

TAPED

The License Commission held its regular monthly meeting on Thursday, May 19, 2011 at 6:00 p.m. in the G.A.R. Room at City Hall. Present were Commissioners Scott H. McDuffy, Paul D. Sullivan, Joshua J. Wood and Alternate Commissioner Kathy Kenney. Also present were License Agent Capt. Emanuel Gomes, Asst. City Solicitor Kate Feodoroff and Adm. Asst. Bonnie Tucker. Commissioner McDuffy presided.

1. Approval of the Minutes of the License Commission Meeting of April 27, 2011.

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

2. Approval of the following police officers as license agents for the month of June 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 Sullivan to approve the police officers as listed for the month of June, 2011. The motion was seconded by Commissioner Kenney. All members voting in the affirmative, the motion carried.

3. Requests for Special One-day Permits:

- (a) **Wine and Malt Beverages** - Brockton Library Foundation, Inc. – Robert Wychules, Manager, for a “Wine Tasting” to be held at the Main Library – 304 Main Street, on Saturday, June 11, 2011, from 2:00 p.m. to 5:00 p.m.

Present was Robert Wychules, 58 Leah Drive, who stated they have planned a wine tasting event to be held at the Main Library on June 11th. They will have George Cataldo entertaining.

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

4. Hearing on the request from the Polish White Eagle Club of Montello, Inc. – Joseph Lazorko, Manager, to serve alcoholic beverages in the parking lot outside the Club at 40 Emerson Avenue during their annual Pig Roast on Saturday, June 18, 2011 from 12:00 noon to 6:00 p.m..

Present was the manager of the Club, Joseph Lazorko, 17 Lucy Lane.

Mr. Lazorko stated they will be serving beer only outside and they will only use plastic cups. They have had this same function for the past five years.

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

5. Hearing on the request from the Brockton Fair Caterers, Inc. – Maura Carney, Manager, 433 Forest Avenue, to amend the Entertainment license to include Bull Riding Events on Saturday, May 28th and Sunday, May 29, 2011 as follows:

Saturday, May 28, 2011

Gates Open – 4:00 p.m.
Country Bands – 5:00 p.m. to 6:30 p.m.
Motorcross Show – 6:30 p.m. to 7:30 p.m.
Rodeo Events – 7:30 p.m. to 9:00 p.m.
Country Bands – 9:00 p.m. to 11:00 p.m.

Sunday, May 29, 2011

Gates open – 12:00 noon
Country Bands – 2 p.m. to 3:00 p.m.
Rodeo Events – 3 p.m. to 5:00 p.m.
Motorcross Show – 5 p.m. to 6 p.m.
Country Bands – 6:00 p.m. to 10 p.m.

Present was George Carney, 7 Chilton Road, who stated he was filling in for his daughter, Maura, who is the manager on the license. Also present was Tom Clifford, 39 Carpenter Street, Rehobeth.

Mr. Carney reviewed the requests and stated they will have police details present. He indicated they worked hard last year to keep the volume of the music down. Mr. Clifford stated they have worked hard on the loudness issues. In addition to the police details, they will have Fire Details and an Ambulance as well as 20 security people to help with noise control.

Councillor Tom Monahan, Ward Two Councillor, stated he has talked to the neighbors and they have no problem with the hours on Saturday. They had asked for a closing time of 9:00 p.m. on Sunday, however, Councillor Monahan stated where it is Memorial Day weekend, he feels the 10:00 p.m. ending time on Sunday will be fine. It is his understanding that there will be no disc jockey. Mr. Clifford stated there is no sound man.

With regard to traffic, Councillor Monahan stated that last year, all vehicles were funneled out onto Belmont Street and there was nothing going on on Thurber Ave which made the neighbors happy. He indicated it was well policed as far as the liquor, boom boxes and partying in the parking area.

Commissioner McDuffy stated it is his understanding that they have worked very hard over the past few years to make improvements and Councillor Monahan agreed.

There was no one present who came forward to speak either in favor or opposed.

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

6. Hearing on the request from RJA Corporation dba Joe Angelo's Café – 216 Main and 11 Crescent Streets to appoint Joseph R. Angelo as the manager.

Present were Attorney John F. Creedon, 71 Legion Parkway and his client, Joseph R. Angelo, 10 Arborview Terrace, West Bridgewater.

Attorney Creedon stated the present manager, Carl Simmons, is 87 and at his age has difficulty fighting and removing people from the bar who don't want to leave, Cape Verdeans mostly. He asked the Commission to approve the appointment of Mr. Angelo who is there all of the time except when he is on vacation.

Commissioner McDuffy then indicated that as of yesterday, Mr. Angelo had not brought in his license to have the hours changed which he was notified in writing to do after last month's hearing. Ms. Tucker stated that someone came in today with the licenses and the changes were made. Mr. Angelo apologized and stated he had totally forgotten to bring the license in. He stated that he is adhering to the rules. Attorney Creedon stated he would have told him to wait until the last minute.

A motion was made by Commissioner Sullivan to approve the appointment of Joe Angelo as the manager. The motion was seconded by Commissioner Kenny. All members present voting in the affirmative, the motion carried.

7. Hearing on the request from Jean Chery for a Lodging House license at 99 Warren Avenue. (License for 2011 not issued due to failure by licensee to comply with renewal requirements)

No action was taken on this matter as the applicant has not complied with Fire and Tax requirements and did not appear for the hearing.

8. Hearing (postponed from meeting of March 17, 2011) on the charge brought by the local police against Antonio Fonseca dba CJ Beer and Wine - 721 Warren Avenue, of an alleged violation of M.G.L. Chapter 138, Section 34, to wit: ". . . whoever makes a sale or delivery of any such beverages to any person under twenty-one years of age, either for his or her own use", on June 19, 2010, at approximately 5:44 p.m.

Present was Attorney Wayne Mathews, 529 Pearl Street, and his client, Antonio Fonseca.

Attorney Feodoroff swore in the following individuals

Mr. Fonseca, 17 Anania Terrace
Officer Scott Uhlman, Brockton Police

On direct examination by Attorney Feodoroff, Officer Uhlman stated on June 19, 2010 at approximately 5:44 p.m., he and Lieut. Mills were conducting minimum age requirement checks throughout the City. They went to CJ Beer and Wine and the under aged individual, who was 20 years old, purchased a 12 pack of Bud Light and was charged \$13.00. He was not asked for identification.

Officer Uhlman stated that he, Lieut. Mills and the minor, Daniel Pennellatore, dob 03/26/90, signed an Affidavit dated Jun 19, 2010, 5:44 p.m. Officer Uhlman stated this is a standard check that is run by the ABCC and they are required to attend a class before participating in this

program. Officer Uhlman stated he has been involved in the program for two years. They use Stonehill College students as their under aged operatives.

Attorney Feodoroff asked the Commission to take note of the licensee's history and Attorney Mathews objected and asked if that would be in the stages after the hearing. Attorney Feodoroff agreed to hold that information until the penalty phase.

On cross examination, Attorney Mathews questioned Officer Uhlman with regard to the length of time that elapsed from the time of the violation to the hearing notification. Officer Uhlman stated that over the course of a couple of weeks they had conducted checks of all of the licensed establishments in the City. He stated there were violations found but does not know if hearings have been held. Officer Uhlman stated they went back into the store after the sale and Jeff Fonseca told him his name. Attorney Mathews questioned Officer Uhlman because nothing in his report states they went back into the store and Officer Uhlman indicated this is outlined by the ABCC and he does not deviate from the format. When they went back into the store, they told Mr. Fonseca he had served a minor and asked for the \$13 which had been paid and returned the Bud Light to him. He told Mr. Fonseca that he and Lieut. Mills were sitting in the parking lot, observed the minor enter the store, purchase the beer and come out with it to the car. He indicated that the minor is not present this evening. Officer Uhlman stated he had filled out the report. He stated he had asked Mr. Fonseca to read it and if he agreed with the information, to sign it and if he didn't agree with it to tell him what is wrong. Attorney Mathews questioned why it wasn't dated at the bottom and Officer Uhlman stated it was dated at the top. The minor was in the store from 17:44 to 17:54.

On redirect by Attorney Feodoroff, Officer Uhlman stated it is the ABCC's policy is for the officer to go into the store if there is a purchase. He recognized Jeff Fonseca as the same person who was at the last hearing. Officer Uhlman stated he witnessed the minor, Daniel Pennellatore, signing the report on June 19, 2010.

In response to questions from Attorney Feodoroff, Ms. Tucker stated the report was received in the License Commission on July 30, 2010. The delay in scheduling the hearing was due to the illnesses of several members last summer, license renewals and a backlog of violations coming into the Commission.

In response to questions from Attorney Mathews, Officer Uhlman stated they usually run the sting operations from mid May through mid July. He stated he has not been notified of any planned operations this year which normally would start around this time.

Commissioner McDuffy expressed concern that a sale to a minor had occurred again. He stated this cannot continue and as far as he is concerned it is a very serious offense.

Attorney Mathews agreed that it is a serious offense. He then referred to Section 64 of Chapter 138 which indicates the Commission has a responsibility to give a licensee a reasonable opportunity to defend himself or present a case. He then stated that waiting nine months to notify someone that there has been a violation exceeds the time. He indicated he can't tell the board the exact period of time that is reasonable or not reasonable but submitted that nine months

is not reasonable and is something that he is entitled to. Attorney Mathews stated it is also his opinion that he is entitled to cross examine whoever the individual was that went into the store and he feels they have violated Section 64 by not giving him a reasonable opportunity to defend himself. He then asked that Mr. Fonseca be found not guilty of the offense.

Attorney Feodoroff stated that in her opinion the argument involving the reasonable delay is inapplicable, especially in this instance when the person who made the sale has been identified as Mr. Fonseca's son, Jeff, so it is not as if he does not have access to this person. In addition, the delay isn't so far in the past that it has caused an inability for him to defend himself. Further, he was notified by Officer Uhlman immediately upon finding the violation so he could have done any evidence gathering at that moment.

Attorney Feodoroff then asked that in the penalty phase, the Commission consider the prior violations. With regard to the question of relevance to the date of the signing, this has been satisfied because it is dated at the top and it is reasonably clear when this occurred. Finally, Officer Uhlman testified that he witnessed the under aged operative sign the document.

Commissioner Wood asked what the City's recommendation is. Attorney Feodoroff reviewed that the last time a minor was served which was approximately a year ago, there was a one day suspension. A three day suspension was issued when Mr. Fonseca failed to comply with the 1-day closing. She indicated the penalty should be progressive and indicated a suspension should be beyond the three days, whether it be five days or seven days, and left it to the board's discretion.

Commissioner Kenney asked who was at the store on the prior occasion and Attorney Feodoroff reviewed that Jeff Fonseca attended the meeting with Mr. Fonseca the last time. It was her recollection that Jeff had been the clerk who made the sale.

In response to questions from Commissioner Sullivan, Mr. Fonseca stated that he went to the Tips training.

With no further information presented, a motion was made by Commissioner Wood to find a violation. The motion was seconded by Commissioner Kenney. All members present voting in the affirmative, the motion carried.

Attorney Mathews asked to be heard and stated that Mr. Fonseca did receive a one-day suspension for the first sale to an under aged person. He indicated there is obviously a language barrier and he acknowledged that he missed the date of the one day suspension because he had never been given the notice after it was delivered to someone at the store. At that point the suspension was put up to three days. Attorney Mathews suggested that a three day suspension is reasonable and there is a communication gap between he and his son. He agrees Mr. Fonseca has to work with Jeff on making sure that this is not ongoing.

Commissioner Kenney asked if the Commission could make a recommendation that Jeff Fonseca not be allowed to work there in addition to a suspension of the license. Attorney Feodoroff indicated she is not sure that this can be done but is sure that if there is a communication gap, it

is clear to Mr. Fonseca that this is an issue that needs to be rectified. Mr. Fonseca stated he works there most of the time now. When he was told that a report was filed, he asked his son Jeffrey about it and was told that nothing had happened. Mr. Fonseca stated that only he has been Tips certified and that his sons have not. His son, Jeffrey, had told him that no one had come in to tell him he had sold to a minor.

A motion was then made by Commissioner Wood to suspend the license for a period of one week and to make sure that every person working in the store is Tips trained. The motion was seconded by Commissioner Sullivan. All members present voting in the affirmative, the motion carried.

9. Hearing (postponed from meetings of April 14 and 27, 2011) on the charges brought by the local police against Maria and Manuel Rodrigues dba Crystal Restaurant – 250 Main Street, of the following alleged violations observed on June 20, 2010 at approximately 1:13 a.m.:

- (a) **ABCC Rule 2.05(2)** – Permitting a disorder, disturbance and/or illegality, on the licensed premises, to wit: “exceeding the total occupancy of 50 allowed by your Certificate of Inspection.; and
- (b) **Brockton License Commission Rule #21**, to wit: “No advertising matter, screen, curtain, partition or other obstruction which in the opinion of the licensing authority prevents a clear view of the interior of the premises shall be maintained in or on any window or door thereof after said authorities have ordered the removal of such obstruction and having afforded the licensee thereof a reasonable opportunity to remove the same. The business conducted therein shall be open to public view from the sidewalk level and the establishment shall be properly lighted. No window or door facing a public way shall be obstructed by any screen or other object extending more than five feet above the level of the sidewalk on which the establishment abuts, but in no event shall any screen or obstruction prevent a clear view of the interior of said premises.

Present were Tony Rodrigues, 18 Cushing Road, who stated he would be speaking on his mother’s behalf, Maria Rodrigues, 95 Fairview Avenue.

The following persons were sworn by Attorney Feodoroff:

Officer Scott Uhlman, Brockton Police
Tony Rodrigues
Maria Rodrigues

The first witness called by Attorney Feodoroff was Officer Scott Uhlman who stated that on June 20, 2010, at approximately 1:13 a.m., he along with inspectors from the Fire Department and Building Department were making routing inspections on liquor establishments throughout the City. Cristal Restaurant was one of thirty establishments visited on that evening. The first thing

they noticed was that the windows on the front of the building had been spray painted to the point that they could not be seen in. Photographs were taken.

Attorney Feodoroff then directed the members to page three of the report which showed two photographs dated 06/20/10 and the picture with Building Inspector Frank Gazzaro. Officer Uhlman stated that Inspector Gazzaro is approximately 5'9" and the windows are blocked above that height.

Officer Uhlman stated the rule requires that you be able to see from the sidewalk up to five feet and no more than eighty percent of the window can be shaded with material blocking it. The window at the Cristal Restaurant appears to be blocked with spray paint. The door is tinted with window tint which makes it non-opaque. He stated that you can see inside but at night time it is very difficult. Officer Uhlman then pointed out the picture dated 04/11/11, which was taken approximately one year later at 4:07 p.m. in front of the building. He stated ten months after this was originally reported, the windows were in the same condition. Officer Uhlman then stated that three days ago, on 05/16/11, he took another picture which indicates the paint has been shaven down, however, the door is still not opaque. He stated if they wanted to spray paint from the top down they could do that but not from the bottom up.

Officer Uhlman stated that on March 16, 2008 he went to this establishment with the Fire Inspector. Attorney Feodoroff then submitted a copy of a call log which Officer Uhlman had printed out which was not in their packages. At that time they were at the location because of a report that they were pulling the security grates down so you could not see in. They were also doing this to block the front door because they were using the back exit and the Fire Inspector was drawn because they only had one exit to the establishment. At that time, once the grates were pulled up, they noticed the spray painting on the window. They were told they could not block the windows and would have to remove the paint.

On June 20, 2010, Officer Uhlman stated they entered the establishment and discovered that it was overcrowded by at least one hundred percent. A copy of the Certificate of Inspection was reviewed and indicates a total capacity of 50 people. Inspector Gazzaro counted approximately 110 people inside and he had witnessed him make the count.

Mr. Rodrigues stated the building is leased from the person who owns the Pawn Shop. They made numerous requests for the windows to be fixed. He stated the windows are cracked and the owner states he is waiting for funds from the façade program. They did not paint the windows. He stated that they have been going back and forth with the owner for years because the windows are damaged. He stated the windows have been measured to be replaced and it was supposed to be done this week but nothing has been started.

Officer Uhlman stated that in 2008, he and Lieut. Williams had conversation with Mrs. Rodrigues and told her specifically that she could not have the grates down nor could she spray paint the windows. She indicated she understood at the time. It has now been almost three years and the windows are still spray painted and the door is blocked. Mr. Rodrigues stated that the windows have been scraped down to about four and one-half feet from the sidewalk. Officer

Uhlman stated the reason for the rule is so they can see inside the establishment in case of a problem. The rule requires that you be able to see into a barroom if there are windows.

Mr. Rodrigues asked Officer Uhlman if there had been any notice given as far as the rule and Officer Uhlman stated that when they are given their liquor license, they are given a copy of the rules and regulations.

In response to questions from Commissioner Wood, Officer Uhlman stated that the screening cannot extend beyond five feet from the level of the sidewalk. Officer Uhlman stated that his interpretation is that it has to be completely visible from five feet from of the sidewalk.

Mrs. Rodrigues stated her lease goes for five more years. Mr. Rodrigues stated that when they were notified about the violation, he had spoken with the landlord and told him they were in trouble with the City because of his negligence in fixing the property so he had the company come down and measure the windows. The paint is now down to four feet.

Councillor Monahan stated he was down by Tamboo last night and walked by Cristal Restaurant and he looked right in.

Attorney Feodoroff stated she would recommend they make a guilty finding and that now they are in compliance and put a note on the record. She stated that the overcrowding is an issue and recommended they deal with that as they see fit.

The history of violations was reviewed which indicated in 2006 and 2007, there were after hour violations which they were found guilty of and rolled back on both.

Councillor-at-Large Jass Stewart asked for clarification on the Rule 21. He indicated he thought Officer Uhlman stated the window needed to be clear from the floor to five feet. Officer Uhlman stated his interpretation is that it must be clear up to five feet to allow them to be able to see in. Attorney Feodoroff stated the interpretation is that the window can be obscured from the ground level to five feet. Officer Uhlman stated it was originally written up because it was obscured over five feet from the sidewalk level. Councillor Stewart stated he just wants to be sure that the laws are being interpreted correctly. He stated that he does have a concern that they want to be encouraging businesses to do business downtown so he hopes that they are clear on what is being enforced and what is enforced is fair for all establishments in the City.

Lieut. LaFratta stated he understands Councillor Stewart's concern and indicated there are a lot of bars that don't have windows or the windows are up five or six feet high so you can't see in. He suggested that it seems that if someone does have windows they are being penalized for covering them. He indicated there are discrepancies and different interpretations as far as this rule goes so it might be something the Commission may want to look into.

Mr. Rodrigues stated that they have purchased Sweeney's Bar and there are windows well above six feet up that cannot be reached and certain establishments have a leeway as far as the windows.

Commissioner McDuffy indicated he feels it is a confusing rule and the important thing is that the licensee has dealt with the issue. He indicated the broken glass bothers him and can be dangerous so that needs to be fixed. Councillor Monahan suggested the Board of Health should look into that.

Commissioner McDuffy suggested that they deal with Rule 21 first and then go back to the overcrowding charge.

Commissioner Wood stated he feels there is enough confusion in the law and there is enough evidence in this case of an attempt at compliance. He recommended there not be a Guilty finding and that it be included as a reminder in the letter that is issued. He indicated it doesn't make sense to him to put it into their history where they have clearly been told and they do not have control over it and have done what they can.

Commissioner Wood then made a motion to find no violation of Rule #21 which motion was seconded by Commissioner Kenney.

Commissioner Sullivan asked if a letter would be sent to the landlord and he was told that it would not as the landlord is not the licensee. Mr. Rodrigues stated they are in the beginning phases of renovating the old Sweeney's Bar and putting an addition on it and moving the business. The Adm. Asst. reminded Mr. Rodrigues that he will have to go before the License Commission before doing that and he indicated he is aware of that.

A vote was then taken and with all members voting in the affirmative, the motion carried.

With regard to the overcrowding, Mr. Rodrigues stated he was present that evening and there is no way that there were over 100 people inside with the tables there. He stated he could not fit more than 85 people. He stated that with the band and people dancing, it could appear that there were over 100 people. He stated there is a fire sprinkler system and the doors are up to code. In response to questions from Commissioner Wood, Mr. Rodrigues stated he did not take a count of the people inside that evening. He stated they are a restaurant and it is possible that there could have been 55 or 60 people inside. There are fourteen tables and Mrs. Rodrigues stated some seat four people and some seat two. He stated that since the violation, they have put someone on the door to count how many people come in. He stated that most of their business is to go orders and people come in and wait in the hallway for the food. He stated they do not want to tell their customers they have to wait outside.

Commissioner McDuffy stated that the law is the law and it is there for safety reasons.

Commissioner Kenney indicated she feels there is reasonable evidence that there could have been more than fifty people inside and made a motion to find them guilty. The motion was seconded by Commissioner Wood. All members voting in the affirmative, the motion carried.

A motion was made by Commissioner Wood to place a letter in the file advising them not only of the limitation on the number of patrons they can have in the establishment but to also remind them regarding the visibility that is required even though no violation was found on that charge.

Commissioner Feodoroff suggested that a copy of the Rules and Regulations be included in the notice of the decision sent to the licensee.

Commissioner Wood added that to his motion. The motion was then seconded by Commissioner Sullivan. With all members voting in the affirmative, the motion carried.

10. Hearing (postponed from meetings of April 14 and 27, 2011) on the charges brought by the local police against Tamboo, Inc. – Chrismin Charlot, Manager, 252-260 Main Street, of the following alleged violations:
 - (a) **Brockton License Commission Rule #21**, to wit: “No advertising matter, screen, curtain, partition or other obstruction which in the opinion of the licensing authority prevents a clear view of the interior of the premises shall be maintained in or on any window or door thereof after said authorities have ordered the removal of such obstruction and having afforded the licensee thereof a reasonable opportunity to remove the same. The business conducted therein shall be open to public view from the sidewalk level and the establishment shall be properly lighted. No window or door facing a public way shall be obstructed by any screen or other object extending more than five feet above the level of the sidewalk on which the establishment abuts, but in no event shall any screen or obstruction prevent a clear view of the interior of said premises.”, observed on June 20, 2010 at approximately 1:13 a.m.; and
 - (c) **Brockton License Commission Rule #22**, to wit: “All doors and windows shall remain closed at all times from 12:00 noon to closing.”, observed on August 19, 2010 at approximately 2:00 p.m.

Present was Chrismin Charlot, 15 Hoosic Drive, Canton.

The following persons were then sworn by Attorney Feodoroff;

Chrismin Charlot
Officer Uhlman

On direct examination by Attorney Feodoroff, Officer Uhlman stated that on June 20, 2010 at approximately 1:53 a.m., he along with inspectors from the Fire Department and Building Department made a routine inspection of Tamboo Restaurant. Inspections were being made throughout the City. He observed the curtains were closed in the front window and attached a photograph of the picture taken which that faces Main Street. The material of the curtain was not transparent and completely blocked the window.

On March 16, 2008, he had spoken to Mr. Charlot during another inspection and told him that the windows cannot be blocked. Attorney Feodoroff then submitted a copy of the call log of this inspection which showed it was a code enforcement check and indicated he had spoken with

someone at Tamboo about removing the window coverings at that time. The only other violation noted was a broken exit light.

Officer Uhlman stated that at this establishment, the front foyer window is actually frosted. He indicated that you can see through their front door which is clear but can't see through the inside foyer window. Officer Uhlman stated that Mr. Charlot has resolved the problem by removing the window coverings.

Attorney Feodoroff indicated that there is a letter from Mr. Charlot in their package stating that the curtains have been opened and he has always been cooperative. She then told Mr. Charlot that he would be given the opportunity to testify but that he has already testified quite a bit in his letter to the Commission. She suggested that even though Mr. Charlot had been spoken to about this previously, the Commission could place a letter of warning in his file.

Commissioner Wood noted that the time the curtain was drawn was at 1:53 a.m. which presumably, is just before closing time so perhaps in this instance they had jumped the gun a little in closing up. Attorney Feodoroff indicated she had also thought about that, however, in Mr. Charlot's letter he indicated he had a couple of parties going on which were quite active.

Commissioner Kenney stated she does not see the need for a warning. Attorney Feodoroff stated that they could issue a letter advising him that he is on notice and enclose a list of the Rules. Commissioner Wood indicated he feels something should be done with the rule even if a violation is not found because the Rule requires notice and an opportunity to correct it and this is the reason why the report from 2008 was submitted. He suggested this be done formally and it be put in the file and send him a copy so there will be no confusion if this happens again. Attorney Feodoroff stated they do not need to find a violation but can put him on notice with a copy of the rules.

Mr. Charlot stated the only time he was made aware of this was when he saw Officer Uhlman and he took the curtains down the next day.

Officer Uhlman stated he had informed Mr. Charlot in 2008 of the rule and when he found the same violation again, he wrote it up because he feels he would be remiss if he didn't report a violation to the Commission.

Councillor Monahan stated he had spoken with Mr. Charlot last week and he knows not to do it again.

A motion was made by Commissioner Wood to find no violation but that Mr. Charlot be formally notified of the rules.

Commissioner Kenney asked if the motion could be amended to have Mr. Charlot respond saying he has received the instructions and understands them completely. Mr. Charlot stated he could do that right now.

Commissioner Wood stated he thinks a formal notice should be enough. Ms. Tucker stated the notices are signed for when delivered.

Commissioner Kenney then seconded Commissioner Wood's original notice. With all members present voting in the affirmative, the motion carried.

Attorney Feodoroff stated that Mr. Charlot had made a request of the Commission that the rule pertaining to the windows and doors being open be looked at and she suggested to the board that this would require quite a bit of deliberation which they are not prepared for at this time and she is sure the Brockton Police Department is not prepared to respond. She stated the request has officially been made and they can take this up either tonight or at a future meeting.

Mr. Charlot stated that when he first started with the renovation of the building, the folded windows were part of the drawing so they understood that they would be allowed to open them. He indicated that he only found out through the Board of Health at which time they installed a screen. He indicated that he does not have the windows open when there is loud music but he understands the concept of the law.

Attorney Jake Creedon stated that Chris had consulted him and he immediately told him that it is in violation of the apparent rule and he changed it immediately.

Commissioner McDuffy indicated that he has already begun to look into it and has spoken with different department heads and he feels it is fairly confusing and may need modification because it is an older rule. He stated that unfortunately, the law is the law, and the Commission has to deal with this and will look into it in the future.

Commissioner Wood indicated that he feels before they look into this, they need to get the police officers considered opinion on it because it may be that the reason for the rule is more than just noise containment. He suggested that the Law Department and Board of Health also be asked to weigh in on it. Commissioner McDuffy suggested that the Building Department also be contacted. Mr. Charlot stated the Building Department and Board of Health were the first ones to tell him he had to install a screen because of insects.

11. Hearing on the charges brought by the local police against Soares Club, LLC dba Bar Dino's – Lucindo Soares, Manager, 1002 Main Street, of the following alleged violations:

- (a) ABCC Rule 2.05(2), to wit: "No license 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 whether present or not.", on Sunday, September 5, 2010, at approximately 12:50 a.m.

Said charge arose as a result of the licensee failing to call police after an argument took place on the premises and resulted in an individual being stabbed.

- (b) ABCC Rule 2.05 (2) - Permitting an illegality on the licensed premises, to wit: "Allowing Entertainment beyond the approved hours.", observed on November 27, 2010 at 1:03 a.m.

Present was Attorney John F. Creedon, 71 Legion Parkway and his client, Lucindo Soares, 37 Johnson Street.

The following persons were sworn by Attorney Feodoroff:

Lucindo Soares
Lieut. Thomas LaFratta, Brockton Police
Lieut. Paul Bonanca, Brockton Police

The first witness called by Attorney Feodoroff was Lieut. LaFratta who stated that on November 27, 2010, at approximately 1:03 a.m., he and Det. McDermott were driving by Bar Dino's and heard music coming from inside the establishment. They entered the establishment and he spoke to the doorman and told him the music should have been stopped at least fifteen minutes prior and that the entertainment license only allows it until 12:45 a.m. The doorman did not speak English very well and kept saying it is okay. Lieut. LaFratta stated he told him it was not okay and that he had warned him previously. He had verified the time on his Nextel phone. The music had stopped playing as he walked in.

On cross examination, Attorney Creedon asked Lieut. LaFratta when he filed his report and stated the report was written on November 27, 2010. He stated he could see Lucindo Soares inside as he was talking to the doorman. This was not the first time he has had conversation with the doorman about the music playing late and the doorman kept repeating it was okay. He stated he has given him verbal warnings in the past which have gone unheeded so he felt it was time to write him up. Lieut. LaFratta stated he did not talk to Lucindo Soares that night.

Commissioner Wood indicated he knows they are not considering previous uncharged conduct in this case but stated he feels it is important because it goes in part to the state of understanding on the part of the bar owner. Lieut. LaFratta stated he tries to educate the people before writing them up for a violation and only writes them up after it seems they are not paying attention. He said he has had two or three conversations with people at the bar about the entertainment being played beyond the allowed hours.

Mr. Soares stated Lieut. LaFratta had only showed up one night at about 10:00 p.m. and told him the entertainment had to stop at 12:30. He told the lieutenant that his license goes until 12:45 a.m. Lieut. LaFratta came back a couple days later and stated he was mistaken and agreed that it could go until 12:45 a.m. Mr. Soares stated he is there every day and always makes sure the DJ's stop on time. Sometimes he only has the ipod playing but always keeps an eye the time. On the night in question, Mr. Soares stated he was there but did not see Lieut. LaFratta.

Lieut. LaFratta stated that he was under the impression that everyone who has a license had to shut the entertainment down one-half hour prior. He has since learned that the entertainment licenses are not uniform. This occurred about a year ago and in fairness to Mr. Soares, he did go

back to let him know he was mistaken and that his license went until 12:45 a.m. On November 27, 2010, the entertainment was definitely still going on after 1:00 a.m. He stated he does not always see Mr. Soares there but he has told the individual who works the door.

In response to questions from Attorney Feodoroff, Lieut. LaFratta stated when he stopped by at 10 p.m., it was as a courtesy and there is no obligation on his part to remind the owner of the time of his license. He indicated he tries to do things in a fair way to all the bars.

In response to questions from Attorney Creedon, Lieut. LaFratta stated that Mr. Soares runs a pretty good place, however, he pushes it to the limit by allowing people in at 12:55 a.m.

The next witness called by Attorney Feodoroff was Lieut. Paul Bonanca who stated that on September 5, 2010, he went to Bar Dino's. At about 12:30 p.m., Rashid Gomes-Sanchez was stabbed while inside the bar and transported to the Brockton Hospital where he was interviewed by Det. McDermott. He told Det. McDermott that he had been rushed by a few individuals and stabbed in the abdomen. Rashid said he exited the bar and hid while the suspects rushed out and disappeared. He then collapsed on the hood of a cruiser that was nearby. Officer Keith Boehner went into the bar as well as Lieut. Bonanca. He asked Mr. Soares for the video and was told that it was not working at the time. Lieut. Bonanca stated he reminded Lucindo that he is suppose to be calling police when something happens at the bar and he said he knows but he tried to rush everyone out right away. Lieut. Bonanca stated there was blood stains found inside the bar. He reviewed the 911 call logs and there was a call made to police but it was an anonymous caller who stated there were fifteen people fighting outside the bar. The call log shows no calls being made from the bar.

Lieut. Bonanca stated he spoke with the bartender and she stated she didn't see anything. Mr. Soares told him he didn't see anyone with a knife.

On cross examination by Attorney Creedon, Lieut. Bonanca stated a couple weeks after the incident he and the gang unit arrested the defendant whose name is Elio Duarte. Duarte had been picked out from a photo array by the victim. That case has not gone to trial yet. It is his recollection that Mr. Soares stated he was going to be getting a new video system and since the incident has indicated it is in place. There have been occasional problems at the bar and for the most part, Mr. Soares is cooperative. Lieut. Bonanca stated he submitted the reports to the License Commission shortly after the incident.

On redirect, Lieut. Bonanca stated there was blood evidence found at the scene and the victim stated he was in the bar and Mr. Soares indicated he hustled people out of there after the fight.

Attorney Feodoroff asked Ms. Tucker to state the reason for the delay in scheduling the hearings and she stated that it was due to the illness of several of the commission members last summer, a backlog of other violations and lack of time due to license renewals.

Mr. Soares then testified. He stated that people are allowed to smoke in the back of the building and he went to tell them they had to leave because it was after 12:45 a.m. When he came back in, he started to close the bar. While he was counting the money, a detective walked in and

asked him why he hadn't called the police. He asked the detective why and was informed that there was a big fight inside. Lucindo stated he told the detective he hadn't seen a fight. He asked the bartender who said there was no fight. He stated he asked a few other people and they said the fight was outside. They told him the person who was stabbed was found near the church. He said he looked for blood but couldn't see any. There was no video and he told a detective this. On September 25th, he had a new video system installed.

In response to questions from Attorney Feodoroff, Mr. Soares stated that the bartender was inside the bar the entire time he was outside checking on the smokers. He stated he has told his employees to call the police if they see a problem.

In response to questions from Commissioner Wood, Mr. Soares indicated he saw no evidence of any conflict in the bar. There was loud music being played during this time. The lights are kept down before closing. He stated he was looking for blood all over the place but could not find any. He spoke with a few officers and told them the fight took place outside and that the individual had been stabbed outside.

Lieut. Bonanca stated that the victim said he was stabbed inside the bar and Plymouth County BCI took photographs that night of the blood inside the bar. Mr. Soares stated he did not see anyone come in with cameras. Lieut. Bonanca also stated that he told Mr. Soares that when there is a fight, he is to call police and Mr. Soares said I know and I'm sorry. Mr. Soares indicated he said he was sorry because he never saw the fight.

Commissioner Wood stated he would like to ask one more question which might seem irrelevant but he wanted to know where the case is now. Lieut. Bonanca stated the case is currently in District Court and is up for trial.

Attorney Feodoroff suggested to the Commission that it is evident that a stabbing occurred inside the bar and it is also evident that it was during the time that Mr. Soares was outside in the back. However, he has admitted that the bartender was inside. She stated it is incredible to suggest that a stabbing took place inside the bar without being seen by the bartender. There is blood evidence as well as photographic evidence of the blood inside the bar as well as Mr. Soares not being aware that BCI was in the bar. She indicated there could be a lot of things that Mr. Soares is not aware of but his employee was present at the time and the employee has been instructed by Mr. Soares to call the police if any incident occurs and there was no call by the establishment. The fact that the victim was found elsewhere is irrelevant because a person can be stabbed and leave the scene and many times they do not want to cooperate with police. From the police report, there is evidence that the assailant had also been stabbed but ran from Brockton Hospital when he saw police arrive.

Attorney Feodoroff further suggested that someone in the employ of Mr. Soares observed the incident and chose not to call police which is a direct violation.

With regard to the after hours report, Attorney Feodoroff stated Lieut. LaFratta is a credible witness and specifically checked his Nextel for the exact time before going into the bar and noted that the music was playing well after the hours allowed on Mr. Soares Entertainment license. In

addition, Mr. Soares supported Lieut. LaFratta's testimony that he has made a courtesy call previously to inform him of his hours. She asked the commission to find violations on both incidents.

Attorney Creedon indicated that the testimony from Lieut. Bonanca indicated he did not see a stabbing, did not hear an argument and did not present any evidence of blood inside or outside. The police report is total hearsay and the commission should start bringing in the witnesses who were involved in the incidents. He stated Mr. Soares had a good record and he followed up with the video installation.

Attorney Creedon further suggested that with regard to the notice, when evidence is fresh it gives the respondent and violator the ability to check things out and he had no ability to do this. Attorney Creedon suggested the reason for the delay in scheduling the hearings is because Mr. Soares wanted a 2 a.m. license. He stated that from a policy situation, it is unfair that with the charge of permitting an illegality, real evidence must be found other than police testimony and hearsay with no witness to indicate there was something he could have done to prevent this incident. Attorney Creedon stated to find him in violation, they should find some real evidence and not just rely on the lieutenants and police officers who work for the commission. As far as the after hour situation, it was testified to that it was 1:03 a.m. and was probably a violations.

Attorney Feodoroff indicated before the hearing is closed, she would like to clarify a legal error which Attorney Creedon made. She stated that this Commission is not a Court of law and they are well within their rights to accept hearsay. Nothing further than the police reports is required as evidence because they are an administrative body and the standard for review is not guilty beyond a reasonable doubt as it would be in a criminal court. It is the substantial evidence and not only does the commission have the hearsay evidence in this case, but they also have the direct testimony of Lieut. Bonanca which says that BCI went to the scene, took photographs of the blood as well as his own observations. She stated that for Attorney Creedon to suggest that there is neither direct evidence, nor hearsay evidence, is wrong. In addition, this isn't a question similar to last month's hearing where you are permitting a disorder. This is a question of what your response is when a disorder happens and the obligation is to call the police.

Attorney Creedon then commented that when each of the members took their oath, they swore to uphold the constitution of Massachusetts and the federal government. He stated with that is the implied absolute consent that they will give someone a fair hearing and listen to the evidence that is credible. He suggested that direct evidence is the best way to convince them that this exact thing happened, not the hearsay or testimony of the officers that they have commissioned to collect the evidence for them.

In reference to Attorney Creedon's argument that he is the only licensed attorney on the board, Commissioner Wood stated the notion of the constitutional requirement is a sliding scale depending on the type of sanction that they are seeking and due process is not one thing all of the time. It is a lot of different things depending on the type of penalty that is being imposed. He further stated that in a criminal court of law, there is a standard of proof and a lot of procedural protections that do not apply here. He indicated that from his perspective in listening to Lieut. Bonanca and listening to Mr. Soares' testimony, there is an issue of credibility when BCI shows

up to take photographs and it is presumed, they are not called out to take photographs of nothing. He stated he is troubled that nothing was done and that maybe Mr. Soares didn't see the fight occur but there was blood evidence in the establishment and the police were not called. He reviewed that the victim has told police that he was stabbed in the bar. He stated that even if the victim was summonsed he probably wouldn't show up and the commission has different abilities from the courts to get people in to testify.

In response to questions from Commissioner McDuffy, Mr. Soares stated that the bartender no longer works there. He was reminded that as the manager, he is responsible for what his employees do. He stated that he feels his employees may have seen something and chose to avoid it. Mr. Soares stated the doorman is a friend of his and just helps him out. They do search people when they enter the bar. He has hired two more security people to search everyone. Mr. Soares stated he is there seven days a week and always calls when there is a problem.

With no further evidence presented, a motion was made by Commissioner Wood to find a violation of ABCC Rule 2.05(2) on September 5, 2010. The motion was seconded by Commissioner Kenney. All members present voting in the affirmative, the motion carried.

A second motion was made by Commissioner Kenney to find the licensee guilty of violating ABCC Rule 2.05(2) by allowing entertainment beyond the approved hours. The motion was seconded by Commissioner Sullivan. All members voting in the affirmative, the motion carried.

With regard to the penalty, Commissioner Wood asked to hear from the attorneys.

Attorney Feodoroff then reviewed the history of this licensee which consisted of a violation of purchasing alcoholic beverages from other than a wholesale which occurred in 2010. A letter of warning was issued and all servers were required to attend a tips course.

Lieut. LaFratta stated there is no doubt in his mind that the entertainment went beyond the approved hours. He indicated he also understands that Mr. Soares has a 1:00 a.m. license and he cannot compete with the 2:00 licensees so he does not want to see his hours pulled back from 1:00 a.m., however, he would just like a guarantee from the licensee that he will follow the rules.

Attorney Creedon stated his client does not have a bad record and he has tried to be in compliance. Mr. Soares is there all of the time and he feels it is a control issue for this board. Attorney Creedon suggested he be given a warning and not have his hours rolled back. With regard to the stabbing incident, Mr. Soares and his bartender had little or no ability to do anything because the people flew out of the place.

Attorney Feodoroff indicated she agrees with Lieut. LaFratta that it is not an egregious violation for the entertainment violation, however, the stabbing incident is somewhat disturbing and she indicated she feels Attorney Creedon is missing the point which is not in preventing the stabbing but calling the police after. She stated that even if they believe that Mr. Soares did not witness the incident, his bartender was in the bar when it occurred. She indicated that they need to have responsible employees to get their patrons help.

Commissioner Wood indicated he, too, is disturbed about the stabbing and that someone could get killed which could end up closing the business altogether. He stated that as a citizen of Brockton, he would be afraid to go to a bar where he wasn't assured that if something were to happen, the police would be called.

Attorney Feodoroff suggested that the hours might be rolled back to 12:30 for a period of time.

Commissioner Wood asked Mr. Soares what sanction they could fashion that would create an incentive for him and Attorney Creedon indicated they could give him either a 1 or 3 day suspension which will cost him in the pocket. He further stated that if the Commission is going to adopt what this Administration's position is as well as that of the Brockton Enterprise, to roll back everyone's hours without going on an individual basis then they should probably roll him back to 12:30 a.m. Commissioner Wood indicated that he is not suggesting that and he wants to do something that makes sense for him as a business person but also gives some sense of peace of mind.

Attorney Feodoroff then indicated that they could also consider that he has installed a new video system so there is some sense that he is trying to make sure the protections are in place.

Commissioner Kenney then asked Mr. Soares if there are any other safety measures aside from the video system. Mr. Soares stated before he didn't have anything but now he has two security people working from Thursday through Sunday as well as two new bartenders who are tips certified.

Commissioner McDuffy then commented on the entertainment and indicated he knows how hard it is to clear everyone from an establishment and made the recommendation that the entertainment be put back to 12:30 a.m.

Commissioner Wood then made a motion to rollback the hours on the entertainment license to 12:30 as it relates to the after hours violation and with regard to the stabbing incident, to rollback the closing hour to 12:30 a.m. for a period of one week and during that time, the Entertainment must stop at midnight.

The motion was not seconded.

A motion was then made by Commissioner Sullivan to close the business for three days over a weekend.

The motion was not seconded.

Commissioner McDuffy then seconded Commissioner Wood's motion.

Commissioner Wood stated that he feels something needs to be done which is more radical than just a warning. He indicated he feels this is serious and that people got hurt. He stated he is not 100 percent sure how personally responsible Mr. Soares was but he needs to be made aware that he needs to be personally responsible and he needs to be properly incentivized to be 100 percent

on top of what is going on in his bar at least as it relates to violence and also as it relates to when the entertainment ends. He further stated that he feels it should not hit him so economically hard that he ends up failing as a business so even taking a whole weekend away seems it would really hit him in the pocketbook in a way that is more punitive than his own personal guilt.

Commissioner Wood further stated he thinks something needs to be done to impress upon Mr. Soares just how serious this is. He indicated the one week rollback should send a message that more might be to come.

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

12. **POSTPONE** Hearing on the charges brought by the local police against Brockton Phalanx, Inc. dba Pisces Lounge – Alexander Strangis, Manager, 816-818 Main Street, of the following alleged violations reported on February 26, 2011 at 1:00 a.m.:
 - (a) ABCC Rule 2.05 (2) Permitting an illegality on the licensed premises, to wit: “Allowing Entertainment beyond the approved hours.”; and
 - (b) ABCC Rule 4.04(1)(c), to wit: “No licensee or employee or agent of a licensee shall sell, offer to sell or deliver to any person or group of persons any drinks at a price less than the price regularly charged for such drinks during the same calendar week, except at private functions not open to the public.”
13. Communications
14. Any other business to properly come before the Commission.

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

Respectfully submitted,

Joseph P. Kelley
Chairman

APPROVED:

Paul D. Sullivan, Commissioner

Bruce G. Dansby, Commissioner

Joshua J. Wood, Commissioner

Scott H. McDuffy, Commissioner

Fred Fontaine, Alternate Commissioner

Kathy Kenney, Alternate Commissioner