MINUTES
SPECIAL MEETING OF
THE LICENSE COMMISSION
5:00 p.m.
Thursday, June 29, 2017
G.A.R. Room, City Hall, 45 School Street
Brockton, Massachusetts

TAPED
The License Commission held a Special Meeting on Thursday, June 29, 2017, in the G.A.R. Room at City Hall. Present were Chairman Henry Tartaglia; Commissioners Harold Marrow, Jeffrey Thompson and Joao DeAndrade; License Agent Lt. Kenneth LeGrice; City Solicitor Philip C. Nessralla, Jr., and Secretary for the meeting, Mary Milligan.

1. Hearing (originally scheduled for meeting on June 15, 2017) on the request from Brockton Post 1046 V.F.W. – James Doherty, Manager, 283 North Quincy Street, to serve alcoholic beverages on the grounds outside the Club during the following events:
   • Car Show – Saturday, July 29, 2017 – 12:00 noon to 6:00 p.m.
   • Annual Family Day Picnic – Saturday, August 19, 2017 – 12:00 noon to 6:00 p.m.
   • Golf Tournament Reception – Saturday, September 23, 2017 – 12:00 noon to 6:00 p.m.

   Present was James Doherty, who stated these are annual events with the family picnic open to the community and the golf tournament being a fundraising event held at the Back Nine in Lakeville with a reception after outside at the V.F.W. There will be a tent outside and they have a patio license. They will be serving beer and alcohol.

   A motion was made by Commissioner Marrow to approve the license which motion was seconded by Commissioner Thompson and made unanimous by vote of Chairman Tartaglia.

2. Hearing on the request from 5 Corner Auto Sales, Inc. – Henrique Fernandes, holder of a Class II Used Car Dealer license at 369 Court Street, to add a second location at 366 Court Street to be used as an annex.

   Present was Henrique Fernandes of 25 Walton Avenue, Hyannis. Lt. LeGrice stated that he did not receive any plans prior to the meeting and was provided with the plans at the meeting by Mr. Fernandes. The plans had 23 spots and Lt. LeGrice pointed out the City Ordinance where there has to be a 12' pathway. Lt. LeGrice mentioned that he drove by 5 Corner Auto Sales with Sgt. George Khoury and commented that he really liked the place because it was always clean, always neat and there were never any problems, not being aware that this establishment was on the agenda.
The only issue Lt. LeGrice had was with 2 spots that have to be paved and lined and the 4 doubled up spots that have to have a 12' pathway for egress. Lt. LeGrice asked Mr. Fernandes if that area was going to be open or was it going to be curbing. Mr. Fernandes stated that that area will be closed and that there are 2 entrances/exits. Lt. LeGrice reiterated that the issue was that there has to be 12' between the vehicles that he doesn't have. The purpose of the 12' between the vehicles is so that you can move the vehicles without having to move vehicles. There is a requirement for 9' x 20' that 180 square feet is needed. Lt. LeGrice suggested that he could rearrange and move 2 spots to the backside, lose 2 spaces that would leave him 20 spaces that would leave plenty of access room for egress in accordance with the ordinance. Mr. Fernandes stated that he will submit new plans.

A motion was made by Commissioner Thompson to approve the license on the condition that it is a 20 spot lot, paved and lined which motion was seconded by Commissioner Marrow and made unanimous by vote of Chairman Tartaglia.

3. Hearing on the charge brought by the local police against Santana Restaurant and Function, LLC – Joao Vaz Lopes, Manager, 684 Crescent Street, of an alleged violation of ABCC Rule 2.05(2), to wit: “No license for the sale of alcoholic beverages shall permit any disorder, disturbance or illegality of any kind to take place in or on the licensed premises. The licensee shall be responsible whether present or not.”, reported on Sunday, April 9, 2017 at approximately 12:47 a.m.; on Sunday, April 9, 2017 at approximately 11:55 p.m. and on Monday, April 10, 2017 at approximately 12:05 a.m.

Present were City Solicitor Philip C. Nessralla, Jr., representing the City of Brockton and Attorney Jake Creedon, representing Santana Restaurant.

City Solicitor Nessralla began by stating that the City's issue in this matter was that on April 9, 2017, there was a disturbance in the establishment owned and operated and known as Santana Restaurant and the music was running so loud that it literally vibrated motor vehicles that were parked outside and that he was not sure whether the vehicle windows were open or sure on how they (Santana Restaurant) conducted the operation but it certainly was conducted in a sub-par inferior manner where the neighborhood was disturbed, their peaceful enjoyment was violated, it abuts a residential neighborhood. Further, there should have been proper care taken in the way that it was operated. We've asked Detective Paul to come in this evening who I am sure will attest to it as he was officer on the scene in responding to the disturbance. If Counselor Creedon will concede the point that the music was loud in violation, there will be no need for Detective Paul to testify.

Attorney Creedon responded and said that they will agree that the music was loud that night. City Solicitor Nessralla said that the neighbors deserve better and the establishment should be mandated to operate better as we believe that this board should send out a very strong signal to the operator so this does not reoccur as we are approaching summer
months, windows are open and the neighborhood has a right to peaceful enjoyment of the area without having to muffle their ears because there is a failure of the establishment to muffle the noise.

City Solicitor Nessralla said that he will leave it to the board for whatever stern and effective message they wish to give to the operator and he does not think the facts are in question and reiterated that on that particular evening, they were operating in a loud, negligent, distasteful manner for the disturbance of the neighbors.

City Solicitor Nessralla informed the board that because he and Attorney Creedon agreed on the incident that occurred on April 9, 2017, there was no need to have Detective Paul testify and go forward with the hearing. Chairman Tartaglia asked if there have been any violations since April 9th and Attorney Nessralla stated that not that he's been aware of and nothing that has been reported. However, he couldn't speak for those that were there behind him and there has been nothing report to the Law Department for any subsequent disturbances.

Commissioner Thompson asked Lt. LeGrice if there have been any other police reports or disturbances at Santana's since the last time they were before the board (September, 2016). Lt. LeGrice responded that they sent a cruiser out there a couple of weeks ago for disturbance but nothing was written up because they knew that this was pending before the board.

Detective Paul stated that at that disturbance, there was a function planned and the noise was at a reasonable level. Commissioner Thompson then confirmed with Detective Paul that other than the April 9, 2017 incident and the minor disturbance a couple of weeks ago, that there have been no other calls to police for disturbances.

City Solicitor Nessralla then pointed out that his examination revealed that there may have been several reports but this is the only one where we came to a conclusion and brought forth to the commission.

Attorney Jake Creedon, representing Santana, informed the board that Mr. Joao Vaz (John) Lopes was mentioned in the police report and is a full partner with Alberto Mendes, who was present who is mentioned in the police report. Attorney Creedon informed the board that they do not contest the situation. Attorney Creedon spoke with Detective Paul who verified that the noise was very loud that night.

Attorney Creedon explained that the reason why the music was so loud that night was that they had a promoter there for the first time and that the promoter would not be allowed back again. In fact, Attorney Creedon further stated that Alberto and John went out and spent significant money with the New England Insulation Company to put in the expensive pads that muffle the sound. This particular night, the doors were open or something because the noise was terrible.
Mr. Mendes had informed Attorney Creedon that he was trying his best to make the place sound proof. He explained that he has spent a lot of money trying to keep the noise reasonable for his neighbors because they do not want to upset them. Mr. and Mrs. Cahoon is the closest house and the most effected by the noise. At least 4 other people on Brockton Avenue have signed and said that they have never had any noise problems themselves.

Attorney Creedon went on to say that his clients have a successful business there and that they are not open all the time as they do functions and it was a graduation. Again, it was the promoter that violated what Mr. Mendes and John would want to happen.

Attorney Creedon went on to say that John told him that he did call the Cahoon's and apparently didn't get any messages back. Neuza Mendes, Executive Chef at Santana's Restaurant and John's daughter spoke to inform the board that she has the phone number of the Cahoon's son-in-law who is married to their daughter. They (Santana) were asked that when they have concerts that will have loud music, to call the Cahoon's prior to the event. Ms. Mendes stated that she sent a text to the son-in-law that weekend that told him to “kindly notify your mother-in-law and father-in-law that we're having an event that weekend.” The Cahoon's room is directly behind Santana's location and Mrs. Cahoon babysits her grandkids there on the weekend.

According to Ms. Mendes, the police were there an hour after the text message was sent to the Cahoon's son-in-law and the music was not even playing yet. That's when Detective Paul stated that he showed up and there was no music playing. Ms. Mendes stated that they do try to accommodate the Cahoon's by keeping their son-in-law informed of events because Mrs. Cahoon's room is on that side and she could sleep on the other side.

City Solicitor Nessralla responded to say that the City's concern with that is that the neighbors shouldn't have to pick a room to sleep in because they're exceeding the noise level and even with a notification, he didn't think that was how the rule works and he stated that he believed Attorney Creedon would advise his clients that it is the licensee's obligation to maintain order not the event planner who is going to blow it open anyway and the licensee should know that and they're going to stretch the elastic.

Attorney Creedon agreed with City Solicitor Nessralla and wanted to conclude that the attitude and the feeling that he has on behalf of his clients is taken from the last paragraph of Detective Paul's report where he says "Mr. Mendes appeared to understand the problem." Which they do. They have apologized, one of them is always there and will not have that promoter back and part of the solution is that they will screen any additional promoters as to the level that they promote their music.

City Solicitor Nessralla added that the music should be monitored the night of the event.
Lt. LeGrice then stated that what he thought the commission should remember is that when Santana came in, there were several things that they were told by the board that they had to do:

1. When they were having an event, to notify the police department of that event so that I (Lt. LeGrice) could send license agents over to make sure that it was protected and it didn't get out of hand. We have never been notified. Not once has he ever received a call of notification that they were holding an event of any sort.

2. Second, Lt. LeGrice went to the establishment to hand deliver notice of this hearing and asked them to show him the sound proofing that they have undertaken. They showed me a box approximately 10" to 12" high, about 12' long and said that they now sit their speakers on top of this wooden box that sits on the floor. Lt. LeGrice's response to them was that they have done nothing to mitigate the sound problem.

They were before the board before for noise violation and at that time, they were told that they had to sound proof the place or take steps to mitigate the sound. Lt. LeGrice stated that in his opinion, after that inspection, they had done nothing to mitigate the sound and he would like to see some receipts if they are saying that they have spent thousands and thousands of dollars on this mitigation.

Attorney Creedon asked his client to inform the board on what they have done concerning sound proofing. Mr. Mendes stated that they called New England Insulation and they said the issue was the sound/vibration was coming from underground. They provided the box to put the speakers on.

Attorney Creedon asked Mr. Mendes what he could do further to stop the sound from getting to the Cahoon house. Mr. Mendes said that they could move the stage but the architect said that would take longer because you have to go to zoning to get approved. Attorney Creedon suggested that the answer was for them (Santana) to monitor the sound closer themselves with their security people and as Lt. LeGrice said, to notify him every time that there is an event.

The Chairman stated to Attorney Creedon that they have a decibel meter and why can't his clients purchase one then there would be no problem. They go outside and it will tell you how loud the music is and by law it can only be so loud. Attorney Creedon responded by saying he didn't know how much they cost or where you could get them but he certainly thought that was an option. Attorney Creedon reiterated that they (Santana) did not want to offend this neighbor.

Mr. Cahoon spoke to say that if they heard actual music, it probably wouldn't be so bad and compared the noise heard to vehicles behind you or in front of you at a red light with the bass booming and said to picture someone parking that car in front of your house 7:00-8:00 at night and keeps it going until 2:00 a.m. and that's all you hear. It rattles the walls. Mr.
Cahoon stated that this noise issue has been ongoing over and over and that they've called the police station and were told a couple of times that there was nothing they (police) could do. Mr. Cahoon informs them that they were asked to call with their complaint to have it logged and were told to go to the licensing commission. Mr. Cahoon said that they gave up calling because it's not changing or helping. It's not the music but the bass that vibrates through the ground that comes up their house.

Mrs. Cahoon stated that the vibration from the bass goes until 2:00 in the morning and she is not changing her bedroom. She further stated that they received one text only from Ms. Mendes begging for leniency because they were having a party that night.

Commissioner Thompson acknowledged that it is obvious that there was a problem that night on April 9th. Mrs. Cahoon said that there was an issue 2 weeks prior and it's ongoing every Saturday night and that they are getting ready to move. They're going to give up and move - is that what they have to do to because they pay taxes. Why do they have to hear this every single Saturday night? She dreads Saturday nights and going to bed.

Commissioner Thompson stated that their job as the board was to try and find some sort of balance. We definitely don't want to have you move or to continue to deal with the situation and they want Santana to have a successful, profitable business.

Mr. Mendes stated that most of the time they do not rent the place because of the noise and they've lost big, big money and that he works 7 days a week to pay the bills and he pays taxes.

Commissioner Thompson stated that they have to find a resolution and there had to be some kind of reasonableness and asked the city solicitor whether there was a city ordinance that pertains to decibel level and noise. City Solicitor Nessralla stated that there were.

Commissioner Thompson asked if the decibel levels were defined and was informed that it is what's considered reasonable (i.e. car shaking, people can't sleep, etc.).

Commissioner Marrow recommended that they eliminate the bass at Santana's as it is what resonates. Commissioner Thompson commented that it is not a decibel issue but a vibration issue. Ms. Mendes said that the guys that do her music told her that it's not the bass because if the music was so loud, the bass would blow the speakers.

The Chairman again suggested a decibel meter. Mr. Cahoon said that you can't hear it outside the house but could if you came into their house. He stated that they were in attendance and in opposition when Santana first came before the board because of the fiasco with the previous place that was there and were told that Santana was just going to be a restaurant and they'll have a beer and wine license and maybe put petitions up so someone could have a small function. When did it become a nightclub?
Commissioner Marrow suggested to Mr. Mendes that they might want to try for a structural sound engineer. Ms. Mendes asked that if the problem is underground, would that become their problem.

Attorney Creedon recommended to the Chairman that for the next 30-40 days because they have functions booked that they try the suggestions to abate totally what the problem is with the Cahoon's. The Chairman asked if he could get them a decibel meter would they be willing to use it and get the law on what the volume is supposed to be. We have to appease - we don't want you to go out of business and don't want the Cahoon's losing sleep.

Ms. Cahoon stated that the noise is in the house and it's very, very loud and if Santana's is not a nightclub, shouldn't the events end about 12:00-12:30 a.m. Ms. Mendes responded by saying that they shut down at 1:30 a.m. because they have a 2:00 a.m. license and was told by Chairman Tartaglia that that was late. Attorney Creedon suggested that that might be another solution. To stop the music at 12:30 a.m. and pipe music in until 2:00 a.m.

Commissioner Thompson again stated that this was a bass issue and that he felt the board needed more time to speak as a board to try and think about what would be reasonable in a situation like this. Attorney Creedon said that her would take any recommendations and provide some once he's had a chance to speak with John.

Commissioner Marrow suggested that they get a structural (building) sound engineer to take a look at the building to say what can and cannot be done.

The Chairman asked Mr. Mendes what was different between now and April because the board has had no complaints. What was he doing different. Commissioner Thompson stated that they had someone come in on April 9th and that was the issue.

Ms. Cahoon said that any event ends at 12:30 and why aren't they having to do the same?

City Solicitor Nessralla said that he felt the board had heard enough evidence and that he didn't know about decibel meters, structural engineers, etc. but somewhere along the line someone just left common sense out of the equation. Noise is noise, people ought to know when it's loud and he didn't care if the noise was going underground for vibration, overground, through the air, noise is noise. They (Cahoon's) shouldn't be affected and we shouldn't have to be sending police because there's enough things to do for the police in Brockton. They have to use common sense. If this neighbor has to make another call then stern action ought to be taken. This particular establishment should not be back before this board on a noise complaint.

The Chairman asked Mr. Mendes if he was getting the drift of the meeting and Attorney Creedon responded by saying that they are looking for solutions also and that they want to cooperate and do whatever they have to do. The Chairman said one solution was to get the
decibel meter for an immediate solution because they will know if the music is too loud.

Attorney Creedon said that the bottom line for all license commissions was to have the licensee in control. We have to get the solutions to get that noise level down so that it is acceptable to the Cahoon's.

Ms. Mendes stated that they were following the guidelines in which Commissioner Marrow agreed but in their case, that might not be enough. Lt. LeGrice disagreed with Commissioner Marrow and stated that they have not followed any of the guidelines that the board set forth. They were supposed to call the police department when they were going to have a function there. That way there we could mitigate the problem before it became a problem. They have never called his office and that was who they were told to call when they were before the board. They haven't taken any steps to mitigate the noise which this board ordered the last time they were here. Lt. LeGrice provided Ms. Mendes with his office number.

Commissioner Marrow explained the difference between the police detail office and Lt. LeGrice's office to Mr. Mendes.

Commissioner Thompson said that they may have to chop this up into little pieces. Today, I think it's clear that there was a violation on April 9th. You present to the board that this was a promoter that came in that didn't abide by your instructions as the licensee and you should have had tighter control of this gentleman at the time. He felt satisfied that this was a one time incident that they are no longer going to have that gentleman promote and understand as the licensee of the establishment that you are responsible for the acts of anybody at your establishment. So, as it pertains to this violation, I think it's clear that you are in violation but he's also comfortable with the remedies that you put in place to prevent that from happening again. But he feels there is a longer term issue, not just that day of the Cahoon's who seem to be particularly affected by your establishments music and he didn't think they would be able to solve that right now. He thought that what the board should do is come together to try to figure out their recommendations on how to alleviate the situation. I think it's incumbent upon the licensee to come up with their own position on how to mitigate the damages with the Cahoon's. He thought that they should get together again and start implementing some of the recommendation that will be put together. Speak to other restaurant owners to see what they do and have some sort of audit of your sound and get back together and have a game plan and implement it. In the meantime, the board did put conditions in place that haven't been obeyed. It's extremely important that you contact Lt. LeGrice prior to any event so that we can mitigate the issues the Cahoon's are experiencing.

Commissioner DeAndrade stated that just notifying Lt. LeGrice does not solve the problem and that they (Santana) have to use common sense in that noise is noise and it's not fair to the Cahoon's and not fair to their business and we have to come to a solution. Last time we
had proposed something and you guys didn't follow it. You have to call Lt. LeGrice and you have to follow procedures. If you don't follow procedures then we have to impose restrictions such as rolling back to a 1:00 a.m. which you choose not to. But you have to understand that if you don't follow procedures we will have to take some serious action.

Commissioner Marrow spoke to the Cahoon's to state that if he could propose anything in talking to people that you think can help, notify the board. We have the information that we got from when Mr. Mike Barrett came in who actually measured what it was inside our bedroom and that a copy was provided to Attorney Creedon. Attorney Creedon stated that Mike who was the previous owner who now he reopened up the old Charlie Horse into Barrett's. Attorney Creedon will contact Mike to find out what companies they can talk about to mitigate the situation.

Councilor Beauregard was hoping that the Cahoon's would have a solution because they've been going through this since Christmas. This is a violation of the law and what she was curious about because in the past, other establishments have not adhered to restrictions and they are fined or penalized. She asked the board what happens when an establishment continues to violate restrictions and was told that there were several things that could be done by the board such as rolling back their hours or their entertainment license might be knocked down an hour. We're trying to find a solution here.

Councilor Beauregard wanted to make sure that it is all documented that they (Santana's) have had restrictions since November and that they haven't followed them and that should be on record.

Commissioner Thompson stated that he did not think the board had a solution as this time. He hoped that they would have more proposals to review. He wasn't on the board in September but he read the minutes and believed that at that time there was a request for soundproofing and it seemed that the extent of the soundproofing was a box that the speakers sat on. It doesn't look like that was enough. He asked Lt. LeGrice if it was fair to say that when officers appeared at the Cahoon's house is it safe to say that they do not hear the sound or have found that it did not appear to be an unreasonable level of sound. Lt. LeGrice responded by stating that yes, on the outside of the house you cannot hear anything because it is in the inside of the house where the sound reverberates.

City Solicitor Nessralla stated to lower the music that they've been there for over an hour going in circles. He thought that the board needs to move and make a motion, issue an order and move from there. We're not structural engineers. This is not a mediation session it's the License Commission. Make a proposal and let's move.

The Chairman stated that they are trying to appease both sides at which point Commissioner Thompson suggested that they compartmentalize and just focus on today and say that it's clear that there was a violation per a letter in their file and he stated that if this issue continues to come before the board then there would be higher and higher repercussions so
it would behoove you to find a solution to this issue.

Commissioner Thompson made a motion that a letter of violation enter the file, that a violation was found. Again, we request that you reach out to Lt. LeGrice personally prior to any events and that they look into some formal mitigating remedies so that the Cahoon's are not continually bothered by the music with Commissioner Marrow seconded and made unanimous by vote of Chairman Tartaglia.

Respectfully submitted,

Mary Milligan