that have opened up that have exotic dancing, not nudity, and what happened was that it turned to nudity and we wound up putting that individual out of business, too. Mr. Strong said that, since then, they have done an ordinance change – we passed an ordinance and updated the land use plan to allow anybody to apply for adult entertainment that could only go in a certain zone and we zoned it right along Route 236. He added that it was a limited area and set aside for the special acceptance for adult entertainment, which must be away from any residents, schools or churches within a thousand feet. He said that they can apply for the permit but they have to meet all the other ordinance criteria, the same as Eliot is

SPECIAL BOARD OF SELECTMEN'S MEETING
May 5, 2011 6:30PM (continued)

doing now. He said that it worked well in Kittery and he thinks Eliot will be on a good road to do that.

Mr. Fernald commented that it was nice of Kittery to bring it that close to Eliot.

Mr. Hole commented that one of the people in a land use case said that zoning is the study of what other people think you should do with your land.

7:52 PM

Jonathan Sholes said that his question was that Mr. Hole mentioned there was an ordinance of no total nudity and that was fine because it covered the entire Town. He asked if there was a reason we couldn't do that here – say no nudity – is there a reason we have to create an area for it or can you do the blanket ordinance of no nudity in a business establishment, whether there is alcohol or no alcohol.

Mr. Hole said he didn't think he needed to be concerned about this but it would be no nudity in a public place in Eliot so, you can't go to Hannaford's unless you have clothes on, etc.

Mr. Sholes said that that, then, would keep it from coming up in the future.

Mr. Hole said that, given the Bangor case, that would be consistent with...pause...the Bangor case actually permitted total nudity in some parts of town but the federal cases he mentioned had regulations saying no public nudity in public places, period.

A member of the audience asked if we were examining that as an option.

Mr. Hole said it was certainly an option, yes.

Suzanne Karon asked if there was any disadvantage to doing a moratorium.

Mr. Hole said that the only disadvantage might be that the applicant might try to get an injunction taking the position that we didn't have the right to do that. He added that he did understand that that is a possibility. He said that the typical moratorium ordinance says six months with the right to extend six months but this whole exercise would not need to take nearly that amount of time. Mr. Hole said that he would hope, if that is the direction that was chosen, that we would all work diligently have in place within one to two months.

Ms. Karon said that she knew that other towns in Maine had recently done moratoriums for this and asked if any of those moratoriums had injunctions put against them.

Mr. Hole said not to his knowledge. He added that he did know that there was an injunction request in federal court in Westbrook, which was denied, but a lot of effort went in to that.

Jack Dougherty said that, many years ago in the late '60's, the Town of Eliot had a situation where a person wanted to put a mobil home here and Townspeople felt that they did not want that. He added that they passed an ordinance, one sentence – there shall be no mobil homes in the Town of Eliot – and everybody was happy with that, except, it went into the courts and, about 18 months later, it turned out to be invalid and many communities within the State of Maine had to rewrite their zoning to be in compliance. He said that he thinks it is very important that the people here tonight listen to advice of counsel and write the ordinance such that there can be under certain circumstances.

Mr. Fernald thanked the speaker and said that he wanted him to know that the Selectmen are going to do the best they can for the Town.

SPECIAL BOARD OF SELECTMEN'S MEETING
May 5, 2011 6:30PM (continued)

7:57 PM

John Miller said that his concern is them bringing their own liquor to this establishment. He asked, if they don't have a liquor license, could they bring their own liquor to this establishment in the presence of nude dancing.

Mr. Hole said that they would either have to have a liquor license or some other legally recognized impossibility like a bottle club. He added that they couldn't just say that they were going to bring liquor in here as if it's a private party. He also added that, if they do, then that is a police enforcement matter.

Mr. Miller asked, if we had to have a full nudity, dancing establishment but we would not issue them a liquor license and a person brings their own bottle to the establishment, they would or would not be breaking the law.

Mr. Hole said that he did not study the bottle club as he did not anticipate that question. He added that they can certainly get an answer to you but he was not prepared to answer that tonight.

Mr. Miller said that he thinks that happened in Westbrook and that was why he brought it up.

Mr. Hole said that, while the microphone was being passed around, before he went to law school he sold pharmaceuticals for two years and the first thing they were told was, "Never guess, there is a team of doctors in New Jersey you can call." and he has no reluctance to say he didn't know, he needed to check.

Cabot Trott, adjacent property owner, asked, when you talk about "in a public building" and nudity does that prevent them from being a private gentlemen's club – membership only.

Mr. Hole said he was glad he asked that question. He explained that he meant public in the sense of a place that the public had access to.

Mr. Trott clarified the public has open access to or can't be allowed in without a membership.

Mr. Hole said that he was thinking of open access but there would certainly be a point if there was a "private club" that it would have to be legitimate and he would have to study the effects on this whole concept, in that case.

Bill Chatfield had a question for the Police Chief in Kittery. He asked if he could bring a beer to the Sunrise Grill.

Mr. Strong said that they don't have a liquor license and you can't consume on premise there. He added that you can be licensed for a bottle club – BYOB – in the State of Maine.

Luanne Goodrom? said that it seemed kind of funny to her that they were proposing this nudity establishment in a closed down daycare center. She added that that really bothers her, with churches in the area, a school down the road and is the public ready for increased drunken driving, people from other areas coming in here, congestion. She said that numerous things would happen when this strip opens and, I'm sorry, but I don't want it in my neighborhood.

Barbara Amergian asked about the time-frame – is this club getting ready to open, is it being waylaid by this process or is it going to open up and we'll be back-tracking trying to close it down. Secondly, she asked how we went from this person submitting an application for a restaurant to this process.

Mr. Hole said that we were looking at the possible future. He said that his instincts are is that the most likely future is that an establishment of this type is

SPECIAL BOARD OF SELECTMEN'S MEETING
May 5, 2011 6:30PM (continued)

going to want a liquor license, in which case it will have to have a special amusement permit, in which case there will be regulations about opaque material on dancers. He added that, notwithstanding the chief in Kittery, our job is to follow the law and decide how much we want to crowd the law and not just to plain close a place down. He clarified that what we don't want to do, I think, do something that turns out a year or two from now we didn't have the right to do and we don't have anything.

Ms. Amergian asked if this was imminent – are they getting ready to open this place in the next two weeks.

Mr. Hole said no, that there has only been an application for a restaurant and he understands that that hasn't had any review, yet. He added that it was certainly going to be awhile and reminded people that these ordinances are police power ordinances and will take effect immediately, stopping anything current that the new ordinance prohibits.

Mr. Fernald clarified that Mr. Hole was indicating that it would affect any application pending.

Mr. Hole said that it is actually broader than that, for an application to be perfected it has to have substantive review but, in a straight police power ordinance, it basically doesn't get grandfathering. He said that, if a police power ordinance passes, then that ordinance will regulate that activity just like every other activity in Town.

Jen Curts said that she heard him mention that they only applied for a restaurant a couple of times and she has an application in my hand, here that says Application for Conditional Use Permit – “Open a gentlemen's club and restaurant – 403 Gentlemen's Club. She said that these are the specific uses described for this restaurant: “403 Gentlemen's Club will have a restaurant and bar with adult entertainment consisting of live topless dancing. The project will also have a separate area offering adult entertainment consisting of live, fully nude dancing.” She said this was not just a restaurant.

Mr. Hole said to let him just say that we talked about liquor license and special amusement license, all of which have to happen before you have a bar and before you have live entertainment. Discussing the separate area, he said that things need to be realistic and when you talk about liquor licenses, there are two things that are licensed: one is the premises and one is the applicant/owner and he would think that the premises would be the whole place. He said that he would think you couldn't say that you can't have a drink in this room but you can have it in that room. Mr. Hole said that one of the things he does when he thinks about questions is that he says to himself, “If I'm trying a case through a jury and I tell them this or that, is an objective person going to believe it?” He added that, if we're talking about a building and an argument that this is the bar with the liquor license and the special amusement permit, except this room is not part of the premises, he doesn't think people would accept that as realistic and reasonable.

A member of the public said she was confused – that she felt like you all know something we don't know. She said that, last week when people were talking like there was some sort of conspiracy theory, she thought you were all nuts and now, the more information I'm getting from people in Town and from what's going on, she was thinking, this is ridiculous – you all up there know something we don't know. She said that that is not just an application for a restaurant and, if she were to apply to, say, have a little muffin shop down here, are you just going to assume I'm going to have nudity or dancing or something. She said that she feels like you knew a long time ago and was your responsibility to tell us. She added that, as Townspeople, we are all really upset. She said that she has two daughters that are going to be in that school, a half a mile away, and I chose this Town 10+ years

SPECIAL BOARD OF SELECTMEN'S MEETING
May 5, 2011 6:30PM (continued)

ago to raise my three children and I never would have come here if I knew this...this is so heartfelt... She said that we were not here to just talk about the ordinance; we are here to talk about something that is going to go in down the street that you all know is going to happen and you are pretending like they only just applied to have a restaurant. She said that there was more to it or we wouldn't be here, saying she was sorry to be so emotional...no, she wasn't sorry, she wasn't sorry. She said that this was so upsetting to her and, with all due respect, you are making me nervous about your speech, the way you are presenting this...

Many said, "Here, here"...

She said that they needed straight talk, no legalese, English, and she knew Duncan in Kittery was able to fight that whole garbage...the dance club on Route 1...and maybe we do need to consult with the people in Kittery and how they worked their way around it. She said thank you very much.

Mr. Moynahan said that he wanted to clarify just one thing - the attorney was not the right person to ask about the application. He said that our Code Enforcement Officer would have been a better person, saying that he did not think the CEO was aware of that full application.

She said that she was pointing to you Board people, not the attorney.

Mr. Moynahan said that we have asked him to review our special amusement licenses because that would be the next step, if the planning process moves forward so; we are trying to protect the Town for that potential next step. He added that the attorney has no bearing on next steps on the application...

She said that she was not personally attacking him but she did feel the Board had a responsibility...

Mr. Moynahan said that he was trying to explain to her that that is where it is, that's why they were preparing the next step if we are to move forward.. Several people were talking at once...

A member of the public asked if it was going to be a restaurant...are they going to have a restaurant there and everything would be coming afterwards...that's the way it sounds.

A member of the public said that you know they wanted something more than a restaurant or they wouldn't be here tonight.

At this time, there were conflicting conversations.

A member of the public asked, when they submitted that application with that spelled out what it was going to be, why didn't somebody say, "I don't think so."

Mr. Fernald said that they did...

A member of the audience asked why this was even happening... why couldn't they say this was not happening.

Mr. Fernald said that, unfortunately, folks, we could not just say that...it is just not a law...

A member of the public said that we had ordinances in place...no dancing...no place with alcohol...but here it is, right?...explain to us because we are not getting what's happening to us...

Another member of the public asked if she could speak.

SPECIAL BOARD OF SELECTMEN'S MEETING
May 5, 2011 6:30PM (continued)

Mr. Fernald said yes.

This person said that she believed she actually had something that was very pertinent. She said that she went to the Town Hall...commenting that they were all very emotional and that she believed that was the problem here, we feel so strongly. She introducing herself...Audra Kearney. She said that we have had ordinances for a long time and I do have some emails, that it's all a matter of public record so any of you who want it can have it. She said that they talk about how we've had them since 1980 or 1981 but it doesn't cover dancing, it covers material – leaflets and pamphlets and literature – so we do have some ordinances in place and nothing was repealed. She said that I think, maybe, that's what you're saying because I have it here – I have all kinds of information that I will gladly share with every single one of you what that is. She asked if that was what you were speaking to – that we do have some things in place but not what we're fighting against.

Mr. Hole agreed you do have some things in place but what you have in place are old in some cases so...let me just back up for a minute. He said that there are three ordinances in place – the zoning ordinance allows adult entertainment just in two zones, as I remember it; then you have two others, one that deals with obscenity and the special amusement ordinance. He added that what the Board directed me to do, and logically so, is to start to develop ordinances to deal with the eventuality of total nudity in the absence of alcohol. He reiterated that total nudity in the presence of alcohol you have already taken care of, saying that he would probably tweak the ordinance but, nonetheless, you have already taken care of it. He added that he didn't want you folks to be misled by what the Chief said – that you shouldn't leave this room with...and we can have him up here, he and I have never talked about this, but I think he would agree with me as he is obviously familiar with the subject – that I have very accurately described the scope of the law and, if Kittery took certain actions and the establishment didn't challenge Kittery or the establishment went under for other reasons, then that's one thing. Mr. Hole said that what I know is that, for the folks that have applied, they are willing to litigate and willing to spend serious money litigating and what I'm trying to do is put the framework together for where you folks have strengths and where you don't. He said that, then, you can decide whether you want a test case or whether you want to work within the established areas of the law.

The same member of the public asked if he had talked with Kittery because we talked about this at the last meeting and one of the things that the Townsfolk said at the last meeting was that we certainly hope you guys would go over and talk to the lawyers in Kittery. She asked if they had done that in the last week.

Mr. Hole said that he had not, that that was not his direction.

Mr. Moynahan said that he may not have been to Kittery but we have forwarded information and, actually, Doug Keith played a big role in that. He reiterated that he did not go to Kittery but did forward information to the attorney to review – Doug Keith was very instrumental with that, based on the information at our last meeting – all about secondary effects and better state model language and all that. He added that our attorney has that and we have discussed a lot of those portions already. Mr. Moynahan said that, getting back to the awareness thing, we do know that there is an application pending, we're not hiding anything; we're trying to protect the Town from this type of thing. He added that you folks have spoken

SPECIAL BOARD OF SELECTMEN'S MEETING
May 5, 2011 6:30PM (continued)

– we don't want that in the Town is what we heard, so we are trying to do the best legal document we can to protect the Town from this type of business. He added that it is that plain and simple, and why we are having this public hearing – to discuss this openly and honestly.

A member of the public said that we are dealing with sharks so we need to attack like sharks; we need to be aggressive, get there, talk to them, be all over them. She added that she worked on Wall Street and this man – and with all due respect, you've said, "I think" before almost every sentence, which makes me uncomfortable because I want to get the leading expert in the State of Maine to get involved in this – we're going to end up spending the money, anyway.

Mr. Hole said just let me say in my saying "I think" before every sentence that is a bad habit and that I believe I have accurately described the law to you in Kittery and in Eliot and in Fort Kent, etc., and that was certainly my intent.

8:15 PM

For those of you who don't know me, I'm Ted Short and I'm your Police Chief. He said that, first of all, the questions being asked about why is this an issue now and it appears as though something was not forthcoming, as was discussed with the application, it does say what the intent is – not only to be an assembly place and restaurant but to have nudity. He added that that was part of what played the role to get everybody here, that when this was brought up and created a review of the current ordinances, there are problems with our current ordinances. He added that they are, quite frankly and in his opinion, out-of-date. He said that because of some of the secondary issues that come with these types of businesses, we need to make sure we can protect ourselves as much as possible. Mr. Short said that one of the things he heard during the last meeting was that, if we want to prevent this from occurring in our community - and, as an opinion, I wish I could stand up here and say I don't want it here, either, as he has spent the last seven years as your police chief trying to make this Town as safe as we possibly can – we've got a great community and I know that we all want to protect it as much as we can. He added that, also, in the world of litigation, it is very difficult to say never and I think what we need to do, and I think that's part of why we are talking about this moratorium tonight, is to make sure we are doing exactly what everybody here is asking us to do and that is to create an ordinance that's going to protect this Town as best we can that will stand the test of litigation. He added that he understands, too, about getting the best possible attorneys and I have been in this business for well over thirty years and I know you can bring in all the attorneys you want, they can ask for guidance, there are several law court cases already out there that have already dealt with this issue. Mr. Short said that he thought, for us as we move forward, we need to make sure that – one, we have the time and two, that we will create ordinances that will protect this Town in the best way possible by making sure we close up as many loopholes as we can. He said that he didn't think that, even though there was a gap in the amount of time between the application and this meeting, he didn't think and for him, too – as soon as he received notification within the last two weeks this being put in front of the PB and seeing exactly what the plans were, that now we need to address this and we need to make it work. He said that one of my questions walking away from last week's meeting was, "Can we completely ban live nudity in the Town of Eliot?" and I think the answer is I think we can attempt to do anything. He added that I think that, if it is challenged in court, then we are going to have difficulty upholding that. He said that that was part of what the attorney was talking about is that we may say that, okay, we are going to create an ordinance that says it can't happen here, then it's going to go to

SPECIAL BOARD OF SELECTMEN'S MEETING
May 5, 2011 6:30PM (continued)

court and we're going to spend an awful lot of money and the courts, historically, have sided with that you can't completely ban it. He added that, that being the case, let's regulate it as much as we can and do what we can to make sure that we limit where it takes place. Mr. Short said that is where I think we're at and, in order for anybody to have a better answer for all of you and for me as well as the Town's Police Chief, is that it's going to take a little time and we aren't going to resolve that with the initial thought process that we would get something up and running tonight and vote on it next week. He said that I don't see that happening – not if we are going to do it the best we can.

Mr. Hole said that he wanted to make one thing clear, based on the Kittery question and as one Board member mentioned, I have been receiving information all week long from Selectpersons or your Town Manager or citizens so, please don't be under any misimpression that I haven't been receiving a lot of local information this week.

Holly Marshall said that she was asking for her children – do you feel capable of handling this case – this is a huge case – are you capable of handling it.

Mr. Hole said absolutely. He said that I have had, I think approximately – oh, I said I think, I'm sorry – I'll count them before the next meeting. He said that I have been before the Maine Supreme Court at least 25 times and one of the cases I won, with my partner Paul Frinsko, was the Old Orchard Beach vs. Gabriel case, which is directly on point.

Ms. Marshall said okay, because our children's futures are in your hands.

Mr. Hole said that he understood.

Mr. Fernald said, to clarify, that the law firm of Bernstein & Shur has been with Eliot for many, many years and they don't work just individually, they work as a team – they have done that for us in the past and I believe they are the best.

Mark Spezia said that I have a copy of the Model Adult Entertainment Establishment Ordinance from the State of Maine that was produced at great expense and effort by the Maine State Planning Office (MSPO) – it's fifteen pages long. He said that I have read our ordinance and it is woefully inadequate. He asked why we were not using this model ordinance produced by the State of Maine as a guideline for producing our own ordinance in Eliot. He added that he wanted to piggyback on some comments that were made earlier. He said that I get the sense that, for some of you, this is an academic exercise – this is a fight for the heart and soul of our community and I want you to know that and I want you to act on that.

Mr. Hole said that I am not sure what you have seen but I have personally started to work on the Special Amusement Ordinance, which isn't bad but needs some tweaking. He added that I have personally worked on the other ordinance to suggest into it things such as collateral effects and the things we need to have the strongest ordinance possible.

Mr. Spezia said that my question, directly, was why are you not using the document produced by the State of Maine as a guideline for our own ordinance. Please answer my question directly.

Mr. Hole said that, if the Board wants to do that, I can certainly do that – typically, ordinances are tailored to your own Town...

SPECIAL BOARD OF SELECTMEN'S MEETING
May 5, 2011 6:30PM (continued)

Mr. Spezia emphasized that this is the State of Maine Model Ordinance – it was produced for all the communities of Maine, it has to be tailored for the specific community, but it's a guideline produced by the State...

Mr. Hole said that that ordinance says to tailor it to your own town and to consult with your own municipal attorney.

Mr. Spezia said that I would like to see this used as a guideline.

Sharon Magnuson said that I don't mean any disrespect by this but you just made the statement that you have tried 25 cases in court and that you won one – that was the way it came across – but you won more than that.

Mr. Hole said yes and clarified that that was not the only case he had won and that he had been litigating since 1973.

Ms. Magnuson said okay, adding that one thing that had her upset, personally, is, if I have the dates correct, the PB received this application sometime in February or the first of March – is that correct.

March 2nd was confirmed.

Ms. Magnuson said that the first time I heard anything about this was approximately 10 days ago when it was on the Portland News that someone wanted to open this establishment in our Town and I thought, "Why have we not heard about this before?" She clarified that it was her understanding that they have not acted on it, yet?

Mr. Fernald confirmed that she was correct.

Ms. Magnuson said okay, they have not acted upon it, yet we, as citizens of this Town, we just found out about it 10 days ago, asking why we were not informed before that. She added that another question she thought was important – this was going to go to a Town Meeting, correct?

Mr. Fernald confirmed that she was correct.

Ms. Magnuson continued by saying that, then, we would be voting by a show of our hands, is that correct?

Mr. Fernald clarified that what they would be proposing was a moratorium, which the Selectmen would be voting on after this hearing - to go to a Town Meeting, in which you would vote for the moratorium or not.

Ms. Magnuson said that she had a question on how we vote on this. She said correct me if I am wrong – we go in, the question is raised, we raise our hands – all those for, all those against – what measure is there going to be or is there going to be a measure there that is verifying that those people voting, for or against this ordinance, are truly residents of Eliot.

Mr. Fernald clarified that, when folks come in to the school to vote at Town Meeting themselves, they are registered at that time – you tell them your name and they look it up in the book to see if you are a resident and, then, they give you a card – that card is what you would be voting with.

Ms. Magnuson clarified that you would raise that card and people could see that you are legitimately living in this Town.

SPECIAL BOARD OF SELECTMEN'S MEETING
May 5, 2011 6:30PM (continued)

Mr. Fernald said that that was right.

Nancy-Joy Lemire said that I was not registered in Town, yet, and I went to a Town Meeting but I wasn't allowed to vote, even though my husband was, at that time, so they did check, they are very diligent about checking.

Ms. Magnuson agreed that we should not totally rush through this seeing as we found out about it 10 days ago, that we had requested at the first meeting that this was going to be as ironclad as possible. She said that Mrs. Murphy brought up some wonderful things that, if they were inserted into this ordinance, then it would divert it away from being a First Amendment issue. She said that, to me, nudity is not a First Amendment issue – nudity of any kind, even if you've got a little piece of a see-through cloth covering special places - she believes a lot of that language should be in there so that it cannot be fought against because of the First Amendment issue. Ms. Magnuson said that she thought that really needed to be taken care of and addressed and I would hope that the Town, in voting on this, was not rushed – that by the time the ordinance is done, that it would be ironclad as much as we could make it.

Mr. Fernald discussed the question of when the application was put in to the PB. He said that they found out on March 2nd, when the application was submitted, immediately contact our lawyers, doing some research, wanting to make sure that it wasn't just a PB issue, that it was something that we needed to act on and it took time for us to do that. He added that, once we got our ordinance in place and talked to our attorney, then we let the people know what was happening and we had something in our hand to give to you and to explain to you what was going on. He clarified that it was not something we were hiding but we were in the process and that is the way it is, sometimes, it takes time. He added that, as the people can see, we've had two public hearings on this already and this is what we want to do – to bring this information to you to help us decide and make sure that we are on the right track.

Tim Kearney said that I think it's pretty clear that everyone wants this to be ironclad and it's going to come down to a legal battle. He said that I think we need to make sure that we have, with no disrespect to Mr. Hole, the best legal representation we can get, if it includes Mr. Hole's firm as well as the folks in the State of Maine. He added that this is, what, a national issue. He said we did talk to someone, recently, who specializes in Adult Entertainment Law and defending municipalities like ourselves. He added that I have some information that I want to share from that law office with the Selectmen and Mr. Hole. He said that he was willing to speak to you for free, initially, acknowledging that he may have some business interest in this, as well. Mr. Kearney said that he has written ordinances for 300 cities around the country, so I think we should consider that. He said that his name was Scott Burgthold and he is down in Chattanooga, Tennessee. He added that, again, this man has represented municipalities around the country so I think we shouldn't preclude ourselves, limit ourselves, to the County of York and the State of Maine, looking broader than that for people who have more experience in this particular niche.

Ms. Kearney said that I actually spoke to this man today and he goes around, dealing with many states, like my husband said – over 300 cities – he just actually worked with the State of Missouri – the entire state came up with new regulations and changed their ordinances. She added that Mr. Burgthold has national municipal law practice, focusing on drafting and defense of adult business

SPECIAL BOARD OF SELECTMEN'S MEETING
May 5, 2011 6:30PM (continued)

regulations in state and federal courts, so this man knows what he is talking about – he literally wrote the book, which I'm getting tomorrow. Ms. Kearney said that this guy knows what he's talking about and he would love to talk with you and I would love it and respectfully encourage that you speak with him because he has an enormous amount of knowledge about this type of thing.

Jen Curts said that, first of all, I want to thank all of you for being here and doing the work that you are doing, I know you're on the hot seat, I know this is an emotional issue. She added that I want to thank all of you for being here – this is an amazing turnout and I'm so impressed that you're going to make me cry. She added that I really honor your presence here tonight so thank you all for showing up in the way that you are. She said that I would like to let you know that I, and a small group folks, are working hard for the group "Keep Eliot Safe" – if you would like to help us in any way by volunteering, we are following the guidelines, we are doing this respectfully and positively and constructively, so, we are not looking to create any trouble, we are going to be meeting with the Eliot Police Chief so please know that we are following guidelines and we would love your participation – we can't do it alone. She said that there is a huge group of you here tonight, so, if any of you have the time, recognizing that we all have the areas that we are comfortable with, whether it be speaking up or handing out flyers or helping fund us, making signs to put in our yards or print flyers or whatever it may be, she welcomed you to join us. She further said to please contact me or Audra and, if you want our contact numbers or you want to give us your contact information tonight, we would love to receive it so, thank you all for what you are doing – I appreciate it.

Nancy Murphy said that I was just wondering and maybe everyone else knows, but who, specifically, owns the building.

People from the audience were answering her, saying it was Mr. Denunzio, that he bought it in 2001/2002.

Ms. Murphy clarified that he has owned it the while time so he was renting it, previously, to the daycare.

Someone from the audience said his mother ran the daycare.

Ms. Murphy said that someone had suggested it at the last meeting and I was wondering if you had thought about it at all – have we tried to consider even buying the building. She added that it could be cheaper in the long run, even if we took a big hit on selling it.

Mr. Fernald said that has obviously been suggested but reminded her that buying that building doesn't stop these types of activities coming in to our community. He added that it could be up the street or down the street, further, and it doesn't stop what we're trying to do.

Martin Borg said that I have a question for the Selectmen – he said that the question is one of governance. He said that, at this point, you are making some strategic decisions about how to approach the ordinance process and one of the approaches he heard, clearly, was that we were going to tweak what was on the books. He said okay – but then we have this other suggestion that we should follow the State of Maine's guidelines that great expense has been gone to. He said that you asked Mr. Hole to explore that and you said okay. He asked, under the question of governance, who is responsible for choosing the strategy to direct you or any other attorney and what is the due diligence that the Board has gone

SPECIAL BOARD OF SELECTMEN'S MEETING
May 5, 2011 6:30PM (continued)

through to select an attorney to advise them on this. He said that I don't know how the governance structure is and how you are going to approach a strategy.

Mr. Fernald reiterated that Bernstein & Shur has been with Eliot and knows Eliot as well as any other attorney in the State of Maine – they are a team – and we have had very good success with them. He added that as far as what will happen as far as the ordinances are concerned, we will work with the attorneys to put the ordinances together, along with all the information we can possibly get, and then it will be voted on by the people of the Town of Eliot.

Roberta Spinney asked, should you vote tonight for a moratorium, which I personally believe should be the direction to go, what is the procedure from that point.

8:41 PM

Mr. Fernald said that the Selectmen need to come to the people for that vote. He explained that we (Board) would decide if we need to bring a moratorium to the people for their vote, how long that moratorium would be and what it would consist of and, then, we would decide when that would be.

Brenda Campbell said that it is clear in this Town that we do not want this – if, by some small chance this happens, has our police force been planning to handle this when this situation starts spilling out into our streets and is not contained in the building. She asked if you have started working on a plan, where we have such a small police force, how are we going to handle these situations.

Mr. Short said that that was an issue that we would ultimately have to address – our current staffing and, certainly, there have been studies for years about the secondary impact of these types of businesses bring to towns – the criminal activity so, is it going to require us to take a different approach in some ways, absolutely – if anyone thinks there are not going to be other economic impacts on this community, I think we would be fooling ourselves. He clarified that I'm not too concerned about my ability to respond to these issues and deal with them and make sure we hold a tight line. He said that he would make the promise to everyone here that you can rest assured that, if there are violations of the law that are going to take place in this establishment or any place like this establishment, we will make sure we take every action possible to address it. He added that I am not going to tolerate it, personally. He addressed the question about when or why it was released to the press. He said that it was released to the press because when I got the email that came to me about the initial application and saw what it was going to contain, my first phone call was to the press wanting to know why you haven't covered this yet.

8:41 PM

Mary Fornier said that she thought we were here tonight for a public hearing on two proposed ordinances. She added that maybe I missed something because I have heard people talking about that the Selectmen would decide tonight, after listening to the people of Eliot, on a moratorium ordinance that would be voted on at Town Meeting. She said that I read the two proposed ordinances and I think that they would probably carry a lot of weight. She discussed that we have Home Rule in Maine, which gives us the power and the right, with the Board of Selectmen or PB, to put together an ordinance that has the language that gives us the law, locally, to stop this owner of this restaurant that I believe is not yet approved. She said that what we need is for our Board of Selectmen, with our attorney, to put together the most solid, legally tight ordinance and approve it to go to the Town Meeting next month on June 14th and, then, we go in and vote for

SPECIAL BOARD OF SELECTMEN'S MEETING
May 5, 2011 6:30PM (continued)

it – that's what it's all about. Ms. Fornier said that, if there is a proposed ordinance for a moratorium, then we should hear the language so that we can discuss or change it, if needed. She asked Mr. Hole if he knew of anywhere in Maine of any municipality that has an existing ordinance that bans this type of nudity or semi-nudity in an establishment that has a liquor license.

Mr. Hole said that we could ask Kittery if they have an outright ban. He said that I believe I've described the law to you as it exists regardless of what the Kittery ordinance says. He added that we are definitely working on two ordinances and what I encouraged the Selectmen to think about, as I said, you have three ordinances right now that deal directly or indirectly with the subject – language in a zoning ordinance, a special amusement ordinance, an obscenity ordinance – we're working on two more, adding that he feels very strongly about having as strong of documents as we have and part of that is making sure they're integrated correctly. Mr. Hole, in referring to the annual Town Meeting on June 14, said that even though a typical moratorium was 6 months, I would think there is certainly some possibility that we could be ready by June 14th, with actual ordinances.

Ms. Fornier said that I am a little concerned with that because I'm not sure of the status of L.D. 86 up in Augusta – once a final permit is issued on an application, then the town cannot change the ordinance after 30 days. She said that, in other words, if we have a moratorium that's good for 6 months and we don't have enough in our present ordinance enough to protect us, as I understand it, from this, all we have to do...I prefer to pass the ordinances on the website already rather than come in with a moratorium to buy us 6 months but we could end up with nothing in the end...

Mr. Fernald thanked the speaker and asked the audience to understand that these ordinances were very involved, very difficult and, we as Selectmen rely very heavily on our attorneys to make sure that all the "T"s are crossed and "I"s are dotted in the ordinances so they cannot be thrown out by the courts and, if we need the six months to do that, then that's what we ought to do.

Buzz Cook said that I just met these people when I came in and they are really working hard to get us all together but one of the things they didn't mention was the name of their website, because we are the foot soldiers right here. He added that a lot of stuff is going to go on legally, I know there is a high-powered lawyer here from the other side - (Someone said he left.) – he left already, good. He said that anyone who has a pen should write down the name of the website because, if we need to picket or all this legal stuff goes by the wayside and we just need to be foot soldiers – write down KeepEliotSafe.org – that's the site so that we can all organize, if need be, to save our little Town, because we are all going to scattered like cats in just a little bit. He added that we thought enough about our Town to come out tonight because we care about our Town so much, so KeepEliotSafe.org is how we can all stay together. Mr. Cook clarified that the ordinance on the books does not allow nudity with alcohol so the question is, then, is this strip club wanting to do nudity without alcohol and, if that's the case, does anyone know of a strip club that is successful without alcohol...

Several people spoke at once and Mr. Fernald asked people to present through the Chair, please.

Ralph Place said that I have lived here all my life and I have a kid whose name is Eliot and I want to bring him up to be proud of this Town, just like I am. He discussed how much this Town has grown since he was a little kid and you don't

SPECIAL BOARD OF SELECTMEN'S MEETING
May 5, 2011 6:30PM (continued)

have to be a rocket scientist to know that it's going to keep growing. He added that what I don't understand, and keep falling over, is shouldn't we have been addressing this back when they (Kittery strip club) opened up down there – why do we have to wait until somebody puts in an application to try to do all this stuff. Mr. Place said that they tried to get gambling in Kittery and that didn't work – are you going to wait until someone approaches a gambling idea in the Town of Eliot before you come forward. He said that I think this is a good time to sit down and look things over and put something together for gambling, also.

Nancy Shapleigh said she had been in Eliot since 1965, this time, and I wish there were this many people that came out for Town Meeting. She added that these people should be at the hearing when they go through the PB and the public has a chance to speak – this isn't the only place to speak. She said that I want to thank the Selectmen for the work they are doing...applause...thank the attorney and that we shouldn't be shooting the messenger. She said that I believe there are only a certain number of days to answer a plan that goes through the PB – maybe there are ways to stall that a little bit and maybe they don't have all the right information – but we have to stay on track with that, I believe, adding that, if a moratorium is what it takes to get the job done right now I think we should start with that. She reiterated that, if some of these people would attend some of the local meetings, they would know the local procedures. She said is March 2nd the date it came into the Town Hall or is that the date of the first meeting, which is usually the second and fourth Thursdays of the month, and if they would learn some of those things and attend some of those meetings, then they wouldn't be asking some of the questions that they're asking.

Mr. Fernald commented that we are all Town residents and we are all very passionate about this process.

8:58 PM

Mr. Hole said that I don't feel like a shot messenger by a long shot, I appreciate everything I've heard, I've learned a couple of things tonight, I will check out the L.D. 86 issue. Referring to the ordinances on the website, I have made substantial changes to a lot of that since it went on the website and this is a process, not a snapshot.

Bobette Nolan said that my granddaughter goes to Marshwood and my question is, you (attorney) said that there are national ordinances that have passed that said no nudity, it hasn't been challenged and it has worked – it's like everybody is dismissing it as not a possibility – but you said that, nationally, it has gone through with other cities.

Mr. Hole said that I am not dismissing that as an idea.

Ms. Nolan said that I know that you aren't, but the police chief in Kittery said that we should have an area in Kittery decided and they sent the guy up Route 236 and the whole thing is to make sure that ordinance is an option if everybody wants no nudity, period – no gambling, period –whatever the people of Eliot want should still be considered, not just what might go through. She asked, if it did work nationally, who is going to challenge...

Mr. Hole said that, certainly, that is one of the things we are studying, there's more than one approach to this concept but, please don't be misled about whether or not there might be a challenge and please don't be misled by how technical this area is. He said that I invited the Kittery Chief to come tonight and I truly believe I have described, for you, what the legal ballpark looks like in this area and your

SPECIAL BOARD OF SELECTMEN'S MEETING
May 5, 2011 6:30PM (continued)

Board is going to have to decide which way to approach it and, ultimately, the decision will be made by you folks at Town Meeting – as someone said, the ultimate democracy. He reiterated that we are not dismissing any approach.

Mary Ellen Harper asked what was missing in our ordinances that would allow this strip club to open, with the application they have put in asking for a restaurant, asking for a bar, asking for full nudity.

Mr. Hole said that the thing we are not regulating, at the moment, is full nudity in the absence of alcohol. He said that you are making the point and someone else has made the point that we have had in place since 1984 a special amusement permit, which is keyed to or companion to a liquor license permit, which requires that opaque materials be over certain body parts. He added that, if it is not realistic that this establishment or any other establishment would pursue not having an establishment without a liquor license...

Ms. Harper clarified that they put in a request to the PB, very specifically, for those three things. She said that, if as our ordinances are now, the PB would be in its rights to deny that because it's not allowed and then they would have to go back and reapply for another whole new permit, they would have to go through the permit process again because they have been denied. She said that she is asking if that is a reasonable thing and then we have this time to tighten up the ordinances, to get it right, have the time to, if we need it, to have a special meeting. She said that I know we can have town meetings on other days other than the day – if you give legal notice, you can call for a special vote – so if we don't make it by June 14th we have that right. She said that we're talking about the PB, how much time the PB has, we're all talking about time – they've asked for a specific thing and right now we're and right now we're within our rights to deny them that specific thing, give ourselves some breathing room where they have to open up the whole PB process again.

Mr. Hole said that we are currently regulating nudity in the presence of alcohol and, if we don't accept "the room next door" premises, then we're okay in that. He added that one of the things we're working on, whether we do it exploring a total ban on public nudity or whether we do it in a different way...

Ms. Harper said that I am just asking, are we within our rights, as our ordinances are written today, to deny the application as it was submitted to us.

Mr. Hole said no because we are not currently regulating nudity in the absence of alcohol.

Ms. Harper said that they asked for alcohol.

Mr. Hole said that was right but they asked for it in a separate room.

Ms. Harper said that you made the point earlier that you did not think they would be allowed to claim that separate room was, in fact, a separate room within the one establishment – you had doubts that any judge would find for them.

Mr. Hole said that's my view but that doesn't mean you don't enhance your position.

Mr. Fernald said that I don't know that we want to take a chance on that – don't we want to make sure that those things are tightened up so that those possibilities are prevented.

SPECIAL BOARD OF SELECTMEN'S MEETING
May 5, 2011 6:30PM (continued)

A member of the audience asked how much time we have to get it on the books.

Mr. Fernald said that, first of all, that's a PB issue, however, what the Selectmen are hoping to vote on tonight is bringing a moratorium to the people and we are asking that that Town Meeting be on May 14th where you people would vote on whether you want a moratorium or not. He clarified that he was not speaking for all the Selectmen, that they needed to take a vote on this.

Ms. Fournier asked for the proposed moratorium ordinance to be read.

9:07 PM

Mr. Hole said that the idea of a moratorium drifted through my mind yesterday and Mr. Blanchette had had the same thought and, around noon, he directed me to prepare a potential ordinance. He reiterated that you have three ordinances on the books, we're talking about two other possibilities, there's more than one way to do one of those two possibilities, etc., so it makes some sense to buy a little bit of time. He read the proposed moratorium ordinance aloud.

A member of the audience said that I definitely want to urge you guys on the moratorium and taking the time to find out and plan out is definitely important. He added that I grew up in Vegas where strip clubs are a dime a dozen and he has seen a successful strip club without alcohol, in the same building –alcohol on one side and no alcohol permitted in another room where total nudity was allowed, so yes, it can exist and yes, it is successful. He reiterated that I urge the Selectmen to take the time and work out the loopholes because they will be and they will find the loopholes to get through in order to make it happen. He asked that they focus not just on total nudity but nudity in general because, if you address total nudity outside the presence of alcohol, you will still have a topless strip club. He said that I think a moratorium is a marvelous idea and I think you guys are doing a great job – thank you, Selectmen – thank you, Attorney Hole - thank you, Chief – thank you all for taking the time to do your due diligence on this.

Jack Dougherty said that I think we need to support our Board of Selectmen and our Town officials and support the moratorium so that they can pursue the items that you have brought up this evening in a reasonable and sensible way and within a reasonable time.

Mr. Fernald said that we understand your passion and we will certainly do what you ask.

Dick Norrick said that it is this Town's experience that this company, I will call them a below-the-belt business, is an unreliable payer of taxes. He talked about a couple of other businesses that were close by that went out of business and did not pay taxes, one of them not paying \$30,000. He suggested the Town collect taxes in escrow, asking for them in the permitting process. He discussed that some of these businesses are poor employers and not businesses we want in Town. He was concerned, based on his personal experiences, with the safety and well-being of the residents of Eliot.

Mr. Fernald said they only had time for a couple more questions.

A member of the public said that I don't think that it is any coincidence that today happens to be the National Day of Prayer and I think if we are going to see anything move on our behalf we probably want to get on our knees tonight before we go to bed.

Applause.....

SPECIAL BOARD OF SELECTMEN'S MEETING
May 5, 2011 6:30PM (continued)

Vera LaPointe said I agree with all of this if we could just say we don't want this here we would and that would be the end of it. She added that, unfortunately, the Supreme Court would overrule us. She said that there are a lot of things that we can do to enhance our safety, to protect our interests, to protect our rights – some of the things we can build in to the ordinance are things like place restrictions; not just taking into account churches and schools but elderly housing, any place where children and families gather – non-clustering – this business is not too far away from the Shipyard Brewery, what would prohibit someone from coming and having a few drinks here and, then, going over there for something else – prohibition of touching and ___?___; prohibitions or requirements that the people who want to establish the business would be subjected to fingerprinting an criminal background checks; licenses for anyone who is involved in working in the establishment – making sure that they are of age and their rights are protected, making sure that they don't have drug habits. She added that there are things we can prohibit by the employees and/or the patrons; the buffer zone; keeping patrons a certain distance away from people direct-tipping - that can be prevented. Ms. LaPointe said that there are a lot of things that could be built in that are missing from the documents that we have and she would so much be in favor of the gentleman that the Kearney's recommended being consulted, especially if it's free help, I think we can handle all the help and all the prayer that we could put in to this.

9:22 PM

Mr. Keith said that the sum of what I have heard tonight is that the people in this room want to see a cohesive, clearer legal strategy to deal with this issue, which includes, I think, our strategy with the documents that we are going to use as a defense and also includes our litigation strategy, which I would very much like to understand from a no-nonsense point of view – what do we expect them to do and what do we expect to do in response to that. He added that I think we are looking for a clear understanding of what constraints on this issue are already incurred through the process that we have – they submit an application; there are issues of retroactivity; there are issues of our PB process – where do we stand.

Mr. Hole reiterated that the ordinances that you have, and we are working on, are police power ordinances, so they will go into effect regardless of the “grandfathered” possibility of some other areas of the law. He said that, as far as litigation strategy, if a suit is filed we would vigorously defend our position.

Mr. Keith said the word you used – police enforceable strategy – does that stand in the face of a First Amendment/Fourteenth Amendment challenge.

Mr. Hole said that the First Amendment concepts are those that I have described and they're going to be there regardless of any way we turn, if the applicant wants to file suit and see what comes out of it. He clarified that nude dancing is a very modestly protected form of expression and all the things we talked about tonight are ways to posture ourselves a strongly as we possibly can to deal with this.

Mr. Borg reiterated his emphasis on the model ordinance - just one example is location restrictions and he said he would use just one of the group - 1,500 hundred feet from a private or public educational facility, including child care facilities, nursing schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education, junior colleges and universities schools, which includes the school grounds but does not include the facilities primarily used for other purposes...my point is that

SPECIAL BOARD OF SELECTMEN'S MEETING
May 5, 2011 6:30PM (continued)

this is very, very comprehensive and I wish our counsel and Board would stop dismissing it...I think it is an important document and he thinks it should be used as a guideline for the development of our own ordinance.

Mr. Hole invited the gentleman to speak with him afterwards about that. He said that my second draft of that ordinance, which was my own draft, I have added in not only the concept of collateral effects but I've also added in the spatial concerns as far as schools and so on and certainly we will add in from that ordinance or any other source. He added that we are not intending, with the time I anticipate you folks will give us – eight nights from tonight, leaving any stone unturned that will be helpful to us in this process.

Mr. Fernald pointed out to the gentleman that the ordinance Mr. Hole was talking about has those types of restrictions but we have to have our own distances and so forth in them.

Liz Turner said that I have never been to a Selectmen's meeting before and I apologize for that but I'm concerned about this process. She added that I have heard people get up and speak quite clearly about their suggestions and seem to have some good ideas. She said that I don't understand what I perceive as you not really hearing or responding to what they're suggesting. She said that I'm not finding this meeting very reassuring.

Mr. Fernald said that you have to understand one thing, the lady on the left is recording everything, so we are all very diligent with what you are saying...all that is being recorded and it will be brought back to us for approval and for review – all that you folks have said will be gone over by the Selectmen and attorney.

A member of the public said that one way that I've seen that we can, if we don't outright ban these establishments in Town, we can make it such that they basically wouldn't want to come to Town because it wouldn't be profitable for them, whether it is no liquor license or no lap dances or things like that. She explained that, in Utah, they enacted a law that was found legal – they had a 10% tax on any sale to do with an adult establishment. She said that I don't know if Maine allows towns to enact separate sales taxes on top but I think, if we look at other things that we can do, if we have to allow it – basically make it so that they just won't come to Town, even if we have the zone.

Mr. Hole said that we will certainly look at whatever is legally available to give ourselves the strongest position but you should know that the State has preempted the area of taxation so we don't have a local sales tax option – we don't have a right to ask somebody to escrow their taxes.

Mr. Strong said that he would like to clarify a few things – I do support, wholeheartedly, the Board of Selectmen and the attorney to have this moratorium so you can work on it, draft it, get it tuned to Eliot so it's enforceable and will withstand the court challenge. He said that the other thing I would like to clear up is that we do not allow any nude dancing in any commercial establishment in the Town of Kittery – we have the adult entertainment zone but, even in that zone, they cannot have any nude dancing. He said that our ordinance is clear to that; it prohibits it to take place in a commercial establishment or for anybody to engage in it for profit. He added that, if there's no profit in it, then they're not going to do it. He reiterated that I do support the Board of Selectmen.

SPECIAL BOARD OF SELECTMEN'S MEETING
May 5, 2011 6:30PM (continued)

Sy Chase wondered if this moratorium was a little late in coming on – in other words, when this permit was first presented to the PB, wouldn't that have been the time to have had this moratorium, if you were going to have one – legally, is it too late.

Mr. Hole said no, it's not too late and, again, the ordinances that we are talking about are straight police power ordinances so, when those ordinances come in to effect, they will apply to any relevant establishment.

Mr. Chase said that these folks that presented this petition to have this operation, and I'm certainly not in favor of it, do they have some legal rights while we have this moratorium and maybe twist this around and get us in trouble.

Mr. Hole said that it was entirely possible that the attorneys will file a lawsuit about the moratorium. He added that I don't think we can count on not being sued regardless of any direction we turn and I think that – the moratorium says six months – we don't need that amount of time and it's incumbent upon us to move this as quickly as we can.

Mr. Fernald clarified that the application is before the PB and the PB deals with land use, if it is a restaurant and they served food, etc. – as far as nude dancing and those types of things, that is something that has to do with our ordinances that the Selectmen control.

Phil Forman said that you said there was some serious money behind this so are we talking about organized crime or the ACLU or something.

Mr. Hole said I have no idea – what I do know is that, in Westbrook, considerable money has been spent in court and, also, in renovating the building involved in Westbrook.

Mr. Forman said that it looks like they are just trying to get their foothold in Maine and maybe other towns around ought to be notified about what may be coming their way, too.

Mr. Hole said that I think that this has been in the news quite a bit.

Mr. Forman said that I would hope that they would take a lesson about what is going on here because it's got to stop – it's not right. He asked – how many people here are for this – there was no one...how many people are against this – everyone...it's obvious that we want something done and I think you guys are doing a good job and I think you are on the right road because the moratorium buys you time and that's what we need – we are going to do it right, I trust you guys, I know you will.

Mr. Fernald said that we need to wrap this up and let us do our job.

Dean Staples said that I was curious if there were any ordinances in the Town regarding a place like the Moonlight Reader being established in Eliot. He added that, to me, that place is just as offensive as any kind of nude dancing.

Mr. Hole said that you do have an existing obscenity ordinance and would have to study what that ordinance said against the facts of the Moonlight Reader.

Mr. Staples said that, if you are going to write some ordinances in the next few weeks regarding this nudity issue, then I would like to see something written that would preclude Eliot from having anything like the Moonlight Reader, saying I

SPECIAL BOARD OF SELECTMEN'S MEETING
May 5, 2011 6:30PM (continued)

know of a lot of people in the area that are trying to get rid of that place and have been for awhile.

Mr. Hole said that that was my point about the fact that we have three on the books and two proposed and we want to make sure they dovetail. He said that I don't want to mislead you folks – I said to the Chief as we walked back up, if the legal standard was, “We don't want it.”, we'd be golden, but the ballpark is different than that, as I've described longer than you want to hear about it and what we're trying to do is give you the strongest possible _____ we can.

Kelly Holloway said that you just said that you have three on the books and the new ones that you are trying to pass, but I could have sworn when I read the new ones they said that they were going to take over the other ones.

Mr. Hole said that my point was to dovetail, as several people have said, and use every possible resource in this process and my point was to, in a calm way, dovetail and come out with only, maybe, two or three total – but they will be internally consistent and so on.

Ms. Holloway said that I do want to say that, at the beginning of this meeting, I think a lot of the confusion was what a moratorium was, saying that I had never even hear it, and I thought you were trying to rush an ordinance. She said that that was part of my confusion and I don't know if that was other people's confusion.

Mr. Hole said that, in defense of myself and the Board, just a few months ago I think there was a moratorium brought forward on dispensaries so, we presumed that most folks were familiar with that. He added that that was a good point and, in the future, we should strive...

Ms. Holloway said that I have never been to anything like this before the last one, so I have been learning as I've been sitting here. She said that I am originally from Florida and I like this Town – I like the fact that we don't have anything like what we're fighting – back from where I'm from, it's everywhere, and it's nice to see us fighting it. She said that when we are talking about just banning pure nudity, we can't just ban that because they have pasties, etc., as they don't consider that nudity, so we have to make sure we have that language in there. She said that what I see is that they're waiting for us to see hat loophole they can find we may have a moratorium but they still have to apply for a construction permit so I think we have more time than just the moratorium. She said that we need to make sure all of the lingo is in there and it's very clear because of the fact that they are looking for that loophole ands, then, they were just going to run away with it and then we are in trouble, here.

A member of the public clarified that you had mentioned that there was no option to tax a business for the Town.

Mr. Hole said that there was certainly an option for taxing but the taxing has to take place within what the State law allows, which is a tax on real estate and some personal property. He added that we don't have the ability to, for example, to have what they call “local option taxes” – like a local option sales tax.

The same member asked about registration fees or licensing fees or anything like that.

Mr. Hole said that we can certainly have fees that are consistent with the regulatory effort that we have to put in to the reviewing of a place.

SPECIAL BOARD OF SELECTMEN'S MEETING
May 5, 2011 6:30PM (continued)

A member of the public said that we have been talking about the fact that they haven't gotten permission to move in or the construction permit and that type of thing – I was told last Saturday morning at 6AM that they were already moving things in. She asked how that affects us if they are already in – have they been given permission to enter the building.

Mr. Hole said that I understand that it is their building and the issue is whether they are operating a business there or not. He added that there are a whole series of permits that they will need to obtain before that happens.

9:41 PM Dutch Dunkelberger said that I just want to remind folks, about 6 or 7 years ago, we had a limitation on the number of homes that could go into Eliot – we had an ordinance on the books that other towns had tried to pass similar ordinances and it did not succeed. He added that this law firm here took it to the Maine Supreme Court and they beat it, they kept it in place for the Town of Eliot. He said that I have a lot of confidence in this law firm; they've done some good work for us in the past. He added that, as a previous member of the PB, we got some great information and great input from them. He added that, as a previous member of the PB, we have tried in the past to update our ordinances but, much like the Selectmen, the PB members meet twice a month and we try to handle the applications as well as update the ordinances – there were times when we were meeting three and even four times a month in order to keep up with the load and update the ordinances and it's tough. He said that one of the suggestions we might want to look at for the future is maybe splitting the PB up into an applications board and a PB that deals specifically with updating our ordinances and keep them up-to-date.

Mr. Hole said that I represent a whole bunch of towns, one being Freeport, and a few years ago we assisted them with the ordinance changes to have a, basically, a review board and a planning board – another town, Naples, has an ordinance review committee and their sole task is working on ordinances.

Ms. Fornier said that I don't know if the majority of people know that we are here tonight for a public hearing on specific ordinances, saying that I understand your logic and am supportive of a moratorium, but she was concerned they were bypassing things. She said that I don't think we need to worry about spending \$100,000 on legal fees to try to outsmart the other lawyers – what we need, with all due respect, is a very strong ordinance within the moratorium timeframe and I believe we could just simply ban public nudity and partial nudity that is defined in the ordinance that is a rock, saying we already have some good definitions and, as a Town, I believe we have a right to have that local law. Ms. Fornier commended the Board for coming up with the idea of a moratorium to give everyone in the Town enough time for input, a public hearing with proper notice and vote on a good solid ordinance. She said that I think people are overreacting and maybe over worried about our right as a Town to have a positive ___?___ and enforcement but we'll have to show up at the May 14th Town Meeting to vote this in.

9:47 PM Mr. Fernald declared the Public Hearing closed.

Mr. Fernald said that I need a motion from the Selectmen to put forth to the voters for a moratorium for six months on the ordinances established on nude entertainment.

SPECIAL BOARD OF SELECTMEN'S MEETING
May 5, 2011 6:30PM (continued)

Mr. Moynahan moved, second by Ms. Place, to approve bringing a 6-month moratorium on the ordinances established on nude entertainment to the voters of Eliot.

VOTE
3-0
Chair concurs

By consensus, the Board said that the Town Meeting will be on May 14th at 6:30 PM at the Middle School on the corner of Route 236 and Depot Road to vote on the moratorium.

Adjourn

The meeting closed by consensus at 9:50 PM.

DATE

Roberta Place, Secretary