

TAPED

The License Commission held its regular monthly meeting at 6:00 p.m. on Thursday, March 18, 2010, in the G.A.R. Room at City Hall. Present were Commissioners Joseph P. Kelley, Paul D. Sullivan, Bruce G. Dansby and Joshua J. Wood. Also present were License Agent Lieut. John Crowley, City Solicitor Phil Nessralla and Administrative Assistant Bonnie Tucker. Commissioner Kelley presided.

1. Approval of the minutes of the License Commission meetings of December 9 and 20, 2009, January 20, 2010 and February 24, 2010.

A motion to approve the minutes of the aforesaid meetings was made by Commissioner Sullivan. Commissioner Wood then requested an amendment be made to the minutes of the February 24th meeting pertaining to Agenda Item #7 (B.A.M.N., LLC dba NFUSZION) which incorrectly stated that the rollback of hours would be to 1:00 a.m. when it should have been 12:00 midnight. The Adm. Asst. stated she would make this correction and the minutes would be amended to reflect the rollback was to 12:00 midnight.

A motion was then made by Commissioner Wood to approve the minutes with the amendment to reflect the rollback being to 12:00 midnight. The 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 April 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.

A motion was made by Commissioner Sullivan to approve the police officers as listed as license agents for the month of April, 2010. The motion was seconded by Commissioner Dansby. 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 Sami's Crew LC dba Little Sami's for a Common Victualer license at 1145 West Chestnut Street.

Present was George Arvanitides, 207 Bay Road, Norton.

Mr. Arvanitides reviewed his request which is to open a restaurant at 1145 West Chestnut Street. The menu will include sandwiches, burgers salads and some items will be the same as the Westside Pizza location. Hours will be from 6:00 a.m. to 11:00 p.m. Mr. Arvanitides appeared before the ZBA on December 9, 2009, for the restaurant and take-out establishment at this location. All of the inspection approvals were submitted.

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

5. Hearing on the request from Brockton East Side Package Store, Inc. – Joseph Robie, Manager, to transfer the All Alcohol Package Store license at 469 Centre Street to Nivniva LLC dba Brockton East Side Package Store – Oanh Bich Quach, Manager.

Present were Attorney George Asack, 95 West Elm Street. Also present was his client, Oanh Bich Quach, 48 Nelson Drive, Apt. 5, Randolph and Roy Quach, 31 Norway Avenue, Randolph. Also present were the current owners, Joseph and Harriet Robie, 308 West Street.

Attorney Asack reviewed the request which is to transfer the All Alcohol Package Store license to Nivniva, LLC. Ms. Quach is the sole shareholder of the LLC and will also be appointed as the manager. The intention is to operate the establishment in the same way as the current owners. There will be no changes to the interior layout. The business has been in the family of Mr. and Mrs. Robie for over 50 years and currently there are 10 part time employees. The Quachs plan to keep the ten employees on when they take over. In addition, Ms. Quach will be working approximately 50 hours per week. She has worked as a cashier at Julio Beer and Wine in Quincy in 2002-2003. Her brother will also be putting in a significant amount of time to assist in the operation.

Attorney Asack stated the sale includes both the business and the real estate. There will be a lease between the licensee and 469 Center Street Realty Trust and a copy of the lease was submitted. The new owner will also enroll in an alcohol training program.

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

6. Hearing on the request from CV Auto, Inc. for a Class II license to sell Second Hand Motor Vehicles at 703 North Main Street. (Licensee failed to file for renewal of license.

This matter was taken up at the end of the agenda.

Present were Gilda Andrade, 97 Stonegate Drive, E. Bridgewater, Marcelino Montrond, 23 Mystic Street and Councillor at Large Jass Stewart.

The Adm. Assistant reviewed for those present that this Class II license was not able to be renewed because there were outstanding taxes and a tax agreement entered into last June when the license was issued had not been complied with. There has now been a partial payment made although there was a problem with the original \$9,000 check which Mr. Montrond paid in February which was returned for insufficient funds. A bank check

for the same amount has now been given to the Tax Collector's office. In addition, the license was suspended as a result of Mr. Montrond's failure to appear as notified at the License Commission meeting in November to answer to complaints of the Board of Health Executive Director.

In response to questions from Commissioner Kelley, Ms. Tucker stated that based on the current City Census, there are nine licenses over the number of Class II licenses permitted by City Ordinance. It was reviewed that the City Ordinance allows one Class II license per 1,300 residents. Commissioner Kelley indicated that the Commission is at a crossroad and stated the City Council does have the ability to change the number of licenses allowed. Commissioner Kelly stated he is unsure whether there is a license to issue at this time.

In response to questions from Councillor Stewart, Ms. Tucker stated that the City Clerk had informed her that the latest City Census indicates the City's population is 73,000. Commissioner Kelley stated there is a question with regard to the difference in numbers between the City and the Federal Census. Attorney Nessralla agreed there are two different censuses, however, historically the number of licenses has been based on the City census.

Ms. Andrade stated that Mr. Montrond had never received a notice for the hearing in November and there was a lawsuit going on which is finally coming to an end. She stated his partner had embezzled from him and Mr. Montrond has invested over \$200,000 in the dealership.

Councillor Stewart stated he thinks Mr. Montrond will confess that he has not followed the laws of the City. Part of the process for him was that Mr. Montrond has made the investment to pay the taxes so he is operating in some kind of measure of good faith. He asked if there are exceptions made to determine the number of licenses. Commissioner Kelley stated that he does not want this to be an affront to the City Council who actually establishes the number of licenses. He indicated if it is the will of the City Council to increase the number of licenses, there would be no issue at all but to find there to be six or seven over the number of licenses allowed, he would be worried to establish a precedent that the Commission is not falling into line with the will of the councillors. Right now the historical trend that has been established is that the number of licenses is based on the City Census and the Commission does not issue licenses that are not authorized by the City Council.

Councillor Stewart asked if there were exceptions made in the past and Commissioner Kelley indicated he could not answer and deferred it to the Adm. Asst. Ms. Tucker stated that last year, Mr. Montrond could not file because of the situation with his partner and the taxes. In June, the Commission did grant the license to Mr. Montrond where he was a partner in the license previously.

Commissioner Wood asked why the Commission would make an exception last year and not this year. It was reviewed that the number of licenses had been based on an older

City Census and at the time it was the Commission's understanding that there was one license over which had previously belonged to Mr. Montrond and his partner. Commissioner Kelley indicated that up until now, it was his understanding that the number of licenses over quota was only one. Commissioner Kelley stated they can make this one exception and then ask the Councillor to look at the cap issue. It is his understanding that there has been a real effort in the City to crack down on some of the lots that haven't performed. As a board member, he feels they do not want to jeopardize that continued effort.

Councillor Stewart stated he will do his part to go back to the Council to address and determine the numbers. Commissioner Kelley stated they want to be in step with the council and accept policy and rules.

The Adm. Asst. reviewed that there is also an existing violation that was reported by Officer Uhlman prior to the end of last year. A hearing was not scheduled where the license had been suspended and not renewed for this year. In response to questions from Councillor Stewart, Ms. Tucker stated that Mr. Montrond's license was issued up until the time when he failed to appear as notified for the Commission's meeting in November when the license was suspended. He was issued a notice to turn his license in after the November meeting which he never did. The license lapsed at the end of the year when it could not be renewed for 2010. As far as the report submitted by Officer Uhlman, it has not been scheduled for hearing where there is no license issued. Councillor Stewart asked about the date of the violation and Ms. Tucker indicated it was in October. Ms. Tucker asked Councillor Stewart if he had been in touch with Officer Uhlman and he indicated Officer Uhlman was included in his emails. Councillor Stewart stated he has been to the location recently. Commissioner Kelley indicated that there will most likely have to be a hearing if the license is re-issued.

Commissioner Dansby asked if this would be a new license since the license was not renewed. The Adm. Asst. stated it would be a new license for this year. Commissioner Dansby asked if this would open up doors for other individuals who are looking for a new license and are told there are none available. Attorney Nessralla stated he feels that is not a legal issue. It is clear that it could open up questions to other individuals seeking licenses. Attorney Nessralla stated it is a very difficult balancing act trying to assist this individual who has made strides. That becomes the decision of the board. Attorney Nessralla stated he cannot advocate either way but he feels it is clear and evident as to the different roadways that can be followed in this instance.

Commissioner Kelley stated he does not want to dismiss the positive efforts that are being made but he indicated he understands Commissioner Dansby's concerns. Commissioner Dansby stated he feels by allowing this license, it is setting up a bad situation for the future.

Commissioner Wood stated he this does not seem to be much different than what happened last year and it seems the only thing that is changed is the number of licenses based on the census. He indicated that essentially it is a single exception for one person

who was given an opportunity to catch up on taxes and renewed in the same manner as last year.

Commissioner Kelley stated he would like to ask the City Council to look into what is the ultimate limit.

A motion was made by Commissioner Wood to issue the license. The motion was seconded by Commissioner Kelley. With Commissioners Wood, Kelley and Sullivan voting in the affirmative, and Commissioner Dansby opposed, the motion carried.

The Adm. Asst. asked the Commission if she should go ahead and schedule the hearing on Officer Uhlman's report and it was agreed that it should be scheduled.

7. Hearing (postponed from meeting of February 24, 2010) on the request from Pizzeria Uno of Brockton, Inc. - 510 Westgate Drive, to appoint Marc Cardin as the manager.

The Administrative Assistant informed the Commissioners that the restaurant has been closed and a report has been submitted by Officer Uhlman to indicate this. No action is necessary at this time and she will contact the office to see if they plan to turn in the license.

8. Communications

Communications had been sent to the members and were reviewed.

It was agreed that a hearing will be scheduled on a report submitted by Lieut. Lafratta concerning Emysafari Dance Club.

Hearings will also be scheduled on reports submitted by Officer Uhlman concerning North Main Auto Sales and Right Way Auto Exchange.

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

- (a) M Club Restaurant and Lounge, Inc.

Attorney John McCluskey, 932 Main Street, appeared and explained that this matter was heard by the Commission at the February meeting. After the license was approved, he stated there seemed to be some misunderstanding as to what the intent of the applicant was. He then reviewed that the application has stated that the total capacity would be for 305 people to be inside. Attorney McCluskey stated this number is incorrect and the establishment could not hold that many people. He reviewed that an old variance had a total of 170 as a restaurant and they have agreed to amend the application to a total of 170 seated and 5 at the bar. They have also agreed that the tables will remain in place and the operation is going to be a restaurant and nothing else. A revised floorplan has been submitted and the application amended. He stated he is hopeful with the changes made it

will resolve any misconceptions that people may have. Attorney McCluskey stated the owner, Mr. Fontes, is presently in Portugal looking to hire a chef for the establishment.

The Adm. Asst. reviewed that Attorney McCluskey had met with Attorney Feodoroff and Jim Casieri, the Building Superintendent, to review the plans for the operation to try to address the concerns raised and it seemed that the concerns of Mr. Casieri had been addressed.

Attorney Nessralla then stated that he knows the concern was that it would not be a night club and he is not sure what the board would want to do to amend the grant of the license. Attorney McCluskey stated that Mr. Casieri was concerned that there would be music every night. He explained that Mr. Fontes wants to have music occasionally and when it was decided that the tables will stay in place and the capacity will not exceed 170, everyone seemed to agree that it was not going to be a nightclub. There will be a dance floor. Attorney McCluskey reminded the Commission that the Commission can take action if the plan is changed.

Commissioner Kelley stated he feels that no action is necessary by the board, however, he feels that the licensee should perhaps review and formalize what has been agreed to. Attorney Nessralla stated that Attorneys Feodoroff and McCluskey can collaborate on the language of the agreement and Attorney McCluskey stated he would have no problem with this.

(The Commission then heard Agenda Item #6.

The Commission will meet again on April 15, 2010.

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

Respectfully submitted,

Joseph P. Kelley
Acting Chairman

APPROVED:

Paul D. Sullivan, Commissioner

Bruce G. Dansby, Commissioner

Joshua J. Wood, Commissioner

Fred Fontaine, Alternate Commissioner