



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.

May 21, 2012

A regular meeting of the Barnstable Licensing Authority was held on Monday, May 21, 2012. Chairman Martin Hoxie called the meeting to order at 9:30 A.M. He introduced Gene Burman, Vice Chairman; Paul Sullivan, Clerk; Richard Boy, Associate Commissioner; Thomas Geiler, Director of Regulatory Services; Richard V. Scali, Consumer Affairs Supervisor; Lt. John Murphy and Patrolman Steve Maher, Liaison Officers from the Barnstable Police Department, and Christine Ade, Recording Secretary.

Vote to accept Minutes: Vote to accept minutes of the 4/30/12 Meeting.

A motion was duly made by Mr. Burman, seconded by Mr. Sullivan and a unanimous vote taken to approve the minutes of the 4/30/12 Meeting.

Hearings:

Two One Day Wine & Malt Licenses and a One Day Entertainment License:

Application of Wayne J. Enos on behalf of the Holy Ghost Society of Santuit & Cotuit, 154 Able Way, Marstons Mills, for two One Day Wine & Malt Licenses and a One Day Entertainment License (Saturday only) for a band, for its annual Portuguese Feast to be held on June 16, 2012 from 5:00 pm to 11:00 pm and June 17, 2012 from 12:00 pm to 6:00 pm at 53 Main Street, Cotuit, outside only.

This is the 121st year this has been held. Beatrice White appeared for the Society.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the application of Wayne J. Enos on behalf of the Holy Ghost Society of Santuit & Cotuit, 154 Able Way, Marstons Mills, for two One Day Wine & Malt Licenses and a One Day Entertainment License (Saturday only) for a band, for its annual Portuguese Feast to be held on June 16, 2012 from 5:00 pm to 11:00 pm and June 17, 2012 from 12:00 pm to 6:00 pm at 53 Main Street, Cotuit, outside only.

One Day Wine & Malt and One Day Entertainment License: Application of Henry Farnham on behalf of the West Barnstable Civic Assn., P.O. Box 243, W. Barnstable, for a One Day Wine & Malt License and a One Day Entertainment License for a 3 piece jazz band (5 pm – 8 pm) for its 2nd annual scholarship fundraising event to be held at 1595 Main Street, W. Barnstable outdoors in a tent from 2:30 pm to 8:00 pm on June 23, 2012.

Mr. Farnham appeared for this event which has been expanded since last year. They will have a police detail; he has spoken with Sgt. Sweeney. Mr. Phil Wallace will be serving the alcohol – he is with Great Moments with a company based in New Bedford. There is one beer vendor – Sam Adams, part of the Cape Cod Life sponsorship. 7 G's Package and Barnstable Market are others. Mr. Burman asked Mr. Farnham how it feels to be on that side of the podium.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the application of Henry Farnham on behalf of the West Barnstable Civic Assn., P.O. Box 243, W. Barnstable, for a One Day Wine & Malt License and a One Day Entertainment License for a 3 piece jazz band (5 pm – 8 pm) for its 2nd annual scholarship fundraising event to be held at 1595 Main Street, W. Barnstable outdoors in a tent from 2:30 pm to 8:00 pm on June 23, 2012.

One Day Wine Only and One Day Entertainment License: Application of Elizabeth Wurfbein on behalf of the Hyannis Main Street BID, 397 Main Street, Hyannis, for a One Day Wine License and a One Day Entertainment License for a jazz trio and violinist, for a culinary event to be held outside only at the Beech Tree Alley, 599 Main Street, Hyannis from 6 pm to 10 pm on June 28, 2012.

Elizabeth Wurfbein stated it will be in the alley by the Beech Tree. They will put 19 tables of 8 down the alley – all attached. It is a dinner by Hyannis Main Street BID. It is a promotion for Hyannis Main Street. It is called a long table event. There are 10 courses brought in by 10 restaurants – using the coffee shop part of the Beech Tree for plating only. Mr. Geiler stated it is not something they can lease to her – he said he spoke to her a couple months ago about this. She had stated they are working through Dave Colombo's wine distributors. Mr. Hoxie wanted to know if this is part of the Beech Tree premises...if not we can issue the license but if it is we cannot.

Officer Maher stated it is not part of the license at present. Ms. Wurfbein stated she has met with Fire, Building, Health to take over the area for the night. Bracelets will be given to those attending the party. She stated that it will not be mixed into the Beech Tree restaurant. Their door is totally separate. There will be a table with 2 persons letting people in. They have established there will be no mixing. Mr. Geiler stated it puts the Beech Tree capacity together with these premises. Ms. Wurfbein stated again that the entrance to the party is separate from the entrance to the Beech Tree Cantina, there is no cross-over. The beginning of the party is farther than the cantina entrance.

Mr. Burman is worried about the possibility of fire. Ms., Wurfbein stated that Dean Melanson reorganized some tables so that the setup would be o.k. for the Fire Department. Because of this concern, Elizabeth stated that one of the breaks in the tables will coincide with a side exit and there will also be an exit to the front and back. The exit in the rear is also approved.

Officer Maher stated there is a walkway through the back now which did not exist before. The area is much much better, and should not be a problem. Ms. Wurfbein said that she brought the fire department there to make sure, and also Building and Health will look at it next week. Mr. Geiler stated the seating required is 15 square feet per table – there is no way they have that square footage. Ms. Wurfbein stated they did a setup for Building and Fire already, based on safety. Mr. Geiler stated we do not have an approval from Building or Fire – did she get some kind of permits from them? If so we need copies of those. She advised that she had a specific site plan review with them. Mr. Geiler asked if there will be a tent – he stated that we are really taking a chance here with 600 people in the rear. She stated it is not being used by Beech Tree that night – their party is using that space and they are 150. Mr. Geiler stated he would like to see more paper documentation on this which we do not have. Our role is to make sure it is safe. We have no approvals of any kind. He asked if the Board would please continue this. Mr. Hoxie stated we need to approve contingent upon certain things....Mr. Geiler stated they are not eligible to apply for a license on an already licensed property. Under section 12 you are limited to one license on the property. The Beech Tree could apply to extend the premises for that area with the alcohol going through them. Ms. Wurfbein stated that could happen if that is what is needed to make this happen. Mr. Geiler stated that somebody has to be responsible. Ms. Wurfbein stated it is 150 people not 400 and the restaurant is open – their only entrance is away from the event. It will not be mixing with the event. Mr. Geiler stated we need to look at this more closely. He asked her to meet with him, Tom Perry, Tom McKean and Fire to get it all on paper. He suggested also a representative from Beech Tree should attend. She stated that the food is catered and being plated in the back behind the Beech Tree. Mr. Hoxie stated that hopefully at our next meeting we can determine a way to have this happen. Mr. Geiler stated in the past we have given a licensee an expansion of premises to include an area not already licensed.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to continue the application of Elizabeth Wurfbein on behalf of the Hyannis Main Street BID, 397 Main Street, Hyannis, for a One Day Wine License and a One Day Entertainment License for a jazz trio and violinist, for a culinary event to be held outside only at the Beech Tree Alley, 599 Main Street, Hyannis from 6 pm to 10 pm on June 28, 2012.
to June 4, 2012.

One Day Entertainment License: Application of Patricia Janiak on behalf of Cape Abilities, 895 Mary Dunn Road, Hyannis for a One Day Entertainment License for Young @ Heart Chorus from Northampton, MA to raise funds to support Cape Abilities non-profit that provides jobs, homes, transportation and support for people with

disabilities across Cape Cod. The event will be held on October 14, 2012 from 1:30 pm to 6:00 pm.

Ms. Janiak appeared for this application. They are looking for entertainment only. It is their 30th anniversary. Performance starts at 3 over 5:30 to 6. Ages 73-90 are in this chorus and musical review. The price is \$35, \$55 and \$65.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the application of Patricia Janiak on behalf of Cape Abilities, 895 Mary Dunn Road, Hyannis for a One Day Entertainment License for Young @ Heart Chorus from Northampton, MA to raise funds to support Cape Abilities non-profit that provides jobs, homes, transportation and support for people with disabilities across Cape Cod. The event will be held on October 14, 2012 from 1:30 pm to 6:00 pm.

Two One Day All Alcohol Licenses: Application of E.J. Jaxtimer, for the Joe Cronin Memorial Jimmy Fund (Dana Farber) Fishing Tournament for two One Day All Alcohol Licenses for its annual fundraising event to be held at Nauticus Marina, 338-339 West Bay Road, Osterville outside in tents on August 2nd and August 3rd, 2012 from 4:00 pm to 10:00 pm.

This has always been a success. Scott Swaylen appeared for this application.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the application of E.J. Jaxtimer, for the Joe Cronin Memorial Jimmy Fund (Dana Farber) Fishing Tournament for two One Day All Alcohol Licenses for its annual fundraising event to be held at Nauticus Marina, 338-339 West Bay Road, Osterville outside in tents on August 2nd and August 3rd, 2012 from 4:00 pm to 10:00 pm.

Alteration of Premises and Change of D/B/A: Application of Radisson Bistro, Inc., d/b/a Radisson Bistro, 287 Iyannough Road, Hyannis. Christopher Connelly, Manager, for Alteration of Premises to change the premises description to read: 287 Iyannough Road, Hyannis, 160 unit two (2) story hotel with forty-three (43) first floor and sixty-four (64) second floor rooms in the main building and twenty-five (25) first floor and twenty-two (22) second floor rooms in the east building with first floor restaurant/pizzeria bar occupying 3,900 sq. ft. with seating capacity of 174 seats restaurant and 86 seats bar/pizzeria (including 10 bar stools), kitchen, storage area, employee area, two (2) restrooms & office, four (4) function rooms, outdoor pool/patio & Lobby Food & Beverage Outlet with 26 seat capacity (including 6 bar stools); Lower Level includes two (2) function rooms. Two exits at Ridgewood Ave., one exit to Iyannough Road, three exits at Engine House Road, and to change the d/b/a name of the hotel to Doubletree Bistro.

Deidre Kyle appeared for this application. The Radisson hotel ceased doing business last December and is set to reopen next month – June 20th. They are keeping the

owner applicant the same and changing the d/b/a name to Doubletree Bistro. There are some changes to the interior which are detailed.

Mr. Hoxie asked if they are keeping the gym; they are.

Mr. Scali asked if they have room service to the rooms – our ad said hotel but should have said Innholder restaurant. It is one liquor restaurant. He wanted to make sure the same entity controls both. Deidre Kyle stated it does.

Ms. Kyle stated Radisson Bistro, Inc. is the only entity that serves alcohol. Mr. Burman stated he was confused as to the operating entity. It is one Manager responsible for both the hotel and restaurant, Christopher Connelly.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the application of Radisson Bistro, Inc., d/b/a Radisson Bistro, 287 Iyannough Road, Hyannis. Christopher Connelly, Manager, for Alteration of Premises to change the premises description to read: 287 Iyannough Road, Hyannis, 160 unit two (2) story hotel with forty-three (43) first floor and sixty-four (64) second floor rooms in the main building and twenty-five (25) first floor and twenty-two (22) second floor rooms in the east building with first floor restaurant/pizzeria bar occupying 3,900 sq. ft. with seating capacity of 174 seats restaurant and 86 seats bar/pizzeria (including 10 bar stools), kitchen, storage area, employee area, two (2) restrooms & office, four (4) function rooms, outdoor pool/patio & Lobby Food & Beverage Outlet with 26 seat capacity (including 6 bar stools); Lower Level includes two (2) function rooms. Two exits at Ridgewood Ave., one exit to Iyannough Road, three exits at Engine House Road, and to change the d/b/a name of the hotel restaurant to Doubletree Bistro.

Alteration of Premises: Application of Brasilia Foods, LLC, d/b/a FOGO Brazilian Barbeque, 39 Iyannough Road, Hyannis, Elizabeth Hurley, Manager, for a Change in License Description to read: Single floor restaurant at 39 Iyannough Road, Hyannis, with a front room w/26 seats, a bar area w/28 seats and an outside deck w/29 seats; total of 83 seats. Two fire suppression systems – kitchen & griddle area. Three exits/entrances, one in front room, bar area and in the kitchen with clearly marked signage. Three(3) bathrooms – men’s/women’s and one handicap accessible. Buffet area in the corner has 9 stations – 3 cold & 6 hot. Griddle & venthood facing South wall, with exhaust, rotisserie, prep area, refrigerated counter, hand sink. Bar in SW corner has 2 sinks, blender station, 3 soda guns, ice chest, 2 bottle coolers, barback & beer cooler, glass froster. Kitchen has dry storage, 6 burner gas stove, walk-in cooler, ice machine, prep area, deep fryer, freezer, water filter, dishwasher, 2 bin sink & mop sink.

Vincent D’Olimpio appeared for the application. These are minor changes they needed to do when they got into construction. They are getting a new building permit and had to put in a grease trap. The restaurant is open.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the application of Brasilia Foods, LLC, d/b/a FOGO Brazilian Barbeque, 39 Iyannough Road, Hyannis, Elizabeth Hurley, Manager, for a Change in License Description to read: Single floor restaurant at 39 Iyannough Road, Hyannis, with a front room w/26 seats, a bar area w/28 seats and an outside deck w/29 seats; total of 83 seats. Two fire suppression systems – kitchen & griddle area. Three exits/entrances, one in front room, bar area and in the kitchen with clearly marked signage. Three(3) bathrooms – men’s/women’s and one handicap accessible. Buffet area in the corner has 9 stations – 3 cold & 6 hot. Griddle & venthood facing South wall, with exhaust, rotisserie, prep area, refrigerated counter, hand sink. Bar in SW corner has 2 sinks, blender station, 3 soda guns, ice chest, 2 bottle coolers, barback & beer cooler, glass froster. Kitchen has dry storage, 6 burner gas stove, walk-in cooler, ice machine, prep area, deep fryer, freezer, water filter, dishwasher, 2 bin sink & mop sink.

New Annual Common Victualler License: Application of Kandy K Inc., d/b/a Kandy Korner, 474 Main Street, Hyannis, Paulo Paraguay, Manager, for a new annual Common Victualler License. Hours of operation 8 am to 11 pm (summer) and 10 am to 6 pm (winter), with 24 seats outside and to the east side of the building.

Mr. Paraguay appeared for the application. The outside seats are on the side of the building. There are 24 seats with a small barrier in the front. This provides seating for their ice cream customers, no service provided at the tables.

Mr. Geiler advised they have a retail food service permit from inside. Mr. Burman stated they do not require a Town Manager permit as it is on their own property.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the application of Kandy K Inc., d/b/a Kandy Korner, 474 Main Street, Hyannis, Paulo Paraguay, Manager, for a new annual Common Victualler License. Hours of operation 8 am to 11 pm (summer) and 10 am to 6 pm (winter), with 24 seats outside and to the east side of the building.

New Lodging House License: Application of Happy Tails Hospitality, LLC d/b/a Long Dell Inn, 436 South Main Street, Centerville, Marc Jacobson and Donna Wrenn, Managers, for a new Lodging House License for an existing premises with a maximum of ten (10) lodgers with five (5) lodging rooms.

Donna Wrenn appeared for the application. She would like to apply for the license. The name is about their two dogs with fluffy tails. It has been an inn for 80+ years.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the application of Happy Tails Hospitality, LLC d/b/a Long Dell Inn, 436 South Main Street, Centerville, Marc Jacobson and Donna Wrenn, Managers, for a new Lodging House License for an existing premises with a maximum of ten (10) lodgers with five (5) lodging rooms.

Alteration of Premises: Application of Mad Hat DP, Inc., d/b/a Harry's at the Depot, 477 Yarmouth Road, Hyannis, Don Patchin, Manager for Alteration of Premises to change the premises description to read: 2 story wood building containing approx 3500 sq ft. Main floor contains a 15' x 25' (375 sq ft) kitchen, 4 restrooms (2 upstairs, 2 downstairs), a 45' x 25' (1125 sq ft) dining room with a bar; seats 50 plus 10 standees, 9 employees. 15' x 21' (315 sq ft) furnace/utility room, and a 6' x 8' (48 sq ft) entryway. Attached to the rear of the kitchen is a 15' x 11' (165 sq ft) walk-in refrigerator and freezer. The right side of the building (upstairs) contains a 6' x 10' (60 sq ft) office, a 7' x 14' (98 sq ft) storage room, a 25' x 35' (875 sq ft) dining area seating 32 with a bar seating 18, an 18' x 19' (324 sq ft) dance floor, a 10' x 18' (180 sq ft) stage and 2 restrooms. The upstairs (right side) of building contains 50 seats with 12 employees/band and 37 standees. The total seating for both floors is 100. The total building capacity is 168.

Don Patchin appeared with Michael Auperlee for their application. This is the second phase of their construction. They want the license to read the same as now but with the additional wording. All the inspections have been done and it is approved by Tom Perry. They are hoping to open that part by June 20th.

Mr. Burman is confused – he sees that there are 100 seats but 168 capacity – that is the standees and employees, band members. Mr. Burman asked how security and head count would be handled. Officer Maher stated it is easy; there is one access to the upstairs (there is also an emergency access). Officer Maher stated they have no problem with it.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the application of Mad Hat DP, Inc., d/b/a Harry's at the Depot, 477 Yarmouth Road, Hyannis, Don Patchin, Manager for Alteration of Premises to change the premises description to read: 2 story wood building containing approx 3500 sq ft. Main floor contains a 15' x 25' (375 sq ft) kitchen, 4 restrooms (2 upstairs, 2 downstairs), a 45' x 25' (1125 sq ft) dining room with a bar; seats 50 plus 10 standees, 9 employees. 15' x 21' (315 sq ft) furnace/utility room, and a 6' x 8' (48 sq ft) entryway. Attached to the rear of the kitchen is a 15' x 11' (165 sq ft) walk-in refrigerator and freezer. The right side of the building (upstairs) contains a 6' x 10' (60 sq ft) office, a 7' x 14' (98 sq ft) storage room, a 25' x 35' (875 sq ft) dining area seating 32 with a bar seating 18, an 18' x 19' (324 sq ft) dance floor, a 10' x 18' (180 sq ft) stage and 2 restrooms. The upstairs (right side) of building contains 50 seats with 12 employees/band and 37 standees. The total seating for both floors is 100. The total building capacity is 168.

Amend Annual Daily Non-Live Entertainment License: Application of Prova Brazil Steakhouse, LLC d/b/a Prova Brazil Steakhouse, 415 Main Street, Hyannis to amend its approved annual non-live entertainment license to add 6 outside speakers in the patio area with light amplification at and below conversation level and 2 additional T.V.'s at the outside bar, with exterior amplification to cease at 11:00 pm.

Attorney Dan Creedon appeared for this application. It is a request to modify the non-live entertainment license. Fabio, the manager, appeared with him. After seeing what competitors are doing, they have decided they need the amplification outside. Although the Board asked specifically at the last meeting about outside and they said no; they later decided they should go for that to provide atmosphere for outside dining on the patio. Six speakers total – four in front and two at the outside bar and two T.V.'s at the outside bar. They want it ATR or below conversation level only. The T.V.'s are common at bars. Her brought proposals for the location of the speakers as well as recommendations of abutting and close by businesses.

Mr. Hoxie stated he knows the concern the Board has is noise; why 6 speakers? Attorney Creedon stated the patio is large – wraps onto Pearl Street. Seat count is large there. Just to cover the area they think 4 in front to inside bar and 2 for outside would provide good coverage.

Mr. Hoxie stated if there are noise complaints the license would be in jeopardy. If the right music is playing low it should be fine. Mr. Burman stated there is not much residential in the area.

Mr. Geiler stated they are asking for 11 am – 11 pm. He stated the daytime hours might be a problem for the school and library. They need to show us how they will keep the music on the property. Mr. Geiler asked Mr. DeOliviera planned to start the music at 11:00 am? He stated noon would be o.k. Mr. Hoxie asked when they plan to be operational? Hopefully by the end of June.

Mr. Geiler stated they will have dueling entertainment – T.V.'s, speakers, etc. all at the same time? He does not understand at or below conversation level. Attorney Creedon has spoken to the folks at the library. Mr. Geiler stated the gazebo bar will be for the inside of the patio only. The other speakers will be mounted beneath the two columns and 4 beneath the gazebo bar. They can be turned down. He has spoken to the neighbors and told them if there is ever a problem to come see him or call him. Attorney Creedon asked how far the speakers are from the library...he stated about 20-25 feet. The T.V.'s are for sports events, music will be all the time but low.

Mr. Hoxie verified that the police will be monitoring too. Joan Kenney from the library appeared for this application. She asked if the Town has a decibel level? We do not. However we do have a law stating 150 feet is the limit from where it can be heard. She also verified if the music is on the T.V.'s are off? Fabio stated that is correct. Mr. Scali suggested when they put the speakers in they test them for level asking the library and school to be there to indicate highest level not to go over.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the application of Prova Brazil Steakhouse, LLC d/b/a Prova Brazil Steakhouse, 415 Main Street, Hyannis to amend its approved annual non-live entertainment license to add 6 outside speakers in the patio area with light

amplification at and below conversation level and 2 additional T.V.'s at the outside bar, with exterior amplification to cease at 11:00 pm with the proviso that everybody is going to be watching.

Amend Common Victualler License: Application of Paul Sage, d/b/a Common Ground, 420 Main Street, Hyannis, Paul Sage, Manager, to amend its annual Common Victualler License to include outside dining in front of the restaurant for a maximum of 8 seats in accordance with the plan on file dated 4/20/12.

Khalid Al Dokhi appeared as the general manager. They are using the sidewalk – it is on private and Town property. It has gone through the Town Manager process as confirmed by Mr. Geiler.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken to approve the application of Paul Sage, d/b/a Common Ground, 420 Main Street, Hyannis, Paul Sage, Manager, to amend its annual Common Victualler License to include outside dining in front of the restaurant for a maximum of 8 seats in accordance with the plan on file dated 4/20/12, subject to the License from Town manager.

Show Cause Hearing: On a request from Meredith Carter, the Licensing Authority has called a Show Cause Hearing for Auto Smart, LLC, Darrell Fietz, Manager, 202 Yarmouth Road, Hyannis, MA, which hearing was called for failure to return her entire deposit or otherwise make her whole and for selling the vehicle she had contracted to buy while it still retained \$500.00 of her deposit under MGL c. 140, §58 (c) (1) (v) (8). Continued from 4/3/12.

Mr. Hoxie stated we will hear first from the complainant.

Meredith Carter appeared and apologized her witness could not be present – it was her daughter and she just had a baby. Ms. Carter stated that she did lose her job over this – she had to be here and has been absent for 2 days she was supposed to work, and it was a new job. She is now unemployed. She is here to get her \$500.00 deposit back. She stated she received 2 pieces of correspondence from Mr. Fietz, both of which are erroneous. He sold the car she wanted; offered her another car, supposedly better than the other one. Even gave her his gas card to put gas in it. He told her he would put his plate on it and she could drive it as long as needed. Not once did he have her sign a lease agreement or rental agreement. She said that the deposit was put on the wagon. She needed to borrow back \$1,000 of her \$1,500 because of financial problems. Her daughter witnessed everything. He had also stated the car would be reconditioned. The lights on the car were falling off. It was very hard to reach Mr. Fietz. She stated he is in the habit of letting friends use cars as loaners. He never used a spare key. The deposit was for a car she wanted, not this car in question. She states none of this would have happened if he had not sold the car she put a deposit on out from under her. She said she will go to any length to get her \$500.00 back. She said now he is trying to say she rented this car. He has no signed lease. She also has her timesheets

documented. Her daughter, a licensed driver, did use the car to go the doctor, she saw nothing wrong with that. She stated the \$500.00 would make her whole. He willingly gave back \$1,000 of it, but when the deal fell apart, he refused to give back the \$500.00. She said he lied to her telling her he sent the car to his main office in Bridgewater. She called there and there is no main office, those people did not want anything to do with him. She also does not agree with the language he uses to customers. She actually saw a woman driving the vehicle she had put a deposit on. That woman told her she was given the car as a loaner. She stated he has hired a lawyer, which will cost more than the \$500.00 she wants back.

Attorney Peter Freeman asked her about the statements she made of Mr. Fietz intimidating a witness and breaking and entering...asking how she got this information. She stated she "googled" Mr. Fietz's name. He asked if it was August 1st when she paid the \$1,500. She was not sure of the date. She then agreed it was August 1st. Attorney Freeman asked if she was telling us she believed he would hold the car indefinitely. He then asked when she expected to purchase the vehicle. She said in a timely fashion. He asked her isn't it true that you went back in October and asked to borrow back \$500 back twice in two increments, and yet she knew the deal was calling for \$1,500 down. She stated she would have it back from her taxes. She stated the first car was sold prior to her asking for the \$1,000 back. Mr. Freeman stated that over 3 months later she still had not supplied the money in a timely fashion. He asked if she recalled in November that Mr. Fietz told her he could not hold that car for her. Mr. Freeman asked if she ever sent a letter to Mr. Fietz asking about that original car. She said she does not have a letter about that first car. He asked at what point she told Mr. Fietz she would be able to buy a car in January with a tax refund? She said that she did not think she had to go to him and say she had to have another car; he offered her the black Volvo with the lights falling out. She asked him to put it in writing. At what point did she sign a contract? She does not have the paperwork and does not recall the specific date – said you might want to ask him as he called her stupid and took the paperwork out of the car. Attorney Freeman stated that after filling out the application the information had to be verified. He said it would be an automatic debit from a checking account. Asked her if the bank account was frozen at some point. She stated it was, but she was unaware of that until they talked to the bank. He stated that even though she alleges he sold the car out from under her; at what point did she ask him for another car? She then stated the full \$1,500 was put down on the first car, not this other car. She did not put the money down on the second car. Attorney Freeman stated Mr. Fietz expected the full \$1,500 for the second car. Did she ever pay the additional \$1,000? In January 2012, he asked if she ever put in writing or verbally after finding out there was a problem at her bank ever communicate even verbally with Mr. Fietz to please hold on a little longer? She stated yes she did, he is very hard to get hold of. He introduced a note she wrote to Mr. Fietz and read it into record. She did not recall when she gave that letter to Mr. Fietz. After that point she said there were extenuating circumstances and she decided not to go forward. She had possession of the Volvo – had possession in January and was told "take it for as long as she needed it." Mr. Freeman asked did she ever get an insurance binder? She said no, as she had already decided she did not want that second car; there were too many things wrong with the car. She tried to tell

him there were things wrong and he yelled at her calling her a bad name. Mr. Freeman asked if she returned the car. She said she did not have a chance. She said she did not. He asked her if it was it in February that she returned the car. She did not recall when, but said that two people came to her house and took the car. She stated the paperwork was never completed, and the car was not repossessed.

Mr. Fietz took the stand as the Manager of Auto Smart, LLC. He reiterated Ms. Carter came in August 1st and put a deposit on a vehicle. Three months later she could not consummate the deal – he states he could not hold it any longer. Two months and 20 days went by and the car still sat – costing him money. She then came back to get the \$1,000 saying that in January would return. She never signed any papers. He sold the vehicle in November. She returned in January as a pre-approved customer. She said she was ready to go in January – got her insurance quote, etc. and asked if she had the \$1,000 he needed plus the insurance money. She was desperate for a vehicle. She said the car she was borrowing was to be returned. She provided the documentation to go for the 2nd car. There was no insurance binder at that time. He covered her on his dealer plate subject to verification of her information. He fed ex-ed the deal to Source One for verification. Eight calls are required – 5 personal, bank account, landlord, etc. All the Source One faxes were given to us. Nothing would verify. No references at all – bank, etc. and he was getting information with problems. About a week later her cell phone went dead. He had to go to her place of employment to consummate the loan. He even went by her home. This went on for 3 weeks. The bank was getting frustrated – after 30 days the bank cancels the deal. He had made the mistake of giving her the vehicle. He cannot say things here but will say them in Court when he goes there. The bank did cancel her loan. At that time his property was in jeopardy. She basically drove away with his car – 1620 miles were put on in the time she had it plus his full tank of gas. The mileage is all documented. Her claims of his being a criminal and not helping her are unfounded and he suffered losses which will be dealt with in the Court action. Briefly his floor plan is at 1.5% interest – he pays that. 1680 miles is a lot of mileage – the vehicle is devalued. Not on the lot for sale during all this time. Hiring an attorney is also a large expense. Mr. Freeman stated Exhibit “E” is what Source One Financial told Mr. Fietz. It is signed by the underwriters saying that after dozens of calls to Ms. Carter, her employer, references and banks we withdraw our offer to fund the loan. Account in overdraft. Unable to verify landlord, failure to communicate with loan company, cell phone regularly out of service. Vehicle unfunded in February 2012.

Mr. Hoxie asks if Mr. Fietz owes her money; he stated he has filed for over \$1,000.00 due to him with Court. He has the \$500.00 but does not feel he owes it to her at this point. It cost him money in excess of \$500.00.

Ms. Carter asked Mr. Fietz about the Source One document for the first car; that did go through but she never signed any paperwork. Is he in possession of that? He said he is. Is that on the first car? He stated that she submitted none of the required information. She asked if she was charging \$69/day for rental of the vehicle? He stated he is suing her in Court. Is he telling her they have a signed agreement for the

second vehicle. She asked if he is suing her for rental of the vehicle or mileage? He said no, for the contract to purchase a vehicle. She said he is saying she rented the vehicle and he has no signed contract so she is done.

Attorney Freeman reiterated Mr. Fietz tried to help her; her allegations of his wrongdoing are false. He did not conduct himself in any way other than professionally. It is interesting that he has to post a bond. If a court judgment finds he violated the consumer protection law the bond is available to protect the consumer. He does not think the Board could possibly find Mr. Fietz or Auto Smart at fault in this instance. It is far from what the complainant alleges. Mr. Fietz stated he would never do this again – should only be 5 days under the dealer plate. The facts are not borne out to sanction the license holder.

Ms. Carter states she went to Auto Smart to purchase a car. Before the car she wanted was sold it was used as a rental car. Her \$500.00 deposit was put on the Volvo wagon that the woman was driving. Later on he offered this other car. There are many different stories on all of this. After her daughter got in a car accident there was a hold of \$2,000 on her account. She said the car was not repossessed; she did not own it. She wants her \$500.00 back. There were no rental agreements or time period she could use the car.

Mr. Hoxie closed the hearing as to testimony.

Mr. Scali asked the chairman to focus on whether Mr. Fietz is acting properly under his license, being mindful that this is the third complaint on this dealership for the same type of situation. He thinks there are a lot of other underlying issues here – maybe sloppy paperwork; dealing with people unfamiliar with the law. At the very least he should be sending paperwork to document his deals with customers. If it was one instance it might be a mistake, but if it is the 3rd time the Board should consider that.

Mr. Hoxie stated we also have to consider the complaint we are holding for this hearing. Mr. Scali stated another one before Mrs. Eldredge's case was resolved without hearing before us.

Lt. Murphy is perplexed about letting her to use the dealer plate for 29 days – was it rented with the dealer plate on it?

Mr. Hoxie stated about the \$500.00; we do need a preponderance of evidence that the \$500.00 is owed. He thinks we should focus on the way he operated his business and treated this customer and let the Court decide about the monies. Mr. Burman stated he is very disturbed about the manner in which all of this took place. To him, there is no way a car should be sold out from under her when her \$500.00 was still in his possession, and that the abuse of dealer plates is not right in any case. Mr. Hoxie stated the purpose of the licensee was to help this person get into a vehicle. Officer Maher stated you can't use a dealer plate over 5 days; also can't use it on a vehicle with a P&S. Finally, the "repossession" issue – did Mr. Fietz notify the police department it was taking

place as required by Town By-law? Officer Maher stated that he also violated CMR with the Dealer plates. Mr. Sullivan stated he does agree he was trying to help her get a vehicle and have something to drive in the interim; but hearing this is the 3rd time we have had complaints about this dealership – not following the rules and regulations as he is supposed to be doing – and it has caused problems. Mr. Hoxie stated we could determine that the licensee had an improper relationship here.

He then asked counsel if he wanted to make a motion as to findings, etc. Attorney Freeman stated he was remiss with the paperwork to help this person out. Again, he did not sell the 1st vehicle out from under her as there was no contract for that car. She came back twice for \$1,000 back in October. Is it reasonable of her to expect that car to be waiting for her? They do not know about the first complaint – never rose to this Board and there is no evidence of that first complaint to say this is the 3rd one. He had no notice of that 3rd complaint. With the hundreds of deals he does not know of that. The only ones in front of us should be with Ms. Eldredge and this one. When he reimbursed her she then went on and went to Small Claims Court and got a judgment by default. She did not do what she said she was going to do. He didn't go as they had "settled." That was amicably resolved. This new complaint creates facts that certainly are not clear on what she was doing. This does not constitute anything to impose a serious infraction. If we feel an admonition is appropriate. He says the facts show a very two sided situation. We should be very careful in making our decision.

Mr. Boy asked about the contract or non-contract for the 1st vehicle? How could this be if he submitted the contract to the funding source? He asked why he would submit the application if they did not have a deal on the car? The pre-approval was not specific on this car. He did hold that car for her for a certain period of time.

Ms. Carter responded that she gave him everything as a purchase application – all her criteria, that was not pre-approval, that was the application to purchase. The same paperwork as the second one. The paperwork for the 1st vehicle was in the 2nd vehicle when they took it back – she has no copy of the 1st car deal. It mysteriously disappeared. It was NOT just a pre-approval.

Mr. Sullivan stated that they say there was no contract; she put money down and signed all the paperwork.

Mr. Freeman stated there was no loan offered yet. It still had to be consummated by \$1,500. She asked for \$1,000 back so it was no longer an approval. He informed her he could not hold the car forever; maybe if he still had the \$1,500 on deposit it might not have happened. She never asked him to hold that 1st car. She then kept that 2nd car, the only thing she sent in was a note to please give her one more week – she was cognizant that she owed him more than that and this was not a completed deal. She never said in writing she did not want the deal. The normal 5 day verification could not take place as the bank could not reach people, found a frozen account, etc. The paperwork dated April was sent to Mr. Fietz to document what he did; not something "after the fact" to change anything. They maintain there was no contract. Mr. Sullivan states he feels there was a contract. He believes this man was not following the rules at

all. Mr. Freeman states the oral contract was for \$1500 and in that she took back \$1,000 of it. He does not think it credible to hold that car indefinitely. Mr. Sullivan found it difficult to believe he would give back the \$1,000. Mr. Freeman stated the final note from her asking for one more week negates all of her allegations that he was doing wrong by her – nothing about the 1st car at all. She then kept the vehicle even when he was trying to get it back after the funding company could not verify what they needed to give her a loan.

Lt. Murphy asked for clarification. Deposit made, paperwork was sent out for pre-approval. Was the reason it did not go through because they could not verify? Mr. Fietz said yes. Lt. Murphy stated in testimony there was name calling – he never heard any discussion or denial from Mr. Fietz on that. There was no comment by Mr. Fietz.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken for findings as follows: 1) He believes Mr. Fietz is an improper person to hold a Class II Auto Dealer License, 2) Mr. Fietz's customer relations are very poor; 3) Mr. Fietz did not follow proper procedures; 4) Mr. Fietz did not submit the credit application in timely fashion.

A second motion was duly made by Mr. Burman, seconded by Mr. Sullivan and a unanimous vote taken that the licensee be found guilty of all charges.

Mr. Hoxie asked the Board to first go to the other case and resolve it which was done. A warning was imposed on that case. He then asked for comment from counsel for Mr. Fietz.

Mr. Freeman asked that a warning be imposed which could then justify calling back for another hearing if there were x number of complaints in a period of time.

Mr. Hoxie asked how many employees there are. Mr. Fietz stated it is himself and a mechanic.

Mr. Hoxie stated in his opinion that the first one warranted a warning; this second one warrants a suspension. He asked for Mr. Scali's recommendation. Mr. Scali stated he believes a suspension is in order for 3-5 days.

Mr. Geiler stated that staff will take complaints, circumstances are almost always immediately corrected. There aren't very many of these we have to go back on. He also agrees what is going on with the dealer plate, etc. is wrong. He believes Mr. Fietz is making up his own rules. Why would he keep the deposit on the first car when it was sold? Mr. Hoxie asked Mr. Geiler for sanction recommendations. Mr. Geiler stated he believes with an auto dealer a suspension is almost impossible to observe. It isn't like a restaurant that has to close down. They can conduct phone business, etc. There is a trust that has to exist between the licensee and the Board about familiarity with the Rules and Regulations. He is not sure this rises to a level of revocation. So we should figure out a suspension. Mr. Hoxie stated like Junk Dealers, we could put up a sign, turn in the license and RMV book, inventory list – which the police department could

check. Mr. Boy asked what then happens to the dealer plates? Officer Maher stated he cannot operate dealer plates during that time. Mr. Geiler stated that we can remind him that if he conducts any type of business during the suspension he would be a candidate for revocation. The use of a dealer plate during that time would consist of an arrestable offense.

A Motion was duly made by Mr. Burman, seconded by Mr. Sullivan and a unanimous vote taken for a 10 day suspension, to start on May 22, 2012. The sign is to be given out and license turned in tomorrow, as well as the RMV book and a listing of vehicles.

Show Cause Hearing (Re-opened): Due to a request from Judith Eldredge, the Licensing Authority is re-opening its Show Cause Hearing for Auto Smart, LLC, Daryl Fietz, Manager, 202 Yarmouth Road, Hyannis, MA, which hearing was called for January 9, 2012 for failure to return her deposit or otherwise make her whole under MGL c. 140, §58 (c) (1) (v) (8) despite her returning the vehicle to Auto Smart, LLC for mechanical issues and higher loan payments. That hearing was closed as the Licensing Authority was advised that Ms. Eldredge was satisfied with the resolution of the matter. The Licensing Authority may cancel, suspend, revoke or further condition this Class II Auto Dealer License. Continued for final disposition now until May 21, 2012.

Mr. Hoxie brought forth this case continued until this date for disposition, saying that we did hear evidence on that. Asked Mr. Burman for findings on that one – findings would be the same as this one; until such time as we started to act on it he did not do anything. He found: 1) there was money owed, 2) the licensee acknowledged it and paid it in front of us; 3) the fact that he had to come before us was true.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken as to guilt or innocence of the alleged charges above: Move to find him guilty of all counts.

A motion was duly made by Gene Burman and seconded by Paul Sullivan and a unanimous vote taken as to sanctions imposed on Eldredge that a warning be issued as a sanction.

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 Common Victualler Wine and Malt renewal as submitted below:

Common Victualler Wine & Malt:

Cape Cod Melody Tent, 31 & 41 West Main Street, 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 renewal as submitted below:

Daily Live Entertainment:

Cape Cod Melody Tent, 31 & 41 West Main Street, Hyannis

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 Victualler:

The Barnacle, 988 Craigville Beach Road, Centerville
Craigville Beach Grill, 974 Craigville Beach Road, Centerville

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

Junk Dealers:

Second Time Around, 631 Main Street, Hyannis
Spinnaker Records, 596 Main Street, Hyannis
Best Buy Stores, LP #2700, 769 Iyannough Road, Hyannis
Best Buy, 793 Iyannough Road, Hyannis

Business:

Discussion on Chapter 138, Section 33B “The local licensing authority of any city or town which accepts this section may authorize licensees under section twelve to sell alcoholic beverages between the hours of 10:00 a.m. and 12:00 noon on Sundays, the last Monday in May and on Christmas day or on the day following when said day occurs on a Sunday.”

Mr. Geiler stated that there is the opportunity open to all have brunches on Sundays with alcohol as early as 10 am. The Licensing Authority voted to confirm 10 am as the earliest time on Sundays for which we can approve alcohol at brunches. Three were granted for 10 am, but recently we have granted some for 11 am – if those licensees would like to have 10 am they can have that without the necessity for further hearing. This does not need Town Council approval. Anyone who does not have the early brunch time at present would need to apply for a Change of Hours in order to have it granted.

Meeting adjourned at 12:16 p.m.

Respectfully submitted,

Christine P. Ade, Recorder
Town of Barnstable Licensing Authority

Paul Sullivan, Clerk
Town of Barnstable Licensing Authority