



Town of Barnstable

Regulatory Services

Thomas F. Geiler, Director

Licensing Authority

200 Main Street

Hyannis, MA 02601

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, 2nd Floor Hearing Room, Hyannis, MA –
9:30 a.m.
October 25, 2010**

A regular meeting of the Barnstable Licensing Authority was held on Monday, October 25, 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, Lt. JoEllen Jason and Patrolman Steve Maher, Liaison Officers from the Barnstable Police Department, and Christine Ade, Recording Secretary.

Hearings:

Change of Location – Class II Auto Dealer: Application of Cape Motors, Inc., d/b/a Cape Motors, James M. Mullin, Manager, for a New Class II Automobile Dealer's License, 123 Falmouth Road, Hyannis, MA, total vehicles to be determined at Site Plan Review.

Mr. Mullin appeared for this license. They will be operating as a Class II Auto Dealer. The number of vehicles is 40. The lease is for 14 months. Mr. Burman asked Mr. Wood how they are dividing the two dealerships. Mr. Wood stated there are three buildings on the site – the plan indicates where they will be parked. Separating them are small concrete birms separating the two. Officer Maher stated there has to be a line between the two according to the RMV. Some type of marking needs to separate them. The curb cuts – two on 28 and one on Walton Avenue will remain the same. The lease is drawn for 14 months so it will run until the following renewal date. That way the leases will renew at the end of the year. Mr. Burman asked if we have a release of lease from the first tenant so the new one will be legal. Mr. Geiler asked what site plan review did about plantings; Mr. Wood stated he had seen nothing yet. He advised that they took out some scraggly old bushes and will install small foot high bushes with mulch in place of those.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Cape Motors, Inc., d/b/a Cape Motors, James M. Mullin, Manager, for a New Class II Automobile Dealer's License,

123 Falmouth Road, Hyannis, MA, total vehicles to be 40 maximum on the his part of the site, subject to a confirmation from Site Plan Review.

New Class II Auto Dealer: Application of AMR Auto Holdings – MH, LLC, d/b/a Prime Pre-Owned Center, Matt McGovern, Manager, for a New Class II Automobile Dealer’s License, 95 Falmouth Road, Hyannis, MA, with a total of 40 vehicles on the lot.

Mr. McGovern appeared for Prime Pre-Owned Center. Presently at the location is Cape Motors; they will be renovating and making façade changes...some to the interior of the building. They will occupy the entire building. They are purchasing the Mercedes franchise from Trans-Atlantic and this will be the location for Mercedes repair. No new vehicles – just pre-owned. Mr. Geiler confirmed the number of vehicles is fine.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of AMR Auto Holdings – MH, LLC, d/b/a Prime Pre-Owned Center, Matt McGovern, Manager, for a New Class II Automobile Dealer’s License, 95 Falmouth Road, Hyannis, MA, with a total of 40 vehicles on the lot.

Show Cause Hearing: **Show Cause Hearing** for AB Auto Sales, 415A Barnstable Road, Hyannis, Anibal Barroso, Manager, for cancellation of its Class II Auto Dealer Bond.

Mr. Barroso appeared for the hearing. Mr. Hoxie stated we have now received the bond. Mr. Barroso stated it is effective the first of October. He stated the bonding company did not want to renew – he did not know why. Mr. Geiler stated it is his responsibility to communicate with the office that there had been a problem.

Christine Ade confirmed that the new bond was provided 10/19/10. It was backdated to October 1, 2010 so there was no lapse in coverage.

Mr. Hoxie stated the license will remain in full force and effect since there was a bond in place and dismissed the Show Cause Hearing.

Renewals:

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

A motion was duly made by Mr. Burman and seconded by Mr. Sullivan and a unanimous vote taken to approve the Class I Auto Dealer renewals as submitted below:

Class I Auto Dealers:

Cycle Services JD Signs
Premier Cape Cod
Buick GMC Cadillac Saab

A motion was duly made by Mr. Burman and seconded by Mr. Sullivan and a unanimous vote taken to approve the Class II Auto Dealer renewals as submitted below:

Class II Auto Dealers:

Cape Cod Cars and Trucks
Barnstable Motors Wholesale
Nantucket Auto Sales
Barnstable Road Auto Repair
Club 44 Acquisition Svcs.

MBM Auto Sales – 500 Yarmouth Road – held for a subsequent hearing
MBM Auto Sales – 115 Iyannough Road – held for a subsequent hearing

A motion was duly made by Mr. Burman and seconded by Mr. Sullivan and a unanimous vote taken to approve the Cinema/Theatre renewals as submitted below:

Cinema/Theatre:

Cotuit Center for the Arts

A motion was duly made by Mr. Burman and seconded by Mr. Sullivan and a unanimous vote taken to approve the Lodging House renewals as submitted below:

Lodging Houses:

Cape Cod Ocean Manor
Bursley Manor
Friends of Prisoners, Inc.
Sea Beach Inn
Simmons Homestead Inn
Bass River Properties – 164 Main Street
Bass River Properties – 80 Yarmouth Road
Bass River Properties – 156 Main Street
Bass River Properties – 18 Quaker Road
Josiah Sampson House
High Pointe inn
Fernbrook Inn

A motion was duly made by Mr. Burman and seconded by Mr. Sullivan and a unanimous vote taken to approve the Common Victualler renewals as submitted below:

Common Victuallers:

A motion was duly made by Mr. Burman and seconded by Mr. Sullivan and a unanimous vote taken to approve the Automatic Amusement renewals as submitted below:

Honey Dew Donuts
Cooke's Seafood
Keyes/Sea Street Beach
International House of Pancakes
Kentucky Fried Chicken/Taco Bell
Sarku Japan
Friendly's #736
Papa Gino's – 790 Iyannough Road
D'Angelo's – 187 Falmouth Road
D'Angelo's – 793 Iyannough Road
BJ's Wholesale Club #321
Osterville Fish Too
Cape Cod Hospital Nutrition & Food Svcs.
Dunkin Donuts – 156 Iyannough Road
Dunkin Donuts – 627 Main Street
Dunkin Donuts – CC Mall
Dunkin Donuts – 3821 Falmouth Road
Dunkin Donuts – 702 Iyannough Road
Dunkin Donuts – 147 North Street
Dunkin Donuts – 317 Falmouth Road
Dunkin Donuts – 751 West Main Street
Dunkin Donuts – 1648 Falmouth Road
Dunkin Donuts – 1220 Iyannough Road
Aegean Pizza
Willow Tree Market
Burger King #4486
Burger King #664
Mary Lou's Coffee
Four Seas Ice Cream

A motion was duly made by Mr. Burman and seconded by Mr. Sullivan and a unanimous vote taken to approve the Video Games renewals listed below:

Automatic Amusement/Video Games:

Boston 'n Barnstable, Inc. for Burger King at 2145 Iyannough Road, Hyannis

A motion was duly made by Mr. Burman and seconded by Mr. Sullivan and a unanimous vote taken to approve the Daily Live Entertainment renewals listed below:

Daily Live Entertainment:

Cotuit Center for the Arts

A motion was duly made by Mr. Burman and seconded by Mr. Sullivan and a unanimous vote taken to approve the Daily Non-Live Entertainment renewals listed below:

Daily Non-Live Entertainment:

Honey Dew Donuts
Boston 'n Barnstable, Inc. for Burger King at 2145 Iyannough Road, Hyannis
Island Carousel

A motion was duly made by Mr. Burman and seconded by Mr. Sullivan and a unanimous vote taken to approve the carousel license renewal listed below:

Carousel:

Island Carousel

A motion was duly made by Mr. Burman and seconded by Mr. Sullivan and a unanimous vote taken to approve the Sunday Entertainment renewals as submitted below:

Sunday Entertainment:

Cotuit Center for the Arts
Island Carousel

Mini Golf:

Lightning Falls

Business Meeting:

An agenda item was added for the Board to discuss how to proceed with regard to the new application of H&S Entertainment, LLC d/b/a Sally & Harry's. Mr. Geiler stated one licensee found themselves in financial difficulties and decided to close the place up. The premises are fairly new – recently built from the ground up. There were several interested applicants. We had an applicant come in with a lease – they

met the criteria for filing with the exception of a surrender letter from the current licensee but was advised it might be a problem as a new license was not available until the present licensee surrendered or did not renew. The application went to Boston and the ABCC rejected it. Currently the applicant would need to demonstrate that the current licensee has formally surrendered that license or wait until the renewal period for 2011. Assuming that the current licensee does not have access to the premises after 12/31/10, the proposed licensee would have a valid license application at that time. Mr. Geiler suggested that it isn't really practical to use the other alternative – schedule a show cause hearing for the current licensee for failure to have a lease at this point and not being open...the potential there might tie the property up for years. It makes sense to do this the right way – with a surrender or move forward during the renewal period. Mr. O'Neill appeared to speak as the owner of the property and the condo development in the back. They worked with the owners of Harry's and it just wasn't working out – back rent, etc. and it was decided their company would like to go back and get the premises ready for a new licensee. He worked with Doris Malow and Thomas Moynihan of the DOR, who had a lien against the property for the current licensee. The license was then surrendered by Harry's to the DOR in Hyannis. The license was mailed from the DOR to the Town Licensing Dept. The building owner made arrangements to sell equipment; but there was a Harry's closing party there and some things were removed and they are now trying to get the facility up and running as soon as they can. Mr. Hoxie stated that barring a surrender by the License holder we are still not in a position to go forward. Mr. O'Neill stated this is unfortunate – the DOR instructed them to apply for a new license so that any back issues with the old tenant would remain open against them.

Mr. Hoxie asked if anyone had heard from the prior owner; Christine Ade stated that the current Licensee, Letitia Durham, had been in to the office a couple weeks back at the Health Dept. counter, and had stated they do not want to surrender the license. Mr. Geiler stated it would be difficult for them to renew for 2011 since they will not have a lease. He reiterated that the worst thing to happen to the Landlord would be for this property to be in litigation so a license would not be available. The applicant can apply in December for January 1st. That seems to be the best way to go about it. He also mentioned he had made several attempts to get the attorney for the new licensee to obtain that surrender letter so this could move forward. The procedures that must be followed are not something with which we have any wiggle room. So Mr. Geiler again stated his best advice would be to keep it in compliance with the law.

Mr. Hoxie stated Dino can apply now for a hearing in December to be approved as of January 1st. To apply today for a reconsideration of the license they would not be open until late in December anyways. But the risk is the appeal process. Mr. Hoxie stated if he applied for the hearing on 12/6 it would go to the ABCC for approval for January 1. The Landlord stated they are here to try to help however they can to get a new viable operator on the premises. Mr. Hoxie asked if Mr. O'Neill planned to take any action against the former tenant for damages or destruction of property?

Mr. O'Neill stated his priority is to get the new business up and running first and that what they do afterwards is not their first priority.

Mr. Geiler stated he made every effort to let the attorney know it would be a slippery slope – we did try to get them to secure a surrender letter. It is every applicant's right to proceed, but we did tell them it might not happen. If the surrender had been obtained, it might have been able to move forward, but that did not happen. Mr. Burman stated he is sympathetic to these people for their investments to date asking if there is a license that could be issued for the next 30-60 days? Mr. Geiler stated they could not be issued an alcohol license but could issue a common victualer license – this also leaving them open to legal ramifications. He stated that we know this whole thing is contentious and getting more so each day. Taking an action giving someone a chance to litigate would be very very costly.

For informational purposes: A copy of a Decision of the ABCC on a recent hearing for SJR Group, d/b/a 586 Bistro & Bar was provided to Commissioners. The ABCC held a hearing and issued the licensee a warning. Mr. Sullivan asked Officer Maher if they had been pretty much in compliance; Officer Maher stated there have been a few issues. Mr. Geiler stated that the BPD has not had as many hours to spend on these types of activities – in order to get a better overview it takes time. They are shorter staffed now, as we are. Officer Maher knew of this case when it first happened; had a good relationship with the investigator. They are aware of what is going on there as well.

No other new business came before the Licensing Authority.

Adjourned at 10:06 a.m.

Respectfully submitted,

Christine P. Ade, Recorder
Town of Barnstable Licensing Authority

Paul Sullivan, Clerk
Town of Barnstable Licensing Authority