

A REGULAR WORKSHOP MEETING OF THE MAYOR AND COUNCIL OF THE BOROUGH OF ANDOVER, COUNTY OF SUSSEX, STATE OF NEW JERSEY WAS HELD ON WEDNESDAY, JUNE 21, 2023 AT THE BOROUGH HALL BEGINNING AT 7:00 P.M.

PRESENT: Mayor Morgan, Council Members: Smith, Lane, Mallon, and Delfing.

ABSENT: Councilmembers Dennison and Hoag.

ALSO, PRESENT: Frank McGovern, Municipal Attorney

Mayor Morgan called the meeting to order with a salute to the flag and in accordance with the Open Public Meetings Act by advertising notice of meeting in the N.J. Herald, posting copy of notice in the Borough Hall and on the Borough website.

EXECUTIVE SESSION:

A MOTION was made by Mr. Smith, seconded by Mr. Lane to adopt Resolution to adjourn into Executive Session to discuss matters which are exempted from the public. Upon roll call the following votes were cast: AYES: Smith, Lane, Mallon, and Delfing. NAYS: None. ABSTAIN: None. Motion carried.

WHEREAS, the Open Public Meetings Act, P.L. 1975, Chapter 231 permits the exclusion of the public from a meeting in certain circumstances; and

WHEREAS, this public body is of the opinion that such circumstances presently exist; and

NOW, THEREFORE, BE IT RESOLVED that the Mayor and Council of the Borough of Andover will go into closed session for reasons of: Potential Litigation (7:02 p.m.)

A MOTION was made by Mrs. Smith, seconded by Mr. Lane to resume the public portion of the meeting. Upon roll call the following vote was cast: AYES: Smith, Lane, Mallon, and Delfing. NAYS: None. Motion carried. (7:14 p.m.)

AUDIENCE PARTICIPATION: None.

NEW BUSINESS:

Smith Street Municipal Road Grant Submission

Municipal Aid Grant - Resolution - MA-2024-Smith Street Drainage Improvements-00138

A MOTION was made by Mr. Smith, seconded by Mrs. Delfing to approve Municipal Aid Grant - Resolution - MA-2024-Smith Street Drainage Improvements-00138. There was no further discussion. Upon roll call the following vote was cast: AYES: Smith, Lane, Mallon, and Delfing. NAYS: None. Motion carried.

Resolution # R-2023-38

Resolution: Approval to submit a grant application and execute a grant contract with the New Jersey Department of Transportation for the Smith Street Drainage project.

NOW, THEREFORE, BE IT RESOLVED that the Andover Borough Council of the Borough of Andover, County of Sussex, State of New Jersey formally approves the grant application for the above stated project.

BE IT FURTHER RESOLVED that the Mayor and Municipal Clerk are hereby authorized to submit an electronic grant application identified as MA-2024-Smith Street Drainage-00138 to the New Jersey Department of Transportation on behalf of Andover Borough.

BE IT FURTHER RESOLVED that the Mayor and Municipal Clerk are hereby authorized to sign the grant agreement on behalf of Andover Borough and that their signatures constitute acceptance of the terms and conditions of the grant agreement and approve the execution of the grant agreement.

Certified as a true copy of the Resolution adopted by the Borough Council on this 21st day of June, 2023.

Plumbing Inspection Coverage – new hire – Barry Kobilarcik

A MOTION was made by Mr. Smith, seconded by Mr. Lane to approve the hire of construction sub code inspector Barry Kobilarcik for plumbing inspection coverage for Richard Beard until further notice. Upon roll call the following vote was cast: AYES: Smith, Lane, Mallon, and Delfing. NAYS: None. Motion carried.

**Andover Borough Republican County Committee email dated 6/21/23 providing:
List of Names to fill vacancy**

The governing body reviewed the list of names provided: Erin Webb, Frederick DiRenzo, and Bill Delfing. A MOTION was made by Mr. Smith, seconded by Mr. Mallon selecting Erin Webb from the list provided. There was no further comment. Upon roll call the following votes were cast: Smith, Mallon, and Delfing. NAYS: None. ABSTAIN: Lane. Motion carried. Erin Webb is selected to fulfill vacancy by appointment through to end of term 12/31/23.

OLD BUSINESS:

Liquor License Renewal: Special Condition Hearing

Mrs. Delfing motioned to approve resolution, Mr. Lane seconded. The matter was opened for discussion.

Frank McGovern opened the hearing by providing a synopsis of the concern held by the Mayor and Council relating to the evident inactivity at the location known as 136 Main Street. This is the only liquor license in town. It has been observed that for most of the year and a great part of the year no business seems to be transacting that that location. The Mayor and Council have received various complaints about it over the years. At the meeting held on 06/12/23, the Mayor and Council decided that it may be appropriate to place certain special conditions to confirm that this liquor license is used. Additionally, the Municipal Clerk in consultation with Mr. McGovern, has express some reluctance in 2022 to renew the license because it appeared, with very strong evidence, that the license may not be actively used at the location of 136 Main Street, which is a requirement for a Municipal Clerk to sign a renewal. At that time notices were provided to the license holder and a position taken by the license holder that the location was active at 136 Main Street. Even with that reluctance the license was renewed. Now again, after another year, there is very little activity at that location. Notices sent to them in the past asking that they file their license inactive have gone unanswered showing a lack of communication.

This hearing tonight is in response to the Mayor and Council expressed desire to explore a renewal with special conditions on this license. That the business must be open and operating and serving alcohol at the 136 Main Street, Andover Borough premises for a minimum of 4 days per week at a minimum of 6 hours a day. Mr. McGovern forwarded a copy of the draft resolution in consideration to Attorney Williams who is representing his client the license holder JJ8789 LLC. Mr.

McGovern closed by noting that an objection was filed and the objector, if present, may speak.

Mr. John Williams of Newton, New Jersey introduced himself as appearing on behalf of the licensee trading as "Andover Inn". He continued to introduce Katherine Rodriguez, owner since 2015, and Kyle Hanselman. Both were sworn in by Mr. McGovern to provide testimony as the hearing continues.

Mr. Williams started his testimony by asking Mr. Hanselman and Mrs. Rodriguez to confirm following statement in sum:

Is it accurate to say that during the time of February 11- July 21st that the business was open 4 days a week, Thursday through Sunday, with hours from 3-10, with a staff of about 5-7, with patronage in the range of 40-50 people? Mr. Hanselman who was standing, confirmed this statement on all parts, stating "yes" to each. Mr. Williams asked if it was accurate to say that there was no profit in the revenue because it barely broke even to cover expenses. Mr. Hanselman stated "it remained operational, not profitable."

Mr. Williams addressed correspondence from the Municipal Clerk dated 12/16/2 which states within it that the premise was closed on "July 19th". Mr. Williams stated "but in fact your restaurant was open on July 21st, is that correct? ". Mr. Hansel stated "correct". Mr. Williams continued to confirm the restaurant was closed there after due to "sliding sales into the summer and there again your gross receipts are not covering the expenses, is that right?" Mr. Hanselman agreed that is correct.

Mr. Williams clarified for all that discussion is for consideration of the 2023/2024 term and that references to activity from 01/18/23 – 04/19/23 term is the 2022/2023 term. He then asked Mr. Hanselman to confirm that during 1/18-4/19 period that the business was open essentially 4 days, but shifted the days from Wednesday to Saturday, the same hours with staff of 4-6. Mr. Hanselman agreed that is "correct". Mr. Williams patronage was approximately 40 patrons and profit from revenue the same. Mr. Hanselman agreed that is "correct" and could be "potentially less".

Mr. Williams explained that this premise was opened last year for private events in the Summer/Fall months. In the 2021/2022 license term there were 16 private events. In current, license term 2022/2023 there have been 4 private events. Mr. Hanselman agreed to both stating "correct".

Mr. Hanselman explained that coming off covid lead them to hold more private events to generate revenue. He stated they reopened in 2022 to the public establishment versus a private event place.

Councilman Smith stated that "its not up to us to determine whether or not you make a profit or a loss, but it up to you to show us that you are actually open. How are you planning on doing that?"

Mr. McGovern asked for clarity on activity between January to April. Mr. Hanselman confirmed the business was opened 4 days a week from Wednesday to Saturday, for 6 hours at day at least, hours at 3-10. Mr. Hanselman stated that social media, Facebook and Instagram, are used and documented in their transcripts. Menus, food, drink, sports events, as well as the hours are there. Mr. Hanselman explained there are "three renditions of this building being opened". When first purchased in 2016, after covid 2021 and 2023. "There have been three you could say attempts to make this business both profitable, but at the same time it's in our best interest and the towns best interest to be open and we understand that".

Mr. Williams asked Mr. Hanselman to list what goes into opening a premise: purchase inventory for all alcohol and food, they have to make sure the facility is clean on regular schedule, purchase new equipment, paper goods, napkins, toilet paper, advertise for staff, hire staff. The minimum level of staff needed is 6-8 people. To include, 2 bartenders, 2 waitresses, 1 dishwasher, 1 chef and 1 sous chef. Back up is always needed. Administrative requirements were listed as: establish a payroll company, liability insurance, workman's comp, pay taxes, to reopen a new drink menu is planned to attract patrons. Mr. Williams asked Mr. Hanselman to explain what goes into staying open. This was listed as: payroll increases, minimum wage cost differences, food cost is a burden, alcohol cost, staff turn over and training as people will leave without tips without patrons, repair and maintenance to the building, advertisement and new menu. Mr. Williams asked Mr. Hanselman to go through some of the difficulties to open more hours and days. Mr. Hanselman stated "the difficulty in opening for more hours and days at this time is the unpredictability of the revenue that can be generated." Mr. Hanselman explained "Cost and Staff" are their issues. Mr. Williams asked if the business is still experiencing difficulties from covid, generally speaking. Mr. Hanselman stated "No". He added that cost of food is there concern now. Mr. Williams added that inflation is a concern. Mr. Williams asked Mr. Hanselman to explain the difficulties in hiring a chef. Mr. Hanselman stated that the "chef is probably the key to any restaurant". Finding a chef, Mr. Hanselman has been the most challenging aspect". They post ads on Indeed and social media to attract people. He confirmed they found a chef for this location who is developing a menu for the upcoming launch. Mr. Williams confirmed that all the testimony was in consultation with Mrs. Rodriguez. Mr. Hanselman confirmed that is true. Mr. Hanselman reported that there would be change with his opening to achieve profitability. Mrs. Rodriguez had nothing to add.

Mr. McGovern asked when this launch would be happening. Mr. Hanselman answered "the menu should be developed next week we hope to open the first week in July". What does that mean in terms of days/hours. Mr. Hanselman said they would be revisiting the same schedule from earlier this year. They would like to open at some capacity at least a Thursday, Friday and Saturday schedule, and if it does well, beyond that."

Councilman Lane asked how they can retain the chef at only three days a week. Mr. Hanselman explained the chef is a salaried employee. Their intention is to provide assistants who allow the business to grow.

Mr. McGovern asked what measures they are taking to purchase inventory. Mr. Hanselman reported that they "have been open since February and have the inventory, but not the food". He repeated they have been open since February so they have that inventory. Mrs. Rodriguez stated "we closed briefly in April" to which Mr. Hanselman repeated that statement "we closed briefly in April to find this chef".

Mrs. Delfing asked if just the bar area is open. Mr. Hanselman stated "no the kitchen has been open all through February through April". Mr. Lane stated that the business was closed for over 40 days. Mr. Williams confirmed that the opening February 11 – to July 21st 2022, then January 18th – April 19th 2023 and there may be some intermittent attempts". Mr. Hanselman agreed with Mr. Williams including "there are always attempts it just depends on whether they are successful attempts".

The comments were opened to the council and public.

F. William LaVigne, Andover New Jersey stated he is a business owner and is from town. He was at this business Friday night and they were open with only 3 patrons. They were told while there that food would be starting this weekend by the bartender.

There was no food that night. He is happy they are going to be open and he thinks it's necessary for the other businesses in town. He recollected that this location has been historically popular with a lot of traffic. He continued to state that with this business there have been times when the sign said they were open, but they were not as he was unable to gain access to the building. He would very much like them to be open and serve the community. Mr. Hanselman stated that "on the door not being opened, he takes that seriously and will correct that going forward."

Albert Parisella, identifying himself as a local business owner, he would like to see a business like this do very well and be opened. He stated that the liquor license is a valuable asset for a town and it should be utilized much more than it is. He didn't understand how the chef is the focus and the revamping several times seems questionable. He felt a liquor license should be open at least 6 days. This business being open would help other businesses around it to do well. Mr. Williams asked him what business he owned. Mr. Parisella stated "Lake House Café".

Mr. Hanselman explained that the chef is important here because alcohol is being served and that food with the alcohol is imperative.

The Mayor questioned how a restaurant that is opened three days a week can be successful. Mr. Hanselman reported that their goal is to be open four or five days a week. Mr. Williams provided the names of a few restaurants in Newton that operate on a similar schedule. It was noted, none of them have a liquor license.

Mr. Williams stated that the Crossed Keys Inn would have no recourse, but to appeal the decision if the current special condition resolution was approved. He proposed alternate language for the resolution. Five hours, three days a week. If they are unable to open for the terms they will go into "inactive status". It was clarified by Councilman Smith, that if the license goes "inactive", they cannot serve alcohol at their facility located in Green Township. Mr. Williams agreed.

The discussion languished in the minutiae of the language proposed by Mr. Williams. Mr. Williams pontificated to the importance the use of the words "continuously" and "active". Mr. Williams was seeking precise language to avoid any triggers which could place the business in violation. He clarified his expectation of the effect of his proposed language in this statement "If we know for a block of consecutive four weeks, there is going to be any one of those weeks where the conditions are not met or can't be met, they will go inactive".

Councilman Smith asked them if they understood that their business hours are not conducive for residents to patronage the business. The inconsistency is an issue. Mr. Williams took this opportunity to tell the Borough Council that he has personally experienced inconsistencies in Borough work and that consideration of his client's efforts should be noted.

Mr. McGovern explained that this business was once the centerpiece of town and the Council would like to see that again.

Mrs. Rodriguez stated she wants more than a bar, if the town wants just a bar she can become "The Greeks". Her desire is to make it successful.

The attorneys continued to scrub the language and meaning of the meaning of four weeks. Mr. McGovern asked, "Is the four weeks a measure"? Mr. Williams agreed it was and that the licensee would file as "inactive" on their own. If they don't file "inactive" that is a violation.

Mr. McGovern attempted to clarify the measure by explain that if the license holder does not meet the standard in a four-week period, then they have to apply for

inactive status. The Mayor was concerned that the license holder will only activate the license to service the business that is owned in Green Township through catering permit. Mr. Williams told the Mayor they already can. Mrs. Rodriguez asked for the benefit of the doubt. She stated that “we will, on our word, we will open Thursday, Friday and Saturday with our best foot forward to serve food and beverage. If business is booming we’ll open on Wednesday, maybe even Sunday”. Mr. Williams stated, “incontrovertibly if the business wanted to open seven days a week they could serve beer and hot dogs from a steam cart if they wanted to and technically be open”.

Councilman Smith stated that the town would like to see the license used. He hears from residents in town often about the business not being open. If the license holder cannot make a success of it, that’s the license holders’ problem. He stated that if the license was honestly being used in the last year, they wouldn’t be here tonight. The Mayor continued to state, “We want to see the license used so that Beth is not put in a position to renew the license as if it’s being used in the Borough when its not”.

The attorneys again worked on the language of the resolution and the requirement of filing as inactive. There was some discussion that the status would be filed online on the POSSE system. Mrs. Rodriguez reported that the system is just the place where they pay their application fees. Mrs. Brothman, the Municipal Clerk, stated, “Yes, but the first of five questions you must answer to renew your license is ‘are you actively using this license’ and on May 10 when you filed your renewal, you were not open”.

There was some further discussion wherein the Mayor and Council processed their understanding of the proposed language and counsel on both sides worked on the final copy.

A MOTION was made by Mrs. Delfing, seconded by Mr. Lane to approve a Resolution approving renewal of liquor license #1901-33-001-010 with special condition held by and in the name of JJ8789 LLC dba Crossed Keys. Upon roll call the following vote was cast: AYES: Smith, Lane, Mallon, and Delfing. NAYS: None. Motion carried.

Mr. Williams for record had no objection to the passing of this resolution.

Resolution #R-2023-39

RESOLUTION APPROVING RENEWAL OF LIQUOR LICENSE

WHEREAS, application was made to the Mayor and Council of the Borough of Andover, County of Sussex and State of New Jersey as the issuing authority for renewal of Plenary Retail Consumption Class “C” License 1901-33-001-010 held by and in the name of JJ8789 LLC in compliance with the laws of the State of New Jersey, resolutions and regulations of the Borough of Andover and the laws and rules of the Alcoholic Beverage Control Commission; and

WHEREAS, any requisite advertising having been done and hearing having taken place on June 21, 2023 at 7:00 p.m. at the Borough Hall;

WHEREAS, concerns were raised by the Borough prior to the renewal of the subject license for the July 1, 2022 through June 30, 2023 year that it was observed that the premises to which the license is assigned, being premises operated under the name of Crossed Keys Inn located at 136 Main Street in Andover Borough, was not open for business for the majority of the 2021-2022 license year; and the Borough’s concerns having been communicated to the licensee JJ8789 LLC prior to the last renewal; and

WHEREAS, despite these concerns having been so expressed to the licensee, it has been observed that, once again during the 2022-2023 license term, the establishment has not been open for business and serving alcohol on the premises for most of the year, and at times has been closed for several months or more in a row; and

WHEREAS, no protest against the renewal of said license having been received in writing by the Borough Clerk, it is hereby

RESOLVED that Plenary Retail Consumption Class “C” License No. 1901-33-001-010 held by and in the name of JJ8789 LLC be and is hereby renewed for a period of one year, from July 1, 2023 through June 30, 2024 SUBJECT TO THE FOLLOWING SPECIAL CONDITION: If the license is not actively used at least three (3) days a week for five (5) hours per day for a period of four (4) weeks continuously, the Licensee will immediately file an amendment to its RETAIL LIQUOR LICENSE APPLICATION to put the license in active status;

BE IT FURTHER RESOLVED that the Borough Clerk be and is authorized to issue, sign and deliver such documents as appropriate in connection herewith.

ANY OTHER BUSINESS:

1. The Mayor inquired as to the status of welcome packet for new residents. The Clerk is working on this.
2. Mr. Mallon was informed that he is the liaison for Stormwater work projects that are coming our way.
3. The Mayor asked the Council to make sure the portion of the water rates ordinance pertaining to rates for new installation are reviewed.
4. The Mayor reported that Newton Township ordinance 2023-15 addressing inoperable vehicles may be something the Borough would want to consider.
5. The Mayor reported that one of the cannabis applications at the meeting held on Monday, 6/19 was rejected and one was approved.
6. The address the fact that Mrs. Delfing’s retirement not only leaves a vacancy in Council, but also for Council President. ***R-2023-40 - Council President Appointment***
A MOTION was made by Mrs. Delfing, seconded by Mr. Mallon to approve ***Jason Lane*** as Council President through end of year 12/31/23. Upon roll call the following votes were cast: YES: Smith, Mallon, and Delfing. NAYS: None. ABSTAIN: Lane. Motion carried.
7. The Mayor asked if the Council has considered what to do about replacing the OEM Mr. Hoag at the end of his annual term. Mr. Lane reported that he has completed the necessary FEMA certifications and may be considered if the terms are accepted when that time comes.
8. The Mayor asked if there was any movement from the finance committee on the investigation into better interest rate CD’s. The Clerk will forward the information provided by Mr. LaVigne on 6/13/23 to the CFO in Mr. Dennison’s absence.
9. The Mayor reported that the Municipal Engineer will be submitting for Smith Street again to address the water damage to the roadway.
10. The Mayor mentioned that Hampton Twp just passed ordinance 2023-12 addressing liability insurance. He thought the Borough should take a look at that.
11. The Mayor continued his report by asking the Park Committee how they will address the maintenance and upkeep of the minipark, specifically the gazebo there needs to be power washed, repaired and stained. He also mentioned the park building needs to be power washed.
12. The Mayor turned his attention to the maintenance of the area in Memorial Park along the roadway in the soccer field. He reported that section of the field needs to be cut down, the sapling removed and the debris cleared. This work is too much for the park employee Tom Smith.
13. The Mayor asked if Morris Asphalt could be contacted for estimate for the Memorial Park parking lot.
14. The Mayor asked if the Borough should consider a false alarm ordinance specific to response by the ABFD to commercial locations like cannabis commercial and other commercial alarmed businesses.

15. The Mayor reported that the water committee should be holding a meeting in the near future to report on the status of the lead survey. The clerk will notify the water admin to schedule a meeting with Tim Hess, Operator, Mayor Morgan, Councilman Smith.
16. He continued to report on lead survey stating that he attended a webinar on lead lines replacement and mentioned that the State of NJ instituted requirements on galvanized lines that are not in the federal guidelines. He will address that with them.
17. The conversation turned to the roof repair needed at Borough Hall. Up and Above will be contacted about this.
18. The Mayor reported that he sent a letter to the ABFD commending their efforts and acknowledging the tragic events on 5/26 wherein the ABFD provided mutual aid to Andover Township.
19. The Mayor reviewed, with the Council, a bank balance report as prepared by the CFO at his request.
20. The Mayor reported that he attended the 8th Grade Graduation at Long Pond School.

AUDIENCE PARTICIPATION: None.

PAY THE BILLS:

A MOTION was made by Mr. Lane, seconded by Mr. Mallon to pass the following Resolution: BE IT RESOLVED by the Governing Body to approve the payment of all vouchers on the bill listed June 21, 2023, submitted by the Chief Financial Officer for payment. Upon roll call the following votes were cast: YES: Smith, Mallon, Lane and Delfing. NAYS: None. ABSTAIN: None. Motion carried.

MOTION TO ADJOURN:

A MOTION was made by Mrs. Delfing, seconded by Mr. Lane to adjourn the meeting. AYES: Lane and Mallon. NAYS: Smith. ABSTAIN: Delfing. Motion carried.


Beth Brothman
Municipal Clerk