



Town of Barnstable

Regulatory Services

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BARNSTABLE LICENSING AUTHORITY LICENSING HEARING MINUTES

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

January 12, 2009

A regular meeting of the Barnstable Licensing Authority was held on Monday, January 12, 2009. Chairman Martin Hoxie called the meeting to order at 9:30 A.M. He introduced Gene Burman, Vice Chairman; Lt. JoEllen Jason and Patrolman Steve Maher, Liaison Officers from the Barnstable Police Department, and Christine Ade, Recording Secretary.

Hearings:

Changes to Junk Dealer Rules and Regulations: The Barnstable Licensing Authority will hold a public hearing on proposed amendments to the Rules & Regulations of the Licensing Authority, Chapter 502, Junk Dealers. Copies of the proposed regulation changes can be found on the Town Of Barnstable web site: www.town.barnstable.ma.us. Click department menu, Regulatory Services, Consumer Affairs, and then Licensing. Hard copy versions may be obtained at the Regulatory Services Department, Licensing Office, 200 Main Street, Hyannis MA 02601

Lt. Jason stated this has been brought about the last 6 months or so. They have discussed the actual rules and how to check the junk dealer paperwork. Detective John Murphy was receiving paperwork from New Bedford, showing what they do with regard to these licenses. Officer Steve Maher did research at some other towns as well and presented the draft worked up by the BPD to Attorney Houghton, Legal counsel for the Town, to check for legalities. The final draft is what is proposed.

Officer Maher stated he went through the call history and amount of stolen goods for the last year. There is little oversight right now under the current regulations. He then presented a Power Point summation of the proposed changes in the Junk Dealer Regulations, offering evidence of the increase in crime levels (stolen property). They looked at other municipalities' regulations and came up with a compromise of those. 1400 – 1700 breaking end enterings reported in 2006 – 2008 each year. Also, computers and radios (\$60,000 - \$140,000). Recordings (CDs, DVDs, etc.) of \$20,900 to \$35,000 per year, tools \$35,000 to \$58,000 per year. Theft is steadily increasing. Tools are up to almost \$60,000. Vehicle parts including catalytic converters, household

items and other items as well as precious metals and jewelry (\$1.6 million dollars + in the last 3 years). These figures are only when a monetary amount was given so are actually higher than what was shown. It is incumbent on the police department to try to keep this down however they can. Eight other Towns were studied and Officer Maher said they are proposing ours to go along with what Medford has at present, which is a median amount according to the municipalities checked. Holding period would be 21 days/15 days. Sell or purchase to no-one under 18. Photo must be taken of the item purchased – it takes up less space and can be emailed to the police department if needed. Most others report to their police departments; we will be asking for a report weekly. A sample report page is attached to these minutes. CORI checks must be done to check for any felonies – will be regulated to within 15 years of the felony conviction on all new licenses and checked at renewal time. ID's must be picture ID's so it can be determined the people selling the items are 18. The owner of the property must give permission for the sale. The BPD will hold two seminars on the new rules. They will also provide a website for submission of the reports via email.

Sgt. John Murphy came forward to express his enthusiasm about the license regulation changes. He suggests this is a property safety issue for the Town. His job is to help the townspeople keep their “memories.” It is heartbreaking for people to lose these important things – like an engagement ring or keepsake jewelry from a family member. He thinks the proposed change will require dealers to do more work but will insure the people selling are selling legitimately. He stated people stealing to support prescription drug habits are stealing and then selling family heirlooms – these people look reputable but in fact are not. Most recently, there is a retail outlet in the Town, which from November to the end of December reported \$20,000 in loss. Many of those items have been sold to secondhand dealers in this community. By changing the rules it will send a strong message to the public that we will not tolerate this theft.

Attorney Cohen appeared to state that he represents a local Junk Dealer and they do not have any problems with some of the proposed changes but regulation 502-6D restricts the purchase at trade shows, hotels, etc. where people gather together to sell. It could be remedied. 502-6C would make it a violation if a serial number was removed; there is no way of knowing if it hasn't got one – that needs to be remedied as well. The law says that parties are free to contract. Some people do not have bank accounts and the \$50.00 check restriction is not strictly legal. If the Town was buying precious metals it could set these limits, but not if it is not. Cash is a fully legitimate means of transaction. The Town has in the other changes put into place good controls. Some old gold is converted straight to bouillon. If the Town restricts this transaction it is unfair, as the price changes radically from day to day. The price/pennyweight (502-8D) if held for 21 days would drive gold purchasing out of business. There are people who even purchase gold through the mail. Ebay transactions would also be prohibited. You can't restrict the transactions arbitrarily by holding the items. And the description of an exception by the Police Chief for extreme hardship – who defines that? He stated the regulations now in force are adequate. He also stated that most junk dealers do not deal in the items on our spreadsheet – computers, etc.

Mr. Hoxie asked if he was for retaining the present regulations. Attorney Cohen stated the present ones are fine. The proposed regulations set arbitrary ability to put someone out of business. Mr. Hoxie asked Attorney Cohen about how the council and Attorney Houghton had reviewed these regulations and found them to be fine. Attorney Cohen stated they may have said that until challenged. The state or town does not have the authority to restrict the normal free right to transact. The fact that other towns do it does not make it correct or legal. Mr. Hoxie asked for a brief to be submitted, which Attorney Cohen stated will be submitted in a few days.

Officer Maher said he is looking at \$50.00 transactions or over to be paid by check to the person selling the item – it will track who is getting money. On the issue of our “setting a price” for gold; it went up 2.35% during the last year. Most municipalities have 30 day holds, we are asking only for 21. Also, if we have reason to believe an item is stolen, the BPD can ask for an item to be held until it can be investigated. If the owner calls stating he has a hardship and needs to sell the item, they can look at it and perhaps release the hold. Record stores, video stores, jewelry stores – all are covered by this. Also tools, CD’s, etc. As our regulations stand, it is not working well enough.

J. Craig Medeiros, a currently licensed Junk Dealer, came forward stating he has been in business 52 years. He told a story about selling papers way back in the 60’s and reselling them later. He salvaged metal and sold it to a man in New Bedford. People call about wire, insulation, etc. He said it will hurt him to store these big things for the timeframes we propose. He stated any of us is more than welcome to come to his place to inspect; he is 73 years old and will be working the rest of his life. Mr. Hoxie asked if this would be a hardship? He stated it would. He is open 3-5 pm some weekdays and Sat 9-12 is when he is open; he has to prepare all the stuff he gets in. Mr. Hoxie asked what he thinks of the regulations proposed – he thinks the gold part – if someone calls, he tells them to come in and he will give them a fair price.

Scott Russo, 21 years old, came forward saying he owns 2 homes, just starting a business. When short on money for bills – he may sell things and for us to regulate the payments over \$50 to be only in check form, if it falls on a Saturday, sometimes he is put in a bad position and falls short with bills owed. He trades in some items of well over \$50.00 to make the money he needs; having to wait until a Monday would be a hardship. He stated he is a regular working person who doesn’t steal or anything. At certain times he could not cash a check on a Saturday or Sunday to pay what needs to be paid on time.

Edythe Davinis, Trade Secret Antiques, in Osterville also came forward and spoke about our possibly changing the license title – from JUNK Dealers. Mr. Hoxie stated these licenses are named by the State, not us. She indicated that when clients see the word “junk” they are offended. Mr. Hoxie stated the Board agrees but we really have no authority over that.

Officer Maher stated that Brockton allows no transient sales; New Bedford only allows resident sales. He stated he would hope anyone in the business would be able to

determine whether or not a serial number had been removed from an item they were purchasing for resale.

Mr. Hoxie would like to take this matter under advisement until the brief is received from Attorney Cohen and our Town Counsel and Board Members can review it. He stated that the hearing will be continued to February 2, 2009.

Mr. Hoxie asked that the January BPD Seminar be rescheduled for later on.

Show Cause Hearing: Show Cause Hearing for Nantucket Auto Sales, 89 Bassett Lane, Hyannis, Donald Hallett, Manager, at the request of the Barnstable Police Department relative to violation of the maximum number of vehicles allowed on its lot in accord with their Class II Auto Dealer License.

Officer Maher stated on 11/13/08 at 1:30 am he did a compliance check – counted 13 vehicles. They are allowed 9. On the 14th he went back and counted 14. March 25, 2008 – 22; May 1, 2008 – 21; May 31, 2007 to date – consistently more than license allows. He said he was told by an employee they were trying to get more vehicles allowed. They came in for a hearing in 2004, at which time they also stated they would be applying for more vehicles, but so far did not get the number changed.

Greg from Nantucket Auto said he spoke with Officer Maher about the overage. He then went to Town Hall and spoke to the Building Commissioner and to Tom Geiler. They have been working on a plot plan Building would be happy with. He has gotten a plan approving 15 vehicles now (January 9th), signed by Tom Perry. They are on our hearing list for February 23rd to increase the number on the license.

Officer Maher stated that 14 vehicles were on the lot even today at 7 am.

Donald Hallett stated that he had thought if they had the number ok'd they were alright (meaning what Tom Perry just approved). Mr. Hoxie stated they have to wait until they have the larger number approved and they have been in violation and are still in violation.

Mr. Burman proposed as findings that the Barnstable Police Department did inspect and found too many vehicles on the dates in their report. This also is not the first offense. There is no denial from the Licensee of having more than nine vehicles.

Mr. Hoxie seconded the guilty finding and that motion carried. A motion was duly made by Mr. Burman that based on the prior offense they be found guilty and a 2 day suspension would be imposed if any further violation is found within calendar year 2009.

Mr. Burman reiterated the number of vehicles on the lot, not just display vehicles, must not be more than nine until changed by the Licensing Authority.

Show Cause Hearing: Show Cause Hearing for AB Auto Sales, 415A Barnstable Road, Hyannis, Anibal Barroso, Manager, at the request of the Barnstable Police

Department relative to violation of the maximum number of vehicles allowed on its lot in accord with their Class II Auto Dealer License.

Officer Maher stated that on 11/13 at 1 am he did a compliance check – there were 32 vehicles; it is licensed for 15. On the 19th there were 36. From January 15, 2007 to date they consistently had more vehicles than the license allows. January 15, 2007 – 21; May 21, 2008 – the used vehicle book and vehicle counts did not match. March 25, 2008 – 18 vehicles. October 8, 2008 - a complaint came into the Consumer Affairs Office for the overcrowding. A visual inspection showed 28 vehicles. October 24, 2008 – 26 vehicles. This morning at 6:45 there were 22 vehicles on the lot and this after knowing they were coming in to a show cause hearing. Officer Maher stated he had conversations warning them that they had too many vehicles and was told they would comply with the license each time. The inspection also showed vehicles in the lot nextdoor – which is not allowed as that is not a licensed premises.

Mr. Barroso stated that nextdoor used to be a woodworking business; they are parking vehicles over there. Mr. Barroso said he spoke to the landlord to see if he could get a license for that strip – the landlord was to call him back; it did not happen yet. He thought he could get storage there. He has taken a lot of the vehicles to the auction resulting in losses.

Mr. Hoxie stated the license states only the 15 plus 2 for customers. Mr. Hoxie stated he had to go to the Building Commissioner for an increase in vehicles to get any increase and if wanting to use another property, must get a license for that property. He stated if Mr. Barroso does not comply he will be back here.

Mr. Barroso said some of the cars are repossession cars too. The economy is very bad.

Mr. Burman reiterated to the Licensee that the license states 17 total vehicles. No more.

Officer Maher stated one of the problems at a lot of these dealerships is that there may be a manager listed on our forms, but there are different employees there every time he goes who do not understand. Mr. Hoxie stated he has to get it down to the 17 right away and he said he understood.

Officer Maher brought up the fact that many dealers are “storing” vehicles around at other locations. This is not allowed – they need a License for the property on which they are stored as well.

Mr. Burman proposed a finding that Barnstable Police Department found them to consistently have overcrowding, that the licensee has been warned, and ignored the warnings. He found the licensee guilty of overparking. A motion of guilty was duly made by Mr. Burman and seconded by Mr. Hoxie; Mr. Burman made a motion to issue

this Licensee a warning, and if there is any further violation coming forward there would be a suspension imposed. Mr. Hoxie seconded the motion and it unanimously carried.

Mr. Barroso stated he will bring all extra cars today to the auction.

Show Cause Hearing: Show Cause Hearing for Cape Cod Auto Connection, 152 Ridgewood Avenue, Hyannis, Thomas Lundquist, Manager, at the request of the Barnstable Police Department relative to violation of the maximum number of vehicles allowed on its lot in accord with their Class II Auto Dealer License.

Officer Maher stated on 11/17 just past midnight he counted at least 29 vehicles. Their license allows 15. Daytime on the 19th he counted over 40. Spoke to the Manager and several different employees; There were 25 vehicles on March 30th; May 1st there were 40 vehicles; again Officer Maher was told they were working on getting the vehicle count increased. Since 11/17; 56 in December and today 62 on the lot.

Tom Lundquist stated he made a timeline wherein they were approved by Site Plan Review for 72 vehicles. He introduced it at the hearing. He stated there was a planning board meeting approving them in December, and tonight is the final Growth Management Department approval meeting. It is on the agenda – 7 pm. They have been working on it since April of 2007. In May of 2000 they started the business and leased a small piece of the property. They since bought the whole property which is .88 acre and all paved. He spoke to Tom Perry about this increase and in November of 2007 it was requested to be increased, and as he said in June Site Plan Review approved it. They requested an Engineer stamp in September - \$2,300 to get. November 24, 2008 the Planning Board heard the request and continued the hearing to have a site visit. On December 8th the Planning Board approved the expansion pending approval of Growth management. Then tonight's final meeting will take place. He said he increased the vehicles on the location as he was approved for 72 – he stated now he probably should have waited for approval on OUR license. He thought it would be a cut and dried approval way back in 2007.

Mr. Hoxie asked if we could hear his new amount on 2/2; the recorder stated she had to check to see if it needed to be advertised – it might be 2/23.

A motion was duly made by Mr. Burman for a finding that the licensee was aware of the overparking; they had been notified and it was properly before the Board and he is guilty. Mr. Hoxie seconded the motion. Mr. Burman stated that based on the circumstances that the Licensee has been working on getting an increase for an extended time, he be issued a warning. Mr. Hoxie seconded that motion and it unanimously carried.

Show Cause Hearing: Show Cause Hearing for Hi-Line Auto Sales, 367 Yarmouth Road, Hyannis, Augusto Netto, Manager, at the request of the Barnstable Police Department relative to violation of the maximum number of vehicles allowed on its lot in accord with their Class II Auto Dealer License.

Officer Maher stated he went to this location 11/13 and counted 42 vehicles; they are allowed 26. There were 40 vehicles on 11/19, 2008, on March 28, 2008 there were 33. On May 1, 2008 there were 27 vehicles. They were given a verbal warning to stay in compliance. This is not 1-2 vehicles. Today when checked, they are in compliance. Mr. Hoxie stated his license has a total of 32 vehicles.

A motion was duly made by Mr. Burman that Barnstable Police Department had consistently found non-compliance; that the licensee was warned and did not comply. Mr. Hoxie seconded the motion and it unanimously carried. A motion was duly made by Mr. Burman for guilt and that the Licensee be issued a warning; Mr. Hoxie seconded the motion and it unanimously carried.

Renewals:

The following renewals have been submitted without any changes from the previous year for Licensing Authority approval (submitted prior to end of 2008):

Common Victualler:

White Hen Pantry – 446 Main Street
Osterville Sundae News
Cold Stone Creamery
Chao Cajun

A motion was duly made by Mr. Burman, seconded by Mr. Hoxie and a unanimous vote taken to approve the above listed Common Victualler renewals for 2009.

Lodging House:

Green Mountain B&B

A motion was duly made by Mr. Burman, seconded by Mr. Hoxie and a unanimous vote taken to approve the above listed Lodging House renewal for 2009.

Class I Auto Dealer:

Hyannis Marina

A motion was duly made by Mr. Burman, seconded by Mr. Hoxie and a unanimous vote taken to approve the above listed Class I Auto Dealer renewal for 2009.

Class II Auto Dealer

Auto Wholesalers of Cape Cod
A&M Auto Sales
Cape Auto Sales

A motion was duly made by Mr. Burman, seconded by Mr. Hoxie and a unanimous vote taken to approve the above listed Class II Auto Dealer renewals for 2009.

Business Meeting:

Mr. Burman apologized for his non-attendance at the special meeting called the Friday after New Year's. There was a carbon monoxide problem at his home.

Mr. Hoxie asked that the brief from Attorney Cohen regarding our proposed new Junk Dealer regulations be given to Attorney Houghton, to him and the Police Department as soon as it is received.

The meeting was adjourned at approximately 11 a.m.

Respectfully submitted,

Christine P. Ade, Recorder
Town of Barnstable Licensing Authority

Eugene Burman, Vice Chairman
Town of Barnstable Licensing Authority