



MINUTES OF A REGULAR MEETING OF THE **LEGISLATIVE & LICENSING COMMITTEE** HELD ON TUESDAY, **MAY 7, 2019** AT **6:30 P.M.** IN THE SELIGENSTADT (MAIN) CONFERENCE ROOM, 2000 NORTH CALHOUN ROAD, BROOKFIELD, WISCONSIN

ALDERMAN GARY MAHKORN PRESIDING

MEMBERS PRESENT: Alderman Brad Blumer, Alderman Bill Carnell, Alderman Buck Jurken, Alderman Gary Mahkorn, Alderman Jeff McCarthy

OTHERS PRESENT: City Attorney Jenna Merten, City Clerk Kelly Michaels, Community Development Director Dan Ertl, Alderman Scott Berg, Shawn DeMain, Christine DeMain, Luke Larson, Brian Schechterle

1. Chairman Mahkorn noted a quorum was present and called the Legislative & Licensing Committee to order at 6:30 p.m.

Items were taken out of agenda order.

4. Presentation by Shawn DeMain re: XGolf.

Shawn DeMain, Christine DeMain, Luke Larson and Brian Schechterle appeared before the committee and introductions were made.

Mr. DeMain summarized the business plan of XGolf. He gave a short background history on the members present.

Mr. DeMain indicated he wanted to address the issue of underutilization of a Class B Liquor license that they wish to apply for. They cannot compare their sales of liquor to that of a TGIFriday's or a big chain restaurant. From a business standpoint, a large restaurant will have higher revenue in liquor sales but it is a dispersment of revenue that is already there. In other words, revenue from liquor sales is spread among all the restaurants in the city. In the case of XGolf, we are bringing in new revenue which will have a benefit for the city. He indicated XGolf is a one million dollar investment. Mr. DeMain acknowledged the committee's concerns with underutilization of licenses that fall under the state quota and noted the 'board and brush' type businesses as an example. He noted there are 15 XGolf locations and all are doing well. He feels people want the golf course experience year round. The business will have cart girls mixing the drinks. They want to be an indoor golf experience. From a business model standpoint, there will be a bar in the middle, simple prepared limited menu food options and simulators around the perimeter. They will be the largest XGolf in existence with seven full simulators. The back corner will include a teaching simulator. They are licensed as a teaching facility and

are looking to hire a head PGA professional to give lessons. He explained that the business model will be more robust in the winter months, which will be their primary operating time. Although, they do have plans to bring people in during the warmer months. The simulators are the best in the market and target the serious golfer.

Mr. Larson added they also offer leagues where other XGolf locations compete against each other. He noted this is a unique business to the City of Brookfield, which does not exist in Wisconsin. They want Brookfield to be 'ground zero' for this type of industry. Currently, there are 15 XGolf locations, by the end of the year there will be 26 locations. This type of business is 'going crazy'. He noted the Green Bay Packers announced they are putting a similar concept in the Title-town District in Green Bay. People want this type of business. Another reason they want to be in Brookfield is that this area is 'golf crazy'. To open an XGolf location, there must be at least 15 golf courses within 20 miles of your location. There are 70 golf courses within 20 miles of Brookfield. They want to make Brookfield the 'hub', because of population and wealth. He added that they are investing 30% more money in this location than any other XGolf location.

Alderman Mahkorn questioned 'why' Brookfield. Mr. Larson answered it was due to the wealth of residents and noted they might want a classier experience. He noted he and Mr. DeMain are in industry's that do significant entertaining of clients. They do not have many options of places to take clients other than restaurants or Brewer games. This would add another entertainment option. He stated he has 2 clients already interested in the XGolf experience.

Mr. DeMain explained that Mr. Larson is on the business-to-business sales side and he is on retail and wealth side of the business. They are constantly holding events where Mr. DeMain handles the expenses. He feels this XGolf is a 'higher end' business that offers a larger bar and space that would differentiate them from other XGolf locations. There will be seating for 13 to 15 at the bar; a clubroom for meetings, tables will be placed behind the simulators. Alderman Mahkorn questioned if this is set up is significantly different from the other XGolf designs across the country. Mr. DeMain stated the size of the bar is significantly different. We are not a business that will draw a crowd that wants to go out and drink for a few hours. We want people to come in for a drink before and/or after their tee time.

Alderman Mahkorn asked if the other XGolf locations around the country also cater to corporate clientele. Mr. DeMain replied not to the extent the location in Brookfield will. Alderman Mahkorn asked what type of research was done by the applicants to decide on this type of venture. Mr. DeMain noted the research stopped with the three locations Mr. Larson personally operates. Mr. DeMain noted he has 42 wealth advisors on his team that are running events for clients or mutual fund companies. He feels he has 15 to 20 events per month, but not all will be services by the Brookfield location. Alderman Mahkorn said the business sounds like a nice idea and you have some backing behind it. Mr. DeMain stated he personally knows people who operate some XGolf locations in Michigan. They were driving to visit

one location and could not get in, as they were booked full. This was during the peak winter season. They want to sell to the off-season patron.

Alderman Mahkorn expressed concern that in Wisconsin there is very strict licensing, especially with Class B licenses. The city scrutinizes the Class B licenses, in a fair way, but utilize criteria to see where we get the 'best bang for our buck'. He asked what are the business operations like for XGolf locations in the colder regions of the US when it is July. Mr. DeMain said it is important that to get the right PGA Pro. The right pro will book a large group of clients that will come in during the off-season. The other aspect is the availability of golf leagues during the off-season for people who work different hours or shifts. The Michigan leagues maintain 100% occupancy through the off-season. He noted his hours of operation would be 9 a.m. to midnight during the on-season. For the off-season, they want to look at their business experience and listen to what the market tells them. We plan to be open 7 days a week at the Brookfield location. They want to double the revenue during the off-season; therefore, they want to be very busy during the off-season.

Alderman Mahkorn questioned how long the planning for this business has been in the works for this location. Mr. DeMain stated it has been about 2 years. Any business is a risk, but he believes they are hitting a market that is 'untapped'; where there is a lot of desire and money. Alderman Mahkorn asked what the breakdown of beer/wine sales versus hard liquor were. Mr. DeMain noted that he can only provide projections based on others, however liquor is 35% and beer sales are 65% of total alcohol sales at other locations. Alderman Mahkorn thanked him for being honest with sales projections, as the committee had 'done their homework' and found the same results.

Mr. DeMain added another thing that will help them are the connections they both have. There will be VIP/COI type pre-open events. He figured there would be 30% occupancy through the simulators. They are actually running 40% to 45% so if this holds true for them, this business plan looks better. Mr. DeMain explained simulator occupancy means that they look at all the hours the business is open and simulators could be rented. The busiest XGolf is in Grand Rapids, MN, with simulator occupancy at 41% last year. His projections were based on 30% occupancy ratio, which is conservative. He added that he was working with a banker who has 26 years' experience and was given the fastest SP loan approval she has ever seen. It took them 30 hours to get a million dollar loan approval. He feels his research and data is sound. He feels confident this business plan will work, the license will be utilized the right way and they will bring value to Brookfield.

Alderman Jurken questioned where the potential site for the business is located in Brookfield. Mr. DeMain said it is at the corner of 124th Street and Capitol Drive on Feerick Street. Alderman Carnell asked if they are building a new building. Mr. DeMain said the building is already there. The building has three sections, the Goldfish Swim School, Game Show Battle Rooms and they would be taking over the third section of the building. He noted that all three businesses were the first to market their business plan.

Alderman McCarthy asked if there were any concerns with parking specifically whether there would be enough parking if multiple tenants packed with patrons.

Brian Schechterle, the owner of the building answered they have the luxury of using 126th Street, Feerick Street and parking along the curb. On weekends, they have the use of the light industrial/office parking lots. He has parked in these lots and has not received any complaints. Mr. Schechterle noted he has two Culver's restaurants in the Brookfield area, one at 20013 W. Capitol and one at 3075 N. 124th Street near Game Show Battle Rooms. Over the years, he has thought about these type of businesses surviving. Adventure Rock has many independent people go in to climb for activity, health and fitness but it benefits his restaurant tremendously on certain days when they close down and have corporate events. It is team building. The same with Game Show Battle Rooms, where real estate brokers are thrilled with their success due to the corporate events held at the site. He feels XGolf is focused on corporate events as well.

Dan Ertl commented that he understands the committee normally does not address parking issues. When there is a parking demand that exceeds parking supply, he encourages property owners, tenants and employees to park off premise, if necessary. This is the case for many businesses in the 124th Street Industrial District.

Alderman Mahkorn stated that the committee appreciates XGolf coming in to present their business plan to the committee. He noted the presentation has been helpful and gives the committee a better understanding but did not believe it would be appropriate for them to give them any direction as to whether they would give them a full liquor license without an application to consider.

City Clerk Michaels questioned the target date to open the business. Mr. DeMain stated September 1, 2019. Clerk Michaels asked Mr. DeMain to explain what would happen should they not be granted a Class B Beer and Liquor License. Mr. DeMain answered that the franchise is very firm on needing the full liquor license or the deal is dead. He indicated there is at least one business that has the Beer and Wine License however, he believed they were open prior to the Franchiser making the rule of having a full liquor license requirement.

Clerk Michaels noted the City currently has seven (7) Reserve Class B Licenses available and will pick up two more when the quota is recalculated on July 1, 2019. She provided a listing of the recreational premises that have been granted a full license and those that just have a beer licenses. She noted that some of these recreational premises received their full Class B licenses before the state put a quota system in effect. She indicated she provided links to the businesses if committee members wish to review them.

Alderman Jurken asked if they are not approved for Brookfield, whether they have another site in mind. He noted XGolf has a lot invested without a license. Mr. DeMain said it has been an interesting journey. We must have an address in order

to get a liquor license. There is a lot invested. If this does not happen for them in Brookfield, they will definitely go somewhere else. Clerk Michaels asked if the committee is suggesting that XGolf apply for the license. Alderman Mahkorn stated he likes presentations before the committee. The more knowledge we have the better decisions we make. He noted that the committee is not able to debate nor 'tip their hats' regarding this issue. The next step will be consulting with the City Attorney on the specifics of this issue.

Mr. DeMain presented Clerk Michaels with an application for a Class B Beer and Liquor License. Clerk Michaels noted a Reserve Class B Liquor License has an additional \$10,000 fee on the initial application plus the \$620 regular fee and then renews at the \$620 rate.

No action was taken on this item.

2. Announcements:

- a. The next regularly scheduled meeting is Tuesday, May 21, 2019.

3. Minutes

- a. Minutes of the April 16, 2019 meeting.

Motion by Alderman McCarthy, second by Alderman Carnell to approve the April 16, 2019 meeting minutes as presented. Motion carried 5-0.

5. Old Business

- a. Ordinance creating Section 5.44.040 of the Brookfield Municipal Code regarding Investigation of License Applicants.

Attorney Merten noted this item was placed back on the agenda by joint request. She explained that Clerk Michaels recently received a license from an applicant who had continuing violations. Some were within 5 years but two more were outside the 5-year period but showed a pattern. Therefore, this item has been brought back before the committee to see if you want to keep the background parameters at 5 years, expand to 10 years or have no time limit at all. Alderman Mahkorn noted this has been a work in progress. The committee understands the 5-year window. His concern is that when an applicant does not have a violation within the 5-year window, but has one in 7 years out, the committee does not see that violation. He feels they should get that information. If there is no violation within 5 years, fine, no need to look further. He feels a 10-year look back is better.

Alderman Mahkorn said the wording on the application should be revised. Some applicants are confused by the wording of the questions. Alderman Jurken and McCarthy agreed with Alderman Mahkorn. Alderman McCarthy stated if there is something within 5 years, then give a look back to 10 years.

Attorney Merten asked what verbiage would you want instead of 'convicted' or 'arrested'. Alderman Mahkorn suggested an extra sentence explaining 'convicted, arrested or cited'. Clerk Michaels noted, when speaking with Alderman Mahkorn, he changed the question to 'Have you been arrested, charged, ticketed, or cited for any violation of state, federal or local laws within the past 5 years'. This is an improvement. Attorney Merten suggested adding 'when in doubt, list the violation'. Alderman McCarthy said part of the problem is that applicants are reading the application as fast as possible and not reading the full question. Possibly rearranging the words, for example: 'have you been cited, ticketed, charged or arrested'. The committee agreed.

Alderman Mahkorn added he likes having the applicant wait one year, after having been denied a license, to reapply. Clerk Michaels asked if the committee wants staff to make the changes to the application and bring back to the committee or take it directly to Common Council. Alderman McCarthy stated with the changes noted he would move approval to the Council.

Motion by Alderman McCarthy, second by Alderman Jurken, to approve the Ordinance with changes and send directly to the Common Council. Motion carried 5-0.

- b. Resolution regarding the Application Information and Criteria for Operator and Provisional Licenses.

Motion by Alderman Blumer, second by Alderman McCarthy, to approve the Resolution with the reverse order of wording on the questions as previously discussed. Motion carried 5-0.

6. New Business

- a. Resolution regarding an Original Bartender/Operator License for an applicant with a record less than 18 months – *Theron Beauregard*.

Theron Beauregard appeared before the committee and introductions were made.

Alderman Mahkorn noted Mr. Beauregard's violation falls within a period of time that requires more scrutiny by the committee. Alderman Mahkorn asked him to explain the circumstances surrounding his violation. Mr. Beauregard stated he went to a friend's house and had a couple of drinks. He left his car at work, the Barley Pop

rear parking lot. He decided to drive but knew he should not have. He indicated he was in a bad place and pled guilty. Alderman Mahkorn asked what the circumstances were regarding being stopped by the police. Mr. Beauregard said he was coming off the main street and he stopped after the stop sign. He did not notice the stop sign fast enough. The officer gave him a field sobriety test. He felt the tests were not tailored to someone even sober; therefore, he did not do well. Alderman Mahkorn asked what he was drinking. Mr. Beauregard replied 'he is a Corona kind of guy'. This has been a bigger change in his life, more than he thought it would be. He said he had seven or eight beers.

Alderman Mahkorn appreciated his honesty and asked if he was cooperative with the Village of Germantown police. Mr. Beauregard said he was as cooperative as he could be. Mr. Beauregard stated the violation was an ordinance violation. He pled guilty and took responsibility for his actions. He was given an evaluation and took an alcohol assessment course as well. He did not make good use of it but found it encouraging talking to someone who had your best interest in mind. He is just finishing his counseling. Alderman Mahkorn asked Mr. Beauregard if he was a better person today than in December 2018. Mr. Beauregard agreed and said part of it was counseling. He used to work up north at a few bars where things are more relaxed. He let himself get sloppy. The bar crowd encouraged his life at the time and he decided to cut down on alcohol.

Mr. Beauregard now understands the consequences of what would happen if someone gets drunk. A bartender has to know how and when to say 'no' to someone who has had too much to drink. Alderman Mahkorn asked what the policy is at Saloon on Calhoun. Mr. Beauregard said anyone under the age of 40 is carded. When there is a crowd, it is easy to miss someone underage. We try to slow down the pace of people ordering, asking more questions.

Alderman Mahkorn asked Mr. Beauregard why he answered 'no' to question #4 on the application which states "*as an adult have you been convicted of violating any laws of the United States, state, county, city, village or town, relating to the use or sale of alcohol beverages or the manufacture, sale, distribution, possession, or use of a controlled substance within the past 5 years*". Mr. Beauregard replied that he was unsure where his violation fell within the parameters listed.

Alderman Jurken asked Alderman Mahkorn to explain why there are two conviction dates. Attorney Merten stated most of the time you receive two citations, one for OWI and one for BAC. There are two different elements for the offense. Per Wisconsin law, a person can be only convicted of one violation.

Alderman Mahkorn said he does not feel comfortable with giving a license to Mr. Beauregard. His violation is only 6 months old; not enough time has passed. His counseling is a work in progress. Attorney Merten said Mr. Beauregard did bring in a letter from the Alliance Counseling Center. Alderman Mahkorn indicated that the committee wants to see more time pass before considering a license for Mr.

Beauregard. Mr. Beauregard said he did get a renewal bartender license from Germantown where the violation happened.

Motion by Alderman Jurken, second by Alderman Carnell, to deny an Original Bartender/Operator License for Theron Beauregard. Motion carried 5-0.

- b. Resolution regarding an Original Bartender/Operator License for an applicant with a record between 19 months and 5 years – *Antonio JT Esparza*.

Antonio JT Esparza appeared before the committee and introductions were made.

Alderman Mahkorn asked Mr. Esparza to explain the circumstances surrounding his violation. Mr. Esparza noted he was bartending at Buffalo Wild Wings in Germantown and was going to a friend's house in West Bend. He left his wallet in his friend's car two days prior so he was going to pick up his wallet after his shift. The marijuana belonged to a friend of someone he works with. He paid \$60 for a bag of marijuana. He drove to pick up his wallet and was pulled over by the police, as he did not have his license plate renewal sticker on his plate. He did not know why he was pulled over.

Mr. Esparza indicated that the officer stated he smelled marijuana and asked him if he had marijuana. Mr. Esparza said 'yes, he had marijuana' in the bed of truck and a small amount in a bag on the front seat. The police could not find the marijuana at first. They put him in handcuffs and placed him in the squad car. The officer found the marijuana in the bed of the truck and thanked Mr. Esparza for cooperating. He was taken to the police station, fingerprinted and interviewed.

Alderman Mahkorn asked why Mr. Esparza answered 'no' to question #5 on the application, which states, "*as an adult have you been convicted of violating any laws of the United States, state, county, city, village or town, relating to the use or sale of alcohol beverages or the manufacture, sale, distribution, possession, or use of a controlled substance within the past 5 years*". Mr. Esparza said he completely forgot about the violation and was surprised when management at Bar Louie asked him what was going on. Alderman Mahkorn stated he understands someone can be confused by the questions. The committee does not tolerate lying on the applicant, but also considers the demeanor of the applicant.

Alderman Mahkorn noted that the committee had seen issues like this before and it could go either way because it is a credibility thing. If the applicant is lying, it is a non-starter. If the applicant is truthful, the committee wants to give them every chance and consideration in believing them. Mr. Esparza indicated he said the conviction was 2 to 3 jobs ago, which is why he did not remember it.

Alderman Jurken asked him what he has learned from this experience. Mr. Esparza replied he no longer uses marijuana. The few times he had used it, he got paranoid and just did not like to feel that way. Attorney Merten noted that this violation would not have been on CCAP as gets generated in a municipal court.

Alderman Blumer asked Attorney Merten if this violation is 'substantially' related to the licensed activity. Attorney Merten replied 'yes, the legislature had found that drugs are usually tied in with alcohol sales and substance abuse. Alderman McCarthy said he would be in support of a license for Mr. Beauregard. He understands how question #5 could be misinterpreted. Alderman Carnell agreed with Alderman Blumer stating that two and one half years is enough time to have passed.

Alderman Mahkorn noted the committee factors in many facets when making a decision on whether to grant a license or not. It is a difficult call to decide whether someone is racing through the application and not reading the questions accurately or someone who is outright lying on the application.

Motion by Alderman Blumer, second by Alderman Carnell, to approve an Original Bartender/Operator License for Antonio JT Esparza. Motion carried 5-0.

- c. Resolution regarding an Original Bartender/Operator License for an applicant with a record less than 18 months – *Jacqueline Flood*.

Jacqueline Flood appeared before the committee and introductions were made.

Alderman Mahkorn asked Ms. Flood to explain the circumstances surrounding the violation at Blaze Pizza on March 16, 2019. Ms. Flood indicated she had recently been promoted to manager and the day after her General Manager had gone on vacation, a police officer came in to check licenses. She gave the officer the Retail Alcohol License. He then asked to see her Bartender/Operator license. Ms. Flood stated she did not realize she needed a license. She then spoke to her general manager and district manager who indicated 'they dropped the ball when they promoted her to manager' as it was one of those things they forgot to tell her. Ms. Flood assumed the store license would cover her. She immediately took an online server course and applied at City Hall for a bartender/operator license, plus a 60-day provisional license.

Alderman Blumer asked who originally gets the citation. Clerk Michaels stated the bartender and agent normally get a citation. Alderman Blumer asked how this could have been avoided. Ms. Flood said the officer told them to not serve any alcoholic beverages until a licensed bartender was on site. She added that the case where the alcohol is stored was locked down. Attorney Merten said technically, per state statutes, the whole business should be shut down, but in this case, they shut down

the selling of alcohol only. Clerk Michaels added this has been how the Police have handled these types of violations since she started eight years ago.

Alderman Mahkorn said the committee takes their responsibilities very seriously. Alderman McCarthy felt this violation was on Blaze Pizza and not Ms. Flood. He would be willing to grant her a license. Alderman Mahkorn noted that employers have an obligation to inform their employees of procedures, etc. He suggested the general manager and district manager appear before the committee at the next meeting scheduled for May 21, 2019. He asked for a motion to postpone until then.

Motion by Alderman Jurken, second by Alderman McCarthy, to postpone an Original Bartender/Operator License for Jacqueline Flood. Clerk Michaels was directed to send letters to the General Manager, District Manager and Jacqueline Flood requesting them to appear at the May 21, 2019 committee meeting. Motion carried 5-0.

Items 6d thru 6i were taken together.

d. Resolution regarding applicants for Original Bartender/Operator Licenses.

Bradley, Stephanie H.	Hogan, Michael R.	Pringle, Erin N.
Cruz, Santiago	Kosy, David	Replogle, Karen B.
Dort, Kristin R.	Krause, Nicole B.	Schramek, Stacy L.
Emerson, Terri L.	Mainville, Candida A.	Strike, Christine K.
Francis, William S.	Mol, Peter C.	Williams, Mareana C.
Gideon, Jonathan	Piscitello, Joseph T.	

e. Resolution regarding applicants for Renewal Bartender/Operator Licenses.

Buschman, Audrey J.	Kane, Scott P.	Paradies, Tonia A.
Craft, Matthew D.	Knoff, Sandra C.	Pirkey, Kathleen B.
Everett, Debra L.	Koehn, Russell E.	Stranberg, Lynn K.
Fitzpatrick, Cory R.	Loncaric, David A.	Trinko, Cody L.
Hart, Armando C.	Quackenbush, Barry L.	

f. Resolution regarding applicants for Temporary Bartender/Operator Licenses.

Austin, John F.
 Stich, Christine S.
 Stich, Darryl D.

- g. Resolution regarding an applicant for a Temporary Class B Retailer's License – Beer & Wine.

St. Dominic Parish
18255 W. Capitol Drive
Dominic Days
Thursday, July 11, 2019 – 5 pm to 11 pm
Friday, July 12, 2019 – 5 pm to 11 pm
Saturday, July 13, 2019 – 8 am to 11 pm
Sunday, July 14, 2019 – 10 am to 6 pm
Beer and Wine sold/served from tent on parish grounds
Bartenders: John Austin, Jeff Hansen, Christine Stich,
Darryl Stich, Kurt VanWilligen
Contact: John Austin

- h. Resolution regarding an applicant for an Original Class B Beer and Class C Wine. (*New Owner*)

Pho One of Brookfield LLC
d/b/a: PHO One24
3075 N. 124th Street, Unit 400
Agent: Nhan N. Tran

- i. Resolution regarding an applicant for a Fireworks User Permit.

City of Brookfield
2000 N. Calhoun Road
July 4th Family Fest
July 4, 2019 – 9:17 pm
Mitchell Park
Pyro technicians: Spielbauer Fireworks Company
Contact: Bill Kolstad

Motion by Alderman McCarthy, second by Alderman Jurken, to approve Original Bartender/Operator Licenses, Renewal Bartender/Operator Licenses, Temporary Bartender/Operator Licenses, a Temporary Class B Beer and Wine License, an Original Class B Beer and Class C Wine License and a Fireworks User Permit to the above named applicants, respectively. Motion carried 5-0.

Motion by Alderman McCarthy, second by Alderman Blumer to adjourn the Legislative & Licensing Committee meeting. Motion carried 5-0. Meeting adjourned at 8:53 p.m.

Minutes respectfully submitted by Kelly Michaels, City Clerk