

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: April 27, 2015)

PAWTUCKET CITY COUNCIL :
Acting in its Capacity as the :
CITY OF PAWTUCKET BOARD :
OF LICENSE COMMISSIONERS :
v. :
HABANOS LOUNGE, INC. :
d/b/a HABANOS CIGAR LOUNGE :

C.A. No. PC- 2010-6197

DECISION

PROCACCINI, J. This matter comes before the Court on an appeal by the Pawtucket City Council, acting in its capacity as the City of Pawtucket Board of License Commissioners (the Board), from a September 23, 2010 decision of the State of Rhode Island Department of Business Regulation (DBR) granting Habanos Lounge, Inc. d/b/a Habanos Cigar Lounge's (Habanos Lounge) application for a Class BV liquor license. Jurisdiction is pursuant to G.L. 1956 § 42-35-15.

I

Facts and Travel

On or about February 17, 2010, Habanos Lounge filed an application for a Class BV liquor license for its premises in Pawtucket, Rhode Island.1 On April 21, 2010, the Board held a hearing on the application and unanimously voted to deny Habanos Lounge's application for reasons of oversaturation and public safety.

1 The location has two addresses in Pawtucket, Rhode Island: 1438 Newport Avenue and 424 Benefit Street. (Hr'g Tr. at 17, June 8, 2010.)

On or about April 26, 2010, Habanos Lounge filed a timely appeal to the DBR, and a de novo hearing was held on June 8, 2010 before Hearing Officer Catherine Warren. At the hearing, Mr. Mohd Eid (Mr. Eid) testified in his capacity as the President of Habanos Lounge. (Hr'g Tr. at 16, June 8, 2010.) Mr. Eid explained that Habanos Lounge has been at the leased location for approximately nine months, and the business has been operating as a cigar retail store. Id. at 17. Habanos Lounge currently has two humidors to keep the cigars fresh, a main seating area, showcases, a custom-made humidor locker for customers to rent, and eleven parking spaces, as required by zoning ordinances. Id. at 19, 21, 22, and 26. Mr. Eid testified that an addition is under construction and will include a kitchen, a bar with six stools, a bathroom, a walk-in humidor, and the building will have approximately thirty-eight seats. Id. at 28-29. The building currently has a ventilation system and a new smoke eater for 1200 square feet. Id. at 30.

Although Mr. Eid stated that he had no experience running a cigar bar in Rhode Island, he was previously a manager at a cigar bar in Tarpon Springs, Florida. Id. at 18. Additionally, Mr. Eid is receiving help from Cigar Masters, a national company and operator of a Providence cigar bar, as well as Bam, a wholesale business in Pawtucket. Id. at 36-37. Mr. Eid testified that he plans to operate Habanos Lounge from 12:00 p.m. to 12:00 a.m. Monday through Thursday, and 12:00 p.m. to 1:00 a.m. on Friday and Saturday. Id. at 29-30. The cigars are imported, handmade, and range in price from approximately \$5-\$30 per cigar. Id. at 31. Mr. Eid stated that the alcohol service will be secondary to the cigar sales. Id. at 32. The bar may sell imported beer, but will mostly sell hard liquor and wine. Id.

On cross-examination, Mr. Eid confirmed that he testified before the Board that if he was unable to obtain a liquor license, Habanos Lounge “would probably have to close . . . because there just isn’t enough business with cigar sales only.” Id. at 39-40. Mr. Eid explained that

having a liquor license will help Habanos Lounge stay in business “[b]ecause people will buy more cigars and will sit down and smoke them.” Id. at 40. Mr. Eid testified that most patrons come from out-of-state, as Habanos Lounge is a high-end establishment, and, in his opinion, the Habanos Lounge neighborhood cannot afford such cigars. Id. at 44-46. Since appearing before the Board, Mr. Eid stated that his plan has slightly changed. Id. at 47. Specifically, Mr. Eid decreased the amount of seats from forty-four to no more than forty because he had a company review the space and the kitchen had to be enlarged. Id. at 47-48.

Subsequently at the hearing, Councilman David Moran (Councilman Moran) testified on behalf of the Board. Id. at 60. He stated that he is a casualty and claims adjuster and handles motor vehicle accidents for an insurance company. Id. Additionally, he is a City Councilor representing District One, where Habanos Lounge is located. Id. at 61. Councilman Moran testified that he has spoken to approximately four or five of his constituents who are not interested in having another liquor license in the area, and they are concerned with safety and traffic. Id. at 63-64. Moreover, Councilman Moran testified that there are eight to ten liquor establishments in close proximity to Habanos Lounge. Id. at 65-66.

Thereafter, Councilman Moran testified that the first reason the Board denied the liquor license was for public safety and traffic concerns since Habanos Lounge is located at the corner of Benefit Street and Newport Avenue, a busy intersection. Id. at 70-71. Newport Avenue consists of four lanes with two lanes each running north and south. Id. at 72. Councilman Moran described the area as “very commercial, and very busy” with businesses located on all corners. Id. at 73-74. Councilman Moran expressed concern that vehicles would back up into Newport Avenue from Habanos Lounge’s parking lot, causing accidents. Id. at 75-76.

Mr. Raymond Moreau (Mr. Moreau) and Mr. Gordon Duquenoy (Mr. Duquenoy) also testified in objection to granting Habanos Lounge a liquor license. Id. at 105 and 121. Mr. Moreau expressed concern of oversaturation in the neighborhood and difficulty parking in the area. Id. at 105-120. Mr. Duquenoy testified regarding parking challenges for another local bar and expressed concern for parking at Habanos Lounge. Id. at 121-128.

The Hearing Officer, along with all undersigned attorneys, took a view of Habanos Lounge on July 7, 2010. Subsequently, the Hearing Officer recommended the DBR grant Habanos Lounge a liquor license, and the DBR adopted the recommendation in its September 23, 2010 decision. (DBR Decision No. 10-L-0046 at 21 and 23, Sept. 23, 2010.)

## II

### Standard of Review

A party who has “exhausted all administrative remedies available to him or her within the agency, and who is aggrieved by a final order in a contested case is entitled to judicial review” by the Superior Court pursuant to § 42-35-15. Sec. 42-35-15(a). In undertaking that review, the Superior Court “shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.” Sec. 42-35-15(g); see also Barrington Sch. Comm. v. R.I. State Labor Relations Bd., 608 A.2d 1126, 1138 (R.I. 1992). Section 42-35-15(g) of the Administrative Procedure Act states:

“The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- “(1) In violation of constitutional or statutory provisions;
- “(2) In excess of the statutory authority of the agency;
- “(3) Made upon unlawful procedure;

- “(4) Affected by other error or law;
- “(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- “(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.”

In reviewing an agency decision, this Court is limited to an examination of the certified record in deciding whether the agency’s decision is supported by substantial evidence. Johnston Ambulatory Surgical Assocs. v. Nolan, 755 A.2d 799, 804-05 (R.I. 2000) (citation omitted). Substantial evidence has been defined as “such relevant evidence that a reasonable mind might accept as adequate to support a conclusion, and means an amount more than a scintilla but less than a preponderance.” Newport Shipyard Inc. v. R.I. Comm’n for Human Rights, 484 A.2d 893, 897 (R.I. 1984) (internal citation omitted). If this Court finds that substantial evidence exists in the record, it “is required to uphold the agency’s conclusions.” Auto Body Ass’n of R.I. v. State of R.I. Dep’t of Bus. Regulation, 996 A.2d 91, 95 (R.I. 2010) (quoting R.I. Pub. Telecomm. Auth. v. R.I. State Labor Relations Bd., 650 A.2d 479, 485 (R.I. 1994)) (internal quotation marks omitted).

This Court must uphold the agency’s conclusions even in cases where, after reviewing the entire certified record, the Court “might be inclined to view the evidence differently and draw different inferences from those of the agency below.” Barrington Sch. Comm., 608 A.2d at 1138. On review, this Court does not weigh the evidence; rather, it searches the record “for any legally competent evidence that supports the decision under review.” Berberian v. Dep’t of Emp’t Sec., Bd. of Review, 414 A.2d 480, 482 (R.I. 1980). This Court may “reverse factual conclusions of administrative agencies only when they are totally devoid of competent evidentiary support in the record.” Kachanis v. Bd. of Review, Dep’t of Emp’t & Training, 638

A.2d 553, 556 (R.I. 1994) (quoting Milardo v. Coastal Res. Mgmt. Council, 434 A.2d 266, 272 (R.I. 1981)).

### III

#### Analysis

On appeal, the Board contends that the DBR made an error of law by failing to give proper deference to the Board's decision. Specifically, the Board argues that its decision gave valid reasons with supporting evidence for denying Habanos Lounge a liquor license, and the DBR ignored this evidence in making its decision to grant Habanos Lounge a license.

Licensing boards have broad discretion in determining whether to grant or deny a license. See Bd. of Police Comm'rs of Warwick v. Reynolds, 86 R.I. 172, 176, 133 A.2d 737, 740 (1957). Rhode Island General Law permits an applicant whose license was denied to appeal the decision to the DBR. See G.L. 1956 § 3-7-21. The DBR "has the right to review the decision of any local board, and after hearing, to confirm or reverse the decision of the local board in whole or in part, and to make any decision or order he or she considers proper." Id. Our Supreme Court has termed the DBR a "super-licensing board," and the Supreme Court has reiterated that the DBR "may on the applicant's appeal hear the case de novo." Bd. of Police Comm'rs of Warwick, 86 R.I. at 177, 133 A.2d at 740; see also Tedford v. Reynolds, 87 R.I. 335, 342, 141 A.2d 264, 268 (1958) (holding that "[i]t is now well established in this state that under existing law the liquor control administrator may on the applicant's appeal hear the case de novo . . .").

In its decision, the DBR recognized that the department has the same broad discretion as the licensing board in granting or denying a liquor license. (DBR Decision No. 10-L-0046 at 7, Sept. 23, 2010.) The DBR also noted that it typically "will not substitute its opinion for that of the local town but rather will look, for relevant material evidence rationally related to the

decision at the local level.” Id. The Board’s argument relies on the DBR’s affinity to defer to the Board’s opinion, but this ignores the consistent precedent from our Supreme Court that the DBR acts as a “super-licensing board” and hears an appeal de novo. Bd. of Police Comm’rs of Warwick, 86 R.I. at 177, 133 A.2d at 740; see also Tedford, 87 R.I. at 342, 141 A.2d at 268; Hallene v. Smith, 98 R.I. 360, 364, 201 A.2d 921, 924 (1964). Thus, this Court does not embrace the Board’s argument that the DBR committed an error of law when it failed to give deference to the Board’s decision.

Next, the Board avers that the DBR did not consider the evidence in support of denying Habanos Lounge a liquor license. The Board contends that there is substantial evidence of oversaturation and traffic safety concerns that the DBR did not consider in granting Habanos Lounge a liquor license.

The record reflects that the DBR considered all of the evidence presented, including evidence that eight to ten other liquor establishments currently exist in the neighborhood, and that Habanos Lounge would be the only cigar bar in the area. (Hr’g Tr. at 66 and 78-79, June 8, 2010.) Additionally, the Hearing Officer considered testimony from local residents expressing concerns over traffic patterns and congested parking. Id. at 104 and 120. Furthermore, the Hearing Officer took a view of the location in making her recommendation to the DBR. After considering all of the evidence, the DBR concluded that the totality of the evidence does not support a denial of the license. (DBR Decision No. 10-L-0046 at 20, Sept. 23, 2010.)

In reviewing the DBR’s decision, this Court does not weigh the evidence; rather, it searches the record “for any legally competent evidence that supports the decision under review.” Berberian, 414 A.2d at 482. The DBR determines the weight given to the evidence. See id. This Court may not substitute its judgment for that of the DBR and must affirm the

decision of the agency unless its findings are clearly erroneous. See Guarino v. Dep't of Soc. Welfare, 410 A.2d 425, 428 (R.I. 1980). After a review of the record, this Court finds that the DBR's decision was supported by ample evidence.

#### **IV**

#### **Conclusion**

After reviewing the record, this Court is satisfied that the DBR's decision was supported by the reliable, probative, and substantial evidence of the record. For the foregoing reasons, it is the opinion of this Court that the decision of the DBR be affirmed. Counsel may prepare and submit an order for the approval of this Court in conformity with this Decision.





**RHODE ISLAND SUPERIOR COURT**

*Decision Addendum Sheet*

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**TITLE OF CASE:** Pawtucket City Council v. Habanos Lounge, Inc., d/b/a Habanos Cigar Lounge

**CASE NO:** PC-2010-6197

**COURT:** Providence County Superior Court

**DATE DECISION FILED:** April 27, 2015

**JUSTICE/MAGISTRATE:** Procaccini, J.

**ATTORNEYS:**

**For Plaintiff:** Frank J. Milos, Jr., Esq.

**For Defendant:** Michael F. Horan, Esq.