

**DOWNERS GROVE LIQUOR COMMISSION
VILLAGE HALL COUNCIL CHAMBERS
801 BURLINGTON AVENUE**

Thursday, March 1, 2018

I. CALL TO ORDER

Chairman Strelau called the March 1, 2018 Liquor Commission meeting to order at 6:30 p.m.

II. ROLL CALL

PRESENT: Mr. Clary, Mr. Krusenoski, Ms. Pietrucha (6:35 p.m.), Ms. Toerpe, Chairman Strelau

ABSENT: Ms. Flanagan, Mr. Jacobson

STAFF: Carol Kuchynka, Liaison to the Liquor Commission, Assistant Village Attorney Dawn Didier, Village Attorney Enza Petrarca

OTHERS: William O'Donoghue, Toni Conic, Carlos Gonzalez, Grant Vanderholt, Gregory Dose, Esq., Heather Rodriguez, Bob Irons, Court Reporter

III. APPROVAL OF MINUTES

Chairman Strelau asked for approval of the minutes for the December 7, 2017 Liquor Commission meeting and asked members if there were any corrections, changes or additions.

Hearing no changes, corrections or additions, the December 7, 2017 minutes of the Liquor Commission meeting were approved as written.

Chairman Strelau reminded those present that this evening's meeting was being recorded on Village-owned equipment. Staff was present to keep minutes for the record and a court reporter was present taking the minutes verbatim.

IV. DISCIPLINARY HEARING FOR ALLEGED VIOLATIONS

Chairman Strelau made the following statements:

"Section 3-40 of the Downers Grove Municipal Code provides that the Local Liquor Commissioner may revoke or suspend any license issued if the Commissioner determines that the licensee has violated any of the provisions of this chapter or any State law pertaining to the sale of alcohol. Both under the Section cited above, and under Chapter 235, Section 5/7-5, Illinois Compiled Statutes, the Local Liquor Commissioner is required to hold a public hearing after notice to the licensee, in which the licensee is afforded an opportunity to appear and defend. Pursuant to Section 3-5 of the Downers Grove Municipal Code, this hearing is being conducted by the Local Liquor Commission at the request of the Local Liquor Commissioner."

"The Commissioner has the power to temporarily suspend a license without a hearing if there is reason to believe that continued operation of the licensed business would immediately threaten the welfare of this

community. Such was not done in these cases. The licensee may be represented by counsel, although he need not be for the purposes of this hearing."

Chairman Strelau asked if there was a signed stipulation in this case. Ms. Petrarca replied yes.

Chairman Strelau made the following statements:

"In view of the stipulation the order of this hearing will be substantially as follows:"

- A. Prosecution will read the signed stipulation into the record with the opportunity for the licensee to register its concurrence or non concurrence for the record.
- B. Prosecution may present any additional evidence in this case with the right of the licensee to cross-examine.
- C. Licensee may present any defense or mitigating evidence with right of prosecution to cross-examine.
- D. Summary of case by prosecution and defense."

"The prosecution should establish that timely notice of this hearing has been provided to the licensee."

"Witnesses shall be sworn."

"Strict rules of evidence will need not be adhered to although the Commission expects to exercise control over the hearing to ensure that irrelevant or repetitive testimony does not unduly prolong the hearing."

"A court reporter is present and will take the proceedings verbatim. Staff is also present for the purpose of summarizing the proceedings."

"The Commission will submit the findings and recommendations to the Local Liquor Commissioner regarding the existence and nature of any violation."

"Upon receipt of the recommendation of the Commission, the Commissioner will render a decision and the licensee will be notified in writing."

Bed Bath & Beyond - 1548 Butterfield Road

Chairman Strelau stated that the next order of business was to conduct a disciplinary hearing for Bed Bath & Beyond of California, LLC d/b/a Bed Bath & Beyond located at 1548 Butterfield Road. She stated that the licensee has been charged with a violation of Section 3-25(a) of the Downers Grove Liquor Control Ordinance.

Chairman Strelau asked that any individual(s) representing the licensee step forward and be seated. She asked that any individual(s) giving testimony, state and spell their name for the record, indicate their affiliation with the establishment and be sworn in by the court reporter.

Attorney William O'Donaghue introduced himself as the attorney representing Bed Bath & Beyond. Attorney O'Donaghue stated that Mr. Grant Vanderholt, Regional Manager, Mr. Toni Conic, Store

Manager and Mr. Carlos Gonzalez, Loss Prevention Specialist were present this evening. Mr. Vanderholt, Mr. Conic and Mr. Gonzalez were sworn in by the court reporter.

Chairman Strelau asked the prosecuting attorney to present her case.

Ms. Didier stated that the parties to this hearing before the Liquor Commission of the Village of Downers Grove by and through their attorneys, if any, hereby stipulate as follows:

1. Bed Bath & Beyond of California, LLC d/b/a Bed Bath & Beyond, 1548 Butterfield Road, Downers Grove, Illinois, is the holder of a Class P-2 Liquor License #LQ-000181, issued by the Village of Downers Grove. That said Licensee has held a liquor license for this location from the Village of Downers Grove since October 27, 2014.
2. Notice of this hearing was served upon the Licensee by certified mail to its registered agent and by personal delivery to the manager of the licensed premises.
3. At approximately 5:25 p.m. on Tuesday, January 30, 2018, Downers Grove Police Officer Lyerly and Downers Grove Police Officer Rau observed S.D., a special agent of the Downers Grove Police Department under the age of twenty-one (21), whose date of birth is September 25, 2000 (making her 17 years old), enter Bed Bath & Beyond located at 1548 Butterfield Road, Downers Grove.
4. The special agent retrieved a bottle of LaMarca Prosecco sparkling wine from the liquor section of the store and proceeded to the checkout counter where Dawn Wenc was working as a cashier.
5. That cashier Dawn Wenc, whose date of birth is March 16, 1970, then asked the special agent for her identification.
6. That the special agent produced her valid Illinois driver's license indicating her date of birth as September 25, 2000, and reading "Under 21 until 09-25-21" on the face of the license.
7. That cashier Dawn Wenc viewed the special agent's driver's license and returned it to her.
8. That cashier Dawn Wenc rang up the sale charging the special agent \$7.55.
9. That the special agent gave the cashier Dawn Wenc a \$20.00 bill and received \$12.45 in change.
10. Officers Lyerly and Rau who witnessed the events in the foregoing paragraphs, identified themselves and advised that the delivery of an alcoholic beverage had been made to a minor.
11. That Dawn Wenc was issued a Village ordinance administrative citation for delivering alcohol to a minor in violation of Section 3-25(a) of the Downers Grove Municipal Code.
12. The Officers advised that notice of further action would be forthcoming from the Downers Grove Liquor Commission.

Ms. Didier asked that the signed stipulation be entered into the record as Village's Exhibit #1.

Chairman Strelau accepted the signed stipulation as Village Exhibit #1.

Chairman Strelau asked the licensee to present its case.

Attorney O'Donaghue prepared a packet for the Commission which included the stipulation, police report, corporate policy and training acknowledgment. He asked that the packet be entered into the record as Defendant's Exhibit #1.

Chairman Strelau accepted the packet as Defendant's Exhibit #1.

Attorney O'Donaghue advised that Bed Bath & Beyond has been in operation in Downers Grove since 1993. He stated that they have been licensed by the Village to sell liquor since October of 2014. He stated that Bed Bath & Beyond began obtaining liquor licenses when the corporation acquired Cost Plus World Market. He stated that four stores in Illinois hold liquor licenses.

Attorney O'Donaghue stated that the Licensee has stipulated to the facts of the case and agrees with the events that occurred on January 30th.

Attorney O'Donaghue stated that Loss Prevention was immediately contacted as part of an internal investigation of the incident. He stated that corporate officers are aware of the violation, take the matter very seriously and expressed concern about the violation. He stated that they were upset about the violation and intend to do everything to ensure that this does not happen again.

Attorney O'Donaghue stated that all cashier associates go through BASSET certified training in addition to training with their corporate manual. He stated that associates are instructed to ask everyone for identification and it is expressly contained in their policy that associates are not to accept the vertical license or identification card. He stated that associates are also made aware of the compliance checks. He stated that associates are encouraged to "pass the buck" or ask for help and get a manager if they are unsure of any situation.

Attorney O'Donaghue stated that the employee failed to comply with company policy by accepting the vertical identification. He stated that Tab 3 contains their service policy and employees must sign an acknowledgment (Tab 4). He stated that the policy goes on the sign if the identification is vertical, it is a sign that the customer is under 21.

Attorney O'Donaghue stated that it is frustrating for corporate that employees do not follow policy. He stated Mr. Gonzales reviewed the video surveillance that monitored the transaction. He stated that the clerk gave no excuse for the violation and was terminated.

Mr. Vanderholdt stated that he has held the regional manager position for the past three years and oversees 40 stores in Illinois, Indiana and Iowa, four of which sell alcohol. He apologized for the violation and was frustrated about the incident.

Mr. Conic stated that he is the store manager. He stated that he was frustrated and upset about the violation. He stated that since the violation the associates have been re-trained. He stated that associates are trained during orientation and they provide continuing education for staff.

Mr. Conic advised that they plan to implement a new POS (point of sale) register system in the store in June. He stated that the new software will be more effective and a date of birth will need to be keyed in for any liquor sales.

Mr. Gonzalez advised that he is the loss prevention specialist area manager for Illinois, Indiana and Iowa Bed Bath and Beyond locations. He apologized for the violation and stated that he was contacted

immediately to investigate the incident. He stated that he viewed the surveillance tape and witnessed the events. He stated that he contacted Human Resources and requested immediate termination. He stated that her failure to follow policy was evident. He stated that he reached out to Carol at the Village to discuss what to do from this point forward. He stated that they immediately retrained staff.

Mr. Gonzalez stated that when the new POS system is installed, every associate will be retrained again with the new system.

Mr. Gonzalez stated that he spoke with the employee who could not explain why the incident happened. He stated that Ms. Wenc misread the year of birth and that the sale was not intentional.

Mr. Gonzales noted that they have passed three controlled buy tests, but need to be at 100% compliance. He apologized and stated that he did not want this to ever happen again.

Chairman Strelau requested questions from the Commission.

Mr. Clary appreciated that they took the violation seriously. He stated that the Village takes the sale of liquor very seriously. He asked why only four of the forty stores in the region sell alcohol. Mr. Vanderholdt replied that liquor departments only fit in certain sized buildings and demographics is taken into consideration. He advised that they hold liquor licenses in Downers Grove, Orland Park, Schaumburg and Vernon Hills.

Mr. Clary asked if they were implementing the new POS system as a result of the violation. Mr. Vanderholdt replied no and stated that the new POS system was in the works as it needed upgrades. He stated that the new date of birth key in capability will be a benefit of the new system as well as upgrades to technology that will benefit the stores.

Ms. Pietrucha appreciated that they are taking the incident seriously and that they are following up with steps to improve training and will upgrade their system. She asked when the new POS system will be up and running. Mr. Vanderholdt replied that they hoped it would be complete by the end of July at the Downers Grove location.

Mr. Conic advised that management has stressed the importance of not selling to minors. He stated that since the incident they have held daily meetings with AM and PM shifts about liquor policy and have encouraged employees to enlist the help of management if they have any concerns about a liquor sale.

Ms. Pietrucha asked what is the percentage of liquor sales at the Downers Grove location. Mr. Vanderholt replied 3%. She asked if coupons can be used for liquor purchases. Mr. Vanderholdt replied yes.

Ms. Toerpe stated that it shows that they have done a lot since the violation and have taken the incident seriously.

Ms. Toerpe asked Mr. Conic if Ms. Wenc had any prior liquor handling experience. Mr. Conic replied no and noted that she was a stay at home mom. He stated that she did obtain a BASSET certification.

Ms. Toerpe asked if it was a challenge selling liquor among the mixed vast inventory that they sell. Mr. Conic replied that liquor items are flagged and a pop up warning comes on the screen which prompts

cashiers to request identification. He stated that the new POS system will add another safeguard where they have to manually type in the date of birth to follow through with the sale.

Mr. Conic noted that they will have training on the new POS system. He stated that they will hold quarterly meetings to cover all carding requirements.

Ms. Toerpe asked if the POS system will have the scanning technology. Mr. Vanderholdt replied no. He stated that technology is not completely reliable. He stated that with keying in, they will be instructed to look at the individual and compare the person in front of them to the identification.

Ms. Toerpe was concerned that if associates by-pass the system or key in the wrong dated. Mr. Vanderholdt replied that there is no 100% fool proof way to enter an identification.

Ms. Toerpe asked if Bed Bath & Beyond had any other violations. Attorney O'Donoghue replied that a Schaumburg associate sold a six-pack to a minor two years ago and they received a \$500 fine for the violation.

Mr. Krusenoski noted that the under 21 identification is more obvious as it is vertical in nature and there is no math to be done - if it is vertical, then employees should know not to take it.

Mr. Krusenoski asked Mr. Conic how long the daily meetings last. Mr. Conic replied about ½ hour. Mr. Krusenoski asked how much time is spent on liquor related topics. Mr. Conic replied 3-5 minutes. Mr. Krusenoski stated that it seems that employees are working in a culture that does not emphasize the importance of liquor services. He stated that they have to work hard to establish good conduct. Mr. Conic stated he was baffled why the employee defied policy. He stated that they have an open forum with employees and the meetings are interactive. He stated that the associates are encouraged to ask questions and come up with solutions and answer questions that come up during the meetings themselves.

Mr. Krusenoski expressed his concern that the Village comes in this one time and a sale is made to a minor. He was concerned as to what occurs the other 364 days a year when the Village is not testing.

Chairman Strelau stated that although Bed Bath & Beyond has a 75% success rate passing the control buys, there are licensees in the Village who have held their licenses for many years without a violation. She stated that they have to be intentionally diligent with regard to liquor sales. She stated that in addition to the new system installation and detailed manuals, management needs to set a tone and tenor stressing the importance of proper liquor sales and stress to employees that they will be held accountable for violations. She was pleased that they brought along evidence of their concern, but noted that employees need to feel that liquor sales are important to the boss and must pay incredible attention to detail. She noted their frustration in that they are the victim of their employees but management must do its due diligence. She wished them luck with the new system.

Ms. Didier summarized by stating that Bed Bath & Beyond of California, LLC d/b/a Bed Bath & Beyond located at 1548 Butterfield Road, has stipulated to a violation of Section 3-25(a) of the Downers Grove Liquor Control Ordinance which prohibits the sale of alcohol to a minor. She recommended that the licensee be found guilty of a violation.

Chairman Strelau asked Attorney O'Donaghue if he had any final comments for the record. Attorney O'Donaghue replied when considering a penalty that they would prefer a fine in lieu of a suspension.

Upon hearing the evidence presented in this case, Chairman Strelau requested a motion as to whether the licensee be found guilty or not guilty of a violation of Section 3-25(a) of the Downers Grove Municipal Code.

MR. KRUSENOSKI MOVED TO FIND BED BATH & BEYOND OF CALIFORNIA. LLC D/B/A BED BATH & BEYOND GUILTY OF VIOLATING SECTION 3-25(A) OF THE DOWNERS GROVE LIQUOR CONTROL ORDINANCE. MR. CLARY SECONDED.

VOTE:

Aye: Mr. Krusenoski, Mr. Clary, Ms. Pietrucha, Ms. Toerpe, Chairman Strelau

Nay: None

Abstain: None

MOTION CARRIED: 5:0:0

The Motion carried.

V. APPLICATION FOR LIQUOR LICENSE

Chairman Strelau made the following statements:

"The first order of business is to conduct a public hearing for a liquor license application. For the benefit of all present, I would like to state that this Commission does not determine the granting or denial of the issuance of any license. We may at the end of each hearing, make a finding or recommendation with respect to the application. If necessary, the Commission may adjourn a hearing to a later date in order to have benefit of further information."

"At the conclusion of the hearing, the Commission will summarize its findings and determine any recommendations it wishes to make to the Liquor Commissioner."

"The Liquor Commissioner, who is the Mayor of Downers Grove, will, pursuant to Section 3-12 of the Ordinance, render decisions regarding issuance of available liquor licenses within 60 days."

"Hearings by this Commission are held according to the following format: 1) reading of information pertinent to the application, 2) comments from the applicant, 3) discussion by the Commission, 4) comments from staff, 5) comments from the public, and 6) motion and finding by the Commission."

Outback Steakhouse - 2970 Finley Road

Chairman Strelau stated that the next order of business was an application hearing for Outback Steakhouse of Florida, LLC d/b/a Outback Steakhouse located at 2970 Finley Road. She stated that the applicant was seeking a Class "R-1", full alcohol, on-premise consumption liquor license.

Chairman Strelau asked that any individual(s) representing the applicant step forward and be seated. She asked that any individual(s) giving testimony, state and spell their name for the record, indicate their affiliation with the establishment and be sworn in by the court reporter.

Gregory Dose and Heather Rodriguez were sworn in by the court reporter. Mr. Dose introduced himself as the attorney representing Outback. Ms. Rodriguez introduced herself as the liquor manager of Outback. Mr. Irons was introduced as the Regional Manager.

Chairman Strelau asked the applicant to present its case.

Ms. Rodriguez stated that Outback Steakhouse is a full service restaurant featuring steaks, ribs and chicken. She stated that they are seeking a liquor license for their full service bar. Attorney Dose added Outback was relocated from Villa Park to Downers Grove as the lease in the former location had expired. Ms. Toerpe asked Ms. Rodriguez about her liquor handling experience. Ms. Rodriguez stated that she has worked for Outback Steakhouse for over 21 years. She stated that her experience started there as being employed as a server. She stated that she then served as manager and was promoted to partner manager 13 years ago. She stated that she has worked in the restaurant industry for a total of 26 years.

Ms. Toerpe asked Ms. Rodriguez if she had ever experienced a violation over the course of her employment. Ms. Rodriguez replied yes. She stated that she was the manager of the Outback in Villa Park when a violation occurred there in 2012. She noted that they were shopped by the State and that the employee never asked for identification. She stated that the employee was immediately terminated, no questions asked.

Ms. Rodriguez stated that mandatory certification of employees is done every three years. She stated servers with outdated certification are immediately removed from the floor. She stated that upon hire employees go through Outback's comprehensive six hour computer training module. She stated that 1 ½ hours is devoted solely to liquor training. She stated that as a refresher, employees go through the corporate training once a year.

Ms. Rodriguez advised that staff holds "alley rallies" which are daily pre-shift meetings where they discuss issues and liquor policies. She stated that they also have a communication board that has liquor information about the year, date of birth for how old someone has to be to drink liquor.

Ms. Toerpe asked if they will accept the vertical id. Ms. Rodriguez replied no. She stated that they have a zero tolerance policy for serving minors.

Mr. Krusenoski stated that it was advantageous for them to hear the previous disciplinary. He stated that in addition to policy and training modules they need to work on a culture that stresses the importance of proper liquor service. He stated that they must be strict in addition to employees following their policies.

Ms. Pietrucha was pleased with Ms. Rodriguez's experience. Ms. Pietrucha asked if Ms. Rodriguez if they encounter underage people trying to purchase liquor. Ms. Rodriguez replied no. She stated that employees are encouraged to seek a manager's help if there is ever a questions about someone's age or identification. She stated the employees are encouraged to get assistance from a manager if they get an out of state identification or if they are unsure about serving a patron.

Ms. Pietrucha asked how Downers Grove differs most from Villa Park. Ms. Rodriguez replied that Downers Grove has very strict rules which she intends to communicate to her staff. She stated that she oversees employee training and will keep proper liquor service at the forefront of their minds.

Ms. Pietrucha asked Ms. Rodriguez how often she is present at the restaurant. Ms. Rodriguez replied that she works the mid-day shift 5 days a week and is there typically 55-65 hours per week. She added that the mid-day shift covers both the lunch and dinner rush.

Mr. Clary welcomed Outback to Downers Grove. He stated it was beneficial form them to hear the disciplinary hearing and how serious the Village is about liquor service. He had no questions.

Chairman Strelau stated that the Commission could not encourage them enough the importance setting the proper tone with regard to the importance of proper liquor service. She stated that the tone and tenor set by management is what matters most in addition to proper training.

Mr. Krusenoski asked when the restaurant will open. Ms. Rodriguez replied the soft opening is March 16th with opening to the general public on March 19th.

Chairman Strelau asked staff for recommendations or comments pertinent to this application. Ms. Kuchynka replied that issuance of the license is contingent upon receipt of satisfactory background checks and the annual fee.

Chairman Strelau asked for comments from the public. There were none.

Hearing the testimony given in this case, Chairman Strelau asked for a recommendation from the Commission concerning its finding of "qualified" or "not qualified" with respect to the applicant with regard to their Class "R-1" liquor license application.

MR. CLARY MOVED TO OUTBACK STEAKHOUSE OF FLORIDA, LLC D/B/A OUTBACK STEAKHOUSE #1417 LOCATED AT 2970 FINLEY ROAD QUALIFIED FOR A CLASS "R-1", FULL ALCOHOL, ON-PREMISE CONSUMPTION LIQUOR LICENSE. MS. TOERPE SECONDED.

VOTE: **Aye:** Mr. Clary, Ms. Toerpe, Ms. Pietrucha, Mr. Krusenoski, Chairman Strelau
Nay: None
Abstain: None

MOTION CARRIED: 5:0:0

Motion carried.

VI. OLD BUSINESS

Chairman Strelau asked if there was any discussion, update from staff or comments from the Commission regarding any old business.

Ms. Kuchynka discussed the month end reports. She stated that the Village Council adopted an ordinance amending the theater license classification to serve alcohol during regularly scheduled movies.

VII. NEW BUSINESS

Chairman Strelau asked if there was any discussion, update from staff or comments from the Commission regarding any new business.

Ms. Kuchynka stated that there will be an April Liquor Commission meeting as she has an application on file and a code change to discuss under new business.

VIII. COMMENTS FROM THE PUBLIC

There were none.

IX. ADJOURNMENT

Concluding business for the evening, Chairman Strelau called for a motion to adjourn.

Mr. Clary moved to adjourn the March 1, 2018 meeting. The meeting was adjourned by acclamation at 7:43 p.m.