

**TOWN OF DE BEQUE
BOARD OF TRUSTEES
REGULAR MEETING
OCTOBER 20, 2020**

The Board of Trustees of the Town of De Beque held a special meeting on Tuesday, October 20, 2020, at 6:00 p.m. via Zoom. Present were the following:

Mayor: Zeke Gaudern

Trustees: Judy Lake	Shanelle Hansen	Walter Wood
Summer Black-Greening	Cindy Faris	Dave Jackson

Staff present: Care' McInnis	Ed Sands	Davis Farrar
Bob Dalley	Toni Vincenzetti	David McConaughy

Also, Present: Tony Marsh	Lisa Maestas	Laura Firth	Rod Milham
Billie Milham			

CALL TO ORDER:

The meeting was called to order at 6:00 p.m. by Mayor Zeke Gaudern

ROLL CALL:

Roll call was taken, and a quorum was present

ADDITIONS, DELETIONS OR CORRECTIONS TO THE AGENDA:

There were None

1. OLD BUSINESS

A. PUBLIC HEARING:

I. DISCUSSION AND ACTION CONCERNING RENEWAL OF LIQUOR LICENSE, WILDHORSE ROADHOUSE.

Mr. McConaughy explained the process and how the meeting was to be conducted and turned it over to Ed Sands.

Mr. Sands called Town Clerk, Shirley Nichols who was then sworn in.

He began by asking her for her name and position and just what her duty was in regarding the renewal of liquor licenses. She explained that the Board of Trustees, by Ordinance, had put her in charge of renewals.

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He questioned why she had not done this but instead had written a letter to Ms. McInnis stating that it was her intention to refer the renewals to the Board for approval as allowed by De Beque Municipal Code.

Her answer was that she had received copies of letters of warning sent to Wildhorse Roadhouse for violations of the mask order both by employees and patrons.

He asked that she identify Exhibit A (the letter written to Ms. McInnis) which she did.

He introduced an anonymous letter received by the Town complaining that they had observed patrons with small children being seated near customers who were smoking marijuana and asked the Clerk to identify the letter. She did indicate that it had been dropped off at the Town Hall.

He asked if there had been any other problems about this previously. " Not that the Clerk was aware of."

He ended his questioning and Ms. Firth was given the opportunity to ask questions.

Ms. Firth stated that she felt an anonymous unsigned letter was not relevant and did not know why it was being considered.

Mr. McConaughy reminded Ms. Firth that she was to ask questions of Ms. Nichols and could make her statement later. Ms. Firth said she had no questions for Ms. Nichols

Mr. Sands called on Lisa Maestas, Criminal Investigator for the Department of Revenue Liquor and Tobacco Enforcement Division for about 9 1/2 years. Ms. Maestas that doing liquor enforcement, their job is to investigate complaints.

Mr. Sands asked Ms. Maestas to look at exhibit B and explain a factual basis for the Division sending out this letter.

Ms. Maestas stated that a complaint had been received complaining that Wild Horse Roadhouse was not in compliance with the public health order regarding masks. Therefore, her partner went out on August 26th and found during the inspection that the employees were not wearing face masks. He spoke to them regarding the public health order and the liquor code requirement for masks to be worn and told them they would be getting a warning letter.

Mr. Sands asked that she explain the public health order and the need to take it seriously and try to prevent the spread of coronavirus. She indicated that they take this very seriously. Mr. Sands asked if all

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employees must wear facial coverings and customers do not have to wear them when seated. Ms. Maestas confirmed that this was correct.

Has liquor licensing had any further complaints about this establishment? Ms. Maestas wished to defer this to her supervisor. She has not had any.

Ms. Firth was asked if she had any questions for Ms. Maestas and she did not,

Tony Marsh, Criminal Investigations Supervisor with the Department of Revenue, Liquor and Tobacco Enforcement was called.

Mr. Sands asked Mr. Marsh if Mr. Broughton worked for him and was told, yes. Mr. Sands asked if he had any knowledge of any other complaints filed against Wildhorse Roadhouse and Mr. Marsh stated, no.

When asked, Ms. Firth declined to ask questions of Mr. Marsh.

Mr. Sands stated he had no further witnesses to present to the Board at this time.

Mr. McConaughy informed Ms. Firth that it was her turn. She could call witnesses, make a statement, or present documents.

Ms. Firth stated that on the day of Mr. Broughton's visit there were only two employees in the building, a cook, and a bartender. They were not wearing their masks and there was no one else in the building. He explained to them why they should be wearing masks and informed them that he would be sending a warning letter. She was not there at the time

Mr. Broughton called her the next day and told her that he would be sending a warning letter which she received.

As to the anonymous letter, the person did not want her identity known and she is wondering why it is presented when there is not an accuser that will make themselves known. Since getting the warning letter they are doing their best to stay in compliance and will continue to do so.

Mr. McConaughy stated that it was time for the Board to open the public hearing to members of the public. No one wished to speak.

Motion: Trustee Hansen

To close the public hearing for Wildhorse Roadhouse (6:40 p.m.)

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Second: Trustee Lake

Voice Vote: Unanimously in favor of the motion

Motion: Trustee Farris
To renew the liquor license for Wildhorse Roadhouse

Second: Trustee Lake

Voice Vote: Unanimously in favor of the motion.

There was a problem with the loss of Mr. Sands from the meeting.

It seems that there was a brief power outage in Rifle.

Ms. McInnis unmuted indicating there had been a power outage in Rifle and she would disconnect and try to get Mr. Sands back. A brief recess was taken.

II. DISCUSSION AND ACTION CONCERNING RENEWAL OF LIQUOR LICENSE, BEER MUGS N BAR STOOLS

Mr. Sands returned and the meeting resumed. He called on Town Clerk, Shirley Nichols, to testify asking her to explain a letter she had written and sent to Care' McInnis. She stated that she had learned of violations of the mask order and other violations and that there was a case pending in Mesa County Court. She identified the letter she had sent.

Mr. Sands showed a Retail Liquor or Fermented Malt Beverage License Renewal Application submitted by Rodney and Billie Milham for Beer Mugs N Bar Stools LLC asking the Clerk if to her knowledge they were in compliance with the Secretary of State. Ms. Nichols answered that the Secretary of State shows them in non-compliance.

ES The application indicates that Billi Milham, with an address on Horse Canyon Road, is the operator and owner of Beer Mugs N Bar Stools. Is this correct? **SN** Her husband is listed as a member also.

ES Line 3a of the application was not answered. Do you know why? **SN** No, I do not.

ES Does Beer Mugs N Bar Stools have a sales tax license with the Town of De Beque? **SN** Yes.

ES To your knowledge has the licensee been remitting all taxes to the Town. **SN** According to the Department of Revenue they have not paid since April.

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ES Called Exhibit D to the attention of the Town Clerk, asking if she could identify this. **SN** Yes, it was an application submitted for a modification of premises that would have allowed them to expand sales out into the yard. Due to Covid 19 the governor had allowed alcohol to be served off licensed premises. This required the approval of the local licensing authority which was never given.

ES Nevertheless, to your knowledge, did they begin work on their premises to make changes. **SN** Yes. **ES** Did they obtain a building permit from the Town? **SN** No, they did not in the beginning, at least not until the building inspector informed them, they needed one. **ES** Is it your understanding that a building permit is required to be issued before building starts? **SN** Yes.

ES Have you been in communication with the building inspector regarding the work they would like to do? **SN** Yes, I have. **ES** Were there some concerns about a side door they had put in? **SN** Yes, the building inspector said that the door was non-compliant. **ES** Has final approval been given for this remodeling work? **SN** No, it is my understanding that they have 180 days from the issuance of the permit to complete this project. **ES** Is it your understanding that because of the way the door is constructed and lack of ADA compliance, customers cannot use that side door? **SN** Yes.

ES Question 9 indicates that the side door would be used when opening the yard. That was not approved, is that correct? **SN** Yes.

ES Attached to the application is a drawing that shows a door to a private area in the back. Was this door there when they submitted their application for a license. **SN** No, there was no door shown on the original drawing. **ES** Is this the first time a door was shown in the back? **SN** Yes, and of course there was no side door either. **ES** To your knowledge was anyone living in this private area? **SN** I do not know.

ES We will hear other evidence that the Milhams refer to this as their home. So, do you know if this is their home? **SN** As far as I know, their home is on Horse Canyon Road.

Mr. Sands had no further questions for Ms. Nichols

Mr. McConaughy asked Ms. Milham if she had any questions for Ms. Nichols.

B Milham began by showing a receipt for payment of sales tax on June 28, 2020 so that is incorrect to say that April was the last time they had paid. Ms. Nichols apologized but her information had come from the Colorado Department of Revenue. This is her only access to this information.

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BM When we started this business, did we own this property, or did we rent it? **SN** You rented it. **BM** And now do we own it? **SN** Yes. **BM** So when we rented this building there would be no reason for me to show a door in the back, does that make sense. **SN** I would not know that. All I must go by is the drawing that was presented with the application. **BM** But there is a Board member who used to rent this same building that can testify that there was always a door there.

Trustee Hansen stated that she had been in that building with previous businesses and can testify that there was always a door there.

Trustee Black-Greening testified that she had rented that unit before the Milhams and there was a door on that property.

SN I am not saying that the door was or was not there. I am saying that the door was not shown on the original drawing.

Ms. Milham explained that is because she did not own the building at that time and the door was locked. Therefore, she had no access to the back. She owns it now and so it is open.

Mr. Sands called Deputy J.R. Korver as his next witness having him state his name and position.

JRK stated his name and position as well as his work address and length of service

ES asked Deputy Korver if he had previously been employed by the Town of Parachute. **JRK** Yes. **ES** On May 7th while on routine patrol, did you observe something in Beer Mugs N Bar Stools that disturbed you. **JRK** Yes, I did. **ES** What was it that concerned you? **JRK** It appeared that it was open for business and with Covid 19 orders, bars were to close at 11:00 p.m. . Having previously noticed people in the bar and leaving after closing, he was concerned. **ES** Prior to this, closing time was 2:00 a.m. **JRK** Correct. **ES** What did you decide to do? **JRK** I notified Chief Dalley, **ES** Was chief Dalley in the area? **JRK** No, he was not. He was off duty. **ES** Did you think it was important enough for him to travel to De Beque to assist you? **JRK** Yes.

ES What did you see and do after you notified Marshal Dalley? **JRK** I stayed in the area watching as much as I could, but some other things came up and I had to leave. I did come back and kept watching for cars and for people leaving until the Marshal arrived. **ES** Did you see a woman known as Evelyn Hohenberger leave the bar? **JRK** Yes. **ES** Do you recall what time that was? **JRK** He did not recall. **ES** Did you hear anything while waiting outside the bar? **JRK** No, I was not close enough.

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ES After Marshal Dalley arrived what did you do? **JRK** We moved closer to the bar where they could hear people talking and singing in slurred voices consistent with the consumption of alcohol. **ES** Did you and Marshal Dalley confront the owners of the establishment? **JRK** That is correct. Marshal Dalley began the conversation, asking what was going on tonight and they said nothing much and this was their house. It was explained to them that this was a licensed liquor establishment, and it could not be a house. **ES** How did they respond to this? **JRK** They were not very happy with this and there were a lot expletives used toward the officers. **ES** Was an audio recording made of this. **JRK** Yes.

At this point, Mr. Sands asked Mr. McConaughy to play the tape. It was stated that it was 22 minutes long.

The tape began with Mr. Milham telling the officers to get off it of his F*@*## property. Get out of my F*##* house. Ms. Milham tried to calm Mr. Milham and informed the officers that this was private property. The Marshal explained that this was not their house that it was a licensed-premises, and they could enter whenever needed. They are enforcing the law. Ms. Milham (in slurred language) accused them of infringing on their Constitutional rights and stated they had a Constitutional lawyer who would be contacting them. Marshal Dalley asked again what Constitutional rights are being violated and was answered "life and liberty"

An incident occurred where Ms. Milham was pushing Deputy Korver and he told her "Do not touch me."

Mr. Sands asked Deputy Korver if he believed that they were intoxicated. **JRK** Yes. **ES** Was there a container confiscated? **JRK** Yes there was. It was a cup or a glass. **ES** Did one or both, of the Milhams say that it contained water? **JRK** Yes. He brought it back and tested it for alcohol, and it checked positive for alcohol.

ES There was a lot a talk about the Ff*##* Constitution. **ES** Did you or the Marshal ever get an explanation of what rights they thought you or the Marshal were violating? **JRK** No, not that I could understand at least. **ES** Were you ever concerned about your safety or Marshal Dalley's safety? **JRK** Yes, especially when you are dealing with intoxicated people and their claiming that this was their residence and a lot of people in De Beque have guns/weapons in their homes. He was concerned they might go in and bring one out.

ES There was some pushing and shoving? Were you ever pushed or shoved? **JRK** Yes, I was pushed out of the doorway. I was standing in the doorway, keeping an eye on Rodney because of his behavior and wanted to make sure that he was not going to get a weapon and come out after them and I was pushed out of the doorway where I could no longer see him.

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ES You were pushed out of the doorway by Billi Milham? **JRK** That is correct.

ES Ultimately, did you and Marshal Dalley determine that there would be criminal charges filed against them? **JRK** Yes, we did, and they were filed in Mesa County Court not in Municipal Court. **ES** What were they charged with? **JRK** They were charged with obstructing government operations. **ES** Is that a class III misdemeanor? **JRK** I would have to double check but that sounds correct. **ES** Did you charge them with 18-8-102. Obstructing Government Operations? **JRK** Yes.

Mr. Sands had no further questions for Deputy Korver and Mr. McConaughy asked if Ms. Milham had any questions for Deputy Korver.

She did and began by asking if he was aware of the Governor's order that was in place at that time for bars. **JRK** Yes, he explained that bars were supposed to be closed at 11:00 pm. Mis Millham replied that was a time when bars were completely shut down and they were closed for three months.

She asked Deputy Korver if he could tell her where all the liquor bottles were and asked if he noticed all the tools around on the floor and that all the tables had been pushed to the side. **JRK** I do not recall what was on the floor but do recall that the tables had been pushed back.

BM Your report indicated that you took pictures of the inside of the bar. Did you do that. **JRK** Yes. **BM** stated that she had repeatedly requested copies and has yet to receive them.

BM When you tested the glass that you took from the bar to the Marshal's office, what instrument did you use to test it? **JRK** A portable breath test. **BM** When was the last time quality control was performed on that prior to May 7th? **JRK** I cannot tell you. **BM** Do you have documentation of any quality control that has ever been performed on that instrument? **JRK** I would have to go back and look. I do not personally have any. **BM** Has that instrument ever been calibrated? **JRK** I do not know. **BM** Then who and how are you trained to use that instrument? **JRK** I received training through the police academy, DUI training, and read the operators manual. **B** I have asked for this information, also repeatedly, and have yet to receive it.

BM Do you have yearly training to prove that you are still competent. **JRK** Not on a portable breath test, no. **BM** Can you explain to me step by step how this test was done? He did so. **BM** Asked why it took so long for them to serve them with a ticket? **JRK** Other parties became involved. **BM** What parties would that be? **JRK** The District Attorney and talking to my supervisors and also, they have up to a year to make a decision. **BM** Was there anyone else employed by the Town that was involved in this event? **JRK** Other than my supervisors? No.

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BM Was my sign on when you approached the bar? **JRK** No. **BM** Was the door locked? **JRK** Yes. **BM** How did you make entrance to the bar? **JRK** By the side door. **BM** Did you go through private property and through the gate. **JRK** Yes. **BM** Did it appear that we were charging anyone for their drinks? **JRK** He could not make that determination. **BM** How many people were in the bar besides my husband and myself? **JRK** One at the time we entered. Do you know who she was? **JRK** Hannah, is all I can remember. **BM** Are you aware that she is a friend of ours and not our customer? **JRK** I have no knowledge of their relationship with you. **BM** Do you know what Evelyn Hohenberger does for a living? **JRK** No. **BM** She is a CNA at the VA hospital in Rifle where my grandmother was staying and since Covid, I cannot go see her. She frequently stops by to let me know how she is doing and to take letters to her.

She indicated she had no further questions but continued asking where his hands were when he entered the property. **JRK** He did not recall. **BM** They were on your taser. Do you admit that might be a confrontational way to enter a business? **JRK** No, my arms rest on my equipment but I am sure I was not gripping it. **BM** You were gripping it.

More conversation regarding trespassing, signs, locks, etc.

ES Is it your understanding that under our statutes and liquor regulations that you have the right to enter a licensed establishment at any time an activity is occurring in that establishment? **JRK** Absolutely.

ES Did you ever threaten the Milhams with a weapon you may have been wearing? **JRK** No.

Having no further questions Mr. Sands called the next witness, Bob Dalley

ES Ask Mr. Dalley to state his name, occupation, and position with the Town of De Beque. **BD** Bob Dalley, DeBeque Town Marshal. **ES** How long have you been the Marshal for the Town of De Beque? **BD** A little over 8 years. **ES** Have you had any previous law enforcement experience? **BD** Thirty years sworn law enforcement experience in Mesa County.

Mr. Sands reference the police report asking the Marshal if he had written a supplemental report. To Deputy Korver's report. **BD**, I did.

EXHIBIT D

ES asked the Marsal look at the copy of this report and Identify it. He did so. **ES** What is your understanding on May 7th of the Governor's order and the Colorado Department of Health Order? **BD** At that time the Governor had an order that all bars must be closed, and the bars could not be occupied.

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ES It was only some weeks after that he allowed food to be served curb side? **BD** That is correct.

ES On the recording we heard earlier, there appeared to be music and singing. **BD** That is correct.

ES Apparently this establishment does Karaoke. Was this Karaoke? **BD** It did sound like it, yes.

ES When you arrived and met Deputy Korver, explain what happened. **BD** It took him about an hour and a half to get here. At the time he was contacted he was told that the bar was open, and it appeared to be occupied. There had been similar complaints received, prior to Covid, that the bar was staying open after hours. When he got here, as he and deputy Korver walked across the street you could hear singing and slurred speech. The sounds you would hear standing outside of a bar. The windows were covered, you could not see in, making it appear as though the bar was unoccupied. One car drove away. Most of the remaining cars with parked in the back. **ES** Did you hear a patron playing a guitar. **BD**, I did.

ES When you went to the front door was it locked? **BD** It was. **ES** So did you enter the side door?

BD, I did. **ES** Explain why you felt you had a right to enter that property. **BD** For several reasons, that is a commercial occupancy, that is a commercial property. The Town of De Beque Code says that Marshal's Office can go on any property regarding a violation of Code at any time on commercial or private property.

At the time they were investigating a possible violation of law. This in not private property where the back is being used in a private way. They were investigating a possible criminal violation. **ES** Is there anything in the liquor code that addresses going on private property. **BD** There is.

ES What happened after they entered the door? **BD**, I went in before of Deputy Korver and things began well but almost immediately it turned into a "this is my house, get out of here". His intent was to instruct them that they needed to move out of the bar and go to the back. The yelling began almost immediately, and Mr. Milham started moving toward Deputy Korver. Ms. Milham kept trying to get him back to the bathroom and to stay there. He kept coming out and yelling.

His goal was to get them out of the bar and into the back. For the record Ms. Milham did not push him but she pushed Deputy Korver out of the door, and I could hear him yelling do not touch me. We do not believe that she was trying to hurt him but rather get him out of the door to get us out of there. Eventually everyone went outside. Rodney went to the back. Billie calmed down quite a bit but she kept coming back to talk. After they went back into the living area, you could hear them back in the bar. That is when he first knew there was a door there.

ES Were you aware of anyone living in the back area? **BD** In the past it had been rented out, but he did believe if it was now.

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ES Is the egress from the back through the bar? **BD** No, there is a door on the south side where you can go out into the yard. At that time, he was not aware of a door going from the back area into the bar. He had seen the drawing on the original license application, and it did not show a door. He had been in there once previously and believes there was a cabinet put over where the door was at that time.

Mr. McConaughy played the I-phone video.

The video showed the Milham's continuing to swear at the officers. Ms. Milham coming back and forth using vulgar language with slurred speech and Mr. Milham yelling obscenities outside the back-living area.

ES Could you clarify how they did the testing that Deputy Korver testified to earlier? **BD**, we used a PBT, which is generally not a certified instrument in Colorado and cannot be used in Court. It is simply a tool. It can be calibrated but since it is not used for evidence is generally not done. In this case it was just used to see if alcohol is present and, in this case, showed positive.

ES Have you recently concluded that there is a door that goes into this private area? **BD** There is a door, yes.

ES Are you aware of a body cam interview conducted by Deputy Scott on September 22nd? **BD** I am. **ES** Did the Colorado State Liquor Enforcement request a copy of that video? **BD**, they did. **ES** What did that video show? **BD** It showed deputy Scott going into the bar to do a bar check and it showed that the owners were not wearing a mask. Also, there was discussion telling Deputy Scott that he should take his mask off. **ES** And then as recently as October when Deputy Neverdahl was delivering the notice for this meeting so they could hang it up. Did you learn anything then? **BD** Again Deputy Neverdahl was going into the bar to do a bar check and the Marshal noted that no one was wearing a mask. Billie asked if he was on mask patrol and if so to make sure he went to the other businesses as well.

The last two videos mentioned were not available at this time.

ES Are you aware of people coming out of the liquor establishment and urinating in public? **BD** I am. In most cases complaints are from people who come into Town Hall and complain or make complaints anonymously, so we do not have names to follow up on. It is something that he had seen. Many time people come out of the bar and go to use the public restroom at the park. Also, they have been seen to use the side of the building or on the truck's tires. **ES** Have you ever seen the Milhams try to control this? **BD** No, on one occasion when warning a patron, David Furr, Rodney was there, and he said "Hey you can't do that when the cops are here." It was somewhat of a joke, something that you had to hide. **ES** Is there more than one restroom in the bar? **BD** It his understanding that there is one small restroom. There were further questions for Mr. Dalley from Ms. Milham

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Ms. Milham had questions for the Marshal. She asked if he was aware of the signs posted in her bar telling people they cannot do this. Marshal Dalley was not aware of what signs were on her wall.

Ms. Milham asked him about October 8 when he was in the DE Beque Country Store speaking to Doc and Shanelle? None of you were wearing a mask. Many of the businesses in Town do not wear masks except for the pot shops. So, why are the bars being singled out for not wearing masks?

Marshal Dalley replied that every time he goes into the store, he wears his mask. Shanelle can testify to this. On this occasion they were sitting at the table having a conversation and as allowed, he removed his mask and put it on before leaving the building.

Ms. Milham asked if he has ever threatened to take the business licenses away from any other business in Town except ours. The Marshal replied that he had never threatened to take a business license away from any business in Town, including yours. We did not charge you for not wearing masks. That is through liquor enforcement. I do enforce my deputies wearing masks.

When you entered my establishment on May 7th do you remember where the liquor bottles were? The Marshal indicated that the ones he could remember were behind the bar. However, his attention was focused on Billi and Rodney because they were so aggressive in a manner that could threaten myself and my deputy.

Ms. Milham asked if he notices any of the tools or materials that could be used during construction? He replied that he did not. He was asked if the bar appeared to be in any condition to be open. Was it clean? He had noted bottles in the back and some drinks on the front and a little way down the bar was a female playing a guitar and singing. It certainly did look like they could be serving alcohol. She asked if the front door was locked and he answered, yes. She then asked if that would be consistent with a business that was closed. Marshal Dalley stated it would certainly be consistent with someone that wanted to keep people out.

There have been complaints about the bar being open after hours. On occasion, at 2:00 a.m. the lights would go out and the curtains would close but no one would leave, and the cars will remain until 5:00 in the morning. Whether or not the light is off is not an indication that the bar is closed.

Mr. Sands asked about the photos at the end of the Marshal's report showing the doors. One shows the original front entrance and side door that was constructed prior to apply for a building permit. The newly installed window was shown also.

A copy of the ticket was shown and explained.

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Ms. Milham had no further questions.

Mr. Sands called Lisa Maestas, investigator for State Liquor and Tobacco Enforcement, to testify. She gave her name, occupation, and background.

Mr. Sands confirmed that she had been assigned a complaint to investigate. The nature of the complaint was regarding employees not wearing masks. This has been sent up to her supervisor for review. A previous complaint had been received in August regarding violation of the public health order and she sent out a warning letter regarding the violation of the public health order.

Mr. Sands asked if she had a chance to review the Marshal and Deputy Korver's report and the audio video recording from this establishment. She answered, yes. Mr. Sands asked for her conclusion. Based on Regulation 47-100 they determined that the establishment did not conduct themselves in a decent and orderly fashion.

Ms. Maestas reaffirmed, in answer to Mr. Sands question, that as of March 19th a public health order was issued requiring all on premise and in person service to cease.

What efforts did liquor enforcement make to notify the Milhams the rules they were supposed to follow regarding this. They were issued a warning letter in May regarding the shutdown and they could no longer have in person service and in August another letter was issued for violation of a couple of different mask violations, allowing entertainment and having a buffet, all violations of the public health order.

There are no buffets and the Milhams were still offering them. Ms. Maestas stated they were advertising them on their social media. Mr. Sands asked how many violations have there been? Other than the warning letter in May and in August they are looking at the one in September for not wearing masks and are looking at not permitting inspection. She indicated she had spoken to Ms. Milham on the phone and had discussed the violation and was told they had ceased having the taco bar and the employee, herself, and her husband, are wearing masks. She is aware of the rules.

EXHIBIT H Case report written by Ms. Maestas

This is regarding the public health order for masks. Mr. Sands asked how seriously does liquor enforcement regard this order? Ms. Maestas stated that they try to educate first but feels they take them very seriously.

Mr. Sands had no further questions.

Ms. Milham had no questions for her.

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Mr. Sands call Tony Marsh asking him to state his name and occupation.

Mr. Marsh stated he was a Special Investigator for the Colorado Department of Revenue, Liquor and Tobacco Enforcement. He has worked for the State for 7 years and prior to that he was a Mesa County Sheriff's Deputy for about 12 years and has worked a lot in liquor enforcement throughout his entire career.

Mr. Sands asked if he was familiar with Beer Mugs N Bar Stools and does he have any concerns regarding this establishment. He stated, yes, he was familiar with it and did have some concerns. He is aware through the De Beque Marshal's Office and an anonymous complainant and Investigator, Maestas. Some of my concerns are the health order violations. The State is trying to make everyone abide by these rules so that if one or two establishments do not comply, and someone gets Covid and shuts down every liquor establishment in the State. We are also trying to make the playing field fair. Trying to make sure everyone complies by the same rules. The audio was very disturbing to him. Their attitude and their aggression are alarming. In his years in liquor enforcement there was only one other occasion where he had run into people like this. The other one on a scale of one to 10 the other was a 3. The intoxication in the bar when the employees are acting as bartenders concerns him. They do not have laws about this but there are laws about intoxicated bartenders serving themselves and loitering (staying in the bar with no purpose) and then we have the issue of intoxication and over service which worries him.

Mr. Sands asked that if in his professional opinion does he believe there is good reason to not renew this license. Mr. Marsh did not wish to comment on this. Mr. Sands asked what actions LED may take. Mr. Marsh explained their charging matrix. If they are renewed, he is going to go forward with charges of the health order, refusal to permit law enforcement inspection, violation of Regulation 47-900 conduct of establishment. This will be aggravated because the owners were the ones that were violent.

He will bring forth the charges and present them to his supervisor. They will the determine what will do.

Mr. Sands asked if stipulations were sometimes added for renewal licensees? Mr. Marsh stated, yes, and explained some of what the state could do including suspensions, fines, fines in lieu of suspensions, etc.

Mr. Sand had no further question for this witness.

Mr. Milham apologized for his actions and explained that they were under stress trying to hold on to their business. He said it was bad and he was sorry for his behavior.

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Mr. McConaughy asked if there are any members of the public that wished to speak.

Todd Barton asked to speak stating that he was the owner of apartments in Parachute and was also the lender and the second note owner on this business. He spoke in favor of the Milhams citing all they did to assist during the Pine Gulch fire.

He stated the business was closed and they can do what they want in their business when it is closed if they did not have more than ten people inside. He gave them a \$3000 additional loan to tide them over through COVID. He went to three different business and none other than the pot shops had masks.

He said he is opening a bunch of businesses and had just spent 1.4 million in Battlement Mesa and is not considering De Beque if this is the way they treat their businesses. Not the Board, he stated that the Town managers are targeting the bars/certain businesses.

He began complaining about Deputy Korver and ranting about what had happened and how the officers had come onto the property and violated the Milhams constitutional rights.

Mr. McConaughy asked for comments from the Board.

Shanelle had a question for the Marshal regarding urinating in public. Was it witnessed quite a long time ago? The Marshal stated that it has been a while since he had witnesses it.

Since they are the owners/bartenders it is not possible for them to tend to their customers and be outside as well. She mentioned the signs posted on the wall and he answered if they had done this it would be great. He does not read all the signs in there. They are out there occasionally, at least one of them is, smoking.

If the Board would vote to renew their license for another year how would you feel about this and what concerns could they promise to meet to move forward from here?

Whether they renew or not is not his job. That is up to the Board. His concern is the fact that he was called. He has been involved in a lot of thing and this is the first time Deputy Korver has ever called even though he knew it was going to take an hour and half for him to get up here. After seeing Milhams reaction he is glad that he did. His concerns are for his deputies and for the safety of the community.

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One of the concerns is how they are acting and how they will react going forward. Another concern is the windows. He will probably be bringing an Ordinance for the Board to consider that any time a licensed liquor establishment be required to keep the windows uncovered whenever they are open or when any non- licensed person is in there so that they can go by and see what is going on. Also, they would not have to worry about people making up stories about what is going on in there. Also, for instance when they have some other things going on, he would like to see a video system put inside the bar that would keep the recordings for at least 10 days.

Mr. Sands began his summation by addressing the concerns of the gentleman that spoke for the Milhams. He explained that the Marshal and his deputies have every right to enter a licensed premise, through the gate, through the front door, the side door, the storage areas, and whatever or wherever else they need. He cited that section of the liquor code allowing all State and Local Authorities to enter during all business hours and all other times of activity.

He submitted a memo put together by Mr. McConaughy citing reasons to consider non-renewal. This included the public health orders.

Evidence was submitted showing that the premise has been operated in a manner that grossly affects the public health, welfare, or safety of the immediate neighborhood. This is evident by fights and disorderly conduct, urinating in public, and fights outside the establishment.

He stated the Board needs to be the judge and decide what action needs to be taken. The Board has heard what

Action the State is considering if the Board fails to act. The State gave several options that could be taken.

He asked that the Board consider, carefully, all the evidence that had been presented, testimony by the Marshal, the recording, and other testimony.

Mr. McConaughy asked Ms. Milham if she had any other statements. She replied that the criminal charges that had been filed against them, they were taking to a jury trial because they did not agree with the charges because they were closed at the time.

Mr. McConaughy called for a motion to close the public hearing.

Motion: Trustee Hansen
To close the public hearing

Second: Trustee Black-Greening

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Voice Vote: Unanimously in favor of the motion

The Regular meeting resumed with Board comments and discussion.

Trustee Hansen spoke in favor of the Milhams. She stated that this was one night, and only one night with people that are facing losing a business and dealing with stress. They were blowing off steam. The subject has been beat hard tonight . She had experienced friends coming and going herself when she was remodeling. It is her opinion that the Board should not hold them accountable for the charge they are facing in court. They should not be penalized before being proven guilty in a court of law. There was no underage serving. No other liquor violation with the exceptions of that night, and we can all agree that it was a bad night.

She refuses to make any decisions about masks. She would support renewing their license for the next year. Give them a chance.

Trustee Farris had comments as well. It has been established that they were in the bar, having some drinks, singing some songs. We are addressing their behavior and their aggressive manner, and it seem like there is a pattern of behavior, and not complying. This is what she does not like. She does not want to see De Beque lose a business and feels they should be given a chance.

The cops were just doing their job. She also noted that it is not the Town Manager making these charges. It is the State, the police, and not the Board or the Town Manager. Considering all the factors she said she was going to have a hard time deciding which way to go on this.

Mayor Gaudern asks for other comments from the Board

Trustee Wood stated the audio and video footage was certainly not the best. He has never had an issue with the Milhams. They have always been very receptive to whatever he discussed with them. He hopes that we can learn from these not so flattering moments and move on. He has also voiced his lack of approval for wearing masks.

Trustee Farris said that the fact the business is a bar, puts them in the position of needing to be ultra-careful with their patrons. If something were to happen when someone leaves the bar and someone is killed, they can come back on them. The responsibility of being a bar owner and server is a very, very big one.

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Trustee Hansen asked to clarify the fact that on the night in question the bar was closed and there were no patrons. There have not been any overserve violations against the bar. Also, during business hours, officers have been treated with respect. We need to consider the other nights not just that one night.

Mayor Gaudern said that they were calling the officers "Mask Nazis" since they were checking up on them. Trustee Hansen said this what most anyone would say in this day and age.

Mayor Gaudern stated that is not being very nice or very polite. One of the other things that no one has ever talked about is the building permit and putting in that door without getting permission. They did not get it until afterward.

Trustee Hansen stated that this is not the first person this has happened to and cited her own experience with this. They did get the permit and they have 180 days to comply and get it finished. We should not hold something against them that is not up yet.

Mayor Gaudern asked if this is not to determine whether they are guilty or not guilty.

Mr. McConaughy warned them to be careful it is not up to them to decide on the criminal charges. Trustee Jackson agree that they had a bad night. Rodney admitted he was wrong. If they keep going that way. He feels this should be tabled until we go through the courts. It is hard for him to judge with the information we have. I would be nice to let the court decide.

What we are here to do tonight is to decide what to do about the licenses that have expired. Renew or not to renew. It may be months or longer before the other violations will be decided.

Trustee Hansen stated, just from her experience with Rodney and Billi, I do not know them personally outside of having a business relationship and sharing a property boundary but, she would be comfortable renewing their license. She believes that it was a one night thing. The mask issue should be enforced at a State level and we have no ordinances to deal with this ourselves. Let them prove that they can be better. They are good people, they have a good business, and they run it well.

Mayor Gaudern stated, "except they don't like our Town staff. Trustee Hansen said that is not a part of their liquor renewal either, is it? Trustee Wood asked the Mayor if he entertained a motion to renew the liquor license for this establishment at this time. Mayor Gaudern stated he would entertain any motions they wanted to make.

Motion: Trustee Hansen
To renew the liquor license for Beer Mugs N Bar Stools

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Second: Trustee Wood

Voice Vote: Those voting, yes: Trustees Hansen, Wood, Farris, and Black- Greening. Those voting, no: Trustees Lake, Jackson, and Mayor Gaudern. The motion carried.

The Mayor asked if there was any further discussion. There was none. He thanked everyone for holding up everything the last couple of months in his absence. He has lost several members of his family during this time.

Motion: Trustee Wood
To adjourn

Second: Trustee Hansen

Voice Vote: All agreed

Meeting adjourned at 9:25 p.m.

Approved

Date

