

The Board of License Commissioners of Cecil County met in a regular session at the County Administrative Building, Conference Room, 200 Chesapeake Boulevard, Elk Room, Elkton, MD on Wednesday, January 25, 2023, at 9:15 A.M.

PRESENT: **Stephen Miller, Chairman**
Kristen Ortt, Commissioner
Bernard Chiominto, Commissioner
Lawrence Scott, Board Attorney
Justin Hill, Board Attorney
Earl Bradford, Chief Alcoholic Beverage Inspector
Sandra Cumm, Administrative Assistant
Jeanea Gomez-Scott, Paralegal

Chairman Miller: called the Cecil County Board of License Commissioners meeting at order. He asked everyone to rise and say the Pledge of Allegiance to the Flag.

Chairman Miller: asked for everyone that was to testify at today's hearing to stand and be sworn in.

Administrative Assistant: sworn in Richard Cunningham and Earl Bradford at this time

UPDATE – EXTENSION ELKTON MUSIC HALL:

Mr Cunningham: Last time here we need the license before the State could finish the financing and we were finally able to get that process done. We are now in construction and renovation phase. It is going along nicely. We have new roof, new stage, Everything is still going as scheduled. We are still on track for opening late spring or early summer opening Early summer looks better of course putting any setbacks on construction delays. Katie and I are scheduled for tips training in Suddlersville the week of January 29/2023. Trying to do everything needed that we are supposed to do. Anything else please let us know.

Mr. Scott: Legal reason the Board asked you to come in is because when licenses are granted they need to be utilized. We realize you are forming your company and you need your license for financing, but the Board also needs you to provide updated to provide real progress is being made. Make a copy of your certificate from the State. Anything that can act as evidence to show the Board you are making progress.

Mr. Cunningham: I can e-mail them.

Mr. Scott: You came in and testified which is fine, but as you hit milestones ,I encourage you to reach out to Earl because the Board is interest in making sure that the licenses given that are not opened that progress is being made, otherwise that have the ability to pull those back and issue to someone else who would utilize them. So there's only so many liquor license and it is in the public interest that whatever ones are given are utilized. So the Board has a very strong interest in seeing movement toward an end not in a never ending. So, you have a date, sound like you are making great progress. I just wanted to pass that along as to why you were called in.

Mr. Cunningham: Okay, thank you

Chairman Miller: Are you looking at July?

Mr Cunningham: : For right now we're thinking end of June beginning of July. Since the programming the we're going to do needs to be scheduled ahead of time, I don't want to schedule a performance from a band and then tell them oh, we're not open and be that guy. So we're trying to be cautious. But we're going to get open as soon as possible and we has a plan that if we can get open even sooner, we can start working with some local and regional bands that may be a little more forgiving. If the toilets don't work the first time, and we have to reschedule it.

Chairman Miller: Earl, are the renewal periods in March?

Mr. Bradford: Yes, We send them out in February and they are due back to us by March. The new license would take effect May 1st.

Chairman Miller: Would you think, 6 months after renewal?

Mr. Bradford: I think probably sounds like he may be open 6 months after renewal, so I think that's a fair time. If he is open, you know of course he wouldn't need to come back in.

Chairman Miller: Can I hear a motion?

Mr. Chiominto: I make a motion the we grant a 6 month extension from May 1st to September 30. That would be 6 months.

Mr. Scott: Does the work for you?

Mr. Cunningham: Yes, Absolutely.

Chairman Miller: Do I have a 2nd?

Ms. Ortt: Second

Chairman Miller: All in favor. Aye

The Board unanimously voted to approve the 6 month extension for Elkton Music Hall located at 107 North Street, Elkton MD 21921

Chairman Miller: Good Luck.

APPLICATION – TRANSFER OF LOCATION:

REMANDED CASE NO: C 07-CV-22-000195:

Mr. Scott: Chairman, would you like me to introduce this next one?

Chairman Miller: I sure would.

Mr. Scott: Okay, so back in March 30th, no April 27 of last year, the liquor board heard an application from the Happy 40 to transfer their license from Kirtan Gopal Patel, Managing Member, Hema Kirtan Patel, Member Robin Lynn Nelson, Maryland resident Elkton Liquor Emporium LLC to transfer of a class A beer and liquor alcoholic beverage license number A-54 from Naynika A Pater President, Sondra Larson, Cecil County Resident, Tech Pride of America, Inc. T/A Happy 40 Liquors. On that day

there were 2 applications: One was to transfer, and the second application which happened at the same time was then to grant the license to a particular location, which was at one of the stalls at Big Elk Mall. The Board at that time granted the transfer of a 30 day closing, which meant that the transfer could only take place if there was a signed contract within 30 days and the second (2nd) one the denied by the Board. The application to have a liquor store or license at the location that was chosen at the Big Elk Mall was denied and second. The motion was appealed. The denial was appealed to the Circuit Court. The case was heard , and was remanded back to the Liquor Board. I will go into what remanded meant, and I will read from the actual opinion from Judge Brown. The first part of the application, which was a transfer, was not appealed and that still stands, however, that decision still has a 30 day requirement that it be closed. That has been TOLD T O L L E D, or put on Pause is told, is the legal term, but everyone else knows that it is paused, We've paused the implementation of that 30 days pending the remand to the liquor board. And so today, and in addition to that motion was made to reconsider. So there was another motion made by opposing counsel for the judge to reconsider and to change his decision that was denied, and now we are here on remand and what is in front of the Board right now, I am going to read you from Judge Brown's opinion, and I will also make sure that as part of the record, Earl for this case.

So Here: The transcript of the hearing before the Board.

The Judge was evaluating the transcript, which was submitted by opposing counsel for the benefit of the appeal to Circuit Court and Judge Brown is now addressing the Transcript and he says: Here the transcript of the hearing before the Board fails to establish that the Board's deliberation on the application occurred in open session, as required by its own rules and regulations and the Open Meeting Act. An Open Meeting Act requires not only that the notion vote and decision occur in open session, but the Board's deliberation on the matter be undertaken in a manner that allows the general public to view the entire deliberative process and based on that it was remanded back down to the Liquor Board to put the deliberation on the open record. Now, the Transcript shows that there was deliberation taken place, however, prior to the discussion the Board went into closed session to get legal advice. Because of this timing, of that I cannot speak for, why the Judge made his

decision. But be that as it may, the Board is now going to go through the deliberative process and put that on open record in front of the public. As part of that, the first thing I am going to ask for, Does the Board wish to simply examine the record as they have before them from the March 30th transcript and minutes of that meeting, and any evidence that was given, and not hear any evidence from the public? In other words, do not open it back up , but simply rely on the evidence that you have and simply put the deliberative process on a robust deliberative process in front of the public on record.

Chairman Miller: I would like to make a motion that we follow the Judge's orders and have a discussion after reviewing the transcripts and the minutes and the signatures and not take any testimony or questions. Do I have a second?

Ms. Ortt: Second

The Board unanimously agreed

Mr. Scott: Okay, So at this time Earl the Executive Director has given the Board each a copy of the Transcript, the minutes and any evidence that was presented at the April 27th meeting hearing at this time. I recommend that you take your time and review the transcript, minutes and other evidence that you have before you from that day that's in the record and then when that's done you may begin the deliberative process. You may also, at any time during this deliberative process, call attention to each other and if there's anything you'd like to highlight or discuss, I encourage you to put everything and all your discussions on the record.

Chairman Miller: I would like to ask some of the highlights into transcripts. **I would like you to look at Chief Bradford testified**

Mr. Scott: Chairman, before you go into that, lets give everybody some time to just simply read the transcript,

Chairman Miller: Yes sir

Mr. Scott: So just start at the beginning of page one and work your way through and if there's anything that you would like to highlight or call

attention to take your pen and circle it or make it Kristen Do you see that aslo?

Ms. Ortt: Yes

Mr. Scott: So there will be a little bit of silence as the go through this, so this will take some time.

Chairman Miller: Okay, A few things I want to point out,

Mr. Scott: Excuse me, Chairman, before I want to put on the record that the Board has examined the transcript of minutes and any other additional evidence that was in the record to whatever your satisfaction was and then I want to also talk about just on last thing of wat we are here to do, on page 28 of the transcript, I just want to read you the first paragraph from Commissioner Ortt in regards to the transfer of location: We as a board, have determined that there is a negative effect on the surrounding licenses within a 2 mile radius, there is a slight increase in density and licenses within a 2 mile radius and that testified existing crime in and around the Big Elk Mall. With my legal reading of the opinion from the Judge that remanded us that in and of itself was not reflective of a healthy , I.m using a word healthy, It was not reflective of the deliberative process, so conclusions were made without a deliberative process. Now that you have familiarized yourself with the record from April 27 you need to engage in a deliberative process where you examine the evidence that was presented. Question it, discuss it, discuss it among yourselves openly and deliberate as to whether or not you still hold those conclusatory statements true or not. So at this point, Chairman, I hand it back to you to begin the deliberative process, or to continue the deliberative process because you have already become familiar with the record of April 27

Jay Emery: Asked to speak to Board

Chairman Miller: Denied request

Mr. Scott: No. A motion has already been made by the board and seconded and passed unanimously that they would only be examining the April 27, record, along with the transcript from opposing Council of that April 27 meeting is a discussion of their remand, their deliberative process of the remand given to them by the Circuit Court. (talking to the public:

That's correct, Fair enough, we are local you are always welcome to stand up and ask anything you want) So Chairman back to you.

Chairman Miller: Okay I want to go through a couple items: We have already talked about the number of licenses in the area as testified to by Mr. Bradford. We had testimony from the audience about going to the mall and being confronted by pan handlers and people intoxicated. We had testimony from Donna Harmer, who I admit owns a liquor store and his testimony was about to many liquor stores in a close area. Shannon Chade who was representing Buddy Ewing from Jayco Liquors also testified to the number of liquor stores in the area, and there is too many of them in close proximity. And he has a petition with 600 people signed against another store like her store. An article was published in the Cecil Whig on April 17 covering the proposal of a new liquor store in the Big Elk Mall. The article drew over 200 comments condemning the application. For Example: Shlrley Reynold wrote just what Cecil County needs, another liquor store. Why cant we put something in there for families? We have enough liquor stores. Linda Lawson Smiht wrote No,no,no not another liquor store There is enough liquor stores around. We don't need it. Heather Child just wrote There are way to many liquor store in Elkton. I have over 1000 signatures with the community members who are against the new liquor store in the Big Elk Mall and a letter from a member of the community wrote of a horrific experience at the Big Elk Mall liquor store. In a six (6) month span from September 20 to March 21 of 2022 the Elkton police department treceived 233 calls to respond to the Big Elk Mall. Darmesh Patel from Bridge Street Liquors, I have been in Cecil County for almost 22 years, I have a family business and my grandpa has been doing business for 40 years, I don't see the need for another liquor store, It's too close and there's too many. Now I would like to hear any discussion from Mr. Chiominto or Ms. Ortt.

Mr Chiominto: I have nothing to add

Mr Scott: It's your deliberative process for you to come to a conclusion. You need to deliberate openly your thoughts and evidence that you have seen to help give the public confidence in your deliberate. To know the ultimate decision that each of you hold and as to why

Chairman Miller: Mr Chiominto Do you have anything additional?

Mr. Chiominto: I have nothing additional, but can I make a motion?

Mr Scott: I think we should have deliberation before we do motion

Chairman Miller: Ms. Ortt Do you have any discussion items?

Ms. Ortt: I don't know if you can answer, but maybe Earl can. How long has Happy 40 been closed?

Mr. Bradford: May 1 2022

Ms. Ortt: And did we grant them any extensions? Do you know?

Mr. Bradford: Yes, we did 2 I believe

Ms. Ortt: For?

Mr. Bradord: I think that the next extension will expire at renewal time

Chairman Miller: This renewal?

Mr. Bradford: Yes, this renewal that is going out in February.

Mr. Scott: I believe the First renewal had to do with Covid for the first extension, I think the most recent extension had to do with a statement that they were going to, I would have to go back to the testimony, but I believe the petitioner, the owner of the license testified that they were going to rebuild and add a building behind there. Some type of retail business so we gave them time to develop that and start building that and make their applications. So the Board gave credit of 6 months extension to engage in that.

Ms. Ortt: And would that retail space be for a liquor store? Or do we not Know?

Chairman Miller: He mentioned that the liquor store would be there along with the retail business . Again, he would have to come in and update us on his progress

Ms. Ortt: But was the plan to rebuild the liquor store?

Mr. Scott: Again We would have to go back and look at that testimony, but I don't know if that relevant, because the board has granted a transfer to the owner of the Happy 40 Liquor license that wanted to put in at the Big Elk Mall. So of it were come to fruition that a liquor license was granted at the location of the Big Elk Mall, then they would 30 days to show that a sale was made of the liquor license and then that transfer would be granted. So we have already given them permission to transfer the license. The board has not granted permission at a particular location.

Ms. Ortt: So the transfer of ownership approved, but not the transfer of location.

Mr. Scott: That so, the only thing before the board on this remand is the Big Elk Mall a suitable location that this Board is willing to give a liquor license to? That's what is font of the Board right now.

Ms. Ortt: And at this time, the Second extension which expires on the

Mr. Bradford: last day of April

Ms. Ortt: So they would still have a license at Happy 40?

Mr. Scott: Well, that's an irrelevant, with all due respect, that's an irrelevant conversatin to have, because we have granted the transfer. They have 30 days once the legal process is complete to implement that transfer. So they have 30 days to show us evidence of the sale and if they can do that within 30 days, the April 27 motion that was put in front of this Board that was approved would then go into effect that's been told (T.O.L.L.E.D.) for the last 9 months because of the appeal and the remand. So what happens, any speculation, as to what might happen with the Happy 40 is outside of this particular hearing in this motion. That would be a separate motion, and that really depends on what happens secondarily to the decision of this particular motion that's in front of us. So right now I would just advise the Board to focus on the deliberation of whether or not the Big Elk Mall location that was applied for is a suitable location. If no or yes, wither way, the deliberative process of your decision making has to be on the record. So as Chairman Miller has discussed, some of the highlights that were important to him and whatever his conclusion might be, I encourage the other Commissioners to do the same.

Mr. Bradford: If I can add, Yearly we receive a letter from the Controllers office for tax holds. We did receive that letter recently, so if the Board would in fact approve that transfer today, we have received a tax hold on

Mr. Scott: Well, again I have to say that's irrelevant to this conversation, because they have a legal transfer that has been TOLLED until this matter has been completely resolved. And so there is really no discussion to be had because we have an obligation to TOLL that and to assist in that. The effectuation of that first motion depending on what happens here and depending on whatever legal remedies have been exhausted by anyone who has an interest and what the Board does today, So we have to focus truly just on this motion, which is to remand on thee, whether or not the Big Elk Mall location is a proper location that this board would be willing to grant a license to.

Chairman Miller: Correct, Okay, After my concerns and the discussion by Mr. Chiominto and Ms. Ortt I believe its time for a motion based on the information we have from the transcript

Mr. Scott: I'm just gonna say again, I would prefer legally if we could get Mr. Chiominto and Ms. Ortt to put more on the record to the basis as to how they may or may not vote. Where things do you find to be important.

Ms.Ortt: I have in front of me is approval or denial of a license application. And this is our rules. Before deciding whether to approve an application and issue a license a local Licensing Board shall consider the public need and desire for the license which in my mind. from our testimony on April 27 the public does not see a need and or desire for the license number 2, the number and location of existing license holders .What did we say? There's 8 in the new area The potential effect on existing license holders of the license for which application is made

Mr Scott: We have plenty of testimony there test testimony for what pro or against.

Ms. Ortt: Against. Okay the granting of the license is not necessary to accommodate the public. That, I think, was in our original testimony. I just. see a lot of things negative for this transfer of location.

Mr. Chiominto: Again, I agree with Ms. Ortt. Reading the transcripts and being here for the April 27 meeting, the opposition again what Mr. Miller said earlier for Ms. Childress, she had over 1000 signatures from community members who are against the new liquor license, and she also cited about police activity in the Big Elk Mall, and the same from 2 other businesses on Bridge Street that I could read about here, Bridge Street Liquors and Cherry Holl Liquors on 213 are totally against this. So that's all I have.

Mr. Scott: So you find that to be compelling?

Mr Chiominto: Yes, with 1000 signatures from community members, absolutely.

Chairman Miller: And they were from community members, not coming into a liquor store and signed

Mr Chiominto: Correct

Chairman Miller: Yes, that carries way

Mr. Chiominto: Exactly

Chairman Miller: And they also had to check a block that they were from Cecil County. Now I will entertain a motion listing for against reason please

Mr Chiominto: I make a motion the we redeliberate this transfer and we rely only on the submitted transcripts of April 27, 2022 opposing counsel for their previous appeal.

Mr. Scott: Bernie, I think Steve did that at the beginning, Yes, So at this point , If you have completed your deliberative process it would be an appropriate time for someone to make a motion as to what they think should be done regarding this application and why.

Ms. Ortt: I move to deny the application received from Kirtan Gopal Patel, Managing Member, Hema Kirtan Patel, Member, Robin Lynn Nelson, Maryland Resident, Elkton Liquor Emporium LLC trading as Elkton Liquor Emporium 157 Big Elk Mall Elkton, MD 21921 for transfer of Class A , beer, wine and liquor alcoholic beverage license number A54 from Naynika

A Patel, President, Sondra Larson, Cecil County Resident, Tech Pride of America Inc trading as Happy 40 Liquors, 60 East Pulaski Highway, Elkton, MD 2121, for reasons there is no public need and desire for the license. The number and location of existing license holders, the potential effect on existing license holders of the license for which the application is made.

Mr. Chiominto: I second it and also the crime, the criminal activity, as it's been occurring in the Big Elk Mall plays a very important role in this decision.

Mr. Scott: So you would like to offer an amendment,

Ms. Ortt: I can add The impact of the license for which the application is made on the health, safety, and welfare of the community, including issues relating to crime, traffic, parking or convenience.

Chairman Miller: And this encompasses the change of location?

Mr. Scott: Yes, so its not simply just a transfer, This is we are denying the location right

Chairman Miller: Do I have a motion? I have a motion. Do I have a second?

Mr. Chiominto: Second

The Board unanimously voted to deny the change of location for Happy 40 to Big Elk Mall location

Mr. Scott: Chairman, can you put on the record that there is approximately 8 people in the audience and the opposing council and participants were here watching

Chairman Miller: Yes, let it be noted on the record that there are approximated 18 people in the attendance of this meeting, including the Council and the applicants for this transfer and change of location. Thank you gentlemen, Okay, now we move on to question, Public comment, Anybody have anything to say? No questions or public comment. Now we go on to General Business. Have the Board reviewed the November

minutes? November because there was no meeting in December. Do I have a motion to approve the November minutes?

Mr. Chiominto: I make a motion to approve the November 2022 Minutes

Ms. Ortt: Second

Minutes were approved.

No Specials

No New Business

Chairman Miller: Motion to adjourn

Mr. Chiominto: Second

Board unanimously voted to adjourn the meeting

BY:

Stephen Miller, Chairman

ATTEST:
Sandra L. Cumm, Administrative Assistant