

Town of West New York Hudson County, New Jersey

Alcoholic Beverage Control Board

Minutes of Regular Meeting
(Regular Session)
October 26, 2011

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

Attest: **Milena Castaneda**
 Board Secretary

Alcoholic Beverage Control Board
October 26, 2011
Regular Meeting

Reference is made to the official transcript of the October 26, 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.

Minutes of a regular stated meeting of the ABC Board of the Town of West New York, in the County of Hudson, State of New Jersey, held in the Municipal Court Chambers, Municipal Building, West New York, NJ on Wednesday, October 26, 2011 at 7:00 p.m.

Salute to the Flag

Roll Call:

Present: Board Members Julio Garcia, Rosendo Jimenez, Joan Palazzo,

There is a quorum and the meeting continued

Also in attendance:

Board Attorney Frank R. Gioia, Esq., Sgt. Michael Clement, Board Secretary
Milena Castaneda, and Board Prosecutor Gregory Farmer (appearing for
Prosecutor Marlene Caride)

At the request of Board Attorney Frank Gioia, Secretary Milena Castaneda made the following announcement regarding the **OPEN PUBLIC MEETING ACT**

This regular meeting of the ABC Board of the Town of West New York held Wednesday, October 26, 2011 at 7:00 PM and it is publicly announced and directed that this announcement be placed in the minutes of this meeting that the notice requirements provided for in the "Open Public Meetings Act" have been satisfied. Notice of this meeting was properly given and published in the Jersey Journal, and Bergen Record and publicly posted on the Municipal Bulletin Board, Town Hall and filed with the Town Clerk. Copies are available to the public in accordance with the Law.

The Board Attorney advised that a letter of representation regarding charges filed against Licensee Enrobert Bar had been received from the firm of Ledesma, Diaz, Lopez & Noris and that Mr. Diaz was present. Mr. Gioia said that the matter was listed on the Agenda as B-4 for Board action. Mr. Diaz put his appearance on the record and entered a not guilty plea on behalf of his client; Mr. Farmer discussed the charges that had been filed. There was discussion about the request for discovery that had been made and also whether or not municipal charges had been filed in this matter. Mr. Diaz advised that no charges had been filed against his client or its employees in Municipal Court. A recommendation was made by Mr. Gioia that the matter be adjourned until the January 2012 regular meeting and this was accepted by all.

Motion to carry the matter to the January 2012 regular meeting made by Board Member Jimenez; seconded by Board Member Garcia. All in favor and the motion carried.

The Board Attorney discussed B-2, Special Ruling for Ohm Satyam and advised that the State Director had approved the Licensee's request to have the license reinstated and renewed but that the Licensee had not advertised yet. In addition, there are open charges against this license which have to be addressed. Mr. Gioia advised that he had spoken to Mr. Shey who represents the licensee and explained this to him. Mr. Gioia recommended that the matter be carried to the next regular meeting.

Motion to carry the matter to the November 2012 regular meeting made by Board Member Jimenez, seconded by Board Member Palazzo. All in favor and the motion carried.

The Board Attorney discussed B-3 and advised that this matter involved Licensee Sory Liquors which was represented by Attorney Alexander Locatelli. Mr. Locatelli had contacted Mr. Gioia earlier that day and told him that he did not have advance notice of the meeting and could not attend. Mr. Gioia advised the Board that the matter should be carried to the November regular meeting.

Motion to carry the matter to the November regular meeting made by Board Member Jimenez, seconded by Board Member Palazzo. All in favor and the motion carried.

Mr. Gioia discussed B-7 which dealt with scheduling a hearing date for charges filed against Licensee DGNY, Inc., t/a Son Cubano. Mr. Gioia advised that efforts to schedule a special hearing date for early in November had failed because of the open status of requests made by the Licensee for records under the Open Public Meetings Act. Discovery was not yet complete advised Mr. Gioia and he recommended that the Board wait until the OPRA issues were resolved before scheduling hearing dates. John O'Donnell, Esq., Counsel for Grandview I and II, was present and was told that charges against Son Cubano had been amended by the Prosecutor in accordance with procedures agreed upon at the last Board meeting between Counsel and that he would be provided with a copy of the amended charges. Mr. O'Donnell was advised that the recommendation made to the Board was to wait until OPRA issues had been resolved before scheduling a hearing. No further action was taken by the Board regarding B-7.

Mr. Gioia discussed Agenda Item B-5 dealing with charges filed against Licensee D'Cache, Inc. There was no appearance by the Licensee. There was a recommendation that the matter be carried to the November Regular meeting and that the Board Secretary send written notice advising if there was no appearance the Board might act to suspend operations for failure to appear.

Motion to carry the matter to the November regular meeting made by Board Member Jimenez, seconded by Board Member Palazzo. All in favor and the motion carried.

Mr. Gioia advised the Board to review the proposed minutes that comprise Agenda Item B-1. He indicated that he certified that the proposed minutes for the June 22, 2012 regular meeting were accurate because he was present at that minute and could attest to that. Mr. Gioia stated that there had been a Special Board Meeting on June 29, 2012 but that that no proposed minutes had been prepared for that meeting because the former Board Secretary had not prepared them before he was replaced as Secretary. Mr. Gioia said that he could not prepare proposed minutes because he had not been present because of illness. He said that requests had been made of the Joseph DeMarco, Esq., who did attend the meeting as Acting Board Attorney and the former Board Secretary Cosmo Cirillo to submit notes for the meeting so that minutes could be prepared. He also stated that Mr. Cirillo had been asked to submit a copy of any tape recording of the meeting he might have in his possession. There was no Court Reporter present at the meeting. Mr. O'Donnell indicated that he was present at the meeting and that no Court Reporter had been present.

There was discussion regarding charges filed against Tony's Grocery. The Prosecutor advised that he had discussed a resolution with the Licensee and that it appeared that the matter could be resolved but the Licensee requested that it be adjourned to next month so that an interpreter could be present. Mr. Gioia explained that the Board Secretary would arrange to have a Spanish interpreter present at the next meeting.

Motion to carry the matter to the November regular meeting made by Board Member Jimenez, seconded by Board Member Palazzo. All in favor and the motion carried.

Mr. Gioia then advised the Board that he had reviewed the transcript of the August 11, 2011 which involved the renewal and place-to-place transfer of the Lusso Pizza Bar & Grill license. Mr. Gioia recommended to the Board that the Board act to memorialize the actions that it took

that night by adopting formal resolutions. Mr. O'Donnell objected to the recommendation made by Mr. Gioia on behalf of his client.

R-1

Resolution 1

Re: Goldberg Realty Consulting, Inc.

t/a Lusso Pizza Bar & Grill

10/26/2011/1

Whereas, a Special Meeting of the West New York ABC was held on August 11, 2011 at which time the Board considered the renewal application and place-to-place transfer application of Goldberg Realty Consulting, Inc., t/a Lusso Pizza Bar & Grill; and

Whereas the following motions were duly moved and seconded on that occasion:

1. 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
2. A motion was made by Board member Palazzo and seconded by Board Member Garcia to approve the renewal of the license
3. 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 the Board would reconsider the issue at a future date
4. 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 applicable Municipal Ordinance
5. 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
6. 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.

Whereas, it was the intention of the Board that the foregoing be adopted as moved and seconded on August 11, 2011; and

Whereas, the Board has acted since August 11, 2011 in good faith and in the belief that the foregoing motions were in fact appropriately voted upon and adopted by the Board at the August 11, 2011 meeting; and

Whereas, a review of the official transcript of the Special Meeting of August 11, 2011 demonstrates to the satisfaction of the Board Attorney and the Board that the foregoing motions while properly moved and seconded were NOT formally voted upon that evening although the Board members considered that the motions had been adopted and in order to rectify any possible inconsistency regarding the Board's intention and actions;

Resolved that the Board shall act at this time to correct the record so as to insure technical compliance with any rules of order and procedure and that such action shall relate, nunc pro tunc, to August 11, 2011

Moved by Board Member: Palazzo

Seconded by Board Member: Jimenez

Vote:

Palazzo yeas

Garcia yeas

Jimenez yeas

Motion made by Board Member Palazzo, seconded by Board Member Jimenez. All in favor and resolution adopted.

R-2

Resolution 2
Re: Approving the Renewal Application
Of Goldberg Realty Consulting, Inc.
t/a Lusso Pizza Bar & Grill
10/26/11/02

Resolved that the Board approves the renewal application licensee Goldberg Realty Consulting, Inc. t/a Lusso Pizza Bar & Grill, for the 2011-2012 term upon the specific condition that the license which is in pocket status be sited on, or before June 30, 2012 in accordance with the provisions of the Special Ruling issued by the State Director; and further

Resolved that the action taken herein relates back to August 11, 2011

Moved by: Board Member: Jimenez

Seconded by Board Member: Palazzo

Vote:

Palazzo yeas

Garcia yeas

Jimenez yeas

Motion made by Board Member Jimenez, seconded by Board Member Palazzo. All in favor and resolution adopted.

R-3

Resolution 3
Re: Approving the place-to-place application of
Goldberg Realty Consulting, Inc. t/a
Lusso Pizza Bar & Grill
10/26/11/03

Be it resolved that the place-to-place transfer application of Goldberg Realty Consulting, Inc. from pocket status to 40-1 Riverwalk Place, West New York, NJ is approved with regard to the interior premises described in the application only, with hours of operation to be until 2 AM in accordance with applicable Municipal Ordinance and further resolved that the Board adopts the specific finding that the 250 foot exclusion as contained in the applicable Municipal Ordinance does not apply to preclude the location of this license at this address based on the measurement and testimony of Sgt. Michael Clement; and further resolved that the Board agrees to reconsider the licensing of the outside patio area at a future date; and it is further

Resolved that the action taken herein relates back to August 11, 2011.

The Board Secretary is instructed to endorse the license to reflect the site herein approved.

Moved by: Board Member: Palazzo

Seconded by Board Member: Jimenez

Vote:

Palazzo yeas

Garcia yeas

Jimenez yeas

Motion made by Board Member Palazzo, seconded by Board Member Jimenz. All in favor and resolution adopted

R-4

Resolution 4
Re: Removal of Original Main
Entrance Door
Goldberg Realty Consulting, Inc.
t/a Lusso Pizza Bar & Grill
10/26/11/04

Be it resolved that Goldberg Realty Consulting, Inc., t/a Lusso Pizza Bar & Grill is directed to replace or remove the original glass main entrance door of its establishment by either converting it to a window or bricking it up or closing it and that this must be done on, or before, November 30, 2011

Resolved that the action taken herein relates back to August 11, 2011

Moved by Board Member: Jimenez

Seconded by Board Member: Palazzo

Vote:

Palazzo yeas

Garcia yeas

Jimenez yeas

Motion made by Board Member Jimenez, seconded by Board Member Palazzo. All in favor and resolution adopted.

R-5

Resolution 5
Re: Music at 40-1 Riverwalk Place
Goldberg Realty Consulting, Inc.
t/a Lusso Pizza Bar & Grill
10/26/11/05

Resolved that music is to be permitted only in the interior premises located at 40-1 Riverwalk Place, West New York and not in the outside dining area

Resolved that the action taken herein relates back to August 11, 2011

Moved by Board Member: Palazzo

Seconded by Board Member: Jimenez

Vote:

Palazzo yeas

Garcia yeas

Jimenez yeas

Motion made by Board Member Palazzo, seconded by Board Member Jimenez. All in favor and resolution adopted.

R-6

Resolution 6

Re: Music at 40-1 Riverwalk Place

Goldberg Realty Consulting, Inc.

t/a Lusso Pizza Bar & Grill

10/26/11/06

Resolved that Resolution 5 (10/26/11/05) dealing with interior and exterior music at Lusso Pizza Bar & Grill and which relates back to August 11, 2011, is hereby rescinded effective immediately with regard to music in the outdoor patio dining area on the grounds that this Board does not have jurisdiction to establish rules and regulations for areas such as the outdoor patio dining area adjacent to 40-1 Riverwalk Place, West New York, which are not subject to licensing by the Board.

Resolved that the action taken herein relates back to August 11, 2011

Moved by Board Member: Jimenez

Seconded by Board Member: Palazzo

Vote:

Palazzo yeas

Garcia yeas

Jimenez yeas

Motion made by Board Member Jimenez, seconded by Board Member Palazzo. All in favor and resolution adopted.

Mr. O'Donnell reiterated his objection to the approval of the resolutions on behalf of his client.

Action Upon Proposed Minutes

Mr. Gioia advised the Board to take a recess and review the proposed minutes so that they could be voted upon when the Board reconvened.

Motion to take a recess made by Board Member Palazzo and seconded by Board Member Jimenez. All in favor and the motion carries and the Board recessed.

A motion to reconvene was made by Board Member Jimenez and seconded by Board Member Palazzo. The motion carried and the meeting continued.

A motion to adopt the proposed minutes for June 22, 2011 was made by Board Member Palazzo and seconded by Board Member Garcia. All in favor and the motion carried and the minutes were adopted.

A motion to adopt the proposed minutes for July 14, 2011 was made by Board Member Palazzo and seconded by Board Member Garcia. Board Member Jimenez abstained. The motion carried and the minutes were adopted.

A motion to adopt the proposed minutes for July 27, 2011 was made by Board Member Palazzo with the correction that the proper spelling of her last name is "Palazzo" and seconded by Board Member Garcia. Board Member Jimenez abstained. The motion carried and the minutes were adopted.

A motion to adopt the proposed minutes for August 11, 2011 was made by Board Member Palazzo and seconded by Board Member Garcia. Board Member Jimenez abstained. The motion carried and the minutes were adopted.

A motion to adopt the proposed minutes for September 27, 2011 was made by Board Member Palazzo and seconded by Board Member Garcia. Board Member Jimenez abstained. The motion carried and the minutes were adopted.

A motion to adopt the proposed minutes October 18, 2011 was made by Board Member Palazzo and seconded by Board Member Garcia. All in favor and the motion carried and the minutes were adopted.

Public Portion:

Mr. O'Donnell thanked the Board Members for the hard work they perform and that they have always been fair and that people respect the way they operate. The Board Members thanked him for his remarks.

Motion to adjourn made by Board Member Jimenez and seconded by Board Member Palazzo. All in favor and the motion carried.

Joan Palazzo, Chairwoman

Julio Garcia, Vice Chairman

Rosendo Jimenez, Member
Board of Alcoholic Beverage Control

Attest: _____

Milena Castaneda
Board Secretary