

**MINUTES
CITY OF ST. CHARLES, IL
LIQUOR CONTROL COMMISSION MEETING
MONDAY, APRIL 17, 2017**

1. Call to Order.

The meeting was convened by Liquor Commissioner Rogina at 4:35 p.m.

2. Roll Call

Members Present: Liquor Commissioner Rogina, Robert Gehm, Ald. Payleitner, Ald. Lewis, and Chuck Amenta

Absent:

Others Present: Mark Koenen, Atty. John McGuirk, Police Chief Keegan, Deputy Police Chief Kintz, Atty. Tim O'Neil, and Tina Nilles

3. Motion to accept and place on file minutes of the Liquor Control Commission meetings held on March 20, 2017.

Motion by Ald. Lewis second by Payleitner to accept and place on file minutes of the Liquor Control Commission meeting held on March 20, 2017.

Voice Vote: Ayes: unanimous, Nays: none. **Chrmn. Rogina** did not vote as Chairman. **Motion carried.**

4. Recommendation to approve a proposal for a new Class B liquor license for DRM Deli Inc. to be located at 610 East Main Street, St. Charles.

Chief Keegan: The applicant is not here tonight.

Chrmn. Rogina: What has been our past precedence on these incidences? If they don't appear at tonight's Government Operations Committee, it is off the agenda for this month.

Chief Keegan: I can quickly give you a quick overview. This is a recommendation to approve a proposal for a new Class B liquor license for DRM Deli Inc. located at 610 East Main Street. This deli is a sustained business for the last several months on the near east side of St. Charles at 610 East Main Street. The site and business plans are attached in the packet. He would like to offer liquor service; the hours of operation are also noted in your packet. I know there has been some discussion on a possible patio as well.

Ald. Payleitner: Is there outdoor seating there now?

Chrmn. Rogina: I've been there and I don't recall seeing any outdoor seating but it was cold at the time.

Ald. Payleitner: With a liquor license they will have to fence it off.

Chief Keegan: We've done patios in several places, so if the Liquor Commission and Council approve the site plan then we would move forward to the next steps that are required.

Ald. Lewis: I thought it was a state law that you couldn't serve alcohol on a state highway. *(There was some discussion of the site plan that was submitted as to where the entrance to proposed patio would be in conjunction with Main Street.)*

Mark Koenen: That area is all private property as well as the parking lot immediately in front of their business on Rt. 64.

Chrmn. Rogina: There are more questions to be ask and we'll take no position on this and move it to Government Operations Committee and if he is not here for that, it will be deferred to next month.

5. Recommendation to approve a proposal for a Class B liquor license application for new owners to take over Taste of Himalayas located at 110 N 3rd Street, St. Charles.

Chief Keegan: This is a recommendation to approve a proposal for a Class B liquor license application for new owners to take over Taste of Himalayas located at 110 N 3rd Street, St. Charles. The applicants are not here this afternoon. This is an ownership change and no changes whatsoever to the business plan.

Chrmn. Rogina: As you pointed out this is a long standing business with just change of ownership and everything else remains the same with the same good food.

Ald. Lewis: I think the applicant should have been here out of respect for what he wants and the privilege of having a liquor license.

Chrmn. Rogina: Let the record reflect that the same situation is being taken by the Liquor Commission that there will be no position taken and we'll move forward without a recommendation to Committee meeting this evening.

6. Recommendation to approve an outdoor patio permit for Vintage 53 located at 162 S 1st Street, Unit C.

Chief Keegan: This is a recommendation to approve an outdoor patio permit for Vintage 53 located at 162 S 1st Street, Unit C. This request is before the committee for one reason; when we typically approve a liquor license the associated floor plan and business plan is approved at the same time. This applicant because his business adjoins to city property right-of-way, the City would have to approve the patio. This is not an uncommon occurrence; the 1st Street Plaza has

ZaZa's, McNally's, Puebla and Pizzeria Neo where we've had some of these uses approve for outside consumption with appropriate parameters of seating being barricaded and roped off.

Ald. Lewis: Do you have to serve food to have an outdoor patio or can you just sit there and have a glass a wine?

Chief Keegan: We do codify in our code that you have to have food in conjunction with alcohol outside on a patio.

Chrmn. Rogina: I noticed across the way at McNally's people were outside with a beverage but food was being served out there.

Ald. Payleitner: We're here because this is changing the business plan and floor plan – correct?

Chief Keegan: That and also we need specific authority from the City because it's on the City's right-of-way.

Robert Gehm: How many seats do you expect to have out there on the sidewalk?

Mario Grado, Vintage 53, 162 S 1st Street: Three or four tables with eight seats comfortably.

Chrmn. Rogina: Just a point on that, I recall a conversation we had back when 1st Street was going on of a couple of citizens coming forth saying that they would like to see “el fresco” patio dining when weather was nice to create that kind of atmosphere. I certainly think it creates the “piazza” atmosphere.

Ald. Lewis: To that point I agree with you but I'm curious how wide is the sidewalk that is left over once these tables are there? If two people are walking down the street, do they now have to go single file to get pass your place?

Mr. Grado: I measured out the space that would be used and there is space to walk. The only exception is the light post but there is sidewalk there to pass by on.

Ald. Lewis: My only suggestion is that you error on the side of the pedestrian; if you could give them a little more room that would be a little more street friendly.

Motion by Ald. Payleitner, second by Gehm in moving forward to committee for a recommendation of approval for an outdoor patio permit for Vintage 53 located at 162 S 1st Street, Unit C.

Roll Call: Ayes: Gehm, Payletiner, Lewis, Amenta; Nays: None. Chrmn. Rogina did not vote as Chair. **Motion Carried.**

7. **Continuation of a Court Hearing regarding tobacco violation citation for Rose Smoke N' Vapor, 902 S Randall Road, St. Charles. (Please refer to Court Reporter**

transcript for the remainder of the minutes taken on this hearing.)

8. Other Business

9. Public Comment – None.

Motion by Mr. Gehm, second by Ald. Payleitner to enter into Executive Session at 5:20 p.m. to discuss tobacco violation citation for Rose Smoke N' Vapor.

Roll Call: Ayes: Gehm, Payleitner, Lewis, Amenta; Nays: None. **Chrmn. Rogina** did not vote as Chair. **Motion carried**

10. Executive Session (5 ILCS 120/2 (c)(4)).

Motion by Mr. Gehm, second by Mr. Amenta to return from Executive Session at 5:37 p.m.

Voice Vote: Ayes: Unanimous; Nays: none. **Chrmn. Rogina** did not vote as Chair. **Motion carried.**

11. Adjournment

Motion to adjourn by Ald. Lewis, second by Amenta to adjourn meeting at 5:38 p.m.

Voice Vote: Ayes: Unanimous; Nays: none. **Chrmn. Rogina** did not vote as Chair. **Motion carried.**



Planet Depos
We Make It Happen™

Transcript of Hearing

Date: April 17, 2017

Case: St. Charles Liquor Commission Hearing

Planet Depos

Phone: 888-433-3767

Fax: 888-503-3767

Email: transcripts@planetdepos.com

www.planetdepos.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

BEFORE THE LIQUOR CONTROL COMMISSION
OF THE CITY OF ST. CHARLES

-----x

In Re: :

Rose Smoke N' Vapor, :

902 South Randall Road. :

-----x

HEARING (Continued)
St. Charles, Illinois 60174
Monday, April 17, 2017
4:48 p.m.

Job No.: 139383

Pages: 1 - 35

Reported by: Paula M. Quetsch, CSR, RPR

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

HEARING, held at the location of:

ST. CHARLES CITY HALL
2 East Main Street
St. Charles, Illinois 60174
(630) 377-4400

Before Paula M. Quetsch, a Certified Shorthand
Reporter, Registered Professional Reporter, and a
Notary Public in and for the State of Illinois.

1 PRESENT:

2 MAYOR RAYMOND ROGINA, Chairman

3 CHUCK AMENTA, Member

4 ROBERT GEHM, Member

5 MAUREEN LEWIS, Member

6 RITA ANNE PAYLEITNER, Member

7

8 ALSO PRESENT:

9 ROSE BAIG

10 JOHN MC GUIRK, City Attorney

11 TINA NILLES, Secretary

12 TIM O'NEIL, Counsel

13 CHIEF JAMES KEEGAN, St. Charles

14 Police Department.

15

16

17

18

19

20

21

22

23

24

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

C O N T E N T S

WITNESS DIRECT CROSS REDIRECT RECROSS

ABDULLAH BAIG

BY MR. O'NEIL 6

ERIC MAHAN

BY MR. O'NEIL 10

NICHOLAS ANSON

BY MR. O'NEIL 15

BY MS. BAIG 23

BY MR. O'NEIL 24

W/D ID EVD

CITY EXHIBITS

Exhibit 1 Bottle of Valgous 7 19

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

P R O C E E D I N G S

MAYOR ROGINA: All right. Item 7 for the continuation of a court hearing regarding Rose Smoke N' Vapor, 902 South Randall Road, St. Charles.

Counsel, O'Neil is here. Do you have counsel or are you representing yourself?

MS. BAIG: Yes.

MAYOR ROGINA: Fair enough. So before I turn this over -- petitioner always has the first burden of proof or the burden to bring forth the facts here.

Before we do that, I'd just like to state that this is a matter before the local Liquor Commission of the City of Charles in the matter of the tobacco license of Rose Smoke N' Vapor, Incorporated, 902 South Randall Road, St. Charles. And, more specifically, if you give me a moment here, the charge here is the sale of a tobacco product to a minor.

With that I'll turn the presentation over to Counsel O'Neil.

For the record, counsel will present the evidence. If there's a question that I need to ask, I will do so. Any witnesses that are called by Counsel O'Neil you have a right to question.

1 MS. BAIG: Okay.

2 MR. O'NEIL: Thank you, your Honor, ladies
3 and gentlemen. I will waive a opening statement.

4 First, I'd call Abdullah Baig. I'd like to
5 call him first as a witness, if you may swear him
6 in, your Honor.

7 (Witness sworn.)

8 MAYOR ROGINA: Would you like to stand?

9 THE WITNESS: That's fine.

10 ABDULLAH BAIG,
11 having been duly sworn, testified as follows:

12 DIRECT EXAMINATION BY COUNSEL FOR THE CITY
13 BY MR. O'NEIL:

14 Q Sir, would you state your name and spell
15 your name for the record?

16 A My name is Abdullah Baig.

17 Q Can you spell that, please?

18 A A-b-d-u-l-l-a-h B-a-i-g.

19 Q And how old are you, sir?

20 A 47.

21 Q And do you have any trouble understanding
22 the English language? In other words, can you
23 understand my questions and answer my questions?

24 A Yes. Sure.

1 Q Okay. And what do you do for a living?

2 A I'm working in the shop.

3 Q What is "the shop"?

4 A It's a vape shop.

5 Q Is it called Rose Smoke 'N Vapor?

6 A Rose Smoke 'N Vapor.

7 Q Are you an employee of that company?

8 A Yes.

9 Q Do you own part of that company?

10 A Yes.

11 Q Were you working on February 9th, 2017, in
12 the early evening around 6:30?

13 A Yes.

14 Q All right. And what is the purpose of
15 Rose Smoke 'N Vapor? What products do you sell?

16 A We sell different kinds of things for
17 different customers for vape.

18 Q Are you aware that the State law of Illinois
19 and the ordinances of the City of Charles prohibit
20 the sale of tobacco or alternate tobacco products to
21 anyone under the age of 18 years of age?

22 A Yes.

23 (Chief's Exhibit 1 marked for identification.)

24 Q I'm going to show you Chief's Exhibit 1.

1 For the record that's a bottle of Valgous,
2 V-a-l-g-o-u-s. Do you recognize what this product is?

3 A Product?

4 Q Is that an alternative tobacco product?

5 A Yes.

6 Q And is this product prohibited by the
7 ordinance of the City of St. Charles and the laws of
8 State of Illinois to be sold to anyone under the age
9 of 18 years of age?

10 A Yes.

11 Q Do you recall if you sold any of this product
12 on February 9th, 2017?

13 A We sold lot of different people, but I
14 didn't sold him another.

15 MAYOR ROGINA: Can you repeat the answer? I
16 heard you say you sold to a lot of people, but then
17 I didn't hear the last part.

18 A (Continuing.) But we didn't sold under
19 18 years of age.

20 MR. O'NEIL: Your Honor, I'd ask that that
21 be stricken as nonresponsive. I just asked if this
22 product was sold on that date, not anyone's age.

23 MAYOR ROGINA: Strike that from the record.
24 And could you repeat the question? The question

1 being whether that product was sold on that date to
2 someone.

3 A (Continuing.) Yes. We sold that date, sell
4 that product.

5 Q And how much does this product sell for?
6 Around \$12 with tax?

7 A \$12 plus tax.

8 Q So the price on this is \$12?

9 A Right.

10 Q Plus the tax?

11 A Yeah. At that time we are having a promotion,
12 so we are selling for \$12 plus tax.

13 MR. O'NEIL: All right. I have no further
14 questions of this witness.

15 MAYOR ROGINA: Do you have anything further
16 you want to add to his questions? I know you're
17 representing yourself; you're pro se. Do you have
18 anything else to say on that point?

19 MS. BAIG: No.

20 MAYOR ROGINA: Thank you. You may step back.
21 Counsel, proceed.

22 (Witness sworn.)

23 ERIC MAHAN,

24 having been duly sworn, testified as follows:

1 DIRECT EXAMINATION BY COUNSEL FOR THE CITY

2 BY MR. O'NEIL:

3 Q Sir, state your name and spell your last for
4 the record, please.

5 A Eric Mahan, M-a-h-a-n.

6 Q What is your occupation?

7 A I'm a commander with St. Charles Police
8 Department.

9 Q How long have you been employed by the City
10 of St. Charles?

11 A 21 years.

12 Q And how long have you been a commander?

13 A 6 1/2.

14 Q All right. With respect to this case, did
15 you pull the dispatch tickets from the date of this
16 incident, being February 9th, 2017?

17 A Yes, I did.

18 Q All right. On the dispatch tickets -- first
19 of all, what is the dispatch ticket? What are we
20 discussing?

21 A That would be a CAD, computer-automated
22 dispatch ticket that's generated by Tri-com dispatch
23 when a call is received.

24 Q And according to the -- and these records

1 are kept in the ordinary course of business?

2 A Yes.

3 Q And they're made at or about the time that
4 the event occurred?

5 A Correct.

6 Q With respect to the time that Tri-com created
7 the event, what time did that show?

8 A That was at 1834 military time.

9 Q So for us guys that weren't in the military,
10 that's 6:34 in the evening?

11 A 6:34 p.m.

12 Q To be more specific, 6:34 and 38 seconds; is
13 that correct?

14 A That's correct.

15 Q And does the CAD ticket also show what time
16 Officer Anson was dispatched to Rose Smoke 'N Vapor?

17 A Yeah. That was at 1835 or 6:35 p.m.

18 Q All right. Specifically, 1835 and 56 seconds?

19 A Correct.

20 Q And what time did the CAD ticket show that
21 Officer Anson arrived on scene?

22 A That was at 1847 or 6:47 p.m.

23 Q And what time did Officer Anson clear the
24 scene?

1 A I think it was 1905 or 7:05 p.m.

2 Q At some point he returned to issue the
3 citation. Do you recall what time that was?

4 A That was 1941 or 7:41.

5 Q All right. So at some point --

6 MAYOR ROGINA: Counsel, if I may. At 7:05 he
7 vacated the premises. At 7:41 he returned with a
8 citation?

9 Q Officer Anson cleared the premises at 7:05 and
10 returned at 7:41 to issue the citation?

11 A That's correct.

12 MAYOR ROGINA: Okay. Thank you.

13 Q Now, Commander Mahan, you are aware that last
14 time we were here the respondent, the owner of the
15 store stated she would produce videotape of that
16 day; is that correct?

17 A That's correct.

18 Q And when did you first -- first of all, when
19 was the videotape of the store on that evening
20 produced?

21 A This afternoon at 12:03 p.m.

22 Q Prior to 12:03 p.m., what did you do in an
23 effort to retrieve the videotape?

24 A At 10:00 this morning I went to the business

1 at the time that it opened, and I spoke to the owner
2 asking -- advising that we had not yet received it
3 as requested at the last hearing. She had told me
4 that she needed to still contact ADT and -- which I
5 believe she had said during the last hearing. But
6 she said she would e-mail what she had on her phone.

7 Q Ultimately, you received it at 12:03?

8 A That's correct.

9 Q Was it sent in the form of an e-mail or in
10 the form of a DVD?

11 A It was sent in the form of an e-mail as an
12 attachment.

13 Q Have you had an opportunity to review the
14 videotape of the evening in question?

15 A Yes, I have.

16 Q And I also have the videotape that was
17 produced. Would you agree that the video starts at --
18 in civilian time 6:30 and 12 seconds?

19 A Yes.

20 Q And that it ends at 6:39 and 18 seconds?

21 A That's correct.

22 Q Does it show Officer Anson entering the
23 establishment?

24 A No, it does not.

1 Q Does it show anything prior to 6:30 and
2 12 seconds?

3 A No, it doesn't.

4 MR. O'NEIL: I have no further questions of
5 this witness.

6 MAYOR ROGINA: You have a right to ask him
7 questions. So you may step up here, and you can
8 direct your questions to Commander Mahan. Anything
9 you'd like to ask -- we're very flexible here. So
10 just go right ahead.

11 MS. BAIG: First of all, I just want to
12 apologize because my mother is sick, so after that
13 last hearing I have to go overseas to see her. I
14 just came back yesterday. That's why I was not able
15 to send you the video when I had it.

16 And we have a cloud system, and that cloud
17 system, we only can go 20 days prior. So what
18 happened, I had the video, but I sent it to you
19 guys, and ADT cannot go back and give me the whole
20 hour video. That's the problem.

21 MAYOR ROGINA: That is a problem. I would
22 agree with you on that. Is there any question you'd
23 like to ask Commander Mahan?

24 MS. BAIG: No.

1 MAYOR ROGINA: Anything further?

2 (No response.)

3 MAYOR ROGINA: Thank you, Officer. You may
4 step down.

5 MR. O'NEIL: Officer Anson.

6 (Witness sworn.)

7 NICHOLAS ANSON,

8 having been duly sworn, testified as follows:

9 DIRECT EXAMINATION BY COUNSEL FOR THE CITY

10 BY MR. O'NEIL:

11 Q Sir, state your name and spell your last for
12 the record, please.

13 A Nicholas Anson, A-n-s-o-n.

14 Q And, sir, what is your occupation?

15 A Police officer for the City of St. Charles.

16 Q How long have you been a sworn peace officer
17 for the City of St. Charles?

18 A 12 years.

19 Q I want to draw your attention to
20 February 9th, 2017, of this year. Were you working
21 that day?

22 A I was.

23 Q What shift were you working?

24 A Evenings.

1 Q Were you dispatched to Rose Smoke 'N Vapor
2 at 902 South Randall Road, city of St. Charles?

3 A I was.

4 Q And approximately what time did you arrive
5 on scene?

6 A I believe it was quarter after, give or take --
7 I'm sorry -- 6:45-ish, give or take.

8 Q When you arrived at the scene, whom did you
9 meet with?

10 A Mr. Trainer, Teener, the complainant.

11 Q You mean Mr. Durando?

12 A Durando -- I'm sorry.

13 Q So there are two Stephen Durandos in this
14 case. A there's senior and junior; is that correct?

15 A Correct.

16 Q And pursuant your investigation of the
17 complaint, what did Stephen Durando, Sr., tell you?

18 A He had told me that he had found a vape pen
19 and e-juice in his kid's backpack when he came home
20 from school. He questioned his kid a little bit
21 more about the items, and he eventually told him the
22 kids at Marmion were purchasing these items at a
23 tobacco shop in town. He had his son point out the
24 said tobacco shop. His dad brought him over to that

1 shop and sent -- do you want me to keep going?

2 Q Yes. Tell the Commission what Mr. Durando,
3 Sr., told you.

4 A After he found out all of this, he drove his
5 son, his 14-year-old son to the Rose Smoke 'N Vapor,
6 parked out front the glass windows. He told me that
7 he waited because there was an older customer inside
8 at the time that he arrived. He waited for that
9 gentleman to leave. He provided his son with \$20 and
10 told him to go and get what he could.

11 Moments later his kid came back out with a
12 bottle of e-juice.

13 Q And Mr. Durando told you that he had
14 provided his son \$20. And did Mr. Durando tell you
15 how much his son spent in the store?

16 A He didn't give me the exact amount, but it
17 was about \$12 with the change that he got back.

18 Q I show you Chief's Exhibit 1 for the record.
19 Do you recognize this exhibit, sir?

20 A I do.

21 Q And what is this exhibit?

22 A It is strawberry banana vape juice.

23 Q All right. And is the vape juice in Chief's
24 Exhibit 1, is that an alternative tobacco product?

1 A Correct.

2 Q Is that prohibited by St. Charles ordinance
3 and Illinois State law to be sold to someone under
4 the age of 18 years old?

5 A It is.

6 Q Where did you recover this item from?

7 A From Senior.

8 Q Senior had taken it from his son after he
9 left the store?

10 A Correct.

11 Q And it's sealed in an evidence package. Has
12 this merchandise been in this state unopened since
13 February 9th, 2017?

14 A It has.

15 Q Are there any alterations, deletions, or any
16 attempt to open?

17 A Not that I can see.

18 Q Are those your initials on the top of the
19 bag that sealed it shut?

20 A They are.

21 MR. O'NEIL: I'd ask that Chief's Exhibit 1
22 be admitted into evidence.

23 MAYOR ROGINA: Any objection?

24 MS. BAIG: No.

1 MAYOR ROGINA: All right.

2 (Chief's Exhibit 1 admitted into evidence
3 and retained by counsel.)

4 Q After you spoke to Mr. Durando, Sr., --
5 first of all, did Mr. Durando identify his son?

6 A He did.

7 Q And did Mr. Durando tell you how old his
8 son was?

9 A He did. He told me his son was 14 years old.

10 Q His father would know how old the kid is?

11 A Correct.

12 Q Now, did you talk to Stephen Durando, Jr.?

13 A I did.

14 Q Can you tell the Commission the physical
15 characteristics of Stephen Durando, Jr.?

16 A Very young. 5 foot, if that; 100 pounds, if
17 that. Very young looking boy.

18 Q And did he tell you how old he was?

19 A He did.

20 Q How old?

21 A 14.

22 Q And where does he go to school?

23 A Marmion Academy.

24 Q And when you spoke to Stephen, what did he

1 tell you about going in the store and what occurred
2 inside? Stephen, Jr., for the record.

3 A He said he walked up to the attendant that
4 was on duty, asked him for a certain brand of
5 e-juice. They didn't have the brand that he was
6 asking for, but he was pointed out this brand by the
7 clerk, and he purchased it and walked out.

8 Q Did Stephen, Jr., state anything about the
9 clerk stating to not tell the police?

10 A He did. He had made a comment to his father
11 that he was told not tell his parents or the police
12 where he had purchased it.

13 Q Based upon gathering that evidence from
14 Mr. Durando and Stephen, Jr., what did you do?

15 A I left them in the nearby parking lot and
16 went inside and spoke to the attendant on duty.

17 Q The attendant on duty, do you see him in
18 Council chambers today?

19 A I do.

20 Q Would you point him out and describe an
21 article of clothing?

22 A The gentleman standing behind me in the
23 polo-type shirt.

24 MR. O'NEIL: May the record reflect

1 identification of Mr. Baig?

2 MAYOR ROGINA: Thank you.

3 Q What conversation did you have with
4 Mr. Baig? What did you say to him, and what did he
5 say to you?

6 A I asked him if he knew why I was here. He
7 told me he did not. I asked him if he had just sold
8 a bottle of e-juice to anyone, and he said that he
9 did. I asked if he had identified -- asked for
10 identification from the subject, and he said he did
11 not. I informed him that he just sold a bottle of
12 e-juice to a 14-year-old, and he said something to
13 the matter of there were other people in the store
14 when the kid was in the store that appeared to be
15 with him.

16 Q And by that you meant -- you took it that he
17 was saying that there were people that were older
18 than him in the store that he thought --

19 A Correct.

20 Q -- were of age, but he still said he sold it
21 to the kid?

22 A Correct.

23 MS. BAIG: Did you say that?

24 MR. BAIG: No, I didn't say that.

1 MAYOR ROGINA: You'll get a chance to ask
2 him questions.

3 Q Following that, you returned to the business
4 sometime later and issued an ordinance violation for
5 sale of tobacco products to Mr. Baig; is that correct?

6 A Correct.

7 Q And at that point -- to your knowledge, that
8 case is still pending in the Circuit Court?

9 A Correct.

10 Q Did all this occur in the City of St. Charles,
11 Kane County, Illinois?

12 A Correct.

13 MR. O'NEIL: I have no further questions of
14 this witness.

15 MAYOR ROGINA: All right. You have a right
16 to ask the officer any questions you'd like to ask
17 him. Just make it clear and concise, and he'll
18 answer the questions to the best of his ability.

19 MS. BAIG: I just want to be clear one
20 thing. The parent is saying the kid is 14 years old.
21 In my shop 14 years old is not allowed to come in if
22 he's under 18.

23 MR. O'NEIL: Your Honor, she can testify
24 later, but can she just ask questions on

1 cross-examination?

2 MAYOR ROGINA: Ma'am, at the end, like
3 counsel is saying here, you can give an argument or
4 you can tell the Commission what you want to tell us
5 in a statement. Right now the purpose of this is to
6 ask him any questions you would like, or you can
7 confer with your husband and ask questions.

8 MS. BAIG: One question.

9 CROSS-EXAMINATION BY THE RESPONDENT

10 BY MS. BAIG:

11 Q Did my husband express that he sold to
12 14-year-old kid? That he said?

13 A He was the only person that was there.

14 MAYOR ROGINA: I'm sorry -- I didn't pick up
15 the question or the answer. I don't think the
16 commissioners did either. Very slowly, use the mic.

17 Q Does he say he sold to 14-year-old?

18 A Does he say he sold --

19 Q He sold to a 14-year-old.

20 A He didn't give me that exact answer, but he
21 told me that he had sold it to the customer that was
22 in there at the time, and that that was the only
23 customer in there.

24 MR. BAIG: No, I didn't sell to 14-year-old.

1 MAYOR ROGINA: Any further questions you have?

2 MR. O'NEIL: Maybe I can clear it up.

3 REDIRECT EXAMINATION BY COUNSEL FOR THE CITY

4 BY MR. O'NEIL:

5 Q When you spoke WITH Mr. Baig, you walked in
6 with the bottle that had been sold and asked
7 Mr. Baig had he just sold this?

8 A Correct.

9 Q And he said that he had?

10 A Correct.

11 Q And then you told him that he had sold it to
12 a 14-year-old kid?

13 A Correct.

14 Q And Mr. Baig said he was with a bunch of
15 older people?

16 A Correct.

17 Q He did not deny that he sold it to the
18 14-year-old?

19 A Correct.

20 MR. O'NEIL: All right. That's all.

21 MAYOR ROGINA: Anything else?

22 MS. BAIG: I don't, no.

23 MR. O'NEIL: At this point, your Honor, the
24 City rests.

1 MAYOR ROGINA: All right. Very good.

2 Mrs. Baig, do you have any evidence? If so,
3 fine, you may present that. If you want to question
4 your husband, that's fine. If counsel here has a
5 question or would like to question you further, he
6 may do so.

7 If there are no other questions or evidence
8 you want to produce -- and I would just say for the
9 record -- and I appreciate your comments earlier,
10 but going back to the previous month, I think
11 Chief Keegan and the rest of our staff, the
12 Commissioners and I were all relatively clear in
13 what we wanted. What we wanted was, it was your
14 argument -- we wanted a copy to view of the tape of
15 your establishment from 6:00 to 7:00. That would
16 have -- looking at the evidence presented here would
17 have suggested the possible sale, alleged sale,
18 Officer Anson coming into the premises and arriving
19 at 6:47. So it would have had all that activity on
20 the tape.

21 Now, from what you told me here and from
22 what's been presented, there was an e-mail sent, but
23 there's really no tape of that one hour.

24 MS. BAIG: We cannot go back 20 days. So

1 now it's like more than 45 days. So I don't know
2 how to get it.

3 MAYOR ROGINA: That's fine. That suggests
4 that the tape is not being produced.

5 Do you have any other evidence, or any other
6 questions, or any other comments you'd like to make?

7 MS. BAIG: The only evidence I provided to
8 them was that 15 minutes --

9 MR. O'NEIL: 9 minutes.

10 MS. BAIG: -- 9 minutes of the video I have.
11 Because I did not realize I have to record it for
12 the whole hour, and now I cannot go back and take
13 the video. That's the problem.

14 MAYOR ROGINA: All right. Now, usually --
15 you get last shots here. So why don't we allow
16 you -- do you have any closing remarks you'd like
17 to make?

18 MR. O'NEIL: Briefly. I'll be perfectly
19 honest with you, I don't have Mr. Durando, Sr. and
20 Jr. here so you could examine their credibility.
21 Why else would a grown man go back to a tobacco
22 shop, give his son \$20 to go in and purchase
23 something and, coincidentally, corroborated by
24 Mr. Baig said at that time there was a sale on that

1 product and it was \$12, and the kid came back with
2 approximately \$8 in change. There's a corroboration
3 of what occurred.

4 The interesting thing in this case is, if it
5 was my business -- again, you can take the evidence
6 in your everyday experience in life. If I was given
7 a citation, on the scene I would have called ADT and
8 said, "Hey, save the video for me. Save the video."
9 At the last hearing I thought the Commission was
10 absolutely clear stating, "We want from 6:00 to
11 7:00." In fact, I remember Chief Keegan up here
12 stating that and the Commission ordering it.

13 Well, now this lady -- and I don't know her
14 from Adam, but she says, "We can't go back more than
15 20 days." Yet we get a snippet of tape from 6:30 and
16 12 seconds to 6:39 and 18.

17 Now, Tri-com took the first call from the
18 complainant. We've established that by computer
19 record that was made at 6:34 p.m. It necessarily
20 means the event had to occur before 6:34. Obviously,
21 a complainant is not going to call in a report
22 unless an event has occurred.

23 I think the logical assumption that you can
24 make -- and the Illinois Supreme Court will instruct

1 juries that this is the law -- is that if there's
2 evidence of a material fact that is missing, and
3 it's in the control of one party over the other, and
4 that party doesn't produce it, you can assume that
5 that evidence is evidence of guilt.

6 So our theory of the case is that at some
7 point prior to 6:30 and 12 seconds Durando, Jr.,
8 walks into the store, talks to Mr. Baig, hands him
9 the \$20, Mr. Baig hands him the tobacco alternative
10 product and gives him \$8 in change, which is
11 corroborated because it was on sale for \$12, which
12 is exactly what Mr. Durando told the officer at the
13 scene. That can't be made up.

14 Why wouldn't you save the tape with something
15 that could affect your business, could affect your
16 wallet and pocketbook? Why wouldn't you save that
17 evidence if it was truly exculpatory? That's the
18 first thing I'd do. I've got this system for a
19 reason, to protect myself and my business. Yet we
20 don't have it.

21 So we have the establishment of the product,
22 tobacco alternative. We've established that the
23 young man that went into the store was 14 years of
24 age on the date of the incident. We've established

1 Mr. Baig sold that product at or about that time.
2 That's called circumstantial evidence. You don't
3 have a smoking gun in every case, but this is a
4 civil case where the evidence is a preponderance or
5 it's more likely true than not. That's the standard
6 that you have to assess in this case.

7 We've got the evidence that was taken from
8 the hands of Mr. Durando. We have Mr. Baig working
9 there. We have missing video that would exonerate,
10 yet they took no effort to get it until 12:03 today
11 when the only video that showed up shows absolutely
12 nothing exculpatory or inculpatory.

13 In other words, the only evidence in front
14 of you now is the statements of the witnesses
15 themselves and the evidence in front of you, and I
16 would ask that you find that the Chief's charges are
17 sustained.

18 Thank you.

19 MAYOR ROGINA: Thank you, Counsel.

20 Ma'am, you have a chance now -- this is not
21 a question period. Right now you have a chance to
22 say whatever you want to the Commissioners. Take
23 your time and say what you would like the Commission
24 to hear.

1 MS. BAIG: I just want to say one thing
2 because he says we don't have evidence. So I don't
3 know -- because this is the first time for us.
4 That's why when I started the video before, so I
5 recorded it from that video, and then I don't know
6 if you guys are going to ask me for one-hour video.
7 That's not my fault because after one month and
8 45 days, I got a question that we need the whole
9 hour video and I cannot go back. More than 20 days
10 I cannot make the video.

11 So it's a cloud-based system. Data -- after
12 20 days you cannot go back and take the video for the
13 whole hour. I have to provide a whole hour video.
14 I understand it's my fault because I don't know
15 that, how long I have to provide the video. So now,
16 if I go back, I can't see those videos. So these
17 videos are gone. So I can't do anything. This is
18 the first thing.

19 Second thing, they are saying, okay, the kid
20 comes in and they bought it. There's lot of people,
21 they do that; they come in and buy and send it
22 outside to their kids. Before this incident I had
23 another incident happen one month ago. Another
24 month ago some kids came in, and they said they

1 bought the cigarettes from us, even though we don't
2 sell the cigarettes. So the thing is people are
3 making something for us that I don't want to be
4 accepted.

5 So if they are saying, "He sold it to us," I
6 am positive if my husband says some other kid came
7 in or and they bought it for them -- like there's
8 parents that come, they buy for their kids. I'm not
9 selling to the kids; I'm selling to the parents.
10 Now, is the parents' responsibility why they are
11 buying it.

12 MAYOR ROGINA: Well, nobody will argue the
13 fact that parents have responsibilities relative to
14 a minor child.

15 Let me ask you this question. Last month at
16 this time you were before us and we had this -- and
17 I thought -- I hope you agree with me -- I thought
18 we were more than lenient here in the fact that we
19 said we were going to give you the entire month, and
20 we'll come back at this time --

21 MS. BAIG: Uh-huh.

22 MAYOR ROGINA: -- if I recall correctly, and
23 I think the minutes will reflect that. You were in
24 agreement. After the Chief made some comments

1 relative to what times he wanted to see, you said,
2 "That will be fine. We'll take care of that."

3 And I said to myself walking out of here,
4 they will produce a tape that will show whatever it
5 shows; it will be stamped with a date, and all will
6 be good one way or the other; we'll get to the bottom
7 of this.

8 Right now, as counsel has suggested -- and
9 we're going to discuss this, but as counsel suggested,
10 we heard from the officer, we heard from the other
11 officer who talked about the Tri-com order -- or the
12 call into Tri-com, and we don't have anything in here
13 from you other than you have denied it. I don't
14 deny that, no pun intended.

15 So we'll make a decision. Anything further
16 you'd like to add?

17 MS. BAIG: I just want to say because once I
18 accepted last month and we had hearing last month, I
19 don't know that we cannot go 20 days prior to the
20 that. So after the last hearing I contact ADT, and
21 then they said to me that we cannot go 20 days prior
22 to that. If I know that, I will let you know last
23 hearing that this is the case. So I wish I know at
24 that time but I don't know that.

1 MAYOR ROGINA: Lastly, this really has --
2 today is April 17th, and the citation was issued, as
3 counsel has indicated, well in the early part of
4 February. So we really have gone two months on this
5 matter. We're going to dispose of the issue and
6 move forward.

7 We will discuss the matter and let you know
8 of a decision 10 to 14 days. But I believe I am
9 safe in saying the following at least for your
10 edification:

11 From our standpoint here, we're not going to
12 close your place down at least on these matters.
13 We're not going to close the place down; we're not
14 going to revoke your license. Whether there's a
15 penalty involved or not is a matter for discussion.

16 And, finally, a decision will be made, and
17 we'll leave it at that for the time being. You
18 don't have to stay longer. We're going to go into
19 executive session.

20 Anything further?

21 MR. O'NEIL: Nothing further.

22 MAYOR ROGINA: I'm going to conclude this
23 hearing, and I'm going to ask for a motion under
24 5 ILCS 120/2 (c) (1) to move to executive session.

1 MEMBER GEHM: So moved.
2 MEMBER PAYLEITNER: Second.
3 MAYOR ROGINA: Moved and seconded.
4 You can call the roll on that.
5 SECRETARY NILLES: Gehm.
6 MEMBER GEHM: Yes.
7 SECRETARY NILLES: Payleitner.
8 MEMBER PAYLEITNER: Yes.
9 SECRETARY NILLES: Lewis.
10 MEMBER LEWIS: Yes.
11 SECRETARY NILLES: Amenta.
12 MEMBER AMENTA: Yes.
13 MAYOR ROGINA: Thank you. Thank you both.
14 (Off the record at 5:19 p.m.)
15
16
17
18
19
20
21
22
23
24

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

CERTIFICATE OF SHORTHAND REPORTER

I, Paula M. Quetsch, Certified Shorthand Reporter No. 084-003733, CSR, RPR, and a Notary Public in and for the County of Kane, State of Illinois, the officer before whom the foregoing proceedings were taken, do certify that the foregoing transcript is a true and correct record of the proceedings, that said proceedings were taken by me stenographically and thereafter reduced to typewriting under my supervision, and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 27th day of April, 2017.

My commission expires: October 16, 2017



Notary Public in and for the
State of Illinois