

TAPED

The License Commission held its regular monthly meeting at 6:00 p.m. on Thursday, December 15, 2016, in the G.A.R. Room at City Hall. Present were Chairman Henry Tartaglia; Commissioners John Deandrade, Harold Marrow, Paul Merian and Jeffrey Thompson. Also present were License Agent Lieut. Ken LeGrice, City Solicitor Phil Nessralla and Administrative Assistant Bonnie Tucker.

1. Approval of the Minutes of the License Commission meeting of November 17, 2016.

A motion was made by Commissioner Marrow to approve the minutes of the meeting as submitted which motion was seconded by Commissioner Merian. All members voting in the affirmative, the motion carried.

2. Approval of the following police officers as license agents for the month of January 2017: Lieuts. Kenneth LeGrice and Paul Bonanca; Sgts. George Khoury, Frank Vardaro and Michael Dennehy; Dets. Thomas Hyland, Nazaire Paul, Eric Clark, Santiago Cirino, Jackie Congdon, Chris McDermott, Michael Bunker, Michael Cesarini, Patrick Donahue and Erin Cummings.

A motion was made by Commissioner Merian to approve the police officers as listed as license agents for the month of January, 2017 which motion was seconded by Commissioner Marrow. All members voting in the affirmative, the motion carried.

3. Requests for Special One-day Permits:

- (a) **All Alcoholic Beverages** – Annunciation Greek Orthodox Church – Liz Karolemeas, Manager, for a New Years Eve Party to be held at the Church Hall 457 Oak Street, on December 31, 2016, from 9:00 p.m. to 1:00 a.m.

This matter was postponed until later in the meeting for the reason that no one was present when called. It was taken up after the renewal of the Class III licenses.

Present was Liz Karolemeas, 9 Marsha Drive.

Lieut. LeGrice stated they have requested one police detail which is sufficient.

In response to questions from Commissioner Thompson, Ms. Karolemeas stated this is the second time they have had this event. Everything went well last year.

A motion was made by Commissioner Merian to approve the Special license which motion was seconded by Commissioner Marrow. All members voting in the affirmative, the motion carried.

WITHDRAWN (b) **Wine and Malt Beverages** – Ceijay School of Dance – Jean Guitho Paul, Manager for a Christmas Party to be held at 60 South Skinner Street on Saturday, December 24, 2016, from 9:00 p.m. to 1:00 a.m.

4. Hearings on the applications for renewal of the following Class III Motor Vehicle Junk Dealer licenses for 2017:
- (a) Brisco Baling Corporation dba Brockton Iron & Steel Co. – 45 Freight Street;
 - (b) David Lynch dba Lynch’s Cycle and Truck Center – 1200 Montello Street and 5 Terminal Place;
 - (c) Regal Auto Parts, Inc. dba Brockton Auto Parts – 511 Thatcher Street;
 - (d) Andrade, Inc. dba Everett’s Auto Parts – 553 Thatcher Street;
 - (e) Spiegel Truck and Auto Salvage, Inc. – 212 North Cary Street

The Chairman requested that each of the licensees come forward when called so that they can be heard at once and if there is anyone present who wishes to speak on any of the applications, they should also come forward.

Present were the following:

- (a) Brockton Iron and Steel – Carin Stone
- (b) Lynch’s Cycle and Truck Center - David Lynch
- (c) Brockton Auto Parts – Donald Galante, Jr.
- (e) Everett’s Auto Parts – Tom Andrade
- (d) Spiegel Truck and Auto Salvage - Anthony Pusatieri

Councillor Beauregard from Ward Five reviewed that Brockton Auto Parts at 45 Freight Street and Spiegels on North Cary Street are both in her ward. She asked about the hours allowed for Brockton Iron and Steel and the Adm. Asst. reviewed that are no hours stipulated. The Councillor stated she had some residents express concern about the noise at the location and Ms. Stone stated she opens at 8:00 a.m. and closes at 4:00 p.m. She indicated there is no equipment running beyond the hours and that the noise is coming from Spiegels which abuts her property. Ms. Stone stated she wants to make it clear that the noise is not coming from her business before 8 a.m. and later than 4:00 p.m.

Commissioner Thompson asked if there have been any complaints logged with the Brockton Police regarding any of these businesses.

Lieut. LeGrice indicated the only complaint they have received is from Councillor Beauregard regarding Spiegels operating all night when the Toll Booths were being torn down. It is his understanding that they were doing the hauling from the demolition of the booths and this project has been completed.

Councillor Beauregard stated she has received constant complaints from the neighbors regarding the noise at Spiegel.

Commissioner Thompson then asked the other businesses about their hours and received the following information:

Mr. Lynch stated he operates 24 hours. They open the shop at 6:30 a.m. and he tries to have the doors closed at 6:00 p.m. but they must remain open 24 hours because they are the facility for the City and for the State. This is for towing but also for anything else that needs to be done. They are very quiet and keep the establishment clean. As far as equipment, there are excavators, large and small wreckers, trailers, ramp trucks and bobcats. If there is an accident, they might have to operate the equipment.

Mr. Lynch stated that he also has a business on North Cary Street and the area has never looked as good as it does now.

A motion was made by Commissioner Merian to approve the renewal of the Brockton Iron and Steel Class III license which motion was seconded by Commissioner DeAndrade. All members voting in the affirmative, the motion carried.

A motion was made by Commissioner Marrow to approve Lynch's Cycle and Truck Center license which motion was seconded by Commissioner Merian. All members voting in the affirmative, the motion carried.

In response to Commissioner Thompson's inquiry, Mr. Galante stated he really has no neighbors in the vicinity. His main hours are from 8 a.m. to 5 p.m. The Administrative Assistant reviewed that there are stipulations on his license which state, 1) AN EIGHT FOOT STOCKADE FENCE ACROSS FRONT OF PREMISE; 2) CHAIN LINK FENCE AROUND REMAINING THREE SIDES; 3) PORTABLE CRUSHER MAY BE OPERATED MONDAY THROUGH FRIDAY FROM 9:00 A.M. TO 3:00 P.M.; 4) GRADED PROPERTY.

A motion was made by Commissioner DeAndrade to approve the renewal of the Regal Auto Parts license which motion was seconded by Commissioner Marrow. All members voting in the affirmative, the motion carried.

With regard to Everett's Auto Parts, Mr. Andrade stated they usually start the heavy equipment at 7:00 a.m. and finish by 4:00 p.m. The storefront hours are from 8:00 a.m. to 6:00 p.m. Monday through Friday and until 5:00 p.m. on Saturdays and 9:00 a.m. to 5:00 p.m. on Sundays. They stay open until 7:00 p.m. weekdays during the summer.

Ms. Tucker then reviewed the stipulations on Everett's license which include, "FRONT END LOADER HOURS - MONDAY THROUGH FRIDAY, 8:00 A.M. TO 8:00 P.M.; SATURDAY, 8:00 A.M. TO 5:00 P.M.; SUNDAY, NOON TO 5:00 P.M."

A motion was made by Commissioner Merian to approve the license which motion was seconded by Commissioner Marrow. All members voting in the affirmative, the renewal was granted.

With regard to Spiegel Auto Salvage, Commissioner Thompson asked Mr. Pusatieri to speak to the issues brought up by Councillor Beauregard.

Mr. Pusatieri stated the only time they were operating all night was when the toll booths were being taken down. This lasted for only three or four nights. They were working the special project for the State and had to be there from midnight to 5 a.m. Their regular hours are from 7:00 a.m. to 4:30 p.m. The equipment is started at 6:45 a.m. but they don't really start loading until 7-7:15 a.m.

Attorney Jake Creedon stated the toll booth project was a State bid and they had to get it done by a certain hour because of the traffic. It was a one time situation that couldn't be avoided.

Councillor Beauregard stated she has received repeated complaints and it started the second week of January 2016 just after she was sworn in as a councillor. The people were complaining that they could hear the noise at 4:00 a.m. Approximately three weeks prior pictures were sent and an article was published in The Enterprise newspaper. She stated she has been out at 5:00 a.m. when she heard the noise and observed that people were there. She reviewed an email from a resident of Ashfield Drive who could not be at tonight's meeting but indicated they can hear the noise at all times. They are operating earlier than 7 a.m. on a fairly regular basis. Another concern is with the dust from the yard. The resident has indicated that in the future he will call police in order to have more documentation.

Attorney Creedon stated it is located in an industrial zone which is across the street from a residential zone. Councillor Beauregard stated that she had complaints long before the most recent problem during the toll booth project. She stated she does not know whether there are employees there before the business opens but has seen and heard the work being done. She has been monitoring the property and did speak with the owner's son.

In response to questions from the Chairman, Mr. Pusatieri said none of the neighbors have ever come to him with a problem. The police have not been there either. He stated a few of his trucks leave early and there is no equipment being operated prior to 6:45 a.m. There is a full sprinkler system to control the dust on the property. Since he took over, he has cleaned up the property, straightened out the berm, removed thousands of tires, painted the building and cleaned the river. He reiterated that he is not operating during the night.

David Lynch stated he has been at his North Cary Street location for 23 years and the neighbor on the corner complains about everything. He stated that he and Mr. Pusateiri have cleaned up the property.

A motion was made by Commissioner Marrow to approve the renewal of the license which motion was seconded by Commissioner Merian. All members voting in the affirmative, the motion carried.

Chairman Tartaglia told Councillor Beauregard to have the neighbors call the police when there is a problem so that the owner is made aware of it.

5. Hearing on the request from Thorny Lea Golf Club – 159 Torrey Street to appoint Christopher J. Barron as the manager.

Present was Chris Barron, 3 Millenium Way, Rockland, who stated he has been the General Manager at Thorny Lea since March. When filing the renewal paperwork he was informed that his name must be put on the license.

A motion was made by Commissioner Marrow to approve the appointment of Mr. Barron as the manager which motion was seconded by Commissioner Merian. All members voting in the affirmative, the motion carried.

6. Hearing on the request from Nahar Corporation dba Palma Restaurant and Pizzeria to transfer the Common Victualer license at 880 Main Street to Arizona Fried Chicken, Inc.

Present was Abdul Sattar Syed, 131 Manners Avenue representing the applicant and the current holder of the license Md Abu Zafar.

In response to questions from Commissioner Thompson, Mr. Syed stated this will be their only restaurant. They have had restaurants in Worcester, Dorchester and Jamaica Plain. They have had all their inspections with the exception of the Wiring which is scheduled for tomorrow.

A motion was made by Commissioner Marrow to approve the transfer of the Common Victualer license pending receipt of the department inspection approvals. The motion was seconded by Commissioner Merian. All members voting in the affirmative, the motion carried.

7. Hearing on the request from St. Mena Corp. dba 7-Eleven to transfer the Wine and Malt Package Store license at 65 Oak Street Ext. to Yash Enterprises, Inc. dba 7-Eleven - Nilesh Shah, manager.

Representing the applicant was Attorney Angela Vastey, 300 Washington Street, Brookline. Also present was Nilesh Shah, 9 Lennon Street, Norwood and Ehab Morcos, 102 Fawn Lane, Nashua, NH.

Mr. Shah stated he has experience in this business and operated the 7-Eleven Store in Brookline for the past ten years. The location did not have beer and wine.

A motion was made by Commissioner Marrow to approve the transfer of the license which motion was seconded by Commissioner DeAndrade. All members voting in the affirmative, the motion carried.

8. Hearing on the request from Copeland Acquisition Corp. dba Copeland Chevrolet to transfer the location of the Class I Motor Vehicle Dealer license from 1555 Main Street to 955 Pearl Street.

Present was Jason Pappas, 45 Sharon Drive, South Easton who stated they will be moving from the current location which is owned by DeSantis.

In response to questions from Commissioner Thompson, Mr. Pappas stated he is the General Manager of Copeland Chevrolet and the Vice President of the company. He has been with the Copeland organization for twelve years. The Chevrolet dealership has only been owned by Copeland for approximately two years.

A motion was made by Commissioner Marrow to approve the transfer of the location of the license as requested which motion was seconded by Commissioner DeAndrade. All members voting in the affirmative, the motion carried.

9. Hearing on the application from Asia Two Bistro Inc. dba Asia One – Jun Pao Zhang, Manager, for an All Alcoholic Restaurant license at 708 Belmont Street. (Taken under advisement at meeting of November 17, 2016)

Present was Jun Pao Zhang, 738 Bark Street and Attorney John Creedon, 71 Legion Parkway.

Attorney Creedon reviewed that he would like to make a disclaimer to the board. He stated he has represented Jun and his father on a couple of other matters. His father does not always agree with his advice partly because he doesn't understand what is being said to him. It is his understanding that two days ago, he went ahead and opened the restaurant against his advice. Attorney Creedon stated he spoke with Mr. Zhang's Boston attorney and apparently there was a grand opening scheduled with the Mayor and other members of the Administration.

Attorney Creedon requested that they vote on the Common Victualer license this evening subject to all of the inspection approvals being submitted. Mr. Zhang keeps telling him that the inspections have been done but he has not seen them. Jun's sister was going to operate the business, however, she is not yet 21 years old and cannot be a part of the liquor license. The father has set up the business for Jun and his sister to run. Originally, Mr. Zhang had opened a Mexican Restaurant for about three weeks. Ms. Tucker had informed him that he

opened without permits and without approval from the License Commission. Attorney Creedon stated Mr. Zhang, the father, has spent a lot of money renovating the restaurant.

He then asked the Commission to consider the liquor license and stated in his opinion no restaurant, especially a Chinese Restaurant, can operate without a liquor license to serve the specialty drinks. He reviewed that the Commission has allowed other liquor licenses close by to the High School. He then submitted a diagram of all of the schools in the City where liquor licenses have been issued within 500 or 1000 feet. Attorney Creedon stated the law changed a number of years ago when it was an absolute veto if a school or church was located within 500 feet and objected to the issuance of a liquor license. Attorney Creedon stated the Supreme Court has change this and the School or Church may object but must give reason as to how the issuance of the license to sell liquor would detrimentally impact any school activity. He reviewed that Commissioner Thompson had asked the question to the Principal and Assistant Principal at the last meeting. Attorney Creedon indicated that Ms. Wolder's answers did not address this issue.

Councillor Creedon asked the Commission to consider issuing the license based on all of the liquor licenses throughout the City which are located near schools and because of the lack of specifically addressing why a liquor license should be there. He suggested the Commission issue it conditionally and if there is a problem, they can review the license at renewal time and not renew it.

Councillor at Large Shaynnah Barnes was present and stated she attended the grand opening of the Asia One restaurant the other day for lunch. She stated it is a really nice establishment and the one thing it was missing was the potential to come back for an evening type of adult event. The restaurant is not a place the kids would want to go to. Councillor Barnes stated that if the majority of the City voted to have a Casino and Gambling across the street from the school and several feet from the Junior High School, she does not see why having a liquor license or beer and wine at this restaurant is an issue. She stated it would rejuvenate and pump life back into the area. She stated at the present time, the only place to go after 8 or 9:00 is someplace like the Texas Roadhouse. It is her opinion that this establishment offers more of an upscale different kind of cuisine that we don't currently have here. She indicated she feels this would be something a lot of people could take advantage of where it is on a main thoroughfare coming in and out of the City. It will be open until 10:30 p.m. and in the summertime, people could go before or after the games in the nearby fields. She urged the Commission to consider her support to this petition to allow this establishment a liquor license.

Attorney Creedon then submitted a copy of the menu. He stated the school academic day goes from 7:30 a.m. to 2:15 p.m. He indicated they would condition that no alcohol will be sold before 4:00 p.m.

The Chairman indicated it bothers him that the owner has opened two times without a license. He asked how he could be trusted with a liquor license if he doesn't follow the laws required.

In response to questions, Mr. Jun Chang stated he will be responsible for hiring bartenders. They will be TIPS certified. Hours of operation are from 11:00 a.m. to 11:00 p.m. seven days. If they are granted the liquor license, they hope to be open until 1:00 a.m. on Fridays and Saturdays. Mr. Chang stated he will be at the restaurant as much as he can, however, he also goes to school.

Commissioner Merian reviewed for Jun that even though his name would be on the license, he is concerned that his father is doing things his own way. If Jun is not going to be there, it doesn't give the board any encouragement that the establishment will be run right. Jun stated he has another partner, Mrs. Wang, who will be there when he is not. His classes are from 11 a.m. to 2 p.m. She has the money and time to run the restaurant right now. He indicated she is putting money into the restaurant.

The Administrative Assistant stated that there has been no disclosure regarding any other partner in the ownership. Attorney Creedon stated this hasn't been done yet, however, Mr. Zhang stated she is buying into the restaurant.

Lieut. LeGrice stated that as the enforcement officer, he is concerned that on two occasions, this establishment has opened without a license. He reviewed that Commissioner Thompson had a lot of questions for his father at last month's meeting, however, his father is not present this evening which leads him to question whether his father may have been less than truthful with his answers. He stated he does not have the confidence that he can run the establishment and it has nothing to do with the liquor license or the high school. Lieut. LeGrice stated his fear is that they are not giving truthful answers regarding the operation of the business and for that reason, he cannot support either license until the proper answers are given and they can give some assurance that they will abide by the rules. Mr. Jun Zhang stated his father will not be running the business at all and he will barely be at the restaurant. He was just helping him get the restaurant opened.

Commissioner Barnes asked if there is some kind of language situation. Attorney Creedon stated he has directly asked Mr. Zhang if he has the permits and he tells him he does. He has told him to bring them in which he has not done. His Boston lawyer is Attorney Levin. Attorney Creedon stated he had called the father after seeing in the Chamber of Commerce bulletin that he was having a grand opening and told him he couldn't because he has no licenses. His response to Attorney Creedon was that he had the permits and they were going to open because the Mayor was going to be there.

Chairman Tartaglia stated he observed they were open yesterday and today and the open sign was out front. Councillor Barnes stated she knows the City has been lenient on other locations where there has been a language barrier. The Chairman stated that Councillors

Farwell and Eaniri had both written letters in opposition to the liquor at last month's meeting in addition to the Principal and Asst. Principal of the High School.

It was reviewed that a beer and wine license was approved to Charlie's Diner at this location, however, it was never issued.

Attorney Nessralla reviewed with the Commission that it has already held an open hearing on the application for the liquor license at last month's meeting. It was taken under advisement at that time. He indicated that based on Attorney Creedon's representation, the maps he presented may indicate other liquor establishments are located near schools and his theory that if you've done it wrong before then let's keep doing it wrong shouldn't fly. Each one of those licenses presumably has a cause as to why they were issued so they cannot say because those were issued, this license has to be issued. He stated he agrees with Attorney Creedon in that the law was changed. He explained that under Chapter 138, Section 16C, there is a presumption that if you are within 500 feet of a school or church, the license should be denied. He stated Attorney Creedon had mentioned that the Principal and Vice Principal had come in but didn't give evidence that the granting of the license would be detrimental to the educational activities of the school. Attorney Nessralla stated there is no burden on those who oppose the license but the burden is on the applicant to prove there will be no detrimental effect by issuing the license. In order for the board to grant the license, they would have to state all of the reasons why it is not detrimental. They do not have to state any reasons why it would be detrimental if they deny the license. If there is no elaborate reason given by the applicant why it would not be detrimental to the church or school they have to deny the application. He explained that they do not have to put any reasons why they deny it; but they would have to put reasons why they allow it.

Attorney Nessralla stated that the law also goes to the point that if they are beyond 500 feet, the license could still be denied if there is a reason it would be detrimental to the school or church. He advised the Commissioners that they should confine themselves to the law.

Attorney Creedon then reviewed the requirements of Chapter 138, Section 15A pertaining to the notifications to abutters. The notice to a church, school or hospital within 500 feet must indicate the necessity of a written objection. He asked if the school had put in a written objection and was told that the Principal had sent an email with pictures which was reviewed when she appeared at the hearing. He stated that when the law was changed from an absolute veto, you must issue a reason why the school activity is impacted negatively.

Attorney Nessralla stated he disagrees with Attorney Creedon's statement. He then read from M.G.L. Chapter 138, Section 16C which states, Premises that are located within a radius of 500 feet of a school or church shall not be licensed for the sale of alcoholic beverages unless the local licensing authority determines in writing and after a hearing that the premises are not detrimental to the educational and spiritual activities of said school.

Commissioner Thompson reviewed that when Principal Wolder testified at last month's hearing, he found her testimony to be credible and persuasive and that she made a case that the issuance of this liquor license would be detrimental to the educational activities.

Attorney Nessralla stated that even without the testimony of the principal of the high school, the presumption of the law is that the license is to be denied unless the Commission writes reasons why it is not detrimental.

Commissioner Thompson indicated he would concur with Attorney Nessralla's reading on the statute that the burden falls on the petitioner.

Commissioner Merian asked if the license could be granted with the requirement that a police detail is there.

After a brief discussion, a motion was made by Commissioner Thompson to deny the license to sell alcohol which motion was seconded by Commissioner Merian. All members present voting in the affirmative, the motion carried.

Attorney Creedon requested that as part of the vote, they include that the opinion of the City Solicitor was that it cannot be allowed.

A motion was then made by Commissioner Marrow that the Common Victualer license be approved pending the closing of the restaurant and pending receipt of all of the department inspection approvals. The motion was seconded by Commissioner Thompson. All members voting in the affirmative, the motion carried.

10. Renewal of Licenses for 2016

Prior to going through the renewals, Commissioner Merian excused himself as he had to leave for another commitment.

A. Licenses to Sell Alcoholic Beverages

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

A list was provided to indicate the status of compliance of all of the licenses. Ms. Tucker reviewed that they could approve the renewals according to the list pending receipt of the

required documents which will have to be submitted before the end of the year in order for the licenses to be issued.

A motion was made by Commissioner Marrow to approve the renewal of the licenses in accordance with the list pending submittal of all of the required documents which motion was seconded by Commissioner Thompson. All members voting in the affirmative, the motion carried.

B. Common Victualer Licenses

A motion was made by Commissioner Marrow to approve the renewals. Commissioner Thompson seconded the motion pending receipt of all of the required documents. All members voting in the affirmative, the motion carried.

C. Innholder Licenses

A motion was made by Commissioner Marrow to approve the renewals. Commissioner Thompson seconded the motion pending receipt of all of the required documents. All members voting in the affirmative, the motion carried.

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

A motion was made by Commissioner Marrow to approve the renewals. Commissioner Thompson seconded the motion pending receipt of all of the required documents. All members voting in the affirmative, the motion carried.

E. Lodging House Licenses

A motion was made by Commissioner Marrow to approve the renewals. Commissioner Thompson seconded the motion pending receipt of all of the required documents. All members voting in the affirmative, the motion carried.

F. Entertainment Licenses

A motion was made by Commissioner Marrow to approve the renewals. Commissioner Thompson seconded the motion pending receipt of all of the required documents. All members voting in the affirmative, the motion carried.

G. Automatic Amusement Device Licenses

A motion was made by Commissioner Marrow to approve the renewals. Commissioner Thompson seconded the motion pending receipt of all of the required documents. All members voting in the affirmative, the motion carried.

H. Fortune Teller License

Ms. Tucker reviewed that there is only one Fortune Teller license and the application for renewal has not been submitted.

A motion was made by Commissioner Marrow to approve the renewal provided the application is filed. Commissioner Thompson seconded the motion with the provision that all required documents are submitted. All members voting in the affirmative, the motion carried.

10. Communications

There were no communications to review.

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

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

The Commission will meet again on January 19, 2017.

Respectfully submitted,

Henry Tartaglia
Chairman

APPROVED:

Paul D. Sullivan, Commissioner

Joao DeAndrade, Commissioner

Harold C. Marrow, Jr., Commissioner

Paul Merian, Commissioner

Jeffrey A. Thompson, Alternate Commission