

Minutes of the Board of Licensing Commissioners for their meeting held on Tuesday, January 25, 2011, at 1 PM in the Weymouth Town Hall, Chambers, 75 Middle Street

Attendance: Chairman Franklin Fryer; Jeffrey Richards, Director of Municipal Licenses & Inspections (absent); Fire Chief Robert Leary; Police Chief Richard Grimes; Daniel McCormack, Director of Health; Town Solicitor George E. Lane, Jr.; Firefighter Justin Myers and Licensing Officer Brian King.

Chairman Fryer called the meeting to order at 1 PM.

APPROVALS

- Minutes: December 21, 2010

Mr. McCormack made a MOTION to approve the December 21, 2010 meeting minutes. Chief Grimes seconded. SO VOTED (3-1, Chief Leary abstained).

PURSUANT TO M.G.L. CHAPTER 138, SECTION 69, LIQUOR VIOLATION HEARING TO CONSIDER MODIFICATION, SUSPENSION, REVOCATION OR CANCELLATION OR THE ALL ALCOHOLIC PACKAGE STORE LICENSE OF: **CURTIS LIQUOR STORES, INC.,** 486 COLUMBIAN ST.

Mr. Richard Curtis, owner, was present as well as his employees, Mr. Donald Barrows and Ms. Danielle.

Solicitor Lane swore in all testifying parties in regards to the incident which occurred at Curtis Liquors on October 26, 2010 for an alleged violation of law, M.G.L., Chapter 138, section 69, "Sale or delivery of alcoholic beverages to an intoxicated person on the licensed premises". He also submitted the hearing notice into the record after affirming it with Mr. Curtis.

Solicitor Lane had the following witnesses that were subpoenaed to testify before the Board: Ms. Jennifer Curtin, 359 Pond Street, Weymouth, MA; Mr. Andrew Lee, 186 Forest Street, Weymouth, MA; Mr. Michael Serrano, 286 Hancock Street, Abington, MA, who witnessed Mr. Paul O'Rourke, 8 Woodcrest Court, Weymouth, MA, suspect, operating his vehicle erratically on Forest Street in the town of Weymouth prior to the sale at Curtis Liquors on the day in question.

Mr. Curtis had no follow up questions.

Solicitor Lane called Officer Michael Symes and Officer Cheryl Potter of the Weymouth Police Department, forward separately for testimony. They reiterated the incident, evidence was presented and subject police reports were submitted into the record by Solicitor Lane.

Mr. Curtis called his employees, as witnesses, forward for testimony: Mr. Donald Barrows, Manager, and Ms. Danielle, clerk. The clerk testified that she made the cash sale of a pint of Smirnoff 100 proof vodka to the gentleman in question. Once she made the sale, and witnessed him staggering towards the door to exit to the parking lot, she flagged Mr. Barrows. He approached

Mr. O'Rourke, at which time he pulled him aside and after speaking with him, he noticed the smell of alcohol and determined Mr. O'Rourke was under the influence. He offered the phone to him to arrange to be picked up. When he left Mr. O'Rourke to retrieve his keys, Mr. O'Rourke left the building and was stopped outside of the doorway and questioned by Officers Symes and Potter, who were dispatched to the scene.

Solicitor Lane stated the matter was before the Licensing Board for a determination of a finding and that the standard is whether the licensee knew or should have known that the customer was intoxicated.

Chairman Fryer stated he has known the Curtis family for many years. Something happened that could have happened to anyone. He agreed with the assessment that a cash sale could have been made. Once it was made and the clerk realized the man's condition, she took the action necessary. He felt a motion for no finding was appropriate.

Mr. McCormack made a MOTION for no finding that a violation occurred. Chief Leary seconded. UNANIMOUSLY VOTED (4-0)

APPLICATION OF **MPHL III, INC. D/B/A SUBWAY** FOR A COMMON VICTUALLER LICENSE, 49 PLEASANT ST.

Mr. Michael Leshinsky, Proprietor, was present.

Mr. McCormack read the departmental referrals into the record. Mrs. Williamson, Health Inspector, reported she did not have an application from the owner, nor has she spoken with him. Mrs. MacLeod, Municipal Finance, reported no issues. Officer King reported no public safety objection. Mr. Richards reported the use of the premises as a restaurant is permitted in the B-1 Zone in which it is located and the existing parking is adequate for the proposed 33 seat capacity on the submitted plan. Accordingly, the requested license conforms to all applicable requirements of the Town's Zoning and Building regulations, and therefore, the license may be granted.

Mr. Leshinsky stated he is proposing to open a Subway at the Pleasant Shops next to Johnnie's Food Master, which was formerly Mama Mia's. This is his third franchise in the Commonwealth.

Mr. McCormack made a MOTION to approve the Common Victualler license. Chief Leary seconded. UNANIMOUSLY VOTED

APPLICATION OF **ROMANO-STOKES, INC. D/B/A JACKSON SQUARE TAVERN RESTAURANT** FOR ALTERATIONS TO THE LICENSE PREMISES (ALL ALCOHOLIC RESTAURANT/COMMON VICTUALLER LICENSES) AT 1530 COMMERCIAL ST.

Mr. Michael Stokes, owner, was present.

Mr. McCormack read the departmental referrals into the record. Mrs. Williamson reported she has not spoke with the owner. No plans have been submitted. Mrs. MacLeod reported a utility bill was

due December 31, 2010 and is unpaid. Officer King reported no public safety objection to the request. Mr. Richards reported the use of the premises as a restaurant is permitted in the B-2 Zone

in which it is located. The application and plans for renovations to the licensed premises has been received. The approval shall be granted contingent upon necessary Building Permits.

Mr. Stokes stated they are proposing to remove an existing wall and construct a half wall, creating a better site line for their staff. They would like to install larger windows to allow more light in the establishment, too.

Mr. McCormack made a MOTION to approve as submitted on plans and application. Chief Leary seconded. UNANIMOUSLY VOTED

APPLICATION OF **JAMES PUPOLO D/B/A LEVAGGI'S CANDY** FOR A FOOD VENDOR LICENSE, 1186 MAIN ST.

Mr. James Puopolo, owner, was present for the application.

Mr. McCormack read the departmental referrals into the record. Mrs. Williamson reported no objection. Mrs. MacLeod reported no issues. Officer King reported no public safety objection. Mr. Richards reported the use of the premises as a retail candy store is permitted in the HT Zone in which it is located.

Mr. Puopolo stated the business has operated since 1957. He took over the operation from his uncle in 1987. The Board of Health issued a license throughout the years and he was unaware he required the Food Vendor license.

Mr. McCormack made a MOTION to approve the Food Vendor License. Chief Leary seconded. UNANIMOUSLY VOTED

APPLICATION OF **FOURZOL, LLC D/B/A FOX BEER & WINE** FOR A WINE & MALT PACKAGE STORE LICENSE, 330 WASHINGTON ST.

APPLICATION OF **FOURZOL, LLC D/B/A FOX BEER & WINE** FOR A FOOD VENDOR LICENSE, 330 WASHINGTON ST.

Attorney Daniel Affsa, Mr. Michael Mouhanna, President, and Mrs. Yvette Mouhanna, Manager, were present.

Mr. McCormack stated the Health Department has no objections. However, the owner must contact the department to complete the food permit application and have the facility inspected prior to opening. If tobacco will be sold, they also need to complete the tobacco permit application. He read the departmental referrals into the record. Mrs. MacLeod, Municipal Finance, reported outstanding Personal Property delinquencies exist for former occupants. Fourzol, LLC has delinquent police detail invoices from FY06. Officer King reported no public safety objection to

the requested Wine & Malt Package Store license as long as the applicant has some type of safe sell training certificate which is current. Mr. Richards reported the use of the premises as a retail Wine & Malt package store is permitted in the B-1 Zone in which it is located. It shall be in accordance

with the Special Permit granted by the Planning Board on August 27, 1992, Case # 92-5-7/20.

Proposed application and plans have been submitted. Accordingly, the proposal conforms to all applicable requirements of the Town's Zoning and Building regulations and the requested license may be granted. Building Permits are required.

Attorney Affsa stated his client has owned the Fox Plaza since 2002 and has since purchased two other plazas. They pay the Town \$72,000 per year in property taxes and are up to date. They will look into the police details bill. Blockbusters went out and they took a huge hit. There have been vacancies the past two years. They have owned other package stores in the Commonwealth as well as Brooklyn, NY without incidents. Mr. Mouhanna is well versed in alcohol sales and no criminal record. He has a family with kids in college. The required legal notice ran in the newspaper and the abutter's notices were mailed. They are seeking to open a package/convenience store within the vacant dentist location.

Chief Grimes asked if the sole purpose of the business would be as a beer and wine location.

Attorney Affsa replied they are also seeking the approval to sell cheese, Danish, coffee, beverages and delicatessen items. They have applied for a Food Vendor license. He presented a proposed interior layout, stating they had submitted a preliminary plan with the original application, as they had an application deadline to meet.

Chief Grimes stated he has concern as to what the layout would be between the liquor and the display of the food items.

Chairman Fryer announced the public hearing for comment.

Mr. Martin Block, Michael's Wine & Spirits at 461 Washington Street, stated there is a lack of distance between his location and the proposed. He has been established as an All Alcoholic Package Store for 23 years. The issuance of the license would be harmful to his business and the area is serving the public convenience with the current businesses in the surrounding area. He cited that the Licensing Board had denied a wine & malt package store for a similar location at 754 Main Street. He stated four businesses within a mile; another wine & malt package store is not necessary. He would hope that the Board would take that into consideration.

Mr. Ratan Lillaney, Broad & Vine Liquors at 141 Broad Street, stated he is located 4 miles from the proposed location. The approval would be a hardship on their store and the business community.

Mrs. Elli Idaris, The Wine Cellar at 791 Broad Street, stated she has been a resident since 1974 and a business owner. She recently opened a beer and wine shop in Jackson Square. There are 9 stores within a 2 mile radius—all liquor stores. She is already suffering with the economy and is opposed

to the addition of another liquor store in the area.

Ms. Caroline Folkins, 16 King Avenue, stated her property abuts the Fox Plaza and she is completely against it. Restrictions were made when the Planning Board originally granted the location. No food establishments were to be at the building. They have had issues throughout the years.

An abutter from King Avenue stated that in 1988 when the plaza was granted there were restrictions of no restaurants at the location. The area has a problem with rats. They do not need another restaurant in the area; this will add to the traffic at an already busy area. Also, having a package store will encourage drinking in the parking lot and bottles being discarded in their yards. He recommended having a security camera in the back alley for public safety.

Mr. McCormack read a letter into the record received from Mr. & Mrs. Ted Hawkes of the Park Avenue Market, supporting Michael's Wine & Spirits objection.

Officer King stated he submitted a no objection based on the background checks of the applicants. He feels the area is already saturated. The application was submitted incremental steps, along with the food vendor and he wasn't sure whether that was the right way to approach it.

Firefighter Justin Myers stated he has inspected the location and the sprinkler system is not compliant. The band aide doesn't work and the situation needs to be rectified.

Mr. Mouhanna replied the sprinkler system is being repaired due to the situation. He understands the necessity for public safety and stated if they lose the building, they'll lose everything. The police detail will be recalled if the license is granted to help the tenant and public safety through traffic.

Solicitor Lane stated the original building was Dwyer's Dairy. Fox Plaza was granted in 1988 with certain restrictions. Since such time they have been modified. When reviewing the case law in granting package store licenses, the Board should consider the number of licenses in the area, whether the public convenience is being met and the appropriateness of the location and public safety issues.

Chief Leary stated he does not feel the location is a necessity for this type of business (Wine & Malt Package Store). He suggested the idea of having a sports equipment consignment store as due to the economy, there is a need for one. He felt a retail store other than a beer and wine package store would be a better fit for the area.

Chairman Fryer stated he doesn't feel a package store is a good idea at the location as the cemetery is directly across the street.

Chief Grimes stated he agreed that the public convenience has been met with three opposing parties present, today. He felt that it wasn't a well thought out application, as they submitted the floor

plan, today, and was more of an act of desperation.

Mr. McCormack mentioned that the floor plans do not specify the location of the coolers. They are not specific enough for approval.

Attorney Affsa stated the plans submitted were hand-drawn and submitted with the original application to meet the deadline. They may be in front of the Board in the near future as they are in search of tenants. He stated his client would like to withdraw the applications without prejudice.

Chief Leary made a MOTION to accept the request to withdraw the Wine & Malt Package Store license application and Food Vendor license application without prejudice. Mr. McCormack seconded. UNANIMOUSLY VOTED

CHAIRMAN'S REPORT

- Meeting Schedule

Mr. McCormack MOTIONED to set the February meeting date as: Tuesday, February 22, 2011 at 1 PM. Chief Leary seconded. UNANIMOUSLY VOTED

NEW/OLD BUSINESS

Mr. McCormack read into the record a letter received from Weymouth Honda in regards to their Class I Auto Dealer license at 875 Washington Street, stating that he anticipates having activity at the site within the end of the calendar year.

Mr. McCormack questioned if the Board should call them in for a discussion.

Solicitor Lane replied it is a question of whether the license is being exercised or not.

Mr. McCormack made a MOTION to send a letter to Mr. Gordon to have him before the Board at their next meeting for a discussion. Chief Leary seconded. UNANIMOUSLY VOTED

ADJOURNMENT

Mr. McCormack made a MOTION to adjourn at 3:05 PM. Chief Leary seconded. UNANIMOUSLY VOTED

Respectfully submitted,

Lisa VanWinkle,
Recording Secretary

BOARD OF LICENSING COMMISSIONERS

Tuesday, January 25, 2011

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Approved:

Date:

Jeffrey E. Richards, C.B.O., Clerk
Director of Municipal Licenses & Inspections