



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

Jean M. Lorizio, Esq.
Chairman

DECISION

**2030 OCEAN ST, LLC D/B/A WINE & MARKET
86 ESSEX STREET
HAVERHILL, MA 01832
LICENSE#: NEW
HEARD: 5/25/2022**

This is an appeal pursuant to M.G.L. c. 138, § 67. 2030 Ocean St., LLC (“Applicant”), is appealing the action of the City of Haverhill License Commission (the “Local Board”) in denying its M.G.L. c. 138, § 15 All-Alcoholic Beverages Retail Package Store License application to be exercised at 86 Essex Street, Haverhill, Massachusetts. The Applicant timely appealed the Local Board’s action to the Alcoholic Beverages Control Commission (the “Commission”), and a remote hearing via Microsoft Teams was held on Wednesday, May 25, 2022.

The following documents are in evidence:

1. Application of 2030 Ocean St. LLC for § 15 package store, filed 2/28/2022;
 2. First appeal to Commission, 3/9/2022;
 3. Minutes of proceeding of Haverhill License Commission on 1/6/2022;
 4. Newspaper advertisement re: Haverhill License Commission’s procedure, 1/20/2022;
 5. Minutes of special meeting of Haverhill License Commission, 1/27/2022;
 6. Minutes of special meeting of Haverhill License Commission, 3/7/2022;
 7. Minutes of special meeting of Haverhill License Commission, 3/14/2022;
 8. Email dated 3/17/2022 at 11:04 am from Rebecca Ambra to Daniel Newcomb;
 9. Minutes of special meeting of the Haverhill License Commission on 4/11/2022;
 10. Video of proceedings by Haverhill License Commission on 1/6/2022, 3/7/2022, 3/14/2022, and 4/11/2022;
- A. Transmittal letter dated 3/21/2022 from Elizabeth Pisano with \$350 local filing fee and advertisement fee;
- B. License Commission notice to 2030 Ocean St. LLC;

- C. Certified mail return receipt for 4/12/2022 License Commission notice to 2030 Ocean Street, LLC d/b/a Wine & Market

There is one (1) audio recording of this hearing.

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. 2030 Ocean Street LLC, d/b/a Wine & Market (“Applicant”), is an applicant for a § 15 all alcohol package store license in the City of Haverhill.
2. On February 28, 2022, the Applicant filed its application with the Haverhill License Commission (“Local Board”) for a § 15 all alcoholic beverages package store license to be exercised at 86 Essex Street, Haverhill, Massachusetts.
3. On March 9, 2022, the Applicant filed a notice of appeal with the Commission (“First Appeal”) claiming that the Local Board failed to hold a hearing on the Applicant’s application.
4. On April 11, 2022, at a hearing before the Local Board on its application, the Local Board voted to deny the license because there were no available § 15 all alcohol package store licenses to issue to it.
5. The Local Board issued a written statement of reasons the following day, April 12, 2022.
6. On May 17, 2022, the Applicant filed a notice of appeal on the denial of its application (“Second Appeal”).
7. The Local Board moved to dismiss the appeal as untimely, which the Commission allowed on February 2, 2023.

DISCUSSION

Licenses to sell alcoholic beverages are a special privilege subject to public regulation and control for which States have especially wide latitude pursuant to the Twenty-First Amendment to the United States Constitution. Connolly v. Alcoholic Beverages Control Comm’n., 334 Mass. 613, 619 (1956), Opinion of the Justices, 368 Mass. 857, 861 (1975). The procedure for the issuance of licenses to sell alcoholic beverages is set out in M.G.L. c. 138. Licenses must be approved by both the local licensing authorities and the Commission. M.G.L. c. 138, §§12, 67; Beacon Hill Civic Assn. v. Ristorante Toscano, Inc., 422 Mass. 318, 321 (1996).

A local board must schedule a public hearing on each license application within specific timeframes, M.G.L. c. 138, §§ 15A & 16B, to evaluate whether to approve a license. The local board has discretion to determine public convenience, public need, and public good, with respect to whether to grant a license to sell alcoholic beverages. Donovan v. City of Woburn, 65 Mass. App. Ct. 375, 378-379 (2006); Ballarin, Inc. v. Licensing Bd. of Boston, 49 Mass. App. Ct. 506, 510-511 (2000). As such, in reviewing the decision of a denial by a local board, the Commission gives “reasonable deference to the discretion of the local authorities” and determines whether “the reasons given by the local authorities are based on an error of law or are reflective of arbitrary or

capricious action.” Great Atlantic & Pacific Tea Co., Inc. v. Board of License Comm’rs of Springfield, 387 Mass. 833, 837-838 (1983); accord Ballarin 49 Mass. App. Ct. at 512.

Should a Local Board deny an application, it must then articulate its reasoning in a written decision. M.G.L. c. 138, § 23. “Adjudicatory findings must be ‘adequate to enable [a court] to determine (a) whether the . . . order and conclusions were warranted by appropriate subsidiary findings, and (b) whether such subsidiary findings were supported by substantial evidence.” Charlesbank Rest. Inc. v. Alcoholic Beverages Control Comm’n, 12 Mass. App. Ct. 879, 880 (1981) (quoting Westborough v. Dep’t of Pub. Util., 358 Mass. 716, 717-718 (1971)).

The appeal currently before the Commission is based on the Local Board’s failure to schedule and hold a hearing on the Applicant’s application and failure to issue a written decision within the time required. However, in the interim of this First Appeal, the Local Board *did* hold a hearing and denied the Applicant’s application in a written decision. Then, the Applicant appealed that denial (“Second Appeal”), which was dismissed as untimely. Because the Local Board held a hearing and issued a written decision, and because the Second Appeal was dismissed as untimely, the First Appeal is now moot.

It is a general rule that the Commission “decide only actual controversies . . . and normally do not decide moot cases.” Boston Herald, Inc. v. Superior Court Dep’t of the Trial Court, 421 Mass. 502, 504 (1995). “[L]itigation is considered moot when the party who claimed to be aggrieved ceases to have a personal stake in its outcome.” Branch v. Commonwealth Emp. Rels. Bd., 481 Mass. 810-816-17 (2019), quotations omitted; accord Bank of New York Mellon v. Henrickson, 102 Mass. App. Ct. 1111 (2023) (“when ‘a decision by the court will not be applicable to existing rights, no decision will be rendered’ because ‘[t]he questions originally involved have become moot’”), quoting Mulholland v. State Racing Comm’n, 295 Mass. 286, 289 (1936).

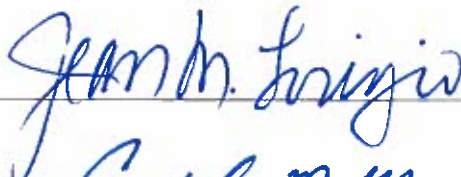
The issues before the Commission in this First Appeal were the failure of the Local Board to hold a hearing on the Applicant’s application and failure to issue a timely written decision pursuant to M.G.L. c. 138, §§ 15A & 16B. Since that time, those concerns have been resolved: there was a hearing, and the application was denied by the Local Board in a written decision. Then the appeal of that denial was dismissed as untimely such that any substantive claims regarding the validity of the Local Board’s decision cannot be addressed. Therefore, there is “no further effective relief” that the Commission can grant. Branch, 481 Mass. at 816-17. This appeal is deemed moot.

CONCLUSION

Based on the evidence presented at the hearing, the Commission **DISMISSES AS MOOT** the appeal of 2030 Ocean St., LLC.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Deborah Baglio, Commissioner

Deborah A. Baglio

Dated: June 16, 2023

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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cc: William A. Kelley, Esq.
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Local Licensing Board
Frederick G. Mahony, Chief Investigator
Administration, File