

**TAPED**

The License Commission held its regular monthly meeting at 6:00 p.m. on Wednesday, December 14, 2011, in the G.A.R. Room at City Hall. Present were Acting Chairman Scott H. McDuffy; Commissioners Joseph P. Kelley, Paul D. Sullivan, Bruce G. Dansby, Joshua J. Wood and Alternate Kathy Kenney. Also present were Asst. City Solicitor Kathryn Feodoroff, License Agent Captain Emanuel Gomes and Adm. Asst. Bonnie Tucker.

1. Approval of the Minutes of the License Commission Meeting of November 17, 2011.

A motion was made by Commissioner Sullivan to approve the minutes of the License Commission meeting of November 17, 2011 which motion was seconded by Commissioner Kenney. All members present voting in the affirmative, the motion carried.

2. Approval of the following police officers as license agents for the month of January 2012: Capt. Emanuel Gomes; Lieuts. Thomas LaFratta and Paul Bonanca; Sgts Frank Vardaro and Kenneth Lofstrom; Dets. Michael Schaaf, John Lonergan, James Smith and Ernest Bell; and Officer Scott Uhlman.

A motion was made by Commissioner Kelley to approve the police officers as listed as License Agents for the month of January, 2012. The motion was seconded by Commissioner Sullivan. All members voting in the affirmative, the motion carried.

3. Requests for Special One-day Permits:

There were no applications for Special One-day Permits.

4. Hearing on the applications for renewal of the following Class III Motor Vehicle Junk Dealer licenses:

- (a) Andrade, Inc. dba Everett's Auto Parts – 553 Thatcher Street  
Present was Mark Andrade, 9 Locust Street, Onset.

Capt. Gomes reviewed that an inspection was conducted on December 12, 2011 and no problems found.

A motion was made by Commissioner Dansby to approve the renewal of the Class III license. The motion was seconded by Commissioner Sullivan. All members voting in the affirmative, the motion carried.

- (b) Regal Auto Parts, Inc. dba Brockton Auto Parts – 511 Thatcher Street  
Present was Donald Galante, 19 Camden Lane, Easton.

Capt. Gomes reported that there is an issue with property located across the street from the licensed premise which Mr. Galante owns. The Building Dept. took action today and it is his understanding that compliance will be reached shortly. He stated the property located across the street is not included on the Class III license.

In response to questions from the Commission, Mr. Galante stated he owns the property across the street and the problem will be corrected by the end of the year. He stated they only park registered company vehicles across the street and there are very few cars over there. He does not work over there. Mr. Galante stated he will have the property cleaned up right away.

A motion was made by Commissioner Wood to approve the renewal with the proviso that the property across the street is cleaned up by the end of the year. The motion was seconded by Commissioner Kelley. All members voting in the affirmative, the motion carried.

(c) David J. Lynch dba Lynch's Cycle and Truck Center – 1200 Montello Street and  
5 Terminal Place

Present was David Lynch, 30 Quincy Street.

Capt Gomes stated that an inspection had been done on December 13<sup>th</sup> and there was an issue of some minor clean up but he is in full support of the license renewal.

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

(d) Spiegel Truck and Auto Salvage, Inc. – 212 North Cary Street

Present was Anthony Pusateri, 142 Patricia Drive, Abington.

Capt. Gomes stated that an inspection was done and there was an issue of non-compliance in that they have stated they are not in business but there is evidence that business is being conducted. He submitted photographs that there is mud being dragged out onto the public way. It is obvious from the photos that vehicles are being brought in and they are open for business. There are old transient busses which were not there a week ago. There was no used car record book and no license posted. It is his impression that the officer conducting the inspection was not very well received.

Commissioner Wood asked Capt. Gomes if he is suggesting the license not be renewed. Capt. Gomes indicated that if they were to come into compliance, he would not have an issue with the renewal. He indicated they are agreeable to scheduling another inspection and hopes it will go along better than the last.

Attorney John Creedon, 71 Legion Parkway, came forward and stated he was present representing Tony Pusateri. He reviewed that Mr. Pusateri is present and stated there has been some business going on. He does have a book with him which shows all of the transactions. He stated that on the day of Officer Uhlman's inspection, they were painting his office and the license was in his car and not inside the building. With regard to the dirt being dragged out onto the roadway, he has contacted Mr. Curtin and has had a cleaner come to clean it up. Attorney Creedon stated Mr. Pusateri has had a good record with his business. He is willing to do whatever is necessary to come into compliance.

Capt. Gomes stated he is willing to go back to make a re-inspection before the end of the year but cautioned the licensee to be more receptive to the inspector. Attorney Creedon indicated he explained to his client that he must cooperate any time an agent or official goes to his property.

Commissioner Kelley indicated he feels that is a fair compromise and made a motion to approve the renewal of the license pending a final sign-off by the agents. The motion was seconded by Commissioner Sullivan. All members voting in the affirmative, the motion carried.

5. Hearing on the request from AJ Donuts, Inc. dba Honey Dew Donuts for a Common Victualer license inside the Brockton Hospital at 680 Centre Street.

Present was Jovane Cividini, 91 Stone Gate Drive, East Bridgewater.

Mr. Cividini stated they are locating a Honey Dew Donuts in the main lobby area at the Brockton Hospital. He stated he has already opened the business and he was not aware of the licensing requirement. He indicated the Building Department had informed him that he did not have to go to a meeting but when he came in for the Common Victualer license, he was informed differently.

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

6. Hearing on the request from Charlampos V. Nikopoulos dba Pearl Street Express to transfer the Common Victualer license at 1050 Pearl Street to Flarjo Foods, Inc. dba Jo's Best Diner.

Present were Charlampos V. Nikopoulos, 58 Jane Terrace, and Jose and Filomena Oliveira, 230 Steve Drive, Taunton.

Mr. and Mrs. Oliveira stated they will be taking over the restaurant in January. He plans to serve breakfast and lunch and add Portuguese food to the menu. Hours will be from 6:00 a.m. to 3:00 p.m.

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

7. Hearing on the request from Paul Veracka Motors, Inc. to transfer the Class II Used Car Dealer license at 2020 Main Street to their current annex location at 2074 Main Street.

Present was Charlyn Veracka, 2074 Main Street, who reviewed the request to move the entire business to 2074 Main Street.

Commissioner McDuffy asked about the location which is located on the Brockton/West Bridgewater line. Mrs. Veracka stated that part of the building and the land is in West

Bridgewater. She indicated they pay taxes on the location to West Bridgewater in addition to paying the taxes to Brockton.

Ms. Tucker indicated she had explained to Mrs. Veracka that she had a conversation with the clerk in the West Bridgewater Selectmen's office today and was informed that they will be required to go before West Bridgewater Planning and Zoning for the West Bridgewater portion of the property so the Commission can only consider the Brockton portion of the property.

Mrs. Veracka stated they have had businesses at the location for years and West Bridgewater had always told them that they didn't require anything because it was licensed in Brockton. This is something new and she will go to the West Bridgewater Town Hall the next day.

Capt. Gomes stated the location has been inspected. It is a large dealership with more than sufficient room. He has no objection to the issuance of the license. He indicated he does not understand how one business can need two licenses from different communities. He asked how it has been handled in the past.

Attorney Feodoroff stated that technically, the Commission's jurisdiction is within the City limits so they can't be licensing across the line. She indicated this is fairly common occurrence in Zoning and Planning and the board must only deal with property that falls under their jurisdiction.

A motion was made by Commissioner Kelley to approve the transfer of the license to 2074 Main Street for the Brockton portion of the land and building. The motion was seconded by Commissioner Sullivan. All members voting in the affirmative, the motion carried.

8. Hearing on the request from Kevin G. Rogers for a Lodging House license at 26 South Street.

Present was Kevin Rogers, 180 Pleasant Street, Whitman.

Attorney Feodoroff reviewed that the City Solicitor's office has been working with Mr. Rogers after it was brought to their attention by the Department of Justice. She explained that the establishment Mr. Rogers is running is a sober house and sober houses have certain protections under the U.S. fair housing act. She stated recovering addicts and alcoholics are considered disabled under that act so they are protected under the law so that you have to allow them to locate anywhere. This type of use cannot be prohibited through Zoning. She stated that under State statute, this is considered a Lodging House which is required when four or more persons are living within a single dwelling unit.

Attorney Feodoroff stated she has worked out an agreement with Mr. Rogers and his attorney due to the concerns of the neighbors relative to this type of establishment. The agreement has been signed off by the Mayor and they have received zoning approval. The Agreement requires that they be relicensed every year by the Commission in the normal course and all code inspections are complied with. There will be periodic drug and alcohol testing which has already been implemented. They have tried to address the concerns that the neighbors had to the extent

that they cannot prohibit this type of use within the City. If at any time they are found to be in violation of the agreement, they would have to come back before the Commission.

Councillor-at-Large Thomas Brophy asked if it should be stipulated that it must remain a sober house. Attorney Feodoroff stated this is part of the agreement but if the Commission wants to make this a part of the condition of the license it would be appropriate. She indicated Zoning had granted the Special Permit subject to the Agreement.

Commissioner McDuffy asked if there is someone to monitor the house and Mr. Rogers stated there is a house manager who lives there. He indicated the tenants do work. Attorney Feodoroff indicated that during the zoning hearing, it was stated that this is not a state subsidized program so the tenants have to pay rent so it is less likely that they will be there during working hours.

Chairman McDuffy asked if there was anyone present who wished to speak either for or against and no one came forward.

A motion was made by Commissioner Wood to approve the license subject to compliance by the license holder with the signed Agreement with the Mayor and pending receipt of the department inspection approvals. The motion was seconded by Commissioner Kenney. All members voting in the affirmative, the motion carried.

Mr. Rogers stated he does not have all of the inspections completed yet.

9. Hearing on the request from Campello Veteran Firemen's Association – James Badgio, Manager, 224 Clinton Street, to amend the hours to serve alcoholic beverages beginning at 10:00 a.m. on Sundays when brunch events are held.

Present was James Badgio, 770 Whitman Street, Hanson.

Mr. Badgio stated they would like to try and raise some money by offering brunch and opening up at 10:00 a.m.

It was reviewed by the Adm. Asst. that the 10:00 a.m. opening is something fairly recent. In the past the Commission has allowed some establishments to serve alcoholic beverages at 11:00 a.m. on Sunday but it has always been done with the stipulation that it be in conjunction with brunch being served.

Mr. Badgio stated there is a kitchen upstairs and they would be offering food.

Capt. Gomes stated the location was inspected on December 12<sup>th</sup> and the only issue was with too many coin-operated games on the premises. Mr. Badgio stated they have already removed the unlicensed games.

Commissioner Kelley agreed that they must comply with the requirement that to allow the earlier opening will only be allowed when food is being served. Mr. Badgio stated it is a private club and they would be willing to comply.

A motion was made by Commissioner Kenney to approve the 10:00 a.m. service of alcoholic beverages on Sundays with the stipulation that it only be done in conjunction with food being served and to those people partaking in the food service. The motion was seconded by Commissioner Kelley. All members voting in the affirmative, the motion carried.

10. Hearing on the request from Domingas Tavares dba Restaurant Luanda, holder of an All Alcoholic Restaurant license at 453 Centre Street, to extend the closing hour to 2:00 a.m. on Thursdays, Fridays, Saturdays and eves of legal holidays.

Present were Attorney Joel Hershman, 932 Main Street and Domingas Tavares, 50 Temple Street, Somerville.

Attorney Hershman reviewed that Restaurant Luanda is a family owned and operated restaurant that serves ethnic food. They have been in business since 2003. He indicated they have been struggling somewhat with the downturn of the economy and would like to extend their hours to 2:00 a.m. as a boost to their business. They have found that they are losing business due to customers leaving their establishment to go to other places that are open until 2:00 a.m. They currently have a security camera for both inside and outside the premise and there are people assigned to the door for special events.

Capt. Gomes stated the location was inspected on December 12<sup>th</sup> and there is absolutely no objection to the 2:00 a.m. license.

Councillor Dennis DeNapoli, Ward 5, stated there are neighbors present who would like to speak on this matter. He and Councillor Brophy will make their comments after the neighbors speak.

Eleanor Rease, 16 Empire Avenue, stated she is opposed mainly due to the loud music which is played at the establishment. She stated she has attended meetings in the past for the same reason. The building is not soundproofed. In addition to the loud music, the cars are racing, there is fighting and nothing seems to be done about it no matter how many times she complains. Mrs. Rease indicated she understands that everyone has a right to make a living but they don't have the right to inconvenience other people. She stated she feels that insulating the building would help the situation and that way she would not be awakened in the middle of the night to loud music, people screaming and yelling other and things like that. She stated again that she has no objection to these people making a living but not so that it affects her health and well being.

James Rease, 16 Empire Avenue, agreed with Mrs. Rease's statements and said the patrons go up and down the street, turn around in the driveways and throw bottles out of the cars. As soon as the people come out of the club, they blast their stereos. He stated that every time someone goes in and out of the Club and the door is opened, the noise echoes throughout the neighborhood. It is very loud at closing time.

Christine Aiello, 28 Empire Avenue, stated that even when the establishment is open for business, people hang in the parking lot drinking. She stated she does not know whether the

alcohol is coming out of the building or if they have it in their vehicles. She finds broken bottles on the street.

Commissioner McDuffy stated he does not recall the neighbors being before the board since he has been a member but told the neighbors that when these things happen they should call the police. Mrs. Rease stated she has called the police on a regular basis and they have responded but they tell her there is nothing they can do about the loud music coming from the inside. They have told her they can control the music outside but she doesn't understand why they cannot do anything about the music inside.

Mrs. Tavares apologized to the neighbors. She stated that when there is a special event they always have a police detail. They do not allow alcohol to be taken outside their establishment and they clean the parking lot in the morning. She stated it is a public place and they cannot control everything. They do tell their patrons they cannot hang around after leaving.

Commissioner Wood asked the neighbors what impact the extension of one hour will have.

Mr. Rease stated it will have a tremendous impact in that the people will be drunker and the noise will go on an hour later. He stated instead of it being bad from 12:00 to 1:00 a.m., it will be from 2:00 a.m. to 3:00 a.m. He stated there are not always police details there.

Commissioner Wood asked if there is a difference when a police detail on duty and the neighbors all agreed that there is a difference but it depends on the number of people there. Mrs. Rease stated the biggest problem to her is the loud music and that doesn't change with a police officer. She stated it is a residential area and she feels it is not fair to have to put up with these conditions.

Commissioner Kenney asked Mrs. Tavares if this is a restaurant. Mrs. Tavares stated it is a family restaurant but they do have music. She stated it is not a bar. On weekends, they do have music for their patrons. Commissioner Kenney stated that her issue with this is that if it is a family restaurant then there is no need for a 2:00 a.m. closing. Mrs. Tavares stated they have a lot of cultural events and weddings and birthdays and in their culture, the events start late.

Attorney Feodoroff then asked for a clarification from the neighbors concerning the noise and Mrs. Rease stated she can hear the noise from the inside of the building coming right into her bedroom. They can hear the music and people yelling. They can hear the noise even when the doors to the establishment are closed. She invited the commission to come to her home and sit in the living room and hear it for themselves. She stated this is not just a family restaurant. It is a bar and a nightclub.

Councillor DeNapoli stated that when they were before the ZBA, it was brought up that there were some issues of violence in the area. He asked Capt. Gomes if there was a report of calls for service and Capt. Gomes indicated they have not had any calls for service within the last six months. He stated that in fairness to everyone involved, the calls for service were dated. Councillor DeNapoli stated he knows there were incidents of two shootings at the location and Mrs. Tavares stated that was 2 or 3 years ago. Councillor DeNapoli stated that the neighbors'

homes are right next door to this establishment. In response to questions, Mrs. Tavares stated her music ends at 12:30 a.m. when they close at 1:00 a.m. He asked what time the entertainment will stop if the hours are extended to 2:00 a.m. and Commissioner Kelley indicated there is no request before them this evening to extend the hours on the Entertainment license.

Councillor DeNapoli stated that the parking lot is small and the vehicles are parking on the street. He indicated that he and Councillor Brophy will address that with the Traffic Commission because there is not enough parking in the lot. He stated he is not in favor of the extension of hours to 2:00 a.m. and supports the neighbors. He questioned who goes out to a family restaurant at 2:00 a.m.

Councillor-at-Large Thomas Brophy stated he has made it clear in the past that he opposes 2:00 a.m. licenses across the board and for that reason alone, he stands in opposition. He stated that it has been a restaurant for years. With regard to this particular establishment and its proximity to a residential neighborhood, the neighbors are being bothered by the noise. It is open until 1:00 a.m. and the neighbors have put up with it but to add another hour to the operation, particularly on the weekends, it would place an undo burden on the residents and they should not have to put up with it. It is unfortunate that there is a neighborhood right next to a business establishment, however, that has to be taken into consideration. He stated he is opposed to this and requested the extension not be granted.

With no further information presented, a motion was made by Commission Sullivan to disapprove this request. The motion was seconded by Commissioner Kelley. All members voting in the affirmative, the motion carried.

11. Hearing on the charges brought by the local police against Brockton Phalanx, Inc. dba Pisces Lounge – Alexander Strangis, Manager, 816-818-820 Main Street, of the following alleged violations:

May 29, 2011:

- (a) **ABCC Rule 2.05 (2) Permitting an illegality on the licensed premises**, to wit: “Allowing Entertainment beyond the approved hours on the license which is issued pursuant to M.G.L. Chapter 140, Section 183A; and
- (b) **Brockton License Commission Rule 8(a) (Restaurant Licenses)**, to wit: “The last drink must be served before the closing hour. All glasses and bottles must be cleared from the tables or bar by 15 minutes after the closing hour. All customers must have left the premises by 30 minutes after the closing hour. Any licensee and his employees shall not be prohibited from being upon such premises at any time for the purpose of cleaning, making emergency repairs to, or providing security for, such premises or preparing food for the day’s business or opening or closing the business in an orderly manner. They may not drink after the closing hour.

Commissioner Dansby stated he would be recusing himself from this hearing for the reason that Mr. Strangis is his neighbor. He then left the meeting room.

Attorney John Creedon, 71 Legion Parkway, stated he believes the Commission heard the May 29<sup>th</sup> situation back in June at least to the allegations. He stated he believes there were findings and asked the Adm. Asst. for confirmation. Ms. Tucker stated he was in on other charges which had been reported the previous November. Attorney Feodoroff indicated that what Attorney Creedon is saying is that this violation predated the hearing and there were changes implemented. She suggested that that could be dealt with later in the hearing. She suggested that if Attorney Creedon is willing to concede the charges, it would perhaps go quicker. Attorney Creedon suggested they hear the testimony.

Present were Alexander Strangis, 30 Homesite Road and Aldo Fernandes, 150 West Chestnut Street.

The following persons were sworn by Attorney Feodoroff:

Lieut. Paul Bonanca, Brockton Police  
Det. Nazaire Paul, Brockton Police  
Alex Strangis  
Aldo Fernandes

The first witness called by Attorney Feodoroff was Det. Paul who stated that on May 29, 2011, he and Lieut. Bonanca were checking area businesses for license violations. At approximately 12:50 a.m., they drove by Pisces Lounge and could hear loud music coming from the establishment. They continued driving south to check on other establishments and returned to Pisces Lounge at 1:05 a.m. The music was still playing very loudly. Det. Paul got out of the vehicle and looked through a small window. He could see the manager/owner, identified as Aldo Fernandes, behind the bar. Mr. Fernandes was still serving alcoholic beverages to his patrons. Det. Paul used his cell phone camcorder to video through the window. It was 1:06 a.m. A few minutes later, Mr. Fernandes came out to lock the front door and he appeared to be surprised when he saw the detectives. He and Lieut. Bonanca followed Mr. Fernandes back inside and Lieut. Bonanca explained to him that the music should have stopped long before and that alcoholic beverages should not be served. There was a female bartender on duty. Det. Paul stated there were still between 25 and 30 people inside and most still had drinks. The time had been verified with his Nextel phone. Mr. Fernandes admitted that he had made a mistake.

On cross examination by Attorney Creedon, Det. Paul stated he observed drinks being served after 1:00 a.m.

The next witness called by Attorney Feodoroff was Lieut. Paul Bonanca who stated they had first driven by the Pisces Lounge at 12:50 a.m. and were aware of the music coming from the building. After checking a couple of other bars at closing time, they returned to the Pisces Lounge at 1:05 a.m. and heard the music coming from inside. As soon as they walked in with Mr. Fernandes, the bartender started emptying drinks when she saw the officers and the music stopped right away. Lieut. Bonanca stated he informed Aldo Fernandes that he was in violation and was told it was a private party. He then told him he was going to write this up as a violation.

Chairman McDuffy then stated that the questioning had addressed the second charge and then read for the record charge (b) which is a violation of Brockton License Commission Rule 8. He informed those present that each will be voted on separately.

In response to questions from Commissioner Kelley, the officers stated they had observed drinks being served after 1:00 a.m. There was also a band playing. The Entertainment license was reviewed and is allowed for an Orchestra of 2 pieces, Singers and Dancing. All live entertainment must end at 12:30 a.m.

Mr. Strangis stated that since the last hearing, they have made the corrections and now use satellite time. Last call is given at 12:30. The music is shut off at 12:15 or 12:30. Mr. Fernandes stated he was not behind the bar.

Attorney Feodoroff stated that they were corrected by the License Commission after this violation and since then have implemented a new process. She reviewed that the last time it was just a few minutes difference. With this violation, the entertainment was suppose to end at 12:30 a.m. and was still playing at 1:10 a.m. so it is not a matter of the time being off a little bit. She indicated she recognizes they have taken steps to improve their process which should be considered by the Commission but this time the violation is more egregious with respect to the time frame they are dealing with.

Commissioner Wood asked Attorney Feodoroff what the City's recommendation is as far as the disposition. Attorney Feodoroff reviewed that the last time there was a letter placed in the file and she stated that she is inclined to go a little bit further in view of the distance in the time. She suggested a rollback for a weekend just to ensure that the process is working effectively.

Attorney Creedon stated that they are on notice and have admitted the violation.

Chairman McDuffy asked Attorney Feodoroff whether she is recommending a rollback for just one of the violations. It was suggested that the testimony on the coin-operated game violation should also be heard.

Attorney Creedon stated that the reason the party was going so late was because the president of Cape Verde was there and for mitigation purposes, the time had been lost.

At this time Jose Araujo, 72 Menlo Street, came forward and was sworn in by Attorney Feodoroff. He stated that day was the party for the guy who was running for president of Cape Verde. It was a special event. Attorney Creedon asked if that was the person who had billboards up in the City.

Commissioner Kelley indicated that this information is irrelevant.

With no further information presented for the May 29<sup>th</sup> violations, a motion was made by Commissioner Kelley to find the licensee guilty of violating ABCC Rule 2.05(2). The motion was seconded by Commissioner Wood. All members voting in the affirmative, the motion carried.

A second motion was made by Commissioner Kenney to find the licensee guilty of violating Brockton License Commission Rule #8. The motion was seconded by Commissioner Wood. All members present voting in the affirmative, the motion carried.

During discussion, Commissioner Kelley stated he feels that they are making light of this situation and that if you have been in business for 34 years, you should be well aware of the entertainment license and laws. He stated that he feels that the penalty should be much more severe than a three day suspension and recommended that something be done to force him to pay attention to his business. He recommended there be a rollback of the hours as well as the entertainment license.

Commissioner Wood indicated he feels that is a little harsh under the circumstances and that he feels if there were ongoing violations of this rule so is losing 2 or 3 hours of revenue building over the course of a weekend although it would provide an economic incentive to follow the rule in the future. He stated a rollback almost seems punitive to the point of not only creating incentive but of being retributive. Commissioner Kelley indicated they do not have a 2 a.m. license and maybe if it is not a full hour than perhaps it could be a half hour.

Attorney Creedon asked to be heard and stated this is not a residential neighborhood. They have had a warning previously and he stated he would be more apt to agree with Attorney Feodoroff about the next step. Mr. Strangis indicated he takes things very seriously and has made the corrections. Attorney Creedon stated that rolling back the hours is like telling another business in Brockton that you are going to go under and he does not think that this is the next logical and fair step. He asked the Commission for a straight suspension of days or a rollback for a week.

Commissioner Kenney asked if the agents could be requested to check this Club and it was agreed that this is being done on a fairly regular basis. Commissioner Kelley indicated he feels the Commission has to support the license agents who are out there enforcing the law.

Commissioner Wood then made a motion for a one hour rollback for seven days and with a corresponding rollback of the Entertainment license for the seven days. The motion was seconded by Commissioner Kenney. With Commissioners Wood, Kenney, Kelley and McDuffy voting in the affirmative and Commissioner Sullivan opposed, the motion carried by vote of 4 to

August 10, 2011:

**ABCC Rule 2.05 (2) Permitting an illegality on the licensed premises**, to wit:

“ Keeping unlicensed coin-operated amusement devices on the premises.”

Officer Scott Uhlman was sworn in by Attorney Feodoroff.

On direct examination by Attorney Feodoroff, Officer Uhlman stated he is a Brockton Police Officer working Code Enforcement and as a License Agent. On August 10, 2011, at 13:30 hours, he went to Pisces Lounge and observed three video machines on the premise. Pictures were taken and submitted with his report.

On cross examination by Attorney Creedon, Officer Uhlman stated he asked the man behind the bar if the bar was open and he stated yes. There were no patrons there. This individual had signed for a cease and desist order.

Mr. Strangis stated that the individual's name is Rinaldo Barros and he is the cleaning person. They usually do not open until after 3 but Mr. Barros had left the front door open by mistake. Officer Uhlman had told him a long time ago that he could have the back door open but not the front door.

Attorney Feodoroff clarified for the record that the only charge being heard is for the unlicensed coin-operated games.

Attorney Creedon stated that Mr. Fernandes knows about the coin-operated machine. He stated the video game is an old machine and the repairman from KL Entertainment had been there that day to try and fix it. He was going to use parts from one machine to fix the other one but it didn't work. Officer Uhlman reviewed the pictures submitted and agreed there are two entirely different machines. Officer Uhlman stated he had observed three coin-operated games the day he was there. They had tried to get in touch with Mr. Strangis who was in the hospital at the time. He was informed that Mr. Fernandes was running the place. Attorney Creedon asked if the games were plugged in and Commissioners Kelley and McDuffy indicated they are only licensed for one game and there were three there.

Attorney Creedon then asked them if they think there is no defense or excuse if the company that is trying to fix the game that is broken brings in other machines for parts and it was pointed out that it was an entirely different machine. Attorney Creedon then commented to Acting Chairman McDuffy that this was one of the reasons he had asked for a continuance so he could find the repairman and find out what the situation was. Commissioner Kelley indicated that the problem is he continues to ask for extensions and if he came in when he is suppose to have the hearing instead of continually asking for the hearing to be extended these types of things would probably not occur. Attorney Creedon stated he understands but he was trying to get the repairman and Ernie Bell and others. Chairman McDuffy stated it was four months ago when this happened and he has had plenty of time to prepare his case.

Commissioner Wood indicated he does not know enough about these machines to determine whether or not they were there for repair. He agreed that on the outside the games look nothing alike.

A motion was made by Commissioner Wood to find a violation which motion was seconded by Commissioner Sullivan. With Commissioners Wood, Sullivan, Kelley and McDuffy voting in favor and Commissioner Kenney voting opposed the motion carried.

Commissioner Kelley indicated he feels that he must clean things up and reminded him that he is licensed for one video game. He then made a motion to put a letter of warning in the file stating there should be no more than one machine on the premises at any time. The motion was seconded by Commissioner Wood.

Commissioner Kenney then asked if Officer Uhlman could take pictures of the area showing only one game. Officer Uhlman indicated he would do this.

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

12. Hearing on the charge brought by the local police against Soares Club, LLC dba Bar Dino's of alleged violations of **ABCC 204CMR 2.05(2) – Permitting an illegality on the licensed premises, to wit: M.G.L. Chapter 138, Section 34** – Sale or delivery of an alcoholic beverage to a person under 21 years of age – 3 counts on the night of September 10, 2011 and the early morning of September 11, 2011 and 2 counts on September 18, 2011 at approximately 12:15 a.m.

Representing the licensee was Attorney John Creedon, 71 Legion Parkway.

The following persons were sworn in by Attorney Feodoroff:

Det. Michael Cesarini, Brockton Police  
Lucindo Soares, 37 Johnson Street  
Nelson Barros, 15 Clarence Street, Boston

The first witness called by Attorney Feodoroff was Det. Cesarini who stated on September 18, 2011 at approximately 12:15 a.m., he and several Brockton Police Officers and State Police Officers went to Bar Dino's to try and identify people as a result of a homicide investigation. They identified 62 people inside the bar. One individual, identified as 20 year old Christopher Teixeira was drinking at the bar and another person, identified as 19 year old Homero Monteiro, smelled of beer and admitted to drinking Heineken in the bar. Neither individual produced any false form of identification.

Det. Cesarini stated there was a bouncer who stated his job was to make sure that everyone going into the bar was 21 years old.

On cross examination by Attorney Creedon, Det. Cesarini stated there were no problems involving intoxicated persons. The under aged individuals were not suspects in any other investigation the officers were conducting. Both individuals produced identification which showed them to be under 21 years old. The police were inside the bar for approximately 40 minutes. He stated he is not familiar with the licensee. He saw one of the under aged individuals with an alcoholic beverage in his hand, the other one he did not see drinking.

In response to a follow-up question from Attorney Feodoroff, Det. Cesarini stated he saw no form of wristbands or hand stamps used to identify people under 21.

Mr. Soares stated he was there and everyone's identification was checked no matter what their age. He said Mr. Barros is from Boston and he doesn't know the people from Brockton so he doesn't have any friends here that he would allow in if they are under age.

Mr. Barros then stated he checks identification and does not allow anyone who is under 21 to enter the bar. He stated an id marked with a red line shows someone is under 21. Everyone must go by him. He takes no breaks. At closing he remains at the door to make sure no one takes anything out.

In response to questions from Commissioner Wood, Attorney Feodoroff stated that being given a fake ID is a valid defense for serving someone under 21 if it is established that the person showed a fake ID

Attorney Creedon then asked how it is handled when the two minors don't show up at a hearing to testify and don't show the fake ID's they used. Attorney Feodoroff stated that you have to produce the evidence you have. She indicated it is not the Commission's job to disprove a hypothetical.

Attorney Creedon then stated he had asked for a continuance so he could try to find out what the story is.

The Adm. Asst. pointed out that the first notice of the violation was served on November 1<sup>st</sup>. Attorney Creedon indicated he realizes this but the board has a policy of not bringing in the person who is the alleged violator and it is his practice to get all of the facts and to get a full hearing.

Attorney Feodoroff stated that the prosecution must bring in the evidence that is needed to prosecute and support their case and the Defense has the burden of bringing in their evidence to disprove the case or set up a defense. She informed Attorney Creedon it is not the City's obligation to subpoena his defense witnesses. Attorney Creedon stated that to show his due diligence, he called the Brockton Police Department and he is on Det. Bell's answering machine telling him he wanted him at this meeting to testify. He stated Det. Bell is not present. This is why he needed another month.

In his closing argument, Attorney Creedon stated that they hire someone specifically who is not related to people in Brockton. This person knows the system. The police officer did not make an arrest. He stated he is not denying that the individuals were under 21 but the question is whether or not in allowing the illegality, they affirmatively participated in that.

Commissioner Kelley then pointed out that this establishment has a history of violations and on April 3, 2010 and May 13, 2010 there was a hearing on sales to persons under 21 years of age and there was one guilty finding and one not guilty finding. It was recommended that all servers be TIPS trained. In another hearing on May 19, 2011, the hours were rolled back for a week for other violations found.

Attorney Creedon told Commissioner Kelley that they haven't voted on whether there is a violation or not and he shouldn't prejudice the board by reviewing the history.

Commissioner Kelley indicated that the prior punishments do not seem to have worked and he made a motion to find the licensee guilty. The motion was seconded by Commissioner Kenney. All members voting in the affirmative, the motion carried.

Commissioner Kelley then suggested for discussion that the hours be rolled back an hour on both the liquor license and the entertainment license.

Commissioner Wood indicated he is not convinced that there were no false ID's used and he is assuming that in the absence of a charge against the individuals, there probably was not a fake ID on them. He stated there is a difference between that type of behavior and being fooled and purposely letting anyone in. He indicated that at the very least, it seems that the licensee is taking affirmative steps to try and card people. He suggested that as a possible remedy it might make sense in this type of situation to make the licensee hire a police detail in addition to having a person working the door.

Attorney Creedon then suggested that if the board is to issue a rollback, it be done for a specific time period. Commissioner Wood stated that a rollback is not going to fix the underlying problem. Mr. Soares indicated this would be expensive and that the people at his bar start leaving at midnight to go to other places and at 12 or 12:30, he only has about five people inside.

Commissioner Kelley suggested a rollback with the ability for the licensee to come back in six months. Commissioner Wood suggested a one hour rollback for three months. Commissioner Kenney agreed with Commissioner Wood that there is a possibility that there was a fake ID presented. Commissioner Kelley indicated that they have found there to be no fake IDs.

Commissioner Kelley stated the doorman, by his own admission, had stated he does not know what a fake ID looks like and further training is warranted. He stated there is equipment that can be purchased to check on fake IDs.

Commissioner Kelley then made a motion to rollback the hours of operation and the Entertainment license for a period of three months. The motion was seconded by Commissioner Sullivan. All members voting in the affirmative, the motion carried.

### 13. Renewal of Licenses for 2012

#### **A. Licenses to Sell Alcoholic Beverages**

1. All Alcoholic Restaurants
2. Wine and Malt Restaurants
3. All Alcoholic Hotels
4. All Alcoholic General On-Premise
5. All Alcoholic Package Stores
6. Wine and Malt Package Stores
7. All Alcoholic Clubs

The Adm. Asst. reviewed that each Commission has a list of the licensees in their folder. On premise licensees are required to furnish Certificates of Inspection and Liquor Liability Certificates which some have not yet conformed with but will more than likely have them by the end of the year. Their vote should be pending compliance with both.

A motion was made by Commissioner Kelley to approve the renewal of the licenses pending compliance with all requirements. The motion was seconded by Commissioner Wood. All members voting in the affirmative, the motion carried.

**B. Common Victualer Licenses**

A motion was made by Commissioner Kelley to approve the renewal of the Common Victualer licenses which motion was seconded by Chairman McDuffy. All members voting in the affirmative, the motion carried.

**C. Innholder Licenses**

A motion was made by Commissioner Kelley to approve the renewal of the Innholder licenses which motion was seconded by Commissioner Wood. All members voting in the affirmative, the motion carried.

**D. Licenses to Sell Second-Hand Motor Vehicles (Class I and II)**

A motion was made by Commissioner Kelley to approve the renewal of the Class I and II Licenses to sell second hand motor vehicles. The motion was seconded by Commissioner Sullivan. All members voting in the affirmative, the motion carried.

**E. Lodging House Licenses**

A motion was made by Commissioner Sullivan to approve the renewal of the Lodging House licenses pending receipt of all of the inspection approvals. The motion was seconded by Commissioner Dansby. All members voting in the affirmative, the motion carried.

**F. Entertainment Licenses**

A motion was made by Commissioner Kenney to approve the renewal of the Entertainment licenses which motion was seconded by Commissioner Wood. All members voting in the affirmative, the motion carried.

**G. Automatic Amusement Device Licenses**

A motion was made by Commissioner Dansby to approve the renewal of the Automatic Amusement Device licenses which motion was seconded by Commissioner Sullivan. All members voting in the affirmative, the motion carried.

**H. Fortune Teller Licenses**

A motion was made by Commissioner Dansby to approve the Fortune Teller License which motion was seconded by Commissioner Sullivan. All members voting in the affirmative, the motion carried.

14. Communications

Attorney Creedon came forward and stated he wanted to address some paperwork with the Commission concerning Jeano's Restaurant. It was suggested that Attorney Creedon wait until all other schedule matters on the agenda were heard.

Communications were distributed and reviewed. It was agreed that a hearing will be scheduled in January on the violation reported by police against Emysafari Dance Club

15. Any other business to properly come before the Commission

- (a) Proposal presented by Maria Mendes, Brockton CMCA Coordinator for Health Imperatives, for amendment to License Commission Rules to require seller training for managers and owners of non-pouring liquor establishments in the City of Brockton

Present were Capt. Wayne Sargo, Brockton Police, Maria Mendes, Program Coordinator for Communities Mobilizing for Change in Alcohol, Health Imperatives at 932 West Chestnut Street and a Brockton Resident, and Andy Robinson, a Ward Two Brockton Resident.

Ms. Mendes stated that CMCA is one of 30 underage prevention programs in the State of Massachusetts. They are funded by the Department of Public Health and they are required to work on enforcing and underage drinking prevention through policies and ordinances and mainly to reduce access to alcohol. She indicated they had conducted a survey with students at Brockton High School to try to understand the magnitude of under aged drinking. She stated the results of the survey indicated that 26 percent of students in grade 9 reported using alcohol in the past thirty days along with 35 percent in the 11<sup>th</sup> grade and 40 percent in the 12<sup>th</sup> grade. During subsequent focus groups with students, community members and parents, it was found that their biggest concern was the large number of liquor stores in the City and they reported it is very easy for someone underage to purchase alcohol.

Ms. Mendes stated that over the past eight years in Brockton, their program has been working to effectively reduce underage access to alcohol. This is a grant and one of their biggest plans is to create and put in place sustainable initiatives such as policies and practices that will reduce underage access to alcohol even after funding for the grant is reduced or eliminated. She stated that CMCA currently offers server training which they call 21 Proof. This has been offered to all licensed package stores on a volunteer basis seven times in the past four years and only four stores have participated.

Ms. Mendes stated they are proposing an amendment to the License Commission's Rules for managers and owners of non pouring establishments in the City of Brockton and are recommending the following guidelines:

1. Training for all liquor store owners and managers would be a requirement of license renewal;

2. The licensee would select one of three required training opportunities, those being, Tips, E-Tips or Stop which is valid for three years;
3. To offer as an additional resource the 21 Proof Selling Smart Best Practices for Reducing Underage Drinking training.

Ms. Mendes then introduced Capt. Sargo and Andrew Robinson, a Crime Watch Coordinator, who are present to share their thoughts on the proposed amendment.

Capt. Sargo stated there are no training programs for package store clerks and owners. With more training required, they are hoping to cut down on some of the underage sales. He stated they have had Sting operations where violations have been found although the number of violations has been minimal. He stated he feels these could be cut down as well. He indicated in addition to the 21 proof training there are other similar training programs which would also be offered. They are hoping with this type of training there will be fewer violations especially with the young people accessing alcohol. Violations involving the serving of alcoholic beverages to intoxicated persons are found more in restaurants and bars.

Capt. Sargo stated they have worked with CMCA on the Sting operations as well as the sticker shop program. Most of the stores have been cooperative. He indicated he would like the Commission to look at this to see if this is something they might want to consider. He stated it will be an involved program which requires the package store owners and staff to go to training. There will be a cost involved as well but he stated it is something worthwhile to look at.

Commissioner Wood asked if there is a cost involved with the 21 Proof Program and Capt. Sargo stated there is a minimal fee which would be in line with the others. Ms. Mendes stated they currently charge \$45 but the establishment is able to send up to three people to the training. She indicated the other programs charge from \$40 to \$70 per individual.

The Adm. Asst. asked Capt. Sargo if they have found violations in the Sting operations they have run and he indicated they have in the past. Ms. Tucker stated recently, there have been no violations brought before the Commission as a result of any Stings conducted. Capt. Sargo stated he does not have the data with him but they have done well recently. He stated it is still an area of concern.

The next person to speak was Andy Robinson who stated that in addition to being a community resident, he has run a neighborhood watch and has been an active part of the Brockton Community Police Leadership Council and he is the School Committee Elect for Ward Two. He stated that clearly, youth wellness and safety is a concern to him. He stated that youth trying to access alcohol will always be an issue. He informed the Commission that Tips is sponsored by Budweiser. He stated that as a resident he will always be concerned with the safety of our youth and any steps that the Commission can take to provide adequate and consistent training for all liquor establishments is encouraged. He urged the Commission to try and be as pro-active as possible about these issues. He also indicated that Councillor Brophy could not stay but wanted him to express his approval of this as well.

Commissioner McDuffy informed those present they the Commission and City Solicitor's office are currently reviewing the Rules and Regulations and he anticipate there will be some changes so this is good timing for their presentation. He stated he will consider the proposal as part of the review.

In response to questions from Attorney Feodoroff, Ms. Mendes stated they are funded through a 10 year grant. Lisa Marske, Program Director for the Brockton Youth Network, came forward and stated that they have one year left on the grant and possibly two other years. Attorney Feodoroff asked if the program continues after the expiration of the grant and Ms. Marske stated that when funding goes away, some of the programs also end. She indicated that what Maria is trying to do is to work with groups such as the License Commission to institute policies and practices that will be there after their funding disappears. Attorney Feodoroff clarified that if the 21 Proof Program goes away, the regulation has to be more generalized.

Capt. Sargo stated that if the regulation comes to pass, he thinks they will be able to utilize it to increase their chances of getting more grant money.

Commissioner Kelley indicated he likes the idea where it is pro-active and he feels some of the changes made recently by the Commission have already shown some positive results. He stated this was well written and well presented and he thinks it should be looked at.

Mr. Robinson stated he thinks by bringing this in for license renewal allows for continuous training and sends a message to bars and bar owners and liquor establishments who have been in business for 30 or 40 years and think they know everything there is to know that there is always something new to learn. He stated that as a community member it is a good message to send.

Commissioner Wood asked if this proposed Rule Change requiring completion of a 21 proof type course would be an annual requirement. Capt. Sargo indicated it would be for new employees or places where there is a problem.

With no further information presented, the Commission thanked those present for their proposal and indicated it would be taken into consideration.

(b) Jeano's Restaurant – 769 Main Street

Present was Attorney John Creedon, 71 Legion Parkway who requested to speak on behalf of Jeano's Restaurant. Commissioner Sullivan asked Attorney Creedon if he is on the agenda and he stated this is unfinished business. Also present was Dieulifaite Jean.

Attorney Creedon then presented the Commission with information which had not previously been filed. He read from his letter which states that he represents Berlangue Jean and Jeano's Restaurant, Inc. on their attempts to have the liquor license and Common Victualer license renewed. He stated that this same issue with the liquor liability insurance came up last year at renewal time. He reviewed that the license was in the name of Mrs. Jean individually and in June, the license was transferred to the corporation. The application was forwarded to the ABCC and on November 7, 2011, the transfer was disapproved by the ABCC due to taxes being owed

to the Dept. of Revenue. A letter notifying the licensee of the disapproval was promptly sent by the Adm. Asst. to Mrs. Jean with a copy to Attorney Creedon. Attorney Creedon stated John Kolentsas, an accountant, was hired by Mr. Jean to straighten things out. Payment in full was made on November 27, 2011 and the Dept. of Revenue issued a letter that stated Jeano's Restaurant was in compliance. On November 29, 2011, Mrs. Jean filed the renewal application and was informed by Ms. Tucker that the insurance certificate was in the name of the corporation and this was a problem due to the disapproval of the transfer of the license. Attorney Creedon stated he went to Morse Insurance who informed him that they are insuring the corporation. He stated that they are covered anyway as Attorney Wood has said. He stated Bonnie had told them that the licensed insurance certificate is not in compliance. Ms. Tucker explained that this is because the ABCC had disapproved the transfer of the license to the corporation and it remains in the name of Mrs. Jean as an individual.

Attorney Creedon stated he called the "powers that be in the ABCC" and they directly told him that if this board sends the Form 43 back in for reconsideration and know the taxes are paid because he gave them all of the information, they would approve this within 48 hours. This approval will be sent back to the License Commission and the insurance certificate will then be in compliance. He stated that all of this can be done without Jeano shutting down after 22 years.

Attorney Creedon stated he had prepared a new Form 43, however, it was reviewed that it is dated June. Commissioner Kelley asked Attorney Creedon if they sign this tonight, will they have the approval within 48 hours. Attorney Creedon stated that is which is what Ted Mahoney at the ABCC had told him.

A discussion was held with regard to the date on the Form 43 which Attorney Creedon had prepared and it was agreed that they would put in today's date and sign it so it could be sent into the ABCC. It was agreed that if this is a problem, it will have to be redone and resubmitted.

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

**Respectfully submitted,**

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**Scott H. McDuffy**  
**Acting Chairman**

**APPROVED:**

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**Joseph P. Kelley, Commissioner**

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**Paul D. Sullivan, Commissioner**

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**Bruce G. Dansby, Commissioner**

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**Joshua J. Wood, Commissioner**

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**Fred Fontaine, Alternate Commissioner**

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**Kathy Kenney, Alternate Commissioner**