

DRAFT

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

January 3, 2002

I. CALL TO ORDER

Chairman Mochel called the meeting to order at 6:30 p.m.

II. ROLL CALL

PRESENT: Ms. Gerloff, Mr. Julian, Mr. Kubes, Mr. Sandack, Chairman Mochel

ABSENT: None

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

OTHERS: Dimitrios Letsos, Officer Rau, Officer Rountree, Special Employee T.O., Court Reporter

III. APPROVAL OF MINUTES

MS. GERLOFF MOVED TO APPROVE THE MINUTES OF THE DECEMBER 6, 2001 LIQUOR COMMISSION MEETING AS PRESENTED. MR. KUBES SECONDED.

VOTE: **Aye:** Ms. Gerloff, Mr. Kubes, Mr. Julian, Mr. Sandack,
Chairman Mochel

Nay: None

Abstain: None

MOTION CARRIED: **5:0:0**

Chairman Mochel remind those present that the meeting is being recorded on Village-owned equipment. A secretary is present to keep minutes for the record and a court reporter is present to take the minutes verbatim.

IV. DISCIPLINARY HEARING

Chairman Mochel 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 Mochel asked Ms. Petrarca, if there a signed stipulation in this case? Ms. Petrarca replied yes.

"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. 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."

Chairman Mochel said that the first order of business is to conduct a disciplinary hearing for Delicacies, Ltd. d/b/a Downers Delight Pancake House located at 401 75th Street". The licensee has been charged with a violation of Section 3-25(a) of the Downers Grove Liquor Control Ordinance. He asked that any individuals representing the applicant step forward and be seated.

Delicacies, Ltd. d/b/a Downers Delight Pancake House, 401 75th Street

Mr. Letsos, owner and manager of Downers Delight Pancake House, came forward and was sworn in by the court reporter.

Ms. Petrarca said that 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 person under the age of twenty-one (21). Ms. Petrarca said 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. Delicacies, Ltd. d/b/a Downers Delight Pancake House, 401 75th Street, Downers Grove, Illinois, is the holder of a Class B-1 Liquor License #46-90601, 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 December 3, 1993.
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 4:50 p.m. on November 28, 2001, Downers Grove Police Officer Rau and Downers Grove Police Officer Rountree observed special employee T.O. of the Downers Grove Police Department under the age of twenty-one (21), whose date of birth is September 11, 1984 (making him 17 years old), enter Downers Delight Pancake House located at 401 75th Street, Downers Grove.
4. The special employee was seated at a table in the restaurant and waitress Esmeralda Garcia, whose date of birth is April 24, 1976, asked him for his order.
5. The special employee ordered a Miller Lite, while Officers Rau and Rountree observed him.
6. That Ms. Garcia asked the special employee for identification.
7. The special agent produced his valid Illinois driver's license indicating his date of birth as September 11, 1984, and reading "Under 21" in red letters on the face of the license.

8. That Ms. Garcia took the identification to show to the manager Rita Oakley.
9. That Ms. Garcia returned to the table with the identification and served the special employee a Miller Lite beer.
10. Officers Rau and Rountree who witnessed the events in paragraphs 3 through 9, identified themselves to the manager Rita Oakley and advised that the delivery of an alcoholic beverage had been made to a minor.
11. That Ms. Oakley advised the officers that she was also to blame for the incident as Ms. Garcia came to her to confirm the age on the identification and she advised Ms. Garcia to serve the special agent.
12. Ms. Garcia 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.
13. The Officers advised 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 Mochel accepted the signed Stipulation of Facts as Village Exhibit #1.

Mr. Letsos acknowledged that the violation did occur as stated in the stipulation. Alcohol was served to a minor. He said that he operates a family restaurant and he very seldom has young people come in alone and order an alcoholic drink. Mr. Letsos said that revenue from the sale of alcohol is less than five percent (5%) of his total revenue.

Mr. Letsos said he instructs his employees to card everyone who orders alcohol. He said if there is any question about the ID presented, he asks for a second or on occasion a third form of identification. Mr. Letsos said that in this case the waitress was not sure if she should serve the individual so she took his driver's license to the manager on duty for verification. Mr. Letsos said he was sorry the incident occurred.

Mr. Sandack asked Mr. Letsos if the employees involved in the violation were still employed at the restaurant. Mr. Letsos replied yes. He added that he reminds his employees everyday to card everyone before serving alcohol and to ask for two forms of identification. Mr. Sandack asked if there are signs posted in the restaurant reminding employees that alcohol is not be served to anyone who is under 21 years of age. Mr. Letsos replied yes.

Mr. Sandack expressed concern that two employees looked at the special employee's under 21 drivers license and did not notice the red lettering on the license and realize that the special employee was not old enough to be served. He asked how long Ms. Garcia and Ms. Oakley have been employed at the restaurant. Mr. Letsos said Ms. Garcia has been employed at the restaurant for three months and Ms. Oakley for two months. He added that Ms. Oakley is 47 years old and has considerable experience working in restaurants. Mr. Letsos said that he is at the restaurant

90% of the time seven days a week and he reminds his employees almost everyday to card everyone who orders alcohol. Mr. Sandack said that Mr. Letsos needs to have better employees at the restaurant when he cannot be there himself.

Mr. Kubes asked how long Ms. Garcia has been a waitress at the restaurant. Mr. Letsos replied three months. Mr. Kubes asked if Ms. Oakley is the liquor manager when Mr. Letsos is not at the restaurant. Mr. Letsos said Ms. Oakley is the manager of food and alcohol service when he is not at the restaurant. He added that the restaurant has only a service bar and alcohol sales make up less than five percent of the restaurant's total revenue.

Mr. Kubes asked why Ms. Garcia questioned the special employee's license when she looked at it. Mr. Letsos said that she was not sure if the special employee was over 21.

Mr. Kubes asked if Mr. Letsos has signs explaining the liquor policy posted in the restaurant and if he has a perpetual calendar posted so that employees can easily determine the date of birth that must be shown on a driver's license to indicate that the individual is 21 or over. Mr. Letsos replied yes.

Mr. Kubes noted that Mr. Letsos was not at the restaurant at the time of the violation. He asked if he was contacted immediately. Mr. Letsos said he was in Florida at the time and his sister-in-law and Ms. Oakley, who were in charge of the restaurant in his absence, telephoned him to inform him of the incident. He said Ms. Oakley was in charge on the evening that the violation occurred.

Ms. Gerloff asked Mr. Letsos if he documented the violation in Ms. Garcia's and Ms. Oakley's employee records. Mr. Letsos replied no. He said he posted the hearing notice in the restaurant and talked to both employees. However, he said he did not suspend the employees involved or take any disciplinary action against them because good employees are difficult to find. Ms. Gerloff suggested that Mr. Letsos put documentation of this violation in the employees' records for future reference.

Ms. Gerloff told Mr. Letsos that the fact that a manager was involved in the sale would be considered an aggravating circumstance when recommending a penalty for the violation. Ms. Gerloff said that if employees are to be left in charge of the restaurant, they must have proper training.

Ms. Gerloff and Mr. Julian noted that the Downers Delight failed a control buy in December 1997. They asked about the circumstances surrounding that incident. Mr. Letsos said the violation was the same, alcohol was sold to an individual under 21 years of age; however, different employees were involved.

Mr. Julian asked if Mr. Letsos is the owner and liquor manager of Downers Delight Pancake House. Mr. Letsos replied yes.

Mr. Julian suggested that Mr. Letsos revise his liquor handling policy or take other steps to prevent a reoccurrence of this violation. Mr. Letsos said it would not happen again. Mr. Julian asked if Mr. Letsos had learned anything from these two violations. Mr. Letsos replied that the manager made a mistake and he would try not to let it happen again.

Mr. Julian asked if Mr. Letsos ever considered requiring the employees involved in the violation to attend the hearing with him. He said he did think of it but decided not to have them attend. However, he now said it might have been good if they had.

Chairman Mochel asked what the employees said about the violation. Mr. Letsos said Ms. Garcia and Ms. Oakley said they were sorry and Ms. Oakley offered to pay the costs involved. Mr. Letsos said he did not accept Ms. Oakley's offer.

Chairman Mochel expressed concern about Ms. Garcia's and Ms. Oakley's training, as they do not appear to take the rules for alcohol sales seriously. Mr. Letsos said he told the employees that the violation could result in loss of his liquor license, resulting in a loss of business and possibly a loss of their employment.

Chairman Mochel asked Mr. Letsos if his liquor manual contains information about the red background on an under 21 Illinois Driver's' license. Mr. Letsos said it is not in his manual; however, he did tell his employees about it.

Chairman Mochel noted that the waitress was concerned enough about the license to consult the manager and yet neither employee noticed the red background on the under 21 license, which immediately indicates that the special employee is under 21 and not old enough to purchase alcohol. Mr. Letsos said the manager is very experienced as she has worked at other restaurants in Downers Grove and Chicago.

Chairman Mochel noted that neither employee involved in the violation was discharged. Mr. Letsos replied no. He said it is hard to find employees.

Chairman Mochel asked Ms. Petrarca to summarize. Ms. Petrarca said that Delicacies, Ltd. d/b/a Downers Delight Pancake House, located at 401 75th Street 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. This is the licensee's second violation in the past 5 years. Two aggravating circumstances in this case were that a red under 21 license was shown and a manager was involved in the incident, both of which warrant an additional day of suspension. Ms. Petrarca recommended that their license be suspended for three (3) days and that the licensee be required to pay an administrative fine of \$525.00 to cover the costs of conducting this hearing.

Chairman Mochel requested a motion as to whether a violation of Section 3-25(a) occurred.

MS. GERLOFF MOVED TO FIND DELICACIES, LTD. D/B/A DOWNERS DELIGHT PANCAKE HOUSE, 401 75TH STREET, 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. SANDACK SECONDED.

VOTE: **Aye:** Ms. Gerloff, Mr. Sandack, Mr. Julian, Mr. Kubes, Chairman Mochel

Nay: None

Abstain: None

MOTION CARRIED: 5:0:0

Chairman Mochel asked if the Commission wished to recommend a suspension.

MS. GERLOFF MOVED TO RECOMMEND THAT THE LICENSE OF DELICACIES, LTD. D/B/A DOWNERS DELIGHT PANCAKE HOUSE, 401 75TH STREET, BE SUSPENDED FOR THREE (3) DAYS AND THAT THEY BE FINED IN AN AMOUNT NOT TO EXCEED ONE THOUSAND (\$1,000) DOLLARS IN ADDITION TO FIVE HUNDRED AND TWENTY FIVE (\$525) DOLLARS TO COVER THE ADMINISTRATIVE COSTS OF THIS HEARING. MR. KUBES SECONDED.

VOTE: **Aye:** Ms. Gerloff, Mr. Kubes, Mr. Julian, Mr. Sandack, Chairman Mochel

Nay: None

Abstain: None

MOTION CARRIED: 5:0:0

Chairman Mochel said the findings of this hearing would be forwarded to the Liquor Commissioner.

V. OLD BUSINESS

Ms. Gerloff asked about the status of the Riprock's appeal. Village Attorney Blondin said that the appeal was filed in the 2nd District Court and it could take several months or one year before a ruling is made. Chairman Mochel asked what the next level of appeal would be if the 2nd District Court rules against Riprocks. Mr. Blondin said the next level of appeal would be the Illinois Supreme Court.

Ms. Conforti reviewed the contents of the informational packet sent to the Commission members. She said the disciplinary hearing for Fuddruckers has been rescheduled for March 7, 2002 at the request of their attorney.

Ms. Conforti said Zahoor Inc. d/b/a Downers Grove Food Mart has forfeited their liquor license and a Class "B-2" license has been issued to the new owner of the Downers Grove Food Mart, AA Mirza Enterprises. She said she helped Mr. Mirza revise his liquor manual and she included portions of the revised manual in the Commissioners' packets.

Ms. Conforti said she also included the list of DUI notification letters that were sent through the month of November 2001. She added that she has not received a list of the DUI's for December 2001.

Mr. Julian noted that Riprocks received a DUI notification letter. Ms. Conforti said that she and Officer Jim Nehls would conduct a training session at Riprocks on Monday, January 7, 2002. She added that Mr. Alex Gatzolis requested the training as a result of receiving DUI notification letters.

Mr. Kubes said that perhaps the Village should consider conducting training sessions for all establishments that violate the Liquor Control Ordinance. If the Commission wished to require training sessions for all violations of the ordinance, Mr. Blondin suggested that some type of formal alcohol training be used rather than having Ms. Conforti conduct the training personally.

Mr. Kubes asked how the control buys are conducted. Ms. Conforti explained that two police officers and an underage special Village employee enter an establishment separately but at the same time. The special employee, who appears to be alone, attempts to order or purchase alcohol while the police officers observe the transaction. Ms. Conforti said although the special employee is to appear to be alone, he is always being observed by the police officers accompanying him.

VI. NEW BUSINESS

Ms. Conforti said that there are no agenda items scheduled for the February, 2002 Liquor Commission meeting at this time.

Ms. Conforti said that Mr. Annivar Salgado, the individual who expressed interest in obtaining a liquor license for a comedy club that he wanted to open in Downers Grove, has discussed the matter with Steve Rockwell, Director of Economic Development.

Chairman Mochel expressed concern that a liquor license for a comedy club may lead to having a business, which is more of a bar than a restaurant. Ms. Conforti said that she told Mr. Salgado that Downers Grove liquor licenses require alcohol service to be supplementary to food service. Ms. Conforti said there might be alternatives to having the comedy club prepare food on the premises, such as having food catered by Roundheads, a nearby restaurant.

Mr. Julian asked about Mr. Salgado's previous experience. Ms. Conforti said Mr. Salgado is a comedian who she believes currently works for a non-profit organization.

VII. COMMENTS FROM PUBLIC

None.

VIII. ADJOURNMENT

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

The meeting was adjourned by acclamation at 7:10 p.m.