



Town of Barnstable

Regulatory Services

Thomas F. Geiler, Director

Licensing Authority

200 Main Street

Hyannis, MA 02601

www.town.barnstable.ma.us

Telephone: (508) 862-4674

Fax: (508) 778-2412

BARNSTABLE LICENSING AUTHORITY LICENSING HEARING MINUTES

Town Hall Building, 367 Main Street, 2nd Floor Hearing Room, Hyannis, MA – 9:30 a.m.

April 13, 2009

A regular meeting of the Barnstable Licensing Authority was held on Monday, April 13, 2009. Chairman Martin Hoxie called the meeting to order at 9:30 A.M. He introduced Gene Burman, Vice Chairman; Paul Sullivan, Clerk; Dick Boy, Associate Commissioner; Thomas Geiler, Director of Regulatory Services and Licensing Agent; Lt. JoEllen Jason and Patrolman Steve Maher, Liaison Officers from the Barnstable Police Department; and Christine Ade, Recording Secretary.

Hearings:

One Day Entertainment and Sunday Entertainment Licenses: Application of Linda Mawhinney on behalf of Cape Symphony Orchestra, 712A Main Street, Yarmouth Port, MA for 10 One Day Entertainment licenses and 8 Sunday Entertainment Licenses for performances by on the following dates and times at Barnstable High School, 744 West Main Street, Hyannis:

<u>Saturdays</u>		<u>Sundays</u>	
May 30, 2009	8 pm	September 27, 2009	3 pm
September 26, 2009	8 pm	October 11, 2009	3 pm
October 10, 2009	8 pm	November 8, 2009	3 pm
November 7, 2009	8 pm	December 6, 2009	3 pm
December 5, 2009	3 pm & 8 pm	January 24, 2010	3 pm
January 23, 2010	8 pm	February 14, 2010	3 pm
February 13, 2010	8 pm	April 11, 2010	3 pm
April 10, 2010	8 pm	May 2, 2010	3 pm
May 1, 2010	8 pm		

and Friday, December 4, 2009 at 8 pm.

Lisa Sheehy appeared for her application. Mr. Sullivan asked about prices – and was advised the prices have not gone up this season. Mr. Sullivan wanted it on the record that it is great.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Linda Mawhinney on behalf of Cape Symphony Orchestra, 712A Main Street, Yarmouth Port, MA for 10 One Day Entertainment licenses and 8 Sunday Entertainment Licenses for performances by on the following dates and times at Barnstable High School, 744 West Main Street, Hyannis:

<u>Saturdays</u>		<u>Sundays</u>	
May 30, 2009	8 pm	September 27, 2009	3 pm
September 26, 2009	8 pm	October 11, 2009	3 pm
October 10, 2009	8 pm	November 8, 2009	3 pm
November 7, 2009	8 pm	December 6, 2009	3 pm
December 5, 2009	3 pm & 8 pm	January 24, 2010	3 pm
January 23, 2010	8 pm	February 14, 2010	3 pm
February 13, 2010	8 pm	April 11, 2010	3 pm
April 10, 2010	8 pm	May 2, 2010	3 pm
May 1, 2010	8 pm		

and Friday, December 4, 2009 at 8 pm.

One Day Beer & Wine License: Application of Beth Marcus on behalf of Cape Cod Beer, 1336 Phinney’s Lane, Hyannis & Edible Cape Cod for a **One Day Beer & Wine License** for a Business After Hours event with Cape Cod Beer and wine from Truro Vineyards to be held on May 20, 2009 from 5:30 pm to 7:30 pm.

Beth Marcus appeared for her application. This is a two hour event at their facility. She owns Cape Cod Beer; they will serve the beer and Truro Vineyards will be serving the wine. It is free to members but a charge to others. They have a Farmer/Brewer’s License.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Beth Marcus on behalf of Cape Cod Beer, 1336 Phinney’s Lane, Hyannis & Edible Cape Cod for a **One Day Beer & Wine License** for a Business After Hours event with Cape Cod Beer and wine from Truro Vineyards to be held on May 20, 2009 from 5:30 pm to 7:30 pm.

One Day Beer and Wine and One Day Entertainment License: Application of Elizabeth Butler on behalf of Centerville Public Library, 585 Main Street, Centerville, for a **One Day Beer & Wine License and a One Day Entertainment License** for a fundraising event to be held on May 16, 2009 from 4:30 pm to 7:30 pm at the library with a wine tasting by Cape Cod Package Store, a beer tasting by Cape Cod Brewery and entertainment by the John Dirac and Clayton March Duo.

Mrs. Butler appeared for this application. She is the Director at the library. There will be a live and silent auction as well. It is set up as a bar situation – they do small

pourings and they also have food provided by local restaurants and some of their Trustees. Wine to be served by Cape Cod Package Store and beer by Beth Marcus at Cape Cod Beer – they have experience at the serving.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Elizabeth Butler on behalf of Centerville Public Library, 585 Main Street, Centerville, for a **One Day Beer & Wine License and a One Day Entertainment License** for a fundraising event to be held on May 16, 2009 from 4:30 pm to 7:30 pm at the library with a wine tasting by Cape Cod Package Store, a beer tasting by Cape Cod Brewery and entertainment by the John Dirac and Clayton March Duo.

3 One Day All Alcohol, 2 Entertainment and One Sunday Entertainment License: Application of Constantine Conostas on behalf of St. George Greek Orthodox Church, 1130 Falmouth Road, Centerville, for **3 One Day All Alcohol Licenses, 2 One Day Entertainment Licenses and a Sunday Entertainment License** for a fundraising event to be held at the church on July 17, 2009 from 4 pm to 11 pm, July 18, 2009 from 11 am to midnight and July 19, 2009 from 11 6 pm (alcohol on Sunday to be offered after 12 noon).

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to continue the application of Constantine Conostas on behalf of St. George Greek Orthodox Church, 1130 Falmouth Road, Centerville, for **3 One Day All Alcohol Licenses, 2 One Day Entertainment Licenses and a Sunday Entertainment License** for a fundraising event to be held at the church on July 17, 2009 from 4 pm to 11 pm, July 18, 2009 from 11 am to midnight and July 19, 2009 from 11 6 pm (alcohol on Sunday to be offered after 12 noon) to our 05/04/09 Licensing Authority Hearing.

Two One Day Entertainment Licenses: Application of Peggy and Douglas Warren on behalf of Four Seas Ice Cream, 360 South Main Street, Centerville, MA for 2 One Day Entertainment licenses for their 75th Anniversary and for the Randall Mark Warren Scholarship Fund on June 18, 2009 from 6 pm to 8 pm and June 20, 2009 also for 2 hours.

Peggy Warren appeared for the application. She asked for their 75th anniversary event to have a band for their scholarship fund. Volunteer bands will be providing the entertainment. The second date does not have the hours in stone yet – but will be two hours in duration.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Peggy and Douglas Warren on behalf of Four Seas Ice Cream, 360 South Main Street, Centerville, MA for 2 One Day Entertainment licenses for their 75th Anniversary and for the Randall Mark Warren Scholarship Fund on June 18, 2009 from 6 pm to 8 pm and June 20, 2009 also for 2 hours.

One Day All Alcohol and One Day Entertainment Licenses: Application of Michael Brooks on behalf of Cape Cod Synagogue, 145 Winter Street, Hyannis, for a **One Day All Alcohol License and One Day Entertainment** for a fundraising event to be held at the synagogue on May 9, 2009 from 7 pm to midnight.

Mr. Brooks appeared for his application. This is their annual raffle party. They have had this for 11-12 years now.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Michael Brooks on behalf of Cape Cod Synagogue, 145 Winter Street, Hyannis, for a **One Day All Alcohol License and One Day Entertainment** for a fundraising event to be held at the synagogue on May 9, 2009 from 7 pm to midnight.

One Day Beer & Wine License: Application of Carol A. Williams on behalf of Cape Cod Community College, 2240 Iyannough Road, West Barnstable, for a **One Day Beer & Wine License** for a fundraising event for the Zammer Institute of Hospitality to be held at the college in the Upper Commons, Grossman Building on May 6, 2009 from 5 pm to 9 pm.

Carol Williams appeared for this application. This is a yearly fundraising event. All alcohol will be under lock and key and served only by people from the Zammer Institute.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Carol A. Williams on behalf of Cape Cod Community College, 2240 Iyannough Road, West Barnstable, for a **One Day Beer & Wine License** for a fundraising event for the Zammer Institute of Hospitality to be held at the college in the Upper Commons, Grossman Building on May 6, 2009 from 5 pm to 9 pm.

New Common Victualler License: Application of Fernando de Almeida Fonseca, d/b/a Maria Preta Café, 425 Iyannough Road, Hyannis, MA, Francisco de Almeida Fonseca, Manager, for a new Common Victualler License, the hours of operation to be 7 am to 5 pm, with a total of 49 seats including 4 at a counter.

Mr. Fonseca came forward for the application. He is opening the business at the former Gold's. He will have a bakery in front. He will be open for breakfast and lunch for Brazilian and American food. He is now asking to stay open at the request of the plaza people until 9 pm. He plans to open May 1st if all goes well.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Fernando de Almeida Fonseca, d/b/a Maria Preta Café, 425 Iyannough Road, Hyannis, MA, Francisco de Almeida Fonseca, Manager, for a new Common Victualler License, the hours of operation to be 7 am to 9 pm, with a total of 49 seats including 4 at a counter.

Transfer of Annual All Alcohol Package Store License: Application of Cotuit Grocery Co., Inc., All Alcohol Package Store License, 737 Main Street, Cotuit, MA, Steven Gould, Manager for transfer to Cotuit Fresh Market, LLC, Raffe Yagjian, Manager, the hours of operation to 7 am to 7 pm, with alcohol sold from 8 am to 7 pm Monday through Saturday and noon to 7 pm Sundays.

Mr. Gould, the present owner came forward with the proposed new manager and requested this be continued to May 4, 2009.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to continue the application of Cotuit Grocery Co., Inc., All Alcohol Package Store License, 737 Main Street, Cotuit, MA, Steven Gould, Manager for transfer to Cotuit Fresh Market, LLC, Raffe Yagjian, Manager, the hours of operation to 7 am to 7 pm, with alcohol sold from 8 am to 7 pm Monday through Saturday and noon to 7 pm Sundays.

Alteration of Premises: Application of Country Club Elite, Inc., d/b/a Philbrick's, 1480 Route 149, Marstons Mills, MA, Ian Philbrick, Manager, **to alter the premises description** to include: "and 18 holes on golf course." Continued from 3/16/09.

No-one appeared for the application. Mr. Hoxie asked if anyone had contacted us regarding the application. Ms. Ade indicated despite sending the manager a letter, there has been no contact from him. Mr. Hoxie asked that the application be denied, but checked first with Mr. Geiler for his comments. Mr. Geiler agreed it could be denied at this point. If they want to reapply later they can do so. The application of Country Club Elite, Inc., d/b/a Philbrick's, 1480 Route 149, Marstons Mills, MA, Ian Philbrick, Manager, **to alter the premises description** to include: "and 18 holes on golf course" was unanimously denied.

Transfer of All Alcohol Common Victualler License and New Non-Live and Video Game Licenses: Application of Phu Bros., Inc., d/b/a Hannah's Fusion Bar and Bistro, 615 Main Street, Units 13&14, Hyannis, MA, Binh Phu, Manager, for Transfer of its All Alcohol Common Victualler License to Seaside Pub on Main, LLC, Uy G. Phu, Manager, and for a new Non-Live Entertainment License and Video Game License (1 game).

Craig Martin appeared for this application. Hannah's has been closed for a while. Uy Phu has applied for a transfer for the current license with a non-live entertainment license for video games only. They have done extensive renovations to the inside of the restaurant. They are asking for the same license that exists now. They have invested \$80,000.00 in these renovations – it looks terrific. Nothing has changed as far as seating capacity.

Mr. Hoxie asked about the menu. Mr. Phu stated it will be more of a pub concept – for families. The game is Meltone with trivia and photos, etc. The other machine is a video

Wii – bowling and dart games all on a screen. He wants a family atmosphere – no live music. There will be radio for background music only. The stereo system will not be loud. It will not be fine dining –he wants it to be more approachable for the people.

Mr. Burman stated that this board decided for the license previous that there be NO amplification. Mr. Phu stated it is not amplified – it will be a non-issue as it can be controlled right at the bar. Mr. Burman stated we have a letter from Mr. Forman asking for NO entertainment of any kind so that he will not have issues. Mr. Burman also brought up the suspensions which will run with this license. The attorney does understand there is a suspension issue on this license; his client is running an entirely new restaurant with a new concept. They are asking the Board to waive these suspensions. Mr. Sullivan stated that if this was an application for a new license – the former suspensions should not be appropriate; since it is a transfer of license the suspensions stay because it is a transfer. He believes the suspensions remain with the license. Mr. Hoxie stated at the present time they are unable to operate at all during suspension times. Mr. Hoxie stated it is his opinion they would serve the present suspensions. He then questioned Mr. Phu's experience and knowledge of the laws and statutes for service of alcohol. Ms. Ade asked if the applicant wanted to request to be open for food only until the ABCC approval; Attorney Martin stated he does not.

Bill Cronin appeared for the Hyannis Civic Association and as a resident of the area. He stated there have been 4 restaurants in there in the last 5 years. There is no parking. He is wondering about the games, the hours they will be open and the control of the kids.

Mr. Phu stated there are 500 games on Meltone – it is a video game. They will be responsible with alcohol service. Kids cannot be there after certain hours. The other machine is a Wii Nintendo system. They will be open 12 noon to 1 am.

Mr. Hoxie advised that because of past violations and because this is a transfer, the Board will treat this in a different way than a new operation.

His attorney advised the Board that Mr. Phu has a lot of experience – in Boston, etc. and that the Town will be proud of the place. Mr. Geiler asked for the menu – it was not provided.

Mr, Phu stated it will be comfort food like burgers, sandwiches, pizza, chowder – a little for everyone. Lunch 12–4; service for dinner 5-10 and appetizers afterwards until midnight.

Mr. Geiler stated from the application it proposes that 70% of sales are from alcohol on the Form 5A. Attorney martin stated he put that in there; Mr. Phu stated he wants to change it to 50%/50%. Mr. Geiler again stated that he wants the menu (Mr. Phu said they have already provided that to Health; now need it for us as well). They are trying to make the restaurant family oriented and affordable. They are emphasizing the food. Answer 22C is also answered “yes” and Mr. Geiler would like a restriction to NON live

and games only – a restriction as to no live entertainment. They reiterated they are not looking for a live entertainment license. Mr. Hoxie stated as long as the new people are aware that this location will have to remain as basically a restaurant as there will not be live entertainment there we are all on the same page.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Phu Bros., Inc., d/b/a Hannah's Fusion Bar and Bistro, 615 Main Street, Units 13&14, Hyannis, MA, Binh Phu, Manager, for Transfer of its All Alcohol Common Victualler License to Seaside Pub on Main, LLC, Uy G. Phu, Manager, and for a new Non-Live Entertainment License and Video Game License (2 machines), no amplification and no live entertainment and the understanding that the suspension running with the license be served, the operation being for the hours of noon to 1 am.

Amendment to Rules and Regulations of the Licensing Authority Ch 501-15:

Public hearing on the Rules and Regulations of the Licensing Authority Ch 501 § 15, Service of Suspension Orders. A copy of the full text may be obtained at the Licensing Office at 200 Main Street, Hyannis, MA and on line at town.barnstable.ma.us under Department Menu/Regulatory Services/Consumer Affairs Division /Licensing Authority/General Information/Proposed Rules and Regulations of the Licensing Authority Amendment to Ch 501 § 15, Service of Suspension Orders.

Mr. Hoxie advised that a copy of the proposed changes is on line and was available at the Licensing Office, 200 Main Street. This was advertised and is a public hearing. Mr. Hoxie asked for discussion and/or comments.

Mr. Burman asked Attorney Houghton if there are any further comments he'd like to make. Attorney Houghton stated "No, thank you."

Mr. Sullivan stated that this gives the Authority the choice to suspend different areas of the facilities, etc. Attorney Houghton stated, "Yes, thank you."

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the proposed new Rules and Regulations to the Town Code §501-15 as attached to these minutes.

Show Cause Hearing: Show Cause Hearing for Timothy J. Ferreira, d/b/a Mid Cape Metal Recycling, 31 G&H Thornton Drive, Hyannis, at the request of the Barnstable Police Department relative to violations of the restrictions incorporated as part of, and printed on his Junk Dealer's License to wit: "No unregistered vehicles may be left outdoors on the property, no motor vehicles may be bought or sold under this license, no hazardous materials may be stored except minimal amounts required for normal building cleaning or maintenance, no storage of junk, old metals or scrap metals or secondhand articles outside the building and no storage containers outside of the building on the property except for one trash container. These restrictions must be adhered to even if the activities are allowed under any other permits or licenses you

may hold.” The alleged violations are as follows: 11/26/08: One unregistered vehicle; three storage containers filled with scrap metal outside on the licensed property; 11/30/08: One storage container filled with scrap metal on the licensed property; 12/2/08: One storage container filled with scrap metal on the licensed property; 12/6/08: Three full containers filled with scrap metal on the licensed property including a vehicle frame in one of them and an unregistered vehicle on a flatbed tow truck on the licensed property; 12/12/09: Two storage containers filled with scrap metal on the licensed property; 12/18/08: Two storage containers filled with scrap metal, scrap metal on the ground and an unregistered vehicle on a flatbed tow truck on the licensed property; 12/23/08: Four storage containers filled with scrap metal on the licensed property; 12/31/08: Four storage containers filled with scrap metal on the licensed property and one unregistered vehicle as well as a Ferreira’s truck parked on the side of the street; 1/12/09: Four storage containers filled with scrap metal on the licensed property and three unregistered vehicles on the licensed property and a Ferreira’s truck parked on the side of the street; 1/19/09: Five storage containers filled with scrap metal, several piles of scrap metal on the ground including water heaters, grease hoods and a refrigerator with a door still attached on the licensed property; 1/25/09: Three full containers of scrap metal on the licensed property as well as five unregistered vehicles; 1/31/09: Three full containers of scrap metal on the licensed property and scrap metal on the ground as well as one unregistered vehicle on the licensed property. In addition, there were several containers observed by the Police Department left on the south side of Kids Hill Road on property owned by the Town of Barnstable. On 1/31/09 one container had a marking on it indicating it was owned by Mr. Ferreira. The total violations are: “No unregistered vehicles outside on the property” – 13 counts; “No storage of junk, old metals or scrap metals or secondhand articles outside the building” – 2; “No storage containers outside the building on the property except one trash container - 35 counts; container left on property at Kids Hill Road – 1 count; Ferreira’s truck parked on the side of the street – 2 counts. At the request of the Licensee’s attorney this hearing was continued to April 13th.

Attorney Connors, on behalf of Mr. Ferreira, stated he has decided to relinquish his Junk Dealer License and has vacated the premises. The business is non-existent at this time. He has no intention of renewing the license. Mr. Ferreira will give back the license at this time. He is not renewing at this time. Mr. Hoxie asked if the charges would then be put on file.

Mr. Burman made a motion that the license return be accepted, and the charges be placed on file. The motion was seconded by Mr. Sullivan and a unanimous vote taken to accept the relinquished license and place the charges on file.

Show Cause Hearing: Show Cause Hearing upon confirmation by the Barnstable Police Department that Phu Bros., Inc., d/b/a Hannah’s Fusion Bar & Bistro, 615 Main Street, Hyannis, MA, Binh Phu, Manager, was in violation of the Rules and Regulations of the Licensing Authority and Town Code Chapter 501, section 1.14, a (3) for failure to operate the premises covered by the license during the period of February 1, 2009 through February 23, 2009, and for violation of Chapter 501, Section 1.16A, reducing

the hours of operation without prior approval of the local Licensing Authority. Continued from 3/30/09.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to file the charges on this offense.

Show Cause Hearing: Show Cause Hearing upon confirmation by the Barnstable Police Department that RooBar, Inc., d/b/a RooBar, 586 Main Street, Hyannis, MA, was in violation of the Rules and Regulations of the Licensing Authority and Town Code Chapter 501, section 1.16 a, failure to operate the licensed premises for a substantial number of hours on all days authorized by the Licensing Authority during the period of January 1, 2009 through February 23, 2009. Continued from 3/30/09.

Mr. Thind appeared before the Board and again told the Board there was not enough business to remain open. He apologized for closing without permission. He submitted new hours to the Board in a recent letter, which are 11 am to 1 am weekdays and midnight to 1 am Sundays as well as noon to midnight.

Mr. Burman proposed findings that the business owner now has understanding of the hours. It was seconded by Mr. Sullivan and a unanimous vote was taken to accept the findings.

Mr. Burman then made a motion to file the guilty charge. Mr. Sullivan seconded that and there was a unanimous vote to file the charges. Mr. Geiler stated we are available at any time – please call us with any questions.

Mr. Sullivan stated that if they in future want to lessen their hours they should send a letter requesting the same to the Licensing Authority.

Renewals:

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

Junk Dealers:

A.J. Marks
Cape Cod Precious Gems & Coins
Historical Military Antiques
Diamond Perfections

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the above Junk Dealer License applications for renewal for the 2009 – 2010 season.

Common Victualler

Ben & Jerry's
McGee's Ice Cream

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the above Common Victualler License applications for renewal for the 2009 – 2010 season.

Business Meeting:

Lt. Jason spoke regarding the recently held Junk Dealer Seminar for which only 8 people appeared. The ones which did not appear should call the Licensing Authority for the new rules. She also stated there are over 20 businesses operating with no licenses and they are selling secondhand articles – she asked if the Licensing Office could send them letters to apply for and have hearings and get the proper licenses. The Licensing Office will do this once the information is supplied.

Adjourned at 10:28 a.m.

Respectfully submitted,

Christine P. Ade, Recorder
Town of Barnstable Licensing Authority

Paul Sullivan, Clerk
Town of Barnstable Licensing Authority

§ 501-15. Service of suspension orders.

- A. When the Licensing Authority suspends the license of any licensee, it shall provide the licensee with an order of suspension for public display.
- B. Suspension orders of the Licensing Authority, as above, shall remain affixed throughout the entire period of suspension. The removal, covering, defacement, or obliteration of the order of suspension or the failure to maintain the order of suspension in the manner and place required prior to the expiration of the suspension period shall be deemed the act of the licensee and shall be cause for further suspension, modification or revocation of the license.
- C. Suspension periods may not be used as a time to do renovations at the licensed premises unless such renovations have previously been approved by the Licensing Authority.
- D. Unless otherwise ordered by the Licensing Authority, no members of the public may be on the licensed premises at any time during the suspension periods and the business may not be open for any reason.
- E. If the business is closed by order of the Licensing Authority, the licensee may be on the premises only if it is in

the process of actively cleaning up or doing office work at the premises. No persons other than the licensee and its employees may be on the premises during the period of closure for any reason.

