

TOWN COUNCIL SPECIAL MEETING - WEDNESDAY EVENING  
JULY 23, 2008

PRESENT: Marshall, Cordeiro, Parella (arrived at 7:30 PM)  
and Barboza

ABSENT: Herreshoff

ALSO PRESENT: Michael A. Ursillo, Esq., Town Solicitor

The Council met in special session on Wednesday evening,  
July 23, 2008 in the Town Hall, Council Chambers beginning  
at 7:05 o'clock PM, Council Chairman Marshall presiding:

1. Bid #662 - Fire Department Headquarters and Rescue  
Squad Facility (continued from July 9, 2008)

Barboza/Cordeiro - Voted  
unanimously to refer this matter  
to the Town Administrator and Fire  
Chief to act in the best interest  
of the Town.

Prior to the vote taken, the Clerk announced receipt of the  
following bids:

The Bailey Group	Warwick	\$5,995,000
Maron Construction	Providence	\$6,175,000
Alhambra Building Co.	Warwick	\$6,152,000
Gilbane Building Co.	Providence	\$5,536,500
Pezzuco Construction	Cranston	\$6,305,000
Parisault Builders	Warwick	\$5,988,000

2. Public Hearing re Aidan Graham, Grace Waters, Inc.,  
d/b/a Aidan's Pub, 5 John Street - request for expansion of  
service area for Class B - Victualler, Intoxicating  
Beverage License (continued from July 9, 2008)

- a. Dory Skemp, 124 Hope Street re Aidan's Pub
- b. April Bellafiore, no address given, re Aidan's Pub
- c. James W. Farley, 24 Sullivan Lane, re Aidan's Pub
- d. Halsey C. Herreshoff, 125 Hope Street, re Aidan's Pub

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Barboza/Cordeiro - Voted  
unanimously to close the public  
hearing.

Barboza/Cordeiro - Voted  
unanimously to grant the petition  
subject to conformance to all laws  
and ordinances and payment of all  
taxes, fees, and levies.

Prior to the votes taken, Council Chairman Marshall  
declared the Public Hearing, duly advertised, to be open.  
He asked to hear from those wishing to speak in favor of  
the petition.

Gordon Fox, an attorney with offices located at 32 Custom  
House Street in Providence informed the Council that he is  
representing the petitioner. He also introduced Betty Ann  
Waters, the petitioner's business partner who spoke in  
favor of the petition.

Ms. Waters informed the Council that the subject property  
has undergone a major renovation at a cost of approximately  
\$1 million and that these renovations have been in process  
during the past seven (7) months.

Ms. Waters explained the details of the expansion of  
premises and further explained that new ceilings and walls  
have been soundproofed. She provided a set of plans  
(Applicant's Exhibit 1)

Councilman Barboza observed that the Police Department  
reports that there has been only one noise complaint  
regarding Aidan's Pub during the past five (5) years and  
that this particular complaint was lodged in 2005 and soon  
thereafter resolved.

Ms. Waters also informed the Council that Aidan's has no  
plan to feature music out of doors and that the outdoor  
space is intended for the use of dining only.

Responding to a question posed by Councilman Barboza, Ms.  
Waters informed the Council that Aidan's plans to serve  
patrons at tables.

Responding to another question posed by Councilman Barboza,  
Ms. Waters explained that her establishment is aware that

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it must offer food for sale at the same time that drinks are sold.

Ms. Waters presented several photographs of the building before and during construction (Applicant's Exhibit 2).

Stephen J. Cleary of 14 Highview Drive informed the Council that he is the former owner of an establishment similar to Aidan's and credited downtown revitalization to Mr. Graham.

He noted that Aidan's is a downtown establishment that is "not out of control" and that he (Mr. Cleary) was "fully in favor of the expansion."

Pamela Trainor informed the Council that she is not a resident of Bristol. She read a prepared statement in favor of the license expansion of premises; noting that she frequents local retailers as a result of her enjoyment of Aidan's.

Michael Ferreira, owner of the neighboring Gillary's tavern, informed the Council that he was in favor of the efforts of both Mr. Graham and Mr. Roiter who is the manager of the nearby Belvedere redevelopment.

Mr. Ferreira noted that Mr. Roiter had informed Town officials of his plan to install noise-proofing materials within his buildings abutting the neighborhood taverns.

Councilman Barboza recalled that this matter was discussed at a Planning Board meeting in 2004 and also recalled that the matter was reported in an edition of the *Bristol Phoenix* after that same meeting.

Angus Davis, address not given, informed the Council that Aidan's "has a long history" and that the establishment's location overlooking Bristol Harbor might be a "selling point" for those persons wishing to lease apartments in Mr. Roiter's buildings.

Michael Martel of 16 Birchwood Road informed the Council that he was a patron of Aidan's. He referred to the establishment as having a "cultural flavor" and that he goes to Aidan's for the Irish and folk music. He also noted that the entertainment at the establishment is suitable for "children and grandmothers."

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Councilwoman Parella arrived at this point in the meeting (7:30 o'clock PM).

Nila Ascioffa of 122 Union Street informed the Council that the Rev. Clifton Daniel III, Episcopal Bishop of North Carolina and former rector of St. Michael's Church in Bristol intends to have a wedding rehearsal dinner for his daughter in the expanded Aidan's premises was the license to be granted.

Councilman Barboza noted that the Council is informed that St. Michael's Church, an abutter to the Aidan's property, appears to have no problem with the expansion of premises.

Marguerite Peruto, an employee of Aidan's, informed the Council that Aidan's establishment was "the pot-bellied stove" of Bristol.

Tom Bradford of Tiverton informed the Council that he was welcomed at Aidan's. He also stated that the establishment has a "family atmosphere" and that his fellow patrons formed a "close circle (of friends)"

Mr. Bradford stated that he was "appalled" to learn via the newspaper of the "bullying tactics" of Mr. Roiter.

Mr. Bradford also stated that he does not become intoxicated at Aidan's since he frequently drives to Cape Cod after leaving the establishment.

Richard Corrente, also an employee of Aidan's informed the Council that Aidan's patrons are not "riff-raff."

Jennifer Warren, also an employee of Aidan's informed the Council that the establishment "says home and coziness."

Leonard P. Sanford III of 868 Hope Street informed the Council that his family has been in Bristol since 1747 and that he recalls frequenting the establishment forerunners of Aidan's since 1963. He also informed the Council that he was unaware of any 'incidents' occurring within the establishment during his visits there.

Mr. Sanford also informed the Council that he is a regular Aidan's patron and that he did not understand why anyone would interfere with the operation of the establishment. He

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further informed the Council that supports the expansion of the service area.

Dennis Gregson of 39 Addy Drive stated that he not only supports the expansion of the service area but further recommends that the Council should impose no specific restrictions on the type of service allowed. He noted that requiring the establishment to serve drinks and food at tables might "handcuff" the operation of the restaurant.

Paul Mancieri, owner/operator of Leo's Ristorante, 365 Hope Street, informed the Council that Aidan's is a "wonderful neighbor" and that Mr. Graham is "good to the Town."

Gary DeBlois of 58 State Street informed the Council that Mr. Graham has invested his time and resources to improve the downtown area. He recommended that the Council should support the expansion of the service area.

John Forrest of 106 High Street spoke in favor of the expansion of the license.

Thomas Carroll of 1172 Hope Street informed the Council that Mr. Graham was known to have a quality operation.

The Clerk informed the Council of the receipt of additional supporting correspondence as noted above. Council Chairman Marshall asked the Clerk to read Councilman Herreshoff's letter into the record as follows:

*I regret inability to attend some or all of the meeting Wednesday, July 23, 2008, which includes a public hearing concerning Aidan's Pub. However, I have extensively studied his case and have come to the conclusion to support his position and request, which I find reasonable and justified.*

*Aidan, through long and respectable participation in the Bristol scene, is deserving of fair treatment by the town of Bristol. I consider it selfish, unfair and unjustified for new neighbor proprietors, or in fact anybody, to attempt to stifle Aidan's good intentions for business, especially after he, with our direct or at least implied approval, has extended substantial funding to improve his pub for even better service to our citizens.*

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*Thus, were I present this evening, I would wholeheartedly vote to support his position and to grant the approvals sought by Aidan.*

*Councilman Halsey C. Herreshoff*

Council Chairman Marshall asked to hear from those in opposition to the expansion of the license.

Scott Spear, an attorney with offices at 30 Exchange Terrace in Providence, informed the Council that he represented the interests of James Roiter, manager of 423 Hope Street Redevelopment and State and Thames Redevelopment entities having business premises located on lots 3, 6, 7, 65 and 81 on Assessor's Map 10; familiarly known as the former Belvedere Hotel and adjoining properties.

Mr. Spear briefly outlined the development plans that include the renovation of the former Belvedere Hotel and ten (10) new residential townhouses along Thames Street and 10,000 square feet of future commercial/retail space.

Mr. Spear expressed concern that any new/modified businesses should be compatible with the residential nature of the Roiter developments.

Mr. Spear also refuted the allegations that his client was attempting to "bully" the local businesses. He also stated that it was not the intention of his client to "snuff out the pot-bellied stove" of Bristol. He also stated that it was not the opinion of his client that the patrons of Aidan's were 'riff-raff.'

He stated that that it was not his client's goal to limit Mr. Graham's business outside of what might be considered to be allowed by law.

Mr. Spear explained that he and Mr. Fox and others had undertaken a negotiation to resolve any differences between Mr. Roiter's interests and Mr. Graham's interests and the only remaining unresolved issue considers the closing time of the outdoor activity at Aidan's. Mr. Roiter would like this activity to cease at 10:00 o'clock PM versus the current 1:00 AM closing time.

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Mr. Spear also informed the Council that Mr. Graham informs him that most of his (Mr. Graham's) business concludes prior to 10:00 o'clock PM, and he expressed concern that should the business operate past this proposed closing time it may become solely a "drinking place" in the late evening.

Councilman Barboza asked Mr. Spear if he was aware of the "law of supposition" with Mr. Spear responding that he was unaware of this law.

A lengthy procedural discussion ensued.

Councilwoman Parella called the situation posed by Mr. Roiter to be "fascinating" and noted that when the redevelopment plans were first revealed she was surprised to learn that the focus of the redevelopment was of a permanent residential nature.

Councilwoman Parella also expressed dismay that those persons who purchase property adjacent to a landfill complain about offensive odors, etc.

Councilwoman Parella also stated that the Council has been proactive to institute controls over business establishments to manage noise complaints and that the Council was willing to "take-on" those who are found in violation of Town ordinance.

Councilwoman Parella noted the receipt of the letter of Mr. Farley and explained that it was Mr. Farley's assertion that the noise issues in the area were well known and discussed repeatedly when the redevelopment plans were considered. She further noted that the letter explains that the Planning Board warned Mr. Roiter about these issues and were convinced that these were not of concern to him based upon the discussion which took place during Planning Board hearings.

Mr. Spear stated that Mr. Roiter is not concerned about the activity within the Aidan's building but is rather only concerned about the activities out of doors.

Councilwoman Parella asked if Mr. Roiter was concerned about the activity of other local establishments; in particular the Thames Street Waterside Bar and Grille with

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Mr. Spear responding that his client was not considering that issue at this time.

Councilman Cordeiro took offense to the request of Mr. Roiter stating that he frequented Aidan's after 10:00 PM and would prefer to dine at the establishment at 11:30 PM were he to choose to do so.

Mr. Spear noted that current Town Ordinance requires closure of those establishments possessing Class B Victualler alcoholic beverage licenses at 11:00 PM.

Councilwoman Parella noted that the greater concern for noise might be related to that originating from those patrons leaving the establishment at closing time versus any disturbance coming from patrons being served out of doors.

Town Solicitor Ursillo recommended that Mr. Spear should be allowed to complete stating his case prior to any further analysis by the Council and that the Council could deliberate on the issue after the case is stated.

Mr. Spear stated that he was doubtful if the Council would vote in favor of Mr. Roiter's objection at this time and asked if the Council would receive various exhibits in support of his case.

Council Chairman Marshall stated that although he did not object to the receipt of the exhibits, he would have preferred to have received same in advance of the public hearing.

Mr. Spear provided the following exhibits for the record:

- A. RIGL Sec. 3-7-7 (2 p.)
- B. Bristol Liquor Ordinance (5 p.)
- C. Series of floor plans and schematics (5 p.)
- D. Series of documents related to a zoning public hearing
  - 1. Notice of Public Hearing
  - 2. Zoning application (4 p.)
  - 3. Radius map
  - 4. List of abutters (2 p.)
  - 5. List of mailing labels
  - 6. Parking lot lease extension agreement

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7. Correspondence Diane Williamson to Alan Berry 9-20-2007
  8. Diane Williamson and Edward Tanner re "findings" (2 p.)
  9. Zoning Board Decision 10-1-2007
- E. Rhode Island DBR Commercial Licensing Regulation 8 (25 p.)
- F. RI Secretary of State website re Grace Waters, Inc.
- G. Alan Berry to Robert J. Martin; Alan Berry to Frank W. Munro; Loren Yoder, PE to Alan Berry; Richard Pimenta to Alan Berry (4 p.)

Mr. Spear asked Mr. Roiter if he was the manager of the aforementioned businesses and objected to the petition of Mr. Graham with Mr. Roiter responding affirmatively.

It was again noted that Mr. Roiter's objection was related only to the hours of operation of the outdoor portions of Aidan's Pub.

It was also noted that Mr. Roiter's objections are based upon noise, congestion, the effects of alcohol upon persons; the use is incompatible with present and future residential uses.

Mr. Spear asked Mr. Roiter if he was familiar with the property owned by St. Michael's Church in the vicinity and its various uses as a day care facility, Sunday school and playground for Sunday school children and that the buildings and properties owned by St. Michael's Church were connected and flowed together with Mr. Roiter responding affirmatively.

Mr. Fox noted his objection to the above questions since Mr. Roiter was not recognized as an expert in these matters. He also took objection to the assertion that all of the buildings and property of St. Michael's Church was 'a place of public worship' and rather some of it was offices and a residence for the rector.

Mr. Spear entered the following exhibits:

- H. Objection filed by Atty. Sousa 6-17-08
- I. RIGL Sec. 3-7-19 (3 p.)
- J. Legislative Status Report (List Bills 3032, 8325) (13 p.)

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- K. Fragment copy Assessor's map #10 (radius)
- L. "Google" aerial views (2)
- M. Dictionary definition of "premises"
- N. Westlaw - Newport Motor Inn v. McManus (3 p.)
- O. Westlaw - The Castle v. City of Newport (4 p.)

Mr. Spear asked the Council to recognize Sean Martin a civil engineer with the firm of Fuss & O'Neill with Town Solicitor Ursillo noting that he was familiar with Mr. Martin and his expert qualifications.

Mr. Spear entered another exhibit as follows:

- P. Fuss & O'Neill - Radius Map 423 Hope Street LLC

Mr. Spear asked Mr. Martin if he had prepared this radius map with Mr. Martin responding affirmatively.

Mr. Spear asked Mr. Martin several questions regarding the map and further asked him to identify the largest property owner within the marked radius area with Mr. Martin concluding that the largest property owner was the business entities represented by Mr. Rioter (State and Thames LLC).

Mr. Martin also noted that property owned by St. Michael's Church (lots 29 and 82) were contained within the marked radius area.

Mr. Fox objected to the exhibit noting that the subject map was incomplete since the full 200 foot radius area was not illustrated.

Mr. Fox noted that Mr. Roiter's companies do not own greater than 50% of the property within the radius area.

Mr. Spear noted RIGL Sec. 3-7-19, a law that apparently allows certain property owners to object to the granting of alcoholic beverage licenses; essentially removing Town Council authority.

He further noted that the same RIGL Section explains that there is to be no alcoholic beverage license granted to those entities located within two hundred feet (200') of the premises of a parochial school, etc.

Mr. Spear noted Respondent's Exhibit "M" - the dictionary definition of the word "premises." He noted that St.

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Michael's Church lots 29 and 82 are within the radius and thus were the premises as noted in Sec. 3-7-19.

Councilman Barboza noted that the Council was in receipt of correspondence from St. Michael's Church indicating that the Church had no objections to the expansion of the Aidan's license.

Mr. Spear also explained that the General Assembly enacted legislation to exempt certain properties from the proximity regulations as stipulated above and that one of Mr. Graham's lots (66) was not included in the legislation.

Councilwoman Parella asked to know the time period of Sec. 3-7-19 with Mr. Spear speculating that this law has been in effect since the early 1900s.

Mr. Spear also noted that case law cited in the "Castle Case" appears to indicate that the "greater land owner" may file an objection rather than one that owns greater than 50%.

He further advised that based upon his assertions, the Council has no authority regarding the expansion of the Aidan's license.

Mr. Fox asserted that the conclusions drawn by Mr. Spear regarding Sec. 3-7-19 are incorrect since the law stipulates that the objecting party must own greater than 50% of the property within the drawn radius area.

He also noted that Mr. Roiter "conveniently" obtained an exception to the law regarding proximity to public worship places, schools, etc. for his own planned restaurant.

Mr. Fox also noted that the definitions of "parochial school," "private school" and "place of public worship" do not describe the portions of the property owned by St. Michaels Church within the radius area.

Mr. Fox introduced Applicant's Exhibit 3; a letter from John Reskusich, Senior Warden at St. Michael's Church concerning the Church's position.

Mr. Fox also asserted that since the Aidan's premises has held an alcoholic beverage license since long before 1978; the regulations noted by Mr. Spear do not apply.

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Mr. Spear stated that the evidence that the Town Council supported the exemptions to 3-7-19 appeared to agree that there was a problem.

Town Solicitor Ursillo noted that both of the attorneys "did an admirable job" and suggested that the Council should move forward and make a decision.

He further noted that there did not appear to be any case law to clarify the definition of "place of public worship."

Town Solicitor Ursillo also took exception to Mr. Spear's assertions regarding premises according to 3-7-19 since using Mr. Spear's manner of calculation, an abutting church, school, etc. with a 1000 acre parcel and a building thousands of feet away would prevent the issuance of an alcoholic beverage license. He further noted that the Mr. Spear's interpretation "went too far."

Barboza/Cordeiro - Voted  
unanimously to be in agreement  
that the Council has jurisdiction  
in the granting of this license  
service area expansion.

Mr. Spear presented the following additional exhibits:

- Q. Board of License Commissioners documents (21 p.)
- R. Retailer's Beverage License Renewal
- S. Copy of newspaper advertisement, letter, floor plan (3 p.)

Mr. Spear noted that he continued his objection to the Council's authority regarding the issuance of a license within the proximity of a church, school, etc., and in the absence of a certificate of occupancy.

Council Chairman Marshall asked Town Solicitor Ursillo to determine if he (Council Chairman Marshall) should recuse himself since Mr. Roiter is a customer of his employer.

It was noted for the record that neither the applicant nor the respondent objected to Council Chairman Marshall's continuing to hear the matter and Town Solicitor Ursillo indicated that there did not appear to be a problem with Council Chairman Marshall doing so.

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Mr. Spear asserted that any license would be issued illegally since there is no certificate of occupancy nor a health certificate, etc.

*It is hereby noted for the record that Council Chairman Marshall announced that due to the late hour, the interviews scheduled for this evening will be held at a later date. He apologized to the applicants and thanked them for their time and patience.*

Mr. Spear referred to Respondent's Exhibit "B," a copy of the Town's Alcoholic Beverage Ordinance.

He noted that subject ordinance contains certain provisions concerning hours of operation, presence of "bars" and food service that do not appear to be followed in this case. He referred to additional information provided in the Zoning Board documents to support his assertions.

Mr. Spear also noted some concerns, as noted in his exhibits, raised by Fire Chief Martin and explained that these remained unresolved. He suggested that the Chief should "sign off" prior to the issuance of a license.

Mr. Spear asserted that his client's objection, as noted in Atty. Sousa's letter was filed with the Council prior to the action of the General Assembly exempting the premises from provisions Sec. 3-7-19.

Mr. Spear noted that the Council must exercise "temperance" and balanced uses. He also noted that Mr. Graham does "an excellent job."

Mr. Spear re-emphasized that the only objection to the license is related to the hours of operation and that Mr. Roiter would have no further objection were the Council to limit the hours of outdoor operation to conclude at 10:00 o'clock PM.

Councilwoman Parella asked if Mr. Roiter could provide a guarantee that the problem will not be reversed and the anticipated noise problem might come, in turn, from Mr. Roiter's apartments.

Mr. Spear stated that he was happy to learn that Councilwoman Parella was concerned about noise with

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Councilwoman Parella reminding Mr. Spear that the Council sets rules and is not adverse to "calling on the carpet" anyone who violates same.

Mr. Spear provided certified copies of those exhibits originating from the Town Clerk's Office.

Councilman Cordeiro stated that he took exception to the demanding nature of Mr. Roiter's request and further noted that the Council makes its decision based upon its experience; proven in its handling of other license issues.

Councilman Barboza stated that the Council must balance the needs of all the Town's citizens. He noted his observation of the installation of loudspeakers on the fifth floor of the Belvedere building and noted that Mr. Roiter's request to limit outdoor sound appeared to be "hypocritical" in light of this installation.

Mr. Spear noted that the objection is in consideration of a 255 person potential capacity of Aidan's and that this might not compare to the sound emitted from Mr. Roiter's loudspeakers.

Councilwoman Parella noted that three out of the four Council members present were residents of the downtown area and all were personally familiar with the Town's noise issues.

Town Solicitor Ursillo noted for the record that Mr. Spear's concerns regarding the health department, occupancy permit, and fire department were unfounded since the Clerk will not issue the license until these matters are suitably resolved and that these matters should not prevent the Council from granting the license should it so choose.

Town Solicitor Ursillo also explained that the rules stipulated in Town Ordinance for hours of operation, etc., were added after the original license for Aidan's was granted and that these apply only to licenses granted after the ordinance amendment based upon the Supreme Court's ruling that license holders have 'property rights.'

Mr. Fox noted that Mr. Graham undertook his extensive renovations based upon the assurance that he would be allowed to continue his operation and that he was in total

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agreement that the license would not be issued until all of the various permits are obtained and work is approved.

Mr. Fox also noted that all of the noted expansions and improvements have been upon the lot that was noted in the General Assembly exemption.

Barboza/Cordeiro - Voted  
unanimously to close the public  
hearing.

Barboza/Cordeiro - Voted  
unanimously to grant this  
expansion of premises to the  
existing license subject to  
conformance to all applicable laws  
and ordinances and payment of all  
taxes, fees and levies.

The Council noted that this action was taken based upon the following findings of fact:

Council Chairman Marshall noted that Aidan's was known to have a good record and no evidence of any problems. He also noted that Mr. Roiter was well aware of the businesses surrounding his property and was reminded of same throughout the process.

Councilman Cordeiro stated that he was familiar with Mr. Graham and credited him with "taking an old bar and creating an outstanding friendly place."

Councilman Barboza noted an attempt upon his part and others to mediate this matter and that the mediation was unsuccessful due to the disagreement about the closing time for the out door premises. He stated that he was satisfied that all of the concerns were satisfactorily addressed by Mr. Graham.

Councilman Barboza also credited Mr. Roiter with doing a "good job" with his building project.

Councilwoman Parella stated that the Council must balance uses and that it (the Council) was well-equipped to address issues as they may be presented. She recommended that the Council should move forward and feel confident that it is on "sound legal ground."

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There being no further business upon a motion by Councilman Barboza, seconded by Councilman Cordeiro and unanimously vote, the Chairman declared this special meeting to be adjourned at 9:45 o'clock PM.

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Louis P. Cirillo, CMC  
Council Clerk