

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

Myles Standish Associates LP,	:	
LMT Realty, LLC,	:	
MJJ Realty Association LLC,	:	
221 Waterman St, Realty,	:	
Waterman 219, LLC,	:	
Waterman Realty, LLC,	:	
Waysquare Associates, LP,	:	
Jennifer Qun Liang,	:	
Stephen Lewinstein,	:	DBR No.: 23LQ009
Bromley Real Estate Corp.,	:	
River Company, LLC,	:	
Eagle Island Investment Group, Inc.,	:	
Charles Smith III,	:	
144 Wayland, LCC,	:	
Appellants,	:	
	:	
v.	:	
	:	
City of Providence, Board of Licenses,	:	
Appellee.	:	
	:	
and George Potsidis d/b/a Estiatorio Fili, Inc.,	:	
Intervenor	:	

DECISION

I. INTRODUCTION

This matter arose from an appeal and first motion for a stay filed on October 20, 2023 by the above captioned appellants (“Appellants”) with the Department of Business Regulation (“Department”) pursuant to R.I. Gen. Laws § 3-7-21 regarding the decision taken on October 11, 2023 by the City of Providence, Board of Licenses (“Board”) to grant a Class BV liquor license

("License") to George Potsidis d/b/a Estiatorio Fili, Inc. ("Intervenor").¹ On November 1, 2023, the Department remanded this matter to the Board for reconsideration of its grant of the License. On December 14, 2023, the Board affirmed its grant of the License. On December 20, 2023, the Appellants informed the undersigned and the parties that they were continuing their appeal, and the Appellants again requested a stay of the grant of the License. An order denying the request to stay was issued on February 6, 2024. A hearing was held on April 29 and June 25, 2024 before the undersigned.² The parties were represented by counsel and rested on the record.³

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.*

III. ISSUE

Whether to uphold or overturn the Board's grant of the License to the Intervenor.

IV. MATERIAL FACTS AND TESTIMONY

Chris Pilotti testified on behalf of the Appellants. He testified that he owns the property behind the restaurant, and there is a school on his property, and he is concerned about a liquor licensee being near the school. On cross-examination, he testified that he was not sure of the school's hours but assumed they end about 3:00 p.m., and he did not know the Intervenor's hours.

Linda Andreoni testified on behalf of the Appellants. She testified she owns the building next to the Intervenor's and is concerned about parking and late night activities and alcohol makes people noisy and she wants to give her tenants' peaceful enjoyment and that will be a challenge since there is only a driveway separating the buildings. She testified she can smell the restaurant

¹ The Intervenor was allowed to intervene by order dated October 25, 2023.

² Pursuant to a delegation of authority by the Director of the Department.

³ The undersigned received the transcript for the second day of hearing on July 1, 2024.

when she is outside in the driveway. On cross-examination, she testified she lives in Bristol and is at her building once or twice a week to check the office, pick up mail and rent, and talk to her tenants. She testified her tenants would complain to her if there were issues. She was asked if since January, she had made any complaints regarding the restaurant to the Board, and she testified she was not aware that it was in operation except for seeing the alcohol delivery trucks.

Jeff St. Sauveur testified on behalf of the Intervenor. He testified that he lives in Wayland Square and has gone to the restaurant about four (4) times for dinner and once for brunch. He testified the food was excellent, and the clientele was upscale. He testified he saw the new restaurant as a benefit to the neighborhood, and he and his wife loved to walk over and have dinner. He testified it is a very low key operation, and there is no noise, and he has not seen any intoxicated patrons. He testified it is not a hangout for people to drink. On cross-examination, he testified that food has always been available as it is a restaurant, and he had drinks while there.

Seth Baum testified on behalf of the Intervenor. He testified that he lives in the building where the restaurant is located. He testified that he has lived there one (1) year and works primarily from home. He testified he has frequented the restaurant several times for dinner, and the food was very good, and the restaurant was family oriented, and he never saw anyone intoxicated, and the restaurant is a benefit to the neighborhood as another place to go and have a relaxing time.

Carolyn Morris testified on behalf of the Intervenor. She testified she lives in the building where the restaurant is located and is partnered with Mr. Baum. She testified she has been to the restaurant, and the food was pretty good, and she has never witnessed any intoxicated or unruly patrons. She testified the restaurant is a benefit to the neighborhood and there is no noise and no negative impact from aromas. She testified if you smell anything, it is delicious. On cross-examination, she testified that when you walk up to the restaurant, you can smell delicious odors.

George Potsidis (“Potsidis”) testified on behalf of the Intervenor. He testified he worked as an engineer before going into building and then into real estate and development. He testified he is the sole owner of the Intervenor and purchased the property about eight (8) years ago and tore down the abandoned two-story office building there and built a four-story building with 22 apartments and retail space on the ground floor. He testified he lives in one of the units and decided to open a restaurant on the ground floor. He testified he has all the necessary licenses and inspections to operate. He testified he had a soft opening two (2) nights a week starting January 10, 2024 and then went to three (3) nights and then four (4) nights a week and opened to the public after about two (2) weeks. He testified he closed the restaurant at the end of April and plans to reopen at the end of August as he is currently recruiting for a new chef after going through three (3) chefs. He testified that he did not open for full hours until toward the end of April when he opened Wednesday through Saturday from 5:00 to 11:00 p.m. or midnight on Friday and Saturday. He testified he initially hired a bar consultant to create drinks and pick the wine list. He testified his staff were all TIPS certified. Certified record (business plan). Intervenor’s Exhibits One (1) (map of area); Two (2) (photograph of restaurant); Three (3) (floor plan); Four (4) (interior photograph); Five (5) (menu); and Six (6) through Nine (9) (copies of staff TIPS certificates). He testified that on the first day of the hearing, he did not have a TIPS certification, but he obtained it that day. Intervenor’s Exhibit Ten (10). He testified the seating capacity is 45. He testified that he has not had and does not plan to have live entertainment. He testified that when the restaurant was open, he had no complaints from the neighbors and did not receive any violation notices from the Board. On cross-examination, Potsidis testified he does not have direct restaurant experience, and the people he hired are no longer on his payroll, but they are available.

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.”⁴ 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*,

⁴ 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.

202 A.2d 292 (R.I. 1964) (Department’s jurisdiction is *de novo* and the Department independently exercises the licensing function). A new hearing was held for this appeal. 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.

C. Arguments

At the end of the hearing, the Appellants stated about the Intervenor that “clearly, overall it’s qualified to open.” (p. 69 of second day of hearing transcript). However, the Appellants requested that as the restaurant is currently closed that it supply its TIPS certificates for staff to the Board when it re-opens. The Intervenor was amenable to providing the TIPS certificates to the Board, and also argued that the Board’s grant of License should be upheld.

D. Discussion

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).

As cited above in *Chapman*, there must be evidence supporting community 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.

In this matter, there were objections from neighbors presented to the Board and to the Department.⁵ The neighbors expressed concern to the Board about noise. The Board indicated a concern about noise when it imposed conditions on the License. These conditions include “[n]o outdoor seating/loitering after 10:00 p.m.”⁶ and 11:00 p.m. closure Sunday to Thursday and 12:00 a.m. closure on Friday and Saturday and Sunday before a legal holiday and no amplified sound outside the premises.⁷

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. Therefore, the issue is whether there was competent evidence to support the Board’s decision to grant the License. Based on the foregoing, there is competent evidence to support the Board’s decision to grant the License. No evidence was submitted to show that the Intervenor was not fit to hold a liquor license. Indeed,

⁵ <http://providenceri.igm2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=14131&Format=Minutes> (October 11, 2023 hearing).

The undersigned listened to the Board’s decision on October 11, 2021 hearing as well as the August 31, 2023 hearing. <http://providenceri.igm2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=14120&Format=Minutes> (August 31, 2023).

⁶ See minutes of Board’s December 14, 2023 meeting. It is noted that Intervenor’s Exhibit Two (2) shows outside tables at the Intervenor. Under this condition, the tables cannot be used after 10:00 p.m.

⁷ It is noted that a December 1, 2022, amendment to the Class B licensing statute, R.I. Gen. Laws § 3-7-7, allows the Board to give permission to a liquor licensee to stop the service of food after 10:00 p.m. R.I. Gen. Laws § 3-7-7(c). But it must be by permission of the Board. Otherwise, by statute and the Department’s liquor licensing regulation, § 1.4.5 of 230-RICR-30-10-1, *Liquor Control Administration* food must be served when liquor is being served.

the Appellants admitted at the close of the hearing that the Intervenor was qualified and requested the submission of TIPS certificates⁸ upon re-opening.⁹

The TIPS certificates are usually submitted after the license approval and on renewal by the Board as a matter of course.

VI. FINDINGS OF FACT

1. On October 11, 2023, the Board approved a Class BV liquor license for the Intervenor.

2. Pursuant to R.I. Gen. Laws § 3-7-21, the Appellants appealed the decision by the Board to the Director of the Department. The Department remanded the matter back to the Board for further consideration.

3. On December 14, 2023, the Board affirmed its grant of the License. The Appellants chose to continue their appeal.

4. A *de novo* hearing was held on April 29 and June 25, 2024 with the parties resting on the record.

5. 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 that the License should not have been approved by the Board.

⁸ TIPS certification demonstrates compliance with R.I. Gen. Laws § 3-7-6.1's requirements for alcohol server training.
⁹ The Intervenor plans to reopen in August. The parties discussed the Board may want more information from the Intervenor if it closed for a long time or if it is still closed by renewal as closure could have an impact on renewal. Thus, it is noted that a delay in reopening may affect the Board's requirements in general or in regard to renewal.

VIII. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends that the decision of the Board to grant the License with the conditions imposed by the Board be upheld subject to providing the Board with copies of staff TIPS certificates upon reopening.¹⁰

Dated: July 29, 2024



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:

ADOPT
 REJECT
 MODIFY

Dated: July 31, 2024


Elizabeth Kelleher Dwyer, 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.

¹⁰ R.I. Gen. Laws § 3-7-6.1(b)(4) provides that on renewal TIPS certificates must be provided for anyone employed more than 60 days in the last year. Here, the Intervenor will provide TIPS certificates for all staff employed upon reopening.

CERTIFICATION

I hereby certify on this 31st day of July, 2024 that a copy of the within Decision and Notice of Appellate Rights were sent by electronic delivery and first class mail, postage prepaid, to the following: Mario Martone, Esquire, City of Providence Law Department, 444 Westminster Street, Suite 220, Providence, R.I. 02903, Peter Petrarca, Esquire, Petrarca & Petrarca, 330 Silver Spring Street, Providence, R.I. 02904, Joseph A. Keough Jr., Esquire, 41 Mendon Avenue, Pawtucket, R.I. 02861, Jeffrey Padwa, Esquire. Padwa Law LLC, One Park Row, 5th Floor, Providence, R.I. 02903, and Louis A. DeSimone, Jr., Esquire, 1554 Cranston Street, Cranston, R.I. 02920 and by electronic delivery to Pamela Toro, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, R.I. 02920.

Megan Mihara
