

**REGULAR MEETING OF THE BOARD OF TRUSTEES  
DOWNERS GROVE PUBLIC LIBRARY  
OCTOBER 10, 2012**

**MINUTES**

**1. ROLL CALL**

President DiCola called the meeting to order in the Library Meeting Room at 7:30 p.m. Trustees Present: Eblen, Greene, Humphreys, Loftus, Read, DiCola.

Also Present: Library Director Rick Ashton, Assistant Director for Support Services Sue O'Brien, Assistant Director for Public Services Bonnie Reid, and Friends of the Library President Joann Hansen.

**2. WELCOME TO VISITORS**

President DiCola welcomed the staff members and Ms. Hansen to the meeting and thanked them for their interest in the Board.

**3. APPROVAL OF MINUTES OF REGULAR MEETING OF SEPTEMBER 26, 2012**

Trustees reviewed the Minutes of the Regular Meeting of September 26, 2012. It was moved by Read and seconded by Loftus THAT the Minutes of the Regular Meeting of September 26, 2012 be approved. Ayes: Eblen, Greene, Humphreys, Loftus, Read, DiCola. Abstentions: None. Nays: none. Motion carried.

**4. APPROVAL OF PAYMENT OF INVOICES AND RELATED FINANCIAL REPORTS**

The Board reviewed the list of invoices submitted for payment. It was moved by Humphreys and seconded by Read TO APPROVE payment of operating invoices for October 10, 2012, totaling \$40,635.86, credit memos totaling \$116.30 and recognize September 2012 payrolls totaling \$254,806.29. Ayes: Eblen, Greene, Humphreys, Loftus, Read, DiCola. Abstentions: none. Nays: none. Motion carried.

**5. OPPORTUNITY FOR PUBLIC COMMENT ON AGENDA ITEMS**

None.

**6. OPPORTUNITY FOR PUBLIC COMMENT ON OTHER BUSINESS**

Friends of the Library President Hansen reminded the Board that the Friends' annual meeting was scheduled for Friday, October 19, at 7:00 p.m. in the Library Meeting Room. Included in

the plans are a brief talk by Library Director Ashton, a short business meeting, and a travel slide presentation.

## **7. UNFINISHED BUSINESS**

None.

## **8. NEW BUSINESS**

- a. Approval of proposed schedule of holidays and closings for 2013

It was moved by Humphreys and seconded by Greene THAT the proposed schedule of holidays and closings for 2013 be approved. Ayes: Eblen, Greene, Humphreys, Loftus, Read, DiCola. Abstentions: None. Nays: none. Motion carried.

- b. Approval of proposed program of employer and employee health insurance premiums for 2013

It was moved by Greene and seconded by Eblen THAT the proposed program of employer and employee health insurance premiums for 2013 be approved. Ayes: Eblen, Greene, Humphreys, Loftus, Read, DiCola. Abstentions: none. Nays: none. Motion carried.

## **9. REPORT OF THE DIRECTOR**

Ashton reported the following:

- a. Progress on the work directed by the Strategic Plan

As indicated in his written report, most activity is on or ahead of schedule. The beginning of work toward selection of an architect for building renovations is behind schedule but will progress rapidly.

- b. I-Pad initiatives.

In response to the active adoption of I-Pads as all-purpose tools for a variety of educational and communications activities, the Library is in the process of purchasing a total of about 30 I-Pads for individual staff members to use in their daily work. This will align activity with both Downers Grove school districts and widespread public adoption. The 2012 computer purchasing budget is adequate to support this purchase.

- c. **BOARD MEMBER COMMENTS AND REQUESTS FOR INFORMATION**

None.

## **10. ADJOURNMENT**

President DiCola adjourned the meeting at 8:24 p.m.

DOWNERS GROVE PUBLIC LIBRARY

BOARD OF TRUSTEES

OCTOBER 24, 2012

AGENDA ITEM 9

REPORT OF THE DIRECTOR

- a. District 58 mathematics curriculum meeting. Over 150 people attended the meeting at the Downers Grove Public Library on October 16, as School District 58 teachers and administrators introduced the district's newly-adopted mathematics curriculum to parents and interested citizens. The daytime meeting at the Library was a welcome opportunity for parents who might not have been able to attend an evening meeting at a school location. While the Library was providing mainly logistical support, the meeting gave parents and school staff an additional opportunity to renew their acquaintance with the Library and reaffirmed the Library's commitment to be an effective community partner.
- b. Discussions with Village of Downers Grove regarding alley and parking lot uses. Library and Village Staff and Downtown representatives met on October 15 to discuss the possibilities. Village staff had done considerable advance planning, considering both how the use of the alley east of the Library building and a possible revamping of the parking lots north of the library would improve traffic flow, safety, stormwater management, parking, and library service. The next step will be a Downtown-convened meeting to discuss ideas with business owners and tenants of buildings located between the alley and Main Street. Discussions have been very positive.
- c. Friends of the Library Annual Meeting. The Director was scheduled to speak at the meeting on October 19, focusing on planned projects and initiatives for 2013.

**DOWNERS GROVE LIQUOR COMMISSION  
VILLAGE HALL COUNCIL CHAMBERS  
801 BURLINGTON AVENUE**

Thursday, May 3, 2012

**I. CALL TO ORDER**

Chairman McInerney called the May 3, 2012 Liquor Commission meeting to order at 6:30 p.m.

**II. ROLL CALL**

**PRESENT:** Mr. Austin, Ms. Fregeau, Ms. King, Mr. Krusenoski, Ms. Strelau, Chairman McInerney

**ABSENT:** Mr. Clary

**STAFF:** Liaison to the Liquor Commission Carol Kuchynka, Staff Attorney Dawn Didier, Village Attorney Enza Petrarca

**OTHERS:** Jennifer Anderson, Kurt Zemla, Vince Iovino, Jake Lohse, Larry Cohen, Esq., James O'Malley, John Alberts, Cyndi Huntley, Colleen Hayes, Irene Bahr, Esq., Martin Tully, Shannon Tully, Court Reporter

**III. APPROVAL OF MINUTES**

Chairman McInerney asked for approval of the minutes March 1, 2012 Liquor Commission meeting and asked members if there were any corrections, changes or additions.

Hearing no changes, corrections or additions, the March 1, 2012 minutes of the Liquor Commission meeting were approved as written.

Chairman McInerney 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.

**IV. DISCIPLINARY HEARING FOR ALLEGED VIOLATIONS**

Chairman McInerney 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 McInerney asked if there was a signed stipulation in this case. Ms. Didier replied yes.

Chairman McInerney made the following statements:

"In view of the stipulations, 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."

**RT Chicago Franchise, LLC d/b a Ruby Tuesday - 1570 Butterfield Road**

Chairman McInerney stated that the first order of business was to conduct a disciplinary hearing for RT Chicago Franchise, LLC d/b/a Ruby Tuesday located at 1570 Butterfield Road. He stated that the licensee has been charged with a violation of Section 3-25(a) of the Downers Grove Liquor Control Ordinance.

Chairman McInerney asked that any individual(s) representing the licensee step forward and be seated. He 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.

Ms. Jennifer Anderson and Mr. Kurt Zemla were sworn in by the court reporter. Ms. Anderson introduced herself as the general manager. Mr. Zemla introduced himself as the area director.

Chairman McInerney asked the prosecuting attorney to present her case.

Ms. Didier 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. RT Chicago Franchise, LLC d/b/a Ruby Tuesday, 1570 Butterfield Road, Downers Grove, Illinois, is the holder of a Class R-1 Liquor License #LQ-000044, 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 20, 2000.
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. At approximately 4:50 p.m. on Wednesday, March 21, 2012, Downers Grove Police Officer Edwards and Downers Grove Police Officer Glaser observed L.T., a special employee of the Downers Grove Police Department under the age of twenty-one (21), whose date of birth is May 29, 1994 (making her 17 years old), enter Ruby Tuesday located at 1570 Butterfield Road, Downers Grove.
4. The special employee was seated at the bar area of the restaurant and bartender, Jennifer Malek, asked her for her order.
5. The special employee ordered a bottle of Corona beer while Officers Edwards and Glaser observed her.
6. That bartender, Jennifer Malek, whose date of birth is December 14, 1984, then asked the special employee for identification.
7. That the special agent produced her valid Illinois driver's license indicating her date of birth as May 29, 1994 and reading "Under 21 until 05/29/15" in red letters on the face of the license.
8. That bartender, Jennifer Malek, viewed the special agent's driver's license and then returned the driver's license to the special employee.
9. That bartender, Jennifer Malek, then served the special employee.
10. Officers Edwards and Glaser who witnessed the events in the foregoing paragraphs, identified themselves and advised that the delivery of an alcoholic beverage had been made to a minor.
11. That bartender, Jennifer Malek, was issued a Village ordinance administrative citation for delivering alcohol to a minor in violation of Section 3-25(a) of the Downers Grove Municipal Code.
12. The Officers advised manager, Goksel Saritas that notice of further action would be forthcoming from the Downers Grove Liquor Commission.

Ms. Didier asked that the signed stipulation be entered into the record as Village's Exhibit #1.

Chairman McInerney accepted the signed stipulation as Village Exhibit #1.

Chairman McInerney asked the licensee to present its case.

Ms. Anderson stated that they immediately terminated Ms. Malek according to their zero tolerance policy for serving minors. She stated that they re-trained all team members. She stated that they utilize a responsible serving video which is shown at orientation and re-training classes once a year. She stated that all employees have re-signed the company's responsible serving statement.

Ms. Anderson stated that they increased the general policy to card patrons who appear over 40 instead of carding those at 30 years of age. She stated that they reviewed proper procedures for carding, looking for the date of birth and discussed vertical versus horizontal licenses. She stated that they have daily pre-shift meetings. She stated that they discussed the zero tolerance policy for serving minors with all employees. She stated that this was their first and only violation since they opened in 2001.

Ms. King noted their flawless record until now. She noted that the State has stop gaps in place with the vertical license. She asked if their register has a point of sale built into the register which requires employees to enter a date of birth. Ms. Anderson replied no. Ms. King asked how often employees are reminded of liquor serving guidelines. Ms. Anderson stated prior to the violation, they discussed liquor issues once a month. She noted that since the violation, they discuss liquor issues once a week as well as during pre-shift meetings. She stated that employees are required to watch the responsible serving video every year and noted that the newest video discusses the vertical license format.

Ms. King asked if all employees have certified training. Ms. Anderson replied yes.

Ms. King asked how long Ms. Malek had been employed with Ruby Tuesday. Ms. Anderson replied less than six months.

Ms. King noted that they have terminated the employee, re-vamped their procedures and was glad they were being proactive.

Mr. Austin asked about training. Ms. Anderson explained that they added to their pre-shift meetings and asked that general managers communicate liquor issues once a week. Mr. Austin asked Ms. Anderson if the incident was discussed with the employees. She replied yes.

Mr. Krusenoski asked if Ms. Malek explained the incident. Ms. Anderson stated that Ms. Malek said she made a mistake and was not concentrating when she looked at the identification.

Mr. Krusenoski asked if Ms. Malek claimed to have not correctly calculated the person's age. Ms. Anderson replied that Ms. Malek's statement was passed to her the next morning, but that manager who spoke with her is no longer employed by the company. She was told that Ms. Malek did not have a reason, just that she made a mistake and understood she was in trouble. Ms. Anderson believed that staff is moving too quickly and not taking the time to adequately validate identifications.

Mr. Krusenoski stated that the vertical format license is a reg flag. He noted that a majority of establishments refuse to accept the vertical license on the chance that an employee may calculate a customer's age incorrectly. Mr. Krusenoski stated it sounded as though there may have been willful serving of someone under 21. He added that the culture of the establishment and management could lead to employees believing it is ok to serve someone under 21 and hoped they work hard on changing that culture.

Ms. Strelau asked if the manager on shift during the incident was with the company. Ms. Anderson replied no. Ms. Strelau asked how long the manager had been with Ruby Tuesday. Ms. Anderson



replied the manger was there for three years and added that Jennifer had been with the company less than six months.

Ms. Strelau asked Mr. Zemla if he is new to the company. Mr. Zemla replied that he has been with the company for eleven years.

Ms. Strelau stated that it is unusual for an establishment to have had a license for so long and suddenly have a violation. She stated they should re-emphasize the importance of liquor service and create a responsible culture. She stated that a 17 year old was served. She stated that even if there are procedures in place, they are no good if policies are not followed. Ms. Anderson stated that she has been with the company for 17 years and this was her first hearing. She was very frustrated about the incident.

Ms. Fregeau stated that the incident took place in the bar area. She noted that staff and the ILCC have visual reminders and training tools for them utilize to remind employees to card properly.

Ms. Fregeau asked if it is generally busy in the bar area at 5 p.m. Ms. Anderson replied no.

Ms. Fregeau stated that management sets the tone and tenor of the establishment. She suggested that Village staff take a look at their manual, review it and help them with training. Ms. Fregeau noted their good record for 10 years. She stated that now may be a good time to update their manual and add visual tools in support of their training program.

Chairman McInerney asked about their general turnover. Ms. Anderson stated that location has a low turnover. She added that 110% turnover is typical in the industry, however, at this location, it is only about 80%. She stated that there are a lot of core team members at this location which is why they have done so well. Chairman McInerney stated that it is a challenge staying on top of training and maintaining the culture.

Chairman McInerney was pleased that they have taken steps to address the incident and encouraged them to take stock of their management team and the message they send to the team members as it carries influence about what is important to focus on. He stated that serving liquor is a privilege and comes with responsibility.

Ms. Didier summarized by stating that RT Chicago Franchise, LLC d/b/a Ruby Tuesday located at 1570 Butterfield Road, stipulated to a violation of Section 3-25 (a) of the Downers Grove Liquor Control Ordinance which prohibits the sale of alcohol to a minor. She stated that this is the licensee's first violation in the past five years, however, there was an aggravating circumstances in this case where the under 21 license was shown. She recommend that the license be suspended for 1 to 3 days with an additional day of suspension for the aggravating circumstance. She recommend that the licensee be required to pay a fine up to \$1,000.00 and that they pay an administrative fee of \$1,000.00 to cover the costs of conducting this hearing. She stated that in lieu of fines the licensee may request additional days of suspension.

Chairman McInerney asked if the defense had any further testimony. Ms. Anderson replied no.

Upon hearing the evidence presented in this case, Chairman McInerney requested a motion as to whether the licensee be found guilty or not guilty of a violation of Section 3-25(a) of the Downers Grove Municipal Code.

**MR. KRUSENOSKI MOVED TO FIND RT CHICAGO FRANCHISE, LLC D/B/A RUBY TUESDAY LOCATED AT 1570 BUTTERFIELD ROAD, GUILTY OF VIOLATING SECTION 3-25(A) OF THE DOWNERS GROVE LIQUOR CONTROL ORDINANCE. MS. STRELAU SECONDED.**

**VOTE:**

**Aye:** Mr. Krusenoski, Ms. Strelau, Mr. Austin, Ms. Fregeau, Ms. King, Chairman McInerney

**Nay:** None

**Abstain:** None

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

The Motion carried.

Ms. Kuchynka stated that the Liquor Commission may discuss with the licensee whether they prefer fines in lieu of suspension or suspension in lieu of fines. She noted that the Commission will no longer make recommendations for fines and/or penalties to the Mayor. She stated the penalty will be determined by the Liquor Commissioner based on testimony and a guilty finding.

Ms. Strelau asked Ms. Didier to reiterate her recommendation. Ms. Didier replied \$1,000 fine, \$1,000 costs with an additional day warranted for the under 21 license shown.

Chairman McInerney asked if they had a preference with regard to a fine or suspension. Ms. Anderson stated that Ruby Tuesday would prefer fines in lieu of suspension.

**V. APPLICATION FOR LIQUOR LICENSE**

Chairman McInerney made the following statements:

"The next order of business is to conduct a public hearing for a liquor license application. For the benefit of all present, I would like to state that this Commission does not determine the granting or denial of the issuance of any license. We may at the end of each hearing, make a finding or recommendation with respect to the application. If necessary, the Commission may adjourn a hearing to a later date in order to have benefit of further information."

"At the conclusion of the hearing, the Commission will summarize its findings and determine any recommendations it wishes to make to the Liquor Commissioner"

"The Liquor Commissioner, who is the Mayor of Downers Grove, will, pursuant to Section 3-12 of the Ordinance, render decisions regarding issuance of available licenses within 60 days in order to consult the Plan Commission for its recommendations."

"Hearings by this Commission are held according to the following format: 1) reading of information pertinent to the application, 2) comments from the applicant, 3) comments from the public, 4) discussion by the Commission, and 5) motion and finding by the Commission."

**Highland Park CVS, LLC d/b/a CVS Pharmacy #2903**

Chairman McInerney stated that the next order of business was an application hearing for Highland Park CVS, LLC d/b/a CVS Pharmacy #2903 located at 400 Ogden Avenue. He stated that the applicant was seeking a Class "P-1", full alcohol, off-premise consumption liquor license.

Chairman McInerney asked that any individual(s) representing the applicant step forward and be seated. He 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. Larry Cohen introduced himself as the attorney representing CVS Pharmacy. He introduced Mr. Jake Lohse as the district manager and Mr. Vince Iovino as the store manager, Mr. Iovino and Mr. Lohse were sworn in by the court reporter.

Attorney Cohen advised that CVS has an existing store at 63<sup>rd</sup> & Main with a full liquor license for two years which has operated without any violations. He stated that they are seeking a full alcohol off-premise license at the 400 Ogden Avenue location. He advised the store is open 24 hours, 7 days a week. He stated that there are approximately 21 employees, of which 13 are part time and 8 full time, of which 2 are full time pharmacists. He stated that store is approximately 10,800 square feet with an additional 2,000 feet of storage space. He was aware of local liquor serving hours. He stated that there have liquor training manuals and safety measure in place. He advised that there are 250 CVS locations in Illinois, of which, 80% have liquor licenses. He the district manager and store manager can answer any questions the Commission may have.

Ms. Kuchynka stated that Vince Iovino was the original liquor manager for the Main Street CVS location. She advised a new liquor manager is on file for that location since Mr. Iovino has transferred to the 400 Ogden location.

Chairman McInerney asked staff if there were any additional factors affecting the finding or recommendation concerning this liquor license. Ms. Kuchynka advised that issuance of the license remains contingent upon receipt of insurance, annual pro-rated license fee and satisfactory background checks.

Chairman McInerney asked if there were any comments from the public pertinent to the application. There were none.

Chairman McInerney asked if there were any comments from the Commission.

Ms. Fregeau asked Mr. Iovino to discuss their age verification software program. Mr. Iovino replied that they have a register lockout system. He stated that if the date of birth entered resulted in the customer being under 21, the liquor sale would be locked out. He stated that liquor sales are also locked out during non-sales hours.

Ms. Fregeau noted a discrepancy in their manual. She stated in one spot, they card customers who appear 27 and under, and in another section, they card anyone appearing under the age of 30. She asked that they make the information consistent. Mr. Iovino replied that their policy is to card those who appear under 30. Mr. Iovino agreed to correct the information.

Ms. Fregeau asked how they check for fake id's. Mr. Iovino replied they have a black light system that helps them identify fraudulent identifications. Ms. Fregeau mentioned that there is a 50 state identification book in order to check out of state identification.

Ms. Fregeau noted their 24 hour location and suggested that they discuss legal serving hours with employees.

Ms. Fregeau asked about their policy if a clerk serves a minor. Attorney Cohen replied that they have a zero tolerance policy, resulting in immediate termination.

Ms. Strelau asked about the floor plan and where liquor sales may be rung out. Mr. Iovino replied liquor may be rung up only at the front register. Ms. Strelau asked if all employees are over 21. Mr. Iovino replied yes.

Ms. Strelau asked where the liquor is located. Attorney Cohen replied that there are 14 cooler doors near the rear of the store and 36 liner feet of space for non-refrigerated liquor items.

Ms. Strelau asked if there is a bypass system on the register where employees can skip entering a customer's date of birth. Mr. Iovino replied no. He stated that they could make up a date, but cannot avoid that step.

Mr. Krusenoski stated that the Commission has seen elaborate systems defeated by a clerk typing in the wrong date of birth and sell liquor to someone under 21. He noted their good record. He hoped that they establish a good culture in the store.

Mr. Austin hoped the addition of liquor would increase their sales. He asked about the means of training and noted they sign off sheet for employees but wondered if the training consisted of more than just reading materials. Mr. Iovino replied that they have a web based interactive training module and complete bi-annual compliance training.

Ms. King noted that there was a quiz for tobacco and hoped to see that more often for alcohol.

Chairman McInerney was pleased that CVS had a presence in Downers Grove. He stated that serving liquor is a privilege and great responsibility. He asked if they have plans to secure liquor during non-sales hours. Mr. Lohse advised that some locations have gates closing off liquor sales areas and some high theft items are contained behind cases under lock and key.

Chairman McInerney stated that the 27 carding age seemed arbitrary. He suggested that they be consistent with their carding policy and ensure associates know at what age they are to card customers.

Ms. Strelau asked if identifications are run through a scanner rather than keying in a date of birth and asked if the bar code reading system software was something a corporation may use with their a register system. Mr. Lohse stated that not all state identifications are set up with the bar code system. He noted if the bar code is fraudulent, it can put them at risk. He stated that the cost effectiveness of the system is also at issue.

Ms. Fregeau asked staff if the Village has the "Guide to Fake Identification" booklet. She believed there is one available for purchase. Ms. Kuchynka was unsure of the booklet she is speaking of, but noted that there is a 50 state identification book available from distributors which is free of charge. Ms. Kuchynka did not have the fake identification guide book.

Hearing the testimony given in this case, Chairman McInerney asked for a recommendation from the Commission concerning its finding of "qualified" or "not qualified" with respect to the applicant with regard to the Class "P-1" liquor license application.

**MR. AUSTIN MOVED TO FIND HIGHLAND PARK CVS, LLC D/B/A CVS PHARMACY #2903, LOCATED AT 400 OGDEN AVENUE, QUALIFIED FOR A CLASS "P-1" LIQUOR LICENSE. MS. FREGEAU SECONDED.**

**VOTE:**       **Aye:**           Mr. Austin, Ms. Fregeau, Ms. King, Mr. Krusenoski, Ms. Strelau, Chairman McInerney

**Nay:**           None

**Abstain:**       None

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

Motion carried.

**Walgreen Co. & its subsidiary Bond Drug Company of Illinois, LLC d/b/a Walgreens - located at 6240 Belmont Road; 7221 Lemont Road; and 1000 Ogden Avenue**

Chairman McInerney stated that the next order of business were application hearings for Walgreen Co., and its subsidiary, Bond Drug Company of Illinois, LLC d/b/a Walgreens located at 6240 Belmont Road, 7221 Lemont Road and 1000 Ogden Avenue. He stated that the applicants were applicants upgrades to the existing Class "P-2", beer and wine only, off-premise consumption liquor licenses to Class "P-1", full alcohol, off premise consumption licenses for each of these three locations.

Chairman McInerney asked that any individual(s) representing the applicants step forward and be seated. He 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. John Alberts, Mr. Jim O'Malley, Ms. Colleen Hayes and Ms. Cyndi Huntley were sworn in by the court reporter. Mr. O'Malley introduced himself as the liquor manager for the Lemont location, Mr. Alberts introduced himself as the liquor manager for the Ogden location and Ms. Huntley introduced herself as the liquor manager for the Belmont location. Ms. Hayes introduced herself as the Walgreens District Manager. Irene Bahr introduced herself as independent liquor counsel representing Walgreens.

Attorney Bahr stated that the three Walgreens locations currently sell beer and wine only and they would like to upgrade all license classifications to allow for full alcohol sales. She stated that each location manager can address Commission member questions.

Attorney Bahr provided updated applications which include the January violation information. She advised that Walgreens applied for the upgrade before the violation occurred and the application documents did not contain this information. Staff accepted the revised application documents.

Attorney Bahr stated that the Commission was provided with their company-wide training materials and local guidelines. She stated that Walgreen policies concerning liquor sales have been updated company-wide as a result of the violation.

Ms. Kuchynka advised that factors affecting the finding and recommendation would be receipt of the upgraded annual license fee and satisfactory background checks. She advised the Commission that

updated floor plans were provided this evening along with a copy of the existing floor plans so they may compare current versus proposed liquor layouts.

Ms. Kuchynka advised the Commission that the Ogden store passed a control buy re-test last evening.

Chairman McInerney advised that the Commission shall conduct one hearing for all three locations, however, a finding of “qualified” or “not qualified” shall be required with respect to each location.

Ms. King asked that they explain the re-training was done in light of the recent control buy failure and asked how procedures have been changed. Mr. Alberts replied that all employees have been re-trained at all three locations. He stated that employees were required to read through the guidelines and review the “Time to Care” video training.

Ms. King asked him to elaborate on the training. Mr. Alberts stated that the training goes through different scenarios in the “Time to Care” video which has scenarios with videos that employees may encounter and the procedures that employees need to follow. He stated that the training is an interactive learning experience.

Ms. King asked if the training specifically addresses the vertical license. Mr. Alberts replied that their store manual discusses the vertical license. He noted the video training does not as it is company wide, covering all states, some of which do not have the vertical license. Mr. Alberts stated that vertical license samples were posted at the time clock areas so employees see it every day once they clock in.

Ms. King asked about their termination policy for selling to a minor. Ms. Hayes noted that they have a company-wide zero tolerance policy with regard to liquor sales to minors.

Ms. King asked if the liquor managers have liquor handling experience, as that information was not listed on the application forms. Mr. Alberts replied that all managers have operated their respective stores since the original beer and wine licenses were issued two years ago. Mr. O’Malley noted he had almost 23 years of liquor experience.

Mr. Austin asked how the addition of liquor sales will change their operation and wondered if sales will be handled differently day to day. Mr. O’Malley replied that their training policies will apply in all regards whether they sell beer and wine only or hard liquor. He stated that employees will be 21 to sell it, customers will need to be 21 to buy it and all employees have been trained. He stated that they are required to card anyone under the age of 40. He added they will not allow under 21 year olds to stock liquor. Mr. Alberts noted the only difference with sales may be the addition of “caps” placed on the hard liquor bottles as a theft deterrent.

Mr. Austin asked about Lemont floor plan and if it was the traditional layout where alcohol used to be in a separate area of the store. Mr. O’Malley replied yes. He stated that area is currently being utilized as a storage area. He noted that was the original liquor department area when before they had stopped selling full liquor years ago.

Mr. Krusenoski had no questions.

Ms. Strelau asked how much additional space for liquor sales would be devoted to each location and what increase in liquor sales they expected. All managers expected the sales area to double in each location. Ms. Hayes stated that area devoted to liquor items in the Lemont location is approximately 21 square feet and the Belmont and Ogden locations are about 15 square feet.

Ms. Strelau asked how purchases are made, what information is asked for and how it is entered into the register system. Mr. Alberts stated that when liquor merchandise is scanned a prompt will come up asking if the customer is under the age of 40, if not the identification is requested and the date of birth is entered into the computer. He stated that the register will do the math when the employee keys in the date of birth. Ms. Strelau asked if employees can put in any date. Mr. Alberts replied yes. Mr. Alberts advised that the company is rolling out a program which is called "next generation registers". He stated that the new system will allow employees to scan the drivers licenses. Ms. Hayes anticipated that these locations will have the next generation register systems by September 1<sup>st</sup>.

Ms. Strelau stated that it was unfortunate that they recently had a violation and that one mistake caused a lot of angst. Mr. Alberts agreed.

Ms. Fregeau stated there may be some concern with selling hours at the Ogden location as it is a 24 hour store. She stated she was curious about their pickup service and went on line to see if liquor would be available with this service, but found that it was not.

Ms. Fregeau noticed there was no experience listed on the manager applications and wondered if they each received certified training. The managers replied that the BASSETT course is a part of their training. They noted that they have had experience at the locations with the beer and wine licenses. Ms. Kuchynka noted that was an oversight on the part of corporate who filled out the applications for them.

Ms. Fregeau asked if they have a certified trainer on staff. Ms. Hayes stated that they utilize their web based liquor training "People Plus" and require BASSETT training.

Ms. Fregeau stated that current liquor sales range about 2 percent. She asked what increase in liquor sales they anticipated. Mr. Alberts expected a 1-1/2 percent increase in liquor sales. He stated that pharmacy is their biggest percentage of sales at 65 percent. He noted that liquor is offered as a convenience and they hope to provide a one-stop shopping experience for their customers.

Ms. Fregeau asked if the 24 hour location has locking cooler doors in order to secure liquor during the times it is not allowed to be sold. Mr. Alberts replied no, however, screens are pulled down in front of the products to deter a customer from seeing it. Ms. Hayes added that the registers lock out liquor sales at the appropriate times.

Chairman McInerney preferred application hearing as opposed to disciplinary hearings. He stated that the mix of liquor may present more issues for them being tested.

Hearing the testimony given in these cases, Chairman McInerney asked for recommendations from the Commission concerning its finding of "qualified" or "not qualified" with respect to each applicant with regard to their Class P-1 liquor license application.

**MR. AUSTIN MOVED TO FIND BOND DRUG COMPANY OF ILLINOIS, LLC D/B/A WALGREENS #02720, LOCATED AT 6240 BELMONT ROAD, QUALIFIED FOR A CLASS "P-1" LIQUOR LICENSE. MS. KING SECONDED.**

**VOTE:**           **Aye:**           Mr. Austin, Ms. King, Ms. Fregeau, Mr. Krusenoski, Ms. Strelau, Chairman McInerney

**Nay:**           None

**Abstain:** None

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

**MR. KRUSENOSKI MOVED TO FIND WALGREEN CO. D/B/A WALGREENS #00318, LOCATED AT 7221 LEMONT ROAD, QUALIFIED FOR A CLASS "P-1" LIQUOR LICENSE. MS. STRELAU SECONDED.**

**VOTE:**       **Aye:**           Mr. Krusenoski, Ms. Strelau, Mr. Austin, Ms. Fregeau, Ms. King, Chairman McInerney

**Nay:**           None

**Abstain:**       None

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

**MS. FREGEAU MOVED TO FIND BOND DRUG COMPANY OF ILLINOIS, LLC D/B/A WALGREENS #04636, LOCATED AT 1000 OGDEN AVENUE, QUALIFIED FOR A CLASS "P-1" LIQUOR LICENSE. MR. AUSTIN SECONDED.**

**VOTE:**       **Aye:**           Ms. Fregeau, Mr. Austin, Ms. King, Mr. Krusenoski, Ms. Strelau, Chairman McInerney

**Nay:**           None

**Abstain:**       None

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

## **VI. OLD BUSINESS**

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

Ms. Kuchynka stated that she provided the Commission with a draft ordinance which would eliminate obsolete liquor license classifications. She stated that certain license classes were created for particular applicants, particularly a comedy club, cultural/performing arts facility and a recreational facility which are currently not in use. She stated that staff would like to clean up the Municipal Code and eliminate these obsolete license classifications. She stated that applicants may petition the Liquor Commission to create license classifications but noted that the Commission has discussed not being so particular with license conditions in the future. She asked the Commission for their comments, questions or concerns with the draft ordinance.

Chairman McInerney felt that it made sense to clean up the liquor code. He recalled many painstaking hours creating such classifications and asked that staff maintain the language so as not to have to re-create the wheel. He agreed with staff that the Commission historically has relied on what information



an applicant provides to the Commission in order to craft a license. He felt that they may want to look at classification in a broader sense as to what fits the Village.

Ms. Strelau noted that the Commission tried to be narrow in creating license conditions, whereby making them appear to be “boutique” licenses, but noted there were reasons the Commission was being specific. She felt there were good reasons for regulating the classes.

Ms. Fregeau asked that staff provide the Commission with a report with information on what classification each establishment holds. Ms. Kuchynka noted that she provides the Commission with a Classification Chart as to how many licensees hold each class of license. Ms. Fregeau would like names of the establishments. Ms. Kuchynka agreed to provide a detailed overview once renewals are finalized in July.

Ms. Strelau asked if anyone applied for the BYO license. Ms. Kuchynka replied no. She stated that she had discussions with a potential applicant, however, they felt it was too expensive to pursue. Ms. Strelau asked what the charge was. Ms. Kuchynka replied \$525 per year, however, they were more concerned with the application fee of \$1,445. She advised that every administrative aspect of the application fee is accounted for in the Cost Center Analysis. She noted those fees cover hearing costs, court reporter fees, staff time, background checks and processing the application. Mr. Austin asked if Village BYO license differs from other communities. Ms. Kuchynka replied no, however, the fees may be shocking. She noted that tax payers should not have to cover the costs for establishments who want to serve or sell liquor. Ms. Petrarca believe that the proponents for the BYO believed the Village was going to allow BYO as the City of Chicago does, without a license, fees or monitoring. Chairman McInerney felt that the application fee may be an entry barrier.

Mr. Austin asked how long it would take an establishment to profit and recover application fees. Ms. Kuchynka noted that some licensees offer liquor as a convenience to their customers and are not concerned per say, with profit. She noted it may take a licensee a bit to regain the license fees, however in the case of BYO, corkage fees do not amount to much, which is why she suggests that applicants seek a regular license so they can make a profit. She noted that licensees make profits with liquor sales, not with corkage fees, which is a convenience charge.

Ms. Fregeau noted that Walgreens listed fees charged by communities they hold licenses in and felt it may be good to compare the fees of Downers Grove with surrounding communities. Ms. Kuchynka stated that all fees are based on what it costs the Village to administer the license. She noted that the Village has many more awareness and compliance programs than other communities, and the licensees are charged for such services.

Mr. Austin asked what advantages establishments have for BYO and wondered if the fees were creating a barrier for establishments to obtain a license. Ms. Kuchynka replied, mainly as convenience or perk for the customer. Ms. Kuchynka advised that the Liquor Commissioner has the option to waive the public hearing before the Liquor Commission, which would reduce the application fees. She noted that the application would be placed on file with the Village Clerk and that background checks would be conducted, however, there would be no testimony before the Liquor Commission. She stated that if there is a history of violations with the applicant, it would not be discussed in a public forum. She stated that a recommendation on whether to grant or deny the license from staff would be provided to the Mayor for consideration.

Mr. Krusenoski asked if there could be subsidization of the application fee for the BYO applicant which is supported by fees of other license holders. Ms. Petrarca noted that the liquor license fee is not the issue, the application fee is.

Ms. Fregeau noted that some potential BYO applicants may also have issues with storage space.

Chairman McInerney recalled the Cost Center and had questioned the methodology of the analysis. He stated that the Commission may not have taken into consideration the enforcement provisions into the license fee structure in the past and felt a much better job is being done collecting those fees now, especially with the Class E licenses. Chairman McInerney felt that the Village might be on the low side of truly covering all costs. Ms. Kuchynka advised that additional Alcohol Awareness funds have been transferred to the Police Department for compliance testing activities.

Ms. Strelau asked if staff needed a motion on the draft ordinance. Ms. Kuchynka replied yes.

**MS. STRELAU MOVED TO FORWARD AN ORDINANCE AMENDING CERTAIN LICENSE CLASSIFICATIONS TO THE VILLAGE COUNCIL FOR CONSIDERATION. MS. FREGEAU SECONDED.**

**VOTE:**

**Aye:** Ms. Strelau, Ms. Fregeau, Mr. Austin, Ms. King, Mr. Krusenoski, Chairman McInerney

**Nay:** None

**Abstain:** None

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

The motion carried.

Ms. Kuchynka stated that she would forward the item when it goes to the Council for consideration.

Ms. Kuchynka stated that she provided a copy of the current Liquor Newsletter.

Ms. Kuchynka advised that she is in the process of license renewals which are due June 8<sup>th</sup>. She stated that they Mayor will receive a list of renewals and comments concerning establishments. She advised that a few licensees will be required to have on-site training seminars as a result of DUI or police activity over the course of the license year.

Ms. Kuchynka circulated fake identifications confiscated by a local license holder. She stated they are utilized as a training tools for the on-site seminars. She explained some characteristics of each and explained that some look very authentic. She noted that the State of Illinois seal is the most difficult for counterfeiters to match. She stated that the bar codes are often difficult to read.

Ms. Fregeau asked that licensees be provided guidelines on what to do when they come across fake id's. Ms. Kuchynka stated those guidelines were included on the back page of the Liquor Newsletter she just sent to license holders which offer them ways to deal with fake id's. She stated that the customer must remove the identification from a wallet. She added that licensees are asked to document that they confiscated an it and are asked to them over to the Police Department, they, in turn, will hold them and/or

send them to the State and remove them from circulation. Ms. Fregeau appreciated that information being given to the licensees.

Chairman McInerney asked staff if the Village has provided an incentive to licensees to confiscate fake ids. Staff replied no, but that could be a possibility.

Ms. Strelau stated that she attempted to use her license with the State-issued sticker for renewal, but it was not accepted when she used it in Washington, DC. Ms. Kuchynka replied that it is perfectly legal for an establishment not to accept it or be more restrictive when carding, especially and out of state id. Mr. Austin noted if an out of state license is used, there might be more stringent requirements for accepting it.

Ms. King asked if the Liquor Newsletter could include information about licensees who have been caught serving a minors and/or accepting the under 21 ids. Ms. Petrarca replied yes.

Ms. Fregeau suggested that licensees provide an updated liquor handling manual along with their renewal. She noted that some licensees have not updated their manuals since they have opened. She felt that changes over the course of the years should be addressed. The Commission and staff agreed.

Ms. Kuchynka noted that the Mayor was in the audience. Ms. Petrarca noted this was a good meeting for him to experience as it touched on all aspects of what the Commission encounters.

Ms. Strelau asked how long an applicant can have a licensee pending before it expires. Ms. Kuchynka replied that she typically waits for a period of 6-8 months, depending on a construction build out, if necessary. She stated that she has not heard from Blackstone and closed out their file. She noted that the Community Development permits also expire. Ms. Fregeau asked that staff send a follow up letter.

Mr. Krusenoski asked if Los Dos received their license. Ms. Kuchynka replied it was issued on April 10<sup>th</sup> and advised they were open.

## **VII. NEW BUSINESS**

Chairman McInerney asked if there was any discussion, update from staff or comments from the Commission regarding any new business.

Ms. Kuchynka stated that she had two applications on file and expected a June meeting.

Ms. Fregeau asked how promotions are checked for compliance. Ms. Kuchynka replied she typically notices, is informed of, or receives complaints about local promotions. She stated that Community Development is out in the field daily and they report back to her if they see any advertising related to alcohol, promotions or activities on signs/banners that are put up with or without a permit.

Ms. Strelau asked about The Keg bar in Evanston that had 115 violations and had to close down. She asked how they could still be open before they appear before the State to answer charges. Mr. Austin stated that they are appealing the decision of the local liquor commissioner to revoke the license before the State. Ms. Kuchynka stated that they may remain open until a decision is made by the Illinois Liquor Control Commission as whether or not they will uphold the local order of revocation. Ms. Kuchynka stated that The Kegs defense was that the minors misrepresented their age by using fake identifications.

## **VIII. COMMENTS FROM THE PUBLIC**

Mayor Tully thanked the Commission members for their service to the community.

**IX. ADJOURNMENT**

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

Ms. Strelau moved to adjourn the March 1, 2012 meeting. The meeting was adjourned by acclamation at 8:17 p.m.

**DOWNERS GROVE LIQUOR COMMISSION  
VILLAGE HALL COUNCIL CHAMBERS  
801 BURLINGTON AVENUE**

Thursday, June 7, 2012

**I. CALL TO ORDER**

Chairman McInerney called the June 7, 2012 Liquor Commission meeting to order at 6:34 p.m.

**II. ROLL CALL**

**PRESENT:** Mr. Austin, Ms. Fregeau, Mr. Krusenoski, Ms. Strelau, Chairman McInerney

**ABSENT:** Mr. Clary, Ms. King

**STAFF:** Liaison to the Liquor Commission Carol Kuchynka, Staff Attorney Dawn Didier

**OTHERS:** Vatsal Thakore, Bharat Joshi, Hiral Amin, Ashish Amin, Rushir Patel, Court Reporter

**III. APPROVAL OF MINUTES**

Chairman McInerney asked for approval of the minutes May 3, 2012 Liquor Commission meeting and asked members if there were any corrections, changes or additions.

Hearing no changes, corrections or additions, the May 3, 2012 minutes of the Liquor Commission meeting were approved as written.

Chairman McInerney 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.

**IV. APPLICATION FOR LIQUOR LICENSE**

Chairman McInerney made the following statements:

"The next order of business is to conduct a public hearing for liquor license applications. For the benefit of all present, I would like to state that this Commission does not determine the granting or denial of the issuance of any license. We may at the end of each hearing, make a finding or recommendation with respect to the application. If necessary, the Commission may adjourn a hearing to a later date in order to have benefit of further information."

"At the conclusion of the hearing, the Commission will summarize its findings and determine any recommendations it wishes to make to the Liquor Commissioner"

"The Liquor Commissioner, who is the Mayor of Downers Grove, will, pursuant to Section 3-12 of the Ordinance, render decisions regarding issuance of available licenses within 60 days in order to consult the Plan Commission for its recommendations."

"Hearings by this Commission are held according to the following format: 1) reading of information pertinent to the application, 2) comments from the applicant, 3) comments from the public, 4) discussion by the Commission, and 5) motion and finding by the Commission."

**Parth-Khushi, Inc. d/b/a Curtiss Food Mart**

Chairman McInerney stated that the first order of business was an application hearing for Parth-Khushi, Inc. d/b/a Curtiss Food Mart, located at 2150 Curtiss Street. He stated that the applicant was seeking a Class "P-2", beer and wine only, off-premise consumption liquor license.

Chairman McInerney asked that any individual(s) representing the applicant step forward and be seated. He 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. Ashish Amin and Mr. Rushir Patel were sworn in by the court reporter. Mr. Amin introduced himself as the owner and operator of Curtiss Food Mart. Mr. Patel stated he was Mr. Amin's brother-in-law and was helping Mr. Amin set up the business and work at the store.

Chairman McInerney asked the applicant to present its case.

Mr. Patel stated that they are applying for a beer and wine license for Curtiss Food Mart which will operate as a small grocery/convenience store that will serve the surrounding neighborhood.

Chairman McInerney asked staff if there were any additional factors affecting the finding or recommendation concerning this liquor license. Ms. Kuchynka advised that issuance of the license remains contingent upon receipt of insurance, license fees and satisfactory background checks.

Ms. Kuchynka advised the Commission that the last operator recently closed the business and was issued an Order of Forfeiture to formally close out the license. She advised this applicant is seeking a new license in its place.

Chairman McInerney asked if there were any comments from the public pertinent to the application. There were none.

Chairman McInerney asked if there were any comments from the Commission.

Ms. Fregeau asked Mr. Amin about his liquor handling experience. Mr. Amin replied that he has six years experience selling beer and wine at his brother's gas station in Georgia. Ms. Fregeau asked if he had any experience in Illinois. Mr. Patel noted that for the past six months while living in Illinois, he was working at a JJ Food and Liquor in Maywood. Mr. Patel stated that Mr. Amin would now like to open his own store and will be a full time employee at Curtiss Food Mart.

Ms. Fregeau asked about the estimated percentage of alcohol sales they expect and what they based the 20% sales upon. Mr. Patel replied that was based upon the prior owner's sales information. He noted that it is an estimated number and they cannot give an accurate figure until they have operated for a year or so.

Ms. Fregeau noted they plan to card customers who appear 25 or younger as indicated in their manual. She noted that many licensees ask for identification from customers who appear 35/40 or younger. She asked if they will accept the vertical licenses. Mr. Patel replied yes, if they are not expired. She stated

that they have the option not to accept the vertical license as the Liquor Commission has seen experienced licensees whose employees misread these licenses. She asked that they exercise caution in carding customers. Mr. Patel replied that they would consider changing that policy.

Ms. Fregeau noted that their policy is to review liquor guidelines quarterly and suggested that they reinforce these policies more often. Mr. Patel replied that they can discuss liquor issues monthly.

Ms. Fregeau asked about the consequences of an employee selling to minors. Mr. Patel replied that they have a zero tolerance policy which is immediate dismissal.

Ms. Fregeau asked about the layout. She asked if customers have access to the store from the back door. Mr. Patel replied no and that the door is only an access to the trash area. He noted that all deliveries will be made through the front of the store.

Ms. Fregeau asked how they will monitor the liquor area and if there are mirrors that enable them to see the liquor area. Mr. Patel stated that they are working on installing a camera system. He stated that they have a tv set up front where they can view the store from the front register. He stated that mirrors do not work because there is a beam in the middle of the store inhibiting view.

Ms. Strelau asked who will be the liquor manager. Mr. Amin replied himself. Mr. Patel replied that he will be helping out with the store. Ms. Strelau asked if they will hire other employees. Mr. Patel replied they may hire another employee in the future and added that they will try to manage the store between the two of them for now.

Ms. Strelau asked if they have familiarized themselves with IL and local laws. She cautioned that they may be vastly different from Georgia law. She encouraged them to understand all provisions of liquor sales especially since they have had out of state experience.

Mr. Krusenoski noted that not accepting the vertical license is generally a good idea. Mr. Patel noted that they could change the policy not to accept them.

Mr. Krusenoski stated that he liked the fake id clause in their manual and that they will not be accepting out of state identification. He noted that their hours of business are well within Downers Grove legal selling hours.

Mr. Austin noted that they are seeking a beer and wine license, but noted that beer was only indicated on the floor plan. Mr. Patel replied that they plan to start out with beer initially, as space is limited but they might add wine in the future. Mr. Austin asked about the storage of inventory. Mr. Patel noted that there is not much storage and they will be ordering inventory on a weekly basis.

Chairman McInerney noted that if there are changes to the floor plan with the addition of wine sales they must contact the Village and advise of changes to the layout or if the beer and wine sales area is increased. Mr. Patel stated that staff will be provided with floor plans before it is set up. Chairman McInerney noted that pursuant to the terms of the P-2 license, the alcohol and tobacco product area is limited to 25% of the retail square footage.

Chairman McInerney noted that their experience in Downers Grove is limited and stated that staff has resources available to help them.

Ms. Fregeau noted that the Illinois Liquor Control Commission also offers licensees free materials for their use.

Hearing the testimony given in this case, Chairman McInerney asked for a recommendation from the Commission concerning its finding of "qualified" or "not qualified" with respect to the applicant with regard to their liquor license application.

**MS. FREGEAU MOVED TO FIND PARTH-KHUSHI, INC. D/B/A CURTISS FOOD MART LOCATED AT 2150 CURTISS STREET QUALIFIED FOR A CLASS "P-2" LIQUOR LICENSE. MR. AUSTIN SECONDED.**

**VOTE:**           **Aye:**           Ms. Fregeau, Mr. Austin, Mr. Krusenoski, Ms. Strelau, Chairman McInerney

**Nay:**           None

**Abstain:**       None

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

Motion carried.

**Raam Enterprise, Inc. d/b/a Downtown Food Mart**

Chairman McInerney stated that the next order of business was an application hearing for Raam Enterprise, Inc. d/b/a Downtown Food Mart, located at 4946 Main Street. He stated that the applicant was seeking a Class "P-2", beer and wine only, off-premise consumption liquor license.

Chairman McInerney asked that any individual(s) representing the applicant step forward and be seated. He 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. Vatsal Thakore and Mr. Bharat Joshi were sworn in by the court reporter. Mr. Thakore introduced himself as the owner of Downtown Food Mart. Mr. Joshi introduced himself as the liquor manager.

Chairman McInerney asked the applicant to present its case.

Mr. Thakore stated that he was seeking a beer and wine packaged alcohol license. Mr. Joshi added that they will be operating as a convenience store. He stated that he has been in the business for the past 10 years. He stated that the exiting store has been vacant for 1 ½ years. He stated that the previous owners did not hold a liquor license or offer lottery.

Chairman McInerney asked staff if there were any additional factors affecting the finding or recommendation concerning this liquor license. Ms. Kuchynka advised that issuance of the license remains contingent upon receipt of insurance, annual fee, satisfactory background checks and a signed lease. She stated that they opted not to sign the lease until the liquor license was approved.

Ms. Kuchynka advised the Commission that this location was a former White Hen Pantry which had beer and wine sales for a number of years.

Chairman McInerney asked if there were any comments from the public pertinent to the application. There were none.



Chairman McInerney asked if there were any comments from the Commission.

Mr. Austin noted Mr. Joshi's liquor handling experience. Mr. Joshi stated that he had worked in the business for 6 years in Calumet City. He added that he had also owned a convenience store and worked Mullian's Liquors in Stickney.

Mr. Austin asked who will run the operation. Mr. Joshi replied he will serve as manager for this location and Mr. Thakore will help out at the business. He stated that if they grow they will hire another employee.

Mr. Austin asked Mr. Joshi about his experience with the state identification and asked Mr. Joshi if he has been presented with false identification. Mr. Joshi advised that he is very strict with id's. He stated that they will card 30 years of age or lower. He stated that he will post signage. He stated that they will utilize the lottery scanner to help scan the licenses and noted that the machine helps to identify the age of customers. He stated that the new lottery machines have an age option button and will calculate the patron's age when it is scanned. He noted if the id is fake, the lottery machine the license will not scan it.

Mr. Austin was anxious to see someone new come in to the store as it has been closed for some time.

Mr. Krusenoski noted that the vertical license is a red flag that a customer is under 21.

Mr. Krusenoski noted that they are open before legal selling hours and asked how they will prevent sales. Mr. Joshi replied that they will have the legal serving hours posted on the cooler doors and at the counter.

Ms. Strelau asked Mr. Joshi if he was still employed at Mullian's. Mr. Joshi replied that he worked there for four years, but for the last 6 months he has not been working as he and Mr. Thakore were looking to own and operate their own business.

Ms. Strelau emphasized that Downers Grove has different liquor handling rules than surrounding communities. She hoped they would familiarize themselves with Downers Grove laws.

Ms. Fregeau asked about the location of the cash registers on the floor plan. Mr. Joshi pointed out the register area on the diagram. He noted it was toward the rear, right hand side of the store, past the entrance. She was glad that the beer was located by the register area so they could monitor it.

Chairman McInerney had no questions. He stated that holding a liquor license is a lot of responsibility and hoped that they take selling beer and wine seriously.

Hearing the testimony given in this case, Chairman McInerney asked for a recommendation from the Commission concerning its finding of "qualified" or "not qualified" with respect to the applicant with regard to their liquor license application.

**MR. KRUSENOSKI MOVED TO FIND RAAM ENTERPRISE, INC. D/B/A DOWNTOWN FOOD MART LOCATED AT 4946 MAIN STREET QUALIFIED FOR A CLASS "P-2" LIQUOR LICENSE. MR. AUSTIN SECONDED.**

**VOTE:**           **Aye:**           Mr. Krusenoski, Mr. Austin, Ms. Fregeau, Ms. Strelau, Chairman McInerney

**Nay:** None

**Abstain:** None

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

Motion carried.

**VI. OLD BUSINESS**

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

Ms. Kuchynka stated that she provided the Commission with a copy of the Council item for the amendment to liquor classifications. She stated that the item has been placed on the July 19th agenda. She stated that it will eliminate some obsolete classifications in the Code. She stated that staff does not receive Council questions until the 17th. Ms. Fregeau asked that the Commission be provided with Council questions on the matter. Ms. Kuchynka agree to provide them.

Ms. Kuchynka stated that she left the Mayor's Findings and Order for Ruby Tuesday. She stated that the licensee was to pay a fine in lieu of suspension in the amount of \$2,500 and the licensee was charged \$1,000 to cover the costs of the hearing. She stated that they will be required to pay the fines and fees or any outstanding debts prior to the issuance of the 2012/13 license. She advised that she received payment.

Ms. Kuchynka advised that the police conducted a compliance check at Shanahan's on May 12th between the hours of 10:30pm and 1:35am. She advised no violations were observed. She stated that employees called "last call" and management announced that they would call for taxis should anyone need a ride home. Ms. Kuchynka stated that compliance checks are being regularly scheduled. Ms. Fregeau asked if any were scheduled for the Butterfield Road area. Ms. Kuchynka did not know of the police schedule, however, they are expected to be done. Ms. Kuchynka advised that the police department was provided funds from the alcohol awareness budget to conduct such checks.

Ms. Kuchynka stated that she was in the midst of license renewal. She stated that the deadline for submittal is Friday, June 8th. She stated that she has been receiving updated liquor manuals from licensees. She advised that licenses will not be re-issued until this document is received. Ms. Kuchynka stated that ten licensees have yet to submit their renewal. Ms. Fregeau asked if that was unusual. Ms. Kuchynka replied no and advised that she typically has about 20 that come in at the last minute.

Ms. Kuchynka advised that there are no items on the agenda for July and anticipated cancelling the meeting. Mr. Krusenoski asked what the deadline was for submittal. Ms. Kuchynka replied at minimum one month prior to the next month's meeting. She stated that materials would have been due June 1st.

Mr. Krusenoski mentioned that Angelo's would be interested in a license for their new location. Ms. Kuchynka replied that staff had been in contact with them a number of times concerning the process and the length of time it takes to obtain a license.

Mr. Austin asked if Downers Grove encourages owners not to accept out of state licenses. Ms. Kuchynka replied no. She noted that licensees are advised that they should have a 50 state identification guide on the premises in order to confirm the authenticity of the license. She stated they can be

purchased and/or receive them free from distributors. She stated that individual business owners may choose to take out of state licenses if they have the policy to do so.

Mr. Austin felt that the Commission may have encouraged an applicant not to take out of state licenses and asked if they should be promoting that. Mr. Krusenoski did not believe that the Commission encouraged them not to take them but simply commended them on the fact that they will not take an out of state license. Ms. Strelau agreed. Ms. Fregeau stated that they were only accepting Illinois in their manual. Mr. Austin agreed. He wanted to ask if the Village should commend them on that idea. Ms. Strelau noted that the Commission also commends licensees to not accept a vertical license. Mr. Austin did not want to suggest to an applicant that it is the Commission's position on what to take and what not to take. Chairman McInerney stated that the Commission may make suggestions, however the decision should be left to each individual owner and an opportunity for the Commission to provide feedback on their policies.

## **VII. NEW BUSINESS**

Chairman McInerney asked if there was any discussion, update from staff or comments from the Commission regarding any new business.

Chairman McInerney stated that the Tivoli is doing midnight shows. He asked if they are allowed to serve liquor during those movies. Ms. Kuchynka replied that they cannot serve liquor during a regularly scheduled movie. She stated that she would look into the matter.

## **VIII. COMMENTS FROM THE PUBLIC**

There were none.

## **IX. ADJOURNMENT**

Concluding business for the evening, Chairman McInerney called for a motion to adjourn.

Ms. Strelau moved to adjourn the June 7, 2012 meeting. The meeting was adjourned by acclamation at 7:18 p.m.

**DOWNERS GROVE LIQUOR COMMISSION  
VILLAGE HALL COUNCIL CHAMBERS  
801 BURLINGTON AVENUE**

Thursday, October 4, 2012

**I. CALL TO ORDER**

Chairman Strelau called the October 4, 2012 Liquor Commission meeting to order at 6:30 p.m.

**II. ROLL CALL**

**PRESENT:** Mr. Austin, Ms. Fregeau, Mr. Jacobson, Ms. King, Mr. Krusenoski, Chairman Strelau

**ABSENT:** Mr. Clary

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

**OTHERS:** Victor Fernandes, Kenneth O'Connor, Joseph Gil, Jitendra Nandani, Court Reporter

**III. APPROVAL OF MINUTES**

Chairman Strelau asked for approval of the minutes August 2, 2012 Liquor Commission meeting and asked members if there were any corrections, changes or additions.

Hearing no changes, corrections or additions, the August 2, 2012 minutes of the Liquor Commission meeting were approved as written.

Chairman 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.

**IV. APPLICATION FOR LIQUOR LICENSE**

Chairman Strelau made the following statements:

"The next order of business is to conduct a public hearing for liquor license applications. For the benefit of all present, I would like to state that this Commission does not determine the granting or denial of the issuance of any license. We may at the end of each hearing, make a finding or recommendation with respect to the application. If necessary, the Commission may adjourn a hearing to a later date in order to have benefit of further information."

"At the conclusion of the hearing, the Commission will summarize its findings and determine any recommendations it wishes to make to the Liquor Commissioner"

"The Liquor Commissioner, who is the Mayor of Downers Grove, will, pursuant to Section 3-12 of the Ordinance, render decisions regarding issuance of available licenses within 60 days in order to consult the Plan Commission for its recommendations."

"Hearings by this Commission are held according to the following format: 1) reading of information pertinent to the application, 2) comments from the applicant, 3) comments from the public, 4) discussion by the Commission, and 5) motion and finding by the Commission."

**Taste Group, Inc. d/b/a Taste Indian Chinese Cuisine**

Chairman Strelau stated that the first order of business was an application hearing for Taste Group, Inc. d/b/a Taste Indian Chinese Cuisine located at 2117 W. 63<sup>rd</sup> Street. She stated that the applicant was seeking a Class "R-2", beer and wine, on-premise consumption liquor license.

Chairman 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. Victor Fernandes was sworn in by the court reporter. Mr. Fernandes introduced himself as the liquor/general manager for Taste Indian Chinese Cuisine.

Chairman Strelau asked the applicant to present its case.

Mr. Fernandes stated that they took the opportunity to open a restaurant in Downers Grove and was seeking a beer and wine license for the restaurant. He noted that they serve Chinese cuisine with a mix of Indian spices and indicated it is growing in popularity around the world. He advised it is a family-style restaurant.

Chairman Strelau asked if there were any comments from the Commission.

Ms. Fregeau commented on the uniqueness of the establishment.

Ms. Fregeau asked Mr. Fernandes to elaborate on his liquor handling experience. Mr. Fernandes replied that he had worked the last five years for two different restaurants in Vegas. Ms. Fregeau asked if he was in charge of liquor handling at both establishments. Mr. Fernandes replied yes.

Ms. Fregeau noted that they submitted a dining menu. She asked if they will have a beer and wine menu and asked if beer will be served on tap. Mr. Fernandes replied that they will serve beer in bottles and noted that they will have a limited beer and wine menu. He stated that they do not have a drinking clientele, but would like to have it available to patrons. He anticipated about 3-5% in liquor sales.

Ms. Fregeau noted that their application projected 85% food sales, 5% alcohol sales, 7% non-alcoholic beverage sales. She asked what the "other" 3% sales entails. Mr. Fernandes replied he was just estimating sales and did not want to leave anything out.

Ms. Fregeau asked how many employees they have. Mr. Fernandes replied eight. Ms. Fregeau asked if they all have been certified. Mr. Fernandes replied not as of yet, but he will coordinate it upon receipt of a license.

Ms. Fregeau asked about the bar area indicated on the floor plan. She asked if they will have a bartender. Mr. Fernandes replied yes and noted that there will not be seating around the bar, but it will operate as a service bar only. Ms. Fregeau asked if wait staff will get orders from the bartender who in turn will take alcoholic beverages to the table. Mr. Fernandes replied yes and that all servers will be over 21.

Ms. Fregeau noted that State law prohibits licensees from giving away alcoholic beverages. She stated that the tone and tenor for proper liquor service is set by management.

Ms. Fregeau asked if they will accept the vertical license. Mr. Fernandes replied no. He stated that due to the excessive fines and possible suspension, he would rather not take the chance and advised that they chosen not to accept them. He noted that his liquor sales are small compared to what violation fines they could possibly face.

Ms. Fregeau noted that staff and the State have a number of resources to aid license holders.

Mr. Krusenoski asked Mr. Fernandes if he conducted quarterly refresher meetings while he was in Vegas. Mr. Fernandes replied no. Mr. Krusenoski asked how they will manage the refresher meetings. Mr. Fernandes stated that they will be very strict about how they serve liquor and who they will serve it to. He stated that they will review the manual and address issues if there are any changes in State or local laws.

Mr. Krusenoski asked if they have carry out. Mr. Fernandes replied yes. Mr. Krusenoski asked if the bar area is located near the take out cash register. Mr. Fernandes replied no and stated that the register is at a separate counter. He was aware that alcohol cannot be sold with carry out orders. Mr. Fernandes noted that the bar area will not have any seats for patrons to sit or get service from the bar.

Mr. Krusenoski noted that their 5% projected alcohol sales are disproportionately small compared to what alcohol fines are for violating liquor laws. Mr. Fernandes agreed and noted that huge fines would impact their business that will have such insignificant liquor sales.

Mr. Austin asked if there would be more than one manager. Mr. Fernandes replied yes and noted that the two owners would also be on site. Mr. Austin asked about their liquor handling experience. He stated that one is a chef with a little experience. He noted the other has 25-30 years of experience and added that he worked at Bamboo Garden in Aurora, India House in Schaumburg the Bamboo Chopsticks in Schaumburg. Mr. Austin asked if those establishments held liquor licenses. Mr. Fernandes replied yes. Mr. Fernandes stated that he also worked in India as the president of a hotel.

Mr. Jacobson had no questions.

Ms. King asked Mr. Fernandes if he ever experienced an underage sting. Mr. Fernandes replied no, but noted his wife got fined while she worked in a convenience store. Ms. King asked if they conducted stings in Vegas. Mr. Fernandes replied yes and noted that they are strict there as well.

Ms. King asked about the circumstances for serving a minor. Mr. Fernandes replied up to termination and employees will have to pay their own fines. Ms. King asked for clarification on the manual where the bartender would be ticketed. She advised that if the server is involved in the sale, the server would be fined. Mr. Fernandes stated that whoever hands over the liquor to the minor will be responsible. He stated that he will update that provision in the manual.

Ms. King asked about the location of the restaurant. Mr. Fernandes replied in the 63<sup>rd</sup> & Woodward strip mall, next to the dance studio. He stated that it use to be a former Chinese restaurant

Chairman Strelau stated that Mr. Fernandes mentioned that all their servers would be over 21, however, the manual referred to 19 year old servers. Mr. Fernandes agreed to update the manual as they planned to only have servers over the age of 21.



however, this location is unique in that the liquor area is completely enclosed making it easy to control, prevent thefts and noted that the area may be closed off during non-sales hours.

Chairman Strelau asked staff if there were any additional factors affecting the finding or recommendation concerning this liquor license. Ms. Kuchynka advised that issuance of the license remains contingent upon receipt of the annual fee, dram shop insurance, satisfactory background checks and a certificate of occupancy.

Chairman Strelau asked if there were any comments from the public pertinent to the application. There were none.

Chairman Strelau asked if there were any comments from the Commission.

Mr. Krusenoski discussed the floor plan and asked what was adjacent to the liquor area. Mr. O'Connor replied the customer service counter and office areas. He stated that the walk-in cooler is contained within the enclosed liquor department. Mr. Krusenoski asked if payment is done at the main registers outside of the liquor area. Mr. O'Connor replied yes.

Mr. Krusenoski asked about the outdoor seating area and asked if it will be used as a cafe. Mr. O'Connor advised that intend to have an eating area where customers could enjoy their pre-cooked meals. He noted they will have coffee and only non-alcoholic drinks in the outdoor dining/seating area.

Mr. Krusenoski asked if this location was also a former Dominick's. Ms. Kuchynka replied yes.

Mr. Krusenoski was impressed that the fine information was prominent in the manual. He noted that the tone is set by management and it could be a deterrent in the sale of liquor to minors. Mr. O'Connor noted that while they will accept the vertical identification, a manager must approve it.

Mr. Austin had no questions.

Ms. Fregeau asked if they have a software system or lock out capability at the register for those that are under 21. Mr. O'Connor replied yes. He stated that they use RDS (Retail Data System) in which cashiers need to enter in a date of birth to complete the sale. He believed the system is capable of locking out sales during certain times such as on Sundays when they cannot sell until 9 am.

Ms. Fregeau asked that they be particularly careful in accepting the vertical licenses.

Ms. Fregeau stated that their manual was thorough and liked the detail on carding procedures.

Ms. Fregeau asked Mr. Gil about his liquor handling experience. Mr. Gil replied that he has 4 years of experience working in the other Shop & Save locations and is currently the Bridgeview manager. He added that he also held a liquor license in Chicago since 1989, prior to working for Shop & Save.

Mr. Jacobson had no questions.

Ms. King was glad to see someone in the empty space. She wondered why the previous grocery stores did not remain in business, as it seemed to be a good location. Mr. O'Connor noted that strong management is key to success. He noted that it is imperative to keep the store clean and well stocked with sale merchandise. He stated that Shop and Save prides themselves in having excellent fresh produce and deli sections and noted that their hot foods are very popular.



Ms. King asked if they role play in the training process with the vertical license. Mr. O'Connor replied no. He stated that they will have to have quarterly training and processes in place for their staff to become certified. He noted the fluidity in staff and added it was the nature of the job to go through 2/4 cashiers monthly. He noted that they will do re-training as new employees are hired.

Ms. King asked if on-line training is available. Ms. Kuchynka replied yes. Ms. King noted that visual training may be beneficial in lieu of just reading material. Ms. King was pleased with their manual and that employees will be made aware of fines. Mr. O'Connor replied that he has never seen as strict as policies as Downers Grove. He noted that the fines were surmountable to what their employees earn in a week.

Chairman Strelau asked Mr. O'Connor if he was aware of any liquor violations at the other stores. Mr. O'Connor replied he was not aware of any violations. Ms. Kuchynka added that Downers Grove checks completed thus far have failed to disclose any violations.

Chairman Strelau noticed they have a keg tag process and asked if they plan to sell kegs. Mr. O'Connor replied not at this time, but they opted to keep that provision in the manual in the event that they sell kegs in the future.

Ms. Fregeau asked about the counter unit in the liquor area. She wondered if they will be serving or tasting in that area. Mr. O'Connor replied that area is for their top shelf liquors which will either be contained in a cabinet or have anti-theft security tops on the bottles.

Chairman Strelau was happy that they felt Downers Grove policies were strict. She wished them luck.

Hearing the testimony given in this case, Chairman Strelau asked for a recommendation from the Commission concerning its finding of "qualified" or "not qualified" with respect to the applicant with regard to their liquor license application.

**MR. AUSTIN MOVED TO FIND LEMONT GROVE ADVISORS, LLC D/B/A SHOP & SAVE MARKET LOCATED AT 7241 LEMONT ROAD QUALIFIED FOR A CLASS "P-1" FULL ALCOHOL, OFF-PREMISE LIQUOR LICENSE. MR. KRUSENOSKI SECONDED.**

**VOTE:**       **Aye:**           Mr. Austin, Mr. Krusenoski, Ms. Fregeau, Mr. Jacobson, Ms. King, Chairman Strelau

**Nay:**           None

**Abstain:**       None

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

Motion carried.

**Nirmala Corp. d/b/a Jay's Convenient**

Chairman Strelau stated that the next order of business was an application hearing for Nirmala Corp. d/b/a Jay's Convenient located at 6314 Main Street. She stated that the applicant was seeking a Class "P-2", beer and wine, off-premise consumption liquor license.

Chairman 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. Nandani was sworn in by the court reporter. Mr. Nandani introduced himself as the owner and liquor manger for Jay's Convenient.

Chairman Strelau asked the applicant to present its case.

Mr. Nandani stated that he has taken over the former independent convenience store at 63<sup>rd</sup> & Main Street. He felt it would be a good opportunity to open in Downers Grove and because of the nice neighborhood around it. Chairman Strelau asked if he is currently operating. Mr. Nandani replied yes.

Chairman Strelau asked staff if there were any additional factors affecting the finding or recommendation concerning this liquor license. Ms. Kuchynka advised that issuance of the license remains contingent upon receipt of the annual fee and satisfactory background checks.

Chairman Strelau asked if there were any comments from the public pertinent to the application. There were none.

Chairman Strelau asked if there were any comments from the Commission.

Ms. Fregeau noted Mr. Nandani's 10 years of experience. Mr. Nandani replied that he has 10 years of experience franchising from 7-Eleven and an overall 22 years of experience working with 7-Eleven. He stated that prior to being an owner he was an employee and a manager.

Ms. Fregeau asked about the number of employees. Mr. Nandani replied that he and his brother would be running the store for now.

Ms. Fregeau asked if they have software or equipment on the register that would lock out underage sales. Mr. Nandani explained that they have id checking software on their register system. He stated that it includes a 50 state id scanner. He noted that they will card everybody. He noted that he had the same policy in the Elmhurst store.

Ms. Fregeau asked Mr. Nandani to add more detail and examples in his training manual. She stated that staff can provide him with good manual examples.

Mr. Nandani replied that Elmhurst and 7-Eleven tested his store on a regular basis. Ms. Fregeau noted that Downers Grove has a compliance testing program. Mr. Nandani noted that a customer just came in to buy cigarettes with an expired identification and he refused that sale.

Mr. Jacobson had no questions.

Mr. Krusenoski asked if the scanner software system can also lock out liquor sales during non-sale hours. Mr. Nandani replied yes and that the software cost a lot of money.

Mr. Austin had no questions.

Ms. King asked about the 100 foot distance from a church or school that was checked "yes" on the application. Ms. Kuchynka replied that was an oversight and should be marked "no". She stated that the

100 foot distance requirement from property line to property line applies only to liquor stores. She noted that there are no schools, churches or homes for the aged in that vicinity and would correct the application accordingly.

Chairman Strelau wished Mr. Nandani luck. She asked that he contact staff if he has any questions.

Hearing the testimony given in this case, Chairman Strelau asked for a recommendation from the Commission concerning its finding of "qualified" or "not qualified" with respect to the applicant with regard to their liquor license application.

**MR. KRUSENOSKI MOVED TO FIND NIRMALA CORP. D/B/A JAY'S CONVENIENT LOCATED AT 6314 MAIN STREET. QUALIFIED FOR A CLASS "P-2" BEER AND WINE, OFF-PREMISE LIQUOR LICENSE. MR. AUSTIN SECONDED.**

**VOTE:**       **Aye:**           Mr. Krusenoski, Mr. Austin, Ms. Fregeau, Mr. Jacobson, Ms. King, Chairman Strelau

**Nay:**           None

**Abstain:**       None

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

Motion carried.

## **VI.    OLD BUSINESS**

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

Ms. Kuchynka stated that she provided the Commission with the monthly packet and provided the group with a revised version of the Liquor Code. She stated that she copied the group on a letter to the licensees which were affected by the recent classification change.

Ms. Fregeau liked having the up to date licensee list which includes the date of issuance. She asked about the Moose license date of issuance. Ms. Kuchynka replied she was unsure as she could not locate their initial paperwork as to what date the license was actually issued. Ms. Kuchynka noted that they may have been one of the very first licensees, but did not have a copy of the original license and would research it further. Ms. Fregeau asked that staff provide updates and put a date at the bottom for reference. Ms. Kuchynka agreed.

## **VII.   NEW BUSINESS**

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

Ms. Kuchynka stated that anticipates a November meeting.

Ms. Fregeau asked about Bingo at Ballydoyle and noticed that a lot of pubs are conducting this. Ms. Petrarca noted that it is the new craze.

Ms. Fregeau had questions on the operation as they were not provided information on what Ballydoyle proposed. She asked if they need a State license to conduct Bingo. Ms. Kuchynka noted that the State regulates bingo and charitable games. Ms. Petrarca stated that there needs to be “consideration” in order for them to be required to obtain a State license. She stated that customers will not pay to participate. Mr. Austin stated there may be no value in participating. Ms. Petrarca stated that some establishments offer trivia games. Ms. Fregeau noted that winners can get prizes. Ms. Kuchynka noted that the establishment, however, will not get any money to conduct the event. Ms. Petrarca stated that nothing stops licensees from giving away t-shirts or gift cards. Ms. Fregeau noted that prizes cannot be given for discounted drinks. Ms. Petrarca noted that licensees cannot discount liquor regardless.

Ms. Petrarca stated that staff did research and there was no legal reason to now allow the activity, but staff wrote a letter to Ballydoyle and set parameters. Ms. Kuchynka noted that they still need to operate primarily as a restaurant and not operate as a bingo hall every night of the week.

Ms. Kuchynka advised that the American Legion is licensed by the State of Illinois and hold a valid bingo license as they charge to play and keep a portion of the proceeds.

#### **VIII. COMMENTS FROM THE PUBLIC**

There were none.

#### **IX. ADJOURNMENT**

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

Ms. Fregeau moved to adjourn the October 4, 2012 meeting. The meeting was adjourned by acclamation at 7:28 p.m.

VILLAGE OF DOWNERS GROVE  
ZONING BOARD OF APPEALS  
SEPTEMBER 26, 2012 MINUTES

**Call to Order**

In the absence of Chairman White, Commissioner Majauskas called the meeting to order at 7:30 PM.

**Roll Call**

**Present:** Mr. Domijan, Ms. Earl, Ms. Majauskas, Mr. McCann,  
Ms. Souter

**Absent:** Mr. Enochs, Chairman White

A quorum was established.

A Motion was made by Ms. Earl, and seconded by Mr. Domijan, to appoint Ms. Majauskas as Chairman ProTem in the absence of Chairman White.  
All in favor. The Motion carried.

**Staff:** Jeff O'Brien  
Tom Dabareiner, Community Development Director

**Also Present:** District 99: Supt. Dr. Mark McDonald, Marty Schack;  
North High School: Principal Scott Kasik, Vice Principal Chuck  
Hiscock, Jim Kolodziej, Building & Grounds  
Byron Wyns, Wight & Co.; Cindy Schramm, 4442 Saratoga Ave,  
Downers Grove; Tom LeCren, 545 Chicago Ave, Downers Grove;  
Roger & Jennifer Bauman, 4500 Prince St; Thomas Eagan, 4501  
Saratoga Ave, Saratoga Ave

**Minutes of July 2012 meeting**

Mr. Domijan moved to approve the minutes of the August 22, 2012 meeting as presented. Ms. Souter seconded the Motion.

**AYES:** Mr. Domijan, Ms. Souter, Ms. Earl, Mr. McCann, Ch. Majauskas

**NAYS:** None

The Motion passed.

**Staff Comment:**

Mr. Tom Dabareiner, Community Development Director for the Village of Downers Grove announced that the Illinois Chapter of the American Planning Association selected the Village of Downers Grove Comprehensive Plan for its Daniel Burnham Award as the Best Comprehensive Plan adopted in the last year. Mr. Dabareiner, Mr. Jeff O'Brien, and Ms. Earl went to Champaign to accept the award last week. The award represents the highest achievement for planning in the state.

**Meeting Procedures**

Chairman ProTem (hereinafter “Chairman”) Majauskas explained the function of the Zoning Board of Appeals, and reviewed the procedures to be followed during the public hearing, verifying with staff that all proper notices have been published with regard to Case ZBA 08-12. She then called upon anyone intending to speak before the Board on the agenda item to rise and be sworn in, as the public information portion of the meeting is an evidentiary hearing.

Chairman Majauskas explained that members of the Zoning Board of Appeals all have had the opportunity to review the documents for the petition prior to the meeting. She explained that any comments made during the meeting must be in relation to the fence variations requested, and not the overall project at North High School. Comments on the overall project must be directed to District 99. In order for a requested variation to be approved there must be a majority of four votes in favor of approval. She added that the Zoning Board of Appeals has authority to grant petitions without further recommendations to the Village Council.

.....

**ZBA-08-12 A petition seeking fence variations for the parking lots at Downers Grove North High School. The property is zoned R-4, Single-Family Residential. The West Parking Lot is located at the northeast corner of Grant Street and Saratoga Avenue. The East parking Lot is located at the northeast corner of Grant Street and Main Street, commonly known as 4436 Main Street, Downers Grove, IL (PINs 09-05-307-005, 09-05-307-006, 09-05-307-007, 09-05-307-008, 09-05-307-011, 09-05-307-012, 09-05-307-013, 09-05-307-014, 09-05-307-15, 09-05-309-001); Community School District 99 Petitioners and Owners.**

**Petitioner’s Presentation**

Mr. Marty Schack, Director of Physical Plant and Operations for North High School, introduced other members of District 99 present at the meeting. Mr. Schack said their request is for a fence variance at North High School campus. He said the new facilities have addressed a number of pedestrian and vehicular traffic and safety issues that have been a challenge to the compact campus for many years. He thanked the Village staff for its assistance during the project, as well as neighbors who have worked with District 99 on landscaping of the site. Mr. Schack said that they are asking for six-foot fences in lieu of four-foot fences around two new parking lots at North High School to control access to the lot and separate pedestrian and vehicular traffic. He noted that the fences are architecturally pleasing and the added height will not impact visual sidelines. The variation provides consistency with other fencing on the property and works to support the safety of everyone on campus. A slide of the proposed fencing was displayed.

## **APPROVED 10/24/12**

Mr. Jim Kolodziej of Building & Grounds at North High School displayed slides of the site, showing where the fencing would be installed on the west side of the campus, as well as the east side of campus. He said on their Master Site Plan Phase 2 there were requests from the Village and neighbors to incorporate an expensive plant design into the landscape. Landscape plans were displayed depicting the proposed landscaping choices. Higher fencing will provide greater protection of the landscaping and deter pedestrians and students from jumping the fence. The six-foot fence would also be consistent with other six-foot fencing on the site.

Vice Principal Chuck Hiscock of North High School addressed the Board and said he has been involved in the Master Site Plan for the last seven years. One of their goals is to improve student safety by keeping vehicular and pedestrian traffic separate as much as possible. On the east side of the building they wanted to funnel pedestrian traffic to the only safe signaled crossing at Main Street and Grant. He has worked with high school students for 21 years now, and in most cases a four-foot fence provides a challenge rather than a deterrent. The men's high hurdle in track and field is 42 inches, only six inches lower than a four-foot fence would be. A six-foot fence represents a barricade most students will not attempt to cross, and it's taller than most of the students. Mr. Hiscock said that the School really believes the six-foot fence will make a difference in terms of student safety.

Mr. Domijan asked about the expanded lot on the east side and its mix and use. Mr. Hiscock said it's used by faculty and students. The southern section is reserved for visitors.

Ms. Earl inquired as to the six-foot fence on the west side Main Street. Mr. Schack said that six-foot fence was installed last summer. There is a varsity softball field and soccer practice field that are against the property line. The six-foot fence will not necessarily stop balls, but it will prevent students from trying to climb the fence to chase balls that go into the street. He further noted that if pedestrians try to climb the fence they would have to walk through a heavily landscaped parkway. Part of the District's agreement with the Village was to re-landscape Village parkways to serve as a screen from school activities for adjacent houses. As a result the District approved a \$200,000 landscape plan, which exceeds normal landscape requirements. Landscaping is on both sides of the campus, including all four sides of the east parking lot, and three sides of the west parking lot.

In response to Chairman Pro Tem Majauskas' question regarding the parking lots, Mr. Hiscock said that they have provided sidewalks within the parking lots to funnel pedestrians to exit at designated signaled pedestrian crosswalks, rather than cutting across Main Street at non-signalized areas. He explained that the parking lot sidewalk would be parallel to the Village sidewalk, with the fence between the two sidewalks.

In response to a question as to why the students would not simply walk out the driveway, Mr. Schack said that there is a construction fence there now and students have not walked out using that exit.

## **APPROVED 10/24/12**

Mr. McCann inquired as to the west lot on Saratoga and its operation during the day asking if it is only for buses. Mr. Schack replied that the bus parking lots are empty during the day. The remaining parking area is for faculty.

Mrs. Majauskas said she understands student safety as a big issue. She was not sure that a six-foot fence makes a difference. In the fifteen years she has lived here she goes down Main Street all the time and has not seen kids jumping back and forth across the road. When you put up a fence, there are kids who will try to jump it, no matter what anyone says. She thinks walking in the parking lot is more dangerous than crossing the street. If they do try to cross the street, they are at least looking both ways, whereas in the parking lot they might be looking at their phones or some other distraction.

Mr. Schack said he thinks it is a safety issue. His office faces Main Street and he has seen numerous situations of students crossing the street at inappropriate locations. It is a safety issue.

Mr. Schack noted the project has been on going for the last two years and there has been an eight-foot construction fence surrounding the property. He and Mr. Kolodziej have seen students attempting to climb the construction fence.

Chairman Majauskas said that is her point. There is a danger to having a fence there.

Mr. Schack said they strongly feel there is more danger without the fence. The fencing is a control device to funnel people in the direction that they want them to go.

Chairman Majauskas said there is an enforcement issue, but she does not understand the need for a six-foot fence versus the allowed four-foot fence.

Mr. Schack said they are talking about kids. At one football game they had adults climbing the fence right in front of school staff. They know a six-foot fence will not stop everyone, but it will be more of a deterrent than a four-foot fence. It is a funnel issue that will allow them to control people in a safe manner.

Mr. McCann asked where students parked their cars prior to this construction. Mr. Schack said they parked in the west parking lot off of Prince Street where the new practice field is now. They have eliminated the pedestrian traffic to and from the practice field across Main Street.

Ms. Earl asked why the students were not put in the teacher's lot rather than across Main Street.

Mr. Schack said they are only crossing the street twice a day. Prior to the change they were crossing the street eight times a day.

Ms. Earl still felt they could have moved the students into the lot south of the school.



Mr. Schack said there is not enough room at that location to have students parking and still retain the athletic field.

There were no further questions from the Board.

**Staff's Presentation**

Mr. Tom Dabareiner, Community Development Director for the Village, reviewed the basic information of the proposal. Downers Grove North High School is located at 4436 Main Street in an R-4 zoning district. It contains accessory parking and sports fields. The petitioner began an improvement project in 2011, which included parking on the east side and relocation of parking on the west side. The east lot is bounded by Main Street, Sherman, Grant and Highland. The west parking lot is at the northeast corner of Saratoga Avenue and Grant Street. He showed the areas in question on the screen. The petitioner is requesting two variations to allow installation of a six-foot fence in the front yards in areas where four-foot fences are permitted. Mr. Dabareiner noted that Section 28.1301(g)(1)(i) of the Village's Zoning Ordinance requires that the fences have an open design and are no taller than four feet. The fences proposed by the petitioner are six feet in height and of an open decorative design. The petitioner is concerned that students will jump a four-foot tall fence and shrubs to cross Main Street at other mid-block locations, or in the case of the west parking lot, students may jump a four-foot tall fence and shrubs to shorten the path to/from the west side school doors.

Mr. Dabareiner pointed out that staff believes the analysis of the request should be split into two issues, because there are unique circumstances surrounding the request for a fence variation for the east parking lot. However, there is no physical hardship nor are there unique circumstances related to the west parking lot. He then reviewed the key points indicated in the staff report. Those key points are:

1. Regarding the east parking lot, there is a significant amount of parking separated from the school campus by a busy arterial street, which is not typical and may be considered a highly unique circumstance. The potential hazards associated with multiple crossing points to and from the east parking lot are a safety concern not found in other school and institutional settings within residential districts in Downers Grove.
2. The guidance offered by the fence in directing students to the preferred crossing point at the Main/Grant traffic signal is a valuable safety benefit.
3. From a design perspective, there is a similar style of fence six feet in height on the west side of Main Street. That fence was permitted by the Village to help control activity related to sports and practice fields, but effectively provides a similar function. Mr. Dabareiner presented slide representations of the subject parking area and the proposed fence height at the Main Street location.
4. By contrast, with the vacation, closing and redesign of Prince Street on the west side of the school campus, there is no longer a dominant pedestrian crossing concern. No unique circumstance exists on the west side to support a variation. Traffic volumes along Grant and Saratoga are much lower than those on Main

Street. Furthermore there is no physical hardship that prevents installation of a functional and allowable four-foot fence.

5. The west parking lot will primarily be used for bus pick-up, staff and visitor parking. Busing operations are closely monitored by administrative staff and faculty. With lower volumes and more staff oversight, concerns should be significantly less.
6. Staff is concerned that if the requested variation along the west parking lot was approved without clear findings of unique circumstances or physical hardship, it could be construed to be applicable to all of the school and institutional properties located in residential districts in Downers Grove. Photographs of the four-foot fence for the west parking lot were displayed.

Mr. Dabareiner explained that fence variations require evaluation per Section 28.1803 of the Zoning Ordinance. He suggested again that discussion be split between the west parking lot and the east parking lot since staff has come to different conclusions and variations on the two parking lots. He then reviewed the nine standards for granting variations as follows, and as shown in staff's report on pages 3-5 of staff's aforementioned report.

***(1) The property in question cannot yield a reasonable return if permitted to be used only under the conditions allowed by the regulations governing the district in which it is located.***

Reasonable "return" is a concept better applied to properties where value and price point play a dominant role. In the case of a public high school, reasonable "function" is a better means for evaluation. The west parking lot area is intended for a less intense set of activities and is immediately adjacent to the school campus, in contrast with the more intense east parking lot located across an arterial street.

The petitioner acquired the properties for the west parking lot over the course of several years to increase the land area for the North High School Campus, including the vacation of Prince Street, which will now provide direct access to the primary portion of the campus without crossing any streets. That connection was one of the supporting reasons for allowing the vacation of Prince Street and is a significant benefit, functionally, to the campus. Combined with this new access to campus, the four-foot tall fence height allowed by the Zoning Ordinance helps achieve the less intense containment goals sought by the petitioner. Further, Staff does not see a time, distance or directional benefit for students to hop a fence located along Saratoga or Grant, when open and direct access is afforded to the east. Staff believes this standard is not met for the west parking lot.

For the east parking lot, Main Street, which is categorized as an arterial street and intended to serve the highest volumes of traffic, is a barrier to safe passage between the parking lot and main campus. The amount of parking is also significantly more. The need to redirect students to and from campus via the signalized intersection at Main/Grant is therefore important. The volume of parking, the arterial street gap and the importance of redirecting students to a controlled intersection make this functionally

different from the west parking lot. Staff believes this standard is met for the east parking lot.

(2) ***The plight of the owner is due to unique circumstances.***

Staff believes there are no unique circumstances associated with the property that would require increasing the fence height for the west parking lot, compared with other school/institutional uses in residential districts. The property is similar to many other institutional and public uses existing in residential neighborhoods with parking adjacent to the primary use. Staff believes this standard is not met for the west parking lot.

For the east parking lot, the larger volume of parking is not adjacent due to the Main Street arterial located in between. This is coupled with the need to redirect students to and from campus via the signalized intersection at Main/Grant. These are circumstances unique to the site, the neighborhood and the residential district. Staff believes this standard is met for the east parking lot.

(3) ***The variation, if granted, will not alter the essential character of the locality.***

Mr. Dabareiner explained staff does not believe taller fences would significantly alter the essential character of the locality and that the standard is met for both fences.

(4) ***That the particular physical surroundings, shape, or topographical conditions of the specific property involved would result in a particular hardship upon the owner, as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out.***

Regarding the west parking lot, there are no associated physical surroundings, shapes, or topographical conditions that would result in a physical hardship in a manner where a six-foot fence works where a four-foot fence does not. Mr. Dabareiner noted that it is not unique to have landscaping outside of fences. The property is a typical rectangular lot that is similar to other school and institutional properties throughout the Village's residential neighborhoods. The topography of the site does not limit the petitioner's ability to construct a fence that meets the requirements of the Zoning Ordinance. Staff believes this standard is not met for the west parking lot.

By contrast, Main Street is an arterial street intended to carry large volumes of traffic often at higher speeds. While it is not uncommon to find institutional uses along arterial streets, it is rare to find the parking separated by arterial streets from the primary use—the case with the east parking lot. The arterial street is a significant physical surrounding that differentiates it from the west parking lot. Staff believes this standard is met for the east parking lot.

(5) ***That the conditions upon which the requested variation is based would not be applicable, generally, to other property within the same zoning classification.***

The variation for the west lot could be applicable to other school and institutional properties with large parking areas situated in residential neighborhoods unless there is a hardship or unique circumstance. Mr. Dabareiner explained staff is concerned that

standards associated with hardship and unique circumstances are lacking or weak for the west lot and that the standard is not met for the west lot.

By contrast, Mr. Dabareiner explained the fact Main Street divides the school from the east parking lot is unique and warrant granting the variation for the east lot. He indicated staff believed this standard was met for the east lot.

**(6) *That the alleged difficulty or hardship has not resulted from the actions of the owner.***

Regarding the west parking lot, Mr. Dabareiner explained no difficulty or hardship is alleged and many design options existed for the petitioner prior to discussion of a fence. He noted actions already taken by the petitioner, such as the vacation of Prince Street, already significantly address concerns raised by eliminating street crossing conflicts. The standard is not met for the west lot.

Mr. Dabareiner noted, the difficulty associated with directing pedestrians to a specific crossing point at Main Street to/from the east parking lot is real and can best be addressed by the fence. He noted staff believes this standard is met.

**(7) *That the proposed variation will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion in the public streets, or increase the danger of fires, or endanger the public safety, or substantially diminish or impair property values within the neighborhood.***

Mr. Dabareiner explained that fences do not usually impact light or air supplies, especially in a suburban setting. As such, both fences meet this standard.

**(8) *That the proposed variation will not alter the land use characteristics of the district.***

He stated that increasing the fence heights will not change the land use characteristics of the R-4 district. The district is and will remain primarily residential.

**(9) *That the granting of the variation requested will not confer on the owner any special privilege that is denied by this Zoning Ordinance to other lands or structures in the same district.***

Mr. Dabareiner stated granting of the variation request for the west parking lot will confer special privileges that are denied to other institutional and educational property owners. He indicated the petitioner has not demonstrated any physical hardships, unique circumstances or practical difficulties that preclude their compliance with the Zoning Ordinance. He indicated staff believes this standard is not met for the west parking lot.

Because unique circumstances and physical surroundings present a hardship for traversing Main Street given the separation of the parking lot from the main campus, staff believes granting a variation for the east parking lot would not confer special privileges and the standard is met for the east parking lot.

## APPROVED 10/24/12

Mr. Dabareiner said that staff recommends denial of the request for a variation for the west parking lot, and recommends approval for the requested variation for the east parking lot. Should the ZBA decide to approve the requested variations for the fences around the parking lots, the variations should be subject to the following conditions:

1. The proposed fences shall substantially conform to the plans prepared by Wight and Company dated July 20, 2012 and attached to Staff's report except as such drawings may be changed to conform to Village codes, ordinances, and policies.
2. The applicant shall submit revised drawings for the permit file.

Ms. Souter asked about the west parking and a variance granting special privilege. Because this is a public high school, she sees the property as being unique in and of itself. She asked Mr. Dabareiner's opinion.

Mr. Dabareiner responded that the uniqueness is measured not just in terms of the individual use of the applicant. The Zoning Ordinance is in place to protect surrounding neighborhoods. People across the street would not be able to put up a six-foot fence in the same zoning district. If this concerned a particular use on an island, the decision would be easier; but this refers to the subject property and the neighborhood surrounding it. What is unique in this case with the east parking lot is crossing an arterial street to access the high school.

Mr. Dabareiner further responded that the Zoning Ordinance addresses the physical relationships, and not particularly the uses. When looking at the physical relationships of property and structure they are limited to a certain set of facts that require the applicant, staff and ZBA to identify something truly unique, or a hardship for activities on the properties.

Chairman Majauskas raised questions related to the west parking lot fence and Sherman Street. When students come out of the school, most are funneling into the buses. If you live south of the school or west of the school, it does not affect you. If you walk northwest the fences will affect you as you can head out Prince. She does not understand who this fence will stop. Mr. Dabareiner said staff agrees with her observation.

Chairman Majauskas then focused on Sherman, and asked what good the fence on Sherman will do. Mr. Dabareiner said in this situation it is a continuation of the fence to the entrance to deter students from exiting along the north and potentially crossing at an inappropriate location.

Mr. McCann said as a point of order someone from the School District could address that as well.

There being no further questions from the Board at this time, Chairman Majauskas called upon members of the public who wished to speak either in favor of, or in opposition to the requested variations.

## APPROVED 10/24/12

1. Cindy Schramm of 4442 Saratoga resides on the northwest corner of Grant and Saratoga. There are two houses on the west side. She said that the neighbors requested the six-foot fence, and have notified the Village that they would like the six-foot fence. The School has followed through with requesting the variation. Ms. Schramm said this affects the neighbors greatly as the students come out of the football field, across the street cutting through the parking lot, which is dangerous. She has had no issues with the buses during the school day; however, when there is a game cars are parked everywhere. She was sitting in her rec room after the most recent game and had students within five feet of her home, in her yard. She has expensive landscaping on the east side of her house, which can be destroyed. She does not want a six-foot fence on her property, but does want it on the school side. She noted that the Board has asked many of the questions tonight that the residents asked more than a year ago when this plan was presented. The neighbors want the same type of safety on the west side as is allowed on the east side. She said neighbors have to watch while kids and their parents are disrespectful of neighborhood property. She reiterated that the neighbors have requested the six-foot fence.

2. Mr. Tom LeCren of 545 Chicago Avenue asked if the District or Wight & Co has ever considered a two-foot berm with a four-foot fence on top. It may not be as effective as a six-foot fence, but it may serve the purpose. Mr. Dabareiner said that is an option.

3. Mr. Roger Bauman resides at 4500 Prince Street, at the intersection of Prince and Grant, due south of the west parking lot. There is a significant amount of residential parking in the area at evening events, and that results in a lot of residential parking crossing at Saratoga going into the school area. He said they see students cross through all the time. There is a construction area fence now which has significantly limited pedestrians crossing over the fences, and that shows what fencing can do. He thinks they should keep a consistent height for architectural aesthetics. Staff thinks this is not an unusual circumstance, and he disagrees. He does not feel a six-foot fence has any place on an individual's single-family property; however, with a school that has continuous traffic and activities, it is an unusual and unique circumstance. He supports the request for the six-foot fence and landscaping of the school.

4. Mr. Thomas Eagan of 4501 Saratoga Avenue, at the intersection of Grant and Saratoga, commented that he has lived in the house for 31 years and has witnessed every type of student behavior you can imagine. He firmly believes a six-foot fence would be a significant deterrent to certain activities and it is a safety issue. Hopping over a four-foot fence onto a flat area is not as risky as hopping over a six-foot fence. Another issue is that the neighbors were vocal concerning the whole design of the west side with the School District. Neighbors attended meetings with the Village Council as well as numerous boards and commissions and expressed concerns about depreciation of their property values. The School District has been responsive to the concerns expressed and allocated substantial additional money toward landscaping to create a better buffer zone and maintain the attractiveness of the neighborhood. If only a four-foot fence is permitted, he believes it would destroy the landscaping and would depreciate the property value of their homes, as well as the aesthetics of the community. He thinks the

landscaping will create a buffer to help protect the property value of the residential owners. He agrees that the west side, because of its proximity to the sports field, is much more utilized than the east side.

5. Ms. Jenny Bauman of 4500 Prince said there were three other people who were unable to attend but have provided e-mails stating their approval of the six-foot fence. Ms. Bauman supports and encourages the variances for the six-foot fence. She has not supported the parking lot across from her home, but the reality is that the parking lot is there. The school is trying to make changes for parking. During the day people see staff around, well organized and well orchestrated. People do not understand the chaos that occurs during school activities. The pick up and drop off of students has improved noticeably. Before the fencing, people disobeyed all the no parking signs. She believes if there is no six-foot fence, and the construction fence comes down, people will begin to park on Grant again, and people will be coming into residents' yards. She also sees the school as a unique situation because it has 2,200 students. The west side is utilized much more than the east side because of its proximity to the athletic field. There has to be a tall, clear and solid delineation between the neighborhood and the residents' homes. She said negative activity could be prohibited from occurring in her yard with a fence installed. A four-foot fence cannot achieve this goal. It is a challenge rather than a barrier. The landscaping is huge for the residents because it helps to soften the affect of the parking lot. Many trees have been taken away. The neighborhood is in full support of the six-foot fence and hopes that the Board will grant the requested variance. Ms. Bauman said she has lived in the area for a year and a half and has surrounding landscaping rather than a fenced-in yard.

There being no further comments from the public or the Board, Chairman Majauskas closed the opportunity for further public comment. The Petitioner had no further comments.

### **Board's Deliberation**

Mr. McCann thanked staff for their report and effort, which was informative. After hearing the testimony and reading the materials he supports the variation for both lots because the consensus of opinion regarding the Main Street lot is the propensity for high school students to ignore the rules and attempt to jump the fence. If that premise were accepted for the Main Street lot it would apply to Saratoga as well. The Main Street lot is also a major arterial street, and that is a valid safety concern. Although that concern does not exist for the Saratoga lot, he thinks the whole purpose for the fence is really crowd control. The fence for the Saratoga lot also applies to quality of life issues for the neighbors in the immediate vicinity. The testimony of the neighbors is very compelling, and is more than students coming in and out during the day. It is an active lot throughout the day and into the evening for various activities. Another very important thing to him is whether they are making decisions that are going to invite a lot of petitions for variations from others who want to see this as a precedent. He agrees that the circumstances in this case are very unique, such as it being a high school, an excess of 2,000 people going in and out everyday, a population comprised of high school students

whose behavior is often unpredictable or unacceptable, and many people are going in and going out at the same time each day. There has to be some type of crowd control, and those factors present unique circumstances and unique concerns that will differ from other requests. He would grant the variation for both lots.

Chairman Majauskas disagrees because the biggest issue to her is that this is an R-4 district. She asked what would stop a church in an R-4 district from making the same request. She does not see this as a unique circumstance. She said the other problem she has is the safety issue. She sees nothing here that shows her it is a safety issue. There are many opinions, but there is no evidence that students will or will not jump over a six-foot fence. Another issue is the comment that kids are running across the street. She goes down Main Street all the time. She does not see kids running across Main Street, and the fence will not stop kids from running across Main Street. They will still be able to cross against the light. They will only be contained in the parking lot area.

Ms. Souter said she is in favor of granting both variances because of the review of staff of the standards. She does not believe a four-foot fence can achieve the containment goals established. The four-foot fence is the height of a balance beam and is not that difficult to jump. As to unique circumstances, there are 2,200 high school students, and high school students are attracted to a different level of reasoning than adults. As for physical surroundings, the high school should be commended for working with the neighbors, some of whom have lived there for more than 30 years. This is a high school with 2,200 students, and cannot be compared to the average R-4 property. She thinks a hardship will be maintaining the planting beds that are to be installed. With a four-foot fence the landscaping may be even more affected. She is in favor of granting the variances.

Ms. Earl referred to standard #5, saying she is looking at how this applies in the entire R-4 zoning classification. As far as trying to protect the landscaping or providing aesthetic consistency of fence height, these are not conditions to grant a variation. She noted that on the east parking lot there has been no fence for years. Kids have been dropped off in that parking lot for years, as she personally did for four years. She commented that she was there today, watching the traffic movements in the east and west parking lot morning and night. She has been there in the evening, and during summer school and the worst violators she has seen crossing in mid-block were coaches and their sports teams. While watching the students in the west lot today she witnessed tremendous movement of the kids toward the buses but she did not see anyone disrespecting anything. With regard to after-hours activities, Ms. Earl said that is obviously a police enforcement issue. She does not know how they can stop anyone if they are actually physically ripping up a fence, or families are running across the street with their kids mid-block. She agrees that the situation is upsetting but sees physically putting police officers out there as the only alternative. She apologized to the neighbors saying she meant no disrespect, however, the neighbors have every right to put up their own fence as well, if they have a problem with their neighbors. She stated that people with a concern cannot always be looking to someone else to solve the problem.



**APPROVED 10/24/12**

Mr. Domijan said that he has not heard anything that says a six-foot fence is going to do the job better than a four-foot fence. The Main Street area is a unique condition, but he thinks the four-foot fences would do what needs to be done based on the evidence presented. The variation for the west side fence does not fly with him. He can see a six-foot fence on the east side only because of Main Street, and still thinks students will walk around Sherman and cross there. There is also the issue of where snow will be placed in those lots and people who will climb over the snow banks. He is in favor of the east side six-foot fence variation, but not the west side.

There were no further comments.

**Motion #1: East Parking Lot Fence**

**Mr. Domijan made a motion the Zoning Board of Appeals grant the requested variance to increase the fence height from four-feet to six-feet for the east parking lot associated with File #ZBA 08-12, with the following conditions:**

- 1. The proposed fences shall substantially conform to the plans prepared by Wight and Company dated July 20, 2012 and attached to this report except as such drawings may be changed to conform to Village codes, ordinances, and policies.**
- 2. The applicant shall submit revised drawings for the permit file.**

**Ms. Souter seconded the motion.**

**AYES: Mr. Domijan, Ms. Souter, Mr. McCann**  
**NAYS: Ms. Earl, Ch. Majauskas**

**The motion carries 3:2, but the variation fails.**

Mr. O'Brien stated the variation failed because four positive votes are required to pass a variation per the Downers Grove Zoning Ordinance.

**Motion #2: West Parking Lot Fence**

**Mr. McCann made a motion the Zoning Board of Appeals grant the requested variation to increase the fence height from four-feet to six-feet at the west parking lot associated with File #ZBA 08-12 with the following conditions:**

- 1. The proposed fences shall substantially conform to the plans prepared by Wight and Company dated July 20, 2012 and attached to this report except as such drawings may be changed to conform to Village codes, ordinances, and policies.**
- 2. The applicant shall submit revised drawings for the permit file.**

**Ms. Souter seconded the Motion.**

**AYES: Mr. McCann, Ms. Souter**

**APPROVED 10/24/12**

**NAYS: Mr. Domijan, Ms. Earl, Ch. Majauskas  
The motion fails 2:3.**

.....

Mr. O'Brien said there is a case scheduled for the October 24<sup>th</sup> meeting.

Mr. Dabareiner reminded the Board to submit their responses to the letter regarding the Open Meetings Act. He has only received three responses.

There being no further discussion, Chairman Majauskas adjourned the meeting at 9:25 PM.

Respectfully submitted,

Tonie Harrington  
Recording Secretary