



# 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, 2<sup>nd</sup> Floor Hearing Room, Hyannis, MA – 9:30 a.m.

October 6, 2008

A regular meeting of the Barnstable Licensing Authority was held on Monday, October 6, 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:

**One Day Wine & Malt and One Day Entertainment License:** Application of Marilyn Fuller, The Sturgis Library, P.O. Box 606, Barnstable, MA on for a **One Day All Alcohol License and a One Day Entertainment License** for a raffle and cocktail party with a live band (2 members) on October 26, 2008 from 3 pm to 6 pm at the library, 3090 Main Street, Barnstable, MA.

Lucy Loomis appeared for this application; it will be an auction rather than a raffle. They have had them before. She represented it was not going to be a raffle after all but an auction. Ms. Loomis asked for fees to be waived. Mr. Burman asked it be waived and Mr. Sullivan seconded the motion. There was a unanimous vote to approve the fee waiver.

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, The Sturgis Library, P.O. Box 606, Barnstable, MA on for a **One Day All Alcohol License and a One Day Entertainment License** for an auction and cocktail party with a live band (2 members) on October 26, 2008 from 3 pm to 6 pm at the library, 3090 Main Street, Barnstable, MA.

**One Day Wine Only and One Day Entertainment License:** Application of Bernie & Phyl's, 20 Airport Road, Hyannis, MA, for a One Day Wine Only and One Day Entertainment License for its store Grand Opening and TV Diner Viewing Party with Billy Costa, NECN's TV Diner with DJ Rich from NECN & TV Diner on October 11, 2008 from 5 pm to 7 pm at the store with drawings for gift certificates and meet & greet opportunities for the public with Bernie & Phyl Rubin and Billy Costa.

Tim Resmini appeared for Bernie & Phyl's as Manager of the store. They will serve wine and lobster rolls. Professionals will serve the alcohol. They have done a lot of advertising.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the application of Bernie & Phyl's, 20 Airport Road, Hyannis, MA, for a One Day Wine Only and One Day Entertainment License for its store Grand Opening and TV Diner Viewing Party with Billy Costa, NECN's TV Diner with DJ Rich from NECN & TV Diner on October 11, 2008 from 5 pm to 7 pm at the store with drawings for gift certificates and meet & greet opportunities for the public with Bernie & Phyl Rubin and Billy Costa.

**One Day Wine & Malt License:** Application of Demetrius Atsalis on behalf of The Atsalis Committee, P.O. Box 283, West Hyannisport, MA for a **One Day Wine & Malt License** for a fundraising event to be held at the building owned by Hyannis Harbor Tours, Inc., in the 2<sup>nd</sup> floor Harbour Room on October 23, 2008 from 5:30 pm to 7:30 pm.

Martin Reilly appeared for Mr. Atsalis for the one day event being held at HyLine Building on the second floor. There will not be a charge of the alcohol – it will be dispensed by a qualified individual. Christine Ade advised we have the State Safety Certificate required for this room at the HyLine building.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the application of Demetrius Atsalis on behalf of The Atsalis Committee, P.O. Box 283, West Hyannisport, MA for a **One Day Wine & Malt License** for a fundraising event to be held at the building owned by Hyannis Harbor Tours, Inc., in the 2<sup>nd</sup> floor Harbour Room on October 23, 2008 from 5:30 pm to 7:30 pm.

**Class I Auto Dealer:** Application of Yarmouth Road Inc., d/b/a Premier Cape Cod, Joseph Laham, Manager, 460 Yarmouth Road, Hyannis, for a **New Class I Auto Dealer License**, the hours of operation to be 8:00 am to 8:00 pm, with 696 total spaces including customers and employee parking.

Mr. Laham is just adding the Chrysler Dodge franchise to this license. Will now have Premier Jeep, Premier Hyundai and & Dodge Chrysler as Premier Cape Cod with 696 spaces.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the application of Yarmouth Road Inc., d/b/a Premier Cape Cod, Joseph Laham, Manager, 460 Yarmouth Road, Hyannis, for a **New Class I Auto Dealer License**, the hours of operation to be 8:00 am to 8:00 pm, with 696 total spaces including customers and employee parking.

**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 appeared with his client, Mr. Ferreira. This application has been continued for some time. Mr. Hoxie read a message asking for a one month continuance with no further continuances as requested by our Town Attorney to November 17, 2008. For the record Attorney Connors asked that the town seek no further continuances, but if Mr. Ferreira has any health issues they are free to ask for another continuance. It was continued to 11/17/08 and the Authority agreed that it could be continued if Mr. Ferreira had further health issues.

**New Lodging House License:** Application of Thomas A. Nortz and Richard Garceau, Jr., d/b/a The Captain David Kelley House, 539 Main Street, Centerville, MA, Thomas A. Nortz and Richard Garceau, Jr., Managers, for a **New Annual Lodging House License**.

Mr. Nortz and Mr. Garceau came forward – they advised it is an existing 6 unit lodging house. The current license has granted 7 rooms.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the application of Thomas A. Nortz and Richard Garceau, Jr., d/b/a The Captain David Kelley House, 539 Main Street, Centerville, MA, Thomas A. Nortz and Richard Garceau, Jr., Managers, for a **New Annual Lodging House License** with no changes from the previous license as presented for 7 rooms.

**Change of Manager:** Application of SL Uno Hyannis, Inc., d/b/a Uno Chicago Grill, 574 Iyanough Road, Hyannis, MA, Michael Sives, Manager for a **Change of Manger on the All Alcohol Common Victualler License** to Joshua D. Sylvester.

Mr. Sylvester advised he is taking over – has been there since 2000. Mr. Sives has left the company. He is Serv Safe certified. Has been in Burlington, VT and another location and here for 2 years.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the application of SL Uno Hyannis, Inc., d/b/a Uno Chicago Grill, 574 Iyanough Road, Hyannis, MA, Michael Sives, Manager for a **Change of Manger on the All Alcohol Common Victualler License** to Joshua D. Sylvester.

**Show Cause Hearing:** Show Cause Hearing on Sea Street Market, 231 Sea Street, Hyannis, Jennifer Cullum, Manager, holding a Wine & Malt Package Store License. The Police Department has reported that on July 26, 2008 you were in violation of the Code of the Town of Barnstable, Massachusetts, Part V, to wit: you did sell an alcoholic beverage to a person under 21 years of age in violation of Section 501-7, paragraph F and 501-7, paragraph I of the Town of Barnstable Rules and regulations of the Licensing Authority as adopted in the Code of Regulations of the Town of Barnstable.

Mr. Hoxie read the hearing notice that on July 26, 2008 Sea Street Market, 231 Sea Street, Hyannis, Jennifer Cullum, Manager, holding a Wine and Malt Package Store License was in violation of the Code of the Town of Barnstable, Massachusetts, Part V, to wit: it did sell an alcoholic beverage to a person under 21 years of age in violation of Section 501-7, paragraph F and 501-7, paragraph I of the Town of Barnstable Rules and regulations of the Licensing Authority as adopted in the Code of Regulations of the Town of Barnstable.

Lt. JoEllen Jason answered that she and Officer Steve Maher would testify for the Police Department. Mr. Hoxie asked them all to raise their right hands and swear to tell the truth at this administrative hearing. All raised their hands and answered yes. Mr. Hoxie advised Ms. Cullum we would hear from the Police Department first and that she would have a right to question the police and then testify on her behalf.

Lt. Jason stated that she and Officer Maher are here representing the Barnstable Police Department, and that Officer Maher would be making the case. She stated she wanted to make an overview statement of how they came to be here today. She said that the two of them have worked for 2 ½ yrs – 3 yrs. as liaison officers with the Board, and that it took some time to learn and be comfortable with all the workings of the Board and what they do all the time. During that time, she stated they feel they have opened the communication with the businesses on Main Street, advising that noise complaints and disturbances are down. They have had great communication with the licensees in the Town. They have facilitated some informational seminars for license holders – two in 2007 and two in 2008, covering all of the alcohol license requirements, ID's (fake and altered), overcrowding, noise complaints, over serving, under-age drinking and what stings are. Because there are only two of them, the rest being in enforcement and so busy, they have taken the philosophy that self-policing of the licensees is the best policy. They have tried to give them as much information as possible and have been open to any questions from licensees. They decided to test the philosophy to see how the licensees were doing. Recently on three separate nights stings were held – they are frankly a bit disappointed with the results. She stated there is more work to be done but took it as a learning experience. They visited approximately 88 businesses on the stings. They want to bring before us the fact that although there are some businesses before us, there were 48 businesses in compliance on those nights and at some point would they like to recognize those as being diligent. She stated there are a number of elements that are common to all of these hearings and stated they will present to us how the sting was put together first and then individually conduct the hearings. She stated that Officer Maher would give an overview of what they did on each night, this

one being July 26<sup>th</sup>. They abided by the Sting Guidelines adopted by the Board a month or so ago.

Officer Maher stated that they sent out a letter to all of the Liquor Licensees in the Town to invite them to informational sessions this year (showing a copy of the letter sent in his power point presentation) in June. There was someone from the ABCC in attendance as well. In the midst of those sessions they went over the sting guidelines (attached to these minutes and shown in his power point presentation). They went over how they would accomplish a sting and what they would do once they went to their establishments, down to the letter of how it would happen. All who attended were informed and shown the specific guidelines and how they would be used. As part of the sting procedure, there was an article in the Cape Cod Times on June 26<sup>th</sup>, a copy of which ad is attached to these minutes, advising that the police department was going to be going out using young people to test these establishments. During the June sessions they also suggested self testing of the establishments. On the nights of the stings, they brought in an underage officer, went over the guidelines with him, took a photo of him dressed as he was to go out on the sting, made sure he looked age appropriate, had no ID of any kind with him, he had no money except what was given him by the Police Department (they check before he goes out). He was asked to sign a release and a copy of the sting guidelines. He was told specifically to go into the establishment and ask to purchase one particular type of drink. In pouring establishments he was told to ask for a Bud Lite and to ask for a six pack of Bud Lite in package stores. In each case it was the same – to cut down on any confusion. If a question was asked by an employee he was told to leave. He was told not to offer a fake ID; there was no ruse used. He was just told to ask for the Bud Lite. He stated this is a learning tool; they want to keep lines of communication open.

He read his report into the record for this establishment: On Friday, July 26, 2008 at 2028 hrs myself with Lt. Jason and two Officers in plain clothes, Officer Jeffrey Marshall, age 20 and Officer Andrew Warmington, age 21, conducted an undercover “sting” of the Sea St. Market at 231 Sea Street. Following the guidelines of the Massachusetts Alcohol Beverage Control Commission for underage drinking stings, Officer Marshall and Officer Warmington went into the store and Officer Marshall purchased one six pack of Bud Lite for \$6.29 from a young white female clerk with red hair and glasses. Officer Warmington witnessed the transaction. The six pack of Bud Lite was secured by Officer Warmington as evidence. At the completion of the operation the evidence was tagged and placed in the Sally port closet locker #78.

Ms. Cullum stated it seems very straightforward. She said she hires people to work in the store – she had two red-heads with glasses. She believed one of them to be responsible. She also told her employees to call her upstairs if she ever had any questions (Ms. Cullum lives upstairs and is not always in the store). She was also surprised to read about herself in the paper. She doubted one particular employee and was looking for a reason to fire her, but as she did not know about this she did not fire her. She is disappointed that she had to be served later than it appeared in the paper.

She stated that she called Officer Maher to ask specifics; it is embarrassing to her – she lives there and this is her livelihood.

Mr. Hoxie stated the concerns raised will be addressed in future as to notification. She also said she has cameras in the store which cycle every month – she could not go back to check it. She wishes she had a chance to address it sooner.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken as to findings: 1) I find that the Barnstable Police Department conducted a sting operation substantially in accordance with the “Sting” Policy adopted by the Licensing Authority, 2) I find this hearing was properly posted and advertised and the licensee properly notified of the hearing, 3) I find that the underage person used in the sting was a person under 21 years of age and an employee of the Barnstable Police Department and operating under the supervision of a Barnstable Police Officer during the sting activity, 4) I find that the Barnstable Police Department did announce, at an open and televised meeting of the Licensing Authority on July 7, 2008, their intention to conduct “sting” operations in the near future, 5) I find that the Barnstable Police Department did send a notice to each licensee of the town, using a Licensing Authority prepared list of licensees, to attend and participate in one of two Licensing seminars in June, 2008 where rules and regulations would be discussed, questions answered, and procedures would be explained, and that a Cape Cod Article dated June 26, 2008 announced the intention of the Police Department to conduct the stings, 6) I find the Police Department did conduct the “Sting” activities less than two months following the seminars (this one being July 26, 2008), 7) I find the testimony of the Police Department to be credible in this matter, 8) I find that the licensee did sell or deliver an alcoholic beverage to a person less than 21 years of age, 9) I find that the record indicates there have been no prior violations.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to adopt the findings as proposed.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken as to guilt of Sea Street Market, 231 Sea Street, Hyannis, Jennifer Cullum, Manager, holding a Wine & Malt Package Store License on July 26, 2008 of violation of the Code of the Town of Barnstable, Massachusetts, Part V, to wit: you did sell an alcoholic beverage to a person under 21 years of age in violation of Section 501-7, paragraph F and 501-7, paragraph I of the Town of Barnstable Rules and regulations of the Licensing Authority as adopted in the Code of Regulations of the Town of Barnstable on July 26, 2008.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken as to sanctions: A two day suspension was imposed; one day to serve on July 26, 2009 and the second to be held in abeyance for one year pending any further Ch 138 violations in the interim.

**Show Cause Hearing:** Show Cause Hearing on Cape Cod Package Store, 1495 Falmouth Road, Centerville, John Pendergast, Jr., Manager, holding an All Alcohol Package Store License. The Police Department has reported that on July 26, 2008 you were in violation of the Code of the Town of Barnstable, Massachusetts, Part V, to wit: you did sell an alcoholic beverage to a person under 21 years of age in violation of Section 501-7, paragraph F and 501-7, paragraph I of the Town of Barnstable Rules and regulations of the Licensing Authority as adopted in the Code of Regulations of the Town of Barnstable.

Mr. Hoxie read the hearing notice that on July 26, 2008 Cape Cod Package Store, holding an All Alcohol Package Store License, 1495 Falmouth Road, Centerville, John Pendergast, Jr., Manager, was in violation of the Code of the Town of Barnstable, Massachusetts, Part V, to wit: it did sell an alcoholic beverage to a person under 21 years of age in violation of Section 501-7, paragraph F and 501-7, paragraph I of the Town of Barnstable Rules and regulations of the Licensing Authority as adopted in the Code of Regulations of the Town of Barnstable. He then asked who was here from Cape Cod Package Store and from the Police Department. Attorney Doug Murphy and Andrea Pendergast answered as being present for the hearing and Lt. JoEllen Jason answered that she and Officer Steve Maher would testify for the Police Department. Mr. Hoxie asked them all to raise their right hands and swear to tell the truth at this administrative hearing. All raised their hands and answered yes. Mr. Hoxie advised we would hear from the Police Department first and that they would have a right to question the police and then testify on their behalf.

Lt. Jason stated that she and Officer Maher are here representing the Barnstable Police Department, and that Officer Maher would be making the case. She stated she wanted to make an overview statement of how they came to be here today. She said that the two of them have worked for 2 ½ yrs – 3 yrs. as liaison officers with the Board, and that it took some time to learn and be comfortable with all the workings of the Board and what they do all the time. During that time, she stated they feel they have opened the communication with the businesses on Main Street, advising that noise complaints and disturbances are down. They have had great communication with the licensees in the Town. They have facilitated some informational seminars for license holders – two in 2007 and two in 2008, covering all of the alcohol license requirements, ID's (fake and altered), overcrowding, noise complaints, over serving, under-age drinking and what stings are. Because there are only two of them, the rest being in enforcement and so busy, they have taken the philosophy that self-policing of the licensees is the best policy. They have tried to give them as much information as possible and have been open to any questions from licensees. They decided to test the philosophy to see how the licensees were doing. Recently on three separate nights stings were held – they are frankly a bit disappointed with the results. She stated there is more work to be done but took it as a learning experience. They want to bring before us the fact that although there are some businesses before us, there were 48 businesses in compliance on those nights and at some point would they like to recognize those as being diligent. She stated there are a number of elements that are common to all of these hearings and stated they will present to us how the sting was put together first and then individually

conduct the hearings. She stated that Officer Maher would give an overview of what they did on each night, this one being July 26<sup>th</sup>. He asked that the Licensee stipulate to the powerpoint presentation. Attorney Murphy did stipulate to the presentation but not to substantial compliance.

Officer Maher stated that they sent out a letter to all of the Liquor Licensees in the Town to invite them to informational sessions this year (showing a copy of the letter sent in his power point presentation) in June. There was someone from the ABCC in attendance as well. They went over the sting guidelines (attached to these minutes and shown in his power point presentation). In the midst of the conversations they went over how they would accomplish a sting and what they would do once they went to their establishments. All who attended were informed and shown the specific guidelines and how they would be operated. As part of the sting procedure, there was an article in the Cape Cod Times on June 26<sup>th</sup>, a copy of which ad is attached to these minutes, advising that the police department was going to be going out using young people to test these establishments. During the June sessions they also suggested self testing of the establishments. On the nights of the stings, they brought in an underage officer, went over the guidelines with him, took a photo of him dressed as he was to go out on the sting, made sure he looked age appropriate, had no ID of any kind with him, he had no money except what was given him by the Police Department. He was asked to sign a release and a copy of the sting guidelines. He was told specifically to go into the establishment and ask to purchase one particular type of drink. In pouring establishments he was told to ask for a Bud Lite and to ask for a six pack of Bud Lite in package stores. In each case it was the same – to cut down on any confusion. If a question was asked by an employee he was told to leave. He was told not to offer a fake ID; there was no ruse used. He was just told to ask for the Bud Lite.

Ptl. Maher read his report into record: On Friday, July 26, 2008 at 2048 hrs myself with Lt. Jason and two Officers in plain clothes, Officer Jeffrey Marshall, age 20 and Officer Andrew Warmington, age 21, conducted an undercover “sting” of Cape Cod Package Store at 1495 Falmouth Road. Following the guidelines of the Massachusetts Alcohol Beverage Control Commission for underage drinking stings, Officer Marshall and Officer Warmington went into the store and Officer Marshall purchased one six pack of Bud Lite for \$5.99 from a tall, older white male clerk with white hair and a goatee. Officer Warmington witnessed the transaction. The six pack of Bud Lite was secured by Officer Warmington as evidence. At the completion of the operation the evidence was tagged and placed in the Sally port closet locker #78.

Attorney Murphy asked if Officer Marshall was accompanied into the store – Officer Maher stated Officer Warmington accompanied him into the store. Attorney Murphy asked how close that Officer Warmington was to the other officer – Ptl. Maher answered in his vision. Attorney Murphy asked why the report was “amended” – Officer Maher stated because he may have started it one day and finished it another day. The system then marks the report amended. Attorney Murphy asked if Officer Maher could go over the securing of the alcohol – Officer Maher stated Officer Warmington secured it and told him he had done so.

Attorney Murphy stated this store has been at this location since the 40's – in excess of 20 years ago there was an offense but has been none since. The store is a family store. He stated for the record that Mr. Pendergast apologized in a letter for his inability to be here as is out of state but his daughter, the Manager, is here in his stead. Attorney Murphy stated they have repetitive training for employees emphasizing the importance of checking ID's; failure to do it must have been a lack of concentration – not intentional not to check the ID. They have the store monitored – outside as well, to make sure minors are not hanging around trying to get someone to buy for them. They have now created new signage stating you will be checked if you appear under 40 years of age. He also expressed concern as to the follow-up of the sting – as a serious matter, that it be addressed quickly and also so they can ascertain what exactly did occur. The proprietor was left in the dark and found out in the paper what happened. In the interim, if the same person was not spoken to, it could happen again and again. He stated the manager of each store, whose address, phone number and contact information is of record with the Board, is readily available to the police department., and that they should have contacted the managers to advise them they had failed this sting. They had the tools. In some cases, as he has heard in other cases here, some of the “summer employees” are not even employed here. He also stated the Officer involved is not even here to question. They do not represent that the incident did not happen and apologized for it, but ask that the police department advise the proprietors quickly.

Ms. Pendergast stated that she and her family take this very seriously and do not take the fact that it happened to them lightly. They make every effort to uphold the law. The employees attend training outside the facility at a State package Store run seminar. She also stated they reviewed their ID policies which were in place, have set up retraining in November for all employees, and expressed that it was very humbling. Lt. Jason felt compelled to speak up, saying she recognizes this store as being a very good store. She said she strongly disagreed however in the allegation that the sting and followup were handled improperly. She stated it started out small – grew as they recognized the problem was widespread. She agreed 5 weeks is a long time to receive notification but stated the timeframe involved included different offices and paperwork – she said in no case were the establishments served after Labor Day. She stated she did recognize the timeframe being too long to notify the establishments. Mr. Sullivan recognized the timeframe of the notification but stressed that the police department held two sessions in which they told everyone what would be happening with the future stings. It bothers him that so many places were caught. He praised the police department for their educational seminars and stated this is a good learning situation for all involved.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken as to findings: 1) I find that the Barnstable Police Department conducted a sting operation substantially in accordance with the “Sting” Policy adopted by the Licensing Authority, 2) I find this hearing was properly posted and advertised and the licensee properly notified of the hearing, 3) I find that the underage person

used in the sting was a person under 21 years of age and an employee of the Barnstable Police Department and operating under the supervision of a Barnstable Police Officer during the sting activity, 4) I find that the Barnstable Police Department did announce, at an open and televised meeting of the Licensing Authority on July 7, 2008, their intention to conduct "sting" operations in the near future, 5) I find that the Barnstable Police Department did send a notice to each licensee of the town, using a Licensing Authority prepared list of licensees, to attend and participate in one of two Licensing seminars in June, 2008 where rules and regulations would be discussed, questions answered, and procedures would be explained, and that a Cape Cod Article dated June 26, 2008 announced the intention of the Police Department to conduct the stings, 6) I find the Police Department did conduct the "Sting" activities less than two months following the seminars (this one being July 26, 2008), 7) I find the testimony of the Police Department to be credible in this matter, 8) I find that the licensee did sell or deliver an alcoholic beverage to a person less than 21 years of age, 9) I find that the record indicates there was one prior violation about 22 years ago.

Mr. Burman mentioned that the Attorney did a fine job in pointing out the points the Board needs to work on.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to adopt the findings as proposed.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken as to guilt of Cape Cod Package Store, 1495 Falmouth Road, Centerville, John Pendergast, Jr., Manager, holding an All Alcohol Package Store License that on July 26, 2008 it was in violation of the Code of the Town of Barnstable, Massachusetts, Part V, to wit: you did sell an alcoholic beverage to a person under 21 years of age in violation of Section 501-7, paragraph F and 501-7, paragraph I of the Town of Barnstable Rules and regulations of the Licensing Authority as adopted in the Code of Regulations of the Town of Barnstable.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken as to sanctions: Suspension of 2 days was imposed; one to serve on July 26, 2009 and one to be held in abeyance pending any further Ch. 138 violations prior to that date.

**Show Cause Hearing:** Show Cause Hearing New England Pizza #1, 187 W. Main Street, Hyannis, Nicolaos Kantzelis, Manager, holding a Wine & Malt Common Victualler License. The Police Department has reported that on July 26, 2008 you were in violation of the Code of the Town of Barnstable, Massachusetts, Part V, to wit: you did sell an alcoholic beverage to a person under 21 years of age in violation of Section 501-7, paragraph F and 501-7, paragraph I of the Town of Barnstable Rules and regulations of the Licensing Authority as adopted in the Code of Regulations of the Town of Barnstable.

Mr. Hoxie read the hearing notice that on July 26, New England Pizza #1, 187 W. Main Street, Hyannis, Nicolaos Kantzelis, Manager, holding a Wine & Malt Common Victualler License was in violation of the Code of the Town of Barnstable, Massachusetts, Part V, to wit: it did sell an alcoholic beverage to a person under 21 years of age in violation of Section 501-7, paragraph F and 501-7, paragraph I of the Town of Barnstable Rules and regulations of the Licensing Authority as adopted in the Code of Regulations of the Town of Barnstable. He then asked who was here from New England Pizza and from the Police Department. Mr. Kantzelis answered he was present and Lt. JoEllen Jason answered that she and Officer Steve Maher would testify for the Police Department. Mr. Hoxie asked them all to raise their right hands and swear to tell the truth at this administrative hearing. All raised their hands and answered yes. Mr. Hoxie advised Mr. Kantzelis we would hear from the Police Department first and that he would have a right to question the police and then testify on his behalf.

Lt. Jason stated that she and Officer Maher are here representing the Barnstable Police Department, and that Officer Maher would be making the case. She stated she wanted to make an overview statement of how they came to be here today. She said that the two of them have worked for 2 ½ yrs – 3 yrs. as liaison officers with the Board, and that it took some time to learn and be comfortable with all the workings of the Board and what they do all the time. During that time, she stated they feel they have opened the communication with the businesses on Main Street, advising that noise complaints and disturbances are down. They have had great communication with the licensees in the Town. They have facilitated some informational seminars for license holders – two in 2007 and two in 2008, covering all of the alcohol license requirements, ID's (fake and altered), overcrowding, noise complaints, over serving, under-age drinking and what stings are. Because there are only two of them, the rest being in enforcement and so busy, they have taken the philosophy that self-policing of the licensees is the best policy. They have tried to give them as much information as possible and have been open to any questions from licensees. They decided to test the philosophy to see how the licensees were doing. Recently on three separate nights stings were held – they are frankly a bit disappointed with the results. She stated there is more work to be done but took it as a learning experience. They want to bring before us the fact that although there are some businesses before us, there were 48 businesses in compliance on those nights and at some point would they like to recognize those as being diligent. She stated there are a number of elements that are common to all of these hearings and stated they will present to us how the sting was put together first and then individually conduct the hearings. She stated that Officer Maher would give an overview of what they did on each night, this one being July 26<sup>th</sup>.

Officer Maher stated that they sent out a letter to all of the Liquor Licensees in the Town to invite them to informational sessions this year (showing a copy of the letter sent in his power point presentation) in June. There was someone from the ABCC in attendance as well. They went over the sting guidelines (attached to these minutes and shown in his power point presentation). In the midst of the conversations they went over how they would accomplish a sting and what they would do once they went to their

establishments. All who attended were informed and shown the specific guidelines and how they would be operated. As part of the sting procedure, there was an article in the Cape Cod Times on June 26<sup>th</sup>, a copy of which ad is attached to these minutes, advising that the police department was going to be going out using young people to test these establishments. During the June sessions they also suggested self testing of the establishments. On the nights of the stings, they brought in an underage officer, went over the guidelines with him, took a photo of him dressed as he was to go out on the sting, made sure he looked age appropriate, had no ID of any kind with him, he had no money except what was given him by the Police Department. He was asked to sign a release and a copy of the sting guidelines. He was told specifically to go into the establishment and ask to purchase one particular type of drink. In pouring establishments he was told to ask for a Bud Lite and to ask for a six pack of Bud Lite in package stores. In each case it was the same – to cut down on any confusion. If a question was asked by an employee he was told to leave. He was told not to offer a fake ID; there was no ruse used. He was just told to ask for the Bud Lite.

Ptl. Maher read into record the report of this incident: On Friday, July 26, 2008 at 2103 hrs myself with Lt. Jason and two Officers in plain clothes, Officer Jeffrey Marshall, age 20 and Officer Andrew Warmington, age 21, conducted an undercover “sting” of New England House of Pizza at 187 West Main Street, Hyannis. Following the guidelines of the Massachusetts Alcohol Beverage Control Commission for underage drinking stings, Officer Marshall and Officer Warmington went into the establishment and Officer Marshall went up to the counter and ordered a Bud Lite. Officer Marshall was told by a white female clerk in her mid thirties with blond hair that he could not just buy a beer and suggested that at a minimum he purchase a small bag of chips in order to purchase the beer. Officer Marshall did so and was not asked for any identification. Officer Marshall purchased one Bud Lite beer for \$3.50 plus the bag of chips. Officer Warmington witnessed the transaction.

Mr. Kantzelis stated they never received notice of the seminars on June. He says he has run a good business there; he stated it was a summer employee; when he got the letter the person was already gone.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken as to findings: 1) I find that the Barnstable Police Department conducted a sting operation substantially in accordance with the “Sting” Policy adopted by the Licensing Authority, 2) I find this hearing was properly posted and advertised and the licensee properly notified of the hearing, 3) I find that the underage person used in the sting was a person under 21 years of age and an employee of the Barnstable Police Department and operating under the supervision of a Barnstable Police Officer during the sting activity, 4) I find that the Barnstable Police Department did announce, at an open and televised meeting of the Licensing Authority on July 7, 2008, their intention to conduct “sting” operations in the near future, 5) I find that the Barnstable Police Department did send a notice to each licensee of the town, using a Licensing Authority prepared list of licensees, to attend and participate in one of two Licensing seminars in June, 2008 where rules and regulations would be discussed,

questions answered, and procedures would be explained, and that a Cape Cod Article dated June 26, 2008 announced the intention of the Police Department to conduct the stings, 6) I find the Police Department did conduct the "Sting" activities less than two months following the seminars (this one being July 26, 2008), 7) I find the testimony of the Police Department to be credible in this matter, 8) I find that the licensee did sell or deliver an alcoholic beverage to a person less than 21 years of age, 9) I find that the record indicates there have been no prior violations.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to adopt the findings.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken as to guilt of New England Pizza #1, 187 W. Main Street, Hyannis, Nicolaos Kantzelis, Manager, holding a Wine & Malt Common Victualler License, that on July 26, 2008 it was in violation of the Code of the Town of Barnstable, Massachusetts, Part V, to wit: you did sell an alcoholic beverage to a person under 21 years of age in violation of Section 501-7, paragraph F and 501-7, paragraph I of the Town of Barnstable Rules and regulations of the Licensing Authority as adopted in the Code of Regulations of the Town of Barnstable.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken as to sanctions: That a 2 day suspension be imposed with one day to be held in abeyance pending no further Ch 138 violations; to be served on July 26, 2009.

**Show Cause Hearing:** Show Cause Hearing on Hyannis Package Store, 775 Main Street, Hyannis, Donald M. Burch, Manager, holding an All Alcohol Package Store License. The Police Department has reported that on July 26, 2008 you were in violation of the Code of the Town of Barnstable, Massachusetts, Part V, to wit: you did sell an alcoholic beverage to a person under 21 years of age in violation of Section 501-7, paragraph F and 501-7, paragraph I of the Town of Barnstable Rules and regulations of the Licensing Authority as adopted in the Code of Regulations of the Town of Barnstable.

Mr. Hoxie read the hearing notice that on July 26, 2008 Hyannis Package Store, 775 Main Street, Hyannis, Donald M. Burch, Manager, holding an All Alcohol Package Store License was in violation of the Code of the Town of Barnstable, Massachusetts, Part V, to wit: it did sell an alcoholic beverage to a person under 21 years of age in violation of Section 501-7, paragraph F and 501-7, paragraph I of the Town of Barnstable Rules and regulations of the Licensing Authority as adopted in the Code of Regulations of the Town of Barnstable. He then asked who was here from Hyannis Package Store and from the Police Department. Phil Boudreau appeared with Don Burch and Corey Fitzgerald and Lt. JoEllen Jason answered that she and Officer Steve Maher would testify for the Police Department. Mr. Hoxie asked them all to raise their right hands and swear to tell the truth at this administrative hearing. All raised their hands and

answered yes. Mr. Hoxie advised them we would hear from the Police Department first and that they would have a right to question the police and then testify on their behalf.

Lt. Jason stated that she and Officer Maher are here representing the Barnstable Police Department, and that Officer Maher would be making the case. She stated she wanted to make an overview statement of how they came to be here today. She said that the two of them have worked for 2 ½ yrs – 3 yrs. as liaison officers with the Board, and that it took some time to learn and be comfortable with all the workings of the Board and what they do all the time. During that time, she stated they feel they have opened the communication with the businesses on Main Street, advising that noise complaints and disturbances are down. They have had great communication with the licensees in the Town. They have facilitated some informational seminars for license holders – two in 2007 and two in 2008, covering all of the alcohol license requirements, ID's (fake and altered), overcrowding, noise complaints, over serving, under-age drinking and what stings are. Because there are only two of them, the rest being in enforcement and so busy, they have taken the philosophy that self-policing of the licensees is the best policy. They have tried to give them as much information as possible and have been open to any questions from licensees. They decided to test the philosophy to see how the licensees were doing. Recently on three separate nights stings were held – they are frankly a bit disappointed with the results. She stated there is more work to be done but took it as a learning experience. They want to bring before us the fact that although there are some businesses before us, there were 48 businesses in compliance on those nights and at some point would they like to recognize those as being diligent. She stated there are a number of elements that are common to all of these hearings and stated they will present to us how the sting was put together first and then individually conduct the hearings. She stated that Officer Maher would give an overview of what they did on each night, this one being July 26<sup>th</sup>.

Officer Maher stated that they sent out a letter to all of the Liquor Licensees in the Town to invite them to informational sessions this year (showing a copy of the letter sent in his power point presentation) in June. There was someone from the ABCC in attendance as well. They went over the sting guidelines (attached to these minutes and shown in his power point presentation). In the midst of the conversations they went over how they would accomplish a sting and what they would do once they went to their establishments. All who attended were informed and shown the specific guidelines and how they would be operated. As part of the sting procedure, there was an article in the Cape Cod Times on June 26<sup>th</sup>, a copy of which ad is attached to these minutes, advising that the police department was going to be going out using young people to test these establishments. During the June sessions they also suggested self testing of the establishments. On the nights of the stings, they brought in an underage officer, went over the guidelines with him, took a photo of him dressed as he was to go out on the sting, made sure he looked age appropriate, had no ID of any kind with him, he had no money except what was given him by the Police Department. He was asked to sign a release and a copy of the sting guidelines. He was told specifically to go into the establishment and ask to purchase one particular type of drink. In pouring establishments he was told to ask for a Bud Lite and to ask for a six pack of Bud Lite in

package stores. In each case it was the same – to cut down on any confusion. If a question was asked by an employee he was told to leave. He was told not to offer a fake ID; there was no ruse used. He was just told to ask for the Bud Lite.

Officer Maher read the report into record of this incident: On Friday, July 26, 2008 at 2114 hrs myself with Lt. Jason and two Officers in plain clothes, Officer Jeffrey Marshall, age 20 and Officer Andrew Warmington, age 21, conducted an undercover “sting” of Hyannis Package Store at 775 Main Street, Hyannis. Following the guidelines of the Massachusetts Alcohol Beverage Control Commission for underage drinking stings, Officer Marshall and Officer Warmington went into the store and Officer Marshall purchased one six pack of Bud Lite for \$6.19 from a short male clerk with brown hair in his twenties. Officer Warmington witnessed the transaction. The six pack of Bud Lite was secured by Officer Warmington as evidence. At the completion of the operation the evidence was tagged and placed in the Sally port closet locker #78.

Attorney Boudreau stated that now every employee is now registered for November and December programs regarding alcohol service. Mr. Burman asked how many years they have been open; he was told at least since 1943. Attorney Boudreau had to comment

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken as to findings: 1) I find that the Barnstable Police Department conducted a sting operation substantially in accordance with the “Sting” Policy adopted by the Licensing Authority, 2) I find this hearing was properly posted and advertised and the licensee properly notified of the hearing, 3) I find that the underage person used in the sting was a person under 21 years of age and an employee of the Barnstable Police Department and operating under the supervision of a Barnstable Police Officer during the sting activity, 4) I find that the Barnstable Police Department did announce, at an open and televised meeting of the Licensing Authority on July 7, 2008, their intention to conduct “sting” operations in the near future, 5) I find that the Barnstable Police Department did send a notice to each licensee of the town, using a Licensing Authority prepared list of licensees, to attend and participate in one of two Licensing seminars in June, 2008 where rules and regulations would be discussed, questions answered, and procedures would be explained, and that a Cape Cod Article dated June 26, 2008 announced the intention of the Police Department to conduct the stings, 6) I find the Police Department did conduct the “Sting” activities less than two months following the seminars (this one being July 26, 2008), 7) I find the testimony of the Police Department to be credible in this matter, 8) I find that the licensee did sell or deliver an alcoholic beverage to a person less than 21 years of age, 9) I find that the record indicates there have been no prior violations over a very long period of time.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to adopt the findings.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken as to guilt of Hyannis Package Store, 775 Main Street, Hyannis,

Donald M. Burch, Manager, holding an All Alcohol Package Store License of being in violation of the Code of the Town of Barnstable, Massachusetts, Part V, to wit: that on July 26, 2008 it did sell an alcoholic beverage to a person under 21 years of age in violation of Section 501-7, paragraph F and 501-7, paragraph I of the Town of Barnstable Rules and regulations of the Licensing Authority as adopted in the Code of Regulations of the Town of Barnstable.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken as to sanctions: That a 2 day suspension be imposed; 1 day to be served July 26, 2009 and the other to be held in abeyance pending any further Ch. 138 violations.

They asked if they could still be open to serve food without alcohol. Mr. Geiler stated the motion did not state that. Ptl. Maher stated that all the restaurants cited were suspended – meaning closed altogether during the suspension

**Show Cause Hearing:** Show Cause Hearing on Willow Package Store, 696 Yarmouth Road, Hyannis, Ed Rosario, Manager, holding an All Alcohol Package Store License. The Police Department has reported that on July 26, 2008 you were in violation of the Code of the Town of Barnstable, Massachusetts, Part V, to wit: you did sell an alcoholic beverage to a person under 21 years of age in violation of Section 501-7, paragraph F and 501-7, paragraph I of the Town of Barnstable Rules and regulations of the Licensing Authority as adopted in the Code of Regulations of the Town of Barnstable.

Mr. Hoxie read the hearing notice that on July 26, 2008 Willow Package Store, 696 Yarmouth Road, Hyannis, Ed Rosario, Manager, holding an All Alcohol Package Store License was in violation of the Code of the Town of Barnstable, Massachusetts, Part V, to wit: it did sell an alcoholic beverage to a person under 21 years of age in violation of Section 501-7, paragraph F and 501-7, paragraph I of the Town of Barnstable Rules and regulations of the Licensing Authority as adopted in the Code of Regulations of the Town of Barnstable. He then asked who was here from Willow Package Store and from the Police Department. Ed Rosario answered he was present and Lt. JoEllen Jason answered that she and Officer Steve Maher would testify for the Police Department. Mr. Hoxie asked them all to raise their right hands and swear to tell the truth at this administrative hearing. All raised their hands and answered yes. Mr. Hoxie advised Mr. Rosario we would hear from the Police Department first and that he would have a right to question the police and then testify on his behalf.

Lt. Jason stated that she and Officer Maher are here representing the Barnstable Police Department, and that Officer Maher would be making the case. She stated she wanted to make an overview statement of how they came to be here today. She said that the two of them have worked for 2 ½ yrs – 3 yrs. as liaison officers with the Board, and that it took some time to learn and be comfortable with all the workings of the Board and what they do all the time. During that time, she stated they feel they have opened the communication with the businesses on Main Street, advising that noise complaints and disturbances are down. They have had great communication with the licensees in the

Town. They have facilitated some informational seminars for license holders – two in 2007 and two in 2008, covering all of the alcohol license requirements, ID's (fake and altered), overcrowding, noise complaints, over serving, under-age drinking and what stings are. Because there are only two of them, the rest being in enforcement and so busy, they have taken the philosophy that self-policing of the licensees is the best policy. They have tried to give them as much information as possible and have been open to any questions from licensees. They decided to test the philosophy to see how the licensees were doing. Recently on three separate nights stings were held – they are frankly a bit disappointed with the results. She stated there is more work to be done but took it as a learning experience. They want to bring before us the fact that although there are some businesses before us, there were 48 businesses in compliance on those nights and at some point would they like to recognize those as being diligent. She stated there are a number of elements that are common to all of these hearings and stated they will present to us how the sting was put together first and then individually conduct the hearings. She stated that Officer Maher would give an overview of what they did on each night, this one being July 26<sup>th</sup>.

Officer Maher stated that they sent out a letter to all of the Liquor Licensees in the Town to invite them to informational sessions this year (showing a copy of the letter sent in his power point presentation) in June. There was someone from the ABCC in attendance as well. They went over the sting guidelines (attached to these minutes and shown in his power point presentation). In the midst of the conversations they went over how they would accomplish a sting and what they would do once they went to their establishments. All who attended were informed and shown the specific guidelines and how they would be operated. As part of the sting procedure, there was an article in the Cape Cod Times on June 26<sup>th</sup>, a copy of which ad is attached to these minutes, advising that the police department was going to be going out using young people to test these establishments. During the June sessions they also suggested self testing of the establishments. On the nights of the stings, they brought in an underage officer, went over the guidelines with him, took a photo of him dressed as he was to go out on the sting, made sure he looked age appropriate, had no ID of any kind with him, he had no money except what was given him by the Police Department. He was asked to sign a release and a copy of the sting guidelines. He was told specifically to go into the establishment and ask to purchase one particular type of drink. In pouring establishments he was told to ask for a Bud Lite and to ask for a six pack of Bud Lite in package stores. In each case it was the same – to cut down on any confusion. If a question was asked by an employee he was told to leave. He was told not to offer a fake ID; there was no ruse used. He was just told to ask for the Bud Lite.

Ptl. Maher asked Mr. Rosario to stipulate as to the guidelines and advertising in the paper.

Ptl. Maher read the report into record: On Friday, July 26, 2008 at 2147 hrs myself with Lt. Jason and two Officers in plain clothes, Officer Jeffrey Marshall, age 20 and Officer Andrew Warmington, age 21, conducted an undercover “sting” of Willow Package Store at 696 Yarmouth Road, Hyannis. Following the guidelines of the Massachusetts Alcohol

Beverage Control Commission for underage drinking stings, Officer Marshall and Officer Warmington went into the store and Officer Marshall purchased one six pack of Bud Lite for \$6.29 from a white male clerk in his late 50's, balding with white hair on the sides. Officer Warmington witnessed the transaction. The six pack of Bud Lite was secured by Officer Warmington as evidence. At the completion of the operation the evidence was tagged and placed in the Sally port closet locker #78.

Mr. Rosario expressed concern as to the violation – and why they were not notified right after the sting took place. He wondered why immediately after they were not contacted. He stated all the employees are BAT trained; the employee who is mentioned has been to the training 4 times and was very surprised it happened to him.

Mr. Hoxie stated it has been duly noted as to non-notification immediately after the sting took place.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken as to findings: 1) I find that the Barnstable Police Department conducted a sting operation substantially in accordance with the “Sting” Policy adopted by the Licensing Authority, 2) I find this hearing was properly posted and advertised and the licensee properly notified of the hearing, 3) I find that the underage person used in the sting was a person under 21 years of age and an employee of the Barnstable Police Department and operating under the supervision of a Barnstable Police Officer during the sting activity, 4) I find that the Barnstable Police Department did announce, at an open and televised meeting of the Licensing Authority on July 7, 2008, their intention to conduct “sting” operations in the near future, 5) I find that the Barnstable Police Department did send a notice to each licensee of the town, using a Licensing Authority prepared list of licensees, to attend and participate in one of two Licensing seminars in June, 2008 where rules and regulations would be discussed, questions answered, and procedures would be explained, and that a Cape Cod Article dated June 26, 2008 announced the intention of the Police Department to conduct the stings, 6) I find the Police Department did conduct the “Sting” activities less than two months following the seminars (this one being July 26, 2008), 7) I find the testimony of the Police Department to be credible in this matter, 8) I find that the licensee did sell or deliver an alcoholic beverage to a person less than 21 years of age, 9) I find that the record indicates there have been no prior violations.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to adopt the findings.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken as to guilt of Willow Package Store, 696 Yarmouth Road, Hyannis, Ed Rosario, Manager, holding an All Alcohol Package Store License that on July 26, 2008 it was in violation of the Code of the Town of Barnstable, Massachusetts, Part V, to wit: you did sell an alcoholic beverage to a person under 21 years of age in violation of Section 501-7, paragraph F and 501-7, paragraph I of the Town of

Barnstable Rules and regulations of the Licensing Authority as adopted in the Code of Regulations of the Town of Barnstable.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken as to sanctions: That a 2 day suspension be imposed; with 1 day to serve on July 26, 2009 and the other to be held in abeyance pending any other Ch. 138 violations prior to that date.

**Show Cause Hearing:** Show Cause Hearing on Mini Food Market, 252 Main Street, Hyannis, Muatsim Chaudry, Manager, holding a Wine & Malt Package Store License. The Police Department has reported that on July 26, 2008 you were in violation of the Code of the Town of Barnstable, Massachusetts, Part V, to wit: you did sell an alcoholic beverage to a person under 21 years of age in violation of Section 501-7, paragraph F and 501-7, paragraph I of the Town of Barnstable Rules and regulations of the Licensing Authority as adopted in the Code of Regulations of the Town of Barnstable.

Mr. Hoxie read the hearing notice that on July 26, 2008 on Mini Food Market, 252 Main Street, Hyannis, Muatsim Chaudry, Manager, holding a Wine & Malt Package Store License was in violation of the Code of the Town of Barnstable, Massachusetts, Part V, to wit: it did sell an alcoholic beverage to a person under 21 years of age in violation of Section 501-7, paragraph F and 501-7, paragraph I of the Town of Barnstable Rules and regulations of the Licensing Authority as adopted in the Code of Regulations of the Town of Barnstable. He then asked who was here from Mini Food Mart and from the Police Department. Attorney Paul Tardif answered he was present with Mr. Chaudry 's brother and Lt. JoEllen Jason answered that she and Officer Steve Maher would testify for the Police Department. Mr. Hoxie asked them all to raise their right hands and swear to tell the truth at this administrative hearing. All raised their hands and answered yes. Mr. Hoxie advised them we would hear from the Police Department first and that he would have a right to question the police and then testify on his behalf.

Lt. Jason stated that she and Officer Maher are here representing the Barnstable Police Department, and that Officer Maher would be making the case. She stated she wanted to make an overview statement of how they came to be here today. She said that the two of them have worked for 2 ½ yrs – 3 yrs. as liaison officers with the Board, and that it took some time to learn and be comfortable with all the workings of the Board and what they do all the time. During that time, she stated they feel they have opened the communication with the businesses on Main Street, advising that noise complaints and disturbances are down. They have had great communication with the licensees in the Town. They have facilitated some informational seminars for license holders – two in 2007 and two in 2008, covering all of the alcohol license requirements, ID's (fake and altered), overcrowding, noise complaints, over serving, under-age drinking and what stings are. Because there are only two of them, the rest being in enforcement and so busy, they have taken the philosophy that self-policing of the licensees is the best policy. They have tried to give them as much information as possible and have been open to any questions from licensees. They decided to test the philosophy to see how the licensees were doing. Recently on three separate nights stings were held – they

are frankly a bit disappointed with the results. She stated there is more work to be done but took it as a learning experience. They want to bring before us the fact that although there are some businesses before us, there were 48 businesses in compliance on those nights and at some point would they like to recognize those as being diligent. She stated there are a number of elements that are common to all of these hearings and stated they will present to us how the sting was put together first and then individually conduct the hearings. She stated that Officer Maher would give an overview of what they did on each night, this one being July 26<sup>th</sup>.

Officer Maher stated that they sent out a letter to all of the Liquor Licensees in the Town to invite them to informational sessions this year (showing a copy of the letter sent in his power point presentation) in June. There was someone from the ABCC in attendance as well. They went over the sting guidelines (attached to these minutes and shown in his power point presentation). In the midst of the conversations they went over how they would accomplish a sting and what they would do once they went to their establishments. All who attended were informed and shown the specific guidelines and how they would be operated. As part of the sting procedure, there was an article in the Cape Cod Times on June 26<sup>th</sup>, a copy of which ad is attached to these minutes, advising that the police department was going to be going out using young people to test these establishments. During the June sessions they also suggested self testing of the establishments. On the nights of the stings, they brought in an underage officer, went over the guidelines with him, took a photo of him dressed as he was to go out on the sting, made sure he looked age appropriate, had no ID of any kind with him, he had no money except what was given him by the Police Department. He was asked to sign a release and a copy of the sting guidelines. He was told specifically to go into the establishment and ask to purchase one particular type of drink. In pouring establishments he was told to ask for a Bud Lite and to ask for a six pack of Bud Lite in package stores. In each case it was the same – to cut down on any confusion. If a question was asked by an employee he was told to leave. He was told not to offer a fake ID; there was no ruse used. He was just told to ask for the Bud Lite.

Officer Maher read the report into record: On Friday, July 26, 2008 at 2216 hrs myself with Lt. Jason and two Officers in plain clothes, Officer Jeffrey Marshall, age 20 and Officer Andrew Warmington, age 21, conducted an undercover “sting” of The Mini Food Mart at 252 Main Street, Hyannis. Following the guidelines of the Massachusetts Alcohol Beverage Control Commission for underage drinking stings, Officer Marshall and Officer Warmington went into the store and Officer Marshall purchased one six pack of Bud Lite for \$6.29 from an Indian male clerk in his 30’s. Officer Warmington witnessed the transaction. The six pack of Bud Lite was secured by Officer Warmington as evidence. At the completion of the operation the evidence was tagged and placed in the Sally port closet locker #78.

Attorney Tardif asked a question about what was changed in the report – Officer Maher stated anytime he goes into a report and has to leave it and then re-enters it, it reads

that it is amended or redacted. Attorney Tardif stated they will work on making sure this does not happen again – Mr. Chaudry stated there have been some additional attempts to buy and officers in the parking lot – he states that they have received the message and will be more vigilant. He asked if the grocery store could still be open during the suspension and was told it could.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken as to findings: 1) I find that the Barnstable Police Department conducted a sting operation substantially in accordance with the “Sting” Policy adopted by the Licensing Authority, 2) I find this hearing was properly posted and advertised and the licensee properly notified of the hearing, 3) I find that the underage person used in the sting was a person under 21 years of age and an employee of the Barnstable Police Department and operating under the supervision of a Barnstable Police Officer during the sting activity, 4) I find that the Barnstable Police Department did announce, at an open and televised meeting of the Licensing Authority on July 7, 2008, their intention to conduct “sting” operations in the near future, 5) I find that the Barnstable Police Department did send a notice to each licensee of the town, using a Licensing Authority prepared list of licensees, to attend and participate in one of two Licensing seminars in June, 2008 where rules and regulations would be discussed, questions answered, and procedures would be explained, and that a Cape Cod Article dated June 26, 2008 announced the intention of the Police Department to conduct the stings, 6) I find the Police Department did conduct the “Sting” activities less than two months following the seminars (this one being July 26, 2008), 7) I find the testimony of the Police Department to be credible in this matter, 8) I find that the licensee did sell or deliver an alcoholic beverage to a person less than 21 years of age, 9) I find that the record indicates there have been no prior violations.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to adopt the findings.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken as to guilt of Mini Food Market, 252 Main Street, Hyannis, Muatsim Chaudry, Manager, holding a Wine & Malt Package Store License of being in violation of the Code of the Town of Barnstable, Massachusetts, Part V, to wit: you did sell an alcoholic beverage to a person under 21 years of age in violation of Section 501-7, paragraph F and 501-7, paragraph I of the Town of Barnstable Rules and regulations of the Licensing Authority as adopted in the Code of Regulations of the Town of Barnstable on July 26, 2008.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken as to sanctions: That a 2 day suspension be imposed with one day to serve July 26, 2009 (store can be open) and the other held in abeyance up to that date pending any further Ch. 138 violations.

**Show Cause Hearing:** Show Cause Hearing on the Black Spot Café Bar, 10 Ocean Street, Hyannis, Micah Power, Manager, holding an All Alcohol Common Victualler

License. The Police Department has reported that on July 26, 2008 you were in violation of the Code of the Town of Barnstable, Massachusetts, Part V, to wit: you did sell an alcoholic beverage to a person under 21 years of age in violation of Section 501-7, paragraph F and 501-7, paragraph I of the Town of Barnstable Rules and regulations of the Licensing Authority as adopted in the Code of Regulations of the Town of Barnstable.

Mr. Hoxie read the hearing notice that on July 26, 2008, the Black Spot Café Bar, 10 Ocean Street, Hyannis, Micah Power, Manager, holding an All Alcohol Common Victualler License was in violation of the Code of the Town of Barnstable, Massachusetts, Part V, to wit: it did sell an alcoholic beverage to a person under 21 years of age in violation of Section 501-7, paragraph F and 501-7, paragraph I of the Town of Barnstable Rules and regulations of the Licensing Authority as adopted in the Code of Regulations of the Town of Barnstable. He then asked who was here from The Black Spot Cafe and from the Police Department. Micah Power and Peter Kenney answered he was present and Lt. JoEllen Jason answered that she and Officer Steve Maher would testify for the Police Department. Mr. Hoxie asked them all to raise their right hands and swear to tell the truth at this administrative hearing. All raised their hands and answered yes. Mr. Hoxie advised them we would hear from the Police Department first and that he would have a right to question the police and then testify on his behalf.

Lt. Jason stated that she and Officer Maher are here representing the Barnstable Police Department, and that Officer Maher would be making the case. She stated she wanted to make an overview statement of how they came to be here today. She said that the two of them have worked for 2 ½ yrs – 3 yrs. as liaison officers with the Board, and that it took some time to learn and be comfortable with all the workings of the Board and what they do all the time. During that time, she stated they feel they have opened the communication with the businesses on Main Street, advising that noise complaints and disturbances are down. They have had great communication with the licensees in the Town. They have facilitated some informational seminars for license holders – two in 2007 and two in 2008, covering all of the alcohol license requirements, ID's (fake and altered), overcrowding, noise complaints, over serving, under-age drinking and what stings are. Because there are only two of them, the rest being in enforcement and so busy, they have taken the philosophy that self-policing of the licensees is the best policy. They have tried to give them as much information as possible and have been open to any questions from licensees. They decided to test the philosophy to see how the licensees were doing. Recently on three separate nights stings were held – they are frankly a bit disappointed with the results. She stated there is more work to be done but took it as a learning experience. They want to bring before us the fact that although there are some businesses before us, there were 48 businesses in compliance on those nights and at some point would they like to recognize those as being diligent. She stated there are a number of elements that are common to all of these hearings and stated they will present to us how the sting was put together first and then individually conduct the hearings. She stated that Officer Maher would give an overview of what they did on each night, this one being July 26<sup>th</sup>.

Officer Maher stated that they sent out a letter to all of the Liquor Licensees in the Town to invite them to informational sessions this year (showing a copy of the letter sent in his power point presentation) in June. There was someone from the ABCC in attendance as well. They went over the sting guidelines (attached to these minutes and shown in his power point presentation). In the midst of the conversations they went over how they would accomplish a sting and what they would do once they went to their establishments. All who attended were informed and shown the specific guidelines and how they would be operated. As part of the sting procedure, there was an article in the Cape Cod Times on June 26<sup>th</sup>, a copy of which is attached to these minutes, advising that the police department was going to be going out using young people to test these establishments. During the June sessions they also suggested self testing of the establishments. On the nights of the stings, they brought in an underage officer, went over the guidelines with him, took a photo of him dressed as he was to go out on the sting, made sure he looked age appropriate, had no ID of any kind with him, he had no money except what was given him by the Police Department. He was asked to sign a release and a copy of the sting guidelines. He was told specifically to go into the establishment and ask to purchase one particular type of drink. In pouring establishments he was told to ask for a Bud Lite and to ask for a six pack of Bud Lite in package stores. In each case it was the same – to cut down on any confusion. If a question was asked by an employee he was told to leave. He was told not to offer a fake ID; there was no ruse used. He was just told to ask for the Bud Lite.

Ptl. Maher read his report into record: On Friday, July 26, 2008 at 2304 hrs. myself along with Lt. Jason and two officers in plain clothes, Jeffrey Marshall, age 20 and Officer Andrew Warmington, age 21, conducted an undercover “sting” of The Black Spot Café Bar at 10 Ocean Street, Hyannis. Following the guidelines of the Massachusetts Alcoholic Beverage Control Commission for underage drinking stings, Officer Marshall and Officer Warmington went into the establishment where Officer Marshall purchased one Bud Lite beer from a white male in his mid 40’s with white hair. Officer Warmington witnessed the transaction.

Mr. Power stated he was the person actually involved (he does not have white hair and is not in his mid forties); there was a band playing who came in at 11:00. He said the two officers came in and commented he was a little upset they weren’t here today. Officer Maher stated they could continue the hearing to when the officers could be present over their Christmas vacation. Mr. Power went on to say he was a little concerned as he immediately noticed they acted strangely – he thought of 3 options – one they were a police sting; two that they were there to steal – he stated he has nice art work and guitars, or that they were under 21. He had thought they were underage. He then said he actually started cleaning the bar so he could watch their activity. When the young man ordered the beer, Mr. Power said because he was being cocky, he put the beer ordered BEHIND the tap intending to ID him prior to handing it to him; and a pie plate with a domed cover where he keeps muffins. It is not a place accessible to the public unless they really wanted to reach back there. He stated that he then turned his head – at which time the officer reached behind the bar and grabbed the beer, sliding it

across the bar; it even spilled. It created such a rucus that people turned around and thought he was in trouble. The other officer took a photo on a cell phone and it flashed as the other held up the beer. The guitarist who is a friend of the owner actually stopped playing, stepped down and tried to block the front door when the tried to exit. Mr. Power motioned to his people to let them leave; they had wanted to block them from leaving. He then said that from 25 feet away the guitarist could tell something was wrong – he had thought the young man was trying to steal a beer. Mr. Power stated that anyone coming in would be carded. Mr. Hoxie asked if he was the only one behind the bar; he stated he usually was – he has a morning girl who does coffee and she has been told she has to card everyone. Mr. Power stated he cards people with grey hair. Mr. Hoxie asked if there was any money left on the bar and Mr. Power said there was but did not remember how much – he thought it might have been \$5.00.

Ptl. Maher asked how long a time went by while this took place – Mr. Power stated about 2 minutes. Officer Maher asked if all this took place in 3 minutes (from the time they walked in until they left)? He stated yes it was very fast. He said they came in looking nervous and he tried to ascertain what was up with them because they stuck out like sore thumbs. Ptl. Maher stated that he just finished testifying that he watched them for a few minutes scoping out the place before this took place – also testified that they took the time to take a photo of the incident and that people tried to block the door – and that took place in less than 3 minutes? Mr. Power repeated that it was very fast and offered to recreate it. Mr. Hoxie asked if he had any witnesses with him.

Mr. Power introduced Peter Kenney speak whom he said was in the back of the bar in and witnessed the entire incident. Mr. Kenney stated he lives in West Yarmouth and was in the Black Spot on the night of this incident and witnessed the entire incident. He stated if he was Micah Power standing behind the bar, at more than arms length apart there are 2 vertical columns, a structure of the building encased in wood trim. He said the portion of the bar between those two columns is the active service portion of the bar. He said if he was Micah Power, to his left there are always one or sometimes tow containers of pastries on the bar, and the bar is deeper than those containers and he was at the extreme right of Mr. Power. He said he saw Micah looking around at something and then looking at him and looking around. He then saw the young man with his back to him, a white male young enough to be carded with black hair standing by the left column and money got thrown on the bar; it was not handed to Micah it was thrown on the bar. He said Micah was at the refrigerator to his left facing out into the room and pulled out a bottle of beer and opened it but put it to his extreme left behind the pastry container. He was standing in a typical Micah gesture with his arms open and head cocked sideways looking at the young man now standing in front of him with his mouth open. I believe he was about to speak. But before anybody knew what was happening, the young man we now know is an officer reached way behind the bar and grabbed the beer, pulled it across the bar and held it up for a photograph. The flash – everyone saw it and stopped what they were doing. He said the officer put the beer down, slid it across the bar and left. Mr. Kenney pointing at Micah stated he was the only person behind the bar, he doesn't have anyone working for him with white hair. Mr. Kenney stated there was no transaction that I saw; there was no alcoholic beverage

delivered to this person or any other person that I saw that night who was underage, and I saw the entire incident. He also stated for the record that the precautions this man takes are having a camera outside the building is in place surveilling the rear entrance. And 15 minutes after the camera went into operation he caught somebody outside the bar apparently with a water bottle filled with beer – smoking and drinking out of the bottle. Mr. Power went out and asked him to leave. He said Mr. Power has another bartender who overheard some college kids stating that an ID he had he loaned to a person who looked just like him (I overheard this as well). The next night, when the kid with the false ID came in, he was approached by the bartender and stopped from ordering before he could even try to order. He stated Mr. Power cares. He has seen a lot of bartenders serve underage people but this is a good proprietor. (speaking of Mr. Power). He also stated with all due respect to the police, neither of the two officers who actually conducted the sting are here today, what I saw that night was NOT a completed transaction – it was not the sale of anything to anybody.

Ptl Maher asked what he charges for a Bud Lite – he was told \$3.50 now but \$3.25 at the time. Ptl. Maher stated that one of the things they do is give the officer used a specific amount of money and at the end of the night they count up the money left. Their money came out right for the \$3.25. He stated that the licensee and Mr. Kenney alleged the subject threw down a \$5 or \$10 bill. Also, Ptl. Maher said he could see inside the front door and never saw the camera flash or anyone trying to bar the door. He witnessed the officers go in and come out within about 2 ½ minutes. He stated if there is further question by the Board we can certainly have Mr. Marshall come down here for the hearing – we could continue it. In his mind, a beverage purchased and the money left there. The testimony he got from the officer was that he purchased the beverage. He said there was no description by the officer of anyone trying to bar him from leaving. He thought maybe the licensee was mistaken about who they were trying to identify, and maybe the other was a separate occurrence. Mr. Hoxie asked the licensee if it was his policy not to ask for ID right away – to get it out, hold it, open it and then ask for ID? Mr. Power stated actually no; when he knows someone is up to something he tends to get cocky with them and be a little more vicious – I made a girl cry once when she was trying to purchase without an ID. Mr. Hoxie asked him if he wouldn't be wasting the beer if he opened it; what would he then do with that beer? He said he thought about it and didn't mind wasting that but Colin, who only orders Bud Lite,, was coming in to see the band, so he would sell it to him. Mr. Power stated he is absolutely positive that he saw Officer Warmington who is 6' or 6'1" with a baby face – and this gentleman in the powerpoint photo is definitely this incident. He then reiterated he did not remember the money part; that is actually what Peter said he saw. He said money was to his left (looking at him face to face) and the beer was over here (pointed to his far right) behind the pastries and the taps being in Mr. Powers' personal space next to the caoppucino machine. He stated the officer actually reached across the bar with his left hand and almost fell over to get it and then held the beer up for a picture to be taken. He said the band had lights too. Mr. Powers said he knew (or suspected) that it was a sting and that it why he held the beer back – there is no way he would have served that person.

Mr. Hoxie asked Ptl. Maher and Lt. Jason if Officer Warmington and the other young man could come in to a future hearing. Ptl. Maher asked about the flashing lights and how he could see the camera flash. Mr. Power stated those lights are not on all the time and yes, he reiterated that everyone stopped when they saw the camera flash. Mr. Hoxie stated he would like the officers to come in – Officer Maher stated they would prefer them to come on December 29<sup>th</sup> (Christmas break) as they are both in college. Mr. Hoxie continued the hearing without further notice so the officers could be here because of discrepancies in the testimony. Mr. Power said he will also invite the guitarist who was a witness, but not available today and who he will hire as his lawyer as well and the band.

**Show Cause Hearing:** Show Cause Hearing for Ying's Café, 59 Center Street, Hyannis, Sunun Chaloeicheep, Manager, holding a Wine & Malt Common Victualler License. The Police Department has reported that on July 26, 2008 you were in violation of the Code of the Town of Barnstable, Massachusetts, Part V, to wit: you did sell an alcoholic beverage to a person under 21 years of age in violation of Section 501-7, paragraph F and 501-7, paragraph I of the Town of Barnstable Rules and regulations of the Licensing Authority as adopted in the Code of Regulations of the Town of Barnstable.

Mr. Hoxie read the hearing notice that on July 26, 2008 Ying's Café, 59 Center Street, Hyannis, Sunun Chaloeicheep Manager, holding a Wine & Malt Common Victualler License was in violation of the Code of the Town of Barnstable, Massachusetts, Part V, to wit: it did sell an alcoholic beverage to a person under 21 years of age in violation of Section 501-7, paragraph F and 501-7, paragraph I of the Town of Barnstable Rules and regulations of the Licensing Authority as adopted in the Code of Regulations of the Town of Barnstable. He then asked who was here from Ying's and from the Police Department. Sunun Chaloeicheep answered she was present for Ying's and Lt. JoEllen Jason answered that she and Officer Steve Maher would testify for the Police Department. Mr. Hoxie asked them all to raise their right hands and swear to tell the truth at this administrative hearing. All raised their hands and answered yes. Mr. Hoxie advised the licensee we would hear from the Police Department first and that she would have a right to question the police and then testify on her behalf.

Lt. Jason stated that she and Officer Maher are here representing the Barnstable Police Department, and that Officer Maher would be making the case. She stated she wanted to make an overview statement of how they came to be here today. She said that the two of them have worked for 2 ½ yrs – 3 yrs. as liaison officers with the Board, and that it took some time to learn and be comfortable with all the workings of the Board and what they do all the time. During that time, she stated they feel they have opened the communication with the businesses on Main Street, advising that noise complaints and disturbances are down. They have had great communication with the licensees in the Town. They have facilitated some informational seminars for license holders – two in 2007 and two in 2008, covering all of the alcohol license requirements, ID's (fake and altered), overcrowding, noise complaints, over serving, under-age drinking and what stings are. Because there are only two of them, the rest being in enforcement and so

busy, they have taken the philosophy that self-policing of the licensees is the best policy. They have tried to give them as much information as possible and have been open to any questions from licensees. They decided to test the philosophy to see how the licensees were doing. Recently on three separate nights stings were held – they are frankly a bit disappointed with the results. She stated there is more work to be done but took it as a learning experience. They want to bring before us the fact that although there are some businesses before us, there were 48 businesses in compliance on those nights and at some point would they like to recognize those as being diligent. She stated there are a number of elements that are common to all of these hearings and stated they will present to us how the sting was put together first and then individually conduct the hearings. She stated that Officer Maher would give an overview of what they did on each night, this one being July 26<sup>th</sup>.

Officer Maher stated that they sent out a letter to all of the Liquor Licensees in the Town to invite them to informational sessions this year (showing a copy of the letter sent in his power point presentation) in June. There was someone from the ABCC in attendance as well. They went over the sting guidelines (attached to these minutes and shown in his power point presentation). In the midst of the conversations they went over how they would accomplish a sting and what they would do once they went to their establishments. All who attended were informed and shown the specific guidelines and how they would be operated. As part of the sting procedure, there was an article in the Cape Cod Times on June 26<sup>th</sup>, a copy of which ad is attached to these minutes, advising that the police department was going to be going out using young people to test these establishments. During the June sessions they also suggested self testing of the establishments. On the nights of the stings, they brought in an underage officer, went over the guidelines with him, took a photo of him dressed as he was to go out on the sting, made sure he looked age appropriate, had no ID of any kind with him, he had no money except what was given him by the Police Department. He was asked to sign a release and a copy of the sting guidelines. He was told specifically to go into the establishment and ask to purchase one particular type of drink. In pouring establishments he was told to ask for a Bud Lite and to ask for a six pack of Bud Lite in package stores. In each case it was the same – to cut down on any confusion. If a question was asked by an employee he was told to leave. He was told not to offer a fake ID; there was no ruse used. He was just told to ask for the Bud Lite.

Ptl. Maher asked the Manager to stipulate to the police presentation. He then read his police report: On Friday, July 26, 2008 at 2312 hrs. myself along with Lt. Jason and two officers in plain clothes, Jeffrey Marshall, age 20 and Officer Andrew Warmington, age 21, conducted an undercover “sting” of Ying’s at 59 Center Street, Hyannis. Following the guidelines of the Massachusetts Alcoholic Beverage Control Commission for underage drinking stings, Officer Marshall and Officer Warmington went into the establishment where Officer Marshall purchased one Bud Lite beer from a small Asian female. Officer Warmington witnessed the transaction.

Ms. Chaloeicheep stated she is there in the office; her waitress was in a hurry to close and supposedly was very tired and didn't check the ID.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken as to findings: 1) I find that the Barnstable Police Department conducted a sting operation substantially in accordance with the "Sting" Policy adopted by the Licensing Authority, 2) I find this hearing was properly posted and advertised and the licensee properly notified of the hearing, 3) I find that the underage person used in the sting was a person under 21 years of age and an employee of the Barnstable Police Department and operating under the supervision of a Barnstable Police Officer during the sting activity, 4) I find that the Barnstable Police Department did announce, at an open and televised meeting of the Licensing Authority on July 7, 2008, their intention to conduct "sting" operations in the near future, 5) I find that the Barnstable Police Department did send a notice to each licensee of the town, using a Licensing Authority prepared list of licensees, to attend and participate in one of two Licensing seminars in June, 2008 where rules and regulations would be discussed, questions answered, and procedures would be explained, and that a Cape Cod Article dated June 26, 2008 announced the intention of the Police Department to conduct the stings, 6) I find the Police Department did conduct the "Sting" activities less than two months following the seminars (this one being July 26, 2008), 7) I find the testimony of the Police Department to be credible in this matter, 8) I find that the licensee did sell or deliver an alcoholic beverage to a person less than 21 years of age, 9) I find that the record indicates there have been no prior violations.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to adopt the findings.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken as to guilt of Ying's Café, 59 Center Street, Hyannis, Sunun Chaloeicheep, Manager, holding a Wine & Malt Common Victualler License of being in violation of the Code of the Town of Barnstable, Massachusetts, Part V, to wit: you did sell an alcoholic beverage to a person under 21 years of age in violation of Section 501-7, paragraph F and 501-7, paragraph I of the Town of Barnstable Rules and regulations of the Licensing Authority as adopted in the Code of Regulations of the Town of Barnstable on July 26, 2008.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken as to sanctions: That a 2 day suspension be imposed with one day to serve July 26, 2009 and one held in abeyance until that date pending any further Ch. 138 violations.

**Show Cause Hearing:** The Barnstable Police Department has reported to the Licensing Authority that on July 18, 2008 The Raw Bar on Ocean Street, holding an all alcohol common Victualler license, 230 Ocean Street, Hyannis, Elizabeth Westwater, Manager, was in violation of the Code of the Town of Barnstable, Massachusetts, Part V, to wit: it did sell an alcoholic beverage to a person under 21 years of age in violation

of Section 501-7, paragraph F and 501-7, paragraph I of the Town of Barnstable Rules and regulations of the Licensing Authority as adopted in the Code of Regulations of the Town of Barnstable.

Mr. Hoxie read the hearing notice that on July 18, 2008 The Raw Bar on Ocean Street, holding an All Alcohol Common Victualler License, 230 Ocean Street, Hyannis, Vincent Holland, Manager, was in violation of the Code of the Town of Barnstable, Massachusetts, Part V, to wit: it did sell an alcoholic beverage to a person under 21 years of age in violation of Section 501-7, paragraph F and 501-7, paragraph I of the Town of Barnstable Rules and regulations of the Licensing Authority as adopted in the Code of Regulations of the Town of Barnstable. He then asked who was here from The Raw Bar on Ocean Street and from the Police Department. Attorney Mark Gildea answered he was present with the owner, Robert Weeks and Lt. JoEllen Jason answered that she and Officer Steve Maher would testify for the Police Department. Mr. Hoxie asked them all to raise their right hands and swear to tell the truth at this administrative hearing. All raised their hands and answered yes. Mr. Hoxie advised them we would hear from the Police Department first and that he would have a right to question the police and then testify on his behalf.

Lt. Jason stated that she and Officer Maher are here representing the Barnstable Police Department, and that Officer Maher would be making the case. She stated she wanted to make an overview statement of how they came to be here today. She said that the two of them have worked for 2 ½ yrs – 3 yrs. as liaison officers with the Board, and that it took some time to learn and be comfortable with all the workings of the Board and what they do all the time. During that time, she stated they feel they have opened the communication with the businesses on Main Street, advising that noise complaints and disturbances are down. They have had great communication with the licensees in the Town. They have facilitated some informational seminars for license holders – two in 2007 and two in 2008, covering all of the alcohol license requirements, ID's (fake and altered), overcrowding, noise complaints, over serving, under-age drinking and what stings are. Because there are only two of them, the rest being in enforcement and so busy, they have taken the philosophy that self-policing of the licensees is the best policy. They have tried to give them as much information as possible and have been open to any questions from licensees. They decided to test the philosophy to see how the licensees were doing. Recently on three separate nights stings were held – they are frankly a bit disappointed with the results. She stated there is more work to be done but took it as a learning experience. They want to bring before us the fact that although there are some businesses before us, there were 48 businesses in compliance on those nights and at some point would they like to recognize those as being diligent. She stated there are a number of elements that are common to all of these hearings and stated they will present to us how the sting was put together first and then individually conduct the hearings. She stated that Officer Maher would give an overview of what they did on each night, this one being July 18<sup>th</sup>.

Officer Maher stated that they sent out a letter to all of the Liquor Licensees in the Town to invite them to informational sessions this year (showing a copy of the letter sent in his

power point presentation) in June. There was someone from the ABCC in attendance as well. They went over the sting guidelines (attached to these minutes and shown in his power point presentation). In the midst of the conversations they went over how they would accomplish a sting and what they would do once they went to their establishments. All who attended were informed and shown the specific guidelines and how they would be operated. As part of the sting procedure, there was an article in the Cape Cod Times on June 26<sup>th</sup>, a copy of which ad is attached to these minutes, advising that the police department was going to be going out using young people to test these establishments. During the June sessions they also suggested self testing of the establishments. On the nights of the stings, they brought in an underage officer, went over the guidelines with him, took a photo of him dressed as he was to go out on the sting, made sure he looked age appropriate, had no ID of any kind with him, he had no money except what was given him by the Police Department. He was asked to sign a release and a copy of the sting guidelines. He was told specifically to go into the establishment and ask to purchase one particular type of drink. In pouring establishments he was told to ask for a Bud Lite and to ask for a six pack of Bud Lite in package stores. In each case it was the same – to cut down on any confusion. If a question was asked by an employee he was told to leave. He was told not to offer a fake ID; there was no ruse used. He was just told to ask for the Bud Lite.

He asked that the Attorney and owner stipulate to the police presentation. He then read the police report into record: On Friday July 18, 2008 at 2143 hrs myself along with Lt. Jason and two officers in plain clothes, Officer Jeffrey Marshall, age 20 and Officer Andrew Warmington, age 21, conducted an undercover “sting” of the Raw Bar at Ocean Street at 22 Channel Point Road, Hyannis (address is actually 230 Ocean Street-building sits on the corner) following the guidelines of the Massachusetts Alcoholic Beverage Control Commission for underage drinking stings. Officer Marshall and Officer Warmington went into The Raw bar on Ocean Street where Officer Marshall purchased one Bud Lite beer from a white female in her thirties with short black hair and a ponytail. Officer Warmington witnessed the transaction.

Attorney Gildea stated they concur with what has been stated as to notification by the other licensees today and will not repeat it. He then asked which guidelines were used – ours or the ABCC’s; Ptl. Maher stated they are basically the same.

Mr. Weeks testified they try to do things as well as possible; they did participate in a seminar given by the police. He stated unfortunately one person did not check the ID that day.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken as to findings: 1) I find that the Barnstable Police Department conducted a sting operation substantially in accordance with the “Sting” Policy adopted by the Licensing Authority, 2) I find this hearing was properly posted and advertised and the licensee properly notified of the hearing, 3) I find that the underage person used in the sting was a person under 21 years of age and an employee of the Barnstable Police Department and operating under the supervision of a Barnstable

Police Officer during the sting activity, 4) I find that the Barnstable Police Department did announce, at an open and televised meeting of the Licensing Authority on July 7, 2008, their intention to conduct “sting” operations in the near future, 5) I find that the Barnstable Police Department did send a notice to each licensee of the town, using a Licensing Authority prepared list of licensees, to attend and participate in one of two Licensing seminars in June, 2008 where rules and regulations would be discussed, questions answered, and procedures would be explained, and that a Cape Cod Article dated June 26, 2008 announced the intention of the Police Department to conduct the stings, 6) I find the Police Department did conduct the “Sting” activities less than two months following the seminars (this one being July 18, 2008), 7) I find the testimony of the Police Department to be credible in this matter, 8) I find that the licensee did sell or deliver an alcoholic beverage to a person less than 21 years of age, 9) I find that the record indicates there have been no violations but they have only been open two months.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to adopt the findings.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken as to guilt on July 18, 2008 The Raw Bar on Ocean Street, holding an all alcohol common Victualler license, 230 Ocean Street, Hyannis, Elizabeth Westwater, Manager, was in violation of the Code of the Town of Barnstable, Massachusetts, Part V, to wit: it did sell an alcoholic beverage to a person under 21 years of age in violation of Section 501-7, paragraph F and 501-7, paragraph I of the Town of Barnstable Rules and regulations of the Licensing Authority as adopted in the Code of Regulations of the Town of Barnstable.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken as to sanctions: That a 2 day suspension be imposed with one day to serve on July 18, 2009 and one to be held in abeyance for that period pending any further Ch 138 violations. Attorney Gildea questioned the day of the week as it is a Saturday. He also asked if the Board would investigate whether or not they can be open for food and closed for alcohol. Mr. Hoxie stated it will be investigated.

Ed Rosario had a question as to the sting guidelines – when it was published (Cape Cod Times June 26<sup>th</sup>) and if the alcohol was taken, which Ptl. Maher stated it was by the other officer, and secured.

Mr. Sullivan stated the police department has done a good job and stated we may have been very lenient. He finds it very serious that so many licensees here have not ID'd purchasers of alcohol. Mr. Hoxie believes that the sting operation has certainly alerted license holders that they must be diligent and that the publicity will improve the way the licensees conduct themselves when underage patrons.

## **Renewals:**

**The following renewals have been submitted without any changes from the previous year for Licensing Authority approval.**

Renewal of Junk Dealer License for Mid Cape Metal Recycling, 30D Thornton Drive, Hyannis, Tim Ferreira, Manager was continued to 11/17/08.

**Business Meeting:**

Discussion – Municipal Licensing Corp. Meeting of Responsible Retailing Forum - October 15, 2008, Brandeis University Faculty Club (Seminar). Mr. Geiler pointed out it is not the same as the seminar we have attended in the past. It is to develop and evaluate a new model of Responsible Retailing to prevent sale of alcohol to underage and intoxicated patrons and to work to address social sources of alcohol in the community. The Board and Police Liaison were asked to contact the Licensing Assistant so she could rsvp.

Respectfully submitted,

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Christine P. Ade, Recorder  
Town of Barnstable Licensing Authority

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Paul Sullivan, Clerk  
Town of Barnstable Licensing Authority