

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

La Quarter Café and Lounge, LLC	:	
Appellant,	:	
	:	
v.	:	DBR No. 14LQ002
	:	
The City of Providence Board of Licenses,	:	
Appellee.	:	

DECISION AND ORDER

I. FACTS AND TRAVEL

La Quarter Café and Lounge, LLC (“Appellant”) appeals the decision of the City of Providence Board of Licenses (“Board”) rendered on December 17, 2013 in which the Board denied the Appellant’s application for a Class BV Full Liquor License to be located at 108B Chalkstone Avenue, Providence. In its decision, the Board concluded that “a review of the record and objections filed in this matter confirms the existence of a legal remonstrance based upon objections by owners of real estate within a 200 foot radius of the subject property which constitute more than 50% of the overall square footage contained within said radius.”

The Department of Business Regulation (“Department”) sent notice of the Department hearing to all abutters within the 200 foot radius, without objection from either party. The purpose of re-noticing the abutters was to determine whether or not a Department level legal remonstrance existed. In response, the Department received four letters of objection. This

decision follows arguments of counsel for the Appellant and the Board before the undersigned at the hearing held on March 13, 2014.

II. JURISDICTION

R.I. Gen. Laws § 3-7-21 delineates the Department’s jurisdiction in this case: the Department has the “right to review the decision of any local board, and after hearing, to confirm or reverse the decision of the local board in whole or in part, and to make any decision or order he or she considers proper.” In *Hallene v. Smith*, the Rhode Island Supreme Court, interpreting the predecessor to § 3-7-21, held that the Department assumes “original jurisdiction” upon appeal, meaning “the cause then pending before the administrator is entirely independent of and unrelated to the cause upon which the local board acted.” 98 R.I. 360, 365 (R.I. 1964). “[T]he cause, when removed to the jurisdiction of the [Department], stands as if no action thereon had been taken by the local board.” *Id.* at 366.

III. DISCUSSION

Under § 3-7-19(a), a “[r]etailers' Class B...license[]...shall not be issued to authorize the sale of beverages in any building where the owner of the greater part of the land within two hundred feet (200') of any point of the building files with the body or official having jurisdiction to grant licenses his or her objection to the granting of the license.” Based on the principles of “de novo” review set forth in *Hallene*, the Department has concluded that when a case is removed to the jurisdiction of the Department, a new calculation of legal remonstrance at the Department level is required. *Jarr Realty, LLC d/b/a DaVinci's Restaurant & Lounge v. City of Providence Board of Licenses*, DBR No. 11-L-0080 (January 9, 2013)(“In absence of objecting interveners at the Department level, the local remonstrance does not necessarily control the Department’s decision.”) R.I. Gen. Laws § 3-7-21 provides for appeal “[u]pon the application of

any petitioner for a license.” (emphasis supplied). The legislature did not exclude appellate rights of those petitioners with applications that resulted in local level remonstrance.

In the instant case, despite the fact that notice was provided to all 22 abutting property owners, only four letters of objection were submitted. The objectors own a total of 42,062 ft² of the 126582 ft² total radius area. As such, the Department-level objections amount to 33.2%; there is no legal remonstrance.

When a legal remonstrance does not exist, the Board is required to decide the matter on its merits after a hearing on the application. In doing so, the Board may consider the substance of the objections if they have “specific and compelling reasons.” *Jarr, supra*. See also *Krikor S. Dulgarian Trust v. Providence Board of Licenses*, DBR No. 10-L-0143 (June 15, 2011)(dismissing “broad concerns regarding health and safety” because they lacked of any specificity to the Appellant.”); *Wise Guys Deli, Inc. v. Providence Board of Licenses*, DBR No. 12-L-0075 (September 27, 2012). At the application hearing, the Appellant should also be provided with the opportunity to testify in support of its application.

This matter has been noticed on two separate occasions, once at the Board level and again at the Department level. Therefore, re-notice is not required. This decision constitutes the final determination that there is no legal remonstrance. Therefore, the objections shall not be recalculated but may only be considered substantively.

IV. FINDINGS OF FACT

1. The property owners within a 200 foot radius of the proposed location who objected at the Department level own 33.2% of the area.

V. CONCLUSIONS OF LAW

1. The Department has jurisdictions over this matter under § 3-7-21.

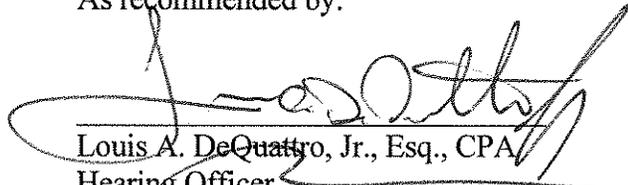
2. There is no legal remonstrance.

RECOMMENDATION

It is hereby recommended that the Director remand the matter for the Board to hold a hearing and review the full application on its merits. Review shall be consistent with the instructions discussed in the Decision.

As recommended by:

Date: 3/20/2014

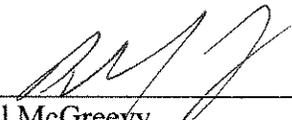

Louis A. DeQuattro, Jr., Esq., CPA
Hearing Officer
Deputy Director & Executive Counsel

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 of Remand.

Date: 20 March 2014


Paul McGreevy
Director

Entered as an Administrative Order No.: -14-14 this 21st 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 21st 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 -

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