

TAPED

The License Commission held its regular monthly meeting at 6:00 p.m. on Thursday, January 17, 2013, in the G.A.R. Room at City Hall. Present were Chairman Scott H. McDuffy; Commissioners Paul D. Sullivan, Joshua J. Wood, Kathy A. Kenney and Catherine B. Holbrook. Also present were License Agents Lieut. Paul Bonanca and Officer Scott Uhlman; Asst. City Solicitor Kate Feodoroff; and Adm. Asst. Bonnie Tucker.

1. Approval of the Minutes of the License Commission Meetings of November 15, 2012 and December 13, 2012.

A motion was made by Commissioner Sullivan to approve the minutes of the aforesaid meetings which motion was second by Commissioner Kenney. All members voting in the affirmative, the motion carried.

2. Approval of the following police officers as license agents for the month of February, 2013: 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 as made by Commissioner Kenney to approve the police officers as listed. The motion was seconded by Commissioner Sullivan. All members voting in the affirmative, the motion carried.

3. Requests for Special One-day Permits:

There were no applications for Special One-day Permits.

4. Hearing on the request to transfer the Common Victualer license held by Burger King Corporation – 606 Belmont Street to Northeast Foods, LLC dba Burger King.

There was no one present when this matter was first called. It was then taken up after agenda item #5.

Present were Doug White, District Manager, 33 Minot Light Avenue, Scituate and Jacqueline Deburgo, General Manager, 22 Huntington Street.

Mr. White explained that this restaurant was previously owned by Burger King Corp. Northeast Foods, LLC is the new franchisee. Northeast Foods, LLC own 97 restaurants in Houston and just purchased 101 up here. They are requesting to change the license over to the franchisee.

Chairman McDuffy reviewed that an issue has been brought up by Mr. Clifford concerning the trash and papers being blown over to Mr. Carney's property at the fairgrounds. Mr. Clifford stated that the landscapers who go to Burger King once a week blow the trash across the lot and towards the Fairgrounds property. He suggested a small fence be put up by Burger King. Mr. Clifford stated he has called Burger King's corporate office at least a half a dozen times and has tried to work with it out with them. Officer Uhlman stated he has been called by the Mayor's

office on numerous occasions and has gone over to the fence and it is rubbish from Burger King. He spoke with a prior manager at Burger King who told him that they have someone clean the parking lot a couple times a day. He stated he, too, has seen the landscapers blowing trash over towards the Fairgrounds fence. Mr. White stated they have no problem sending someone over to pick up the trash from Burger King but they also have problems with trash blowing over from Shaw's and Stop and Shop.

The Adm. Asst. reviewed that the Articles of Organization have not yet been submitted as well as documentation concerning the transfer of ownership. In addition, the department inspection approvals have not been filed.

A motion was made by Commissioner Kenney to approve the transfer of the license pending receipt of the required documents and the department inspection approvals. The motion was seconded by Commissioner Holbrook. All members voting in the affirmative, the motion carried.

Mr. White was reminded that it is his responsibility to call for the inspections and to submit them to the office.

5. Hearing on the request from Margo English dba Kinfolks Award Winning BBQ, for a Common Victualer license at 235 East Ashland Street.

Present was George Carney, 7 Chilton Road, Margo English and Sylvester English both of 162 Oak Street, Taunton, and Thomas Clifford, 39 Carpenter Street, Rehobeth.

Mr. Carney stated he owns the plaza at 235 East Ashland Street and knows Mr. and Mrs. English through the Brockton Fair. He stated he would like to speak in their behalf and they are doing a good job. They are only operating the food establishment where Bob's used to be.

Officer Uhlman stated that he went to the establishment on January 14th to make an inspection. He asked if this establishment is a part of Sidelines because they share a kitchen. He indicated that Sidelines needs to submit a plan to the License Commission because the liquor license is affected where there are vacant storefronts which were previously used by Sidelines.

Mr. Carney stated Kinfolk's will handle the food for both sides and is a tenant. Sidelines will not be involved with the food and Kinfolk's will not be involved with the liquor. Mr. Carney said the empty storefronts have been shut down for approximately eight or ten years.

In response to questions from Chairman McDuffy, Mr. Carney stated Kinfolks will be independent but will handle Sidelines food and will run the kitchen. The Chairman indicated this is a problem with two separate businesses working out of one kitchen. Mr. Clifford stated there are two separate kitchens. Mr. Carney indicated they would like to get whatever problems there are straightened out so that Kinfolks can get their license.

Mrs. English then stated that they pay rent. As far as the food, Sidelines gets a percentage of the food being served by Kinfolks into Sidelines and they issue Kinfolks a check every week. She

stated they are catering to Sidelines so no one from that side is in her kitchen. Kinfolk's is solely buying and preparing the food. She and her employees have no reason to go out into the Sidelines area to serve the food. The Chairman stated he was there and observed people from Kinfolks serving food in Sidelines. Mrs. English indicated that from time to time, she sometimes helps out because there is only one person on duty in Sidelines during the day. She does this for free and is not getting paid.

Chairman McDuffy stated that there are rules and laws that must be conformed to and it is up to the Commission to see that things are done right. It is his understanding that it is against the law to have one kitchen serving both businesses. He stated he does not want to put them out of business but they must conform to the law. Mr. Carney indicated that is why Kinfolk's want their own Common Victualer license. He stated they either have to combine the businesses and be licensed under Sidelines or separate the two. Mr. Carney said he would take the position that they are running under his kitchen and he will maintain it. In the meantime, a new plan can be submitted.

Officer Uhlman stated he has suggested to Mr. Clifford that Kinfolk's be brought under the Sidelines banner. A plan must be provided that shows Sidelines, a vacant building, Kinfolk and another vacant building, one giant kitchen and the layout of the seating. In the meantime, Officer Uhlman stated this will affect the Sidelines liquor license because it is currently licensed for the four buildings yet two are vacant and one has a new business. He suggested Mr. Carney needs to revise his plan with the City and the State. In response to Mr. Carney, Officer Uhlman stated that the easiest way to correct this is to revise a plan. Kinfolks is currently open and serving take-out but serving sit down in Sidelines. If Kinfolks is going to be a separate business, they need to separate the kitchen completely.

Mr. Carney then asked Attorney Feodoroff if they could leave things as is and Kinfolk's be allowed to work for him as a percentage. In response to questions from Attorney Feodoroff, Mr. Carney stated he was operating the kitchen previously under Sidelines and it was one entity. With regard to Bobs Restaurant that had been licensed at this location but they had their own separate kitchen.

Attorney Feodoroff indicated there would have to be two separate licenses for the two businesses. Officer Uhlman stated he has been informed by Board of Health Inspector Bob Butler that they will not sign off on two health certificates for one kitchen. Mr. English stated that Mr. Butler had signed off on the inspection and he agreed that he have two employees on one side and two on the other side. If the door is closed there are two separate kitchens. Mrs. English stated they cater to Sidelines because Sidelines has nothing but chips and alcohol. Chairman McDuffy stated he wants to make sure that what is being done is legal for everyone involved. In response to questions, Mrs. English stated that she is not using two kitchens currently because she does not have dining on her side.

A discussion was held with regard to Sidelines and the necessity of a new plan being submitted due to changes made over the years. Chairman McDuffy reviewed that any changes made to Sidelines such as additional pool tables, dart area, or structural changes require a plan be submitted and approved by the License Commission. He requested a new layout be submitted

for Sidelines Restaurant. In addition, a new plan should be submitted for Kinfolk's. Mr. English stated they will do whatever is needed to get the license. Both he and Mrs. English explained that they did not intend to break any laws.

It was agreed that the Commission could go forward on the application for Kinfolk's. Chairman McDuffy explained that they will still need all of the inspections to be signed off on and Mr. Clifford stated they have all the inspections with the exception of the Fire Department. He said all they are waiting on are the CO2 detectors.

Commissioner Kenney asked if there is any way a patron from Kinfolks can walk into Sidelines and Mrs. English stated that they have to go outside to enter Sidelines.

Mr. Clifford stated he will be in with a master plan for Sidelines within the next couple of weeks. He was informed that there are also applications that need to be filed along with the plan. Officer Uhlman instructed them that they will need to go to the Building Department to get a permit to secure the door so that they are two separate businesses.

A motion was made by Commissioner Wood to approve the license pending receipt of the Fire Department inspection approval. The motion was seconded by Commissioner Kenney. All members voting in the affirmative, the motion carried.

6. Hearing on the following requests from Blazin Wings, Inc. dba Buffalo Wild Wings – Scott C. Hardy, Manager, 486 Westgate Drive, #SC101:
 - (a) To amend the previously approved description for the licensed premise, by adding a patio area approximately 22' by 30' with seating for 44, which will be adjacent to the front of the restaurant.
 - (b) An Automatic Amusement Device license for the following coin-operated machines: 3 Video games, 2 Redemption Games and 1 Playport Station.

Present was Scott Hardy, 1082 Bluestem Lane, Batavia, IL, who stated he will be the general manager when the restaurant opens. It was reviewed that the Zoning Board approved the patio area at its December meeting. They are now before the Commission for permission to amend the license description. The patio will be covered and there will be seating for 44. In addition, they are also requesting the Automatic Amusement Device license.

In response to questions, Mr. Hardy stated that they are planning to open April 15th and Ms. Tucker stated they will have to have all of the Department inspection approvals in as well as the inspection of the License Agent prior to the license being issued.

With regard to the Playport Station being requested, Mr. Hardy stated that this is a touch screen game. Officer Uhlman stated most bars have the playport station and explained there is a tablet that you can take to your seat. He stated it is one station with four games. Officer Uhlman indicated it is his opinion that this should be amended to four coin operated games because each tablet requires separate payment. Mr. Hardy stated that in Chicago, it is considered one license for the station although four tablets can be taken off. Officer Uhlman indicated the Playport

Stations are allowed by the State. It was suggested that the Law Department look into whether it should be four licenses.

Officer Uhlman reviewed that he had gone to the location and it is currently just a shell of a building so there is nothing to report on at this time.

A motion was made by Commissioner Wood to approve the request to include the patio area pending receipt of the final inspection approvals. The motion was seconded by Commissioner Sullivan. All members voting in the affirmative, the motion carried.

A second motion was made by Commissioner Wood to approve the automatic amusement device license subject to the possible amendment to the number of licenses required pending review by the Law Department. The motion was seconded by Commissioner Sullivan. All members voting in the affirmative, the motion carried.

7. Hearing on the charges brought against Insurance Collision Center, Inc., holder of a Class II Used Car Dealer license at 50 Meadowbrook Road, Suite 7, of the following alleged violations reported on October 22, 2012:

- (a) Vehicles are not being displayed in accordance with the approved plan on file;
- (b) The lot has not yet been lined as required;
- (c) There is no distinction from vehicles on the lot for sale and vehicles being parked on the lot;
- (d) There is no sign indicating this is a licensed used vehicle dealer; and
- (e) There are banners/flags which have not been issued a permit from the Building Dept.

Present were Norman Berkowitz and Elizabeth Berkowitz, 152 Dean Street, So. Easton.

The following persons were sworn by Attorney Feodoroff:

Officer Scott Uhlman, Brockton Police Department
Norman Berkowitz
Elizabeth Berkowitz

Attorney Feodoroff called on Officer Uhlman who stated he went to the location in October, 2012 and found that the cars were not being displayed in accordance with the plan. Officer Uhlman stated there is no delineation as to where the cars for sale are parked and there are other vehicles being parked in those spaces. He submitted photos for review. The first photo was dated 1/7/13 and showed a Verizon truck parked in a used car spot. In another picture a registered vehicle was parked in a used car spot. A picture taken on January 14th showed a black Altima parked by the door which is not a space included on the plan.

In response to further questions from Attorney Feodoroff, Officer Uhlman stated in February, 2012, he performed an inspection as a result of Mr. Berkowitz's application to transfer the license to this location. At the time, he specifically stated that the spaces must be lined and Mr.

Berkowitz had agreed he would line the lot as a condition of the license. He was given 13 used car spaces. He and Mr. Berkowitz had come to an agreement as far as the handicapped and customer parking and that there would be no cars parked on the grass. To date, the spaces have not been lined.

Attorney Feodoroff then reviewed the minutes from the February 15, 2012 meeting which stated, "A motion was made by Commissioner Sullivan to approve the transfer of the location of the license pending receipt of copies of the Occupancy Permit, Repair and Auto Body licenses as well as a revised plan acceptable to Officer Uhlman. The motion was seconded by Commissioner Kenney and made unanimous by vote of Chairman McDuffy."

Officer Uhlman then stated he went to the location as recently as just prior to the meeting tonight. A picture taken showed the cars were not placed in accordance with the plan. Attorney Feodoroff then reviewed that Officer Uhlman has reported that there are no distinctions between sale vehicles and parked vehicles not for sale. Officer Uhlman stated there is a sign that say Insurance Collision Center. He explained that Mass. Law requires the dealer to display a permanently affixed exterior sign of sufficient size and design to give the general public notice of the name and nature of the business. He stated the sign does not say anything about a used car dealer. As a consequence, the general public does not know that this is a used car dealership. With regard to charge #5 on his report, Officer Uhlman stated they just recently received a permit for one flag, however, they need a permit for every flag and banner as well as pennant flags which cannot exceed 25. He then pointed out the banners and pennants in the photograph he had taken. Two banners with "Used Cars Sale" were put together. The banners have been there for at least six months.

With regard to Charge #3, Officer Uhlman stated that the vehicles for sale do not have a lemon law sticker affixed to the left front window as required. The vehicles he observed were parked where the Used Cars are suppose to be but they did not have the sticker on and technically cannot be sold from the lot.

Officer Uhlman stated that just the other day he had found Mr. Berkowitz consigning vehicles from another dealer but this allegation is not included in the charges he was notified to appear for this evening.

In response to questions from Commissioner Wood, Officer Uhlman stated at the time the license was granted, it was approved to Insurance Collision Center and they were not told that the name had to be changed. Commissioner Wood asked if the Used Car Banner would be sufficient to notify the public that they are engaged in the business of selling the used cars.

There were no further questions for Officer Uhlman.

Mr. Berkowitz then went through the charges. With regard to Charge #1, he stated that the vehicles for sale were in the right spots. On the day Officer Uhlman took the picture, someone from Verizon had left the truck off. Mr. Berkowitz stated that at the end of the day, he brings the vehicles inside the shop. He stated if someone comes into his shop and parks in one of the spaces, he is not going to run out and tell him the person to move his vehicle if they aren't going

to be there for long. He stated the Verizon truck was there for ten minutes that day. Mr. Berkowitz stated he has put \$85,000 into his business and Officer Uhlman is there every day going after him for ridiculous things. He stated he had called Officer Uhlman today to try and work things. Mr. Berkowitz stated he does not deserve this treatment he has received.

Mr. Berkowitz continued and with regard to charge #4, he indicated Officer Uhlman is saying there is a violation because there is no sign saying he is a used car dealer but on charge #5, it says he has banners and flags with no Permit. Mr. Berkowitz stated he read the minutes from the February 15, 2012 meeting and he was not told to line the lot. He stated he will line the lot when the weather permits. Mr. Berkowitz stated he has driven around the City and there were only three car dealers with lined lots. On the charge that there is no distinction from vehicles on his lot for sale, Mr. Berkowitz stated there is writing on the vehicles advertising that they are for sale. He read from a law which states the banners and flags are exempt from the permit requirement. He stated he has been in business in the City since 1969 and has never had a problem previously.

Commissioner Wood asked Mr. Berkowitz if he recalled in the February 15th minutes that he was to comply with a plan agreed to with Officer Uhlman and he indicated they had discussed the number of cars. Mr. Berkowitz stated he might have talked to him about lining the spaces but he cannot recall. He acknowledged that some vehicles did not have the required lemon law sticker.

Chairman McDuffy acknowledged that he and Mr. Berkowitz have spoken previously. He stated the license agents are police officers and they do a great job for the Commission. He indicated he can understand Officer Uhlman's frustration and he has observed vehicles being parking in the used car spaces. He stated he has never seen 13 used cars for sale there. He informed Mr. Berkowitz that if he needs to change the number of cars or the placement, he can submit a new plan to the board for review. He reminded him that at this time, the 13 spaces are designated for used car spaces and can only be used for that purpose. Chairman McDuffy stated that although Mr. Berkowitz has indicated there is no law requiring the lot to be lined, it is a requirement that the City and the License Commission adopted years ago. He indicated he understands the lines cannot be painted now but this should have been done months ago.

Chairman McDuffy stated he drives by the business on a regular basis and does make observations such as the motor home that has been parked there for a week. He has also seen the vehicles parked along the front because there are no lemon law stickers on them. After reviewing the charges, Chairman McDuffy indicated in his opinion the banners are a Building Dept. issue but the rest would fall under the License Commission's purview because the rules and regulations have not been followed.

Commissioner Wood asked if the lining of the lot is a rule that the licensee is bound by absent Officer Uhlman's recommendation as part of his plan. Chairman McDuffy stated that he was told this was adopted by the License Commission a long time ago.

Attorney Feodoroff then read from City Ordinance Section 27-5 which states that any off-street parking for five or more vehicles shall be marked so as to provide for orderly and safe loading, parking and storage of automobiles or trucks. Commissioner Wood suggested that doesn't say

there has to be lines in the parking lot. Officer Uhlman stated that was what he and Mr. Berkowitz had been agreed to.

Mr. Berkowitz asked if he can slant vehicles as opposed to keeping them straight. Chairman McDuffy suggested that in view of the requirements that haven't been followed over the past year, he should probably not deviate from anything at this time.

Attorney Feodoroff stated if a customer leaves a vehicle where it should not be, it should be moved because the license agents do not know how long the vehicle has been parked there and it is difficult to enforce. She stated it is better to have the rule clear so there is no confusion. She indicated this is true with the lining also because it dictates to the customer where they should park.

Both Mr. and Mrs. Berkowitz agreed that they will line the lot as soon as the weather permits.

Chairman McDuffy stated that he understands people make mistakes but it appears that nothing is being changed and it adds to the frustration with the enforcement of the rules and regulations.

Commissioner Kenney then made a motion to find no violation of vehicles not being displayed in accordance with the approved plan based on the evidence presented. She indicated that she has parked in an empty space when going into a dealership and can understand the dilemma.

Commissioner Wood stated he thought the violation was that he was parking cars that were not for sale in spaces where the cars for sale were supposed to be parked. He asked if this would be a question of the owner properly policing the parking lot or whether he is knowingly allowing this.

Commissioner Kenney stated she does not find there to be enough evidence to find the licensee guilty.

Commissioner Wood seconded Commissioner Kenney's motion.

Chairman McDuffy stated he has gone by several times and has seen the same vehicle there all day long. He indicated he understands if a customer comes in and stops but if the vehicle is going to be on the lot all day long, it should be moved.

Commissioner Wood stated he does not feel it is the commission's job to expand on the evidence which was presented by the license agent and to do their own fact finding. He indicated this has happened more and more often where individual commissioners have gone out into the field and noticed things and bring it up during the guilty or innocent phase.

Attorney Feodoroff stated the Commissioners have the responsibility or options of checking out and making observations and as long as it is stated for the record, it can be considered evidence just like any other evidence. Commissioner Wood stated the Chairman is talking about observations he made on a separate date when he saw the car and this is now being used as a basis to augment the evidence presented by Officer Uhlman to create a violation on the particular

dates. Commissioner Wood indicated he understands they have the ability to go and make observations and report them to Officer Uhlman which might become the subject of a later complaint but feels it is impermissible for them to go out on a completely different date from when the reported violation happened and then use it in a way of augmenting the record on the violations reported.

Attorney Feodoroff stated in her opinion the charges do not specify a date and what Chairman McDuffy has stated is there are continuing violations over the course of time that the license has been held.

Chairman McDuffy stated he does not make a special effort to go by the lot but travels that route daily and can't help but make the observations.

Mr. Berkowitz stated that every customer's car is taken inside the building over night.

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

A motion was made by Commissioner Wood to find a violation that the lot has not been lined as required. The motion was seconded by Commissioner Kenney. All members voting in the affirmative, the motion carried.

With regard to the charge that there is no distinction from vehicles on the lot for sale, a motion was made by Commissioner Kenney to find a violation which motion was seconded by Commissioner Sullivan. All members voting in the affirmative, the motion carried.

On the charge that there is no sign indicating this is a licensed used vehicle dealer, Attorney Feodoroff indicated in her opinion she feels the banners are enough but that the expiration of the permit in 180 days should put him on notice that the banners are going to have to come done and something more permanent must be put up.

Officer Uhlman presented additional information and Attorney Feodoroff suggested that the hearing should be technically closed after the evidence is presented and that any discussion should only be held amongst the commissioners during the deliberation.

A motion was made by Commissioner Wood to find no violation on the charge and it is his opinion that the banners give the reasonable impression that they were selling used cars. The motion was seconded by Commissioner Kenney who stated that she feels the licensee was told about the problem and fixed it. With all members voting in the affirmative, the motion carried.

Attorney Feodoroff advised the Commission that a licensee is supposed to be in compliance with all City ordinances and laws so they can vote on the charge that the banners /flags have not been permitted although it is a Building Department violation.

Commissioner Wood stated there appears that there are two competing ordinances and that there were different types of signage for the purpose of attracting attention to the used car sales. He

stated he feels that both Officer Uhlman and Mr. Berkowitz read accurate statements. He indicated that because of this he would say there is not a clear violation.

Attorney Feodoroff explained that they were both reading from the same ordinance but were interpreting it in different ways and it is a question for the Building Department to see what the interpretation is.

Commissioner Wood made a motion to find no violation which motion was seconded by Commissioner Kenney. All members voting in the affirmative, the motion carried.

Chairman McDuffy reviewed the votes taken and violations were found on two of the five violations.

Commissioner Kenney suggested that for a penalty on the violations found, a letter be placed in the file and that the lines on the parking lot be required to be done when the weather permits and to request Officer Uhlman to make another inspection to see that all of the required signage on the automobiles for sale is being complied.

Chairman McDuffy stated that lemon law signs on the vehicles must be complied with immediately.

Attorney Feodoroff suggested that for the purposes of making this clear, they should give a specific date for compliance.

Commissioner Kenney then made the motion that a letter be placed in the file; that the lines on the parking lot be completed no later than May 31, 2013; and that Officer Uhlman make a follow-up inspection. The motion was seconded by Commissioner Holbrook. All members voting in the affirmative, the motion carried.

Mr. Berkowitz stated he did not get an answer as to whether he can park the truck at an angle and it was agreed it could be angled. Mr. Berkowitz asked if there are any different license agents that could be sent to his business.

8. Hearing on the request from Insurance Collision Center, Inc. – 50 Meadowbrook Road, to amend the stipulation on the license which currently states, “No more than 13 used cars on lot” to “No more than 13 used cars for sale on the premises.”

Mr. Berkowitz stated that Officer Uhlman had told him that it isn't necessary to amend the stipulation he has requested. Officer Uhlman indicated that the other used cars are being taken in for body work and repairs and have nothing to do with Norman's used car business. He was concerned that the used cars from other dealers that are there for repairs would be counted as used cars on the lot. Chairman McDuffy indicated that he doesn't see a problem with this as long as they are not being sold from his lot.

Attorney Feodoroff stated that if there is writing on the vehicles it be taken off while on his premise.

With regard to Mr. Berkowitz's request to have another license agent go to his lot, Lieut. Bonanca stated for the record that he and the Chief will decide which licensing officer will go to an establishment and they will not have anyone pick and choose which licensing officer they wish because they are upset with violations.

It was agreed that no action is required on the request to amend the stipulation and a motion was made by Commissioner Wood to strike the petition which motion was seconded by Commissioner Kenney. All members voting in the affirmative, the motion carried.

9. Hearing on charges brought against Avon Auto Brokers, Inc., holder of a Class II Used Car Dealer license at 8 Montello Street and 985 Belmont Street, of the following alleged violations:

985 Belmont Street

Violating the stipulation on your license which states, "NO MORE THAN 58 VEHICLES IN ACCORDANCE WITH APPROVED PLAN OF 10/28/11." On October 14, 2012, Officer Uhlman reported a total of 72 vehicles on the property.

In addition, it was reported by Officer Uhlman that there are violations of various City Ordinances: Sec. 20-4 pertaining to numbering on buildings; Sec. 27-63 - use of banners; and Sec. 12-76 with regard to handicapped parking spaces.

8 Montello Street

Officer Uhlman has reported that vehicles are not being displayed in accordance with the approved plan on file and there were 64 vehicles on the property.

In addition, Officer Uhlman reports that there are violations of various City Ordinances at this location: Sec. 20-4 pertaining to numbering on buildings; and Sec. 12-76 with regard to handicapped parking spaces.

Present were Attorney George Asack, 95 West Elm Street and his client, Dana Nessen, 24 Marshall Lane, No. Easton.

Attorney Feodoroff swore in the following persons:

Officer Scott Uhlman
Dana Nessen

On direct examination by Attorney Feodoroff, Officer Uhlman stated that on October 14, 2012 at 7:44 a.m., he went to Avon Auto Brokers at 985 Belmont Street. He counted 72 cars on the property. The license restricts him to no more than 58 cars on the property. In addition, there was no number on the building and there were approximately 5 banners stuck into the grass in the front (photo in file). There was a car for sale parked in the handicapped parking spot (photo in file). Officer Uhlman stated there was one handicapped parking space which is not sufficient for the number of parking spaces he has. The law requires no less than three handicapped parking spaces for 40 to 100 parking spots. The vehicles are not being parked in the lined spots and they are being parked on sidewalks. The purpose of the limitation of cars on a lot is for

safety and semblance of order. In addition the Fire Department needs to be able to get through in case of fire in the building and this would not be possible with the cars being parked as they are on the property. The lined spaces on the lot are nine by twenty. Each of the commissioners had the approved plan in their files to review.

On cross examination by Attorney Asack, Officer Uhlman stated he was there on a Sunday morning and the business was not open. He asked if the law requires the handicapped space be left empty even if the business is not open. Officer Uhlman stated that even if the business is not open, he would be subject to a ticket for parking in a handicapped parking spot which is the law.

Commissioner Wood indicated it is a difficult question for the officer to answer because it requires him to comment on the legality of his own actions and as a commission they should probably talk about that issue.

Attorney Asack indicated he has no further questions.

Chairman McDuffy stated there are two handicapped spaces on the plan and Officer Uhlman stated there is one handicapped space which is shown in his photographs. The plan submitted has not been complied with whether it be with the handicapped spaces or the way the cars are parked.

Attorney Feodoroff stated that the law requires that the handicapped parking spaces must be delineated for the public to see. Officer Uhlman stated it is required that the markings be on the wall and on the pavement according to certain specifications. This was not observed on the photos.

Officer Uhlman stated that the main license is at 8 Montello Street and the Belmont Street location is an annex so any penalty must carry back to the Montello Street location. It was suggested that they proceed on the violations reported at Montello Street.

On October 16, 2012, at 7:39 a.m., Officer Uhlman stated he responded to 8 Montello Street as a direct result of a complaint received. There were 64 cars on the property and the license allows for 63 cars. The vehicles are not being parked in accordance with the plan submitted to the License Commission. The display area is not lined. If it is not a law to line the lot, Officer Uhlman asked that it be made a condition of the license. There are no provisions for handicapped parking space on the property. Photographs were submitted. Officer Uhlman stated that at both locations, once the required number of handicapped parking spaces has been created, the number of vehicles will have to be changed and he asked that the license be amended. At the same time, he suggested the lining of the lot can be added as a requirement. Photographs were viewed by the commissioners and the vehicles were not in accordance with the plan. Officer Uhlman stated that the purpose of having vehicles further away from the building is to allow for the Fire Department to be able to gain access.

Attorney Asack stated that Mr. Nessen has no problem with lining the lot and agrees this will provide for a neater and more orderly lot.

Attorney Feodoroff indicated it is her understanding the Mr. Nessen is willing to accept a guilty finding on all of the charges except for the banners.

Commissioner Kenney stated in viewing the photos of October 14th of the Belmont Street location, the cars are not parked between the lined spaces and Officer Uhlman agreed there are two cars to a parking spot.

Chairman McDuffy stated that on the Montello Street plan, he sees 63 spaces but does not see any customer parking or handicapped spots. There is a dumpster next to the building and there are 2 vehicles crossed out. It would appear that the plan is not accurate and Officer Uhlman agreed that he would need to submit a new plan, professionally done.

Attorney Asack stated he would rest on the evidence that is before the Commission but he would like to be heard on the penalty phase prior to it being imposed.

Attorney Feodoroff then reviewed that they could find violations based on the concession of the licensee and then make a motion as to whether or not there is a violation with the banners.

Commissioner Kenney asked if she could hear the evidence again concerning the banners. Officer Uhlman showed her the picture and stated there was no permit in place for the banners on Belmont Street.

Commissioner Wood asked if there was anyone contesting that the banners were not licensed and Attorney Asack indicated no.

Commissioner Holbrook asked the licensee if they gave reason why they are saying they are not guilty in terms of temporary signs. Attorney Asack stated they did not give a reason but left it to the Commission to determine whether or not it is a violation.

Chairman McDuffy stated he has gone by a few times and there are extra cars on the lot as Mr. Nessen has admitted. He indicated it concerns him that the vehicles are being parked on the sidewalk and this is a public safety issue.

Commissioner Kenney also stated that she travels by the establishment regularly and it looks very clean and neat but she noticed the sign that said they have 300 cars for sale. She asked if this includes all of the locations and Mr. Nessen stated it does and people can go on the website to look at the vehicles.

A motion was made by Commissioner Wood to find the licensee in violation on all of the violations that were conceded to by the licensee on both locations absent the banners. The motion was seconded by Commissioner Sullivan. All members voting in the affirmative, the motion carried.

A second motion was made by Commissioner Wood to find the licensee in violation of the banners charge which motion was seconded by Commissioner Kenney. All members voting in the affirmative, the motion carried.

Attorney Asack agreed that there were too many cars. This was a mistake and something that should not have happened. He reviewed that Mr. Nessen has been in business in the City of Brockton for fifteen years and in Avon for 27 years. There have been very few issues and Mr. Nessen runs a very clean operation. He keeps late model and low mileage vehicles which are well kept and clean and there was no excuse for having too many vehicles on the property. He indicated Mr. Nessen was not aware that he had to have a number on the property and as soon as he became aware, he corrected the problem. There are now two marked handicapped spaces on the Montello Street property and according to Mr. Nessen, both lots now have less than the allowed number of vehicles. Attorney Asack suggested that based upon Mr. Nessen's record of running the property, it would be appropriate to perhaps put a letter in the file and require the appropriate number of handicapped spaces on the lot. They are willing to have a professional plan drawn up for the layout on Montello Street. He stated the number of vehicles on Belmont Street needs to be recalculated. Officer Uhlman requested a new plan for the Belmont Street lot.

A motion was then made by Commissioner Wood that based on the violations found, a letter be placed in the file; the licensee be required to put in the requisite number of handicapped spaces at each location based on the State law; that professionally prepared plans be submitted for the Montello Street and the Belmont Street properties and that the lot on Montello Street be lined no later than May 31, 2013.

Officer Uhlman stated the banners have been removed due to the road construction.

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

Mr. Nessen apologized to the board and to Officer Uhlman and he stated the charges were valid. He will do everything that has been requested and he promised Officer Uhlman that he will not see him before the board again.

10. Hearing on the charge brought against Brockton Phalanx, Inc. dba Pisces Lounge – Alexander Strangis, Manager, 816-818-820 Main Street, of the following alleged violations of ABCC Rule 2.05(2), to wit: “Permitting an illegality on the licensed premises”, observed on Saturday, October 20, 2012 at approximately 12:53 a.m. to 1:02 a.m.:
 - (a) Allowing Entertainment beyond approved hours of 8:00 p.m. to 12:30 a.m.; and
 - (b) Violating the Entertainment license by allowing Live Entertainment in the form of a Disc Jockey which has not been approved by the License Commission. (Currently licensed for Orchestra (2) pieces, Dancing by Patrons and Singers)

This matter was postponed due to illness in the licensee's family.

11. Communications

Chairman McDuffy reviewed that he and Chief Gomes had appeared before the Finance Committee on a proposed change in the law submitted by Councillor Brophy. He indicated that the City needs the ability to close an establishment for a period of time if they feel it is a public safety hazard. He stated that the proposal, as written, gives the Police Chief the authority to close an establishment for up to a year. Both he and the Chief Gomes do not agree with the way the proposal was written and feel there needs to be several amendments made. Chairman McDuffy stated that the councilors also agreed there had to be some amendments made.

Officer Uhlman stated that by statute, the Mayor can close an establishment for up to three days and then an emergency meeting has to be called.

In response to questions, Chairman McDuffy stated the change to the law must be done by Home Rule Petition and it will need to be approved by the City Council before it goes into the State. He stated he will keep the members informed.

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

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

The Commission's next regular meeting is scheduled for February 21, 2013.

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

Catherine B. Holbrook
Alternate Commissioner