



Town of Barnstable
Regulatory Services
Richard V. Scali, Interim 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.
September 9, 2013

A regular meeting of the Barnstable Licensing Authority was held on Monday, September 9, 2013, 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; Ron Semprini, Associate Commissioner; Richard V. Scali, Interim Director of Regulatory Services, Lt. John Murphy and Patrolman Steve Maher, Liaison Officers from the Barnstable Police Department, and Christine Ade, Recording Secretary. David Nunheimer, Associate Commissioner, was absent.

Vote to accept Minutes: Vote to accept minutes of the 8/19/13 Meeting.

A motion was duly made by Mr. Burman, seconded by Mr. Sullivan and a unanimous vote taken to approve the minutes of the 8/19/13 Meeting.

Hearings:

One Day Wine & Malt License: Application of Marilyn Fuller on behalf of Barnstable Historical Society, 3087 Main Street, Barnstable, for a One Day Wine & Malt license for its annual Autumnfest to be held on September 14, 2013 from 5 pm to 8 pm in a tent in the backyard of the premises. This is a fundraiser held in conjunction with Sturgis Library.

Marilyn Fuller appeared for her application. This is a joint fundraiser with the Sturgis Library. It will be held in a tent in the backyard. Everyone serving is an adult; member of the Board of one or the other organization. This has been going on since 2003 or so. It has always been a success.

A motion was duly made by Mr. Burman, seconded by Mr. Sullivan and a unanimous vote taken to approve the application of Marilyn Fuller on behalf of Barnstable Historical Society, 3087 Main Street, Barnstable, for a One Day Wine & Malt license for its annual Autumnfest to be held on September 14, 2013 from 5 pm to 8 pm in a tent in the backyard of the premises. This is a fundraiser held in conjunction with Sturgis Library.

One Day Wine & Malt License: Application of Ellen Merlesena on behalf of Osterville Village Library, 50 Oak Street, Osterville for a One Day Wine & Malt license for a fundraising night of mini golf at the library, 43 Wianno Avenue, Osterville, on September 21, 2013 from 7 pm to 10 pm.

Ellen Merlesena appeared for her application. On Saturday night from 7-10 pm the library will be transformed into a mini golf course. They will serve beer and wine. It is all inside. Trustees of the Library will serve (all adults).

A motion was duly made by Mr. Burman, seconded by Mr. Sullivan and a unanimous vote taken to approve the application of Ellen Merlesena on behalf of Osterville Village Library, 50 Oak Street, Osterville for a One Day Wine & Malt license for a fundraising night of mini golf at the library, 43 Wianno Avenue, Osterville, on September 21, 2013 from 7 pm to 10 pm.

New Class I Auto Dealer License: Application of 25 Rte 28 Inc., d/b/a Audi Cape Cod, 270, 278 & 258 North Street, Hyannis, Christopher Laham, Manager, for a new Class I Auto Dealer license with a maximum of 68 customer & employee vehicles, 116 vehicles for storage/display, hours of operation to be 8-8 Mon-Th, 8-5 Sat, 11-4 Sun.

Jeff Ford, Attorney, appeared for this application for a Class I License. Joe and Chris Laham appeared for the application as well. Chris will be the General Manager. They have Chrysler Dodge, BMW, etc. The site was previously used by Tracy and earlier by Nissan. Mr. Laham is purchasing the Audi portion of the license from Tracy Volkswagen, not the Volkswagen franchise. They have a contract with Audi. It was determined by the Building Commissioner that they did not need formal site plan review – they added lot lines on the plan and received a sign-off from Tom Perry. Lastly, they have an assignment from Mr. Laham to 25 Route 28, Inc., d/b/a Audi Cape Cod, to use the site.

Mr. Scali stated that the present license holder for this site would have to come in and relinquish the Audi license and amend it to be Volkswagen only before we can issue this license. Attorney Ford is aware of this. The purchase is subject to Tracy Volkswagen getting the license amended and also having a new deed. Mr. Hoxie stated the license cannot be issued until the other is done. Mr. Scali stated the other entity must come in to Licensing. Mr. Hoxie stated we could approve pending these things happening. Mr. Scali stated the license would not be issued until the other one is amended.

A motion was duly made by Mr. Sullivan, seconded by Mr. Hoxie and a majority vote taken to approve the application of 25 Rte 28 Inc., d/b/a Audi Cape Cod, 270, 278 & 258 North Street, Hyannis, Christopher Laham, Manager, for a new Class I Auto Dealer license with a maximum of 68 customer & employee vehicles, 116 vehicles for storage/display, hours of operation to be 8-8 Mon-Th, 8-5 Sat, 11-4 Sun., subject to the

license of Tracy Volkswagen d/b/a Tracy Audi being amended to only Volkswagen, and that they satisfy the Authority they have legal right to the property. Mr. Burman voted nay.

Attorney Ford stated that Mr. Laham has 25 months before he actually has to close according to the P&S. They are in effect leasing that land and assigned it today. Mr. Scali stated it has to be an actual lease. Attorney Ford stated this is all set forth in the P&S – he can control, occupy and use it for 25 months prior to closing.

Mr. Semprini asked if there is an agreed price; Attorney Ford stated there is but he had redacted it as the Licensing Authority does not need that information. The 25 months is to satisfy the remainder of the P&S.

New Class II Auto Dealer: License application of Ubirajara V. Ferreira, d/b/a Price-Less Auto Sales, 417A&B and 431B Yarmouth Road, Hyannis, Ubirajara V. Ferreira, Manager, for a new Class II Auto Dealer license with a maximum of 19 total vehicles not to exceed 12 vehicles parked outside. No washing of vehicles or repair of vehicles on site. Hours 8 am – 5 pm.

Mr. Ferreira appeared for his application. He is the sole owner. He is presently owner of Cape & Island Motors at 152 Corporation Street, Hyannis.

Officer Maher stated that the business behind the mall is significantly over on their car count. He stated he has not spoken to Mr. Ferreira about it yet. Mr. Ferreira stated those overage cars were going to auction the next day.

Mr. Hoxie asked if he has repair facilities elsewhere; he stated he does on Thornton Drive. Mr. Hoxie suggested approval, but that he comply with his current license number and the number for this license.

Mr. Sullivan stated we are having a discussion later in the meeting about Class II licenses; he wants to state that from his position, in the future, if this continues there will definitely be repercussions. There is too much of it going on in the community.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Ubirajara V. Ferreira, d/b/a Price-Less Auto Sales, 417A&B and 431B Yarmouth Road, Hyannis, Ubirajara V. Ferreira, Manager, for a new Class II Auto Dealer license with a maximum of 19 total vehicles not to exceed 12 vehicles parked outside. No washing of vehicles or repair of vehicles on site. Hours 8 am – 5 pm and that he comply with the maximum number on his Cape & Island Motors license as well.

New Class II Auto Dealer License: Application of Montero's Motor Sales, LLC d/b/a Montero's Motor Sales, 455 Yarmouth Road, Hyannis, Fabian Campoverde, Manager,

for a new Class II Auto Dealer license with a maximum of 20 total vehicles, 11 display, 6 customer, 2 employee, 1 handicap, and 5 garaged spots.

Attorney Stephen Hayes appeared with Mr. Campoverde for this application. They have purchased from WAJ Auto Sales. Mr. Campoverde has two years experience. There will be no change in the layout.

Mr. Scali stated there were other names on the paperwork; Attorney Hayes stated they have corrected it to be uniform.

Gilbert Wood appeared to state that he needs to have them strictly adhere to the plan approved for the prior license at this site. There is to be a rope blocking their property off from access to the parking area of 477. It will be a problem if they do not comply. Attorney Hayes stated that his client will be vigilant about that.

A motion was duly made by Mr. Burman, seconded by Mr. Sullivan and a unanimous vote taken to approve the application of Montero's Motor Sales, LLC d/b/a Montero's Motor Sales, 455 Yarmouth Road, Hyannis, Fabian Campoverde, Manager, for a new Class II Auto Dealer license with a maximum of 20 total vehicles, 11 display, 6 customer, 2 employee, 1 handicap, and 5 garaged spots and that they comply with the parking plan on file..

New Annual Non-Live Entertainment License and Video Games License:

Application of Ryan Family Amusements, LLC, Cape Cod Mall, W14, 151A &B, Hyannis, Robert P. Nichols, Manager, for an annual non-live entertainment license (Mon – Sat 10 am -9pm; Sun 11 am-6pm) and video games license for 35 games.

Mr. Nichols appeared for this application. He is President of Ryan Family Amusements. They were at the mall for over 25 years. They did not renew the last two years. The Mall approached them to come back; they are still negotiating the Lease. He is asking for approval prior to Lease. Mr. Scali stated they do have a letter of intent. It is the old Lane Bryant location of which Men's Warehouse took a part. It is a different location than they had before.

A motion was duly made by Mr. Burman, seconded by Mr. Sullivan and a unanimous vote taken to approve the application of Ryan Family Amusements, LLC, Cape Cod Mall, W14, 151A &B, Hyannis, Robert P. Nichols, Manager, for an annual non-live entertainment license (Mon – Sat 10 am -9pm; Sun 11 am-6pm) and video games license for 35 games.

Mr. Scali stated they need to provide the signed Lease before the license is issued.

Show Cause Hearing: Show Cause Hearing at the request of the Barnstable Police Department, for Davester, LLC, d/b/a Embargo, 453 Main Street, Hyannis for the

purpose of determining if its Annual All Alcohol Common Victualler License should be modified, suspended, or revoked or conditions imposed due to Incident Report #13-1657-OF as follows: Violation of the Town Code Rules and Regulations of the Licensing Authority Chapter 501-8A, "It shall be the responsibility of licensees to ensure that a high degree of supervision is exercised over the conduct of the licensed establishment at all times. Each licensee will be held accountable for all violations that are related to the licensed premises to determine whether or not the licensee acted properly in the given circumstances."

Mr. Scali and Mr. Bianchi spoke together and then Mr. Hoxie announced that the Show Cause Hearing would be continued to October 21, 2013.

Business Meeting:

Release of Executive Session Minutes, if any (0).

Discussion on the current number of Class II Auto Dealers (used cars) and whether there are sufficient licenses and businesses currently operating. Officer Maher stated that over the last couple weeks he inspected the 51 used car dealerships. There are over 1500 vehicles for sale, not including Class I dealers. Approximately 15 had issues. Some were over on the # of vehicles, how vehicles were parked, lots used that were not on the license description; it left us with about a 35% non-compliance rate. He requests a more in depth inspection of all used car dealers to make sure they are in compliance with record keeping, adherence to plans, etc. It would be his recommendation that there be a moratorium on Class II licenses for new sites for the time being.

Officer Maher stated he gave those in non-compliance a timeframe to come into compliance; if they do not comply they will be brought in for show cause hearing.

Mr. Scali stated that three came in to our office for having too many vehicles. All three need to go to Site Plan Review to see if they can increase the number of vehicles they now are approved for. Those will need hearings.

Officer Maher stated that auction is a big excuse for overage. He said that there is a lot of movement of vehicles, and he believes there are more vehicles held by a lot of places than even show up. Some Class I Dealers have added extra lots – Hyannis Toyota, Tracy Volkswagen has a spot on Cit Ave, Hyannis Honda has a Class II on West Main but all there are new vehicles. He recommends a moratorium. Lt. Murphy stated that Chief McDonald is concerned that the current state we are in needs a strategy and enforcement plan before we can approve any new sites for auto dealers.

Mr. Hoxie stated that requirements under Ch 140 is a lot different than 138. They point out that the criteria does not state whether or not there are too many. They could appeal to Superior Court if denied for that reason. Mr. Hoxie cannot find anywhere that it limits number of licenses with regard to public need or competition.

Lt. Murphy stated he does not like the word moratorium in this instance. He would like time to prepare a report so the Board will have facts to properly question new applicants on how we move forward in the future.

Mr. Scali stated they also need to come into compliance with Zoning before even getting to our Board, and he recommends that if we impose something it needs to be put on for vote and give proper notice via advertising.

Mr. Hoxie stated it is our responsibility not to overburden the police department but to scrutinize the applications as to location, # vehicles, owner/manager being a proper person, having repair facilities to use - away from site if needed.

Mr. Semprini agreed with Lt. Murphy, as 35% being in non-compliance is a lot. In reference to the businesses with no activity, what does that mean? The two having service bays when it is not part of the licenses, is not good.

Officer Maher stated there are 4-5 with no signs and no activity at the address – all internet sales? Maybe it could be determined that they must have a working business at the location. More investigation needs to be done. Officer Maher stated that at one place the GM told him he was doing brakes, mufflers, etc. Officer Maher stated they needed to come in to add that to the license. He then suggested it might be good to list on each license where their repair facilities are.

Mr. Burman stated he has been pushing this for several months – it is actually good for business to limit the number as the pie is cut in too many pieces already.

Lt. Murphy stated that at the next meeting the police department will have a report on what has and has not been corrected. At the October 21st meeting they will have a plan for enforcement. Chief McDonald has approved officers to do this investigation. They may have some show cause hearings to request at that time.

Mr. Hoxie stated that nowhere in case law is a reason to deny because of a number of licenses. It would certainly eliminate competition and could be appealed. Lt. Murphy stated the ones who are non-complaint could be suspended or revoked. Mr. Scali stated we should continue this to September 30th.

Mr. Burman stated the Class I licenses should also be brought in to have a plan, which many do not.

Mr. Hoxie stated this discussion will continue to September 30, 2013.

Discussion on CV Pouring Licenses on Main Street. Mr. Scali brought in the report on CV licenses on Main Street –the total is 35 on Main Street. Mr. Burman stated he is satisfied with that, he had thought it was 50.

Discussion on the Memo with regard to The Quarterdeck Non-Live Entertainment License, adding T.V.'s to that license. Mr. Scali stated it was not clear on the license that they had the T.V.'s outside so they have applied to add that to their license. Christine Ade confirmed that they have applied and will be on the next hearing.

Discussion on the suspension of The Car Guys, 741B Yarmouth Road, Hyannis, Casey DeVincent, Manager, for August 27th, 28th and 29th, 2013 to either re-vote on the one original charge or remark for hearing for the additional charge not advertised, which suspension has been postponed until a decision is made by the Board. Mr. Burman suggested we remark to add the new charge and put in file. Mr. Scali stated they have options.

Officer Maher stated he has now re-inspected and they are in compliance. Mr. Hoxie wants there to be a record of the violation in the file. They are storing vehicles outside the licenses premises, were guilty and a letter will be placed on file. Mr. Hoxie asked the licensee if they agree; they did. Mr. Burman stated we have done them some damage with the advertising of this. Mr Burman proposed findings that the police department charge was true. He also made a motion that they were guilty. That motion was duly seconded by Mr. Sullivan and also unanimously approved. The third motion was to place a letter in the file in lieu of sanctions. That was also seconded by Mr. Sullivan and unanimously approved.

Officer Maher stated the Police Department had recently conducted stings on alcohol establishments and were happy to report a 100% compliance rate. He attributes this to education as well as the street crimes unit presence, and said that the establishments in Town have done a great job.

Lt. Murphy brought to the Board's attention that regarding Molly, the club drug, from which several kids have recently died, BPD has not had occurrences here yet, but the department is aware of the issue and monitoring so that our kids are not at risk.

Mr. Hoxie asked about the report on service of suspension service timeframes. Mr. Scali stated that Ms. Ade and myself sent a memo to 65 towns around the state; 16 reported suspensions are as close as possible to the incident date, one like Barnstable requires a year from the date and 4 others vary. The majority require the suspensions as close to the date as possible. Mr. Hoxie asked for this to be put on the agenda to change the wait for a year on service of penalties.

Mr. Sullivan asked if we had been getting complaints; Mr. Hoxie said no, it was his personal feeling suspensions should be served sooner rather than delayed. Mr. Sullivan stated penalties are not equal if they are suspended off season rather than in season. Mr. Hoxie stated he never liked this delay. We can certainly go through the appeal process quickly as well. And winter is not as quiet as it used to be. Lt. Murphy would support the close suspensions except on certain ones like holidays for example, and suggested they should be looked at on a case by case basis. He would like some

flexibility. Mr. Hoxie asked for a vote on giving the Board flexibility depending on findings on the 30th of September.

And any other new business to come before the Licensing Authority.

Adjourned at 10:35.

Respectfully submitted,

Christine P. Ade, Recorder
Town of Barnstable Licensing Authority

Paul Sullivan, Clerk
Town of Barnstable Licensing Authority