

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

DATE: Wednesday, October 23, 2019

PLACE: Health & Public Services Building
403 S. 7th Street, 2nd Floor, Room 242
Denton, Maryland 21629

BOARD MEMBERS: Greg Eigenbrode, Chairman
Nicholas Loukides, Vice-Chair
Glen Plutschak, Member
Michael Mann, Alternate

OTHERS PRESENT: Phillip Moore, Alcoholic Beverage Inspector
Heather Price, County Attorney
Crystal Dadds, Assistant Director of Codes

Chairman Eigenbrode called the meeting of the Caroline County Board of License Commissioners to order at 9:30 a.m.

OLD BUSINESS

RULES OF PROCEDURES DISCUSSION

Ms. Dadds explained that the current Rules of Procedures are very limited and out of date. With the Attorney's assistance they will do a complete rewrite. Ms. Dadds had contacted neighboring counties to compare their Rules of Procedure and found that most of them incorporate this document into their Rules and Regulations.

Montgomery, Howard and Charles County examples were distributed among the members. Chairman Eigenbrode asked staff to clarify why Talbot County regulations are unique to other counties. Ms. Price explained that in the 1970's Talbot was exempted from some of the Maryland alcoholic beverage rules. There was a State Legislator that succeeded in having the exemption approved for Talbot County by the General Assembly.

Mr. Plutschak agreed with the change to Section 8.1 where it stated, "The Commission shall render its decision in each case at the end of a case and followed up with a letter to the applicant." He suggested language be added to explain fine amounts and when they are due to be paid. He asked for an explanation of the limit the County can charge for an offense. Ms. Dadds explained that the County is limited to a fine of no more than \$2500 per offense and per day for a continued violation. Ms. Dadds thought there was some language in the Rules and Regulations related to this but is sure the limit is not mentioned.

There have been numerous amendments to the Rules and Regulations since it was first printed as a pamphlet. Ms. Dadds has been updating the sections as they are approved in a word document and noting when the amendment was made and the amendment number.

Accounting was discussed and it was noted that revenue for the Board goes directly into the County General Fund. The Board has an annual spending budget of \$200 for other expenses that would not cover the cost of reprinting the pamphlets. Ms. Price suggested that the Board could earmark part of their revenue to use towards necessities such as the pamphlet update, education for license holders, reduced cost TiPS classes. Ms. Price explained that legislation intended for the Liquor Board to be self-sufficient. Ms. Dadds suggested that we could charge them to replace their initial pamphlet.

They discussed how to approach the Commissioners with this request. Chairman Eigenbrode suggested setting aside \$2000 for the Liquor Board budget and it returning to the General Fund if not used. Inspector Moore added that then, when a licensee remarks about the County making money off of fines, the Commissioners could respond that the money circles back to the license holders for education and assistance.

The Board directed Ms. Price to draft a letter to the Commissioners requesting to attend a workshop meeting to discuss earmarking fine money for education and prevention measures.

VIOLATION/PENALTY GUIDELINES

Ms. Dadds stated that they have identified the types of violations and potential penalties. The Board wanted to allow license holders an opportunity to reset their violation records once they have kept their record clean (no warnings) over a five-year period. Staff suggested this be initiated by the license holder applying to the Board at the annual renewal meeting.

Ms. Dadds suggested they put this information in the Rules & Regulations for the licensees to see. Mr. Eigenbrode agreed, adding that it will reveal which license holders are conscious of their violations when they are on time to reset their record. This request must be submitted with their renewal applications.

ROAD HOUSE 313 TRANSFER

In May the Board agreed to approve the transfer of Sheldon's 313 to Road House 313. There were a few conditions that had to be resolved; one of them was a "hold" the Comptroller's Office requested on the transfer due to a delinquency of a Sales & Use Tax and Corporate Tax.

After much ado about who paid what and when, Road House agreed to pay the Taxes and had set up an account to do so. In June, according to the owner, the Comptroller's Office stated that everything was resolved with the Sales & Use Tax, but the Corporate Tax was not resolved.

State law reads that conditions for transfer is that sales & use tax, admission and amusement, and withholding are paid and if not, they are the only taxes they can request a "hold" for on a transfer. Ms. Dadds consulted the County Attorney and reached out to Wicomico and Cecil County Liquor Boards to ask if they have ever been in a similar situation. The other County's

advised her that if it is not in the law, the State cannot force the “hold”. Their Boards would deny the “hold” for that reason.

The problem this causes for the Board is that if the Liquor Inspector would find the Road House in violation of any of the Rules & Regulations, they would have to call in the previous owners as the responsible parties. The Board members have made it clear they did not want the Sheldon’s involved.

Ms. Dadds recalled a similar situation fifteen years ago where the new owners were charged; appealed the charge because the transfer had not occurred; and the judge ruled in behalf of the new owners.

Ms. Price explained that it is outside the Boards jurisdiction to withhold a license for reasons that are not authorized by state statute. However, the Comptroller’s Office is insisting that they do. The members asked if they were to authorize the transfer in this situation would the Comptroller’s Office be able to confront them for not honoring their request.

Ms. Price advised that if the Comptroller’s Office were to respond negatively, she would ask that they show where, in the law, it states the Board must comply with such a request. As it is, the new owners have the right to fight this action and demand their license. Ms. Dadds received a call from the owners a week before asking why their license was still being held.

The members asked what they knew of this corporate tax that it is interfering with the transfer. Ms. Dadds stated that it was a tax that the Sheldon’s owed from 2016. She believes the Comptroller’s Office is extending their power to recover the money in this way. She is confused that the Comptroller’s Office cleared the Sheldons to renew their license in 2019 but is now preventing the new owners from transferring the license because of a tax the Sheldon’s owed at the time of the renewal.

The Board was upset that although the new owners have gone above and beyond to resolve this and jumped every hoop that was put before them, they are still being denied. Ms. Dadds then stated that she has not yet received a clearance from the Comptroller’s Office for the sales & use tax. Ms. Dadds did email her contact at the Comptroller’s Office to inform them that the County is still holding the transfer. She referred to the statute that gives the conditions of withholding the transfer, pointing out it does not include corporate tax. She asked that they respond with the status of the sales and use tax.

She has not received a response. She intends to escalate the issue to the Director, Mr. Jeff Kelly. According to the owners this tax was cleared. The Board asked if they were to go ahead and approve the transfer upon the notification that the sales and use tax is cleared, would the Comptroller be able to go after the establishment. Ms. Price stated that they would only be able to go after the Board for the decision. However, they may still expect the new owners to pay the corporate tax.

The Board listed their facts:

- The Board has no jurisdiction to legally hold the license;

- The tax was owed by the Sheldon's from 2016, however, the Comptroller's office approved their license renewal for 2017, 2018 and 2019;
- The license is being withheld as ransom for a debt owed by the previous owners of the establishment; and
- Their approval of the transfer, despite the hold, will not have any consequence on the new owners.

Inspector Moore has conducted several inspections on the business and has found them to be clean, they consult him before holding questionable events, they passed the underage sales check and routine compliance checks and resolved the parking issue that arose earlier in the year.

Motion: Mr. Loukides made a motion to approve the transfer from Sheldon's 313 to Road House 313 pending confirmation that the sales & use tax has been paid.

Second: Mr. Plutschak seconded the motion.

In Favor: The motion was unanimously approved (3-0).

NEW BUSINESS

NOTIFICATION OF 2019 TURKEY SHOOTS - American Legion Caroline Post #29

In the minutes of October 2018, the Board agreed that this was an annual event that they approve of on the condition that they notify the Board in advance of the dates they are scheduled for each year. The list of dates for the fall/winter have been provided and are included in the Board's package. The Inspector has had no issues with the American Legion and was present at some of the 2018 events.

CONSENT AGENDA

The Board reviewed the September 25, 2019 meeting minutes.

Motion: Mr. Loukides made a motion to approve the September 25, 2019 minutes as written.

Second: Mr. Plutschak seconded the motion.

In Favor: The motion was unanimously approved (3-0).

INSPECTORS REPORT

The Inspector was able to do a few inspections despite covering for the Codes Enforcement Officer while the position is vacant. He discussed those establishments that were found in compliance. Although there were no violations, he expressed some concerns that arose since the last meeting.

He checked the progress of the porch construction at Dave's Place. There was proper security in place during his visits. Chairman Eigenbrode believed that now that the head of security is aware of the Rules & Regulations, he expects the problems they were having to improve.

Inspector Moore asked for direction from the Board regarding the food/alcohol sales report that is required of restaurants. Other jurisdictions require that it come from an accountant. Otherwise, there is no assurance that the reports are accurate.

He explained that it is much easier to get an alcoholic beverage license for a restaurant than it is for a tavern. Then it is too easy to transform into a tavern as they move the tables to the side for a dance floor. It is more difficult for the Inspector to inspect for compliance in these situations without an accurate food/alcohol sales report.

Ms. Dadds and Inspector Moore have received complaints that one of their establishments have been overserving. This is a difficult violation to prove. Mr. Plutschak asked if it were reported to the police could they keep an eye on the establishment. Inspector Moore explained that if an intoxicated person were to kill somebody after leaving an establishment, they could hold the server responsible.

The Board discussed that the definition of a restaurant states that the daily receipts from the sale of foods must exceed the daily receipts from the sale of alcoholic beverages. They suggested that the Inspector could request those daily receipts to verify the restaurant complies.

The Board agreed that restaurants should have to serve food until an hour before closing. Staff will prepare some language for a potential rule and regulation amendment for the Boards review at the next meeting.

DISCUSSION

Ms. Dadds informed the Board of a recent legal decision regarding the residency requirements for their discussion. Resident agents were considered.

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


Minutes prepared by: Melanie Smith