



# Town of Barnstable

## Regulatory Services

Thomas F. Geiler, Director

### Licensing Authority

200 Main Street

Hyannis, MA 02601

[www.town.barnstable.ma.us](http://www.town.barnstable.ma.us)

Telephone: (508) 862-4674

Fax: (508) 778-2412

### BARNSTABLE LICENSING AUTHORITY LICENSING HEARING MINUTES

Town Hall Building, 367 Main Street, 2<sup>nd</sup> Floor Hearing Room, Hyannis, MA – 9:30 a.m.  
February 2, 2009

A regular meeting of the Barnstable Licensing Authority was held on Monday, February 2, 2009. 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 & Sunday Entertainment Licenses:** Application of Ann Louise Harries on behalf of Hyannis Public Library, 401 Main Street, Hyannis, MA for a One Day and Sunday Entertainment License for its annual Antique Show to be held at Barnstable High School, West Main Street, Hyannis, on February 14<sup>th</sup> and 15<sup>th</sup>, 2009 from 10 am to 4 pm each day.

Ms. Harries came forward for her application. She wanted to change the hours to 10-5 Saturday and 11-4 Sunday. This is the 3<sup>rd</sup> year of the show.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Ann Louise Harries on behalf of Hyannis Public Library, 401 Main Street, Hyannis, MA for a One Day and Sunday Entertainment License for its annual Antique Show to be held at Barnstable High School, West Main Street, Hyannis, on February 14<sup>th</sup> and 15<sup>th</sup>, 2009 from 10 am to 5 pm Saturday and 11-4 Sunday.

**Five One Day Beer & Wine Permits:** Application of Christine Duren on behalf of Cotuit Center for the Arts, 4404 Route 28, Cotuit, MA for **5 One Day Beer & Wine Licenses** for an Art Exhibit Opening & Reception on February 14, 2009 from 5 pm to 11 pm, a Jazz Brunch on February 15, 2009 from 1 pm to 3 pm, its 8<sup>th</sup> Annual Poetry & Chilifest on March 14, 2009 from 7 pm to 11 pm, a Harp Trio Brunch on March 15, 2009 from 1 pm to 3 pm and an Art Exhibit Opening Reception on March 21, 2009 from 4 pm to 7:30 pm.

Christine Duren came forward for the application. This is their normal proceeding for asking for the alcohol. They are active as always. They have 4-5 events per quarter.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Christine Duren on behalf of Cotuit Center for the Arts, 4404 Route 28, Cotuit, MA for **5 One Day Beer & Wine Licenses** for an Art Exhibit Opening & Reception on February 14, 2009 from 5 pm to 11 pm, a Jazz Brunch on February 15, 2009 from 1 pm to 3 pm, its 8<sup>th</sup> Annual Poetry & Chilifest on March 14, 2009 from 7 pm to 11 pm, a Harp Trio Brunch on March 15, 2009 from 1 pm to 3 pm and an Art Exhibit Opening Reception on March 21, 2009 from 4 pm to 7:30 pm.

**Change of Manager:** Application of Wianno Club, 107 Seaview Avenue, Osterville, MA, Jack L. Thomson, Manager for a **Change of Manger on the All Alcohol Club License** to Peter C. Davies.

Mr. Davies appeared for its applications. He is taking over both places from Jack Thompson. He has been doing this since February of 2008.

Mr. Burman asked how one person sits at two places at one time? He carries the responsibility for service of alcohol at both places. Mr. Davies stated he is constantly doing the rounds and the Parker Road facility is normally only used for lunch. There is a manager on duty as well as Mr. Davies. They go through the ServSafe programs, etc. He stated they don't want to get anyone into trouble. Mr. Sullivan asked if the former manager ran both; Mr. Davies stated he did.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Wianno Club, 107 Seaview Avenue, Osterville, MA, Jack L. Thomson, Manager for a **Change of Manger on the All Alcohol Club License** to Peter C. Davies.

Mr. Burman suggested in future that the manager on property should be the manager on record; from last February to now they were operating without the proper manager on the licenses.

**Change of Manager:** Application of Wianno Club, 389 Parker Road, Osterville, MA, Jack L. Thomson, Manager for a **Change of Manger on the All Alcohol Club License** to Peter C. Davies.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Wianno Club, 389 Parker Road, Osterville, MA, Jack L. Thomson, Manager for a **Change of Manger on the All Alcohol Club License** to Peter C. Davies.

**Changes to Junk Dealer Rules and Regulations:** The Barnstable Licensing Authority will hold a public hearing on proposed amendments to the Rules & Regulations of the Licensing Authority, Chapter 502, Junk Dealers. Copies of the proposed regulation changes can be found on the Town Of Barnstable web site: [www.town.barnstable.ma.us](http://www.town.barnstable.ma.us). Click department menu, Regulatory Services, Consumer Affairs, and then Licensing. Hard copy versions may be obtained at the Regulatory Services Department, Licensing Office, 200 Main Street, Hyannis MA 02601

Mr. Hoxie stated that this hearing will be continued to 2/23/09 so that everyone can fully review the brief of counsel for one of the Junk Dealers, Attorney Richard Cohen.

**Increase in Number of Vehicles and change in description of Lot – Class II Auto Dealer:** Cape Cod Auto Connection, 152 Ridgewood Avenue, Hyannis, Tom Lundquist, Manager, has requested a change in the description on their Class II Auto dealer License to: .88 acre lot at 152 Ridgewood Avenue, Hyannis, Ma with an office area and the maximum number of vehicles on lot to be 70 vehicles (includes 6 customer spaces and 2 employee spaces) in accord with any restrictions imposed by the Planning Board and Site Plan Review at its 1/12/09 hearing.

Tom Lundquist appeared to request the increase as stated. He had purchased the property some time ago and has now gone through the proper authorities to

Officer Maher went on record that at the last hearing this dealer did not make any effort to come into compliance with the number on his license; Mr. Lundquist stated the people who were supposed to pick up the extra vehicles put them off for a few days.

Mr. Burman asked about final Planning Board approval. Mr. Lundquist stated he has it.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Cape Cod Auto Connection, 152 Ridgewood Avenue, Hyannis, Tom Lundquist, Manager, to change the description on their Class II Auto dealer License to: .88 acre lot at 152 Ridgewood Avenue, Hyannis, Ma with an office area and the maximum number of vehicles on lot to be 70 vehicles (includes 6 customer spaces and 2 employee spaces) in accord with any restrictions imposed by the Planning Board and Site Plan Review at its 1/12/09 hearing.

Officer Maher the diagram submitted there are only 7 vehicles near the driveway; he wanted that confirmed which Mr. Lundquist said is correct.

**Increase in Number of Vehicles and change in description of Lot – Class II**

**Auto Dealer:** Nantucket Auto Sales, 89 Bassett Lane, Hyannis, Donald Hallett, Manager, has requested a change in the description on their Class II Auto Dealer License to increase the maximum number of vehicles on lot to 18 vehicles (includes 2 visitor spaces and 1 handicap spot).

Mr. Hallett appeared to speak to the Board. He stated he met with the Building Commissioner who signed off on a total of 18 vehicles.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Nantucket Auto Sales, 89 Bassett Lane, Hyannis, Donald Hallett, Manager, to change the description on their Class II Auto Dealer License to increase the maximum number of vehicles on lot to 18 vehicles (includes 2 visitor spaces and 1 handicap spot).

**New Junk Dealer License:** Application of Gamestop, Inc., d/b/a Gamestop 4225, 793 Iyannough Road, #B-16B (Cape Cod Mall), Hyannis, MA, Timothy Nance, Manager, for a **New Junk Dealer's License**, hours of operation to be 10 am to 9 pm, Monday-Saturday and 12 pm to 6 pm Sunday.

Timothy Nance appeared for his application. He is the store manager at the Mall. They have more than 6,000 stores worldwide. They stopped their second hand sales until this meeting once they found out they needed our license. Lt; Jason stated that Sgt. Murphy wanted to put in a good word for Gamestop. They immediately desisted cash for used video games and is now giving store credits.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Gamestop, Inc., d/b/a Gamestop 4225, 793 Iyannough Road, #B-16B (Cape Cod Mall), Hyannis, MA, Timothy Nance, Manager, for a **New Junk Dealer's License**, hours of operation to be normal Mall business hours plus special seasonal mall hours

Mr. Nance asked for the mall hours – and to expand them for seasonal hours like holiday time.

**Renewals:**

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

**Lodging House**

The Embassy Inn

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of The Embassy Inn for renewal of its Lodging House license.

### **Common Victualler**

Trem de Minas Restaurant  
Quizno's  
Old Country Buffet

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the applications of the above establishments for renewal of their Common Victualler licenses.

Mr. Burman suggested that something be put into their file so if this happens again there would be some sanction.

### **Cinema/Theatre**

Cotuit Center for the Arts

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Cotuit Center for the Arts for renewal of its cinema/theatre license.

### **Daily Live Entertainment**

Cotuit Center for the Arts

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Cotuit Center for the Arts for renewal of its Daily Live Entertainment license.

### **Sunday Entertainment**

Cotuit Center for the Arts

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Cotuit Center for the Arts for renewal of its Sunday Entertainment license.

### **Business Meeting:**

Mr. Hoxie put into record that he would be attending the meeting on Feb 17<sup>th</sup> with Mr. Burman put on by GMD.

Discussion took place on liquor license checks returned for insufficient funds – 3 licensees currently without liquor license fees paid. One paid at the end of last week.

Mr. Geiler stated this is not new – but there are more this year and usually the response from the licensees is immediate. There has been no communication whatever from these. Sec 7, Ch 138 of MGL makes it clear that no license is granted until the fee is paid, as the case may be. Without that fee they really do not have a valid license. Some years in the past, a decision was made to go there and just take the licenses. We are into week 5 at this point, and need to take a position on how long we would continue to allow them to operate as they are definitely in violation. He also brought up that the Board some years ago offered a half-year payment which only one of these licensees asked for. This was to ease the burden of paying for the entire year license at the end of each year.

Mr. Hoxie asked what we did for these checks. Mr. Geiler stated the Treasurer's Office sent a very specific letter to them and we called them. Mr. Hoxie stated we need to send a certified letter that we need their bank check or money order by a certain specific date or their license is null and void.

Mr. Burman stated that because of this economy we need to give them some breathing room, but suggests ½ now and ½ by June...there should be some leniency. Mr. Geiler stated that the law does not leave room for leniency.

Mr. Burman suggested we give them notice. Mr. Sullivan stated we should send a letter out right away suggesting a payment date on or before 1 week from receipt of the letter.

Mr. Hoxie summarized and stated we will send them notice to pay by February 10<sup>th</sup> or we will take action.

Discussion took place regarding possible change in sanctions for show cause hearings.

Mr. Geiler stated he finds nothing saying the Authority cannot amend their sanctions...He stated that the forward to the Town of Barnstable Rules and Regulations states that, "Copies of the regulations are to be kept at each licensed premises and are to be available for review at all times. The Licensing Authority requires all employees of its licensees be familiar with the rules contained herein as well as the obligations mandated by them. It is the intent of the Licensing Authority to make the rules and regulations as accessible as possible to all persons to aid in the general understanding of the Licensing Authority's roles and functions. Licensees are cautioned that these rules and regulations are not intended to cover every potential combination of circumstances. Should a licensee intend to implement a change in operating

procedures, which circumstances are not clearly defined in these rules and regulations, an inquiry to the Licensing Office is suggested.

Within the body of the rules and regulations there is a section of Ch. 501-15 that deals with suspension orders and requires that anybody who is the recipient of a sanction with a suspension order must post the premises during that period with a sign supplied by the Licensing Authority and that sign must remain affixed during the entire suspension period. It goes on to indicate that the suspension periods may not be used to effect renovations; no members of the public may be on the licensed premises at any time during suspension periods and the business may not be open for any reason. The Licensee may be on the premises only if it is in the process of actively cleaning up or doing office work at the premises. No persons other than the licensee or its employees may be on the premises during the suspension period for any reason. I think it's clear that when an applicant comes before the Licensing Authority, the Licensing Authority makes every effort to ensure that they have read and understand their rules and regulations and how it would apply to the premises that they intend to operate. On occasion the Licensing Authority explains they most often deal with violations with a sanction; that sanction being a suspension. Having said that, I really don't see anything in Ch 138 or in our rules and regulations that says you can't review a decision and if appropriate to amend that decision. I suppose there are several ways you could do that. The only thing I would suggest is that it still need to be consistent.

One of the issues raised was whether the food license should be suspended as well as the alcohol license. Clearly within the rules and regulations, 501-15, Section D says no members of the public may be on premises at any time during suspension periods and the premises may not be open for any reason. The Licensee may be on the premises only for actively cleaning or doing office work. For the most part, historically Barnstable has paralleled or certainly modeled their sanctions after actions taken by the ABCC. The difference is that if you are a licensee that is charged, reviewed and convicted by the ABCC and issued a sanction, you have the right to offer a fine in lieu of suspension. They have a formula to calculate that fine on a daily basis based upon the dollar volume of the restaurant or store. Cities and towns do not have that option except there is a provision that can be adopted, and you can exercise that option, that the money goes to the state. Not many communities have adopted that.

Mr. Hoxie said he does not think that should be an option for us. What he thinks Mr. Burman means by raising this issue is whether to give the establishments which are not just a bar a separate Common Victualler or Innholder license or issue one after the alcohol license was suspended for the suspension period and suspend only the alcohol license. For instance if a large motel or hotel was given a suspension for a violation in one of their lounges, would that mean that the entire inn would have to close?

Mr. Burman asked Mr. Geiler about the front page of our blue book which states that we as an authority adopted these rules. If we adopted them, we can modify them. Licenses are issued under law. Ch. 138 is alcohol and Ch. 140 is CV and Innholder. Mr. Burman stated that the point he wanted to make is that the license for the restaurant or innholder is under a completely different section. Mr. Geiler stated not necessarily; if you read Ch. 138, you'll see that it specifically authorizes you under the consideration of whether to issue a license that you can grant both a Common Victualler component or an all alcohol component or whatever the components may be as a single license and single vote – as in Common Victualler All Alcohol License. Mr. Burman stated he still felt it was a separate chapter and that is why he is asking both Mr. Geiler and Attorney Houghton to give us some guidance as to how we could change that so that if a sanction issued to an alcohol licensee, that he or she can still serve food. They aren't in violation of the food. The Board of Health will cite them for any violations with regard to the food.

Mr. Hoxie asked how we can determine which ones to grant this privilege to? Or would you allow every licensee to do it? Mr. Burman stated the Authority would decide at the time.

Mr. Sullivan asked specifically about the motels; do you close the whole place for the suspension time? If it was separate, we probably would take a different look at the penalties themselves and make them harsher. Mr. Burman stated he would have taken a harsher position if it was only alcohol service – instead of one day maybe three days, not their food license as well. Mr. Burman brought it up as suspending the food he thinks is unfair.

Mr. Hoxie asked Attorney Houghton, if we suspend an All Alcohol Common Victualler's license, can we then issue a Common Victualler's license only for that period of time during which the All Alcohol Common Victualler's License is under suspension?

Attorney Houghton stated they are in a sense separate but equal licenses. You can't have a Common Victualler All Alcohol unless you are a Common Victualler. You can't have an Innholders All Alcohol license unless you're an innholder. You can, ironically, separate the two. The suspension of the alcohol license is not necessarily a suspension of the innholder or common Victualler license unless you in fact impose that. What we have to do is change 501-15D in such a way that the business of serving alcohol only is suspended unless the Authority specifically votes to suspend both. Section 9 of Ch 140 has different and less stringent regulations. You need to take the offenses on a case by case basis to see if they have violated the UNDERLYING Common Victualler or Innholder license as well as the alcohol license.



Mr. Hoxie stated we could amend that regulation even though it might be somewhat up to our discretion of what to suspend.

Attorney Houghton answered yes; there might be two amendments; one based on the violation they are CHARGED with; what have they violated? Our notices are the alcohol notice. Are they also violations of food service?... Are they violations of providing rooms to transients? We think you violated your alcohol license because of ...and we also think you violated your common Victualler license because of ...

Mr. Hoxie asked if he was correct in thinking if we suspended an Innholder All Alcohol license it meant the whole motel would have to shut down for the period of suspension?

Attorney Houghton stated there is enough leeway in the rules for Innholder licenses; that he believes an innholder has to provide both a room and available food service but that they may not have to shut the motel down – just the restaurant on premises with the alcohol. Without changing the regulation you could say the violation is against the food service or the alcohol service. This would not need a change in the regulations. They could continue to rent rooms but can't operate the bar or possibly the restaurant. They must have on premises "the implements to have food." They may not be in violation if not serving food. On the other hand, the regulation probably could be particularly with an innholder interpreted that the entire license be suspended.

Mr. Burman asked if we keep our licenses as we have been doing them for the last how many years but if a suspension is imposed, swap the license out when the sanction takes place with a plain Common Victualler of Innholder license omitting the alcohol. Attorney Houghton stated we can do that and can differentiate which the Licensing Authority wants. That would solve the internal problems. Mr. Hoxie thought it might not – what about the regulation that no one can be on the premises...as in the rules.

Attorney Houghton stated it IS discretionary except that 501-15 should then be amended to be specific "suspend the business" Z(just the license or the entire premises) and that the LA at hearing can decide what exactly they want to close. It would be safer to amend the regulation.

Mr. Hoxie said he prefers to keep the one license and amend JUST the regulation to give the Authority on the violation of alcohol to close the entire business or just the part serving alcohol. He asked if it is possible to come up with wording to do that?

Mr. Geiler stated he thought that would be possible but stated what needs to be part of the thought process is how it would impact the licensees. It is not an equal situation across the board. Some food is their primary commodity but

they also have a beer & wine license. Then we have restaurants where food is not their primary focus and alcohol is a significantly larger portion of their total revenue so the impact would be different. From an enforcement standpoint that would be difficult to oversee – would they be allowed to keep the alcohol on the property? How would the Town police that?

Mr. Hoxie stated his major concern is the Innholders – especially the larger hotels. We would look at it differently than just restaurants. If we allow them to stay open without the food – the kitchen staff in the restaurant are then penalized by not being able to go to work though they have nothing to do with the violation that occurred in a lounge which is a small percentage of their operation. Could we come up with a percentage of food/alcohol? Mr. Burman stated that is a judgment we can decide at the sanctions hearing.

Mr. Hoxie asked Attorney Houghton and Mr. Geiler to get together to draft a new regulation to allow the Authority the discretion to do this. Attorney Houghton answered yes and Mr. Geiler said then we could get together. Mr. Geiler then asked whether or not we should treat stings differently from other alcohol violations? He said in his observation our system has worked – the exception being the stings. Other communities usually issue warnings for stings, but we chose not to. Mr. Hoxie asked if maybe Attorney Houghton and Mr. Geiler can look at that too but mainly Innholders.

Mr. Geiler stated we did have a facility open this way – a long time ago – the Board wanted to allow them to continue to operate the motel only. They asked the Board of Health to issue a motel license for just that period. Office Maher indicated that Cape Cod Inn kept their rooms open during suspension; just closed the restaurant. Mr. Geiler stated that if there is a qualifier in the decision, that is what rules. Mr. Hoxie stated he knows of a few places that if they had to close their entire operations it would be a major financial burden.

Mr. Sullivan also requested a draft be put together with parameters for the Board. Mr. Hoxie reiterated what they would like is some discretion in allowing a common Victualler of innholder to keep operating after suspension of the liquor portion of their license.

It was brought up also by the recorder, the Board may want to reconsider the actual time of suspension (currently 1 year from the date of violation). It was requested by several licensees to revisit this policy as well as some dates are much more punitive than others (holidays, etc.). Mr. Hoxie stated this was in the back of his mind and he thinks it should be discretionary at each hearing.

Ptl. Maher said we could be like Sandwich where they imposed a sanction on Super Bowl weekend. Mr. Hoxie stated he saw that. Mr. Burman asked if we can have it for the next meeting? Mr. Hoxie asked for maybe the March meeting – there is no hurry.

Attorney Houghton stated he will have the draft for the March 16<sup>th</sup> meeting.

Hearing was adjourned at 10:30 a.m.

Respectfully submitted,

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Christine P. Ade, Recorder  
Town of Barnstable Licensing Authority

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Paul Sullivan, Clerk  
Town of Barnstable Licensing Authority