

**TAPED**

The License Commission held its regular monthly meeting at 6:00 p.m. on Thursday, August 18, 2011, in the G.A.R. Room at City Hall. Present were Chairman Joseph P. Kelley; Commissioners Bruce G. Dansby, Joshua J. Wood and Scott H. McDuffy. Also present were Asst. City Solicitor Kate Feodoroff, License Agent Captain Emanuel Gomes; and Administrative Assistant Bonnie Tucker.

1. Approval of the Minutes of the License Commission Meeting of July 14, 2011.

A motion was made by Commissioner McDuffy to approve the minutes of the meeting of July 14, 2011. The motion was seconded by Commissioner Dansby. All members present voting in the affirmative, the motion carried.

2. Approval of the following police officers as license agents for the month of September 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 Nazaire Paul; and Officer Scott Uhlman.

A motion as made by Commissioner Wood to approve the police officers as listed as license agents for the month of September, 2011. The motion was seconded by Commissioner McDuffy. All members voting in the affirmative, the motion carried.

3. Requests for Special One-day Permits:

- (a) **All Alcoholic Beverages** – Brockton Firefighters Local 144 – William Hill, Manager, for a fundraiser at 80 Perkins Avenue on Saturday, September 17, 2011, from 12:00 noon to 11:00 p.m.

Present was Steve Mclean, 15 Belcher Avenue, who stated he was present for Bill Hill who could not attend the meeting tonight. Mr. Mclean stated this is their ninth annual motorcycle fundraising event and they are requesting a one day liquor license. The money that is raised from this event will go into the union fundraising account to benefit local charities.

Paperwork being in order, a motion was made by Commissioner Wood to approve the one-day permit which motion was seconded by Commissioner Dansby. All members voting in the affirmative, the motion carried.

- (b) **All Alcoholic Beverages (4 Permits)** – Annunciation Greek Orthodox Church – John Kolentsas, Manager, for the annual Greek Food Festival to be held at 457 Oak Street from Thursday, September 15, 2011 thru Sunday, September 18, 2011 during the hours of 11:00 a.m. to 12:00 midnight.

Present was John Kolentsas, 200 Boxwood Lane, Bridgewater, who reviewed the request which is for four one-day all alcohol licenses for the Greek Church annual Food Festival. Mr. Kolentsas stated they have made all arrangements for police details.

A motion was made by Commissioner Wood to approve the four permits as requested. The motion was seconded by Commissioner McDuffy. All members voting in the affirmative, the motion carried.

The Chairman announced that the next agenda item which the commission will hear is Agenda #13.

**4. Hearing on the request from Brockton Fair Caterers, Inc. – Maura J. Carney, Manager, 433 Forest Avenue, to amend the Entertainment license to include the following:**

- Sunday, September 11, 2011 – Wheels of Time Car Show – 10:00 a.m. to 6:00 p.m.
- Wednesday, September 14, 2011 – Northeast RV & Recreation Vehicle Show – 8:00 a.m. to 6:00 p.m.
- Sunday, September 25, 2011 – Rodeo & Concert – 12:00 noon to 8:00 p.m.
- Saturday, October 1 and Sunday, October 2, 2011 – South Shore Auto Swap & Demo Derby – 7:00 a.m. to 7:00 p.m.
- 

(This request was heard after Agenda Item #13)

Present were George Carney, 7 Chilton Road, Chris Carney, 61 Saltmeadow Road, Hanover and Thomas Clifford, Rehobeth.

Mr. Clifford stated the Wheels of Time Car Show has been held at the Fairgrounds for the past 20 years. He stated it is an oldies type of auto show put on by Joe Dutcher.

Capt. Gomes stated he would have no concerns with this event.

A motion was made by Commissioner McDuffy to approve this event. The motion was seconded by Commissioner Dansby. All members voting in the affirmative, the motion carried.

Chairman Kelley reviewed that the requested event scheduled for September 14, 2011 has been withdrawn.

Mr. Clifford reviewed that the Auto Swap and Demo Derby which is scheduled for October 1<sup>st</sup> and 2<sup>nd</sup> is like a flea market geared towards automotive items. There are spaces set up for people to sell their goods. In the afternoon, there will be the North East Demo Derby which will be held from the infield in front of the grandstand. On each day, there will be a couple of local bands playing music until 7:00 p.m. at the latest.

Ms. Tucker reviewed that their liquor license does not allow patrons to be on the premise prior to 11:00 a.m. on Sunday and 8:00 a.m. the rest of the week. Mr. Clifford stated they've held flea markets at the fairgrounds previously. Ms. Tucker informed Mr. Clifford that they are governed by the state liquor laws and Mr. Clifford indicated they will not be serving any liquor. Ms. Tucker informed Mr. Clifford that even if they are not serving alcohol, they are still licensed

under the provisions of M.G.L. Chapter 138, Section 12 and they should perhaps consider giving up their license and coming in for one-day liquor licenses when there are events planned. Mr. Clifford stated he does not understand the legality and they will not be selling any liquor until 12 or 1 p.m. He asked if these rules apply to the Brockton Fair and she stated they do.

Chairman Kelley then reviewed for the licensee that they currently have a general license for the Fairgrounds and one-day licenses might be easier where they wouldn't be governed under the general license. Mr. Clifford stated that these are fundraising events and they thought they could get a nice fall crowd in. Chairman Kelley stated that the event is not the question and advised him that they cannot have patrons on the premise prior to their licensed hours. Mr. Clifford was advised that the alternative would be to do one-day permits, however, they would have to surrender their year round license before they could apply. Mr. George Carney said to forget it and told them move on. The Adm. Asst. stated they pay for and are issued a full license which should be open year round.

Chairman Kelley stated that if they agree to change the hours of this event to 11:00 a.m. to 7:00 p.m., the Commission can vote on the request tonight and they can then make a decision on whether or not to change the status of the license at a later date.

Capt. Gomes stated he does not have issues with the demolition derbies which have been held in the past without incident provided they adhere to the closing hour.

A motion was made by Commissioner Wood to approve the request subject to the modification of the hours to 11:00 a.m. to 7:00 p.m. on Sunday. The motion was seconded by Commissioner McDuffy. All members voting in the affirmative, the motion carried.

With regard to the request for the Rodeo and Concert request for September 25, 2011, from 12:00 noon to 8:00 p.m., Chairman Kelley stated that he held this until last in order to discuss some conditions and requested input from Capt. Gomes.

Mr. Clifford reviewed that this request is for a rodeo. They will have a different security force in place along with the Brockton Police paid details. There will be more and better signs posted and detail police at the gate. He indicated he does not know if they are permitted to go into people's personal vehicles but there will be a bigger, better and more diligent force in the parking which will prevent any alcoholic beverages in the parking lot.

Chairman Kelly read into the record a letter from Councillor Timothy Cruise dated August 18, 2011, which stated he was unable to attend the meeting, however, he asked that certain stipulations be considered for the various events being requested at the Fairgrounds. Councillor Cruise indicated he has no issue with most of the events and realizes the importance of the Fairgrounds to host events to best use the property, however, the rodeo request has proven in the past to be a troublesome event with the noise factor, the inability to finish the music at the required time and with the traffic leaving. Councillor Cruise requested that if the Commission decides to approve the rodeo, that the following stipulations be added:

- No personal coolers or alcoholic beverages, including in the parking areas;

- All attendees must be out of the parking lot within 45 minutes of the end of the approved hours;
- All detail police must remain in attendance until the parking lot is empty; and
- No personal music set up in the parking lot.

Capt. Gomes reviewed that the complaints received at the last rodeo were not really about the event but all of the issues had to do with the parking lot. He stated this is a unique and cultural event and the bull riding is very big in the Brazilian culture. He stated there has to be controls and asked the Commission to weigh in on some of his comments.

Capt. Gomes then indicated he had issues with the way the event was promoted and that the promoter should make people aware of what time the gates open. He would like to see some limitations with regard to when the gates open so that people do not arrive three or four hours prior to the beginning of the event. He stated they have to be careful on how vehicles are handled at the gate in order to prevent backups on the street which will occur if each vehicle is checked as it enters the Fairgrounds. In addition, they have to be concerned so that they don't disrupt the nearby businesses and residential areas. He stated he would like to meet with the licensee a day prior to the event in order to make plans for the parking lot and to make sure the cars are off the road as quickly as possible in order to keep Route 123 open. From a police standpoint, he is looking to delegate two platoons of four officers to be dedicated to the parking lot. He stated the issues with the drinking and noise need to be quelled from the get go. At the last rodeo, there were no issues once everyone was into the venue and the noise was not attributed to the bull riding but to the vehicles outside. He stated he does not want to see the secondary security handled by the promoter because there is no way to hold them accountable.

Capt. Gomes stated that the adherence to the hours has to be key and that he has been contacted by the city councilors in that area. The police officers need to remain on the premises after the event until everyone has cleared out. He stated that if the event ends at 7:00 p.m., the officers will need to stay on the premise in order to move the crowd out. Capt. Gomes indicated he feels it is important that people be educated on the time the gates open, that there is a concentrated plan to get the cars off the road and that there be security people on the grounds ready to deal with the problems at the get go. He stated that if the police are not there from the beginning, it can be dangerous for them if they need to make arrests and they will be lost from the scene if they are tied up with arrest reports. Capt. Gomes stated they did get complaints of noise from the last rodeo and the noise was a big issue so this has to be quelled early on.

Chairman Kelley asked for any comments in response to Capt. Gomes' recommendations and Mr. Clifford indicated the recommendations are all attainable. He stated they had talked about the boom boxes being brought in and stated this is a cultural thing. When they are asked to turn the boom boxes down, they do, but fifteen minutes later they turn the volume back up. He stated they had an alternative plan to park the vehicles in the infield and to put some box trailers up to muffle the sound from the cars.

Commissioner Wood indicated it seems like an easy thing to fix by not allowing people to bring boom boxes into the parking area. He indicated a security guard could make them turn their cars off. He asked if this would ruin the event and Mr. Clifford stated he thinks that many

attendees would not come but if those are the parameters the Commission requires they will abide by this. Commissioner Wood stated he is just asking if that would cut down on the number of patrons that come to the event to such a degree that it would make it not profitable. Mr. Clifford stated he does not believe it would.

Mr. George Carney stated that they did not know who the security was that had been brought in by the promoter. He stated that he has worked with Capt. Gomes for a number of years and if he wants a certain number of police officers on, they will go along with whatever Capt. Gomes recommends and if he recommends four officers in the parking lot they will go along with that. Commissioner Wood pointed out that Capt. Gomes is suggesting two platoons of four officers in the parking lot and asked if that is realistic. Mr. Carney stated no, because they don't need that many around with the people themselves. Chairman Kelley indicated it seems like a good policing strategy to control it from the beginning.

Mr. Chris Carney agreed that their license is not an everyday license and if there are problems in October, they do not realize the problems until the following spring. He stated they have no problem putting an officer on the gate and two platoons in the parking lot. They will put up signs for no open containers of alcoholic beverages and they won't allow any drinking. They will also make them turn the radios off in the parking lot and force the people inside.

Chairman Kelley stated they also have to regulate how the event is promoted and must get the message out that they cannot have liquor or boom boxes. He suggested they could hand out leaflets as they enter in addition to having the information advertised by the promoter. He indicated the quicker they can get the people into the venue the better. Mr. Clifford stated it is just a one day event.

Capt. Gomes stated this is primarily a noise issue that can be addressed but they have to get out in front of it. He stated it is key for the City not to have complaints about the noise and to be a good neighbor to all of the residents that live there year round by addressing and quelling the noise problems and to make sure they stay focused with the stipulations.

Chairman Kelley indicated he also feels there is a way to negotiate with the promoter that in lieu of their security, they will put on extra details.

Mr. Chris Carney stated they try to keep the venue as open as possible. He stated there are 70 acres and it is getting harder every year. They try to tell the neighbors that they were here before them but it doesn't seem to matter. He stated that during the Fair, they take around 25 calls a day, even when the Rox use the fairgrounds to shoot off their fireworks. He stated it is a very difficult place to manage.

Attorney Feodoroff indicated she does not usually weigh in on applications, however, since her prosecution was involved in the prior hearing, she wanted to suggest that they could set hours that the parking lot can be open and closed. The Chairman indicated this is the type of information the promoter has to get across to the patrons.

Commissioner McDuffy commented that he had some concerns about the rodeo event and he is very happy to see that it is only going to be one day; that the hours have been changed and they have indicated they are willing to work with the police department.

Chairman Kelley then stated that Councillor Monahan had arrived and asked him if there was anything he wanted to say.

Councillor Monahan stated that as long as everything goes along, he will agree with the recommendations of Capt. Gomes. He stated the only problem they had was with the noise a little bit. During the Fair, he stated he really doesn't get many complaints. He stated he knows Tom (Clifford) is trying to work with the announcer and the P.A. System and the Boom Boxes.

Commissioner McDuffy then made the motion to approve the rodeo event on September 25, 2011 provided the licensee works with the Police Department to remedy some of the issues.

Commissioner Wood asked if Commissioner McDuffy's motion is subject to the gates opening and closing time being set, stopping the cars at the gate and a meeting before with police officers to make sure traffic isn't backed up.

Capt. Gomes asked how many people they anticipate and Mr. Clifford stated 5,000.

Attorney Feodorff advised the Commission that for the purpose of the record, they should make their stipulations clear.

Commissioner Wood then stated that he is amending Commissioner McDuffy's motion that they should have a set open and close time.

Capt. Gomes stated that he wants everyone to know that even if this event goes without any problems, a full report will be filed with the License Commission.

Commissioner Wood then continued with his amendments to the motion which will be subject to the following stipulations:

1. The gates have a set opening and closing time to be worked out between Capt. Gomes and Mr. Carney;
2. That there be some means of stopping the cars as they enter the Fairgrounds, to be worked out between the Police Department and Mr. Carney;
3. That two platoons of four officers are assigned to the parking lot area;
4. That secondary security should not be responsible for all of the security at the venue;
5. That the police officers stay on scene until everyone is gone; and
6. That all cars are turned off with the radios off after they are parked.

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

**5. Hearing on the request from Giannaros, Inc. – 430 Main Street to appoint Nicolas T. Giannaros as the manager.**

Present was Nicolas Giannaros 98 Allen Road, North Easton, who stated that his father, Charles Giannaros, who was the manager of record for many years had passed away this year.

Paperwork being in order, a motion as made by Commissioner McDuffy to approve the request which motion was seconded by Commissioner Wood. All members present voting in the affirmative, the motion carried.

**6. Hearing on the request from The DeLeon Group, Inc. dba Subway to transfer the Common Victualer license at 768 Centre Street to Radha Corporation dba Subway.**

Present was Jay DeLeon, 133 Hart Street, Taunton and Sokhum Vang, 1040 Highland Avenue, Fall River.

Mr. DeLeon reviewed that he is selling his business to Radha Corporation and is requesting to transfer the Common Victualer license.

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

**7. Hearing on the request from Soila Blanco dba Tavarez Grocery for a Common Victualer license at 721 Warren Avenue.**

Present was Edwin Surun, 14 Chester Avenue who stated he is present with his mother, Souila Blanco, 14 Chester Avenue.

The Adm. Asst. reviewed that the paperwork is in order with the exception of the department inspection approvals.

A motion was made by Commissioner McDuffy to approve the license pending receipt of the department inspections. The motion was seconded by Commissioner Dansby. All members voting in the affirmative, the motion carried.

**8. Hearing on the request from Absolute Auto Sales, Inc. – 1008 Centre Street, to amend the stipulation on the Class II license by increasing the number of vehicles allowed from 25 to 38.**

Present was Robert Samuels, 107 Ferris Avenue, the owner of the business.

Capt. Gomes stated he has reviewed the request and there is more than enough room for the additional vehicles.

Chairman Kelley advised the licensee that if they approve 38 vehicles then that is the total number be allowed on the lot. Mr. Samuels asked if this would include repair vehicles and was informed that it includes all vehicles. It was reviewed that the plan shows a total of 43 vehicles on the lot and Mr. Samuels stated his request was only for the cars for sale. The Chairman told him he could amend the request to 43 vehicles so that his repair and personal vehicles would be covered. He indicated he would like to go forward as is and was told he could come back with a new plan.

A motion was made by Commissioner McDuffy to approve the amended request for 43 vehicles on the lot. The motion was seconded by Commissioner Dansby. All members present voting in the affirmative, the motion carried.

**9. Hearing on the request from Yamato Japanese Steak House Inc. – Zhen Kui Tian, Manager, for an All Alcoholic Restaurant license at 510 Westgate Drive.**

Present was Zhen Kui Tian, 165 W. Main Street, Plainville, CT, who stated he will be the manager of the restaurant which will be located in the former Pizzeria Uno building at Westgate Mall. He hopes to open as soon as possible. Chairman Kelley indicated he thinks that TIPS Training for all help serving alcohol should be a requirement.

Paperwork being in order, a motion was made by Commissioner Wood to approve the license with the stipulation that all waitstaff and bartenders receive TIPS training. The motion was seconded by Commissioner McDuffy. All members voting in the affirmative, the motion carried.

**10. Hearing on the request from Burger King Corporation – 606 Belmont Street to extend their hours of operation to 24 hours seven days. (Current hours of operation are Inside- 6:30 a.m. to 1:00 a.m.; Drive-thru – 5:00 a.m. to 2:00 a.m.)**

Present was Douglas Whyte, 33 Minot Light Avenue, Scituate who stated he is the District Manager. Also present was Mauro Fabrini, Hopedale, MA.

Mr. Whyte reviewed the request and stated they are currently open from 5:00 a.m. to 2:00 a.m. and they are looking to keep the drive thru open 24 hours. This will not apply to the inside of the restaurant which will continue to close at 11:00 a.m.

Capt. Gomes stated he has not had the opportunity to speak with the applicants, however, he has reviewed the request. From a police standpoint, they would be vehemently opposed to this. He stated it has nothing to do with the way they operate their restaurant but with the clientele it would bring in for so many hours. He stated they do not have the police manpower to patrol this all night. There is a large parking lot and there have been issues in the past and it is sometimes almost impossible to deal with it up until 2:00 a.m. They are located right off the highway and with texting, word travels rapidly that this is the place to hang out. He stated that there have

been serious cases of violence, including murders, at some of the all night gas stations that also serve food.

Attorney Feodoroff stated that the City's position is that the ordinance was put into place in order to address the type of business this might attract and that if this is granted, others would follow so she cautioned the board to tread carefully in their consideration of this request.

Chairman Kelley stated that he would agree with Capt. Gomes and with the City's position that there is not enough police manpower to patrol this and he is very familiar with the operation.

Mr. Whyte then stated that their competitor, Taco Bell, is open until 3:00 a.m. and he asked if they could be open until at least 3 a.m. Ms. Tucker stated that Taco Bell only has approved drive thru hours until 2 a.m. and Chairman Kelley asked that Capt. Gomes have this checked out.

Commissioner McDuffy then stated that the history of all night operations in the City is not very good. Mr. Whyte stated they have hired details during the Fair as well as after school and have also installed more lighting in the parking lot.

A motion was made by Commissioner Wood to deny the request which motion was seconded by Commissioner Dansby. All members voting in the affirmative, the motion to deny carried.

**11. Hearing on the charges brought by the local police against Jonas Garcon dba North Star Automotive – 301 North Main Street of the following alleged violations:**

- (a) Registry of Motor Vehicles has notified this board that the dealer plates have been revoked after hearing on May 23, 2011 at which time the hearing officer found that the licensee was not complying with RMV Rules/Regulation and was at fault on violations of
  - (1) Chapter 90, Section 24B RMV Forge/Misuse; and
  - (2) Chapter 90D, Section 32: Misuse of a dealer reassignment form (DRT-1)
- (b) Failure to keep proper records as required by M.G.L. Chapter 140, Section 62.

This matter was postponed at the request of Attorney John Creedon.

**12. Hearing on the charges brought by the local police against Trim Line of Boston/South Shore, Inc. – 159 North Main Street that the dealer plates were revoked after hearing on August 25, 2010 for the following reasons:**

- (a) Business has not been open to the public since April 14, 2010;
- (b) The licensee is not principally and substantially engaged in the licensed business.

Present was Robert Belcher, 590 Truman Parkway, Hyde Park.

Attorney Feodoroff swore in Mr. Belcher and Officer Scott Uhlman of the Brockton Police Department.

Attorney Feodoroff then explained that this action was prompted as a result of action taken by the Registry of Motor Vehicles in revoking Trim Line's Dealer Plates after a hearing. It was found that the licensee did not have the basic requirements for issuance of a Section 5 Dealer Plate where they were not open to the public and not principally and substantially engaged in business.

Attorney Feodoroff reviewed for the Commission that Mr. Belcher's license had been modified to reduce the number of vehicles from 25 to 15 but the license Commission had not revoked the license and Officer Uhlman is present to testify to the fact that cars have not been on the property or for sale on the property.

Officer Uhlman then stated that Trooper Tavares of the Section 5 Division did an inspection and found there was no display and no place for the public to conduct business. There is no power to the building and there is no place for Registry or Police officials to inspect documents and records.

Commissioner Wood asked if Mr. Belcher had stopped doing business after the Commission reduced the number of vehicles on his license. Officer Uhlman stated there have not been any cars displayed for sale and no electricity to the business, so the RMV felt the dealer plates should be taken away.

Mr. Belcher stated that what Officer Uhlman has stated is not true and the distress situation which he finds his corporation in is due to actions taken and initiated by Officer Uhlman and those who work along with him. He stated they are responsible for turning off the water to his property in 2009. He stated his house is in foreclosure and he is very stressed out because of the situation. He has a tax obligation of \$15,000 a year to the City of Brockton which he does pay. He has a mortgage on the property and he is operating his corporation under duress. He stated that the City of Brockton has painted a picture that he is some sort of bad guy and Scott Uhlman has consistently done this.

Chairman Kelley asked Mr. Belcher why he has no cars on the lot. Mr. Belcher stated that all of the cars had been towed off of his property by Scott Uhlman. This included construction equipment and all of his records. He indicated this is going to end up being a legal matter. Mr. Belcher stated the RMV took his dealer plate and this was orchestrated by Scott Uhlman. He stated that he has had the Dealer Plate since 1993 and has never violated it. Chairman Kelley stated that Officer Uhlman does not dictate the responsibility of the RMV. He then asked Mr. Belcher why he needed a Dealer Plate if there are no vehicles. He stated he has always used a dealer's plate to sell cars and under his dealer license, he has to sell cars every year. He stated that his rights have been completely ignored as a businessman. At the RMV hearing, Officer Uhlman had testified that there is no water and no electricity. He indicated this is true because the City of Brockton had turned it off. He did not owe any money for his utilities and the City Inspectors had walked in and turned everything off for their own reasons. He stated that this has left him in a very distressful situation. He indicated that he feels his rights have been violated

and yet he is responsible as a businessman to pay his taxes which he does. He stated he still struggles to pay the mortgage on the building. With regard to their being no cars, he stated he is in such a financial bind it has reduced him to wholesaling. He indicated that the RMV had asked him to show proof that he sold vehicles which he did, however, they still revoked the plate. He then presented records to show he had sold vehicles. Mr. Belcher stated it is a large piece of property but he is struggling to survive in business.

In response to questions from Commissioner Wood, Mr. Belcher explained that when he wholesales a vehicle, he gets a vehicle quickly and cheaply. He has a customer's list and his customers can contact him anytime and he will get a vehicle they are looking for and sell it to them. Due to his present situation, when he gets a vehicle, it is on his property for a short period of time. He stated his customer base is reduced because of his financial distress. He stated he takes offense to them saying he is violating the use of his license.

Chairman Kelley advised Mr. Belcher that he is licensed to sell cars from this location and if he is selling vehicles from any other location, he is in violation. Mr. Belcher stated the cars are sold from that location. Chairman Kelley again reviewed the decision from the RMV and Mr. Belcher stated it was not true. He was informed that he would have to take it up with the RMV.

Commissioner Wood asked why the City wants to revoke the license and Chairman Kelley reviewed it is because he is not in business. Commissioner Wood indicated it does not hurt the City in any way and Mr. Belcher has said he is engaged in business and the only proof that he is not in business is that people driving by his property do not see cars.

Attorney Feodoroff explained that according to the RMV hearing officer's decision which to some extent the Commission is bound by, they found that this structure is not open for business and it does not have electricity. She stated the RMV held a hearing and they determined that this business was not sufficient. Commissioner Wood asked if the Commission has to make that same determination and Attorney Feodoroff indicated that the findings have been made and they are persuasive. She stated that there has been testimony that there are no cars on the lot; there are no for sale signs and there is not an open and active business being conducted. Commissioner Wood stated Mr. Belcher has shown records that he has sold vehicles and the only evidence that he is not selling them from the property, presumably, is because Officer Uhlman has driven by and not seen them open for business. He then asked Officer Uhlman if this was correct.

Officer Uhlman stated that if he went to the business location to inspect the records, he would have to inspect them with a flashlight in the dark. He stated the Wiring Inspector had shut the power off to the building due to safety violations. The power has been off since December, 2009.

Chairman Kelley stated that they are not only acting on the complaint from the officer, there is also a complaint by Trooper Tavares of the Mass State Police Compliance Unit who came up with the same conclusions as the City's Code Enforcement Team.

Commissioner Wood asked if Mr. Belcher could come back in the future to apply for a license and the Adm. Asst. informed him there are no Used Car Dealer licenses available.

Officer Uhlman then explained to Commissioner Wood that Mr. Belcher had a license for four cars on the outside of the building and 91 cars had been towed out of the business in December 2009 after he had been given three weeks to have them removed on his own. He had a garage license for nine cars inside the building and there were over thirty. Councillor Denapoli is in the process of having the garage license revoked. The Auto Body license was taken away because of non-compliance. He stated he has no idea why the license gets renewed every year. He was given this information from the Title Five Division of the RMV saying they had taken away his dealer plates because he is not fit enough to be a dealer.

Mr. Belcher stated he operates under extreme conditions and there is plenty of sunlight coming into his building to conduct the business and he is selling cars. He stated he invested in the City of Brockton. He stated he has a huge financial investment. Mr. Belcher admitted he did have 91 cars on the property back in 2009.

Mr. Belcher stated he had called Mr. Creedon at the time his water was turned off and was told there were electrical violations. He then hired an electrician who came in and indicated he did not understand this.

Chairman Kelley asked if he has rectified the problem and Mr. Belcher indicated he pulled a permit and hired a plumber and did what he is suppose to do. In response to questions from Chairman Kelley, Mr. Belcher stated they refuse to turn his water back on.

Commissioner Wood then indicated he might vote differently if there was a plan in place and perhaps table the matter for a couple of meetings but Mr. Belcher has indicated there is no way that can happen. Mr. Belcher stated it is coming down to a huge legal issue and he has hired an independent investigator to deal with this issue and certified letters have been sent to the City of Brockton alerting them to the fact that they have violated the law and his Civil Rights.

Commissioner Wood asked Mr. Belcher if there is any way in the near future he could be able to get this business up and running to such a degree that the electricity could be on so that Officer Uhlman could inspect the books or whether the legal entanglement is so great that he does not see any way he could do this in the near future. Mr. Belcher stated he has never stopped physically working in order to get them to turn on the water and electricity. He stated there are no outstanding taxes owed on the property. Chairman Kelley then asked if he could be up and running in thirty days and Mr. Belcher stated no.

Attorney Feodoroff then reviewed that Mr. Belcher has met with City Officials and it is now two years later and there is still no plan to rectify the situation. Mr. Belcher stated it is being worked on with the legal commission he is dealing with.

Commissioner Wood then asked Mr. Belcher if his lawyers are working on a lawsuit against the City or working to get his electricity and water up and running again. Commissioner Wood told

Mr. Belcher he did not have to answer the question if he did not want to. Mr. Belcher stated they are working on all issues.

Commissioner Dansby then indicated there is a difference between wholesale and retail and that typically when you retail, you retail to the public. He then asked Mr. Belcher what he meant when he said he only wholesales. Mr. Belcher stated he only used that term but is still selling to the public.

Commissioner McDuffy then stated he was in favor of giving him some time but in reviewing that this matter goes back to 2009, he does not know what good that would do at this point.

Commissioner McDuffy then made the motion to revoke the Class II license. The motion was seconded by Commissioner Wood

Commissioner Wood then stated for the record that the reason he is seconding the motion is much like Commissioner McDuffy and he does not think that based on the somewhat vague statement by his lawyers that they are working on a number of issues that there is a plan in place by which in the near future he could get up and running. He stated for that reason he feels he cannot qualify to have a license.

A vote was then taken and with Commissioners McDuffy, Wood and Kelley voting in the affirmative and Commissioner Dansby opposed, the motion carried and the license was revoked.

**13. Hearing on the charges brought by the local police against Brockton Fair Caterers, Inc. – Maura J. Carney, Manager, 433 Forest Avenue, of the following alleged violations:**

**A. May 29, 2011**

1. 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.” (4 counts)

Said charge is being brought as a result of reports of the following incidents at the licensed premises:

- a. 5:03 p.m. – Brockton Fire Department received a call from Brewster Ambulance Company on scene at the fairgrounds that there was an assault on a female patron;
- b. 5:10 p.m. – Brockton Fire Department received call from Brewster Ambulance Company on scene at the fairgrounds that there was a large fight at the grandstand area and it was unknown if weapons were involved;
- c. 7:29 p.m. – Sgt. Hallisey, the supervisor on scene at the fairgrounds called in a knife fight; and

- d. 7:46 p.m. – An unknown caller reported a large fight up on the hill by the State building that a male party was bleeding.

**B. May 29 and 30, 2011**

**ABCC Rule 2.05(2)** – “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.” - Violation of Article II. (Nuisances), Section 14-19(4) of the Revised Ordinances of the City of Brockton – All unnecessary or unauthorized noises and annoying vibrations...”, reported at various times throughout the day; and

- C. **Brockton License Commission Rule 19 (Restaurant licenses)**, to wit: “Patrons are not permitted to bring alcoholic beverages on the premises for their own consumption, observed on May 28, 2011 at approximately 4:03 p.m.

After the Chairman read the above charges into the record, the following persons present were sworn by Attorney Feodoroff:

George Carney, General Manager Brockton Agricultural Society and General Manager for Brockton Fair Caterers, Inc.

Thomas Clifford, 39 Calvin Street, Rehobeth, who stated he helps the Carneys run the property at the Brockton Fairgrounds

Chris Carney, 61 Saltmeadow Lane, Hanover

Officer Scott Uhlman, Brockton Police Department

Sgt. William Hallisey, Brockton Police Department

The first witness called by Attorney Feodoroff was Officer Scott Uhlman who stated he works for the Brockton Police Department as a Code Enforcement Officer and a License Agent. On May 28, 2011, he went to the Brockton Fairgrounds after receiving calls from Chief of Police William Conlon and Ward Two Councillor Tom Monahan who had received calls about the loud music coming from the Fairgrounds. At the time, he was on Thurber Avenue and it was quiet in that area. He then drove around to Belmont Street and when he neared the Visiting Nurse Building, he could hear a loud thumping which was rattling the windows in the cruiser and vibrating license plates on the floor of his vehicle. At the time, he was on the phone with Chief Conlon and the noise was extremely loud. When he went into the Fairgrounds, he observed people in cars, campers and trucks who appeared to be tailgating and partying. They were playing loud music and were drinking from open containers of alcoholic beverages. It was an open air type of event which was located inside the fairgrounds area.

Officer Uhlman stated he observed people drinking from beer cans, beer bottles and plastic cups and carrying them from the parking lot area into the Entertainment venue. In his opinion, it was prevalent throughout the crowd and they were not attempting to hide the alcohol. On multiple occasions, he observed people taking alcoholic beverages onto the grounds. He observed one

person carrying two Corona bottles by a security guard who was wearing a shirt with "Security" written on it.

Officer Uhlman stated that along with his written report, he submitted some police logs. He briefly reviewed the log items which consisted of the following:

On Saturday night, 5/28/11, at 21:43, there was an accident. The police report reveals a neighbor had his lawn run over. After the man crashed his truck, he got out of his truck with his cowboy hat on and walked into the rodeo.

On 5/29 at approximately 7:30 p.m., Officer Uhlman stated he heard a radio transmission from the private ambulance company that was on scene at the Fairgrounds and they reported that a female was being assaulted by her boyfriend who ran off in the area of Staples.

On Sunday, 5/29 at approximately 17:10, the Brockton Fire Department received another call from the ambulance company that there was a large fight in the grandstand area. It was unknown if there were weapons involved.

On Sunday, 5/29/11 at 19:29, Sgt. Hallisey, the supervisor on the scene at the Fairgrounds, called in a knife fight.

On Sunday, 5/29/11 at approximately 19:46, an unknown caller reported a large fight on the hill by the State house and a male party was bleeding.

Attorney Feodoroff stated she had no further questions of Officer Uhlman at this time.

Attorney Feodoroff asked Mr. Carney if he had questions of Officer Uhlman and he stated he was going to ask him more questions than he expects. Mr. Carney stated he had eleven police officers there to take care of the crowd. He indicated he has been involved with the Brockton Fair for fifty years and has owned several packages stores and bars and has never had a liquor violation in any of the operations.

Chairman Kelley then explained to Mr. Carney that they have to ask direct questions.

Mr. Carney stated he just wanted to give a little background about himself and he stated he is not an attorney. He then asked Officer Uhlman if he had reported to Sgt. Hallisey when he went to the Fairgrounds.

Officer Uhlman stated he had spoken with Sgt. Hallisey by telephone and in person. Mr. Carney then told Sgt. Hallisey to get up because he had a couple of questions to ask him and Attorney Feodoroff explained that she would be calling on Sgt. Hallisey but would take one witness at a time. Mr. Carney stated he was at the Fairgrounds on both days and asked Officer Uhlman if he was there on Saturday night. Officer Uhlman stated he was not there.

Officer Uhlman then stated that he is a license agent and gets the calls as they relate to a licensed premise. On 5/29/11 at 2:06 p.m., he was working the day shift and was checking on a noise

situation as noted in the first log item. Mr. Carney asked Officer Uhlman if he was on his (Carney's) payroll or the City's payroll and Officer Uhlman stated he was working for the City. Officer Uhlman said he received phone calls from Councillor Monahan and from the Police Chief who both asked that he check on the noise situation at the Fairgrounds. He stated he found it was out of control. He referred the information to Sgt. Hallisey who was the supervisor of the detail. Officer Uhlman stated he was trying to get a hold of Mr. Clifford and Sgt. Hallisey informed him that he was in conversation with Mr. Clifford.

In reply to questions from Mr. Carney, Officer Uhlman stated he was there on Saturday. He was also there on Sunday. The parking lot was out of control. Sgt. Hallisey and his men were trying to get it under control. Bottles of beer were flowing from the parking lot into the entertainment venue. He continued to read from the log item which stated there is a standing liquor license and private alcoholic beverages should not be brought onto the property. This is not only a City violation, but it is also a State ABCC violation.

Officer Uhlman indicated there were multiple phone calls and everything he had done on Saturday is listed in the report. Officer Uhlman stated he was there on a loud noise complaint on Saturday. Mr. Carney then asked Attorney Feodoroff who she would be calling on next because he does not know the protocol.

Attorney Feodoroff then explained to Mr. Carney that she would conduct the direct examination of Officer Uhlman and he (Mr. Carney) has the right to cross examine him and ask him any questions and then she can re-direct. She said she will then bring up Sgt. Hallisey and ask him questions and then Mr. Carney could cross examine him.

Attorney Feodoroff then indicated she wanted to make sure the record was clear and asked Officer Uhlman if he had observed open containers in the parking lot in addition to the loud noise and Officer Uhlman stated he had. On that same day he had observed tailgating, people drinking out of plastic cups and people going into the fairgrounds with the open containers. He stated he was given a police report regarding an incident that happened at the fair and as a license agent had reported it to the License Commission based on the police record.

Mr. Carney asked Officer Uhlman if he had notified anyone in his management about the problems and Officer Uhlman stated it is in his report that he asked Councillor Monahan for Mr. Clifford's phone number because he was trying to get in touch with him at the Fair. He stated he kept missing him. Sgt. Hallisey had informed him by radio that he was with Mr. Clifford and he would take care of notifying him. Officer Uhlman stated he then cleared from the Fairgrounds area for the time being. In referring to the police log, Officer Uhlman stated he left at 14:06. Mr. Clifford questioned Officer Uhlman and stated that the event didn't start until 4 or 4:30 p.m. on Saturday and suggested that he had the dates confused.

Mr. Carney stated he doesn't have the dates confused and informed Attorney Feodoroff that he is not there to make her look foolish. Attorney Feodoroff informed Mr. Carney that he is obligated to follow the rules. Mr. Carney stated he will follow the rules because his daughter practices law and so he knows what it is all about.

Mr. Carney then stated that the big issue was the noise at 2:00 on Saturday afternoon. He then stated that at 2:18 in the afternoon, the noise couldn't have been loud to that extent because there was nothing happening and he told Officer Uhlman he does not want to make him look bad.

Attorney Feodoroff again informed Mr. Carney that he can ask questions of Officer Uhlman. He will have the opportunity to present his case and give his evidence on what he observed but while Officer Uhlman is up, specific questions have to be asked to him.

Mr. Carney stated he does not want to stand there and be accused of things that didn't happen because the Chief of Police and he don't like one another. He then stated he will rest for the time being.

Mr. Clifford stated that the Saturday event was an evening event and there were people on site at 4 in the afternoon but there was not a crowd there on Saturday afternoon, May 28<sup>th</sup>. Attorney Feodoroff informed Mr. Clifford that he can testify when the time comes and she then called Sgt. Hallisey as the next witness.

Prior to questioning, Sgt. Hallisey stated that he was not at the Fair on Saturday and indicated Officer Uhlman might have gotten the dates mixed up. He stated that he was there on Sunday and the event had started in the afternoon and he spoke with Mr. Clifford on Sunday. He indicated that the fights documented occurred on Sunday.

In response to Attorney Feodoroff's questioning, Sgt. Hallisey stated he is a sergeant on patrol and was working the detail at the Fair on Sunday, May 29<sup>th</sup>. He stated that he arrived at the detail at 2:00 p.m. and was aware that there had been a situation on Saturday with loud music being played in the parking lot. There were twelve police officers working the detail at the Fairgrounds on Sunday. When he arrived, he found Mr. Clifford right away and spoke to him and explained to him that there was a problem with the noise in the parking lot as well as the drinking which he had observed as he walked in. Mr. Clifford told him that he would give him whatever help he needed and that they had their own security there. Sgt. Hallisey indicated he did not know if it was the Fair security or the security of the people running the show. The security people were in the parking lot. When he went to the parking lot, he brought as many of the police detail officers as he could and he explained to them that they were going to get as many people as possible from the parking area to the inside. He then told the people collecting tickets at the gate that they had to tell the people coming in that they would have to go right to the venue. Sgt. Hallisey stated that he left one detail inside the venue but the rest were in the parking area. They explained to the people in the parking lot that they had to go inside. He estimated that fifty percent of the people were drinking and he did observe one group of people with a keg.

At around 5:00 p.m., Sgt. Hallisey stated that someone had come up to him to tell him there was a fight and someone had a knife. He called for assistance and someone pointed out an individual with a knife who they apprehended. A couple of witnesses came out and said that a group had surrounded him and he pulled the knife out for protection. The group of individuals who had done this had taken off. At least six or seven officers responded to that situation.

Sgt. Hallisey stated he received another call that there was a fight at the State house. He sent three officers to that area and was informed that there was an individual who looked like he could have been involved in an altercation but he didn't want to press charges. If there were any injuries they were very minor and the situation was quelled.

He stated that it had taken the officers about an hour to clear the parking lot. They told the people that the beers had to stay in the parking lot. Although many were drinking, no one appeared to be staggering drunk.

Mr. Carney stated that Sgt. Hallisey's testimony was 100 percent right and that everything he said was honest and he agrees with everything he said. He commended Sgt. Hallisey for his honesty.

Attorney Feodoroff asked if there were any questions of Sgt. Hallisey and explained to Mr. Carney that it is now his opportunity to present their case.

Mr. Carney stated that they have been here fifty years and they try to run a good operation. He stated there is a little back biting behind this thing as far as he is concerned. He stated he is not here to point fingers and he stands for his track record and is not there to beg for mercy or anything else. He stated they do not condone people bringing their own liquor in because they are there to sell liquor. If that did get out of control, it was not brought to their attention directly and they would have taken care of it directly because that is the reputation they have. They had what they felt was an adequate number of police officers and Lieut. Barry told them they needed eleven officers which is how many they hired. Mr. Carney stated he thinks they can rest their case there.

Chairman Kelley asked if there were any questions from the Commission and Commissioner Wood asked Sgt. Hallisey if all of the violations he observed had taken place on May 29<sup>th</sup> and Sgt. Hallisey stated he was not there on May 28<sup>th</sup>. He asked Officer Uhlman if this was just a typographical error on his report and Officer Uhlman stated it is a log item and he has no control over the police log. He reviewed it appears all of the police log items were for Sunday.

Chairman Kelley asked if the noise was from a band or whether it was parking lot music and Officer Uhlman stated it was from the parking lot.

Commissioner Wood then asked Sgt. Hallisey if the knife fight was just the person acting in self defense and there was nothing illegal about him pulling the knife. Sgt. Hallisey stated that all of the witnesses said the group of people that had surrounded the individual had been the aggressors. The individual had taken the knife out of his back pack in self defense.

Attorney Feodoroff indicated the legality is irrelevant and there was a report taken.

Commissioner Wood asked if the ABCC Rule uses the term illegality. He then asked Sgt. Hallisey if the knife fight was brought to his attention by security and Sgt. Hallisey stated it was reported to him by a female patron. At the time the police details were in the process of clearing the parking lot and he was in a cruiser. He came up one of the alleyways and the female ran to

his cruiser and told him there was a knife fight. Commissioner Wood asked if he saw the actions of the security and the police details as permitting whatever happened with the knife fight or if it was incidental and if it was something going on with the security's knowledge or the management's knowledge. Sgt. Hallisey stated it was not. Commissioner Wood then asked about the evidence given by Officer Uhlman regarding a female who was being beaten. Sgt. Hallisey indicated he thought that was something that happened on Saturday night and he has no knowledge about it. Commissioner Wood then asked Officer Uhlman if he knew where that fight took place and Officer Uhlman stated that Fire received a call from the Ambulance Company who stated they had a female who was assaulted by a white male wearing a blue shirt ripped with blood on it and tan shorts. This was on Sunday, 5/29/11. The ambulance company was assigned to the Fairgrounds. Officer Uhlman stated that from what he can see in looking at the log items, the dates are incorrect. He stated they should say Sunday.

Commissioner Dansby asked the Carneys if the event was promoted by an outside company and they indicated it was. They stated that the promoters hired their own security staff which was supplemented by the Carney Security and Brockton Police. Commissioner Dansby asked if there is an initial checkpoint in terms of passing through security gates in order to park on the Fairgrounds. Mr. Clifford explained the cars come in through the checkpoint off of Belmont Street, they circle around in front of the State Building and they start to park over in the corner of West and Belmont Streets. There are parking lot attendants and they cruise the grounds with a golf cart. He stated the people do come in and use their hibachi's which is a cultural thing. They look at it as their day to celebrate. Mr. Clifford stated that when they see patrons with open beers they make them pour them out. He indicated there is a language barrier but the people are respectful. He stated that they are not a violent group and when he saw Officer Uhlman's report he didn't know if he was at the same event. Commissioner Dansby asked if the people attending the event are aware that they are not supposed to bring in alcoholic beverages. He asked if there are signs to indicate no alcohol. Mr. Clifford stated that at the gate there is a sign which is in two languages that states they cannot bring alcoholic beverages onto the property. Commissioner Dansby asked if any one checks the cars for alcohol and Mr. Clifford stated they do not normally do this unless they see a reason to.

Chairman Kelley asked if there had been any arrests made during the two days and Sgt. Hallisey stated there were no arrests on Sunday. There was nothing in the log to indicate there had been any arrests on Saturday. Chris Carney stated that the Brazilian population is generally very good to deal with because most of the minors are illegal so they don't like to get arrested. He indicated that Lieut. Zeidman was working on Saturday night which was the night the Chief called up complaining about the noise. He thought the license was until 10:00 p.m. but Mr. Spillane stated the license was to 11:00 p.m. on Saturday. Chris Carney stated at 9:00 p.m. on Saturday, the Chief felt it was necessary to send a cruiser to drive through the midway and chase everyone out. Lieut. Zeidman can verify that he got a call from the Chief who told him the noise was bad. Councillor Monahan also said the same thing so he and Tom Clifford went to the band and told them to turn the decibals down. He stated it is much better to let people leave on their own free will rather than to chase 3,000-4,000 people out at one time. Mr. Chris Carney stated that was a problem on Saturday night.

Attorney Feodoroff stated that Councillor Monahan came to the Commission and spoke on behalf of the Brockton Fair Caterers and yet he had to complain to them during the course of the event and his position changed. Mr. Chris Carney stated they hear complaints every day and they do not have a bad relationship with Councillor Monahan.

Mr. Chris Carney commented he does not take to the tone Attorney Feodoroff is using towards the three of them and asked her what her question is. Attorney Feodoroff then asked Chris Carney if they have a good relationship with Councillor Monahan and he stated yes. He stated Councillor Monahan did not complain, he had residents who complained and the way in which it is dealt with is that he calls them and tells them what is good and bad and they deal with it. Chris Carney then stated to Attorney Feodoroff that he does not understand why her body language is so derogatory towards him and that he is only answering her questions. He indicated he feels she is combative and he is answering her questions as freely as possible and that Councillor Monahan is great with them.

Mr. George Carney stated that he spoke with Councillor Monahan who told him that he was not going to come to the meeting this evening to protest the upcoming events and he is very friendly with him and has been for years. Mr. Carney stated that unfortunately for Councillor Monahan and for him, there are three or four neighbors who complain all the time. He stated that it starts in the wintertime when the snow is dumped. He stated he does not want to make any mistakes about Councillor Monahan and that they have been friends for many years.

Chairman Kelley stated he thinks that Attorney Feodoroff was just making the point that Councillor Monahan had called looking for Mr. Clifford to tell him about the noise and whether this information had come from the neighbors or not, it still came from Councillor Monahan.

Mr. Clifford stated that when they are in these events, he sees or talks to Councillor Monahan nine or ten times over the couple of days.

Chairman Kelley then reviewed from the minutes of the May meeting which state that they had asked for a closing time of 9:00 p.m. on Sunday, however, Councillor Monahan had indicated that where it is being held on Memorial Day weekend, he feels the 10:00 p.m. ending time on Sunday will be fine. Mr. Clifford stated it ended at about 8:30 p.m.

Chairman Kelley stated he would like to make a point where there are other applications coming forward this evening. He stated there is no question that it is a fairground and has been there for many years. He feels the biggest barrier is the drinking before the people enter the event as well as the tailgating. He indicated this needs to be addressed and they are in the business to sell the beer inside and as they get into the next hearing they can address some parameters.

Mr. Clifford stated they have been with the same promoters since 2001 and it was just after 9/11 that they had the first Brazilian Rodeo at the Fairgrounds. A couple of years ago, they had switched over to another group because there were some problems, however, they switched back to Kenny Churchill's group who were the original rodeo promoters. He stated that the group they had switched to had promoted through the internet that they could bring their own booze and it is hard to fight that type of thing off.

Chairman Kelley stated that as they get into the next hearing, Commissioner Dansby has brought up a good point that there might be a way to put up different signage in view of the language barrier.

Attorney Feodoroff asked Chairman Kelley if he might want to see if there is anyone who wishes to make any comments. Chairman Kelley indicated there doesn't appear to be any councilors present and stated that Councillor Cruise had sent a letter which he will read into the record but that it pertains to the requests for additional events.

Commissioner Wood asked the police officers if there was something that could have been done to address the problems that existed that night that hadn't been done.

Capt. Gomes stated that he does not want to prejudice this hearing but there are some recommendations he would like to make as the application comes forward but he does not want to apply it retroactively. Commissioner Wood stated he was asking for oversights based on the current rules that there were things they failed to do that could have been done to protect against some of the incidents.

Capt. Gomes stated that with these types of events, there is a learning curve so they learn with things that weren't acted upon in the past. Commissioner Wood asked if from a police perspective, could they have done anything different that night that could have prevented the fights from happening.

Attorney Feodoroff stated that if the police don't have a suggestion, she has remarks in her closing arguments that pertain to that.

Capt. Gomes then deferred Commissioner Wood's question to the officers who were there. Sgt. Hallisey stated that he would suggest they have a police officer at the gate to make sure the people know they can't take alcohol in.

In her closing argument, Attorney Feodoroff stated it is her opinion that in this case there is intentional ignorance and there is a big party going on in the parking lot which is premises under the licensee's control and they have an obligation to maintain peace and quiet within the guidelines of their license. There was testimony that there had been a keg of beer in the parking lot which is fairly difficult to miss, open containers being carried past the security checkpoints into the Fairgrounds. She stated the management has an incentive to want to prevent this and it is their obligation to prevent this but they do not. What has been presented is there is drinking in the parking lot. There are open containers and the drinking can lead to violence which in this instance did occur and this is an illegality. She indicated that she disagrees with Sgt. Hallisey that the self defense knife incident was not an illegal incident and she feels the prosecution of that case could have been impeded because they had not been able to capture some of the people. There was an assault and battery which also occurred on the premises which is also an illegality. Attorney Feodoroff stated she wants to make the Commission aware that this is a situation where the parking lot is their premise and they are specifically obligated to maintain control of the area. She stated the noise level has been a known factor and is something that is repeated every year when they come before the License Commission and the neighbors come out and say it is too

noisy. It is their responsibility to tell the people to turn down the volume. She reviewed that Officer Uhlman had testified that his windows and the license plates in his vehicle were rattling because of the level of the stereo systems and the base and this is what the neighbors have to endure during these events. She stated with this information, at some point the Commission has to make the licensee accountable for their inaction.

Commissioner Wood ask what that means and presumably the City has a position with respect to what should happen and that is part of Attorney Feodoroff's closing argument.

Chairman Kelley indicated he thinks they are representing the City. Commissioner Wood agreed that they are the judges but that he would like for the prosecutor to tell him what it is that she wants to see happen.

Attorney Feodoroff stated she is recommending a guilty finding. She indicated the difficulty with this licensee is that certain protections have to be put into place if the Commission is going to continue to grant licenses and they might want to consider that the rodeos are not an appropriate event but going forward, something has to be done to ensure that these incidents do not continue to occur and they have to take notice of the incidents when dealing with them. The licensee's only ongoing business is with the next applications coming up. She reviewed that their license is for the entire premises and the Commission could consider limiting it.

Chairman Kelley asked the Carneys for their closing arguments and Chris Carney questioned Attorney Feodoroff with regard to what roll she plays in getting into the City's position. Attorney Feodoroff stated she is the prosecutor. Mr. Chris Carney stated he never knew there was a prosecutor and Chairman Kelley stated she is the Asst. City Solicitor. Mr. Carney stated that they have never been in this situation before and the City has had the Fair for over 100 years. He stated that most people think it is a park and on a large scale they only run it for five weekends a year. He stated that the liquor is definitely a big part of it so they can pay the Police and Fire details. He indicated they always go to Capt. Gomes and Lieut. Barry to ask for their expertise and knowledge as far as what is needed. He stated they do not condone drinking in the parking lot and going forward they will correct it. He stated his father is 82 years old and he has never had a violation before and they have never been prosecuted before. Chairman Kelly informed Mr. Carney that they are entitled to representation.

Chairman Kelley stated that from everything he has read, there were no arrests and there is clearly an admission to the illegalities involving the drinking on the premises outside of the event. He indicated it is his opinion there was an infraction.

Commissioner Wood stated there is a question on some level of what constitutes permission and he thinks the City's position should be that by not monitoring the parking lot at least at the beginning of the events or during the night when there is very loud music, they are on notice that by not coming out and quelling the noise immediately, they are permitting it. He stated it doesn't necessarily need to be an illegality but it does need to be permitted. He stated there is also testimony from Sgt. Hallisey that there were 9 out of 10 police officers in the parking lot and he asked if that works against the permitting argument. He indicated he is not entirely sure of what happened and it does seem like there is not a lot of information as far as the assault and batteries.

With respect to the noise, he stated it is a clear point that the noise was loud and it was loud enough so the people in the neighborhood heard it so the security had probably also heard it.

Chairman Kelley reviewed that there have been hearings in the past involving the Fair and the City Councillors weigh in a great deal and the board has always taken the lead of the City Councillors in their best interests to resolve the problems. He stated Councillor Monahan is not present this evening, none of the Councillors-at-Large are present and none of the neighbors are present. He indicated he wonders to what level any action should be taken.

Mr. Clifford asked to speak and Chairman Kelley indicated that a lot of what he might want to be discussed will come at the next hearing.

Commissioner McDuffy asked if it would be appropriate for a motion of whether or not they were responsible for some of the things that took place without coming to a finding of what action should be taken. He stated that it is clear that Mr. Carney and Mr. Clifford have agreed that they might not have taken the quickest steps on some of the things that have happened as reported by Officer Uhlman and that someone had walked past one of their security people with alcoholic beverages. Mr. Carney stated the security people were hired by the promoter. Commissioner McDuffy stated that the Brockton Fair Caterers are responsible for what happened there that day and they have agreed that some things did happen.

Commissioner McDuffy then made a motion that the Brockton Fair Caterers, Inc. be found in violation of their license on May 29<sup>th</sup>. Commissioner Wood seconded the motion and asked if they would be finding on each individual allegation and the Chairman said it would be taken as a whole. With all members present voting in the affirmative, the motion carried.

Chairman Kelley stated there are no prior violations on record and recommended that a letter be placed in the file and they deal with matters as they go forward as to how they can mutually make this work.

A motion was made by Commissioner Wood to place a letter in the file which motion was seconded by Commissioner McDuffy. All members voting in the affirmative, the motion carried.

Chairman Kelley stated they will proceed with agenda item #4.

#### **14. Communications**

Chairman Kelley reviewed that the ABCC denied the appointment of Joe Angelo as manager of RJA Corporation due to failure to comply with Mass Tax Laws. It was agreed that a hearing will be scheduled.

Correspondence from Lieut. Williams regarding the Holiday Inn reveals there are building issues with the renovations and Chairman Kelley questioned whether they should even be operating. He suggested that they be called in.

The Adm. Asst. reviewed that a letter from Maria Mendes, Brockton CMCA Program Coordinator was received in which she has requested an Ordinance be put into place which requires seller training for all non pouring liquor licensees. It was reviewed that they had met with Councillor Monahan who was present. Councillor Monahan stated that he did attend a meeting with them but they did not have a plan in place. It was agreed that clarification would be sought on whether they are looking to have an Ordinance proposed to the City Council or a License Commission Rule change.

It was reviewed that an application was submitted by Attorney Siskind on behalf of John Santilli's Collision Center even though he has been told there are no licenses available. Attorney Feodoroff indicated he could be referred to the Law Department which the Adm. Asst. stated she had already suggested.

**15. Any other business to properly come before the Commission.**

**(a) Deliberation and Decision pertaining to proposed Rule changes (Hearing held August 10, 2011)**

Chairman Kelley reviewed the proposed changes to the rules which were discussed at last week's Special Meeting.

In response to Commissioner Wood's question concerning the smoking provision, Chairman Kelley indicated that it was included to help with enforcement but he feels it could be amended if the onus is put on the owners who could perhaps give their smoking patrons some kind of identifying markers. The proposed rule states that if there is a violation it is an automatic roll back of one hour. Commissioner Wood indicated he feels the smoking part might be a little excessive and as it relates to enforcement, the only way it will be enforceable is if an officer drove by an establishment after 1:00 a.m. and observes someone entering.

Attorney Feodoroff stated they have to keep in mind that most licensees are rule abiding licensees and they are not going to circumvent the rules. If there is a rule in place, they will follow it. She stated that most licensees are not violators that they are trying to catch. Commissioner Wood agreed but stated that it is the violators that are the problems and they are the ones that this rule is being used as a form of enforcement against. He indicated they are most concerned with the people who tend to violate the liquor laws and in talking about that subset of people, there has to be a huge cost to sending police around to all of the licensing establishments, even among the small number of licensees who are violating, to make sure that no one actually walks in after 1:00 a.m.

Commissioner Kelly reviewed that Councillor DeNapoli had brought up the question of who will be enforcing. Attorney Feodoroff stated there will be random checks but the responsibility is on the owner.

Commissioner Wood indicated he understands that and agreed that most follow the rules and that any time there is a rule, ninety percent of the people are going to follow it and anytime there is a rule change it is presumably to stop a problem that exists. The problem that has been proposed

to exist is the fact that there are certain bars where problems occur. They are trying to reduce the people that are troublemakers within the bar by preventing people coming in from other communities around Brockton that leave their communities after 1:00 a.m. and go to a Brockton bar to get that extra hour of drinking in. He indicated there is a problem with enforcement with a rule change.

Capt. Gomes agreed that the majority of the people are good license holders and are already closing their doors at 1:00 a.m. because in the past it was an unwritten agreement with no enforcement powers. He stated this will codify a set of rules, make them accountable and if they see that patrons are being allowed to enter after 1:00 a.m., there is going to be police testimony and action being taken.

Attorney Feodoroff pointed out that if there are problem areas then the police will be patrolling those areas and it is likely that the police will observe people entering the establishments after 1:00 a.m.

In response to questions from Commissioner Wood, Capt. Gomes stated that they are now seeing people being allowed in post 1:00 a.m.

Commissioner McDuffy indicated he feels the smoking issue can be an unfit issue and that a regular customer could go out and smoke after 1:00 a.m. and leave the door open for a new patron to enter. Commissioner Wood indicated this is where they could consider the Chairman's suggestion that there be some kind of stamp or an outside patio area. Chairman Kelley stated that if the bar owner didn't want to do anything then the risk falls on them. Commissioner McDuffy indicated that if they can be responsible to stop the Entertainment and serving of liquor, they can be responsible for the patrons leaving to smoke.

Chairman Kelly stated if they approve the rule change, they could make a recommendation to the bars to give out something like wrist bands to anyone going outside to smoke. He reviewed that Councillor DeNapoli indicated that Tamboo wants to put a porch out back. Attorney Feodoroff advised the members that if they are going to do this they would have to eliminate the smoking provision from the rule.

Capt. Gomes stated that the license holders who currently follow the agreement by not letting new patrons in after 1:00 a.m. have smokers and they have worked through this and it is a non-issue. He indicated that if the smoking part is taken out, it will not create any law enforcement problems.

Chairman Kelley then asked the members if they would like to take this matter off the table in order to vote on it this evening.

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

Chairman Kelley then read the Rule as proposed and indicated it will be amended to eliminate the wording that, “any patron leaving the establishment, which includes going outside to smoke, is not allowed to re-enter after 1:00 a.m.”

Attorney Feodoroff suggested in order to clarify this, to make it that no new patrons are allowed after 1:00 a.m. Changes to the language were then suggested.

Commissioner Wood then made a motion to approve the entire proposal pertaining to Holders of Licenses with 2:00 a.m. Closing Hours, with the following amendment to part 1, subsection (a)(1) which shall read: “No patrons are allowed admittance after 1:00 a.m. Any patron leaving the establishment, not to include patrons going outside to smoke, is not allowed to re-enter after 1:00 a.m. All other provisions will remain unchanged.

Chairman Kelley asked if the word new patron should be added and Commissioner Wood indicated it isn’t necessary.

The motion was seconded by Commissioner Wood. All members present voting in the affirmative, the motion carried.

Chairman Kelley asked if this will take effect immediately and the Administrative Assistant indicated it would have to be prepared in writing and Capt. Gomes stated he could have it hand delivered to the licensees. He suggested that once it is ready, he will then serve every licensee in hand. The Adm. Asst. suggested that they hand serve the 2:00 a.m. licensees and that the rest could be mailed.

Chairman Kelley made the suggestion that Capt. Gomes could have the license agents give the bar owners some tips when they are making service of the rules.

Commissioner Dansby then asked how this will pertain to the Foxy Lady. Attorney Feodoroff explained that the Foxy Lady is a different issue and they will probably move for a Preliminary Injunction so that this rule doesn’t apply to them because they have a Court Order in place from when the nude entertainment was issued. She indicated it is something the City can argue and she will argue that the rule change supersedes their original application because the Court Order never intended for it to be binding but it was a First Amendment action.

A motion was then made by Commissioner Wood to approve the following changes as proposed:

- (b) Add the following as Rule #23 to Restaurants, Hotels, General On-Premise and Rule #26 to Clubs:

Holdes of Section 12 licenses (Restaurants, Hotels, General On-Premise and Clubs) shall have allowable capacities reviewed at the time of annual renewals and may be subject to a downward adjustment if justified by reviews.

- (c) Add the following as Rule #24 to Restaurants, Hotels, General On-Premise and Rule #27 to Clubs.

No Licensee shall permit any “Under 21 Night” and/or “18 Plus Night” or similar type event in any licensed liquor establishment.

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

- (b) Copeland Toyota, Inc. – Change name to Copeland Enterprises, Inc. dba Copeland Toyota Scion –Sign new license**

A new license was signed by the Commission and the licensee will be requested to turn in their current license before the license is issued.

- (c) Fernandez Family Liquors, Inc. – Request reconsideration for transfer of All Alcoholic Package Store license to Golab Corporation. (ABCC disapproved June 14, 2011) – Sign Form 43 to be resubmitted to ABCC for approval**

Attorney Joel Hershman, 932 Main Street, was present to speak on this and he reviewed that the ABCC had disapproved this transfer for the reason that the seller was taking back paper and held an interest in another liquor license. The Seller has now extinguished all interest in the other license and he is requesting to resubmit this request for reconsideration.

The Adm. Asst. stated a new Form 43 has been prepared for their signature and will be sent to the ABCC. No vote is necessary.

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

**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**