



# Town of Barnstable

## Regulatory Services

Thomas F. Geiler, Director

### Licensing Authority

200 Main Street

Hyannis, MA 02601

[www.town.barnstable.ma.us](http://www.town.barnstable.ma.us)

Telephone: (508) 862-4674

Fax: (508) 778-2412

### BARNSTABLE LICENSING AUTHORITY LICENSING HEARING MINUTES

Town Hall Building, 367 Main Street, 2<sup>nd</sup> Floor Selectmen's Conference Room  
Hyannis, MA – 9:30 a.m.

**July 28, 2008**

A regular meeting of the Barnstable Licensing Authority was held on Monday, July 28, 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.

#### Hearings:

**Three One Day Beer & Wine, One All Alcohol, 3 Daily Entertainment and a Sunday Entertainment License:** Application of Cathrine Macort on behalf of Cape Cod Maritime Museum, 135 South Street, Hyannis for **Three One Day Beer & Wine Licenses, a One Day All Alcohol License, 3 Daily Entertainment Licenses and a Sunday Entertainment License** for the 3<sup>rd</sup> annual Cape Land and Sea Harvest Festival (CLASH) on September 25, 26, 27 and 28, 2008 in the lot behind the museum.

No-one appeared for the application.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to continue to the application of Cathrine Macort on behalf of Cape Cod Maritime Museum, 135 South Street, Hyannis for **Three One Day Beer & Wine Licenses, a One Day All Alcohol License, 3 Daily Entertainment Licenses and a Sunday Entertainment License** for the 3<sup>rd</sup> annual Cape Land and Sea Harvest Festival (CLASH) on September 25, 26, 27 and 28, 2008 in the lot behind the museum to 8/18/08.

**Two One Day Beer & Wine and a One Day Entertainment License:** Application of Marilyn Fuller on behalf of Barnstable Historical Society, 3074 Main Street, Barnstable, for **Two One Day Beer & Wine Licenses, and One Entertainment License for 2 entertainers** for its annual summer event on August 6, 2008 from 5 pm to 9 pm (alcohol and entertainment) and its annual Septemberfest on September 14, 2008 from 4 pm to 8 pm (no entertainment), both at the Daniel Davis House, 3074 Main Street, Barnstable.

Margaret McKenzie-Beatty appeared for the application. They have a band and are serving beer & wine by experienced servers who are members. Gene Burman asked about the entertainers – as this is a private home. What about the music emanating beyond the boundaries. She stated it is only from 6 pm to 8 pm and there is a P.A. system – a hurdy-gurdy and sea chanties are the type of music.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the application of Marilyn Fuller on behalf of Barnstable Historical Society, 3074 Main Street, Barnstable, for **Two One Day Beer & Wine Licenses, and One Entertainment License for 2 entertainers** for its annual summer event on August 6, 2008 from 5 pm to 9 pm (alcohol and entertainment) and its annual Septemberfest on September 14, 2008 from 4 pm to 8 pm (no entertainment), both at the Daniel Davis House, 3074 Main Street, Barnstable.

**Car Sale Permit:** Application for a Special 4 Day Permit for **Saturn of Hyannis**, 115 Bassett Lane, Hyannis, MA 02601, for an off-site fundraiser Car Sale at Barnstable High School, 744 West Main Street, Hyannis from August 14, 2008 to August 17, 2008 \$100.00 per vehicle sold will be donated to the school to be used at its discretion.

Jim Conroy came forward for his application. This is a fundraiser they have done in the past and had very good luck with it. It will be Thursday through Saturday 9-8 and Sunday 12-5.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the application for a Special 4 Day Permit for **Saturn of Hyannis**, 115 Bassett Lane, Hyannis, MA 02601, for an off-site fundraiser Car Sale at Barnstable High School, 744 West Main Street, Hyannis from August 14, 2008 to August 17, 2008 with \$100.00 per vehicle sold to be donated to the school to be used at its discretion.

**One Day Beer & Wine License:** Application of Sarah Biggs on behalf of The Casual Gourmet, 31 Richardson Road, Centerville for **a One Day Beer & Wine** for a Chamber of Commerce event for young professionals to be held at the Tilden Arts Center at Cape Cod Community College on August 7, 2008 from 5 pm to 7 pm.

Olive Chase came forward for the application – it is a Business After Hours event. The bar will be cash beer and wine 5-7 pm.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the application of Sarah Biggs on behalf of The Casual Gourmet, 31 Richardson Road, Centerville for **a One Day Beer & Wine** for a Chamber of Commerce event for young professionals to be held at the Tilden Arts Center at Cape Cod Community College on August 7, 2008 from 5 pm to 7 pm.

**One Day Entertainment License:** Application of Bruce Smith for Calvary Baptist Church, 25 Lincoln Road, Hyannis, MA, for a **One Day Entertainment License** for a summer festival to help its nutrition mission to be held at the church on August 23, 2008 from noon to 7 pm.

Mr. Smith came forward for the application – mostly background taped music but also some live gospel music. There are mostly businesses there.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the application of Bruce Smith for Calvary Baptist Church, 25 Lincoln Road, Hyannis, MA, for a **One Day Entertainment License** for a summer festival to help its nutrition mission to be held at the church on August 23, 2008 from noon to 7 pm.

**New Annual All Alcohol Common Victualler License:** Application of Costa Galatas, d/b/a Pizza Market, 12 Thornton Drive, Hyannis, Costa Galatas, Manager for a New Annual All Alcohol Common Victualler License, the hours of operation to be 6:00 am to 1 am.

NO-ONE APPEARED FOR THE APPLICATION. It was held to the end of the meeting and still no-one appeared.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to deny the application since this is the 3rd time it has been scheduled.

**New Common Victualler License:** Application of Shree Ganesh Associates, Inc., d/b/a Cape Cod Chicken, 1671 Falmouth Road, Centerville, MA, Jaganath Lamsal, Manager, for a **New Common Victualer License**, the hours of operation to be 11:00 am to 8:30 pm.

Cape Cod Chicken exists but this is a new owner – operating the same business. Mr. Hoxie asked if the man in the chicken suit would be back outside and Mr. Lamsal, Manager, said he was trying to get it.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the application of Shree Ganesh Associates, Inc., d/b/a Cape Cod Chicken, 1671 Falmouth Road, Centerville, MA, Jaganath Lamsal, Manager, for a **New Common Victualer License**, the hours of operation to be 11:00 am to 8:30 pm.

**New Class II Auto Dealer License:** Application of Cape Cod Automotive, LLC, d/b/a Cape Cod Automotive, 600 Yarmouth Road, Hyannis, MA, Ralph Perkins, Manager, for a new Class II Auto Dealer License, hours of operation to be 8 am to 7 pm.

Kathy Hansen appeared for the application just to sell used cars on the lot – now it is a Class I license. They no longer have the franchise for Chrysler-Dodge.

It was asked how many vehicles; Tom Perry had indicated no more than at present, but this was an old license with no number of vehicles listed.

Tom Geiler stated the number of vehicles should be less than the present license as they will no longer sell new vehicles and suggested 150 as Kathy intimated they have approximately 250 now. Mr. Geiler stated if they want more vehicles they will have to develop a plan and have it approved.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the application of Cape Cod Automotive, LLC, d/b/a Cape Cod Automotive, 600 Yarmouth Road, Hyannis, MA, Ralph Perkins, Manager, for a new Class II Auto Dealer License, hours of operation to be 8 am to 7 pm for a maximum of 150 vehicles on the lot.

**Transfer of Annual All Alcohol Package Store License:** Application of Daggett's Liquors – Park Square Inc. d/b/a Capeside Wine & Spirits All Alcohol Package Store License, 101 Iyannough Road, Hyannis, MA, Thomas Haugh, Manager for transfer to Grain & Vine Spirit Shoppe, Alan O'Campbell, Manager, the hours of operation to be 10 am to 10 pm Monday through Thursday, 10 am to 11 pm Fri & Sat, noon to 10 pm Sun.

Alan O'Campbell came forward – they are not changing the building or hours but will have somewhat different inventory. He has been managing a shop in Somerville for 6 years and has many years in the business. He was questioned about his familiarity with the Town of Barnstable Rules & Regulations; stated he has read the Blue Book (ABCC) but does not know Barnstable's at present - stating he will before operating. The closing is scheduled for September 15.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the application of of Daggett's Liquors – Park Square Inc. d/b/a Capeside Wine & Spirits All Alcohol Package Store License, 101 Iyannough Road, Hyannis, MA, Thomas Haugh, Manager for transfer to Grain & Vine Spirit Shoppe, Alan O'Campbell, Manager, the hours of operation to be 10 am to 10 pm Monday through Thursday, 10 am to 11 pm Fri & Sat, noon to 10 pm Sun.

**New Annual All Alcohol Common Victualler License:** Application of Kobi House, Inc., d/b/a Kobi House, 489 Bearse's Way, Hyannis, MA, Karen Huang-Liu, Manager, for a New All Alcohol Common Victualler License, the hours of operation to be 11:30 am to 11:00 pm. Proposed seating for 48.

Mrs. Huang-Liu came forward for the application. They have a license now for food. She has been a bartender in Harwich 2005-2006, bar manager and assistant manager. She is the owner and manager of a liquor store for 2 years in West Dennis (beer & wine). There will be no bar – the alcohol will be only for service to the tables. All

servers will be TIPS trained. Mr. Burman asked if we have a sign-off on the 48 seats and was told it is the same as existing now.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the application of Kobi House, Inc., d/b/a Kobi House, 489 Bourse's Way, Hyannis, MA, Karen Huang-Liu, Manager, for a New All Alcohol Common Victualler License, the hours of operation to be 11:30 am to 11:00 pm. Proposed seating for 48, with no bar.

**New Junk Dealer License:** Application of Tim Ferreira, d/b/a **Mid Cape Metal Recycling**, 31 Thornton Drive, Hyannis, Tim Ferreira, Manager for a **New Junk Dealer's License**, hours of operation to be 7 am to 4 pm.

Attorney James Connors came forward for his client and asked for a continuance per Attorney David Houghton, Town Attorney, so an Executive Session could be held prior to the hearing for the license.

Attorney Houghton asked that we hold an executive session today before 11 or at the beginning of the next meeting to determine whether the application should be heard. Mr. Hoxie prefers the Executive Session be published prior to holding it. The content will be with regard to strategy for the Superior Court case.

Mr. Burman asked how Mr. Ferreira can continue to operate now without a proper license. He did not get an answer to his question.

Mr. Hoxie stated the Executive Session will take place at 9:30 on August 18, 2008. It will be prior to the regularly scheduled Licensing Authority Hearing. A notice will be posted to that effect.

**Show Cause Hearing:** The Barnstable Police Department has reported to the Licensing Authority that on May 26, 2008 at 9:57 p.m., VN Management Corp., d/b/a Cape Cod Inn, 447 Main Street, Hyannis, Johnny Vo, Manager, did violate the Code of the Town of Barnstable, Massachusetts, Part V, Section 501-15, Paragraph D to wit, "no members of the public may be on the licensed premises at any time during suspension periods," and further that "the licensee may be on the premises only if it is in the process of actively cleaning up or doing office work at the premises.

Steve Maher asked for a brief recess to speak to Lt. Jason prior to commencement of the hearing.

Mr. Hoxie swore in Officer Maher and Mr. Vo and Lt. JoEllen Jason. Lt. Jason stated that the officer writing the report could not appear today. Lt. Jason then asked Officer Maher about the incident 5/26/08. Officer Maher had interviewed the officer (Challies) going to the Duck Inn Pub. According to him, Mr. Vo and his wife were inside the establishment with plates of food and an open bottle of red wine which subsequently ended up on the floor. The T.V. was also on in the bar. He did not see any cleaning or

clerical work taking place— just the remnants of a dinner. The business was closed at that time according to the officer. Officer Maher also advised that according to the signs posted, Mr. Vo was supposed to be closed for suspension of his all alcohol innholder license at the time of the incident. The suspension rules are very clear and Lt. Jason stated those rules had been broken. Mr. Vo was asked if he had any questions for the police. He did not.

Mr. Vo stated he did not know he and his wife could not be there – they live on the property and have meals every day there. He stated he did not understand that HE could not be there – he thought the rule was just for the public or others. They are there most all of the time.

Paul Sullivan reiterated that they were under a 6 day suspension at the time. Mr. Geiler stated a notice of closing is given to the licensee when suspended plus a copy of the suspension rules. Mr. Geiler stated Mr. Vo is the owner/manager and is supposed to be the most responsible person on the property. Mr. Sullivan again asked Mr. Vo about his presence there. Mr. Vo said he was there with his wife eating and answering the phone for reservations.

Officer Maher asked Mr. Vo where the wine came from for their dinner – Mr. Vo answered it came from the bar. Officer Maher asked him what he was given for the suspension from Licensing – Mr. Vo could only remember the orange sign. Officer Maher asked about the piece of paper with the rules for suspension and he did not remember that.

Mr. Burman stated this is sort of a grey area – as Mr. Vo does live there.

A motion was made by Paul Sullivan, seconded by Gene Burman and a unanimous vote taken for a guilty finding that the owner/manager violated the Rules and Regulations of the Town of Barnstable, Massachusetts, Part V, Section 501-15, Paragraph D to wit, “no members of the public may be on the licensed premises at any time during suspension periods,” and further that “the licensee may be on the premises only if it is in the process of actively cleaning up or doing office work at the premises.

A second motion was made by Paul Sullivan that the restaurant receive a warning. The motion was seconded by Gene Burman.

Mr. Geiler asked for the rationale behind that motion – Mr. Sullivan said he believes there is some mitigation as although there was a violation he thinks this does not warrant a suspension. He stated this cannot continue to happen. Mr. Geiler stated that the law authorizing the issuance of a liquor license carries with it a high level of responsibility for the manager and the owner. They must ensure that the rules and regulations are complied with. Ignorance or not understanding is not acceptable. This was a day on which their license was already suspended! He further stated that is the time to think about how to get back on track; not to violate another rule of the Town. The facility does have an office which could be utilized for reservations. He stated he

understands the egregiousness on a violation like this may not jeopardize the public, but raises the larger issue of whether this is a proper person to even hold a liquor license.

Mr. Sullivan re-read the regulations and still thought Mr. Vo was under mitigating circumstances here.

Mr. Geiler asked if he was in the facility, taking phone calls, talking with customers, is he supposed to be drinking? He is prohibited by the regulations. Officer Maher stated Mr. Vo has admitted to taking stock from the bar while suspended. This is not allowed. This Board had already moved the suspension to a date more convenient for him. Officer Maher suggested a suspension be imposed rather than a warning which be suspended for a period of time so that if he has to be brought back in it be imposed. Lt. Jason stated that the police have heard more incidents since this one but chosen not to bring them before the board yet. Some of the same issues like the music outside.

Mr. Vo says he has been here for 5 years. He has tried his best to survive in this Town; they work very hard and have not ever tried to violate the rules. He again said he was not trying to do anything wrong and did not understand as that is his home. Mr. Sullivan stated the police department is there for discussion with the licensees at any time and has held several meetings to help them understand the rules. Mr. Sullivan stated he does not want to see him before the Board again – he needs to pay more attention to his responsibilities.

Mr. Hoxie asked Mr. Geiler his opinion – Mr. Geiler stated it might behoove the Board to just continue the hearing for a period of time so if he violates again, he can then be brought back in and reprimanded.

Mr. Hoxie suggested we continue the hearing. Mr. Burman agreed completely with Mr. Geiler's suggestion. He stated not understanding as an excuse just does not cut it. Not knowing is not an acceptable excuse. He MUST know. He is the manager; the name on the license is his. Nothing mitigates that responsibility. Mr. Burman recommends the hearing be left continued. He also stated Officer Maher does not go out looking for trouble but is out trying to make sure everyone is treated fairly.

Mr. Geiler stated there are two charges which fall under the same section. Present for purpose other than work or cleanup; and second eating and drinking with the restaurant alcohol and food. The reservation phone is in the office; not in the bar.

Mr. Sullivan asked about a call – a call came in for a disturbance between Mr. Vo and another party not related to this incident.

Mr. Sullivan withdrew his original motion.

Mr. Burman made a motion to continue the Show Cause Hearing: brought by the Barnstable Police Department that on May 26, 2008 at 9:57 p.m., VN Management Corp., d/b/a Cape Cod Inn, 447 Main Street, Hyannis, Johnny Vo, Manager, did violate

the Code of the Town of Barnstable, Massachusetts, Part V, Section 501-15, Paragraph D to wit, "no members of the public may be on the licensed premises at any time during suspension periods," and further that "the licensee may be on the premises only if it is in the process of actively cleaning up or doing office work at the premises to July 27, 2009 based on testimony and discussion. Town Attorney David Houghton was asked if he had any problem with the motion; he did not. Mr. Sullivan seconded the motion and it was unanimously voted to continue the hearing to July 27, 2009.

**Show Cause Hearing:** The Barnstable Police Department has reported to the Licensing Authority that on May 26, 2008 at 1:30 a.m., Phu Bros., Inc., d/b/a Hannah's Fusion Bar and Bistro, 615 Main Street, Hyannis, Binh Phu, Manager, did violate the Code of the Town of Barnstable, Massachusetts, Part V, to wit:

(1) Section 501-3, Paragraph J, "Licensees are not permitted to lock the front door of the premises until the last patron has exited from the premises;"

(2) Section 501-7, Paragraph C, 1: "No licensee or employee or agent of licensee shall offer or deliver any free drinks to any person or group of persons;"

(3) Section 501-7, Paragraph I: "Whoever makes a sale or delivery of any alcoholic beverages or alcohol to any person under 21 years of age, either for his own use or for the use of his parent or any other person, or whoever, being a patron of an establishment licensed under § 12 or 15 of General Laws Chapter 138 delivers or procures to be delivered in any public room or area of such establishment any such beverages or alcohol to or for use of a person who he knows or has reason to believe to be under 21 years of age or whoever procures any such beverages or alcohol for a person under 21 years of age in any establishment licensed under § 12, or procures any such beverage or alcohol for a person under 21 years of age who is not his child, ward or spouse in any establishment that is a package store, shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than six months or both. (N.B.: Alcoholic beverages may be procured for an underage child, ward or spouse in a package store by a parent, guardian or spouse but may not be so procured for such underage person in an on-premises drinking establishment). (General Laws, Ch. 138, § 34);"

(4) Section 501-7, Paragraph R: "No alcoholic beverages shall be served after the closing hours indicated on the license;"

(5) Section 501-7, Paragraph R: "All glasses, bottles, or other containers used for or containing alcoholic beverages shall be removed from all tables, bars, counters, patrons and public areas no later than 15 minutes after the approved closing time on the license for the sale of alcoholic beverages;"

(6) Section 501-7, Paragraph R: "No alcoholic beverages shall be consumed after the closing hours on the license;"



(7) Section 501-8, Paragraph A: "It shall be obligation of licensees to ensure that a high degree of supervision is exercised over the conduct of the licensed establishment at all times. Each licensee will be held accountable for all violations that are related to the licensed premises to determine whether or not the licensee acted properly in the given circumstances.;"

(8) Section 501-10, Paragraph D: "No entertainment may take place at a licensed premises and no member of the public may be at the licensed premises except during the hours and days when the Licensing Authority has approved the premises to be open to the public. It shall be a violation of the food or beverage license if entertainment is conducted on the premises prior to the opening hour set by the Licensing Authority or subsequent to the closing hour set by the Licensing Authority for the exercise of the food or beverage license or during any period when the food or beverage license has been suspended."

Mr. Hoxie swore in Officer Maher and Bin Phu. Lt. Jason asked Officer Maher to describe his assignment. Officer Maher stated he was directed to conduct compliance checks in plain clothes. He went on this patrol with Officer Estey – also in plain clothes and in an unmarked car. He observed an open window at Hannah's – but the place looked closed. He got out of the car to check it and then heard music coming out. Officers Maher and Estey looked down the bar from the Main Street window. They observed drinks (shots) being handed to each patron and each patron drank those shots. A uniformed vehicle was called and arrived on scene. They tried to enter in front and it was locked. They went to the back and it was locked. Officer Maher then went to the open window and got the attention of the bartender and were let in. Each patron put their ID on the bar – 10 were over 21 but one claimed he had no ID. Officer Maher spoke to the female bartender asking if she had gotten ID from everyone – she said she had. She also said she had lost track of time. The police then called in Mr. Liberty's information (the one without ID) and determined he was 20. He stated he had entered with the group, had been given a shot of Crown Royal, was not asked to pay and not asked for ID. It was about 1:35, 1:40 at the time of the incident. Officer Maher stated there was no owner there, just this bartender.

Mr. Phu attended and stated he is the owner/manager. He stated he tried to hire good employees – Leslie had worked for him since the restaurant opened – and he had no reason to believe she would take advantage of her position and do this. He took full responsibility and said he believes Officer Maher's representations to be true. Mr. Phu stated the people there were the bartender's friends. Mr. Hoxie asked if she was still employed. Mr. Phu said he called her the next day – did not get a callback for another day. She was then terminated after he spoke with her. He also stated that all of his staff went to the recent meeting held by the Police Dept. with regard to rules and regulations. He is trying very hard to see that everything runs properly. That evening he stated that he left about 11; he is the chef.

Mr. Burman asked if he had anyone in charge when he is not there; Mr. Phu stated the person left in charge would be the bartender. Mr. Burman asked how old the bartender

is – he thought she was 22. He had known this bartender for several years as a waitress prior to taking the bartender job.

A motion was duly made by Gene Burman on the Show Cause Hearing of Phu Bros., Inc., d/b/a Hannah's Fusion Bar and Bistro, 615 Main Street, Hyannis, Binh Phu, Manager, that on May 26, 2008 at 1:30 a.m., IT did violate the Code of the Town of Barnstable, Massachusetts, Part V, to wit:

(1) Section 501-3, Paragraph J, "Licensees are not permitted to lock the front door of the premises until the last patron has exited from the premises;"

(2) Section 501-7, Paragraph C, 1: "No licensee or employee or agent of licensee shall offer or deliver any free drinks to any person or group of persons;"

(3) Section 501-7, Paragraph I: "Whoever makes a sale or delivery of any alcoholic beverages or alcohol to any person under 21 years of age, either for his own use or for the use of his parent or any other person, or whoever, being a patron of an establishment licensed under § 12 or 15 of General Laws Chapter 138 delivers or procures to be delivered in any public room or area of such establishment any such beverages or alcohol to or for use of a person who he knows or has reason to believe to be under 21 years of age or whoever procures any such beverages or alcohol for a person under 21 years of age in any establishment licensed under § 12, or procures any such beverage or alcohol for a person under 21 years of age who is not his child, ward or spouse in any establishment that is a package store, shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than six months or both. (N.B.: Alcoholic beverages may be procured for an underage child, ward or spouse in a package store by a parent, guardian or spouse but may not be so procured for such underage person in an on-premises drinking establishment). (General Laws, Ch. 138, § 34);"

(4) Section 501-7, Paragraph R: "No alcoholic beverages shall be served after the closing hours indicated on the license;"

(5) Section 501-7, Paragraph R: "All glasses, bottles, or other containers used for or containing alcoholic beverages shall be removed from all tables, bars, counters, patrons and public areas no later than 15 minutes after the approved closing time on the license for the sale of alcoholic beverages;"

(6) Section 501-7, Paragraph R: "No alcoholic beverages shall be consumed after the closing hours on the license;"

(7) Section 501-8, Paragraph A: "It shall be obligation of licensees to ensure that a high degree of supervision is exercised over the conduct of the licensed establishment at all times. Each licensee will be held accountable for all violations that are related to the licensed premises to determine whether or not the licensee acted properly in the given circumstances;"

(8) Section 501-10, Paragraph D: “No entertainment may take place at a licensed premises and no member of the public may be at the licensed premises except during the hours and days when the Licensing Authority has approved the premises to be open to the public. It shall be a violation of the food or beverage license if entertainment is conducted on the premises prior to the opening hour set by the Licensing Authority or subsequent to the closing hour set by the Licensing Authority for the exercise of the food or beverage license or during any period when the food or beverage license has been suspended” that we have heard testimony from the police department and the licensee and there was ample discussion. He stated he sees no mitigating circumstances and finds the Licensee guilty of all the charges. The motion was seconded by Paul Sullivan and a unanimous vote taken to adopt those findings.

Mr. Burman then made a motion to suspend for 4 days for specific findings, Paul Sullivan seconded and a unanimous vote was taken to impose the suspension of 4 days to commence May 26, 2009.

Mr. Geiler stated the important issue here is that the owner/manager took immediate action to fire the bartender and have his staff attend the police department meeting for further training. He was not asked to do so but did so on his own. He stated also that Mr. Phu admitted these things took place and did not try to make excuses; he took the appropriate actions. Mr. Geiler stated we could make individual findings or sanctions or take them as a group or continue the matter to see what the future brings. Mr. Geiler suggested issuing sanctions on the serious ones but filing the others. Mr. Hoxie was worried about what would happen on appeal.

Mr. Phu stated he really thinks the amount of the suspension Mr. Burman proposed is too much; he stated he immediately took the proper actions to ensure it never happens again. He asked for a warning – stating they are not a punk place; it is a beautiful, nice restaurant; he has received the highest Zagat rating – Mr. Phu stated he is a good culinary school graduate and tries to hire the best people he can; but the situation is like a bad child; out of his control and the “child” made a mistake, which snowballed into all the offenses. He trusted this person as he cannot be there all the time. The person in charger is the person responsible. Mr. Burman is a former licensed owner himself and stated so. Mr. Burman said that each night went to whomever was in charge and stated to the person left there – it was HIS name on the license and to make sure to be vigilant – if in doubt do not serve the person. He then stated there are several serious violations the night of the incident here and someone must be left “in charge” and responsible. Mr. Phu’s position is that the person working there is the “manager” that evening. Mr. Burman stated that the restaurant is a good one – but that he is being mild in suspending for only 4 days, not harsh. Mr. Sullivan stated that the person who was 22 – and the conversations that took place with her, she did not show much credibility or maturity. The woman was just trying to get out of trouble. Locking the doors while people are in there drinking is a major problem. This was ½ hour after they should have been closed. And then serving a minor besides is a serious problem.

Mr. Hoxie also stated the motion made by Mr. Burman is very lenient. He also stated he is upset with the licensee for thinking it should only warrant warnings.

After discussion, Mr. Burman withdrew his motion and proposed suspension for Phu Bros., Inc., d/b/a Hannah's Fusion Bar and Bistro, 615 Main Street, Hyannis, Binh Phu, Manager, as follows: For Section 501-7, I for serving a person under the age of 21 a one day suspension; for Section 501-7, R for bottles and glasses on the bar after the hour of closing a one day suspension; for Section 501-7 R consuming beverages after closing a one day suspension and for Section 501-3,J locking the doors with patrons inside drinking a suspension of one day for a total of 4 day suspension. This motion was seconded by Paul Sullivan and a unanimous vote taken to suspend for 4 days commencing May 26, 2009.

**Show Cause Hearing:** Show Cause Hearing for the purpose of determining if the lodging house licenses held by Park Square Trust III, Mark Sheehan, Trustee, Errol Foster, Manager at 156 Main Street and West Wind Trust, Mark Sheehan, Trustee, Errol Foster, Manager, 80 Yarmouth Road, Hyannis, MA should be renewed for the remainder of the calendar year.

Mr. Sheehan appeared for continuation of his Lodging House License for the remainder of 2008. He represented that everything is fine there and there are no problems.

Mr. Geiler stated that the Building Commissioner and Public Health officials are still very concerned about the landlord providing the basic utilities needed by these residents without interruption. Mr. Burman asked if the specific problems have been rectified. Mr. Sheehan started talking about a lawsuit and some health issues and Mr. Burman stated he did not answer his question. The landlord then stated the utilities were behind because of his lawsuit. He then said he guaranteed that there are no problems now.

Mr. Geiler stated that utilities are NOT shut off with no warning...property owners are notified and are obligated to take care of the arrearages so that BASIC services are provided. He suggested the Board renew for the remainder of the year with the restriction that the owner will notify the Board of Health immediately if there is an interruption of any basic services or any emergency shutoffs.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to renew the lodging house licenses held by Park Square Trust III, Mark Sheehan, Trustee, Errol Foster, Manager at 156 Main Street and West Wind Trust, Mark Sheehan, Trustee, Errol Foster, Manager, 80 Yarmouth Road, Hyannis, MA with the restriction that the owner will notify the Board of Health immediately if there is an interruption of any basic services or emergency shutoffs.

### **Business Meeting:**

Adoption of Sting Guidelines by the Licensing Authority for use by the Barnstable Police Department.

Lt. Jason stated the following need to be changed on our guidelines. Two weekend stings were conducted. She would like to amend #12: or until such time as the alcoholic beverage was taken as evidence and #17 striking the last sentence.

Lt. Jason stated they were very disappointed that there was a 30% non-compliance rate from the stings they conducted, and some of the offenders were owners, not just employees.

Mr. Burman made a motion to adopt the sting guidelines as amended by Lt. Jason, the motion was seconded by Paul Sullivan and a unanimous vote taken to adopt. Those sting guidelines are attached as page 14 of these Minutes.

Adjourned at 11:13 a.m.

Respectfully submitted,

---

Christine P. Ade, Recorder  
Town of Barnstable Licensing Authority

---

Paul Sullivan, Clerk  
Town of Barnstable Licensing Authority

## STING GUIDELINES

These guidelines are intended to provide the basic framework which will be used when conducting underage drinking stings on licensed premises.

- 1) Notification that a sting will be taking place will be made in local media prior to the start date.
- 2) The underage person taking part in the sting should reasonably look their age. Efforts to make them look older should be avoided.
- 3) A photo of the underage person should be taken and attached to the information requested in #6.
- 4) The underage person should not be carrying any identification when taking part in the sting.
- 5) The underage person should not carry any money with them other than that given by the law enforcement officer supervising them.
- 6) The underage person shall sign a release form prior to starting participation in this program. The underage person and police officer should also sign and date a copy of these guidelines.
- 7) The underage person shall be given a BAC test at the conclusion of the investigation. They should be informed of this prior to beginning the investigation.
- 8) The underage person shall enter the licensed premises under observation by a law enforcement officer.
- 9) The underage person shall attempt to purchase an alcoholic beverage. They should attempt to purchase the same thing at each location tested to avoid confusion.
- 10) At no time shall the underage person attempt to misrepresent their age or provide any identification.
- 11) If asked for identification, the underage person should leave the establishment.
- 12) If served, the underage person shall remain on the licensed premises for a period of time as instructed by the law enforcement officer. They should then exit the licensed premises leaving the alcoholic beverage or until such time as the alcoholic beverage was taken as evidence.
- 13) At no time, under any circumstance, shall the underage person consume any alcoholic beverage.
- 14) The safety and welfare of all underage participants will be of utmost importance to ABCC investigators and law enforcement personnel. Underage persons shall not be exposed to any unusual, unnecessary or unreasonable risk.
- 15) The underage person will not wear, exhibit or carry any law enforcement identification or falsely represent themselves as employees of any other law enforcement unit while participating in this program. They shall not under any circumstances carry a weapon.
- 16) Law enforcement personnel should only enter the premises to observe on an as needed basis when circumstances warrant.
- 17) Law enforcement personnel should not enter the licensed premises after the underage person has exited.