



# Town of Barnstable

## Regulatory Services

### Licensing Authority

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## BARNSTABLE LICENSING AUTHORITY LICENSING HEARING MINUTES

Town Hall Building, 367 Main Street, 2<sup>nd</sup> Floor Hearing Room, Hyannis, MA – 9:30 a.m.

December 29, 2008

A regular meeting of the Barnstable Licensing Authority was held on Monday, December 29, 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:

**Request to Close:** Request of WKC Corp., d/b/a Misaki Restaurant, 379 West Main Street, Hyannis, Karen L. Butler, Manager, to close from 1/1/09 to 1/31/09 for renovations, and general clean up.

Ms. Butler appeared for her application. They would like to do minor renovations-painting and general maintenance since buying the restaurant in May.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the request of WKC Corp., d/b/a Misaki Restaurant, 379 West Main Street, Hyannis, Karen L. Butler, Manager, to close from 1/1/09 to 1/31/09 for renovations, and general clean up.

**New Annual All Alcohol Common Victualler License:** Application of Robin's Nest Grill, Inc., d/b/a Eclectic Cafe, 606 Main Street, Hyannis, MA, Robert A. Najarian, Manager, for a New Seasonal All Alcohol Common Victualler License.

Dr. Najarian appeared along with Mr. Rosario regarding this application. Commissioner Sullivan recused himself from this hearing. They wish to reopen the Eclectic Café much the same as it was previously and seasonally. He owned a restaurant in Marshfield for 5 years and a restaurant on Sea Street for two years. They will open in April – striving for the 1<sup>st</sup>. They will close in October. Dr. Najarian will be the hands-on manager. This is only open for dinner. He will be running his dental practice daytime. Joseph Chili is here with his wife as the landlords who will be with them pretty much 7 days per week while they open. They have had lengthy discussions with Dr. Najarian and are

thoroughly convinced this will be an asset to the west end. They will be as cooperative with the other tenants as possible. They will run 11:00 am to closing at 12:45.

A motion was duly made by Gene Burman and seconded by Mr. Hoxie and a unanimous vote taken to approve the application of Robin's Nest Grill, Inc., d/b/a Eclectic Cafe, 606 Main Street, Hyannis, MA, Robert A. Najarian, Manager, for a New Seasonal All Alcohol Common Victualler License, the hours to be 11 am to 12:45 am.

**Change of Location and Change of d/b/a on Common Victualler Wine & Malt License:**

Application was made by Carol A. Williams, d/b/a La Petit Maison, 1304 Main Street, Osterville, Carol A. Williams, Manager for a **Change of Location** to 50 Sea Street, Hyannis and a **Change of D/B/A** to Cape Cod Epicurean.

Mrs. Williams appeared for her application to change her location to 50 Sea Street, Hyannis. It was formerly the Black Bean Café and Collucci Bros. Diner. She is renewing her restaurant license with wine and malt in Osterville to transfer it to the new location. Mr. Geiler stated there is an option to open as soon as she would like after inspections for food only without the alcohol. Mrs. Williams would like to do that.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the application of Carol A. Williams, d/b/a La Petit Maison, 1304 Main Street, Osterville, Carol A. Williams, Manager for a **Change of Location** to 50 Sea Street, Hyannis and a **Change of d/b/a** to Cape Cod Epicurean. and to allow her to open with the Common Victualler License prior to approval of the alcohol license.

**Change of Manager:** Application of Not Your Average Joes, Inc., 793 Iyannough Road, Hyannis, MA, Stephen Wenzel, Manager for a **Change of Manger on the All Alcohol Common Victualler License** to John Armstrong.

Michael Minicello, HR Director, appeared with Mr., Armstrong. Mr. Hoxie asked about his experience in serving alcohol – he is 42 now and has been in this business for 20 years. Mr. Burman noted in the record there have been a couple alcohol-related incidents – he admitted to having 2 OUI's 1989 and 2006 and has completed the alcohol program and probation with regard to those. Mr. Burman asked if he was aware it could affect his being approved for this position. The HR Manager stated they are aware of this problem and are more than confident that he can oversee this business properly. The corporation is very confident in his abilities. Mr. Sullivan asked him about his time at NYA Joes – it is 3 ½ years. Presently he is the general manager of the Hyannis restaurant, being Assistant Manger prior to that. Mr. Sullivan asked if he had any help in filling out the application; he stated yes. The HR Manager stated they have laid off 430% of staff; errors have been made in the applications lately as administrative staff has been cut back. Due to lack of staff this occurred. The Director of Human Resources assured the Board that they are fine with Mr. Armstrong and hope the Board will see fit to approve the application. Mr. Armstrong stated for the record he did not intentionally mislead the Board by checking the wrong box on his application.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the application of Not Your Average Joes, Inc., 793 Lyannough Road, Hyannis, MA, Stephen Wenzel, Manager for a **Change of Manger on the All Alcohol Common Victualler License** to John Armstrong; taking into account that the HR Director and the corporation fully supports Mr. Armstrong in this application and the error he made in filling out his paperwork.

**Annual All Alcohol Common Victualler License tyo Seasonal Common Victualler License:** Application of SPSS Enterprises, LLC, d/b/a Asa Grill & Reputation, Mollie T. Lehane, Manager, 415 Main Street, Hyannis for a **Change from an Annual All Alcohol Common Victualler License to a Seasonal All Alcohol Common Victualler License.**

Attorney Steve Pizzuti appeared with his client, owner Shane Pacheco, for this application. They are requesting the change to a seasonal license; the operation in the winter created a deficit. The goal is to generate income and revenue. They wish to re-open in the Spring as a Seasonal Licensee.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the application of SPSS Enterprises, LLC, d/b/a Asa Grill & Reputation, Mollie T. Lehane, Manager, 415 Main Street, Hyannis for a **Change from an Annual All Alcohol Common Victualler License to a Seasonal All Alcohol Common Victualler License.**

**New Class II Auto Dealer License:** Application of Emilio Netto, d/b/a **Mutual Motors**, Emilio Netto, Manager, for a **New Class II Automobile Dealer's License**, 537 Yarmouth Road, Hyannis, MA, maximum 15 total vehicles on the property, hours of operation: Mon – Fri, 9-5, Sat, 9-3.

Emilio Netto appeared for the Class II License. It will be bought mainly at auction for sale at the local location. He does have experience in Class IIII Auto sales. Mr. Burman reiterated the 15 vehicles includes customers, employee vehicles and vehicles for sale.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the application of Emilio Netto, d/b/a **Mutual Motors**, Emilio Netto, Manager, for a **New Class II Automobile Dealer's License**, 537 Yarmouth Road, Hyannis, MA, maximum 15 total vehicles on the property, hours of operation: Mon – Fri, 9-5, Sat, 9-3.

**Show Cause Hearing:** Show Cause Hearing on the Black Spot Café Bar, 10 Ocean Street, Hyannis, Micah Power, Manager. The Police Department has reported that on July 26, 2008 you were in violation of the Code of the Town of Barnstable, Massachusetts, Part V, to wit: you 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.

Mr. Hoxie read the hearing notice that on July 26, 2008, the Black Spot Café Bar, 10 Ocean Street, Hyannis, Micah Power, 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. He then asked the witnesses to raise their right hands and swore in the witnesses. Mr. Geiler asked Mr. Hoxie if this was a continuation of the former hearing or a whole new hearing. Mr. Hoxie stated he thought it should be a whole new hearing .unless there is an objection. Officer Maher stated whatever the Board wants. Mr. Hoxie thought that because the officer was not present we should start over. Mr. Hoxie advised them we would hear from the Police Department first and that he would have a right to question the police and then testify on his behalf.

Ptl. Maher read his report into record: On Friday, July 26, 2008 at 2304 hrs. myself along with Lt. Jason and two officers in plain clothes, Jeffrey Marshall, age 20 and Officer Andrew Warmington, age 21, conducted an undercover "sting" of The Black Spot Café Bar at 10 Ocean Street, Hyannis. Following the guidelines of the Massachusetts Alcoholic Beverage Control Commission for underage drinking stings, Officer Marshall and Officer Warmington went into the establishment where Officer Marshall purchased one Bud Lite beer from a white male in his mid 40's with white hair. Officer Warmington witnessed the transaction.

Officer Maher stated he was here representing the Barnstable Police Department. He stated he wanted to make an overview statement of how they came to be here today. He said that before conducting these stings they held some informational seminars for license holders, notifying the licensees they would be conducting some stings and invited everybody by a letter to come to these sessions – talking about underage drinking, ID's (fake and altered), and stings guidelines specifically stating how they were not going to conduct a ruse, how the people would be dressed, what things they would have on them. Also, just prior to that, there was an article in the Cape Cod Times stating they would be going out and conducting these operations. As we stated earlier, we thought it would go well but it didn't. He said they brought the officer in the night before (25<sup>th</sup>) and specifically go through how they are going to conduct the operation and make sure they have nothing in their person; no money other than what we give them. We take a picture of the person before they go out. He was asked to sign a release and a copy of the sting guidelines. He asked Officer Marshall to join him so he could ask the questions. Officer Maher asked him Q: to state his name and age. A: Jeffrey Marshall, age 20. Q: On July 26<sup>th</sup>, what was your employment status? A: I was employed by the Barnstable Police Dept. as a seasonal officer. Q: On the night of the 26<sup>th</sup>, what was your duty assignment? A: I was assigned to an undercover alcohol sting operation. Q: On that night where did you report? A: I reported to the watch

commander's office to meet Officer Maher and Lt. Jason. Q: After that what happened, what did we do? A: We went over the alcohol guidelines, I took an alcohol breath test, my photo was taken and all items removed from my person and put in my locker. Q: When we were going over the directions as far as liquor establishments, did we discuss specifically how that was going to happen? A: Yes, to go in, attempt to purchase a bottle of Bud Lite, and if served to leave the alcohol and leave the premises. Q: Were you ever asked to take pictures? A: No. Q: Did you have the means to take any pictures? A: No, we did not. Q: On the night of the 26<sup>th</sup> at about 11:04, could you describe what happened when you went into the Black Spot? A: Myself and Officer Warmington went into the Black Spot and moved approximately 1/3 of the way down the bar area. We observed a musical performance in progress and the patrons of the bar. We walked up to what appeared to be the active service bar and after a moment I asked for a Bud Lite. The owner placed the Bud Lite on the bar. I asked how much and he indicated it was \$3.25. I placed the \$3.25 on the bar and picked up the Bud Lite at which point I nodded to Officer Warmington, replaced the beer on the bar and exited the premises. Q: When you went into the establishment, did you see anybody else behind the bar when you first went in? A: Yes. Q: Is that person present here today? A: Yes. Q: Could you point him out? A: Yes, the gentleman with the white beard over there (pointed to Peter Kenney). Q: The person who actually served you the beer? A: Yes, it would be the Licensee. Q: Could you describe him for us please? A: Tall, heavy set, brownish-white hair. Q: How many people were in the bar that night? A: 25-30. Q: And there was a band playing? A: Yes. Q: Were they actually playing music at the time you went in? A: Yes. Q: Were there any lights on the band at that time? A: The lighting in the establishment seemed rather bright white lights specifically focused on the band. Q: And how much again did you pay for the Bud Lite? A: \$3.25. Q: Did you pay with exact change? A: Exact change. Q: You stated that the Licensee placed the beer on the bar; how far away did you have to reach to pick it up? A: No more than arm's length as any other establishment. Q: Did you have any conversation with the person that served you? A: No. Q: Did he hesitate at all when he served you the beverage? A: Didn't seem to, no. Q: Did you have any conversation with anyone else? A: I did not. Q: Did anybody confront you as you bought the beer or tried to leave? A: No they did not. Q: What did you do with the beverage after you picked it up? Placed it back on the bar next to a pillar. Q: Did he ask you for an ID at all? A: No, he did not. Q: About how long were you inside? A: Approximately 3 minutes. Officer Maher: thank you, no further questions. .

Mr. Hoxie then asked if the Licensee if he would like to ask the officer any questions.

Mr. Power asked how many people Officer Marshall stated were there – he had stated 25; there were 13. Mr. Power said to him Q: that he left the beer on the bar and paid \$3.25 in exact change to me? A; Yes. Q: Mr. Power asked if he could identify the gentleman who was going to be the witness? A: Officer Marshall said he could. Mr. Power stated that would be all.

Mr. Hoxie then asked the Licensee if he would like to testify and respond to the allegations. Mr. Power came forward again, stating he did see a problem with not

having the original hearing in evidence. He said the price of the beer he had to ask for at the prior hearing. Officer Marshall actually stated that he paid \$3.25 for the beer. I had to be asked how much the beer was as well as in the previous cases where in the other stings they had the price of the alcohol purchased. It wasn't known what the price of the beer was.

Mr. Geiler said he was not sure he understands that. Mr. Power stated in the previous hearing they talked about how much the beer was but it wasn't stated how much the beer was by Officer Maher. And this is when Officer Marshall was not present.

Mr. Geiler said he thinks what Mr. Power is saying is that Officer Maher didn't testify himself; he knows that information was in the police report. He then asked Mr. Power if this is different from other cases coming before the Board. Mr. Power stated he watched the cases on video. Mr. Geiler asked how it affects this case. Mr. Powers stated he (the officer) did not know the price of the beer at my establishment until after the other hearing had taken place and Mr. Power had testified the price. He stated a ten dollar bill had been left but now they are stating exact change was left.

Mr. Power stated the band Strangeways was playing. I was behind the bar and noticed the two people walk in (one being Officer Marshall here) and the other one is not present. They went towards the back of the bar – he said he noticed them right away; and knew something was up because of their nervousness and particularly Officer Warmington tipped him off as he has a young face so he thought of three options - he thought they might steal the guitars hanging in the back, or attempt to purchase a beverage – which meant they were either underage or they were police in a sting, as they looked too young. Mr. Power said he moved to the bar to wipe it down to keep an eye on them. He was behind a pillar before. He stated Officer Marshall did order a Bud Lite. He knew right then there was something up (knew he was a cop because of the way he stared at me rather than someone too young who would not be so confident) and said he got out the beer and opened it, putting it up behind the taps and said when we had asked him previously what he was going to do with it he stated he planned to either pour it out or to give it to his friend Colin in the band who he knew was coming in a while and that is all he ever orders, and just wanted to mess with the cop a little as he was so obvious. He said he had it BEHIND the taps and the pastries in a glass covered dish so it actually somewhat obscured from the normal "serving" area, his "on deck position." He stepped back for a second, looking to his left and Officer Marshall looked at me, looked at the beer, then impatiently reached over with his left hand and grabbed the beer, slid it down the bar, spilling it all over the bar. Officer Warmington took a picture with a grey metallic silver camera phone (upright not sideways like a camera) and they then walked out. The beer was left on a table. Mr. Powers walked forward to stop them and the guitarist stepped down from the stage in front of the front door and by eye contact asked Mr. Power if he should keep them inside. Mr. Power indicated to let them go. He stepped back up. All this took three minutes. I do have a witness, Mr. Kenney, who is here today to testify but the band members could not be here today and in any case did not see exactly what was going on; the singer thought he had an

underage person trying to steal a beer. Mr. Power did not ask them if they saw the flash.

Officer Maher questioned Mr. Power. Q: Did Officer Marshall order an alcoholic beverage from you? A: He asked me for a Bud Lite, yes. Q: What did he order? A: He asked me for a Bud Lite. Q: Did you open the Bud Lite? A: I did open the Bud Lite. Q: Did Officer Marshall take the beer from where you set it down? A: He took it from where I set it down behind the bar. Q: Yes or no questions, ok?. A: Yes. Q: Did Officer Marshall ask you for the price of the beer? A: No. absolutely not. Q: Did he pay you for the beer? A: There was money on the counter. Q: Did you refuse to serve him? A: I tried. Q: How did you refuse to serve him? A: I was not given the opportunity. Q: Did you stop him from picking up the beer? A: I could not. Q: Why? A: In the time he grabbed the beer it was only a few seconds. Q: Did you stop him from leaving the money on the counter? A: I could not as well. Q: Why not? A: Well, what would I do, throw the money at him? Q: Did you ask for an ID? A: I did not have the opportunity. Q: You had him ask for a beer, you opened the beer, but you didn't ask for ID, yes or no? A: Yes. Q: You didn't ask for ID? A: No, I did not have the opportunity.

Mr. Hoxie asked if the Commissioners had any questions of the Licensee. Mr. Burman? Do we have any other witnesses? Mr. Power stated he did, Peter Kenney..

Peter Kenney of West Yarmouth appeared saying he was a friend of Mr Power who was in the bar before, during and after this incident. He said he was appalled; shocked, stunned and appalled at what he has heard this morning. He stated it wouldn't take too much trouble to retrieve the record of the last hearing and there was a substantial conversation in the last hearing about the price of the beer which he believed came out to \$3.50 not \$3.25. He stated from the beginning what I saw was two individuals enter the premises ; I was NEVER, repeat never, n-e-v-e-r behind the bar; I was standing where I am often found there at the extreme back end of the bar. In fact I never saw this Officer clearly until he was leaving the bar. I saw his hands and the back of a head and I saw the reach for the beer – it was a considerable reach. The beer was never presented to this officer; it was placed well out of reach of anybody standing at the main service area of the bar. As you can see he is a long individual and used that entire length to reach the beer, drag it across the bar – the bar is individual tiles, bumping it along the bar, spilling it as he went, turned around and held it up for the other officer. I can't honestly say who took a picture but somebody did, it could have been somebody else, but there was definitely a flash. He threw a \$10 on the bar; he did not pay with exact change. At the last hearing, the police department didn't know what the price of the beer was in that bar. The record will show that. In fact, Officer Maher asked Mr. Power the price of the beer and after consulting some paperwork Mr. Power stated the change was right. He said the CHANGE was right. My reading of the regulations for the stings is that the only money the officers may carry is the money issued by the Police Department for that purpose; they may have none of their own. Yeah, the CHANGE was right. Mr. Kenney stated I saw what happened and I take no joy in saying this but what I saw is dramatically different from what I heard during the first

hearing and even more so from the police department at this one today. I'm also, I think, able to read, isn't there something in the regulations saying the undercover office should remain on premises for a while? Not lunge across the bar, grab a beer that had not been served to him, hold the beer up for someone else to see, slam it down and leave putting the \$10 bill on the bar. Not \$3.25. In my opinion, there was no transaction. Did he come in? Yes. Was he alone? No, he was in the company of somebody else. Did he ask for a beer – yes. Was he SERVED a beer? No. Was he asked for an ID? No; there wasn't the opportunity. It was lean, grab, show and run. That is what happened and I'll submit that the still available record of the original hearing is going to raise more questions than it answers. One more thing; at the previous hearing Officer Maher stated he was watching this from outside in a cruiser; it doesn't work. The only location for anybody to see any of the interior of the bar at all is if they were parked right out front with the driver's window centered on the front door. And I can assure you that since the band plays in the front window next to the front door with another window on the side of the front door in a place as small as the Black Spot if there were anybody parked out front, let alone a marked police cruiser, everybody would see it. As I said before I'll say again, I am appalled by what I have heard and it gives me no pleasure at all to say that.

Officer Maher then questioned Mr. Kenney. Q: When did you enter the Black Spot that night? A: Approximately 7:00. Q: Approximately when was the incident? A: About 9-10. Officer Maher said it was 11:00. Q: Had you had anything to drink that night? A: A couple glasses of wine. Q: From the time you came in until that time? A: Correct. Q: Could you describe the area where you were when this happened? A: The bar is in a long narrow building and runs along the long side from 15' inside the front door nearly to the rear wall. It's open on the short side back and front so you can go behind the bar from the front or the rear of the space. There is a return at the back of the bar with a couple of stools there and that is kind of where I hover when I'm there. There are also two public computers facing the rear wall and immediately behind that point in the bar. Q: Were you sitting at a table or at the bar that night? A: I was standing at the end of the bar. Officer Maher, no other questions.:

Mr. Hoxie asked if the Board has questions. Mr. Burman asked the owner about his lack of asking for identification and asked him if Is it the normal procedure to open a drink prior to asking for ID? Mr. Power stated actually NO, the intention was to be brazen and cocky and get the beer out, not to serve him. The intention was to point out to the officer that he knew he was doing something. He said he had knowledge that it was a sting at this point from their actions. He said he was actually laughing at him about the way it was done behind the pillar. He apologized and stated he does take it very seriously but the way it was done was laughable; not trying to castigate anyone here – just trying to state what happened. I did not intend to give this person the beer. He also stated with regard to how long Mr. Kenney was there to get at how much he had drunk, we also serve a lot of coffee, and Peter incessantly uses the computer all night, watches T.V., etc., they talk about things and watch the people; he is not a person who drinks heavily there.

Officer Maher stated this comes down to sale and furnishing.

Mr. Geiler asked Mr. Power about there not being an opportunity to ask for ID. Why not? He stated he did not understand. Particularly if he knew the person was up to something. Why did he open the beer? Mr. Power stated the question was asked did I or did I not ask for an ID. The question to me is actually moot as I actually knew they were policemen so I was being cocky and should not have opened it or confronted him right away. Mr. Geiler stated all the more reason NOT to get the beer I would think. Mr. Power stated that's true. Mr. Geiler asked him to explain why there was not an opportunity and particularly if he suspected this person might be underage or it might be part of a sting...Mr. Power stated he was being brazen and cocky as he said and he made a mistake opening it; it was one of those "example" things, like Oh yeah? He had no intention of serving it to the officer. Mr. Geiler asked if it was not the whole point of this activity to determine whether or not the law that prohibits service of alcohol to a minor is being upheld? Mr. Power answered yes. Mr. Geiler stated then that it seems pretty simple to him. For you to say you didn't have the opportunity to ask him for ID, is that really true? Couldn't you have asked him before you went and got the beer? Before you opened the beer? Before you set it on the bar? Mr. Power interjected, before I set it on deck? Mr. Geiler said which is on the bar right? Mr. Power said that he admitted previously in the other hearing that it was a mistake for him to do that first. I did say that. I had no intentions of serving; I wouldn't have minded throwing it at him actually. I was going to pour it out or give it to Colin who was 5 minutes down the road. He usually comes in the back way. I was expecting someone else anyways so the point of opening the beer did not seem like an issue to me.

Mr. Sullivan asked again about the money issue saying here is no question there was some money put on the bar. Mr. Power stated the officer placed the money at the pillar. It was a \$10 bill. He said he had to be reminded of that when he commented later – I can't believe they did it that way. And someone reminded him he had stated at that point do I have to give this back or do I get to keep it as idiot tax? That's what I said. He said he still owes the Town the \$10.00. Mr. Sullivan asked again if it was a bill, no change; Mr. Power said yes it was a bill no change. Mr. Sullivan then asked if he kept the bill. He said he had no-one to give it back to. There was no change made. He was gone. Mr. Sullivan stated to Mr. Power that he indicated he knew right away something was odd here. Mr. Sullivan stated Mr. Powers seems to be very alert and cognizant and a bright Licensee. He then asked why he did not keep that bill for fingerprints, etc. Mr. Power said he did not think about serial numbers or keeping the bill for his defense. He thought it so completely ludicrous. Mr. Sullivan asked if he went to the seminar – he said he could not as he has 2 children he takes care of during the day so his wife can work, but went to the ABCC web page to learn everything on his own.

Mr. Burman asked Officer Maher about the money part asking if they are given a certain amount of money and after they come out of each establishment they write down what they spent, and if that is checked at the end of the night...and Officer Maher stated they came out having given the officer \$3.25 for this stop – and said if he had left \$3.25 here his money came out right. He asked Officer Maher if the \$10 bill is questionable; Officer

Maher said yes it is. Mr. Sullivan asked Officer Maher again about the procedure that the officer is given a certain amount of money...how do you do that? Is it all bills and change or what? Officer Maher stated they start with \$20 bills and as they go along through the night obviously there is change accrued. In this case that is why Mr. Marshall was able to pay with \$3.25 exactly. Mr. Sullivan asked as a matter of curiosity if they are told no tips. Officer Maher stated that is correct. Mr. Sullivan then asked Mr. Power if he heard the testimony of the Officer that he put \$3.25 on the bar? Mr. Power answered yes. Mr. Sullivan asked if he was saying that's not true. Mr. Power stated yes, I am saying he is lying. He went on to say he would like to address what Mr. Sullivan is saying about the seriousness of this; if at that point I had already established that he was a policeman and was being a jerk, if somebody had come in and I did not think that they were police, or suspected something, I normally ID people. I would have done the whole thing differently had I not already determined I was being stung and identified them as cops by their actions.

Mr. Geiler asked his current procedure – Mr. Power stated now everyone must present ID, with grey hair and of all ages; I now have a sign up also that I he looks at ID and don't like it I say I cannot accept it. If someone looks 35 and does not have ID I do not serve them. I now realize I left myself open to what has happened here. I also have a camera out back now and am getting a camera for the serving area so I can film what takes place.

Mr. Sullivan asked about the pictures taken; Mr. Powers said he is dead certain a phone camera operated by Officer Warmington took a picture of Officer Marshall when he grabbed the beer turned around and posed and raised it up. He got a glimpse the phone camera at waist level when Officer Marshall moved. Mr. Powers stated the photo was taken just before they left the bar. Mr. Sullivan stated asked if it was a cell phone and Mr. Powers held his up showing the orientation of the "camera" used...it was upright like an open cell phone not rectangular with the long side width wise like a camera. Mr. Sullivan stated this is the only time he has heard of any pictures being taken in one of the stings. Mr. Powers stated he saw what he saw here. Mr. Geiler asked if there was And the police had it, where is it? Mr. Powers answered he didn't know. Mr. Geiler stated, well think about it; wouldn't they have brought the picture in?. Is it possible a car drove by and something reflected off it? Mr. Powers said no, it was a camera phone. Mr. Geiler then asked, how the "camera" would impact the sale or delivery of an alcoholic beverage to a minor. Mr. Powers stated, it doesn't; I gave my testimony as I saw it.

Mr. Hoxie asked Officer Maher to sum up.

Officer Maher stated the Manager states he knew it was a sting – although he knew it was a sting he takes the order, he opens the beer, he lets Officer Marshall pick it up. His testimony states there was money on the bar. He never asks for an ID, most importantly. Officer Marshall testified as to the price of the beer; it has nothing to do with any testimony I gave today. The bottom line is he furnished an alcoholic beverage to someone under the age of 21 and also during his testimony he claims he made a

mistake; almost every other manager who came before us stated he made a mistake. The bottom line is he furnished an alcoholic beverage to somebody under the age of 21. Thank you.

Mr. Hoxie asked the Licensee to sum up.

Mr. Powers stated he can only say what he did; if everyone else claimed they made a mistake; the problem is the character of the word mistake. My mistake specifically was in laying himself open to a poorly executed sting; not that of I made a mistake and did not ID someone under 21. I can only say that I did not let him take the beer; I did not let him pay for it; I let him go thinking he was a cop. If it had been an actual event, which is what this is all about – making sure people adhere to the law - I would not have even put the beer behind the pillar. I don't like this at all. I didn't intend to serve. I do not serve anyone under 21; I have a reputation for that. This whole thing has been very embarrassing.

Mr. Hoxie closed the hearing for testimony.

Mr. Burman stated he is concerned as this hearing was called off for 12 weeks because we were requested to have the officer here. He stated Mr. Power had that time to give us some sort of explanation and follow up on the camera question; we can't discuss it because we know nothing about it. If the police department had taken it, I believe it would be in evidence because that certainly was *prima facia* evidence that there was a violation. Beyond that, you (Licensee) self-admitted. As a businessman, you do not open up a bottle of beer before you know you have a customer. It just doesn't make any sense to me. Mr. Sullivan stated it is his impression when this person came in he asked for a beer, the beer was provided and money put on the bar. There is an issue of where it was placed, but to me that meets the criteria of serving. There was also money put down but some issue about the amount. Clearly from the testimony heard the Licensee kept the money. It was procured, purchased and paid. That's the way I understand it.

Mr. Hoxie stated that if we are to believe everything that the Licensee says, and there is no reason not to believe him, his testimony shows that he used very poor judgment. Number one he stated he was brazen and cocky. That is not, certainly, what a Licensee should do when it comes to someone entering the establishment underage. He also stated in his testimony it was a poorly executed sting and \$10 was left. Why in the world wouldn't anyone call the police that night and tell them they had executed a poor sting and ask them to come and get their \$10? He said in his opinion the Licensee used poor judgment in opening the beer, not initially asking for ID, and I will entertain a motion.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote was taken as to findings as follows: 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 July 26, 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 were no violations on file for this establishment.

A motion was duly made by Gene Burman and seconded by Paul Sullivan, adding the Licensee is well aware of the procedures and has reviewed the ABCC regulations as well, and a unanimous vote taken to adopt the findings.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken as to guilt of the Licensee.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken as to sanctions on the Black Spot Café Bar, 10 Ocean Street, Hyannis, Micah Power, Manager. that on July 26, 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.: Mr. Burman moved that the sanctions be a two day suspension with one day to serve on 7/26/09 and one to be held in abeyance if no further Ch. 138 violations occur within that timeframe..

**Renewals:**

**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 Common Victualler All Alcohol renewals as submitted below:

**Common Victualler All Alcohol:**

Five Bays Bistro

Ardeo  
Asa Grill & Reputation  
Barbyann's  
The Black Spot Café Bar  
Bobby Byrne's  
Brazilian Grill  
British Beer  
Colombo's Café & Pastries  
DJ's Wings 'n Things  
Hannah's Fusion Bar & Bistro  
The Island Merchant  
Mallory Dock  
North Street Steakhouse & Sports Bar  
The Naked Oyster  
Pavilion Indian Cuisine  
Roadhouse  
Roobar  
Sam Diego's  
Schooner's  
Tiki Port  
Uno Chicago Grill  
Kettle Ho  
Regatta of Cotuit  
99 Restaurants/Pubs  
Bud's Place  
The Dockside  
Embargo  
Harry's  
Misaki  
Nineteenth Hole  
Ristorante Barolo  
TGI Friday's  
Tommy Doyle's Irish Pub & Restaurant  
Up the Creek Again  
Sweet Tomatoes Osterville

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

**Common Victualler Beer & Wine:**

Pinocchio Pizza  
The Daily Paper  
Perry's Main Street Deli  
Thai House

Restaurant Prato Per Feito  
Scottie's Famous Pizza  
B2 Burrito Bistro  
La Petit Maison  
Pizza Wave

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

**Club All Alcohol:**

Wianno Club – Seaview Ave  
Wianno Club – Parker Road  
Cummaquid Golf Club  
Hyannisport Club  
Cape Cod Lodge OSIA – Sons of Italy  
Hyannis Anglers Club  
Hyannis Elks  
King's Grant Racquet Club  
Osterville Veteran's Assn.  
Wequaquet Lake Yacht Club

A motion was duly made by Mr. Burman and seconded by Mr. Sullivan and a unanimous vote taken to approve the General On Premises All Alcohol renewals as submitted below:

**General on Premises:**

Quarterdeck Lounge  
Pufferbellies  
Puff the Magic

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

**Innholder All Alcohol:**

The Greenhouse Restaurant  
Radisson Bistro  
Courtyard by Marriott  
Resort & Conference Center at Hyannis

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:**

JMR Honda  
Tracy Audi/Volkswagen  
Everett H. Corson, Inc.  
Saturn of Hyannis  
Hyannis Toyota – 1020 Iyannough Road  
Coastal Trailer Sales  
Balise Hyundai  
Balise Nissan  
Puritan Motors

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:**

Robert's Auto Wholesale  
Rotary Collision Center  
Joe's Auto Sales  
Argus Auto Sales  
Dick Garbitt Investment Autos  
Wheels to Work  
MBM Auto – 500 Yarmouth Road  
Huhtanen's Auto Sales  
Barnstable Auto Exchange  
Davis Auto Sales  
Auto Smart  
Cape Cod Auto Connection  
West Main Auto  
Hyannis Toyota – 756 Bearses Way  
Route 66 Auto Sales  
Action Auto Sales  
DeVincent Auto Brokers  
Hyannis Auto, Inc.  
J&J Auto Sales

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

**Class III Auto Dealer:**

Blackburn's Auto Salvage (cont'd from 12/8/08)

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:**

Park Square – 164 Main \  
Park Square – 156 Main \ All Mark Sheehan  
Rosebud Trust /  
Westwind Trust /  
Country Cottages by the Sea  
Beechwood 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:**

SoleLua  
La Petite France Café  
Subway – 251 Hyannis Road  
Box Lunch  
Old Village Store & Café  
Willow Pizza  
Pain D'Avignon

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

**Automatic Amusement/Video Games:**

Bobby Byrne's  
Quarterdeck Lounge  
Ryan Family Amusements  
Bud's Place  
Hyannis Anglers Club  
Hyannis Elks  
Nineteenth Hole  
Resort & Conference Center at Hyannis  
Up the Creek Again

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

**Pool Tables**

Quarterdeck Lounge  
Hyannis Elks  
Nineteenth Hole  
Osterville Veteran's Assn.

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

**Daily Live Entertainment:**

Asa Grill & Reputation  
The Black Spot Café Bar  
Brazilian Grill  
British Beer  
Hyannisport Club  
The Island Merchant  
North Street Steakhouse & Sports Bar  
Radisson Bistro  
Roadhouse  
Roobar  
Schooner's  
Uno Chicago Grill  
Cape Cod Lodge OSIA – Sons of Italy  
Bud's Place  
Courtyard by Marriott  
Embargo  
Harry's  
Hyannis Anglers Club  
Hyannis Elks  
Pufferbellies  
Puff the Magic  
Resort & Conference Center at Hyannis  
Ristorante Barolo  
Tommy Doyle's Irish Pub & Restaurant  
Up the Creek Again  
Wequaquet Lake Yacht Club

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:**

Asa Grill & Reputation  
The Black Spot Café Bar

Bobby Byrne's  
British Beer  
Hyannisport Club  
Mallory Dock  
North Street Steakhouse & Sports Bar  
Quarterdeck Lounge  
Schooner's  
Ryan Family Amusements  
Regatta of Cotuit  
Bud's Place  
The Dockside  
Harry's  
Hyannis Anglers Club  
Hyannis Elks  
Nineteenth Hole  
Pufferbellies  
Resort & Conference Center at Hyannis  
TGI Friday's  
Tommy Doyle's Irish Pub & Restaurant  
Up the Creek Again  
Osterville Veteran's Assn

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:**

Asa Grill & Reputation  
The Black Spot Café Bar  
Bobby Byrne's  
British Beer  
Hyannisport Club  
Mallory Dock  
North Street Steakhouse & Sports Bar  
Quarterdeck Lounge  
Schooner's  
Ryan Family Amusements  
Regatta of Cotuit  
Bud's Place  
The Dockside  
Harry's  
Hyannis Anglers Club  
Hyannis Elks  
Nineteenth Hole  
Pufferbellies

Resort & Conference Center at Hyannis  
TGI Friday's  
Tommy Doyle's Irish Pub & Restaurant  
Up the Creek Again  
Osterville Veteran's Assn

**Business Meeting:**

Discussion about the State Safety Certificate for West Barnstable Deer Club – Mr. Hoxie stated that the Board would call a special meeting to accommodate them to renew.

Discussion regarding suspension penalties. Mr. Geiler asked what the Board would recommend. Mr. Burman suggested we get together with Legal to modify regulations to act on the sanctions for 2009. Mr. Geiler stated there have been several inquiries about dates and days of the week, etc. It is his opinion if they want to get something in the Board would consider it.

Mr. Burman thanked the

Adjourned at 11:02 am review the Board can then act on it.

Respectfully submitted,

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Christine P. Ade, Recorder  
Town of Barnstable Licensing Authority

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Paul Sullivan, Clerk  
Town of Barnstable Licensing Authority