

## TAPED

The License Commission held its regular monthly meeting at 6:00 p.m. on Thursday, October 21, 2010, in the G.A.R. Room at City Hall. Present were Commissioners Joseph P. Kelley, Paul D. Sullivan, Joshua J. Wood, Scott H. McDuffy and Alternate Kathy Kenney. Also present were Asst. City Solicitor Kate Feodoroff, License Agent Capt. Emmanuel Gomes and Adm. Asst. Bonnie Tucker.

1. Approval of the Minutes of the License Commission Meeting of September 30, 2010.

A motion was made by Commissioner McDuffy to approve the minutes of the meeting as submitted which motion was seconded by Commissioner Kenney. All members present voting in the affirmative, the motion carried.

2. Approval of the following police officers as license agents for the month of November, 2010: Capt. Emanuel Gomes; Lieuts. Thomas LaFratta and Paul Bonanca; Sgts Frank Vardaro and Kenneth Lofstrom; Dets. Michael Schaaf, John Lonergan, James Smith and Ernest Bell; and Officer Scott Uhlman.

A motion was made by Commissioner Sullivan to approve the police officers as listed for the month of November, 2010. The motion was seconded by Commissioner McDuffy. All members voting in the affirmative, the motion carried.

At this time Attorney Feodoroff asked the Commission to take the Joe Angelo hearing (#9) on the agenda. (Refer to agenda item #9)

3. Requests for Special One-day Permits:

- (a) **All Alcoholic Beverages** – Brockton Firefighters Local 144 – William E. Hill, Manager, 80 Perkins Avenue, for a Retirement Party on Thursday, October 28, 2010 from 6:00 p.m. to 12:00 midnight.

Commissioner McDuffy stated he would be recusing himself from both agenda items 3(a) and 3(b)

Present was William Hill, 80 Ellis Street, who stated that on Thursday, October 28<sup>th</sup>, there will be a Retirement Party for the members of the department who have retired throughout the year.

Paperwork being in order, a motion was made by Commissioner Sullivan to approve the permit which motion was seconded by Commissioner Kenney and made unanimous by vote of Commissioner Kelley.

- (b) **All Alcoholic Beverages** – Brockton Firefighters Local 144 – William E. Hill, Manager, 80 Perkins Avenue, for a fundraiser to be held on Friday, October 29, 2010, from 6:00 p.m. to 12:00 midnight.

Present was William Hill, 80 Ellis Street who stated that this event will be a political fundraiser.

Paperwork being in order, a motion was made by Commissioner Sullivan to approve the permit. The motion was seconded by Commissioner Kenney and made unanimous by vote of Commissioner Kelley.

**ADD: (c) Wine and Malt Beverages** - Maria Miranda Becerra/Wayne Holmes – 891 Montello Street (The Fruth Center) , for a private birthday party on November 19, 2010 from 9:00 p.m. to 2:00 a.m.

Present was Wayne Holmes, 58 Union Street, Stoughton, who stated they have planned a birthday party at the First Lutheran Church hall. He requested to change the date from November 19<sup>th</sup> as stated on the application to November 12. He stated that the number of people expected has gone up to between 100-150 people.

The Adm. Asst. stated the information has been sent to the police department and that the forms which Mr. Holmes had filled out indicated 50 people. In response to questions from Commissioner Kelly, Mr. Holmes stated it is a birthday party. Ms. Tucker told Mr. Holmes to come in the next day to fill out a new police detail form due to the date change and the increase in the number of people.

A motion was made by Commissioner Sullivan to approve the request pending completion of the revised applications which must be reviewed by the detail office. The motion was seconded by Commissioner McDuffy. All members voting in the affirmative, the motion carried.

4. Hearing on the request from Hacienda del Rosario, Inc. dba Burrito Wraps Mexican Grill to alter the licensed premise by removing a portion of the countertop.

Present were Alejandro Perez, 261 Mill Pond Lane, Marshfield and Arnold Danielson, 603 Summer Street.

Mr. Perez reviewed his request and stated he has removed a six foot portion of his counter. The Adm. Asst. stated Mr. Perez was unaware of the requirement to come before the Commission for any alterations of the licensed premise.

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

5. Hearing on the request from Heidi Hearing on the request from Heidi Barbas and Magda Kosmidis dba Heidi's Place for a Common Victualer license at 685 Warren Avenue.

Present were Heidi Barbas, 20 Athens Drive, Magdeline Kosmidis, 24 Madrid Square and Chris Barbas, 90 Hatchfield Drive.

Commissioner Kelley reviewed that there are some questions as to whose name is on the deed and the outstanding taxes owed to the City. Mr. Barbas stated they have the deed and the Adm.

Asst. informed him that he must bring this in to Mr. Brophy the Treasurer-Collector. Mr. Barbas assured the Commission that this would be done the following day.

Commissioner Kelly suggested to the members that any approval would be pending the information being clarified and approved by the Tax Collector.

A motion was made by Commissioner Sullivan to approve the license pending receipt of clearance from the Tax Collector and receipt of the department inspection approvals. The motion was seconded by Commissioner McDuffy.

(Commissioner Kelley noted for the record that Commissioner Wood arrived at this time)

6. Hearing on the request from Joseph Savino dba International Auto Wholesalers to transfer the Class II Used Car Dealer license at 130 Elliot Street to Carlos S. Silva, Jr. and Luis Silva dba International Auto Wholesale.

Present were Carlos S. Silva, Jr., 134 Brookside Avenue and Luis S. Silva, 339 Foundry Street. Also present was Joseph Savino, 7 Oak Leaf Lane, So. Easton.

Capt. Emmanuel Gomes stated that the Brockton Police Dept. is looking for a continuance on this matter after speaking with the police officer conducting the inspection. He indicated there is a plan that does not meet the requirements and they would like the opportunity to make an inspection and make sure the spaces meeting the criteria.

A motion was made by Commissioner McDuffy to postpone the matter which motion was seconded by Commissioner Wood. All members voting in the affirmative, the motion carried.

7. Hearing (postponed from meeting of November 18, 2009) on the charge against B.A.M.N, LLC dba Progressions – Jeffrey Summers, Manager, 23-25 Montello Street of an alleged violation of ABCC 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 license premises. The licensee shall be responsible therefore whether present or not.

Attorney Feodoroff returned and stated that after conferring with the police officers involved, the City is inclined to dismiss the complaint.

8. Hearing (postponed from meeting of September 30, 2010) on the request from B.A.M.N., LLC dba NFuzion – Jeffrey D. Summers, Manager, holder of an All Alcoholic Restaurant license at 23 Montello Street, to transfer the license to Antonia V. Cardoso dba Malu’s Lounge.

Antonia V. Cardoso dba Malu’s Lounge makes application for the following:

- (a) An All Alcoholic Restaurant license
- (b) A Common Victualer license

- (c) An Entertainment license for Televisions (4), Radio, Orchestra (5) pieces, Vocalists, Disc Jockey and Karaoke from 6:00 p.m. to 12:30 a.m.

Present were Attorney John F. Creedon, 71 Legion Parkway representing the purchaser, Antonia Cardoso, 480 West Elm Street and Regina Gabriel, 425 Pleasant Street. Also present was Jeffrey Summers, 51 Grace Street, Malden.

Ms. Cardoso plans to open a Portuguese restaurant and on Friday, Saturday and Sunday she would like to have a band. On the other days she would like to have softer music with the restaurant. This will not be a nightclub atmosphere. In reply to questions, Ms. Cardoso stated she and her staff will all be tips trained.

Commissioner Kelley reviewed that the current license has a 12:00 midnight closing and that is what is being considered. Ms. Cardoso stated midnight is fine. Attorney Creedon stated he has known Ms. Cardoso for twenty years and she is buying the building and business and will be operating a Portuguese-Creole restaurant. She will be working there full time along with her brother and nephew who worked at Sodade Terra before it closed. She will not have hip hop music and will not be advertising outside the Brockton area. Attorney Creedon stated she intends to buy the building on Monday. He stated she is a good business person and will her restaurant will be a benefit to the City.

Attorney Bret Francis, 564 Main Street, Waltham, stated he is not present to oppose this but represents the residents at 9 Montello Street. The residents had major concerns with the previous ownership. The residents are ecstatic that this transfer is occurring and they wanted to make sure the music will be quiet and recommend the closing hour be 11-11:30 p.m. Attorney Francis stated they will not object to the 12:00 closing hour.

The Adm. Asst. reminded Attorney Creedon that the buyer cannot take over the license prior to approval by the ABCC and he indicated this is understood.

Commissioner McDuffy commented that he is impressed with Ms. Cardoso's intentions and plans for the restaurant and reminded her that because of what has happened there over the past several years there will be many people keeping an eye on it and he reminded her of the importance to do what has been presented. Commissioner McDuffy wished her the best of luck.

Commissioner McDuffy then made a motion to approve the transfer of the license which motion was seconded by Commissioner Wood. All members voting in the affirmative, the motion carried.

A second motion was made by Commissioner McDuffy to approve an Entertainment license for Televisions (4), Radio, Orchestra (5) pieces, Vocalists, Disc Jockey and Karaoke with amended hours from 6:00 p.m. to 11:30 p.m. The motion was seconded by Commissioner Sullivan. All members voting in the affirmative, the motion carried.

A motion was made by Commissioner McDuffy to approve the hours of 11:00 a.m. to 12:00 midnight on Monday through Saturday and from 12:00 noon to 12:00 midnight on Sunday. The

motion was seconded by Commissioner Sullivan. All members voting in the affirmative, the motion carried.

(This was the last item heard on the agenda)

9. Hearing (postponed from meeting of September 30, 2010) on the charges brought against RJA Corporation dba Joe Angelo's Café – Carl Simmons, Manager, 216 Main and 11 Crescent Streets, of the following alleged violations reported on August 15, 2010 at approximately 2:15 a.m.:
  - (a) **ABCC Rule 2.05(2)**, “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 therefore whether present or not.”;
  - (b) **ABCC Rule 2.05(2)** –Permitting a disorder, disturbance or illegality, to wit: “Assault and battery by an employee on a patron.”
  - (c) **M.G.L. Chapter 138, Section 69**, to wit: “No alcoholic beverage shall be sold or delivered on any premises licensed under this chapter to an intoxicated person.”

Attorney Feodoroff informed the Commission that after speaking with police officers in preparation of the hearing, she learned that one of the individuals involved in the incident has not yet been arraigned and if they were to hear testimony this evening, it might impact the criminal case. She then requested a postponement of the matter and requested that the police officers involved advise the Commission when the hearing can go forward and begin the process at that time.

A motion was made by Commissioner McDuffy to postpone the hearing which motion was seconded by Commissioner Sullivan. All members present voting in the affirmative, the motion carried.

Later in the meeting, Attorney Creedon requested the matter not be held at the Commission's November meeting as he will be out of state.

10. Hearing on the charges brought against CV Auto, Inc. – 703 North Main Street of the following alleged violations observed on June 16, 17 and 19, 2010:
  - (a) Failure to properly maintain a Used Car Record Book as required by M.G.L. Chapter 140, Section 62.;
  - (b) **M.G.L. Chapter 140, Section 66** – which provides an authorized police officer to enter premises used by any person licensed under section 59 for the purpose of carrying on his licensed business, ascertain how he conducts the same, and examining all second hand motor vehicles or parts thereof kept or stored in or upon the premises, and all books papers and inventories relating thereto and **City of Brockton Ordinance 14-1** – Hampering or interference with a city official or officer;

- (c) **City of Brockton Ordinance 4-28** – Illegal apartment over the commercial establishment; and
- (d) Performing mechanical repairs on the premises without a license in violation of City Ordinance Chapter XI;
- (e) Allowing a vehicle to be stored inside a garage not licensed as required by M.G.L. Chapter 148.

Attorney Feodoroff swore-in the following persons;

Marcelino Montrond, 23 Mystic Street  
Gilda Andrade, East Bridgewater  
Officer Scott Uhlman, Brockton Police

On direct examination by Attorney Feodoroff, Officer Uhlman stated he is a Brockton Police Officer assigned to Code Enforcement and as a License Agent. On June 16, 2010, at approximately 1:45 p.m., he was travelling on North Main Street and as he passed by CV Auto, he noticed 2 men under the hood of a car on the lot. He stated he was en route to another call and could not stop but did make note of it.

On June 17, 2010, at approximately 11:00 a.m., Officer Uhlman stated as he was travelling along North Main Street, heading back to the station, he noticed a car on the lot of CV Auto Sales with the hood up and 2 men under the hood. He circled back and pulled into the lot and informed Mr. Montrond that he could not work on cars on his property because he does not have a license to do repairs. Officer Uhlman stated that as he stepped from his car, Mr. Montrond began to yell and scream at him and he told him “that I don’t do this to white people and to get off my property.” Officer Uhlman told him he was just making a courtesy reminder that he cannot fix cars and that was going to be the extent of his visit. Officer Uhlman stated he was verbally attacked by Mr. Montrond with racial overtones and slurs and told to get off the property and that he had no right to be there. He also enlisted the help of others to make verbal attacks on him and fearing for his safety, Officer Uhlman stated he left the property. He stated he took some pictures from across the street to document the event and left.

At approximately 11:45 a.m. on June 17<sup>th</sup> Officer Uhlman was asked by a supervisor to meet a complainant at CV Auto Sales. The individual had put a \$3,000 deposit on a car and it was promised to her for her son’s birthday on June 5<sup>th</sup>. The establishment was unable to produce the car and refused to give her a refund. He indicated he called for a supervisor and Lieut. Williams to meet him at the location. Sgt. Hallisey, Lieut. Williams and he listened to the complainant’s story and saw the original invoice that indicated she had placed the car order on May 15<sup>th</sup> and left a \$3,000 deposit. Sgt. Hallisey attempted to do what he could for the complainant seeing that it was a civil matter.

Officer Uhlman stated he asked to see the Used Vehicle Record book in an attempt to locate the vehicle in question. The book was not in order and there was not one car on the lot that was recorded in the book. They went from car to car and tried to compare VIN’s but could not match any. Mr. Montrond informed them that the only vehicles in the book are cars that he actually

sells. He told them that he does not own the cars, and has no titles. There were fifteen cars on the lot. They took the book and made notations.

In response to questions from Attorney Feodoroff, Officer Uhlman stated they took the book and attempted to return it on five occasions, two times by himself and three times by a constable but Mr. Montrond would not accept the book. Officer Uhlman stated that the book contained no information about any vehicles on his lot but the only information contained in the book was for vehicles that he says he sold and are off his lot. The Book should contain information for all of the vehicles on the lot and if they are not on the lot, how the vehicle was disposed of. He stated Mr. Montrond is not keeping the book as required by law.

In response to further questions from Attorney Feodoroff, Officer Uhlman stated Mr. Montrond does not have a Repair license as verified with the City Clerk's office. On two occasions he had observed individuals looking under the hoods of vehicles on the lot.

On June 19, 2010, at 11:05 p.m., while conducting occupancy inspections of licensed establishments, he along with Lieut. Williams, Dep. Fire Chief Kenney and Building Inspector Frank Gazzero were travelling by 703 North Main Street and observed the gate was open and lights on in the second floor attic. As they pulled in to investigate, an individual came to the door and they inquired who he was. He responded that he is Mr. Montrond's cousin and he was there watching TV. When asked if he slept there, he answer on occasion he stays there. They entered through the office inside the garage where there was a motor vehicle stored inside and tools used to repair vehicles. They went up a pull down stairway into the attic. They observed a complete bedroom with a refrigerator, microwave, air conditioner, television, and clothes. Pictures of the apartment were taken and presented. They showed the refrigerator, clothes, numerous pairs of sneakers, body lotions, the microwave and some pizza which was being heated up in the microwave. Another picture taken through a broken window on the garage showed the vehicle in the garage, tools and car parts as well as tires that had been taken off of a vehicle. Another picture taken showed the CV Auto Sales sign with an air conditioner unit in the window for the attic apartment. Another picture taken showed no VIN tag on the dashboard inside the vehicle. Mr. Montrond was unable to produce the title to this vehicle that day.

Officer Uhlman noted that the vehicle inside the garage in the picture taken on June 17<sup>th</sup> is different than the vehicle inside the garage on June 19<sup>th</sup>.

Commissioner Kelley asked the licensee if there were any questions for Officer Uhlman and Ms. Andrade stated no.

Ms. Andrade then stated that she wanted to make it clear that Officer Uhlman has been harassing them for no apparent reason and has harassed all the minority businesses. She indicated that they do not have some titles because until a car is paid off they do not get a title. She stated the VIN number is located two places inside a car. As far as the upstairs, Ms. Andrade stated that someone was up there to watch the property and it is not an apartment. She stated that Officer Uhlman is always watching the premises. No one is doing repairs and the people looking under the hood of the vehicle were customers. Officer Uhlman had gone in and started yelling at them.

There was all kinds of commotion and there was a fire truck there. She stated Officer Uhlman watches and comes in and snaps pictures in everyone's face and ruins their business.

Ms Andrade stated the bed upstairs was there when they bought the property and that the individual who was there was watching the property and does not live there. He had brought some of his own personal stuff up there. She stated there is a TV and a microwave and refrigerator which she puts her food in and uses sometimes during the day. She indicated it is not an apartment. With regard to the parts, Ms. Andrade stated they do buy parts sometimes and lock them up in the garage. She stated there is a jack there because they sometimes have to change tires. She stated that the allegations are all false and she stated she feels it is unfair for Officer Uhlman to go into a business and watch and observe.

Attorney Feodoroff stated she objects to Ms. Andrade's personal attack on Officer Uhlman who was doing his job as a police officer to observe and investigate.

Ms. Andrade stated she had nothing further and Attorney Feodoroff indicated she had several questions to ask.

In response to Attorney Feodoroff's questions, Ms. Andrade stated she goes upstairs to the apartment during the day to heat up her lunch. She does not sleep there. She stated it is not a bed but a couch that opens into a bed. Attorney Feodoroff then showed Ms. Andrade a picture of the mattress pulled out of the couch with a fitted sheet and a comforter on it. She stated that the person probably took a nap up there. She then pointed out the personal items such as body lotion. Ms. Andrade stated she has personal items there and she uses hand cream all of the time. She stated that the book Officer Uhlman took is not the book they use but she could not remember whether she was there the day the book was taken. She is aware that when a police officer requests the book, it is the licensee's responsibility to provide the book. She indicated she was not there when Officer Uhlman took the book and that Mr. Montrond doesn't speak English that well and she didn't find out until after that the wrong book was taken.

In reply to questions from Commissioner Wood, Ms. Andrade stated she was not there the day Officer Uhlman took the book. She had been told that Officer Uhlman had gone through drawers.

Attorney Feodoroff then indicated she had a question for Mr. Montrond and asked if he would be able to understand and Ms. Andrade stated she would interpret for him. It was agreed that this would not work and Attorney Feodoroff withdrew the request.

In response to questions from Commissioner McDuffy, Ms Andrade stated she does not have the correct book with her but she can get it. As to why she didn't bring it, she said she didn't know if it was okay to take it off the premise. Ms. Andrade had made reference to an Affidavit, however, she indicated she didn't bring it with her and that she forgot it back at the office.

Commissioner Kelley then indicated the pictures are telling and in one it shows about 20 pairs of sneakers and shoes. Ms. Andrade stated she does not recall any prior conversation about the apartment. He reviewed that the Commission had tried to work with Mr. Montrond and that he

had been given consideration with all of the violations presented this evening and told that he had to go by the rules. He indicated that with each of the violations, there is a serious problem with not being a responsible licensee and not being responsible to the City. It is the law that the book must be maintained and it was not. It is clear there is an apartment with someone living there. Commissioner Kelly stated he feels there has been no will by the licensee to work with the Commission.

Commissioner Kelley then asked Officer Uhlman if the door on the vehicle with no VIN tag had been checked and Officer Uhlman stated Mr. Montrond was asked but he could not find the key on the premise.

With regard to the history, Ms. Tucker stated it is difficult to track but for the last two renewal periods, the renewal could not be filed due to ownership issues or tax problems. Last year Mr. Montrond was suppose to appear at a License Commission meeting as a result of a Board of Health report concerning violations on the premise but he failed to appear and the license was suspended at that time. The renewal was then applied for after the first of the year and the Commission agreed to grant Mr. Montrond the license in order to give him another opportunity to operate his business even though the number of licenses was over quotas.

Councillor-at-Large Jass Stewart came forward and stated he has worked with Mr. Montrond and one of the agreements was that they would adhere to every single law and ordinance or the City because this was his second or third chance. He stated the law is the law and actually the violations are not as egregious as they look in the photos, however, they had agreed that every rule would be followed. Councillor Stewart stated he feels adherence to the ordinances is extremely important and that an exception was made and the bar was not met and that it has to be dealt with. Councillor Stewart indicated he drives by the property frequently and it has improved over the past few years.

Commissioner Kelley thanked Councillor Stewart and reviewed that the Commission is a regulatory board and have to listen to the compliance officers and other City departments. This is not a selective situation and he feels there was ample opportunity given to the licensee to get things in order.

With no further information presented, a motion was made by Commissioner Wood to find the licensee in violation of failing to properly maintain a used car record book as required by M.G.L. Chapter 140, Section 62. The motion was seconded by Commissioner McDuffy. All members voting in the affirmative, the motion carried.

A motion was made by Commissioner Kenney to find the licensee not guilty of violating M.G.L. Chapter 140, Section 66. The motion was seconded by Commissioner Wood. With Commissioners Kenny, Wood and Kelley voting in the affirmative and Commissioners Sullivan and McDuffy voting opposed, the motion carried.

A third motion was made by Commissioner Wood to find the licensee in violation of City of Brockton Ordinance 4-28 – illegal apartment which motion was seconded by Commissioner McDuffy. All members voting in the affirmative, the motion carried.

A fourth motion was made by Commissioner Wood to find the licensee not guilty of performing mechanical repairs without a license which motion was seconded by Commissioner Kenney. With Commissioners Wood and Kenney voting in the affirmative, and Commissioners Kelley, Sullivan and McDuffy voting opposed, the motion did not carry.

A fifth motion was made by Commissioner Kenney to find the licensee in violation of storing a vehicle inside a garage with no license which motion was seconded by Commissioner Wood. All members voting in the affirmative, the motion carried.

Commissioner Kelly then reviewed for the Commission that they must determine the penalty for the violations found and asked for the recommendation of the Asst. City Solicitor.

Attorney Feodoroff reviewed that given the history of the licensee, the violations reported and the fact that the purpose for the used car book is to prevent what was found in that vehicles on the property without the proper titles is a serious issue for fraud and criminal conduct. She asked for revocation of the license.

Commissioner Kelley indicated that he does not want to be harmful to the business community but the history is clear that this licensee has been given every opportunity to continue with the business. He indicated he would be in agreement with a revocation.

A motion was made by Commissioner McDuffy to revoke the Used Car Dealer license for CV Auto, Inc. The motion was seconded by Commissioner Sullivan. With Commissioners McDuffy, Sullivan, Wood and Kelly voting in the affirmative, and Commissioner Kenney voting opposed, the motion carried and the license was revoked.

The licensee was informed that a written decision will be issued and he will be required to turn his license in.

16. Communications

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

(a) Review Survey and set License Fees for 2011 licenses.

Commissioner Kelley reviewed that the fees have remained stable for the past few years but given the condition of the economy and the recent tax increases, he recommended the fees remain the same.

A motion was made by Commissioner Sullivan to leave the fees as they are. The motion was seconded by Commissioner Wood. All members voting in the affirmative, the motion carried.

(Refer to agenda item#7)

A motion was made by Commissioner Sullivan to adjourn the meeting. The motion was seconded by Commissioner McDuffy. 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

---

Scott H. McDuffy, Commissioner

---

Kathy Kenney, Alternate Commissioner