

**BOARD OF LICENSING COMMISSIONERS
SPECIAL MEETING
APRIL 10, 2008
9:00 A.M. – WEYMOUTH TOWN HALL CHAMBERS**

Attendance:

Voting Members: Chairman Frank Fryer, Town Clerk; Jeffrey Richards, Clerk, Director of Municipal Licenses & Inspections; Robert J. Leary, Fire Chief; Richard T. Marino, R.S., C.H.O., Director of Public Health; Captain Brian Callahan, Police

Guests: Officer Brian King, Police; Attorney George Lane, Town Council; Domenic Silvestro, Owner BASTA; Attorney Jon Aieta of Cassis & Cayer

Chairman Fryer called the meeting to order at 9:00 a.m. Mr. Richards stated the hearing was for the administrative decision on the noise mitigation study presented by NBG, Inc. D/B/A BASTA Bar & Grill. Mr. Richards stated that Mr. Silvestro acquired a building permit to replace the rear doors and in fill the two former windows behind the stage with concrete block to bring the building into noise compliance. An engineering review by Walter A. McKinnon Associates was performed. At the time of inspection, Mr. McKinnon determined there was noise emanating from the buildings. The following renovations were performed to reduce this noise: 1. Two side windows and an old rear door have been blocked in with concrete blocks; 2. Two new solid core doors were installed at the rear egress (stage side); 3. A former entrance at the left side of the building was closed off with wood studs. This opening was filled using concrete block and an additional stud wall was added.

Mr. Richards read the conclusion of the engineering report signed by Richard McKinnon, Registered Professional Engineer dated March 27, 2008, as follows:

The following was noted:

An inspection was conducted at the above referenced location. The purpose of the inspection was to review the building in order to determine the best methods for reducing sound vibrating to the exterior of the building due to music. The following recommendations were discussed and agreed to be performed:

1. Two former windows behind the stage were boarded up using wood paneling. It was recommended that these openings be closed using concrete block.
2. A series of two doors leading from the stage/dance floor are made of wood, old and poorly weather-stripped. A new solid core wood door and an insulated metal door were properly installed and weather-stripped.
3. A former entrance at the left side of the building was closed off with wood studs. This opening was filled using concrete block and an additional stud wall was added.

The above renovations represent a significant improvement in the amount of music volume and vibration coming from the building and will hopefully address concerns expressed by some of the neighbors.

Mr. Richards stated that a second report from Daniel J. McCormack, Town of Weymouth Health Department, was submitted on findings of noise readings. Mr. McCormack met with Nick Silvestro and Richard McKinnon at 11:00 a.m. on April 4, 2008 for the purpose of evaluating exterior noise levels with both no music playing and with music playing inside the establishment. Readings were taken with an EXTECH sound level meter, in low range, slow response, A weighting, with the wind sock on. The meter was calibrated to 94dB prior to testing. The weather was cloudy with rain and temperature was approximately 40 degrees F with winds blowing approximately 0-10 mph. Initial readings were taken across the street in the BASTA parking lot right next to the BASTA sign. The background noise level reading without music playing was 57-58dB (without vehicular traffic). The noise level reading at the same location with the sound system on inside the bar was 58-61 dB (without vehicular traffic). The difference with music was 0-3dB. Noise readings taken while vehicles were passing by the area were up to 73dB. That section of Mutton Lane is heavily traveled, and only a few seconds were available to take readings without the interference of vehicular noise. Indoor readings at the main entrance area and the stage area were taken. The readings in the entrance area were 88.3dB MAX, and the reading in the stage area was 93.7 dB MAX. The noise level inside the establishment was high enough to prevent normal conversation. They had to yell to communicate to each other indoors. Mr. Silvestro stated most of the time the internal sound system is used, but sometimes bands bring their own sound systems.

At the time of the inspection, Mr. McKinnon and Mr. Silvestro showed Mr. McCormack the following renovations were performed to reduce noise emanating from the building:

1. Two side windows and an old rear door had been blocked in with concrete blocks.
2. Two new solid core doors were installed at the rear egress (stage side).

Mr. McKinnon stated they would be installing a secondary wall at the former rear egress foyer.

A building permit was applied for and received by Mr. Silvestro dated 03/31/08 to perform the renovations.

The Chairman recognized Mr. Silvestro's attorney, Jon Aieta, Attorney Aieta echoed the findings of the engineering study and stated the concrete block work has been completed. He stated they were interested to entertain the Board's decision based on the March 26, 2008 discussion of presenting a study and they have mitigated everything on the list.

Attorney George Lane stated the motion made on March 25, 2008 was to suspend the entertainment license until the engineering study noise mitigation was performed and complied with to the satisfaction to the Licensing Board. The meeting was held on Tuesday, March 25, 2008 to suspend the entertainment license and on Friday, there was a motion made by the licensee at the Norfolk Superior Court to have a mandatory preliminary injunction to have the license reinstated, which was denied. There is a current suit that was filed for a reinstatement of

the motion today at 2:00 p.m. I conferred with Attorney Aieta regarding that matter, and if the Boards conditions have been met and license is reinstated, then he believes the case would be dismissed. Attorney Lane asked Attorney Aieta if that was correct, to which Attorney Aieta stated that was correct. That item would be removed and there would be no further litigation on this matter.

The Chairman asked if there was anyone in favor of this license reinstatement, to which Mr. Silvestro raised his hand. The Chairman asked if there was anyone opposed to this license reinstatement. The Chairman recognized Mr. Louis Molinari, 94 Mutton Lane, Weymouth, MA. He said it has been a peaceful two weeks without the entertainment license. He is not an engineer and is concerned that adding cinderblocks would keep things quiet. He hope it has been resolved.

The Chairman recognized Doug MacIntyre, 94 Mutton Lane, Weymouth, MA. He said he was concerned with the loud noise and asked what the recourse would be if it should happen again?

Chief Leary asked if the opening that was sealed affected any egress. Mr. Richards stated it was already closed, but was made more soundproof with the concrete blocks.

Richard Marino stated the motion on the 25th was to wait for the engineers report. He suggested they see how the mitigation works. He thought it would be premature to prejudge what the engineer has stated should be done. Mr. Marino suggested the owner can listen and we can listen to result of the engineered changes.

A MOTION was made by Richard Marino and seconded by Jeffrey Richards to end the suspension and reinstate the entertainment license.

Officer Brian King questioned whether this mitigation would solve the loud vibration of the base noise. The owner has been asked to turn the base volume down. Mr. King stated in the past he has told the owner it was too loud and he did not know why it became such an issue. He suggested shutting off the music at 11:00 p.m. and revisiting the matter in sixty days. He asked the owner if the entertainers get paid by the hour or by the evening. Mr. Silvestro said they are paid by the evening.

Attorney George Lane stated he understands what the Licensing officer is saying, but he reminded the Board that the license was suspended until the engineering study and mitigation was performed according to the standards of the Board of Health and to the satisfaction of the Licensing Board. That is the motion that was made and not for any other motion at that time. That is the issue before the Board. Any problems that would be in the future are beyond this decision. Should another situation arise, they would be before the Licensing Board for that issue.

Attorney Jon Aieta staed that based on the last findings, the decibel level is the key factor that the law indicates. An increase of 3 decibels is imperceivable to the human ear. They are within that range. That is the main item. If there are concerns by the neighbors, they want to be good neighbors. If they receive a request to turn it down, the owner has done that in the past and they will do it again.

Richard Marino stated that as he said at the March 25th meeting there are certain subjective perceptives about sound such as base beats making a pounding sound. This can be disturbing that can defy the statistical measure. That does not mean that sounds do not exceed certain thresholds. No one here wants to make life difficult, but the neighbors want to enjoy their homes.

Attorney Jon Aieta stated they are absolutely aware of the past complaints and has tried to mitigate the issues and acknowledged and considers the base.

The Chairman recognized Louis Molinari who stated a concern with the vibration. He stated certainly the decibel thing is straightened away, but is not confident with the vibration.

Chairman Fryer stated they have an engineering report and an indication of mitigation and we must give them a chance to work.

Chief Leary commented they have done what the Board has asked and suggested they see how this works.

The MOTION that was made by Richard Marino and seconded by Jeffrey Richards to end the suspension and reinstate the entertainment license was UNANIMOUSLY VOTED FOR APPROVAL.

A MOTION was made by Jeffrey Richards and seconded by Chief Leary to adjourn and was UNANIMOUSLY VOTED FOR APPROVAL.

Respectfully Submitted,
Doreen Teodorson/Recording Secretary

Franklin Fryer, Chairman