

The Commonwealth of Massachusetts
Department of the State Treasurer
Alcoholic Beverages Control Commission
Boston, Massachusetts 02114

Steven Grossman
Treasurer and Receiver General

Kim J. Gainsboro, Esq.
Chairman

**IN RE: PETITION OF 25 TAXPAYERS OF DUXBURY
REGARDING SQUARE CORP DBA HALL'S CORNER STORE
8 CHESTNUT STREET
DUXBURY, MA 02332
LICENSE #: NEW
HEARD: 08/21/2013**

MEMORANDUM AND ORDER

On February 27, 2013, the Alcoholic Beverages Control Commission received a Petition of 25 Taxpayers ("TVP") of the Town of Duxbury pursuant to M.G.L. c. 138, § 67, paragraph 4 ("Upon the petition of twenty-five persons who are taxpayers of the city ... in which a license has been granted by such authorities ... the commission shall ... investigate the granting of such a license.") The TVP contained thirty-four (34) signatories from thirty-three (33) separate addresses in Duxbury. The TVP puts forth the argument and specifically states that:

1. "The Town of Duxbury failed to state a public need for a fourth off-premise [sic] license within the Hall's Corner area since there are already off-premise [sic] licenses within 500 yards of the proposed premises, two all alcoholic beverages licenses, one wine and malt license, and two on-premises licenses;
2. The granting of the license does not protect the common good since an additional licensed establishment would increase an already existing traffic problem to the area, and that the area already has five businesses that provide alcoholic beverages to which the public can purchase alcoholic beverages for on-premise and off-premise [sic] consumption; and
3. The questions of procedural and substantive issues regarding the granting of a wine and malt beverages section 15 license to an applicant that applied for and notice was published and sent to abutters regarding an application for an all alcoholic beverages section 15 license; The Duxbury Licensing Authority, as required by section 23 of chapter 138, and since the issue was raised by people who testified at the public hearing, along with another town committee opposing the granting of the license, failure to demonstrate the granting of the license was "only to serve the public need in such manner as to protect the common good, and to that end, to provide, in the opinion of the local licensing authority, an adequate number of places at which the public may obtain, in the manner and for kind of use indicted, the different sorts of beverages for the sale of which provision is made."; and that the address on the notice of the meeting, 8 Chestnut Street, was not the correct address of Square Corp, dba Hall's Corner ("Halls Corner") which is located at 2 Chestnut Street."

On June 6, 2013, Attorney Walter Sullivan representing the TVP group submitted with the petition a memorandum and exhibits in support of the petition in opposition. On June 13, 2013, the Commission issued a letter to the TVP group through its attorney regarding the "Purported appeal pursuant to M.G.L. c. 138 §67 of a new license by 25 or more taxpayers /voters re: Square Corp d/b/a Hall's Corner Store." The Commission advised the TVP group through its attorney that it returned all application documents to the town and designated it "Return No Action." The letter noted that "this Commission will take no further action, as there is presently no application."

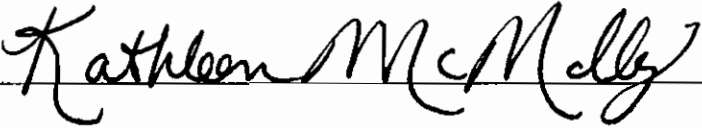
On June 20, 2013, Square Corp d/b/a Hall's Corner Store's application was received by the local licensing authorities for reconsideration, and went through the normal application process. The Local Licensing Authority approved the application of Square Corp. d/b/a Hall's Corner Store. The application of Square Corp. d/b/a Hall's Corner Store was then submitted to the Commission for consideration of approval in the usual administrative course.

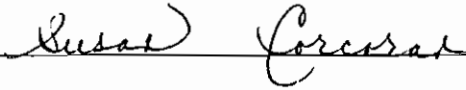
On July 23, 2013, Attorney Walter Sullivan representing the TVP group submitted a letter to the Commission stating "...Square Corp's application is back before the Commission for approval. The issues addressed in the petitioners' petition have not been addressed by the Duxbury Board of Selectmen, the local licensing authorities under the chapter 138 of the Massachusetts General Laws, or the Massachusetts Alcoholic Beverages Control Commission. Therefore, the petitioners still seek to move forward at the ABCC with its petition."

A hearing on this matter was held before the Commission on Wednesday, August 21, 2013. The Commission took the matter under advisement. The Commission, upon careful review of the TVP and the memorandum in support of the opposition, finds no basis to disapprove the decision of the Local Board in granting this license.

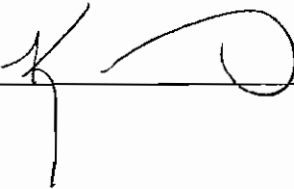
Although the signatories of the TVP may disagree with the decision of the local licensing authorities in granting this application for a license, nothing presented to the Commission suggested that any further action by the Commission on the TVP was warranted. "The opposition of the neighborhood, albeit an important factor for a licensing board to consider, does not convert the exercise of a licensing board's adjudicatory function into a plebiscite." Ballarin, Inc. v. Licensing Board of Boston, 49 Mass. App. Ct. 506, 512 (2000). The decision made by the Local Licensing Authorities appears to be a reasonable exercise of the Local Licensing Authorities' lawful discretion. No further action will be taken by the Commission regarding this TVP.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kathleen McNally, Commissioner 

Susan Corcoran, Commissioner 

I, the undersigned, hereby certify that I have reviewed the hearing record and concur with the above decision.

Kim S. Gainsboro, Chairman 

Dated: September 10, 2013

cc: Walter J. Sullivan Jr., Esq. via fax 617.226.3801
Duxbury Board of Selectmen via fax 781-934-1118
Philip M. Markella, Esq. via fax 781-934-0033
Administration
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