

CAMBRIDGE LICENSE COMMISSION HEARING

CITY OF CAMBRIDGE

IN RE: LICENSE COMMISSION DECISION HEARING

LICENSE COMMISSION BOARD MEMBERS:

CHAIR ANDREA JACKSON

POLICE COMMISSIONER ROBERT C. HAAS

STAFF: EXECUTIVE DIRECTOR ELIZABETH LINT

AT: Michael J. Lombardi Building
Basement Conference Room
831 Massachusetts Avenue
Cambridge, Massachusetts 02139

DATE: May 1, 2014

TIME: 10:09 a.m.

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P R O C E E D I N G S

May 1, 2014

EXECUTIVE DIRECTOR ELIZABETH LINT: Good morning. This is the License Commission Decision Making Hearing, Thursday, May 1, 2014, it is 10:09 a.m. We are in the Michael J. Lombardi Building, 831 Massachusetts Avenue, Basement Conference Room.

Before you are the Commissioners: Chair Andrea Jackson and Police Commissioner Robert Haas. The Chief is unable to be here this morning.

The only matter on the Decision Making Hearing was continued from April 8, 2014 Tigers and Bears, LLC, doing business as Tory Row.

CHAIR ANDREA JACKSON: Please come forward.

Good morning. Can you state your name for the record and spell it for the record.

CHRIS LUTES: My name is Chris Lutes,
L-U-T-E-S.

CHAIR ANDREA JACKSON: L-U-T?

CHRIS LUTES: E-S.

CHAIR ANDREA JACKSON: Thank you.

So we continued this matter from our
April 8 hearing, I believe. Is that correct, Ms.
Lint?

EXECUTIVE DIRECTOR ELIZABETH LINT: Yes.

CHAIR ANDREA JACKSON: In terms of you
looking to change your wine and malt license to
an all alcohol beverage license, I received
correspondence that you sent in that was dated on
April 18, 2014, received by us on April 22, which
went through the litany of you trying to inquire
about obtaining an all alcohol license that was
available on the market.

CHRIS LUTES: Yes.

CHAIR ANDREA JACKSON: Do you have

anything you would like to add to the letter?

Any comments you would like to make? Or --

CHRIS LUTES: The only thing I would add, and I don't have my copy of the letter in front of me, is, I don't know if I made it clear what we thought a reasonable amount to pay would be to upgrade our license or get an all alcohol license for an establishment of our size, which is 80 seats. And we were -- in my discussions, I only had one opportunity to let the potential seller know that we were -- that our ballpark was between -- you know, we were looking for the \$50,000 to \$75,000 range, which was well out of the asking price of these licenses that all have been obtained years ago and were also licensed for over 200 seats, and thus a significantly higher price, the \$200,000 to 300,000 range.

CHAIR ANDREA JACKSON: I know our office had contact with Marvin Gilmore (phonetic). I

know that he was specifically noted in your letter.

And Mr. Gilmore related to the License Commission staff that the offer that was made to him was more along lines, I believe he said it was \$5,000.

CHRIS LUTES: That's a mistake on his part. It was \$50,000. And he said that he wasn't willing to go under \$200,000. He was asking \$220,000.

Honestly, I would never offer \$5,000 for an all alcoholic license. That's less than the annual fee for the license would be.

No offense to Mr. Gilmore, but he seemed to be in and out of the conversation. He's not a young man.

CHAIR ANDREA JACKSON: So, again, I think I related my concerns from the last hearing that you've received -- let me go back to my notes --

two free all alcohol licenses previously, and the wine and malt that you currently have for Tory Row was free as well, and that was issued in 2007, although you didn't open until 2009. The two free all alcohol for Middlesex, that was issued in 2004, Miracle of Science in 1991. And then you have the one paid for wine and malt, the Cambridge one, that was paid for in 2002, is that correct?

CHRIS LUTES: That's correct. I would like to remind you that when we got the Miracle of Science, as well as the Middlesex license, that was when Cambridge had capped zones and our location was not in a capped zone, and it was -- the only option was to come here and apply for a license.

We came in and said, How do we go about getting a license? And the License Commission said, Oh, you're not in a capped zone, just apply

for it. And that's what we did.

CHAIR ANDREA JACKSON: And I recognize going back and reading through the transcript that when you came before the Board back in 2007 for Tory Row, there was initially a lot of conversation about an all alcohol license at that hearing.

And then somewhere towards the end of the hearing, and then at the Decision Making Hearing is when the discussion turned towards the wine and malt, is that your recollection?

CHRIS LUTES: Yes, correct. At the time it was, if I'm not mistaken, a big deal for the Commission to be issuing a new license in a capped zone, which is still, I think, a capped zone time, and you weren't able to move licenses into a capped zone.

And so the Commission thought that it would be easier to start with a malt and beverage

license and it was left, start with a malt and beverage and come back to us after you've shown that you can operate that responsibly in the capped zone.

CHAIR ANDREA JACKSON: Okay.

CHRIS LUTES: And that was why we came back a month ago having operated without incident for five years.

CHAIR ANDREA JACKSON: And my concern is not -- certainly not the way that you run your business. So please don't take it that way. I don't have any concerns in terms of the way you have served alcohol or wine and malt at this establishment or any of your other establishments.

My concern is really that thinking you were fortunate to receive the license you have now that was a free wine and malt in terms of it being your third free license. So that's my

concern.

And I think I'll hold any additional comments I have and see if the Commissioner has any.

POLICE COMMISSIONER ROBERT HAAS: I had the opportunity to read the minutes of October 23, 2007. I just wanted to make sure that my recollection was correct. And I know that you and I had a little bit of a difference in terms of recollection.

There was a lot of conversation, as the Chair indicated, relative to your application for an all alcoholic license. The concerns were primarily, according to the minutes, and the way I remember it, there were some alcohol -- all alcohol licenses that were available on the market at the time, and I think what the Commissioner was trying to do was suggest that because that there wasn't a wine and beer license

on the market at the time, that that might be your better option in terms of applying for an all -- for a beer and wine and malt license at the point in time, and there was some conversation back and forth and Mr. Scali kind've said in the minutes, You're not hearing what I'm saying. And I think you both, you and your partner, both realized, Mr. Pacheco (phonetic) at the time, recognized the fact that unless -- while there was still licenses available on the market, that the License Commission was not in a position to issue you an all alcoholic license at the time. Again, you were in a capped zone, you were in Harvard Square, and the suggestion was, and I think you took the Commission up on the suggestion, that maybe you want to think about applying for a beer and wine license, which you did. There's no representation in the minutes that by applying for the beer and wine license

that that was the first step towards moving towards now applying for an all alcoholic license going forward. I just want to make sure. Because I know that was your recollection at the time but that was not suggested.

CHRIS LUTES: We applied for the all alcohol license and it was in the process of the meeting that Mr. Scali suggested it had might be easier for us, right, for the Commission to issue a wine and malt beverage versus an all alcohol license.

POLICE COMMISSIONER ROBERT HAAS: Essentially because it was not on the market at that point in time.

CHRIS LUTES: That was not clear to me. But I don't doubt that may have been the case.

POLICE COMMISSIONER ROBERT HAAS: Yeah. So I think my concern is still consistent with what they were in 2007, while there were still

available, all alcoholic licenses available on the market, rather than issuing one and undermining the value of those licenses, that you really need to do some due diligence with respect to trying to see if you can purchase one as opposed to obtain one, or come back to us at a time when there's no alcohol license available on the market.

Again, I'm a little bit reluctant to take one license you have already been granted as a no-value license, take it back in and issue another one when there's still available alcohol licenses on the market.

CHRIS LUTES: Well, the only one legitimately available right now is the Western Front license and he's firm at \$200,000. He's asking 220. He said he would take 200. It has only been six months and that's really what he's looking for, and for 80 seats, that's absurd. I

didn't actually offer. I said I was in the \$50,000 range and he said that we are miles apart. And that's where that was left.

I don't know what is a fair number for 50 seats. Economically that wouldn't make sure. We won't recoup that within the term of our lease and even if we were to extend it ten years, perhaps not.

That license that he's selling he obtained, he told me, ballpark, \$100,000, 30 years ago and has been able to amortize the cost of that license over 30 years. This is just -- it is just an asset, a former asset, of his business now. And at some point, the City of Cambridge issued that license at no cost to someone, you know.

I mean, these licenses that are being sold now for hundreds of thousands of dollars were at some point were just granted as we had

originally got our Miracle of Science license, for example, and when the City instituted capped zones, that necessarily created a market for the licenses to be traded.

POLICE COMMISSIONER ROBERT HAAS: There's always value licenses because the stipulation for a no-value nontransferable license is that you can't use it for pledges and you can't use it for the value of the establishment. So there's two distinctions of licenses here. One that somebody has purchased a license and it has value associated with it, which can be used as collateral or to secure loans.

CHRIS LUTES: The value is based on market, correct, what people are willing to pay --

POLICE COMMISSIONER ROBERT HAAS: Right. Right.

CHRIS LUTES: -- for that license.

And there's some out there for a long time that haven't been used and also haven't been bought, and in particular, it's the ManRay license I spoke to the owner there. I don't recall his name now. And he sort've laughed at me and he said that he plans on using the license even though he hasn't used it for over two years, and he was referencing the most recent transaction in Harvard Square where the all alcohol license went for \$300,000 or more at the Tasty Burger, I think he said.

And that if he ever were going to sell it, that's what he would be looking for. Again, it is a license that he could use for a restaurant that has over 200 seats. And that's prohibitive for anyone running a small business like ours with only 80 seats.

POLICE COMMISSIONER ROBERT HAAS: Okay.

CHRIS LUTES: If there were a reasonable

size license, if there were an all alcohol license in that 80-seat range, then I think the market value would be in the \$50,000 to \$100,000 range and that's something we would be willing to do and we could finance.

But a bank is not going to lend us that kind of money to take a license that's worth \$300,000 and use it in a place that uses it less than that. It's sort've crazy.

You know, I question also the City's responsibility to maintain the value of these transferable for sale licenses. The market is held up by what people are willing to buy and sell them for and the current owners at this point are just, you know, they have -- all the ones on the market have been used for a long period of time, they've clearly gotten their value out of them, and now they are trying to cash out on their way out with the license. And

it's -- I think it is an impediment to business.

CHAIR ANDREA JACKSON: Can I ask why you waited this long to upgrade?

CHRIS LUTES: Sure.

We waited because we have been busy operating our current restaurants and it was only in the last year and a half that competition in our neighborhood has changed and made it a little more difficult for us and we went back.

CHAIR ANDREA JACKSON: When you say "difficult for us," what do you mean?

CHRIS LUTES: For our business, you know, now that there are all these all alcohol licenses around us and we are just trying to even the playing field.

It was originally part of our business plan. We have done okay without it. But it's definitely a handicap that we would like to overcome.

CHAIR ANDREA JACKSON: So you think your business would improve if you had an all alcohol license?

CHRIS LUTES: Definitely. Not to the point where it would just justify a \$200,000 expense. But I think it could effect our business 5 to ten percent.

Honestly, we are trying to serve our customers, you know. We have regular customers who come to us for food and go across the street to have a drink. I believe we submitted -- did we submit a petition that we had?

EXECUTIVE DIRECTOR ELIZABETH LINT: Yes.

Definitely not all from Cambridge.

(Forwarding petition to Chair.)

CHRIS LUTES: May I ask a question?

CHAIR ANDREA JACKSON: Sure.

CHRIS LUTES: Is your concern -- I guess you said your concern is the fact that it would

be another free license for us as opposed to paying for one. Is that on principle or is that because you care about maintaining the value of the existing licenses that are for sale?

CHAIR ANDREA JACKSON: I would say both, quite honestly. It is the fact that you have received three. It would be, for me, and again, I'm only speaking for myself, if you were coming before the Board and you didn't have any other restaurants that had an all alcohol license or hadn't received any other free license from us and you were coming before us for the first time, I think my take may be a little different.

I think my concern and feeling is, though, and even looking through the minutes, the conversation then was kind've like this is a gift to you, the fact that this is your third free license that you've received from this Board.

So my concern is that you've received

this wine and malt license that was free, and now in turn you are looking to upgrade to an all alcohol. And I am concerned you received two already -- well, three with the wine and malt.

CHRIS LUTES: Right. That would still be three. And it would be over a 23-year period of doing business in the City.

Now, I don't think we're stepping on the toes or getting in the ways of other people trying to operate businesses. We're a small business group and we love Cambridge. We like working in Cambridge, and this is just natural growth, and I don't feel it would be a gift of the Commission. I feel it would be the Commission doing its job and due diligence to make sure that we are good operators, responsible operators serving the public need, which I have argue that we have done very successfully in the past 23 years, and that if anyone -- you know, we

come and sit before you as a proven success and as good operators and responsible corporate citizens.

POLICE COMMISSIONER ROBERT HAAS: The principle reason for creating a no-value nontransferable license was to give small businesses an opportunity to get started.

Like you said, you are well established in the City. I differ a little with the Chair. I don't see it as a gift. I just think what was happening and I think it's consistent with my thinking today, was at the time when you came to apply for an all alcohol license in 2007, there were licenses, those were licenses on the market. And what we were saying to you, an option would be to look at the wine and malt license because there was none available, and the Commission, I think, at that point in time was more inclined to want to support you in terms of your application

because they -- the License Commission at the time couldn't see going ahead and giving you a no-value nontransferable all alcohol license when there were some on the market. And the only pathway that appeared to you at that point was a wine and malt license.

So I think that was the concern at that time. I still have that concern now. And I'm not saying that -- I appreciate your comments relative to not being able to negotiate a value for license, but I think we're still kind of in the same position. We got some all alcohol licenses available on the market, and I think what we are encouraging you to do, if you want to upgrade, your best option at this point in time since you have been in business for a long period of time, and I'm not disputing you run a good business, I concede that, but I think at some point, once you have established yourself, then

you kind of move into a different realm with respect to being able to participate in that free market, if you will, of supply and demand with respect to licenses, and to now turn around and give you a new all alcoholic license when there's some on the market, I think it undercuts the value on those licenses.

CHRIS LUTES: Yeah. I did some serious work after our -- the April 8 meeting, and there's really only one license that is legitimately for sale right now.

I talked to absolutely -- I talked to all the brokers. I spoke to Chris. He told me the licenses that weren't being used. I heard about other licenses through a lawyer. I talked to the Uno's people who already have a deal.

All these licenses that are for sale are for large, you know, they paid a fair amount for the license because they were -- this is not, I

guess, the way it is now, but there was a premium for a larger license, a license that could seat more people. The only one that is for sale now the asking price in excess of \$200,000. With a wink and nod he said he would take \$200,000. It is a license that doesn't make economic sense for a business of our size. We would be irresponsible to our investors to make a decision like that. It doesn't make economic sense.

Would we benefit from an all alcohol license?

Yes, we would to the tune of five, maybe ten percent if we were lucky. And all we're trying to do is be a better restaurant and serve the public better. If we were 200 seats, I would consider that price. That would make sense.

Like the deals that have taken place recently with these larger establishments. But there are no all alcohol licenses on the market now in that small realm.

Back in 2007, when we first came to you, there were again there were a couple licenses, in fact, there were a couple guys that had an all alcohol -- they had two all alcohol licenses, they were trying to combine their space and sell one. It was a profit-play move, but the asking price there was in excess of \$150,000 at the time and more seats.

In any event, I understand what you are saying, there's no license out there that matches our size right now. For me to get all alcohol, I have to pay \$200,000 and waste 150 seats on the license.

That's just money out the window that may never be recouped unless -- I have to trust that that value would be maintained going forward, which it may or may not. You know, there are people, as you've seen, that have held licenses that haven't used them for two years.

That is definitely not serving the public need and that's a -- when there's a capped market like this.

POLICE COMMISSIONER ROBERT HAAS: And I think if we had this conversation back in 2007 it would resound a little bit more because you were now trying to establish this business and you were kind of being unable to purchase an all alcohol license. And because of the state of affairs back then, it felt somewhat comfortable, but I know there was some concern, looking at the minutes, the number of no-value licenses you had already received, and again, our view of you is that you are kind of an established business because you have been able to open multiple restaurants, and this would have been your third, and yet, they still issued you that wine and malt license back in 2007.

And we are saying to you we are not

prepared -- the Commission is not prepared to issue an all alcohol license when there are other licenses on the market.

The fact you have a license now, you are in a different starting point. It is not like you are coming to us and saying, Jeez, I have no alcohol license, I can't purchase the license because the values are too extraordinary. But you do have a license and you are asking us to turn your one license in and get another license.

CHRIS LUTES: Keep the number the same and just allow us to serve a few more products that we can't currently serve in order to have a level playing field within a very competitive market which is Harvard Square.

Back then there was a cap on the zone and by issuing that license it was a very big deal, if I recall, at the time because it was a new

issue in a capped zone. If we weren't the first, we were one of the very first, and I remember it was a tricky business the Commission. They were feeling that out.

And I understand what you are saying about that it may not have been a beer and malt license, wine license on the market at the time, but it was also not considered as big a license and it was sort've like a half a step into the market by issuing that versus all alcohol.

POLICE COMMISSIONER ROBERT HAAS: Right.

CHAIR ANDREA JACKSON: If I can clarify my comment. The comment about the license being a gift to you was not my comment. It came from the February 24, 2009 hearing. And that was a comment by the then-Commissioner Mr. Scali. So I just want to clarify that was not me saying I thought it was a gift. That was a comment that was made by former Chairperson Mr. Scali. I

wanted to make sure I clarified that for the record.

CHRIS LUTES: Okay.

CHAIR ANDREA JACKSON: So anymore conversation? Are you prepared to --

POLICE COMMISSIONER ROBERT HAAS: I think we are.

CHAIR ANDREA JACKSON: Based on what I've read, testimony received, I'm not prepared to issue an all alcohol license, and I make a motion that we deny the application for an all alcohol license.

POLICE COMMISSIONER ROBERT HAAS:
Seconded.

CHAIR ANDREA JACKSON: All in favor signify by saying aye.

POLICE COMMISSIONER ROBERT HAAS: Aye.

CHAIR ANDREA JACKSON: So we have denied it. You do have appeal rights and the appeal

rights will be in the decision letter sent to
you.

CHRIS LUTES: Okay.

CHAIR ANDREA JACKSON: Thank you.

There's nothing else on our agenda, correct? I
make a motion that we adjourn.

POLICE COMMISSIONER ROBERT HAAS: Second.

CHAIR ANDREA JACKSON: All in favor
signify by saying aye.

POLICE COMMISSIONER ROBERT HAAS: Aye.

(The proceedings were adjourned.)

CERTIFICATE

Commonwealth of Massachusetts
Norfolk, ss.

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