



Town of Barnstable

Regulatory Services

Thomas F. Geiler, Director

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.
February 26, 2007

A regular meeting of the Barnstable Licensing Authority was held on Monday, February 26, 2007. Chairman Martin Hoxie called the meeting to order at 9:30 A.M. He introduced Gene Burman, Vice Chairman; Thomas Geiler, Director of Regulatory Services and Licensing Agent, Lt. JoEllen Jason and Patrolman Steve Maher, Liaison from the Barnstable Police Department, and Christine Ade, Recording Secretary. Paul Sullivan, Clerk, was absent.

Requests:

One Day Entertainment and Sunday Entertainment Licenses: Application of Joe Cotellessa on behalf of **Hyannis Rotary**, P.O. Box 93, Hyannis, MA 02601, for a **One Day Entertainment License and Sunday Entertainment license** for a Home & Garden Show with raffle, face painting, & balloons to be held at Barnstable High School, 744 West Main Street, Hyannis, MA on Saturday, March 24, 2007 from 10 am to 6 pm and Sunday, March 25, 2007 from 10 am to 5 pm.

Mr. Cotellessa, President Elect of the Rotary Club appeared for his request. This is an annual event.

A Motion was duly made by Gene Burman and seconded by Martin Hoxie and a **Unanimous Vote taken** that the application of Joe Cotellessa on behalf of **Hyannis Rotary**, P.O. Box 93, Hyannis, MA 02601, for a **One Day Entertainment License and Sunday Entertainment license** for a Home & Garden Show with raffle, face painting, & balloons to be held at Barnstable High School, 744 West Main Street, Hyannis, MA on Saturday, March 24, 2007 from 10 am to 6 pm and Sunday, March 25, 2007 from 10 am to 5 pm be approved.

One Day Wine & Malt License: Application of Michael Sweeney on behalf of **Housing Assistance Corp.**, 460 West Main Street, Hyannis, MA for permission for a **One Day Wine & Malt License** for its annual review of the state of housing on Cape Cod to be held on March 21, 2007 from 5 pm to 8 pm at St. George Greek Orthodox Church, 1130 Falmouth Road, Centerville, MA.

Mr. Sweeney appeared for this request. This is their annual meeting. They have a responsible server.

A Motion was duly made by Gene Burman and seconded by Martin Hoxie and a **Unanimous Vote taken** that the application of Michael Sweeney on behalf of **Housing Assistance Corp.**, 460 West Main Street, Hyannis, MA for permission for a **One Day Wine & Malt License)** for its annual review of the state of housing on Cape Cod to be held on March 21, 2007 from 5 pm to 9 pm at St. George Greek Orthodox Church, 1130 Falmouth Road, Centerville, MA be approved.

Hearings:

Change of Manager: Application of Bumbalini's of Cape Cod, LLC, d/b/a Bumbalini's & The Beechtree Bar, 599 Main Street, Hyannis, Kathryn Tetreault, Manager, holding an Annual All Alcohol Common Victualler License, for a Change of Manager to Melissa L. Duarte.

Ms. Duarte and Ms. Tetreault appeared for Bumbalini's application for Change of Manager. Ms. Tetreault apologized for being a few minutes late today. Melissa has 11 years experience – Bobby Byrnes and British Beer Company among others. They are presently the only two employees. Ms. Duarte lives upstairs – literally she “lives at work.” They have a small operation right now. Ms. Tetreault will stay on but not as Manager. They wanted us to know that the chef is gone.

A Motion was duly made by Gene Burman and seconded by Martin Hoxie and a **Unanimous Vote taken** that the application of Bumbalini's of Cape Cod, LLC, d/b/a Bumbalini's & The Beechtree Bar, 599 Main Street, Hyannis, Kathryn Tetreault, Manager, holding an Annual All Alcohol Common Victualler License, for a Change of Manager to Melissa L. Duarte be approved.

Renewal of Entertainment Licenses to 12/31/07: Bumbalini's & The Beechtree Bar - Daily Live Entertainment, Daily Non-Live Entertainment and Sunday Entertainment – review of licenses for yearly renewal.

Ms. Tetreault appeared for Bumbalini's review of the entertainment licenses for the remainder of the year. She stated everything is very quiet – they are keeping it low. They really want the entertainment license to continue. She will remain but not as Manager as she has a full time job with her baby. Mr. Burman asked what the entertainment will be in the summer. They plan to have one person with acoustic guitar; the music to be inside only. The entertainment will not be outside. Ms. Duarte is cognizant of the neighborhood concerns and Mr. Geiler suggested if they have any questions at all she should call us. We only renewed the entertainment license until today. Mr. Geiler stated the biggest part of the plan is now in place. He stated the music IS compatible in the area if controlled properly and believes these individuals are well aware of what their task is. Mr. Burman proposes that we issue

the license with one entertainer; no outside speakers, and If they want more they will have to apply. Ms. Tetreault stated that they have had 3 entertainers up to this point with no problem. She stated that they would prefer the three. Mr. Hoxie stated he has no problem with the three, as we can call them back in if there is any problem. Katie asks for up to three with very light amplification or acoustic. Mr. Hoxie again stated he has no problem with the three. Mr. Burman stated for once he is at odds and moved that the license be modified to TWO entertainers, no outside speakers and all noise contained within the premises and that It is approved to the end of the year.

A Motion was duly made by Gene Burman and seconded by Martin Hoxie and a **Unanimous Vote taken** that the Daily Live Entertainment, Daily Non-Live Entertainment and Sunday Entertainment Licenses of Bumbalini's & The Beechtree Bar be approved and issued for the remainder of 2007 with up to 2 entertainers and no outside speakers.

Change of License Type: Application for a **Change of License Type** by Preet Corp. d/b/a **Pavilion Indian Cuisine**, 511 Main Street, Hyannis, Narinder S. Thind, Manager from an Annual Wine and Malt Common Victualer License to an Annual All Alcohol Common Victualer License.

Mr. Thind appeared for his application. He requests the change at his customers' request (the change to serve public need). Mr. Burman asked if it is necessary to get the Town Manager license approval for outside dining – Mr. Geiler stated it is NOT necessary as it is all on their own private property, and is not before us today. Mr. Burman also wanted to make sure it did not impact the church nearby. The Licensing Recorder stated that abutters are not required to be notified for this change; this restaurant already has their license with the ABCC and is just requesting all alcohol at this time.

Gary Blazis, Town of Barnstable, appeared to comment on this application. He told a brief story of a summer afternoon when he parked in front of the restaurant, went up to see his son who had an office nextdoor. He came out later on and a man was waiting by his car. He asked him if he had lost his cell phone. He was very very impressed as this was the owner/manager of the restaurant, who was waiting outside. He believes this person is an asset to the community and went on to say that his restaurant is wonderful. He supports the request for full alcohol. He states they run a great business. Alan Goddard also came forward as well and has eaten at this restaurant many times; stated it is the only Indian restaurant here – encourages the Board to grant his expanded license.

A Motion was duly made by Gene Burman and seconded by Martin Hoxie and a **Unanimous Vote taken** that the application of Preet Corp. d/b/a **Pavilion Indian Cuisine**, 511 Main Street, Hyannis, Narinder S. Thind, Manager from an Annual Wine and Malt Common Victualer License to an Annual All Alcohol Common Victualer License be approved.

Change of License Type and Alteration of Premises: Application for a **Change of License Type** by Smiling Jack's Restaurant Group, LLC d/b/a **La Paz Surf Cantina**, 573B Main Street, Hyannis, Sean Downes, Manager from an Annual All Alcohol Common Victualer License to a Seasonal All Alcohol Common Victualer License and an **Alteration of Premises** to expand the restaurant and patio into the adjacent storefront (573A Main Street) and increase seating to 71 interior and 67 exterior.

Sean Downes appeared for his two applications. He stated they did not have the business volume to make money staying open after the season, unfortunately. They will expand into what was Mom's Apple Pie. Nothing has changed from what was there in the past – Mom's Apple Pie had a patio and outside seating as well. He stated they are not asking for expanded entertainment. The Licensing Recorder stated to the Board that the Building Commissioner approved the new plan with the numbers as shown – 71 inside and 67 outside.

Tina Carey of Gringo's appeared in opposition to this application. They are direct abutters. They have an upstairs apartment – she stated it has been residential for 75 years. They are in no way in approval of a "nightclub" nextdoor; people standing around outside on the patio with drinks...she stated this past season it was very disorganized; no supervision. She also stated they have had litter on Gringo's patio; and beer bottles thrown as well. She said the place adversely affects her son who lives upstairs; he could not be present but wrote a letter for the record, which was given to the Board. Their concern at Gringo's and as an abutter is that they want this to be a restaurant, not a nightclub.

Mr. Downes stated he believes she just does not want competition. He is there early in the morning and late at night and does not believe there is anyone living upstairs full time. He questioned why her restaurant can have outside speakers playing until midnight and his restaurant cannot have outside speakers at all. He stated their expansion is being done so that they do not have to turn people away or become overcrowded like what happened last season. They admitted to their transgressions last season (one incident) and have taken steps to have two people outside – he does not think there will be any problem in the future. He stated they are not a nightclub. They have no entertainment. They have a radio and do not have outside speakers – however, he stated he does not understand why she can have them and they cannot. Mr. Geiler told him that is not what was said to him in our office. He asked Mr. Downes about the sign Ms. Carey produced along with her son's letter. Mr. Geiler asked about the margarita pitchers and bucketsof beer pricing advertised; and how they price the items Mr. Downes answered that the prices are less than if they purchase them individually – to get the people to buy them. Mr. Geiler stated this does not follow the rules and regulations – that you can't discount liquor; it is illegal. Mr. Downes stated the only reason they put the sign out (on a surfboard) was because Gringo's advertised "margarita specials" – so they did the surfboard advertising their own specials. Mr. Geiler suggested they call us if they have something special they want to do so it can be done properly. Mr. Hoxie stated that

from what he could see, the applications we are looking at today are not anything to do with the noise. Officer Maher asked how they will be able to supervise the 67 outside if they had a problem with the 20 last season. Mr. Downes stated their OWN patio will have ample seating; there used to be a “corral” problem as the area was too small. He stated there will be a lot less people standing around now. There will be supervision of the fence area and people going in and out. Mr. Downes stated there will be a hostess seating people; a “counter” and someone at the door. The incident last year happened after the fireworks – too many people entered and were pushed up against the fence all of a sudden on the 4th of July. He stated it happened very quickly and they were not prepared. They will now have someone right at the fence at all times. Mr. Hoxie stated that Mr. Downes knows if there are complaints and noise and they will be back in before the Board.

A Motion was duly made by Gene Burman and seconded by Martin Hoxie and a **Unanimous Vote taken** that the application of Smiling Jack’s Restaurant Group, LLC d/b/a **La Paz Surf Cantina**, 573B Main Street, Hyannis, Sean Downes, Manager from an Annual All Alcohol Common Victualer License to a Seasonal All Alcohol Common Victualer License be approved.

A second motion was duly made by Gene Burman and seconded by Martin Hoxie and an **Alteration of Premises** to expand the restaurant and patio into the adjacent store front (573A Main Street) be approved. Mr. Burman also stated to Mr. Downes that there will be surveillance; and that what Mr. Downes has represented will be, actually stays that way.

New Annual All Alcohol Common Victualer License and Daily Live, Non-Live & Sunday Entertainment Licenses: Application of Hyannis Golf Corp., d/b/a **Hyannis Golf Club**, 1800 Route 132, Hyannis, MA, Daniel T. Keefe, Manager, for **A New Annual All Alcohol Common Victualer License and Daily Live, Non-Live & Sunday Entertainment Licenses** (maximum of 4 entertainers), Monday through Saturday 11:30 am to midnight and Sunday noon to midnight.

Paul Covell appeared for this application. The property is Town owned and leased. The plan presented represents accurately what the floor plan has been and is currently – they are not changing it. Dan was the successful bidder for the Town golf club. He has a lot of experience – Clancy’s of West Yarmouth. He has been in the business many years. Brings a team with him who is experienced as well. He thanked Christine Ade for helping them get their paperwork in good order.

A Motion was duly made by Gene Burman and seconded by Martin Hoxie and a **Unanimous Vote taken** that the application of Hyannis Golf Corp., d/b/a **Hyannis Golf Club**, 1800 Route 132, Hyannis, MA, Daniel T. Keefe, Manager, for **A New Annual All Alcohol Common Victualer License and Daily Live, Non-Live & Sunday Entertainment Licenses** (maximum of 4 entertainers), Monday through Saturday 11:30 am to midnight and Sunday noon to midnight be approved.

Transfer of License; Change of License Type; Change of License Description:

Application of Thomas E. Fazio, d/b/a Fazio's Trattoria, 294 Main Street, Hyannis, MA, Thomas E. Fazio, Manager, for a **Transfer of his Annual Wine & Malt Common Victualler License** to Fazio's Trattoria, Inc., d/b/a Fazio's Trattoria, Thomas E. Fazio, Manager; for a **Change of License Type from Wine & Malt to All Alcohol**, and for a **Change in License Description** to remove 4 seats from the outside patio and to add 4 seats to the interior of the restaurant.

Thomas Fazio and his wife Eileen appeared with Joseph Maruca, his attorney, for this application. It is a straightforward request to effect a "transfer" to change from a single proprietor to a corporation. He remains the sole stockholder. He is also requesting a change to an all alcohol license and to add four seats indoors, removing the four outside. This is being done as a business decision to offer the customers what they are asking for.

Mr. Burman had some questions about the seats outside. Attorney Maruca stated they are eliminating the seats outside entirely. No one came forward with any questions. Mr. Maruca then stated the church was notified as a courtesy but the ABCC does not require notification as the place is already licensed.

A Motion was duly made by Gene Burman and seconded by Martin Hoxie and a **Unanimous Vote taken** that the application of Thomas E. Fazio, d/b/a Fazio's Trattoria, 294 Main Street, Hyannis, MA, Thomas E. Fazio, Manager, for a **Transfer of his Annual Wine & Malt Common Victualler License** to Fazio's Trattoria, Inc., d/b/a Fazio's Trattoria, Thomas E. Fazio, Manager; for a **Change of License Type from Wine & Malt to All Alcohol**, and for a **Change in License Description** to remove 4 seats from the outside patio and to add 4 seats to the interior of the restaurant be approved.

Other Business:

Presentation by "Hyannis Sound" Committee regarding noise issues in downtown Hyannis. Christine Palkowski, Rick Angelini and Alan Goddard appeared. Christine presented an overview. They have been discussing actual noise limits in a measurable level. A noise consultant will come to Town and take ambient noise levels over a two-day period. He will set the baseline. She asked the Board for their input as to when to do this and where to take the measurements. The group suggested they be taken in the harbor area, and at places where there have been complaints. Mr. Angelini stated if the measurements were taken now it is too quiet – thinks maybe the end of May or just into summer would be better. Their purpose is to stop the complaints and to address entertainment in mixed use buildings. The newest buildings are being planned with better noise insulation. They want to base the noise level acceptable on a meter reading for each location. The ambient noise is also important; they do not want to misjudge where the noise is coming from. He asked for input from the Board. Mr. Goddard stated the metering makes sense as we can now have an objective way to deal with complaints. He stated we do want to

have a simpler ordinance in place upon which all must comply. He stated it has been very useful in the harbor to keep the “self-containment” understanding in place. He is all for the decibel readings applied to the downtown area; but wants to make sure we keep the “self containment” measurement in all other areas in the Town.

Mr. Burman stated he hears what is being said by Mr. Goddard but his concern right now is based on what we went through with Hannah’s. He believes this committee should develop a regulation in the BUILDING stage – which is when to take care of the problem. He stated the Board had to go overboard with Hannah’s as we had no choice there – the resident disturbed has the right to quiet enjoyment. He thinks the structures should contain the sound within at the building level. Christine stated it has been discussed and is going into the new places. Mr. Angelini stated the task group is just put together to make suggestions to the Town. Clearly they have to develop a spec with Growth Management for recommendations for the new mixed use buildings. Mr. Goddard is all for specs for these new buildings. Mr. Hoxie thinks May is a little early. Wants to see readings at the Melody Tent, airport area, etc. Mr. Angelini stated the group is focusing in the downtown growth incentive area at present. He agrees that May is a little early; they do want to get the recommendations in place for this summer. They will figure out the best times with the sound engineer. Mr. Burman stated that if the Melody Tent would do what they say they will do when they come before the Board but they don’t seem to stick with it and that is where the complaints come from. Mr. Hoxie also stated the Melody Tent should also be considered. He stated it is important we get it right with the downtown area – and thinks the community is on the right track with the mixed use. He applauds the committee and what they are attempting to do. They are looking at places like Key West, which has already gone through this process, as models for what we should have here. Mr. Burman states that from the construction point of view there are many things which can be done to stop the noise from traveling upstairs for example. Mr. Hoxie stated the Town Council will have to adopt these new ordinances. He asked how the engineer would work – he will measure limits acceptable now in each noise zone and recommend the maximum readings which would be acceptable. Mr. Hoxie stated a member of the police department should begin participating in this process. Mr. Geiler asked if there has been any look at classifying the types of music acceptable as opposed to those which were not acceptable as noise – specifically brass being brought in, which caused the [roblem at Hannah’s. He thinks we may need to classify the TYPE of noise produced which becomes offensive – such as the boom boom boom from bass in some types of music. The other part of it is the language problems – as in the Melody Tent – the crude language of some comedians at the tent, and in some types of music. Also, how about the weather conditions affecting the noise? He stated he is hopeful the committee can look at these issues as well and what is appropriate in the tighter areas. There are many restaurants with entertainment in downtown but only a small percentage have become a focus of police concern. He stated an awful lot goes into that – customer base, management style, etc. Also the difference between a loud brief noise as opposed to lengthy steady noise problems. He thinks it is a good thing that the establishments could measure their OWN levels. Mr. Goddard stated it is also good to get objective standards; but there is a subjective element involved here

as well, and that “we don’t want to throw out the baby with the bathwater”. He stated that the Steamship Authority put in a nostalgic whistle which was nice from far away but right nearby in the homes there it was very bothersome. Studies showed the decibel level was not too different from the other whistles but there was a problem with high frequency noise. This proves that there is more to it than decibel – noise quality as well must be considered. The more we learn, the better it will be for everyone. Mr. Geiler’s position is that we get it right – not necessarily quickly, but properly, so it works. No sense spending a lot of money when it does not work in the “real world.” Mr. Hoxie concurred. Steve Maher stated they have a database of noise complaints – he is willing to provide that to this committee. Mr. Angelini suggested someone from the PD bring this data and sit on the committee occasionally. The next meeting has not been scheduled yet; Mr. Hoxie will request that the Chief of Police send someone to the meeting.

Anti drunk driving message discussion. Mr. Hoxie read the message about talking urinal cakes in restrooms for bars, lounges and restaurants which has been received by the Authority. He asked if there were any questions and there were none.

Meeting was adjourned at 10:54 a.m.

Respectfully submitted,

Christine P. Ade,
Town of Barnstable Licensing Authority

Eugene Burman, Vice-Chair
Town of Barnstable Licensing Authority