



*Commonwealth of Massachusetts  
Alcoholic Beverages Control Commission  
95 Fourth Street, Suite 3  
Chelsea, Massachusetts 02150-2358*

**Jean M. Lorizio, Esq.**  
*Chairman*

**DECISION**

**FOURTH AND LONG INC. D/B/A RASPUTIN'S TAVERN  
120-122 MAIN STREET  
FAIRHAVEN, MA 02719  
LICENSE#: 00017-RS-0384  
HEARD: 3/12/2024**

This is an appeal of the action of the Town of Fairhaven Select Board ("Local Board" or "Fairhaven") in suspending the M.G.L. c. 138, § 12 all alcoholic beverages license of Fourth and Long Inc. d/b/a Rasputin's Tavern ("Licensee" or "Rasputin's") located at 120-122 Main Street, Fairhaven, Massachusetts for thirty (30) days and modifying the license by adding eleven (11) conditions. The Licensee timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission ("Commission" or "ABCC"), and a remote hearing via Microsoft Teams was held on Tuesday, March 12, 2024.

The following documents are in evidence:

Agreed-upon Exhibits:

1. First Notice of Local Board Hearing, including attached exhibits, 7/27/2023;
2. Second Notice of Local Board Hearing, including attached exhibits, 8/10/2023;
3. Local Board Decision, including attached exhibits, 12/4/2023;
4. Licensee's Section 12 All-Alcoholic Beverages License.

Licensee's Exhibits

5. 2013 to 2023 Fairhaven License Annual Reports and Renewals;
6. Printout ABCC Decisions within Cities and Towns starting with "F";
7. Licensee's Notice of Appeal, 12/8/2023;
8. Witness' cellular phone screenshot of geofencing locations on May 6, 2023, and May 7, 2023.

Town of Fairhaven's Exhibits:

- A. Police Report of Officer Ethan Horsley re: 5/7/2023 incident;
- B. Police Report of Lt. Kevin Kobza re: 5/7/2023 incident;
- C. Police Report of Officer Laurie Cannon re: 9/7/2021 and 5/7/2023 incidents;
- D. Police Report of Officer Scott Coelho re: 9/7/2021 incident;
- E. Police Report of Officer Andrew Dillon re: 5/7/2023 incident;

- F. Police Report of Sergeant Michael Bouvier re: 5/7/2023 incident;
- G. Town of Fairhaven Annual Report to ABCC for 2020.

There is one (1) audio recording of this hearing. and nine (9) witnesses testified.

At the close of the Commission hearing, counsel for Rasputin's made an oral Motion for Required Finding in favor of Rasputin's. The Local Board filed its objections to the Motion in a post-hearing brief, and the Licensee filed a reply brief on May 13, 2024, closing the hearing record.

### FINDINGS OF FACT

The Commission makes the following findings based on the evidence presented at the hearing:

1. Fourth and Long Inc. d/b/a Rasputin's Tavern holds a § 12 all alcoholic beverages license operating at 120-122 Main Street, Fairhaven, Massachusetts, since 2009. (Testimony, Exhibit 4)
2. On July 27, 2023, the Local Board sent the Licensee a Notice of a public hearing ("Notice") scheduled for August 21, 2023. Attached to the Notice and incorporated by reference was a summary, created by the Fairhaven Police Department, entitled, "Investigation of Liquor Law Violations", as well as numerous supplementary documents, including 32 pages of police reports. (Exhibit 1)
3. The "Investigation of Liquor Law Violations" states:
  - 1) 9/6-7/2021 11:00pm - 12:42am call for service: liquor license violations, security plan violations, disturbance/altercation, arrest and further charges filed based on the incident which occurred at Rasputin's Tavern. Incident reports documented.
  - 2) 12/18/2021 0201 call for service: liquor license violations, patrons inside bar along with owner of the establishment drinking after hours.
  - 3) 1/22/2023 0334 call for service: liquor license violations, encounter with owner of bar/Rasputin's Tavern, he informs police officer he can serve alcohol any time he wishes after hours.
  - 4) 5/7/2023 0334 call for service: liquor license violations, disturbance/breach of the peace, assaultive towards police, multiple arrests. Charges filed, incident reports documented.
  - 5) 6/11/2023 0215 call for service: liquor license violations, serving underage/minor alcohol, multiple patrons inside bar with alcoholic beverages opened in front of the patrons while seated at the bar. Incident report documented.

Id.

4. The hearing was continued to September 18, 2023. (Exhibits 2, 3)

5. On October 23, 2023, the Local Board deliberated and voted as to whether Rasputin's was responsible for the alleged violations. (Exhibit 3)
6. On November 20, 2023, the Local Board voted to impose penalties and to modify the license by adding conditions. Id.
7. On December 4, 2023, the Local Board issued a written decision ("Decision") documenting its votes, findings, and penalties. Id.
8. The Local Board voted Rasputin's was responsible for disturbing the peace on September 6-7, 2023 but in its written findings found Rasputin violated Fairhaven Town Ordinance §204-6 by permitting alcohol to be served, possessed, and/or consumed by patrons after hours. However, a six (6) day suspension was imposed for violations of sale to an underage person and disturbance of the peace. Id.
9. The Summary of Investigation of Liquor Laws alleges a violation occurred on September 6-7, 2021. A police report dated September 6-7, 2021, was attached. (Exhibit 1)
10. The Local Board voted that Rasputin's was responsible for persons in possession of alcoholic beverages after hours on December 18, 2021, January 22, 2023, and June 11, 2023, but its written findings state that Rasputin's violated 204 CMR 2.04(2) by permitting disorder, disturbance, or illegality on the premises. (Exhibit 3)
11. 204 CMR 2.04(2) states "Donations of alcoholic beverages by licensees for the purpose of having the same used as prizes in any game of chance is prohibited." 204 CMR 2.04(2).
12. A six (6) day suspension was imposed for each violation, on December 18, 2021, January 22, 2023, and June 11, 2023, of persons in possession of alcoholic beverages after hours. (Exhibit 3)
13. The Local Board voted that Rasputin's was responsible for persons in possession of alcoholic beverages after hours and disturbance of the peace on May 7, 2023. Id.
14. The Local Board made written findings that Rasputin's violated 204 CMR 2.04(2) and Fairhaven Town Ordinance §204-6 by permitting alcohol to be served to, possessed and/or consumed by patrons after closing and/or the posted hours of operation and by permitting disorder, disturbance or illegality of any kind to take place in or on the licensed premises whether the licensee shall be responsible therefore, whether present or not. Id.
15. A six (6) day suspension was imposed for violations of persons in possession of alcoholic beverages after hours, disturbance of the peace, and sales to intoxicated persons. However, the Local Board had voted Rasputin's was not responsible for sales to intoxicated persons. Id.
16. The Local Board voted to modify the license by adding eleven (11) conditions:
  - 1) Rasputin's Tavern shall at all times comply with Fairhaven Code Section 204-1 and 204-10, Appendix A thereto, and M.G.L. c. 138 in operating its premises.

- 2) Rasputin's Tavern shall maintain a manager log. The manager log shall be maintained behind the bar, and it shall provide law enforcement the names, cell phone, and address of all on-duty managers. The log shall also include the past on-duty managers listed daily. There shall be a designated manager on duty at all times while the bar is open to the public. The manager log shall be retained for at least three years for inspection by the police department upon request.
- 3) Rasputin's Tavern shall maintain an ID scanner at the front door to assure persons entering will be over the age of 21 and shall maintain such ID scanner at all times in good working order.
- 4) Rasputin's Tavern shall hire and provide the following minimum security on duty. Sunday through Thursday 10 PM to closing - one security personnel. Friday 1PM to 10PM - one security personnel, 10PM to closing - two security personnel. Saturday 1PM to 10PM - one security personnel, 10PM to closing - two security personnel. Said security personnel shall be in addition to the manager on duty.
- 5) The security personnel will be responsible for the following. Entry of persons over 21 only. Use of the scanner at entrance. Assuring restrooms are not overly crowded or groups entering at the same time. Notify bartenders if persons are intoxicating. Assure people are not bringing in their own alcoholic beverages nor exiting the premises with alcoholic beverages. Call police when there is a disturbance. Make sure there is one security personnel outside at the time of closing to assure people are moving along. Make sure employees are not dancing on table, bar, or doing body shots.
- 6) Rasputin's Tavern shall make sure that security cameras are working and that they are recording and if necessary provide security recordings to law enforcement to assist in any investigation. The licensee shall retain security footage for at least 120 days for inspection by the police department upon request.
- 7) Rasputin's Tavern shall position and direct security cameras to detect and record all people entering and exiting the establishment through the front door.
- 8) Rasputin's tavern shall check the operation of the security cameras to confirm they are accurately recording video on a daily basis. If the management becomes aware that a security camera is not working properly as a result of such daily check, the manager shall notify the police department of same within 24 hours of becoming so aware and shall inform the police department of what steps are being taken to remedy the issue and when the issue will be remedied.
- 9) Rasputin's Tavern shall acquire and keep in good working order a scanner for purposes of checking the identifications of all patrons entering the establishment and such scanning shall be done at all times within the view of the security camera. Such scanning records shall be retained for at least 3 years for inspection by the police department upon request.
- 10) Rasputin's Tavern shall keep a log at the premises which shall record the identification of the security personnel on duty for each shift as set forth above. the

manager on duty for each night shift when Max Cebula is not the manager on duty, and regular updates with regard to the security camera being checked for proper operation and repairs if needed. Such logs shall be retained for at least three years for inspection by the police department upon request.

- 11) Any material violation of this order/security plan shall be subject to the investigation/hearing/disciplinary provisions set forth in Fairhaven Code Section 204-1 and Section 204-10 and Appendix A thereto as may from time to time be amended, including but not limited to potential imposition of the penalties set forth in Section 6 of Appendix A including potential permanent revocation of Rasputin's Tavern license. Rasputin's Tavern agrees that each violation of this agreement determined by the Select Board shall constitute a separate offense. Any imposition of penalties for violation of this agreement shall be in addition to any other discipline that the Select Board has the authority to impose after a providing hearing under Fairhaven Code 204-1 and 204-10 and Appendix A thereto and M.G.L. c. 138.

(Exhibit 3)

17. The Licensee timely appealed the Local Board's decision to the ABCC. (Exhibit 7)

#### DISCUSSION

Pursuant to M.G.L. c. 138, § 67, "[t]he ABCC is required to offer a de novo hearing," that is to hear evidence and find the facts afresh. As a general rule the concept of a hearing de novo precludes giving evidentiary weight to the findings of the tribunal from whose decision an appeal was claimed. Dolphino Corp. v. Alcoholic Beverages Control Comm'n, 29 Mass. App. Ct. 954, 955 (1990), citing United Food Corp. v. Alcoholic Beverages Control Comm'n, 375 Mass. 240 (1978). The findings of a local licensing board are "viewed as hearsay evidence, [and] they are second-level, or totem pole hearsay, analogous to the non-eyewitness police reports in Merisme v. Board of Appeals on Motor Vehicle Liab. Policies and Bonds, 27 Mass. App. Ct. 470, 473 – 476, (1989)." Id.

Both the Local Board and the Commission have the authority to grant, revoke, and suspend licenses. Their powers were authorized "to serve the public need and ... to protect the common good." M.G.L. c. 138, § 23, as amended through St. 1977, c. 929, § 7. "[T]he purpose of discipline is not retribution but the protection of the public." Arthurs v. Bd. of Registration in Medicine, 383 Mass. 299, 317 (1981). The Commission is given "comprehensive powers of supervision over licensees," Connolly v. Alcoholic Beverages Control Comm'n, 334 Mass. 613, 617 (1956), as well as broad authority to issue regulations. New Palm Gardens, Inc. v. Alcoholic Beverages Control Comm'n, 11 Mass. App. Ct. 785, 788 (1981).

These "comprehensive powers" are balanced by the requirement that the Local Board and the Commission provide notice to the licensee of any violations, as well as an opportunity to be heard. M.G.L. c. 138, § 64. In addition, the Local Board has the burden of producing satisfactory proof that the licensee violated or permitted a violation of any condition thereof, or any law of the Commonwealth. M.G.L. c. 138, §§ 23, 64.

The Commission's decision must be based on substantial evidence. See Embers of Salisbury, Inc. v. Alcoholic Beverages Control Comm'n, 401 Mass. 526, 528 (1988). "Substantial evidence" is "such evidence as a reasonable mind might accept as adequate to support a conclusion." Id. Evidence from which a rational mind might draw the desired inferences is not enough. See Blue Cross and Blue Shield of Mass. Inc. v. Comm'r of Ins., 420 Mass. 707 (1995). Disbelief of any particular evidence does not constitute substantial evidence to the contrary. New Boston Garden Corp. v. Bd. of Assessor of Boston, 383 Mass. 456, 467 (1981).

"One of the prerequisites to the exercise of the statutory power is that notice setting forth the grounds upon which the respondent board intends to proceed must be given to the licensee. While it is the initial step in the procedural process required by the statute, yet it is not a matter of procedure alone but one of substantial right." Higgins v. License Commissioners of Quincy, 308 Mass. 142, 145 (1941) citing Stiles v. Municipal Council of Lowell, 233 Mass. 174 (1919), McKenna v. White, 287 Mass. 495 (1934).

Grounds upon which the local board proposes to proceed should be stated with reasonable particularity so that the notice is sufficiently definite to fairly apprise the licensee of the charges which he must be prepared to meet. Higgins, 308 Mass. at 145; Aristocratic Restaurant of Massachusetts, Inc. v. Alcoholic Beverages Control Commission (No. 1), 374 Mass. 547 (1978) (notice of hearing that did not specify the date of the alleged violation was inadequate); Deanne, Inc. d/b/a The Lion's Den (ABCC Decision 5/4/2005) (rights of licensee substantially prejudiced where local board's notice to licensee did not cite the law that licensee allegedly violated or any specifics as to the incident that allegedly caused a violation).

The Local Board voted that the Licensee was responsible for persons in possession of alcoholic beverages after hours on December 18, 2021, January 22, 2023, and June 11, 2023, and imposed a six (6) day suspension for each violation. (Exhibit 3) However, in its written findings, the Local Board stated that the Licensee violated 204 CMR 2.04(2) by "permitting disorder, disturbance, or illegality of any kind to take place in or on the licensed premises". Id.

204 CMR 2.04(2) was not cited in the Notice but was cited in the Local Board's written findings. (Exhibit 1) 204 CMR 2.04(2) prohibits "Donations of alcoholic beverages by licensees for the purpose of having the same used as prizes in any game of chance." 204 CMR 2.04(2).

The Local Board voted that on May 7, 2023, the Licensee was responsible for persons in possession of alcoholic beverages after hours and for disturbance of the peace, but not responsible for sales to intoxicated persons. (Exhibit 3)

In its vote as to discipline for violations on May 7, 2023, the Local Board stated, "[f]or the penalties of persons in possession of alcoholic beverages after hours and other violations of Board Rules/Regulations, ABCC or State Law to wit: disturbing the peace and sales to intoxicated persons, the Board issues a six (6) day suspension." Id.

Despite having voted the Licensee was not responsible for sales to intoxicated persons, the Local Board included sales to intoxicated persons as a basis for the suspension. Id.

In its written findings, the Local Board stated Rasputin's violated 204 CMR 2.04(2). This regulation was not cited in either the Local Board's vote or the discipline imposed. Id.

The Local Board voted that the Licensee was responsible for disturbing the peace on September 6-7, 2023. Id. However, in its written findings, the Local Board cites a violation of Fairhaven Town Ordinance §204-6 by permitting alcohol to be served to, possessed, and/or consumed by patrons after closing or posted hours. Id.

The Local Board imposed discipline for violations of sale to an underage person and disturbance of the peace, despite there being no vote or written finding on the charge of sale to an underage person. Id.

Further complicating matters regarding the Local Board's vote as to violations on September 6-7, 2023 is that the Notice and attached police report indicate the alleged violation took place on September 6-7, 2021. (Exhibit 1)

In addition to suspending the license for thirty (30) days, the Local Board voted to modify the license by adding eleven (11) conditions. (Exhibit 3)

The Licensee asserts that the Local Board's Notice of public hearing was insufficient, the Decision replete with incorrect dates and statutes, and the findings contradictory to the vote. The Commission agrees.

The Local Board did not provide adequate notice of the alleged charges which would be the subject of its September 18, 2023, hearing. The Notice cited M.G.L. c. 138, §§ 34 and 69, Town of Fairhaven Regulations 204-7(a), and 204-6, and 204 CMR 2.05(2) but provided no dates of occurrence. (Exhibit 1) While the incorporated summary of liquor license violations listed several alleged violation dates with vague descriptions, it did not include any citations. Id. It was unfair and unreasonable to expect the Licensee to sort through the Notice, summary and attached documents to determine the charges and applicable citations to be addressed at the Local Board's hearing.

The Local Board's Decision is also flawed. Citations in the Local Board's written findings are inconsistent with its votes and in some instances, penalties were imposed for alleged violations for which the Licensee had been found not responsible.

Given the inadequacy of the Notice and contradictions amongst the Notice, vote, findings and discipline, as outlined in the Decision, the Commission is unable to make a finding and cannot approve of the Local Board's action.

### CONCLUSION

Based on the foregoing, the Alcoholic Beverages Control Commission **DISAPPROVES** the action of the Town of Fairhaven Licensing Board in finding Fourth and Long Inc. d/b/a Rasputin's Tavern in violation. Therefore, the Commission **DISAPPROVES** the Town of Fairhaven's actions in suspending the license for thirty (30) days and modifying the license by adding conditions.

The Commission remands the matter to the Town of Fairhaven with the recommendation that it find no violation and no further action be taken against the Licensee, as any penalty would be discrepant with this decision.

As a result of this decision, the Licensee's Motion for Required Finding is moot, and the Commission need not act on it.

**ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Crystal Matthews, Commissioner Crystal Matthews

Jean M. Lorizio, Chairman Jean M. Lorizio

Deborah Baglio, Commissioner Deborah A Baglio

Dated: September 1, 2026

You have the right to appeal this decision to the Superior Courts under the provisions of Chapter 30A of the Massachusetts General Laws within thirty (30) days of receipt of this decision.

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2023-000270-ad-enf

cc: John P. Connell, Esq.  
Arthur J. Goldberg, Esq.  
Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Administration File