



# Town of Barnstable

## Regulatory Services

Thomas F. Geiler, Director

### 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.  
October 1, 2012

A regular meeting of the Barnstable Licensing Authority was held on Monday, October 1, 2012. Chairman Martin Hoxie called the meeting to order at 9:30 A.M. He introduced Gene Burman, Vice Chairman; Paul Sullivan, Clerk; Richard Boy, Associate Commissioner; Thomas Geiler, Director of Regulatory Services and Licensing Agent, Richard V. Scali, Consumer Affairs Supervisor, Lt. John Murphy and Patrolman Steve Maher, Liaison Officers from the Barnstable Police Department, and Christine Ade, Recording Secretary.

**Vote to accept Minutes:** Vote to accept minutes of the 9/10/12 Meeting.

A motion was duly made by Mr. Burman, seconded by Mr. Boy and a unanimous vote taken to approve the minutes of the 9/10/12 Meeting.

#### **Hearings:**

**One Day Beer & Wine License:** Application of Casual Gourmet on behalf of Marvin Design Gallery for a One Day Beer & Wine License for a Chamber of Commerce Business After Hours Event to be held at 73 Falmouth Road, Hyannis, on October 7, 2012 from 5:30 pm to 7:30 pm.

Mary Lyons appeared for this application as a standard Business After Hours event similar to many they have done. They will be applying for their own license soon.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Casual Gourmet on behalf of Marvin Design Gallery for a One Day Beer & Wine License for a Chamber of Commerce Business After Hours Event to be held at 73 Falmouth Road, Hyannis, on October 7, 2012 from 5:30 pm to 7:30 pm.

**New Officers & Directors, New Stockholders, Transfer of Stock, Issuance of Stock:** Application of 99 Restaurants of Boston, LLC, d/b/a 99 Restaurants & Pub,

1600 Falmouth Road, Thomas Hann, Manager, for a Transfer of Stock, New Stockholders, New Officers & Directors & Issuance of Stock.

No-one appeared for the application. Mr. Hoxie stated that he would entertain a motion to approve since it is corporate changes only.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of 99 Restaurants of Boston, LLC, d/b/a 99 Restaurants & Pub, 1600 Falmouth Road, Thomas Hann, Manager, for a Transfer of Stock, New Stockholders, New Officers & Directors & Issuance of Stock.

**New Annual Common Victualler License:** Application of Alice Maria Da Silva, d/b/a Sabor Do Brasil, 461B-4 Main Street, Hyannis, Alice Maria Da Silva, Manager, for a New Annual Common Victualler License for a total of 27 occupants (20 seats, 6 standees and one employee) to be operated from 8 am to 10:00 pm, daily.

No-one appeared for the application. Mr. Hoxie stated that it will be continued to our October 22, 2012 hearing.

**New Annual Common Victualler License:** Application of Elaine Stathe and Yong C. Mavor, d/b/a Elaine and Yong's Bagel Co., 70 Center Street, Hyannis for a New Annual Common Victualler License for a total of 25 seats inside only, to be operated Monday – Sunday from 5 am to 2 pm.

Attorney Mark Boudreau appeared for this application. This is a new annual Common Victualler license – a bagel and deli operation. Same site as Brown Bag Bagels. Capacity 25 seats all indoors. The applicants have over 50 years combined experience.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Elaine Stathe and Yong C. Mavor, d/b/a Elaine and Yong's Bagel Co., 70 Center Street, Hyannis for a New Annual Common Victualler License for a total of 25 seats inside only, to be operated Monday – Sunday from 5 am to 2 pm.

**Alteration of Premises and Change from Seasonal to Annual All Alcohol Common Victualler License:** Application of Lobster Girl Lobster Boy, Inc., d/b/a Raw Bar on Ocean Street, 230 Ocean Street, Hyannis, Elizabeth Westwater, Manager for Alteration of Premises to add the second floor function room to the existing description at the end as follows: The second story includes an 826 sq ft octagon shaped room and staging area with an entrance/exit from/to the second floor hallway. The entire second floor is part of the licensed premises; with a function room having a maximum of 49 seats/standees. Total for building 108 seats, and a change from a seasonal to an annual license.

Attorney Mark Gildea appeared for the applicants. The room being added is for a function room and they are also applying to be an annual licensee.

Mr. Hoxie clarified that they have a seasonal license now – will they be open all winter? Attorney Gildea stated not every day but they will be open in the winter. Mr. Burman stated when they first got the license, there was a major question about entertainment – how will the new room affect this? He stated it will not as the new room is totally enclosed. Officer Maher asked if they have an entertainment license there...he stated it will not have entertainment in it...the entertainment is downstairs.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Lobster Girl Lobster Boy, Inc., d/b/a Raw Bar on Ocean Street, 230 Ocean Street, Hyannis, Elizabeth Westwater, Manager for Alteration of Premises to add the second floor function room to the existing description at the end as follows: The second story includes an 826 sq ft octagon shaped room and staging area with an entrance/exit from/to the second floor hallway. The entire second floor is part of the licensed premises; with a function room having a maximum of 49 seats/standees. Total for building now 108 seats.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Lobster Girl Lobster Boy, Inc., d/b/a Raw Bar on Ocean Street, 230 Ocean Street, Hyannis, Elizabeth Westwater, Manager for a change to an annual license.

**Change of Manager on Annual All Alcohol Common Victualler License:**

Application of Beech Tree Cantina, LLC d/b/a Beech Tree Cantina, 599 Main Street, Hyannis, for a Change of Manager from Caitlyn E. Sweeney to Jared J. Pane.

Jared Pane appeared for this application. Caitlyn is a teacher and cannot stay on as manager. Mr. Hoxie asked if this is the first time Jared has had experience in this field; he stated he has worked at his father's other restaurants. Mr. Burman asked if he had liquor experience as far as service to minors, etc. Jared stated this summer was a great learning experience. He is TIPS trained and has his Serv Safe application. Lt. Murphy stated he has many instances of interaction with Jared Pane and is completely satisfied with his ability to control the premises.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Beech Tree Cantina, LLC d/b/a Beech Tree Cantina, 599 Main Street, Hyannis, for a Change of Manager from Caitlyn E. Sweeney to Jared J. Pane.

Mr. Hoxie stated he might want to stay for the business meeting as there was a complaint received on noise out back.

**New Annual Class II Auto Dealer License:** Application of WAJ Auto Sales, Inc., d/b/a WAJ Auto Sales, 455 Yarmouth Road, Hyannis, MA to move his existing Annual Class II Auto Dealer License to 455 Yarmouth Road, Hyannis. There will be 22 display vehicles of which a maximum of 13 are outside, 2 customer vehicle spaces outside, total of 15 vehicles outside on property. There will be additional vehicles inside the building for display and owner/employee parking. No washing of vehicles or repair on site. Hours M-F 9:30 – 5:30. Continued from 9/10/12.

Mr. Alves appeared for this application – there will be 9 display vehicles outside, not 13. On the plan to the right there is an “E” – that will be a “C”; number 20 will be an “E.” This change will not affect the total number of vehicles.

Mr. Burman recused himself from this hearing.

Gilbert Wood came forward as the abutter and clarified that Mr. Alves has agreed that the 40’ x 40’ easterly corner of the lot will only be used for customer vehicles and not display vehicles. He would like the motion to reflect that.

Mr. Hoxie stated that the numbers have changed. Mr. Alves stated there will be 9 outside at night – 15 spaces. The rest of the 25 vehicles will be inside. The configuration is to be as shown on the plan marked final plan. The easterly corner will be used for customer vehicles only (4).

A motion was duly made by Dick Boy, seconded by Paul Sullivan and a unanimous vote taken to approve the application of WAJ Auto Sales, Inc., d/b/a WAJ Auto Sales, 455 Yarmouth Road, Hyannis, MA to move his existing Annual Class II Auto Dealer License to 455 Yarmouth Road, Hyannis. There will be 25 total vehicles of which a maximum of 15 are outside on the property. There will be additional vehicles inside the building for display and owner/employee parking. No washing of vehicles or repair on site.; the 4 vehicles on the easterly corner of the lot weill be customer spaces only. Hours M-F 9:30 – 5:30.

**Show Cause Hearing:** Show Cause Hearing for International Inn Bar & Grill, Inc., 662 Main Street, Hyannis, MA, Ravi Ahuja, Manager for failure to complete the application process for a Change of License Premises Description, and for operation with an alternate floor plan without the approval of the ABCC.

Savi Borah appeared for this application. Mr. Scali wanted the Board to note that Savi is not the Manager of record. Mr. Ahuja, the Manager, is not here today. Mr. Hoxie asked if he is aware of the hearing. Savi answered he is.

Mr. Scali stated to the Board that this goes back to a year ago when the applicant asked for a secondary plan to include layout for when they have entertainment. That application has come back 4 times from the ABCC marked failure to obey Mass Tax Laws. This latest time it came back denied.

Savi Borah stated they do not have any tax issues – they are all up to date. She stated she has provided information to the ABCC and they are up to date.

Mr. Scali asked if she has contacted the ABCC; she stated she has.

Mr. Scali asked if she has a document that all the taxes are clear? She said she will have it.

Mr. Scali stated they have only ONE approved plan currently. Savi stated the secondary plan is now off the table – there will be no dance floor.

Officer Maher stated there were tables and chairs throughout the whole atrium last Saturday evening early – but later in the evening when he checked again, the chairs were removed for dancing. That is not legal as that 2<sup>nd</sup> plan was never approved by the ABCC. Officer Maher stated they have been doing this all summer – they cannot do so as the 2<sup>nd</sup> plan has not been approved. Mr. Scali stated unless the ABCC tells us otherwise, they are not approved.

Mr. Hoxie asked to continue this to the next hearing. Mr. Scali stated we cannot submit the application for reconsideration to the ABCC without proof that the issues are resolved. Savi stated she will be in touch with Mr. Scali and will not take out the tables and chairs in the interim.

Mr. Hoxie stated they will be back for our hearing on October 22, 2012.

### **Business Meeting:**

Release of Executive Session Minutes, if any (None).

Discussion on Noise level from Beech Tree Cantina outdoor patio per complaint letter. Mr. Hoxie stated we have a letter of complaint for a resident. It is not a show cause hearing today but a discussion on this letter. Mr. Burman stated anyone living around a licensed premises is entitled to quiet enjoyment of their home. Mr. Hoxie asked for discussion as to whether or not we should call a hearing. Mr. Hoxie asked Lt. Murphy for his input. Lt. Murphy stated he worked Tues-Sat all summer and is not aware of any noise issues brought to his attention while on patrol. Officer Maher stated there have been no complaints through the police station. The licensees have offered to add soundproofing to windows in the building of the complainant to reduce noise in the building. They have said that this is one way they can reduce/eliminate the noise. Mr. Pane stated they typically have everyone out of there before midnight – they have been diligent. Mr. Hoxie asked Mr. Geiler his opinion. He asked if it would be appropriate to say we have spoken to the licensee and if there are future complaints we will then have a hearing. Mr. Geiler stated the entertainment inside is until 12 but outside only until 8. He thinks the noise is from people enjoying sports events from the T.V. outside. Outbursts from the watchers are common with sporting events. Beyond that there is no authorization for the T.V. to be on after 8. There should be nothing going on out there after 8 but food and beverages. He thinks that is the issue. Is entertainment going on past 8 pm? Mr.

Hoxie stated Monday night football is an example. Lt. Murphy stated part of the problem is that the complainant should call the police department when there is an issue so the police can check it at the time – not a week later. Mr. Hoxie stated we can inform the complainant of that. Mr. Sullivan concurred with Lt. Murphy. The letter says 4 complaints to the licensee not the police department; they should contact the police department in future.

Mr. Hoxie asked the licensee to speak. Phil Miller appeared with Jared Pane. They have met with the “speaker” for the condo association. Essentially 3 units are affected. He has met with them and been in their units. They have agreed to install a soundproof window in 3 units. The people have stated there is an echoing going on above the patio level. Mr. Miller stated that these windows are used in airports to mitigate noise. They have measured and placed an order – ready to go in 6-8 weeks upon delivery. They have an ongoing relationship with the neighbors. Other neighbors have not expressed any issues. Mr. Miller has given the vendor all the information needed to soundproof for these units. He did not measure noise – he measured the windows to install a sound proofing unit inside the existing window. This will prevent all noise from entering the premises. Mr. Scali stated he has extensive experience in noise issues from the past – he wanted to make sure where the noise is coming from. Mr. Miller stated that the occupants of the units asked Mr. Miller for this solution. Mr. Scali stated it may not solve the problem. Mr. Miller stated the occupants have agreed this is what they want. The noise is not an issue of patio doors but one level higher...they (the licensees) are doing this at their own expense. Mr. Hoxie sees no reason for a show cause hearing at this time. Mr. Geiler asked what the plan is for 8 pm entertainment outside, stating the outside must end at 8; can the radio be on past 8 outside? No it can't per Mr. Geiler. Inside it can. Jared Pane was wondering about that radio outside past 8 pm, thinking it was allowed until 11 as was the T.V. Mr. Geiler stated it is almost impossible to have patrons watching football and not get loud. If they want to apply to amend the license from 8 pm they have to do so formally. Jared Pane stated the letter stated the noise was after midnight; he knows for sure they have not had anything after midnight. William Pane stated there were no complaints all summer. In terms of football, all he can say is that if you come to see a game and see the average age - it is 45-50. The people bring their kids. They sit with their kids with a yogurt or Sunday and sit there. He also wanted today to thank the Board for approving them...this summer the number enjoying the tree has been incredible. The town people can verify that this area is revitalized; kids feeding the fish, the tree is such an attraction for photos, etc. It has been enjoyable for all. They will take care of the problem. He also stated he is very proud of his son, Jared, who follows the rules and has done a great job.

Mr. Hoxie stated they might come in to apply for an extension of the non-live license to have the capability for movies there or T.V. after 8 pm.

The noise issue has been tabled for now according to Mr. Hoxie.

Mr. Hoxie then stated that both the application of the 99 Restaurant and Sabor do Brasil will be continued until October 22, 2012 as the applicants did not appear. Mr. Geiler stated that on the 99, they were advised that the local Boards may want them to appear. Some of these changes create a difficulty for this reason – change of corporate structure. The ABCC has put together these blanket applications to facilitate this. We have the completed submission from the 99. He said the Board might want to approve it without hearing.

Mr. Burman moved to approve the application of 99 Restaurant Restaurants of Boston, LLC, d/b/a 99 Restaurants & Pub, 1600 Falmouth Road, Thomas Hann, Manager, for a Transfer of Stock, New Stockholders, New Officers & Directors & Issuance of Stock, and Mr. Sullivan seconded; it was unanimously voted to approve this.

The Sabor do Brasil application is continued to October 22<sup>nd</sup> for them to appear.

Mr. Geiler stated we have prepared a hearing schedule for 2013 which has been provided to everyone today.

Mr. Burman asked what the notice was to Barbyann's which was included in their packets; Mr. Geiler stated they have been charged with failure to provide Worker's Comp insurance and have a hearing at the ABCC on October 4<sup>th</sup>.

Lt. Murphy stated that he wanted to advise the Board the meeting held prior to "season" by the [police department for licensees seemed to really help the license holders to comply this past summer. They plan to have another meeting in the future to advise all for 2013 so we can have an even better year.

Mr. Hoxie stated our next meeting will be in the Selectmen's Conference Room on October 22, 2012.

The meeting was adjourned at 10:25 am.

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