



Licensing Board

March 27, 2013 – 7:00 PM – **Minutes**
City Hall, 133 William Street, Room 314

LICENSING BOARD MEETING

-MINUTES-

Wednesday, March 27, 2013
Room 314 - 7:00 p.m.

PRESENT: Steven A. Beaugard, Chairman
Marcelino “Sonny” G. Almeida, Commissioner
Edmund F. Craig, Jr., Commissioner
Atty. John Flor, Asst. City Solicitor
Lt. Joao Chaves, Police Department Liaison to the Lic. Bd.
Nick Nanopoulos, Director

MOTION TO ACCEPT THE MEETING MINUTES OF JANUARY 22, 2013 - Unanimous

APPROVALS RECEIVED FROM THE ALCOHOLIC BEVERAGES CONTROL COMMISSION

‘New’ Retail Package Store Wine & Malt License - Trans. # 222 – Plot # 108—172

Abracadabra Flower & Gift Service, Inc., which is petitioning for a **New Retail Package Store Wine and Malt Only Beverages License**. **Connie Pereira** is the President, Treasurer, Secretary, Sole-Director, and Sole Shareholder (100 %), and the **Proposed Manager**. The premises consist of an area approximately 1,080 sq. ft., which is currently and will continue to be used as a flower and gift shop. The area will include a wine cooler, display tables, a wine accessories sales area and service desk area, and a limited seating area to be used as a product information center; as well as a 180 sq. ft. work area and one restroom in the rear of the building. There is only one customer entrance/exit, which is located in the front of the building and leads onto Acushnet Avenue; as well as an emergency exit facing Nash Road. There will be additional storage in the 1,300 sq. ft. basement area, which is only accessible through a trap door from within the premises. The premise is situated on the main floor and basement of a street level building, which is located on the west side of Acushnet Avenue between Nash Road and Whitman Street, **and numbered 1701 Acushnet Avenue**.

The application was approved by the Board with the following stipulations:

- 1. The license would be restricted in its use to the sale of wines and malts only and said bottles are to be included and wrapped in flower arrangements, gift baskets and favors only. There shall be no on or off premise sale of any alcoholic beverages, other than those described.**
- 2. The licensee will apply for and maintain a transportation license for the delivery of the wine and malt beverages. Said license is issued through the Alcoholic Beverages Control Commission and an approved copy shall be filed with the licensing board.**

Final approval will require a ‘Certificate of Inspection’ from the Building Department.

Approved By ABCC – 02/26/13

VOTED: To accept the approval from the ABCC. – **Unanimous**

Change of Officers, Directors, Manager, d/b/a, and Transfer of Corporate Stock - Trans. #149 - Plot # 47-39

Cork County, Inc., Catherine Carter Flynn, President, who is requesting a **Change of Officers, Directors, Manager, and Transfer of Corporate Stock** of the **Common Victualler (Restaurant) All Alcoholic Beverages License**; Denis Keohane as Clerk, Co-Director, and Co-Shareholder is petitioning to allow the transfer of all his corporate shares (49%), and to accept his resignation of all his positions in the corporation.

Upon approval, Catherine Carter Flynn will be the President, Co- Director, and Co-Shareholder (49%); and **Barry W. Flynn** will be the Treasurer, Clerk, Co-Director, Co-Shareholder (51%), and the **Proposed New Manager**; also being requested is a **Change of d/b/a to Slainte Irish Pub & Grille**. Premises will remain the same at **34-44 Union Street**.

Approved By ABCC – 02/26/13

VOTED: To accept the approval from the ABCC. – **Unanimous**

DISAPPROVALS RECEIVED FROM THE ALCOHOLIC BEVERAGES CONTROL COMMISSION

Change Of Officers, Directors, & Manager - Trans. #109 - Plot # 19--53

United Fishermen Club, Inc., Jose Fanguero, President, who per a vote taken at the Annual ‘Club’ Meeting held on October 1, 2012, is petitioning for a **Change of Officers, Directors, and Manager** for a **General on Premise All Alcoholic Beverages License**. Upon approval, the New Officers and Directors will be as follows: Jose Fanguero will be the President and Sole Director, Carlos E. Belo will be the Vice-President, Antonio F. Braz will be the Treasurer, and Carlos Pereira will be the Secretary; respectively; Stockholders will remain the same. **Antonio F. Braz** ~~*Eusebio Rego~~ is the **Proposed New Manager**. Premises will remain the same at **639 Orchard Street**.

***Note:** Application was amended naming Antonio F. Braz as the new manager, replacing Eusebio Rego whose name was previously submitted.

No Advertisement Required: Abutters Not Required To Be Notified

Disapproved By ABCC – 03/07/13 - Failure to Comply With Mass Tax Laws (DOR) – 1st Attempt

VOTED: To accept the disapproval from the ABCC, and to re-submit application to the ABCC “for reconsideration”, only upon notification from the Applicant or the DOR, that all outstanding issues have been resolved. – **Unanimous**

Change of Manager - Trans. # 141 – Plot # 25-A-25

Young Cape Verdean Athletic Association, Inc., 418 South Front Street, is requesting the approval of **Dulceiann Mello** who resides at 155 Frederick Street, New Bedford, MA. as **their new manager**.

Disapproved By ABCC – 03/11/13 - Failure to Comply With Mass Tax Laws (DUA) – 1st Attempt

VOTED: To accept the disapproval from the ABCC, and to re-submit application to the ABCC “for reconsideration”, only upon notification from the Applicant or the DUA, that all outstanding issues have been resolved. – **Unanimous**

Pledge of License - Trans. # 225 – Plot # 31--239

Racing Mart, LLC d/b/a Mutual Oil, Alexandre El Tom, Manager of LLC, who is requesting approval of a **Pledge of the Retail Package Store Wine & Malt Only Beverages License** to **Mechanics Cooperative Bank, 308 Bay Street, Taunton, MA.**, as security to authorize and execute a promissory note in the amount of **Seven Hundred Thousand Dollars (\$700,000.00)**, pursuant to Massachusetts General Laws Ch.138 s.23.

Disapproved By ABCC – 03/11/13 - Failure to Comply With Mass Tax Laws (DUA) – 1st Attempt

VOTED: To accept the disapproval from the ABCC, and to re-submit application to the ABCC “for reconsideration”, only upon notification from the Applicant or the DUA, that all outstanding issues have been resolved. – **Unanimous**

1. PETITION - Trans. # 224 – Plot # 94--47

Gulf Resources, Inc. d/b/a Hathaway Irving is petitioning for a **New Retail Package Store Wine and Malt Only Beverages License**. John Carrigg is the President, Co-Director, Co - Shareholder (50 %), Richard Carrigg is the Treasurer, Secretary, Co-Director, and Co-Shareholder (50 %), and **Dennis Collard** is the **Proposed Manager**. The proposed licensed premises is a convenience store located on the first floor of a one-story

building in an area approximately 3,800 sq. ft., which includes a coffee shop take-out area, a deli take-out area, a backroom for storage, an office, and two restrooms; as well as a walk-in cooler and shelving for the sale and display of alcohol. There is one (1) entrance/exit in the front of the building, as well as two (2) emergency exits located at the rear of the building. The premises is situated on the south side of Hathaway Road, **and numbered 380 Hathaway Road.**

Final approval will require a ‘**Certificate of Inspection**’ from the Building Department.

Application has been advertised; Abutters have been notified

Rec’d 03/26/13 – A letter was received from Henry G. Bousquet, Councilor Ward 3, asking to be recorded in favor of the petition for a ‘new’ Wine and Malt Retail Package Store license for 380 Hathaway Road. (Letter on File)

Present: Atty. Karen Simao along with Dennis Collard, Proposed New Manager and Richard Carrigg, Co-Owner; The following persons were either recorded or spoke in favor of the petition: Henry G. Bousquet, Councilor Ward 3, Michael Lobo, 143 Cottage Street, N. B., Christian Beaulieu, 169 Macomber Street, N. B., Phil Paleologos, 368 Whitlow Street, N. B., Cathy Jarvis of Fall River, Nick Cardoza, 17 Edward Drive, Whitman, MA., Leonard Jacinto of N.B., Bert Vasconcelos, 11 Slocum Road, Dartmouth, Mark Cabral, 2094 Phillips Road, N. B. & Atty. Chris Markey, State Representative, 48 William Street, Dartmouth

Mr. Nanopoulos opened the hearing by reading in part, a letter from Henry G. Bousquet, Councilor Ward 3, who asked that he be recorded as in favor of the petition for a ‘new’ Retail Package Store Wine and Malt Only Beverages License, for Hathaway Irving Gas Station located at 380 Hathaway Road; which was received and placed on file by the Board.

Atty. Simao then presented the Board with an informational packet as part of her presentation, which was also received and placed on file by the Board.

Chairman Beaugard then recognized Atty. Simao and asked her to explain to the Board what her client’s plans were regarding the petition that was before them.

Atty. Simao opened her presentation by identifying herself, and stating that she was present representing Mr. Carrigg as the owner of Gulf Resources, Inc., as well as Mr. Collard, who is the current manager of the store on Hathaway Road.

Atty. Simao continued her presentation by stating, we’re here before the Board today requesting a ‘new’ Retail Package Store Wine & Malt only liquor license to be used at 380 Hathaway Road ... I believe the Board is aware of the history of this particular location ... meaning ... Mr. Carrigg was very happy to become part of the New Bedford business community by renovating this building ... creating new jobs ... by all accounts he’s done a wonderful job at this particular location ... I understand that he previously appeared before this Board for a wine & malt license ... I also understand that there might have been some past discussions in terms of layout and that nature ... and that Mr. Carrigg backed away from the application at that time ... because to be frank ... the layout didn’t work with the business concept of the convenience, which is intended to be one-stop shopping for its customers.

Atty. Simao continued her presentation by stating, the reason we’re back before you today is the direct result of ‘customer demand’ for this ... there is no other reason that we are here other than the fact that customers that come into the store are regularly asking (saying) ... boy, we wish you could sell us a bottle of wine or some beer. I know the Board is very well versed with regard to package store licenses ... we are not intending to be a full package store ... that is in no way the concept here ... and I also know that the Board is very familiar with some mixed use stores whether they are in your jurisdiction or in others ... what I don’t know ... is whether or not the Board is familiar with the experience of Mr. Carrigg in operating identical operations to what we’re asking today ... and I point that out because I do feel that it is critical in looking at the factors to consider in weighing whether or not to issue a new license at this location.

Atty. Simao continued her presentation by stating, as I’m sure the Board knows ... the ‘Ballarin Case’ is the leading case on issuing new licenses and it is driven by ‘Public Need’ and ‘Common Good’ ... and I’ve been before different Boards in over 12 years, now ... and nobody has really come up with a succinct definition of what that means (laughing) ... but certainly looking at the case ... it sets out several factors that Boards consider when making this kind of decision ... I would respectfully submit that this particular applicant certainly successfully meets not 1 ... not 2 ... but all 7 of those factors that are relevant in that case.

Continuing, Atty. Simao stated, one of the principle factors for proper consideration is the number of similar

locations in the area ... and if we look at New Bedford ... and I have a package that I'm going to hand out to you ... there are certainly several licensed establishments in New Bedford ... however, if you look at the map that will be in the package that we'll hand out to you ... and you look at where this location is ... it really isn't serviced within a one mile area ... it's very distinct when you look at the map in terms of the clusters in other areas and not here ... so certainly, we believe that the location makes a lot of sense ... and would do so with minimal impact to the neighborhood ... also in that consideration of whether or not to issue a license, is also, do we have licenses available, which the Board does at this time.

Continuing, Atty. Simao stated, the second factor that Ballarin looks at and the Board looks at is the view of the customers and the residents in your district ... you will have a petition here in your package that has over 200 signatures, of which a vast majority are New Bedford residents ... and that's only from a week and a half period ... and I point out that it's only New Bedford residents because we really wanted to zone in on your residents in your jurisdiction but as the Board knows ... the licenses are intended to the public need ... not just the need of the residents of New Bedford so to that point, we service hundreds upon hundreds of other customers that come in and have requested it ... we just wanted to be as transparent as possible with the Board in terms of who are the people that most directly impact you that are requesting this ... you'll also hear live testimony tonight of people who support this application ... support Mr. Carrigg's business ... and feel that there is a 'public need' ... so to that extent, the Ballarin Factor as it relates to the views of participants, customers, and residents ... is very relevant here.

Atty. Simao continued her presentation by stating, when we talk about things like traffic, noise, & size ... that is somewhat irrelevant in this analysis because we're talking about an existing business operation by adding this limited license for the convenience store aspect ... we're not going to be adding traffic ... we're not going to be adding noise ... we're not going to be adding any size to this location ... again, this is intended to serve the customers that come into the store as a convenience for those customers as members of the public ... and as you can see from the floor plan ... this is a very limited area ... so people aren't going to be coming in here to stock up for a Super Bowl Party ... this is truly a day to day convenience for people who are coming in for any of the other convenience items.

Continuing, Atty. Simao stated, when we talk about the last two factors of Ballarin, #'s 6 & 7 ... which deal with the sort of operation that the applicant runs ... and the character, fitness, and reputation of the applicant ... I would very respectfully submit to the Board that you would be hard pressed to find someone with more direct experience in this kind of operation and a better record ... he has successfully run identical operations for years in various other jurisdictions, which are submitted in the application without incident ... and that's very telling ... because a convenience store format can be very challenging ... it certainly can be challenging for someone that's never done it ... but the persons before you ... the applicant and the proposed manager ... both have direct experience in what I would call the mixed use format that is before the Board today ... so to that end and for the record ... I would respectfully submit that all of these factors that encumber ant upon the Board to consider in issuing a new license have been met by this particular applicant.

Atty. Simao then addressed the contents of the packet that she presented to the Board, which included the following,

1. A map of New Bedford Package Store Licenses
2. Store Policy on Alcohol Sales
3. Instructions to Employees on Alcohol Sales
4. Diagram of Security Locations Within the Store
5. Biography of security Consultant and Creator of Store Alcohol Protocol and Training Program
6. Support Petition Signed by Customers and Neighbors

by stating, this packet was really intended to provide a record to the Board that backs up not only some of what I said ... not only what is in your application materials ... not only what you're going to hear live today ... but also backs up some of my testimony that I submitted here today ... so when we look at this map of New Bedford (tab #1) ... you can see that we are really less segregated than many of these other clusters of package store licensees that currently exist ... I would submit that under tab #2 & #3... this is just really a point of information for the Board as it relates to policies regarding wine & malt sales ... in addition to the polices that I note there ... I would submit ... actually in anticipation of this hearing ... that this is a function of every store that Mr. Carrigg owns ... there is an initial in house training ... there has been training done by a third party by

Mr. Staples, of which you have a biography and a copy of his training materials under tab #5 ... you'll see that his experience as a third party trainer deals directly with alcohol sales and is highly regarded by Alcohol Beverages Control Commission ... and in addition to that initial training and certification process there are monthly meetings ... it's a constant state of communication even though at this location in New Bedford and the other locations that Mr. Carrigg operates it's really a family environment ... his employees have been with them for years ... there's not a lot of turnover ... you don't want people to become complacent ... so those monthly meetings are important to make sure that everyone continues to be aware of some of the challenges in running a C-Store generally ... and also a C-Store that has a wine and malt as part of their format ... the folks that are currently at the store ... and there are 10 employees currently at that store ... each and everyone of them in anticipation of this meeting tonight have gone through the training with Mr. Staples, as well as the in house training ... we really wanted to be able to emphasize to the Board that we are taking this seriously as we do at our other locations ... and hopes that the Board respects those efforts that have been going in to some of this training.

Continuing, Atty. Simao stated, in addition to training, obviously security is always important when you're dealing with any sale of alcohol ... whether it's in a restaurant ... whether it's a traditional package store ... whether it's in a convenience format ... so the diagram under tab # 4 sets out a couple of important things for you ... from an overall perspective ... the grey circles indicate individual cameras in the interior of the premises ... the darker circles indicate the nine cameras on the exterior of the premises ... we feel very strongly that the location of the beer and wine cooler and the one wine gondola, which are both highlighted on the floor plan in your packet ... that is in line of sight of the cashier at all times ... it is in no way obstructed ... no customer, who wants a non beer and wine product, has any reason to go into that area ... meaning you're not walking past this to get to the milk or to get to the cereal ... which is important from a control standpoint ... and so, not only are they in the line of sight of the employees and cashiers at all times ... not only are they separate and distinct, so there's no ambiguity as to why a customer would be going there ... they are also monitored by cameras, which in other jurisdiction have assisted the police in non-alcohol related issues where they needed co-operation of the licensee ... we have found that the surveillance system has been very helpful ... we have not had a problem ... we've not had violations ... so to that extent ... we believe the system works ... this is really top of the line ... this is really going above and beyond to do what they can to be good business members of any community, which in this case, certainly N.B.

Atty. Simao concluded her opening remarks by stating, and under tab #6 ... there you'll find the petition that I referenced in my initial statements.

Chairman Beauregard opened the questioning by the Board by asking, when you were before us initially, didn't we discuss (suggested) that a separate area be set up with a separate entrance for the sale of beer and wine, which would separate the liquor store from the convenience store, to which Mr. Carrigg acknowledged that they had.

Chairman Beauregard stated that he just wanted to make sure that they were talking about the same space that was discussed prior.

Chairman Beauregard continued his questioning by stating, let's talk first about the points in the Ballarin Case, which were very familiar with ... in your exhibit # 1 ... in which you talked about 'Public Need' ... you're absolutely right ... there is no definitive method of what constitutes 'Public Need' ... but I would just make reference to your spread sheet that you provided that there are ten (10) licensed establishments within 2 miles of this site ... there are a couple at 2.1 ... 2.2 that I didn't use ... there's one here down the street (Zully's) at 2.5 ... but within a 2 mile radius there are ten (10) licensed establishments already serving that need ... so I would come back and I'd say ... what is the need that this Board would need to add another licensed establishment within that 2 mile area.

Atty. Simao responded, so, to that point ... what the Donovan Case does, which I'm sure the Board is also familiar with ... is that the consideration is the format that is before the Board ... so, unequivocally there are package store licenses in abundance as the 'Chair' noted ... but I would respectfully submit that clearly the past practice has been to put stores much closer than the .8 miles that we're referencing here in just looking at the map ... generally ... but that really isn't my main focus ... my main focus is the format of this store ... so when we look at any type of a C-Store type of operation ... a convenience store type of operation ... the whole point ... and the reason frankly why the prior suggested floor plan didn't work is that this applicant is not in the

business of operating a full service package store ... they're in the business of providing a convenience store format for its customers ... and that's the reason the square footage is what it is on the floor plan ... so when we look at the format of C-Store operations ... the ones that you have closest would be #25 on your diagram ... #26 on your diagram ... #27 on your diagram ... #28 on your diagram.

When informed by Chairman Beauregard that the numbers didn't coincide with what is shown on the map as being within the 2 mile radius of the proposed location and noting that #25 was 5 miles away, Atty. Simao stated, well I'm only talking about format now ... I'm not talking about distance ... so I'm making the distinction that, yes, there may be full service package stores within the 2 mile radius as the 'Chair' noted ... but that the distinction is the format ... so people that go to the full service package store ... are going to that store for a different purpose than the folks coming to this store ... so, I'm simply noting that in New Bedford ... there are some of these other formats ... they are further away than the 2 miles noted by the 'Chair' ... so for the folks that are utilizing this C-Store location ... there is that need ... because they don't want to go that 5 miles to get to the 'Lukoil' gas station to get their gas, as well as any other convenient item they made need ... again, I started the presentation and I continue with the theme that ... the obligation is not that every member of the public be served by any one of these particular operations but where is there a need, and how that need is evidenced ... so at least 200 residents of New Bedford ... over 200 residents of New Bedford feel that they are customers here ... they feel there's a need ... and in today's day and age where people work ... have families ... have children ... life is very busy ... people don't want to make multiple stops for whatever it is that they're looking for ... and that's what gave birth to the whole convenience stores concept ... we're not competing with the full service super market we're not saying we are ... we're a convenience store ... it's filling that gap for an item that you may need on a daily basis ... and that's really the concept here for the limited wine and malt area in this floor plan ... and again, the only other formats that 'service that' are further away and/or ... people shouldn't be forced to be a customer of Costa's Sunoco, if they don't want to be ... and that's really the point that I was trying to get at ... and again, I always try to be very transparent ... this is why I provided a map with all of these locations ... and I understand 'Chair's' position and question on ... there are other stores within the 2 mile radius ... but those stores are not servicing these customers nor this particular format.

Chairman Beauregard responded, you mention Costa's Sunoco, which is #26 and they're only a mile and a half away ... and I'm not suggesting that anybody that wants to go out and buy a bottle of wine or a case of beer needs to support anyone that is .8 or .9 miles away.

Continuing, Chairman Beauregard stated, the other fact that I just want to bring to light is the fact that just north of the proposed location is a highway ... if you go west of the location ... it's an area with limited housing or no housing... east of the location there is some housing ... but it isn't much ... and since your client was previously before this Board ... to the best of my knowledge, there hasn't been any additional housing built around that neighborhood ... I'm not aware of any major construction going on in that area.

Atty. Simao responded, to that point ... it serves to raise 2 points at least in my mind ... which is that at least some of the residents of New Bedford who are driving through are stopping at this store upon getting off the highway ... and one of the points that I did make initially is that ... again, I wanted to be transparent with this and focus on New Bedford residents for your benefit ... but the standard for 'Public Need' ... is the public need in general ... so to your point ... there are hundreds of transient people that are coming into New Bedford and giving their business to New Bedford and New Bedford businesses by coming to this location ... and those are the same customers who are also asking for this ... they're coming off those highways ... and are coming in to get gas or other items ... so there is no question that the business is servicing the public generally ... not just those in that area.

Chairman Beauregard responded, but there is no way for us to measure whether those people coming in getting milk and bread ... and your client is simply saying ... would you be willing to sign a petition to get beer and wine ... people will sign anything ... they'll sign anything to put anyone on a ballot ... they'll sign anything coming out of a super market for a petition for casino gambling ... whatever it might be ... but there's no way for us to sit here ... but we'll certainly take credence to the 200 plus names ... and think ... ok ... there might be a percentage of them that are advocating ... and certainly want to see a beer and wine license over there ... but there is no way for us to be able to put value that says that these 200 people were here ... and all the 200 plus people came in and said ... I'm here for milk and bread ... and by the way I want to buy a bottle of wine or a case of beer.

Atty. Simao responded, I think that is somewhat disingenuous ... having signed similar petitions in similar locations ... I can tell you that there are people who will not sign a petition ... I'm not suggesting that every person on here said ... I want to come here to buy my bottle of wine ... I'm not suggesting that ... but I am suggesting that every person on here feels that this business owner should have that accessibility and they as customers should have that accessibility.

Chairman Beauregard responded, but their attitude is that he should have that ability to be able to sell liquor not knowing the facts that this Board has to listen to and consider this evening.

Atty. Simao responded, the petition clearly says ... "It would be very convenient for New Bedford residents and other patrons of the store to be able to purchase beer and wine along with other items sold at this location" ... it's a pretty clear statement ... and I don't think that the standard contemplated in Ballarin or any other ABCC decision ... is whether every single person on the list would in fact utilize it ... it's whether or not they feel that there is a need ... and in this case ... the convenience is the need that is being met by this particular format ... but I do think that out of fairness to the employees who have had conversations with people who came into the store and some of whom are here ... it is a regular question that is asked by customers of the store ... I'm not submitting of the several hundred customers who come in during the course of the day that everyone is asking that question ... that's certainly not my position ... and it's not a criteria but it is a very regular request ... and it's the reason we're trying to go through this process again.

Commissioner Almeida made the observation that the signatures had addresses from all areas of the city, and stated that they would have to go by other places to get to this location.

Atty. Simao responded, that's right ... that goes to the point of customer loyalty in some cases ... and the 'time' ... people don't want to have to make stops and that's the origin of the convenience request here ... and that's why again ... I keep emphasizing the format ... again ... we're in no way saying here ... if you're having your family party on Sunday and it's a big party ... no way are you coming here ... this is a convenience issue ... if someone is running to the gas station to do any other number of things in the convenience store ... they don't want to have to make another stop somewhere along the city ... I think it's a valid point that the Commissioner raises but I also think that it underscores our point, which is customer loyalty ... they don't want to be forced to stop somewhere else that is inconvenient or someplace where they don't want to stop at.

Chairman Beauregard then recognized Councilor Bousquet, Ward 3, who spoke in favor of the petition as reflected in his letter to the Board, as well as stating that he did a walk through of the premises with the owner, and that he was impressed with the way they were operating their business; he also stated that he was aware of the Board's previously expressed desire to have the liquor portion totally segregated from the convenience store portion of the building but after speaking with the owner, he felt as they did, that it would not be financially viable to set up the store in that manner, which would require additional staffing; and respectfully requested that the Board approve the petition as presented.

Chairman Beauregard then asked if there was anyone present who wanted to speak in favor of the petition, upon observing several hands raised, each were asked to step up to the table one at a time and state their name for the record.

The first person to speak in favor of the application was Michael Lobo, 143 Cottage Street, N. B., who stated that he wanted to speak to Mr. Carrigg's good character, as someone he's known for over 25 years; and his ability as a good and responsible businessman.

Next to speak in favor was Christian Beaulieu, 169 Macomber Street, N. B. who addressed the issue of other package stores being in that area by stating, living on Macomber Street ... I come off Rte. 140 when coming back into the city ... and I stop there for milk, bread, and other things ... and on my way up Rockdale Avenue to my home ... there isn't another place to get a bottle of wine for dinner ... so I think this would be a good location to be able to pick up a bottle of wine on the way home.

Next to speak in favor was Phil Paleologos, 368 Whitlow Street, N. B., who spoke to the character of Mr. Carrigg, stated as a resident of the area, as well as receiving input from his neighbors and his customers (Shawmut Diner), he felt that it was something that was needed in that area; and it was something everyone he spoke to was in favor of.

Next to speak in favor was Nick Cardoza, 17 Edward Drive, Whitman, MA. who stated that he was a non-resident of New Bedford and friends with Christian who just spoke, and stated that he comes into the city often ... and that it would be nice on his way to his house ... without having to re-route ... to be able to stop and pick

up a bottle of wine or a 12-pack and just head over to his house.

Next to speak in favor was Cathy Jarvis of Fall River, who stated that she's a fulltime employee of Hathaway Irving, and she stated that she constantly gets asked why they don't have beer and wine available, which is often requested by people on their way home.

Next to speak in favor was Leonard Jacinto, N.B., who stated that he's a regular customer at this location, and that he would like to be able to buy beer or wine when he stops there prior to heading home.

Next to speak in favor was Bert Vasconcelos, 11 Slocum Road, Dartmouth, who stated that he owns the abutting property next door, and stated that many people stop by his business asking for directions to the nearest package store, and he feels that this location would fill in a lot of the gaps in the area for people looking to purchase beer and wine; and added that as an abutting businessman for 11 years, he felt it would fulfill a need in that area for people that come off the highway everyday on their way home, which would allow them to buy wine or beer without making another stop, so why would you want to make that consumer extend his travel home to get to another liquor store in another direction.

Next to speak in favor was Mark Cabral, 2094 Phillips Road, N.B., who stated that he's currently an employee of Hathaway Irving Gas Station, and that he's been employed there since they opened 3 years ago; and added that he's had similar conversations with patrons as stated by Ms. Jarvis earlier, who constantly asked why they don't have beer and wine available, and is usually requested by people on their way home after getting gas or picking some other necessity.

Last to be recognized was Atty. Christopher Markey, 48 William Street, Dartmouth, who was attending the Licensing Board meeting tonight on another matter stated, I've used that intersection (highway ramp) a bunch of times ... not only is it New Bedford residents ... it's a ton of Dartmouth residents also ... they go up Hathaway Road ... then take a left onto Slocum Road ... and you go down ... if you look up going into a westerly direction from that location there's nothing between there and the mall ... if there were to be wine and malt available at this location ... that would be making some convenience for the people all the way up ... again, there is quite a bit of development on the Dartmouth/New Bedford line up in that area where Riccardi's is located ... I think it would make sense to have to have a place to purchase wine and malt at that location quite frankly ... again, I didn't come in here with an agenda ... but I'm listening to the testimony ... I didn't even know where it was until they said it ... but I find myself coming back from Boston and getting off at Hathaway Road ... and either going there or going up to Riccardi's ... and it is a matter of convenience for the people that live in the west end of New Bedford as well as in Dartmouth.

Chairman Beaugard then asked if there was anyone else that wanted to either be heard or be recorded in favor of the petition, upon hearing and seeing none, the Chairman then asked if there was anyone present who wished to speak or be recorded in opposition to the petition, upon hearing and seeing none, Chairman Beaugard closed the public input portion of the hearing on the petition.

Chairman Beaugard then asked Atty. Simao if she had any final comments before calling for a vote on the petition, to which Atty. Simao responded, I would just like to add something regarding a couple of other security features that Mr. Carrigg has in his other stores, as well as in this store, if the petition is approved by the Board, and that is that all the coolers that will be used for alcohol will have locks on them, so no one will have access to the alcohol during those hours and days when alcohol sales are not permitted; and the gondola would be enclosed by plexi-glass, as well as being locked during those same hours and days when alcohol sales are not permitted; and that in addition to the training, the store would also be purchasing an I. D. scanner to check I.D.'s., which combat at least 50% of the problems that commonly occur in any package store.

When asked by Chairman Beaugard if the store would be open 24 hrs., Mr. Carrigg stated that it's not; and added they're open from 5:00 a.m. until 10:00 p.m.

Upon asking if there were any other questions for the applicant, and seeing and hearing none, the Chairman called for a motion regarding the application being considered.

Upon hearing all the evidence, the Board, on a motion by Commissioner Almeida, and on a second by Commissioner Craig, **voted in the majority to approve the application as presented, and forward the application to the ABCC for their approval;** with Chairman Beaugard voting against based on his opinion that a number of off premise liquor licenses (7) already exist within close proximity of the proposed new location, and therefore satisfies the public need for that area.

2. PETITION - Trans. # 177 – Plot # 55—171 (No Representation Required)

Barry's Fine Wine & Spirits, Inc., Barry G. Levine, President, who is requesting approval of a **Pledge of the Retail Package Store All Alcoholic Beverages License** to the **New Bedford Economic Development Council, Inc., 1213 Purchase Street, N.B., MA.** as security to authorize and execute a promissory note in the amount of **Ninety-Five Thousand Dollars (\$95,000.00)**, pursuant to Massachusetts General Laws Ch.138 s.23.

Present: No one was required to appear.

Voted: Commissioner Almeida made a motion to approve the petition as presented, and forward the application to the Alcoholic Beverages Control Commission for their approval. – **Unanimous**

Voted: Commissioner Almeida made a motion to remove Item # 3 from the table, and to take up the matter at this time. – **Unanimous**

Tabled at 02/25/13 Meeting

3. Hearing: Capitol Motors

Ronald Moura, Licensee
384 Dartmouth Street

Please be advised that your presence is required at a hearing to be held in this office to determine whether you have violated certain provisions of City of New Bedford Ordinance Sec.10 – 45 with regard to outstanding personal property tax owed to the City of New Bedford.

The City of New Bedford Treasurer/Collector of Taxes has requested that the Licensing Board hold a hearing for revocation of your MV Class II license due to non-payment of personal property taxes, based on your neglect or refusal to pay your local property tax to the City of New Bedford by January 31, 2013, as previously notified in a letter from this office dated January 23, 2013. All Licensees must be in compliance for renewals of all Class II licenses.

Please be advised that you are currently in violation of operating a used car lot without a license.

Present: No one was required to appear.

Mr. Nanopoulos informed the Board that Mr. Moura had paid the required 25% down on his Tax Title amount, which allowed him to enter into a new agreement, as well as getting with his current tax year.

Voted: Commissioner Almeida made a motion to follow the recommendation, and take no further action at this time. – **Unanimous**

4. APPLICATION, Representation Required

Cinco de Mayo Celebration Committee, Javier Rojas, Representative, who is requesting pre-approval of an application for a **Special One Day Wine & Malt Only Beverages License**, for a '**Cinco De Mayo Celebration**', to be held '**on Rivet Street**' between **Acushnet Avenue and South Second Street**; and to be held on **Saturday, May 4, 2013, from 12:00 p.m. until 11:00 p.m. (Last call at 10:30 p.m.) (Liquor Liability with the City named as additional insured on certificate is required/along w/Copy of the Police Detail Contract)**

Present: Javier Rojas and Grisay Rojas, Applicants

When asked by Chairman Beauregard if planned to do anything different from last year, Mr. Rojas stated that the only thing different that the food would be served outside but there would not be any changes with regard to the service of the alcohol.

When asked if he's been in touch with the Police Department regarding detail officers, Mr. Rojas stated that he had, and that he would provide the liquor liability as requested.

Mr. Nanopoulos reminded Mr. Rojas once again that alcohol should neither be allowed in or out of the restaurant, and that it was his responsibility to ensure that this does not occur, and recommended that he has someone stationed at each entrance/exit of the restaurant.

Voted: Commissioner Almeida made a motion to approve the application as presented. – **Unanimous**

VOTED: Commissioner Almeida made a motion to take up **Item #'s 5 - 16** at one time; waive reading; and approve the applications as presented – **Unanimous**

5. APPLICATION, (No Representation Needed)

Spinner Publications, Inc., Susan Grace, Representative, who is requesting approval of an application for a **Special One Day All Alcoholic Beverages License** for a 'Fundraiser/Auction' to be held at the **N. B. Whaling Museum**, located at **18 Johnny Cake Hill**; and to be held on **Friday, March 8, 2013 from 6:00 p.m. until 10:00 p.m.**

6. APPLICATION, (No Representation Required)

Tifereth Israel Synagogue, Milton Goodman, Representative who is requesting approval of an application for a **Special One Day All Alcoholic Beverages License** for a 'Fundraiser Dinner & Dance' to be held at **Tifereth Israel Synagogue**, located at **145 Brownell Avenue**; and to be held on **Saturday, March 9, 2013 from 7:00 p.m. until 11:00 p.m.**

7. APPLICATION, (No Representation Needed)

Club Madeirense - S. S. Sacramento, Inc., Brian Fernandes, Representative, who is requesting approval of an application for a **Special One Day All Alcoholic Beverages License** for a 'Museum of Madeiran Heritage Fundraiser' to be held at the **Club Madeirense - S. S. Sacramento**, located at **50 Madeira Avenue**; and to be held on **Saturday, March 16, 2013 from 6:00 p.m. until 11:00 p.m.**

8. APPLICATION, (No Representation Needed)

New Bedford Art Museum, Inc., Nooshin Navidi, Representative, who is requesting approval of an application for a **Special One Day All Alcoholic Beverages License** for a 'Mad Hatter Spring Fundraiser' to be held at the **New Bedford Art Museum**, located at **608 Pleasant Street**; and to be held on **Friday, March 22, 2013 from 6:00 p.m. until 8:30 p.m.**

9. APPLICATION, (No Representation Needed)

New Bedford Community Rowing, Laurie Bullard, Representative, who is requesting approval of an application for a **Special One Day Wine & Malt Only Beverages License** for an 'Annual Meeting' to be held at the **Quest Center**, located on **1213 Purchase Street**; and to be held on **Wednesday, April 3, 2013 from 7:00 p.m. until 9:00 p.m.**

10. APPLICATION, (No Representation Needed)

New Bedford Area Chamber of Commerce/Bay Coast Bank, Mary Mendes, Representative, who is requesting approval of an application for a **Special One Day All Alcoholic Beverages License** for a 'Business After Hours Event' to be held at the **BayCoast Bank (formerly Citizens-Union Savings Bank)**, located at **95 William Street**; and to be held on **Wednesday, April 10, 2013 from 5:00 p.m. until 7:00 p.m.**

11. APPLICATION, (No Representation Needed)

Irmandade Do Divino Espirito Santo Do Pico, Inc., Guida Rocha, Representative, who is requesting approval of an application for a **Special One-Day All Alcoholic Beverage License** for a 'Fundraising Dinner' to be held at the **Irmandade Do Divino Espirito Santo Do Pico Club**, located at **2056 Acushnet Avenue**; and to be held on **Saturday, April 13, 2013, from 6:00 p.m. until 11:00 p.m.**

12. APPLICATION, (No Representation Needed)

Our Lady of Angels Catholic Association/Fairhaven, Edward Cabral, Representative, who is requesting approval of an application for a **Special One Day Wine & Malt Only Beverages License** for a 'Benefit for Joe Garcia Fundraiser' to be held at the **Madeira Field – Main Pavillion**, located on **Madeira Avenue**; and to be held on **Sunday, April 28, 2013 from 1:00 p.m. until 5:00 p.m.**

13. APPLICATION, (No Representation Needed)

The Azorean Maritime Heritage Society, Rosemary Rebello, Representative, who is requesting approval of an application for a **Special One Day Wine & Malt Only Beverages License** for a ‘Wine Tasting Fundraiser’ to be held at the **N. B. Whaling Museum**, located at **18 Johnny Cake Hill**; and to be held on **Saturday, May 4, 2013 from 6:00 p.m. until 9:00 p.m.**

14. APPLICATION, (No Representation Needed)

Club S. S. Sacramento Scholarship Committee, Rosemary Rebello, Representative, who is requesting approval of an application for a **Special One Day Wine & Malt Only Beverages License** for a ‘Scholarship Fundraiser’ to be held at the **Museum of Madeiran Heritage**, located at **1 Funchal Place**; and to be held on **Saturday, May 11, 2013 from 6:00 p.m. until 9:00 p.m.**

15. APPLICATION, (No Representation Required)

Community Boating Center, Andy Herlihy, Representative, who is requesting approval of an application for a **Special One Day Wine & Malt Only Beverages License**, for an ‘Opening of the Bay Fundraiser’ to be held in **Fort Taber Park – Under a Tent**; and to be held on **Saturday, May 11, 2013, from 6:00 p.m. until 11:00 p.m.**

(Final approval will require Liquor Liability with the City named as additionally insured, and a copy of the Police Detail Contract)

16. APPLICATION, (No Representation Required)

Bristol Community College Foundation, Wayne Wood, Representative, who is requesting approval of an application for a **Special One Day Wine & Malt Only Beverages License** for a ‘Business After Hours’ to be held at **Bristol Community College**, located at **800 Purchase Street**; and to be held on **Thursday, May 16, 2013, from 5:00 p.m. until 7:00 p.m.**

17. Hearing: Centro Luzo Americano Corp., Inc.

Jose A. DaRosa, New Manager
34 Beetle Street

Please be advised that you have ‘Failed to Comply’ with this Board’s written decision of December 27, 2012 (see attached), in which it stated that the Board *voted unanimously* to approve your application and to forward it to the ABCC for final approval with the following stipulation:

- That you complete an Alcohol ‘Server Certification’ course (See Attached) **within thirty (30) days after final approval is received or prior**; and proof of your certification be provided to this office; and that all your servers be ‘certified’ as well, with copies of their certifications to be kept on file for review, if needed.

Your license was approved on January 9, 2013, which would have required you to submit a copy of your certification to this office **by February 15, 2013**.

Therefore, based on your failure to comply with this Board’s 12/17/12 approval decision, you are hereby notified that you are required to appear before this Board for a hearing.

If the required documents are submitted to this Office by Monday, March 18, 2013, you will not be required to appear as ordered.

Present: No one appeared as requested.

VOTED: Based on the licensee’s failure to comply with this Board’s written decision of December 27, 2012 and their failure to appear before this Board as requested, Commissioner Almeida made a motion to suspend your Club All Alcoholic Beverages license for a period of three (3) days (04/29/13 – 05/01/13), which will be held in abeyance for thirty (30) days allowing the licensee a final opportunity to comply with the Board’s decision. - **Unanimous**

18. Hearing: Panthers Athletic and Social Club, Inc.

Jeffrey W. Baker, New Manager

43-45 Madeira Avenue

Please be advised that you have 'Failed to Comply' with this Board's written decision of August 28, 2012 (see attached), in which it stated that the Board *voted unanimously* to approve your application and to forward it to the ABCC for final approval with the following stipulation:

- That you complete an Alcohol 'Server Certification' course (See Attached) within thirty days after final approval is received or prior; and proof of that certification be provided to this office.

Your license was approved on December 19, 2012, which would have required you to submit a copy of your certification to this office **by January 21, 2013.**

Therefore, based on your failure to comply with this Board's 08/27/12 approval decision, you are hereby notified that you are required to appear before this Board for a hearing.

If the required documents are submitted to this Office by Monday, March 18, 2013, you will not be required to appear as ordered.

Present: No one was required to appear.

VOTED: Based on the licensee's failure to comply with this Board's written decision of December 27, 2012 and their failure to appear before this Board as requested, Commissioner Almeida made a motion to suspend your Club All Alcoholic Beverages license for a period of three (3) days (04/29/13 – 05/01/13), which will be held in abeyance for thirty (30) days allowing the licensee a final opportunity to comply with the Board's decision. - **Unanimous**

19. Hearing: United Fisherman's Club, Inc.

Antonio F. Braz, Proposed New Manager

639 Orchard Street

Your presence and that of **Jose Fanguero, President** is requested at a hearing to determine whether you have violated certain provisions of ABCC Regulations and Licensing Board Rules & Regulations, as reported by the City of New Bedford Police Department; the Board will also review the ongoing calls to service to this location as a result of promoted events that are being held, as reported by the N. B. Police Department. Based on their findings, the Licensing Board may take action to modify, suspend, revoke, or cancel your license; and if warranted, a roll back of hours may be considered. They are as follows:

ABCC Regulation 204 CMR 2.05: (2)-

States no licensee shall permit any illegality to occur on the licensed premises. The licensee is responsible, whether present or not, for ensuring that no disorder, disturbance, or illegality takes place in, or on a licensed premises.

Licensing Board Regulations No. 1, 6, 10, 11, 12, 28, 36-

Licenses may not be transferred or surrendered without permission of the Board; each Corporate Licensee shall appoint a manager who shall have full authority and control of the premises and who shall be satisfactory to the Board, and who shall be a United States citizen. Immediate notice of the appointment must be made to the Board in writing; Alcoholic beverages shall not be served to a person who is or appears to be intoxicated; objectionable persons shall not be permitted on or about the premises. It is the responsibility of the Licensee to enforce this rule; Premises must at all times be kept safe, clean, neat, and sanitary;

A current list of employees shall be submitted to authorized agents of the Licensing Board, upon request; Licenses are subject to suspension, revocation or forfeiture after hearing for breach of any of the listed regulations or any other law of the Commonwealth.

Summary of Incident

Police Department Incident Report states that Officers were dispatched to 639 Orchard Street for a disturbance

called in by Police detail officers, which occurred at closing time after yet another promoted event; and resulted in at least one individual being placed into protective custody for intoxication.

Upon arrival on the scene the Reporting Officer observed at least 100 people standing and walking in the middle of Orchard Street preventing not only the undersigned arrival on the scene but that of all other responding units. The disturbance was created by the exiting patrons, who numbered approximately 300 to 350, who proceeded to loiter not only in the 'club' parking lot but also in the middle of Orchard Street, and in the adjoining businesses such as Rite Aid, Burger King, Howland Place, and Seabra.

Because of the mass gathering of patrons, additional units from the West End had to be called in to assist with the disturbance, at which point the large mass of patrons began to leave; even though the police were still greatly outnumbered.

The officers then located the Manager of the United Fisherman Club, Antonio Braz, who stated that he had rented the club hall out for a Cape Verdean Soccer Team party hosted by YP Entertainment; when asked how many people were at the function, he stated approximately 350; when asked how he knew the number of patrons, he stated he had someone at the door with a counter but he could not produce the door counter or the person who was in charge of that duty.

The officers then were approached by the promoter of the event, Yannick Paiva (YP Entertainment), who stated he posted flyers in New Bedford, Brockton, Boston, and Providence. The officers noted in their report that Yannick Paiva (YP Entertainment), is the same promoter who rented the Fisherman 's Club the last time they were written up for the same type of disturbance that occurred on November 23, 2012.

It was also noted in the report that the inside of the club was a complete disaster, there were hundreds of plastic cups scattered across the floor with other miscellaneous trash. The outside had numerous plastic cups scattered throughout the entire parking lot, in the street, and in all the above mentioned business parking lots; also found outside the club were several empty liquor bottles and numerous beer bottles; the detail officers also reported that a bottle of liquor was stolen from behind the bar sometime during the evening.

As a result of the disturbance, one patron was placed into protective custody for being intoxicated.

Date and time of alleged violations: Saturday, February 16, 2013 @ approx. 1:48 a.m. Police Report # 13-1728-OF

Present: Atty. Christopher Markey along with Antonio F. Braz, Proposed New Manager and Jose Fanguero, Pres.; Lt. Joao Chaves, Police Department Liaison to the Lic. Bd. along with Dennis Ledo and Officer Jaime Wotton

Upon being asked by Mr. Nanopoulos if his client had received a copy of the 'Hearing Notice', and if he had read the summary contained in the notice, and if he understood why he was requested to appear before the Board based on the summary, and the list of alleged violations contained in the 'Notice', Atty. Markey, speaking on behalf of his client, stated that he did. When asked by Mr. Nanopoulos if they wanted him to read the written incident summary contained in the 'Hearing Notice', Atty. Markey stated that would not be necessary, since it was included in his hearing notice that was sent to him, therefore, he waived the reading of the summary.

Chairman Beauregard informed the licensee that the Officers were present to read, summarize, or give testimony to what was contained in their reports; and at the conclusion of his testimony, the Board would then ask any questions they may have, and then he would be given an opportunity to respond to the testimony presented, and address the Board before they make their decision.

Atty. Markey responded on behalf of his client, I don't think in general we have an issue with the Police Report ... there is a couple of little things that we have an issue with but I think the third paragraph of the Police Report would be the most concerning for the Board ... and that's in regards 'to the use of a promoter' by the Cape Verdean soccer team ... I would think that's what the Board would be most concerned with ... at least that's what it expressed in January ...about the use of promoters as a result of two incidents in November ... in relation to the empty liquor bottles and those types of things ... I spoke to Mr. Braz about that ... the bottles that were found outside in the street and in the parking lot did not come from within the club ... again, I think what your concerns are ... are those concerning the use of a promoter by the club ... not by the club but by the individual who ended up renting it ... and I've spoken to Mr. Braz about that ... and Mr. Braz stated that the individual came in saying that they were from a Cape Verdean soccer team and that they were going to celebrate a game ... that they had made it to the 'World Cup' ... and they were having a celebration for that ...

and as a result of that ... that's what they (the club) thought they were having ... and this Yannick Paiva appeared as the promoter ... but when they signed the contract, they had the expectation that this Cape Verdean soccer team was going to be the rental of it ... and I believe Mr. Paiva was the same promoter of the November incident.

Chairman Beauregard responded to Atty. Markey's comment that Mr. Paiva was the same promoter of the November incident, by stating, that's correct; and added, Mr. Paiva was the same gentleman that, when asked for a count of the door for the November incident, and the counter was nowhere to be found ... and the same thing occurred during this incident ... when Mr. Braz was asked for the count by the Police Officers ... Mr. Braz stated that it was approximately 350 ... when asked how he knew that ... Mr. Braz stated that he had someone at the door with a counter ... but when asked ... he could not produce the door counter or the person who was in charge of the door who was gone again.

Mr. Braz responded, the count was confirmed by one of the Detail Officers ... we confirmed the count every once in a while to make sure that we're not above our capacity.

When asked by Chairman Beauregard, what is the problem, how come the door counter is nowhere to be found, Mr. Braz responded, the door counter and the doorman leave when the event ends ... they close the event ... they leave ... their job is done ... so by the time the Police Officers arrived ... it was already after the event ended.

When asked by Chairman Beauregard, who does the counter at the door work for, Mr. Braz responded, for us, to which Chairman Beauregard asked, and he didn't leave the counter behind and tell you what the final count was at the door.

Mr. Braz responded, he said 350 ... some odd.

When asked by Chairman Beauregard, at what point did you realize that this was not just some soccer team party/celebration, Mr. Braz responded, what they were doing ... the evidence that was there ... was the Cape Verdean Flag ... soccer balls ... and all that type of stuff ... so when it came to the end ... the Detail Officer called the other officers and I spoke to the Lt. ... and he says that he (Mr. Yannick) advertised on the internet ... in Brockton ... in Boston ... at that point it was really clear that he was a promoter ... and that this was being done as a soccer thing ... but the event was over.

Atty. Markey added, there have been numerous people who have come in ... who had used the United Fisherman before ... since we were before the Board in January ... who have called to ask to rent the hall ... and they've been denied because they are promoters ... I know Mr. Braz has told me that's one of the things that he's worked on is to tell the individuals who are making the schedules ... that they have to make sure of that ... and he's actually had to call people back and say, 'you can't come' ... so they are aware of this situation ... they have denied people ... it seems to me at least ... one of the things is to make sure that these individuals who sign the contract are doing it on their own ... and we need to have them held to some degree of liability for now fronting as somebody ... a promoter ... saying ... oh yeah we're doing it for this reason ... and then at the last minute you have the promoter coming in.

When asked by Chairman Beauregard, if they had and used a hall rental agreement, Atty. Markey confirmed with Mr. Braz that they do.

When asked by Chairman Beauregard as to who rented the hall, Mr. Braz stated that the hall rental was already there (taken) and there wasn't much he could do.

Chairman Beauregard responded, you said the last time you were here (reading from the minutes of 01/22/13)... that you were aware that there was a problem ... and if I had known that this place was going to be as much of a problem ... I wouldn't have taken the job ... I now know what the Board's looking for and there's not going to be anymore problems.

When asked if Mr. Paiva (promoter) had rented the hall, Mr. Braz stated that he was not the one who applied ... and that it was a Mr. Barbosa with some other guy that came in ... it wasn't Mr. Paiva ... and since then, Mr. Chairman ... I said I was going to do everything and cutback ... I must have had 10-12 'Sweet 16's and 'Sweet 15's' ... and I told them absolutely not ... and they said to me ... we used to do them ... absolutely not ... we're not having them!!

Atty. Markey once again stated, I think one of the things that's important is to have an understanding of who signed the contract and doing that ... I think the other thing we need to do at the club ... is to have a contract that really spells out that things can be cut off (shut down) immediately ... with the fact that there's any

indication of a promoter that they have liability and they have to end up paying for a detail and other things that required ... and I know after speaking with other members of the club that they've actually cut back on a ton of requests for the rental of the hall over the next few months ... I think they're making the effort ... but clearly the efforts are resulting in the best results ... and you should have concerns ... but I would ask ... if they could bring in documentation to show what they had for the contract with this Cape Verdean Soccer Club ... if that is satisfactory with you ... maybe that can be some type of mitigation in regard to what the punishment is that you would set down ... and I would ask at least for that opportunity next month to do that.

Chairman Beauregard responded, I think what the concern is ... and I'm only speaking for myself here ... the main concern here is that it's a big establishment ... you've got the restaurant (bar side) ... you've got the function hall ... it's huge ... please don't take offense to this ... I'm not sure you're (Mr. Braz) the guy that will be able to manage an establishment of that size ... I know events that you have had ... I know you had a fundraiser the other day ... in which homemade wine was brought in for a wine tasting ... you cannot bring homemade wine into a licensed liquor establishment ... I know that they're taking place ... I know you had some fights down there during a very good fundraiser a couple of weeks ago ... and some other small incidents took place ... these are problems ... and I'm not sure of the manpower ... you're not going to be able to manage 350 people coming into the establishment ... nor are these guys (Police) ... and there are only a handful of them on at 2 o'clock in the morning ... and there's a slew of problems downtown ... there's a slew of problems up on Acushnet Avenue ... and all of a sudden ... all the manpower ends up at the Fisherman ... and the mentality seems to be that ... ok, I take the money and at 2:00-2:30 ... I push them out the door and it becomes their problem ... that's not the case ... they're still your problem.

Mr. Braz responded, that's not my mentality, Mr. Chairman ... I cleaned out of the book (scheduled events) ... I must have cleaned (canceled) over 20 events ... they were called in and they were told ... this is the reason ... go up the street ... go down the street ... go anywhere you want ... you cannot have it here ... I've been cutting down left and right ... I've been spending 50-60 hours a week to straighten out a lot of things that used to be allowed in the past ... to be honest with you ... if you asked me if it was 100% improved ... I would tell you that it's not ... if you asked me if it's 75-80 % improved ... I would tell you, 'yes!' ... and we're still working at it to improve the rest.

When asked about some outstanding DOR tax issues that are currently holding up a pending application submitted to the ABCC, which includes his application as the new manager, Mr. Braz stated, when I received the letter from Mr. Nanopoulos notifying us of the tax issue ... I contacted the person he instructed me to call ... when we did what we were instructed to do ... and I placed a call again today ... and we're up to date with what they claimed we were not ... the state received the check and cashed the check ... it's right on their website ... everything is in.

Mr. Nanopoulos instructed Mr. Braz that he needed to speak to Steven Moshko at the DOR, and get a release from him, so that the application may be resubmitted to the ABCC; and to call the office once he gets that release.

Atty. Markey also stated that he would give him a call as well.

Mr. Nanopoulos also reminded Mr. Braz that he was instructed by the Board that he needs to submit copies of the hall agreements for existing bookings, as well as for all new bookings, as soon as they're booked; and that nothing has been submitted as of yet.

Mr. Braz stated that he would personally deliver copies of their March bookings in the morning.

Atty. Markey also stated that copies of all their April bookings would be delivered on Monday (04/01/13), and that all new bookings would be faxed as they are booked.

Chairman Beauregard then asked the officers if they had anything they wanted to add before he closed this portion of the hearing.

Lt. Ledo stated, I was probably one of the last officers to arrive there ... by the time I got there ... I couldn't get anywhere near there because Orchard Street was backed up both ways ... I had to park away from the site and walk over ... everybody was just milling around in the street blocking the street ... when I walked into the club hallway leading to the hall ... there were literally 100's if not 1,000's of plastic cups on the floor ... the hall was in total disarray ... it looked like a Frat Party' ... there was absolutely no way with that type of clutter that was in that hall and room ... and that's after they started cleaning up after I got there ... there is no way those bartenders could have effectively monitored the alcohol that was being served to those patrons during the course

of the night ... that's my #1 concern ... we'll do what we have to do with the manpower that we have and we'll do the best we can ... the problem is that people are getting tanked up until 1-1:30 in the morning ... then we have to deal with them drunk on the street ... and to clarify what Att. Markey said ... and it might have not been clear in the report ... we're not saying that a bottle was taken from the bar and taken outside ... what we're saying is that sometime during the course of the night somebody reached over the bar and grabbed a bottle ... and I think that goes to the point of saying that ... how effective are the bartenders being when someone can reach over and take a bottle ... what kind of chaos is going on in there ... if you're allowing that to happen then how can you effectively monitor the amount of alcohol that is being served to their patrons ... and that's my concern.

When asked by Chairman Beauregard, as to how many employees were on duty that night, Mr. Braz responded, we had 4 bartenders on.

When asked by Chairman Beauregard, as to how many other people he had manning the floors ... manning the doors ... that were employees of the United Fisherman, Mr. Braz responded, we had about 5 not counting the bartenders.

When asked by Chairman Beauregard, if the promoters had brought in any of their people to be bouncers or doormen to assist, Mr. Braz responded, the guy that had the function ... he had 4 people inside there to assist with anything ... they were looking around and watching.

Responding to Mr. Braz's comments, Chairman Beauregard stated, that's my concern Councilor ... just as Mr. Braz just testified ... there are 4 or 5 of his people who do not have the experience that's required ... if you go to Bar 908 for example ... they got 4 or 5 people working the floor who are experienced bouncers ... they know what to look for ... they know what to do when a problem arises ... they know what to look for such as eye contact and mannerisms ... so before an incident occurs ... somebody is over there breaking the problem up ... with no disrespect ... but a guy that is a contractor or is on the Board over there ... or he happens to frequent the place regularly ... or plays soccer for the club ... is not a guy we can sit and be comfortable with that he's going to be of assistance to these guys (Police) when something takes place ... most of the places your size have professional staffs ... they know what to look for ... or they can I. D. somebody ...

If somebody runs out the back door ... they know what they're looking for ... height ... build ... tattoos ... significant marks ... the guy that's a contractor doesn't have any of that ability.

Mr. Braz responded, we had three ... one was the cop ... one was the band ... and one was the I. D. checker ... three professional people right at the door as they come in ... and they refused quite a few people from coming in.

Chairman Beauregard responded, but you had over 350 people in there and all 3 of your people were at the door ... you don't have the people working the floor, to which Mr. Braz responded, the 3 at the door were ours ... the ones inside were theirs.

Chairman Beauregard responded, I understand ... I don't need theirs ... you shouldn't have theirs ... it's your responsibility ... it's now your problem ... where's Mr. Paiva (promoter) tonight ... who's here ... who's license ... that's the problem.

When asked by Commissioner Almeida if he was approached by somebody or talked to somebody who stated that they were in charge, Lt. Ledo responded, I spoke to Mr. Braz ... and I spoke to Mr. Paiva, specifically ... and when I spoke to Mr. Paiva ... he's the one that informed me ... he said yes, I did advertise in Boston ... Brockton ... again ... he was in control ... and in control of the premises ... when I walked in ... he presented himself as being in control of the premises ... I did ask him ... he may not have been the one that signed his name on the hall agreement ... but he was clearly the guy running the show.

When asked by Chairman Beauregard, if it was fair to say that mixing Brockton with New Bedford patrons has been a problem in the past, Lt. Ledo responded, yes ... and if I could add ... the problem is that a lot of places are turning these requests down ... because these people (promoters) can't go anywhere else to have these types of "night clubs for a night" ... because the word gets out ... we can go here ... we can have a "night clubs for a night" ... we can charge \$10-\$15 a head ... we'll make our money off the back of someone else's liquor license ... and ride out of town and that's exactly what's happening ... so this question has to be asked ... why are they going there when there's plenty of other places in the area ... because the other places won't allow it.

When asked by Chairman Beauregard if he had anything further to add before he closed that portion of the hearing, Atty. Markey responded, no, I do not.

Chairman Beauregard closed the hearing, and asked for a motion.

VOTED: Commissioner Almeida, upon listening to those present to testify on behalf of the licensee, and based on the evidence presented, found that the licensee violated 204 CMR 2.05 (2)-Permitting an illegality on the licensed premises and therefore made a motion to impose a five (5) day suspension that was being held in abeyance for an earlier violation as well as to suspend the General on Premise license for a period of ten (10) days, of which five (5) days will be served, and five (5) days will be held in abeyance. This decision resulted in a ****ten (10) day suspension**** which will be imposed on **April 29, 2013 until May 8, 2013**. The five (5) days held in abeyance will be for one year and the probation period is extended for an additional year from the date of this hearing (03/27/13 – 03/27/14). - **Unanimous**

Note: Licensing Board's Written Decision Dated 04/29/13

The Board's decision was based on the testimony of the responding Police Officers who reported another disruption at a promoted event and the fact that this incident occurred three weeks subsequent to appearing before the Board for a similar violation. The Board also found the licensee in violation of serving to intoxication, allowing objectionable persons on or about the premises and failing to keep the premises safe. Additionally, the Board felt that you, as the proposed manager failed to comply with our prior warnings regarding the use of promoters which the Board contends inhibits your ability to maintain full authority and control of the premises.

20. Hearing: United Fisherman's Club, Inc.

Antonio F. Braz, Proposed New Manager
639 Orchard Street

Your presence and that of **Jose Fanguero, President** is requested at a 'Public Hearing' to determine whether a roll back (decrease) of hours is warranted as a result of violations of certain provisions of M.G.L., ABCC Regulations, and Licensing Board Rules and Regulations, as a result of incidents reported by the New Bedford Police Department. This roll back (decrease) of hours could affect the hours in which you will be allowed to be open.

The local licensing authority, may after proper notice, hold a hearing to determine whether a roll back of hours is warranted, on the basis of frequency of arrests, disturbances, and incidents requiring police involvement inside or outside the licensed premises; this decision is one that is not appealable to the Alcoholic Beverages Control Commission or to the superior court. (As noted in Chapter 138, sec. 12 -)

Action Taken: None

- **CORRESPONDENCE,**

From: County of Bristol, The Superior Court **Dated –03/12/13** **Received – 03/13/13**
Re: Kenneth J. Rapoza and Club Altitude, LLC vs. The Sky Room and Audrey Carter 651 Orchard Street

SUMMONS AND RESTRAINING ORDER;

Hearing Date: March 22, 2013 at 2:00 p.m. in Court Room C – Main (Taunton) – CIVIL DOCKET # BRCV2013-00227

ACTION TAKEN: Received & Placed on File.

From: County of Bristol, The Superior Court **Dated –03/22/13** **Received – 03/26/13**
Re: Kenneth J. Rapoza and Club Altitude, LLC vs. The Sky Room and Audrey Carter 651 Orchard Street

SUMMONS AND RESTRAINING ORDER;

Hearing Date: April 11, 2013 at 2:00 p.m. in N.B. Superior Court in the "A" session - CIVIL DOCKET #

Note: Continued on 03/12/13, Defense counsel unavailable on this date.

ACTION TAKEN: Received & Placed on File.

From: City Council

Dated – 02/28/13 Received 03/18/13

Related Motion: Requesting that a letter be sent to the Licensing Board, City Clerk, Health Department, and the Department of Inspectional Services, to see if any help can be given to those businesses along Acushnet Avenue, in regards to waiving any fees for permits, within their jurisdiction and said departments report to the City Council, in writing, if any help can be given to the businesses that were affected by Phase 1 of the Acushnet Avenue Project.

Steven Martins, Councilor Ward Two

IN CITY COUNCIL, February 28, 2013

Adopted-

Rita D. Arruda, City Clerk

Presented to the Mayor for Approval on March 4, 2013

Rita D. Arruda, City Clerk

RETURNED UNSIGNED March 16, 2013

ACTION TAKEN: Received & Placed on File.

• **COMPLAINTS RECEIVED:**

03/15/13 – Alianca Lounge, 1708 Acushnet Avenue – This office received a verbal complaint from a neighbor who came into the office and filed a complaint about the Alianca Lounge, which had a stabbing early Friday Morning...She stated that there are constant problems there and that she has kids and she’s concerned.

Action Taken - (03/15/13): The complaint was forwarded to Capt. Steven Vicente, Liaison to the Licensing Board, with a request for a Police Log and a copy of the Police Report once it’s completed.

• **REVIEW POLICE DEPARTMENT INCIDENT REPORTS/ COMPLAINTS**

<u>NAME</u>	<u>POLICE REPORT#</u>	<u>DATE</u>	<u>VIOLATION</u>
1. Alianca Lounge (Fight)/	#13-2729-OF	03/15/13	Unsafe Premises/Disturbance Patrons Assaulted & Stabbed/ Employee Stabbed (Approximate Time of Violation 2:03 a.m.)

Decision: Bring In For Hearing on 04/22/13

2. Jalice Café	#13-2724-OF	03/15/13	Underage Event/College Night/ Resulting in Disturbance (“Flash Mob”) at 7/11 (Approximate Time of Violation 1:24 a.m.)
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Decision: Bring In For Hearing on 04/22/13

3. XS Lounge (Fight)/	#13-3062-OF	03/23/13	Unsafe Premises/Disturbance Patrons Assaulted & Stabbed/ (Approximate Time of Violation 2:0 a.m.)
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-LATE FILE-

Decision: Table with a request for additional information.

- **Upcoming Summer Events & Festivals**

- **Day of Portugal** – June 7th, 8th, & 9th
(April Meeting)
- **Cape Verdean Day Parade** – July 6th
(May Meeting)
- **New Bedford Summerfest** – July 5th, 6th, & 7th
(May Meeting)
- **Irmandade Do Divino Espirito Santo Do Pico** – July, 12th, 13th, & 14th
(May Meeting)
- **Feast of the Blessed Sacrament (Madeira Feast)** – Aug. 1st, 2nd, 3rd & 4th
(June Meeting)

Tabled at 07/23/12 Meeting

APPLICATION, - Plot # 107—33, 35, 37, & 39

Jose S. Adao, who resides at **9 Mary Ann Way, Dartmouth, MA.** who is requesting approval of his application for a **Motor Vehicle Class I (New Car Dealer) Annex License for Joe's Auto Mall, Inc. d/b/a Auto Mall Kia**, with premises situated at **548 Belleville Avenue.**

Note: Applicant was approved for a 'Special Permit' by the City Council on February 12, 2009.

Item # 16 to be referred to the Planning Board per Jill Maclean, Acting City Planner

- **NEXT TWO (2) MEETING DATES:** April 22nd (Monday) & May 20th (Monday) - **Approved**
- **MEETING ADJOURNED:** 8:25 p.m.