

## **MINUTES**

Special Meeting of Town Council  
of the Town of Morristown  
sitting as the Municipality's  
Alcohol Beverage Control Board

Thursday, March 31, 2016  
7:00pm

Continued and concluded on  
Tuesday, April 12, 2016  
6:30 p.m.

### A. Statement of Compliance with Open Public Meetings Act

Minutes of a Meeting of the Town Council ABC Board of the Town of Morristown, held on Thursday, March 31, 2016, in the Council Room of the Morristown Town Hall located at 200 South Street, Morristown, New Jersey, beginning at 7:09 p.m., prevailing time.

Council President Armington presiding.

Town Clerk Kevin D. Harris read the following statement: Notice of this meeting was provided in compliance with the Open Public Meetings Act in accordance with a Resolution adopted by the Council of the town of Morristown at the Organization Meeting on January 5, 2016 setting forth the time, date and location of each meeting. A copy of the Resolution was distributed to the Morris County Daily Record and the Star Ledger, filed with the Town Clerk, posted on the Bulletin Board at the Municipal Building and mailed to any person who has requested and prepaid the established fee for such meeting notice. In addition, Notice of the Meeting was provided to the Petitioner, his legal counsel and anyone who filed a Notice of Objection with the Office of the Town Clerk.

### B. Roll Call

#### **ATTENDANCE:**

**PRESENT:** Ms. Davis, Ms. Deeb, Mr. Elms, Ms. Foster, Ms. Harris, Mr. Iannaccone, Council President Armington

**ABSENT:** None.

**ALSO PRESENT:** Elnardo J. Webster, II, Esq., &

Joni Noble McDonnell, Esq., Assistant Municipal Attorneys, Town of Morristown; Robert C. Williams, Esq., Attorney for the Petitioner, Mr. David Walsh, on behalf of Dehart Associates, LLC, Applicant.

- C. Moment of Silence – the Town Clerk led the Assembly in a Moment of Silence.
- D. Pledge of Allegiance – Council President Armington led the Assembly in reciting the Pledge of Allegiance.
- E. Presentation of Statements, Testimony or Direct Evidence.

**Application of Dehart Associates, LLC, t/a Tashmoo for a Place-to-Place Transfer (Expansion of Premises) from 8-10 Dehart Street, Morristown, New Jersey to 8-10 Dehart Street. Morristown, New Jersey.**

**License Number: 1424-33-022-010**

Council President Armington turned parliamentary control of the meeting over to Elnardo J. Webster, II, Esq., who announced that he would serve as the facilitator & referee (if necessary).

Mr. Webster asked the Town Clerk how the letters of objections would be preserved and included in the record. The Town Clerk replied that the original notices provided are maintained in the Office of the Town Clerk, and that copies were provided to each Council Member and to the Attorney for the Petitioner. Mr. Webster advised the Town Clerk that the objections be amended to be included as an Exhibit when the record is produced. The Town Clerk stated that the objections would be noted as Exhibits.

Mr. Webster read into the record N.J.S.A. 33:1-24 which outlines the statutory requirements for the Application for a Transfer of a Plenary Alcoholic Beverage License. Mr. Webster announced that the Applicant has filed an application for an Expansion of Premises. Mr. Webster also read into the record N.J.A.C. 13:2-2.7, which outlines what the municipal issuing authority must do when an application is presented and notices of objection are timely filed.

Mr. Webster stated that the Applicant has provided the Council/ABC Board with the Application and the Site Plan & the modified proposal. Mr. Webster advised Mr. Robert C. Williams, Esq., to place copies of the modified proposal on the back bench for members of the Public. Mr. Webster announced that a sign-in sheet was being circulated and that anyone who wished to speak would have to sign. Mr. Webster further stated that in approximately five minutes; the sign-in sheet would be collected. Mr. Webster then allowed Mr. Robert C. Williams, Esq., Attorney for the Applicant if he wished to make any opening remarks.

### **PRESENTATION BY PETITIONER**

Mr. Williams stated this process began back in April 2013 when the license holder applied to the Council/Board for a Place-to-Place Transfer, for expansion from 8 Dehart Street to 8-10 Dehart Street which would include expansion to a new premises adjacent to the original property. Mr. Williams then stated that the application for the expansion was approved by the Town Council/ABC Board in May 2013.

Mr. Williams referenced as “**Exhibit A**” which the Town Clerk this evening has marked as “**Exhibit P2**” (Petitioner’s Exhibit 2) for identification; written plans for the expansion which were submitted in April 2013 to the then Town Clerk, Matthew Stechauner which Mr. Williams stated that he had Mr. Stechauner sign for. Mr. Williams stated that the existing structure located at 10 Dehart Street would be removed and the entire premises would be developed with features such as an: outer courtyard and a building. Mr. Williams stated that one of the “unique” features of this expansion plan would be a “retractable roof” on half of the building; as well a loft on the second floor with small bar with limited seating. Mr. Williams stated that the overall goal of the “Plan” was a bar/restaurant with indoor and outdoor seating and a loft on the second floor. Mr. Williams noted that the original architect, Mr. Raymond Caselli was no longer associated with the project and would not be speaking at this hearing.

Mr. Williams stated that after the plan was approved; the matter was referred to the Planning Board and after extensive conversation and informal meetings with the Planning Board as well as with others in Town who expressed interest in what was to be developed; the applicant is returning to the Town Council/ABC Board for approval of a smaller expansion.

Mr. Williams stated that what the Applicant seeks fro, Council/Board this evening is a smaller building. However, Mr. Williams stated that under the present State Alcoholic Beverage Control Regulations; an applicant cannot “de-license” any part of the premises and would have to come back before the Town Council/ABC Board to “de-license” the entire premises. Mr. Williams stated that what is being presented tonight is the original plan with “tweaks” to make it a better plan. Mr. Williams stated that the “Plan” being presented this evening which he called “**Exhibit A2**” would call for a smaller building not extending to the boundary of the property line in the rear; and where a quarter of the building would be removed and as Mr. Williams noted; this Plan if approved can be submitted to the Planning Board without any requests for approval of variances.

The Town Clerk advised Mr. Williams that the item that Mr. Williams had marked as “**Exhibit A2**”; the Town Clerk has marked as “**Exhibit P1**” (Petitioner’s Exhibit 1) for Identification. Mr. Williams expressed that he had no objection to that entry.

Mr. Williams noted that this expansion has already been approved. Mr. Williams stated that he wanted to make it to Council/Board Members and the public that if for some reason, the modified plan was not approved; the original plan was approved in May 2013 and the Applicant could act on developing that plan. Mr. Williams stated that Applicant does not want to act on the original plan and would rather have approval on the modified plan.

Mr. Williams then introduced as his first witness, John Lyons, whom Mr. Williams stated that he (Mr. Williams) would qualify as his expert and that Mr. Lyons was the Architect on the Project.

Mr. (Elnardo) Webster asked Mr. Lyons to state his name (spelling his last name), and providing his address. Mr. Lyons provided same.

Mr. Webster next asked Mr. Lyons to describe for the Council/Board his qualifications to act as an expert. Mr. Lyons complied and provided for the Council/Board his qualifications.

Mr. Webster then asked the Council/Board that Mr. Lyons’ testimony before the Council/Board be accepted as “expert testimony”; Council President/Board Chairman Armington stated that any testimony would be

accepted as same.

Mr. Williams then questioned Mr. Lyons who testified that he prepared the modified “Plan” (“Exhibit P1”). Mr. Williams then asked Mr. Lyons to explain to the Council/Board what changes are contained in the modified “Plan”.

Mr. Webster asked if Mr. Lyons was going to present a comparison of the two Plans submitted (the one in 2013; and the one before the Council/Board this evening). Mr. Lyons stated that he wished to quickly discuss the original Plan (Exhibit P2); then go into the modified Plan (Exhibit P1) showing differences and changes. Mr. Williams stated that as each plan contains several pages; the pages would be referred to as “Exhibit P1A”, et seq..

Mr. Lyons then referenced “Exhibit P2” (the original “Plan”), where he discussed on the first page of the original “Plan” (P2A); the building, both interior and exterior, front and back as well as the second floor. Mr. Lyons noted that the retractable roof would have been over the front and the exterior courtyard. Mr. Lyons then addressed the second page (P2B); showing the original elevations (front and side) (on Dehart Street), the entry doors into the building and windows on the second floor.

Mr. Lyons then turned to the modified “Plan” (“Exhibit P1”) where one difference is the pages in the modified “Plan” contained a chart in the upper right hand corner. Mr. Lyons stated that the proposed seating in both plans has not changed. Mr. Lyons stated that there would be 44 bar seats and 184 other seats for a total seating plan of 228 seats. Mr. Lyons also stated that 4 tables in the loading area had been removed to insure that the number of seats matched.

Mr. Lyons discussed how in the original “Plan”; a variance would be needed from the Planning Board for a “10 foot buffer” in the rear corner of the property. Mr. Lyons noted that in the modified “Plan” the variance would not be required because the plans for the kitchen had been modified where in the kitchen had been “stepped in” in that corner. Mr. Lyons also the trash removal and how trash would be removed. Mr. Lyons referenced a dedicated 14’x7’ dumpster enclosure space off of the alleyway where garbage could be removed.

Mr. Lyons stated that the outdoor courtyard area in the modified “Plan” would be bigger because seating space in the bar and restaurant space on the first floor interior had been reduced. Mr. Lyons cited the first floor interior which is the “main” bar and restaurant area with the restrooms and kitchen all being similar to that in the original “Plan”. Mr. Lyons noted that the second floor was also similar in that there is only a partial second floor with table and chairs. Mr. Lyons noted that the original “Plan” had a more substantial bar area on the second floor; however, the modified “Plan” only allows for 4 bar seats on the second floor. Mr. Lyons noted that the second floor would serve more as an “overflow” area for lunch or dinner.

Mr. Lyons noted other changes including, but not limited to:

- (i) Loading Zone off of Dehart Street which includes a 14’ swing open gate. Mr. Lyons stated that it is hoped that this would help alleviate congestion on Dehart Street.
- (ii) Proposed outdoor bar in the courtyard space with 14 seats and a kitchen area with gas grills which would only be operational during the 4 months of Spring/Summer/Fall.
- (iii) On the first page (P1A), Mr. Lyons stated that it was thought that overhead doors that would open during summer months would afford an “indoor/outdoor” feel as well as two moon roofs. Mr. Lyons also discussed windows and doors on the first and second floor
- (iv) On the second page (P1B), Mr. Lyons discussed the left and right side elevation as well as the enclosed area for trash. As well as windows and building materials on the side of the building.
- (v) Mr. Lyons asked Council/Board Members to note that the modified “Plan” has square footages displayed. Mr. Lyons noted in the original “Plan” that the interior first floor area was 6,679 square feet; and on the modified “Plan”; it is 6,019 square feet. On the second floor interior, Mr. Lyons noted that that the modified “Plan” calls for a bigger second floor in that the original “Plan” had an area of 1,987 square feet and the modified “Plan” calls for an area of 2,021 square feet. Mr. Lyons emphasized that the overall area of the interior in the modified “Plan” was 620 square feet smaller than in the original “Plan” without the courtyard.
- (vi) Mr. Lyons noted that the original “Plan” allowed for an outdoor courtyard area called for an area of 1,200 square feet; while the modified “Plan” allows for an outdoor courtyard area that is 2,200 square feet. Mr. Lyons noted that this is accomplished by making the

interior smaller.

Mr. Williams noted that there would most likely be questions asked by Council/Board Members on the expansion of the basement area. Mr. Williams asked Mr. Lyons to expand or provide an explanation for same. Mr. Lyons referenced the third page of the modified "Plan" (PIC) where he noted that there would be no public access to the basement; that it would be used for storage only. Mr. Lyons further noted that the basement square footage was increased from 3,699 in the original "Plan" to 5,976 in the modified "Plan".

Mr. Williams noted that a prior hearing during the presentation of the original "Plan"; a question constantly arose about a "dance" floor. Mr. Williams further noted that in the original plan; there was a condition that no entertainment area would exceed 30%. Mr. Lyons stated that there is no dedicated dance floor or entertainment area. Mr. Williams stated that the Applicant would have no problem allowing that condition to carry over into consideration of the modified "Plan".

Mr. Williams then stated that a question previous arose about speakers in the outdoor courtyard area. Mr. Lyons stated that there would be no amplified sound devices in the outdoor courtyard area.

Mr. Williams then stated a question about outdoor courtyard lights. Mr. Lyons answered the question and noted that the lighting shall be the same as in the original "Plan".

Mr. Williams next asked about the equipment and maintenance and the layout of the outdoor kitchen area. Mr. Lyons replied that it would be maintained by gas grills used only during the "summer" months. Mr. Williams asked if it would be only be hot dogs and hamburgers primarily served. Mr. Lyons stated that was affirmative.

Mr. Williams then stated that he had no further questions of Mr. Lyons at this time regarding the initial change of plans; and made Mr. Lyons available for Council Questions.

## **PETITIONER’S WITNESSES PRESENTED**

**Mr. John Lyons** – Architect, Lyons McConnell Architectural Construction, 27 Dehart Street, Morristown, New Jersey.

- Master’s Degree in Architecture from New Jersey Institute of Technology.
- Licensed Professional Architect in the States of New Jersey and Pennsylvania.
- Has appeared as an expert before numerous boards and commissions throughout the State of New Jersey.

**Mr. David Walsh**, 2 John Glenn Road, Morristown, New Jersey, Principal of Dehart Associates, LLC

## **PETITIONER’S EXHIBITS PRESENTED**

P1 (A2) – Revised Plan presented for Town Council Consideration – March / April 2016, prepared by Architect John Lyons.

P1A – first page of the modified “Plan”.

P1B – second page of the modified “Plan”.

P1C – third page of the modified

P2 (A) – Original Plan presented and approved by the Town Council as the Municipality’s Alcohol Beverage Control Board – April / May 2013, prepared by Architect Raymond Caselli.

P2A – first page of the original “Plan”.

P2B – second page of the original “Plan”.

P3 – Revised Plan based on suggested modifications and amendments made at the March 31, 2016 meeting and presented to Council on April 12, 2016, prepared by Architect John Lyons.

**OBJECTION EXHIBITS** – As instructed by Mr. Webster, the Town Clerk noted the following objections into the Minutes and the Record of the Meeting.

- O-1: December 29, 2015 Written Objection of John and Ruth Butler, 35 Community Place, Morristown, New Jersey
- O-2: December 29, 2015 Written Objection of Cynthia Geoffroy, 27 Community Place, Morristown, New Jersey
- O-3: December 29, 2015 Written Objection of Tim Reuther, 51 South Street, Morristown, New Jersey
- O-4: December 30, 2015 Written Objection of Roseann Loia, 40 West Park Place, Morristown, New Jersey
- O-5: December 29, 2015 Written Objection of Lee Delaporte, 50 DeHart Street, Morristown, New Jersey
- O-6: December 29, 2015 Written Objection of Vincent T. Zuza, 40 West Park Place, Morristown, New Jersey
- O-7: December 29, 2015 Written Objection of Dave Nagy, 22 Colles Avenue, Morristown, New Jersey
- O-8: December 30, 2015 Written Objection of Ravitte Ginsberg, 38 DeHart Street, Morristown, New Jersey
- O-9: January 2, 2016 Written Objection of Richard Herburger, 21 Community Place, Morristown, New Jersey
- O-10: January 6, 2016 Written Objection of Don Ginsberg, 38 DeHart Street, Morristown, New Jersey
- O-11: March 14, 2016 Written Objection of Marie Rozan, 40 West Park Place, Morristown, New Jersey

O-12: March 15, 2016 Written Objection of Sergio Burani, 38 DeHart Street, Morristown, New Jersey

O-13: March 29, 2016 Written Objection of Donna B. McNamara, 20 Colles Avenue, Morristown, New Jersey

### **COUNCIL MEMBERS QUESTION AND ANSWER PERIOD**

Council President Armington asked for an elaboration as to the request for change in times for operation. Mr. Williams stated that the 11:00 p.m., closing time would be impossible in light of the money that the Applicant is willing to spend. Mr. Williams did note that the State ABC Regulations allow the Council/Board to place conditions on every year which can be modified after evaluation from year-to-year. Mr. Williams stated that for a first one year period; there would be no alcohol served after 11:00 p.m., in the outdoor courtyard area and 12:00 a.m., in the interior with the exception of 10 evenings to which Mr. Williams provided a list to Mr. Webster earlier during the day on March 31, 2016, including: 3 Saturday nights in June; Halloween, Thanksgiving Eve (Wednesday) and the Friday and Saturday after Thanksgiving, March 17, December 31 & SantaCon (a festival day when people dress like Santa Claus or other Christmas figures and have a parade and other activities). On those evenings, Mr. Williams stated that the Applicant would like to have last call at 1:30 a.m., with closing at 2:00 a.m.. Council Member Deeb asked if Mr. Williams had a date for SantaCon to which Mr. Williams stated that it varies from year to year.

Council Member Foster asked for a clarification of closing times on those 10 evenings to which Mr. Webster replied: last call at 1:30 a.m., closing at 2:00 a.m.. Mr. Williams agreed with Mr. Webster.

Mr. Webster advised Mr. Williams that it was Mr. Webster's understanding that the applicant was seeking an 11:00 p.m. closing time, Sunday through Thursday and 12:00 a.m., on Friday and Saturday. Mr. Webster asked for clarification. Mr. Williams replied that the Applicant is seeking a uniform closing time which is a "must" (anything else would be a nightmare). Mr. Williams asked that with the exception of the 10 days; that it be 11:00 p.m. (outdoor); and 12:00 a.m. (interior). Mr. Williams stated that anything else would be logistically impossible. Mr. Williams asked the Council/Board to note that there is still approximately a two year period from the time of approval to the time of opening.

Council Member Iannaccone asked Mr. Williams if his client was taking a risk in the sense that if the Council/Board were to approve the hours annually and then the Applicant spends money based on those conditions only to have Council perhaps “downwardly” modify those conditions. Mr. Williams stated that Council can always change the hours. However, the change must be “necessary and proper”; and that changing hours has a higher standard. Mr. Williams stated that the change cannot be arbitrary; there must be grounds. Mr. Williams stated that if Council makes its decision based on “necessary and proper” grounds; the State ABC will most likely sustain. Mr. Williams stated that the Applicant is willing to go forward with the original “Plan”.

Council President Armington stated that following up on Council Member Iannaccone’s statement; that Mr. Williams’ client always has a right of appeal. Mr. Williams agreed and stressed the outdoor courtyard area is a wonderful attraction as not a lot of business have that in Town.

Council President Armington asked Mr. Williams as to what language is in the Town Code as to the maximum occupancy within the 2,200 square foot outdoor courtyard area. Mr. Lyons stated that he cannot make an accurate determination. Council President Armington stated that because this area is larger and his concern is that if there is a large number of people in the courtyard and the police have to be called to enforce the noise ordinance. Mr. Lyons stated that in the modified “Plan”; there are 55 seats in courtyard (15 at bar). Mr. Lyons further stated that he is not sure if those seats are fixed. Mr. Williams stated that “common sense” might dictate that the seats and tables are not fixed.

Council Member Iannaccone inquired that if this a restaurant with fixed seating then why is the Applicant requesting to be open until 2:00 a.m., on those 10 evenings. Mr. Williams replied that these are special times and are sensitive to select people (i.e., Thanksgiving → college kids come home and meet up with friends).

Council President asked if the kitchen area in the outer courtyard would be fixed. Mr. Lyons stated that only the counter would be fixed; not the grills.

Council Member Iannaccone asked that in the original “Plan” variances would be required of the Planning Board; and if the Plan was modified,

would that avoid the need for variances. Mr. Williams replied yes, but the idea is to have the most viable plan as well. Council Member Iannaccone inquired as to the noise levels and sound variables. Mr. Williams answered no, but stated that obvious the “Plan” would have to comply with noise ordinances. Council Member Iannaccone followed up by asking that if there are more people in the outer courtyard; wouldn’t that cause additional noise. Mr. Williams stated that it would, but that the Applicant would make every effort to comply with the noise ordinance, or the establishment would be subject to a visit and possible summons from the police.

Council Member Deeb asked what happened to the “retractable roof” area and why did the Applicant deviate from that in the modified “Plan”. Mr. Williams deferred to Mr. Lyons who stated that the decision was made to go to a more traditional roof. Council Member Deeb asked if the “retractable roof” offered a better manner of noise control. Mr. Williams replied that it would, and that is what would be available with a traditional roof. Council Member Deeb stated that a “retractable roof” outdoors would most likely curb sound especially when there are a lot of people outdoors. Mr. Williams agreed.

Council Member Iannaccone asked were any reports on sound review submitted to the Planning Board. Mr. Williams stated that he did not know. However, Mr. Williams stated that there has never been a formal hearing on the matter before the Planning Board. Mr. Williams stated that all meetings were held informally before a Planning Board sub-committee. Mr. Webster stated that to his knowledge; there was never a determination by the Planning Board that the application was approved as complete, only that there was a review. Mr. Iannaccone reminded the Council/Board that the Members are not sitting this evening as Town Council, but as the Municipality’s ABC Board and that the Board’s authority is limited to Title 33 of the New Jersey Statutes or Title 13 of the New Jersey Administrative Code. However, Mr. Williams stated that in the spirit of openness has the Applicant showed the Board the entire picture so they could have perspective. Council President Armington asked for an opinion from the Town’s Legal Counsel. Mr. Webster stated that the Planning Board process to date has been informal; that no application has been presented, no testimony heard or evidence presented. Mr. Webster stated that Mr. Williams is correct.

Council Member Deeb asked Mr. Williams about the present seating capacity of Tashmoo. Mr. Williams replied 70. Council Member Deeb asked if the occupancy capacity presented in “Exhibit P1” include Tashmoo or only the expansion. Mr. Lyons replied that it referred only to the expansion (10 Dehart Street). Mr. Williams stated that the idea was to match seat for seat; it was just reconfigured. Council Member Deeb inquired about the outdoor courtyard and asked if there was a plan to operate the outdoor courtyard in the cooler months and would a variance be required. Council Member Deeb also asked about awnings and roof covering.

Council President Armington asked about the Place-to-Place transfer requiring connecting properties. Mr. Williams replied by stating that there is no requirement that the properties connect as long as both areas are under the exclusive control or has possessory control over the licensed premises. Mr. Williams stated that the buildings are adjacent and the alley connects them. Mr. Webster stated that there was some confusion in the sense that it appeared that the space that possessory control was being exercised over is the alleyway. Mr. Williams referred all to view both Plans showing the alleyway. Mr. Webster stated that when he looked at the modified “Plan” (P1A); that all of 8 Dehart Street was not under the exclusive control of Tashmoo. There is other property there. Mr. Webster asked what is the extent of the Applicant’s control of 8 Dehart Street, in that is it the entire building. Mr. Webster stated that it was his understanding that there was some connection from 8 Dehart to the alleyway and he is having difficulty seeing the nexus. Mr. Williams stated that it does not matter as long as the Applicant has exclusive control.

Council Member Deeb asked if the present structure at 10 Dehart Street would be raised. Mr. Williams replied in the affirmative and that a completely new structure would be built.

Council President Armington stated that it was his understanding that on adjoining properties; the adjoining boundary requires the side lot buffer to match the buffer of the adjacent zone and the adjacent zone requires a 10 foot side lot. Council President Armington stated that he believed that it had to be a full 10 foot buffer. Council President Armington stated that shall be addressed by the Planning Board at the appropriate time.

At this time, Council President Armington asked if there would be questions from the public and what was to be the process in the sense that would the

objections and question period be merged or separate. Mr. Webster stated that there would be questions from the public first at which time, the Applicant or his legal counsel could address the questions. Then the members of the public who object or support would be heard.

Council Member Harris stated that since people came in since the sign-in sheet was initially distributed; that anyone who wants to add their name be allowed to do so. Mr. Webster agreed.

### **PUBLIC CITIZEN QUESTIONS**

- 1) **Tim Reuther**, 51 South Street, Morristown, asked a question as to the Block and Lot Number for 10 Dehart Street. Mr. Lyons replied that it was Block 6101, Lot 11; and the existing structure of Tashmoo was Block 6101, Lot 12. Mr. Reuther then asked if there is an extension of license; how does one expand the liquor license. Supposed someone wanted to sell one property and keep another. Mr. Williams replied that the Applicant could remain in the sold property because there is a lease and the Applicant would remain as a tenant. Mr. Webster stated that if that happened, the Applicant would have to come back before the Board with a modification request.

Mr. Reuther then asked about the second floor having no outside egress to the street; and in the event of a fire how do you accommodate those on the second floor. Mr. Lyons stated that there would have to be Building and Fire Departments approval on exits and fire escapes. Mr. Williams stated that all of those questions would be considered by the Planning Board.

- 2) **Cynthia Geoffroy**, 27 Community Place, Morristown, asked about the distance from the back of the expansion from the current property line. Mr. Lyons answered her question.

Ms. Geoffroy next asked about lighting and trash. Ms. Geoffroy then asked that when the outdoor courtyard area closes at 11:00 p.m., would members of the public be able to access the outdoor courtyard from the interior. Mr. Lyons replied no.

Ms. Geoffroy asked on the 10 evenings (i.e., SantaCon), would they be open until 2:00 a.m.. Mr. Williams replied yes.

- 3) **Donald Ginsberg**, 38 Dehart Street, Morristown, asked about what constitutes contiguous buildings for the purpose of expanding the license and is the Applicant in compliance. Mr. Williams responded that contiguous and control are two different items and that the Applicant has control.
- 4) **Marie Rozan**, 40 West Park Place, Morristown, asked if the holder of the lease; the holder of the liquor license. Mr. Williams replied yes, by law they are required to be.
- 5) **Dr. Donna Gaffney**, 40 West Park Place, Morristown, asked about the capacity of the existing space, and would the occupancy remain the same. Mr. Webster stated that we do not know the occupancy; we only know the seating capacity.

Dr. Gaffney next asked about cues for people lining up outside of the establishment. Dr. Gaffney also asked about sound which she stated she is aware is not under the Applicant's control; but the more people outside would generate more sound. Dr. Gaffney asked if the Applicant has to comply with the same conditions as Sidewalk Cafes. Mr. Webster replied no.

Dr. Gaffney asked how the trash and recycling would be collected. Mr. Lyons stated that it would be collected the same way that it is presently collected.

- 6) **Matt Majorossy**, 25 Community Place, Morristown, asked about the rear elevation and asked if the back door off of the kitchen would be used to bring trash and refuse out and would employees be congregating outside of the back door. Mr. Lyons replied no to both questions.

Mr. Majorossy asked if there would be restrictions on the use of the cooking area during winter months. Mr. Lyons replied perhaps if the applicant desired to do so.

- 7) **Vincent Zuza**, 40 West Park Place, Morristown, asked if the plans could change then what they presented. Mr. Webster replied that the purpose of this hearing is to transfer the license. Mr. Zuza then asked, could the Applicant present a different plan to the Planning Board. Mr. Williams

stated that they are going to make their presentation to the Planning Board.

Mr. Zuza next asked that on the nights that the Applicant shall have the premises open late; was that done to compensate for the days that the establishment would have to close early and what was the basis for selecting those dates. Mr. Williams replied that it was hoped that the business would support the late closing on these dates.

- 8) **Ken Hoffman**, 12 Hill Street, Morristown, asked what mechanisms would the Applicant have in place to buy liquor inside and then go outside into the courtyard after 11:00 p.m.. Mr. Williams spoke with the Applicant and informed the Board/Council that there would be security staff to insure that.

Mr. Hoffman then asked what steps would be taken with respects to the outdoor grills to control the order. Mr. Williams stated that he did not believe that would be an issue and if so, Mr. Williams is sure that it would be addressed by the Health Department.

- 9) **Eldon Priestley**, 40 West Park Place, Morristown, asked a question about the courtyard and would there be any entertainment in the courtyard. Mr. Williams stated that there may be a guitar player, but he would not be amplified.

Mr. Priestley, then asked if there would be any tvs in the outdoor courtyard area. Mr. Williams replied no.

Seeing no other members of the public wishing to be heard; Council President Armington closed the Public Citizen question portion.

### **FURTHER COUNCIL MEMBER COMMENTS AND QUESTIONS**

Council Member Davis asked what steps would be taken to insure patrons did not go into outdoor courtyard area after 11:00 p.m., with alcohol. Mr. Williams stated that after speaking with the Applicant; security staff would be present to insure that.

Council Member Iannaccone asked are you basing the sale of alcohol on occupancy or seating capacity; and can that distinction be made in the

Resolution. Council Member Iannaccone asked if the alleyway is subject to an easement or some other operation of law. Mr. Webster stated answered his question and referenced Mr. Williams' presentation that the entire 8 Dehart Street is the licensed premises for consumption of alcohol.

Council Member Iannaccone asked if it was possible that the Plan could avoid the Planning Board altogether. Council President Armington stated that there would still need to be major site plan approval.

### **PUBLIC CITIZEN COMMENTS**

Council Member Harris stated that it is stated that there should not be repetition. Mr. Webster stated that he was not aware when Council planned to end the meeting. Council President Armington stated that he did not plan to go past 10:00 p.m., although it may be likely that not everyone would be heard this evening.

Mr. Webster administered an oath or affirmation to all who wish to make comments and asked that their comments be limited to 5 minutes or less.

- 1) **Tim Reuther**, 51 South Street, Morristown, stated that he does not believe the transfer should be approved, because there is a gray area as to whether this is a bar or restaurant.

Mr. Williams had no questions for Mr. Reuther.

- 2) **Cynthia Geoffroy**, 27 Community Place, Morristown, thanked Council for their questions. Ms. Geoffroy noted that due to location of bars and lack of space, as well as noise issues would create a quality of life issue. Ms. Geoffroy also expressed concern with the noise and food being cooked in the outdoor courtyard area and asked the Town Council to deny the transfer application.

Mr. Williams asked Ms. Geoffroy if she was aware that the previous plan had been approved and was Ms. Geoffroy comfortable with that. Ms. Geoffroy stated that she would be happy with the 11:00 p.m. closing; and the smaller courtyard area.

- 3) **Jack Gaffney**, 40 West Park Place, Morristown, expressed concern about the increased volume and that the Town is being placed into

making a decision that they never contemplated. Mr. Gaffney cited incidents that are alcohol related in the area where Tashmoo is seeking expansion. Mr. Gaffney asked Council to examine the matter and make its deliberation based on the totality of the situation.

Mr. Williams had no questions for Mr. Gaffney.

- 4) **Ravitte Ginsberg**, 38 Dehart Street, Morristown, stated concern as to how the Applicant is going to stop the movement from inside to outside. Ms. Ginsberg further stated that the outdoor courtyard area with the noise and cooking of food would create a quality of life issue. Ms. Ginsberg also cited the example of the 10 evenings and stated that most people during those times tend to drink, not eat. Ms. Ginsberg summarized that while some of the comments are nice; the number of residents that are going to be adversely affected is there and Council has a tough decision to make.

Mr. Williams asked Ms. Ginsberg if she would prefer the area as originally approved. Ms. Ginsberg stated that she would not have agreed with what was approved and does not have an opinion.

- 5) **Donald Ginsberg**, 38 Dehart Street, Morristown, stated that he thinks the idea of a restaurant is a really good idea. However, he believes there are additional motives and goals on the part of the applicant. Mr. Ginsberg stated all of the problems that shall occur when you have additional drinkers in Town which will ultimately lead to decreased property value and lower quality of life. Mr. Ginsberg stated that Council should look at the picture that limits the public view of the Town. Mr. Ginsberg summarized that Council needs to think about alternative ways to resolve this problem either by ordinance or adjustment to the land use code.

Mr. Williams had no questions for Mr. Ginsberg.

- 6) **James Yardley**, 40 Macculloch Avenue, Morristown, expressed a concern as to noise and late hours of operation. Mr. Yardley expressed concern with the outdoor courtyard area being open until 1:30 a.m.. Mr. Yardley also expressed concern with traffic, odors and other quality of life concerns. Mr. Yardley summarized that in the end, he thinks that this creates a bad image of the Town and if this is the kind of place that

people want to live in and Council should decide on whatever makes the least noise.

Mr. Williams had no questions for Mr. Yardley.

- 7) **Marie Rozan**, 40 West Park Place, Morristown, left prior to this portion of the meeting. No comments.
- 8) **Christopher Flood**, 4 Perry Street, Morristown, expressed support for the application. Mr. Flood stated that while he understands the concerns raised; he believes there is a “disconnect” with the issues raised and this Applicant. Mr. Flood stated that the Applicant is not one of the establishments which contribute to the problems. Mr. Flood stated that as a real estate attorney; he does not see a problem with decreased property values; much to the contrary, values have increased.

Mr. Williams had no questions for Mr. Flood.

- 9) **Dr. Donna Gaffney**, 40 West Park Place, Morristown, stated that on March 8, 2016, she spoke to the Council related to research she conducted related to alcohol related incidents. Dr. Gaffney stated that she recently met with the Morristown Chief of Police, and stated that we as people would never attempt things by experiment, but would always proceed based on the facts. Dr. Gaffney cited incidents of density as related to alcohol based incidents and urged Council to look at all of the data before making these critical decisions.

Mr. Williams asked Dr. Gaffney is she was aware that the expansion has already been granted. Dr. Gaffney stated that she was aware.

- 10) **Shawn Knightly**, 5 Franklin Place, Morristown, spoke in support of the transfer and stated that another outdoor restaurant would be a great addition to the Town.

Mr. Williams had no questions for Mr. Knightly.

- 11) **Matthew Zimmer**, 67 Wetmore Avenue, Morristown, stated that Mr. Flood who previously spoke was correct in his statement and that Tashmoo is a really nice place.

Mr. Williams had no questions for Mr. Zimmer.

- 12) **John McMurry**, 146 Franklin Street, Morristown, stated that he has been a restaurant professional for over 20 years and he would rather see an establishment like the Applicant expand than to see many commercial, corporate establishments (i.e., Outback) come in.

Mr. Williams had no questions for Mr. McMurry.

- 13) **Matt Majorossy**, 25 Community Place, Morristown, stated that he is a lifelong resident of Town and his wife and he patronize many restaurants here in Town. However, he has many concerns regarding quality of life issues here in Town and he does not know how they are going to be addressed. Mr. Majorossy stated that he is concerned with the idea of the outdoor courtyard area. Mr. Majorossy stated that he does not see how Council in its ABC authority can approve or disapprove of an application without knowing what the total occupancy is. Mr. Majorossy further stated that approval of this transfer is not in the best interest of the Town.

Mr. Williams asked Mr. Majorossy if he had opportunity to eat at Tashmoo. Mr. Majorossy stated that he had. Mr. Williams asked Mr. Majorossy if he enjoyed it to which Mr. Majorossy replied that he did. Mr. Williams asked Mr. Majorossy would he prefer the plan that was approved in 2013 to the plan that is being presented tonight. Mr. Majorossy replied that he would rather have a retractable roof and see the establishment close at 11:00 p.m., than what is being presented tonight.

- 14) **Jan Terlizzi**, 40 West Park Place, Morristown, stated that she came before the Council ABC Board in 2013 and that she is concerned about the noise and she is very pleased with the 2013 ruling as to the 11:00 p.m., closing and she hopes that Council decides on this application in a manner consistent with that approved in 2013.

Mr. Williams had no questions for Ms. Terlizzi.

- 15) **Vincent Zuza**, 40 West Park Place, Morristown, stated that he opposes the expansion; not on its face but on the fact of the hours and the structure. Mr. Zuza stated that he was asking Council to do 3 things: (a) keep your principle; (b) keep your precedent; and (c) keep consistent.

Mr. Zuza asked Council to make its decision based on what is best for the residents of the Town and not for those who merely do business here then go home to quiet neighborhoods.

Mr. Williams had no questions for Mr. Zuza.

- 16) **Ken Hoffman**, 12 Hill Street, Morristown, stated that his comments are in the general sense because he lives by the train station. Mr. Hoffman stated how bars can be loud and boisterous and how parking overflows into the residential area. Mr. Hoffman further stated that he is sensitive to the issues of those who may be affected by this application and that the decision should be based on the quality of life for the people who live here. As to the plan, Mr. Hoffman believes that there are too many bar stools for a restaurant.

Mr. Williams asked Mr. Hoffman if he had any experience in the restaurant area. Mr. Hoffman answered no and asked Mr. Williams why. Mr. Webster informed Mr. Hoffman that he is not allowed to answer any questions which drew laughter from the gallery and the dais.

- 17) **Eldon Priestley**, 40 West Park Place, Morristown, encouraged Council to rely on economic data to see what the bars actually add to the value of the Town of Morristown. Mr. Priestley stated generally that there is a lot of ancillary damage done to the surrounding property areas as a result of the increased bars which costs the property owner substantial monies. Mr. Priestley states that the bar owners get a “free ride” in that they do not have to share in the costs of these repairs. Mr. Priestley stated that if asked by Mr. Williams, he would prefer the previous plan approved because he is concerned about the doubling of the courtyard and the addition of an outdoor kitchen if it was not previously approved.

Mr. Williams had no questions for Mr. Priestley.

Council Member Iannaccone asked Mr. Priestley that with the original plan that has a retractable roof and a greater area of open space, would that change Mr. Priestley’s opinion. Mr. Priestly replied that it would not because he believes that most of that noise would go up as opposed to horizontally.

18) **Bob Morris**, 29 Wetmore Avenue, Morristown, stated that he has not seen problems associated with Tashmoo. Mr. Williams believes that the expansion application will not bring more people to Town, but to redistribute those who are already here. Mr. Morris stated that the people who live in the center of Town should be more accommodating even though they did not foresee the results of the expansion; it is the center of Town. Mr. Morris concluded by stating that he supports the expansion application.

Mr. Williams had no questions for Mr. Morris.

19) **Kelly McGarrigal**, 146 Franklin Street, Morristown, stated that she supports the application.

Mr. Williams had no questions for Ms. McGarrigal.

20) **Erica Mapchak**, 39 Early Street, Morristown, stated that she is in support of the application. Ms. Mapchak stated that as someone in her early 30s; she and others in her age group need a place such as this that are not bars. Ms. Mapchak stated that as a child she remembers when Epstein's and Macy's left the Town and everyone wondered what the next step for the Town would be; and that it is the restaurants that allowed the Town to continue to grow through the difficult times. Ms. Mapchak further stated that a lot of businesses have come and gone and we need to fill those vacancies.

Mr. Williams had no questions for Ms. Mapchak.

Seeing no other members of the public wishing to be heard; Council President Armington closed the Public Citizen comment portion. Prior to allowing Mr. Williams to make his closing arguments, Council President Armington recessed the meeting for a break at 9:52 p.m..

Council President Armington resumed the meeting at 10:00 p.m., all Council Members were present.

### **SUMMATION OF PETITIONER'S ATTORNEY**

At this time, Mr. Williams made his closing statements. Mr. Williams noted that even among those who opposed the expansion, no one said that the

existing licensee was contributing to the problems that were stated. Mr. Williams stated that there have been no violations from this licensee in the last 10 years. Mr. Williams also emphasized that there have been no complaints from the Police, Fire or Health Departments. Mr. Williams further noted that no one spoke of any complaints about this applicant. Mr. Williams stated that the “Restaurant Row” has contributed to the ambiance of the Town. Mr. Williams stated that a number of people now eat at the bars and the bars are getting wider. Mr. Williams stated that as to the outdoor kitchen, it was believed that this was an idea that Council would like; however, it is not important to the application and it can be removed. Mr. Williams stated that the Applicant already has the approval and he would like the amended approval which he asked the Council to pass with the outdoor courtyard area as is and the hours of operation. Mr. Williams concluded his remarks and thanked Council for hearing the application.

Mr. Webster asked Mr. Williams that it was Mr. Williams’ assertion that the outdoor grill would be removed if required by the Council ABC Board; and that Mr. Williams made no mention of the 10 evening request to be open until 2:00 a.m.. Mr. Williams thanked Mr. Webster for noting that oversight and stated that he would like to have those hours.

### **COUNCIL DELIBERATION**

At this time, 10:07 p.m., Council President Armington stated that it was his intention to deliberate and attempt to reach a decision this evening. However, that would ultimately be the will of the Council ABC Board. There were no objections, Council President Armington opened the floor for Council/Board discussion.

Council Member Iannaccone asked for further clarification in the sense that if the application for the modified “Plan” is denied; the applicant can proceed with the original “Plan” which was previously approved. Council President Armington agreed. Council Member Iannaccone, then asked if the Council ABC Board has the option to change what is being presented by the Applicant in the current “Plan” (i.e., no outdoor courtyard structure whatsoever). Council Member Deeb replied in the affirmative and informed Council Member Iannaccone that those are called “conditions”. Council President Armington stated that they Board can vote on amendments, but only if the Applicant agrees to those amendments. Council Member Deeb stated that what “scratch” was the applicant willing to make. Council

Member Elms replied that the “scratch” was for the outdoor kitchen area only.

Council President Armington asked if there were any more questions or comments.

Council Member Deeb stated that there is already a “pre-approved application”, now we are being asked to consider a modified “Plan”. Council Member Deeb states that the Board has to proceed on what was presented. Council Member Deeb stated that while Mr. Williams’ comments that Tashmoo has never been cited is hearsay and not fact; Council Member Deeb noted that no one from the Police Department came and spoke tonight. Council Member Deeb further stated that no one who objected specifically cited Tashmoo. Council Member Deeb stated that the overall issue is one of: (1) concentration; and (2) density; however, she noted that this is most likely through no fault of the applicant, but just a comment in general. Council Member Deeb stated that while bars and restaurants have helped regenerate and rejuvenate the “downtown” area; there have been complaints to which the Council has attempted to address in an attempt to mitigate the complaints. Council Member cited one measure is the overnight parking restrictions. Council Member Deeb also cited the recent adoption of the ordinance which limited the times for trash and recycling pickup. Council Member Deeb did express a concern about the “10 days” and stressed that perhaps there should not be a blanket approval without inquiring of the other establishments. Council Member Deeb stated that perhaps there should be some conditions because the Town does not receive the benefit that the State receives. Council Member Deeb stated that she believes one condition should be for the licensee to provide security which would help the Town defray costs while addressing quality of life issues for the Town residents.

Mr. Webster for a point of clarification stated that Council can deny the application. However, that would only mean that the Applicant may proceed with the original “Plan” that was approved with conditions.

Council Member Harris stated that she agrees with many of the comments made by Council Member Deeb and that this should be a coordinated effort on the part of the Police Department, Parking Authority and Partnership to alleviate parking concerns and littering and other issues. Council Member Harris stated that one area that she would like to see addressed as a

condition if the modified “Plan” is approved is the reduction of the outdoor courtyard area and remove the outdoor kitchen area. Council Member Harris also believes that the hours of operation ending at 11:00 p.m., should remain, although she would not oppose the 12:00 a.m., indoor closing and that the 10 evening request for a 2:00 a.m., closing should be denied. Council President Armington asked Council Member Harris, if she wished for the outdoor courtyard area to revert back to the originally approved square footage to which Council Member Harris replied no, but she wanted to see some reduction. Council Member Deeb asked if she would compromise on the “10 evenings”; perhaps a lower number. Council Member Harris replied that it could be considered.

Council Member Elms stated that he has some comments and questions and some of his deliberation will not make the Applicant happy; while other comments and questions will not make those opposed happy. Council Member Elms stated that he loves the patio idea and one of the places he liked before closing was Callaloo. Council Member Elms stated that he has travelled all over the country; and he is a little disheartened to hear that there is no outdoor music, and that would provide a great benefit although he understands that there was no provision made for it in either Plan. Council Member Elms further stated that he agreed with Ms. Mapchak and three areas that he would most likely frequent would be: (1) End of Elm; (2) David Todd’s and (3) Tashmoo for their ambiance and the fact that they cater to a more mature clientele and scene. Council Member Elms stated that he has no objection to the outdoor kitchen; however, as it seems that members of the public do. Council Member Elms noted that perhaps the Applicant would be willing to remove it. As to the “10 evenings”; Council Member Elms believes that there could be a “happy medium”, perhaps 6 days which would be his suggestion. Council Member Elms stated that as to the design; he is much more in favor of the amended “Plan’s” design while he means no offense to the original “Plan’s” Architect. Mr. Webster asked Council Member Elms where he stood on the proposed closing times of 11:00 p.m., outdoors, and 12:00 a.m., indoors. Council Member Elms stated that he was okay with that.

Council Member Foster stated that she agreed with the comments of her colleagues and that her biggest concern is the large size of the outdoor courtyard area in relation to the proposed Building C which is to be built across the street. Council Member Foster thanked the members who came out in support, but stated that there needs to be a happy medium. Council Member Foster stated that she agrees with Council Member Harris and the

others on the 11:00 p.m. outdoor, 12:00 a.m. indoor. Council Member Harris further stated that she would be okay with granting some of the requested “10 evenings”, but not all. However, she would not be in favor of the outdoor kitchen area. Council Member Foster concluded with the observation that she hopes that the applicant takes all necessary steps to help alleviate the noise for the residents in the area particularly from those in the outdoor courtyard area.

Council Member Davis stated that while she agrees with her Council colleagues; her primary area of concern is the large outdoor courtyard area. Council Member Davis stated that we have to consider the quality of life of the residents in the surrounding area. Council Member Davis also stated that with respects to the issue of the heated lamps; they provide a great benefit and she would like to see a more definitive time frame for the outdoor are (i.e., the end of September).

Council Member Iannaccone stated that the issue and concerns are not with Tashmoo as Tashmoo is by all accounts a wonderful place. However, Council Member Iannaccone noted that Tashmoo as it exists has 71 seats. This plan calls for an expansion that calls for the size to be tripled. It will not be the same type of establishment. Council Member Iannaccone further noted that there is an issue with the open space. Council Member Iannaccone noted that this Application is different from other sidewalk cafes as this one will actually be part of the permanent premises. Council Member Iannaccone stated that he understands that if the Application for the modified “Plan” is denied; the applicant can fall back on the original “Plan” which has already been approved. Council Member Iannaccone stated that what he would suggest in concert with his Council colleagues is a reduction of the open space; and that he would rather see the interior space increased in lieu of the open space. Council Member Iannaccone noted that as this would have an impact on residents; and not only does Council have to protect the current residents but future residents with respects to the proposed Building C. Council Member Iannaccone stated that the open space be reconsidered and perhaps the open space should perhaps be more in compliance with those already imposed on sidewalk cafes with no music and no outdoors. Council Member Iannaccone stated that as to the hours of operation; it should be limited and while he doesn’t know why it is not being limited to 11:00 p.m. across the board; he has no objection. Mr. Webster asked Council Member Iannaccone about the “10 evenings” to which Council Member Iannaccone replied that this is a restaurant; therefore, the 10 evenings are not needed. Council Member Iannaccone

stated that if one operates as a restaurant; it does not necessary get the benefit of being a bar. Council Member Iannaccone stressed that if one is a restaurant; that is what the majority of the space should be utilized for. However, Council Member Elms drew Council Member Iannaccone's attention to Roots Steakhouse, stating that while it is a successful restaurant; there may be as many as 250 people standing in the bar well. Mr. Webster did also note for Council Member Iannaccone that the original "Plan" called for 304 seats while the modified "Plan" only calls for 228. Council Member Iannaccone noted that no formal application has been made to the Planning Board on the original "Plan". Mr. Webster stated that he was just noting that and inquiring as to whether the Applicant would be willing to acknowledge that this evening. Assistant Municipal Attorney Joni N. McDonnell, Esq., noted that the only thing that was contained in the previous resolution was a limitation on the number of bar stools.

Council President Armington noted that the Town does not define bars. There is only restaurants (which includes bars) and clubs. Council President Armington also stated how he liked the retractable roof idea which would have alleviated some of the noise in that the retractable roof closed at 10:00 p.m.. Council President Armington stated that his biggest concern is what has occurred since 2013; particularly a lack of parking space. Council President Armington cited a February 3, 2016 letter previously received from the Morristown Parking Authority saying there is no space in the Dehart Street garage. Council President Armington stated that he did not believe that patrons who wish to utilize facilities on Dehart Street would allow themselves to automatically park at the Ann/Bank Street & Dalton Street garages. Council President Armington noted that this is an issue for the Planning Board regardless of what "Plan" proceeds. Council Member Deeb read the February 3, 2016 letter into the record. Mr. Williams questioned the validity of the letter in terms of space availability. Council President Armington stated that unfortunately that is what Council has to rely on. Council Member Deeb noted that the Parking Authority has standing contractual obligations to future development projects. Council President Armington stated that irrespective of the letter; the seating demand for both the original and modified "Plans" call for a significant amount of parking spaces. Council President Armington also noted the proposed Building C and its close proximity to the Applicant's proposed outdoor courtyard area. Council President Armington also noted as a major concern the patronage of the outdoor courtyard area and the numerous patrons who would be utilizing it; perhaps presenting a noise issue. Council President Armington noted that while the Applicant has presented a positive picture;

he noted that things can get out of control. Council President Armington cited another establishment where the representation was made for a high-end seafood restaurant and the end result turned out to be a sports bar serving latin-american food with dancing Thursday through Saturday. However, Council President Armington noted that in that case; there was little public complaint and there seems to be an acceptance of that establishment's atmosphere. Council President Armington also noted the increase of the outdoor courtyard area to 2,200 square feet and the removal of approximately 20 seats which Council President Armington feels that would lead to approximately 40 extra patrons standing at the outdoor bar which in total would not help the noise situation. Council President Armington stated that he liked the original "Plan" with the retractable roof; and based on all of the quality of life concerns raised in respects to restaurants with liquor licenses; he is in favor of leaving the closing time at 11:00 p.m. across the board. Council President Armington stated that based on the reasons stated; he is in favor of the denying the Applicant's modified "Plan".

Council Member Iannaccone stated that while this is a unique concept; he could go along with the Council President's recommendation. Council Member Iannaccone stated that even with a retractable roof; sound travels upward, and more likely over. Council Member Iannaccone stated that he would be willing to join with Council President Armington in a vote to deny the Applicant's modified "Plan". Council Member Iannaccone stated that the Council should look at the previous 2013 Resolution to see what conditions were imposed as those conditions would most likely be similar to any conditions imposed by Council on the modified "Plan", and do you give the option to the Applicant for a closed-in structure. Council President Armington stated that if the Applicant wanted to get rid of the retractable roof and closed the structure in; than that is a matter that may be resolved by the Planning Board.

Council Member Harris asked if there is a consideration to reduce the size of the outdoor courtyard area; limit the number of patrons and not grant the "10 evenings' 2:00 a.m. closing." Council Member Deeb asked if the thought was to require the outdoor courtyard area to be reduced to its size in the original "Plan". Council Member Foster asked that before any condition be imposed; would the Applicant be willing to accept those conditions. Council Member Deeb stated that would be a matter for the attorneys to decide. Council President Armington suggested that Council attempt to decide on the hours of operation first. Council Member Iannaccone read the

conditions from the 2013 Resolution adopting the original “Plan”. Council Member Iannaccone stated that three conditions he would perhaps like to see added to any approval of the modified “Plan” would be (1) a provision that no amplified sound will be utilized in the outdoor area; (2) a provision that the Applicant comply with federal, state and local guidelines regarding noise; and (3) no outdoor cooking.

Council President Armington asked for a poll as to the hours of operations. Council Member Deeb stated that people do eat later; do to people working alternate hours other than “9-5 jobs”. Council Member Deeb stated that she would like to see the “data” that has been compiled to which Council President Armington replied that none of that information would directly impact the decision before Council this evening. Council Member Deeb stated that she understood that; she was referring to future expansion applications. Council Member Iannaccone stated that having the data provides a better “sufficiency of information” to assist Council in making these types of decisions. Council Member Foster stated that it is either one or the other in terms of which “Plan” should go forward.

Council President Armington asked for a poll as to whether everyone thought that the proposed outdoor courtyard area in the modified “Plan” is too big. Everyone replied yes. Council Member Deeb asked if the outdoor areas at Pazzo Pazzo and the former Callaloo were also as big.

Council Member Armington made a motion to deny the Application for the Place-to-Place Transfer of the License submitted by Dehart Associates, LLC. The Motion was seconded by Council Member Iannaccone and failed on the following roll call vote.

YEAS: Mr. Iannaccone, Council President Armington

NAYS: Ms. Davis, Ms. Deeb, Mr. Elms, Ms. Foster, Ms. Harris

ABSTAIN: None

ABSENT: None

Council President Armington stated that he would defer to Council Members as to their proposals. Council Member Harris stated that proposed that the outdoor courtyard area be decreased anywhere from 1/3 to 1/2 of the proposed size. Council President Armington asked if other Council Members were in favor of

supporting the reduction of the outdoor patio to 1,200 square feet. Council President Armington asked Mr. Williams if the Applicant would be willing to go along with the reduction. Mr. Williams stated that he would be willing to discuss the matter with the Applicant, but Mr. Williams asked if Council would approve the proposed hours of operation under the modified “Plan”. Council Member Deeb noted that the Applicant who was seated behind Mr, Williams was nodding his head. However, Council Member Deeb did not note whether the Applicant’s nodding was affirmative or negative. Council Member Harris proposed that the outdoor courtyard area be reduced to 1,800 square feet with no outdoor kitchen. Mr. Webster stated that an informal consensus would be 4 Council Members. Council Member Deeb noted that there are approximately 55 seats with 15 bar stools. There was discussion as to the size.

Council Member Deeb made a motion that the outdoor courtyard area be reduced to what was originally approved 1,200 square feet with no outdoor kitchen. The motion was seconded by Council Member Harris. Council President Armington conducted a straw vote; and at least 4 Council Members were in favor.

Mr. Webster next asked about the proposed hours (11:00 p.m. outdoors – 12:00 a.m. indoors). Council President Armington conducted a straw vote; and at least 4 Council Members were in favor.

Mr. Webster next asked about the proposed “10 evenings where the establishment would be open until 2:00 a.m.). Council Member Elms suggested 5 days. Council President Armington stated that he would be okay to any suggestion as long as the outdoor area closed at 11:00 p.m. regardless. Council Member Iannaccone read the proposed request. Council Member Elms suggested New Year’s Eve, Thanksgiving Eve and Halloween, St. Patrick’s Day Parade Day. Council Member Iannaccone noted that they should be days when people tend to eat late. There was discussion and Council President Armington suggested that as all applicants who wish to extend hours do; that the Applicant may come before Council for an hours extension for up to five days.

Mr. Webster asked about the retractable roof vs. the present outdoor design. Council Member Elms suggested that in the modified “Plan” there is a call for 5 doors on the south side of the building. Council Member Elms suggested that 3 doors be deleted and leave 2. Council President Armington suggested that they all be taken out. Council Member Elms stated that the windows be closed at 10:00 p.m., and 3 of the garage doors be taken out. Council Member Iannaccone agreed. Mr. Webster asked for clarification to which Council Member Elms explained. Mr. Webster asked about the large French doors in the front. Council President Armington stated that everything should close at 10:00 p.m.. Council Member Elms stated that other establishment do not close at 10:00 p.m., and suggested 11:00 p.m.. There was a poll and at least 4 Council Members agreed to close it at 10:00 p.m..

Council Member Deeb asked what the next step would be and would a Resolution be needed. Council President Armington proposed that there be no bar in the outdoor courtyard area if the intent is to have a restaurant. Mr. Webster stated that as substantial progress has been made; there was also substantial modifications made. Mr. Webster suggested the next step should be to schedule the matter for a continuation; that a resolution be drafted containing the modifications that the Applicant and his legal counsel would have an opportunity to review; and the return date, there be a final vote. Mr. Webster stated that the architect could redraw the specifications.

Mr. Webster then stated for Mr. Williams what if any conditions would be imposed; including, but not limited to”

- (1) Reducing the outdoor courtyard area to 1,200 square feet with no outdoor kitchen and no bar;
- (2) Hours of operation would be expanded to 11:00 p.m. outdoors and 12:00 a.m. indoor closings;
- (3) That Council as the Municipal ABC Board would consider up to 5 applications for late closing (2:00 a.m.) per year;
- (4) The new design is acceptable, but the overhead doors on the second floor be closed at 10:00 p.m., and the 3 doors on the south rear second floor be made non-operable.
- (5) All other conditions that were imposed in the 2013 meeting.

Mr. Webster suggested that as the next regular meeting is scheduled for Tuesday, April 12, 2016, that this meeting be recessed until Tuesday, April 12, 2016 at 6:30 p.m., prior to commencement of the regular meeting scheduled for 7:30 p.m.. Council Members were in agreement.

Mr. Webster asked if Mr. Williams was for the most part in agreement, subject to memorialization in a Resolution. Mr. Williams stated that this creates a problem in that if Council is allowing an 11:00 p.m. closing; the closing of doors at 10:00 p.m., would create an operational problem. Council President Armington stated that the Applicant is being set up to violate the noise ordinance after 10:00 p.m.. Council Member Elms stated that he believes that it would be logical to allow the front barn doors stay open until 11:00 p.m.. Other Council Members agreed with that. Mr. Williams stated that he would speak with his client for 3 minutes. Council Member Iannaccone asked if there could be a vote prior to adopting the resolution. Mr. Webster stated that he is comfortable taking a vote this evening to allow Mr. Williams to have an idea where Council stands as to the application.

Mr. Williams returned and stated that he reviewed same with the Applicant and the conditions are acceptable. Council President Armington stated that there has been an issue with license holders getting an application and then attempting to increase capacity. Council President Armington stated that he

would like the Council ABC Board to maintain control over that in that whatever capacity is granted when they open is the capacity that they shall operate under and they shall come back before Council to increase capacity. Mr. Webster asked Mr. Williams if the ABC Board can do that. Mr. Williams thought that capacity is determined by the Building and Fire Departments and Zoning Officer. Mr. Webster then asked Mr. Williams if Mr. Williams would agree to a number. Council President Armington proposed that the capacity be set at double the number of seats. Council Member Iannaccone questioned why if the primary function is to be a restaurant. Council President Armington conducted a straw poll on the conditions and a majority. Mr. Webster then advised that the meeting be carried until Tuesday, April 12, 2016 at 6:30 p.m., Council agreed and the meeting was recessed on Thursday, March 31, 2016 at 11:35 p.m., until Tuesday, April 12, 2016, at 6:30 p.m..

**April 12, 2016**

**RESUMPTION OF MEETING – CONTINUED FROM MARCH 31, 2016**

The Meeting resumed on Tuesday, April 12, 2016 at 6:38 p.m..

Town Clerk Kevin D. Harris read the following statement: Notice of this meeting was provided in compliance with the Open Public Meetings Act in accordance with a Resolution adopted by the Council of the town of Morristown at the Organization Meeting on January 5, 2016 setting forth the time, date and location of each meeting. A copy of the Resolution was distributed to the Morris County Daily Record and the Star Ledger, filed with the Town Clerk, posted on the Bulletin Board at the Municipal Building and mailed to any person who has requested and prepaid the established fee for such meeting notice. In addition, Notice of the Meeting was provided to the Petitioner, his legal counsel and anyone who filed a Notice of Objection with the Office of the Town Clerk.

A Roll Call of Council Members was conducted and the following was determined:

PRESENT: Ms. Davis, Ms. Deeb, Mr. Elms, Ms. Foster, Mr. Iannaccone, Council President Armington

ABSENT: Ms. Harris (arrived late at 6:55 p.m.).

ALSO PRESENT: Elnardo J. Webster, II, Esq., & Joni Noble McDonnell, Esq., Assistant Municipal Attorneys, Town of Morristown; Robert C. Williams, Esq., Attorney for the Petitioner, Mr.

David Walsh on behalf of Dehart Associates,  
LLC, Applicant.

Council President Armington turned control over to Mr. Webster, who gave a summary of the events of the March 31, 2016 Meeting.

Mr. Webster invited Mr. Williams to go through the modifications agreed to for the benefit of Council.

Mr. Williams recalled Mr. Lyons went through the modifications which Mr. Williams marked as “**Exhibit P3**”. Mr. Lyons stated the revisions which included:

- (1) Reduction of the outdoor courtyard area to 1,200 square feet with removal of the outdoor kitchen area and outdoor bar.
- (2) On the second floor, the 3 doors on the southern rear side of the building shall be non-operable. Mr. Webster asked Mr. Lyons the reason for leaving the window there as non-operable as opposed to removing them all together. Mr. Lyons stated the purpose was to give the structure and more consistent and appealing look.
- (3) Mr. Lyons noted the square footage changes and seating changes. Mr. Lyons noted that there was a change in that the new square footage on the first floor would be 6,695 square feet.

Council President Armington asked for the purpose of licensing the basis. Mr. Williams stated that if liquor is stored there; it has to be licensed. Council President Armington stated that his concern is what if there is a move to expand consumption to the basis. Mr. Williams stated that there may be a condition imposed that the basement shall be utilized for storage only.

Council Member Deeb asked if the proposed Resolution states that no alcohol shall be allowed to go from inside of the establishment to the outside after 11:00 p.m.. Mr. Webster stated and Mr. Williams agreed that a patron who was sold and served alcohol in the outdoor courtyard area prior to 11:00 p.m., could remain outside. However, no one could come into the outdoor courtyard area with alcohol after 11:00 p.m.. Council Member Elms asked on average how long do patrons take to finish drinks after “last call”. Mr. Williams presented Mr. David Walsh, who is the principal of the Applicant. Mr. Webster administered the oath to Mr. Walsh, who then

answered Council Member Elms' question stating that while it varies, it is usually no more than approximately 30 minutes. Council Member Elms asked if it would be reasonable to have everyone be out by 12:30 a.m.. Council Member Iannaccone stated that if the intent is to have everyone out by 11:00 p.m., then people should leave the courtyard at 11:00 p.m.. Mr. Webster stated that was not his recollection, that even if alcohol would not be served after 11:00 p.m., but could remain outside to conclude their meal or whatever alcohol they were served prior.

Council Member Foster asked how many seats would be allowed in the outdoor courtyard.

Mr. Webster stated that the Resolution could state that "Patrons not be allowed to leave the interior into the outdoor courtyard area with alcohol after 11:00 p.m.."

Council Member Iannaccone asked about Condition #13, the non-operability of the doors. Mr. Lyons stated that they would not be opened at all. Council Member Iannaccone stated that on Condition #14, that the language should be reflected as "shall apply" as opposed to "may apply", and the nights reflected should be nights of late night dining. Mr. Webster stated that it was his understanding that Council would have the opportunity to modify the 5 number (upwards or downwards) at the time of renewal.

Council Member Foster stated that she was happy that all were able to agree to a meeting of the minds.

Council President Armington stated that it has long has precedent to realize the 11:00 p.m. shutoff and while he believes Council is going to grant 12:00 p.m. closing to this establishment; they should do so for other establishments.

Ms. McDonnell stated that with the "other" establishment; it was agreed that 11:00 p.m. would be the closing; and 11:30 p.m., on Friday and Saturday.

Council Member Iannaccone stated that he agreed with Council President Armington and there should be some consistency. Council Member Harris stated that the "other" establishment mentioned is proceeding with their court case against the Town on Friday. Council Member Harris stated that she believes that there should be no precedent of proposing one

establishment over another, because it shall come back to haunt us.

Mr. Webster suggested that the 3 modifications agreed to this evening be read into the record. Ms. McDonnell read into the record the conditions modified this evening that

- (1) On Condition #1: (an added sentence) “Patrons will not be allowed to exit the interior of the establishment with alcohol after 11:00 p.m..”
- (2) In Condition #14: “The Applicant agrees that it may apply on a yearly basis at the time of renewal for permission from the Town Council to remain open on certain limited days until 2:00 a.m., and to otherwise seek modification of the conditions contained herein.”
- (3) In Condition #15: “The basement shall not be used for occupancy; it shall only be used for storage.”

Mr. Webster asked Mr. Williams if he was in agreement with everything stated and memorialized. Mr. Williams stated that he was in agreement.

Council Member Foster made a Motion that the Resolution be approved with all modified conditions agreed to. The Motion was seconded by Council Member Davis. The Town Clerk advised that the Resolution would be styled as follows:

**Resolution R-69-2016: “A Resolution Approving the Application of Dehart Associates, LLC, d/b/a Tashmoo for a Place-to-Place Transfer/Expansion of a Liquor License No. 1424-33-022-010 to be built building at 10 Dehart Street, Morristown, New Jersey with the modifications agreed to.”**

On the roll call vote; the Motion passed as follows:

YEAS: Ms. Davis, Ms. Deeb, Mr. Elms, Ms. Foster, Ms. Harris

NAYS: Mr. Iannaccone, Council President Armington

ABSTAIN: None

ABSENT: None

Mr. Williams thanked the Council for its vote and stated that he was leaving 3 full size sets of the Plans that the Clerk dated with the Clerk keeping one, the Applicant keeping one and Mr. Williams keeping one.

**ADJOURNMENT**

There being no further business, a motion to adjourn was made by Council President Armington and seconded by Council Member Foster and passed by acclamation. The meeting was adjourned on Tuesday, April 12, 2016 at 7:10 p.m..

Respectfully Submitted

ATTEST

APPROVED

\_\_\_\_\_  
KEVIN D. HARRIS  
TOWN CLERK

\_\_\_\_\_  
STEFAN P. ARMINGTON  
COUNCIL PRESIDENT

I do hereby certify the above to be a true and exact copy of the Minutes of the ABC Meeting of the Town Council held on Thursday, March 31, 2016 which continued and concluded on Tuesday, April 12, 2016, duly passed and adopted by the Town Council of the Town of Morristown at the Regular Meeting of the Town Council held on October 25, 2016 in the Morristown Council Room, 200 South Street, Morristown, New Jersey, beginning at \_\_\_\_7:30P.M., prevailing time.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Kevin D. Harris, Town Clerk