



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.

May 18, 2009

A regular meeting of the Barnstable Licensing Authority was held on Monday, May 18, 2009. Chairman Martin Hoxie called the meeting to order at 9:30 A.M. He introduced Gene Burman, Vice Chairman; Dick Boy, Associate Commissioner; 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. Paul Sullivan, Clerk, was absent.

Hearings:

Two One Day Entertainment Licenses: Application of Susan Mendoza Friedman on behalf of Dance Designs, 11 Enterprise Road, Hyannis, MA for 2 One Day Entertainment licenses for a student dance recital at the Barnstable High School Performing Arts Center, 744 W. Main Street, Hyannis on June 19, 2009 from 7 pm to 9 pm and June 20, 2009 from 7 pm to 9 pm.

Susan Mendoza Friedman appeared for her application. She has been holding this same recital for ten years. It will be held at BHS Performing Arts Center. It will be children and teens performing. Families get 3 free tickets and after that tickets are \$13.00. Ms. Friedman asked the Board if she could “renew” each year. Mr. Hoxie replied it cannot be renewed if it is a special license (one day license).

A Motion was duly made by Gene Burman and seconded by Dick Boy and a unanimous Vote taken to approve the application of Susan Mendoza Friedman on behalf of Dance Designs, 11 Enterprise Road, Hyannis, MA for 2 One Day Entertainment licenses for a student dance recital at the Barnstable High School Performing Arts Center, 744 W. Main Street, Hyannis on June 19, 2009 from 7 pm to 9 pm and June 20, 2009 from 7 pm to 9 pm.

Two One Day Beer & Wine Licenses: Application of Marilyn Fuller on behalf of Barnstable Historical Society, 3074 Main Street, Barnstable, MA, for **two One Day Beer & Wine Licenses for June 12, 2009 and September 13, 2009** for the 150th Anniversary of the Superior Court of MA from 4 pm to 7 pm, 6/12/09 and its Annual

Septemberfest fundraiser from 3 pm to 5:30 pm on 9/13/09, both at the Daniel David House outdoors only. Ms. Fuller stated they do have a tent. The celebration is being coordinated by the Historical Society – there will be walking tours and a reception with refreshments, beer and wine. The Septemberfest is an annual event.

Marilyn Fuller appeared in her capacity for Barnstable Historical Society. This event will be outdoors only and is an anniversary celebration for the Barnstable Superior Courthouse and Septemberfest.

Mr. Hoxie asked if the beer and wine would be served by responsible adults and Ms. Fuller replied it would. A lot of Judges and politicians will be present.

A Motion was duly made by Gene Burman and seconded by Dick Boy and a unanimous Vote taken to approve the application of Marilyn Fuller on behalf of Barnstable Historical Society, 3074 Main Street, Barnstable, MA, for **two One Day Beer & Wine Licenses for June 12, 2009 and September 13, 2009** for the 150th Anniversary of the Superior Court of MA from 4 pm to 7 pm, 6/12/09 and its Annual Septemberfest fundraiser from 3 pm to 5:30 pm on 9/13/09, both at the Daniel David House outdoors only.

One Day Wine and One Day Entertainment Licenses: Application of Ellen Mycock on behalf of Cotuit Library, Main Street, Cotuit for a **One Day Wine License and a One Day Entertainment License for June 18, 2009** for a fundraising party with a jazz band and piano player to be held at 144 Pinquickett Cove Road, Cotuit from 6 pm to 8 pm.

Ellen Mycock appeared for this application. This will be the 3rd year at this location with no problems. Ms. Mycock advised that this is low key – about 40 couples. All proceeds will be going to the library. Mr. Hoxie suggested we waive the fees for this application as it is for the library and we have been doing that. Mr. Burman asked if we had the State Safety Certificate; Christine Ade, Licensing Recorder, replied that we do.

A Motion was duly made by Gene Burman and seconded by Dick Boy and a unanimous Vote taken to approve the application of Ellen Mycock on behalf of Cotuit Library, Main Street, Cotuit for a **One Day Wine License and a One Day Entertainment License for June 18, 2009** for a fundraising party with a jazz band and piano player to be held at 144 Pinquickett Cove Road, Cotuit from 6 pm to 8 pm and that the fees be waived.

One Day Beer & Wine, One Day Entertainment & Sunday Entertainment Licenses:

Application of Janet Preston, Director, Cape Cod Maritime Museum, 135 South Street, Hyannis for a One Day All Alcohol License and One Day Entertainment License (a band with dancing) for a Pirates Ball fundraiser in a tent outside the museum on June 12, 2009 from 7 pm to 11 pm; and two One Day Beer & Wine Licenses, a One Day Entertainment License (June 13th) and a Sunday Entertainment License (June 14th) for the Cape Cod Maritime Festival from 10 am to 4 pm each day (various live entertainers and recorded music).

The kickoff is June 12th – a fundraiser for the museum and is a cash bar with a band and dancing and raffles, etc. The festival starts the next day with various entertainments. They will have experienced servers. Mr. Burman expressed a concern about parking – there is very little there. The Steamship Authority offered them 25 spots; the Red Cross offered spots. Mr. Burman expressed concern about the people crossing the street. She advised that there is also parking at the new kiosks. Mr. Burman said he is not against it, but is against the people crossing the street without police presence at least. She stated there will be a lot of activity on the festival days along the walkway by the sea. She stated they will have two police officers on duty and night security. Mr. Burman stated that alleviates some of his concern.

A Motion was duly made by Gene Burman and seconded by Dick Boy and a unanimous Vote taken to approve the application of Janet Preston, Director, Cape Cod Maritime Museum, 135 South Street, Hyannis for a One Day All Alcohol License and One Day Entertainment License (a band with dancing) for a Pirates Ball fundraiser in a tent outside the museum on June 12, 2009 from 7 pm to 11 pm; and two One Day Beer & Wine Licenses, a One Day Entertainment License (June 13th) and a Sunday Entertainment License (June 14th) for the Cape Cod Maritime Festival from 10 am to 4 pm each day (various live entertainers and recorded music) and providing there are some police details to alleviate the risk for the public.

Change of Manager: Application of Tommy Doyle's Hyannis, LLC, d/b/a Tommy Doyle's Irish Pub & Restaurant, 334 Main Street, Hyannis, MA, Matthew Vazquez, Manager for a **Change of Manager on the All Alcohol Common Victualler License** to Jason A. Irving.

Alan O'Sullivan appeared with Mr. Irving, the new proposed manager. They seek to replace Matt Vazquez. Mr. Irving has worked for Tommy Doyle's for 4 years. He has worked with the Cambridge Liquor Board, TGIF locations and south shore. He has read the Hyannis Blue Book and is well versed on what he needs to do to manage. Mr. Boy asked if he is still living off Cape? Mr. Irving stated he is down here full time now. Mr. Burman asked when he takes over; Mr. O'Sullivan stated once the approval is received, although he has been working there for some time.

A Motion was duly made by Gene Burman and seconded by Dick Boy and a unanimous Vote taken to approve the application of Tommy Doyle's Hyannis, LLC, d/b/a Tommy Doyle's Irish Pub & Restaurant, 334 Main Street, Hyannis, MA, Matthew Vazquez, Manager for a **Change of Manager on the All Alcohol Common Victualler License** to Jason A. Irving.

New Seasonal All Alcohol License: Application of Beaches Diner, Inc., d/b/a The Dockside, 110 School Street, Hyannis, MA for a Seasonal All Alcohol Common Victualler License, weekdays and Saturdays 8 am to 1 am, Sundays midnight to 1 am and noon to midnight, Ornel O. Roberts, Manager and Non-Live Entertainment 7 days per week during the hours of operation.

Attorney Larry Murphy attended the hearing with the applicants as his brother, Doug, who filed the application, is recuperating from knee surgery. He stated that the new applicants have no relationship with prior owners using the same d/b/a. The actual manager on the floor will be Eric White, who worked at Tugboats for many years. Mr. Roberts and Mr. Gray appeared as well; Mr. Roberts is a U.S. citizen, Mr. Gray is not. Mr. Roberts worked at H&K and BBC as a chef; Mr. Gray at BBC, Yarmouth House and Moonakis Café in Falmouth as a chef.

Mr. Hoxie asked if the emphasis is on food? Attorney Murphy stated it will be. They will serve breakfast through dinner. Mr. Murphy stated there will be no outside music or music emanating from the premises and it will be all non-live. Mr. Burman asked why Mr. White was not being put on the license as manager of record. The answer was that he is not an owner of the business. Officer Maher stated he has no qualms for Mr. White being floor manager, but does have a problem as he is not manager of record. Attorney Murphy stated Mr. Roberts IS familiar with the operations of liquor establishments and any violation would affect him more than just an employee as he is an owner. He will have the benefit of Mr. White assisting him. He will take the courses necessary to be TIPS certified. Both owners are licensed chefs. Mr. Roberts will be in the kitchen more than on the floor. Mr. Hoxie asked if he is aware he will be responsible for the alcohol service? Attorney Murphy stated he understands this responsibility.

Allen Goddard came forward as the direct abutter. He has gotten along well with the prior applicants and has asked that there be no dumpster service before 7 am; timely pickup to avoid odors especially in the hot weather and non-live entertainment kept within the premises inside, and oversight of the lot as patrons disperse. He had two problems with the prior owners – music volume crept up and no-one answered the phone when he called to request they turn the volume down. He also was woken up by motorcycles owned by employees leaving after work. He asked that the new owners please not have those type of vehicles and loud car music and shouting disturbing the neighborhood. Things have been mostly fine since 1994 and he wished the new people luck. Attorney Murphy stated they will make note of all the concerns raised by Mr. Goddard. Mr. Burman asked if the premises are air-conditioned; the response was that it is not. Mr. Burman stated they will need to be more aware than usual with open windows that the music stay low and not disturb the neighbors and that the sound carries over the water as well as next door. Mr. Burman asked about the lease; Christine Ade stated a lease amendment was brought in for the license to extend it to 1/15/10 (end of seasonal license period) as that is what it needs to be for a seasonal license.

Officer Maher brought up that prior owners have “moved the party” to the upstairs apartment causing problems – Attorney Murphy stated the new owners will not do so.

Mr. Geiler asked about the parking lot across School Street; Attorney Murphy stated they are allowed to use it but will use it for the restaurant parking ONLY. Mr. Geiler stated in the past people have tried to use it as a commercial parking lot – and Attorney

Murphy stated his brother had sent them a letter expressly addressing this issue. It is on file with their application.

A Motion was duly made by Gene Burman and seconded by Dick Boy and a unanimous Vote taken to approve the application of Beaches Diner, Inc., d/b/a The Dockside, 110 School Street, Hyannis, MA for a Seasonal All Alcohol Common Victualler License, weekdays and Saturdays 8 am to 1 am, Sundays midnight to 1 am and noon to midnight, Ornel O. Roberts, Manager, and for Daily Non-Live and Sunday entertainment, all non amplified and no outside speakers.

Alteration of Premises: Application of Hyannis Property, LLC, d/b/a British Beer Company, 412 Main Street, Hyannis, MA, Jacquelyn McCarthy, Manager, for a change in license description to the following: “4400 sq. ft. ground floor on Main Street, rear entrance/exit to North Street parking lot; 2 handicapped restrooms; full service kitchen; bar seating 15; dining room seating 158; separate vestibule and waiting area (12); employees (12); total interior capacity 217. Outdoor seating on sidewalk with 5 tables and 20 seats. Full cellar for storage and employee restroom.”

Attorney Lawler appeared for the application. Gary Simon and Jacquelyn McCarthy from the BBC appeared also. They have the Board of Health approval for the new numbers. They had an architect and engineer come in to rearrange the seating. It has been approved by Tom Perry. They are also adding 5 tables of 4 for 20 outside. The seating inside is changed to accommodate code regulations. Tom Perry is fine with it. In speaking with Mr. Geiler, he stated the outdoor people must be covered under the total occupancy – there is standing throughout the premises. This should accomplish the purpose of having plenty of room inside if it rains to let the people outside in. They understand that the total will never exceed 217. The BBC over the years has shown a commitment to the Town – it is open 12 months per year and they have a good menu. Mr. Hoxie asked if the Town Manager approval is necessary; Mr. Lawler stated they already have it. Mr. Burman did not see a plan signed by Tom Perry; Christine Ade advised it is in the file but was too big to copy that section; showed it to the Board.

A Motion was duly made by Gene Burman and seconded by Dick Boy and a unanimous Vote taken to approve the application of Hyannis Property, LLC, d/b/a British Beer Company, 412 Main Street, Hyannis, MA, Jacquelyn McCarthy, Manager, for a change in license description to the following: “4400 sq. ft. ground floor on Main Street, rear entrance/exit to North Street parking lot; 2 handicapped restrooms; full service kitchen; bar seating 15; dining room seating 158; separate vestibule and waiting area (12); employees (12); total interior capacity 217. Outdoor seating on sidewalk with 5 tables and 20 seats. Full cellar for storage and employee restroom.”

New Seasonal Common Victualler License: Application of Canal Fish & Lobster, Inc., d/b/a Osterville Fish Too, 275 Millway, Barnstable, MA, Paul Dean, Manager, for a new Seasonal Common Victualler License, the hours of operation to be 10 am to 9 pm, with 66 seats outdoors.

Mr. Dean appeared for his application. He has been owner for a few years. They have picnic tables but no table service. They order and pick up their food and eat at the tables.

A Motion was duly made by Gene Burman and seconded by Dick Boy and a unanimous Vote taken to approve the application of Canal Fish & Lobster, Inc., d/b/a Osterville Fish Too, 275 Millway, Barnstable, MA, Paul Dean, Manager, for a new Seasonal Common Victualler License, the hours of operation to be 10 am to 9 pm, with 66 seats outdoors.

Transfer of Annual All Alcohol Package Store License: Application of Cotuit Grocery Co., Inc., All Alcohol Package Store License, 737 Main Street, Cotuit, MA, Steven Gould, Manager for transfer to Cotuit Fresh Market, LLC, Raffe Yagjian, Manager, the hours of operation to 7 am to 7 pm, with alcohol sold from 8 am to 7 pm Monday through Saturday and noon to 7 pm Sundays. (Needs actual vote to accept withdrawal of application).

Mr. Geiler stated this should be added to the formal record on our hearings. The applicant cannot resubmit within a year unless we vote to approve the withdrawal without prejudice. His understanding is that the manager and tenants are attempting to restructure the ownership interests.

A Motion was duly made by Gene Burman and seconded by Dick Boy and a unanimous Vote taken to approve the request for withdrawal of the application of Cotuit Grocery Co., Inc., All Alcohol Package Store License, 737 Main Street, Cotuit, MA, Steven Gould, Manager for transfer to Cotuit Fresh Market, LLC, Raffe Yagjian, Manager, the hours of operation to 7 am to 7 pm, with alcohol sold from 8 am to 7 pm Monday through Saturday and noon to 7 pm Sundays without prejudice.

Request to abolish/change dates of inherited suspensions: Application of Seaside Pub on Main, 615 Main Street, Uy G. Phu, Manager, for the Board to abolish, reduce or change the dates of suspensions inherited from the prior owner of the restaurant, Hannah's Fusion Bar & Bistro.

Uy Phu came forward for his request to amend the suspensions for Hannah's. As a new restaurateur he does understand as a transfer license does come with two suspensions; he is asking that we postpone the penalties so they can establish the restaurant within the community. They will conduct monthly meetings to ensure the rules and regulations are followed. They respectfully request alternate dates.

Mr. Hoxie stated the punitive action is 4 days in May, 3 in July. Mr. Phu stated these are peak times – weekends. Mr. Hoxie asked him if he realized these were serious violations. Mr. Phu stated ALL employees are TIPS trained. This is NOT a family business – a new corporation and new concept. Binh Phu from Hannah's is not involved in this corporation. Mr. Boy asked why they did not apply for a new license; he stated their attorney had recommended a transferred license and they took his advice. Mr. Phu stated it will be difficult to have to close so soon after opening. Mr. Boy stated it

defeats the penalties imposed by this Board to suspend the penalties. If we do this it might set a precedent. Mr. Phu stated they will serve the penalties, but he is asking for new dates in order to build a rapport with the community before having to close up for a few days. Mr. Hoxie stated our policy has been suspension a year to date of the violation. He stated that could negate the old policy. Mr. Boy stated that extensive investigation and work went into the establishment of the suspensions in the first place. Mr. Burman stated that 3 weeks ago Mr. Phu was here; both he and Mr. Hoxie asked them why they did not want to apply for the new license with no sanctions. He stated the Board expected it to be a hardship.

A Motion was duly made by Gene Burman and seconded by Dick Boy and a unanimous Vote taken to deny the application of Seaside Pub on Main, 615 Main Street, Uy G. Phu, Manager, for the Board to abolish, reduce or change the dates of suspensions inherited from the prior owner of the restaurant, Hannah's Fusion Bar & Bistro.

Show Cause Hearing: Show Cause hearing will be held at the request of the Barnstable Police Department for RCSJ Group, Inc., d/b/a Fresh Ketch, 460 Main Street, Hyannis, Raymond C. Roy, Manager, for violation of the Town of Barnstable Code Chapter 501-8 to wit: "It shall be the obligation of licensees to ensure that a high degree of supervision is exercised over the conduct of the licensed establishment at all times." The Police Department will provide testimony as to May 24, 2008, June 1, 2008, July 5, 2008 and August 22, 2008. A violation was also reported for October 9, 2008 with regard to Town of Barnstable Code Chapter 501-10B to wit: "No entertainment at the licensed premises may be conducted in such a manner that the noise from the entertainment can be heard outside the boundaries of the premises." Continued from 12/8/08.

Raymond Roy (father) and Steven Roy appeared for this hearing. Mr. Hoxie asked what the status was. Officer Maher stated that the testimony at the last hearing was that if there were no further violations this hearing would be dismissed. Mr. Roy stated they will continue with karaoke but will only offer acoustic bands. No more percussion bands, etc. They have also done renovations wherein they have their own sound system where THEY can control the volume. Their building is air-conditioned so the music will not emanate outside. They have spoken with their abutters and neighbors to make sure they are happy with the changes. Officer Maher stated they have been closed all winter, so he believes we should have a finding and continue any action until after season.

Mr. Eaton from Hyannis Inn Motel came in. He had a conversation with Mr. Roy, who informed him there will be no more reggae or rock bands. He stated he is very happy and satisfied with this change. He then requested the license # for entertainers be lowered to 1-2 and this will alleviate all the problems. Mr. Roy stated he wants to keep it to 5 in case of a wedding – the stated we have his word that they will not have rock and reggae in the future. He would agree to continue the suspension penalty and asks that if there is a noise violation he be notified immediately so he can address the Board at that time.

Mr. Eaton is agreeable to the suspension continuation to the end of the summer. He is concerned that the BPD may not respond quickly to a noise complaint depending on how busy the police department is on that night.

Mr. Roy stated he does not want an issue that he is not notified for over a month that there was a violation. He wants notification within 30 days. Lt. Jason stated they will do their best and if she or Officer Maher are on duty they will tell them right away. Lt. Jason stated they cannot because of time review the log each day but will do their best to notify him if there is a problem. Mr. Roy stated several times there were items in the police log they knew nothing about.

Mr. Geiler stated there is no way the Town can guarantee notification of everything in the police log; however, if there is a police investigation, they would be informed. To suggest that he be notified, whether there or not, is an unreasonable request. Mr. Burman asked about weddings – how much prior to the event itself?

Mr. Burman stated we could issue the license for 1-2 entertainers and then have him come in for a special permit for 5 for the weddings. Mr. Roy stated he might also want to do jazz; a bachelor party, rehearsal dinner, etc. where he would need the 5. He plans not to have the type of entertainment that was a problem in the past. Mr. Roy said he has never had any complaints from any other neighbors – just Mr. Eaton, with whom he is trying very hard to work with. In order to stay open they have to be competitive. He will work hard with Mr. Eaton. He will not have any live reggae or rock bands this year.

Officer Maher suggested we leave the license at 5 but that he notify the BPD ahead of time when it will be 5. Pufferbellies notify the BPD for larger events. Officer Maher requested an email for events over 3 entertainers.

Mr. Boy stated Mr. Eaton has most of the population in the area and that is why he is the one complaining.

Mr. Geiler stated it is important to remember it is not complaints that create the violations – the applicants create the violations. The license comes with a regulation that the noise be CONTAINED on the property. He stated people are reluctant to complain. He is not sure they are looking at the situation that all establishments are created equal. The ones with more are generally bigger and better able to contain the sound. He said their location is more difficult to contain the noise. The license was given with a caution – and he had responded that he would comply.

Mr. Roy stated again that they now have their OWN music system that allows them to themselves control the volume.

Mr. Eaton stated it is fine with him to keep the 5 pieces and if he agrees to not have rock or reggae that are very loud - he will be very happy.

Mr. Burman stated Mr. Roy now has a new friend.

Mr. Hoxie stated he would like to just continue the whole show cause hearing until after the season – until 9/21 or 10/5/09.

A Motion was duly made by Gene Burman and seconded by Dick Boy and a unanimous Vote taken to continue the hearing as is until 9/21/09.

Mr. Roy thanked the Board. Mr. Hoxie thanked Mr. Eaton.

Renewals:

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

Common Victualler:

Keyes/Sea Street Beach
CBA Snack Bar
Efrain – Veteran’s Beach
Kalmus Beach

A Motion was duly made by Gene Burman and seconded by Dick Boy and a unanimous Vote taken to approve the above Common Victualler License renewals for the 2009-1010 season.

Junk Dealer Licenses:

Spinnaker Records
Trade Secret Antiques

A motion was duly made by Gene Burman, seconded by Dick Boy and a unanimous vote taken to approve the applications of the above listed establishments for their Junk Dealer License renewals for 2009-2010.

For the record, Spindle City did not come back for their request so their license was not granted.

Daily Live Entertainment

Cape Cod Melody Tent

Mr. Burman stated the Melody Tent notified us of their full list of shows. He is concerned about the adult content of the show of Lisa Campanelli due to web content. He is reluctant to approve this show. They did not notify us of the adult comedy.

Mr. Boy asked if we approve and just ask for further information on this one show. Mr. Hoxie does not want to cause them any concern about starting their season. Mr. Hoxie stated we have three weeks to look at everything and thinks we can request additional information from them on this one. Officer Maher stated this is a comedian popular with the under 35 crowd. Mr. Geiler stated it is not in content against zoning issues. If it is too noisy and the neighborhood is forced to listen to it that is when it becomes an issue. He stated the tent management is well aware of the noise problems here. Mr. Burman suggested a clause be put in the contract that each entertainer comply with the Town noise regulations. Mr. Geiler stated we had no noise violations last year.

A motion was duly made by Dick Boy, seconded by Gene Burman and a unanimous vote taken to approve the application of Cape Cod Melody Tent for its Daily Live Entertainment License renewal for 2009-2010 with the attached list of entertainers.

Sunday Entertainment

Cape Cod Melody Tent

A motion was duly made by Dick Boy, seconded by Gene Burman and a unanimous vote taken to approve the application of Cape Cod Melody Tent for its Sunday Entertainment License renewal for 2009-2010 with the attached list of entertainers.

Business Meeting:

Confirmation of attendees for the 6/2 MLC Meeting – Mr. Geiler and Mr. Boy.

Adjourned at 11:00.

Respectfully submitted,

Christine P. Ade, Recorder
Town of Barnstable Licensing Authority

Martin Hoxie, Chairman
Town of Barnstable Licensing Authority