



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 7, 2008

A regular meeting of the Barnstable Licensing Authority was held on Monday, January 7, 2008. 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, Liaison Officers from the Barnstable Police Department, and Christine Ade, Recording Secretary.

Requests:

One Day Wine & Malt Licenses (3): Request of James Wolf on behalf of Cotuit Center for the Arts, 4404 Falmouth Road, Cotuit, for three one day wine & malt licenses for a Poetry and Chili Fest on 1/19/08 from 6 pm to 10 pm; a Concert on 1/26/08 from 8 pm to 11 pm and an Art Show Opening on 3/8/08 from 4:30 pm to 7:30 pm.

Mr. Wolf did not appear for his request. This was continued to 1/15/08 and the applicant will be notified.

Hearings:

Change of D/B/A: Request of 4120 Corp., d/b/a Cotuit Pantry, Vincent Holland, Manager, 4120 Falmouth Road, Cotuit holding an Annual Wine & Malt Package Store License for **Change of d/b/a to Big Daddy's Pizza.**

No-one appeared for this request.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to continue the request of 4120 Corp., d/b/a Cotuit Pantry, Vincent Holland, Manager, 4120 Falmouth Road, Cotuit holding an Annual Wine & Malt Package Store License for **Change of d/b/a to Big Daddy's Pizza** to special meeting 1/15/08 at 10:00 a.m. and that the applicant be notified.

New Class II Auto Dealer License: Application of Edward A. Santoro, d/b/a Hyannis Auto Sales, 498 West Main Street, Hyannis, for a New Class II Auto Dealer License, the hours to be open being M-F 9 am to 5 pm, Sat. 9 am to 3 pm, for a total of 26 vehicles on site. No repairs on site.

Mr. Santoro appeared for his request. He plans to sell used automobiles. The location was a Class II Auto dealership as well. He has sold at Beard Chevrolet for 12 years and was also at Hyannis Toyota and service work at Meineke in Hyannis, which will give him experience for purchasing vehicles. Mr. Burman had one question – the total of 26 vehicles. Confirmed it includes all vehicles on site including customers and employees. Mr. Sullivan went by yesterday counting 22 vehicles – and said the place was packed. Mr. Sullivan will propose 20 rather than 26 as it seemed so crowded to him. Mr. Hoxie asked if the site could be revisited.

Mr. Geiler stated the 26 should be appropriate as the total number. Tom Perry, Building Commissioner, stated if the car has no plate or a dealer plate it is for sale. He stated we need to know how many spaces are for customers and for display (for sale) vehicles. The police department is only concerned with the total number. Mr. Burman asked for a suggestion as to a formula for total number as opposed to display number. Lt. Jason stated they go out at night and only check the TOTAL. Tom Perry suggested they get together for a meeting to resolve the issue. She stated they can only enforce the total number. Tom Perry indicated it is part of Site Plan Review to break it up. Tom Perry indicates from the map it shows 20 spaces for vehicles for sale; room on the driveway does not count. Officer Maher indicated that there are 26 spaces and Tom Perry agreed with that. He stated there was a car fire last year at another location, and there were so many cars 7 were affected. He thinks we should go with the total spaces indicated by Site Plan Review. Paul Sullivan has heard over the past 1-1/2 years all the problems with overcrowded lots and his thoughts are that the total numbers have to be looked at closely. Mr. Burman suggests we have a meeting to discuss it, but proposed granting the 26 maximum at present.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the request of Edward A. Santoro, d/b/a Hyannis Auto Sales, 498 West Main Street, Hyannis, for a New Class II Auto Dealer License, the hours to be open being M-F 9 am to 5 pm, Sat. 9 am to 3 pm, for a total of 26 vehicles on site, and no repairs or car washing on site.

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**. Continued from 10/29/07; request from Attorney to continue to January 7, 2008.

Tim Ferreira appeared for his hearing with Attorney James Connors. Attorney Connors stated that at this point, Mr. Ferreira is in the process of reconfiguring his businesses to be more "Town friendly." He would like to withdraw the current

application. He stated there was a new license application filed this morning. Mr. Geiler stated there was NOT an application filed today – this is not the place to file an application. Attorney Connors stated they were told to come over to the hearing room to get a signature from Licensing on a business certificate for #31. He advised them to bring it to 200 Main Street. Attorney Connors presented the Board with a request for the Board to waive future defenses relative to statute of limitations arising out of the licensing application appeal or new application.

Mr. Hoxie confirmed that the application for #54 Thornton Drive has been withdrawn.

New Annual Wine & Malt Package Goods Retail License: Application of Christy's of Cape Cod, LLC, d/b/a **Christy's of Cape Cod**, 50 Ocean Street, Hyannis, MA 02601, Christy Mihos, Manager, for a **New Annual Wine & Malt Package Goods Store License**.

Patrick Butler, Esq. appeared for this application with his client, Christy Mihos, Manager of Christy's of Cape Cod, LLC. He is the sole member of that LLC. Mr. Mihos thanked the Board for letting them come before us this morning. The store is next door to 50 Ocean Street. He stated he has sold beer and wine as a matter of right in Christy's all over New England. He is well versed in operating these types of licenses. He stated they have an all alcohol retail license in Orleans. He is in the stores every day. Works with the Manager and Assistant Manager closely to make sure the license is run properly. Attorney Butler represented that a discussion took place with Mr. Mihos about the responsibility of this license. He has read the rules and regulations and is very familiar with them. This license has been contemplated for over a year. There will be no changes in the footprint of the building – just adding 4 coolers on one wall. There is an issue of zoning in the Harbor District; it is no longer an allowed use (retail). They have looked at case law regarding intensification of use at the location. He will be meeting on Thursday with Tom Perry to ascertain if any zoning/planning relief is required. He states it is his belief that it is just a change from selling donuts and coffee to selling beer and wine. They believe being in the growth incentive zone, near harbor and marinas, it meets the community need and public good. Attorney Butler believes the pre existing non-conforming use has not changed. It IS a grandfathered use and is not being intensified. He cited a Costco case where the retail use changed but was still a retail use. It is still a convenience store with gas pumps. They do not believe this is an expansion. Mr. Sullivan wanted to clarify intensification – is it the volume of people in and out? The volume of sales? Attorney Butler stated that for 15 years the zoning code states if you have a use that changes the parking it requires site plan review. This matter does not require that. There is also a traffic manual based on use – again it is not changing. It is retail store to retail store. The Dunkin Donuts was very busy certainly. He will work with Tom Perry to resolve this. They may not even have to get into the traffic situation. Mr. Mihos stated the business has really changed since Dunkin Donuts has moved out. Mr. Hoxie asked Mr. Perry to speak on his thoughts. Tom Perry stated this was discussed generically a year ago. The place is there by Special Permit only since its inception. This will come into play. He feels adding

beer and wine WOULD require a Special Permit if adding liquor. Mr. Hoxie asked if he had a problem approving the application pending ZBA approval? Tom Perry stated it is up to the Board. Mr. Butler stated he has had other cases go before Zoning with other Boards already approving. Gene Burman recalled that this Special Permit application was for a gas station with a convenience store, which has been operating for many many years. In 1979 there was a Special Permit.

Attorney Butler stated they will present a letter stating they will not use the license if not approved by ZBA. Tom Geiler stated it would be cleaner to continue the request. Attorney Butler asked if the Board could act today on the premise that the license be turned in pending any negative result of the Zoning Board. Mr. Hoxie stated he would like to hear from the public who seem to be here today for this application and the need for this service. Mr. Butler stated there will soon be a large condominium unit within walking distance. The underlying zoning in the harbor district shows a desire to have the area revitalized – with the usual and appropriate use of sale of beer and wine here. Mr. Hoxie asked if it was fair to say there are 2 beer and wine package stores nearby? Attorney Butler states that he believes there are 2 within ½ mile but both not in easy walking distance. Mr. Butler states the idea of walkability is a need – a use where people can walk to do things. He stated they want to try to keep things within the “neighborhood.”

Cynthia Cole, Hyannis Main Street Business Improvement District, appeared to speak. She stated the line was out the door with coffee sales at that location. She thinks that was much more intense than it will be from now on. She stated Christy's has been a good neighbor and Christy himself has been very cooperative and is an excellent businessman. She believes we need to be growing and with more visiting boats coming in and goods and services available to those people it would be a good idea. Walkability is extremely important to revitalization. She hopes the Board will approve this application today.

Gary Brown came forward as well speaking in favor of this license. He was President of the Town Council – he submitted the proposal to close from 1-3 which passed. Christy Mihos as a retailer supported him, and was the only one who did. He supports the Town. Gary Brown ran a water taxi for the Hyannis Angler's Club. Many people he taxied asked where the closest package store was. Many of them said forget it when he told him how far the stores were away from the harbor. He said the Town lost revenue this way. Again, Mr. Mihos' office is right near the store. He thinks it would be a great convenience. Lt. Jason stated Mr. Mihos has been an exceptional business owner – and his spearheading the closings from 1-3 was extremely helpful.

Mr. Hoxie stated he had an email from Arthur Kane– it stated the location is near the park and where the homeless hang out...and we do not need to make it easier for them to get alcohol. Mr. Butler stated Mr. Mihos would stay on top of that situation. They are willing to continue to February 4th if it makes more sense and to satisfy Mr. Geiler. He will submit to the Board some zoning information. Mr. Hoxie asked if

there was discussion from the Board needed to make a decision. Mr. Burman as a business person stated he knows how hard it is to have delays...he also knows about the Zoning Board; thinks this may be the Planning Board, not the Zoning Board and that they usually look for the approval of other Boards at their hearings. Mr. Burman stated we should approve it today and that we have a very knowledgeable Building Commissioner who is also very cooperative and that they will get this resolved. Mr. Hoxie asked if we approve will it prejudice the Planning Board. Mr. Butler stated it will not; our approval is just that the applicant has met OUR conditions for the license they are applying for. Mr. Hoxie asked Mr. Geiler again about the way this is done. Mr. Geiler stated the Licensing Dept. has 3 days to get the paperwork to the ABCC. That means it has been approved. The process for rescinding a license is difficult; the Licensing Authority cannot simply take a license back. Mr. Butler stated that a holder of a license MAY voluntarily turn in the license and not use it. They would agree in writing to so this. Then the Board could vote it revoked. The other way would be for us to approve the License, send it to the ABCC for approval, and then have us just HOLD the license for approval. Mr. Butler also offered not to tender the fee if approved by the ABCC until determination is made. Zoning takes 6-8 weeks; Planning Board is quicker. Tom Perry stated it IS the Planning Board. Mr. Perry stated it should only take a few days to determine where this needs to go. Mr. Butler agreed to continue to February 4th and get resolution. Mr. Hoxie made a recommendation that this be heard on Monday, January 14th. Mr. Butler was not available that day. Mr. Hoxie then asked that it be continued to Tuesday, January 15, 10:00 a.m., location to be determined for a room. This was agreed to by Attorney Butler and Mr. Mihos.

Show Cause Hearing: Show Cause Hearing requested by Barnstable Police Dept. on Ardeo on Main, 644 Main Street, Hyannis, Joseph Jamiel, Manager, for violation of Town Rules and Regulations of the Licensing Authority Ch. 501-7 paragraph b for pricing wine sales on November 8 and November 15, 2007 differently on those dates than other dates the same weeks.

Mr. Hoxie swore in the witnesses.

Officer Maher presented the police department's case. November 8th he noticed an ad in the Cape Cod Times for half price wine. He visited the restaurant that Saturday and spoke to the bartender telling him that they were in non-compliance. He agreed to inform management. However, the next week the same ad appeared. Attorney Peter Freeman, counsel for Ardeo on Main, represented that they know what took place was as the officer represented. However it was VERBAL and the problem "did not make it to" Mr. Jamiel, the Manager. Chain of command did not get the information to the right place to remove the ad and stop the promotion. He advised this will not happen again. The second issue is that he thinks the regulation is fuzzy; Mr. Jamiel is a long time licensee and is familiar with state law and local regulations. Attorney Freeman thinks there was an intention to comply with the law and they will comply. The restaurant doesn't promote the alcohol per se; it is a good restaurant. They did not intend it to be a draw by promoting alcohol. Subsection "d"

lets the licensee include a drink as part of a meal package or wine by the bottle sold with meals. The client did not think, because of this, that it was illegal. The 3rd point Attorney Freeman made is that Mr. Jamiel has had a stellar record in 3 towns. He operated Christine's, the Barnstable Tavern, and the other Ardeo's as well. He knows what it means to be responsible. He asked for a dismissal as there has been no harm and no intentional non-compliance. Also, other towns have not shown concern (Yarmouth and Brewster). Mr. Hoxie asked if there were any questions. There were not. Mr. Sullivan asked to go back to the section of the Town Ordinance to be violated – it was “b.” He read “d” which does not modify “b” but only “c.” That is how he interprets it. Attorney Freeman still interprets “b” as being so broad it should be o.k. under “d.” He asked if they can't DO it or just can't PROMOTE it? Mr. Geiler stated they can do neither one. Mr. Freeman stated that evidently the bartender did not transmit what happened to the Manager...it was totally unintentional of Mr. Jamiel to ignore the request of Officer Maher. Mr. Jamiel is the Manager in South Yarmouth and Hyannis, not Brewster. Mr. Burman suggested that is the problem – there has to be a responsible party in each location so there is knowledge of what is going on. According to the police report it happened twice with an interim of 15 days without being rectified. He sees that as lack of supervision. Mr. Freeman again stated it was a problem of chain of command not getting the message to Mr. Jamiel. Officer Maher stated he DID ask for the Manager; the bartender represented he was the manager at the time – no-one else was there. He also stated he understood the advertisement.

Paul Sullivan wanted to clarify, and mentioned that our new liaison officers have done an outstanding job since coming onto the Board. He does not see any need for a written communication – because the matter was handled verbally should not in any way be held against him (Officer Maher) as not doing his job correctly. Mr. Burman stated he would like it on record if you could discount just not advertise. Mr. Geiler stated you must keep the price at one level for one week at a time. He reiterated Mr. Jamiel's operation has been good – never a problem. But there was a breakdown. The rules are there to protect from over service. He reiterated that Mr. Jamiel will not do it again.

Findings: Mr. Burman proposed that we find them guilty. Paul Sullivan seconded the motion. There was a unanimous vote to find them guilty.

Mr. Burman proposed a letter of warning be issued. It was seconded by Mr. Sullivan and a unanimous vote taken to issue a warning.

Show Cause Hearing: Show Cause on Up the Creek Again, 36 Old Colony Road, Hyannis, John M. Evans, Manager, for complaints received from neighbor with regard to smoking patio. Continue at request of Owner/Manager, John M. Evans to next hearing – February 4, 2008, as he is out of state until after the present hearing date.

It was represented to the Board that in accord with a telephone call from Melissa Meece, she and her husband (complainants) are in agreement with the continuance to February 4, 2008 and will be present on that date.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to continue this hearing to February 4, 2008.

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:

Balise Nissan
Coastal Trailer Sales
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:

ES Auto Sales
Rotary Collision Centers
West Main Auto
Wheels to Work
Ron's Truck Stop
Mistic Motors
DeVincent Auto Brokers
A&M Auto Sales
Auto Wholesalers of Cape Cod
Cape Auto Sales
Hyannis Auto
Barnstable Auto Exchange

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
Josiah Sampson House
Craigville Conf. Ctr. – 19 Vine Ave
Craigville Conf. Ctr. – 125 Ocean
Craigville Conf. Ctr. – 39 Prospect
Craigville Conf. Ctr. – 1 Bluff Ave.
Craigville Conf. Ctr. – 208 Lake Elizabeth Drive
Rosebud Trust – 18 Quaker Road
Park Square Trust III – 164 Main Street
Park Square Trust III – 156 Main Street
West Wind Trust – 80 Yarmouth Road

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

Common Victuallers:

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:

McDonald's – 175 North St., Hyannis
McDonald's – 793 Iyannough Road, Hyannis
McDonald's – 654 Iyannough Road, Hyannis
Wendy's
White Hen Pantry #1-0305-1
Efrain Mobile Foods – Veteran's Beach
Efrain Mobile Foods – Sandy Neck Beach
Bangkok Kitchen
Village Landing
Quizno's
La Petite France Café
Christy's Market #616
Brown Bag Bagels & Deli
Common Ground Cafe

Automatic Amusement:

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

Ryan Family Amusements – 441 Main Street

Ryan Family Amusements – CC Mall

A motion was duly made by Mr. Burman and seconded by Mr. Sullivan and a unanimous vote taken to approve the Video Games renewals listed below:

Video Games:

Ryan Family Amusements
Ryan Family Amusements – CC Mall

A motion was duly made by Mr. Burman and seconded by Mr. Sullivan and a unanimous vote taken to approve the Daily Non-Live Entertainment renewals listed below:

Daily Non-Live Entertainment:

Ryan Family Amusements – 441 Main St.
Papa Gino's – 790 Lyannough Road
Papa Gino's – Bell Tower
Ryan Family Amusements – CC Mall

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 St.
Papa Gino's – 790 Lyannough Road
Papa Gino's – Bell Tower
Ryan Family Amusements – CC Mall

Christine Palkowski came forward to request that we not approve 80 Yarmouth Road and 156 Main Street Lodging House renewals until we can hear testimony from Tom McKean, Health Department. Mr. McKean came forward regarding the two places not to be renewed – problems were because of lack of heat, electricity, etc. and the problems arose because of non payment of utility bills by the Landlord. Mr. Hoxie asked that we notify the Lodging house owners to come to the meeting 2/4/08. Mr. McKean stated his inspectors advise the owners they have 24 hours to get the heat on, etc. They checked the next day and it WAS back on. He wants to prevent the recurring nature of these problems. Mr. Hoxie requested we renew these licenses only until 2/4/08 without issuing the license and that we notify them in hand to be at the 2/4 meeting. Mr. Geiler asked that Mr. McKean get the names for us of anyone with a financial interest in these two properties so this does not happen again and provide us with his documentation on these lodging houses.

Other Business:

Discussion took place relative to a sound study by Harris Miler Miller & Hanson provided to the Board members for review. Mr. Hoxie asked for comments. Mr. Burman stated he could not make much out of it. Mr. Hoxie stated that if Growth Management is happy with it, the Board should be. Christine Palkowski from the Legal Dept. stated that the Fire Dept. stated that they have no problems and the Building Commissioner had no problems. Mr. Hoxie stated it will eliminate problems with new construction as far as noise issues go. Mr. Sullivan asked about cost impact – Christine said that it would be just for new construction, would not affect places existing already. Mr. Geiler stated it would seem to him that if they will be investing this type of money, there must be a “carrot” out there for them somewhere. This building standard is very high. If they build to this standard then we cannot later find them responsible if there are noise problems. It provides some protection to the establishment. He stated we should meet them halfway or no-one will do it. Once the building is built, the Manager of the facility can then decide what type of entertainment – volume etc. and the noise problems because of those choices are different from place to place; maybe even coming up with limitations as to types of instruments, etc.

Gene Burman asked if there was any progress as far as noise issues with the Melody Tent last year – citing we had referred questions to Mr. Niedzweicki, then Assistant Town Manager, who is no longer here. Mr. Geiler stated the problem has not been totally resolved. They still have the responsibility not to irritate the residents in Hyannis.

Adjourned at 11:25 a.m. until Tuesday, 1/15/08 at 10:00 a.m..

Respectfully submitted,

Christine P. Ade, Recorder
Town of Barnstable Licensing Authority

Paul Sullivan, Clerk
Town of Barnstable Licensing Authority