

Minutes for Lowell License Commission meeting, Thursday, February 11, 2016 at 6:30 p.m., City Council Chamber, 2nd floor, City Hall, 375 Merrimack St., Lowell, MA 01852

Present: John Descoteaux, Commissioner, Chairman, Commissioners Cliff Krieger, Kristen Hogan, Nancy McGovern, Terry McCarthy; and Captain Jack Webb of the Lowell Police Department, 1<sup>st</sup> Assistant Solicitor Ken Rossetti.

The Commission voted to approve the minutes for meeting of January 28, 2016 on the motion by Commissioner Krieger, second by Commissioner Hogan, with two (2) corrections, to wit: page 2, line 6, “on behalf of,” and page 3, line 13, “but could not obtain counsel.”

The Commission reviewed applications for special one-day licenses to sell/dispense malt beverages & wines only, or either one by Michael Lenzi of Lenzi Catering, at Lucy Larcom Park, and Arcand Drive, Winterfest 2016, for Friday, February 19, 2016, 12:00 p.m. to 11:00 p.m., and for Saturday, February 20, 2016, 12:00 p.m. to 11:00 p.m. Michael Lenzi was present. Mr. Lenzi stated there will be several beer and wine stations; if there is inclement weather, the concession will be at the JFK Plaza under a tent. The Commission, on the motion by Commissioner Krieger, second by Commissioner Hogan, voted to approve licenses for Michael Lenzi of Lenzi Catering.

The Commission opened the public hearing on the application by Phuong-Tuyen Nguyen, d/b/a Sizzling Kitchen, for a malt beverages and wines only restaurant license for premises at 478 Merrimack Street, one unnumbered exit door west side, first floor dining room, kitchen, 800 sq. ft.; basement for storage 340 sq. ft. Phuong-Tuyen Nguyen was present. The Commission reviewed and ordered placed on file the affidavit attesting to the mailing of the legal notice to abutters and to the Hellenic Orthodox Church of Lowell, the white postal slips, and green return receipts. Ms. Tuyen stated that she has manager experience working in a retail store for ten (10) years. Chairman Descoteaux opened the hearing for public comment. There was no one present to speak in favor of the application, and no one present to speak against the application. The hearing was declared closed, and the Commission, on the motion by Commissioner McCarthy, second by Commissioner Hogan, voted to approve the application by Phuong-Tuyen Nguyen, d/b/a Sizzling Kitchen, for a malt beverages and wines only restaurant license for premises at 478

Merrimack Street. The License Commission did not find that the granting of the above license would be detrimental to the religious activity of the Hellenic Orthodox Church of Lowell, 62 Lewis Street.

The Commission reviewed the application filed by Gary's Tipico, Inc., Gary De Los Santos, President, for an all alcoholic beverages restaurant license for premises at 26 Andover Street, one-story building, first and basement floors to be licensed, 1<sup>st</sup>: 2 rooms including kitchen, 1 entrance, 3 exits (2466 sq. ft.), basement: 1 room, 1 entrance, 2 exits (2340 sq. ft.), access to outdoor deck (1432 sq. ft.). The Commission voted, on the motion by Commissioner Krieger, second by Commissioner Hogan, to ratify the publication of the legal notice in the local newspaper for Friday, February 12, 2016, and to schedule the public hearing for Thursday, February 25, 2016 at 6:30 p.m. in the Council Chamber, 2<sup>nd</sup> floor, City Hall, 375 Merrimack St. The applicant is to notify abutters of the public hearing in accordance with M.G.L. Chapter 138, section 15A.

The Commission reviewed the application filed by Navigation Brewing Company, Inc., Robert A. Johnson, President, a Farmer-Brewery licensee at 122 Western Avenue, Lowell, for a "Farmers Series Pouring Permit" for premises at 122 Western Avenue. The Commission voted, on the motion by Commissioner McCarthy, second by Commissioner Krieger, to ratify the publication of the legal notice in the local newspaper for Friday, February 12, 2016, and to schedule the public hearing for Thursday, February 25, 2016 at 6:30 p.m. in the Council Chamber, 2<sup>nd</sup> floor, City Hall, 375 Merrimack St. The applicant is to notify abutters of the public hearing in accordance with M.G.L. Chapter 138, section 19C.

Commissioner McGovern recused herself from the hearing for Vannak Kann, d/b/a The Crown, due to a conflict of interest.

1<sup>st</sup> Assistant Solicitor Ken Rossetti explained to the License Commission the circumstances of a continuance request by Attorney Raymond Weicker on behalf of Vannak Kann. Vannak Kann was absent. Chairman Descoteaux recognized the appearance of Vannak Kann at 6:45 p.m. Mr. Kann stated to the Commission that his attorney has a conflict in appearing at tonight's hearing, and requested a special meeting of the License Commission either Wednesday or Friday. Chairman Descoteaux questioned Assistant Solicitor Rossetti about opening the hearing as scheduled without Mr. Kann having legal

counsel present. Commissioner Krieger stated the charges are serious; a delay of two weeks is unacceptable. Commissioner Krieger made the motion to move the hearing to Wednesday, February 17, 2016. The Executive Secretary questioned if the Lowell School Committee would be meeting in the Council Chamber on February 17<sup>th</sup>. Chairman Descoteaux stated the School Committee is scheduled to meet on February 17<sup>th</sup>. Asst. Solicitor Rossetti stated the License Commission has the discretion for a continuance of hearing on the serious allegations, and to convene a special meeting. Commissioner Krieger stated the License Commission meet in the Mayor's Reception Room. Commissioner McCarthy asked Mr. Kann about new counsel in the absence of Attorney Weicker. Chairman Descoteaux stated that two weeks ago Mr. Kann did not have legal representation, and the hearing was continued to tonight's meeting. Chairman Descoteaux stated concern that there are not repercussions for the License Commission if the hearing is held tonight. Commissioner Krieger reiterated his motion to continue the hearing to February 17, 2016. There was no second to the motion. Mr. Kann stated he wants legal counsel present. Chairman Descoteaux stated a continuance was granted, but due to the severity of the complaint, the Commission will proceed with the hearing. Mr. Kann repeated his request for the presence of counsel. The Commission opened the hearing on the allegations of misconduct by William M. Taylor, Superintendent of Police, dated January 8, 2016, regarding violations on December 27, 2015 that are charged against Vannak Kann, d/b/a The Crown, all alcoholic beverages restaurant licensee at 74 Middlesex St., to wit: (a) failure to maintain order and decorum in the premises, and in the immediately surrounding areas adjacent to the premises, Regulation 1.16 of the Regulations of the Lowell License Commission; (b) failure to notify the Lowell Police Department when any violation of law, disorder, or disturbance is taking place in the licensed premises, in violation of Regulation 1.20 of the Regulations of the Lowell License Commission; (c) failure to notify the Lowell License Commission of a police response to the licensed premises within 48 hours, Regulation 1.16 of the Regulations of the Lowell License Commission; (d) A.B.C.C. regulation 204 CMR 2.05 (2) No licensee for the sale of alcoholic beverages shall permit any disorder, disturbance, or illegality of any kind to take place in or on the licensed premises. The licensee shall be responsible therefore, whether present or not. Chairman

Descoteaux asked Mr. Kann if he wanted the complaint read. Mr. Kann stated he did. Chairman Descoteaux requested that Captain Webb read the complaint from the Superintendent of Police. At the conclusion of the reading of the complaint, Captain Webb introduced Detective Corey Erickson. Detective Erickson stated he had three video recordings, and one cell-phone recording of the altercations that had taken place inside The Crown in the early morning of December 27, 2015 to present to the License Commission. Chairman Descoteaux asked Asst. Solicitor Rossetti if the Commission should review the cell-phone video made available to the Lowell Police Department by a patron who was at The Crown on the morning of December 27<sup>th</sup>. Asst. Solicitor Rossetti stated the License Commission can choose to accept or not accept the cell-phone video. Each of the four videos was shown to the License Commission. Detective Erickson explained the number of fights/altercations, and stated further, that four gunshots outside were heard by police. Detective Erickson identified police officers seen on the video. Captain Webb stated that there were no calls made to the Lowell Police Department at the time of the altercations, nor was there written communication sent to the License Commission of a police response to The Crown within 48 hours of the altercations. Officer Dan Desmarais was questioned by Chairman Descoteaux. Officer Desmarais stated that he was outside The Crown when a female bouncer spoke to him, telling him that he better get inside because of the fights that were taking place at that time. Officer Desmarais went inside The Crown. Chairman Descoteaux asked Officer Desmarais if would estimate the number of patrons he saw inside. Officer Desmarais stated there were one hundred plus patrons in the rear of the establishment where the altercations had taken place and well over 200 patrons in total in the establishment. Commissioner Krieger questioned Officer Desmarais. Officer Desmarais stated that when he was entering the lights were on, people started to calm down, and patrons started to disperse. Commissioner Hogan questioned Officer Desmarais. Sergeant Prescott, in response to a question from the Commission, stated ten (10) police officers responded, every unit of the City was covering The Crown. State police and UMass Lowell police were covering other parts of the City. Chairman Descoteaux questioned Vannak Kann about the number of security he had working. Mr. Kann stated ten (10) security employees. Mr. Kann stated everything would be calm if he had a police detail. Commissioner Hogan

questioned the comment about detail police; there were 200 plus patrons. Commissioner Hogan asked when was last call. Mr. Kann stated last call was 1:30 a.m. Chairman Descoteaux questioned Mr. Kann about not filing the report. Mr. Kann stated he thought the police would notify the Commission. Commissioner Krieger stated you have to report . . . not good enough. Chairman Descoteaux stated unless the Lowell Police are there, something is going to happen . . . impression not enough security working . . . fights do happen. There was no call to Lowell police; no report to the License Commission. Commissioner McCarthy asked Mr. Kann if security is trained to call. Mr. Kann stated they are trained, but [altercations] happened so quickly. Mr. Kann stated he requested detail, but didn't show up. Commissioner Krieger made a reference to the number of incidents in the vicinity of 70 Middlesex Street. Chairman Descoteaux stated, upon review of the allegations of misconduct, there is no violation on number one [# 1] it is difficult to stop fights, you're attracting the wrong clientele; number two [# 2] yes guilty of the violation; number three [# 3] yes guilty of the violation; number four [# 4] goes with number one [# 1] no violation. There are violations for number two [# 2], and number three [# 3]. Chairman Descoteaux made the motion to suspend license for two (2) days. Commissioner Krieger seconded the motion. On a roll-call, Chairman Descoteaux voted yes, Commissioner Krieger voted yes, Commissioner Hogan voted yes, Commissioner McCarthy voted no. The vote was three (3) yeas, one (1) no, to suspend the all alcoholic beverages restaurant license granted and issued to Vannak Kann, d/b/a The Crown, for two (2) days. Commissioner Krieger made the motion for reconsideration of the vote to suspend license for Vannak Kann, second by Commissioner McCarthy. Commissioner Krieger stated the suspension should be more than two (2) days. Commissioner McCarthy made the motion for five (5) days suspension, three (3) days to serve, and two (2) days to be held in abeyance, second by Commissioner Krieger. On a roll-call, Chairman Descoteaux voted yes, Commissioner Krieger voted yes, Commissioner Hogan voted no, Commissioner McCarthy voted yes. The vote was three (3) yeas, one (1) no, to suspend the all alcoholic beverages restaurant license granted and issued to Vannak Kann, d/b/a The Crown, for five (5) days, three (3) days to serve, and two (2) days to be held in abeyance. Chairman Descoteaux stated the days of suspension the licensee is to serve are the following: Friday, February 26, Saturday,

February 27, and Friday, March 4, 2016. Commissioner Krieger stated the two (2) days suspension to be held abeyance is until March 1, 2017.

At 7:50 p.m., the License Commission opened the public hearing to consider the public need in accordance with section 12 of chapter 138, MGL, to decrease hours from 2:00 a.m. to 11:00 p.m. for the sales of alcoholic beverages by Vannak Kann, d/b/a The Crown, for premises at 74 Middlesex Street, during the calendar week (Sunday to Saturday). Vannak Kann was present. Captain Webb spoke to the Commission about police resources since 2013 have been to address The Crown nightclub, and the negative impact the business has had on the quality of life of neighborhood residents. Captain Webb cited the communication from William M. Taylor, Superintendent of Police, dated January 8, 2016, and the Department Intelligence Report, dated January 6, 2016. Superintendent Taylor wrote the following in said communication:

The Crown Nightclub has become a source of significant police attention, and has negatively impacted the quality of life of neighborhood residents since it opened in 2013. During calendar year 2015, on duty Lowell Police Officers have been taken from their assigned duties and posted outside of the Crown on 107 different dates during the early morning hours in an effort to forestall disturbances and violence by exiting patrons. During this time period, 10 disturbances have been reported, and 10 arrests have been made. Four of these disturbances have required the already present officers to call for additional assistance. Lowell Police Department records also indicate that in the two block area around the Crown Nightclub, calls for service have increased 129% since the club opened in 2013, with Priority One, or emergency, calls increasing 100% during the same period. The negative activity associated with the Crown Nightclub has had a significant impact on the allocation of police resources, as well as impacting the quality of life for neighborhood residents.

1<sup>st</sup> Assistant Solicitor Ken Rossetti advised the Commission that the public hearing is separate from the disciplinary action; public need is not a sanction . . . disproportional resources focus on the establishment; public input, to speak in favor of or against [reduction of hours]. The code violations [cited by City Building Commissioner] have been cured . . . [are] cause for concern. Chairman Descoteaux opened the public hearing to individuals in favor of the reduction in hours. There was no one to speak in favor; that portion of the hearing was closed. Chairman Descoteaux opened the public hearing to individuals in opposition to the reduction of hours. The first person to speak stated she was in support of the licensee keeping the hours as they are. The second person stated he thought a detail duty should be available for

certain events at The Crown, and was against the reduction of hours. The third person stated that he did not want a reduction. Vannak Kann presented a hand-written note, signed, from the owner of Garnick's Television & Music Co., 54 Middlesex Street, dated 2/11/16, which reads, in part "The Crown . . . They are wonderful people & are a credit to the neighborhood." The Commission ordered the communication to be placed on file. Chet Cheng stated he was in support of The Crown. Ann Marie Murray addressed the Commission about help for the owner of The Crown with his business. Chairman Descoteaux closed the public comment portion of the hearing. Commissioner Krieger stated concern, and appreciation for, the Lowell Police Department's Intelligence Report. Commissioner McCarthy cites the 107 times Lowell Police Department resources were called. Mr. Kann stated his request for one detail officer to appear. Commissioner McCarthy recommended Mr. Kann set-up a meeting with the Superintendent of Police. Mr. Kann stated he wanted someone there to help. Chairman Descoteaux cites serious problem last year at The Crown; police leave other areas uncovered; business owner is to know rules and regulations; need to re-invent The Crown, be a restaurant. Mr. Kann stated he has put everything into The Crown. Chairman Descoteaux stated to Mr. Kann that he is to visit [the Commission] in one month with [business] plan. Chairman Descoteaux made the motion to decrease the hours to 12:30 a.m., last call at 12:00 a.m., second by Commissioner Krieger. Commissioner Hogan requested to amend the motion to decrease the hours to 1:00 a.m., last call at 12:30 a.m. There was no second to amend the motion. Chairman Descoteaux requested a vote: Chairman Descoteaux voted yes; Commissioner Krieger voted yes; Commissioner Hogan voted no; Commissioner McCarthy voted yes. The vote was three (3) yeas, one (1) no, to decrease the hours to 12:30 a.m., last call at 12:00 a.m. The Commission, after further discussion, agreed to convene a public hearing on March 10, 2016 to ascertain if the public need warrants a change in the hours of operation for The Crown. Chairman Descoteaux requested Mr. Kann prepare a business plan for the License Commission to review at the public hearing on March 10<sup>th</sup>. The Commission closed the public hearing at 8:40 p.m.

Commissioner McGovern returned to the regular meeting at 8:40 p.m.

The Commission reviewed copies of communications from the Office of the State Fire Marshall regarding notice of violation addressed to the following all alcoholic beverages licensees as a result of inspections conducted January 21, 2016:

Back Page, 15 Kearney St., Lowell, MA 01852 – communication dated January 25, 2016

Portuguese American Center, 59 Charles St., Lowell, MA 01852 – communication dated February 1, 2016

Portuguese American Civic League, 512 Central St., Lowell, MA 01852 – communication dated February 1, 2016.

The Commission on the motion by Commissioner Krieger, second by Commissioner Hogan, voted to place the communications from the State Fire Marshall's Office on file.

The Commission voted to adjourn the meeting at 8:45 p.m. on a motion by Commissioner Hogan, second by Commissioner Krieger.

Respectfully submitted by Ryan Wynn, Executive Secretary, present at meeting.