

TAPED

The License Commission held its regular monthly meeting at 6:00 p.m. on Thursday, January 20, 2011, in the G.A.R. Room at City Hall. Present were Commissioners Paul D. Sullivan, Joshua J. Wood, Scott H. McDuffy and Alternate Commissioners Fred Fontaine and Kathy Kenney. Also present were Asst. City Solicitor Kate Feodoroff and Adm. Asst. Bonnie Tucker. Commissioner McDuffy presided.

1. Approval of the Minutes of the License Commission Meetings of November 17, 2010 and December 9, 2010.

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

2. Approval of the following police officers as license agents for the month of February, 2011: 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 Kenney to approve the police officers as listed as license agents for the month of February, 2011. The motion was seconded by Commissioner Wood. 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 (postponed from meeting of September 30, 2010) on the request from Emysafari Dance Club Corp. – Christian Ekechukwu, Manager, to extend the closing hour to 2:00 a.m. on Thursdays, Fridays, Saturdays and eves of legal holidays.

Present were Attorney John McCluskey, 932 Main Street and Christian Ekechukwu, 24 Flintlocke Street, Randolph.

Attorney McCluskey reviewed that his client has owned the establishment since 2005. When he purchased the business it was his understanding that he would be able to continue with the 2:00 a.m. closing which is the closing time issued to the previous owner. However, he was told that he had to operate for a period of time with no problems and he could then apply for the 2:00 a.m. closing. Attorney McCluskey recalled that early on, Mr. Ekechukwu had a problem with overcrowding at the establishment. Shortly thereafter, an electrical fire forced him to closed for quite some time. The premise is now fully sprinklered and up to code.

Attorney McCluskey stated that there was one other minor violation which occurred last year and involved the jukebox being on after closing. He appeared before the Commission and admitted to the infraction. There was also an issue with the dumpster which has been resolved, although Attorney McCluskey stated he is aware that Capt. Gomes' report questions the dumpster

situation. Attorney McCluskey stated he had ridden through the lot. There are several adjoining lots and the dumpster is adjacent to the building, was closed up and covered. He observed several other dumpsters in the parking lot which belong to other businesses. He then reviewed Capt. Gomes' report which indicated the establishment to be under poor management, lacked compliance and the neighbors (Campbell Business Association) have concerns with the 2 a.m. license.

Attorney McCluskey reviewed that he is a member of the Campello Business Association and it is his understanding that some of the members have an issue with the 2 a.m. license. A letter dated September 28, 2010 was previously submitted which indicated the Campello Business Association was in favor of the 2:00 a.m. license. A subsequent letter dated in October, 2010 was submitted withdrawing their support. Attorney McCluskey stated he is a member of the Campello Business Association and he was not aware of anyone not being in favor with the exception of one or two members who had objected to Mr. Bethany, the president of the association.

Attorney McCluskey stated the issues brought up the last time they appeared before the Commission have been addressed.

In summation, Attorney McCluskey stated Mr. Ekechukwu has owned the business for five years and would like the opportunity to have the 2:00 a.m. closing. There is nothing on his record to indicate he should not be allowed to open until 2. Mr. Ekechukwu has hired a consultant to help him move in the right direction to operate his business. It has been very difficult for Mr. Ekechukwu to operate his bar when there are others in the neighborhood which have 2:00 a.m. licenses. Attorney McCluskey stated that he is a neighbor to the business and feels he should be given the chance.

Present was Daniel Marseilles who stated he used to be a promoter for Mr. Ekechukwu. He stated he feels that after being in business in the City for six years, he should be given the opportunity to be open until 2 a.m.

In response to questions from Commissioner McDuffy, Mr. Ekechukwu stated he cannot afford to open every day. He stated he opens at 11 a.m. and stays there until about 10 p.m. but no one comes in so he closes. Commissioner McDuffy indicated he travels by the establishment regularly and never sees any lights on. He reminded Mr. Ekechukwu of the regulation which requires he notify the commission if he intends to close for more than 48 hours. Mr. Ekechukwu stated he owns the adjacent parking lot. Commissioner Mc Duffy stated he had difficulty driving through the parking lot and it needs to be maintained for the public safety.

Capt. Gomes stated that he had conferred with officers who have handled past violations at this establishment. He indicated that there were five issues involving the dumpster and trash being taken off premise. Attorney McCluskey stated those issues have been resolved. Capt. Gomes stated he also spoke with the Chief of Police who wanted to convey his opposition to any more 2:00 a.m. licenses in the City from a Police Department standpoint.

Attorney Feodoroff advised the Commission to take into consideration the gravity of the violations, how frequently they have occurred, the neighborhood issues and police recommendation and to determine whether the violations rise to the level where the 2:00 a.m. license is not warranted. Attorney Feodoroff stated she had been to Housing Court to deal with the Emysafari's Ordinance violations and she stated that Mr. Ekechukwu had worked with them to reach a resolution however, it is the licensee's responsibility to know the rules. The Code Enforcement issues have been resolved. Attorney Feodoroff then asked if there was anyone present who wished to be recorded in favor or opposed.

The following person came forward in favor of the 2:00 a.m. closing:

John Aaron, 156 Perkins Avenue
Rafi Ramleo from Help Foundation, 1106 Main Street
Ron Dasilva, Carl Avenue
Danny Barbosa, Elliot Street
Kinly, Farrington Street
Francesco Mendes – 1753 Main Street

Commissioner McDuffy asked if there was anyone present in opposition to the request and no one came forward.

Commissioner Kenney then made a motion to approve the 2:00 a.m. license for a six month trial basis and if there are no violations during the six months, the licensee can come back before the Commission. The motion was seconded by Commissioner Fontaine.

Commissioner Sullivan asked if the 2 a.m. license can be approved on Sunday through Wednesday but was told that the Commission only considers 2:00 a.m. closings on Thursdays through Saturdays.

A vote was then taken. With Commissioners Sullivan, Wood, Kenney and Fontaine voting in favor and Commissioner McDuffy voting opposed, the motion carried.

5. Hearing (postponed from meeting of December 9, 2010) on the request from Carlos Lima dba Rolando's, holder of an All Alcoholic Restaurant license at 133 North Main Street, to transfer said license to CSMR Corporation dba The Spot.

CSMR Corporation dba The Spot requests the following:

- (a) To appoint Chenet Sam as the manager;
- (b) A 2:00 a.m. closing hour on Thursday, Friday, Saturday and eves of legal holidays;
- (c) An Entertainment license for Orch (4) pieces, vocalists, Dancing by patrons, Disc Jockey, Television, Radio, Stereo on Sunday thru Wednesday from 6:00 p.m. to 1:00 a.m. and on Thursday through Saturday from 10:00 p.m. to 2:00 a.m.
- (d) An Automatic Amusement Device license for coin-operated pool table, soccer table and two video machines.

Present were Attorney John Creedon, 71 Centre Street. Also present were Carlos Lima, 100 Salton Street, Chelsea, Chenet Sam, 1156 Adams Street, Dorchester.

Attorney Creedon stated they are requesting a transfer of the license as well as a 2:00 a.m. closing time, Entertainment and Automatic Amusement Device licenses. He indicated that Chenet Sam has owned the building at 133 North Main Street since 2005. Mr. Sam is a full time engineer for Verizon and has worked there for many years. He along with Manny Ramos are each 50 percent owners of the new corporation formed for the business. Mr. Ramos was born and raised in Brockton and operates a construction business.

Attorney Creedon reviewed the history of the establishment. He stated that Sam Sergio had owned it for a number of years and he cannot recall any problems. Mr. Ramos then took over and it is his recollection that there was one violation which was resolved. Attorney Creedon stated he does not think there have been any problems since Mr. Lima took over the establishment in 2007.

The bar is small and there is a total occupancy for 81. It caters to older males, mostly of Cape Verdean descent. The second and third floors have three tenants. The businesses in the area are not open past 7:30. The floorplan shows the games and pool table and the dance floor. There will be three revolving employees. Attorney Creedon indicated that control is the greatest issue that the licensee must understand. He stated that as far as the 2:00 a.m. license the Commission should consider that there are economic reasons, competition is tough and it is an older crowd. Attorney Creedon stated he doesn't see the risk here and it will be an economic help to the City for them as far as paying their taxes.

Mr. Sam stated that since becoming the owner, he has transformed the building as far as tenants and activities. He indicated he comes from Dorchester every night just to manage the property. Attorney Creedon stated that they have been working with Mary Waldron to apply for a grant to improve the façade.

Commissioner McDuffy asked if anyone would like to speak either for or against this application and no one came forward.

Captain Gomes stated he has conferred with Lieut. Thomas LaFratta who stated he has cited this establishment for an entertainment violation being allowed beyond the approved hours. In addition, Capt. Gomes reiterated the Chief of Police's concerns for 2:00 a.m. licenses.

In response to questions from Commissioner Wood, Attorney Creedon stated that he has been in the establishment three times over the past four months at midday or later in the afternoon and every person in there was over 40 years old. Commissioner Wood asked if the 2:00 license was of value to that clientele. Mr. Sam stated they are trying to transform the business. They are putting money into the facility and will also need a little bit of entertainment and the crowd they will be attracting may be younger. Attorney Creedon stated that Mr. Sam and Mr. Ramos will not advertise in Boston or anywhere but Brockton.

Commissioner Kenney stated in her mind it is not like a club where there would be dancing or entertainment. Attorney Creedon stated it will not be a Club that can have a large entertainment crowd of young people. It is his understanding that in the Cape Verdean Community and the Haitian Community the people like to get up and dance to a 3 or 4 piece band. Attorney Creedon stated that in the four times he has been in the bar, he has not seen one female. With an occupancy of 81, it will not be a full time entertainment location.

Commissioner Sullivan asked if the location was large enough to hold all of the Automatic Amusement Devices being requested. Attorney Creedon stated the pool table is standard size and the soccer table is approximately one foot smaller than the pool table. The two video games will be against the wall. He agreed it might be a little tight but it is transitional with the older crowd wanting the pool table and soccer game while the younger crowd will want the videos. Attorney Creedon stated that it is a small establishment and has not been a problem in the City because of its location and size.

Commissioner McDuffy indicated that with the automatic amusement devices, the premise will have to be inspected by the departments and this may drop the occupancy. Attorney Creedon stated that if this is the case, the new owner might change his mind about the games and he could always notify the Commission of this.

Mr. Sam then commented to Commissioner Woods question as to whether they will be transforming the place into something else and he stated that this is not the case. He stated he has a family at home and is not interested in transforming the place into a night club. The clientele is an older Creole and Haitian crowd.

Commissioner McDuffy then asked about serving food where this is a restaurant license. Mr. Lima stated there is no kitchen. It was reviewed that with a restaurant license, there must be food available. Mr. Sam stated they will be serving appetizers.

A motion was made by Commissioner Fontaine to approve the transfer of the All Alcoholic Restaurant license from Carlos Lima dba Rolando's to CSMR Corp. The motion was seconded by Commissioner Wood. All members voting in the affirmative, the motion carried.

A second motion was made by Commissioner Wood to approve the appointment of Chenet Sam as the manager. The vote being 5 to 0 with all members voting in the affirmative, the motion carried.

A third motion was made by Commissioner Wood to approve the 2:00 a.m. closing on Thursday, Fridays, Saturdays and eves of legal holidays. The motion was seconded by Commissioner Fontaine. The vote being 3 to 2 with Commissioners Wood, Fontaine and Sullivan voting in the affirmative and Commissioners McDuffy and Kenney voting opposed, the motion carried.

The request for Entertainment was reviewed and the Adm. Asst. stated that it is the usual requirement that the live entertainment end one-half hour before the closing hour.

A fourth motion was then made by Commissioner Wood to approve the Entertainment license for Orch (4) pieces, vocalists, Dancing by patrons, Disc Jockey, Television, Radio, Stereo with amended hours of Sunday through Wednesday from 6:00 p.m. to 12:30 a.m. and on Thursday through Saturday from 10:00 p.m. to 1:30 a.m. The motion was seconded by Commissioner Fontaine. All members voting in the affirmative, the motion carried.

A fifth motion was made by Commissioner Kenney to approve the Automatic Amusement Device license for a pool table, soccer table and two video games pending receipt of the department inspection approvals. The motion was seconded by Commissioner Wood.

Commissioner Sullivan stated he would not vote on this because he does not believe there is enough space for all of the devices. He indicated he would table this until the Fire Department makes its inspection. Commissioner Wood pointed out that the motion was made pending the inspection approvals which include the Fire Department.

The vote being 5 to 0 with all members voting in the affirmative, the motion carried.

6. Hearing on the request from Fernandez Family Liquors, Inc. – Jose M. Fernandez, Manager, to transfer the All Alcoholic Package Store license at 127 Pleasant Street to Noima Enterprises, Inc. dba Fernandez Family Liquors.

Noima Enterprises, Inc. requests the following:

- a. To appoint Rashed Ahmed as the manager;
- b. To pledge the license and the stock of the corporation to Jose M. Fernandez.

Present were Attorney John McCluskey, 932 Main Street. Also present were Jose Fernandez, 87 Highland Street, Stoughton and Rashed Ahmed, 209 Warren Street, Randolph.

Attorney McCluskey reviewed the request which includes the purchase of the business from Mr. Fernandez who will also be financing the sale and the license and stock of the corporation will be pledged to Mr. Fernandez. A vote and copy of the pledge information was submitted.

Councillor-at-Large Todd Petti was present and requested to be recorded in favor of this request.

With no further information presented, a motion was made by Commissioner Sullivan to approve the transfer. The motion was seconded by Commissioner Kenney. All members voting in the affirmative, the motion carried.

A second motion was made by Commissioner Fontaine to approve the appointment of Rashed Ahmed as the manager. The motion was seconded by Commissioner Wood. All members voting in the affirmative, the motion carried.

A third motion was made by Commissioner Sullivan to approve the pledge of the license and stock of the corporation to Jose Fernandes. The motion was seconded by Commissioner Fontaine. All members voting in the affirmative, the motion carried.

7. Hearing on the request from Panera, LLC dba Panera Bread #1440 for a Common Victualer license at 1301 Belmont Street.

Representing Panera, LLC was Kevin McMann and Gregg Godfrey who is the operator. Mr. McMann stated this will be an 84 seat restaurant with a drive thru and 25 exterior seats. They hope to open on March 15th. This is a new building under construction at the westerly end of Stonehill Plaza. Commissioner Kenney asked about traffic flow and it was reviewed that they had been to the ZBA in May, 2010. Attorney Feodoroff reviewed the zoning board decision which indicated there was discussion regarding traffic flow.

Mr. McMann stated the hours will be from 6:00 a.m. to 10:00 p.m. There will be no alcoholic beverages sold.

A motion was made by Commissioner Sullivan to approve the license pending receipt of the department inspection approvals. The motion was seconded by Commissioner Kenney. All members voting in the affirmative, the motion carried.

8. Hearing on the request from S & T Deli, Inc. dba Doyle's Gourmet Pub – Thomas P. Doyle, Manager, to include the following types of Entertainment on the license: 1-2 Vocalists with Acoustic Guitar, Disc Jockey and Karaoke on Sundays from 1:00 p.m. to 12:00 midnight and on Thursdays, Fridays and Saturdays from 8:00 a.m. to 1:15 a.m. (TV, Radio, Jukebox)

Present was Thomas Doyle, 20 Messina Drive, who stated he is requesting a one or two piece band on occasion. On Thursday thru Saturday, the beginning time should be amended to 8:00 p.m. Capt. Gomes stated that this is a reasonable request and there have been no violations at this location and the police would have no objection.

Mr. Doyle stated he has recently enlarged the parking lot. They do have a 2:00 a.m. closing on Thursdays, Fridays and Saturdays.

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

9. Hearing on the request from Massasoit Community College Conference Center – 770 Centre Street, to appoint Jeffrey Demarco as the manager.

Present was Jeffrey Demarco, 21 Bayview Avenue, Berkley, who stated he has been the Food Service Director at Massasoit Community College from 1984 to the present. He will be on the licensed premises 20 hours per week

Paperwork being in order, a motion was made by Commissioner Sullivan to approve the appointment of Jeffrey Demarco as manager. The motion was seconded by Commissioner Wood. All members voting in the affirmative, the motion carried.

10. Hearing on the request from James Victorine for a Lodging House license at 19 Clinton Avenue.

Present were James Victorine, 234 Elm Street, Easton and Gerald Joseph, who stated he will manage the property. Both individuals stated they have managed properties for a number of years. Mr. Victorine purchased the property in July from Galen Locke who previously held the Lodging House license.

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

11. Communications

Copies of a supplemental report concerning an incident at Joe Angelos had been sent to the members. In addition, after conferring with Capt. Gomes, Attorney Feodoroff stated there had been an arraignment in Brockton District Court, however, he indicated he does not know what the outcome was. Attorney Feodoroff informed the Commission that she will be in touch with the ADA to make them aware that there is a pending violation before the License Commission, however, it should be held in order to avoid any impact to the State's case in the criminal matter. Capt. Gomes then stated that the person who visited the bar has been formally charged in the Courts.

Capt. Gomes was requested to look into a complaint which was sent to the office anonymously from In Brockton.Com concerning illegal poker machines at Joe Angelo's. He indicated he would look into it and report his findings to the Commission.

12. Any other business to come before the License Commission

- (a) Request from Rockton Corp. dba Bud's Convenience – 532 North Quincy Street, to change dba to Bud's Liquor & Convenience.

The Adm. Asst. reviewed that this is a request to change the business name and the required paperwork has been filed. The board has to sign a Form 43 which will be sent in to the ABCC.

- (b) Request from Mayra Sosa dba El Mariachi – 1753 Main Street, for wine and malt restaurant license to be issued with Certificate of Liability Insurance for mandatory liquor liability coverage issued to Hungry Coyote LLC dba El Mariachi Taquereas Mexicanas.

Present was Mayra Sosa, 103 Henrietta Street, Providence and Francisco Mendes.

Ms. Tucker reviewed that this is an issue with the liquor liability insurance certificate submitted in that it is issued to an entity other than the holder of the license. The beer and wine license was recently approved by the ABCC to Ms. Sosa as an individual and in order for the license to be issued she must provide the Commission with a Certificate of Insurance. The Certificate of

Insurance which Mr. Mendes has submitted is issued to an entity other than the license holder. A letter from Ms. Sosa was submitted which requested the liquor license be issued under the company name which is Hungry Coyote LLC. The Adm. Asst. explained that the license can't be issued in a name other than what is approved and that this would have to be transferred.

Attorney Feodoroff explained that the insurance has been issued to the Hungry Coyote LLC and that the City must ensure that the license is issued in accordance with all applicable laws and regulations and the problem is that the insurance has been issued to an entity other than the license holder.

After a lengthy discussion, Attorney Feodoroff stated that the appropriate avenue would be for the current licensee to transfer the license to the LLC which will involve filing the necessary applications and documents by the licensee. The Adm. Asst. stated that Mr. Mendes has represented that they are operating the business under the Hungry Coyote, LLC and that entity is not licensed to sell beer and wine which also presents a problem. Attorney Feodoroff agreed that with this representation, essentially the wrong person is operating the business.

Mr. Mendes stated he called the insurance agent to have them change the name and they told him that would be illegal and they don't want to do what he is asking them to do.

The Adm. Asst. stated that it is nothing the board has done and that Mr. Mendes had decided to operate as an LLC. There have been no documents with the exception of the Certificate of Insurance that mentions the Hungry Coyote LLC and at this time, there is no information as to who belongs to the LLC. Attorney Feodoroff, again, recommended the license be transferred to the appropriate entity. It was suggested that the applications be filed as soon as possible in order for the hearing to be set up.

Ms. Tucker reminded Mr. Mendes that even if the Certificate of Insurance gets straightened out, the license cannot be issued until he submits the Certificate of Inspection also.

It was agreed that the license will not be issued until the Certificate of Insurance contains the name of license holder as approved.

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

Respectfully submitted,

Scott H. McDuffy
Acting Chairman

APPROVED:

Joseph P. Kelley, Commissioner

Paul D. Sullivan, Commissioner

Bruce G. Dansby, Commissioner

Joshua J. Wood, Commissioner

Fred Fontaine, Alternate Commissioner

Kathy Kenney, Alternate Commissioner