

*The Commonwealth of Massachusetts*  
*Department of the State Treasurer*  
*Alcoholic Beverages Control Commission*  
*Boston, Massachusetts 02114*

*Deborah B. Goldberg*  
*Treasurer and Receiver General*

*Kim J. Gainsboro, Esq.*  
*Chairman*

**DECISION**

**DENNIS LANE D/B/A 7-ELEVEN #11503B**  
**678 ADAMS STREET**  
**QUINCY, MA 02169-1339**  
**LICENSE#: NEW**  
**HEARD: 09/16/2015**

This is an appeal of the action of the City of Quincy Board of License Commissioners (the "Local Board" or "Quincy") for denying the application to transfer a M.G.L. c. 138, §15 wines and malt beverages license to Dennis Lane d/b/a 7-Eleven ("Applicant" or "7-Eleven") to be exercised at 678 Adams Street, Quincy, Massachusetts. The Applicant timely appealed the Local Board's decision to the Alcoholic Beverages Control Commission (the "Commission"), and a hearing was held on Wednesday, September 16, 2015.

The following documents are in evidence as exhibits:

1. Affidavit of Notice to Abutters and Others;
  - a. Return of Service from Abutters;
2. Transcript of 6/9/15 Hearing before the Local Board;
3. Customer Petitions in Support of License Transfer;
4. Letters in Support of License Transfer;
5. Milton Customer Petitions in Support of License Transfer;
6. Petition Requesting Deferral of Action on Application for License Transfer;
7. Written Decision of the Local Board, 6/10/15;
8. Quincy Liquor License Proximity Map;
9. Map of Licensed Premises within 1.29 Miles of Current Licensee;
10. Map of Licensed Premises within 1.3 Miles of Current Licensee;
11. Video of 6/9/15 Local Board Hearing; and
12. Audio of 6/9/15 Local Board Hearing.

There is one (1) audio recording of this hearing, and three (3) witnesses testified.

**FINDINGS OF FACTS**

1. Dennis Lane has owned and operated a 7-Eleven convenience store located at 678 Adams Street, Quincy, Massachusetts for over forty years and has an excellent reputation in the Quincy community. (Testimony; Exhibit 2)

2. 7-Eleven is located in the upper western part of Quincy. The area in the immediate vicinity of 7-Eleven is highly commercial, and traffic in that area is very congested. (Testimony)
3. On or about April 13, 2015, the Applicant submitted to the Local Board an application to transfer to it a M.G.L. c. 138, §15 wines and malt beverages retail package store license from the current licensee, which is located at 101 Liberty Street in the southern part of Quincy, Massachusetts (the "Application"). (Testimony; Exhibit 2)
4. The Applicant intends to sell single bottles of wine as well as beer in six packs. (Testimony)
5. The Local Board held a hearing on the Application on June 9, 2015. (Exhibit 2)
6. Quincy has a quota of eighteen wines and malt beverages and sixteen all alcoholic beverages §15 licenses, and Quincy has issued all of them. (Testimony)
7. There are seven §15 licenses within a 1.29 mile radius of 7-Eleven. (Exhibit 8)
8. There are approximately nine §15 licenses within a 1.29 mile radius of the current licensee at 101 Liberty Street, Quincy, Massachusetts. (Exhibit 9)
9. Diagonally across the street from 7-Eleven and approximately 332 feet or .06 miles away is Atlas Liquors, an all alcoholic beverages licensee operating a package store at 661 Adams Street. (Testimony; Exhibit 8)
10. The Application was supported by many Quincy residents. (Testimony; Exhibits 2-4) Two hundred and twenty Quincy residents signed a petition in support of the Application. (Exhibit 3) Over one hundred Quincy residents submitted letters in support. (Exhibit 4) Some Quincy residents voiced their support for the Application at the hearing. (Exhibit 2) The Applicant also submitted a petition signed by residents of Milton, as the 7-Eleven is only a couple of streets away from the Milton border. (Exhibit 5)
11. Forty-three Quincy residents signed a petition to defer action on the Application because of an impending sale of Tedeschi Food Stores to 7-Eleven Corporation. (Exhibit 6)
12. At the Local Board's hearing one person who was not a member of the Local Board spoke in opposition to the Application. (Exhibit 2) That person, City Councilor Coughlin, raised the following issues: Lakin Square, where the Applicant is located, is a busy area; public safety issues for pedestrians trying to cross Adams Street; public safety issues with regard to traffic build-up in the neighborhood; firefighters from Engine 4 informed him that they have concerns about the ability to get fire apparatus through traffic at the nearby intersection; and there are already eight §15 licenses within 1.29 miles of the Applicant.<sup>1</sup> (Exhibit 2)
13. Two Local Board members also spoke in opposition at the hearing. Local Board member Joseph Duca stated that he did not see a public need for the Application. Chief Joseph Barron of the Quincy Fire Department, who is also a member of the Local Board, noted that there are a large number of under-aged persons in the Applicant's location and

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<sup>1</sup> There are actually seven, not eight, §15 licensees within 1.29 miles of the 7-Eleven. (Testimony; Exhibit 8)

expressed a concern that alcohol sales would be difficult to regulate at the Applicant's location. He echoed Councilor Coughlin that traffic is a concern in that area for the Quincy Fire Department. (Exhibit 2)

14. At the hearing before the Commission, Joseph Shea, Quincy City Clerk and Chairman of the Local Board, testified that over the past twenty years, traffic has become exacerbated in the area of Beale Street, Adams Street, and Stedman Street. (Testimony) He indicated that Quincy spent hundreds of thousands of dollars with a highway safety grant dedicated to those streets, with an effort toward helping to alleviate traffic in the area, but that traffic is still terrible. Id.
15. The Local Board denied the Application and gave the Applicant written notice of its decision on June 10, 2015. (Exhibit 7) The Local Board gave the following reasons for the denial:

- (1) Concerns about traffic issues in Lakin Square at the intersection of Stedman Street, Beale Street and Adams Street, which are directly adjacent to [the] store at 678 Adams Street. In addition the intersection of Robertson Street at Adams Street nearby contributes to this congestion.

- (2) There are 8 other Full Alcohol or Beer & Wine stores within 1.29 miles of [the] store location.<sup>2</sup>

- (3) Concern of Chief Joseph Barron of the Quincy Fire Department, that fire apparatus has difficulty traveling through the Lakin Square area when responding to calls in the area.

Id.

### DISCUSSION

In reviewing the decision of a denial by a local licensing authority, the Commission gives "reasonable deference to the discretion of the local authorities" and determines whether "the reasons given by the local authorities are based on an error of law or are reflective of arbitrary or capricious action." Great Atlantic & Pacific Tea Co., Inc. v. Board of License Comm'rs of Springfield, 387 Mass. 833, 837, 838 (1983); see Ballarin, Inc. v. Boston Licensing Board, 49 Mass. App. Ct. 506, 512 (2000) (when reviewing the local licensing authority's authority, court does not assess the evidence but rather "examine[s] the record for errors of law or abuse of discretion that add up to arbitrary and capricious decision-making"). However, while this discretion of the local licensing authority is broad, "it is not untrammled." Id. at 511.

A local board may deny a license even if the facts show that a license lawfully could be granted. Donovan v. City of Woburn, 65 Mass. App. Ct. 375, 379 (2006). "Neither the [local board's] broad discretion nor the limitations on judicial review, however, mean that the [local board] can do whatever it pleases whenever it chooses to do so." Id. "Instead, '[w]here the factual premises on which [the board] purports to exercise discretion is not supported by the record, its action is arbitrary and capricious and based upon error of law, and cannot stand." Id. (quoting Ruci v. Client's Sec. Bd., 53 Mass. App. Ct. 737, 740 (2002)).

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<sup>2</sup> See supra note 1.

A Board must state the reasons for its decision whether or not to issue the liquor license. M.G.L. c. 138, §23. "Adjudicatory findings must be 'adequate to enable [a court] to determine (a) whether the . . . order and conclusions were warranted by appropriate subsidiary findings, and (b) whether such subsidiary findings were supported by substantial evidence.'" Charlesbank Rest. Inc. v. Alcoholic Beverages Control Comm'n, 12 Mass. App. Ct. 879, 880 (1981) (quoting Westborough v. Dep't of Pub. Util., 358 Mass. 716, 717-718 (1971)).

The statutory language is clear that there is no right to a liquor license of the type specified in M.G.L. c. 138, §15. As §23 provides in pertinent part:

"[t]he provisions for the issue of licenses and permits [under c. 138] imply no intention to create rights generally for persons to engage or continue in the transaction of the business authorized by the licenses or permits respectively, but are enacted with a view only to serve the public need and in such a manner as to protect the common good and, to that end, to provide, in the opinion of the licensing authorities, an adequate number of places at which the public may obtain, in the manner and for the kind of use indicated, the different sorts of beverages for the sale of which provision is made."

Licenses to sell alcoholic beverages are a special privilege subject to public regulation and control for which states have especially wide latitude pursuant to the Twenty-First Amendment to the United States Constitution. Connolly v. Alcoholic Beverages Control Comm'n, 334 Mass. 613, 619 (1956); Opinion of the Justices, 368 Mass. 857, 861 (1975). The procedure for the issuance of licenses to sell alcoholic beverages is set out in M.G.L. c. 138. Retail licenses must be approved by both the local licensing authorities and the Commission. M.G.L. c. 138, §§ 12, 67; Beacon Hill Civic Ass'n v. Ristorante Toscano, Inc., 422 Mass. 318, 321 (1996).

A local licensing authority has discretion to determine public convenience, public need, and public good with respect to whether to grant a license to sell alcoholic beverages. Donovan, 65 Mass. App. Ct. at 378-379; Ballarin, Inc., 49 Mass. App. Ct. at 510-511. A local board exercises very broad judgment about public convenience and public good with respect to whether to issue a license to sell alcoholic beverages. Donovan, 65 Mass. App. Ct. at 379.

A local board's determination to deny an application based on the lack of public need is not contrary to law where the local board considers the need for the particular business that the applicant sought to run and the local board applies its analysis to the applicant's proposed business and to the location of the proposed business. Id. at 380. "Need in the literal sense of the requirement is not what the statute is about. Rather the test includes an assessment of public want and the appropriateness of a liquor license at a particular location." Ballarin, Inc., 49 Mass. App. Ct. at 511.

Consideration of the *number of existing dispensaries in a locality* is a proper concern . . . as are the views of the inhabitants of the locality in which a license is sought . . . In making its discretionary determination, a licensing authority may take into account a wide range of factors - such as *traffic*, noise, size, the sort of operation that carries the license, and the reputation of the applicant.

Id. (Italics added).

Upon review of the record before the Local Board and the evidence before Commission, the Commission finds that the Local Board fulfilled its responsibility regarding the Application and that the Local Board's decision was not based on an error of law or reflective of arbitrary or capricious action. The Local Board considered the testimony introduced at the hearing on the Application and reviewed 7-Eleven's Application and documentary evidence. The Local Board received evidence that traffic in the Applicant's commercial neighborhood is very congested and problematic, including for fire trucks. (Exhibit 2; Testimony) Without a §15 license at 7-Eleven, there are already public safety issues for pedestrians trying to cross Adams Street, and there is already traffic build-up in the neighborhood. (Exhibit 2) Similarly, the Fire Department has difficulty getting its apparatus through that intersection in an emergency. See id. Over the past twenty years, traffic has become exacerbated in the area of Beale Street, Adams Street, and Stedman Street. (Testimony) Despite Quincy having spent hundreds of thousands of dollars with a highway safety grant dedicated to those streets, with an effort toward helping to alleviate traffic in the area, the traffic is still severe. Id. The Commission finds that the evidence regarding existing congested traffic is sufficient to satisfy the Ballarin requirements.

There was also evidence before the Local Board that there are seven §15 wines and malt beverages licensees within a 1.29 mile radius of 7-Eleven. (Testimony; Exhibit 8) Atlas Liquors, a package store, is only 332 feet (.06 mile) from 7-Eleven. Id. It was proper for the Local Board to consider the number of existing dispensaries in the locale of 7-Eleven, and the evidence supports the Local Board's conclusion that the area of 7-Eleven is adequately served by §15 licensees.<sup>3</sup> Ballarin, Inc., 49 Mass. App. Ct. at 511; (Testimony).

7-Eleven argues that the Local Board should have granted it a license because it is different from other §15 licensees in its area in that it would offer the convenience of one-stop shopping as well as the ability to purchase wine/beer in small quantities. (Testimony) The Commission is not persuaded by this argument. The fact that 7-Eleven would sell, along with convenience items, six packs of beer (as opposed to 24- or larger packs of beer) does not sufficiently distinguish 7-Eleven's intended product from other §15 stores in the area so as to satisfy the public need requirement. Compare Donovan v. City of Woburn, 65 Mass. App. Ct. 375, 381 (2006) (determining "sound exercise of discretion required the [local board] to consider the need for the business [the applicant] sought to run [--sale of gifts, which sometimes contained alcohol--], not the need . . . for a business of the type typically run by others").

The Applicant also points to the number of people who supported the Application. However, a community's opinion concerning an application for a liquor license is not the sole factor in determining whether the application should be granted. Ballarin, Inc., 49 Mass. App. Ct. at 511. The Local Board did not err in determining that the issues of traffic and number of existing licensees in the area outweighed the community support for the Application.

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<sup>3</sup> 7-Eleven points to the fact that there are two more §15 licensees within a 1.29 mile radius of the transferor (nine licenses) than there are within 1.29 miles of its own location (seven licenses). (Testimony; Exhibits 8, 9) In doing so, the Applicant suggests that its own neighborhood is not adequately served and should have been granted another license. While the Ballarin test considers the "number of existing dispensaries in a locality," there is no legal requirement that §15 licenses be distributed evenly throughout a city or town. Ballarin, Inc., 49 Mass. App. Ct. at 511. The Local Board's decision denying the Application in part on the number of §15 licensees within a 1.29 mile radius of the Applicant is supported by the record.

The Local Board properly considered the Ballarin factors when determining that traffic was already too congested in the Applicant's neighborhood and that there was not a need for another §15 license in this location. The denial was based on information presented during the course of the public hearing and grounded in the cases of Ballarin and Donovan. As the Supreme Judicial Court has stated, "[t]here is nothing in the record to indicate that the decision was whimsical or not based on logical analysis. On the record, we can only conclude that the decision was founded on reasoned judgment, and was not arbitrary or capricious." Great Atlantic & Pacific Tea Co., Inc., 387 Mass. at 839-840.

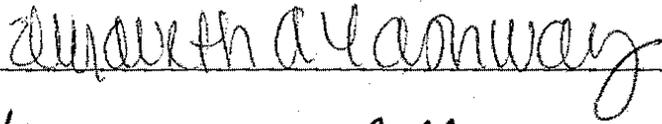
Therefore, the Commission finds that the decision of the Local Board is supported by the record, was not based upon an error of law, and not arbitrary and capricious.

#### CONCLUSION

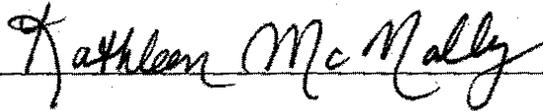
Based on the evidence and testimony at the hearing, the Commission **APPROVES** the action of the City of Quincy Board of License Commissioners in denying the application to transfer the M.G.L. c. 138, §15 wines and malt beverages license to Dennis Lane d/b/a 7-Eleven.

#### **ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Elizabeth A. Lashway, Commissioner



Kathleen McNally, Commissioner



Dated: October 19, 2015

You have the right to appeal this decision to the Superior Courts under the provisions of Chapter 30A of the Massachusetts General Laws within thirty (30) days of receipt of this decision.

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cc: Karen D. Simão, Esq. via facsimile 617-946-4624  
James S. Timmins, Esq. via facsimile 617-376-1519  
Frederick G. Mahony, Chief Investigator  
Administration, File