



Town of Barnstable

Regulatory Services

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Licensing Authority

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BARNSTABLE LICENSING AUTHORITY LICENSING HEARING MINUTES

Town Hall Building, 367 Main Street, 2nd Floor Hearing Room, Hyannis, MA – 9:30 a.m.

February 23, 2009

A regular meeting of the Barnstable Licensing Authority was held on Monday, February 23, 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 Wine Only License: Application of Nikki Ashley on behalf of Friends of Baybridge, 278 Main Street, Hyannis, MA for a **One Day Wine Only License** for a Dessert First, Chocolate Soiree, to be held at the JFK Museum, Main Street, Hyannis, MA from 3 pm to 8 pm on March 27, 2009.

This is the 5th annual event; held last year at the JFK Museum. There is a champagne fountain. It is a \$25 fee to get in. ID's are checked at the door and the fountain. Mr. Sullivan requested a synopsis of what their organization provides for. They help adults with severe mental illness – recovery back into society; actively working on housing and getting people working again. They have lost their social program because of budget cuts. The program is run with members and staff working side by side. Mr. Burman stated the number on the State Safety Certificate is set at 100. They said that was fine.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Nikki Ashley on behalf of Friends of Baybridge, 278 Main Street, Hyannis, MA for a **One Day Wine Only License** for a Dessert First, Chocolate Soiree, to be held at the JFK Museum, Main Street, Hyannis, MA from 3 pm to 8 pm on March 27, 2009 with a maximum of 100 people.

Two One Day Entertainment Licenses: Application of Kathleen Schatzberg on behalf of Hyannis Rotary Club, P.O. Box 39, Hyannis, MA for a One Day and Sunday Entertainment License for a home show with face painting to be held at Barnstable High

School, West Main Street, Hyannis, on March 28th and 29th, 2009 from 9 am to 6 pm. Set up will be Friday, March 27th from 3:30 pm to 8 pm.

Joe Gatto appeared for this application. Ms. Schatzberg is home recuperating from a hip replacement. The net proceeds go to support scholarships to local schools and other non-profits.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Kathleen Schatzberg on behalf of Hyannis Rotary Club, P.O.; Box 39, Hyannis, MA for a One Day and Sunday Entertainment License for a home show with face painting to be held at Barnstable High School, West Main Street, Hyannis, on March 28th and 29th, 2009 from 9 am to 6 pm. Set up will be Friday, March 27th from 3:30 pm to 8 pm.

One Day Entertainment License: Application of Suzan Fellows on behalf of Brenda Cottingham of Maidstone, England for a One Day Entertainment License for “An Evening of Clairvoyance” to be held at The Unitarian Church of Barnstable, Main Street, Barnstable, on September 18, 2009 from 7 pm to 10 pm.

Mrs. Fellows appeared for the application. Mrs. Cottingham will be here in September. This is to benefit the Unitarian Church and provide an evening of entertainment and enlightenment. Admission is being charged at the door – she believes \$15.00 per person. She is a professional medium in England; she gets connections from the spiritual world and gets the audience involved.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Suzan Fellows on behalf of Brenda Cottingham of Maidstone, England for a One Day Entertainment License for “An Evening of Clairvoyance” to be held at The Unitarian Church of Barnstable, Main Street, Barnstable, on September 18, 2009 from 7 pm to 10 pm.

One Day Beer & Wine License: Application of Amy Whiteside on behalf of Cape Cod Young Professionals, P.O. Box 1302, S. Dennis, MA for a **One Day Beer & Wine License** for a social networking event on March 19, 2009 at the Cape Cod Art Association, 3480 Main Street, Barnstable, MA from 5:30 pm to 7:30 pm.

Amy Whiteside appeared for the application with Ben Lamora, a Board member. There will be an admission charged \$10 for members and \$5 for non-members. Mr. Burman stated the number of people is limited to 50 people according to the State Safety Certificate.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Amy Whiteside on behalf of Cape Cod Young Professionals, P.O. Box 1302, S. Dennis, MA for a **One Day Beer & Wine License** for a social networking event on March 19, 2009 at the Cape Cod Art Association, 3480 Main Street, Barnstable, MA from 5:30 pm to 7:30 pm with a maximum of 50 people.

One Day All Alcohol License and One Day Entertainment License: Application of Paul Covell on behalf of Barnstable Deputy Sheriff's Assn., P.O. Box 3028, Pocasset, MA for a **One Day All Alcohol License and a One Day Entertainment License** (one guitar player and dancing by patrons) for its annual fundraising event for Sheriff's youth programs, on March 6, 2009 at the St. George Greek Orthodox Church, 1130 Falmouth Road, Centerville, from 6 pm to midnight with a maximum of 360 people (tables & chairs) or 570 (chairs only) or 770 standees only.

Paul Covell appeared for the application. This is the 9th event, which has proved very successful and incident-free. The Sheriffs Dept. dispense the alcohol.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Paul Covell on behalf of Barnstable Deputy Sheriff's Assn., P.O. Box 3028, Pocasset, MA for a **One Day All Alcohol License and a One Day Entertainment License** (one guitar player and dancing by patrons) for its annual fundraising event for Sheriff's youth programs, on March 6, 2009 at the St. George Greek Orthodox Church, 1130 Falmouth Road, Centerville, from 6 pm to midnight.

New Class II Auto Dealer License (change of location): Application of Richard W. Clark, d/b/a **Oceanside Classics**, Richard W. Clark, Manager, for a **New Class II Automobile Dealer's License**, 102H Thornton Drive, Hyannis, MA, maximum 13 total vehicles on the property, hours of operation: 8 am to 6 pm.

Mr. Clark appeared for his application. He is moving across the street and changing the name of the dealership.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Richard W. Clark, d/b/a **Oceanside Classics**, Richard W. Clark, Manager, for a **New Class II Automobile Dealer's License**, 102H Thornton Drive, Hyannis, MA, maximum 13 total vehicles on the property, hours of operation: 8 am to 6 pm.

New Common Victualler License: Application of Centerville Pie Company, Inc., d/b/a Centerville Pie Company, 1671 Falmouth Road, Centerville, Kristin Broadley, Manager, for a new Common Victualler License, hours of operation to be 7 am to 3 pm.

Kristin Broadley and her partner Loretta Bowen appeared for the application. They are going to bring back the concept of the old Centerville Pastry Shop. They have dessert and savory pies – all from scratch. They plan to open March 9th if inspections are all done. The kitchen will be closed at 3 but want to stay open to 7 pm for pickup of pies.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Centerville Pie Company, Inc., d/b/a Centerville

Pie Company, 1671 Falmouth Road, Centerville, Kristin Broadley, Manager, for a new Common Victualler License, hours of operation to be 7 am to 7 pm.

New Junk Dealer License: Application of Jeffrey Niedbala, d/b/a Spindle City Precious Metals, 1475 South Main Street, Fall River, MA, Aaron H. Tetreault, Manager, for a **New Junk Dealer's License** to operate at the Cape Cod Mall on March 6, 7, and 8, 2009 to purchase precious metals.

Mr. Niedbala appeared to advise that they held this event this past year. They will operate Mall hours. It was successful the last time. They will advertise on the radio and in the newspapers. Officer Maher advised that they had no problems last year and provided the police department with records of all sales. It was advised that there will be new regulations but they will not go into effect until just after the event so they need to check for next year's license. They confirmed that they have a copy of the current regulations.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Jeffrey Niedbala, d/b/a Spindle City Precious Metals, 1475 South Main Street, Fall River, MA, Aaron H. Tetreault, Manager, for a **New Junk Dealer's License** to operate at the Cape Cod Mall on March 6, 7, and 8, 2009 to purchase precious metals.

Change of d/b/a: Request of R&Y Enterprises, Inc., d/b/a Ying's Café, 59 Center Street, Hyannis, Tanida Suriyawong (formerly Sunun Chaloeicheep) Manager, for a change of d/b/a to Ying's Sushi Bar & Lounge.

Robert Perry appeared as stand-in for Ms. Suriyawong, who was having a medical procedure this morning. He advised this is merely a change in d/b/a. Recently she got her all alcohol license so in addition she wanted the new name to reflect the all alcohol. She has merely changed her personal name.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the request of R&Y Enterprises, Inc., d/b/a Ying's Café, 59 Center Street, Hyannis, Tanida Suriyawong (formerly Sunun Chaloeicheep) Manager, for a change of d/b/a to Ying's Sushi Bar & Lounge.

New Junk Dealer License: Application of Newbury Comics, Inc., Festival Plaza, Rte. 132, Hyannis, MA, Daniel Harrington, Manager, for a **New Junk Dealer's License**. Hours of operation are 10 am – 9 pm M-F and 10 am – 10, pm Sat, Sunday 11-7.

Mr. Harrington appeared with the owner. Mr. Burman stated that we are in the process of changing our regulations and they will be advised of those.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Newbury Comics, Inc., Festival Plaza, Rte. 132,

Hyannis, MA, Daniel Harrington, Manager, for a **New Junk Dealer's License** . Hours of operation are 10 am – 9 pm M-F, 10 am – 10 pm Saturdays, and 11 am – 7 pm Sat.

New Annual Wine & Malt Package Store License: Application of Shark City Market, LLC, d/b/a Old Village Store, 2455 Meetinghouse Way, West Barnstable, MA, Alfred P. Schofield, Manager, for a **New Annual Wine & Malt Package Goods Store License.**

160 sq. ft. of selling space is being added. Within a five mile radius there is only one full liquor store. There is a limited density of stores in that region. He believes the added wine and malt will complement the sales of food. He has no alcohol dispensing background but stated everyone has to start somewhere. Mr. Burman asked if there had been an alcohol permit in this location before – Mr. Geiler stated in his recollection there had not been.

Mr. Schofield stated the store is open 7 am to 6 pm in winter and 7 – 7 in summer.

Joe Govoni, owner of Seven G's Liquor Shoppe, right down the road, came forward stating his store is less than 3/10 of a mile away. He is open 8 am to 9 pm year round and until 10 or 11 weekends. He feels the area is adequately served for its alcohol needs.

Barbara Kiusalas of Meetinghouse Way (directly across the street) came forward also questioning the need for another liquor store so close to the one already there.

Mr. Schofield thinks that 160 sq. ft. of selling space should not really affect their business. This is the only other package store in the area. They are not interested in a serving establishment, just a package store. Mr. Hoxie asked if he had considered a petition from customers. He said he has not – his focus is on local vineyards specially. It is a segregated 8' x 8' area with shelving and no cooler. Beer will be limited to Cape Cod Brewing Company. No coolers. They have owned the building 8 months – open since July 1. Mr. Sullivan asked what he estimates his gross income from sales to be – he does not know yet, as there is not much history. Mr. Sullivan asked about percentage alcohol – maybe \$20-25,000 annual sales is his estimate. Mr. Sullivan wondered about getting a petition as to need from customers.

Mr. Hoxie asked if the 64 sq. ft. and type of alcohol proposed would make a difference to the person who had made a complaint.

Mr. Burman stated that every business is entitled to an opportunity. It is a competitive world and everyone should have a chance. He does not think this size should be much impact. His major concern is that the applicant has no experience. Mr. Sullivan stated he likes to see some type of presentation as to need.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a vote taken to approve the application of Shark City Market, LLC, d/b/a Old Village Store, 2455 Meetinghouse Way, West Barnstable, MA, Alfred P. Schofield, Manager, for a **New**

Annual Wine & Malt Package Goods Store License with a limitation as to 64 square feet only. Mr. Burman and Mr. Sullivan voted aye and Mr. Hoxie b\ voted Nay. The motion passed by majority vote.

Mr. Burman reiterated the area to be used must not exceed the 8' x 8' area. Mr. Geiler stated that Mr. Schofield should qualify where the alcohol will be STORED (in a locked office upstairs, etc.) to add to the description on the license to be sent to the ABCC. He will come in and do that within the next day or two.

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. 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 Continued so that everyone could fully review the brief of counsel submitted by one of the Junk Dealers. Continued from 2/2/09 hearing.

Mr. Hoxie opened the hearing to continue it to March 16, 2009.

Business Meeting:

Cape Cod Epicurean asked to surrender its license; in the course of making the place ready the pipes burst – they found deficiencies in the property and have broken their lease. Mr. Geiler was under the impression it had not come back from the ABCC but Ms. Ade advised it had; they have just not opened.

A motion was duly made by Mr. Burman, seconded by Mr. Sullivan and a unanimous vote taken to approve the surrender of the license of Carol A. Williams, d/b/a Cape Cod Epicurean, and to refund the fee she had paid for the Annual Wine and Malt Common Victualler License.

Signatures by Licensing Authority on Order to the Barnstable Police Department to Seize All Alcohol Retail Package Store License. Mr. Hoxie advised this item is not necessary since the store has brought in payment. Mr. Geiler confirmed that on Friday, February 20, 2009 payment was hand-delivered in the form of a Treasurer's check. Mr. Geiler stated the issue of procedure upon which the Authority might want to take action was that the bank notified the licensee of the insufficient check, the Town Treasurer notified the Licensee by letter, the Licensing Authority notified them as well, and there was no response. Under the General Laws of the Commonwealth of Mass the license has no force and effect until the licensing fee is paid and received in the Town or State (as the case may be) Treasury. The Licensing Authority has always had a policy of trying to work with the licensee, and circumstances sometimes create these situations but they are usually corrected quickly. In this case we received zero communication

from the establishment. The issue of seasonal license is not on the table but whether the Licensing Authority wants to take further action at this point.

Mr. Burman stated that maybe all three must get a letter from Licensing that in the future be in compliance with MGL and Mr. Hoxie asked if maybe the renewal license next year will not be issued until a certified check is received or license not issued until the check has cleared. Mr. Burman asked about the others – Mr. Geiler stated the others responded immediately (early January) to resolve the problem.

Mr. Sullivan stated we have taken the position of leniency because of the extraordinary economic conditions and that he does not think a letter is appropriate as they have all paid. Mr. Hoxie asked Mr. Geiler for his opinion. Mr. Geiler stated he wants the Town to be consistent. There are many reasons this could happen – historically notice is given after the Treasurer's notice and the establishments respond quickly to correct the problem. In the case of the Barnstable News Store there was NO communication from the licensee. He stated he thinks all of the licensees would have enjoyed 2 months of not paying their fees. Cooperation within a few days is one thing, but not paying for so long should be noted as it is not fair to the rest of the licensees. Mr. Sullivan thinks we should look at it next year if it is again a problem. Mr. Hoxie stated it will be put to rest at this time as we now have the payment.

Discussion took place on an anonymous complaint received with regard to an All Alcohol Common Victualler Licensee. This complaint was investigated by the Barnstable Police Department. Lt. Jason stated it was an anonymous complaint with specific issues. Officer Maher investigated twice and did not find any issues. This was at Embargo. There were no violations found on his unannounced visits. Officer Maher did speak with the licensee about the allegations so he is aware of the complaint and issues.

Discussion took place on two Licensees who appear to be closed and are annual licensees plus discussion on annual Licensee who is closed AND has not paid or picked up their license for 2009.

Ristorante Barolo: closed and confirmed by Officer Maher

RooBar: Hit or miss, they have been closed sometimes and open sometimes – at least 2 weeks per Officer Maher

Tommy Doyles: It was reported by someone in the 200 Main Building that they are not open a lot of the time and signs are missing? They are open according to Officer Maher.

Hannah's: Appears to be closed.

The Dockside: Ms. Ade commented about what has transpired – the establishment closing in mid December without any notice, non-payment of the 2009 license fee and that they did not try to pick up their 2009 license. She also advised that they have told

Licensing two years in a row that they have no heat and it seems kind of crazy that they still have an annual license. She stated she spoke to the principals on the telephone advising they might want to file for a seasonal license and was advised they might go for that. Ms. Ade stated she was also advised that Mr. Skudris would be bringing in the license fee but that did not happen. A letter was sent to them telling them they needed to get permission to close for more than 2 weeks, advise us what their intentions were for changing their license type since there is no heat for the winter and this resulted in no further communication from the licensee. Mr. Hoxie stated that Dockside should appear before the Authority before they can be given their license.

Mr. Geiler stated that an annual licensee is required to be open all year. They can close for less than 2 weeks without permission but if they want to be closed a month or two they have to request it and come in for a hearing to be approved, which approval may or may not be granted by the Board. Seasonal licensees CAN open 4/1 – 1/15 but many do not open until later and close sooner as there is no requirement they stay open any particular time.

There certainly IS a restriction on the annual licenses to be open year-round. The original decision to issue an annual license with the assumption that they will be open year-round and exercise the right to be open all year. If they no longer do that they are not complying with the license. What concerns Mr. Geiler is that these could easily become pocket licenses; we need to do something but also need to be consistent as well. It cannot just go for months on end that people are not open. There is a difference between an application for a transfer and an application for a new license. The review on a transfer is limited to the character of the new applicant even though circumstances may have changed. The license just stays the same. The LA could ask them to surrender the license in good standing and if they decide to reapply for a license there or somewhere else in the future they would have a good record. He advised that the Board should ask them to come in to see why it the licenses should not be surrendered or revoked.

Mr. Hoxie asked that we bring in the licensees not in compliance – RooBar, and Barolo, Hannah's and Dockside. Officer Maher stated there are about 6 others not close to their regular operating hours at present. He did not name these on the record.

Mr. Geiler stated this is a heavily regulated industry and we want to be consistent in how we apply the rules. We need to look into the situation, give them a chance to respond. When there IS no response the Town needs to take some action.

Mr. Sullivan thinks it is getting a bit out of hand – they should be called before the Board to explain what they are doing. If this happens the others will take notice. It will convey a message that the licensees should take the privilege of having the license seriously.

Mr. Hoxie stated that by consensus a Show Cause Hearing letter is to be sent on all 4 licensees right now to show why they are not in compliance.

Craig Medeiros came forward as a licensed Junk Dealer. He had come in today to hear about the changes in the Junk Dealer Rules and Regulations. He spoke about having had junk left in their yard and people from New Bedford came to pick up things on their property – a couple boilers have been stolen. He advised that in the metals business it is difficult – people leave stuff on his property and come back later to get paid. He has been in business over 50 years. He invites anyone on the Board to come in and see his operation. He thinks the continuations have to stop so he knows what he is doing.

Adjourned at 10:43.

Respectfully submitted,

Christine P. Ade, Recorder
Barnstable Licensing Authority

Paul Sullivan, Clerk
Barnstable Licensing Authority