

*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*

**JANET'S COUNTRY STORE & DELI, INC**  
**D/B/A JANET'S COUNTRY STORE & DELI, INC.**  
**526 SANFORD ROAD**  
**WESTPORT, MA 02790**  
**LICENSE#: 145200057**  
**HEARD: 06/11/2014**

**MEMORANDUM AND ORDER**

On December 13, 2013, the Alcoholic Beverages Control Commission received a Petition of 25 Taxpayers ("TVP") of the Town of Westport pursuant to M.G.L. c. 138, § 67, paragraph 4 ("Upon the petition of twenty-five persons who are taxpayers of the city ... in which a license has been granted by such authorities ... the commission shall ... investigate the granting of such a license.") The Town of Westport Board of Selectmen (the "Local Board") voted on December 9, 2013 to grant a new Annual wine and malt beverages package store license pursuant to chapter 138, section 15, to Janet's Country Store & Deli, Inc. (the "Licensee") at 526 Sanford Road, with Janet Rego, as the license manager.

The TVP contained (29) signatories from (19) separate addresses in Westport. The TVP puts forth the argument and specifically states that:

1. The licensed premise is situated in a residentially zoned district and the convenience store operates as a prior non-conforming use. The owners of the licensed premises petitioned the Westport Zoning Board of Appeals for a finding to allow the sale of beer and wine as not being substantially more detrimental to the neighborhood and not an expansion or change in the non-conforming use.
2. The petition for the finding that the sale of beer and wine was not substantially more detrimental to the neighborhood or a change in use was granted by the Westport Zoning Board of Appeals and the decision was filed with the Town Clerk on September 29, 2011. The Zoning Board of Appeal decision was timely appealed to the Superior Court. The Superior Court affirmed the Zoning Board of Appeals decision on November 1, 2013. The Superior Court decision was timely appealed to the Massachusetts Appeals Court on November 8, 2013.
3. The taxpayer petitioners of Westport submit that until such time as their appellate rights are exhausted, it was premature for the Town of Westport Board of Selectmen to grant a new section 15 package store wine and malt beverages license to Janet's Country Store and Deli, Inc. when a decision that the sale of wine and malt beverages was an expansion of a prior non-conforming use as a matter of law is pending with the Appeals Court and their failing to consider the existing number of dispensaries in its locality of the licensed premise and the view of the inhabitants of its locality.

On December 13, 2013, Attorney Marc Deshaies representing the TVP group submitted the petition in opposition.

A hearing on this application was held by the Local Licensing Authority on December 9, 2013. The Local Licensing Authority unanimously voted to approve the application of Janet's Country Store & Deli, Inc. The application of Janet's Country Store & Deli, Inc. was then submitted to the Commission for consideration of approval in the usual administrative course.

A hearing on this matter was held before the Commission on Wednesday June 11, 2014.

The following documents are in evidence as exhibits:

Exhibits of the Petitioner, 25 Taxpayers of Westport:

1. Notice of Appeal and Taxpayer Petition signed by 29 Taxpayers of Westport;
2. Map of the Section 15 Packages stores existing in Westport;
3. Map of Residents of Sanford Road, Westport who signed the Taxpayer petition;
4. Minutes of Westport Board of Selectmen dated May 18, 2009;
5. Minutes of Westport Board of Selectmen dated December 9, 2013.

Exhibits of the Local Board of Selectmen of Westport:

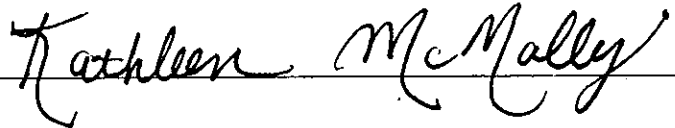
- A. Superior Court of Bristol Judgment of the Court;
- B. Photograph of the Interior of Janet's Country Store and Deli, Inc.;
- C. Petitions in favor of Janet's Country Store and Deli, Inc. (7 pages).

The Commission took the matter under advisement. The Commission, upon careful review of the TVP and the exhibits submitted in support of the opposition, as well as the Judgment on the Findings, Rulings and Order of the Superior Court of Bristol, Massachusetts (Exhibit A), finds no basis to disapprove the decision of the Local Board in granting this license.

Although the signatories of the TVP may disagree with the decision of the local licensing authorities in granting this application for a license, nothing presented to the Commission suggested that any further action by the Commission on the TVP was warranted. "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." Ballarin, Inc. v. Licensing Board of Boston, 49 Mass. App. Ct. 506, 512 (2000). The decision made by the Local Licensing Authorities appears to be a reasonable exercise of the Local Licensing Authorities' lawful discretion. No further action will be taken by the Commission regarding this TVP.

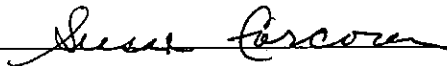
ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kathleen McNally, Commissioner



I, the undersigned, hereby certify that I have reviewed the hearing record and concur with the above decision.

Susan Corcoran, Commissioner



Dated: September 15, 2014

cc: Marc R. Deshaies, Esq., via fax: 508-997-2637  
Walter Frazee, Jr., Esq., via fax: 508-672-6670  
Westport Board of Selectmen, via fax: 781-934-1118  
Administration  
File