



Town of Barnstable

Regulatory Services

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BARNSTABLE LICENSING AUTHORITY LICENSING HEARING MINUTES

Town Hall Building, 367 Main Street, 2nd Floor Hearing Room, Hyannis, MA – 1:00PM.
July 9, 2014

A regular meeting of the Barnstable Licensing Authority was held on Wednesday, July 9, 2014, Chairman Martin Hoxie introduced Gene Burman, Vice-Chairman, Dick Boy, Associate Commissioner; Ron Semprini, Commissioner; David Nunheimer, Associate Commissioner, Richard V. Scali, Director of Regulatory Services, and Patrolman Steve Maher, Liaison Officer from the Barnstable Police Department, and Maggie Flynn, Recorder. Lt. John Murphy was absent.

Vote to accept Minutes: Vote to accept minutes of the 6/23/14 Meeting.

A motion was duly made by Mr. Burman, seconded by Mr. Semprini and a unanimous vote taken to approve the minutes of the 6/23/14 Meeting.

Hearings:

New One Day entertainment License: Application of Amanda Converse on behalf of Love Yoga Company, 25 Sail a Way, Centerville, for a One Day Live Entertainment License for an outdoor yoga event. Event to be held at Aselton Park, Ocean Street, Hyannis on August 16, 2014 from 7:00 P.M. to 11:00 P.M. DJ Sinnetti will play world music and be accompanied by two people singing about yoga and Buddhism.

Amanda Converse is representing the yoga company. They will be having a tent for Saturday and Sunday, 40 classes will be held throughout the weekend. Outdoor yoga festival for the first time on Cape Cod.

A motion was duly made by Mr. Burman, seconded by Mr. Semprini and a unanimous vote taken to approve the Application of Amanda Converse on behalf of Love Yoga Company, 25 Sail a Way, Centerville, for a One Day Live Entertainment License for an outdoor yoga event. Event to be held at Aselton Park, Ocean Street, Hyannis on August 16, 2014 from 7:00 P.M. to 11:00 P.M. DJ Sinnetti will play world music and be accompanied by two people singing about yoga and Buddhism.

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New Annual Common Victualler License: Application of KGGK, Inc, d/b/a Katie's Creamery, 572 Main Street, Hyannis, Julie Kimball, Manager, for a New Annual Common Victualler License, to be operated 11 am to 9 pm.

Julie Kimball, manager, appeared. This building is behind the other building. I am the manager for both; separate building. The Samba grille used to be there several years ago. Requesting hours of 11-9 but may not be open for all of that time. Additionally, requesting 48 seats for outside alley. There are 3 apartments upstairs, any potential noise problems, no, one is her daughter. The new facility will be used for manufacturing the ice cream and the public can watch.

A motion was duly made by Mr. Burman, seconded by Mr. Semprini and a unanimous vote taken to approve the application of KGGK, Inc, d/b/a Katie's Creamery, 572 Main Street, Hyannis, Julie Kimball, Manager, for a New Annual Common Victualler License, to be operated 11 am to 9 pm.

New Annual Common Victualer License: Application of Dreams Cape Inc, d/b/a Sweet Kiwi Hyannis, 790 Iyannough Rd, Cape Cod Mall, Hyannis, Bryan F Byrne, Manager, for a New Annual Common Victualler License, to be operated 10 am to 9 pm in the Cape Cod Mall food court.

Bryan Byrne appeared on behalf of the application. We will be selling self serve frozen yogurt; took over a vacant space, just before Macy's. Mr. Scali asked if there will be seats inside the restaurant; yes. There needs to be clarification regarding the location of the restaurant, it was advertised as being in the food court of the mall which is not the case.

A motion was duly made by Mr. Burman, seconded by Mr. Semprini and a unanimous vote taken to approve the application of Dreams Cape Inc, d/b/a Sweet Kiwi Hyannis, 790 Iyannough Rd, Cape Cod Mall, Hyannis, Bryan F Byrne, Manager, for a New Annual Common Victualler License, to be operated 10 am to 9 pm in the Cape Cod Mall.

Show Cause Hearing : The Barnstable Police Department has requested a Show Cause Hearing be called for Compound Cape Cod Inc., d/b/a The Compound Bar and Grille, for the following alleged violations on 6/01/2014:

Code of the Town of Barnstable, MA, 501-3, Section H, by allowing more people in the main room of the establishment that was allowed per the building commissioner for that room; 501-3, section 1-2, by allowing patrons to congregate outside the premises without an employee present; 501-5, Section D, by allowing patrons to consume beverages outside the licensed premise; 501-8, Section A, by allowing the above actions to take place on June 1, 2014 after being advised of the regulations of the Town on at least two different occasions.

Additional complaint from a Resident, pursuant to Section 501-4 not adhering to hours; pursuant to Section 501-8 A & E Lack of Supervision and Noise. Not adhering to Entertainment License and Noise Violation Section 501-10 A, B, D.

David Keville and Mike Nardone, owners, and Erica Cemino daytime manager, appeared on behalf of the Compound. The Barnstable Police Department is requesting the show cause hearing.

Officer Maher began his testimony to the Licensing Authority asking why the manager is not here. Mr. Keville replied that the manager is his wife and she has some ongoing health issues.

Officer Maher stated that on June 1st he was at the bar for a possible violation, he proceeded to park to observe 21 people at the door, platform and the ramp. At least 6-8 of these patrons had drinks and some with beer bottles. Observed this for 10 minutes and then an employee told them to come inside. At that time Officer Maher called for additional assistance from the police. Once inside, Officer Maher asked the employee, how many patrons were inside, he responded he did not know. Officer Maher asked the employee how many patrons allowed in that room; he responded that he did not know. Officer Maher then counted the patrons. The smaller room had all lights off and was under construction, continued count at least 79 in the room.

Erica was reminded about earlier conversations with police personnel and Erica stated she notified the licensed manager. Officer Maher saw an employee checking ID's, it was determined that he is one of the cooks. Mr. Semprini stated that the Barnstable Police Department has been called there 6 times in the last year. We generate a record from the previous year, officer initiated call, not if they call us. Officer Maher reviewed several times when he spoke with the staff along with Lt Murphy. They have been spoken to three times.

David Keville reviewed that they had had a quiet day, we cut staff and 60 people came in within 10 minutes. Since then we have hired staff and doorman for every shift. We understand that we were under staffed. Mr. Hoxie asked if he was you at the restaurant at the time of the incident, Erica was there. Terry Brennan was the acoustic guitar player, at most 15 people, 2 servers that had gone home. There were only two people in the bar. At midnight 20 Irish kids came through the door, they had just arrived, the crowd swelled so quickly.

On that night there was no door staff. Capacity of the restaurant is 99; this is not a valid number since the other room was not being used. The individuals outside were refused admission, they travel in packs and try and figure out where to go. The bar was closed immediately.

Since that night we have had a door man on every night, no other issues. We now know that we are responsible for the parking lot. Officer Maher inquired if they are

aware that total seating changes when entertainment is present. Additionally he asked Mr. Keville if he remembered the Deputy Fire Chief discussing capacity and the number of servers, he did not remember, vaguely remembers. Officer Maher reminded Mr. Keville that he submitted a separate entertainment plan; he responded that he did not know what the numbers are. There is a total of 89 and interior capacity of 64. This is something that the staff has not had issues with as we have not been that busy. Mr. Keville stated that he is in the restaurant 4-5 times per week; his wife has not acted as manager for several months. Who has been in charge of the restaurant, Mr. Keville responded either me or Erica.

Mr. Keville stated our business is suffering it would improve if we had outdoor seats. We need to apply for an alteration of premises. The Board reminded Mr. Keville that two previous owners ran successful businesses at that location. Mr. Keville stated that he understands that they were caught in a bad situation, since then there have been 3 staff meetings, we have complied with everything. We regret the situation, it was complex, caught us unaware.

Mr. Hoxie asked if you are considering a new manager. This issue points to lack of supervision that no one legally responsible is available in the restaurant for months at a time.

Erica stated that maybe the ID count by Officer Maher was off it is such a close number, how can Officer Maher be sure he did not count the same person more than once. Officer Maher is a direct representative of the Licensing Authority and is very experienced. The restaurant was not that busy. Officer Maher stated with entertainment the number is 64 so they are 15 over. The staff member had no idea what the capacity numbers were. This is the most serious type of violation due to fire safety and the Board of Health concerns.

Testimony was concluded. Mr. Hoxie asked for motions.

A motion was duly made by Mr. Burman, seconded by Mr. Nunheimer and a unanimous vote taken to unanimously find guilty of violation of the Code of the Town of Barnstable, MA, 501-3, Section H, by allowing more people in the main room of the establishment that was allowed per the building commissioner for that room; 501-3, section 1-2, by allowing patrons to congregate outside the premises without an employee present; 501-5, Section D, by allowing patrons to consume beverages outside the licensed premise; 501-8, Section A, by allowing the above actions to take place on June 1, 2014 after being advised of the regulations of the Town on at least two different occasions.

Mr. Hoxie asked Officer Maher for recommendations on sanctions.

Officer Maher recommended on the first violation a 3 day suspension. Violation 2 and 3 go hand in hand, this is very serious this comes down to an issue of safety; serve 5 day

suspension. On violation 4, failure to manage and failure of the corporation, a 1 day suspension. Recommend serving concurrently; serve 5 days.

A second motion was duly made by Mr. Burman, seconded by Mr. Nunheimer and a unanimous vote taken on the charges based upon testimony and lack thereof that the Licensee is guilty of all four charges.

A third motion was duly made by Mr. Burman, seconded by Mr. Nunheimer and a unanimous vote taken to accept the recommendations of Officer Maher, stipulating the entertainment license and the All Alcohol Common Victualler License be suspended for 5 days to serve on September 7-11, 2014.

Mr. Paul Weber appeared on behalf of the resident complaint; he lives on the second floor over the restaurant. He has brought his concerns to the attention of the owner, and he was directed to the landlord by the owner. At this point Mr. Weber brought his concerns to Mr. Scali and Ms Flynn.

Mr. Weber was invited to give his opinions. The music was loud I could not even hear the DJ speak. The live band consisted of more than 2 people, rattled things in my apartment. I am 84 years old. Did not adhere to their hours, they had karaoke, live bands. Another instance of live karaoke, he was told to leave since then. Last Saturday, replacing illegal entertainment with sound and noise coming from a recorded noise, this is now harassment. Low pitched, repetitive music, Mr. Weber demonstrated the sound sources.

Erica Cimeo stated that Mr. Weber has been personally harassing her; she brought this to the police department for a no harassment order. This complaining has just started in the last month; we have tried to do everything that we can. At 11 pm we put the TVs on, no more music. He has become a problem with a disturbance. Mr Scali stated that he advised Mr. Weber to keep a log. Mr. Keville stated that there have been no other complaints. Karaoke has a separate license which they do not have.

Mr. Burman took a moment to recognize Mr. Weber he is a former teacher at Barnstable high school, irrefutable as an individual.

Officer Maher stated that there are valid complaints; he advised Mr. Weber to simply call the police department. There are issues on either side, most certainly. The owner was going to speak to the tenants specifically, did you go upstairs to speak to him, and no, he did not. He only met Mr. Weber a month ago. He reached out to the property manager. We need to discuss.

Mr. Hoxie inquired if the punishment will be concurrent. Mr. Scali asked Mr. Keville as to why you stated that the landlord is responsible. We need to have a mediator. Officer Maher suggested that the suspension be held in abeyance so that the owner can reach some arrangements.

Testimony was concluded. Mr. Hoxie asked for motions.

A motion was duly made by Mr. Burman, seconded by Mr. Nunheimer and a unanimous vote taken to for findings of the Section 501-8 A & E Lack of Supervision and Noise. Not adhering to Entertainment License and 501-10 B, D had no findings at this time.

Mr. Hoxie asked for recommendations at this time from Officer Maher.

Mr. Hoxie recommends to Mr. Weber to talk to the police if he has complaints. Clarify that these suspensions need to be run concurrently. Officer Maher will take someone who is fluent in Portuguese to listen to the complaints of the others in the apartments.

A second motion was duly made by Mr. Burman, seconded by Mr. Nunheimer and a unanimous vote taken to unanimously find guilty of the Section 501-8 A & E Lack of Supervision and Noise.

A third motion was duly made by Mr. Burman, seconded by Mr. Nunheimer and a unanimous vote taken to accept the recommendations of a two day suspension to be held in abeyance until the end of the calendar year.

Alteration of Premises: Application of Compound Cape Cod, Inc., d/b/a The Compound Bar and Grille, 644 Main Street, Hyannis, Sara Keville, Manager for an Alteration of Premises description to change the existing premises description to: 644 Main Street, Hyannis wood and brick construction, approximately 4400 sq. ft. consisting of kitchen, bar with seating for 16, dining room with seating for 36, lounge area with seating for 38 and outside seating for 16.

Officer Maher asked if there has been a change in the corporate name. Mr. Keville responded that he thought his business partner took care of all the changes in the corporate structures. Mr. Scali stated that if you are not operating under the previous corporation name you need to be closed. Everything has to under the same corporate name. The application was filled out in the new applicant name, it was not verified that the corporate name was changed. Mr. Keville stated that a new corporation was created for payroll; the creditors and liquor are still under Country Saloon Products.

Assume that you are operating under the old corporate name, must re-notice the disciplinary hearing and the alteration of premises. If you discount the disciplinary hearing you will have to close today. You filled an application with a new corporate name; we should not have done that. Mr. Keville stated that he accepts the disciplinary hearing findings. Mr. Scali recommended to Mr. Keville that he correct his issues before he moves forward with the Alteration of Premises Application. Everything must match within the filing; all paperwork has to be under the same corporate name. Attorney Nunheimer stated if you want to proceed under the new corporation everything should be matching. We have accepted that the applicant will have a change in name. Payroll is only the item that has moved. The Alteration of Premises application needs to move forward at a later date.

A motion was duly made by Mr. Burman, seconded by Mr. Nunheimer and a unanimous vote taken to move the Alteration of Premises to a later date.

Business Meeting:

The International Inn management team appeared. Want to stay as a restaurant and bar not a nightclub. John Martinez is the new food and beverage manger. The focus of the bar and restaurant is for the hotel guests rather than a bar. Mr. Hoxie inquired if Mr. Martinez has experience. He moved here from Honolulu, was in the bar business for 6 years as manager.

Building a foundation is what needs to be done, management and ownership are accountable now. Mr. Scali inquired as to the whole team working together now; are you all in agreement? Mr. Daniels commented that we have addressed the city concerns, cleaned up element. We are working with police, homeless people a large issue. No major calls to the bar. We cooperate with the Barnstable Police Department at all times. Mr Ajuda does not want to come to the Licensing Authority all the time; that is why he is not the manager. It was agreed upon that if Mr. Daniel's leaves the employ of the International Inn the Licensing Authority needs to be immediately notified

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

And any other new business to come before the Licensing Authority.

Adjourned at. 2:35 PM

Respectfully submitted,

Margaret Flynn, Recorder
Town of Barnstable Licensing Authority

Martin Hoxie, Chairman
Town of Barnstable Licensing Authority