

TAPED

The License Commission held its regular monthly meeting at 6:00 p.m. on Wednesday, April 8, 2009, in the G.A.R. Room at City Hall. Present were Chairman James E. Holmgren; Commissioners Edward F. Cotter, Paul D. Sullivan, Joseph P. Kelley and Bruce G. Dansby. Also present were License Agent Lieut. John Crowley; Asst. City Solicitor Phil Nessralla; and Administrative Assistant Bonnie Tucker.

1. Approval of the minutes of the License Commission meetings of February 25, 2009, March 18, 2009 and the Special Meeting of March 5, 2009.

A motion was made by Commissioner Cotter to approve the minutes of the meetings which motion was seconded by Commissioner Sullivan. All members present voting in the affirmative, the motion carried.

2. Approval of the following police officers as license agents for the month of May, 2009: Lieuts. John Crowley, Thomas LaFratta and John Flynn; Sgts. William Barry and Paul Bonanca; Dets. Michael Schaaf, Erik Hilliard, John Lonergan, Sanford Gurney, James Smith, Dominic Persampieri and Ernie Bell; and Officers Scott Uhlman, and William Healy.

A motion was made by Commissioner Cotter to approve the police officers as listed which motion was seconded by Commissioner Sullivan. All members voting in the affirmative, the motion carried.

3. Requests for Special One-day Permits:

There were no applications for special one-day permits.

4. Hearing on the request from Brockton Fair Caterers, Inc. – Maura J. Carney, Manager, 433 Forest Avenue, to amend the Entertainment license to include a Rodeo/Brazilian Festival on Saturday, May 23, 2009 from 12:00 noon to 12:00 midnight and on Sunday, May 24, 2009 from 12:00 noon to 9:00 p.m.

Present were Maura J. Carney, 122 Fairview Avenue and George Carney, 7 Chilton Road.

Ms. Carney reviewed the request which is to have the Brazilian Festival on May 23rd and 24th. It will be the same as usual.

A motion was made by Commissioner Sullivan to approve the request which motion was seconded by Commissioner Cotter. All members voting in the affirmative, the motion carried.

Mr. Carney then asked the Commission to approve Entertainment on April 19th. He indicated there is going to be an event at the Rox Stadium across the street and he knows

they will need to have parking at the Fairgrounds. He would like permission to have Brazilian bands and other activities to go along with their culture.

A motion was made by Commissioner Sullivan to approve the request which motion was seconded by Commissioner Kelley. All members voting in the affirmative, the motion carried.

5. Hearing on the request from Nancy Nicholas dba Fatima Palm & Tarot Reading for a Fortune Teller license at 794 Belmont Street.

Present were Attorney John Creedon, 71 Legion Parkway and Nancy Nicholas, 794 Belmont Street.

Attorney Creedon reviewed that Nancy and her husband, Tom, have lived at that location for almost five years and have conducted business there for the last five years. They previously had a business at 624 Main Street. Mrs. Nicholas realized that she had forgotten to renew her license.

A motion was made by Commissioner Kelley to approve the license which motion was seconded by Commissioner Cotter. All members voting in the affirmative, the motion carried.

6. Hearing on the request from The Naked Chicken, LLC for a Common Victualer license at 532 North Quincy Street.

Present were Evelyn Knight, 524 North Cary Street and Ignacio Garcia, 524 North Cary Street.

Ms. Knight stated they are requesting to have a sit down restaurant. There is seating for 40 people. Hours will be from 5 a.m. to 10 p.m. The Inspection approvals were submitted.

Paperwork being in order, a motion was made by Commissioner Sullivan to approve the license which motion was seconded by Commissioner Kelley. All members voting in the affirmative, the motion carried.

7. Hearing on the charge of the local police against P.J.F. Enterprises, Inc. dba Terra Terra Bar & Grill on the charge of an alleged violation of Alcoholic Beverages Control Commission Rule 2.05(2), to wit: "No licensee for the sale of alcoholic beverages shall permit any disorder, disturbance or illegality of any kind to take place in or on the licensed premises. The licensee shall be responsible therefor whether present or not.", reported on March 16, 2009, at approximately 12:43 a.m.

Present were Filipe Miranda, 298 High Street, Randolph and Porfirio DeSilviera, 10 Hartford Street, Dorchester.

Attorney Nessralla asked the licensees if they are represented by legal counsel and they indicated they are not.

The following persons were then sworn by Attorney Nessralla:

Det. Nazaire Paul, Brockton Police
Filipe Miranda
Porfirio DeSilveira

On direct examination by Attorney Nessralla, Det. Paul stated that on March 16, 2009, while on routine patrol, they received several calls from neighbors and people as far away as Mulberry Street about a shooting in front of the Tiger's Den in the Village area. It took approximately two minutes for the officer to get to the establishment. He found several shell casings in the front of the Tiger's Den and shell casings were also found across the street. A total of approximately 25 shell casings were found. Det. Paul stated a weapon was retrieved by other officers behind the Tiger's Den building. BCI was called to collect all of the evidence.

Det. Paul further stated that Sgt. Celia and several other officers stopped a car which several of the neighbors had given a description of. Inside the vehicle which was stopped at Ames Street and North Montello Street were Mr. Silveira and the shooting victim who had been shot in the leg. Det. Paul stated he recognized the victim from prior occasions through the Brockton Police. The owner of the car was taking the victim to the hospital. Sgt. Celia explained to him that he should have called the police so that an ambulance could be sent. The owner's car had several bullet holes and the windshield was also damaged with bullet holes.

After everything was done, Det. Paul went inside the Tiger's Den and spoke with the owner and asked him why he didn't call the police and why he didn't call for an ambulance. His response was because the previous owner of the establishment had told him not to call the police and he was afraid of losing his license.

The Chairman asked if either individual had any questions of Det. Paul and they indicated they did not.

Attorney Nessralla stated he has no further questions of the officer or individuals. He then stated to the Commission members that this satisfies the violation of ABCC Rule 2.05(2). Not only did a shooting take place with an excessive number of shell casings and a car that was bullet ridden, but lying to the police officer and failing to report this raises several issues of concern to the City. He stated it is a direct violation of the ABCC Rule but the Commission was expressly clear with the licensee when they initially came in for their license. He indicated the decision to not call the police could have put the officers in jeopardy. He stated it also obstructs the system of justice in not allowing the police to rapidly make the investigation. Attorney Nessralla stated there should be a

finding that he was in violation of the Commission's rules as well as the ABCC rules and recommended the most stringent type of sanction against the licensee.

In response, Mr. Silveira stated he wishes to apologize to the police officer, the license board and to his partner. He stated he realizes there is no excuse for not knowing what to do in that circumstance. He then explained that on the night of the shooting, he was in the kitchen making subs and was in the process of closing. The shooting victim walked in the door and was acting erratic and taking his clothes off and stated he had been shot and asked to be taken to the hospital. Mr. Silveira stated he got nervous and did not know what had happened outside but wanted to get him to the hospital. He stated he is there 80 hours per week and always tries to do the right thing both on the inside and the outside. He indicated he had nothing to do with the incident nor could he do anything about it. He stated there are gangs down the street. He stated that they believe they have the cleanest bar inside and there are no drugs going on. Although it has not been accomplished, their plan is to have the bar be like a 99 Restaurant. Mr. Silveira stated they have nothing to hide and are cooperative with the police.

Attorney Nessralla asked Mr. Silveira if he had, in fact, told the police officer that he was told not to call the police because it would appear on his record and he indicated he did. Attorney Nessralla also stated that with his comment about the gangs in the area, he should have a better linkage and communication with the police department instead of trying to evade the situation. Mr. Silveira stated he was not trying to evade the situation and he did not lie to the police department. Mr. Silveira then asked for leniency.

Commissioner Sullivan then stated he feels there is no excuse for ignorance and that it is a clear violation.

In response to questions from Commissioner Kelley, Mr. Silveira stated the previous owners as well as other bar owners have told him not to call police. Commissioner Kelley then expressed concern that he put the police and customers in jeopardy.

Commissioner Kelley then made a motion to find a violation. The motion was seconded by Commissioner Cotter. All members voting in the affirmative, the motion carried.

Commissioner Kelley stated that he feels a strong message must be sent and all options should be put on the table from rolling back the hours to taking the license away. Commissioner Cotter indicated he would prefer to see a rollback to at least 12:00. Commissioner Kelley stated he feels a real message must be sent to these people and the rollback should be to 11:00.

Chairman Holmgren stated he is disturbed by the fact that they had been before the Commission thirty days prior and had been warned at least four times according to the minutes from the meeting. He indicated he finds that most egregious and they know there are problems in the City. He reminded them that they bought a facility and what they put into it is their own responsibility and it is not an excuse to avoid getting the police involved. Chairman Holmgren stated they evidently knew they should call the

police because Mr. Silveira had told the police they didn't want to call them. He also reminded him that they had been told of this responsibility when they got the license. Chairman Holmgren then stated that it is his opinion they should be rolled back to midnight for nine months and closed for five days and he would like to see them have to re-apply at the end of nine months and to never be allowed a 2:00 a.m. again.

Councillor Michelle DuBois, Ward Six, asked if public comment would be allowed and the Chairman indicated the Councillor's comments would be welcome.

Councillor DuBois stated she wanted to submit for the record a power point presentation which the District Attorney gave to the City Council. She indicated that the interesting part is that 3 of the gun incidents between 12:00 a.m. and 4:00 a.m. since January 2008 happened in the area of this bar and that does not include the one that just happened. She stated that some of the neighbors who have called her are too fearful to be present this evening and have said they saw the person in the doorway of the bar. Councillor DuBois stated that the person who owns the six-family across the street is coming to the meeting. Currently, there are three or four apartments he is unable to rent because of how dangerous the area is. She indicated that beyond the fact that it is the fault of the two licensee's present, she feels the key point to remember is that both of the two previous owners had serious problems following the laws. She stated the first owner still owns the building and there is a pledge of the license. Councillor DuBois stated she feels the whole area is a mess and the permit should be pulled. She stated that Councillor Brophy asked her to say that he also thinks it is a serious problem and his recommendation is a rollback to 12:00. She indicated she thinks it is unacceptable that residents have to live in fear all the time. Councillor DuBois then thanked the Commission for hearing her.

Councillor-at-large Linda Balzotti stated she is present to support Councillor DuBois and she knows how serious the Commission takes matters and when she was a Ward Councillor the Commission would provide assistance. She agreed that at minimum a rollback should be considered for public safety.

Commissioner Kelley then stated he would personally like to see the hours rolled back to 11:00 p.m. but he will agree to the midnight closing.

A motion was made by Commissioner Kelley to rollback the license to 12:00 seven days a week along with the Entertainment license and to recommend a five day suspension of the license which includes the weekend. The motion was seconded by Commissioner Sullivan.

Chairman Holmgren then stated that Councillor/Representative Brady had telephoned and wanted to go on record that he will go along with a rollback of hours if that is what Councillor DuBois wanted.

Chairman Holmgren then reviewed that there is a motion to rollback to midnight seven days a week for a period of nine months at which time they must apply to extend the closing hour to 1:00 a.m. and a five day closing which will include a weekend.

A vote was then taken and with all members voting in the affirmative, the motion carried.

The licensee was informed that he would be hearing from the License Commission.

8. Communications

The Adm. Asst. reviewed that notifications concerning used car dealer bond cancellations have been received. After a brief discussion, it was agreed that a notice be sent advising the licensees that their license will be terminated two weeks from the receipt of the notice unless the bond is re-instated.

9. Any other business to properly come before the Commission.

It was agreed that the next meeting will be held on May 13, 2009.

With no further business to come before the Commission, a motion was made by Commissioner Cotter to adjourn the meeting which motion was seconded by Commissioner Sullivan. All members voting in the affirmative, the meeting was adjourned.

Respectfully submitted,

James E. Holmgren
Chairman

APPROVED:

Edward F. Cotter, Commissioner

Joseph P. Kelley, Commissioner

Paul D. Sullivan, Commissioner

Bruce G. Dansby, Commissioner

Fred Fontaine, Alternate Commissioner