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

John Wilson and OJohn, LLC **Appellant,**	:	
v.	:	**DBR No.: 22LQ009**
Town of Lincoln, Town Council acting as the Board of License Commissioners, **Appellee**	:	

DECISION

I. INTRODUCTION

This matter arose from an appeal filed by John Wilson and OJohn, LLC ("Appellant") with the Department of Business Regulation ("Department") pursuant to R.I. Gen. Laws § 3-7-21 regarding a decision taken by the Town of Lincoln ("Town"), Town Council acting as the Board of Licensing Commissioners ("Board") on May 17, 2022 to deny the Appellant's application to transfer its Class A liquor license ("License") from 10 Higginson Avenue ("Current Premise") to 622 George Washington Highway (Unit 30a) ("Proposed Premise"). A prehearing conference was held on June 6, 2022 before the undersigned.[1] The parties were represented by counsel. The parties agreed to rest on the record below and file briefs. Briefs were timely received by October 7, 2022.

II. JURISDICTION

The Department has jurisdiction over this matter pursuant to R.I. Gen. § 3-2-1 *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.*

[1] Pursuant to a delegation of authority by the Director of the Department.

III. ISSUE

Whether to uphold or overturn the Board's denial of the Appellant's application to transfer its License.

IV. MATERIAL FACTS AND TESTIMONY

On January 18, 2022, the Board granted the Appellant the transfer of the License from the old license holder at the Current Premise to the Appellant. On that date, the Appellant's owner and his attorney appeared before the Board.[2] The owner, John Wilson ("Wilson"), was asked by a councilor on the Board if he planned to stay at the Current Premise or whether once he received the License, he would want to move. Wilson stated that he planned to stay at the "same place, right now." He stated that he was signing a lease. He was asked if the lease would be for certain years. Wilson acknowledged the lease would be for certain years and said, "three plus two." He also indicated he did "not know what [the] future holds" and if he found a better location, he would like to move. But when asked if he was considering any other locations at that time, he said no. Wilson's attorney indicated that the Appellant for now wanted to stay in the Current Premise and was in discussion with the current landlord about a lease.

While the Board was discussing the application and its location and whether the Appellant would move, the Town Solicitor pointed out that while a licensee may request to transfer its location and that would be subject a public hearing, the Appellant had just made representations to the Board that it had no plans to move and if the Appellant came back in the calendar year, the Board would remember what happened here. Neither Wilson nor his attorney corrected the Town Solicitor's summary of the Appellant's representations to the Board.

[2] For both Town of Lincoln hearings, no transcripts were provided in the certified record. Rather both hearings were recorded and accessible via the Town of Lincoln's website at www.licolnri.gov.

On or about March 6, 2022, the Appellant applied to the Town of Lincoln to transfer its License from the Current Premise to the Proposed Premise. Board's certified record. A hearing was held by the Board on May 17, 2022 on this application.

At the Board's May 17, 2022 hearing, Wilson and his attorney appeared. The attorney represented that the Appellant signed a new lease for the Current Premise, but after Wilson got into the store and reviewed its financials, he was approached by the Lincoln Mall, the landlord of the Proposed Premise, and offered a much better deal than his current deal. The Board indicated that Wilson had said at the January meeting that he had a three (3) year lease, and in reply, the attorney said that Wilson would have to break his lease, and he thought there was a 90 day notice provision to break the lease. The attorney indicated that the original plan was to procure the License and then move to Lincoln Mall but that fell through and once that fell through, the Appellant's plan had been to stay at the Current Premise. The attorney indicated that the Lincoln Mall then approached the Appellant again. A councilor indicated that was not revealed at the January 18, 2022 hearing.

The Board then listened to a portion of the January 18, 2022 hearing where Wilson discussed his plans for the Current Premise. After listening to a portion of the January hearing, Wilson's attorney indicated that at the time of the January 18, 2022 meeting, the Appellant had signed the lease for the Current Premise. The attorney said it was true that on January 18, 2022, the Appellant had signed a lease. However, in reply, a councilor indicated that the Appellant did not disclose the mall negotiations at the January hearing.

A councilor indicated that Lincoln is made up of five (5) villages and that the Town has four (4) liquor licenses that are nicely spread out in the Town in four (4) of the districts. One councilor indicated that the Appellant was disingenuous at the January 18, 2022 meeting and made

misrepresentations so that the Board approved the transfer based on false information. The Town Administrator indicated concerns with the Proposed Premise because it is in a mall and a hot spot for teenagers so that raises public safety issues in relation to underaged drinking. Another councilor indicated that the liquor stores are spread out in the Town and felt the Appellant was misleading in January and was concerned about the traffic at the mall. Another councilor also expressed concern over youth being in the proximity to a liquor store at the mall.

Members of the public objected in person at the hearing. The Board also received emails and letters from people objecting to the transfer. The objectors included the liquor store owner in the village where the Appellant proposes to move who objected since the Proposed Premise would be near its location and who also had concerns over the mall and safety issues. Other reasons for objections included that the transfer would mean that in a small town, there would be two (2) liquor stores within a half mile proximity, and there would be traffic and safety issues.

At the May, 2022 hearing, the Board denied the application by the Appellant to transfer its location.

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 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 (R.I. 1998).

B. The Appeal before the Department

The Department has broad and comprehensive control over the traffic in alcohol. Indeed, the Department's power of review is so broad that it has been referred to as a "state superlicensing board." *Baginski v. Alcoholic Beverage Comm'n.*, 4 A.2d 265, 267 (R.I. 1939). Thus, the Director has the authority under R.I. Gen. Laws 3-7-21, "to make any decision or order he or she considers proper."[3] The hearing before the undersigned is a *de novo* hearing so that the parties start afresh during the appeal. *A.J.C. Enterprises v. Pastore*, 473 A.2d 269 (R.I. 1984); and *Cesaroni v. Smith*, 202 A.2d 292 (R.I. 1964) (Department's jurisdiction is *de novo* and the Department independently exercises the licensing function). The outcome of an appeal is a decision whether to uphold, overturn, or modify a licensing board's decision. The undersigned will make her findings on the basis of the evidence and will determine whether that evidence justifies said decision. See below.

C. Arguments

The Appellant argued that it did not mislead the Board at the January hearing as it indicated it did not know what the future held, and its plan had been "for now" to stay in the Current Premise, and the mall option came up after the January hearing. It argued that the statute does not provide for licensing by districts and for the Board to do so upsets the licensing scheme. It argued that a

[3] R.I. Gen. Laws § 3-7-21 provides in part as follows:

> Appeals from the local boards to director. (a) Upon the application of any petitioner for a license, or of any person authorized to protest against the granting of a license, including those persons granted standing pursuant to § 3-5-19, or upon the application of any licensee whose license has been revoked or suspended by any local board or authority, the director 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, but the application shall be made within ten (10) days after the making of the decision or order sought to be reviewed.

general concern about the overabundance of liquor licenses is not a basis to deny an application. The Appellant argued the public safety concerns for underage drinking at the mall are speculative.

The Board argued that it has discretion for approving a location for a liquor license. It argued that it had personal knowledge of the mall and underage patrons and concerns about the underage purchase of alcohol. The Board argued that the Appellant was misleading at the January hearing as it had already spoken to the mall about moving there.

D. Review of Liquor Applications

It is a matter of law that local licensing boards have broad discretion in deciding whether or not to grant a liquor license application. "The granting or denying of such licenses is in no sense an exercise of the judicial process. On the contrary it is purely administrative. In performing that function the board (sic) act as agents of the legislature in the exercise of the police power. . . . [I]t is a matter of discretion whether or not they shall grant the license and this court has no control over their decision." *Bd. of Police Comm'rs v. Reynolds*, 86 R.I. 172, 176 (1957).

The Department has the same broad discretion in the granting or denying of liquor licenses. *Id.*, at 177. *Domenic J. Galluci, d/b/a Dominic's Log Cabin v. Westerly Town Council*, LCA–WE-00-04 (10/25/00); *Donald Kinniburgh d/b/a Skip's Place v. Cumberland Board of License Comm'rs*, LCA–CU-98-02 (8/26/98). However, the Department will not substitute its opinion for that of the local town but rather will look,

> for relevant material evidence rationally related to the decision at the local level. Arbitrary and capricious determinations, unsupported by record evidence, will be considered suspect. Since the consideration of the granting of a license application concerns the wisdom of creating a situation still non-existent, reasonable inferences as to the effect a license will have on a neighborhood must be logically and rationally drawn and related to the evidence presented. A decision by a local board or this Office need not be unassailable, in light of the broad discretion given to make the decision. *Kinniburgh*, at 17.

In discussing the discretionary standard enunciated in *Kinniburgh,* the Department has also found as follows:

> [T]he Department, often less familiar than the local board with the individuals and/or neighborhoods associated with the application, will generally hesitate to substitute its opinion on neighborhood and security concerns if there is evidence in the record justifying these concerns. To this end, the Department looks for relevant material evidence supporting the position of the local authority. (citation omitted). *Chapman Street Realty, Inc. v. Providence Board of License Commissioners*, LCA-PR-99-26 (4/5/01), at 10.

As articulated through liquor licensing decisions at the State court level and the Departmental level, the standard of review for a new license or a transfer of license is subject to the discretion of the issuing authority. Arbitrary and capricious determinations not supported by the evidence are considered suspect. *Infra. W&D Parkview Enterprise, Inc. d/b/a Parkview v. City of Providence, Board of Licenses*, DBR No.: 19LQ021 (12/12/19); and *Crazy 8's Bar/Billiards v. Providence Board of Licenses*, DBR No.: 09-L-0042 (8/24/09).

E. Whether the Denial of the License Should be Upheld

The Board's reasons for denying the transfer of License can be summed up as 1) the Appellant misled the Board at the January, 2022 hearing; 2) the current locations of Class A licenses are geographically balanced; and 3) public safety at mall and public opposition.

a. <u>The Mall, Safety Issues, and Public Opposition</u>

As cited above in *Chapman*, there must be evidence supporting community concerns such as the mall safety concerns. In *International Yacht Restoration School Inc. and Jose F. Batista v. Newport City Council and Dockside North, LLC et al.*, DBR No. 02-L-0037 (6/30/03) the Department found that the Newport licensing authority had not abused its discretion in granting that license despite 42 neighbors' objections because the local authority found the application represented a desirable business proposal for an additional business establishment in the wharf

area in Newport. The decision further found that the Newport applicant had operated liquor establishments for six (6) years without any significant violations of local or State law. The decision found that the neighbors did not "focus on specific incidents attributable to [the applicant] or its management, but rather on unruly behavior emanating" from the area. *Id.*, at 10.

In *Krikor S. Dulgarian Trust v. Providence Board of Licenses*, DBR No.: 08-L-0175 (6/18/09), the abutter appellant had broad concerns regarding traffic, parking, safety, noise, and late night liquor closings in the area. However, the decision upheld the local authority's grant of a license because it found that there was no evidence from the objecting neighbors that linked the applicant to the various concerns. See also *Liquor Depot v. City of East Providence, et al.*, DBR No. 08-L-0250 (6/2/09) (Class A license denial overturned since objections were speculative).

However, neighborhood objections can demonstrate the negative impact a proposed licensee may have. In *Crazy 8's Bar/Billiards*, the Department upheld the local authority's denial of application because the location had a history of problems, and the applicant had no relevant business experience. In *Domenic J. Galluci*, the local authority found that 1) the prior liquor license located at the proposed location was linked to disorderly conduct, assaults, and traffic issues; 2) the applicant was associated with past licensee; and 3) local licensing authority could reasonably infer from the evidence that reopening the establishment could have a similar negative effect on the neighborhood.

The Board and many objectors had broad concerns regarding safety, traffic, and underage drinking if the Appellant moved to the Proposed Premise located in the Lincoln mall. However, there was no direct evidence linking the Appellant to safety concerns or underaged drinking. In light of the broad discretion given to the Board, the undersigned only reviews the Board's decision for evidence to support it. The Board's decision need not be unassailable but rather there must be

evidence to support the Board's decision. In relation to the issue of safety concerns and the mall location, the concerns are too speculative to support the denial of the License. *Krikor S. Dulgarian.*

b. Balanced Geographic Locations

At the May Board hearing, it was indicated that under the R.I. Gen. Laws § 3-5-16 population cap for Class A liquor licenses, Lincoln should have three (3) Class A liquor licenses but has four (4) licenses. Thus, there must be one Class A license that was grandfathered in pursuant to R.I. Gen. Laws § 3-5-16. It was further represented that Lincoln is made up of five (5) villages, and the four (4) licenses are each in a separate village. Thus, they are spread out in the Town, and no village has more than one (1) liquor store. The Board based its denial on its desire to geographically balance the distribution of liquor stores in the Town.

The Board is not claiming that moving the License from the Current Premise to the Proposed Premise would cause that area to become oversaturated with Class A licenses. Instead, its argument is premised on the fact that transferring the License from one village to another village upsets the geographic balance of Class A liquor licenses in the Town. This type of argument falls under the concept of "community need."

The Department's decision, *Douglas, Inc. and Derby Liquors, Inc. v. Pawtucket Board of License Commissioners* (3/14/83), found "[w]e are of the opinion that in the proper circumstances, community sentiment, not just the fitness of the applicant, may properly be heard and should be given thoughtful consideration with regard to a transfer of an alcoholic beverage license." *Id.*, at 4-5. Similarly in *Vel-Vil, Inc. v. Pastore*, 1986 WL 732870 (R.I.Super.), the Department overturned the local granting of a license finding that the applicant had not sustained its burden that there was an additional need to serve alcohol in the proposed location's neighborhood and that

another liquor license might threaten the areas's ongoing revitalization and there were three (3) liquor establishments in the immediate vicinity and twenty (20) within fifteen (15) blocks.

In reviewing the many cases that have come before the Department over the years since *Douglas* and *Vel-Vil* that address "community sentiment," the Department has not sought proof by a local licensing authority when it grants a license that the applicant is providing a needed service of selling liquor. Nor has the Department reviewed a denial of a license and upheld the denial if there is no proof that the applicant is needed to provide liquor sales.[4] Rather that term is part of the Department's continuous review and consideration of community sentiment and evidence in its review of liquor licensing decisions.

As further clarified and discussed after *Douglas* by numerous Department decisions, the term "need" must be based on specific articulated reason(s). If a local licensing authority finds there is no community need, it must articulate what is meant by community need; otherwise, the term is too vague. The Department has continuously considered community sentiment but ensures that such sentiment is based on evidence and not just speculation. The Department will uphold denials when a local authority has found based on the evidence that a community does not need another license because of past problems, traffic, etc. Such reasons could be that the neighbors object because the previous license holder made the area miserable, and the new applicant will be the same as it lacks experience (so there is no need for the applicant). *Crazy 8's Bar/Billiards*. The concept of community need must be based on a specified reason why the license would not benefit the area. As discussed, the local authorities have broad discretion in making such determinations.

[4] That is not to say that a local authority might not be faced with a *Vil-Vel* situation of twenty (20) liquor establishments in fifteen (15) blocks and for various reasons as in *Corina Street Café v. City of Providence, Board of Licenses*, LCA-PR-96-20 (11/25/96) choose to reduce the number in that area.

In *Corina Street Café v. City of Providence, Board of Licenses*, LCA-PR-96-20 (11/25/96), the Department upheld the denial of the application for a liquor license. Said decision found that the applicant wanted to change the character of its business (from a deli to a bar/restaurant), but the majority of neighbors opposed the application regardless of the applicant's responsibility and good faith intentions. The decision found that the City had a specific policy to eliminate liquor licenses in the area by not issuing new licenses and not replacing those licenses that had been eliminated because of the area's history of problems with liquor licensees and alcohol consumption. That decision pointed out that community opinion is not sacrosanct but in that matter community opposition, previous issues associated with liquor licensing in that area and the city's resulting licensing policy as well as the applicant's inexperience supported the denial of the application because the license would not be in the best interests of the neighborhood.

In *Cadillac Lounge, LLC v. City of Providence, LCA-PR-99-15* (10/18/02), the Department found that the substantial neighborhood opposition was based on the detailed problems of an existing licensee and its relation to the transfer application at issue. The Department also found that the applicant had "[a] sketchy business plan." *Id.*, at 10. The Department concluded that a liquor licensee takes a neighborhood as it finds it and the local authority has the right to review how an application may alter local conditions which in this matter consisted of troubled conditions.

The Appellant argued that the statute does not limit Class A locations by geography except that they may not be within 200 feet of another. The Appellant argued that any geographic limitation for Class A licenses must be enacted by a local ordinance such in *D&J Food Service LLC d/b/a Bob & Timmy's Grilled Pizza of Smithfield v. Smithfield Town Council*, DBR No.: 11-L-014 (2/24/12) (town ordinance prohibiting certain liquor licenses within 200 feet of a daycare). The Appellant

relied on *Tedford v. Reynolds*, 141 A.2d 264 (R.I. 1958) also to argue that a geographic limitation should be subject to an ordinance.

However, the issue of geographic balance is different from *Tedford*. R.I. Gen. Laws § 3-5-16 specifically provides the authority to local licensing authorities to limit the number of liquor licenses of each class. In *Tedford*, the municipality had not exercised its statutory authority to limit Class BV licenses and instead relied on an informal policy for such a limitation. *Tedford* found the municipality should formally adopt a rule or regulation pursuant to its statutory authority to limit Class B licenses if it so desired to limit such licenses.

Here, the Board has not failed to exercise its statutory authority to limit a type of liquor license. Rather, Class A licenses are already limited by statute, and the Board has issued all allowed licenses. For the Town, the population limit is three (3), but it actually has four (4) such licenses. The Board wants to spread liquor stores out in the Town and not have them concentrated in one area.

The licensing authority has discretion in issuing a license. Arbitrary and capricious determinations not supported by the evidence are considered suspect. As discussed above, speculation is not enough to deny a license application. But a licensing authority has the right to review how an application may alter local conditions. In *Cadillac Lounge*, those local conditions related to a troubled area. Here, the local conditions are that in a small town,[5] the transfer of the License will upset the geographic balance of the four (4) Class A liquor licenses. In a larger town or city, geographic balance might not be so obvious or obtainable depending on the population density and the number of Class A licenses allowed by statute. The Appellant did not dispute that the current locations of the Class A licenses are geographically balanced in the Town.

[5] Administrative notice is taken that the population of Lincoln in the 2020 census was 22,499. U.S. Census Bureau QuickFacts: Lincoln town, Providence County, Rhode Island at www.census.gov. Such a population allows for three (3) Class A liquor licenses under R.I. Gen. Laws § 3-5-16.

The issue before the Department is whether there is competent evidence to support the Board's discretionary finding of denial. The Department reviews whether a local licensing authority has abused its discretion by failing to have relevant material evidence in support of its decision. The concept of community need must be based on a specified reason why the license would not benefit the area. The Board specified the desire for geographic balance in its small town. Local authorities have broad discretion in making such determinations. There is legally competent evidence to support the Board's finding.

c. Misleading the Board

The Appellant argued that Wilson did not lie to the Board but rather indicated that his plan was to stay in the Current Premise and he did not know what the future held. The Town called Wilson's answers squirrely and weaselly in that he omitted key information from his answers to the Board.[6]

The Board has the right (and even obligation) to ask applicants about licenses for which they are applying and what their plans are for such licenses. If an applicant applies for a restaurant license, a licensing authority will certainly ask questions about the applicant's business plan and experience, and other questions related to the application. In *Magaly Morel d/b/a El Caribeno v. Providence Board of Licenses*, DBR No.: 12LQ030 (9/27/12), the applicant had initially applied for a food license. At the initial local hearing, the applicant was asked, "[a]nd today you're not applying for a liquor license?" The applicant responded, "No." *Id.* at 6.

The Appellant pointed out that *Magaly Morel* found that an applicant does not have to apply for a victualing license and a liquor license at the same time but could decide later after

[6] For "weaselly" words, the Board cited to *Tavones d/b/a Town of West Warwick*, 1990 WL10000210 (R.I. Super.) (liquor license applicant represented that it would be playing "oldies but goodies" music, but when it opened, it featured striptease dancers so that while the licensee may have been playing oldies and goodies, it omitted key information in its representations to the licensing authority that it also planned to provide striptease entertainment).

being granted a victualing license that it would also like a liquor license. Obviously, an applicant may decide at a later date that it would like an additional license such as liquor license or a late night license and apply for such a license. In *Magaly Morel*, the Department found that the applicant was not asked at its initial food license hearing about whether she had an intent to apply for a liquor license on some future date. The decision found that there has been confusion and misunderstandings at the local hearing so there had been no misrepresentations by the applicant. Nonetheless, *Magaly Morel* recognized that intentionally misleading a local licensing board as to material aspects of an application could be grounds for denial of an application.

Here, the Board was not asking the Appellant about whether it only applied for a victualing licensing or a Class BV license. The Board specifically asked Wilson if he was planning on keeping the License at the same location and when he said, "[w]ell, for now," the councilor followed up asking "[f]or now?" and specifically asked whether that meant Wilson was thinking about something in the future in "a little bit" so was the plan to get the License and then move. Wilson's reply was that he was staying in the same place now and signing a lease. He was asked for how long the lease would be, and Wilson said, "three plus two." After committing to staying in the same location for at least three (3) years, Wilson then hedged his bets by saying, "[y]ou don't know what the future will bring" and that if he found a better location he would likely move.

The Appellant argued that Wilson was forthcoming in his answers since he said he did not know what the future would bring. However, he was specifically asked if the future meant in "a little bit." His reply to the question about lease's time period was that he had a lease for three plus two. In other words, his idea to perhaps move to a better location would not be in a "a little bit" of time but rather as his response stated for a longer period of time since he had a lease for three years. Indeed, the Town Solicitor summarized the Appellant's representations to the Board as the

Appellant had no plans to move and if the Appellant came back this calendar year, the Board would remember. Neither Wilson nor his attorney corrected the Town Solicitor's summary of the Appellant's representations to the Board.

The Appellant argued that it was clear the Appellant did not commit itself to staying at the Current Premise because Wilson indicated that he would move to a better location, and one does not know what the future holds. However, those statements were added after Wilson was specifically asked whether he wanted to move right away, and he replied he was staying in the same place and had signed a three plus two lease. He did not dispute the Town Solicitor's summary of his representations. Indeed, the Town Solicitor's summary of the representations made it clear that the Board did not want a change in location.

The Appellant gave the commitment to the Board that it had no plans to move in 2022 nor in the next few years as it had a lease. Less than two (2) months after the January 18, 2022 hearing, the Appellant submitted its transfer location application. That certainly was in "a little bit" of time. It is true that circumstances could change and be beyond a licensee's control. But that is not the case here. Instead, the Appellant decided that it liked the financials better at the mall after committing to the Board that it was not planning on moving in a little bit of time and had signed a three (3) year lease.

Adding a caveat about the unknown future after making such a representation does not change the representation. An unknown future could apply to many things: natural disaster, landlord decides to sell building, or Appellant decides to sell the business. It does not mean that the Appellant's commitment not to move was in fact meaningless. The same is true about the caveat about wanting to move to a better location. Adding that caveat after making the

commitment that the Appellant was staying at the Current Premise and not moving in a little bit of time and had signed a three (3) year lease does not change the initial commitment not to move.

The Appellant argued that the question about moving was irrelevant because a transfer of location is subject to a public hearing so that any issue about moving could be addressed at a hearing at a later time. However, a licensing authority can ask an applicant its plans for a license. *Supra.* The Board indicated that it did not want the License moved. Whether one agrees with the Board's position or not, the Board sought confirmation from the Appellant that it was not seeking to move in a little bit of time. When pressed on its plans, the Appellant misled the Board by committing to staying that Current Premise for more than a little bit of time; indeed, at least for its lease. Liquor applicants need to be open and forthcoming when questioned by licensing authorities as to their applications and business plans. Otherwise, licensing authorities cannot fully evaluate the applications before them which undermines the licensing scheme.

The Appellant misled the Board as to its intentions at the January 18, 2022 hearing. Its misrepresentation about its business plans was material to the Board's decision to grant the transfer. *Magaly Morel.* At the January hearing, the Board clearly indicated that it was concerned that the Appellant would obtain the License and then try to move. The Appellant assured the Board that it had no plans to move. It represented that it had a three (3) year lease.

Based on the foregoing, the Board had grounds to find that the Appellant misled it at the January, 2022 hearing as to a material fact regarding its application so that it had grounds to deny the transfer of License on the basis of this misrepresentation.

F. Conclusion

Based on the foregoing, the Board has grounds to deny the transfer of License due to its desire for a geographic balance of Class A licenses and/or due to the Appellant misleading the Board at the January hearing as to intentions regarding its location.

VI. FINDINGS OF FACT

1. On May 17, 2022, the Board denied the Appellant's application to transfer its Class A liquor license from the Current Premise to Proposed Premise.

2. Pursuant to R.I. Gen. Laws § 3-7-21, the Appellant appealed the decision by the Board to the Director of the Department.

3. The parties agreed to rest on the record below and submit briefs. Briefs were timely filed by October 7, 2022.

4. 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. § 3-2-1 *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.*

2. In this *de novo* hearing, no showing was made by the Appellant that would warrant overturning the Board's decision to deny the License transfer.

VIII. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends that the decision of the Board be upheld.

Dated: November 1, 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
_____ REJECT
_____ MODIFY

Dated: 11/1/2022

Elizabeth Kelleher Dwyer, Esquire
Interim 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 2nd day of November, 2022 that a copy of the within Decision was sent by first class mail, postage prepaid and by electronic mail to John J. Garrahy, Esquire, John J. Garrahy Law, LLC, 2088 Broad Street, Cranston, R.I. 02905 and Anthony DeSisto, Esquire, Anthony DeSisto Law Associates, 450 Veterans Memorial Parkway, Suite 103, East Providence, R.I. 02914 and by electronic delivery to Pamela Toro, Associate Director, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Bldg. 68-69, Cranston, RI 02920.

Megan J. Mihara