

TAPED

The License Commission held its regular monthly meeting at 6:00 p.m. on Wednesday, January 20, 2010, in the G.A.R. Room at City Hall. Present were Chairman James E. Holmgren; Commissioners Joseph P. Kelley, Paul D. Sullivan and Alternate Commissioner Fred Fontaine. Also present were License Agent Lieut. John Crowley; City Solicitor Phil Nessralla, Jr. and Administrative Assistant Bonnie Tucker. The meeting was called to order at 6:07 p.m.

1. Approval of the following police officers as license agents for the month of February, 2010: Lieuts. John Crowley, Thomas LaFratta, William Barry and Brian Leary; Sgt. Paul Bonanca; Dets. Michael Schaaf, Erik Hilliard, John Lonergan, James Smith and Ernie Bell; and Officers Scott Uhlman, and William Healy.
2. Requests for Special One-day Permits:

Add: All Alcoholic Beverages – Christ the King Parish for a fundraiser to be held at the Parish Hall on Friday, February 12, 2010 from 7:00 p.m. to 10:00 p.m.

Present was Dennis DeNapoli, 137 Bishop Street who stated that Father O'Donnell was unable to be at tonight's meeting and had asked him to attend in his place. This will be a fundraising event and they are requesting to sell only wine and malt beverages. The event was originally planned for January 29th but moved to February 12th. Mr. DeNapoli requested hours from 7:00 p.m. to 11:30 p.m. and the Chairman informed him that the application indicated hours from 7:00 p.m. to 10:00 p.m. and he indicated those hours would okay. It was reviewed that any approval would be contingent upon the Fire Department issuing a permit.

A motion was made by Commissioner Sullivan. The motion was seconded by Commissioner Kelley. All members voting in the affirmative, the motion carried.

3. Hearing (originally scheduled for meeting of December 29, 2009) on the request from C E & G, LLC dba Piezoni's to transfer the Common Victualer license at 1284 Main Street to Peperonis of Brockton, LLC dba Piezonis.

Present were Edward Moore, 150 Rumford Avenue, Mansfield and Joe Ferreira, 4 Fairview Circle, Barrington, R.I.

Mr. Moore stated he is requesting to transfer the Common Victualer license at 1284 Main Street back to Mr. Ferreira who originally operated the business. The Adm. Asst. reviewed that the paperwork is in order.

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

4. Hearing (originally scheduled for meeting of December 29, 2009) on the request from Sidelines Sports Bar. Inc. – Laura Kelley, Manager, to amend the description of the licensed

premises at 225 East Ashland Street by eliminating the function hall, one kitchen and one storage area from the license.

Present was Laura Kelley, 19 Lantern Road, Holbrook. Ms. Kelley stated this is a request to reduce the licensed premise and to put up a wall to eliminate the function hall. The affidavit of notice to the abutters and certified mail receipts were submitted.

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

5. **POSTPONE** - Hearing on the request from Domingas Tavares dba Restaurant Luanda for an Automatic Amusement Device license for one coin-operated pool table at 453 Centre Street.

The Chairman announced earlier in the meeting that this was postponed at the request of the licensee.

6. Hearing on the request from Burrito Wraps, LLC dba Burrito Wraps Mexican Grill – Ezequiel Sandoval, Manager, 688 Crescent Street, to transfer the Wine and Malt Restaurant license to Hacienda del Rosario, Inc. dba Burrito Wraps, Mexican Grill – Alejandro Perez, Manager.

Hearing on the application from Hacienda del Rosario, Inc. – Alejandro Perez, Manager, for an All Alcoholic Restaurant license at 688 Crescent Street.

Representing the applicants was Attorney John Creedon, 71 Legion Parkway. Also present were Alex Perez, 261 Millpond Lane and Ezequiel A. Sandoval, 8 Pico Avenue, Kingston, MA 02364.

Attorney Creedon reviewed that the first request is to transfer the license which is located next door to the Brazilian Restaurant in the plaza on Crescent Street. Mr. Perez will be on premise 100 percent of the time. There are 28 seats and the name will remain as Burrito Wraps.

Councillor Dennis DeNapoli, Ward 5, was present and requested to be recorded in favor.

Paperwork being in order a motion was made by Commissioner Kelley to approve the transfer of the license. The motion was seconded by Commissioner Fontaine. All members voting in the affirmative, the motion carried.

With regard to the request to upgrade the license to an All Alcoholic Restaurant license, Attorney Creedon stated there have been no problems and it is a quiet location. Like other Mexican restaurants, they would like the opportunity to be able to serve Margaritas and other specialty drinks. Hours will be from 10:00 a.m. to 10:00 p.m. The Adm. Asst. reviewed that the hours would have to be until 11:00 p.m. by statute and it was agreed that hours for the liquor license will be from 11:00 a.m. to 11:00 p.m.

Councillor DeNapoli requested he be recorded in favor of this request also.

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

7. Hearing on the request from Jose Romo dba Taquerias Mexicanas El Mariachi for a Wine and Malt Restaurant license at 1753 Main Street. (Currently holds a Common Victualer license at this location.)

Present was Alberto Delloca, 532 Washington Street, Whitman and Jose J. Romo, 12 Book Street #1, Marlborough.

The Adm. Asst. stated that paperwork is in order and indicated she has informed the applicant of the requirement for a Certificate of Inspection prior to the issuance of the beer and wine license.

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

8. Hearing on the request from Renu Corp. dba B D Market for a Wine and Malt Package Store license at 95 Montello Street.

Representing the applicant was Attorney Mary Butler, Clark Balboni & Gildea, 72 Main Street, Bridgewater. Also present was Monzur Khan, 96 Oak Street.

Attorney Butler stated Mr. Khan is the sole director and stockholder of Renu Corp. which is seeking a beer and wine license.

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

9. Hearing on the request from Jose Tavares dba Sodade Terra for a Wine and Malt Restaurant license at 1145 Main Street. (Licensee failed to submit Certificate of Inspection for renewal of license)

Prior to commencing the hearing, Attorney Nessralla stated for the record that Mr. Tavares was a former client and that he had represented him some years ago.

Present was Jose Tavares, 11 Whipple Street.

The Adm. Asst. reviewed for the members that Mr. Tavares had applied for the renewal of his license on time, however, he had not furnished the required Certificate of Inspection prior to the end of the year and therefore, the renewal could not be approved. She had contacted the ABCC when Mr. Tavares furnished his certificate at the beginning of January and was advised by the Executive Director that the application would have to be processed as a new license.

In response to questions from the Chairman, Ms. Tucker stated that it is her understanding that Officer Uhlman had gone to the location after the first of the year and found them in operation and had issued a citation with a fine for operating without a license.

A motion was made by Commissioner Kelley to approve the license. The motion was seconded by Commissioner Fontaine.

In response to questions from Commissioner Fontaine, Ms. Tucker explained that once the Commission approves the license, it will have to be forwarded to the Alcoholic Beverages Control Commission for approval. The Chairman reminded Mr. Tavares that he cannot serve any beer or wine until the approval comes back from the State and he indicated he understands this.

All members voting in the affirmative, the motion carried.

Officer Uhlman then requested that the fines be paid prior to the issuance of the license. Chairman Holmgren indicated he is not sure that the license can be held as there might be an appeal. Attorney Nessralla suggested that some proof that an appeal has been filed or a copy of the paid receipt is acceptable for the license to be issued. .

10. Hearing on the request from P.F.J. Enterprises, Inc. dba Terra Terra Bar & Grill – Filipe Miranda, Manager, for an All Alcoholic Restaurant license at 30 Intervale Street. (Licensee failed to submit Certificate of Inspection for renewal of license)

Chairman Holmgren announced earlier in the meeting that this hearing had been postponed at the request of the licensee.

11. Hearing on the charges of the local police against Trim Line of Boston/South Shore, Inc. – 159 North Main Street of the following alleged violations:
- (a) Violating the stipulation on the license which states, “MAXIMUM OF 25 UNREGISTERED MOTOR VEHICLES ON LOT AT ANY ONE TIME.” On November 4, 2009, Officer Uhlman reported a total of 110 unregistered vehicles in an around the property.
 - (b) Failure to properly maintain a Used Car Record Book as required by M.G.L. Chapter 140, Section 62.

Representing the licensee was Attorney John Creedon, One Centre Street. Also present was Robert Belcher, 590 Truman Parkway, Hyde Park.

Officer Scott Uhlman of the Brockton Police Department and Lieut. Edward Williams of the Brockton Fire Department were also present.

Officer Uhlman, Lieut. Williams and Mr. Belcher were all sworn by the Chairman.

On direct examination by Attorney Nessralla, Officer Uhlman stated that he had outlined his visits to this business as follows:

The first time he went to the establishment was in May, 2009. He asked the people on the scene who the owner of the autobody shop was and they indicated they do not know. He left his card, told them the owner had to clean up his yard and asked them to have the owner call.

In July 2009, he responded to the location and photographed the outside of the shop and parking lot. He spoke with Robert Belcher who informed him he was the owner of the shop. When Officer Uhlman informed Mr. Belcher that he had been there approximately a month previous, Mr. Belcher acknowledged he was aware of Officer Uhlman's previous visit. Officer Uhlman then stated he asked to see the licenses and they were taken out of a drawer. He advised Mr. Belcher that the licenses are suppose to be conspicuously posted. He then located the Motor Vehicle Sales and Repair licenses. The license for the body shop allowed only four vehicles inside the shop and no storage of vehicles outside. The class II license allows for no more than 25 vehicles for sale. When asked for the Used Vehicle Record Book, Mr. Belcher explained that he did not have one and that no cars on his lot were for sale. He indicated he holds the used car license just in case.

Officer Uhlman stated he informed Mr. Belcher that he was way over the cars allowed on the lot and he issued a citation for \$200.

On July, 29th, Building Inspector Dave Parmenter and Officer Uhlman responded to the location and toured and photographed the inside of the building. They counted 30 vehicles inside the building and 80 cars outside. Various safety violations noted by Inspector Parmenter included locked emergency exits, blocked emergency exits, fire extinguishers missing from marked locations, substandard electrical wiring and there was serious overcrowding of the building with cars and parts. Inspector Parmenter had informed him this was the worst he had ever seen and that he would take immediate action on the violations. A citation was issued.

On July 31st, Officer Uhlman reported that there was no change in the situation. A citation was issued.

In response to questions from Attorney Nessralla, Officer Uhlman stated that most of the vehicles inside as well as outside were unregistered and in what he would consider salvage condition. There were clearly more than 30 unregistered vehicles.

On September 6, 2009, there was no change in the situation when he went to the location. None of the citations had been paid or appealed in Brockton District Court. An application for Complaint was filed in Brockton District Court for failing to pay citations issued.

On September 7 and 12, 2009, there was no change.

On October 18, 2009, a formal letter to City Councillor DeNapoli requesting a hearing be held before the City Council.

On October 31st there had still been no change and two citations were issued – one for \$1,400 and one for \$700.

On November 3, 2009, there was a court hearing on the citations issued in July. The Clerk Magistrate found the violations did occur and the matter was scheduled to go before a Judge. He indicated that this was due to the non payment of the citations not the issues surrounding the issuance.

On November 4, 2009, a formal letter was sent to the License Commission for a revocation of the Class II license to be held in December.

On November 7, 2009, there was no change in the situation.

On November 9, 2009, there was a hearing before the City Council.

Officer Uhlman stated fines totaling \$3,500 have been issued so far and to the best of his knowledge, nothing has been paid. Attorney Creedon stated that the fines have been paid in full, however, he did not have a receipt for the payment.

On December 4, 2009, Officer Uhlman went to the location with all of the City inspectors and proceeded to tow every unregistered motor vehicle in violation of the license. Officer Uhlman stated he asked to see the Used Vehicle Record Book which was produced for him. Officer Uhlman stated he confiscated the book as evidence and asked that Lieut. Williams be asked to describe his findings upon examination of the book.

In response to questions from Attorney Nessralla, Lieut. Williams stated he inspected the used car record book and found there to be 91 cars sold to date. He explained that the last page in his summarized package explains the proper way for recording used car records. He stated there were 88 pages dating back to 1995 in the record book but none of the pages were numbered as required. He noted that the part which requires the dealer to indicate whether it was a sale or trade had been left blank on numerous occasions. The acquisition date was left blank on 6 occasions and there was one page where the VIN was left blank on the page. The disposition date was left blank on one occasion. There were 11 vehicles with no disposition that were not on the lot the day of the enforcement. Lieut. Williams stated he went through the towing list and through the book and there are 11 unaccounted vehicles. One of the vehicles was purchased in 2001 by Mr. Belcher but there was no record of sale. It was last titled to someone in 2007 so a sale was made but not recorded in the book. In another case, a vehicle was last titled to a party in 2008 and this had not been properly recorded. In some cases there were entries that were illegible and areas that were constantly left blank. There were other questionable entries as well as entries not in chronological order. Lieut. Williams stated that the failure to keep the book accurate is a violation of state law with criminal penalties unless there is a revocation of the license.

Attorney Nessralla then advised those present that that is the submission of the City relative to the violations of the Class II license. He indicated he has no questions of Mr. Belcher.

Attorney Creedon then called this the “Poster Child Bust” that the City made for code enforcement which has been somewhat lax over the past five years when no enforcement was going on. Lieut. Williams stated that the State Police had determined one of the vehicles towed from the lot was a stolen vehicle. In response to questions from Attorney Creedon, Lieut. Williams indicated the lot is fairly large. He had not checked the registered vehicles to see if they were customers of the business. It was his understanding that the person who owned the Barracuda was trying to get it back.

Attorney Creedon asked if there were any problems with Mr. Belcher prior to May, 2009. Lieut. Williams stated there are code enforcement actions that go as far back as 1997. He stated he has been there on two other occasions, in 2001 and 2003 (approximately). At some point there was a Federal Lawsuit filed against the City and at that time, the inspectors were told to back off for a little while. Approximately a year ago, the owner of Starz Bar had complained. Attorney Creedon stated that after he had gotten involved several months ago, Officer Uhlman and Lieut. Williams have worked with him to clean the place. Lieut. Williams stated that he had met with Attorney Creedon and Mr. Belcher and that they had mediated in advance as to what portion of the fines had to be paid which he believed was 50 percent. Attorney Creedon asked Officer Uhlman if Mr. Belcher had cleaned up the lot and Officer Uhlman indicated it was the City’s police department that had cleaned things up. He indicated there is a boat on the property. The dumpster has been removed. At the time of his inspections, there were no cars on the lot with signs indicating they were for sale.

Attorney Creedon asked how they can be in violation if the vehicles are not for sale.

Mr. Belcher stated that he has owned the business since 1993 and basically runs the operation himself. He knows of no neighbor complaints. He acknowledged that the used car book was not in order. Attorney Creedon explained to Mr. Belcher that the 25 car stipulation must include employees.

Officer Uhlman stated that the State Police had recovered a stolen Porsche from across the street at the old Al and Vic’s lot. It had been stolen out of the impound lot in Middleboro and repainted. The phone calls the State Police Auto Theft Unit were receiving were coming from Trim Line. In addition, Det. Lonergan recovered a car with LoJack that was activated inside the building. The Barracuda referred to was stolen out of a parking lot in Boston and was inside Mr. Belcher’s garage.

Chairman Holmgren expressed concern with Mr. Belcher’s operation and failure to keep the record book in order and the fact that he was put on notice by Officer Uhlman and failed to do anything about it.

Attorney Nessralla then reviewed that in addition to the excessive number of vehicles over the limit, the record keeping is problematic where VIN numbers were incorrect.

Commissioner Kelley stated he has a major concern with the state of the record book and feels there is a clear violation. Attorney Creedon stated that there are two other licenses there and cars were there for repair and also for auto body work.

Mr. Belcher stated he was in the process of moving cars to another lot. Some of the cars were old cars he had bought from the 60's and 70's. Officer Uhlman stated the latest vehicle is a 1985 which he will excuse because it doesn't have the 17 characters in the VIN.

Commissioner Fontaine indicated he would like to help out but there are a lot of violations and he questioned how this can be cured.

Attorney Nessralla stated that the liability is clear based upon admission and testimony of both Officer Uhlman and Lieut. Williams.

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

Attorney Creedon then suggested the Commission table the penalty part of this in order for him to become fully compliant and check back with the board so that all his other licenses are in order. He indicated that otherwise, they are putting somebody out of business in an already terrible economy. Commissioner Kelley commented that he brought this on himself.

Officer Uhlman stated he feels a suspension of the time served seems to be appropriate and that he should be made to come back to apply for his license. The Adm. Asst. stated the license was renewed and issued. Attorney Creedon indicated he is going to be punished financially until he gets into compliance. He has done what he has to with housing court.

Officer Uhlman suggested that the number of vehicles be reduced. Commissioner Kelley reviewed that the license now limits the number of cars to 25. Officer Uhlman stated the total number of cars allowed is 29 which also includes the auto body license which is currently revoked by the City. Lieut. Williams stated that according to the record book, in 2007 there were 14 vehicles sold for the entire year. Every other year he has sold fewer. Commissioner Kelley then suggested reducing the number to 15 vehicles. Officer Uhlman suggested that they require the vehicles to be saleable cars and not junk cars.

A motion was made by Commissioner Kelley to amend the stipulation on the license to read no more than 15 saleable cars on the lot.

Chairman Holmgren stated he does not want to send the wrong message and reviewed that the police and fire had chased the licensee for over six months to clean up the lot and he did nothing. If the licensee is out of business it is his own fault. He stated he is concerned that this is not a strict enough penalty. Attorney Creedon suggested he be given probation.

Lieut. Williams then asked if the motion could be amended to allow fifteen saleable cars properly marked as being saleable cars and he can go before the City Council for his licenses if he so chooses. He and Officer Uhlman will work with the City Council to approve the language that will make every car identifiable.

Chairman Holmgren reviewed that as it stands the stipulation will be "No more than 15 cars clearly marked for sale on the lot at any one time."

Commissioner Kelley then amended his motion to read as stated. Commissioner Fontaine seconded the motion. The vote being 3 to 1 with Commissioner Sullivan voting opposed, the motion carried.

12. Communications

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

a. Late Renewals

- 1. KFC U.S. Properties, Inc. – 875 North Montello Street**
- 2. KFC U.S. Properties, Inc. – 1251 Main Street**
- 3. Kasmel Corporation dba Honey Dew Donuts– 541 Pleasant Street**
- 4. Buffets, Inc. dba Old Country Buffet – Westgate Drive**

- 5. Ashutosh, LLC dba Country Inn & Suites – Christy’s Way**

Prior to proceeding with agenda item #11, Chairman Holmgren took up the applications of the above licenses which were not renewed prior to the end of the year.

The Adm. Asst. reviewed that inspection approvals are still outstanding from the four Common Victualer licenses.

With regard to the Country Inn & Suites, they have now submitted all of the required inspection approvals.

Ms. Tucker stated that it is her understanding that citations were issued to all of these locations for operating without their licenses. It was reviewed that these licenses would be required to furnish proof that the citations have been appealed or that they have been paid prior to the issuance of the licenses.

A motion was made by Commissioner Kelley to approve the four Common Victualer licenses pending the department inspection approvals. The motion was seconded by Commissioner Sullivan. All members voting in the affirmative, the motion carried.

A motion was made by Commissioner Kelley to approve the issuance of the Country Inn & Suites license which motion was seconded by Commissioner Fontaine. All members voting in the affirmative, the motion carried.

The legal counsel for KFC, 100 Cambridge Street, Boston, reviewed that the paperwork has been submitted and asked if the board could authorize the seating in the interim. The attorney was informed that they could not and that the company continuously misses the deadline for filing for the renewal of the license. The Adm. Asst. stated the paperwork had been given out and it would be up to the company to contact the departments and to make arrangements for the inspections to be done and to get the paperwork into the office.

(The Commission then heard item #11)

It was noted that this would be Chairman Holmgren's last meeting.

The Commission will meet again on February 24, 2010.

APPROVED:

Joseph P. Kelley, Commissioner

Bruce G. Dansby

Paul D. Sullivan, Commissioner

Fred Fontaine, Alternate Commissioner