

**MINUTES OF THE PROCEEDINGS OF THE
LICENSE COMMISSION OF THE CITY OF WORCESTER
December 22, 2011**

ESTHER HOWLAND CHAMBER – CITY HALL

Commission Members Present: Peter Lukes, Chair
Karon Shea, Commissioner
Paul Mullan, Commissioner

Staff Present: Joel Fontane, Division of Planning & Regulatory Services
Deborah Steele, Division of Planning & Regulatory Services
Edgar Luna, Division of Planning & Regulatory Services
Jennifer Beaton, Law Department
Lt. James Johnson, Worcester Police Department
Officer Edward Saucier, Worcester Police Department
James Foley, Health Department

REGULAR MEETING (10:00 AM)

CALL TO ORDER:

Chairman Lukes called the meeting to order 10:01 a.m.

MINUTES:

Upon a motion by Chairman Lukes and seconded by Commissioner Shea the Board voted 3-0 to approve the minutes of November 10, 2011.

241 Southbridge Street – AA Brothers Inc dba Emperor’s Club

Petition: Transfer of common victualer all alcoholic license & entertainment license from Premier Club Enterprises

AA Brothers, Incorporated dba Emperor’s Club, 241 Southbridge Street – License Commission meeting – December 22, 2011

PETER LUKES: Unfinished business. AA Brothers, Incorporated dba Emperor’s Club, 241 Southbridge Street. Transfer of common victualer all alcoholic license and entertainment license from Premier Club Enterprises. Good morning.

EVAN LAWSON: Good morning, chairman and members of the Commission. My name is Evan Lawson. I am attorney representing the transferor,

Premier Club. I have spoken with the attorney for the transferee, the proposed transferee but apparently he is not able to be here today. However, the transferee himself is here today. I am sure you will recall there was a fair amount of difficulty with this license and ultimately there was an agreement that was reached that the current owner would not operate the license and would then transfer. This transferee has submitted his application. The transferee is here. He submitted his application with his own attorney. I am here, as I said, there is an agreement with the Board and I'm here to try and implement that agreement. I have been informed that the Board has received communication concerning proposed restrictions on the license. Essentially discussing with the transferee, who obviously can speak for himself but I simply want to point out I would assume that the restrictions on the hours applies to the entertainment license because there is proposed restriction of Noon to 1:45 and of course that would not be consistent with the liquor laws in terms of the alcoholic beverages license which essentially has its own requirements.

PETER LUKES:

We can restrict those hours. I take that wording to mean hours of operation but I will defer to the City Manager's Office.

JOEL FONTANE:

Mr. Chairman that was just pulled from the applicant's application quite frankly and the business plan talked about those hours. We don't have a particular issue with 1:45 it is up to the Board.

Thank you.

EVAN LAWSON:

Well the applicant will have to speak for himself but if the license we are proposing to transfer is 8:00 a.m. to 2:00 a.m. and under section 12 of the liquor control act hours of sales cannot be restricted. Hours of sale cannot be changed. I'm not totally comfortable arguing this point with someone who is not my client but I felt I should make this clear.

PETER LUKES:

Can I ask what the police on this.

ALEX GUARDIOLA:

We want to be able to open serve alcohol at 11:00 a.m. but entertainment part we are okay with.

PETER LUKES:

So 11:00 a.m. to 2:00 a.m.

ALEX GUARDIOLA:

Correct.

EVAN LAWSON:

And then there was proposed requirement that turnstiles be used and I believe that turnstiles are a public safety issue and I'm not sure if they would violate the fire codes but it would certainly impede exiting the building and I don't believe that anybody else uses a turnstile and the final issue is that saving video surveillance for ten days. The current system which I believe is the same system that everybody, same type of system that everybody uses records on a loop so recordings are saved for three to four days but not ten. So to impose this requirement requires changing the system and would not really be consistent with what required of all the other licensees.

PAUL MULLAN: All the other licensees don't have the history. If we want the ten days we can put condition. I also understand you're not their lawyer.

EVAN LAWSON: That's right.

PAUL MULLAN: So how do we debate with you about the conditions would be.

EVAN LAWSON: That's true. You shouldn't. I am simply making a couple of statements in things in conversation with the transferee and as I said he is here and can speak for himself. His lawyer is not coming today as I understand it. So at that point I will simply defer to any questions you have the licensee and have the proposed transferee let him answer them.

PETER LUKES: Okay, just to start this off as I want to get this out of the way first the recommendations by the City Manager and the police department and they talked about the turnstile issue. Is that up for grabs or is that

JOEL FONTANE: Mr. Chairman, in review of the past applications and the past petition of approval there was a reference to turnstiles as a condition of approval and we just clarified what we meant by that and reworded those. So that is something that, it is not at every exit. Certainty, not emergency exits. It is the main entrance. The control point if you will. The idea of counting in and out goes to rated occupancy at the club and to make sure it is managed appropriately.

PETER LUKES: Sure. Okay, I think we are going to try and keep that and incorporate the turnstile language and the video surveillance.

PAUL MULLAN: Could I reference the fact that if the Fire Department comes in and Chief Budd, Chief Dio says no we are going to do that is what is going to have to happen.

PETER LUKES: As long as they maintain.

ALEX GUARDIOLA: The actual capacity issue we are more than willing to adapt to a counting system electronically that way can keep the capacity at correct number in and out. I think the turnstile issue would become some sort of hazard. We would separate both entrance and exits.

PETER LUKES: Well we will keep it in there and if the Fire Department says it is a hazard then it is a hazard. Otherwise, we vote for turnstiles should we approve this. Tell me how you are going to change your security plan and you're going to change your operation so we don't have anything that resembles what we had there prior.

ALEX GUARDIOLA: We are going to hire outside security team that is outside hired from the club inside. They will not be employed by us. We will hire an outside security team that has three to five people at all times not including the police details. We want to ensure the safety of all patrons and employees. We want to make sure that nothing ever occurs like happened before.

PETER LUKES: Okay, if you're outsourcing the security you still have to have control over those people. You are still liable that happens at that club. You're responsible for hiring an adequate number whether three to five or whatever. What if it happens if it becomes inadequate? Do you have people on call?

ALEX GUARDIOLA: Yes, that is one of the agreements we will have with the company. We will make sure at all times we will have an adequate amount of number of employees there.

PETER LUKES: What is the company?

ALEX GUARDIOLA: The company is owned by Fernando Rivera & Valdmir Mero. They do many security details in the City now.

PETER LUKES: Where?

ALEX GUARDIOLA: Jose Murphy's, they do at Funky Murphy's. We got them through asking around.

PETER LUKES: There is something in the security plan that requires that any employee of security have a background check.

ALEX GUARDIOLA: Absolutely.

PETER LUKES: Lieutenant do you feel comfortable with that? You have to do a background check on a third party employee?

LT. JAMES JOHNSON: Sorry?

PETER LUKES: You will have to do background checks.

LT. JAMES JOHNSON: That is part of what we had already spoken about is back grounding. Just like we do a manager or any disclosed party in the organization. We are going to do the same thing for the security staff. So they are going have to follow the same guidelines. There are a lot of stringent guidelines on that.

PETER LUKES: So security is from third party so you may have to go to a different company. What happens if approve security person A and then security person B and C show up.

LT. JAMES JOHNSON: Then it would be a violation and obviously as the owner he be in violation.

ALEX GUARDIOLA: The only people that will be working will have a cori check first.

LT. JAMES JOHNSON: You have to make sure of that. I understand that your saying that it is a third party and all of sudden they send a new whole new crew in. That whole new crew shows up and we show up and we are going to be around anyway you're in violation for the three people that are working there because they weren't back grounded by us just like the organizational background. That could be an issue with third party I understand.

PETER LUKES: Questions?

KARON SHEA: None.

PAUL MULLAN: Couple questions. On site manager at all times?

ALEX GUARDIOLA: Yes.

PAUL MULLAN: All hours of operations. So if Lieutenant shows up and says "who is in charge here" they are going to know exactly who that person is they are not going to have to wait for four hours to find out.

Take me through. You don't have counsel here. Take me through the financing.

ALEX GUARDIOLA: We put in \$125,000 and we financed the other amount.

PAUL MULLAN: So this is a five million dollar deal? Total price?

ALEX GUARDIOLA: 5.5.

PAUL MULLAN: And \$125,000 of this is cash that you are paying?

ALEX GUARDIOLA: Yes.

PAUL MULLAN: You're financing the rest of it? It is five and half million back to the seller?

ALEX GUARDIOLA: Yes.

PAUL MULLAN: I going to tell you I'm having real problem with this. If I had a real estate client that was buying a house I wouldn't let them buy that deal because I don't want to get stuck with this again and if this happens, what happens if you miss two payments? What are the terms? What is the monthly payment of 5.5 million dollars?

ALEX GUARDIOLA: \$50,000

PAUL MULLAN: Is that on a thirty year note?

ALEX GUARDIOLA: No, seven years.

PAUL MULLAN: Seven years. What is the interest?

ALEX GUARDIOLA: 3.9

PAUL MULLAN: 3.9, \$50,000 and you're in default in how many payments?

ALEX GUARDIOLA: One I believe.

PAUL MULLAN: So it all reverts back to them? City of Worcester is back in this situation and holding this license.

EVAN LAWSON: Part of the agreement provides that the current licensee will never operate this business.

PAUL MULLAN: But that is no guarantee to us.

EVAN LAWSON: Well, it is guarantee he won't operate the business.

PAUL MULLAN: Well, guarantee they wouldn't get a liquor license.

EVAN LAWSON: So major part of this is the real estate. The sale of the real estate. I think it has been made clear that the current licensee will never operate this operation again.

PAUL MULLAN: I just want it clear when this thing comes down to a vote I don't know how I'm going to vote. I'm very concerned. I don't think this a good deal. I am very concerned in March we are going to have this back. The numbers are too big.

PETER LUKES: I have to agree with Commissioner Mullan in the past we have required that the new licensee taking over from a licensee who had absolute terrible past there was no connection and there would be no financial interest at all so they have to go to a regular bank or have to go to another person for the loan. That separation would guarantee there be no ownership or no control and one month in default suddenly we got someone hanging over our heads who frankly this city doesn't want to do business with any capacity ever again so I have serious problem with the financing as well and with potential control of ownership.

KARON SHEA: I also do too. We know past and that is concern. The numbers are there and are large and I don't know how personally can do that.

ALEX GUARDIOLA: We can personally guarantee with other businesses. We have jewelry stores.

KARON SHEA: This is new to us now.

ALEX GUARDIOLA: It is going to be guaranteed with other business.

PETER LUKES: But is it's kinda overwhelming if the prior owner is still maintaining. I have personally have biggest problem because of the agreement. You are taking an operation that had one of the most embarrassing moments, illegal, disgusting moments for the city and for any licensee in the city in recent history. So with that we are extremely cautious and we want to move forward making sure that those prior don't profit from their bad behavior. Don't maintain any control because of the incredibly bad behavior and lack of judgment and I think that is an important aspect.

PETER LUKES: Anything else?

EVAN LAWSON: I would just say that the largest part of the financing is the real estate financing. So you wouldn't be dealing with the prior

PETER LUKES: We wouldn't have to deal with him in person or paper but I think our concern is that we may have to deal with him in the background which would be a crucial mistake. That is my issue.

PETER LUKES: Anything else? Move the motion.

WILLIAM BREAULT: Any public comment?

PETER LUKES: Sorry, Billy I didn't see your hand.

WILLIAM BREAULT: William Breault, Main South Public Safety, Worcester resident, Hathaway Street. I not really here on this issue but I'm going to speak. A new group is being formed on economic development, stakeholders in the community are going to be invested in that area in economic development, public safety and some other issues which I can speak on but one of the properties abuts the potential new owners. I'm sitting there and I'm hearing a lot about money. The lawyer that does not represent them so not sure about that but the new owners are putting up a lot of money and I did read the article. It has been well publicized what happen there but something brought up the parking lot what happen there several years back some activity in the parking lot led to a shooting. Individual shooting, not a bad shot, two of the bullets wound up in the South fire station. It is well known the history prior to the incident that closed them of cocaine distribution within that club. We are going to be working there and I will be there in a much as necessary because of housing that is going in there and economic development and I will very much be a part of that so whatever you going to do the parking lot is a concern and there must be a lot of money in that business to put up five million dollars but I hope it runs well but past history will show it did had a lot of problems and a lot of problems did not get publicized. The stakeholders

have a vested interest in that area and that abuts that property.
Thank you for the opportunity to be heard Mr. Chairman.

PETER LUKES: Thank you. I appreciate the comments. Just as an aside part of the security plan would be video monitoring of the parking lot twenty four hours day, seven days a week and parking areas would be equipped with sufficient lighting to allow effective video surveillance of the entire parking area along with several other video surveillance issues. Just for your edification. Is there anyone else who like to speak on this issue for or against?

JOEL FONTANE: I have one correction to note. Item one B, I in the memo from me to the Commission it should say Massachusetts Driver's license or other valid state license. Thank you Mr. Chairman.

PETER LUKES: We have heard all the comments we are going to hear we are going to vote to transfer the common victualer all alcohol license for Premier Club Enterprises, to AA Brothers.

KARON SHEA: I would like to make a motion to disapprove.

PETER LUKES: Okay, make a motion for a transfer.

KARON SHEA: Okay.

DEBORAH STEELE: Karon Shea?

KARON SHEA: No.

DEBORAH STEELE: Paul Mullan?

PAUL MULLAN: No.

DEBORAH STEELE: Peter Lukes?

PETER LUKES: No, motion fails.

EXHIBIT: Application for common victualer all alcohol & entertainment license. Dated November 21, 2011 and received on November 23, 2011.

One Einhorn Road – Yarock Memorial Housing Inc
Item continued until the January 5, 2012 License Commission meeting.

Petition: Request for lodging house license

New Business:

446 Main Street – Eric's Lapatisserie

Petition: Request for common victualer license

Eric Jasmin appeared on behalf of application. Establishment will be located at 446 Main Street and serve food only.

Upon motion by Chairman Lukes and seconded by Commissioner Shea the Commission voted 3-0 to approve a common victualer license for Eric's Lapatisserie, 446 Main Street.

EXHIBIT: Application for a common victualer license, dated on December 14, 2011 and dated December 14, 2011.

75 Maywood Street – Kyriakos Kozoukas

Petition: Request for common victualer license at Pizza & Pasta Inc dba Oreganos Italian Pizzeria

Kyriakos Kozoukas appeared on behalf of application. He stated that establishment will serve pizza and subs and that he has operated similar establishments in the state.

Upon a motion by Chairman Lukes and seconded by Commissioner Shea the Commission voted 3-0 to approve a common victualer license for Pizza & Pasta, Inc., 75 Maywood Street.

EXHIBIT: Application for common victualer license dated December 8, 2011 and received on December 8, 2011.

93 Highland Street – Eva Postol

Petition: Request for common victualer license at Boomers Sub & Deli

Eva Postol appeared on behalf of application. She stated she has been working at establishment and will now be taking over and running the business.

Upon a motion by Chairman Lukes and seconded by Commissioner Shea the Commission voted 3-0 to approve a common victualer license at Boomers Sub & Deli.

EXHIBIT: Application for common victualer license, dated December 16, 2011 and received December 16, 2011.

270-272 Mill Street – Ken Chin’s

Petition: Request for change of manager to Robert Chin and change of stock

Robert Chin appeared on behalf of application. He stated will be now be managing the establishment.

Upon a motion by Chairman Lukes and seconded by Commissioner Shea the Commission voted 3-0 to approve the change of manager and change of stock for Ken’s Chin’s.

EXHIBIT: Application for change of stock/change of manager dated December 2, 2011 and received on December 5, 2011.

27 Pleasant Street – Roland Georges

Petition: Request for establishment to be allowed to be 18+

Roland Georges & Andre Mikhail appeared on behalf of petition.

Mr. Georges stated that since they opened six months ago there have been no issues at establishment and they would like restriction of only allowing 21 and older lifted as it is restricting their business.

Lt. Johnson stated there have been no issues at establishment but he is not in support of 18+.

Mr. Lukes stated he appreciated the efforts by establishment but would not be willing to allow 18+ seven nights a week at this time.

Mr. Lukes stated he be willing to see establishment on a trial basis offer 18+ on one night a week.

Commissioner Mullan and Commissioner Shea were in agreement that a one night trial period for establishment would be best at this time and that after a few months establishment could come back and request to expand to other nights if there are not problems.

Upon a roll call the Commission voted 3-0 to allow International Lounge – 27 Pleasant Street to be 18+ on Thursday evenings.

EXHIBIT: Email from Roland Georges received on November 30, 2011.

693-701 Main Street – South Middlesex Opportunity Council

Petition: Request for lodging house license

Charles Gagnon, Jayde Campbell, Ricardo Rivera appeared on behalf of South Middlesex Opportunity Council (SMOC)

Mr. Gagnon stated that the application is request to renew the lodging house at 693-701 Main Street. The license was not renewed in 2010 as location was going to be closed but SMOC was forced to leave 12 Queen Street where it had been operated by Community Healthlink since January 31.

Mr. Gagnon stated that they will reduce the number of clients by controlling both who gets in and where they will go for new housing.

William Breault spoke in opposition to re-opening the location at 701 Main Street.

Jo Hart stated she had concerns as there was no plan when PIP Shelter was closed.

Paul Lenkarski, an abutter, to the property an a lodging house owner expressed concerns that SMOC had already been operating and does not have a license.

Jacqueline Vachon-Jackson from the City's Economic Development Office stated that the city is requesting that license be issued for 701 Main Street for 88 beds to avoid putting 50 people out on the street as winter approaches.

Ms. Jackson stated that after dealing with immediate issue the city will focus on opening the new assessment center at Dudley Place on Jacques Avenue.

Mr. Lukes expressed concerns that SMOC had already begun operation at 701 Main Street and did not think it was fair to the public to break promise that 701 Main Street would not be operated as a lodging house again.

Karon Shea expressed similar concerns that location was already in operation without a license.

Upon a roll call the Commission voted 2-0, Chairman Lukes voting against to issue a lodging house license for 701 Main Street.

EXHIBIT: Application for lodging house dated December 6, 2011 and received on December 6, 2011.

Hearings:

97 Millbury Street – Café Neo

Violations of Rules #13, #14, M.G.L. c. 138 §69

Lt. James Johnson presented the following report:

On October 1, 2011, Officer Nate LeFleche was in a marked police vehicle when he was flagged down by the bouncer at Café Neo, 97 Millbury Street. Officer Edward Saucier was in area and responded to assist Officer LeFleche.

The bouncer explained to the two officers that a female came into the Café Neo thirty minutes prior, became intoxicated, started to expose herself and became assaultive when she was asked to leave.

Officers asked the bouncer how much the female had to drink in the bar and he informed the Officers that she was already drunk before he let her in and that after a few drinks at Café Neo she started exposing herself by lifting up her shirt.

The Officers observed the intoxicated female. She appeared unsteady on her feet and slurred her words when she speaking with the Officers. She told the Officers she was drinking inside Café Neo before she was thrown out. The Officers called a taxicab for the female to take her home.

The Officers spoke again with the bouncer and explained that it was against regulations to serve intoxicated person. The bouncer began to recant his statements to the police stating he did not did not say the female was intoxicated before she entered the premises and that she did not drink on the licensed premises.

Peter Tsigas testified that he knew the woman and she had Parkinson's disease and that is why she was unsteady on her feet.

Mr. Tsigas testified that woman did not drink any alcohol on premises and only had cranberry juice but when she started to become disruptive he asked her to leave and told the bouncer not to allow her back in.

Mr. Grudzien testified that the woman appeared unstable to him but he was unaware that she had Parkinson's disease and that Mr. Tsigas and told him not to allow woman back into the bar.

Officer LaFleche testified that when he responded to the incident that the woman in question was unsteady on her feet and was slurring her words.

Upon a roll call the Commission voted 3-0 that violation had occurred.

Upon a roll call the Commission voted the following suspension:

Two day suspended suspension from prior violation to be served.

Additional three day suspended suspension.

EXHIBIT: Police Report dated October 1, 2011.

41 Pleasant Street – City Instyle Inc
Violations of Rule #14, M.G.L. c. 138, §34

Item continued until January 5, 2012 License Commission meeting

EXHIBIT: Police report dated December 2, 2011.

Other Business:

ABCC Communication: Mixers Cocktail-

Filed

MEETING ADJOURNMENT:

Upon a motion by Chairman Lukes and seconded by Commissioner Shea the Commission adjourned the meeting at 11:20 a.m.