

MINUTES OF THE BLOOMINGTON
LIQUOR COMMISSION

September 14, 2010

The Bloomington Liquor Commissioner Richard Buchanan called the Liquor Hearing to order to hear the request of Big Bev, Inc., d/b/a Friar Tuck, located at 2401 Maloney Dr., currently holding a PAS liquor license which allows the sale of all types of packaged alcohol for consumption off the premises seven (7) days a week, for a Text Amendment to Chapter 6. Alcoholic Beverages, Section 1. Definitions allow all types of alcohol at Wine and Beer Tastings. Present at the hearing were Liquor Commissioners Richard Buchanan, Marabeth Clapp and Geoffrey Tompkins; George Boyle, Asst. Corporation Counsel, and Tracey Covert, City Clerk; and Matt Dunn, Friar Tuck's Store Manager and License holder's representative.

Commissioner Buchanan opened the hearing. He noted that currently City Code only allowed tastings for beer and wine. Matt Dunn, Friar Tuck's Store Manager and License holder's representative, addressed the Commission. He requested that the City allow tastings of any liquor product which contained alcohol in excess of fifteen percent, (15%). He noted that the Town of Normal allowed tastings of all types of alcohol. (*The Town allows tasting of beer & wine and/or all types of alcohol. A license is required.*) He noted that a tasting was exactly that, a taste. Tastings assist/enhance sales. Friar Tuck has an e:letter which is emailed to its customers for all of its store locations. The company has added "no spirit tastings allowed in the City of Bloomington". Customers have requested spirit tastings at the Bloomington store.

Commissioner Buchanan clarified that under the City Code there were two (2) categories of alcohol: 1.) beer & wine and 2.) hard liquor/spirits. Mr. Dunn noted that there were various liquors/cordials which were twenty to forty-five (20 - 45) proof. Commissioner Buchanan noted that Friar Tuck would prefer that the City allow tastings of all types of alcoholic beverages. Mr. Dunn responded affirmatively. Commissioner Buchanan acknowledged that he did not see an issue with this request. The Council would have to approve a Text Amendment.

Commissioner Clapp questioned when Friar Tuck hosted its tastings. Mr. Dunn responded on Saturdays from 1:00 to 5:00 p.m. Friar Tuck hosts spirit tastings at its other store locations. Customers have expressed an interest in the new ready to drink cocktails.

Commissioner Tompkins questioned if Friar Tuck offered tastings or samples. Mr. Dunn stressed that tastings were offered. A customer may request a tasting for each product available on a given Saturday. The tastings are staffed by the store's Asst. Manager. Commissioner Tompkins questioned if the tastings were sponsored by a liquor company. Mr. Dunn responded negatively. Friar Tuck was a hands on operation. The only salespersons allowed on the premise were beer salesmen.

Commissioner Clapp questioned Friar Tucks' experience with tastings. Mr. Dunn responded positively. The Bloomington store offered a better selection of products. Customers came to the store from throughout Central Illinois. He described the customers as cordial and polite.

Commissioner Buchanan noted that the Code allowed up to two (2) tastings per week.

Commissioner Clapp expressed support for the Text Amendment. Commissioner Buchanan requested that George Boyle, Asst. Corporation Counsel, draft the Text Amendment. Mr. Boyle responded affirmatively. The draft ordinance would appear on the Commission's October 12, 2001 meeting agenda.

Commissioner Buchanan opened the hearing to public comment.

Dennis Arnold, 504 N. Lee St., addressed the Commission. He questioned if the proposed Text Amendment would be limited to this liquor license holder. Commissioner Buchanan noted that the control factor was that a license holder must hold a "P", Packaged liquor license. The Text Amendment could include the category(ies) of license. Mr. Arnold expressed his preference that this text amendment be linked to a specific classification, (PAS - Packaged sales, All types of alcohol, Sunday Sales).

Mr. Boyle informed the Commission that under the current ordinance there were no restrictions based upon license classification.

Karen Schmidt, 409 E. Grove St., addressed the Commission. She had spoken with Mr. Dunn and observed Friar Tuck's operations.

Commissioner Buchanan requested that Mr. Boyle draft the proposed Text Amendment and return the draft Ordinance to the Commission for review. Mr. Boyle noted his understanding of the request. He planned to research what other cities have included in their ordinances.

Commissioner Clapp noted that there had been no issues with tastings to this point.

Commissioner Tompkins recommended that a license holder be required to obtain permission from the City.

Commissioner Buchanan suggested that tastings be limited to legitimate retail outlets. Mr. Boyle questioned if tasting should be restricted by location. Mr. Dunn noted that the large grocery stores offer tastings.

Commissioner Buchanan noted that the Text Amendment would need to be precise. He restated that City staff would prepare a report with a draft Text Amendment/Ordinance. The Commission would review same with a recommendation to the Council.

Commissioner Clapp believed that the Commission needed to review the proposed Text Amendment. She believed that there needed to be improvement to the current language in order

to allow all types of alcohol at tastings. She suggested that Mr. Boyle consider the license classification and square footage of the establishment.

Commissioner Buchanan did not foresee any major obstacles. Commissioner Clapp affirmed that the request was reasonable. The City needed to address any obstacles. Commissioner Tompkins recommended that staff proceed and prepare a draft ordinance.

Commissioner Buchanan stated that the Commission would take this issue under advisement. The text amendment would be prepared with appropriate conditions.

Motion by Commissioner Tompkins, seconded by Commissioner Clapp that staff be directed to prepare a draft Text Amendment which would allow all types of alcohol at tasting based upon the Commission's discussion.

Motion carried.

Staff was directed to place this item on the Commission's October 12, 2010 meeting agenda. Commissioner Buchanan added that the draft ordinance should be good for the public and fair to the retailers. Mr. Boyle questioned if there should be different regulations for tastings dependent upon product offered, ("B", Beer & wine only or "A", All types of alcohol). Commissioner Clapp requested that staff consider the establishments that would be authorized to host tastings of all types of alcohol.

There being no further business before the Commission, the hearing recessed at 4:35 p.m.

The Bloomington Liquor Commissioner Richard Buchanan called the Liquor Hearing to order to hear the request of Mac's Convenience Stores, LLC, d/b/a Circle K #1211, located at 513 S. Clinton St., currently holding a GPBS liquor license which allows the sale of packaged beer and wine for consumption off the premises seven (7) days a week, with the following conditions: 1.) everyone purchasing alcohol must be carded, (the Applicant can request dispensation from the Commission in writing); 2.) the establishment's rear and side must be effectively monitored; 2.) a landscape patrol must be established for both on/off premise; 4.) no sale of packaged beer in volume of 40 oz. or less; 5.) packaged sales be allowed in groups of six (6) or more; and 6.) a cyclone fence be installed at the rear of the property; that conditions 4 and 5 be removed; and the request of Mac's Convenience Stores, LLC, d/b/a Circle K #1210, located at 1210 W. Market St., currently holding a GPBS liquor license which allows the sale of packaged beer and wine for consumption off the premises seven (7) days a week with the following conditions: 1.) no sale of packaged beer in volume of 40 oz. or less and 2.) packaged sales be allowed in groups of six (6) or more; that conditions 1 and 2 be removed. Present at the hearing were Liquor Commissioners Richard Buchanan, Marabeth Clapp, Mark Gibson, and Geoffrey Tompkins; George Boyle, Asst. Corporation Counsel, and Tracey Covert, City Clerk; and Garvin Weitzel, Regional Director - Operations, Julie Reed, Market Manager, and Alan Rehorst, Store Manager (Clinton St. store), Mac's Convenience Stores, LLC, License holder's representatives.

Commissioner Buchanan opened the hearing and informed those present that the two (2) requests would be handled in a single hearing.

Commissioner Gibson arrived at 4:36 p.m.

Commissioner Buchanan informed the Commission that he had contacted the City Clerk's Office regarding these requests. He specifically questioned if Mac's had requested a waiver of condition 1. the Applicant can request dispensation from the Commission in writing for Store #1211. He requested that the License holder address the Commission regarding this request. Garvin Weitzel, Mac's Convenience Stores, LLC's Regional Director - Operations and License holder's representative, addressed the Commission. Mac's was interested in the objective steps that the company could take to allow the sale of single serve items, (40 oz. or less). Mac's had acquired these two (2) stores seven (7) years ago during a bankruptcy proceeding. Mac's has a zero tolerance policy for employees who violate liquor laws. At this time, Mac's has passed all police audits without a single violation. Mac's was interested in feedback from the Commission. Mac's wanted to see a level playing field. He provided the Commission with the following examples for the Clinton St. store: Ace Liquors/Slick Rick's, located at 907 E. Oakland Ave., currently holding a TAPS liquor license; Huck's Convenience Food & Fuel, located at 102 W. Oakland Ave., currently holding a GPBS liquor license; Price Rite, located at 706 N. Clinton St., currently holding a GPBS liquor license; and Franzetti's, located at 801 E. Washington St., currently holding a PBS liquor license.

Alan Rehorst, Mac's Convenience Stores, LLC's Store Manager and License holder's representative, addressed the Commission. He believed that all of these license holders were allowed to sell 24 oz. cans and 40 oz. bottles.

Mr. Weitzel cited examples for the Market St. store: Sport & Bait Lounge, located at 304 N. Morris Ave., currently holding a TAPS liquor license; Freedom, located at 1802 W. Market St., currently holding a GPBS liquor license; and Food Energy Mart, located at 1901 W. Market St., currently holding a GPBS liquor license.

Commissioner Buchanan summarized that Mac's wanted the playing field to be leveled by allowing their two (2) stores to sell packaged beer and wine in amounts of 40 oz. or less. Mr. Weitzel noted that the convenient store industry was a competitive business. Mac's goal was to attract loyal customers. By its nature a convenient store needed to be convenient. He noted these tough economic times. Mac's was interested in enhancing its business, sales and profit margins. Mac's was at a competitive disadvantage.

Commissioner Buchanan noted that the "G", Gasoline, liquor license classification was considered special. The City had eliminated the GPA, (Gasoline, Packaged, All Types of Alcohol), liquor license classification. There were four (4) remaining GPA establishments left in the City. They had been grandfathered by the City Council when the classification was eliminated.

Commissioner Gibson acknowledged that the GPA classification had been eliminated during his tenure on the Commission. He could not recall a single application for a GPB, (Gasoline, Packaged, Beer and wine only), that had been denied by the City.

Commissioner Buchanan added that there were GPB establishments which were allowed to sell single serve items. Commissioner Gibson cited the City's inconsistency on this issue. The Commission must consider a number of items, (Chapter 6 Alcoholic Beverages, Section 4B. Creation of New License - Findings and 4C. Conditions of Creation). The City has the authority to place conditions upon a liquor license.

Julie Reed, Mac's Convenience Stores, LLC's Market Manager and License holder's representative, addressed the Commission. She restated Mac's strong opinion that there needed to be a level playing field. Mac's had made a number of changes over the last seven (7) years. She believed that both stores' staff were giving their best efforts. Mr. Rehorst believed that Mac's was the victim of the stores' prior owners. He believed that both owners exercised poor management.

Commissioner Buchanan cited various issues regarding single serve sales. Mr. Weitzel noted the different packaging that was available today. Mac's was interested in gaining customers both old and new. He expressed his confidence in the stores' staffs. Mac's was a responsible retailer.

Commissioner Buchanan noted that there were unique issues related to these two (2) locations which were not within the retailer's control. He cited the City's concern regarding "cold" single serve sales and the ease for abuse of the law. Ms. Reed noted that there were other licensed establishments within the City which have the availability of single serve items.

Commissioner Clapp questioned if Mac's believed that it was losing customers over the inability to sell single serve items. Mr. Weitzel noted that individuals who purchase beer also tended to purchase add on sales. He cited tobacco sales which represent fifty percent (50%) of total sales excluding gasoline sales.

Ms. Reed cited the national economy. Single serve items were a better buy. Commissioner Tompkins expressed his disagreement with the last statement. If individuals were interested in a better purchase price, then they would purchase alcohol at the larger grocery stores. Mr. Weitzel acknowledged that this fact has impacted the convenience industry, (customers pay more for the convenience).

Commissioner Buchanan questioned if Mac's had any data to support their statements. Mr. Weitzel cited the following gross margins: single serve - twenty-five percent (25%) and packaged - ten percent (10%). He added that actual sales, (single serve versus packaged) differed by store and was dependent upon the store's customer base.

Commissioner Buchanan noted that store location was important. He noted his tenure on the Commission. He acknowledged that convenient stores have to sell convenience. If this is not offered, then the store would lose customers. The owner/operator of any business is important. Providing a level playing field was not a simple task. He expressed his interest in developing an amortization which would eliminate single serve sale items from all "G", Gasoline, classification liquor licenses.

Commissioner Gibson noted that the Commission had studied the single serve sale issue in depth. A decision was made to not take any action on same for a variety of reasons. Elimination of single serve items must be an all or none situation. The conditions placed upon these two (2) establishments came about from concerns raised by the neighbors. Each application was evaluated on its merits. He believed that Mac's request to remove these conditions should be used as an example for the Commission to take future action on single serve sales. He also believed the issues before the Commission today addressed competitiveness and compliance. He did not want the Commission to confuse the issues. He expressed his interest in public comment. George Boyle, Asst. Corporation Counsel, recommended that public comment address each premise separately.

Commissioner Tompkins questioned if Mac's d/b/a Circle K #1211, located at 513 S. Clinton St. had complied with condition 6.) a cyclone fence be installed at the rear of the property. Mr. Weitzel informed the Commission that a six to seven foot (6 - 7') wooden fence was installed behind the building, (north property line). There was a bumper guide along the property's west edge which ran the length of the alley. Commissioner Tompkins questioned condition 2.) the establishment's rear and side must be effectively monitored. Mr. Weitzel stated that store staff walked the property. There was a check list for the store's exterior appearance. Mac's had a cleanliness standard. Mr. Rehorst informed the Commission that store staff inspected the property each evening. They were instructed to call the Police Department if individuals were loitering.

Commissioner Gibson questioned lighting. Mr. Rehorst responded affirmatively. He informed them that Hannah Eisner, former Deputy Corporation Counsel, had visited the store to review the implementation of the conditions. Commissioner Buchanan questioned Ms. Eisner's findings.

He stated that the Commission would listen to specific commentary for either location. Commissioner Gibson requested clarification regarding what action the Commission might take. Commissioner Buchanan noted that the Commission could address Mac's request not the single serve issue.

Circle K #1211, located at 513 S. Clinton St.

Dave Schumacher, 502 S. Clayton St., addressed the Commission. His home was located one (1) block north of this store. He had resided there for twenty-one (21) years. He noted that under the previous ownership, there were daily telephone calls to the Police Department regarding alcohol consumption in the alley and park, (Lincoln Memorial Park - 701 E. Taylor St.). There was litter behind his garage on a daily basis. At this time, litter issues occurred on monthly basis. Individuals still consume alcohol in the park. This happens occasionally. The Police Department has been called as there were times when he was afraid to be in his backyard. These issues have reduced in frequency since the conditions were placed upon this license. He acknowledged that the store's staff did a good job of policing their property. However, in the alley just north of their property there was litter from same. In the past, individuals would sit in the alley, consume alcohol and leave their litter. He requested that the conditions remain in place as there had been a reduction in the frequency of issues. He believed that if the conditions were removed, then things would go back to the way they were in the past.

Anthony Vozzella, 512 S. Clayton St., addressed the Commission. He was a frequent customer of this store. He recognized the store's need to make a profit. He expressed his opinion that the store was not in compliance with condition 6. a cyclone fence be installed at the rear of the property. He noted that the conditions have been in place for seven (7) years. The neighborhood had seen improvement. He noted increased property values. He cited litter and publicly intoxicated individuals as safety concerns. The Dimmit's Grove neighborhood cared about the community. Single serve sales were linked to undesirable behavior. He also addressed the locations of Ace Liquors/Slick Rick's, located at 907 E. Oakland Ave. and Huck's Convenience Food & Fuel, located at 102 W. Oakland Ave. These two (2) businesses were located in areas that were zoned for commercial uses not residential. This store was surrounded by residential properties. There had been improvement. He questioned why the City would want to take the risk and test fate.

Frank Calaway, 715 W. Mulberry, addressed the Commission. He cited condition 1. everyone purchasing alcohol must be carded. He questioned if Mac's was in compliance. He also addressed condition 6. a cyclone fence be installed at the rear of the property. He also believed that the fence should be installed on the property's western edge. He noted that a cyclone fence would be a chain link one.

Amy Davis, 501 S. Clayton, addressed the Commission. She was a store customer. She cited the importance of the Lincoln Memorial Park. Dimmit's Grove was the oldest section of the City. There had been huge improvements. As the County's former Public Defender, she was familiar with local crime statistics. The neighborhood association had made efforts to improve the community. She cited the impact of single serve sales on the area. There were individuals whose existence revolved around drinking, partying and sleeping. There were a variety of factors which impact single serve sale issues. She believed that there were important issues for the Commission to consider: 1.) the history, area issues; 2.) property improvements; and 3.) this area was viable part of the City. She acknowledged that the store had improved. She was opposed to this request. There were neighborhood issues to consider.

Joan Phillips, 503 S. Clayton, addressed the Commission. She had resided at this location for the past eighteen (18) years. She stated that no longer were there late night requests for money. She no longer received calls from the Police Department to remove intoxicated persons from her yard. She attributed these changes to the elimination of single serve sales. She expressed her opposition to this request. Commissioner Buchanan noted that Ms. Phillips believed that the elimination of single serve sales was a factor which contributed to neighborhood improvement.

The Commission took a five (5) minutes recess. Time: 5:30 p.m.

Commissioner Buchanan called the meeting back to order at 5:35 p.m.

Circle K #1210, located at 1210 W. Market St.

Dennis Arnold, 504 N. Lee St., addressed the Commission. He represented the Gridley, Allin & Prickett (GAP) Neighborhood Association. He was a store customer. He noted that the Market St. Store Manager was not present at the hearing. Two (2) establishments were cited for

comparison purposes which also held GPBS liquor licenses: Freedom, located at 1802 W. Market St., and Food Energy Mart, located at 1901 W. Market St. Both of these stores were located in areas zoned B - 1, Highway Business. Mac's store was zoned M - 1, Restricted Manufacturing District. (This building is two blocks west of the GAP Form Based Code area.) It was located in a residential area. He noted the following improvements: 1.) elimination of various nuisances and 2.) a reduction in crime. His presentation was similar to those regarding the Clinton St. store. He acknowledged that the management of the business had changed. He believed that the biggest change was the conditions placed upon the liquor license. He was opposed to this request. He noted that there were other liquor establishments located in urban residential areas that have similar conditions, (no single serve sales). Commissioner Gibson requested clarification. Mr. Arnold noted that if the Commission was interested in a level playing field, then the comparison should be between comparable zoning districts. Mr. Boyle noted Mr. Arnold's comments regarding neighborhood improvement.

Frank Calaway, 715 W. Mulberry, addressed the Commission. He cited the volume of pedestrian traffic to this store. He expressed his opinion that the majority of its business came from pedestrians. He believed that the ability to offer single serve sale items would increase same. He noted the litter in the street at this time. He also believed that if granted, other license holders with similar conditions, would also request that they be removed. He cited W. Market Groceries, located at 301 W. Market St., currently holding a PBS, (Packaged, Beer & wine only, Sunday Sales), as an example. He noted that on Saturday, September 11, 2010, the neighborhood hosted its biannual clean up day. He was opposed to this request.

Commissioner Buchanan offered the License holder the opportunity for rebuttal.

Mr. Weitzel stated that Mac's wanted to be a good neighbor. He requested that the Commission and citizens be open minded. Mac's employed two (2) strong store managers who have the necessary leadership skills. Mac's wanted to have a positive relationship with the community. He had heard the concerns. He restated his belief that there needed to be a level playing field. Mac's needed the ability to be competitive. He restated Mac's request to remove the conditions. If the Commission denied this request, then he would request that the City ban single serve sale items citywide.

Commissioner Buchanan noted that Mac's had identified businesses which it viewed as its competitors. Mac's believed that all of these establishments have the ability to sell single serve items. Mac's also believed that it was losing customers to these businesses. Mr. Rehorst stated that he was on site six (6) days a week. He estimated that five to six (5 - 6) customers stop by per day during the day shift requesting single serve sale items. Mac's was at a disadvantage. Mr. Weitzel added that the key was add on sales. Commissioner Buchanan noted that the majority of gasoline purchasers do not come into the store. He questioned the percentage of customers who were pedestrians. Mr. Weitzel could not answer this question.

Commissioner Tompkins expressed his belief that it was impossible to proceed. The City must address the issue of single serve sales. The consumer is responsible for his/her behavior. He cited alcohol consumption and litter as examples. Mr. Boyle restated that the City had not prepared a notice regarding a Text Amendment to the City Code, (Ordinance change). The

Commission was limited to the items listed on its meeting agenda. The request was to remove conditions placed upon two (2) liquor licenses. Commissioner Buchanan expressed his opinion that the two (2) issues were related and the Commission intended to discuss both. Mr. Boyle noted his role as advisor to the Commission. His goal was to provide a focus to the Commission's discussion and insure conformity to the law.

Commissioner Clapp expressed her understanding that these conditions were based upon the establishments' past experience. She recalled that there were citizens present at the Liquor Hearing who were opposed to a liquor license at these locations. The License holder was told that if things improved, then there would be an opportunity to readdress the Commission to request removal of the conditions. She noted that there were issues with single serve sales. The License holder should exercise some control over whom it chooses to sell to. She addressed the City's hopes and the License holder's request for a level playing field. She noted the time spent in the recent past regarding single serve sales. She acknowledged that it may be time to revisit same.

Commissioner Gibson noted that this issue created a lot of conflict. He also acknowledged that the License holder had done as instructed. He noted that there were issues in both neighborhoods. He sympathized with Mac's and their request for a level playing field. He understood the competitive nature of business world. The Commission was responsible to the City and its citizens. The citizens had expressed their concerns regarding 1.) quality of life; 2.) public safety; and 3.) observed behavior. The Commission needed to address Mac's requests. He questioned if the Commission would be able to find a middle ground. He also questioned how removing these conditions would impact the neighborhoods. He expressed his conflict regarding these requests. He acknowledged that when conditions have been imposed on license holders the City had not been consistent.

Commissioner Buchanan presented the Commission with three (3) options: 1.) lay this request over until the Commission's October 12, 2010 meeting; 2.) approve these requests; and 3.) deny these requests. He added that there would be no formal discussion regarding a text amendment to the City Code at this meeting.

Commissioner Gibson expressed his opinion that it would be unfair to the License holder and citizens to not bring these requests to a vote. He added that these requests addressed quality of life issues. He did not see a short term solution. He did not believe that the citizens would support a trial period.

Commissioner Buchanan noted his opposition to approval of these requests. He did not believe that this hearing's discussion would be the last word on single serve sales. He requested that the Commission's October 12, 2010 meeting agenda include a discussion of the four (4) GPA liquor licenses that had been grandfathered by the City Council. In addition, the Commission needed to address the single serve sales issue.

Commissioner Tompkins expressed his opinion that the City would level the playing field. At this time, the Commission needed to consider the neighborhoods, the City and the business.

Motion by Commissioner Gibson, seconded by Commissioner Clapp that the request of Mac's Convenience Stores, LLC, d/b/a Circle K #1211, located at 513 S. Clinton St., currently holding a GPBS liquor license which allows the sale of packaged beer and wine for consumption off the premises seven (7) days a week, with the following conditions: 1.) everyone purchasing alcohol must be carded, the Applicant can request dispensation from the Commission in writing; 2.) the establishment's rear and side must be effectively monitored; 2.) a landscape patrol must be established for both on/off premise; 4.) no sale of packaged beer in volume of 40 oz. or less; 5.) packaged be allowed in groups of six (6) or more; and 6.) a cyclone fence be installed at the rear of the property; that conditions 4 and 5 be removed; and the request of Mac's Convenience Stores, LLC, d/b/a Circle K #1210, located at 1210 W. Market St., currently holding a GPBS liquor license which allows the sale of packaged beer and wine for consumption off the premises seven (7) days a week with the following conditions: 1.) no sale of packaged beer in volume of 40 oz. or less and 2.) packaged be allowed in groups of six (6) or more; that conditions 1 and 2 be removed be approved.

Ayes: Commissioner Clapp.

Nays: Commissioner Buchanan, Gibson and Tompkins.

Motion failed.

Commissioner Buchanan informed the License holder that this item would appear on the October 11, 2010 City Council Consent Agenda. He encouraged them to attend this meeting.

There being no further business before the Commission, the meeting adjourned at 6:05 p.m.

Respectfully,

Tracey Covert, CRM, CMC, RMC
City Clerk