

Item 24-0420: Class "B" Beer and Reserve "Class B" Liquor License application for Delaires LLC d/b/a Delaire's, David Boulanger, Agent, located at 823 W. College Ave
Safety and Licensing Committee

Wed, Oct 23, 2024 5:30PM

Aldersperson Chris Croatt (District 14) 45:42

All right. Moving back up on our agenda to 24-0420, which is the class B beer and reserve Class B liquor license application for Delaires LLC, doing business as Delaires. David Boulanger agent, located at 823 West College Avenue, contingent on approval from health and inspections departments. This was originally sent to Council as a recommendation to approve this license application. It was referred back at Council by Alder Firkus. At this time, I will turn it over to Alder Firkus. District Six should be on.

Aldersperson Brad Firkus (District 3) 46:20

Thank you, Chair.

Aldersperson Chris Croatt (District 14) 46:21

Explain the refer back.

Aldersperson Brad Firkus (District 3) 46:22

Sure. So last week, Tuesday and Wednesday, I received a few messages raising concern about this item. A conversation occurred which painted that this business may be more of a gaming lounge than what the initial attachment to the agenda indicated. There was some conversation indicating that this was something a little different than what had been provided to the committee. Also—and I believe Alder van Zeeland also has this information provided a print out to people in the room—but there is an article of in a neighboring community where this individual who's applying for this license for this business—they had also at that in that community had tried to get permission for a gaming lounge, and when asked about whether or not the machines would pay out, the response was, "I'm going to do what everyone else does," which was not the most necessarily optimistic, best sounding answer that I think someone would want when asked if their gaming machines are going to pay out or follow state law.

Aldersperson Brad Firkus (District 3) 47:33

So, between those mix of concerns, I thought it might be of worthwhile to bring it back to committee, at least have this discussion and see if these are issues/items that would maybe make the committee reconsider this or not. I'm not necessarily advocating one way or another, but I feel like based on the feedback that has come back from some members of the community that are associated with some of the businesses, especially right next to where this business would be, it's worth at least rehashing and taking this all into consideration. Thank you.

Aldersperson Chris Croatt (District 14) 48:09

Okay, thank you. And this is what refer back is for, to do some additional committee work at committee. So, in addition—and I will get to you, Alder van Zeeland—the original agenda item had the application. Tonight's has the application plus the business plan. So, I just want to make sure everyone saw that there was—because in the application, there was a reference to a business plan, but that was originally not attached. It is now part of tonight's agenda. So, there is a business plan attached, and then we also have this new information submitted. So, I will turn it over to Alder van Zeeland. Is it 11? Okay.

Alderson Katie Van Zeeland (District 5) 48:50

Thank you, Chair. Initially, I had just one question about this establishment at Council, based on my service industry experience, which was wondering, how, you know coffee houses that have wine typically serve wine in a glass, not a coffee cup. I was wondering how we would make sure that people aren't leaving with their coffee cup full of coffee that also has liquor in it. And decided to take a look at the location itself just out of curiosity to try to get a better idea of what kind of establishment this was, and that was when I also learned of a neighboring business owner who had interacted with someone working in the space who said that the work they were doing was to upgrade the electricity for the gambling machines.

Alderson Katie Van Zeeland (District 5) 49:46

So, it's important to know that the information you have there from the applicant in Grafton actually came after that discussion. That's how we were able to discover it. It wasn't just searching the person's name. It was finding out first that there was the possibility that this would be an establishment like that.

Alderson Katie Van Zeeland (District 5) 50:12

I had some other questions for the attorney, but I'll let him take care of that. What you'll see in the last page, I thought was really interesting. It's just the picture of the establishment through the window. I've never seen a coffee house that has only high top tables. I've never seen a coffee house that has back—you know, backed bar stools lining the area where you would serve people, and I've never seen a coffee house that has no noise dampening. So, it gives me pause about approving an application when it appears to me that this is either a very new kind of business we've never seen before, or is likely not the business that that we're being told it is.

Alderson Chris Croatt (District 14) 51:06

Okay. Thank you. Attorney Buruin, would you like to add anything? Director one should be on.

Zak Buruin (Assistant City Attorney) 51:17

So, when this situation was brought to my attention later last week, there were some questions initially raised about how this could be considered with respect to the alcohol licensing situation. There are also questions about how it would pertain to the special use permit requirements, which my understanding is those are maybe going away, so that's probably going to be a moot point.

Zak Buruin (Assistant City Attorney) 51:45

But with respect to the alcohol licensing requirements or the alcohol licensing decision that would be before the committee and the council, this is one of the few times and the time when the committee and the council has the most discretion that it's going to have in terms of what decision to make in the interest of the community. The ability to make those decision does need to be rational. It needs to be based on evidence, information. It can't be arbitrary, capricious, any of that kind of stuff. But with the information that was provided, it does appear that there is a significant basis, at least, to raise some questions and perhaps flesh out the factual record a little bit more.

Zak Buruin (Assistant City Attorney) 52:28

And I say that because, in short, if what is alleged is true, this business could not operate lawfully in Appleton or in the state of Wisconsin. And I don't want to get hyperbolic here, but in the literal, statutory sense, if what's being alleged is true, then the business plan would have would essentially amount to an ongoing criminal conspiracy, because commercial gambling is criminally illegal in the state of Wisconsin, and this appears to be, based on the allegations, potentially, a plan to violate that, whether or not anybody else is actively attempting to break the law or not. But the decision does need to be based upon information sufficient to reasonably draw a conclusion.

Zak Buruin (Assistant City Attorney) 53:23

With respect to some of Alder van Zeeland questions, I don't know if there are any specifically that you wanted me to address that I haven't addressed already.

Aldersperson Chris Croatt (District 14) 53:33

Go ahead.

Aldersperson Katie Van Zeeland (District 5) 53:34

Could I? Thank you, Chair. I was wondering if there—number one was if there is some evidence that the applicant may not have been truthful on the application is that within our power to deny the liquor license? Just solely that there may be some evidence?

Zak Buruin (Assistant City Attorney) 53:56

It is going to come down to municipalities can issue licenses to people who are eligible as the governing body deems proper, and the only way that's going to be overturned is if a court reviews it and determines that it is not rational or reasonable based on the information available. So, I don't have a hard and fast and yes or no to give to you on that. It really depends on what the state of the evidence is and how directly it ties to the proper considerations that would be before the committee and the council. Those proper considerations are quite broad, but it's about rationally tying it to the information available.

Zak Buruin (Assistant City Attorney) 54:41

I don't know what it—what additional information there might be available beyond the written documentation that's been provided here today. I think that is what's been provided. I would evaluate it legally as a significant basis to complete the factual record, but without the applicant here to, uh, to respond or without members of the community to address the matter specifically, in terms of what they have specifically heard, I would characterize the factual record as incomplete at this point.

Aldersperson Chris Croatt (District 14) 55:14

Okay.

Aldersperson Katie Van Zeeland (District 5) 55:15

May I follow up?

Aldersperson Chris Croatt (District 14) 55:16

Yes, you may.

Aldersperson Katie Van Zeeland (District 5) 55:18

I think this would probably be a good time to add that I do actually, in my possession, have a video of somebody entering the business with a key telling a neighboring business owner that they were going to be putting gambling machines in that location, and also a text message between a neighboring business and their landlord confirming that slot machines would be installed, and I'd be happy to get those to the attorney. I just was a little concerned that there may be—that there could be backlash to the neighboring businesses who are opposed to this establishment.

Aldersperson Chris Croatt (District 14) 56:01

Okay, thank you. I think one of the challenges the committee faces is factual information. And this was provided by Alder van Zeeland, correct? Not your office?

Zak Buruin (Assistant City Attorney) 56:13

Correct.

Aldersperson Chris Croatt (District 14) 56:14

Okay. Not questioning it. Just want to make sure that the committee is basing their decision on factual information. I know there was multiple members, hands up. Go ahead.

Zak Buruin (Assistant City Attorney) 56:25

Just for clarification purposes, to that point specifically, that information was provided by Alder van Zeeland, but the—one of the items in there is minutes from the Grafton Planning Commission meeting from I believe it was March 22 of 2022. I did independently retrieve those myself and verify them. They're also contemporaneous news reporting. I don't know if I viewed the same specific articles, but I did view on my own articles consistent with those. So I.

Aldersperson Katie Van Zeeland (District 5) 56:53

Chair, if I could.

Aldersperson Chris Croatt (District 14) 56:55

Go ahead.

Aldersperson Katie Van Zeeland (District 5) 56:56

The—I did also send these in an email to the attorney.

Aldersperson Chris Croatt (District 14) 56:59

Okay, and, just for the committee to consider, we got this tonight. I don't think there's a sense of urgency on moving this, but I would just like us to consider if we have all of the factual information and time to review it. Alder Doran, I believe was first, and then I'm gonna go this way. Oh, can we get a motion on the table before we discuss it as a committee?

Aldersperson William Siebers (District 1) 57:25

I move that we hold this 'til our next meeting.

Aldersperson Chris Croatt (District 14) 57:30

Okay motion and a second to hold until the next safety and licensing committee meeting, which would be, I believe, the 13th? No?

[City Clerk Lynch says something off microphone.]

Aldersperson Chris Croatt (District 14) 57:42

Okay. Yeah. Okay, so this would really push it out. We need to pick a date if we're going to hold it. We could say the next regularly scheduled safety and license committee meeting, but I'd like to have a date.

Zak Buruin (Assistant City Attorney) 57:58

I would recommend that.

Aldersperson Chris Croatt (District 14) 58:00

So.

[City Clerk Lynch says something off microphone.]

Alderson Chris Croatt (District 14) 58:09

Okay. This is your motion.

Alderson William Siebers (District 1) 58:11

The 11th.

Alderson Chris Croatt (District 14) 58:12

Okay. So, the motion is to hold it until December 11, which would be the next—who was the seconder? Alder Schultz was the seconder. Okay. On the motion to hold, I believe we'll have some latitude on discussing this. Who's next? Alder Fenton.

Alderson Katie Van Zeeland (District 5) 58:32

Your Hon—Your Honor, could I ask follow up question? He had asked if I could just—I just wanted to ask the question I asked initially about the cups and the to go, if that would be okay.

Alderson Chris Croatt (District 14) 58:43

Yep, sure. Go ahead, and then we'll bring it to committee here.

Alderson Katie Van Zeeland (District 5) 58:47

Do you want me to reiterate—

Alderson Chris Croatt (District 14) 58:48

Sure. Go ahead.

Alderson Katie Van Zeeland (District 5) 58:48

—the question? Okay, thank you. I was wondering how an establishment that could be a coffee establishment, how we would deal with, you know, cups—to go cups, essentially, that if they're selling to go coffee, and their product is coffee with liquor, how do we ensure that we don't have people coming and going from that establishment? There's a church across the street, a laundromat next door, other businesses. How do we ensure that that doesn't occur?

Zak Buruin (Assistant City Attorney) 59:20

Two things to point out with that. I would say, first, there is always the option to apply conditions to a license approval so that—something to address that could be included as a condition if the committee and the Council ultimately wanted to approve. It would be worth pointing out, and I think this, ultimately is probably what Alder van Zeeland is getting to, there is an issue with enforcement and being able to accurately and reliably enforce that which, in significant part, probably goes to the ability of the police department to provide the necessary law enforcement services, which is a pretty well-worn consideration for whether or not it's proper to grant a license. So that is a consideration that would go towards something like that arguably.

Alderson Chris Croatt (District 14) 1:00:10

Okay.

Alderson Katie Van Zeeland (District 5) 1:00:11

Thank you, Chair. I'll wait my turn for the rest.

Alderson Chris Croatt (District 14) 1:00:13

That's okay. That's okay. Thanks. I know a number of you want to speak, but I just, I need to ask has the applicant been notified of the legislative action of the refer back or anything? I mean, they're not here tonight. They're probably not following it. Are they getting any sort of notification from anyone?

[City Clerk Lynch speaks off microphone.]

Alderson Chris Croatt (District 14) 1:00:39

Okay, okay, and it's not standard practice to notify an applicant of the status of their application?

[City Clerk Lynch speaks off microphone.]

Alderson Chris Croatt (District 14) 1:00:51

Right, but not if it gets referred back or if there's another meeting. Okay, okay. Okay, all right. Who's next? Alder Fenton.

Alderson Denise Fenton (District 6) 1:01:01

Thank you, Chair. Um, so the question that I had intend—was going to ask first was whether the applicant was in the loop on all of these events and so. And my second question is—can I direct this to the attorney?

Alderson Chris Croatt (District 14) 1:01:17

Sure.

Alderson Denise Fenton (District 6) 1:01:17

Okay. So, my second question is, obviously there are other establishments that have gaming type machines, and they are labeled for entertainment purposes only. And so legal question is, I mean, what is the implication of denying a license because he's putting these machines in? Would we have to have some sort of evidence that in the past, or in another place, that they had operated these machines illegally? And obviously we all remember earlier in the year, we had some incidences of this kind of thing. So legally speaking, where are we on those type of—on those machines?

Zak Buruin (Assistant City Attorney) 1:02:02

There is a distinguishing characteristic between them in that once the license is granted, especially if it's a Class B license, there are certain statutory limitations to how the municipality, the city, is able to enforce some of those things. I don't understand the logic of them, but they exist, and they hamstring us in some ways. I'm looking into how much. I've reached out to an investigator with the Department of Revenue about that, and hopefully there'll be some dialog between him and myself. We can get some clarification regarding that.

Zak Buruin (Assistant City Attorney) 1:02:39

That is to contrast this with the fact that in a case such as this, where there isn't a license, there's a lot more discretion in the hands of the committee and the council, versus one that's already been granted. So while there may not be prior ongoing existence of these machines, if the committee is—if the committee and the council are reasonably satisfied and rationally so that this is the intent, that this is the plan, and that conclusion is based on rational evidence that a reasonable person would say supports the same kind of conclusion, there's no reason that the court has—"the court" sorry—reason that the committee or the council has to provide a license to somebody that it believes reasonably is going to use it to violate the law. That—as I indicated, there's an argument to be made that if that is the intent, the law is already being broken in the form of a conspiracy.

Zak Buruin (Assistant City Attorney) 1:03:52

In some of those Class B establishments, they're just harder to get into, because there are certain prohibitions against the municipality even engaging in certain types of investigation, let alone enforcement action.

Alderson Denise Fenton (District 6) 1:04:04

Can I follow up?

Alderson William Siebers (District 1) 1:04:05

Chair? I had a motion to hold.

Alderson Chris Croatt (District 14) 1:04:08

Yep, this is on the motion to hold. Yeah. This should be on the motion to hold, if we can—

Alderson William Siebers (District 1) 1:04:13

I mean, if we want to go all night—

Alderson Denise Fenton (District 6) 1:04:15

So, I have one follow up that I think is related to the motion to hold.

Alderson Chris Croatt (District 14) 1:04:20

Go ahead.

Alderson Denise Fenton (District 6) 1:04:20

And the question is, is it possible to request that the applicant be present at our next meeting? Because we have—we're talking a lot of theoretical questions that we don't have the opportunity to get an answer to.

Zak Buruin (Assistant City Attorney) 1:04:37

I believe that would be prudent. Yes.

Alderson Denise Fenton (District 6) 1:04:39

Okay, thank you.

Alderson Chris Croatt (District 14) 1:04:39

Okay, I would like to see that too. Although I should note that the business plan presented has no reference to the allegations that are put forward. On the motion to hold, Alder Hartzheim, district 13.

Alderson Sheri Hartzheim (District 13) 1:04:54

Thank you, Chair. I'm just wondering if the rationale behind the hold is to wait for the applicant, or what the other rationale for the hold might be? I just want to be clear on that so that everybody understands what's—

Alderson Chris Croatt (District 14) 1:05:08

I'll go to the person that made the motion. But it's my understanding that that would be one part of it. The other part of it would be that we got information tonight that we have not had a chance to fully review, and the information that we got tonight came from an alderperson, not the not the city or staff or attorney's office. So that would be my understanding.

Alderman William Siebers (District 1) 1:05:28

Right. And it's—there's, there's a lot of questions that have to be answered yet. And there's some—maybe this isn't the right word. So, there's allegations that I think are very serious that I believe the person is applying for the license needs to be present to answer those in all fairness to that person.

Alderman Chris Croatt (District 14) 1:05:51

Okay. Alder Van Zeeland, go ahead.

Alderman Katie Van Zeeland (District 5) 1:05:54

On the motion to hold.

Alderman Chris Croatt (District 14) 1:05:55

Okay, please.

Alderman Katie Van Zeeland (District 5) 1:05:58

I would just add that we do have a couple weeks before a Council—or a Council meeting would be on the—

Alderman Chris Croatt (District 14) 1:06:07

Sixth.

Alderman Katie Van Zeeland (District 5) 1:06:07

On the sixth. So, we do have a couple weeks to notify the applicant to be present at the Council meeting. I would like to hear what they have to say. At the same time, I think that a news report of someone admitting to wanting to engage in criminal activity and choosing not to apply a stipulation to their business that they will not engage in criminal activity feels to me like enough to not grant a liquor license because of the gravity of owning a liquor license. Thank you.

Alderman Chris Croatt (District 14) 1:06:46

Yep, thank you. I would prefer that we—I mean, it's a committee's purview, but I would prefer that we do the committee work at committee versus doing a lot of this at Council on the sixth, but that's up to the committee. So, on the motion to hold. Is there any other comment? Alder Doran.

Alderman Chad Doran (District 15) 1:07:04

I guess I would have preferred that we had some conversation about some of these questions here tonight as well. I think at Council, we'd have the option to refer back, which would do the exact same thing. Again, I know it's been referred back once, but there is still another option for that, which I would assume, if there are still multiple questions about what's actually happening here, would probably give us the threshold to do that if needed.

Alderman Chad Doran (District 15) 1:07:29

I'm not even sure if some of these things we're discussing here are even things that we can take into consideration yet. I guess I'm still confused on that. So that—I guess I'd just rather see us have at least some direction tonight before we wait another month or month and a half on this.

Alderman Chris Croatt (District 14) 1:07:45

I understand what you're saying, but I think, you know, with the information that we have in front of us, and possibly new information that we will get before the next time we meet, I don't have any problem with the hold. Other comments, questions? Nothing from anyone? Okay, seeing no hands.

Aldersperson Chris Croatt (District 14) 1:08:06

All right. On the motion to hold, excuse me, until the December 9 committee meeting. Is that...11th? Okay. Okay. Okay. On the motion to hold until December 11, all those in favor signify by saying aye.

Alderspersons Siebers, Fenton, and Schultz 1:08:24

Aye.

Aldersperson Chris Croatt (District 14) 1:08:25

All opposed?

Aldersperson Chad Doran (District 15) 1:08:26

Nay.

Aldersperson Chris Croatt (District 14) 1:08:26

Four one. That is held at committee.