

TAPED

The License Commission held a Special Meeting at 6:00 p.m. on Tuesday, July 31, 2012, in the G.A.R. Room at City Hall. Present were Chairman Scott H. McDuffy; Commissioners Paul D. Sullivan, Bruce G. Dansby and Kathy A. Kenney. Also present were Asst. City Solicitor Kate Feodoroff, License Agent Lieut. Paul Bonanca; and Administrative Assistant Bonnie Tucker.

1. Requests for Special One-day Permits:

- (a) **Wine and Malt Beverages** - Brockton Baseball Concessions, Inc. – Michael Canina, Manager, 1 Feinberg Way (Campanelli Stadium), for a baseball game to be held on Friday, August 3, 2012 from 6:00 p.m. to 11:00 p.m.

Present was Michael Canina, 227 Linwood Street, who reviewed the request which is a benefit baseball game sponsored by Signature Health Care KO Cancer event. There will be two “over 30” baseball teams with celebrities such as Doug Flutie and Oil Can Boyd. The proceeds for the night will go to the Signature Healthcare Foundation.

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

Mr. Canina then reviewed that when he was before the Commission in July, an amendment to his entertainment license was approved for a concert on August 25 along with a one-day permit for the event. He indicated the date needed to be changed to September 8th due to a conflict with one of the artists, Bel Biv Devoe. They plan to go forward on September 8th and will have En Vogue if Bel Biv Devoe can't perform. The Adm. Asst. stated she will contact police and fire to inform them of the date change.

A motion was made by Commissioner Sullivan to approve the change in the date to September 8th. The motion was seconded by Commissioner Kenney. All members voting in the affirmative, the motion carried.

2. Hearing (postponed from meeting of July 19, 2012) on the charges against Ames Street Pub, LLC dba The Lit – Ralph Lawcewicz, Manager, 128-132 Ames Street, of the following alleged violations on June 8, 2012 at approximately 7:24 p.m.:

- (a) **ABCC Rule 2.05(2)**, “No licensee 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 therefore whether present or not.”,
- (b) **M.G.L. Chapter 138, Section 69, to wit:** “No alcoholic beverages shall be sold or delivered on any premises licensed under this chapter to an intoxicated person.”
- (c) **ABCC Rule 2.05(2)** - Permitting an illegality to take place on the licensed premises, to wit:

1. **M.G.L. Chapter 270, Section 22** – Smoking in public places
2. Knowingly allowing drug use in the parking lot

After the charges were read by Chairman McDuffy, Attorney Feodoroff stated the City is moving to dismiss the charge of an alleged violation of ABCC Rule 2.05(2) – Knowingly allowing drug use in the parking lot. She indicated that after a further review of the tapes, they feel there is not sufficient proof to go forward with the charge.

The following persons were sworn by Attorney Feodoroff:

Shawn Wilkins, 27 Page Terrace – Suite 404, Stoughton
Al Urbaschak, Jr. – 39 Amark Road
Amanda Ginsberg – 136 Sawtell Ave – Apt. 3
Robert Mantell – 33 Whitton Street Apt. 22, Holbrook
Ralph Lawcewiz – 42 Lawton Avenue
Det. Nazaire Paul, Brockton Police Dept.

In her opening remarks, Attorney Feodoroff reviewed that there are serious allegations being brought against The Lit and the most serious involves a fight which occurred in the parking lot of the establishment. The City expects the evidence will show that not only was the bartender aware of the circumstances in the parking lot but he did not call the police. She indicated the evidence shows he knew or should have known of the disturbance and chose not to call the police. In addition, there are allegations of over serving, allowing smoking inside and there is video evidence to demonstrate these occurred.

Attorney John Pavlos, 120 Torrey Street, representing Ames Street Pub, LLC dba The Lit, stated that there have been many articles written and statements which have been made by members of the police department which have been irresponsible. He stated he read the articles and thought there were serious issues and wondered if there were problems with management and certain decisions which were made. The video was made available by Mr. Lawcewicz to the police department investigation and there are a number of cameras. He stated The Lit is located in a high crime area but the bar is not the problem. There will be arguments made about the over serving. Both the day bartender and night bartender are present and were not interviewed by the police. The video tape will not show a mob rushing out and beating someone to death. Attorney Pavlos conceded that there was smoking by a bartender in the back room. He informed those present that there is a time indicator on the video that will be shown which does not account for daylight savings time and so the clock is one hour off.

Attorney Feodoroff called on Det. Nazaire Paul who stated he has been a Brockton Police officer for seventeen years and has been a detective for thirteen of those years. On June 8, 2012, a call came in to the Brockton Police reporting a medical emergency and Officer David Delehoey was the first officer sent to the location. When he arrived, the victim had been taken to Brockton Hospital and the bar was still open. Det. Paul stated he was dispatched because the victim was not doing well. The case turned out to be a homicide. When he arrived, there were a couple more officers and a lieutenant at the scene. There were several people still inside the bar. Det. Paul requested an officer remain in the room where the surveillance video is kept because Officer Delehoey had informed him that entire incident was on

the video. He stated he spoke with several individuals including the bartender - Mr. Mantel, Sean Wilkens and Al Urbaschak and briefly to Everett Gunderway and Jacquelyn Gill.

Det. Paul stated Mr. Mantell told him he was in the back room smoking a cigarette and he was watching the monitor of the parking lot. The video was played and on Camera #1, Det. Paul pointed out a grey truck parked in the lot belonging to Mr. Mantell. There was a man in the parking lot trying to open the door to his truck and going up to the cars and leaning against them. Mr. Mantell told him that he went to the bar and told some of the people inside the bar about the person in the parking lot. Mr. Gunderway whose car was parked behind his truck (he pointed Gunderway's car out on the video) was one of the individuals. A few of them went outside to talk to the person in the parking lot and told him to stay away from their cars. They checked their cars and there was no damage so they returned inside the bar.

Det. Paul stated he interviewed Mr. Urbaschak who told him he didn't see what was going on. He also spoke with Mr. Lawcewicz very briefly that evening.

On June 11, 2012, Det. Paul indicated he went back to the Lit with Trooper Kalil. He spoke with Mr. Lawcewicz and told him no one should be smoking inside. He also told him that the police should have been called and it could have prevented a person from being injured. Mr. Lawcewicz made a statement to the effect that he it was a mistake to install the surveillance system because the police can see whatever they want. Mr. Lawcewicz also stated that several of his employees have called the police on different times but the police failed to come. Det. Paul stated Mr. Lawcewicz was present on June 8th.

Det. Paul continued and stated that the State Police were called in on the investigation which occurs anytime there is something major. They helped with the surveillance tape and there were a couple of copies made that night. A few days later, a technician came in and made a few dvd's. He agreed with Attorney Pavlos' statement that one of the cameras is off by an hour. He also agreed that the assault took place at approximately 7:20 p.m. He has reviewed the tapes and stated that when the three individuals went out to talk to the victim, they told him to stay away from the cars. He was still in the parking lot wandering around and obviously drunk and confused. Det. Paul stated he is unsure whether the victim was looking for his own car or someone else's vehicle. He was trying to get into the truck. Det. Paul stated the video shows him leaning against the truck and the car behind the truck and that is what cost him his life. He indicated he believes someone went in to tell them he was still outside. Two men rushed outside and one punched him and the second one joined him and kicked him after he had fallen.

Attorney Feodoroff then showed the video marked camera #1 of the exterior parking lot which showed the time from 7:09 p.m. This showed the footage of what Mr. Mantel had described took place while he was smoking his cigarette out back. Mr. Bishop was wandering around the parking lot and he approached a female who drove up in a vehicle. Det. Paul stated his report for the License Commission is more for the license violation. Some reports cannot be given to the License Commission because they have been given to the State Police and there is still a grand jury investigation going on. The female was identified in his other reports and it shows that the female got out of her vehicle and had no fear of Mr. Bishop. She left him, Brian Bishop, in the parking lot and went inside the bar. At 7:13 p.m., Mr. Mantel, Gunderway and Kent Johnson went out to the parking

lot to confront Mr. Bishop. Kent Johnson is one of the individuals being charged in the assault of Brian Bishop. Det. Paul stated at this point, police have not been notified. The video continued to be played and Det. Paul stated there has been no violence in the parking lot at this time although the audio cannot be heard. There was no physical harm. All three males then returned to the bar. The next five minutes on the video show people going in and out of the bar in the parking lot. During this time Sean Wilkins arrives in his vehicle and another witness, Crystal, was in the parking lot. The video shows Kent Johnson and Brian Bishop are exchanging words. He was going after him but was stopped by Crystal. At 7:19 Rodney Flinch exited the bar by himself. The video shows Flinch and Mr. Bishop exchanging words and then Flinch sucker punched him. At this point, at least six people could be seen on the video coming out of the bar. These individuals included Urbaschak, Gunderway, Clarence Lightford, Crystal DeRosa and Kent Johnson. Attorney Feodoroff noted that two additional individuals could be seen in the camera's view. These two individuals were Mr. Wilkins and Jaquelyn Hill.

Det. Paul continued and stated that when Mr. Bishop hit the ground, he hit his head and the autopsy revealed trauma to his head. At this point in the video, Mr. Bishop is lying on the ground and not moving and then he is kicked in the head. Det. Paul stated that no one has yet called the police. Attorney Feodoroff reviewed that the video then shows a good portion of the people returning to the bar and Mr. Bishop laying on the ground. They check the cars for any damage to the vehicles which there is none.

Det. Paul stated the only calls to the police were from Shawn Wilkins and a passerby who saw the victim on the ground and called 911. Attorney Feodoroff passed out copies of the police log. Det. Paul indicated it showed the calling party as unknown and gives a phone number which was not a number from The Lit. He stated he listened to the 911 tapes and identified Shawn Wilkins as being the first caller and the second call was from someone who was passing by.

Attorney Feodoroff then reviewed that at 7:24:06, the video shows Mr. Urbeschak carrying a cup of water out from the bar and approaches the victim, put some water on his face and later in the video he dumps the water on the victim. Det. Paul explained that Urbeshack had gotten the cup of water from the bartender, Robert Mantell. At 7:27 p.m., the first fire truck arrived.

Attorney Feodoroff then reviewed video from Camera #5 and Det. Paul stated the inside of the door where the people had exited from could be seen from this camera shot. The person behind the bar is identified as Mr. Mantell, the bartender. The video shows four or five people inside the bar at this time. The bar is relatively empty. Det. Paul indicated it shows Mr. Mantell leaving the bar and exiting with two other males. This is when they go to confront Mr. Bishop as seen from the outside camera previously. They return inside the bar. It is 7:13 p.m. Several minutes pass and the camera shows Mr. Urbaschak is standing at the door and his gestures indicated something was going on outside. It appears that he is shouting something. At that point six people exit the bar and from this camera angle, it shows there are three people plus the bartender inside the bar. At 7:21:10, Kent Johnson is seen walking in the door of The Lit. Attorney Feodoroff pointed out that Kent Johnson is the person who had just assaulted and kicked Brian Bishop in the parking lot. At 7:21:21, Det. Paul stated it shows Kent Johnson speaking with the bartender, Mr. Mantell. Johnson is shaking his hand like it was hurt. At that point no one had called the police. Mr. Urbaschak came in and spoke with the bartender for

15-20 seconds and the bartender gave him a cup of water which Urbaschak brings outside to try and wake up the victim. No one from The Lit called the police.

In response to further questions from Attorney Feodoroff, Det. Paul stated he had reviewed videos from earlier in the day and she provided a document for him to review. Attorney Pavlos asked if Attorney Feodoroff was giving Det. Paul a report he had not received and Attorney Feodoroff indicated she hadn't introduced it as an exhibit and no one else has seen it either. Attorney Pavlos stated for the record that he requested copies of any reports that would be used at this hearing and he clearly has not been provided with this document. He indicated that what is being provided to the detective to further comment on the video tapes seems to be a significant report and this is why he requested a continuance so he could obtain the police reports. He stated he was told he had all the police reports and he objected to this and feels it is unfair and another problem with a fair hearing.

Attorney Feodoroff stated for the record that she had asked Det. Paul to prepare a report for her and she had only just received the report which is a review of the same video tape indicating the time that the drinks were served to Mr. Bishop. She stated that if the Commission would prefer, they can go through the video and document each instance through the video as opposed to through Det. Paul's subsequent investigation. Attorney Pavlos stated he is clearly not asking to do that but stated he would just have appreciated a copy of it. Attorney Feodoroff stated she did not intend to introduce this as an exhibit.

Chairman McDuffy asked if the members would rather see the video and it was agreed that they would view the video instead.

Attorney Feodoroff then pulled up the video which showed the time to be 15:15, however, Det. Paul stated that this is one of the times that is off an hour due to day light savings time so it is actually 16:15 which was agreed to by both Det. Paul and Attorney Pavlos. She pointed out that this is Camera #5 which shows the inside of The Lit. There is a female bartender on duty. At 15:17 on the camera which Det. Paul stated is actually 16:17, Brian Bishop is shown drinking a beer. At 4:23:06, the female bartender serves Mr. Bishop another beer. Approximately 14 minutes later, at 4:37:22, the same bartender serves Mr. Bishop another beer. At 4:55:11, she serves Mr. Bishop another beer and then another at 5:13:51. In the course of less than an hour, Det. Paul stated the video showed Mr. Bishop being served five beers.

At 16:46 (real time 5:46 p.m.), Mr. Bishop is shown taking a cigarette from his pocket and smokes the entire cigarette. At no time did the female bartender ask him to leave or put the cigarette out.

Attorney Feodoroff asked if they could take a recess for a couple of minutes which the board agreed to.

For the record, Chairman McDuffy called the hearing back to order.

Upon further questioning by Attorney Feodoroff, Det. Paul indicated he is aware that Lieut. Bonanca reported to the Commission that Brian Bishop had a high alcohol level of .242 which is based on a copy of the toxicology report which was presented to the Commission members. She directed them to the back page which refers to alcohol ethyl which reports the findings as .242.

On cross examination by Attorney Pavlos, Det. Paul stated he was one of the first officers on the scene and started conducting interviews as soon as he arrived. He is trained in preserving evidence. He identified his report dated June 11, 2012 and in addition, he prepared some written reports involving the grand jury investigation. Det. Paul stated it is a homicide investigation and he cannot talk about the grand jury investigation. Attorney Pavlos then asked Det. Paul if he had interviewed any of the witnesses and written reports that were presented to the grand jury which are not here and he indicated yes. When he arrived at The Lit on June 8th, no one was allowed to leave the bar until the police had spoken to them. Some of them were detained for several hours. Some of the witnesses were taken to the station to be interviewed there. Those individuals included Mr. Wilkens, Mr. Gunderway and his girlfriend and several others. At the bar, he spoke to Mr. Mantell for seven to ten minutes. He stated he took information such as names, addresses, phone numbers because in situations such as this, the State Police come in and re-interview the individuals.

Attorney Pavlos then asked Det. Paul about statements in his report. Det. Paul stated Mr. Lawcewicz was there when he arrived which was shortly after Officer Delehoy responded. Attorney Feodoroff objected to Attorney Pavlos' question regarding when Mr. Lawcewicz was on the premise on grounds of relevance and at this point they haven't yet shown Mr. Lawcewicz as being present in the videos. She stated that for License Commission purposes, Mr. Lawcewicz is responsible for the actions of his employees and they are attaching the responsibility to the bartender who should have called police. Attorney Pavlos stated it is relevant and he will go through each one and discuss their responsibilities and what can be attributed to the bar. He stated his point is that the detective was there investigating and made the statement that Ralph Lawcewicz was present during this incident. Det. Paul indicated he said that in his report because Mr. Lawcewicz was there when he was there. He is not sure whether he was present at the time of the fight in the parking lot but he was there during the time Mr. Bishop was being served because he saw him in the video. He did not ask any of the witnesses if Mr. Lawcewicz was present during the incident. When he arrived, there was yellow tape from the back entrance to the front entrance and no one was allowed inside. Mr. Lawcewicz was inside.

Upon further questioning by Attorney Pavlos, Det. Paul reviewed that Mr. Bishop was smoking right at the bar and appeared to be intoxicated. He stated that he was not familiar with Mr. Bishop or his mannerisms but knows he is dead because no one called the police. He is not aware of any injuries Mr. Bishop had prior to the assault but knows that he was walking around inside the bar and drinking. The video shows him consuming five beers within one hour.

Attorney Pavlos stated to Det. Paul that he has made assumptions and had come to a conclusion that Mr. Bishop was intoxicated, just from looking at the video. Det. Paul indicated he feels it is a little bit observable in the video. Prior to being confronted, Mr. Bishop is observed in the parking lot going from car to car checking doors and trunks. Through his investigation, he has learned that Mr. Bishop did not have a car in the parking lot. Attorney Pavlos stated to Det. Paul that he had concluded in his report and for the press that Mr. Bishop was intoxicated and looking for his vehicle. Det. Paul stated he never spoke to the press and Attorney Feodoroff objected to Attorney Pavlos' statement. Attorney Pavlos stated that there have been statements and conclusions made by Det. Paul and he thinks that whether they are credible is clearly a point. He indicated it has been said that Mr. Bishop was drunk and was looking for his car but it is also a reasonable assumption that he wasn't drunk and looking for his car and that he wasn't drunk and was trying to break into cars.

Chairman McDuffy stated he has read the toxicology report and 2.43 and it is obvious that he was drunk.

Attorney Pavlos continued to question Det. Paul as to whether he knew whether Mr. Bishop was an alcoholic and Det. Paul indicated he is not here to make judgments. Attorney Pavlos stated he is the one making assumptions and he is asking basic questions and it is fair to ask whether he believes that it is a fair inference that this person was trying to break into cars. Attorney Feodoroff stated the point of tonight's hearing is not to prove whether or not the assailants have a defense in terms of protecting their property but the focus of this hearing should be limited to whether there is evidence to demonstrate if the employees of the Lit had information as to whether they should call police and they chose not to in call, in addition to the other more minor allegations.

Attorney Pavlos stated there have been a number of conclusory statements made based on preliminary investigation talks about viewing the video, three days later writing a report and making conclusions about what Mr. Bishop was doing there and how he was comporting himself. He stated he will be taking up whether he was over served but the fact that the detective concludes that this guy was looking for his own car is worthy of follow up questions. Attorney Pavlos stated he will be reviewing the video of Mr. Bishop in the parking lot which shows he is not falling down in the parking lot and he is not staggering. He is casing the place and when someone goes by, he tries to look busy as if he belongs there.

Attorney Pavlos then showed Det. Paul the toxicology report and pointed out that it was negative for cocaine. In response to questions, Det. Paul stated some people had said he was smoking crack cocaine in the parking lot. He had included in his report that there was no damage to the cars in the parking lot because Mr. Bishop was killed because the people in the bar thought that he was trying to break into their cars. They had confronted Mr. Bishop on two occasions; the first to advise him to stay away and the second time, two of the patrons beat him up and ended up killing him. Attorney Pavlos asked Det. Paul if he is aware of a person named Peter Polminskas and he stated no. Det. Paul stated that to the best of his knowledge, he has viewed what is important on the video tapes.

Attorney Pavlos then reviewed that at 5:23 on the video, Mr. Bishop gets out of a green pickup truck that is in the approximate place of Robert Mantell's truck. Det. Paul stated he has not seen that video. Attorney Pavlos stated he has spoken with Peter Polminskas who is a resident of Brockton. He informed him that when he came out of the bar, Bishop was inside his pickup truck. He confronted him and asked him what he was doing in his pickup truck. Attorney Feodoroff objected to this and asked if Mr. Polminskas is present. Attorney Pavlos asked if hearsay is not admissible in that Det. Paul has talked about what people have told him and has put in a lot of innuendo into his testimony. Attorney Feodoroff stated that they are not just hearing hearsay and that they are seeing direct evidence by video.

Chairman McDuffy indicated he feels things are getting out of hand and off the subject. He stated the subject is whether or not Brian Bishop was served at the bar and when he went outside there was an incident that was videotaped and observed by employees and whether or not The Lit or its employees are responsible for that and that his employees did not do the right thing.

Attorney Pavlos indicated there is time in the video after Mr. Bishop is served and at one point he is seen get out of the green pick up truck parked in the parking lot. He stated he has spoken with the owner of the truck who is in Maine and wouldn't come back to testify but this individual told him that he had been to the liquor store. There was a bag that contained four nips and cigarettes in his truck. Attorney Pavlos stated Mr. Bishop was sitting in the driver's seat and had drunk two of the nips and he started to take his cigarettes. Attorney Pavlos stated his point is that there are other things happening with Bishop leaving and coming back and five beers do not account for a blood alcohol of 2.42.

Attorney Pavlos then played the video of the outside which showed the time to be 17:23. For clarification, Attorney Feodoroff stated there are two systems and some of the time on the videos are correct and some is an hour off. Attorney Pavlos stated he would be showing the video shot by the outdoor camera and Attorney Feodoroff stated that is the accurate time.

Attorney Pavlos asked Det. Paul if he had spoken with Shawn Wilkins who is shown in the video arriving in a car and Mr. Bishop went over to the car and spoke to him. Kent Johnson is then shown going over to them and he is seen interacting with both Bishop and Wilkins. There is also a female there who Det. Paul referred to as Crystal. This is after the three had come out the first time and told Mr. Bishop to leave and get away from their cars. This is the second interaction where Bishop is being told to get away from the vehicles. At that point, eight people come out of the bar. The video shows only two people making contact with Mr. Bishop and those two people are Kent Johnson and Fitch who have both been charged. Attorney Pavlos gave an account of what took place which shows Fitch outside alone and punching Bishop once. He asked Det. Paul to correct him if his account is wrong. Other people come out of the bar and Kent Johnson goes over and punches him at least twice. At that time, Mr. Bishop falls backward and hits his head and the autopsy confirms there was a lot of damage from hitting his head on the pavement in the parking lot. Kent Johnson then kicked him while he is down on the ground. Det. Paul stated it all appears to happen very quickly. At that time, the inside video shows Al Urbeschak go to the bartender and say something to him. Det. Paul indicated when he went inside the first time, he believes he told people there was a fight outside. He then went back out and returns a short time later and gets a glass of water from the bartender. At some point in the video, Shawn Wilkins is shown to be moving around in his wheelchair. He is fairly close to what is going on and appears to be on the phone. Det. Paul indicated it is fair to say that is when he makes a call to 911. Al Urbaschack is seen coming out at that point with the water.

Attorney Pavlos stated that from his observations of the video, the emergency vehicle arrives within seven minutes of the first punch. Attorney Pavlos asked Det. Paul if he had been told that the reason Robert Mantel had not called police was because he was told by Al Urbaschack that the call was already made. Det. Paul stated he was not told this. Attorney Pavlos then reviewed the account of what took place in the prior video when Mantell, Gunderway and Johnson went out in the parking lot and spoke to Bishop who then went to the edge of the parking lot and the three went back inside The Lit. Det. Paul agreed that there was no pushing. He stated he has interviewed both Mantell and Gunderway. Mr. Gunderway didn't want to tell them anything and had to be subpoenaed to the Grand Jury. Det. Paul stated that at this time, Mr. Bishop was intoxicated and maybe didn't know what he was doing in the parking lot. He indicated his point was that if someone had called the police, they would have placed him in protective custody or taken him home instead of leaving him in the parking lot. Det. Paul stated he believes the police should have been called when they first saw Mr. Bishop in the parking lot trying to get into cars. If the police had been called, they could have talked to him and

either taken him home or brought him in for protective custody and Mr. Bishop would still be alive. Attorney Pavlos asked Det. Paul if it was an unreasonable thing not to call the police at that point. Attorney Feodoroff objected for the reason that it is ultimately the Commission's decision to determine whether or not it was reasonable or unreasonable based upon the evidence. She indicated that Det. Paul's opinion as to the issue is of no relevance or consequence and it is up to the Commission to determine whether or not it was appropriate for the bartender to react the way he reacted at any given moment during that 20 minute interval.

Attorney Feodoroff stated that the City rests.

Attorney Pavlos called his first witness, Al Urbaschak. The video of the outside was reviewed and Mr. Urbaschak identified Mr. Gunderway's car and the truck that belongs to the bartender, Mantell. Another vehicle was identified as the car belonging to Amanda, the barmaid. Attorney Pavlos asked the commissioners to continue observing the video as Mr. Bishop was going to the doors of the vehicles. He viewed the three people coming out and then going back in. Bishop is standing at the edge of the parking lot. The video was forwarded and Mr. Urbaschak stated when Shawn went over to Bishop who was lying on the ground, he was still in the parking lot. He (Urbaschak) then yelled out did someone call 911 and Shawn stated he was calling then. Mr. Urbaschak stated he then went inside and notified the bartender that 911 was being called. He stated he initially went outside because he heard someone say that a guy was roaming around the parking lot and he thought he might be trying to break into some vehicles. He doesn't remember anyone coming in and saying there was a fight but when he walked outside he could see it was going on. Mr. Urbaschak described Mr. Wilkins wheeling over to the body. About 30-45 seconds before this he had gone into the bar and told the bartender he didn't have to call 911 because an ambulance was on the way.

Attorney Pavlos then showed Mr. Urbaschak two photographs which he identified one being the back door and the other photo was at the front of the bar looking at the front door. The parking lot cannot be seen from anywhere in the bar. The photos were provided for the Commissioner's review.

Upon further questions by Attorney Pavlos, Mr. Urbashak stated he had been in the bar since about 4:00 p.m. He had been drinking but was trying to pace himself. He had seen Mr. Bishop in the bar that day but had not talked to him. He didn't notice anything unusual about him. Mr. Urbashak stated he didn't really know Mr. Bishop but had seen him in the bar once before and he remembers him having a problem with someone at that time. After the fight had taken place, the police would not let anyone leave the bar. Mr. Urbashak stated he testified before the Grand Jury and told them everything he knew about the incident.

Mr. Urbaschak continued and stated that earlier the same day, someone had a seizure. He had dialed 911 at that time and an ambulance came. He estimated it to be 2 to 3 hours prior to the fight taking place.

Mr. Urbaschak stated it is possible that someone from the bar might have asked him to check the parking lot to find out what was going on. He heard that Mr. Bishop was out there roaming around and maybe trying to break into cars. After Mr. Wilkins had called 911, he went in to tell the bartender an ambulance was on the way. He is not sure if the bartender was aware of what had happened at that point.

On cross examination by Attorney Feodoroff, Mr. Urbaschak stated he arrived at The Lit at about 2:00 p.m. He was drinking during the entire time he was there. He frequents the establishment quite a few times a week and knows the bartender and the owner. He knows why the bar has been called in this evening and the possible consequences if they are found in violation. He stated he has played pool with Mr. Johnson and Mr. Finch and has seen them in the bar and talked to them.

Attorney Pavlos explained that next he was going to show the video of the parking lot prior to the three individuals coming out from the bar and talking to Mr. Bishop. He then called the commissioners attention to a pick-up truck located in the parking lot on the left of the screen and let the video run for the next four minutes. Chairman McDuffy questioned Attorney Pavlos as to the correct date of the video which stated 6/9/12 and appeared to be from a different angle. He stated what will be seen is the owner of the pick-up truck coming out of the bar and having a confrontation with Mr. Bishop who has been sitting in his truck. The owner of the truck is Peter Palminskus. Chairman McDuffy asked for Attorney Pavlos to pause the video and he indicated this is very confusing because it is showing the same time of 5:23 but there are a whole lot more cars in the parking lot than the original video shown. Attorney Pavlos stated the time is actually 6:23 p.m. What has been shown previously is the parking lot at 7:00 p.m.

Attorney Feodoroff stated that they have determined that the cameras displaying military time are one hour off due to daylight savings time. The cameras showing regular time and not military time are the correct time.

The next witness called by Attorney Pavlos was Robert Mantell. Mr. Mantell stated he has been a bartender at The Lit for five years. He works from 6:00 p.m. to closing. He was working on the evening of June 8, 2012 and had come on duty at 6:00 p.m. At approximately 7:00 p.m., he had walked outside with Hoggie (Everett Gunderway) and Kent Johnson. Just prior to going outside, he was smoking a cigarette in the back room and saw someone in the parking lot on the surveillance video. At the same time he was called on the bar phone by an individual (Bobby Hendricks) from the Shoe City Bar which is located across the street telling him that there someone was messing around with cars in the parking lot. He stated he went back to the bar and told Hoggie that someone was messing around with their vehicles. He recognized the person in the parking lot as someone who had been in the bar a half hour after he had come on his shift. He wanted Hoggie to come out with him. They approached Mr. Bishop and asked him to get away from his truck and he said yes and then went over and leaned on Hoggie's car. Hoggie asked him to get off his car and he said okay. His intention of going out into the parking lot was to tell the individual to leave the vehicles alone. There was no hostility at this time. After telling Mr. Bishop to leave the cars alone they went back into the bar. Mr. Mantell stated he looked over his shoulder and saw Mr. Bishop on his cell phone and he figured he was calling himself a cab. He did not call the police at this time because he did not feel it was necessary. He then went back inside and continued his shift. Mr. Bishop did not come back inside the bar. Later on in the video when Al Urbaschak came inside, he told him that Sean Wilkins was calling 911.

Mr. Mantell stated that when Mr. Bishop was in the bar earlier in his shift, he told him he would have to leave when he lit a cigarette at the bar. He did not say anything and just got up and left. Mr. Bishop did not appear to be hostile. When he had first come in the bar, Mr. Mantell stated his back was

toward him so he only saw him when he was already seated. He could not judge him as to whether he was inebriated.

Mr. Mantell stated that Det. Paul had interviewed him for approximately eight minutes on the evening of the incident. He first became aware that there was a fight outside when someone came in and said there was a fight out there. He does not remember who said this. He indicated he went to Al Urbaschak and asked him to go outside and find out what was going on. When Al returned to the bar, he asked for a cup of water and told him that Shawn had called 911.

On cross examination of Robert Mantell by Attorney Feodoroff, Mr. Mantell stated he knows Peter Palminkus. Mr. Palminkus was not in the Lit at any time during his shift which began at 6:00 p.m. He saw Mr. Bishop trying to get into his car when he, Hoggie and Kent Johnson were outside. Even though Bishop was trying to break into his vehicle, he did not call police. He brought Hoggie with him because Bishop was also trying to break into Hoggie's car. At some point Mr. Urbaschak came into the bar and shouted something and approximately 7 or 8 people rushed outside. This was only about five minutes after they had approached Mr. Bishop for trying to break into their vehicles. He stated that when he went outside with Hoggie, he thought the situation had been diffused. He did not think it was necessary at that time to call police.

The next witness call by Attorney Pavlos was Shawn Wilkins who stated he is a resident of Stoughton. He frequents The Lithuanian Village and was there on June 8th. He was there earlier in the day when a friend of his had suffered a seizure while at the bar. He was taken by ambulance to the hospital and had asked him (Shawn) to go to the hospital with him. Mr. Wilkins stated he had followed the ambulance in his vehicle. Based on the time indicated on the video, at 7:15 p.m., Mr. Wilkins arrived back at The Lit in his vehicle. He had given Crystal who had ridden in the ambulance with the seizure victim a ride back from the hospital. Mr. Wilkins described how he disassembles his wheel chair and puts it in the rear of the passenger seat while he drives. They reviewed the video which showed Mr. Bishop go over to Mr. Wilkins vehicle. Mr. Wilkins stated Bishop had walked over and spoken with Crystal but he was not close enough to hear their conversation. Mr. Wilkins stated his observations of Mr. Bishop were that he was somewhat confrontational. The video shows Kent Johnson going over to Mr. Bishop and Crystal. Bishop seems to back away and it appears that Johnson, Crystal and Wilkins walk back towards the entrance of the bar. Mr. Wilkins stated that at that point, they thought it was a done deal and Mr. Bishop was told to leave and it appeared that was what he was doing.

Mr. Wilkins stated he was subpoenaed and testified before the Grand Jury.

Mr. Wilkins continued and stated they went into the bar. He was inside for approximately 15 or 20 minutes during which time he was updating people on Phil's (seizure victim) condition. Crystal came up to him and asked him if he had locked his car because that guy was out in the lot trying to get into people's cars. He headed towards the door and was one of the last people to exit to the parking lot. Once outside, he saw several people around the sidewalk towards Mr. Gunderway's car. He headed towards his car and that is when Mr. Bishop backed up in the middle of the parking lot and the fight took place and Bishop fell to the ground. Mr. Wilkins stated he remained out there. Over the next couple minutes, there was some confusion with people walking around Mr. Bishop and wondering whether or not he was going to come to. Mr. Wilkins stated that when he went up close to Bishop, he could tell by the look on his face that there was something really wrong. At that time he called 911.

He stated he made it clear to the people around that he was calling 911. Al, Clarence and he were the ones who were mostly with Mr. Bishop until help arrived. On the video, it showed a couple people trying to sit him up and Mr. Urbaschak putting water on his face. He stated when Mr. Bishop's head hit the ground it made a horrible sound. He did not talk to any of the emergency responders. He went back inside the Lit and no one was allowed to leave. He finally left at about midnight and went to the police station.

On cross examination by Attorney Feodoroff, Mr. Wilkins stated he was outside the whole time and he told Al he was calling 911 and Al said he would let them know and that he was getting some water. He was in the bar when Mr. Urbaschak came into the bar and said something to make everyone get up and go outside. He did not hear what Mr. Urbaschak said but he went outside because of Crystal's prompt that someone was trying to break into cars in the parking lot and to make sure his car was locked. That is when he began to go to the door and saw five people in front of him going outside. He stated he did not know about any fight taking place. When he went outside he went to see if his car was alright.

Attorney Pavlos then called on Amanda Ginsburg who is the daytime bartender.

On direct examination by Attorney Pavlos, Ms. Ginsburg stated she has worked at The Lit for 2 ½ years on Monday through Friday from 11:00 a.m. to 6:00 p.m. She stated she was working on June 8, 2012. She stated she has had the opportunity to view the video. She stated she had been the one to show the police officer the videos. She can remember Mr. Bishop being in the bar and serving him five 14 oz. drafts. Mr. Bishop was never hostile or aggressive towards her. She indicated she has received her Tips certification. She indicated that this training shows what to expect with people who are intoxicated. Mr. Bishop did not exhibit any signs of intoxicated behavior at her bar. She stated Mr. Bishop and another customer were sitting next to each other talking. She indicated Mr. Bishop was in and out of the establishment all day. When he left, he would leave his beer on the bar. Mr. Bishop had been in the bar several times before this incident. She recalled that the last time he had been in was approximately two months ago. She remembered he was wearing shorts and had been involved in an altercation with another customer outside the bar. He had not been banned from the bar. Ms. Ginsburg stated that she did not see Mr. Bishop smoking at the bar while she was on duty. She stated that she pulled up to the bar when the ambulance and police were already there. She had left after getting off her shift and had gone to Best Buy to purchase a flash drive because she was suppose to record a portion of surveillance video that a private investigator wanted which was unrelated to this incident. She stated she was in the office when the Brockton Police came in and asked for the footage and she showed it to them. She had remained in the office the entire time they were there. Ms. Ginsberg stated that when she is on duty at the bar, she cannot see outside into the parking lot.

On cross examination by Attorney Feodoroff, Ms. Ginsberg stated she saw the video when Mr. Bishop lit up his cigarette at the bar and acknowledged that she was only a few feet from him. It is common practice for her to serve five beers within an hour to a customer.

Attorney Pavlos indicated he would like to structure his argument and asked the commission if the video is something that could be made available to them. Attorney Feodoroff clarified that Attorney Pavlos is asking the board whether they will be making a decision tonight or whether they would be holding their decision. She indicated they can decide after closing arguments.

Both Chairman McDuffy and Commission Kenney indicated they would hope to be making a decision this evening.

Attorney Pavlos stated that what was preliminarily stated about this incident and what was inferred in Det. Paul's interpretation this evening is that the bartender was in the back, saw Mr. Bishop on the video and rather than calling the police, takes matters into his own hands, forms a mob, goes out and that is why Mr. Bishop was beaten. He stated that extreme interpretation has been refuted with the video tape. He suggested that what is seen is Robert Mantel who gets a phone call from someone at the bar located across the street who can see the parking lot. While he is on the phone, he is smoking a cigarette and can see on the surveillance monitor that someone is in the parking lot. Any inference made that he and Hoggie were going out to hurt Mr. Bishop is also refuted through viewing the video. Attorney Pavlos reviewed what was seen on the video. Attorney Pavlos stated that in real time as opposed to retrospect, Mr. Mantell, as an experienced bartender, thought the problem was taken care of and did not call police. Attorney Pavlos stated this is reasonable and is not a violation. The bartender and people at the bar went out several times. Attorney Pavlos stated what has been seen is the people going out and talking to Mr. Bishop. He indicated he is trying to show the mentality of the bar inside and stated that Ralph Lawcewicz was not present. He reviewed how the bartender told Al Urbaschak to go outside and see what was going on because there are no windows in the bar.

Attorney Pavlos stated that the perspective that is important is what the person in the bar knows and it is important that they do not take the available video tape as that knowledge. From the bartender's perspective, he asked Al to check on things and Al came back and told him that 911 was called. Things had been done right. Attorney Pavlos stated that from the time of the first punch to the time the emergency vehicle arrived, is 7.5 minutes. He asked the board to look at the evidence presented and consider what they have heard. He indicated they should not speculate and guess what the bartender should have known. The actions of the bartender show the mentality of not only the bar but Robert Mantell who acted reasonably. He stated that the excerpt of the video showing Bishop getting into the green truck a half hour before the assault was not known by the bartender. This was not a situation of a mob in a bar with a bartender who didn't care. He stated he believes the video tape is important.

To the last issue, Attorney Pavlos reviewed that the toxicology report shows the blood alcohol to show a level three times over the limit compared to what is statutorily the limit for driving. He stated the timing is critical and Mr. Bishop is an enormous man. Attorney Pavlos stated he does not know what his habits are but he knows that people who are professional drinkers function pretty well with a lot of alcohol in their system. The bartender has stated that it is not unusual to serve people at The Lit 4 or 5 beers in an hour. Five drafts do not translate into three times the alcohol level allowed. He questioned what Bishop might have been doing all day. Attorney Pavlos asked the board to accept his proffer that he had the phone number of Peter Palminskus who had told him he had bought four nips and a pack of cigarettes and when he kicked Bishop out of his truck, there were two nips gone.

Attorney Pavlos stated he has discussed with Mr. Lawcewicz that as a community, the Lithuanian Village is called a high crime area by the police. He indicated the incident is a tragedy and asked them if the bar is responsible. After going through the evidence, not only was there no malice but given the knowledge Mr. Mantell had as the bartender at the time, it wasn't an unreasonable way to proceed. If Bishop hadn't hit his head in the parking lot, they wouldn't be before the Commission. To attribute all of the possibilities to the bar is not within the purview of the Commission and they would have to take

this on an isolated basis and they have seen evidence that suggests otherwise. He asked the board to find them responsible for only the cigarette smoking. He asked the members to give a vote consistent with the evidence and that is given what knowledge the licensee has projected through the bartender that he did not allow the disturbance to go on and it wasn't a failure to do anything. Attorney Pavlos suggested that Det. Paul's statement that "if a phone call had been made he'd still be alive" is careless and reckless.

Attorney Feodoroff stated that one thing she and Attorney Pavlos agree on is that it is up to the Commission to weigh the evidence and determine what would be a reasonable response by the bartender. She indicated the evidence is a little different than from what Attorney Pavlos characterizes. She stated that Mr. Mantell had the opportunity to call the police on at least five occasions at any given point during that thirty minute period. Specifically, this is a high crime area and he saw Mr. Bishop messing around with his car and he thought he was going to damage or break into his car which is criminal. Instead of calling police, he chose to go outside and confront Mr. Bishop. The prudent and cautious thing to do would not have been to alert people who have been drinking inside the bar but to call the police. The second time Mr. Mantell should have called was when eight of the ten people suddenly exit the bar. They know there is going to be a confrontation and Mr. Mantell chose to sit back and see how things played out. The third time he should have called the police was when someone came in and said there was a fight going on. Instead, he asked a patron who had been drinking in the bar most of the afternoon to go out and check on things for him. The final time he should have called the police was when Mr. Urbaschak came in and asked for the glass of water, when he knows someone has been hurt. He again relies on another lay person to call the police. Mr. Wilkins testified that he had trouble getting through and Mr. Mantell could have made the call more quickly from the land line inside the bar. Attorney Feodoroff stated the evidence is clear on all of those points. The smoking by Mr. Bishop at the bar is clearly seen on the video. Attorney Feodoroff indicated it is impossible for her to understand how the bartender could not smell or see Mr. Bishop smoking at the bar from where she was about two feet away. With regard to the drinking, it is up to the commissioners to decide whether five beers served to a person within one hour is reasonable or unreasonable, especially in light of the fact that this person was known to have been in a fight with someone at the bar on a prior occasion. The individual was also acting somewhat strangely by going in and out of the bar throughout the day and leaving his beer on the bar. She indicated Attorney Pavlos is right in that no one knows what Mr. Bishop was doing when he went outside.

Attorney Feodoroff suggested the evidence shows that the bartender had a responsibility and he shirked his responsibility. She stated the final piece of evidence she would like the Commission to consider is a statement made by Mr. Lawcewicz which was testified to by Det. Paul that he should never have gotten the cameras. Attorney Feodoroff suggested that this is a culture of willful blindness and he had made the statement that, if I didn't have the cameras, the cops wouldn't know and I wouldn't be in trouble. Mr. Mantell, the bartender, stated he didn't know there was a fight outside because there are no windows although eight people have just left his bar and run out. The female bartender stated she didn't know what he was doing every time he left the bar and came back in but she kept giving him another beer. Ms. Ginsberg stated she didn't know that Mr. Bishop lit up a cigarette even though she was two feet away. Attorney Feodoroff stated these are all examples of willful ignorance and this is something the Commission cannot tolerate and something that needs to be sanctioned.

Commissioner Sullivan asked Mr. Lawcewicz if he tells his bartenders that they must call the police when there is any kind of confrontation and Mr. Lawcewicz stated he does.

Commissioner Kenney commented that she heard several people say that they thought Mr. Bishop was breaking into their car. She indicated that if someone was breaking into her car, the first thing she would do is call the police and not say to her friend lets go outside and tell that guy to get out of here. She stated she cannot imagine the police not being called when seven or eight people think someone is breaking into their cars.

Commissioner Dansby indicated that in his experience as a bartender you do not serve five beers to a person in an hour regardless of the situation. He stated that based on what was reported by the media and what he read, he now has a different perspective from what was portrayed as opposed to the evidence he has seen. He indicated he, too, thought it was a mob mentality and his opinion is much different in terms of that. Based on the evidence, patrons gave the individual an opportunity to leave and the group that left the establishment didn't appear to go out to give Mr. Bishop a beat down. Commissioner Dansby stated that both bartenders were clearly irresponsible of their duties from beginning to end. He further stated that as a person who was in the field for a number of years, he prided himself on Tips training and doing the right thing and the egregious behavior displayed in this situation by the bartenders cannot be overlooked.

Attorney Pavlos stated he does not take issue with Commissioner Dansby's interpretation that the bartenders performance was sub-par, however, he cautioned the Commission that what the patrons say, do or think and why patrons did not call police is not relevant. He asked the Commission that when considering the testimony, they see it through the eyes of the bar which is very significant. He suggested that the Commission be very careful not to let the comments of patrons or the actions of patrons bleed into the Commission's work which is to hold a licensee through its managers/bartenders up to their responsibilities. He indicated they may come to the same conclusion, however, he suggested it is not valid to talk about other people in the bar not making a phone call. He stated what is significant is the knowledge Mr. Mantell had or should have known. He stated the outcome of the situation changes how everyone views this. Attorney Pavlos indicated that giving Mr. Bishop a break was what was in the mind's eye of the bartender. If that is being seen maliciously, it would be inaccurate and a poor interpretation of the facts which have been heard. He stated there were not five instances when the bartender could have called police.

After Attorney Pavlo's summation, Chairman McDuffy indicated he believes that the amount of time from the start when Mr. Bishop was first observed in the parking lot to the time that the assault occurred and the police were called was much too long. It is his opinion that the bartender or some employee of the bar should have called police for assistance or they should have at least tried to bring the individual inside and call him a cab.

The Chairman reviewed that each charge will be dealt with separately and depending on the results, they will then decide on a penalty.

On the first charge (2a) of violating ABCC Rule 2.05(2), a motion was made by Commissioner Sullivan to find the licensee guilty. The motion was seconded by Commission Kenney. All members voting in the affirmative, the motion carried.

On the charge of violating M.G.L. Chapter 138, Section 69, a motion was made by Commissioner Dansby to find the licensee guilty. The motion was seconded by Commissioner Sullivan. The vote being 2 to 2, with Commissioner Dansby and Sullivan voting in the affirmative and Commissioners McDuffy and Kenney voting opposed, no violation was found.

On the charge of violating ABCC Rule 2.05(2), (smoking), a motion was made by Commissioner Kenney to find the licensee guilty which motion was seconded by Commissioner Dansby. All members voting in the affirmative, the decision was unanimous.

With regard to the charge of allowing drug use in the parking lot, it was reviewed that the charge was dismissed by the City based on lack of evidence prior to the start of the hearing.

Commissioner Kenney asked Attorney Feodoroff if the City had any recommendations for a penalty on the charge of ABCC Rule 2.05(2). She indicated that the irresponsibility of the bartenders as well as the statements made by Mr. Lawcewicz show a serious lack of judgment. Attorney Feodoroff indicated that ultimately, the tragedy was awful not to say that the results should dictate what the board does. She stated that is the point and that is why bartenders are required to call for assistance to prevent something horrific from happening although in this instant, a tragedy did occur. She suggested a long term suspension such as six months would be appropriate in this circumstance. If not, she would advocate for a revocation of the license because of the seriousness of the misstep.

It was reviewed that the licensee currently has a 2:00 a.m. closing hour on Thursday, Friday and Saturday. Attorney Feodoroff stated that the hour of this violation was at approximately 7:30 p.m.

Commissioner Kenney stated that no matter how high of a crime area that the Lit is located in, this tragedy should have never happened.

A motion was then made by Commissioner Kenney to revoke the license. The motion was seconded by Chairman McDuffy for discussion.

Commissioner Sullivan asked Mr. Mantell if he is TIPs certified and he stated he is.

A motion was then made by Commissioner Dansby to suspend the license for a period of three months and a rollback of the 2:00 a.m. license to 1:00 a.m. for the following three months. The motion was seconded by Commissioner Kenney for discussion.

Commissioner Kenney stated she would like to amend that if Commissioner Dansby is agreeable to make that a permanent rollback to 1:00 a.m.

Commissioner Dansby stated he would not be totally agreeable with that and asked for the history and was informed that there are no prior violations. He stated he will stay with his original motion.

Commissioner Sullivan indicated he would like to see a police detail there on Thursday, Friday and Saturday.

Attorney Feodoroff advised the Commissioner that Commissioner Dansby would have to amend his motion to include that. If Commissioner Dansby prefers to leave his motion as is, then they can vote on his motion.

Commissioner Dansby stated that he would agree to amend his motion to include a three month closing, a three month rollback to 1:00 following the closing and to require a police detail on Thursday, Friday and Saturday and they could reapply for the 2:00 a.m. closing after the three month period of the rollback. With all Commissioners voting in the affirmative, the motion carried.

On the violation of allowing smoking, Commissioner Dansby made the motion that no additional penalty be required. The motion was seconded by Commissioner Sullivan. With Commissioners Dansby, Sullivan and Kenney voting in the affirmative and Chairman McDuffy voting opposed, the motion carried.

3. Communications
4. Any other business to properly come before the Commission

With no further business to come before the Commission, the meeting was adjourned.

Respectfully submitted,

Scott H. McDuffy
Chairman

APPROVED:

Paul D. Sullivan, Commissioner

Bruce G. Dansby, Commissioner

Joshua J. Wood, Commissioner

Kathy Kenney, Commissioner

Fred Fontaine, Alternate Commissioner