



Town of Barnstable
Regulatory Services
Richard V. Scali, Interim 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.
October 28, 2013

A re-scheduled meeting of the Barnstable Licensing Authority was held on Monday, October 28, 2013, Chairman Martin Hoxie called the meeting to order at 9:30 A.M. He introduced Gene Burman, Vice Chairman; Dick Boy Associate Commissioner; Ron Semprini, Associate Commissioner; David Nunheimer, Associate Commissioner, Richard V. Scali, Interim Director of Regulatory Services, Lt. John Murphy and Patrolman Steve Maher, Liaison Officers from the Barnstable Police Department, and Christine Ade, Recording Secretary. Paul Sullivan, Clerk, was absent.

Vote to accept Minutes: Vote to accept minutes of the 9/30/13 Meeting.

A motion was duly made by Mr. Burman, seconded by Mr. Boy and a unanimous vote taken to approve the minutes of the 9/30/13 Meeting.

Hearings:

Amend Class II Auto Dealer License: Application of Auto Smart, LLC., d/b/a Auto Smart, 202 Yarmouth Road, Hyannis, Darrell G. Fietz, Manager, to amend its Class II Auto Dealer license to show 18 display vehicles and 5 customer vehicles outside and 2 customer vehicles inside. Hours of operation to be 9-7 M-F, 10-6 Sat and 12-5 Sun.

Mr. Fietz appeared for his request to amend his license to include 18 display vehicles and 5 customer vehicles outside and 2 customer vehicles inside. He is the Manager; has been in business since 2006 in Barnstable. He wants to be more compliant. The property's plot plan had not been touched for many years. Has received an approval from the Building Commissioner to add 7 customer spots and a couple display spots. He will line and number the spots C for customer and D for display.

Mr. Boy stated the parking at Junior's has been terrible. Mr. Fietz stated from time to time he has had too many cars as the license is currently. He keeps his corral open to keep the wreckers off the street so they can get in and out and turn. They work hard to keep it off the road as it is a busy intersection. The neighbor, Junior, does a huge business. There is also a pole right there which they can do nothing about. The police

are enforcing numbers now and he wants to be compliant. He can't control AAA and others going to the other side but his will stay in compliance.

Mr. Semprini asked with regard to the right hand turn just before Hess...do they have a no left turn sign? Mr. Fietz stated yes. He was asked if he owned the repair shop and he said he did not. Mr. Semprini asked about the entrance at the left – the two to the left are Auto Clinic and in front of 5C is Auto Smart. Mr. Semprini asked if he was proposing a spot in front of the door...he said he was. There is room. He has spots for smaller cars. Mr. Semprini asked if there would be enough room for fire vehicles to get in if there was a problem. Mr. Fietz said it is 60' from building to fence. Even large car carriers can get through. He does not anticipate any problems.

Officer Maher stated he has walked the space. Within his site plan, after seeing it, he is going above and beyond to be in compliance. Lt. Murphy also stated that he is trying his best to do the right thing. He recognizes and appreciates this. Officer Maher stated that if this is approved, he wants under "display" to say "display or unregistered vehicles."

Mr. Burman asked about the curb cut into the Hess station. Mr. Fietz stated the driveway is there but is fenced. There is no access to that from the Hess or north side. The 2nd curb cut has a pole in the middle of the curb cut and is impassable.

A motion was duly made by Mr. Burman, seconded by Mr. Boy and a unanimous vote taken to approve the application of Auto Smart, LLC., d/b/a Auto Smart, 202 Yarmouth Road, Hyannis, Darrell G. Fietz, Manager, to amend its Class II Auto Dealer license to show 18 display vehicles and 5 customer vehicles outside and 2 customer vehicles inside. This includes unregistered vehicles.

Change Manager: Application of Davester, LLC, d/b/a Embargo, 453 Main Street, Hyannis, holding an Annual All Alcohol Common Victualler License, for a Change of Manager to John Bush.

Attorney Robert Bianchi appeared to request a Change of Manager to John Bush from David Noble. Mr. Bush is presently a manager at Embargo, just not Manager of record on the license.

Officer Maher asked what his responsibilities will be from 10 to close. Mr. Bush stated he is observing in front of the house during that time period. Mr. Scali asked how he would handle anything inside or outside that was a problem – he stated his Security people will be handling it with him overseeing. Between himself and the head of Security they will be alerting the police department.

A motion was duly made by Mr. Burman, seconded by Mr. Boy and a unanimous vote taken to approve the application of Davester, LLC, d/b/a Embargo, 453 Main Street, Hyannis, holding an Annual All Alcohol Common Victualler License, for a Change of Manager to John Bush.

Show Cause Hearing: Show Cause Hearing at the request of the Barnstable Police Department, for Davester, LLC, d/b/a Embargo, 453 Main Street, Hyannis for the purpose of determining if its Annual All Alcohol Common Victualler License should be modified, suspended, or revoked or conditions imposed due to Incident Report #13-1657-OF as follows: Violation of the Town Code Rules and Regulations of the Licensing Authority Chapter 501-8A, "It shall be the responsibility 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."

Attorney Robert Bianchi appeared with David Noble.

Mr. Hoxie read the show cause notice. He advised we would hear evidence from the police department first and then the licensee and attorney can present their case.

Lt. John Francis Murphy introduced himself and made an opening statement. He stated that this is going to be very obvious to the Board quickly that I am not a public speaker, but am a Liaison Officer with the Licensing Board. I will detail several instances in 2013 to show that Embargo was not run with a high degree of supervision and in no way is bringing this complaint meant to embarrass or denigrate Mr. Noble. On July 12th of this year he said he feels there was some discord. He stated he was not present but has a witness who will testify that there was a disturbance outside the bar and Mr. Noble interjected himself into the disturbance and did not show a high degree of supervision.

Lt. Murphy called Sgt. Stephen Lopes, MA State Police. He is assigned to work with the Street Crimes Unit under Lt. Murphy. He is a 21 year member of State Police and a Sgt. Since 2005. He said he has been a plainclothes and uniformed member. Worked in Boston, Brockton, Springfield. A lot of the work brought them into liquor establishments at closing time. He was supervisor on July 12, 2013 which is the date of this incident. Sgt. Lopes heard a radio transmission to which he responded just after 12:30. He got there and saw several police cruisers and a crowd on the sidewalk. Lt. Murphy asked what briefing Deputy Saladino gave him. He said that she stated there had been an incident and they were called; the crux of the conversation was that Mr. Noble was aggravating the situation. He stated he was surprised as he knows Mr. Noble. He said that he saw Mr. Noble taking pictures. He approached Mr. Noble to calm him down and contain the situation safely and quickly. Mr. Noble had a problem with the incident having too large a response. He said he had met with Mr. Noble before and he was very professional. His involvement with staff was fine until this evening.

Lt. Murphy showed Sgt. Lopes the photos and asked him what they depict. Sgt. Lopes said it was from the steps to the entrance of Embargo. He sees 3 police cars in one

and another in other photos and some officers standing there. Lt. Murphy asked if this is what he recalls seeing that evening. Sgt. Lopes stated it is.

Mr. Hoxie asked who took the photos; Lt. Murphy stated Mr. Noble did, and forwarded them to him by text. Lt. Murphy asked Sgt. Lopes how long he had been working with the street crimes unit. He stated about a year. He said he responded no differently than any other incident he has responded to. He stated that if they do not contain the incidents they can become larger. That is why the swift response and why they involve so many police vehicles. Lt. Murphy asked if Sgt. Lopes thought Mr. Noble displayed a high degree of supervision that evening – Sgt. Lopes stated no he did not think Mr. Noble was acting appropriately and that is why he spoke with him. Mr. Hoxie asked what the disturbance was about that began the incident. Sgt. Lopes stated a patron was being ejected from the building. Officer Maher stated the staff flagged an officer down to help get the patron out as he had had too much to drink and that is why other cars appeared shortly thereafter.

Mr. Scali asked how Lt. Murphy got the photos. Lt. Murphy stated he had taken ½ night off and was at Logan picking up his daughter. He received a text message from Mr. Noble expressing his displeasure with the police response and he pledged his cooperation but called it an embarrassment – thought it seemed overwhelming and not indicative of the tourist friendly presence for Main Street. He attached the photos. Lt. Murphy texted back that he was off that night but would speak with him when back on duty. The message came in about 1:30 – 2:00 a.m. Lt. Murphy said that the complaint brought forward is in no way a result of Mr. Noble's being displeased, but is the result of his interference and not supervising the inside of the establishment. On this one night there was discord with Mr. Noble. There had not been prior and has not been since.

Officer Maher questioned Officer Lopes. He asked if Sgt. Lopes had been to other disturbances at Embargo before – he said he had. Was the response of the police department the same as other times? Sgt. Lopes said it was. Officer Maher asked if other establishments reacted this way; he said they did not. Officer Maher asked if Mr. Noble's response was like or different from responses before? He stated he had not seen this type of response from Mr. Noble before.

Attorney Bianchi introduced Mr. Noble, who apologized to the police department; stating he acted inappropriately that evening, which was very busy. He stated he would never intentionally undermine the police department or interfere with them. He commended the police department for the hard job they have to do. He stated that he was 100% wrong that night.

Attorney Bianchi stated that he thinks Mr. Noble covered his feelings about the occurrence. He has acknowledged he was wrong, says it will not happen again. He runs a very nice place very well. He assures us it will never happen again. He stated that the word inappropriate sums it up very well. He was very upset and did the wrong thing. This has never happened before with him, and will not happen again. He asks that the Board keep this in mind when making their decision on sanctions.

Mr. Hoxie asked if there was something going on with Mr. Noble that evening that maybe made him get so upset. Attorney Bianchi stated he was just upset that there were so many cars there and such a large disturbance.

Mr. Hoxie asked if there is a reason Mr. Noble is stepping down as Manager. Attorney Bianchi stated it is to help relieve him of some of his duties; that is all.

Lt. Murphy in closing stated they only brought the complaint as on the evening in question Mr. Noble was not reacting appropriately. It has not happened before and thinks it will not happen again. Mr. Noble talked about pressure – he recognizes the pressure the police department feels to keep the peace and Lt. Murphy also recognizes the pressure on restaurant/bar owners to keep open and provide a living for themselves and their employees. He stated the police department can't survive without the cooperation of the licensees. They do hold every license holder to a high standard and on this date, in his opinion, Mr. Noble did not show the supervision needed. Lt. Murphy stated a disturbance from inside spilled outside, which is common. He states that once the police arrived Mr. Noble should have been back inside supervising, not outside being in the way.

Attorney Bianchi stated that on any routine night Mr. Noble has managerial staff inside. He had three management people inside on the evening in question. Mr. Hoxie stated the lack of supervision took place when he was outside taking photos and interfering. Attorney Bianchi stated they would argue that it was not a lack of supervision on Mr. Noble's part but a lack of appropriate behavior.

Lt. Murphy stated it was not those things that made this complaint move forward. In his opinion Mr. Noble's behavior on that evening showed his lack of supervision. He has dealt with problems there before and the manager on the license on that evening failed to be inside when needed and created more of a problem.

Mr. Boy stated he basically did not set a good example for his employees that night but appreciates his apology and thinks he should take that even further and apologize in a newspaper.

Mr. Semprini thanked Mr. Noble for his straightforward response and for apologizing. He asked about the ruckus and having to have 4-5 people escort the patron out. He also asked about weapons; stating no-one knows if someone is carrying, and he should be happy for a good police response.

Mr. Noble said that he spoke to Officer Maher the next day and was told that all available officers respond. Mr. Noble then stated he was actually off that evening, had been to dinner with his mother. They had three managers including his wife that night in the restaurant. He said he recognized the patron – he was coming back that night to the restaurant when the incident occurred. The patron had too much to drink, and somewhere between the bar and front door the patron started to resist. He also stated

perhaps they should have left the “escorting out” to the police in the first place as well. Mr. Noble stated it is restaurant until 10 and after 10 it becomes more of a bar. Their security starts at 8 pm. They have a dress code. They do everything they can to keep trouble out. It is not a fighting place or a drug place. It is a grown-up bar on Main Street.

Lt. Murphy stated they have worked closely with Embargo staff and they have no problem with any of these people. There was in fact an arrest for a cocaine problem due to a call from Embargo reporting it. Lt. Murphy says he has no problem with the security staff there.

A motion was duly made by Mr. Burman, seconded by Mr. Boy and a unanimous vote taken for the following findings: that the charges brought before the Board for Chapter 501 section 8A for ensuring a high degree of supervision be enforced, that there was a lack of supervision.

A motion was duly made by Mr. Burman, seconded by Mr. Boy and a unanimous vote taken for guilt or innocence as follows: Guilty.

Mr. Hoxie asked for a recommendation from Lt. Murphy as to sanctions. Lt. Murphy stated it is what it is. Prior to July 12th they had a positive working relationship with Mr. Noble and since July 12th they have had a good relationship. He deferred to Sgt. Lopes who was there that evening, and reiterated how a minor incident can escalate. He stated the response of the police department is appropriate. At closing time if the small incidents are handled correctly, they stay contained. There have not been massive melees in the street anymore, or stabbings in the street. He stated that he recognizes that if he gives a harsh recommendation it affects all the employees of the restaurant. He asked for wisdom from his father and grandfather in making this recommendation. His recommendation will be based on conversations with Chief MacDonald and in keeping in line with all of the Main Street owners so this does not happen again here or elsewhere, that they expect the licensees to cooperate fully. He respectfully requested a 5 day suspension with one 1 day to serve, so as to not overburden the restaurant employees. He would put the other 4 days off for one year to be dismissed if no further problems occur.

Attorney Bianchi stated there is not much to argue here. The facts are the facts. He did not think, however, that Mr. Noble’s reaction warranted a suspension. He requested a one year probation, taking into account his recognition of inappropriate behavior and his apology.

Mr. Hoxie asked about proposing a 5 day suspension with 1 day to serve. A Friday night in the near future? Or would Lt. Murphy consider all 5 days suspended? Lt. Murphy stated that to punish a dishwasher, barback, bartender for the action of 1 person is excessive. He did state that Mr. Noble’s interaction with the board in the past may have an effect on the decision. He views 1 day to serve as fair. If the Board wants

to take into account some previous history that is not for him to comment on. His recommendation is for the incident on July 12th.

Mr. Burman stated he might have suggested 3 days prior to hearing Lt. Murphy. We do have to have some sort of control. He thinks he would follow the recommendation except to impose 2 days rather than 1 to serve.

Mr. Boy stated that last year he was given a 2 day suspension. He would go along with a 5 day suspension and 2 days to serve holding 3 for a year. Mr. Scali stated our suspension policy has been changed to allow a suspension timeframe at Board discretion. Mr. Hoxie is suggesting the 29th & 30th of November.

A motion was duly made by Mr. Burman, seconded by Mr. Boy and a unanimous vote taken for the following sanctions: That a 5 day suspension go on record with 2 days to be served; 3 to be held in abeyance for one year from today (10/28/14). The suspension is to be served 11/29 and 11/30/13.

Business Meeting:

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

Final report and recommendations for rule/license change for Class II and Class I Auto Dealers – Officer Maher. Officer Maher handed out recommendations as to in a memo dated October 21, 2013. He commented on each recommendation as follows:

1. The wording will regulate what is happening at the establishments.
2. Sign required legible from the street. Problem is that some exist with nothing there. It is hard to figure out what is going on.
3. Request a repair facility sign off on the application as being a repair facility for this licensee. This will let the police count the total number including these vehicles.
4. Parking plan goes hand in hand with the next one
5. Marked lines to show what is really going on. Lots of licensees have vehicles sticking out into roadways shoulder, or on grass near exit/entrance.
6. Dealers not showing vehicles – must submit reports quarterly of their transactions.
7. That the Board allow this computerized report as well as the old log book.
8. That the Board authorize inspection counts quarterly.

Lt. Murphy stated that Officer Maher's comment about item #2 shows that proper enforcement will take care of some of the issues the Board has with the dealers. It will make the licensees accountable. If they do not comply, it would allow the police department to bring them before the Board to suspend. It is Chief MacDonald's wish to be more proactive.

Mr. Scali asked a question with regard to the Class I licensees currently operating to come into compliance with having numbers on their licenses. He then asked a second question as to lots which are a dirt surface – how would they be marked. He stated this rule change will all have to be advertised and posted and have a hearing. The earliest could be December 9th.

Officer Maher recognized that for some Class I Dealers this would be huge; he suggests if they wish to make changes with an application, then they should comply. There are ways to mark boundaries on dirt or grass. Lt. Murphy stated that they should use due diligence to do this but after a rainstorm, etc. of course they would have time to re-do the lines. Mr. Burman asked whether the repair facility required has to be in Town. Officer Maher stated they have never looked at that question. Mr. Hoxie stated it is more important to know where it is and who to contact than whether it is in Barnstable. We would then have the ability to reach out to that jurisdiction.

Mr. Hoxie stated he thinks we should go forward with a public hearing and then proceed on whichever items the Board wants to adopt.

Lt. Murphy commended Officer Maher and Mr. Scali on getting this document before the Board.

Discussion on questions posed by Lt. Murphy relative to other Licensing communities requiring video cameras with taping capability and whether or not they have a requirement for an English speaking person to be on site to communicate with police or Licensing people was addressed. Lt. Murphy stated this issue has played out even recently. Inside a bar several people were involved in an altercation. The victim did not want to tell on the person assaulting him. He person required medical attention at the hospital. The police department had no recourse but to let everybody go. He thinks there should be a volunteer program in which establishments are recognized in assisting the Board and law enforcement by having the surveillance capability. He thinks some type of voluntary program would be helpful. A large place like Pufferbellies for example obviously would need much more security/surveillance that the Brazilian Grill. He suggested a meeting at BPD perhaps to go over these issues.

Mr. Hoxie stated we can suggest video surveillance to new establishments. He asked Lt. Murphy about the second half of the request, being requiring a person to speak English at a problem scene. Lt. Murphy stated it is very difficult to respond to a scene and then not be able to communicate with the people there. He suggested that the Board might ask that to operate the business they must have a person be able to communicate with 911 at their initial application hearing. Especially with the weight the liquor license carries, this is very important. Mr. Hoxie stated he appreciates the efforts of Lt. Murphy, but says good luck. It is his opinion that it is up to the enforcement party to provide the interpreters. Lt. Murphy did suggest to the Board for all future liquor applicants that he will be asking for a staff person able to communicate in English with law enforcement or any enforcement authority. This would be just for education for himself, to be able to hear a dispatch there and have a heads-up that there is a

language barrier. Mr. Burman stated there should be someone who speaks the language of the land there at all times. Mr. Hoxie again stated it wouldn't stand a chance of getting approved. Lt. Murphy thinks the mere fact we are discussing this is a help. Mr. Scali stated he had a Cantonese applicant come in at a prior job who had an interpreter come with him. He stated that what is important is that the Licensee, whatever language he speaks, needs to understand and follow the rules and regulations of the Town.

And any other new business to come before the Licensing Authority. No other business.

Adjourned at 11:10 until 11/18/13.

Respectfully submitted,

Christine P. Ade, Recorder
Town of Barnstable Licensing Authority

Gene Burman, Vice-Chairman
Town of Barnstable Licensing Authority