

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
25 Commerce Drive Cranford, N.J. 07016

BULLETIN 2233

July 26, 1976

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STATE OF NEW JERSEY
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1. NEW LEGISLATION - CHANGE IN CERTAIN LICENSE AND PERMIT FEES.

Assembly Bill No. 2041 was approved by the Governor on June 30, 1976 and thereupon became Chapter 44 of the Laws of 1976. The Act amends the designated sections of our Alcoholic Beverage Law to change fees, with respect to licenses,, effective July 1, 1976, as follows:

R.S. 33:1-10 (1a). Plenary brewery license - increase from \$7,500.00 to \$8,500.00.

R.S. 33:1-10 (4). Rectifier and Blender license - increase from \$5,000.00 to \$6,000.00.

R.S. 33:1-11 (1). Plenary Wholesale license - increase from \$6,000.00 to \$7,000.00.

R.S. 33:1-11 (2b). Wine Wholesale license - increase from \$2,500.00 to \$3,000.00.

R.S. 33:1-11 (2c). State Beverage Distributor's license - increase \$750.00 to \$825.00.

R.S. 33:1-12 (4). Plenary Retail Transit license

Railroad or Air transport companies increase from \$150.00 to \$300.00.

A boat 65 feet or less in length increase from \$25.00 to \$50.00.

A boat more than 65 feet in length but not more than 110 feet in length increase from \$50.00 to \$100.00.

A boat more than 110 feet in length increase from \$150.00 to \$300.00.

R.S. 33:1-20. State municipal license issued by the Director - increase from \$35.00 to \$50.00.

R.S. 33:1-25. Retail Filing Fee - increase from \$25.00 to \$50.00. This increase to be effective August 1, 1976.

R.S. 33:1-28. Transit Insignia - Increase from \$10.00 to \$25.00.

R.S. 33:1-74. One day Social Permits

Civic, religious or educational organizations increase from \$15.00 to \$50.00.

Any other organization increase from \$25.00 to \$75.00.

Dated: July 8, 1976

JOSEPH H. LERNER
ACTING DIRECTOR

2. NOTICE TO MUNICIPAL ISSUING AUTHORITIES - NEW LEGISLATION - CHANGE IN PERMIT FEE ON SOCIAL AFFAIR PERMITS AND FILING FEE RELATIVE TO RETAIL LICENSEES.

TO ALL MUNICIPAL LICENSE ISSUING AUTHORITIES:

RE: NEW LEGISLATION - CHANGE IN PERMIT FEE ON
SOCIAL AFFAIR PERMITS AND FILING FEE
RELATIVE TO RETAIL LICENSEES

Assembly Bill No. 2041, now Chapter 44 of the Law of 1976, was approved by the Governor on June 30, 1976. The Bill provides that, effective immediately, the fee for a one (1) day permit authorizing the sale of alcoholic beverages for consumption on a designated premise by civic, religious or educational organizations shall be \$50.00 per day, and for a one (1) day permit authorizing sale of alcoholic beverages by any other organization, the fee shall be \$75.00 per day.

The Bill also provides that every person filing an application for license, renewal of license or transfer of license, on or after August 1, 1976, with a municipal issuing authority shall, within ten (10) days of such filing, file with the Director a copy of such application with a non-returnable filing fee of \$50.00.

Joseph H. Lerner
Acting Director

Dated: July 8, 1976

3. COURT DECISIONS - ALEXGOOD TAVERN, INC. v. PATERSON - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-513-75

ALEXGOOD TAVERN, INC.
t/a CLUB MUSTANG,

Plaintiff-Appellant,

v.

BOARD OF ALCOHOLIC BEVERAGE CONTROL
FOR THE CITY OF PATERSON,

Defendant-Respondent.

Argued: May 18, 1976 - Decided: June 18, 1976

Before Judges Lynch, Larner and Horn

On appeal from Order of Director of the Division of
Alcoholic Beverage Control

Mr. Matthew M. Keshishian argued the cause for appellant
(Messrs. Krugman, Chapnick & Grimshaw, attorneys).

Mr. Ralph L. DeLuccia, Jr. argued the cause for respondent
(Joseph A. LaCava, attorney).

Mr. David S. Piltzer submitted a statement in lieu of brief
for the Division of Alcoholic Beverage Control (Mr. William
F. Hyland, Attorney General, attorney).

PER CURIAM:

(Appeal from the Director's decision in Re Alexgood Tavern,
v. Paterson, Bulletin 2215, Item 2. Director affirmed.
Opinion not approved for publication by the Court Committee
on Opinions).

4. APPELLATE DECISIONS - SILVERTON BAR & LIQUORS, INC. v. DOVER ET AL.

Silverton Bar & Liquors, Inc.)	
t/a Silverton Hub,)	
)	
Appellant,)	On Appeal
)	
v.)	CONCLUSIONS
)	and
Township Committee of the)	ORDER
Township of Dover, and Silverton)	
Investors, Inc.)	
)	
Respondents.)	

Paschon & Feury, Esqs., by Robert V. Paschon, Esq., Attorneys
for Appellant

Bando J. Caruso, Esq., Co-Counsel for Appellant

Campbell & Sachs, Esqs., by Donald F. Campbell, Esq., Attorneys
for Respondents.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent Township Committee of the Township of Dover (Committee) which by unanimous vote on July 8, 1975, granted a person-to-person and place-to-place transfer of a plenary retail consumption license from Toby's Inn, Inc., to respondent Silverton Investors, Inc. and from premises 107 Brand Road to premises at the intersection of Kettle Creek Road and Hooper Avenue, Dover.

The substantive portion of the resolution approving the transfer sets forth the following:

"WHEREAS, application has been made for the transfer of a plenary retail consumption liquor license (C-4) from Toby's Inn, Inc., T/A Toby's Inn, to Silverton Investors, Inc. T/A Liquor Locker Lounge and from 107 Brand Road, Township of Dover, New Jersey to Kettle Creek Road at its intersection with Hooper Avenue in the Township of Dover, New Jersey; and

WHEREAS, the Clerk-Administrator has received notification of objection to said transfer on behalf of Silverton Hub, Inc.; and

WHEREAS, a plenary hearing was held by the Township Committee on June 4, 1975 to consider the merits of the application for said transfer and such objections as were submitted on behalf of Silverton Hub, Inc., and such other objectors as appeared at said hearing; and

WHEREAS, the Township Committee has received satisfactory proofs of notice of publication with respect to said hearing; and

WHEREAS, memoranda have been submitted by the attorneys for the applicant and the objector, Silverton Hub, Inc., as well as reply memoranda; and

WHEREAS, the Township Committee has considered such testimony and other proofs as were submitted at the hearing herein referred to and having further considered such memoranda as have been submitted; and

WHEREAS, the Township Committee is satisfied after such consideration that good cause has been shown in support of the application for the license transfer herein referred to:

NOW, THEREFORE, BE IT RESOLVED, By the Township Committee of the Township of Dover, County of Ocean, State of New Jersey as follows:

1. The application for the person to person and place to place transfer for the aforesaid plenary retail consumption liquor license be and is hereby approved, subject to all applicable zoning and site plan regulations."

In its "amended" petition of appeal, appellant, who operated a competing liquor establishment on Hooper Avenue in the general area of the proposed premises alleges that the Committee's action was erroneous and should be reversed for the following stated reasons:

"(a) The transfer was improperly granted as respondent, Silverton Investors, Inc. require site plan approval and variances for the proposed location, which variances may not legally be granted under existing New Jersey law and, accordingly, the aforesaid license may not be transferred and operated at the location in question except in direct violation of existing municipal ordinances;

(b) The public sustained an unreasonable burden

as to their right to be heard and object to the transfer because the hearing was not open to the general public until 3:45 a.m. There were in excess of 100 people in attendance at the commencement of the hearings at 8:00 p.m. in the evening and less than one-half dozen at the conclusion at 3:45 a.m. The result was a defacto denial of their right to voice their opinions on this issue;

(c) Respondent, Silverton Investors, Inc. must bear the burden of proof, notwithstanding Rule 6 of State Regulation No. 15 as promulgated by the State of New Jersey, Department of Law and Public Safety, Division of Alcoholic Beverage Control. The aforesaid rule indicates, and I quote:

"All appeals shall be heard de novo, except as otherwise provided in Rule 8 hereof, and the parties may introduce oral testimony and documentary evidence, but the burden of establishing that the action of the respondent issuing authority was erroneous and should be reversed, shall rest with the appellant."

To require the appellant to carry the burden of proof in this appeal is in direct contradiction to N.J.S.A. 52:13D-16 (b) which prohibits members of the Legislature from appearing in any cause, proceeding, application or other matter. This matter was handled at the municipal level by John F. Russo, Senator from Ocean County. The net effect of the hereinbefore cited Statute is that by reason of the aforesaid John F. Russo's inability to appear directly before the Department of Law and Public Safety, Division of Alcoholic Beverage Control of the State of New Jersey, said Division of Alcoholic Beverage Control cannot now rely on a decision and render a decision on an appeal where the Division could not have heard the original action. The aforesaid Rule 6 of State Regulation No. 15 indicates that the hearing is a de novo hearing. However, it should be noted that the burden of proof has shifted as a result of the municipal decision. Thus justice mandates that the respondent in this instance must bear the burden of proof in this instance."

In their respective answers, both respondents denied that the Committee's action was improper and unreasonable.

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15, at which time the attorneys for the respective parties had full opportunity to produce testimony and cross-examine witnesses.

Appellant presented several threshold issues for determination prior to offering testimony. It argued (1) that the Committee's action in conducting the hearing to consider Silverton Investor's application for the subject transfer from 8:00 p.m. on June 4, 1975 to 3:45 the following morning was an abuse of its discretion, since it deprived possible objectors of the right to be heard; (2) applicant had not complied with municipal site requirements; and (3) that since the appearance of State Senator John Russo in behalf of the applicant in the proceedings before the Committee is in contravention of N.J.S.A. 52:13D-16(b), this Division cannot "rely" on the decision and resolution of the Committee for the reason that it would be tantamount to permitting Senator Russo to appear before the Division; and further, by reason of such impermissible appearance that section of Rule 6 of State Regulation No. 15 which casts the burden of establishing that the action of the respondent issuing authority was erroneous and should not apply, and instead, the burden of proof shifts to the respondent applicant.

The reasonableness of the Committee's action in conducting the hearing from 8:00 p.m. to 3:45 the following morning ((1) above) will be considered later in this report.

Relative to the second issue raised by appellant, any grant of the place-to-place transfer would necessarily be subject to compliance by the transferee with the local ordinances pertinent to its occupancy of the proposed location. Vide, Lubliner v. Bd. of Alcoholic Bev. Control, Paterson, 33 N.J. 428 (1960).

In adjudicating the third issue raised, I find that Senator Russo's appearance before the Committee was not violative of any statutory proscription. N.J.S.A. 52:13D-13 fully defines a "State agency" and concludes with the following sentence: "A county or municipality shall not be deemed an agency or instrumentality of the State." (Emphasis added).

Senator Russo has not entered an appearance or participated in the subject appeal proceeding. The application for transfer of license cannot be said to be "pending" before this Division at the time that municipality conducts its hearing thereon, thus bringing it within the prohibition of the quoted statute. That a legislator's legally permissible appearance before a municipality would cause a shifting of burden of proof from the appellant to respondent merely because the subject matter of the controversy was appealed to a State agency is an exercise in strained reasoning.

It cannot be said that a legislator's appearance in a matter pending before a municipality constitutes an appearance before a State agency merely because an appeal was taken to the State agency. I recommend dismissal of this contention as frivolous.

In support of appellant's contention that the manner in which the Committee conducted the hearing precluded the testimony of objectors to the proposed transfer, Robert V. Paschon, attorney

for the appellant testified that when the hearing opened at 8:00 p.m. the number of people attending the hearing was so large that the hearing was moved across the street to the Municipal Courtroom. Thereafter, except for several intermissions, the hearing continued to 3:45 a.m.

On cross examination, the attorney for appellant conceded that he engaged in extensive cross-examination of the witnesses who testified on behalf of the applicant although urged to "hurry up" with cross-examination. He also requested and received recesses in order to examine various exhibits.

The witness further testified that he knew that some of the people attending the hearing were opposed to the transfer, however, he did not know how many individuals were opposed and how many favored the transfer. He learned at approximately midnight that the Committee had decided to continue the hearing to its conclusion. He did not recall entering any objection on the record until 3:45 a.m. The Committee rejected petitions favoring and opposing the transfer. Appellant's attorney did not, at any time, request the Committee to open the meeting to the objectors in order that they might be heard. At 2:15 a.m., at his request, one of appellant's witnesses was called out of turn due to an urgent call from his home.

Maureen White who resides at the end of Kettle Creek Road attended the hearing held by the Committee from 7:45 p.m. to approximately midnight when she left. She had intended to object to the proposed transfer. She did not approach any of the Committee members or attorneys to make known her presence. The witness was opposed to the proposed transfer because she felt that it would intensify the traffic problems at that area.

Phyllis K. Lockman, a resident of the community testified that she attended the hearing held by the Committee in order to voice her objection to the proposed transfer, from 7:30 p.m. to approximately midnight, when she departed. At the commencement of the hearing the Township attorney announced that both parties would be heard and at the conclusion of that presentation, the public would be heard. She did not communicate her objections to any of the attorneys participating in the hearing.

George Davino, a resident of Toms River, testified that he attended the hearing conducted by the Committee on the night of June 4, 1975, and left the hearing at 11:30 p.m. He did not have an opportunity to voice his objections to the proposed transfer nor examine the exhibits marked in evidence.

On cross examination, Davino testified that his residence is five miles distant from the site of the proposed transfer; he is engaged in the heating and air conditioning service business; traffic is heavy in the area of the proposed transfer.

The witness explained that he did not inform any member of the governing body or any of the attorneys that he found it necessary to leave.

Davino regularly patronizes the appellant's tavern and has been servicing the heating and air conditioning system in the establishment for the past several years.

At this point appellant presented an additional objector who did not appear at the hearing held by the committee on June 4, 1975.

Reverend George Ciebold, pastor of Open Door Bible Church, who also operates a school having an enrollment of twenty-three students enrolled therein ranging in age from five years to eighteen years of age attending school five days a week, testified that the Church is located on the opposite side of Hooper Avenue from the proposed location. He objected to the proposed transfer because:

"...the Bible is quite specific in saying that liquor, wine and strong drink is unwise. It makes a person unwise. It makes them unstable. So, from a spiritual point of view, as a pastor in a community, I would be opposed to any liquor store in the community."

The Pastor was also opposed to the transfer because of the proximity of the proposed licensed premises to the Church and school; it would increase vehicular traffic and increase the possibility of accidents.

Finally, Reverend Ciebold stated that he moved to Toms River on July 13, 1975 and he became associated with the Church in September 1975.

Francis Carroll, who resides within three blocks of the proposed location, testified that he and his wife attended the hearing held by the Committee on June 4, 1975 for the purpose of objecting to the proposed transfer. He estimated that there were approximately 85 to 100 people in attendance at the hearing.

The Carrolls left for home at approximately 10:15 p.m. Several fast food stores, a grocery store, a gasoline station and other businesses are located in the immediate vicinity of the proposed transfer sites. In his opinion the transfer would intensify the traffic hazards in the area more than any other mercantile business. He patronizes appellant's liquor establishment once or twice a month.

Joseph L. Foster, First Assistant Township Attorney, who attended the hearing of June 4, 1975 in his official capacity, testified that the meeting was moved from a room in Town Hall Annex which seats approximately 25 people to a room in the Town Hall across the street. He estimated that there were approximately ten or twelve

persons present who were not counsel or parties to the proceedings and whom he classified as members of the general public.

He had no knowledge of anyone complaining that he did not have an opportunity to be heard.

In the witness' opinion the Committee considered four matters in arriving at its determination. First, it was felt that the proposed location was far superior to the transferor's present location and it considered the transferor's general physical esthetic condition. Second, in the present location, the transferor lacked sufficient parking and its facility was located in a residential area. Third, the proposed location was satisfactory from a commercial point of view and it would not result in an economic hardship to existing licenses in the area. Fourth, the argument presented by the objector was insufficient to rebut the proofs offered by the applicant.

Foster did not recall that appellant's attorney made any objection to the duration of the hearing or of the time that the hearing was concluded at 3:45 a.m.

The sole objector that Foster was aware of was the appellant herein. In his judgment, he and members of the Committee were accessible to objectors at various times during the four or five "intermissions" which occurred during the course of the hearing.

Robert Brune, presently the Mayor of the respondent Township was, on May 4, 1975, a member of its Committee and participated at the hearing held to consider the subject transfer. He asserted that, in his opinion, there were no more than ten members of the general public present at the hearing.

At no time was he made aware of the presence of objectors to the transfer at the hearing before the Council, other than appellant.

Subsequent to the hearing, no one made him aware that he was denied an opportunity to be heard.

Brune explained that there was no conflicting opinion among the members of the Committee during the deliberations leading up to the ultimate decision. Concerning the sense of the Committee which led to its decision, he testified:

"The reasoning that led to the decision that we made, basically it was we felt that the transfer would be in the interest of the community for the following reasons: Number one, the previous location was in a residential area. It was in a run-down condition. We were concerned with the traffic in the general area and we felt that by transfer to a commercial area that was more accessible to the general public would be in everyone's best interest."

Concerning his recollection of any objection having been raised by Paschon relative to the time at which the meeting was opened to the public, Brune testified:

"I personally don't, but I heard afterwards that Mr. Paschon had raised an objection. But I took it in a humorous vein particularly because we had had innumerable recesses or short breaks during the course of the evening, and I do remember that Mr. Foster, who was, I guess you would call him, the presiding officer, had asked both attorneys if there were any objections to continuing, and there were none. There were never any objections during the eight hours that we were there."

Brune further recalled that not only Foster, but also, some members of the Committee asked at the several "coffee breaks" whether anyone objected to the continuance of the hearing and no one objected thereto.

Questioned whether he felt that the interest of the general public would have been better served by continuing the meeting to a future date, Brune replied;

"No. No, because by the time the hearing concluded there were so few people that were left, and those that had filtered out during the course of the evening never expressed, during any of the intermissions or to Mr. Foster as they were leaving, that they wanted an opportunity to be heard.

No one called up afterwards. No one sent a letter or phoned in saying that because of lateness of the meeting they lost an opportunity to speak,---."

The transcript of the hearing held by the Committee to consider the subject application was admitted into evidence. This was objected to by the attorney for appellant on the ground that the admission of the transcript in evidence by the Division was tantamount to permitting Senator Russo to appear before the Division because he had represented the applicant at the hearing held by the Committee. Not so. To give validity to that argument would be equivalent to declaring a legislator's otherwise lawful appearance before a municipality to be violative of the above quoted statutory provision nunc pro tunc solely because an appeal has been taken to this Division.

Furthermore, the Division would be deprived of the opportunity to review the record below in order to arrive at a fair determination of the very questions raised by appellant. As a matter of fact, if the transcript had not been offered in evidence, I would have been inclined to request its submission sua sponte in order to determine the validity of appellant's objection to the procedure below.

I have carefully examined the transcript of the hearing (consisting of 191 pages) held by the Committee with respect to appellant's allegation that the Committee in conducting the hearing from 8:00 p.m. until its conclusion at 3:45 a.m. the following day had abused its discretion.

I am persuaded after perusing the transcript that the appellant was represented by an able and articulate advocate who was tenacious, exhaustive and vigorous in his cross examination of the applicant's witnesses, and who presented legal arguments skillfully and fully throughout the course of the hearings.

The transcript of the hearing held by the Committee reveals that the appellant's attorney requested and was afforded the opportunity to examine various reports offered in evidence. At no time did appellant object to the continuance of the hearing to its conclusion. As an example, I note the following colloquy of counsel:

"MR. RUSSO: My question is, since it's 2:30 in the morning, I'd like to know if we're going to finish this thing tonight. It's getting late. I'd just like to know if we're going to finish it tonight and if so just how many more witnesses do we have?

MR. PASCHON: I have one more witness, if necessary to put on the stand on behalf of the Hub.

MR. RUSSO: Are we going to finish this thing tonight? It's already 2:30.

MR. FOSTER: Let's continue with Mr. Doorman.

[The witness being cross-examined by Mr. Paschon]"

Further, there was no evidence produced that any member of the public: (1) expressed dissatisfaction to anyone of the manner in which the hearing was conducted; (2) desired to express his sentiments with respect to the proposed transfer either before, during or after the hearing, or (3) expressed to anyone either during or after the hearing that he was denied the right to express his sentiments at the hearing held by the Committee. It appears to me that an interested, independent or concerned citizenry would have made its reaction known with respect thereto.

I, therefore, reject appellant's contention that the Committee's conduct of the hearing was unreasonable or an abuse of its discretion.

Relative to the merits of the proposed transfer, I have examined the transcript of the hearing held by the Committee and the transcripts of the two hearings held on the appeal de novo in this Division.

It appears from the testimony adduced from the witnesses at the hearing held by the Committee that the transferor licensee was located in an area that was otherwise wholly residential. It was proposed to transfer the license to a neighborhood shopping center located on a highway in a mixed commercial and residential area as distinguished from a large commercial shopping center containing one or more large department stores with a number of satellite stores.

Patrolman Charles R. Theiman of the Township Police Department, who was requested to prepare a report with respect to the subject application testified that in his opinion traffic safety would not be adversely affected by the approval of the proposed transfer.

George Post, who has made a special study of marketing analysis, testified that, in his opinion, the proposed transfer would not only provide adequate servicing for the residents wherein the liquor establishment is presently located, but also would better serve the needs for this type facility in the proposed location. Its location in a shopping center would better serve the convenience of the patrons of the shopping center.

Byron Kotzas, a real estate broker in the community whose expertise was conceded, testified that there has been a substantial growth both residential and commercial in the general area of the proposed location. In his opinion, the said proposed transfer would better serve the needs of the area residents. Its transfer from a wholly residential area to a commercial area would be beneficial to both areas.

In behalf of appellant, Paul Sysmanski, a land planner, testified that in his opinion a transfer to the proposed situs would not be desirable because there are sufficient liquor outlets located in the area. He further testified that it is preferable for an establishment to be located in a commercial area rather than a residential area. However, in this case it is better to leave the liquor establishment in its present location in a residential area.

In adjudicating this matter de novo on the merits and without regard to the action taken by the Committee, I find that there was not a shred of evidence to substantiate the action brought by the appellant who is a competitor of the proposed transferee.

This case is unlike Lyons Farms Tavern, Inc. v. Newark, 55 N.J. 292 (1970) wherein numerous individual objectors and organi-

zations including a hospital which contained a school of nursing appeared to voice their strenuous objections to a place-to-place transfer occasioned by a premises-enlargement. In Lyons Farms Tavern, much of the locality was devoted to residences. Area residents and hospital employees (male and female) had been molested. In Lyons Farms, the Supreme Court affirmed the local Board's denial of the place-to-place transfer and held that the Board's finding that the paramount equities favored the objectors was reasonably grounded. None of these factors or the other factors considered by the Court in Lyons Farms are present in the matter sub judice.

Additionally, I find that it was neither alleged nor proven that the proposed location was in anywise violative of the statutory distance prohibition relating to a church or school.

Although respecting his views, I am not impressed with the objections articulated by Reverend Ciebold for the reason that his bias is manifested by the fact that he is philosophically opposed to the sale of liquor anywhere in the community.

At best, all of the fears expressed concerning the effect that the transfer would have are conjectural. In any event, it must be assumed that the transferee is well aware of the fact that an application for the renewal of the license must be made annually. If the premises are conducted in a law-abiding manner (and it must be assumed that such will be the case), residents of the area have nothing to fear. If, however, the licensed premises will be operated in violation of the Alcoholic Beverage Law, the licensee would subject its license to suspension or revocation. Tagliaferro v. Newark, Bulletin 1710, Item 1; Jesswell v. Newark, Bulletin 1847, Item 5; Monmouth County Retail Liquor Stores v. Middletown et al., Bulletin 1572, Item 1.

The Committee has, in my opinion, understood its full responsibility and has acted circumspectly, and in the reasonable exercise of its discretion, in granting the transfer. I, thus, conclude that appellant has failed to sustain the burden of establishing that the action of the Committee was arbitrary, capricious unreasonable or an abuse of its discretion. Rule 6 of State Regulation No. 15.

In addition to the above findings, I have considered the objections voiced by the several witnesses who testified at the hearings conducted by this Division for the purpose of deciding de novo the central issue of whether the best interests of the community would be served by the grant of the transfer of the license and thereby mold the appeal as if it were a direct application for a transfer to the Director rather than an appellate one calling for the review of the exercise of discretionary power by a municipal issuing authority. This will obviate the necessity of relitigating this matter. Re Tagliaboschi, Bulletin 1972, Item 1 and cases cited therein.

In reviewing the record herein, including the exhibits and the testimony presented, I find and recommend that, for the reasons hereinabove expressed, that the said license be transferred in accord-

ance with the application made therefor upon compliance with the local regulatory requirements relating to site plan approval and construction, if any.

It is, accordingly, recommended that the action of the Council be affirmed and the appeal be dismissed.

Conclusions and Order

No Exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the written argument of counsel in summation, and the Hearer's report, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 7th day of May 1976,

ORDERED that the action of the respondent Township Committee of the Township of Dover be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.



Joseph H. Lerner
Acting Director