



# 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.

May 3, 2010

A regular meeting of the Barnstable Licensing Authority was held on Monday, May 3, 2010. 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, Kim Connors, Licensing Agent, Lt. JoEllen Jason and Patrolman Steve Maher, Liaison Officers from the Barnstable Police Department, and Christine Ade, Recording Secretary.

#### Hearings:

**Discussion On Auto Dealer Regulations Updates:** The Barnstable Licensing Authority will hold a hearing requested by the Barnstable Police Department, which has identified as an issue, and has requested the Licensing Authority consider, adoption of regulations that would subject all auto dealers that do not currently have an approved site plan to file with the Site Plan Review Committee to obtain an approved site plan. That plan would then be used to determine the maximum number of vehicles authorized on the property. The approved plan would be required to be on site at each dealer location and available for inspection staff to review for compliance determination. This hearing will be for discussion purposes on the concept proposed.

Commissioner Burman, a member of the sub-committee assigned to review this issue, spoke regarding a meeting held with Ptl. Steve Maher, Tom Geiler and Tom Perry, Building Commissioner. There was no intent at any time to put anyone out of business; we are trying to get some control over the businesses presently non-restricted as to number of vehicles approved by the Building Commissioner on each lot. We invited the dealers in today to advise the Licensing Authority if there are any hardships, or special issues they wish to discuss.

Dealers attending: Jonas Krisciunas - Trans-Atlantic Motors, Robert Trapp – Robert Trapp, Inc., Gilbert Wood – Willow Street Motors & Harbor Auto Sales, John Gallagher – Trans-Atlantic Motors, Michael Bradley – Huhtanen Auto Sales, Neil Atwood, Joe Maloney – Joe's Auto Sales, Robert D. Gonsalves – Robert's Auto Wholesale, David Bardfield – Cape Motors, John Trapp – All Cape Auto Sales,

Myron J. Sears – Nantucket Auto Sales, Greig Johnson – Nantucket Auto Sales & Barnstable Motors Wholesale, Alex Gladkowski – West Main Auto Sales, Jay & Brad Tracy – Tracy VW Audi, Gary Beard – Beard Chevy – Subaru, Gary Buckler – Bucklers, Inc., James Balise – Balise Ford, Nissan, Hyundai, Joe Laham – Premier Chrysler, Jeep, Dodge, Tim Ferreira – proposed new Class II License for Ferreira's.

Steve Maher stated we are looking for a number for each lot for enforcement purposes only. The Fire Department will be looking at the placement of vehicles for fire issues. We would like this to be an even playing field for everyone and have each lot be aesthetically pleasing. Mr. Hoxie asked who sets the number for each lot; it is Building Commissioner, Tom Perry. Through the site plan review process this number is set for new businesses, major changes, etc. In order to bring in some older dealerships, there would have to be a change of the Town Ordinance requiring all dealerships to come before Site Plan Review if they do not have a maximum number of vehicles set already. Mr. Perry stated they use "parking lot standards" – travel lanes, parking spot size, etc. Mr. Hoxie stated we do not want to increase the vehicles allowed, so we don't have a safety hazard. Mr. Perry stated the issue is that some go back way before Site Plan Review was even envisioned. The problem is not with access, but with setting the number of vehicles on the lots. Mr. Hoxie asked if there is any other way to come up with a number agreeable with BPD? Mr. Perry stated that would be voluntary. Officer Maher stated each one without a number could submit a plan with numbers to the L.A. with a total number of spaces for their lot, without the L.A. having to adopt a new regulation. Mr. Geiler stated that his question would be, could that apply to existing dealerships with a site plan or JUST those without? Mr. Hoxie stated just those without, which was confirmed by Officer Maher. It would be voluntary.

Mr. Hoxie asked for comments from the public. The first speaker was Jay Tracy. They have been here since 1968. They do not have as much land as they would like – they have had 2 easements taken – one to the airport across the back. They do not have access problems and a good working relationship with the Town and BPD and Fire. He does worry about this as to the new car dealers – they try to keep the lots neat, clean and in order, as that is their showcase. It would be a problem for them to have Site Plan Review – also if they get a truckload of vehicles in and are getting them prepared, that day they would probably be over their number. It worries him as they try to be good citizens. He stated that they support a lot of things within the Town as well as keeping their place neat and clean and hope they ARE grand-fathered somewhat on this issue.

David Bardfield owns Cape Motors. His slant is from the used car dealers – it will not affect him. He stated they have just come through the worst 2-3 years of business due to the economy – things are just starting to come around now. If the L.A. reduces the numbers of vehicles dealers can showcase, it would reduce their income potential. He is worried about those without enough room for more vehicles going out of business, or not being able to make enough money. What we are proposing as to the licensees with unnumbered licenses coming up with a number

themselves sounds like a great idea. He does not want to hurt those without a number on their licenses. He says just when they are starting to see a turnaround, it would be awful to impose more restrictions.

Deb Krau came forward as an interested citizen – asking what good is it to have the businesses pick their own number rather than have one set by Site Plan Review? Just for a count – this seems rather arbitrary, and would not be an even playing field either if some numbers are set by Site Plan and others are not.

James Tinsley spoke representing Balise this morning. He stated we have to consider the fluctuation of business. For those who have service – how will that number play into the total? Some vehicles are for sales and some for service on the lot. He thinks the voluntary plan is a good idea but how could we know it was fair for the size of each lot?

Gilbert Wood, Willow Street Motors spoke as he owns 8 lots on which auto dealers reside. Those who have licenses now going forward to a new dealer, that the new property can have the same amount of cars as the prior licensee. He thinks that devaluates the property. He compared Buick and now Land Rover - those dealers are all neatly in rows and do not seem to be contributing to any of the mess. It is the new licensees whose lots seem to be more of a problem than the older ones.

Mr. Hoxie asked the Fire Dept. if there is any

Deputy Chief Dean Melanson keeps an eye on the lots, does the inspections, etc. The devil is in the details. Some of the used car dealers share lots with businesses and tenants from apartments; some which are also repair and rental in the same area. The Fire Dept. does not care why the car is there – only the specifics regarding to access if there were a fire. To put a number on these property will be difficult as used and new cars are there, cars for service waiting for parts, employees on site and customers – also occupied structures on the site. All of these issues are considered at Site Plan Review. From the Fire standpoint, BPD and their own inspections – they are addressing them as they come up.

Mr. Hoxie asked if those do not have numbers, would it be o.k. to keep it as is? Mr. Melanson stated that if there is a problem it will come up and be dealt with. There is an education process involved. As long as they have access isles it is fine with them. Access to repair bays is of concern. The inspectors are educating the owners at inspection times.

Mr. Hoxie asked if a dealership changes hands and is just a change of ownership is the number changed? Mr. Perry stated no – they keep the same number and do not require another site plan review.

Robert Trapp also spoke up – he has a Class II License at Walton Ave. and Route 28. It seems like we are trying to come up with a new regulation to make dealers

already on a location to now come up with a number. If we already have a process to o.k. them, unless it is being modified in some way why are we singling the auto dealers out to count cars which were not counted in the past? It would seem to be a burden for a petty detail.

Joe Lahan from Premier Cape Cod – he stated they came up recently for the site plan with numbered spaces; he has had licenses in a lot of towns – each has some discipline to create an even playing field. He stated there must be some discipline and common sense. If they are left with the older dealers being able to do what they want it will be a mess. They have had a great relationship with the town and from his perspective they should use some common sense and discipline.

Mr. Burman stated we are at this point because of Class II licenses – with total number of vehicles on the lot – to include employees, customers, cars on display, whatever. He stated there should be a limit on every license.

Bob Gonsalves, Robert's Auto Wholesalers spoke up as to numbers and properties stating the ones that do not have the numbers should take a walk around their yards and prepare a plan with a total number. This is for the license and count for BPD. He stated it should not be too hard for the ones without numbers to submit a plan with numbers.

Mr. Geiler stated the issue is not new – the Board has been wrestling with it for 15-18 years. All those with numbers are not uniform – some are number displayed; did not cover repair, customers, employees, etc. That has been compounded by multiple auto dealers or businesses on a single site. The number does not cause the problem – it could be a disaster with 2 if they are in the wrong place or leaking fuel. We know where the problems are and should probably be dealing with the issues where the establishments have not played by the rules. Some have been before the Board multiple times. Given the town limited resources will be very costly for the town and the dealers and he is not sure where we would end up – maybe in just as much confusion as we are currently. He thinks it is our problem to deal with the ones where there are issues – deal with those. He thinks we should maintain the status quo while we deal with the problem areas and those deserve more attention to correct the problems.

Mr. Hoxie stated this all started as BPD wanted a count of cars on each lot for their purposes. All the police want is a number – how many total spaces. They can bring in a numbered plan themselves. The cars being trucked in are not a problem because they count 2-3 times before bringing a problem to the Board. This is to level the playing field so someone is constantly going over their number. Then no one can complain it is not fair.

Mr. Hoxie asked Mr. Sullivan his opinion. He would like to find a way where we can make the BPD job easier as to counting the vehicles. We need to get the handful of dealerships in voluntarily. Mr. Hoxie stated that what has made up his mind is the

fact that the Fire Department thinks everything is pretty much o.k. as it is. Mr. Burman stated the confusion is the licenses state total number of vehicles now; before some have just # of display cars, which Mr. Geiler reiterated. It will still not be level playing field if those are not changed as well. Mr. Sullivan said his theory is aesthetics and safety. He thinks there is some merit to each of these – and since the safety issues are being met, he thinks there is not enough information here to make any kind of change. Mr. Hoxie thinks we should remain with the status quo. He thinks those older ones should be grand-fathered.

Mr. Hoxie stated for the record that there will be no action taken as to setting a number on those licenses which do not have one.

**One Day All Alcohol License:** Application of Gary Cannon on behalf of The Waldorf School of Cape Cod, 140 Old Oyster Road, Cotuit for a One Day All Alcohol License for a live and silent auction and fundraiser for the school, to be held at Cotuit Center for the Arts, 4404 Route 28, Cotuit, on May 22, 2010 from 5:00 pm to 10:00 pm.

Gary Cannon appeared. Nimrod restaurant will be serving the alcohol. This is a non-profit organization.

A motion was duly made by Gene Burman, seconded by Paul Sullivan, and a unanimous vote taken to approve the application of Gary Cannon on behalf of The Waldorf School of Cape Cod, 140 Old Oyster Road, Cotuit for a One Day All Alcohol License for a live and silent auction and fundraiser for the school, to be held at Cotuit Center for the Arts, 4404 Route 28, Cotuit, on May 22, 2010 from 5:00 pm to 10:00 pm.

**One Day Entertainment License:** Application of Rebecca Hynes on behalf of Independent Event Planners, 190 Marlborough Street, Boston, MA for a One Day Entertainment License for a One Day Summer Expo for Cape Cod Businesses pertaining to ideas for locals/visitors for summer entertaining. It will be held on May 29, 2010 from 11 am to 4 pm at the Hyannis Youth Community Center, 1412 Basset Lane, Hyannis.

This one day event is to showcase what they offer for summer events. There is a \$10 admission fee.

A motion was duly made by Gene Burman, seconded by Paul Sullivan, and a unanimous vote taken to approve the application of Rebecca Hynes on behalf of Independent Event Planners, 190 Marlborough Street, Boston, MA for a One Day Entertainment License for a One Day Summer Expo for Cape Cod Businesses pertaining to ideas for locals/visitors for summer entertaining. It will be held on May 29, 2010 from 11 am to 4 pm at the Hyannis Youth Community Center, 1412 Basset Lane, Hyannis.

**Carnival License and Sunday Entertainment Licenses:** Application of John A. Flynn, Rockwell Amusements, P.O. Box 338, North Scituate, RI, Harold Fera, Manager, for a **Special Permit for a Carnival** for Monday, June 7, 2010 through Sunday, June 20, 2010, to be held at the Cape Cod Mall rear parking lot, Hyannis Road, Hyannis from 6 pm to 10 pm Monday – Friday, noon to 11 pm Saturdays and 1 pm to 10 pm Sundays.

Mr. Fera and John Flynn appeared for this application. The carnival will be changed to the 16<sup>th</sup> to the 20<sup>th</sup> of June (5 days) instead of what they had originally requested. Officer Maher asked for the list of employees – he would also like a permanent address of each person. Investigating some people out of state brought up some issues. Mr. Fera told him he would be getting it by fax.

A motion was duly made by Gene Burman, seconded by Paul Sullivan, and a unanimous vote taken to approve the application of John A. Flynn, Rockwell Amusements, P.O. Box 338, North Scituate, RI, Harold Fera, Manager, for a **Special Permit for a Carnival** to be held at the Cape Cod Mall rear parking lot, Hyannis Road, Hyannis from June 16<sup>th</sup> through June 20<sup>th</sup>, from 6 pm to 10 pm Monday – Friday, noon to 11 pm Saturdays and 1 pm to 10 pm Sunday.

**New Common Victualler License:** Application of Michael Hamwey, d/b/a Sea Street Cafe, 50 Sea Street, Hyannis for a **New Common Victualer License**, the hours of operation to be 7 am to 9 pm.

Mr. Hamwey advised that this is for the old Collucci's Diner. They are doing breakfast, lunch and catering.

A motion was duly made by Gene Burman, seconded by Paul Sullivan, and a unanimous vote taken to approve the application of Michael Hamwey, d/b/a Sea Street Cafe, 50 Sea Street, Hyannis for a **New Common Victualer License**, the hours of operation to be 7 am to 9 pm. Christine Ade advised that the Building Dept. had approved a total of 48 seats. Mr. Burman amended the motion to include the 48 seats and it was unanimously approved.

**Change of D/B/A:** Request of Mcaab, Inc., d/b/a Cape Cod Pizza and Subs, 10 Seaboard Lane, Unit K, Hyannis, MA, Aaron Boutiette, Manager, for a change of d/b/a to B & B Pizza.

Christian Boutiette appeared for this hearing. He stated they are in business now. His sign is awaiting approval.

A motion was duly made by Gene Burman, seconded by Paul Sullivan, and a unanimous vote taken to approve the change of d/b/a from Mcaab, Inc., d/b/a Cape Cod Pizza and Subs, 10 Seaboard Lane, Unit K, Hyannis, MA, Aaron Boutiette, Manager, to B & B Pizza.

**Change of Officers/Directors:** Application of GMRI, Inc. d/b/a The Olive Garden, 1095 Iyannough Road, Hyannis, MA, Traci Kempaner, Manager, for a Change in Corporate Officers/Directors.

Traci Kempaner appeared for the application. She stated that this is merely a change in corporate officers/directors. It will change nothing locally.

A motion was duly made by Gene Burman, seconded by Paul Sullivan, and a unanimous vote taken to approve the application of GMRI, Inc. d/b/a The Olive Garden, 1095 Iyannough Road, Hyannis, MA, Traci Kempaner, Manager, for a Change in Corporate Officers/Directors.

**New Class II Auto Dealer License:** Application of Timothy J. Ferreira, d/b/a Ferreira's, 85 Old Yarmouth Road, Hyannis, MA, for a New Class II Auto Dealer License, hours of operation to be 7 am to 7 pm daily, with 15 spaces maximum.

Tim Ferriera appeared with his attorney, James Connors. Attorney Connors approached the podium for Mr. Ferreira. He stated that Mr. Ferreira has gone thorough Site Plan Review, provided a lease, bond, and application with fee. He said if you review the site plan it clearly articulates where automobiles will be parked and also restricts the number of vehicles allowed on the property to Mr. Hoxie asked if there will be repairs or washing of vehicles on the property? Attorney Connors stated the primary function is to allow him to sell the automobiles; Mr. Ferreira stated there will not be washing or repair.

Deb Krau, Chairperson of the Hyannis Water Board, came forward. She stated that this location is now in a wellhead protection area, which does not allow a junkyard, which has already been put on this site, it does not allow cleaning, service or repair on this lot. She stated that the application as it came in had the word, "repair" on it, which she believes was originally intended but then crossed out. Where will the used cars be cleaned? She reiterated that this is a tenuous area being very very close to the Maher wells and there are a lot of non-conforming uses down there and problems with this proposal – the biggest detriment is a problem with the water of this area being contaminated. It is not he time to continue to give variances to the wellhead protection area. She also questioned how you distinguish the junkyard which has the capability of having cars from the auto dealer area of cars to be sold. She stated that they encourage the Board to look at groundwater protection and consider it is a fortune to clean up a well. She encouraged the Board not to license questionable businesses in this area.

Attorney Connors stated this is not a problem – Mr. Ferreira will not be repairing or washing vehicles on site and has followed all applicable zoning requirements. He will not be cutting the vehicles apart, draining fluids, that is not the subject of this license application. He does not have a junkyard; he has a Junk "Dealer" permit.

Mr. Hoxie asked how the vehicles will be cleaned? Attorney Connors stated the vehicles would be washed at a commercial car wash off site if they needed washing.

Mr. Hoxie asked if he is saying there would absolutely be no way fluids would contaminate the area? He does not believe leakage would be a problem any more than any other auto dealership.

Mr. Burman asked how the work of the Junk Dealer License will comply with the necessary Auto Dealer License requirements on the one site, which is not a large site? He stated that it is a potential conflict. Attorney Connors stated that under the General Laws it requires that a Class II License the principal function of the property. He holds a Lease for .66 acres and has a building on it. It has been indicated to me that the Junk Dealer business will not be the primary business; the primary business will be the auto dealer business in conformance with the statute and the side business will be the Junk Dealer business which he does have a license for.

Mr. Geiler asked for an explanation on this, how he is going to do it. Attorney Connors stated under the General Laws he certainly has been in compliance and has been in contact with Officer Maher 2-3 times per month. Under the General Laws you are required to show that it is a principal business on the site. He suggested how you do that is through monitoring and enforcement. He stated Mr. Ferriera indicated to me that this is going to be his primary business.

Mr. Geiler replied, "so you are saying it is OUR job? At least in the beginning it is your job to at least explain it."

Mr. Ferreira stated the recycling has evolved; they don't want to have to go to the junkyards with vehicles; he is he is now trying to bring the vehicles to auctions so he is not dealing with any hazardous materials. He wants to take them to the auctions to do all the paperwork, to clean the cars there. He wants to bring whole cars off the Cape to a dealer. He said he is actually providing a service for the Town getting these vehicles off the Cape. They are removing the entire vehicles from people to the dealers to sell them. They are not removing any gas, etc. He said that his Junk Dealer license will not allow him to sell the vehicles unless he has this Class II Auto Dealer License so he has applied for this license to conform to the Town's wishes.

Mr. Geiler stated that the requirement for a Class II Dealer license is that it be a principal business. Tim asked if he was selling more vehicles than he is, if anything else, that is my primary business. I do have advertisements on the radio, advertise in the Cape Cod Times, the Barnstable Patriot...I think the Town is aware of what I want to do. I want to be environmentally friendly, work with the police department, work with the Board. All I am asking is to be in compliance, I have to hold this license to sell the vehicles to the dealers. If not, then my Junk license would have to allow me to and we would have to argue that issue. We are trying to keep it simple today by applying for the Class II Dealer license which would allow me to sell to the dealers.

Mr. Geiler stated it is very confusing to him. You have a license to sell secondhand articles. You have a tow company. You buy scrap. And you are going to add this to



that. But you are not going to display vehicles, you are not going to invite customers in...

Mr. Ferreira stated he did not say he was not going to display vehicles; what I am trying to accomplish here...you have eliminated a Class III license in the Town, so in order to operate such a facility to be in compliance, you must need different licenses and permits – Hauler's, Septic, Board of Health – I went through all of that; all the Site Plan Reviews twice, which a lot of people don't have to go through. I am the only one in this Town dragged through these processes which is for recycling. It is for renewable energy. Even a car. They crush it, grind it up & recycle it. It is of more monetary value to me to sell to a dealer than to a junkyard. It is a cleaner process. I think the Board should come down and see.

Mr. Geiler stated it is not a question of whether it is a cleaner process, it is a question of does the Board have the authority to issue this license. Is this your primary business, your principal business. Mr. Ferreira stated he would say yes, because he is selling more cars than anything else. Mr. Geiler stated you may be today but what about tomorrow? When you've got that many businesses on the site it doesn't seem that you are in compliance and doesn't seem that, what I am hearing you say is that you want a Class III license, you want to run a junkyard, and since you can't get a Class III license what you're doing is applying for a Class II license and you don't qualify for that but you're a nice guy so we should give it to you.

Mr. Ferreira said, no, that is your interpretation, Mr. Geiler. I am trying to explain to you that the right way is to come out there and see what we do. I run a recycling facility. If we deal with a vehicle they require me to have a license for that to be in compliance. There's no way around it, that's the way it is. Not because I'm a nice guy but because I am working. I get up 5:00 in the morning and am in the lot every day – just like Officer Steve Maher saw us and said I am in 99% compliance. You want to squeeze 1% out of me? I am trying to comply. You are draining me of money and time.

Mr. Geiler stated he is missing a point here. Anybody has a right to buy and resell a vehicle. Mr. Geiler stated that what he hears is that you are applying for the Class II license to exempt yourself from sales tax, not have to register the vehicles, be able to do business with an auction and so forth. What I don't see is that your intention is to run a used car business; I don't see any benefit to the community or citizens of Barnstable in terms of the Class II Auto Dealership, I don't see not see this as a principal business with all of those businesses that are already on the site.

Attorney Connors stated again as talked about earlier that Mr. Ferreira intends the Class II Auto business be his primary business. Officer Maher had indicated there are many businesses that have more than one business within a site. Certainly any site could have sale of auto parts if permitted, ancillary tot heir primary business. They could have a vending machine, which is a separate business as well. Mr. Hoxie asked what effect it would have on Mr. Ferreira's business if his application for the

license is denied? He was told that it will stop him from having vehicles on site and from buying them, that is why he is here today. It would not directly impact his other licenses but implicitly it would.

Mr. Burman stated that the location and testimony of Deb Krau about being in the wellhead district does not make him very happy, nor does Mr. Ferreira's past relationship with the Town. Mr. Burman asked what would happen if a car sprung an oil leak? Mr. Hoxie asked if Officer Maher had any comment. Officer Maher's comment was that he has a much better relationship with Mr. Ferreira than in the past. Mr. Sullivan asked about the location – and was told Mr. Ferreira has a 3 year lease. Mr. Sullivan is very concerned about the water district problem and testimony this morning. However, he does understand that it has gone through Site Plan Review. Mr. Hoxie asked if Site Plan Review takes into account the wellhead protection district. Mr. Geiler stated it DOES take this into consideration. The purpose of site plan is to make sure it meets the ordinances. That gets done. The misconception is the goal of the water quality protection with respect to this wellhead protection area. This licensee has a Junk Dealer License for buying and selling second hand articles, primarily metals. That license is NOT a "junkyard" license. It does not include hazardous materials. Mr. Geiler stated he has heard several times from individuals that there is a "junkyard" on this site – there is not license for a junkyard. Mr. Sullivan suggested if we grant the Class II License there be absolutely no cleaning, service or repair on the property.

Mr. Hoxie again asked whether or not this is really the primary business of the applicant. How will it be maintained as the primary business? Attorney Connors stated that the first line of inquiry is with the books, which Mr. Ferreira keeps very well. Unless there has been an alteration somewhere, the first line would be to see what the business function has been within a few month period. There is really no other way to monitor that. Attorney Connors stated that principal is not exclusive, is not sole, but something "more." This does not exclude the Junk Dealer License he already has. Mr. Burman asked if he would surrender his Junk Dealer License if he was given the Class II Auto License? Attorney Connors stated he would not. Mr. Geiler stated that if someone calls him to sell a car – it will not be a cream of the crop car. It may very well be leaking and in poor shape. He went on to say that when Mr. Ferreira got the Junk Dealer License, it was indicated to the Board by him that vehicles would be put on a flatbed and taken right off Cape for sale. He is worried about the state of the vehicles brought in. He then stated that first, however, we must get by the "principal business" issue. Mr. Geiler stated he is having a problem seeing how the other license could be accessory to the Car Dealer License.

Attorney Connors stated the second license does not HAVE to be accessory to the principal license. Mr. Geiler wanted to know how the scrap business, towing business, junk dealer business, etc. are accessory to the Class II Auto business. Attorney Connors stated again that those licenses and permits are not accessory but are just other businesses of Mr. Ferreira at the address. Mr. Geiler stated you cannot have primary businesses without those accessory uses. Mr. Geiler stated there cannot be

multiple primary uses. Mr. Geiler stated principal or primary income is not the same thing as principal or primary business.

Attorney Connors stated he thinks the books would show which is the primary business. Mr. Geiler does not agree with what Attorney Connors stated; he does not agree that it is in the best interest of the town to bring junk cars there for storage.

Mr. Hoxie does not want to disrupt the water supply, but stated he also does not want to disrupt Mr. Ferreira's ability to make a living. Mr. Hoxie stated Mr. Ferreira is aware of the issues of law and what the new license requires. Mr. Hoxie asked if the license is denied, how will it affect his now principal license? Mr. Ferreira stated his Junk Dealer license states he can buy vehicles. He wants to be able to take the vehicles to dealers but cannot sell them now as he is not a Class II Dealer.

Mr. Geiler commented on what Mr. Ferreira stated. What apparently is going on is some vehicles are taken for scrap, and some taken to auction and the auctions at some point recently asked if Mr. Ferreira has a Class II Auto License. The auctions were told NO. They then said he needed the license to sell the cars to auctions. Mr. Geiler stated anyone has the right to establish himself as an auto dealer. However, he cannot combine it on the present site with the other business he has there already.

Attorney Connors stated he went through site plan review. They insure the setbacks are correct, egress is appropriate, signage is appropriate, use is appropriate, etc. Attorney Connors stated Mr. Ferreira wants to follow the letter of the law to operate within the town regulations and have the appropriate licenses.

Mr. Hoxie asked Officer Maher about this. Officer Maher stated some of the vehicles picked up are taken right out for auction, or whatever. He thinks from his understanding that Mr. Ferreira will be operating under the confines of the Class II License. Mr. Hoxie thinks the water problem could be taken care of immediately if it were to become a problem. Mr. Hoxie asked again whether the other businesses are, or even have to be, accessory to the primary business of Class II Auto Dealer. Mr. Hoxie asked that we continue this hearing for a decision on primary and accessory use under this license as we need time to ask the Town Attorney whether this is the law, or if Attorney Connors' representation is correct that it does not have to be accessory to the primary or first business.

A motion was duly made by Gene Burman, seconded by Paul Sullivan, and a unanimous vote taken to continue this hearing for May 17, 2010 to determine whether or not through our Town Attorney the other business does not have to be accessory to the Class II, and also that if the license were granted and there were any problems of contamination it would be revoked immediately.

**Amend Daily Live Entertainment License, add Daily Non-Live Entertainment License and modify Sunday Entertainment License:** Application has been made by Heritage House Hotel, 259 Main Street, Hyannis, Jan Daale, Manager, for

**Modification to its Daily Live Entertainment License** to include the outside patio and change the hours to noon to 12:45 a.m., 3 entertainers maximum outside **and for a Daily Non-Live License and to change the hours on its Sunday Entertainment License**, to 1:00 pm to 12:45 a.m.

Peter Martino, Owner, appeared for the request for acoustic guitar type of entertainment and speakers to be hidden within the landscaping area within the seating area. The intent is for music for those utilizing the outside patio in front of the hotel.

Officer Maher thought maybe 3 entertainers outside might be a lot. Mr. Martino stated their entertainment has been going on for 10 years – 50's and up. He said till not change the theme of entertainment.

Mr. Hoxie stated that he believes the BID is in favor of this type of entertainment.

They are talking about the wooden stage area outside in front. It would be afternoon and early evening only. Lt. Jason asked if they can keep the noise on their property? Mr. Martino stated they will face the speakers and music towards the diners but it probably would not be completely contained.

Mr. Geiler stated there are few if any residential abutters. Bank, empty lot, bus station, their own property quite lengthy before getting to the housing on Barnstable Road. Gene Burman asked about the new condos on Center Street and above the former Martin's bakery on the 2<sup>nd</sup> floor? Mr. Geiler stated those are at least ¼ mile or more away and behind a strip mall convenience store.

Mr. Hoxie asked if they would be willing to limit the evening hours? Mr. Martino stated it would be prior to midnight but until the diners vacate the area.

Mr. Geiler asked who would control the volume? He stated that the responsibility is that of the hotel – not the entertainers. Can they commit the hotel to control that noise? Mr. Martino stated their own hotel policy does not allow loud music as they do not want to disturb their OWN guests.

Officer Maher's concern is the types of music OTHERS may ask for down the street – it could leave us open to other types of music which would be louder and more disruptive. Mr. Martino said they own the property, restaurant and hotel and are trying to get quality entertainment. Mr. Burman stated the Board is very sensitive about this issue. Mr. Martino stated they have a past history of entertainment and no problems.

Mr. Hoxie stated we should look at these cases individually and not compare one to another. We can make amendments if needed later, should what we grant not work out. Mr. Sullivan stated we are stepping into a new area now; but have to be careful. If they cause a problem it will be limited or eliminated.

A motion was duly made by Gene Burman, seconded by Paul Sullivan, and a unanimous vote taken to approve the application of Heritage House Hotel, 259 Main Street, Hyannis, Jan Daale, Manager, for **Modification to its Daily Live Entertainment License** to include the outside patio and change the hours to noon to 12:45 a.m., 3 entertainers maximum outside **and for a Daily Non-Live License and to change the hours on its Sunday Entertainment License**, to 1:00 pm to 12:45 a.m.

**Transfer of Annual Retail Package Store Wine & Malt License:** Application of Srajy's Inc., d/b/a Mini Food Mart, 252 Main Street, Muatsim N. Chaudhry, Manager, for Transfer of its Annual Wine & Malt Package Goods Store License to SAM Inc., d/b/a Mini Food Mart, Asim Jamal, Manager.

Attorney Paul Tardif. appeared for this application. This property is right next to the railroad station. The TIPS training has been completed for all employees. About 4-5 months ago the current owner was approached by BPD with regard to controlling the vagrants, etc. and asked to limit packaging of alcohol. They did voluntarily change packaging and number of pieces in a sale – not selling singles. It seems to have worked well. The new owner will continue that. There is no plan to change anything on the present license. The store closes about 5 minutes to eleven.

Mr. Hoxie asked about the new Manager's experience – he has worked there for 4-5 months; they have an ID checking system and cameras inside and outside which are very visible.

Lt. Jason spoke that the problem was brought to their attention of loitering there, etc. She wonders if the former manager will have anything to do with this license? She went on to say that he was allowing homeless to put their personal belongings behind his counter and selling singles cigarettes. This seems to have stopped – and selling the 40 oz. beer really cheaply has stopped as well, to try to eliminate this clientele.

Mr. Hoxie verified the applicant is a citizen. Mr. Burman is concerned about giving a license to a manager most of whose experience is in places without alcohol – does he understand the ramifications of sales of alcohol?

Attorney Tardif stated he does understand and has worked at this place just recently. He understands there will be compliance checks announced or unannounced.

Mr. Sullivan wanted to reiterate that this location makes it hard on management – they must be very diligent.

A motion was duly made by Gene Burman, seconded by Paul Sullivan, and a unanimous vote taken to approve the application of Srajy's Inc., d/b/a Mini Food Mart, 252 Main Street, Muatsim N. Chaudhry, Manager, for Transfer of its Annual

Wine & Malt Package Goods Store License to SAM Inc., d/b/a Mini Food Mart, Asim Jamal, Manager.

**New Lodging House License:** Application of Eastern New England Council, Hostelling International-American Youth Hostels, Inc., d/b/a Hostelling International-Hyannis, Robert Sylvia, Manager, for a new Lodging House License at 105 and 111 Main Street, Hyannis, with a maximum of 4 buildings, with 47 maximum lodgers (beds), and 16 maximum parking spaces.

John Yonce appeared for the application. They have a regulatory agreement with the Town to operate this hostel. It has been a long road to get here. Mr. Burman stated there were two houses originally; they were 105 and 111 Ocean Street. Mr. Yonce represented that they plan to be open for July.

A motion was duly made by Gene Burman, seconded by Paul Sullivan, and a unanimous vote taken to approve the application of Eastern New England Council, Hostelling International-American Youth Hostels, Inc., d/b/a Hostelling International-Hyannis, Robert Sylvia, Manager, for a new Lodging House License at 105 and 111 Main Street, Hyannis, with a maximum of 4 buildings, with 47 maximum lodgers (beds), and a maximum of 16 parking spaces.

**New Class II Auto Dealer License:** Application of H & P Capital Management, Inc., d/b/a Route 66 Auto Sales, William A. Gasson, Manager, for a New Class II Automobile Dealer's License, 362A Yarmouth Road, Hyannis, MA, maximum of 18 total vehicles on the property, hours of operation: 10 am – 5 pm M-F; 10 am - 3 pm Sat.

Mr. Burman recused himself from this hearing; Mr. Boy will be sitting. William A. Gasson appeared for the license. He stated that currently Route 66 Auto Sales is at this location. There is a tractor company next-door – and a business sells medium tractors and across the street is canvas sales. Mr. Hoxie asked if there will be repairs or car washing? Mr. Gasson stated there will not. Mr. Sullivan asked Mr. Gasson if he has been in this business before? He stated he has, for 33 years off Cape.

Deb Krau from the Hyannis Water Board came forward again for this license. She questioned where the staff is to do the checks and enforcement on these businesses. She wonders how 362 has carved out a 362 "A?" She stated a waste meter is required at this location. Is the Board of Health getting those reports? Her concern is enforcing the restrictions being put on these licenses. She is hopeful that there is. She has already asked if the Health Dept. has reports from 362.

Mr. Geiler asked whose restriction it is about the waster meter? It was a Special Permit with conditions - ZBA Appeal 1993-64 for 362 Yarmouth Road. Mr. Geiler thinks it is still one lot with multiple tenants. Mr. Geiler stated he will get the information for her.

Mr. Hoxie asked the applicant if he is aware of this location's restrictions; Mr. Gasson said he is aware of the restriction on total number of vehicles being 18. Mr. Sullivan asked if this issue was ever brought up to him? He stated it was not. Mr. Hoxie stated we will look into this.

Mr. Geiler said that we have had show cause hearings in the past for compliance. The police and fire departments do inspections as does building and fire, regularly. The DPW has a wastewater department which reviews activities on sewer and Health on a site specific system as well as state agencies...is that enough? Mr. Geiler stated he would like to have more, but we do routine inspections and have a degree of confidence, and if non-compliance is indicated they are brought to the Board to explain why they are not in compliance.

A motion was duly made by Paul Sullivan, seconded by Dick Boy, and a unanimous vote taken to approve the application of H & P Capital Management, Inc., d/b/a Route 66 Auto Sales, William A. Gasson, Manager, for a New Class II Automobile Dealer's License, 362A Yarmouth Road, Hyannis, MA, maximum of 18 total vehicles on the property, hours of operation: 10 am – 5 pm M-F; 10 am - 3 pm Sat.

**Change of Location:** Application of Unveiled Seafood, Inc., d/b/a The Naked Oyster, 20 Independence Drive, Hyannis, Florence Lowell, Manager for a **Change of Location** to 408 Main Street, Hyannis with the licensed premises described as follows: Single story brick structure with a basement at 408 Main Street, Hyannis. Consists of one entrance/exit on the South side, one entrance/exit on the East side, one entrance/exit on the east side of the building. Dining room seating for 76, bar drink rail for 8, 10 standees, 14 employees, outdoor cafe with 18 seats in front of the building. Kitchen, storage & restroom areas. Total main floor 2200 sq. ft. 1,400 sq. ft. basement – office, storage, restrooms and a function room with 20 seats.

Mr. Burman stated maybe someone might perceive he has a conflict of interest in this matter but he is not involved in any way. He will sit on the hearing.

Florence Lowell appeared for this application of change of location for The Naked Oyster to the Puritan Clothing Store building. This will be where the old Cricket Shop was located. They are hoping to move by July 1<sup>st</sup>. They will hopefully stay open until then and have no down time if possible. There will be access during the hours of operation of Puritan through the store. They will make sure no alcohol is taken out of their restaurant. The function room will have handicap access and elevator access and a sign out front. There will be outside dining on Main Street – an iron fenced-in patio six feet from the sidewalk. She has a meeting for the Town Manager Agreement and it has gone through historic as well.

A motion was duly made by Gene Burman, seconded by Paul Sullivan, and a unanimous vote taken to approve the application of Unveiled Seafood, Inc., d/b/a The Naked Oyster, 20 Independence Drive, Hyannis, Florence Lowell, Manager for a Change of Location to 408 Main Street, Hyannis with the licensed premises

described as follows: Single story brick structure with a basement at 408 Main Street, Hyannis. Consists of one entrance/exit on the South side, one entrance/exit on the East side, one entrance/exit on the east side of the building. Dining room seating for 76, bar drink rail for 8, 10 standees, 14 employees, outdoor cafe with 18 seats in front of the building. Kitchen, storage & restroom areas. Total main floor 2200 sq. ft. 1,400 sq. ft. basement – office, storage, restrooms and a function room with 20 seats, with the outside seating contingent upon approval of a Sidewalk Café Agreement from the Town Manager.

**Show Cause Hearing:** Show Cause Hearing for Cape Cod Precious Gems & Coins, 48 Iyannough Road, Hyannis, MA, Carl Marchetti, Manager, for revocation of its Junk Dealer License as a result of information presented to the Licensing Authority by Detective Sgt. John Murphy of the Barnstable Police Department at the December 7, 2009 Licensing Authority Hearing for failure to comply with the Town of Barnstable Rules and Regulations under Chapter 502 regarding non-reporting of items purchased for sale, that it purchased items which appear on a list of stolen property, and a determination that Mr. Marchetti is an improper person to hold a Junk Dealer License, to show cause why its Junk Dealer License should not be permanently revoked. This hearing was continued again as the police sergeant who called for this hearing could not attend this morning due to an emergency last evening.

Mr. Hoxie stated there is a request from Attorney Atwood's Office to continue this hearing – they represent him in the criminal matter...it is moving along slower than anticipated. She thinks it may go on for a three month period. We will continue the hearing to Monday, August 16, 2010 and that he remain suspended (closed) until that date.

A motion was duly made by Gene Burman, seconded by Paul Sullivan, and a unanimous vote taken to continue this hearing to August 16, 2010 with the suspension to remain in place.

#### **Renewals:**

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

#### **Automatic Amusement - Carousel:**

Courtyard Marketplace

A motion was duly made by Gene Burman, seconded by Paul Sullivan, and a unanimous vote taken to approve the above renewal for a carousel.

#### **Non-Live Entertainment:**



## Courtyard Marketplace

A motion was duly made by Gene Burman, seconded by Paul Sullivan, and a unanimous vote taken to approve the above renewal for non-live entertainment.

### **Video Games:**

## Courtyard Marketplace (40)

A motion was duly made by Gene Burman, seconded by Paul Sullivan, and a unanimous vote taken to approve the above video games license for renewal.

### **Sunday Entertainment:**

## Courtyard Marketplace

A motion was duly made by Gene Burman, seconded by Paul Sullivan, and a unanimous vote taken to approve the above Sunday entertainment license for renewal.

### **Junk Dealers**

Trade Secret Antiques  
Best for Less  
Guertin Brothers Jewelers  
Cotuit Mercantile

A motion was duly made by Gene Burman, seconded by Paul Sullivan, and a unanimous vote taken to approve the above Junk Dealer licenses for renewal.

### **Common Victualler:**

## McGee's Ice Cream

A motion was duly made by Gene Burman, seconded by Paul Sullivan, and a unanimous vote taken to approve the above Common Victualler license for renewal.

### **Business Meeting:**

Blackburn's Auto Sales: Mr. Geiler stated we sent a letter to Blackburn's for a written detailed plan for cleanup of his site – we got a letter requesting a 90 day timeframe to do this cleanup. Our expectation would be to get a plan, which we did not get. His suggestion is to grant the 90 days but expect to see the property in compliance in 90 days.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to inform Mr. Blackburn that we expect his property to be in compliance within 90 days.

Cape Cod Lincoln Mercury: Mr. Geiler stated this seems to be a competitive issue. The bottom line is that Cape Cod Lincoln Mercury is advertising new Ford autos. They are authorized for new vehicle sales. Mr. Geiler thinks that as a response to this letter we should send them a copy of the license and state we do not see a licensing issue in this situation. The Board agreed.

FYI – Restaurant All Alcohol (fine and warning). Nothing to be done on it at this time – placed in file as a warning.

Restaurant All Alcohol – Request for Show Cause Hearing Date – The Dockside. Mr. Hoxie suggested that this hearing be held on June 7, 2010.

The BPD will hold another seminar on Wednesday, 5/26 for alcohol establishments at 10 am – and will ask Christine Ade to send out the letters. She was asked to use the same letter from a couple years ago and change the date.

Mr. Geiler will get our minutes to Town Attorney for a decision for Ferreira’s hearing on 5/17, but thinks it may not be enough time for an answer to be provided as this is an impossible time of year due to budgets for the next fiscal year.

Adjourned at 11:57 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