



# Town of Barnstable

## Regulatory Services

Thomas F. Geiler, Director

### Licensing Authority

200 Main Street

Hyannis, MA 02601

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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.

November 16, 2009

A regular meeting of the Barnstable Licensing Authority was held on Monday, November 16, 2009. Chairman Martin Hoxie called the meeting to order at 9:30 A.M. He introduced Gene Burman, Vice Chairman; Paul Sullivan, Clerk; Dick Boy, Associate Commissioner, 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 & Sunday Entertainment Licenses:** Application of Tanya Vincent for Coastal Dance Co., 49 John Maki Road, Sandwich, MA, to conduct performances of The Nutcracker on Friday, December 11, 2009 (for school children only – not open to the public) and on Saturday, December 12, 2009 at 4:00 pm and Sunday, December 13, 2009 at 2:00 pm at Barnstable High School Performing Arts Center, West Main Street, Hyannis, MA.

Mr. Vincent appeared for this request. This is the 24<sup>th</sup> annual Nutcracker event they have been holding for years at the High School. The admission is the same as last year's performance. The school kids get to go for free on the Friday.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Tanya Vincent for Coastal Dance Co., 49 John Maki Road, Sandwich, MA, to conduct performances of The Nutcracker on Friday, December 11, 2009 (for school children only – not open to the public) and on Saturday, December 12, 2009 at 4:00 pm and Sunday, December 13, 2009 at 2:00 pm at Barnstable High School Performing Arts Center, West Main Street, Hyannis, MA.

**One Day Entertainment and Request to Close:** Application of Danielle Siscoe for Wimpy's, 752 Main Street, Osterville, MA, for a One Day Entertainment license for Friday, December 11, 2009 for Michael Hennessey and Erica to play with a keyboard at the Christmas Stroll at Wimpy's, and for permission to close the restaurant for annual maintenance and cleaning.

Danielle Siscoe appeared for her requests. Last year they had great success with Mr., Hennessey and want to do it again. They also want to close from January 4<sup>th</sup> through February 9<sup>th</sup>.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Danielle Siscoe for Wimpy's, 752 Main Street, Osterville, MA, for a One Day Entertainment license for Friday, December 11, 2009 for Michael Hennessey and Erica to play with a keyboard at the Christmas Stroll at Wimpy's, and also for permission to close the restaurant for annual maintenance and cleaning from January 4, 2010 through February 9, 2010.

**New Junk Dealer License:** Application of Cheryl A. Dumont, d/b/a Main Street Consignment Home Furnishings, 832 Main Street, Osterville, MA, Cheryl A. Dumont, Manager, for a Junk Dealer License, hours of operation 9 am to 4 pm, Monday - Saturday.

Mr. Burman recused himself from this hearing.

Cheryl Dumont appeared for her request. She brought photos of the types of things she plans to sell. This is a new business. She said the Fire Department has come by and she has her Business Certificate. Has her DOR paperwork and a copy of the agreement for her consigners. She does not plan to sell any of the "regulated" items – no jewelry or tools or electronics, mostly secondhand furniture and home decor.

A motion was duly made by Paul Sullivan, seconded by Dick Boy and a unanimous vote taken to approve the application of Cheryl A. Dumont, d/b/a Main Street Consignment Home Furnishings, 832 Main Street, Osterville, MA, Cheryl A. Dumont, Manager, for a new Junk Dealer License, hours of operation 9 am to 4 pm, Monday – Saturday.

**New Junk Dealer License:** Application of Deborah D'Agostino, d/b/a Second Hand Rose, 217 Main Street, Hyannis, for a New Junk Dealer License, hours of operation to be 10 am to 4 pm.

Deborah D'Agostino appeared for her request. She said her business is already in operation, she held a Transient Vendor License last year. She does not sell sports equipment or secondhand jewelry; just handmade jewelry, antiques and home furnishings and decorations.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Deborah D'Agostino, d/b/a Second Hand Rose, 217 Main Street, Hyannis, for a new Junk Dealer License, hours of operation to be 10 am to 4 pm Tuesday through Saturday.

**New Junk Dealer License:** Application of Valquiria F. Wood, d/b/a The Second Coming Thrift Shop, 255 Main Street, Hyannis, MA, Valquiria F. Wood, Manager, for a Junk Dealer License, hours of operation 10 am to 4 pm.

Mr. Burman recused himself from this hearing as he was involved with rental of the space.

Valquiria Wood appeared for her request. This shop used to be in Dennisport. It is mostly clothing and accessories. Mr. Sullivan asked what days of the week she is open. It is Monday through Saturday.

A motion was duly made by Paul Sullivan, seconded by Dick Boy and a unanimous vote taken to approve the application of Valquiria F. Wood, d/b/a The Second Coming Thrift Shop, 255 Main Street, Hyannis, MA, Valquiria F. Wood, Manager, for a new Junk Dealer License, hours of operation 10 am to 4 pm Monday through Saturday.

**Show Cause Hearing:** Show Cause Hearing for MBM Auto Sales, 500 Yarmouth Road, Hyannis, Irena Zinov, Manager, based on a report from the Barnstable Police Department based on vehicle counts and inspections on September 16, 2009 (35 vehicles), October 1, 2009 (40 vehicles) and October 7, 2009 (25 vehicles), it had more vehicles on site than its license permits (23 vehicles permitted by license), and further that it is repairing vehicles on site which is expressly prohibited by zoning at its location.

Officer Steve Maher advised that on September 16<sup>th</sup> he conducted inspections of all auto dealers in Town. He counted 35 at MBM and they are allowed only 23. Because they were over he counted again on October 1 and found an overage; went again on the 7<sup>th</sup> and again found more than allowed. He stated they have been in before for the same infraction. He stated he was also given a report from Tom Perry provided to him by Chris Ade showing they are doing repairs which are not allowed at this location. Officer Maher stated he counts the vehicles early am (1:00) and it is the count of total vehicles on the lot that he counts as they are authorized 23.

Ms. Zinov stated that yes, they were here last year; since then they have tried to pay attention to the number of cars. She stated on those dates she could explain it because a transporter from auction brought some cars in at night when they were not there. When they come in the morning the cars are "sorted out" – some go to their 2<sup>nd</sup> location and some to repair shops. Some have plates; some had already been sold. She stated that it why they are there. She stated they did have an inspection by town hall people – they do only brake pads and brake repairs; they do have stock of oil as many of the cars from auction come with no oil and they need to add it to move the cars around.

Mr. Hoxie asked if their license prohibits repair; she stated it does. Mr. Hoxie also asked her if she realizes they can only have 23 cars total; she replied that she knows that but sometimes at night they are delivered.

Officer Maher stated he wondered why they are dropping off the vehicles at this location rather than the other location which has more vehicles allowed at it. She stated it does not happen that frequently. He asked that of the 3 times maybe once was a drop off; the other were customer cars. Mr. Burman stated their marketing brochure provided in the paperwork from Tom Perry states that their services include free oil change, air conditioning service and all types of repairs – all at 500 Yarmouth Road. Does she have an explanation? She stated they do have computer testing. She then said there is no contamination from brake repair or air conditioning – for engine repairs and oil changes they have a contract with CARZ. Mr. Burman stated having all the repair materials on their site does not quite ring true. She stated there was some metal and oil there – they dispose of junk cars and old engines etc. in Middleboro.

Mr. Burman asked when they were first in and for what complaint – it was the same complaint before – too many vehicles and was last year. He stated photos 12 and 13 show auto repair items – oil filters, brake fluid, etc., fan belts, charging units, etc. which all indicate repair. The shelving states “spare parts.” Steve Maher indicated the round black thing in the photo goes under a vehicle. He disagrees that there are no repairs being done on premises. Batteries, antifreeze, radiators and a vehicle on a lift show there are repairs going on there. Officer Maher stated that working this shift for many years and counts of cars; he stated there are 6 – 7 on that street. He has never seen a carrier drop off cars after midnight.

Mr. Hoxie asked if she is aware why her license is restricted for repair – she said yes there is a wellhead. She said she cannot argue except to ask why they cannot do small repairs inside. Mr. Hoxie stated they would need to come in and request to amend their license. She has her husband and two other employees – 2 full time and 2 part time working there. Mr. Hoxie asked how they are doing – she stated o.k. but a little slow. He asked if punitive action took place last year; she stated there was a warning. She asked why the police do not come in the daytime so they can speak to them instead of drawing their own conclusions. She said the transporter comes at night. She stated they have not been over since October 7.

Mr. Sullivan asked if Officer Maher had spoken to the dealers about his findings. He stated he has not. He then asked her how many vehicles the car carriers hold – she stated 10. Mr. Sullivan pointed out that even after the 10 from a transport is subtracted, they were still over. She stated also some sold vehicles may be there. It is a combination of both. Mr. Sullivan stated it seems excessive to him, 17 cars over.

Officer Maher stated the second date (October 1) there were 40 and 32 at 115 Lyannough Road. Even using this argument it puts her over on both lots if you add the two. The argument does not hold water. Officer Maher stated the license states total vehicles. Each business should be run separately. Now there is a question of whether these businesses are being run together. Mrs. Zinov stated their records are kept properly and they are separate for each location. Mr. Hoxie asked for recommendations from Officer Maher. He recommended a 14 day suspension with 3 days to be served and the rest to be held pending any further violations.

Mrs. Zinov had nothing to say about the proposed sanction.

Mr. Geiler asked about the photos – asking if they represented what is at the location? She stated it does. He asked what he would see today and she stated that now it is gone. Mr. Geiler stated the Town's drinking water comes from a well near where they are. It is not really the repair causing the problem – it is the handling and storage of potentially harmful chemicals. Containers with no caps, no protection, is high disregard for the water issue. That is critical. He also asked about the auction vehicles delivered – does she ever get vehicles she is not aware are coming? If she knows she has 10 or 20 coming, what steps does she take to reduce vehicles on the property to accommodate them? She then went on to say they did not think it meant at night; only daytime that there had to be 23 there. She stated they do not have transporters come now. He asked what they would do if some were delivered. She stated they would be at the office and arrange for them to be moved to their other location. They were coming to one location and they sorted them out as to which dealership location they would be at. Mr. Geiler asked if the corporation has the same officers. She stated they are the same corporation, same d/b/a just a different location. He asked if they maintain 2 record books; she confirmed they do. If cars are moved they note that in their record books. Mr. Sullivan asked when the photos were taken – Officer Maher stated October 6<sup>th</sup>. Mr. Sullivan stated he finds it amazing all of the equipment and fluids are there when repair is prohibited. Mr. Hoxie asked about repairs on the other location – are they allowed? She stated no.

Mr. Burman stated he thought the photos test the credibility of the witness. Mr. Burman recommended a suspension of 14 days with 7 to be served.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve findings to wit, "the officer's presentation and photos convince me that the licensee is in violation on all four counts as stated in the complaint." Mr. Sullivan seconded the motion amending it by finding it is not contested as to the numbers of vehicles on the lot on the days in question (September 16, October 1 and October 7) – and the license authorizes 23 vehicles. He also found that the photos submitted by the Building Department indicate there was extensive auto repair and work done on cars which was not disputed at this location, and this is a violation. Mr. Burman seconded the amended motion, and it was unanimously approved.

Mr. Geiler wanted to clarify that the license should state there should be no more than 23 vehicles on display but it should state 23 total vehicles outside and no repairs or storage of hazardous materials, etc. right on the license. Mr. Sullivan stated the licenses need to be more detailed as to what cannot be done here.

A motion was duly made by Gene Burman, seconded by Paul Sullivan, and a unanimous vote taken to approve sanctions of 14 days with 7 days to serve on MBM Auto Sales, 500 Yarmouth Road, Hyannis, Irena Zinov, Manager, based on a report from the Barnstable Police Department on vehicle counts and inspections on

September 16, 2009 (35 vehicles), October 1, 2009 (40 vehicles) and October 7, 2009 (25 vehicles), that it had more vehicles on site than its license permits (23 vehicles permitted by license), and further that it is repairing vehicles on site which is expressly prohibited by zoning at its location, of guilty on all violations.

Mr. Sullivan stated he can understand the recommendation of Commissioner Burman for sanctions but would himself recommend for discussion the 14 day suspension with 3 days to serve because of the economy at present. Mr. Burman stated the reason he is saying 7 days is because it will really be painless for them as they will refer them to the other location. It is one of those things where having 2 licenses help them out.

A motion was duly made by Paul Sullivan with regard to the complaints that the license of MBM Auto Sales, 500 Yarmouth Road, Hyannis, Irena Zinov, Manager, based on a report from the Barnstable Police Department on vehicle counts and inspections on September 16, 2009 (35 vehicles), October 1, 2009 (40 vehicles) and October 7, 2009 (25 vehicles), that it had more vehicles on site than its license permits (23 vehicles permitted by license), and further that it is repairing vehicles on site which is expressly prohibited by zoning at its location be suspended for 14 days with 3 days to be served, that a 14 day suspension be approved with 3 days to serve and the others held for the 2010 license period, recommending those days be Thursday, Friday and Saturday. Mr. Hoxie asked what the busy days are and she stated Monday, Wednesday, Friday. Mr. Sullivan changed his motion to be Wednesday, Thursday and Friday of this week.

Mr. Burman asked Mr. Geiler if there are any specific guidelines for suspensions and appeals. Mr. Geiler stated just based on the testimony and evidence presented. The appeal would be court. Mr. Geiler stated any licensee has the right to appeal so immediate suspension should be used only for imminent danger to the public.

Mr. Hoxie stated the suspension should be 14 days to be served December 2<sup>nd</sup> through 4<sup>th</sup> – the other 11 days not to be served unless there is a violation in the future for the period of 2010 calendar year. Mr. Burman seconded. It was unanimously passed.

Discussion took place about moving vehicles and conducting this business during the suspension at their other location.

Officer Maher stated the only sign on their door should be they are closed for 3 days – not allowing movement of vehicles or the office being open or no business taking place directing them to another location during those 3 days. Mr. Hoxie stated this should be done as recommended by Officer Maher.

**Show Cause Hearing:** Show Cause Hearing AB Auto Sales, 415A Iyannough Road, Anibal Barroso, Manager, based on a report from the Barnstable Police Department based on vehicle counts and inspections on September 16, 2009 (17 vehicles), October 1, 2009 (15 vehicles) and October 7, 2009 (17 vehicles), you had more vehicles on site than your license permits (15 vehicles permitted by license).

Officer Maher stated that on September 16<sup>th</sup> at 12:50 he found 17 vehicles. On October 1, 2009 he counted 15 and October 7 they had 17 as well. They have been before the Authority before for more vehicles than allowed – it is not something new to him. They are also parking vehicles on a lot next door. He was given a warning the one other time. Mr. Barroso stated they have display for 15 and 2 for customers – he stated he might have left his own car there as wife picked him up. They sometimes find a car from Thrifty Rent A Car which has been left there dropped off for Thrifty. On occasion a customer will drop a car off at night for service the next day. He states they have tried to be diligent to keep only the 15 vehicles there. He does not control the Thrifty people. He was here once before about a year ago and got a warning.

Officer Maher asked if the Thrifty cars have plates on them? He stated they usually do. He has no control what is left there at night. Mr. Burman suggested a chain at night so no cars can be left there at night. Officer Maher stated there is also a dealership behind the building and Thrifty's vehicles have a sticker on them. Using the site plan by the town, he tries to check that when counting these vehicles. Mr. Barroso did not know leaving one car of his own was a problem

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken for findings that the allegations are valid and undisputed by the licensee. He also found the licensee to have been before us on another occasion. He thinks the licensee is trying to comply. Mr. Sullivan seconded the motion and unanimous vote was taken to accept the findings.

Findings were proposed by Mr. Burman of guilty on all counts. Paul Sullivan seconded the motion, and there was a unanimous vote to find the licensee guilty of all charges.

A motion was duly made by Gene Burman, seconded by Paul Sullivan, and a unanimous vote taken to approve sanctions on AB Auto Sales, 415A Iyannough Road, Anibal Barroso, Manager, based on a report from the Barnstable Police Department based on vehicle counts and inspections on September 16, 2009 (17 vehicles), October 1, 2009 (15 vehicles) and October 7, 2009 (17 vehicles), you had more vehicles on site than your license permits (15 vehicles permitted by license) of 5 days to be held until the end of 2010, and no days to serve t present.

**Show Cause Hearing:** Show Cause Hearing for Hi-Line Auto Sales, 367 Yarmouth Road, Augusto Netto, Manager, based on a report from the Barnstable Police Department based on vehicle counts and inspections on September 16, 2009 (31 vehicles), October 1, 2009 (31 vehicles) and October 7, 2009 (35 vehicles), you had more vehicles on site than your license permits (26 display vehicles permitted by license).

Jessica Tatara, Officer Manager, appeared for the hearing, she ws representing Mr. Netto. Mr. Burman stated he would like to see Mr. Netto here. Jessica Tatara stated our letter stated he could be represented by someone of his choice.

Officer Maher stated he also discovered on the three dates he was inspecting, that this licensee was over the limit on all three days. All vehicles faced the roadway for sale and none had plates on them – all had the lemon law sticker on them for sale. The license stated the number for display and these vehicles counted were all on display. This licensee has also been before the Board before. Ms. Tatara stated that last year it states 26 for display and 32 total vehicles for overnight. She watched the hearing from last year – some at night are dropped off, etc. and he can have 32 overnight. They have been watching it closely. The stickers are put on when they get them but the papers do rip off if they stay there for a while. Her interpretation was that 32 is allowed at night. She states that the only violation date would be October 7<sup>th</sup> and even then it could be cars dropped off. They received a warning last time.

Officer Maher asked if the stickers rip off when being test driven. She stated if they open the windows the stickers rip off. The vehicles NOT for display are stored anywhere there is space. She may leave her vehicle there overnight. When a vehicle is repossessed does it have a plate? She stated it could be either way. Officer Maher stated he made sure the vehicles he counted more vehicles without plates than allowed by the license. He also stated last year the counts were 42 and 25. Officer Maher stated looking at the building other vehicles may be out back but not counted by him on these three dates.

Mr. Burman complimented Officer Maher for doing a fine job and stated the wording on our licenses is causing some problems.

Mr. Burman proposed findings as stated by Officer Maher in his complaint. The motion was amended by Paul Sullivan of finding of violation on October 7. Gene Burman seconded it and it was unanimously approved as finding of 35 on October 7 and 32 allowed.

Mr. Burman made a motion of guilty, it was seconded by Paul Sullivan and a unanimous vote taken.

A motion was duly made by Gene Burman, seconded by Paul Sullivan, and a unanimous vote taken to approve sanctions on Hi-Line Auto Sales, 367 Yarmouth Road, Augusto Netto, Manager, based on a report from the Barnstable Police Department based on vehicle counts and inspections on September 16, 2009 (31 vehicles), October 1, 2009 (31 vehicles) and October 7, 2009 (35 vehicles), you had more vehicles on site than your license permits (26 display vehicles permitted by license) of 3 days to be held during calendar year 2010; none to serve at present.

Mr. Geiler stated it is now the time to correct the language on this license. Other wise they will have to come back.

Mr. Geiler stated that no repairs or tools associated with repairs allowed and a total of 32 vehicles allowed at all times.

Mr. Hoxie stated it will be a 3 day suspension held in abeyance; no washing cars or repairs or tools on premises and a total of 32 vehicles allowed. The license will be amended to reflect this.

Mr. Burman stated all the license wording must be changed to include the no washing, repairs, tools, etc. and a TOTAL number allowed on each license. Mr. Geiler stated we cannot change these licenses arbitrarily – they need to have notice and be called in to change the licenses.

Mr. Boy asked if they could do the change by mail notification and response? Mr. Hoxie stated we can work that out.

**Renewals:**

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

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the following Class I Auto Dealer Renewals:

**Class I Auto Dealers:**

Hyannis Toyota/Scion – 1020, 1040 & 1056 Iyannough Road  
Land Rover Cape Cod  
Premier Cape Cod  
Everett H. Corson, Inc.  
Cape Cod Lincoln Mercury  
Hyannis Honda  
Hyannis Honda Body Shop  
Trans-Atlantic Motors  
Dick Beard Chevrolet

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the following Class II Auto Dealer Renewals:

**Class II Auto Dealers:**

Hyannis Toyota/Scion – 756 Bearses Way  
Auto Smart, LLC  
American Classic Dream Cars  
Mutual Motors  
Davis Auto Sales  
European Car Service  
Ziggy's Auto Sales  
Ron's Truck Stop

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the following Lodging House Renewals:

**Lodging Houses:**

Sea Beach Inn  
The Mains'l  
The Captain David Kelley House  
The Hillcrest B&B  
Clark, Jean – 961 Pitcher's Way  
Clark, Jean – 975 Pitcher's Way  
Clear, Jean – 989 Pitcher's Way  
Fernbrook Inn  
High Pointe Inn

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the following Common Victualler renewals:

**Common Victuallers:**

Friendly's 736  
Osterville Fish Too  
BJ's Wholesale Club #321  
Centerville Pie Co.  
The Ship's Belle  
Keyes/Sea Street Beach  
Willow Tree Market  
Borders Books & Music  
Mitie's Sushi House  
FAME Food Mgmt. – Cape Cod Community College  
Regina Pizzeria  
Panera Bread  
Hot Diggity Dogs  
Osterville Cheese & Sandwich Shop  
Pizza 1 & Subs 2

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the following Cinema/Theatre Renewals:

**Cinema/Theatre**

CC Mall Theatres

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the following Daily Live Entertainment Renewals:

**Daily Live Entertainment:**

Borders Books & Music

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the following Daily Non-Live Entertainment Renewals:

**Daily Non-Live Entertainment:**

CC Mall Theatres

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the following Automatic Amusement/Video Game License Renewals:

**Automatic Amusement/Video Games:**

CC Mall Theatres

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the following Sunday Entertainment License Renewals:

**Sunday Entertainment:**

Borders Books & Music  
CC Mall Theatres

**Business Meeting:**

Letter to Licensees from BPD. Mr. Geiler thinks it is a good idea to get as much info out there as possible to help the licensees. He would like the BPD to review it with the rules we have. Officer Maher stated these items are in the letter as they have come across these potential violations this summer.

Mr. Hoxie stated the letter includes a notice to licensees that they are going to be conducting a sting in 2010. Mr. Hoxie asked about any more informational seminars; Lt. Jason stated there will be except if there are budget constraints.

Adjourned at 11:03 a.m.

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