



*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*

**DECISION**

**Pedro Beato**  
**dba Don Pedro Restaurant**  
**76-80 South Broadway**  
**Lawrence, MA 01843**  
**License#: 059400121**  
**Heard: February 16, 2011**

This is an appeal of the action of the Lawrence Licensing Board (the "Board") for denying the transfer of location application of Pedro Beato dba Don Pedro Restaurant (the "Licensee") from 76 South Broadway, Lawrence, MA to 10 Carver Street, Lawrence, MA. The Board voted to deny the application at a public hearing that convened on October 28, 2010. The Licensee timely appealed the Board's decision to the Alcoholic Beverages Control Commission (the "Commission") and a hearing was held on February 16, 2011.

The following exhibits are in evidence by agreement of the parties:

1. Zoning Board Decision;
2. Plan of Neighborhood;
3. Letter from Gordon N. Schultz;
4. Lease;
5. Letter from Fire Department;
6. City Hall Compliance Sign-Off List;
7. Abutter Letters:
  - Apollo Plumbing
  - North Andover Mechanical Construction, Inc.
  - Carver Street Collision
8. Decision for City of Lawrence;
9. Municipal Lien Certificate dated December 15, 2010;
10. Proposed Site Plan; and
11. Internal Layout of New Location.

There is one (1) tape of this hearing. Three witnesses testified.



### FACTS

1. Pedro Beato is the holder of an alcoholic beverages license dba Don Pedro Restaurant located at 76-80 South Broadway, Lawrence, MA.
2. The licensee has been in business at 76-80 South Broadway, Lawrence, MA for approximately six (6) years operating as a restaurant.
3. The licensee filed an application to transfer the license from 76-80 South Broadway, Lawrence, MA to 10 Carver Street, Lawrence, MA
4. 10 Carver Street is approximately 2/10 of a mile from 76-80 South Broadway. Carver street runs parallel with South Broadway, 1 block away from the existing premises.
5. The new location proposes to serve food and alcohol until 12:00 a.m., but will have no entertainment.
6. The licensee received a variance from the Zoning Board at Lawrence, MA dated October 28, 2010 to operate the business for a restaurant with alcoholic beverages.
7. On December 20, 2010, the Board denied the request to transfer the location of the license to the new location for the following reasons:
  - a. Neighborhood groups oppose this action
  - b. The Catholic church disapproved-too close to Church (St. Patrick's and Cor Unum)
  - c. Three City councilors opposed this action. Ex. 8
8. St. Patrick's Church is more than 500 feet from the premises. Cor Unum is a building where free meals are given out three times a day to children, but does not meet the definition of "church" set in section 16C of chapter 138 of the General Laws.
9. The licensee appealed the Denial of the Board dated December 20, 2010.

### DISCUSSION

A Local Board must state the reasons for its decision whether or not to grant a license application. M.G.L. c. 138, §23; Exotic Restaurants Concept, Inc. v. Boston Licensing Board, Suffolk Superior Court, C.A. No. 07-3287 (Borenstein, J.) 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, (1981) quoting Westborough. Dep't of Pub. Util., 358 Mass. 716, 717-718 (1971). "General findings are



insufficient, and if the licensing board does not make sufficient findings, it remains the ABCC's obligation to articulate the findings of fact, which were the basis of the conclusions it drew, and not merely adopt the findings of the board. Charlesbank Rest. Inc., 12 Mass. App. Ct. at 879. Recitals of testimony do not constitute findings. Johnson's Case, 355 Mass. 782 (1968)." Exotic Restaurants Concept, Inc. v. Boston Licensing Board, Suffolk Superior Court, C.A. No. 07-3287 (Borenstein, J.)

Section 23 of chapter 138 of the General Laws provides, in pertinent part, that "[a]ny license issued under this chapter may, upon application pursuant to section fifteen A, be transferred from one location to another ... with the approval of the licensing authorities." Section 15A requires a specific process for a Board to follow when a church lies within a 500 foot radius of the proposed licensed premises. Under the Liquor Control Act the Board and the applicant have a legal obligation to (1) identify a five hundred (500) feet radius from the licensed premises as measured by 204 C.M.R. 2.11; (2) identify every "church", and every "school" and every "hospital" within that 500 foot radius; (3) give the notice required by M.G.L. c. 138, §15A to every identified "church", "school" and "hospital" within that 500 foot radius; (4) conduct a hearing required by M.G.L. c. 138, §16C to determine whether "the premises are not detrimental to the educational and spiritual activities of said school or church"; (5) upon conclusion of that hearing, make a determination in writing that "the premises are not detrimental to the educational and spiritual activities of said school or church"; and (6) grant the license application and submit it timely to the Commission.

The term "church" as used in §15A is defined as "a church or synagogue building dedicated to divine worship and in regular use for that purpose, but not a chapel occupying a minor portion of a building primarily devoted to other uses." M.G.L. c. 138 §16C, In re: B.A.M.N., LLC, Brockton (ABCC Decision dated June 9, 2008). The Board should review its prior procedures to insure it is complying with M.G.L. c. 138, §§15A and 23, and also M.G.L. c. 138, §16C regarding any application filed.

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 (2004); Ballarin Inc., v. Licensing Board of Boston, 49 Mass. App. Ct. 506 (2000). "Need in the literal sense of the requirement is not what the statute is about. Rather the test includes an assessment of public want and the appropriateness of a liquor license at a particular location." Ballarin 49 Mass. App. Ct. at 311. "Consideration of the number of existing licenses in the area and the views of the inhabitants in the area can be taken into account when making a determination, as well as taking into account a wide range of factors-such as traffic, noise, size, the sort of operation, that carries the license and the reputation of the applicant." Id. "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." Id. at 512.

The local board's broad discretion, however, does not mean that the [local board] can do whatever it pleases whenever it chooses to do so. Donovan v. City of Woburn, 65 Mass. App. Ct. 375, 379 (2006). The local board "may exercise judgment about public



convenience and public good that is very broad, but it is not untrammelled.” Ballarin Inc., 49 Mass. App. Ct. at 511. Instead, “[w]here the factual premises on which [the board] purports to exercise discretion is not supported by the record, its action is arbitrary and capricious and based upon error of law, and cannot stand.” Ruci v. Client’s Sec. Bd., 53 Mass. App. Ct. 737, 740 (2002).

In this case, the Local Board rejected Mr. Beato’s application and went on to cite in three paragraphs their findings. The testimony indicated that the main reason for the disapproval was church opposition. However, all of the parties agree that St. Patrick’s Church is more than 500 feet from the proposed premises and that Cor Unum’s primary function is to serve meals. Therefore, under the pertinent statutory provisions, the location of St. Patrick’s and Cor Unum to the proposed premises cannot lawfully control the result in this case. See M.G.L. c. 138, §16C.

Although there were concerns raised by several people opposed to the license, there was also support for the license, including written responses, which addressed the concerns raised by the individuals and organizations opposed to the license. Exotic Restaurants Concept, Inc. v. Boston Licensing Board, Suffolk Superior Court, C.A. No. 07-3287 (Borenstein, J.). The findings of the Board do not indicate how they evaluated the evidence presented before them and what they found credible or not credible. The Board did not fulfill its statutory obligation when it denied this application without adequate findings based on the facts and grounded in the law. Because the Board did not fulfill its statutory duty, its decision cannot be approved.

### CONCLUSION

The Commission disapproves the action of the Local Board in denying the application to transfer the location of this license. The Commission remands the matter to the Local Board with the recommendation that it grant the application, provided the Licensee Pedro Beato renewed the license for calendar year 2011 in compliance with section 16A of chapter 138. The granted application should be forwarded to the Commission in the usual process for its consideration of approval.

