

Minutes of the Board of Licensing Commissioners for their meeting held on Tuesday, March 25, 2008, at the Weymouth Town Hall, Chambers, 75 Middle Street

Attendance: Chairman Franklin Fryer, Town Clerk; Jeffrey Richards, Director of Municipal Licenses & Inspections; Fire Chief Robert Leary; Police Chief James Thomas; Richard Marino, Health Director; Town Solicitor George E. Lane, Jr., Licensing Officer Brian King and Lisa VanWinkle, Secretary

Chairman Fryer called the meeting to order at 2 PM.

Mr. Richards took the Carnival Permits out of order for approval:

APPROVALS

- Carnival Permit: Dean & Flynn d/b/a Fiesta Shows
- One-Day Food Vendor Permit: Dean & Flynn d/b/a Fiesta Shows
- Sunday Entertainment License: Dean & Flynn d/b/a Fiesta Shows

Mrs. Jean Savoy and Mrs. Lee Hultin, Assistants to the Mayor, were present. Mrs. Hultin stated the Town will be hosting the annual "Weymouth Carnival" to be held at the Weymouth High School over school vacation week. The hours of operation are as follows: Wednesday & Thursday: 12 PM – 10:30 PM; Friday & Saturday: 12 PM – 11 PM and Sunday: 12 PM – 8 PM. The approval is for carnival amusements, games and food. Proceeds will help fund Weymouth Day, scheduled for September 27, 2008.

Mr. Richards made a MOTION to approve a Carnival Permit for Dean & Flynn d/b/a Fiesta Shows for the event. Chief Thomas seconded. UNANIMOUSLY VOTED

Mr. Richards made a MOTION to approve a Food Vendor Permit for Dean & Flynn d/b/a Fiesta Shows for the Weymouth Carnival. Chief Thomas seconded. UNANIMOUSLY VOTED

Mr. Richards made a MOTION to approve a Sunday Entertainment License for Dean & Flynn d/b/a Fiesta Shows on April 27, 2008. Chief Thomas seconded. UNANIMOUSLY VOTED

APPLICATION OF NOODLE PLANET, INC. D/B/A NOODLE PLANET FOR A COMMON VICTUALLER LICENSE, 1025 MAIN ST.

Mr. Taweesak Sripam, owner, was present.

Mr. Richards read the departmental referrals into the record. Lt. White reported fire and life safety inspection was attempted on March 24, 2008. They must demonstrate compliance with Fire Prevention Code for approval. The Health Department reported no objection. Officer King reported no public safety objection.

Mr. Sripam stated he has worked with Sweet Lemons and has past restaurant experience. He hopes to take over the Imperial Kitchen at 1025 Main Street.

Mr. Richards made a MOTION of approval for the issuance of a Common Victualler license to Noodle Planet, Inc. Chief Leary seconded. UNANIMOUSLY VOTED

APPLICATION OF FOODMASTER SUPER MARKETS, INC. D/B/A FOODMASTER SUPER MARKETS #11 FOR A WINE & MALT PACKAGE STORE LICENSE TRANSFER, 35 PLEASANT ST.

Attorney Thomas Vangel and Mr. DeJesus, President of Foodmaster Super Markets, Inc. were present.

Mr. Richards read the departmental referrals into the record. Lt. White reported a fire and life inspection was conducted on March 24, 2008; no issues. The Municipal Finance Department reported no outstanding balance. Mr. Kaplan, Health Inspector, reported no objections. Officer King, reported public safety concerns about traffic, the security of the goods from being shop lifted by minors and the security of the checkout system so alcohol would not be able to be sold to minors under the guise of a different UPC code sticker.

Mr. Richards also read a letter of support from The Thomas Tanner Family.

Attorney Vangel stated they are before the Board with a new application for the transfer of the Wine & Malt Package Store license from The Olde Depot General Store, 85 Pond Street, less than a ½ mile from the proposed location. They were formerly before the Board with an application for the transfer of the license from Pizza Plus, Inc. from North Weymouth. Food Master reached an agreement with The Olde Depot General Store as they are closing their business and selling the license. The area will no longer be saturated with package store licenses as this will be a transfer from the same area. The Lee's Beer and Wine Store closed and a new license was issued to another part of town. Attorney Vangel also stated he was made aware that Maxwell's Market & Deli has been closed for three months now; this is another license which may be available. The hearing notice requirement has been met; he submitted an affidavit.

Attorney Vangel stated Food Master Supermarkets also has a package store license in the City of Somerville. Therefore, Mr. DeJesus has the experience to operate a beer and wine license within the supermarket. He understood there would be various comments from the Board as regards to security of the store and Mr. DeJesus would answer them.

Mr. DeJesus addressed the Board's questions regarding security measures that would be in place to prevent the sale of alcohol to underaged customers. He presented floor plans, laying out the cash registers and the secured area for display of beer and wine.

Mr. Richards questioned if they have any unmanned registers (self-service).

Mr. DeJesus replied no.

Chief Thomas after reviewing the plans noted that the area where the beer & wine would be displayed is enclosed.

Chief Leary asked if the clerks need to be of a certain age to sell alcohol.

Chief Thomas replied over 18 years.

Mr. DeJesus stated they have 10 clerks under the age of 18 years. They will not be able to sell. They will have marked registers for food sales only.

Attorney Vangel stated the clerks selling beer & wine will be TIPs Certified. There will be a black light at the designated registers to spot fake ids and they will also have identification machines. Safe guards are in place and employees are required to sign employment agreements noting a termination clause and possible criminal persecution. He submitted a petition including 1,400 signatures of customers wishing to be able to purchase beer & wine from the store. This accounts for the public want and public desire. The license will not increase the traffic in the area, but will actually neutralize by offering "one-stop shopping". Attorney Vangel stated Food Master Supermarket has had a reputable reputation for the past 12 years. They have consistent policies for the sale of alcohol. The package store is allowed by zoning at the location. Mr. DeJesus is a suitable manager. The public convenience and welfare will be served at a grocery store.

Chairman Fryer announced the public hearing for comment.

Attorney Robert Looney came forward and stated he was the attorney of Bailey's Package Store, 74 Pleasant Street. The store is less than 500 feet from their location. Bailey's hires clerks not less than 21 years of age. He noted all of the package stores within two miles in a reply to the convenience factor. He also submitted a petition including 500 signatures against the granting of the license. He reminded the Board that the ballot initiative was not favored by the voters of Massachusetts.

Attorney Vangel replied the ballot initiative was geared towards gas and convenience stores.

Mr. Richards asked for the review of the security system to be in place.

Mr. DeJesus stated the registers would be marked for beer & wine sales only.

The Director of IT from the Somerville store noted the stores are similar. They would have non-designated registers. The UPC monitors alcohol purchases.

Chief Thomas questioned what is to prevent an underaged person from sticking another UPC code on an alcohol product.

Mr. DeJesus offered to have clerks who sell beer & wine be 21 years or older.

The Director of IT stated the flat screen TV would show that Coke was scanned.

Chief Leary asked if the clerk would need to enter the id of the purchaser.

The Director of IT replied yes.

Attorney Looney came forward again and stated the public need is not want.

Chairman Fryer stated they turned down the Brazilian restaurant and he is also not in favor of granting this license. The demand for the license in this particular area of town is not needed.

Mr. Richards reminded the Board that Lee's Beer & Wine is out of business, Maxwell's Market & Deli is closed and The Olde Depot General store is out of the picture.

Attorney Vangel stated their application shouldn't be treated any differently.

Chief Leary stated as a public safety official he can see Chief Thomas' concerns. The saturation factor has changed as issuing the license would not bring an additional license in the area. What concerns him is the security involved with the sale of alcohol. Clerks should be 21 years of age or older. The storage will be locked in the back. No self-service stations. Entering date of birth for everyone is required. He is not in favor of bringing a new license to the area. The proposal is something that the town could bring to the food store.

Mr. Richards made a MOTION, stating the geographic landscape has changed and security plans are in place, to grant the transfer of the Wine & Malt Package Store license from The Olde Depot General Store. Chief Leary seconded. SO VOTED (Chairman Fryer and Mr. Marino abstained and Chief Thomas was opposed).

NBG, INC. D/B/A BASTA BAR & GRILL RE: ANNUAL ENTERTAINMENT LICENSE, 1166 WASHINGTON ST.

Mr. Domenic Silvestro, III, President of NBG, Inc. was present.

Chief Thomas stated they called Mr. Silvestro in as a result of receiving numerous noise complaints of the neighbors. He cited a specific incident on March 1st when the Police Department received a complaint of loud music coming from the establishment. Officer King was on-duty at the time, responded to the call and took a decibel reading of a level over 90. This level is unacceptable and loud. As of January 2008 the Police Department has received numerous calls regarding loud noise, etc. at 1 AM. Chief Thomas stated it has been one continuous nightmare with noise complaints.

Mr. Louis Molinari, 94 Mutton Lane, came forward, stating he abuts the auxiliary parking lot. He said the last 1 ½ year has been a nightmare: patrons urinating on the property, bottles left behind, cars parking on lawns, tearing up the grass; with loud music every night. He specifically cited the bass notes from the music creating a nuisance.

Mr. Richard & Claire Godin, 114 Mutton Lane, also spoke, stating they live 100 yards away and the base beat is obnoxious 7 days per week. They installed new windows and A/C with no relief. This is a quality of life issue.

Mr. Doug McIntire, 94 Mutton Lane, stated they are bombarded by the music coming from across the street. He stated the location needs insulation; there is a lack of sound proofing.

Mr. John Kelly, 94 Mutton Lane, stated he has no objection to someone running a small business, but they need to have some consideration for their neighbors.

Mr. Molinari asked that the music is limited to a certain time of the evening and that sound proofing is installed.

Mr. Silvestro replied to all the comments stating every night he receives complaints of noise. The Mutton Lane neighbors have not met with him. He stated the direct abutters have no issue. He also stated they have the most sound proofing that they have ever had. He said many of the times the police have showed up they haven't reported a noise issue. He has a decibel meter and monitors the noise. He wanted to know what an acceptable level was. He cited that the previous license holders had entertainment licenses as well.

Mr. Marino replied to Mr. Silvestro his inspector established a baseline in the 50's. Three complaints were received at a level beyond what you think is a problem. Noise is continuing after the police leave the premises.

Mr. Richards said another establishment was reviewed by this Board for noise complaints and issued a 6 month review. He suggested that an engineer is hired to perform a study on noise mitigation to solve the problem.

Chief Leary stated asked if the decibel level of 90 was taken at an ambient level or peak.

Mr. Silvestro replied while or after a car went by.

Chief Thomas stated the noise level is an issue affecting the quality of life.

Mrs. Godin stated a lot of people (neighbors) are not here because they work for a living. She gets woken up from the band almost every night.

Officer King said Mr. Silvestro was told to turn down the baseline. The neighborhood is entitled to peaceful enjoyment. It has reached a point that voluntary resolution has gone by. The Board needs to limit, suspend or revoke the entertainment licenses.

Mr. Marino stated the neighbors need to restore their ability to sleep every night. The establishment needs to knock off the noise to allow reasonable quietness. They tried to resolve matters voluntarily, what is the next step?

Officer King questioned if they have a scanner to monitor complaints and turn down the music before the police arrive?

Chief Thomas stated he would like to see the entertainment license revoked as Mr. Silvestro has not been a good neighbor. He hasn't been responsive or cooperative.

Solicitor Lane cited the circumstance when another establishment was brought in for noise issues. The situation was rectified with sound proofing installation and by monitoring the noise level using mechanical equipment.

Mr. Marino stated he didn't have documentation that a violation occurred on dates in question. A nuisance has been established under health laws and Board of Health Regulations. Noise over 10 decibels over background is considered to be a nuisance.

Solicitor Lane said it is possible to measure over a particular period of time other violations did occur.

Mr. Marino replied it is subjective to measurement by human or machine. If the pictures on the walls are vibrating that is considered offensive.

Solicitor Lane stated the Board may compare past complaints with other establishment. They need to examine the parameters.

Chief Thomas stated the quality of life has been affected time and time again; therefore, the license should be revoked.

Officer King said the voluntary compliance did not work; cutting back on the license should be considered. If that doesn't work, ultimately the license would be revoked.

Solicitor Lane stated a study should be performed per Mr. Richards' suggestion.

Chairman Fryer asked for action of the Board.

Chief Thomas made a MOTION to revoke the entertainment licenses. NO SECOND – MOTION FAILED.

Mr. Marino stated license should be suspended to send a message. When the license is reinstated, unannounced inspections will be performed to ensure compliance.

Mr. Marino made a MOTION to suspend the entertainment licenses for one day. NO SECOND – MOTION FAILED.

Mr. Richards stated they aren't using the liquor violation guidelines. He made a subsequent MOTION to suspend the entertainment licenses until an engineer study on noise mitigation is performed to comply with current standards of the Board of Health regulations receiving satisfaction of the Licensing Board. Mr. Marino seconded. SO VOTED (4-1, Chief Thomas opposed)

APPLICATION OF K & S DREIK, INC. D/B/A SAM'S AUTO FOR A CLASS II AUTO DEALER LICENSE, 115 WASHINGTON ST.

Mrs. Michelle Draik, Secretary of K & S Dreik, Inc. was present. She stated they are requesting for the approval of a used car dealer license for 5 vehicles. The auto dealer business is located on a lot with an automobile repair facility.

Mr. Richards reported the use of the premises for retail sales of automobiles is permitted in the B1 Zone in which it is located. The existing parking and repair facilities are adequate for the proposed five vehicles. Accordingly, the application conforms to the Town's Building and Zoning Regulations and therefore, the requested license may be granted. He also read the departmental referrals into the record. Lt. White reported fire and life safety inspection was conducted on March 12, 2008; no issues. The Municipal Finance Department reported outstanding FY 07 personal property taxes as well as real estate taxes for FY08. Mr. McCormack, Health Department, reported Sam's Auto is in good standing; no issues. Officer King reported no public safety objection.

Chairman Fryer announced the public hearing; no comments.

Mr. Richards made a MOTION to approve the Class II Auto Dealer license subject to the approval of the bond. Mr. Marino seconded. UNANIMOUSLY VOTED

APPLICATION OF RAM AUTO SALES, LLC FOR A CLASS II AUTO DEALER LICENSE, 185 WASHINGTON ST.

Mr. Metri A. Metri, owner, was present. He stated he is changing his business to a corporate ownership. He currently has a one-car license.

Mr. Richards stated the use of the premises as retail sales of automobiles is permitted in the B1 Zone in which it is located. The existing parking and repair facilities are adequate for the proposed one vehicle. Accordingly, the application conforms to the Town's Building and Zoning Regulations and therefore, the requested Class II Auto Dealer's license may be granted. He continued to read the departmental reports into the record. Lt. White reported a fire and safety inspection was conducted on March 24, 2008; no issues. The Municipal Finance Department reported no outstanding taxes. Mr. McCormack reported no objections as the Lincoln Square Service Station is in good standing with the Health Department. Officer King reported no public safety objection.

Mr. Richards made a MOTION to approve a Class II Auto Dealer license for one vehicle. Mr. Marino seconded. UNANIMOUSLY VOTED

APPROVALS CONTINUED

- Minutes: February 12, 2008

Mr. Richards made a MOTION for approval. Chief Thomas seconded. UNANIMOUSLY VOTED

- Fundraiser: Annual Poppy Drive – Wessagusset V.F.W. Post #1399

Mr. Richards stated the fundraiser was for the Annual Poppy Drive of the Wessagusset V.F.W. Post #1399 to be able to sell poppies at private locations within the town on May 2, 3, 4, 9, 10, 11, 2008.

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

CHAIRMAN'S REPORT

- Meeting Schedule

Mr. Richards made a MOTION to schedule the next regular meeting for April 15, 2008 at 2 PM, to be held in the Chambers, Weymouth Town Hall. Chief Leary seconded. UNANIMOUSLY VOTED

NEW/OLD BUSINESS

- Outstanding Taxes of License Holders – Colonial Bowl, 1055 Main St.

Mr. Richards noted Ms. Lynne Burbine submitted correspondence stating she was making payments towards the outstanding taxes. The Municipal Finance Department had reported a balance of approximately \$28,000 for FY07 and FY08 real estate taxes.

Solicitor Lane asked that a hearing is scheduled to bring Colonial Bowl in to discuss the payment schedule. They need to be encouraged to pay outstanding debt.

ADJOURNMENT

Mr. Richards made a MOTION to adjourn at 4:26 PM. Chief Leary seconded. UNANIMOUSLY VOTED

Respectfully submitted by Lisa VanWinkle, Recording Secretary