

City of Malden
Massachusetts
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Malden, MA 02148
Malden Licensing Board

James S. Conway, Chairman

Lee Kinnon, Vice Chairman

Andrew Zeiberg, Member

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MINUTES OF MEETING
MALDEN LICENSING BOARD
JANUARY 15, 2019

Lee A. Kinnon, Board Member

Andrew Zeiberg, Board Member

Captain Marc Gatcomb, MPD Liason

Sgt. Michael Powell, MPD Liaison

The meeting was called to order by Acting Chairman Kinnon at 6:30 p.m.

Motion by Andrew Zeiberg to approve Minutes from November 27, 2018 meeting

Motion passed.

The first item on the agenda was request for a continuance of the Violation Hearing for Papa's.

Motion by Andrew Zeiberg to allow continuance until February 19, 2019 meeting

Motion passed.

The next item on the agenda was the request for a one day license by North Shore Hispanic Association at 7 Washington Street on February 21, 109. Representing North Shore Hispanic Association was Gladys Rivera Rogers. She said that Anthony's will be catering the event and serving the beer and wine. It is a scholarship fundraiser.

Motion by Andrew Zeiberg to approve.

Motion passed.

The next item on the agenda was a request for an all alcohol restaurant license at 184 Salem Street by Emone Tofu, Inc. Representing the applicant was Attorney Daze Swift Lee, Brad Turner Manager, Jiyun Kim-owner and Gi Ok Lee-owner.

Mr. Kinnon stated that before they started their presentation he had serious concerns about the experience of Mr.

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Turner as Manager of Record. It was noted that Mr. Turner had no experience serving alcohol or managing a restaurant. He lists his employment as a carpenter. Mr. Kinnon asked if they would like to come back with a person who had experience or bring in a manager with experience to train Mr. Turner.

Attorney Lee said that the two owners have vast experience in the restaurant business and service of alcohol. One of the co-owners is also married to Mr. Turner.

Mr. Kinnon said that is great but the Board needs to see their resumes and vet them. We must do our research. You can't just tell us they have experience. We need it ahead of time not just verbally at the meeting.

Mr. Zeiberg said that if they move forward the application could possibly be rejected but if it is put off until the next meeting in February that would give them the time to provide the Board with the particulars about their experience and what training they have.

Attorney Lee requested to withdraw application without prejudice at this time and take it up at the February meeting.

Motion by Andrew Zeiberg to allow withdrawal without prejudice.

Motion passed.

The next item on the agenda was the application of Dishlav, Inc., 455 Lynn Street for an all alcohol package store. Present and representing the parties was Attorney Patrick MacDonald, Disha Patel – owner, Harsh Desai – manager of record and attending a few minutes late was Lav Patel – owner.

Mr. Kinnon asked Attorney MacDonald to make his presentation. Attorney MacDonald said that there are two principals, Disha Patel and Lav Patel 50% ownership each and Disha's husband Harsh Desai who would serve as manager of record. The Patels also have a package store license and own a Richdale in Andover, MA under LavDisha LLC. They have varied work history and he understands that experience is primarily important to the Board. They purchased the business in 2012 and Mr. Desai has worked and managed the Andover store for the past two years. He also works part time as a manager at Best Buy. The proposal if approved will be for an all alcohol license with all hard liquor stored behind the counter and only accessible by the cashier. The floor plan provided shows a storage area at the far wall that is furthest from the entrance of the store. They will install shelving in this area for wine and beer and also in the rear of the store are coolers that will also hold beer and wine. They have elected to put the beer and wine as far back in the store as possible. Again to reiterate all hard liquor will be behind the counter. All principals of the LLC and all employees have attended a 3 ½ hour seminar. It is not a TIPS online training but a Massachusetts approved in person training class. Mr. Desai has experience in retail sales along with all other employees. Attorney MacDonald respectfully asks the Board to approve this application.

Mr. Kinnon asked about the Richdale Store in Andover and asked about a violation in 2016 with a 10 day suspension for failing alcohol compliance. Disha Patel said they have never had any violation. It was determined that it was the Richdale in North Andover that had the violation and not the store the Patels own at 10 Railroad Street in Andover.

Attorney MacDonald asked his client Disha Patel if they have ever been disciplined and she answered no.

Mr. Zeiberg asked if they had spoken with the local City Councillor. Attorney MacDonald said his office had

reached out to Councillor Sica but she did not respond. Also, Attorney MacDonald said Chairman James Conway (who was not present at this meeting) had also reached out to her.

Mr. Zeiberg asked if they had reached out to the neighbors in the area and Attorney MacDonald said they had not. They had just sent the statutory abutter notifications.

Mr. Zeiberg asked about work schedule for Mr. Desai. Attorney MacDonald said he maintains 3 days now in each store but if approved, he would work at 455 Lynn Street location Wednesday through Sunday with Monday and Tuesdays off. Mr. Kinnon asked who would be in charge when he was not there. Mr. Kinnon was also concerned about the location and ease of access to main routes in Saugus, Revere, and Everett and also proximity to Route 1. Mr. Kinnon asked about security systems and cameras they maintain now. Mr. Desai said they had security cameras that panned outside and covered both entrances to the parking lot. They also have an ADT system too.

Mr. Zeiberg noted that Robinson's located just around the corner which is also a convenience store already sells beer and wine. Mr. Zeiberg asked how they would deal with issues and concerns about possible robbery. Mr. Desai said their Andover store that is also centrally located in an area with a train station and all types of traffic. Mr. Zeiberg confirmed that they just sell beer and wine in Andover. Mr. Zeiberg also asked if they will have snack foods at the Malden location. Ms. Patel said they sell snacks and lotter and dairy products no bread or donuts.

Mr. Kinnon showed the parties a photograph of the Richdale store in Andover and asked if that was their store. ~~They said yes. The photograph depicted several signs in the window. Mr. Kinnon said that in Malden they would~~ require clear window access. Attorney MacDonald said if approved they would abide by the Malden regulations.

Mr. Zeiberg said he is concerned that there are already a number of stores selling liquor in the vicinity. He mentioned there are seven (7) locations already in a small area. Namely, Robinsons, Quarrystone, M & M, Kappy's, Locke Liquor, Vernon's Liquors and Sunnyhurst. He would have a hard time with another one that would make 8 in a small geographic area. He feels another one is not needed at this time.

Attorney MacDonald said that Robinson's and Quarrystone are beer and wine and they don't offer hard liquor and Quarrystone services mainly people who live in that residential development. You have to go a little further out to a store with a full liquor license, such as Vernons or M & M or Kappy's. Attorney MacDonald does not dispute that here a lot but this will be the only full liquor license in the area.

Mr. Kinnon asks if there is anyone present in favor of this petition -- No response

Mr. Kinnon asks if there is anyone present opposed of this petition -- No response from the audience, however Mr. Kinnon reads into the record an email received by City Councillor Jadeane Sica from the ward where the store is located. It says "I as Ward 8 Councillor do not support a license at Linden convenience".

Motion by Andrew Zeiberg to deny application.

Motion passed

Findings of Fact by Board Members:

1. No public need
 2. Opposition of City leader
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The next item on the agenda is the application of District Kitchen for a Change of Manager, Change of Corporate

Name, Transfer of Stock/New Director. Present and representing District Kitchen were Attorney Chaz Fisher, Douglas Tran, owner and Stacey Zhang, owner and proposed manager of record.

Attorney Fisher stated that he stood before this Board several years ago when District Kitchen first applied for a license to them as B & B Caffe. Douglas Tran is also the owner and manager of All Seasons Table and Jackie Bouley was the previous manager of B & B Caffe. Jackie's husband has recently passed away and Stacey Zhang has been at what is now District Kitchen for several months. Stacey Zhang has also invested in this business. In addition T & Z Group, Inc. would be the new name of the licensee effective January 1, 2019. This change has been made for accounting purposes. Mr. Tran is there many nights and Stacey Zhang is there all the time. Attorney Fisher said that Stacey has had experience and was a manager at Tapanyakki Restaurant in Lexington for three years where alcohol was served. She is fully TIPS certified and that restaurant was managed in compliance with all laws. Attorney Fisher thanked Councillor O'Malley for his support and asked that the Board approve the application as submitted.

Mr. Kinnon asked about Ms. Zhang's resume. It does say she was a manager at Tapanyakki but it does not say that alcohol was served there. Ms. Zhang said they had a full liquor bar at Tapanyakki.

Mr. Kinnon said based on Douglas Tran is willing to do to make sure Stacey Zhang is fully trained will bear on his decision. At the last visitation by the Board Mr. Tran was present at the restaurant, District Kitchen. Mr. Kinnon asked Douglas if he would be willing to go on record to stay at District Kitchen for 2-3 months to make sure Ms. Zhang is fully trained. Mr. Kinnon wants to make sure that Douglas will be there 40 hours per week at District Kitchen. Mr. Tran said that he would do this.

Stacey Zhang also said that she received her Bachelor's degree in Holland and has worked at the Langham Hotel and also owned a frozen yogurt shop and owns Honey Honey Dessert Café on Main Street in Malden.

Mr. Kinnon said that a major concern for this Board is over-serving and making sure no serving of minors.

Mr. Zeiberg confirmed with Mr. Tran that he would stay on for 2 more months at 40 hours per week at District Kitchen and Mr. Tran said yes.

Mr. Kinnon asked if there anyone present in favor of this application with no response from the audience, however, an email from Councillor O'Malley was read into the record. It stated:

Dear Honorable Members of the Malden Licensing Board,

I am writing in support of the petition by District Kitchen for a change of stockholders and a change of manager. I write in support of the petition in part because Douglas Tran is a trustworthy business owner in Malden Center whose existing establishment, All Seasons Table, is one of the best restaurants in the region. Similarly Stacy Zheng is the founder and owner of Honey Honey Dessert Cafe which is another extremely popular and successful establishment which has enlivened Main Street.

The addition of Stacy Zheng to the leadership of District Kitchen will only further strengthen the deep bench of fine dining options in Malden Center. I fully support this collaboration and wish District Kitchen years of success and growth.

Sincerely,

Ryan O'Malley
Councillor Ward 4
City of Malden

Mr. Kinnon then asked if anyone was present in opposition of this application with no response from the audience.

Motion by Andrew Zeilberg to approve application.

Motion passed

The next item on the agenda was the violation hearing for The Island Restaurant. Present and representing The Island Restaurant was Attorney Andrew DeLorey of Everett, Chantal Qessa, Manager of Record, and Avlot Qessa, owner.

Mr. Kinnon asked Attorney DeLorey if they were in receipt of the Notice of Hearing together with police reports. Attorney DeLorey said they were. Mr. Kinnon asked if Attorney DeLorey wanted to make a presentation. Attorney DeLorey said he would like to move forward and hear from the Police Department as to what is going on and whether there are fundamental issues that need to be addressed to move forward.

Mr. Kinnon asked Chief Molis if he would like to speak. Chief Molis said that he would like to hear what is presented but he is aware that the party has expressed concerns to the Mayor's Office about the motivation for this hearing. Chief Molis would like to hear what is said now.

Mr. Kinnon recognized Captain Marc Gatcomb. Captain Gatcomb reviewed Police Report #18005547/1 dated December 8, 2018 in which a report written by Officer Kevin Law at 1am when a call for disturbance came in. Officers responded as well as a Street Sargent. When officers arrived they noticed a combination of blood, wine and broken glass. They proceeded to the bathroom area and were prevented by people around from getting to the bathroom. When they did get to the bathroom the man was evasive and gave a false name. Cataldo Ambulance came and checked him out. He gave a false name and Sgt. Fitzpatrick went down to lower basement and found an 8 year old sleeping down there. From the Board's perspective that may not be a violation of their liquor license but it is an egregious public safety issue. It is unacceptable and thank goodness nothing worse happened other than a bar fight. Captain Gatcomb would hate to think what could have happened if there were a fire. In any event, he will let the parties speak to why an 8 year old child was down there when they have the chance. The Street Supervisor observed the child down there. They were down there to review the security footage. Whenever a new licensee comes before the Board they always mention the importance of security cameras and he believes this was done when this licensee came before this Board for their license. It is for the safety of the business and the people. The employees and owners could not figure out how to operate the video from the security system. That is understandable; however, he made a few more attempts to try and view the video but after several days was finally referred to an IT person. They have detectives that are trained and they could have gone the next and viewed the video, however, for whatever reason the owners had they were not allowed to view it until they were able to meet with the owners IT person. It struck Captain Gatcomb as odd and there should have been as much cooperation as possible. Another concern of Captain Gatcomb is the Street Supervisor and both seasoned officers were concerned that they were being blocked by getting into the bathroom and there were several individuals there and the officers were not aware if the person had been stabbed, but for whatever reason the dialogue towards the officers were that he was not assaulted and he is okay. The police did eventually review the footage and Sgt. Powell will speak as to that.

Captain Gatcomb reviewed report 18005783/1 dated December 25, 2018 at approximately 1:00 a.m. Street Sargent Frolo took a ride by The Island he states he came by a municipal parking lot and observed about 100 people and as he turned on to Ferry Street he observed another 50 people inside and congregating at The Island Restaurant. Officer Law, who patrols that area, had already gone by and saw the large crowd and he was standing

by also. That is a proactive thing that they do in the area particularly for restaurants. The crowd was loud and not unruly and was disbursed about 1:10 a.m.

Captain Gatcomb has another report that was not previously provided to the parties. He gave the report to Attorney DeLorey who read it. It was basically a noise report. Attorney DeLorey said that is fine. It is a report filed December 29, 2018 at 12:40 am by Street Sgt. Michael Casaletto. As a point of reference, Captain Gatcomb, explained that Street Sergeants are officers of the Liquor Licensing Board. They are an arm of the Licensing Board. Sgt. Casaletto he responded to the establishment and when he arrived the music was extremely loud and impacted the surrounding area. He made contact with the owner and he was cooperative. A report was written on the noise violation. Mr. Kinnon asked if the doors were open and Cpt. Gatcomb said there was no reference to the doors.

Captain Gatcomb asked Sgt. Mike Powell to speak about the video footage of the incident. Sgt. Powell testified that he has supplemental reports 2 and 3 from the December 8, 2018 incident. Sgt. Powell testified that he saw Avelot Qessa on two occasions to follow up on December 11th and December 12th. He also spoke to Chantal Qessa about this. He addressed his concerns with Chantal about the 8 year old child sleeping in the basement and she agreed to rectify the problem. She then allowed Sgt. Powell to go to the basement. Sgt. Powell spoke to Avelot and spoke to him about this incident. He was finally allowed to meet with their IT man named, Sam, and at that time he was finally able to view the video. He observed two people in a physical altercation and it appeared one go to the ground with an injury. As a result of that it appears patrons are trying to assist the injured party. One of the initial concerns from the Police Department is that no call was received from the actual establishment. The 911 calls came from outside the establishment from parties with no connection to the Island. Captain Gatcomb brought up a concern about not being able to immediately view the video. He understands that not everyone is tech savvy but he thinks the problem is fixed and the video coincides with the reports. Captain Gatcomb adds that of the two 911 calls he listened to were one was from a woman who was not familiar with the establishment. It appears to him that this 911 caller was just a passerby who happened to notice the altercation in the establishment.

The floor is turned over to Attorney Andrew DeLorey. Attorney DeLorey states that he believes we are only talking about one incident here, the December 8th incident. He has seen the video also and he agrees with Sgt. Powell that the video coincides with story. There is one party that for some reason is inside and pushes one person and loses his balance and falls and hurts his head. The aggressor was the injured party. It is a concern and his clients have taken steps to alleviate an incident like this happening again. The video is grainy but it appears that whatever caused this is that one person had a bottle in his hand. His clients have now decided that if there is a VIP attendee who wants champagne service the glass bottle will remain behind the bar at all times. There are no bottles now other than behind the bar. Glassware is no longer being used. It is safer and moving forward that situation will not present itself again. As you can see the initial aggressor was the person who was injured. At the request of the Board at their initial approval the Board did suggest security cameras inside the establishment and his clients did as the Board suggested and had them installed.

As for the video, Attorney DeLorey, said that his client Avelot is going to law school and at the time his natural training as a lawyer kicked in and he had reservations about allowing the video to be produced. It is unclear as to whether he was required to produce the video. They contacted Attorney DeLorey and the delay in their response may have been due to his delay in getting back to them. To him it was appropriate for them to produce the video and they did. Sam is the IT guy and moving forward there will not be a delay in providing the video.

As for the child in the basement, Attorney DeLorey states that the mother was working at the restaurant and the father and child were in the basement waiting for her to get off her shift. It is a licensed portion of the premises and they were inside the managerial office. It will not happen again.

In terms of the incident that took place they are looking for a one off. Steps have been taken to resolve this moving forward and they will not have an issue like this again. As for the other two incidents he thinks that the nature of the officers and his client are trying to feel each other out.

Attorney DeLorey states that his clients were very upset that this incident took place. At the time of the incident, Avelot Quessa was approached by a police officer and put his hand out. The officer responded that he does not shake hands. Attorney DeLorey said that it came off wrong. They are Malden residents and own a Malden business. It left a bad taste in his client's mouth and he felt it was racially motivated. It left his client where they felt something is going on. Attorney DeLorey wants it on the record.

Sgt. Mike Powell said he would like to speak to that. Sgt. Powell states that he as an officer can assure them that this is not the case. There are some officers that never shake hands and sometimes he himself does not shake hands. He has kids and he does not want to carry illnesses back to his home. He can assure them that this is not the case. On a daily basis his concerns are about not wanting to bring anything home. Avelot Quessa said when there are two different races this is not a good case. He met with Kevin (Chief Molis) and told him about it. Avelot said he is a contributing member of the City and he serves on the Malden Cultural Council and he values diversity and he wants to feel it in action. Sgt. Powell shook his hand but when it is a different race and we see what is happening on a national level. Sgt. Powell said he understands his point of view but that it clearly not the case here. Sgt. Powell has worked for years with the officer involved and this has never been a problem. Sgt. Powell says that is not the case here in Malden. Sgt. Powell said this incident has nothing to do with race.

Attorney DeLorey said that if the officer had said "I'm sorry" I don't shake hands because I'm nervous and afraid to bring something home to my kids that would have made a difference. Sgt. Powell said you need to understand that officers may be in a climate where they don't know what is going on and there is someone bleeding and that is their main concern at that time.

Member Andrew Zeiberg told the parties that he understands that there is an issue here but that is not the issue we are to discuss tonight. We are getting off topic of what happened that night in regard to the video. We are here tonight because of the child in the basement, the incident and the delay in getting the video to the police department. Any other issue with regard to shaking hands there may be a reason for that but that is a different issue and we don't want to get off topic.

Attorney DeLorey said the drafting of police reports when there is no violation alleged is what he is concerned about. To have a report where it says it looks like a lot of people were in there is not sufficient. Is this standard procedure? Captain Gatcomb says he can attest to the fact that there are officers out there. We have officers who are trained and if they see something that is out of place they write the report. As he said before the Street Sergeants are arms of the Liquor Board. Any incident documented that has alcohol or a licensed restaurant involved a report is written. Audits are done by him and Sgt. Powell. As they may recall, Captain Gatcomb and Sgt. Powell both went together to The Island Restaurant and introduced themselves. Sgt. Powell said that every establishment that sells alcohol and has an incident or an officer notices something a report is written and sent to the Board members for review. That is the policy. Attorney DeLorey said that is a good practice but in the last two instances there are not allegations other than a lot of people or noise inside.

Mr. Lee Kinnon said he must say one thing. This Board gets police reports most every month. They are reviewed by the Board and sometimes the parties are not brought in and sometimes the Board determines that they must hear from the establishment. Then they are called in. If you had been here last meeting you would have seen three establishments here before the Board. The Board wants to stem these things as early as possible. In this case there were other reports after the initial incident and the Board felt it was appropriate to address them all at once. Since they were being called in for one incident it is the Boards feeling that the other incidents should also be addressed such as possible overcrowding or noise violations. In the case of the noise violation if it were

warmer weather the doors may have been open and that it not allowed. We look at these things and make decisions. We brought them in and included the other two incidents so that they could be addressed. Attorney DeLorey said in his opinion it is excessive and he thinks we are only here for one incident.

Attorney DeLorey says as to the incident that took place, the Board asked them to install cameras, they did so and as to the availability of the video, his clients are fully compliant and they are trying to get operable. If there are small things they need to address they will. This is a one-time incident and his clients have addressed it. He asks the Board to make no decision as to licensing at this time and move forward.

Mr. Kinnon recognizes Malden Police Chief Molis. It is not often that he comes to these meetings. The reason he comes tonight is that he was advised by the Mayor that Mr. Quessa raised the issue that the actions of the police were a deliberate attempt to allow race to drive the proceedings. In some of the allegations made to the Mayor's Office were directed to him. For a point of history, when these fine people opened their place one of the first things he did, as is his custom, he went and introduced himself because he lives in the City too. If Mr. Quessa recalls he shook his hand. He shook his hand, he welcomed him, they sat at a table and he gave him his cell phone number. They sat at the table, he looked at the menu, asked him about the food and he also told him that anyone opening up an establishment where liquor is served is going to come to a crossroad. With alcohol comes responsibility and potential problems. His memory is vivid about this. He told him about places where alcohol could become more profitable than food and that becomes a point in the business model where they have to be diligent. That is what he told him and he knows that one of his great officers, Officer Montana, went to visit them. Michelette Montana is also from Haiti. If Michelette were here now he would be disappointed. He was very hurt that they had made an accusation against him (the Chief). He is a police officer because the Chief asked him to become a police officer and take a job. He likes them lives in the City. He has an obligation to public safety. The last thing they want is for anyplace – he does not care who owns it or where they come from – to become a public safety issue. We are much better off having a discussion about bumps in the road rather than a gaping hole. We have in our careers been to places where people have been stabbed, where people have been shot. He can guarantee you that there was a slippery slope that these places have been on. This Board to its credit is a strong Board. He has been on the force many many years before he became Chief and they have been places where problems occurred predictably every weekend. This Board has done a very good job keeping them on the right path. He believes that it is more recent in the business model that the crowd is more a drinking crowd later in the night. He would say that is probably the case and that is probably why a bigger number leaving at 1am than 3 months ago and why the music is loud later in the night. That is not showing themselves in a bad way but the last thing he wants is for them to lose it all because alcohol sales and crowd issues result in that perfect storm.

The biggest reason he (the Chief) is here is he is very disappointed he was after he went to his (Acelot Quessa's) place, shook his hand, looked you in the eye, wished you well, gave him his private cell phone number and sat with him and two of his great officers Officers Montana and LaMoore told him how hurt they were to hear that this man would think that he would allow his race or ethnic background to influence what is going on here. He could not be more hurt. He wants to be very clear that this is an independent Board and they have two great officers here. That is not how we conduct business, that is not why he became a cop in 1980 and that is not why when he comes to your place it is for no other reason that he goes to everyone's place when they open. He was very hurt and disappointed that something that had nothing to do with what is going here has been brought up.

Attorney DeLorey asks what can be done to move forward so that his clients can operate.

Mr. Kinnon recognized Captain Gatcomb. Captain Gatcomb said one very important point is that it was not the owners of the establishment that called the police. Two calls came in on 911. He listened to both and there is one from a woman on her cell who he feels was a passerby as it is his impression she was not familiar with the location. So Number 1 should be - Call should come from the owners on a landline if possible. Number 2 – Do

they have a system in place for number of occupants – clicker – scan identifications – how do they know how many people they have in there – Attorney DeLorey said they have an app and also a clicker they use. They have 2 security staff on during Friday and Saturday nights – one inside and one outside. Captain Gatcomb thanked Chair Lee Kinnon for recognizing him.

Mr. Kinnon said that there is something he would like to see done. That is from the police report it seems like there was no one in charge helping the police clear the way to the person. The police felt like their access was being blocked. Mr. Kinnon assumes that the owners were there and asked them that. The owners said they were there. Mr. Kinnon said they need to greet the police and clear the way for the police. The manager or someone in charge needs it to be clear “do not impede the police from doing their job”. Chantal Quesa said that earlier when the police officer did not shake her husband’s hand they let the police do things on their own. The police obviously did not need their help. Attorney DeLorey said they want to make sure they are asking for the right person, Manager of Record, Owner? He wants to make sure they are looking for Manager of Record with the most knowledge. Mr. Kinnon said the manager of record needs to assert themselves to the police and assist them. Mr. Kinnon said the shaking of hands has nothing to do with the manager assisting the police to investigate.

Attorney DeLorey said his clients will agree to assist. Mr. Kinnon stated as to the tapes time is of the essence. It doesn’t matter if you’re going to law school or not. If there were more serious injuries the police would want to review the tapes to see what happened sooner than 2-3 days later. Captain Gatcomb stated that there was an ~~incident in the past where they had to seize the video evidence. He does not want that to happen here.~~ The police have staff that is knowledgeable in reviewing and accessing the security cameras. If the owners or manager does not know how to do it, the police can assist. It’s all a matter of asking. God forbid there was a knife, they police would have just taken the video into evidence. Attorney DeLorey said his client can’t forget his lawyer hat. Did they have a warrant? Sgt. Powell said that is why it is important the owners/manager know how to access it. Attorney DeLorey said they now know how to deal with it.

Mr. Zeiberg went back to the video. The issue with the video not being turned over it almost like two different stories. One was there was no IT guy but now Attorney DeLorey is saying it may have been a legal matter. Mr. Zeiberg states he is an attorney and former prosecutor and you (Attorney DeLorey) are an attorney. The issue becomes they at this point had nothing to hide so why did they not cooperate with the officer. Why did they not get the video faster. In general there was no 4th amendment and no issue of self-incrimination. He does not know what the owners were doing but they clearly did not call the police, the concern is that there was not a lot of cooperation that evening on their part. The Police had to wait 3 days to view it. He does not understand why it took 3 days and why the owners did not know how to use their equipment. The owners should know how to do this. Thank God it was not worse but if it was a robbery that evening they probably would have turned the video off quicker. It should not take 3 days said Mr. Zeiberg.

Attorney DeLorey again says that it relates to his client’s legal training. They are now familiar with the system. He brings up the fact that his client is trained to put his lawyer’s hat on. They called him and asked his counsel if they had to provide the video and Attorney DeLorey said it was in their best interest to give it over. Attorney DeLorey said it will not be an issue in the future. Ms. Chantal Quesa said she knows how to text, call and go online. The video has a password and their IT guy Sam operates it. When Sgt. Powell came in she said Sam was not there but she would reach out to Sam to get him there. It just took them time to get their IT guy Sam there. She never has to see their faces again because she will learn to use the system now. Captain Gatcomb said if they have the password in the future the police officers can access it. Captain Gatcomb said we have officers trained to do that. At a minimum just have the password.

Mr. Acelot Quesa said there was no intent. Mr. Kinnon said it is important #1 to call from a landline. We just want to minimize anything from getting worse. #2 - The manager must identify themselves and they can explain

to the police what the status and what happened and #3 – Learn to work the security video system. They need to take time and training to do that.

Mr. Zeiberg said the restaurant or restaurants in general should have a protocol listed of what to do in an emergency situation. Who is going to call police, who will wait outside for police to bring them to incident, witnesses in an area, etc. There should be something in place so something like this doesn't happen again. Hopefully this doesn't happen again. Next time, the police should not have to wait so long or have their progress hindered by anyone. Make it easier for the police when they get there.

Attorney DeLorey said the process in Malden is cumbersome. Malden leaves no stone unturned. The other cities don't have these requirements such as the food safety plan and other things. Malden is cumbersome in his opinion.

Mr. Kinnon said that a protocol list is not in our rules and regulations and that is not to say that they may be at a later date but this is a suggestion from the Board based on what we learned tonight. There is no requirement now for it.

Attorney DeLorey said he just represented the axe throwing in Everett and they needed a protocol.

Request from Board Member, Andrew Zeiberg to think about a motion for a five minutes. Recess requested and granted by Acting Chair Lee Kinnon. Note – no deliberations took place, Mr. Zeiberg just took 5 minutes to think things through. Public was welcome to stay in the room during this time.

Mr. Zeiberg asked Mr. Kinnon what types of motions could be made based on the information provided.

Mr. Kinnon said it starts off with suspend; roll back hours; suspend and suspend the suspension or roll back and suspend the roll back if no further instances in a certain period of time or no action taken.

Motion by Mr. Zeiberg to roll back hours to serve alcohol for seven (7) days to a closing time of 11:00 p.m.; however, this will be held in abeyance if no further incidents take place within the next ninety (90) days.

Seconded by Mr. Kinnon - Motion passed.

Findings of Fact were:

1. There was no phone call to the Malden Police Department from any owner/manager or staff at your establishment. It was determined by the testimony of Captain Gatcomb that the call to 911 about the disturbance came from a cell phone outside the establishment from a possible passerby.
2. The Malden Police were initially impeded by the patrons of the establishment from investigating the incident
3. There was a significant time lapse for the Malden Police to view the security tapes from the incident on December 8, 2018.
4. It was determined by the Board that you violated the following Rules and Regulations of the Malden Licensing Board (copy of Rules and Regulations were provided to you upon approval of your license and again in October, 2018 with your renewal application packet):

#3: No licensee shall permit any disorder, disturbance, or illegality of any kind, in or on premises; Licensee is responsible whether present or not.

#5: No disorder shall be allowed.

#10: Premise is subject to inspection and MPD Officers shall not be prevented from taking appropriate action in or on the premises

#24: No person shall hinder, refuse or delay to permit entry or refuse to provide information.

Attorney DeLorey asked for clarity purposes what exactly is the decision -- Mr. Kinnon said this is a 7 (one week) day roll back of hours to 11:00 p.m. but that roll back is suspended pending no further incidents for ninety (90) days. Mr. Kinnon said if there is an incident within the 90 days and it is determined they did everything right then the roll back will still be suspended.

Captain Gatcomb suggested a detail on Friday or Saturday nights. The owners said they have sent detail requests but because of the National Grid issue there were none available. Captain Gatcomb said that has been resolved and they should put in a detail request a week in advance. If they have a large party call ahead and if they can't get a detail they could have a patrol car out at 1am if it is not a busy night just to watch over. Captain Gatcomb said we are here to help. Just give us a call.

This portion of the meeting concluded.

The Board discussed the next meeting in February. Notices will be sent to Papa's and Pearl Street Station to attend the February meeting for violation hearings.

Meeting adjourned at 8:30 p.m. Next meeting will be February 19, 2019.

Submitted by:

Diane M. Anthony, Clerk
Malden Licensing Board
Minutes Approved by:




