



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

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

**DECISION**

**NAPOLIS OPERATORS, INC. D/B/A NAPOLIS TAVERN  
119 CEDAR STREET  
HAVERHILL, MA 01830  
LICENSE#: NEW  
HEARD: 10/11/2023**

This is an appeal of the action of the City of Haverhill License Commission (the “Local Board” or “Haverhill”) in rescinding its approval of the M.G.L. c. 138, § 12 all Alcoholic Beverages General-on-Premises Application of Napolis Operators, Inc. d/b/a Napolis Tavern (“Applicant” or “Napolis Tavern”) to be exercised at 119 Cedar Street, Haverhill, Massachusetts. The Applicant timely appealed the Local Board’s action to the Alcoholic Beverages Control Commission (the “Commission” or “ABCC”), and a remote hearing was held via Microsoft Teams on Wednesday, October 11, 2023.

The following documents are in evidence:

- A. Memorandum of Law of the Appellant, with Exhibits 1 through 9.

There is one (1) audio recording of this hearing, and two (2) witnesses testified.

**FINDINGS OF FACT**

The Commission makes the following findings of fact:

1. Napolis Operators, Inc. d/b/a Napolis Tavern (“Applicant” or “Napolis Tavern”) applied for a Chapter 138, § 12 all alcoholic beverages general on premises license to be exercised at 119 Cedar Street, Haverhill. (Exhibit 3 to Memorandum)
2. On March 2, 2023, the Local Board held a public hearing on Napolis Tavern’s application. The Local Board approved the application and forwarded it to the ABCC. *Id.*
3. The Local Board scheduled a hearing to Reconsider Napolis Tavern’s application at a public hearing on April 6, 2023. Notice for said hearing was dated March 20, 2023. (Exhibit 4 to Memorandum)
4. The Local Board held a public hearing on April 6, 2023. (Exhibit 5 to Memorandum)
5. Listed on the April 6, 2023, meeting agenda was the reconsideration of Napolis Operators, Inc.’s application for Section 12 General on Premises license. (Exhibit 6 to Memorandum)

6. The Local Board issued a Notice of Decision dated April 12, 2023, stating, “[o]n Thursday, April 6, 2023, the Commission rescinded approval of the Section 12 General on Premises Liquor License, previously approved on March 2, 2023.” (Exhibit 7 to Memorandum)
7. No basis for the rescission was given in the Local Board’s written decision. (Exhibit 9 to Memorandum)
8. The Applicant timely appealed the Local Board’s decision to the Commission. (Commission Records)

### 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; see e.g. Beacon Hill Civic Ass’n v. Ristorante Toscano, Inc., 422 Mass. 318, 321 (1996).

A local licensing authority has discretion to determine public convenience, public need, and public good, with respect to whether to grant a license to sell alcoholic beverages. See 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). A local board exercises very broad judgment about public convenience and public good with respect to whether to issue a license to sell alcoholic beverages. Donovan, 65 Mass. App. Ct. at 379.

In reviewing the decision of a denial by a local licensing authority, 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); see Ballarin, 49 Mass. App. Ct. at 512 (when reviewing the local licensing authority’s authority, court does not assess the evidence but rather “examine[s] the record for errors of law or abuse of discretion that add up to arbitrary and capricious decision-making”).

A local board may deny a license even if the facts show that a license lawfully could be granted. Donovan, 65 Mass. App. Ct. at 379. “Neither the [local board’s] broad discretion nor the limitations on judicial review, however, mean that the [local board] can do whatever it pleases whenever it chooses to do so.” Id. “Instead, ‘[w]here the factual premises on which [the board] purports to exercise its discretion is not supported by the record, its action is arbitrary and capricious and based upon error of law, and cannot stand.’” Id., quoting Ruci v. Client’s Sec. Bd., 53 Mass. App. Ct. 737, 740 (2002).

“Whenever a Local Board denies an application for a new license, refuses to issue a license, modifies, suspends, revokes or cancels a license, denies an application for transfer of location or between persons, denies an application for change of a description of the licensed premises, or levies a fine, the Local Board shall . . . stat[e] the reasons for such action.” M.G.L. c. 138, § 23 (emphasis added). “A board must state the reasons for its decision” and its findings “must be

'adequate to enable [the Commission] 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.'" Exotic Restaurant Concepts, Inc. v. Licensing Bd. for the City of Boston, Suffolk Superior Court, 0784 CV 03287 at 5-6 (Borenstein, J., Aug. 8, 2008), quoting Charlesbank Rest. Inc. v. Alcoholic Beverages Control Comm'n, 12 Mass. App. Ct. 879 (1981); accord Murfslx, Inc. d/b/a Murphy's Package Store (ABCC Decision March 21, 2013) (general findings are legally insufficient).

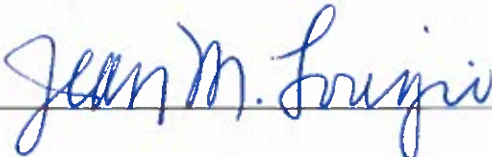
Here, the Local Board did not make any written findings. Without a statement of reasons, the Commission cannot evaluate how the Local Board rendered its decision, or upon what evidence it made its decision. Therefore, the Commission cannot adequately review the Local Board's denial of the Applicant's application. As the Commission has stated before, "[t]he failure to issue [a] written statement of reasons, as required by law, is fatal to the Local Board on appeal." Gran Chimu Inc. (ABCC Decision, Dec. 16, 2015), and cases cited.

### CONCLUSION

Based on the evidence and testimony presented at the hearing, the Commission **REMANDS** this matter to the Local Board to issue within ten (10) days from receipt of this decision and order, subsidiary findings and the statutorily required statement of reasons, upon which it made its decision rescinding its vote to approve, and as a result denying the M.G.L. c. 138, § 12 All-Alcoholic Beverages Retail license application of Napolis Operators Inc. The Applicant may request a further hearing before the Commission to present oral argument and legal authority on the denial by the Local Board based on their subsidiary findings.

### **ALCOHOLIC BEVERAGES CONTROL COMMISSION**

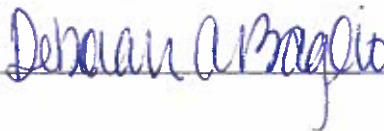
Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Deborah Baglio, Commissioner



Dated: April 9, 2025

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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2023-000059-ad-enf

cc: Bryan E. Chase, Esq.  
Fred Riley, Esq.  
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Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Administration, File