



Town of Barnstable

Regulatory Services

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Licensing Authority

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BARNSTABLE LICENSING AUTHORITY LICENSING HEARING MINUTES

**Town Hall Building, 367 Main Street, 2nd Floor Hearing Room, Hyannis, MA – 9:30 a.m.
February 14, 2010**

A regular meeting of the Barnstable Licensing Authority was held on Monday, February 14, 2011. 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, Recorder.

Hearings:

One Day & Sunday Entertainment License: Application of Cecelia Carey on behalf of Hyannis Rotary Club, for a One Day Entertainment License and Sunday Entertainment License for its annual Home and Garden Show to be held on March 26 and March 27, 2011 from 8 am to 4 pm each day at Barnstable High School, 744 West Main Street, Hyannis, MA 02601.

Cecelia Carey appeared for this application which is an annual charity event.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the application of Cecelia Carey on behalf of Hyannis Rotary Club, for a One Day Entertainment License and Sunday Entertainment License for its annual Home and Garden Show to be held on March 26 and March 27, 2011 from 8 am to 4 pm each day at Barnstable High School, 744 West Main Street, Hyannis, MA 02601.

Six One Day Wine & Malt Licenses: Application of David Kuehn on behalf of Cotuit Center for the Arts, 4404 Falmouth Road, Cotuit, for six one day wine and malt licenses for the following concerts and an art gallery opening:

2/16/11	6 pm to 7:30 pm	wine & music reception
2/19/11	5 pm to 7 pm	Art Gallery Opening
2/26/11	8 pm to 10:30 pm	George Gritzbach jazz concert
3/4/11	5 pm to 7 pm	Johnny Hoy concert

3/5/11	8 pm to 10:30 pm	Tedi Marsh cabaret concert
3/6/11	7 pm to 9 pm	Clezmer Swing Band concert

Mr. Kuehn appeared for this application. It is for 6 events. Cotuit Center also requests that as they are applying for a year-round Wine & Malt General on Premises license, that if granted, these fees be applied toward that yearly license fee. Every year it seems they apply for pretty much the maximum of one day licenses. This year they are expanding to more shows and would like beer & wine sales. There at present is no beer & wine license category only, so they will seek an all alcohol general on premises license and the 6 one day licenses in the interim while waiting for the yearly license approval from the ABCC. Mr. Hoxie stated if the yearly license comes back before the last of the one day licenses is needed, we could then credit them for the any days after approval.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the application of David Kuehn on behalf of Cotuit Center for the Arts, 4404 Falmouth Road, Cotuit, for six one day wine and malt licenses for the following concerts and an art gallery opening:

2/16/11	6 pm to 7:30 pm	wine & music reception
2/19/11	5 pm to 7 pm	Art Gallery Opening
2/26/11	8 pm to 10:30 pm	George Gritzbach jazz concert
3/4/11	5 pm to 7 pm	Johnny Hoy concert
3/5/11	8 pm to 10:30 pm	Tedi Marsh cabaret concert
3/6/11	7 pm to 9 pm	Clezmer Swing Band concert

New Common Victualer License: Application of Felipe Lopes, d/b/a Acai Berry Juice Bar, 14 West Main Street, Hyannis, Paul Yee, Manager, for a New Common Victualer License, with total seating for 25 at 4 tables and 9 at counter, the hours of operation to be 7 am – 1 am.

Mr. Lopes and the new Manager, Mr. Yee, appeared for this application. The status of the restaurant was questioned; they have been closed since the end of the year. The partner in the former Acai Berry license did not renew the license. The only entertainment is a television. Mr. Hoxie asked if there were any objections to the 1 am closing; there were none.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the application of Felipe Lopes, d/b/a Acai Berry Juice Bar, 14 West Main Street, Hyannis, Paul Yee, Manager, for a New Common Victualer License, with total seating for 25 at 4 tables and 9 at counter, the hours of operation to be 7 am – 1 am.

New Common Victualer License: Application of Mark Lawrence and Vito Marotta d/b/a Porky's Barbeque & Grill, 12A Thornton Drive, Hyannis, Vito Marotta,

Manager, for a New Common Victualler License, hours to be 6 am to 9 pm Mon –Sat and 9 am to 9 pm Sun.

Mr. Lawrence and Mr. Marotta appeared for this application. This is the old Murph's recession. They advised that this will be breakfast and lunch and some suppers, and also used as their catering facility. They are not looking for alcohol at this time but may seek a beer and wine license in the future. Want to open around March 15. They have done minor fixing up - new door was installed and they've painted the inside. No other construction.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the application of Porky's Barbeque & Grill, 12A Thornton Drive, Hyannis, Vito Marotta, Manager, for a New Common Victualler License, hours to be 6 am to 9 pm Mon –Sat and 9 am to 9 pm Sun.

Change Manager: Application of Wequaquet Lake Yacht Club, 150 Annable Point Road, Centerville, for a Change of Manager on its annual Club All Alcohol License from James Dunnett to Ronald N. Chevalier.

Brad Parker and Ron Chevalier appeared for the application. Their prior manager is retiring.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the application of Wequaquet Lake Yacht Club, 150 Annable Point Road, Centerville, for a Change of Manager on its annual Club All Alcohol License from James Dunnett to Ronald N. Chevalier.

New Annual General on Premise Wine & Malt License: Application of Cotuit Center for the Arts, Inc., a non-profit organization, for a new Annual Wine & Malt General On Premise License, 4404 Falmouth Road, Cotuit, MA, David Kuehn, Manager. Alcohol service would be from 10 a.m. to 11:59 p.m.

Mr. Kuehn appeared for this application. This license is being applied for as they have expanded the number of shows they wish to have at which they would want to serve beer & wine.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the application of Cotuit Center for the Arts, Inc., a non-profit organization, for a new Annual Wine & Malt General On Premise License, 4404 Falmouth Road, Cotuit, MA, David Kuehn, Manager. Alcohol service would be from 10 a.m. to 11:59 p.m.

Change Manager: Application of Outback/NewEngland-I Limited Partnership, d/b/a Outback Steakhouse, 1070 Iyannough Road, Hyannis, for a Change of Manager on its annual Common Victualler All Alcohol License from Justin Schwarz to Thomas Ward.

Mr. Ward appeared for this application. He has been working with the company for 3 years and here since October. Mr. Sullivan brought up the paperwork needed if ever convicted of a crime. Mr. Ward had an affidavit with him.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the application of Outback/NewEngland-I Limited Partnership, d/b/a Outback Steakhouse, 1070 Iyannough Road, Hyannis, for a Change of Manager on its annual Common Victualler All Alcohol License from Justin Schwarz to Thomas Ward.

Class II Auto Dealer License: Application of Cape Cod Lincoln Mercury, Inc., d/b/a Langway Cape Cod Pre-Owned Center, 556 Yarmouth Road, Hyannis, MA, Keith Sexton, Manager, to change the existing Class I Auto Dealer License to a Class II Auto Dealer License. The hours of operation are 9 am to 6 pm, Monday, Tuesday, & Thursday through Saturday. The total number of vehicles is to be determined from the plan by the Building Commissioner.

Mr. Sexton appeared and advised they had renewed their Class I license but now will be selling ONLY the used vehicles. Mr. Geiler stated the Class I license has a requirement that they have a contract to sell new vehicles – they no longer have it. They closed down and are re-opening as a Class II licensee. The only issue is that the Building Commissioner has asked for a certified plan which he will approve. There is no intent to restrict them to less than what they had. We see no reason to hold this up. We are also waiting for the bond, which we must have prior to issuance of the license.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the application of Cape Cod Lincoln Mercury, Inc., d/b/a Langway Cape Cod Pre-Owned Center, 556 Yarmouth Road, Hyannis, MA, Keith Sexton, Manager, to change the existing Class I Auto Dealer License to a Class II Auto Dealer License. The hours of operation are 9 am to 6 pm, Monday, Tuesday, & Thursday through Saturday. The total number of vehicles is to be determined from the plan by the Building Commissioner.

Show Cause Hearing: Show Cause hearing for R&Y Enterprises, Inc., d/b/a Ying's Sushi Bar & Lounge, 59 Center Street, Hyannis, Tanida Suriyawong (formerly Sunun Chaloeicheep), Manager as a result of the Barnstable Police Department report to the Licensing Authority that: 1) It is in violation of the General Laws of the Commonwealth of Massachusetts, Chapter 140, Section 183A whereby the entertainment of the establishment and the activities of the licensee along with its patrons did adversely affect the health, safety and order of the public by causing disruptive and criminal activity which was also alleged in two written complaints from a citizen of the Town who lives in the area; 2) It allowed an increase in the noise level in the area though the entertainment provided, the patrons entering and exiting the establishment and an increase in vehicle traffic along with vehicles being parked

on the area of the premises; 3) It violated the Town of Barnstable Code, Rules and Regulations of the Licensing Authority Chapter 501, Section 8 by failing to ensure a high degree of supervision over the conduct of the licensed establishment at all times; 4) It violated the Town of Barnstable Code, Rules and Regulations of the Licensing Authority, Chapter 501-9B by hindering or delaying a Police Officer in the performance of his/her duties during the investigation of the shooting on January 6, 2011; and 5) It allowed the entertainment at the licensed premises to be heard outside the boundaries of the licensed premises (violation of Town of Barnstable Code, Rules and Regulations of the Licensing Authority Chapter 501-10.

The Licensee appeared with Janet Daly. Ms. Daly lives across the street and appeared to speak for Ms. Suriyawong, along with Robert Perry and about ten other individuals, all of whom were sworn in by Mr. Hoxie. He asked those who would testify and raise their hands, searing that what they would say at this administrative hearing would be the truth.

Mr. Hoxie asked for police testimony first and advised the witnesses would have the opportunity to ask questions and give testimony after that took place.

Officer Steve Maher presented the case for Barnstable Police Department. He advised he is before the Board because of the incident that happened on January 6th of 2011, there was a shooting outside Ying's, and along with that there have been calls based on noise complaints and my own conversations with the Manager from November through January. He said he was present on the night of the shooting as a result of a call going out to assist officers with the collection of evidence, and was there when the door staff and patrons present were interviewed. He had also spoken to the Manager on November 20, 2011 about the situation as a result of increased calls of noise at that time, as well as his view of some of the patrons that were entering and exiting the establishment. He stated that on the 20th he pointed out directly to her that some of the patrons she had in her establishments were known criminals and based on that and the fact type of entertainment she was providing, that she was going to have a problem if she didn't adequately provide staff to police the area of the establishment. Her comments to him that night were that she would take care of it and there would not be a problem. On January 6, he went into the establishment and while the other officer was conducting interviews, he again noticed there were known criminals indoors. He was told by the door staff the individual shot was inside before the shooting.

He then presented photos for evidence, showing them to the licensee. These photos were taken 1/15/11. On the entertainment nights the traffic increases tenfold. From 2/10 to 11/10 there were no calls to this establishment. In November this changed. There was one prior incident – a sting for underage service. On 12/17 there was an attempted stabbing across the street – the bartender that night, who told him he felt uncomfortable being here today because of possibly placing himself in harms way, told him there was a problem outside and he informed the manager that the police should be called; but was told by the manager not to call the police.

He also told Officer Maher that for the short time he was there, he had attempted a couple of times to ID people to make sure they were over 21 but was also told by the manager not to ID, there wasn't time to do that, and that was what the door staff were there to do. He also stated he had witnessed other bartenders there provide more than two drinks to different individuals. On the night of the stabbing, he was approached by a DJ working the night of the shooting (came up to us outside), and said he had been fired by the manager due to the type of music being played; saying that she had told him when he went to her about the shooting, not to talk to the police department. He stated that individual is here today to testify. Subsequent to all this happening, there has been an article in the Cape Cod Times, quoting the manager as saying the staff was inside the night of the shooting and did not know what was going on outside. However, he was present during the interview of the door staff who were outside at the time of the shooting, saying to both himself and Officer Souve that they had seen the shooting which happened in the parking lot approximately 30 feet from the front door of the establishment and had gone back inside to try to help stop the people inside from going outside. Also in that article she stated that the DJ had borne some responsibility for what had happened that night. Along with that he was told by the door staff that the individual who had been shot was inside the establishment prior to the shooting. Along with that, in the article, the manager has also stated that she should not be responsible for the actions of people outside and she can't control other people. 204 of the Mass Code Regulations states that no licensee for the sale of alcohol shall permit disorder, disturbance or illegality of any kind to take place in or around the licensed establishment, the key tot hat being "in or around the licensed establishment." Also in the Rules and Regulations it states that the license takes place not only within the confines of the building but on the grounds as well. Officer Maher stated in November he went there and had windows up, radio on, had parked across the street, and could hear the music from the building at a distance of approximately 125 feet. We also have a complaint from a neighbor across the street (2 separate letters) who asked in person (went across the street and spoke to the manager) for the music to be turned down, which he advised did not happen – after he left it went right back up again. He reiterated that the police department had noticed an increase in traffic in the area and presented some photos, which Mr. Hoxie had him show Ying and then accepted. Along with that, to give a little history, from February 2010 to November 2010, there were NO calls to this establishment. In November, when the entertainment with the DJ started, there were a lot of calls.

Mr. Hoxie asked if there were any questions for the officer.

Mrs. Daly asked about some minor details – she stated that anywhere there is music playing, even churches, the music can be heard across the street. What is the regulation? Are there decibels or something of that sort that are regulated?

Officer Maher stated within the confines of the rules and regulations governing entertainment, the regulations state the music cannot be heard beyond the curtelage of the building, which means specifically that if you stand outside the building you

should not be able to hear the music. Along with that, there is a Town ordinance which states that music should not be heard beyond 150 feet of the building. Ms. Daly stated she knows there is a nightclub on 28 sort of parallel with the Transportation Center, called Pufferbellies. She said she can often hear the noise from that which is probably 1,000 feet from that premises. She said she was just saying there is a certain amount of noise that does come from entertainment places, and thinks it is very difficult to contain.

Officer Maher called William Hughes from Harwich to testify. He was present at the night of the shooting as the D.J., hired by the Manager on that night. He testified earlier in the night there was an argument outside about an hour before the shooting – there were no security guards outside or anything. He said he had himself gone out to talk to the people arguing with each other and had actually thrown out 3 people, telling them they couldn't come back in. He had stated he would call the police if they were still outside after he changed the left back in. When the shooting happened he had been in the DJ Booth over near the bar. He said he didn't know anything happened until he saw a bouncer run towards the door and later on he saw blue lights outside. Officer Maher asked if he had seen the victim inside prior to the shooting; he said he had when he went to set up at about 8:00 – he was there with a friend and his girlfriend eating at the bar. Mr. Hughes left to get some clothes and when he came back later, the victim he was outside – then he had left and gone towards Main Street. I then went to the Mall to get a hat and when I came back to speak to the manager (Officer Maher asked him if she was here today and he answered yes) he was back too with a couple friends but not the girlfriend. After the shooting officer Maher asked if he had a conversation with the manager – he said he went up to the bar saw two detectives standing near the front door. He went to Ying and asked if she thought she should tell them what had happened (the argument that was outside earlier); she proceeded to tell him to shush, not to tell them about it. Officer Maher asked if there were other incidents in the last couple months; he stated that there was a Friday night when he had actually tried helping her ass he has worked in other establishments around here for the 8 years he has been D.J.'ing from Hyannis to Harwich – he said he had brought in some security on a Friday night – some people from Irish Pub & Improper, one of his friends was doing security for her (it was a Friday night – a Latin night); he said he had left at 12 to go to a friend's birthday party at Pufferbellies. This guy had called him at about 12:50 and said where are you where are you I need to get out of here – stating he had been threatened with stabbing by a patron in the parking lot trying to get the person out of the club. He was the only security guard on. Officer Maher asked if he has seen underage drinking; he stated he had...there is a girl he knows from Pufferbellies 18+ nights – he has been D.J.'ing for 8 years. The girl's name is Toni. I don't know her last name. He said she still goes into the establishment. Officer Maher asked if he thought the manager knew or was cognizant of the type of crowd and what was going on the night of the shooting and if she was adequately prepared, based on his past experience. Mr. Hughes stated he had specifically brought two of his security guards with him that night who were not paid (there is a gentleman here who does security for me because I do private events also) because he did not think security

was adequate for that night – I brought in two guys of my own who actually did not get paid that night and she had recently hired a new bouncer so there was 3 people on that night. He said if it wasn't for him bringing in the other two there would only have been one person.

Mr. Hoxie asked if the Licensee or anyone had any questions for the DJ.

Ms. Suriyawong stated she does not believe this testimony. She wanted to ask him if she paid everybody. She said she does not believe this is happening.

Mr. Hoxie asked the DJ if anyone else other than the DJ went out from the establishment – he said it was him, the 3 gentlemen that were together, the one who got shot was out there; he was the one starting the commotion, and 10-15 kids on the other side – they were in front of the Sushi Bar window outside near the road. It had been causing a commotion inside. He said he had seen such types of commotion at the old Kendrick's and did not want to have a problem. Mr. Hoxie asked if the staff was aware of what was happening...He said that the whole club knew what was going on outside. He didn't want to see a fight, didn't see the bouncers or anybody doing anything so went outside himself. Mr. Hoxie asked again, who else went out? Mr. Hughes answered, nobody.

Ms. Daly asked what time this was – he stated 11:30-11:45. He stated at 8:30 or so they were eating dinner. Ms. Daly asked when the argument was again – he said 11:45. Ms. Daly stated as an aside that they would not have had a bouncer when it was just the restaurant, the bouncer starts at 10 pm.

Mr. Sullivan asked his usual working hours – he stated 10-1 but he gets there a couple hours earlier to set up his equipment. Mr. Sullivan asked if he was fired that night? Mr. Hughes said he was told he was fired after the incident from a bouncer – he had told me I had been fired. Mr. Sullivan asked if he was fired that night and he said yes he had learned that while he was walking to his car in the parking lot. Mr. Sullivan asked if anybody told him why he was fired and he said no. He then said he read in the paper that it was because of music he plays radio music, dance music, techno, hip hop; tries to match the music to the place – hers is more upscale). Mr. Sullivan asked about his other places – he has rented out Pufferbellies in the past and now since being fired at Ying's has gotten Friday nights at Pufferbellies, and was supposed to have Saturday nights at Five Eighty Six but lost that after the newspaper article basically blamed him. He said he is now kind of blackballed by certain establishments which is really sad. Mr. Sullivan asked what was played that night... The music that night had a little bit of hip hop but was more dance beat than hip hop – he said he had already talked to Ying about the music. It's like techno-dance, he doesn't want to drive people out. Mr. Sullivan told him he was questioning the music type because that seems to be what attracts a certain kind of clientele. Mr. Hughes said in the article in the paper it said it was his type of music that caused what happened, but noticed that the officer mentioned November 29th and ate said he was hired after November 20, so the crowd was already in the establishment

prior to his beginning work there. I had worked for her when I was 19-20 years old in the Dennisport Ying's. He was paid to bring people in – promoted himself; wanted to help her out. Mr. Sullivan asked his period of employment there – he said he started work there the Wednesday after November 20 through January 6 every Wednesday night and had gone on other nights like Thursday and Friday as a customer. The incident was a Wednesday night.

Ms. Suriyawong asked if she fired him that night? She said didn't I tell you we had to hold off?

Mr. Geiler asked her to direct her questions to the Licensing Authority, not to Mr. Hughes, and not to have a dialogue back and forth.

Ms. Daly asked the Authority if Ying herself ever fired him? Mr. Hoxie stated he thinks he answered no.

Ms. Daly asked if Ying spoke to him to tone it down and not to play hip hop because she had been advised by the police not to play that type of music? Mr. Hughes said she had never said "by the police." Mr. Hoxie asked what she said about the music. He said he had been there before, there was one night it was very slow and he was trying to play to the crowd present and what they like to keep them in there. He said he DJ's at the Improper Bostonian, plays classic rock; it all depends on the crowd that's in there – tries to cater to the customer. One night there were people in there who had requested hip hop songs and at the end of the night she asked him to try to tone it down and he said to her he had the songs requested and was trying to cater to the people. Mrs. Daly asked if normally, the employer who pays you asks you to tone it down or play selective music, isn't it usually the employer who pays you that you listen to? He answered yes. Mr. Geiler asked what kind of dance music he played? Mr. Hughes stated like the Temptations, old Motown and techno – club music – the kind heard in Providence, Boston, big city music – Mr. Geiler asked what radio stations on Cape you could hear techno on and he stated no stations on Cape. Mr. Geiler asked where the customers are from? He said the customers are from the Cape. If you wanted to listen to serious radio you can listen to satellite radio stations, they have about 5 techno & dance stations out there. Mr. Geiler asked if it was significantly different than what we hear on our radio stations and he said he tries to bring something new to Cape Cod. Mr. Hughes stated he DJ's for non-profits, mentally challenged kids, Cape Cod Challenger Club, Project Forward, the YMCA - has a whole repertoire of music; that's why he is hired by a lot of companies.

Ms. Daly said to Mr. Hoxie that he mentioned there was no security, did you know there were 3 security people on duty who had been hired by Ying that night that the shooting took place? Mr. Hughes stated they were not hired by Ying, one security guard was hired by her, the other two had been brought by me, one of whom is here today. Mrs. Daly asked who paid them? He said he did not know, he did not pay them, he believed one did not get paid at all, he told me if Ying didn't pay him the

other security guard would get paid and he would just do it for the night, he didn't know there had been another person hired. Mr. Hoxie asked if the licensee requested him to bring these people? He said one had worked there nights before as head bouncer, he himself brought the extra people as he was uncomfortable with what Ying had in place as the crowd started growing – there were about 60 people there that night. Mr. Hoxie asked again if he brought he people and he said he did. Ms. Daly asked if he was saying they were not requested by Ying? Mr. Hughes said no they weren't. She had not been in touch with them. Ms. Daly asked if Ying had asked him as he knew some people to bring them and she would pay? He said not then, she had told him she needed help with security before. Ms. Daly then asked if they had discussed who would pay them. He said he had a talk with her and said if she needed help I would pay – she never said she'd pay the security person.

Mr. Sullivan confirmed that he brought in 2 people out of the 3 there. Why did he feel HE had to bring them in? Mr. Hughes said he thought only one was coming but the one he thought was coming brought a second person he worked with. Mr. Geiler asked what risk he thought he needed the additional security for; Mr. Hughes stated it was up to the person he asked to come in who he brought, that is the person he uses and who had worked there before; reiterating he had asked for one person, not two.

Ms. Daly asked if he brings security to other places as well? He said yes, he does bring them. Ms. Daly asked him with the kind of clientele he is drawing if generally he needs some heavy security and he said no. Mr. Burman asked how many total were there, him having 2 and a bouncer there.... Mr. Hughes stated Ying's one she had hired for the door and the one he hired who brought a third. Officer Maher asked if he did or did not have a conversation with Ying about hiring extra staff? Mr. Hughes said he did have a conversation with Ying about extra security.

Officer Maher asked him if he was familiar with the layout of the restaurant – there are basically 2 areas. Mr. Hughes stated he was. Where did the people congregate? Mr. Hughes stated mostly in the bar. Officer Maher asked if he usually saw any people in the sushi area? Mr. Hughes said a couple times as she serves dinner all night. Officer Maher asked approximately how many people were in there the nights he worked at its busiest point? Mr. Hughes said at the busiest there were approximately 48-50 people; he couldn't say exactly. He said the doorman was counting and most of the people were in the bar area. The doorman said he subtracted people from the number as they left. He asked for the count at the end of the night and it was low because of the subtractions.

Mr. Sullivan asked Ying prior to Mr. Hughes working sometime in November? what type of entertainment was there? Was there a change in the type of entertainment? She stated Wednesday night was top 40 and today music. Mr. Sullivan asked if she went to Mr. Hughes or he came to her to be hired? How did that transpire?. She said he came to her. Mr. Sullivan stated there was a change in the type of music then..She said yes; she said she had told him she wanted top 40 and today music

not hip hop as she was afraid about the crowd. Mr. Sullivan asked what type of music she had prior to him and she said she had DJ's prior to him and computerized, no bands. Mr. Sullivan asked what was the reason for the change in type of music? She said she had requested top 40 and popular music, no change in the type. DJ's were added to bring more people in the evenings. They used to have entertainment that did not draw people in so she went with this new DJ.

Officer Maher then called Bradley Ford Cammerlingo, who was present the night of the shooting. He said he is from West Yarmouth. He came in as security for Will Hughes who had brought him several times on his Wednesday night job. He stated Ying only has one staff member who does the door. He stated in a nightclub situation you need more than one person to watch the crowd and the door – it is not safe for you, your customers or anybody. He has been head of security at the Improper Bostonian. You need at least two. Officer Maher asked what he saw. He said he was indoors – the security person she brought in and the guy he brought in were outside smoking. They came running in and said shots were fired – he said he stood by the door everybody goes out & officers arrived, he said he tried to keep everyone inside to the best of his ability. Officer Maher asked if he had seen the victim inside earlier – he said he had seen him eating earlier with a girl when he was helping Will carry speakers in; later on just the guy was there at the bar. Officer Maher asked if on the night of the shooting he saw the manager take any action either prior to or after the shooting? He said no he did not. Officer Maher asked if he saw her outside at all...he said the only time he would see Ying outside was to check noise levels. Officer Maher asked if he was aware of other events that happened at this establishment over the past couple months – he said he was aware of the attempted stabbing of our friend who was also trying to tdo the door at one point. Officer Maher asked about his experience – Improper Bostonian (has about 400 people) head of security, and Timmy B's, head of security this summer (180). He has 2 years experience. Officer Maher asked if he thought Ying's was properly covered with security the night of the shooting – he said it was not.

Ms. Daly asked if he was asked to be there that night – he said Will asked him not Ying. Ms. Daly asked if there were 3 security people with 50 patrons and that was not adequate? He told her four is a more adequate number – 2 door people (each exit – one watching the smoking section) and two people to watch the floor.

Officer Maher asked that he had stated he needed more people there based on the type of crowd – you're familiar with some of the people who go into the establishment, have seen them in the past? He said yes he has. Officer Maher asked him if he recognized some of the people there as being those involved in criminal activity in the past? He said to his knowledge no. Officer Maher asked if he recalled the restaurant configuration on the night of the shooting, if tables and chairs were removed that night? He said they were not moved.

Mr. Geiler asked for clarification of what he meant by type of crowd with respect to being not safe seemed like the crowd that had been attending Shanghai across the

street and a few people he had heard had been at Pufferbellies. Mr. Geiler asked how he knew – is it something somebody told you or did you see them? He said he has known a couple other people who have worked at Pufferbellies who told him about a couple of people. Mr. Geiler asked if he was able to connect by seeing these people? He said yes, they had given him a good description of how the people looked.

Mr. Hoxie asked Officer Maher if he had anything else, he did not at that time.

Mr. Hoxie asked if anyone could give direct testimony to the 5 specific allegations of the complaint?

Max Valau came forward saying he lives across the street at 68 on the top floor with windows facing Ying's. He said he would like to address Complaints 2 and 5 – noise level – he does not hear any noise from Ying's. The top 5 noisemakers at night would NOT contain Ying's – for example the bus station is noisier (starts at 11 for a couple hours pulling them in and out); the train station also, planes flying over. In the summer time there are always people on the street who make more noise than Ying's. Also traffic and sirens. He does not see the noise as a problem at all.

Mr. Hoxie asked if he is a customer? He said he has known Ying for a long time and is a customer of Ying's. Officer Maher asked him what nights does he typically go there? He said he usually goes Friday nights and Monday 1/2 price Sushi and sometimes Saturdays. Officer Maher asked how long he would stay. Some nights he'd stay until 12:30. Officer Maher asked if going home does he while walking back to his apartment notice a lot of vehicles parked at the condo where he lives and next door at the golf shop? He said some - maybe a dozen. Officer Maher asked on the nights with no entertainment does he notice those vehicles when no entertainment? He said no.

Ms. Daly asked Max him about the noise from the bus station – not the terminal but the actual bus garage...He said yes the repair garage. Then she asked him if he mentioned something about the yellow house and the drums. He then said oh yes, the drumming noise in the yellow house – there is a business in the same building as Ying with a man who gives drum lessons in the yellow house right to the left of Ying's which is noisy in the summertime when the windows are open.

Mr. Hoxie asked for other questions.

Pornipa Sutthimaitree came to testify – she was working that night at the bar as bartender/waitress and said she did not have the sergeant who came her ask her anything at all. She said about 11:45 she heard one of the clients come in and say some shooting outside and the police outside. She did not really know what was happening. No-one came and asked her any questions. The police officer did not even come and ask her one question.

Officer Maher asked if she saw him that night? She said at the end of the night. She went to leave and was asked to stay by another officer as they were taking a picture. She said she waited until told she could leave. Officer Maher stated she just waited and did not go over and talk to the police? She said no; she was waiting for them to approach her- did not know what they were supposed to do and did not want to get in the way. Officer Maher asked her how long she'd been a bartender at Ying's and she said 10 years. Officer Maher asked if she had over the last couple months noticed a change in the type of people coming into the restaurant. She said because of the music there is a different crowd. Officer Maher asked if it is an older or younger crowd? She said pretty much over 21 because after 10:00 they have the security to screen the people with ID before they get in. On the nights there is no music the bartender has to card; on the entertainment nights she said the door staff card. Officer Maher confirmed with her that on the nights there is security staff there it is those people who do the carding? She said yes. Officer Maher asked what year a person would be born to be legal – she did not know, said she had to see the card and is not good in the math.

Mr. Hoxie asked if the licensee had questions for the witness, she did not.

Robert Perry of Cummaquid stepped forward and read a letter which he then presented stating he dines frequently at Ying's – has known Tanida Suriyawong for 10 years. Recently she made a major renovation in the bar area and added more music. He stated on her behalf that she really does want to comply with the Town rules and regulations. Not the time to lose more small businesses. He read aloud about how he finds this economy terrible – seeing businesses shuttered.

Mr. Hoxie asked if there were any questions by the police, Officer Maher said no.

Thomas Scott then came forward – stating he is retired from the country club business. Because of that 32 year experience he looks for certain things in a restaurant – only frequents three restaurants on the area he considers clean, professionally run and managers who really care. Said he was very surprised to hear of this, was in Florida at the time of the incident. He goes to Ying's at least 3 times a week for lunch and eats there at night for dinner a lot too. Is 65 years old. He stated the clientele is first class. He doesn't see any problems – likes Frank Sinatra to hip hop music. He is a musician, an artist and has written 2 books. Saw nothing of this from August through today. He stated he is very picky. He said he was ill prior to going to FL; this lady was the only person in Town to call and ask him how he was. It meant something to him and that's what her customers mean to her. He said he had a shooting incident in Naples – in his parking lot. He said he can't control as a manager who is in his parking lot. He said he heard the person was changing a tire when someone came up and shot him. He said he knows when he is in the restaurant she is on top of what is going on from the minute he comes in until he leaves – she has asked him if he is o.k. to drive if he has had a few drinks if he is o.k. to drive home. He cares about the town. Has been to restaurants here he will never go back to because the restrooms are dirty. He said he has seen her

scrubbing the restroom herself– she cleans it 4 times a night herself. He said he also goes to Mr. Colombo's establishments and could name about 12 he would never go back to again and yet people are giving this lady a hard time. He said in one restaurant he was escorted outside by a big man after talking to two beautiful ladies. He was told the ladies inside were Swedish prostitutes waiting for a limo. He stated that bothered him.

Ms. Daly asked to speak; Mr. Hoxie asked her to please wait unless it was direct testimony about these allegations.

Rich Holmes appeared to testify stating he lives at 68 Center Street (he was the complainant who wrote the letters to the Licensing Authority). He said Ying's was a good neighbor until November. Has lived across from it for a couple years. He has been a customer – it is good food. It started getting noisy on Friday nights and Tuesdays. He said he would hear drums, bass, screams occasionally. The later it got the louder it got. There was Tuesday entertainment he would hear but it was not a problem, it was over by 10. He said he did go over the beginning of November and spoke to Ying and a gentleman about midnight on a Friday night as it had been too loud – they asked him if it was too loud and he answered no, not then because it was not when he went in, but as soon as he walked across the street he said it got noisy again. He stated he called the cops that night with a noise complaint but has not since because he emailed and called the town twice and then wrote a letter. He said he prefers to go to the Town rather than to harass them. Never really heard the type of music. He stated basically every Friday night and other nights too he would be kept awake. He stated there is lots of other noise – can hear Pufferbellies in summer. Ying's wakes him up and keeps him awake 12-1 and then for about 1/2 hour later with people in the parking lot yelling. He did send them a letter in December too. He keeps his windows shut – is on the 2nd floor in the corner, directly across the street from Ying's. The night of the shooting he did not call but was woken up. He said they have been quiet the past 3 weeks. Whatever the reason he is grateful. Officer Maher asked if he is aware of more parking patrons on entertainment nights and more foot traffic since the new type of entertainment? He said he really doesn't know.

Mr. Hoxie asked if the licensee had any questions from the witness and she did not.

Mr. Hoxie then said we would then hear from the licensee and could have comments in general following that.

Ms. Daly commented as follows: She said in relation to complaint number 1, she thinks the police became involved because of the complainant letter about sound. The complainant works for the Cape Cod Times, and there were some mentions of that sound in the paper, and she found inordinate space being taken up in the paper for this. Each time there is an article, the noise complaint is included. She said they dispute the undue publicity, even a front page story that Hyannis has a rep. She stated people have gotten their information not from the officer here today

whose testimony was valid but from the paper. She said they don't dispute the fact that an incident took place, but she stated the person was shot not in front of the restaurant but in front of a retail place next-door. She said she does not think Ying or her staff would impede the police. She said she thinks there is a lot of hearsay. We heard an awful lot from the DJ. She also confessed that her son has a band that originated in Europe with hip hop and hard rock so she is used to this kind of music although he had to use earphones in the house. She asked that the Board please rely on the Officer's testimony that yes, there was a shooting and they regret it immensely. She said she thinks that Ying has learned that hiring security is important but relied on the DJ's advise that her one and his one security person should be adequate – now the security person is saying it should have been 4 people. She stated she followed Officer Maher's advice about asking the DJ to play top 40 and not hip hop. She urged the Board to realize this is a popular place. She said about #5, it would be nice if the noise from entertainment did not carry – we'd all like that. She hopes that count can hopefully be forgiven. She said she is 74 and goes there regularly, does not feel threatened. Goes there and walks across the street. She had a petition of many many people (388) in support of Ying's, which was given to the Licensing Authority. She said Ying has certainly learned a lesson about DJ's; will certainly be a lot more selective, but saying Ying was responsible for the shooting in front of the restaurant which also happens to be in front of her own house should not be blamed any more than she should be herself. She asked that the Board allow her to follow the instructions of the police department and keep the entertainment license as there are no problems with these other nights.

Mr. Hoxie stated apparently in the last three weeks there has been less noise – is there anything that would continue to happen perhaps? The only change in the last 3 weeks when it has been better is possibly because the DJ on the night of the shooting has not been there.

Officer Maher asked the licensee if anyone from the police department to the best of her recollection had had to visit her for any reason prior to the new DJ within the last year? She said no, not prior to the entertainment. Officer Maher asked as the type of entertainment changed, how did the crowd change? Yes it did; during restaurant hours – people of all ages but primarily adults; after the music started it was a younger crowd 21 years and up. Officer Maher stated that the police department holds information sessions every year. He asked if Ying has attended any of the police department sessions given for licensees? The answer was no. He then asked how many people are allowed in each area of the establishment? Ying said in the sushi bar to the right as you walk in – 20. In the larger space where the entertainment takes place it is 50; and 20 outside. The total is 85. Officer Maher read from the license saying she is allowed 30 at the tables and 9 at the bar in the first area, and in the sushi area 30 at tables and 6 at the bar? She agreed. He asked how much food service they do after 10 pm on the nights when there is entertainment? Ms. Daly said on Thursdays there is a lot. Officer Maher then asked how many are on staff on entertainment nights? The answer was total of 8-9. How many are security? 3. How are they paid? Cash. Are there any background

checks? Ms. Daly said an application is filled out and they check the references. Do they pay tax on the cash paid? He said they 1099 the security people. He asked what happened that night and how she responded to the shooting. There was discussion between Ying and Mrs. Daly but no direct testimony.

Officer Maher asked again about his visit in November – does she recall what he told her about the entertainment drawing a different crowd? Did she recall why he was in there? She said yes. She said she found it hard to believe about the drug dealers, she said she did not know which ones were the drug dealers. She knows most of the people – she would like the police to help in telling her who the bad people are, who sells drugs in her place. She said she sees all the people landscaping, she knows them; the dishwasher, the cook, other people who work around here in Hyannis. She said he can come check every night right now – Friday, Saturday, Sunday even Wednesday right now - she would like him to come and tell her which ones and she will not let them in. Officer Maher asked her again if she fired the DJ on the night of the shooting as it said in the paper; she said no. He said the Cape Cod Times quoted her as saying she did fire him and his music was partly responsible for the shooting; she said she had talked to him about her Wednesday nights being top 40 and today music and he not supposed to play hip hop, and the crowd he draws she doesn't like it. Since they don't have that DJ they don't have that crowd in the restaurant right now. Officer Maher also asked her about the article where she was quoted as saying that she cannot be held responsible for the patrons and that she answered she cannot control all of the people...what does she have to say about that? Mrs. Daly said that as a reporter, she doesn't think what is printed in the paper is necessarily gospel. Mr.; Hoxie stated she could deny the quote if she liked. Officer Maher repeated that she was quoted in the article as saying she could not control the patrons and cannot control all of the people. Why did she say that? Ying asked how she could control the people shooting?

Mr. Burman asked if she was familiar with the Town of Barnstable Rules and Regulations regarding the privileges and responsibilities of having an all alcohol pouring license? She answered yes, more than once. Mr. Burman then asked how she could not understand that she and her staff are responsible for her premises and all of the environs around it? He said that is her responsibility as a license holder. Ms. Daly stated what Ying is saying is that she could not be responsible for the people doing the shooting outside, and Ms. Daly said she thinks this is true. She does not think they were on the premises, thinks they were on the street.

Officer Maher said as much as he appreciates the fact that the licensee has someone here to help her, he feels the licensee's helper is actually interjecting her own comments and opinions rather than what really should be direct testimony from the licensee.

Mr. Hoxie stated the Authority will take that into consideration and is well aware of Officer Maher's concerns.

Mr. Sullivan stated he feels the employer is very diligent in some areas and trying to do a good job, however, there are certain things that bother him – not aware of the capacity and was inaccurate; has not attended any of the seminars the police provide – they go out of their way to try to help and thinks this licensee needs a lot of help - that bothers him. He feels she needs that help. He feels the Officer's testimony is very credible. Observations of his own about when the officer went to the establishment on November 20, 2010 should have been taken much more seriously by the licensee. He did point out some people to her then and Mr. Sullivan thinks she did not believe him. The officer was trying to help her, not cause her problems. He thinks the advice was ignored. She certainly has a lot of support. He said he thinks a lot of it relates to the music. He then said the original complainant has even indicated a willingness to work with her to mitigate some issues and he has not even been given much consideration. He agreed this might have gotten exposed in the wrong way on the front page of the paper but this is causing a lot of other people anxiety.

Mr. Hoxie closed the hearing for direct testimony and asked for summation from the police department and the licensee. At that point, the Licensing Authority would base its decision solely on the testimony and after that any comments, which would not have bearing on our decision, could be heard.

Ms. Daly stated first of all that if in speaking for Ying, she in any implied or said anything against the honesty of the officer she did not intend to do that. She said she thinks Ying realizes there was a very difficult situation which should have been addressed a little sooner, which was the noise. She said she thinks the advice given to her by the officer given his experience was valid and that she should attend the next seminar(s) the police offer, that she will not have this kind of entertainment at all any more; she has other entertainment which does not attract this kind of attention. She will make every effort to perhaps hire security personnel experienced enough and aware of the people who might be troublemakers if coming in.

Officer Maher stated they do not dispute the fact that the restaurant is good and the manager has done a great job, there have been many people testifying on its behalf. The problem has been with the change in the entertainment in late October causing a change in the type of people that frequent the restaurant/club. On the night of the shooting, the victim was found to have over 60 encounters with the police department and was only 23 years old. The shooting was not a random act; that specific person was the target. The victim a week later was also arrested for carrying a Tech 9 in another town just off Cape. It was not a random act; he was inside the restaurant before the shooting. As you might have read in the papers, There were 6 rounds fired that night; 4 hit him and 2 didn't; those 2 rounds were lodged in a car and somewhere else. It was not a random act. The victim was there as a result of the entertainment that was provided by the establishment. The licensee has also testified that she has no idea how many people the establishment can hold. This goes back to being able to provide the amount of supervision that is

needed to have this type of entertainment. We also had direct testimony from the DJ of the licensee telling him not to talk to the police department; to me that is the most significant problem here today. We also had testimony here today that he saw someone under 21 drinking there, which again goes back to inadequate supervision. The photos provided show that there was an increase in traffic in the area when this type of entertainment was provided. We had testimony from someone across the street as well as from Officer Maher that music could be heard outside the environs of the restaurant. I find it interesting that with regard to the article in the Cape Cod Times, until today there was no retraction or a second article, or anything from the licensee stating that she disagreed with what was written. In that article, the licensee actually states that the music was part of the problem that particular night. The licensee also states in that article that she can't control all the people, but as you all know, in our town rules and regulations, it states that the manager is required to control her patrons both inside and outside the establishment.

Mr. Hoxie then asked for public comment at this time.

Brian Joseph from West Barnstable testified that he has been a professional sound engineer and DJ for 25 years and said he finds it disheartening his comments will have no affect on the proceedings. He has found some major interpretation problems with the interpretation of the noise bylaw in Barnstable. On several private functions in the last year he has had to maintain sound for live bands where no one could tell him what the actual sound decibel limits or specific regulations are here, except for the 150 feet ordinance. He said that the average police officer or individual on the street would not necessarily even know what a decibel sounds was or how to interpret that decibel. He said that other towns on Cape Cod require police to have a sound meter with them so there is not an arbitrary decision; as far as he knows there is no current regulation in Barnstable. The problem is that that number is extremely subjective – lower frequencies travel further and for greater distance depending on environmental responsibility and several other factors occur as far as noise is concerned. On the noise violation for Ying's, he said he is concerned with any action the Board might take for Ying's considering what they had as being "loud or obnoxious noise." He likens that to a leaf blower at 5 am or a plane taking off or a bus being repaired. In addition, it is important to note that Ying and the restaurant, have made a big investment in hiring live local music – professional musicians, singers, songwriters, individual acoustic acts the he personally has attended and seen on Mondays, Tuesdays and other nights of the week. He makes his living from those individuals – by providing amplified sound for them to be heard in small or large venues professionally. If our Board imposes limits on types of music, it is also limiting the performing arts on Cape Cod and inhibiting his living as working for the live bands and owners. He asked the Board to very carefully decide on the entertainment license and protect the live local bands the he and several other performers work for. He says that is what he feeds his kids with and pays his taxes with, the money generated by those live bands and club owners like Ying who have put money forward to pay those individuals and in turn pay me.

He said he is a member of the hospitality industry (that is his day job). The number one complaint he receives from guests in the hotels he has worked for is that there is nothing to do; no live local music; no scene per se in the Town of Barnstable. This is a great concern because in other towns it is not a problem. His concern is the future possibility of the police department and regulatory agencies singling out certain businesses because they don't like the kind of music being played or the crowd it brings as it will put all of us at risk. I'm all for safety and have never once performed or set up at any venue I have ever felt threatened in or any way shape or form felt my safety was in jeopardy.

Candace Chambers, owner of House of Bud's spoke to the Board – stating that she is disappointed in what she is hearing; entertainment is a freedom, its creative, brings revenue to the Town, revenue to the venues, and to blame a specific type of genre is wrong. People are people. From April to the present they have owned the business and they have had no issues whatsoever. Sometimes you don't know who is coming through the door. As an owner or manager you can't say to someone, "you have a record so you're out the door." There would be lawsuits. If the people do nothing in front of you, how can you throw them out or not let them in? In regard to Ying's she said she can understand her position. You can watch them but can't accuse as soon as they arrive. She also stated that she has not herself received a seminar notice, was surprised to hear that.

Bill Cronin for Greater Hyannis Civic Association appeared next to speak. He read from a letter he presented to the Licensing Authority. Their purpose is to provide an active voice to represent the views of the citizens of Hyannis and West Hyannisport. It serves as a forum to discuss and develop consensus on the quality of life in the community, primarily the greater Hyannis area. At last week's meeting it was voted unanimously to ask the Board to take action on Ying's to restrict the entertainment license to return it to a good business partnership with the community. The Association believes it is the type of music they started having recently, the same type which was present in other local establishments where there were serious problems and stated it is this type of music which leads to violent acts in the town. It is not conducive to a safe environment. They ask for what they believe to be a reasonable compromise - a limit to the number of entertainers to a piano player and a closing time of 11 pm. He said that recent events at Ying's have only served to perpetuate the negative perception of our community and we need to do whatever we can to reinforce the appeal of Hyannis as a shopping and entertainment destination.

Mr. Martinez came forward to testify; he came here from California about 3 weeks ago. He met Ying in 1989. He came here and worked for her, and she always seemed to care about everything she was doing. He noticed she is now uncomfortable because she thinks people are harassing her and she really cares about people. She is not doing bad things. Ever since the police came to the restaurant, they have been trying to make changes – last drinks at 12:30 to give people a chance to drink the last drink and cool down before leaving. No-one at

1:00 except employees cleaning up. He has felt secure there.

Derek Pattison from Hyannis (4 yrs) came forward as resident of Hyannis and a restaurant manager. Recently had to get re-certified in alcohol service. Nowhere in the certification process was there anything about guns or firearms. He did not have to be certified in firearms; as managers they are responsible for safe alcohol service to their guests. They are responsible for making sure their guests do not leave intoxicated to endanger themselves or anyone else. He thinks we are harping on the one shooting incident; and in the newspaper when Ying said she wasn't responsible for a firearm and for a shooting, he agrees with her. He does not see how that affects the license to serve alcohol.

Andy Iannello then appeared as a local musician who has played for a number of years locally. He urges the Board to take their time to consider this. There are many forms of entertainment out there - there is a broad spectrum on how they could impose sanctions – in revoking or limiting Ying's entertainment license. Our whole Cape culture and economy is based on tourism, which is deeply rooted in arts and culture and providing entertainment. He thinks Ying's is a quality establishment and none of us can control what a small percentage of crazy people do. He said he wanted to emphasize again that the shooting was not in front of Ying's but down the street, although it may have involved a patron who came out of Ying's. He believes as the previous spokesperson stated that restaurant owners and bar owners cannot be responsible for the actions of individuals after they have left their premises. Guns don't kill people, people kill people. He believes this owner should be given the opportunity to comply with the Town's wishes.

Mr. Hoxie opened the hearing to discussion of the Board. He asked for the allegations one at a time. It is a fine line when you are talking about limiting a type of entertainment.

With regard to Complaint 1 – Mr. Hoxie stated that the statute (chapter 140) reads “the entertainment together with activities affecting the health and safety and order of the public,” and asked for comments from his colleagues on that. Mr. Burman agreed with Mr. Hoxie that it is a grey area; not sure we have a total violation.

With regard to Complaints 2, & 5 address the noise caused by the entertainment: Mr. Hoxie stated that you could say certain types of entertainment causes certain other activity. Mr. Sullivan commented this is probably an issue we can deal with – you can always hear some noise. But if people who live in the area are complaining, they have the right to live in peace and quiet, even though the business has the right to make a living. It seems that the complainant is willing to work with the licensee and the licensee is willing to work with the neighbors on the noise statute.

Mr. Hoxie stated he believes 2, 3 & 5 have all been proven in his opinion. He said unless the Board disagrees, he would say that on all but #1 he would like positive findings of guilty.

Mr. Sullivan stated we haven't dwelled much on the noise outside. His observation of physically going down there is that there are 8 parking spots there and traffic parked bumper to bumper in front of the establishment also causes a problem. There are also comments as to where the shooting took place – stating it didn't happen on the establishment premises. What Mr. Burman found most disturbing was the hindering of the officers' ability to investigate properly – no-one refuted that. According to Officer Maher the employees were told not to talk to the police officer and no-one refuted that. That is something that just doesn't fly with me.

A motion was duly made by Gene Burman on R & Y Enterprises, Inc., d/b/a Ying's Sushi Bar & Lounge, 59 Center Street, Hyannis, Tanida Suriyawong, Manager, holding an All Alcohol Common Victualler License, a Daily Live Entertainment and Sunday Live Entertainment License that: (1) It is in violation of the General Laws of the Commonwealth of Massachusetts, Chapter 140, Section 183A whereby the entertainment of the establishment and the activities of the licensee along with its patrons did adversely affect the health, safety and order of the public by causing disruptive and criminal activity which was also alleged in two written complaints from a citizen of the Town who lives in the area; that the evidence indicates this is true. Paul Sullivan seconded the motion, on the basis that it probably would not have happened if the licensee had paid more attention to suggestions in November by the police. The vote on the motion was unanimous. Mr. Hoxie reiterated that that finding does not necessarily mean that the type of entertainment was the problem, but was true in combination with the other activities.

A motion was duly made by Gene Burman on R & Y Enterprises, Inc., d/b/a Ying's Sushi Bar & Lounge, 59 Center Street, Hyannis, Tanida Suriyawong, Manager, holding an All Alcohol Common Victualler License, a Daily Live Entertainment and Sunday Live Entertainment License that: 2) It allowed an increase in the noise level in the area though the entertainment provided, the patrons entering and exiting the establishment and an increase in vehicle traffic along with vehicles being parked on the area of the premises; that the evidence indicates this is true. Mr. Sullivan seconded based on his comments about the parking situation. The vote was unanimous.

A motion was duly made by Gene Burman on R & Y Enterprises, Inc., d/b/a Ying's Sushi Bar & Lounge, 59 Center Street, Hyannis, Tanida Suriyawong, Manager, holding an All Alcohol Common Victualler License, a Daily Live Entertainment and Sunday Live Entertainment License that: 3) It violated the Town of Barnstable Code, Rules and Regulations of the Licensing Authority Chapter 501, Section 8 by failing to ensure a high degree of supervision over the conduct of the licensed establishment at all times; that the evidence indicates this is true. Mr. Sullivan seconded the motion and the vote was unanimous.

A motion was duly made by Gene Burman on R & Y Enterprises, Inc., d/b/a Ying's Sushi Bar & Lounge, 59 Center Street, Hyannis, Tanida Suriyawong, Manager,

holding an All Alcohol Common Victualler License, a Daily Live Entertainment and Sunday Live Entertainment License that: 4) It violated the Town of Barnstable Code, Rules and Regulations of the Licensing Authority, Chapter 501-9B by hindering or delaying a Police Officer in the performance of his/her duties during the investigation of the shooting on January 6, 2011; that the evidence presented indicates that this is true. The motion was seconded by Paul Sullivan and a unanimous vote taken that this is true. Mr. Sullivan would like to change the wording in the motion to the licensee "being non-cooperative" rather than "hindering." That change was approved unanimously as well.

A motion was duly made by Gene Burman on R & Y Enterprises, Inc., d/b/a Ying's Sushi Bar & Lounge, 59 Center Street, Hyannis, Tanida Suriyawong, Manager, holding an All Alcohol Common Victualler License, a Daily Live Entertainment and Sunday Live Entertainment License that: 5) It allowed the entertainment at the licensed premises to be heard outside the boundaries of the licensed premises in violation of Town of Barnstable Code, Rules and Regulations of the Licensing Authority Chapter 501-10. The evidence indicates that this is true. Mr. Sullivan stated he very reluctantly seconds. The vote was unanimous.

A motion was duly made by Gene Burman for a guilty finding on all counts, which motion was seconded by Paul Sullivan, and a unanimous vote taken individually for all counts being found guilty.

Mr. Hoxie asked the licensee what she thinks would be fair as punitive action. Ms. Daly asked Mr. Hoxie what would be allowed...he said it could be anything from revocation to modification to being placed on file as a warning. After conferring with Ying, Ms. Daly stated that naturally, they think it should be placed on file as a warning and in future they will make every attempt to do everything to the letter of the law. This has been a great awakening and very sad situation. Mr. Hoxie confirmed with her that they would like a warning on each of the 5 specific charges? She said yes.

Officer Maher stated in regard to the 5 specific charges, two specifically carry the most weight: 1) the lack of supervision and 2) delaying or not being cooperative as being the most severe of the offenses. He stated that the police department has worked very hard over the past few years to try to maintain a dialog and communicative atmosphere with the different establishments and the police department. With that we hold seminars that everyone is aware of, go out and do compliance checks, talk to them about what they need to do. However, in this particular case, his licensee tried to thwart the police department on the night of the shooting and he thinks a clear message needs to be sent to the licensee as well as other licensees that this type of behavior cannot and will not be tolerated. He proposedHe said there was a shooting that night and in response to that the licensee said "don't talk to the police department." The police department's recommendation for the count of hindering the police (or as Paul Sullivan suggested, "lack of cooperation with the police," a 30 day suspension. On the lack of a high

degree of supervision charge, he proposes a sanction of 30 days concurrently with the other offense, as this goes hand in hand with hindering. Two different people have stated that the licensee really didn't have any idea what was going on in the establishment that night. I spoke to another individual who stated there is underage drinking going on as well. There are questions as to how people are being paid. There are questions as to how the process of security is being done. He stated that when the restaurant is run just as a restaurant it is a great restaurant. But when the entertainment is added, and it is being run as a nightclub or bar, it falls apart. This is prevalent all over town. On the noise and safety issues, he said in and of themselves he proposed a warning for this to be filed. He stated the entertainment being provided caused this problem, and suggests the closing hour for entertainment be rolled back to 11 pm starting immediately.

Mr. Sullivan stated his thoughts would be what the licensee suggested, except that rather than filing, the absolute minimum we should impose is a warning; he thinks their suggestion is at one end of the spectrum and the police's at the other. He said that although he respects the officer's suggestion and opinion, he feels that something in the middle would be more appropriate to these circumstances. Mr. Hoxie stated as the officer pointed out, that #3 & 4 are the most grievous. It is obvious this Manager needs some help with supervision. He then entertained motions.

A motion was duly made by Gene Burman for the following sanctions:

Count 1: The Licensee be given a warning and the offense be filed; seconded by Paul Sullivan and the vote was unanimous.

Count 2: The Licensee be given a warning and the offense filed; seconded by Paul Sullivan and the vote was unanimous.

Count 3: The Licensee be given a 30 day suspension to commence January 6, 2012; Paul Sullivan asked to amend the motion to 15 days, which emendment was not accepted. The original motion of 30 days was then seconded by Mr. Sullivan. The vote was Gene Burman and Martin Hoxie yay; Paul Sullivan then acquiesced and voted yay as well.

Count 4: The Licensee to be given a 30 day suspension to commence January 6, 2012; seconded by Paul Sullivan, and the vote was unanimous.

Count 5: The Licensee to have its entertainment license modified to terminate at 11 pm rather than 12:45 a.m.; this was seconded by Paul Sullivan, and the vote was unanimous.

Show Cause Hearing: Show Cause Hearing for Cape Cod Precious Gems & Coins, 48 Iyannough Road, Hyannis, MA, Carl Marchetti, Manager, for revocation of its Junk Dealer License as a result of information presented to the Licensing Authority by Detective Sgt. John Murphy of the Barnstable Police Department at the December 7, 2009 Licensing Authority Hearing for failure to comply with the Town of Barnstable Rules and Regulations under Chapter 502 regarding non-reporting of items purchased for sale, that it purchased items which appear on a list of stolen

property, and a determination that Mr. Marchetti is an improper person to hold a Junk Dealer License, to show cause why its Junk Dealer License should not be permanently revoked. Continued from 8/10. Along with this hearing, the renewal/non-renewal of the Junk Dealer License for 2011 will be determined.

Mr. Hoxie informed the Board and the public that Attorney Atwood has requested a continuance until June as this case is still in Superior Court. Mr. Hoxie advised that the June hearing will be June 20, 2011 and that the suspension remain in full force and effect.

A motion was duly made by Gene Burman, seconded by Paul Sullivan, and a unanimous vote taken to continue this hearing until June 20, 2011, and that the suspension remain in full force and effect.

Renewals:

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

Lodging House:

Hostelling International – Hyannis

A motion was duly made by Mr. Burman, seconded by Mr. Sullivan and a unanimous vote taken to approve the Lodging house renewal above.

Common Victualler:

Blue Dog

A motion was duly made by Mr. Burman, seconded by Mr. Sullivan and a unanimous vote taken to approve the Common Victualler renewal above.

Business Meeting:

The Open Meeting Law handout was discussed by the Board members and no-one indicated that they would attend. Mr. Geiler suggested they think about it as the Attorney General's Office is paying special attention to this matter.

The meeting was adjourned at 12:20 p.m.

Respectfully submitted,

Christine P. Ade, Recorder

Paul Sullivan, Clerk

Town of Barnstable Licensing Authority Town of Barnstable Licensing Authority