



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.

October 3, 2011

A regular meeting of the Barnstable Licensing Authority was held on Monday, October 3, 2011. Chairman Martin Hoxie called the meeting to order at 9:30 A.M. He introduced Gene Burman, Vice Chairman; 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. Paul Sullivan, Clerk, was absent.

Hearings:

Five One Day Wine & Malt Licenses and Five One Day Entertainment Licenses:

Application of Pam Brimmer on behalf of The German-American Club of Cape Cod, for 5 One Day Wine and Malt licenses and 5 Daily Entertainment Licenses (2 or 3 piece bands) for the following dates: October 8, 2011, December 10, 2011, February 11, 2012, April 7, 2012 and May 12, 2012 for club dinner dances. Times are from 5:30 pm to 10:30 pm and all events will be held at the Fraternal Lodge, Route 28, Centerville.

Charles Fernhoffer appeared for this application. They are looking for 5 licenses for the dates noted for alcohol and entertainment. They have been doing this for quite a few years.

A motion was duly made by Gene Burman, seconded by Dick Boy and a unanimous vote taken to approve the application of Pam Brimmer on behalf of The German-American Club of Cape Cod, for 5 One Day Wine and Malt licenses and 5 Daily Entertainment Licenses (2 or 3 piece bands) for the following dates: October 8, 2011, December 10, 2011, February 11, 2012, April 7, 2012 and May 12, 2012 for club dinner dances. Times are from 5:30 pm to 10:30 pm and all events will be held at the Fraternal Lodge, Route 28, Centerville.

One Day Wine & Malt License: Application of Douglas Bohannon on behalf of Mid-Cape Home Centers, 1520 Route 132, Hyannis for a one day beer & wine license for a Chamber of Commerce Business After Hours event to be held at its establishment on October 19, 2011 from 5 pm to 8 pm.

Mr. Haskell appeared for this application. It is on October 19th. They expect 75-200 people that evening.

A motion was duly made by Gene Burman, seconded by Dick Boy and a unanimous vote taken to approve the application of Douglas Bohannon on behalf of Mid-Cape Home Centers, 1520 Route 132, Hyannis for a one day beer & wine license for a Chamber of Commerce Business After Hours event to be held at its establishment on October 19, 2011 from 5 pm to 8 pm.

New Annual Common Victualler License: Application of Rod, Tyler, Karen and Danielle Desimone, d/b/a TJ's Deli Subs, 1070 Iyannough Road, Hyannis, Ron Desimone, Manager, for a new Common Victualler License, operation to be 7 am to 9 pm with seating for 22 inside and 8 outside, when available. Continued from 9/19/11.

Rod DeSimone appeared for this application; he missed the last meeting – thinking it was Tuesday. They do breakfast sandwiches and full lunches. It is where Quizno's Subs used to be. They are operational already without seating.

A motion was duly made by Gene Burman, seconded by Dick Boy and a unanimous vote taken to approve the application of Rod, Tyler, Karen and Danielle Desimone, d/b/a TJ's Deli Subs, 1070 Iyannough Road, Hyannis, Rod Desimone, Manager, for a new Common Victualler License, operation to be 7 am to 9 pm with seating for 22 inside and 8 outside, when available.

Show Cause Hearing: A Show Cause Hearing has been called due to a report from the Barnstable Police Department of two violations of Pufferbellies, 183 Rear Iyannough Road, Hyannis, Sunny Aroustamian, Manager on July 19, 2011 of the Code of the Town of Barnstable Licensing Authority, to wit: Chapter 501, §7I, Sale or delivery of an alcoholic beverage to a person under 21 years of age (1 count) and of Chapter 501, §8A, Failure to ensure that a high degree of supervision is exercised over the conduct of the licensed establishment at all times. Hearing was requested to be continued by the licensee from September 19, 2011.

An email letter was received from Attorney David Lawler requesting a continuance of this hearing as the principal is out of the country and he is committed in Court.

Mr. Hoxie advised that the Licensing Authority will continue this hearing to October 24, 2011.

Show Cause Hearing: The Barnstable Police Department has reported to the Licensing Authority that on September 1, 2011, an undercover sting was conducted by them under written guidelines adopted by the Town of Barnstable Licensing Authority. The Police Department has reported to the Licensing Authority that on September 1, 2011 Hess Express 21243, 50 Ocean Street, Hyannis, Donald P. Vieira, III, Manager was in violation of the Code of the Town of Barnstable, Massachusetts, Part V, to wit: you did sell an alcoholic beverage to a person under 21 years of age in violation of Section 501-7, paragraph I of the Town of Barnstable Rules and regulations of the Licensing Authority as adopted in the Code of Regulations of the Town of Barnstable.

Mr. Hoxie read the hearing notice.

The local District Manager, Peter Frateroli, appeared for this hearing with Mark Barbie.

Mr. Hoxie swore in the people intending to testify.

Officer Maher stated the BPD conducted stings this summer, advertising the stings as noted in the newspaper (see attached) and advised attendee license holders at the seminars held this spring. The people used for the sting had only the money given to them by BPD; and they take that individual to the station to make sure they have a breath test, understand the guidelines. If a restaurant they were to purchase a beverage; if a package store they were to purchase a six-pack. They are instructed to leave if asked for ID.

On 9/1/11 the police department conducted a sting at 9:25. They sent the underage officer in, who purchased Twisted Tea for \$8.71. The other officer and Officer Maher witnessed the transaction. The underage officer identified the suspect with some particular identifying marks afterwards.

Mr. Hoxie asked for any questions. Mr. Burman asked about the phone number being inoperable as indicated on the police report – Officer Maher stated the number called was “out of service.” Licensing will check the number.

The District Manager stated that they did have an employee hired 8/25 – he failed within his 1st two shifts. Employees are to take a course after hire before going on the register – if alcohol or tobacco a screen pops up on the register asking for the birth date on the ID or to bypass the screen – that must have been what happened. They also have a separate scanning machine for ID's, which evidently this employee did not use. The employees are TIPS trained within 30 days of hire – telling them how to identify intoxicated people; they also have hired a company do internal stings – this location passed both. All employees must sign a cigarette and alcohol policy – agreeing to check ID for everyone under the age of 40. Failure to comply results in termination – which is what happened here.

Mr. Hoxie asked if anybody else was working at this time – the District Manager said he was alone. He evidently pressed over 40 and failed to use the ID machine.

Mr. Hoxie stated it appears everything was in place as far as training and policies for alcohol and tobacco. The Manager stated that late last year two stings were conducted by a company they hire. Mr. Burman asked how often their employees turn over – the District Manager stated about 80%. He worked 2 shifts prior to the sting date as a new employee. He is supposed to count cigarettes and lottery; clean up & sweep. The District Manager Pete Fraterola has been in place on Cape since 2009. He advised that the listed manager, Donald Vieira, stopped showing up for work in late July. They held his position open for a while to give him a chance to contact them but after our notice, they filed an application for a new manager but as she was not a citizen – she was advised by Licensing she could not apply. He wanted to put himself on as manager and stated he was told he could not file (this is not so; they were advised on the telephone it would be preferable to appoint a manager for the license who would be there more than 20 hrs. per week). He advised he had the application with him right now for a new manager. There is an employee there to train new hires but she is not a citizen so was rejected by Licensing. Mr. Burman stated we now have a rudderless operation – no-one is responsible on this license. He again stated they have not heard from Mr. Vieira. They did not expect what happened with Natalia not being accepted. Natalia was trained by a certified manager from Sandwich.

Mr. Hoxie stated this is about all they can do when a manager just abandons his position. Mr. Burman stated this is not acceptable as no-one is in control. Corporate promoted Natalia in the interim. The District manager again stated he applied as well but was rejected as he would not be there 20-25 hours a week (this is not accurate). Mr. Burman asked if they were not aware they must have someone responsible on the license.

Mr. Geiler stated what they have done does not meet the requirements of the law but life doesn't always cooperate. The law does not even accept co-managers. He believes the store should have acted much more quickly as our office is open 5 days a week to answer questions. He thinks it is the supervisor's responsibility to oversee this place in the interim. Mr. Geiler asked if the new person is TIPS trained; evidently she is not as yet. The one they are putting in place is the manager at North Street, and they will get her trained asap.

A motion was duly made by Gene Burman, seconded by Dick Boy and a unanimous vote taken for the following findings: The officers made the inspection, the testimony was credible and the allegations are admitted to by management.

A motion was duly made by Gene Burman, seconded by Dick Boy and a unanimous vote taken for guilt of the licensee with regard to the charge of violation of the Code of the Town of Barnstable, Massachusetts, Part V, to wit: you did sell an alcoholic beverage to a person under 21 years of age in violation of Section 501-7, paragraph

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

A motion was duly made by Gene Burman, seconded by Dick Boy and a unanimous vote taken for sanctions of the licensee with regard to the charge of violation of the Code of the Town of Barnstable, Massachusetts, Part V, to wit: you did sell an alcoholic beverage to a person under 21 years of age in violation of Section 501-7, paragraph I of the Town of Barnstable Rules and Regulations of the Licensing Authority as adopted in the Code of Regulations of the Town of Barnstable as follows: suspension for one week is the first impression. Mr. Scali stated there is one State violation before they took over (Christy's).

A second motion was duly made by Richard Boy for a 2 day suspension. Mr. Burman seconded. The suspension was unanimously passed, to be served September 1 and 2, 2012.

Mr. Hoxie asked for the application to be filed immediately. The District Manager asked if they could serve the suspension now. Mr. Hoxie stated it is our policy to impose the suspension 1 year from the date of the violation.

Show Cause Hearing: The Barnstable Police Department has reported to the Licensing Authority that on September 1, 2011, an undercover sting was conducted by them under written guidelines adopted by the Town of Barnstable Licensing Authority. The Police Department has reported to the Licensing Authority that on September 1, 2011 that Mini Food Mart, 252 Main Street, Hyannis, Asim Jamal, Manager was in violation of the Code of the Town of Barnstable, Massachusetts, Part V, to wit: you did sell an alcoholic beverage to a person under 21 years of age in violation of Section 501-7, paragraph I of the Town of Barnstable Rules and regulations of the Licensing Authority as adopted in the Code of Regulations of the Town of Barnstable.

Mr. Hoxie read the hearing notice. Paul Tardif, Attorney, appeared with Asim Jamal, Manager.

Mr. Hoxie swore in the witnesses.

Officer Maher stated the stings were advertised (attached) in the paper and they also told attendees at their alcohol seminar they would be holding stings. On September 1, 2011, they took a photo, breath test and checked the possessions on the underage officers used. On that date at 10:45, two female operatives went into the Mini Mart, a 21 and 20 year old. The 20 year old took out a six pack and brought it to the counter. The clerk rang it up for \$8.25. After being rung up he asked her for ID which she could not produce. The man then asked the other female for ID, which she produced. The 20 year old without the ID actually carried the six pack to the car; not the one with ID. Attorney Tardif asked if Officer Maher was in the store for the sale? He said he was not. Attorney Tardif asked if anything else was

purchased? Officer Maher stated not by the 20 year old. Attorney Tardif asked about the 21 year old – she did buy a bottle of water. Attorney Tardif asked if the sting guidelines were in place. Officer Maher stated they were. Attorney Tardif stated in this case several items were purchased – they paid for the water and alcohol at the same time – it was a “common” sale. Sometimes another will grab the bag purchased to carry it if they are both in the store. Attorney Tardif argued that when the young person was asked for ID she was supposed to leave the store when not being able to show ID, according to the guidelines. He stated Mr. Jamal sold to the 21 year old with ID. Attorney Tardif stated they have some unique problems at this store – the police chief has asked them not to sell singles or the 40 oz. bottles. They honor that policy voluntarily – that request was made of the prior owner. Attorney Tardif stated the manager did this to comply with the police request to stop the vagrants from hanging around there. Attorney Tardif stated he does admit to this sale, but argues it to be a second party sale. He understands the privilege of the license and Attorney Tardif asked for leniency.

Officer Maher asked when the beer was rung up – before or after the ID was requested. He stated it was rung up before. He asked if he would let a younger person walk out with the beer after sale to the older person. Mr. Scali asked if he was there in March when another violation took place? Mr. Jamal stated he was not; he and his brother and another employee are there now. He states he was trained and went to the seminar; he trains his people. Only Mr. Jamal was on that night – the duties are sales, cleanup, stocking, etc. Mr. Burman asked if he accepted the money from the underage person and after bagging asked for the ID. He said he did not take the money until after the ID was checked. Mr. Burman stated that is contrary to what Officer Maher stated. The sale was rung up prior to his asking for the ID. Attorney Tardif stated the bagging was the last thing done after checking the ID. They watched the store video from different angles. Mr. Geiler asked if they brought the store tape with them – that might clarify this. Mr. Hoxie stated he is convinced there is a clear violation and did not need to see a tape.

Mr. Scali asked how long he has been here and if he was here during the ABCC sting? He said someone else was working who is no longer there. He is there from 12:00 onwards. He stated he does the training. Mr. Burman asked how many people were working that night; Mr. Jamal stated only he was working that night. Mr. Burman stated he bagged and took the money from the underage person and then asked for ID? He said he was counting the money from the first register and did not know who put the money on the counter. He said he rung it up but did not take the money until after checking the ID. Mr. Burman stated that was contrary to what the officer stated ...it was rung in, bagged and then asked for ID. Mr. Hoxie said there was a question of when the money was taken. Attorney Tardif stated after the ID was requested. Mr. Scali stated that if a violation is found here, the ABCC penalty will also kick in, as they had a violation recently which would go into effect if they were found guilty of any further violations.

A motion was duly made by Gene Burman, seconded by Dick Boy and a unanimous vote taken for the following findings: Mr. Burman stated he finds the violations took place, the sting operation was well advertised, the underage person looked age appropriate. The request for ID was done after the transaction took place. Mr. Boy proposed separately that under the sting guidelines, the underage person did not leave the premises after being ID'd as required. This also carried unanimously.

A motion was duly made by Gene Burman, seconded by Dick Boy and a unanimous vote taken for the guilt of the licensee with regard to the charge of violation of the Code of the Town of Barnstable, Massachusetts, Part V, to wit: you did sell an alcoholic beverage to a person under 21 years of age in violation of Section 501-7, paragraph I of the Town of Barnstable Rules and regulations of the Licensing Authority as adopted in the Code of Regulations of the Town of Barnstable.

Mr. Hoxie asked Officer Maher for his recommendation for sanctions.

Officer Maher stated when he asked the manager if a 16 year old came in with a person over 21 who bought alcohol – would he let the 16 year pick out the alcohol, go up to the counter, pay for it and let them walk out with it? We sit in parking lots and watch to see if these kids are doing this. He asked if now we are going to allow them to be in the store and actually pick it out? He said at a minimum, he should have asked the older person if she was 21 or not and he didn't. He just asked if they had an ID. Also, if the older one showed the ID he should have made sure she was the one walking out with the alcohol. He thinks the licensee is familiar enough with the laws and having been brought before the ABCC more than once and been talked to more than once by myself, he can't see allowing this kind of activity. Attorney Tardif stated number 1 they have not been brought to the ABCC more than once and also, number 2 if there is to be any credibility to the guidelines posted on the website the police department needs to follow it's own guidelines by making the younger person leave the store after being ID'd.

Officer Maher stated here we have two females of similar age, not a father and son or whatever, and the law states sale or delivery – there was a sale made. Attorney Tardif again stated if the police are going to conduct stings they must follow the sting guidelines they have created for themselves.

Officer Maher read Ch 501, section 7I out loud, "Whoever makes a sale or delivery of any alcoholic beverages or alcohol to any person under 21 years of age, either for their own use or for the use of his parent or any other person, or whoever, being a patron of an establishment under § 12 or 15 of General Laws Chapter 138 delivers or procures such alcoholic beverage for a person under 21 years of age," so he said that within their own rules and regulations it says parent or other person.

Mr. Scali reminded Attorney Tardif that if they are found guilty on this the ABCC sanctions will also kick in. Attorney Tardif stated he is aware of that. The ABCC will be interested in circumstances as well as our punitive action.

A motion was duly made by Gene Burman, seconded by Dick Boy and a unanimous vote taken for violation of the Code of the Town of Barnstable, Massachusetts, Part V, to wit: you did sell an alcoholic beverage to a person under 21 years of age in violation of Section 501-7, paragraph I of the Town of Barnstable Rules and regulations of the Licensing Authority as adopted in the Code of Regulations of the Town of Barnstable for sanctions as follows: a one day suspension to be served September 1, 2012. Attorney Tardif asked if they could serve the suspension right now instead if in a year, if Mr. Hoxie was being serious with the other offending party? Attorney Tardif stated they are willing to serve it right now, and they do know the ABCC penalty may kick in. Mr. Hoxie asked if they would agree to not appeal. He then asked what day of the week September 1 was; it was a Thursday. So the sanction would be Friday of next year.

The Board discussed it – Mr. Burman stated our policy has been a year from the date; Mr. Hoxie stated policies can be modified. Mr. Boy stated we should have some flexibility, and in this case it doesn't really matter – it is a package store not a restaurant or place with entertainment. Mr. Hoxie stated they could be open for groceries but not alcohol. Mr. Tardif asked what we do to make sure they have served the suspension? Mr. Hoxie stated we will know. Mr. Boy stated Chris will take care of that. Mr. Hoxie stated the suspension will take place Thursday, October 6, 2011 and that they waive their right of appeal. Attorney Tardif stated they accept that sanction.

Business Meeting:

Release of Executive Session Minutes, if any (none).

Other Business:

Mr. Geiler asked if the Board was aware that the ABCC feels we are over the quota on all alcohol package store licenses citing the population change, but he further stated that he believes that's an error since in 1979 there was a Town meeting to eliminate seasonal licenses – to make them annual and that authorized the town to petition the legislature to sanction that approval, which passed. The legislation allows us additional licenses and we will be providing some documentation to the ABCC.

The meeting was adjourned at 10:25 a.m. until the next meeting October 24th.

Respectfully submitted,

Christine P. Ade, Recorder
Town of Barnstable Licensing Authority

Gene Burman, Vice Chairman
Town of Barnstable Licensing Authority