



**Town of Barnstable
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**BARNSTABLE LICENSING AUTHORITY
LICENSING HEARING MINUTES
July 12, 2004**

A regular meeting of the Barnstable Licensing Authority was held on Monday, July 12, 2004. Vice-Chairman Gene Burman called the meeting to order at 9:30 A.M. He introduced himself as Vice Chairman; Paul Sullivan, Clerk; Sgt. Sean Sweeney, Liaison from the Barnstable Police Department, and Christine Ade, Recording Secretary. Chairman Martin Hoxie and Thomas Geiler, Director of Regulatory Services, were not in attendance.

REQUESTS:

One Day Entertainment License (two): Application of Eliane Thomas for the Sandwich Glass Museum, 129 Main Street, Sandwich, MA, for two **One Day Entertainment Licenses** for their annual antiques and collectibles glass show, to be held at the Cape Cod Community College, Route 132, West Barnstable, MA on Saturday, September 18, 2004 from 10 am to 5 pm and on Sunday, September 19, 2004 from 11 am to 4 pm.

Ms. Thomas appeared for this application. This is the 17th annual show.

On Motion made by Paul Sullivan and seconded by Gene Burman it was **Unanimously Voted to approve** the request of Eliane Thomas for the Sandwich Glass Museum, 129 Main Street, Sandwich, MA, for two **One Day Entertainment Licenses** for their annual antiques and collectibles glass show, to be held at the Cape Cod Community College, Route 132, West Barnstable, MA on Saturday, September 18, 2004 from 10 am to 5 pm and on Sunday, September 19, 2004 from 11 am to 4 pm.

One Day Entertainment License : Application of Jaci Throught for Covenant on the Rock Ministries Int'l., P.O. Box 101, Hyannis, MA, for a **One Day Entertainment License** for a family Summer Youth Festival, to be held at the Hyannis West Elementary School, 2463 Main Street, Hyannis, MA on Saturday, August 14, 2004 from 9 am to 9 pm.

Memo from the Town Recreation Department limits closing time to 7:30 pm.

This is a church function – want to have tents and performances, food, crafts, etc. at this festival. Mr. Sullivan reviewed Mr. Curley's letter; he said the approval is conditional on the School Dept., police, building, fire and health, and as long as all are received we should approve. So far they have obtained all but the building dept. approval – tent company working with them. Have the food permits and fire permit.

No public comment.

On Motion made by Paul Sullivan and seconded by Gene Burman it was **Unanimously Voted to approve** the request of Jaci Throught for Covenant on the Rock Ministries Int'l., P.O. Box 101, Hyannis, MA, for a **One Day Entertainment License** for a family Summer Youth Festival, to be held at the Hyannis West Elementary School, 2463 Main Street, West Barnstable, MA on Saturday, August 14, 2004 from 9 am to 7:30 pm.

One Day All Alcohol License and One Day Entertainment License:

Application of John Pearson, President and CEO of Big Brothers of Massachusetts Bay, 55 Summer Street, 8th Floor, Boston, MA, for a **One Day All Alcohol License and Live Entertainment License** for a fundraising Fishing Tournament catered by The Casual Gourmet to be held on Saturday, July 24, 2004 from 4 pm to 11 pm, at the Cape Cod Maritime Museum premises, 135 South Street, Hyannis, MA, with live entertainment (a DJ and band) under a tent.

Mary Coch of Corinthian events and Michael Tritto, President of Big Brothers, Cape & Islands appeared for this application.

Gene Burman had a question regarding the type of tent because of sound – It is a 60 X 80 tent and they have spoken to the Maritime and neighbors to keep this at a level which would not annoy the neighbors. Paul Sullivan asked about the location next to Aselton Park. Made them aware of noise complaints around the harbor. The Authority was advised that the band will only play from 8 – 10 pm.

Sgt. Sweeney reiterated the problem with noise down there – asked if they could have flaps down at harbor side of tent if possible. Mr. Tritto said they will take that into account.

Felicia Penn appeared as a person interested in the neighborhood. She said she has been working hard to keep the noise under control in the neighborhood. Would like a number to call to ask these licensees to “turn it down” if need be. Mr. Burman commented that the reason for the problem is that the harbor acts like a bowl. Mr. Sullivan requested the applicant answer Mrs. Penn regarding the phone contact – Ms. Coch would be happy to have a cell phone # to provide to

Mrs. Penn. Would like it to go to 10 pm, with condition that they adjust the volume if there is a call. There will be two police officers on site – instead of calling Ms. Coch any neighbor with a complaint should coordinate with Sgt. Sweeney and the detail officers. Mr. Sullivan said there are half a dozen businesses around the harbor with which we have been very strict – so this should not compromise those businesses. Mr. Burman asked that the applicants check with Hyannis Harbor Hotel regarding placement of speakers, etc. since what they are doing seems to do the trick.

On Motion made by Paul Sullivan and seconded by Gene Burman it was **Unanimously Voted to approve** the request of John Pearson, President and CEO of Big Brothers of Massachusetts Bay, 55 Summer Street, 8th Floor, Boston, MA, for a **One Day All Alcohol License and Live Entertainment License** for a fundraising Fishing Tournament catered by The Casual Gourmet to be held on Saturday, July 24, 2004 from 4 pm to 11 pm, with the live entertainment from 8 pm to 10 pm only, to be held at the Cape Cod Maritime Museum premises, 135 South Street, Hyannis, MA, with live entertainment (a DJ and band) under a tent.

One Day Entertainment License: Application of Steven Kelley for Cape Cod Classics Car Club, P.O. Box 621, S. Yarmouth, MA for a **One Day Entertainment License** for a “Blast from the Past” Classic Car Show with entertainment by a 4 piece band, to be held at the Capetown Plaza, Route 132, Hyannis, MA on Saturday, August 14, 2004 from noon to 8 p.m. with a rain date of Saturday, August 21, 2004. Benefits will be donated to the Cape Cod Breast Cancer Fund.

Marie Kelley appeared for her husband for this application. Mr. Burman mentioned permission received from the landlord of the plaza. Mrs. Kelley would like live entertainment that day – request for noon to 8; starting at 1 pm with the music. Free admission; donations accepted. They have the hot dog permits and are going for the hamburger ones at present. They have functions every Saturday now (without the music)..

Public comments? None. Mr. Burman noted no permission for the rain date – he requests a 2nd permission for the 21st date.

Motion made by Paul Sullivan and seconded by Gene Burman that the application of Steven Kelley for Cape Cod Classics Car Club, P.O. Box 621, S. Yarmouth, MA for a **One Day Entertainment License** for a “Blast from the Past” Classic Car Show with entertainment by a 4 piece band, to be held at the Capetown Plaza, Route 132, Hyannis, MA on Saturday, August 14, 2004 from 1 pm to 8 p.m. with a rain date of Saturday, August 21, 2004. Benefits will be donated to the Cape Cod Breast Cancer Fund be approved. License is to issue once the Agent for Cape LLC, the property owner, provides another letter giving permission for the rain date of August 21st if needed.

Late Filing: One Day Beer & Wine License: Application of Hope Ratner on behalf of Cape Cod Maritime Museum, 135 South Street, Hyannis, MA, for a **One Day Beer & Wine License** for the Dedication of the Walkway to the Sea to be held on Thursday, July 15, 2004 from 5 pm to 7 pm in the parking lot adjacent to the museum.

Hope Ratner appeared for this application. Dedication starts at 4 ends at 6 – Main Street and ending at Maritime Museum for a reception. Open bar and food. Spanky's will be serving. No entertainment.

On Motion made by Paul Sullivan and seconded by Gene Burman it was **Unanimously Voted to approve** the request of Hope Ratner on behalf of Cape Cod Maritime Museum, 135 South Street, Hyannis, MA, for a **One Day Beer & Wine License** for the Dedication of the Walkway to the Sea to be held on Thursday, July 15, 2004 from 5 pm to 7 pm in the parking lot adjacent to the museum.

HEARINGS:

Review by Licensing Authority of Daily Live Entertainment and Sunday Live Entertainment Licenses: Review of temporary entertainment license for Hyannis Management Associates, LLC d/b/a **Hyannis Harbor Hotel**, 213 Ocean Street Hyannis, MA, Kevin Dubois, Manager, for renewal of its live entertainment license for no more than three instrumental pieces plus a vocalist, to be exercised on weekdays and weekends between the hours of 12:00 noon to 10:00 pm.

Attorney Sabatt appeared for this review. The \$7,000.00 sound system was installed. Mr. Phillips, Manager of the hotel, also appeared. He made an effort each evening checking sound – which is kept at 62 decibels. The meter registered “0” for the music. They also checked the neighborhood – Hoffman, Murray and Penn homes – knocking on the doors to ask for responses. He listened carefully and did not hear the entertainment at those locations. Dates he checked: June 25th, 6 pm, 26th noon to 10 pm and 27th noon to 10 pm; had both a single guitarist and vocalist and a singer with pre-recorded CD's. Manager was very satisfied that his checks showed that no noise was heard off the premises. Mr. Sabatt checked with Sgt. Sweeney – he had received no complaints. The same invitation was extended to the Board. Attorney Sabatt stated he was glad to hear Felicia Penn this morning asking the one day applicants to check with Hyannis Harbor Hotel. Mr. Sullivan asked how many days they had had entertainment – Fri, Sat and Sun beginning 6/25 to present. Mr. Sullivan voiced concerns and said he was fairly satisfied that there have been no problems and wants it to continue this way. Attorney Sabatt emphasized that the hotel will continue to monitor the entertainment after the license is granted.

Felicia Penn came forward and stated the Hyannis Harbor Hotel has conducted the entertainment as they said they would. Has one concern - that the license allows for 3 instruments and a vocal; so far only one instrument has been there. Since there have not been three yet she wonders what the noise level will be for that. Hopes it would stay at the same decibel level. Thanks them for honoring the neighborhood – keeping flaps down. Can't hear it on Channel Point Road. Patricia Mitchell at 45 Channel Point Road spoke up; her concern is that at her house she occasionally feels avibration (drums?) although she cannot actually hear the music itself. Thanks the hotel thus far; would like assurances that this would continue and some sanctions if it doesn't. Gene Burman spoke for the Authority saying we hope it will continue and would of course take action if it does not. Sgt. Sweeney reiterated he went to the harbor Saturday night and heard nothing from the hotel; did hear something from Aselton Park area – which was too loud and was the cause of the loud rumbling noise. That was promptly taken care of.

On Motion made by Paul Sullivan and seconded by Gene Burman it was **Unanimously Voted to approve** the request of Hyannis Management Associates, LLC d/b/a **Hyannis Harbor Hotel**, 213 Ocean Street Hyannis, MA, Kevin Dubois, Manager, for renewal of its live entertainment license for no more than three instrumental pieces plus a vocalist, to be exercised on weekdays and weekends between the hours of 12:00 noon to 10:00 pm.

New Annual Common Victualer License: Application for a **New Annual Common Victualer License**, from Eleni Chirigotis, d/b/a **Pizza Market**, 696 Yarmouth Road, Hyannis, MA, Eleni Chirigotis, Manager, to be open from 10 am to 11 pm.

Eleni Chirigotis appeared to speak. She wants to open a pizza shop where D J's Wings used to be. Mr. Burman mentioned she has experience; not requesting alcohol. No public comments.

On Motion made by Paul Sullivan and seconded by Gene Burman it was **Unanimously Voted to approve** the application for a **New Annual Common Victualer License**, from Eleni Chirigotis, d/b/a **Pizza Market**, 696 Yarmouth Road, Hyannis, MA, Eleni Chirigotis, Manager, to be open from 10 am to 11 pm, seven days per week.

New Annual Common Victualer License: Application for a **New Annual Common Victualer License**, from Henry A. Lyons, d/b/a **Henry's Coffee Shoppe**, 38 North Street, Hyannis, MA, Henry Lyons, Manager, to be open from 6 am to 8:30 pm in July and August, and from 6 am to 3:30 pm from September through June.

Henry Lyons appeared for the application for his coffee shop – across from the municipal parking area. Mr. Lyons has been in the business since 1968 on and off. No comments from public.

On Motion made by Paul Sullivan and seconded by Gene Burman it was **Unanimously Voted to approve** the application for a **New Annual Common Victualer License**, from Henry A. Lyons, d/b/a **Henry's Coffee Shoppe**, 38 North Street, Hyannis, MA, Henry Lyons, Manager, to be open from 6 am to 8:30 pm July & August; 6 am to 3:30 pm September to June.

Change of Manager: Application for a **Change of Manager**, Cape Hospitality Management Corp., d/b/a **Bubba's BBQ & Clamshack & The Beechtree Bar**, 599 Main Street, Hyannis, MA, Seasonal All Alcohol Common Victualer License, Ervan A. Schultz, Manager to Marc Percuoco, Manager.

Erv Schultz and Marc Percuoco appeared. Marc is born in Norwell; summered here as a child. Has lived here a year. Experience in Boston – 2 years as head of security at a nightclub across from Fenway. He has his TIPS certification and has reviewed Town of Barnstable Rules and Regulations. He has worked for Mr. Schultz since mid-May. No questions from the public.

On Motion made by Paul Sullivan and seconded by Gene Burman it was **Unanimously Voted to approve** the application for a **Change of Manager**, Cape Hospitality Management Corp., d/b/a **Bubba's BBQ & Clamshack & The Beechtree Bar**, 599 Main Street, Hyannis, MA, Seasonal All Alcohol Common Victualer License, Ervan A. Schultz, Manager to Marc Percuoco, Manager.

Alteration of Premises: Application of Cape Hospitality Management Corp. d/b/a **Bubba's BBQ & Clamshack & the Beechtree Bar**, 599 Main Street, Hyannis, Ervan A. Schultz, Manager, for a **Change of Description** proposed to read as follows: Wood frame building with one entrance on Main Street, two rear entrances, dining area of approx. 900 sq. ft. consisting of a bar seating 4 and tables & chairs seating 46, outside front patio approx 864 sq. ft. with tables and chairs seating 48, outside deck approx. 2,316 sq. ft. with tables & chairs seating 122 & bar seating 8. No standing area requested. Kitchen & storage area of approx. 785 sq. ft. Basement storage area of 600 sq. ft.

Attorney Rob Galibois appeared for Cape Hospitality Management Corp. as a late addition to this application. He stated the client was before the Board May 24th seeking to increase capacity from 48 to 200 including 70 standing. The applicant chose that number as that is what the building department said they would allow in the space. The Licensing Authority denied that request. Mr. Galibois stated he went over the minutes and brought up concerns – number requested is now scrolled back from 200 to 130. Also, the applicant added square footage to 2,300 + square feet. Also since last here, applicant has secured written permission for emergency egress from Mr. Alan White. Concern in Minutes also about residences in the area of the emergency exit. Humbly suggest this exit is **ONLY** for emergencies, not for any other reason. The seating in the Beechtree area will not include other areas totals. Also, since last before

the Board, a lot of work has been done to add more space in back for additional seating. Also presented Petition in Support of Proposed Expansion of Floor Plan – 1,468 signatures of patrons presented in favor of the additional seating for outside diners. All are not residents of Barnstable, but many are. At 5/24 hearing client stated he caters to family groups. Has had to turn away weddings and rehearsal parties because of cap on # in back area being too small. Client stands ready to answer any questions posed today. Believes compliance checks have been fine; unfortunately the 48 total is very small for their business. Mr. Sullivan had a question. The application shows 1500 + square feet and is going to 2300? Mr. Schultz stated there was a little dirt area of about 600 square feet; that has been cleaned up and leveled off all the way back to the fence. Was NOT reflected last time. Also indicated that there are actually two fences at the rear. The two fences are too high and too far apart to “pass something over the fence.” Presented photo to show Mr. Bradley trying to pass a can over the fence. That 2nd fence abuts a vacant parking lot. Mr. Schultz has spoken to Mr. Hines, a concerned citizen and abutter (from their last hearing issue brought up by Attorney Paul Tardif). Emergency gate is double what fire dept. asked for and is in the rear at the furthest point from the entrance. If approved, the chain link fence will have an open gate in the area where the emergency gate is located. It will become an archway. Attorney Galibois has spoken to the other abutter – a law office, at the rear; who has no problems with this. Mr. Hines is o.k. with it also. Presented photos of location with present seating. Dirt area will have oyster shells on it and be leveled. That area will have tables and chairs (9 tables). For the record, Sgt. Sweeney brought up a violation on July 4th. A Police Officer wrote a report at 12:25 am saying there were 55 people in the area. No employees out there. Verbal warning was given to Manager at the time. Mr. Burman asked for public comment.

William Jeffries appeared as a 33 year Main Street resident – owns Mass Bay Company and property on the other side of the Beechtree where he lives (apartment) by Plush and Plunder. Stated he is there 7 days a week. Has now sold property to the owner of The Beechtree Bar. In regard to capacity on the property, he says the 48 capacity is very low. It looks very empty. To stay in business it must be enlarged to at least 100 or more. He stated he is there every night – has no problems with them; no debris; noise level no problem either. Recommends we allow the 130 people for seating. Board had no questions. Mr. Jeffries said that last year from 4-8 there was a reggae band; also would approve having that in future as it was very enjoyable.

Dorothy Galvin came to the mike. She is owner of Cape Cod Internet Café, recently granted a Common Victualer License. Her business is directly across from the Beechtree. She has no objections to the increase; has had no problems – said there is a constant management presence there and it is well run and maintained. Supports their application. Andi Carole came to speak...was grateful to the Board for denying the increase to the restaurant at the 5/24 meeting. Now says her roses and lilies have been damaged. Lights were

broken this week. People park in her parking area. She is totally against this application. She thinks this historic landmark should be preserved as is. Stated that once it is increased they would have no recourse. She is on actually Sea Street. Attorney Jack Roberts representing Jack Hines appeared to speak. Mr. Hines owns 615 Main Street. He is developing it and worked with abutters (Beechtree), and it houses a CVAA Licensee – Roasted Red Pepper. Mr. Hines is sensitive to the needs of the business community and needs of other CVAA's. He now wears two hats and is erecting 12 condo apartments at his location. There is a ByLaw for mixed use environments on Main Street – and he has been grateful to the Beechtree for being a good neighbor. Stated that all prior requests for addition of seating/standing have been denied. Has read minutes and concerns from past meetings. Noise was an additional concern raised by the Authority. They are not here to oppose the request but to voice a concern for the upscale condo units being constructed right next door. Manager of Roasted Red Pepper and Mr. Hines have spoken with the applicant to voluntarily impose certain anti-noise language in the approval. A Town By-Law prohibits loud outcries and boisterousness (11 pm to 7 am). Attorney Roberts asks for a limitation imposed requiring applicant to install standard sound meters to check levels and not exceed 10 decibels when measured. Mr. Schultz has with him today a reference reflecting decibels – 10 is normal breathing; 60 is normal conversation. The Town states only “self-contained” not the decibel level. Yarmouth specifies 15 between 11 – 7. Mr. Galibois spoke again. Addressed Ms. Carole – stated that people congregating around her business on Sea Street may very well not be from the Beechtree at all (presented photos). She is NOT at all an abutter of this premises. Client has noticed people who gather near the Dunkin Donuts pretty much nightly. Those people are there in and around the same time Beechtree is open. There is no way there is any interaction between those people and the Beechtree patrons. He further stated that Attorney Roberts' concerns are very valid. Once the condos are constructed applicant would work with Mr. Hines to address the decibel level at that time. The applicant's data regarding decibels is a bit different. He is very willing to work with the neighbor. Sgt. Sweeney stated noise in the area has been a bit of a problem. A gentleman on South Street in past seasons had problems when the place was overcrowded – just with conversations and noise. Mr. Galibois stated that this applicant is and has been trying to establish credibility before this Authority. Asks if the Authority would consider granting a temporary license and have the applicant come back in August to prove his credibility. Paul Sullivan addressed Attorney Roberts' concerns about noise – is it existing or potential noise? Existing noise was on past history for violations of occupancy (exceeding 100 or more) and catering to college crowd. Issues when front closed those people went to the back – which was not allowed but management did not understand that. Because this is an open air establishment with alcohol – conversations, laughter, etc, with even 50 to a direct residential abutter would be a concern. Just for the record, regarding the condos being built, the zoning relief obtained was 1/27; no appeals made; demolition permit issued. Mr. Sullivan asked Attorney Galibois about the TV in back. There is a TV by the bar seats

and the volume is OFF. The screen is a 54" TV for all the patrons in the back. It is due west from the tree. Mr. Schultz stressed his expansion of menu to include barbeque and a family style atmosphere. Stated that families with children are not willing to wait 20 minutes for a table. Stated again that their focus is for the family restaurant. They are here only for this purpose. Their kitchen is open until midnight on weekends now. Asked if they pull license back to 11 pm each night? Would that be helpful to the Board? Sgt. Sweeney said he thought Mr. Roberts called it as correctly – the fact that there were complaints before when numbers went up past 48. Mr. Sullivan brought up the fact that the standing people have been eliminated. The outdoor area will not function all year round either. It may go through September but wraps up by October. Outdoor dining really starts in June. Plus, it is a seasonal license. Mr. Sullivan stated he thinks this is a very important decision to make. Since it is a "short board" today – asked if maybe we put off vote until full board is present? Mr. Galibois asked if they would agree to a temporary license now with review on July 26th? Mr. Burman said he would not agree. Mr. Galibois then said his client would agree to wait until the July 26th meeting. Mr. Burman's major concern is sound, which has not been addressed. Especially sports events even with 10 people raises the noise level substantially.

Paul Sullivan made motion that this application be postponed to the next scheduled meeting on July 26th. Gene Burman would not second that motion.

Gene Burman made a motion that this application be denied. Paul Sullivan seconded the motion. It went to a vote; Mr. Burman voted to deny and Mr. Sullivan did not vote to deny.

Mr. Galibois requested a full board hearing on July 26th.

OTHER BUSINESS:

Passed out new Blue Book from the ABCC. Passed out copy of Shanghai Chinese Restaurant, Inc. ABCC Show Cause Hearing Notice.

Paul Sullivan moved to adjourn. Gene Burman seconded.

Adjourned at 11:23 a.m.

Respectfully submitted,

Christine P. Ade, Recorder
Barnstable Licensing Authority

Paul Sullivan, Clerk
Barnstable Licensing Authority