

*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**

**NORTHGATE PETROLEUM LLC DBA NORTHGATE MOBIL**  
**350 SQUIRE ROAD**  
**REVERE, MA 02151**  
**LICENSE#: NEW**  
**HEARD: 2/8/2012**

This is an appeal of the action of the Revere Licensing Board (the "Local Board") in denying the M.G.L. c. 138, §15 all alcohol beverages license of Northgate Petroleum LLC dba Northgate Mobil (the "Licensee" or "Northgate"). On December 8, 2011, the Local Board held a hearing that resulted in a denial of Northgate's application. The Licensee timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission (the "Commission") and a hearing was held on Wednesday, February 8, 2012.

The following documents are in evidence:

1. Northgate's License Application Package and Lease;
2. Interior Floor Plan and Photographs;
3. Exterior Site Plan;
4. Exterior Photographs of Applicant's Store;
5. Board Meeting Minutes dated October 20, 2011;
6. Transcript from Board Meeting dated December 8, 2011;
7. Board Meeting Minutes dated December 8, 2011;
8. Board's Written Decision Denying Applicant's Application dated December 13, 2011.
9. Street Map Identifying the Location of All Retail Licensees, both All Alcohol and Wine/Malt, within the City of Revere.
10. List of All Alcohol and Wine/Malt License Holders in the City of Revere;
11. Notice of Appeal dated December 15, 2011;
12. Wine and Malt Beverage License no. 1022-00110;
13. Applicant's Resume; and
14. Pretrial Memorandum.

There is one (1) audio recording of this hearing.

## FACTS

1. Northgate Petroleum LLC dba Northgate Mobil (the "Applicant" or "Northgate") is a Massachusetts limited liability company with its principal place of business at 350 Squire Road, Revere, Massachusetts 02151. Joseph C. Prizio, Jr. is the manager and owner of Northgate. Ex. 1, Testimony
2. In May 2005, the Applicant began operating its business which consists of a nine hundred and ninety (990) foot Mobil Mart convenience store and wine and malt license. Ex.14, Testimony
3. Northgate has never been disciplined by either the Local Board or the Commission for any violations of either M.G.L. c.138 or Commission regulations. Testimony
4. In November 2011, Northgate applied for an all alcohol off-premises license. Ex. 1
5. On December 8, 2011, the Local Board held a hearing that resulted in a denial of Northgate's application. Ex. 8
6. During the hearing, Mr. Prizio testified that he has approximately thirteen (13) years of retail business experience and has served as Northgate's license manager since November of 2005. Ex. 6
7. Mr. Prizio further testified that he spends approximately fifty (50) hours a week at Northgate, and that he takes the sale of alcohol very seriously. Ex.6
8. Mr. Prizio requires that all of his employees and managers receive in-house alcohol training. Ex. 6
9. Mr. Prizio testified that Northgate serves as the neighborhood store for food products and wine and beer to the large residential neighborhood in the surrounding area as well as guests from a one hundred and eight (108) room hotel located directly across the street. Ex. 6
10. Mr. Prizio testified that these customers would like the convenience of being able to purchase other alcoholic products. Ex. 6
11. Mr. Prizio produced a map of Revere displaying the alcoholic beverages licenses.
12. The area surrounding Northgate is not saturated with off-premises liquor licenses.
13. In fact, the closest establishment with an all alcohol, off-premises license is approximately four-tenths (4/10ths) of a mile away from Northgate. Testimony
14. Northgate also provided the Local Board with floor plans detailing the area within its existing convenience store where it intended to sell liquor, if approved. Ex.6

15. The floor plans illustrated two (2) dedicated display areas for a limited inventory of alcohol.
16. The cordials and smaller bottles will be kept in an area behind a locked gate, and the larger bottles will be kept on shelving units behind the existing wine display.
17. These will be the only two (2) areas where alcohol will be displayed. Ex. 6
18. The Board raised no issues with Northgate's operation of its existing beer and wine business. Ex. 6, Testimony
19. In fact, during the hearing, Robert Mara, a Local Board member, praised Mr. Prizio's business operation.
20. Mr. Marra said that he had the utmost respect for Mr. Prizio and the way he runs his business. Ex. 6
21. Moreover, Councilor Patch testified in favor of the expanded license.
22. Mr. Patch testified that Mr. Prizio's store is well-kept and clean. Testimony, Ex. 6
23. No inhabitants spoke in opposition to granting the application. Ex.6, Testimony
24. There was no evidence before the Local Board regarding any concerns relative to traffic, noise or the size of Northgate.
25. There was also no evidence submitted regarding any concerns regarding the number of dispensaries within the area surrounding Northgate. Ex. 6
26. Commissioner Marra commented that, "I'm not persuaded of the public good that is served by expanding a beer and wine license, which I have questions about to begin with, but I am certainly not persuaded that expanding a beer and wine license to an all alcohol license at a location that is primarily a gas station which has expanded into a fairly large convenience store, I'm not persuaded of the need for an all alcoholic (sic) beverage license, particularly where the use of the premises is so closely associated with the operation of motor vehicles." Ex. 6
27. The Local Board by letter dated, December 13, 2011 denied Northgate's application for an all alcohol license. Ex.8
28. The Local Board cited as grounds for denial, "it is not in the public good, and (sic) to expand a Malt/Wine Package Store License to an All Alcohol Package Store License, which is in a gas station, that is closely associated with the operation of motor vehicles". Ex. 8

#### 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). 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.)

Indeed, the proper assessment of public need requires a particularized inquiry into the sort of business that seeks the license. See Donovan v. City of Woburn, 65 Mass. App. Ct. 375, 381 (2006). In light of the requirement for a particularized inquiry, the question becomes why the sale of distilled spirits does not meet the public need standard, when it has already been established that there is a public need for the sale of wine and malt beverages at this location.

In this case, the Local Board rejected Northgate's application, because "to expand a Malt/Wine Package Store License to an All Alcohol Package Store License, which is in a gas station, that is closely associated with the operation of motor vehicles, is not in the public good." Although legally required to do so, the Local Board did not make any subsidiary findings. The findings of the Board do not indicate how they evaluated the evidence presented before them and what they found credible or not credible. Therefore, the Commission is obligated to cull through the evidence before the Local Board and articulate its findings upon which they based their decision. Charlesbank, *supra*.

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. For example, the Local Board did not hear any concerns or cite as factors in its decision; traffic, noise or the size of the Applicant's operation. See Ballarin, *supra*. Moreover, Commissioner Marra, a Local Board member commended Mr. Prizio regarding the operation of his business. Therefore, the reputation of the applicant was not a factor that contributed to the Local Board's decision. In addition,

there was no neighborhood opposition. In fact, Councilor Patch attended the hearing and testified in favor of the expanded license on his own behalf and those of his constituents.

The only "Ballarin factor" that the Local Board can be said to have taken into account in its decision is, "the sort of operation that carries the license." See Id. Commissioner Marra commented that he did not believe that the public need was met by expanding a beer and wine license to an all alcohol license at this location. His reasoning, which the Local Board apparently adopted, was that Northgate "was closely associated with the operation of motor vehicles." It is unclear how the Local Board came to this conclusion. All off-premises alcoholic beverages licenses by their very nature generally involve an individual driving to the premises, purchasing the alcohol, and then leaving the premises with the alcoholic beverages and consuming it somewhere else. In this instance, unlike other off-premises establishments, Mr. Prizio testified that because Northgate is in a densely populated neighborhood and across from a hotel, most of his alcoholic beverages business is walk-in.

Moreover, the standard for the Local Board's decision to grant an off-premises wine and malt license is the same standard as that for an all alcohol license Massachusetts General Laws, Chapter 138, §§15, 17, and 23 are the operative statutory provisions relative to the Local Board's decision whether to grant an application for an alcoholic beverages license. When the Local Board granted and issued Northgate's wine and malt beverages license, it determined that Northgate is qualified to hold an alcoholic beverages license. It also determined that Northgate's location and "sort of "operation" met the standard for public need. The Local Board did not find that the number of dispensaries in the area was a factor that they considered in determining public need and denying the expanded license. See Ballarin, supra. Therefore, the Local Board has not met its burden to show that the denial of this license was based on evidence illustrating that the public need would not be met by granting this license.

#### CONCLUSION

Based on the evidence and testimony at the hearing, the Commission **DISAPPROVES** the action of the Revere Licensing Board in denying the license of Northgate Petroleum LLC dba Northgate Mobil. **The Commission remands this matter back to the Local Board with the recommendation to grant the application for an all alcoholic beverages license and submit it to this Commission for consideration of approval in the usual administrative course.**

#### **ALCOHOLIC BEVERAGES CONTROL COMMISSION**

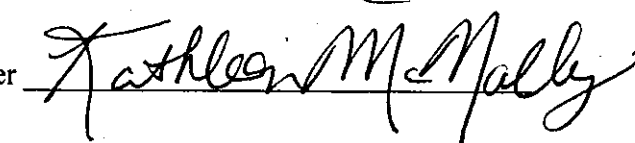
Kim S. Gainsboro, Chairman



Susan Corcoran, Commissioner



Kathleen McNally, Commissioner



Dated: April 10, 2012

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: Thomas S. Vangel, Esq. via Facsimile  
Thomas Henneberry, Esq. via Facsimile  
Administration  
File