



*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**

**OSJL SPIRITS LLC DBA OCEAN STATE JOB LOT**  
**201 COLLEGE HIGHWAY**  
**SOUTHWICK, MA 01077**  
**LICENSE#: NEW**  
**HEARD: 06/11/2014; 07/29/2014**

This is an appeal from the action of the Town of Southwick Board of Selectmen (the "Local Board" or "Southwick") in denying the M.G.L. c. 138, §15 wines and malt beverages application filed by OSJL Spirits, LLC dba Ocean State Job Lot (the "Applicant" or "OSJL" or "Ocean State") to be exercised at 201 College Highway, Southwick, 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, July 29, 2014.<sup>1</sup>

The following documents are in evidence as exhibits:

1. Monetary Transmittal Form;
2. Affidavit of Marc Perlman Regarding Initial Inventory Costs;
3. Affidavit of Notice of Mailing to Abutters and Others;
4. Applicant's Statement;
5. Certificate of Action by Consent of the Members OSJL Spirits, LLC;
6. Personal Information Forms for OSJL Corporate Members;
7. CORI Request Forms for OSJL Corporate Members;
8. Proof of citizenship for Corporate Members;
9. Manager Application for Jeffrey Skelton;
10. Sublease Agreement dated 9/1/2013;
11. OSJL's Certificate of Organization dated 7/1/2013 with Certificates of Amendment dated 7/2/2013 and 7/3/2013;
12. Massachusetts Secretary of State's Certificate of Good Standing dated 10/4/2013 for OSJL;
13. Scale Plan of the Southwick Store Location;
14. Site Plan approved by Southwick's Planning Board;
15. Deed for the Intended Licensed Premises;
16. Amended page from the ABCC's Retail Application;
17. Loan Agreement between Bank of America and OSJL Spirits, LLC;
18. Southwick's CORI Request Forms for OSJL Corporate Members and Proposed License Manager;

---

<sup>1</sup> By letter dated October 20, 2014, Ocean State submitted information regarding a Farmer Brewer license, exercised by the Westfield Brewing Company, LLC, at 707 College Highway, Southwick, MA. The Commission did not consider the contents of the letter, as it was submitted after the record closed.

19. Scale Plan of the Southwick Store Location;
20. Local Board's Memorandum dated 2/14/2014 to Detective Landis, with Chief Ricardi's response dated 2/17/2014;
21. Chief Ricardi e-mail dated 3/3/2014 to Local Board (Cindy Pendleton);
22. Memorandum dated 3/10/2014 from OSJL to Local Board;
23. E-mail dated 3/17/2014 from OSJL to Chief Ricardi;
24. First E-mail dated 3/17/2014 from Chief Ricardi to Local Board;
25. Second e-mail dated 3/17/14 from Chief Ricardi to Local Board;
26. Minutes of Local Board hearings dated 3/3/2014, 3/10/2014, and 3/19/2014;
27. E-mail dated 4/29/2014 from OSJL to Local Board;
28. Southwick's Motion for Leave for Late Filing of Written Decision;
29. OSJL's Opposition to Southwick's Motion for Leave for Late Filing of Written Decision;
30. Affidavit of Mary E. O'Neal;
31. Allowed Endorsement of OSJL's Motion for Leave for Late Filing;
32. Notice of Local Board's Decision on OSJL's Application;
33. Copy of Spreadsheet from Town of Southwick listing all licensed locations;
34. Google maps of proposed licensed premises and surrounding area;
35. Audio recording of Local Board's Hearing 3/3/2014;
36. Audio recording of Local Board's Hearing 3/10/2014;
37. Audio recording of Local Board's Hearing 3/19/2014;
38. Southwick Zoning Map;
39. Southwick GIS Mapping Site for 201 College Highway;
40. Southwick GIS Mapping Site for 208 College Highway;
41. Southwick Chapter 185 Zoning, Article IV Use, Regulations;
42. Southwick Chapter 185 Zoning, Article II, Definitions;
43. Agreed Upon Facts in Joint Pre-Hearing Memorandum;
44. Subpoena for Local Board's Chairman R. Fox;
45. Local Board Document Schedule A;
46. Subpoena to Keeper of Records for the Town of Southwick Keeper of the Records.

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

#### FACTS

1. OSJL is a Massachusetts limited liability company with a retail store location at 201 College Highway, in Southwick, Massachusetts. (Testimony, Exhibits 26, 35, 36, 37, 43)
2. OSJL applied to the Local Board for an available M.G.L. c. 138, §15 wines and malt beverages license to be exercised at its Southwick location. (Testimony, Exhibits 26, 35, 36, 37, 43)
3. Ocean State Job Lot owns multiple retail store locations throughout Massachusetts. OSJL holds §15 retail package store licenses in four (4) other Massachusetts stores located in Falmouth, Medford, Randolph, and Sturbridge, Massachusetts. (Testimony, Exhibits 26, 35, 36, 37, 43)
4. The Board of Selectmen for the Town of Southwick ("Local Board") acting as the Local Licensing Authority held three (3) public hearings with regard to the application on March 3, 2014, March 10, 2014, and March 19, 2014. (Testimony, Exhibits 26, 35, 36, 37, 43)
5. Mr. Charles H. Dunlap, a resident of Southwick, submitted a letter in opposition to this application stating that "At present, there are three (3) licensed liquor establishments within close

proximity to the proposed new liquor license requested at the establishment of Ocean State Job Lot” and “The public has access to beer and wine with the present facilities nearby.” (Exhibit 26)

6. The Chief of Police of Southwick, Mr. David Ricardi, submitted a letter, via email, to the Local Board with his recommendation against issuance of the license stating “I believe we may have reached a point where we should question the necessity of its issuance.” and “Contents okay – don’t believe we need another source to purchase beer and wine.” (Testimony, Exhibits 25, 26)
7. At the Local Board hearing, six (6) residents of Southwick spoke regarding this application. Four (4) of the residents asked specific questions about the size of the proposed location within the store where the alcohol would be sold, and about refrigeration of the alcohol product. (Exhibits 35, 36, 37)
8. Two (2) residents spoke in opposition to the application. One resident stated that there are enough liquor stores in Southwick, and the town does not need any more. (Exhibits 35, 36, 37)
9. No residents spoke in favor of this application. (Testimony, Exhibits 35, 36, 37)
10. The intended manager for this location is Mr. Jeffrey Skelton, who has been with Ocean State for 17 years, and has managed the Southwick store for seven (7) years. Mr. Skelton has more than 30 years of retail management experience, including package store management experience. Mr. Skelton had previously managed a retail store in Massachusetts (Walbaum’s Food Mart) which sold beer and wine. (Testimony, Exhibits 9, 35, 36, 37, 43)
11. The intended location within the store of the beer and wine sales is a 100-square-foot area on the sales floor of the OSJL store, with one hundred and eighty-one (181) square feet of locked storage space (for the storage of beer and wine) in the rear of the proposed location. The beer and wine to be sold would be displayed on shelves and pallets, with no product being displayed in coolers. (Testimony, Exhibits 35, 36, 37, 43)
12. The beer and wine would be rung up at the store registers located in the front of the store. All store employees would be TIPS trained by one of the seven (7) employees of OSJL, who would receive TIPS certified “Train the Trainer” training. No employees less than 18 years of age would work at the registers for check-out or anywhere within the store. (Testimony, Exhibits 35, 36, 37, 43)
13. The existing security at the store (being 16 security/surveillance cameras throughout the store including at entrance and exits areas, and at all registers) would be enhanced by the installation of security/surveillance cameras in the beer and wine retail area on the floor and storage area as well, and by the training of the manager and employees to watch the floor area from where beer and wine would be sold, and the continued visits by undercover loss prevention managers with an emphasis on the floor area from where beer and wine would be sold. (Testimony, Exhibits 35, 36, 37, 43)
14. The forms of identification OSJL would accept for the purchase of beer and wine would be limited to those forms of identification provided under Massachusetts law. No college identifications, birth certificates, or voter registration cards would be accepted. Ocean State would use the ID Checking Guide (describing characteristics and forms of valid out of state licenses) and employ a backlight device for checking forms of identification. (Testimony, Exhibits 35, 36, 37, 43)
15. During the March 19, 2014 meeting the Local Board voted unanimously (3 to 0) to deny OSJL’s application. The Board determined that, “the needs of the town are adequately served by the

current number of licensed establishments. Further, the Board determined, that the proposed location is in the immediate vicinity (approximately 299 feet) of an existing location licensed pursuant to M.G.L. c. 138, §15 which is located at 208 College Highway, Southwick, Massachusetts.” (Testimony, Exhibits 26, 32, 35, 36, 37)

16. Although OSJL attempted to distinguish their type of business from the other §15 stores in the area, the Board was not persuaded that the public need for this (OSJL’s) type of business at this particular location were not being met.

### 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, 23. “[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.” Donovan v. City of Woburn, 65 Mass.App.Ct. 375, 378-379 (2004).

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). 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. at 379. A local board exercises very broad judgment about public convenience and public good, with respect to whether to issue a license to sell alcoholic beverages. Id.

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. at 380. It is well-settled that the test for public need includes an assessment of public want and the appropriateness of a liquor license at a particular location. Ballarin, Inc. v. Licensing Board Of Boston, 49 Mass. App. Ct. 506, 511 (2000).

In Ballarin, the Appeals Court held that “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 511-512. “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, 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). 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.)

Upon review of the record of the Local Board proceedings, the Commission finds that the Local Board fulfilled its responsibility regarding this application. The Local Board held three hearings, during which it reviewed the application of OSJL, heard testimony from a number of individuals, and received documentary evidence. During these hearings, the Local Board heard testimony from two residents in opposition to this application, received a letter from a resident in opposition to this application, and received a letter from the Chief of Police in opposition to this application. The Local Board also received evidence that there already exists a M.G.L. c. 138, §15 wines and malt beverages license approximately 299 feet away from this location on the same street, and two other off-premises licensees in close proximity. There was no testimony from any residents in favor of this application. The Local Board did not consider any inappropriate testimony or materials.

The Local Board properly considered the Ballarin factors when determining that "the needs of the Town are adequately served by the current number of licensed establishments" in this location, and that the public need for M.G.L. c. 138, §15 wines and malt beverages licenses is being met. The reasons for denial: opposition of the residents, the opposition of the Chief of Police, and the Local Board's finding that there exists an adequate number of dispensaries in the area, were based on information presented during the course of the public hearings and grounded in the cases of Ballarin, supra, Donovan, supra. 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, is not arbitrary and capricious.

#### CONCLUSION

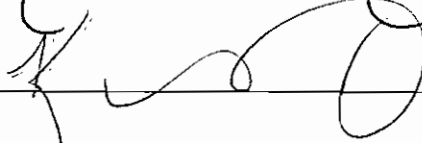
Based on the evidence, the Alcoholic Beverages Control Commission **APPROVES** the action of the Local Board in denying the M.G.L. c. 138, §15 wines and malt beverages application of OSJL Spirits LLC dba Ocean State Job Lot.

**ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Kathleen McNally, Commissioner

Handwritten signature of Kathleen McNally in cursive script, written over a horizontal line.

Kim S. Gainsboro, Chairman

Handwritten signature of Kim S. Gainsboro in cursive script, written over a horizontal line.

Dated: December 8, 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: Mary E. O'Neal, Esq. via facsimile 617-482-6444  
Mark A. Tanner, Esq. via facsimile 413-584-0453  
Frederick G. Mahony, Chief Investigator  
Administration  
File