

**REGULAR MEETING OF THE BOARD OF TRUSTEES  
OF THE  
DOWNERS GROVE PUBLIC LIBRARY  
MARCH 23, 2011**

**MINUTES**

**ROLL CALL**

President DiCola called the meeting to order in the Library Meeting Room at 7:33 p.m. Trustees present: Eblen, Greene, Humphreys, Loftus, Read, DiCola. Trustees absent: none. Also present: Library Director Bowen, Assistant Director Carlson. Visitors: Literature/AV Librarian Nicole Wilhelm.

**APPROVAL OF MINUTES**

Trustees reviewed the minutes of the regular meeting of March 9, 2011. It was moved by Read and seconded by Eblen **THAT THE MINUTES OF THE REGULAR MEETING OF MARCH 9 BE APPROVED AS WRITTEN.** Ayes: Eblen, Greene, Humphreys, Read, DiCola. Abstentions: Loftus. Nays: none. Motion carried.

**PAYMENT OF INVOICES**

Trustees reviewed the list of invoices submitted for payment. It was moved by Greene and seconded by Read **TO APPROVE PAYMENT OF OPERATING INVOICES FOR MARCH 23, 2011 TOTALING \$40,299.63 AND BUDGET JOURNAL ENTRY FOR PARKING PERMITS TOTALING \$2,000.00.** Ayes: Eblen, Greene, Humphreys, Loftus, Read, DiCola. Abstentions: none. Nays: none. Motion carried.

**OPPORTUNITY FOR PUBLIC COMMENT ON AGENDA ITEMS**

None.

**OPPORTUNITY FOR PUBLIC COMMENT ON OTHER LIBRARY BUSINESS**

None.

**OLD BUSINESS**

None.

**NEW BUSINESS**

**- Demonstration of the eMediaLibrary ebook collection**

Since the board has been talking about ebooks recently, Bowen asked Nicole Wilhelms, a librarian in the Literature/AV Department and the primary staff member who selects ebooks for the library collection, to give a demonstration of the use of the eMediaLibrary Overdrive collection. Nicole has been offering programs on how to download ebooks and audio books from this collection and pretty much filling every program. She provided the trustees with a

handout of eMediaLibrary downloading instructions and pointed out the several places to link to the collection and instructions on the library's website. Nicole gave an abbreviated version of the program she presents to library patrons, passed around different types of ebook readers, and answered questions from the trustees.

### **- Review and approval of the Identity Protection Policy**

Illinois recently adopted the Identity Protection Act. Under this act governmental agencies are required to adopt and implement an Identity Protection Policy to ensure the confidentiality of Social Security numbers that the agencies collect. As part of the policy requirement, agencies must create a Statement of Purpose for the collection of Social Security numbers that will be given to anyone from whom the agency needs to collect an SSN. The Illinois Attorney General's Identity Protection Taskforce created a policy template for governmental agencies to use. The draft for the library was based on that model.

The library currently does not collect Social Security numbers from library patrons for any reason. Staff SSNs are only collected for personnel purposes. The intent of the policy is to ensure that, on those rare occasions that the library is required to collect someone's SSN, the numbers are kept confidential and secure.

The board reviewed the brief policy and statement of purpose. Trustee Greene asked that "administrative purposes" be changed to "personnel purposes" in the list of reasons the library may ask for someone's Social Security number. It was moved by Greene and seconded by Loftus **THAT THE IDENTITY PROTECTION POLICY AND STATEMENT OF PURPOSE BE APPROVED AS AMENDED.** Ayes: Eblen, Greene, Humphreys, Loftus, Read, DiCola. Abstentions: none. Nays: none. Motion carried.

### **REPORT FROM THE ADMINISTRATION**

The County Clerk released the tentative property tax extensions Tuesday morning, March 22. The 2010 assessed valuation of the Village is 5.6% less than 2009 – last year's value. Bowen planned to provide an in depth review of what this will mean at the next board meeting; however Trustee Loftus' requested that Bowen send the trustees his analysis as soon as possible in case the issue of taxes is raised in the course of the coming elections. Bowen will email his material to the Board and include discussion on the agenda of the next meeting in case anyone has questions about it.

Bowen received a letter from the Secretary of State informing him that Downers Grove Public Library has been awarded a 2011 Per Capita Grant of \$49,860.73. Bowen assumes that the library will actually receive the check sometime in the late fall, as happened with the 2010 grant.

Bowen reported at the last meeting that the MLS board had directed MLS staff to proceed with the proposed outsourcing of delivery service. This was contingent on the Transition Board of the new library system being willing to sign the contract with the delivery vender. At their meeting on March 22 the Transition Board voted against approving the contract. The reasons given were poor timing and lack of documentation. From reports of the discussion, Bowen's impression is

that the board did not want to make such a big change at this time. He suspects they will maintain the status quo on pretty much everything until a new merged system board is elected and takes over.

### **TRUSTEE ANNOUNCEMENTS AND REQUESTS FOR INFORMATION**

Trustee Read, a former MLS board member, reported that the new merged library system being formed has been named Reaching Across Illinois Library System (RAILS). The transition board will select an interim director who will administer the new system until the new board is elected and can hire a permanent one.

Trustee Read, as treasurer of the DGPL Foundation, handed out an account summary and portfolio history report on the Foundation since its inception 5 years ago. Foundation board president Susan Eblen, Bowen, and Read met recently with Christopher Cralle of Citibank to review the Foundation's portfolio. Funds will remain the same. DiCola commented that she was pleased to see that the Foundation account has recovered as well as it has since the 2008 losses.

Trustee Eblen and Assistant Director Carlson reviewed the schedule of the Trustees who had volunteered to help with the Foundation Mini Golf fundraiser on Sunday, April 10, and briefly discussed the possibility of purchasing the AWE early literacy station (computer) with revenue from this event. Trustees liked the idea of purchasing something like this system for children's services, and asked that other systems be considered before deciding on this one.

### **ADJOURNMENT**

The meeting was adjourned at 8:36 p.m.

**DOWNERS GROVE LIQUOR COMMISSION  
VILLAGE HALL COMMITTEE ROOM  
801 BURLINGTON AVENUE**

Thursday, March 3, 2011

**I. CALL TO ORDER**

Staff called the March 3, 2011 Liquor Commission meeting to order at 6:33 p.m.

**II. ROLL CALL**

**PRESENT:** Mr. Adank, Mr. Clary, Ms. Fregeau, Ms. King, Mr. Krusenoski, Ms. Strelau

**ABSENT:** Chairman McNerney

**STAFF:** Liaison to the Liquor Commission Carol Kuchynka, Assistant Village Attorney Beth Clark, Village Attorney Enza Petrarca

**OTHERS:** Phil Cullen, Jim Russ, Mike Polz, Nick Nagy, Jay Nagy, Marta Cullen, Tom Cawthorne, Chuck Keenley, Karen Keenley, Marge Earl, Mary Mengel, Joe Mengel, William Chalberg, Liz Chalberg, Barbara Taylor, Brian Slodysko, Court Reporter

**III. APPOINTMENT OF CHAIRMAN PRO TEM**

In the absence of Chairman McNerney, staff requested a motion to appoint a Chairman Pro Tem for the meeting.

**MS. FREGEAU MOVED TO APPOINT ALICE STRELAU TO ACT AS  
CHAIRMAN PRO TEM FOR THE MARCH 3, 2011 MEETING OF THE  
LIQUOR COMMISSION. MS. KING SECONDED.**

**VOTE:**     **Aye:**   Ms. Fregeau, Ms. King, Mr. Adank, Mr. Clary, Mr. Krusenoski

**Nay:**   None

**Abstain:** None

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

The motion carried.

**IV APPROVAL OF MINUTES**

Chairman Pro Tem Strelau asked for approval of the minutes February 3, 2011 Liquor Commission meeting and asked members if there were any corrections, changes or additions.

Ms. Fregeau requested a minor change to Page 4 where she indicated that the Village allows an unconsumed portion of wine to be taken from the establishment. She referenced the Fuddrucker manual,

not the Village Code. She stated that the applicant later clarified it was a non-issue as they were not serving wine.

Hearing no further changes, corrections or additions, the February 3, 2011 minutes of the Liquor Commission meeting were approved as written.

Chairman Pro Tem Strelau reminded those present that this evening's meeting was being recorded on Village-owned equipment. Staff was present to keep minutes for the record and a court reporter was present taking the minutes verbatim.

## **V DISCIPLINARY HEARINGS FOR ALLEGED VIOLATIONS**

Chairman Pro Tem Strelau made the following statements:

"Section 3-40 of the Downers Grove Municipal Code provides that the Local Liquor Commissioner may revoke or suspend any license issued if the Commissioner determines that the licensee has violated any of the provisions of this chapter or any State law pertaining to the sale of alcohol. Both under the Section cited above, and under Chapter 235, Section 5/7-5, Illinois Compiled Statutes, the Local Liquor Commissioner is required to hold a public hearing after notice to the licensee, in which the licensee is afforded an opportunity to appear and defend. Pursuant to Section 3-5 of the Downers Grove Municipal Code, this hearing is being conducted by the Local Liquor Commission at the request of the Local Liquor Commissioner."

"The Commissioner has the power to temporarily suspend a license without a hearing if there is reason to believe that continued operation of the licensed business would immediately threaten the welfare of this community. Such was not done in this case. The licensee may be represented by counsel, although he need not be for the purposes of this hearing."

Chairman Pro Tem Strelau asked if there are signed stipulations in these cases. Prosecuting Attorney Janicki Clark replied that there are stipulations in only two of the three cases being heard tonight.

In view of the stipulations, Chairman Pro Tem Strelau stated that the order of this hearing will be substantially as follows:

- A. Prosecution will read the signed stipulation into the record with the opportunity for the licensee to register its concurrence or non concurrence for the record.
- B. Prosecution may present any additional evidence in this case with the right of the licensee to cross-examine.
- C. Licensee may present any defense or mitigating evidence with right of prosecution to cross-examine.
- D. Summary of case by prosecution and defense."

"The prosecution should establish that timely notice of this hearing has been provided to the licensee."

"Witnesses shall be sworn."

"Strict rules of evidence will need not be adhered to although the Commission expects to exercise control over the hearing to ensure that irrelevant or repetitive testimony does not unduly prolong the hearing."

"A court reporter is present and will take the proceedings verbatim. Staff is also present for the purpose of summarizing the proceedings."

"The Commission will submit the findings and recommendations to the Local Liquor Commissioner regarding the existence and nature of any violation and the appropriate penalty, if any."

"Upon receipt of the recommendation of the Commission, the Commissioner will render a decision and the licensee will be notified in writing."

**Ballydoyle, LLC d/b/a Ballydoyle Irish Pub & Restaurant**

Chairman Pro Tem stated that the first order of business was to conduct a disciplinary hearing for Ballydoyle, LLC d/b/a Ballydoyle Irish Pub & Restaurant located at 5157 Main Street. She stated that the licensee has been charged with a violation of Section 3-33.1 of the Downers Grove Liquor Control Ordinance which limits the sale and promotion of alcoholic liquor.

Chairman Pro Tem Strelau asked that any individual(s) representing the applicant step forward and be seated. She asked that any individual(s) giving testimony, state and spell their name for the record, indicate their affiliation with the establishment and be sworn in by the court reporter.

Mr. Phil Cullen was sworn in by the court reporter. Mr. Cullen introduced himself as the owner of Ballydoyle. Mr. Jim Russ introduced himself as the attorney representing Ballydoyle.

Chairman Pro Tem Strelau asked the prosecuting attorney to present her case.

Ms. Clark stated that the parties to this hearing before the Liquor Commission of the Village of Downers Grove by and through their attorneys, if any, hereby stipulate as follows:

1. Ballydoyle, LLC d/b/a Ballydoyle Irish Pub & Restaurant, 5157 Main Street, Downers Grove, Illinois, is the holder of a Class R-1/O Liquor License #LQ-000020, issued by the Village of Downers Grove. That said Licensee has held a liquor license for this location from the Village of Downers Grove since October 31, 2003.
2. Notice of this hearing was served upon the Licensee by certified mail to its registered agent and by personal delivery to the manager of the licensed premises.
3. On Wednesday, February 2, 2011 the Daily Herald published an article entitled: "Super Bowl bashes ease pain for Bears Fans", listing local establishments offering Super Bowl XLV events on Sunday, February 6, 2011.
4. That Ballydoyle Irish Pub, located at 5157 Main Street, Downers Grove, was included in this article.
5. That the article read: "Ballydoyle Irish Pub, 5157 Main St., Downers Grove, (630)969-0600, [ballydoylepub.com](http://ballydoylepub.com): For \$30, get four hours of wings, homemade chili, nachos and Miller Lite", copy attached hereto and incorporated herein as Exhibit A.

6. That the Downtown Downers Grove website ([www.downtowndg.org](http://www.downtowndg.org)) listed local restaurant specials in connection with Super Bowl XLV taking place on February 6, 2011.
7. That the restaurant special for Ballydoyle Irish Pub and Restaurant advertised in the Downtown Downers Grove website read: "\$30.00/person for a wristband that includes: Unlimited buffet of wings, homemade chili, nacho bar and Miller Lite drafts for four hours", copy attached hereto and incorporated herein as Exhibit B.
8. That the promotion/advertising of the sale of an unlimited number of drinks during a set period of time for a fixed price is in violation of Section 3.33.1(b) of the Downers Grove Municipal Code.
9. That on February 6, 2011, at approximately 6:00 p.m., Detective Bylls entered Ballydoyle Irish Pub & Restaurant located at 5157 Main Street. Upon entry Detective Bylls viewed an 11" x 17" advertisement offering a \$30 "all-u-can-eat/all-u-can drink" special with smaller print indicating it was all-u-can drink Miller Lite Draft beer, copy attached hereto and incorporated herein as Exhibit C.
10. That Detective Bylls inquired about the \$30 package and server April Javurek advised that the food buffet was free because of low turnout.
11. That Detective Bylls inquired about the all-u-can-drink package and server April Javurek advised it included only Miller Lite.
12. That server April Javurek confirmed that an all-u-can-drink package was available although she was unaware of any patrons who had purchased the all-u-can-drink package.
13. On February 6, 2011, an unlimited number of drinks was offered for sale on the premises in violation of Section 3-33.1(a)(2) of the Downers Grove Municipal Code.
14. That Sergeant Giancarlo joined Detective Bylls at Ballydoyle Irish Pub & Restaurant at approximately 6:30 pm., identified themselves, and asked for a manager but were advised that there was no manager on duty at the time.
15. That server April Javurek was advised that all-you-can-drink specials was in violation of Section 3-33.1(a)(2) of the Downers Grove Municipal Code.
16. That Sergeant Giancarlo requested that Ballydoyle no longer offer the special.
17. That April Javurek advised that no one had purchased the drink special, and would not offer it if any one asked for it.
17. The Sergeant Giancarlo and Detective Bylls advised that notice of further action would be forthcoming from the Downers Grove Liquor Commission.
18. That Ballydoyle has not had a liquor violation within the last twelve (12) months.

Ms. Clark asked that the signed stipulation and exhibits be entered into the record as Village's Exhibit #1. Chairman Pro Tem Strelau accepted the signed stipulation as Village Exhibit #1.

Chairman Pro Tem Strelau asked the licensee to present its case.

Mr. Cullen apologized for the violation. He stated that they did not give the promotion a second thought and were trying to come up with new ways to get people into the restaurant. He stated when they received the violation notice they were shocked. He stated that they made a mistake and did not intentionally violate the law. He was aware of their responsibility to know the ordinances. He admitted violating Section 3-33.1 of the ordinance. He stated that the economy is difficult. He stated that a lot of restaurants are no longer around and most others are under pressure to keep the doors open. He stated that in surrounding communities there were other restaurants and bars offering the same and/or bigger Super Bowl specials with all you can eat and drink specials.

Mr. Cullen advised that Super Bowl Sunday is not a big event for them and noted that most stay at home or go to sports bars for the event. He noted that Downers Grove is more conservative than other communities but it was his mistake for not checking with staff to check if the promotion was ok.

Mr. Cullen stated that it is not their intention to break the law. He noted that they have brought business to downtown Downers Grove. He stated that management stresses proper liquor service with their employees.

Mr. Cullen noted that he has a good working relationship with Carol and will not hesitate to contact her about future events or offerings.

Mr. Cullen stated that he is normally in the establishment, however his son was having a baby and he was out of the restaurant that day. He was not there to know first hand about the violation in order to explain.

Mr. Cullen advised that they did not sell any of the Super Bowl promotions. He apologized for their mistake.

Ms. King was sorry to see them before the Commission. She appreciated his candor and being forthright. She empathized that business is difficult and understood their attempts at marketing the establishment in order to stay in business.

Ms. King asked if this was in violation of local law. Ms. Kuchynka replied that it is a State and local law violation. She advised that the local portion of the law prohibits the advertising. She added that offering unlimited drinks is a violation of both state and local law.

Ms. King looked on the web site and believed that State laws are taught through BASSETT training. She stated that any one who is a server should know the happy hour regulations. Mr. Cullen stated that staff is aware of happy hours and noted that Super Bowl events are glorified happy hours. Ms. King felt that the training is not effective if nobody caught it.

Mr. Cullen did not associate the advertisement with happy hour. He stated that there were many other establishments that had the offer and felt a lot of people do not know the law properly and made the same mistake they made.

Ms. King understood the reasoning behind the law as it prevents patrons from “slamming” an unlimited number of drinks in a few hours of time and them getting behind the wheel.



Ms. King stated that the State of Illinois simplifies the Happy Hour Laws in a publication on their website. She felt it would be helpful for them to review the publication which is spelled out in laymen's terms.

Mr. Cullen stated that staff ensures that customers to not over indulge and they do not over serve patrons.

Ms. King encouraged them to contact staff more in the future. Mr. Cullen agreed.

Mr. Krusenoski asked Mr. Cullen if he has more than one Ballydoyle location. Mr. Cullen replied yes. He noted that they have been in Downers Grove for 8 years. Mr. Krusenoski asked if they offer happy hour specials. Mr. Cullen replied no. Mr. Krusenoski explained that unlimited drinks and drink specials are regulated.

He was flabbergasted about the event and noted that ignorance of the law does not excuse the violation.

Mr. Krusenoski asked whose decision it was to do the promotion. Mr. Cullen replied that they have weekly managements meeting and it was a group decision to hold an event. Mr. Krusenoski asked why other staff members did not question this activity. Mr. Cullen explained that there was a magazine with 20 pages of listings for Super Bowl specials.

Mr. Krusenoski asked Mr. Cullen if he offered the special at his other restaurants. Mr. Cullen replied yes.

Mr. Clary did not believe Mr. Cullen intentionally violated the law. He asked if there was a manager on site. Mr. Cullen reiterated that he is typically there, however, his son's wife was having a Super Bowl baby.

Mr. Cullen noted that although he was not there, his employee, April has been with Ballydoyle for 5 years and has been in the business longer than he as a server and bartender. Mr. Clary noted that with that experience, she should have known better. Mr. Cullen did not want the Commission to think the restaurant was unmanned. He stated that April was the supervisor.

Mr. Clary stated that knowing the perimeters of marketing and about what they offer should be most important on their list. He stated that an all you can drink offer is a blatant violation and should have been a red flag for them.

Mr. Adank understood that it was uncomfortable for Ballydoyle and noted it is uncomfortable for the Commission as well.

Mr. Adank asked how many patrons were in the establishment. Mr. Cullen replied about 15-20, mostly regulars.

Mr. Adank asked how many patrons that have on a normal Sunday. Mr. Cullen replied roughly 100 on Sundays. He stated that there is more of a family atmosphere on Sunday. He stated that Irish dancers usually come in to practice as well.

Mr. Adank appreciated his honesty and candor.

Ms. Fregeau was sorry to see them before the Commission. She knows they know better after being in the community for so many years. She also appreciated his candor and honesty. She found it most troubling that the offer said “all-you-can drink” which essentially is a “bottomless” drink. She encouraged them to stop and think about responsible service.

Ms. Fregeau asked what their percentage of food versus liquor sales. Mr. Cullen replied on average 60% food 40% liquor and perhaps 50-50 on nights they have entertainment.

Ms. Fregeau noted that the Commission gets DUI monthly reports where patrons indicate they have been drinking at a Downers Grove establishment. She stated that weighs on the Commission and responsible service by licensees.

Ms. Fregeau stated that he was honest and stipulated to the facts. She cautioned him to stop and question offers. She felt that he has a good relationship with staff.

Ms. Fregeau stated that Downers Grove is conservative and believed Mr. Cullen got the message about the violation.

Mr. Cullen advised that he received the newsletter that Carol sent out which re-emphasized the basics and highlighted what licensees cannot offer by way of drink specials. Ms. Fregeau felt it great that staff provides that information, however, it is the responsibility of the licensee to be familiar with that information.

Chairman Pro Tem Strelau was disturbed that so many staff members did not know about the potential violation. She asked if there were other regulations they do not know. She noted that the Commission wants licensees to succeed, but licensees have to follow the law. She stated that Commission is left with the task of dealing with licensees when they do not follow the law. She stated their ability to succeed will only happen if they do what they are supposed to do. She stated that staff is there to guide them.

Chairman Pro Tem Strelau stated was sorry that business is bad and noted that they all are sympathetic, but them being before the Commission will not help their business either. She stated that there will be ramifications. She stated that there are over 70 license holders, but see only a handful for disciplinary hearings and most never run afoul.

Chairman Pro Tem Strelau stated that the Commission is not here to make life miserable, but should licensees not follow the law, that is what it will feel like. She asked that he review the ordinance and State laws and if they have any questions or concerns to bring it up to staff. She stated that they will be more than happy to help and guide them. Mr. Cullen stated that he will check with Carol about regulations going forward.

Ms. Clark summarized by stating that Ballydoyle, LLC d/b/a Ballydoyle Restaurant and pub located at 5147 Main Street has stipulated to a violation of Section 3-33.1 of the Downers Grove Liquor Control Ordinance which limits the sale and promotion of alcoholic liquor. She stated that this is the licensee’s third violation in the past five years and there are no aggravating circumstances in this case. She recommend that the license be suspended for 6 to 14 days based upon the Village’s suspension guidelines. She recommend that the licensee be required to pay a fine of up to \$15,000 and that they pay an administrative fee of \$1,000.00 to cover the costs of conducting this hearing. Ms. Clark stated that in lieu of the fines the licensees can request to serve additional days of suspension.

Chairman Pro Tem Strelau stated that following the motion the Commission may have further discussion.

Upon hearing the evidence presented in this case, Chairman Pro Tem Strelau requested a motion as to whether the licensee be found guilty or not guilty of a violation of Section 3-33.1 of the Downers Grove Municipal Code.

**MS. KING MOVED TO FIND BALLYDOYLE, LLC D/B/A BALLYDOYLE IRISH PUB & RESTAURANT, LOCATED AT 5157 MAIN STREET, GUILTY OF VIOLATING OF SECTION 3-33.1 OF THE DOWNERS GROVE LIQUOR CONTROL ORDINANCE. MS. FREGEAU SECONDED.**

**VOTE:**       **Aye:**   Ms. King, Ms. Fregeau, Mr. Adank, Mr. Clary, Mr. Krusenoski, Chairman Pro Tem Strelau

**Nay:**   None

**Abstain:** None

**MOTION CARRIED: 6:0:0**

The motion carried.

Chairman Pro Tem Strelau requested a recommendation as to the fine and/or suspension for the violation.

Ms. Clark reiterated her recommendation of a 6-14 day suspension, fine of up to \$15,000 and a fee of up to \$1,000 to cover administrative costs of the hearing.

Mr. Clary asked if the suspension would have to be served consecutively. Ms. Clark stated that the suspension guidelines do not mention consecutive days and that they could be served consecutively or spread out. Chairman Pro Tem Strelau stated that the Commission can make it either way as part of their recommendation.

Mr. Krusenoski asked if this penalty was more severe than what is typically recommended for serving someone under age. Ms. Clark advised the reason it seems so severe is that this is the licensee's third violation in the past five years. She stated that the suspension guide is progressive and the increase in fines and/or suspension is based on the their history. Mr. Krusenoski asked if penalties were progressive regardless of the type of violation. Ms. Clark replied yes.

Attorney Russ stated that this is the first violation of this provision of the Ordinance in the Village. He asked if this provision has been violated in the past. Ms. Petrarca stated that the Village had one previous advertising violation in the past.

Attorney Russ stated that this is not a control buy violation asked the Commission look at this as a first offense rather than a third violation. Chairman Pro Tem Strelau noted that staff's recommendation is according to Village guidelines and that any Liquor Code violation has a cumulative effect.

Chairman Pro Tem Strelau noted this is the licensee's third appearance before the Commission in five years and noted that some licensees have never been before the Commission for a disciplinary hearing. Ms. Clark stated that she simply looked at the number of violations and followed the suspension chart.

Ms. Clark advised that Ballydoyle received a Cease and Desist Order in 2004 for violation of the same liquor code provision, violation of the Happy Hour laws, which was also taken in consideration.

Chairman Pro Tem asked what the licensee was cited for. Ms. Clark stated that in 2004 the licensee was issued a Cease and Desist Order for violation of 3-33.1 which prohibits advertisements using the words “open bar”. She stated that notice was provided and hand delivered to him for the violation. She stated that the Order forced him to cease and desist that type of advertising.

Ms. King felt that this type of violation may be more severe than failure of the control buy program, as there is the potential to over serve multiple people.

Chairman Pro Tem asked for a motion.

Mr. Adank stated that he would like to propose a motion to put the item up for further discussion.

**MR. ADANK MOVED TO RECOMMEND THAT THE LICENSE OF BALLYDOYLE, LLC D/B/A BALLYDOYLE IRISH PUB & RESTAURANT, LOCATED AT 5157 MAIN STREET, BE SUSPENDED FOR NOT LESS THAN ONE (1) DAY NOR MORE THAN ONE (1) DAY, THAT THE LICENSEE BE FINED IN AN AMOUNT OF \$1,000, NOT TO EXCEED \$15,000.00 AND THAT THE LICENSEE PAY AN AMOUNT NOT TO EXCEED \$1,000.00 TO COVER ADMINISTRATIVE COSTS TO CONDUCT THIS HEARING. MR. CLARY SECONDED.**

**VOTE:**       **Aye:**   Mr. Adank, Mr. Clary, Mr. Krusenoski

**Nay:**   Ms. King, Ms. Fregeau, Chairman Pro Tem Strelau

**Abstain:** None

**MOTION:**     3:3:0

The motion failed.

Chairman Pro Tem asked for discussion.

Mr. Krusenoski felt more sympathetic in this instance and would prefer to see a penalty on the lower end of the suspension and fine recommendations. He recommended a 3-5 day suspension with a \$1,000 fine. He understood that it was their third violation, but it was a different type of violation.

Chairman Pro Tem Strelau asked what penalty Ballydoyle received last. Ms. Petrarca replied that they received a \$5,000 fine and paid \$1,000 in hearing costs. Mr. Krusenoski asked if they served suspension. Ms. Petrarca replied no and added that the licensee requested a fine in lieu of suspension.

Mr. Clary asked who decides the day(s) of suspension. Ms. Kuchynka replied the Mayor. She stated that typically take licensee’s requests into consideration and will work with them if they have pre-booked parties or events.

Ms. Fregeau stated that nobody wants licensees to suffer in these economic times. She realizes that a \$15,000 fine would be scary for any business.

Chairman Pro Tem Strelau asked Mr. Cullen if he would prefer a fine in lieu of suspension. Mr. Cullen replied that it would depend on the amount of the fine. He stated that if they have to close, it will be

tough on the business. Attorney Russ noted that entertainment is one of the first things people cut back on in a bad economy. He stated that the economic impact in these times is crucial and noted a number of establishments have been closing down. He felt any closing would have a huge impact on them.

Mr. Krusenoski asked if he would prefer a fine and zero days of suspension. Mr. Cullen replied yes and noted it would be better for business.

Mr. Cullen reiterated that nobody was served the special in this situation and it was not an intentional violation. He stated that staff recommended big numbers for the penalty.

Ms. Fregeau stated that disciplinary action of any kind is never pleasant. She stated that just because the offer did not happen, does not mean it could not have happened.

Ms. Fregeau noted that the Commission reviews the DUI Notification reports and thankfully nobody has been killed as a result of those drunken driving incidents.

Ms. King stated that the Commission is a recommending body. She would recommend zero days of suspension and a \$10,000 fine. She stated that sends a message. She felt that the 2004 warning was an aggravating circumstance.

Chairman Pro Tem Strelau stated that the Commission is put in a difficult situation. She stated that if they do not enforce the Ordinance and make it difficult for violators, they will be dealing with violations regularly. She stated that it is the licensee's responsibility to know the rules. She stated that the Commission has to deal with the ramifications if licensees do not follow the rules.

Chairman Pro Tem Strelau did not feel that they should be closed 6-14 days, but understood the staff recommendation. She stated fines in lieu of suspension have been offered in the past for them and others. She felt a fine of \$7,500 to \$10,000 fines was appropriate and knows it is steep, however, she has a hard time issuing a \$1,000 fine if their last fine was \$5,000. She stated that there needs to be some escalation. She would be agreeable to zero days of suspension.

Mr. Adank was not comfortable burdening Ballydoyle with that fine. He appreciated Mr. Cullen's candor and honesty but could not wash the "mistake" away. He did not want to make the disciplinary action difficult on licensees, but memorable.

Chairman Pro Tem asked Mr. Adank if he would reconsider his motion on the base on the basis of making the violation memorable. Mr. Adank replied that he would like costs of the hearing be covered and a fine in the amount of \$1,000.

Mr. Adank believed that Ballydoyle felt the pain of sitting before the Commission and there was pain felt on behalf of those up for the next hearing. He believed that nobody is going to forget this. He weighed the economic situation with the severity of what happened. He was comfortable with his original motion.

Mr. Clary agreed and wanted to be tough, but not excessive with penalties. He stated that although the economy is tough, there is no excuse for this type of violation. He wanted licensees to be successful but operate in accordance with the law. He did not believe however that a six day suspension or \$10,000 fine was appropriate. He stated that hearing costs should be covered and \$1,000 fine was fair in this case with the understanding that this is very serious violation.

Ms. Fregeau understood that this was their first type of violation, but noted the previous warning given and that there have been a number of violations for this licensee in a short period of time. She was

concerned that so many of them did not see this offer as a potential problem. She did not believe it was deliberate or intentional violation.

Ms. Fregeau felt that a \$1,000 fine with no suspension sends the wrong message globally. She was not comfortable with \$1,000 fine and zero days. She did not want to shut down the licensee, but the fine should be more than the last fine of \$5,000 . She was willing to accept zero days of suspension in accordance with that.

Ms. Fregeau stated that she was uncomfortable with the whole thing. She was concerned about setting precedent and worries about the message what kind of message would be sent to the community.

Chairman Pro Tem Strelau asked the Commission if an appropriate penalty would be zero days of suspension and a fine over \$5,000. Mr. Krusenoski agreed. Ms. King was concerned about setting precedent.

Chairman Pro Tem Strelau stated that they were only a recommending body and that the Liquor Commissioner could take a completely different view of the situation. She wanted them to make the best decision possible and move on. She asked for another motion.

**MR. KRUSENOSKI MOVED TO RECOMMEND THAT THE LICENSE OF BALLYDOYLE, LLC D/B/A BALLYDOYLE IRISH PUB & RESTAURANT, LOCATED AT 5157 MAIN STREET, BE SUSPENDED FOR ZERO (0) DAYS, THAT THE LICENSEE BE FINED IN AN AMOUNT OF NOT OF NOT LESS THAN \$5,000 NOR MORE THAN \$15,000.00 AND THAT THE LICENSEE PAY AN AMOUNT NOT TO EXCEED \$1,000.00 TO COVER ADMINISTRATIVE COSTS TO CONDUCT THIS HEARING.**

The motion died for lack of a second.

Chairman Pro Tem Strelau requested another motion.

Ms. Petrarca advised that the Commission may offer the Liquor Commissioner a larger range and allow the Mayor to decide the appropriate penalty, if any.

**MR. KRUSENOSKI MOVED TO RECOMMEND THAT THE LICENSE OF BALLYDOYLE, LLC D/B/A BALLYDOYLE IRISH PUB & RESTAURANT, LOCATED AT 5157 MAIN STREET, BE SUSPENDED FOR ZERO (0) DAYS, THAT THE LICENSEE BE FINED IN AN AMOUNT UP TO \$15,000.00 AND THAT THE LICENSEE PAY AN AMOUNT NOT TO EXCEED \$1,000.00 TO COVER ADMINISTRATIVE COSTS TO CONDUCT THIS HEARING. MR. CLARY SECONDED.**

**VOTE:**       **Aye:**   Mr. Krusenoski, Mr. Clary, Ms. Fregeau, Ms. King Chairman Pro Tem Strelau

**Nay:**   Mr. Adank

**Abstain:** None

**MOTION CARRIED: 5:1:0**

The motion carried.

That concluded the disciplinary hearing for Ballydoyle Irish Pub & Restaurant.

**JN Pizza, Inc. d/b/a Roundhead's Pizza Pub**

Chairman Pro Tem Strelau stated that the next order of business was to conduct a disciplinary hearing for JN Pizza, Inc. d/b/a Roundhead's Pizza Pub located at 2001 W. 63rd Street. She stated that the licensee has been charged with a violation of Section 3-33.1 of the Downers Grove Liquor Control Ordinance which limits the sale and promotion of alcoholic liquor.

Chairman Pro Tem Strelau asked that any individual(s) representing the applicant step forward and be seated. She asked that any individual(s) giving testimony, state and spell their name for the record, indicate their affiliation with the establishment and be sworn in by the court reporter.

Mr. Nick Nagy and Mr. Jay Nagy were sworn in by the court reporter. Jay introduced himself as the owner of Roundhead's. Nick Nagy introduced himself as the manager of Roundhead's.

Chairman Pro Tem Strelau asked the prosecuting attorney to present her case.

Ms. Clark stated that the parties to this hearing before the Liquor Commission of the Village of Downers Grove by and through their attorneys, if any, hereby stipulate as follows:

1. JN Pizza, Inc. d/b/a Roundhead's Pizza Pub, 2001 W. 63rd Street, Downers Grove, Illinois, is the holder of a Class R-1/O Liquor License #LQ-000011, issued by the Village of Downers Grove. That said Licensee has held a liquor license for this location from the Village of Downers Grove since March 8, 2005.
2. Notice of this hearing was served upon the Licensee by certified mail to its registered agent and by personal delivery to the manager of the licensed premises.
3. That the Downers Grove Patch website ([www.downersgrove.patch.com](http://www.downersgrove.patch.com)) published an article entitled "Patch Picks: Places to Watch the Superbowl".
4. On February 3, 2011, the Patch Picks article read: "Roundheads Pizza Pub, 2001 63rd St., Downers Grove 630.434-9999...For the Superbowl, they offer a \$50 all you can eat and drink buffet during game time so you can enjoy yourself to the fullest.", copy attached hereto and incorporated herein as Exhibit A.
5. On Wednesday, February 3, 2011 the Roundheads Pizza Pub website ([www.roundheadspizza.com](http://www.roundheadspizza.com)) promoted a Superbowl XLV party on February 6, 2011 at 5:00 p.m which included an all you can eat and drink buffet, copy attached hereto and incorporated herein as Exhibit B.
6. That the promotion/advertising of the sale of an unlimited number of drinks during a set period of time for a fixed price; is in violation of Section 3.33.1(b) of the Downers Grove Municipal Code.
7. That on February 6, 2011, at approximately 4:30 p.m., Sergeant Richard Giancarlo entered Roundhead's Pizza Pub located at 2001 W. 63rd Street. Upon entry, a promotional flyer in the window next to the entry door advertised an all you can drink and all you can eat special for \$50.00.
8. That Sergeant Giancarlo ordered a meal and inquired about the \$50.00 special. His waitress advised it was a "Drink special" which included the buffet and drinks for \$50.00.

9. That Sergeant Giancarlo observed six patrons seated near him who he believed had purchased the special. He noted that their table had been served several rounds of beer without the exchange of currency and the entire party ate the buffet.
10. That Sergeant Giancarlo spoke with a patron and asked about the significance of a placard around his neck and the patron advised it was for the promotion offered by Roundheads. The patron advised it was given to him for paying for all you could eat and drink for \$50.00 and advised that the promotion ran from 4:00 p.m. until the end of the game.
11. On February 6, 2011, an unlimited number of drinks was sold, offered for sale and delivered on the premises in violation of Section 3-33.1(a)(2) of the Downers Grove Municipal Code.
12. That Sergeant Giancarlo approached the owner Joe Nagy and asked him if he was offering an unlimited \$50.00 unlimited drink special. Mr. Nagy acknowledged that Roundhead's was having a Super Bowl party, which included a \$50.00 per person all you can eat and all you an drink special during the football game.
13. That Sergeant Giancarlo asked what type of alcoholic beverages were included in the special, to which owner Joe Nagy replied "beer and wine".
14. That Sergeant Giancarlo informed Mr. Nagy that unlimited drink specials were in violation of Section 3-33.1(a)(2) of the Downers Grove Municipal Code.
15. That Sergeant Giancarlo advised Mr. Nagy that the serving of unlimited drinks would need to be discontinued.
16. The Sergeant Giancarlo advised that notice of further action would be forthcoming from the Downers Grove Liquor Commission

Ms. Clark asked that the signed stipulation with exhibits be entered into the record as Village's Exhibit #1. Chairman Pro Tem Strelau accepted the signed stipulation as Village Exhibit #1.

Chairman Pro Tem Strelau asked the licensee to present its case.

Jay Nagy apologized for the violation. He stated that the event was originally designed for a private party. He stated that they have been in business for 15 years and follow the rules strictly.

Ms. Fregeau asked how this event was designed to be a private party. Joe Nagy stated that a patron approached them about having a Fantasy Football Party. He stated that they had placards made and put a coupon on the back. He stated that whoever came to his party would be given a placard.

Ms. Fregeau asked how the event broke down in the restaurant. Jay replied that there were other people in the restaurant also. He took responsibility for the event escalating. Ms. Fregeau asked if there was a segregated section for the party. He stated there was supposed to be.

Ms. Fregeau asked how waitresses knew who was allowed to participate. She inquired how it went from a private party to being offered to the public. Jay stated that the offer was a good deal and other people wanted to get in on the offer.

Ms. Fregeau asked if they sent out a press release. Jay replied no. She asked where the information on the Patch article came from. Jay replied it must have been noticed from their website. He stated that it



was designed to be a private party. Nick stated that they take full responsibility for it being posted wrong.

Ms. Fregeau stated that the Commission has to be concerned about licensees and the messages sent to the community as to what is allowed.

Ms. Fregeau asked if there were managers on duty that day. Jay replied his father and sister.

Mr. Adank asked how it went from a private party to being advertised on the internet making it a public party. He asked them to expand on that. Nick thought they could bring more people in and piggy back on this private event.

Mr. Adank referred to Exhibit B of the stipulation and asked if it was on their website. Jay replied yes. Mr. Adank stated that he did not see where the event was listed as private or a public party. Ms. Clark referred him to review the side of the exhibit.

Mr. Adank asked if they understand it is not a private party at the point it was posted on the website. Jay replied that was his mistake. He stated that business has been slow and they were trying to get more business from it. Mr. Adank again asked if it was a public party or private party. Jay replied that it is a public party as it was on the website.

Mr. Adank reviewed the Patch article. He asked if it was written by someone at the Patch or if it was supplied by them. Jay replied it was not supplied by them.

Mr. Adank asked if Officer Giancarlo identified himself as an officer. Mr. Petrarca stated that he did at the end of the investigation. Mr. Adank asked if he was in uniform. Ms. Petrarca stated that he is a plain clothed detective. He asked how long Officer Giancarlo knew about the offer prior to be on site the evening of the incident. Ms. Petrarca replied a few days. Mr. Adank asked how Officer Giancarlo knew about the party and asked why staff was not working with license holders ahead of time to discuss the matter. Ms. Petrarca replied that this licensee was spoken to about a similar issue less than one month prior.

Mr. Clary was struggling with the private/public issue as well. He asked when the party was posted on the website. Jay replied did not know the exact date. Mr. Clary asked if they had been in contact with the patron prior to the event. Nick replied yes.

Mr. Clary stated that there is no verbage in the advertisement stating it was private. Jay agreed.

Mr. Clary asked if it was their intention for this to be a private party for the entire restaurant. Jay stated that it was their intention to have this party and use it to get more people into the bar. He stated that unless the Bears are in the Super Bowl it is not a busy day for them. He stated that they were trying to get people in the door. Jay stated that it was poor advertising on their part.

Jay Nagy stated that in 15 years they have never held a party like this. Mr. Clary asked them what prompted them to do it. Jay replied that since it has not been busy, they wanted to step outside the box and drum up some business. Nick stated that it was like a wedding as it was the patron's party. Mr. Clary stated that it is their restaurant and could not wrap his head around the fact about it being on the website.

Mr. Clary asked how many people were there and paid the \$50. Jay replied 40. Mr. Clary asked where they were at in the restaurant. Jay replied they were in the section by the bar area. He asked if that was the only way to get into the restaurant and asked if it was \$50 just to get in. Jay replied that they sat

patrons at tables if they just wanted a burger. Mr. Clary asked if they were soliciting the \$50 offer. Jay replied no.

Mr. Clary asked if the offer was advertised in the restaurant. Ms. Petrarca stated that there was an advertisement in the window.

Mr. Krusenoski asked if there were simultaneous parties, one by a private party and the one that they were hosting. He asked if they got the idea from the private guy. He stated that it did not matter what the origin was, it is still a violation of the State and local law.

Mr. Krusenoski asked when staff talked to them a month ago and if it was prior to the Super Bowl. Ms. Clark stated that staff spoke to Nick regarding a New Years Eve event. She stated that she has copies of two emails from Carol to [zpizzaguy@aol.com](mailto:zpizzaguy@aol.com) which is Nick's email address. Ms. Clark advised that the first email was sent on December 29<sup>th</sup> at 12:48 PM where Carol indicates "New Years Eve and any other open bar promotions are prohibited by local and state ordinance." Ms. Clark stated that Carol provided a copy of 3-33.1 of the Code which prohibits the advertising, sale and promotion of unlimited drinks. Ms. Clark advised that on December 30<sup>th</sup> at 3:51 PM, Carol sent another email to [zpizzaguy@aol.com](mailto:zpizzaguy@aol.com) regarding open bar promotions saying to "please have the New Year Eve open bar offer removed from your website. Advertising alone constitutes a violation". Mr. Krusenoski stated that was pretty clear.

Mr. Krusenoski asked if staff was aware of the Super Bowl promotion in advance of Sunday. Mr. Clark replied yes.

Ms. King asked how hotel private parties and other parties are legally held. Ms. Kuchynka stated that a patron could rent out a room or area of the establishment. She stated that they would pay for all of their invited guests only. She stated that the general public cannot be invited or they cannot allow anyone to walk in and participate. She stated that once it is put on a website or anyone can join in, it is no longer considered a private function.

Chairman Pro Tem Strelau was pleased when Another Round came into expand, but disappointed now they before them for the complete opposite. She stated that knowing State and local laws is their responsibility. She stated that if they fail to follow the law, they jeopardize their license and put the Commission in an unpopular position when they have to recommend penalties. She understood that times are difficult and the party started out one way but morphed into something else. She stated that they need to call Carol the next time they have an out-of-the box thought.

Ms. Clark summarized by stating that JN Pizza, Inc. d/b/a Roundhead's Pizza Pub located at 2001 W. 63rd Street has stipulated to a violation of Section 3-33.1 of the Downers Grove Liquor Control Ordinance which limits the sale and promotion of alcoholic liquor. She stated that this is the licensee's first violation in past five years and there are no aggravating circumstances in this case. She recommend that the license be suspended for 1 to 3 days pursuant to the Village's suspension guidelines. She recommend that the licensee be required to pay a fine of up to \$15,000 and that they pay an administrative fee of \$1,000.00 to cover the costs of conducting this hearing.

Upon hearing the evidence presented in this case, Chairman Pro Tem Strelau requested a motion as to whether the licensee be found guilty or not guilty of a violation of Section 3-33.1 of the Downers Grove Municipal Code.

**MR. KRUSENOSKI MOVED TO FIND JN PIZZA, INC. D/B/A ROUNDHEAD'S PIZZA PUB LOCATED AT 2001 W. 63RD STREET, GUILTY OF VIOLATING SECTION 3-33.1 OF THE DOWNERS GROVE LIQUOR CONTROL ORDINANCE. MR. CLARY SECONDED.**

**VOTE:**       **Aye:**   Mr. Krusenoski, Mr. Clary, Mr. Adank, Ms. Fregeau, Ms. King, Chairman Pro Tem Strelau

**Nay:**   None

**Abstain:** None

**MOTION CARRIED:** 6:0:0

The motion carried.

Chairman Pro Tem Strelau asked if they preferred a fine in lieu of a suspension. Jay preferred a fine.

Chairman Pro Tem Strelau requested a recommendation as to the fine and/or suspension for the violation.

Mr. Krusenoski asked if the staff recommendation was 1-3 days and an open ended fine of up to \$15,000. Ms. Clark replied yes.

**MS. KING MOVED TO RECOMMEND THAT THE LICENSE OF JN PIZZA, INC. D/B/A ROUNDHEAD'S PIZZA PUB LOCATED AT 2001 W. 63RD STREET, BE SUSPENDED FOR ZERO (0) DAYS, THAT THE LICENSEE BE FINED IN AN AMOUNT OF \$2,500/NOT TO EXCEED \$15,000.00 AND THAT THE LICENSEE PAY AN AMOUNT NOT TO EXCEED \$1,000.00 TO COVER ADMINISTRATIVE COSTS TO CONDUCT THIS HEARING. MS. FREGEAU SECONDED.**

Jay Nagy noted that this is their first violation in 15 years.

Mr. Krusenoski was troubled by the staff email warnings. He stated that there is not a big distinction between the New Years Eve party and the Super Bowl party. He was in agreement with Ms. King's motion.

Mr. Clary was also concerned that they did not heed prior warnings.

Mr. Krusenoski asked who is the liquor manager at Roundhead's. Nick replied that he is.

Mr. Adank asked who is in charge of advertising. Jay replied that they all are.

Ms. King stated that in the past they have recommended training and asked if they should require it.

Chairman Pro Tem Strelau asked if they are all BASSETT trained. Jay replied yes.

Mr. Adank was torn and they would like to fight on behalf of licensees, but was torn with the previous warnings from New Years. He was not comfortable with where they were at with private versus public parties. He was not opposed to the motion.

Ms. Fregeau stated that 15 years without a violation is something to be proud of. She stated that in looking at the ad, there is a lot of food advertisements on the site. She stated that the all you can eat and drink is still offered. She stated that it is a "bottomless glass" offer. She would have leaned toward \$1,000 in fines, however, a previous warning was given and they should have checked the law.

Chairman Pro Tem Strelau was disappointed that they heard from staff, but did not heed staff advise. She noted their good record, which is appreciated. She stated that it is not staff's obligation to chase

down licensees to make sure they are following the rules. She stated that they got a “freebie” when they received the New Years’ Eve warning. She stated that it is not the Village’s obligation to constantly remind licensee’s of the rules. She agreed with Ms. King’s motion.

**VOTE:**           **Aye:**   Ms. King, Ms. Fregeau, Mr. Adank, Mr. Clary, Mr. Krusenoski, Chairman Pro Tem Strelau

**Nay:**   None

**Abstain:** None

**MOTION CARRIED:** 6:0:0

The motion carried.

**Village of Downers Grove v. Nagy Brothers, Inc . d/b/a Another Round**

Chairman Pro Tem Strelau stated that as there is no stipulation in the case of the Village of Downers Grove vs. Nagy Brothers, Inc. d/b/a Another Round, located at 5141 Main Street. She stated that the order of the hearing will be substantially as follows:

- A.       Prosecution will present its case with the right to cross examine.
- B.       Licensee may present any defense or mitigating evidence with right of prosecution to cross-examine.
- C.       Summary of case by prosecution and defense.

Chairman Pro Tem made the following statements:

"The prosecution should establish that timely notice of this hearing has been provided to the licensee."

"Witnesses shall be sworn."

"Strict rules of evidence will need not be adhered to although the Commission expects to exercise control over the hearing to ensure that irrelevant or repetitive testimony does not unduly prolong the hearing."

"A court reporter is present and will take the proceedings verbatim. Staff is also present for the purpose of summarizing the proceedings."

"The Commission will submit the findings and recommendations to the Local Liquor Commissioner regarding the existence and nature of any violation and the appropriate penalty, if any."

"Upon receipt of the recommendation of the Commission, the Commissioner will render a decision and the licensee will be notified in writing."

Chairman Pro Tem Strelau asked that any individual(s) representing the applicant step forward and be seated. She asked that any individual(s) giving testimony, state and spell their name for the record, indicate their affiliation with the establishment and be sworn in by the court reporter.

Mr. Nick Nagy and Mr. Jay Nagy were sworn in by the court reporter. Jay introduced himself as the owner of Another Round. Nick Nagy introduced himself as the manager of Another Round.

Chairman Pro Tem Strelau asked the prosecuting attorney to present her case.

Ms. Clark stated that she was the prosecuting attorney representing the Village of Downers Grove. She summarized by stating that Nagy Brothers, Inc. d/b/a Another Round is the holder of a Class R-1/O liquor license #LQ-00015, issued by the Village of Downers Grove. She stated that they have held this license since April 1, 2010. She stated that the licensee is being charged with violating 3-33.1(b) of the Downers Grove Municipal Code which specifically prohibits promoting or advertising an unlimited number of drinks during a set period of time for a fixed price.

Ms. Clark stated that during the testimony, the Village will show that on or about February 4, 2010, Another Round posted on its website ([www.anotherroundbarandgrill.com](http://www.anotherroundbarandgrill.com)) and advertisement reading "Reserve your Super Bowl party seats now, Sunday, February 6<sup>th</sup>, \$50 includes food, drinks, prizes. Seats going fast". She stated that this listing violated Village ordinances and that it was an advertisement on its website offering an unlimited number of drinks on the day of the Super Bowl.

Ms. Clark stated that Mr. Nagy provided notice to her that they would not sign the Village's stipulation. She stated that she received an affidavit from one of the Village's witnesses.

Ms. Clark read the following affidavit of Erin Venezia into the record:

NOW COMES the AFFIANT, Erin Venezia, and upon oath, states as follows:

1. I am the Marketing/Office Manager for the Downtown Downers Grove Management Corporation.
2. Part of my duties as Marketing/Office Manager for the Downtown Downers Grove Management Corporation includes updating the Downtown Downers Grove website ([www.downtowndg.org](http://www.downtowndg.org)).
3. As part of those duties and updating the website, I affirm that I retrieved a Superbowl advertisement on January 10, 2011 directly from the website of Another Round ([www.anotherroundbarandgrill.com](http://www.anotherroundbarandgrill.com)) which stated as follows: "Reserve Your Superbowl Party Seats Now! Sun Feb 06 \$50 Includes Food Drinks Prizes Seats are Going Fast!", copy attached hereto and incorporated herein as Exhibit A.
4. I updated the Downtown Downers Grove website with the following information in the February Calendar of Events section of the Downtown Downers Grove website which read: "Another Round Bar and Grill \$50.00/person includes: food, drinks and prizes", copy attached hereto and incorporated herein as Exhibit B, based upon information retrieved from the website of Another Round.
5. On February 5, 2011 at approximately 11:30 AM after receiving a phone call from an uninvolved third party that the Superbowl special was not being offered, I subsequently posted the following statement on the Downtown Downers Grove Facebook page: "The planned activities at Another Round will no longer be offered", copy attached hereto and incorporated herein as Exhibit C.

FURTHER AFFIANT SAYETH NAUGHT.

Ms. Clark advised that Ms. Erin Venezia signed the affidavit on March 2, 2011. She asked that the signed and notarized affidavit be entered into the record as Village's Exhibit #1. Chairman Pro Tem Strelau accepted the signed stipulation as Village Exhibit #1.

Ms. Clark stated that the Village would like to call Nick Nagy as her first witness.

Ms. Clark asked Mr. Nagy to explain his role with Another Round and briefly describe the business. Nick Nagy replied that it is a restaurant/bar and that he is the liquor manager.

Ms. Clark asked if Another Round has a website. Mr. Nagy replied yes. She asked the address of the website. Nick replied [www.anotherroundbarandgrill.com](http://www.anotherroundbarandgrill.com)

Ms. Clark asked who responsible for posting advertisements on their website. Nick replied their web designer. Ms. Clark asked the web designer's name. Nick replied Aaron.

Ms. Clark asked how the web designer gets the web information to post on the website. Nick replied through him, Jay and the other manager, Rob.

Ms. Clark asked Nick if he was familiar with Exhibit A of the affidavit (super bowl advertisement). Nick replied yes. Ms. Clark asked if the advertisement was posted on their website. Nick replied it was on the website for 2-3 days.

Ms. Clark asked what the advertisement meant by \$50 includes food, drink and prizes. Nick stated that he believed the web designer put it on the Another Round site but it was supposed to be for the Roundhead's site.

Ms. Clark asked Nick if they asked Aaron to post the advertisement on their website. Nick replied no. He stated he believed there was miscommunication about putting on the website for Roundhead's Pizza but did it on his own. He stated that they told him to take it off and that they were not offering it, having the special or having the party downtown. Nick stated that 20 minutes later Aaron took it off. Nick stated that nobody told them to take it off, that they caught it themselves.

Ms. Clark asked why they took the advertisement off. Nick replied that they were never doing the party.

Ms. Clark asked if this was the same advertisement that appeared on the Roundhead's website. Nick replied that he did not know if it was the exact one. Jay replied it was the same one.

Ms. Clark referred to the copy of the advertisement and asked Nick to read it. Nick read "all you can eat and drink buffet, reserve your seats now". Ms. Clark asked if that was the same advertisement that appeared on the site of Another Round. Jay replied it was different. Nick replied it was different. Ms. Clark asked them how it was different. Jay replied that the background was different. Ms. Clark stated that the advertisement for Another Round read "food, drink and prizes" whereas the Roundheads advertisement read "all you can drink and all you can eat buffet". Jay stated that if you look at the websites, they are different too.

Ms. Clark asked if it is their testimony that at no point they requested Aaron place this advertisement on Another Round's website. Nick replied that he never did.

Ms. Clark asked were Aron gets his information as to what is posted on the website. Jay replied they tell him. Ms. Clark asked who they thought told Aaron to place this on the website. Jay believed that Aaron assumed he was supposed to place it on both websites. Jay stated that after they saw it was on the wrong website on their own, it was taken off. Jay stated that they knew it was not the right party to have.

Ms. Clark had no further questions.

Ms. Clark stated that the Nagy's could call witnesses. The Nagy's had none.

Nick stated that on the stipulation document [www.anotherround.com](http://www.anotherround.com) is not their website, it is [www.anotherroundbarandgrill.com](http://www.anotherroundbarandgrill.com) He stated that there is no reference to "free", "complimentary", "open bar" or "unlimited alcoholic beverages" listed on the ad. He stated that mistakes happen and there was miscommunication. He stated that the same thing happened with Aaron.

Ms. Clark asked if the special including drinks and prizes was advertised on the website for Another Round. Jay and Nice replied mistakenly, yes.

Jay stated that they knew this was not a party they could have and that it was illegal. Nick stated that they did not intend to have the party, he stated that they never called the Daily Herald or the Patch. He stated that

there were no signs posted in house. He stated that they were warned for New Year's Eve. Jay stated that it was on the wrong website for two days and taken off. Nick stated that they took it off their website on their own and that they did not want to advertise something they were not doing.

Jay stated that the Code reads "alcoholic beverages" and noted that his ad says "drinks". He stated that they could have had the offer with only two drinks. He stated that they understood that they could offer two drink tickets with a package.

Nick advised there were other establishments in the community that offer specials on their websites.

Jay stated that there was miscommunication with their web designer and that they did plan to have the event. He stated that the word "drinks" could have meant anything. Jay stated that it was proven that they did not hold the party as the officer asked for the special during his investigation but was told it was not being offered.

Jay stated that the stipulation was wrong and noted that [www.anotherround.com](http://www.anotherround.com) was not their website. He stated that was a misprint just as their advertisement was a misprint by putting it on the Another Round website. Ms. Clark advised that the draft stipulation offered to the Nagy's was never signed and cannot be offered as evidence and it was never entered into the record. Jay pointed out that mistakes happen. He understood the violation at Roundhead's but did not understand the violation and did not believe they did anything wrong at Another Round.

Ms. Clark summarized that the Village Code not only prohibits the sale and delivery of unlimited drinks, but it also prohibits the advertisement of unlimited drinks which is the violation in this case. Jay stated that it prohibits "alcoholic" drinks. Jay stated that the ad does not have alcoholic drinks. Jay stated that the offer could have included two drink tickets.

Ms. Clark stated that the advertisement that they had stipulated to in the previous case regarding Roundhead's also states "drinks" and does not state alcohol, however, they testified that drinks in that advertisement meant alcoholic beverages. Nick replied that offer was not their party. Jay stated that they took the guilt for that offer and apologized for it.

Ms. Clark asked that the Commission find Nagy Brothers, Inc. d/b/a Another Round guilty of violating Section 3-33.1(b) in that they placed an advertisement on their website for an unlimited drink special.

Chairman Pro Tem Strelau wanted to clarify the charges and wanted to be sure that the Commission understood this violation was solely for the advertising of the drink special and that the offer did not take place. She stated that the mere advertising is a Downers Grove local ordinance violation. She stated questions should be directly related to advertising of the special.

Ms. King asked for clarification on the affidavit of Erin Venezia. She noted that Erin stated that the advertisement was placed on the website on January 10<sup>th</sup> and then she took off the advertisement off the Downtown Management site on February 5<sup>th</sup>. Ms. Clark replied yes. Ms. King asked if it was posted for a month. Jay replied that the advertisement was not on their website for a month. He stated that they were getting calls about the party and was unaware of where people were getting the information from. He stated that they did not advertise on the Patch or on the Downtown Downers Grove Management site. He stated that someone finally told them they were on that site but they said they were not having the party.

Ms. Clark stated that Ms. Venezia retrieved the information from the [www.anotherroundbarandgrill.com](http://www.anotherroundbarandgrill.com) website on January 10<sup>th</sup> and that she was informed that the special was not being offered on February 5<sup>th</sup>. She stated that we know that it was up on January 10<sup>th</sup>, but do not know how many actual days it was up on [www.anotherroundbarandgrill.com](http://www.anotherroundbarandgrill.com). Jay stated that this was a misunderstanding and that they never intended to have this party. He stated they take pride in their 15 year reputation. He understood the Roundhead's

violation but did not understand why they were before the Commission for Another Round.

Chairman Pro Tem Strelau replied that they are before the Commission because staff felt there was enough evidence that they were advertising a drink special. She stated they are trying to discover what advertising, if any, took place for the special. Jay stated that if they were going to advertise, there would be signs in the restaurant and it would be posted on their website until the day of the event. He stated that there were postings on the Roundhead's website and signs posted. He stated this was a misunderstanding in that the advertisement was posted on the wrong website.

Mr. Krusenoski understood that it is part of Erin Venezia's duties is to look over downtown businesses and grab advertisements that relate to special events and post them on the Downtown Downers Grove website. He stated it was posted on the downtown site for about a month but may not have been posted on the Another Round site for that entire time.

Mr. Krusenoski wished this hearing came before the prior case because they clearly knew this was wrong and they pulled this advertisement but piggy backed on the other party, which is completely counterintuitive. He stated that the whole thing does not make sense that they allowed the Roundhead's party to go on because they were so adamant about the fact that they knew the offer was wrong in this case.

Mr. Krusenoski felt that they did not have a buffet at Another Round, but had one at 63<sup>rd</sup> Street (Roundheads), did not offer prizes at Roundhead's, but offered prizes at Another Round. He stated that it clearly looks as though this advertisement was intended for the Another Round location.

Mr. Clary agreed that the advertisements were totally different. Jay stated that the offer was placed on the specials page and noted it was a different ad than the one on the main page. Mr. Clary was unclear. Jay stated that the same advertisement was on the specials page of Roundhead's and not on the front page of the site where the other advertisement was. He stated that the advertisement did run on both websites.

Mr. Clary asked if the special ran on both websites. Jay replied correct, for a couple of days. He added that it was not specifically designed for Another Round. Mr. Clary asked why this was not placed on the front page of Roundhead's. Jay stated that if they were to look through the specials page it probably would have been there.

Mr. Clary asked if they had intention to place this advertisement on the website. Jay replied never. He added that it why they feel so strongly against this violation.

Mr. Clary asked who brought the advertisement to their attention. Jay stated that they went on the site and saw it. Mr. Clary asked if it was under the specials section. Jay replied it was on the front page. He noted that he does not go on the website every day.

Mr. Clary clarified that he does not go on the site every day. Jay agreed. Mr. Clary asked if their web designer goes on the website every day. Jay replied no. He stated that he will go on every so often or when they have changes.

Mr. Clary asked if the advertisement would have stayed on the site if they would not have gone on the website for a few weeks. Jay replied it probably would have stayed there until someone brought it to their attention.

Mr. Clary asked how many calls they received about the offer. Jay stated that they did not get any in the beginning and stated that started getting calls closer to the Super Bowl. He stated that is why they were confused.

Mr. Clary inquired where people got the information from and they said they took the ad off the site. Jay



replied that it was on the Downtown Management site but they never gave permission to them. He stated that they decided to take it. Mr. Clary stated, unfortunately, what is posted on the Another Round website is public information. Jay reiterated it was a mistake on the site. He stated that they had no signs posted in the restaurant.

Mr. Adank understood what they were saying in that it was posted as a mistake, but it is ultimately their responsibility.

Ms. Fregeau had no questions.

Chairman Pro Tem Strelau recognized that Mr. Clary made a salient point in that it is their website and that the Downtown Management Corporation only pulled what they found, however long it was there.

Chairman Pro Tem Strelau asked if they fired their web designer. Jay Nagy replied no. He noted that people make mistakes. He would not fire a waitress if they put in a wrong order. Chairman Pro Tem Strelau agreed, but a misplaced order would not bring them before the Liquor Commission either.

Chairman Pro Tem Strelau requested a motion as to whether a violation of Section 3-33.1(b) of the Downers Grove Municipal Code occurred upon hearing the evidence presented in this case.

**MR. KRUSENOSKI MOVED TO FIND NAGY BROTHERS, INC. D/B/A ANOTHER ROUND LOCATED AT 5141 MAIN STREET, GUILTY OF VIOLATING SECTION 3-33.1(b) OF THE DOWNERS GROVE LIQUOR CONTROL ORDINANCE. MR. CLARY SECONDED.**

**VOTE:**           **Aye:**   Mr. Krusenoski, Mr. Clary, Mr. Adank, Ms. Fregeau, Ms. King, Chairman Pro Tem Strelau

**Nay:**   None

**Abstain:** None

**MOTION CARRIED: 6:0:0**

The motion carried.

Chairman Pro Tem Strelau requested a recommendation on a penalty for the violation.

Ms. Fregeau asked staff what penalty they recommend.

Ms. Clark stated this is the licensee's first violation in the past five years. She stated there is one aggravating circumstances in this case, which is that the violation occurred within one year of the original issuance of the license. She recommend that the license be suspended for 1 to 3 days and/or a fine of up to \$15,000 and an administrative fee of up to \$1,000 to cover the costs of conducting this hearing.

**MR. KRUSENOSKI MOVED TO RECOMMEND THAT THE LICENSE OF NAGY BROTHERS, INC. D/B/A ANOTHER ROUND, LOCATED AT 5141 MAIN STREET, BE SUSPENDED FOR ZERO (0) DAYS/THAT THE LICENSEE BE FINED IN AN AMOUNT OF \$500.00 AND THAT THE LICENSEE PAY AN AMOUNT NOT TO EXCEED \$1,000.00 TO COVER ADMINISTRATIVE COSTS TO CONDUCT THIS HEARING. MR. CLARY SECONDED.**

Mr. Adank asked about administrative hearing fees and asked if they can be reduced. He asked if they would be covered with the previous hearing. Ms. Kuchynka advised that staff can review the cost center analysis and perhaps give them a reduction on the court reporter fees. Ms. Clark stated that the Village has the

authority to collect up to \$1,000 for hearing fees per State law. She advised that staff can calculate fees after the hearing. Ms. Fregeau could take into consideration a reduction in fees. Chairman Pro Tem Strelau noted that the fee will never be more than \$1,000.

Mr. Adank preferred to waive the hearing fees. He asked if it could be reduced. Ms. Petrarca stated that the Village should cover administrative costs. The group agreed that staff would determine if the costs could be reduced. Mr. Adank agreed with the motion on the table.

Ms. Fregeau asked if there is a guideline or history of suspension for this type of violation. Ms. Petrarca stated that the only advertising violation was in 2001 where the licensee received a one day suspension and \$1,000 fine. She noted that all Code violations can fall within prescribed guidelines.

Ms. Fregeau stated that the aggravating circumstances troubled her. She stated that they have been good for awhile but it is hard to ignore the fact that they were warned a few weeks beforehand.

Mr. Clary was fine with the recommendation.

**VOTE:**           **Aye:**   Mr. Krusenoski, Mr. Clary, Mr. Adank, Ms. Fregeau, Ms. King, Chairman Pro Tem Strelau

**Nay:**   None

**Abstain:** None

**MOTION CARRIED:** 6:0:0

The motion carried.

## **V.       OLD BUSINESS**

Chairman Pro Tem Strelau asked if there was any discussion, update from staff or comments from the Commission regarding any old business.

Ms. Kuchynka advised that the Friday 2AM serving hours has been adopted by the Village Council on March 1<sup>st</sup>. Ms. Kuchynka advised that there is a six month sunset clause put into the ordinance making it effective until September 1<sup>st</sup>. She stated that staff will be monitoring events over the next six months. She advised that the Police Department was notified of the change and was asked to report problems immediately.

Ms. Petrarca advised that the Council asked that staff look at the hours of liquor serving as a whole and whether or not the issuance of a late night liquor license should be considered. She stated that liquor service could end at midnight for all license holders and those licensees who wanted to serve past midnight could apply for a separate two-hour late night license (midnight - 2AM).

Ms. Kuchynka noted that a survey was being taken of licensees about their hours of operation. Ms. Petrarca stated that once licensees are surveyed, it can be determined how many licensees would be affected. She advised that most stop serving prior to midnight and it would not harm them if they did not serve past midnight. She stated that staff will put its findings together which will be the basis of a future Liquor Commission discussion.

Mr. Adank asked about the rationale behind the separate license. Ms. Petrarca stated it would be similar to issuing outdoor licenses. She stated that it would be a privilege for those licensees who want to serve late. She stated that officers would know what licensees remain open late and did not believe this would affect more than 10 license holders. Ms. Petrarca stated that licensee responses and pricing will be issues.

Ms. Fregeau asked if staff will include the history when the Village changed Saturday into Sunday hour service to 2AM. She was curious as to how 2AM was brought up in the beginning and why it did not include Friday.

Mr. Adank asked what the time line was to review the matter. Ms. Petrarca hoped to have it to the Council before the six month sunset clause is up.

Mr. Krusenoski asked if the Village would reduce license costs for those who do not want the late night license. Ms. Petrarca stated that is a possibility and will be an issue they plan to discuss. Ms. Kuchynka stated that core police services are affected during late night hours. Chairman Pro Tem Strelau noted that as staff has been including times and dates of the week for the DUI notification offenses, the affect on police services can be seen across the board. Ms. Kuchynka stated that compliance checks, over service and monitoring are also late night service issues.

Chairman Pro Tem Strelau asked how often compliance checks are done. Ms. Kuchynka replied they are done regularly. Ms. Fregeau noted that the Police Department should provide information on how this would impact their coverages and the advantages to being able to know there are a limited number of licensees holding late night licenses. Ms. Petrarca agreed that police services should be covered, and used the cases heard tonight as an example. She noted that staff will be monitoring if there are additional police calls, fights and issues arising out of late night service.

Ms. Fregeau felt that the consensus of the Council meetings were for the Liquor Commission to come back to them with a review of the late night licensing issue.

Chairman Pro Tem Strelau asked for clarification and asked if the 12 AM license hours would impact the whole week or if the late night license would only be needed for the weekend. Ms. Petrarca believed that would be part of the discussion about what type of late night license they create.

Chairman Pro Tem Strelau stated it was her understanding that extensions would no longer be granted for serving liquor until 3AM. Ms. Kuchynka replied that extensions are considered on a case-by-case basis and the Mayor has discretion to grant or deny them. Chairman Pro Tem Strelau felt that the potential for licensees to be able to serve until 3AM should be part of the discussion. Ms. Fregeau agreed.

Ms. Kuchynka stated that changed to the Class P-O-2 license were also adopted by the Village Council on March 1<sup>st</sup>. She advised that a copy of the revised Lemon Tree seating plan was provided to the Commission. She stated that the plan incorporates usage of the extra 200 square feet of on-site serving areas. She advised that they updated the plan with bench seating prior to approval, however, the seats were within the original square footage area grated for on-site use. She advised that they are limited to 42 dining seats pursuant to other code regulations.

Ms. Kuchynka provided a copy of the March Liquor Newsletter. She included information on what licensees are not allowed to advertise in their liquor promotions. She advised that happy hour provisions were included in the last newsletter sent to the license holders. Ms. Fregeau stated that staff should have to be responsible for noticing every advertisement. She felt that it is the licensees responsibility to know the law. Chairman Pro Tem Strelau appreciated what staff does when sending out notices and noted that they have done more than their share of what is required.

Ms. Kuchynka reiterated that happy hours are regulated by state and local law. Chairman Pro Tem Strelau stated just because everyone else is offering them does not mean that it is allowed. Ms. Kuchynka agreed and in talking with the State, she was advised that there are many violations, but the State does not have enough field agents to catch and prosecute all of the violators. She added that just because some establishment get away with it, does not excuse the violation

## **VI. NEW BUSINESS**

Chairman Pro Tem Strelau asked if there was any discussion, update from staff or comments from the Commission regarding old business.

Ms. Kuchynka provided a copy of the updated liquor classification chart with updated hours of operation. She stated that there are 77 liquor license holders.

Ms. Kuchynka advised that she has an application on file and planned to hold a meeting on April 7<sup>th</sup>.

## **VII. COMMENTS FROM THE PUBLIC**

There were none.

## **VIII. ADJOURNMENT**

Concluding business for the evening, Chairman Pro Tem Strelau called for a motion to adjourn.

Ms. King moved to adjourn the March 3, 2011 meeting. The meeting was adjourned by acclamation at 9:15 p.m.