



NORTHAMPTON LICENSE COMMISSION

City Hall, Office of the Mayor
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COMMISSIONERS

Brian Campedelli, Chair
Natasha Yakovlev
Helen Kahn

Executive Assistant

Annie Lesko

alesko@northamptonma.gov

MEETING MINUTES

Wednesday, August 5, 2020

Virtual Meeting

4:00 p.m.

The August 5, 2020, License Commission meeting will be held via remote participation.

Join Virtual Meeting

- **Video Conference:** <https://zoom.us/j/93859588623?pwd=d2lRjN3Mkg0enNNVkJhbnQ0OT09>

OR

- **Telephone, call:** +1-929-436-2866, Meeting ID: 938 5958 8623, Password: 440209

1. **MEETING CALLED TO ORDER** at 4 p.m. by Commissioner Yakovlev
ROLL CALL - Commissioners Campedelli, Yakovlev and Kahn were present. Commissioner Yakovlev departed at 5:38 p.m.
ANNOUNCEMENT OF ZOOM RECORDING made by Commissioner Yakovlev
2. **PUBLIC COMMENT** - None
3. **PUBLIC HEARING ON AN APPLICATION FOR NEW SEASONAL WINE AND MALT RESTAURANT LICENSE AND APPLICATION FOR COMMON VICTUALLER LICENSE**
T. Roots, Inc. d/b/a T. Roots, 249 Main St., Northampton
Proposed Manager: Hui Lan Nicole Tsao

Commissioner Yakovlev moved to open the public hearing at 4:01 p.m. Commissioner Kahn seconded. The public hearing was opened.

Hui Lan Nicole Tsao was present for this application and stated she is opening a Taiwanese restaurant in the former Viva Fresh Pasta location. Attorney Meihuei Hu was also present to represent T. Roots, Inc.

Attorney Hu stated that T. Roots is occupying the existing restaurant space and there will be no reservations. Indoors there are about 60 seats and the applicant also applied to have outdoor seating in the existing back patio area. Hours of operation will be Monday, Wednesday, Thursday, Friday, Saturday and Sunday from 11 a.m. to 9 p.m.

Commissioner Yakovlev moved to close the public hearing at 4:06 p.m. Commissioner Khan seconded. The public hearing was closed.

The clerk noted that the outdoor patio area has a few restrictions because the property is owned by the City of Northampton. After consulting with multiple departments, the clerk noted that the city will allow T. Roots to utilize the outdoor area as long as the existing footprint isn't extended, the establishment is responsible for securing all the materials needed to protect diners from traffic and all materials must be removed from the area for the fall and winter.

Commissioner Yakovlev moved approval of the application for a new seasonal wine and malt restaurant license and application for Common Victualler license with the conditions that the outdoor area is kept to the existing footprint, materials be secured for protecting diners and the area be cleaned out during the fall and winter months. Commissioner Khan seconded. The motion passed unanimously 3-0.

4. DISCUSSION OF BUSINESS OPERATION WITH HIGHBROW, INC.

Andrew Brow was present to discuss the status of his business operation relating to his cordials permit.

Commissioner Yakovlev stated that when the cordials permit was issued there was a misunderstanding of what the permit covered because Highbrow is serving drinks with flavored vodka.

Mr. Brow stated that the products he receives are from approved vendors and all of the distilled spirits are flavored and fall under the cordials permit. He furthered that he has not received anything that is not cordial approved from the distributor. The distribution companies he purchases from are MS Walker, Martignetti and Horizon Beverage.

Commissioner Yakovlev stated that the interpretation of a cordial is that beverages arriving at the restaurant must be labeled as a cordial or liqueur and V-1 cucumber vodka is not labeled as such.

Mr. Brow stated that the V-1 cucumber vodka is on the list that the distribution company provided for beverages that he is permitted to purchase.

Commissioner Campdelli stated that it would be beneficial for Mr. Brow to provide invoices or any information that would prove the drinks he is providing are actually cordials and liqueurs.

Aimee Francaes was present for another agenda item but weighed in on this topic because she has experience with cordial licenses because of former employers. She stated there is a distinct difference between all alcohol licenses and cordial permits because Mr. Brow would not be able to sell Jack and Coke. She stated that any alcohol that is distilled with other flavors to have the correct percentage, is in fact a cordial.

The clerk read the definition of a liqueur/cordial as outlined in Chapter 138 Section 1, "Liqueur or cordial", all alcoholic beverages manufactured or produced by mixing or redistilling neutral spirits, brandy, gin, or other distilled spirits with or over fruits, flowers, plants or pure juices therefrom, or other natural flavoring materials, or with extracts derived from infusions, percolations, or maceration of such materials and containing no less than two and one-half percent sugar by weight." The clerk furthered that the Alcohol and Tobacco Tax and Trade Bureau (TTB) is the entity that classifies cordials to ensure the beverage gets taxed at a certain rate. The list from the TTB is what the Commission adheres to because the ABCC uses the same list to determine whether a beverage is a cordial.

Commissioner Campedelli stated that if the beverages Mr. Brow is serving are fact cordials, he would hate to see a business lose revenue over the weekend.

The clerk read the email interpretation from Attorney Seewald, "The beverage must arrive at the licensed premises having been already mixed or redistilled so as to contain no less than 2 ½ percent sugar by weight. Any other alcoholic beverage, including those infused with flavors, that is not over 2 ½ sugar by weight cannot be served under a cordials/liqueur license even if mixed with a cordial or liqueur. Cordials and liqueurs are labeled and taxed as such through the Alcohol and Tobacco Tax and Trade Bureau. Therefore, a cordials/liqueur licensee can sell only products that are labeled as cordial or liqueur. Applying this to the advertisement published by Mr. Brow, it is clear that chipotle-infused tequila, V One Cucumber Vodka, and Barr Hill Gin are not permissible under a cordial/liqueur license."

Aimee Francaes stated that her previous employer, Myers and Change, holds a cordials permit and sell the exact same drinks that Mr. Brow does and almost none of them have a specific label indicating they are cordials.

Commissioner Kahn appreciates the education around this topic so that the Commission can understand what exactly constitutes a cordial.

Commissioner Campedelli stated that if Mr. Brow can produce documents within 24 hours then the Commission can review them separately and determine whether they follow the law. He furthered that he feels the Commission possibly jumped to a conclusion before having all of the information.

Commissioner Kahn believes Mr. Brow should be able to continue to serve while the details get sorted out. If the Commission learns that Mr. Brow is operating in violation of the license, then he must cease and desist immediately.

The clerk requested receipts, invoices and any other documentation showing purchases going back to February which is when Mr. Brow was approved for the cordials permit.

5. REVIEW AND APPROVAL OF APPLICATION FOR EXTENSION OF PREMISES ONTO PUBLIC SPACES

Belly of the Beast, Inc., 159 Main St.

Aimee Franceas was present for this application and stated that she is hoping to extend her outdoor area while she is in the midst of reconceptualizing her business. She stated the plan is to use the red brick spaces in front of the establishment with the hopes of moving the newspaper boxes and trash receptacles. She mentioned that she wouldn't be ready to operate until the beginning of September. She questioned whether businesses would be able to put up heating lamps during the winter months.

The clerk noted that the newspaper boxes can be easily moved as long as they move the shortest distance possible, Belly of the Beast would have to move them and also have to notify the newspaper box vendors. The clerk noted that the trash and recycling receptacles can not be moved as they are bolted down on concrete pads.

The clerk also noted that the space in front of Belly of the Beast will eventually be reconfigured once the city rolls out the new shared streets and spaces project so there will be a new area to work with. The clerk opined that she wouldn't want Belly of the Beast to implement its new outdoor dining area when it will be reconfigured shortly thereafter.

Aimee Franceas understood and opted to wait until the street gets configured to submit a new plan for the new space.

Aimee Franceas asked how restaurants can go about extending the dining season into the winter months if heating lamps were implemented.

The clerk noted that the November date is attached to the Governor's order. However, she will inquire about heating lamps and extending the outdoor seating date.

6. VIOLATION HEARING

21-23 Center Street, LLC d/b/a The Basement/Center Street Cafe
21 Center St.

Manager of Record: Eric Suher

Date of Violation: February 23, 2020

Violations alleged: 204 CMR Section 2.01 (10) Every license or storage permit shall be displayed on the premises covered by the license or permit, in a conspicuous place where it can easily be read.

Commissioner Yakovlev moved to open the hearing at 4:53 p.m. Commissioner Kahn seconded. The motion to open the hearing passed unanimously 3-0.

Catuogno Court Reporting was present for the violation hearing. A copy of the report will be kept on file with the License Commission. Commissioner Yakovlev confirmed receipt of the hearing letter sent certified mail to the license holder and read the alleged violation out loud. Commissioner Yakovlev swore in Police Chief Jody Kasper.

Chief Kasper stated that on February 23, 2020, at about 1:09 a.m., Officers Ross and Cook went to The Basement for a liquor establishment check. Officers had previously been to The Basement on February 2, 2020, and noticed that the liquor license was not visible and subsequently issued a verbal warning stating that the liquor license needs to be displayed. When officers went back on February 23, they observed that the liquor license was still not posted. Officers spoke with the manager Naan Pui, and asked him to produce the liquor license. The manager reached onto a shelf located behind the bar and pulled out a manilla folder and presented the liquor license.

The license holder, Eric Suher, was present and was sworn in by Commissioner Yakovlev. Mr. Suher stated he was not going to dispute Chief Kasper's statement and on the evening the verbal warning was given the bartender produced the liquor license. Previously the license was hung on the back of the bar and from what Mr. Suher was told the license was removed for cleaning. Mr. Suher was not aware that the license was not hung on February 2 and was surprised to learn this because he was present that evening and was not made aware. Mr. Suher stated he had a conversation with the bartender explaining that if the license was removed for cleaning purposes or for any other reason, it must be prominently displayed as soon as possible.

Commissioner Yakovlev moved to close the hearing at 4:58 p.m. Commissioner Kahn seconded. The motion passed unanimously 2-0.

Commissioner Campedelli asked for proof that the license is now displayed prominently.

Mr. Suher stated that the license was hung the next day once the bartender explained the violation. However, right now, everything in the establishment has been taken off the wall and cleaned because the establishment is closed.

Commissioner Campedelli asked if The Basement will be reopening.

Mr. Suher stated eventually it will but because the establishment doesn't serve food, they aren't allowed to open according to the Governor's Reopening Guidelines.

Commissioner Campedelli requested a photo be sent to the clerk showing that the license was hung.

There was a brief discussion on the timeline of when the license was posted. Mr. Suher also noted that he purchased a glass case for all licenses to be posted in but since COVID happened, it hasn't been installed.

Chief Kasper noted that as long as the license has been posted, she doesn't see the need for a sanction.

The clerk noted that Mr. Suher's restaurant license requires him to sell food. The clerk also noted that Mr. Suher holds a Common Victualler license permitting service of food. The clerk suggested amending the classification of the license to a General on Premises license so that food is not a requirement of the license.

Mr. Suher agreed that he will research this issue and come back before the Commission in the future.

Commissioner Kahn moved to find 21-23 Center Street, LLC in violation of 204 CMR Section 2.01 (10) Every license or storage permit shall be displayed on the premises covered by the license or permit, in a conspicuous place where it can easily be read. Commissioner Yakovlev seconded. The motion passed unanimously 3-0.

Commissioner Yakovlev moved to not impose any sanctions on the license holder. Commissioner Campedelli seconded. The motion passed unanimously 3-0.

7. CLERK'S UPDATE

- **Discuss next steps for Rias Baixas, LLC d/b/a Ibiza Tapas**

Commissioner Yakovlev stated that she doesn't want to hold a suspension or revocation hearing but believes that Ibiza Tapas must continue to do business based on who the license was issued to.

There was a discussion about waiting until the ABCC makes a determination on the appeal submitted by Attorney Evans.

Commissioner Campedelli asked whether the Commission has the authority to let the licensee keep operating the way it has been.

The clerk stated that wouldn't be fair but also it is a violation of the special act license.

Commissioner Kahn stated that revoking the license seems hard because the Commission has allowed the license holder to operate as Homestead for years.

There was a discussion about the background of the Rias Baixas, LLC, license and how it relates to the special act.

Commissioner Campedelli pointed out that the Commission made a mistake in the beginning for allowing a whole new restaurant to operate with this license so it doesn't seem fair to revoke the license when it wasn't the current owners fault.

Commissioner Yakovlev stated that the license holder has had an advantage and there is a tremendous amount of unfairness for other businesses.

Commissioner Yakovlev noted that while this situation can not linger any longer, it is such a trying time for local businesses and it doesn't feel right to revoke the license at this time.

Commissioner Kahn stated that a loophole was found for the DBA so now the license holder should stick to it. If the license holder insists on making the DBA change then the Commission should take the license.

Commissioner Campedelli stated that the license holder should keep the current name.

Commissioner Yakovlev left the meeting at 5:38 p.m.

Commissioner Kahn stated she is at a loss on how to proceed.

Commissioner Campedelli suggested Attorney Seewald be at the next meeting for a further discussion so that the Commission can make a final determination.

8. NEW BUSINESS

Commissioner Kahn noted she will not be able to attend the September meeting.

Commissioner Kahn also questioned whether there should be a fee for cordials permits and requested that the Commission discuss this at the next meeting.

9. ADJOURN

Commissioner Kahn moved to adjourn the meeting at 5:51 p.m. Commissioner Campedelli seconded. The motion to adjourn passed unanimously 2-0.