

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
1511 PONTIAC AVENUE, BUILDING 69
CRANSTON, RI 02920**

IN THE MATTER OF:	:	
	:	
PBH VINEYARDS, LLC	:	DBR No. 13LQ068
d/b/a JAMESTOWN VINEYARDS	:	
	:	
<u>Application for a Farmer-Winery License</u>	:	

DECISION AND ORDER

I. Introduction

On or about June 21, 2013, PBH Vineyards, LLC d/b/a Jamestown Vineyards (“Applicant”), through its Manager Frank DiZoglio, applied to the Department of Business Regulation (“Department”) for a license to operate a farmer-winery on 334 Beavertail Road in Jamestown, Rhode Island (the “premises”). On July 12, 2013, the Director of the Department issued an “Order Appointing Hearing Officer and Providing Notice of Hearing” scheduling a hearing for August 2, 2013 and appointing the undersigned as Hearing Officer to conduct the hearing and render a decision in the above captioned matter pursuant to R.I. Gen. Laws §§ 42-6-8, 42-35-1 *et seq.*, and the Department’s Central Management Regulation 2 *Rules for Procedure for Administrative Hearings* (“CMR 2”).

II. Discussion

At the hearing, oral testimony from the Applicant’s manager was received along with a short slideshow presentation and photographs of the premises relevant to the proposed operation. Nine (9) persons identified themselves as “abutters” at the hearing and were given the opportunity to provide public comment, several of which did. These comments were received

pursuant to CMR 2, Section 15(F) which specifically provides that “any Person who is not a Party to a proceeding may, in the discretion of the Hearing Officer, be permitted to make oral or submit written statements on any issues relevant to the proceeding.”¹ Because it was not conclusively established whether *all* of these persons in attendance were in fact “abutters,” *i.e.* owners of property within 200 feet of the proposed farmer-winery, they are referred to collectively as “neighbors.”²

Following the hearing, the Applicant and the attending neighbors were given the opportunity to present additional evidence and/or comment through written submissions. Post-hearing submissions on behalf of the neighbors included documentation pertaining to alleged violations of laws under the jurisdiction of the Rhode Island Coastal Resources Management Council (“CRMC”), letters from one of the neighbors individually and from several neighbors collectively identifying themselves as the “Concerned Neighbors of 334 Beavertail Road,” and a copy of a letter addressed to the Jamestown Zoning Enforcement Officer. Submissions on behalf of the Applicant included two letters in support of the application, a pesticide inspection report from the R.I. Department of Environmental Management, and written legal argument from counsel for the Applicant. The Applicant objected to the neighbors’ post-hearing submissions on grounds of relevance and hearsay.³ In assigning weight to the submissions and the statements

¹ While providing certain entitlements to notice and opportunity for public comment, R.I. Gen. Laws § 3-5-17 does not in itself elevate abutters or neighbors to the status of “parties” to an administrative proceeding. Abutters and/or neighbors only become full parties to the proceeding if they seek and are granted “intervener” status pursuant to CMR 2, Section 23. *See* Section 3(I)(“Party” or “Parties” means each Person named or admitted as a Party, or properly seeking and entitled as of right to be admitted as a Party in a Contested Case.)

² The Jamestown City Solicitor also entered his appearance and attended the hearing; however, no substantive objection was made on behalf of the Town. A Jamestown Town Council member was also in attendance, but in a personal capacity, without any official objection being mounted on behalf of the Town.

³ The Applicant also objected to Concerned Neighbors’ letter on the grounds that the letter constituted unauthorized practice of law in violation of R.I. Gen. Laws Chapter 11-27. However, the cited chapter is outside the Department’s jurisdiction and, as such, an objection thereunder is not necessarily controlling of the outcome of the Department’s liquor licensing decision. The Florida district court of appeals case cited by the Applicant for the proposition that it “would be legal error to give any weight” to the letter is not binding. *Forman v. State Department of Children and Families*, 956 So.2d 476 (Fla. Dist. Ct. App. 4th Dist. 2007). The case is also distinguishable

made therein, the Hearing Officer considered these objections; however, hearsay evidence is not strictly prohibited in administrative proceedings.⁴ Procedurally, post-hearing submissions are permitted under CMR 2, Section 15 (G) which provides that “[n]o evidence shall be admitted [after the close of the hearing], *unless otherwise ordered* by the Hearing Officer.” Where the Hearing Officer permits post-hearing submissions, “appropriate notice” to any Party is required. *Id.* In the instant case, copies of all submissions were provided to the Applicant party with the opportunity to respond.

The general public notice requirements of R.I. Gen. Laws § 3-5-17 were complied with when an announcement appeared in the Legal Section of the Providence Journal on July 19 and 26, 2013, notifying all interested persons of the scheduled hearing.⁵ As documented by certified mail receipts, the Applicant complied with the abutter notice requirements of R.I. Gen. Laws § 3-5-17 upon sending notice by certified mail on July 3, 2013 to persons that the Applicant identified as the twenty three (23) abutters, *i.e.* owners of property within a 200 foot radius of the Appellant’s premises.⁶ The Applicant admits that “[a]lthough Applicant believed that list to be complete, the property owner identified by Concerned Neighbors did not receive the written notice to which she was entitled.” However, this property owner and her husband had actual notice of the hearing, which is confirmed by the fact that the husband’s name appears on the

because it deals with submission of briefs to a court in a proceeding that does not have a public comment element. CMR 2, Section 15(F), in providing for public submissions, in no way prohibits one interested member of the public to make a submission in representation of multiple interested members of the public. CMR 2, Section 7(A)(3) provides that a Party must either appear *pro se*, by an attorney admitted to the state bar or *pro hac vice*, or by a person exempted under Chapter 11-27. However, the neighbors are not “parties,” but rather providers of public commentary; the letter was received by the Hearing Officer as a public comment letter, not as a brief filed on behalf of an admitted party.

⁴ *DePasquale v. Harrington*, 599 A.2d 314, 316 (R.I. 1999) (“Both the United States Supreme Court and [the Rhode Island Supreme Court] have stated directly that hearsay evidence is admissible in administrative proceedings.”).

⁵ R.I. Gen. Laws § 3-5-17 provides: “Before granting a license to any person under the provisions of this chapter and title, the board, body or official to whom application for the license is made, shall give notice by advertisement published once a week for at least two (2) weeks.”

⁶ R.I. Gen. Laws § 3-5-17 provides: “Notice of the application shall also be given, by mail, to all owners of property within two hundred feet (200’) of the place of business seeking the application.”

attendance record for the hearing. In absence of specific evidence of prejudice, which is lacking here, actual notice demonstrated by attendance during a governmental proceeding cures any defect in the notice under both statutory and due process standards.⁷ Except as to this one property owner, the accuracy of the list of abutters relied upon by the Applicant was not contested by any other evidence.

R.I. Gen. Laws § 3-5-17 gives abutters the right to be notified of the hearing for a proposed farmer-winery and to provide objection and/or comments for the Hearing Officer to consider, which they were clearly provided in this case. However, neither § 3-5-17 nor any other provision of Title III, Department rule promulgated thereunder, or past decisions, practices, or policies of the Department support the proposition that the objections of abutters and/or neighbors may rise to the level of an absolute ban on an application for a farmer-winery license. By way of contrast, R.I. Gen. Laws § 3-7-19(a) provides for “legal remonstrance,” which means that if the objectors cumulatively own greater than 50% of the land within a 200 foot radius of a proposed establishment, the application must be denied by the issuing authority. However, § 3-7-19(a), by its explicit terms, only applies to “[r]etailers’ Class B, C and I licenses under this chapter.” The farmer-winery license is a manufacturing license issued under Chapter 3-6, entitled “Manufacturing and Wholesale Licenses.” While the farmer-winery license does permit limited retail sales, it is not a “retail” license issued under Chapter 3-7, entitled “Retail Licenses.” Therefore, the “legal remonstrance” does not apply here.⁸

⁷ *Gardner v. Cumberland Town Council*, 826 A.2d 972, 976 (R.I. 2003); *Autobody Recyclers Ass'n of Rhode Island v. McConaghy*, 2005 WL 419824 (R.I. Super., 2005); *Desrosiers v. Rhode Island Pub. Utilities Comm'n Div. of Motor Carriers*, 2001 WL 1685595 (R.I. Super., 2001).

⁸ The Concerned Neighbors suggest that the legal remonstrance rule applies because “Rule 6 applies to applications for farmer-winery licenses.” Commercial Licensing Regulation 8 *Liquor Control Administration* (“CLR 8”), Section 6(b)(1) is a specific application of § 3-7-19(a) to brewpubs. The brewpub operation is distinguishable from a farmer-winery because the former involves two separate licenses, a “Manufacturer’s brewpub license – Class B-M” issued by the local licensing authority pursuant to § 3-7-7.2, and the “brewpub manufacturer’s license” issued by the Department pursuant to § 3-6-1.2; whereas, the latter singly involves the farmer-winery license under § 3-6-1.1,

Turning to the substantive review of the application, R.I. Gen. Laws § 3-6-1.1(a) provides, in relevant part, that “[f]or the purpose of encouraging the development of domestic vineyards, the department shall issue a farmer-winery license to any applicant of the state.” The Department interprets the term “*any applicant of the state*” to include any individual that is a citizen of the state and any form of business entity that is organized under the laws of Rhode Island. The Applicant is a Domestic Limited Liability Company (LLC) organized in Rhode Island on August 14, 2012, and, as such, is qualified to apply for a farmer-winery license under R.I. Gen. Laws § 3-6-1.1(a).

The Applicant’s business structure is also compatible with R.I. Gen. Laws § 3-5-10(a)(2), which, in relevant part, prohibits liquor licenses from being issued directly to “any trust or trustee” or “to any corporation of which any share or shares of stock or other indicia of ownership or control are owned or held by any trust, or trustee.” The Applicant is a Domestic Limited Liability Company, the “members” of which are two trusts and the “manager” of which is Frank DiZoglio. Granting the application would not violate the prohibition on issuing a license *directly* to “any trust or trustee.” Neither is the Applicant a “corporation” of which “indicia of ownership or control are owned or held by any trust.” A corporation owned or controlled by a trust is legally distinguishable from a LLC having membership held by trusts. The Rhode Island Limited Liability Company Act, R.I. Gen. Laws § 7-16-2 (“LLC Act”) makes it clear that LLCs and corporations have fundamentally distinct legal definitions based on their organization under distinct chapters of the law.⁹ The cited prohibition was adopted by the

with retail sales being permitted by that same instrument. In contrast to the farmer-winery, the fact that the brewpub carries a separate Class B-M retail license subjects it to the same “laws and regulations pertaining to a Class BV alcoholic beverage license, including but not limited to...” the legal remonstrance rule. Rule 6(b).

⁹ Pursuant to § 7-16-2(8), “corporation” “means a business corporation formed under chapter 1.2 of this title or a foreign corporation;” whereas, under subsection (15), “limited liability company” “means an entity that is organized and existing under the laws of this state pursuant to this chapter,” chapter 16 of title 7.

General Assembly in 2000 at which time the LLC Act, as it does today, defined a “member” of a LLC as a “person” to include not only a “natural person” or “corporation,” but also a “trust.” R.I. Gen. Laws § 7-16-2 (18), (22). “A well-established tenet of statutory interpretation posits that the Legislature is presumed to know the state of existing law when it enacts or amends a statute.” *Simeone v. Charron*, 762 A.2d 442, 446 (R.I. 2000)(citing and quoting *Providence Journal Co. v. Rodgers*, 711 A.2d 1131, 1134 (R.I.1998)). Charged with such knowledge that domestic LLCs had the option to organize with trusts as members, it must be presumed that the General Assembly did not intend to prohibit such business entities from holding liquor licenses, or else § 3-5-10(a)(2) would have been crafted to so prohibit.

In issuing her recommendation, the Hearing Officer finds that the Applicant, in addition to its compliant business structure, has satisfied all other specific statutory and regulatory requirements for a farmer-winery application, for example, the bond requirement of § 3-6-13, submission of a copy of its Federal Basic Permit as required by Commercial Licensing Regulation 8 *Liquor Control Administration* (“CLR 8”), Rule 8(h), as well as satisfactory completion of an inspection by the Department’s Chief Public Protection Inspector for compliance with those sections of Rule 40 applicable to a farmer-winery operation, *e.g.* secure premise for the storage of alcohol and separate office for storage of required invoices and documentation, dedicated business line, etc. However, § 3-6-1.1 is not a “mandatory licensing requirement” as argued by the Applicant; satisfaction of all the technical statutory and regulatory requirements does not necessarily end the Department’s inquiry. Where Title III does not “specif[y] the criteri[a] to be used by the licensing authority in making its decision,” the licensing authority is vested with “considerable discretion” to consider any relevant information in rendering its decision. *Ribiero v. Pastore*, 1983 WL 481440 at 2 (R.I.Super.,

1983)(analogous retail liquor license context). As the state “super licensing authority,”¹⁰ the Department retains discretion to approve or deny an application based on other considerations rooted in title III's purpose of “promotion of temperance” and “reasonable control of the traffic in alcoholic beverages.”¹¹ For example, in past cases, the Department has given consideration to “negative indicators regarding the personal history” of the applicant and its owners and/or managers; “whether or not the applicant will serve a public necessity, convenience and need;” “whether the applicant has had any prior experience in the liquor traffic business particularly of a [manufacturing] nature;” “whether or not the applicant has sufficient facilities and a suitable location;” and “objections to the application.” *In the matter of Langworthy Farm Winery, Inc.*, DBR No. 04L0078 at 3-4 (November 19, 2004)(citing and quoting *Wine Marketing, Ltd.* (LCA August 5, 1980)).^{12, 13, 14}

In considering any “negative indicators regarding the personal history” of the Applicant, the Department’s inquiry is guided by legislative reference to an applicant’s “criminal record” and any “records of repeated violations of this title [III].” R.I. Gen. Laws § 3-5-10(d). The Applicant’s manager has no such record. However, the neighbors submitted documentation of violations on the premises of certain statutes and/or regulations under the jurisdiction of the

¹⁰ *Baginski v. Alcoholic Beverage Commission*, 4 A.2d 265, 268 (R.I., 1939); *Jake and Ella's, Inc. v. Department of Business Regulation*, 2002 WL 977812 (R.I. Super., 2002).

¹¹ R.I. Gen. Laws § 3-1-5.

¹² In *Langworthy*, the applicant was a corporation rather than an LLC. As such, the Hearing Officer rooted its analysis of the cited factors under the requirement of R.I. Gen. Laws § 3-5-10 that shareholders, directors, officers of corporations must be “suitable.” While this provision does not apply to LLCs, the factors discussed provide useful guidelines to the exercise of the Department’s broad discretion in evaluating the application in this case.

¹³ Another factor listed in *Langworthy*, uncontested in this case, is “whether or not the applicant has sufficient financial ability to sustain his proposed business operation, including the payment of taxes to both the Federal and State government.” This aspect of the application was satisfied at the time of submittal as the Applicant has demonstrated its financial ability by appropriate balance sheets and has made a declaration pursuant to § 5-76-2 that all required state tax returns have been filed and all owed taxes have been paid. The Federal Basic Permit is expressly conditioned on payment of taxes under federal laws relating to alcoholic beverages.

¹⁴ The listed factors are deemed relevant by the Hearing Officer in this particular case, but may not apply in other liquor licensing cases. Each case involves a unique set of facts that may also give rise to additional concerns not listed.

CRMC in support of their concern that future violations of law may occur on the premises if the liquor license is granted. This documentation concerns PHB Realty, LLC, the entity that owns the real property and improvements on which the proposed farmer-winery would be operated through a lease to the Applicant. While the Applicant emphasizes the distinct business organization of the two entities and that the Applicant's manager has never been a member or manager of PHB Realty, the liquor license does have a legal relationship with the premises itself that supports recognition of the neighbors' concerns in this regard. *See* R.I. Gen. Laws § 3-5-9 ("Every license shall particularly describe the place where the rights under the license are to be exercised"); *Baker v. Rhode Island Department of Business Regulation*, 2007 WL 1156116 (referencing the "legislature's intent to ensure more regulatory control over liquor licenses by correlating each license with a specific property," a legal correlation that applies "even after issuance."). While concerns with the property owner's violation of laws outside of Title III do not justify denial of the application, the Hearing Officer does recommend that this Decision and Order address this concern by specifically providing notice to the Applicant that nothing herein should be construed as exempting the Applicant or the property owner from compliance with all applicable federal, state, and local law.

"Public necessity, convenience, and need" for the product and/or service proposed to be provided by the Applicant have been established. As stated in *Langworthy*, "one manner of satisfying the public necessity, convenience and need requirement is to supply or distribute in the state product not presently available." Because the wine proposed to be produced by the Applicant is not currently available in the market, this factor weighs in favor of approving the application. Moreover, in the farmer-winery context, the General Assembly has specifically expressed the legislative purpose of R.I. Gen. Laws § 3-6-1.1 for "encouraging the development

of domestic vineyards.” As such, farmer-winery applicants enjoy a presumption of public convenience and necessity.

While prior experience is one factor the Hearing Officer may consider, it is not an absolute requirement that the Applicant must satisfy in all cases. As stated in *Langworthy*, “any shortcoming in [the experience factor] is overcome by evidence of the solid business plan which has been presented.” The Applicant, through its manager, testified to his experience cultivating the grapes on the property, the equipment and area for manufacturing that has been secured, and additional details pertaining to the planned operation. The Applicant’s manager further testified as to his experience with limited domestic production, which is permitted under R.I. Gen. Laws § 3-1-3.¹⁵ Furthermore, in its letter of support, the Vineyard Manager of a well-established Rhode Island vineyard and winery stated that he has been “working personally as a vineyard/agricultural consultant” and that, in his professional opinion, the manager “has successfully cultivated and transformed his farm into one of the best vineyards in New England.”

The objections of the neighbors have limited relevance to the *Langworthy* factor of “whether or not the applicant has sufficient facilities and a suitable location.” This factor is typically satisfied upon submission of the application with evidence of a completed fire safety inspection and local zoning approvals. In the instant case, the Applicant presented an Inspection Report from the Jamestown Fire Marshall’s office without any recommendations for satisfaction of fire and safety standards and a letter from the Jamestown Building Official and Zoning Officer stating that “a proposed use of a winery is permitted under Jamestown Zoning Code.”¹⁶ With

¹⁵ “Nothing contained in this title and chapter shall be construed as to prohibit the manufacture of cider, or the sale of cider; or the manufacture of wine or malt liquors for domestic use.”

¹⁶ The Hearing Officer was provided with a copy of a letter directed to the Jamestown Building Official and Zoning Officer asking for clarification of permissible uses under the Jamestown Zoning Code; however no subsequent communication has been received by the Department that would indicate that the initial determination that a “winery” was permitted has been withdrawn by that officer.

these submissions, it is evident that the facilities and location are sufficient and suitable under the laws and standards of the Town of Jamestown. The Department, which lacks any independent zoning or building code jurisdiction, will not refuse to issue a license or issue restrictions thereon based solely on the opinions of the neighbors that, despite having all necessary approvals, the location or facilities are unsuitable in light of the character of the surrounding area.¹⁷

The neighbors also objected on the grounds that issuing an unconditional license may result in increased noise and light, dust and/or smoke, traffic on Beavertail Road, issues pertaining to septic on the premises, and/or decrease in property values.¹⁸ These concerns are neither supported by adequate evidence nor dispositive of the questions pertinent to the Department's decision of whether to approve a new liquor license application.¹⁹ As such, these objections do not justify denying the application or restricting the scope of the operations permitted under Title III.²⁰ Moreover, weighing against the neighbors' objections is a letter

¹⁷ For example, the Concerned Neighbors requested that, as an alternative to completely denying the application, that the Department issue a conditional farmer-winery license that would prohibit retail sales of alcohol because "land that is surrounded by private homes is not a suitable place for the retail sale of wine;" and permitting retail sales would be "inconsistent with the highest and best use of the property on Beavertail Road." Similarly, the Concerned Neighbors suggest a farmer-winery conditioned on the restriction that wine not be manufactured on the premises, limiting the Applicant to growing its grapes on the premises, utilizing off-premises manufacturing, then selling the product at wholesale. In support of this request, the Concerned Neighbors summarily state "we believe it would be inappropriate to permit the commercial manufacturing, storing, or bottling of wine on property that has the characteristics of 334 Beavertail Road," *i.e.* residential areas. These are zoning concerns not dispositive under the Department's liquor licensing jurisdiction. Moreover, to issue a farmer-winery license with a condition *entirely* prohibiting the activity the license is intended to permit would be an unreasonable restriction. *See* 3-1-1(6)(the very statutory definition of "farmer-winery" is "any plant or premise where *wine is produced*, rectified, blended or fortified from fruits, flowers, herbs or vegetables.")

¹⁸ Neither does the concern of one neighbor that issuance of the license will cause "the risk of drivers under the influence" constitute grounds for denying the license. At the hearing, the Applicant confirmed that any tastings or sale for on-premises consumption would be compliant with CLR 8, Section 43 "Alcohol Server Training Program Certification," which includes training to prevent over-consumption of alcohol. Moreover, the Applicant is subject to the Rhode Island Liquor Liability Act, R.I. Gen. Laws Chapter 3-14.

¹⁹ If the operation becomes a nuisance once the license is issued, as the neighbors appear to suggest, the neighbors have civil remedies. If the complained-of effects arise from the manufacture and sale of liquor itself, the Department has authority, in its sole discretion, to discipline farmer-winerries for "permit[ting] the house or place where he or she is licensed to sell beverages under the provisions of this title to become disorderly as to annoy and disturb the persons inhabiting or residing in the neighborhood." R.I. Gen. Laws § 3-5-23(b).

²⁰ The Concerned Neighbors raise the issue that the Applicant will increase its scale of business by expanding the grape-growing acreage, purchasing additional grapes, expanding hours, and/or offering free food or entertainment. Such expansion should not be construed to be restricted by this Decision and Order so long as no Title III provisions

submitted by neighbors representing themselves as having “the largest common property line” with the Applicant and stating that, though unable to attend the hearing, they are “supportive of the application.”

Finally, the Concerned Neighbors suggest that “the Department should authorize the Jamestown Town Council to make such rules and regulations with respect to farmer-winery operations as in their discretion in the public interest seem proper to be made under Section 3-5-20.” Request for such delegation has not been received by the Jamestown Town Council or any authorized representative of the Town. Neither has it been demonstrated that additional restrictions beyond those already contained in the statutes and Department regulations are necessary and appropriate for application to this particular Applicant. This is not an issue appropriately resolved in the context of a Decision and Order in a contested case involving the business interests of a single Applicant.²¹

III. Findings of Fact and Conclusions of Law

1. Sections I-II of this Decision and Order are incorporated herein as findings of fact.
2. The notice requirements of R.I. Gen. Laws § 3-5-17 were substantially satisfied by publication in the Providence Journal and evidence of certified mail receipts for abutters identified on a list prepared by the Applicant the accuracy of which has not been successfully contested.

or Department regulations are violated. Pursuant to § 3-5-9, [e]very license shall particularly describe the place where the rights under the license are to be exercised and beverages shall not be manufactured or kept for sale or sold by any licensee except at the place described in his or her license.” In the instant case, the “premises” described in the application is the entire property of 334 Beavertail Road.

²¹ See § 42-35-1(3) (“contested case” means “a proceeding, including...licensing, in which the legal rights, duties, or privileges of a *specific party* are required by law to be determined by an agency after an opportunity for hearing.”); Compare § 42-35-1(8) “rule,” as in “rulemaking” means “each agency statement of *general applicability* that implements, interprets, or prescribes law or policy.”)

3. R.I. Gen. Laws § 3-5-17 permits abutters to make public comment at the hearing but does not apply any “legal remonstrance” rule to the proceeding. Therefore, the Hearing Officer gives due consideration to abutter comments but is not bound by their objections in rendering her decision.
4. R.I. Gen. Laws § 3-6-1.1(a) authorizes the Department to issue a farmer-winery license to “any applicant of the state,” which includes business entities organized under the laws of Rhode Island, including Domestic Limited Liability Companies (LLCs).
5. While R.I. Gen. Laws § 3-5-10(a)(2) prohibits issuing a farmer-winery license directly to a trust or to a corporation having indicia of ownership or control owned by a trust, it does not prohibit issuance to a LLC organized with trusts as “members” and a natural person as the “manager.”
6. Through submission of all required application documentation, the Applicant has satisfied all specific statutory and regulatory requirements for a farmer-winery license.
7. The Department, as the state’s superlicensing authority, has broad discretion to decide whether a farmer-winery license should be issued, based on considerations rooted in title III’s declared purpose of “promotion of temperance” and “reasonable control of the traffic in alcoholic beverages.” Such considerations may include, but are not limited to: the applicant’s personal history, including criminal background and past violations of Title III; public necessity, convenience, and need; prior experience and proposed business plan; sufficiency of the facilities and suitability of the location; and objections mounted to the application.
8. The Applicant’s manager does not have a “criminal record” or any “records of repeated violations of this title [III].” R.I. Gen. Laws § 3-5-10(d).

9. The neighbors' concerns with the property owner's violation of laws outside of Title III does not justify denial of the application.
10. Considerations of public necessity and convenience of a new product to be offered in the market and of the declared legislative purpose of § 3-6-1.1 to promote domestic vineyards weigh in favor of issuing a farmer-winery license to the Applicant.
11. The Applicant has demonstrated its qualification to hold a farmer-winery license by presentation of its proposed business plan and its manager's experience with grape cultivation and limited domestic production.
12. Having received the necessary submissions of evidence of fire safety inspection and local zoning approvals from the Applicant, objections related to zoning issues do not support denying the application in this case.
13. Nothing in this Decision and Order should be construed as exempting the Applicant or the property owner from compliance with all applicable federal, state, and local law.

IV. Recommendation

For the reasons stated herein, the undersigned Hearing Officer recommends that the Application of PBH Vineyards, LLC d/b/a Jamestown Vineyards be approved and farmer-winery license be issued pursuant to § 3-6-1.1. Nothing in this Decision and Order should be construed as exempting the Applicant or the property owner from compliance with all applicable federal, state, and local law.

As recommended by:

Date: 10/24/13

Maria D'Alessandro
Maria D'Alessandro, Esq.
Hearing Officer

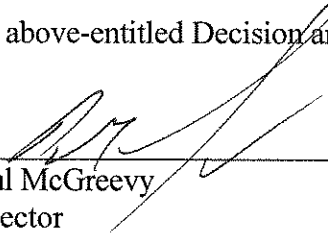
Deputy Director, Securities, Commercial
Licensing and Racing and Athletics
Department of Business Regulation

I have read the Hearing Officer's recommendation and I hereby (check one)

- Adopt
- Reject
- Modify

the recommendation of the Hearing Officer in the above-entitled Decision and Order.

Date: 25 Oct 2013



Paul McGreevy
Director

Entered as an Administrative Order No.: -13-049 this 25th day of October, 2013.

NOTICE OF APPELLATE RIGHTS

THIS DECISION CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-12. PURSUANT TO R.I. GEN. LAWS § 42-35-15, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A PETITION FOR REVIEW IN SUPERIOR COURT. THE FILING OF THE COMPLAINT DOES NOT ITSELF STAY ENFORCEMENT OF THIS ORDER. THE AGENCY MAY GRANT, OR THE REVIEWING COURT MAY ORDER, A STAY UPON THE APPROPRIATE TERMS.

CERTIFICATION

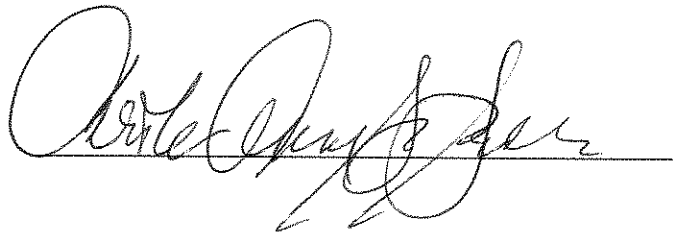
I hereby certify on this 25th day of October, 2013 that a copy of the within Decision and Order and Notice of Appellate Rights was sent by e-mail and first class mail, postage prepaid to -

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A handwritten signature in black ink, appearing to read "Peter D. Ruggiero", is written over a horizontal line.