



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.
September 17, 2007

A regular meeting of the Barnstable Licensing Authority was held on Monday, September 17, 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 & Sunday Entertainment Licenses: Application of Anne Hayes, on behalf of **Rotary Club of Hyannis**, P.O. Box 39, Hyannis, MA, for two One Day and a Sunday entertainment license for its annual home show to include a raffle, face painting, etc. to be held at the Barnstable High School Gymnasium & Field House from 10 am to 6 pm on Saturday, March 29, 2008 and from 10 am to 5 pm on Sunday, March 30, 2008.

No one appeared from the Rotary Club of Hyannis. Continued to 10/1/07.

One Day All Alcohol License: Application of Richard Angelini on behalf of **Cape & Islands United Way**, 749 Main Street, Hyannis for an event to be held behind the Cape Cod Maritime Museum at 135 South Street, Hyannis for a **One Day All Alcohol License** for its sixth annual Cape Cod Oyster Festival, on Sunday, September 30, 2007 from 1 pm to 4 pm in a tent. Proceeds from the event will be donated to Cape & Islands United Way.

Richard Angelini appeared for his application. This is the 6th annual Oyster Festival. They would like to serve alcohol between 1 and 4 pm in a tent just to the rear of the Cape Cod Maritime Museum. Gene Burman had a question about the background music – he wondered if it would be self contained. Mr. Angelini stated it will be contained to the tent and is a radio broadcast only.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the request of Richard Angelini on behalf of **Cape & Islands United Way**, 749 Main Street, Hyannis for an event to be held behind the Cape Cod Maritime Museum at 135 South Street, Hyannis for a **One Day All Alcohol License** for its sixth annual Cape Cod Oyster Festival, on Sunday, September 30, 2007 from 1 pm to 4 pm in a tent. Proceeds from the event will be donated to Cape & Islands United Way.

Modification to Common Victualler All Alcohol and Sunday Live Entertainment Licenses: Application of D.E.A., Inc., d/b/a Harry's, 350 Stevens Street, Letitia Durham, Manager on behalf of **Nam Vets of Cape Cod & Islands**, for modification to its Common Victualler All Alcohol License for outdoor service and Live Sunday Entertainment License to hold its annual Chili Challenge and music fest outside at Harry's on Sunday, October 14, 2007 from 3 pm to 6 pm.

Letitia Durham, Harry's and Joanne Bruno Moser appeared to request the annual event – the only change is the location as the restaurant has moved; it will be in the back. Noise has never been an issue. They may also have pumpkin carving for kids this year. Mr. Hoxie asked about the new neighbors – they are still building so it is not a problem. There will be police details and EMT's. Mr. Burman is concerned about the music when facing North Street as there is lots of residential out there. Ms. Durham stated they can face the stage towards Main instead of towards the residents; any place the Town thinks it should be. Mr. Burman is concerned and thinks it should still face Main Street facing their building. Ms. Durham agreed to that location for the music. Mr. Sullivan asked them to take that in mind so they can continue in the future.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the request of D.E.A., Inc., d/b/a Harry's, 350 Stevens Street, Letitia Durham, Manager on behalf of **Nam Vets of Cape Cod & Islands**, for modification to its Common Victualler All Alcohol License for outdoor service and Live Sunday Entertainment License to hold its annual Chili Challenge and music fest outside at Harry's on Sunday, October 14, 2007 from 3 pm to 6 pm,

One Day Wine Only License: Application of Charles Allen & Robin Pulsifer on behalf of **Sepia Chocolates**, 619 Main Street, Unit 2, Centerville for a **One Day Wine Only License** for a Wine Tasting event to be held at the premises on Friday, September 28, 2007 from 7 pm to 9 pm.

Charles Allen appeared for his application. Their prior events have been successful and have had no problems. Due to popular demand they would like one more this season. Mr. Burman has a question - that the wine is being poured by Cape Cod Package Store; he wondered if this person was TIPS trained. Mr. Allen did not know, but stated there have been no problems.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the request of Charles Allen & Robin Pulsifer on behalf of **Sepia Chocolates**, 619 Main Street, Unit 2, Centerville for a **One Day Wine Only License** for a Wine Tasting event to be held at the premises on Friday, September 28, 2007 from 7 pm to 9 pm.

One Day Entertainment Licenses: Application of Linda Mawhinney, on behalf of Cape Cod Symphony Orchestra, 712A Main Street, Yarmouth Port, MA, for **7 One Day Entertainment Licenses and 7 Sunday Entertainment Licenses** for concerts to be held at Barnstable High School, 744 West Main Street, Hyannis, MA on the following dates:

<u>Saturdays</u>		<u>Sundays</u>	
September 29, 2007	8 pm	September 30, 2007	3 pm
October 13, 2007	8 pm	October 14, 2007	3 pm
November 3, 2007	8 pm	November 4, 2007	3 pm
January 19, 2008	8 pm	January 20, 2008	3 pm
February 9, 2008	8 pm	February 10, 2008	3 pm
April 12, 2008	8 pm	April 13, 2008	3 pm
May 3, 2008	8 pm	May 4, 2008	3 pm

Linda Mawhinney appeared for the licenses for the Cape Cod Symphony for the '07-'08 season. Mr. Sullivan asked what the normal fees are – they run from \$25 to \$55. He asked if they have a full house; she stated they do not. He'd like to get the word out – this is a nice day.

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, Yarmouth Port, MA, for **7 One Day Entertainment Licenses and 7 Sunday Entertainment Licenses** for concerts to be held at Barnstable High School, 744 West Main Street, Hyannis, MA on the following dates:

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January 19, 2008	8 pm	January 20, 2008	3 pm
February 9, 2008	8 pm	February 10, 2008	3 pm
April 12, 2008	8 pm	April 13, 2008	3 pm

Hearings:

New Class II Auto Dealer License: Application of Anthony Spagone II, **DBA A & M Auto Sales**. Anthony Spagone Manager, for a **New Class II Automobile Dealer's License, 130 Rosary Dr**, Hyannis, MA 02601, the hours of operation to be Monday thru Friday 9 am to 5 pm.

Anthony Spagone is seeking permission for a Class II Auto dealer License. He plans to have the majority of the operation as a wholesale operation. He would like permission for 2 vehicles. There will be no repair or reconditioning at the location. Lt. Jason asked how many total cars are allowed there...Mr. Spagone said the total would be for two vehicles. He thinks there are in excess of 15 spots at that address. Lt. Jason asked for purposes of control how many vehicles would be allowed on this site. Mr. Geiler stated the typical license will have a restriction for outside display vehicles; Mr. Spagone did get a signature from Site Plan Review. Lt. Jason stated again they have no idea how many are for display. Mr. Spagone stated the cars for sale will be very obviously marked for sale. Lt. Jason is trying to clarify what the Authority is approving. Mr. Hoxie stated we can limit this ourselves.

Mr. Sullivan thought it should be 2 for sale and 2 for the employees/customers. Officer Maher spoke up as the licenses do not limit the total number of vehicles. We need the total number – whether for display or not. Mr. Spagone stated he is only seeking at the most three vehicle spaces total. Mr. Geiler asked what else is on the property – there is an open bay and a business for nitrogen. Mr. Geiler asked if anyone else has vehicles stored there and he said they did not. Mr. Spagone discussed only two vehicles with Site Plan and he said he can store 2-3 inside. He does not want the confusion of additional vehicles there. Mr. Spagone is very clear as to what the Police Department is looking to do.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the request of Anthony Spagone II, **DBA A & M Auto Sales**. Anthony Spagone Manager, for a **New Class II Automobile Dealer's License, 130 Rosary Dr**, Hyannis, MA 02601, the hours of operation to be Monday thru Friday 9 am to 5 pm, with parking for a total of 2 cars, registered or unregistered.

New Class II Auto Dealer License: Application of R&J Nissan, Inc., d/b/a Hyannis Nissan, 258-278 North Street, Hyannis, MA, for a New Class I Auto Dealer License, Richard L. Covington, Manager, with sixty eight (68) customer/employee spaces, and 126 inventory spaces as shown on plan on file under R & J Nissan, 7/26/2007.

Patrick Butler appeared for R&J Nissan, with Mr. Covington and Cochran. This is for 68 customer and parking spaces and 126 inventory spaces. He thanked our offices and Tom Geiler for helping with the Site Plans previously heard by Zoning. In 1996 additional parking spaces were approved. In order to clarify the car numbers; Mr. Perry and Mr. Geiler counted out the spaces. This is a relocation of the dealership to the old KIA site.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the request of R&J Nissan, Inc., d/b/a Hyannis Nissan, 258-278 North Street, Hyannis, MA, for a New Class I Auto Dealer License, Richard L. Covington, Manager, with sixty eight (68) customer/employee spaces, and 126 inventory spaces (194 total) as shown on plan on file under R & J Nissan, 7/26/2007.

New Lodging House License: Application of Ronald D. Bougeois, Jr., d/b/a Yarmouth Road Rooming House, 34 Yarmouth Road, Hyannis, MA, Ronald D. Bougeois, Jr., Manager, for a **New Annual Lodging House License**.

Mr. Bougeois appeared for the application. He said they have purchased the property; also owns #44 Yarmouth Road. It is limited now to 10 lodgers. They have cleaned it up and gotten rid of some of the problem lodgers.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the request of Ronald D. Bougeois, Jr., d/b/a Yarmouth Road Rooming House, 34 Yarmouth Road, Hyannis, MA, Ronald D. Bougeois, Jr., Manager, for a **New Annual Lodging House License** subject to verification of the Special Permit allowing 10 lodgers.

Recess called for 5 minutes by Chairman Hoxie (10:06 am) prior to start of Show Cause Hearing.

Show Cause Hearing: Show Cause Hearing for Timothy J. Ferreira, d/b/a **Mid Cape Metal Recycling**, 30D Thornton Drive, Hyannis as it has been reported by staff of the Barnstable Police Department, the Barnstable Building Division and the Barnstable Public Health Division, that on various dates between August 1, 2007 and August 14, 2007 that he did: (1) violate the terms of his Junk Dealer's License by buying motor vehicles (Brown Buick VIN #1G4AH51N3KT476616); (2) operate his business in a place other than a place that was licensed (31 Thornton Drive and 53 Thornton Drive, Hyannis); (3) have more than one unregistered vehicle on property leased by him at 53 Thornton Drive in violation of Barnstable Ordinance 228-1; (4) fail to cover a container of household trash in violation of Barnstable Ordinance 353-2; (5) allow an open five gallon bucket of used oil to be stored out of doors in violation of Barnstable Ordinance 108-9; (6) violate Barnstable Ordinance 353-1 by allowing a large pile of used air conditioners to be stored out of doors on the ground; (7) violate Barnstable Zoning, Chapter 240, by maintaining a dwelling unit at 30D, such dwelling unit without benefit of permits or inspections; (8) maintain more than 12 uncovered dumpsters with various types of scrap metal to be stored at property at 53 Thornton Drive without benefit of a Junk Dealer's License or Salvage Yard License under Chapter 502.

Chairman Hoxie read the above notice for this hearing and introduced Thomas Geiler, who will present evidence. He then swore in any witnesses who will be testifying.

Mr. Geiler introduced himself and stated he will be coordinating this effort today – having individuals from several departments who will testify. He asked Patrolman Steve Maher for an overview of what he has observed in his inspections.

Officer Steve Maher stated that on or about 8/1 he received some complaints through the Licensing Office and from business owners on Thornton Drive stating that Mr. Ferreira was not operating only at 30D but at also 31 and 53. On the 1st of August he noted that the business seemed to be conducted out of 31 and 53. He went back on August 3rd; saw some of the same vehicles at 31 and 53 and saw large piles of scrap to include air conditioners. He first saw a brown Buick at 31 and then on the 3rd at 53 with doors removed. Based on this and his inspections he contacted Mr. Geiler who suggested we get the other Town agencies involved. He presented a power point photo presentation. Narrating as he showed it, he stated 30D, the office, looks locked up. On the doors it directs you to go across to Ferreira's. At 31 there is a large sign stating Ferreira's Mid Cape Recycling; on the lot line it states junk cars, copper, aluminum are being taken in with arrows to 31 and 53. Everything points to 31. Parking lot at 53 had several cars with no plates. All appear to be in disrepair; a couple leaking fluid. One on a flatbed. Door of a vehicle marked as scrap. He showed pictures of the vehicles and dumped air conditioners.

He then stated that on August 14th, the day the group went to the site, they found no one at the business. Mr. Ferreira was called by Deputy Olsen from the Fire Department. He met the inspectors, police and Mr. Geiler 10 minutes later. He was questioned about the vehicle now in 31. The VIN number came back different from the person who gave it to him; which he said was some kids. At 53 and 31 he was taking in junk. At 31 he is conducting business. Mr. Geiler asked for clarification as to scrapping cars or dismantling cars. Officer Maher stated vehicles were moved back and forth, doors removed. He did not observe them being scrapped. There were at least 5 there and Mr. Ferreira said he took them in as junk and was selling them as junk. Mr. Geiler asked if Officer Maher knew there was a license for 30D, 31 and 53. Mr. Geiler asked if he knew if those three locations were licensed. Officer Maher stated only 31 is licensed and that Mr. Ferreira had stated he would not be selling junk cars. Mr. Geiler stated scrapping and dismantling are totally different – j.e. asked Officer Maher if he thought Mr. Ferreira had a Class III Auto dealer License (salvage yard). He then asked if Officer Maher was present at the time Mr. Ferreira got his license for 30D; Officer Maher stated he was. Officer Maher questioned him as to how he was using the 3 properties; Mr. Ferreira stated 30D was the office only; 31 and 53 were for storage. He could not explain why he was not using just 30D and why he was using 31 and 53 without a license. He said that Mr. Ferreira again stated he was alone there and could not do everything at once. Mr. Geiler passed out an aerial photo from Town records. It shows the relationship between 30D, 31 and 53. Each building has separate units. Mr. Geiler stated that is all he had for questions for Officer Maher.

Attorney Connors came forward to question Officer Maher as did Mr. Ferreira. Attorney Connors asked if Officer Maher noticed New Hampshire plates on the vehicle in question. Officer Maher stated it had no plates. The vehicle was outside 8/1 and 8/3; inside on the 14th. Attorney Connors stated the vehicle was owned by the mother of the young person who sold it to Mr. Ferreira. He then passed out paperwork – directing us to Exhibit 1, regarding junk, metal and second hand license, the 2nd exhibit was a business certificate for auto repair, debris removal and metal recycling. For the record, Attorney Connors stated he is applying for a license at 53. Attorney Connors asked about the bottom of the business certificate application. He also asked for the record if there were any complaints regarding illegal dumping; Officer Maher stated he was not aware. Attorney Connors directed us to Exhibit 3, a letter to Aaron Bornstein from the Town regarding illegal dumping and commending Mr. Ferreira's efforts. He asked if Officer Maher has witnessed any other illegal dumping; Officer Maher stated there may have been. Attorney Connors asked if Officer Maher is aware Mr. Ferreira had moved to Thornton Drive from Cedar Street. Attorney Connors asked about the vehicle sitting on a flatbed without a truck attached. He then asked if the trailer had a license on it. Officer Maher stated it had no license – it had junk on it. Attorney Connors asked for the photos to be brought back up; there are no wheels on it, it looks like it is on the floor. Attorney Connors stated it is a type of apparatus which can be attached to a vehicle for further use, perhaps the next day. He then stated the air conditioners were deposited in the middle of the night according to Mr. Ferreira and unknown to him.

Mr. Geiler called Donald Desmarais from the Town Health Department. Mr. Desmarais read his inspection report – stating there were three violations at 53. There was an oil bucket on its side which he picked and disposed of, there was trash in a dumpster without a cover, there were more than 10 air conditioning units behind #53. He further stated it is a Zone 2 groundwater area; there was no care used in the storage of the oil – which is considered hazardous. Mr. Geiler questioned him about the gases like Freon, refrigeration, etc...are they hazardous?

Attorney Connors asked how many bags of household trash were in the dumpster; Mr. Desmarais stated numerous. By numerous he asked how many; Mr. Desmarais stated there were three or more. He also stated there was a discussion with Mr. Ferreira wherein Mr. Ferreira stated he was aware it was there (trash) and that he would remove it. Attorney Connors then asked Mr. Desmarais if he had seen illegal dumping anywhere else in Town? Mr. Desmarais replied it was unknown to him. He also asked if a follow up inspection was done on the oil, the trash and the air conditioners, to which Mr. Desmarais stated here had not been. Attorney Connors stated those items have all been removed.

Mr. Geiler then called the Town Zoning Enforcement Officer, Robin Giangregorio. She stated staff goes to this area periodically. She stated Mr. Ferreira was using 31 and 53; things were being thrown in dumpsters and he was causing noise problems.

Mr. Geiler asked her if she observed the air conditioners behind the building, she said she did. She noticed there was metal and tires on the ground. Mr. Geiler asked about batteries – she did not recollect seeing those. Mr. Geiler asked how many dumpsters were at 53 – she stated 3 or 4; she did not recall how many at 31. Mr. Geiler asked if Zoning in Barnstable allows the properties to be filled with dumpsters. Ms. Giangregorio stated everything Mr. Ferreira did on 31 and 53 would have triggered Site Plan Review, which he had not had. He asked if the Junk Dealer License allows outdoor storage; she said she was not sure, but thought it was inside only. He asked her about 30D. She stated the downstairs was vacant; the upstairs was being used as a primitive living space.

Attorney Connors asked Ms. Giangregorio if as part of her duties she is required to notify the Town of violations. She said that she is, as they become known to her. He then asked if we would look at the Show Cause Notice which ONLY refers to 30D, not the other locations. He then directed Ms. Giangregorio to a letter from Alisha Parker to Aaron Bornstein dated April 2nd in Exhibit 3. Ms. Giangregorio stated the letter in evidence was dated April, not August or September, and what was there now was totally different, and she could not comment on someone else's letter. Attorney Connors then asked her if any of the products were labeled and separated appropriately? She stated nothing was labeled. He then asked if she had been there between April 2nd and August; she stated she had, but not inside. Attorney Connors asked what kind of zoning this was; alluding that it was not a residential area and maybe the noise level would not be so strict.

Tom Geiler called Building Inspector Jack LeBoeuf. He questioned him about 30D and the apartment. Mr. LeBoeuf testified he observed the illegal apartment. Mr. Geiler asked if the unit was originally set up with an apartment or if it had it been altered? Mr. LeBoeuf stated it had been altered. Mr. Geiler asked if he also observed the dumpsters spread between 53 and 31 as well as the tires, batteries on the ground outside the dumpsters. Mr. LeBoeuf stated he had witnessed the tires and air conditioners.

Attorney Connors asked Mr. LeBoeuf if he knew when the building was altered. Mr. LeBoeuf did not know. He then asked for a definition of an illegal apartment – Mr. LeBoeuf stated there was not an apartment on his first visit but it was used as living space at the 2nd visit. Mr. LeBoeuf stated it had a counter, microwave, etc. Attorney Connors asked if there was anything showing it was an apartment – Mr. LeBoeuf stated all of it; a refrigerator, clothing in a bureau, a microwave. Attorney Connors stated that without kitchen cabinets, would this be an illegal apartment? Mr. LeBoeuf stated not alone, but the whole setup together was definitely an illegal apartment.

Mr. Geiler asked if he could swear in Tim Ferreira and if he could ask Mr. Ferreira a couple of questions. Attorney Connors agreed but asked for a short recess to confer with his client. After that Mr. Ferreira was sworn in.

Mr. Geiler asked Mr. Ferreira if he has a Junk Dealer's License for 31 Thornton Drive; He said no, that is not correct, the license is for 30D. 30B is not the address? No, 30D Thornton Drive is licensed for a Junk Dealer License. He asked what that authorized Mr. Ferreira to do – Mr. Ferreira said to be a junk dealer in or keeper of a shop for the purchase, sale or barter in junk, old metals and second hand articles. Mr. Geiler asked if it authorizes you to dismantle units or vehicles for parts? Mr. Ferreira stated he does not do that – that would be a salvage yard. Mr. Geiler stated that the Patrolman stated over a period of time it was dismantled. Mr. Ferreira stated that was the way the vehicle came in – with no doors; the kid was given a citation for driving around with no doors. Mr. Geiler asked about the junk dealer license at 30D – does that authorize him to go from place to place with his junk dealers license at places OTHER than the licensed premises; he stated that MGL allows him to go from place to place. Mr. Geiler asked where in Ch 140 we can find that language. Mr. Ferreira went to a book to Section 56 Junk Dealer defined and read it into record. Mr. Geiler asked if anywhere in there it authorizes him to bring those items to any location other than the licensed location or a disposal location? Mr. Ferreira stated that Ferreira's "Hauler's License" authorizes them to do that. Mr. Geiler asked him about the component of on 8/14 there were discussions about outdoor storage of junk and turning the property into a big scrap yard. Mr. Geiler then referred to the licensing minutes of March 19th. Mr. Geiler asked if he was disputing the dismantling of cars as testified to by Patrolman Maher. Mr. Ferreira stated he does not do that. Mr. Geiler stated he was told by more than one inspector that there was more than one thing which had to be corrected – storing things all over the place, like a salvage yard; something very different from that which was licensed. Mr. Ferreira stated Mr. Geiler was absolutely confused as to what he was allowed and what he was not allowed to do. He then asked about the Business Certificate. Mr. Ferreira was asked what the Business Certificate is for – he stated it registered the business. Mr. Ferreira stated that there is no authorization to conduct a business by the Business Certificate.

Attorney Connors asked Mr. Ferreira what the business was at 30D. Mr. Ferreira said to purchase, barter and dispose of metals. 31 is auto repair, storage and his hauling business and 53 is used as storage from Mid Cape Metal and Ferreira's. He asked if he received a show cause notice for 31 or 53 Thornton Drive? Mr. Ferreira stated he did not; only 30D. He was then asked if the homeowner who calls him to pick up an item is required to get a junk dealer's license? He stated no they are not. Attorney Connors asked if there are kitchen cabinets in 30D. Mr. Ferreira said there is not. He stated the area is to eat lunch and clean themselves up after picking up stuff; and relax if needed. There is no bed and never has been. He then asked if it is common in the business to have clothing around – Mr. Ferreira stated yes, they take off the soiled clothing there. He then asked Mr. Ferreira about his meeting with the Building Inspector. He stated Mr. LeBoeuf had said to him that the move from Cedar Street to Thornton Drive was a good one to a better area for his business and that he was not in violation. The attorney asked if he had a receptacle for trash; he said they do. The attorney asked if possibly trash could have gone into a dumpster rather than that receptacle by accident? He said it could. Mr. Ferreira then stated he

got an approval by Building to move to 31 in January. When he got there, there were boats, 55 gallon drums of oil, wood, plastics, old motorcycles, numerous debris. Attorney Connors asked him if those items are still there on either property? Mr. Ferreira stated that at his own cost they were removed – Alisha Parker acknowledged this effort. He then asked if there are tires, batteries, oil cans? He stated there are not. He asked if there has been illegal dumping since he got there – Mr. Ferreira said there has been. He has installed signs that the property is videoed and they patrol the area periodically – early in the morning or late at night. Attorney Connors asked if the air conditioners were put there by him; Mr. Ferreira stated they were not. He then asked if they were the product of illegal dumping – Mr. Ferreira stated they were.

Mr. Geiler summed up at the request of Mr. Hoxie, telling the Authority they have heard the testimony of our Police Department, Zoning, Building and Health officials about the business being spread around three sites. He also stated there were numerous unregistered vehicles as well as the one with the doors off and stated there was testimony that nothing was going on at 30D, but at the properties where there was no authority given to conduct the metal recycling or fill dumpsters. He reiterated that the business license this Authority has issued is required to be done in a building. The photos by the police department are self-explanatory. The Health Inspector testified about the used oil on the ground and both the Building and Health Inspectors talked about used air conditioners behind the building. The Building Official and Zoning Officer spoke of the illegal dwelling unit, which had been made by altering a space which used to be an office. There was also testimony of a large number of dumpsters which were stored outdoors in the parking lots and not within a building. He stated that the Authority heard Mr. Ferreira tell them he does not need the license for 31 or 53. He had just decided he was not going to comply with removal of those dumpsters loaded with scrap outside and unregistered vehicles on sites that are not in compliance. His activities are in contempt of the license granted by the Licensing Authority. It has all been evidenced today by witnesses.

Attorney Connors objected in the spirit of 31 and 53; stating he only received a notice for 30D. They did want to address all three, because Mr. Ferreira gave testimony of no knowledge of the articles he claims were illegally dumped. He removed many of these just to be a good neighbor. Attorney Connors stated if there is no kitchen, the unit upstairs at 30D we are referring to is not an accessory apartment. He stated a microwave and clothing in a drawer does not constitute an accessory apartment. He then stated it might be helpful to provide Mr. Ferreira guidance as to where he can keep the vehicles. He stated Mr. Ferreira works long hours and periodically patrols, has a sign on his fence, is a hauler and is attempting to get a license for the third building at 53 Thornton.

Mr. Burman asked what the other licenses Mr. Ferreira has – Mr. Ferreira stated he has a permit to haul and our Junk Dealer License.

Mr. Hoxie asked if there were any other people present to testify. Cornelius Trowbridge came forward to testify. He stated he is the one who asked if this place was a legal business – as it seems to cover three locations – stating he sees what happens on Thornton Drive. Other businesses and himself have formed an association – he stated he has been threatened on Thornton Drive; Mr. Ferreira threw him off his property. Mr. Trowbridge stated a lot of people are not happy with what is going on in the area. He wondered why we were not going after the OWNER of these buildings...just the business owner. He stated Mr. Ferreira has scared people. The others were afraid to appear at the hearing. Mr. Trowbridge stated he is a veteran and does not use illegal drugs. Attorney Connors asked if Mr. Trowbridge runs a business on Thornton Drive? He said he does not. He asked if he was a property owner – he said he is part owner of a property, yes. Attorney Connors asked if the police came to speak to him for being on Mr. Ferreira's property; he said yes they did.

Discussion took place within the Licensing Authority. Mr. Hoxie asked for a motion on findings.

A motion was duly made by Gene Burman regarding Timothy J. Ferreira, d/b/a Mid Cape Metal Recycling, 30D Thornton Drive, on the following counts that he has been charged and proved to be in violation of his license and found guilty on Count 1. Mr. Sullivan seconded the motion and it was unanimous. Mr. Sullivan made a motion as to a guilty finding on Count 2. Mr. Burman seconded and it was unanimous. Mr. Burman proposed a guilty finding on Count 3 which Mr. Sullivan seconded. It was unanimous. Mr. Burman made a motion for a guilty finding on Count 4, Paul Sullivan seconded the motion and it was unanimous. Paul Sullivan made a motion of Count 5 of Guilty, Gene Burman seconded the motion and it was unanimous. Mr. Burman made a motion as to a guilty finding on Count 6, which was seconded by Paul Sullivan and was unanimous. Mr. Burman proposed a finding of Not Guilty on Count 7, seconded by Mr. Sullivan and unanimous. Mr. Burman proposed a finding of Guilty on Count 8 which was seconded by Mr. Sullivan except for the number 12, and it was unanimous with the number being deleted.

Mr. Hoxie reiterated that the Authority had found Violations 1-6 and 8 guilty; 7 Not Guilty.

Mr. Hoxie asked for a motion as to sanctions. Mr. Burman asked what the choices would be. Mr. Hoxie stated the choices are to modify, suspend, or revoke the license. Mr. Hoxie asked that the counts be taken individually.

Recommendation was proposed by Paul Sullivan on the following:

- (1) 1 day suspension, seconded by Gene Burman and a unanimous vote taken;
- (2) 1 day suspension (in addition to the first day suspension); seconded by Gene Burman, and a unanimous vote taken;

- (3) that a warning be issued; Gene Burman seconded; a unanimous vote was taken;
- (4) that a warning be issued; Gene Burman seconded, a unanimous vote was taken;
- (5) 1 day suspension; Gene Burman seconded, a unanimous vote was taken;
- (6) Gene Burman recommended a warning be issued because there is some doubt about the illegal dumping; Paul Sullivan seconded, a unanimous vote was taken;
- (7) No action taken
- (8) Paul Sullivan recommended a warning be issued; Gene Burman did not second; stating he considered this serious; he then made a motion for a 1 day suspension; Paul Sullivan seconded that motion and a unanimous vote was taken.

The punitive action is a four day suspension and three warnings. The Authority asked Mr. Geiler about when the suspension should take place; Mr. Geiler recommended at least 2 weeks so the appeal period could take place if the defendant chose to appeal. Attorney Connors stated he would like at least that time period so they could appeal. He thinks that is the inclination of his client - to appeal. Mr. Hoxie also asked about the license application for #53; they would also like that to go forward as soon as possible. If they did not appeal they would ask for 30 days. Mr. Hoxie said he would like a date set for 53 Thornton Drive. He then set the suspension date for October 22, 23, 24 and 25, 2007, and asked that the hearing date for #53 be October 29, 2007. Attorney Connors had no objection. He wanted to clarify that in the event of an appeal we would hold off.

Mr. Geiler stated that given the situation at 53 and 31, he thinks it would be very helpful to have the applicant submit a business plan for #53. He stated that staff would be hard-pressed to grant any additional license without some evidence of a full understanding of the requirements for the licenses and compliance with same. Mr. Hoxie stated the business plan would be very appropriate and requested it be provided.

Other Business:

ABCC Seminars – Mr. Geiler stated it is a yearly type of thing; directed more towards the operating of the Licensing Authority function and suggests there IS value in the meeting. He would prefer someone go and bring back the information to the rest of the Board. Mr. Geiler stated if he is available he would go, but thought it would not be a bad thing for the police department to go.

Adjourned at 11:59 a.m.

Respectfully submitted,

Christine P. Ade, Recorder
Town of Barnstable Licensing Authority

Paul Sullivan, Clerk
Town of Barnstable Licensing Authority