

**Town of Mansfield
Board of Selectmen
Minutes of May 19, 2010**

Present: Chairman Moran, Vice Chairman George Dentino, Clerk Douglas Annino, Selectman Jess Aptowitz, Selectman Olivier Kozlowski, William Ross, Town Manager

Absent:

Sake Steakhouse liquor license hearing

Public hearing notice read by Clerk Annino.

Ching Chan, proposed manager of record and Atty. Christopher Coleman are present for hearing.

600 Sq ft. restaurant with outside seating for 30 patrons proposed for Mansfield Crossing location. The restaurant will offer hibachi style cooking with grills at the tables.

One of the shareholders was a manager at the Haverhill restaurant and was cited for over service. However, that person will not be managing in Mansfield.

Selectman Annino asked Ms. Chan about her experience in the restaurant business. She is tips certified and has a wide variety of experience in the industry. Selectman Annino suggested that a more experienced manager might assist Ms. Chan with training and running the establishment for the first few months.

Ms. Chan's husband manages several restaurants in the area and will be assisting his wife getting Sake up and running.

Selectman Aptowitz has a question about this license being the last one available in Mansfield. Yes, it is. Bertucci's had held two and returned one but it was not recorded until a later time.

Selectman Kozlowski asked that since the restaurant would be at the end of the building that anyone walking about that area, would be for the outdoor seating? Atty. Coleman responded yes, that would be correct.

Selectman Dentino has several questions about the outdoor patio/dining area. Selectman Annino also had questions about the architectural plans for the restaurant. Exit or egress doors are not shown on the plans.

Motion: To close public hearing. (Aptowitz/Kozlowski) 5:0 passes

Selectman Kozlowski suggested that the board vote on the liquor license itself and leave the building code and planning issues to their respective departments.

Attorney Mangiaratti suggested that the board reopen the hearing if they wish to further deliberate the conditions of the license approval.

Motion: To re open public hearing. (Aptowitz/Kozlowski) 5:0 passes

Selectman Dentino would like to see more detailed floor plans that show the exits next week before voting on this license. The applicants and their attorney will come back next week with such.

Lou Masiello, WS Development (landlord) spoke to the board about other restaurants in the mall that have this type of outdoor arrangement. He would appreciate it if this restaurant be treated just like the others, as a family establishment that happens to serve alcohol. The board will review new plans next week.

Transfer of retail all alcohol license - Mansfield Deli to GT Retail

Public hearing notice read by Clerk Annino.

Motion: To postpone public hearing until Sake hearings complete.

Glenn Thompson, proposed manager of record, Atty. Edward Valanzola, Atty. Robert Roughsdege and Thomas Reilly are present for hearing.

Chairman Moran stated for the audience that this hearing was first conducted on April 28th. However due to a clerical error, the meeting posting was in error and the boards vote to approve the license transfer was rescinded.

Selectman Annino and Aptowitz rescued themselves from participating in the hearing as they have business dealings with local competitors. They then left the room.

Selectman Dentino commented that everyone on the Board of Selectmen may have had business deals with local stores. Where do you draw the line? Atty. Mangiaratti stated the law is rather disjointed in dealing with this issue as it is covered or suggested in different statues. A public disclosure of any dealings past or present is always advisable.

Atty. Valanzola provided a brief description of what happened at the previous meeting for the new board members. He also summarized the law that allows for license transfer among license holders.

Attorney Valanzola provided the board with a map showing the location of all the liquor stores in Mansfield. Six out of the eight stores are located along the rt. 106 corridor with the closest competitor being Corks at Erin's Center. The Mansfield Crossing site is ideally suited for this type of establishment.

Atty. Valanzola continued with a description of the facilities that will bring a different style of shopping to the area. In addition to the retail space, the facility will have a large beer cave, wine tasting room and educational space for learning about specialty wine and malts.

Selectman Kozlowski asked about the provisions of the law that provide for transfer of licenses. He asked Atty. Valanzola to clarify the intent of this law. Isn't it for when a business grows and moves or sells the establishment? Atty. Valanzola stated that while this often happens, the law does not specify it is for solely that purpose. Transfers of license happen all the time from one business to another.

Selectman Dentino asked Atty. Valanzola about a case that was previously before the ABCC. Atty. Valanzola explained the way different cases are handled. Atty. Mangiaratti also expounded upon case law that supports the Board of Selectmen as the local licensing authority as long as they act within their authority and do not act arbitrarily and capricious in their decision.

Atty. Jon Aieta of Quincy is representing a group of citizens that oppose a new all alcohol retail shop in town. The citizen group states as grounds for their opposition that the granting of this license does not serve the public need or protect the common good in that the Town of Mansfield has an adequate number of large package stores and there already exists three package stores within approx. one mile of the proposed location.

After a great deal of discussion, Chairman Moran called for questions from the audience.

Resident Ted Gulley, 7 Willis St. spoke against the issuing of an additional license in this area.

Resident Karl Clemmey, 175 Essex. spoke against the issuing of an additional license and asked if the Board of Selectmen have looked at the Assessors list of abutters.

Mr. Clemmey also had many questions about routing slips and the input of town depts.

Chairman Moran asked Atty. Mangiaratti to recap the process the board uses in liquor hearings. Atty. Mangiaratti stated that the board does not use routing slips for a newly proposed business nor are they required to. There is no statutory requirement for dept. head review such as with a subdivision plan.

Mr. Clemmey insisted that as a landowner in town that he has always kept the best interest of the town in his mind. He does not feel this new store would be in the best interest of the town or surrounding businesses.

At that time, Chairman Moran stated that does not have any bearing on this case and asked Mr. Clemmey to stay on topic.

Mr. Clemmey continued that such a large business would bring a tremendous amount of traffic to the area and that would not be good for the town. The Board of Selectmen should talk to surrounding businesses and residents before deciding to grant another license.

Mr. Clemmey also stated that the developer was doing unauthorized, unpermitted work in the proposed site. He then made it clear to the applicant that they are not welcome in Mansfield and will take away jobs from others.

Wayne Smith, employee of Dubs Liquor Store, is concerned about having such a large store in the small town of Mansfield.

William Clemmey, 175 Essex St. is also concerned about this store coming to town. He recapped how when he opened Cork's, he had to compete for his license.

Joe DeTrolio, School St. Manager of Rum Runner Wine and Spirits. He is concerned with the need of another license in town, particularly in West Mansfield. After a long story about square footage of liquor stores per resident, Mr. DeTrolio concluded with the statement that Mansfield does not need another liquor store.

Lou Masiello also recapped various points of information on what kind of tenants Mansfield Crossing is and has looked for. They feel Wines and More will complement services available in the mall.

Dan Clemmey, Essex St. He believes in family businesses and feels Mansfield does not need another out of town big box store. The retail space to be located at Mansfield Crossing consists of approx. 17,205 sq. ft. and you can fit all of the liquor stores in Mansfield in that space. We don't need more. Plus, He feels that such a store in a large mall would not be able to police youths hanging out in the area looking for liquor.

Selectman Dentino asked Police Chief O'Neill to speak about his investigation into the applicants franchise agreement. Chief O'Neill has read the franchise agreement several times and would caution the Board of Selectmen to take a close look at it prior to a vote as it is a carefully crafted document.

Atty. Valanzola responded that the ABCC looks at financial and legal concerns when the Board of Selectmen approves a license before they also approve. The Board of Selectmen does not need to include that in their proceedings.

Further questions from the audience were in regards to franchise business vs. smaller family owned businesses. Mr. Thompson stated that while this is a franchise owned store, it does fit a need in the community. They will be offering a large selection of beer and wines in addition to classes for the community. They will also be doing gift basket and associated wares sales in addition to liquor. The Cranston RI store sells more associated products than liquor itself. Redemption and lottery sales are also big draws as well.

Selectman Dentino asked if there were any legal issues with the lease or franchise agreement that the board should be concerned with. Chief O'Neill stated that he found no legal reason to deny the license application from his standpoint as Police Chief.

Selectman Dentino also noticed that the Chief mentioned a routing slip. He thought there wasn't one. The Chief of Police is sent a copy of the application for the police detectives to do a background check. It was not the traditional slip that is sent to dept. heads.

Selectman Dentino asked Mr. Thompson if he had a compilation of cases that were upheld or denied by the ABCC. He does not, however there are many on file and explained a couple of different cinereous in which licenses have been transferred.

Selectman Dentino then recapped each point that was discussed by each speaker for the audience.

Upon review of the documents and map before him Selectman Kozlowski stated he would support this transfer upon final review of the ABCC.

Mr. Ross briefly described the process used by the ABCC in checking on liquor franchises.

Motion: To close public hearing. (Kozlowski/Dentino) 3:0 passes

Selectman Dentino requested a 5 minute recess to confer with Town Counsel.

Chairman Moran called for a 5 minute recess. Upon return to open session a motion was made.

Motion: To grant transfer of an all alcohol retail license to GT Retail from Mansfield Deli. (Kozlowski/Dentino) 3:0 passes

Selectman Kozlowski would like to require the applicant to submit all financial documents to the ABCC for review. The applicant has agreed to this request. He is troubled by the situation, when is another liquor truly needed or not needed? You really need to analyze the situation.

Chairman Moran stated the proposed licensee will have to face the same issues that every one liquor license holder does. Under age drinking, sales, policing etc.

Chairman Moran is personally not in favor of transfers. However, as a Board of Selectmen member he feels the license application is a proper use and legal. He voted for it the last time and still feels the same today.

Selectman Dentino does not have an issue with the financial matters of the applicant; he just does not see the need for an additional license in town. The biggest problem he has is with hurting people. This is the hardest vote that he has had to make in his career as a Selectman but doesn't see any reason why not to vote for it.

Selectman Kozlowski stated that a previous board had decided that the license was needed so there is precedent. However, they need to decide if this is a good use or location for such license.

Mr. Ross stated that the fact the applicant consented to ABCC review is recorded in the minutes.

Retail wine and malt license hearing - Mansfield Deli

Public hearing notice read by Clerk Annino.

Motion: To postpone public hearing until previous hearing complete. (Kozlowski/Dentino)
3:0 passes

Hearing resumed at 9:47pm.

Selectman Aptowitz asked Atty. Mangiaratti if he and Selectman Annino should stay out of this hearing or not. Atty. Mangiaratti stated they could stay and vote, however Chairman Moran stated that he would feel better if they recued themselves from this one as well as the hearings are connected.

Thomas Reilly, manager of record and Atty. Edward Valanzola are still present for hearing.

Mr. Reilly has decided to move his business in another direction and to focus on the food service end of it. Thus he does not need a full liquor license and would like to apply for a new wine and malt retail license to supplement his deli and convenience store business.

Wayne Smith came to the podium again and asked the Board of Selectmen if granting another license is in the public need. He does not think so.

Joe DeTrollo came back to the podium again as well and asked as well. If Mr. Reilly doesn't need a full license and the area is served by Dubs across the street, is there really a public need for another wine and malt license?

Motion: To close public hearing. (Kozlowski/Dentino) 3:0 passes

Motion: To approve new wine and malt license to Mansfield Deli. (Dentino/Kozlowski) 2:1 passes (Kozlowski nay)

Selectman Kozlowski stated that Rt. 106 is full of stores with liquor licenses and another one is not needed in order to serve the public good.

Chairman Moran stated again that nothing different has come up that would change his vote.

Adjourn to executive session to discussion pending litigation and return to open session to conclude weekly business. (Kozlowski)

Roll call vote: Selectman Moran, Selectman Dentino aye, Selectman Aptowitz aye, Selectman Annino aye, Selectman Kozlowski 5:0 passes

returned to open session 11:36pm.

Weekly Business

Warrant No. 10046T in the amount of \$280,544.06

Motion: To approve. (Aptowitz/Annino) 5:0 passes

Warrant No. 10046E in the amount of \$234,808.80

Motion: To approve. (Aptowitz/Annino) 5:0 passes

Warrant No. 10046S in the amount of \$4,621.85

Motion: To approve. (Aptowitz/Annino) 5:0 passes

Warrant No. 10044PT in the amount of \$259,968.98

Motion: To approve. (Aptowitz/Annino) 5:0 passes

Warrant No. 10044TV in the amount of \$76,610.97

Motion: To approve. (Aptowitz/Annino) 5:0 passes

- Block party request from John Cooney. Close Deerpath Lane on May 31st from 10am - 2pm. (Approval has been received from public safety.)
Motion: To approve. (Annino/Dentino) 4:0:1 passes (Aptowitz abstain)
- Memo from Veterans Agent John Hogan regarding the rededication of the East Mansfield Honor Roll of World War II on Memorial Day. There will be a small service at the site.
Motion: To approve new memorial plaque. (Aptowitz/Annino) 5:0 passes

Correspondence

- Resignation letter from Douglas Annino, Planning Board.
Motion: To send letter of thanks and congratulations. (Aptowitz/Kozlowski) 4:0:1 passes (Annino abstain)
- Resignation letter from Olivier Kozlowski, Planning Board.
Motion: To send letter of thanks and congratulations. (Aptowitz/Annino) 4:0:1 passes (Kozlowski abstain)

Town Managers Report

- Update on sewer connection request from Foxboro resident.
- Public safety has looked into concerns regarding Pratt St. intersection and he will contact resident that had accident there.
- He will be meeting with Brenda Hodges soon to discuss strategic planning for FY12

BOS Old and New - none

- Selectman Kozlowski:
- Selectman Aptowitz:
- Selectman Annino:
- Selectman Dentino:
- Chairman Moran

Adjournment

Motion: Adjourn meeting at 10:40pm (Aptowitz) 5-0 Passes

Douglas R. Annino

Signature of Clerk

June 9, 2010

Date of Approval