

Town of West New York Hudson County, New Jersey

Alcoholic Beverage Control Board

Minutes of Regular Meeting
(Regular Session)
August 11, 2011

Joan Palazzo
Julio C. Garcia
Rosendo Jimenez
Board of Alcoholic Beverage Control

Attest: **Milena Castaneda**
 Board Secretary

August 11, 2011 Special Meeting

Location:

Hudson Hall Community Center

Reference is made to the official transcript of the August 11, 2011 which is incorporated into these minutes by specific reference thereto; if there is any inconsistency between the official transcript and these minutes, the official transcript is deemed to be controlling.

Meeting started at 7 PM

Pledge to the flag

Open Public Meetings Act Notice read into record by Board Attorney

Roll Call:

Present

Member Palazzo

Member Garcia

Absent

Member Jimenez

Also:

Milena Castaneda, Board Secretary

Frank R. Gioia, Esq., Board Attorney

Sgt. Michael Clement, WNY Police Department

There being two members out of three present, there is a quorum.

Correspondence

Board Attorney reviews and discusses the following correspondence:

- 1) Letter from Chris Margounakis, Executive Asst. to the State Director discussing and attaching copy of Special Ruling issued by Director Fisher which approved the application filed by Goldberg Realty Consulting, Inc., t/a Lussa Pizza Bar & Grill

Board Action:

A motion was made by Board Member Palazzo the Special Meeting of July 14, 2011 to permit the entry and marking of exhibits; seconded by Board Member Garcia; the motion to reopen and entry of exhibits was approved.

The Board Attorney identified the Exhibits that would be marked and admitted into evidence:

B-5 the Special Ruling letter

B-6 the tax clearance certificate

B-7 the Affidavit of Publication

B-8 excerpts from the ABC Handbook

B-9 a Certificate of Continuing Occupancy

B-10 a copy of Ordinance 114-33

B-11 a letter from Jennifer Loheac, Esq.

B-12 a copy of Ordinance 114-32

B-13 a copy of a letter addressed to the Town Clerk from the Town Engineer regarding the distance between Son Cubano and Lusso

B-14 correspondence related to the patio dining area

B-15 a copy of Exhibit E of the Lusso Lease entitled Rules and Regulations

B-16 a copy of letter from Board Attorney to William Strasser, Esq. requesting copies of approvals from Landlord, Condo Association and Town of West New York re outdoor patio dining area

B-17 a copy of Ordinance 114-35

B-18 a letter from John O'Donnell, Esq. dated June 21, 2011

B-19 a copy of Ordinance 114-55

B-20 a copy of a letter from John O'Donnell, Esq. to Board Attorney dated August 11, 2011

B-21 a copy of a letter from Board Attorney to John O'Donnell, Esq. in reply to B-20

A-5 a copy of a letter from William Strasser, Esq. to Board Attorney dated August 11, 2011

A-6 a copy of a letter from William Strasser, Esq. to Board Attorney dated August 11, 2011 in response to request for documentation

O-1 a photograph of entrance to Lusso

O-2 a photograph of the doors leading to Lusso

O-3 "Quality of Life" petitions

O-4 Additional "Quality of Life" petitions

There were objections placed on the record by:

Mr. O'Donnell regarding the Town Engineer report because he did not have a chance to cross-examine him and also no one from Grandview was present when he measured the distance

The Board Attorney explained that there had been agreement that a member from the "Objectors" and a member of Lusso's would be present when the distance was measured but that the Town Engineer had been contacted by the Town Clerk and he had gone IMMEDIATELY and measured the distance on the same day he was called which was July 14, 2011 and therefore since that was the day of the Special Meeting there was no way that anyone else could be present.

Mr. Mayland stated that Lusso did not object to the entry of the Town Engineer's report

The Board permitted Counsel for the Grandview and Lusso to address the Board.

Mr. Mayland gave his summation

Mr. O'Donnell gave his summation

Motion made by Board Member Palazzo and seconded by Board Member Garcia to close the hearing but before there could be a vote it was determined that members of the public who were present would be afforded an opportunity to address the Board.

The following individuals addressed the Board:

Henry Song

Bill Mitchell

Motion to close the hearing made by Board Member Palazzo and seconded by Board Member Garcia; all approve and the motion carries

The following motion was proposed:

Whereas the provisions of the Open Public Meetings Act permit the Board to exclude the public from that portion of the meeting in which the governing body discusses and matters falling within the attorney/client privilege to the extent that confidentiality is required in order for the attorney to exercise his ethical duty as a lawyer; Now be it resolved that the Board shall enter into executive session, and the public shall be excluded from that portion of the hearing for this purpose with regard to the legal issues presented in the matters of the renewal and place-to-place transfer of the Goldberg Realty Consulting, Inc. license; be it further resolved that the discussion shall be memorialized in transcript form and made part of the minutes of the Board but such minutes and/or transcript shall not be released to the public unless and until the individual Board members waive the attorney-client privilege and give written consent to such waiver”

Motion to approve was made by Board Member Palazzo and seconded by Board Member Garcia and approved and adopted

EXECUTIVE SESSION

When the Board came out of executive session and was about to reconvene, the Board Attorney experienced a medical emergency and had to be transported to Palisades Medical Center for treatment.

Julio Morejon, Esq., Town Attorney of West New York announced this development to those present and advised that the Board had was ready to proceed and the members prepared to vote.

John O'Donnell, Esq. expressed an opinion that the Town Attorney had a conflict of interest if he were going to be representing the ABC Board. Mr. O'Donnell advised the Board members that they could carry the meeting to another date.

Board Member Palazzo advised that the Board was prepared to render a vote.

A motion was made by Board Member Palazzo to approve the place to place transfer of the license based on the measurement of distance made by Sgt. Clement; seconded by Board Member Garcia

A motion was made by Board member Palazzo and seconded by Board Member Garcia to approve the renewal of the license

A motion was made by Board member Palazzo and seconded by Board Member Garcia not to approve that portion of the application which would license the outside area; only the inside area would be licensed and that the Board would reconsider the issue at a future date

A motion was made by Board Member Palazzo and seconded by Board member Garcia to permit the hours of operation to be until 2 AM as permitted by the Ordinance

A motion was made by Board Member Palazzo and seconded by Board Member Garcia directing the Licensee to replace the original door whether it be a window or closed up with brick but that it had to be removed by September 26, 2011

A motion was made by Board Member Palazzo and seconded by Board Member Garcia that music would be permitted only in the inside premises and not outside at this time. (Mr. Mayland objected to this motion arguing that if the Board did not have jurisdiction to license the outside area it did not have jurisdiction to deal with the topic of music in the outside area; the objection was noted for the record)

There was discussion on the record between Counsel and Board Member Palazzo regarding the motions that had been made. Board Member Palazzo stated that the Board was acting to approve the application for renewal and the fact that the 250 foot rule did not apply based on the measurement.

There was further discussion on the record as Counsel attempted to resolve any confusion that may have existed.

Counsel placed objections on the record regarding the motions made by the Board.

Meeting was adjourned

Joan Palazzo, Chairwoman

Julio Garcia, Vice Chairman

ABSENT

Rosendo Jimenez, Member

Board of Alcoholic Beverage Control

Attest: _____

Milena Castaneda

Board Secretary