



Town of Barnstable

Regulatory Services

Thomas F. Geiler, Director

Licensing Authority

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BARNSTABLE LICENSING AUTHORITY LICENSING HEARING MINUTES

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

June 20, 2011

A regular meeting of the Barnstable Licensing Authority was held on Monday, June 20, 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, Richard V. Scali, Consumer Affairs Supervisor, Lt. JoEllen Jason and Patrolman Steve Maher, Liaison Officers from the Barnstable Police Department, and Christine Ade, Recording Secretary.

Hearings:

One Day All Alcohol and One Day Entertainment License: Application of Peter Davies on behalf of the Wianno Club Tennis House, 82 Warren Street, Osterville, for a One Day All Alcohol License and a One Day Entertainment License for a Social Tennis Mixer to be held on July 22, 2011 at 5:00 pm at the Tennis House, which location is not covered under the licenses held by the Club for property across the street.

Attorney Albert Schultz appeared for this application. This one day license is needed as the Tennis Club is not considered part of the Wianno Club's yearly club all alcohol licenses in the license description. Trained bartenders will serve and the Manager of the Wianno Club will serve. The Wianno Club is a non-profit so they do qualify for an all alcohol one day license.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Peter Davies on behalf of the Wianno Club Tennis House, 82 Warren Street, Osterville, for a One Day All Alcohol License and a One Day Entertainment License for a Social Tennis Mixer to be held on July 22, 2011 from 5:00 pm to 9:00 pm at the Tennis House, which location is not covered under the licenses held by the Club for property across the street.

One Day Wine & Malt and One Day Entertainment Licenses: Application of Marilyn Fuller for Lucy Loomis on behalf of The Sturgis Library, 3090 Main Street, Barnstable for a One Day Wine & Malt License and a One Day Entertainment

License for a fundraising event on June 26, 2011 with food, soft drinks, beer and wine and a guitar player. The library has requested waiver of fees for this fundraiser.

Tom Prince, a trustee of the library, appeared. It is from 3-6 pm; they have a reciprocal agreement with St. Mary's Church for parking. The alcohol will be served by adults only. \$15 advance tickets – they have a Red Sox/Yankee ticket for August..

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Marilyn Fuller for Lucy Loomis on behalf of The Sturgis Library, 3090 Main Street, Barnstable for a One Day Wine & Malt License and a One Day Entertainment License for a fundraising event on June 26, 2011 with food, soft drinks, beer and wine and a guitar player. The library has requested waiver of fees for this fundraiser and the request was granted.

Sunday All Alcohol and Sunday Entertainment Licenses: Application of Todd Walantis for an All Alcohol and Entertainment License for the 3rd annual Cape Cod 5000 Fishing Tournament, P.O. Box 46, Osterville, for Cape Cod Child Development, for a fundraising striped bass and bluefish tournament taking place June 25 and 26, 2011. There will be an awards party with a barbeque, all alcohol and entertainment (singer, announcer). It will be held at Oyster Harbors Marine from 3:00 pm to 8:00 pm on June 26, 2011.

Todd Walantis appeared for this application. This party after the tournament is from 3-8; there is an acoustic guitar. They use wrist bands for the party. Most are already customers of Oyster Harbors Marine. They wrapped up before 7 last year. Everyone is tired by then. They will use the same service for alcohol as last year.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Todd Walantis for an All Alcohol and Entertainment License for the 3rd annual Cape Cod 5000 Fishing Tournament, P.O. Box 46, Osterville, for Cape Cod Child Development, for a fundraising striped bass and bluefish tournament taking place June 25 and 26, 2011. There will be an awards party with a barbeque, all alcohol and entertainment (singer, announcer). It will be held at Oyster Harbors Marine from 3:00 pm to 8:00 pm on June 26, 2011.

Special Alcoholic License for Farmer's Market: Application of Rob Russell on behalf of Westport Rivers Vineyard and Winery, 417 Hixbridge Road, Westport, MA for One Day Permits for Wine Tastings and sale of wine products at the Osterville Farmer's Market, 155 West Bay Road, Osterville, on Fridays from June 24th to September 30, 2011 from 9:00 am to 1:00 pm.

Mr. Russell appeared for this application. This will be at Osterville Farmer's market alternate weeks from the other winery.

Mr. Burman is confused as to what the request is – it is alternating Fridays. How will we know which one will be there? Mr. Scali asked if there is a schedule – we would like to have it. He stated they will get that to us. Mr. Scali asked if there are others who will be coming in – Mr. Russell stated this year it will be the two. His winery and the other one are also participating at another market on the alternate weeks. Mr. Burman stated it may be confusing for people who buy one week and come back the next and it is different wines. Mr. Scali asked if they have glass or paper – they have glass as well and will not be wandering off – there are usually only a few people at one time (it is a 10 x 10 tent). Their goal is to get them to visit them at their farms. Mr. Geiler asked the size of the samples – they are ½ to 1 oz each and keep it at 4 total oz served. Mr. Geiler stated we put no restrictions on the other one and shouldn't on this one. If you are approving the sale what difference does it make if there are two?

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Rob Russell on behalf of Westport Rivers Vineyard and Winery, 417 Hixbridge Road, Westport, MA for One Day Permits for Wine Tastings and sale of wine products at the Osterville Farmer's Market, 155 West Bay Road, Osterville, on Fridays from June 24th to September 30, 2011 from 9:00 am to 1:00 pm subject to the Licensing Office receiving a printed schedule.

One Day All Alcohol License: Application of Olive Chase, The Casual Gourmet. 31 Richardson Road, Centerville, on behalf of the Heritage Museum & Gardens, 315 Main Street, Osterville, outside in a tent for a One Day All Alcohol License for a fundraising gala for the museums. The event will be cocktail hour and dinner, on July 9, 2011 from 5 pm to 10 pm.

Mary Lyons appeared for Olive Chase. They have done this before.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Olive Chase, The Casual Gourmet. 31 Richardson Road, Centerville, on behalf of the Heritage Museum & Gardens, 315 Main Street, Osterville, outside in a tent for a One Day All Alcohol License for a fundraising gala for the museums. The event will be cocktail hour and dinner, on July 9, 2011 from 5 pm to 10 pm.

3 One Day All Alcohol, 2 Daily Entertainment and a Sunday Entertainment License: Application of Regina Bisgouris on behalf of St. George Greek Orthodox Church, 1130 Falmouth Road, Centerville, for 3 One Day All Alcohol licenses, Two Daily Entertainment Licenses (a 405 piece band) and a Sunday Entertainment License for July 15, 16 and 17, 2011. Times are July 15 from 4 pm to 11 pm, July 16 from 11 am to 12 midnight and July 17 from 11 am to 6 pm. This is their annual fundraising Grecian Festival.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to continue the application of Regina Bisgouris on behalf of St. George Greek Orthodox Church, 1130 Falmouth Road, Centerville, for 3 One Day All Alcohol licenses, Two Daily Entertainment Licenses (a 405 piece band) and a Sunday Entertainment License for July 15, 16 and 17, 2011 to June 24, 2011 at 200 Main Street, Hyannis, at 9:30 a.m. as no-one appeared for the application. Times are July 15 from 4 pm to 11 pm, July 16 from 11 am to 12 midnight and July 17 from 11 am to 6 pm. This is their annual fundraising Grecian Festival.

Sunday Entertainment License: Application of Jason Boudrot for All Star Jam, 40 Rosa Lane, Marstons Mills for a Sunday Entertainment License for an All Star Jam concert to be held on the stage on the Hyannis Village Green on July 10, 2011 from 9:00 am to 8:00 pm, with live music and bands performing.

Jason Boudrot appeared for his application. This will involve 12 local bands – the charity is the Arc Foundation which protects the rights of disabled people. It is a free event but they will collect donations. He has the permit for the stage.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Jason Boudrot for All Star Jam, 40 Rosa Lane, Marstons Mills for a Sunday Entertainment License for an All Star Jam concert to be held on the stage on the Hyannis Village Green on July 10, 2011 from 9:00 am to 8:00 pm, with live music and bands performing.

One Day Wine Only and One Day Entertainment License: Application of Stephen Hemberger on behalf of the Historical Society of Santuit & Cotuit, 1148 Main Street. Cotuit, outside in a tent for a One Day Wine Only License And a One Day Entertainment License (a jazz/rock band) for a fundraising gala for the museum. The event will run from 5:00 pm to 9:00 pm.

Mr. Hemberger appeared for the application. He is the community liaison person for the society. This fundraiser is for the Society on July 16th. There will be a band and about 10 food vendors. It will be on their grounds. Mr. Burman asked that the band keep its amplification down as it goes to 9 pm; Mr. Hemberger stated there will be no amplification.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Stephen Hemberger on behalf of the Historical Society of Santuit & Cotuit, 1148 Main Street. Cotuit, outside in a tent for a One Day Wine Only License And a One Day Entertainment License (a jazz/rock band) for a fundraising gala for the museum. The event will run from 5:00 pm to 9:00 pm.

New Annual Common Victualler License: Application of John A. Enright, d/b/a Subway Sandwiches, Cape Cod Mall, 793 Iyannough Road, Hyannis, Geoffrey

McAbee, Manager, for a New Common Victualler License, with Mall seating, the hours of operation to be Mall hours.

No-one appeared for this application.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to continue the application of John A. Enright, d/b/a Subway Sandwiches, Cape Cod Mall, 793 Iyannough Road, Hyannis, Geoffrey McAbee, Manager, for a New Common Victualler License, with Mall seating, the hours of operation to be Mall hours, to June 24, 2011 at 200 Main Street, Hyannis, at 9:30 a.m.

New Class II Auto Dealer License: Application of Tillo's Cars and Trucks, Inc. for a new Class II Auto Dealer License at 20 Bearnse Road, Hyannis, Zach Tillo, Manager, with a total of 11 vehicles on site.

Zach Tillo appeared with Paul Tardif, Attorney. He stated there has been a license there for Liberty Motors for 11 cars. There will be no changes. Mr. Burman reiterated the 11 is ALL vehicles on site – customer, employee, etc.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Tillo's Cars and Trucks, Inc. for a new Class II Auto Dealer License at 20 Bearnse Road, Hyannis, Zach Tillo, Manager, with a total of 11 vehicles on site.

New Annual Common Victualler License: Application of James Turi and Brian Dixon, d/b/a Subway #29525, 251 Iyannough Road, Hyannis, Paula Fee, Manager, for a New Common Victualler License, with seating for 36, the hours of operation to be 7 am to 10 pm.

Mr. Turi appeared for this application – they are a management team. Ownership was transferred a few weeks ago. They will open Wednesday if approved. Mr. Scali questioned the lease, sub-lease, etc. The sublease is in the names of the 2 individuals and the application was in the corporate name. He asked why Subway does this. Subway holds all master leases and subleases to each franchise so they have control of the license. For liability purposes for us it should all match – these individuals got the insurance in their own names. Mr. Scali stated he just wants this on record as being what is going on.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of James Turi and Brian Dixon, d/b/a Subway #29525, 251 Iyannough Road, Hyannis, Paula Fee, Manager, for a New Common Victualler License, with seating for 36, the hours of operation to be 7 am to 10 pm.

New Class I Auto Dealer License: Application of Ford of Hyannis, Inc., d/b/a Balise Ford for a new Class I Auto Dealer License (new location only) at 90 High School Road, Hyannis, James E. Balise, Jr., Manager, with a total of 291 vehicles on site.

Attorney Jeffrey Ford appeared for this application. Mr. Balise will be happy to get back to the Board if they have any questions. The ownership is the same. This is a new location with a Regulatory Agreement and they went to Site Plan. Management contracts approved and new Business Certificates obtained.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Ford of Hyannis, Inc., d/b/a Balise Ford for a new Class I Auto Dealer License (new location only) at 90 High School Road, Hyannis, James E. Balise, Jr., Manager, with a total of 291 vehicles on site.

New Class I Auto Dealer License: Application of R&J Nissan, Inc., d/b/a Balise Nissan of Cape Cod for a new Class I Auto Dealer License (new location only) at 332 Falmouth Road, 45, 57, 32, 20 Corporation Street & 574 Bearses Way, Hyannis, James E. Balise, Jr., Manager, with a total of 355 vehicles on site.

Attorney Jeffrey Ford appeared again for this application. This a case where they are relocating this one as well. Ownership remains the same. All required information submitted; plans approved by Tom Perry and the Fire Department. Required contract with the Manufacturer and new Business Certificates approved. Mr. Scali advised the manufacturer letter approved “conditionally” and stated he knew the Business Certificates had to wait until today. He asked that Mr. Ford provide the final approval of the contract.

Mr. Geiler stated he assumes that the changes made were taking the car wash down, etc. That doesn't appear on the application – same with the building next-door; the small building. Then is states 332 and it is 322 for the main building. He indicated that 71 Corporation is not included?? 574 is the new property from the car wash. What about the corner properties – 516 and 528 (former car wash & Vehicle Vibes properties) and what about Lot 71??? And 332 should be 322. They don't seem to be part of the application. They would need to give notice for these lots. Mr. Geiler asked if there was a timing issue as it will need to be re-advertised; he thinks the law indicates you can't sell on those properties but you can display. He stated that the Board can approve today, and add the other lots at the next hearing. It was suggested that the attorney needs to check on those and give us an amended application to re-advertise for 516, 528 and 71 (and changing the number 332 as the Assessors' Office has it as 322). We should correct that at the same time

Mr. Burman suggested the Board approve subject to the changes being made. In the meantime they could have the authorization to go ahead with the move and Mr. Geiler indicated that it is not a fatal flaw. Attorney Ford will look into that. Mr. Geiler sees no reason to change the 355 number of vehicles in the approval, which is a

TOTAL not a display number. Attorney Ford was not sure why Mr. Perry wrote display on the plan.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of R&J Nissan, Inc., d/b/a Balise Nissan of Cape Cod for a new Class I Auto Dealer License (new location only) at 322 Falmouth Road, 45, 57, 32, 20 Corporation Street & 574 Bearses Way, Hyannis, James E. Balise, Jr., Manager, with a total of 355 vehicles on site subject to further modification.

Show Cause Hearing: Show Cause Hearing for Sam Diego's, 950 Iyannough Road, Robert Kershaw, Manager, as it has been reported to the Licensing Authority by the Barnstable Police Department that on May 5, 2011, Sam Diego's, 950 Iyannough Road, Hyannis, Robert Kershaw, Manager, holding an Annual All Alcohol Common Victualler License, did violate the Code of the Town of Barnstable, Chapter 501, § 7- I, "Whoever makes a sale or delivery of any alcoholic beverages or alcohol to any person under 21 years of age, either for his own use or for the use of his parent or any other person, or whoever being a patron of an establishment licensed under §12 or 15 of General Laws Chapter 138 delivers or procures to be delivered in any public room or area of such establishment any such beverages or alcohol to or for use of a person who he knows or has reason to believe to be under 21 years of age...shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than six months or both..."

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to continue the show cause hearing for Sam Diego's, 950 Iyannough Road, Robert Kershaw, Manager, as it has been reported to the Licensing Authority by the Barnstable Police Department that on May 5, 2011, Sam Diego's, 950 Iyannough Road, Hyannis, Robert Kershaw, Manager, holding an Annual All Alcohol Common Victualler License, did violate the Code of the Town of Barnstable, Chapter 501, § 7- I, "Whoever makes a sale or delivery of any alcoholic beverages or alcohol to any person under 21 years of age, either for his own use or for the use of his parent or any other person, or whoever being a patron of an establishment licensed under §12 or 15 of General Laws Chapter 138 delivers or procures to be delivered in any public room or area of such establishment any such beverages or alcohol to or for use of a person who he knows or has reason to believe to be under 21 years of age...shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than six months or both..."

at the request of the licensee's attorney to August 15, 2011.

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 and 2/14/11. Along with this hearing, the renewal/non-renewal of the Junk Dealer License for 2011-2012 will be determined.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to continue the 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 and 2/14/11. Along with this hearing, the renewal/non-renewal of the Junk Dealer License for 2011-2012 will be determined at the request of Mr. Marchetti's attorney to a hearing in October, 2011. (10/3 or 10/24).

Renewals:

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

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

CBA Snack Bar, 915 Craigville Beach Road, Centerville

Business Meeting:

Release of Executive Session Minutes, if any (1). There are no Executive Session minutes to release as yet.

Revoke and revise sanctions for violations imposed against R&Y Enterprises, Inc., d/b/a Ying's Sushi Bar & Lounge, Tanida Suriyawong, Manager, 59 Center Street, Hyannis, at the Licensing Authority Hearing on February 14, 2011. David Houghton appeared as attorney for the Town. He advised that This matter is back before us on a recommendation to revise the sanctions imposed on February 14th as both sanctions are under appeal – one to the ABCC and the other to Superior Court. Any appeal is always an uncertainty – in this case based on his dealings with the ABCC a 30 day suspension might prove a bit troublesome to uphold on appeal. He

mentioned the Kendrick's case which was sent back from the ABCC. He believes conversations with the attorneys from Ying's made it clear they realize the seriousness of the charges against them and they also want to get back to business as usual as soon as possible avoiding the type of clientele and music they had in the past. The recommendation is that the 30 day suspension be reduced to 10 days starting on January 6, 2012 provided there are no violations of any licenses under our jurisdiction except for a violation of the ABCC already pending. The 30 day suspension would be re-imposed should there be any other violations. He has a signed dismissal to file today with the court should their hours of 12:45 am for entertainment be returned as of August 1. If however there is a finding of violation on the entertainment in the interim, the hours would be returned to 11 pm with no appeal. He is prepared to file the dismissal today and has it in his file should the Board approve the recommendations today. He stated we have sufficient safeguards in place in case they do not comply. Adam Dupuis from Ardito, Sweeney, Stusse, their attorney, was present as well as the Manager from Ying's. In the case of the liquor violation dates it is between now and January 6th; the entertainment between now and August 1.

Mr. Burman stated he has some misgivings. It was exhibited that Ying runs a beautiful restaurant but her operation of a nightclub gives him some strong misgivings. He wants to hear what modifications she is planning to make in her entertainment. She, her head waitress, and the general manager went to the BPD seminar; let go some employees who were not supporting her cause – her bartender as well as her DJ. She has meetings with their employees and stressed with them the ID checks, crowd management, will have security if she believes there will be a lot of people there. Mr. Hoxie asked about the type of entertainment – she wants new age music as well as karaoke and piano. She does have a lot of young people and a large international crowd who come out later in the evening. She may hire another DJ, but will interview carefully to make sure she hires the correct one. Officer Maher asked if there is a violation before August 1st does it affect BOTH licenses? Attorney Houghton stated it does – both would go back to our 2/14 sanctions. Mr. Burman wanted to reiterate that Ying needs to really understand what the Board is saying. While we do not intend to persecute but we do intend to prosecute if there is a violation. Mr. Dupuis stated the manager, Yvonne, speaks very good English and will communicate everything to Ying. Mr. Burman reiterated she runs a superb restaurant but when it comes to a nightclub there are shortcomings. Mr. Scali wanted to make sure the entertainment is under HER control, not someone else's control. Mr. Sullivan wanted to confirm that any further violations will be disastrous to this licensee. Mr. Dupuis stated he has advised her of this.

The motions prepared by Attorney Houghton were duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve those motions as follows: "The suspension of Ying's Sushi Bar & Lounge All Alcohol Common Victualler License imposed on February 14, 2011, and sent to the licensee in its decision dated February 22, 2011, be revised from 30 to 10 days to be served

beginning January 6, 2012 unless the Authority finds a violation of any license held by Ying's Sushi Bar & Lounge within its jurisdiction from this date until January 6, 2012, in which case the full 30 day suspension is imposed to be served upon the finding of such violation except the pending underage serving violation brought by the ABCC and, provided Ying's Sushi Bar & Lounge dismisses its ABCC appeal of the February 22, 2011 decision imposing the 30 day suspension with prejudice and without further appeal.

Moved that the hours of entertainment at Ying's Sushi Bar & Lounge be revised from 11:00 pm to 12:45 am beginning August 1, 2011 unless the Authority finds violation of any license held by Ying's within the Authority's jurisdiction from this date until August 1, 2011 except the pending underage serving, in which case the entertainment hours would remain until 11 pm and Ying's Sushi Bar & Lounge dismisses its Superior Court appeal of the entertainment hours rollback with prejudice and without further appeal."

The Board members agreed to continue the hearing of the Greek Orthodox Church and the Subway at the Mall (which were not held as the applicants did not appear) to June 24, 2011 at 9:30 am at 200 Main. Licensing will advise the applicants. Meeting will take place unless Licensing contacts the Board members otherwise.

The meeting was adjourned at 10:35 am.

Respectfully submitted,

Christine P. Ade, Recorder
Town of Barnstable Licensing Authority

Paul Sullivan, Clerk
Town of Barnstable Licensing Authority