



Town of Barnstable

Regulatory Services

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Licensing Authority

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BARNSTABLE LICENSING AUTHORITY LICENSING HEARING MINUTES

Town Hall Building, 367 Main Street, 2nd Floor Hearing Room, Hyannis, MA – 9:30 a.m.

April 11, 2011

A regular meeting of the Barnstable Licensing Authority was held on Monday, April 11, 2011. Chairman Martin Hoxie called the meeting to order at 9:30 A.M. He introduced Gene Burman, Vice Chairman; Paul Sullivan, Clerk; Thomas Geiler, Director of Regulatory Services and Licensing Agent, Richard Scali, Consumer Affairs Supervisor, Richard Boy, Alternate Commissioner, Patrolman Steve Maher, Liaison Officer from the Barnstable Police Department, Christine Ade, Recording Secretary, and Katie Donahue, substitute Recording Secretary. Lt. JoEllen Jason was absent.

Mr. Geiler introduced Richard Scali as our new Consumer Affairs Supervisor, stating it is a unique position, as it has 4 separate functions – no other community in the state has that combination of services. It is an important division – all the activities are technical and have a sizeable revenue stream. Richard is a former employee of the City of Cambridge for over 25 years; had extensive experience in those areas, and is one of the “go to” people in the state in understanding the technical requirements of licensing. He has worked in the taxi area as well as licensing and consumer affairs, and we are very happy to have him, welcome Richard.

Hearings:

One Day Beer & Wine License and One Day Entertainment License: Application of Michael Brooks on behalf of Cape Cod Synagogue, 145 Winter Street, Hyannis, MA for a One Day Wine & Malt License and a One Day Entertainment License for a band and dancing for its annual fundraiser for the synagogue to be held on May 7, 2011 from 7 pm to 11 pm.

Mr. Brooks came forward for this application. It has been done for probably 20 years. They are having just beer and wine this year instead of all alcohol. That is the only change from prior years.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Michael Brooks on behalf of

Cape Cod Synagogue, 145 Winter Street, Hyannis, MA for a One Day Wine & Malt License and a One Day Entertainment License for a band and dancing for its annual fundraiser for the synagogue to be held on May 7, 2011 from 7 pm to 11 pm.

Two Day Beer & Wine License and One Day Entertainment License: Application of Beatrice E. White on behalf of The Holy Ghost Society of Santuit & Cotuit, 53 Main Street, Cotuit, MA for two One Day Wine & Malt Licenses for June 18, 2001 from 5 pm to 11 pm and June 19, 2011 from noon to 6 pm and a One Day Entertainment License for a band and dancing on June 18, 2011 from 5 pm to 11 pm for its 120th annual Portuguese feast.

Ms. White appeared for the application. This is the 120th annual feast. Mr. Burman stated she is not that old! It has always been a successful event.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Beatrice E. White on behalf of The Holy Ghost Society of Santuit & Cotuit, 53 Main Street, Cotuit, MA for two One Day Wine & Malt Licenses for June 18, 2001 from 5 pm to 11 pm and June 19, 2011 from noon to 6 pm and a One Day Entertainment License for a band and dancing on June 18, 2011 from 5 pm to 11 pm for its 120th annual Portuguese feast.

One Day Wine & Malt License and Entertainment License: Application of Elizabeth Butler, Director of The Centerville Public Library, 585 Main Street, Centerville, for a One Day Wine & Malt License to include a wine tasting by Cape Cod Package Store and beer tasting by Cape Cod Beer for May 14, 2011 from 4:30 pm to 7:30 pm and a One Day Entertainment License for silent and live auctions. This is a fundraising event.

Elizabeth Butler appeared for the application. She said they will have a fabulous auction, finger foods, beer and wine. This is the 8th year and the 4th at the library.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Elizabeth Butler, Director of The Centerville Public Library, 585 Main Street, Centerville, for a One Day Wine & Malt License to include a wine tasting by Cape Cod Package Store and beer tasting by Cape Cod Beer for May 14, 2011 from 4:30 pm to 7:30 pm and a One Day Entertainment License for silent and live auctions. This is a fundraising event.

One Day Entertainment & Sunday Entertainment: Application of Jennifer Pitta on behalf of Cape Cod Symphony Orchestra, 712A Main Street, Yarmouth Port, for the following One Day Entertainment and Sunday Entertainment Licenses for events to be held at Barnstable High School Performing Arts Center, 744 Main Street, Hyannis as follows:

Saturdays

September 24, 2011	8 pm
October 8, 2011	8 pm
November 5, 2011	8 pm
December 3, 2011	3 pm & 8 pm
January 21, 2012	8 pm
February 11, 2012	8 pm
April 14, 2012	8 pm
May 5, 2012	8 pm
June 16, 2012	8 pm

Sundays

September 25, 2011	3 pm
October 9, 2011	3 pm
November 6, 2011	3 pm
December 4, 2011	3 pm
January 1, 2012	3 pm
January 22, 2012	3 pm
February 12, 2012	3 pm
April 15, 2012	3 pm
May 6, 2012	3 pm

Friday

December 2, 2011 4 pm; 8 pm

Jennifer Pitta appeared for the application. It will be their 50th year.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Jennifer Pitta on behalf of Cape Cod Symphony Orchestra, 712A Main Street, Yarmouth Port, for the following One Day Entertainment and Sunday Entertainment Licenses for events to be held at Barnstable High School Performing Arts Center, 744 Main Street, Hyannis as follows:

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April 15, 2012	3 pm
May 6, 2012	3 pm

Friday

December 2, 2011 4 pm; 8 pm

One Day Beer & Wine License: Application of Olive Chase of Casual Gourmet on behalf of Duffy Health Center, 105 Park St., Hyannis, for a One Day Wine & Malt License for an event to be held at Rectrix Aerodrome, 730 Barnstable Road, Hyannis, on May 20, 2011 from 5 pm to 10 pm.

Mary Lyons, Operations Manger of Casual Gourmet appeared for this application. Last year it was all alcohol, this year beer and wine only.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Olive Chase of Casual Gourmet on behalf of Duffy Health Center, 105 Park St., Hyannis, for a One Day Wine & Malt License for an event to be held at Rectrix Aerodrome, 730 Barnstable Road, Hyannis, on May 20, 2011 from 5 pm to 10 pm.

Two One Day All Alcohol Licenses: Application of E.J. Jaxtimer on behalf of the Joe Cronin Jimmy Fund Fishing Tournament, 350 Main Street, Osterville, for two One All Alcohol Licenses for a two day fishing tournament to be held at Nauticus Marina, 339 West Bay Road, Osterville under two tents on August 4, 2011 from 6 pm to 10 pm and August 5, 2011 from 4 pm to 10 pm.

Mr. Jaxtimer appeared for this event. They have held this event before and it is very successful. It is their 18th year. They are the largest private fundraiser for Dana Farber.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of E.J. Jaxtimer on behalf of the Joe Cronin Jimmy Fund Fishing Tournament, 350 Main Street, Osterville, for two One All Alcohol Licenses for a two day fishing tournament to be held at Nauticus Marina, 339 West Bay Road, Osterville under two tents on August 4, 2011 from 6 pm to 10 pm and August 5, 2011 from 4 pm to 10 pm.

Annual Common Victualler All Alcohol, Daily Live, Non-Live, Video Games & Sunday Entertainment Licenses: Application of Mad Hat DP, d/b/a Harry's at the Depot, 477 Yarmouth Road, Hyannis, MA, Donald Patchin, Manager, for a New Annual All Alcohol Common Victualler License with inside seating totaling 95, parking spaces 42 and for a Daily Live Entertainment License, maximum of 6 entertainers, amplified, Non-Live Entertainment License for recorded music, Video Games License (3) and Sunday Entertainment License (all 11:30 am to 12:45 am).

Mr. Patchin appeared for this application. Michael Auperlee appeared as well. They are doing lunch and dinner 7 days per week and entertainment 4 nights a week. It will be a full menu and bands – blues bands like the old Harry's. They would like to bring that niche back to Hyannis. It is a great location – just car dealerships and railroad tracks nearby. Would like to open in June.

Mr. Burman asked about this licensed premises; have renovations been completed to make the location more palatable? They stated they are doing renovations in this – have done a lot of restaurants over the years. They will be trying to bring the building back to an old depot look, have that as a motif. Having done this before, the owner is happy to take them on. Mr. Burman asked about the apartments upstairs; the owner requested that they keep them. They have met the tenants who are

excited something is coming back. No renovations as of yet but will be replacing all windows in the building at some point. Will be putting windows in the front to brighten it up; change the doors, etc. In the fall they will replace the apartment windows. Mr. Burman recollected that the Board of Health was unhappy about the apartments; it is their understanding the roof has been replaced and bathroom issues addressed. They are not aware of any other problems. One had a leak and hot water issues, which have been resolved. Mr. Geiler stated Health, Building and Fire were involved with the apartment violations; have those all been done? Mr. Patchin stated what has not been done will be – Health, Building and Fire will have to approve before they open in any case. Mr. Auperlee said he has been working with Tom Perry who said he would let them know along the way what they require. The owner wants it to look the way it used to. They intend to do just that.

Steve Maher stated that 6 entertainers with apartments above could be a problem; Mr. Auperlee said the far end is a single story – that is the said which will house the entertainment. They stated that the Fire Dept. has concerns about the ceiling so they will rip it down and install the possibility of soundproofing board under the sheetrock. The lease is for 5 years with a 5 year renewal. Mr. Patchin owned Kettle Ho and ran it for 15 years, in Cotuit. Mr. Auperlee has been building and the GM will be his daughter when Mr. Patchin is not there. She graduated from Johnson & Wales.

Mr. Scali asked when entertainment will run; Mr. Patchin stated 9 to 12:45. His son in the National Guard will be there for security. They will serve full dinners until 10 and maybe burgers and pizza until 11. They will have 42 spaces in the parking lot and Mr. Scali asked if they will be monitoring that. He said they will. Mr. Burman mentioned the new Crowd Manager law which they fall just under, at 95 people total capacity.

Officer Maher stated there can only be 49 in the entertainment area including employees as shown on the plan, and wanted to make sure they understood that. Mr. Burman stated we seem to be getting a proliferation of nightclubs; he has some reservations. Mr. Auperlee said they are calling it a nightclub but are looking for the blues bands, an older crowd, not youngsters by any means. They used the word nightclub because that is what they called it upstairs; they want a blues bar.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application as filed for Mad Hat DP, d/b/a Harry's at the Depot, 477 Yarmouth Road, Hyannis, MA, Donald Patchin, Manager, for a New Annual All Alcohol Common Victualler License with inside seating totaling 95, parking spaces 42 and for a Daily Live Entertainment License, maximum of 6 entertainers, amplified, Non-Live Entertainment License for recorded music, Video Games License (3) and Sunday Entertainment License (all 11:30 am to 12:45 am).

New Annual All Alcohol Innholder License and Daily Non-Live and Sunday Entertainment Licenses: Application of Shiv Sai, LLC, d/b/a Cape Cod Inn/Duck Inn Pub & Grill, 447 Main Street, Hyannis, MA, Sandeep Patel, Manager for a **New Annual All Alcohol Innholder License**, the hours of alcohol service to be 8:00 am to 1:00 am, with seating at the restaurant for 81 indoors, 44 at the outside cafe, total of 125 maximum seats, and for alcohol room service to the 40 hotel rooms, and for Daily Non-Live and Sunday Entertainment Licenses.

Attorney Ted Schilling came with Sandeep Patel for this application. It is a rear round Innholder license. They are new owners. They have notified all the abutters; the school and church had no objection; wanted that on the record. They hope to be open in May. They have upgraded the rooms as well and there are 40.

Mr. Hoxie wanted to emphasize no amplification outside as there have been complaints in the past. They plan to have karaoke definitely and possibly something else. Mr. Patel and his family will live here. Mr. Patel worked for a wholesale liquor company. He is TIPS certified and he and his wife will both be working. They will serve lunch and dinner; seafood, chicken, same menu as the previous owner pretty much. The hotel will have continental breakfast for the guests.

Mr. Burman asked if he was aware there are some sanctions on this premises from last season...Mr. Schilling stated this is a brand new owner and license. They were not aware sanctions would carry over. There is no-one associated with the previous licensee. Attorney Schilling asked that the Board waive those sanctions. Officer Maher asked for a definition of live entertainment – he believes karaoke would be considered live entertainment in his opinion. Part of the problem was the live before as well as speaker placement. He stated that the entertainment should not include outside speakers.

Mr. Scali said he would recommend that someone serve those sanctions before a transfer would be allowed or recommend that those be served prior to taking ownership.

Mr. Hoxie asked if Mr. Geiler had an objection to them starting out fresh. Mr. Geiler stated he can't remember offhand a leftover sanction, we would have to check our files for that. He stated that the prior owner's problem was lack of supervision and understanding.

Attorney Schilling stated the new owners have been nothing but straightforward and honest. Mr. Sullivan recollected a lot of problems stemmed from noise complaints. He said that it will be sensitive if they do have karaoke.

Mr. Geiler stated he understands the concern with ownership being transferred; the Board might consider continuing the sanction for a year; if any further problems they could bring that forward as well as any new ones. He expects the applicant is

anxious to get this moving so continuing the hearing would be a hardship for the licensee. Mr. Burman said our policy of sanctions a year in future should stay in place. Mr. Hoxie suggested we let them start fresh; we can take quick action if there are any problems. Mr. Sullivan agreed.

A motion was duly made by Paul Sullivan, seconded by Martin Hoxie to approve the application of Shiv Sai, LLC, d/b/a Cape Cod Inn/Duck Inn Pub & Grill, 447 Main Street, Hyannis, MA, Sandeep Patel, Manager for a **New Annual All Alcohol Innholder License**, the hours of alcohol service to be 8:00 am to 1:00 am, with seating at the restaurant for 81 indoors, 44 at the outside cafe, total of 125 maximum seats, and for alcohol room service to the 40 hotel rooms, and for Daily Non-Live and Sunday Entertainment Licenses; and a vote showed Mr. Hoxie and Mr. Sullivan yay, Mr. Burman nay. They are planning on renovating rooms but not closing for an extended period; they are an annual licensee. They do not anticipate extended closing.

New Common Victualler License: Application of Epic Narbles, LLC, d/b/a Osterville Cheese and Sandwich Shop, 29 Wianno Avenue, Osterville, Nathaniel Cote, Manager, for a New Common Victualler License, with total seating for 22, the hours of operation to be 7 am – 2:30 pm.

Mr. Cote is taking over the restaurant.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Epic Narbles, LLC, d/b/a Osterville Cheese and Sandwich Shop, 29 Wianno Avenue, Osterville, Nathaniel Cote, Manager, for a New Common Victualler License, with total seating for 22, the hours of operation to be 7 am – 2:30 pm.

New Common Victualler License: Application of Marat Hunanyan and Kristine Gevorgyan, d/b/a Cape's Best Gyros, 569 Main Street, Hyannis, Edgar Gevorgyan, Manager, for a New Common Victualler License, hours to be 10 am to 10 pm.

Mr. Hunanyan and Mr. Gevorgyan appeared for this application. It used to be Café Samedy. Mr. Hoxie asked if they had food experience; he worked in and partially managed a pizza place. This is next to Hot Diggity Dogs.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the application of Marat Hunanyan and Kristine Gevorgyan, d/b/a Cape's Best Gyros, 569 Main Street, Hyannis, Edgar Gevorgyan, Manager, for a New Common Victualler License, hours to be 10 am to 10 pm.

The sister (Kristine) and Marat own the restaurant, Edgar is going to be the manager.

Continuation and Clarification of New Annual All Alcohol Common Victualler License, Daily Live Entertainment, Non-Live Entertainment and Sunday Entertainment licenses:

Application of Salt & Sea, LLC, d/b/a Salt, 599 Main Street, Hyannis, MA, Matthew P. Conley, Manager, for a New Annual All Alcohol Common Victualler License, Daily Live Entertainment License (4 pm to 11:00 pm, 3 entertainers, non-amplified, Non-Live Entertainment License for recorded music, and Sunday entertainment License (4 pm to 11 pm) with inside seating as well as a front and rear patio area. Clarification on floor plan for rear patio area and clarification on live and non-live entertainment and Sunday entertainment licenses.

Attorney Pizzuti stated they wanted to clarify the seating, which remains 48 on the rear and 182 inside and in front. They plan to come in by next month to increase the seating on the rear. The rear entertainment they propose is soft dinner-type music, no loud rock and roll; just to enhance the dining experience. He stated the food, lighting and music are all necessary for a successful restaurant. They are very cognizant of the noise issues at this location and request they be allowed to have it.

Mr. Geiler stated he did not remember dinner being served in back – Attorney Pizzuti stated that Mr. Geiler has brought up the clanging dishes...they proposed using paper out back to mitigate this noise. Officer Maher asked if the outside speakers would be under the Tiki Bar as before...Attorney Pizzuti said they are thinking about two small speakers at ground level. They are confident that they will not disturb their neighbors. Mr. Pane, one of the owners, made a personal commitment to the condos out back that the restaurant would not affect them negatively. They are confident that what they offer will be acceptable. Officer Maher stated that the group before Bumbalinis was the problem. The two speakers under the Tiki Bar that Bumbalinis had seemed to be acceptable. Their problem was overcrowding. Officer Maher stated on the ground would be fine. He does not think it would be a problem considering the type of entertainment they plan to have. This is the rear of the property – the 48 seats. Mr. Burman stated that paper plates are not conducive to fine dining...Attorney Pizzuti stated he might have used the wrong wording – Heather Miller prepares fine food; he should probably have called it fine dining. The Board of Health suggested paper to alleviate noise. Mr. Pane assured the Board last meeting that the establishment would be fine dining; this is a curve ball now. He thinks the paper dishes are not conducive to fine dining. The manager, Mr. Conley, suggested Jasper White in Boston who has a line of restaurants called the Summer Shack. He uses paper plates but the food remains fine dining food. The offering of paper plates was to appease the Board of Health grease trap issue. Heather is not looking to operate a burger and hot dog stand.

Mr. Hoxie asked if Mr. Burman can bring his own plate. Attorney Pizzuti thinks we are here to clarify the vote from last time. Mr. Scali stated that we had passed the rear as 48 but they intended to maybe change to 107. The other issue was what entertainment would be allowed on the rear patio. They are requesting 2 small speakers in the rear for dinner music.

Mr. Geiler stated 3 times the Board has granted an entertainment and 3 times sanctions have had to be imposed...how will they control the music & noise? He said it gives them a lot of latitude. It doesn't make sense to have people back a 4th time. Given the location of the neighbors and where the structures exist, that noise is kind of trapped in the area. He understands there is a way of doing it which will not bother anybody but does not know what that is. Can they offer how it would be prevented? Mr. Geiler assumed recorded music only. Attorney Pizzuti stated that two words can help here – it is called good management. They could get a sound specialist to come in to see what it will sound like. He stated the person to his right, Mr. Conley and Heather Miller, one of the finest chefs on Cape Cod, are interested in making this end of Main Street nicer...they are betting on the success, not on the failure. Good management will keep the volume down and make it a good dining experience for the neighbors.

Mr. Geiler asked how many feet from the outside dining will the band inside the coffee shop be? Attorney Pizzuti stated the band will be on the easterly sideline but the beech tree on the westerly side. Mr. Geiler stated what would be helpful is a better description on paper of the type/size of speakers and written description. The Board last time approved the inside entertainment. Attorney Pizzuti asked the Board to approve the exterior light amplified music with Board approval of the speakers and placement. Mr. Geiler stated we have 8 weeks before this place opens. He asked what harm is there in coming back with the detailed plans. Attorney Pizzuti stated that coming back just raises the cost to these owners.

Mr. Scali stated in bringing his experience here – it is easy for them to come up with a detailed entertainment plan making the sound placement and anchoring to prevent vibration and noise; it is not as complicated as it seems. He stated he can refer them to people who can help them do that. Attorney Pizzuti stated the Board had just voted to approve another entertainment license and yet theirs is being questioned; when in Barnstable have they required a sound engineer.

Mr. Sullivan stated if we approve the entertainment today it will be at their peril.

A motion was duly made by Paul Sullivan to approve the entertainment license from 4 pm to 11 pm with the use of two amplification instruments for the rear patio, ground level, appropriately placed not to cause excess noise to local residents. The motion was seconded by Mr. Hoxie and unanimously voted to approve.

Before the show cause hearings, Mr. Hoxie called Mr. Wood to come forward about his comments at the prior meeting. The Board did not question the integrity of the comments he made at the last meeting. Mr. Wood was notified not to come today because Mr. Kurker could not come today. Their concern was that Mr. Shea has at various and sundry times indicated he was the manager at Trader Ed's when our license has Mr. Kurker as the manager and he could not attend to answer these allegations but would send a representative. We need something further to prove he is a manager and not an employee.

Mr. Wood stated he thanks the Board; his emails were harsh, but he felt he was being silenced. All he really wants is for the Board to acknowledge this happened and care. He feels it is not his job to prove Mr. Shea is the manager. He did want the Board to know that this man was over served at the Roadhouse and then came to his place and caused damage. He thinks that how the Board handles this situation will have an affect on how things happen in the future. Mr. Hoxie stated this is not a Manager the Board approved; he is an employee of Trader Ed's and is no reflection on Trader Ed's or Mr. Kurker. Unless we see something proving that is not the case, this has nothing to do with this Authority.

Mr. Wood wondered if it is right for someone to run a business that way – the person in charge on site and off not being on the license should be looked at. Mr. Kurker is there all the time, but it doesn't mean he knows what goes on at Trader Ed's. Mr. Hoxie said to Mr. Wood that if one of his employees went somewhere else and caused a problem like this man did, it should be up to the Manager of Record. Mr. Wood stated the Board should be looking at why Mr. Kurker is defending this person, Mr. Shea. Mr. Hoxie stated it is up to the Licensee to take action against this employee.

Mr. Wood stated he would hope this Board could request a copy of the police report from this week when Mr. Shea was charged with yet another offense and do something. Mr. Hoxie stated again that the Authority does not have jurisdiction over a private citizen. If Mr. Kurker had given the false information, it would be a different story totally. Mr. Wood stated he disagreed totally and would fire that employee immediately being the manager of a premises.

Officer Maher stated he has had conversations with Mr. Kurker and told him he will be held responsible for Mr. Shea's actions at the premises.

Evan Lawson, a lawyer in Brewster and Boston, appeared for Mr. Kurker. He said he has represented him for many years. He said Mr. Kurker is the sole owner, director and approved manager of Trader Ed's. He is there all the time. This situation is unusual; renewal of a license is supposed to be automatic. He then said that it appears to him Mr. Wood is looking for money and trying to leverage his situation by bringing this before the Board. Mr. Hoxie immediately disagreed with Attorney Lawson's allegations against Mr. Wood.

Show Cause Hearing: Show Cause Hearing at the request of the Barnstable Police Department for Julie Fagin, d/b/a Goldfinger, 64 Enterprise Road, Hyannis, MA, Julie Fagin, Manager, for violation of the Town Code Chapter 502, Sections 4B (2 counts): (1) Not filling out a purchase report form in all relevant aspects at the time of purchase and (2) Not requiring the seller to sign his name to the purchase report form, 4C: Not photographing items taken in from a seller at the time of purchase, 4D: Not providing a copy of ALL transactions recorded, 6B: conducting business outside the property as designated on the Junk Dealer License, 8A: Not

having a copy of purchase report on the premises as required, 8C: Not holding regulated property for 21 days as required and 8D: Not storing the regulated property on the licensed premises as required. Request of licensee to continue to 4/11/11 as out of town plans had already been made when they were served with notice of hearing.

Mr. Hoxie read the hearing notice.

Attorney William E. Gens appeared with Julie Fagin; he practices here and in Boston.

Officer Maher presented the case as a result of information given him by Detective Gallant. He handed out paperwork involved before the detective started speaking (Exhibit A).

First to testify was Albert Robichaud, Sandwich Police Dept. On 10/12/10 he said that he was involved investigating several break-ins. The person they arrested advised him he had sold jewelry at 2 locations in Barnstable. He stated he got \$2100 from Goldfinger. Officer Robichaud said he went to Goldfinger and spoke to Stephen Fagin; he said that Mr. Fagin kind of smirked when confronted; recalled the transaction but could not find the paperwork corresponding with it. Officer Robichaud told us he had inferred it was \$300 in merchandise but told him afterwards it was \$2100. Mr Fagin stated the paperwork was in his wife's possession at their residence. He advised that later that afternoon Mrs. Fagin brought in the paperwork, which had the check number and \$2,100 on it and it was Jason Tenney, ID being a Driver's License. The jewelry was not at the residence or in the store – it could not be readily found.

Officer Maher asked Officer Robichaud if he was familiar with the transaction reports Barnstable uses? Are they numbered sequentially? The answer was yes. Do they list what was purchased? He answered yes, they do, and the items should be kept in separate bags and not intermixed with other purchases. Officer Maher asked if there has ever been another case when the items were not at the store? He said no. The detective asked if the signatures were the same on the report and the identification as he looked at. He said they did not appear to be similar. The detective said Mr. Tenney had told him the items were sold to Goldfinger, and we (the police department) and still do not have those items in our possession.

Attorney Gens asked if Mr. Tenney's license number on the form was accurate? The detective said it was. The attorney asked if he received a check number and copy of license and description of the individual from the store? He said he did. Attorney Gens said that Mr. Fagin told him the jewelry from Mr. Tenney was stolen from the store; he could not fill out the forms as he did not have the jewelry for the report.

Mr. Burman asked if Sandwich has the same regulations as we do for reporting? The detective stated no – theirs is in the process of catching up to Barnstable and is from about 1923.

Officer Maher called Detective Gallant to testify. She has been a detective for over 13 years with BPD. She visited Goldfinger with Detective Robichaud about the case in Sandwich and Mr. Tenney. She went to her books and looked in the log for the purchases of Mr. Tenney. On the 14th the list was received from Goldfinger and there was no transaction for Jason Tenney. She said she was present when the questions were asked. Mrs. Fagin was filling out the report (the 12th) at the time they were speaking, and it should have been filled out on the 7th. She told Mrs. Fagin they needed the report of that transaction (#128) for their books. It is a description of the jewelry given to them that day; not the jewelry Mr. Tenney had sold them. She said she had spoken with Mr. Tenney at the correctional facility and asked if that was his signature on the report, and he said it did not look like his signature.

Officer Maher asked if she spoke with Mr. Fagin; she said she did and he recollected Mr. Tenney coming in, but had no other recollection of that day – he was busy. He did not file a police report that jewelry had been stolen from their store, or mention that to her.

The attorney asked about Mr. Tenney's criminal past – did she take a handwriting sample from him to compare? She stated he would not provide one. She took into consideration what he said about it not being his signature. He stated his client had come in voluntarily and told them some items had been stolen that day. He asked if she questioned Mr. Tenney if he stole the items at the store? She stated no, she did not.

Mr. Burman asked the detective if she was saying that no theft report was made by Goldfinger for the missing \$2,100 of jewelry. She stated that was correct.

Officer Maher turned the podium over to the licensee to testify. The Attorney asked Officer Maher about the requirement of signing the report – is our allegation based on the Tenney transaction? Officer Maher stated the signature provided by the Manager and the signature on his ID were in discrepancy. He asked if there was any other incident at Goldfinger of this allegation? Officer Maher stated no. His investigation was to the scope of the investigation from Sandwich (Mr. Tenney) and said he is not testifying about other signatures. The attorney confirmed this with Officer Maher. The attorney asked if he followed up on the check Mr. Tenney received for the \$2100? Officer Maher stated no, he had not. The attorney asked what the allegation meant stating that business was not conducted at the licensed premises and that Mrs. Fagin had taken it home. The attorney asked if anywhere in the regulations of the Town it allows people to take records home to work on.

Officer Maher stated he believed it to be a ruse offered by Mr. Fagin to allow time for Mrs. Fagin to make up the missing transaction report, and should not be a regular practice.

The Attorney asked Officer Maher with regard to the other allegations in the notice – not photographing at time of purchase, etc., are they all just in regard to the Tenney transaction? Officer Maher stated yes, just this transaction. The attorney asked about other questionable transaction records provided –Officer Maher stated that in the prior year items were lumped together on reports and that Chapter #502-4C states each item should be photographed, not grouped together...it depicted a mass of jewelry and was not sufficient for the police department to view each item. Officer Maher stated that is what the proceeding last year was about.

Julie Fagin stated she runs the business with her husband. They never intended to get into the gold purchasing business but the economy has forced them into it. They came in to us for the license and it was granted to them. They were handed the forms by Detective York and told to photograph the items. The rules are somewhat vague – and it was a legitimate reason why they were brought in, the police could not see all of the jewelry. They afterwards bought a digital camera, bought excel software and forward their report and photos weekly as required. She said she has a cordial relationship with the person at BPD receiving the reports (Mary Ellen Pratt), who has had no complaints since the 1st infraction. She said 99% of the time the seller describes the jewelry; she may add to that description herself to detail the items for identification. She said that on the Tenney day she was not present. To her understanding Mr. Tenney came in, he filled out a form except the description of the jewelry; she has every confidence the signature is his. The driver's license matched his looks. She said she does all her reports at home on Monday evenings – takes just the sheets home and the camera with the photos to email from home. Has no computer at the store. She assumed Stephen had forgotten to take the pictures of that jewelry – that is why it was not on the report at that time. She indicated that she was going to add it to the following week's report. They then could not find the jewelry; the only thing Stephen can think is that either Mr. Tenney or the man with him when he came in took the bag back when he was busy photographing the license, etc. He did not notice at the time that anything had happened. Mr. Fagin had been treated recently with surgery on his spine and was heavily medicated at the time – medications that can cause some confusion and absentmindedness. This may have contributed to the problem. The discs in his neck had to have screws put in. He is now recovered and off the medication. She said it took them a couple of days to figure out what may have happened. The month or so before that she stated that another incident had happened where they reported the stolen jewelry a few days later when they were positive it was not in the store. She was filling out ONLY the list of items when Detective Gallant came in – just that part; the rest had been filled in by Mr. Tenney. She asked what they could do to make things right. She stated it was an isolated incident. They probably had 500 transactions last year and this is the only one questionable. Officer Maher said he had suggested a camera be installed in the premises; they feel that is an

excellent idea. She stated if their gold license were to be taken away they would be out of business by Christmas. They are the only store in Barnstable that offers totally custom jewelry. She has letters of recommendation from customers. She said people when they leave the store are happy. The store always donates to the schools, fundraisers, children's activities, the sheriff's dept. Has a list of those to which they contribute. Has been in business here for 22 years. They have never had a problem prior to this. She asked for the Board's leniency. She stated they have had a tough year.

Officer Maher asked her about the 95% of the business is selling jewelry – that means only 5% buying? She answered 95% of the jewelry sold in the store is hand-made, only 5% other jewelry. He then stated the purchase form was brought home; when she discovered Monday she did not have the pictures of the items she stated to her husband they had to go in and take those pictures; then Detective Robichaud came in looking for it. Officer Maher asked why Mr. Fagin was looking for the report in some folders – she stated that at the time the reports were kept loose in a folder; they are now in a notebook in order. She said there is a chance she kept the paperwork with what she had at home and he must have assumed when not finding it she had it at home.

Officer Maher asked if she had a conversation about the bag of jewelry her husband put together when he could not find the original bag of jewelry purchased? At that point it was pretty clear the items were items stolen from a house in Sandwich. Why would they then try to replace the items they should have had? She said they wanted to replace the items – it was the 1st day Officer Robichaud was in. Why did they present that bag and not indicate the original bag had been stolen? She said they did not know for sure it had been stolen. He then asked why it was not reported to BPD then? She stated that because they were already talking to the officers they didn't do so, but they mentioned it. They also did not want to find it later and look foolish. Officer Maher asked if it is their allegation they follow the rules and regulations? He asked her why she is now saying sometimes they can't find things? She stated that Officers from other towns come in and ask for items and they have to give them to them. He then asked her about the \$5,000 ring she stated was stolen a month earlier and not reported for a week or so. She said there is one place in the safe used for recently bought items. She wanted to make sure they just didn't overlook it or it had fallen out or something. Officer Maher asked why transaction numbers and dates are not in order? Left off one week and transmitted the following week as happened in this event. She said it should have been reported the week before #128; others after that were reported but this one was not as the description of the jewelry was not on it as they could not find it; normally the photos are taken at the time of purchase but if he was busy he may have set it aside to photograph when not so busy. They can't hire someone to help as they are not consistently busy. Officer Maher asked why they would photograph items other than the Tenney purchases and put them in instead? Officer Maher said at the time she submitted the transmittal forms – why did she include items NOT the items purchased after they believed the items had been stolen?

Mr. Burman asked about the report made on 10/7 – are those the stolen items or replacements she put in? She stated those are items she picked out to replace those that they could not locate. She also said she offered to pay restitution. Mr. Sullivan asked if they have been at this location 22 years? She stated 9 at this location but in town 22. He also asked her about the rules and regulations for the junk dealers – she stated they have only been buying gold for 1-1/2 yrs. and do have those rules. He asked why we she thought have the rules? She stated to make right what has been stolen from people. She said Officer Maher suggested they not deal with very young people and they do not. Mr. Sullivan stated the rules and regulations were made up specifically to address a major problem; we are one of the few who have such detailed regulations for just the reason of the thefts. Mrs. Fagin stated this is an isolated incident. Mr. Sullivan stated there was a prior incident – she stated she was doing the descriptions and just photographing things together. Once they found out what was expected of her, she said they have had no problems conforming to those rules. Mr. Sullivan said that this person, Mr. Tenney, sold the property to her and then supposedly turned around and took back what he just sold to them? She stated they could have grabbed the bag if her husband was photographing, or writing them a check, or because of his prescription medications...it was probably because he wasn't sure what had happened. She stated sometimes she has missed a picture and was told so by BPD, it was a clerical error, not an error of omission.

Mrs. Fagin's Attorney commended Officer Maher and for pursuing these incidents as it is pervasive on the Cape. Break-ins, thefts etc. are on the rise and underground sale of merchandise is a bigger problem than before. He stated he is aware the Board is concerned with the irregularities in this case; he stated the husband was perhaps not as alert or aware of things as he should have been; these people then trying to comply ended up making them look even more guilty. He stated if they were trying to be under-handed they would have no record at all of the transaction; no check would be written for payment. He thinks that it would be inappropriate to read too much into this matter. They have been professionals here for many years. He asked the Board to take that into consideration. Mrs. Fagin added that when Officer Robichaud came in she told him she did not have what he was looking for – he said he could get a warrant; she allowed him to search the safe because she had nothing to hide. She said she still has nothing to hide; she was not present that day and it is unfortunate that the bag had disappeared.

Officer Maher stated that Chapter 502-4B clearly was proved to be true. 502-4B not signing the form – and the licensee not bringing forth the cancelled check leaves doubt. 502-4C photos were not taken at time of purchase but 5 days later. The original report was sent 10/11 and did not include #128; 2nd report 10/12 did list #128 but was sent prior to anyone questioning that there was something stolen. The form was not filled out at the store but at home – Detective Robichaud went in and it was not there. On the charge of not holding property for 21 days they will waive this allegation. The last one true; no numbers on the transaction report or photos – all

they did was catch up after the fact. For sanctions, he said the police department is asking for revocation.

Mr. Burman complimented Sandwich and Barnstable Police for their investigation and presentation. He said he is convinced they are culpable.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken for findings as follows: On all charges except 8C which has been dropped, the police department has proved it's allegations.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken regarding guilt: The Licensee is guilty of the seven counts and it was a unanimous vote for that guilty finding.

The attorney spoke as to the isolated nature of this one transaction and the number of years in business, he recommended the board consider a less punitive sanction than revocation. He suggested a probationary regime to be a 30 day suspension with full compliance, that a video camera be placed on the premises and that the proprietor Mrs. Fagin, deal with all precious metal transactions, rather than delegating to her husband. Mr. Hoxie asked if Mr. and Mrs. Fagin are the only employees – it was answered that they are.

Mr. Hoxie asked the detective some questions – where the jewelry went – he answered that some was to Goldfinger and some to Jewelcraft; all of which at Jewelcraft was recovered.

Officer Maher then stated because they investigated this one and found problems; there is a question as to where the items went; whether they should be buying and selling these items is in question.

Mrs. Fagin stated they have an email with Detective Robichaud when they did mention they believed the bag of jewelry was stolen, to refute when Officer Maher stated they did not bring this up.

Mr. Sullivan stated that without casting aspersions – this is only a single transaction investigated; no-one is questioning any other transactions; so how other transactions went is not before the Authority. Mr. Hoxie stated please keep in mind the severity of taking the license away and of letting them keep the license. Mr. Burman stated they don't seem to have anti-theft devices in place. He does not like the idea of putting someone out of business, but we need to protect the public.

A motion was duly made by Gene Burman, seconded by Paul Sullivan for sanctions as follows: he moves for revocation; which was seconded by Mr. Sullivan, who stated this is the second time around within 1-1/2 years and wants to make sure the regulations are adhered to. There was a unanimous vote taken to revoke the license.

Show Cause Hearing: Show Cause Hearing to determine whether the annual All Alcohol Common Victualler License of Tommy Doyle's Irish Pub & Restaurant, 334 Main Street, Hyannis, MA, Jason Irving, Manager should be modified, suspended or revoked as a result of a report made to the Licensing Authority by the Barnstable Police Department that on February 13, 2011 it was in violation of the Town of Barnstable Rules and Regulations of the Licensing Authority, Section 501-3H for allowing more persons in two rooms of the licensed premises (218) than the number allowed by the Building Commissioner for the capacity of those rooms (165) minus the number of employees working in the areas at the time, and that it violated Section 501-8 of the Town of Barnstable Rules and Regulations of the Licensing Authority, in that it failed to maintain a high degree of supervision over the licensed premises, advertising gaming and betting activity (poker tournament every Sunday night and a weekly Bar Pong event listing a \$200.00 cash prize).

Mr. Hoxie read the show cause notice. One of the owners appeared with the Manager, Jason Irving. Mr. Sullivan recused himself as his hearing device was malfunctioning, stating that Mr. Boy would sit on this hearing in his place.

Officer Maher stated he went in to check on Tommy Doyle's; the two rooms open had more individuals in them than approved on our license. Of the 218 people present, only 165 are allowed in those two rooms. He also advised that after seeing tournaments advertised on facebook, he called on 2/16 to see if there was a fee for the poker tournament and was told there was and it was \$25. He said he then called and asked about the pong game – in this case it advertised an entrance fee of \$5 and a \$200 prize. Officer Maher stated that later on, a DJ advertised on facebook that they were giving away \$50 bar tabs. He testified the staff are and have been cooperative. They are not the problem, but the people they hired were not aware of the illegality of what they were offering. The overcrowding in those rooms has also been resolved satisfactorily.

The owner apologized for the problems, he personally guaranteed these type of issues will not happen again. Alan O'Sullivan and the heads of security of Cambridge will be down here to train all the staff. He stated that facebook and twitter ads done by the promoters were totally unacceptable and will not happen again either. Alan is away until Thursday but would have been here today. The other owner appeared here as they wanted us to know they are aware these are serious allegations.

Mr. Boy asked if they are still advertising the pong, etc.? Officer Maher stated they are not.

A motion was duly made by Gene Burman, seconded by Dick Boy and a unanimous vote taken for findings as follows: on the charges of overcrowding in 2 rooms he finds it to have been proved by police testimony. The gaming and bar pong events also were not denied so he found those allegations to be true. Richard Boy

seconded the motion and it was a unanimous vote for findings that the police had proved the allegations.

A motion was duly made by Gene Burman, seconded by Richard Boy and a unanimous vote taken regarding guilt. It was unanimously voted that they are guilty as charged on all the counts.

Officer Maher stated they have not had problems with this establishment and he recommends a warning on the overcrowding, a one day suspension on the gaming put off for a year pending further violations, and if there are none to be dismissed.

A motion was duly made by Gene Burman, seconded by Richard Boy and a unanimous vote taken for sanctions as follows:

A one day suspended sentence on the gambling and
A warning on the overcrowding.

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 All Alcohol License renewals listed below:

Common Victualler All Alcohol:

The Islander, 330 West Bay Road, Osterville
Trader Ed's, 11 Willow Street, Hyannis

Daily Live Entertainment:

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 listed below:

Trader Ed's

Sunday Entertainment:

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:

Trader Ed's

Junk Dealers:

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

Spindle City Precious Metals, CC Mall, Hyannis
New England Jewellery, 342 Main Street, Hyannis
Hannoush Jewelers, Cape Cod Mall, Hyannis
A.J. Marks Jewelers, 1140 Iyannough Road, Hyannis

Business Meeting:

Attorney David Houghton asked Mr. Burman to make a motion to allow the Town Attorney to represent the Licensing Authority regarding the case of Ying's appeal of its entertainment license suspension in Superior Court, and to submit a counterclaim in said Court. The motion was seconded by Richard Boy and it was unanimously voted to approve this request.

The meeting was adjourned at 12:46 p.m.

Respectfully submitted,

Christine P. Ade, Recorder
Town of Barnstable Licensing Authority

Paul Sullivan, Clerk
Town of Barnstable Licensing Authority