

JUDICIARY, LICENSE AND CEMETERY COMMITTEE
MINUTES OF DECEMBER 1, 2009

Meeting called to order by Chairperson Wagner at 5:47 p.m., in the Common Council Chambers, City Hall Plaza.

PRESENT: Alderpersons Ed Wagner, Donald Krueger and Alanna Feddick

ABSENT: None

ALSO PRESENT: Alderperson Earll, Police Chief Stroik, Attorney Wolfgram, Cemetery Sexton Baltus, City Clerk Hall, Lance Fischer, Richard VanDerGeest, Andrew Cveykus, DonnaMarie Ostricki, Kenneth Frank and Bob Saba.

CITIZEN COMMENTS

Lance Fischer, owner of Coyote's Bar & Grill. He feels that he is being treated unfairly. When he exceeded his points, his liquor license was suspended for 10 days. He wanted to know why Nutz Deep did not lose their license when they exceeded their points.

Police Chief Stroik responded that the Common Council granted Mr. Fischer a liquor license with the stipulation of 95 demerit points because of some things that was on his record. There was a compliance check on July 17th which Coyote's failed. Subsequently he brought that information back to the JLC Committee and the license was suspended for 10 days. The difference is when he brought the information related to Nutz Deep; his recommendation was not to suspend their liquor license. There were three separate violations over two license years, all of which resulted from compliance checks. However the owners of that establishment took several steps to minimize the access of alcohol to underage people. Based on the ordinance and combined with the actions taken by management at Nutz Deep, his recommendation was to lower the number of points in each case by 10 points because of three separate activities that Nutz Deep had taken. The JLC committee took his recommendation to decrease their points from 125 points to 95 points thereby not reaching the 100 point threshold to authorize or motivate the committee to suspend the license.

JLC09-146 Motion by Krueger, second by Feddick to grant eleven (11) Beverage Operator Licenses to: Jan Christman, Allison Diercks, David Fisher, Ian Keith, Jackie Mayer, Daniel Mueller, Steven Russo, Debra Sabin, Dawn Smetak, Nicole Weichelt and Mark Yokimcus.

Motion carried

Police Chief Stroik discussed the Beverage Operator's application of Jordan Felhofer. She has been arrested three times for underage alcohol by the Marshfield Police Department; July of 2007, April of 2008 and then again in June of 2008. Most recently she was arrested for underage alcohol operation on July 3, 2009 in Jackson County. The June 10, 2008 and July 3, 2009 violations are enough to not allow this license to be obtained. These do qualify as substantially related to the licensed activity. They are within the two license years. His recommendation was to not provide this individual with a Beverage Operator's license.

Alderperson Wagner asked the committee if they considered these violations to be relevant to the licensed activity.

Alderperson Feddick responded that she doesn't think they are. These cases were dismissed and she realizes that the committee can still consider them but they were dismissed for some reason. The June of 2008 arrest was dismissed. In April of 2008 she went through the Diversion Program. The July of 2007 arrest is outside of the two year license period so the only thing that applies is the most recent one which would only be 25 points which is not enough to deny.

Aldersperson Krueger disagreed. He was in favor of denying the license.

Aldersperson Wagner agreed. We are dealing with somebody that has shown a propensity to ignore the laws concerning the use of alcohol. As somebody behind the bar that is in charge of enforcing these laws, it is quite likely that they will do so again.

Aldersperson Feddick said just because that is the case we can not say that just because she will get this license she will somehow ignore the law again or break the law by not following the rules. It is the bar's choice based upon her record whether to hire her or not.

JLC09-147 Motion by Krueger, second by Wagner to deny the Beverage Operator Application of Jordan A. Felhofer. Feddick voted Naye.

Motion carried

JLC09-148 Motion by Feddick, second by Krueger to approve the 2010 Cemetery Fee increases effective January 1, 2010.

	<u>2009</u>	<u>2010</u>
Opening traditional interment	\$590.00	\$610.00
Opening cremation interment	\$320.00	\$330.00
Opening infant interment	\$190.00	\$195.00
Burial Spaces	\$510.00	\$525.00
Infant/Cremation burial spaces	\$245.00	\$250.00
Disinterment charge	\$800.00	\$810.00

Motion carried

City Clerk Hall explained that Mr. Kurzynski has still not paid his back taxes. He has had since July 1, 2009 to get these taxes paid.

JLC09-149 Motion by Krueger, second by Wagner to rescind the action to grant a Reserve "Class B" Combination Liquor License to Elixir Nite Club; Scott Kurzynski-Agent; 434 S. Central Avenue.

Motion carried

JLC09-150 Motion by Feddick, second by Wagner to grant a Secondhand Article Dealer license to GAMEZ, LLC; John Iwaszcszenko, owner.

Motion carried

Police Chief Stroik discussed the Beverage Operator's application of Bret Heiting. On September 23, 2009, he was arrested 4th offense OWI. He tested a .217 on the preliminary breath test. That is an open criminal case. In 2002, he had a 3rd OWI offense, conviction, which is a criminal case. In January of 2002 he was cited for providing alcoholic beverages to underage persons at Lefty's; deferred prosecution for six months. In 2001 he was arrested for 2nd offense OWI which he was convicted for and that was also a criminal case. Under the ordinance, one criminal conviction can be enough for disallowing a license to an operator. In this particular case you have three criminal convictions. He recommended denial of the license.

Aldersperson Wagner said that there is a gap in the convictions of about seven years. The 3rd OWI offense was in 2002 and then the 4th OWI offense was just on September 23, 2009. Essentially there is only one OWI within the last two license years which would only give him 25 points.

Police Chief Stroik said that the portion of the code that talks about a criminal conviction for OWI does not specifically state that it has to be within the last two license years. It also says that a criminal conviction for operating while intoxicated in itself is enough.

Attorney Wolfgram stated that for purposes of the conviction record there is a statutory section that says that when you are considering whether to issue a new license or revoke that for purposes of a Chapter 125 conviction which goes to this 2002 serving an underage person, there has to be two or more violations within one year in order to consider all violations committed within one year of a previous violation. So the use of that in combination with the other convictions is at least questionable in terms of how you would work that under this provision given the extended time period that's passed. No violation may be considered under chapter 125 unless the licensee or permittee has committed another violation within one year preceding the violation.

JLC09-151 Motion by Feddick, second by Krueger to grant the Beverage Operator Application of Bret T. Heiting with 25 demerit points assessed.

Motion carried

Arlene Norberg filed a claim with the City alleging that she sustained bodily injury when she allegedly slipped and fell in a City-owned parking lot located at 2nd Street and Chestnut Avenue. She alleges that she slipped on loose gravel located in the parking lot. The claim was filed with the City's insurance company, Midwest Claims Service. They have completed their investigation and are recommending that the City of Marshfield deny this claim.

The basis of the denial should be that there was no negligence on behalf of the City of Marshfield. Their investigation revealed that this parking lot was inspected after the claimant reported this incident and no hazards were located.

JLC09-152 Motion by Feddick, second by Krueger to deny the claim of Arlene Norberg as recommended by Midwest Claims Service pursuant to the Wisconsin Statute for disallowance of claim 893.80 (1g).

Motion carried

JLC09-153 Motion by Feddick, second by Krueger to go into closed session pursuant to Wisconsin Statute, chapter 19.85 (1)(b) considering dismissal, demotion, licensing or discipline of any public employee or person licensed by a board or commission or the investigation of charges against such person. Specifically the Chairperson had requested a closed session to reconsider the Beverage Operator application of Richard VanDerGeest. Roll call vote - All Ayes. (Time: 6:20 p.m)

Motion carried

Present in closed session: Alderperson Wagner, Krueger, Feddick and Earll, Attorney Wolfgram, Police Chief Stroik, City Clerk Hall, Richard VanDerGeest, Andrew Cveykus, DonnaMarie Ostricki, Kenneth Frank and Bob Saba.

Alderperson Earll left at 6:47 p.m.

Andrew Cveykus, Kenneth Frank and Bob Saba left at 6:55 p.m.

Richard VanDerGeest and DonnaMarie Ostricki left at 7:25 p.m.

JLC09-154 Motion by Feddick, second by Krueger to return to open session. Roll call vote - All Ayes. (Time: 7:52 p.m.)

Motion carried

Findings of Fact:

1. He has a felony conviction.
2. He has successfully completed jail and probation.
3. He has a stellar work history with Festival Foods.
4. He was selling alcohol illegally at The Store for approximately 3 months as a condition of employment.
5. He was untruthful to the committee about offending while on leave.
6. It bears a substantial relationship to the licensed activity.

JLC09-155 Motion by Krueger, second by Wagner to accept the Findings of Fact and to deny the Beverage Operator application of Richard VanDerGeest.

Alderpersion Feddick said that she dissents to the Findings of Fact. The reasons are as follows:

1. Mr. VanDerGeest was honest in his presentation.
2. He shows the character and responsibility of someone who would deserve a liquor license.
3. He should not be punished for the rest of his life for a mistake that he made when he was younger.
4. Not only has the probation been successfully completed but there has been time even since that he has been free of any criminal activity.
5. It is appropriate for him to have a liquor license and based upon his answers to the committee he would be appropriate in serving appropriate ages, not serving minors, and have appropriate conduct while in his employment as a licensed operator.

Feddick voted Nay.

Motion carried

Motion by Krueger, second by Wagner to adjourn at 7:55 p.m.

Motion carried

Deb M. Hall
City Clerk