



Town of Barnstable

Regulatory Services

Thomas F. Geiler, Director

Licensing Authority

200 Main Street

Hyannis, MA 02601

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, 2nd Floor Hearing Room, Hyannis, MA –
9:30 a.m.
July 30, 2012

A regular meeting of the Barnstable Licensing Authority was held on Monday, July 16, 2012. Chairman Martin Hoxie called the meeting to order at 9:30 A.M. He introduced Gene Burman, Vice Chairman; Richard Boy, Associate Commissioner; Thomas F. Geiler, Director of Regulatory Services and Licensing Agent, Patrolman Steve Maher, Liaison Officer from the Barnstable Police Department, and Christine Ade, Recording Secretary. Paul Sullivan, Clerk, Richard V. Scali, Consumer Affairs Supervisor, and Lt. John Murphy were absent

Mr. Hoxie recognized Thomas Geiler, Director of Regulatory Services and stated that Mr. Geiler was recently given a lifetime achievement at the recent National Weights and Measures Conference. He stated that the Licensing Authority would like to offer its sincere congratulations.

Vote to accept Minutes: Vote to accept minutes of the 6/25/12 Meeting.

A motion was duly made by Gene Burman, seconded by Dick Boy and a unanimous vote taken to approve the Minutes of the 6/25/12 meeting.

Hearings:

One Day Wine and Malt License: Application of Marilyn Fuller on behalf of Sturgis Library and Barnstable Historical Society, 3087 Main Street, Barnstable, for a One Day Beer & Wine License for its annual Autumnfest to be held outside on the grounds on September 15, 2012 from 5 pm to 7:30 pm under a tent.

Marilyn Fuller appeared on behalf of both the library and the historical society. They are serving beer & wine, ID's checked if necessary but very few young people come. Parking at the library and nextdoor at St. Mary's Church.

A motion was duly made by Gene Burman, seconded by Dick Boy and a unanimous vote taken to approve the application of Marilyn Fuller on behalf of Sturgis Library

and Barnstable Historical Society, 3087 Main Street, Barnstable, for a One Day Beer & Wine License for its annual Autumnfest to be held outside on the grounds on September 15, 2012 from 5 pm to 7:30 pm under a tent.

One Day Entertainment License (2 days): Application of Melissa Alexander for the annual TICA cat show, Cats on the Beach, to be held at Horace Mann Charter School, Marstons Mills, on September 8, 2012 from 8 am to 5 pm and September 9, 2012 from 8 am to 6 pm.

Ms. Alexander appeared for the application, there are about 150 cats there – some brought for adoption.

A motion was duly made by Gene Burman, seconded by Dick Boy and a unanimous vote taken to approve the application of Melissa Alexander for the annual TICA cat show, Cats on the Beach, to be held at Horace Mann Charter School, Marstons Mills, on September 8, 2012 from 8 am to 5 pm and September 9, 2012 from 8 am to 6 pm.

One Day All Alcohol and One Day Entertainment Licenses: Application of D. Christian Liakos on behalf of the Cam Neely Foundation for Cancer Care/Oysterville Yacht Club, PO Box 101, Osterville, for a One Day All Alcohol and One Day Entertainment License for its annual event to be held at Oyster Harbors Marine, 182 Bridge Street, Osterville, on July 30, 2012 from 5 pm to 11 pm. Live entertainment will be provided by the Cape Cod Band and Freddie and the Maties.

Mr. Liakos appeared for the event. They have hired a police detail and have cleared everything with the fire department. They have 3 crowd managers who will be on site. They have buses bringing people from parking areas.

A motion was duly made by Gene Burman, seconded by Dick Boy and a unanimous vote taken to approve the application of D. Christian Liakos on behalf of the Cam Neely Foundation for Cancer Care/Oysterville Yacht Club, PO Box 101, Osterville, for a One Day All Alcohol and One Day Entertainment License for its annual event to be held at Oyster Harbors Marine, 182 Bridge Street, Osterville, on July 30, 2012 from 5 pm to 11 pm. Live entertainment will be provided by the Cape Cod Band and Freddie and the Maties.

Amend Common Victualler License and Add Daily Live and Daily Non-Live Entertainment Licenses: Application of Hyannis Rendezvous, Inc., d/b/a Rendezvous Cafe & Creperie, 394 Main Street, Hyannis, Dylan Jordan, Manager, to amend its Common Victualler License to a restaurant with 48 indoor seats, 12 employees, and 15 outdoor seats on a front patio, as well as a Daily Live Entertainment License for 1-3 people with acoustic and percussion instruments, amplified, and a non-live entertainment license for a radio system and a 50" T.V., all from 11 am to 10 pm daily.

Mr. Jordan appeared for his applications. They are looking to add 15 seats out front and entertainment just for acoustic singers with a mic; nothing loud. They have been in operation for just 2 months. He does have the radios and t.v. right now. Mr. Hoxie asked if the Town Manager has ok'd the outside dining 0 he advised that hearing is August 8th. He stated for the music there will be no outside speakers.

A motion was duly made by Gene Burman, seconded by Dick Boy and a unanimous vote taken to approve the application of Hyannis Rendezvous, Inc., d/b/a Rendezvous Cafe & Creperie, 394 Main Street, Hyannis, Dylan Jordan, Manager, to amend its Common Victualler License to a restaurant with 48 indoor seats, 12 employees, and 15 outdoor seats on a front patio subject to Town Manager approval, as well as a Daily Live Entertainment License for 1-3 people with acoustic and percussion instruments, amplified very carefully, and a non-live entertainment license for a radio system and a 50" T.V., all from 11 am to 10 pm daily.

New Annual All Alcohol Common Victualler License: Application of Chipotle Mexican Grill of Colorado, LLC, d/b/a Chipotle Mexican Grill #1814, 793 Iyannough Road, Hyannis, Christopher Martin, Manager, for a New Annual All Alcohol Common Victualler License: Casual Dining Mexican restaurant at 793 Iyannough Road, Hyannis serving bottled beer and Margaritas. No bar. Hours of operation 11 am to 10 pm. Total square footage is 2,200 and there are 48 seats indoors. There is a 228 sq. ft. patio consisting of 3 tables & 6 seats. The patio is enclosed by a railing with non-locking gate. Main entrance is in the Mall vestibule in front of the Mall & parking lot facing North. There is an entrance on the East side and an exit on the South side of the restaurant. There are 2 restrooms located on the East side of the restaurant close to the East entrance and South exit. Kitchen is 939 sq. ft. Alcohol is stored in a refrigerator behind the cashier station and with dry storage by the cooler in the back of the restaurant.

Attorney Matt Fogelman from Newton represents 13 Chipotle Mexican Grills; Christopher Martin, Manager and Chris Gruber, who oversees operations throughout the state were present. There are over 1,000 nationwide and a couple international. The company serves typically bottled beer and margarita's. The customers expect this amenity from other restaurants in the chain who already have it. The food is prepared fresh in front of you. Everyone will be TIPS certified. They have a computer which asks "is this person born before..." YES or No; this is standard with the company. They have few violations nationwide. They have good policies and procedures standardized across the board. Hours are 11 to 10; not a late night place at all. A lot of families and very good low prices. Mr. Hoxie asked if this is where Friday's was in the Mall. He asked what the experience is of the manager; he has over 13 years experience in PA, NY, ordered all the alcohol and did the training. Bartending and service background from Johnson & Wales Univ. All the restaurants have the same menu and the beer and margaritas or just beer if no all alcohol licenses available. Mr. Hoxie asked if they plan on any entertainment; they do not. Mr. Boy asked if you pick up your tray, your beverage, how do they control if you

leave with the bottle ½ full? Mr. Fogelman stated they have a roaming employee who is walking around aware the drink was purchased and watching where the person is going. They are vigilant. They are also vigilant in watching for passing off of a drink to a younger person. Mr. Burman stated he was looking at the list of violations and suspensions – it seems there were a lot to minors; how do they propose to change that record? Attorney Fogelman stated we need to look at it in context – they have 1,000 locations and only these few violations in 5-6 years. They want zero; but the numbers do have to be viewed in context of the number of restaurants they have. They do everything they can to prevent the problem. That is why they bought the computer program – the YES or NO has to be entered by the person serving the drink. They are actually looking at the license twice. The managers and staff will oversee to make sure that person is the one drinking it. Officer Maher stated if you had an 18 year old who went in and bought a drink and left and had an accident, you wouldn't care if it is a low number opposed to the number of restaurants. He asked if they are they serving alcohol without food. Mr. Fogelman stated they are not. Will they card everyone, or just those who look young? Mr. Fogelman stated they will card everyone one on one.

A motion was duly made by Gene Burman, seconded by Dick Boy and a unanimous vote taken to approve the application of Chipotle Mexican Grill of Colorado, LLC, d/b/a Chipotle Mexican Grill #1814, 793 Iyannough Road, Hyannis, Christopher Martin, Manager, for a New Annual All Alcohol Common Victualler License: Casual Dining Mexican restaurant at 793 Iyannough Road, Hyannis serving bottled beer and Margaritas. No bar. Hours of operation 11 am to 10 pm. Total square footage is 2,200 and there are 48 seats indoors. There is a 228 sq. ft. patio consisting of 3 tables & 6 seats. The patio is enclosed by a railing with non-locking gate. Main entrance is in the Mall vestibule in front of the Mall & parking lot facing North. There is an entrance on the East side and an exit on the South side of the restaurant. There are 2 restrooms located on the East side of the restaurant close to the East entrance and South exit. Kitchen is 939 sq. ft. Alcohol is stored in a refrigerator behind the cashier station and with dry storage by the cooler in the back of the restaurant.

New Class II Auto Dealer License: Application of Casey T. and Ryan M. DeVincent, d/b/a The Car Guys, 741B Yarmouth Road, Hyannis, MA for a New Annual Class II Auto Dealer License, hours of operation to be Mon – Sat, 9 am to 5 pm, Sun 10 am to 2 pm. Maximum of 43 vehicles total on premises.

Both brothers appeared at the hearing. Mr. Hoxie asked if 43 is the total of all including employee vehicles and customer vehicles. The said it is. Mr. Burman asked about the property layout as there was some concern when the prior owner came before us. Mr. Geiler stated they have improved that property.

A motion was duly made by Gene Burman, seconded by Dick Boy and a unanimous vote taken to approve the application of Casey T. and Ryan M. DeVincent, d/b/a The

Car Guys, 741B Yarmouth Road, Hyannis, MA for a New Annual Class II Auto Dealer License, hours of operation to be Mon – Sat, 9 am to 5 pm, Sun 10 am to 2 pm. Maximum of 43 vehicles total on premises including employees.

Show Cause Hearing: Show Cause Hearing on RCSJ Group, Inc., d/b/a Fresh Ketch, 460 Main Street, Hyannis, Raymond C. Roy, Manager to determine if its Seasonal All Alcohol Common Victualler License and/or Live Entertainment License should be modified, suspended, revoked or conditions imposed due to violations of the Rules and Regulations of the Licensing Authority as follows: 1. Ch. 501-3. Admissions to the premises, Section D for a failure to provide a written or printed receipt, permanently recorded and numbered seriatim, presented to each individual customer or group of customers; 2. Ch. 501-3. Admissions to the premises, section H. Licensees shall not permit entrance to the premises by more persons than the number approved by the Building Commissioner for the capacity of the premises minus the number of employees working in the public areas at the time. By allowing over 300 people inside the establishment at approximately 2200 hrs.; 3. Ch. 501-5. Physical premises, Section B. The licensed premises shall conform to the floor plan approved by the Licensing Authority with regard to the structures and the walls at the premises, as well as with regard to all tables, chairs, booths, bars, counters, barstools, dance floors or areas, railing partitions, and other barriers at the premises. Any changes in the floor plan or any renovations of any kind may not be made without notification to the Licensing Authority and the approval of the Licensing Authority. This includes substantial changes in the arrangement of moveable furniture. By moving tables and chairs out of the dining area to allow for space for a DJ and dancing; 4. Ch. 501-6. Business arrangements of licensees, Section C. No licensee shall permit any person to have a direct or indirect financial or beneficial interest in the licensed business or to receive any revenue from the business or to manage the premises other than the persons properly approved of by the Licensing Authority and the salaried employees of such persons. By allowing an outside entertainment company, (AYBOI Entertainment) to have a financial interest in the event on May 25, 2012; 5. Ch. 501-6. Business arrangements of licensees, Section G. No licensee shall enter into an agreement with an independent contractor to provide beverages or food or entertainment or management at the premises without the approval of the Licensing Authority. By allowing a outside entertainment company, (AYBOI Entertainment) to promote and run the “Old school reunion 5” event held on May 25, 2012; 6. Ch. 501-8. Environs of licensed premises, Section A. It shall be obligation of licensees to ensure that a high degree of supervision is exercised over the conduct of the licensed establishment at all times. Each licensee will be held accountable for all violations that are related to the licensed premises to determine whether or not the licensee acted properly in the given circumstances. By not adequately having staff present for the size and type of entertainment on May 25, 2012, as well as the issues listed above. By allowing a situation to exist whereby a patron was severely injured as a result of a fight inside the establishment. Continued at the request of Barnstable Police Dept. to 7/30/12.

Mr. Hoxie read the hearing notice.

Attorney Jeremy Carter appeared with Raymond and Stephen Roy for Fresh Ketch. Officer Steven Maher presented the case for the Police Department.

Mr. Hoxie swore in anyone who was going to testify.

Officer Maher stated Officer Murphy with the Street Crime Unit was working that night when he had a conversation with door staff at Fresh Ketch – he was told they were having hip hop in back and karaoke in front. There was a \$10 cover charge – no receipt being given.

Officer Maher stated that Officer Murphy later investigated a stabbing with a broken beer bottle. He estimated the crowd as being over 300, and noted only two security people. The officer had to escort the fire department to the injured person. They also noted that the premises was altered from its approved floor plan for the entertainment; the entertainment being billed with flyers. AYBOI facebook page advertised a draw of over 300 people on this site last year. They also show the DJ, the sound system, the dance area, which are not in conformance with the floor [plan approved.

Attorney Carter spoke to the board advising that both Steven and Raymond Roy have been in existence for 8 years at Fresh Ketch and 3 for Five Eighty Six. It was his understanding they have only been before the Licensing Authority for noise. He stated they have many events for the community. He stated on the night in question, they had karaoke in the front and had hired a DJ for a flat fee for the rear. The DJ promoted his event – it was not authorized by Fresh Ketch. He stated that the doorman is at the hearing to testify if needed. There were 11 employees that night; there were 4 scheduled for security – one called in sick and has a letter. The third wrote a letter stating he was there. It was his understanding the DJ also has people standing by if they were needed. They do have numbers on each room with the numbers allowed. Mr. Acker is here – he had a clicker, and was keeping track of numbers coming in. He stated that he was a little over 200 people total, not 300. He states the 300 the DJ put on his website was not in fact really 300. The door person did hand out receipts – maybe the officer who came at 10 did not see the receipts. Some people just dropped them, he has spoken with Mr. Roy to advise they do need to give those receipts out all night. Attorney Carter stated the chairs and tables are moved to the side; no walls or partitions taken down; they do not remove them from the premises; they are just pushed over to accommodate the dancers. The entertainment was contractual; the entertainers did not get a percentage. They do agree there is never enough security if there is an injury. This was a spur of the moment incident. Mr. Acker will testify if we wish. Fresh Ketch does do everything they can to comply and also do many charitable things at the restaurant. This was the second time having this AYOB group, the last time there was no incident. They have not been in violation for anything else.

Officer Maher stated the responsibility of the licensee is to keep copies of all the receipts given out; Steven Roy stated they do have some receipts. The people coming in for the karaoke were not charged the cover – that is probably what the officer saw. He asked how many were in for karaoke, how many for live? The karaoke is the bar area to the right; DJ people were in the left room. Officer Maher asked how many each – Mr. Roy stated 65 karaoke and the other 150 in the rest of the restaurant. Officer Maher stated the inside capacity is 233; the 150, 65 and 12 employees total 227. He also would submit that it is an alteration of premises to move the furniture. Officer Maher asked if they could produce the contract with the DJ; he stated it is verbal with his friend from Barnstable High School; lots of it is donated for good works. Tim and Jonathan worked at T.V. station; his cousin is the DJ; he pays the DJ a significant fee. They will not do it again at that location. The normal Fresh Ketch crowd is a lot different. Mr. Roy stated that was a Memorial Day event. Mr. Carter stated the occupancy is 253 not 233; they were under. Mr. Roy stated the incident evolved because of personal problems between the individuals involved.

Mr. Burman asked how many people check the door and do crowd control? Mr. Roy said one checks ID's, one manager bartending, and other manager and himself were there and there were 3 crowd control managers. Mr. Roy stated there were 11 working. Two bartenders, one waitress. Eight were at the doors, roaming, as well as the rest roaming. Mr. Boy asked about the receipts again; how many \$10 bills did they take in? Mr. Roy stated approximately 150. They paid out \$750. He believes the incident was just because the people had problems with each other. He is there until 2 am each day, doesn't drink, is very vigilant. The rest of the night was a great night save this incident. Mr. Hoxie did state he could see how something like this could happen. Mr. Burman stated he could not see how they could charge only some people and not all. Mr. Hoxie wanted to take the violations individually.

A motion was duly made by Gene Burman, seconded by Dick Boy and a unanimous vote taken for the following findings:

#1 Mr. Burman proposed lack of control and the finding is such; Mr. Boy seconded and stated written receipts were not readily available.

#2 Admission of too many persons; Officer Maher stated that one thing they highly recommend they use clickers and keep that count and that the receipts are given sequentially. Officer Maher stated from experience they determined the place was overcrowded. Attorney Carter stated there was a clicker used and Mr. Acker is here to testify he used it. The receipt thing isn't a count – people come and then go and other receipts are given out. Mr. Burman proposed no evidence shows they were in violation; Mr. Boy seconded, all approved.

#3 Mr. Burman proposed they were not in compliance. Mr. Boy seconded and Mr. Hoxie approved.

#4 Mr. Burman stated there was no contract but has not seen evidence there was money given; he proposed guilty – all approved. Attorney Carter stated there was respectfully no evidence. Counts 4 and 5 are connected; he suggests there is no evidence to find guilty on #4; evidence was that it was an oral contract to pay the

person a flat fee. Based on the comments he asks reconsideration of #4. Attorney Carter stated he has a letter and the person here who will testify he was paid a flat fee of \$750. It was done as a "paid out receipt" – there is a receipt in the register for that \$750 that day. The DJ will testify to that. Mr. Hoxie stated they will move on to #5 Mr. Burman proposed they were in violation. Mr. Boy asked for more testimony from the DJ based on their attorney's representation. Mr. Boy found it inconclusive. Mr. Hoxie seconded and all voted to approve.
#6 Mr. Burman stated he found there were not enough security people. Mr. Boy seconded and all approved.

A motion was duly made by Gene Burman, seconded by Dick Boy and a unanimous vote taken as to guilt or innocence: #1 Guilty, all approved. #2 Not Guilty, all approved. #3 Guilty, all approved. #4 Guilty, all approved. #5 Motion by Dick Boy, seconded by Gene Burman - Inconclusive; Not Guilty, all approved. #6 Motion by Gene Burman, seconded by Dick Boy – Guilty, all approved.

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Attorney Carter testified this was a one time event – will come before the board in future if they will have a need to move tables and chairs; he suggests the lack of supervision, as one person called in sick and on a normal night it would be adequate and in future they will not have this type of event. As to receipts the client will make a better effort to have them readily available.

Officer Maher recommended on #1 & #3 that a written warning to be placed on file; on #4, outside entertainers hired – a 1 day suspension be imposed, which suspension would be suspended for a year if no further incidents and then dismissed; #5 – Recommend file. #6 – The licensee should have known better because they had this event last year; recommend a 1 day suspension be imposed, which suspension would be suspended for a year if no further incidents and then dismissed.

A motion was duly made by Gene Burman, seconded by Dick Boy and a unanimous vote taken for sanctions as follows:

- #1 Warning; all approved
- #2 Not Guilty; all approved
- #3 Warning; all approved
- #4 1d suspend for a year; all approved
- #5 Motion by Dick Boy, seconded by Gene Burman Not Guilty; all approved
- #6 Motion by Gene Burman, seconded by Dick Boy 1d suspend for a year; all approved

Mr. Geiler asked if they were to go into effect a year later and if no problems by 5/25/13 it go into effect then? Officer Maher stated no, if no problems by 5/25/13 it be dismissed. The Board went along with all of the recommendations.

Mr. Geiler asked that they go back and look at their financial records – it would help if those receipts were here. It would be better to pay the entertainers by check – then they are covered. It needs an invoice and company check. That is how the business should handle all payments.

Show Cause Hearing: Show Cause Hearing for Davester, LLC, d/b/a Embargo, David Noble, Manager, 453 Main Street, Hyannis at the request of the Barnstable Police Department, for the purpose of determining if its Annual All Alcohol Common Victualler License should be modified, suspended, revoked or conditions imposed due to violations in Police report dated June 16, 2012 (see attached) under: 1. Mass. General Laws, Ch. 138, § 70, “No license or permit under this chapter shall be granted by the commission or the local licensing authorities unless the fee therefore has been paid to the state treasury or the city or town treasury, as the case may be,” and violation of the Town Code Rules and Regulations of the Licensing Authority as follows: 2. Ch. 501-1-D No business requiring a license from the Licensing Authority shall operate without a valid license posted as required below. 3. Ch. 501-14-C Licensees may not fail to comply with any condition, stipulation or agreement upon which any license was issued or renewed by the Licensing Authority or upon which any application or petition relating to the premises was granted by the Licensing Authority. It shall be the duty of the licensee to ensure that all appropriate personnel at the licensed premises are familiar with the rules and regulations of the Licensing Authority and with any conditions on the license.

Mr. Hoxie called the hearing by reading the notice. Mr. Hoxie asked if anyone was present for the licensee. They were not. He then asked if they were served, Ms. Ade said they were. He asked if they have communicated since, Ms. Ade stated they have not.

Officer Maher stated he had spoken to Mr. Noble who was planning on attending the hearing.

Officer Maher stated Officer Murphy went to Embargo that night and spoke with Ms. Dewar who identified herself as the manager. She asked if there was anything she could do to rectify the problem of the license fee not being paid and Officer Murphy advised her there was not until Monday. Later on, Mr. Noble called Officer Murphy to speak to him, advising he was at the premises and he was advised by Officer Murphy that after midnight he was operating with an expired license. He met with Mr. Noble who was very upset and stated he could not afford to be closed all weekend. He advised there were extenuating circumstances as he was off Cape with his sister-in-law who was undergoing life threatening surgery, said he had spoken with Ms. Ade in Licensing who had called to remind him the payment was due, and called his wife – however, he only got her voicemail and with the stress of the surgery had forgotten to follow up. This occurred on the 15th in the evening. Officer Maher stated that late afternoon on the 15th the police department had an email from Ms. Ade that they had not paid the 2nd ½ year liquor license fee. She

stated that she had spoken to Mr. Noble that morning stating his wife would bring over the payment – for some reason she did not do so.

It was then stated that the fee was paid on Monday. Officer Maher stated he did speak to Mr. Noble, who intended to be at the hearing this morning, and did not know why he was not present. Ms. Ade also had not heard from Mr. Noble since the telephone conversation on June 15th.

Mr. Geiler stated his not appearing this morning should be noted. He also stated that our office notifies licensees the payment is due by the 15th by mail early in June and staff personally calls the licensees if they have not been in the day prior or day the payment is due. He believes this went on last year as well as far as a call having been made at the last minute to this licensee.

Mr. Hoxie stated the violation is that he stayed open the two weekend days with no valid license. Mr. Geiler asks that the Board needs to determine what message we are sending to the community.

A motion was duly made by Gene Burman, seconded by Dick Boy and a unanimous vote taken for the following findings: Findings were that the licensee operated for the weekend without a license on June 15th after midnight and on June 16th and 17th knowing he did not have his license. Mr. Boy seconded the motion. It was unanimously approved.

A motion was duly made by Gene Burman, seconded by Dick Boy and a unanimous vote taken as to guilt or innocence: The licensee was found guilty. It was a unanimous vote.

A motion was duly made by Gene Burman, seconded by Dick Boy and a unanimous vote taken for sanctions as follows: Mr. Burman proposed that the restaurant be closed August 3rd and 4th for suspension (Friday and Saturday). Mr. Boy seconded the motion and it was unanimously approved.

Mr. Geiler stated an additional charge should be that he did not appear today, and be made a part of the record.

An additional motion was made by Mr. Burman for findings that the licensee failed to appear. That motion was seconded by Mr. Boy and a unanimous vote taken to add this violation to the record.

Show Cause Hearing: Show Cause Hearing on Ferreira's Recycling, Inc. d/b/a Ferreira's, Timothy J. Ferreira, Manager, 85 Old Yarmouth Road, Hyannis, MA 02601, at the request of the Barnstable Police Department, for the purpose of determining if its Annual Junk Dealer License should be modified, suspended, revoked or otherwise conditioned due to the following violations pursuant to the Police Report dated June 18, 2012 (see attached): 1. Violation of Chapter 502-4.

Record Keeping paragraph B, of the Town of Barnstable Secondhand Dealers and Secondhand Collectors Ordinance, for failure to fill out a purchase report form in all relevant aspects at the time of purchase, Nine Counts; and 2. Violation of Chapter 502-4. Record keeping paragraph D, of the Town of Barnstable Secondhand Dealers and Secondhand Collectors Ordinance, for failure to transmit electronically to the Barnstable Police Department on a weekly basis, a copy of all transactions recorded in the ledger on the form provided, 52 counts.

Mr. Hoxie read the hearing notice.

Attorney James Connors appeared with Mr. Ferreira for this hearing.

Mr. Hoxie swore in the witnesses.

Officer Steven Maher presented evidence. As of 6/13/12, in speaking with Lt. Murphy and the Detective's secretary, it was determined that Ferreira's was not in compliance with respect to record keeping (no weekly reports – 52 counts) for a year. In 2011 he started out well and deteriorated since then. Since being served notice of this hearing, Mr. Ferreira has gotten 1000% better. He has had numerous conversations with Mr. Ferreira about this over the past year. Having him come in has prodded him to make the changes necessary but does not excuse the non-compliance in the past. Attorney Connors stated he had spoken to Officer Maher in April about this – he has improved greatly. It is a nature of the type of business which requires records the police want that the records be transmitted electronically. Mr. Ferreira was not computer savvy, but has been working with the police department to do this correctly. He has hired an employee to take care of this reporting and get him up to speed.

Mr. Hoxie asked if the police and Attorney could agree on a disposition for this matter.

Attorney Connors conferred with Officer Maher and then with Mr. Ferreira and they then asked for an agreed disposition. Officer Maher recommended that the nine counts be taken as one – and that the licensee be given a one week suspension, to be continued for 6 months and if no further violations dismissed. He recommended the same disposition on #2. Mr. Burman stated he has a problem with the history of this business. He should have been aware of and complied with this requirement for the time he has had the license. Officer Maher stated to Mr. Burman he is now up to date. Mr. Boy stated he likes the recommendation, and is impressed he has made such good strides.

Mr. Hoxie asked for findings. Mr. Burman proposed that on #1 the violations were proved, asked to consolidate the counts into one violation. The motion was seconded and unanimously approved. Mr. Burman proposed on #2 that the violations were proved, asked to consolidate the counts into one violation. The motion was seconded and unanimously approved.

Mr. Burman then duly made a motion of guilty on both counts which was seconded by Mr. Boy and unanimously approved.

Officer Maher stated the sanction would be held for 6 months and dismissed if no further problems in the interim. The same sanction was recommended for #2.

A motion was duly made by Gene Burman, seconded by Dick Boy and a unanimous vote taken for sanctions as follows: That there be two separate one week suspensions, each held for 6 months; and if no further violations in the interim, that the suspensions be dismissed but if any further problems the suspensions be imposed immediately.

Business Meeting:

COMM Fire Department letter requesting approval be obtained for each event at Oyster Harbors marine (Licensing Assistant has been doing this).

Mass Lottery Commission letter advising of application of Cape Cod Inn/Duck Inn Pub for a Keno license.

Release of Executive Session Minutes, if any (0).

Effective November 1, 2012 all applications for renewal of an annual or seasonal restaurant license will require a Certificate of Good Standing, issued electronically by the MA Department of Revenue, be included as part of the required documents submitted by the licensee for renewal by the local Licensing Authority.

The process is done electronically at <http://www.mass.gov/dor/forms/request-a-certificate-of-good-standing.html>.

Mr. Geiler stated we have received communication from the DOR regarding meals taxes, etc. being unpaid. They have set up a process for each restaurant to obtain an electronic statement of good standing. They have asked the cities and towns to add this to renewal requirements to show the appropriate taxes have been paid. Staff will be sending out a notice that this requirement will be added to the other items they need to file at renewal time. Mr. Burman asked what about the people who are not computer savvy; it was determined they would just ask someone to do it for them. It is a requirement.

Mr. Geiler stated he has never seen an attachment like what Chipotle Grill had given us as to violations at their other locations. They chose to supply a nationwide list. They are all service to minor violations; the highest is a \$4,000 fine with 12 day suspension. There is not single warning. There are 3 – 12 day suspensions. A lot of communities seem to be strong on penalties. Mr. Hoxie asked if there are any in Mass? Mr. Geiler stated they are new in Mass.

The meeting was adjourned at 11:20.

Respectfully submitted,

Christine P. Ade, Recorder
Town of Barnstable Licensing Authority

Gene Burman, Vice-Chairman
Town of Barnstable Licensing Authority