

*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**

**VERC ENTERPRISES, INC.**  
**93 MAZZEO DRIVE**  
**RANDOLPH, MA 02368-3401**  
**LICENSE#: NEW**  
**HEARD: 05/07/2014**

This is an appeal of the action of the Town of Randolph, Office of the Town Council (the "Local Board") in denying the M.G.L. chapter 138, §15 wines and malt beverages package store license application of Verc Enterprises, Inc. (the "Applicant" or "Verc"). On July 8, 2013, the Local Board held a hearing that resulted in a denial of Verc's application. The written denial was issued on August 1, 2013. The Applicant timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission (the "Commission") and a hearing was held on Wednesday, May 7, 2014.

The following documents are in evidence as exhibits:

1. Decision of Local Board dated August 1, 2013;
2. Google Earth Map of Area;
3. Floor Plan of Licensed Premises;
4. Beer Cooler Layout of Premise;
5. Letter from Randolph Police Department, dated June 7, 2013;
6. Letter from Randolph Fire Department, dated June 6, 2013;
7. Letter from Randolph Building Department, dated June 7, 2013;
8. Letter from Randolph Board of Health dated May 31, 2013;
9. Letter from May School Center dated April 30, 2014;
10. Letter from Office of Labor and Work Force Development, dated April 29, 2014;
11. Letter from Commissioner of Probation, dated January 30, 2014;
12. Citations from the Massachusetts Legislature;
13. Minutes of Meeting with Randolph Council on December 2, 2013 and December 16, 2013 concerning Ocean State Job Lot application;
14. D.V.D. of Randolph Council Meeting, dated July 8, 2013;
15. Transcript of Hearing held on July 8, 2013;
16. List of Licensed Premises in Randolph;
- 16A. Oversize Map of License Premise locations in Randolph;
17. Minutes of Meeting held on July 8, 2013.

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

## FACTS

1. Verc Enterprises, Inc. (the "Applicant" or "Verc") is a Massachusetts corporation which applied to the Local Board for a section 15 wines and malt beverages package store license, to be exercised at 93 Mazzeo Drive, Randolph. (Testimony, Exhibits 15, 17)
2. Verc operates a Mobil Gas Station and convenience store at this location. (Testimony, Exhibits 15, 17)
3. A Public hearing on Verc's application was held on July 8, 2013 before the Local Board. (Testimony, Exhibits 15, 17)
4. The Building Commissioner, the Board of Health, the Police Department, and the Fire Department each submitted letters to the Local Board indicating that each agency was not opposed to the granting of this license. (Testimony, Exhibits 5, 6, 7, 8, 15, 17)
5. One Randolph resident opposed Verc's application at the Local Board hearing, stating that it does not serve a public need in this area, and it is located close to a highway. (Testimony, Exhibit 17)
6. Verc owns and operates 24 gas stations and convenience stores throughout Massachusetts and New Hampshire. (Testimony)
7. In Massachusetts, Verc holds three (3) section 15 wine and malt beverages package store licenses at its gas station locations in Lynnfield, Pembroke, and Plymouth. (Testimony, Exhibits 15, 17)
8. In New Hampshire, Verc holds two (2) package store licenses at its gas stations in Nashua and Manchester. (Testimony, Exhibits 15, 17)
9. Verc has owned and operated these liquor licenses for approximately seven years and has never had a license premise violation at any of its locations in Massachusetts or New Hampshire. (Testimony, Exhibits 15, 17)
- ~~10. Verc employs 230 individuals, and more than twenty percent (20%) of its workforce is comprised of individuals with intellectual and developmental disabilities. At the Randolph location, there are two employees hired with developmental disabilities. (Testimony, Exhibits 15, 17)~~
11. Each of the employees who work at Verc's gas stations holding liquor licenses are TIPS trained and certified. (Testimony, Exhibits 15, 17)
12. The Local Board expressed its concerns with Verc selling single cans/bottles of beer, and the storage and theft of wine. The Board expressed its concern about the sale of alcohol at this location due to its proximity to the highway. (Testimony, Exhibits 15, 17)
13. Verc communicated to the Local Board that they would not sell warm beer, or single beers. Verc also offered not to sell any wine products, and to limit its sales strictly to cold beer. (Testimony, Exhibits 15, 17)
14. The Local Board voted to deny Verc's application by a vote of 5 to 3. (Testimony, Exhibits 1, 15, 17)
15. The written decision issued by the Local Board on August 1, 2013 did not give any specific subsidiary findings or a statement of reasons for the denial. (Testimony, Exhibit 1)

16. Mr. James Burgess, a member of the Local Board, testified before the Commission that the applicant did not show that there was a public need for a package store at this location. (Testimony)
17. However, in December of 2013 the Local Board granted a section 15 wines and malt beverages package store license to Ocean State Job Lot at 100 Mazzeo Drive, Randolph. Ocean State Job Lot is located several hundred feet from Verc's location at 93 Mazzeo Drive in Randolph. (Testimony, Exhibit 13, 15, 17)
18. Ocean State Job Lot is substantially larger than Verc's convenience store located at 93 Mazzeo Drive, Randolph. (Testimony, Exhibit 13, 15, 17)
19. No residents of Randolph testified in favor of a license at Ocean State Job Lot. (Exhibit 13)
20. Mr. Burgess testified before the Commission that the Local Board granted the section 15 package store license to Ocean State Job Lot because it was going to sell Ocean State Job Lot off-label warm alcoholic beverages products. (Testimony, Exhibit 13)
21. At the time of the Local Board hearing Ocean State Job Lot and its license manager had no prior experience in the package store or alcoholic beverages business. (Exhibit 13)
22. At the time of the Verc hearing, the Town of Randolph had a quota of 7 wines and malt beverages section 15 package store licenses, and five (5) of these section 15 licenses were available. (Testimony)
23. One package store license was issued prior to the Verc application hearing. One license was issued to Ocean State Job Lot after the Verc application hearing. (Testimony)
24. At the time of the Commission hearing, four (4) section 15 wines and malt beverages package store licenses were available in the Town of Randolph. (Testimony)

### DISCUSSION

The statutory language is clear that there is no right to a liquor license of the type specified in M.G.L. c. 138, §15. 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." Id. 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. Neither the 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. See 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, 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).

This appeal involves the denial of an application for a M.G.L. c. 138, section 15, retail package store wines and malt beverages license. The Applicant, Verc Enterprises, Inc. argues that the addition of a wine and malt beverages package store license to its Randolph location would be a great convenience to its customers and would serve the public interest as it does in its other five locations holding licenses. It is also Verc's position that the Local Board did not provide an adequate statement of reasons or any particularized findings for the denial of the license.

The Local Board argues that there was not a public need for the proposed license and appropriately exercised its statutory discretion to deny the license. The Local Board further argues that during the Board's hearing, it cited several grounds upon which the decision was based that Verc did not meet a public need for a package store license at this location. The Local Board noted the location of other licensed premises in the area and that the demand for the sale of alcoholic beverages in that area of Randolph was adequately served, especially in relation to the local population.

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 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. 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 this case, the Local Board rejected Verc's application. Although legally required to do so, the Local Board did not make any subsidiary findings. The Local Board does not argue that the "Ballarin factors" it is required to consider in making its determination about whether it should grant or deny an alcoholic beverages license were a factor in its decision. The minutes of both public hearings before the Local Board do not reflect a discussion of the Ballarin factors that are appropriately used in determining public need in its denial of this application. Ballarin, Inc. v. Licensing Board of Boston, 49 Mass.App.Ct. 506 (2000). The Commission finds that the Local Board did meet its burden as it did not articulate the reasons for the denial in its decision.

The Commission was presented with the argument that the Local Board considered that the "wine and malt sales at this location and its proximity near a highway to be troubling." It is unclear how the Local Board came to this conclusion. Verc, pursuant to and in response to the "proximity to the highway" concerns of the Local Board, agreed not to sell single bottle or cans of beer. Furthermore, within an extremely brief period of time after denying Verc's application, the Local Board granted a section 15 package store license to Ocean State Job Lot in the same location (several hundred feet apart in distance) with Ocean State Job Lot having the same proximity to the highway as Verc.

The issue for the Commission to determine becomes why the sale of malt and wine at Verc's location does not meet the public need standard. The Local Board of Randolph denied this application and noted

the location of other licensed premises in the area, and that the demand for the sale of alcoholic beverages in that area of Randolph was adequately served, especially in relation to the local population. However, an extremely brief period of time thereafter, issued the exact license to Ocean State Job Lot, which is located merely several hundred feet from Verc.

The Commission heard testimony that Verc owns five other package store licenses in Massachusetts and New Hampshire, and for the past seven years has operated them with an exemplary record, and has never been cited, nor found in violation of, any liquor laws at any of its five locations. A significant percentage of Verc's employees are developmentally disabled, and Verc has received many letters of commendation for this practice.

The evidence before the Commission indicated that Ocean State Job Lot had (in December of 2013) no history or any experience in the sale of alcoholic beverages and the operation of package stores when the Local Board granted its license application. Whereas Verc possessed an exemplary history of operation in all five of its licensed package stores in two states.

The Commission finds the Local Board's decision to be arbitrary and capricious. The Local Board did not make any particularized and specific findings when it denied Verc's application. Yet, argued to the Commission that its denial of Verc's application was based on a lack of public need in this location. The Commission does not find the Local Board's argument persuasive, as only a few months after it denied Verc's application, the Local Board issued a package store license to Ocean State Job Lot located just several hundred feet from Verc's location.

The Commission is persuaded that the decision by the Local Board in this matter is arbitrary and capricious, and is not supported by substantial evidence. The denial by the Local Board, which it claims was based on a determination of a lack of public need, is not supported by the record.


### CONCLUSION

Based on the evidence presented at the hearing, the Commission **DISAPPROVES** the action of the Local Board of the Town of Randolph in denying the section 15 wines and malt beverages package store license application of Vere Enterprises, Inc.

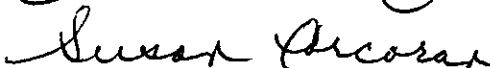
The Commission remands this matter to the Local Board with the recommendation to grant the application for a wines and malt beverages package store license and submit it to this Commission for consideration of approval in the usual administrative course.

### **ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Kathleen McNally, Commissioner



Susan Corcoran, Commissioner



Dated: August 11, 2014

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.

cc: Louis Cassis, Esq.  
Robert Sullivan, Esq.  
Robert Hillman, Esq.  
Local Board  
Frederick G. Mahony, Chief Investigator  
Administration  
File