

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

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

Chairman Fryer called the meeting to order at 1 PM.

## **APPROVALS**

- Minutes: September 27, 2011

Mr. Richards made a MOTION to approve the minutes of the September 27, 2011 meeting. Mr. McCormack seconded. SO VOTED (Acting Chief Davis abstained)

PURSUANT TO M.G.L. CHAPTER 138, SECTION 64, LIQUOR VIOLATION HEARING TO CONSIDER MODIFICATION, SUSPENSION, REVOCATION OR CANCELLATION OF THE ALL ALCOHOLIC PACKAGE STORE LICENSE OF **TXK, INC. D/B/A WASHINGTON STREET LIQUOR MART**, 21 WASHINGTON ST.

Attorney John Walker and owner of Washington Street Liquor Mart, Mr. Thao Huynh, were present.

Town Solicitor Lane swore in all testifying parties. He also presented the hearing notice for the record without objection.

Richard Fuller, Lieutenant of the Weymouth Police, Detective Bureau, came forward.

Solicitor Lane asked if he was on duty on the evening of August 31, 2011.

Lt. Fuller replied, yes, that he was the supervisor of the Detective Bureau on the 4 to 12 shift. He summarized his report for the record, stating at approximately 8:40 PM, he observed a Mass State Police Cruiser in Weymouth Landing with a motor vehicle stopped. He pulled over to back up the State Trooper on the stop. The vehicle was stopped directly across from Washington Street Liquor Mart. As he was parked waiting for the vehicle to be towed he observed a Buick LeSabre pass by twice. The vehicle appeared to have four youths in it and slowed down both times as it passed the liquor store. He ran the registration and it came back to 17 year old of Braintree, Shawn Kenney.

Lt. Fuller continued with his report, stating a short time later, he observed Shawn Kenney exit the liquor store carrying alcohol and he lost site of him briefly. However, he was able to locate him on Brookside Road next to the Buick LeSabre with the four youths. He viewed Mr. Kenney handing the alcohol to the youths in the Buick LeSabre. He radioed the Braintree Police to report the situation to have a cruiser report to the location. Mr. Kenney had gotten into his vehicle and driven into Braintree. He approached the Buick LeSabre with the four individuals in it. He identified

himself, informed them that the Braintree Police was on their way. They all told him that they were underaged. The person who had accepted the alcohol from the individual was a 17 year old and said it was his 19 year old brother that had purchased the alcohol, who had a fake id. He asked him to call his brother to ask him to return with his fake id. Officer Jeff Journegan from the Braintree Police arrived.

Lt. Fuller continued with his report, stating they retrieved a bottle of Captain Morgan Spice Rum and a 5 ml bottle of red wine from the trunk of the LeSabre. Shawn Kenney had returned and handed over his fake id, which was a fake New Jersey license, showing a date of birth of 12/10/1988 instead of 12/10/1991. He asked Mr. Kenney if he was asked for an id and he replied that he had purchased alcohol from Washington Street Liquors on several occasions. The only one that had asked him for an id was the owner, who is actually present this evening.

Lt. Fuller said he returned to Washington Street Liquors with the alcohol and the fake id. He spoke to Mr. Huynh who told him that he did ask Mr. Kenney for an id and accepted his fake New Jersey license believing it was real. He asked him if he had attended TIPS training and he stated he did. He explained to him that he is not allowed to accept out of state licenses and he just shrugged his shoulders. He also explained that Mr. Kenney was only 19 years. Mr. Huynh stated he always asked for id when he came in. He showed Mr. Huynh the id, which was poorly laminated.

Lt. Fuller stated the id and alcohol were tagged and turned over to the Weymouth Police Evidence Department. A copy of the report was forwarded to Licensing Officer Brian King.

Solicitor Lane asked in regards to the TIP's training what the valid forms of Mass identification are.

Lt. Fuller replied they are a valid Mass Driver's License; a valid Military ID; a valid Passport; a valid US Passport Card; a Mass Registry of Motor Vehicles Liquor ID Card.

Solicitor Lane questioned to Lt. Fuller even if the id was a genuine New Jersey license and not a fake New Jersey id card, would it be a valid identification under Massachusetts General Law?

Lt. Fuller replied no.

Solicitor Lane asked where Lt. Fuller retrieved the alcohol from.

Lt. Fuller replied the trunk of the black Buick LeSabre registered to Adam Kenney, who is the brother of Shawn Kenney, who had purchased the alcohol.

Solicitor Lane confirmed that Shawn Kenney was the possessor of the fake id.

Lt. Fuller replied yes.

Solicitor Lane asked Lt. Fuller to recollect his conversation with Mr. Kenney in regards to the fake id.

Lt. Fuller replied he asked him for the fake id, of which he handed over to him. He asked Mr. Kenney how he got it and Mr. Kenney stated he went for college orientation and somehow obtained it.

Solicitor Lane asked if Mr. Kenney made any statements as to where he bought it.

Lt. Fuller replied he stated he purchased the alcohol, which was in the trunk of the LeSabre, and he stated he had been at the establishment several times where he showed this fake id. He said the only one that asked for an id was the owner.

Solicitor Lane asked if he had the id with him.

Lt. Fuller presented it showing the information, stating the picture was accurate, other than the date of birth. The lamination was in a poor condition.

Solicitor Lane asked what happened next.

Lt. Fuller stated he went back to the store and identified the owner. He stated he did accept the New Jersey State Driver's License, believing it was real.

Solicitor Lane asked if he would accept the id knowing the acceptable forms of identification per Mass General Law.

Lt. Fuller replied no, it is not included on the list as it was an out of state id.

Solicitor Lane presented the Police Report regarding the incident, with Lt. Fuller's verification, asking that it be entered into the record. Attorney Walker had no objection.

Attorney Walker asked Lt. Fuller if he reviewed the book with the owner showing him a picture of the accurate New Jersey State License.

Lt. Fuller replied yes.

Attorney Walker questioned the appearance of the fake id.

Lt. Fuller stated it appeared accurate comparing to the New Jersey State License.

Attorney Walker asked if the valid forms of id were discussed with his client.

Lt. Fuller replied yes. The TIPS training reviews the valid forms of id as well.

Solicitor Lane stated Lt. Fuller had said the date of birth of Mr. Kenney is 12/10/88 but is shown as 12/10/91 on the id. He asked Lt. Fuller if the appearance matched up with the id.

Lt. Fuller replied it is the same as on the fake id. He went over the specific list of the forms of id with him, stating that is what they are supposed to accept.

Solicitor Lane said where there are no additional testimonies the Board may make a finding.

Attorney Walker stated according to the testimony of Lt. Fuller, the license as presented by the purchaser and the picture on the license was identical to the purchaser. He asked that the Board take judicial notice of the Massachusetts Appeals Court Decision of 1998: Murray Liquors vs. the Alcoholic Beverages Control Commission from MGL Chapter 138, section 34b, which describes what Lt. Fuller said was the acceptable form of license in Massachusetts. It reads section 34b does not in any way infringe upon the right of a holder of a out of state driver's license to drive in Massachusetts nor does the statute prevent anyone from preventing or accepting such a license as proof of identity or the age for the purchase of alcohol. The TIP's training manual provides to the operator of the establishment pictures of every license in the United States. He asked that the Board take into consideration that his client did inquire for the license. He reviewed the license, looked in the book and in turn he also showed Lt. Fuller the book after the incident. He made every effort to determine whether the person was of age to purchase alcohol in the state of Massachusetts. Since that time, his client has made every effort to comply with your requests. He has purchased an identification machine as well. He requested for the leniency of the Board based on such.

Solicitor Lane stated he made an inquiry to the General Counsel of the Alcoholic Beverages Control Commission on the issue whether or not there could be any other forms of identification for purchases of liquor. The interpretation of that was that licenses are issued in accordance with MGL Chapter 90 section A. The presentation by Lt. Fuller noted the poor lamination of the license presented by the under aged person. He suggested there be a finding made that there was or was not a sale of alcohol to an under aged person on August 31, 2011.

Mr. Richards asked Officer King if during the TIP's training they go over the acceptable forms of id.

Officer King said they do and explain under the law if they accept any other form of id and are found to have sold to a minor they have no defense under the law. They have a defense if they accept one of the acceptable forms of id and they turn out to be fraudulent. This is stressed a number of times during the training.

Mr. Richards asked Attorney Walker to explain the section of law he cited.

Attorney Walker replied he would not argue that the statute as it is written says that if one of those forms of identification is presented then it is an absolute defense to the sale of liquor. The Appeals Court clearly states that the statute does not prohibit anyone from presenting or accepting such license as proof of the identity of age of the purchaser of alcohol. The TIPS training manual has pictures of ids from the fifty states. His client did all those things and pointed them out to Lt. Fuller.

Solicitor Lane said the id guide that Attorney Walker is showing today is not from the State of Massachusetts but from some outfit out of Redwood, California. It simply shows formats from all different states as well as providences of Canada. He felt it was not relevant to the hearing today.

Mr. Richards asked if they provide a book at the TIP's training.

Officer King replied they are given the information of a book to purchase. He reminded the Board that they did have a past incident where a fake id was scanned by an identification verification machine, which scanned okay. A company in China provides fake ids that will scan through the machines. At the training they stress to accept a Massachusetts id only; if the person is less than 25 years old they are taking a chance.

Mr. Richards asked Officer King what he thought of the appearance of the id that was presented.

Officer King replied the first thing that drew his attention was that the lamination was bubbly. Whenever there is a disturbance of the coating, it should be a tip off and they should not accept it. The id is similar, accept for two spots of different fonts.

Chairman Fryer asked if the Board members had any other questions. The testimony has been heard. A motion for a finding is in order.

Chief Grimes made a finding that the licensee was responsible for accepting a false form of identification. Based on the TIP's manual in front of him, it is specific in its recommendation and the manual circulating around the room that Attorney Walker presented is not the manual used during the Alcohol Awareness Training, but is from a private enterprise. He agreed with Officer King's assessment that anyone who deals with reviewing licenses for identification purposes that immediately you run your thumb around the license and can feel that the license has been tampered. The testimony of the person involved stated that he had made purchases many times in the past and was only carded by the owner himself. It is a difficult business, but when in doubt the business should error on the side of caution. The out of state id was repeatedly used and should have raised a suspicion.

Chief Grimes made a MOTION of a finding that Washington Street Liquors accepted a false form of identification and sold alcohol to an underaged person. Mr. Richards seconded.

UNANIMOUSLY VOTED

Attorney Walker stated he presented information related to mitigation, and his client has taken every effort to comply. He purchased an identification verification machine as well. He stated not to contradict Chief Grimes, the underaged person said he made several purchases but there was no testimony as to the time involved. His client knows to check every id that comes through the door. He will continue to comply and verify. He asked for the Board's leniency on the matter.

Solicitor Lane stated a three day suspension was served on July 7-9, 2011 for a first offense in relation to an incident (sale to an underaged person) which took place on March 25, 2011. Within the Liquor Violation Guidelines, a second offense is equal to a 3 to 6 day suspension.

Mr. Richards read the criteria of the Liquor Violation Guidelines.

Chairman Fryer stated the license holder has been before the Board before and thought a six day suspension would be in order.

Chief Grimes stated he thought the licensee has made an effort to demonstrate some of the criteria and measures but fell short in accepting the out of state license. He has served the first offense at three days. He recommended a middle of the road sentence for this second offense.

Mr. Richards agreed.

Acting Chief Davis concurred.

Mr. McCormack stated they all agree that underage drinking is a problem. Here they have an establishment who sold alcohol twice within eight months to a minor. He understands that the licensee has purchased some equipment to prevent the future occurrence. He felt a longer suspension would be in order like Chairman Fryer. He would be willing to lessen should another offense come before the Board the third offense be given the maximum. He could go four or five days, if need be.

Mr. Richards made a MOTION for a four day suspension. Acting Chief Davis seconded.  
UNANIMOUSLY VOTED

Solicitor Lane stated per the Liquor Violation Guidelines the suspension would commence on the third Thursday from today on: Thursday, November 10 through Sunday, November 13.

Officer King informed Mr. Huynh the Weymouth Police will pick up the package store license on the evening of November 9, 2011 and the licensee may retrieve it after serving the suspension.

ESTABLISHMENT HAS CLOSED WITHOUT NOTICE TO THE LICENSING BOARD—  
DELIBERATION TO CONSIDER THE SUSPENSION, REVOCATION OR CANCELLATION  
OF THE FOOD VENDOR LICENSE OF JOHN GUILFOY D/B/A COOKOUT EXPRESS, 95-  
99 BRIDGE ST.

Mr. Richards stated there has been no written response from Mr. Guilfoyl; a notice was mailed via Certified Mail on October 26, 2011.

Mr. Richards made a MOTION to cancel the Food Vendor license of John Guilfoyl d/b/a Cookout Express at 95-99 Bridge Street. Mr. McCormack seconded. UNANIMOUSLY VOTED

Mr. McCormack stated this is the second occurrence within two years. He made a MOTION that a license not be issued in the future. Mr. Richards seconded the MOTION. UNANIMOUSLY VOTED

DISCUSSION – QUARTERLY REVIEW – COLONIAL BOWL, 1055 MAIN ST.

Mr. Richards stated that Ms. Burbine is up to date with her payment agreement. He MOTIONED to schedule future review in another quarter. Mr. McCormack seconded. UNANIMOUSLY VOTED

APPLICATION OF **YUMMY LUCKY STAR, INC. D/B/A YUMMY HOUSE**, FOR A FOOD VENDOR LICENSE, 1212 WASHINGTON ST.

Attorney Christopher Coleman and Mr. Yi Qun Huang, President of Yummy Lucky Star, Inc. were present for the hearing.

Mr. Richards said the use of the premises as a retail food establishment at the existing location is permitted in the B-1 Zone in which it exists. Parking is adequate for a take-out only business with no seating. a Certificate of Occupancy is required. He read the referrals into the record, stating 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 and applicable fee. The establishment must be inspected prior to opening. The Municipal Finance Department reported Personal Property Taxes as current. Officer King reported no public safety objection.

Attorney Coleman stated his client has experience as he operated a restaurant in Brockton; same type of operation.

Mr. Richards asked if they were proposing any changes.

Attorney Coleman replied the menu might change slightly.

Mr. Richards made a MOTION of approval. Acting Chief Davis seconded. UNANIMOUSLY VOTED

APPLICATION OF **99 WEST, INC. D/B/A NINETY-NINE RESTAURANT** FOR A CHANGE OF MANAGER ON THEIR ALL ALCOHOLIC RESTAURANT/COMMON VICTUALLER LICENSES, 1094 MAIN ST.

Mr. John O'Connell, proposed manager, was present.

Mr. Richards read the departmental referrals into the record. The Municipal Finance Department reported utility, real estate and personal property taxes as current. Officer King reported no public safety objection to the request for a change of manager. Fire Inspection will be performed for the renewal.

Officer King asked Mr. O'Connell if he was TIP's trained.

Mr. O'Connell replied yes.

Officer King asked that he drop off a copy of his certification at the Police Station.

Mr. Richards made a MOTION of approval. Mr. McCormack seconded. UNANIMOUSLY VOTED

### **CHAIRMAN'S REPORT**

- Meeting Schedule

Mr. Richards made a MOTION to schedule the next meeting for Tuesday, November 29, 2011 at 1 PM. Mr. McCormack seconded. UNANIMOUSLY VOTED

### **NEW/OLD BUSINESS**

- License Renewals to be distributed the first week of November and are due by November 30<sup>th</sup>

Mr. Richards stated the renewals will be distributed in November and are due November 30, 2011. The approvals will be on the December meeting agenda.

- Letter from Mr. Crawford RE: Next Page Café, 550 Broad St.

Mr. Richards stated the letter has been forwarded to Chief Grimes for review.

### **ADJOURNMENT**

Mr. Richards made a MOTION to adjourn at 1:52 PM. Acting Chief Davis seconded. UNANIMOUSLY VOTED

Respectfully submitted,

Lisa VanWinkle,  
Recording Secretary

Approved:

Date:

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