

# Bulletin

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140 East Front Street, P.O. Box 087, Trenton, New Jersey 08625-0087

BULLETIN 2477

DECEMBER 22, 1997

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New Jersey Department of Law & Public Safety

# Bulletin

140 East Front Street, P.O. Box 087, Trenton, New Jersey 08625-0087

BULLETIN 2477

DECEMBER 22, 1997

## 1. NOTICE AND ORDER TO SOLICITOR PERMITTEES.

### NOTICE AND ORDER TO SOLICITOR PERMITTEES

BY THE DIRECTOR:

On September 30, 1997, the Division issued ABC Bulletin #2474, which contained a "Notice and Order to Solicitor Permittees". That Notice and Order addressed situations where a solicitor, or applicant for a Solicitor's Permit, had an immediate family member (defined as a spouse, child, parent or sibling, or the children of any son, daughter, brother, or sister) holding an interest in a retail license. After a review of the Division's statutes and regulations, I had concluded that solicitors having immediate family members who hold an interest in a retail license were required to disclose same and were prohibited, as of January 1, 1998, from calling on and/or servicing those licenses.

The Division has since received numerous inquiries from industry members, and has received Notices of Appeal from two affected parties.

We have determined to withdraw the September 24, 1997 order to enable us to freshly consider the issues and concerns raised by the industry. Accordingly, the Division will commence a review of the issues involving solicitors with immediate family members holding an interest in a retail license. Upon completion of our review, we will determine whether regulatory action in the form of rulemaking is necessary and appropriate.

Accordingly, it is on this 12th day of December, 1997,

ORDERED that the Notice and Order to Solicitor Permittees dated September 24, 1997 is hereby VACATED, effective immediately.

/s/ JOHN G. HOLL  
JOHN G. HOLL  
DIRECTOR



New Jersey Department of Law & Public Safety

2. IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST N.C. CAPA, INC.  
T/A PAULY'S LANDMARK TAVERN - FINAL CONCLUSION AND ORDER ACCEPTING  
INITIAL DECISION AND REVOKING PLENARY RETAIL CONSUMPTION LICENSE.

STATE OF NEW JERSEY  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL

IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST:

N.C. CAPA, INC.  
T/A PAULY'S LANDMARK TAVERN  
LICENSE NO. 0714-33-212-009

) FINAL CONCLUSION AND ORDER  
) ACCEPTING INITIAL DECISION AND  
) REVOKING PLENARY RETAIL  
) CONSUMPTION LICENSE

) AGENCY DKT. NOS. S-95-20467  
) & S-96-20795

) OAL DKT. NOS. ABC 9674-95  
) & ABC 7326-96

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Louis S. Rogacki, Deputy Attorney General for the Petitioner  
Ralph Colasanti, Esq., Attorney for Respondent

Initial Decision Below

Honorable R. Jackson Dwyer, Administrative Law Judge

BY THE DIRECTOR:

On March 30-31, 1995, an investigation was conducted at Respondent's licensed premises which resulted in forty-one (41) charges. Thirty-eight (38) charges were for serving persons under the legal age (PULA), one was for maintaining a nuisance, one was for illegal activity and one was for failure to have a special federal tax stamp. Three of the PULA charges were dismissed prior to the hearing.

On May 4, 1996, a second investigation of the license was conducted which resulted in four more PULA charges, two of which were dismissed prior to hearing.

The two cases were consolidated at the Office of Administrative Law and hearings were held on September 19 and 20 and October 30, 1996. Administrative Law Judge (ALJ) Dwyer filed his Initial Decision on June 25, 1997 and we received it July 2.

DAG Louis Rogacki filed exceptions on behalf of the State. No exceptions were filed on behalf of the licensee. The time to render the Final Conclusion and Order was properly extended to December 5, 1997.

#### Findings of Fact

I accept the factual findings and conclusions of law contained in the Initial Decision. I find that the Division proved each of the forty (40) charges and that revocation is the appropriate penalty in this case. The ALJ found that thirty-seven (37) patrons were arrested and convicted for purchasing, possessing or consuming alcoholic beverages under the legal age. Approximately forty (40) other underage patrons were detained and then released by the investigating officers. Additionally, Judge Dwyer found the licensee guilty of maintaining a nuisance, illegal activity, and failure to have its Special Federal Tax Stamp.

The ALJ found that the nature and seriousness of the offenses warranted revocation. Revocation was particularly warranted since it was less than a year after the initial offense that the licensee again served underage patrons on the licensed premises.

I am particularly disturbed by several factual findings made by the ALJ and amply supported by the record below, which demonstrate that the licensed premises had developed a reputation among nearby Seton Hall University students that they could be admitted with fake identification or without any proof of age. Initial Decision at pg. 31.

Jessica Davitt and her friend, Jennifer Johnson, went to Pauly's Tavern about 11:00 p.m. on March 30, 1995 and were asked to produce identification. Both women presented fake identification that stated they were 23 years old and attended the New York Institute of Engineering and Technology. The fake identifications that were presented by Ms. Davitt and Ms. Johnson were identical. Ms. Davitt testified that she and Ms. Johnson are strikingly different in appearance. After they presented the fake identification, the employee at the door made a comment, laughed and then let them in.

Ms. Davitt went to Pauly's that evening because she was quite confident that she would be admitted. On previous occasions, she had been admitted without proof of age. Since her arrest on the evening of March 30-31, 1995, Ms. Davitt has been back to Pauly's three times. Once, she was unable to produce any identification and was admitted anyway. Initial Decision at pg. 3.

Alexander Brozyna was eighteen on the evening of March 30-31, 1995 and arrived at Pauly's at about 9:30 p.m. with his friend Roman Laszok. No one checked their ID. He purchased a mixed drink for a friend just as the raid began. Mr. Brozyna was certain he could enter Pauly's because he had been there before and had never been asked for identification. On one occasion, when asked for identification by an employee, Mr. Brozyna said he did not have any and the employee took the cover charge and allowed him to enter anyway. Initial Decision at pg. 4.

Miss Laura Lockhead was nineteen years old on the evening of March 30-31, 1995 when she and two friends arrived at Pauly's at about 10:30 p.m. They were all freshmen at Seton Hall University. Ms. Lockhead was not asked to produce proof of age. One friend, Lilia, produced someone else's driver's license and the doorman smiled and let the three women in. All three of the women purchased alcoholic beverages that evening. Initial Decision pp. 4-5

Although thirty-seven underage individuals were arrested during the first investigation, there were approximately forty more inside the licensed premises that were not charged for a variety of reasons. Initial Decision at 33. Judge Dwyer found that the licensee's conduct in allowing so many underage patrons in the premises had created a hazardous condition which facilitated underage drinking.

#### Conclusions

It is a serious matter when one or two underage individuals are found to be consuming or purchasing alcoholic beverages in a licensed premises. However, when a licensee is convicted of serving thirty-seven persons under the legal age, protection of the public health, safety and welfare requires that the licensee be revoked. "The prevention of sale to, or consumption by, minors of liquor upon the licensed premises is of the utmost importance." Essex Holding Corp. v. Hock, 136 N.J.. 28, 31 (Sup. Ct. 1947). The prevention of

sales of intoxicating liquor to minors not only justifies but necessitates the most rigid control. Sportsman 300 v. Bd. of Commr's. of the Town of Nutley, 42 N.J. Super. 488, 492 (App. Div. 1956).

The State has asked that the premises be disqualified for a period of two years in accordance with N.J.S.A. 33:1-31 which provides:

"any revocation may, in the discretion of the Director..., render the licensed premises ineligible to become the subject of any further license, of any kind or class under this chapter, during the period of two years from the effective date of the revocation."

The property owners, Benjamin and Dorothy Brandford, were notified that the Division of Alcoholic Beverage Control intended to seek disqualification of the premises upon revocation. Their attorney, Fayth Ruffin, submitted a letter on their behalf on August 29, 1997. In that letter Ms. Ruffin argued that her clients did not contribute to the problems caused by the licensee. She contends that the financial burden on the Brandford's as a result of the lease to NC Capa has been severe and that de-licensure would cause further financial loss to the Brandford's.

She argues that without a tenant the Brandford's will be required to pay constant tax increases (under the lease the landlord is responsible for a base property tax and the tenant is to pay any increase). Further they will suffer unpaid rent, have unoccupied units, and other charges.

I see no reason not to disqualify the premises. The financial burdens referred to by Ms. Ruffin in her letter can be eased either by re-renting the building or by pursuing civil remedies. However, in order to avoid an unwarranted penalty upon the property owners, the disqualification will be accompanied by a provision that will allow the landlord to petition the Division for relief from the disqualification should it find a licensee to lease the premises., Any such petition should set forth good cause why the relief sought should be granted.

Accordingly, it is on this 4th day of December, 1997,

ORDERED that Plenary Retail Consumption License No. 0714-33-212-009 issued by the Governing Body of Newark and located at

1082-86 South Orange Avenue, Newark, New Jersey, is hereby revoked effective immediately; and it is further

ORDERED that the licensed premises 1082-86 South Orange Avenue, Newark, New Jersey, are hereby declared ineligible to become the subject of any further license of any kind or class under Chapter 33, N.J.S.A., during a period of two years from the date of this order, provided, however, that the Division will entertain an application at any time during that two year period for removal of the disqualification upon a showing of good cause to site an alcoholic beverage license at the premises.

\s\ JOHN G. HOLL  
JOHN G. HOLL  
DIRECTOR

3. JOSE BEATO V. BOARD OF COMMISSIONERS OF THE CITY OF UNION CITY -  
FINAL CONCLUSION AND ORDER IMPOSING A SUSPENSION OF LICENSE.

STATE OF NEW JERSEY  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
Division of Alcoholic Beverage Control

JOSE BEATO,	)	
	)	FINAL CONCLUSION AND ORDER
Appellant,	)	IMPOSING A SUSPENSION OF
	)	LICENSE
v.	)	
	)	APPEAL NOS. 6169, 6155,
BOARD OF COMMISSIONERS OF THE	)	& 6305
CITY OF UNION CITY,	)	
	)	OAL DKT. NO. ABC 241-95,
Respondent.	)	ABC 523-95 & ABC 8334-95

Susan Dinicola, Esq., for appellant  
Sean Dias, Esq., for Respondent  
(Scarinci & Hollenbeck, attorneys)

## INITIAL DECISION BELOW

HONORABLE LINDA BAER, ADMINISTRATIVE LAW JUDGE

Decided: July 17, 1997

Received: July 23, 1997

## BY THE DIRECTOR:

This matter was received by the Division of Alcoholic Beverage Control ("ABC") on or about July 23, 1997. Exceptions to the Initial Decision were filed by Respondent, Board of Commissioners of the City of Union City ("Union City") as is permitted under N.J.A.C. 1:1-18.4(d). The appellant licensee, Jose Beato, filed no reply. Upon review of the record and the Initial Decision, I adopt the Administrative Law Judge's ("ALJ") findings of fact and conclusions of law in which she recommends a suspension of the Respondent's license for a total of twenty-four (24) days.

Jose Beato operated La Nobleza Bar at 732 27th Street in Union City. For activities that occurred on September 20, 1992, Union City charged the licensee for having a gambling machine in violation of N.J.A.C. 13:2-23.7; not having or maintaining a Current Employee List in violation of N.J.A.C. 13:2-23.13(a)(3) and not having or maintaining books of account on the licensed premises in violation of N.J.A.C. 13:2-23.32. Union City held a February 1, 1994 hearing on these charges. Jose Beato did not appear. Union City found him guilty of the charges and suspended the licensed premises for 24 days. The licensee served one day and appealed the suspension. Union City then denied the licensee's renewal applications for the 1994-95 and 1995-96 license terms.<sup>1</sup> I stayed the suspension and issued Orders to Show Cause why the license term should not be extended.

At OAL, the ALJ found that the licensee violated the ABC regulations as charged and recommended the suspension of the license

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1. Union City also denied the licensee's renewal application for the 1996-97 license term. Mr. Beato appealed the denial, Appeal No. 6401, and I issued an Order to Show Cause. This denial was not consolidated with the above action and is not before me.



for the remaining 23 days. The ALJ also found that the severe penalty of non-renewal of this license was not warranted. The licensee seeks a monetary penalty in lieu of suspension. Union City objects to the conversion.

On August 21, 1997, Union City filed Exceptions to the Initial Decision arguing that it properly denied renewals of the license. In addition to the current charges, Union City maintained that three subsequent charges occurring within a short period of time necessitated the action of non-renewal. Jose Beato had pled guilty and served a 4 day suspension for an after hour sales violation on April 4, 1993, a 3 day suspension for noise disturbance and not maintaining books of account violations on December 4, 1993 and a 20 day suspension for not maintaining books of account, no current employee list, disturbance and possession of controlled dangerous substances violations on December 9, 1994.

On September 2, 1997, Union City adopted a resolution that noted that the licensee, Jose Beato, had died and that the OAL recommended that the license be reconsidered for renewal. Union City resolved to extend the license to Maria Cuevas as Administratrix of Jose Beato and renewed the license for the 1994-95, 1995-96, 1996-97 and 1997-98 license terms.

Union City's action to renew this license for the 1994-95, 1995-96, 1996-97 and 1997-98 license terms moots out the licensee's request for an appeal of the non-renewal issues. *O'Shea v. Board of Educ.*, 127 N.J. 244, 245 (1992).

The only issue before me is whether the license should be suspended for a total of 24 days. Upon my review of the record, I adopt the ALJ's Finding of Fact and Conclusions of Law in which she found the testimony of Sergeant Barrett credible and the penalty imposed reasonable. I accept the recommendation that the Respondent's license be suspended for a total of twenty-four (24) days. Since Jose Beato is deceased and no longer operating the premises, I will consider an application for the Administratrix to convert the remaining 23 day suspension into a fine in lieu of suspension. N.J.S.A. 33:1-31.; *Alibi Inn v. Woodbridge Township*, 96 N.J.A.R.2d (ABC) 90, 92, 94 (1996).

Accordingly, it is on this 1st day of December, 1997,

ORDERED that the Plenary Retail Consumption License 0910-33-025-009 issued by the Board of Commissioners of the City of Union City to Maria Cuevas, Administratrix of the Estate of Jose Beato, t/a La Nobleza Bar for premises located at 732-27th Street, Union City, New Jersey is hereby suspended for a period of twenty-three (23) days, such suspension to commence at 12:00 A.M., Friday January 2, 1998 and to continue until 12:00 A.M., Saturday, January 24, 1998.

/s/ JOHN G. HOLL  
JOHN G. HOLL  
DIRECTOR

4. DRB-71, INC. V. MAYOR AND COUNCIL OF THE BOROUGH OF SEASIDE PARK,  
AND STEPHEN D'ONOFRIO, INTERVENOR - FINAL CONCLUSION AND ORDER.

STATE OF NEW JERSEY  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
Division of Alcoholic Beverage Control

DRB-71, INC.,	)	
	)	
PETITIONER,	)	FINAL CONCLUSION AND ORDER
	)	
PLENARY RETAIL CONSUMPTION	)	
LICENSE NO. 1527-32-002-003	)	
	)	
V.	)	OAL DKT. NO. ABC 12277-94
	)	
MAYOR AND COUNCIL OF THE	)	AGENCY APPEAL NO 6224
BOROUGH OF SEASIDE PARK,	)	
	)	
RESPONDENT,	)	
	)	
AND	)	
	)	
STEPHEN D'ONOFRIO,	)	
	)	
INTERVENOR.	)	

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John F. Vassallo, Jr., Esq., for Petitioner  
(Kearns, Vassallo, Guest & Kearns, attorneys)  
Craig L. Wellerson, Esq., for Respondent  
(Dasti, Murphy & Wellerson, attorneys)  
David S. Piltzer, Esq., for Intervenor Stephen D'Onofrio  
(Piltzer & Piltzer, attorneys)

INITIAL DECISION BELOW

HONORABLE JOSEPH F. MARTONE, ADMINISTRATIVE LAW JUDGE

Decided: February 18, 1997  
1997

Received: February 19,

BY THE DIRECTOR:

Written Exceptions to the Initial Decision were filed on behalf of the Respondent Borough of Seaside Park and Respondent Intervenor, and written Replies thereto were filed on behalf of the Appellant, in accordance with the provisions of N.J.A.C. 1:1-18.4(d). The time to render a Final Decision was extended by properly executed Orders, and, therefore, my Decision must be made on or before December 4, 1997. For the following stated reasons, I shall reject the filed Exceptions and accept the Initial Decision of the Administrative Law Judge ("ALJ"). Accordingly, I shall reverse the action of the Respondent Borough of Seaside Park, and Order the place-to-place transfer of this license, however, the license shall be subject to special conditions imposed below.

This appeal arises from the denial by the Mayor and Council of the Borough of Seaside Park ("Borough") of a place-to-place transfer application submitted by DRB-71, Incorporated, ("DRB-71") on October 6, 1994. Upon receipt of the appeal by the Division, the matter was transmitted to the Office of Administrative Law ("OAL") on December 21, 1994 for a hearing as a contested case.

The ALJ issued an Order permitting intervention of Stephen D'Onofrio on April 18, 1995. The parties then discussed a potential settlement, and the ALJ adjourned the matter. However, the discussions did not result in a settlement. Accordingly, a hearing in this matter was held on March 4, 1996. At the hearing, the parties

requested that the matter be decided on the record of the hearing before the governing body, and that they be permitted to submit briefs setting forth their respective legal arguments. The ALJ granted this request, and on May 30, 1996, the record was closed, after briefs were submitted by the parties. The record was later reopened by the ALJ to permit the parties to submit the exhibits relied upon at the hearing before the governing body. After the exhibits were submitted, the record was closed on October 3, 1996, and the Initial Decision was issued by the ALJ on February 18, 1997.

The facts of this matter were established during hearings held by the Borough on August 18 and 25, 1994. At those hearings, DRB-71's application for a place-to-place transfer of its plenary retail consumption license to a location known as the "Bar-B-Que Pit" was considered. At the hearings, DRB-71 offered to subject the license to certain special conditions should the place-to-place transfer be approved. The special conditions are as follows:

1. The license will only be activated from March 1 to November 1 of each year;
2. The sale of alcoholic beverages will occur only until midnight on weekdays, (Monday, Tuesday, Wednesday, and Thursday), and only until 1:00 a.m. on weekends, (Friday, Saturday, and Sunday);
3. The petitioner will give up the broad package privilege and there will be no sale of alcoholic beverages for off-premises consumption while the license is at the location which is the subject of this application;
4. There will be no stand-up bar;
5. There will be no happy hours, no complimentary coupons for alcohol and no two-for-one specials; and
6. Security will be provided at all times at both entrances to the premises for the purpose of verification of identification, crowd control, and to ensure that no alcoholic beverages leave the premises.

At the hearing, Michael Brown testified that he and Frank Mandia, Jr., Esq., the principals of DRB-71, have held this liquor license since March, 1986. Mr. Brown testified that the Funtown Pier,

located on the boardwalk, consists of 19 buildings. In addition, Mr. Brown stated that the Bar-B-Que Pit is an operating restaurant. Mr. Brown testified that the Bar-B-Que Pit seats approximately 85 - 100 people, and that the restaurant is enclosed by a 3 foot high fence. Mr. Brown further stated that if the place-to-place transfer is approved, the area will be enclosed with nylon netting in order to prevent the pass-through of alcoholic beverages to the boardwalk area.

Mr. Brown asserted that there will not be an increase in traffic and that a bathroom would be added for patrons. Mr. Brown further discussed that there will be no "stand-up" bar at the premises for patrons, although there is an existing 30 inch high counter with low stools of approximately 24 inches in height. Mr. Brown said that he was not encouraging a "bar-type" operation, but that there would be a small service bar for wait staff.

Furthermore, Mr. Brown discussed the proximity of additional licensed premises to the Bar-B-Que Pit. According to Mr. Brown, the "Saw Mill," a licensed premises which contains a bar, is located 77 feet away. Moreover, Seaside Heights is located nearby and two establishments that operate a bar are open and accessible from the boardwalk. Mr. Brown also stated that there are additional food service facilities nearby, and that he wishes to site the license at the proposed location due to the number of people who use the boardwalk.

Mr. Brown stated that the special conditions offered were made in order to influence the public's opinion of the application. Mr. Brown testified that he believes that there will be no additional traffic due to the existence of a liquor license at this location. Mr. Brown states that the intended "bar area" is for a service bar only and that no stools or seats will be present at the bar. Mr. Brown further emphasized that there will be no service of alcohol to individuals who are not seated at a table.

Mr. William Majors testified that he has been the owner of the amusement area known as "Funtown Pier" for the past 14 years. Mr. Majors operates the amusement area on the premises and believes that the sale of alcohol at the Bar-B-Que Pit is not detrimental to his business. In fact, he feels that it would help his business, because patrons would remain in the boardwalk area to eat.

The first witness called on behalf of the Borough was Lt.

William Beining, Sr., the Acting Chief of Police. Lt. Beining testified that he prepared a report which concluded that there is number of liquor licenses sited in the area of the Bar-B-Que Pit. Furthermore, Lt. Beining stated that the "Saw Mill" facility is located approximately 77 feet from the proposed site. Furthermore, Lt. Beining testified that two plenary retail consumption licenses and two plenary retail distribution licenses are sited in the Borough.

Lt. Beining also testified that licensed premises located in the neighboring Seaside Heights are "Jack and Bill's" and "Frankie and Johnny's," which are located 407 feet and 512 feet away, respectively, from the proposed licensed premises. Lt. Beining stated that neighboring Seaside Heights has approximately 20 consumption licenses.

Furthermore, Lt. Beining concluded that if this transfer was approved, the Bar-B-Que Pit would detract from the family atmosphere on the pier, and create congestion and problems requiring additional police presence. Lt. Beining opined that the density of customers in the area would require the police department to dedicate police officers to maintaining crowd control. Lt. Beining maintained that to add a liquor license to this area would worsen problems, since a liquor license has a tendency to create additional more disorderly persons offenses in the area. Lt. Beining also raised concerns about off-site consumption, underage patrons and insufficient bathroom facilities. Lt. Beining stated that he believed that a liquor license sited at this location would greatly increase the number of people in this area. Lt. Beining opined that many problems that have occurred were related to a "spill-over effect" from Seaside Heights, and that an additional liquor license in this area would add problems.

During cross-examination, Lt. Beining admitted that he did not consider the special conditions offered by DRB-71 when preparing his report. Furthermore, Lt. Beining conceded that there was a distinction between DRB-71's proposed facility and other establishments operating exclusively as bars. In addition, Lt. Beining admitted that by enclosing the facility with netting, it would not be possible to pass alcoholic beverages to people outside of the establishment. Also, Lt. Beining agreed that the proposed usage of the license differs from that of a traditional "stand-up" bar. However, Lt. Beining did testify that he believes that the main problem is the increase in people to the area and the related problems of keeping order.

Certain members of the public were given an opportunity to testify before the Borough in this matter. This testimony generally focused on concerns regarding public urination, incidents of vandalism, crowd control, and increased alcohol consumption. In addition, members of the public raised concerns regarding the future of the licensed premises, and offered their opinion that this license would do nothing to improve the image and lifestyle of the Borough. Furthermore, the testimony also indicated a concern regarding the number of bars in neighboring Seaside Heights and the need for increased police patrols on the boardwalk. Moreover, the individual who runs the food portion of the Bar-B-Que Pit testified that the business would be operated as a family atmosphere and believes that this facility would be operated properly. In sum, approximately nine members of the public testified with the opinion that this license should not be permitted to operate on the boardwalk, and one member of the public testified in favor of the license being located on the boardwalk. On October 6, 1994, the Governing Body adopted Resolution #94-167 which set forth its reasons for the denial of the place-to-place transfer.

In evaluating the above testimony, it is apparent that the majority of the objections are not specific to the threat to the public health, safety, or welfare of the public, but express some opposition and concern to the boardwalk location of the liquor license. While I must consider this general opposition, the record does not establish, and the ALJ did not find, any evidence that placing a liquor license at the Bar-B-Que Pit would cause an increase in the municipality's existing problems.

I have reviewed the Exceptions filed by Respondent Borough, and several dispute the ALJ's procedural recitation in the Initial Decision. These Exceptions may or may not be valid, however, they do not directly relate or influence the substance of this matter. Moreover, Respondent Borough takes exception to the ALJ's finding that approving the place-to-place transfer to the Bar-B-Que Pit will not: (1) adversely impact children, (2) detract from the family atmosphere of the boardwalk, and, (3) cause a need for increased police presence. The observations made during the hearings appear to be speculative and unsupported by the testimony and evidence in this matter. The ALJ concluded, and I agree, that the Borough made findings which were not supported by the evidence; as a result, it acted unreasonably, arbitrarily, capriciously, and abused its discretion in denying the application. The Exceptions also allege that the ALJ ignored

widespread sentiment against this transfer. Public sentiment must bear a relationship and "have some reasonable association with dangers to the public health, safety, morals, and general welfare commonly recognized as incidents of the sale and consumption of alcohol." A&P Co. v. Mayor, Point Pleasant Beach, 220 N.J. Super. 119, 128 (App. Div. 1987) (citations omitted). In reviewing the record, the ALJ found, and I agree, no substantial widespread opposition to the transfer.

Moreover, I have considered the Exceptions filed by Respondent Intervenor in this matter. These Exceptions primarily focus on four issues. The Respondent Intervenor discusses the proximity of the Bar-B-Que Pit to the children's rides and the boardwalk. However, this concern is addressed by DRB-71's willingness to affix netting to prevent pass through of alcoholic beverages to those standing outside the Bar-B-Que Pit. Additionally, DRB-71 has agreed to only serve alcoholic beverages to patrons who are seated at a table and will not sell alcoholic beverages as package goods. Finally, I note that the Saw Mill is located 77 feet away from the Bar-B-Que Pit. The boardwalk area is not pristine, in light of the fact that another alcoholic beverage license is sited nearby.

Furthermore, the Exceptions discuss the increased concentration of licenses in the area and the community's concerns regarding the location of another license on the boardwalk. The ALJ properly evaluated and carefully considered the concerns of the public and determined that a negative impact is purely speculative and unsupported by the testimony and evidence in this matter. Moreover, no correlation has been shown between the public sentiment and any problem that may arise from siting a license at the Bar-B-Que Pit. There is no evidence, nor reasonable association, that a liquor license at the Bar-B-Que Pit would be dangerous to the public health, safety, morals, or general welfare of the public. Lyons Farms Tavern v. Mun. Bd. of Alc. Bev. Cont. Newark, 55 N.J. 292, 304 (1970); Martell's Sea Breeze, Inc., v. Mayor and Council of the Borough of Point Pleasant Beach, 97 N.J.A.R.2d (ABC) 39, 55.

DRB-71 has filed Replies to the Exceptions filed by both parties. I agree with Respondent's assertion that the ALJ "correctly analyzed the entire issue and has reached the proper conclusion." (Appellant's Replies at p. 3).



The ALJ provided a thorough summary of the standards of review and case law which are applied when reviewing the action of a local issuing authority considering a place-to-place transfer. I note that generally the Director must abide by the municipality's grant or denial of an application so long as its exercise of judgment and discretion was reasonable. Fanwood v. Rocco, 33 N.J. 404, 414-415 (1960). Furthermore, it is "improper for the Director to intervene and to substitute his judgment for that of the [local] board." Lyons Farms Tavern v. Mun. Bd. of Alc. Bev. Cont. Newark, 55 N.J. 292 (1970) at 307. The court in Lyons Farms also set forth the test for review in these matters:

Did the decision of the local board represent a reasonable exercise of discretion on the basis of evidence presented? If it did, that ends the matter of review by both the Director and the courts.

Lyons Farms, at 307.

Furthermore, I note that the action of a local issuing authority may not be reversed by the Director in the absence of manifest mistake or abuse of discretion. Florence Methodist Church v. Township Committee, Florence Township, 38 N.J. Super. 85 (App. Div. 1955). However, if the municipal action is deemed unreasonable or improperly grounded, the Director may grant such relief or take such action as is appropriate. Common Council of Hightstown v. Hedy's Bar, 86 N.J. Super. 561 (App. Div. 1965).

The ALJ specifically found that "there is nothing in the record to support" the factual findings of the local issuing authority. (Initial Decision at p. 17). In evaluating Acting Chief Beining's testimony, the ALJ found that there is no evidence or testimony that "the proposed transfer of a license to its existing facility would have the result of demanding a higher police presence or forcing the police department to decrease police protection to other areas of the municipality." (Initial Decision at p. 17). Furthermore, the ALJ found that there was "no testimony in the record to establish that the impact of the transfer of the alcoholic beverage license to this location will have anything other than a minimal impact in an area which anticipates large crowds and, in fact, attempts to draw large crowds." (Initial Decision at p. 18) Further, the ALJ determined that the voluntary special conditions requested by DRB-71 "are essentially designed to assure that the proposed premises will continue to be a family-oriented restaurant, rather than a bar or tavern."

Based on the entire record, the ALJ found that the record did not support the conclusion that the serving of alcoholic beverages in this restaurant is objectionable, and that the record is devoid of any testimony that would directly establish that the Bar-B-Que Pit would increase Respondent's existing problems of disorderly conduct, profanity, public urination, and intoxication. Finally, the ALJ determined that there is "no indication in the record that approving this transfer would cause anything more than a minimal increase in pedestrian traffic at this location on the boardwalk." (Initial Decision at p. 21). I agree with the ALJ that any negative impact is purely speculative and is unsupported by the testimony and evidence in this matter.

Therefore, based on the record before me, I find that the action of the Respondent Borough in denying petitioner's application for a place-to-place transfer was arbitrary, capricious and unreasonable, and, therefore, conclude that the Respondent's denial of the place-to-place transfer should be reversed and the application be approved subject to the following conditions, proposed and agreed to by DRB-71 during the hearings before the Borough.

Accordingly, it is on this 4th day of December, 1997,

ORDERED that the determination of the Mayor and Council of the Borough of Seaside Park, which, by Resolution denied the place-to-place transfer application of DRB-71, Inc., holder of Plenary Retail Consumption License No. 1527-32-002-003, dated October 6, 1994, is hereby REVERSED; and it is further

ORDERED that the place-to-place transfer application of DRB-71, Inc., is hereby APPROVED subject to the following special conditions that shall apply to the premises indicated on the transfer application:

1. The license will only be activated from March 1 to November 1 of each year;

2. The sale of alcoholic beverages will occur only until midnight on weekdays, (Monday, Tuesday, Wednesday, and Thursday), and only until 1:00 a.m. on weekends, (Friday, Saturday, and Sunday);

3. The petitioner will give up the broad package privilege and there will be no sale of alcoholic beverages for off-premises consumption while the license is at the location which is the subject of this application;

4. There will be no stand-up bar;

5. There will be no happy hours, no complimentary coupons for alcohol and no two-for-one specials;

6. Security will be provided at all times at both entrances to the premises for the purpose of verification of identification, crowd control, and to ensure that no alcoholic beverages leave the premises and to maintain order;

7. The license is only to be used at the one location which is shown on the application in this matter, and the applicant is suspending the right to ask for more than one location for the license premises;

8. The outer area will be enclosed with nylon netting, which is to be added in order to prevent the pass-through of alcoholic beverages on the boardwalk area. The nylon netting will be designed as so to permit its emergency release in the event of a fire or other emergency;

9. Customers will not be served alcoholic beverages at the service bar;

10. There will be no expansion of the existing premises which petitioner represented can accommodate up to 100 customers;

11. There will be no service of alcohol to standees, and only patrons who are seated will be served food and/or alcoholic beverages. Patrons will be required to sit at the counter or at tables in order to be served. People sitting at the counters will be served alcohol by the servers only and not by a bartender;

12. If any zoning, planning or other land use approvals are required, the applicant will apply for them;

13. The licensed premises will consist solely of the Bar-B-Que Pit building designated as Block 97, Lot 20-34;

14. Two rest room facilities consisting of a lady's room and men's room, each six by ten feet in size, will be constructed against the exterior concrete wall of the Flume Ride to the east of the premises which are the subject of this application.

/S/ JOHN G. HOLL  
JOHN G. HOLL  
DIRECTOR

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Publication of Bulletin 2477 is hereby directed this  
22th Day of December, 1997

  
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JOHN G. HOLL, DIRECTOR  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL