



Town of Barnstable

Regulatory Services

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 27, 2008

A regular meeting of the Barnstable Licensing Authority was held on Monday, October 27, 2008. 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, Lt. JoEllen Jason and Patrolman Steve Maher, Liaison Officers from the Barnstable Police Department, and Christine Ade, Recording Secretary.

Hearings:

One Day All Alcohol Permit: Application of Michael Robinson, Cape Cod Young Professionals, P.O. Box 1302, Centerville, MA on for a **One Day All Alcohol License and a One Day Entertainment License** for a fundraiser event with a steel drum band on September 17, 2009 from 5:30 pm to 8:30 pm at Rectrix Aerodrome, Hyannis, MA.

Gary Sheehan appeared for this application – as there were issues this year he wanted to get the application in early. It was brought up that the problem this year was that they did not pick up the permits. What happened really was that the State Safety Certificate is required for the use of the premises for alcohol purposes and was not signed off by Fire. Also, they did not pick up their permits, if they had come in we would have told them they could not get them without the certificate. Mr. Geiler stated that the fire safety certificate was never approved and asked if it had been now. He stated several calls were made by us to their organization and to an attorney and email sent back and forth and they still do not have the certificate for Rectrix. Mr. Geiler asked that the hearing be continued to when they have the certificate. They did not have it and were a bit confused about it. Mr. Hoxie continued the hearing to 11/17/08.

One Day All Alcohol and One Day Entertainment Licenses: Application of Bill Sykes on behalf of **Best Buddies International**, 13 River Street, Plymouth, for a **One Day All Alcohol and One Day Entertainment License** for its Best Buddies Challenge Bicycle Ride on May 30, 2009 from 12 pm to 9 pm, culminating with a catered event in a tent with live music and dancing at 1014 Craigville Beach Road, Centerville.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to continue the hearing to 11/17/08 as no-one was there for Best Buddies.

Amended Class I Auto Dealer License: Application of Hyannis Enterprises, Inc., d/b/a Hyannis Toyota, Jack G. Carter, Jr., Manager, 1020 Iyannough Road, 1040 Iyanough Road and 1056 Iyannough Road, Hyannis, for an **Amended Class I Auto Dealer License** to include the property at 1056 Iyannough Road, the hours of operation to be Monday - Thursday 7 am to 8 pm, Friday 7 am to 6 pm and Saturday 7 am to 5 pm. Total of 448 spaces at the 3 lots.

Mr. Carter purchased 1056 Iyannough Road and wants to include it with his other two lots for new vehicle storage and employee parking. Mr. Burman asked about approval of the numbers for the license; the other two lots numbers have been approved. Mr. Geiler stated there is no building on this lot and no concern about the number of stored vehicles here. It is an improvement over what was there before. Mr. Geiuler stated we are just amending a license; the two are already approved – 448 is the total on all three lots. Mr. Burman stated he just wanted to make sure we have the correct fixed number, which seems to be 448.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the application of Hyannis Enterprises, Inc., d/b/a Hyannis Toyota, Jack G. Carter, Jr., Manager, 1020 Iyannough Road, 1040 Iyanough Road and 1056 Iyannough Road, Hyannis, for an **Amended Class I Auto Dealer License** to include the property at 1056 Iyannough Road, the hours of operation to be Monday - Thursday 7 am to 8 pm, Friday 7 am to 6 pm and Saturday 7 am to 5 pm. Total of 448 spaces at the 3 lots.

New Common Victualler License: Application of Shark City Market, d/b/a Old Village Store and Café, 2455 Meetinghouse Way, West Barnstable, MA, Alfred Schofield, Manager, for a **New Common Victualer License**, the hours of operation to be 7:00 am to 9:00 pm 7 days per week with 25 seats.

Mr. Schofield appeared for his application. The store is open – this is to reopen the café. It will be run with the same camaraderie and good food as a breakfast and lunch café. They will open as soon as the Board allows. Mr. Hoxie states they have support of the WB Civic Association and permission for 25 seats from the Health Dept. and another letter he presented in support to Mr. Hoxie.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the application of Shark City Market, d/b/a Old Village Store and Café, 2455 Meetinghouse Way, West Barnstable, MA, Alfred Schofield, Manager, for a **New Common Victualer License**, the hours of operation to be 7:00 am to 9:00 pm 7 days per week with 25 seats.

Show Cause Hearing: Show Cause Hearing for The Egg & I, 521 Main Street, Hyannis, MA, Peter Kappatos, Manager at the request of the Barnstable Police Department that on July 27, 2008 and again on August 10, 2008, The Egg & I was in violation of the Code of the Town of Barnstable, Massachusetts, Part V, of Section 501-23 to wit: "Licensees under this Article are subject to all applicable general rules for licensees set out in Article I above, with the exception of those parts that refer to the sale of alcoholic beverages;" and Section 501-5-F, "The capacity set for the premises by the Building Department constitutes the maximum potential capacity for the premises but the actual capacity of the premises may not exceed the amount approved by the Licensing Authority and stated on the license," in this case, 32 seats outdoors. On July 27, 2008 there were 46 persons on the outdoor patio and on August 10, 2008 there were 45 persons on the outdoor patio.

Ralph Crossen appeared with the Licensee to represent his interests. He provided a letter to the Board describing what they have done in the interim period from receiving the Show Cause letter.

Mr. Hoxie read the notice of hearing and swore in witnesses. Mr. Hoxie stated we will hear from the police department first.

Officer Maher read his report into record as follows: On July 27, 2008 after receiving a phone call from a business owner on Main St., Hyannis about The Egg & I restaurant at 512 Main St., Hyannis having too many seats out on the sidewalk in front of the establishment I went to the establishment at 0914 hrs. at that time I counted 46 seats in the outside dining area of the establishment. Also, I observed that all of the seats were occupied by patrons. I then went up to the hostess station, identified myself and asked to speak to the manager. The hostess then went inside the restaurant and a short time later a male subject came out to me and identified himself as the head cook and told me the manager was not on the property. I then asked to see the occupancy license for the outside seating at the restaurant. The license showed a capacity of 32 for outside seating. I then brought to the cook's attention that they had too many seats outside. He told me that he would correct it and would tell the manager that I had been at the establishment.

On August 10, 2008 I received another phone call from a business owner on Main St., Hyannis that The Egg & I still had too many seats for outside dining. I then called Dispatch and asked to have an officer go to the Egg & I and count the number of seats outside. An Officer went to the establishment at 0817 hrs and at that time counted 45 seats at the outside dining area.

Mr. Kappatos stated he called the police 3-5 times and never was answered. He then stated that they never take the chairs out until 9 pm and the second time he only put 32 chairs outside not 45 as alleged. Mr. Crossen stated he is representing Mr. Kappatos and said he is midpoint in the process for expanding his outside seating, but some of the follow-up applications did not get done. There is a language barrier and he will help him with that. A Site Plan Review application has been filed and approval given to

address the next step. They have gone to the Board of Health for approvals and also gone to historic for an awning, which is in process and then will come back to Licensing again for our approvals. The Building Commissioner went over the seats, bathrooms, etc. with him and the bathrooms modify the code – 1 for every 60 men and 1 for every 30 women. It now has 2 for women and 2 for men. He stated that Mr. Perry saw no objection to going to the limits of 180 total – inside and out. Mr. Perry expressed concern about access around the tables. They are now in process of getting things done and numbers figured out. Mr. Crossen stated there is a dispute on the 2nd date in the show cause hearing notice as to how many tables were out there as his client insists there were only 32. They are trying to increase the outside seating with all approvals. It is currently 152 with 32 outside. The increase requested is 48 seats. The Building Commissioner has no problem with that. He stated there was no intent to break the law here. From this point forward he will walk the licensee through the procedure to do things properly.

Officer Maher asked when the concrete patio was poured? Mr. Kappatos stated early October 2008 after approval by an earlier Site Plan. Officer Maher stated the 2nd incident happened before the slab was poured. Mr. Crossen stated the area already available to the owner now has a level seating area.

Mr. Burman proposed findings that the police dept credibly reported the facts. The Licensee was been notified of the hearing, it was properly posted and advertised. The findings were seconded by Mr. Sullivan and a unanimous vote taken to approve the findings.

Mr. Burman proposed a finding of guilty, it was seconded by Mr. Sullivan and there was a unanimous vote of guilty that on July 27, 2008 and again on August 10, 2008, The Egg & I was in violation of the Code of the Town of Barnstable, Massachusetts, Part V, of Section 501-23 to wit: "Licensees under this Article are subject to all applicable general rules for licensees set out in Article I above, with the exception of those parts that refer to the sale of alcoholic beverages;" and Section 501-5-F, "The capacity set for the premises by the Building Department constitutes the maximum potential capacity for the premises but the actual capacity of the premises may not exceed the amount approved by the Licensing Authority and stated on the license," in this case, 32 seats outdoors. On July 27, 2008 there were 46 persons on the outdoor patio and on August 10, 2008 there were 45 persons on the outdoor patio.

Mr. Burman then moved for a warning as sanction; and it was seconded by Mr. Sullivan and unanimously approved to issue a warning. Mr. Sullivan then stated he now has very good representation and Mr. Crossen will make sure he does what is necessary to increase this seating.

Show Cause Hearing: Show Cause Hearing on Ristorante Barolo, 297 North Street, Hyannis, Ann Marie Wallace, Manager, at the request of The Barnstable Police Department which has reported to the Licensing Authority that on August 16, 2008, an undercover sting was conducted by the Barnstable Police Department under written

guidelines adopted by the Town of Barnstable Licensing Authority and on August 16, 2008 it was in violation of the Code of the Town of Barnstable, Massachusetts, Part V, to wit: it did sell an alcoholic beverage to a person under 21 years of age in violation of Section 501-7, paragraph F and 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 that on August 16, 2008 Ristorante Barolo, 297 North Street, Hyannis, Ann Marie Wallace, Manager, holding an All Alcohol Common Victualler License was in violation of the Code of the Town of Barnstable, Massachusetts, Part V, to wit: it did sell an alcoholic beverage to a person under 21 years of age in violation of Section 501-7, paragraph F and 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.

Lt. JoEllen Jason answered that she and Officer Steve Maher would testify for the Police Department. Mr. Hoxie asked them all to raise their right hands and swear to tell the truth at this administrative hearing. All raised their hands and answered yes. Mr. Hoxie advised the Licensee we would hear from the Police Department first and that they would have a right to question the police and then testify on their behalf.

Lt. Jason stated that she and Officer Maher are here representing the Barnstable Police Department, and that Officer Maher would be making the case. She stated she wanted to make an overview statement of how they came to be here today. She said that the two of them have worked for 2 ½ yrs – 3 yrs. as liaison officers with the Board, and that it took some time to learn and be comfortable with all the workings of the Board and what they do all the time. During that time, she stated they feel they have opened the communication with the businesses on Main Street, advising that noise complaints and disturbances are down. They have had great communication with the licensees in the Town. They have facilitated some informational seminars for license holders – two in 2007 and two in 2008, covering all of the alcohol license requirements, ID's (fake and altered), overcrowding, noise complaints, over serving, under-age drinking and what stings are. Because there are only two of them, the rest being in enforcement and so busy, they have taken the philosophy that self-policing of the licensees is the best policy. They have tried to give them as much information as possible and have been open to any questions from licensees. They decided to test the philosophy to see how the licensees were doing. Recently on three separate nights stings were held – they are frankly a bit disappointed with the results. She stated there is more work to be done but took it as a learning experience. They visited approximately 88 businesses on the stings. They want to bring before us the fact that although there are some businesses before us, there were 48 businesses in compliance on those nights and at some point would they like to recognize those as being diligent. She stated there are a number of elements that are common to all of these hearings and stated they will present to us how the sting was put together first and then individually conduct the hearings. She stated that Officer Maher would give an overview of what they did on each night, this

one being August 16th. They abided by the Sting Guidelines adopted by the Board a month or so ago.

Officer Maher stated that they sent out a letter to all of the Liquor Licensees in the Town to invite them to informational sessions this year (showing a copy of the letter sent in his power point presentation) in June. There was someone from the ABCC in attendance as well. In the midst of those sessions they went over the sting guidelines (attached to these minutes and shown in his power point presentation). They went over how they would accomplish a sting and what they would do once they went to their establishments, down to the letter of how it would happen. All who attended were informed and shown the specific guidelines and how they would be used. As part of the sting procedure, there was an article in the Cape Cod Times on June 26th, a copy of which is attached to these minutes, advising that the police department was going to be going out using young people to test these establishments. During the June sessions they also suggested self testing of the establishments. On the nights of the stings, they brought in an underage officer, went over the guidelines with him, took a photo of him dressed as he was to go out on the sting, made sure he looked age appropriate, had no ID of any kind with him, he had no money except what was given him by the Police Department (they check before he goes out). He was asked to sign a release and a copy of the sting guidelines. He was told specifically to go into the establishment and ask to purchase one particular type of drink. In pouring establishments he was told to ask for a Bud Lite and to ask for a six pack of Bud Lite in package stores. In each case it was the same – to cut down on any confusion. If a question was asked by an employee he was told to leave. He was told not to offer a fake ID; there was no ruse used. He was just told to ask for the Bud Lite. He stated this is a learning tool; they want to keep lines of communication open.

Regina Hurley came forward for Ristorante Barolo with concerns about the process and stating she did not know for sure which transaction the sting referred to. She also expressed that she was not happy about the way they received notice first in the paper. She presented some tapes of the evening's receipts to Mr. Hoxie.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken as to findings on: 1) I find that the Barnstable Police Department conducted a sting operation substantially in accordance with the "Sting" Policy adopted by the Licensing Authority, 2) I find this hearing was properly posted and advertised and the licensee properly notified of the hearing, 3) I find that the underage person used in the sting was a person under 21 years of age and an employee of the Barnstable Police Department and operating under the supervision of a Barnstable Police Officer during the sting activity, 4) I find that the Barnstable Police Department did announce, at an open and televised meeting of the Licensing Authority on July 7, 2008, their intention to conduct "sting" operations in the near future, 5) I find that the Barnstable Police Department did send a notice to each licensee of the town, using a Licensing Authority prepared list of licensees, to attend and participate in one of two Licensing seminars in June, 2008 where rules and regulations would be discussed, questions answered, and procedures would be explained, and that a Cape Cod Article

dated June 26, 2008 announced the intention of the Police Department to conduct the stings, 6) I find the Police Department did conduct the "Sting" activities less than two months following the seminars (this one being August 16, 2008), 7) I find the testimony of the Police Department to be credible in this matter, 8) I find that the licensee did sell or deliver an alcoholic beverage to a person less than 21 years of age, 9) I find that the record indicates there have been no prior violations.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to adopt the findings as proposed above .

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken as to guilt on August 16, 2008 Ristorante Barolo, 297 North Street, Hyannis, Ann Marie Wallace, Manager, holding an All Alcohol Common Victualler License was in violation of the Code of the Town of Barnstable, Massachusetts, Part V, to wit: it did sell an alcoholic beverage to a person under 21 years of age in violation of Section 501-7, paragraph F and 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 and seconded by Paul Sullivan and a unanimous vote taken as to sanctions: A two day suspension was imposed with one day to serve a year from the date of the incident (August 16, 2009) and one day to be held in abeyance until that date and if no further Ch. 138 violations, that suspension day would be dismissed.

Show Cause Hearing: **Show Cause Hearing** on Osterville Veteran's Association, Inc., 753 Main Street., Osterville, Cornelius Andres, Manager, at the request of The Barnstable Police Department which has reported to the Licensing Authority that on August 16, 2008, an undercover sting was conducted by the Barnstable Police Department under written guidelines adopted by the Town of Barnstable Licensing Authority and on August 16, 2008 it was in violation of the Code of the Town of Barnstable, Massachusetts, Part V, to wit: it did sell an alcoholic beverage to a person under 21 years of age in violation of Section 501-7, paragraph F and 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 and swore in the witnesses.

Lt. JoEllen Jason answered that she and Officer Steve Maher would testify for the Police Department. Mr. Hoxie asked them all to raise their right hands and swear to tell the truth at this administrative hearing. All raised their hands and answered yes. Mr. Hoxie advised the Licensee we would hear from the Police Department first and that they would have a right to question the police and then testify on their behalf.

Lt. Jason stated that she and Officer Maher are here representing the Barnstable Police Department, and that Officer Maher would be making the case. She stated she wanted

to make an overview statement of how they came to be here today. She said that the two of them have worked for 2 ½ yrs – 3 yrs. as liaison officers with the Board, and that it took some time to learn and be comfortable with all the workings of the Board and what they do all the time. During that time, she stated they feel they have opened the communication with the businesses on Main Street, advising that noise complaints and disturbances are down. They have had great communication with the licensees in the Town. They have facilitated some informational seminars for license holders – two in 2007 and two in 2008, covering all of the alcohol license requirements, ID's (fake and altered), overcrowding, noise complaints, over serving, under-age drinking and what stings are. Because there are only two of them, the rest being in enforcement and so busy, they have taken the philosophy that self-policing of the licensees is the best policy. They have tried to give them as much information as possible and have been open to any questions from licensees. They decided to test the philosophy to see how the licensees were doing. Recently on three separate nights stings were held – they are frankly a bit disappointed with the results. She stated there is more work to be done but took it as a learning experience. They visited approximately 88 businesses on the stings. They want to bring before us the fact that although there are some businesses before us, there were 48 businesses in compliance on those nights and at some point would they like to recognize those as being diligent. She stated there are a number of elements that are common to all of these hearings and stated they will present to us how the sting was put together first and then individually conduct the hearings. She stated that Officer Maher would give an overview of what they did on each night, this one being August 16th. They abided by the Sting Guidelines adopted by the Board a month or so ago.

Officer Maher stated that they sent out a letter to all of the Liquor Licensees in the Town to invite them to informational sessions this year (showing a copy of the letter sent in his power point presentation) in June. There was someone from the ABCC in attendance as well. In the midst of those sessions they went over the sting guidelines (attached to these minutes and shown in his power point presentation). They went over how they would accomplish a sting and what they would do once they went to their establishments, down to the letter of how it would happen. All who attended were informed and shown the specific guidelines and how they would be used. As part of the sting procedure, there was an article in the Cape Cod Times on June 26th, a copy of which is attached to these minutes, advising that the police department was going to be going out using young people to test these establishments. During the June sessions they also suggested self testing of the establishments. On the nights of the stings, they brought in an underage officer, went over the guidelines with him, took a photo of him dressed as he was to go out on the sting, made sure he looked age appropriate, had no ID of any kind with him, he had no money except what was given him by the Police Department (they check before he goes out). He was asked to sign a release and a copy of the sting guidelines. He was told specifically to go into the establishment and ask to purchase one particular type of drink. In pouring establishments he was told to ask for a Bud Lite and to ask for a six pack of Bud Lite in package stores. In each case it was the same – to cut down on any confusion. If a question was asked by an employee he was told to leave. He was told not to offer a

fake ID; there was no ruse used. He was just told to ask for the Bud Lite. He stated this is a learning tool; they want to keep lines of communication open.

He read his report into the record for this establishment: On Saturday, August 16, 2008 at 2252 hrs myself with Officer Jeffrey Marshall, age 20 in plain clothes conducted an undercover "sting" of the Osterville Veterans' Club aka The Fox Hole, following the guidelines of the Massachusetts Alcohol Beverage Control Commission for underage drinking stings. I observed Officer Marshall go into the establishment where he purchased one Bud Lite beer for \$2.75 from a white female in her mid 40's with blond hair. After purchasing the beer Marshall left it on the bar and exited the establishment.

The Manager, Cornelius Andres, stated they have no questions. He stated everyone was aware of the sting. All staff and doormen went through TIPS training. That evening there was a doorman. They do scan the ID's in but found that night an 18 minute window when ID's were not scanned. The doorman is no longer with them. The Board had no questions.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken as to findings: 1) I find that the Barnstable Police Department conducted a sting operation substantially in accordance with the "Sting" Policy adopted by the Licensing Authority, 2) I find this hearing was properly posted and advertised and the licensee properly notified of the hearing, 3) I find that the underage person used in the sting was a person under 21 years of age and an employee of the Barnstable Police Department and operating under the supervision of a Barnstable Police Officer during the sting activity, 4) I find that the Barnstable Police Department did announce, at an open and televised meeting of the Licensing Authority on July 7, 2008, their intention to conduct "sting" operations in the near future, 5) I find that the Barnstable Police Department did send a notice to each licensee of the town, using a Licensing Authority prepared list of licensees, to attend and participate in one of two Licensing seminars in June, 2008 where rules and regulations would be discussed, questions answered, and procedures would be explained, and that a Cape Cod Article dated June 26, 2008 announced the intention of the Police Department to conduct the stings, 6) I find the Police Department did conduct the "Sting" activities less than two months following the seminars (this one being August 16, 2008), 7) I find the testimony of the Police Department to be credible in this matter, 8) I find that the licensee did sell or deliver an alcoholic beverage to a person less than 21 years of age, 9) I find that the record indicates there was a violation in 2005 of patrons on the premises after closing, lack of supervision and glasses on the bar after hours for which written warnings were given by the Board.

Officer Maher spoke up that this establishment has worked very well with the police department; they have been very cooperative. Mr. Hoxie asked what he recommended. Officer Maher recommended the same suspension as the others except more days suspended than served if given a stricter sentence...since it was 3 years ago.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to adopt the findings as proposed.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken as to guilt on August 16, 2008, of Osterville Veteran's Association, Inc., 753 Main Street., Osterville, Cornelius Andres, Manager, holding an All Alcohol Club License was in violation of the Code of the Town of Barnstable, Massachusetts, Part V, to wit: it did sell an alcoholic beverage to a person under 21 years of age in violation of Section 501-7, paragraph F and 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 and seconded by Paul Sullivan and a unanimous vote taken as to sanctions: 3 days in total; one day to serve a year from the violation date (8/16/09) and 2 to be held in abeyance pending any further Ch. 138 violations in the interim; if none to be dismissed.

Mr. Sullivan was a little reluctant to go along with it. He asked about the machine used? Officer Maher stated some establishments do use it. The person responsible is no longer there. They have zero tolerance – it is the fault of the doorman who is not supposed to leave the door and was not checking the ID's at the time of the violation.

Cynthia Cole, Director of Hyannis Business Improvement District, came forward and stated that it has been difficult for everyone; obviously the police department has done their job and done it well – educated the licensees and notified them they would conduct a sting. However, every establishment has come in except one – clearly upset by what happened, most have fired the employee responsible, and she quite frankly thinks the sanctions imposed are very severe with the downturn in the economy. It is not to say what they did was not absolutely wrong but the licensees have agreed what they did was wrong – she thought people were usually given a warning first, then a fine and THEN a suspension. Or making a longer suspension or next time a more severe punishment. She expressed the thought that to give the licensees a second chance would be more than fair.

Mr. Hoxie thanked her for her input.

Mr. Geiler stated Cynthia had talked about "normal" sanctions...Mr. Hoxie stated that anyone that officially was brought in to the Licensing Authority had much greater sanctions than the 2 days; most at least 3 days in the past.

Show Cause Hearing: Show Cause Hearing on Uno Chicago Grill, 574 Iyannough Road, Hyannis, Michael Sives, Manager, at the request of the Barnstable Police Department which has reported to the Licensing Authority that on August 16, 2008, an undercover sting was conducted by the Barnstable Police Department under written guidelines adopted by the Town of Barnstable Licensing Authority and on August 16, 2008 it was in violation of the Code of the Town of Barnstable, Massachusetts, Part V, to

wit: it did sell an alcoholic beverage to a person under 21 years of age in violation of Section 501-7, paragraph F and 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 and swore in the witnesses.

Lt. JoEllen Jason answered that she and Officer Steve Maher would testify for the Police Department. Mr. Hoxie asked them all to raise their right hands and swear to tell the truth at this administrative hearing. All raised their hands and answered yes. Mr. Hoxie advised the Licensee we would hear from the Police Department first and that they would have a right to question the police and then testify on their behalf.

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Officer Maher stated that they sent out a letter to all of the Liquor Licensees in the Town to invite them to informational sessions this year (showing a copy of the letter sent in his power point presentation) in June. There was someone from the ABCC in attendance as well. In the midst of those sessions they went over the sting guidelines (attached to these minutes and shown in his power point presentation). They went over how they would accomplish a sting and what they would do once they went to their

establishments, down to the letter of how it would happen. All who attended were informed and shown the specific guidelines and how they would be used. As part of the sting procedure, there was an article in the Cape Cod Times on June 26th, a copy of which ad is attached to these minutes, advising that the police department was going to be going out using young people to test these establishments. During the June sessions they also suggested self testing of the establishments. On the nights of the stings, they brought in an underage officer, went over the guidelines with him, took a photo of him dressed as he was to go out on the sting, made sure he looked age appropriate, had no ID of any kind with him, he had no money except what was given him by the Police Department (they check before he goes out). He was asked to sign a release and a copy of the sting guidelines. He was told specifically to go into the establishment and ask to purchase one particular type of drink. In pouring establishments he was told to ask for a Bud Lite and to ask for a six pack of Bud Lite in package stores. In each case it was the same – to cut down on any confusion. If a question was asked by an employee he was told to leave. He was told not to offer a fake ID; there was no ruse used. He was just told to ask for the Bud Lite. He stated this is a learning tool; they want to keep lines of communication open.

He read his report into the record for this establishment: On Saturday, August 16, 2008 at 2201 hrs myself with Officer Jeffrey Marshall, age 20 in plain clothes conducted an undercover “sting” of Uno Chicago Grill, 574 Iyannough Road, Hyannis, following the guidelines of the Massachusetts Alcohol Beverage Control Commission for underage drinking stings. I observed Officer Marshall go into the establishment where he purchased one Bud Lite beer for \$4.19 from a white female in her mid 20’s with red hair and glasses. After purchasing the beer Marshall left it on the bar and exited the establishment.

Corporate Manager Thomas Vangel appeared for the restaurant. He stated UNO’s does not contest the alleged violation. Mr. Boudreau, Bar Manager, was here this morning with him. He has been there for 6 years. The corporate Officer stated they had no problem identifying the server as the report was very specific. They also have a zero tolerance policy and the server was terminated. In mitigation, this is the 1st offense in 15 years. It requires all servers be bar code and now serv safe certified. UNO’s management has conducted meetings about what happened here – they have a policy that anyone appearing under 40 will be carded. They request the least severe sanction. They also requested serving the sanction now rather than in the summer. Also, he wanted to clarify whether the restaurant can be open without service of alcohol? He wanted to go over the protocol we follow.

Mr. Hoxie stated that the time between the event and notification of the violation will be addressed in future as these were the first ones.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken as to findings: 1) I find that the Barnstable Police Department conducted a sting operation substantially in accordance with the “Sting” Policy adopted by the Licensing Authority, 2) I find this hearing was properly posted and advertised

and the licensee properly notified of the hearing, 3) I find that the underage person used in the sting was a person under 21 years of age and an employee of the Barnstable Police Department and operating under the supervision of a Barnstable Police Officer during the sting activity, 4) I find that the Barnstable Police Department did announce, at an open and televised meeting of the Licensing Authority on July 7, 2008, their intention to conduct "sting" operations in the near future, 5) I find that the Barnstable Police Department did send a notice to each licensee of the town, using a Licensing Authority prepared list of licensees, to attend and participate in one of two Licensing seminars in June, 2008 where rules and regulations would be discussed, questions answered, and procedures would be explained, and that a Cape Cod Article dated June 26, 2008 announced the intention of the Police Department to conduct the stings, 6) I find the Police Department did conduct the "Sting" activities less than two months following the seminars (this one being August 16, 2008), 7) I find the testimony of the Police Department to be credible in this matter, 8) I find that the licensee did sell or deliver an alcoholic beverage to a person less than 21 years of age, 9) I find that the record indicates there have been no prior violations in 15 years.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to adopt the findings as proposed.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken as to guilt that on August 16, 2008 Hyannis, Uno Chicago Grill, 574 Iyannough Road, Hyannis, Michael Sives, Manager, holding an All Alcohol Common Victualler License was in violation of the Code of the Town of Barnstable, Massachusetts, Part V, to wit: it did sell an alcoholic beverage to a person under 21 years of age in violation of Section 501-7, paragraph F and 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 and seconded by Paul Sullivan and a unanimous vote taken as to sanctions: 2 days were imposed; 1 to serve on August 16, 2009 and 1 to be held in abeyance until that date and dismissed if there are no further Ch. 138 violations.

Mr. Burman stated he thinks we have to separate the alcohol service from the restaurant service licenses.

Mr. Geiler stated he has been doing this for many years. The suspension we impose is for the license the licensee holds. The common victualler license is absolutely included in the alcohol license in this instance.

Mr. Vangel stated never once in the years he has worked in the field in any other jurisdiction have they been unable to keep the restaurant open. He thinks it is overly punitive. Given the fact that it is the high season that is when these places make their money. He has never seen a licensee be shut down from serving food. He said with all due respect we need to separate the two. It is a family restaurant, not a lounge or

barroom. 80% of the revenue is food driven, not alcohol. A lot of people are employed – it is the busiest day. With all due respect the impact of that for employees too should be looked at.

Mr. Geiler stated he is sure there have been situations where they are separated, but his observation is just the opposite. He stated that if Mr. Vangel wanted to submit something he could. Mr. Geiler also stated the Town of Barnstable rules close the premises for the suspension time; no employees are allowed inside even to clean or anything else. This has been our policy for many years.

Mr. Vangel wanted the right to submit the backup he has spoken about and decide whether or not they need to come back before the Licensing Authority. Mr. Sullivan asked if Mr. Vangel's experience is in Mass. Mr. Vangel stated it is, mostly the south shore.

Mr. Burman stated he has brought up before that two licenses should be issued; hotels being a case in point. Does the entire hotel have to be closed or just the part where the liquor license is exercised? Mr. Sullivan stated that since our sanctions do not take place for a year, they can then appeal if they want to and we can look into the situation.

Show Cause Hearing: Show Cause Hearing on DJ's Wings, Ribs, Subs 'n More, 165 Yarmouth Road, Hyannis, Dennis Carlin, Manager, at the request of The Barnstable Police Department which has reported to the Licensing Authority that on August 16, 2008, an undercover sting was conducted by the Barnstable Police Department under written guidelines adopted by the Town of Barnstable Licensing Authority and on August 16, 2008 it was in violation of the Code of the Town of Barnstable, Massachusetts, Part V, to wit: it did sell an alcoholic beverage to a person under 21 years of age in violation of Section 501-7, paragraph F and 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.

Lt. JoEllen Jason answered that she and Officer Steve Maher would testify for the Police Department. Mr. Hoxie asked them all to raise their right hands and swear to tell the truth at this administrative hearing. All raised their hands and answered yes. Mr. Hoxie advised the Licensee we would hear from the Police Department first and that they would have a right to question the police and then testify on their behalf.

Lt. Jason stated that she and Officer Maher are here representing the Barnstable Police Department, and that Officer Maher would be making the case. She stated she wanted to make an overview statement of how they came to be here today. She said that the two of them have worked for 2 ½ yrs – 3 yrs. as liaison officers with the Board, and that it took some time to learn and be comfortable with all the workings of the Board and what they do all the time. During that time, she stated they feel they have opened the communication with the businesses on Main Street, advising that noise complaints and

disturbances are down. They have had great communication with the licensees in the Town. They have facilitated some informational seminars for license holders – two in 2007 and two in 2008, covering all of the alcohol license requirements, ID's (fake and altered), overcrowding, noise complaints, over serving, under-age drinking and what stings are. Because there are only two of them, the rest being in enforcement and so busy, they have taken the philosophy that self-policing of the licensees is the best policy. They have tried to give them as much information as possible and have been open to any questions from licensees. They decided to test the philosophy to see how the licensees were doing. Recently on three separate nights stings were held – they are frankly a bit disappointed with the results. She stated there is more work to be done but took it as a learning experience. They visited approximately 88 businesses on the stings. They want to bring before us the fact that although there are some businesses before us, there were 48 businesses in compliance on those nights and at some point would they like to recognize those as being diligent. She stated there are a number of elements that are common to all of these hearings and stated they will present to us how the sting was put together first and then individually conduct the hearings. She stated that Officer Maher would give an overview of what they did on each night, this one being August 16th. They abided by the Sting Guidelines adopted by the Board a month or so ago.

Officer Maher stated that they sent out a letter to all of the Liquor Licensees in the Town to invite them to informational sessions this year (showing a copy of the letter sent in his power point presentation) in June. There was someone from the ABCC in attendance as well. In the midst of those sessions they went over the sting guidelines (attached to these minutes and shown in his power point presentation). They went over how they would accomplish a sting and what they would do once they went to their establishments, down to the letter of how it would happen. All who attended were informed and shown the specific guidelines and how they would be used. As part of the sting procedure, there was an article in the Cape Cod Times on June 26th, a copy of which ad is attached to these minutes, advising that the police department was going to be going out using young people to test these establishments. During the June sessions they also suggested self testing of the establishments. On the nights of the stings, they brought in an underage officer, went over the guidelines with him, took a photo of him dressed as he was to go out on the sting, made sure he looked age appropriate, had no ID of any kind with him, he had no money except what was given him by the Police Department (they check before he goes out). He was asked to sign a release and a copy of the sting guidelines. He was told specifically to go into the establishment and ask to purchase one particular type of drink. In pouring establishments he was told to ask for a Bud Lite and to ask for a six pack of Bud Lite in package stores. In each case it was the same – to cut down on any confusion. If a question was asked by an employee he was told to leave. He was told not to offer a fake ID; there was no ruse used. He was just told to ask for the Bud Lite. He stated this is a learning tool; they want to keep lines of communication open.

He read his report into the record for this establishment: On Saturday, August 16, 2008 at 2149 hrs myself with Officer Jeffrey Marshall, age 20 in plain clothes conducted an

undercover "sting" of DJ's Wings, Ribs, Subs 'n More, 165 Yarmouth Road, Hyannis, Dennis Carlin, Manager, following the guidelines of the Massachusetts Alcohol Beverage Control Commission for underage drinking stings. I observed Officer Marshall go into the establishment where he purchased one Bud Lite beer for \$3.40 from a white male named Brendan. After purchasing the beer Marshall left it on the bar and exited the establishment. While in the parking lot Brendan came out to our vehicle, recognized me, whereupon he realized he had sold to someone under the age of 21, stating that he knew he should have checked Marshall's ID but did not.

Dennis Carlin appeared for the restaurant. He stated they close at 9-10 pm; go out of their way to run a tight operation. He is shocked it happened as it is his bar Manager who is named Brendan.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken as to findings: 1) I find that the Barnstable Police Department conducted a sting operation substantially in accordance with the "Sting" Policy adopted by the Licensing Authority, 2) I find this hearing was properly posted and advertised and the licensee properly notified of the hearing, 3) I find that the underage person used in the sting was a person under 21 years of age and an employee of the Barnstable Police Department and operating under the supervision of a Barnstable Police Officer during the sting activity, 4) I find that the Barnstable Police Department did announce, at an open and televised meeting of the Licensing Authority on July 7, 2008, their intention to conduct "sting" operations in the near future, 5) I find that the Barnstable Police Department did send a notice to each licensee of the town, using a Licensing Authority prepared list of licensees, to attend and participate in one of two Licensing seminars in June, 2008 where rules and regulations would be discussed, questions answered, and procedures would be explained, and that a Cape Cod Article dated June 26, 2008 announced the intention of the Police Department to conduct the stings, 6) I find the Police Department did conduct the "Sting" activities less than two months following the seminars (this one being August 16, 2008), 7) I find the testimony of the Police Department to be credible in this matter, 8) I find that the licensee did sell or deliver an alcoholic beverage to a person less than 21 years of age, 9) I find that the record indicates there have been no prior violations.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to adopt the findings as proposed.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken as to guilt of DJ's Wings, Ribs, Subs 'n More, 165 Yarmouth Road, Hyannis, Dennis Carlin, Manager, that on August 16, 2008 it was in violation of the Code of the Town of Barnstable, Massachusetts, Part V, to wit: it did sell an alcoholic beverage to a person under 21 years of age in violation of Section 501-7, paragraph F and 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 and seconded by Paul Sullivan and a unanimous vote taken as to sanctions: 2d suspension; one day to serve one year from the date of the violation and one to be held in abeyance for that timeframe to be dismissed if no further Ch 138 violations. Mr. Hoxie stated we will allow the lawfulness and appropriateness of staying open for food only during the suspension but at present it has to be closed.

Show Cause Hearing: **Show Cause Hearing** on The Island Merchant, 302 Main Street, Hyannis Joe Dunne, Manager, at the request of The Barnstable Police Department which has reported to the Licensing Authority that on August 16, 2008, an undercover sting was conducted by the Barnstable Police Department under written guidelines adopted by the Town of Barnstable Licensing Authority and on August 16, 2008 it was in violation of the Code of the Town of Barnstable, Massachusetts, Part V, to wit: it did sell an alcoholic beverage to a person under 21 years of age in violation of Section 501-7, paragraph F and 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 and then a letter from the Licensee requesting a continuance due to a prior catering commitment, the continuance being granted to 11/17/08.

Show Cause Hearing: **Show Cause Hearing** on Fazio's Trattoria, 294 Main Street, Hyannis, Thomas Fazio, Manager, at the request of The Barnstable Police Department which has reported to the Licensing Authority that on August 16, 2008, an undercover sting was conducted by the Barnstable Police Department under written guidelines adopted by the Town of Barnstable Licensing Authority and on August 16, 2008 it was in violation of the Code of the Town of Barnstable, Massachusetts, Part V, to wit: it did sell an alcoholic beverage to a person under 21 years of age in violation of Section 501-7, paragraph F and 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.

Lt. JoEllen Jason answered that she and Officer Steve Maher would testify for the Police Department. Mr. Hoxie asked them all to raise their right hands and swear to tell the truth at this administrative hearing. All raised their hands and answered yes. Mr. Hoxie advised the Licensee we would hear from the Police Department first and that they would have a right to question the police and then testify on their behalf.

Lt. Jason stated that she and Officer Maher are here representing the Barnstable Police Department, and that Officer Maher would be making the case. She stated she wanted to make an overview statement of how they came to be here today. She said that the two of them have worked for 2 ½ yrs – 3 yrs. as liaison officers with the Board, and that it took some time to learn and be comfortable with all the workings of the Board and what they do all the time. During that time, she stated they feel they have opened the

communication with the businesses on Main Street, advising that noise complaints and disturbances are down. They have had great communication with the licensees in the Town. They have facilitated some informational seminars for license holders – two in 2007 and two in 2008, covering all of the alcohol license requirements, ID's (fake and altered), overcrowding, noise complaints, over serving, under-age drinking and what stings are. Because there are only two of them, the rest being in enforcement and so busy, they have taken the philosophy that self-policing of the licensees is the best policy. They have tried to give them as much information as possible and have been open to any questions from licensees. They decided to test the philosophy to see how the licensees were doing. Recently on three separate nights stings were held – they are frankly a bit disappointed with the results. She stated there is more work to be done but took it as a learning experience. They visited approximately 88 businesses on the stings. They want to bring before us the fact that although there are some businesses before us, there were 48 businesses in compliance on those nights and at some point would they like to recognize those as being diligent. She stated there are a number of elements that are common to all of these hearings and stated they will present to us how the sting was put together first and then individually conduct the hearings. She stated that Officer Maher would give an overview of what they did on each night, this one being August 16th. They abided by the Sting Guidelines adopted by the Board a month or so ago.

Officer Maher stated that they sent out a letter to all of the Liquor Licensees in the Town to invite them to informational sessions this year (showing a copy of the letter sent in his power point presentation) in June. There was someone from the ABCC in attendance as well. In the midst of those sessions they went over the sting guidelines (attached to these minutes and shown in his power point presentation). They went over how they would accomplish a sting and what they would do once they went to their establishments, down to the letter of how it would happen. All who attended were informed and shown the specific guidelines and how they would be used. As part of the sting procedure, there was an article in the Cape Cod Times on June 26th, a copy of which ad is attached to these minutes, advising that the police department was going to be going out using young people to test these establishments. During the June sessions they also suggested self testing of the establishments. On the nights of the stings, they brought in an underage officer, went over the guidelines with him, took a photo of him dressed as he was to go out on the sting, made sure he looked age appropriate, had no ID of any kind with him, he had no money except what was given him by the Police Department (they check before he goes out). He was asked to sign a release and a copy of the sting guidelines. He was told specifically to go into the establishment and ask to purchase one particular type of drink. In pouring establishments he was told to ask for a Bud Lite and to ask for a six pack of Bud Lite in package stores. In each case it was the same – to cut down on any confusion. If a question was asked by an employee he was told to leave. He was told not to offer a fake ID; there was no ruse used. He was just told to ask for the Bud Lite. He stated this is a learning tool; they want to keep lines of communication open.

He read his report into the record for this establishment: On Saturday, August 16, 2008 at 2127 hrs myself with Officer Jeffrey Marshall, age 20 in plain clothes conducted an undercover "sting" of Fazio's Trattoria, 294 Main Street, Hyannis, Thomas Fazio, Manager, following the guidelines of the Massachusetts Alcohol Beverage Control Commission for underage drinking stings. I observed Officer Marshall go into the establishment where he purchased one Bud Lite beer for \$4.00 from a white female in her late 20's with dirty blond hair and a ponytail. After purchasing the beer Marshall left it on the bar and exited the establishment.

Thomas Fazio stated he is just getting into the sting procedure – where it came from, who initiated it? Officer Maher stated it was initiated by the police department. What penalties were recommended for first offenses? Steve Maher stated the police department does not normally make recommendations. Officer Maher stated they also had stings in 2004 and 2006 to his knowledge. Mr. Fazio read a statement into the record: I would first like to apologize to the licensing board as well as to the police department for our establishment serving an underage person. I first read about this violation as others did in the newspaper. I feel the town could have notified license holders before the story was published. After learning of the violation the bartender was immediately fired. Before you determine the appropriate punishment for this offense, I wish to point out some mitigating factors that this Board should take into account. First, I question whether the statement from the police department in the Cape Cod Times on June 26, 2008 was misleading; it stated that "undercover stings" would take place in "package stores and bars." My establishment is neither or these. I operate a small family run restaurant not a bar. I feel we were not properly informed as required by the rules that were established. Second, I have been operating a restaurant on Main Street in Hyannis since 1989 without a single violation and without even being accused of a violation. I can assure this board that prior to this undercover sting I have never served an underage person. I have been vigilant and I oversee the serving of alcohol directly seven days a week. I am asking for consideration for the 18 years of running a business without a violation. We have taken our responsibility to police drinking further than most restaurants. We are probably the only restaurant in town that was sued for refusing to serve alcohol to an adult who appeared intoxicated. Third, Fazio's has always been and will always be primarily a restaurant where alcoholic beverages are served with meals. Fazio's is not a bar and does not attract an underage drinking crowd. People don't come simply to have a drink. Our clientele is mostly over 40. We close at 10 pm to avoid adding to the problems on Main Street by staying open later. Even though this may have a negative impact on our bottom line it creates a better atmosphere for our clients as well as our help. These factors are an excellent indicator that this type of violation doesn't regularly occur and won't occur again. The purpose of punishing an offender is to prevent the incorrect behavior from happening again. I think the personal embarrassment associated with having to come before this board on this one occasion, is more than enough punishment to ensure that this won't happen again. To close my restaurant in August at the cost of thousands of dollars not to mention the cook's and wait staff that would go without a days pay in view of our 18 years with a perfect record is excessive and in light of the recent downturn in the economy, harmful to our business. I can't help but notice the sanctions given out in the previous hearings

have been exactly what the police have recommended. I find it fundamentally unfair for the police to handle the sting and the sentencing for the violations. I would ask that taking all of this into account that this Board would choose to give Fazio's a warning or a suspended sentence on this occasion.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken as to findings: 1) I find that the Barnstable Police Department conducted a sting operation substantially in accordance with the "Sting" Policy adopted by the Licensing Authority, 2) I find this hearing was properly posted and advertised and the licensee properly notified of the hearing, 3) I find that the underage person used in the sting was a person under 21 years of age and an employee of the Barnstable Police Department and operating under the supervision of a Barnstable Police Officer during the sting activity, 4) I find that the Barnstable Police Department did announce, at an open and televised meeting of the Licensing Authority on July 7, 2008, their intention to conduct "sting" operations in the near future, 5) I find that the Barnstable Police Department did send a notice to each licensee of the town, using a Licensing Authority prepared list of licensees, to attend and participate in one of two Licensing seminars in June, 2008 where rules and regulations would be discussed, questions answered, and procedures would be explained, and that a Cape Cod Article dated June 26, 2008 announced the intention of the Police Department to conduct the stings, 6) I find the Police Department did conduct the "Sting" activities less than two months following the seminars (this one being August 16, 2008), 7) I find the testimony of the Police Department to be credible in this matter, and that they do not make recommendations on sentencing except for the one in question 8) I find that the licensee did sell or deliver an alcoholic beverage to a person less than 21 years of age, 9) I find that the record indicates there have been no violations in 18 years.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to adopt the findings.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken as to guilt that on August 16, 2008, Fazio's Trattoria, 294 Main Street, Hyannis, Thomas Fazio, Manager, holding an All Alcohol Common Victualler License was in violation of the Code of the Town of Barnstable, Massachusetts, Part V, to wit: it did sell an alcoholic beverage to a person under 21 years of age in violation of Section 501-7, paragraph F and 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 and seconded by Paul Sullivan and a unanimous vote taken as to sanctions: a 2 day suspension was imposed; one to be served on August 16, 2009 and one to be held in abeyance until that date; if there are no further Ch. 138 violations it will be dismissed. Mr. Hoxie stated that they will investigate the feasibility of staying open without the alcohol service.

Mr. Fazio stated he will appreciate any help the Board can give them with regard to remaining open for food only.

Show Cause Hearing: Show Cause Hearing for Shanghai Chinese Restaurant, 11 Ridgewood Avenue, Hyannis, MA, Henry Yang, Manager, at the request of the Barnstable Police Department, which has reported to the Licensing Authority the following violations of the Code of the Town of Barnstable, Massachusetts, Part V, to wit: § 501-1 Availability of rules and regulations sections A and D - The rules and regulations of the Town were not readily available and the employees had not read the regulations (5/11/08 & 8/16/08); § 501-2 Posting and signs sections A and B – signs and permits were not posted (5/11/08); § 501-5 Physical premises section G – children not allowed in the kitchen and behind the bar (8/16/08); § 501-7 Alcoholic beverage sales and laws Section B – No drink list available (8/16/08); § 501-8 Environs of licensed premises sections A and C for lack of supervision and allowing patrons to loiter and congregate in front of the licensed premises, inside the establishment and in the parking lot and allowing the same patrons to walk in and out of the premises at short intervals (11/13/07, 12/4/07, 12/25/07, 2/8/08, 7/10/08, 7/11/08, 8/16/08); § 501-12 Illegal activity on the licensed premises, by failing to pay attention to activities on the premises of known drug users or drug dealers; using diligence in observing and taking action against persons who make unusually frequent trips in and out of the premises or in and out of the rest rooms and/or persons visited at the premises by an unusually large number of people or by one or more people with packages (matchbooks, cigarette packs, bags, paper squares, plastic or foil containers, or other containers) or payments of money (11/13/07) and failure to call for police assistance as necessary to protect patrons against injury or to evict unruly patrons or to uncover unlawful conduct or to give medical assistance and providing police with requested information.

Mr. Hoxie read the hearing notice. He asked that the witnesses be sworn in.

Officer Maher read his report into record as follows: Dispatched to the Shanghai Restaurant on August 16, 2008 at 0021 hours for a report of a large fight inside the establishment. Upon arrival I observed several subjects, 10-15, standing outside the establishment. On going inside, I also observed several subjects, 15-20, standing in the table area along with 12 people at the bar. None of the tables had any food on them. There were several drinks on the bar. Officers present first attempted to find out from the subjects present if there had been a fight and who had been involved. None of the subjects cooperated with the officers. I then went up to the two employees - Boa Goa and Yong Ding and tried to have conversation with them regarding the fight. Both claimed that they did not know of any fight. I then attempted to conduct a compliance check of the town ordinances governing establishments with liquor licenses. When I asked for a copy of the town's rules and regulations I was handed a copy of the Commonwealth's regulations. When I asked for a copy of all employees I was handed a driver's license from Ms. Gao. When I asked who was the manager, Goa stated that there was no manager, that the manager was at home. I also noted that there were two children behind the bar. While having conversation with Goa, I observed the two children go back and forth between the bar and the back kitchen area. I then asked who the

children were. Mr. Ding stated that they were his children. I then asked how old they were and he stated 15 years and 9 years old. Over the past year there have been several calls to this establishment including the following: A stabbing on December 4, 2007; a controlled purchase of \$200.00 of cocaine on November 13, 2007; a fight in the parking lot on December 25, 2007; drug activity in the parking lot on February 8, 2008 where the suspects went into the restaurant afterwards; a compliance check done on May 11, 2008 where the following violations were found: no employee list, no drink price list, licenses not posted, 138D posters not posted, employee not familiar with the Rules and Regulations of the Town; a fight at the establishment between employees on July 10, 2008 and a disturbance at the establishment on July 11, 2008 for a large crowd inside.

Over the past several months I have observed several instances where groups have either been loitering in the parking lot or in the doorway of the establishment. On May 11, 2008 while entering the establishment to conduct a compliance check I clearly heard a male subject at the door yell into the establishment, "Yo, 5-O" after which there was a large group that exited the establishment as I entered."

Officer Maher stated that after the stabbing, etc. – no call was made to the Police Department and employees did not admit any disturbance. He also stated that the controlled buy was set up – a confidential informant was used. In the bathroom and at the bar – purchase of crack cocaine took place.

On February 8th there were subjects in the parking lot standing around cars, then going back into the establishment; he saw one of them leave something on the ground – it was a cigarette container with a baggie with cocaine residue found inside it.

On May 11th, Officer Maher and another officer conducted a compliance check; there was no manager on duty; no employee list, no drink list, no posters posted, no license posted. Employees were not familiar with the rules and regulations of the Town,

Back to the most recent incident on 8/16/08 – there was no manager there; employees had no knowledge of any fight, no Town rules and regulations were available, no employees list was present, no drink list posted, and he was only given ABCC Blue Book. Two children were there 15 and 9. He stated he found that odd.

He also testified that the handicapped walkway is used by loiterers – they go in and out of cars and into the restaurant.

Officer Maher stated he has never met a functioning Manager; no-one is keeping an eye on patrons going in or out. His attention has been drawn here many many times – it has become a nuisance. The crowd is usually rough.

Attorney Rob Mills attended with Mr. Yang and Ms. Gao, who was there at a couple of the dates mentioned.

Attorney Mills questioned 12/4/07: Report of stabbing – Was the woman stabbed inside the restaurant? It was stated by Officer Maher that she did not discover she was stabbed until she got home. She then went to Cape Cod Hospital. During subsequent investigations they identified who stabbed her. It was a confrontation where she tried to intercede between 2 males and she got stabbed. Officer Maher did not know if it involved drug activity. He then stated that the allegation was that the restaurant did not notify the police of the fight which took place inside in the bar area. The victim and officers responding verified the fight. The second case – cocaine on 11/07 took place in the bar. Attorney Mills asked why the purchase was set up in the bar; Officer Maher stated it probably was because this establishment is used as a rendezvous place for this type of activity. Attorney Mills then asked about 12/25/07 – was this called in? By whom? Officer Maher stated he did not know. Attorney Mills asked about the drug related activity in the parking lot on February 8th and then going inside – Officer Maher stated that is what happened. Attorney Mills asked if the person he spoke to understood him; Officer Maher stated she did. Officer Maher then stated when asked that the fight in July was between employees – it was that 4 people fighting then went inside.

Attorney Mills asked about August 16th, trying to talk to the people inside - and Officer Maher stated there was very little cooperation. Attorney Mills asked if they saw a fight; Officer Maher stated he saw evidence of spilled drinks on the tables, indicating a disturbance.

Attorney Mills stated Mr. Yang owned China Gardens in Mashpee – he thinks a lot of the problems here in Hyannis are because of the location of the restaurant. It is a challenging location. He stated many of the customers are homeless; people there with mental health issues. These people are in the area. Attorney Mills sees these people around the area – the demographics are a problem. There is also a clear language problem with Lucy – she sometimes does not know what he is saying. Mr. Yang and Ms. Gao did not go to the educational seminars. He stated he would like them to attend. Attorney Mills has gone over the Town rules and regulations with them for about 45 minutes – they also have been re-certified in TIPS training. They have a copy of the rules and regulations which are now behind the bar. They have a sign on the bathrooms stating that Bathrooms are for patrons only, thank you (on the front door) and a No Loitering sign is also posted. Attorney Mills stated it is a fine line for the woman (Lucy Gao) to determine if bathrooms are used too often, etc. because of the clientele. She has been very vigilant about carding people who do not look over 40. There are a total of 4 employees ONLY. The daughter was probably seen where the food prep was being done. Ms. Gao also handles the food prep. The drink list is in a plastic standup on the tables and usually on the bar. The Polynesian drinks list is on the bar itself. There is not a set price on a drink list. Attorney Mills told them that needs to be done and displayed. The other posters ARE all up but perhaps were covered. He noticed it being covered himself. All the licenses and posters must be exposed, which he has told Ms. Gao. Lucy wanted the Board to know that infrequently the 9 year old has no care all of a sudden and has to be brought to the restaurant. The 16 year old has just recently come here from China. He sits at a table behind the area of the bar where the prep work is done.

The daughter is doing homework, etc. This happens only when there is no care available – they will change where the children sit if they have to be there.

Mr. Hoxie asked Officer Maher when these occurrences happen – it seems to always be late at night. Mr. Hoxie stated his recommendation would be to continue this hearing to decrease the hours to the 12/8/08 hearing for findings, sanctions and to advertise a proposed decrease in hours. He stated we owe it to the public to have the option to appear as to decrease in hours. Mr. Sullivan asked if they are aware of the Federated Church meeting this Tuesday night sponsored by BID, police, etc. dealing with the business people and the homeless. He stated there are a lot of things he could accept about their testimony, but the drug issue totally turns him off. Attorney Mills stated it is their concern as well. It was brought up by Attorney Mills that they had a violation uncovered by the ABCC in 2004 for service to a minor. A suspension was imposed but held in abeyance pending any further violations. No further violations took place within the timeframe.

Mr. Sullivan suggested attendance at this meeting tomorrow night.

Mr. Hoxie stated we will advertise hearing under Sec 12 c 138 decrease hours as well as findings and sanctions on this hearing for later hearing.

Renewals:

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

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

Class I Auto Dealers:

Cycle Services JD Signs
Premier Cape Cod
Cadillac Saab of Cape Cod
Trans-Atlantic Motors

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

Class II Auto Dealers:

ES Auto Sales
Robert J. Trapp, Inc.
Image Motors
Barnstable Road Auto Repair
Club 44 Acquisition Services

AB Auto Sales
Nantucket Auto Sales
Earl LeGeyt Auto Sales
Ron's Truck Stop
Barnstable Motors

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

Lodging Houses:

Friends of Prisoners
The Mains'l
Tidewater Inn
The Old Hundred House
Captain David Kelley House
Salt Winds B&B & Guesthouse
Maple Street Inn
Sail Inn
Jean F. Clark - 961 Pitcher's Way
Jean F. Clark - 975 Pitcher's Way
Jean F. Clark - 989 Pitcher's Way
Simmons Homestead Inn
Josiah Sampson House
Boston Culinary Group
Flaherty's Two

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

Common Victualler:

Pizza 1 and Subs 2
Marylou's Coffee
Burger King 2145 Iyannough Road
Burger King 184 North Street
Coffee Table Café
Pery's Place
Four Seas Ice Cream
Sarku Japan
Kentucky Fried Chicken
BJ's Wholesale Club
Cooke's Seafood
Caffe e Dolci
Papa Gino's – Bell Tower Mall
Subway Sandwiches – 2145 Iyannough Road

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

Video Games:

Burger King 2145 Iyannough Road

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

Carousel:

Island Carousel

A motion was duly made by Mr. Burman and seconded by Mr. Sullivan and a unanimous vote taken to approve the Cinema/Theatre renewal as submitted below:

Cinema/Theatre:

Barnstable Comedy Club

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

Daily Live Entertainment:

Barnstable Comedy Club

A motion was duly made by Mr. Burman and seconded by Mr. Sullivan and a unanimous vote taken to approve the Daily Non-Live Entertainment renewals as submitted below:

Daily Non-Live Entertainment:

Burger King 2145 Iyannough Road
Lightning Falls
Island Carousel
Papa Gino's – Bell Tower Mall

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

Sunday Entertainment:

Island Carousel
Barnstable Comedy Club
Papa Gino's – Bell Tower Mall

A motion was duly made by Mr. Burman and seconded by Mr. Sullivan and a unanimous vote taken to approve the Mini Golf renewal as submitted below:

Mini Golf:

Lightning Falls

Business Meeting:

Mr. Burman asked Mr. Geiler to provide information about separating liquor from food licenses. Mr. Geiler stated given the history of the ABCC process and the courts, it would be subject to a review – the ABCC sting guidelines show they have done just we have done – close the premises. Mr. Burman asked that it be added to the next agenda and research will be done in the interim.

Mr. Hoxie stated the attorney did raise a point that it is a harsh sanction not to let them serve food.

Lt. Jason stated they have been going over the Used Car Dealer regulations and would like to put this on the next agenda – stating that Attorney Houghton looked at it and stated it was fine except for some minor wording. She'd like us to look at it and that they would also conduct education for the parties involved. Mr. Geiler stated the Licensing Authority may adopt rules and regulations – all we need to do is advertise it to the public. Lt. Jason wanted us to put it on for discussion at the next hearing and vote at a later hearing to adopt the changes.

Mr. Geiler stated it substantiates the Board's position for years to suspend a year from the date of any violation.

Adjourned at 11:50.

Respectfully submitted,

Christine P. Ade, Recorder
Town of Barnstable Licensing Authority

Paul Sullivan, Clerk
Town of Barnstable Licensing Authority