

TAPED

The License Commission held its regular monthly meeting at 6:00 p.m. on Thursday, July 14, 2011, in the G.A.R. Room at City Hall. Present were Chairman Joseph P. Kelley; Commissioners Paul D. Sullivan, Bruce G. Dansby, Scott H. McDuffy, and Alternate Commissioners Fred Fontaine and Kathy Kenney. Also present were Capt. Emanuel Gomes, Asst. City Solicitor Kate Feodoroff and Administrative Assistant Bonnie Tucker.

1. Approval of the Minutes of the License Commission Meeting of June 16, 2011.

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

2. Approval of the following police officers as license agents for the month of August 2011: Capt. Emanuel Gomes; Lieuts. Thomas LaFratta and Paul Bonanca; Sgts Frank Vardaro and Kenneth Lofstrom; Dets. Michael Schaaf, John Lonergan, James Smith, Ernest Bell and Nazaire Paul; and Officer Scott Uhlman.

A motion was made by Commission Kenney to approve the police officers as listed as license agents for the month of August which motion was seconded by Commissioner McDuffy. All members voting in the affirmative, the motion carried.

3. Requests for Special One-day Permits:

- (a) **Wine and Malt Beverages** – Brockton Firefighters Local 144 – Daniel Foye, Manager, for the annual softball tournament to be held at 80 Perkins Avenue on Saturday, September 24, 2011 from 11:00 a.m. to 11:00 p.m.

Present was Daniel Foye, 525 Torrey Street, who stated this is for the annual softball tournament. There will only be beer sold. He has requested hours to 11:00 p.m., however, he indicated the event usually ends earlier. Commissioner Sullivan reminded Mr. Foye that if beverages are taken outside, they must be in plastic containers.

A motion was made by Commissioner Fontaine to approve the one-day permit which motion was seconded by Commissioner McDuffy. All members present voting in the affirmative, the motion carried.

4. Hearing on the request from Club National Franco-American of Brockton, Mass. – Steve Pickett, Manager, 170 Court Street, to serve alcoholic beverages on the grounds outside the Club on Saturday, July 23, 2011, from 12:00 noon to 9:00 p.m.

Present was Steve Pickett, 22 Aspen Street, who reviewed that the request is to serve alcoholic beverages on the grounds outside the Club for the Club's annual chicken and steak bake. Everything will be poured into plastic cups.

A motion was made by Commissioner McDuffy 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 Brockton Post #1046 V.F.W. – Daniel J. Redd, Manager, 283 North Quincy Street, to serve beer and wine on the grounds outside the Club on Saturday, August 6, 2011, from 1:00 p.m. to 5:00 p.m.

Present was Daniel Redd, 146 Court Street, who stated this will be the Club's annual family picnic and they would like to serve beer outside. It will be poured into plastic cups.

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.

6. Hearing on the request from Robert Pellegrine dba Robert's Auto Sales – 954 Centre Street, to amend the stipulation on the Class II Used Car Dealer license by increasing the number of vehicles on the lot for sale to 15.

Present was Robert Pellegrine, 32 Partridge Way, Hanson, MA.

In response to questions, Mr. Pellegrine stated his license currently stipulates that there be no more than ten cars on the lot for sale with no more than three vehicles displayed.

Capt. Gomes stated he had gone to the location on July 12th and observed the lot from the outside only. He indicated he doesn't have a problem with the fifteen vehicles although it might be a little tight. He requested that any of the vehicles parked along the public way be tucked back as far as possible. Mr. Pellegrine indicated he had been keeping nine vehicles out there and it became a problem so with the new plan it has been cut back to five. He stated they can also put five or six vehicles inside the building.

Chairman Kelley reminded Mr. Pellegrine that if they approve the fifteen, it is for the total number of vehicles on the lot including the cars inside the building. Upon reviewing the plan, it shows a total of 18 vehicles which includes any vehicles there for repair.

Commissioner Kenney then questioned spaces numbered two and nine. Capt. Gomes indicated there is a fenced in area but his major concern would be with the spots in the front along the public way.

A motion was made by Commissioner Dansby to approve the amendment to the stipulation to read, "No more than eighteen (18) vehicles on the lot with no more than fifteen (15) for sale." The motion was seconded by Commissioner McDuffy. All members voting in the affirmative, the motion carried.

7. Hearing on the request from Kwok Fan, Inc. dba Bamboo Chinese Cuisine for a Common Victualer license at 1285 Belmont Street.

Present was Heng Yong Yang, 3 Garfield Street, Taunton.

Mr. Yang stated that he plans to open in a couple of months. He has his Building Permit and is renovating the premises. He was advised that he will need all of the inspection approvals prior to opening.

A motion was made by Commissioner Fontaine to approve the Common Victualer 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 Crescent Variety, Inc. – Denise Wilson, Manager, to transfer the Wine and Malt Package Store license at 163-165 Crescent Street to Thi & Giai, LLC dba Crescent Variety – Thi Minh Do, Manager.

Present were Attorney Khuong Nguyen, 1582 Dorchester Avenue, Dorchester, representing the buyers. Also present was Thi Minh Do, 48 Parkman Street, Dorchester, 1 Turning Mill Lane, Randolph and Denise Wilson, 365 Forest Avenue.

Attorney Nguyen stated that his clients are looking to continue the same business at this location. Along with the sale of beer and wine, they will be selling tobacco, lottery, milk and dairy products which are what is there now. The hours will remain the same. Both applicants are Tips certified.

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

9. Hearing on the request from Avon Auto Brokers, Inc. – Dana Nessen, Pres., holder of a Class II license to sell second-hand motor vehicles at 8 Montello Street, to add a second location at 985 Belmont Street.

Present was Dana Nessen, 24 Marshall Lane, No. Easton.

In response to questions from Chairman Kelley, Mr. Nessen stated the new location will be at 985 Belmont Street. The plan is for a total of 80 vehicles which includes handicapped parking spaces, customer parking and employee parking. This location was formerly Kentucky Fried Chicken. Mr. Nessen stated he will be using the existing building; however, it will be cleaned up.

Capt. Gomes stated he would have no opposition to this site. He then asked Mr. Nessen which spaces would be for customer parking and he indicated all of the spaces in the front are for customers who could pull in and park. Capt. Gomes indicated there appears to be plenty of access as well as the side access road which is shared with the Gas Company and Fed Ex. He stated it is a large parcel of land which is currently not being used.

Commissioner McDuffy indicated he is not familiar with having more than one location on a license. He asked if separate licenses are need. The Adm. Asst. stated that the law does not prevent more than one location on a license; however, past practice has been to not allow a second location due to the restriction on the number of used car dealer licenses in the City.

Chairman Kelley asked Mr. Nessen if there is a reason he did not apply for a new license and he indicated that Bonnie had informed him there are no new licenses available. He stated he does have a current license at 8 Montello Street. Chairman Kelley reviewed that there are no licenses available and in order to go forward with the business, he would have to do it as an add on. He reviewed that the Commission has restricted a second location in the past so it is going against some of their own practices although it is legal to do. He stated from his perspective, it will clean up an eyesore with a viable business.

Commissioner Kenney indicated that some of the used car dealers had been closed and the Adm. Asst. reviewed that the City Ordinance restricts the number of Used Car Dealers based on the population and in recent years the population has decreased based on the City Census so the number of licenses have dropped.

Attorney Neil Siskind, 360 Belmont Street, was present and stated that John Santilli was suppose to be present to speak on the splitting of the license. Attorney Siskind stated that Mr. Santilli is interested in applying for a license and was told there are not any licenses available. He stated that by splitting a license into two locations it is essentially issuing another license.

Chairman Kelley told Attorney Siskind that his comments will be taken into consideration but the fact is, it is legal to have a second location and it will be a decision of the board to go off the beaten path and allow it.

Commissioner Dansby indicated Mr. Nessen runs a good business and it will take care of an eyesore he passes by daily.

Commissioner McDuffy asked if it could be stipulated that if licenses do become available, he should apply for a second license. Chairman Kelley indicated that if licenses become available and Mr. Nessen wants to apply for a second license as a course of business, that would be up to him but it would not be necessary.

Commissioner McDuffy indicated he is familiar with Mr. Nessen's business and he does not have a problem with his business, however, he is concerned with other businesses that might not run good operations doing this and Chairman Kelley indicated these could be dealt with on a case by case basis.

Commissioner Fontaine asked Attorney Feodoroff her opinion and she indicated it is legal for this to be done and the board must apply the same standards as they would in any situation.

With no further information to be presented, Chairman Kelley stated that there are two alternates present and although they can participate in the conversation, only one can vote. The Adm. Asst. indicated that Alternate Commissioner Fontaine had been called to fill in this evening so it was agreed that he would vote on the matter.

A motion was made by Commissioner Fontaine to approve the additional location at 985 Belmont Street on the current license which motion was seconded by Commissioner McDuffy. All members voting in the affirmative, the motion carried.

In response to questions, Mr. Nessen stated he hopes to open in a few months but has to clean up the property first.

10. Hearing on the charge against Emysafari Dance Club Corp. – Christian Ekechukwu, Manager, 22-26 Perkins 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”, reported on June 4, 2011, at approximately 12:45 a.m.

Present was Christian Ekechukwu, 22 Flintlocke Road, Randolph.

Attorney Feodoroff stated that in preparation of tonight’s hearing, she had done some research to determine what the burden of proof would be and she had come across a case called Tiki Lounge v. ABCC. She reviewed that what that case stands for is that a bar owner’s license may not be revoked unless they have actually made the sale themselves to the minor. She indicated that the bar owner does not necessary have the obligation to insure that a third party does not hand off the alcohol to a minor. Attorney Feodoroff stated she had spoken with Lieut. LaFratta who has indicated that neither he nor the other officer had observed the minor being served so she advised the Commission that there is not sufficient evidence to proceed against Mr. Ekechukwu.

Attorney Feodoroff stated she had spoken with Mr. Ekechukwu prior to the meeting and suggested to him that he may not want to do the 18+ night and he agreed it was something he might consider. She indicated that this is something the Commission might want to consider in revising its rules because it is difficult to monitor.

Chairman Kelley stated he is blindsided by this information that they were not aware of this beforehand because there is a police report filed stating there was a young under aged girl in there with an ID and she clearly had liquor in her hand. He stated he would still like to go through with the hearing. He commented to Mr. Ekechukwu that it is clear that he (Mr. Ekechukwu) does not understand where the board is coming from and that anytime he has been before them, he has not acted appropriately and to have someone under the age of 21 in there at 12:45 a.m., with alcohol in their hands, he stated he does not feel the law should be interpreted to justify that as being reasonable. He asked Attorney Feodoroff how this is justified.

Attorney Feodoroff stated she agrees and it is disturbing because the purpose of the law is to protect minors from alcohol but this case was exactly on point. In reviewing the case law, she stated there was a bar with an 18+ night and a third party passed off the beer to a minor. The ABCC had ruled in the City’s favor but it was overturned. Attorney Feodoroff stated she thinks the licensee could have been noticed differently to include permitting an illegality.

Chairman Kelley stated the police reports indicate there were many very young people in there at 12:45 a.m. and it was the night of the high school graduation. He asked Mr. Ekechukwu if he feels this is a good business practice.

Mr. Ekechukwu stated no one in his establishment has ever sold or delivered any alcoholic beverages to anyone under the age of 21. He stated that in 2006 he was told not to have any

Teen nights and he has never done that since. The Chairman asked Mr. Ekechukwu how many teenagers were at his establishment that night and he said he could not say. He then asked him how he is going to conduct business and whether he is going to continue to allow people under 21 into his establishment. Mr. Ekechukwu stated he will work harder to keep people under 21 out of the place. He stated he has two people at the door checking ID's and the only forms of identification he accepts are Mass Drivers licenses and Passports.

Chairman Kelley asked if it would be reasonable for the Commission to amend his license today in order to prevent this activity in the future and he asked Mr. Ekechukwu if he would be agreeable to adjust his license not to allow anyone in his establishment who is under 21. Mr. Ekechukwu stated he would be very glad to do this if they make everybody do it. To this comment, Chairman Kelley stated to Mr. Ekechukwu that he is not hearing anything that has been said and he has the opportunity to do something positive. He suggested that he not put conditions on the Commission about what he will do it if everyone else does it.

Chairman Kelley stated he would like to make this part of his license if everyone is agreeable and asked Capt. Gomes for his input. Capt. Gomes stated that one of the recommendations previously made by the Police Dept. was to prohibit under 21 nights citywide because of similar situations as tonight with the case law and the impossibility of enforcement control by the police department. He indicated the chance of having a police officer on premises and observing someone deliver the alcohol to the under aged person is almost impossible.

Chairman Kelley indicated he is willing to assist the licensee by not allowing anyone in under the age of 21. Attorney Feodoroff stated she feels it makes more sense to take it up at a hearing and make it an official rule of the License Commission. She stated she was also shocked to find this case but she does not want to mislead the Commission.

At this time, Lorenzo Monteiro came forward and stated he was present that evening and had seen the officers. He stated the event was a family event which was an 18th birthday party along with a high school graduation party. He stated the drink that the girl had could have been a Red Bull. Attorney Feodoroff indicated the officer had reported that the drink smelled of alcohol. She indicated the reality is that the monitoring of this type of event is too difficult because they are teenagers.

Chairman Kelley acknowledged that there will be a hearing on the under 21 rule next month but with this particular licensee, there have been a lot of underage problems in this establishment and he has been before the Commission on several occasions and has a record. He stated he does not see him doing anything positive to help the Commission in making their decisions and he would like to go forward with regulating the under 21. He indicated this is one of the few establishments that does not exhibit good behavior and he was just approved for a 2:00 a.m. not that long ago. Commissioner Dansby reminded Mr. Ekechukwu that a 2:00 a.m. license is a privilege. Commissioner Kenney indicated it was she who made the motion to grant the 2:00 a.m. license based on the fact that he swore he would not be before the board again.

In response to questions from Commissioner Dansby, Mr. Ekechukwu stated he was on the premises the night of this incident and that the police officer had come to him. He stated that

anyone who did not have identification could not buy alcohol. Commissioner McDuffy asked him if there was alcohol being served and minors present and he stated yes. He then suggested to Mr. Ekechukwu that it would be best for him not to allow anyone under 21 in at all. Attorney Feodoroff stated that in a civil setting, he would be liable if the girl got into an accident. She stated there is a serious risk to the bar owner even if it is going on without his knowledge.

Commissioner Kenney asked if it is the City's position that with an alcohol license, under age people are allowed in the facility but cannot drink. She then indicated that she agrees with Mr. Ekechukwu that this needs to be done Citywide and Chairman Kelley stated that is the intention of the hearing in August, however, his concern is this operation between now and the hearing because there is no intention on the licensee's part to change this. He then asked Mr. Ekechukwu if the rule does not get passed, will he still allow people under 21 in and he stated he will not allow them. Chairman Kelley asked Mr. Ekechukwu if he is willing to make the commitment that he will not have anyone in under 21 and he stated he will post signs at the door that no one under 21 should be allowed inside. Chairman Kelley stated he would like to make him responsible that he doesn't allow anyone under 21 into the club.

Lieut. LaFratta indicated he agrees with the Chairman and that a decision has to be made this evening, specifically to this bar, that no one under 21 should be allowed inside and that down the road a citywide regulation be put into effect. He agreed that it is not only impossible for the bar owner but for the police to regulate it. He stated that at the present time, the place is not properly supervised and there are people sneaking in the back door and a lot of under aged people hanging around there. He stated they were allowing girls under 18 in but not the boys and they are hanging around in the parking lot and it is a bad situation. He stated that if the License Commission has the authority to prevent him from allowing under 21 in, they should do this immediately and do this City wide.

Attorney Feodoroff advised the Commission that if they are going to make an amendment to his license, they will have to convene a hearing and take testimony.

Commissioner Sullivan asked what they are going to do with the Clubs with the under aged people. Lieut. LaFratta stated most of the Clubs do not allow people under 21 in. Attorney Feodoroff stated this is the point for the hearing next month.

Commissioner McDuffy asked Attorney Feodoroff if the new rule is approved, when can it be enforced and she indicated if they pass it on August 10th, it can be enforced immediately. Both Commissioner McDuffy and Chairman Kelley indicated they feel there is a weakness in this particular case. Chairman Kelley stated that if this does not get approved City wide, this licensee gets off the hook again.

The Adm. Asst. suggested they table the matter until after the hearing on the rule change.

Chairman Kelley asked Mr. Ekechukwu if he is getting the message and he stated he is. Commissioner Dansby stated that in his opinion, serving minors is the most egregious offense. He indicated that regardless, the alcohol came from his establishment and in his opinion he served it.

Commissioner Dansby stated that based on the counsel's recommendation, he feels the matter should be tabled at this time. Chairman Kelley stated that if this is going to be tabled he would like it to be tabled to be heard right after the hearing on the Rule Change hearing.

A motion was then made by Commissioner Dansby to table this hearing to the August 10th meeting. The motion was seconded by Commissioner Kenney. With all members present voting in the affirmative, and Chairman Kelley opposed, the motion carried.

Commissioner McDuffy reminded Mr. Ekechukwu that everyone present heard him promise that he will not let anyone 21 in.

11. Communications

It was agreed that hearings will be scheduled on reports submitted by Officer Uhlman concerning Trim Line Auto Sales, North Star Automotive and Brockton Fair Caterers.

With regard to the Brockton Fairgrounds alleged violations, Commissioner Kelley suggested that the Councillors who have appeared in support of the events at the Fairgrounds be subpoenaed in to the hearing. He indicated that they cannot be allowed to walk away on this and leave it hanging on the License Commission. Commissioner Kenney recalled that the operators of the Fair had assured the Commission that they would fixed everything that had been an issue at prior events. Chairman Kelley indicated he feels it is unfair because it is left in the Mayor's lap and the Licensing Board.

Attorney Feodoroff indicated she lives three miles away and thinks she can hear the car racing events. The Adm. Asst. indicated that not all of the car events are properly licensed during the Fair.

Chairman Kelley then reviewed a letter from Commissioner Fontaine concerning the License Commission meetings and indicated he feels it is worth having a discussion on it. He then read the letter dated June 30, 2011 into the record.

Commissioner Fontaine indicated he had intended to send this letter a long time ago and just wants to protect the board members and the City because people are watching. He then referred to a matter where an alternate was sitting in and a regular member arrived late and took part in the vote even though he was not present for most of the discussion.

Attorney Feodoroff indicated she feels Commissioner Fontaine makes a good point and in the future, when a commissioner does arrive late, they should refrain from voting on that matter. She is confident that it was an oversight. She also asked Commissioner Fontaine to bring it up at the time if this does occur in the future.

Commissioner Kenney indicated that she has not experienced this during the year she has served as an alternate commissioner. She did question that if an alternate is recognized as being present at the beginning of a meeting and a regular member arrives after the meeting starts, why does the

alternate need to step down. Chairman Kelley indicated that the alternates may participate in the discussion, however, there can only be a vote of five members. He indicated he agrees that it is only right that if an alternate is in place at the start of a matter then the alternate should be allowed to remain seated through the vote on the particular matter.

Attorney Feodoroff then reviewed that at times if a regular member has a conflict on a particular matter, the alternate would step in on the matter for the discussion and then vote and step down. The Adm. Asst. reviewed that in the past if a member has a conflict on a particular matter, they step away from the table in order to avoid any confusion in the vote.

Attorney Feodoroff also suggested that if a commissioner arrives late, this should be noted in the minutes.

It was reviewed that there will be a special meeting on August 10, 2011 to discuss the proposed rule changes. It was agreed that there might be a large number of people attending and it was requested that another venue such as the Little Theatre at the High School be booked. The Alternates were requested to come to add to the discussion. Chairman Kelley reviewed that there were a number of different proposals and he requested that the legal department review the wording.

Attorney Feodoroff also advised the commissioners that it would not be a violation of the open meeting law if they want to send her comments. She cautioned them not to send any comments to each other.

A letter from Attorney Feodoroff to Bay State Motors was reviewed. She explained that this was as a result of a letter sent by Mr. Fathi regarding his repair license.

Commissioner Kenney then stated that while on the Brockton Rox Website she came across an advertisement for "Thirsty Thursdays" where they are advertising drinks for \$2.00. She indicated that she did mention it to one of the license agents but never got a reply but it has since been removed from the Rox's website.

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

In addition to the special meeting scheduled for August 10th, the Commission's next regular meeting will be held on August 18, 2011.

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