

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

**TIGER ROSE GROUP, LLC,
663 HANCOCK STREET
QUINCY, MA 02170
LICENSE#: NEW
HEARD: 01/12/16**

This is an appeal of the action of the City of Quincy Board of License Commissioners (the "Local Board" or "Quincy") for denying the application to transfer a M.G.L. c. 138, §12 all alcoholic beverages restaurant license to Tiger Rose Group, LLC ("Applicant" or "Tiger Rose") to be exercised at 663 Hancock Street, Quincy, Massachusetts. The Applicant timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission (the "Commission"), and a hearing was held on Tuesday, January 12, 2016.

The following documents are in evidence as exhibits:

1. Decision of City of Quincy, Board of License Commissioners, dated 10/09/2015;
2. Decision of City of Quincy, Zoning Board of Appeals, dated 08/20/2014;
3. Transcript of the hearing before City of Quincy, Zoning Board of Appeals, dated 08/20/2014;
4. Floor Plan submitted to the City of Quincy, Board of License Commissioners;
5. Photos of Fairy Café, Inc., 14 – 16 Brook Street, Quincy, MA 02170;
6. Photos of Koi Restaurant, 21 Beale Street, Quincy, MA 02170;
7. Photos of H&L Restaurant, d/b/a Crystal Jade, 708 Hancock Street, Quincy, MA 02170;
8. Agenda Item # 13 of City of Quincy, Board of License Commissioners' Agenda, dated 06/09/2015 at 4:00 p.m.;
9. Agenda Item #9, City of Quincy, Board of License Commissioners' Agenda, dated 06/24/2014 at 4:00 p.m.;
10. Agenda Item # 1, City of Quincy, Board of License Commissioners' Agenda, dated 01/14/2014 at 4:00 p.m.;
11. Map of City of Quincy with labelling of numbers;
12. Map of City of Quincy without labelling;
13. Land Court Decision, Norfolk County, Judge Keith Long, dated 01/18/2011;
14. Floor Plan submitted to Zoning Board of Appeals;
15. Traffic Study of Wollaston section of Quincy, MA conducted by McMahon Associates,

dated 07/10/2009;

16. Alcoholic Beverages Control Commission Form 43 approval for Fairy Café Inc. for the transfer of a section 12 wine and malt beverage restaurant license, 14 – 16 Brook Street, Quincy, MA dated 06/09/2015;
17. Alcoholic Beverages Control Commission Form 43 approval for H&L Restaurant, Inc. d/b/a Crystal Jade for the transfer of a section 12 all alcoholic beverages restaurant license, 706-708 Hancock Street, Quincy, MA dated 01/14/2014; and
18. Alcoholic Beverages Control Commission Form 43 approval for Summer Blossom, Inc. d/b/a Koi for the new license application for an all alcoholic beverages restaurant license at 21 Beale Street, Quincy, MA dated 06/24/2014.

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

FINDING OF FACTS

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

1. Tiger Rose Group, LLC (“Tiger Rose”) applied to transfer the location and the all alcoholic beverages license from Hong Kong Eatery, located at 1515 Hancock Street, to a new location at 663 Hancock Street, located within the Wollaston Business District of Quincy. (Testimony, Exhibits 1, 8)
2. 663 Hancock Street, Quincy is on a main corner of the Wollaston Business District, which is a densely populated area that experiences traffic congestion. (Testimony)
3. Tiger Rose Group, LLC proposed a 98 (ninety-eight)¹ seat Japanese hot pot style restaurant, with operating hours of 11:00 a.m. to 1:00 a.m. A hot pot restaurant has heated tables where patrons cook food in pots located at each table. (Testimony, Exhibit 8)
4. Ms. Judy Chen has 25 years of experience in the restaurant and alcohol business. She is the proposed license manager for Tiger Rose. (Testimony, Exhibit 8)
5. Ms. Chen is also the license manager of Jet 8 Group, LLC d/b/a The China Restaurant, which holds an all alcoholic beverages license and is located at 681 Hancock Street in Quincy.² (Testimony)
6. China Restaurant is a 76 seat restaurant located in the same building as 663 Hancock Street. Ms. Chen and her family have owned and operated the China Restaurant since 2014 and have owned the building at 663-681 Hancock Street, Quincy, since 2006. (Testimony)
7. The Chen family also owns Asia Restaurant, Inc. d/b/a The Golden China Restaurant in Canton, which has operated with an all alcoholic beverages license since 1978. Ms. Chen has been the license manager at this establishment since 1992. (Testimony)
8. 663 Hancock Street is located within the Wollaston Business District of Quincy. 1515 Hancock Street is located in the Downtown Business District and is approximately one (1) mile away from the proposed location. (Testimony, Exhibits 8, 11, 12, Joint Pre- Hearing Memorandum)

¹ Ms. Chen testified during the Commission hearing that Tiger Rose has 95 seats, however, 98 seats is the accurate number. (Testimony, Exhibits 4, 14)

² This license was granted pursuant to a land court decision in January of 2011. (Exhibit 13).

9. A hearing was held before the Quincy Zoning Board of Appeals ("ZBA") on August 5, 2014. Tiger Rose applied to the ZBA "for a finding for an increase of existing non-conforming parking in violation of Title 17 as amended, Chapter 3.4.2 (non-conforming uses) on the premises numbered 663 Hancock Street, Quincy." The building was previously utilized as a retail bridal/dress shop and hair salon but was vacant when Tiger Rose appeared before the ZBA. Tiger Rose also applied to change the building use to a 98 seat restaurant. (Testimony, Exhibits 2, 3, 14)
10. At the ZBA hearing it was represented that Tiger Rose would not have a liquor license at this location. (Testimony, Exhibit 2, Exhibit 3: page 9, lines 1-4.)
11. A traffic study from July of 2009, which was prepared for Jet 8 Group, LLC d/b/a The China Restaurant Group application, was submitted by Tiger Rose at its 2014 ZBA hearing. (Testimony, Exhibits 2, 3, 13)
12. The ZBA made a finding on August 20, 2014, that a proposed restaurant would not be substantially more detrimental to the neighborhood. (Testimony, Exhibit 2)
13. Hearings were held by the Local Licensing Board on June 9, 2015, September 8, 2015, and October 6, 2015. (Exhibits 1, 8)
14. The Local Licensing Board of Commissioners in Quincy is comprised of the City Clerk, Mr. Joseph Shea; the Head of Inspectional Services Division (ISD), Mr. Jay Duca; the Quincy Police Chief, Mr. Paul Keenan; the Fire Chief, Mr. Joseph Barron; and the Public Health Commissioner, Mr. Andrew Sheele. (Testimony, Exhibits 1, 8)
15. At the Local Licensing Board hearing there was no testimony in support, nor in opposition, to Tiger Rose's application. (Testimony, Exhibit 8)
16. Police Chief Keenan expressed concerns regarding parking and noted that there is no parking, the area is congested, and there is no room for another 45 to 50 cars. (Exhibit 8)
17. ISD Commissioner Duca, who sat on the ZBA hearing and the Local Board hearing, was concerned about the fact that Tiger Rose represented at the ZBA hearing that there would be no liquor license. He was troubled because the plan for Tiger Rose's premises doubled in size from what was originally presented to the ZBA and what was subsequently presented to the Local Licensing Board.³ (Testimony, Exhibit 14)
18. The ZBA decision was based upon there being no liquor license at this location, and the Local Licensing Board relied upon this factor when deciding Tiger Rose's liquor license application. (Testimony, Exhibits 2, 3)
19. ISD Commissioner Duca, like Police Chief Keenan, was concerned with the parking issues at this location. The parking analysis submitted by Tiger Rose for this application was the July 10, 2009, parking analysis used for the Jet 8 Group's application, which is outdated

³ Tiger Rose originally proposed a floor plan to the Local Licensing Board which was twice/double the square footage from that presented to the ZBA. Tiger Rose proposed the basement level space strictly for the use for food preparation, which doubled the floor size of the premises. However, subsequent to the Local Licensing Board hearing, Tiger Rose withdrew the larger proposal/floor plan and did not include the basement level. (Testimony, Exhibits 4, 8)

for use with Tiger Rose's application. Commissioner Duca was opposed to this application because of inadequate parking. (Testimony, Exhibits 8, 15)

20. Quincy requires one (1) parking space for every four (4) seats in a restaurant. Tiger Rose proposes a 98 (ninety-eight) seat restaurant, therefore it would require 25 (twenty-five) parking spaces. (Testimony, Exhibits 4, 14)
21. There are two parking lots, an MBTA parking lot and the Chapman Street parking lot, located near Tiger Rose. There are approximately 11 (eleven) on-street parking spaces within a one block radius of Tiger Rose's proposed location.⁴ (Testimony)
22. There were no additional traffic studies submitted during the Local Licensing Board hearing. (Testimony, Exhibit 8)
23. On October 9, 2015, the Local Licensing Board denied (3 to 2 vote opposed) the request to transfer the location and all alcoholic beverages § 12 restaurant license from Hong Kong Eatery at 1515 Hancock Street to Tiger Rose at 663 Hancock Street. (Testimony, Exhibit 1)
24. The Local Board denied Tiger Rose's application based on several concerns: (1) a lack of adequate parking to serve the premises, (2) inconsistency between this application and the application submitted to the ZBA on behalf of the same parties in August of 2014; and (3) the explicit representation to the ZBA at the 2014 hearing that there would be no liquor license at this premises. (Exhibit 1)
25. The Local Board determined "that a liquor license adds to the time that a patron spends at a premises – which means parking in the district, which is already inadequate, will be further taxed by the addition of this establishment. The Wollaston Business District is now very densely populated with a multitude of businesses, many of which are open into the early evening. Adding a 90 (ninety)⁵ seat restaurant with a liquor license will only further exacerbate the congestion that now exists. The Board therefore concluded that a transfer of this license to this site – located on the main corner of this business district – will not be in the public interest." (Exhibit 1)
26. The City of Quincy has approved the following alcohol licenses:
 - a. January 14, 2014: H&L Restaurant (Crystal Jade) ("Crystal Jade") at 708 Hancock Street, Quincy: The transfer of an existing all alcoholic beverages restaurant license from Bel-Pro, Inc. d/b/a Alumni Café, at the same location. (Exhibits 7, 10, 17)
 - b. June 24, 2014: Summer Blossom, Inc. d/b/a Koi Restaurant ("Summer Blossom") at 21 Beale Street, Quincy: The granting of a new all alcoholic beverages restaurant license, with 43 seats, hours of operation: 11:00 a.m. to 11:00 p.m. (Exhibits 6, 9, 18)
 - c. June 9, 2015: Fairy Café Inc. ("Fairy Café") at 14 – 16 Brook Street, Quincy: The transfer of location and wine and malt beverages restaurant license from Giang's

⁴ City of Quincy Attorney Timmons stipulated to approximately 110 existing public parking spaces in the vicinity of Tiger Rose. (Testimony, Commission Hearing)

⁵ Tiger Rose's application is for a 98 seat restaurant, not 90 seats as the Local Licensing Board decision states. (Testimony, Exhibits 4, 14)

Family Inc. at 20-22 Cottage Street, Quincy, with 38 seats, hours of operation: 10:00 a.m. to 11:00 p.m. (Exhibits 5, 8,16)

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). Local licensing authorities are recognized as having expertise regarding the problems affecting the regulation of alcoholic beverages. Great Atl. & Pac. Tea Co., Inc. v. Bd. of License Comm'rs of Springfield, 387 Mass. 833, 837 (1983). The Local Board, in its wide discretion, denied the Tiger Rose's application for the transfer of location and § 12 all alcoholic beverages license, the appeal of which is now before the Commission.

The procedure for the issuance of licenses to sell alcoholic beverages, M.G.L. c.138, § 23, provides in pertinent part:

"[t]he provisions for the issue of licenses and permits [under c. 138] imply no intention to create rights generally for persons to engage or continue in the transaction of the business authorized by the licenses or permits respectively, but are enacted with a view only to serve 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."

A local licensing authority exercises very broad discretion about public convenience and public need, with respect to whether to grant a license to sell alcoholic beverages. Donovan v. City of Woburn, 65 Mass. App. Ct. 375, 379 (2006); Ballarin, Inc. v. Licensing Bd. of Boston, 49 Mass. App. Ct. 506 (2000). In exercising its discretionary powers, 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 Bd., 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 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.

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 Atl. & Pac. Tea Co., Inc., 387 Mass. at 837, 838; see Ballarin, Inc. v. Boston Licensing Bd., 49 Mass. App. Ct. 506 (2000).

The Appeals Court has considered public need at length and determined that it should not be interpreted literally. The Court explains that “[n]eed 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, Inc., 49 Mass. App. Ct. at 511 - 512. (Italics supplied.). The Local Licensing Board determined that there was no public need to allow the transfer of location and a § 12 all alcoholic beverages license to Tiger Rose located in the densely populated Wollaston Business District of Quincy.

Tiger Rose requests that the Commission review three (3) alcohol licenses recently granted in the vicinity of Tiger Rose. Tiger Rose contends that the Local Board’s action in granting three new licenses, while denying Tiger Rose’s application, constitutes an arbitrary and capricious decision by the Local Board.

The Commission finds, and the record reflects, that only two of these three licenses granted are located in the Wollaston Business District. (Exhibits 11, 12)

The H&L Restaurant (Crystal Jade) located at 708 Hancock Street, is in the Wollaston Business District, and was granted in January 14, 2014. However, H&L (Crystal Jade) Restaurant was an existing license at the same location that was transferred from Bel-Pro, Inc. d/b/a Alumni Café. The Commission determines that C&J Restaurant was existing, and not a new, additional license granted in the Wollaston Business District. (Exhibits 7, 10, 11, 12, 17)

The Fairy Café had its Licensing Board hearing at the same time Tiger Rose was heard, and its application was granted on June 9, 2015. The Commission finds that Fairy Café’s license is not located within the Wollaston Business District. Rather, it is located some distance away, in another section of Quincy, on the other side of Newport Avenue. (Exhibits 5, 8, 11, 12, 16)

Summer Blossom, Inc. d/b/a Koi Restaurant at 21 Beale Street, Quincy is located in the Wollaston Business District. The Commission finds that Summer Blossom was granted in June of 2014, as a new license. However, the Commission does not find the Local Board’s granting of Summer Blossom’s license, and the denial of Tiger Rose’s application, to be arbitrary and capricious. The Commission finds that Summer Blossom was granted in June of 2014, one year prior to Tiger Rose’s first hearing before the Local Board, in June of 2015. Summer Blossom’s license had been issued approximately one year prior to Tiger Rose initially appeared before the Local Board for its first hearing. (Exhibits 6, 9, 11, 12, 18)

Tiger Rose further claims that it did not make an explicit representation to the ZBA that there would be no alcohol license at this premise. Upon review of the ZBA transcript, in conjunction with the ZBA decision and ISD Commissioner Duca’s testimony, the Commission is convinced that Tiger Rose’s ZBA proposal stated that there would be no liquor license at this location. (Exhibits 2, 3)

Furthermore, Tiger Rose asserts that there is adequate parking for the issuance of an alcohol license, and there was no testimony before the Local Board regarding traffic and parking congestion at or near its premises. The Commission finds that there was no additional traffic study submitted at the Licensing Board hearing, and an outdated traffic study from July of 2009 was submitted to the ZBA. In addition, the Police Chief and the ISD Commissioner expressed concerns about the lack of parking in this location. (Testimony, Exhibit 8)

Tiger Rose challenges the decision of the Local Board as being biased against the applicant/Chen Family because the Jet 8 Group, LLC d/b/a The China Restaurant, which license is owned by the Chen Family and located in the same building as Tiger Rose, was only granted pursuant to litigation initiated by the Chen family against the City of Quincy. (Exhibit 13) Tiger Rose claims that the City of Quincy retains animus against the Chen family due to the previous litigation, and this is the genuine reason for the denial of Tiger Rose's application. The Commission conducted a thorough review of the all of the evidence submitted and the complete record of these proceedings. The Commission finds unequivocally that there is no basis and no evidence indicating or demonstrating any bias, animus, or prejudice exhibited by the Local Board toward the Chen family in this matter.

The Board of License Commissioners denied Tiger Rose's request for a license based on its determination that the location for the prospective license is in the Wollaston Business District, which is a very densely populated area with a multitude of businesses, and that parking in this area of Quincy is inadequate. The Local Board was also troubled by the inconsistency between this application and that which was presented to the ZBA explicitly representing that there would be no liquor license at this premises.

The Local Board concluded that the addition of a 90 (ninety)⁶ seat restaurant with a liquor license would only further exacerbate the congestion that now exists. The Board therefore concluded that a transfer of the license to this site – located on the main corner of the Wollaston Business District – will not be in the public interest.

A local board may deny a license even if the facts show that a license could be lawfully granted. Donovan, 65 Mass. App. Ct. at 379. Upon review of the record of the Local Board proceedings in this matter, the Commission finds that the Local Board fulfilled its responsibility regarding this application. The Local Board denied Tiger Rose's application due to inadequate parking on the main corner of an extremely congested business district.

If a local authority's decision is supported by the evidence and based on "logical analysis," it is not arbitrary and capricious and must be affirmed. Great Atl. & Pac. Tea Co., Inc. v. Bd. of License Comm'rs of Springfield, 387 Mass. 833, 839-840 (1983); Town of Middleton v. Alcoholic Beverages Control Comm'n, 64 Mass. App. Ct. 1108 (2005). The Local Board's decision was based on evidence presented during the course of the public hearing. The Local Board's reliance on these factors was reasonable and appropriate pursuant to the holding in Ballarin, supra and Donovan. Therefore, the Commission finds that the decision of the Local Board is supported by the record, was not based upon an error of law, and thus, was not arbitrary and capricious.

⁶ Tiger Rose's application is for a 98 seat restaurant, not 90 seats, as the Local Licensing Board decision states. (Exhibits 4, 14)

CONCLUSION

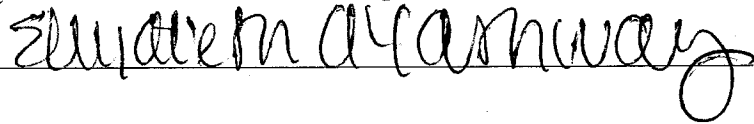
Based on the evidence presented at the hearing, the Commission **APPROVES** the action of the Board of License Commissioners of the City of Quincy in denying the transfer of location and the section 12 all alcoholic beverages license application to Tiger Rose, LLC.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kathleen McNally, Commissioner



Elizabeth Lashway, Commissioner



Dated: July 13, 2016

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: Jack Milgram, Esq., via facsimile 617-227-3797
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Local Board
Frederick G. Mahony, Chief Investigator
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