Licensing Board
TOWN OF WATERTOWN
ADMINISTRATION BUILDING
149 Main Street
Watertown, Massachusetts 02472

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BOARD MEMBERS
DONNA B. DOUCETTE
GEORGE B. NEWMAN
ROBERT J. WHITNEY

ALTERNATE MEMBER
SANDRA KASABIAN HOFFMAN

Minutes October 20, 2011

ACCEPTANCE OF MINUTES: September 15, 2011

1. Not Your Average Joe's Watertown, LLC d/b/a
   Not Your Average Joe's
   55 Main Street
   Change of Manager — Approved 3-0

2. Arev, LLC d/b/a
   Arev Market and Bakery
   23 Elm Street
   Common Victualler License — Approved 3-0

3. NN Business Development LLC
   d/b/a Subway
   9 Main Street
   Common Victualler License — Continued to November 17, 2011

4. Guckenheimer Enterprises, Inc. (Athena Health's Nourish Cafe)
   400 N. Beacon Street
   Common Victualler License — Approved 3-0

5. Garo Masrof, LLC d/b/a Arsenal Liquors
   5 Lousie Street
   All Alcohol Package Goods License — Approved Withdrawal of application

6. SE Asian Bistro of Watertown, Inc.
   485 Arsenal Street E06
   Transfer of All Alcohol License — Continued to November 17, 2011

7. Thomas and Patricia Brennan d/b/a Hardy Spa
   682 Belmont Street — Two 7-Day Suspensions

8. Comments by Board Clerk and Police Department

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Donna B. Doucette, Chairman

7:32PM to 9:50 PM

Present: Donna B. Doucette, Robert J. Whitney, George B. Newman

1. Not Your Average Joe's, Inc.
d/b/a Not Your Average Joe's
55 Main Street
Watertown, MA 02472

The Watertown Licensing Board met to consider the application of Not Your Average Joe's, Inc. d/b/a Not Your Average Joe's for approval of a change of manager of its premises at 55 Main Street licensed for all alcohol common victualler service.

Ralph Vitiello, the newly appointed manager of the restaurant and proposed manager under the license, appeared in support of the application. Ms. Vitiello stated that he has worked as a general manager in the restaurant business for the past 25 years, including service with the 99 Restaurants and Outback Steakhouse. He has worked at Not Your Average Joe's restaurants in Needham, Westborough and Burlington. He is ServSafe certified.

In response to a question from the Board, Mr. Vitiello stated that he would continue the restaurant's responsible alcohol service policies.

Sergeant Grady stated that the Police Department had no objection to the approval of the new manager, provided that the conditions stated below were imposed.

The Licensing Board unanimously voted to approve Mr. Vitiello as the new manager, subject to the following conditions:

1. Mr. Vitiello shall ensure that all bartenders and servers attend and successfully complete an alcohol awareness training program (e.g., TIPS) within 90 days of hire or expiration of certification.

2. All other conditions of the license shall remain in place.

2. Arev, LLC d/b/a
Arev Market and Bakery
9 Lawrence Street
Watertown, MA 02472

The Watertown Licensing Board met to consider the application of Arev, LLC d/b/a Arev Market and Bakery for a common victualler license to be exercised at 23 Elm Street.

Attorney Steven Parnagian appeared in support of the application, together with Jirayr Cinar, manager of the LLC. Attorney Parnagian stated that Mr. Cinar has restaurant experience dating to 1980. He proposes to operate a market with dry goods and a kitchen serving Armenian style pizza and various entrees. There will be both eat-in and take-out service.

The current seating capacity at the premises is 20 persons, and seating for 12 to 16 persons is proposed. In response to a question from the Board, Attorney Parnagian noted that the area of the proposed operation is 3,000 square feet.

Sergeant Grady stated that the Police Department had no objection to the granting of the requested license, provided that the conditions stated in items 1 – 3 below were imposed.

The Health Department reported that the applicant has not been granted a food service establishment permit and that a disapproval letter had been issued on October 4, 2011.

The Licensing Board voted unanimously to grant the requested license, subject to the following conditions:

1. The hours of operation shall not exceed 8:00 a.m. to 10:00 p.m. Sunday through Saturday.

2. The total seating capacity shall not exceed 20 persons, as shown on the floor plan submitted and received in the office of the Town Clerk on August 30, 2011.

3. There shall be no alcoholic beverages on the premises.

4. The applicant shall comply with Health Department requirements, including, but not limited to, food establishment plan review application and permit requirements, and the license shall not be issued to the applicant until certification of such compliance is provided to the Licensing Board.

4. NN Business Development LLC
90B River Street
Waltham, MA 02453

At the request of the applicant, the Watertown Licensing Board has continued its hearing on the application of NN Business Development LLC for a common victualler license to be exercised at 9 Main Street. The continued hearing on this application will be held on November 17, 2011 at 7:15 p.m. in the Philip Pane Hearing Room, Administration Building, 149 Main Street, Watertown, MA.

5. GaroMasrof, LLC
d/b/a Arsenal Liquors
5 Louise Street
Watertown, MA 02472

At the request of the applicant, the Watertown Licensing Board accepted the request from Garo Masrof, LLC to withdraw its application for an all alcohol package goods store license to be exercised at 5 Louise Street, also known as 246 North Beacon Street, and voted to grant leave to withdraw. The application has been considered withdrawn.

6. S.E. Asian Bistro of Watertown, Inc.
738 Bark Street
Swansea, MA 02777

The Watertown Licensing Board has continued its hearing on the application of SE Asian Bistro of Watertown, Inc. for a transfer to it of the all alcohol common victualler license currently held by Lazziz Restaurant, Inc. for exercise at 61 Main Street, for exercise at different premises located at 485 Arsenal Street in the Arsenal Mall, tenant space E06A, in order for the applicant to submit additional financial information, as required by the Police Department, for the purpose of evaluating the nature and viability of the proposed transfer. The continued hearing on this application will be held on November 17, 2011 at 7:15 p.m. in the Philip Pane Hearing Room, Administration Building, 149 Main Street, Watertown, MA.

7 (1). Thomas and Patricia Brennan d/b/a)
Hardy Spa
682 Belmont Street
Watertown, MA 02472

The Watertown Licensing Board held a show cause hearing, on the application of the Watertown Police Department, concerning alleged violations of G.L. c.138 (the Liquor Control Act) on August 30, 2011 at 682 Belmont Street licensed as a wine and malt package goods store, to wit: sale/delivery of an alcoholic beverage to a person under 21 years of age in violation of G.L. c.138, §34 and improper management, by allowing such sale and failing to obey all laws, rules and regulations of the Commonwealth, the Alcoholic Beverages Control Commission and the Watertown Licensing Board, in violation of G.L. c.138, §23.

Attorney Timothy McGoldrick appeared on behalf of the licensee, together with Thomas Hardy.

Sgt. Grady testified that on August 30, 2011, the Watertown Police Department conducted a compliance check of the licensed retail package stores in town. The compliance check involved one male volunteer, aged 20, entering the stores with instructions to pick up and bring to the check out register one 6-pack of light beer. He was instructed to leave the beer at the register and exit the store if asked for a form of positive identification. If a sale was made, the volunteer was to return to the position of police officer surveillance with the alcohol. The volunteer was given a copy of the Police Department's compliance check guidelines, which he stated he understood and signed. A photograph of the volunteer was taken prior to the compliance check operation.

At approximately 7:40 p.m. on August 30, the volunteer entered the Hardy Spa, brought a 6-pack of beer to the register and was allowed to purchase it without providing proof of identification. He returned to Sgt. Grady and Lt. Lawn's location and delivered the beer to them.

Sgt. Grady then entered the store and identified himself to the clerk who was identified as transacting the sale to the volunteer. The clerk stated he had only been employed at the store for approximately one month and did not have any training in alcohol sales. He explained that he allowed the sale without checking for identification to move the line at the register along.

Attorney McGoldrick stated that the licensee was not contesting any of the facts reported by the Police Department, nor any of its recommendations. He explained that the clerk had made a mistake, but there was also an owner mistake in the clerk's lack of training. The clerk is now ServSafe certified. Attorney McGoldrick noted that two of the store's long time employees had died within the past year, and that they had worked the bulk of the clerk hours. He added that Mr. Brennan's brother had also recently died.

Sgt. Grady stated that the Police Department recommended a 7-day license suspension as a sanction for the violations.

The Licensing Board unanimously found that the violations as alleged had occurred, and unanimously voted to impose a 7-day suspension. The Board offered the licensee the opportunity to choose the dates the suspension would be served if he chose to waive his right of appeal. Attorney McGoldrick stated that the licensee did waive his right of appeal and requested that the licensee be allowed until October 24, 2011 to designate the dates the suspension would be served.

7 (2). Thomas and Patricia Brennan d/b/a
Hardy Spa
682 Belmont Street
Watertown, MA 02472

The Watertown Licensing Board held a show cause hearing, on the application of the Watertown Police Department, concerning alleged violations of G.L. c.138 (the Liquor Control Act) on September 1, 2011 at 682 Belmont Street licensed as a wine and malt package goods store, to wit: sale/delivery of an alcoholic beverage to a person under 21 years of age in violation of G.L. c.138, §34 and improper management, by allowing such sale and failing to obey all laws, rules and regulations of the Commonwealth, the Alcoholic Beverages Control Commission and the Watertown Licensing Board, in violation of G.L. c.138, §23.

Attorney Timothy McGoldrick appeared on behalf of the licensee, together with Thomas Hardy. After hearing, the Licensing Board unanimously found that the violations as alleged had occurred, and unanimously voted to impose a 7-day suspension. The Board offered the licensee the opportunity to choose the dates the suspension would be served if he chose to waive his right of appeal. Attorney McGoldrick stated that the licensee did waive his right of appeal and requested that the licensee be allowed until October 24, 2011 to designate the dates the suspension would be served. By letter to the Licensing Board dated October 24, 2011, Attorney McGoldrick identified the period of January 1, 2012 through January 7, 2012 as the dates the suspension would be served.

On September 1, 2011, Sgt. Grady and Detective Campbell were conducting surveillance of various package stores in town. They parked their vehicle across the street from Hardy Spa at approximately 7:10 p.m. At approximately 7:20 p.m. they observed two males exit a motor vehicle that had parked near the entrance to Hardy Spa and enter the store. The males were observed to take beer from the cooler area and bring it to the cash register. One of them then exited the store carrying a "suitcase" package of beer, and opened the trunk of the vehicle, placed the beer inside and covered it with what appeared to be blankets. The second male also exited the store, carrying an open box filled with various malt beverages. He placed it in the vehicle and he and the first male, the driver, got back into the car. Sgt. Grady and Det. Campbell followed the vehicle as it drove away and initiated a motor vehicle stop on Hardy Avenue. At that time, they observed an additional male occupant, in the front passenger seat. On questioning, the driver stated he was 17. All occupants were asked to exit the vehicle. They all admitted to having just purchased beer at Hardy Spa. The rear-seated passenger stated he had been purchasing alcohol at Hardy Spa all summer, at least two times a week. He stated that he had not been asked for identification that evening, but had been the night before and had used a fake ID; he did not have the ID in his possession that night. He further reported that in this evening's purchase the driver had used a fake ID. The driver later admitted to having a fake ID and turned it over to Sgt. Grady and Det. Campbell; it was a Pennsylvania operator's license. However, the driver stated he had not been asked for identification by the clerk that evening. In the trunk of the vehicle, the following alcohol was identified: 30-pack of light beer, 18-pack of beer, 12-pack of beer, 6-pack of iced malt beverage, one 40-ounce of malt liquor and one 8-ounce can of beer. The males stated the total purchase was approximately $55.00. The officers then confiscated the alcohol.

Sgt. Grady and Det. Campbell later visited Hardy Spa and spoke to the clerk on duty. The clerk identified a picture of one of the males in question and stated he had an ID. Sgt. Grady showed her the Pennsylvania license he had been given by the driver and the clerk stated, "Isn't that a good ID?" The clerk insisted that the rear seated passenger had been in the store the previous night and that she had asked for his identification on both nights.

While Sgt. Grady and Det. Campbell were speaking with the clerk a young male entered the store, looked around nervously, and exited when he realized there were police officers present. Sgt. Grady and Det. Campbell followed him outside, and he identified himself as an 18-year old who had in the past used a fake ID to purchase beer at Hardy Spa. He turned over the ID, which was a Pennsylvania license of the same type surrendered by the driver of the vehicle described above.

After leaving the store, Sgt. Grady and Det. Campbell continued to monitor the store and, at 9:55 p.m., observed a young looking male exit a car that had parked near the entrance. He walked inside, toward the beer cooler, took beer to the register and then left without any items. Sgt. Grady and Det. Campbell approached him, and he identified himself as a 19-year old who attempted to make a purchase, but was told by the clerk "not tonight." He stated he had a fake Florida driver's license, and turned it over to the officers.

On the evening of September 1, the police learned of four fake ID's that had been used to purchase beer illegally from Hardy Spa.

Attorney McGoldrick stated that the licensee was not contesting any of the facts reported by the Police Department, nor any of its recommendations. He noted that the clerk on duty on the night in question had been alcohol service certified many years earlier and had worked at the Elks Club, an environment where all persons entering must be 21 years old. She was not aware that a non-Massachusetts license was not a valid form of identification for purchase of alcohol.

Sgt. Grady stated that the Police Department recommended a 7-day license suspension as a sanction for the violations.

Attorney McGoldrick stated that the licensee would not contest the penalty, but did request that the suspension not be served successively with the suspension imposed for the violation of sale to a minor that took place on August 30. He noted that the sale of beer and wine is the bulk of the store's business and that the store would probably be closed completely during any suspension period. He asked that the suspension period be deferred until January of 2012.