



Town of Barnstable

Regulatory Services

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Licensing Authority

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BARNSTABLE LICENSING AUTHORITY LICENSING HEARING MINUTES

Town Hall Building, 367 Main Street, 2nd Floor Hearing Room, Hyannis, MA – 9:30 a.m.
January 8, 2007

A regular meeting of the Barnstable Licensing Authority was held on Monday, January 8, 2007. Chairman Martin Hoxie called the meeting to order at 9:30 A.M. He introduced Gene Burman, Vice Chairman; Paul Sullivan, Clerk; Thomas Geiler, Director of Regulatory Services and Licensing Agent, Lt. JoEllen Jason and Patrolman Steve Maher, new Liaison Officer from the Barnstable Police Department, and Christine Ade, Recording Secretary.

Requests:

One Day Wine and Malt Licenses (3): Application of James Wolf on behalf of **Cotuit Center for the Arts**, 4404 Falmouth Road, Cotuit MA for permission for **three One Day Beer & Wine Licenses** for the following: a Valentine's Day At Show Reception to be held at the Center on February 3rd from 5 pm to 8 pm, and an Art Show Reception to be held on March 10, 2006 from 5 pm to 8 pm, each with no entertainment and a maximum of 80 attendees and a Poetry and Chili Fest to be held on February 24, 2006 from 6 pm to 11 pm with dancing.

James Wolf appeared for Cotuit Center for the Arts. At the two art shows they don't expect but 50-75 people. The poetry and chili fest is family oriented; ID's checked at door and stamping of hands takes place. This may have 125 people. The dancing only lasts for about an hour. This is their 6th or 7th year. Mr. Hoxie confirmed it will have trained servers. Mr. Burman attended an art show last night and stated it was an outstanding event, praising the facility as well.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the request of James Wolf on behalf of **Cotuit Center for the Arts**, 4404 Falmouth Road, Cotuit MA for permission for **three One Day Beer & Wine Licenses** for the following: a Valentine's Day Art Show Reception to be held at the Center on February 3rd from 5 pm to 8 pm, and an Art Show Reception to be held on March 10, 2007 from 5 pm to 8 pm, each with no entertainment and a maximum of 80 attendees and a Poetry and Chili Fest to be held on February 24, 2006 from 6 pm to 11 pm with dancing.

One Day Wine and Malt License: Late filed application of Gerald Morgan on behalf of **Just Us Home Furnishings**, 70 Corporation Road, Hyannis, MA for permission for a **One Day Beer & Wine License** for a Chamber of Commerce Business After Hours event to be held on January 24, 2007 from 4 pm to 8 pm. Just Us Home Furnishings will sponsor the event by providing a sponsorship fee, and the Chamber of Commerce will collect a door fee.

Mr. Morgan appeared for this application. They are hosting this “after hours” Chamber event. He does not expect to have any problems; the Chamber has this every month.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the request of Gerald Morgan on behalf of **Just Us Home Furnishings**, 70 Corporation Road, Hyannis, MA for permission for a **One Day Beer & Wine License** for a Chamber of Commerce Business After Hours event to be held on January 24, 2007 from 4 pm to 8 pm. Just Us Home Furnishings will sponsor the event by providing a sponsorship fee, and the Chamber of Commerce will collect a door fee.

One Day Entertainment Licenses: Application of Linda Mawhinney on behalf of Cape Cod Symphony Orchestra, 712A Main Street, Yarmouthport, MA 02675 for one day entertainment licenses for concerts to be held at the Barnstable High School Performing Arts Center on the following dates and times:

<u>Saturday</u>		<u>Sunday</u>	
January 20, 2007	8 pm – 11 pm	January 21, 2007	3 pm – 6 pm
February 10, 2007	8 pm – 11 pm	February 11, 2007	3 pm – 6 pm
April 14, 2007	8 pm – 11 pm	April 15, 2007	3 pm – 6 pm
May 5, 2007	8 pm – 11 pm	May 6, 2007	3 pm – 6 pm
December 1, 2007	3 pm – 6 pm & 8 pm – 11 pm	December 2, 2007	3 pm – 6 pm

Linda Mawhinney appeared for the application. She is the Executive Assistant. These are concerts.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the request of Linda Mawhinney on behalf of Cape Cod Symphony Orchestra, 712A Main Street, Yarmouthport, MA 02675, for one day entertainment licenses for concerts to be held at the Barnstable High School Performing Arts Center on the following dates and times:

<u>Saturday</u>		<u>Sunday</u>	
January 20, 2007	8 pm – 11 pm	January 21, 2007	3 pm – 6 pm
February 10, 2007	8 pm – 11 pm	February 11, 2007	3 pm – 6 pm
April 14, 2007	8 pm – 11 pm	April 15, 2007	3 pm – 6 pm
May 5, 2007	8 pm – 11 pm	May 6, 2007	3 pm – 6 pm

December 1, 2007 3 pm – 6 pm & 8 pm – 11 pm

December 2, 2007 3 pm – 6 pm

Hearings:

New Lodging House License: Application of Liberina Pinheiro, 7 Quaker Road, Hyannis, MA, Liberina D. Pinheiro, Manager, for a **New Annual Lodging House License**.

Ms. Pinheiro did not appear for the application.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to continue the request of Liberina Pinheiro, 7 Quaker Road, Hyannis, MA, Liberina D. Pinheiro, Manager, for a **New Annual Lodging House License** to 1/29/07.

Change of Location: Application of The Wine List, Inc., d/b/a The Wine List, Tracy K. Anderson, Manager, holding an Annual Wine & Malt Retail Package Goods Store License to **Change its Location** from Route 132, Southwind Plaza, Hyannis, MA to 665 Iyannough Road, Unit 5B, Hyannis, MA, description as follows: One entrance in front, one in rear. Retail space of 1300 sq. ft. to include small island (12' x 7') with vented gas range for the purpose of chef cooking demonstrations at wine tastings. Back area of approximately 450 sq ft to include storage, 3-bay sink, mop sink and hand sink. Two handicap-access bathrooms per code.

Tracy Anderson appeared for her application. They have been at their present location 5 years and the new location would be a much better fit for them and for their customers. The new location is in the Christmas Tree Plaza, next to Trader Joe's. It was the Dress Barn; then Cuffy's. The space was large but they will have a smaller part of it; Trader Joe's is expanding a bit. Ms. Anderson stated it is less than a mile from their present location. Rick Angelini appeared representing Hyannis Chamber of Commerce in support of The Wine List application. He stated they are a successful business and donate time, product and money to the non-profits in the area. They are also featured in local and national media. Mr. Burman stated he was a dissenter when they were first opening, but now poses this affirmative motion with pleasure. They plan to move in March.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the request of The Wine List, Inc., d/b/a The Wine List, Tracy K. Anderson, Manager, holding an Annual Wine & Malt Retail Package Goods Store License to **Change its Location** from Route 132, Southwind Plaza, Hyannis, MA to 665 Iyannough Road, Unit 5B, Hyannis, MA, description as follows: One entrance in front, one in rear. Retail space of 1300 sq. ft. to include small island (12' x 7') with vented gas range for the purpose of chef cooking demonstrations at wine tastings. Back area of approximately 450 sq ft to include storage, 3-bay sink, mop sink and hand sink. Two handicap-access bathrooms per code.

Modification to Entertainment Licenses: Smiling Jack's Restaurant Group, LLC, d/b/a **La Paz Surf Cantina**, Sean Downes, Manager, 573B Main Street, Hyannis, MA has petitioned the Barnstable Licensing Authority to add to the present number of entertainers (1-2) to up to 5 entertainers (from the period 8-12 pm), to extend the hours of entertainment from 5 pm to 10 pm to 4 pm to 12 midnight, and to allow outside speakers for non-live music only.

The applicants did not appear at the meeting. Mr. Geiler asked that rather than just sending a continuation letter, we send a letter asking them to detail what they will do to contain the noise, etc.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to continue the request of Smiling Jack's Restaurant Group, LLC, d/b/a **La Paz Surf Cantina**, Sean Downes, Manager, 573B Main Street, Hyannis, MA to add to the present number of entertainers (1-2) to up to 5 entertainers (from the period 8-12 pm), to extend the hours of entertainment from 5 pm to 10 pm to 4 pm until 12 midnight until January 29, 2007 or after filing of an Alteration of Premises application. Mr. Geiler stated it might be appropriate here to not only tell them what forms need to be submitted but to tell them whatever information you want. Clearly this is a place which is going to have a very difficult time in complying if they add additional entertainers and additional outdoor speakers. It is a very small place as it is, the building, many of them are built as seasonal operations down there – there is not a lot of insulation and so forth and it appears to me that their intent here is to ratchet this entertainment up quite a bit. Rather than simply send them the message that we can't wait to get your application, if there is something specific as to how they are going to mute the noise or control the noise, etc. then we ought to let them know that. Martin Hoxie asked to continue this to the 29th and so notify them.

Show Cause Hearing: Show Cause Hearing for M&M Tavern, Inc., d/b/a Kendrick's Casual Dining & Lounge, 72 North Street, Hyannis, Kimberly Mooney, Manager, for the purpose of determining if its Annual All Alcohol Common Victualler license should be renewed and that it satisfy the Licensing Authority of the Town of Barnstable that it is operating a restaurant and that proper equipment for the service of food to travelers and strangers is in place. Kendrick's is invited to supply copies of meals tax records, food suppliers and purveyor records and invoices and payroll records to establish it has in fact operated a restaurant for the last year (excepting the period subsequent to the fire on September 23, 2006). Also a hearing on possible rollback of hours due to complaints from the Barnstable Police Department and neighbors.

Mr. Hoxie asked for their documentation.

Mr. Hoxie read the Notice of Hearing. He stated we would like to discuss today the status of the establishment so we could have information to guide us on whether or not this license should be renewed.

Attorney John Slattery appeared with Kimberly Mooney. He stated he has a usual place of business at One Union Street, Boston, MA. He stated that he was here representing

Kendrick's, introduced Kimberly Mooney and stated they intend to reopen in March assuming that their liquor license is renewed by this Board. He noted with respect to this renewal that Ms. Mooney has been the main officer of M&M Tavern since June of 2004, stating that since that time there has only been one violation for overcrowding in August of 2005. With respect to her food service on the premises, he will note for the Board that to his understanding there has been no complaint that no food was available when requested. He also stated that according to the regulations food service has to be available 75% of the time and there needs to be adequate kitchen facilities. The statute provides that kitchen facilities are described by the Licensing Authority in its regs and in your regs you actually do not list what are adequate kitchen facilities but we do have a list of kitchen equipment available at Kendrick's which he read into record: There is one eight burner stove, two ovens, two fryolaters, one bread warmer, two soup warmers, two convection ovens, one grill, one alto sham, two heat lamps, a Hobart mixer, two microwave ovens, two ice machines, two slicers, commercial dishwasher, coffee machines, a walkin refrigerator, walkin freezer for the storage of food, popcorn machines and all of the other sundry items that go with operating a kitchen in a licensed establishment.. He submitted the list to the Board of kitchen equipment.

He also had 3 photos of the kitchen at the premises showing the kitchen, the walkin equipment, the walkin freezer and refrigerator at the premises at Kendrick's which establish that the equipment is indeed on site. He also had for the Board's review a menu which he stated has been the same menu offered at Kendrick's as long as Ms. Mooney has been operating it and which is the food service menu which was approved last year by this Authority when they renewed her license. The menu provides that food services available for the entire time it is open, not just 75% of the time as required by the Board and as well he presented Kendrick's Profit & Loss Statement which shows that they had food costs for last year January through December 2006 of \$3,798.00 and paid meals taxes on food and beverages of \$15,932.00. He stated he does have the payroll records and expense sheets – they are kind of voluminous so he stated they submitted for the Board the Profit & Loss Statement that was presented to the IRS and to Mass DOR for meals taxes which reflect the sale of food, the cost of food and sale of beverages. He stated that again, Ms. Mooney stated that Kendrick's has a menu similar in all respects to that which is at Hooter's which was renewed as a restaurant and the British Beer Company; both restaurants in the same area that Kendrick's operates. He stated they would submit for the Board's edification, copies of menus from those establishments. He then stated that since they are not aware of any violations, nor are they aware of any complaints made that any food service request at Kendrick's was mad and not honored, he would ask that the Board renew Kendrick's license and further note that the Town's Health Inspector, Tom McKean, who reviewed and inspected the premises in March of '06 as a food service operation including its equipment and utensils found as a Health Inspector that it was o.k. to be open as of March 24, 2006, so it is not only the list of inventory present which establishes that it has adequate food facilities and adequate kitchen equipment which is in full compliance of this Board and the statutory requirements, Mr. McKean's own inspection and investigation of the premises – a Town Office from the Public Health Division established that it was o.k. to

open when it had sufficient equipment and utensils and by his report on file with the Town dated March 24, 2006. He stated they would be happy to answer any questions.

Mr. Hoxie asked again if they planned to open in March. Kimberly Mooney stated Yes. Mr. Geiler asked what hours would the facility be open and what days? Ms. Mooney stated 5 pm 'till one and probably Tuesday through Sunday. Monday is generally a slower day.

Mr. Hoxie stated we do have some correspondence from the Hedgerow Condominiums including the ownership about how nice it has been apparently since September (when they closed for the fire) and they are concerned that when this establishment opens there will be disturbances and are asking this Authority to take a close look at the renewal and to take a close look at the renewal and to take a close look at the hours of operation. He stated he realizes it has been closed since September so there has obviously been no activity since September but this Authority is concerned that the operation will be the same as it was prior to September for the next summer coming up. He stated we also do have some evidence regarding the food, and asked Patrolman Maher if he had any inspection from prior to September when this establishment was closed due to the fire? Patrolman Maher stated, yes sir I do; because of the fire Detective York was inside the establishment investigating the fire in September and during the course of the investigation of the fire, he, along with two fire department officials had asked the electric company and gas company to shut off the power to the building and in so doing they went into the kitchen area to insure that there was nothing that was going to develop into a further problem with fire or electricity being shut off. During this inspection he along with the fire department had gone into the kitchen areas and went into the walkins, the kitchen area where food is kept and found that for the most part there was no signs of any food; very little if there was any; there was rust on most of the equipment and the utensils and whatnot were not in the area. He presented photos of the kitchen, and gave copies to Attorney Slattery. Patrolman Maher confirmed that the date the photos were taken was September 24, 2006, the date of the fire. Mr. Hoxie asked him if to his knowledge the establishment was open just prior to the fire. Mr. Maher stated it was.

Attorney Slattery asked to respond and stated that certainly the pictures show that there is food on the premises despite the characterization by Mr. Maher – it shows spaghettis, it shows bowls, it shows rice-a-roni, which is all consistent with the food that is being served according to the menu. It also shows the office and restaurant equipment – no indication from these photographs that it does not work. It also shows there is milk, stored there, pineapple juice and other foodstuffs. He stated that to the extent Officer Maher characterizes the photographs and what other officers found he notes that they are not here to testify and be subject to cross examination as is required and further more that Ms. Mooney will testify that the burner did indeed work and that the walkin had been repaired and was indeed working in March of 2006 and that the pictures do show the cutting boards, the stainless steel walkin, shelvings, double sinks required; it shows the oven, the 8 burners; and actually show the equipment is there and present and that the equipment does work. With respect to the photographs he states he does

not think they establish anything and specifically notes that there has been no complaint by any patron that food service was ever requested and denied at any point in time and has never been any violation issued into this matter. With respect to that he stated that first the photographs provided by the police liaison officer would further satisfy this Board and the Licensing Authority that there is sufficient equipment at the premises to operate a food service establishment and that it is adequate according to the statute and your own rules and regs. Mr. Hoxie thanked Attorney Slattery.

Mr. Sullivan referred to the profit and loss statement provided by Attorney Slattery – asking him as he had mentioned something rather convoluted about payroll, asking if there anything on it reflecting payroll? Attorney Slattery stated there are no payroll figures on there; they do have the payroll records if you would like them. They would ask that the Licensing Authority preserve them because they will need them for tax record purposes and would like an acknowledgment and receipt for the review of the payroll records. Mr. Sullivan stated he was not asking to look at the payroll records he was just wondering what the total payroll is for the year and how many people does it involve? Ms. Mooney stated she has about 10 employees; payroll roughly was approximately \$60-70,000 for the year. Mr. Sullivan asked about the 10 employees – what types? She stated they do a little bit of everything; they did not have a strict title. Ms. Mooney said she did most of the cooking; some of these employees helped in the kitchen. Mr. Sullivan stated that is where he was going – that she did the cooking primarily. Mr. Slattery stated they do have a statement of 3 quarterly reports with payroll listed which they could present to the Board. Mr. Sullivan asked if that was because of the lack of activity since September? Attorney Slattery replied that it was. Mr. Sullivan asked if the total income on the Profit & Loss Statement was the gross income for the year - 114; Mr. Slattery stated it is even though it says January to December it would really be ending in September because they were out of business since September due to the fire. Mr. Sullivan confirmed the payroll as about \$60,000? Ms. Mooney stated “thereabouts; I am not exactly sure; I haven’t added it up.” Mr. Slattery noted that the taxes for the 2006 season are due by April 15th so they are in the process of tabulating that information but do have a Quarterly Report for quarter 1 which is a little more broken down if the Board would like to see that.

Mr. Hoxie stated that obviously we are not only trying to determine that if in good faith that this establishment is operating as a restaurant and will do so if the license is renewed, but that the Board is concerned because of all the complaints we have received because of the activity last summer; everything from poor public relations with the neighbors to loud and boisterous noise to parking problems and there is apparently a litany of items that this Authority has received. We are just concerned that this would continue, or would not be alleviated if we renew it. He stated he just wanted to let them know that if we do renew this license they will be scrutinized and if they become the focus for the police department that we will come in with a full-blown rollback hearing. He stated he has mentioned this before, does not want to keep repeating himself but wants to emphasize that they have to operate this place in good faith as a restaurant and has to develop a better relationship with the neighbors and control their patrons. He stated he thinks they are aware of that.

Attorney Slattery stated based on the comments by the Board at the last hearing they are certainly aware that the Board has raised some concerns and that they are willing to work with the Board to operate it and can kind of step back from what appears to be a focus of the Board. He thinks Ms. Mooney would like to operate it in a way that is helpful to her surrounding neighbors. She hasn't received complaints from them but they do not deny that if the Board says it has, it has. They haven't actually seen those complaints but do know they were in here once for a hearing and thankfully the violation was not issued but at that point in time those concerns of the Board were brought forward to us and they certainly would be willing to work with the Board to meet those concerns and to work with the neighborhood to address any concerns the neighborhood might have.

Mr. Burman stated he is very uncomfortable with the \$3,798 gross cost of food for the entire year from January through September. How could the taxes be over \$15,000 ?? He asked them to explain to him the incongruity of those two numbers. Ms. Mooney stated that sometimes it was slow; alcohol and food is under the same tax – she stated the cost of doing the food on the menu is not very expensive. Attorney Slattery stated the meals taxes include the meals/sales tax on food and liquor both; it is not broken down. In order to be fully “open” with the Board they did break down for us what the costs are. Attorney Slattery stated the food that she buys is pastas, pizzas, hamburgers; and is not nearly as expensive as if they were supplying another restaurant menu. The second point is that they have never made any bones about the fact that the vast majority of the business at Kendrick's, even though they are open at 5 and serving food at 5 and open for business; the majority of their business is from 9:30 and 11 pm and tends to be more alcohol than food service, but food service is available; and while it does have food service earlier in the day, again most of its business does tend to occur between 9 and 12:30. Mr. Burman asked if anyone has a calculator. \$3800 divided by 35 weeks; Officer Maher stated it comes out to \$422 for 9 months is all they made. Mr. Burman stated he does not know how that falls into the category of a “restaurant.” Attorney Slattery again stated it meets this Licensing Authority's regulations and meets the statutory regulations for a common victualler license – that it have adequate food facility; that it have a listed menu which we do, and that it offer it for sale; and again notes for the Authority that there has been no incident police report that they conducted a sting in which the police could show non-service of food or that a patron complained that they requested food service and it was not available; and that they can't unfortunately control her business in trying to drum up the food service business; if she could all the businesses which have gone out of business recently wouldn't have gone out. He reiterated the food service is available in conformance with the license; the food service is available in conformance with your rules and regulations; the food service is available in conformance with the statutory authority; would we like the sales to be higher, we would. It would mean greater profit for the restaurant. However, it is what it is.

Mr. Burman asked what the extent of the damage was from the fire? Ms. Mooney stated it was mostly smoke damage but since the electricity has been off the food

freezers and refrigerator now have to be fixed. But with no income it is difficult to have \$5,000.00 on each one to be repaired. It has taken her some time to get those fixed, since obviously she can't operate a restaurant without a freezer or walkin. Mr. Burman asked if she has made an application to this Board for closing of the restaurant, since it is now more than the fire damage situation. Ms. Mooney stated she has not.

Mr. Hoxie reiterated to counsel that obviously the majority of business is after 9 pm and this is what has created the problem. He stated he thinks that also we have gone into in the past about trained staff and if they are going to continue that type of operation some changes have to be made. He also stated he would be interested in public comment before voting to renew the license.

Rita Schmid, Trustee of Hedgerow Condominiums, appeared to speak first. She is an owner of Hedgerow Condominium since 1981. Has been a Trustee since 1982 and managed the common areas for 20 years for the association. She has a good background and history of how they have dealt with this establishment and issues over the years. There are two main issues – parking violations (all three owners – Fiddlebees, The Boathouse and most recently Kendrick's) and later on violation of the Town of Barnstable anti-noise law. She stated that they have a 200' driveway leading to their property alongside Kendrick's from North St. to their condominium and Kendrick's. Patrons park from Kendrick's park in their area; delivery trucks block the driveway for up to 20 minutes so they can't get in or out and at night when parking became an issue patrons resorted to their premises looking for parking. It is an old problem that is ongoing. When Fiddlebees owned the restaurant it was strictly a dining facility and later were allowed to add on & had some dinner music during dinner time. Then the Boathouse extended the entertainment into the night hours and were allowed to bring in a band-that is when really the problems started with anti-noise regulations. Frequently loud band music coming out of open windows and doors. They worked with Mr. Richardi, who made some changes in order to correct this and there was some relief. Then under Kendrick's, being open until 1 am and running the entertainment until 1:00 (even though they license restricts it to 12:30) it awakens her and other owners with loud music. She stated when this gentleman said before we never brought an issue to the owners directly, she said lately, during the last few years, when she has tried to call the restaurant first before the police about the loud music, all she could get on the phone when calling the restaurant was a recording about upcoming entertainment so she could not speak to anyone at the restaurant and therefore had to voice her complaints directly to the police. She said when Mr. Mooney was still living, she and another Trustee met with Kendrick Mooney about the noise issues (she said she has documentation about that); he was agreeable to make changes but nothing happened unfortunately. The noise violations have been ongoing. Other issues are that restaurant patrons on foot and in cars are trespassing onto their property after hours looking for a way out; those on foot looking for shortcuts to the adjoining neighborhood, jumping over fences, often small groups came over from the restaurant and woke her up – she heard loud arguments in her own parking lot. They lately are very concerned about the bad press reports the restaurant has been getting – shooting, stabbing, etc. became a big concern for them; it is not a comfortable feeling living so

close to a place where these activities are going on. She personally found at the gas station picture postcards of some kind of dubious entertainments apparently incorporated into the late entertainment hours at the establishment – certainly not related to music. Those are her major complaints. She stated she personally feels the quality of the restaurant has really changed so much since the late night hours were added on and granted. And one more point to make regarding the noise issue – when the restaurant closes at 1:00 very often crowds linger in their parking lot; motors of cars are running, but people are still standing around talking and blasting music in their cars which is another issue they are very unhappy about and had to put up with for quite some time. Mr. Hoxie asked if anyone had any questions. Mr. Geiler asked if she would comment on type of noise occurring at night; and during the last few months (between September and currently) is there a substantial change? She stated it has been a very substantial change. It has been very peaceful – she has not been awakened once; and has been able to sleep through the night. Officer Maher asked if any of the noise was from the BBC across the street; is she familiar with it and does she know that people who go there park there; has she ever heard noise from them? She stated NO. She has heard nothing from the BBC and if she had she would have heard it now during the months Kendrick's has not been operating.

Attorney Slattery asked if he could ask Ms. Schmid some questions. He stated she was alarmed by the news reports of the shooting and stabbing, which news reports I think you said were of a shooting and a stabbing, right? He asked Ms. Schmid if she was aware that Kendrick's was not cited after hearings on those issues? Ms. Schmid stated then, "But it happened on their premises." Attorney Slattery stated it was found that it wasn't, Ms. Schmid, and is she aware of that? She stated where then did the stabbing take place? Mr. Slattery began questioning her again and Mr. Geiler asked to interrupt and Mr. Slattery told him, "No; not at the present time please. She made a statement and I want to know what the basis of her testimony is. Mr. Geiler then stated that "you made a statement there that it has been established that the shooting did NOT take place on the premises? Attorney Slattery stated that no, it has not been established that the shooting did take place on the premises, in fact the Board found that and the ABCC determined that it did not take place on the premises, ruled against the Board and overturned its decision. Mr. Geiler stated that is not correct; that is not correct. Mr. Slattery asked if Ms. Schmid was aware of that. She stated she had not read anything to that effect. He then asked if she was aware with regard to the stabbing incident that appeared in the press, that it was found there was no evidence that that occurred on Kendrick's premises? She said no. He reiterated that when she testified about the stabbing and shooting incidents she is unaware that Kendrick's was not cited or violated about that, correct? She stated if that is so, she does not know about any change.

Mr. Hoxie told Mr. Slattery that he should take notice that as far as the press releases are concerned he is concerned about the noise and disturbance and is looking forward to his reassuring us that this isn't happening; it is just informational and would be appreciated if he could just be guided by it.

Attorney Slattery stated that under those circumstances he would have no more questions about it.

Stephen Burgum came forward to tell the Board that he also lives at Hedgerow and has since 1997. It isn't like he sits in his window and waits for these things to happen. He said he lives on the upper level farthest from Kendrick's whereas Rita lives closest to Kendrick's. He stated a lot of what Rita stated he has experienced and will try not to take too much of our time. He confirms the noise problems. He stated that initially when he moved there he noted their private area entrance being blocked by trucks – both coming in from North Street and into their private area. The police and/or the restaurant were called to have the vehicles moved. He has observed on many occasions the patrons were attending Kendrick's as a bar not as a restaurant as a bar – parking in their parking area and drinking before they went in (let's say 9, 9:30, 10) that way they could save on what they drink when they went in there; leaving their litter in the area (bottles, cans, & wristbands later at night after closing). Also general litter – paper and garbage all over the parking lot after closing the night before and they have to maintain that area. He said as far as noise goes, in the summer he has windows open and he hears the band on a regular basis; does not usually complain. Said that even in fall/winter with windows closed and being as far away as he is on many occasions he hears the bass especially and can almost feel the pulsing vibrations of the bass entertainment as well as hearing it. As far as voices go before and after the restaurant, and let me voice my opinion on that...since 1997 when it was the Boathouse there was restaurant activity even though limited in terms of being a restaurant and also more activity after 9 pm but since it has become Kendrick's, in general passing, he has never noticed any business AT ALL prior to the bar scene starting at 9 pm or after. He knows no-one who has ever eaten there either. Witnessed 2 separate incidents personally; was in his own apartment minding his own business – one when he was awakened; a loud noise coming from the left (Kendrick's). In one incident when he was standing there lights from a white SUV proceeded into his parking lot (he did not recognize it; knew it didn't belong to anyone who lived there) driving down their parking lot to the end; backing up when it could not get out; almost hit a truck in their area and kept backing up in not too stable a fashion and crashed into the fence between Kendrick's and their lot. He did not write down the date and was not dressed to go outside. Did get dressed rapidly and ran out and the SUV then was wedged on their lawn in between a little flower arrangement. He at that point observed an intoxicated person driving and yelled out to the person – the vehicle approached him; it was a female who was very intoxicated. He was concerned that the person might hit him so he got in the middle of the lot so he had options of jumping either way depending on what occurred. He determined it to be a female. She rolled down her window and was cordial but very intoxicated and had a cigarette going. I asked her if she knew what she was doing; she said to me "what do you mean?" I told her she just backed into the fence over there and was just on the lawn driving all cross-eyed. Told her he did not think she should be driving, and at that point she asked him not to call the police; she was in the Air Force and would turn around and go back into Kendrick's side and call a cab, which was what I wanted to hear. I had to help her get out without hitting anything but then she sped off onto North Street, taking a left and then I called the police – had

not had an opportunity to do that earlier. Another time (December 30, 2005) I heard the noise from that area, got up to observe and a car driving very fast came into our lot; we have a sharp "S" turn coming in and the lights were moving 4 times faster than I've ever see lights come in before and once it got into the straightaway it accelerated (to I'm estimating 50 mph) and I could tell it was a small car with a male driving with a cigarette in his mouth and a baseball hat backwards; moving VERY fast. His lights hit the dumpster; he realized he had no place to go and immediately swerved to the right, hit his brakes and did a 180 turn and was gone in a blink. It was an awesome piece of driving in my opinion though I was not impressed at where he was doing it. I called the police. Officer Butler came by the next day and spoke to Glenn, the Manager, and myself. They did have photos of the damage to the lawn (the rear end of his car came across the lawn to within 3-4' from their entrance door). Another time I was outside at closing – looking over my fence into Kendrick's parking lot. I witnessed 3 males standing by their cars, motors running like Rita said, with loud foul language; you wouldn't want your children to hear, vulgar and disrespectful and scary. I just went inside at that point; didn't call the police, just filed it with the rest of the stories you've been hearing. The property has been very peaceful since the fire and the closing. Life goes on the way you want it to. In terms of the litter, on at least 2 occasions (and I think it was turned in to you people) flyers about events that were going to take place that I would equate to being in the soft porn range as far as the picture on the flyer) have been found – I am offended by those. Attorney Slattery said he had a few questions for Mr. Schmid (sic it is Burgum); and Mr. Hoxie stated he would advise against it. Attorney Slattery then stated it appeared that these witnesses come from the same condominium complex, share a common drive with Kendrick's and none are identifying any of the people they are talking about as coming from Kendrick's; that they spoke to them, that they said they had been IN Kendrick's; there are plenty of other establishments there and the problem seems to stem largely from the fact they have a common drive and knew when they bought the property they had a common drive. He asked if there was someone from another place than the apartment complex they are talking about...he stated he noticed that we have on Washington Street which is a business district which they knew when they purchased it and also note that the complaints also seem to stem not only from Kendrick's but from Fiddlebees and the Boathouse and both witnesses spoke concerning that this is an ongoing situation with all prior establishments. He said he had not heard from anyone from Sol e Lua restaurant, the flower shop, UBS, the tax investment people, an engineering supply company across the street, the various bars and other businesses – J Tech, a cosmetic shop, North Street Plaza – it is a business district. – nothing has been reported to the police or Ms. Mooney. Specifically Ms. Schmid said she hasn't discussed anything with Ms. Mooney. If she says she can't get her on the phone, well she is apparently the neighbor next door; she could easily walk over and knock on the door to talk to Ms. Mooney. He said he is unaware of any police reports being filed in these matters. It would seem to him that under the circumstances, due process requires fair notice and opportunity to be heard; none of these complaints were provided to him and don't seem to have any specific information and should not be considered by the Board in determining this as well as the fact that there is an extreme bias as they share a common drive

Mr. Hoxie stated that he hopes what is happening and knows the speaker could probably pinpoint that it is coming from Kendrick's, and what I am hearing it is that it is peaceful now and if we renew the license you certainly should be aware that there has got to be better policing by the establishment not only in the interior but the exterior to keep the common area clean, to keep disturbances to a minimum and hope that is the message that is getting across as a result of the testimony. He said he was sure you will be able to say that these people did come from Kendrick's. Mr. Burgum stated the woman who backed into the fence TOLD him she came from Kendrick's and Mr. Hoxie stated also that he thinks Counselor understands that none of the businesses he mentioned are OPEN when these disturbances have occurred. He stated that this is all evidence that would be taken up in a rollback if this establishment is causing problems in the interior and exterior parking lot and are disturbing the owners whether it is a business zone or not. So Counselor is aware of that and I am hoping the message is getting across that a better job has to be done in the operation of this premises. With that I ask if anyone else would like to speak. Rita Schmid came forward again – saying that she needed to make one additional statement – that the Attorney stated that she never approached the Mooneys directly. She said to him that he must not have heard what she said when she stated that when Mr. Kendrick Mooney was alive, she herself and another met with Mr. Mooney about the entertainment – strict enforcement (10-12:30) of the entertainment hours with windows and doors to the outside closed and some parking issues. She stated for this she has documentation as well as confirmation letter to Mr. Mooney and a copy to the Licensing Board Attn: Miss Carol Ann Ritchie. Later the same year (July 14th) she stated she filed 3 complaints with the police department (2002) about the same situation. Mr. Slattery inquired about the year – she stated 2002; he stated that was 2 years before Ms. Mooney came in as Manager. Ms. Schmid stated that Ms. Mooney or one of the Mooney sisters was present during this meeting and so was Mr. Kendrick's father so they should be aware of these problems. Ms. Schmid brought this up to show they tried to approach the owners first but later just call the police. Mr. Hoxie spoke to Ms. Schmid telling her that she should understand she is not required to speak to the owner of the property first if she is disturbed; either by noise or if there is a parking problem, just call the police department and they will conduct an investigation and forward the reports to this Authority. Ms. Schmid said that they just initially tried to contribute to good neighborly relations by approaching the owners first but then it just became too frequent and a hopeless case so that is when they resorted to calling the police department more often. She also wanted to say that Glenn Ludvigson, their manager, who works in the harbor at the Hy-Line is on his way to testify too. Hopes we have the time to listen to him. Cynthia Cole, Hyannis Business Improvement District, came forward stating she was not there representing her organization and had no plans of speaking for or against Kendrick's, and was not planning on saying anything until after she heard some of the comments from the Attorney. She stated she simply wanted to say that their job is to support all business; they want business to be successful; but don't want it to be successful at the detriment of the community as a whole. They want to be there to be helpful but want them to understand, and directed her plea to Ms. Mooney, that, "If your way of operating is indicated through your attorney's arrogance you will NOT succeed in moving forward and having a better business. I certainly hope you will make every effort to work with

the community, both the business community and the residential community, to make your business be successful. Thank you.” Mr. Hoxie called the next witness.

Glenn Ludvigson, Manager & Trustee of Heathrow Condominiums, also came forward. He is also an owner. He stated they have done everything possible to try to live with them being there and nothing has worked. He stated they have contacted the police, health department, Licensing Authority; he stated there should be numerous records of phone calls to the police department; he has photos of cars and property damage caused from vehicles spinning around on nights; brawls across the street, backing into fences; he asks that if the Board issues the license to Kendrick’s the license should be restricted as to the hours of entertainment and entertainment type at hand here; and that if any other business comes in to that building, it also should be restricted. He stated it is a beautiful building and should stay that way. He stated he has met with Kim on several occasions; spoke with her directly and it still doesn’t work. He stated in meetings with Ms. Mooney she comes across as being very pleasant and wanting to accommodate them but she may at times try but nothing changes. He stated again that THEY HAVE HAD IT.

Mr. Sullivan stated that in an exhibit submitted by Mr. Slattery in attempts to explain his client’s operation and that on the Payroll Report for Quarter 1 ending March 31 it shows a payroll with 7 names; there is another quarterly report he believes to be quarterly insurance for the 2nd quarter, and would think there would be more records...but in looking at the payroll record for the first quarter he saw no familiar names on it. He stated he was saying this because the Board had the occasion to address this establishment back a few months ago and there were four names mentioned by both the commissioner and Mr. Slattery – he believed to be security personnel – and they are not listed. He asked Mr. Slattery if what is submitted is the total payroll? Mr. Slattery stated that yes it is. Mr. Sullivan stated he recalls the names of the people we discussed ; both of us here, relating to some alleged stabbings; 4 security people were mentioned and they are not here. Are these all new people? Mr. Slattery asked, the security people? Mr. Sullivan said yes. Mr. Slattery stated no, the security people have been there 2-3 years. Mr. Sullivan asked if they had a payroll for them. Attorney Slattery stated they “1099” the security people after consulting Ms. Mooney. He then stated, “as independent contractors.” Mr. Sullivan stated that is interesting to him; he stated he does not know how you do that. Mr. Sullivan stated he was trying to get at who works there, how many people work there – really to get at the restaurant business. Attorney Slattery said that is not atypical for paying security staff for liability issues if a person alleges the security staff treated them in an unreasonable manner. Mr. Sullivan stated it may be atypical but they really should be on the payroll as far as his understanding of the payroll and labor laws go, but stated he will let it go for now. He also asked about the employment insurance & payroll for 2nd quarter. Wondered why they did not have the payroll for the 2nd quarter. Mr. Slattery stated they can supply those. Mr. Sullivan stated it made him wonder about how the operation is being run. Mr. Slattery said that again it is the end of the year, they had the fire and are trying hard to pull the information together for the tax authorities. They have never had any issue with the DOR or the IRS. Officer Maher asked the number of employees working

outside the security people. Mr. Sullivan stated that the lack of all the reports and that they were so confusing just raises the question in his mind about how the operation is being run and about the credibility he has to think about in other issues. Officer Maher asked Ms. Mooney how many of her employees work out of security. She stated all of them... He asked her how many people. She asked, including the bar staff, waitstaff, kitchen employees? She stated there are 15 employees. Officer Maher stated there are only 3 employees on her Worker's Comp Affidavit listed. So as far as the liability issue, you are stating you only have 3 employees on your affidavit but telling the Board you have 10-15. She stated that since the fire everybody has gone other places. Mr. Slattery asked if he would note that part-time employees aren't required to be covered by Worker's Comp Insurance. Officer Maher asked her who are the 3 full time employees? She shrugged and said she is not even sure what is down there – right now she has none. Officer Maher stated the application also does not have a menu and asked her if her statement is that that menu is available 75% of the time, is that correct? She said Yes. He then asked if that menu was available prior to the fire. She stated Yes. Officer Maher also asked Ms. Mooney in looking at the photos in front of her, is there anything in those photos that shows fish, scrod, spaghetti, steak? He stated he looked at the menu and it is fairly extensive having over 30 items on it but in looking at the photos and also photos they brought to the Board, he does not see staple items lending to that menu – steak, meat, fish, etc. available or the other items you have on your menu. Ms. Mooney stated all she can say is that she bought fresh every day. Officer Maher stated that her Profit & Loss Statement does not show that. To carry the food items ON the menu presented, what was your food cost for the year? She stated the food cost wasn't much; shrugging again, and said she did a menu it was inexpensive for her to do. Officer Maher stated that to carry that menu and does not lend itself to being inexpensive. To carry that menu you would have to have all those foodstuffs available and it was not substantiated by the foods that were there. Mr. Slattery asked Officer Maher if he knew what those food costs were. He stated he is looking at their menu...Attorney Slattery interrupted and stated I am asking you...you are making statements that the amount of money that she lists as costs on the Profit & Loss Statement are insufficient to withstand her food menu. I am asking you what basis you have for making the statement. Officer Maher stated that to look at the menu and to look at steak and scrod and things of that nature he would say it would be an assumption that those items would be more costly. Mr. Slattery, but it would be an assumption? Officer Maher stated it would. Mr. Burman stated he is at a loss to justify with a \$3,798 per year food cost that you are operating a restaurant. He stated that there is NO WAY in his mind you can convince me of that. The food cost on an annual basis figuring 35 weeks because you are closed in September comes out to \$15.51 PER DAY for cost of food. He then stated, that's pretzels in an operating restaurant. He also stated he has operated a restaurant so he does know something about food costs, to answer Mr. Slattery's previous question. Mr. Slattery then stated, "the issue Mr. Burman is that she has told you the food menu is available and you haven't had one complaint to tell you that anyone has tried to buy food...Mr. Burman stated it has nothing to do with complaints. Mr. Slattery then stated it is a food service operation and if you listened to the witnesses who came in; they both said whether it was Fiddlebees or whatever it was after that, that most of their business came in for those two

establishments as well. He then stated that just seems to be the way it goes – she can't generate more restaurant business; she is open at 5; is open for the business. He stated that seems to be the history of that establishment even before Ms. Mooney was there. Mr. Geiler stated it may have been the case with Ms. Mooney's experience, but not for when Kendrick's opened. When Kendrick's opened, they opened with a full lunch menu, were open through the dinner hour, they served substantial meals; did a very good family food business. At some particular point apparently that stopped. Mr. Slattery stated that she is open from 5 on for a dinner business, meets the requirements of the statute and your dinner guidelines. Mr. Geiler stated he does not agree that it meets the guidelines OR requirements of the statute. If you just address it from the standpoint of Ch 138, 23 in the issuance of a license based upon need and convenience, would \$3-\$4,000 worth of food demonstrate that there would be a NEED for the Licensing Authority to issue a license like this? Mr. Slattery stated it is his understanding that the License issued last year and the year before and the nature of the restaurant business has not changed. So apparently it satisfied the Licensing Authority in the past and there have been no violations issued this year. Mr. Geiler then stated that apparently this has not come up in the past; this is the first time it has come up. Mr. Slattery then stated that it meets the requirement of food service under the statute. Mr. Geiler stated it does NOT meet the requirements. Mr. Slattery stated the statute does not say how much food has to be served, but that it only says it has to be available to be purchased. Mr. Geiler stated it requires substantial food service be available at all times the place is open...and substantial meaning what the Licensing Authority believes is an appropriate menu. What they approved is this menu right here which deals with a lunch menu, a dinner menu, a dessert menu like any other restaurant.

Mr. Hoxie stated it is clear that it is the responsibility of the License holder to satisfy this Authority that they are operating a restaurant in good faith and what I'm hoping to hear is some proposed change in the operation of this establishment so if it is renewed it can be renewed with confidence that the disturbances and the things we have heard this morning will cease. But apparently what I'm hearing is that we are going to have the SAME operation of this establishment where it is going to be more of a nightclub and not a restaurant. I was hoping to hear how we could alleviate obviously a problem that is caused by this establishment. And I'm not hearing anything. Attorney Slattery states that Ms. Mooney is willing to work with the Board and the police department to run a successful business at that location. She is willing to work with the neighborhood to accommodate their interests and take steps to solve whatever problems they have and take steps to comply with what the Board would like. He stated his position in this has been that it has been a series of events where the Licensing Authority has brought Mooney before the Board several times this year on some circumstances which merited it and some circumstances which didn't. What he said he doesn't want to do is get in a position where we are saying that anything in the past has any reflection on whether it should be renewed because of a violation. In terms of going forward Ms. Mooney is open to working with the police department, the Licensing Authority and the neighbors to achieve what everybody wants to run over there – a successful business. To that end, they did provide a booklet I think to the police department as to how we would go

forward. It wasn't required that we do that because the decision was overturned but we did it anyways and again we would be willing to work with the Board to accommodate what the Board would like to see at Kendrick's bearing in mind that there is the practical problem there of what business generates at that facility and what has historically been generated at that facility. Mr. Hoxie stated he still would like to see something more specific about staff security training, in order to alleviate the problem, how these meetings would take place with the neighbors, what is meant by a better relationship with the police, I would like to hear some specifics how we are going to keep this neighborhood the way it is right now since September. Attorney Slattery said he does not see how it can be the same as it was in September because there is no operation there but certainly they would be willing to meet with the neighborhood and discuss things; he does not believe Kendrick's would want any patrons parking in their side of the parking lot; they tend to try to prevent that; everybody parks over in the North Street lot. That would address their parking issues. It should also address the issue of people going into their driveway and their parking area. With respect to eh police, as I've said in the past, we would always be open to have a police officer on duty; I know that the Town doesn't do that but certainly if the Town would change its position on that we would be happy to have a Police Officer in the establishment and pay details. With respect to training, we have investigated the training, to the extent that if the Board is aware of security training we would be more than happy to secure that with respect to security personnel and as I said we are open to discussion with the Board and the Police Department when it comes to the operation of Kendrick's. We would like to see the license renewed – they haven't had any violations in the past year and I understand there is anecdotal evidence from the several witnesses who came up but again we weren't provided with that information and it is anecdotal. The fact remains if they did complain to the police department they didn't bring forward a notice of violation or cite Kendrick's.

Mr. Ludvigson came forward again with the property damage photos for the Board. He stated that in 6 years he has never ever seen a food delivery truck; has never seen the building open at 4 to 5 – 6 pm. He stated his job has him coming in and out all hours of the afternoon – even 10 pm and I have been home at 10 and they are still not open; there might be signs of opening – there may be her vehicle – but I have NEVER seen that restaurant open at 5 pm or 6 pm, even 7 or 8! The only time they might open at 8 is when they pass out those flyers where they call it Kendrick's Club, which they are not a club, with half naked women in glossy photos advertising some reggae band and they say they open at 8. Even then, it is definitely NOT a restaurant.

Mr. Burman read into record correspondence from Lt. Hubler, Hyannis Fire Dept. – to wit:

"It is my observations in the kitchen at Kendrick's I can tell you for the record that during my annual inspections, fire incidents and incident re-inspections that I have not seen much in the way of food for running a restaurant in the last 4 years. There has been little to no food in the walk-in cooler and little evidence of use of the cooking line. I have seen fruit in one of the walk-ins which I assume is for garnishing cocktails. I have

noticed discolored can labels on cans stored on racks in the basement. I would suggest that the board review their state meals tax records and their menus. I hope this is of help to you and the Board.”

Mr. Hoxie stated that he thinks the difficulty here, Counselor, is that even though there are no complaints for someone who has not received food upon request, and even though the equipment is available it is the establishment's responsibility to show this Board that this place IS in fact a restaurant and it is operating in good faith. With the evidence coming forward, it appears to me it is not a restaurant but more of a nightclub with the vast majority of its business being done at 9:00 through alcohol and entertainment, and I would like to know what steps you are going to take to turn this into a restaurant which could be compatible with an entertainment establishment. Attorney Slattery reiterated that again there have been no complaints regarding food service, she has introduced evidence that she is buying food, the fact that there is not a lot of great sales from food she can't control, but the Profit & Loss Statement clearly shows that there is purchase of food substances, that they do have food service available, they have provided the menu, she will take whatever steps she can to enhance her foodservice business, whatever she can do – advertising; she'd like to do that and would be more than happy to run a more profitable business but the history of the building has been, at least my understanding from the two witnesses that the business picks up at 9 at night. She does have food available; it is what is required by the Common Victualler's License and she is willing to make a further effort with respect to the food service end of it; but I think the only thing we can really do is advertise it as a restaurant and try to draw in the customers.

Officer Maher stated he had also received a letter through Chief John Finnegan – from Silvia & Silvia Associates. He read the letter dated May 15, 2006 into record, to wit:

“This letter is being sent to you in the hopes that the Barnstable Police Department can be of assistance to our tenants, UBS/Paine Webber, at 60 North Street in Hyannis. They are located next to Kendrick's and arrive at work every Monday morning to litter thrown about the parking lot and lawn.

At this point in order to keep our tenants happy we have to hire and pay a clean up crew to be there first thing Monday morning to clean up the litter. I feel this responsibility lies in the hands of the owners of Kendrick's. As this continues to be an ongoing problem I would appreciate your assistance in enforcing that they be held responsible for the actions of their patrons.” Signed by Robert J. Silvia, the President of the company.

Mr. Hoxie closed the hearing to testimony and opened it to discussion of the Board.

Mr. Burman stated the application is for a common victualler license; he does not see it as being a legitimate common victualler license. There is food being served but not as advertised; we know the equipment is there but that doesn't mean it is being used and from the pictures I saw the equipment looks rusty which means it hasn't been used. The Board of Health made an inspection just prior to the fire or after the fire would show

that you can't continue to use this equipment until it is cleaned up and I can tell you that from personal experience. He then said at this point in time when we take a vote I would not vote in favor of renewal of the license. Mr. Sullivan agreed with Mr. Burman about the validity of this establishment operating as a restaurant which was initially before us today. He refers to the exhibits, figures, etc. submitted by Counsel for the establishment – the Profit and Loss. He thinks there have been a tremendous amount of problems and complaints – from the public, from the police department –some of these things I am just becoming aware of today. I am convinced that a number of these people have talked to owners of this establishment or those in the chain of command, family members in the past, and they don't seem to have been addressed. I don't know if I would go as far as saying I would not issue the license Mr. Chairman but I clearly think the parking issues and access to the condominiums in the back is a serious issue, it is not just a matter of community pride; that is the only way to access their property. Some of these people who have come forward and testified are elderly and I don't see the access there for emergency vehicles. It has been stated it is blocked off sometimes and I don't see that the establishment is paying an awful lot of attention to outside when that is a severe issue as far as access for emergency vehicles. I would at least, if the counsel for the establishment is saying they will do all they can to operate this establishment in a proper fashion I think the music has got to be controlled, the hours have to clearly be reduced until they can show they can operate in an appropriate manner in this community. That's my position at the present time.

Mr. Hoxie stated that it would appear from the evidence presented here that the licensee has not satisfied the requirements of Section 12A, Chapter 138 that prior to renewing a restaurant license the Licensing Authority must be satisfied that in good faith that the establishment is operating as a restaurant. Keeping in mind the Licensee's right to appeal in Section 67 of Chapter 138, I would entertain a motion.

A motion was duly made by Mr. Burman that M&M Tavern, Inc. d/b/a Kendrick's Casual Dining and Lounge doing business at 72 North Street, Hyannis, Kimberly Mooney, Manager, that the Annual Common Victualler's License should not be renewed. The motion was duly seconded by Paul Sullivan and a unanimous vote taken not to renew this license. Mr. Hoxie then stated that the Licensee has the right to appeal.

Renewals:

The following renewals have been submitted without any changes from the previous year for Licensing Authority approval.

A motion was duly made by Mr. Burman and seconded by Mr. Sullivan and a unanimous vote taken to approve the Class I Auto Dealer renewals as submitted below:

Class I Auto Dealers:

Tracy Volkswagen Audi
Cape Cod Lincoln Mercury

A motion was duly made by Mr. Burman and seconded by Mr. Sullivan and a unanimous vote taken to approve the Class II Auto Dealer renewals as submitted below:

Class II Auto Dealers:

Hyannis Auto Sales
Auto Smart
Auto Wholesalers of Cape Cod
Wheels to Work
Carz
Image Motors
Mistic Motors
M3 Motors
Cape Auto Sales
ES Auto Sales

A motion was duly made by Mr. Burman and seconded by Mr. Sullivan and a unanimous vote taken to approve the Lodging House renewals as submitted below:

Lodging Houses:

Green Mountain Inn B&B
Beechwood Inn

A motion was duly made by Mr. Burman and seconded by Mr. Sullivan and a unanimous vote taken to approve the Common Victuallers renewals as submitted below:

Common Victuallers:

FAME – Cape Cod Community College
Cape Cod Chicken
Back Again Café
Quizno's
McDonald's – 175 North St.
McDonald's – CC Mall
McDonald's – 654 Iyannough Road
Spiritus Pizza
White Hen Pantry 1-0305-1
Subway – 251 Iyannough Road
World's Banquet
Katie's Home Made Ice Cream
Sweet Tomatoes
Chao Cajun
Osterville Sundae News

The Box Lunch
McGee's Ice Cream
Common Ground

A motion was duly made by Mr. Burman and seconded by Mr. Sullivan and a unanimous vote taken to approve the Automatic Amusement renewals as submitted below:

Automatic Amusement:

Ryan Family Amusements – CC Mall
Ryan Family Amusements – 441 Main Street

A motion was duly made by Mr. Burman and seconded by Mr. Sullivan and a unanimous vote taken to approve the Cinema/Theatre renewal as submitted below:

Cinema/Theatre:

Regal Cape Cod Cinemas 12

A motion was duly made by Mr. Burman and seconded by Mr. Sullivan and a unanimous vote taken to approve the Sunday Entertainment renewals as submitted below:

Sunday Entertainment:

Ryan Family Amusements – 441 Main Street
Regal Cape Cod Cinemas 12

Other Business:

Discussions with Bumbalini's principals regarding continued entertainment licenses for 2007 (review per meeting 12/18/07). Mr. Cheschi and Ms. Tetreault appeared. Mr. Hoxie stated he understands that they have received no complaints. Officer Maher confirmed. Mr. Hoxie asked if they have HAD entertainment since 12/18; Mr. Cheschi stated they have. And they have not received any complaints. Mr. Cheschi stated they are trying hard. But they have no outside speakers. Ms. Tetreault stated they have not had entertainment this week and it has been a significant drop in business. Mr. Geiler asked what they are looking at here; what are they asking to renew? Mr. Geiler wanted to make sure everyone knows what that is – what are the times on the license, what are the entertainers, what will be the impact on the neighborhood, etc. Mr. Cheschi stated that has all been sent in to us. Their entertainment as is up to 3 entertainers, acoustic with amplification. They are asking for the same entertainment they have had in the past. The hours presently are noon – midnight; 1 pm to midnight Sunday. Mr. Geiler asked how big the facility is. Mr. Cheschi stated there are 3 locations at which they have entertainment; Mr. Geiler stated they are only talking about one here. Mr. Cheschi

stated they have entertainment inside – it holds 48 people and the outside that holds 48...Mr. Geiler stated they are not talking about outside at this particular point; Ms. Tetreault said, “not ‘till the summer, but we are speaking of it for the license.” Then Mr. Cheschi stated that the license reads in and on the premises of 599 Main Street. Mr. Hoxie asked if what they are asking for is what they had in the past. Mr. Cheschi replied, “Exactly.” Mr. Hoxie states he is satisfied to continue this license as is; if there are any complaints it could be modified. Mr. Geiler asked if we could at least talk about reducing the hours? Mr. Hoxie stated the hours presently are 12:30? Mr. Burman stated noon to midnight and Sat & Sun 1 pm to midnight. Mr. Geiler told him he was reading off the Sunday license. Ms. Tetreault stated it is just Sunday from 1 pm to midnight; she believes Mon – Sat is noon starting time. Mr. Burman stated he is reading off the license. Again Mr. Geiler told him that was the Sunday license. Mr. Burman stated there is one other issue – that of the employees. Mr. Hoxie stated again that they have no complaints. Mr. Geiler stated that there IS a problem, who is running the place? Mr. Cheschi who is running the place – Mr. Cheschi stated he is in Hyannis 3-4 times per week. He spends the weekends here. Mr. Geiler asked who is managing the place and stated he does not think that Mr. Cheschi is being straight with the Board. Mr. Cheschi stated he IS being up front with us. Mr. Geiler asked how often he is here in Hyannis? Mr. Cheschi stated he is in Hyannis about three to four times a week. He said he spends the weekends here – he and his wife – and ...Mr. Geiler stated that was not going to allow him to manage the place. Mr. Cheschi stated they ARE looking for a manager right now and he has done some interviewing; is aware of the situation and will correct it. Mr. Hoxie asked Kathryn if she was not going to return as manager. Kathryn said she is acting as a manager, bartending 2 nights a week; there in the afternoons several days a week – wasn’t there Monday last week because of the holiday but right now is there and as manager. Mr. Hoxie asked how soon they will be coming forward with an application for a new manager. Mr. Cheschi represented within 21 days. Mr. Geiler again stated, “Mr. Chairman I do not think you are getting a straight answer out of this guy; I’m sorry but he hasn’t been forthcoming; I think everybody has told you what needed to be done; you decided you were not going to do it; fine. Mr. Cheschi stated that is not so, and he is not disrespecting anyone and did want to help the person I have working in my kitchen right now which I thought was doing a great job. I understand there is a serious problem here and I will correct it. Would you suggest renewing this license again for a short period of time again, for a month, and investigate? Mr. Geiler stated, “at the very least.” Mr. Hoxie stated that is what we’ll do and by then we should have a new manager and feel more comfortable renewing the license on an annual basis. Mr. Burman asked when the next meeting was; it is the 29th of January. He then asked for the next meeting – February 12th. Mr. Burman asked if we could do it until February 26th. Before a vote, a citizen asked to speak to oppose the entertainment license for Bumbalini’s – he stated there are no hours being set; no-one has brought up that there is another bar there – the Beechtree – it is a busy place; he is a neighbor with a 6 year old son. He stated many patrons have urinated through the fence into his yard and he has spoken to management about this – there doesn’t seem to be any management there. Kathryn stated that is NOT true. Mr. Hoxie asked him for his name – it is Robert Johnson. Mr. Hoxie stated he thinks we do understand the problem with the management; that’s why we are thinking of issuing the license for a short period of

time in order to come up with a new manager and a new plan. Mr. Hoxie asked if he had called the police on any of these occasions. He has never called the police. Mr. Hoxie stated he should call the police starting today if he is being disturbed so they could conduct an investigation. He also said there is a problem with parking out n the back area where it is private property. Ms. Tetreault stated there are also other bars within walking distance, across the street. Mr. Hoxie stated we understand the problem and will address it and to make sure he alls the police if he is being disturbed and they will report it to us. Don Lavoie came forward; he lives in the apartment above the restaurant. He said at the last meeting he was at with Lou he was asked to compromise, which they did. He stated he will tell the truth, will not say anything behind anybody's back. He said out of the past 21 days, 218 days was perfect; music was low; bass was just a little bit - he and his wife were satisfied with the 18 days. On three of the days it was too loud late at night. – he faults the disc jockey sneaking it up late at night and is willing to forget those 3 days. However, this is with all windows closed and storm windows down. He cannot say what it will be like in the summer with windows open. If they have an idea they can tell us about what the summertime will be like he'd appreciate it. As of now he is satisfied. Mr. Hoxie stated that once a manager is in place, that will be the person he could communicate with. If we issue the license for a short period of time it should suffice. Mr. Lavoie has communicated with Louis Cheschi and he has complied with whatever has been asked. A few times there was loud music outside and he spoke to Lou about it; it was killed immediately and he has no complaints about it. He just wanted the Board to know what has gone on since the last meeting.

Mr. Hoxie asked that an application for new manager be on or before February 26, 2007. Mr. Cheschi stated he will not be available in February. Mr. Hoxie asked if he would have a manager by then? He stated there will be a manager in place by that time. Mr. Hoxie asked that he have the manager here on February 26th and perhaps Katie as well. The 12th or 26th? Mr. Hoxie stated the 26th.

Mr. Burman moved that the entertainment license be renewed until 2/26/07 for a new discussion. Mon-Sat noon to midnight and Sunday 1 pm to midnight. Seconded by Mr. Sullivan and unanimously carried.

Discussion regarding correspondence on establishment called in by ABCC for underage drinking. A violation took place on December 2, 2006 regarding underage possession of an alcoholic drink (Sam Diego's) and a violation of service of alcohol to an intoxicated person (Duck Inn Pub) took place on December 2, 2006.

Mr. Hoxie welcomed Lt. Jason and Patrolman Maher and adjourned the meeting at 11:30.

Respectfully submitted,

Christine P. Ade, Recorder
Town of Barnstable Licensing Authority

Paul Sullivan, Clerk
Town of Barnstable Licensing Authority