



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.
August 15, 2011**

A regular meeting of the Barnstable Licensing Authority was held on Monday, August 15, 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 & One Day Entertainment License: Application of Jeni Landers on behalf of Cape Cod Young Professionals for its 5th annual Back to Business Bash event to be held on September 15, 2011 from 4:30 pm to 8:00 pm at Rectrix Aerodrome, Barnstable Road, Hyannis, for a One Day All Alcohol License and One Day Entertainment License. They will also have a DJ entertaining.

Jeni Landers appeared for this application; their 5th annual Back to Business Bash (500-700 people). Never have had a problem. Approximately 25 restaurants participate. There is a DJ. The event is over at 8 pm.

Mr. Burman questioned the diagram – how will they control the alcohol? She said they have 3 confirmed liquor vendors – bottom right Cape Cod Beer; providing their own employees. V1 Vodka sends their own people and the wine comes from Yarmouth Wine and Spirits – served by students from Cape Cod Bartending.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Jeni Landers on behalf of Cape Cod Young Professionals for its 5th annual Back to Business Bash event to be held on September 15, 2011 from 4:30 pm to 8:00 pm at Rectrix Aerodrome, Barnstable Road, Hyannis, for a One Day All Alcohol License and One Day Entertainment License. They will also have a DJ entertaining.

One Day and Sunday Entertainment License: Application of Melissa Alexander for the Cats on the Beach Cat Show, 24 Residential lane, Blackstone, MA, for an Entertainment License and Sunday Entertainment License for its annual Cat Show to be held at Marstons Mills East, Horace Mann School, 760 Osterville-West Barnstable Road, Marstons Mills, MA on Saturday, September 17, 2011 from 7:30 am to 5 pm and Sunday, September 18, 2011 from 7:30 am to 4 pm.

Melissa Alexander appeared for this application. This has been on for about 19 years. They invite the local shelters; collect food and donate to the shelters. They have permission from the school.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Melissa Alexander for the Cats on the Beach Cat Show, 24 Residential lane, Blackstone, MA, for an Entertainment License and Sunday Entertainment License for its annual Cat Show to be held at Marstons Mills East, Horace Mann School, 760 Osterville-West Barnstable Road, Marstons Mills, MA on Saturday, September 17, 2011 from 7:30 am to 5 pm and Sunday, September 18, 2011 from 7:30 am to 4 pm.

One Day Entertainment License: Application of Lauren Titus on behalf of Independence House, 160 Bassett Lane, Hyannis, for an Entertainment License for a DJ to entertain outdoors on the property for its 5K Walk/Run to be held on October 1, 2011 from 9 am to 12 pm.

Lauren Titus appeared for this application which is their 8th walk but first time with a DJ. People gather for about an hour to start the event. They return to their parking lot where the DJ will announce prizes, etc.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Lauren Titus on behalf of Independence House, 160 Bassett Lane, Hyannis, for an Entertainment License for a DJ to entertain outdoors on the property for its 5K Walk/Run to be held on October 1, 2011 from 9 am to 12 pm.

One Day Wine & Malt: Application of Marilyn Fuller on behalf of Sturgis Library, 3087 Main Street, Barnstable, MA for a One Day Beer & Wine License for an event on September 17, 2011 at the library outside in a tent, from 5:30 pm to 8:30 pm.

Marilyn Fuller appeared for this application. It is joint with the Historical Museum. Parking outside and at St. Mary's. They expect no children. There is only one spot for beer and wine to be dispensed.

Mr. Hoxie asked about waiving the fee – it was voted to do so.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Marilyn Fuller on behalf of Sturgis

Library, 3087 Main Street, Barnstable, MA for a One Day Beer & Wine License for an event on September 17, 2011 at the library outside in a tent, from 5:30 pm to 8:30 pm.

LATE FILED – Two One Day Entertainment Licenses: Application of Charlene Dixon on behalf of Cape Cod Antique Dealers Association, Inc., 660 Samoset Road, Eastham for a two day Antique Show to be held at the Cape Codder Resort, Route 132, Hyannis, on August 3, 2011 from 5 pm to 8 pm and August 4, 2011 from 9 am to 4 pm (show has already taken place).

Ms. Dixon appeared for this application. It has always been held in Orleans in an un-airconditioned place. She had talked to promoters earlier in the year and did not know about these requirements. They are a non-profit. She stated it was successful and they will apply next year.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Charlene Dixon on behalf of Cape Cod Antique Dealers Association, Inc., 660 Samoset Road, Eastham for a two day Antique Show to be held at the Cape Codder Resort, Route 132, Hyannis, on August 3, 2011 from 5 pm to 8 pm and August 4, 2011 from 9 am to 4 pm (show has already taken place).

Mr. Scali stated Ms. Dixon was very very busy but Ms. Dixon was very cooperative. He also spoke to the Cape Codder people so future event people will be advised of our requirements. Mr. Geiler stated this is a new law; the State requires a Promoters permit and makes sure all the participants comply with requirements such as payment of taxes, etc. It is new to us as well. We are hoping all the other organizations are aware of this and get their applications in – whomever is running the event

LATE FILED – One Day Entertainment License: Application of Cynthia Hall on behalf of Osterville Historical Museum, 155 West Bay Road, Osterville, for a One Day Entertainment License for an antique show and sale with over 30 dealers, on August 18, 2011 at the museum from 9:30 am to 3:30 pm. Rain date is 9/19/11.

Mari Poss appeared for this application. It is a new thing for them.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Cynthia Hall on behalf of Osterville Historical Museum, 155 West Bay Road, Osterville, for a One Day Entertainment License for an antique show and sale with over 30 dealers, on August 18, 2011 at the museum from 9:30 am to 3:30 pm. Rain date is 9/19/11.

LATE FILED – Two One Day Entertainment Licenses: Application of Friends of Sturgis Library, 3087 Main Street, Barnstable, for an antique show to be held at the

Barnstable/West Barnstable Elementary School, 2463 Main Street, West Barnstable, on August 19th from 10 am to 5 pm and 20th from 10 am to 4 pm.

Jan Gow appeared for this application – it is their main summer fundraiser; they raise about \$1800 for the library fund. They did get the State Promoters license but found out when we called her that she also needed the Town license.

Mr. Hoxie asked the Board to approve waiving of the fee on this one as well.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Friends of Sturgis Library, 3087 Main Street, Barnstable, for an antique show to be held at the Barnstable/West Barnstable Elementary School, 2463 Main Street, West Barnstable, on August 19th from 10 am to 5 pm and 20th from 10 am to 4 pm.

New Annual Common Victualer License: Application of Junisa, LLC, d/b/a Creative Baking II, Michael's Creative Bakery & Sandwich Shop, 424 Main Street (rear), Hyannis for a new annual Common Victualer License, hours of operation to be 7 am to 8 pm, and seating for 26.

Mr. Thiel appeared for this application. He stated he did not realize they needed the Common Victualler License. He had the food service permit and occupancy certificate.

Mr. Burman asked about the number 26 – that is the Building Commissioner's number for their maximum.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Junisa, LLC, d/b/a Creative Baking II, Michael's Creative Bakery & Sandwich Shop, 424 Main Street (rear), Hyannis for a new annual Common Victualer License, hours of operation to be 7 am to 8 pm, and seating for 26.

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..."

Mr. Hoxie read the hearing notice and swore in witnesses.

Officer Maher presented the case. He and 2 other officers went to Sam Diego's – they were there as part of a grant. They were looking for service to minors. All three of them were asked for I.D. He noticed everyone over 21 was given a wristband. Steve himself was not ID'd – he also did not get a wrist band. The others ordered soda and he ordered a Bud Light – was served and not asked to show his wristband. He and the others later saw three girls who did not all look 21 – they were all drinking Corona's. Two showed ID to the officers; the 3rd only showed her wristband. She pulled out a Passport and a credit card was in there. The name and DOB were on the Passport but it took her a while to state the birthday. He asked her where she had been when using the Passport and she could not remember. He then asked to see the credit card, which had a different name on it than that on the Passport. She said it was her friend's – a male; but it was a female name. She then asked to go to her car for more ID. He went out with her to get the backup ID. While out there one of the other officers ran the car registration – it as the name of the person on the credit card, not the Passport. Officer Maher told her he did not believe her and was going to run the license through the system for a photo. She admitted that the passport was not her at that point. A cruiser came down and picked her up. Officer Maher went back inside and advised the Manager what had happened.

Attorney Charles Sabatt appeared to represent Sam Diego's. He stated he had no questions for Officer Maher. Officer Maher had no further comments. Attorney Sabatt stated that with regard to the event on Cinco de Mayo (5/5), Sam Diego's employs 100 people in season and 80 in off season. Has been very active in philanthropy. It is not a night club. It is a family restaurant catering to people of all ages. While there as a patron and as an attorney more recently meeting with Mr. Kershaw he noted that there are mostly older people and families there at all times he had been in there. It has never even had live entertainment. They have in place some very extensive procedures as well as an employee handbook stating people looking under 28 MUST be ID'd. In May of 2011 Mr. Kershaw and head bartenders attended the meeting at the Police Station regarding this and then Mr. Kershaw distributed an outline to his waitstaff and bartenders and now upped the age to 30 to ask for ID's. They maintain a bar manual with out of state ID info at each waitstation. They are trained. With respect to this particular night, the only ad they took out was a small one in the Cape Cod Times. However, this has become an unofficial holiday and many people come in. Being aware of this they prepared for it. This is their highest volume date of the year. They hired five attendants when generally they have none. These five (2 roamers, one at front and one at back door) had an ID procedure in place. After showing ID you were given a bracelet. The answer seems to be that Officer Maher did not get a bracelet as the person letting him enter knew him and who he was. He advised that the restaurant was at a heightened level of vigilance. However, this individual who was later caught as being a minor set up to defraud the restaurant and break the law. Looking at the

photos we don't know if she put her hair up and took it down or what; she did get by the guard at the door somehow. It was not carelessness on their part. He stated they also have a spotter service come in several times a year to make sure this does not happen. They were there on 4/29 coincidentally, and were each asked for ID at front and back bars. They noted that the bartenders checked all ID's; and also did not note any "over served" people. All the reports from late 2010 and 2011 were good reports from this service. The reports were entered into record – copies presented to the Board. The bottom line according to Attorney Sabatt is that Sam Diego's does request ID's, and although this is one of our most serious offenses, he asks the Board to consider the diligence of the restaurant, the length of their good service and the fact that the individual caught really tried hard to deceive Officer Maher. He asked for a probationary period for them; not a suspension. He noted that in our recent stings they passed and had a letter advising of same..

Mr. Burman brought up that there are myriad ways people try to get around the ID requirements. He expressed that Attorney Sabatt put on a fine presentation.

Mr. Hoxie asked Officer Maher for a recommendation. Officer Maher said Mr. Kershaw was contrite and stated they need to be more diligent as the wristbands were not checked by the barstaff always, which needs to be done. Young people today have incredible ways to get into places – he said that this same young woman had another "fake ID" a few weeks later. The staff did not have anything to show they were security (shirts, etc.). Overall however, this restaurant does a great job. Based on that and considering that typically the suspension would be a year from the date – which in this case falls on their most important night of the year – he recommends that they get a one day suspension which be held for 3 months and that they meet before next Cinco de Mayo with the police department. If no further infractions in that timeframe the charges be filed.

Attorney Sabatt again stated that if they have to close on this night (Cinco de Mayo) it would have a terribly negative impact on the public.

Mr. Scali also wanted the Commissioners to consider the ABCC offense on the same grounds from 2006/07. Officer Maher stated he DID take that into consideration when making his recommendation.

Attorney Sabatt said that the prior offense was sloppiness – they have taken the steps to correct that problem between then and now. He asked even with that in mind that the Board waive the suspension. What Mr. Kershaw recommended is that the wristbands need always to be checked by the bartenders. This will be in future manuals.

Mr. Sullivan also stated Attorney Sabatt put on a good presentation. He, however, does not want the probationary period to be 3 months but to be a year. He thinks that more appropriate for a 2nd offense.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken for findings that based on the charges, he found that there was no refuting of these charges and that the police department proved its case.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken that the licensee was guilty of the charges as filed.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken for sanctions as follows: A one day suspension on the charges to be served on 5/5/2012 and that it be suspended for 3 months. Neither Mr. Sullivan nor Mr. Hoxie seconded.

Mr. Sullivan then made a second motion for a 1 day suspension continued for one year; the penalty to be waived if no incidents within the next year (through August 15, 2012). Mr. Hoxie seconded and the vote was two yea and one nay; Mr. Sullivan yea, Mr. Hoxie yea, Mr. Burman nay.

Attorney Sabatt asked the Board to reconsider the probationary period running to 8/15/12, given there are so many trying to get through this safety net. Mr. Hoxie asked for comments from Mr. Scali – who stated it is usually more strict than this, typically with 1-3 day suspensions being given; he believes this ruling to be quite lenient. Mr. Hoxie stated he also believes the decision to be reasonable and doesn't see fit to change it.

Mr. Geiler stated there is something that hasn't been mentioned – the laws that make this so difficult also are for the ultimate protection of the public and server. A licensee has the responsibility to demonstrate that a reasonable person would “do what I have done.” He thinks making it the Licensing Authority's responsibility to fix the problem is not fair – burden should be on the Licensee. Attorney Sabatt stated they never implied this. Mr. Geiler stated it has been like this as long as he has been around – always people trying to get around being underage to get the alcohol.

Mr. Sullivan stated he fully understands what counsel is trying to get across. He stated with the previous incident as well as this one, and how serious it could get, he believes the one year probationary period is fair and appropriate.

Mr. Burman state up to a year and a half ago, the license holder was covered if ID was checked at entrance. Now however, the server himself or herself is responsible for service to an underage person if they don't see the ID themselves. He stated he is willing to compromise on the probationary period.

Mr. Hoxie stated that the sanctions voted on and passed will remain in effect.

Show Cause Hearing: Show Cause Hearing to determine whether the annual Junk Dealer License of Play It Again Sports, 25 Iyannough Road, Hyannis, MA, John Junkin, Manager should be modified, suspended or revoked as a result of a report

made to the Licensing Authority by the Barnstable Police Department that on July 6, 2011, it was found to be in violation of the Code of the Town of Barnstable, Chapter 502, Section 4B for failure to record purchases on purchase report forms, and Section 5B for failure to post the “notice sign” as required by Town Rules and Regulations, to wit: “The sale or attempted sale of property to a secondhand dealer without consent of the property’s owner is punishable by a civil violation penalty not to exceed \$300 per item. Don’t sell property without consent of the property’s owner. You will be held strictly liable for violation of this law.”

Mr. Hoxie read the hearing notice.

Officer Maher stated they had a meeting at the Police Station as well as visits to our licensees to show them what needed to be done and what their responsibilities were – providing electronic forms. He has been back 4 times to ask them to comply at which time they stated they would comply. In those conversations they talked specifically about cleats and things under a certain price not being important to report. He said that golf clubs are a big item taken by people in break in’s, etc. There was also no sign posted as required.

The Manager asked again about his July visit – Officer Maher stated they had been notified several times. The manager stated that the notice is now at both counters. They have been the owners for about 3 years. Their customers come in with a \$3 pair of cleats and a bunch of kids; they find the forms to be prohibitive – too lengthy for the small items. They understand the golf clubs are an issue. They have taken steps now to ask for ID for over 18 years old. That shuts down a lot of traffic coming in with people under 18. Going forward they are getting rid of the used golf club section. They are keeping lower cost equipment (all to be under \$45 in value) in the future. He stated they do not write any checks. The top price of the check would be \$45. They do not want to have to deal with the paperwork and issues with the police department.

Mr. Burman stated that he needs to be re-familiarized with the rules and regulations of a “price limit.” Officer Maher stated a lot of what they do is a trade; they bring something in and get something else. There is no need to report that. The \$3 and \$5 items do not warrant the paperwork. He stated above \$10 - \$20 you start to think about it. More expensive items definitely warrant the paperwork.

Mr. Hoxie asks if the police department would be satisfied with this.

Mr. Geiler stated if they do not wish to comply, do not want to do the paperwork, they do not deserve the license in the first place. Mr. Sullivan asked how many of the sporting goods stores do secondhand items? The manager stated they are the only ones. Mr. Sullivan stated that maybe there can be an understanding with the police department when the paperwork has to be done and when not.

Officer Mahher advised that the regulations state that ANY property brought in has to be reported. There is no way around it. They COULD be given a store credit possibly. The manager stated the customers want the cash. It was then stated by the Board unequivocally that every item must be reported. The manager stated that he has the right to choose to purchase something or not; he would rather not deal with that. The manager stated they will not do golf clubs now. Mr. Sullivan asked about hockey stuff, baseball stuff, football stuff?

Mr. Burman recommended they sit down with Officer Maher to fine tune what they need to do. Mr. Sullivan stated the reason for all of this is not to create problems for the licensee but because there is a reason for these rules and regulations because of what is going on in the community. Officer Maher recommends that on sections 4B and 4D – we show findings of responsible, impose 1 day suspension for each of those offenses and hold that for one year; on the failure to post the notice under Section 5B, he recommended a written warning be imposed.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken for findings that on the Ch. 502 4B, 4D offenses Play It Again Sports be found responsible as presented by the police department and on the Section 5D offense be found responsible as the case was presented.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken that the licensee was guilty as charged of all three charges.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken for sanctions as follows: On Sections 4B, 4D – that a 1 day suspension be imposed on each to be continued for 1 year, and a written warning to be imposed with regard to Section 5B.

Business Meeting:

Release of Executive Session Minutes, Ying's Sushi Bar & Lounge, from 5/16/11. Appeals have been formally withdrawn and Attorney Houghton has advised they can be released to the public. Licensing staff will notify the Clerk's Office. The Board agreed to release the Executive Session Minutes.

ABCC Advisory on Special Licenses at Municipal Golf courses – saying total number cannot be over 245 days. The Board discussed this briefly.

ABCC Advisory on Farmer/Brewer Licenses – Mr. Geiler stated the ABCC and Governor's Office will be looking at this a bit more in the future.

Advisory from the Comm of MA Executive Office of Public Safety, Dept. of Fire Services about the trailers at the last carnival; there were some violations. Mr. Scali advised he can write something up that temporary housing not be allowed in future as part of our license approvals. Mr. Geiler stated he was not aware of this

happening but it seems it is going on. Mr. Scali advised we should ask the question at our future hearings about where the workers would be staying. The Board can or cannot agree to this depending on whether they would comply with health and fire regulations. Mr. Scali stated we can prohibit or take on a case by case basis.

Mr. Burman again jokingly requested a briefcase.

The meeting was adjourned at 11:00 a.m.

Respectfully submitted,

Christine P. Ade, Recorder
Town of Barnstable Licensing Authority

Paul Sullivan, Clerk
Town of Barnstable Licensing Authority