



Town of Barnstable

Regulatory Services

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Licensing Authority

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BARNSTABLE LICENSING AUTHORITY LICENSING HEARING MINUTES

Town Hall Building, 367 Main Street, 2nd Floor Hearing Room, Hyannis, MA – 9:30 a.m.
November 17, 2008

A regular meeting of the Barnstable Licensing Authority was held on Monday, November 17, 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, Liaison Officers from the Barnstable Police Department, and Christine Ade, Recording Secretary.

Hearings:

One Day Entertainment and Sunday Entertainment License: Application of Tanya Vincent on behalf of Coastal Dance Co., 49 John Maki Road, W. Barnstable, MA, for a **One Day Entertainment License and Sunday Entertainment License** for its 23rd annual Nutcracker Gala Ballet to be held at the Barnstable High School Performing Arts Center, West Main Street, Hyannis on Saturday, December 13, 2008 at 4 pm and Sunday, December 14, 2008 at 2 pm.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to continue the application of Tanya Vincent on behalf of Coastal Dance Co., 49 John Maki Road, W. Barnstable, MA, for a **One Day Entertainment License and Sunday Entertainment License** for its 23rd annual Nutcracker Gala Ballet to be held at the Barnstable High School Performing Arts Center, West Main Street, Hyannis on Saturday, December 13, 2008 at 4 pm and Sunday, December 14, 2008 at 2 pm go the 12/8/08 hearing.

One Day All Alcohol Permit: Application of Michael Robinson, Cape Cod Young Professionals, P.O. Box 1302, Centerville, MA on for a **One Day All Alcohol License and a One Day Entertainment License** for a fundraiser event with a steel drum band on September 17, 2009 from 5:30 pm to 8:30 pm at Rectrix Aerodrome, Hyannis, MA. Continued from 10/27/08 to obtain State Fire Safety Certificate.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to continue application to the 12/8/089 hearing as the Fire Department has advised it will not sign off on the State Safety Certificate since only 50% of the exit door issues have been resolved.

Request to Close: Request of Wimpy's, 752 Main Street, Osterville, Danielle Siscoe, Manager to close the restaurant from January 4, 2009 to February 10, 2009 for general maintenance.

Danielle Siscoe appeared for her request. There were no questions by the Board.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the request of Wimpy's, 752 Main Street, Osterville, Danielle Siscoe, Manager to close the restaurant from January 4, 2009 to February 10, 2009 for general maintenance.

One Day Entertainment: Application of Danielle A. Siscoe on behalf of Wimpy's Seafood Café and Market, 752 Main Street, Osterville, MA, for a **One Day Entertainment License** for 2 singers and a keyboard player on December 12, 2008 from 6:30 pm to 11:00 pm.

Danielle Siscoe appeared for this request as well. She explained that it would be in the restaurant for the Christmas stroll.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the request of Danielle A. Siscoe on behalf of Wimpy's Seafood Café and Market, 752 Main Street, Osterville, MA, for a **One Day Entertainment License** for 2 singers and a keyboard player on December 12, 2008 from 6:30 pm to 11:00 pm.

One Day All Alcohol and One Day Entertainment Licenses: Application of Bill Sykes on behalf of **Best Buddies International**, 13 River Street, Plymouth, for a **One Day All Alcohol and One Day Entertainment License** for it's Best Buddies Challenge Bicycle Ride on May 30, 2009 from 12 pm to 9 pm, culminating with a catered event in a tent with live music and dancing at 1014 Craigville Beach Road, Centerville.

Mr. Sykes appeared for the application. This is the same event they have been having for 10 years; at this location for 3. This year is a different band but everything remains the same.

Mr. Burman asked the police department if there have been any problems; Lt. Jason stated there have not.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the application of Bill Sykes on behalf of **Best**

Buddies International, 13 River Street, Plymouth, for a **One Day All Alcohol and One Day Entertainment License** for it's Best Buddies Challenge Bicycle Ride on May 30, 2009 from 12 pm to 9 pm, culminating with a catered event in a tent with live music and dancing at 1014 Craigville Beach Road, Centerville.

Change of Manager: Application of Outback/New England – I Limited Partnership, d/b/a Outback Steakhouse, 1070 Iyannough Road, Hyannis, MA, Brian T. Cray, Manager for a **Change of Manger on the All Alcohol Common Victualler License** to Christina B. Jacobs.

Christina Jacobs appeared for the application. Brian is no longer the manager and she has taken over. Mr. Hoxie asked her experience – she has been with them for 12 years; she is a serv safe alcohol instructor before becoming the proprietor. Mr. Hoxie stated he noticed she was was born in Seychelles – asking where that is; she stated it is northeast of Madagascar.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the application of Outback/New England – I Limited Partnership, d/b/a Outback Steakhouse, 1070 Iyannough Road, Hyannis, MA, Brian T. Cray, Manager for a **Change of Manger on the All Alcohol Common Victualler License** to Christina B. Jacobs.

New Junk Dealer License: Application of Tim Ferreira, d/b/a **Mid Cape Metal Recycling**, 31 Thornton Drive, Hyannis, Tim Ferreira, Manager for a **New Junk Dealer's License**, hours of operation to be 7 am to 4 pm.

Attorney Connors appeared for the application. He stated it was first presented in May of this year. There were several continuances on both sides; request for a business plan and for a drawing to demarcate the property lines and locations for parking. He said there have been no incidents as to parking. Each request was addressed by them and they now request a new license at 31 Thornton Drive. It is their position they have complied with all our requests. He said through the drawing they submitted the location has been addressed as well as fencing and where the dumpsters are. There have been no instances of blocking the highway, etc. Another property owner has blocked the highway in the past but not Mr. Ferreira. These are vehicles, tow trucks, etc. Mr. Hoxie asked that they be submitted. They are in the file in an envelope marked photos submitted 11/17/08 by Attorney Connors. That property is owned by Cornelius Trowbridge who has been one of the complainants against Mr. Ferreira.

Christine Ade asked where at 31 they are located; as at 31 Thornton Drive is broken up into bays and other businesses occupy Units A, B & C (or so we have been advised. Attorney Connors stated all of 31. Mr. Ferreira then corrected him, and stated he is at the last 2 bays of 31; Bays G&H. Mr. Hoxie confirmed it is G&H at 31 Thornton Drive.

Mr. Burman asked how he could continue to function all this time when his old license was not yet renewed and the new one not yet approved either. Attorney Connors stated

the license at 30D renewal was continued under a “general continuance” that paralleled this application so he had a license at 30D Thornton. Mr. Burman stated that was not his understanding. Attorney Connors stated that’s where he has been; there were 2 licenses continued; one the one we are here for today and a continuance of the other application. Mr. Ferreira subsequently moved and was operating from 53 and 30D for a while; he has consolidated his operations which has been outlined in the business plan submitted at a previous hearing at 31 – he is no longer at 30D or 53.

Mr. Geiler stated the application has certainly been protracted. He believes the business was originally licensed at 31; at some point in the last year or two Mr. Ferreira moved across the street and at one point was running the operation from both and also was running the operation from what would be the north side or west side of the building. Christine Ade confirmed the original license was at 30D – the small little office. Attorney Connors stated there was a general continuance on the 30D application and he also operated from another location which was 53 Thornton Drive so there were 3 separate locations he had been operating from.

Mr. Burman stated that only one was licensed; IF it was licensed. Attorney Connors stated there was one license for a Junk dealer, yes. Then he represented that under 31 Thornton Drive, he was allowed to do auto repairing, trash; it has all been indicated in the business plan; what had been permitted under 31 Thornton Drive. It has been written and articulated as to what was permitted at each property in the packet submitted several months ago. He says now he is at 31; he no longer occupies 30D or 53 Thornton Drive.

He has been operating for auto repair and salvage and septic repair under permits he has and it is their position that he is also operating under the Junk Dealer license that had been continued for renewal at 30D. He stated under Ch 140, Section 54, defines Junk Dealers. Our Ordinance 502 section 1 describes the activities of a junk dealer. Ch 140 Section 56 defines Junk Collector. Ordinance incorporates both these sections and does not articulate whether you are required to operate from one location as the statute does; under Section 56 you can go from place to place.

Mr. Geiler stated certainly he would not agree with that; that has never been his understanding or the understanding of this Board for over 30 years. There is another section that clearly states that a licensed junk dealer is not authorized to conduct business any other place than the location on the license. There is a section allowing him to go from place to place recognizing that typically people may have bulk items that they want to get rid of and he is authorized to GO thereto purchase or remove those items – but in terms of setting up your business there is nothing in it that would allow him to simply decide he has a business here and move it around to here and here and here. Mr. Geiler said he hopes we can at least agree today on how that is going to be applied – this is a great part of the problem at this business. Attorney Connors said he understands but disagrees saying he has done a fair amount of research regarding the two sections and has reviewed the town’s ordinance and sees nothing that indicates that it is required under a junk collector that it has to be from some fixed location – it

cannot be if it goes from place to place; that would be in contravention of the statutory interpretation.

Mr. Geiler stated what he thinks Attorney Connors is stating is that he does not agree with the rules and so does not intend to comply with those rules and if that's the case it would be very difficult for the Board to issue this license.

Attorney Connors said it is their belief that there is an ambiguity within the ordinance which would violate his client's due process rights and the plain meaning of the statute and its interpretation. Certainly an individual is afforded due process rights under the Constitution of the US and under Mass Declaration of Rights and they believe after reviewing both MGL and the ordinances of the Town that there is an ambiguity as to what it means by being a collector – does it mean you're required to stay in one place and have people come to your property or permit you to go to other people's properties to obtain the items of junk or scrap or whatever it may be.

Mr. Geiler stated that is exactly what it means; but it doesn't mean you can set u\your business up at a location which is not licensed. That's exactly what he did. He had a big sign announcing and explaining what the business was – although it was licensed in a different location so we asked you to comply. That's what this whole process has been about – simply complying with the rules.

Attorney Connors stated they have been attempting to comply but for the continuances; all of which were because of the appeal and Superior Court case. He referenced a meeting in the "small" room regarding this. They state they would have been in compliance sooner had it not been for the Board's continuances. He states they certainly would have been in compliance under your theory some time ago if it weren't constantly being continued by the Board.

Mr. Geiler stated one of the things the Board did was to invite him to submit documentation or court cases or history that would have supported his position but we never have seen anything. Attorney Connors said he has never submitted a legal memorandum as he was not requested to; he did submit a business plan and a schematic of the property articulating the property lines and where and where not the potential customers would be allowed to be parked. He said he has b\never been asked to submit a legal memorandum; he has prepared a short one...

Mr. Geiler stated he did not think he was; but he said he was invited to do that and the Board did invite you to do that; to support that argument you are making with respect to the rules.

Attorney Connors did not recall that but said he would happily submit one today (which he did) – a very short one of 3 pages. He offered to give us the one he prepared but addresses some of the issues you are bringing up right now. .

Officer Maher said he has been observing this regulation for some time and said his understanding of the statute – going from place to place goes back to the time when someone would go with a pickup truck to someone's house to buy something and then turn around and sell it to somebody else. What he said he has observed is that Mr. Ferreira does go out to pick up things from other locations but always brings them BACK to 31 – he stores it at 31 and he also has signage there asking people to come in there to drop things off. That goes back to where the Town license kicks in – he has been running that part of the business at 31 where he is not licensed. It is two separate things; one is the place to place getting articles and two is he is running the business out of 31. Just last night, going back to what Mr. Geiler said, where it appears that Mr. Ferreira just decides to do what he wants, now at 66 Barnstable Road there is a sign advertising Ferreira's Disposable Recycling; so he has started another business someplace else in town without a license. Mr. Burman stated that goes back to his original question – is he operating an unlicensed premises?

Attorney Connors stated he did have the license at 30D and in May 2008 the renewal request at 30D was continued. Prior to that they applied for a license at 53 which was then withdrawn. Mr. Burman stated he has been without a license at all since the 30D license expired at the end of 2007 – and the Board did not renew the license. Attorney Connors stated it is their position the renewal was continued. Mr. Burman stated that was not his point – it is that he has been operating since January 1, 2008 and he has no license for any location according to Mr. Burman. Attorney Connors stated that based on the continuances of 30D, he did hold a Junk Dealer's License. It is a matter of interpretation as to what does Junk Dealer under the ordinance mean; it is not clearly articulated that it has to be at a fixed location. Mr. Burman stated he does not have the imagination that an attorney does; all I can read is the facts and you are not following what I understand is the facts. He has no license at this point for 30D, 31 or any one of the locations. AS\Attorney Connors states that he holds on 31 licensing; which had been issued in the beginning of January; Mr. Burman asked issued by whom? Attorney Connors said issued by the Town; if you look at the business plan it's attached. He has a repair and salvage business... Mr. Burman repeated "Junk Dealer's License" is what I am referring to. Attorney Connors stated a Junk Dealer's License he does not hold at 31.

Mr. Hoxie asked about the status of the Superior Court case; Attorney Connors stated that prior to the last hearing we had at which Mr, Houghton was in attendance, the Board had continued these applications as there was a question as to whether these applications could go forward with the Superior Court case pending. The notice of dismissal was provided to Attorney Houghton, who has not replied formally, but in speaking with Attorney Houghton it was determined that the case be dismissed along with the 4 day suspension but has not heard back from him although he had sent the document to which he advised he had authorized Attorney Houghton to sign his name to it and file it. Mr. Hoxie said we do have a recommendation to dismiss the case from the Town Attorney and perhaps we could hear from him.

Attorney Houghton stated he would agree that that the case is ripe for dismissal and that there were discussions as to whether the suspension has been served and thinks

we have reached the point to agree that it has been. Attorney Houghton stated he would be executing a Stipulation for Dismissal with Prejudice to prior cases but without prejudice to any future enforcement action that might arise out of the facts.

Mr. Hoxie asked if he would need a vote of the Board. Attorney Houghton stated a vote from the Board wouldn't hurt under the litigation control ordinances although it can be dismissed with the Town Manager's o.k. but certainly a vote from the Board would help.

Mr. Hoxie then asked if the decision of the Board could be made on the new application before it today with the Board considering the evidence as to whether or not the applicant is a proper person to hold a Junk Dealer's license – that's what the decision should be based on. He asked if he would be correct in that.

Attorney Houghton suggested it be based on whether or not it is in the public interest which obviously incorporates whether a person is fit to conduct the business. He then stated if he may, since he was present for some of Mr. Connors' comments about the licensed premises, said it would be my opinion that Officer Maher expressed it very well; that you could be a "collector" depending on how much you collect; you have to put what you collect someplace. If a small enough amount, the vehicles parked becomes the licensed premises – the Board could look into this. But if it is a large enough amount, kept in a place, while the statute itself is silent on where you deal out of, there are actually three types of licenses; a junk collector which would simply allow you to collect and do basically nothing else; a junk dealer who would sell or trade the property collected and the third an operator of a shop, which is similar to a dealer. Certainly a dealer or shop proprietor would have a licensed premises and even if the statute was silent, the authority can condition the license upon exercising a particular place, which he believes is the basis for Mr. Geiler's comments and he would agree with that. For the last 30+ years a license has probably been issued for a particular address. Simply by operation of the license you've been conditioning it on a premises. I think there is no question in my opinion that you have the legal authority to say that a dealer or shopkeeper is going to conduct their business at a fixed address which is the only premises to be used under the license and even for a collector, who has to keep it somewhere – in one place and one place only..

Mr. Hoxie stated if you have merely a collector's license you would have to have another license as you will have to bring the items back somewhere to hold them. Attorney Houghton said unless it is a small enough quantity. He agrees with Officer Maher that these are older statutes and go back to times when peddlers and collectors literally had push carts and went from place to place. Obviously that business has changed because of improvements in transportation, but even a collector – if you are going to collect it and keep it someplace the authority can certainly condition the license on the place it will be kept – one place only.

Mr. Hoxie asked if a collector could JUST collect and nothing else; Attorney Houghton said if you want to be strict about it, yes; all they can do is collect it. A dealer will collect

and sell it and a keeper of a shop will collect and sell it. It makes sense to not distinguish between the three.

Mr. Hoxie asked if we deny the license as to being against public interest, would we have to show he has been operating illegally, or done something against the record?

Attorney Houghton said that the law of due process deals with hearings. And basically due process law requires notice that some action is being taken with respect to them and have they had an opportunity to be heard. In this type of due process there probably is not a right for confrontation of expert witnesses but as a practical matter in a hearing like this it would make sense that might not be necessary to allow confrontation but just a give and take. So due process is not the law of whether a board's action is proper or not, it is opportunity to be heard and notice. Operating is a quasi judicial mode as we are, we would be judged by the substantial evidence test – would a reasonable person reach the same decision based on the oral and document evidence presented.

Following due process is just whether there was notice and opportunity to be heard. What the ultimate decision will be judged on is what were the facts presented and based on those facts what conclusions did they reach and how reasonable was the Board in its actions both in favor and against.

Attorney Connors stated that Mr. Ferreira would be very willing to have the Board state that he can only operate his junk dealer's license at 31 Thornton Drive. He said that as far as the constitutional ramifications that Mr. Houghton had stated he respectfully disagrees - he thinks case law is very clear and there is an ambiguity between the statute and an ordinance. And with respect to a holder of a license is unable to interpret the statute then due process comes in. There is a due process issue here – a case in 1973 supports his premise as to ordinances vs. statutes. He stated he has talked with Officer Maher regarding defects in the statutes and ordinances. Office Maher represented the statute was written some 70 years ago if I recall correctly so we are willing to be held to the one location albeit as a dealer or a collector but I am steadfast in maintaining that there IS a conflict between the state statute and Town ordinance. When there is a conflict between the two and you are an applicant, there is a due process violation that has to be litigated. If it went to that point he would have no choice but to seek judicial relief and would then seek a Declaratory Judgment as to what is valid and what is invalid and if you carefully read Junk Dealer and the definition of Junk Collector it doesn't say Junk Collector is a separate entity, it just defines it in section 56 of Ch 140 – your license language incorporates 54 and 56 so there IS an ambiguity. I have looked at the ordinance and there IS no separate Junk Collector's license. I looked thoroughly to see if you OFFER a junk collector's license in Town, and have not seen one.

Mr. Burman complimented Attorney Connors as being a very able champion for Mr. Ferreira. He asked again where and when he is now operating.

Attorney Connors states he is now only operating Mid Cape Metal Recycling at 31, which was articulated in the business plan. Mr. Ferreira has a sign also on Barnstable Road, where he does computer work and is pulling automobiles, working there but is not operating out of that property.

Mr. Burman stated he has a copy in hand of the license he has which is ONLY for a Junk Dealer's License at 30D, which expired May 1, 2008. Attorney Connors stated that is correct. They have been operating under a continuance regarding that license for quite some time. Mr. Burman stated that is a continuance for 30D where he is NOT operating; he is operating in 31. Mr. Burman then stated he is operating clearly in his opinion without the benefit of a license. Attorney Connors stated he has been trying to obtain a license for many many months. Mr. Burman stated that businesses don't operate under the POSSIBILITY of getting a license – they have to have a license before they can operate. That is normal business procedure.

that under Section 54 in Ch 140, he is a dealer. It states purchase, barter and sale of junk. He is storing and operating as a dealer with signage. The place to place operation is under 56 which is NOT what the Board is addressing here. Attorney Connors stated he also operates Ferreira's so I think the question would be what type of operation is he running at 31. Certainly he has other permitted businesses there so the underlying question would be is he operating as a Junk Dealer or is he operating as an auto repair or is he doing the septic and offal disposal and everything else. Mr. Burman stated that Attorney Connors made a statement that he is operating his business, the Mid Cape Metal Recycling, at 31 and he is NOT licensed for that. Attorney Connors went back again to the continuance under 30D because it is their position if they own a junk dealer's license and you write down 30D Thornton Drive as an example, under the statutory interpretation it could mean from place to place.

Officer Maher stated that in looking at Attorney Connors' memorandum, Ch 140 Section 56 talks about a Junk Collector, which says from place to place. Ch 140 section 54 talks about a Junk Dealer. At 31 he is operating as a Junk Dealer. Under Ch 140 Section 54, he cannot go from place to place. Attorney Connors again stated if you read the language of 54, it incorporates the word collector. Section 56v only defines what a collector is. Officer Maher stated that within 54 it states "and keepers of shops, purchasing and sale or barter of junk," and that's what he is doing at 31. He is purchasing and he is bartering. He is NOT operating as a junk collector at 31 because as a junk collector he is going from place to place. He is storing, operating with signage out of 31. He is operating as a dealer and I think that is the key difference. Attorney Connors respectfully disagreed. He said that he also goes from place to place. Officer Maher stated that is under separate statute and completely separate from what the Board is talking about right now with regard to his license as a junk dealer. Attorney Connors reiterated that 56 is a definition to clarify 54.

Mr. Hoxie joked that it is all clear to him now.

Attorney Houghton came forward to address the statute. Section 54 authorizes towns by ordinance or bylaw to provide for licensing – so in the first place you can't even have a junk dealer, collector or shop dealer in your town unless the Town has enacted an ordinance or a bylaw. The only ordinance the town has enacted with respect to that is in Section 121-6 in our code which is an ordinance which simply authorizes the granting of licenses. Section 54 authorizes the granting of 3 licenses if there is an ordinance to that effect. The collector of junk, dealer of junk, or keeper of junk. One is to be a collector. Another is to be a dealer. The last is to be the keeper of a shop for purchase, sale or barter of junk. Section 56 does define a collector as a person going from place to place to collect junk, old metals, or secondhand articles. Again it would be my opinion you could go out and collect it. However, once you collect it you have to put it someplace, and we have an ordinance that authorizes license and therefore requires licenses. If you have to put it someplace – an authority can certainly say keep it in one place and one place only. Again, the only ordinance the town has is the ordinance setting up or authorizing the license. I believe this Authority has regulations that govern how the licenses are exercised. It is within your authority if you fix a particular place to make that at a bare minimum a condition of the license.

Attorney Connors stated again they are happy for us to narrow based on suitability of the person standard what we are required to do to give an applicant a license and be submitted a business plan narrowing the focus for us to show the Town where he intended to operate. He intends to operate as a junk dealer only at 31G and 31H to aid in enforcement by the police. He stated they are trying to comply and be as good a neighbor to the town as possible. Any narrow focus deemed reasonable we would be happy to live with. If it has to say we will grant a Junk Dealer's license for 31 only and that he cannot do anything on any other property he may possess within the Town then we would be happy to abide by that.

Mr. Hoxie stated the application before us is for 30D; Attorney Connors stated no, for 31. Mr. Hoxie stated 31, Units G&H? Christine Ade replied those are the only units they have; 31A, B, C, D (I don't know about E&F) are occupied by other businesses. Attorney Connors confirmed it is 31 G&H. And Mr. Hoxie stated you are contention is that your client is not operating without a license at any location at this point? Attorney Connors stated it is their position that the only place he has any sort of operation is at 31, now articulating as G&H. As far as the Junk dealer's license, he had one at 30D under a general continuance and out position as a statutory interpretation, we believe that entitled him if he was to operate at 31 to be able to do that. The Board never confined him to 30D. Attorney Connors states he has another permitted business at 31 G&H – whether he was doing junk dealing or not. He stated he has not been given any instances except for signage that he had been doing the junk dealer business there. The salvage and septic, offal and auto repair have been permitted at this location by the town.

Mr. Hoxie asked if he has a "collector's" license. Attorney Connors stated the town does not offer a collector's license. Mr. Hoxie asked again if he has one. Attorney Connors said that under 30D it embodies collector within the meaning of the statute.

Mr. Hoxie asked if he contends that you don't need a license to collect? Attorney Connors stated that under the umbrella Junk Dealer it embodies a Junk Collector. Again he said he thinks there is a statutory ambiguity.

Officer Maher stated that through his own observation, that 31 has been operating as a Junk Dealer right along – there is not just auto salvage there, not just auto repair; I have witnessed bins going in and out with metal, aluminum, etc. going in and out for the last year. So although Mr. Ferreira may have what he claims is a license to do auto salvage, that is not the only thing going in and out of there. My other question is that now we have another sign at 66 Barnstable Road. Is this an extension of the business? Or what's going to happen there?

Attorney Connors stated it is not. Mr. Hoxie asked what the sign is for then. Attorney Connors stated he is just doing work there for the owner; we'd be happy to remove the sign if you'd like; it's common that people that do construction work have signs for the temporary time they are doing it. Officer Maher asked if he'd like to take a look at the picture he took last night and stated the sign he put up is not a temporary sign.

Attorney Connors looked at it and stated it may appear to be a fixed sign but looks like it can be readily removed and they would do so if asked.

Mr. Geiler asked if there is a sign permit for that sign? Is there a business authorized at that location?

Attorney Connors replied not that he is aware of. Mr. Geiler then asked if there is a business certificate for Ferreira's at Barnstable Road? Attorney Connors stated he is not operating a business there, he is doing work there.

Mr. Hoxie asked for public comment in favor or opposed.

Mr. Hoxie asked if we could address the court case and its dismissal. Attorney Houghton stated it would be with prejudice to any prior acts and without prejudice to any future acts.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to dismiss the existing Superior Court Case brought by Mr. Ferreira with prejudice to any prior acts and without prejudice to any future acts.

Mr. Hoxie asked for questions as to the new license. Mr. Burman states he does not see this as being a viable licensee. He does not think it is in the public interest or that he is a proper person to hold the license and I would so move to deny this license. Mr. Hoxie asked for a second with an explanation. Mr. Sullivan would not second but instead stated that he gathers we are dealing with a request for a new license at 31G & H, a Junk Dealer's License. That this is the only place he will only operate out of with the granting of the license, and no-place else. Attorney Connors confirmed. Mr. Sullivan stated that

includes anything collected going only to #31G&H. Attorney Connors confirmed. Mr. Sullivan stated that Junk Dealers are collecting precious metals, aluminum, copper, etc. which we have read a lot about. That is the reason for it operating and functioning at one location so the authorities can check the items collected as to being legitimate or stolen, and there is a whole list of things this person is responsible for doing. Mr. Sullivan would like these issues to be nailed down, and if they are he would not have a problem.

Attorney Connors stated in his discussions with Officer Maher he had indicated some of the revisions to the ordinance that were going to be addressed apparently today as far as photographing the items brought in and Mr. Ferreira is happy to comply with photographing anything the Board would impose and especially operating out of only one distinct location.

For clarity, Mr. Sullivan stated that they have absolutely committed themselves to that. Mr. Hoxie asked Officer Maher about observing the business being operated now without a license; what would take place if the license is denied? Would the police take action? Officer Maher replied yes, that would be the only relief they had. Mr. Hoxie then asked if the license is granted would it be beneficial to law enforcement so we can define what he is authorized to do, or would the police department think it would be worse off just collecting and having no license. Officer Maher stated that considering their position on moving from place to place – that would make it more difficult to regulate what Mr. Ferreira is doing. If it was in one location and considering that the Board adopts the proposals we have, it would be better to have him at one spot as a licensed premises where we have some oversight through the regulations to observe what Mr. Ferreira is doing.

Mr. Hoxie asked if it would be easier if he was locked into one location? Officer Maher stated that was correct. He then asked for another motion.

A motion was duly made by Mr. Sullivan to approve the application of Tim Ferreira, d/b/a Mid Cape Metal Recycling, for a Junk Dealer License at 31G&H Thornton Drive. Mr. Burman asked if this could be a temporary license to March 30, to be reviewed at that time to see if he is in compliance?

Mr. Geiler stated this is a license renewed for May 1 each year anyways, so it would expire April 30 in any case.

Mr. Sullivan stated he feels better about it since Mr. Connors and Mr. Ferreira will work with Officer Maher to make sure everything will be done properly in accordance with the license we issue. Mr. Burman seconded the motion.

Mr. Geiler asked if the Board intends to carry over the restrictions that exist on the current license? Mr. Hoxie asked what those were. Mr. Geiler stated, no unregistered vehicles left outdoors, no vehicles may be bought or sold with this license, no hazardous materials may be stored except the minimum requirements for normal building cleaning or maintenance,. Those are the restrictions that currently exist. I would suggest that we

also think of adding no storage of junk, old metals or secondhand articles outside – this is an issue that has come up several times. Also, no storage containers outside on the property except for one trash receptacle. The building dept. has asked that those containers be removed from the front of the building. It is contained in the business plan. He then stated his concern would be if the board did not prohibit the storage containers by putting it on as a restriction, then the business plan would be potential evidence that that is what they asked for. I believe they would have to go to the Board of Appeals for relief for that particular area.

Mr. Hoxie asked Attorney Connors if those restrictions were satisfactory.

Attorney Connors agreed with all except the containers on the property. He argued that if the board recalled way back on 9/17/07 we had a show cause hearing regarding the containers and he believed on page 31 of the transcript Robin DeGiangregorio was asked about the containers by Mr. Geiler and a question related to if they had this license would these containers be permitted. She had indicated yes. It went on to talk about Site Plan Review and she tried to intimate that perhaps it would have to go through Site Plan Review but as it is such a small project, Site Plan Review would not be necessary or required. Most businesses have dumpsters on their property – there was an issue of whether they were covered or not but I have never seen a 40 yard container with a cover on it, only 10 year or less. The imposition of no containers out front would be burdensome for this type of business. Her stated every business he has seen of similar import has containers. Mr. Hoxie asked how many he wants?

Mr. Geiler stated this business is in a wellhead protection district. The town spends an awful lot of energy in trying to insure that appropriate protections are adhered to by all of the tenants in that area to protect the drinking water. The outside storage of junk or old metals, or scrap is just not consistent with that.

Attorney Connors stated it is his understanding that this is an industrial zone and the wellhead protection zone is below that area; I represent somebody below Kidd's Hill Road and the wellhead protection zone extends into that – I would like to see a GIS Map showing whether the wellhead protection zone does or doesn't extend into this area.

Mr. Geiler stated he has been told by the Building folks that outside storage of containers is not allowed without a permit. Attorney Connors argued that if you read the transcript carefully and the testimony of Robin, no permitting is needed. Mr. Ferreira indicated that 2-3 containers of scrap metals would be ok; anything hazardous would absolutely not be contained within the dumpsters.

Attorney Houghton asked the Board to talk slowly and he would go upstairs to get a GIS Map.

Mr. Ferreira stated he also owns Ferreira's which was problematic on Cedar Street as that was in a residential area so he moved Ferreira's it to 31 Thornton. He then bought Mid Cape Metal Recycling at 30D; moved Mid Cape TO Ferreira's at 31 to consolidate.

He said he is permitted to have the dumpsters there, even a recycling service. Tom Perry signed off on it, Robin signed off on it; that's why I originally moved TO Thornton Drive to get into an industrial area to comply with Building. Mr. Hoxie asked how many dumpsters he has or would like to have. He said he owns 17 dumpsters – 16 are dumpsters and one's a flat – you put a container on it. Most are out at Puritan, Home Depot, at job sites collecting this metal. Once we pick them up, we haul them out; saving taxpayer money instead of dumping them at the dump they bring the metals to us for storage in the containers and then we ship it out. He indicated he has permits to do these things by Building, even for recycling. Mr. Geiler asked to see those permits. He said he submitted it a year ago. He said he had a permit for septic – to inspect septic, he has a permit to transfer offal waste and also has a permit to hold over 100 gallons...Mr. Geiler asked if they had any of those documents today. Attorney Connors again told Tom to look at the business plan. Mr. Geiler again said all he was asking for is the permits they have been making representation that they hold. He asked Attorney Connors to show him the documents. Attorney Connors stated they are in the business plan. Mr. Geiler stated no, no...they are not in the business plan, there is a statement in the business plan. I think that is one of the difficulties we're having – we keep getting representations that certain conditions exist, certain permits exist, certain procedures exist. We can't get the documentation and the police department reports that when they visit the site that's not what they find. Attorney Connors then said that under a business APPLICATION dated 1/16/07 in the name of Ferreira's, the type of business – auto repair, recycling, debris removal. And it says at the bottom regarding comments, no requirements with Licensing. To again address the number of dumpsters, I would say 2-3 would be the most ever on site. It won't be a property with 17 dumpsters on it; that's physically impossible.

Mr. Sullivan recommended they come back to argue the container numbers and type after checking with the Building Department, and the wellhead area – he'd be more comfortable seeing the permits he holds as well as approval from the Building Department, as proof it is not affecting the wellhead area. Attorney Connors stated Attorney Houghton would be back in a minute regarding the water and if it was a condition of approval of the application I would certainly seek the documentation from Building regarding what is and is not permitted with regard to dumpsters.

Attorney Houghton returned with the GIS Map, stating that ALL of Thornton Drive UP TO Business Lane is within the wellhead protection district but the parts not in it are further up the hill. There are certainly parts of Thornton Drive within the wellhead district. Mr. Geiler had a map identifying the property as being in the pink area – wellhead protection district. It is a zoomed map showing it IN the wellhead district. Mr. Hoxie stated we can make this a restriction – obtaining any permits from Building. Attorney Connors agreed.

Mr. Hoxie asked Mr. Burman for a new motion. Mr. Burman made a motion to approve the Junk Dealer license of Tim Ferrieira, d/b/a Mid Cape Metal Recycling, 31 G&H Thornton Drive, Hyannis, and Mr. Geiler read the current restrictions with the new ones he wanted added: "No unregistered vehicles may be left outdoors on the property, no motor vehicles may be bought or sold under this license, no hazardous materials may be

stored except minimal amounts required for normal building, cleaning or maintenance, no storage of junk, old metals or scrap metals or secondhand articles outside the building and no storage containers outside of the building on the property except for one trash container.” If the Board adopts it this way, we certainly would be willing to entertain any information that you have that suggests why this may not be appropriate or under mitigation or whatever, but I think that this would at least get us back into a situation where Mr. Ferreira is licensed to operate. We could continue the dialog where we may have some differences. It certainly would be a slippery slope if Mr. Ferreira after having been told what the town’s position is with respect to the license, accepts the license and then turns around and decides he is not going to comply with everything the Board has requested it puts us back in that contentious situation. I would urge that if there is documentation or If there are arguments to be made, that they be made now, rather than go ahead and do something which causes the police department to go out and we are back hear at a hearing. Attorney Connors stated he will speak with Building in short order as to what may or may not be required there as to Mr. Ferreira or one of his businesses. He said that certainly with the automobiles he does have the right to repair automobiles there so the question would be if he has an automobile there he is repairing, and it is put outside in one of the parking spaces as has been articulated in the business plan, is that a violation of his Junk Dealer’s license; that is an issue that may or may not come up.

Mr. Geiler stated if it was registered, it wouldn’t be a violation of anything. Attorney Co9nnors then stated if it was unregistered and he was repairing it, I would suggest on a personal level that he store it inside.

Mr. Geiler then stated that he thinks if we can be clear that what you are applying for is a Junk Dealer License; NOT a Junk Yard License; that is what everybody wants to see – that it is not a junkyard. We don’t want to have junk vehicles leaking fluids, etc. and containers of whatever leaking and stored outside. We would love to see a flourishing Junk Dealer business that offers the community a mutually agreeable method of disposing of scraps and those types of things. In the end we both want the same thing; it’s really how we get there. These are the rules. If you think that there should be some changes, I’d be willing to work with you to work up some language. But not just saying you are going to will comply, and have these permits and never showing anybody the permits. That does not work for any of us. Attorney Connors understands and will work with Building regarding their requirements of containers in a particular industrial zone to make sure they are compliant; less contentious and work together as a Licensee with the Board.

Mr. Geiler thanked him. Mr. Hoxie stated they will check with Building on the number of containers and all that...Attorney Connors stated he would but has a specific recollection at the show cause hearing in September ’07 from Robin that there IS no requirement – I believe on page 31 of the transcript. We will work with Building on this.

Mr. Hoxie stated that later this morning there will be a public hearing on amending the Junk Dealer regulations and a public hearing on this. Mr. Sullivan seconded the motion made by Mr. Burman with Mr. Geiler’s stated restrictions as follows:

Mr. Burman made a motion to approve the Junk Dealer license of Tim Ferrieira, d/b/a Mid Cape Metal Recycling, 31 G&H Thornton Drive, Hyannis with the restrictions that “No unregistered vehicles may be left outdoors on the property, no motor vehicles may be bought or sold under this license, no hazardous materials may be stored except minimal amounts required for normal building, cleaning or maintenance, no storage of junk, old metals or scrap metals or secondhand articles outside the building and no storage containers outside of the building on the property except for one trash container,” and there was a unanimous vote to approve it.

Change of Hours: Application of I.G.A.P. Lima Corp., d/b/a Village Landing Restaurant, Gary Lima, Manager, 3226 Main Street, Barnstable MA, has petitioned the Barnstable Licensing Authority for a **Change of Hours** for their Common Victualler License. The extended hours proposed are daily from 7:00 am to 9:00 pm, rather than from 6 am to 6 pm as originally approved by the Licensing Authority.

No-one appeared for the application.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to continue the application of I.G.A.P. Lima Corp., d/b/a Village Landing Restaurant, Gary Lima, Manager, 3226 Main Street, Barnstable MA, to 12/8/08 for a **Change of Hours** for their Common Victualler License. The extended hours proposed are daily from 7:00 am to 9:00 pm, rather than from 6 am to 6 pm as originally approved by the Licensing Authority.

Change from Seasonal to Annual All Alcohol Club License: Application of Cotuit Highground Golf Club, Inc., Paul Heher, Manager, 31 Crocker Neck Road, Cotuit for a **Change from a Seasonal All Alcohol Club License to an Annual All Alcohol Club License.**

Mr. Heher stated his membership has requested parties in the winter; basically they are requesting it for these events. Mr. Geiler stated that the Zoning department approached him Friday and stated that going from seasonal to annual is an intensification of the business and would require zoning relief. He stated other than time, this should not affect it but must be looked into. Mr. Heher reiterated they are changing nothing except being open all year round.

Mr. Geiler stated the suggestion by Zoning that change to an annual license requires ZBA approval.

Mr. Hoxie continued this hearing to 12/8/08 to see whether or not this needs Zoning approval in order for us to issue the license. Mr. Geiler stated we will initiate the contact with Zoning.

Since several people came today to testify at this hearing, Mr Hoxie invited them to speak so they do not have to return.

William Keto came forward saying he abuts the golf course. He is here to support the licensee as a good neighbor; but he has a concern with the license evolving into a year round liquor establishment – he does not want to see the clubhouse turn into a full time bar area – something like the Kettle Ho used to be. He stated Mr. Heher has been a great neighbor and will trust his assurance this will not happen.

Dave Poina, 49 Windmill Lane, Cotuit spoke next. He plays golf year round. As it is now they have to go right home in the winter – he would like to be able to go into the establishment to watch TV, have a beer, etc. He is in favor of the year round license.

Mr. Hoxie asked Mr. Heher to address the concerns of the abutter – Mr. Heher stated they will conduct the place as they are now. They will be closed by 11 pm.

Mr. Hoxie continued the hearing to 12/8/08 and stated we will make contact with Zoning and let him know what he should do.

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

Attorney Jeremy Carter sent a letter to the Licensing Authority requesting that this hearing be continued to the 12/8/08 meeting. The Authority approved the request and the hearing has been continued to 12/8/08.

Show Cause Hearing: **Show Cause Hearing** on The Island Merchant, 302 Main Street, Hyannis Joe Dunne, Manager, at the request of The Barnstable Police Department which has reported to the Licensing Authority that on August 16, 2008, an undercover sting was conducted by the Barnstable Police Department under written guidelines adopted by the Town of Barnstable Licensing Authority and on August 16, 2008 it was in violation of the Code of the Town of Barnstable, Massachusetts, Part V, to wit: it did sell an alcoholic beverage to a person under 21 years of age in violation of Section 501-7, paragraph F and 501-7, paragraph I of the Town of Barnstable Rules and regulations of the Licensing Authority as adopted in the Code of Regulations of the Town of Barnstable. This hearing was continued from 10/27/08.

Mr. Hoxie read the hearing notice that on August 16, 2008 The Island Merchant, 302 Main Street, Hyannis Joe Dunne, Manager, holding an All Alcohol Common Victualler License was in violation of the Code of the Town of Barnstable, Massachusetts, Part V, to wit: it did sell an alcoholic beverage to a person under 21 years of age in violation of Section 501-7, paragraph F and 501-7, paragraph I of the Town of Barnstable Rules and regulations of the Licensing Authority as adopted in the Code of Regulations of the Town of Barnstable.

Joe Dunne appeared for the restaurant. Mr. Burman recused himself from this hearing and Mr. Hoxie stated that Commissioner Boy will sit for this hearing.

Lt. JoEllen Jason answered that she and Officer Steve Maher would testify for the Police Department. Mr. Hoxie asked them all to raise their right hands and swear to tell the truth at this administrative hearing. All raised their hands and answered yes. Mr. Hoxie advised the Licensee we would hear from the Police Department first and that they would have a right to question the police and then testify on their behalf.

Lt. Jason stated that she and Officer Maher are here representing the Barnstable Police Department, and that Officer Maher would be making the case. She stated she wanted to make an overview statement of how they came to be here today. She said that the two of them have worked for 2 ½ yrs – 3 yrs. as liaison officers with the Board, and that it took some time to learn and be comfortable with all the workings of the Board and what they do all the time. During that time, she stated they feel they have opened the communication with the businesses on Main Street, advising that noise complaints and disturbances are down. They have had great communication with the licensees in the Town. They have facilitated some informational seminars for license holders – two in 2007 and two in 2008, covering all of the alcohol license requirements, ID's (fake and altered), overcrowding, noise complaints, over serving, under-age drinking and what stings are. Because there are only two of them, the rest being in enforcement and so busy, they have taken the philosophy that self-policing of the licensees is the best policy. They have tried to give them as much information as possible and have been open to any questions from licensees. They decided to test the philosophy to see how the licensees were doing. Recently on three separate nights stings were held – they are frankly a bit disappointed with the results. She stated there is more work to be done but took it as a learning experience. They visited approximately 88 businesses on the stings. They want to bring before us the fact that although there are some businesses before us, there were 48 businesses in compliance on those nights and at some point would they like to recognize those as being diligent. She stated there are a number of elements that are common to all of these hearings and stated they will present to us how the sting was put together first and then individually conduct the hearings. She stated that Officer Maher would give an overview of what they did on each night, this one being August 16th. They abided by the Sting Guidelines adopted by the Board a month or so ago.

Officer Maher stated that they sent out a letter to all of the Liquor Licensees in the Town to invite them to informational sessions this year (showing a copy of the letter sent in his

power point presentation) in June. There was someone from the ABCC in attendance as well. In the midst of those sessions they went over the sting guidelines (attached to these minutes and shown in his power point presentation). They went over how they would accomplish a sting and what they would do once they went to their establishments, down to the letter of how it would happen. All who attended were informed and shown the specific guidelines and how they would be used. As part of the sting procedure, there was an article in the Cape Cod Times on June 26th, a copy of which ad is attached to these minutes, advising that the police department was going to be going out using young people to test these establishments. During the June sessions they also suggested self testing of the establishments. On the nights of the stings, they brought in an underage officer, went over the guidelines with him, took a photo of him dressed as he was to go out on the sting, made sure he looked age appropriate, had no ID of any kind with him, he had no money except what was given him by the Police Department (they check before he goes out). He was asked to sign a release and a copy of the sting guidelines. He was told specifically to go into the establishment and ask to purchase one particular type of drink. In pouring establishments he was told to ask for a Bud Lite and to ask for a six pack of Bud Lite in package stores. In each case it was the same – to cut down on any confusion. If a question was asked by an employee he was told to leave. He was told not to offer a fake ID; there was no ruse used. He was just told to ask for the Bud Lite. He stated this is a learning tool; they want to keep lines of communication open.

He read his report into the record for this establishment: On Saturday, August 16, 2008 at 2132 hrs. myself with Officer Jeffrey Marshall, age 20 in plain clothes conducted an undercover “sting” of The Island Merchant, 302 Main Street, Hyannis, Joe Dunne, Manager, following the guidelines of the Massachusetts Alcohol Beverage Control Commission for underage drinking stings. I observed Officer Marshall go into the establishment where he purchased one Bud Lite beer for \$3.50 from a white female in her late 20’s with short blond hair possibly named Sara according to Marshall. After purchasing the beer Marshall left it on the bar and exited the establishment.

Mr. Dunne took full responsibility – the bartender obviously made a mistake. He said they were understaffed that evening. He has spoken to the bartender who has attended the seminar given by the Police Department.

A motion was duly made by Paul Sullivan and seconded by Richard Boy and a unanimous vote taken as to findings: 1) I find that the Barnstable Police Department conducted a sting operation substantially in accordance with the “Sting” Policy adopted by the Licensing Authority, 2) I find this hearing was properly posted and advertised and the licensee properly notified of the hearing, 3) I find that the underage person used in the sting was a person under 21 years of age and an employee of the Barnstable Police Department and operating under the supervision of a Barnstable Police Officer during the sting activity, 4) I find that the Barnstable Police Department did announce, at an open and televised meeting of the Licensing Authority on July 7, 2008, their intention to conduct “sting” operations in the near future, 5) I find that the Barnstable Police Department did send a notice to each licensee of the town, using a

Licensing Authority prepared list of licensees, to attend and participate in one of two Licensing seminars in June, 2008 where rules and regulations would be discussed, questions answered, and procedures would be explained, and that a Cape Cod Article dated June 26, 2008 announced the intention of the Police Department to conduct the stings, 6) I find the Police Department did conduct the "Sting" activities less than two months following the seminars (this one being August 16, 2008), 7) I find the testimony of the Police Department to be credible in this matter, 8) I find that the licensee did sell or deliver an alcoholic beverage to a person less than 21 years of age, 9) I find that the record indicates there have been no prior violations.

A motion was duly made by Paul Sullivan and seconded by Richard Boy and a unanimous vote taken to adopt the findings.

A motion was duly made by Paul Sullivan and seconded by Richard Boy and a unanimous vote taken as to guilt of The Island Merchant, 302 Main Street, Hyannis, Joe Dunne, Manager, that on August 16, 2008, an undercover sting was conducted by the Barnstable Police Department under written guidelines adopted by the Town of Barnstable Licensing Authority and on August 16, 2008 it was in violation of the Code of the Town of Barnstable, Massachusetts, Part V, to wit: it did sell an alcoholic beverage to a person under 21 years of age in violation of Section 501-7, paragraph F and 501-7, paragraph I of the Town of Barnstable Rules and regulations of the Licensing Authority as adopted in the Code of Regulations of the Town of Barnstable.

A motion was duly made by Paul Sullivan and seconded by Richard Boy and a unanimous vote taken as to sanctions: Sanctions of 2 days were imposed, with one day to serve on August 16, 2009 and one day to be held in abeyance until that date pending any further Ch. 138 violations.

Renewals:

Junk Dealer License for remainder of 2008 until 4/30/09: Renewal of Junk Dealer License for Mid Cape Metal Recycling, 30D Thornton Drive, Hyannis, Tim Ferreira, Manager for the remainder of 2008 to 4/30/09.

This renewal application did not go forward as the location is no longer where he will have his business.

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

A motion was duly made by Mr. Burman and seconded by Mr. Sullivan and a unanimous vote taken to approve the Class I Auto Dealer renewals as submitted below:

Class I Auto Dealers:

Dick Beard Chevrolet
Cape Cod Lincoln Mercury
Buckler's

A motion was duly made by Mr. Burman and seconded by Mr. Sullivan and a unanimous vote taken to approve the Class II Auto Dealer renewals as submitted below:

Class II Auto Dealers:

Hyannis Auto Center
All Cape Auto Sales
HiLine Auto Sales
Hyannis Auto Sales
California Auto Sales - HOLD by Mr. Burman; withdrawn after clarification
Oceanside Classics
Cape Cod Cars and Trucks
European Car Service
Ziggy's Auto Sales

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

Lodging Houses:

Fernbrook Inn
Sea Beach Inn
Honeysuckle Hill
Cape Cod Ocean Manor
The Long Dell Inn
Craigville Conference Center – 125 Ocean
Craigville Conference Center – 19 Vine
Craigville Conference Center – 39 Prospect
Craigville Conference Center – 1 Bluff
Craigville Conference Center – 208 Lake Elizabeth (Inn)

A motion was duly made by Mr. Burman and seconded by Mr. Sullivan and a unanimous vote taken to approve the Common Victualler renewals as submitted below:

Common Victuallers:

Sbarro Italian Eatery
D'Angelo Sandwich Shop – 793 Iyannough Road
D'Angelo Sandwich Shop – 187 Falmouth Road
Great House of Zou
Mitie's Sushi House

Osterville Cheese & Sandwich Shop
Honey Dew Donuts – 313 Iyannough Road
Fame Food Mgmt. – CCCC
CCH – Nutrition & Food Svcs.
Friendly's
IHOP
Dunkin Donuts – 702 Iyannough Road
Dunkin Donuts - CC Mall
Dunkin Donuts – 147 North Street
Dunkin Donuts – 1220 Iyannough Road
Dunkin Donuts – 317 Falmouth Road
Dunkin Donuts – 627 Main Street
Dunkin Donuts – 751 W. Main Street
Dunkin Donuts – 156 Iyannough Road
Dunkin Donuts – 3821 Falmouth Road
Papa Gino's – 790 Iyannough Road
Bangkok Kitchen

A motion was duly made by Mr. Burman and seconded by Mr. Sullivan and a unanimous vote taken to approve the Daily Non-Live Entertainment renewals as submitted below:

Daily Non-Live Entertainment

Papa Gino's – 790 Iyannough Road

A motion was duly made by Mr. Burman and seconded by Mr. Sullivan and a unanimous vote taken to approve the Video Games renewals as submitted below:

Video Games

Papa Gino's – 790 Iyannough Road

A motion was duly made by Mr. Burman and seconded by Mr. Sullivan and a unanimous vote taken to approve the Sunday license renewals as submitted below:

Sunday Entertainment

Papa Gino's – 790 Iyannough Road

Business Meeting:

Discussion on proposed modification to Junk Dealer Regulations by the Barnstable Police Department. Mr. Hoxie stated this will eventually require a public hearing – will the amendments be posted somewhere?

Lt. Jason suggested the proposed changes to the Junk dealer requirements be placed on the website prior to the public hearing and that Officer Maher will put it into powerpoint form for the meeting. She stated these amendments were compiled from a number of other police departments in Massachusetts who have recently updated the ordinances and rules and regulations. It was also done at the request of their own detective division who finds that as the town grows along with the number of junk dealers there needs to be a tightening up of the regulations for these licensees because of catalytic converters, precious metals and so forth. It would also be helpful to add that “no Junk Dealer License authorize doing business from anywhere other than the licensed premises.” After today’s hearing I wondered though if it would be helpful to have a specified building for the license.

Mr. Geiler suggested, No Junk Dealer may operate from any location unless specifically authorized by the Licensing Authority.

Lt. Jason stated it is our document, we can add what we like, but they did not have anything like that in it but we may want to add it be a fixed location and not exercised from place to place.

Officer Maher suggested a brought up by Mr. Geiler within the definitions of regulated property we also add a “J” to the rules collectibles – to add “collectibles” – decoys and things of that nature not specifically addressed in our definitions of the regulation.

Mr. Geiler stated add a “J” Collectibles – Including objects of art, coins, currency and antique objects.” Mr. Hoxie stated we would add that after “I.”

Mr. Geiler stated that the intent here is to get more specific because there are people who buy and sell secondhand items that don’t have the same lure as those people who may want to break into a home and steal. So making sure the items the police department and other enforcement agencies are interested in are included in here but not requiring somebody that is running a jewelry store and happens to have some secondhand jewelry that they offer would not have to keep the same records. This helps those businesses that the intent doesn’t really apply to, this is more like the pawn shop type license. Barnstable does not and is not authorized to issue pawn shop licenses, so the closest mechanism is the Junk Dealer, Secondhand Article requirement – that’s a growing business in town and at the same time the law enforcement agencies are experiencing a growth in missing items.

Lt. Jason stated regarding punishments Mr. Burman had asked her what recourse is described in this regulation; according to Mr. Houghton the maximum you are allowed to assess is \$300 per item per infraction, and each item would be a separate infraction.

Mr. Hoxie asked could we spell out violation of the license results modification, suspension or revocation of the license? Officer Maher replied that is within the statute already. Mr. Hoxie also wanted confirmed the Town Attorney has reviewed the proposed changes, and Lt. Jason stated he has reviewed it. So we are going to make some changes; Mr. Geiler stated the Town Attorney's changes have already been incorporated. Mr. Hoxie asked for further comment.

Jim Crocker, Councilor 5, came forward and stated that we pass ordinances to empower people like yourselves to do the good things we need to do to protect our neighborhoods – we've had a very lengthy discussion today on some aspects of this particular business and he stated he was here to tell you all that he is quite proud of the stewardship that you took here and the conversations that came from all the professionals as well as the board members. The issue is huge; it is inviting an element that we don't always want in our neighborhoods, and always, always with salvage we're talking about the problem of groundwater discharge. So I had a chance to sit and see the way that you all handled this and how you all acted and prepared and also, I must say we treated the applicant, even though it was tenuous at times, with the respect that anybody deserves when they come before us. Again, hats off to the Chair and a great job by all of you.

Mr. Hoxie stated there will be a public hearing on December 8th.

Mr. Burman again requested a discussion on separation of alcohol and common victualler licenses, and commented he had requested Mr. Geiler look into what other towns do regarding the separation of Common Victualler and Alcohol Licenses.

Mr. Geiler stated he had requested an opportunity to sit down with the Chairman but unfortunately his schedule did not allow that (Marty said he forgot) and Mr. Geiler said he had talked with ABCC investigators but could not reach the attorney for the ABCC They don't track that information. The responses he got were that they believe what we do has been consistent over the years and also to be what 99% of the other liquor license authorities issuing suspensions in the state have done which is to close the entire premises. It is consistent with Town regulations of Barnstable which require the entire premises to be closed, and even go so far as to prohibit repairs or maintenance activity during the time of closure. Clearly under your own regulations the suspension is intended to be punitive. In restaurant cases, the vast majority (and I don't even remember one that did not include closure of the entire premises). In the case of other communities and the ABCC as well that has also been the case. I do think there have been rare instances of a premises being granted closing of liquor privileges only with respect to stings. Sandwich and Falmouth were a bit more lenient with stings only. Mr. Geiler stated the authority is welcome to review decisions; and also that some licensees have requested trading days – a day in July will impact them much more than a day in the winter, etc. The concern is that the establishments for the most part have admitted their guilt and are ready to take their punishment. However, it does impact a whole lot of employees as well in the restaurants. Mr. Geiler will try to get something more definitive from the ABCC. He does think there is a huge difference. The ABCC offers a

fine in lieu of suspension which we are not authorized to offer. That is available to the licensee to exercise. The amount of fine is in a preset formula which is not weighted at all by summer or winter. The opportunity to review this exists here as all of the suspensions from our stings are summer ones. When he spoke to them, Mr. Geiler stated that other towns weren't sure they could find their minutes, etc., especially with respect to stings. Mr. Geiler stated the Town Attorney's office and the Police Department could get together with them to propose alternatives.

Mr. Burman stated that in no way is implying they are free of guilt but thinks the regulations are a little unfair – we could allow them to continue to serve food without alcohol. He thinks this is something we need to pursue and thinks he may have taken a different tack on the suspension times – giving them more without alcohol had they been able to stay open for food.

Mr. Hoxie stated we have the authority to issue them a CV license for the suspension period. He also stated the suspension has been requested for the same DAY as the violation – not the same date.

Mr. Geiler does not ever remember not asking an applicant if they understand and whether or not they have read the town regulations. The applicants just do not do this. The same penalties have been imposed for years and years only changing the number of days in the suspension. But the premises have always been closed for the timeframe. He asked if the regulations are still appropriate and whether or not they should be changed. Mr. Geiler suggested later in January, February or March would be a good time to have these discussions.

Meeting was adjourned at 11:40 a.m.

Respectfully submitted,

Christine P. Ade, Recorder
Town of Barnstable Licensing Authority

Paul Sullivan, Clerk
Town of Barnstable Licensing Authority