

MINUTES OF THE PROCEEDINGS OF THE
LICENSE COMMISSION OF THE CITY OF WORCESTER
MARCH 20, 2014

ESTHER HOWLAND CHAMBERS

Commission Members Present: Karon Shea, Chairperson
Paul Mullan, Commissioner
Anthony Salvidio, Commissioner

Commission Members Absent:

Staff Present: Steve Rolle, Planning & Regulatory Services
Deborah Steele, Planning & Regulatory Services
Lt. James Johnson, Worcester Police Department
Officer Edward Saucier, Worcester Police Department
Officer Mark Jolin, Worcester Police Department
Alexandra Haralambous, Law Department
James Foley, Inspectional Services

Call to Order

Approval of the Minutes – 3-6-2014- Upon a motion the Commission voted 3-0 to approve the minutes of March 6, 2014.

Unfinished Business

New Business

One Day Liquor & Entertainment Requests:

Petition: Request for one day liquor licenses – April 14, 2014, 3:30 p.m.- 5:00 p.m.,
May 9, 2014, 4:30 p.m. – 7:30 p.m., May 8, 2014, 4:00 p.m.-7:00 p.m.-

Petitioner: Chartwells, 25 Foster Street

Kristi DeCisero appeared on behalf of the applications. She stated these are for function that will be held at Massachusetts Pharmacy College.

Upon a motion the Commission voted 3-0 to approve the three one day special licenses.

Exhibit A: Applications for one day liquor license received March 27, 2014 and dated March 27, 2014.

Petition: Request for one day liquor license – March 29, 2014 –

Petitioner: St. Peter-Marian Central Catholic Jr-Sr High School-

Peter Jones appeared on behalf of the application. He stated this is for a one day license for a fundraiser.

Upon a motion by Commissioner Mullan and seconded by Commissioner Salvidio the Commission voted 3-0 to approve the one day liquor license.

Exhibit A: Application for one day liquor license received March 4, 2014 and dated March 4, 2014

Petition: Request for nine foot pool table

Petitioner: Hoang Gia Place, 179 Millbury Street

No one appeared for item. Item held.

Exhibit A: Application for pool table received February 26, 2014 and dated February 26, 2014.

Common Victualer – Food Only:

Petition: Request for common victualer license

Petitioner: Southern Style Bar-Be-Que, 610 Lincoln Street

Stephen Ventola appeared on behalf of the application. He stated he is taking over an existing barbecue place.

Upon a motion by Commissioner Mullan and seconded by Commissioner Salvidio the Commission voted 3-0 to approve the common victualer license.

Exhibit A: Application for common victualer license received on February 24, 2014 and dated February 24, 2014.

Petition: Request for common victualer license

Petitioner: Simmy's Jimmies, 1027 Main Street

Thomas Simulis appeared on behalf of the application. He stated he will be opening an ice cream shop which will be in front of his existing plumbing business.

Upon a motion by Commissioner Mullan and seconded by Commissioner Salvidio the Commission voted 3-0 to approve the common victualer license.

Exhibit A: Application for common victualer license received March 4, 2014 and dated March 4, 2014.

Petition: Request for common victualer license-

Petitioner: Greendale Pizza, 414 West Boylston Street

Petition: Request for common victualer license
Elion Qendro appeared on behalf of the application. He stated he is going into this business with his brother who is currently operating the establishment.

Upon a motion by Commissioner Salvidio the Commission voted 3-0 to approve the common victualer license for Greendale Pizza.

Exhibit A: Application for common victualer license received March 14, 2014 and dated March 14, 2014.

Petitioner: S&A Mini Mart, 97 Ward Street

Petition: Request for common victualer license

Vijay Patel appeared on behalf of the application. He stated this is for a convenience store.

Upon a motion by Commissioner Mullan and seconded by Commissioner Salvidio the Commission voted 3-0 to approve the common victualer license.

Exhibit A: Application for common victualer license received on March 3, 2014 and dated March 3, 2014.

Alcohol & Entertainment Permit Applications:

Petition: Request for transfer of package store all alcohol from Milzan, Inc, dba Millbury
Street liquors change of location to 72 Pullman Street

Petitioner: Price Chopper of Operating Company of Massachusetts, Inc.

MARCH 20, 2014 LICENSE COMMISSION HEARING – PRICE CHOPPER, 72 PULLMAN STREET

ATTORNEY NEIL MOODY: Good morning Madam Chair, Commissioners, Neil Moody, with Price Chopper Operating Company of Massachusetts. Commissioners as you are aware and had a chance to review the summary memorandum and I won't belay you with a lot issues you are already aware of. In summary this is the transfer of existing license. It is not a new license with the city. A full liquor license from Milzan, Inc. doing business as Millbury Street Liquors to the Price Chopper on Pullman Street. I am here with several members of Price Chopper staff are available for additional questions regarding operations which currently hold a beer and license. Mr. Robert Hewitt is the

director of Price Chopper Operating Company. Mr. Robert Murphy who is the store manager and Kevin Schulke who is knowledgeable regarding Price Chopper's alcoholic beverages business. Price Chopper has five licenses currently in the Commonwealth including three full liquor licenses so it is not new to this business and as you know this is the second time that this issue has been before this Commission. Again, this is summarizing the memorandum but I would like to point out one important factor. The first time this was heard in January of 2013 the Commissioner, the Commission issued a two part decision. It approved the transfer of the license to Price Chopper unanimously so there was no issue with Price Chopper's suitability to hold a full alcoholic beverage license and think that Price Chopper was subsequently granted a beer and wine license for this location. The issue that was, my interpretation of the denial of the license at that time was based on location and that is the issue that was reviewed by the Alcoholic Beverages Control Commission and in that regard they overruled this Commission and ruled that this was a suitable location. I know there is a lot of, in addition to the density, there is a lot of complements that go into suitable location. There has been some media coverage of the matter. The memorandum by the Division of Planning & Regulatory Services which was submitted with the initial application did not find that this location was not a suitable location and with all regards found that Price Chopper was a suitable applicant for a full liquor license. I would also point out that Price Chopper with the initial application submitted a petition with 2,000 signatures of Worcester residents in support of this, of this application. So there are other stakeholders involved who favor this application who may not be present today or able to speak today. Lastly, the memorandum prepared by the Commission for today notes that competition is not factor, a suitable factor you can consider in these types of decision and I will point out that the recently the A.B.C.C. echoed that in a case that just came out this week involving a proposed license transfer in the city of Chicopee in where that the city's denial of existing license on Memorial Drive to the BJ's located on the same street was denied by the Commission but subsequently by the City Commission but subsequently that decision was disapproved by the A.B.C.C. and the A.B.C.C. specifically noted in that decision that the issue of competition is one that should not be considered in determining whether or not a license should be granted or transfer. I know the Commission is aware of that and don't mean to

PAUL MULLAN: What is the name of the case and the date that the A.B.C.C. issued that?

ATTORNEY NEIL MOODY: This was issued March 18, this year. It is Moremax Corporation dba BJ's Wholesale. Moremax.

ANTHONY SALVIDIO: Counselor, do you have a copy for us?

ATTORNEY NEIL MOODY: I do. Lastly, I also have a copy of the signed petition signed by both parties. Thank you.

PAUL MULLAN: Counsel, before you disappear. Tell me. We have all been through the A.B.C.C. Take me through the Ballarin issues since they said we didn't address them the first time. I would state that I was under an assumption that I had no evidence that traffic was an issue, parking was not issue, noise wasn't an issue and we didn't specifically go to the records for those issues but I want to

make sure that we have a full record of it so whatever ends up happening. So take me through those factors. Just to present your case.

ATTORNEY NEIL MOODY: Of course, Ballarin of course refers to the case of Ballarin vs the Board of Boston and it is the controlling case in the question and also cited in the city's memorandum, it is an appeal course case. There are seven criteria that are examined in the Ballarin standard. The first is suitability of a particular location and that issue I was speaking to and there is a lot of factor to give weight to fact specific standard in this regard I would point out the DPRS memo did imply that this was a suitable location as noted there was A. A low concentration of licensees in this area. B. This Price Chopper is located in an industrial park and is not in close proximity to residential uses and at the time of time of the application there were no other package store licenses within a one mile radius. Now, KJ Barron's is approximately half a mile from the Price Chopper location. That is the only other full licensee in this area. I did bring a copy of the DPRS map that they prepared if you want to review that at this time.

PAUL MULLAN: No, we have one right here.

DEBORAH STEELE: That is one from last January.

ANTHONY SALVIDIO: Counselor, I just want to ask you one question.

ATTORNEY NEIL MOODY: Sure.

ANTHONY SALVIDIO: The memo from the city is just an advisory memo. It holds no weight with the Commission.

ATTORNEY NEIL MOODY: I understand.

ANTHONY SALVIDIO: So your speaking of the city's findings as if they are our findings but

ATTORNEY NEIL MOODY: Excuse me if I mis-spoke. I don't want to repeat a standard that the Commission's is already aware of and waste your time. In other words, I didn't want, I found the memo very helpful myself because it lays out the issue itself. I am not moving to have it entered into the record. Not certainly

ANTHONY SALVIDIO: And I want to correct something on the A.B.C.C. It is not an over ruling it is a remand to us. It is hearing de novo in your case.

ATTORNEY NEIL MOODY: It is a recommendation.

ANTHONY SALVIDIO: It is a recommendation. It bears no weight on our ability to make a decision or a finding.

ATTORNEY NEIL MOODY: I agree. With regard to the other Ballarin factors, the next one is view of the inhabitants and again I would point to the petition that was submitted with the initial application which contains 2,000 signatures and I believe that already has been entered into the record. Traffic I would turn again to the DPRS report that noted that the parking situation complied

with the zoning requirements in the city and there were no traffic concerns. The next Ballarin factor, the review memorandum, the DPRS memorandum again noted that this Price Chopper location is an industrial park and not in close proximity to residential area where noise would be issue. Regarding the size of the licensed premises the current beer and wine license is licensed for 1,500 SF floor space, 100 SF, storage space. If this requested is granted Price Chopper would be asking for and additional floor space, I believe 2,200 SF and 250 in addition to what they already have for storage for the spirits. We also have a new floor plan that we would be glad to review now or Mr. Murphy can go over.

PAUL MULLAN: Right now, 1,500 SF and 100 SF?

ATTORNEY NEIL MOODY: Correct.

PAUL MULLAN: Are you looking for, if this passes, are you looking for an additional 2,200 on top of that?

ATTORNEY NEIL MOODY: No. Total in line with

PAUL MULLAN: No, and additional 100 for storage, so 2,500 and 200 for storage.

ATTORNEY NEIL MOODY: License Premises in square footage

PAUL MULLAN: The 200, and maybe Mr. Murphy has to answer, the 100 you have now that is all in the back? That is how all that was counted? The 1,500 was the display area behind the pharmacy and then behind the counter and the coolers but the 100 is in the back?

BOB MURPHY: Yes.

PAUL MULLAN: So it would be 2,200 for the display area and the coolers and then 200 in the back if that goes. Thank you. I'm sorry council. Go ahead.

ANTHONY SALVIDIO: Counsel when you say in line with. In line with what?

ATTORNEY NEIL MOODY: Well, that some data for square footage of some of the competitors.

ANTHONY SALVIDIO: What are they?

ATTORNEY NEIL MOODY: I will read to you the right now, I believe we go this from Miss Steele, I don't know if this is total space but Greendale is 5,192, KJ Baron's, is 3,431, Austin is a large facility, I have them listed as almost 75,000 SF. O'Hara, 1900 selling floor, 300 storage, Brattle, 1960 floor, 362 storage and Valley I have total # of 11,000 and Lincoln 1,700 and I know that is not all of the competitors but that is ones we have.

ANTHONY SALVIDIO: So you are going to run a competitive size liquor store within inside the market?

ATTORNEY NEIL MOODY: Within the market, with in our own.

ANTHONY SALVIDIO: Basically, you want a mini liquor store within the market.

ATTORNEY NEIL MOODY: The next Ballarin factor is the sort of operation and I would point out again that Price Chopper is an experience operator. It is experienced all alcohol operator as well. The last Ballarin factor pertains to the reputation of the applicant. There was no issue in the DPRS memo and I don't believe there was any objection by the police department at the time of the first hearing and again I would point out that the petition and the fact that Price Chopper has operated five stores in the City, has had a presence in the City of a long time and employees many Worcester residents and many shop there as well so I believe that would be the reputation criteria.

PAUL MULLAN: Thank you for taking us through the Ballarin case. Obviously, we have to address those issues or at least have them on the record your presentation of them. My question to you based on what you just told us is I have a different take of what they mean by sort of operation. I think that the presentation that you just made well all absolutely true and I haven't heard any at last hearing, haven't heard any objection to that type, the reputation, five licenses in the state, a year operation, we have had no complaints, the police have been there, the Commissioners have been there. All those things and I haven't had any problems with that as far as reputation but sort of operation and I have gone on and tried to look at A.B.C.C. decision for what that means as I don't think Ballarin defines that even though it goes out of its way to mis-define public need but sort of operation tell me because I see Price Chopper as a sort of operation as a supermarket that sells milk, groceries and meat. Not a package store and I need to be comfortable if I did vote on this issue I need to be comfortable with why we should determine that Price Chopper, the supermarket, should be in the business of running the type of package store operation that the Commonwealth has had for the last 100 years.

ATTORNEY NEIL MOODY: I would respectfully reply that under the, the way that the Section 15, if you will has evolved, it has encompassed just your traditional package store so we now have wholesale clubs such as BJ's, or supermarkets such as Price Chopper are allowed to expand what they are offering to include more than milk, bread and meat and of course they are still offering those as well. The purpose, one of the purposes, certainly one of the purposes from Price Chopper's perspective is more convenience to its customers so they have one stop shopping availability.

ANTHONY SALVIDIO: Can I stop you right there. Counsel is what you are saying is the use your proposing for full alcohol license is ancillary to the food, milk, bread and all the other things. It really not your intent to be a liquor store.

ATTORNEY NEIL MOODY: It not our intent to be destination liquor store and again I will speak to competition a little bit. Price Chopper is not offering the type of service and expertise that a full service liquor store would offer.

ANTHONY SALVIDIO: Such as?

ATTORNEY NEIL MOODY: Well,

ANTHONY SALVIDIO: Let's go through them.

ATTORNEY NEIL MOODY: Such as you won't get wine recommendations from Price Chopper.

ANTHONY SALVIDIO: You are not going to have any cards that say this is 91.

ATTORNEY NEIL MOODY: No personal wine recommendations. You won't get to buy smaller bottles of spirits from Price Chopper. Not selling less than .75 liters. It is more again, I would turn, I would characterize it more as a one stop convenience for the customers not intended or wouldn't be successful and not intended to draw away customer who wants to go to a specific liquor store because there is, people work there will provide them information and talk with different brands to they like to try. Again I think ancillary is fair term. It is shopping experience that is ancillary to their original mission

ANTHONY SALVIDIO: Again, to complement what their traditional mission was. Would you say wine and beer would suffice and wine tends to be the major complement to the food and hard liquor is a different type of business?

ATTORNEY NEIL MOODY: I would respectfully not agree with that. I would agree that wine and beer, I think throughout typically beer and wine is 70% of sale and I think that is true of supermarkets as well. So I think the addition of spirits is an additional complement but is not intended to change the essential character of the store. If you are looking to the marketing and that is my understanding.

ANTHONY SALVIDIO: Again, I think this all goes to appropriateness.

KARON SHEA: And you're saying it is more of a convenience than a need.

ATTORNEY NEIL MOODY: Well, I think it is both. I would say it's both.

ANTHONY SALVIDIO: How do you distinguish the two?

ATTORNEY NEIL MOODY: It an (inaudible) standard for sure and I know there was some discussion of this at the A.B.C.C. hearing as well. A lot of it has to do with customer base and again customer relationship and their commitment to a local package store and I don't think Price Chopper could take that business away. Price Chopper is offering a one time shopping experience for people who want to pick up a glass of wine or bottle of wine for a holiday gathering or something so it offers both convenience and there is a need because those folks may not

ANTHONY SALVIDIO: I would say a pairing perhaps because the culinary definition is wine pairing goes with food.

ATTORNEY NEIL MOODY: Thank you.

ANTHONY SALVIDIO: Spirits don't seem to fit into that but go back to your question. I'm sorry. I keep interrupting.

PAUL MULLAN: No, that fine because I actually want to move on to that as I'm sure we are going to have a lot of that but while we have counsel here I would like to raise one other issue that is very

important to me. Let's talk about security. I have been to your store many times just to check this situation out. It helps that I live on Burncoat Street. So it right there. Price Chopper, maybe Mr. Murphy has to answer these questions as he would have more of the information and I know he has seen me there when I go up and down. I go into Price Chopper and right in front of me is section designation to pharmacy.

BOB MURPHY: Correct.

PAUL MULLAN: To the immediate left that there is the bagel and coffee and to the right of that is the pizza section, pizza and chicken. I go all the way over to where we have the coolers where you have the beer and wine now and you have a floral section. From what I can tell, pharmacy has it owns designated area, geographically set up separately so that the aisles form right around it. Almost island like and it has a register. There are people there, pharmacists I am assuming but also staff and a register. The bagel, coffee designated separate area but it doesn't have its own register, correct? Does it?

BOB MURPHY: It does not.

PAUL MULLAN: Does not, the pizza, chicken area has its own people working on the register and cooking and they have separate register and the floral has a separate person in a designated area with its own register, correct? Now I know those probably weren't your decisions those came from corporate and that is part of their plan, floor plan and all that but would you agree with me that those things are separate areas and are separate registers so that the public can be served by that designated person? That the area can be addressed so people do not have to wait to buy their pizza. They can come in. Get that and move out and for security reasons because they have a specific type of product that your are selling whether it be a pharmacy issue or the pizza, chicken thing or the flowers. So there is convenience for the customer and there is a sense of security for the store. Would you agree with me on that?

BOB MURPHY: It is not just for security but for convenience so people can get flowers and milk at that register.

ANTHONY SALVIDIO: What about the pharmacy?

BOB MURPHY: Pharmacy is only for the pharmacy. I believe that must be due state law.

PAUL MULLAN: But people don't, in the years that you have been up there on Pullman Street, people don't go to the floral area register with a shopping cart and then buy some tulips. If they are just going to get tulips they would go to that register and if they are going to get tulips and a cart full of stuff they would go to the regular lines, correct?

BOB MURPHY: Right.

PAUL MULLAN: Now, tell me this as far as the operation but we haven't seen your monitors or anything. I know that the store is heavily camera. Are there separate and designated cameras to those designated registers?

BOB MURPHY: Yes.

PAUL MULLAN: And do those have separate monitors upstairs or wherever your security people are?

BOB MURPHY: Yes, we can direct monitor

PAUL MULLAN: At those registers, specifically?

BOB MURPHY: Yes.

PAUL MULLAN: Thank you. That addresses my questions. You can probably stay as counsel is probably going to ask you that if you have an alcohol license why shouldn't they have a designated register just for alcohol so that customer can have convenience, so that the store can monitor and if I have to call Lt. Johnson and say we have these complaints, or this article has been in the paper and underage buyers or whatever that he can have Mr. Murphy or security people go right to that machine and say here is the camera and he doesn't have to go through every single aisle.

ATTORNEY NEIL MOODY: I believe from an operational standpoint the emphasis here would be customer convenience and correct me if I am wrong they want to allow customers to buy the multiple products throughout the store in addition to alcoholic beverages and bring them to the single point of sale location. With that said, all of the registers, not just the special ones, are monitored. All the staff, all the cashiers are TIPS trained. One of the, there are electronic ID scanners at all the registers, correct?

BOB MURPHY: No.

ATTORNEY NEIL MOODY: But at all the registers that sell alcoholic beverages?

BOB MURPHY: Absolutely.

ATTORNEY NEIL MOODY: Beer and wine currently can go through any of these registers, correct?

BOB MURPHY: Yes.

ANTHONY SALVIDIO: Currently with beer and wine what is the smallest amount you are selling? You don't sell individual cans?

BOB MURPHY: We sell

ANTHONY SALVIDIO: Size

BOB MURPHY: 16 ounce of top shelf. That is in the six pack and then twelve packs, thirty packs.

ANTHONY SALVIDIO: What is the average age of your cashiers?

BOB MURPHY: Average age?

ANTHONY SALVIDIO: What is the youngest you hire?

BOB MURPHY: The youngest we hire is sixteen.

ANTHONY SALVIDIO: Do you have many sixteen year olds?

BOB MURPHY: No, out of 160 associates sixteen years old are probably small fraction of that.

ANTHONY SALVIDIO: How about seventeen years old? How about this, how many are under 21?

BOB MURPHY: Not sure.

ANTHONY SALVIDIO: Give me a rough idea?

BOB MURPHY: 20%.

KARON SHEA: But they are not TIPS certified.

BOB MURPHY: Anyone 18 years or older are only ones who have any alcohol training.

ATTORNEY NEIL MOODY: What happens if I go to register and the person is sixteen or seventeen?

BOB MURPHY: We have a pager button that we press as they are not allowed to touch the alcohol so they touch the button and supervisor comes over.

KARON SHEA: I saw that.

ATTORNEY NEIL MOODY: How many supervisors are there?

BOB MURPHY: We have supervisor all the time on the floor.

ANTHONY SALVIDIO: One supervisor covering all the registers?

BOB MURPHY: Yes, at least one but sometimes there are two or three and they press the button if they get another call and they just wait if employee calls for help.

ANTHONY SALVIDIO: So the supervisor comes over and when is the ID checked? Has it already been checked or does the supervisor checking it.

BOB MURPHY: The supervisor completes the sale.

ANTHONY SALVIDIO: Complete the sale doesn't answer my question. My question is when it ID check. Who scans it.

BOB MURPHY: The supervisor comes over and scans to verify the license and the age.

ANTHONY SALVIDIO: So the cashiers doesn't do that ever?

BOB MURPHY: If they are underage, no. Never.

ATTORNEY NEIL MOODY: TIPS certified cashier?

BOB MURPHY: Yes.

ATTORNEY NEIL MOODY: Who gets ID?

BOB MURPHY: Everybody.

PAUL MULLAN: My

BOB MURPHY: 100% of people have to go through the id or we have refuse the sale if for some reason a license doesn't scan.

PAUL MULLAN: Thank you and I appreciate that and I don't have any dispute with what you are saying and I have experienced it and I have sat there but my concern is this goes to the idea if you present, your presentation is that we are expanding the language of sort of operation and I can see that, so BJ's sells everything from wine to tires. Price Chopper isn't BJ but I understand where we are going. My concern is that the legislature and the state government and the city government haven't set up stores to oversee the sale of flowers or the sale of hot chicken or slices of pizza but it has to alcohol and that is why we are here and that is our responsibility and as we all know the record in this case is pretty substantial and we have been through a lot of hearings. I want to know what Price Chopper is willing to do for the City of Worcester to make sure it is the safest operation for selling alcohol and I can tell you the last time we had this hearing and I asked if there would be a separate register the answer was no because that doesn't add to the convenience or the flow of the store. That maybe my interpretation but that is how I have dealt with it. I don't know want to hear what Price Chopper doesn't want to do for us. If I vote for this I need to know that Price Chopper is working with us. I am absolutely convinced that store is probably safer and more efficient than 10% of the package stores in this city as I have watched those to and those are the ones that are in front of us with violations, repeat violations, for 21. I know a nineteen cannot buy at Price Chopper. I know that because I have watched that. Doesn't mean they can't steal. Doesn't mean that the store is making this a priority for this store to do this service. This isn't helping out the people of Worcester as much Price Chopper wants us to believe. This is a business decision. I understand that too. Our responsibility is not just to Ballarin and not just to make decisions it is to ensure that we don't have to deal with a lot of these issues down the road and we don't give lip service to sort of operation, convenience and all that stuff. So I need Price Chopper, I need the petitioner to understand that I am not happy of the idea that flowers are more important than alcohol and I know that is not anyone's presentation but that is certainly how it looks at that operation. I know someone who wants to go in and buy some roses he can just go in and do that. That is convenience and all those things. Great, someone wants to buy a quart of VO then they should go to that register. I argued all along when Price Chopper was here, convenience and public need. I was the one the one vote for this to go through and I voted for the beer and wine. That is out of convenience and I see that as a liter of wine, a six pack beer, an eighteen pack with the hamburgers, potatoes chips and the dog food. That is convenience but if someone is going to come into the store and decides they are going to stock up the bar as opposed to going to any other package store in this city then I don't find it troubling for Price Chopper to have designated area for that bar business, that liquor business and don't find it

inconvenient for the person in line to get their groceries take them to the car and walk back in. If it is convenience they haven't had to drive down the street to go to another store. Their convenience is that they can go back and get the VO and the Fleishmann's or whatever. So I really see the all alcohol and the beer and wine really different. The A.B.C.C. made a big issue of that and asked us pretty strongly if we saw those as different and I do see them as different. There is a reason we have 37 all alcohol and 37 or 34?

DEBORAH STEELE: 37.

PAUL MULLAN: 37 all alcohol and 37 beer and wine. Statute dictates that so I see this as completely different issues and I have seen we have addressed the issue of the convenience by the issuance of the beer and wine. I see that they are asking for something different now and I really, really want to Price Chopper to give some thought and I hope I can get some answers today that there would be a designated area. I don't even care if people use it. I don't care if people are in line but I want it to be a designated area.

ANTHONY SALVIDIO: You're suggesting a single point of sale?

PAUL MULLAN: Single point of sale.

ANTHONY SALVIDIO: You would restrict what they already have now? Right now you as I understand you have limited use of your registers and you would go to single point of sale. In other words you have one register located and that would be only way to check out and would be different from what you have now that is what you saying?

PAUL MULLAN: That is what I am saying.

KARON SHEA: So like a liquor store inside the market.

ANTHONY SALVIDIO: Yes, and would address command and control issues and security and safety issues in some respects.

PAUL MULLAN: If it good enough for cold medicine. It good enough for vodka.

ANTHONY SALVIDIO: It good enough for flowers.

PAUL MULLAN: That beside.

ATTORNEY NEIL MOODY: I mis-spoke if I gave you the impression that public safety issues were not important issues to Price Chopper.

ANTHONY SALVIDIO: They are extremely important to this Commission.

PAUL MULLAN: I didn't read your comments to be that at all.

ATTORNEY NEIL MOODY: I can't speak to the corporate level decision making that applies because I haven't had time to look at but regarding the single dedicated register my first question would that apply to the current beer and wine as well.

ANTHONY SALVIDIO: You would get rid of the beer and wine if you get this license and you would turn in the beer and wine license as you can't have two licenses.

ATTORNEY NEIL MOODY: But beer and wine goes through everything.

ANTHONY SALVIDIO: I think that is what Commissioner Mullan would satisfy some of those concerns he has but I have others.

ATTORNEY NEIL MOODY: I would just offer, in the hope of taking a different view there are many dedicated package stores that have multiple point of sales.

ANTHONY SALVIDIO: The operative word there is dedicated. I can't say it dedicated. You sell flowers, you sell drugs, you sell alcohol now. You don't have dedicated except you have chosen on your store to have dedicated registers for sell certain things.

ATTORNEY NEIL MOODY: Well, all the alcohol, currently beer and wine is located at the far end of the store and I'm not sure having a single register in the area, the way I interpret Commissioner Mullan, I haven't reviewed

ANTHONY SALVIDIO: Well let us talk about your other operations in Worcester that run a separate liquor operation within your store.

ATTORNEY NEIL MOODY: Correct.

ANTHONY SALVIDIO: Now when someone checks out there can they go to any register in the store?

PAUL MULLAN: No, because they are separate licensee.

KEVIN SHULKE: We have two liquor licenses that are actually tenants of ours and I'm just trying to remember location and I know one they check out at front end and we issue a check at end of week in reconciliation process.

ANTHONY SALVIDIO: But it one register, correct?

KEVIN SHULKE: No, it goes through three of our registers.

DEBORAH STEELE: Through the chair, we are only talking about Worcester.

PAUL MULLAN: Yes.

KEVIN SHULKE: Main & Cambridge has a separate register and on Sunderland Road registers two and four.

ANTHONY SALVIDIO: So you are limited?

KEVIN SHULKE: Yes.

ANTHONY SALVIDIO: I want to move on to another question.

PAUL MULLAN: Thank you.

ANTHONY SALVIDIO: I want to talk about employee theft. What commands and control do you have for the store? I'm not asking you to reveal any secrets or anything along those line but do you have a problem at the store.

BOB MURPHY: No.

ANTHONY SALVIDIO: You have no employee theft whatsoever?

BOB MURPHY: I am not saying no but we don't have a problem with it. We have a perpetual inventory system that keeps track of the inventory so we can keep track of any losses.

ANTHONY SALVIDIO: How often do you do that?

BOB MURPHY: We have that on a rotating schedule and every sixteen weeks it's a different category.

ANTHONY SALVIDIO: So would you check alcohol every day?

BOB MURPHY: Not every day but we can check if we think there is a significant loss, we can check through the computer

ANTHONY SALVIDIO: What do we consider a significant loss or a loss that would trigger the computer to say hey we have a problem.

BOB MURPHY: It would be management first if I noticed a shelf was full one day and next day the shelf empty I can look.

ANTHONY SALVIDIO: It would have to be a larger theft or something along those lines. It wouldn't pick up diminimus things. By diminimus, I mean small amounts.

BOB MURPHY: No more than it would pick up other

ANTHONY SALVIDIO: So it is set the same way.

BOB MURPHY: And we have security cameras 24 hours day that covers entire store.

ANTHONY SALVIDIO: So conceivably we could have small thefts of alcohol and we wouldn't notice it. How many employees per store?

BOB MURPHY: Roughly 106 but not all work at same time.

ANTHONY SALVIDIO: And how many of those people would have access to the alcohol?

BOB MURPHY: Hours of operation.

ANTHONY SALVIDIO: Anyone. From a stock clerk to a cashier to manager to butcher, baker. So everyone has access so it is not cordoned off under some separate control

ATTORNEY NEIL MOODY: How is it managed during the off hours.

BOB MURPHY: After hours of operation we close it off, gate it off.

ANTHONY SALVIDIO: Locked.

BOB MURPHY: We lock it with keys and we have some fencing around to block it off.

ANTHONY SALVIDIO: So that handles preventing potential theft from customers but I want to go back to employees. All the employees have accessed to the alcohol at all times, correct?

ATTORNEY NEIL MOODY: Are you referring to the store or the storage?

ANTHONY SALVIDIO: Both as I'm referring to the whole store as I am encompassing all the employees.

ATTORNEY NEIL MOODY: Would it be fair to say they don't have access non store hours.

BOB MURPHY: No.

ANTHONY SALVIDIO: So who has the keys?

BOB MURPHY: Managers.

ANTHONY SALVIDIO: So the stockperson needs to get another twelve pack Budweiser they have to go get the manager and the manager checks out what they taking and brings it out and watches them stock the shelves.

BOB MURPHY: I make the decision who gets the key.

ANTHONY SALVIDIO: So now you are telling me someone else gets the key too beside the manager. You give the key to someone else.

BOB MURPHY: The salesman can get the key and open the display and then lock it back it up.

ANTHONY SALVIDIO: How about employees of the store?

BOB MURPHY: No.

ANTHONY SALVIDIO: So you never give the key to anyone beside yourself or a salesman outside.

BOB MURPHY: A manager, I have a grocery manager and we have a 24 hour manager.

ANTHONY SALVIDIO: Who is stocking the shelves with alcohol?

BOB MURPHY: Most of the time it myself or the grocery manager.

ANTHONY SALVIDIO: Anyone else ever, any regular employees?

BOB MURPHY: No.

ANTHONY SALVIDIO: Any stock people?

BOB MURPHY: No.

ATTORNEY NEIL MOODY: When you refer to sales people you are referring to liquor salesman

BOB MURPHY: Yes.

KARON SHEA: Further questions.

PAUL MULLAN: I don't have any of counsel.

ATTORNEY NEIL MOODY: Can is just add one thing regarding the security issue security. It is fair to say they will cooperate to the city to the best of its ability.

ANTHONY SALVIDIO: Up to installing a wall to separate from rest of store.

ATTORNEY NEIL MOODY: Probably not, I am probably not authorized to make that decision regarding the single point of sale requirement.

ANTHONY SALVIDIO: Question to counsel. Two separate licenses in the Commonwealth, Attorney Wayne the first time he was here explained that there was this great big plan between the package stores and the large big box retailers and how are we going to handle all alcohol and away from full package stores and he gave me the grand legislative scheme but the legislature still keeps the two separate licenses on the books. Are you aware of any proposed to changes to that, the way it is.

ATTORNEY NEIL MOODY: I am aware, I wasn't present for his testimony for this first hearing.

ANTHONY SALVIDIO: It was very educational.

ATTORNEY NEIL MOODY: I think one aspect of that you are referring to is Section 15 increase in the limitation on alcoholic beverages that an individual or a corporation can hold which was three until 2012 and went up to five

ANTHONY SALVIDIO: I agree with you there but that only benefited individual owners who were doing roll ups and it benefit

ATTORNEY NEIL MOODY: I think his interpretation of that. He may have been better qualified to answer that.

ANTHONY SALVIDIO: It was very educational but we didn't get a memo from the state.

KARON SHEA: At that this time we would like to take this time we would like to take this time if anyone would like to come up in favor or oppose.

ANTHONY SALVIDIO: Madam Chair before we leave just so we are on the record. We are agreement that there are two separate licenses that the legislation in its infinite wisdom thought of hard liquor as one thing and beer and wine as another.

ATTORNEY NEIL MOODY: We are in agreement that there are two separate classifications in Section 15 and I agree with that.

ANTHONY SALVIDIO: And one of the classifications is for what?

ATTORNEY NEIL MOODY: Beer and wine and the other is all liquor which includes beer and wine sales.

ANTHONY SALVIDIO: So the distinguishing factor is spirits?

ATTORNEY NEIL MOODY: Correct and I don't dispute that but one of the factors that goes into that is how the quota is handle for a specific town.

ANTHONY SALVIDIO: But the if, if I am not mistaken, correct me if I'm wrong, they expanded beer and wine for ancillary convenience for other uses. There aren't many beer and wine shops. There are most people who are in food business or some type of convenience store that is use that is ancillary to the primary use and I believe we heard testimony that this is an ancillary use to the primary use which is food distribution.

ATTORNEY NEIL MOODY: I am not disputing that.

KARON SHEA: At that time we would anyone to come forward who is opposed and if you could write your name and full address.

TONY ECONOMOU: Morning, my name is Tony Economou, resident of the City of Worcester. Also the District 1 City Councilor and I want to say thank you for giving me the opportunity to speak before you and the Commission this morning. I do want to just say thank you for Price Chopper for being as involved as they are in our city as they have a done a lot of good and they have been for the most part been good part but from that point on I would say I am absolutely unequivocal opposed to them getting the full liquor license. It is disappointing to hear that the good neighbor supermarket chooses to compete with others who make up the fabric of the neighborhood and that is the most disappointing part to me. Is there a need. I don't see a need. Within a mile and you have one. You go a mile and half three quarters there is five. There is no need for additional alcohol. Price Chopper is just that it is a supermarket. A place where you go and buy your bread and milk. You touch on a couple points that counsel had made. Their decision making today couldn't make a decision today so if something needs to get change where does that come from if they can't come in the floor immediately then it has to be someone higher up to come here. They talk about expertise. It just isn't wine pairings. These guys are on the floor, are they doing wine parings, sure but it usually the owner or the owner or a representative of the product doing the wine paring. So they are right on the floor. Security is there. They can make a decision. Now if I am going to stand here and depend on whether a sixteen or seventeen year old presses the button so a supervisor can come over I don't agree with that. It is a recipe for disaster. I grew up in the food business/ restaurant business my entire life and even with ownership oversight, cameras, there is still theft. Doesn't matter who has the key or who doesn't have the key there always going to be theft. The grocery market the younger age group tends to work there. Teenagers in general have a reaction of three second before they

understand the decision they make. So think about that as you go forward and your responsibility in the preservation of our city and our economic development as we go forward. It is a by product of what they do. They are a supermarket to sell bread and milk. They got their milk and they got the beer and wine which is 70% of these small businesses and now they want to take a whole piece of the pie and I can't speak strongly enough against it and I urge you to make the decision against it as well.

PAUL MULLAN: Councilor, before you leave. You believe that is our responsibility to address the economic development of the city.

TONY ECONOMOU: I believe you need to look at it as a whole. I am not saying you have the authority but if these guys get the license then Shaw's, Price Rite they are all going to follow suit at some point in time and quite frankly these gentleman here, they may not feel the brunt of it today but down the road and I think yeah you guys are arm of the city and you bear some of that responsibility.

ANTHONY SALVIDIO: Councilor, I would put it more that we must take into account what the will of the City is.

TONY ECONOMOU: That's fine.

ANTHONY SALVIDIO: As we are not step and fetch people for the whims of the City are. The memo has no bearing on me I use it for background and not a position of statement of any way shape or form. I believe the Commission is allowed to form its own

TONY ECONOMOU: Absolutely.

ANTHONY SALVIDIO: Again, the Commission should consider the will of the city as a whole.

TONY ECONOMOU: We all live here. We are all trying to make ends meet and right down the highway in a positive way and that is all we are looking towards positive moment.

ANTHONY SALVIDIO: And my decision would never be made on trying to restrain trade or favor trade or anything like that but you have step back and say what is the will of the body you serve and the body you serve is the citizens of Worcester and want do they want.

TONY ECONOMOU: And if there are five more vacant storefronts on West Boylston Street that is an issue again with corporate decision to be made out of town, out of state. You're putting more people out of work. Your putting more vacant storefronts in the city and again I know it not something you may have to deal with but maybe different policy making at city level but you can look at as say this doesn't apply and have some point you have to look at the big picture as well and that all I am asking. Thank you.

ANTHONY SALVIDIO: Thank you.

KARON SHEA: Anyone else?

ATTORNEY JOHN SHEA: Good morning, Madam Chairperson, members of the Commission, my name is John Shea with office on Mechanic Street on Worcester. I represent several package store owners, McGovern's who has owned Greendale Liquors for decades and the Vasiladis that owns O'Hara's Liquors and Lincoln Discount Liquors. I will tell you I benefit from growing up in the neighborhood, living in the neighborhood and have been to each of these stores and have been to Price Chopper both before and since they have received their wine and beer license and I just want to procedurally just walk through this because the A.B.C.C. decision kinda glossed over some of the things that were mentioned or discussed by the Commissioners. At the original hearing on January 10 where Price Chopper was here for its Section 15 all alcohol license they were denied where Commissioner Salvidio specifically expressed his anger at having Section 15 all alcohol licenses as an ancillary use in a supermarket. There was also testimony about a checkout at a particular register. My clients can tell you that in their businesses security is the number one issue for them and theft in business is by employees so Commissioner Mullan hit the nail on the head when he asked some of those questions. Commissioner Salvidio indicated who has access to the common areas to all the associates and I haven't seen the back room and I think it was described as a cage. It wasn't so long ago that I was a teenager.

PAUL MULLAN: It was a long time ago.

ATTORNEY JOHN SHEA: I can image have teenagers, twenty something myself, when you have a group of young people and by and large they are young people might find a way to impact the alcohol or beer wine or all alcohol. That is reality. I want to turn your attention back to that first hearing on January 2, 2013 where Commissioner Shea specifically expressed that she prefers the small business model in the small store and I think that is important and will get into that in a minute. On January 24 there was another hearing on KJ Barron and my clients objected to that business even though it was described as a niche, as a different kind of model. This Commission has the right to take testimony from the witnesses and decided credibility and what I read through the transcript that this Commission clearly felt that KJ Barron's assuming based on its operation, on what was declared, that KJ Barron's was a different type of business model then the package stores. It was a specialty store. It did have gourmet food. I think Commissioner Salvidio used the term that it was serve a niche market and it is cleared to me from the transcript of that hearing that you felt it was different enough to allow it to be relocated from Washington Square to West Boylston Street beyond McDonald's.

ANTHONY SALVIDIO: Counselor, doesn't that show that this Commission is observing Ballarin spirit and that they are not taking competition into a factor or into our reasoning. We are looking at appropriateness.

JOHN SHEA: Absolutely, appropriateness. I didn't see competition. You looked at it as a different model. I think that it is critical to what this Commission needs to do. I am going to ask the Commission to look at that later on as I review the Ballarin factors as I see them for this particular operation. I know, February 7, 2013 the hearing on the malt & wine license Commissioner Mullan talked about his hamburger, chips and beer made a point for me at least he clearly established that is not a need but it is a convenience. This operation described its security issue. Let me first go

through Ballarin as I see it. First factor would be public need and again the convenience piece goes through to that and I heard some good comments that convenience in the sense to the hamburger and chips but if you stock up for a holiday party by for whatever you're going to consume and give to your friends then maybe a separate register for the food and beer and you also looked to the appropriateness of the license in a given locale and I just going back to that fellow Vardersian who petitioned in 2007 to transfer a package store license just beyond Stop N Shop and was denied and then the following year Pullman Street, across from Price Chopper where now is located a car was in 2009 was denied. I know it's a different Commission and members change and you can have different opinions but at that point in 2007, 2008 it was determined that area was well served. You are required to consider the number of existing dispensary in that locale. So let us got back to 2013 and come forward to today and since January, 2013, KJ's an all alcohol license was transferred to half mile from Price Chopper. Probably less as the crow files. Price Chopper received malt & wine license. The Extra Mart at corner of West Boylston Street only began selling beer and wine in past few months.

PAUL MULLAN: That was before that.

ATTORNEY JOHN SHEA: But they only starting selling in past three of four months. They only put up sign as I say 45-60 days ago. Another place is on the corner of Burncoat and Quinapoxet. The Mediterranean Marketplace received a beer wine license. So since 2013 you have an additional full alcohol with KJ's and you have two malt & wine license and one that is inside a supermarket. So from my perspective there has been no change in population since Indian Hill was developed 15 years ago. Up by O'Connor's that is closest development and that was ten to thirteen years ago. So there have been no new roads, no new subdivision. There are occasional lots, couple of new duplexes on West Boylston Street but nothing significant to alter the public need or want in that geographic area. The next factor is noise and I'm not going say there is any noise issues that would be silly. Size is an issue but I'm going to come back to that in a minute.

ANTHONY SALVIDIO: Can I stop you right there. Everyone talks about this site being located in an industrial location but right across the street is residential. It is a border community. If you listened to Price Chopper's presentation it is in the middle of an industrial park and it's not that all.

ATTORNEY JOHN SHEA: You're right.

ANTHONY SALVIDIO: Because we did have Joey's did complain about noise and things originally.

ATTORNEY JOHN SHEA: Yes, they complained about litter and cans and bottles and that sort of thing. To get back to sort of operation, we are going from prior hearings of 1900 SF to 2,000 SF with some area for storage and you're going for Mom and Pop type of operation to store that operates 24 hours a day and I get that you limited the display area for beer and wine but this is different type of operation and I will get back to that in a minute. Reputation, I am not going to get into that. I go there. My wife goes there. They have great meat department but that is different use. Let's go back to sort of operation and there is a recent case that came down from the A.B.C.C. and

its dated June 20, 201 and called Packaging Center, Inc. dba Stop & Shop Supermarket and I have copies for the Commission if you would like.

PAUL MULLAN: Yes, please. Is this the case out of Harwich.

ATTORNEY JOHN SHEA: Yes, it is the Harwich case and I will describe if I can. I don't know if you're familiar with Harwich. My parents happened to live in the area for quite a few years. The small package store called Plum's, smaller than O'Hara's and McGovern's by a third and it is owned by a family and they kept this little package store and it one of these places when you go in to get your eighteen pack he slides one out to the front. They were trying to sell their license to Stop N Shop and beyond the center of Chatham and it is a large supermarket on the corner of 39 and 137. Essentially the license granting authority there is the select board and the select board denied the transfer essentially based on fact that Harwich is comprised mostly of small businesses and they want to maintain that model and that is what they wanted for their town so obviously the A.B.C.C. allowed that Commission to maintain that small model and I would suggest to you that you go back to sort of operation. We are going from, if Price Chopper is successful they are going from that small business model to something different and I would suggest to you that this essentially support your decision based on what I have read and have heard on the preference for small business model in, there are only two establishments, Austin Liquor and the one on Park Avenue those are the two exceptions I can think of in the city that aren't mom and pop which you have now the Mediterrean Marketplace up on Burncoat Street that now sells beer and wine. I would suggest that you have the authority to maintain that model which has worked for the City of Worcester. You heard Councilor Economou talk about empty storefronts on West Boylston Street and I am not hear to talk about competition. Competition is what made this country great. I know Worcester is not Harwich but we always have that mentality, sometimes it has kept the city back and I would suggest that we have always had that mom and pop and I think that what you can do is you deny the application and your findings need to be such that can stand scrutiny and I want you to know that the appeals court has made a determination that you can deny granted a license even if you find you could issue. You are not required to issue. Let me clear and I know this is a remand and you'll be making your own decision. I see Mr. Mullan.

PAUL MULLAN: Attorney Shea we are the second biggest city in New England, 185,000 people. We are responsible to those 185,000 people for liquor licenses. Pool table licenses, boarding houses, entertainment, taxis now and every week there is another thing and every week someone goes in front of the council with some issue and they say let the License Commission deal with it. Alright, this isn't Harwich and what I see in this decision and fortunately I was able to read it before is that sort of operation which I talk to Price Chopper about and I hear you I don't want the storefronts empty on Main Street and I don't go to the bigger stores but that it is a reality too. We live in 185,000 people and that is reality when Shell gas station and Mobil came in and started buying up Haddad's Garage and all of those place while there was uproar the City Council didn't do anything about that. No one went before a Board and said they can't do that because there was no oversight on that but to put that oversight on us first of all I think is unreasonable and goes beyond the scope of our responsibility. It is not our obligation make sure that the business community in Worcester is satisfied with that. It is an issue, okay. We have had one councilor come here and say we don't want

these businesses here but unlike the Harwich decision they had the Chamber the Commerce, three selectman, they had a vote, the people vote of Harwich voted that grocery stores couldn't sell wine and the A.B.C.C. put great emphasis on that. We don't have any of that. We are extrapolating our responsibility if we say we have to make sure all these businesses stay open because that is not an economic reality either. When you and I started the practice of law there were only two big firms in this City and now there are lots of big firms and people can't hang shingles. Those are economic realities in a city this big. So, while I am very sensitive to it and while it is educational issue for the small town Worcester biggest town in the world attitude that we all share and why we still live here I don't see it being both our responsibility and I don't see it being the law in this kind of case.

ATTORNEY JOHN SHEA: I am not saying responsibility lies with this Commission and this Commission alone. Anecdotally, let me related back to the 1970's. We had Filene's, we had Toupins, Slater building where my father worked, we had Bernard's and Marcus and I can go on and on an on. Marks Brothers where I got my first suit when my brother was getting married and what happened they built a mall and now if you want to buy a suit for men there is only one place, Shack's. I'm not saying it your responsibility but if you read this case more broadly then do think opinion of the Commission reflecting the desire of the community to have that smaller business model which is currently model that is reflected in our community and is working and I would like to say and I having visited the Price Chopper on Cambridge Street on occasion but there might have been some of that in that decision to have a separate if you will license and that's a smaller and the smaller stores seem to work.

PAUL MULLAN: That's a different license than the licensee and that licensee has a very strong relationship with the City so that is different situation completely.

ATTORNEY JOHN SHEA: Commissioner Mullan I get that.

ANTHONY SALVIDIO: It still shows that prior Commissions had the foresight to segregate the sale of all alcohol.

ATTORNEY JOHN SHEA. I agree.

ANTHONY SALVIDIO: So if there is any guidance to this Commission it is to stay true to that. I don't think people take hard alcohol seriously but the legislation by counsels own testimony by differentiating and there is a differentiation and the differentiator is spirits. Beer and wine is looked at one way and therefore have a different appropriateness test. Spirits seem to be in the infinite wisdom of our legislation and I didn't hear anything contrary that they intend to amend that, are thought of separately and the locations for them have a different appropriateness standard.

ATTORNEY JOHN SHEA: I agree and if there are no further questions I have taken up enough of your time but a couple of my clients may want to speak.

PAUL MULLAN: Can we go back and blame the Planning Board of five years ago for any of this?

ATTORNEY JOHN SHEA: I was off for five so okay.

JIM VASILADIS: Morning, my name is Jim Vasiladis from O'Hara's Liquors, from 404 West Boylston Street. I appreciate the concern this Commission has for security and theft but I do want to point something out. We sell alcohol, a control alcohol. Ninety percent of our sales is alcohol. We do depend on alcohol, we rely on alcohol sales. Our priority is just that. Our we perfect, is it a perfect method. No it is not but it's all we do. This controlled substance has many ways of getting into the wrong hands and this is what we try to do against loss by employees and customers and delivery drivers. The most loss happens by employees because they have access and then it comes to customers. Being there patrolling every day is what we do. If we lose a case of beer or a bottle of vodka that is a big loss for us. Should I compare it to when Price Chopper loses what kinda of a loss it is to them it is a write-off. It is a fact. It is reality. There is nothing that else that we focus on. We focus on how to keep our employees honest and our customers and it is not easy and it is not perfect and it doesn't work all the time but this all we do. Nothing else. As far as convenience and the need, legal counsel for Price Chopper conveniently stated that there is one alcohol license in a mile and one in a half miles there are four full liquor licenses and three beer and wine, you know. We can quote facts all morning long here. The bottom line is control, sustaining a highly controlled item all alcohol to those that just sell alcohol might work a little bit better and that is all we do. Ninety percent of our business. Thank you.

ATTORNEY JOHN SHEA: Walter McGovern is here today and he and his family own McGovern's and it is a family owned business.

WALTER MCGOVERN: Walter McGovern, Greendale Liquor. We are here today and we serve our community and we have deep roots in the community. We have always been extremely diligent with alcohol training for our employees and keeping a watchful eye on the parking lots, sidewalks and monitoring carefully. It's not like a grocery mart. Selling alcohol should not be something taken lightly.

PAUL MULLAN: Thank you.

ATTORNEY JOHN SHEA: Next is Nick Vasialids who owns Lincoln Discount Liquors.

NICK VASIALDIS: Hello, my name is Nick Vasialids, I own Lincoln Discount Liquors on 560 Lincoln Street and I am only just a couple miles away from Price Chopper and just like the rest of the business owners I live in the area. I grew up in the area. My employees grew up in the area and this is what we do for a living. The 80 hours we work, my employees are there and all week we sell alcohol and we focus on it. We watch it and we monitor as much as possible and we have said it many times, the area is well served but if you look at all our businesses and the employees that work for us it is an issue that the area is well served. Thank you.

PAUL MULLAN: Thank you.

KARON SHEA: And make sure you sign.

JUDY PICKET: My name is Judy Picket and this is my husband Jim and we live on Chester Street which is about a mile from Price Chopper and I shop at Price Chopper and I have nothing against the

store at all. Great grocery store but I really feel and my husband feels the area is well served with package stores and availability of liquor and I have been in that area for 50 years. Thank you.

TIM PICKET: And I don't believe any grocery store can handle the security and prevent theft. Like you said. It still wouldn't be a safe thing as far as I am concerned. I am surprised that they have the beer and wine license. They have no idea how to run that business. People in liquor stores, package stores that is all they do. That is where security is. You have young kids working in the grocery store with alcohol much more alcohol in smaller containers of liquor than wine it becomes a hazard.

PAUL MULLAN: Thank you.

ELIAS ZEENA: Good morning, my name is Elias Zeena, I am from Grafton Hill Package Store and I have been in the industry for 30-35 years. I have seen a lot. Seen a lot of things happen and have gone through quite a few employees. Employees are the hardest thing. They will throw things in the rubbish, no problem, they won't check ID's and if you are not there they will steal you blind. This isn't a candy bar off the shelf. This is vodka, 80 proof. They walk into my store I keep an eye on them from the second they walk in the store to the second they pick up a bottle. We are watching the entire time. Do you think a supermarket will question the other people with them? Do you think they will follow them out the door to make sure they are not handing it off. No they will not. We take our job seriously. This is our livelihood. We put everything into our stores. We work 80 hours a week. We have families. Our employees have family. They are going to hire one kid, two kids to work. Supporting themselves. Not a family. Not a mortgage. You're putting small businesses in jeopardy which is going on. We don't need another liquor license in the area. My store is not even near it but is like opening Pandora's box you open this open you are opening it for everyone. I can't trust my kids to take out the trash. Do you think they can trust and eighteen year old to check the ID's properly, how to handle a drunk. I don't think so. Thank you.

WALTER JABS: Good Morning Madam Chair, members of the Board. For the record I am a resident of Worcester. I live on Wilson Street and parenthetically I am well aware of the noise issue as I live right above Shrewsbury Street so having said that I am also the attorney for Milzan and have been for a number of years and have been in the licensing business for a number of years starting my practice in Boston dealing with licensing issues. I heard a lot today with regard to a number of issues. First of all I believe my client should be given the opportunity to be given a return on his investment and he has another package store and this is an important transaction. We have been talking about loss management. In this business, loss management is basically is an important factor of managing it itself. It is not whether it is a small package store or a large package store and not whether it is a grocery store or a mom and pop. It is about management. It is about people. We have here a quality operator so while we have heard a lot about the theft the key is management and that is why we have bar managers and that is why Section 15 addressed the issue and the business model and we have heard a lot of about mom and pop operations but we are looking at change in the business model in Massachusetts and we have heard a lot about that today. We see a lot of that change coming in places like Westborough, Hudson, Massachusetts, Boston where the large box operations have opened. Those large box operations include ancillary as well as principal. Well I know this because I think Worcester it is important that we change the time and accordingly I think this where

the business is going. It unfortunate that the mom and pop operations are going but if you don't change with the time you are going to have significant economic issues anywhere in the Commonwealth. I would point out that outside of the Commonwealth the largest retailer of alcohol believe it or not is Walgreen so it has been an interesting problem that is what we are looking at sooner or later so I want to point out that because we have heard a lot about it and I don't believe it addresses Section 15 issues. I would also like to point out that we have evidence of a need. Two thousand people signed a petition. It is how people now shop. We go to WalMart and we buy a lot. WalMart just toys, not just bikes. Its food, its everything. Our whole business model, our whole shopping model, our whole everything has changed. I know for myself growing up in Whalen there were no liquor stores, it was dry. Now it has liquor licenses. That what it is and I think the demand is there for this and the need.

ANTHONY SALVIDIO: Counselor can I ask you a question. Shoes stores aren't regulated by separate boards, t-shirts shops, nail salons, you can put one on every corner. Alcohol is thought of differently in the Commonwealth of Massachusetts and in most, I just came back from trip from Florida and you have supermarkets that do not have liquor stores inside the supermarket. If there is one it is right next door. It is run as a separate operation. Obviously, they think of it differently, it just another good or service to be render.

WALTER JABS: But Section 15 was amended to allow for different type of license. It is not prohibition of a grocery store having a full liquor license. Its Commonwealth of Massachusetts, general courts could have made that distinction but they did not and you have that model already in place and the other issue you have, I do want to address one of the points Commissioner Mullan made. You do see a lot of separate registers in Massachusetts. I want to speak from my experience and separate registers are usually because the entity that controls the liquor license is separate. They are separate. So for example you go to BJ's in Hudson you buy all your tires and whatever you're buying from BJ's. You buy your liquor from BJ you actually you buying from a separate corporation. That has a separate license. The model of having the checkouts with the electronic check is the best model the Commonwealth has and that is what BJ's has. Every single license, every single buyer, scans the license. That is the safest check. Rather than the mom and pop who are looking, relying on younger people, this is far quicker, the license runs through that best security we have. Unfortunately, we are going to have problems in the state. Someone can always steal. Employees can steal but I go back to the fact we have quality management with a reputation and long standing experience in the business. Finally, my client, I just want to emphasize that my client, both him and I as residents consider this a positive move for the City of Worcester. Thank you.

PAUL MULLAN: Thank you, counsel.

ZACK ZOMPETTI: My name is Zack Zompetti and I live right up the road on Andover Street. I have been in Price Chopper quite recently. I go shopping with my mom a lot and while she obviously of age. I went in one time and she couldn't find her ID and I had scanned her mine for her and the clerk didn't pay any attention so what saying I couldn't do it for someone younger of for a group of people. So I am opposed on security reasons.

ANTHONY SALVIDIO: It is a big parking lot and anything can go on in parking lot.

ZACK ZOMPETTI: True. Also, right at the register I know liquor stores will ID and approve and goes through one checkout, you scan your ID. The cashiers are doing his or her job and that's that and they don't care, you know, you can see the security issue with me scanning in my ID for someone else and that is my issue with the security.

KARON SHEA: Thank you.

PAUL MULLAN: Thank you. You are good son for taking your mother to the supermarket.

LINDA BROSNIHAN: My name is Linda Brosnihan and I am a cashier at Price Chopper and we are trained well and we are instructed and these kids are well trained. The ones who have the red shirts are the ones who are really qualified. If you go through register and it a white shirt they back off and don't touch the liquor, they don't bag it, the manager goes come out and he or she does thing and it put in the bag for the customer or the customer bags it. We have a lot of security in it. We have cameras. If we see things in the store we report it. They also tend to be well trained in people skills and meeting people and if someone comes through with another person most of the time and I know the people I work with they check everybody and how old. (Inaudible). Our customers would like this. They would like the full liquor license. They like the beer and we have customers who live on the cusp of the location, Sutton, Holden, Paxton, Sterling. These people come in and they don't have a clue where these package stores are and I do respect them as it hard to have a small business. I myself maybe tired and want to pick up couple thing and want to make one stop but if I want to plan something for a holiday then I go to O'Hara's and I think they are great. They have a new store by the way.

PAUL MULLAN: Let me ask you a question. How long you been a cashier at Price Chopper?

LINDA BROSNIHAN: Couple years. I need to get going as have doctor appointment.

PAUL MULLAN: Just a quick question. When you are at your register and you can see what is happening at the other registers does the sale of alcohol make the lines go slower.

LINDA BRONISHAN: Heavens no. Absolutely no. It just like you are getting a gallon of milk. We already scanning when the customers puts the stuff off as I don't want to put all the bread and stuff on the bottom. So I see the bottles, so I say okay, so sometimes we put it to last. If a kid has white shirt he already sees it and presses button and manager is on way manager and they won't touch it and back off.

PAUL MULLAN: And there is a good response time from the managers. That they are there appropriately.

LINDA BROSNIHAN: Yes, we have managers and assistant managers and they are there.

PAUL MULLAN: So if I have wine or alcohol in front of me you take my ID and swipe it and that goes through the register. If you don't swipe it, it won't go through the register. Is that correct?

LINDA BROSNIHAN: That is correct.

PAUL MULLAN: But if there is a seventeen year old girl in the aisle next to you can you go over and put that sale through and leave your register and put that sale through.

LINDA BROSNIHAN: No the manager has to.

PAUL MULLAN: And that is part of the training?

LINDA BROSNIHAN: That is part of the training. Strictly what you do is call manager. That is it.

PAUL MULLAN: Thank you.

KARON SHEA: Thank you.

WILLIAM KIRSTY: Hello, my name is William Kirsty, with Olympic Wine & Spirits on Grafton Street, I concur with all the opposition today. I do want to mention two interesting points. The attorney in favor of Price Chopper and owner selling to Price Chopper mentioning something about BJ and how they control the sales and basically talked about public safety issue. At BJ's they do it separate and the one in Northborough the liquor is right inside the store. You don't have to have a membership club to go into the BJ's to buy the alcohol. However, when you do buy the alcohol they do check the ID and when you do leave they check all the items. They aren't checking if you're old enough as they already did but they checking if you have all the products you have on your receipt. There is that check going outside the store at membership club. All I am opposed to them to selling. The main public safety issue I want to mention that was briefly mentioned was shop theft at Price Chopper. It a growing trend. I have three teenagers with one college, high school and being relatively newbie in the liquor industry I have a real hard time as it alcohol, cigarettes and lottery so I have to take this in a different way from various business experiences and recognizing the seriousness of it we take all the measures to avoid any type of theft or people coming. My experience, recently growing trend is you have two people coming in and one is of age and they hire a person to buy the alcohol and they will pick up. One person will pick up and other person will buy. We see that and we say you can't leave with that person or they have to show us an ID or you don't get this product and that is what we have been doing. I haven't heard.

ANTHONY SALVIDIO: What, if kids are going to buy what their choice, what is thing they go for the most.

WILLIAM KIRSTY: Well, we refuse

ANTHONY SALVIDIO: Do they try to buy beer and wine or do they try to buy hard alcohol.

WILLIAM KIRSTY: It primarily beer, try to 18 packs, sometimes 6 packs or 12 packs. You have some that try to get the 750 vodka or whatever. Usually when they try to do that they will make an attempt to buy it but for most part. The trend that I see and I asked my children the things that are going on here and they say for the most part, my daughter goes to college in Boston and when the kids that are trying to get alcohol, the ones that are underage they hire someone in the dorms who is 21 years old, they get \$10 or \$12 for a thirty pack and then will go into the parking lot of the grocery

store. They will sit outside the store. One person will go in and choose what they want, or write on a piece of paper or even sometimes walk side by side. Then one will go back and go in line that is dedicated for the alcohol. That is a going trend and there are growing number of licenses being issued and how is the Commission here going to monitor that. The public safety factor is huge. I spoke to the A.B.C.C. this morning and the themselves admitted they were understaffed to monitor these things.

ANTHONY SALVIDIO: Thank you but I heard something different from feedback that kids are trying to go for hard alcohol as it easier to conceal in their dorms and their cars.

WILLIAM KIRSTY: In my experience, my store it is primarily beer and wine, 12 packs but according to my daughter who goes to Wentworth it UV, Grey Goose Vodka, and she is very specific and its incredible and I shake my head as I have kids who are underage and I can't emphasize enough that they cannot participate in that because it reflects on me and the likelihood of having Romanoff next to Cheerios in an aisle store and having those items go to the register together, they can't guarantee, like Jim mentioned 90% of our stores is controlled substance. Even with BJ's membership at least they are checking what they bought and whether they old enough here there is really no oversight on that and if the grocery stores wind up getting these licenses, full package stores this is going to become a growing trend where you have this type of situation and I am absolutely opposed and it is going to be a hindrance to our children and being able to effectively monitor. He mentioned that some of the employees are sixteen year olds, sixteen years old. If a sixteen year old is stealing alcohol that to me just

CHARLES FAUCHER: Hi morning my name is Charles Faucher from Faucher and Masson and I would like to address what was just said. I am very close to Holy Cross and trust me those kids do drink hard stuff and they come in groups, if they have come in groups, if they come groups an if everybody doesn't have an ID we say you can't buy. They do buy the hard stuff and it is an issue and us liquor store owners have, that is the answer to that. They do.

ANTHONY SALVIDIO: Thank you.

MICHAEL FAUCHER: My name is Michael Faucher, I am resident of Worcester, I do shop at Price Chopper and all the other liquor stores in that area and I also work with my father and my biggest concern is the control issue. Just like his gentleman said earlier. They come in two, three, four at a time. How does Price Chopper see that? Monitor that? How are they going to control, one guy goes to the aisle, another goes another. I don't see how they control that.

KARON SHEA: Anyone else?

ANTHONY SALVIDIO: Madam Chair I have question of counsel. We heard testimony today regarding the sale and security and point and sale. Is it possible to revisit a license that has already been issued and put conditions subsequently?

ALEXANDRA HARALMBOULOUS: For conditions?

ANTHONY SALVIDIO: Obviously, we have had a lot of testimony at this hearing regarding point of sale and maybe we could revisit that issue regarding the beer and wine license that was issued. Is that something the Commission could take up and bring the applicant or the license holder back in?

ALEXANDRA HARALMBOULOUS: You could but I would advise that it could not just be based on testimony. You would need facts, real evidence.

PAUL MULLAN: But there would be notice requirements?

ANTHONY SALVIDIO: Right, it would be a separate hearing. There would be plenty of opportunity.

ATTORNEY NEIL MOODY: I like to address the security and there has been no specific incident and I would repeat that security is an issue for Price Chopper and it is an evolving issue and Price Chopper wants to make sure it is the most secure store possible. Mr. Murphy and employees testified today that they card 100% of the customers and that is not the case in these other stores and I will also point out as Attorney Shea pointed out shrinkage is problem with every licensed establishment. That doesn't mean we aren't committed to security issues. They are and they always will be. One other issue and I just want to amplify on briefly that Section 15 does distinguish between beer and wine and all alcohol beverages. They are two licenses but it does not restrict the type of establishment, for example, supermarkets, from obtaining one type of license. When Section 15 was amended the legislature had the opportunity to make that restriction, that restriction does exist in other states, and they chose not to do so. Finally,

ANTHONY SALVIDIO: Would you say that they left it to the discretion of the Commission on appropriateness by not putting it into the legislature they left it up to this Commission to decide what was appropriate.

ATTORNEY NEIL MOODY: On a fact by fact basis, yes.

ANTHONY SALVIDIO: Fact by fact basis.

ATTORNEY NEIL MOODY: Yes.

ANTHONY SALVIDIO: And that falls into the purview of this Commission.

ATTORNEY NEIL MOODY: In light of the other Ballarin factors certainly. Finally, I know this is an emotional hearing for a lot of people. It has been a long hearing. Competition is an issue whether you want to talk it about or not. We all have competition, law firms come and go, supermarkets chains come and go, so do the mom and pops in that regard I would refer you to the conclusion of the Chicopee case that came out this week and I won't say anymore about that and we are glad to answer any additional questions including the issue of security that have come up if the Commission has any further questions. Thank you.

KARON SHEA: Further questions.

PAUL MULLAN: I have no further questions. I am prepared to make a motion. For the record please identify yourself.

JIM PICKET: Jim Picket, when you go to the grocery store and buy two bags of food and one bag has liquor in it and the other has food in it and it a teenager. You grab one bag and he grabs another, you can have a seventeen year old or fifteen year old taking it which you can't have in a liquor store.

PAUL MULLAN: Point of order. The transfer of the liquor license has already been allowed. We don't have to go back to that.

DEBORAH STEELE: The ownership.

PAUL MULLAN: The ownership and that passed three to nothing a year ago. I would make a motion to approve the petition, the request for the petitioner to transfer that license to Putman, 72 Pullman with the added square footage of the 2,200 and the 200 SF with the condition that there be separate designated register complete with security cameras and monitoring.

DEBORAH STEELE: PAUL MULLAN:

PAUL MULLAN: Yes.

DEBORAH STEELE: Anthony Salvidio.

ANTHONY SALVIDIO: No.

DEBORAH STEELE: Karon Shea?

KARON SHEA: No.

ANTHONY SALVIDIO: And I would like the record to reflect all of my comments regarding appropriateness and I believe the legislature has two separate licenses in mind and in the appropriateness of each and that the beer and wine is ancillary to the food business and I did not have a problem when I voted for that to be issued. I believe hard alcohol is delineated by the legislature and segregated by the legislature and does not belong in a site as such and I don't believe it is an appropriate use of the site and I believe that is in the purview.

KARON SHEA: I did not change my vote and I voted the same way. I don't believe there is a need. I believe we have enough in the area for that. Yes, it is a convenience and yes I have actually that convenience but I actually feel if we do something on this caliber allowing to be expanding it larger it is just adding a liquor store in a food chain and I do not agree.

PAUL MULLAN: Okay, beer and wine license stays.

DEBORAH STEELE: Yes.

PAUL MULLAN: With conditions as is.

ANTHONY SALVIDIO: Unless we modify.

Petition: Request for change of manager to Derek Butler

Petitioner: Ruby Tuesday, Inc., 537 Lincoln Street

Ms. Steele informed the Commission that item had been postponed until April 3, 2014.

Exhibit A: Application for change of manager received March 3, 2014 and dated March 3, 2014.

Petition: Request for entertainment license for jukebox, tv, radio, dancing by patrons, dancing by entertainers, recorded music, live music, amplification system, moving picture show, floor show, light show, theatrical exhibition, karaoke, and other audio or visual show, whether live or recorded specifically

Petitioner: Meze Greek Tapas, Inc., 156 Shrewsbury Street

Sotirios Georgiadis appeared on behalf of the application. He stated this will be dancing and entertainers but more cultural entertainers.

Upon a motion by Commissioner Salvidio and seconded by Commissioner Mullan the Commission voted 3-0 to approve the entertainment license.

Exhibit A: Application for common entertainment license received on February 28, 2014 and dated February 28, 2014.

Petition: Change in beneficial interest

Petitioner: Texas Roadhouse Holdings, LLC, 535 Lincoln Street-

Attorney Andrew Upton appeared on behalf of Texas Roadhouse Holdings, LLC. He stated this was a change in beneficial interest in all Texas Roadhouse licenses and the A.B.C.C. had requested they get local approval and then submit to A.B.C.C. to finalize transaction.

Upon a motion by Commissioner Salvidio and seconded by Commissioner Mullan the Commission voted 3-0 to approve the change in beneficial interest.

Exhibit A: Application for change in beneficial interest dated February 26, 2014 and dated February 26, 2014.

Hearings:

Santiago's Liquors, 296 Pleasant Street – Violation of Rules #6, #21, Sale to minor

SANTIAGO LIQUORS 296 PLEASANT STREET MARCH 20, 2014

KARON SHEA: Thirteen, Violation hearings. Santiago's Liquors. Please come forward. Good morning. Please sit down.

PAUL MULLAN: Sir, please take your hat off in City Hall. Thank you.

KARON SHEA: Okay, we do have paper for you. You have legal counsel

HECTOR PINEIRO: Good Morning Madam, members of the Commission.

PAUL MULLAN: Good Morning, Mr. Piniero. I should say good afternoon.

KARON SHEA: We have some paper for you to sign.

PAUL MULLAN: No he is counsel. Just swear them in.

KARON SHEA: Okay, swear them in. Raise you right hand please. Do you promise to tell the truth, whole truth and nothing but the truth? Thank you. Lt. Johnson.

LT. JAMES JOHNSON: I am just going to read the report of Officer Mark Jolin. The undersigned alcohol enforcement officer requests that the License Commission notify Santiago's Package Store located at 298 Pleasant Street, to appear before a hearing of the License Commission to answer to police complaints of violations of Rule #6 and #21 of the Rules and Regulations of the License Commission which occurred on May 25, 2013. Rule #6-Sales to persons under twenty-one (21) are punishable by a fine or imprisonment or both. (Chapter 138, Section 34). Rule #21 –Managers of all licensed liquor establishments shall be responsible for all violations or infractions of the law occurring on the premises whether present or not. The licensee is responsible for any disorder, disturbance or illegality of any kind taking place on license premises whether present or not. On May 25, 2013 Lt. Johnson, Officer William Stout and I were involved in a city wide sting. With the assistance of two under 21 year old males we were checking restaurants and package stores to see if the minors were served alcohol. The two under aged males had no ID on them and were advised to tell the clerks that they had no ID if asked. The males were instructed to be polite and leave without confrontation if denied the purchase of alcohol. The information of the two minor males is recorded at the Worcester Police Department and the males were given a Breathalyzer prior to and at the conclusion of the operation. At approximately 1554 hours, Officer Mark Jolin did drop one of the underage males at Santiago's Package Store and purchased a six pack of Miller Lite Beer of \$6.49. According to the underage male, the clerk was watching Bruins game and never asked for an ID. At the conclusion of the sting I contacted the business to inform them of the infraction and advised that the manager would be notified to appear before the City of Worcester License Commission at a future date. The business will be charged with violations of Rule #6 and Rule #21 for selling alcohol to a minor. That is all we have and I have Officer Jolin here to testify.

PAUL MULLAN: Are you going to stipulate to the violation?

HECTOR PINIERO: No, we don't.

PAUL MULLAN: Okay.

ANTHONY SALVIDIO: That's interesting.

HECTOR PINIERO: I want to ask some questions of Lt. Johnson.

LT. JAMES JOHNSON: Absolutely,

HECTOR PINIERO: Lt. Johnson. Does the, essentially what the Worcester Police Department did was a sting operation?

LT. JAMES JOHNSON: Yes.

HECTOR PINIERO: Okay, and the Alcoholic Beverages Control Commission has guidelines on sting operations.

LT. JAMES JOHNSON: They do.

HECTOR PINIERO: And you became aware of that because there was a case that went to the Alcoholic Beverages Commission in 2007 in which I represented a licensee and you testified at the Alcoholic Beverages Commission. Isn't that a fact?

LT. JAMES JOHNSON: Yes.

HECTOR PINIERO: Okay, did you have a copy for us to see, what they call compliance check guidelines that the Alcoholic Beverages Commission has issued?

LT. JAMES JOHNSON: I do not.

HECTOR PINIERO: Okay. Do they exist?

LT. JAMES JOHNSON: They do have their guidelines.

HECTOR PINIERO: The, Alcoholic, the A.B.C.C. has too but that is not my question. My question is does the City of Worcester have them when this alleged

LT. JAMES JOHNSON: The question is do I have them. I don't have them.

HECTOR PINIERO: Okay, do they exist? Does the City of Worcester have those guidelines?

KARON SHEA: The City of Worcester.

ANTHONY SALVIDIO: Counsel, clarify your question to him. Are you asking if he has them on his physical person now or do they exist in the

LT. JAMES JOHNSON: I though he said the ABCC. I don't have any guidelines.

HECTOR PINIERO: So the City of Worcester doesn't have any guidelines?

LT. JAMES JOHNSON: The City of Worcester does not have any guidelines.

HECTOR PINIERO: Does the Worcester Police Department have any guidelines for sting operations?

LT. JAMES JOHNSON: We just know. We give them a couple of guidelines each sting and they are verbal guidelines from me.

ALEXANDRA HARALAMBOUS: Jim, you use the ABCC guidelines.

LT. JAMES JOHNSON: We don't use, we don't follow the dictates of their guidelines, no. We modify to each sting using some of their guidelines. We don't use their guidelines.

HECTOR PINIERO: So just to get it clear here. So the City of Worcester liquor license commission nor the police department have what they call compliance check guidelines that the Alcoholic Beverages Commission utilizes?

LT. JAMES JOHNSON: No we don't.

HECTOR PINIERO: But you've, you would agree that you are familiar with

LT. JAMES JOHNSON: I am familiar with their guidelines.

HECTOR PINIERO: One of the requirements of the state guidelines and if a licensee is unhappy with the decision of a liquor license board they can appeal to the Alcoholic Beverages Commission.

LT. JAMES JOHNSON: Yes they can.

HECTOR PINIERO: Okay, and I am sure you are aware one of the guidelines that the Alcoholic Beverages Commission, there is about seventeen guidelines would you agree with that.

LT. JAMES JOHNSON: Yes, I am not sure if there are seventeen.

HECTOR PINIERO: Let me mark this, may I mark this as Exhibit 1 and I have copies to members of the Commission.

PAUL MULLAN: Thank you.

HECTOR PINIERO: You're welcome. One of the guidelines is that there be notification that a compliance check will be taking place will be made in the media prior to the start date. Do you agree with that?

LT. JAMES JOHNSON: I do.

HECTOR PINIERO: And you are aware of that in 20

LT. JAMES JOHNSON: I am aware of that.

HECTOR PINIERO: And you certainly aware of it when the sting operation on May 25, 2013.

LT. JAMES JOHNSON: Right.

HECTOR PINIERO: Alright. It, does the city or the police department publish anything in the media?

LT. JAMES JOHNSON: To be totally honest I am not if we did but we wouldn't have done it prior we can do it up to a year before as long as we put in the paper that there will be stings during the year or if we received a grant for underage alcohol I believe we are covered there.

HECTOR PINIERO: So

LT. JAMES JOHNSON: But I am not sure of exact dates. Even if we had done that.

HECTOR PINIERO: So let's say a month, well, one of the purposes of the sting operation is not necessarily to be punitive but I am sure of the decisions of the Alcoholic Beverages Commission one of the purposes is to educate the licensees.

LT. JAMES JOHNSON: Sure.

HECTOR PINIERO: Right, okay that they do not sell to an underage minor, correct?

LT. JAMES JOHNSON: Right.

HECTOR PINIERO: So, within a month. Let's say between April 25, 2013 and May 25, when you did this sting operation did you in compliance with the Alcoholic Beverages Commission did you advertised anything in any local paper?

LT. JAMES JOHNSON: I don't remember. I don't think we did but that month before I don't think we did.

HECTOR PINIERO: Okay, did you advertise anything on the radio?

LT. JAMES JOHNSON: No.

HECTOR PINIERO: Or through

LT. JAMES JOHNSON: I don't think so. I don't remember, recall if we did or we didn't. That a year ago. I don't think we did.

HECTOR PINIERO: So, the next requirement is that the underage person taking place in the compliance check, if you take a look at paragraph two, should reasonably look their age. Do you agree with that?

LT. JAMES JOHNSON: I would agree with that.

ANTHONY SALVIDIO: Counsel, they are guidelines. They aren't law. They are guides to communities.

HECTOR PINIERO: With all due respect. If you would let me ask the questions I will show you the decision that create a rebuttal assumption of entrapment if these guidelines are now followed. So I would be happy to do that.

ANTHONY SALVIDIO: Okay.

HECTOR PINIERO: So let me ask the questions as what I suspect is that many of these guidelines were not followed and if these guidelines were not followed there is a presumption of entrapment under the law and that is why I am simply asking these questions and I have to establish the record and I have to elaborate the record.

ANTHONY SALVIDIO: Can you just clarify.

HECTOR PINIERO: And I will show the law and I will show you a decision that was issued against the City of Worcester in a minute. So let me ask you. You agree with me that under the compliance check guidelines, see under H, person taking under the compliance check should reasonably look their age?

LT. JAMES JOHNSON: I would say yes.

HECTOR PINIERO: Alright, and efforts to make a person look a different age would not be allowed.

LT. JAMES JOHNSON: Yes, reasonably.

HECTOR PINIERO: The third requirement is that there be a photo of the underage person to be taken and attached to the information requested in paragraph six. Okay, I would like to see the photograph of the person taken and the attached information requested and let us go to number six.

LT. JAMES JOHNSON: I will not show you that. I am not going to show you the photo.

HECTOR PINIERO: So let me ask you a question as I am sure you will remember

LT. JAMES JOHNSON: You just asked me if I would show you that.

HECTOR PINIERO: I am going to ask you again and let me elaborate for the record because last time when the city went to the Alcoholic Beverages Commission the Alcoholic Beverages Commission felt that that city failed to comply with this requirement. Providing information on the decoy or the person that participated in the sting operation. The person that participated in the sting operation was a male, correct.

LT. JAMES JOHNSON: For this one or the last one?

HECTOR PINIERO: For this one?

LT. JAMES JOHNSON: It was a male. I read the report. It was a 20 year old male.

HECTOR PINIERO: And do you have the date of the birth of that person?

LT. JAMES JOHNSON: No, not on me.

HECTOR PINIERO: And would you share the date of birth of that person?

LT. JAMES JOHNSON: No I would not.

HECTOR PINIERO: Does the License Commission have the date of birth of that Commission?

LT. JAMES JOHNSON: No, but I could provide that to them.

HECTOR PINIERO: But, but I need it today.

LT. JAMES JOHNSON: You are not getting it.

HECTOR PINIERO: And you are not going to show me the picture of what the decoy looked like.

LT. JAMES JOHNSON: No.

HECTOR PINIERO: And what is the reason you will not provide that?

LT. JAMES JOHNSON: I just want to protect those underage people that work.

HECTOR PINIERO: And, let me ask you, so can you pursue through all these different guidelines?

LT. JAMES JOHNSON: Sure.

HECTOR PINIERO: Would you agree that these are the guidelines that the Alcoholic Beverages Commission in this state, the state regulating board, uses for purposes.

LT. JAMES JOHNSON: Yes, it what they use.

HECTOR PINIERO: For the purpose of determining whether a sting operation is kosher or not?

LT. JAMES JOHNSON: Kosher?

HECTOR PINIERO: Well complies with

LT. JAMES JOHNSON: Well is there a state law that says we have to follow these guidelines?

HECTOR PINIERO: I will show you

LT. JAMES JOHNSON: If I see that then maybe in the future we will utilize every one of them. What we do is I modify them and I have modify and I have the list of what we modified using that day.

HECTOR PINIERO: Sir.

LT. JAMES JOHNSON: We do have copies of their photos. We do have copies of their Breathalyzer.

HECTOR PINIERO: Sir, let me ask you a question. You are a Lieutenant in the liquor license board.

LT. JAMES JOHNSON: I am.

HECTOR PINIERO: You have been in this position since 2007.

LT. JAMES JOHNSON: Probably before that, yeah.

HECTOR PINIERO: Okay, so if a decision is issued by the Alcoholic Beverage Commission do you read those decisions of the Alcoholic Beverages Commission?

LT. JAMES JOHNSON: Sometimes we do.

HECTOR PINIERO: Did you ever read sir the decision that the Alcoholic Beverages Commission issued on a hearing that took place on November 20, 2007 regarding El Coqui Liquor at 184 Chandler Street, Worcester, MA and the decision that was issued by the Board on December 28, 2007?

LT. JAMES JOHNSON: I don't

HECTOR PINIERO: Let me show you.

LT. JAMES JOHNSON: Let me show you the decision.

HECTOR PINIERO: Let me show you the decision and have you remember having seen it? This will be Exhibit 2 and I will share a copy. Take a look at that sir. Lt. Johnson.

LT. JAMES JOHNSON : I see exactly what is says, are will still

HECTOR PINIERO: I just wanted to show you that to see if you recognize.

LT. JAMES JOHNSON: And I still and everything I said is 100% accurate today. A lot of this is Sgt. Coakley.

HECTOR PINIERO: Let me ask you a question.

LT. JAMES JOHNSON : Okay, go ahead. Ask away.

HECTOR PINIERO: Take a look at page two of the, do you see at the bottom it says Lt. Johnson

LT. JAMES JOHNSON: Yes,

HECTOR PINIERO: That he has been a police office for 21 years. Do you see that?

LT. JAMES JOHNSON: I do.

HECTOR PINIERO: Please turn on to page #3 sir. Do you see where it says that Lt. Johnson says he believes the A.B.C.C. guidelines are training tools? Lt. Johnson testified that decoys should not misrepresent their age and conceded that using another person's identification for the purchase of alcohol is a misrepresentation of who they decoys in parentheses are.

LT. JAMES JOHNSON: Totally agree.

HECTOR PINIERO: Right, in that case, in that case where you testified before the Commissioner the issue was that in participating in this sting operation you instructed your subordinations to give the decoys fake ID's and the liquor, and the Alcoholic Beverages Commission was critical of the use of the fake ID's.

PAUL MULLAN: Counsel, let's talk about this incident.

HECTOR PINIERO: I will.

PAUL MULLAN: Please.

HECTOR PINIERO: Let me ask you a question. The individual that sting operation whose identity you will not reveal.

LT. JAMES JOHNSON: Individuals.

HECTOR PINIERO: The individuals.

LT. JAMES JOHNSON: No, it was individual.

HECTOR PINIERO: Any of these individuals trained in accordance with the compliance check guidelines that the ABCC, like formal training?

LT. JAMES JOHNSON: Negative.

HECTOR PINIERO: Okay, I know that you testified previously before that Board and transcript of that there was no formal training for the officers that work in the liquor license for the purposes of compliance with the check guidelines for Alcoholic Beverages.

LT. JAMES JOHNSON: For the officers?

HECTOR PINIERO: Yes. Is there any training right now for the officers?

LT. JAMES JOHNSON: Just on the job training and just working with the ABCC.

HECTOR PINIERO: Okay, I see. Did you, Lt. Johnson on page four of the opinion did you read the portion of the opinion that talked about following the written guidelines of the, when the city follows the written guidelines of the Alcoholic Beverages

LT. JAMES JOHNSON: Where is it?

HECTOR PINIERO: Right here where it says written guidelines.

LT. JAMES JOHNSON: No, I didn't read it yet but I will read it.

HECTOR PINIERO: Like for instance did you read the portion of the opinion of the bottom where it says the appeals court further held that where a sting operation was conducted in accordance with published guidelines to assigned to ensure that such operations are conducted fairly the Commission could properly rely on this evidence.

LT. JAMES JOHNSON: Let me just read that.

HECTOR PINIERO: Take a look at it.

LT. JAMES JOHNSON: Okay.

HECTOR PINIERO: Did you read that?

LT. JAMES JOHNSON: I read it. A little confusing but I read it.

HECTOR PINIERO: Let me ask you another question. Can you go to page number 6 and I am directing you to roman numeral two that talks about prior notice and you see that first sentence where it says the ABCC guidelines state that quote that notification that a compliance check will be taken place will be made in the media prior to the start date. Do you see that?

LT. JAMES JOHNSON: I do.

HECTOR PINIERO: Okay, do you see the next sentence they cite a case which is called BBRG Massachusetts Restaurant Papa Razzi where they cited the Commission found that the failure to notify in the media, the first guideline, jeopardizes the entire compliance check. Do you see that?

LT. JAMES JOHNSON: I do.

HECTOR PINIERO: Is that something that you read when this opinion came down sir?

LT. JAMES JOHNSON: I don't remember. I may read it. I don't know.

HECTOR PINIERO: Take a look, please at page #7 where they talk about not revealing the identity of the decoy. Do you see where it says roman # three, anonymous decoy, do you see that?

LT. JAMES JOHNSON: I do.

HECTOR PINIERO: Okay, and do you see here, do you see here where the Alcoholic Beverages Commission in the second paragraph last sentence testimony and cross examination of the agent and other evidence educable once the agent is identified would almost certainly effect the deliberations of the court although not necessarily the ultimate outcome as to the liability. Do you see that?

LT. JAMES JOHNSON: I do.

HECTOR PINIERO: Is that something

LT. JAMES JOHNSON: I didn't have time to absorb what you did. You have it all highlighted. Let me read it please.

HECTOR PINIERO: So if you go to the third paragraph you see they cite this case, the Hunter case which is a 1991 decision of the Alcoholic Beverages Commission and I will start with a quote. The underage operative for the police was not present at the hearing. The operative conducted the purchase outside the supervision of the police. The police, pursuant to an agreement with the underage person, refused to identify the person during the prosecution of the violation. The disapproval was not the fact the underage person was not present at the hearing, but the police refused to identify the underage person to the licensee and the police did not supervise the underage person when he conducted the purchase of the alcoholic beverage. Do you see that?

LT. JAMES JOHNSON: I do.

HECTOR PINIERO: And did you at any point and time did you glean from this particular decision that it was important for the licensee to challenge the decision of the city liquor licensing board or for the police to be able to confront that witness who did the sting. Did you glean anything from that?

LT. JAMES JOHNSON: Just from reading this paragraph I believe it saying the police weren't present when he actually went in to buy the alcohol.

HECTOR PINIERO: And that is why

LT. JAMES JOHNSON: The police were present when he purchased the alcohol.

HECTOR PINIERO: So the police when inside

LT. JAMES JOHNSON: We were right outside, they were right outside

HECTOR PINIERO: So the police didn't witness the transaction.

LT. JAMES JOHNSON: I would have asked the officer, I wouldn't know as

HECTOR PINIERO: So you don't know one way or the other?

LT. JAMES JOHNSON: I know the police where there.

HECTOR PINIERO: But you didn't see the actual transaction.

LT. JAMES JOHNSON: I did not see the actual transaction.

HECTOR PINIERO: And you don't know what the anonymous individual asked.

LT. JAMES JOHNSON: Just that he was watching a Bruins game I glean out of that.

HECTOR PINIERO: You didn't watch a Bruins game as you were outside.

LT. JAMES JOHNSON: I wasn't anywhere in the vicinity of there.

HECTOR PINIERO: Let me ask you a question. Something I am curious about. Why if this alleged violation occurred on May 25, 2013 my clients were notified of this March 5, 2014. Why is there almost a year lag, 2014?

LT. JAMES JOHNSON: They weren't notified, they were notified

OFFICER MARK JOLIN: They are notified right after the operation.

HECTOR PINIERO: Why is it, this written notice of violation came almost a year later?

LT. JAMES JOHNSON: That happens, that happens. We have a lot of other things going on and we try to limit the amount of hearings we have every month.

HECTOR PINIERO: Okay,

LT. JAMES JOHNSON: And that happens and it unfortunate and I would like it to be a little quicker.

HECTOR PINIERO: If you give me one second Madam Chair and in page #9 of that opinion sir you see that it says that the conduct of the sting operation as conducted in this case was unfair and amounted to entrapment.

LT. JAMES JOHNSON: This

PAUL MULLAN: Is your question, is that what it says?

HECTOR PINIERO: Is that what it says.

LT. JAMES JOHNSON: Yes, because we used an ID on that one and based on the evidence and you're talking is that it.

HECTOR PINIERO: Do you know any other cities and towns that have rules and regs relative to alcoholic beverages, entertainment, and entertainment that have specific sections for sting operations?

LT. JAMES JOHNSON: Off hand, no. Without using the ABCC

HECTOR PINIERO: Incorporating the ABCC guidelines.

LT. JAMES JOHNSON: Not really sure.

HECTOR PINIERO: Okay, so the citation that my client received was under rule #6 selling alcohol to someone who was under the age of 21.

LT. JAMES JOHNSON: Yes.

HECTOR PINIERO: The second one is under rule #21 meaning that the manager shall be responsible.

LT. JAMES JOHNSON: Right.

HECTOR PINIERO: And but you also cited other provisions of the statute and regulations and of the Mass General Laws dealing with selling to minors, correct and in order to sell to a minor you see here in footnote number four back on the notice of violation. Do you have copy of the notice?

LT. JAMES JOHNSON: No I don't.

HECTOR PINIERO: May I show it? May I approach? Lieutenant do you see here in footnote four where furnishing knowingly or intentionally supply or provided information to provided alcohol to this individual. Knowingly did.

ANTHONY SALVIDIO: Can I ask you what you reading?

LT. JAMES JOHNSON: Yes. Is that 138 or 134, I am not sure. So I think that is the catch all in rule six and we just put the general law down. Is that we do Deb?

DEBORAH STEELE: Correct.

HECTOR PINIERO: Just back to my question as you were not in the room because you refuse to identify the identity of the decoy.

LT. JAMES JOHNSON: Yes.

HECTOR PINIERO: Do you have any evidence here today that my client or his agents intentionally or willfully or knowingly sold alcohol.

LT. JAMES JOHNSON: Just based on what the minor had told us is all I have.

HECTOR PINIERO: Which would be here say, correct?

LT. JAMES JOHNSON: I don't know. I'm not a lawyer.

HECTOR PINIERO: You have been quite a bit. I don't have any further question of the Lieutenant.

PAUL MULLAN: Do you have any questions for anybody else?

HECTOR PINIERO: I'm not sure

PAUL MULLAN: That's up to you. Do you have any questions of anybody else? We got to get it going.

HECTOR PINIERO: Yes a few questions. Could you identify yourself?

LUIS SANTIAGO: My name is Luis Santiago. (Inaudible)

HECTOR PINIERO: And how long have you this place, sir?

LUIS SANTIAGO: Few years

HECTOR PINIERO: Do you recall at some point and time getting a phone call sometime around May of 2013 that your establishment sold liquor to a minor?

LUIS SANTIAGO: Yes.

HECTOR PINIERO: Who called you and did that person identify him or herself?

LUIS SANTIAGO: Time he call me they told me we sold to a minor and we try to found , we check the camera and we don't see any.

HECTOR PINIERO: Let me back up for a minute. When that person was it male or a female?

LUIS SANTIAGO: From my understand it was a female. That was my understanding.

HECTOR PINIERO: Did you understand that the person the person you sold to that the person you allegedly sold to was female?

LUIS SANTIAGO: (inaudible).

HECTOR PINIERO: What did you do to check that you did not sell the a minor?

LUIS SANTIAGO: What I did was we asked and they said no and we tried to check the camera and I have the system.

HECTOR PINIERO: Let me ask you a question. What methods do you have in this business so you don't furnish knowingly or intentionally alcohol to minors?

LUIS SANTIAGO: We ask for ID's?

HECTOR PINIERO: Do you have a system?

LUIS SANTIAGO: We have a scanning system in the store (inaudible)

HECTOR PINIERO: Let me ask you one last question.

OFFICER ED SAUCIER: We can't hear what he is saying.

LT. JAMES JOHNSON: Put the mike on.

LUIS SANTIAGO: What we happens most of the time always someone in store anyone that have to ask for ID at least person (inaudible)

HECTOR PINIERO: Who was the person that was working on the day you got the phone call?

LUIS SANTIAGO: Ernesto Paldino.

HECTOR PINIERO: What is his full name for the record?

HECTOR PINIERO: It is Ernesto Paldino?

LUIS SANTIAGO: Erenesto Paldino.

HECTOR PINIERO: And before you got this phone call from this person did you get any notice from the paper that there would be sting operation would be done by the Worcester Police Department.

LUIS SANTIAGO: No, no.

HECTOR PINIERO: Thank you. I have no further questions for him. If I may chair. May I have your full name and address sir.

ERNESTO PALDINO: My name is Ernesto Paldino and I live at 29 Ellis Street, Worcester, Massachusetts.

HECTOR PINIERO: And how old are you sir?

ERNESTO PALDINO: I am thirty.

HECTOR PINIERO: And how far have you gone in school

ERENSTO PALDINO: I just finished a Bachelor's at Worcester State.

HECTOR PINIERO: Are you employed?

ERNESTO PALDINO: Yes.

HECTOR PINIERO: And were you employed on May 25, 2013?

ERNESTO PALDINO: Yes.

HECTOR PINIERO: And how were you employed on May 25, 2013? Where did you work on May 25, 2013?

ERNESTO PALDINO: I worked part time for Santiago's.

HECTOR PINIERO: In what capacity did you work at that time?

ERNESTO PALDINO: I was cashier?

HECTOR PINIERO: What are your responsibilities as cashier at Santiago's Liquors?

ERNESTO PALDINO: Work with customers, greet people, they buy cigarettes, liquor. We accept MA license, passport, military ID. We don't accept out of state ID.

HECTOR PINIERO: And is there anything else that you do when you work there on May 25, 2013 to make sure you did not furnish knowingly or intentionally alcohol beverages to people under the age of 21.

ERNESTO PALDINO: Other than check the ID's just try and use common sense as to the age of a person. I am not going to ask the regulars that come in every single day. Obviously don't go by

HECTOR PINIERO: Let me ask you a question. Did you get a phone call between May 25th or May 26 until the end of May from your Uncle regarding the possible and alleged sale to an underage minor?

ERNESTO PALDINO: Yes, I did.

HECTOR PINIERO: Do you recall, tell the members what you recall about it.

ERNESTO PALDINO: He gave me a call as he was curious if we could go through the camera system to see if we can find this person at the time and we did get through the camera system and couldn't find it.

HECTOR PINIERO: What did you understand. What type of person would you be looking for? A male or female?

ERNESTO PALDINO: He described as female. So that is what I was looking for. A female

HECTOR PINIERO: Okay, on, do you remember anything about what you were doing that day at Santiago's Liquors?

ERNESTO PALDINO: Just

HECTOR PINIERO: Were you watching a Bruins game?

ERNESTO PALDINO: No, I am not a fan.

HECTOR PINIERO: Okay and who else would be working there on May 25, 2013?

ERNESTO PALDINO: Beside me?

HECTOR PINIERO: Anybody else?

ERNESTO PALDINO: The guy we have on the floor. Restacks everything.

HECTOR PINIERO: So does that person have responsibility over the sale of liquor?

ERNESTO PALDINO: No.

HECTOR PINIERO: One last question. Before this sting did you hear anything in the paper or did you hear anything in any radio that the Worcester Police Department of the City of Worcester would be doing a sting operation.

PAUL MULLAN: Mr. Paldino, are you TIPS certified?

ERNESTO PALDINO: Yes.

PAUL MULLAN: When did you get that?

ERNESTO PALDINO: Must be

PAUL MULLAN: Years ago?

ERNESTO PALDINO: Almost two years ago.

PAUL MULLAN: Okay, and you still working at the store?

ERNESTO PALDINO: Yes.

PAUL MULLAN: Good. Okay

HECTOR PINIERO: How many hours a week do you work there?

ERNESTO PALDINO: They just changed my schedule. I want to say four on weekdays. Actually, more now. Five on weekdays and mostly weekends.

ANTHONY SALVIDIO: Mr. Paldino you testified earlier that you don't ID everybody, correct?

ERNESTO PALDINO: Correct.

ANTHONY SALVIDIO: You don't ID regulars. You make a judgment call.

ERNESTO PALDINO: Try to make a judgment call as to common sense as how someone seems if at any point you question especially if they use credit cards, especially if purchases is suspicious we add them

ANTHONY SALVIDIO: It up to the individual cashier? You don't have a written on who you are going to ID and who you are not going to ID? Up to discretion?

ERNESTO PALDINO: Yeah.

KARON SHEA: So you went through all of the cameras and you can't find one person that you felt, young women that came in and purchased it. It did not find anyone.

ERNESTO PALDINO: The timeline

PAUL MULLAN: Any other.

HECTOR PINIERO: I don't have any further questions.

PAUL MULLAN: Just because we have gone back and forth and making sure the record is clear Attorney Piniero is it your argument that negligence to ask for an ID is a defense to knowingly and intentionally?

HECTOR PINIERO: Well, I am not sure I can answer the question in the form that you asked it Commissioner Mullan but the testimony you heard today does not. There is no requirement that every person that comes in be ID. That would be the ideal form but the licensee of the regulations of the City do not require it. The Alcoholic Beverages Commission do not require it. Would it be the ideal thing? I think it would be the ideal thing and would be my advice from today on that they do that regardless of who the individual is I think it makes perfect sense but let me just finish here. The issue here, the issue here is whether there is any evidence that my client knowingly or through his agents knowingly or intentionally sold. It is not (inaudible) but more importantly for the record Mr. Mullan.

PAUL MULLAN: I am well aware of that Mr. Piniero. I am a trial lawyer too. I know about the record.

HECTOR PINIERO: I understand, my ability to defend this case has been hampered as the City has refused to give me the information that the law requires

PAUL MULLAN: Prior to today did you make any request for that?

HECTOR PINIERO: I should be able to do it right at the hearing Mr. Mullan. I should be able, that information, well I think it is pretty clear that even if I had requested it prior to the hearing that the position would have been the same position that the City took in the case

PAUL MULLAN: That is two different arguments.

HECTOR PINIERO: Okay.

PAUL MULLAN: Did you make any request for before?

HECTOR PINIERO: I did not, I did not but I

PAUL MULLAN: Okay.

HECTOR PINIERO: But I should be able to right at hearing.

LT. JAMES JOHNSON: I would have been glad to give you that. If you come down the station I would show it to you at the police station.

HECTOR PINIERO: The point sir, is

ANTHONY SALVIDIO: Would you like the opportunity to step back and

LT. JAMES JOHNSON: I be glad to do it, show you the pictures.

HECTOR PINIERO: It is not just a question, with all due respect. Not just a question of seeing the picture you know. It's a question being able to question this individual.

KARON SHEA: You're questioning the individual who that left without, your questioning that person?

ANTHONY SALVIDIO: The decoy.

KARON SHEA: And you're saying that decoy should have not been, should not have happened that night?

HECTOR PINIERO: What I am saying is that there is a presumption under the law.

KARON SHEA: Right.

HECTOR PINIERO: Under the decision of the law as the case of El Coqui Liquor case if you deviate from these policies the presumption of entrapment. The presumption is a rebuttal assumption but right off the bat without notification the sting operation was defective. The City was on notice that it would be defective as early as a 2007. They ignore the rules of the Alcoholic Beverages Commission they think they are not mandatory. They do not think they apply to the City. The second issue is that I have a right under and in the opinion makes this clear under that the licensee has the right of confrontation under general law chapter 30A. Not only to see the pictures but to see what that person looks like but to get actual testimony from that person at the hearing where credibility determinations. Otherwise, the Board, the License Commission is under no position to evaluate the credibility of the witnesses. We certainly don't have the side of the story of the decoy that was utilized in the sting and that is what the court was critical on this opinion and other opinions that the Alcoholic Beverages Commission that have taken place. So I don't believe the liquor license commission in good conscience can issue a violation where either the city or the police department so flagrantly flaunted these guidelines that have salutatory purpose to make sure people are not entrapped when these investigations are taking place.

ANTHONY SALVIDIO: How would you distinguish that case from this case here when that case dealt with use of a false ID.

HECTOR PINIERO: What

ANTHONY SALVIDIO: The use is more akin to entrapment.

HECTOR PINIERO: But there were a variety of issues. If you at the opinion. There are three different sections to the opinion.

ANTHONY SALVIDIO: Correct.

HECTOR PINIERO: One was the notice. So the court said you didn't do the notice so the court said you didn't do the notice, strike out. Then the other issue was purposely issuing false information, strike out. I don't have that one here but on the third one you see using the anonymous decoy I have an absolute right of confrontation as that person and have you absolutely responsibility weigh in on the credibility to see what he said, what he didn't say and without that you are missing a very important piece of the puzzle and I don't believe respectfully to all of you in good conscience under those circumstance should a violation should be issued or a suspension should be issued.

PAUL MULLAN: Okay, I am going to make a motion that we find the violation of Santiago's Liquors

DEBORAH STEELE: Paul Mullan?

PAUL MULLAN: Yes.

DEBORAH STEELE: Tony Salvidio?

ANTHONY SALVIDIO : Yes.

DEBORAH STEELE: Karon Shea?

KARON SHEA: Yes.

PAUL MULLAN: I am going to make a violation that it be a one day suspension suspended for one year.

DEBORAH STEELE: Paul Mullan?

PAUL MULLAN: Yes.

DEBORAH STEELE: Tony Salvidio?

ANTHONY SALVIDIO : Yes.

DEBORAH STEELE: Karon Shea?

KARON SHEA: Yes.

Keiko Bar & Lounge, 751 Main Street – Violation of Rule #14 –
manager responsible for violations or infractions occurring on premises

Tuyen Lam appeared to answer to the violations and waived her right to counsel.

Lt. Johnson summarized the following incidents:

February 7, 2014

On February 7, 2014 at 1:47 a.m. Officer Joe Tolson was working a detail at Club Keiko at 751 Main Street and radioed for assistance in regards to a fight outside the establishment. At least eight police officers responded to this location to help clear the establishment. Officer Tolson reported that as he attempted to clear the establishment he noticed a patron starting an altercation with another person in the parking lot. Officer Tolson intervened and four individuals were arrested. Three of the four individuals were under twenty-one years old.

February 16, 2014

On February 16, 2014, at closing time of Club Keiko, Officer Joseph Tolson, one of two detail officers assigned to the bar, radioed out for assistance from other officers to assist in large fight in the bar. Officer Tolson was screaming that they needed assistance immediately. All available officers responded and numerous fights between officers and patrons erupted in addition to the initial large fight inside. Four arrests were made during this incident. Many of the patrons were openly challenging police as the officers arrived and others punched and interfered with officers while they were engaged with the patrons that they were arresting.

March 6, 2014

On February 20, 2014, a notice of suspension of the liquor license was posted at the Licensed Premises, 751 Main Street, by constable at 10:00 a.m. and mailed by first class mail. The notice stated that the suspension was to begin on March 3, 2014 and instructed the Licensee to turn in the License to the Office of Planning & Regulatory Services at City Hall during the suspension. The license was never turned in and this information was relayed to the police. On March 6, 2014, Officer Edward Saucier went to Club Keiko to check on the status of the business and observed that the parking lot was beginning to fill up with cars and observed a police officer on a paid detail at the club. Officer Saucier explained to the officer that the Club Keiko was under suspension and should not be open and advised him to shut the establishment down.

Officer Saucier observed a group of people who just arrived and informed the group that the club was closed and not to bother going in and then proceeded inside Club Keiko. Officer Saucier was informed that the manager, Lam Tuyen, was not present but that she had been contacted. Officer Saucier informed security that the business was under suspension and that they should clear the establishment and close up. Security staff and wait staff were cooperative and instructed everyone to leave.

Ms. Lam showed up and told Officer Saucier that she did not know she was supposed to serve the suspension and that she was never notified about dates of suspension and that she didn't know she needed to surrender her license during the suspension.

Ms. Lam stated she did not have much to say except that she is attempting to sell the business and that the night Officer Saucier came she had left Club Keiko to go buy milk to bring home.

Commissioner Mullan stated that Club Keiko was in for a violation on February 6, 2014 and that same evening had incident at establishment and continues to have problems and the concern is that someone may get killed due the lack of control at establishment.

Based on the evidence, the Commission finds the Licensee violated Rules #14 of the Worcester License Commission Rules and Regulations for liquor licenses, 204 CMR 2.05(2) and M.G.L. c. 138, §12 on February 7, 2014, February 16, 2014 and March 6, 2014 and due to the history of public safety problems at this establishment the Commission voted unanimously to revoke the liquor license for Club Keiko, 751 Main Street.

Adjournment

Upon a motion the Commission voted 3-0 to adjourn the meeting at 1:00 p.m.