



The Village of
North Fond du Lac
...A Great Place to Live, Work & Play

**VILLAGE OF NORTH FOND DU LAC
FOND DU LAC COUNTY, WISCONSIN**

**Minutes of Special Committee of the Whole and Village Board Meeting
June 29, 2010**

ROLL CALL

The meeting was called to order by Village President Jim Moore at 6:30 p.m. at the Village of North Fond du Lac Village Hall, 16 Garfield Street. Present were Board members Moore, King, Keller, Streetar and Will. Also present were Attorney Tony Renning, appearing for the Village Administration (“Administration” or “Police Department”), Attorney Peter Culp, appearing for licensee Day’z Gone By (“Licensee”) and Attorney John St. Peter appearing for the Village Board. Mr. Moore confirmed open meeting notice to the public and actual notice to the Licensee. The notice to the Licensee included a document entitled “Notice of Recommendation to Non-renew Alcoholic Beverage License” (“Recommendation”).

BACKGROUND

The purpose of the meeting was to consider the Recommendation of the Administration to non-renew the alcohol beverage license of the Licensee (“License”). The grounds for the non-renewal are set forth in the Recommendation. No objections were raised by the Administration or the Licensee to conducting the hearing at the time and place noted above. The hearing was transcribed by a court reporter. The Village Board President announced that Mr. St. Peter has been appointed as the hearing officer to conduct the proceedings and to rule on evidentiary matters. However, the Village Board reserved the right to overrule Mr. St. Peter if it disagrees with any of his rulings. In addition, the President announced that the Village Board will be making the final decision. After these introductory comments, Mr. St. Peter reviewed the procedure that would be followed during the hearing. At the conclusion of Mr. St. Peter’s comments counsel for the parties indicated their readiness to proceed with the hearing.

OPENING
STATEMENTS

Both the Administration and the Licensee made brief opening statements. The Administration's counsel reviewed the grounds for non-renewal set forth in the Recommendation. Counsel also emphasized the relative rarity of the Administration making recommendations to non-renew a alcohol beverage licenses. Counsel for the Licensee emphasized the good faith of the Licensee, alerted the Board to the possible bias of certain witnesses and urged the Board to give the Licensee a second chance.

PRESENTATION
BY
ADMINISTRATION

The Administration presented four witnesses, all officers of the Police Department. The principal witness was Police Chief William Lamb. The various Administration witnesses offered five exhibits. All of the exhibits were received by the Board. The evidence presented by the Administration included the following:

- The Renewal Alcohol Beverage License Application contains false or inaccurate information because it failed to acknowledge or explain pending charges against the Licensee or persons affiliated with the Licensee.
- The Licensee was convicted of being open after hours.
- The Licensee was convicted of a violation of the Village's noise ordinance.
- On June 19, 2010 a fight occurred within and immediately outside the licensed premises. This event has resulted in a criminal complaint being filed by the Fond du Lac County District Attorney alleging misdemeanor battery and disorderly conduct against David S. Cross, Jr. and Terrence L. Schneider. Mr. Cross is an operator employed by the Licensee, although Mr. Cross was not tending bar when the June 19, 2010 event occurred. In addition, the Police Department presented evidence that one of the owners of the Licensee, Paul Oldenburg, failed to take the appropriate measures after he became aware of the fight and, further, failed to cooperate in the Police Department's investigation of the fight.

The Administration concluded by recommending the non-renewal of the alcohol beverage license of Day'z Gone By for the reasons set forth in the Recommendation. All of the Administration's witnesses were extensively cross-examined by Mr. Culp.

PRESENTATION
BY
LICENSEE

The Licensee presented seven witnesses in its defense. It also was allowed to present comments from the public and letters of support. The letters of support were received by the Board. The evidence presented by the Licensee included the following:

- Statements from Jenny Ledden, Darrell Reinhold and Trina Odekirk may be suspect because these individuals are associated with a competing tavern establishment located immediately across the street from the Licensee.
- The Police Department did not adequately cooperate with the Licensee to address the alleged problems that may have occurred at the premises.
- Substantial portions of the Police Department testimony were not based on eyewitness testimony.
- The Licensee has taken steps to address problems, including employing a bouncer on Friday nights.
- The Licensee has been in business approximately three years and, overall, has operated a peaceable establishment. The Licensee emphasized the limited number of events being cited as the basis for the non-renewal.
- The Licensee repeatedly apologized to the Board, the Administration and the Police Department for any mistakes that may have been made.
- The Licensee assured the Board that, should the license be renewed, the Licensee will take positive, concrete steps to better manage the business. These steps include an active program of cooperation with the Police Department, regular staff training and new employment policies.

CLOSING
ARGUMENTS

Counsel for both the Administration and the Licensee presented closing arguments. The Administration emphasized the seriousness of the June 19, 2010 incident and subsequent events relating to this incident. The Licensee pled for a second chance with emphasis on the Board's right to seek a revocation or suspension if the Licensee failed to meet its responsibilities as represented.

CLOSED
SESSION

Pursuant to open meeting notice, the Board President announced the Board's intention to convene into closed session pursuant to Wis. Stats. § 19.85(1)(a) to deliberate as a quasi-judicial body. The President informed the public that it would reconvene into open session to take action on the recommended non-renewal. Motion and second to convene into closed session as stated in the open meeting notice. Motion carried unanimously on a roll call vote.

(Herein occurred the closed session.)

BOARD
ACTION

The Board reconvened into open session. Motion and second with unanimous approval by roll call of the following resolution:

WHEREAS, the Village of North Fond du Lac Administration filed a recommendation to non-renew the alcohol beverage license of Day'z Gone By, LLC (Kathleen J. Oldenburg)("Licensee"). The recommendation is dated June 24, 2010; and

WHEREAS, timely notice of the recommendation was provided to the Licensee; and

WHEREAS, the Village Board conducted a hearing for the purpose of receiving evidence for and against the recommendation to non-renew the alcohol beverage license; and

WHEREAS, both the Licensee and Village Administration were represented by legal counsel; and

WHEREAS, the Village Board duly considered the testimony and exhibits presented both in support and opposition of the recommendation to non-renew the alcohol beverage license; and

WHEREAS, the Village Board has jurisdiction to conduct the above-referenced hearing pursuant to both Village Ordinances and Chapter 125 of the Wisconsin Statutes;

RESOLVED, that the Village Board of the Village of North Fond du Lac does hereby find that the allegations contained in the Village Administration's recommendation to non-renew the alcohol beverage license of the Licensee are true and are hereby incorporated by reference as if fully set forth in this resolution; and

FURTHER RESOLVED, that the Village Board does hereby find that the alcohol beverage license issued to the Licensee should be non-renewed as authorized by Wis. Stat. §125.12(3) and the relevant Village Ordinances; and

FURTHER RESOLVED, that the non-renewal of the alcohol beverage license shall take effect at 12:01 a.m. Thursday, July 1, 2010; and

FURTHER RESOLVED, that the Village Board's special legal counsel and the Village's Administration are authorized and directed to take such further action as may be necessary to implement this resolution non-renewing the alcohol beverage license issued to the Licensee.

ADJOURNMENT No other business coming before the Board the meeting was adjourned.

VILLAGE OF NORTH FOND DU LAC

By: _____
Donna Richards, Village Clerk