



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.

August 27, 2007

A regular meeting of the Barnstable Licensing Authority was held on Monday, August 27, 2007. Chairman Martin Hoxie called the meeting to order at 9:30 A.M. He introduced Gene Burman, Vice Chairman; Paul Sullivan, Clerk; Dick Boy, Associate Commissioner; Thomas Geiler, Director of Regulatory Services and Licensing Agent, Lt. JoEllen Jason and Patrolman Steven Maher, Liaison from the Barnstable Police Department, and Christine Ade, Recording Secretary.

Requests:

One Day Entertainment License: Application of Alice E. Smith on behalf of **Family-Centered Institute**, 66 Massasoit Trail, Brewster, MA, for a **One Day Entertainment License** for an event to include Comedian Jimmy Tingle, on Sunday, September 23, 2007 from 1 pm to 2:30 pm with a "Meet and Greet" period until 4:30 pm at the Barnstable High School, 744 West Main Street, Hyannis.

Warren Smith, Alice's husband, appeared on behalf of the Family-Centered Institute. It is a one afternoon comedic event – it supports education and research. This is the second annual event. The first brought 600 people. They are hoping for 700 this year. Admission is \$25 or \$40 if attending the "Meet and Greet."

A motion was duly made by Gene Burman, seconded by Paul Sullivan, and a unanimous vote taken to approve the application of Alice E. Smith on behalf of **Family-Centered Institute**, 66 Massasoit Trail, Brewster, MA, for a **One Day Entertainment License** for an event to include Comedian Jimmy Tingle, on Sunday, September 23, 2007 from 1 pm to 2:30 pm with a "Meet and Greet" period until 4:30 pm at the Barnstable High School, 744 West Main Street, Hyannis.

One Day Wine & Malt and One Day Entertainment Licenses: Application of Pamela Brimmer on behalf of the German-American Club of Cape Cod, P.O. Box 187, Hyannis, MA, for **9 One Day Beer & Wine & Live Entertainment Licenses** (a band and dancing) on the following dates from 5:30 pm to 11:00 pm at the Fraternal Lodge, 1989 Falmouth Road, Hyannis, MA:

September 8, 2007
October 13, 2007
November 10, 2007
December 8, 2007
January 12, 2008
February 9, 2008
April 12, 2008
May 10, 2008
June 14, 2008

Pamela Brimmer, Treasurer of the Club, appeared on behalf of the German American Club. She is requesting dates through June of 2008 for their events at which they plan to serve beer and wine and provide live entertainment (9 events). These events are at the Fraternal Lodge.

A motion was duly made by Gene Burman, seconded by Paul Sullivan, and a unanimous vote taken to approve the application of Pamela Brimmer on behalf of the German-American Club of Cape Cod, P.O. Box 187, Hyannis, MA, for **9 One Day Beer & Wine & Live Entertainment Licenses** (a band and dancing) on the following dates from 5:30 pm to 11:00 pm at the Fraternal Lodge, 1989 Falmouth Road, Hyannis, MA:

September 8, 2007
October 13, 2007
November 10, 2007
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January 12, 2008
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April 12, 2008
May 10, 2008
June 14, 2008

One Day Wine & Malt License and One Day Entertainment License: Application of Cathrine Macort on behalf of **Cape Cod Maritime Museum**, 135 South Street, Hyannis for **a One Day Wine and Malt License and One Day Entertainment License (Sunday)** for a Launch of Replica Catboat Sarah to be held at the Museum and parking lot behind the Museum on Sunday, September 2, 2007 from 4 pm to 6 pm.

Cathrine Macort appeared on behalf of the Cape Cod Maritime Museum for this application. They are launching their catboat finally (after 3 ½ years). Celebratory beer and wine will be offered. The event is free to the public. Staff will supervise dispensing of beer and wine. Mr. Burman asked if there has been any difficulty at the location in the past...there has not.

A motion was duly made by Gene Burman, seconded by Paul Sullivan, and a unanimous vote taken to approve the application of Cathrine Macort on behalf of **Cape Cod Maritime Museum**, 135 South Street, Hyannis for a **One Day Wine and Malt License and One Day Entertainment License (Sunday)** for a Launch of Replica Catboat Sarah to be held at the Museum and parking lot behind the Museum on Sunday, September 2, 2007 from 4 pm to 6 pm.

Two One Day Entertainment Licenses: Application of James Reardon on behalf of **Cape Cod Cat Club**, 25 Moultrie Street, Boston, MA, for two **One Day Entertainment Licenses** for its annual Cape Cod Cat Show at the Horace Mann Charter School, Marstons Mills, MA on September 8, 2007 from 9 am to 5 pm and September 9, 2007 from 9 am to 5 pm.

No-one appeared on behalf of the Cape Cod Cat Show, an annual event drawing thousands of people. Mr. Geiler stated there is nothing different from previous years and it might behoove them to grant the request, as a special meeting puts a lot of people out. Mr. Hoxie stated he was not inclined to authorize the event without a meeting, and really did not want to have to hold a special meeting.

A motion was duly made by Gene Burman, seconded by Paul Sullivan, and a unanimous vote taken to take no action on the application of James Reardon on behalf of **Cape Cod Cat Club**, 25 Moultrie Street, Boston, MA, for two **One Day Entertainment Licenses** for its annual Cape Cod Cat Show at the Horace Mann Charter School, Marstons Mills, MA on September 8, 2007 from 9 am to 5 pm and September 9, 2007 from 9 am to 5 pm.

Hearings:

New Junk Dealer License: Application of Timothy J. Ferreira, d/b/a Mid Cape Metal Recycling, 53 Thornton Drive, Hyannis, MA, Timothy J. Ferreira, Manager, for a **New Junk Dealer's License**.

Attorney James Connors appeared for Mr. Ferreira. He stated his understanding was that this hearing would be continued until after the show cause hearing. Tom Geiler stated that after inspection last week we recommend this hearing be continued until after the show cause hearing on September 17. Attorney Connor requested this hearing be put on as soon as possible after the show cause hearing.

Mr. Geiler asked what the status is at this point...Mr. Ferreira had been asked to clean up the place and he doesn't see much improvement – it looks like a salvage yard. Mr. Ferreira stated that contrary to what Mr. Geiler had stated, a letter was sent to him stating Ferreira has cleaned up the areas – the letter was from Alisha Parker, Hazardous Materials, Board of Health.

A motion was duly made by Gene Burman, seconded by Paul Sullivan, and a unanimous vote taken to continue the application of Timothy J. Ferreira, d/b/a Mid

Cape Metal Recycling, 53 Thornton Drive, Hyannis, MA, Timothy J. Ferreira, Manager, for a **New Junk Dealer's License** until after the Show Cause Hearing to be held at the 9/17/07 Licensing Authority meeting.

Daily Live Entertainment License: Application of TJ Enterprises, Inc., d/b/a Kian 'n Rylee's Pub & Patio, 561 Main Street, Hyannis, MA, Tara Jean Whelahan, Manager, for a **Daily Live Entertainment License** from 8 pm to 11 pm, Wednesday, Thursday, Friday and Saturday nights for 2 entertainers.

Sean Whelahan (husband of the Manager) appeared to request live entertainment for the restaurant. They are looking for entertainment ending at 11 pm for 2 entertainers – acoustic and karaoke. They have been operating since August 2005; no problems at the restaurant other than break-ins. They are seasonal. Officer Maher stated there are no complaints with them – asked if they are asking for inside or outside entertainment...Mr. Whelahan replied inside only and the landlord has granted permission. They are aware there are tenants upstairs – if any problems they will cease and desist. The restaurant operation is foremost. Mr. Burman asked a question but was thinking of the restaurant next-door, not this one.

A motion was duly made by Gene Burman, seconded by Paul Sullivan, and a unanimous vote taken to approve the application of TJ Enterprises, Inc., d/b/a Kian 'n Rylee's Pub & Patio, 561 Main Street, Hyannis, MA, Tara Jean Whelahan, Manager, for a **Daily Live Entertainment License** from 8 pm to 11 pm, Wednesday, Thursday, Friday and Saturday nights for 2 entertainers.

Modification to Daily Live and Sunday Entertainment Licenses: Application of SPSS Enterprises, LLC, d/b/a Asa Grill, 415 Main Street, Hyannis, Scott Saulnier, Manager, for **Modification to its Daily Live and Sunday Entertainment Licenses, by changing the number of entertainers from a maximum of 3 to 5.**

Scott Saulnier appeared to request modification of the existing Live Entertainment license to add a maximum of 5 rather than 3 entertainers to enhance the business to attract an older crowd instead of the younger crowd. He is aware the noise must be contained within the entertainment area. He stated they have had no complaints thus far. Mr. Sullivan made a comment – there have been no complaints. If residents complain it will stop. He hopes they will pay close attention to the noise. Mr. Boy asked if this is for Reputation; Mr. Saulnier stated it is. Mr. Geiler asked how they can possibly have 5 entertainers inside a dining room and have it be compatible with fine dining. Mr. Saulnier stated it is not fine dining – it is Casual American Cuisine. They plan to have the larger bands in the middle area only a bit later than the normal dinner time. Reputation will be more in the evening. The intelligent lighting is dance floor lighting – the lighting moves with the music. It was in at the beginning. Mr. Geiler stated a Wiring Inspector will take a look at it. Officer Maher stated there have been no problems with them.

A motion was duly made by Gene Burman, seconded by Paul Sullivan, and a unanimous vote taken to approve the application of SPSS Enterprises, LLC, d/b/a Asa Grill and Reputation 415 Main Street, Hyannis, Scott Saulnier, Manager, for **Modification to its Daily Live and Sunday Entertainment Licenses, by changing the number of entertainers from a maximum of 3 to 5 with no outside speakers.**

New Class II Auto Dealer License: Application of Ryan and George DeVincent, d/b/a **DEVINCENT AUTO BROKERS**, Ryan DeVincent, Manager, for a **New Class II Automobile Dealer's License**, 24 Plant Road, Unit #4, Hyannis, MA 02601, the hours of operation to be 10 am to 6 pm.

Ryan DeVincent appeared for this application. This will be a wholesale license. No display vehicles. It will be an internet operation. It has been his full time job for 5 years – wholesale to other dealers – in Sherbourne Mass. Mr. Burman asked Mr. Geiler what leverage we have with insurance; Mr. Geiler stated the bond is for \$25,000 and most come from out of state. Mr. Geiler asked where 24 is; it is across from Handler's Gym; there are 5-6 20 x 50 bays at the location. Import Specialists are there; heating and ventilation; an antique dealer too. He will have a small sign only. Mr. Geiler stated there is a wholesale component to the retail auto business. It has been going on for years. We would much prefer they be licensed so they have to comply with the Class II Auto Dealer rules and regulations. It is a good thing. In this area it is a good use. The no display factor is good for the area. It gives the police the ability to have some type of oversight. It is in our interest to have these licenses.

A motion was duly made by Gene Burman, seconded by Paul Sullivan, and a unanimous vote taken to approve the application of Ryan and George DeVincent, d/b/a **DEVINCENT AUTO BROKERS**, Ryan DeVincent, Manager, for a **New Class II Automobile Dealer's License**, 24 Plant Road, Unit #4, Hyannis, MA 02601, the hours of operation to be 10 am to 6 pm with the stipulation that there are no display vehicles outside.

Show Cause Hearing: Show Cause Hearing on VN Management Corp., d/b/a **Cape Cod Inn**, Johnny Vo, Manager, 447 Main Street, Hyannis to show cause why its All Alcoholic Innholder license should not be modified, suspended or revoked for: (1) on July 21, 2007 at approximately 12:30 a.m. it did violate the terms of its All Alcoholic Innholder license by allowing 50 people to occupy the outdoor patio area, upon which only 28 people are permitted in violation of the Code of the Town of Barnstable, Massachusetts, Part V, Chapter 501-5 ; (2) on July 21, 2007 at approximately 12:30 a.m. it did violate the terms of its All Alcoholic Innholder license by failing to properly supervise the premises in violation of the Code of the Town of Barnstable, Massachusetts, Part V, Chapter 501-8; (3) on July 21, 2007 at approximately 12:30 a.m. it did violate the terms of its All Alcoholic Innholder license by allowing noise from your entertainment to be heard beyond the borders of the premises to as much as 250 feet beyond the premises in violation of the Code of the Town of Barnstable, Massachusetts, Part V, Chapter 501-10.

Mr. Hoxie swore in the witnesses for this administrative hearing.

Gene Burman recused himself from this hearing as he was present the night of the alleged violations. Dick Boy will sit in on this hearing.

Officer Steve Maher represented the Barnstable Police Department at this hearing. He stated since about 1-1/2 years ago there have been over 10 calls on this pub. The calls were all on noise going beyond the curbing. He stated Mr. Vo was advised by Sgt. Tynan and others including himself to turn the music down; it could be heard at the Town Green. Officer Maher stated that after asking that it be turned down one time and having it turned down, 20 minutes later it was right back up again. The speakers have been right in the doorway facing outside. The music can be heard way off the premises. Also, three times there have been IPE's (intoxicated persons) at the pub, ONE ON 30TH OF July where subject passed out at the bar and friend thought he should be taken to the hospital, and also 2 fights. He stated that a compliance check showed no licenses posted and no employee list. There have also been drinks on the table as late as 1:30, which is against the rules and regulations.

Officer Maher was on duty the night in question (21st of July) and music could be heard well past the pub. Speakers were facing outside; people were in a walkway with no supervision with drinks in their hands. He pulled up across the street and observed that there were quite a few people in the patio area. The DJ was reluctant to turn the music down. Miss Rourke was approached as the "manager on duty," and she later admitted after representing herself as the manager that she was not the manager, but would try to get him. Officer Maher informed her of the noise problem and asked her about the capacity on the patio. She then said she did not really know what was going on. While she was getting the manager we took a count and there were 50 people on the patio and they are authorized only for 28. They asked that she clear the patio of all but the authorized 28. Officer Maher stated this is a clear pattern of not complying with the Town By-Laws. The manager has been advised several times; it is Officer Maher's opinion there is a complete disregard for Town By-Laws.

Johnny Vo, d/b/a Duck Inn Pub appeared at the hearing. He asked to respectfully state his case based on the incident of July 21. He read a prepared statement. They had about 80 customers on premises. The doorman was not on duty as he called in sick. When Mr. Vo stepped out for dinner, the Barnstable Police arrived and the bartender on duty provided incorrect information; she did say that there was neither a doorman or manager on site; Mr. Vo was still on site - just having his dinner. He is there 24 hours a day. He said he did allow more people outside than the 28, as people wanted to enjoy the summer air. He believed his capacity was 84. He misinterpreted the license as far as the patio goes of having only 28 out there. He stated the music varies each night. He stated he has his entertainers modify the volume each time he is made aware of any problem. He stated several times he

does not want to cause any problems for the Town of Barnstable and desires to provide a place for relaxation and fun in Hyannis without causing any trouble. He wants permission to keep his license and will incorporate the following practices: 1) provide 2 people to keep the customer count in line, 2) ensure staff member is present and wearing a yellow polo uniform, 3) keep music volume moderate and lower volume at 12:30 a.m. He does not want any trouble and wishes to apologize to the Town for any violations. He is here only to survive the business.

Mr. Hoxie asked Mr. Vo if he was on the premises and asked if he saw the officers. Mr. Vo said he was away for dinner and the police were gone when he came down. Mr. Hoxie asked if he recalls warnings as to loud music; Mr. Vo said he does but says he immediately responds. Mr. Hoxie stated his responsibility is to make sure the noise is contained on premises, the premises is supervised – not out for dinner – when the premises is open, and the patio is not overcrowded. Mr. Vo again said he stepped out for the dinner time – about ½ hour.

Mr. Sullivan questioned Mr. Vo where he went to eat; he said he was upstairs eating in his room. He wondered why he did not go down when Ms. Rourke called him. He stated they had left by the time he got downstairs, which was some time later. He said she should not have told them she was the manager. He was filling in for the doorman. He said he went to dinner at a slow time – whenever it seemed best. The door person was sick that night. Mr. Vo was on the door until about 12:00. Mr. Sullivan stated that was not a very good time to leave for dinner. Mr. Sullivan asked about the speakers in the doorway. This is not the first time there has been a conversation about noise at the establishment. Mr. Vo said the speakers ARE in the doorway. Mr. Sullivan told him this was not the first time he had been spoken to about volume. He said he does walk around to check the noise. Mr. Sullivan said the entertainers cannot just do what they want; it is Mr. Vo's responsibility as the business owner to keep that noise down at all times. He does not understand why he has had to be told a number of times. Mr. Vo said he will make sure the entertainer plays inside and keep it controlled. Mr. Sullivan asked what he has done to solve the problem and what he had told the police in the past; he stated they have tried to lower the volume. He now should understand the rules and regulations but it doesn't seem to help too much – we might need some effort to help him understand. Commissioner Boy stated he admitted he allowed more than 28 people on the patio and asked WHY – Mr. Vo stated he did not realize the breakdown of each section had to be watched, just the total capacity of 84. Mr. Boy stated he should be aware of the restrictions on his licenses and the numbers have to be posted in each room. Mr. Vo said he thinks he has learned a lot, and realizes it now. Mr. Boy stated he should be well aware of the restrictions and should follow them. Officer Maher asked specifically about discussion he had with him on 8/26/06 about putting the speakers inside and about the capacity inside and outside and on 4/22/07 the same discussions. Officer Maher said he specifically discussed all the licenses, where they were posted and the breakdowns of people per room. He asked if Mr. Vo remembered the conversation. Mr. Vo was very vague and said he did not recall in April; stating he could not remember specifics. Officer Maher reiterated he had told

him what was and was not permissible and asked how many times they had those conversations – Mr. Vo started thinking out loud...Officer Maher asked how many different times they had those conversations about noise – he said maybe 1, 2, 3. Officer Maher asked if it was more than or less than 3? More than 5? Mr. Vo stated more than 3. Mr. Hoxie asked if Mr. Vo had any questions for the Officer – he did not.

Mr. Sullivan asked how long he has been at the establishment – Mr. Vo said this is his 3rd year. Mr. Sullivan stated that is more than enough time and great opportunity with the police department to become familiar with the rules and regulations. Mr. Vo stated that to be honest, this is “not his business” – there are a lot of things he needs to learn how to deal with. Mr. Sullivan asked if he had any experience in the business before – he stated no, he was a drycleaner before. When he first started he had a manager who was experienced; he is now the manager. Mr. Hoxie stated that now he is the manager it seems he does not know what to do. Mr. Hoxie then stated it is clear there were violations, all three. There were 50 people on the patio. The lack of supervision is serious and it is obvious it was the case. The manager was not on the premises and could not be reached in a short length of time. He stated the manager should have been on the premises and supervising. Mr. Hoxie asked for a motion on findings.

Mr. Sullivan proposed a finding of guilty in having 50 occupancy where it should have been 28 on the patio. That is uncontested. Dick Boy seconded, it was a unanimous vote that they were in violation of the Code of the Town of Barnstable, Massachusetts, Part V, Chapter 501-5.

Mr. Sullivan proposed a finding of guilty on failure to provide adequate supervision – Town Code Chapter 501-8 there was no doorman between 11 pm to 12:30 am, at a crucial time, lack of control as to who was coming and going, and no manager in charge present to address the police department when they arrived or were present based on testimony and documentation. The motion was seconded by Mr. Boy and a unanimous vote taken.

Mr. Sullivan proposed a guilty finding of excessive noise on the date in question of over 250 feet and that this is not the first time it has happened in violation of the Code of the Town of Barnstable, Massachusetts, Part V, Chapter 501-10. Dick Boy seconded the motion. There was a unanimous vote.

Mr. Sullivan recommended on the charge of lack of supervision that because of clear lack of supervision and lack of an appropriate manager being available that a 3 day suspension be imposed. Mr. Boy seconded the motion. Mr. Hoxie asked Mr. Geiler for suggestions or comments so the Board could be consistent with the past. Mr. Geiler stated the recommendation was the same as has been made in prior years. The motion carried unanimously.

Mr. Sullivan proposed a suspension of one day for the overcrowding on the patio. It was seconded by Mr. Boy and a unanimous vote taken to suspend for 1 day.

Mr. Sullivan proposed a two day suspension for the noise violation, for a total of 6 days suspension with a July 21, 2008 commencement date. Mr. Boy seconded the motion and by unanimous vote it carried.

Mr. Geiler asked Mr. Vo if he had attended the police seminars on training...stating he received invitations. Mr. Vo stated he was there alone. Mr. Geiler then stated he must ensure he has properly trained staff. He stressed this training for his establishment, saying that failing to do that will lead him into more of these situations.

Show Cause Hearing: Show Cause Hearing on **MBM Auto Sales**, Dmitry L. Zinov, Manager, 500 Yarmouth Road, Hyannis, MA for permitting more vehicles to be displayed on its lot than the number authorized by its license (23), evidenced on August 2, 2007 (60 vehicles on lot).

Officer Maher testified for the Police Department. He said the department on May 22, 2007 was at the establishment early in the a.m. – conducting an ordinance check. He checked the books and cars – on that date they had 22 OVER capacity (45). He told them to correct the problem. On August 2 he went to the establishment at 1:30 am and counted 60 vehicles – they are allowed 23. At 6 am TODAY before the hearing he also counted 29 vehicles on the lot – the license is for 23.

Dmitry Zinov appeared along with Mrs. Zinov, Office Manager. They had no idea the police did the counts. She stated that unfortunately there are more vehicles on the lot because they may be going to auction; a few times vehicles were repossessed, bringing more there than the license allowed. They would like to increase the number as she states they can fit twice as many vehicles as they are allowed. Mr. Hoxie stated that is for another hearing; today is for the violations. Mrs. Zinov stated this was not brought to her attention before. She said she does not believe there were 60 unregistered at any time. Mr. Hoxie stated the police has intensified its efforts to be sure all licensees are in compliance and have been and will be checking these numbers. Mr. Burman asked if there was any discussion prior to this hearing on the numbers. Officer Maher stated that the discussion took place on 5/22/07. He then stated that obviously it did not work, as they had even more cars on the lot on August 2nd. He asked her if she had an explanation. Mr. Zinov stated three vehicles on the lot today are already sold; one was returned last week and 2 others are not displayed for sale. That is why there are 29 now. Mr. Hoxie asked if they understood the 23 for display. He said they did. Mr. Geiler asked how many can fit inside...Mr. Zinov stated 5. He then asked how many vehicles they typically have. Mr. Zinov stated it is unpredictable. Mr. Geiler asked how so. Mr. Zinov stated because of repossessions or returns; sometimes additional work needs to be done on vehicles previously sold. Mr. Geiler stated there is a garage to put them in.

He stated if the business has grown so the property is not sufficient it is up to them to move to a bigger lot or comply with the numbers for this lot.

Mr. Hoxie asked Mr. Burman for findings. Mr. Burman proposed that there were 60 vehicles on the lot when only 23 were allowed by the license. He stated they were over their capacity by 37 vehicles. Paul Sullivan seconded the motion. It was a unanimous vote for guilty findings.

Mr. Burman stated they were warned in May (having at that time 22 extra vehicles) and did not comply again in August. He thinks the rules and regulations must be observed; he then proposed a warning. Mr. Sullivan seconded the motion but commented that he will go along with the recommendation for a warning, but finds that the enforcement agents for the Town are trying to do a good job. He wondered how someone could possibly even get 60 vehicles into this lot. He does not want this "entry into Hyannis" to be a problem area. If brought forward in future it should result in a suspension. Mr. Geiler stated it is important to remember that when the license is granted, an appropriate amount of vehicles is determined by building, fire, site plan, etc. and the Board grants the license based on that number. Even today they did not get the number down to the 23 granted them. It appears that their decision is certainly not based on safety of traffic, neighbors, water, the Town...it is not being based on any of those things, but on their own financial gain only. Mr. Geiler stated that they are now doing whatever they wish. A vote was then taken with regard to sanctions and the vote was unanimous for granting a warning.

Hearing was adjourned at 10:55.

Respectfully submitted,

Christine P. Ade, Recorder
Town of Barnstable Licensing Authority

Paul Sullivan , Clerk
Town of Barnstable Licensing Authority