

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

January 4, 2001

I. CALL TO ORDER

Chairman Brown called the meeting to order at 7:30 p.m.

II. ROLL CALL

PRESENT: Ms. Gerloff, Mr. Julian, Mr. Keenley, Chairman Brown

ABSENT: Mr. Mochel

STAFF: Village Attorney Daniel Blondin, Assistant Village Attorney, Enza Petrarca, Liaison to the Liquor Commission Carol Conforti, Secretary Karen Mudra

OTHERS: Dave Gajos, Cindy Rivera, Rodrigo Rivera, Officer Roundtree, Officer Rau, Special Employee, Court Reporter

III. APPROVAL OF MINUTES

MR. JULIAN MOVED TO APPROVE THE MINUTES OF THE NOVEMBER 2, 2000 LIQUOR COMMISSION MEETING AS PRESENTED. MS. GERLOFF SECONDED.

VOTE: **Aye:** Mr. Julian, Ms. Gerloff, Mr. Keenley, Chairman Brown

Nay: None

Abstain: None

MOTION CARRIED: **4:0:0**

IV. DISCIPLINARY HEARINGS

Chairman Brown made the following statement:

"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 this case. It is in order that the licensee be represented by counsel, although he need not be for the purposes of this hearing."

Chairman Brown asked Attorney Enza Petrarca if there were stipulations in these cases. Ms. Petrarca replied yes.

"In view of the stipulation of facts, the order of these hearings 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. A secretary is also present for the purpose of summarizing the proceedings."

"The Commission will submit the findings and recommendations to the Local Liquor Commissioner respecting the existence and nature of any violation and the appropriate penalty, if any."

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

Pizza Hut of America, Inc. d/b/a Pizza Hut, 1560 75th Street, Downers Grove, Illinois

Attorney Petrarca said the licensee has been charged with a violation of Section 3-25(a) of the Downers Grove Liquor Control Ordinance which prohibits the sale of alcoholic liquor to a minor person under the age of twenty-one (21). Ms. Petrarca read the following signed stipulation into the record:

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. Pizza Hut of America, Inc. d/b/a Pizza Hut, 1560 75th Street, Downers Grove, Illinois, is the holder of a Class B-1 Liquor License #73-58016, 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 August 21, 1989.
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 6:30 p.m. on Thursday, December 14, 2000, Downers Grove Police Officer Todd Rountree and Officer Russell Rau observed R.S. a Special Employee of the Downers Grove Police Department under the age of twenty-one (21), whose date of birth is November 22, 1983 (making him 18 years old), enter Pizza Hut located at 1560 75th Street, Downers Grove.
4. The Special Employee was seated at a table in the restaurant and waitress, Judene L. Burkhardt, whose date of birth is September 27, 1968, asked him for his order.
5. The Special Employee ordered a Miller Lite beer while Officers Rountree and Rau observed him.
6. Waitress Judene Burkhardt then served the Special Employee a Miller Lite beer.
7. At no time did waitress Judene Burkhardt ask for identification from the special employee.
8. Officers Rountree and Rau who witnessed the events in paragraphs 3 through 7, identified themselves to the Manager, Dave Gajos and informed him that the delivery of an alcoholic beverage had been made to a minor.

9. Ms. Burkhardt 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.

10. The Officers advised the Manager, Dave Gajos, that notice of further action would be forthcoming from the Downers Grove Liquor Commission.

Attorney Petrarca asked that the signed Stipulation of Facts be admitted as Village Exhibit #1. Chairman Brown accepted the signed Stipulation of Facts as Village Exhibit #1.

Mr. Dave Gajos, a Shift Manager at Pizza Hut in Downers Grove, was sworn in by the Court Reporter. Mr. Gajos admitted that his waitress, Judene Burkhardt, did serve beer to the Special Employee. He explained that the waitress was not trained at their store. At the time of the incident, she was a borrowed employee on loan from another Pizza Hut, which was closed for remodeling. However, the waitress has now been permanently assigned to the Downers Grove Pizza Hut. Mr. Gajos said that their store has had a good record of responsible alcohol sales since they received their license in 1989. Since the violation occurred they have made their liquor policy more restrictive. Mr. Gajos said that they now card every customer who orders alcohol and note their date of birth on their food order ticket. The waitperson then shows the ticket to a manager who serves the alcohol if the customer is over 21. Mr. Gajos said the managers now serve all alcohol, employees no longer have that privilege. Mr. Gajos said the manager will also bring the alcohol to the table and if there is any question as to the customer's age, they will be carded again before the alcohol is served.

Mr. Keenley asked how long Mr. Gajos has been a manager at Pizza Hut. Mr. Gajos said he has been with this store for about two years. Mr. Keenley asked how many people Mr. Gajos has trained during that time. Mr. Gajos replied from 75 to 100 employees. Mr. Keenley agreed that prior to this incident, the restaurant has had a long-standing good record of passing control buys.

Mr. Keenley asked Mr. Gajos how he plans to train Ms. Burkhardt now that she has been permanently assigned to his store. Mr. Gajos said since the violation, he has been retraining her every time he works with her. He has also tested her by having his underage brother come in and attempt to purchase alcohol when she is on duty. Mr. Gajos said that no matter how busy he and the other managers are, they watch Ms. Burkhardt's every move when handling alcohol.

Mr. Keenley said Pizza Hut probably has a specific liquor-training program. He suggested that Mr. Gajos take advantage of it when training new employees.

Mr. Keenley asked about the procedure of writing the customer's date of birth on their ticket. He asked were the waitperson obtains the customer's date of birth. Mr. Gajos said it was taken from their driver's license. Mr. Keenley asked if Mr. Gajos knew how to identify an underage driver's license and if he knew the under 21 license was red. Mr. Gajos said yes. He added that he also trains his employees how to identify a valid driver's license.

Ms. Gerloff noted that this Pizza Hut restaurant has passed 12 control buys. She asked if prior to this violation, they had any policy in place concerning temporary employees. She asked if anyone could walk into their store and begin work without first reviewing their policies. Mr. Gajos explained that this waitress had worked for Pizza Hut for three years and he and the other managers assumed that she had been properly trained. Ms. Gerloff said that perhaps the waitress did not work in the State of Illinois.

Mr. Julian noted that Mr. Gajos said he discussed Ms. Burkhardt with another manager. He asked the manager's name. Mr. Gajos said when Ms. Burkhardt started working at their restaurant he noticed that she was easily stressed and he began to have some doubts about her training.

Mr. Julian asked if this restaurant is corporate-owned. Mr. Gajos replied yes. Mr. Julian asked if the Corporate Office is aware of this violation and hearing. Mr. Gajos replied yes. Mr. Julian asked with whom Mr. Gajos had spoken at the corporate office regarding this incident. Mr. Gajos said his area coach knew that he would be attending the hearing tonight. Mr. Gajos said he assumed that the area coach would have told everyone at the corporate level. Mr. Julian asked what an "area coach" is and where he is located. Mr. Gajos said an area coach is a regional manager and he is located in Lisle.

Mr. Julian asked when Mr. Gajos last spoke to the regional manager and what they discussed. Mr. Gajos said he spoke to the manager about a week ago and they discussed this hearing; however, the manager had never attended a disciplinary hearing and he had no advice other than to answer the questions truthfully. They also discussed financial matters and the possibility of Mr. Gajos being transferred to another area Pizza Hut in the near future to report on the operation of that store.

Mr. Julian asked how many shift managers are at the Downers Grove Pizza Hut and to whom does Mr. Gajos report. Mr. Gajos said there are three other shift managers and a restaurant general manager. Mr. Gajos said he reports to the restaurant general manager and she reports to the regional manager in Lisle. Mr. Julian asked if the restaurant general manager discussed this violation with Mr. Gajos. Mr. Julian said he found it somewhat unusual that no one from the Pizza Hut Corporate Office was present at the hearing. Mr. Julian asked if Mr. Gajos felt that he received adequate preparation for this hearing from his superiors. Mr. Gajos said none of his superiors have ever appeared at a liquor commission hearing. He said he was instructed to answer all questions honestly.

Ms. Gerloff asked if Mr. Gajos understood the seriousness of this hearing. He replied yes. Mr. Julian said he wanted to be sure that Mr. Gajos's superiors also understand the seriousness of this hearing. Mr. Julian said the Commission appreciated Mr. Gajos's attendance; however, the Commission would have appreciated it if one of his superiors had also attended.

Chairman Brown said the Commission is concerned that perhaps Pizza Hut does not take this situation seriously. He noted that the Downers Grove Pizza Hut has had an excellent record with respect to alcohol sales and said that they must be doing something right. Chairman Brown said that in this situation, they might have been lulled into a false sense of security because the employee on loan had been with Pizza Hut for three years. He said that they may have assumed that all Pizza Hut employees were trained as well as those at the Downers Grove store. However, that apparently is not true because Ms. Burkhardt obviously did not pay attention to the customer she was serving.

Chairman Brown asked if Ms. Burkhardt still works at the Downers Grove Pizza Hut. Mr. Gajos replied yes. He added that she has been given a written warning. Chairman Brown asked if Ms. Burkhardt will return to her original store or if she will remain with the Downers Grove store. Mr. Gajos said she would not be returning to her original store. He explained that she is now considered his employee and she will work at the Downers Grove store and at another area Pizza Hut.

Mr. Keenley asked Mr. Gajos if anyone had told him who would be responsible for any fines that might be assessed in the event that this licensee is found guilty of a violation. Mr. Gajos said his area coach said he would take care of any fines. Mr. Keenley asked if the fine would be taken out of any employee's paycheck. Mr. Gajos replied no.

Ms. Gerloff asked if a written statement concerning this violation was put in Ms. Burkhardt's employee records. Mr. Gajos said Ms. Burkhardt was given a written warning and advised that if it happened again she would be terminated. Ms. Gerloff asked if Ms. Burkhardt now understands the seriousness of the violation. Mr. Gajos replied yes.

Chairman Brown clarified that the restaurant manager reports to the area coach/regional manager who is in charge of seven stores. Mr. Gajos replied yes. Mr. Julian asked if the Commission could have the names of those individuals for purposes of correspondence. Ms. Conforti said that the restaurant manager/liquor manager, Peggy Burton, was notified of the violation by mail. Ms. Conforti confirmed that Ms. Burton is out of town at this time. Mr. Gajos replied yes.

Chairman Brown asked if there were any further questions. Hearing none, he asked Ms. Petrarca to summarize.

Ms. Petrarca said the licensee has stipulated to a violation of Section 3-25(a) of the Downers Grove Municipal Code, which prohibits the sale of alcohol to a minor. Since this is the licensee's first violation, she recommended that their license be suspended for not less than one (1) nor more than three (3) days. In addition to this suspension, Ms. Petrarca recommended that a fine be imposed in an amount not to exceed \$1,000.00 to cover the administrative costs of this hearing.

Chairman Brown asked if Mr. Gajos had any further comments. He replied no.

Mr. Julian asked Mr. Gajos his age. He replied 23 years old.

Chairman Brown asked for a motion on whether or not a violation to Section 3-25(a) has occurred.

MS. GERLOFF MOVED TO FIND PIZZA HUT OF AMERICA, INC. D/B/A PIZZA HUT, 1560 75TH STREET, DOWNERS GROVE, ILLINOIS, GUILTY OF SELLING ALCOHOLIC LIQUOR TO A MINOR PERSON UNDER THE AGE OF TWENTY-ONE (21) IN VIOLATION OF SECTION 3-25 (a) OF THE DOWNERS GROVE MUNICIPAL CODE. MR. KEENLEY SECONDED.

VOTE:	Aye:	Ms. Gerloff, Mr. Keenley, Mr. Julian, Chairman Brown
	Nay:	None
	Abstain:	None

MOTION CARRIED: 4:0:0

MR. JULIAN MOVED TO RECOMMEND THAT THE LICENSE OF PIZZA OF AMERICA, INC. D/B/A PIZZA HUT, 1560 75TH STREET, DOWNERS GROVE, ILLINOIS, BE SUSPENDED FOR NOT LESS ONE (1) DAY AND THAT A FINE OF \$525.00 BE ASSESSED FOR VIOLATION OF SECTION 3-25(a) OF THE DOWNERS GROVE MUNICIPAL CODE. CHAIRMAN BROWN SECONDED.

Mr. Julian recommended that the one-day suspension be served on a Friday. Ms. Gerloff pointed out that Attorney Petrarca stated that a fine not to exceed \$1,000.00 could be assessed to cover the expense of this hearing. She asked Mr. Julian to amend his motion and raise the recommended fine to \$1,000.00.

Mr. Keenley referred to Ms. Petrarca's letter, dated December 21, 2000, in which she stated that if found guilty, Pizza Hut would be responsible for a fine of \$525.00. Village Attorney Blondin apologized and explained that the statement was made in error. The Ordinance has been changed and now states that the fine is not to exceed \$1,000.00. Mr. Blondin said that it is the Village's practice that the fine will be at least enough to cover the cost of the hearing and anything above that up to \$1,000 is left to the discretion of the Liquor Commissioner.

Chairman Brown asked Ms. Gerloff to restate her amendment. Ms. Gerloff said she would like to amend Mr. Julian's motion to include a fine of not more than \$1,000.00. Mr. Julian asked if she wished to recommend a specific amount. Ms. Gerloff replied no, saying she would like to leave that to the discretion of the Liquor Commissioner. Mr. Julian agreed to amend the motion.

Chairman Brown clarified that Mr. Julian's motion was to recommend a one-day suspension to be served on a Friday and a fine not to exceed \$1,000.00. Mr. Julian agreed.

Chairman Brown asked for a vote of the motion.

VOTE: **Aye:** Mr. Julian, Chairman Brown, Ms. Gerloff, Mr. Keenley,

Nay: None

Abstain: None

MOTION CARRIED: **4:0:0**

Cebu, Inc. d/b/a Cebu Restaurant, 7329 Lemont Road, Downers Grove, Illinois

Chairman Brown asked the representatives from Cebu Restaurant to come forward and be sworn in. Ms. Cindy Rivera, part owner and liquor manager of Cebu Restaurant, and her husband, Mr. Rodrigo Rivera, part-time manager at Cebu Restaurant, were sworn in by the Court Reporter.

Attorney Petrarca said this licensee has been charged with a violation of Section 3-25(a) of the Downers Grove Liquor Control Ordinance which prohibits the sale of alcoholic liquor to a minor person under the age of twenty-one (21). Ms. Petrarca read the following signed stipulation into the record:

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. Cebu, Inc. d/b/a Cebu Restaurant, 7329 Lemont Road, Downers Grove, Illinois, is the holder of a Class R-1 Liquor License #47-81148, 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 November 2, 2000.

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 5:40 p.m. on Thursday, December 14, 2000, Downers Grove Police Officer Todd Rountree observed R.S. a special employee of the Downers Grove Police Department under the age of twenty-one (21), whose date of birth is November 22, 1983 (making him 18 years old), enter Cebu Restaurant located at 7329 Lemont Road, Downers Grove.

4. The Special Employee was seated at a table in the restaurant and manager/owner, Cindy Rivera, whose date of birth is August 13, 1950, asked him for his order.

5. The Special Employee ordered a Corona beer while Officer Rountree observed him.

6. Manager/owner Cindy Rivera then served the Special Employee a bottle of Corona beer.

7. At no time did manager/owner, Cindy Rivera, ask for identification from the Special Employee.

8. Officer Rountree who witnessed the events in paragraphs 3 through 7, identified himself and advised Ms. Rivera that the delivery of an alcoholic beverage had been made to a minor.

9. Ms. Rivera 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.

10. The Officer advised the manager/owner Ms. Rivera that notice of further action would be forthcoming from the Downers Grove Liquor Commission.

Attorney Petrarca asked that the signed Stipulation of Facts be admitted as Village Exhibit #1. Chairman Brown accepted the signed Stipulation of Facts as Village Exhibit #1.

Ms. Rivera said the Stipulation of Facts is correct. She explained that on the day of the incident she was filling in for a waitress that did not report for work. Ms. Rivera said she was managing the back of the restaurant as well as waiting on customers. In addition, she said she was unfamiliar with the computer and was preoccupied with how to operate it when she took the Special Employee's order. She said she was concentrating on managing the restaurant and operating the computer and did not ask for his identification. Ms. Rivera said she was embarrassed by this violation because she is the one who has trained her staff. She apologized and said she made a mistake.

Mr. Rivera added that they understand the seriousness of the violation and they have discussed ways to avoid repeating it. Mr. Rivera said they have posted notices in the beer and wine storage area to remind them to check identification every time they serve alcohol. He added that his wife was very stressed that day because she was trying to manage the restaurant, fill in for a waitress, and operate a computer with which she was unfamiliar.

Ms. Rivera said everything is new to them; they have been open for four months and have only had their liquor license for one month. She said they do not sell much alcohol; however, she admitted that is no excuse.

Ms. Petrarca said that the officers and Special Employee involved in the control buy were present at the hearing. Chairman Brown asked that they come forward. He asked the Special Employee

if he was dressed the same way he was at the time of the control buy. He replied yes. Chairman Brown asked the Rivera's if they thought the Special Employee appeared to be twenty-one years old. Mr. Rivera said he thought the Special Employee looked 21. However, he added that they now ask for identification from anyone who orders alcohol. Mr. Rivera said their waitresses always card everyone; however, he is sorry to say that the person who trained them did not.

Mr. Keenley said he understands that this is upsetting and embarrassing; however, this violation has now brought their establishment to the attention of the Liquor Commission. He noted that they have only had their liquor license a short time. He asked if the problems with their waitresses not reporting for work have been resolved. Ms. Rivera replied yes. She explained that her daughter was the waitress in question and she is now back at work. In addition, they have two other waitresses and their son and their nephew also help out. Mr. Rivera said the restaurant is family-run and they are always in control when everyone is there. It just happened on the day of the violation that their daughter said she could not come in. He added that it was very stressful.

Mr. Keenley said when they applied for their license, they probably presented a comprehensive liquor-handling manual. However, having a violation occur so soon after having received their license is unsettling for everyone. It makes him wonder what else may have happened in this short amount of time. Mr. Keenley said he hopes Ms. Rivera has very strict control of the situation because the Village will be conducting other control buys in the future. Ms. Rivera said they now card everyone. Mr. Keenley asked Ms. Rivera how she would treat the Special Employee if he walked in today and ordered a beer. Ms. Rivera said she now asks for identification and explains to customers that they are a new restaurant and that they ask for identification from everyone who orders alcohol. Mr. Keenley asked Ms. Rivera if she requests a driver's license as identification. She replied yes. Mr. Rivera added that if they do not recognize the driver's license they ask for another form of identification.

Ms. Gerloff said she was saddened to see this violation. She said she reviewed the minutes from the Rivera's application hearing in October 2000. During that hearing Mr. Keenley described in detail the Village's control buy program and according to the minutes, Ms. Rivera said she was aware of the program and that she would handle it. However, in a very short time, they have failed their first control buy and the liquor manager was the person responsible for the failure. Ms. Rivera said that is why this is so embarrassing. Ms. Gerloff agreed and added that the incident leaves a lot of doubt in her mind as to what is going on at the restaurant. Ms. Gerloff recalled that Ms. Rivera was emphatic at the application hearing that she understood the laws of the State and the Village. She said Ms. Rivera assured them that she was acutely aware of alcohol policies, that she had gone to school and learned how to serve alcohol properly and that she would have complete control of alcohol. However, after a very short time this violation occurred. Ms. Rivera said one reason the violation occurred is that the entire business is so new to them. Now, however, they have put up reminders and keep the alcohol locked away so that they will have to stop and think before they serve alcohol. Ms. Gerloff advised that if they wish to continue to sell alcohol in Downers Grove, they should ask for identification without apology.

Mr. Rivera apologized again and explained that they only serve beer and wine to enhance their menu.

Mr. Julian said he has been to their restaurant several times and it is a terrific restaurant. He can see that they have a substantial investment in it. He said that they appear to understand the seriousness of this situation. He compared the record of control buys at Pizza Hut and to those at Cebu. He pointed out that Pizza Hut passed control buys for many years before they had a violation; however, Cebu's record shows them failing their very first control buy. He suggested that their goal should be to pass all control buys in the future. Mr. Rivera said again that they are very sorry about the violation and they will try to ensure that it does not happen again.

Chairman Brown said it seems to him that they are overextended. The scenario that Ms. Rivera described shows that she was trying to do several different things in addition to serving food and that will cause problems. He suggested that they try to avoid that type of situation even if they need to hire additional outside help. He said this is a serious violation and one, which can happen again if she or her employees are distracted. Chairman Brown said it is particularly serious when the liquor manager is involved in the violation.

Ms. Petrarca said the licensee has stipulated to a violation of Section 3-25(a) of the Downers Grove Municipal Code, which prohibits the sale of alcohol to a minor. Although this is the licensee's first violation, there is the aggravating circumstance that the owner was involved in the sale, which warrants an additional day of suspension. Therefore, Ms. Petrarca recommended that the licensee's license be suspended for not less than two (2) nor more than four (4) days. In addition to that suspension, Ms. Petrarca recommended that a fine be imposed in the amount not to exceed \$1,000.00 to cover the administrative costs of this hearing.

Chairman Brown asked if the Rivera's had any other comments. Ms. Rivera said she did not know how large the fine would be or how soon they would have to pay it; however, she wanted the Commission to know that they had just opened and could not afford a large fine. Mr. Julian said the Commission will make a recommendation regarding their penalty to the Liquor Commissioner, who is the Mayor, and the Rivera's would be notified of his decision.

MR. KEENLEY MOVED TO FIND CEBU, INC. D/B/A CEBU RESTAURANT, 7329 LEMONT ROAD, DOWNERS GROVE, ILLINOIS, GUILTY OF SELLING ALCOHOLIC LIQUOR TO A MINOR PERSON UNDER THE AGE OF TWENTY-ONE (21) IN VIOLATION OF SECTION 3-25 (a) OF THE DOWNERS GROVE MUNICIPAL CODE. MR. JULIAN SECONDED.

VOTE:	Aye:	Mr. Keenley, Mr. Julian, Ms. Gerloff, Chairman Brown
	Nay:	None
	Abstain:	None

MOTION CARRIED: 4:0:0

MS. GERLOFF MOVED TO RECOMMEND THAT THE LICENSE OF CEBU, INC. D/B/A CEBU RESTAURANT, 7329 LEMONT ROAD, DOWNERS GROVE, ILLINOIS, BE SUSPENDED FOR NOT LESS TWO (2) DAYS NOR MORE THAN FOUR (4) DAYS DUE TO AN AGGRAVATING CIRCUMSTANCE AND THAT A FINE OF NOT MORE THAN \$1,000.00 BE ASSESSED FOR THE VIOLATION OF SECTION 3-25(a) OF THE DOWNERS GROVE MUNICIPAL CODE. MR. KEENLEY SECONDED.

VOTE:

Aye:	Ms. Gerloff, Mr. Keenley, Mr. Julian, Chairman Brown
Nay:	None
Abstain:	None

MOTION CARRIED: 4:0:0

Mr. Julian asked if both Officer Rau and Officer Roundtree were involved with the control buy program. They replied yes and explained that they are assigned as police counselors at North and South High Schools. Chairman Brown asked if during the control buys, the Special Employee and the police officers enter the establishment together and sit together. The Special Employee said the officers entered first and he followed. He said they were not seated together.

Mr. Julian asked if the results of control buys were discussed at the high schools. The officers replied no. They said the results are submitted as a written report to the Police Department for in-house use.

Mr. Julian asked when Pizza Hut and Cebu Restaurant would be tested again. Officer Rau explained that establishments that pass the control buy attempts are usually tested on an annual basis. However, establishments that fail will be retested within a year.

Chairman Brown thanked the Special Employee and the officers for their work with the control buy program.

Ms. Gerloff asked if the officers use the same Special Employee when they do control buys for tobacco sales. They replied no, they usually recruit different students. Ms. Gerloff asked to whom the failed tobacco control buys are reported. The officers said they are reported to the Police Department. Ms. Petrarca added that an administrative citation is issued to a person caught selling tobacco to a minor. Mr. Blondin explained this procedure is followed because the Village does not generally license businesses and thus, has no recourse to penalize the establishment. Ms. Gerloff noted that the failure rate for the tobacco control buys was quite high. The officers agreed.

Mr. Keenley said it appears to him that the Village is getting a little tougher with violators, especially with the option for increased fines for the sale of alcohol to a minor. Chairman Brown said he feels the Village should charge violators a set fee to cover administrative costs plus a fine of up to \$1,000. Ms. Gerloff asked what the fine was under the previous ordinance. Village Attorney Blondin explained that \$525.00 was assessed to cover administrative costs; however, there was no actual fine included in the previous ordinance. Chairman Brown said he likes the fact that the current ordinance gives the Village the option to levy a fine.

Ms. Conforti said that historically the \$525.00 fee was to cover administrative costs and added that the previous Mayor, Betty Cheever, never considered a fine in lieu of a suspension for violations. Ms. Conforti said she felt the licensee should be required to pay the administrative costs. She said in the case of a violation, other than a control buy failure, the establishment cannot be charged for the cost of the hearing because that cost specifically covers the cost involved solely with the control buy program for the Village Attorneys, the Liquor Liaison, the Court Reporter, the Officers and the Special Employee.

Chairman Brown agreed with Ms. Conforti, but added that he feels it is a mistake to itemize these costs for the public. He noted that there are administrative costs for any violation, not just control buy failures. Thus, he said he feels the Village should establish a standard fee for administrative costs when conducting disciplinary hearings. Attorney Blondin said that when asked, the Village Council has always encouraged staff to set fees that reflect actual specific costs. He said that the Chamber of Commerce also reviews any proposed fee changes.

Chairman Brown said he has no objection to the Village Council making a conscious decision not to charge administrative costs for certain violations. However, he feels the Council should be given the opportunity to make that decision. Chairman Brown said in his opinion, the fine is the penalty and each situation should be considered on a case-by-case basis.

Ms. Gerloff said she feels a "fine of not less than \$1,000" gives the Village the discretion to charge a fine in addition to the fee for administrative costs. Chairman Brown agreed; however, he feels the possible \$1,000 fine should be separate from the fee. He said he feels the language of the current ordinance limits the amount of the possible fine because it requires that a portion of the \$1,000 be used to cover administrative costs. Chairman Brown said according to statute, the fine and the fee for administrative costs can be separate and he feels that they should be.

Mr. Julian asked if the Liquor Commission could make a recommendation to separate the fee and the fine. Chairman Brown said that the Commission can recommend setting a standard administrative fee for every hearing. Attorney Blondin pointed out that such a recommendation would have to be approved by the Village Council. Chairman Brown agreed. Mr. Julian said he would like to recommend the possibility of a fine, not to exceed \$1,000.00 in addition to a fee for administrative costs. Chairman Brown agreed. Village Attorney Blondin said the Legal

Department would prepare a draft ordinance, incorporating the Commission's suggestions, for review at their next meeting.

Mr. Julian asked if the Village knew the actual cost of a Liquor Commission hearing. Ms. Conforti said she did a cost center analysis and basically, the Village fees have reflected the actual administrative costs involved. Chairman Brown noted that for many years the Village did not charge any fee to cover administrative costs. Ms. Conforti agreed and said that at that time it cost the Village more to conduct a hearing than the licensee would lose in revenue if found guilty.

Ms. Conforti asked if the Commission wished to set a specific dollar amount to cover administrative costs for all types of hearings or is they wished to set different amounts for each type of hearing. The previous Ordinance allowed a fee of \$525.00 to cover administrative costs for a disciplinary hearing for a failed control buy. Chairman Brown and other Commission members suggested that a fine be charged for any type of disciplinary hearing.

Mr. Julian stated that his vision of the Commission is one that welcomes restaurants and good businesses to Downers Grove as long as these establishments abide by Village rules. He added that he feels it is appropriate for the Commission to be tough on violators. Mr. Julian said he believes that this is the attitude he and the other Commission members would like to represent.

V. NEW BUSINESS

Ms. Conforti distributed a revised notice of hearing; however, she said it may need to be revised again as the ordinance is amended with regard to administrative fine provisions

Ms. Conforti said there will be a meeting next month.

Ms. Conforti said she wanted to get the Commission's opinion concerning a floor plan from a licensee who is planning to move into the former Best Szechwan Restaurant. She pointed out that in the upper left-hand corner of the floor plan for the restaurant there is a bar and several small tables. She asked if the Commission would consider the entire area part of the bar area, or just the bar itself. Mr. Julian said he would consider just the bar itself. Chairman Brown said he thought it would depend on whether or not food is served at the tables in that area. Ms. Conforti said food is served in the entire restaurant.

Mr. Julian said the Ordinance specified that for a Class "R" license, bar seating should be no more than 20% of the total restaurant seating. Chairman Brown asked the total seating capacity of the restaurant. Ms. Conforti said there are close to 100 seats, including the bar. Although the Class "R" license requires that no more than 20% of the total seating be bar seating, the Ordinance does not define what constitutes bar seating. Ms. Conforti asked if the Commission considers bar seating to be only the barstools at the bar or if it would include high tables in the area of the bar. The Commission members said they felt bar seating would be seats at the bar

itself, not seating at tables in the area of the bar.

Chairman Brown asked what type of restaurant it would be. Ms. Conforti said it would be similar to a Houlihans or Bennigans.

Ms. Gerloff asked if this application would be ready for the February meeting. Ms. Conforti said she was not sure if the applicant would have the necessary paperwork completed at that time.

VI. OLD BUSINESS

Ms. Gerloff noted that the Chamber of Commerce agreed with the Ordinance changes defining requirements for establishments that sell packaged alcohol. Ms. Conforti and Attorney Blondin explained that although the amendment has already been workshopped, it would have to be presented again for Village Council approval. Mr. Julian asked if the Council had any questions about the amendment. Ms. Gerloff said one of the Commissioners wondered why there was no square footage requirement to qualify for a Class "B-2" liquor license. Ms. Petrarca and Ms. Conforti said it was because of the Downers Grove Wine Shop. Ms. Gerloff said that Commissioner Sisul's main concern seemed to be the use of the words "food, cleaning supplies, and health and beauty aids" instead of "sundries" in the draft ordinance. She added that he asked that the Chamber of Commerce review amendment before proceeding. Ms. Conforti said the Chamber of Commerce reviewed the draft ordinance and did not object to the language.

Mr. Julian noted that the Mayor rejected Riprock's request for additional hours for alcohol sales over the holidays. Ms. Conforti said she received calls from other licensees who were surprised and disappointed at the Mayor's decision not to grant these additional hours. Some licensees told her that they felt they lost business to establishments in other area communities that did have additional hours for alcohol sales.

Ms. Conforti said she received a revised floor plan from Trader Joe's and distributed a copy to the Commission.

Ms. Conforti said the keg tag materials have been distributed for the new year. Mr. Julian said after seeing the keg tags, he noticed that they come off rather easily. Ms. Conforti agreed, especially when they get wet. However, she said manufacturers and distributors do not like anything stamped on the kegs because it presents problems during the cleaning and recycling process. Ms. Conforti said Founder's Hill suggested using wire to attach the tags to the kegs.

Ms. Conforti distributed the record of DUI notifications for the year 2000. She noted that there were 34 general DUI arrests in November and 23 as of December 20th, which she said was particularly high. She added that several licensees have quite a few DUI's attributed to their establishments and they may want to consider bringing them before the Commission to discuss the situation.

Chairman Brown asked if there was any other way for the Commission to reprimand these establishments, because the licensees were aware that the Commission could not penalize them based on the number of DUI notifications they received. Ms. Conforti said there is no disciplinary procedure in the Ordinance for such cases; however, by asking the licensee to come before the Liquor Commission it gives them the opportunity to review their liquor-handling policies and suggest changes if appropriate. Ms. Conforti said after the owners of DuPage Inn came in to discuss a large number of DUI's attributed to them, they sent their employees to a training course.

Chairman Brown asked if they could charge a fee for administrative costs if a Court Reporter was present during the DUI hearings. Attorney Blondin said court costs cannot be assessed unless a licensee is found guilty of an Ordinance violation. He added that the Village does not charge licensees with an Ordinance violation in such cases because there is no stipulation or first-hand testimony available. Mr. Blondin said, although the Village cannot impose a fine in these situations, requiring licensees to come before the Commission at least lets them know that the Village is watching this issue.

Ms. Conforti said Steven's Restaurant, at Woodward and 63rd Street, is relocating to Woodridge. However, the owners plan to keep the establishment in Downers Grove and remodel and reopen it as a pizza/Mediterranean style restaurant. She said they indicated that they would probably be applying for a license within the next few months.

VII. COMMENTS FROM PUBLIC

None.

VIII. ADJOURNMENT

MR. JULIAN MOVED TO ADJOURN THE MEETING. MR. KEENLEY SECONDED.

The meeting was adjourned by acclamation at 8:57 p.m.