



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 19, 2013

A regular meeting of the Barnstable Licensing Authority was held on Monday, August 19, 2013, Chairman Martin Hoxie called the meeting to order at 9:30 A.M. He introduced Gene Burman, Vice Chairman; Paul Sullivan, Clerk; Dick Boy, Associate Commissioner; Ron Semprini, Associate Commissioner; David Nunheimer, Associate Commissioner, Richard V. Scali, Interim Director of Regulatory Services, Lt. John Murphy and Patrolman Steve Maher, Liaison Officers from the Barnstable Police Department, and Christine Ade, Recording Secretary. Mr. Hoxie congratulated Mr. Scali on his new position as Interim Director of Regulatory Services, stating that he was sure with Mr. Scali's extensive experience, education and past record he will be very capable.

Vote to accept Minutes: Vote to accept minutes of the 7/29/13 Meeting.

A motion was duly made by Mr. Burman, seconded by Mr. Sullivan and a unanimous vote taken to approve the minutes of the 7/29/13 Meeting.

Hearings:

One Day Wine & Malt and One Day Entertainment Licenses: Application of Mary Petiet on behalf of Barnstable Oysterfest, 2198 Main Street, West Barnstable for a One Day Wine & Malt license for an event to be held on September 21, 2013 from 3 pm to 6 pm at Mass Audubon/Long Pasture, 345 Bone Hill Road, Barnstable, and for a One Day Entertainment License for a chamber music string quartet from Cape Cod Symphony.

Mary Petiet appeared for this application. They are holding a non-profit event to raise money for three charities. It will be a mature crowd. Food will come from restaurants in Barnstable Village. Cape Cod Beer's Beth Marcus will serve the beer and a caterer is to serve the wine. Maximum attendance will be 300.

A motion was duly made by Mr. Burman, seconded by Mr. Sullivan and a unanimous vote taken to approve the application of Mary Petiet on behalf of Barnstable Oysterfest, 2198 Main Street, West Barnstable for a One Day Wine & Malt license for an event to

be held on September 21, 2013 from 3 pm to 6 pm at Mass Audubon/Long Pasture, 345 Bone Hill Road, Barnstable, and for a One Day Entertainment License for a chamber music string quartet from Cape Cod Symphony.

One Day All Alcohol & One Day Entertainment Licenses: Application of Daniel W. Chamberlain on behalf of Cape Cod Young Professionals, P.O. Box 634, Barnstable for a One Day All Alcohol License and a One Day Entertainment License for its 7th Annual Back to Business Bash, to be held at Rectrix Aerodrome, Hyannis, from 5:30 pm to 8:30 pm on September 26, 2013. Cape Cod Conservatory Jazz Band will entertain.

Daniel Chamberlain appeared for this application. This is the 7th annual event. There have been no alcohol or noise issues. Cape Cod Beer serves the beer and Cape Cod School of Bartending will serve the other alcohol. Mr. Scali asked about the food; he is working that out with the Health Department.

A motion was duly made by Mr. Burman, seconded by Mr. Sullivan and a unanimous vote taken to approve the application of Daniel W. Chamberlain on behalf of Cape Cod Young Professionals, P.O. Box 634, Barnstable for a One Day All Alcohol License and a One Day Entertainment License for its 7th Annual Back to Business Bash, to be held at Rectrix Aerodrome, Hyannis, from 5:30 pm to 8:30 pm on September 26, 2013. Cape Cod Conservatory Jazz Band will entertain.

Two One Day Entertainment Licenses: Application of Melissa Alexander on behalf of TICA/Cats on the Beach Club, 24 Residential Lane, Blackstone, MA for two One Day Entertainment Licenses for its annual Cat Show to be held at the Horace Mann School, Marstons Mills on September 7th and 8th from 9 am to 4 pm each day.

Ms. Alexander appeared for this application. It has been going on for 20 years. No changes.

A motion was duly made by Mr. Burman, seconded by Mr. Sullivan and a unanimous vote taken to approve the application of Melissa Alexander on behalf of TICA/Cats on the Beach Club, 24 Residential Lane, Blackstone, MA for two One Day Entertainment Licenses for its annual Cat Show to be held at the Horace Mann School, Marstons Mills on September 7th and 8th from 9 am to 4 pm each day.

One Day Wine & Malt License: Application of Kathleen Edmonston on behalf of Gallery Artrio, 50 Pearl Street, Hyannis, for a One Day Wine & Malt License for an opening reception at their location on September 14, 2013 from 5 pm to 8 pm.

Kathleen Edmonston appeared for this application. This is a reception for her art show. It is the grand opening. They are new to the Town. Three partners in the business and their husbands will serve the alcohol. They do not expect too many young people. Their experience tells them 20-30 people as they are a new gallery.

A motion was duly made by Mr. Burman, seconded by Mr. Sullivan and a unanimous vote taken to approve the application of Kathleen Edmonston on behalf of Gallery Artrio, 50 Pearl Street, Hyannis, for a One Day Wine & Malt License for an opening reception at their location on September 14, 2013 from 5 pm to 8 pm.

Change of Manager: Application of Hyannis Yacht Club, 490 Ocean Street, Hyannis, for a Change of Manager from Wesley Richardson to John R. Schuler.

John Schuler appeared for this application. Wesley Richardson has retired. The club requests this appointment. Mr. Schuler has managed for 16 years on Long Island Sound, 8 years in the mid-west. No changes in the operation of the club.

A motion was duly made by Mr. Burman, seconded by Mr. Sullivan and a unanimous vote taken to approve the application of Hyannis Yacht Club, 490 Ocean Street, Hyannis, for a Change of Manager from Wesley Richardson to John R. Schuler.

Change of Manager: Application of Beech Tree Cantina, LLC, d/b/a Beech Tree Cantina/Off the Hook Sushi & Raw Bar, 599 Main Street, Hyannis from Jared Pane to Brian D. Beatty.

Attorney Steven Pizzuti appeared for this application with the proposed new Manager, Brian Beatty. Attorney Pizzuti advised that Mr. Beatty has been acting over the last 1 ½ years as a manager in this establishment – is well aware of the complexities and issues in running of the Beech Tree. He should be a great manager there. At present he is the bar manager; previously was bar manager at Joe's American Bar & Grill. Lt. Murphy advised that Brian has been professional and respectful in all interactions he has had with him.

Mr. Scali asked how he will interact with the three areas within the restaurant. Mr. Beatty advised that he has three managers who will report to him and he will oversee the entire thing. Mr. Scali asked how it has been going with the neighbors – Mr. Beatty replied that only issues are noise issues; they monitor decibel levels and do the 150 feet test. Mr. Scali asked if the residents have his number to reach him if needed? Mr. Scali suggested he contact them and give them his number as the contact person.

Mr. Sullivan stated he has been working since a young age and wished him luck. Mr. Burman asked again about the neighbor complaints; he is aware of the issues and is working towards making everyone happy. Mr. Semprini asked if the noise complaints were because of music or conversation in back? Attorney Pizzuti stated they believe it is people talking, and they are trying to curtail some of that noise. Fortunately it is not entertainment noise but people's voices. They have had a sound engineer out and explored some options. They are now looking at acoustic tiles. The first thing Brian was told is that noise is of utmost importance to this restaurant and must be kept down as much as possible. Mr. Hoxie stated the conversation is not a violation as it isn't heard 150 feet away but still wants them to understand that the noise level may be

bothersome to neighbors. Attorney Pizzuti stated it is an issue to the Beech Tree to curtail this to be a good neighbor.

A motion was duly made by Mr. Burman, seconded by Mr. Sullivan and a unanimous vote taken to approve the application of Beech Tree Cantina, LLC, d/b/a Beech Tree Cantina/Off the Hook Sushi & Raw Bar, 599 Main Street, Hyannis from Jared Pane to Brian D. Beatty.

Attorney Pizzuti congratulated Mr. Scali on his new position.

New Junk Dealer License: Application of ecoATM, Inc, San Diego, CA, David Mersten, Manager, for a New Annual Junk Dealer License, for an un-manned ATM at the Cape Cod Mall Food Court area, to recycle used cell phones. Hours of operation to be 10 am to 9 pm, Mon – Sat and 10 am to 8 pm Sunday. Continued from 7/8/13.

Lt. Murphy advised the Authority that ecoATM is withdrawing its application as they cannot comply with the restrictions Barnstable has on the \$50.00 maximum cash return for purchases and other issues for which they are not set up to be able to comply.

Review of Restrictions on Junk Dealer License: Review of restrictions placed on Junk Dealer License of 2 Good To Be New, 142 Corporation Street, Unit E, Hyannis, James Servidori, Manager.

Mr. Servidori appeared to request that the restrictions be removed from his Junk Dealer License, as he has operated 6 months with no issues. The restrictions were on purchase or sale of precious gems and coins and purchase from individuals. He said he has some elderly customers who would prefer to sell their items instead of consigning and this will help them out.

Lt. Murphy stated Mr. Servidori has operated with no problems so far and he has no reservations about letting him operate without these restrictions.

A motion was duly made by Mr. Burman, seconded by Mr. Sullivan and a unanimous vote taken to remove the restrictions on the license of Mr. Servidori to purchase or sell precious metals and gems and to purchase from individuals.

Show Cause Hearing: Request of the Barnstable Police Department after a visit on June 13, 2013, for Scottish Rock, LLC dba The Quarterdeck Lounge, for the following alleged violations of the Code of the Town of Barnstable, MA, Part V, Chapter 501-7R: alcohol on the bar after 15 minutes of closing hour, 501-8 A: there was not a high degree of supervision of the establishment & C: Staff did not disperse patrons loitering at the rear of the building after closing hour, and 501-10 A: Having t.v.'s and speakers outside, B: Entertainment heard outside the boundaries of the premises & D: Entertainment past 12:45 am, time on license, as presented in police incident report #13-1234-OF.

Mr. Hoxie swore in the people to give testimony, Errol Thompson, Manager, appearing for The Quarterdeck. He then asked the Police Department to state the case. Officer Steve Maher advised that on June 13th he was dispatched at 1:30 am to a fight at the Quarterdeck address. While there he stated that he noticed a t.v. on the wall and another in the outside area; speakers playing from within the building. He advised the individual on duty, Mr. Wood, who he was and that all entertainment was to end at 12:45. He then stated that the bartender's reply was, "So What." He asked Mr. Wood to go inside and Mr. Wood was not cooperative did not want to let him in. He noted bottles on the bar and on tables and asked Mr. Wood when they were supposed to be removed, to which the bartender stated, "When I feel like it." He stated that he then asked to see the video of the fight, and the bartender did not know how to use the system. He called Mr. Thompson, who also said he did not know how to use it, but his wife might. He later was given the video.

Mr. Thompson went through the three complaints for which he was cited. As far as the t.v.s go, he stated there are no speakers. Never have been – they have been there for a number of years. Have never had a noise complaint in 39 years. The reason they were not turned off was because of the commotion and in dealing with the officers, he had not had a chance to turn music and t.v.'s off. The patrons at the rear were only there because the police were interviewing them or because they could not get out of the lot. There was no-one in the building but the officer and the bartender. With regard to the third complaint, the glasses were all ready to be cleaned but they have an old bar with a small sink area. He stated in the past they have always provided the videos when requested; they did it this time within 10 hours. He also showed pictures of the sink – they cannot fit the glasses in there all at once. He stated that the bartender was busy with the officers, and had not gotten to cleaning them. Officer Maher asked if he had a license for t.v.'s outside the building; Mr. Thompson stated that in 2003 he opened the "smoking" patio and went before a board, and thought he did have permission for those t.v.'s. Officer Maher asked Mr. Thompson about what the bartender told him about the incident when questioned. Mr. Thompson stated he was told the fight was people outdoors –he was not even sure they were customers of theirs. The video shows no fight. He stated maybe 10 people were there at 1:23. It was a quiet night. The people in back were only being interviewed or could not leave as the police vehicles were blocking them.

Officer Maher asked if they have a policy of dispersing patrons at closing time. Mr. Thompson stated they just ask people to leave. Officer Maher asked if he had comments on Mr. Wood's replies. Mr. Thompson stated Mr. Wood has worked for him for 3 years. He finds it hard to believe he would have been so disrespectful, and Mr. Wood told him the allegations were not true about what he said. Mr. Thompson repeated that he thought he came before the Authority in 2003 for that smoking patio. Mr. Nunheimer asked how much staff they have on – Mr. Thompson stated 2-3 usually as the occupancy of the bar is 50 including the outside. Usually one supervising person. That night was not busy.

Mr. Thompson stated he believes he went before the Licensing Authority for the smoking patio with his plans in around 2003 and will check further in his records.

Mr. Burman stated he does not believe the type of arrogance the bartender showed is acceptable.

Mr. Semprini asked how many t.v.'s there are. Mr. Thompson advised there are two and one for keno. Mr. Semprini was disturbed that Mr. Wood was not present at the hearing. Mr. Thompson stated that he told him he did not have to appear as he worked the night before, and that he would appear for the Quarterdeck. Mr. Sullivan stated he also believed that the person involved should be present.

Mr. Thompson advised after receipt of the notice, he went to talk to Tom Geiler, who advised him not to get into, "he said she said" on this matter; that is why he only talked about the three complaints. Mr. Sullivan stated it seems like they are trying not to give any credence to the police officer's statements.

Officer Maher stated that the issues are:

#1 - 501-8A Licensee must ensure a high degree of supervision – the only employee working either does not understand the Licensing Authority rules & regs or chooses to ignore them; there is not enough staff to manage or see what is going on outside; and this shows a definite failure to manage. As we all know things have changed – the younger crowd nowadays is different than in the past. Only 1 person responsible in the establishment is just not enough.

#2 – Not enough staff and failure to go by rules and regs, and no view of what is happening on that patio from inside – he only came outside as someone went in to tell him that there was a fight

#3 - At 1:15-1:25 there were people there as the fight started. They should have been gone by then. The bartender had no idea what was going on.

#4 - The Entertainment license does not show outside entertainment

#5 – The entertainment should be off by 12:45

Officer Maher heard music – may have been from the t.v.'s. He stated that it all goes back to not enough supervision.

#6 – Ch 501-7 Bottles & glasses not removed from tables or the bar...understands the argument but goes back to only one person working.

Mr. Thompson feels that everyone has predetermined the guilt. They have 16 cameras to see the premises including the patio. They have had no issues in the past.

Mr. Semprini asked why Mr. Thompson would not think there should be more than one person working. Mr. Thompson stated many times there is more than one but sometimes it does not warrant it.

Mr. Hoxie stated there is no predetermination by our Board. He said there have not been problems with the Quarterdeck, but the majority of the allegations all come back to

lack of supervision. The officer stated the bartender was not aware of the rules – or in the alternative may have just been being a wiseguy. Mr. Hoxie asked for findings from Mr. Burman.

Officer Maher interjected that there are really only 5 issues to which he recommended the following findings:

- 1- Obligation of Licensee for high degree of supervision. Findings that there was a lack of supervision.
- 2 – Licensee shall disperse patrons diligently. Findings there was a lack of diligence in maintaining order & dispersing patrons.
- 3 – Licensee holds an entertainment license for the patio area - Findings that it is a requirement of the licensee to have the physical license showing, which he did have.
- 4- No-one should be there after hours – Findings that patrons were still there at 1:23 and that entertainment hours were not observed, and that we have questions as to allowance of entertainment outside.
- 5 - 501-7R No alcohol served after hours and all bottles, glasses are to be removed within 15 minutes after closing... Findings that there were glasses and bottles in evidence after 1:15.

A motion was duly made by Mr. Burman, seconded by Mr. Sullivan, and a unanimous vote taken to accept the findings as proposed by Officer Maher.

A second motion was duly made by Mr. Burman, seconded by Mr. Sullivan, and a unanimous vote taken for guilt or innocence that:

- Offense #1 – guilty
- Offense #2 - guilty
- Offense #3 – Hold for investigation – no findings.
- Offense #4 – guilty
- Offense #5 - guilty

Mr. Hoxie requested a recommendation from Officer Maher for sanctions: Officer Maher stated that on #2 a letter should be put in the file, on #4&5 a letter should be put in the file, but a 3 day suspension be imposed on #1, and that 1 day suspension be served a year from the infraction date with 2 days to be held if no other infractions.

Mr. Thompson had no problem with that.

Lt. Murphy stated Mr. Thompson was very candid. Part of the problem was that Mr. Wood did not appear. The recommendation of Officer Maher took into consideration the longevity of the Quarterdeck.

Mr. Scali stated the sanction imposed is very lenient. He suggested Mr. Wood be retrained on the Licensing Authority Rules and Regulations. Mr. Hoxie suggested Mr. Wood's behavior be monitored, and that he get a good talking to with respect to his

treatment of the police. Mr. Burman stated that when he read the report, he wrote down one question – Is he still working there? Mr. Thompson stated yes, he is loyal to a fault with his employees and believes his speaking with Mr. Wood will suffice.

A motion was duly made by Mr. Burman, seconded by Mr. Sullivan and a unanimous vote taken to impose a 3 day suspension a year from the date of the incident, if no further problems between now and the date (June 13), a one day suspension be served and the other 2 days dismissed.

Mr. Hoxie suggested Licensing will look into what was allegedly granted in 2003 and will advise on the patio, and determine whether he must apply for the t.v.'s outside.

Mr. Hoxie asked if Mr. Scali can investigate the policy that the sanctions be given for a year from the date of the suspension – asking how the other communities and the ABCC feel about it. He thinks it should be immediate. Mr. Scali stated usually it is a suspension closer to the date the incident(s) happened.

Show Cause Hearing: Show Cause Hearing requested by Barnstable Police Department in response to a complaint, that on June 12, 2013 it was observed that there were 3 unregistered vehicles at 8 King Arthur Drive, Osterville, one with an advertising plate on the rear of the vehicle advertising “The Car Guys.” It was also reported that this is the second time the police department has visited this residence for the same complaint. Storage of vehicles under the Class II Auto Dealer License held by Ryan and Casey DeVincent, d/b/a The Car Guys, is to be at 741B Yarmouth Road, Hyannis, not a residence in Osterville. This is in violation of M.G.L. c. 140, § 57-59 and is a violation of the Town Code Chapter 228, Section 1: No person shall have more than one unregistered motor vehicle or trailer or any part or portion thereof, ungaraged on premises owned, occupied or controlled by him at anytime.

Mr. Sullivan recused himself and Mr. Boy will sit.

Mr. Hoxie swore in the people to give testimony, Ryan and Casey DeVincent. He then asked the Police Department to state the case. Officer Steve Maher advised that on June 3 he received a complaint on The Car Guys. On the 12th he observed (at the King Arthur Drive location) the extra vehicles. He also had told a female who lived there that this was a warning, and they should not be there.

Officer Maher stated that he received a phone call from Mr. DeVincent to see what could be done to mitigate the sanctions at the hearing. He told them to make sure there were not too many vehicles there on the hearing date or at the licensed premises. At 9 am Officer Maher went by the lot to observe the total of vehicles, maximum of which was to be 43. There were today 49 vehicles on the lot at 9:00 a.m. The charge he is asking for today is that vehicles are stored off the premises illegally and there are too many vehicles on the lot.

Casey DeVincent advised that it is his residence; he is aware of the unregistered vehicle ordinance. He has been in the habit of driving the vehicles home and bringing the tags with them. As of now, he puts the tags on. He was not aware of what happened a year ago. Ryan DeVincent stated they have not been in to the dealership this morning, but sometimes vehicles are delivered at night. They did not know they were over their capacity today.

Mr. Hoxie asked about dealer plate use and was advised that the owner or immediate family members may operate the vehicles if a dealer plate is on them.

Mr. Scali stated the complaint came to him because neighbors complained about the NUMBER of vehicles at the residence; stating it did not matter if there were plates on them or not. Ryan DeVincent stated that each of them take 1-2 vehicles home at night.

Mr. Burman stated they have a license for 43 – they have 49 on premises; if each takes 2 home they are still over. Ryan DeVincent stated those extras go to body shops, etc. for work to be done to keep the number on the lot correct.

Officer Maher asked if they are following their parking plan. They advised that they try too stay within that plan.

A motion was duly made by Mr. Burman, seconded by Mr. Boy and a unanimous vote taken for findings that: Based on testimony given by Officer Maher and the two Mr. DeVincent's that there were more vehicles than allowed on the lot and vehicles stored off premises.

A motion was duly made by Mr. Burman, seconded by Mr. Boy and a unanimous vote taken for guilt or innocence, that they are guilty as charged.

Officer Maher stated because of time issues, it is hard to go out and check all these dealers...and because he warned these people a year ago and also advised them that he would be checking this morning, and because residents in their neighborhood are complaining, he would recommend a 3 day suspension almost immediately.

Mr. Hoxie asked when their least busy days are...they answered mid-week.

Mr. Scali stated they do have the right to appeal. Mr. Boy asked why they would exceed the 43 having been told the number would be checked. They again advised that vehicles had to have been dropped off the night prior.

Business Meeting:

Release of Executive Session Minutes, if any (0).

ABCC Advisory regarding new Farmer Series Pouring Permits for Farmer-Breweries, Farmer-Wineries & Farmer-Distilleries. Mr. Hoxie asked if there were any questions.

Mr. Scali stated we have put this category in place ourselves for Cape Cod Beer. The ABCC just clarified it.

Mr. Burman asked for a discussion as to the number of Class II licenses presently in effect and whether the community is adequately served. Mr. Burman also thinks we should re-examine our position as to restaurant alcohol licenses and whether or not there should be a quota imposed by the Town.

Adjourned at 10:50 a.m.

Respectfully submitted,

Christine P. Ade, Recorder
Town of Barnstable Licensing Authority

Paul Sullivan, Clerk
Town of Barnstable Licensing Authority