

**MINUTES OF THE REGULAR MEETING OF THE
ALCOHOL, GAMBLING & TOBACCO COMMISSION**

March 6, 2013

The regular meeting of the Alcohol, Gambling & Tobacco Commission was held on Wednesday, March 6, 2013, at 4:45 p.m., in the City Council Chambers, 3rd Floor, City Hall.

ROLL CALL: Present: Dennis Birchland, Bjorn Braaten, Chris Pekkala, Jeff Rosenthal,

Ryan Stauber - 5

Absent: President Donahue - 1

COMMUNICATIONS:

CITY ATTORNEY SUBMITTING NOTICE OF HEARING AND POLICE REPORT TO DECIDE WHAT, IF ANY, DISCIPLINARY ACTION SHOULD BE TAKEN REGARDING THE ON SALE INTOXICATING LIQUOR LICENSE OF TB DULUTH, LLC, (RADISSON HOTEL), 505 WEST SUPERIOR STREET. #12-13. Received

CITY ATTORNEY SUBMITTING NOTICE OF HEARING AND POLICE REPORT TO DECIDE WHAT, IF ANY, DISCIPLINARY ACTION SHOULD BE TAKEN REGARDING THE ON SALE CLUB LIQUOR LICENSE OF NORTHLAND COUNTRY CLUB, 3901 EAST SUPERIOR STREET. #12-14. Received

CITY ATTORNEY SUBMITTING NOTICE OF HEARING AND POLICE REPORT TO DECIDE WHAT, IF ANY, DISCIPLINARY ACTION SHOULD BE TAKEN REGARDING THE OFF SALE 3.2 PERCENT MALT LIQUOR LICENSE OF D & C LETOURNEAU, ENT, (D & C LAKESIDE MILKHOUSE), 5402 EAST SUPERIOR STREET. #13-01. Received.

CITY ATTORNEY SUBMITTING NOTICE OF HEARING AND POLICE REPORT TO DECIDE WHAT, IF ANY, DISCIPLINARY ACTION SHOULD BE TAKEN REGARDING THE OFFSALE 3.2 PERCENT MALT LIQUOR LICENSE OF MINER'S INC. (SUPER ONE FOODS), 15 S. 13TH AVENUE EAST. #13-02. Received.

UNFINISHED BUSINESS:

GRANDMA'S SPORTS BAR AND GRILL, INC. (GRANDMA'S HOSPITALITY #1), 250 CANAL PARK DRIVE - APPLICATION FOR AN ON SALE INTOXICATING LIQUOR LICENSE (OLD) AND ON SALE SUNDAY LICENSE FOR THE PERIOD ENDING AUGUST 31, 2013, WITH ANDY BORG, CEO AND 10% STOCKHOLDER, AND

MICHAEL PAULUCCI, 90% STOCKHOLDER.

Tony Bronson was present on behalf of the application. He explained that what they would like to do is have the ability to serve alcohol at least six days a week at the Canal Park Lodge as a guest amenity for the Lodge and hopefully a source of some sales for them.

City Attorney Lutterman addressed the commission because of some issues with the application. Ms. Lutterman thanked Mr. Bronson for the map of the licensed premises as it is important to identify where the licensed premise is going to be because under City Codes, alcohol may only be served and consumed in the serving area. She continued explaining the licensee in this case is the Grandma's organization and not the hotel, so Grandma's is essentially wanting to open up a small bar in this hotel which is allowed. Ms. Lutterman explained that they can lease space within the hotel property and open up a bar, but the serving area has to be defined because the liquor can only be served and consumed in the serving area, and the only people who can serve the liquor must be employees of the licensee. She stated that employees of the hotel can't serve alcohol or operate the bar being licensed by Grandma's and wants to make sure the applicant understands that. Ms. Lutterman stated that although they applied for a Sunday license, at this point does not think they are eligible for a Sunday license as they do not meet the requirements that are required under State law for a Sunday license.

Mr. Bronson replied that they would be fine with getting the license to serve Monday through Saturday and they can address the Sunday issue at a later date. To the commission's questioning, Mr. Bronson replied that they do plan on serving food there on a regular basis from 5 to 8, however being open to the general public for food and alcohol would be the hotel's call. The commission questioned if Grandma's employees would be serving the alcohol, and Mr. Bronson replied that all the staff that will be working will be trained in the responsible liquor service training program just like the Grandma's Restaurant staff which is required by their insurance. The commission requested clarification of the serving area, and Mr. Bronson replied the guests will be taking their drinks and food over to the lakeside seating area which looks out over the lake and has chairs and couches in the area. Officer Vang stated he will contact Mr. Bronson and go down there to review their licensed premises so there is a clear understanding of where alcohol can and cannot go. Mr. Bronson requested that the Sunday license application be withdrawn at this time. There being no further discussion, Mr. Birchland moved THAT THE APPLICATION OF GRANDMA'S SPORTS BAR AND GRILL, INC. (GRANDMA'S HOSPITALITY #1), 250 CANAL PARK DRIVE, FOR AN ON SALE INTOXICATING LIQUOR LICENSE (OLD) FOR THE PERIOD ENDING AUGUST 31, 2013, WITH ANY BORG, CEO AND 10% STOCKHOLDER, AND MICHAEL PAULUCCI, 90% STOCKHOLDER, BE APPROVED, AND THE SAME BE RECOMMENDED TO CITY COUNCIL FOR APPROVAL. Mr. Stauber seconded the motion, and it was unanimously approved.

ORDER OF OWLS, NEST 1200, (ART IN BAYFRONT PARK), BAYFRONT PARK-APPLICATION FOR A TEMPORARY ON SALE INTOXICATING LIQUOR LICENSE FOR AUGUST 16 & 17, 2013, WITH DON BRANDT, MANAGER.

Christine Carlson and Benjamin Marsen, (Owls Club) were present on behalf of the application. Ms. Carlson explained that they are holding an Art in Bayfront Park event in August and would like to be able to serve alcohol at the event. Ms. Carlson explained that it will be a two day event with Friday night being a VIP event for about 100 -150 people. She stated the alcohol will be contained in building down at Bayfront but would also like to use the patio area outside of the building for the licensed area. Ms. Carlson also explained that on Saturday they will quit serving at 4:00 p.m. and then from 5 - 7:30 there will be an Art of Brewcraft event with many different brewers giving out samples of their brewed beer. Officer Vang stated there will be an off duty police officer working at this event and will be contacting the event organizer before the event to identify the serving area. To questioning from the commission, Mr. Marsen replied that they were approached to apply for this license which they are happy to do, and that they understand that the bartenders from the Owls Club need to serve the alcohol on Friday night and Saturday during the day. There being no further discussion, Mr. Stauber moved that THE APPLICATION OF ORDER OF OWLS, NEST 1200, (ART IN BAYFRONT PARK), BAYFRONT PARK FOR A TEMPORARY ON SALE INTOXICATING LIQUOR LICENSE FOR AUGUST 16 & 17, 2013, WITH DON BRANDT, MANAGER, BE APPROVED, AND THE SAME BE RECOMMENDED TO CITY COUNCIL FOR APPROVAL. Mr. Rosenthal seconded the motion, and it was unanimously approved.

HEARING TO DECIDE WHAT, IF ANY, DISCIPLINARY ACTION SHOULD BE TAKEN REGARDING THE ON SALE LIQUOR LICENSE OF TB DULUTH, LLC, (RADISSON HOTEL), 505 WEST SUPERIOR STREET.

(See attached transcript)

HEARING TO DECIDE WHAT, IF ANY, DISCIPLINARY ACTION SHOULD BE TAKEN REGARDING THE ON SALE CLUB LIQUOR LICENSE OF NORTHLAND COUNTRY CLUB, 3901 EAST SUPERIOR STREET.

(See attached transcript)

HEARING TO DECIDE WHAT, IF ANY, DISCIPLINARY ACTION SHOULD BE TAKEN REGARDING THE OFF SALE 3.2 PERCENT MALT LIQUOR LICENSE OF MINER'S INC. (SUPER ONE FOODS), 15 S. 13TH AVENUE EAST.

(See attached transcript)

NEW BUSINESS:

GRANDMA'S MARATHON - DULUTH, INC, CANAL PARK DRIVE AND BUCHANAN ST, - APPLICATION FOR A TEMPORARY ON SALE INTOXICATING LIQUOR LICENSE AND TEMPORARY ON SALE DANCING LICENSES FOR JUNE 21-23, 2013, WITH SCOTT KEENAN, MANAGER.

Commissioner Rosenthal stated that he would not be partaking in the discussion of this applicant as he has a conflict of interest with the application.

Scott Keenan, Executive Director, was present on behalf of the application. Mr. Keenan reviewed the operation for the Marathon tent has not changed for Friday and Saturday nights. He went on to say that the hotels in the area requested that the music on Friday night not be so loud and Mr. Keenan explained to accommodate that request they will have a band that plays softer music and will be done by midnight on Friday night. Mr. Keenan reviewed that the music and alcohol sales will start at 7 with the serving ceasing at 1:00 and the police starting to clear the tent between 1:30 and 2:00 a.m. To questioning by the commission, Mr. Keenan replied that they will be hiring 12 off duty police officers, and that during the day Saturday individual 21 years of age are stamped, but in the evening no one under 21 is allowed into the tent. The clerk reviewed that in addition to this application, a special events permit is secured by this applicant, and the council passes a resolution waiving the drinking in public prohibition. There being no further discussion, Mr. Birchland moved that THE APPLICATION OF GRANDMA'S MARATHON - DULUTH, INC, CANAL PARK DRIVE AND BUCHANAN ST, FOR A TEMPORARY ON SALE INTOXICATING LIQUOR LICENSE AND ON SALE TEMPORARY DANCE LICENSE FOR JUNE 21-23, 2013, WITH SCOTT KEENAN, MANAGER, BE APPROVED, AND THE SAME BE RECOMMENDED TO THE CITY COUNCIL FOR APPROVAL. Mr. Stauber seconded the motion, and it was approved upon the following vote: Yeas - Birchland, Braaten, Stauber, Pekkala - 4
Nays - 0 -
Abstain - Rosenthal - 1

LAWFUL GAMBLING:

Regents of UMD

60 day waiver - raffle exemption

Kristina D'Allaird was present on behalf of the application. Ms. D'Allaird explained that this raffle is a 50/50 drawing held as part of their Spring Fling April 18th with all of their proceeds going to the scholarship fund for athletic department. She went on to say that the tickets are \$10 and the winner will get half of the 50/50 drawing and the other half to the scholarship fund. There being no further discussion, Mr. Stauber moved THAT THE 60 DAY WAIVER REQUEST OF REGENTS OF UMD FOR A RAFFLE EXEMPTION PERMIT BE APPROVED, AND THE SAME BE RECOMMENDED TO THE CITY COUNCIL FOR APPROVAL. Mr. Rosenthal seconded the motion, and it

was unanimously approved.

There being no further business to bring before the commission, the meeting was declared adjourned at 5:25 p.m.

HEARING TO DECIDE WHAT, IF ANY, DISPLINARY ACTION SHOULD BE TAKEN REGARDING THE ON SALE LIQUOR LICENSE OF TB DULUTH, LLC, (RADISSON HOTEL), 505 WEST SUPERIOR STREET.

Attorney Lehr: Thank you Vice President Pekkela, Commissioners. This matter is resolved with regard to the facts. Does everyone have a copy of the stipulation that was signed by myself and Mr. Briner? This matter involves a violation that occurred on July 18th of 2012. It was a sale to a minor. The licensee acknowledges that the violation occurred and they are here today to address the commissioners regarding what the penalty should be with regard to this matter. The presumptive penalty is a \$500 civil penalty. This is a first offense for this licensee.

Briner: Jeff Briner, General Manager for the Radisson. The person that was in violation was disciplined. We did have some liquor training afterwards with all other bartenders, and it has been addressed, not only with her, but with everybody. It was the first offense that the property has had in the 42 years that it's been here. I was not the manager at the time. I came in a month later. Since then, everybody's been retrained. We've had our so-called different meetings: we actually have a bartender meeting on Friday afternoon and we focus on this issue.

Stauber: Were you here for the January meeting that we didn't have a quorum for?

Briner: Yes. I've been schedule for three meetings.

Stauber: If there's no questions, I've got a motion. I'd like to reduce the civil penalty to \$100 with the extra circumstances that you've had to essentially prepare for three meetings and it's bad government that we can't provide a quorum and we didn't at the time.

Birchland: Second.

Pekkala: All in favor?
Motion passes unanimously.

Briner: Thank you.

Oswald: This recommendation goes to our city council for approval, which will probably take a couple weeks before it goes, and then you'll get a letter telling you when it's going to the council. So you have an opportunity, if you want, to come to the council meeting. Either way I'll send you a copy of the resolution once it's approved. Your fine will be paid after that.

Briner: Very good. Thank you.

Lutterman: Yes, and you should be aware that the commission's action today here is a recommendation to the city council. The city council has the authority to go along with the commission's recommendation, reject the commission's recommendation, modify the commission's recommendation, so it's always in your best interest to appear at city council.

Briner: Thank you for the information.

HEARING TO DECIDE WHAT, IF ANY, DISCIPLINARY ACTION SHOULD BE TAKEN REGARDING THE ON SALE CLUB LIQUOR LICENSE OF NORTHLAND COUNTRY CLUB, 3901 EAST SUPERIOR STREET.

Attorney Lehr: Thank you Vice President Pekkela. This matter is also resolved with a stipulation as to the facts. I again have a signed stipulation signed by Mr. O'Connor, from the licensee. Does anyone not have a copy of the stipulation. This is a violation that occurred on July 18th of 2012. Again, it's a sale to a minor and the licensee is acknowledging that the violation occurred but wishes to address the commission regarding the penalty. This is also a first offense so there is presumptive civil penalty of a \$500 fine.

Joe O'Connor: I am Joe O'Connor, General Manager, Northland Country Club. I'm a 26 year employee at the facility. Certainly we do apologize for our negligence in serving a minor, a guest at our facility. And I can assure you that the proper training procedures are now in place with staff and hopefully this won't happen again. And like the gentleman previously, I too had prepared for three meetings including changing travel schedules and I'm glad that we can finally put this matter behind us. Thank you.

Stauber: Do you know if the property's had any other violations in the

past?

O'Connor: You know what? In the years that I've been there, no. But prior to that I can't answer that. But talking to the long term members, I don't think so. It's not something that we're accustomed to – serving an individual who is not a guest of a member. So, it's certainly very unfortunate.

Birchland: Given the same set of circumstances as the first hearing that we just had, I would make a motion that we reduce that penalty to \$100 for the exact same reasons. It wasn't the commission's fault it was just a matter of circumstances of illnesses and resignations that we weren't able to have a full crew here, and I would move that we reduce that fine to \$100 the same as the previous hearing.

Rosenthal: Second.

Pekkala: All in favor? Motion passes unanimously.

O'Connor: Would you explain to me the importance of attending a city council meeting?

Lutterman: The commission's action here today is a recommendation to city council. The city council can choose to accept the commission's recommendation and implement it fully, they can reject the recommendation and impose a \$500 fine or no penalty at all, or they can modify the commission's recommendation. Some people think that the commission's action is the final word on the matter and it is not. The council hasn't always gone along with the commission's recommendations and that's why we suggest that a representative of the licensee appear at the city council meeting.

O'Connor: And I'll be notified when that meeting will take place?

Lutterman: The Clerk's office will be sending out that notice.

O'Connor: Thank you. Thank you very much.

HEARING TO DECIDE WHAT, IF ANY, DISCIPLINARY ACTION SHOULD BE TAKEN REGARDING THE OFF SALE 3.2 PERCENT MALT LIQUOR LICENSE OF MINER'S INC. (SUPER ONE FOODS), 15 S. 13TH AVENUE EAST.

Attorney Lehr: Thank you. This matter is like the previous two. We have a stipulation as to the facts signed by myself and licensee wherein the licensee acknowledges that the violation occurred but wishes to be heard with regard to the penalty. Do all the commissioners have a copy of the stipulation? This is a violation that occurred on July 18th of 2012. It also involved a sale to a minor. It is a first offense and the presumptive penalty is again the \$500 civil fine.

Anderson: Bruce Anderson, General Counsel for Miner's Incorporated

Heikkinen: Dan Heikkinen, Store Manager.

Anderson: Commissioners, I do have some information here that I'd like to share with you if I can. What I've just handed you and highlighted on the first page is a copy of our employee handbook and this talks about the restricted sale of products, both tobacco and alcohol at our Super One stores. We've put all employees on notice that if they violate the law and commit an illegal sale there's going to be serious discipline. If you go to the second page you'll see our Minnesota store policy on the sale of alcoholic beverages. I've highlighted what the end result generally is. If an employee commits such an offense, a violation of this policy will result absent substantial mitigating circumstances, termination of employment. The individual that was involved with this was a young man named Andy Bjorklund. He was a UMD student. He was a short time employee at Super One. He started the first week in June and this incident happened, I believe, the middle of June, so he was there for about six weeks. He did sign an acknowledgement that he received the handbook. He also signed an acknowledgement that he understood the policy and he understood that if he committed this infraction that his employment with Super One would be terminated. If you go to page 5, what you're looking at there, this is the actual cash register transaction. What I want to point out to you is what's interesting here. Our cash register systems are set up so that they require a birthdate on restricted sales of all alcohol beverages. Again, we only sell 3.2 beer. There you'll see that the undercover agent purchased a bottle of Bud Light for \$5.69. The register seized up, stopped the transaction, said give me a birthdate. The date that Mr. Bjorklund put in was 8/28/88. 8/28 is his birthday. He was born in 1991. He wasn't 21 yet, so he put in 88. So, he put in a birthdate, but it wasn't the customer's birthdate. When this came to light, the end result was Mr. Bjorklund's employment with Super One was terminated. Since that time, we've modified our policy. I'd like to share this with you too. We've updated our policies. We've added language that says that each store cash register is programmed to require that a birthdate be keyed into the system to process the sale of

alcoholic beverages. In bold: Store employees must enter the customer's birthdate as printed on a valid ID – not the employee's birthdate, another person's birthdate, or some fictitious birthdate to process the transaction. And I do have these, I won't hand these out to you. If you go through the Super One store and you find the beer section you'll now find these cards posted by the beer. It says "Valid ID required to purchase alcohol". They're all very young. If your parents come in to Super One and want to buy a six pack of Bud Light they're going to be asked for their ID because that's the birthdate that going to go into the cash register system. We take this type of infraction very, very seriously.

It's important to us that we comply with this area of the law. The liquor business is important to all of the Super One organization so this is something that we don't fool around with. The store manager who was in charge at the time that this incident took place last July is still with the company but he is no longer the store manager there. Mr. Heikkinen took over. Dan's been with the company for 20 some years, I think. He was most recently the store manager in Two Harbors. He's got a lot of experience with the company so I have great faith in what he can do. If you have any questions we'd be happy to answer them.

Pekkala: How has the new policy gone as far as carding everybody and making sure that the correct birthdate is inputted?

Heikkinen: Since it's been implemented there really hasn't been too many problems. I kinda anticipated there might be some push back on it, but so far it's been pretty well accepted.

Anderson: One of our concerns obviously was, you're going to get older people, my age, that would say "why do you need to card me?" We're training our front end staff to say "We have a zero tolerance when it comes to violating the liquor laws. Our process and our front end systems require that an appropriate birthdate be put into the cash register and that's why we're doing it. Basically, we'd like you to be part of the solution.

Pekkala: Any questions?

Birchland: Were you here in January?

Anderson: We were.

Stauber: I make a similar motion to the previous that we reduce the civil fine to \$100 under the circumstances that the defendant here did show up at the January meeting and probably prepared for the February meeting which was subsequently cancelled.

Rosenthal: Second.

Pekkala: All in favor? Motion passes unanimously.

