



# BOARD OF LICENSE COMMISSIONERS

City Clerk's Office, 166 Boulder Drive

Fitchburg MA 01420

(978) 829-1820

Daniel Sarefield, Chair

Donna Pawlak

Glenn Fossa

## MINUTES OF MEETING

*The regular meeting of the Board of License Commissioners was held on January 17, 2018 in the Fitchburg Fire Department Community Room, 33 North St., Fitchburg, and called to order by Commissioner Sarefield at 6:02PM. Commissioner Fossa was present. FPD liaison Capt. Lemay was present. Commissioner Pawlak arrived at 6:09PM.*

The agenda consisted of the following:

### **I. REVIEW AND ACCEPTANCE OF MINUTES FROM PREVIOUS MEETING**

*Amended minutes of the two previous meetings were reviewed, approved and signed.*

### **II. APPLICATIONS**

Cafe Destare, 320 Main St. for Transfer of Annual, Restaurant, All Alcoholic beverages license #00033-RS-0394 to Tryst Lounge, Inc., 320 Main St., Paul Chlebeczek, Manager

*Mr. Christopher Iosua, owner of Destare, Mr. Paul Chlebeczek, proposed Manager of Tryst Lounge and Ms. Heather Silvera, owner of Tryst Lounge, Inc. were present. Mr. Iosua stated that when he decided to sell Destare, several people approached him with interest. After hearing the plans of how Ms. Silvera intends to run Tryst Lounge very similar to his original vision of Destare, he chose to pursue the sale with her. Ms. Silvera stated that she has not managed a liquor establishment before but bartended and waitressed through college. Captain Lemay stated that he would withhold comment on background checks until the public hearing.*

*Application accepted and sent to a public hearing to be held on February 5, 2018 2/0*

Tryst Lounge, Inc., 320 Main St. for 2AM Late Closing Tues – Sun

*Application continued to the public hearing on the license transfer scheduled for February 5, 2018*

Tryst Lounge, Inc., 320 Main St. for annual Sunday entertainment permit: live acoustic music, live amplified music, DJ, dancing

*Application continued to the public hearing on the license transfer scheduled for February 5, 2018*

Tryst Lounge, Inc., 320 Main St. for annual Mon-Sat entertainment permit: live acoustic music, live amplified music, DJ, dancing

*Application continued to the public hearing on the license transfer scheduled for February 5, 2018*

Fitchburg Senior Center, 14 Wallace Ave. for annual Mon-Sat entertainment permit: live acoustic music, live amplified music, DJ, dancing

*Mr. Schaff was present. Application approved 3/0*

### **Taxi driver:**

Carol Ann Michael (not present on 12/6/17 and denied. Applicant called on 1/2/18 to say she had been in the hospital and asked to be placed on tonight's agenda for second review)

*Ms. Michael was present. In order to discuss criminal history background with the applicant the Board entered in to Executive Session at 6:12PM with the intention to resume open session upon conclusion.*

*The Board resumed open session at 6:23PM. Application denied 3/0*

**Taxi driver reviews – continued from January 3, 2018 when applicants were not present:**

Michael Mangiacotti – Twin City Kab

John McNamara – City Cab

Emmanuel Petit-Frere – City Cab

*None of the taxi drivers listed above were present. Applicants were notified of tonight's continued hearing by certified mail sent to their last known address according to their taxi driver application on file and the taxi companies for whom they reportedly work were also sent notice of the hearing by certified mail.*

*Motion to revoke the taxi driver licenses for the individuals listed above passed unanimously 3/0*

*The Clerk was instructed to send notice of the license revocation to the drivers at their last known address and also to the taxi companies for whom they reportedly worked.*

**III. OTHER**

Topps Liquor: Review of appeal of 21 day suspension filed by William A. Kelley, Jr., Esq. and vote on stay of suspension. (Continued from January 3, 2018 at the request of licensee's counsel)

*Attorney William Kelley, representing Topps Liquor, Mr. Kalpesh Patel-Topps Liquor owner and Mr. Bhavik Patel-Topps Liquor manager were present. Attorney Kelley requested that the Board stay the enforcement of the 21 day license suspension until after the ABCC hearing is held on the appeal and they render a decision. Both the non-renewal of the annual license and the 21-day license suspension are under appeal by the licensee to the ABCC. Attorney Kelley stated that he has conferred with the City of Fitchburg City Solicitor Vincent Pusateri on this matter and what the various options may be. He stated that, should the ABCC rule for the licensee at hearing and the stay on the suspension is not granted by the Board, time and sales lost cannot be given back to the licensee. He stated that the basis of their appeal is the progressive discipline policy noted in the License Commission regulations and why it was not followed. He stated that the Patel's have found someone else to operate the store and that it would be beneficial to allow that process to continue. He recognized the perception that the Patel's may be avoiding punishment by finding a buyer for the store but asked that the buyer not be punished for the acts of the seller.*

*Attorney Kelley suggested payment of a fine in lieu of a license suspension as a possible alternative and noted that this is a common ABCC practice. He stated that he discussed this with Attorney Pusateri who is unsure how the City would receive such fine if determined to be the course of action. He stated that the primary issue for tonight is to determine whether or not the stay on the license suspension will be granted.*

*Commissioner Pawlak stated that the Board's decision to not renew the annual license has an automatic stay upon appeal to the ABCC but that the stay on the license suspension is not automatic. She outlined several concerns: questioning if it is unfair to other potential buyers of the license to have lost the opportunity to purchase it as a result of the ongoing negotiations between the Topps Liquor Patels and the Super Liquor Patels (who are not related); the fact that the owner was unaware of the hearing due to lack of notification by the Manager who was aware of it and present at the hearing and that significant weight was placed on the fact that the owner was not present in the basis of the Board's decisions to suspend and not renew the license; if negotiations for transfer of the license continue and the ABCC supports the non-renewal of the license there will be no license to transfer. Some discussion ensued regarding the process that the Leominster License Commission follows to determine the best applicant for a license in the possession of the City and available for issuance although Attorney Kelley noted that Topps has signed a transfer agreement and is prepared to move forward with submission of the transfer application to this Board.*

*Attorney Kelley asked that the Board reconsider the non-renewal of the license for purposes of a transfer of the license and to resolve the twenty one day suspension with a financial penalty.*

*Commissioner Sarefield stated that the Board considered at the hearing the magnitude of the pattern of underage sale at Topps compounded by not using the device that they had purchased to screen for underage sales and would not want the suspension to go un-served. He stated that he perceives these actions as a stalling tactic.*

*Attorney Kelley cited MGL Chapter 138 section 23 that details the formula for calculating a fine in lieu of suspension and that a fine is equivalent to a business closure as the end result of loss of funds is the same. It was noted that if the fine is determined to be the method of service, the amount will be factored in to the sale of the license.*

*Commissioner Pawlak reiterated that it was unfortunate the owner was not present at the original hearing because the Board intended to hear them out. Now, because a calculated move was made by another licensee to purchase their license, other potential buyers cannot apply for the license and Board has lost control over*

*the best potential owner. She stated that she has no problem with taking a fine in lieu of suspension and that the ABCC would probably allow it at hearing.*

*City Solicitor Pusateri asked if the Board could have the opportunity to let others know about the availability of the license with an informal meeting of interested parties.*

*Attorney Kelley stated that a signed agreement already exists and believes, although is not certain, that it is contingent upon approval of the license renewal.*

*Commissioner Pawlak stated that the transfer must happen before the ABCC hearing on the renewal and Attorney Kelley stated, in response, that they will continue to pursue the transfer and have it heard by this Board prior to the ABCC hearing in March.*

*DECISION: Motion to stay the license suspension to March 19, 2018 with the condition that any further violations will result in the stay being moved to the date of the next License Commission meeting for full review of all matters and that the stay can be revoked and the suspension implemented immediately*

*Passed by vote of 3/0*

#### **IV. CONTINUED SUMMONS HEARINGS**

*Kathleen Bradford – taxi driver, for review of driver history*

*Ms. Bradford was present. Captain Lemay reported that the results of Ms. Bradford's driver history report show five accidents in the City of Fitchburg in the last year, four of which were in taxi vehicles and one in her personal vehicle. Ms. Bradford stated that two of the accidents were not her fault and she was cited at fault in three of them. Ms. Bradford stated that, prior to driving a taxi, she delivered newspapers in the middle of the night and that, when she began to drive a taxi, she was not prepared for driving in traffic during the day.*

*Commissioner Sarefield referenced the Commission regulations that allow the Board to deny a taxi driver license for unsafe driving and more than one accident in a year.*

*Discussion ensued regarding the possible suspension of her driver's license at the end of the month if an outstanding court case is not resolved. She stated that the court date is scheduled and that she will rectify this issue to prevent the suspension.*

*Commissioner Pawlak, while deliberating towards a motion, asked Ms. Bradford some clarifying questions regarding her license and the court proceedings. Ms. Bradford became angry and disruptive and tossed her taxi cab permit from her purse on to the table in front of Commissioner Pawlak before leaving the room and before a vote on the matter was taken.*

*Motion to suspend the taxi driver license of Ms. Bradford passed by unanimous vote 3/0*

*Commissioner Fossa recused himself from the following matter and left the room.*

*Mr. Walther Kirby, Manager – Partner's Pub, 970 South St. regarding FPD report #17-50392-A-OF Attorney Edward Ryan, representing Partner's Pub, Walter Kirby-owner of Partner's Pub and Kevin Michaud-bartender at Partner's Pub on the night in question were present on behalf of Partner's Pub. Also seated at the table for discussion were FPD Chief Martineau and City Solicitor Vincent Pusateri.*

*Attorney Ryan stipulated and agreed to the following violations of License Commission regulations:*

*6:7 – All patrons must be off the licensed premises before the closing time stated on the license or late closing permit.*

*6.8 – Licensees and their employees may remain upon the premises after closing for the purpose of cleaning, making emergency repairs, providing security for such premises, preparing food for the next day's business or closing the business in an orderly manner. No alcoholic beverages are to be served or consumed after closing hours.*

*6.12 – All establishments will stop serving alcohol at least thirty (30) minutes before closing time.*

*Chief Martineau stated that he agreed with the stipulated violations and recommended a 10 day license suspension with 5 days to be served and 5 days to be held in abeyance for one year and a review and possible revocation of the 2AM Late Closing permit.*

*Attorney Ryan stated that he agrees with the 10 day suspension however requests that 3 days be served and 7 days be held in abeyance until the end of December and that the review of the 2AM Late Closing permit be stricken. He stated that the establishment has been in business for 32 years and is a good citizen.*

Commissioner Sarefield, Chief Martineau and City Solicitor Pusateri discussed the alternative of reviewing all 2AM Late Closing permits at the time of the annual license renewals, to consider whether there is a history of violations at late hours and neighborhood complaints.

Commissioner Sarefield asked Mr. Kirby if he was present on the night in question. Mr. Kirby responded that he was there until about 12:30AM. He said normally he is there until closing but that he suffered a stroke eleven days prior and left early that night at the urging of his wife.

While deliberating towards a decision, Commissioner Pawlak stated that she would consider revoking the 2AM Late Closing permit during the annual license renewal process. She stated that she would be willing to split the difference in the requested days to serve (5 vs 3).

FINDINGS:

Licensee was found to be in violation of the following Board of License Commissioners Regulations:

6.7 – All patrons must be off the licensed premises before the closing time stated on the license or late closing permit.

6.8 – Licensees and their employees may remain upon the premises after closing for the purpose of cleaning, making emergency repairs, providing security for such premises, preparing food for the next day's business or closing the business in an orderly manner. No alcoholic beverages are to be served or consumed after closing hours.

6.12 – All establishments will stop serving alcohol at least thirty (30) minutes before closing time.

DECISION communicated verbally to Attorney Ryan, Mr. Kirby and Mr. Michaud at Hearing and sent by regular and certified mail:

By vote of 2 in favor and 0 opposed with 2 members present, Board consists of 3 members:

10-day license suspension with four days to be served and six to be held in abeyance for one year.

Suspension is to be served on February 10, 11, 12 and 13, 2018.

Commissioner Fossa returned to the room.

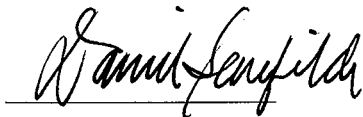
The meeting adjourned at 7:49 PM

Respectfully submitted,



Anna M. Farrell  
City Clerk

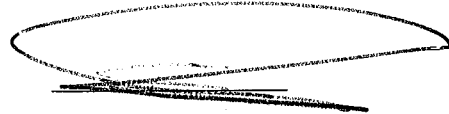
Approved:



Daniel Sarefield



Glenn Fossa



Donna Pawlak