

Minutes of the Board of Licensing Commissioners for their meeting held on Tuesday, January 24, 2012, at the Weymouth Town Hall, Chambers, 75 Middle Street

Attendance (present): Daniel McCormack, Director of Health, Acting Chairman; Jeffrey E. Richards, Director of Municipal Licenses & Inspections; Fire Chief Robert Leary, Police Chief Richard Grimes; Officer Brian King; George E. Lane, Jr., Town Solicitor; Justin Myers, Fire Prevention Officer and Lisa VanWinkle, Recording Secretary

Acting Chairman McCormack called the meeting to order at 1 PM.

APPLICATION OF EZ MART HOLDING, INC. D/B/A EZ MART FOR A FOOD VENDOR LICENSE, 1166 WASHINGTON ST.

Mr. Ayaz Akhtar and Mr. Taha Kidwai, business partners were present.

Mr. Richards read the departmental referrals in to the record. Officer King reported no public safety objections. Mr. McCormack reported if the license is issued, a permit to operate must also be obtained at the Health Department. You must submit the following: a copy of the floor plan, a completed application, Workers Compensation Affidavit, Food Manager Certification, Allergen Certifications, if applicable, and applicable fee. The establishment must be inspected prior to opening.

Mr. Akhtar stated his partner has operated a similar store in the past and is proposing a new location.

Mr. Richards stated they would have 10 spaces; two spaces for use by employees. Building is limited by a firewall and is fully sprinklered and alarmed.

Mr. Richards made a MOTION to approve the issuance of the Food Vendor license for a 24-hour operation, as per application. Chief Leary seconded the motion and it was UNANIMOUSLY VOTED.

APPLICATION OF LINCOLN SQUARE SERVICE, INC. D/B/A GINA'S COFFEE FOR A FOOD VENDOR LICENSE, 185 WASHINGTON ST.

Mr. Walid Metri, applicant, was present.

Mr. Richards read the departmental referrals in to the record. Officer King reported no public safety objection.

Mr. Richards stated the Food Vendor license application is for a gas station convenience store operation, located next to a bank. The size of the location is 15'x20' with the hours of operation as 5 AM-11 PM. They will offer coffee, beverages and breakfast sandwiches through the drive-through.

Mr. McCormack opened the public hearing for public comment; none was made.

Mr. Richards made a MOTION to approve the issuance of the Food Vendor license. Chief Grimes seconded and the motion was UNANIMOUSLY VOTED.

M.G.L. CHAPTER, SECTION 183A HEARING TO CONSIDER MODIFICATION, SUSPENSION, REVOCATION, CANCELLATION OR IMPOSITION OF THE ANNUAL ENTERTAINMENT LICENSE OF MAURA, INC. D/B/A NEXT PAGE CAFÉ, 550 BROAD ST.

Attorney Dale Malone and Mr. Edward Page, licensee, were present.

Solicitor Lane read the notice of the hearing in to the record stating, "Pursuant to M.G.L. Chapter 140, section 183A, the Board of Licensing Commissioners of the Town of Weymouth has scheduled a hearing on Tuesday, January 24, 2012 at 1 PM to consider modification, suspension, revocation, cancellation or imposition of the conditions of your Annual Entertainment License. The circumstances, which gave rise to the matter, involve noise levels of live entertainment held at your establishment, which may be found to adversely affect public health, safety or order..."

Solicitor Lane swore in all testifying parties and stated the Licensing Authorities may not modify the license if the entertainment has not been found to adversely affect public health, safety or order. He stated the Licensing Board had a hearing on May 24, 2011 at which time the license was modified restricting entertainment after midnight.

Attorney Malone objected as the matter referenced happened prior to that date.

Solicitor Lane acknowledged the objection and called Officer King forward for testimony.

Officer King stated he is a Police Officer with the Town of Weymouth and is also the Licensing Officer. He duties include code enforcement and review of possible violations of licenses issued by the Licensing Board. Since the main meeting, he has been by the location several times to monitor noise complaints. He ran a list of calls between May 26, 2011 and January 2012 of which there were 58 calls. Forty-four calls were made in regards to noise-fifteen were founded, nineteen were unfounded, five were no response, and three of the calls were gone on arrival. He stated the unfounded calls involved in instances when a cruiser arrived to the scene and music levels were considered acceptable.

Solicitor Lane asked with regard to the calls how accurate unfounded calls are—if the Officer determined there was no noise.

Officer King responded it depends on the circumstance and response time.

Solicitor Lane asked what the average response time is.

Officer King replied it varies from 10 to 15 minutes.

Solicitor Lane asked if it was okay to provide a copy of the records for the counsel.

Officer King replied yes and they were presented.

Attorney Malone questioned Officer King if he was in charge of Code enforcement and possible violations.

Officer King replied, yes, the Code and rules of licensees. Noise issues are a possible violation.

Attorney Malone asked what the standard is between founded and unfounded calls.

Officer King replied founded would be determined by the officer as hearing noise outside of the business and subsequently reported to the manager inside. Officer King went through the listing of calls and reviewed by "founded" and "unfounded".

Attorney Malone stated the reports are based on the officer's subsection at the time arriving at the establishment. He referenced the report of June 4, 2011.

Solicitor Lane called Officer Michael Best forward who reviewed his police report from June 4, 2011.

Officer Best testified that when they arrived at that location, he/officer would make a determination whether the noise was objectionable or not.

Attorney Malone stated Mr. Page has spent thousands of dollars making renovations, and installing a fence, trying to work with Mr. Crawford. Mr. Page calls Officer King on a weekly basis to ask what complaints have come in.

Solicitor Lane asked Officer King to testify.

Officer King stated he has been employed by the Weymouth Police Department for 34 years. In regards to the calls, unfounded vs. founded, each case is determined by noise of entertainment levels heard from outside the establishment. Complaints from May 2011 to January 2012 averaged at 6/7 calls per week. In regards to Officer Harrington's report, when arriving to the scene one evening the entertainment could be heard 30-40 feet away from the establishment. He acknowledged that The Crawford's live within the vicinity and their house is approximately 40 feet away.

Solicitor Lane asked if in general noise from live entertainment could be within a level that would adversely affect one's health.

Officer King replied yes.

Attorney Malone questioned if Mr. Crawford was the source of all calls.

Officer King replied most of the calls.

Attorney Malone asked how long the establishment has had the entertainment license.

Officer King replied since 2006. No complaint calls were received prior to the entertainment being offered.

Solicitor Lane called Officer Scott Harrington forward for testimony.

Officer Scott Harrington stated he had been employed by the Weymouth Police Department for 25 years.

Solicitor Lane asked Officer Harrington to review his report.

Officer Harrington reiterated the report, stating during the incident the noise level was exceptionally loud and Mr. Page came out of the establishment with a decibel meter. Based on his training and experience, Officer Harrington stated he determined that the noise was exceptionally loud.

Solicitor Lane asked if one's health could be affected from the noise.

Officer Harrington stated it may affect one's sleep and health.

Solicitor Lane asked Officer Harrington if he had been dispatched for any other calls from May to June of 2011.

Officer Harrington replied just once.

Attorney Malone stated Mr. Page met you with a sound meter.

Officer Harrington replied he did not use it as based on his experience he judged the noise from the entertainment to be exceptionally loud.

Attorney Malone cited as a Police Officer you use a radar gun for speed as a measuring device.

Solicitor Lane called Officer Michael Best for testimony. He stated he has been employed by the Weymouth Police Department for five years working on the 12 AM – 8 AM shift. He had been to the establishment numerous times, mostly on noise complaints. Most instances occurred on a weekly basis. Founded calls meant when arriving to the location he could hear music and found a reasonable person to find the noise level unreasonable.

Attorney Malone objected to the comment.

Officer Best agreed that the noise level might affect one's sleep. The calls he reported to were mostly between 12 AM – 12:30 AM during the months of May through January.

Attorney Malone asked Officer Best for his opinion of reasonable versus unreasonable noise.

Officer Best stated he judged his opinion as a reasonable person would base on whether the noise was offensive or not.

Attorney Malone asked for Officer Best's threshold for a passing loud motorcycle.

Officer Best replied a loud music would be different as the duration of a passing motorcycle would be quicker.

Attorney Malone said his client would offer to have a sound level measurement performed to determine an objective threshold for Mr. Crawford. Mr. Page also offered to do unannounced sound checks at his own expense.

Mr. David Crawford, 546 Broad Street, came forward for testimony. He stated he abuts the Next Page by 35 feet away. He stated his mother and father moved to their home in 1962/3 and he in the early 1980's. His mother is 87 with a serious heart condition. He works for Hanover High School and wakes at 5:30 AM to get to work by 7 AM, working through until late afternoon. His sleep pattern is crucial. They have endured loud music since the entertainment license was granted. After the Licensing Board of May 2011, the noise subsided and a doorman was hired during the 2-3 quieter months. October through current the noise levels have gone back to where they were prior to the last hearing. He voiced his frustration where he had hope that the problem had been resolved. It is simple to just let him sleep.

Solicitor Lane stated work had been done on Mr. Page's behalf to alleviate the noise.

Mr. Crawford stated he had blown-in insulation and installed a fence.

Solicitor Lane said these measures did not alleviate the sound.

Mr. Crawford said no. His sleep pattern is affected; this increases his stress level. There is no peace and tranquility in his home. He spoke about the unfounded calls noted on the police listing, requesting that the narrative include more detail. The noise, traffic and parking coming from the establishment is unreasonable and an infringement of their enjoyment of their property. In regards to threats and intimidation, they are located in a B-1 Zone and the license is a privilege the Licensing Board has granted to the business. Mr. Page insulated the walls and installed fence. The blown in insulation does not alleviate and noise but helps with the heat bill. He offered resolving items: keep windows closed; they never have been legally measured for sound w/ decibel meter while the noise complaint is being made; Friday night entertainment instead of all three nights; back deck to be removed; need public access for emergencies.

Attorney Malone asked Mr. Crawford to describe the condition of his house.

Mr. Crawford noted it is a cape from the mid 1800's. The windows, insulation and construction of the house have not been updated recently. He is a light sleeper and the noise and vibration affect his quality of sleep. It interferes with their reasonable enjoyment of quality of life.

Attorney Malone asked if a scientific measurement was made from Mr. Crawford's home.

Mr. Crawford replied it was irrelevant if an official is not present.

Attorney Malone stated his client offered to perform a sound study and purchase a machine for the town. The matter would have been solved a long time ago.

Mr. Crawford stated since Mark, doorman, has no longer been visible (whom he considered a friend) matters had changed. He hates living next to a bar.

Attorney Malone asked Mr. Crawford if when he moved to the home in the 1980's, if there was a restaurant operating at the time.

Mr. Crawford said there was. He also noted that employees/patrons had access to a parking lot down the street, which alleviated the situation. The new fence extension does not overlap the entertainment area.

Mrs. Mary Crawford came forward to testify, stating she was 86 years old with a heart condition. She agreed the level of the noise from the entertainment was loud and her bedroom is located on the same side as the entertainment.

Solicitor Lane asked Mrs. Crawford if she felt the noise was affecting her health.

Mrs. Crawford agreed, stating she goes to bed at 12 AM instead of her preferred time of 10:30 PM.

Attorney Malone asked when Mrs. Crawford moved to the home.

Mrs. Crawford replied in 1963 with her husband who ran a glass business.

Acting Chairman McCormack announced the public hearing for comment.

Mr. Michael Daniels came forward stating he lived previously upstairs from the bar and he had no issues.

Ms. Debbie Cabezas, resident of Holbrook and sister of Ed Page, stated this has been an ongoing issue as Mr. Crawford made complaints prior to David Crawford. There is a personal vendetta and her brother has done everything he could. He is a good business owner and needs the entertainment license to survive. It is their mother's livelihood. The matter is personal and continues to exist.

Ms. Arlene Page, Quincy resident and mother of Ed Page, stated her husband ran the bar from 1963 and their son took it over eleven years ago. He runs a good honest business and it is a good respectable place.

Mr. Tom Rizzo, business owner, supported Mr. Page as he runs a good business, seeing it first hand. He requested that he be allowed to keep it going and keep good people employed.

Mr. David Connolly, lifelong friend of Mr. Page, stated Mr. Page turned the restaurant in to a nice family bar/restaurant from an eyesore. It is a nice place to go.

Ms. Cheryl Springstein spoke, stating she is an employee of the Next Page. She is a single mother of three children and it has been a privilege to work there. She asked that the license not be pulled; stating Mr. Page has done numerous items to correct the issue.

Mr. Tim Bailey, life-long resident, stated Mr. Page has done a great job and turned the restaurant in to a nice family place. Everything is subjective; he plays in a band himself. There does not seem to be a standard. Possibly a standard level could be determined to be monitored by the decibel meter by Mr. Page.

Chief Leary questioned Mr. Bailey, as a member of a band, volume levels would be based on the size of the room or type of the song.

Mr. Bailey stated he thinks they have done a good job trying to control the noise. A particular song would be played based on the size of the room. Blues caters to an older crowd (40-70 years of age). Patrons are able to have a conversation while the band is playing.

Mr. George Carr, life-long resident spoke, stating the older crowd is comfortable in enjoying the entertainment. If the level gets too loud, the crowd starts to complain about it.

Ms. Jodi Purdy-Quinlan, life-long resident and Historical Commission member spoke, stating she knows both families. They are both impacting each other's lives. She was concerned that Mr. Crawford would not be satisfied until entertainment has been revoked. The establishment is located in a business zone and has the right to be there. She and her husband enjoy going to the establishment for dinner, dancing and enjoying listening to established artists. Mr. Page has tried really hard. She encouraged the Board before making a decision to take into consideration that it is not fair based on one family's complaint to revoke the entertainment license. Something needs to be done on the next level to alleviate the noise. She is on the Fore River Watershed Association and stated that EAP standards were not created for live music.

Chief Grimes asked Ms. Purdy-Quinlan where she lives.

Ms. Purdy-Quinlan replied four doors down from Gio's, on the other side of Middle Street. She has never heard music from her home. People are upset the Next Page may lose its establishment.

Mr. Ed O'Toole spoke, stating he has resided in Weymouth for many years and is a retire Boston Police Officer. He said in regards to the attorney's comment about decibel meters—police officers have to make a decision based on their own judgment. Mr. Page is a giving person and he would hate to see him lose a great business.

A resident of Harrington Lane spoke, stating he and his family are music people. It is a joy to be able to walk to the establishment from his home. Conversations can be heard while the band is playing. Mr. Page is doing everything in his power to make it work.

Mr. Bob Romano stated a business like Next Page Café needs entertainment to keep going. Mr. Page supports the community and his employees. He did the booking of the entertainment on most nights, making adjustments as complaints came in. Whatever it took it was done. He noted it was a personal vendetta, as calls came in a 9:30 PM just after the entertainment commenced. Twenty-five percent of the calls made were from Mr. Crawford. He mentioned an occurrence when Mr. Crawford could not get out of his driveway and created a disturbance of the neighborhood beeping his horn. The Town cannot afford to lose this business.

Mr. Mark Fintigos, Quincy resident and friend of Mr. Page, stated changes have been made: fence, structural, managerial, booking changes. He is being a good neighbor. As neighbor's they need to communicate and take into consideration Officer King's suggestions. It is a pub type atmosphere with 35-70 age crowd. Food and entertainment is a key to surviving in this business. He has been around the last 8-9 months and navigating people in and out the door.

Solicitor Lane asked Mr. Fintigos if during instances there was intrusive and excessive noise.

Mr. Fintigos replied yes. When it started, measures were taken. He asked the booking agent to turn it down in the beginning.

Attorney Malone said they have heard from a large number of people today. We are here to address noise complaints; single source of which are Mr. Crawford's, majority of which occur three nights a week. The officers have to come and do their job. There is no objective standard. This Board has to follow the rules of law. In 2010, Mr. Page asked what the standard was in Health Regulation #17, over 10 decibels. He used that to try to measure the noise level. Mr. Crawford is trying to build up a volume of calls; 26 were not verified.

Mr. Crawford stated it is not a vendetta to support a violation of the law.

Solicitor Lane stated Massachusetts General Laws Chapter 140, section 183A does not indicate the need for a police officer to carry a decibel meter to indicate a level of ambient level of sound. Two seasoned officer responded to the calls and is presenting the incidents to use. 35 feet a proximity between the business and the home. The noise has not been contained. An increase in level of noise from the entertainment has adversely affected the public during the timeframe presented.

Attorney David Kellem spoke reiterating the hearing of May 24, 2011.

Chief Grimes stated his concern and objective to resolve this matter before the Board. The founded and unfounded calls from dispatch recognize an issue. At the November 2011 meeting, they discussed that the doorman helped the issue. Mr. Crawford stated during July through August life was good. This peaked his interest. They heard from the residents of the Town who enjoyed the entertainment. The direct resident would like to sleep at night without being disturbed. Two Hundred and Fifty calls were received during a period. They have tried to resolve the problem from both sides. The doorman seemed to satisfy this situation; what changed in his capacity during that time? Construction and managerial changes were made.

Attorney Malone asked that Mr. Crawford be persuaded to first call Next Page Café to resolve an issue. Mr. Page has been the doorman inside during the colder weather.

Chief Grimes stated he found Mr. Crawford's testimony credible and also found that how Mr. Page runs his business is credible, too.

Solicitor Lane stated a finding is in order.

Chief Grimes asked for the two parties to communicate. Thursday seems to be the trigger date.

Attorney Malone stated his client would offer a full-time outside doorman and noted he had offered to hire a paid detail. He asked that Mr. Crawford be willing to have a scientific measurement taken of noise levels to set some sort of objective standard.

Solicitor Lane stated if there is a problem, there is a finding for a workable solution.

Chief Grimes stated the problem exists—what they need to do, as the Licensing Board is the question.

Mr. Page stated he has offered to do an unannounced decibel checks at his cost. A doorman could be hired to alleviate the matter. A phone number to call when there is an issue. Fines issued by the Police Department. He has already replaced the windows and added insulation.

Mr. Richards stated they need to make a finding or not. As the standpoint of zoning, vibration and noise did occur; therefore, there was a violation.

Mr. Richards made a MOTION for a finding that a noise level was offensive and did occur a number of times in violation of MGL Chapter 140, section 183A, adversely affecting the public health. Chief Grimes seconded and the motion was UNANIMOUSLY VOTED (4-0).

Mr. McCormack asked for a motion to suspend, modify or revoke the Annual Entertainment License.

Mr. Richards made a MOTION to continue the hearing until the next meeting, requesting that the two parties offer solutions at the meeting on February 28, 2012 at 1 PM. Chief Leary seconded the motion and it was UNANIMOUSLY VOTED (4-1).

Chief Grimes said the matter needs to be worked upon on both sides. The Licensing Board will make a decision on whether to modify, suspend or revoke the license.

APPROVALS

- Minutes: December 22, 2011

Mr. Richards made a MOTION to approve the minutes of the December 22, 2011 meeting. Chief

Leary seconded and the motion was UNANIMOUSLY VOTED.

- Poppy Drive: George R. Bean Unit No. 79 American Legion Ladie's Auxiliary

Mr. Richards made a MOTION to approve the Poppy Drive for the George R. Bean Post on May 24, 25, 26, 27, 2012. The motion was seconded by Chief Leary and was UNANIMOUSLY VOTED.

- One-Day Wine & Malt Permit: Immaculate Conception Parish

Mr. Richards made a MOTION to approve a One-Day Wine & Malt Permit for Immaculate Conception Parish's corned beef dinner to be held on March 10, 2012 from 5 PM – 10 PM. The motion was seconded by Chief Grimes and was UNANIMOUSLY VOTED.

CHAIRMAN'S REPORT

- Meeting Schedule

Mr. Richards made a MOTION to schedule the next meeting for Tuesday, February 28, 2012 at 1 PM. Chief Leary seconded the motion and it was UNANIMOUSLY VOTED.

CORRESPONDENCE

- Keno License from the MSLC to: EZ Mart, 1166 Washington St.

Mr. Richards made a MOTION of non-objection. The motion was seconded by Chief Leary and was UNANIMOUSLY VOTED.

ADJOURNMENT

Mr. Richards made a MOTION to adjourn at 4:15 PM. Chief Leary seconded the motion and it was UNANIMOUSLY VOTED.

Respectfully submitted,

Lisa VanWinkle,
Recording Secretary

Approved: 

Date: 4.24.12