

TAPED

The License Commission held its regular monthly meeting at 6:00 p.m. on Thursday, August 16, 2012, in the G.A.R. Room at City Hall. Present were Chairman Scott H. McDuffy; Commissioners Paul D. Sullivan, Joshua J. Wood and Kathy A. Kenney. Also present were Asst. City Solicitor Kate Feodoroff; License Agent Sgt. George Khoury; and Adm. Asst. Bonnie Tucker.

1. Approval of the Minutes of the License Commission Meeting of July 19, 2012.

A motion was made by Commissioner Sullivan to approve the minutes of the meeting of July 19, 2012 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 September, 2012: Lieuts. Paul Bonanca and Kenneth Legrice; Sgts. George Khoury, Frank Vardaro, James Baroud, Michael Powers and Charles Cassiani; Dets. Thomas Hyland, Nazaire Paul and Matthew Graham; and Officer Scott Uhlman.

A motion was made by Commissioner Sullivan to approve the police officers as listed as license agents for the month of September, 2012. The motion was seconded by Commissioner Kenney. All members voting in the affirmative, the motion carried.

3. Requests for Special One-day Permits:

- (a) **All Alcoholic Beverages (4 permits) – Annunciation Greek Orthodox Church**
John Kolentsas, Manager, for the Annual Greek Food Festival to be held at 457 Oak Street on Thursday, September 20, Friday, September 21, Saturday, September 22, and Sunday, September 23, 2012 from 11:00 a.m. to 12:00 midnight.

Present was John Kolentsas, 200 Boxwood Drive, Bridgewater, who stated he is representing the Church and reviewed the request for Special One day permits and the dates of the Festival. He stated they have made the necessary arrangements for Police and Fire Department details.

A motion was made by Commissioner Sullivan to approve the 4 Special One-day permits as requested which motion was seconded by Commissioner Kenney. All members voting in the affirmative, the motion carried.

- Add:**
- (b) **All Alcoholic Beverages (2 permits) – St. Theresa’s Church – Rev. Tony Mouanes**, Manager, for the Food Festival to be held at 343 North Main Street on Friday, September 28, 2012 from 6:00 p.m. to 11:00 p.m. and on Saturday, September 29, 2012 from 6:00 p.m. to 11:00 p.m.

No action was taken on this request for the reason that no one appeared.

4. Hearing on the request from **Westgate Lanes, Inc. – Jason Minassian, Manager, 59-65 Westgate Drive**, to amend the current Automatic Amusement Device license (17 Video games) by removing 10 Video games and adding 4 Merchandise Crane games and 24 Redemption/Ticket games.

Present was Harry Minassian, Jr., 46 Cornerstone Drive, Bridgewater and Jason Minassian, 45 Village Drive, Quincy, Rob Nichols, 21 Beth Lane, Hyannis and Mike Crowley, 8 Ann Lane, Bourne.

Mr. Minassian stated they are requesting an added video game and arcade room. They will be taking out the pool tables in the bowling alley and replacing them with the games. There will be a store are built where the prizes can be redeemed. He indicated it is on the idea of the Charlie Horse. They are hoping to have this in place by the middle of September. Revenue is down and they are hoping to make this a more family oriented business. He stated the pool tables in the bar do fine and there is an older crowd in there. By removing the pool tables in the bowling alley, they will be getting rid of some of the crowd that is not conducive to their plans. He hopes to have more birthday parties held there. Mr. Minassian stated he would defer any questions about the games to the vendors, Mr. Nichols and Mr. Crowley.

Officer Uhlman stated he went to the location on August 14th at 12:30 p.m. He reviewed the plans and sees no problem with the proposal. They are trying to make this more family oriented. Mr. Minassian brought him through the entire project. The pool table license will be modified as they are being removed in the bowling alley to accommodate the arcade. The games will be in clusters of four back to back. He currently has a row of video machines and some will be taken out. Mr. Minassian stated the Pub will not change and the games are all located in the bowling alleys.

The vendors then explained that the redemption games are like the skeeball games that have been around forever. They give the tickets out and the kids can redeem the tickets for prizes. There are many kinds of redemption games. The crane games have a claw that pick up the stuffed animals.

It was reviewed that there will be a total of 35 games which is the total number they are allowed by City Ordinance.

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

Mr. Minassian stated they are donating some of the pool tables to non-profit charities and if they know of any who might be interested to please let them know.

5. Hearing on the request from **Prestige Gas, Inc. – Ronen Drory, President – 761 Warren Avenue**, for an Automatic Amusement Device license for two (2) coin-operated Bonus Hole games.

Present was Attorney Joel Hershman, 932 Main Street and his client, Ronen Drory, 463 Sherman Street, Canton.

Attorney Hershman reviewed that this past January, Mr. Drory had two of the Bonus Hole games in his gas station store on Warren Avenue. Officer Uhlman had been there and a citation was issued. The games were then removed. They had gone to Court and informed Officer Uhlman that these same machines were allowed to operate at the Brockton Fair. Attorney Hershman stated that if the games are illegal, his client has no problem removing them but if the same games are being allowed at the Fair then his client should be allowed to have the games.

Chairman McDuffy stated he was not aware that these games were at the Fairgrounds. However, he does understand that they are illegal in the state and Attorney Hershman agreed that is what they have been told.

Ronen Drory stated they had told the enforcement officer that the games were going to be at the Brockton Fair this year. He stated the games were removed from his store within two hours after the enforcement officer had issued a citation giving him 24 hours to remove the games.

Officer Uhlman stated he does not patrol the Fair and there is a sergeant who is in charge of the games at the Fair. Sgt. Stanton has been to schools pertaining to gaming and is an expert in this area. Officer Uhlman acknowledged that games at Mr. Drory's store were removed and he did write a citation for unlicensed amusement devices. Mr. Drory had indicated he was unaware that the games were there and Officer Uhlman had the ticket dismissed and there was no payment of the fine.

Officer Uhlman reported that according to the Division of Standards these machines cannot be licensed and that they are gambling machines that pay out money.

Attorney Feodoroff suggested that Sgt Stanton be requested to provide information as to the games at the Fair. She stated that just because something has slipped by the Commission does not mean that it can be allowed and if it is illegal it is not permitted. She indicated it will be investigated further now that they have been made aware. She stated that Mr. Carney and his partner are present on another matter and the Commission might want to hear from them concerning this.

George Carney, Chilton Road, stated he is the General Manager of the Brockton Fair. He stated he is not aware of any machines at the Brockton Fair which are illegal. To the best of his knowledge, all of the games are checked out by the police prior to the opening of the Fair. He stated he has no machines that involve any type of gambling.

Attorney Hershman stated he does not expect Mr. Carney to know every machine at the Fair and only when it is reported to the Brockton Police, it should be checked on.

Sgt. Khoury stated that if it was reported to the Brockton Police, they would have addressed it and there was no report to the Brockton Police that there were illegal games at the Fair.

Chairman McDuffy indicated he appreciates the notification of the illegal machine and promised Attorney Hershman and his client that the games will not be at the Brockton Fair again. He stated the games are illegal and cannot be licensed by the City of Brockton.

Mr. Drory stated that at the time, they did not know the machines were illegal and just wanted to make the point that if it is illegal for them, it should be illegal for everyone. He stated the City of Taunton gave him a permit for the games. He indicated the same games are in Fall River, New Bedford and Stoughton. Mr. Drory stated every convenience store in Brockton has them. Chairman McDuffy assured Mr. Drory that this will be addressed in the future and asked him if he could make a list of the stores he has knowledge of where the games are being used.

Mr. Drory then asked if he could put the same machines back using tokens. It was suggested that Mr. Drory send a written request to the Commission which will be referred to the Law Department for an opinion.

Mr. Carney stated this is all news to him. It is his understanding that under the gaming laws, the games must require some degree of skill. If it is a game of chance, it is not allowed.

Chairman McDuffy asked that the Commission and the City be given a month to investigate this further but at this time, it is his understanding that the games are illegal. If it is found that they are wrong, Mr. Drory would be informed that he could reapply.

Mr. James Yesucevitz, 26 Myrtle Street, stated he is a nearby resident and is present to express his opposition to the request. He indicated this is a very busy gas station and he is afraid they will get too many children in to play the games.

A motion was made by Commissioner Wood not to allow the illegal game to be licensed in the store. The motion was seconded by Commissioner Kenney. All members voting in the affirmative, the motion carried.

6. Hearing on the request from **Brockton Fair Caterers, Inc. – Maura J. Carney, Manger, 433 Forest Avenue**, to amend the Entertainment license to include the following events:
 - **August 19, 2012** – Wheels of Time Car Show from 11:00 a.m. to 5:00 p.m.
 - **September 9, 2012** – Car Show, Bands and Martial Arts Demonstration from 12:00 noon to 6:00 p.m.
 - **September 27, 28, 29 and 30, 2012** – Fall Festival, Carnival Rides, Petting Zoo, Hayrides, Martial Arts Demonstration and a Demolition Derby on September 30th.
Thursday and Friday – 5:00 p.m. to 9:00 p.m.
Saturday and Sunday – 12:00 noon to 9:00 p.m.
 - **October 4, 5, 6, 7 and 8, 2012** – Fall Festival, Carnival Rides, Pumpkin Patch, Petting Zoo, Hayrides, Martial Arts Demonstration and Rodeo with Bands on October 6th and 7th.
Thursday and Friday – 5:00 p.m. to 9:00 p.m.
Saturday, Sunday and Monday – 12:00 noon to 9:00 p.m.
- Add: Saturday, September 22, 2012** – Boxing Event from 3:00 p.m. to 10:00 p.m.

Present were George Carney, Chilton Road and Tom Clifford. Also present was Michael Vanessi, Avon, the President of the Wheels of Time Car Club.

Mr. Vanessi reviewed that the Wheels of Time is a nostalgia car show. This will be the 22nd year it has been held at the Brockton Fairgrounds. It is a one day show scheduled for August 19th with a rain date of August 26th. He has submitted for a police detail from 11:30 a.m. to 3:30 p.m. and he has provided Mr. Clifford with the insurance binders and they are all set with the Board of Health and the Fire Department.

Sgt. Khoury stated there have been no problems with this event in the past.

Commissioner Kenney asked why the police detail will end at 3:30 and not at 5:00 p.m. which is the time listed on the request. Mr. Vanessi stated the car show will end at 3:00 p.m. The show is from 9:00 a.m. to 3:00 p.m. Chairman McDuffy reviewed the hours requested are from 11:00 a.m. to 5:00 p.m. Mr. Clifford stated this is his error. It was agreed that the hours will be changed from 9:00 a.m. to 3:30 p.m. Commissioner Kenney asked if the police detail should be required to begin at 9 a.m. instead of 11:30 a.m. Mr. Vanessi stated the show starts at 9 a.m. however; the pedestrian traffic doesn't normally start until 11 a.m. It takes them until close to noon to set up the cars for the judges. Sgt. Khoury stated he knows that last year the details started at 11 a.m. and there has never been any problems.

A motion was made by Commissioner Kenney to approve the Wheels of Time Car Show with the hours amended to 9 a.m. to 3:00 p.m. The motion was seconded by Commissioner Sullivan. All members voting in the affirmative, the motion carried.

Mr. Clifford reviewed the September 9th event which will take place in front of the grand stand. It will be a Martial Arts demonstration and not the actual fights. There will also be a muscle car show and it will be over by 7 or 8:00 p.m. This is a new event. They are hoping for 300 people to attend. Sgt. Khoury stated he sees no problem with traffic.

A motion was made by Commissioner Sullivan to approve the amendment requested for September 9, 2012. The motion was seconded by Commissioner Kenney. All members voting in the affirmative, the motion carried.

With regard to the September 27, 28, 29, and 30th event planned, Mr. Clifford stated they are trying to do a fall festival. It will be located from the west end of the grandstand over to the walk in admission gate on Belmont Street. There will be approximately ten rides set up by Rockwell Amusement who will pull their own permits. Fire and Police will also be involved. On the weekend days they plan to do a demolition derby and the same group providing the Martial Arts demonstration on September 9th will also do a demonstration in the afternoon and evening on Saturday, September 29th. He expects the rides will go no later than 9 p.m. Sgt. Khoury stated he is sure they will arrange for the appropriate number of police details.

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

On October 4, 5, 6, 7 and 8, they have planned a similar event, however, there is also a rodeo and bull riding event on the weekend as well as bands. Mr. Clifford stated they will do the same as has been required in the past with details at the rodeo events. To the best of his knowledge, there have been no further issues with the event. He indicated they have received letters from the neighbors applauding them.

Chairman McDuffy suggested that on the Rodeo Event, the same stipulations be required as the last time because it seems to work out. Mr. Carney indicated they have no problem with this.

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

Mr. Clifford stated that on September 22nd they have been asked by the Capiello's to use their pavilion for a Boxing Event to coincide with the Rocky Marciano Dedication. There will be no drinking and the Capiello's will be putting on the event with local fighters. Mr. Carney stated that they are supposed to provide the Ambulance and the Police Detail for the event because they are donating the use of the property to them.

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

7. Hearing on the charge against **Golden Rock Discount Liquors, Inc. dba Rose's Discount Liquors – May Mi Chow, Manager, 186 Oak Street** of an alleged violation of **M.G.L. Chapter 138, Section 34**, to wit: “. . . whoever makes a sale or delivery of any such beverages to any person under twenty-one years of age, either for his or her own use”, reported on June 21, 2012, at approximately 5:32 p.m.

Present was May Mi Chow, 144 North Main Street, Sharon.

The following individuals were sworn by Attorney Feodoroff:

Det. Eric Clark, Brockton Police Department
Det. Michael Cesarini, Brockton Police Department
May Mi Chow

On direct examination by Attorney Feodoroff, Det. Clark stated that on June 21, 2012 Brockton Police were conducting a sting operation. They were working in conjunction with “Brockton Communities mobilizing for change on Alcohol Program” which is a program working to make sure the alcohol laws are followed and that minors do not have access to alcohol. They provided a 16 year old operative to go into the liquor establishments and attempt to buy alcohol. The underage operative was trained and there is no deception involved when they are sent in to buy

alcohol. If they are asked for identification, they are instructed to say they don't have any and to leave. A photograph of the 16 year old operative was furnished for the Commission. Det. Clark stated the photo was taken on the night they went out. She was provided with a marked and photocopied \$20 bill.

Det. Clark stated that at 5:32 p.m., they went to Rose's Discount Liquors. The under aged operative was sent in to make a purchase. She grabbed a six-pack of Bud Light, went to the counter, gave the clerk the marked \$20 bill and was given change. She then left the store with the change and the six pack of Bud Light. She stated that she was not asked for any identification. Det. Clark stated he immediately went back into the store with the change and the Bud Light. They spoke with Mr. Chook and the clerk who was working the counter who fit the description provided to the police by the under aged operative. The clerk identified herself as Michelle Steeves. Det. Clark stated Mr. Chook and Ms. Steeves were told what had transpired. The change from the \$20 and the Bud Light Beer was returned and they were advised that a complaint would be filed with the License Commission.

Det. Clark stated that 21 compliance checks were made that night and two establishments were found to make a sale to the underage operative.

Attorney Feodoroff asked Mrs. Chook if she had any questions to ask the officer and she stated she did not.

Attorney Feodoroff then called on Det. Cesarini who indicated he was also working that evening and agreed that everything testified to by Det. Clark was accurate and he had nothing further to add.

Mrs. Chook stated it was unfortunate that this happened and the clerk has worked there for 3 ½ years. Mrs. Chook indicated she agrees with what was reported.

Chairman McDuffy reviewed the history which consists of a sale to a minor in 2003 which resulted in a letter of warning being issued. In response to questions from Commissioner Wood, Mrs. Chook stated that the clerks have not received any type of server training and neither has she.

A motion was made by Commissioner Kenney to find the licensee guilty of the violation. The motion was seconded by Commissioner Sullivan. All members present voting in the affirmative, the motion carried.

A motion was then made by Commissioner Wood to require all employees working in the store to take a server training course. He reviewed that it has been eight years since the last violation but feels more than a warning is called for. The motion was seconded by Commissioner Sullivan.

During discussion, Commissioner Kenney stated she feels this would be letting them off too easily. She indicated they should get server training anyway so that this type of violation does

not happen again. Chairman McDuffy stated he agrees and everyone makes mistakes but you need to learn from the mistakes.

Commissioner Wood stated there is a financial element involved by requiring that their employees are be sent for training and, presumably, it will provide an incentive so that it doesn't happen again as well as to provide them with relevant information.

Sgt. Khoury stated that there was a recent violation with Hayden's and they had a prior violation and that the board should consider staying consistent with what the penalty was for Hayden's which was a two day suspension.

Attorney Feodoroff stated she agrees with Sgt. Khoury to some extent although with Hayden's there was a previous violation much closer in time.

A vote was then taken on Commissioner Wood's motion and with Commissioners Wood and Sullivan voting in the affirmative and Commissioners McDuffy and Kenney voting opposed, the motion did not carry.

A motion was then made by Commissioner Kenney to suspend the license for one day, preferably a weekend day when it would make the most impact.

Attorney Feodoroff stated that Commissioner Kenney should specify which day in her motion.

Commissioner Kenney then specified the day to be a Friday and in addition, the employees and owner must attend server training within six months. The motion was seconded by Chairman McDuffy. With Commissioners Kenney, McDuffy and Sullivan voting in the affirmative and Commissioner Wood opposed, the motion carried.

8. Hearing on the charge against **Thi & Gai, LLC dba Crescent Variety – Thi Minh Do, Manager, 163-165 Crescent Street**, of an alleged violation of **M.G.L. Chapter 138, Section 34**, to wit: “. . . whoever makes a sale or delivery of any such beverages to any person under twenty-one years of age, either for his or her own use”, reported on June 21, 2012, at approximately 7:05 p.m.

Present was Thi Minh Do, 48 Parkman Street, Dorchester, who stated he is one of the owners of Crescent Variety.

The following individuals were sworn by Attorney Feodoroff:

Thi Minh Do
Det. Eric Clark, Brockton Police
Det. Michael Cesarini, Brockton Police Department

On direct examination by Attorney Feodoroff, Det. Cesarini stated that on June 21, 2012 from 4:00 p.m. to 8:00 p.m., he was conducting compliance enforcement checks for the Brockton Police Department in conjunction with Brockton Communities mobilizing for change on Alcohol

Program. Brockton Communities provided police with an underage operative who had been trained by the program. Det. Cesarini stated the operative was given a marked \$20 bill to use in making the purchase. A photograph taken of the operative on June 21st was provided. At 7:05 p.m., they went to Crescent Variety at 163 Crescent Street. The under aged operative was sent into the store with the marked \$20 bill. She came out a short time later with a six pack of Bud Light beer and change in the amount of \$13.15. She said she was not asked for any identification. She provided a description of the clerk who sold the beer to her which was a man of Asian descent wearing a gray shirt. He and Det. Clark went inside the store and found the person with the gray shirt and asked him if he had just sold the beer to the female and he said that he did. He identified himself as Gai Khan Au-Dong and apologized.

Mr. Do stated that he had no questions for the officer but stated the person who had made the sale is his partner and he could not be present today. Mr. Do stated he viewed the video and he is not denying what happened. He also apologized and stated it was their mistake. He stated that ever since they bought the business in 2011, they have asked for identification and have denied a lot of people. Even after the incident, they have asked for IDs and have had people just walk away. He stated this is their first offense and asked for a break this time. It is a family oriented place and they try not to break any of the rules. He stated both he and his partner are certified in server training. It was reviewed that the board had required this when they took over the business. Mr. Do stated he has made a rule that if someone doesn't look to be in their late 30's then they must be carded. He stated some customers get upset but they have made progress.

A motion was made by Commissioner Wood to find a violation. The motion was seconded by Commissioner Kenney. All members voting in the affirmative, the motion carried.

A second motion was made by Commissioner Sullivan to place a letter of warning in the file. The motion was seconded by Commissioner Wood. All members voting in the affirmative, the motion carried.

9. Hearing on the charge against **Maria and Manuel Rodriguez dba Crystal Restaurant – 250 Main Street**, of an alleged violation of **ABCC Rule 2.05(2)** – Permitting a disorder, disturbance and/or illegality on the licensed premises, to wit: “exceeding the total occupancy of 50 allowed by the Certificate of Inspection”, reported on June 12, 2012, at approximately 12:50 a.m.

Present was Maria Rodriguez, 95 Fairview Ave.

The following individuals were sworn by Attorney Feodoroff:

Officer Scott Uhlman, Brockton Police Dept.
Dep. Chief Kevin Galligan, Brockton Fire Dept.
Maria Rodrigues

The first witness called by Attorney Feodoroff was Officer Uhlman who stated he was working as a License Agent on June 12, 2012 from 10:00 p.m. to 2:00 a.m. conducting inspections of licenses and non licensed establishments. When they arrived at Crystal Restaurant, they found

there to be 25 to 30 people inside in excess of their 50 person capacity stated on the Certificate of Inspection. Officer Uhlman stated that he, Deputy Galligan, Fire Department Lieut. Edward Williams and Building Inspector Frank Gazzero counted the individuals inside. The Building Inspector ordered the number of individuals inside to be reduced to 50. Officer Uhlman stated this number includes employees as well.

Attorney Feodoroff asked Mrs. Rodrigues if she had any questions for Officer Uhlman.

Mrs. Rodrigues stated she only has 45 seats and there are not 80 seats. She stated she has been here for ten years and she has never lied. There were 65 people and Officer Uhlman told her son there were 80. It was busy because she remembers she had two people on the door to control the people. The other man had told her there were 65 and she said Officer Uhlman said to take 15 people out and she told him she doesn't need to take 15 people out because eighteen people paid their bill and they were in the hallway and the bathrooms. She stated she doesn't let anyone in after 1:00 a.m.

Attorney Feodoroff asked Mrs. Rodrigues if she has a question for Officer Uhlman and explained to her that she will have the opportunity to make her statement at the end.

Mrs. Rodrigues stated there were not 80 people inside and that it was only 65 people.

Attorney Feodoroff then called on Deputy Chief Galligan who stated he was also present on June 12, 2012. He stated they counted approximately 80 people inside. People were not allowed in or out and there were people in the hallways and stairways and bathrooms. When they asked people to leave they did comply.

Mrs. Rodrigues stated she had no questions for Deputy Galligan.

Mrs. Rodrigues then stated that there were not 80 people inside and they only have seats for 45 people. She had two people on the door to control people. She stated the problem was she had a party of 18 people and the waitress told her they already paid the bill and were going outside. The 18 people got up and 15 people came in. She stated she does not allow anyone to come in after 1:00 a.m. Attorney Feodoroff reviewed with her that she was afraid she wouldn't be able to allow more people in so for a short period of time while the 18 were leaving they were doubling up so they weren't all out at that point. She agreed that there were more than 50 people inside. Mrs. Rodrigues stated she respects the police and understands they were doing their job.

Attorney Feodoroff explained to Mrs. Rodrigues that it is a violation even if it is only for a few minutes if there are over 50 people inside.

The history of violations was reviewed which includes the following:

- In 2006, there was a guilty finding for an after hour violation and allowing entertainment beyond the approved hours. The license was suspended for three days which the ABCC upheld after appeal.

- In 2007, they were again found in violation for after hours and the hours were rolled back to midnight.
- In 2011, they were found in violation of exceeding the occupancy of 50 and a letter of warning was issued.

Officer Uhlman stated that he wanted Mrs. Rodrigues to be aware that if there is a third violation found of over occupancy, State law requires that the license be revoked.

Chairman McDuffy reviewed that this is their second offense. Attorney Feodoroff cautioned Mrs. Rodrigues that the Commission would have no choice because the law says the license must be revoked so she must be vigilante with this.

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

Commissioner Wood stated he feels badly because it doesn't seem that this was done intentionally and it was only for a short period of time but he agrees that there must be something more than just a letter placed on file. He suggested the penalty could be closing the place for a day or two.

Commissioner Wood then made a motion to roll back the closing hour from 2:00 a.m. to 1:00 a.m. for a weekend, from Thursday thru Saturday and the Entertainment will be rolled back to 12:30 a.m. The motion was seconded by Commissioner Kenney

Officer Uhlman stated that according to the law any business owner cited for violating the capacity of the business shall be subject to a \$10,000 fine for a first or second offense. He will be referring this to the Building Department.

During discussion on the motion, Commissioner Sullivan stated he disagrees and would roll them back to 1:00 a.m. for six months and let them re-apply.

Mrs. Rodrigues stated she did not have 60 people inside and the police said no one could go outside. If the police had stayed for five minutes no one would have stayed inside. She indicated it is not fair to take away her hours for six months. She stated she bought the building next door four years ago and the City has held her up for four years.

Chairman McDuffy stated he is also opposed to Commissioner Wood's motion but he is also opposed to Commissioner Sullivan's suggestion.

A vote was then taken on Commissioner Wood's motion. With Commissioner Wood voting in favor and Commissioners McDuffy, Sullivan and Kenney opposed, the motion did not carry.

A motion was then made by Chairman McDuffy to roll back the hours for a period of three months. The motion was seconded by Commissioner Sullivan.

Commissioner Wood stated there will be plenty of reminder if there is a \$10,000 fine and he feels this is truly a harsh penalty for what has been found even if it is a second offense.

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

10. Hearing on the charge against **Soares Club, LLC dba Bar Dino's – Lucindo Soares, Manager, 1002 Main Street**, of an alleged violation of Brockton License Commission Rule #6 (General On-Premise license), to wit: "All alcoholic beverages sold must be opened and consumed on the premises.", reported on June 12, 2012, at approximately 12:13 a.m.

Representing the licensee was Attorney John Pavlos, 120 Torrey Street and Lucindo Soares, 37 Johnson Street.

Attorney Feodoroff noted for the record that Commissioner Wood has stepped outside and is recusing himself from this hearing. Attorney Pavlos asked if it could be stated for the record why Commissioner Wood is recusing himself and Attorney Feodoroff stated no and it is not his right to inquire. Attorney Pavlos then asked if three commissioners out of five constitute a sufficient number and Attorney Feodoroff stated it is a quorum.

The following persons were then sworn by Attorney Feodoroff:

Lucindo Soares
Deputy Chief Kevin Galligan, Brockton Fire Dept.
Officer Scott Uhlman, Brockton Police Dept.

The first witness called by Attorney Feodoroff was Officer Scott Uhlman who stated he was working as a license agent on June 10, 2012, conducting occupancy checks of licensed and non-licensed establishments. At approximately 12:15 a.m., they went to Bar Dino's at 1002 Main Street. The first thing noted was that the rear emergency egress was locked. He then described that as you leave the rear door of the establishment, you step out into a penned in area that has a gate with a push bar on it. This was locked with a chain and a hasp.

On cross examination by Attorney Pavlos, it was reviewed that when you go out the back door, you go through a fire door and go into a small area that is completely fenced with barbed wire. One of the walls of the enclosed area is a building and to the left is a fence and stairway. The building where the apartments were has been condemned and there are no residents. Mr. Soares rents the building. Mr. Soares went inside and got the key to unlock the chain. Officer Uhlman stated he does not recall when the two individuals came out with their drinks but he knows he was standing by the crash bar talking with Mr. Soares and looked over and saw the two individuals drinking. Lieut. Williams and Deputy Chief Galvin were not in uniform but Officer Uhlman was. When Mr. Soares returned with the key, he took the lock off immediately. The report was not written up until two days later because he was off duty. Officer Uhlman estimated he has been to Mr. Soares establishment approximately 8-10 times in the past five years. He has previously gone out the back door. Mr. Soares told him that he presumed the area

was part of the licensed premise and that some guy at City Hall said it was okay. Attorney Pavlos stated he believes it might have been Joe Welch at the Board of Health who told him it could be used.

Officer Uhlman stated there weren't many people inside the bar while he was there. One of the reasons they went out back to check the lock was because they had been there before and found it was locked. In response to Mr. Soares, Officer Uhlman stated he has pictures but is unsure whether it got written up and submitted to the License Commission. When there is no lock on the door it functions the same way as the push bar on the back door. Right next to it, there is a double gate fence that lets deliveries in.

Attorney Feodoroff indicated she will not be calling on Deputy Chief Galligan.

Attorney Pavlos then called on Mr. Soares who stated he is on the premises seven days a week. He was not aware that the area outside was not a part of the licensed premise. He stated when he took the business over, people drank in the area all of the time. He indicated that after he had operated the business for about a year, an inspector told him to get the people off Main Street and have them smoke out back and told him that he saw no issue with that. The day after Officer Uhlman and Lieut. Williams were there, he put a sign on the back door that says smoking only. He stated he now understands about the lock. The owner had put the lock out there and had given him the key incase he needed it. He now understands that the lock needs to be open during the hours the business is in operation.

Attorney Pavlos then reviewed photos taken showing the signs that tell patrons they cannot take their drink beyond the door even if they are going outside to smoke. Mr. Soares stated there was no one outside when the inspectors came in that night but when he went in to get the key, the two individuals went out with their drinks. Attorney Pavlos asked if the Commission wanted to see the photos. Commissioner Kenney indicated that issue was not a part of the complaint before them. Attorney Pavlos stated there is no disagreement with Officer Uhlman's report. He indicated that just by the two individuals going out with the drinks while there were people of authority as well as an officer there in uniform shows there was no intent to deceive and Mr. Soares thought it was part of the licensed premise. He has taken the issue seriously and put the signs up. There is a sign in the front stating that no one can smoke out in front of the building and they must go out back and in the back it states that they can only smoke and there is no alcohol allowed. Attorney Pavlos asked the Commission to consider a warning and that he has rectified the issue brought to his attention.

Chairman McDuffy acknowledged that Mr. Soares seems to be trying very hard but stated this is the fifth violation found in the last couple of years. The violations were reviewed. He reminded Mr. Soares that he needs to follow the rules and must put more of an effort into it in order to control these types of situations. He indicated he is in favor of giving him a written warning but if it happens again he won't be.

Commissioner Kenney stated she is concerned that whenever Mr. Soares comes before the Commission, he states he is trying or didn't know. She commented that if he doesn't know the

rules then how can he be enforcing the rules. She indicated she feels he needs to be sent for some kind of training where he has to learn the rules.

Commissioner Kenney then made a motion to find the licensee guilty of the violation. The motion was seconded by Commissioner Sullivan. All members voting in the affirmative, the motion carried.

Commissioner Kenney indicated she feels the penalty should be a written warning in the file and she asked Mr. Soares to seek counsel and to prove that to the Commission so they know he understands the rules and will know when he sees something wrong happening, it is not allowed.

She made the motion that a letter of warning be placed in the file and for Mr. Soares to seek counsel and prove this to the License Commission so there are no further issues going forward. The motion was seconded by Chairman McDuffy. With Commissioners McDuffy and Kenney voting in the affirmative and Commissioner Sullivan opposed, the motion carried.

Chairman McDuffy told Mr. Soares to keep in mind that he follow up with the suggestion of Commissioner Kenney in getting some counsel.

11. Hearing on the cancellation/revocation of the Used Car Dealer license approved on March 21, 2012 to **Todd Copeland dba Copeland Auto Discount – 59 Manley Street**, for failing to comply with conditions agreed to and not operating the Class II Used Car Dealer business.

Chairman McDuffy reviewed that it is his understanding that no one is present on this matter. Ms. Tucker stated a letter was received today from Attorney Wayne Mathews requesting a postponement.

Chairman McDuffy reviewed how Mr. Copeland had been before the Commission and he was given thirty days to move the location or transfer the license. When he was approved to move the license to Manley Street, he was aware of what he had to do to conform. He met with Officer Uhlman in April and has never complied with anything requested and has failed to open the business. The license has never been issued due to his failure to comply. He was given a break back in March to allow him the opportunity to move the business.

Chairman McDuffy indicated he denied the request to postpone, however, the Commission can decide what they wish to do. Commissioner Wood asked if it could be postponed until a full hearing can be held and revoke the license in the meantime. The Adm. Asst. indicated the license has never been issued due to the failure of Mr. Copeland to comply. Commissioner Wood asked what the harm would be in allowing them a postponement. Officer Uhlman stated that he had gone by the location and nothing was done. He presented photos of the property. He indicated there had been cars on the property and signed into the book by Mr. Santilli. Officer Uhlman stated he ordered the cars to be removed because Mr. Santilli does not work for him. It is his opinion that Todd Copeland has no intention of operating the business. Officer Uhlman stated he believes someone else intends to operate the business but they haven't worked things out yet.

Commissioner Wood asked what the cost to the City is to just postponing it. Chairman McDuffy stated he is extremely upset about this and his problem is that Mr. Copeland has been given postponements, breaks and extensions and has still not cooperated

Officer Uhlman stated he met with him over three months ago and they outlined everything that needed to be done. He has done nothing and there is no sign.

Commissioner Kenney indicated it is her understanding that this license will not be available once it is revoked. The only reason it might be available is if they postpone it until they sell the property.

Attorney Feodoroff stated if this license is revoked it would not be available for anyone to apply for because the number of licenses available is based on the population which has decreased. She feels that what Commissioner Kenney is saying is right on point in that the postponements are intentional because even Attorney Mathews letter states that Mr. Copeland has been notified that the leased premises are now under agreement to be sold which has further complicated the issue. She stated that the postponements seem to be intentional so as to hang on to the license that would otherwise be lost.

Commissioner Wood asked if arguments could be made on record with Mr. Copeland present in order to give them actual due process.

Commissioner Kenney recalled that when Mr. Copeland was before them last March, he stated he was holding onto the license on Main Street so they could sell it with the property on Main Street. Officer Uhlman stated he held on to the license for two years even though he did not own the property.

Commissioner Wood asked why the board can't give him a month until he can be before them to present his case. In addition to not doing anything he has said he would, Officer Uhlman stated he served him the notice eight days ago and the request for a postponement just came in today. The notice was hand delivered at Copeland Toyota and Mr. Copeland's partner signed for it and said he would make sure Todd got the letter. It was also reviewed that Ms. Tucker had called on two different occasions but he had not returned the calls.

Chairman McDuffy stated he feels Mr. Copeland has been allowed to take advantage of the several times. Commissioner Wood indicated that Mr. Copeland might come in with a good explanation but if the postponement is not allowed he will not be given the opportunity. Commissioner Kenney asked what would happen if Mr. Copeland comes in at the next meeting and states he has a person who wants to purchase this property and run a used car dealership on it and wants to transfer the license. Attorney Feodoroff stated she feels they would have to stagger the hearings so tonight's hearing would precede any motion to transfer the license. Commissioner Kenney asked if it be stipulated that this be the first item of business on next month's agenda if the postponement is allowed. Commissioner Wood also suggested that there be no further continuances.

In response to Commissioner Kenney's questions, Attorney Feodoroff stated that if the license was revoked tonight without a full hearing, it would be an administrative appeal so it would be based upon the evidence before the Commission and whether there was sufficient evidence to support their decision. She indicated that their failure to appear is their omission. She indicated that the question is more towards fairness in terms of due process.

At the end of the discussion, a motion was made by Commissioner Wood to postpone the hearing and mark it no further postponements. The motion was seconded by Commissioner Kenney. With Commissioners Wood, Kenney and Sullivan voting in the affirmative and Chairman McDuffy opposed, the motion carried by vote of 3 to 1.

12. Communications

Attorney Feodoroff stated she received a letter late today from Christian Ekechukwu. She read the letter for the record which stated that his six month penalty has been completed without further violation and he requests the 2 a.m. closing be reinstated. The letter further states that he paid for the 2 a.m. closing and all aspects of their business was structured based on that. When the hours were rolled back, every structure of their business collapsed and since then they have suffered immensely and have managed to avoid foreclosure on their property. Mr. Ekechukwu further states in his letter that there intent is to abide by the rules and regulations and not to destroy their business and he has put together a new management team that is dedicated to obey all of the rules and regulations. He feels it would be proper to re-instate the 2 a.m. closing and has lost eight of twelve months out of this year.

Attorney Feodoroff stated that is not before them but it is just a communication. Mr. Ekechukwu is here tonight and he would have to re-apply through the License Commission office. Chairman McDuffy stated that at that meeting, he would like a report from the Police Department concerning the hiring of a detail officer. Officer Uhlman stated that Mr. Ekechukwu has been asking for a detail officer, however, the detail has not been able to be filled.

Sgt. Khoury stated he speaks for both the Chief and Lieut. Bonanca and from a Police Department perspective, they are against all 2:00 a.m. licenses. They feel the 2:00 licenses bring nothing good to the City and they are adamantly against them. He feels the reason for the stretch of success in the City has a lot to do with the 2:00 a.m. licenses. He thinks the Commission should look at that and try to get rid of them. The 2 a.m. licenses just bring a bad element into the City early in the morning which is exactly what the Police Department doesn't need.

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

Attorney Feodoroff introduced the Commission to Caitlyn Leach who will be covering the Commission's hearings beginning next month while Attorney Feodoroff is out on leave.

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

The Commission's next regular meeting is scheduled for September 20, 2012.

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