



CITY OF GARDNER
 OFFICE OF THE
BOARD OF LICENSE COMMISSION
 ROOM 29, CITY HALL
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Michael Fitzsimmons
 Chairperson

Nancy Binder
 Member

Kenneth Arsenaul
 Member

Meeting Minutes
Regular Meeting

Date 1/11/2022

Location: Council Chambers

Members Present: Mike Fitzsimmons, Chairperson
 Kenneth Arsenault, Member
 Nancy Binder, Member
 Angela DiPrima, Clerk

Hearing Attendees: Jerold G. Paquette, Attorney for Paul Johnson
 Paul Johnson, Owner Bob Martin’s Bar, Inc DBA South Gardner Hotel
 Michele Anderson, Bartender, South Gardner Hotel
 Lt. Nicholas Maroni, Gardner Police Department
 Officer Scott Marigliano, Gardner Police Department
 Officer Alexa Morgan, Gardner Police Department
 Officer Anthony Webb, Gardner Police Department

Call to Order: 4:30pm
Opening Announcements

Minutes:
 December 14, 2021 meeting minutes were reviewed and approved.

Hearing:
Bob Martin’s Bar, Inc. DBA South Gardner Hotel: Alleged violation of MGL Ch 138 § 69
 Sale or delivery of an alcoholic beverage to an intoxicated person, November 13, 2021 @
 12:59am. Above attendees were present.

The following is a summary of documents included in the hearing packet provided to the
 commission members and to Attorney Paquette:

- 11/13/21 Notice of Violation which was served to the establishment. The notice includes an order to produce the following items from 11:00am on Friday November 12, 2021 through 2:00am on November 13, 2022 to the License Commission within 7 days: video surveillance footage, sales receipts, and credit card receipts.
- 11/22/21 Sales receipts, and credit card receipts as requested in the Notice of Violation, additionally there is a copy of a hand-written log dated 11/6/21 to 11/12/21, all of which are attached to Attorney Paquette’s receipt for the items he provided.
- 12/8/21 Lt Maroni’s investigation report to the License Commission requesting a hearing on this matter due to an automobile accident and subsequent OUI arrest.

- 12/27/21 Hearing Notice from the Gardner Liquor Commission, sent certified mail with return receipt, signed as received, dated 12/31/21.
- A USB drive with video surveillance footage which was provided by Attorney Paquette, labeled "S. Gardner Hotel 11/13//21" which is attached to the file for this hearing. Time/Date stamp on the video indicates that the footage received is limited to Friday 11/21/2021 from 11:00pm to Saturday 11/13/2021 at 1:00am, 2 hours in duration with 4 camera views

The License Commission members, Lt Maroni & Clerk have reviewed the video surveillance footage from the establishment prior to the hearing.

To begin the hearing, the Chairperson requests that Lt Maroni summarize the findings of his investigation. Lt Maroni states that on 11/13/21, officers responded to a motor vehicle accident. The individual who had been operating the vehicle disclosed to officers at the scene that she was coming from the South Gardner Hotel. She was arrested for OUI at the scene.

Lt Maroni states that as part of the violation investigation, he reviewed video surveillance provided by the establishment. He verifies the identity of the person from the OUI arrest booking photo is the same subject he observed on the video surveillance. His observations of this subject are outlined in his written report which was provided to the License Commission on 12/8/2021. Lt Maroni outlines the timeline of beverages he observed being served to and then consumed by the subject identified from the accident and subsequent arrest. Lt Maroni states that she was served what appears to be 2 or 3 draft beers and 6 shots between 11:03pm on 11/12/2021 to 12:24pm on 11/13/2021 when she exits the bar. She duration being in the establishment documented on the video is approximately 1 hour, 21 minutes.

Attorney Paquette states that the Lieutenant's testimony is not evidence or fact, it is hearsay as he did not witness any of the events at the bar. He also states that the Commission should view the video themselves and each member of the Commission states that they have already viewed the video. The Chairperson asks if Attorney Paquette if he has viewed the video and the attorney states that he has viewed the video also.

The Chairperson then asks that Scott Marigliano, the arresting officer, come forward to provide information. He states that on the night in question, at approximately 1:00am, he responded to a call for a motor vehicle accident at 204 Pearl St in Gardner. When he arrived, he observed a motor vehicle off the road in the bushes and the driver was still in the vehicle. When asked where she was coming from, she stated "SoHo" which the South Gardner Hotel is commonly called. She admitted to consuming 4 draft beers and one shot of liquor. Officer Marigliano administered a field sobriety test. At the completion of that test, he determined that she was under the influence of alcohol and placed the driver under arrest.

The Chairperson asks at what time he arrived on the accident scene, he states that the call came in at 12:56 to dispatch and he arrived within a few minutes of the call. Officer Marigliano is asked if there was anyone else in the vehicle; he states that she was alone.

Attorney Paquette asks Officer Marigliano who the other officers on the accident scene were; he states that Officer Alexa Morgan was also on the scene. Attorney Paquette asks if Officer Marigliano where the car was when he arrived; he states that car had crossed Pearl St. from Lawrence St. and was in the brush in the yard at 204 Pearl St. Officer Marigliano states that the driver was still in the car, that the driver had difficulty exiting the vehicle but was able to exit unassisted. Attorney Paquette asks if Officer Marigliano saw her drink at the bar and the officer states that he did not. Attorney Paquette

asks what was on the driver's side of the car on the ground, the officer replies that there was an open beer can on the ground.

Attorney Paquette then directs a question to Officer Alexa Morgan; however, she is seated in the galley. The Chairperson asks her to come forward to the hearing table before responding. Attorney Paquette then states that there was an open beer on the ground and asks Officer Morgan if that is what she saw. She does confirm that there was a beer can, but she cannot confirm the contents of the can as she did not pick it up or examine it.

Attorney Paquette asks Officer Marigliano about whether or not the police report pertaining to the accident is accurate, speaking over the officer as he attempts to answer question. The Chairperson attempts to bring the hearing back to order asking Attorney Paquette to allow the officer to speak; however, Attorney Paquette continues to speak to the officer over his efforts. Member Arsenault then reminds Attorney Paquette that this hearing is about an over-serving violation at the establishment not the events that occurred after the driver left the establishment or the accident; Member Arsenault asks what the direction of his questions has to do with the hearing. Attorney Paquette states that the beer can is evidence that the driver may have become intoxicated after she left the bar, that the driver did not consume her last alcohol at the bar, and no one knows how many she consumed in her car; he speculates about the driver's activities after leaving the bar.

Member Binder asks Officer Marigliano what time the call came into dispatch; he states 12:56pm. Member Binder asks Officer Marigliano if he knows who called the accident to dispatch; he states that it was the homeowner of the property where the accident occurred. Member Arsenault states that it was 32 minutes from the time driver exited camera view in the direction of the back door of the bar until the call to dispatch was made reporting the accident. Mr. Johnson states that there is no video showing the back parking lot of the establishment. Lt Maroni states that he used a GPS app to calculate the driving time from the bar to the accident scene as 4 minutes as documented in his report. Member Binder asks Officer Marigliano if there was an inventory list from inside the vehicle after the driver was placed under arrest; he answers, "yes." Officer Marigliano is also asked if there was any evidence of alcohol or other substances on the inventory list and he answers that there was not.

Attorney Paquette asks Officer Marigliano if he arrested the driver and took her to the station; he replies that he did. Officer Marigliano states that at the station, he attempted to administer a breathalyzer test, but the driver was unable to give sufficient volume of breath to complete the test. Attorney Paquette then states that Officer Webb was the officer who went to the bar after the accident and asks Officer Marigliano if Officer Webb was aware of the facts from the accident scene. Officer Marigliano states that Officer Webb was on the scene for the at least part of the field sobriety test and states that Officer Webb is present at the hearing. The Chairperson asks Attorney Paquette if he would like Officer Webb to come forward to speak at the hearing table; he replies he would.

The Chairperson asks Attorney Paquette if he is done speaking with Officer Marigliano and Officer Morgan, and he states that he is done speaking with Officer Marigliano. Officer Marigliano exits the hearing and Officer Webb takes his seat; Officer Morgan remains seated at the hearing table.

Attorney Paquette asks Officer Morgan if she had any input on the on the decision to arrest the driver; she states that she did not complete a report as she was not the arresting officer, but she was at the scene. Officer Morgan states that she arrived at about the same time as Officer Marigliano, saw the vehicle in the brush, witnessed the driver exit the vehicle, she walked around the car, and did observe a beer can on the ground. Attorney Paquette asks Officer Morgan if she looked inside the car; she states that she did. Attorney Paquette then asks if she saw any additional beer cans; she states that she did not. Attorney Paquette asks Officer Morgan if she made Lt Maroni aware of the beer can in the ground; she states that Lt Maroni was not at the scene. Attorney Paquette asks Officer Morgan if at

any time she made Lt Maroni aware of the beer can; she states that she has not had any conversations about it with Lt Maroni. Attorney Paquette states that he is done questioning Officer Morgan and she leaves the hearing.

Attorney Paquette asks Officer Webb what his involvement was with the driver; Officer Webb states that he did not interact with the driver, that his main task was to direct traffic at the scene until the tow truck left. Officer Webb also states that he served the Notice of Violation at the South Gardner Hotel while Officer Marigliano was with the driver at the police station. Officer Webb gave the notice to Michele Anderson. Attorney Paquette states that he is done questioning Officer Webb and he leaves the hearing.

At the request of the Commission, Michele Anderson comes to sit at the hearing table. Attorney Paquette asks her how long she has been employed at the bar, and she states 5 years. He asks what her duties are at the bar; she states bartender and cook. Attorney Paquette asks if she served the person in question; Michele states that she did and she served her 3 beers and 3 shots, including 2 shots of Patron and 1 Pickleback shot. Attorney Paquette asks what a "Pickleback" is; she states that it is 2 shot glasses, 1 with Jamison whiskey and another with pickle juice, served at the same time. Attorney Paquette asks for clarification if there is alcohol in the pickle juice; she states that there is not. Attorney Paquette asks if that would be obvious that the 2nd shot glass contained pickle juice on a video; she states that if you can see the color, it would be green.

Attorney Paquette asks if the patron in question paid for her drinks; Michele states that she paid for 1 drink, and a gentleman next to her paid for her other drinks. Attorney Paquette again asks how many beers the patron had; Michele states that she had 3 draft beers. Attorney Paquette asks what time the patron arrived; Michele states that she arrived around 8:00pm. Attorney Paquette asks what time the patron left; Michele states that she left a little after 12:00am. Lt Maroni states that on the video provided it shows patron in question entering the bar at 11:03pm by the front door. Michele states that this patron is a smoker and that she may have come in from the front door after smoking. Member Arsenault asks if video is available prior to 11:00pm; LT Maroni states that the establishment only provided 2 hours of video beginning at 11:00pm on 11/12/2021.

Attorney Paquette asks where the evidence is that she didn't arrive at 8:00; the Chairperson asks is where the evidence that she did? Attorney Paquette states that the video does not show the entire evening. Member Arsenault asks if there was video provided for 8:00pm and the Clerk replies that video was not provided for that time. Member Binder asks that if the defense is that the patron arrived at 8:00 then where is the video that shows her arriving at 8:00? Attorney Paquette states that the evidence is Michele's testimony.

Member Arsenault shows Michele a copy of handwritten notes from the hearing packet and asks her if those are her notes; she replies that yes, they are. Member Arsenault states that bartender's notes state that the patron in question was served 3 beers and maybe 4 shots. Michele states that is correct and that the 4th shot was the Pickleback.

The Chairperson states that in the Commission's observation of the video, that from 11:03pm through 12:24am, the patron in question consumed at least 2 draft beers and 6 shots. Michele states that she only served her 1 Pickleback after 11:00pm. Michele again states that the patron arrived at 8:00pm. Lt Maroni then tells Attorney Paquette that the video requested was from 11:00am-2:00am, which is the entirety of service of alcohol for the establishment for the day. The Clerk confirms that the only video provided was from 11:00pm through 1:00am.

Attorney Paquette asks Michele if she had opportunity to make observations of the patron in question; she states that she did observe her standing with her friends and moving around. Attorney Paquette

asks Michele if she ever fell down or slurred words; Michele replies “no.” Attorney Paquette asks if she was aggressive; Michele replies “no.” Attorney Paquette asks if anyone complained about her; Michele replies “no.” Attorney Paquette asks if the patron has been to the bar before; Michele states “yes.” Attorney Paquette asks Michele if the patron is a personal friend; Michele replies “no.” Attorney Paquette asks Michele if she thought that the patron in question was under the influence; Michele states, “no, I did not think so.” Attorney Paquette asks Michele if she thought that the patron was an intoxicated person at any point in time; Michele states “no.” Attorney Paquette asks Michele how she would know what an intoxicated person looks like; Michele states that she has seen people intoxicated who can’t talk or stand up and she doesn’t serve them.

Member Arsenault asks Michele if she watched the patron leave; Michele states, “no.” Michele also states that the patron did talk with her before she left to verify that her tab was paid. Member Binder asks Michele if it was a busy Friday night; Michele states that it was “steady.” Member Binder asks if Michele has ever seen this patron intoxicated before; Michele states, “no, she’s a very slow drinker. She orders a draft beer, and it will last her 3 hours.” Member Binder states that was not what she observed on this video.

The Chairperson states that from what the Commission observed when viewing the video that the patron appeared to drink 3 beers and 6 shots from 11:03pm though 12:24am. Lt Maroni states from his observation of the video that she arrived and was served 2 beers, walked around and maybe got a 3rd beer, he’s not sure about the 3rd beer as she was out of camera view for a time. He states that the patron was clearly served and consumed 3 rounds of shots, 2 shot glasses in each round and that the patron consumed 2 shot glasses at a time for each round. Michele then states that the patron’s friends drank the other shots she poured, that this patron only had 1 set of shots, 1 Pickleback. Attorney Paquette asks what happened when the officer came to the establishment that night; Michele states that told her that he told her he was serving her for over-serving he asked her a paper to sign. Lt Maroni identifies that paper as the ‘Notice of Violation’ that is on the hearing packet. The Commission and Attorney Paquette state that they have no further questions for Michele, and she left the hearing.

Attorney Paquette makes a lengthy statement about the burden of proving in that someone is intoxicated, and about the likelihood that the patron drank in her vehicle after leaving the bar as there was a beer can found on the ground at the scene.

Lt Maroni states that in the video provided, that when the patron got up to leave the bar, she appears to lose her balance, stumbles and uses the wall to stabilize herself. The Chairperson states that he did notice that she fell against the coat rack as she walked away from the bar. There was no physical evidence of alcohol containers in the vehicle at the accident scene. Member Binder asks Attorney Paquette if he is done presenting his argument; he states, “yes.”

The Chairperson asks Lt Maroni for what the Gardner Police Department recommendation would be for the violation; he states that based on past violations that he would recommend a 2-day suspension. The Chairperson asks the other Members if they would like to discuss a 2-day suspension. Member Binder states that she is in favor of the 2-day suspension; she feels that there was evidence serving of an intoxicated person in the video. Member Arsenault states the patron’s mannerisms at the bar, on the video prior to her leaving the South Gardner Hotel, walking into the coat rack, is that she was intoxicated.

The Gardner Board of License Commission then voted unanimously to find the Establishment Owner in violation of MGL Ch 138 § 69 Sale or delivery of an alcoholic beverage to an intoxicated person. As a result of this decision, the Commission will levy a Two-Day Suspension of the Annual All Alcohol Hotel/Innkeeper License for the establishment. The establishment is made aware that they have the option to appeal this finding to the ABCC within 5 days of receipt of the written notification.

The Two-Day Suspension of the establishment’s liquor license shall commence Friday February 4, 2022 through Saturday February 5, 2022 for the full duration of the establishment’s operating hours. Service of alcohol may resume on February 6, 2022 as outlined on the 2022 Gardner Liquor License.

Hearing duration is approximately 1 hour, 14 minutes. Video of the hearing is located at <https://www.youtube.com/c/CityofGardnerMassachusetts> in the ‘2022 License Commission’ playlist and is identified as *Gardner License Commission Meeting Jan 11 2022*.

Old Business: Annual Liquor License renewals for all of the City’s establishments were certified and mailed to ABCC on 1/3/2022.

New Business: There is no new business.

Date of next meeting: Tuesday February 8, 2022 at 4:30pm

Adjournment: 6:45pm - Moved to adjourn from Nancy Binder, seconded by Kenneth Arsenault, meeting adjourned by Chair Fitzsimmons.

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Approved by:	Date Approved:
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