

TOWN OF FOXBOROUGH
SELECTMEN'S MEETING
EXECUTIVE SESSION MINUTES
AUGUST 19, 2014

Members Present: Lorraine A. Brue, Chairman
 John R. Gray, Vice Chairman
 Virginia M. Coppola, Clerk
 David S. Feldman

Others Present: William G. Keegan, Jr.
 Attorney David DeLuca

A motion to enter into Executive Session to discuss statutes/strategy regarding Tasting's Liquor License and return to regular session at the conclusion was made by John Gray. Seconded by Virginia Coppola. **The motion carried 4-0-0. Roll Call Vote Lorraine Brue- yes, Virginia Coppola – yes, David Feldman – yes, John Gray - yes**

Mr. DeVellis was not present for this meeting.

Attorney DeLuca explained to the Board that after speaking with Sandra Herrmann as well as the Bankruptcy Court, the Bankruptcy Court taking the alcohol license from an establishment filing bankruptcy is not an unusual situation.

Attorney DeLuca stated that the Bankruptcy Court takes control over all assets of the business. The Bankruptcy Court does however recognize that the transfer/reissuance of this alcohol license does come back to the Board of Selectmen for ultimate control.

Attorney DeLuca spoke to the Trustee appointed by the Bankruptcy Court and was assured that they are making an aggressive effort to find a buyer and are hoping this will be completed within sixty (60) days.

Attorney DeLuca further stated that the bidders RFP's go to the Bankruptcy Court and they will decide who the best candidate/best price is but that the Board will have the right to make the final decision on an applicant, even if it isn't the RFP the Bankruptcy Court picks.

Ms. Brue asked Attorney DeLuca if the Bankruptcy Court would have the entire packet of each RFP submitted.

Attorney DeLuca replied yes.

Mr. Gray asked if the alcohol license would be restricted to the Tastings location.

Attorney DeLuca stated that it would not be restricted to that particular space but would be restricted to the Patriot Place Overlay District.

Attorney DeLuca further explained that if the alcohol license is returned to the Board, they can grant that license to a new applicant whose business would be located anywhere in the Patriot Place Overlay District.

Mr. Gray asked if the Board could nullify the alcohol license.

Attorney DeLuca stated no, he would not advise that.

Ms. Coppola stated that alcohol licensing is part of Foxborough's legislation and could they get the license back that way.

Attorney DeLuca stated no.

Attorney DeLuca stated that if the Board knew before the bankruptcy was filed that Tastings was closing their doors, the Board could have demanded the license back, but once Tastings has filed in Bankruptcy Court they cannot. Tastings filed with the Bankruptcy Court on July 1, 2014.

Mr. Gray asked if the liquor license was considered part of the Tastings assets in helping them to sell the business.

Attorney DeLuca stated yes.

Attorney DeLuca explained that they are not putting the alcohol license up for sale. The Seller is only giving the Buyer the right to come before the Board for approval of this alcohol license and that there is no guarantee that the Buyer will be granted this license by the Board.

Ms. Coppola stated that the Board does not want to be put into another bad situation and that they want a restaurant to use this license not a bar.

Mr. Keegan asked Attorney DeLuca if there was any way the Town could be notified before a bankruptcy occurs.

Attorney DeLuca stated that the business filing bankruptcy must go to the Bankruptcy Court and fill out a large packet of forms. On one of the forms they must list all creditors. If the Town is not listed as a creditor then the Town would not be notified.

Mr. Keegan asked if this could be sustained by the ABCC.

Attorney DeLuca stated not very often. In this particular case Attorney DeLuca recommends letting this run its course through the bankruptcy court.

Attorney DeLuca further stated that the Bankruptcy Court would not allow the Board to hold a hearing to revoke the license.

Mr. Keegan asked if it wouldn't behoove Patriot Place to get involved in this process.

Attorney DeLuca stated they are/have been involved with the Trustee.

Ms. Brue stated that when Toby Keith's was issued an alcohol license they were the thirteenth license for Patriot Place. The Board had stated at the time of approving the license that if a license at Patriot Place became free, that license would come back to the town.

Ms. Brue further stated that the Town is in a situation where they have a property going out for RFP's and would like to use that license for that.

Attorney DeLuca replied no, the license is specific to the Patriot Place Overlay District as it is part of the original 12 permits allowed for that area.

Ms. Brue asked if they could apply Tastings license to Toby Keith's and take back Toby Keith's present license as they were the thirteenth license.

Ms. Coppola stated that if they got Toby Keith's license back, it could be used somewhere else in town.

Attorney DeLuca stated that the Bankruptcy Court would not allow that because they would be hindering the assets of Tastings.

Mr. Keegan stated that Tastings is a small space.

Ms. Coppola stated that this was her concern in that a bar would want the space.

Attorney DeLuca stated that he could file an "Appearance" with the Bankruptcy Court and then report back to Mr. Keegan on the status of the bankruptcy.

Attorney DeLuca stated that he expects to see an application before the Board sometime in the fall.

Ms. Brue asked if the alcohol in the building is secured.

Attorney DeLuca responded that he had brought this matter up to the Trustee and was assured that he would check into the matter and perhaps blacken the windows if the product was visible.

Ms. Brue asked Mr. Keegan to have Chief O'Leary check on this.

Mr. Gray asked Attorney DeLuca when he would file an Appearance at the Bankruptcy Court.

Attorney DeLuca stated he would do it this week.

Attorney DeLuca stated that an alternative would be for the town to file their own “Relief From Stay” but he urged the Board not to do this.

Motion was made by John Gray to adjourn Executive Session at 7:00pm and to return to regular session. Seconded by Virginia Coppola. **The motion carried 4-0-0. Roll Call Vote Lorraine Brue- yes, Virginia Coppola – yes, David Feldman – yes, John Gray - yes**

Respectfully Submitted,

Debra A. Jarvis