

**Meeting Minutes
Board of License Commissioners
Caroline County, Maryland**

DATE: Wednesday, July 24, 2019

PLACE: Health & Public Services Building
403 S. 7th Street, 1st Floor, Room 110
Denton, Maryland 21629

BOARD MEMBERS: Nick Loukides, Acting-Chair
Glen Plutschak, Member

OTHERS PRESENT: Crystal Dadds, Asst. Director of Codes
Phillip Moore, Alcoholic Beverage Inspector
Heather Price, County Attorney
Melanie Smith, Administrative Assistant to the Boards

Acting Chair Loukides called the meeting of the Caroline County Board of License Commissioners to order at 9:30 a.m.

NEW LICENSE APPLICATIONS

FAT RICKY'S PUB & GRUB, INC – 42 Denton Plaza, Denton, MD

Ms. Dadds read the notice of public hearing and exhibits into the record. John & Deborah Mullins and Michael Root are requesting for the use of Fat Ricky's Pub & Grub, Inc., located at 42 Denton Plaza, Denton, MD for a new, class B – beer, wine & liquor (restaurant, 7-day on premise sales alcoholic beverage license.

Exhibit 1 – Notice of Public Hearing
Exhibit 2 - Premise Diagram
Exhibit 3 - Staff Report

Mr. Loukides swore in:

Richard Phillips, 9643 Legion Rd., Denton, MD 21629
Michael Root, Jr., 7759 Sauerbacker Ave., Pasadena, MD 21122
Deborah Mullins, 25770 Burrsville Rd., Denton, MD 21629
John Mullins, Sr, 25770 Burrsville Rd., Denton, MD 21629

Mr. Phillips introduced himself to the Board as the major investor in this business with Mr. Root and Mr. & Mrs. Mullins holding a 10% interest each. The Mullins' have agreed to be the licensees

until Mr. Phillips qualifies to be a resident license holder. He recently moved to Denton from Pasadena to be closer to the establishment.

Mr. Phillips owned two taverns in New York in the 1990's but this will be his first experience running a restaurant. They will be serving high-quality fresh food, not frozen.

Mr. Phillips had to pay several outstanding bills, left by the previous owner, to the Town of Denton before moving forward with the application. They are now resolved, and everything is now transferred into Fat Ricky's Pub & Grub.

Mr. Plutschak asked about the permit for the outside storage unit. Mr. Phillips explained that he has applied for the permit and is waiting for the approval. He does not intend to store anything other than bottled beer and food to keep chilled. Mr. Plutschak asked for the history of the outside storage.

Ms. Dadds explained that the Browns took over the establishment and outside storage from Snappy's Bar & Grill. Snappy's maintained a permit to use the outside storage area as part of their premise. When Mr. Mullins, Jr. took over the business it was discovered that the Brown's did not obtain or maintain a permit for the unit. Mr. Mullins finally got a permit to use the outside storage for alcohol and the permit expired in October 2018. Any type of alcohol may be stored in the outside cooler if the permit is approved by the Comptroller's Office.

Mr. Phillips asked for the interior of the establishment and the outside cooler to be included in the premise. He is not interested in expanding to the sidewalk because they aren't wide enough now to accommodate a wheel chair.

Ms. Dadds informed the Board that Mr. Phillips had provided his business license and is having a TIPS class in the establishment the next day. He also provided his Workers' Compensation Insurance Certificate. Mr. Phillips added that he has fourteen potential employees ready to start.

Ms. Dadds stated that Ms. Price approved the paperwork for legal sufficiency. All payments have been made to the County. Mr. Phillips still needs notarized signatures on the amended lease agreement. He is waiting for the Health Department to give him his permit at which time the Town of Denton will issue the Occupancy Permit. Mr. Phillips confirmed that he possessed the Rules & Regulations and has thoroughly read them. He has it at the front counter of the bar.

Mr. Phillips also informed the Board that he purchased new equipment which is to be delivered this day. He will have new stoves, fryers, ovens and refrigerators. He had the restaurant and hoods professionally cleaned.

Motion: Mr. Plutschak motioned to approve the new license application for Fat Ricky's.

Second: Mr. Loukides seconded the motion.

In Favor: The motion was unanimously approved (2-0).

CONSENT AGENDA

The June minutes will be held for the August agenda due to the absence of the other Board members. The following items were approved by unanimous consent:

- Written Decision – Sheldon’s 313, Inc.
- Written Decision – Denton Shell

OLD BUSINESS

ROADHOUSE 313 – Transfer Status

The only item that is still needed to finally approve the Roadhouse 313 transfer license is a release from the Comptroller’s Office. Mr. Dial has been unsuccessful working with the Comptroller’s Office. They would not speak to him about the business account because he was the purchaser and not the previous owner. Ms. Dadds believed it was due to confidentiality of financial information. Ms. Dadds spoke to their office and explained that if they wanted the sales tax that is due, they needed to communicate with Mr. Dial.

Mr. Dial stated that the taxes that were due were from the time he took over the business in November 2018. He was under the impression that he had until 2020 to pay the current taxes for 2019. He had set up an online account at the beginning of April 2019 to pay the taxes quarterly and the second quarters amount is scheduled to be withdrawn from his account on July 20th.

He found it impossible to speak to anyone in the Comptroller’s Office. Ms. Price agreed and Ms. Dadds added that they don’t have an answering service. He finally talked to someone and agreed to pay the taxes in full, from when they took over the business in November.

The Comptroller’s Office agreed to allow him to pay it but would not give him the amount due until his check cleared for the second quarter payment. As of today, they still had not given him an amount. In the meantime, they approved his bulk transfer permit. The officers traveled to the store for the audit and cashed the check for the bulk transfer, but he is still working under the Sheldon’s license.

Ms. Dadds asked him to explain to the Board about the corporate tax that is due. Mr. Dial stated that when he finally talked to someone in the Comptroller’s Office and gave her all the sales information that she had requested, he asked if they would now release him to transfer the license. She asked Mr. Dial what he meant. He stated that they hadn’t given him his release yet and he was still working under the Sheldon’s license.

She responded that until the Sheldon’s pay the corporate tax that is owed from 2016 they would not issue a release. The Comptroller’s Office sent a release in April 2019 for the Sheldon’s to obtain their renewal license despite this outstanding charge. But he has paid all of his taxes in advance and owes them nothing and they will not release him to transfer the license. Despite the fact that they approved the bulk transfer permit for the transfer of the alcohol stock from Sheldon’s to Roadhouse.

Mr. Dial was clearly frustrated. The woman told him that it occurred because the Sheldon's were working as an INC rather than an LLC. Ms. Price stated that she didn't know as much about the situation as Ms. Dadds did, which made it difficult for her to advise the Board. She stated that the question before them was, can Mr. Dial continue to work under the Sheldon's license until this is resolved.

Mr. Plutschak suggested Mr. Dial contact Senator Hershey's Office about not being able to contact or resolve this issue with the Comptroller's Office. In the meantime, Mr. Plutschak asked how the Board should handle Mr. Dial's request to extend the deadline to comply. The Board voted at the June meeting, that if the transfer was not resolved by today, the license would be confiscated. Mr. Plutschak would like to allow Mr. Dial to continue to keep the license while working to resolve this.

Ms. Dadds read the conditions of transfer from the MD Annotated Code §4302(b) as follows:

Conditions of transfer

(b) A transfer under subsection (a) of this section may be made if:

- (1) an application for the transfer has been made;
- (2) all sales and use, amusement, admission, and withholding taxes have been paid to the Comptroller;
- (3) a bulk transfer permit has been obtained if the inventory of alcoholic beverages is to be transferred:
 - (i) in any manner, including by sale, gift, inheritance, and assignment; and
 - (ii) regardless of whether consideration is paid; and
- (4) the local licensing board approves the new location or license holder in the same way the local licensing board approves the issuance of a license.

Ms. Price stated that he may have met the legal threshold to take a Mandamus Action. This would compel the Office to act on an administrative matter that they have a legal duty to do so but have not. Mr. Plutschak suggested asking the Comptroller's Office to send the corporate tax that is owed by the Sheldon's to Central Collections rather than holding Mr. Dial's license ransom.

Mr. Dial added that it was not in their contract that they would assume any corporate taxes owed. Mr. Dial's business is not required to pay corporate tax as an LLC. Ms. Price suggested he send a copy of the contract to the Comptroller's Office to support his statement. Ms. Price will contact one of the Assistant Attorney Generals before the August meeting to intercede if she can.

Ms. Price would also like to enquire what, if any, ramifications there were if the Board took judicial notice of this objection and state that it was wrong, and they move forward anyway and

issue the transfer license. She has never seen a local Board act in circumvention to a State Comptroller. Ms. Price pointed out that the last hold notice on record stated that Mr. Dial still owed sales and use tax, which, by law, the Comptroller can withhold approval of this transfer.

Motion: Mr. Plutschak motioned to approve Road House 313 to remain open using the Sheldon's license until this issue is resolved.

Second: Mr. Loukides seconded the motion.

In Favor: The motion was unanimously approved (2-0).

DISCUSSION

BOARD RULES OF PROCEDURE

Ms. Dadds stated that the Board was working under Rules of Procedure from 1993. She would like the Board to look at them again and make updates where necessary. Mr. Plutschak asked Ms. Price what updates she suggested.

Ms. Price would like to see the new practices incorporated into the document. Some specific protocols include:

- The order of the hearing – reading of exhibits, swearing in, order of testimony;
- The Boards opening statement;
- Acceptable conduct of a Board member and the audience – cross talk during deliberation or testimony, for example;
- A 10-day limit to request a reconsideration;

Ms. Price explained that if a licensee should request a reconsideration within the ten-day limit, the original decision would be "Stayed" or suspended until the next hearing. The thirty days to appeal would begin again from the date of the reconsideration if the Board should make a new motion.

- Failure to appear is written in the summons but not written as a policy;
- Exparte Rule - communication should be prohibited in policy with further explanation that should a member be approached they stop it and put it on record that they were approached by an individual at the start of the hearing;
- Bad behavior will cause someone to be forced to leave a hearing; For instance, cross talk with the Inspector or someone in the audience;
- A move for recusal can be made but not forced;
- Board members may be under the State ethics law, Ms. Price will investigate that;
- Public predisposition – if a member were to state on Facebook or declare in public that "they would never give a license to a particular establishment" this is a public disposition – If a member were to make a public predisposition, she would strongly encourage them to recuse themselves. And in this case, the Board can force a recusal.

- Deliberately circumventing an act – for instance members discussing a case before it is heard or offering suggestions on how to proceed. There is also accidental circumvention. Ms. Price would like to clarify what constitutes an executive act as opposed to an administrative act before addressing this in policy.
- Offer of compromise – might allow a defendant to admit guilt and ask to offer a compromise so they don't have to attend a Show Cause Hearing or go to Court. Mr. Plutschak would like members to be the approving authority. Inspector Moore suggested that it could be a decision pending Board approval.

Mr. Plutschak would like to incorporate rules of deliberation similar to those of other County Boards. Ms. Price suggested this be added to the order of hearing. She would also like to include language to address a preliminary motion should a licensee elect to have someone speak in their place (as occurred in the Taphouse show cause hearing). The person must state their involvement with the business.

Mr. Plutschak noted that when only two members are available for a hearing, staff has allowed a licensee to reschedule their hearing until all members are available. He asked for consideration for this practice to be added to policy. Ms. Price advised against this, stating that it has been a professional courtesy the Board has offered. But it is not required and if put into policy it would tie their hands to deliberate if one or two members recuse themselves.

Mr. Plutschak asked if an inter-jurisdictional agreement could be made with neighboring County's that would allow a member of another district to sit in on cases where there is no quorum. Ms. Price stated that they could explore such an agreement. Ms. Dadds liked the idea to have someone available to sit on cases where Board members were acquainted with a licensee (neighbors, grew up together, distant relatives).

Mr. Plutschak would like the Rules & Regulations to be united with the Rules of Procedure. A chapter added to the Rules of Procedure was suggested.

RECKONING PERIODS

Mr. Plutschak requested this be postponed to the August meeting when all members are present.

Ms. Dadds briefly explained that the Board considered a three-year clean record (of violations and warnings) to be sufficient for expunging historical violation records. The Board would review records for expungement during the annual renewal meeting.

They also wanted to include a note in the Matrix that will reveal that it is a guidance document only.

RULE & REGULATION NO. 2.17 – Handling of Sensitive Information

Mr. Plutschak requested this be postponed to the August meeting.

The Rule & Regulation states that licensees shall maintain records containing the legal names, aliases, addresses, ages, and social security numbers of all persons employed by them. At a

recent hearing an owner shared his concern that confidential information in employees' records was required to be readily available for inspection at the front counter.

Ms. Price suggested changing the wording to exclude social security numbers or any confidential employee information and entitle §2.17 (b) LISTS rather than RECORDS as it is titled now. She also added that family members handling alcoholic beverages for a licensee in a temporary and/or casual manner are considered employees.

INSPECTORS REPORT

Inspector Moore attended the LDAAC meeting this month. They were pleased with his investigative techniques and the increase in compliance among the licensees.

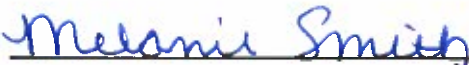
Inspector Moore assisted the Department by doing Codes Enforcement while the regular Inspector was on vacation.

The Comptroller is considering a week-long Academy for County Alcoholic Beverage Inspectors this fall.

There being nothing further to discuss Chairman Eigenbrode adjourned the meeting at 11:15 am.

BOARD OF LICENSE COMMISSIONERS

Greg Eigenbrode, Chairman



Minutes prepared by: Melanie Smith