STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
JOHN O. PASTORE COMPLEX
1511 PONTIAC AVENUE
CRANSTON, RI 02920

2012 Sports Bar, Inc.	:	
Appellant,	:	
	:	
v.	:	**DBR No. 12LQ084; 13LQ060**
	:	
The City of Cranston,	:	
Appellee.	:	

DECISION AND ORDER

1. Facts and Travel

This liquor licensing matter between the City of Cranston ("City") and 2012 Sport Bar, Inc. ("Appellant"), a liquor establishment located in the City of Cranston, has a long history that that is described in the first Decision and Order issued by Rhode Island Department of Business Regulation ("Department") on June 22, 2013 and the second Decision and Order issued by the Department on December 9, 2013. In brief, the dispute concerns restrictions on entertainment that the City imposes as a condition on the Appellant's liquor license. In the Department's December 9, 2014 Order, the Department ordered as follows:

1. The entertainment license shall be granted for a sixty day "demonstration period" with the restriction that "entertainment" cease at 11:00 p.m., seven days per week. Closing hours and activities not requiring an entertainment license shall not be affected.
2. On the date of the first regular meeting of the Committee that is scheduled after completion of the sixty day "demonstration period" commencing on the date of the City's issuance of the entertainment license, the Committee shall hold a hearing to evaluate the Appellant's performance during the "demonstration period" and determine whether or not to lift the new restriction.
3. If the Appellant's record is free of any substantiated complaints against the Appellant that would establish violations of law and/or a public nuisance, such as through police citations or documentation of decibel readings beyond legal limits, the Committee should consider lifting the restriction. Allegations pertaining to performance of past

operators on the premises should not be held against the Appellant in making this determination.

4. The final decision following this "demonstration period" review shall be appealable to the Department.[1]

The 60 day demonstration period ended February 2, 2014. The Council's Committee on Safety Services & Licensing ("Committee") held a hearing to consider lifting the restriction on February 3, 2014. On an amended motion by the Council President, the Committee voted to change the restriction to allow entertainment up to 12:00 p.m. on Friday, Saturday, and Sunday and until 11:00 p.m. during rest of week for an additional demonstration period of 30 days ending March 5, 2014. The Appellant appealed this decision to the Department. According to counsel for the Appellant, a meeting was held on March 3, 2014, during which the Committee voted to table the matter, holding off on the 30 day review, based on the pending appeal.

The undersigned Hearing Officer, in issuing the below Recommendation, has carefully reviewed the transcript from the Committee meeting on February 3, 2014 ("Transcript"), which was admitted into the Administrative Record pursuant to R.I. Gen. Laws § 3-7-21. According to that record, there were no substantiated complaints against the Appellant. The Appellant's owner testified that it had entertainment every Wednesday and Saturday, almost every Thursday, and on four Fridays. Transcript at 5, 8. She testified that she had been closed approximately 5 or 6 days of the 60 day demonstration period. Transcript at 8. Throughout the demonstration period, entertainment included karaoke, Calamari Brothers (band), DJs, a two piece band, and a musician union party (where instruments were played). Transcript at 4-5. The Appellant's owner also testified that she was not approached by neighbors with noise complaints and that she

[1] *See Sugar, Inc. and Sharlene Alon v. City of Providence, Board of Licenses*, DBR No. 09-L-0119 at 29, n. 19 (March 9, 2010); *Habanos Lounge, Inc. d/b/a Habanos Cigar Lounge v. Pawtucket Board of License Commissioners*, DBR No. 10-L-0046 at 21, n. 13 (September 23, 2010). In these cases, the Department granted the Appellant a liquor license with conditions, providing that the Appellant could request said conditions to be lifted upon renewal. The cited footnotes provided that the Appellant would have a right to appeal the denial to lift the conditions to the Department.

has used a decibel meter to monitor the sound levels on certain occasions. Transcript at 6. The Chair of the Committee made a comment on the record that an unnamed neighbor told him that he does not "hear anything" because "they're never open." Transcript at 19. The Council President explained his amended motion with the reasoning that the establishment is "abutting a neighborhood." Transcript at 10.

2. Jurisdiction

The Department has jurisdiction over appeals from decisions of local liquor licensing authorities under R.I. Gen. Laws § 3-7-21, subject to the relevant provisions of the Rhode Island Administrative Procedures Act, § 42-35-1 *et seq.*

3. Standard of Review

The Rhode Island Supreme Court has explained that "§ 3-7-21 contemplates the removal of a cause by operation of law from a local board to the [state liquor] administrator," a role statutorily vested in the Department. *Cesaroni v. Smith*, 98 R.I. 377, 379, 202 A.2d 292, 294 (1964). "Under such removal [,] jurisdiction is de novo, pursuant to which [the Department] independently exercises the licensing function." Id. "[T]he discretion given to the DBR goes as far as to vest the hearing officer with the authority to review the local board partially de novo and partially appellate if he/she sees fit." *Jake & Ella's, Inc. v. Dep't of Bus. Regulation*, 2002 WL 977812 (R.I. Super., 2002).

4. Findings of Fact and Conclusions of Law

From the record, it appears that the only reasons for the decision not to completely lift the restrictions were the concerns that a full demonstration period had not been served and that the establishment is "abutting a neighborhood."[2] The testimony of the Appellant's owner supports

[2] The City Solicitor asked the Appellant's owner about a "parking concern;" however, no Committee member commented on parking nor questioned the Appellant on the topic. Transcript at 5. Therefore, the record does not

the conclusion that an adequate demonstration period was served in that she was open 54 or 55 days out of 60 days and that she had entertainment every Wednesday and Saturday, almost every Thursday, and on four Fridays. The Department's December 9, 2014 Order did not require the Appellant to be open every single night nor have entertainment on a certain minimum number of nights.

The hearsay comment of the neighbor that he does not "hear anything" because "they're never open" is not sufficient to impeach the Appellant's owner's testimony. The neighbor was not subject to the Committee being able to ask specifically how many days he believed they had been closed or to assess his credibility. Neither was there an opportunity for the Appellant to cross-examine the neighbor. Furthermore, the Appellant represented that the restriction on entertainment times was posing difficulty in booking additional entertainment events because entertainers could elect to perform at other establishments in the City that are permitted to have entertainment until 1:00 a.m. Transcript at 20-21.

With respect to the concern that the establishment is "abutting a neighborhood," the Department, which lacks any independent zoning jurisdiction, will not uphold restrictions on liquor licenses based solely on the opinion that, despite having all necessary zoning approvals, the location is unsuitable in light of the character of the surrounding area.

Having served the demonstration period with no verified complaints, the restriction should have been lifted pursuant to the Department's December 9, 2014 Order. The Department's December 9, 2014 Order instructs that the restriction on entertainment be "lifted" entirely; it does not contemplate that the restriction could continue to be imposed with adjustments to performance times. Nothing in the record establishes sufficient grounds for the

---

clearly reflect whether this factored into the Committee's decision. To the extent that parking was a consideration, it would not justify not lifting the restriction because no substantiated evidence of parking violations were presented.

Appellant to be restricted in entertainment type or time. Therefore, the Appellant should be permitted to have entertainment of any kind up until the 1:00 a.m. legal closing time applicable to most, if not all, other liquor licensees in the City.

While the City should not restrict the Appellant's entertainment, it should be noted that the City has remedies if the entertainment permitted causes "the house or place where [the Appellant] is licensed to sell beverages under the provisions of this title [III] to become disorderly as to annoy and disturb the persons inhabiting or residing in the neighborhood." R.I. Gen. Laws § 3-5-23(b). R.I. Gen. Laws § 3-5-23(b) provides an adequate remedy for the Committee to address any issues that arise, provided that the Appellant is entitled to a full evidentiary hearing on any alleged violations.

In closing, the City is reminded that under R.I. Gen. Laws § 3-7-7.3, municipal licensing authorities may "restrict or prohibit entertainment at [Class B] licensed facilities" but only "provided that any standard shall be applied uniformly to all of these licensed facilities." And, under *Thompson v. Town of E. Greenwich*, conditions on liquor licenses must be "reasonable." 512 A.2d 837, 843 (R.I. 1986). In order to be "reasonable," the conditions must be uniformly applied to similarly situated licensees. *See Town of New Shoreham v. Racine*, 1992 WL 813547, * 5.[3] In the instant case, no evidence was presented to the Committee that would justify singling out this particular Appellant for an entertainment restriction that is not imposed on similarly situated licensees.

[3] In *Racine*, the Superior Court upheld the Department's decision to reverse a local board's disciplinary action for alleged violation of a condition that was deemed "unfair" because it was not equally imposed on other licensees: "The record also provides ample evidence to support the Administrator's finding that the license condition was unfair. Island Entertainment, Inc.'s license was the only license that had such a condition imposed upon it. This fact was disclosed in the record and supports the Administrator's conclusion."

RECOMMENDATION

It is hereby recommended that the entertainment restrictions on Appellant's liquor license be fully removed.

As recommended by:

Date: 3/20/2014

Louis A. DeQuattro, Jr., Esq., CPA
Hearing Officer
Deputy Director & Executive Counsel

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 March 2014

Paul McGreevy
Director

Entered as an Administrative Order No.: -14-16 this 26th day of March, 2014.

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 26th day of March, 2014 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 -

For the Appellant:

Gregory P. Piccirilli
Sciacca & Piccirilli
121 Phenix Avenue
Cranston, RI 02920
gregory@splawri.com

For the City of Cranston:

Even M. Kirshenbaum, Esq.
67 Jefferson Boulevard,
Warwick, RI 02888
emk@kirshenbaumlaw.com

Patrick Quinlan
400 Smith Street
Providence, R.I. 02908
quinlaw@verizon.net

and by email to Maria D'Alessandro, Deputy Director, Securities, Commercial Licensing and Racing & Athletics