



Office of the Town Clerk

Town of Brookfield | 645 N. Janacek Road, Brookfield, WI 53045

Office: 262-796-3788 | Clerk@TownofBrookfield.com

MEETING MINUTES

Tuesday, June 18, 2024 7:00pm	Town Board Utility District No. 1 Sanitary District No. 4	Eric Gnant Room TOB Municipal Building 645 N. Janacek Rd., Brookfield, WI
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Item # Topic

1. Call to Order & Roll Call. Present: Supervisors John Schatzman (Acting Chairman), Steve Kohlmann, Ryan Stanelle, and John Charlier. Absent: Chairman Keith Henderson. A quorum was met (4-1).
2. Meeting Notices. The Clerk confirmed the meeting was publicly noticed on June 14, 2024.
3. Adoption of the Agenda.
Motion by Stanelle to amend the agenda by taking items 8 (CMAR) and 9 (Amending Change Order) out of order, after item 5 and before item 6, and to adopt the resulting agenda accordingly; seconded by Kohlmann.
Motion prevailed by a voice vote (4-0).
4. Meeting Minutes: **June 4, 2024 Meeting of the TB, UD1, SD4.**
Motion by Stanelle to approve the minutes as presented; seconded by Kohlmann.
Motion prevailed by a voice vote (4-0).
5. Citizen Comments. No members of the public requested to speak.

New Business, Including Topics from Departments, Committees and Commissions

6. Clerk: **Alcohol Licenses:** Change of Agent requests for the remainder of the 2023-2024 licensing year and applications for the 2024-2025 licensing year.
Motion by Kohlmann approve Change of Agent requests for the remainder of the 2023-2024 licensing year and applications for the 2024-2025 licensing year as presented, noting removal of scrivener's duplication of The WAC from the liquor license listing; seconded by Charlier.
Motion prevailed by a voice vote (4-0).
7. Clerk: **Hearing and Possible Action regarding Alcohol License:**
Renewal of Prime Cigar Class B Intoxicating Liquor License for the 2024-25 license year, including request for AB-102 Alcohol Beverage License and Permit Transfer Application Acme Group, Inc. d/b/a/ Prime Cigar Co. – Transfer from: Suite 104 to Suite 148.

The Chairman opened the hearing regarding the renewal of Prime Cigar's Class B Intoxicating Liquor License for the 2024-25 license year, including request for AB-102 Alcohol Beverage License and Permit Transfer Application Acme Group, Inc. d/b/a/ Prime Cigar Co. – Transfer from: Suite 104 to Suite 148.

Town Board was provided:

- Letter from Town Clerk dated June 5, 2024 to Acme Group, Inc. d/b/a Prime Cigar Co of Town Board intent to not renew Class B Intoxicating Liquor License based on violations of Wis. Stat. § 125.68(8), Wis. Stat. § 125.69(6), Wis. Stat. §§ 139.11, 139.25, and Wis. Stat. § 134.65(4).
- Letter from Attorney Brian Randall dated June 13, 2024 regarding Prime Cigar Licensing Procedure.
- Letter from Attorney Brian Randall dated June 13, 2024 enclosing Acme Group, Inc. d/b/a Prime Cigar Co's renewal application for Suite 148.
- Letter from Attorney Brian Randall dated June 13, 2024 enclosing Acme Group, Inc. d/b/a Prime Cigar Co's renewal application for Suite 148 (which included application for transfer from 104 to 148).
- Wisconsin Department of Revenue report and related materials.

Witness Present: Erin Dorn. Ms. Dorn stated she is a Special Investigator with the Wisconsin Department of Revenue. She is responsible for four counties. She has had the position of Special Investigator for 12 years. Her investigations are largely based on complaint involving bars and liquor stores.

In August 2023, Ms. Dorn received an anonymous complaint involving the refiling of liquor bottles at 18900 W. Bluemound Rd., Ste. 104, Brookfield, WI 53045. Ms. Dorn completed a field inspection on September 19, 2023. She confiscated liquor bottles and cigarettes that did not have supporting invoices. Ms. Dorn reviewed the documents with Claire Reinhardt, an employee of license holder.

Supervisor Kohlmann asked Ms. Dorn about how Ms. Reinhardt reacted to Ms. Dorn's inspection. Ms. Dorn responded that Ms. Reinhardt was cooperative, just an employee, and did not request any additional information.

Chairman Schatzman asked Ms. Dorn how many other issues has she run into in the Town of Brookfield. Ms. Dorn answered none.

Chairman Schatzman asked Ms. Dorn if she was aware of the licensee doing this before. Administrator Hagie stated this was Prime Cigar's first time having an intoxicating liquor license. Ms. Dorn answered that in 2015, the licensee had a class B license that allowed beer, but they were found to be selling liquor as well. There was also a separate issue involving a tobacco complaint in 2015. She said that the DOR ended up confiscating the liquor.

Supervisor Charlier asked Ms. Dorn if Prime Cigar could still sell tobacco. Ms. Dorn said that state law requires invoices to be on site or the items can be confiscated.

Brian Randall, Attorney for licensee, said that he cannot put Ms. Dorn under oath but asked her to confirm that she is telling the truth. Ms. Dorn said that she was telling the truth.

Attorney Randall asked if the complaint was anonymous. Ms. Dorn said it was, and August 18, 2023 was the date of the anonymous complaint, not the date of the incident.

Attorney Randall asked about past complaints and incidents. Ms. Dorn said she had been to Prime Cigar in 2015.

Attorney Randall asked if Ms. Dorn forwarded the 2015 field report to the Town. Ms. Dorn said no from what she recalled.

Attorney Randall asked if Ms. Dorn forwarded the 2023 report to the Town. She said she doesn't recall if she forwarded it to the Town or if it was an open record request.

Attorney Randall asked if Ms. Dorn would have any records in her office of an email or anything to document any requests for records. Ms. Dorn said yes.

Attorney Randall asked how many incidents like Prime Cigar she typically sees, such as once a week, once a month, etc. Ms. Dorn said the refilling with known cheaper brands, not very often. Retail purchase - yes, more often. Uninvolved product like tobacco, often too.

Attorney Randall asked Ms. Dorn about the purpose of the invoices. He asked if it is because of the three tier system that Wisconsin has or is it because of paying proper taxes to the state. Ms. Dorn said its not necessarily because of the taxes, but is because of the three tier system.

Attorney Randall asked where receipts were found in the office. Ms. Dorn said she couldn't remember where she found them. Attorney Randall tried to clarify the location. Ms. Dorn tried to recall from memory by describing the office area.

Attorney Randall asked about the 2023 report that says "thorough search found three invoices" and they were allowed to keep what they found invoices for. Attorney Randall asked how much alcohol they left at the property versus the alcohol that was confiscated. Attorney Randall asked if it was possible that the cigarettes on premises could have been there for more than two years. Ms. Dorn she said she would have looked for a tax stamp.

Attorney Randall read a portion of the case report that said the document contains neither recommendations nor conclusions of the alcohol and tobacco enforcement section, Wisconsin Department of Revenue, it is the property of this section and is loaned to your agency, its contents are not to be distributed outside your agency.

Attorney Randall then asked Ms. Dorn if citations were issued. Ms. Dorn said DOR doesn't issue citations, DOR issue charges. Ms. Dorn said that the DOR did not issue any charges on Prime Cigar.

Attorney Randall asked Ms. Dorn if the report being discussed at a public meeting exceeds the authority granted to the Town based on the language read by Attorney Randall in case report. Ms. Dorn confirmed that the case report was provided to the Town.

Attorney Randall looked at receipts including one with Hendrick's on it and asked Ms. Dorn if she found that bottle of Hendrick's in the items she confiscated. Ms. Dorn said she did not see it on the property receipt. Attorney Randall asked if it was possible that the receipt could have been personal. Ms. Dorn said that the law presumes that any receipts found on the premises are business receipts.

Attorney Randall looked at next receipt with Basil Bourbon and asked Ms. Dorn if that was also on her confiscated list. Ms. Dorn said these liquors were not detailed by name on the confiscated list.

Attorney Randall looked at next receipt dated March 22, 2023 and asked Ms. Dorn if it was considered recent under law? Ms. Dorn said yes, because it was within the last two years. Attorney Randall asked Ms. Dorn if

the liquors on the receipt were found on the premises. Ms. Dorn said these liquors were not detailed by name on the confiscated list.

Attorney Randall looked at the next receipt from Costco and asked if the liquor was on her confiscated list. Ms. Dorn said these liquors were not detailed by name on the confiscated list.

Attorney Randall looked at the next receipt with Cognac XO. Ms. Dorn said these liquors were not detailed by name on the confiscated list.

Attorney Randall looked at the next receipt dated June 27, 2023 with VSOP cognac 750ml. Ms. Dorn said these liquors were not detailed by name on the confiscated list.

Attorney Randall looked at the next receipt on page 17 dated April 2023 with paper towels, batteries, towels, etc., Queen, Cognac, and Glenfiddich. Ms. Dorn said these liquors were not detailed by name on the confiscated list.

James Hammes, Attorney for Town, asked Ms. Dorn that when she confiscated the liquor, how she determines if she is going to confiscate something. Ms. Dorn said partially based on how cooperative the person or owner is and if they have an ability to explain why they don't have an invoice.

Attorney Hammes stated to Ms. Dorn that she would not confiscate unless she thought it was a violation of one of the statutes, correct? Ms. Dorn said correct and that there is a prohibition of filling bottles, misrepresenting the quality or cost of the product, or buying from a retailer rather than a wholesaler.

Attorney Hammes stated to Ms. Dorn that in the 5th paragraph of her report she indicated that she did a thorough search of the premises for liquor products that had been purchased from a distributor. Attorney Hammes stated that attached to the report are receipts showing purchases from a retailer instead with three showing a distributor and ten showing from a retailer. Attorney Hammes asked Ms. Dorn if she explained to the manager what Ms. Dorn was confiscating and why she were confiscating it. Ms. Dorn answered yes.

Attorney Hammes asked Ms. Dorn how long she was at the premises. Ms. Dorn said an hour to an hour and a half.

Attorney Hammes asked Ms. Dorn if the manager or anyone else representing the business contacted the DOR about the inspection, the receipts, items confiscated, or anything at all. Ms. Dorn said no.

Attorney Randall asked if it is true that as the DOR when dealing with issues like this, the DOR has two choices of either to confiscate or to issue charges. Ms. Dorn said no.

Attorney Randall asked about Ms. Dorn not doing charges or prosecution. Ms. Dorn said its often up to the DA, and in Milwaukee for example, the DA would never press charges for this.

Attorney Randall asked if this was a training situation. Ms. Dorn said no. Ms. Dorn said part of DOR's inspection authority is the office and all paperwork.

Attorney Randall asked if there is a reason she didn't include the wholesaler receipts in her report. Attorney Randall asked if wholesaler invoices usually have multiple lines on them. Ms. Dorn said sometimes. Attorney Randall asked for clarity on how often. Ms. Dorn answered generally. Attorney Randall asked how much the line items came to on the invoices. Ms. Dorn did not remember.

Supervisor Stanelle said that during the confiscation process, there was very little left, and only what was on the wholesale receipts. Supervisor Stanelle asked Ms. Dorn if there were 100 things on the wholesale receipts, then she would have left more there - yes? Ms. Dorn said that's correct.

Supervisor Kohlmann looked at the Total Wine receipt dated March 22, 2023, and the receipt next to the Total Wine receipt with the same date. Supervisor Kohlmann said to Ms. Dorn that her inspection took place five months later. Supervisor Kohlmann asked Ms. Dorn if it is possible that the items on those receipts were already used up and the bottles disposed of already. Ms. Dorn said yes, its possible.

Supervisor Kohlmann asked Ms. Dorn if people keep empty bottles lying around. Ms. Dorn said she is hesitant to assume they were thrown out due to the nature of the complaint.

Supervisor Charlier compared the listing of items confiscated that were already opened and asked Ms. Dorn if its possible the list includes items that were on the receipts. Ms. Dorn said yes.

Attorney Randall asked Ms. Dorn what law prohibits the personal receipts being present. Ms. Dorn couldn't say. Attorney Randall said Ms. Dorn shouldn't be excused and wants to know what state statute presumes personal receipts are a violation. Ms. Dorn said she itemizes unopened bottles because they get auctioned, but opened bottles get dumped out eventually.

Ms. Dorn was excused.

Attorney Randall called Bill Bode as a witness. Attorney Randall confirmed with Mr. Bode that he is giving sworn testimony. Mr. Bode said he was property owner and landlord. He said Prime Cigar was a tenant starting in 2006 and he never had any significant issues with them as a tenant.

Attorney Randall asked Mr. Bode if Prime Cigar ever asked for Mr. Bode's help with their space or growth or services or offerings. Mr. Bode said the business without a liquor license struggled a little bit, then Prime Cigar applied for a liquor license.

Attorney Randall asked if Prime Cigar applied for a liquor license in 2021. Mr. Bode said he couldn't remember.

Attorney Randall asked that since Prime Cigar's license was granted, if Mr. Bode noticed any changes or problems with the business. Mr. Bode said their patronage increased and their ability to succeed as a business increased. Attorney Randall asked about any problems. Mr. Bode said there has never been any problem that he was aware of with any patron of the facility. Mr. Bode said he would call them a quality asset and they added to the shopping center.

Attorney Randall asked good customers, not causing problems? Mr. Bode said yes, professionals.

Attorney Randall asked Mr. Bode if he knew the reason Prime Cigar moved from suite 104 to 148. Mr. Bode said yes, he made them. Mr. Bode said he asked Prime Cigar to relocate to another space in the center so that another tenant could expand into the space they had.

Attorney Randall asked Mr. Bode if Prime Cigar was accommodating to you and to the other tenants. Mr. Bode said yes. Mr. Bode said he has no complaints about Prime Cigar as a business and as a quality tenant.

Attorney Randall asked Mr. Bode if Prime Cigar had to spend money on a build out for the space. Mr. Bode said yes, and the space is rented and they were approved an occupancy permit several weeks ago.

Chairman Schatzman asked Mr. Bode if he ever has arrangements with his tenants where he receives a portion of their income. Mr. Bode said not with this tenant.

Chairman Schatzman asked Mr. Bode if there were any loose ends needing to tie up with Prime Cigar when he sold the property.

Chairman Schatzman asked Attorney Hammes if he had any questions. Attorney Hammes said that he did not.

Attorney Randall said he's ready to go to closing statements. Chairman Schatzman asked Attorney Randall if his client would speak on his own behalf. Attorney Randall said that he doesn't plan to and the Town Attorney could opine on whether the Town Board could compel him to testify. Attorney Hammes said no that the client doesn't need to testify if he doesn't want to.

Attorney Randall made closing statement. He said Town Board's closed session discussions and what it may want to do, are not necessarily within the law. The licensee was not new, it had been in place since 2021. The DOR uses it as an educational thing. The penalty is under state statute and there is no non-renewal reference under state statute, and also the DOR decided not to issue the penalty. Using these as basis for a non-renewal finding is outside the Town's jurisdiction. He said there were also no charges. He said that the receipts and testimony about them needs to be struck because they don't connect to the alcohol confiscated. What is on the testimony is that this happens with licensees, there was something nine years ago and of two times in nine years, they use it as a learning experience, and what Ms. Dorn didn't elaborate on is that charges are brought when they don't get the message. Attorney Randall said this is a diverse business, not everyone likes to smoke or to drink, but not everyone likes pizza or brunch, etc. When Bullwinkle's moved, the Town was happy for them and approved the move easily. Prime Cigar has had a de facto no license for 40 days now.

Attorney Randall cited state statute 125.12(3) Refusals from local authorities to issue licenses. He said we received the notice, we did respond, we provided direct testimony, apologies that maybe you wanted to hear. He said this is not a criminal case and Attorney Randall's client is not required to testify. Attorney Randall said we're going to focus on the law and the Town Board's authority. "If the hearing is found before the municipal governing body and found to be true... 10 to 90 day suspension...". Remedies are also full revocation. That is a death sentence for a business. A licensee has a vested property right in their license. The bookkeeper responsible for these invoices is transitioning out. Prime Cigar will continue to be a great tenant.

Attorney Hammes stated that the statutes refer to revocation, but non-renewal is different. Section 125.12(2)(b)3 says that the Town Board shall determine whether the arguments presented orally or in writing and if after considering, find the complaint to be true, the Town Board can make a determination as to what the result could be, it could include suspension. It could also include non-renewal (or revocation). Attorney Hammes said that the Town Board should engage in discussion of what the evidence says. Looking at the notice that was sent out, Section 125.12(2)(ag), a license can be revoked or suspended if the person has violated this chapter (or any ordinance the Town has adopted under this chapter). The notice that the Clerk sent out notes the specific statutes that were violated.

Attorney Randall agreed that the Town Board needs to focus first on whether they believe the complaint is true or not, and then determine the appropriate penalty.

Chairman Schatzman opens deliberation of the Town Board.

Chairman Schatzman said let's look at the four allegations. Town Clerk asked Attorney Hammes if the statutes should be read into the record. Attorney Hammes said not necessary.

Supervisor Kohlmann said to take the allegations all together.

Chairman Schatzman asked for comments toward evidence.

Supervisor Charlier said there was no proof of invoice on site for the cigarettes. He said the receipts might not have been the full unopened bottles, but it could have been the opened bottles or others that were already gone. The issue he has is why would there be so many receipts around a business if the receipts were for employees.

Supervisor Kohlmann said he agreed with Supervisor Charlier. Supervisor Kohlmann said this is not the licensee's first violation but wasn't aware before of the 2015 violation. Supervisor Kohlmann said what he has seen tonight is confirmation of a violation.

Supervisor Stanelle said it is a shame that we don't have the wholesale receipts and the bulk of the items removed were not on the wholesale receipts. He said that affirms that the activity was taking place. Supervisor Stanelle also said he was not aware of the 2015 violation. He recalled that some people who wanted licenses didn't get them.

Chairman Schatzman said he heard sufficient evidence that the allegations are truthful and has no reason to disbelieve the DOR agent that testified. He said was also not aware of the 2015 matter. He said it probably would have made a difference back then, but the Town Board is looking at this particular violation and this time.

Chairman Schatzman asked if this is acceptable behavior from any business to the citizens which we represent. Is this a slap on the wrist situation, or unacceptable behavior to defraud the residents who we heard previously that our own residents are frequenters of Prime Cigar. Chairman Schatzman said it bothers him that those residents have been ripped off. Supervisor Kohlmann said he agreed. Supervisor Charlier said he agreed. He also said that if it was him who was a customer there, he would be livid. He said that just because the state didn't press charges doesn't mean that it's not a serious offense.

Chairman Schatzman asked for a motion as to what should be done.

Attorney Hammes said that based on your discussions, if you made a finding that there was a violation, then based on those findings you would move to not renew the license for the upcoming year.

Supervisor Kohlmann made a motion to not renew the class B intoxicating liquor license for 2024-2025 license year based on the findings made by the Town Board.

Chairman Schatzman confirmed with Supervisor Kohlmann that the motion was based on the first three sections identified in the Town Clerk's letter dated June 5, 2024, not the cigarette law (which was Section 4 of the Town Clerk's letter dated June 5, 2024). Supervisor Kohlmann confirmed.

Supervisor Charlier seconded the motion.

Motion prevailed (4-0) for non-renewal.

Attorney Hammes said the Town Board must take a vote on the premises moving.

Town Administrator asked about the rules with moving it. Town Clerk referenced state statute 125.04(12).

Attorney Hammes said that the Town Board could move to approve the change to the new premises. The Town Board could not deny because it didn't have a hearing tonight about revoking the license for the current year, it was a hearing on the non-renewal for the new year. Town Clerk mentioned doing it administratively.

Supervisor Stanelle moved to approve the transfer for the current license year as presented (from Suite 104 to Suite 148). Chairman Schatzman seconded.

Motion prevailed (3-1) (No: Kohlmann).

8. Sanitary: **2023 Compliance Maintenance Annual Report (CMAR).**

Motion by Kohlmann approve the 2023 CMAR as presented; seconded by Charlier.

Motion prevailed by a voice vote (4-0).

9. Sanitary: **Change Order for Agreement for Technical Services for the Poplar Creek Lining Project.** (Strand Associates with contractor Visu-Sewer, Inc.)

Motion by Stanelle to approve the change order; seconded by Charlier.

Motion prevailed by a voice vote (4-0).

10. Treasury: **Review of Vouchers and Checks**

Motion by Kohlmann approve the vouchers and checks as presented, including poll worker payments and funds transfers; seconded by Charlier.

Motion prevailed by a voice vote (4-0).

11. Communications & Announcements.

- Chief Schilling started on Monday and had the opportunity to attend the Chamber's golf event with the Chair.
- The ladder truck is expected to be complete next week.
- Gordon Gaeth, who was a member of the Board of Zoning Appeals and the Plan Commission has passed away and his funeral will be on Friday. The Town has sent condolences to his family.

12. Adjourn.

Motion by Kohlmann to adjourn; seconded by Charlier.

Motion prevailed by a voice vote (4-0).

Submitted July 1, 2024. Approved by a vote of the Town Board on July 2, 2024.



Deanna Alexander, MPA, Town Clerk, Town of Brookfield