STATE OF RHODE ISLAND
DEPARTMENT OF BUSINESS REGULATION
PASTORE COMPLEX
1511 PONTIAC AVENUE
CRANSTON, RHODE ISLAND

Oaklawn Discount Liquors, Inc. and MAB Liquors, Ltd., Appellant,	:	
v.	:	
City of Cranston and Cranston Safety Services and Licenses Committee, Appellee.	:	**DBR No. 21LQ007**
and	:	
Wine and Liquor Company, Inc., Intervenor.	:	

DECISION

I. INTRODUCTION

This matter arose from an appeal filed by Oaklawn Liquors, Inc. and MAB Liquors, Ltd. ("Appellants") on October 8, 2021 with the Department of Business Regulation ("Department") pursuant to R.I. Gen. Laws § 3-7-21 regarding the decision taken by the City of Cranston ("City"), Cranston Safety Services and Licenses Committee ("Board") on October 4, 2021 to renew the Class A liquor license ("License") of the Wine & Liquor Company, Inc. ("Intervenor"). This matter came before the undersigned pursuant to a delegation of authority from the Department director. The Appellants filed a motion to stay. It was agreed by the parties that the Intervenor would not open pending the full appeal hearing.[1] By motion dated October 15, 2021, the Intervenor moved to

[1] See email correspondence of October 12, 2021. This agreement was further confirmed at the hearing on November 18, 2021, and the order on the motion to intervene entered on November 23, 2021.

intervene to which the Appellants and the Board did not object. The Intervenor's motion to intervene was granted by the undersigned on October 27, 2021.[2] By motion dated January 31, 2022, the Intervenor filed a motion to dismiss Oaklawn Discount Liquors, Inc. ("Oaklawn"). The full hearing on this matter was held on February 8, 2022. It was agreed that the Appellants would file an objection to the second motion to dismiss after hearing and that motion would be addressed in the decision. An objection to the second motion to dismiss was filed on February 14, 2022. All parties were represented by counsel, and briefs were timely filed by February 25, 2022.

II. JURISDICTION

The Department has jurisdiction over this matter pursuant to R.I. Gen. § 3-5-1 *et seq.*, R.I. Gen. Laws § 3-7-1 *et seq.*, R.I. Gen. Laws § 42-14-1 *et seq.*, and R.I. Gen. Laws § 42-35-1 *et seq.*

III. ISSUE

Whether the License at issue should have been either transferred and/or renewed and/or whether it has been abandoned and/or is null and void.

IV. MATERIAL FACTS AND TESTIMONY

The parties filed an agreed stipulation of facts ("ASOF") which is summarized as follows:[3]

1. The Intervenor is a duly organized corporation in the State of Rhode Island. Oaklawn Discount Liquors, Inc. is a duly organized corporation in the State of Rhode Island and was a holder of a Class A Liquor License in the City of Cranston at the time of the filing of this appeal. MAB Liquors, LTD is a duly organized corporation in the State of Rhode Island.

2. The Cranston Safety Services and Licenses Committee ("Board," *supra*) is a committee of the Cranston City Council.

3. The Board as a committee of the Cranston City Council is the duly authorized body responsible for approving the issuance and renewal of retail liquor licenses in the City of Cranston, including but not limited to Class A liquor licenses.

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[2] By motion dated October 15, 2021, Christy, LLC and Marley Rose, LLC moved to intervene to which the Appellants objected. That motion was denied by order dated November 23, 2021. By motion dated November 17, 2021, the Intervenor moved to dismiss this appeal to which the Board joined and to which the Appellants objected. That motion to dismiss was denied by order dated December 14, 2021.

[3] See statement of stipulated facts filed February 7, 2022. Joint Exhibit One (1).

4. The Intervenor is the holder of a Class A liquor license City of Cranston.[4]

5. MAB Liquors, LTD is the holder of a Class A liquor license in the City of Cranston.

6. Howard J. Clift III is a 51% shareholder of the Intervenor and Deborah J. Marley owns the remaining 49% of the shares of the limited liability company.

7. The Intervenor formerly was located at 311 Warwick Avenue in Cranston.

8. On March 7, 2016, the Board approved the transfer of the Class A liquor license to the Intervenor from Gagnier Associates, Inc. d/b/a Another Liquor Store which operated at that location.

9. The location transfer approval by the Board [was] without express conditions or restrictions.

10. The Intervenor's Class A liquor license was renewed by the Board on September 12, 2016 without express conditions or restrictions. The Intervenor's Class A liquor license was renewed by the Board on September 11, 2017 without express conditions or restrictions. The Intervenor's Class A liquor license was renewed by the Board on October 1, 2018 without express conditions or restrictions. The Intervenor's Class A liquor license was renewed by the Board on October 7, 2019 without express conditions or restrictions.

11. On November 4, 2019, the Board approved the location transfer of the Intervenor's Class A liquor license from 311 Warwick Avenue to 1458-1500 Oaklawn Avenue, Cranston.

12. During the transfer hearing, the Board placed no express restrictions or conditions on the location transfer from 311 Warwick Avenue to 1458-1500 Oaklawn Avenue.

13. The Intervenor's Class A liquor license was renewed by the Board on September 14, 2020 without an express statement of conditions or restrictions.

14. The Intervenor's Class A liquor license was renewed by the Board on October 4, 2021 without an express statement of conditions or restrictions.

15. The property ("Property") at 1458-1500 Oaklawn Avenue (referred to in part now known as 1350 Oaklawn Avenue) is owned by Christy, LLC (80%) and Marley Rose, LLC (20%)

16. Christy, LLC and Marley Rose, LLC acquired the Property on June 5, 2020 for the acquisition price of $1,975,000.

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[4] The parties agreed that this was an "agreed statement of the facts notwithstanding the appellants' legal arguments related to the status of the license."

17. The Intervenor signed a lease for retail space for its new liquor store on June 5, 2020 with Christy, LLC and Marley Rose, LLC. (Intervenor's Exhibit Six (6)).

18. Christy, LLC loaned the prior owner of the Property (The Jerome A. Geller Trust) $100,000 that was secured by a mortgage on the Property recorded on January 30, 2020 in the Land Evidence Records of the City of Cranston in Book 5913 at page 83.

19. Other than the recorded mortgage, prior to June 5, 2020, neither Christy, LLC nor Marley Rose, LLC held an interest in the Property.

20. Prior to June 5, 2020, the Intervenor held no interest in the Property.

21. The Intervenor closed its store at 311 Warwick Avenue in Cranston in April, 2020 and has not begun operation at the Property.

22. The Intervenor has not operated as a Class A Liquor sales establishment since April, 2020 while its landlord pursued the permitting and construction of the new store.

23. The Property included three (3) commercial and three (3) residential houses at the time of acquisition. The Cranston City Council rezoned a portion of the Property from a residential zone to a commercial zone by ordinance adopted on April 27, 2020.

24. The R.I. Department of Environmental Management issued a RIPDES Permit for the planned construction on the Property on July 14, 2020. (Intervenor's Exhibit Seven (7)).

25. On August 25, 2020, a demolition permit was issued by the City of Cranston for the Property. (Intervenor's Exhibit Eight (8)).

26. Christy, LLC and Marley Rose, LLC had all the buildings razed in the Fall of 2020 and are in the process of constructing a new building to house the Intervenor.

27. The R.I. Department of Transportation issued a Physical Alteration Permit for the planned construction on the Property on October 28, 2020. (Intervenor's Exhibit Nine (9)).

28. The Cranston Development Plan Review Committee issued its final approval for the planned construction on the Property on December 31, 2020. (Intervenor's Exhibit 11).

29. A building permit application was submitted to the Building Official of the City of Cranston for the new retail building on or about February 17, 2021.

30. A building permit was issued by the Building Official of the City of Cranston for the new retail building on May 10, 2021. (Intervenor's Exhibit 12).

Deborah Clift ("Clift") testified on behalf of the Intervenor. She testified that the Oakland Avenue project is a family effort. She testified that up until recently, her son owned 100% of the Intervenor but since the filing of this appeal, she has acquired a 49% interest in the company. She testified that she was present at the October 4, 2021 Board meeting and has been familiar with the Intervenor since its establishment in 2016. She testified that she and her husband by their LLC, Marley Rose, owned the Warwick Avenue property and currently are part owners of the Property. She testified that her son is now a member of Marley Rose. She testified that she and her husband are also members of the Christy, LLC which is also a part owner of the Property. She testified she is involved in coordinating construction of the new building.

Clift testified that in 2016, the Intervenor acquired the assets of a liquor store located at 311 Warwick Avenue and Marley Rose bought and rehabilitated that property. She testified that prior to buying the Intervenor in 2016, she sought guidance from the Department about relocating the licensed premises. She testified that they had identified another property as a possible site and before acquiring the liquor store, they wanted to make sure they could relocate the Intervenor there.

Clift testified that the current plan was to transfer the Intervenor from Warwick Avenue to the Property and demolish the buildings at the Property. She testified that she believes the Board understood their plan, and the transfer minutes showed it was conditioned on building a new retail store. She testified the purchase and sale agreement for the Property was dated January 27, 2020. She testified that they advanced money to the seller in order to be able to pay taxes and to remediate an underground storage tank prior to the sale. She testified they received financing from the bank so paid for the Property with the loan and family funds. She testified that at the June 5, 2020 closing, they formalized the lease with the Intervenor as the loaning bank requested that.

Clift testified the new building will be approximately 20,000 square feet with the store being approximately 15,000 square feet, and it is essentially completed. Intervenor's Exhibit 22 (photograph). She testified since the Intervenor's License was issued in 2016, the company has paid the annual $1,000 license fee to Cranston. She testified that the Intervenor has not ceased operations as her son is paying bills, filing tax returns, planning the building, and planning operations for the new store.

Clift testified that she used to own the Class A licensee, Heritage Liquors, but she sold its assets so that she could devote her time to the Intervenor and help her son. She testified she acquired the Heritage liquor license in 1986, and in 1990, she moved the store from one location to another like they are doing now as they built a new store and opened in 1992.

Clift testified that the 2015 letter to the Department related to another project but that she relied on it for this project as well. She testified that they could have opened the liquor store in one of the buildings on the Property but that was not feasible as it would have required renovating that building, and they were demolishing the site. She testified that with the pandemic in March, 2020 and her husband being ill, she made the decision to close the Intervenor store at the Warwick Avenue location. She testified there was a delay in building the new building because people at the engineering and architectural firms got sick with COVID19, and because of delays in the delivery of goods to build the building.

On cross-examination, Clift testified the 2015 letter sent to the Department was not related to the Oakland Avenue location. She testified the last time any liquor was sold out of the Warwick Avenue building was March, 2020. She testified in November, 2019, they did not own the Property but wanted to purchase it. On re-cross examination, she testified that the Warwick Avenue property was sold in April, 2020 so they do not own that property anymore.

V. DISCUSSION

A. Legislative Intent

The Rhode Island Supreme Court has consistently held that it effectuates legislative intent by examining a statute in its entirety and giving words their plain and ordinary meaning. *In re Falstaff Brewing Corp.,* 637 A.2d 1047 (R.I. 1994). If a statute is clear and unambiguous, "the Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings." *Oliveira v. Lombardi*, 794 A.2d 453, 457 (R.I. 2002) (citation omitted). The Supreme Court has also established that it will not interpret legislative enactments in a manner that renders them nugatory or that would produce an unreasonable result. See *Defenders of Animals v. DEM,* 553 A.2d 541 (R.I. 1989) (citation omitted). In cases where a statute may contain ambiguous language, the Rhode Island Supreme Court has consistently held that the legislative intent must be considered. *Providence Journal Co. v. Rodgers*, 711 A.2d 1131, 1134 (R.I. 1998). The statutory provisions must be examined in their entirety and the meaning most consistent with the policies and purposes of the legislature must be effectuated. *Id.*

B. Relevant Statutes and Regulation

R.I. Gen. Laws § 3-1-5 provides as follows:

> Liberal construction of title. This title shall be construed liberally in aid of its declared purpose which declared purpose is the promotion of temperance and for the reasonable control of the traffic in alcoholic beverages; provided, however, that the promotion of incentive programs or discounts for any person sixty-five (65) years of age or older, active duty members of the armed forces of the United States, and members of the National Guard or Reserves shall be allowed.

R.I. Gen. Laws § 3-5-6 provides as follows:

> Classes of licenses There are several classes of beverage licenses, each of which authorizes the doing of things stated in the chapter and sections concerning the class of license.

R.I. Gen. Laws § 3-5-9 provides as follows:

> Premises covered. Not more than one retail license, except in the case of a retailer's Class E license, shall be issued for the same premises. Every 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.

R.I. Gen. Laws § 3-7-3[5] provides for the issuance of Class A licenses for towns and cities of 10,000 or more inhabitants. It authorizes a Class A licensee to keep and sell alcoholic beverages at retail and provides how such beverages are to be sold. A Class A licensee is to sell at retail at the place described (e.g. the premises of the license). The number of Class A licenses that a town or city may issue is limited by population as provided for by R.I. Gen. Laws § 3-5-16.

R.I. Gen. Laws § 3-5-16.1 provides as follows:

> Revocation of abandoned Class A licenses. Whenever it comes to the attention of any local licensing authority as defined in § 3-5-15 that the holder of a Class A license has abandoned the premises from which the licensee has been conducting his or her business or has ceased to operate under the license for a period of ninety (90) days or more then after hearing with due notice to the licensee the local licensing authority shall cancel the license; provided, that the authority may grant a reasonable period of time, not to exceed one year, to the licensee within which to reestablish the business where the abandonment or cessation of operating was due to illness, death, condemnation of business premises, fire or other casualty.

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[5] R.I. Gen. Laws § 3-7-3 provides in part as follows:

> Class A license Towns and cities of 10,000 or more. (a) In cities and towns having a population of ten thousand (10,000) or more inhabitants, a retailer's Class A license authorizes the holder to keep for sale and to sell, at the place described, beverages at retail and to deliver the beverages in a sealed package or container, which package or container shall not be opened nor its contents consumed on the premises where sold. The holder of a Class A license, if other than a person entitled to retail, compound, and dispense medicines and poisons, shall not on the licensed premises engage in any other business, keep for sale or sell any goods, wares, merchandise or any other article or thing except the beverages authorized under this license and nonalcoholic beverages. This provision shall not apply to the sale or selling of cigarettes, newspapers, cigars, cigarette lighters, gift bags, prepackaged peanuts, pretzels, chips, olives, onions, cherries, hot stuffed cherry peppers, Slim Jims and similar pre-packaged dried meat products, pickled eggs, popcorn, pre-packaged candy, styrofoam cooler, lemons, limes, and ice, nor to home bar accessories such as pourers, glasses, cork screws, stirrers, flasks, jiggers, wine racks, ice crushers, bottle openers, can openers and any other items of like nature which may, by suitable regulation of the director of business regulation, be authorized to be sold. ***
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> (b) ***The annual fee for a Class A license is five hundred dollars ($500) to one thousand dollars ($1,000) prorated to the year ending December 1st in every calendar year.
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> ***

R.I. Gen. Laws § 3-5-19 provides for the process on how to transfer or relocation a liquor license.[6] The transfer or relocation of a license is to follow the same procedures the application for the original license as set forth in R.I. Gen. Laws § 3-5-17.[7] R.I. Gen. Laws § 3-7-6 provides for the renewal of licenses including Class A license.[8]

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[6] R.I. Gen. Laws § 3-5-19 provides in part as follows:

> Transfer or relocation of license. (a) The board, body or official which has issued any license under this title may permit the license to be used at any other place within the limits of the town or city where the license was granted, or, in their discretion, permit the license to be transferred to another person, but in all cases of change of licensed place or of transfer of license, the issuing body shall, before permitting the change or transfer, give notice of the application for the change or transfer in the same manner as is provided in this chapter in the case of original application for the license, and a new bond shall be given upon the issuance of the license provided, that notice by mail need not be made in the case of a transfer of a license without relocation. *** The holders of any retail Class A license within the city or town issuing or transferring a Class A license have standing to be heard before the board, body, or official granting or transferring the license.
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[7] R.I. Gen. Laws § 3-5-17 provides in part as follows:

> Notice and hearing on licenses. 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 in some newspaper published in the city or town where the applicant proposes to carry on business, or, if there is no newspaper published in a city or town, then in some newspaper having a general circulation in the city or town. Applications for retailer's Class F, P and Class G licenses need not be advertised. The advertisement shall contain the name of the applicant and a description by street and number or other plain designation of the particular location for which the license is requested. 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. The notice shall be given by the board, body or official to whom the application is made, and the cost of the application shall be borne by the applicant. The notices shall state that remonstrants are entitled to be heard before the granting of the license, and shall name the time and place of the hearing. ***

[8] R.I. Gen. Laws § 3-7-6 provides as follows:

> Renewal of Class A, Class B, Class C, Class D, Class E, and Class J licenses. The holder of a Class A, Class B, Class C, Class D, Class E, or Class J license who applies before October 1 in any licensing period for a license of the same class for the next succeeding licensing period is prima facie entitled to renewal to the extent that the license is issuable under § 3-5-16. This application may be rejected for cause, subject to appeal as provided in § 3-7-21. A person whose application has been rejected by the local licensing authorities shall, for the purpose of license quotas under § 3-5-16, be deemed to have been granted a license until the period for an appeal has expired or until his or her appeal has been dismissed. The license holder may be required to pay a twenty-five dollar ($25.00) fee upon application of renewal, at the option of local licensing authorities. This fee shall be used by the local licensing authority for advertising and administrative costs related to processing the renewal application.

Section 1.14.14 of 230-RICR-30-10-1 *Liquor Control Regulation* ("Liquor Regulation")[9] provides as follows:

> Granted License (Not Issued) -Retail
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> A retail alcoholic beverage license may be granted but not issued pending full compliance with conditions and criteria necessary for the issuance of said license. All such "grants" of alcoholic beverage licenses shall be in writing. The license shall particularly describe the place or premises where the rights under the license are to be exercised. The applicant shall have no more than one (1) year after the original granting of the license to meet all conditions and criteria set forth in the granting order. If the applicant does not meet all the conditions and criteria within one (1) year, the license shall become null and void without further hearing by the local licensing authority; provided, however, said time period shall not be calculated when the license at issue is involved in litigation, from the date of commencement of the action to final disposition.

Section 1.4.27 of the Liquor Regulation provides in part as follows:

> Premises - Retail
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> A. All licenses granted or issued must identify a premise for operation under the license. The licensed premises is that portion of the licensee's property owned, leased or controlled by the licensee, on which or from which alcoholic beverage may be sold, served or stored. It shall be defined by the licensee at the time the application (new or renewal) is filed and finally determined by the approval of the local licensing board.
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> B. In addition, every applicant is required to submit to the local licensing board and keep current an accurate drawing of the licensed premises outlining and giving dimensions of the area which is actually the subject of the license. Any sale, service or storage of alcoholic beverages outside the licensed premises is a violation.
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> ***

Section 1.4.3 of the Liquor Regulation provides in part as follows:

> Advertising License Applications - Retail/Wholesale/Manufacturers
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> A. In advertising applications for, or transfer of, an alcoholic beverage license, notice must be given once a week for two weeks on days other than Sunday or legal holidays and at least fourteen (14) days must elapse between the first publication and the date or hearing on the application.
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> B. The advertisement must include the following:
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> 1. Name of applicant (individual, corporation, limited liability company, or partnership) and the name of any person(s) owning more than 10% of the interest in the proposed license holder, if applicable;
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> 2. D/B/A (name of business);
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> 3. Address of proposed licensed premise; and

[9] This section is the successor to Rule 14 of *Commercial Licensing Regulation 8 – Liquor Control.*

4. Date, time, and place of public hearing.

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C. Once the licensed premise is established, any expansion thereafter shall require a hearing as prescribed in R.I. Gen. Laws § 3-5-17 and the approval of the local licensing board. A decrease in the area of the licensed premises requires notification to the local licensing board and filing of a revised drawing. Any notice of a decrease in the area shall not require a public hearing.

C. Arguments

The parties' arguments will be discussed more fully below. Briefly, the Appellants argued the License should not have been initially transferred in 2019 as the Intervenor did not have a premises to which the License could be transferred. The Appellants argued the License has been abandoned pursuant to R.I. Gen. Laws § 3-5-16.1 by its non-use of over two (2) years. Additionally, the Appellants argued that assuming the License was transferred, it cannot be issued as it has surpassed the one (1) year requirement in § 1.4.14 of the Liquor Regulation for a licensee to meet all conditions of licensing. The City and Intervenor disagreed. The Intervenor argued the City properly transferred the License, and it followed guidance from the Department in its plans for this project. The Intervenor argued that the one (1) year period does not apply but rather the issue is of a reasonable time, and it has diligently been working on opening at its new location. The City argued that the License was not abandoned. The City and Intervenor argued that to declare the License null and void would be unfair.

D. The Transfer of License

The Appellants argued the Board incorrectly approved the transfer of the License because neither the Intervenor nor its Landlord controlled, leased, or owned the premises at the time of the initial transfer. The Appellants argued that R.I. Gen. Laws § 3-5-9 requires every license shall particularly describe the place where the rights under the license are to be exercised, and the Intervenor had no interest in the Property at the time of the transfer.

The Intervenor argued that it complied with the statute in its transfer application in 2019 and identified its proposed premises by address in its application. The Intervenor argued the radius map it submitted for the abutters' list further identified the property by lot and plat number and the zoning certificate that it submitted as required by the City also identified the Property by lot and plat number. City's certified record dated October 29, 2021.

At the time of the 2019 transfer, the Intervenor did not own, lease, or control the Property. Christy, LLC and Marley Rose, LLC (collectively, "Landlord") purchased the Property on June 5, 2020 and at that time, the Intervenor signed a lease for retail space for its new liquor license store.

At the time of the 2019 transfer, the Intervenor provided the Property's address on its transfer application. It also provided the plat and lot number in the zoning certificate and abutters' radius map. The transfer application was required to be advertised and notice of the transfer application was required to be sent to the abutters pursuant to R.I. Gen. Laws § 3-5-17 which requires that the "advertisement shall contain the name of the applicant and a description by street and number or other plain designation of the particular location for which the license is requested." Section 1.4.3 of the Liquor Regulation requires that advertisements for liquor applications must include the name of the applicant and name(s) of anyone owning over 10% of interest in the proposed license holder and address of proposed licensed premises. Notice was sent to all abutters within 200 feet of the Property as required by law. Said notice indicated that a hearing would be held on the transfer of the Class A liquor license from the Warwick Avenue address to the Property's then address. The statute requires that the notice give the street and number or another designation of the particular location. If a street name and number are not available, a plain designation can be given. Here, the street name and number (at the time of the transfer application; it has since been changed) was given in the notice to the abutters. The advertised notice also

contained the Property's street address.[10] City's certified record dated October 29, 2021. Thus, the Intervenor complied with R.I. Gen. Laws § 3-5-17 and § 1.4.3 of the Liquor Regulation in terms of notice being sent to abutters.

Section 1.4.27 of the Liquor Regulation has further requirements regarding licensed premises. First, it requires that all licenses granted or issued must identify a premise for operation under the license. Here, the License has been granted but not issued as provided for by § 1.4.14. See below. The Appellants argued that the premises were not identified at the time of its transfer application. However, the Intervenor identified the proposed premises by its address and plat and lot number at the time of its application.

Said section also provides the "licensed premises is that portion of the licensee's property owned, leased or controlled by the licensee, on which or from which alcoholic beverage may be sold, served or stored. It shall be defined by the licensee at the time the application (new or renewal) is filed and finally determined by the approval of the local licensing board." This requirement raises the issue of whether at the time of application, an applicant must own, control, or lease the premises from which it proposes to operate. The section requires that the premises that is licensed must be owned, leased, or controlled by a licensee. But it does not say that the premises must be controlled, leased, or owned at the time of the application. Instead, an applicant must define where it shall operate from at the time of the application (new or renewal) is filed. Then, the area that is the licensed premises is finally determined by the approval of the licensing board. It could be that a local authority may shrink a proposed Class BV's serving area upon

[10] The notice of the location transfer hearing must be advertised twice. Two (2) advertisements are included in the certified record, but it is unclear on what date they ran and in which newspaper they ran. The undersigned assumes they ran in the City of Cranston's local newspaper.

review of an application. Or it could be that the local authority conditions a grant of a license on the applicant purchasing a property that is the proposed licensed premises.

Along those lines, the section also requires every applicant "to submit to the local licensing board and keep current an accurate drawing of the licensed premises outlining and giving dimensions of the area which is actually the subject of the license." Thus, prior to the issuance of the license, there must be an accurate drawing submitted of the licensed premises. The section then provides that once "the licensed premise is established, any expansion thereafter shall require a hearing as prescribed in R.I. Gen. Laws § 3-5-17 and the approval of the local licensing board." Therefore, once the licensing authority has determined the licensed premises, alcohol only may be sold or served from those premises. Indeed, any expansion requires a hearing as if a new application was filed.[11]

Overall, an applicant files an application to sell liquor from a property. When it files the application, the applicant will define the proposed licensed premises. It does not have to control that property at the time of the application. But it must when the license is issued. In addition, there must be an accurate drawing of the licensed premises submitted prior to the issuance of the license. A drawing must be submitted to the licensing authority; though, the Liquor Regulation does not require it to be with the application. Presumably most liquor applicants, e.g. a Class BV, know where they plan to serve, sell, and store their alcohol and would include such a drawing and description with their application. In some situations, one could envision a local authority could choose to wait to consider the granting of a license until it knows more about the proposed premises. Nonetheless, the regulation requires an address with an application but does not require the control, the ownership, or leasing of the proposed premises at the time of the application. The

[11] A decrease in the area of the licensed premises requires notification to the local licensing board and filing of a revised drawing but does not require a public hearing.

local authority approves the final licensed premises prior to the issuance of a license but the drawing of the premises does not have to be submitted contemporaneously with the application. The licensing authority's approval gives the final approval to the licensed premises (which should be delineated by the drawing).

Indeed, one assumes that often an applicant may have signed a potential lease contingent on receiving a liquor license for the proposed leased property. In that situation, the regulation allows the grant of the license but not the issuance. The license cannot be issued without proof of control of the licensed premises by the applicant. That would also include the submission of the drawing of the licensed premises. The proof of control of the licensed property and delineation of the license premises ensures the control of liquor licensing in that the local authority will know who the licensee is, who controls the property (ownership, lease), and the area being used for the liquor license. But that control need not be shown at the time of the initial application.

In this matter, the Intervenor could not submit an accurate drawing of the final licensed premises at the time of application as the building has not yet been completed. However, the Intervenor was able to use the address of the not yet demolished building. The applicant is to define where it proposes to sell alcohol, and that area is then finally determined by the Board. At the 2019 transfer hearing, the Intervenor told the Board that it planned to acquire the Property and build a new building. The Board approved the transfer request. Clearly, the License could not issue after the transfer approval without proof of control of the Property and the filing of a drawing. The Board did not request the building plans prior to issuance of the License so approved the new store in the new building as the licensed premises. Thus, if the License was to be issued, the Intervenor would need to submit a drawing of the store in the new building prior to issuance.

The initial transfer of the License on November 4, 2019 was valid.

E. Section 1.4.14 of the Liquor Regulation

Section 1.4.14 balances the need for a liquor licensee to be able to plan and construct an establishment knowing that it will be able to sell alcohol when it opens and the need for the local authority to be able to control liquor trafficking by ensuring that liquor licenses are used within a reasonable time and are not held for speculation. Section 1.4.14 references R.I. Gen. Laws § 3-5-9 which provides that a license must be issued to a specific premise. In other words, once a license is granted, it must be used for specific premises. Section 1.4.14 takes into consideration that the premises might not be ready for occupation right away but ensures that the license will not be granted and/or held in perpetuity if the premises are not ready.[12]

The first sentence of § 1.4.14 provides that a "retail alcoholic beverage license may be granted but not issued pending full compliance with conditions and criteria necessary for the issuance of said license." The section then states that a licensee shall have a full year to "meet all conditions and criteria set forth in the granting order." The section is concerned with "full" compliance for "all conditions and criteria" necessary for the issuance of said license and not just additional conditions imposed by a local licensing authority.

There are certain requirements – state and local - that a licensee must meet before a license is issued. For example, there are statutory requirements regarding compliance with the Fire Safety Code and Fire Alarm Systems. R.I. Gen. Laws § 23-28.1-1 *et seq.*; and R.I. Gen. Laws § 23-28.25-1 *et seq*. New buildings require a certificate of use and occupancy by the building official as set forth in R.I. Gen. Laws § 23-27.3-120.1. R.I. Gen. Laws § 3-7-24 provides that for any renewal or transfer of a liquor license, proof of payment of state taxes shall be provided. The Cranston

[12] See *Baker v. Department of Business Regulation*, 2007 WL 1156116 (R.I.Super.) (finding that a Class B liquor license can be revoked for failing to comply with conditions of licensing when license not being used and finding that license is tied to premises).

Ordinance § 5.04.130 provides a license may not be issued if there are any delinquent City taxes the applicant has not paid and/or has not entered into a payment plan for said taxes with the City.

Indeed, the City has a checklist for requirements to be met before a liquor license can be issued. In the 2019 checklist for the Intervenor, items to be presented at the time of application are starred and in bold and included zoning approval, copy of driver's licenses for all officers, and copy of corporate documents filed with the secretary of state's office. It is also indicated in bold and starred that a diagram of the area where alcohol is to be served and stored must be on file before a license is issued. Items not in bold and starred included the Department of Health inspection, payment of City taxes, copy of lease or purchase and sales agreement, letter of good standing from the Division of Taxation, and payment of fees. City's certified record dated February 17, 2022.

The Board placed no express restrictions or conditions on the location transfer for the License from Warwick Avenue to the Property. ASOF. Nonetheless, there are conditions that must be met by an applicant prior to the issuance of a license. A licensing authority may impose conditions on the issuance of a liquor license that apply to the operations of the license[13] or a licensing authority may impose conditions to be met prior to opening such as a parking plan. But in order to open, a licensee does not only need to meet any specific conditions placed by a granting authority (e.g. a parking plan) but all ("full") conditions necessary in order to be able to open. Indeed, those are unchanging criteria that are included in any grant of a license and would not need to be specified by a granting authority as they would be included in any grant of a liquor license. Those unchanging criteria include those contained in Cranston's checklist and all granted liquor licenses are subject to such conditions.

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[13] *Thompson v. East Greenwich*, 512 A.2d 837 (R.I. 1986) found that a town may grant a liquor license upon conditions that promote the reasonable control of alcoholic beverages. E.g. early closing, type of business, etc.

On November 4, 2019, the Board approved the location transfer of the Intervenor's License from Warwick Avenue to the Property. The License was renewed on September 14, 2020 and October 4, 2021.

Section 1.4.14 discusses the difference between the grant and issuance of a liquor license.[14] It distinguishes between the grant of the license which refers to when the license is approved and the issuance of the license which is when the license can be used. By its own terms, § 1.4.14 does not allow a license to be renewed past the one (1) year period after the grant since the license becomes null and void without hearing by operation of the regulation unless the time is extended by litigation. During the one (1) year period, a license maybe renewed as required pursuant to R.I. Gen. Laws § 3-5-8 as most liquor licenses expire on December 1 of each year. Thus, even if a license has been renewed during that one (1) year period, it still would be null and void after the one (1) year of the grant of the license if the license did not issue. The only exemption to the one (1) year period is if the license at issue is involved in litigation which is not applicable here.

Here, the transfer to a new location was issued on November 4, 2019. The transfer was granted but could not be issued as the new premises had not been built. Section 1.4.14 clearly states that an applicant has one (1) year to meet all necessary conditions and criteria for the issuance of the license as set forth in the granting order. Thus, once the Board approved the transfer

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[14] *D'Ambra v. Narragansett Town Council*, DBR No. 14LQ058 (4/21/15) concerned § 1.4.14 then known as Rule 14. In that matter, the new liquor license at issue was granted at the location and then transferred to a new owner at the same location. As that decision noted, the transfer of the license in the same location was not a grant of license. It noted that a transfer of a license is treated the same as a new application in that a transfer has the same notice and appeal rights as an application for a new license. R.I. Gen. Laws § 3-7-19 and R.I. Gen. Laws § 3-7-21. A renewal application does not have the same notice or appeal rights as a new application or transfer application. However, the transfer of the license at the same location could not be considered a grant of the license under § 1.4.14 as the rule provides that the "applicant shall have no more than one (1) year after the original granting of the license to meet all conditions and criteria set forth in the granting order." In other words, the one (1) year period runs from the original grant which was the initial grant of the license. The transfer of license at the same location was not an original grant of a license because the license has already been granted in response to the initial application. And again, the policy of § 1.4.14 would militate against allowing a licensee to continually file transfer applications at the same location as a way to circumvent the one (1) year period of § 1.4.14. Here, the transfer to a new location was a grant of the License as conditions needed to be met in order to open.

(the granting order), the Intervenor had one (1) year to meet all the conditions and criteria necessary for the issuance of the License. In this matter, all the conditions are those provided for by statute and ordinance. There are no exemptions in the section except for litigation. More than one (1) year has passed since the grant of that transfer of that License to the new location.

The Intervenor has not met the necessary conditions for the issuance of license. There has been no final fire inspection or certificate of occupancy issued. The testimony was that the new building is essentially complete. Nonetheless, it has been over one (1) year since the grant of the License, and the Intervenor has not met all the necessary conditions of licensing.

Indeed, the most likely reason for § 1.4.14's one (1) year provision is because it is an easily understood time period and weighs the needs of an applicant to have time to open a new location and the policy of ensuring that licenses are used and not held for speculation. In other words, instead of leaving the time period to be open to a discussion of what is "reasonable," § 1.4.14 chose a time period that must be met that was not too long or too short. In its closing, the Intervenor argued that to find that the one (1) year period applied would be myopic literalism.[15] However, this regulation does not need to be interpreted as it clearly just provides a one (1) year period. While the evidence is that the Intervenor's Landlord has been pursuing the demolition and building on the Property, § 1.4.14 does not take such steps into account.[16]

The City argued that equitable estoppel should be applied in this situation. The City argued that the Department has previously recognized and applied equitable principals in denying a challenge to a license transfer on the grounds of the one year period in *D'Ambra v. Narragansett*

[15] This refers to the Rhode Island Supreme Court's holdings that the plain meaning approach to statutory language when construing a statute is not the equivalent to myopic literalism. E.g. *In Re: Brown*, 903 A.2d 147 (R.I. 2006).
[16] In contrast, the 2013 historic tax credit statute provides that work must be ongoing and the tax credit is lost if a project "remains idle" for over six (6) months. In other words, as long as the project is being worked as defined by statute and regulation, the project does not lose its tax credit. If it is idle for too long, it does. R.I. Gen. Laws § 44-33.6-1 *et seq.* is the Historic Preservation Tax Credits 2013 act. R.I. Gen. Laws § 44-33.6-2(13) defines remain idle.

Town Council, DBR No. 14LQ058 (4/21/15). The City also argued that equitable considerations should be applied to this situation. The City and Intervenor argued that City was well aware of the Intervenor's plans to demolish and build a new building at the Property and welcomed such economic revitalization. The City and Intervenor argued that the Intervenor was not sitting on the License (as in *Baker*) but was diligently working to open the new store as evidence by Clift's testimony and that it would be unjust to declare the License null and void.

While the City and Intervenor argued that equitable principals should be applied so that the one (1) year period does not apply, equitable principles are not applicable to an administrative procedure. *Nickerson v. Reitsma*, 853 A.2d 1202 (R.I. 2004). In *Nickerson*, the Supreme Court vacated a Superior Court order that had vacated an agency sanction on so-called "inherent equitable powers." *Id.* at 1206. In other words, the Court could not use its equitable powers for an administrative matter since equitable principals are not applicable to administrative procedures.[17]

Here, the City and Intervenor argued that to declare the License null and void would stop an important City policy of economic revitalization in that the City approved the transfer because of its understanding of what the Clifts planned to do at the Property. The undersigned does not question that the City wanted or desired the Clifts' proposed plan to demolish the old buildings at the Property and build a new commercial building.

However, the Department as an administrative agency is charged with exercising its statutory authority[18] which is this matter relates to enforcement of the statutory and regulatory requirements

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[17] The Court found as follows:

> The Superior Court is certainly a court of equity; however, the trial justice was not vested with any authority to circumvent the clear procedural limitations that the statutory and decisional law of this state placed upon him. In this case, the trial justice erred in three respects: by impermissibly consolidating an administrative appeal with a civil trial, erroneously exceeding his authority by considering evidence outside the certified record in the administrative appeal, and lastly, by vacating a valid agency decision based upon unarticulated equitable grounds and in the absence of any authority to do so. *Id.*

[18] *Iselin v. Ret. Bd. of Employees' Ret. Sys. of Rhode Island*, 943 A.2d 1045 (R.I. 2008).

for liquor licensing. Indeed, the liquor licensing statute is to be liberally construed to promote temperance and reasonable control alcoholic beverages. R.I. Gen. Laws § 3-1-5. In other words, the liquor licensing statute does not necessarily favor the granting and issuance of liquor licenses and instead provides for the control of liquor licensing.[19]

To that end, there is a statutory cap on Class A liquor licenses. The parties agreed that the City of Cranston is over the statutory cap so that it cannot issue any new Class A liquor licenses. If the statutory cap did not exist, there would be no issue here as the Intervenor could merely apply for a new Class A liquor license which presumably would be approved by the Board.

The liquor licensing statute has other examples of providing for the control of liquor licenses in that certain licenses cannot be issued within 200 feet of a place of certain schools and places of public worship. R.I. Gen. Laws § 3-7-19. However, a review of R.I. Gen. Laws § 3-7-19 shows that

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[19] In *Baginski v. Alcoholic Beverage Commission*, 4 A.2d 265, 266-267 (R.I. 1939), the Court reviewed the reasons behind the State's liquor licensing laws finding as follows:

> Chapter 2013 is a familiar and well-recognized example of the legitimate exercise of the police power. *Tisdall v. Board of Aldermen*, 57 R.I. 96, 188 A. 648. The act is entitled an act to promote temperance and to control the manufacture, transportation, possession and sale of alcoholic beverages. Its chief purpose may, without question, be said to be the safeguarding of the public health, safety and morals. *Clark v. Alcoholic Beverage Commission*, 54 R.I. 126, 170 A. 79.
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> The traffic in intoxicating liquors has ever been a prolific source of evils, gravely injurious to the public welfare. The need of its regulation and control is undisputed. In a search for a system of effective, impartial and uniform regulation and control of this traffic our legislature enacted the above chapter [P.L. 1933 ch. 2013] which was later amended by P.L.1934, chap. 2088. This system is a departure from that which had long existed here prior to the advent of national prohibition. Then the regulation and control of substantially every phase of the liquor traffic was vested exclusively in the local governing bodies. The state exercised over this local administration no administrative supervision or control, except occasionally in some cities and towns the legislature intervened to set up state-appointed license commissions or police commissions with licensing powers; but such commissions were vested with purely local administrative powers only. They were not commissions with state-wide jurisdiction.
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> Chapter 2013 changed all this. Where, before, the emphasis was exclusively on control locally, now it is predominantly on state control. This is evident in many sections of the act. Running through the entire act is the central idea that the traffic in intoxicating liquors is a problem that is state-wide; and correspondingly, that state supervision and control, either originally in some phases or ultimately in others, alone can adequately cope with it. However, along with the incorporation into the law of this new idea, there has been retained a remnant of local administration. ***

there are over 50 statutory exemptions provided for in the statute to that prohibition.[20] In those cases, the General Assembly has revisited its policy on the placement of licensees and made exemptions when found to be desirable.

This brings us to *D'Ambra*. In that case, a Class BV-Tavern license was granted but not issued within the one (1) year period of the then Rule 14. In that matter, there was no dispute that the license holder had been working on the premises in order to open a hotel with a restaurant and bar. The undersigned found that the Class BV-Tavern license was null and void pursuant to Rule 14. The then Department director modified the decision finding that the "policy behind Rule 14 is to prevent grantees from sitting on liquor licenses without using them for an unreasonable period of time" and that the license holder in that matter "cannot be characterized as sitting on a license for an unreasonable period of time" and that the local authority's "renewal of the license does not violate the letter of spirit of the law." *Id.*

As the Intervenor rightly argued, the Department applied equitable considerations to *D'Ambra*. However, equity is not applicable to administrative proceedings so that the undersigned respectfully disagrees with the outcome of that matter as it had no basis in the statute or regulation but rather was based in what the then director felt was a good policy. Despite *D'Ambra*, there has been no change to the regulation. The Department has not amended the regulation to either provide for a longer period than one (1) year or to change the one (1) year period to a "reasonable time" or to define the time allowed based on the efforts made to open the granted location. The regulation has not been amended to include any hardship exemption.[21]

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[20] Indeed, R.I. Gen. Laws § 3-7-19(41) was a result of a Department decision upholding the Providence Board of Licenses' denial of a liquor application due to it being within 200 feet of a public place of worship. *Perez Smith, LLC d./b/a Paris Bistro v. City of Providence, Board of Licenses*, DBR No. 19LQ001 (3/6/19). P.L. 2019 ch. 162 § 1 (eff. 7/11/19).

[21] The issue of the COVID19 pandemic was raised during the hearing in terms of the Intervenor's Landlord's progress in constructing the new building. However, other than the exemption for litigation to extend the one (1) year period, the regulation does not provide any exemption for natural disasters, acts of God, or fire, etc. The Appellants noted that in the many executive orders issued by the governor of Rhode Island in relation to the COVID19 pandemic, none

The Intervenor argued that since the Board had not placed any conditions on the transfer of the license in terms of time limits or operational deadlines or at time of the renewals, § 1.4.14 does not apply. The Intervenor argued that the Board was informed of the plans to demolish and build a new building and approved such relocation of the License. Presumably, the Intervenor raised the issue of conditions placed on the License because of language in the director's modification of *D'Ambra*.

In *D'Ambra*, the director tried to distinguish between conditions precedent and those running with the license. By doing so, the modification concluded that the local authority's granting order did not make the opening of the establishment or a certificate of occupancy a condition precedent to the issuance of the license so that the license was issued when the applicant submitted its parking plan which was a condition imposed by the town. This attempt to distinguish between conditions precedent and those running with the license is not supported by § 1.4.14. In fact, that conclusion renders § 1.4.14 meaningless as the modification found the one (1) year period did not apply without explicit conditions imposed by the local authority. That distinction that was read into the regulation could result in a licensee that was granted a license being able to sit on its license and not open and not obtain a certificate of occupancy as long a local licensing authority did not explicitly recite all of the conditions necessary for operating the business. Not only is that not the actual requirement of the section but it contradicts the policy of ensuring the control of liquor licensing and preventing the speculation of licenses. *Green Point v. McConaghy*, 2004 WL 2075572 (R.I. Super.).

While the modification of *D'Ambra* found § 1.4.14 provided for a reasonable time, that section never speaks of reasonableness or different kinds of conditions. Instead, "a retail alcoholic

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addressed this issue. Section 1.4.14 provides a time period that is applicable to all situations but litigation involving the license.

beverage license may be granted but not issued pending full compliance with conditions and criteria necessary for the issuance of said license" and an applicant is to "meet all conditions and criteria set forth in the granting order." Section 1.4.14. The granting order is merely the approval of the license by the local authority which includes the unchanging criteria and any other conditions that a local authority may apply. Section 1.4.14 clearly provides that "[a]ll conditions and criteria" – in other words, "full compliance" - must be met within the one (1) year period. It does not say that some conditions must be met. It does not say only the conditions mentioned by the local authority must be met. It does not say that only special local conditions must be met. Rather it says all necessary conditions must be met.

Presumably § 1.4.14 applies the one (1) year period because what is reasonable for one person is unreasonable for another. *Supra*. Some people might argue that it is reasonable to take two (2) or five (5) years to complete a location. Instead of causing such arguments, § 1.4.14 provides a clear period of one (1) year. Following the rule is not elevating form over substance but rather it is applying the rule as written. The time period of one (1) year has not been changed since the 2015 *D'Ambra* decision. As much as it could be found that the Intervenor's Landlord has been completely reasonable in the steps it has taken to build the new building, § 1.4.14 merely applies a time period.

This brings us to the Department's 2015 letter. The Appellants argued that the letter is not applicable in that it cannot bind the Department as it is not a response to the statutory mechanism of requesting a declaratory order contained in R.I. Gen. Laws § 42-35-8. The Intervenor argued that it relied on the letter to its detriment. The letter in question was in response to questions posed by the Intervenor's counsel to the Department in 2015 in relation to another proposed project that

the Clift family was considering. Intervenor's Exhibits One (1) and Two (2). The Intervenor did not seek any guidance from the Department in relation to its proposed project on the Property.

In 2015, the Intervenor's counsel asked that if a Class A liquor license was transferred could the new entity discontinue operations during the permitting and construction of the new building which could take up to one (1) year. The Department's response indicated that once the license is transferred to a new location, the new entity could discontinue operations during the permitting and construction of the building for a reasonable time. The letter indicated that § 1.4.14 only applies if the licensing authority expressly conditions the grant of the transfer on the satisfaction of certain conditions and criteria such as the construction of the premises. The letter relied on *D'Ambra* and noted it was on appeal.[22]

As noted above, § 1.4.14 does not distinguish between explicit conditions noted by a local authority and those that are known to apply such licenses. As such, the undersigned respectfully disagrees with the letter's conclusion in relation to said section.

Nonetheless, on rare occasions, the Rhode Island Supreme Court has found that the doctrine of *equitable estoppel* (as opposed to generic equitable considerations) may apply against public agencies. The Supreme Court has held as follows:

> in an appropriate factual context the doctrine of estoppel should be applied against public agencies to prevent injustice and fraud where the agency or officers thereof, *acting within their authority*, made representations to cause the party seeking to invoke the doctrine either to act or refrain from acting in a particular manner to his [, her, or its] detriment. *Romano v. Retirement Board of the Employees' Retirement System of the State of Rhode Island*, 767 A.2d 35, 39 (R.I. 2001) (citation omitted) (italics in original).

Therefore, for a party to obtain *equitable estoppel* against an agency, it must show that a "duly authorized" representative of the agency made affirmative representations within the scope of his/her

[22] During the pendency of this matter, it was represented that the *D'Ambra* appeal was resolved, and no decision was every issued by the Superior Court.

authority, that such representations were made to induce the plaintiff's reliance thereon, and that the plaintiff actually and justifiably relied thereon to its detriment. *Cigarrilha v. City of Providence*, 64 A.3d 1208 (R.I. 2013); and *Casa DiMario, Inc. v. Richardson*, 763 A.2d 607 (R.I. 2000). See also *El Marocco Club, Inc. v. Richardson*, 746 A.2d 1228, 1234 (R.I. 2000) ("key element of an estoppel is intentionally induced prejudicial reliance.") (internal citation omitted).

However, a government entity and its representatives do not have "any implied or actual authority to modify, waive, or ignore applicable state law that conflicts with its actions or representations." See *Romano* at 40. *Romano* found that the "doctrine of *equitable estoppel* should not be applied against a governmental entity like the board when, as here, the alleged representations or conduct relied upon were *ultra vires* or in conflict with applicable law." *Id.* at 38. See also *Technology Investors v. Town of Westerly*, 689 A.2d 1060 (R.I. 1997). Moreover, "any party dealing with a municipality 'is bound at his own peril to know the extent of its capacity.'" *Casa DiMario* at 612 (internal citation omitted). See also *Tidewater Realty, LLC v. State, Providence Plantations*, 942 A.2d 986, 995 (R.I. 2008) (well-settled principle that a municipal employee cannot bind the city without possessing the actual authority to do so and apparent authority and reliance on the part of the plaintiff are not adequate). Furthermore, "'[a]s a general rule, courts are reluctant to invoke estoppel against the government on the basis of an action of one of its officers.'" *Casa DiMario* at 612. (internal citation omitted).

In addition, the party must make a requisite showing that *equitable estoppel* should be applied to prevent fraud and injustice. See *Guilbeault v. R.J. Reynolds Tobacco Company*, 84 F.Supp.2d 263 (D.R.I. 2000) (to prove fraud, plaintiff needs to show that defendant made a false or misleading statement of material fact that defendant knew to be false and it was made in order to deceive and that plaintiff detrimentally relied on statement).

The Department did not make any affirmative representations regarding this project. In fact, it made no representations to the Intervenor regarding this project. The Department's letter was in response to inquiries in 2015 about another project. The 2015 letter cannot be found to have been made to induce reliance on by the Intervenor as the letter predates this project and the inquiry was not about this project. The Department made no affirmative representations to the Intervenor in relation to this project in order to induce detrimental reliance. Further, the Department could not waive the applicable law.[23] The facts in this matter do not fall under *equitable estoppel.*

The City relied on *DeFalco v. Voccola*, 557 A.2d 474 (R.I. 1989) to argue that *equitable estoppel* should be applied to this situation. *DeFalco* referenced *equitable estoppel* being used in zoning contexts similar to the matter before the Court and found while those other cases were not exactly like its matter, they bore a strong resemblance. However, the Court did not analyze the facts before it in terms of the doctrine of *equitable estoppel.* Rather its finding was based in "equity principles" in that it was unfair to require an occupancy permit prior to the issuance of the license. *Id.* at 476. In *DeFalco*, the licensee had part of its property condemned by the State, and he needed to restore and modify the part of the building that was condemned in order to be able to operate as a restaurant. The local authority denied his Class B renewal liquor license because he did not have an occupancy permit. The Court found the equitable considerations allowed the issuance (renewal) of a license conditional upon obtaining an occupancy permit. Indeed, the Court found that the local authorities had obstructed the licensee from demolishing and reconstructing his building. Certainly, that is the opposite of the facts in this matter where the City supports the Intervenor's project. While *DeFalco* spoke of equity, its conclusion was to impose a condition on the renewal of a license. The Court below had found there was no prohibition in the statute for the issuance of a condition on a

[23] For a discussion, of how hard it is to show *equitable estoppel* against a government entity, see *Town of South Kingstown v. Rhode Island Department of Business Regulation*, 2012 WL 6756205 (R.I.Super.).

license. Indeed, the Supreme Court had already decided prior to *DeFalco* that liquor licenses may be issued with conditions attached. *Thompson, supra. DeFalco* merely imposed a condition on the renewal of a license and does not support the application of *equitable estoppel* or equity in this matter.

The applicability of § 1.4.14 has come before the Department prior to *D'Ambra.* On January 8, 2013, the Department issued an order to the Providence Board of Licenses that it grant a Class BV license to an applicant who had taken an appeal to the Department. On December 4, 2014, that applicant filed an emergency request with the Department to re-issue the January 8, 2013 order with "today's date" so that the applicant would not be in violation of the then Rule 14. In *In Re: Jarr Realty*, LLC, DBR No. 14LQ062 (12/8/14), the Department declined this request. The Department also rejected the applicant's equity arguments that it had spent money rehabilitating a building for the use of the license.

As *Jarr* noted, the then Rule 14 existed clearly for the reason of establishing the "reasonable control of the traffic in alcoholic beverages." R.I. Gen. Laws § 3-1-5. R.I. Gen. Laws § 3-5-9 requires that the license must describe the location where the license is to be used and only that location can be used so that it clearly envisions that all retail licenses must be used at a specific location. *Supra.* Rule 14 strikes a balance between ensuring that an applicant has time to come into compliance with building, fire, and zoning (etc.) requirements after the granting of a liquor license but that the grant of the license is not open ended so that the license continues to "exist" without being used. In other words, the licensing scheme ensures that liquor licenses are being used and the local licensing authority knows who holds the license and where the license is located.

Jarr went on to discuss that the General Assembly did not want Class A licenses continuing to exist when they were not being used. The same policy supports when a Class B license is revoked for non-use. The requirement to specifically identify a premise of a retail license supports the public

policy of reasonably controlling the traffic in alcoholic beverages by ensuring that a town or city knows where each liquor license is located. Furthermore, the requirement also provides a basis that licenses that are not being used and/or are failing to comply with the conditions of licensing cannot continue to exist. Section 1.4.14 clearly provides a one (1) year period for a licensee after a license is granted to comply with all conditions necessary for the issuance of a license.

While the Department has been called a "super licensing" authority and the Director has the authority under R.I. Gen. Laws 3-7-21, "to make any decision or order he or she considers proper," the Department does not have the discretion to ignore or waive statutory or regulatory requirements. *Romano*. Section 1.4.14 controls in this situation. *Jarr*.

F. Abandonment

The Intervenor closed its store on Warwick Avenue in March, 2020 and sold the property in April, 2020. It is no longer selling liquor at its store.

The Appellants argued that the Intervenor has abandoned its License pursuant to R.I. Gen. Laws § 3-5-16.1. That statute provides that when the holder of a Class A license has abandoned the premises from which the licensee has been conducting his or her business or has ceased to operate under the license for a period of ninety (90) days, the license shall be canceled. However, a Class A licensee may have up to one (1) year to reestablish the business where the abandonment or cessation of operating was due to illness, death, condemnation of business premises, fire or other casualty.

In this situation, the Intervenor transferred its License location to the Property. Section 1.4.14 is a similar provision to the Class A abandonment statute in that it provides that if a granted licensed does not open it a year, that license too shall be null and void. The abandonment statute

applies to already established Class A establishments that cease to operate. However, the idea is the same for both provisions: failing to use or operate a liquor license results in the loss of license.

R.I. Gen. Laws § 3-5-16.1 requires that a local licensing authority shall hold a hearing after notice of abandonment. Here, the License was transferred to the Property. It ceased to operate at Warwick Avenue. However, as the License is now null and void under Section 1.4.14, abandonment does not apply. If the Intervenor had opened its new store by November 4, 2020, the abandonment provision would not have applied as the License would have been granted and issued within one (1) year of the grant as provided by § 1.4.14.

Nonetheless, with the City's and Intervenor's arguments regarding abandonment, the undersigned will address its statutory requirements. The City argued that there is a difference between operating a business and selling liquor. The Intervenor argued that its License has not been abandoned as it continues to operate in preparation of opening the new store. The Intervenor also invoked zoning cases to argue that there must be an intent to abandon. *Town of Coventry v. Glickman*, 429 A.2d 440 (R.I. 1981). However, zoning cases are not necessary to understand the abandonment statute. The plain language of the statute indicates that either a licenseholder has abandoned its premises - in other words is no longer at those premises - or has ceased to operate under its license.

The Intervenor argued that it was still "using" its license even if was not selling liquor. It argued that it was preparing for opening and designing the store and paying taxes, etc. However, all activities that the Intervenor is engaging in for the opening of the new store would not require a liquor license. Preparing for a potential store does not show the use of a license. Instead, it is analogous to holding licenses in a safe and not using them. See *Baker*.

R.I. Gen. Laws § 3-5-6 provides that there are several classes of beverage licenses, each of which authorizes the doing of things. For Class A liquor licenses, R.I. Gen. Laws § 3-7-3 authorizes the license holder to sell closed containers of liquor at retail. In other words, to be a liquor store. The issue of abandonment concerns whether a Class A licensee has ceased to operate under the license. Once a Class A liquor licensee stops selling liquor, it is no longer operating under its license.

To argue that someone can be using a license without selling liquor contravenes the public policy concerns behind the abandonment statute. As noted in *Green Point v. McConaghy*, allowing the transfer and prolonged non-use of liquor licenses contravenes public policy in that it promotes private market speculation of licenses that are otherwise difficult to obtain through proper application to a licensing authority. As noted in *Marty's Liquors v. Warwick Board of Commissioners*, 1985 WL 663587, the General Assembly enacted legislation specifically providing to reduce the number of Class A liquor licenses so that Class A licenses cannot be kept "alive" for improper purposes.[24]

The Department's letter noted that the abandonment statute would not apply if the transfer of the License was accomplished before the closing of the License's current location. However, with the transfer of the License, the Intervenor became subject to the abandonment statute's equivalent in § 1.4.14. Thus, the abandonment statute would not apply prior to the November 4, 2020 date for the issuance of the license. Nonetheless, if the Intervenor sought to re-open the store

[24] The Department has consistently ensured that new life is not breathed into licenses that have been revoked, expired, abandoned, or are null and void. *Baker* (cannot transfer a Class B liquor license that was not issued to a *bona fide* tavern keeper or victualer); and *Green Point*. See also *Wines and More, Inc. v. City of Cranston, Board of Licenses*, DBR No.: 19LQ009 (8/2/19) (Class AE liquor could not be split by locality in order to transfer Class A license): *City of Cranston and A. Jeffrey Bucci d/b/a Plainfield Pike Liquors*, DBR No. 01-L-0050 (8/10/01) (over statutory cap for new Class A license and cannot transfer expired Class A license); and *Newport Paragon Group d/b/a Wellington Square Liquors & Newport County Package Store Association v. Newport Board of License Commissioners*, LCA-NE-98-09 (12/18/98) (Class A license cannot be transferred as it was abandoned).

at its old location (which has been sold), it could not do so as the License is null and void under § 1.4.14 so does not exist to be transferred back. Nor could it claim that it could re-open the store as if there had never been a transfer of License due to the abandonment statute.

G. Motion to Dismiss

By motion dated January 31, 2022, the Intervenor moved to dismiss this appeal as to Oaklawn on the basis that on December 6, 2022, the Oaklawn Class A liquor license was transferred by the Board to J&J Gasbarro Oaklawn Liquors, Inc. ("Gasbarro"), a different entity with different shareholders so that it could not be substituted in as a party.

As a Class A liquor licenseholder, Oaklawn had standing to bring this appeal to the Department pursuant to R.I. Gen. Laws § 3-5-19 and R.I. Gen. Laws § 3-7-21. Oaklawn objected to the motion but agreed that Gasbarro had purchased its assets and now was the licenseholder at that location. Oaklawn argued that Gasbarro is now the successor in interest to the Oaklawn appeal.

Under § 2.11 of 230-RICR-10-00-2 of the *Rules of Procedure for Administrative Hearings* ("Hearing Regulation"), a party may make motions that are permissible under the Hearing Regulation and the Rhode Island Superior Court Rules of Civil Procedure. Super. R. Civ. P. 25 allows for the substitution of parties. See also Super. R. Civ. P. 21. *Carbone v. Planning Bd. of Appeal of Town of South Kingstown*, 702 A.2d 386 (R.I. 1997).

While the undersigned believes that Gasbarro might be able to be substituted for Oaklawn, it is unclear whether Oaklawn's counsel is also representing Gasbarro in such a request to substitute in Gasbarro as no separate motion has been made to substitute the parties. Whether Oaklawn is dismissed has no bearing on the outcome of this matter as there are two (2) appellants in this matter. This matter has gone to full hearing and the record has closed; otherwise, the

undersigned would seek clarification over the status of Gasbarro's legal representation and any motion for substitution. Thus, no ruling is necessary at this time on this motion.

H. Conclusion

The License was properly transferred on November 4, 2019. However, the License cannot be issued as the Intervenor did not comply with all necessary conditions for licensing within one (1) year by November 4, 2020. As the License was transferred prior to its closing is store and ceasing to operate under its license, the abandonment statute was inapplicable. Instead, the time limits of § 1.4.14 of the Liquor Regulation apply. Therefore, the License is null and void.

VI. FINDINGS OF FACT

1. On November 4, 2019, the Board approved the location transfer of the Intervenor's Class A liquor license from 311 Warwick Avenue to the Property.

2. Said License was renewed by the Board on September 14, 2020.

3. Said License was renewed by the Board on October 4, 2021

4. Pursuant to R.I. Gen. Laws § 3-7-21, the Appellants appealed the Board's decision of October 4, 2021 to renew the License to the Director of the Department.

5. A *de novo* hearing was held on February 8, 2022. The parties were represented by counsel who timely filed briefs by February 25, 2022.

6. The Intervenor had not completed its new premise at the Property by November 4, 2020.

7. The Intervenor had not complied with all necessary conditions for licensing by November 4, 2020.

8. The facts contained in Section IV and V are reincorporated by reference herein.

VII. CONCLUSIONS OF LAW

Based on the testimony and facts presented:

1. The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 3-7-1 *et seq.*, R.I. Gen. Laws § 42-14-1 *et seq.*, and R.I. Gen. Laws § 42-35-1 *et seq.*

2. Pursuant to § 1.4.14 of the Liquor Regulation, the License became null and void on November 4, 2020.

VIII. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends that it is found that pursuant to § 1.4.14 of the Liquor Regulation, the License became null and void on November 4, 2020.

Dated: March 30, 2022

Catherine R. Warren
Hearing Officer

ORDER

I have read the Hearing Officer's Decision and Recommendation in this matter, and I hereby take the following action with regard to the Decision and Recommendation:

X ADOPT (see attached)
_____ REJECT
_____ MODIFY

Dated: 04/14/2022

Elizabeth M. Tanner, Esquire
Director

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 15th day of April, 2022 that a copy of the within Decision and Notice of Appellate Rights were sent by first class mail and by electronic delivery only to the following: John M. Verdecchia, Esquire, Law Office of John M. Verdecchia, 400 Reservoir Ave., Ste 1C, Cranston, R.I. 02920 John.Verdecchia@verizon.net; Louis A. DeSimone, Jr., Esquire, 1554 Cranston Street, Cranston, R.I. 02889 ldatty@gmail.com; and Robert D. Murray, Esquire, Taft & McSally LLP, 21 Garden City Drive, Cranston, RI 02920 rdmurray@taftmcsally.com; and by electronic delivery to Pamela Toro, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, R.I. 02920.

Diane L. Paravisini

DIRECTOR'S SUPPLEMENT TO ADOPTED DECISION

The following is added to Section V-(H):

Section 1.4.14 of the Liquor Regulation provides that as to an alcoholic beverage license that is "granted but not issued" pending compliance with conditions and criteria necessary for final issuance: the "grant" shall be "in writing"; the conditions and criteria must be met within one (1) year of the original grant; and the conditions and criteria shall be set forth in the granting order. The record and exhibits do not include a granting order as to the November 4, 2019, transfer approval. Had a granting order been issued in accordance with the Regulation, it would have accomplished an important objective of the regulation, which is to delineate clearly the conditions, criteria and deadline.