

TAPED

The License Commission held its regular monthly meeting at 6:00 p.m. on Tuesday, July 14, 2009, in the G.A.R. Room at City Hall. Present were Chairman James E. Holmgren; Commissioners Edward F. Cotter, Paul D. Sullivan and Bruce G. Dansby. Also present were License Agent Lieut. William Barry, Asst. City Solicitor Phil Nessralla; and Administrative Assistant Bonnie Tucker.

1. Approval of the minutes of the License Commission meeting of June 17, 2009.

A motion was made by Commissioner Sullivan to approve the minutes of the meeting of June 17, 2009 which motion was seconded by Commissioner Dansby. All members present voting in the affirmative, the motion carried.

2. Approval of the following police officers as license agents for the month of August 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 Sullivan to approve the police officers as listed as license agents for the month of August 2009. The motion was seconded by Commissioner Dansby. All members voting in the affirmative, the motion carried.

3. Requests for Special One-day Permits:

- (a) **All Alcoholic Beverages (4 Permits)** – Annunciation Greek Orthodox Church – John Kolentsas, Manager, for the Annual Greek Festival to be held on the Church grounds at 457 Oak Street on September 17, 18, 19 and 20, 2009 from 11:00 a.m. to 11:00 p.m.

Present was John Kolentsas, 200 Boxwood Lane, Bridgewater.

Mr. Kolentsas reviewed his request for the four special one-day all alcoholic permits which are for the annual Greek Festival on the Church grounds. It will be the same as in the past and there will be police details. The hours being requested are from 11 a.m. to midnight on each day.

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

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 Brazilian Festival on Sunday, July 26, 2009, from 12:00 noon to 11:00 p.m.

Present was Maura Carney, 122 Fairview Avenue, who requested that the date be changed back to July 19th as originally applied for.

With no one present wishing to be heard on this matter, a motion was made by Commissioner Sullivan to approve the request which motion was seconded by Commissioner Dansby. All members present voting in the affirmative, the motion carried.

5. Hearing on the request from Melvin Lightford Ministries, Inc. for a Lodging House license at 11 Cherry Street.

Present was Melvin Lightford, 11 Cherry Street, who indicated he would like to re-apply for the Lodging House license. He stated that due to an error on his own part he had changed over to foster care and did not notify the Commission.

The Adm. Asst. reviewed that Mr. Lightford had not filed for the renewal of the license and that the Fire Department has not given an inspection approval. Mr. Lightford stated that the Fire Department has indicated they will not give the approval without a letter from Stadelman Electric on the alarm. He stated he has installed the carbon monoxide detectors.

Chairman Holmgren reminded Mr. Lightford that he cannot operate until the approvals have been submitted and the license is issued and he indicated he understands this.

Officer Scott Uhlman who was present on another matter informed the Commission that he had spoken with Fire Lieut. Ed Williams and he has indicated that a re-inspection by the Fire Department is needed and that it is okay to approve the license pending the re-inspection and approval by the Fire Department.

A motion was made by Commissioner Cotter to approve the license pending receipt of an inspection approval from the Fire Department. The motion was seconded by Commissioner Dansby. All members voting in the affirmative, the motion carried.

6. Hearing (postponed from meeting of June 17, 2009) on the charge brought by the local police against Carlos Lima dba Rolando's – 133 North Main Street, of an alleged violation of **Brockton License Commission Rule #8**, to wit: "The last drink must be served before the closing hour. All glasses and bottles must be cleared from the tables or bar by 15 minutes after the closing hour. All customers must have left the premises by 30 minutes after the closing hour. Any licensee and his employees shall not be prohibited from being upon such premises at any time for the purpose of cleaning, making emergency repairs to, or providing security for, such premises or preparing food for the day's business or opening or closing the business in an orderly manner. They may not drink after the closing hour.", observed on April 25, 2009, at approximately 2:20 a.m.

Representing the licensee was Attorney John McCluskey, 932 Main Street. Also present were Carlos Lima, 25 West Summer Street, Dorchester Mattapan, Regina Best, 135 Menlo Street and Rolando Lima.

Also present were Lieut. Tom LaFratta, Brockton Police Department and Det. James Smith, Brockton Police Department.

The first witness called by Attorney Nessralla was Det. Tom LaFratta who stated that on April 25, 2009, he and Det. James Smith were checking liquor establishments in the City. At approximately 2:20 a.m., they were traveling by Rolando's on North Main Street and observed several cars parked out front. They decided to investigate and went to the front door and found the grate was down and padlocked. They then went to the side door and knocked on the door. After several minutes passed, Mr. Lima opened the door and invited them in. Lieut. LaFratta stated there were approximately eleven people sitting at the bar. Lieut. LaFratta told him that all patrons should have been out of the establishment by 1:30 and Mr. Lima stated he was having a soccer meeting and wanted to know if it was okay. Lieut. LaFratta stated he told him it was fine to have a soccer meeting but that he had to have it within the allowed hours of the business. He also advised Mr. Lima that closing the front grate with the padlock was a safety hazard in case of a fire.

In response to questions from Attorney Nessralla, Lieut. LaFratta stated he did not observe any alcoholic beverages on the bar.

Attorney McCluskey stated he did not have any questions for Lieut. LaFratta.

Attorney McCluskey then asked Mr. Lima what the people were doing inside the bar and he stated that it was a meeting of the soccer players. They were not drinking. He stated there is a double door and he might not have heard the officer knock at first.

Commissioner Cotter stated it is a clear violation and reminded Mr. Lima that he is not suppose to have people in there whether they are drinking or not.

Chairman Holmgren then reviewed with Mr. Lima that they were before the Commission on a similar violation back in November and reminded them of the fact that they have been unable to maintain six months without having a violation. He stated this had all been reviewed at the time of their last violation. He then asked why the door was padlocked.

Ms. Best stated that when the grate is left up people still come in. She stated they had been told they could not lock the door while people were inside. She indicated she understands the grate was pulled down and that was wrong. She stated she had been the bartender that night and was there cleaning while the meeting was going on. Chairman Holmgren indicated that the door can be locked if there is a crash bar and people can still get out.

Attorney McCluskey stated he has had this conversation with his clients. It is a family run operation and they have not been in business all that long. They have cleaned up the operation. He asked the Commission to take into consideration the fact that his clients made a couple of stupid mistakes and he asked the board not to roll back their hours.

Chairman Holmgren asked Attorney McCluskey what it is going to take to make his clients understand and the fact that they are using up police resources. Attorney McCluskey stated that if they rollback the hours, it will make it very difficult for them to make a living. They are trying to run a clean operation.

With no further information presented, a motion was made by Commissioner Cotter to find the licensee guilty. The motion was seconded by Commissioner Sullivan. All members voting in the affirmative, the motion carried.

The Commission discussed their recommendations for the penalty. Commissioner Cotter indicated he feels the hours should be rolled back to midnight in view of the prior violation. Chairman Holmgren reminded the licensee that they have to follow the rules. The licensee promised that this type of incident will not happen again and it was a mistake on their part. They pleaded for the Commission to give them another chance.

The Chairman then suggested that in lieu of a rollback, the Commission consider a two year ban on a 2 a.m. license. Commissioner Dansby indicated he would go along with that suggestion.

Commissioner Cotter made a motion as suggested by Chairman Holmgren. The motion was seconded by Commissioner Sullivan. All members voting in the affirmative, the motion carried.

Attorney Nessralla asked the Commission to add a basis for the purpose of the vote.

Chairman Holmgren indicated it is to create a trail to understand the thinking of the Commission.

Attorney Nessralla indicated he would like a clarification and it was agreed that the basis is to deter further action based on the past record of the infraction that took place last November and that it seems to be clear that the licensee is still unclear on the rules and ordinances and has not taken the time to understand the rules for a licensed establishment and the operating hours.

9. Hearings on charges brought by the local police against the following establishments of alleged violations of M.G.L. Chapter 138, Section 34, to wit: “. . . whoever makes a sale or delivery of any such beverages to any person under twenty-one years of age, either for his or her own use”:
 - (a) Mardom Liquors, Inc. dba Hayden’s Westside Liquors – Maria S. Viega, Manager, 104 Torrey Street (**April 9, 2009 at approximately 7:45 p.m.**)

This hearing was postponed prior to the meeting.

- (b) Chinatown Restaurant Corporation dba Chinatown – Joyce P.Y. Hayes, Manager, 51-53 Oak Street (**April 30, 2009 at approximately 7:30 p.m.**)

This hearing was postponed prior to the meeting.

- (c) Domingas Tavares dba Restaurant Luanda, 453 Centre Street (**May 2, 2009 at approximately 7:15 p.m.**)

This hearing was postponed prior to the meeting.

- (d) Maui, Inc. dba Maui – Elizabeth C. Wong, Manager, 1875-1883 Main Street (**May 3, 2009 at approximately 6:35 p.m.**)

Present was Elizabeth Wong, Canton, who was sworn by Attorney Nessralla. Also sworn by Attorney Nessralla was Det. John Lonergan, Brockton Police.

In response to questions from Attorney Nessralla, Det. Lonergan stated that on May 3, 2009 at approximately 6:35 p.m., he had a 19 year old female named Brittany Daniels go into the Maui Restaurant to see if she could purchase alcoholic beverages. She was given a marked \$20 bill and was told to go inside and try to purchase an alcoholic beverage. She was told not to drink it but to just leave it on the bar if she was served. A short time later, she came out and said she had been served and gave back the change. Det. Lonergan stated he went into the establishment and saw a full bottle of beer on the bar where she said it was. He talked to the bartender and asked him for the \$20 bill that had been given to him by the female. The bartender admitted serving her and not checking for an ID.

Ms. Wong stated it was a lapse in the bartender's judgment and acknowledged that they were guilty.

A motion was made by Commissioner Cotter to find the licensee guilty which motion was seconded by Commissioner Dansby. All members voting in the affirmative, the motion carried.

It was reviewed that the last violation against this establishment occurred in 1996. A second motion was made by Commissioner Cotter to place a letter of warning in the file. The motion was seconded by Commissioner Dansby. All members voting in the affirmative, the motion carried.

- (e) Cary Hill Liquors, Inc. – Maura J. Carney, Manager, 232 East Ashland Street (**May 21, 2009 at approximately 6:40 p.m.**)

Present was Maura Carney, 122 Fairview Avenue, who was sworn by Attorney Nessralla. Also present and sworn in was Officer Patrick Donohue, 7 Commercial Street.

Det. Donohue was called by Attorney Nessralla to testify. Det. Donohue stated that on May 21, 2009 at approximately 6:40 p.m., he and Det. Eric Clark along with Victor Washington who is under 21 years of age, went to this establishment to see if Mr. Washington could purchase alcohol. He went in and purchased a 40 oz. bottle of Budweiser beer and was not asked for identification. Det. Donohue stated that Victor Washington is 18 years old.

Attorney Nessralla asked Ms. Carney if she had any questions for Det. Donohue and she indicated she did not. Ms. Carney acknowledged that it did happen and that the employee who sold Mr. Washington the beer was terminated.

With no further information presented, a motion was made by Commissioner Cotter to find the licensee guilty of the charge. The motion was seconded by Commissioner Dansby. All members voting in the affirmative, the motion carried.

There are no prior violations on record for this licensee.

A motion was made by Commissioner Sullivan to place a letter of warning in the file. The motion was seconded by Commissioner Dansby. All members voting in the affirmative, the motion carried.

- (f) Vulcan Bar, Inc. – Augusto S. Rosa, Manager, 705 Montello and 48 Ames Streets (**May 17, 2009 at approximately 7:45 p.m.**)

This matter was postponed at the request of the attorney for the licensee.

- (g) Restaurant Panorama, Inc. – Henrique Pina, Manager, 180 North Main Street (**May 17, 2009 at approximately 7:27 p.m.**)

Present and sworn was Det. Santiago Cirino. There was no representative present from the establishment. However, the licensee had been sent written notice two weeks in advance.

In response to questions from Attorney Nessralla, Det. Cirino stated that on May 17, 2009 at approximately 7:27 p.m., he and Det. Congdon sent a 19 year old into the establishment for the purpose of buying alcoholic beverages with the instructions to pay for a beer, get the change and leave the beer on the counter top and leave. He came out of the establishment and advised the officers that he had been sold alcohol and described the person who had sold it to him. He and Det. Congdon entered the establishment and spoke to the person the underage individual described as having sold the beer. This was a male who was behind the bar. The detectives advised this individual that he had served a minor. The manager of the establishment came over and they advised him of the

violation. The bartender acknowledged that he had served the drink and had not checked for any identification.

Chairman Holmgren suggested that in view of the fact that Mr. Pina is not present, the matter be tabled until the next meeting. Attorney Nessralla advised the Commission that the matter can either be tabled or they can make a decision as the licensee was duly notified of the hearing. The Chairman indicated that prior to making his decision, he would like to find out why he did not appear for the hearing. Attorney Nessralla stated it is within the board's discretion.

Chairman Holmgren stated that the board can make a decision on the charge but that he would like to hold off on the penalty until the licensee is present. Commissioner Cotter indicated it should be tabled so that the licensee can be present to defend himself.

A motion was made by Commissioner Cotter to postpone the hearing until next month. The motion was seconded by Commissioner Sullivan. All members voting in the affirmative, the motion carried.

Mr. Pina, 124 Florence Street arrived later in the meeting. Chairman Holmgren called him forward.

A motion was made by Commissioner Cotter to re-open the hearing. The motion was seconded by Commissioner Sullivan. All members voting in the affirmative, the motion carried.

Chairman Holmgren explained to Mr. Pina that Det. Cirino had testified as to what happened at his establishment. Mr. Pina stated he disagreed with what happened and stated that the person came in and asked for a beer and his employee did not give it to him.

Chairman Holmgren asked Det. Cirino if the bottle of beer was open and he indicated it was. Chairman Holmgren then asked Mr. Pina if his employees open the bottle before asking for an ID. Mr. Pina stated his partner Antonio Silva was there and he told him no money was taken. Det. Cirino stated they had asked the manager to retrieve \$20 from the cash register which he stated they had a photocopy of. He then showed him the photocopy which matched the \$20 bill taken from the cash register.

Antonio Silva, 102 Bird Street, Dorchester, was sworn and testified that he had not taken any money from the underaged person. The bartender sold the beer to the customer. He had come out of the kitchen and went over and asked for an ID. The customer left.

Chairman Holmgren asked Mr. Pina if he still disagrees with what was reported by the police and he indicated he now agrees with what the officer said. Mr. Pina stated they are trying to do their job and have had no prior violations.

A motion was made by Commissioner Cotter to find the licensee guilty of serving a person under 21 years of age. The motion was seconded by Commissioner Sullivan. All members voting in the affirmative, the motion carried.

A second motion was made by Commissioner Cotter to place a letter of warning in the file. The motion was seconded by Commissioner Sullivan. All members voting in the affirmative, the motion carried.

10. Communications

A letter regarding Aria Day Spa had been distributed to the members prior to the meeting.

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

Lieut. LaFratta stated one of his concerns is that some of the Clubs are having 18 and over nights, especially Morabeza. He indicated there is almost no way to monitor this type of situation. On many occasions, at closing time, there have been squirmishes involving young females who appear to be 17 or 18 years of age. He asked the Commission if something could be done to stop this type of practice.

Chairman Holmgren stated that this would have to be done either by City Ordinance or a stipulation on the license. He suggested that if there is an incident and a disturbance violation occurs they could bring the licensee before the Commission. Lieut. LaFratta stated he had asked the City of Boston how they monitor this and was informed that they do not allow them. Lieut. LaFratta stated one of his concerns is that the females are not even carded to see if they are 18 and are getting in and being bought alcoholic beverages by someone of legal age and he stated it is extremely difficult to monitor.

Lieut. LaFratta then asked if the License Commission would send a letter in support to the City Council indicating they are against the practice and the Chairman stated he is not sure if it is the License Commission's purview. In response to Chairman Holmgren, Attorney Nessler stated it is well within the Commission's authority to send a letter.

The Commission will meet again on August 19, 2009

A motion was made by Commissioner Cotter to adjourn the meeting. The motion was seconded by Commissioner Sullivan. All members voting in the affirmative, the motion carried.

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