

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

Deborah B. Goldberg
Treasurer and Receiver General

Kim J. Gainsboro, Esq.
Chairman

DECISION

WESTBOROUGH BEVERAGE CORP. INC.
D/B/A WALMART SUPERCENTER NO. 2336
300 COLONY PLACE
PLYMOUTH, MA 02360
LICENSE#: NEW
HEARD: 08/20/2014

This is an appeal from the action of the Town of Plymouth Licensing Board of Selectmen (the "Local Board" or "Plymouth") in denying the application to transfer a M.G.L. c. 138, §15 license and change of location as filed by Westborough Beverage Corp. Inc. d/b/a Walmart Supercenter No. 2336 (the "Applicant" or "Walmart") to be exercised at 300 Colony Place, Plymouth, MA. The applicant timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission (the "Commission") and a hearing was held on Wednesday, August 20, 2014.

The following documents are in evidence as exhibits:

1. Local Board's Decision 5/7/2014;
2. Walmart's Applications 2/14/2014;
3. Certified Transcript of Local Board's Meeting 4/29/2014;
4. Certified Transcript of Local Board's Meeting 5/6/2014;
5. Adopted Meeting Minutes of Local Board's Meeting 4/29/2014;
6. Adopted Meeting Minutes of Local Board's Meeting 5/6/2014;
7. Excerpt from Video Recording of Local Board's Meeting 4/29/2014;
8. Excerpt from Video Recording of Local Board's Meeting 5/6/2014;
9. Walmart's Petition on Appeal 5/7/2014;
10. Plan of Proposed Licensed Area;
11. Map of Colony Place Shopping Center;
12. Map of Licensed All-Alcohol Package Stores in the Town of Plymouth;
13. Town of Plymouth Zoning Ordinance;
14. Town of Plymouth Zoning Map;
15. Petitions of support for Walmart's Applications, collected 4/1/2014 to 4/31/2014;
16. Petitions of support for Walmart's Applications collected July and August, 2014;
17. The Official Text and Summary of 2006 Ballot Question 1;
18. Zip Code Composition of Petition Signers (Plymouth and Non-Plymouth Residents) in Favor of the Applications;

19. Local Board's Agenda and Meeting Minutes 6/10/2014; and
20. Affidavit of Amanda Nelen.

- A. Memorandum dated 10/7/2007 regarding the Town's liquor license quota;
- B. Local Board's Decision dated 8/23/2006 denying the all alcohol package store application of Westborough Beverages Corp. d/b/a Sam's Club #4909 to be exercised at 500 Colony Place;
- C. Local Board's Decision dated 5/16/2007 denying the all alcohol package store application of Village Vineyards to be exercised at 73 Washington Street;
- D. ABCC Decision dated 7/18/2007 on Village Vineyards' appeal of its denial of §15 application;
- E. Official vote count from the Secretary of the Commonwealth's web site on the 2006 Ballot Question 1;
- F. List of all §15 licenses with approximate driving distances from the proposed location;
- G. Google Map showing existing §15 licenses surrounding the proposed location.

There is one (1) audio recording of this hearing, and five (5) witnesses testified.

The Commission took Administrative Notice of Village Vineyards Inc.'s ("Village Vineyards") Commission Records.

FACTS

1. Plymouth has a population of 56,468 people as determined by the most recent federal census. (Commission Records)
2. The town's population is spread over 105 square miles making Plymouth the largest municipality in the Commonwealth geographically. Historically, Plymouth's growth spread with sparse development in the southern half of the town. As a result, most retail business establishments, including package stores, are concentrated in the northern quadrant of the town. (Exhibit 4)
3. Significant growth in the southern half of the town began some 30 years ago and has gained momentum over the last 10 years with projected considerable commercial growth in that area over the next few decades. These portions cover over two-thirds of the town's area, and are served by less than one quarter of Plymouth's available off-premises all-alcoholic beverages licenses. (Exhibit 4)
4. In November of 2006, Massachusetts held a referendum that would have allowed local licensing authorities to issue up to five licenses for food stores to sell wine. The law defined a "food store" as a retail vendor including a grocery store, supermarket, shop, club outlet or warehouse-type seller, that sells food to consumers to be eaten elsewhere. The referendum failed to pass with almost a two-to-one margin statewide. The Plymouth residents voted against this 12,945 to 7,726. (Exhibits 4, 17)

5. Westborough Beverage Corp. Inc. d/b/a Walmart Supercenter No. 2336 ("Walmart") is a Massachusetts corporation located at 300 Colony Place, Plymouth, MA. (Exhibit 2, Testimony)
6. Colony Place Shopping Center ("Colony Place") is an 865,000 square foot self-contained retail shopping center with several parking lots, and three internal roadways. Colony Place is located off Commerce Way in the Town of Plymouth near U.S. Route 44 and west of Route 3. Colony Place is the largest commercial complex in Plymouth and contains more than 30 retail stores and 10 restaurants. (Testimony, Exhibits 2, 3, 4, 5, 6, 7, 8, 12, B, F, G)
7. Walmart is the "anchor tenant" of Colony Place. Walmart is the only retailer at Colony Place that sells groceries and fresh produce, in addition to a wide variety of other merchandise, such as pharmacy goods, electronics, toys, sporting goods, automotive equipment, clothing, and furniture. (Testimony, Exhibits 2, 3, 4, 5, 6, 7, 8, 9, 10, 11)
8. In 2006, Walmart applied for an all alcoholic beverages license to be used at this location. By written decision dated August 23, 2006, the Local Board denied the request due to a lack of public need in this section of Plymouth. No appeal was taken. (Testimony, Exhibits 2, B)
9. On or about November 13, 2006, Village Vineyards Inc. d/b/a Village Vineyards Fine Wine & Spirits ("Village Vineyards"), located at 144 Colony Place, first applied for an all alcoholic beverages license to be used at this location. The owners of Village Vineyards are Mark Nadeau and Randolph Morgan. Neither had operated a package store or owned a business prior to opening Village Vineyards. (Testimony, Exhibits 3, 4, 5, 6, 7, 8, Commission Records)
10. On January 9, 2007, the Board of Selectmen held a hearing to consider the Village Vineyards application. After hearing and deliberation, the Board held a tie vote, two to two, resulting in the denial of the application. At that time, Chairman Richard Quintal and Selectmen David Malaguti, both of whom voted in opposition, cited the concentration of package stores in the northern section of town and the growth in the central and southern sections of the town, "which growth would inevitably and eventually result in demand for the limited number of such licenses available under state guidelines." (Exhibit 4)
11. Soon thereafter, Village Vineyards re-filed an application requesting an annual all-alcoholic beverages off-premises license at the same location as the previous application. During the hearing, Village Vineyards attempted to demonstrate public need by differentiating itself from the surrounding off-premises all alcoholic beverages licensees. (Exhibit 4; In re: Village Vineyards (ABCC Decision July 18, 2007))
12. There are 10 off-premises licenses located within a five-mile radius of Village Vineyards including Plymouth Liquors, an all alcoholic beverages license located approximately ½ mile from this location. (Exhibit 3)
13. Village Vineyards introduced a business model that proposed to fill a niche market. "Village Vineyards' plans were to "specialize in single malt scotch, special wine, wine baskets and specialty cigars, hand painted glasses and accessories for wine." The staff

would be trained in fine wines and be able to advise the patrons about wine, in addition to hosting wine tastings. In essence, Village Vineyards would fill a niche market.” (Exhibit 4; In re: Village Vineyards (ABCC Decision July 18, 2007))

14. On May 15, 2007, the Board, now reconstituted to a five-member board, held a hearing to consider the second application. This time the Board voted three to two to deny the application with the majority adopting the same reasoning as Chairman Quintal, i.e. the concentration of package stores in the northern section of town. (Exhibit 4)
15. Village Vineyards appealed the Local Board’s decision to the Commission. Upon appeal, the Commission disapproved the decision of the Local Board and found that the license should be granted, as Village Vineyards would be operating a unique, boutique liquor store selling high priced wines and offering wine tastings. (Commission Records, Testimony, Exhibits C, D)
16. The Commission explained that Village Vineyards “is a unique store that will offer consumers special products that are currently not available in most of the existing stores” because the “store would cater to a distinctive customer with an affluent background selling high end wine.” (Exhibit 4; In re: Village Vineyards (ABCC Decision July 18, 2007))
17. As a result, the Board granted the license to Village Vineyards and the Commission approved this granting with the understanding that Village Vineyards would operate its business pursuant to its proposed business model, and offer unique, high-end alcoholic beverages that are unavailable at the existing dispensaries. (Commission Records)
18. Approximately one year after its license was issued; Village Vineyards could not support its business model of selling high priced alcoholic beverages or wines and malt beverages, and began selling alcoholic beverages similar to the other liquor stores in Plymouth. This practice continues until the present. (Testimony, Exhibits 3, 4, 5, 6, 7, 8).
19. Village Vineyards is failing even with the change in its business model. (Testimony, Exhibits 3, 4, 5, 6, 7, 8, 11)
20. The owners of Village Vineyards believe their package store business has not been successful due to a number of factors. They believe their store occupies a challenging location within the Colony Place that provides minimal visibility; the additional portion of the mall was not developed; there was a lack of signage for Village Vineyards at the entrance to the Colony Place; and the economic downturn, all of which contributed to their lack of success. (Testimony, Exhibits 3, 4, 5, 6, 7, 8, 11)
21. On March 14, 2014, Walmart submitted an application (the “Application”) to transfer Village Vineyards all alcoholic beverages license from Village Vineyards, Inc. d/b/a Village Vineyards Fine Wine & Spirits (“Village Vineyards”), located at 144 Colony Place, Plymouth, Massachusetts, to be exercised at Walmart Supercenter #2336, 300 Colony Place, Plymouth, Massachusetts. (Testimony, Exhibits 2, 11)
22. Walmart has operated its business, a 203,091 square foot retail store, at Colony Place since approximately 2005. In its application, Walmart designated a 450 square foot area

for the sale of alcohol, with one register dedicated to alcohol sales. Walmart's employees will be trained and certified in the safe sale of alcohol. (Testimony, Exhibits 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, B)

23. The Local Board held two hearings on the Application. The first hearing took place on April 29, 2014 at 6:00 p.m. at Plymouth Town Hall, and was continued to a second hearing on May 6, 2014, 6:00 p.m. at Plymouth Town Hall (the "Hearings"). (Testimony, Exhibits 3, 4, 5, 6, 7, 8)
24. At the Local Board hearings there were six individuals who spoke in opposition to this application. Three of those individuals are holders of alcoholic beverages licenses in the town of Plymouth, one individual was a Precinct 1 Town Meeting Representative, and two were residents, one of whom works with Pioppi's and associated companies. (Testimony, Exhibits 3, 4, 5, 6, 7, 8)
25. Seven people spoke in support of this application, two of those individuals own Village Vineyards, two are Walmart employees, one is an owner of off-premises licenses in surrounding towns, and two are Plymouth residents. (Testimony, Exhibits 3, 4, 5, 6, 7, 8)
26. Prior to the Local Board Hearings, 1,745 people signed the petitions in support of the transfer of the license to Walmart.¹ Fifty percent of the signatures were from Plymouth residents. (Exhibits 4, 15, 16)
27. Selectman Mahoney voted against the license transfer application. He believed that there was no public need for a license in Colony Place Shopping Center or the surrounding northern part of the Town, and pointed out that the Board had consistently voted as such in the past. He cited the fact Village Vineyards was failing, despite changing its business model, as a concrete example of the lack of public need for a \$15 all alcoholic beverages license in the area. (Exhibits 4, 8)
28. Selectman Provenzano based his opposition to this application on the existing concentration of licenses in the northern area of Plymouth. In the past, licenses have been concentrated in the northern part because the south has only had sparse development since the Town's founding in 1620. However, the southern part of the Town has seen significant growth in the last thirty years. And now, while the developing southern and central portions of the Town cover over two-thirds of the Town's area, they are served by fewer than one quarter of Plymouth's available all-alcoholic beverages package store licenses. Because of the rapid growth in the last several years, the southern part of Plymouth now has a greater public need for package store licenses than the northern part. (Testimony, Exhibit 8)
29. Selectman Provenzano went on to say that his decision was not based upon the proximity of any other particular license to the proposed premises location, but rather on the overall concentration of multiple licenses in the north, which demonstrably cannot support the number of such establishments, as evidenced by the failure of Village Vineyards. He further explained that while the Commission disapproved the Board's prior action in

¹ An additional 3,549 people signed petitions after the Local Board hearings. Forty-two percent of the total number of signatures was from Plymouth residents. (Exhibits 4, 15, 16)

denying Village Vineyards' license, the Commission's rationale for disapproving the Board's actions – that Village Vineyards would serve a niche market as a boutique retailer – was negated by the fact that Walmart would not be a boutique retailer catering to a niche market and would be using a greatly decreased floor area. (Testimony, Exhibit 8)

30. Selectman Brewster also voted against the transfer. In explaining her vote, she highlighted the 2006 referendum where Plymouth voters voted two-to-one to not allow big box stores and grocery stores to sell alcohol, and that she was "loathe to go against what the people of Plymouth very clearly stated that they wanted regarding liquor licenses in big-box stores and grocery stores, which is what Walmart is." (Exhibit 4)
31. At the time of these hearings, the Local Board was comprised of five (5) members. The Local Board voted unanimously (5 to 0) to deny this transfer application. (Testimony, Exhibits. 1, 3, 4, 5, 6)
32. By Decision dated May 7, 2014, the Local Board notified Walmart: "At the conclusion of the hearing, a motion was made to approve the license, resulting in a unanimous 0-5 vote in opposition. Therefore, the license was not granted. The Selectmen in opposition of the license found that a public need for the license does not exist in this section of Plymouth." (Testimony, Exhibit 1)
33. On May 15, 2014, Walmart, pursuant to M.G.L. c. 138 §§ 23 and 67, filed a Petition of Appeal to the Commission. (Testimony, Exhibit 9)
34. On June 10, 2014, the Local Board held a hearing regarding the application of Cumberland Farms for a section 15 wine and malt beverages retail package store license to be exercised at 150-152 Samoset Street. (Testimony, Exhibit 19)
35. On June 10, 2014, the Local Board voted 3 to 1 in favor of granting an off-premises wines and malt beverages license to Cumberland Farms. The Cumberland Farms store is located in downtown Plymouth, approximately one thousand (1,000) feet away from an existing package store, and approximately 2.5 miles distance from the location of Walmart. (Testimony, Exhibits 12, 19, F, G)

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 Beacon Hill Civic Assn. v. Ristorante Toscano, Inc., 422 Mass. 318, 321 (1996). Section 23 of c. 138 provides, in pertinent part: "Any license under this chapter held by an individual, partnership, or corporation may be transferred to any individual, partnership or corporation qualified to receive such a license in the first instance, if, in the opinion of the licensing authorities, such transfer is in the public interest." Section 23 of c. 138 further provides, in pertinent part: "[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.”

The Appeals Court has discussed the statutory standard to grant a license and the factors that a licensing authority may properly consider in its decision whether to grant or deny a license application. In Ballarin Inc. v. Licensing Board of Boston, 49 Mass. App. Ct. 506 (2000), the Appeals Court held that:

The statute authorizing the issuance of liquor licenses speaks in terms of serving “the public need and in such a manner as to protect the common good and, to that end, to provide, in the opinion of the licensing authorities, an adequate number of places at which the public may obtain, in the manner and for the kind of use indicated, the different sorts of beverages for the sale of which provision is made.”

M.G.L. c. 138, § 23, as amended by St. 1965, c. 399.

The Appeals Court has held that a local board may deny a license even if the facts show that a license could be lawfully granted. Donovan v. City of Woburn, 65 Mass. App. Ct. 375, 379. A local board’s determination to deny an application based on the lack of public need is not contrary to law where the local board considers the need for the particular business that the applicant sought to run and the local board applies its analysis to the applicant’s proposed business and to the location of the proposed business. Donovan v. City of Woburn, 65 Mass. App. Ct. 375, 380 (2004).

In making its discretionary determination, a licensing authority may take into account a wide range of factors including “the number of existing licenses in the area and the views of the inhabitants in the area . . . 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.” Ballarin, 49 Mass. App. Ct. at 511, citing Connolly v. Alcoholic Beverages Control Commission, 334 Mass. at 617-618; Great Atlantic & Pacific Tea Co. v. Board of License Commrs. of Springfield, 387 Mass. 833, 837 (1983); Beacon Hill Civic Assn. v. Ristorante Toscano, Inc., 422 Mass. at 322 n. 4; Hub Nautical Supply Co. v. Alcoholic Beverages Control Commission, 11 Mass. App. Ct. 770, 772-774 (1981). Ballarin Inc. v. Licensing Board of Boston, 49 Mass. App. Ct. 506, 510-512 (2000). The Local Board “may exercise judgment about public convenience and public good that is very broad, but it is not untrammelled.” Ballarin, supra at 511. Instead, “[w]here the factual premise 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). A Board must state the reasons for its decision whether or not to issue the liquor license. 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 Commission, 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 Commission’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.).

In reviewing the decision of a denial by the 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 Commissioners of Springfield, 387 Mass. 833, 837, 838 (1983); accord Ballarin, Inc. v. Licensing Board of Boston, 49 Mass. App. Ct. 506, 512 (2000) (when reviewing the Local Board's authority, court does not assess the evidence but rather "examine the record for errors of law or abuse of discretion that add up to arbitrary and capricious decision-making").

Upon examination of the record of the Local Board proceedings, the Commission finds that the Local Board fulfilled its responsibility regarding this application. It held hearings over the course of two days, and it listened to statements made in support of, and in opposition to, the license transfer, and reviewed a petition filed in support of the transfer. It deliberated over the information that was before it, and made particularized and specific findings based upon the information they were provided. Furthermore, the factors that the Local Board considered and used to support its decision were based on those cited in Ballarin. As such, the Local Board's decision was not arbitrary and capricious.

The Local Board took into consideration the fact that the town does not want an operation the size of Walmart to sell alcoholic beverages in their community. It considered that in 2006, Plymouth residents had voted 12,945 to 7,726, to prohibit big boxes stores from selling wine. This view was bolstered by the statements of many Plymouth residents at the hearings. The Local Board could properly consider that a majority of Plymouth voters do not want big box stores in Plymouth selling alcoholic beverages. It is well-settled that the test for public need includes an assessment of public want. Ballarin, 49 Mass. App. Ct. at 511; Donovan, 65 Mass. App. Ct. at 381, and testimony and evidence from local residents on the question of "public need" and "common good" may be accepted by a Local Board. Tiger, Inc. v. Hargadon, No. CIV.A. 97-01367, 1998 WL 156990 at *3 (Mass. Super. Apr. 2, 1998) ("Testimony at the hearing was based on the personal knowledge of local residents who are familiar with the area. Although this is not scientific evidence, it fits within the substantial evidence standard").

The Local Board also considered that Village Vineyards was unable to make a success of their business, thereby indicating a lack of public need. The conclusion that there is no public need for this license is supported by the fact that the existing licensee in this location was unable to succeed despite changing its product line from selling fine wines to selling the same types of products as the other license holders in the area. This type of product line, which has failed to sell in the current licensee's location in the same shopping plaza, is the same as what Walmart proposes to sell. Furthermore, Plymouth is already one \$15 all alcoholic beverages license in excess of its quota. The Appeals Court has held that a Local Board may deny a license -- even if the facts show that a license could be lawfully granted -- and can consider the appropriateness of a liquor license at a particular location and the proposed type of business to be run at that location. Ballarin, 49 Mass. App. Ct. at 511; Donovan, 65 Mass. App. Ct. at 381.

Furthermore, the Local Board did not act arbitrarily and capriciously as it decided the outcome of this application consistently with its prior decisions when it denied Village Vineyards' original application and Walmart's prior application on grounds that there was no public need. The Local Board took into consideration all of the foregoing factors to determine there is no public need in this area and appropriately denied the transfer application.

Walmart urges the Commission to look beyond what was before the Board when it made its decision and find that the Board's actions were arbitrary and capricious because the Board issued a wine and malt beverages license to Cumberland Farms one month later, located only 1,000 feet away from another package store and two and a half miles away from Walmart. In support of this argument, Walmart cites a previous Commission decision, In re: Price Chopper Operating Co. of Mass. (ABCC Decision Jan. 8, 2014). The Commission is ordinarily limited to reviewing the Local Board's decision for an abuse of discretion and for arbitrary and capricious action. Ballarin, 49 Mass. App. Ct. at 512 (when reviewing the Local Board'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"); Donovan, 65 Mass. App. Ct. at 379 (review is limited "to determining whether the decision was arbitrary and capricious and whether the [licensing authority] made an error of law"; "[w]here the factual premise on which [the licensing authority] purports to exercise discretion is not supported by the record, its action is arbitrary and capricious and based upon an error of law"). However, even when looking beyond the record that was before the Local Board, Walmart's argument does not influence the Commission's conclusion that the Board's action was proper.

As an initial matter, there is nothing in the record that indicates the Local Board knew of Cumberland Farms' application at the time of its ruling. In any event, the Local Board's actions are readily distinguishable from Price Chopper. In Price Chopper, the Local Board denied the transfer of a §15 all alcoholic beverages license to Price Chopper finding no public need, while two weeks later it approved the change of location of another §15 all alcoholic beverages license to a premises only half a mile from Price Chopper and less than a mile from other §15 all alcoholic beverages licensees, finding a public need existed. The Local Board, when confronted with this disparity in its rulings, attempted to clarify its position by explaining that the licensee permitted to change locations served a niche in the marketplace, while Price Chopper did not. The Commission, however, held that the Local Board had failed to adequately explain their seemingly disparate and contradictory rulings with support from the record, as the other licensee offered no unique services compared to other licensees in the area.

Here, on the other hand, from what can be gleaned from the hearing before the Commission (and not before the Local Board) Cumberland Farms was not seeking the same type of license that Walmart was seeking to acquire, but rather applied for and was granted a §15 wines and malt beverages license. Plymouth also had not reached its quota in issuing §15 wines and malt beverages licenses and had instead only issued three out of twelve potential §15 wines and malt beverages licenses. Finally, Cumberland Farms is not a big box store, which the voters of Plymouth had consistently objected to both by referendum in 2006 and at the hearings. Therefore, as opposed to Price Chopper, there were not two similarly situated applicants with disparate outcomes and Price Chopper is inapposite.

Instead, the Commission is steered by its decision in Packaging Center, Inc. d/b/a Stop & Shop Supermarket (ABCC Decision Aug. 12, 2013). In Stop & Shop, the Local Board properly

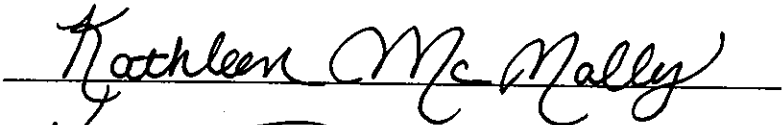
denied the application of Stop & Shop for a \$15 all alcoholic beverages license. In its reasoning, the Local Board explained that the town did not want an operation the size of Stop & Shop to sell alcoholic beverages in their community, and that it was out of line with the town's business community being comprised of mostly small businesses, which has been successful there. Furthermore, this decision was bolstered by the view of the town's residents both at the hearing and at the election booth. Here, too, the voters have overwhelmingly rejected the idea of a big box store selling alcohol. Therefore, the Commission finds that the decision of the Local Board is supported by the record, was not based on an error of law, and thus is not arbitrary and capricious.

CONCLUSION


Based on the evidence, the Alcoholic Beverages Control Commission **APPROVES** the action of the Local Board in denying the M.G.L. c. 138, §15 application of Westborough Beverage Corp. Inc. d/b/a Walmart Supercenter No. 2336.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kathleen McNally, Commissioner



Kim S. Gainsboro, Chairman



Dated: April 16, 2015

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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