

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

Thursday, March 7, 2013

I. CALL TO ORDER

Chairman Strelau called the March 7, 2013 Liquor Commission meeting to order at 6:30 p.m.

II. ROLL CALL

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

ABSENT: Mr. Austin

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

OTHERS: Angelo Boulougouris, Shannon Carlson, Elizabeth Yang, Candace Buchanan, Chandrakant Ankola, Jennifer Telitz, Nick Telitz, Danny Scheurer, Christopher Peckat, Judy Kaenel, Elias Nehra, Rob St.Clair, Dawn Rhodes, Court Reporter

III. APPROVAL OF MINUTES

Chairman Strelau asked for approval of the minutes December 6, 2012 Liquor Commission meeting and asked members if there were any corrections, changes or additions.

Hearing no changes, corrections or additions, the December 6, 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. DISCIPLINARY HEARING FOR ALLEGED VIOLATIONS

Chairman Strelau made the following statements:

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

"The Commissioner has the power to temporarily suspend a license without a hearing if there is reason to believe that continued operation of the licensed business would immediately threaten the welfare of this

community. Such was not done in this case. The licensee may be represented by counsel, although he need not be for the purposes of this hearing."

Chairman Strelau asked if there was a signed stipulation in these cases. Ms. Didier replied yes.

Chairman Strelau 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."

DuPage Inn - 2410 W. Ogden Avenue

Chairman Strelau stated that the first order of business was to conduct a disciplinary hearing for DuPage Inn, Inc. d/b/a DuPage Inn located at 2410 W. Ogden Avenue. She stated that the licensee has been charged with a violation of Section 3-25(a) of the Downers Grove Liquor Control Ordinance.

Chairman Strelau 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.

Mr. Angelo Boulougouris and Ms. Shannon Carlson were sworn in by the court reporter. Ms. Carlson introduced herself as the manager. Mr. Boulougouris introduced himself as the owner/operator of DuPage Inn for the past 39 years.

Chairman Strelau 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. DuPage Inn, Inc. d/b/a DuPage Inn, 2410 W. Ogden Avenue, Downers Grove, Illinois, is the holder of a Class R-1/O Liquor License #LQ-000008, 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 July, 1978.
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 6:05 p.m. on Wednesday, January 30, 2013, Downers Grove Police Officer Rau and Downers Grove Police Officer Edwards observed L.L., a special agent of the Downers Grove Police Department under the age of twenty-one (21), whose date of birth is October 13, 1994 (making him 18 years old), enter DuPage Inn located at 2410 W. Ogden Avenue, Downers Grove.
4. The special agent was seated at the bar in the restaurant and Donna J. Mason asked him for his order.
5. The special agent ordered a bottle of Miller Genuine Draft beer while Officers Rau and Edwards observed him.
6. That Donna J. Mason, whose date of birth is February 13, 1959, then asked the special agent for identification.
7. That the special agent produced his valid Illinois driver's license indicating his date of birth as October 13, 1994, and reading "Under 21" in red letters on the face of the license.
8. That Donna J. Mason viewed the special agent's driver's license and then returned the driver's license to the special agent.
9. That Donna J. Mason requested to see the special agent's driver's license a second time and then returned the driver's license to the special agent.
10. That Donna J. Mason then served the special agent a bottle of Miller Genuine Draft beer.
11. That special agent L.L. handed Donna J. Mason a \$10.00 bill.
12. That Donna J. Mason rang up the sale and returned change to the special agent.
13. Officers Rau and Edwards, who witnessed the events in the foregoing paragraphs, identified themselves and advised Donna J. Mason that the delivery of an alcoholic beverage had been made to a minor.
14. Donna J. Mason 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.

15. The Officers advised 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 Strelau accepted the signed stipulation as Village Exhibit #1.

Chairman Strelau asked the licensee to present its case.

Mr. Boulougouris stated that Donna has been a bartender for 35 years and was never involved in a violation before. He stated that they have very strict rules. He stated that she was changing shifts at the time of the incident. He stated that she looked at the identification, miscalculated the number and could not explain how it happened. He stated that their last violation was in 1989. He apologized and advised that the manager has taken steps to avoid from this happening again. Ms. Carlson stated that signs from the ILCC website have been posted throughout the restaurant. She stated that she met with staff, reminded them that the 21 year olds year of birth must be 1992 and noted that staff is to card anyone who appears under the age of 35.

Ms. Carlson stated that Donna has not served a minor in the past. She stated that she planned to have BASSETT come out and re-certify all employees. She stated that they would brush up on everything, discuss procedures on how to cut people off and how to avoid over service. She stated that there was no excuse for the violation and Donna made a mistake.

Ms. Carlson distributed pictures of the signs she has posted throughout the establishment. Ms. Carlson also noted that a sign was posted in the kitchen that anyone who serves a minor will be terminated immediately.

Ms. Carlson stated that Donna wrote a letter. Chairman Strelau asked if they would like it read into the record. Ms. Carlson read Ms. Mason's letter as follows:

To Whom It May Concern,

"I, Donna Mason acknowledge I served a minor after carding him. This is my first offense in 35 years of working at the DuPage Inn. I have reviewed our servers manual and this mistake will not happen again. I apologize to you, Angelo Boulougouris and my co-workers. Sincerely, Donna Mason"

Mr. Jacobson asked what kind of training employees go through after the incident and asked if Donna was still employed. Ms. Carlson stated that they went over the manual and stated all employees will be re-certified by a BASSETT trainer. Ms. Carlson stated that Donna was devastated by the incident and they opted not to fire her as she has worked for them for 35 years.

Mr. Jacobson asked when BASSETT was coming out. Ms. Carlson replied within the next month or so.

Ms. King asked who is the liquor manager. Mr. Boulougouris replied Ms. Carlson. Ms. Kuchynka noted that Angelo is listed as liquor manager for the establishment. Ms. Kuchynka advised that they could update the records if they wish. Ms. Carlson replied that she makes all the liquor orders.

Ms. King asked about Donna's experience. Ms. Carlson replied that she has 35 years of experience.

Ms. King stated that people make mistakes and noted that when the license is shown there is an aggravating circumstance. She stated that this is just a sample test. She wondered if there could be other instances where a minor could be served.

Ms. King asked what their policy was in accepting the under 21 identifications. Ms. Carlson stated that they have not had any issues with the under 21 license. Ms. Carlson noted that it is rare for them to have patrons in the establishment that are young and that their regular patrons are 50+. She stated that they would reiterate the details of the under 21 license to staff and that it is vertical. She stated that she printed out samples of the vertical licenses.

Ms. King suggested that they do not accept the under 21 license. Ms. Carlson asked if that was legal. Ms. Kuchynka replied yes and so long as it is an across the board policy, it is perfectly legal not to not accept the vertical identification. Ms. Carlson felt it might be good not to accept them at all.

Mr. Krusenowski asked if Donna explained the incident. Mr. Boulougouris replied that Donna was in the midst of a shift change. Ms. Carlson stated that she was preoccupied. Mr. Boulougouris could not explain why she took the license and still served anyway.

Mr. Krusenowski stated that there is no math an employee must do when looking at the vertical license. He stated that it says "under 21 until xx/xx/xx" on the face of it. He felt that with the BASSETT training she should have known that and all the posted signs telling staff to card seem not to matter because she carded the agent and still served him.

Mr. Boulougouris and Ms. Carlson apologized and stated this was very unfortunate.

Mr. Krusenowski stated that there are 365 days in a year and the one day the Village's agent goes in with an under 21 identification he gets served. He stated that it makes the Commission wonder what goes on the other 364 days of the year.

Mr. Boulougouris noted that their crowd is much older. He stated that not a lot of young people come in there to drink.

Mr. Clary asked if there were prior violations. Ms. Kuchynka replied the last violation was in 1989 and two prior in 1986 and 1981.

Mr. Clary suggested that they no longer accept the vertical license. He stated that having this one mistake by someone who has been there 35 years is unfortunate. He stated that the Village takes violations very seriously.

Ms. Fregeau stated that it is not pleasant for the Commission to see Downers Grove businesses before them for violations. She stated that they want to help licensees go forward from here. She stated at some point there was a fail in the training policy. She stated that training, reviewing the manual and figuring out what went wrong needs to be determined. She advised that they will be re-tested.

Ms. Fregeau asked how many employees they have. Ms. Carlson replied 12-15.

Ms. Fregeau was a bit concerned that they did not address the under 21 vertical license before now. She stated that staff has been working with license holders and that manuals are submitted at renewal.

Ms. Fregeau asked how often they meet with employees for training. Ms. Carlson stated that many employees have been with them for a number of years and they have low turnover. She stated that they regularly review things. Mr. Boulougouris stated that he reminds employees to check id's regularly.

Ms. Fregeau stated even with an experienced employee there was a fail. She suggested reviewing the manual more frequently or change in policy, they need to address problems. Ms. Carlson thought they should make a policy to no longer accept the vertical identification.

Ms. Fregeau asked about their termination policy and what it read prior to updating their manual. Ms. Carlson replied the employee would be fired. She stated that they took into consideration that Donna has been a loyal employee for 35 years and opted not to fire her. Ms. Carlson felt that it was a lapse in judgment and that she was not paying attention.

Ms. Fregeau stated that the re-certification was a good idea. She encouraged them to work with staff to get additional materials for training. She stated that they need to address the importance of liquor service.

Chairman Strelau stated it was disturbing that someone who is 19 years old was served by an experienced bartender, where the typical patron is in their 50's, at 6:05 p.m. on a Wednesday evening. She stated that they hope that licensees do what they are supposed to be doing and realize that their liquor license is their responsibility. Mr. Boulougouris stated that they are trying their best. He stated that they have passed a number of tests. He stated that he wants to protect his license and does not want to serve minors.

Chairman Strelau noted that they have passed control buys. She stated that it is important that their employees be vigilant. She stated that they will be re-tested.

Chairman Strelau asked Ms. Carlson to advise Carol when BASSETT training has been completed for the employees. Ms. Carlson agreed.

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

Ms. Didier summarized by stating that DuPage Inn, Inc. d/b/a DuPage Inn located at 2410 W. Ogden Avenue, 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 this is the licensee's first violation in the past five years however was an aggravating circumstances in this case where the under 21 license was shown. She recommend that the license be found guilty of a violation of Section 3.25(a) and staff would make a recommendation to the Liquor Commissioner. She stated that in lieu of fines the licensee may elect to serve additional days of suspension or vice versa and request more fines in lieu of suspension.

Ms. Carlson asked about fines and penalties. Ms. Petrarca stated that they may request if they prefer fines or suspension. Chairman Strelau stated that their request will give the Liquor Commissioner an idea of what penalty they would prefer. Ms. Carlson asked how much the typical fine is. Ms. Kuchynka stated that a fine generally equates to \$1,000 per day in lieu of serving a day of suspension. She noted that they will be required to pay \$1,000 administrative fee separately to conduct the hearing and a re-test on the establishment.

Ms. Fregeau asked if the Commission changed the policy for discussing fines and suspensions. Ms. Kuchynka stated that at a past meeting the Commission discussed no longer making 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 at his discretion. Ms. Carlson and Mr.

Boulougouris discussed the matter and opted for a suspension in lieu of a fine but said he would accept the Liquor Commissioner's decision.

Upon hearing the evidence presented in this case, Chairman Strelau 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 DUPAGE INN, INC. D/B/A DUPAGE INN LOCATED AT 2410 W. OGDEN AVENUE, GUILTY OF VIOLATING SECTION 3-25(A) OF THE DOWNERS GROVE LIQUOR CONTROL ORDINANCE. MR. CLARY SECONDED.

VOTE:

Aye: Mr. Krusenoski, Mr. Clary, Ms. Fregeau, Mr. Jacobson, Ms. King, Chairman Strelau

Nay: None

Abstain: None

MOTION CARRIED: 6:0:0

The Motion carried.

Mr. Jacobson left the meeting at 7:10 p.m.

Lao Sze Chuan - 1331 Ogden Avenue

Chairman Strelau stated that the next order of business was to conduct a disciplinary hearing for Chinese Culinary Institute of America, Inc. d/b/a Lao Sze Chuan located at 1331 Ogden Avenue. She stated that the licensee has been charged with a violation of Section 3.25(a) of the Downers Grove Liquor Control Ordinance.

Chairman Strelau 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. Elizabeth Yang was sworn in by the court reporter. Ms. Yang introduced herself as the manager.

Chairman Strelau 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. Chinese Culinary Institute of America, Inc. d/b/a Lao Sze Chuan, 1331 Ogden Avenue, Downers Grove, Illinois, is the holder of a Class R-1 Liquor License #LQ-000022, 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 April 13, 2006.
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 5:25 p.m. on Wednesday, January 30, 2013, Downers Grove Police Officer Rau and Downers Grove Police Officer Edwards, observed special agent L.L. of the Downers Grove Police Department under the age of twenty-one (21), whose date of birth is October 13, 1994 (making him 18 years old), enter the Lao Sze Chuan located at 1331 Ogden Avenue, Downers Grove.
4. That Officer Rau, Officer Edwards and the special agent L.L. were seated at a table in the restaurant.
5. That employee Jian Feng Wang, whose date of birth is August 11, 1961, approached the table and asked the group for their order.
6. Officer Edwards requested a Miller Lite beer and Officer Rau requested a Corona beer.
7. The special agent ordered a Bud Light beer while Officers Rau and Edwards observed him.
8. That Jian Feng Wang did not ask the special agent for identification.
9. That Jian Feng Wang, returned to the table and placed a Bud Lite in front of the special agent and placed a Miller Lite in front of Officer Edwards.
10. That Jian Feng Wang advised Officer Rau that they did not have Corona beer and asked if he wanted a different brand, at which time the Officer replied that it was not necessary. Mr. Wang then left the table.
11. Officers Rau and Edwards who witnessed the events in the foregoing paragraphs, identified themselves and advised manager, Ms. Yang, that the delivery of an alcoholic beverage had been made to a minor.
12. Mr. Wang 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.
13. The Officers advised Ms. Yang 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 Strelau accepted the signed stipulation as Village Exhibit #1.

Chairman Strelau asked the licensee to present its case.

Ms. Yang apologized for the incident. She stated that since the change in ownership in 2006 there have been no violations. She stated that they all feel very guilty about the violation and will be very careful in carding patrons. Ms. Yang stated that they have instituted new policies for the servers. She stated that two people will need to verify the identification presented.

Ms. Yang stated that Mr. Wang indicated that he was tired and that his eyesight is not good. She stated that he was very sorry for the violation.

Ms. Yang stated that she met with all employees to discuss the incident. She stated that in order to be served liquor, at least two people will now need to check identification.

Ms. Yang stated that Mr. Wang did not ask for identification and thought the special agent was much older. Ms. Yang stated that it is difficult for Asian people to determine an American's age. She stated that she typically checks identification but was busy with carry out orders at the time of the incident. She accepted responsibility for the violation, apologized and felt very guilty about the incident.

Ms. Fregeau stated that the Commission wants licensees to succeed and noted that having licensees before them for violations is a concern for them.

Ms. Fregeau asked Ms. Yang if she is the liquor manager for the restaurant. Ms. Yang replied she is the manager. Ms. Kuchynka noted that Mr. Tony Hu is listed as the liquor manager on file. Ms. Kuchynka advised that Mr. Hu was unable to attend the meeting and authorized Ms. Yang to appear on his behalf.

Ms. Fregeau noted that there was some concern that Mr. Wang never asked for identification.

Ms. Fregeau asked about their liquor manual and asked what age they card patrons. Ms. Yang stated all identifications are checked for those under 21. She stated that they will now ask for identification from patrons that appear under the age of 40.

Ms. Fregeau asked when the last time her manual was updated. Ms. Yang replied at renewal in 2012.

Ms. Fregeau asked if the vertical under 21 licenses in the manual. Ms. Yang replied yes.

Ms. Fregeau asked how many employees they have. Ms. Yang replied two full time and three to four part time.

Ms. Fregeau asked if they have a bar area. Ms. Yang replied that they have a mini bar and noted that they do not have many liquor sales. She stated that they have dining area with 94 seats. She stated their primary business is food service.

Ms. Yang stated that Mr. Wang has more than 10 years of wait staff service and worked for other restaurants.

Ms. Fregeau asked what policy they have for servers who serve minors and asked if Mr. Wang is still employed. She advised that he is still employed with the restaurant and noted that he will be required to obtain certified training when he returns from China.

Ms. Fregeau asked if the restaurant was busy at that time. Ms. Yang replied no. She stated it was slow and believed that there was only one other table beside the corner booth that the agents were in.

Ms. Yang stated Mr. Wang indicated that the corner booth where the officers and agents were seated was very dark. Ms. Fregeau suggested they get flashlights for their staff if lighting is a problem. She stated that it is crucial for staff to be able to read the license and identify those under 21. She felt that having two employees check identification was a good policy.

Ms. Fregeau stated that staff has other tools and visual materials that will help with their training.

Mr. Clary stated that they have to be diligent. He stated that they had a good record and advised them to be careful.

Mr. Krusenoski asked if the employee served the minor because he could not discern how old the agent was or if it was due to his bad eyesight. Ms. Yang stated Mr. Wang thought the agent was over 21 and was old looking.

Mr. Krusenoski asked if Mr. Wang is full or part time. Ms. Yang replied part time, usually three days a week.

Mr. Krusenoski asked if part time employees are allowed to serve alcohol. Ms. Yang replied yes. Mr. Krusenoski asked if all staff was trained. Ms. Yang replied both full and part time employees receive training but Mr. Wang had not received certified training in their restaurant. Mr. Krusenoski stated that it is important for them to take liquor handling and training seriously. He stated that management must set the tone for the workforce and make it a priority to train employees so that they do not make these types of mistakes.

Ms. King asked if Mr. Wang is require to be BASSETT trained to serve liquor. Ms. Kuchynka looked through the certifications that were submitted in 2012, but she did not see Mr. Wang's certification in with the other employees. Ms. King stated that if an employee has a hard time discerning age, they need teach him how to properly card patrons. Ms. Yang stated two employees will now check identification.

Chairman Strelau stated that their new policy of having two people check identification was a concern, especially if employees are not asking for identification.

Chairman Strelau asked if they will require Mr. Wang to card patrons who request alcohol. Ms. Yang replied that he has been told to check identification, no matter how old they are and make it a habit.

Ms. King recommended that licensees conduct their own in-house testing and check identifications within the establishment.

Chairman Strelau was concerned if Mr. Wang was doing good service by waiting table and taking drink orders. She stated that they are risking their license if he cannot see properly or discern age. She was concerned that it was a slow time in the restaurant. She advised that they will be re-tested.

Ms. Yang stated that she has had several meetings with staff about checking identifications. She stated that if their customers do not have white hair, staff is to request identification.

Chairman Strelau stated that she should reiterate the importance of carding with Mr. Wang and resolve the issue with this staff member.

Chairman Strelau asked how long Mr. Wang has to attain his BASSETT certification. Ms. Kuchynka replied four months from the date of hire. Ms. Kuchynka stated that he may have it from the other establishment he worked at, but would need to see that certificate. Chairman Strelau stated he can use the certificate he has from another location or will need to go for the training.

Ms. Fregeau asked staff if they request updated lists of certifications at renewal. Ms. Kuchynka replied yes. Ms. Kuchynka noted that there were other BASSETT certifications in their file, however, Mr. Wang's is not submitted in 2012 at renewal. She stated that unfortunately, there is a high turnover of wait

staff in the restaurant industry. Ms. Yang stated that once Mr. Wang returns, she will contact a trainer and have all of the employees re-certified.

Ms. Didier summarized by stating that Chinese Culinary Institute of America, Inc. d/b/a Lao Sze Chuan located at 1331 Ogden Avenue, 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 recommend that the license be found guilty of a violation of Section 3.25(a).

Upon hearing the evidence presented in this case, Chairman Strelau 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.

MS. FREGEAU MOVED TO FIND CHINESE CULINARY INSTITUTE OF AMERICA, INC. D/B/A LAO SZE CHUAN LOCATED AT 1331 OGDEN AVENUE, GUILTY OF VIOLATING SECTION 3-25(A) OF THE DOWNERS GROVE LIQUOR CONTROL ORDINANCE. MS. KING SECONDED.

VOTE:

Aye: Ms. Fregeau, Ms. King, Mr. Clary, Mr. Krusenoski, Chairman Strelau

Nay: None

Abstain: None

MOTION CARRIED: 5:0:0

The Motion carried.

Chairman Strelau asked Ms. Yang what type of suspension they preferred. Ms. Yang stated that they have very low liquor sales and would prefer suspension in lieu of a fine.

Mrs. T's Pizza - 4246 Main Street

Chairman Strelau stated that the next order of business was to conduct a disciplinary hearing for CD ZA, Inc. d/b/a Mrs. T's Pizza & Pub located at 4646 Main Street. She stated that the licensee has been charged with a violation of Section 3.25(a) of the Downers Grove Liquor Control Ordinance.

Chairman Strelau 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. Candace Buchanan was sworn in by the court reporter. Ms. Buchanan introduced herself as the liquor manager and owner.

Chairman Strelau 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. CD ZA, Inc. d/b/a Mrs. T's Pizza & Pub, 4246 Main Street, Downers Grove, Illinois, is the holder of a Class R-2 Liquor License #LQ-000035, 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 July 1, 1999.
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 5:03 p.m. on Wednesday, January 30, 2013, Downers Grove Police Officer Rau and Downers Grove Police Officer Edwards observed L.L., a special agent of the Downers Grove Police Department under the age of twenty-one (21), whose date of birth is October 13, 1994 (making him 18 years old), enter Mrs. T's Pizza & Pub located at 4246 Main Street, Downers Grove.
4. The special agent was seated at the bar area in the restaurant and Sean M. McGrane, asked him for his order.
5. The special agent ordered a bottle of Coors Light beer while Officer Edwards observed him.
6. That Sean P. McGrane, whose date of birth is March 7, 1978, placed an opened bottle of Coors Light beer in front of the special agent and then asked to see his identification.
7. That the special agent produced his valid Illinois driver's license indicating his date of birth as October 13, 1994, and reading "Under 21" in red letters on the face of the license.
8. That Sean P. McGrane viewed the special agent's driver's license and then returned the driver's license to the special agent.
9. That Sean P. McGrane then walked away from the special agent.
10. Officers Edwards who witnessed the events in the foregoing paragraphs, identified himself and advised that the delivery of an alcoholic beverage had been made to a minor.
11. That Sean P. McGrane was issued a Village ordinance administrative citation by Officer Rau for delivering alcohol to a minor in violation of Section 3-25(a) of the Downers Grove Municipal Code.
12. The Officers advised 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 Strelau accepted the signed stipulation as Village Exhibit #1.

Chairman Strelau asked the licensee to present its case.

Ms. Buchanan apologized for the violation. She stated that the incident was unacceptable. She stated that Sean had been working for her for 2 ½ -3 months and she was preparing to send him to TIPs training. She noted that he should not have served anyone as he was not certified, however was helping out another employee at the time.

Ms. Buchanan stated she has met with her employees and has updated her manual and they will no longer accept the vertical under 21 identification. She stated that she added a termination policy. She stated that they will card those who appear under the age of 30. She stated that if employees have a question about an identification they are instructed to ask another staff member for help.

Ms. Buchanan stated that she has a zero tolerance policy and terminated Sean the next day.

Ms. Buchanan stated that she does not have a lot of employee turnover.

Ms. Buchanan recalled having one prior violation. Ms. Kuchynka stated that occurred in 2001.

Ms. King stated that the zero tolerance policy sends a good message. Ms. King asked the cost of TIPs training. Ms. Kuchynka replied classes for on line and on-site fees vary and range from \$17-\$150 for a variety of certification programs.

Ms. King asked who was working during the incident. Ms. Buchanan replied that she was not at the restaurant and stated that Sean and Dan were working at the time. She stated Dan normally does the serving. Ms. King asked if Sean was to run the register. Ms. Buchanan stated that Sean was a cook and was not supposed to be serving because he was not certified. She stated that Sean was helping out Dan while he was busy cooking. She stated that he simply glanced at the identification and did not look at it properly.

Ms. Buchanan stated that she goes through the manual yearly and with new hires.

Ms. King asked if she was accepting the vertical license. Ms. Buchanan replied yes. She stated that she will not after this incident.

Mr. Krusenowski was unfamiliar with the establishment. He asked if there was an eat-in area. Ms. Buchanan replied yes. She stated there is a dining area with 36 seats and a tiny bar with four bar stools.

Mr. Krusenowski asked how many employees work on an average evening. Ms. Buchanan replied on slow nights, such as Wednesday, typically two cooks and one working the front. She stated that the volume each night varies and noted there may be as many as seven employees working on a Friday night.

Mr. Krusenowski asked if it was busy on the night of the incident. Ms. Buchanan replied no.

Mr. Krusenowski asked about Sean's experience. Ms. Buchanan replied that he has worked at other restaurants.

Mr. Krusenowski asked if Sean was familiar with vertical licenses in Illinois. Ms. Buchanan replied yes. She felt that if he had taken the certification class he would have been more familiar with it. She felt it was very important for servers to take the class, know the liquor laws and are aware of identifications.

Mr. Krusenowski asked if Dan was aware that Sean was not certified yet. Ms. Buchanan replied yes. She stated that Sean was trying to be helpful because Dan was busy in the back, he took the initiative and got caught.

Mr. Krusenowski asked Ms. Buchanan if she has regular meetings to discuss liquor policies. Ms. Buchanan stated that she tries to discuss policy with staff twice a year. She noted that she does not have a lot of turnover and some employees have been with her for some time.

Mr. Krusenoski asked if their termination policy was known by staff. Ms. Buchanan replied it was a verbal policy, however, she has since added it to the manual. She stated that she has relatives working for her and they would have to be let go if they served a minor. She reiterated her zero tolerance policy.

Mr. Krusenoski stated that the message sent by management needs to be serious. He encouraged her to be vigilant.

Mr. Clary felt that Ms. Buchanan was being proactive.

Ms. Fregeau stated that Ms. Buchanan's seriousness about the incident has been communicated. She suggested a more frequent training, program. Ms. Buchanan replied she would propose doing refresher training quarterly.

Ms. Fregeau noted that Mrs. T's has gone 12 years without a problem. She believed that Ms. Buchanan has addressed the failure. Ms. Fregeau felt that signage may help to remind employees. Ms. Buchanan replied that she has posted signs in the back reminding employees to card.

Chairman Strelau it is always disappointing to hear that violations are occurring at 5 o'clock in the afternoon when nobody is busy and it seems that licensees are trying to do the right thing, however, employees still serve the agent. She was comfortable with Ms. Buchanan was aware of liquor laws. She stated that the best thing to do is train employees and hope that they understand it.

Ms. Didier summarized by stating that CD ZA, Inc. d/b/a Mrs. T's Pizza & Pub located at 4646 Main Street, 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 recommend that the license be found guilty of a violation of Section 3.25(a).

Chairman Strelau asked Ms. Buchanan what type of suspension she preferred. Ms. Buchanan stated that she would prefer a suspension on lieu of a fine. She noted that they do not sell a lot of beer and wine. She stated as long as she can serve pizza, she would be fine. Chairman Strelau stated only liquor sales would be prohibited on those days and she can be open for business. Ms. Buchanan asked that the Commissioner consider not issuing a suspension on a weekend evening. She apologized again.

Upon hearing the evidence presented in this case, Chairman Strelau 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. CLARY MOVED TO FIND CD ZA, INC. D/B/A MRS. T'S PIZZA & PUB LOCATED AT 4646 MAIN STREET, GUILTY OF VIOLATING SECTION 3-25(A) OF THE DOWNERS GROVE LIQUOR CONTROL ORDINANCE. MR. KRUSENOSKI SECONDED.

VOTE:

Aye: Mr. Clary, Mr. Krusenoski, Ms. Fregeau, Ms. King, Chairman Strelau

Nay: None

Abstain: None

MOTION CARRIED: 5:0:0

The Motion carried.

Prestige Liquors - 739 Ogden Avenue

Chairman Strelau stated that the next order of business was to conduct a disciplinary hearing for RGC, Inc. d/b/a Prestige Liquors located at 739 Ogden Avenue. She stated that the licensee has been charged with a violation of Section 3.25(a) of the Downers Grove Liquor Control Ordinance.

Chairman Strelau 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.

Mr. Chandrakant Ankola was sworn in by the court reporter. Mr. Ankola introduced himself as the liquor manager and part owner.

Chairman Strelau 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. RGC, Inc. d/b/a Prestige Liquors, 739 Ogden Avenue, Downers Grove, Illinois, is the holder of a Class P-1 Liquor License #LQ-000070, 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 November 2, 1994.
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 4:42 p.m. on Wednesday, January 30, 2013, Downers Grove Police Officer Rau and Downers Grove Police Officer Edwards observed L.L., a special agent of the Downers Grove Police Department, under the age of twenty-one (21), whose date of birth is October 13, 1994 (making him 18 years old), enter Prestige Liquors located at 739 Ogden Avenue, Downers Grove.
4. The special agent retrieved a six pack of 312 Wheat Ale from the refrigerated cooler section and proceeded to the check out counter where employee Girdhar V. Kamani was working as a cashier.
5. That Girdhar V. Kamani, whose date of birth is June 1, 1970, rang up the purchase charging the special agent \$9.73 for the beer.
6. That the special agent handed Girdhar V. Kamani a ten dollar bill.
7. That Girdhar V. Kamani returned \$.27 in change to the special agent for the purchase of the beer.
8. That at no time did Girdhar V. Kamani ask the special agent for identification.
9. Officers Rau and Edwards who witnessed the events in the foregoing paragraphs, identified themselves and advised manager Chandrakant Ankola that the delivery of an alcoholic beverage had been made to a minor.

10. That Girdhar V. Kamani 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.
11. The Officers advised 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 Strelau accepted the signed stipulation as Village Exhibit #1.

Chairman Strelau asked the licensee to present its case.

Mr. Ankola apologized for the violation. He stated that he has been in business in the Village for 19 years and this is his first violation. He stated that his employee did not ask for identification. He stated that he was in the store stocking while the incident occurred and took responsibility for the violation.

Ms. Fregeau noted that he had been in operation for 19 years without a violation.

Ms. Fregeau asked how long the employee involved in the sale had been working at the store. Mr. Ankola stated that Mr. Kamani had been working for six months and had gone through basic training.

Ms. Fregeau asked if there were any systems in place in the cash register. Mr. Ankola stated that they can scan the identification with the lottery machine. He stated that they will card anyone appearing under the age of 35 instead of 25, which was their former policy.

Ms. Fregeau asked how many employee he has. Mr. Ankola replied three, two of which he is related to.

Ms. Fregeau was concerned that this was a liquor store and that they were not asking for identification. She asked what excuse the employee gave. Mr. Ankola stated that Mr. Kamani thought the agent looked old enough. He stated that he spoke with Mr. Kamani about the importance of carding and told him if it happens again he will lose his job.

Ms. Fregeau asked if there is signage at the register that reminds employees. Mr. Ankola replied yes. He advised that they have a perpetual calendar clock at the register that tells the clerk what the date of birth has to be for the patron to be 21.

Ms. Fregeau asked if they address vertical licenses in their manual. Mr. Ankola replied yes. He stated that they are trained to recognize that the vertical license means the individual is not 21 years old. He stated that in this case the employee did not even ask for identification.

Mr. Clary asked Mr. Ankola if Mr. Kamani was a family member. Mr. Ankola replied yes. Mr. Clary asked if he was fired. Mr. Ankola replied no.

Mr. Clary noted their good record. Mr. Ankola stated he has been in operation since 1989 and knows his customers. He stated that most are regulars who come in 1-2 times per week.

Mr. Krusenowski asked Mr. Ankola if he was in the store. Mr. Ankola replied yes. Mr. Krusenowski asked Mr. Ankola if he thought the 18 year old agent looked old enough. Mr. Ankola replied he thought the agent looked older than 18, but was not excuse for him not to be carded. Mr. Krusenowski asked Mr. Ankola if the agent looked older than 25. Mr. Ankola replied no.

Mr. Krusenoski was trying to understand if Girdhar thought the agent looked 25 or just did not care. He was troubled that it happened where every transaction is a liquor sale. He stated it was incumbent on them to insure they are carding anyone that is remotely young looking.

Mr. Krusenoski was concerned that the Village sent someone in and they are sold liquor without being asked for identification. He felt it was likely that they have not carded patrons in other instances.

Mr. Ankola stated that he regularly checks identifications. He submitted a stack of fake identifications that he has collected as evidence. Ms. Petrarca stated that the Village would like to keep the identifications and turn them over to the Police Department.

Mr. Krusenoski applauded the use of scanners, however noted they are only effective if patrons are asked to supply identification.

Mr. Krusenoski asked if the employee did not care or if it was a misjudgment of the age of the agent. Mr. Ankola replied that it was poor judgment.

Ms. King asked if every transaction requires the employee to enter the date of birth. Mr. Ankola replied no. Mr. Ankola stated that the lottery machine system can be used and it will tell the age of the customer.

Mr. Ankola stated that they will card anyone under the age of 35, even the regulars they know.

Ms. King stated that the risk of a liquor store selling to a minor is much higher than at a restaurant. Mr. Ankola was aware of the risks.

Ms. King commended Mr. Ankola on his past record.

Chairman Strelau advised Mr. Ankola to be watchful of his employees to be certain they are checking more. Mr. Ankola replied yes. She advised that they will be re-tested.

Chairman Strelau was disturbed this incident happened at a liquor store. She encouraged them to be sure all employees, family or not, check identification. She stated that they have had a good record.

Chairman Strelau asked Mr. Ankola if he was the liquor manager. Mr. Ankola replied yes.

Mr. Ankola noted that Elk Grove requires presentation of identification for all liquor purchases throughout the Village. Ms. Kuchynka stated that she could look up their code. Chairman Strelau recalled that her 82 year old in-laws were carded in that community. Ms. Kuchynka stated that any establishment can make that a store policy.

Ms. Didier summarized by stating that RGC, Inc. d/b/a Prestige Liquors located at 739 Ogden Avenue, 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 recommend that the license be found guilty of a violation of Section 3.25(a).

Chairman Strelau asked Mr. Ankola what type of suspension she preferred. Mr. Ankola preferred to pay a fine in lieu of serving a suspension.

Upon hearing the evidence presented in this case, Chairman Strelau 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.

MS. KING MOVED TO FIND RGC, INC. D/B/A PRESTIGE LIQUORS LOCATED AT 739 OGDEN AVENUE, GUILTY OF VIOLATING SECTION 3-25(A) OF THE DOWNERS GROVE LIQUOR CONTROL ORDINANCE. MS. FREGEAU SECONDED.

VOTE:

Aye: Ms. King, Ms. Fregeau, Mr. Clary, Mr. Krusenoski, Chairman Strelau

Nay: None

Abstain: None

MOTION CARRIED: 5:0:0

The Motion carried.

The group took a 5 minute break.

V. NEW BUSINESS

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

Ms. Kuchynka included a request for liquor license from Gnarly's J's in their monthly packet. She advised that this was for the former North Beach location at 1211 B Butterfield Road. She reminded the group that in September of 2012, the Village removed a number of obsolete liquor license classifications from the Code. She stated that after review of the Code, the Village is at the maximum number of licenses allowed for a recreational facility and the license formerly held by North Beach was eliminated.

Ms. Kuchynka advised that a recreation facility is defined as "a place in which the public may participate in activities, including but not limited to bowling, gaming, billiards, and indoor simulated golf, as defined herein. Such facilities shall include an area where food is prepared on the premises and food service shall be available during operation. Bar/lounge seating shall be no more than twenty percent (20%) of the total seating provided for patrons of the establishment." She stated that there are three full alcohol REC-1 licenses held by Q Billiards, Game Pazzo and Tivoli Bowl. She stated that there is one beer and wine only REC-2 license which is issued to Bogies Indoor Golf.

Ms. Kuchynka stated that representatives from Gnarly J's are present.

Ms. Kuchynka stated that the Commission will need to discuss whether the ordinance should be amended in order to accommodate their request. She stated that the Village has the option to create a license classification to meet their needs or increase the number of recreational facility licenses available.

Ms. Petrarca stated that preliminary staff review had determined that Gnarly J's proposal does not fit into an existing license class. Mr. Clary asked if a new license class would need to be created. Ms. Petrarca stated that staff is requesting Commission discussion and a recommendation as to how staff should proceed. She stated that changes to the Code will need to be taken to the Village Council for approval.

Ms. Fregeau asked staff to summarize how their request does not fit the existing Code. Ms. Kuchynka replied that an application was submitted by Gnarly J's. She stated that they declared on the application a break down of sales as follows: 37.5% food; 32.5% alcohol; 5% non-alcoholic beverages and 25% leagues and activities. She stated that the recreational facility class requires that the "primary business" or 51% is devoted to recreational activities. She stated that the restaurant class requires that the "primary business", or 51%, is food service. She advised that Gnarly J's proposal did not meet the primary business requirement of either license class.

Ms. Kuchynka stated that staff was uncomfortable putting them into a license classification where they might have trouble meeting the requirements of. Staff also felt that they should not simply re-create the former North Beach license classification, as times have changed, the Village has different expectations of license holders and this applicant may have different needs than North Beach had when the license was created in 1996. She stated that most of the activities are taking place, however, they have made a few changes to the establishment.

Ms. Kuchynka stated that staff is looking for guidance from the Commission as to how they would like Gnarly J's to be licensed.

Mr. Krusenoski asked if the Commission needs to discuss creating a license or modify the existing recreational license. Ms. Kuchynka replied yes. Mr. Krusenoski asked if their declaration figures were projections. Ms. Kuchynka replied yes. She stated that the Commission has created other license classes and the licensee does not end up meeting their expectations. She stated that the operation presented to the Commission evolves and is skewed because of customer and market demands and then they tend not to operate how they had projected. Ms. Kuchynka stated that some licensees have changed their focus and strayed from what was originally presented to the Liquor Commission.

Ms. Kuchynka stated that she did not want people to apply for a license they are unable to comply with. She stated that projections should be easily attainable and there should be no question that they are able to meet the minimum requirements.

Chairman Strelau asked the representatives of Gnarly J's to step forward. Ms. Kuchynka asked that they state and spell their names for the record and indicate their affiliation with the establishment. Ms. Jennifer Telitz and Mr. Nick Telitz introduced themselves as owners/operators of Gnarly J's.

Mr. Krusenoski asked if they are currently open. Ms. Telitz advised that their current certificate of occupancy allows them to operate only for volleyball. She stated that they have a few hundred people playing. Ms. Petrarca stated that their Certificate of Occupancy does not allow food or beverage service. Ms. Telitz advised they are operating 100% as a recreational facility.

Mr. Krusenoski asked if BYOB is allowed. Ms. Kuchynka replied no. Mr. Telitz stated that players are allowed to bring in their own water or Gatorade.

Mr. Telitz advised that when they estimated the percentages as they were unsure of the license class they were seeking. Mr. Telitz advised that they have made changes to the facility since it was North Beach. He stated that they removed the center dance floor and replaced it with field turf for an area for bags games. He stated that there are two indoor sand volleyball courts. He stated that they would like to put in pool tables and dart boards.

Mr. Telitz stated that they have volleyball leagues and private rentals of the sand courts. He stated that they are hoping to have bag leagues and tournaments as well as pool and dart leagues. He stated that

there are four bowling lanes, which will be used for fun, as they cannot accommodate leagues with so few lanes. Ms. Telitz hoped that they would also hold private parties.

Mr. Telitz felt that they could fit into the recreational license and meet the 51% requirement.

Ms. Telitz stated that the outdoor patio has an enclosed roof and hoped to put pool table outside as well.

Ms. Telitz stated that most of their fall and winter month business is the volley leagues. She hoped to classify themselves as a recreation center and did not want to operate like the former North Beach.

Mr. Telitz advised that they are a family-owned business that is involved with charities and they hope to help the community. He stated that they are hoping to make a better future for their kids.

Ms. Telitz stated that they plan to have "Save a Vet" help by hiring former vets to work in the kitchen and receive food sales profits.

Ms. Telitz stated that they would like to hold fundraisers and help those in the community.

Mr. Clary asked how many special event licenses there are. Staff replied that any given location is limited to 6 Special Events per year. Mr. Clary asked if they had to have a liquor license to do fund-raising and asked if a special event license would be an option for them. Ms. Telitz advised that they need a liquor license in order to pay monthly bills.

Mr. Telitz noted that they have until July 1st to obtain a liquor license or they must vacate. He noted if they do meet that requirement, they will have a three year lease on the property. Chairman Strelau advised that time line may cause them trouble as the licensing process could take several months, especially since a license is not available. Ms. Petrarca stated that if the Liquor Commission chooses to amend the recreational license, that draft ordinance would need to be presented to the Village Council for consideration. She stated they would then have to come back to the Commission to actually apply for a license once it is made available. Chairman Strelau stated that may put them past their July deadline. She stated that the process may take a long time and wanted them to understand that time frame may cause them some trouble.

Chairman Strelau asked about their business plan and wondered what sales figures they need to meet with food, liquor and leagues that will make the business work.

Ms. Telitz stated that they are currently operating 100% as a recreational facility with the sand volleyball league use and rentals. She stated that they have 150-200 people playing volleyball there each night. She stated that if they had food and beverage sales it would bring in more revenue. She stated that they were unsure of sales figures and experimented with the numbers because they are operating as a recreation facility 100% now.

Mr. Clary asked if the league players all are over 21. Ms. Telitz replied yes.

Ms. Fregeau asked if that will be a requirement for people to come into the facility. Mr. Telitz replied they do not currently ask for identification. Chairman Strelau asked if it was their intention to only let in 21+ year olds into the facility if a liquor license is granted. Ms. Telitz replied yes.

Chairman Strelau asked if they have private parties where someone under 21 can attend. Ms. Telitz replied yes if it is during the day. She stated no one under the age of 21 will be allowed in after 7pm. She stated that she does not want to take any chances and understood the liability is higher.

Chairman Strelau advised that many of the problems encountered by North Beach stemmed from events that were attended by under 21 year olds during the day as they had difficulty clearing them out of the facility.

Chairman Strelau stated that a declaration is required at application submittal and an applicant must have an idea of what it is going to take to run the business at a profit.

Ms. Telitz stated that they reviewed the numbers and with the addition of other recreational aspects believed they could be classified a recreation facility. She felt that they could offer weekend specials on the recreational activities and meet the 51% requirement. She thought they would cut it close in the summer months, as leagues will likely play at outdoor leagues. She noted that St. Claire, their primary volleyball league, has expressed interest in a summer indoor league.

Chairman Strelau stated the Commission, along with staff does not want to force them into a classification and want them in a classification that they can successfully operate without having to do other things to generate revenue. She wanted them fairly certain that they will operate as a facility where recreation is 51% of the business. Mr. Telitz stated that he felt that they could do that. He stated that leagues will be in the facility Sunday through Friday nights, they plan to hold private rentals on the weekends and hope to add bags, dart and pool leagues.

Chairman Strelau asked if they have sources to fill those other leagues. Mr. Telitz replied that he has vendors for the equipment but does not have leagues set in stone. Ms. Telitz stated that they would move forward with the leagues once they determine where they stand with the Liquor Commission.

Mr. Clary stated that is where the disconnect lies. He stated that the Commission does not have accurate information to help them as they are not fairly certain of how Gnarly J's hopes to proceed. Mr. Clary was concerned that the business model is not set. He wants them to be successful but cannot make a decision on something when they have no idea what else for certain they will be doing besides the volleyball leagues.

Ms. King reviewed the layout. She stated that there are three bars. She asked if they would be using all three bars. She stated that one bar just like a bowling alley would be sufficient for a recreational facility.

Ms. King asked how bar service would be set up. Ms. Telitz replied that the large square front bar serves the front area of the facility, the bar area next to the courts will serve the volleyball players and a bar area in a closed off area near the back will serve the bowling area. She stated that it is a large space.

Ms. Fregeau noted that it was a very large space to monitor. Ms. Telitz stated that they have a security plan.

Chairman Strelau asked how many people they intend to hire. Mr. Telitz replied 25. He stated they anticipated having two bartenders per bar, a bar back for each, a security staffer in each bar area, two security at the front door, two employees in the kitchen and two cocktail servers that will serve tables too.

Mr. Clary noted that only two staff members will be serving food. He noted that non-existent staff was part of the problems issue in the past. Chairman Strelau stated that it is difficult to have the proper amount of staff to monitor the sheer magnitude of the establishment, especially when it comes time when under 21 year olds need to vacate the facility.

Chairman Strelau asked why they are not serving any food or non-alcoholic beverages. Mr. Telitz stated that they just received the permit from the DuPage Health Department and are working to get everything ready. Ms. Telitz stated that the players are now going to Hooters and having drinks with their food. She stated that people want to drink when they eat.

Ms. Fregeau asked if they were planning to have table service for alcohol. Ms. Telitz replied eventually. She noted that they are on a learning curve. Chairman Strelau stated that may be the Commission's problem in that this location is a bad place to learn. She stated that it is a big facility that can get out of hand.

Ms. Telitz stated that she does not want the same problem clientele. Ms. Fregeau stated that sometimes they do not have a choice. Ms. King noted that no facility wants to have a young crowd or one that causes a problem. She stated that for such a big space, a licensee would do anything for a profit and do things just to keep the doors open or hold events/activities not presented to the Liquor Commission in their application.

Ms. Telitz stated that they have eliminated standing room areas, took out the dance floor and replaced it with the bags area and removed some tables and replaced them with pool tables. Chairman Strelau asked if tables on the plans were still there.

Mr. Telitz stated that once they walk in they would approach the front bar and just beyond the bar is the field turf bags area. He stated that there are pool tables, a stage and tables throughout. He stated that there is table seating by the volleyball area and another bar area directly across from the courts. He stated that there is a back bar also.

Ms. King asked if they will have bands. Mr. Telitz stated that there is a stage.

Chairman Strelau stated that there is no clear line of sight. She stated that the facility is split up into rooms. Mr. Telitz agreed and stated that there will be bartenders and security in each area.

Mr. Clary stated that it is difficult to discern what they are to discuss. Ms. Kuchynka noted that was the problem staff had with the request. Ms. Kuchynka stated that the recreational license class states that bar/lounge seating is limited to 20% of the dining seating. She stated that the front bar has 32 seats, which should be reduced to 10, based on the dining seats in that area. She stated that there are 21 seats at the side bar, where only 12 would be allowed based on the 20% rule. She stated that is where she had difficulty seeing this as a recreational facility. She stated she does not want to pigeon hole them into a license class they cannot qualify for. She stated that she wanted them to be successful. She advised that if there comes a time when they cannot qualify for the license, it could be taken away. The Commission agreed.

Mr. Telitz stated that they were before the Commission for advice. Mr. Clary was unsure of what advice to offer. Ms. Telitz stated that they are involved with this financially and emotionally. She stated that they have 500 volleyball players and organizations that are looking to rent the facility and regularly gets questioned about a liquor license.

Ms. King asked how events would be handled on a monthly basis. Ms. Telitz stated that they can offer a party package with a cash bar and private court rentals.

Ms. Telitz stated that the special event license would not meet their needs as it would be cost prohibitive to stock the bar and obtain a special event license. Mr. Clary stated that could be a start in which to see how the events work out.

Mr. Krusenoski asked if they were seeking full alcohol or just beer and wine. Ms. Telitz replied full alcohol. Mr. Krusenoski asked that if they have a liquor license it would help them meet their needs. Ms. Telitz replied yes. Mr. Krusenoski asked if having a liquor license would keep the players around and would be a draw for the other leagues. Mr. Telitz replied yes.

Mr. Telitz stated that players will want to play outdoors in the summer. He stated most of the league draw will be when the weather turns. Ms. Telitz stated that they are the only indoor sand facility in Illinois. She advised that there was one other in Milwaukee.

Mr. Krusenoski asked when they opened. Ms. Telitz replied October, 2012. Mr. Clary asked when they decided to add liquor. Ms. Telitz stated that they knew all along they wanted liquor. She stated they had to do a lot of work to the facility and had some costly renovations. She stated that the building needed to be brought up to code and they knew there were food service requirements in order to sell liquor.

Mr. Krusenoski asked if they are now waiting for liquor service before they go ahead and start serving food. Mr. Telitz replied yes. He stated that they do not want to stock a lot of food at this time. Mr. Krusenoski asked if they already made an investment in the kitchen. Mr. Telitz replied yes. He stated that they were trying to take the proper steps. Mr. Krusenoski asked when they can start serving food. Ms. Telitz replied once the Village comes in and does a walk-through inspection.

Ms. King asked if they would be willing to scale down, not use parts of the facility or only utilize 1-2 bars in order to get started. She could not imagine the costs of stocking two bars. Ms. Telitz stated that they will need to use two bars. She stated that she did not want to have the volleyball players have to walk through to the front of the facility when all of their stuff is left unattended in the volleyball court area.

Ms. Telitz would be happy to obtain a temporary liquor license and only serve the volleyball leagues.

Mr. Telitz stated, based on the discussion, that it seemed that they would not meet the requirements of the recreation license in the way they submitted their application. He asked if there was a way to proceed and make something that they could qualify for. Ms. Kuchynka stated that there is the option of creating a license for them. Mr. Clary suggested that they present something at next month's meeting.

Chairman Strelau stated that they will need to show the Commission exactly what their plan is. Ms. Telitz stated they do not know what they are. Chairman Strelau part of the problem the Commission has is not being able to define something for them if they do not even know what they are. She stated that they need to come back to the Commission with an exact plan and how they are going to get there.

Chairman Strelau stated that part of the Commission's willingness to recommend the granting a license is being confident that the applicant will operate exactly as they propose. She stated that they must have a very practical look at the number of people they need in the facility to be successful. She stated that the reason this is a difficult endeavor is because it is a difficult facility to run. She stated that they need to present what the facility is going to be and how they are going to run it. She stated that if it does not fit a

license class, the Commission can figure out what a license class needs to be to suit their needs. She stated that some of the license classes are specific but they want a business and an ordinance that match. Ms. Kuchynka asked if the numbers they presented in the original declaration are accurate. Mr. Telitz replied yes. Chairman Strelau advised them not to change from what they really want to do because then they will not operate the right way.

Mr. Telitz asked if another applicant would be able to come in and take the license if it was created. Ms. Kuchynka replied no that Gnarly J's would be considered first for it. Ms. Kuchynka stated that they will be required to pay for the creation of a license and advised those costs will cover staff time, hearing requirements and time spent drafting and presenting the ordinance to the Council.

Ms. Fregeau stated that the Commission has had other classifications that were created that have started out one way, but now are operating as another.

Ms. King asked if they have investors. Mr. Telitz replied no.

Mr. Danny Scheurer from Save A Vet introduced himself. He stated that Gnarly's will be offering kitchen jobs for veterans and offer part of the profits to them. He asked if they have the option to open as a restaurant. Ms. Kuchynka stated that they will not qualify for a restaurant license as food service is not their primary business. She stated that they can open and serve food only at any time. Ms. Petrarca advised them that the current Certificate of Occupancy does not allow food service and that would need to be addressed by the Village if they wish to do so.

Chairman Strelau stated that she could understand that patrons of the facility would want both food and liquor amenities.

Ms. Telitz was concerned that they will not have enough time to obtain a license.

Ms. King asked how the parking is going to affect them being next to Rita's. Mr. Telitz did not believe it would be an issue.

Mr. Clary asked that the Commission discuss this matter at their next meeting.

Chairman Strelau asked that Gnarly J's present a business plan to the Commission at the April meeting. Ms. Petrarca stated that staff could draft something from what they propose. Ms. Telitz stated that she hoped to be able to get a license before the lease is up. Ms. Kuchynka stated that they may be able to get an extension. Ms. Telitz noted that the property is up for auction and the lease is held by the bank. Mr. Krusenoski stated that the bank may negotiate.

Chairman Strelau stated that they will be on the agenda and could present that information to the bank to show commitment and progress. Ms. Kuchynka stated that she would be happy to speak with the landlord or bank on their behalf and keep them up to date with the application progress. Ms. Telitz advised that Dwight is no longer managing the property. She stated that new ownership may be coming in. Ms. Kuchynka asked if the new owner is guaranteeing existing leases. Ms. Telitz replied yes.

Mr. Clary stated that the time line will be close.

Ms. King felt that it may not be in the best interest of the property owner to have vacant spaces.

Ms. King asked who would be the liquor manager. Ms. Telitz replied she would serve as liquor manager.

Ms. Telitz asked who she should forward documentation to. Chairman Strelau replied the material should be forwarded to staff who will provide the materials to the Commission the week before their meeting. Ms. Kuchynka stated that she has some notes and questions on the materials they already provided and she would give them more guidance based upon tonight's discussion. She reminded them that they will need to review the seating plans and bar/lounge seat overages.

Ms. Telitz welcomed the Commission to visit the facility.

The Telitz's thanked the Commission.

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 advised that Fairview Mart has closed since their last meeting in December.

Ms. Kuchynka advised that the Mayor sent a notice for intent to issue a liquor license for Xtapa. She noted that they were still in the build out phase.

Chairman Strelau asked about Shop & Save. Ms. Kuchynka noted that they had a few issues with build out and expects to issue that license soon.

Ms. Kuchynka advised that she had floor plan change requests on file.

Ms. Kuchynka stated that she also had an application on file along with the Gnarly J's request and expected an April meeting.

VII. COMMENTS FROM THE PUBLIC

There were none.

VIII. ADJOURNMENT

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

Mr. Clary moved to adjourn the March 7, 2013 meeting. The meeting was adjourned by acclamation at 9:20 p.m.

APPROVED 4/1/13

VILLAGE OF DOWNERS GROVE
PLAN COMMISSION MEETING
PUBLIC HEARING

MARCH 4, 2013, 7:00 P.M.

Chairman Hose called the March 4, 2013 meeting of the Plan Commission to order at 7:00 p.m. and led the Plan Commissioners and the public in the recital of the Pledge of Allegiance.

ROLL CALL:

PRESENT: Chairman Hose, Mr. Beggs, Mr. Cozzo, Mr. Matejczyk, Mr. Quirk, Mrs. Rabatah, Ms. Urban, Mr. Webster

ABSENT: Mr. Waechtler

STAFF PRESENT: Community Development Director Tom Dabareiner; Village Planner Stan Popovich

VISITORS: Mr. Marty Schack, Community High School District 99, 6301 Springside Avenue, Downers Grove; Ms. Kathie Henn with Klein, Thorpe & Jenkins, Ltd., 20 N. Wacker Drive, Suite 1660, Chicago, IL; Ms. Marge Earl, 4720 Florence Avenue, Downers Grove

APPROVAL OF THE JANUARY 28, 2013 MINUTES

A correction was noted on Page 5, first paragraph, second line: reference "63rd Street"; Page 11, first paragraph, seventh line: remove the words "picks parts from autos" and insert "picks auto parts from his yard;" and Page 10, first full paragraph, seventh line: delete the word "talked".

THE JANUARY 28, 2013 MINUTES WERE APPROVED, WITH CORRECTIONS, ON MOTION BY MR. BEGGS, SECONDED BY MRS. RABATAH. MOTION CARRIED BY VOICE VOTE OF 8-0.

APPROVAL OF THE FEBRUARY 4, 2013 MINUTES

A correction was noted on Page 2, first full paragraph, third line: revise to read, "two new parkway trees are required in 'the' Woodward Avenue parkway."

THE FEBRUARY 4, 2013 MINUTES WERE APPROVED, WITH NOTED CORRECTION, ON MOTION BY MR. COZZO, SECONDED BY MR. WEBSTER. MOTION CARRIED BY VOICE VOTE OF 8-0.

Chairman Hose reviewed the meeting's protocol.

PC 04-13 A petition seeking a text amendment to Article XIII of Chapter 28 of the Municipal Code. The purpose of the request is to amend certain fence provisions in residential districts. Community School District 99, Petitioner.

Village Planner, Mr. Stan Popovich, summarized that the petition before the commissioners was a text amendment request to change the regulations relating to front yard fencing for non-residential uses in residential zoning districts. He specifically noted the exact text amendment language is shown in staff's report (page 2) and attached to the staff report. In summary, the change would allow certain non-residential uses located in residential zoning districts the ability to have a six-foot open design fence in a front yard where currently only four-foot open design fences are allowed.

Mr. Popovich reported that the text amendment creates a three-part test of where a six-foot tall fence could be installed. The three parts are: 1) the property must have multiple frontages; 2) a parking lot and no other structures or buildings could be located on the parcel; and 3) the fence can only be located on a frontage immediately adjacent to an arterial street and/or adjacent to a non-residentially zoned property. A four-foot (or under) open design fence would still be allowed in all other front yards and all other provisions of the fence regulations would remain unchanged.

Mr. Popovich referenced staff's report listing the three parcels that would be affected, if the text amendment were approved, to have the six-foot tall fence: 1) Downers Grove North High School; 2) St. Mary of Gostyn property; and 3) Ebersold Park. He pointed out where the proposed fences could be located.

In reviewing the proposal, Mr. Popovich believed there was little to no impact on adjacent residential properties; the open design element was similar to what was currently allowed; the additional two feet in height would not adversely affect adjacent properties; and, in some instances, would stop pedestrians from making a mid-block crossing of the street. Staff believed the request was unique and, based on its findings, believed the Plan Commission should forward a positive recommendation to the Village Council.

Per a question, Mr. Popovich added that the petitioner did seek a variance for a six-foot tall open design fence for the Downers Grove North High School parking lot. The variance was denied by the Zoning Board of Appeals because the board did not believe it was a unique condition. Other examples followed by staff on how the fence requirements for front yards would apply to various situations, i.e., swimming pools (not permitted in front yards), athletic fields, etc.

If the amendment were granted, Mr. Popovich confirmed that future requests that do not meet the three criteria would require a variance. The variation request would be heard by the Zoning Board of Appeals. Additionally, it was brought up that only North High School raised this issue and not the two other entities -- St. Mary's church or the Park District for Ebersold Park. Concern was raised that the request appeared to benefit one specific party, wherein Mr. Popovich explained that the amendment benefitted the public good by channeling the pedestrians to locations where the Village wanted the pedestrians to cross streets and would keep them safe from arterial streets that had higher speed traffic.

Asked if there would be design standards that existed with the new amendment, Mr. Popovich explained that chain-link fences were already prohibited in front yards and would remain as such, but the design would be any open design fences, such as picket fences (plastic or cedar) or wrought

iron type fences. Visibility for the proposal was considered and did require a vision triangle to be done which applied to residential uses on residentially-zoning properties. Staff believed the current regulations do a very good job regulating vision and types of fencing permitted in the front yard.

Chairman Hose invited the petitioner to present their petition.

Ms. Kathie Henn, with Klein, Thorpe & Jenkins, Ltd., 20 N. Wacker Drive, Suite 1660, Chicago, IL introduced herself and acknowledged that she was appearing on behalf of Community High School District 99. Also introduced was Mr. Martin Schack, Director of Physical Plant & Operations, Community High School District 99. Ms. Henn discussed that the District was seeking an amendment to the fence provisions, specifically, to address multi-frontage lots, with the intent to allow the school district and the two above-mentioned properties to construct an open design fence up to six feet in height in the two limited circumstances, as explained previously by staff, i.e., along an arterial street or immediately adjacent to non-residential properties. The text amendment was limited to non-residential uses in residential districts.

Per Ms. Henn, staff and she worked collaboratively to draft the proposed language in order to address the situation at the school district. Due to the denial of the school district's variance by the Zoning Board, the school district engaged staff in how to proceed next, wherein staff recommended a text amendment. Ms. Henn reiterated that the proposal was purposely written to be strict. The proposal was consistent with the provisions that permit taller fences in business and manufacturing districts where fences up to eight feet are allowed and, in residential districts where fences up to six feet in height are allowed in a rear and side yard that does not border a street and along side and rear yards of certain corner lots.

The proposal was a unique situation, as cited by Ms. Henn, in that a parking lot existed that did not have a structure on it. It presented a safety hazard to pedestrians (as seen by Mr. Schack) trying to cross mid-block and this was what the district was trying to avoid. Ms. Henn believed there would be no negative impact with the amendment being put into place and it would provide safety by directing pedestrian traffic to areas that were safer to cross while providing additional screening next to non-residential property. It would not negatively impact any neighboring residential properties.

In response to Mrs. Rabatah's question regarding the benefit of the extra two feet, Ms. Henn stated it provided for additional screening and allowed to safely direct pedestrians, as discussed above, and deter students from jumping the fence.

When asked if there were many pedestrians hopping four-foot fences that would lead the Village to believe that the six-foot fence would be significantly safer, Ms. Henn responded that she believed the six-foot fence was safer than the four-foot fence, keeping in mind, that at the high school location, the Village was dealing with high school age students that may not make the same decisions as adults, i.e., where to cross a street or whether or not to jump a fence. However, she understood that the revision would not prevent all pedestrians from crossing mid-block, but the amendment would decrease such activity.

Ms. Urban confirmed with Mr. Schack that the height of the proposed fence would be the same as the six-foot fence across the street to the west, near the athletic field. Mr. Schack responded that the design of the fence will mimic a wrought iron fence but will be constructed of painted steel with an

open design, such as the fence across Main Street. The fence's intent was not to be aesthetic, as Ms. Urban had inquired, but instead, a safety feature for students and spectators, as explained by Mr. Schack. Furthermore, Mr. Schack pointed out that the existing construction fence on site has funneled the cut-through pedestrians up to the Grant Street light, which was a positive. Otherwise, he stated, drivers cannot see pedestrians crossing mid-block until driving over the hill on the south end of Main Street, which is a safety concern.

Mr. Matejczyk inquired that if the district should, at some future point, install a parking control device for the parking lot, would the school district be prohibited from doing that or would the fence have to return to four feet. Mr. Popovich explained that if there was a structure proposed to be built and the six-foot open design fence existed, the fence would have to be modified to conform with the Zoning Ordinance. Ms. Henn also added that it depended upon which way the structure faced and a determination of which "yard" was which. The case was unique because there was no existing structure.

Asked if the district experienced any issues with anyone scaling the existing six-foot fence on the west side of the site, Mr. Schack stated "not to my knowledge" and commented on the fine job it was doing directing pedestrians to the sidewalk. He believed the proposed fence on the east side would duplicate the same activity.

Chairman Hose opened up the meeting to public comment and swore in those individuals who would be speaking on this matter.

Ms. Marge Earl, 4720 Florence Avenue, Downers Grove, asked if there will be sufficient sight triangles for the six-foot fence since there were no sight triangles proposed in the original proposal. She also asked if the Village or school received complaints about the existing eight-foot fence.

Community Development Director, Mr. Tom Dabareiner, stated the Village had no formal submittal but that it would have to comply with the sight triangle requirements which would be on the southeast corner of the Sherman and Main Streets. As to complaints, he stated he was aware of one complaint received by the Community Development Department that related to sight issues and a driver having difficulty seeing across the chain link southward along Main Street and the driver having to pull out further than he was comfortable with the northbound traffic.

Ms. Earl asked if the sight triangle would be larger for an eight-foot fence versus a six-foot fence, wherein Mr. Popovich stated they would be the same.

Hearing no further comments, the chairman closed public comment.

The petitioner had no closing statement.

Returning to staff, Mr. Popovich explained that the Zoning Ordinance, as currently written, offered no differentiation between non-residential uses and residential uses in residential zoning districts as it pertained to fences. Additionally, the ordinance did not differentiate between institutional types of uses with specific zoning regulations for these types of uses, i.e., churches, universities, village halls, etc., where unique regulations could be placed on them. Examples followed. Mr. Popovich also mentioned the fact that staff may be looking at institutional use classifications in the future.

Mr. Dabareiner, raised the point that staff's concern was that it did not want to get into a position where the Village was "creating walls" off of arterial roads and sending a wrong message to the public.

Asked if staff anticipated any similar petitions coming before this commission, Mr. Popovich stated he had not heard of any requests from businesses for a similar change.

Mr. Matejczyk voiced concern about the amendment being site specific and he felt it should be handled by the Village's zoning board.

Mr. Cozzo, in response, believed that if the proposal had merit, it was a matter of either granting an exception or returning it and reviewing the rule to see if it applies in the particular case and, if not, then the recourse was to modify the rule. He believed the proposal was unique, citing that the language was drafted specifically for the proposal, because granting the exception was more difficult than modifying the text. He was fine with modifying the text for this specific proposal. He believed a safety concern did exist, explaining that any time young students can be deterred from making a poor decision, it is a positive.

Dialog followed by Mr. Dabareiner regarding the high standards required under the Zoning Board of Appeals and meeting those high standards, which were intentional. Furthermore, he explained that if the Village's Zoning Ordinance included an institutional use rather than grouping all of the institutional uses in the residential district, staff would not be in the position to write such a narrowly-defined text amendment for a residential district that applied only in certain circumstances.

Ms. Urban supported the safety aspect of the fence and the "channeling" that it provided but said she struggled with the two extra feet safety challenge. She believed the proposal was well presented by staff and she did not have concerns about the other two properties mentioned earlier.

Mr. Quirk also believed the six-foot construction fence height was important because a four-foot fence was readily accessible and did not deter an adolescent. He understood that the school district's reason to have it was for safety purposes, given the amount of people that venture across the street at the location. He supported the proposal.

Mr. Webster believed the text amendment was a creative zoning solution to a gap and believed the use of the parcels were specific to an institution. Also, the verbiage was antiquated in the zoning ordinance but the text was narrowly written for that reason.

WITH RESPECT TO FILE PC 04-13, MR. BEGGS MADE A MOTION THAT THE PLAN COMMISSION MAKE A POSITIVE RECOMMENDATION AND FORWARD THE MATTER TO THE VILLAGE COUNCIL.

SECONDED BY MR. WEBSTER.

ROLL CALL:

APPROVED 4/1/13

**AYE: MR. BEGGS, MR. WEBSTER, MR. COZZO, MR. MATEJCZYK, MR. QUIRIK,
MRS. RABATAH, MS. URBAN, CHAIRMAN HOSE**

NAY: NONE

MOTION CARRIED. VOTE: 8-0

Mr. Dabareiner announced that tomorrow night the Village Council votes on the contract with the consultant who will be working on the Zoning Ordinance re-write and the Subdivision Ordinance re-write, which he expects will come before the Plan Commission. The timelines for these re-writes were briefly discussed. Mr. Beggs cautioned staff about bringing the rewrites in piece-meal to the commissioners and said to focus on the larger perspective.

**THE MEETING WAS ADJOURNED AT 8:00 P.M. ON MOTION BY MRS. RABATAH,
SECONDED BY MS. URBAN. MOTION CARRIED BY VOICE VOTE OF 8-0.**

/s/ Celeste K. Weilandt
Celeste K. Weilandt
(As transcribed by MP-3 audio)