



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 – 9:30 a.m.

February 4, 2008

A regular meeting of the Barnstable Licensing Authority was held on Monday, February 4, 2008. Chairman Martin Hoxie called the meeting to order at 9:30 A.M. He introduced Gene Burman, Vice Chairman; Paul Sullivan, Clerk; Thomas Geiler, Director of Regulatory Services and Licensing Agent, Lt. JoEllen Jason and Patrolman Steve Maher, new Liaison Officer from the Barnstable Police Department, and Christine Ade, Recording Secretary.

Requests:

Request to Close: Request of Rumpy's Beef & Reef, Inc. d/b/a The Dockside, 110 School Street, Hyannis, Paul Skudris, Manager to close until mid March, 2008.

Mr. Skudris appeared for the application – there is no heat in the building; they plan to fix it in the summertime. He plans to re-open March 15. Gene Burman asked when they closed? Mr. Skudris advised that the note was delivered January 3. Mr. Burman again asked when he actually closed...he then stated he actually closed the week before Christmas as they had no heat.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the closing of the restaurant until March 15.

Request to Close: Request of Bumbalini's of Cape Cod, Inc. d/b/a Bumbalini's & The Beechtree Bar, 599 Main Street, Hyannis, Louis Cheschi, Owner, to close for 90 days for renovations.

Mr. Cheschi stated they are going to clean up the place and get new staff to run it. They also closed the week before Christmas and are looking to reopen April 1st. Mr. Burman asked if they would rather have a seasonal license; Mr. Cheschi stated they want to retain the annual license. Mr. Sullivan asked about the issues of staff; Mr. Cheschi stated he needs a manager there – has been interviewing. He has no problem getting workers; just a good manager.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the request until April 1.

Hearings:

New Common Victualler License: Application of Great House of Zou Restaurant, Inc., d/b/a Chopsticks, 1600 Falmouth Road, Centerville, MA, Zhong Chan Huang, Manager, for a **New Common Victualer License**, the hours of operation to be 11 am to midnight.

Ms. Zhong is taking it over – no changes from the prior licensee but a new corporation. There is no alcohol. They will continue delivery.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the application of Great House of Zou Restaurant, Inc., d/b/a Chopsticks, 1600 Falmouth Road, Centerville, MA, Zhong Chan Huang, Manager, for a **New Common Victualer License**, the hours of operation to be 11 am to midnight.

New Annual All Alcohol Common Victualler License: Application of Bagley-Heath LLC, d/b/a Sweet Tomatoes Osterville, 791 Main Street, Osterville, MA, Darren Bagley-Heath, Manager for a **New Annual All Alcohol Common Victualler License**, the hours of operation to be 6:00 am to 12:00 am, with seating for 34 inside and 12 on the patio, for a total of 46.

Mr. Bagley-Heath appeared for his application. This is his new location and he wanted a new alcohol license in the new corporate name, rather than filing for change of corporate name, etc. He had an alcohol license at the old location (beer and wine). There will be a bar – 8 seats. Mr. Burman asked if he has TIPS trained people – Mr. Bagley-Heath will schedule all the staff for alcohol service training once this is approved. Mr. Hoxie asked if he intended to be fully trained – he stated he would be. They are counter service only – there is no need to have the waitresses trained. The bartender can see each and every seat and will be dispensing all the alcohol. Steve Maher has spoken with Mr. Bagley-Heath about this. Mr. Geiler asked about counter service and only 2 drinks per person – they will be serving in only clear glasses and only 2 per person maximum. He does have the Rules and Regs. Mr. Sullivan complimented him on his knowledge of the Rules and Regs. David Lawler came forward – he knows the applicant; stated he is very responsible and would be a very appropriate person to hold a liquor license.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the application of Bagley-Heath LLC, d/b/a Sweet Tomatoes Osterville, 791 Main Street, Osterville, MA, Darren Bagley-Heath, Manager for a **New Annual All Alcohol Common Victualler License**, the hours of operation to be 6:00 am to 12:00 am, with seating for 34 inside and 12 on the patio, for a total of 46 subject to the approval of the Building Commissioner and bar service only for alcohol.

Transfer of Annual All Alcohol Innholder Licenses, Daily Live, Non-Live & Sunday Entertainment Licenses, Pool Table & Video Games Licenses: Application of Western Host, Inc. d/b/a Four Points by Sheraton Hyannis Resort, 35 Scudder Avenue, Jim Cook, Manager for **Transfer of its Annual All Alcohol Innholder License, Daily Live, Non-Live and Sunday Entertainment Licenses, Pool Table & Video Games (8) Licenses** to TFG Hyannis Hospitality LLC, d/b/a **Resort and Conference Center at Hyannis**, 35 Scudder Avenue, Hyannis, MA, Leeanne Moulthrop, Manager.

Leanne Moulthrop came forward with the present manager. In November of 2007 they purchased the resort – it is being renovated. They request transfer of all licenses and permits. She has directed a resort for 10 years and worked at another resort for another 10 years prior to that. Mr. Hoxie asked if they would object to a 12:30 entertainment license, since we are in the process of standardizing it to 12:30 for everyone? They would not.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the application of Western Host, Inc. d/b/a Four Points by Sheraton Hyannis Resort, 35 Scudder Avenue, Jim Cook, Manager for **Transfer of its Annual All Alcohol Innholder License, Daily Live, Non-Live and Sunday Entertainment Licenses, Pool Table & Video Games (8) Licenses** to TFG Hyannis Hospitality LLC, d/b/a **Resort and Conference Center at Hyannis**, 35 Scudder Avenue, Hyannis, MA, Leeanne Moulthrop, Manager, with the entertainment licenses to cease at 12:30 a.m.

Amendment to Rules and Regulations of the Licensing Authority and Alcohol Fee Changes: Proposed amendment to the Rules & Regulations of the Licensing Authority, Chapter 501, Section 10: Entertainment at premises which serve food or beverages to be consumed on the premises:

Add a sentence at the end of paragraph “A,” “Entertainment is prohibited between the hours of 12:30 a.m. and 11:00 a.m.”

Also, amend the Town of Barnstable Licensing Fees – Licensing Authority with respect to alcohol establishments effective 1/1/09 (last changed 7/1/04) as follows:

<u>Fee</u>	<u>Current Fee</u>	<u>Proposed</u>
Club All Alcohol*	\$1,950.00	\$2,150.00
Common Victualler, All Alcohol*	\$2,700.00	\$2,950.00
Common Victualler, Wine & Malt*	\$1,725.00	\$1,900.00
General on Premises, No Food	\$3,450.00	\$3,750.00
Innholder, All Alcohol*	\$3,150.00	\$3,450.00
One Day All Alcohol	\$ 85.00	\$ 90.00
One Day Beer & Wine	\$ 35.00	\$ 40.00
One Day Wine Only or Malt Only	\$ 30.00	\$ 35.00

Package Store All Alcohol	\$2,650.00	\$2,925.00
Package Store Wine & Malt	\$1,725.00	\$1,900.00
License for Pharmacist to sell alcohol	\$1,750.00	\$1,900.00

* includes the \$100.00 Common Victualler fee

The entertainment change is to standardize the entertainment closing hour for all establishments in Barnstable. It has been proposed by the Police Department to do so as it would be much easier to maintain order and not to have to determine individually which entity has what hours.

Attorney David Lawler came forward on behalf of a client and as an attorney, stating that although well-intended by the Police Dept., there may be much better ways to maintain order other than closing these establishments before 1 am. There is a large segment of the tourist trade who want to be out at night. We are competing with other resort communities and from a business standpoint it would cause a loss of tourism over time. He thinks this would heighten the perception of Cape Cod as being a backwards or overly strict place. If we keep getting more and more restrictive we will only LOSE business. There is a lot of space on North and Main and the surrounding area for businesses which benefit from this half hour of entertainment. He offered his services to draft something for all the entertainment licensees and coordinate it with the Police Dept. He stated if we keep hammering at these licensees they will lose money and go out of business. He also does not approve of the fee changes. The main reason he is here though is the hours.

Cynthia Cole came forward pointing out that there are two issues with the hours and fees. The first is small businesses trying to make a living. That half hour for 365 days a year comes up to a lot. Also, rolling back the hours and increasing the fees is a double slap. She asked that maybe hours be posted on the doors or communication with a laptop with the PD be considered. She thinks having everyone closing at one time would also be a bigger problem for Main Street. The second item she wanted to discuss is that we are losing young people here. One thing young people do is stay up late. They like to dance, socialize and listen to music. She stated they do not start going out until 10. If we want to grow our economy we need young people here. If we limit the hours of entertainment it would be a shame. She stated our actions should be positive not negative.

Mike Travis, General Manager of Pufferbellies, spoke up as a person in the entertainment business. They spend a lot of money figuring what would bring in the most money with the least risk. The surrounding towns boasting later curfews would impact Barnstable. When we are in a dwindling economy, the restaurants feel it because the public cuts out their "fun" money first. Their establishment has entertainment as their priority. The time they are busiest is 11 pm to 1 am. The young people want to come to where something is happening. They then have approximately 2 hours to make the money to pay their employees and pay the entertainers before seeing any profit. To them it would cut 25% of their profit. They utilize a software program to scan ID's for safety purposes and as a database. It tells how often people

come, and what time they come in. Running a report for 2007, it showed the customers from 12 -1 were 38% of the total. They could not survive if we pass the 12:30 closing. The customers will leave Barnstable. We would be alienating their best customers at their busiest time. Another problem is crowd control. Staying open until 1 with no entertainment from 12:30 on would be a problem. People are left standing around and he thinks it would compound the problem we are trying to solve. The locals might get used to it but the tourists are new each year. Why should all be punished for the acts of the few who have caused problems?? He offered the suggestion of having closings at 1:00 and 1:30 – save the businesses and let the police know where they need to be and when. He agreed there may need to be changes made. What he asks is that the Board not judge the establishments but find a way to be proactive rather than reactive. Mr. Burman stated he has a sheet of entertainment hours – they have 12:30 and 12 as their entertainment closing hours. Officer Maher stated they have not been enforcing these as much as they should. There are several examples which have midnight closings. Our information does not show 1:00 as they have been running. Mr. Burman wondered if they were aware the entertainment license ceases at midnight? Mr. Lawler stated there would be no confusion if the entertainment ceased at the same time as the alcohol license closing time. Mr. Hoxie stated the “cooling off” period was the reason for the entertainment stopping prior to the liquor license time. He stated these nightclubs when they close down generally stop everything about 15 minutes or 20 minutes before last call because they have to have everyone out and the drinks cleared at a certain time. Maybe the old philosophy of ending the entertainment earlier might not make sense. Maybe a By-Law could be passed to have service and music stop 15 minutes prior to closing. Attorney Lawler thinks ½ hour prior to closing is too long – people would be milling about. Mr. Hoxie asked if they would like all entertainment to go to 1 am. Lt. Jason stated this is NOT a police initiative. Mr. Geiler wrote up the proposal from the suggestions from the Police Dept. They do support it as most businesses NOW have 12:30. Officer Maher has spoken to the entities having 12:30 and none seemed to have a problem with that. They are also in favor of this because of the mixed use of Main Street – another good reason to close entertainment at 12:30. Also, officer safety – 2,700 people could be dispersed at the same time (1:00) and then another 800 at Pufferbellies. The police support this. Attorney Lawler stated the financial impact would be terrible. Only two will be affected on Main Street – Harry’s and Asa Grill. Officer Maher stated all of the places are busy even though the entertainment closes at 12:30. It helps the police and the sound issues in the mixed use area. Attorney Lawler was the attorney working on the mixed use area – he stated we need to compete with Newport and Boston for the tourists. He stated officer safety is paramount but the solution proposed would stagnate the economy here. He suggested again we standardize the hour with the liquor licenses. Mr. Hoxie asked if 12:45 would be liveable? Attorney Lawler stated that would even be a help – allow the 15 minute cooling off period.

Rick Angelini from the Hyannis Area Chamber of Commerce came forward. He addressed the fee increase – thanking the Board for the advance notice; suggesting maybe we should adjust annually so it is not such a big chunk at once. Regarding the entertainment closing hour – he thinks if the purpose is to standardize we are really not

accomplishing that – the people shift from club to club. He thinks the dialogue is good – maybe a plan could be worked out with the police department. He also thinks it should parallel the liquor license closing time. He thought maybe the Chamber, BID and our police Dept. could work together.

Letitia Durham from Harry's came forward. They rely heavily on the music from 12:30 to 1:00. They fear loss of their customers to places with entertainment until 1 or later. Harry's has been a strong entertainment venue for many years. She finds it difficult to find merit with the 12:30 closing. Mr. Hoxie asked if they could live with the 12:45 time; she stated they could. They wind down now prior to 1. They have been doing this for 23 years. The licenses at present are 1 and 12 on Saturday. Fred Durham came forward as well for Harry's. He apologized for his dress as he stated he has to work another job to support his family. His concern is that it is just getting stricter – we are a tourist based economy here. Mr. Hoxie stated the vast majority of entertainment licenses are now 12:30. He stated the standardization is not meant to take away but to standardize all. Officer Maher stated there is not one Manager in the crowd today they have a problem with. He stated 12:45 would not be a problem for the department for closing hour on entertainment. Mr. Hoxie asked the Board members if they would object to 12:45. Mr. Sullivan stated he has no problem with it but from what he is hearing he is under the impression that we need to assist the police dept. and also address the money issue for the businesses to be able to pay their bills. Mr. Hoxie asked for comment from the public on the 12:45 or increase in fees.

John Shea came forward for Trader Ed's in support of the 12:45 entertainment closing hour.

Micah Power from the Black Spot came forward about the entertainment hours. He has bands from Boston who do not understand the earlier closing. He would support the 12:45 closing for entertainment. Some local bands do not even play out until the closing time. The problem with earlier entertainment closings is that there are more private parties in residential areas with entertainment – noise complaints,

David Noble came forward from Embargo as he has a 12:30 entertainment closing. He thought it was given him so the closing hours could be staggered. He does not see the 15 minute increment to 12:45 as being much of a help. He stated they make their money from 11-1. They will suffer loss of business. He thinks it might make the problem WORSE in letting everything stop at 12:45. Mr. Noble thinks the police 3rd shift should have more staff – this would help more than changing the closing times.

Mr. Geiler stated he is not the proponent of the 12:30 closing hour – he just wrote the language. He thinks what Mr. Noble just stated running until 1 and then throwing all of them out at the same time is significantly different. Mr. Geiler stated there needs to be a cooling down period. The behaviors of the people leaving that way are just more aggressive historically. There is reason to give them a few minutes to settle down. Leave in a more orderly manner. He also stated not all entertainment affects people the same way – Lou Colombo's band as opposed to some others for example. From his

perspective, closing the entertainment earlier does make some sense. It is just the opportunity for socializing, talking about where to go next.

Mr. Noble stated he does not want to go backwards – but wants to do the right thing.

Cynthia Cole came forward again and stated it would be a bad idea to make this decision today. She proposes a meeting to come up with something that does not cause unintended consequences. This could be accomplished in one meeting and come back at the next meeting.

Albert Baker came forward agreeing with Cynthia's suggestion of having a meeting prior to making this decision. His concern is that there is a run on people moving from bar to bar being open for one more drink to the next place open longer. He thinks the entertainment is the more flexible one and the cooling off time should be minimum 10 minutes.

Gary Simon from BBC came forward – he thinks people make a decision as to where to go by what the license is; he thinks it should be equal for everyone. Whatever the Board decides he would like it to be standardized.

Mr. Hoxie stated we want to standardize all the entertainment licenses and also to allow the cooling off period. There is no question that stopping both alcohol and entertainment at the same time is not a good thing. He proposes an entertainment license stopping at 12:45. He also stated the fee increase should go forward as proposed. Mr. Burman asked if voted today, when would the entertainment license times change? Mr. Geiler stated 1/1/09 unless a show cause hearing was held. Existing licenses would stay the same as they are until that time.

Mr. Noble suggested we standardize it all for the summer this year. Why wait until 1/1/09?

Mr. Burman stated he was very happy to see the turnout today and stated the expert witness comments are appreciated. He thinks that the problems with the police dept. should not penalize these places for their problems. Mr. Burman stated each licensee should go back and look at their licenses to see exactly what times the closing of the entertainment is on the licenses. He commended how cooperative the parties were with the police when he went on a drive-by. Mr. Burman stated he is very unhappy with the fee increases and will vote against them.

Mr. Sullivan stated the problems of noise and people going out at the same time caused the Board to grant licenses recently only until 12:30. He now sees on the police list that 12 and 12:30 are the closing times for entertainment for a vast majority of the establishments. His issue is why are some made to close at 12 and a few at 1? There have never been any complaints however. Mr. Sullivan thinks we got to the standardized time proposal in the first place to be fair to everyone. He is in favor of the 12:45. Mr. Hoxie asked Mr. Geiler why it would not be prudent to change all the times

prior to 1/1/09? Mr. Geiler stated it would then have to be done individually at a public hearing to change the entertainment licenses from what was issued 1/1/08. Many do not utilize the whole license as it is. With respect to the fees; the Town Council has a policy of full cost recovery for certain types of services – including elected licenses. We have been doing a cost analysis, reviewing it on an annual basis, and that is how we came up with the new fee structure. The average being 2.3% a year on a 4 year span (just over 9% total). We don't try to compare with other Towns. Many are considerably higher than ours, some are lower. There seems to be no reason or rhyme to how they are set. Existing licensees pay the new fees only after 1/1/09. New licensees will pay the new fees as they are granted.

David Lawler came forward again with a comment and a thought. He stated that to prevent a flood of people to modify their existing licenses, which they could do; from a practical point – we could unilaterally vote to increase all under 12:45 to 12:45 and not change the 1:00's until 1/1/09. If we voted it this way and no-one objects, it could be a good way to approach it. It is a technicality in the law as it is. He would suggest doing it that way. We have to keep those at 1 as they are but others CAN be increased with no effect on the 1:00's. Those would decrease on 1/9.

Mr. Geiler stated liquor licenses and entertainment licenses are granted individually. They must be changed individually, unless we change all of them at the renewal date or new licenses. He stated we could be sued. We have to abide with the State laws. We are trying to make this as easy as we can. The new fees could affect seasonal licenses but we can ask the authority to change those fees on 4/2/09. The annual licensees will not be affected until 1/1/09.

Cynthia Cole stated she is concerned about the licenses out there if the change does not take place until '09. She also stated that there seemed to be a problem with entertainment hours and the licensees not knowing what their times are.

Mr. Burman made a motion to propose that entertainment be prohibited from 12:45 a.m. to 11:00 a.m. Paul Sullivan seconded the motion. There was a unanimous vote to approve that motion.

Paul Sullivan made a motion that the fees effective 1/1/09 be approved as proposed. Mr. Hoxie seconded the motion. Mr. Burman reiterated that the taxes we pay have gone up – he thinks some of that should include these costs and fees. He voted against the increase. Mr Sullivan stated it is less than 3%/year; they are fees for the enforcement of the alcohol licenses, and recommends they be approved as they are not excessive. Mr. Hoxie and Mr. Sullivan voted to approve the fee increases as proposed. Mr. Burman voted nay. The motion passed by majority vote.

Change of Manager: Application of Osterville Veterans Assn., 753 Main Street, Osterville, MA, Robert Sousa, Manager, for Change of Manager to Cornelius Andres. Mr. Andres and Mr. Sousa came forward along with their Treasurer. They are a non profit club – run by a Board of Directors. He has been on that Board since 1991. The

Board meets 2x per month. Mr. Sousa and the Treasurer will be staying on. Mr. Andres stated he answered yes on a question about a criminal record but advised it was in the 1980's. Mr. Andres is not yet tips trained but plans to get that training if approved.

A motion was duly made by Mr. Burman to approve the application of Osterville Veterans Assn., 753 Main Street, Osterville, MA, Robert Sousa, Manager, for Change of Manager to Cornelius Andres. Paul Sullivan seconded the motion and a unanimous vote was taken to approve the application once the TIPS training is completed.

Show Cause Hearing: Show Cause Hearing for Up the Creek Again, 36 Old Colony Road, Hyannis, John M. Evans, Manager, for complaints received from a neighbor with regard to the smoking patio. This hearing was continued at the request of the Owner/Manager, John M. Evans to today.

Melissa Meece came forward as the person writing the letter regarding the smoking patio at Up the Creek. In January of 2005 she stated that we granted the smoking patio without alcohol on it. In July of 2005 he added alcohol on the patio – she stated she and her husband would have objected had they understood what was being proposed. She stated it is very loud – they own 180 and 186 Gosnold; one of which is directly abutting the restaurant property. She stated that when it is loud it is very much a party atmosphere at the bar. She also stated someone urinated behind the fence in their yard. They are asking the Board to reconsider the alcohol on the patio. They have 2 small children – their swing set is 5 feet away from the fence. The rental property also has a sandbox close to the fence. They are requesting a change prior to next summer. She feels this area has become the place for people drinking to hang out. She does not like to have to hear the noise from this patio. She thinks it has escalated since the alcohol was allowed out there. It creates a crowd out there talking loudly.

Mr. Evans from Up the Creek came forward to let us know he is very concerned about this. There are a couple of contrary statements however – in February of 2005 there were many many noise complaints (before he took the restaurant over). He has gotten that down to 1 (that of the direct abutters; just the Meece's). He stated at his original hearing the Meece's were more concerned with the "visual" of the patio than the noise – he said for their benefit he immediately planted trees until he could put up a fence. He brought in those photos. His other comment was that Mrs. Meece's complaints were valid about seats being added to the patio. The seats were donated by an elderly couple who could not stand outside very easily – they were for their own use and for and others to use and have since been removed. He advised that he had also put up a tent with a plastic side so people could go out to smoke and it would buffer it somewhat. He stated it is a family restaurant, not a nightclub. He has many kids and families. Mr. Evans stated one of the problems on the patio was a small company giving out paychecks and drinking. When he went out there and asked them, all the people came inside. He stated the only time it is busy is summer – and most of the people come back inside to the air conditioning. He does not know how you can stop someone outside from talking. He also stated there have been at most 12 people out there at any one time. Mr. Hoxie asked if monitoring the alcohol outside has changed it...he stated it

has not. He does not serve out there; it is not a bar room, it is a restaurant. He said he has already spent \$2,500 to separate the restaurant from her family. He is open for suggestions. Mr. Hoxie suggested signs out there – “Respect Our Neighbors; Hold It Down” or something to that nature, or worst case, revoking the alcohol out there. Mr. Evans raised another point. He does not use his entertainment license (which he has paid for) as DJ and Karaoke do not benefit his restaurant that much, but might cause problems with the neighbors. He also stated the complaints can only be coming from 7-9 pm. Mr. Hoxie asked Mrs. Meece if there was anything she could suggest the restaurant try; something less serious than revoking this part of the license. She does not think limiting the number would necessarily help. She stated they have let it go for two summers and are annoyed enough that they are here today. Mrs. Meece said that the times she has called Mr. Evans was not there – and even after calling to ask for the noise to be stopped it did not change. She does not want to have to contact Mr. Evans every time there is a problem. She prefers there be no alcohol on the patio. In January of 2005 they spoke to Mr. Evans telling him they would not support eating on the patio. In July of 2005 she stated they did not understand the proposal before the Authority so did not attend. They did not realize the license included drinks. Mr. Evans stated he has removed the chairs and tables since our hearing was called. Mr. Burman suggested Mrs. Meece and Mr. Evans sit down and discuss this matter together and come up with a solution. Mr. Evans stated his customers do not go outside and stay there for hours and hours. Mrs. Meece stated that is not true – it happens once or twice a week in the summer. Mr. Burman stated again this is a problem in residential areas. He again suggested they sit down and discuss this and come back in 30 days. Mr. Hoxie disagreed and stated it is our obligation to determine if drinks should still be allowed on the patio. Mr. Sullivan read from the original license stating that not taking drinks outside was to be strictly enforced. The next hearing in July of 2005, the Board reversed and granted the taking of drinks out onto the patio. This is a direct turnaround. Mrs. Meece’s complaint in September was about what the kids hear. Mr. Sullivan thinks this is what we have to deal with. Mr. Evans originally needed the deck for smokers. At that time he was concerned about people going outside drinking and his having to monitor it. Then his customers requested to go out there with their drinks – it then became his problem. He wondered how a person could even get behind the fence to urinate – he would never allow it but did not see it. Taking the drinks outside is what the customers want. He stated if he changes things like this, his business will really decline. The economy is bad enough already and this is his worst year so far. Mrs. Meece stated the intent of the restaurant has changed – she does disagree that this is a bar. She also stated she does not want to have to look over there to see if and when the chairs and tables reappear. Mr. Hoxie asked if she would be amenable to NO seating out there and still allow the drinks to be outside with better monitoring? Mrs. Meece stated if he held to the premise that people just go out for a smoke and drink with that she would agree. The signs could read 10 minute smoke break area? Mr. Evans reiterated the elderly couple donated the chairs as they cannot stand for long. He also reiterated it is not a bar it is a restaurant. When he bought the restaurant there were a couple benches and a table. Mr. Hoxie thinks the seating has to go or the drinks have to go outside. Mr. Evans stated if that’s what it takes, that’s what it takes.

Mrs. Meece is advised to notify us if there are any problems in the future. Mr. Burman stated we should have a quick hearing if there are any problems.

Mr. Geiler commented that Mr. Evans should give Mrs. Meece his cell phone number which she can call at any time and he will address any problem. Mr. Geiler asked if maybe the patio could be reconfigured. He should look at that option. There are also options like bamboo mats to absorb sound. Mr. Evans reiterated that the problem is only apparent in summer.

A man came forward to testify for Mr. Evans – he used to frequent the restaurant and was on the smoking patio; it was not loud. The real problem is that if you choose to live by a restaurant or bar you should be prepared for the noise that takes place. Mrs. Meece said the family has owned the property for 50 years.

Mr. Hoxie continued this hearing to July 7th, no seating, better monitoring. If everything is o.k. there is no need for the hearing July 7th.

Mr. Evans stated he will advise all of this staff if Mrs Meece calls he needs to be notified immediately so her concerns can be addressed by him if the staff cannot address it. Mr. Evans also stated he has a back room he could designate as smoking only – but does not know how this could happen. He was told to talk to the Board of Health about it.

Show Cause Hearing: A Show Cause Hearing was held for the purpose of determining if the terms of the lodging house licenses held by Park Square Trust III, Mark Sheehan, Trustee, Errol Foster, Manager at 156 Main Street and West Wind Trust, Mark Sheehan, Trustee, Errol Foster, Manager, 80 Yarmouth Road, Hyannis, MA are being violated, as the Town of Barnstable Health Department staff have reported that on multiple occasions over the last several years (reports on file at Licensing Office and Board of Health Office), the electricity and/or gas have been turned off at both these properties because of non-payment for services, resulting in tenants without heat, hot water, lights and cooking facilities.

Tom McKean, Donna Miorandi, Tim O'Connell, & Meredith Morgan appeared for the Health Dept. Problems started in 2006 with no electricity for a few days; later that year another complaint and health personnel contacted them with no immediate response. There were days at a time again with no electricity. A third time the gas was turned off at the property – no hot water, no cooking could take place for several days. There was again another call for no services at this property – 80 Yarmouth Road. A problem of no electricity in May at 156 Main Street took place and went on for a couple days, also for non-payment of utility bills.

Mr. Sheehan stated he has run those places for 25 years – he has been sick; he has also been involved in lawsuits. He corrected the problems as soon as he could. Because of his lawsuits cash flow is tied up; he paid for all the tenants to go to a motel in the time the services were off. Mr. Hoxie asked how many rooms at 80 Yarmouth

Road – there are 8; 16 rooms at 156. He stated the utilities have not been turned off for a year.

Mr. Sheehan came before the Board of health in May '07 and it happened again in October '07. At that time Meredith Morgan inspected and this is a recurring problem. Mr. Geiler asked how NStar shuts electricity off – do they do it unannounced? Mr. McKean stated the Health Dept. is NOT advised. The tenants do get a notice. Timothy O'Connell stated the tenants receive the notices – the Health Dept. calls NStar and they are told the reasons. Mr. Geiler asked how many lodging houses we have in Town – more than a hundred? The Health Dept. only deals with them when there is a complaint. Mr. O'Connell stated the only complaints they have had are Mr. Sheehan's 6 complaints. Mr. Burman asked why NStar is notifying the tenants and not Mr. Sheehan? Mr. O'Connell stated the tenants are telling him the electricity will be turned off on such and such a date. Mr. Sheehan stated there was a problem with a part needed for the furnace – could not find the part and it was a weekend; when it was located they fixed it and the electricity went back on. The notices are given to "occupant." Mr. Sheehan stated he has taken care of the occupants during this time. Mr. Hoxie stated if we renew these two licenses, Mr. Sheehan will have to guarantee the electricity or gas will not be turned off again.

Mr. Geiler stated it is difficult to believe the Landlord can't keep the utilities on if he stated he has no mortgages, and also advised that he can't be reached at any of the numbers we have for him.

Mr. Hoxie stated we have several options.

Mr. Sheehan stated they have a full time office 9-5. While he was in the hospital his staff walked out. He also mentioned going through a divorce. This must be why this happened. In 20 years this has not happened.

Mr. McKean stated that Meredith wanted it on the record that in October the electricity was off for non-payment, it was not for a problem with the furnace like Mr. Sheehan suggested.

Mr. McKean has asked for Mr. Sheehan's cell phone # which supposedly they have - but when they call it no one answers.

Donna Miorandi stated they had an informal hearing in 2006 when they heard about the same lawsuit Mr. Sheehan mentioned. There was an eighty-some year old man in an apartment with no heat and electricity. The Board of Health told him if this happens again they would follow through with a criminal complaint. Mr. Sullivan asked about this. Mr. McKean stated they have not done it yet. Mr. Sullivan suggested maybe the Board of Health should go forward. Mr. Hoxie suggested the licenses be renewed for now for 6 months only but if it happens again we will have a Show Cause Hearing to revoke. Mr. Hoxie asked for a business plan to be submitted to the Board of Health.

Mr. Hoxie proposed we renew for 6 months; business plan to be submitted in 7 days to the Health Dept.

Findings were duly proposed by Mr. Burman of guilty; seconded by Paul Sullivan and a unanimous vote was taken to find Mr. Sheehan guilty.

A Motion was duly made by Paul Sullivan to continue this matter for 6 months and that the licenses for 80 Yarmouth Road (West Wind Trust) and 156 Main Street (Park Square Trust III) be renewed and that a business plan be submitted in 7 days. The motion was seconded by Gene Burman and there was a unanimous vote taken to approve the motion.

Show Cause Hearing: A **Show Cause Hearing** was held at the request of the Barnstable Police Department for Hyannis Property, LLC, d/b/a British Beer Company, 412 Main Street, Hyannis, Jacqueline McCarthy, Manager, for violation of the Town of Barnstable Code Chapter 501-3H, exceeding the number of persons approved by the Building Commissioner for the capacity of the premises minus the number of employees working in the public areas at the time, on 1/12/08 at 12:25 a.m.

Officer Steve Maher submitted his report wherein he parked in the rear lot of the BBC. He used a mechanical counter – 190 exited. He went inside; spoke with the staff – they had a count of 188. He asked the Manager what she had for a count – she stated 188. Mr. Maher did not count those leaving from the front. While inside he came up with 213. He later spoke with the staff and did another count – they were in compliance. Ms. McCarthy addressed this.

Gary Simon, Managing Partner, agreed they were in violation. He stated that they came back for a new occupancy number – they have stayed within their limit. He stated their people take it very seriously. At no time did they intentionally go over that limit. He stated that some people walk through to get to the parking lot to their cars – this may be what happened. He stated his opinion that an outside count is not accurate, and invites the police to come inside to count. The capacity is 185. In May it was 135.

Mr. Maher stated on the date in question the counter if at 188 was already over capacity. And they also have to count their own employees. Mr. Burman asked if there is contact between the front and back door; he was advised they do have walkie-talkies so the count should not ever be exceeded. Jacquelyn, the General Manager, stated the front door is closed down; bracelets issued for those already counted. They use the alley way to leave. Once they get around 160 they shut down the front door. Mr. Simon stated the 188 on the counter did include the employees.

Mr. Burman proposed a finding of guilty of being over capacity but stated that they are trying to solve the problem. Findings were seconded by Paul Sullivan and a unanimous vote was taken to approve those findings.

Mr, Burman proposed a written warning be issued. Paul Sullivan seconded the motion and a unanimous vote was taken to issue a written warning.

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

Lodging Houses:

Embassy Lodging & Shelter

A motion was duly made by Mr. Burman and seconded by Mr. Sullivan and a unanimous vote taken to approve the Lodging House renewal as submitted above.

Common Victuallers:

Subway – 251 Iyannough Road
CBA Snack Bar
Donut World
Burger King #664
Old Country Buffet
Chao Cajun #96 (Mall)

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the above Common Victualler applications for renewal for 2008.

Next meeting is February 25th.

Mr Geiler brought up the Bud's decision asking if all the Board members had received it. They have. He stated that there is also a copy of the building regulations for the Board with their packets..

The hearing was adjourned at 12:37 pm.

Respectfully submitted,

Christine P. Ade, Recorder
Town of Barnstable Licensing Authority

Paul Sullivan, Clerk
Town of Barnstable Licensing Authority