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## TOWN OF BARNSTABLE

NOTICE OF MEETINGS OF TOWN DEPARTMENT AND ALL TOWN BOARDS  
As Required by Chapter 28 of the Acts of 2009 which amends MGL Chapter 30 A

### Licensing Authority Minutes

#### **DATE OF MEETING: July 15, 2015**

A special meeting of the Barnstable Licensing Authority was held on Wednesday, July 15, 2015. Chairman Martin Hoxie called the meeting to order at 11:00 A.M. He introduced Gene Burman, Vice Chairman; Ron Semprini, Clerk; Richard V. Scali, Director of Regulatory Services; Elizabeth G. Hartsgrove, Consumer Affairs Supervisor; Lt. John Murphy and Patrolman Steve Maher, Liaison Officers from the Barnstable Police Department; and Maggie Flynn, Recording Secretary.

#### **Show Cause Hearing:**

**Show Cause hearing for Scottie's Famous Pizza:** MacFraga, Inc., d.b.a. Scottie's Famous Pizza, 11 Ridgewood Avenue, Hyannis, MA, Alex MacDonald, Mgr., for violations of the Code of the Town of Barnstable, Massachusetts:

- **Section § 501-1A. Availability of Rules and Regulations,** (1 count - copy of rules and regs not on premise);
- **Section § 501-1C. Availability of Rules and Regulations,** (1 count - employees not being familiar with Rules and Regulations);
- **Section § 501-4A. Hours of Operation** (1 count - allowing non-employees on property after the 30-min limit upon closing);
- **Section § 501-7B. Alcoholic Beverages Sales and Laws** (1 count – not having a schedule of the alcoholic drinks available for sale);
- **Section § 501-7Q. Alcoholic Beverages Sales and Laws** (1 count – not having the posters and displayed as required);
- **Section § 501-7R. Alcoholic Beverages Sales and Laws** (1 count – allowing glasses and bottles to remain on bar after the 15 min. requirement to remove them);
- **Section § 501-8A. Environs of licenses premises.** (1 count – failing to follow the rules and regulations of the town as described);
- **Section § 501-9B. Inspections and Investigations** (2 counts – not allowing Police access to premise);

- **Section § 501-9C. Hours of Operation** (1 count – not having a current employee list available for inspection on demand).

Chairman Hoxie asked all that individuals that will be testifying to stand to be sworn in and testify to the truth.

Attorney David Lawler, Alex MacDonald and Alex Fraga appeared on behalf of the application.

Attorney Lawler admitted to all of the allegations except to denying the police officer entrance into the premises. Attorney Lawler suggested that his client surrender their alcohol license until 9/15/2015. This suggestion is from his client, historically a more substantial penalty than most. Atty. Lawler stated that on an evidentiary issue this is not a court of law and requested the police report should be inadmissible; hearsay, a five year old report should not be before this board if its presented. Any such reports should have no weight, the real issue is the denial of access.

Lt Murphy asked if his client admitting to 501-8 as well. Atty. Lawler stated they will not admit to that count. Lt. Murphy stated the older police reports were not provided to the board and only given to Attorney Lawler as a courtesy.

Mr. Hoxie asked if Scottie's Pizza was to plead guilty on 7 of the 9 accounts. With respect to the Common Victualler that would stay in place. Mr. MacDonald stated that they need to get some more training. Atty. Lawler stated this is most generous and mature stance by his client; they are voluntarily willing to give up license for two months.

Chairman Hoxie stated that the proceedings of the show cause should commence.

Officer Maher reviewed the police report, driving down Ridgewood Avenue on patrol. The restaurant hours are 11 to 11; it was evident from the street that patrons were still there. 501-7R no beverages to be served after closing hours and are to be removed no later than 15 minutes after closing. Some patrons appeared to be under 21 and the door was locked. Mr. MacDonald made eye contact with him and still did not come to door. Officer Maher told Mr. MacDonald to let him in; however Mr. MacDonald stated that they were closed. Officer Maher continued to detail the conversation and reasoning as to why the door should be opened and that he has a statutory right to be allowed in. Mr. MacDonald disagreed and continued to deny and hinder Officer Maher into the premise which could be grounds for revocation. Mr. MacDonald unlocked the door but did not let Officer Maher in, during which Officer Maher witnessed glasses being removed from the bar. At this time Officer Maher radioed Lt. Murphy that he was being denied access. Lt Murphy arrived and said to Mr. MacDonald "let me in", which Mr. MacDonald attempted to block entrance. Lt. Murphy informed Mr. MacDonald that the Police have a right to enter as agents of the town.

After the Police entered the premise, it was found that Mr. MacDonald did not have a copy, had not read the regulations, no employee list was available (he offered to

handwrite one), no available drink list, no chapter 138 poster, and only 4 of the 8 people at the bar were employees. Mr. MacDonald was advised at this time that he will be brought in for show cause hearing. Officer Maher informed the Board that there were two females under age 21 sitting at the bar and had beers in front of them.

Attorney Lawler asked Officer Maher how long he has been a police officer which Officer Maher replied "21 years". Atty Lawler asked if at the academy Officer Maher was trained to diffuse situations instead of incite? He asked Officer Maher that if he walked up to the door and asked to be let in which Mr. MacDonald asked why and the reason given was "because I said so I am a police officer", would this be inflammatory? Officer Maher stated the first thing he said was to unlock the door and that he spoke through a closed door. Attorney Lawler questioned whether Officer Maher would have responded the same way to a fifty year old proprietor.

Officer Maher stated an estimated 5 minute conversation took place regarding opening the door and that the license was in jeopardy prior to radioing Lt. Murphy. All the time Officer Maher reiterated to Mr. MacDonald that the police have a right to enter. Mr. MacDonald did not open the door all the way. Officer Maher did not indicate that any felonies were taking place. Lt. Murphy met Officer Maher at the door, informed him that he was not being let in. Officer Maher stated that Mr. Macdonald told Lt. Murphy that he was not going to let them in, citing the fourth amendment and private property. Ultimately access was given, approximately 8 minutes after the first request.

Attorney Lawler stated he has video evidence, intended for cross-examination.

Atty. Lawler asked Lt. Murphy if Officer Maher's testimony was correct which Lt. Murphy stated "Yes". Atty. Lawler asked if Alex MacDonald allow the police in or did he walk past him, essentially blocked by Mr. MacDonald? Lt. Murphy then was asked to briefly describe the events that brought him to the establishment.

Lt. Murphy stated that at approximately 11:30 while in the lot of the Nor'easter restaurant he received a call from Officer Maher. Previously he asked Officer Maher to speak to owners about overcrowding. On June 20th people were observed inside Scottie's well past closing time and had told Officer Wright to note in police report.

Atty. Lawler asked what Lt. Murphy saw at the time he came to the door which Lt. Murphy stated that he saw Alexander Macdonald. Lt. Murphy stated he opened the door and informed him that I am coming in to inspect which Mr. MacDonald mentioned that they were on private property asked him to get out. Mr. MacDonald blocked the entrance and as Lt. Murphy walked past him made physical contact. He made observations of young people needing to have ID's checked and numerous bottles on the bar. Lt. Murphy stated that he did not know what was going on in that bar, he walked in uninvited.

Lt. Murphy stated the photos submitted in the report were taken as the Police were leaving.

Lt. Murphy was asked has anything like this happened in his career which Lt. Murphy stated in 32 yrs, 25 with Barnstable Police Department he recalled 2 incidents where Police were denied entry; this would be the third. Lt. Murphy was asked by Atty. Lawler to explain the P's relationship with other restaurants in the town which Lt. Murphy stated the PD tries to foster a good liaison community police approach which is very successful. Atty. Lawler asked if Scotties' ever called the Police Department which Lt. Murphy stated there is a note of 2 calls about narcotics activity.

Lt. Murphy stated that during the April hearing Mr. MacDonald said he would welcome the PD onto the property at any time. However this incident Mr. MacDonald's demeanor was defiant, like Lt. Murphy was coming into his house and had no reason to be there. Mr. MacDonald was not aggressive or swearing; defiant, not belligerent. Atty. Lawler asked if Mr. MacDonald held his arms up, which Lt. Murphy replied "yes, and he did not allow me access by stepping away". Lt. Murphy continued by stating when he walked past Mr. MacDonald into the premise and he was not going to negotiate. Atty. Lawler asked if there was a verbal altercation going on between Officer Maher and Mr. MacDonald which Lt. Murphy said he saw them looking at the iPad however he was more concerned about the bar itself. Lt. Murphy stated that he did step outside the bar because Mr. MacDonald was stating that he pushed him however he was alerted about a recording so he went back in and noticed Andrew MacDonald holding a smart phone by his side. He asked if Andrew was recording which Mr. MacDonald stated "yes". Lt. Murphy did not take further action.

Lt. Murphy stated that when an assistance call is received from an officer and that another officer is waiting outside for the supervisor he would view this as de-escalation. His opinion is that the A PD Lt. was 100% denied access and could not think of a more serious violation; who knows what was happening inside, in basement or back room.

Attorney Lawler asked if any felonies were observed when Lt. Murphy entered the premises which Lt. Murphy replied no.

Atty. Lawler asked how long it took Lt. Murphy get to the scene and if his lights were on? Lt. Murphy stated that his lights were on and he did not have an independent recollection of the amount of time. The call directly from Officer Maher to him was at approximately 23:35, his estimate of the time.

Mr. Hoxie asked Lt. Murphy if he had an opinion why Mr. MacDonald would block an officer and in his opinion did they have ample opportunity to remove and destroy evidence which Lt. Murphy relied yes, he cannot see inside the entire restaurant from the glass door and does not know what is going on inside. Mr. Hoxie asked if Lt. Murphy thought that being told to unlock the door because I said so would be a reason to be denied entrance? Lt. Murphy stated there is no excuse not to step aside, if the manner was inappropriate there are remedies for that which Mr. MacDonald could have filed a complaint. Officer Maher was there by himself, there were 8 people in the bar and safety was the utmost concern.

Atty. Lawler questioned about a statement made by Off Maher referencing felonious activity regarding beer bottles on the bar and is that criminal? Lt. Murphy stated it does not matter if it is felonious or not due to the time and license for this establishment.

Mr. Scali asked for clarification when the pictures were taken which Lt. Murphy stated that the photos were taken on location at least 20 minutes after arrival, closer to midnight.

ABCC Investigator Jamie Binienda was called to testify. Officer Maher asked how long has he worked for the ABCC as an investigator and how many investigations has he conducted which Mr. Binienda replied that he had worked for the ABCC for 13 years and has conducted several thousand investigations. Mr. Binienda stated Chapter 138 section 63 deals with entry into a licensed premise. He stated that an agent does not need to witness a violation to enter an establishment, and began to quote a 2013 case regarding a club in Lowell that received an 88-day suspension for denying access to the premise.

Attorney Lawler asked about the case law presented and would this be a hinder or a delay? Atty. Lawler asked how Mr. Binienda prepared for this hearing and if the ABCC inspects the premise? Mr. Binienda stated that he did not read the officers report and if site was already licensed the ABCC does not have to inspect the site.

Owner and manager Alex MacDonald was then questioned: asked when and where Liquor license was picked up and if he studied the rules and regulations, which Mr. MacDonald stated the license was picked up June 26<sup>th</sup> at Town Hall and he did not study the rules and regs nor was he aware that the Barnstable Police Department could enter the premises.

Mr. MacDonald stated that he lost his temper because Officer Maher said he could enter "because I said so". He took ownership of his reactions and should have treated the officers with more respect. There were beers on the bar, no posters in the restaurant, and should have let Officer Maher into the premises immediately instead of preventing entry for 2-3 minutes.

Atty. Lawler requested video to be presented as evidence. There was some discussion regarding the video which resulted in Chairman Hoxie determining that the individual who taped the video needed to be present. The individual was not present therefore the video would not be accepted.

Officer Maher asked Mr. MacDonald if he blocked Lt Murphy which Mr. MacDonald replied no and that he never told Lt. Murphy that he could not come in.

Officer Maher asked Mr. MacDonald prior to opening the restaurant, how long did he work at Scotties which Mr. MacDonald stated approximately 3 years. He prepared food,

directed people to go home, yet was not made aware or required to go to any licensing meetings.

Mr. MacDonald stated that he had one beer that evening and approximately 5-10 % of sales are due to alcohol; 90% beer maybe 95% and 5 % wine.

Mr. MacDonald did not recall telling Officer Maher that he was trespassing; or that he was violating my 4th amendment rights. Officer Maher asked how many times he told Mr. MacDonald he was a licensing agent, which Mr. MacDonald answered 2 or 3 times.

Officer Maher mentioned that during the April hearing Mr. MacDonald stated that he had been working in the business since 16 years of age and knew not to over serve. Officer Maher also mentioned that both Atty. Lawler and Mr. MacDonald said that they wanted to with the Barnstable Police Department. Mr. MacDonald stated that he did call the police regarding drug deals. Officer Maher asked if they use radios which Mr. MacDonald said they did not.

Lt. Murphy asked Mr. MacDonald if he recalled making a statement “did you just push me?” and if Lt. Murphy was welcomed into the establishment why did contact occur? Mr. MacDonald stated that he was just standing there talking to Officer Maher in the doorway and that Lt. Murphy pushed his way through. Lt. Murphy asked why did Mr. MacDonald not walk out to greet the PD. why he remained in the doorway and why Did he not get out of his way?

Atty. Lawler stated that clearly violations occurred; the License was issued the week before the fourth of July and Mr. MacDonald did not take the necessary precautions. His client got indignant and became stubborn where a period of 5-8 minutes the police did not enter the premises. Atty. Lawler said that Officer Maher stated that he did not believe any felonious activity was going on inside and Atty. Lawler said the punishment must be appropriate. Mr. MacDonald has testified that he is trying to clean up the area. Due to the 5 minute or so delay/hinder Atty. Lawler suggested stop serving alcohol until 9/15/2015 and continue to serve food. A forfeiture of Common Victualler license should not be in play. Atty. Lawler said that these gentlemen have invested thousands; a five minute loss of controlled temper should be relative. Focus has been on the issues of drugs and the punishment needs to fit the crime and an orange notice will be posted behind the bar.

Lt. Murphy stated the Barnstable Police Department views the liquor license and anyone that holds them to a high standard. Lt. Murphy stated that Mr. MacDonald is not making himself aware of these regulations; he goes in the opposite directions. The events although 5-8 minutes are clear to the Board that the Barnstable Police Department was denied access by the owner and that is very serious. Lt. Murphy continued by saying the Barnstable Police Department does not want a vacant building and people in that area have the right to have a local restaurant. This location has had a long history, the first day of his license there is an issue.

Lt. Murphy stated that he accepts Mr. MacDonald's apology; He said there was loud in tone in speaking to Mr. MacDonald and he apologized. Lt. Murphy said though a liquor license holder cannot learn as they go therefore the Barnstable Police Department will recommend a penalty.

Attorney Lawler stated that employees are involved and suggests that the food operation not be closed at any time. If this happens we may need to take the next step.

Mr. Hoxie asked for motions for findings.

A motion was made by Gene Burman and seconded by Ron Semprini and a unanimous vote taken **to move that the Licensing Authority determine violation of Section § 501-1A of the Barnstable Licensing Authority Rules and Regulations was found;**

A motion was made by Gene Burman and seconded by Ron Semprini and a unanimous vote taken **to move that the Licensing Authority determine violation of Section § 501-1C of the Barnstable Licensing Authority Rules and Regulations was found;**

A motion was made by Gene Burman and seconded by Ron Semprini and a unanimous vote taken **to move that the Licensing Authority determine violation of Section § 501-4A of the Barnstable Licensing Authority Rules and Regulations was found;**

A motion was made by Gene Burman and seconded by Ron Semprini and a unanimous vote taken **to move that the Licensing Authority determine violation of Section § 501-7B of the Barnstable Licensing Authority Rules and Regulations was found;**

A motion was made by Gene Burman and seconded by Ron Semprini and a unanimous vote taken **to move that the Licensing Authority determine violation of Section § 501-7Q of the Barnstable Licensing Authority Rules and Regulations was found;**

A motion was made by Gene Burman and seconded by Ron Semprini and a unanimous vote taken **to move that the Licensing Authority determine violation of Section § 501-7R of the Barnstable Licensing Authority Rules and Regulations was found;**

A motion was made by Gene Burman and seconded by Ron Semprini and a unanimous vote taken **to move that the Licensing Authority determine violation of Section § 501-8A of the Barnstable Licensing Authority Rules and Regulations was found;**

A motion was made by Gene Burman and seconded by Ron Semprini and a unanimous vote taken **to move that the Licensing Authority determine violation of Section § 501-9B of the Barnstable Licensing Authority Rules and Regulations was found;**  
and

A motion was made by Gene Burman and seconded by Ron Semprini and a unanimous vote taken **to move that the Licensing Authority determine violation of Section § 501-9C of the Barnstable Licensing Authority Rules and Regulations was found.**

Mr. Hoxie asked for motions for guilt or innocence.

A motion was made by Gene Burman and seconded by Ron Semprini and a unanimous vote taken **to move that the Licensing Authority find Scottie's Famous Pizza guilty in violating Section § 501-1A of the Barnstable Licensing Authority Rules and Regulations.**

A motion was made by Gene Burman and seconded by Ron Semprini and a unanimous vote taken **to move that the Licensing Authority find Scottie's Famous Pizza guilty in violating Section § 501-1C of the Barnstable Licensing Authority Rules and Regulations.**

A motion was made by Gene Burman and seconded by Ron Semprini and a unanimous vote taken **to move that the Licensing Authority find Scottie's Famous Pizza guilty in violating Section § 501-4A of the Barnstable Licensing Authority Rules and Regulations.**

A motion was made by Gene Burman and seconded by Ron Semprini and a unanimous vote taken **to move that the Licensing Authority find Scottie's Famous Pizza guilty in violating Section § 501-7B of the Barnstable Licensing Authority Rules and Regulations.**

A motion was made by Gene Burman and seconded by Ron Semprini and a unanimous vote taken **to move that the Licensing Authority find Scottie's Famous Pizza guilty in violating Section § 501-7Q of the Barnstable Licensing Authority Rules and Regulations.**

A motion was made by Gene Burman and seconded by Ron Semprini and a unanimous vote taken **to move that the Licensing Authority find Scottie's Famous Pizza guilty in violating Section § 501-7R of the Barnstable Licensing Authority Rules and Regulations.**

A motion was made by Gene Burman and seconded by Ron Semprini and a unanimous vote taken **to move that the Licensing Authority find Scottie's Famous Pizza guilty in violating Section § 501-8A of the Barnstable Licensing Authority Rules and Regulations.**

A motion was made by Gene Burman and seconded by Ron Semprini and a unanimous vote taken **to move that the Licensing Authority find Scottie's Famous Pizza guilty in violating Section § 501-9B of the Barnstable Licensing Authority Rules and Regulations.**

A motion was made by Gene Burman and seconded by Ron Semprini and a unanimous vote taken **to move that the Licensing Authority find Scottie's Famous Pizza guilty in violating Section § 501-9C of the Barnstable Licensing Authority Rules and Regulations.**



Mr. Hoxie asked for motions for sanctions.

A motion was made by Gene Burman and seconded by Ron Semprini and a unanimous vote taken **to move that the Licensing Authority place a letter in the file regarding violations to sections §501-1A, §501-1C, §501-4A, §5017B, §501-7Q, §501-7R and §501-9C.**

A motion was made by Gene Burman and seconded by Ron Semprini and a unanimous vote taken **to move that the Licensing Authority place a 30-day suspension on the Common Vicuttaller and Entertainment licenses, with 5-days to be served from July 21-26, 2015 and the remaining 25-days to be held in abeyance for one year due to violating Section § 501-8A of the Barnstable Licensing Authority Rules and Regulations.**

A motion was made by Gene Burman and seconded by Ron Semprini and a unanimous vote taken **to move that the Licensing Authority revoke the Annual Beer and Wine Common Victualler License issued to Scottie's Famous Pizza effective immediately, due to violating Section § 501-9B of the Barnstable Licensing Authority Rules and Regulations.**

Based up on the motions of the Barnstable Licensing Authority, you are hereby ordered to surrender your Annual Beer & Wine License immediately and close the establishment from operation between the dates of July 21<sup>st</sup> and July 26<sup>th</sup>, 2015 as to your common victualler and entertainment licenses.

According to Attorney Lawler, the sanctions placed for 501-9B is the death penalty, far too severe a penalty by eliminating permanent ability to sell alcohol at this location. The penalty needs to fit the crime, loss of license for 60 days effective immediately has been suggested. There is no precedence for this severe of a penalty.

Mr. Hoxie stated that we do have precedence and that Mr. MacDonald can reapply in 1 year.

The meeting was adjourned at 1:25

Respectfully submitted,

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Margaret D. Flynn, Recorder

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Ron Semprini, Clerk