

Town of Barnstable

Regulatory Services

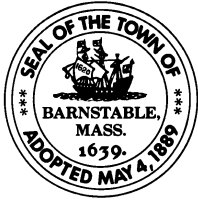
Richard V. Scali, Interim Director

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.
December 30, 2013

A regular meeting of the Barnstable Licensing Authority was held on Monday, December 30, 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; David Nunheimer, 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. Ron Semprini was absent.

Vote to accept Minutes: Vote to accept minutes of the 12/09/13 Meeting.

A motion was duly made by Mr. Burman, seconded by Mr. Sullivan and a unanimous vote taken to approve the minutes of the 12/09/13 Meeting.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to

Hearings:

Request to Close: Request to close submitted by WKC Inc., d/b/a Misaki, 379 West Main Street, Hyannis, Karen Butler, Manager from January 2, 2013 to February 12, 2014.

Ms. Butler appeared for her request. They are doing the same thing as last year – a little cleaning, restoring and vacation.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the request of by WKC Inc., d/b/a Misaki, 379 West Main Street, Hyannis, Karen Butler, Manager from January 2, 2013 to February 12, 2014.

Request to Close: Request to close submitted by Barnstable Restaurant, Inc., d/b/a Barnstable Restaurant and Tavern, 3176 Main Street, Barnstable, Susan Finegold, Owner, to close Mondays and Tuesdays for January, February and March and to close the entire month of February.

Susan Finegold appeared for her request. They have been open 365 days a year for 10 years; plan to close for restoration, steam cleaning, painting and a little vacation.

A motion was duly made by Gene Burman, seconded by Paul Sullivan and a unanimous vote taken to approve the request of Barnstable Restaurant, Inc., d/b/a Barnstable Restaurant and Tavern, 3176 Main Street, Barnstable, Susan Finegold, Owner, to close Mondays and Tuesdays for January, February and March and to close the entire month of February.

New Class II Auto Dealer License: Application of Hyannis Imported Cars, Inc., 268 Stevens Street, 30 Mitchell's Way and 24 Holmes Lane, Hyannis, Paul Bornstein, Manager, for a New Class II Auto Dealer license for a total of 118 vehicles on the sites; 4 handicap spots, 10 employee spots, 10 customer spots and 94 display/unregistered vehicle spaces, as shown on plan signed by the Building Commissioner on 11/1/13.

Paul Sullivan recused himself from this hearing and Dick Boy sat in his place for this one and those following.

Paul Bornstein advised they are applying for a Class II license at a prior Class I location. Officer Maher asked his name; he stated Paul Bornstein. Officer Maher stated that Holmes Lane cannot have vehicles stored on it; he stated it is part of the lot they have, not the street itself.

A motion was duly made by Gene Burman, seconded by Dick Boy and a unanimous vote taken to approve the application of Hyannis Imported Cars, Inc., 268 Stevens Street, 30 Mitchell's Way and 24 Holmes Lane, Hyannis, Paul Bornstein, Manager, for a New Class II Auto Dealer license for a total of 118 vehicles on the sites; 4 handicap spots, 10 employee spots, 10 customer spots and 94 display/unregistered vehicle spaces, as shown on plan signed by the Building Commissioner on 11/1/13.

New Annual Common Victualler License: Application of Old Kings Highway, LLC, d/b/ The Blue Plate Diner, 3224 Main Street, Barnstable, Patrick Sullivan, Manager, for a New Annual Common Victualler License, to be operated 6 am to 2 pm. Seating for a maximum of 36 people.

Mr. Sullivan appeared for his application; the prior owner was also present. It is currently The Blue Plate Diner run by Susan Finegold. There were no further questions.

A motion was duly made by Gene Burman, seconded by Dick Boy and a unanimous vote taken to approve the application of Old Kings Highway, LLC, d/b/ The Blue Plate Diner, 3224 Main Street, Barnstable, Patrick Sullivan, Manager, for a New Annual Common Victualler License, to be operated 6 am to 2 pm. Seating for a maximum of 36 people.

New Class I Auto Dealer License: Application of 500 Colony Place, Inc., d/b/a Premier Mazda, for a new Class I Auto Dealer License at 141, 145 & 151 Stevens Street and 91 Bassett Lane, Hyannis, Joe Laham, Manager, for 44 customer/employee spaces and 83 display/unregistered spaces, a total of 127 spaces on the sites.

Attorney Jeffrey Ford appeared for this application along with Joe Laham, President and Owner. The property includes 4 parcels. This was the old Saturn and then Kia dealership. It has a Special Permit on file which authorizes expansion is allowed if the applicant wishes. He may do that in the future. They have a signed off site plan, did not have to have Site Plan Review. The P&S allows him to occupy for the purpose of being a Class I Auto Dealer. The manager will be Joe Laham.

Mr. Scali asked if there are any other lots associated with this dealership not on the application. There are not, and he would reapply if they wish to make changes. Mr. Laham stated the lot was striped. It will be seal-coated and re-striped in the Spring.

A motion was duly made by Gene Burman, seconded by Dick Boy and a unanimous vote taken to approve the application of 500 Colony Place, Inc., d/b/a Premier Mazda, for a new Class I Auto Dealer License at 141, 145 & 151 Stevens Street and 91 Bassett Lane, Hyannis, Joe Laham, Manager, for 44 customer/employee spaces and 83 display/unregistered spaces, a total of 127 spaces on the sites.

Transfer of Annual Common Victualler Wine & Malt License: Application of Scott L. Lopes, LLC, d/b/a Pizza Wave, 3864 Falmouth Road, Marstons Mills, Scott Lopes, Manager for transfer of its Annual Common Victualler Wine & Malt License to NXBP, LLC, d/b/a Pizza Wave, Branko Pishev, Manager.

Mr. Pishev appeared for their application. He will be the new Manager. He has been there for 3 months now. Business is good – they are adding a new whole wheat product as well. Otherwise it is the same. Mr. Scali asked if Mr. Lopes is still running it; Mr. Pishev stated he is still involved but he himself is running it. Mr. Scali reiterated that Mr. Lopes is responsible for it until the transfer goes through with the ABCC.

A motion was duly made by Gene Burman, seconded by Dick Boy and a unanimous vote taken to approve the application of Scott L. Lopes, LLC, d/b/a Pizza Wave, 3864 Falmouth Road, Marstons Mills, Scott Lopes, Manager for transfer of its Annual Common Victualler Wine & Malt License to NXBP, LLC, d/b/a Pizza Wave, Branko Pishev, Manager.

Change of Manager: Application of Beech Tree Cantina, LLC d/b/a Beech Tree Cantina/Off the Hook Sushi & Raw Bar, 599 Main Street, Hyannis, Brian D. Beatty, Manager for a Change of Manager to Paul Beatty.

Paul Batty appeared as the proposed new Manager. He does have experience in the service of alcoholic beverages. Brian is his son, who is no longer involved. Mr. Scali stated he is concerned with all the changes in Manager; Ron Beatty was on as manager, before him Jared Pane, and hopes they are trying to get it to be more consistent. Mr. Scali asked if he is aware of the past issues about noise, etc. with the location and he stated he is. He then stated in fact they installed a barrier behind the tree.

A motion was duly made by Gene Burman, seconded by Dick Boy and a unanimous vote taken to approve the application of Beech Tree Cantina, LLC d/b/a Beech Tree Cantina/Off the Hook Sushi & Raw Bar, 599 Main Street, Hyannis, Brian D. Beatty, Manager for a Change of Manager to Paul Beatty.

Show Cause Hearing: The Licensing Authority received a formal complaint from Christine Campbell that funds were paid to Barnstable Motors Wholesale, 689 Yarmouth Road, Hyannis, Pandula Suriyaarachi, Manager, for a vehicle which does not pass inspection and for which funds were not returned to her, and that the vehicle has not been fixed so it will pass a safety inspection.

Also, that the Manager of record (Mr. Suriyaarachi) and the two partners on record for this license (Mr. Suriyaarachi and Mr. Johnson) were not available. When asked who ran the

business, a third party stated that he is running the business. This is in violation of M.G.L. c. 140 §58 (c). Mr. Hoxie advised that the **COMPLAINT WITHDRAWN BY MS. CAMPBELL AND OTHER ISSUES RESOLVED.**

Show Cause Hearing: Show Cause Hearing for Auto Smart, LLC, 202 Yarmouth Road, Hyannis, Darrell Fietz, Manager, on a complaint from Venturcap Financial Group, LLC dba CarNow Acceptance Company, 1675 Main Street, Brockton, that the account from which the check was written to pay off the loan of Penney Ryder did not have sufficient funds (see attached documents). This hearing is called pursuant to M.G.L. c 140 §58 (c)(v) and M.G.L. c. 140 §58 (c).

The complainant and Mr. Fietz from Auto Smart appeared for this hearing. Mr. Hoxie read the hearing notice. He called the complainant first.

Lauren Pipiekowski appeared as the person who filed the documents. Penney Ryder was a customer who purchased a vehicle. They sent out the title while the payoff was in transit. Then the check sent to them turned out to be a bad check. The check was \$1,925.00. They contacted Mr. Fietz and received no satisfaction.

Mr. Fietz submitted a written response. He stated that the bill of sale and contract was dated November of 2012. The contract did not include any trade. He had sold Ryder several other vehicles in the past. They needed a vehicle. They had a trade vehicle but his company does not take trade-ins with payoffs. He took the vehicle as collateral – waiting for them to bring in the down payment through a promissory note. He agreed to clear their lien after the payoff was made. He started reconditioning the vehicle before even getting paid by Ryder. He took them to small claims court. He had a verbal agreement with Ryder; he is owed \$2,000 by them; the vehicle was stored for months and months for free; he also reconditioned it. There is such a thing as a Mechanic's Lien...which he has every right to exercise. This is State law. He did not even go that route. He liquidated the vehicle and is pursuing Ryder in Court. VenturCap has not pursued what they need to pursue. Ryder did not even appear; they are not the ones who filed this complaint. If Ryder pays him, he will pay VenturCap. This is an incident he is trying to remedy. They should also be pursuing Ryder.

Mr. Hoxie asked Lt. Murphy about whether or not this should be in Court. Why should VenturCap have to pay for his bad judgment on Ryder? Lt. Murphy understood what was said but the error in judgment was by Mr. Fietz. VenturCap is just on paper.

Officer Maher asked who has the title. VenturCap stated that Auto Smart now has the title. Mr. Fietz took the title and sold the car approximately 65 days later. He did not log the car into his book until he received the title. At that point he owed VenturCap the \$2,000.

Mr. Hoxie stated that the Licensing Authority could let this go through the courts or suspend the license until the payment is made to VenturCap.

Mr. Scali stated this is the 4th or 5th time Mr. Fietz has been before the Authority. Mr. Nunheimer stated the issue is that his check bounced. It is Mr. Fietz' problem to chase Ryder. VenturCap should be paid; they were not responsible for his sending a check out in "good faith." He made a deal with the consumer; they made a deal with Mr. Fietz. Legally they ought to be paid.

Mr. Sullivan stated he heard that Mr. Fietz operated out of the ordinary; did not follow the normal course of business. He should have waited for payment from Ryder to send his check to VenturCap.

Mr. Hoxie asked for a motion to revoke the license effective January 6, 2014; to be rescinded if payment is made. The motion was made by Mr. Burman and Mr. Boy seconded the motion. A unanimous vote was taken to revoke the license on January 6, 2014 if no payment has been made.

Addition of Regulations for Class I & Class II Auto Dealers as proposed by the Barnstable Police Department as follows:

Officer Maher stated they changed wording regarding the sign and delineation of markings on the ground.

Mr. Hoxie asked if Officer Maher recommended we adopt these regulations; he stated he did. Mr. Hoxie asked for background from Officer Maher as to why we need these regulations. Officer Maher stated our application requires a parking plan – showing the number of vehicles and placement as not to block fire lanes, etc. In doing inspections he has noticed dealers are parking in such a way as to block these, And noticed it is more so in Class I than Class II dealers. Some dealers have many more vehicles than they are approved to have. Inspections are difficult when they cannot locate exactly where the business is located. Having signage will clear up where business is conducted, and when they are or are not open. By having hours posted, they could also post if they are not there on the door or window. The other issue was dealers who do not conduct business at the office location they notify the police department of their transactions.

Mr. Hoxie stated the purpose of the regulations is a public safety issue, to protect the consumer and to protect the owners.

Lt. Murphy stated there comes a time when walking the tightrope between the owners, consumers, abutters, Licensing Authority, etc. is tough to make sure all are protected. He does not think these regulations are too harsh. It helps the Fire Department and Police Department to have a set of rules for public safety and consumers and does not see the regulations as being heavy handed.

Mr. Hoxie stated he has received information that these regulations are only to get more money into the Town coffers. Lt. Murphy stated this is not an anti business measure and that statement is untrue. It will cost more to enforce this way. It is an effort of all 3 entities – the dealers, the consumers and the Licensing Authority.

Mr. Scali stated these rules are very light as compared to rules imposed where he used to work. The repair facility requirement has been reworded so it does not require a facility to sign off.

Robbie Trapp stepped forward as a Class II Dealer. He had a question on #3, the repair facility. He does not use one specific facility. He goes to whomever he needs to for repair parts, to an independent facility as to what is needed for each job. He does not understand how he could list one place.

Lt. Murphy stated he needs to list all the places he uses. Mr. Trapp asked what is the point of that? Officer Maher stated there are some facilities in town who cannot repair on site. It is important for us to know who and where they are using for their repairs. Officer Maher stated in Mr. Trapp's case, just list the major ones he uses. Officer Maher stated a list should be at the dealerships as to who they use, if anyone. Mr. Trapp asked about #7; Officer Maher stated it has been amended to state "MAY" not shall, and that should answer Mr. Trapp's concerns.

William Baron appeared again about the lining of the parking lots and fanning cars out to make it look better...he sees an issue there if he can't move his cars around. He does not want to be in violation. The back is not paved, the front is. He is only talking about the front. He has had it lined and seal-coated...he then applied and was granted new numbers. He did not line the area for display for this reason. Officer Maher stated as long as the cars they have are within the spaces lined, there is no problem. There will be a little give and take; as long as they are not OVER their number.

Lt. Murphy stated this reminds him of when we strengthened the regulations for junk dealers. It has to be generic but applies differently in some cases. Lt. Murphy stated their concern is that the rules need to be adhered to but there needs to be trust that everyone will do the best they can. Due consideration will be given. If the police find a violation it would then come back to the Licensing Authority for decision.

Mr. Fietz from Auto Smart asked again about vehicles in excess of his display vehicles – those that could be at auction; or at storage lot or warehouse somewhere...the vehicles are logged in (repossessions, etc.). Will the Town be looking to see who has licensed storage lots? If someone rents a warehouse to store vehicles that are not actively for sale?

Officer Maher stated that the license granted gives each dealer a number of vehicles. If they decide to get a storage lot they need to come before the board to add that storage lot to the license. They will be asked if their number exceeds what is on the license. The license needs to be amended to include the storage space.

REGULATIONS FOR TOWN OF BARNSTABLE CLASS I AND CLASS II AUTO DEALERSHIPS TO BE ADOPTED ON DECEMBER 30, 2013

1. Total vehicle count shall include the numbers of displayed/unregistered vehicles, customer vehicles and employee vehicles. The plan shall be approved by the Building Commissioner and Fire Department. This shall apply to all new, transferred or amend license applications.
2. A sign is required on the property, whether it is a free standing sign or displayed in the door or window, listing the name of the business and hours of operation.
3. All dealerships shall have a repair facility or provide repairs themselves, available and listed on the application and renewal of the license. This information shall be provided yearly.
4. An approved parking plan shall be available on site for any inspections. This shall apply to all new, transferred or amended license applications
5. All spaces delineated on the approved parking plan, shall be marked out with lines, on the surface of the property, except for lots that are storage or non-asphalt surfaces.

6. All Class II dealers who do not display vehicles on the licensed property or who only conduct business via the internet, shall submit to the Licensing Authority a quarterly report of all vehicle transactions, as delineated in the Used Vehicle Inventory Book.
7. All licensees may use a computer-generated version of the Used Vehicle Inventory Book, so long as it is approved by the Mass. DOR.
8. A physical vehicle count may be conducted quarterly by the police/inspectors of all Class I and Class II dealerships.
9. An inspection of the Used Vehicle Inventory Book for each dealership, may be conducted by the police/inspector, at least once a year.

Mr. Hoxie asked for a motion on these regulations. Mr. Burman stated that he has received many phone calls on this. He asked for more time for the dealers to meet with the Police Department before implementing these regulations. It was then stated that this has already been on two hearings and discussions have gone on for months. The dealers have had time to give their input.

Lt. Murphy stated that if it becomes onerous or does not work it can be changed in future. This is a good faith effort to change some issues which have been problematic. Mr. Sullivan stated we have not had any complaints about enforcement. If a dealer has a question they can bring it to the attention of the police department. He thinks this is a good step.

Lt. Murphy stated that we passed a stringent ordinance on junk dealers. Not one junk dealer has come forward to complain. If an auto dealer has a problem, they should bring it to our attention.

Mr. Burman made a motion to approve the regulations and change #7 to "may" instead of shall, This motion was seconded by Mr. Boy and unanimously approved to become effective December 30, 2013.

Renewals:

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

Common Victualler All Alcohol (appealed disapproval from 12/9/13):

The Steakhouse Sports Bar, 72 North Street, Hyannis
The Regatta, 4631 Falmouth Road, Cotuit

Mr. Hoxie asked about both of these and reiterated they will not be renewed.

Package Store Wine & Malt (was held until this hearing):

Big Daddy's Pizza, 4120 Falmouth Road, Cotuit

Mr. Scali stated that the new entity this license was transferred to was disapproved by the ABCC. However, the new owner is running it and should not be as of January 1, 2014. Mr. Holland stated that a condition of the sale was that the ABCC approve the license.

That was unable to happen as he owed delinquent taxes. Then the license transfer can be reviewed again and approved by the ABCC. That was not resolved with the DOR and DUA yet. The DUA was satisfied, and he entered into a DOR agreement to pay the taxes, but the ABCC would not agree to the transfer with an agreement only. It has been burned in the past and now required full payment.

Mr. Hoxie asked to clarify the ABCC's position. They will not approve until all taxes are paid. Mr. Holland is still involved with the store, but cannot be working full time due to his health. Mr. Holland is looking for more time to resolve this. Mr. Hoxie stated the ABCC would not approve the renewal in any case with the taxes owing.

Mr. Scali also advised that this is a package store license; it is the last one of the beer and wine licenses in Town. Does the Board want to hold this license and not issue it; coming back to the Board later with a decision. In any event after January 1, Mr. Mohammed may not be running the business.

Mr. Hoxie stated that we will take the license and hold it for a reasonable time to let Mr. Holland get the taxes paid. Mr. Hoxie stated he would be willing to give him 90 days. Within the 3 months Mr. Holland needs to report back to the Authority. Mr. Scali stated that once that happens, Mr. Holland would need to reapply for the transfer to Mohammed.

Mr. O'Sullivan appeared for Tommy Doyle's – he is in the process of trying to sell his Hyannis location. There has been a problem with his business partner. He thought he could close (December 8, 2013) while he resolved this and did speak with Mr. Scali. He came in today to ask for the ability to close until March 1, 2014. Mr. Scali asked that we hold the license while they are closed – get the licenses back at this point. Mr. O'Sullivan will bring them back to us.

A motion was duly made by Mr. Burman, seconded by Mr. Sullivan and a unanimous vote taken to allow the closing until March 1, 2014.

Alcohol License renewed 12/9/13 but has unresolved real estate tax issues: Barbyann's, 120 Airport Road, Hyannis

Mr. Scali advised that they owe more than a year in arrears of real estate taxes and also have an ABCC hearing coming up on taxes.

Mr. Hoxie stated that they need to be made aware they cannot serve alcohol after the first of January.

A motion was duly made by Mr. Burman, seconded by Mr. Boy and a unanimous vote taken to approve the renewal of the licenses listed below:

Class I Auto Dealers:

- Balise Ford, 90 High School Rod Ext., Hyannis
- Balise Hyundai, 518&556 Yarmouth Road, Hyannis]
- Balise Nissan, 322 Falmouth Road, Hyannis
- Hyannis Honda Annex, 405 West Main Street & 57 Shady Lane, Hyannis
- JMR Honda, 741 Yarmouth Road, Hyannis

Cape Cod Auto Body (Tracy), 686 & 151 Iyannough Road, 63 Cit Avenue, 138 & 140 Cedar Street,
Hyannis

A motion was duly made by Mr. Burman, seconded by Mr. Boy and a unanimous vote taken to approve the renewal of the licenses listed below:

Class II Auto Dealers:

Brico Autoworks, 178 Thornton Drive, Hyannis
Hyannis Auto, Inc., 478 West Main Street, Hyannis
All Motors Auto Sales, 66 Barnstable Road, Hyannis
Cape Auto Sales, 58 Willow Avenue, Hyannis
Used Auto Cape, 61 Falmouth Road, Hyannis
Mutual Motors, 537 Yarmouth Road, Hyannis
AB Auto Sales, 415A Barnstable Road, Hyannis
Barnstable Motors Wholesale, 669 Yarmouth Road, Hyannis
Hi Line Auto Sales, 367 Yarmouth Road, Hyannis
Cape & Island Motors, 153 Corporation Street, Hyannis
Ultra Clean, 30 Cit Avenue, Hyannis
Cape Wide Auto & Marine II, 730 Bearses Way, Hyannis
Harbor Auto Sales, 380 Yarmouth Road, Hyannis
Wheels to Work, 15 LaFrance Avenue, Hyannis
Tillo's Cars and Trucks, 20 Bearse Road, Hyannis
The Car Guys, 741B Yarmouth Road, Hyannis

A motion was duly made by Mr. Burman, seconded by Mr. Boy and a unanimous vote taken to approve the renewal of the licenses listed below:

Common Victuallers:

Nirvana, 3206 Main Street, Barnstable
Wendy's, 554 Rte 132, Hyannis
Wianno Green Cafe, 29 Wianno Avenue, Osterville
Four Seas Ice Cream, 360 So. Main Street, Centerville
Bangkok Kitchen, 339 Barnstable Road, Hyannis
Panera Bread, 790 Iyannough Road, Hyannis
Box Lunch, 357 Main Street, Hyannis
The Mad Platter, Barnstable Municipal Airport
JJ's Roast Beef, 770 Main Street, Osterville
The Mills Restaurant, 149 Cotuit Road, Marstons Mills
Green Lotus Cafe, 349 Main Street, Hyannis
Common Ground Cafe and Juice Bar, 420 Main Street, Hyannis

A motion was duly made by Mr. Burman, seconded by Mr. Boy and a unanimous vote taken to approve the renewal of the licenses listed below:

Lodging House:

Edmund J. Flynn, 791 Pitcher's Way, Hyannis
High Pointe Inn, 70 High Street, West Barnstable

The Lamb & Lion Inn, 2504 Rte 6A, Barnstable
Cape Cod Yoga Retreat and B&B, 2415 Meetinghouse Way, West Barnstable
The Pilot House, 86 South Street, Hyannis

Business Meeting:

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

Mr. Scali reported that Sea Street Café (no alcohol) failed to renew its Common Victualler license for 2014. We just recently became aware of this. They have been notified and have now applied for the license – they are on the hearing for February 10, 2013. Mr. Hoxie stated we must notify them they have to close until they get our license in February.

Lt. Murphy stated we will have a couple show cause hearings coming up in the near future.

Mr. Hoxie asked about the ABCC hearings coming up – there are three.

Mr. Hoxie thanked Officer Maher and Lt. Murphy for the excellent job in coming up with the new regulations for auto dealers.

Adjourned at 10:50 am.

Respectfully submitted,

Christine P. Ade, Recorder
Town of Barnstable Licensing Authority

Paul Sullivan, Clerk
Town of Barnstable Licensing Authority