



# Town of Barnstable

## Regulatory Services

Thomas F. Geiler, Director

### Licensing Authority

200 Main Street

Hyannis, MA 02601

[www.town.barnstable.ma.us](http://www.town.barnstable.ma.us)

Telephone: (508) 862-4674

Fax: (508) 778-2412

### 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.

July 6, 2009

A regular meeting of the Barnstable Licensing Authority was held on Monday, July 6, 2009. 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:

**One Day Entertainment License:** Application of Larry Thayer on behalf of Cape Abilities, 895 Mary Dunn Road, Hyannis, for a One Day Entertainment License for Young@Heart Chorus (performers 72-90 years of age) for an event on October 16, 2009 at the Barnstable High School Performing Arts Center, West Main Street, Hyannis, from 3 pm to 10:30 pm.

Patricia Janiak, Director of Development, appeared for Mr. Thayer. This has an admission fee of \$30 & \$75. It is an event that will only happen once. It will be about 1-1/2 hour performance. The performers are from Northampton, MA. They are here for 2 days. They have permission from the high school.

A motion was duly made by Mr. Burman, seconded by Mr. Sullivan and a unanimous vote taken to approve the application of Larry Thayer on behalf of Cape Abilities, 895 Mary Dunn Road, Hyannis, for a One Day Entertainment License for Young@Heart Chorus (performers 72-90 years of age) for an event on October 16, 2009 at the Barnstable High School Performing Arts Center, West Main Street, Hyannis, from 3 pm to 10:30 pm.

**One Day Wine & Malt and Entertainment License:** Application of Ann Drouin on behalf of the Armenian Church of Cape Cod, P.O. Box 1485, Mashpee, for a One Day Beer & Wine License and One Day Entertainment License for a dinner dance to be held at St. George Greek Orthodox Church Community Center, Route 28, Centerville, on August 8, 2009 from 6 pm to 11 pm. There will be up to 7 entertainers, amplified.

Ann Drouin appeared for her application. Mr. Hoxie asked if this was the first time they put on the event? It is not. The admission is \$40 and all proceeds go to the church building fund.

A motion was duly made by Mr. Burman, seconded by Mr. Sullivan and a unanimous vote taken to approve the application of Ann Drouin on behalf of the Armenian Church of Cape Cod, P.O. Box 1485, Mashpee, for a One Day Beer & Wine License and One Day Entertainment License for a dinner dance to be held at St. George Greek Orthodox Church Community Center, Route 28, Centerville, on August 8, 2009 from 6 pm to 11 pm. There will be up to 7 entertainers, amplified; not outside.

**Sunday Entertainment License:** Application of Heather Donnelly on behalf of MSPCA, for a One Day Entertainment License for its annual Walk for Animals event to be held at Aselton Park, Hyannis, on September 13, 2009 from 11 am to 2 pm. There will be a DJ with amplified music playing at the event.

No-one appeared for the application.

A motion was duly made by Mr. Burman, seconded by Mr. Sullivan and a unanimous vote taken to continue the application of Heather Donnelly on behalf of MSPCA, for a One Day Entertainment License for its annual Walk for Animals event to be held at Aselton Park, Hyannis, on September 13, 2009 from 11 am to 2 pm. There will be a DJ with amplified music playing at the event to 7/27/09.

**One Day All Alcohol and One Day Entertainment Licenses:** Application of Jaci Barton on behalf of **Barnstable Land Trust**, 407 North Street, Hyannis, for a One Day All Alcohol License and One Day Entertainment License for its annual auction and lawn party, all to be held outdoors in a tent at the premises of Mr. and Mrs. O'Brien, 205 Ocean View Avenue, Cotuit, on August 1, 2009 from 5:30 pm to 8:30 pm., as a fundraiser for this non-profit organization.

Jane Harvey appeared for her application. It is August 1<sup>st</sup> and is their annual fundraiser; she believes it is the 12<sup>th</sup> year. They have 2 certified bartenders.

A motion was duly made by Mr. Burman, seconded by Mr. Sullivan and a unanimous vote taken to approve the application of Jaci Barton on behalf of **Barnstable Land Trust**, 407 North Street, Hyannis, for a One Day All Alcohol License and One Day Entertainment License for its annual auction and lawn party, all to be held outdoors in a tent at the premises of Mr. and Mrs. O'Brien, 205 Ocean View Avenue, Cotuit, on August 1, 2009 from 5:30 pm to 8:30 pm., as a fundraiser for this non-profit organization providing the entertainment is self-contained and does not disturb the neighborhood.

**New Common Victualler License:** Application of Juliano Coutinho, d/b/a Acai Berry Juice Bar, 14 West Main Street, Hyannis, MA, Juliano Coutinho, Manager, for a new Common Victualler License, hours of operation to be 11 am to 1 am, Tuesday through Sunday.

Mr. Coutinho appeared for this application. The acai is a berry from Brazil. They hope to open 7/15. They have the building ready and are just waiting for the license and inspections. He used to sell this fruit in Brazil. It is a high anti-oxidant fruit. They are hoping to stay open until 1 am and requested to open up at 6 am for breakfast time as well. They do not want alcohol. They will also be doing hot dogs and hamburgers.

A motion was duly made by Mr. Burman, seconded by Mr. Sullivan and a unanimous vote taken to approve the application of Juliano Coutinho, d/b/a Acai Berry Juice Bar, 14 West Main Street, Hyannis, MA, Juliano Coutinho, Manager, for a new Common Victualler License, hours of operation to be 6 am to 1 am, Tuesday through Sunday.

**Annual Daily Live and Sunday Entertainment Licenses:** Application of Colombo's Café, Inc., d/b/a Colombo's Café & Pastries, 544 Main Street, Hyannis, MA, for an annual Daily Live and Sunday Entertainment License for 1-5 entertainers, non-amplified, Monday through Saturday from 6 pm to 9 pm and Sunday from 4 pm to 8 pm.

David Colombo appeared for this application. He wanted to amend it to add entertainment on the inside as well. The outside faces a parking lot with offices which are closed in the evenings. It backs up to a wall so noise could not be heard. To the north and south are businesses – 2 breakfast places which are closed in the evenings. There may be an electric piano or other instrument that is plugged in. He wants to have 4 entertainers but may have 5. He also requested to cover himself for the future to extend the entertainment hours for a private party to start at noon to 10 pm everyday.

Attorney Lawler came forward as an abutter to David. He stated you couldn't get a better neighbor and is in full support of this application. Elizabeth Wurfbein also spoke and said she has heard the music he proposes – it is beautiful. There aren't any residences it would impact negatively.

A motion was duly made by Mr. Burman, seconded by Mr. Sullivan and a unanimous vote taken to approve the application of Colombo's Café, Inc., d/b/a Colombo's Café & Pastries, 544 Main Street, Hyannis, MA, for an annual Daily Live and Sunday Entertainment License for 1-5 entertainers for jazz and dining music which is amplified from noon to 10 pm, both indoors and outdoors.

**Request for Outdoor Entertainment Thursday Nights:** Request of Smilin' Jack's Restaurant Corp., d/b/a La Paz Surf Cantina, 573B Main Street, Hyannis, John Downes, Manager, for permission to amend its Daily Live Entertainment License to allow outside entertainment on their front patio Thursday nights during the summer season from 6 pm to 10 pm, in conjunction with the Hyannis BID Thursday evening events. Continued from 6/22/09.

Elizabeth Wurfbein appeared for this request representing the BID. She has asked the restaurants to have more outdoor entertainment so the whole street will have music. Mr. Hoxie stated that the BID permit does NOT cover the type of entertainment in this request at all. After meeting with Mr. Geiler she now knows this is different than what

the BID requested and had approved by the Town Manager. Mr. Downes wants to be part of the music stroll by paying for his own entertainers. She offered to have people near his property, but he wanted his own. The stroll started last Thursday but because of weather it was cancelled. It will run until 8/27.

The manager of Gringo's, Jim Carey, appeared to remind the board about the letter he submitted in opposition to this request. He said he had live entertainment for 5 years but relinquished it to improve his business. He stated this restaurant is right on top of his restaurant – there are a matter of inches separating the properties. If put as far away as he could, the music would still be too close to Gringo's customers and would negatively impact his business. He does not think the Thursday nights are conducive to all businesses; maybe to some and not others. He thinks that Las Paz is more like a bar with bar entertainment and would interfere with his diners. Mr. Carey DOES have speakers on his patio but he stated the sound does not go off his patio. Mr. Boy confirmed this is true. Mr. Boy then stated it is only 5-9 on Thursdays for which they are requesting the entertainment. Mr. Burman stated there will already BE entertainment on the sidewalks and the streets. Mr. Carey stated that conflicting bands create chaos and noise. Mr. Burman asked if he has ever been to New Orleans? The music there overlaps and everyone loves the festival atmosphere. Mr. Burman stated he has the choice – the music on the streets is approved by the Town Manager, not the Licensing Authority. Mr. Burman asked what his attitude would be if a group of entertainers stood between his property and La Paz? Mr. Carey stated he would not like it, and this request if approved would definitely compound the problem. Tina Carey also appeared. She stated when the license was granted to La Paz she told the board there would be problems with this new establishment. She said there was an incident with a drink passed to someone on the sidewalk and there was a fight nextdoor; and THEIR RESTAURANT was asked to close. The police evidently thought it was all one establishment. She stated they then put up a barrier trellis for which they “should seek reimbursement.” She said they run a family restaurant – a quiet clientele. A quiet crowd – no bands. Their son lives upstairs. They have never had a violation. She asked that the board not issue a license affecting how another business does business. She stated the bands on the street are annoying enough. There is not room on the sidewalk in front of them – they have asked the musicians to move in the past. She said La Paz is literally on top of them. She stated she is tired of having to come here to the board. Mr. Sullivan asked for some clarity as to whether or not other restaurants have outside entertainment on Main Street? His feeling is that they do not. Elizabeth Wurfbein from BID stated Asa Grill has Friday night outside entertainment and Colombo's is applying today for outside entertainment today. So that is two. The BID has barbershop quartets, small groups – not rock music. Mr. Hoxie stated he does not think we should grant the request, as it would compound the problem for Gringo's. He believes it should be denied. Mr. Geiler wanted to add that in this particular case, the board expressed concern of the liquor license because of the small size of the building and the wall to wall neighbors. When it changed to the current owners the same concern was expressed. Their proposal emphasized a restaurant operation with a bar. They anticipated a lot of dining. He thinks those concerns were valid then and are valid now. He thinks this Thursday night request could lead to a request for other nights and

the whole concept of what is being approved would go out the window. It is difficult to understand that outside multi-entertainment could successfully benefit everybody in the area.

A motion was duly made by Mr. Burman, seconded by Mr. Sullivan and a unanimous vote taken to deny the request of Smilin' Jack's Restaurant Corp., d/b/a La Paz Surf Cantina, 573B Main Street, Hyannis, John Downes, Manager, for permission to amend its Daily Live Entertainment License to allow outside entertainment on their front patio Thursday nights during the summer season from 6 pm to 10 pm, in conjunction with the Hyannis BID Thursday evening events.

**Request to pay fine in lieu of suspension:** Request of Blanchard's Liquors, 167 Corporation St., Hyannis, holding a retail package store all alcohol license, for permission to pay a fine in lieu of their alcohol sales suspension on July 18, 2009.

Attorney David Lawler appeared for this request. Mr. Corey appeared with him. Due to numerous issues, they are requesting that the suspension be altered or amended to offer a fine or amended penalty. Attorney Lawler stated that what happened was a serious thing – the sting operation took place and alcohol was sold to a minor. This business has been around for dozens of years and has shown itself to be a good corporate citizen. Just the way the calendar falls – the suspension being the same date the following year is bad. They chose not to appeal. But the past year has been a dismal one economical. The reality is a Saturday in July will devastate this man's business. He does 25% of his business on the weekend in the summertime – in excess of \$20k if he is open on the Saturday. The ABCC has monetary values which can be imposed. They have calculated that the ABCC would require an \$884.00 penalty according to the formula the ABCC uses. He is not sure of who get the funds – the State or the Town. He stated that they would in addition offer a \$500 contribution to a charity such as MADD. They understand the severity of the issue. He knows the board members have had conversations with town counsel. It is vague as to whether the board would approve this. In the alternative, they are requesting closing on the Sunday, the following day from the suspension date rather than the Saturday. There has been some precedent on leap years from a Friday to a Sunday. The board could go 2 calendar days. The Saturday in July is a catastrophic day to have to close. They want to make it clear they know they were wrong. Steps have been taken to reinforce policy and procedure with zero tolerance for service to a minor. The purpose of the stings is to make sure these establishments maintain high standards – not to penalize the establishment to the point of devastating their business.

Mr. Hoxie stated there are 2 concerns: 1) does the board have the right to grant this and 2) would it start a precedent. Attorney Houghton stated that Section 23 DOES allow for fines. It was added to the statute. It is accordance with ABCC regulations. Mr. Burman asked Attorney Houghton where the fine goes? Attorney Houghton stated he does not know at this point. Mr. Hoxie stated he does not think the Board should set this precedent. Also, moving the day would go against the premise the board has always gone under – a year from the date of the offense. Mr. Sullivan stated in the

Boston Globe yesterday there were 8 deaths – the majority of which were early 20's or teen drivers with alcohol involved. All we need is one of those here. He thinks when we approached the sting violators decisions we took all of it into consideration and the one day suspension was fair. He feels uncomfortable changing it.

Attorney Lawler stated he is a father before he is an attorney; he has seen the young people dying because of driving with alcohol. He does, however, go along with the ABCC's formula based on liquor sales as to the fine amounts. The figure they came up with was applying the ABCC formula. They also felt that offering the \$500 to a charity involved with the drinking and driving issue on top of that would impress that they find this serious. He also thought the change of day (not date) should be o.k. The offense occurred on a Friday, not a Saturday. He thinks \$1,300 is a substantial amount to offer. He also does not think the ABCC formula (submitting the business numbers to the town as well) is lenient. There is a lot that goes with it on top of just the fine. It is not taken lightly by Don Corey. He does not think this would open the floodgates for more problems. Second offenses are treated much more severely. The board has the ultimate authority – they can actually pull a license if an establishment re-offends. Mr. Burman stated Mr. Lawler's presentation was eloquent but thinks our board was very lenient – if up to him for the seriousness of the offense it would have been longer. He thinks the board should stand by its principles. Mr. Hoxie stated this Authority has disagreed in the past with the ABCC and thinks we should not decide to change our position. Mr. Hoxie agrees that the presentation was very good but he agreed with Mr. Burman.

A motion was duly made by Mr. Burman, seconded by Mr. Sullivan and a unanimous vote taken to deny the request of Blanchard's Liquors, 167 Corporation St., Hyannis, holding a retail package store all alcohol license, for permission to pay a fine in lieu of their alcohol sales suspension on July 18, 2009, or to change the suspension date.

**Yearly Sunday Entertainment License:** Application of Paul Mazzeo, Manager. Palio Pizzeria, Inc., 435 Main Street, Hyannis, MA, for a yearly Sunday Entertainment License for up to 2 acoustic entertainers from 5 pm to 8 pm.

Mr. Mazzeo did not appear for his application.

Elizabeth Wurfbein appeared for Mr. Mazzeo who wants Italian opera singers and a special dinner on Sundays. She stated that it sounded like he wanted a guitarist or accordion to accompany the singers. Mr. Boy mentioned that BID notifies people in the BID of what is going on Thursday nights; and asked if she notifies other businesses of these activities? She stated she sends emails out to the BID members and puts things in the kiosk on the street. They do not have overall notification of what is going on these Thursdays. Mr. Boy suggested they do get notice out there for everyone..

A motion was duly made by Mr. Burman, seconded by Mr. Sullivan and a unanimous vote taken to continue the application of Paul Mazzeo, Manager. Palio Pizzeria, Inc.,

435 Main Street, Hyannis, MA, for a yearly Sunday Entertainment License for up to 2 acoustic entertainers from 5 pm to 8 pm to July 27, 2009.

**Request to Serve Food during Suspension of Common Victualler All Alcohol License:** Request of Asa Grill & Reputation, 415 Main Street, Hyannis, Shane Pacheco, Manager, for permission to serve food only at the restaurant during the suspension scheduled for 7/18/09 as a result of the police sting last season.

Attorney David Lawler appeared for this request. He stated the Asa Grill is asking just to serve food and non-alcoholic beverages on the suspension date rather than be closed altogether. They feel the needs of the area would be served by letting them serve food on the outside patio especially on this date. After the last 4 rainy weeks, they are requesting this to allow them to keep their doors open. He does not think this would set a negative precedent. They would have a sign outside stating alcohol will not be served today and also instruct the maitre d' to inform everyone prior to their orders, saying something like, "Sorry, today we are not serving alcohol but offer our entire menu except the alcohol." Shane Pacheco stated the intent would be to close the restaurant at 9 pm without any entertainment. The bar will be shut down. There will be no access to the alcohol. They have no intention of having b.y.o.b. Mr. Hoxie stated we have had a request for a hotel to stay open without alcohol and a package store which is also a market and deli but not just a restaurant.

Mr. Boy stated they are offering advertised specials for drinks at reduced prices on a board outside – the prices have to be the same for a week. Mr. Geiler stated outside advertising of alcohol is prohibited. Mr. Lawler stated he will make sure that is taken care of.

Mr. Burman said he would be comfortable if there are tent cards on each table that no alcohol will be served and that it close at 9 pm. He thought that would help the police be able to enforce. Attorney Lawler stated that would be acceptable. Mr. Sullivan suggested they close at 9 pm. Mr. Hoxie asked Mr. Geiler if the board in past has allowed a restaurant to be open without alcohol; he does think it has happened some years ago. Mr. Geiler suggested it apply to ALL the restaurants affected by the sting if approved – there are others who cannot get before the board in time for their suspensions.

Mr. Hoxie stated we passed the regulation in March to separate the alcohol service. Mr. Sullivan is very sympathetic because of the economy. He thinks, however, that we were reasonable when the sting hearings took place in the punishments imposed. He also stated we do not want to have a special meeting for the others.

Attorney Lawler stated that, "Justice goes to the vigilant." His client has retained him and been the only one to come here to request this. He reiterated that we had the worst June in history for weather and stated that the board can use discretion to approve this. This applicant came here before the deadline and appeared to request this. The board is not required to hold a special meeting because others have not been vigilant. He

thinks the board could grant the request without setting precedent. Mr. Hoxie stated it is a question of fairness to the others as well. We cannot forget it was for service of a minor; at the time it was decided the current regulation meant that the entire establishment be closed. Mr. Burman disagreed; we did discuss motels as well as restaurants and their ability to serve food without alcohol. Mr. Burman said that when he came on board there was a sanction against a restaurant who was told they could not serve food without alcohol. He believes in March we passed a regulation giving this board the authority to revise the regulation. Mr. Burman believes we let them know they had the ability to ask but it was not automatic. He does not agree with Mr. Hoxie.

Attorney Lawler stated that last year we weren't aware of the severity of the economic downturn. Mr. Hoxie asked Lt. Jason if we could let these restaurants be open covering their liquor – she does not think they have the manpower to check each one to make sure they are complying all through the date of suspension. She stated mostly all of the restaurants got one day (except prior ioffenders), and she believes it should stay the way it is. Mr. Sullivan said he is not happy about it but believes we should keep things the way they are. Mr. Hoxie stated that from this date forward, on each case with a suspension the board should discuss whether or not they could be open without the alcohol. We have not spoken about this until now on a one by one basis.

A motion was duly made by Mr. Burman to approve the request of Asa Grill & Reputation, 415 Main Street, Hyannis, Shane Pacheco, Manager, for permission to serve food only at the restaurant during the suspension scheduled for 7/18/09 as a result of the police sting last season. There was no second.

A second motion was made by Paul Sullivan, seconded by Martin Hoxie, and a majority vote of both Paul Sullivan & Martin Hoxie recorded to deny; and Gene Burman not to deny. Motion passed by majority vote to deny the request.

---

Christine P. Ade,  
Town of Barnstable Licensing Authority

---

Paul Sullivan, Clerk  
Town of Barnstable Licensing Authority