

**MINUTES
SPECIAL MEETING
MUNICIPAL COUNCIL – BOROUGH OF RED BANK
JUNE 21, 2007
4:00 P.M.**

PLEDGE OF ALLEGIANCE

ROLL CALL

PRESENT: Mayor Menna and Council Members Curley, Murphy, DuPont and Cangemi.

ALSO PRESENT: Borough Clerk Vivona, Acting Borough Attorney Michael Holzapfel, Assistant Attorney Hall, representing the Borough of Red Bank, Samuel Reale, representing Best Liquors of Red Bank, Inc.

ABSENT: Council Members Bifani and Lee, Chief Financial Officer Mason, Attorney Pringle, Administrator Sickels and Engineer Kosenksi.

Councilwoman Lee arrived at 4:15 p.m.

SUNSHINE STATEMENT

Mayor Menna requested the minutes reflect that, in compliance with Public Law 1975, Chapter 231 (Open Public Meetings Act), notice of this meeting has been provided by notifying the Asbury Park Press, the Courier, the Two River Times and the Star Ledger and by placing a notice on the bulletin board and filing same with the Borough Clerk on June 15, 2007.

MAYOR MENNA: Thank you. This is the continuation of the hearing regarding the specification of ABC charges regarding the plenary retail distribution license for Best Liquors of Red Bank Incorporated. This is the continuation for our deliberations. We received information this afternoon that both Mr. Hall as well as Mr. Reale, the counsel respectively for the Borough of Red Bank as well as the licensee, will be joining us for the actual determination of the council's deliberation. However, since we commenced in terms of the executive session discussion in terms of our options, when we terminated we thought it appropriate for us to reconvene for those discussions before we make a decision and get advice from our attorney. However, you all should have received the transcript of the proceedings that were provided in this matter and you should have read it or considered those particular proceedings that the transcripts indicate. Neither attorney has an objection to our continuation of the deliberations, for the record, prior to making the decision and they should be here for -- when the decision is rendered. Having said that, is there anything to add, Mr. Holzapfel?

MR. HOLZAPFEL: No. Procedurally, the appropriate thing before the attorneys get here, as noticed last time, Mr. Mayor, continue the executive session and then reconvene with the public to comment on and make findings and whatever conclusion the council may reach.

EXECUTIVE SESSION

07-151c The Attorney read a resolution to adjourn to executive session to discuss legal matters.

Mr. Curley offered a motion, seconded by Ms. Cangemi to adjourn to executive session to discuss deliberations. Minutes to be made public in 180 days.

ROLL CALL:

AYES: Curley, Murphy, DuPont, Cangemi

NAYS: None

There being four ayes and no nays, the motion was declared approved.

MR. MENNA: What that means, in a nutshell, is that we're going to go into our conference room to discuss the transcript, be back out, and the decision will be made this evening. Hopefully, it will be made within the next half hour. So if you're here, please don't go away. We will be reconvening.

Councilwoman Lee arrived at 4:15 p.m.

(The council members retire to the conference room at 4:16 p.m.)

Mr. DuPont offered a motion, seconded by Mr. Curley to adjourn from executive session.

ROLL CALL:

AYES: Curley, Murphy, Lee, DuPont, Cangemi

NAYS: None

There being five ayes and no nays, the motion was declared approved.

Continuation of Hearing Regarding Charges and Specifications against Plenary Retail Distribution License No. 1340-44-020-005 Currently Issued to Best Liquors of Red Bank, Inc.

MAYOR MENNA: The record should reflect that the council had adjourned for some executive session discussions. We've been in discussion with our counsel. At this time Mr. Reale is present on behalf of the licensee, and Mr. Hall is present on behalf of the borough. Mr. Holzapfel is special counsel for the Borough of Red Bank. Mr. Holzapfel.

MR. HOLZAPFEL: I think just for everybody's benefit the procedure we're going to follow is that we're going to go through the charges one at a time, specify what they are, and then I will inquire of the Mayor and Council whether or not there is a motion to determine whether or not the borough has proven that charge and the votes will be taken accordingly. Just for the record, this is a plenary retail distribution license hearing; the licensee, Best Liquors of Red Bank, Inc., 75 Leighton Avenue, Red Bank, New Jersey. The first charge that on or about July 20th, 2006, the licensee had pled guilty to the knowing possession of a quantity of cigarettes which did not bear the required New Jersey revenue stamp, on which required tax had not been paid in violation of NJSA 54:52-18. Mr. Mayor, is there a vote as to whether or not the borough has proven by a fair preponderance of the evidence the validity of this charge?

MR. DUPONT: I'd like to make a motion now with respect to that -- I think before we make a -- or before a vote is taken I think that we need to set forth some findings of fact regarding our vote, and if I might, counsel, we're asked to decide these matters by a preponderance of the evidence. The preponderance of the evidence is the least, I guess, burden of proof that the state has to prove. The next one is clear and convincing and the next one above that is beyond a reasonable doubt. In this particular charge there was a guilty plea. I think that the state has certainly met its proof by a preponderance of the evidence. The testimony is quite clear on that, and I believe that the finding of guilt is appropriate to that charge.

MR. HOLZAPFEL: Why don't we phrase it as liability.

MR. DUPONT: Liability.

MR. MURPHY: Motion second.

MAYOR MENNA: Okay. There's been a motion and a second, any discussion? Roll call vote on that charge alone.

MS. VIVONA: Councilwoman Cangemi.

MS. CANGEMI: Yes.

MS. VIVONA: Councilman Murphy.

MR. MURPHY: Yes.

MS. VIVONA: Councilman Dupont.

MR. DUPONT: Yes.

MS. VIVONA: Councilwoman Lee.

MS. LEE: Yes.

MS. VIVONA: Councilman Curley.

MR. CURLEY: Yes.

MAYOR MENNA: The motion passes by five votes. The second charge, Mr. Holzapfel.

MR. HOLZAPFEL: The second charge which is denoted as charge B, that on or about July 6th, 2006, the licensee sold a quantity of alcoholic beverage to Mark Valdez, a person under legal age to purchase alcoholic beverages, in violation of NJSA 33:1-77, and Borough Ordinance number 6-4.4, which I will note for the record that I have confirmed for the Mayor and Council for the both parties that is an official approved ABC ordinance.

MR. DUPONT: This motion or this charge, if I recall correctly in looking at the transcript that we reviewed, is the one where Mr. Valdez pleads guilty and pays a fine; however, due to his service for our country is unable to attend. However, this is also, as Councilwoman Cangemi pointed out, that he submitted a fake Pennsylvania license which was submitted into evidence which was quite clear that it was fake. Yet, alcohol was still served. Once again, the state only has to prove liability by a preponderance of the evidence. The -- this applies to a couple different charges that you will hear in the next few minutes and that is there was a defense that the lighting was poor, that the dress of the patrons allowed them to be perceived as older or reaching the age of 21. Also, there was a defense, which I found somewhat offensive, that the ethnic background caused the individuals to be perceived older. I think that this charge has been proven by a preponderance of the evidence in that a charge -- that a liability charge can be found in this instance.

MS. CANGEMI: Second.

MAYOR MENNA: There's been a motion and a second. Any discussion on the motion? No discussion. Roll call.

MS. VIVONA: Councilwoman Cangemi.

MS. CANGEMI: Yes.

MS. VIVONA: Councilman Murphy.

MR. MURPHY: Yes.

MS. VIVONA: Councilman Dupont.

MR. DUPONT: Yes.

MS. VIVONA: Councilwoman Lee.

MS. LEE: Yes.

MS. VIVONA: Councilman Curley.

MR. CURLEY: Yes.

MAYOR MENNA: Motion passes by five affirmative votes. The third charge.

MR. HOLZAPFEL: The third charge, Mr. Mayor, is that on or about July 7, 2006, the licensee sold a quantity of alcoholic beverages to one Sergio Limon, a person under the legal age to purchase alcoholic beverages, in violation of NJSA 33:1-77 and Borough Ordinance number 6:4.4.

MAYOR MENNA: Is there a motion?

MR. DUPONT: Yes. So moved. In this particular case --

MAYOR MENNA: What is your motion?

MR. DUPONT: Motion to find liability. In this particular case, the transcript and these documents reveal that an underaged minor, I might add, aged 16, is charged in juvenile court with the sale of alcohol to a minor. The defendant in this matter pleads guilty. If my notes are correct on this, this is the defense that the dress of the patrons and the ethnicity of the patrons caused the individual to appear to be of age. I think, again, that the state has proved by a preponderance of the evidence that there is sufficient evidence to prove liability in this charge.

MAYOR MENNA: Is there a second?

MS. LEE: Second.

MAYOR MENNA: Any discussion? There's no discussion. Role call vote.

MS. VIVONA: Councilwoman Cangemi.

MS. CANGEMI: Yes.

MS. VIVONA: Councilman Murphy.

MR. MURPHY: Yes.

MS. VIVONA: Councilman Dupont.

MR. DUPONT: Yes.

MS. VIVONA: Councilwoman Lee.

MS. LEE: Yes.

MS. VIVONA: Councilman Curley.

MR. CURLEY: Yes.

MAYOR MENNA: The motion with respect to finding liability passes by five votes. The fourth charge.

MR. HOLZAPFEL: The fourth charge, Mr. Mayor, is that on or about July 14, 2006, the licensee sold a quantity of alcoholic beverages to one Nicole Rosato, a person under the legal age to purchase alcoholic beverages, again, in violation of NJSA 33:1-77 and Borough Ordinance 6:4.4.

MR. DUPONT: Mayor, I'd like to make a motion again for liability by a preponderance of the evidence. In this particular case or this charge Nicole Rosato, age 19, pled guilty, pays a fine, and then takes time out of her life to come and testify as to how she received the alcohol and how she purchased it without demonstrating a license. I think in the opening or the closing arguments Mr. Reale had indicated that, you know, a liquor license is a privilege, it's not a right. I think that it's the duty and responsibility of a liquor license holder to insure and to check license or age for the purpose of purchase of alcohol. That's not done in this case. It's been testified and as a result of that testimony I believe that the state has proven by a preponderance of the evidence that liability rests with respect to this charge.

MAYOR MENNA: Is there a Motion?

MS. LEE: Second.

MAYOR MENNA: Second. Any discussion? Roll call.

MS. VIVONA: Councilwoman Cangemi.

MS. CANGEMI: Yes.

MS. VIVONA: Councilman Murphy.

MR. MURPHY: Yes.

MS. VIVONA: Councilman Dupont.

MR. DUPONT: Yes.

MS. VIVONA: Councilwoman Lee.

MS. LEE: Yes.

MS. VIVONA: Councilman Curley.

MR. CURLEY: Yes.

MAYOR MENNA: The motion passes five affirmative votes. Our next charge.

MR. HOLZAPFEL: The next charge, Mr. Mayor, is charge E, that on or about October 6th, 2006, licensee employed a person who sold alcoholic beverages at the licensee's place of business, that person not being registered to do so in violation of Borough Ordinance 6-7.4.

MR. DUPONT: Mayor, I'd like to make a motion finding liability by preponderance of the evidence in this particular charge. In this one you have two underage individuals purchasing alcohol, age 15 --

MR. HOLZAPFEL: Councilman, we're on -- this is the so-called paper violation.

MAYOR MENNA: The employee who was not registered.

MR. DUPONT: I'm sorry. I was mixing my notes. I make a motion for guilty -- I'm sorry. Liability from the preponderance of the evidence.

MR. MURPHY: Second.

MAYOR MENNA: Any discussion? Roll call vote.

MS. VIVONA: Councilwoman Cangemi.

MS. CANGEMI: Yes.

MS. VIVONA: Councilman Murphy.

MR. MURPHY: Yes.

MS. VIVONA: Councilman Dupont.

MR. DUPONT: Yes.

MS. VIVONA: Councilwoman Lee.

MS. LEE: Yes.

MS. VIVONA: Councilman Curley.

MR. CURLEY: Yes.

MAYOR MENNA: Passes five zero. Sixth charge.

MR. HOLZAPFEL: The final charge, Mr. Mayor, is actually another supplemental charge A that on or about November 22nd, 2006, licensee sold a quantity of alcoholic beverages to Kristin Philpot and Stanley Bibens, both under the legal age to purchase alcohol. Once again, in violation of NJSA 33:1-77 and Borough Ordinance 6-4.4.

MAYOR MENNA: Is there a motion?

MR. DUPONT: Yes. I make a motion, I'm sorry about the mix up there. There's a number of papers, and the transcripts were all provided to us as well as copies of the evidence that our counsel is holding. In this particular one, you have two individuals, a motion again as to liability by a preponderance of the evidence, two individuals aged 15 and 18 purchased alcohol, and the individual age 18 pled guilty in court and the defendant pled guilty in court and the juvenile was addressed in juvenile court. In this particular one, there was much discussion about the plastic bags but the evidence clearly purports that the underage individuals purchased alcohol, and it was proved by a preponderance of the evidence that liability rests in this particular case.

MS. LEE: Second.

MAYOR MENNA: Is there a second?

MS. LEE: Second.

MAYOR MENNA: Any discussion? Roll call vote.

MS. VIVONA: Councilwoman Cangemi.

MS. CANGEMI: Yes.

MS. VIVONA: Councilman Murphy.

MR. MURPHY: Yes.

MS. VIVONA: Councilman Dupont.

MR. DUPONT: Yes.

MS. VIVONA: Councilwoman Lee.

MS. LEE: Yes.

MS. VIVONA: Councilman Curley.

MR. CURLEY: Yes.

MAYOR MENNA: The motion passed, five zero. Anything else, Mr. Holzapfel?

MR. HOLZAPFEL: Just procedurally, Mayor and Council, and counsel to the parties I know that you know in addition to, you know, this proceeding there is the issue that pertains to license renewal, the deadline being, I believe, June 30th, which is Monday. In the interest of time constraints, I'll put this to council, I do not know whether or not there's a motion on the floor whether or not we would adjourn for a couple of minutes as to penalties imposed as a result of liability.

MR. MURPHY: Is there a need for adjournment?

MR. DUPONT: Does counsel want to speak as to penalty?

MR. REALE: No. I think Mr. Holzapfel has raised two separate issues. He raised the renewal issue.

MR. DUPONT: That's correct.

MR. HOLZAPFEL: The licensing and renewal issue for now.

MR. REALE: The renewal issue.

MR. HOLZAPFEL: Raising it in the context of time constraints I just put it.

MR. HALL: The renewal issue would – may be moot based on whatever penalties you impose.

MR. REALE: One way or the other the council would have to act on the application for renewal because they've taken the application, they've taken the money, so they have to act on it one way or the other.

MAYOR MENNA: I happen to agree with that. I think they are two separate issues. We have to rule just for the interest of the record on both of them just to be on the safe side.

MR. MURPHY: So we need a motion not to renew the license?

MAYOR MENNA: It depends on what the counsel --

MR. DUPONT: It depends on what the counsel says. We haven't gotten to that stage yet. The renewal aspect, though, should be heard on Monday night? I mean it's not before the Mayor and Council at this point in time. It's on the agenda for Monday night. Correct?

MR. REALE: If you have a meeting on Monday night, it could be part of the Monday night agenda.

MR. DUPONT: The issue that needs to be addressed this evening is whether the council would want to address us with respect to penalties or if they will rest on the, you know, on the summations which included defense's mitigation and the reasons for what happened.

MR. HALL: He gets to go first.

MR. DUPONT: If there's a need. There may not be a need.

MR. REALE: Well, in all fairness to Mr. Hall, he wasn't allowed during the closings because on my objection as it was inappropriate as to penalty being imposed, I suggested he was putting the cart before the horse, so he may well wish to be heard.

MR. DUPONT: He may rest. He might say it's at the discretion of the Mayor and Council.

MR. HALL: I have a recommendation. I won't go on forever. I make my recommendation and give it to Mr. Reale.

MR. DUPONT: What's that?

MR. HALL: My recommendation is revocation. You found the charges were sustained for the underaged sale. Four charges were sustained under the regulations of the ABC, the presumptive penalty is revocation. You don't even have to reach so-called paper violations. The violation of cigarettes without revenue stamp, which I submit is a serious charge, the presumptive penalty for that is 15 days, and the presumptive penalty for employing -- having an employee without a borough registration for the first offence is 10 days; but I think those charges, however serious they may be, pale in comparison to the underaged sales. I would point out that under the commissioner's own regulations, the penalties are enhanced for sales to people under the age of 18 I believe it is. Here you have a sale to someone 16 and a sale to someone 15. You reach the same result after the fourth sale. Either way you cut it, it's revocation. Now, I've heard nothing and there's nothing in the record that would go to mitigation. I think the choice is clear. The presumption is clear. There's been nothing to overcome the presumption. The only logical penalty, the only sustainable penalty is to revoke the license. That's all I have. That's my recommendation.

MR. DUPONT: Mr. Reale.

MR. REALE: That's easy for Mr. Hall to say. That doesn't take much by way of either intellect or fine analysis of the record to simply stand to you and say, well, revoke the license. With all due respect to some of the fact finding that went on here tonight, I suspect that some of it might not withstand some scrutiny by way of facts that were relied upon or referenced by council, and there was a long record, so I'm not going to sit there and try to parse out whether I agree with a particular fact or not. You've entered your decision. I'm not going to try to belabor that. What I would present for the borough's consideration, and I previously have shown these to Mr. Hall and I offer them up to Mr. Holzapfel, are two petitions -- sets of petitions that were signed. Now, Mr. Hall last time was objecting saying, well, these people are not from Red Bank. I'll stand up because I want to make sure I'm heard. That there were people who weren't residents of Red Bank who signed it. Quite frankly, if you look through that particular petition, you will find that there are a majority are, in fact, Red Bank residents and a substantial number of residents who live in the Catherine/Leighton Avenue neighborhood. That's the first thing I'd ask you to consider so that the public perception, if you were to follow and I have tracked both this council's prior comments both not only in the board but during the last election cycle, by way of commentary that was made and allegations that were put forth as it related to the corner occupied by my client, none of which by the way --

MR. HALL: Excuse me, Mr. Reale. I object to this. This is outside the record.

MR. REALE: This is as to penalty.

MR. HOLZAPFEL: Mr. Reale can make his statement.

MR. REALE: But the practical reality is that presumptive sentences, whether they be criminal or under ABC rules, are not something that you have to follow. Now, that's the first thing. Secondly, the death penalty where in other cases, as I understand it, you had suspensions in front of you for conduct as egregious, you have not revoked the license. All I have to do is search the web portals of Red Bank to find that information out; but the reality is is that I suggest to you that revocation is not really called for. This is not a perfect science as a business. You had testimony here, and this goes to sentencing here, you had testimony from Patrolman Adams who himself said people can look at somebody and not come to the same conclusion. Now, I argued in the fact-finding analysis that that's something you should consider as to whether this charge has been made out as to the sale and that was as it related to Nicole Rosato. The situation that you had is that when people can disagree as to how old someone looks like, it's really a little bit narrow minded to try to pass judgment as to what you or I would consider as to someone's age looking at them as against what someone else would have as a perspective and a perception and that goes to whether anybody looks a certain way or how they appear or whether they look younger or older. I gather if we poll the members of council as to how old the people are in the courtroom, we would get as many decisions and opinions as to age as to the people sitting up here. That's the first thing you have to keep in mind. Secondly, there is no obligation under ABC rules that everybody be carded. It's simply if you think somebody is underaged, then you have to card. Thirdly, Mr. Holzapfel referred to the ordinances, that the question that was raised in the last session whether these ordinances had, in fact, been approved by the ABC, what you should know is yes, they stand approved as we sit here tonight. They weren't approved except by letter dated June 17th is when they were actually approved. They weren't approved nunc pro tunc, in other words, now for then, they are effective as of June 17th. I ask you to keep that in mind, particularly. The only other thing that I'd like to suggest to you is that whatever penalty you impose this evening, I would ask you, given the closeness between now and the end of the month and considering you have renewal on for Monday, whether or not whatever action you take this evening, is that I would ask you to stay tonight's decision or the effective date of whatever it is you decide to do until July --

MAYOR MENNA: Isn't that by ABC regulations, in any event?

MR. REALE: It makes my life easier, but sometimes councils don't want to do that. They want to kill them on a certain date.

MAYOR MENNA: Isn't that by state law anyhow, Mr. Reale?

MR. REALE: Excuse me?

MR. MENNA: The ABC says that if there's an appeal --

MR. REALE: ABC says that there is an appeal process, and the applicant, the licensee, has a right to file the appeal. I would just point that out. I don't know whether --

MR. DUPONT: I think we need to ask if there's an automatic stay.

MR. REALE: Actually, there isn't an automatic stay.

MR. DUPONT: There is not an automatic stay.

MR. REALE: There is not an automatic stay.

MR. HOLZAPFEL: I would note for the record, referring to NJAC 13:2-17.8, the filing of an appeal from a suspension or revocation of a license by a municipal issuing authority shall act as an automatic stay of such suspension or revocation unless the director shall otherwise order.

MR. REALE: There's two things to that, if I might, Mayor and Council. The first thing is that's right, but the reality is that we're sitting here at 5 o'clock or 6 o'clock at night and the ABC is closed. You can't file an appeal before, you know, tomorrow during business and we need a copy of a resolution to do that. We need a copy of your resolution, if you decide to revoke the license, which I suggest to you really isn't appropriate. A suspension as has been made clear I think here because we didn't really contest all five of the charges, suspension may well be in order. I ask you to be reasonable in the imposition of such a suspension; but the reality is if you revoke tonight or you suspend tonight, either way the reality is until you adopt it formally by resolution, which I suspect would be Monday evening at the earliest, there isn't anything I can take to Trenton to appeal.

MAYOR MENNA: Once you do that, my point is you're going to do that in any event no matter what happens, hypothetically.

MR. REALE: Except this governing body could say they won't consent to a stay pending appeal because Mr. Holzapfel is going to be asked for input to the director on that issue.

MAYOR MENNA: However, once you go to the director, the chances of the director granting a stay pending appeal is about 100 percent.

MR. REALE: Somewhere close.

MAYOR MENNA: All right. 99.9 percent.

MR. REALE: It's the old Ivory soap situation.

MAYOR MENNA: So what does the borough do if that's the intent of the borough, spend useless money on counsel fees?

MR. DUPONT: Is this a statement?

MAYOR MENNA: It's not a statement. We were getting to that hypothetical.

MR. DUPONT: The hypothetical doesn't add anything to the discussion, to the penalty, does it?

MR. REALE: We'll deal with it as it goes.

MAYOR MENNA: Yeah.

MR. REALE: No sense, as you suggest, wasting time or money.

MR. MURPHY: Mayor, what are the names on that list? What did they testify to? What did they sign

to? Is there a question or statement as to Mr. Sharma or something? What are the names, 200 names for what?

MAYOR MENNA: Well, I recognize the signatures, number one. Some of them.

MR. MURPHY: What does it say? Mr. Sharma is a great guy?

MR. HOLZAPFEL: Before we get to that.

MAYOR MENNA: It's not into evidence yet.

MR. HOLZAPFEL: No.

MR. REALE: It's a submission for sentence, so it's not necessarily in evidence.

MAYOR MENNA: I'm waiting for Mike to let me know.

MR. HOLZAPFEL: I recommend that we allow it. Council members can see it, they can afford it whatever weight and credibility they deem appropriate. There's no reason not to let them see it.

MAYOR MENNA: The petition that we have before us is basically a petition that I presume is on the premise that says: "We, the undersigned residents of Red Bank," and I should note that some -- the majority are residents but a lot are not residents, "do shop at Best Liquors feel that it would be a great inconvenience if the store were closed. We feel that it would be in the community's best interest and convenience if the store remains open." The other says: "We, the undersigned residents of Red Bank, support Best Liquors of Red Bank. We further believe Best Liquors does not represent an attractive nuisance, has not been a bad neighbor and has not conducted its operations in such a manner as to harm the community. We further believe that the Borough of Red Bank should not act to suspend or revoke Best Liquors license." Again, that's what it says. You can give it whatever weight or credence that you may want.

MR. MURPHY: We're basing our testimony on what he's been charged with.

MAYOR MENNA: That's correct.

MR. HOLZAPFEL: Let me just --

MR. CURLEY: Mayor, I have concern -- pardon me. I have concern about a petition being given at this hour in this forum. We agreed that the public would not be allowed to come up and speak, to avoid any perception of prejudice. This isn't an election of how many votes are over there or how many votes are in the audience. This is a hearing of fact. And I object to this being turned into a political charade. I think especially in light of people whether they are in favor of the license or opposed to the license to come up to that microphone. They have been restricted. I don't think that a petition is the correct and proper venue.

MR. DUPONT: As a matter of fact, one of the reasons why I agree with Mr. Curley or John is that there are people whose voices or signatures may not be heard but yet they might oppose the position of those petitions, so I'm not quite sure as to why we would accept those petitions. They don't add anything to the penalties phase. We're not permitted to -- Mr. Reale had the right and obligation, I believe, to testify or to present arguments that, hey, look, there are people out there who want and use this business, and, therefore, you should show mercy on us. He's done that. He's done it adequately, and he has been protected. We don't need to see the petitions.

MR. MURPHY: Just for the record, I wholeheartedly agree with Mr. Curley and with Councilman DuPont.

MR. HOLZAPFEL: Just for clarification purposes, liability having been determined this is not an exhibit that weighs on the gravity or lack thereof of any of the offenses. We can note for the record that if this is an acceptable alternative, licensee does have this, you know, particular petition, that he did garner these particular signatures, and that fact, again, the council can weigh in terms of whatever credibility they feel it's --

MR. DUPONT: I guess you're saying this is similar to, like, for example, when criminal defendants are being sentenced that people write letters of commendations or letter of recommendation or whatever you want to call these letters to show leniency. Is that what you're saying?

MR. HOLZAPFEL: I wouldn't liken this to a criminal trial.

MR. DUPONT: It's not likening it to but what I was likening it to or giving an analogy to was the letters being written to or given on behalf of an individual.

MR. HOLZAPFEL: Well, again, in terms of imposing the penalty, while they do -- ABC penalties do carry a presumption of reasonableness, you do have the discretion. The licensee does have, you know, the opportunity to the present mitigating circumstances just as the state, you know, has the opportunity to present aggravating circumstances. You've heard Mr. Hall's, you know, Mr. Hall made the argument regarding sales to persons who are not only underage but minors carry a presumption of an enhanced penalty. I don't think -- I don't think it's necessarily --

MS. LEE: Mr. Holzapfel, are we obligated to accept this and to hear from the residents in the community or are we here -- I believe we're here to make a decision based on the law, the violations of the law as set forth?

MR. HOLZAPFEL: That is correct.

MS. LEE: So these personal opinions and any personal opinions of members of the audience should they be coming into consideration with our vote?

MR. HOLZAPFEL: Would the licensee have an objection if we opened it to public comment?

MS. CANGEMI: No.

MR. DUPONT: No. I think what we do is -- I understand the purpose of --

MR. REALE: If you want to. That's up to the borough council.

MAYOR MENNA: That's not what the council wants.

MR. REALE: If that's what you want to do.

MR. DUPONT: If I understand --

MR. REALE: Just so the record is clear, I don't mean to cut you off. I'll save some time here. When we were here last week we tried to offer those. We were rebuffed at that point, Mr. Hall objected, Mr. Holzapfel essentially objected to us offering those petitions at that time because the position of the board was that they all go to sentencing and discussion of what the appropriate penalty may be. Now we're going to change up that rule a little bit, that's fine. We've attempted to offer it. If you don't accept it, if you don't determine to look at it, and while I don't -- I agree with Mr. Holzapfel, this is not a criminal trial in Freehold, the petition is a similar type of circumstance.

MR. DUPONT: I didn't same similar.

MR. REALE: I think it's a good analogy. If you consider not to use them in any respect, that's fine. The record will be clear, and we'll just move forward from there.

MR. DUPONT: I think what we do is in light of the fact Mr. Reale has already indicated that whatever we do tonight is going to be appealed that we let the defendant submit the petitions and then we just move along here on this.

MS. CANGEMI: I would agree.

MR. HOLZAPFEL: That's a motion up to council.

MS. CANGEMI: I agree with Councilman DuPont.

MAYOR MENNA: Give it whatever weight and credence the council wishes. The motion is seconded. All in favor?

MR. DUPONT: Aye.

MS. CANGEMI: Aye.

MR. MURPHY: Aye.

MAYOR MENNA: Any opposed?

MS. LEE: No.

MR. CURLEY: No. I just feel that it is creating a prejudicial situation by handing names. It is creating a prejudicial situation by allowing the audience to come forward and speak to a bunch of politicians, and I think it's the wrong precedent to set. We're here for fact finding. We'll base our decision on the facts that have been presented by counsel.

MR. HOLZAPFEL: That being said, is there a motion by the council to recommend a penalty?

MR. DUPONT: Yes. I recommend at this point in time that -- I move -- before I make this motion, I want to set something forth here. You know, this case has been going on for quite some time, and, you know, this is a business that got a warning. He pled guilty to five charges. There are underage teens or individuals that have purchased and have been subsequently charged in juvenile court. Red Bank needs to protect its young. This is an accident waiting to happen, and, you know, I understand the presumptive penalty. I understand that with past practices but maybe past practices don't protect our underaged teens. What upsets me the most tonight and maybe I would have a little more understanding or sympathy in this and that is after all the charges I never heard any testimony saying, hey, look, after this charge, we instituted the following policies, nothing. You know, after the second or third charge for underaged drinking maybe you put, I don't know, cameras in or maybe you have a written policy to the employees that, Hey, look, any kid that looks anything -- anyone that looks under 21 you card. I didn't even hear that. I don't hear any steps taken by this business operator to protect our teenagers. Now, you know, you read every day about individuals or teens getting into a car accident, drinking and driving. We have to stop that. We just past an ordinance just a couple of weeks ago about tagging kegs, the purpose is to try to protect our teens, but yet this business operator seems to, you know, think it's like the wild west. Sometimes, you know what, if you're dressed appropriately, I'm not going to card you; but if you're not dressed appropriately, I'm not going to card you. If you're a different ethnic group, I may card you. All the teens deserve protection. In this case here there was nothing here. Now, I understand, you know, I've heard the statements by counsel that, you know what, we're going to appeal any of the charges, and I understand that, you know, your former partner was an ABC commissioner, but you know what this is not a political game here. This is the protection of our teenagers here in Red Bank, and you know what, I spent a lot of time going through the exhibits, counsel did a wonderful job leading and teaching me about the ABCs of ABC, so to speak. The exhibits were wonderful, but, you know, this is more than just a political game here. This is people who are living here. These are teenagers who are buying alcohol, and for my own motion I think that we need to revoke this license and take the hard stance and put this license out of business here. I mean I think that people need to take -- to own up and be accountable. You can't have a defense, oh, the lighting is bad or the dress of the patrons indicated that they were 21 or the ethnic background of the individual was 21. They have to be accountable. And, Mr. Reale, I know you were accurate and I know you practice this type of law for quite some time and that is -- funny, I highlighted it and said, you know, the liquor license is a privilege. It's a right. I read it -- I read everything that you guys presented in this transcript and Ms. Jean Dolan gave me a wonderful transcript and I read it a couple of times, and I think that the best practice that this borough needs to do is to accept the decision and revoke this gentleman's license.

MS. LEE: Second.

MAYOR MENNA: There's a motion for revocation of the license for Best Liquors of Red Bank Incorporated.

MS. LEE: Second.

MAYOR MENNA: Having made a motion and a second, is there any discussion on the motion before the council?

MR. CURLEY: Mayor, one other comment that I wanted to bring forth to the chambers is the fact that we continually heard from Mr. Reale regarding Mr. Sharma being separate from the corporation and I don't buy that. I view Mr. Sharma as being the sole proprietor of the corporation. It is a corporation, but I also believe that he is the agent of that corporation and/or officer of the corporation. I just want to put that on the record.

MAYOR MENNA: Any other discussion?

MS. CANGEMI: Yes. I would like to comment on Councilman DuPont's statement about what was done after the first set of charges were made. The ABC offers all sorts of training programs that we never heard any evidence that the licensee made any attempt to bring in the ABC to do training programs or to do anything to insure or to do their best to insure that minors would not be served. Mr. Reale in his statement just now said that if we were to poll this council on how old we thought people were we would get different opinions, and I think that that's exactly what the issue is here. If there is any question this license is a privilege, if there's any question, then, I think that it's incumbent upon the licensee to make that decision, err on the side of caution, in protecting our teenagers. We see it all the time. When we talk

about the death penalty for this license, I'm loathed to see anybody lose their business, but I am more loathed to see an underaged kid buy liquor and get in a car accident somewhere in this borough. That would be a much more egregious issue. I think given our need to protect our children here in town, I would have to concur with Councilman DuPont.

MAYOR MENNA: Any other comments?

MR. MURPHY: Mayor, if I may, just for the record to make sure we're all on board, I appreciate all the counsel's input, and I definitely agree with Councilman DuPont and along with Mr. Curley and Ms. Cangemi. I just want to say that on all seven violations six of the seven either Mr. Sharma pleads guilty or was found guilty, four of which were serving minors. I think Councilman DuPont makes a strong point about protecting our teenagers. The world is definitely changing. The drinking underage element seems to be getting out of hand. Our recommendation would be to revoke his license and I agree with that.

MAYOR MENNA: Councilwoman Lee.

MS. LEE: I can only say that our business is the business of enforcing the laws in this borough. Mr. Sharma, your business is the business of alcohol. You're aware that something should be in place for any customers that come into your door. It's your business to enforce and to make sure that you're selling to properly aged individuals. When you fall short, it's our business to work to the full extent of the law to see that you understand that. That's the penalty.

MAYOR MENNA: All right. There's a motion and a second, discussion has taken place. Roll call vote.

MS. VIVONA: Councilwoman Cangemi.

MS. CANGEMI: Yes.

MS. VIVONA: Councilman Murphy.

MR. MURPHY: Yes.

MS. VIVONA: Councilman DuPont.

MR. DUPONT: Yes.

MS. VIVONA: Councilwoman Lee.

MS. LEE: Yes.

MS. VIVONA: Councilman Curley.

MR. CURLEY: Yes.

MAYOR MENNA: The motion passes. That's with respect to the specification of the charges in terms of the penalty phase. Any other business right now?

MR. HOLZAPFEL: Well, I think the next order of business is to draft a resolution. Obviously, you know, it doesn't become effective and the time for appeal does not start to run until the resolution is passed. I think that's something that can be done in relatively short order. Try to be as accommodating as possible.

MR. REALE: I'd like to inquire. Are you going to have both resolutions then available for Monday night? If your meeting is Monday evening and you're going to adopt this resolution, you have the renewal, which I assume is a matter of foregone conclusion, you deny the renewal. Since I'm going to appeal both, I assume you'll have a resolution for both there that way I can go one -- save everybody some time and the borough some money.

MAYOR MENNA: That would be a logical way to handle it. We should do both issues Monday night since we have a council meeting --

MR. DUPONT: Mayor, I think it's important on that resolution that since this is going to be appealed findings of fact of each councilperson has made specific statements here that findings of facts be contained in that resolution.

MAYOR MENNA: That's correct.

MR. DUPONT: I'm not quite sure, to be honest with you, that Mr. Holzapfel is going to have sufficient time, tonight is Thursday.

MAYOR MENNA: That's what I was going to ask.

MR. DUPONT: That might be logical but practical reason is is that I would like to read that resolution before Monday night to make sure that the resolution comports to what I said and also what was in the transcript, and maybe if Ms. Dolan, who did a wonderful job the first time, can get me a copy of the transcript so that when the resolution is done in draft I can also then look at the resolution and say Hey, look, I said the following items and here are the findings of fact and make sure that those findings of fact are not only in the resolution but the other council people can also verify that they are. I'm not quite sure if that's realistic to have it on Monday. We may have to have a special meeting to pass the resolution. We've had two -- we've had a special meeting for both of our hearings. There's no reason why we couldn't have a special meeting to pass the resolution. Correct?

MR. REALE: Monday is Monday. You have to do it before the 30th.

MR. DUPONT: No. We have to do the -- before the 30th we have to make an application and we have to vote on the renewal. We do not have --

MR. REALE: Imposed before the 30th, Counsel.

MR. DUPONT: Why do we have to do it before the 30th?

MR. REALE: Because one is going to tie into the other. The basis of your denial of the renewal is going to be this action this evening.

MR. DUPONT: One of the bases.

MR. REALE: Well, if there are other bases, I'll put on record right now I haven't been served with any notice of any additional charges.

MR. DUPONT: Mike, is that accurate?

MR. HOLZAPFEL: If the governing body does not act on an application for renewal by the 30th, as I understand it, the licensee can then look to the division for an at interim permit; however, in light of the proceeding, I think the point Mr. Reale is trying to make is that in light of the outcome of today's proceeding --

MR. REALE: If I may. Mr. Holzapfel hits the problem here. This applicant has an absolute right to appeal, that appeal has to be in, I suggest to you, before the 30th because on an interim you have to direct the clerk, Ms. Vivona, to sign agreeing to the at interim. You'd have to agree to allow him to be open on the at interim until you act and the appeal gets filed, because the practical effect of an appeal of a liquor license revocation is he will stay open on the appeal on the 2006-2007 license.

MR. DUPONT: So all we have to do is pass this resolution before the 30th?

MR. HOLZAPFEL: That's right.

MR. REALE: I ask -- I think the 30th is --

MS. CANGEMI: Week from Saturday.

MR. REALE: Next Saturday. So, quite frankly, the world being what it is you would need to act -- I would say you need to act Thursday at the latest because you would have to file the appeal on Friday.

MR. DUPONT: There's a lot of documents. We've done a wonderful job.

MR. HOLZAPFEL: I'll try my best. I would like to do what is practical.

MR. REALE: Councilman, I agree Mr. Hall represents municipal governing bodies and so do I, Mr. Holzapfel, we all recognize that those resolutions the more fact specific they are the easier it is for all counsel to deal with it in the future as well as ABC.

MR. DUPONT: We have a transcriber here. I want the resolution to be accurate.

MAYOR MENNA: How about next Thursday at 4 o'clock we adopt the resolutions, 4:30. Is that better for you guys?

MR. HALL: Any day is fine.

MAYOR MENNA: 5 o'clock.

MR. REALE: If all you're doing is adopting the resolution, you can do it at 5.

MAYOR MENNA: That's a sufficient amount of time hopefully to read the findings of fact in the resolution so that we will just come here, adopt a motion, and if any changes have to be made to the resolution after review of the transcripts, it can be done before Thursday. So it would be next Thursday at 5 o'clock and it should be a relatively short session.

MR. HALL: Mr. Mayor, just to get this out of the way now, when will the revocation be effected?

MR. REALE: When the resolution is passed.

MR. HOLZAPFEL: When the resolution is passed.

MR. HALL: The resolution.

MR. REALE: I mean I suspect the resolution will say 11:59 or 12:01 on a specific date. What I would simply ask is -- here is the only thing I'm going to recommend is that if, in fact, you're going to adopt this at 5 o'clock on Thursday, again, with ABC being closed, we can't effect the appeal until 9 o'clock Friday morning.

MAYOR MENNA: As a senior member of the council for many years that every time we have adopted those resolutions, they have always been at 11:59 p.m., traditionally, and, frankly, we should follow tradition. So that's what we've done forever and everyone should be treated the same, I suspect.

MR. REALE: Right.

MR. DUPONT: Motion to adjourn.

MR. MURPHY: Second.

MAYOR MENNA: Wait. So there's no further business in terms of the hearing except that we are adjourned until next Thursday at 5 p.m. for adoption of the resolution. Is there a motion to adjourn?

ADJOURNMENT

Mr. Curley offered a motion, seconded by Mr. DuPont to adjourn the meeting.

ROLL CALL:

AYES: Curley, Murphy, Lee, DuPont, Cangemi

NAYS: None

There being five ayes and no nays, the motion was declared approved.

Respectfully submitted,

Carol A. Vivona