

CITY OF PORTLAND, MAINE

ZONING BOARD OF APPEALS

Philip Saucier-chair
Sara Moppin
Matthew Morgan
Gordan Smith-secretary
Mark Bower
William Getz
Elyse Wilkinson

May 9, 2011

Tom Manning
PO Box 7212
Portland, ME 04112

RE: 410-412 (416) Fore Street
CBL: 032 N010
ZONE: B-3

Dear Mr. Manning:

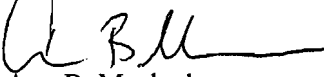
At the May 5, 2011 meeting, the Zoning Board of Appeals voted 5-0 to deny your Miscellaneous Appeal. I am enclosing a copy of the Board's decision.

You will also find an invoice for \$203.14 for the fees that are still owed on the appeal for the cost of the legal ad, the cost of the noticing and the processing fee. Please submit your payment on receipt of the invoice.

Appeals from decisions of the Board may be filed in Superior Court in accordance with Rule 80B of the Maine Rules of Civil Procedure.

Should you have any questions, please feel free to contact me at 207-874-8709.

Yours truly,



Ann B. Machado
Zoning Specialist

Cc. file

CITY OF PORTLAND, MAINE

ZONING BOARD OF APPEALS

ZONING BOARD APPEAL DECISION

To: City Clerk

From: Marge Schmuckal, Zoning Administrator

Date: May 6, 2011

RE: Action taken by the Zoning Board of Appeals on May 5, 2011.

Members Present: Phil Saucier (chair), William Getz, Elyse Wilkinson, Mark Bower and Matthew Morgan (acting secretary).

Members Absent: Gordon Smith and Sara Moppin

1. Old Business

A. Miscellaneous Appeal:

410-412 Fore Street/25-29 Wharf Street (Called 416 Fore Street), lessee is Allied Resources, Inc., D/B/A Cactus Club, Tax Map 032, Block N, Lot 010, B-3 Downtown Business Zone: Pursuant to Chapter 4, Article III of the City Code, the appellant is seeking to appeal the denial of an entertainment license by the City Council on February 23, 2011. Representing the appeal is Tom Manning of Allied Resources, Inc. The Zoning Board of Appeals heard the appeal on April 21, 2011. The Board will vote on the final findings of fact and take the final vote at the May 5, 2011 meeting. **The Zoning Board of Appeals voted to approve the findings of fact and voted 5-0 to deny the appeal.**

2. New Business:

A. Conditional Use Appeal:

81-85 Allison Avenue, Omid Ghayeb, owner, Tax Map 370, Block A, Lot 026, R-2 Zone: The appellant is seeking a Conditional Use Appeal under section 14-78(a)(2) to add an accessory dwelling unit to his single family dwelling. Representing the appeal is the owner. **The Board voted 5-0 to grant the conditional use appeal to allow the applicant to add an accessory dwelling unit.**

Enclosure:

Decision for Agenda from May 5, 2011

Original Zoning Board Decisions

One dvd

CC: Patricia Finnigan, Acting City Manager

Penny St. Louis, Director, Planning & Urban Development

Alex Jaegerman, Planning Division

CITY OF PORTLAND, MAINE

ZONING BOARD OF APPEALS

ZONING BOARD APPEAL DECISION

To: City Clerk
From: Marge Schmuckal, Zoning Administrator
Date: April 22, 2011
RE: Action taken by the Zoning Board of Appeals on April 21, 2011.

Members Present: Phil Saucier (chair), William Getz, Elyse Wilkinson, Sara Moppin, Mark Bower and Matthew Morgan (acting secretary).

Members Absent: Gordon Smith

1. New Business:

A. Miscellaneous Appeal:

410-412 Fore Street/25-29 Wharf Street (Called 416 Fore Street), lessee is Allied Resources, Inc., D/B/A Cactus Club, Tax Map 032, Block N, Lot 010, B-3 Downtown Business Zone: Pursuant to Chapter 4, Article III of the City Code, the appellant is seeking to appeal the denial of an entertainment license by the City Council on February 23, 2011. Representing the appeal is Tom Manning of Allied Resources, Inc. **A decision has not been reached at this point. The final findings of fact will be presented at the May 5, 2011 Zoning Board of Appeals meeting and the final vote will be taken at that time. The Board of Appeals did take a straw poll and denied the applicant's request to have the City's Council's decision reversed.**

Enclosure:

Decision for Agenda from April 21, 2011

One dvd

CC: Patricia Finnigan, Acting City Manager

Penny St. Louis, Director, Planning & Urban Development

Alex Jaegerman, Planning Division

CITY OF PORTLAND, MAINE
ZONING BOARD OF APPEALS

On April 21, 2011, the Zoning Board of Appeals held a hearing on the appeal of Allied Resources, Inc. d/b/a The Cactus Club, 416 Fore Street ("The Applicant"). The Applicant appealed a decision of the Portland City Council, dated February 21, 2011, denying the renewal of a special amusement permit. The same decision denied a liquor license renewal but that action is not before this Board. The Applicant's timely appeal was filed on March 7, 2011.

Board members present and participating were:
Elyse Wilkinson; Mark Bower; Matthew Morgan; Sara Moppin; William Getz; and Philip Saucier, Chair.

Thomas Manning, President of the Applicant, presented evidence in support of granting the permit. Commander Vern Malloch of the Portland Police Department presented evidence in opposition to denying the permit. Charles Bragdon, a taxi driver, presented evidence in opposition. Ms. DeFalco testified in favor of granting the permit.

I. APPLICABLE LAW.

The appeal of the denial of the special amusement permit is before the Board pursuant to 28-A M.R.S.A. §1054. Subsections 1 and 2 of §1054 require a liquor licensee to obtain an additional permit for entertainment on the premises, except for music from a radio or other mechanical device.

Subsection 5 of §1054 states:

The municipal officers shall grant a permit unless they find the issuance of the permit would be detrimental to the public health, safety or welfare, or would violate municipal ordinances or rules and regulations.

The Appeal procedure is set forth in Subsection 8 of §1054:

Appeal Procedure. Any licensee who has applied for a permit and has been denied, or whose permit has been revoked or suspended, may appeal the decision to the municipal Board of Appeals as defined in Title 30-A Section 2691, within 30 days of the denial, suspension or revocation. The municipal Board of Appeals, if the municipality has such a Board, may grant or reinstate the permit if it finds that:

A. The permitted activities would not constitute a detriment to the public health, safety or welfare or violate municipal ordinances or regulations; or

B. The denial, revocation or suspension was arbitrary and capricious.

The issuance of special permits for facilities licensed to sell liquor is governed by City Ordinance Chapter 4, Article III. Sec.4-42 incorporates definitions set forth in Chapter 15 of the Ordinance. Sections 4-1 and 4-52 require the application, and the applicant for a license, to meet the requirements of Chapter 15; and Section 4-55 states, in part: "Licenses shall be granted, denied, suspended, revoked or granted with a condition in accordance with Chapter 15."

City Ordinance Chapter 15 governs Licenses and Permits. Section 15-8 sets forth "Standards for denial, suspension or revocation." Among these standards are the following:

Sec.15-8 (a) Grounds. In addition to any other specific provision of this Code authorizing such action, a license or permit may be denied, suspended or revoked upon a determination of the existence of one (1) or more of the following grounds:

.....

(2) The licensed activity, or persons on the premises for the purpose of participating in the licensed activity, or persons patronizing the licensed device have caused one (1) or more breaches of the peace; or

(3) There is a clear danger that a breach of the peace will occur if the licensed activity is permitted; or

(4) The licensed activity or persons patronizing the licensed premises will substantially and adversely affect the peace and quiet of the neighborhood, whether or not residential, or any substantial portion thereof;

In this appeal the Board conducted the hearing *de novo*. Stewart v. Town of Sedgwick, 2000 ME 157, 757 A.2d. 773, 776. The parties used the same exhibits that were submitted to the City Council meeting; but the Board made its own evaluation of the evidence presented and drew its own conclusions. Id.

II. ISSUES FOR DETERMINATION

The Board of Appeals may grant or reinstate the permit if it finds that the permitted activities would not constitute a detriment to the public health, safety or welfare, or that the denial, suspension or revocation was arbitrary or capricious. 28-A M.R.S.A. §1054(8).

The Applicant requested that, in the event the Board did not approve the permit, the Board would grant a stay until the matter is appealed. The Board does not have the jurisdiction or authority to grant a stay.

The Applicant also argued that the permit should be "deemed approved" because the municipal officers did not give the applicant written notice of their decision with 15 days of receiving the permit application as stated in 28-A M.R.S.A. § 1054(6). However, this statutory provision applies only to initial applications for special amusement permits by an applicant who already has a liquor license. That conclusion is supported by 28-A M.R.S.A. § 1054(3), Term of Permit, which states: "A permit is valid only for the license year of the existing liquor license." The application before the Board is for the renewal of a special amusement permit whose expiration date is coterminous with the applicant's liquor license. The municipal officers denied both licenses in the same written decision dated February 21, 2011. The Board is therefore satisfied that this matter is properly before it.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. WHETHER THE PERMITTED ACTIVITIES WOULD NOT CONSTITUTE A DETRIMENT TO THE PUBLIC HEALTH, SAFETY OR WELFARE.

The Applicant has argued that the Board may consider only the impact of the permitted use, i.e., playing live music, dancing or other forms of entertainment on alleged breaches of peace. However, since Ordinance Chapter 15 applies to determinations under Ordinance Chapter 4, the Board may consider the impact of "the licensed activity or persons patronizing the licensed premises." (emphasis added)

Ordinance Section 15-8 does not require that a "breach of the peace" result in a criminal conviction or a civil adjudication. The Board may determine whether there have been breaches of the peace or whether there is a danger that a breach of the peace will occur.

The standard imposed by state law, 28-A M.R.S.A. § 1054(5), is even broader, i.e., whether the issuance of the permit "would be detrimental to

the public health, safety or welfare, or violate municipal ordinances or rules and regulations.”

The Board concludes that, under either of these standards, the appropriate focus of concern is the behavior of the patrons and employees who are drawn to, or who work at, the licensed business.

The Police Department recommended that the entertainment license not be renewed because of the behavior of persons patronizing the premises and because of weak management practices, including specific incidents involving employees and past experience.

The Police Department made their recommendation based on a summary of incident reports all occurring during the license year (December 17, 2009 – December 16, 2010). The reports were made at the time of their occurrence by officers on the scene, based on the personal observations of the officers and statements from patrons, witnesses and employees. They also include a computer-generated list of calls for service. The Rules of Evidence, including rules concerning hearsay, do not apply to evidence at this hearing. The Applicant offered second-hand versions of the incidents, and there were no corroborating witnesses for those versions.

The Police weeded out calls for service that, although they occurred in the area of the Cactus Club, could not be attributed to the Club itself.

In relation to breaches of the peace, the Police noted 4 calls for service involving fights in or from inside the club and 3 general disturbances in or from inside the club. The records also show 2 fights and 2 general disturbance calls constituting breaches of the peace in the immediate vicinity and related to the Cactus Club. Mr. Bragdon, the cab driver, testified that he witnessed one fight that spilled out of the club and onto the hood of his taxi before moving down the street. He also testified there were four incidents of patrons of the Cactus Club getting directly into his cab and passing out before he could deliver them to their destination. In all cases he called Medcu, which came and took control of the patron after providing medical service.

In relation to incidents showing a detriment to the public health, welfare and safety, two particular incidents were of particular concern to the Police. On March 12, 2010, two young women were found passed out outside of the bar, where they told police they had been drinking. They were "scantily dressed," according to the report and the weather was cold. The manager of the Cactus Club admitted that the women had been there and that they had appeared to have been sober when they first arrived. One woman had to be transported, still comatose to Maine Med by Medcu. The other highly intoxicated woman was at risk from a man

unknown to her who was trying to "take her home" but who was stopped by the intervention of Lt. Hutcheson of PPD.

Another incident, on November, 28, 2010, involved a call for a woman who was either overly intoxicated or suffering a drug overdose. According to the Police reports, the Club Manager and other employees refused to cooperate with Medcu; and as a result, the woman declined Medcu service and Medcu left. A short time later Lt. Gary Hutcheson of PPD made the following observation:

It just happened to be that during this entire time I was parked on Fore St in a marked SUV. I observed the comings and goings of Police and Fire personnel. Once they all left I observed a silver Dodge Charger park at an angle on the corner of Fore Street and Dana St. I observed the Manager, Michael Ingalls, exit the front door of the Charger. He was followed by two males carrying a female out of the club whom could not walk under her own power. They placed her in the Charger and left. It is presumed that this female was Rachael Hein.

The fights and the incidents show that there is a safety risk to some of the patrons of the Cactus Club and that the employees of the Club have been indifferent at best to these risks.

The Board finds that the evidence presented by PPD and Mr. Bragdon is credible.

The Department does not have a ranking system for bars; each establishment is reviewed on its own merits. Thus, the recommendations of the Department about other bars are irrelevant. The fact that another bar may have had more incident reports but was still able to obtain a license is not significant.

The history of prior management, however, was a significant factor in the Police Department recommendation. The Applicant had prior experience operating other establishments, two of which had previously been shut down. The Cactus Club was also denied a liquor license in a prior year but that decision was overturned by the Maine Supreme Court because the written decision was not timely filed. Although the number of service calls went down from the prior year, the number was still substantial, and a sign of lax management. Commander Malloch stated that the police dealt often with the manager instead of the owner. He stated that the Applicant does not "walk the walk" by paying more attention to the causes behind the

service calls. Management indifference is a concern because it will lead to ongoing breaches of the peace at the Cactus Club.

The Applicant provided no reliable evidence that the Police Department harassed the Club. Police cruisers were parked on Fore Street across from the Club because that location is in the middle of the Old Port area, which has a lot of bars and which requires a substantial police presence. The Applicant filed a Protection from Harassment Complaint against the Police Department; but the Complaint was dismissed.

Based on the police records and testimony regarding the fights and general disturbances, the Board finds that there were 1 or more breaches of the peace at the Cactus Club during the previous year; and, because of management practices during that same period, there is a clear danger that a breach of the peace will occur involving patrons of the Club if the permit is granted.

Based on the incidents described in the reports, particularly the incidents on March 12, and November 28, 2010, the Board finds that the employees and patrons engaged in or were involved in activities that were detrimental to the public health, safety and welfare.

On the Question whether the Applicant demonstrated that "The permitted activities would not constitute a detriment to the public health, safety or welfare," the Board, by a 6-0 vote, is therefore Not Satisfied.

B. WHETHER THE DENIAL BY THE CITY COUNCIL WAS ARBITRARY OR CAPRICIOUS.

The second issue, stated in the alternative, is whether the Applicant demonstrated that "The denial, suspension or revocation was arbitrary or capricious."

The arbitrary and capricious standard has been defined as: "willful and unreasoning action, without consideration of facts or circumstances." Central Maine Power Co. v. Waterville Urban Renewal Authority, 281 A.2d 233, 242 (Me. 1971) (citation omitted). Action by the City Council would be arbitrary or capricious if it "has no rational factual basis justifying the conclusion or lacks substantial support in the evidence." Id. (citation omitted).

In this case, the City Council reviewed the same evidence as was presented before this Board and found a rational basis for its decision, as has this Board in its de novo review.

The Applicant stated that the City Council acted in an arbitrary and capricious manner because of vindictiveness and harassment by the Police Department. This is not the standard for reviewing the Council's action.

On the issue of whether the Applicant demonstrated that the denial of the license renewal by the City Council was arbitrary or capricious, the Board, by a 6-0 vote, is Not Satisfied.

C. THE BOARD CANNOT STAY ITS DECISION.

The Board does not have the authority or jurisdiction to stay the effective date of this Order in order to give the Applicant time to formulate his appeal. The Board did meet on April 21, 2011, and took a straw vote, pending the preparation of Findings. However, this decision is final as of the regular Board Meeting on May 5, 2011.

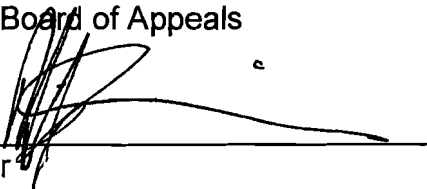
Therefore the Appeal, and the application for the Special Amusement Permit, is DENIED.

DATE:

5/5/11

Zoning Board of Appeals

By:
Its Chair

A handwritten signature in black ink, appearing to be 'J. J. [unclear]', is written over a horizontal line. The signature is stylized and somewhat illegible.

CITY OF PORTLAND, MAINE

ZONING BOARD OF APPEALS

✓ Elyse Wilkinson
William Getz
Phillip Savcier
Sara Moppin
Matthew Morgan
Mark Bower

Entertainment License Appeal

DECISION

Date of public hearing: April 21, 2011

Name and address of applicant: Allied Resources, Inc
d/b/a Cactus Club
416 Fore Street
Portland, ME 04101

Location of property under appeal: 410-412 Fore Street/25-29 Wharf St.

For the Record:

in favor of
appeal

Michelle
Destenaco

Falmouth, ME

opposing
appeal

Names and addresses of witnesses (proponents, opponents and others):

Thomas
Manning for allied.

Gary Wood - City Counsel

Capt. Malloch for Portland PD
Commander

Charles Bragdon

31 Munjoy
South
Portland, ME

Exhibits admitted (e.g. renderings, reports, etc.):

1 item 1A - packet.

Memo from Allied Resources Inc,

Chapter 4 -

↓
concerned
citizen/taxi
driver

Findings of Fact and Conclusions of Law:

Applicant is the owner of the Cactus Club, located at 416 Fore Street. On November 11, 2010, the applicant applied for renewal of its Special Entertainment with Dance Permit. On February 7, 2011, the Portland City Council voted 7-1 to deny the renewal of the Permit. The applicant has appealed the Council's decision to the Portland Zoning Board of Appeals. The Board of Appeals may grant or reinstate the permit if it finds that the permitted activities would not constitute a detriment to the public health, safety or welfare, or that the denial, suspension or revocation was arbitrary or capricious.

Special Entertainment Permit Appeal Standards pursuant to Portland City Code §4-54 and 28-A M.R.S.A. §1054:

1. The permitted activities would not constitute a detriment to the public health, safety or welfare. (pending final decision on May 5)

Satisfied _____ Not Satisfied X (6-0)

Reason and supporting facts:

- W. Gutz: takes issue w/ placing blame/not being aware of where the problems are coming from.

- 15-E(a) will be used as the standard of review (b/c incorp. by 4-1).

This has been accepted as the standard by vote (6-0).

- M. Bauer: We are looking only at the Cactus Club (CC) based on its merits, (statute/policy do not require comparison).

E. Wilkinson: agrees.

Moppin: Would like to note that the ^{appeal} ~~application~~ needs to be viewed in terms of mang. failures as well as public calls.

Detriments to Health:

M. Barr: 2 incidents (Nov.) (Mar.)

- MREs do ~~not~~ apply.
- Failure to hear testimony of manager or ^{any} witness - means that he has failed to meet burden to disprove the facts in police report.

Moppin Contemporaneous nature of police report is evidence reliability.

Sanjour: various calls in record (~ pg 30).

Moppin: ^{poor} Many issues increase the detriment to health, making safety standard.

Morgan / Moppin: Denying evidence is not necessary b/c breach of peace and the failure to provide health treatment in and of themselves allow the ~~license~~ to be denied.

2. The denial, suspension or revocation was arbitrary or capricious.

Satisfied _____ Not Satisfied X

Reason and supporting facts:

Wilkinson: City Council record contained sufficient evidence for denying.

Sawyer: In addition, our own findings are based on the same facts presented to City Council.

3c) Should there be a stay on the denial?

members present: Mark Bower - Elyse Wilkinson - William Getz - Phil Sancier
CITY OF PORTLAND, MAINE
Matthew Magan (acting Secy)

ZONING BOARD OF APPEALS

members absent: Gordon Smith - SARA Moppin

APPEAL AGENDA

called to order 6:30 pm

The Board of Appeals will hold a public hearing on Thursday, May 5, 2011 at 6:30 p.m. on the second floor in room 209 at Portland City Hall, 389 Congress Street, Portland, Maine, to hear the following Appeals:

1. Old Business

A. Miscellaneous Appeal:

410-412 Fore Street/25-29 Wharf Street (Called 416 Fore Street), lessee is Allied

Resources, Inc., D/B/A Cactus Club, Tax Map 032, Block N, Lot 010, B-3 Downtown

Business Zone: Pursuant to Chapter 4, Article III of the City Code, the appellant is seeking to appeal the denial of an entertainment license by the City Council on February 23, 2011. Representing the appeal is Tom Manning of Allied Resources, Inc. The Zoning Board of Appeals heard the appeal on April 21, 2011. The Board will vote on the final findings of fact and take the final vote at the May 5, 2011 meeting.

2. New Business:

A. Conditional Use Appeal:

81-85 Allison Avenue, Omid Ghayeb, owner, Tax Map 370, Block A, Lot 026, R-2 Zone:

The appellant is seeking a Conditional Use Appeal under section 14-78(a)(2) to add an accessory dwelling unit to his single family dwelling. Representing the appeal is the owner.

3. Adjournment:

7:00 pm

Appeal Denied
5-0
And Findings of
Fact Approved

Granted
5-0

members Present: Bill Getz - Elyse Wilkinson - Mark Bower - Matthew Manning
CITY OF PORTLAND, MAINE ^{Acting Sec} ^{Shah-McPhail} ^{Saucier}

ZONING BOARD OF APPEALS

Members Absent: Gordon Smith

APPEAL AGENDA

6:30 p.m.

The Board of Appeals will hold a public hearing on Thursday, April 21, 2011 at 6:30 p.m. on the second floor in room 209 at Portland City Hall, 389 Congress Street, Portland, Maine, to hear the following Appeal:

STAW
polk
Denied

1. New Business:

A. A Miscellaneous Appeal:

410-412 Fore Street/25-29 Wharf Street (Called 416 Fore Street), lessee is Allied Resources, Inc., D/B/A Cactus Club, Tax Map 032, Block N, Lot 010, B-3 Downtown Business Zone: Pursuant to Chapter 4, Article III of the City Code, the appellant is seeking to appeal the denial of an entertainment license by the City Council on February 23, 2011. Representing the appeal is Tom Manning of Allied Resources, Inc.

2. Adjournment:

9:40 pm

W

The final finding of facts & final vote
will be May 5th



City of Portland, Maine
Planning and Development Department
Zoning Board of Appeals
Miscellaneous Appeal Application

Applicant Information:

Name Allied Resources Inc.
Business Name Cactus
Address 416 Fore street
Portland, ME 04101
Telephone 451-8661 Fax _____

Applicant's Right, Title or Interest in Subject Property

Tenant
(e.g. owner, purchaser, etc.):

Current Zoning Designation: B-3

Existing Use of Property:

Tavern / Restaurant use

Subject Property Information:

416 Fore street
Property Address
Assessor's Reference (Chart-Block-Lot) 32-N-10

Property Owner (if different):

Name Monopoly Inc
Address Po Box 367,
Portland, ME 04112

Telephone _____ Fax _____

Appeal pertains to Section 14 - _____

Past Use (if different):

same use

Basis for Appeal and Relief Requested:

Appeal of denial of entertainment
license by City Council

APR - 9 2011

NOTE: If site plan approval is required, attach preliminary or final site plan.

The undersigned hereby makes application for an appeal as above described, and certified that all information herein supplied by his/her is true and correct to the best of his/her knowledge and belief.

Ther Mign of Allied Resources Inc.
Signature of Applicant

3/7/11
Date

March 7, 2011

Marge Schmuckal
Zoning Board of Appeals
389 Congress St.
Portland, ME 04101

Re: Special Entertainment License for Allied Resources/The Cactus Club

Dear Marge:

Please let this correspondence serve as a formal notice of appeal in response to the City of Portland's decision of denial of our special entertainment license of February 23rd, 2011 . We disagree with that decision, we object to it, we appeal, and we seek reversal by your Board and/or by the Courts.

We will be prepared to show that the City Council's denial was arbitrary and capricious and that the operation of our Special Entertainment license and permitted activities does not and will not constitute a detriment to the public health, safety or welfare.

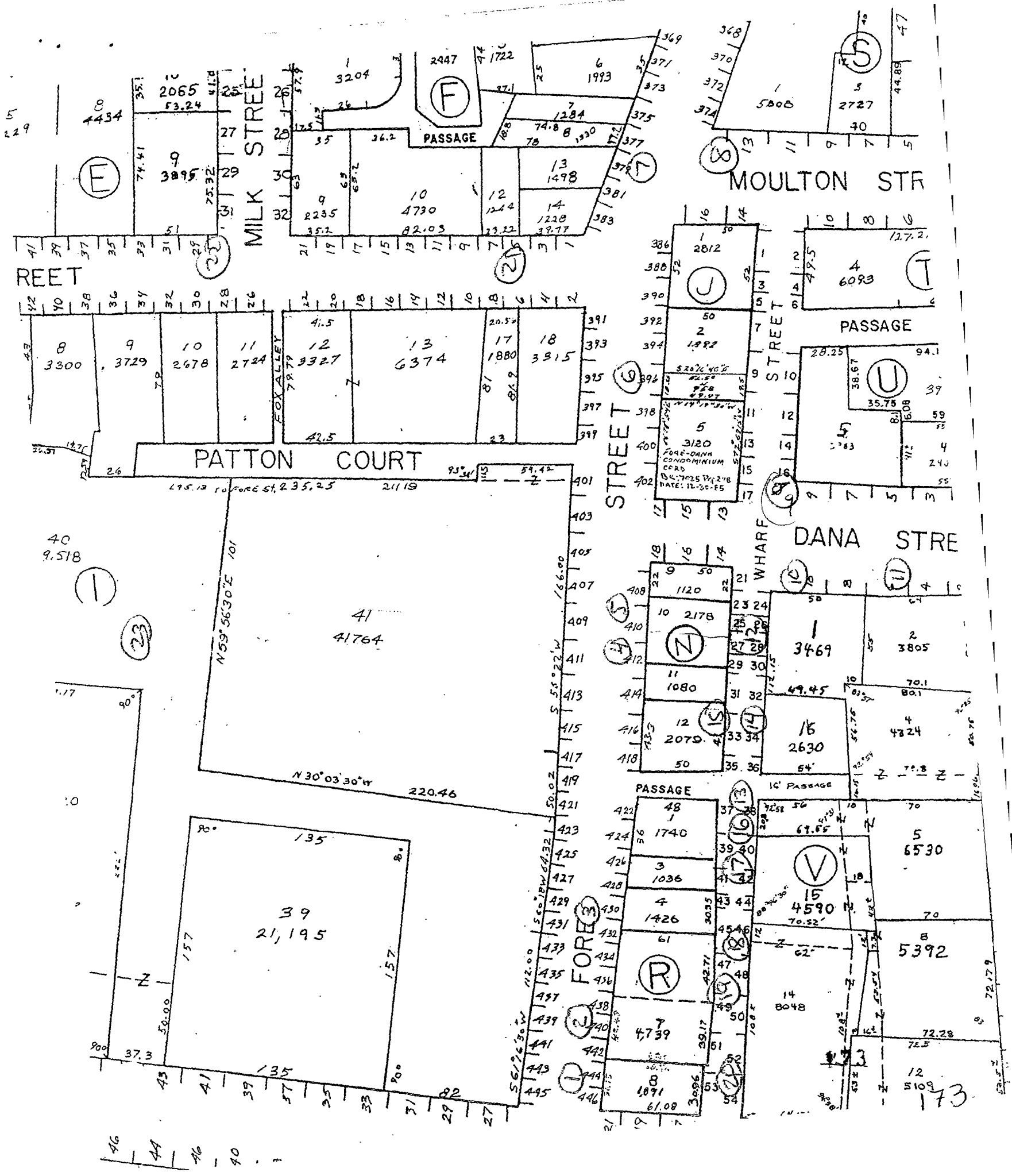
Let us here reiterate our objection to the City's decision and this notice of appeal. Our business in recent years has been repeatedly harassed and singled out for persecution and we would ask this Board to reverse the City's decision.

Thank you for your time and consideration.

Most Sincerely Yours,

A handwritten signature in black ink, appearing to read "Th Manning", written in a cursive style.

Thomas Manning of Allied Resources

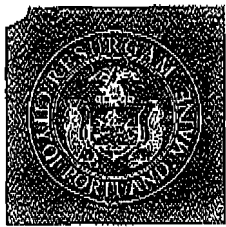


416 Fore St, Portland, ME 04101

Image U.S. Geological Survey

Image © 2009 Maine Geolibrary

©2009 Google



Strengthening a Remarkable City, Building a Community for Life

www.portlandmaine.gov

Corporation Counsel
Gary C. Wood

Associate Counsel
Mary E. Costigan
Danielle P. West-Chuhta
Ann M. Freeman

February 24, 2011

VIA HAND DELIVERY

Mr. Jeffrey R. Austin
Liquor Licensing and Compliance Division
164 State House Station
Augusta, ME 04333-0164

RE: Decision of Portland City Council Denying Class A Lounge License and Special Entertainment Permit for Allied Resources, Inc. d/b/a The Cactus Club

Dear Jeff:

I have attached the original decision of the Portland City Council on February 23, 2011 along with the Council Order that approved the written decision as well as the attached record.

The same material has been sent today to the applicant's owner Thomas Manning.

The Council's original vote denying the license was taken on February 7th. Their action last night formally approved the written decision that they signed because it accurately reflected the decision that they reached on February 7th and the reasons for that decision.

We received the video tape made by Time Warner of the February 7th Council meeting at the February 23rd meeting. We are copying that video tape and will be sending both you and Mr. Manning a copy in the immediate future.

Sincerely,


Gary C. Wood
Corporation Counsel

cc: Thomas Manning

APR 11 2011

Order 144-10/11
Passage: 8-0 2/23/11
NICHOLAS M. MAVODONES (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
EDWARD J. SUSLOVIC (3)
CHERYL A. LERMAN (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

JOHN R. COYNE (5)
JOHN M. ANTON (A/L)
DORY RICHARDS WAXMAN (A/L)
JILL C. DUSON (A/L)

**ORDER APPROVING THE RECORD AND WRITTEN DECISION
RE: ALLIED RESOURCES, INC. D/B/A/ THE CACTUS CLUB RENEWAL
APPLICATION FOR A CLASS A LOUNGE LICENSE AND A SPECIAL
ENTERTAINMENT WITH DANCE PERMIT**

ORDERED, that the record compiled by Corporation Counsel of the February 7, 2011 hearing on the application by Allied Resources, Inc. d/b/a/ The Cactus Club for renewal of its Class A Lounge License and Special Entertainment with Dance Permit is hereby approved as the official record; and

BE IT FURTHER ORDERED, that the written decision attached hereto as Attachment A is approved as the final written decision of the City Council regarding the application by Allied Resources, Inc. d/b/a/ The Cactus Club for renewal of its Class A Lounge License and Special Entertainment with Dance Permit.

**DECISION OF THE PORTLAND CITY COUNCIL
DENYING THE RENEWAL OF A LIQUOR LICENSE FOR A
CLASS A LOUNGE LIQUOR LICENSE AND
A SPECIAL ENTERTAINMENT WITH DANCE PERMIT
February 7, 2011**

IN RE: ALLIED RESOURCES, INC., D/B/A CACTUS LOUNGE AT 416 FORE STREET

I. Procedural History

Date of Application for Renewal: November 11, 2010

License Period: December 18, 2010 -- December 17, 2011

City Council Consideration: December 20, 2010 (Postponed to January 3, 2011 at City staff and applicant's request to permit applicant to respond to Police Department's recommendation for denial)

January 3, 2011: Postponed to January 19, 2011 Council meeting; applicant had requested postponement to a February meeting; staff recommended postponement to January 19th.

January 19, 2011: Postponed to February 7, 2011 at the request of the applicant.

February 7, 2011: Public hearing and final Council action: Motion to take separate votes on licenses - passed 5-3; Motion to approve renewal of liquor license failed by a vote of 1 (Mavodones) to 7 (Councilor Leeman absent) Motion to deny renewal of Special Entertainment Permit failed by a vote of 1 (Mavodones) to 7 (Councilor Leeman absent)

II. Procedural Background and Factual Findings

These licenses came before the City Council for renewal pursuant to 28-A M.R.S.A. § 653, 654 and 1054. A 2 ½ hour hearing was held by the City Council on February 7, 2011, at the conclusion of which the City Council voted 5-3 to take separate votes on the liquor license and the special entertainment with dance permit. The Council then voted 1 (Mavodones) to 7 on

a motion to grant the liquor license. The Council voted 7-1 (Mavodones) in favor of a motion to deny the Special Entertainment Permit.

Thomas Manning is President of the applicant Allied Resources, Inc. which does business as the Cactus Club, located at 416 Fore Street in Portland. Mr. Manning sought the renewal of the corporation's license to serve malt, spirituous and vinous alcohol on a full time basis as a Class A lounge. He also sought renewal of its special entertainment with dance permit. He previously operated another bar, Diggers Liquid Blue at a different location on Fore Street. The Council denied the renewal of the liquor license for Diggers/Liquid Blue based on a recommendation from the Portland Police Department. The Council also denied the renewal of the Cactus Club's license in 2009. That decision was overturned by the Maine Supreme Court because it was filed after a statutory deadline.

The Cactus Lounge is a Class A lounge located in Portland's Old Port area. The Old Port area is a small geographical area consisting of about five small city blocks. Mr. Manning testified that there are at least 40 other businesses with liquor licenses in the vicinity of the Cactus Club.

The Cactus Club's current liquor license was due to expire on December 18, 2010. Mr. Manning filed an application for license renewal on November 10, 2010 (R.2A-2H).

The Portland City Council has nine elected members. This matter appeared for the first time on the Council Agenda on December 20, 2010. At that time, the Council had before it the order approving renewal of the licenses (R.1) and a number of other documents, the most important of which is a Liquor License Review Report done by Lt. Gary Hutcheson of the Portland Police Department for the review period dated December 17, 2009 to November 29, 2010 (R.3) and the back-up police records used to prepare the Liquor License Review Report

including the incident reports (R.6-22) and Calls for Service entries, also called CAD reports (R.23-33).

Unlike some of the Liquor License Reviews that the Council has considered in the past, this report and its back-up clearly connect the described incidents to the conduct of patrons or employees or both, of the licensed business.

The record also includes 6 administrative violation notices and complaints issued to the Cactus Club for violations of the State's liquor laws (R.5A - 5F).

Prior to the January 19, 2011 Council meeting, a number of other documents were added to the record many of which were produced by PPD at Mr. Manning's request. On January 17, 2011, Mr. Manning directly emailed the Council and staff a copy of a letter with an attached Motion to Dismiss the liquor violations signed by Assistant Attorney General Michelle Robert (R. 122). That motion was approved by the Court on January 18, 2011 (R. 130). The record also includes 128 pages of documents provided by Mr. Manning on February 7, 2011 (R. 123 - 251).

It is the longstanding practice of the Portland City Council to refer both new and renewal liquor license applications to the Police Department in order that the Department may present the Council with a report describing what, if any, incidents have occurred in or around the applying establishment during the preceding license year, the efforts made by PPD to resolve any problems, and the response of the owners or management to those efforts. Prior to April of 2010 the PPD prepared a Liquor License Review for each business authorized to sell alcohol for consumption on the premises even if the Department recommended approving the license. Beginning in April of 2010 the Department only prepares a Liquor License Review if it recommends denial.

The Police Department rarely recommends denial. They annually review over 200 license applications. They recommend denial of a license about once every two years at most.

The applicant was present at the hearing on February 7, 2011. The documents submitted by the applicant include all of which are included in the Record. The applicant presented charts (R.133 - 149) that he prepared based upon records obtained from the PPD comparing the number of incidents at other liquor serving establishments in the City with that of the Cactus Club. He also presented a number of photographs of police cruisers parked next to and across the street from the Cactus Club.

Captain Vernon Malloch and Lt. Gary Hutcheson presented the PPD report and the case for the Police Department recommendation for denial. Lt. Hutcheson's report (R. 3 - 5) lists ten calls for service relating to the "Operation of the Premises" including four fights in or from the inside of the Club. This category is used by PPD to report incidents inside an establishment or that start inside and end up outside.

The reports listing for "Liquor Law Violations and Administrative Violations" identifies six citations alleging violations of state liquor laws in relation to two women patrons on March 13, 2010. These citations were the subject of a court complaint. They were dismissed by the court at the request of the State. It also lists another alleged violation of state liquor laws on November 28, 2010. That alleged violation was not taken to court by the State.

Under the category of "Incidents of Breach of the Peace in the Immediate Vicinity" the Police Department report lists the following incidents: two verbal domestic disputes, three general disturbance calls, seven pedestrian checks, two reports of motor vehicle thefts and two fights.

Under the category of "Liquor Inspection" it states that 16 inspections were done at the Club. No liquor law violations were noted during those inspections.

Lt. Hutcheson's report contains one page of details on some of the incidents based upon the PPD CAD reports and Incident Reports that are also in the Record.

To support PPD's conclusion that the Cactus Club presents an unacceptable risk to public safety, Captain Malloch and Lt. Hutcheson stressed the incident on March 3, 2010 in which two women patrons of the Cactus Club who were sober when they entered the Club were found highly intoxicated and passed out on the sidewalk in front of the bar in skimpy clothing. They also stressed the incident on November 28, 2011 involving a highly intoxicated or overdosed female patron of the Cactus Club who was not sent to the hospital via Medcu despite her clear need for immediate medical attention because employees of the Cactus Club who knew her refused the assistance of the Medcu personnel and the ambulance.

PPD's conclusion that the Cactus Club presents an unacceptable risk to public safety was further supported by Lt. Hutcheson's testimony, having been an eyewitness on both occasions, about his affirmative intervention at the March 3rd incident to prevent a predatory and unknown male from taking one of the women "home" thereby preventing a very serious crime and serious personal harm to the woman.

In stark contrast to the PPD reports, records and testimony, Mr. Manning testified that on March 3, 2011 the two women had been drinking elsewhere before arriving at the Cactus Club, that they were in the Club no more than 45 minutes, that they then left his Club and returned later where they passed out in front of the club without going back in. In relation to the November 8th incident, he stated that that woman had been dancing all night at another bar before arriving at the Cactus Club in an overdosed or intoxicated condition to see her boyfriend who works for the

Club. He did not offer any documents or describe the source of his information for either incident. He did not address the actions of the patrons or employees on November 28, 2010 that prevented the severely intoxicated or overdosed woman from going to the hospital in the Medeu ambulance that had been called by PPD and that was waiting to transport her.

Mr. Manning addressed these incidents after requesting that all records and testimony regarding the March 3rd incident be struck and not considered based on the dismissal by the State of the six alleged liquor violations. His request was denied based on the advice of Corporation Counsel, who advised the Council that while the incidents could not be considered as grounds for denial under §653(2)(E), they could be considered under § 653 (D) and under §654 in relation to the liquor license and under § 1054 and the City Code in relation to the Special Entertainment Permit.

Mr. Manning also focused on the grids he prepared (R. 134 - 149) in support of his theory that other clubs have worse records than the Cactus Club and that to recommend denial of the Cactus Club was therefore inconsistent on the part of the Portland Police Department.

Only one member of the public spoke during the public testimony portion of the hearing. That person was Mr. Charles Bragdon who identified himself as a Portland resident and taxi cab driver. He supported denying the licenses based on his personal experience. He stated that on at least 5 occasions he drove visibly intoxicated patrons of the Cactus Club home. He also observed several fights start inside the bar and then leave the bar and move on down the street when no members of the PPD were present.

III. Decision

(1) *The Class A Lounge Liquor License*

This application for renewal of a Class A Lounge liquor license is denied.

A. *This Applicant violated 28-A M.R.S.A. § 653(2)(D).*

28-A M.R.S.A. § 653 (2)(D) provides that one of the grounds for non-renewal of a liquor license are:

Repeated incidents of record of breaches of the peace, disorderly conduct, vandalism or other violations of law on or in the vicinity of the licensed premise and caused by persons patronizing or employed by the licensed premises.

We find that the incidents described in Lt. Hutcheson's License Reviews for the period occurred as described in the License Review and in the records upon which it is based, notably the incident reports and CAD reports found in the Record at pp 4 - 33, as well as his eyewitness testimony.

The incident reports contain a number of witness statements as well as personal observations by PPD officers who were on the scene at the time of the incidents. The incident reports were created in close proximity in time to the events which makes them highly credible. In addition, Lt. Hutcheson personally observed the incident on March 3, 2011 and the incident on November 28, 2011 which adds to the credibility and accuracy of his report.

We further find that the incidents in the License Review were caused by patrons or employees of the Cactus Club and we conclude that they constitute breaches of the peace, disorderly conduct, and other violations of the law in the licensed premises and in the vicinity of the licensed premises.

Those that occurred in the immediate vicinity that are of most concern are: 3 general disturbances and 2 fights.

In addition to that ground for denial, 28-A M.R.S.A. § 653(2)(D) was also violated by the incidents occurring inside the premises. The reports place those incidents in the category of "Operation of the Premises." Those incidents that are of most concern are: 4 fights in or from inside the Club and 3 general disturbance calls.

Two of the fights are highlighted in the narrative and accurately described as follows:

- (1) 10-005409 – On 6/14/10 Officer Mike Galiotta observed the doorman of the Cactus Club rush inside. He returned with a patron that was being ejected from the Club. This person didn't want to leave and attacked the doorman. The subject was arrested for disorderly conduct.
- (2) 10-22092 – On 11/07/10 Lt. Scott Pelletier, Sgt. John Nueslien, and Officer Druan were breaking up a fight involving patrons of the Cactus Club directly in front of the Club. Lt. Pelletier asked an intoxicated male, who was in the way of officers, to move out of the way repeatedly. This person refused to comply and was arrested for obstructing a public way.

Finally and of utmost concern are the incidents on March 3, 2010 and November 28, 2010. Those incidents are highlighted in the narrative and accurately described as follows:

- (1) 10-002186 – On 3/12/10 at 2300 hours, two females were found by myself and Officer Matt Pavlis laid out on the sidewalk in front of the Cactus Club. We had a difficult time waking one of them we had to call MEDCU to transport one of them to MMC ER for possible alcohol poisoning. During the course of the investigation we learned that the girls had been drinking "Fruity Drinks" inside the Cactus Club.

The manager Michael Ingalls admitted that the girls were sober when they entered his Club. The two were removed from the club apparently by staff. The doorman denied any knowledge of the females even though he worked the door all night and the manager acknowledged their presence. They were deposited outside where they lacked the ability to care for themselves. They were dressed in thin short dresses with no protection from the elements and were in danger of hypothermia. Six administrative violations were served upon the Cactus Club. The case is still pending.

- (2) 10-11856 – On 11/28/10 Sgt. Hutcheson, Officer Druan, and Officer Aguilera responded to the Cactus Club for what was described as a drug overdose. Michael Ingalls who is the manager was present. The female in question was passed out in the club. Rather than being taken to the front door where she could easily be treated by MEDCU she was carried into the back hallway which leads

down to Wharf Street. She apparently dates an employee named Benjamin Beninger. All subjects refused to cooperate with MEDCU and it appears the name Beninger is an alias. Upon being refused MEDCU left without transporting. Officer Druan describes Hein in his report as being highly intoxicated.

It just happened to be that during this entire time I was parked on Fore St. in a marked SUV. I observed the comings and going of Police and Fire personnel. Once they all left I observed a silver Dodge Charger park at an angle on the corner of Fore St and Dana St. I observed the Manager Michael Ingalls exit the front door of the Cactus Club and open the rear passenger door of the Charger. He was followed by two males carrying a female out of the club who could not walk under her own power. They placed her in the Charger and left. It is presumed that this female was Rachael Hein.

These incidents exposed three women to serious bodily harm. We have no doubt that the two women found passed out in cold weather and skimpy clothing on the sidewalk in front of the Cactus Club were sober when they got to the Club, were served an amount of alcohol that made them highly intoxicated and then put on the sidewalk by employees of the Club, as the contemporaneous statement of one of the women to the PPD officers and the confirming statement to PPD by Mike Ingalls, the manager of the Cactus Club, clearly demonstrate. We find that Mr. Manning's explanation of their presence on the sidewalk in front of the Cactus Club lacks credibility. Given the physical condition in which they were found they could not possibly have engaged in the rambling walk about that he described only to end up in front of the Cactus Club by happenstance.

Lt. Hutcheson is to be commended for his alert action that prevented one of these helpless women from being removed from the site by a male unknown to her whose intentions were unclear at best but in all likelihood were to subject her to a sexual assault against which she could not have defended herself.

It is much less clear whether the woman found passed out inside the club on November 28, 2010 consumed any alcohol or drugs inside the Club. Officer Duan describes the woman as

highly intoxicated. It is immaterial why and how she became comatose. What is material is the conscious disregard for her physical safety and well being by the patrons and employees of the Cactus Club, one of whom was her boyfriend, in refusing to allow MEDCU to transport her to the hospital and then, immediately after police and rescues personnel had left the scene, helping to place the woman in a private car which left the scene.

We note that these two incidents are listed in the Liquor License Review under the category of "Liquor Violations and Administrative Premise Violations", a category that refers to violations of sections of the law in Title 28-A that fall within the jurisdiction of the State and outside our jurisdiction for the purpose of enforcement. We conclude that the dismissal of the charges for liquor violations means that we cannot deny this license based on 28-A § 653 (2)(E) which specifically references violations of the State's liquor laws that have either been admitted or adjudicated.

We reject Mr. Manning's legal argument that we are therefore prohibited from considering whether the facts of those incidents show a violation of other laws in Title 28-A § 653(2), notably subparagraph (D), and § 654 or § 1054 which authorizes the City's local ordinances on Special Entertainment Permits. Those local laws are found in Chapter 4, Sections 4-54 and 4-55 and Chapter 15, Section 15-8(2), (3) and (4).

In our legal system it is common for one set of facts to support enforcement actions by legally distinct jurisdictions with different laws which most often are federal, state and local laws. Also, the same set of facts can and often is used to support an enforcement action based on several distinct laws created by one legal jurisdiction.

Were we to adopt the argument put forward by Mr. Manning it would prohibit us from considering, for example, whether an individual who had tried to kill someone in a bar, but who

had not been charged or convicted of a crime under Section 653(2)(A), had committed a breach of the peace under Section 653(2)(D). The state law and its purpose, which is to promote and preserve public health, safety and welfare does not support such a conclusion.

We therefore conclude that the incidents on March 3, 2010 and November 28, 2010 as well as the other incidents cited in the Liquor License Review constitute repeated incidents of record of breaches of the peace and disorderly conduct on or in the vicinity of the licensed premises caused by persons patronizing or employed by the licensed premise and deny the liquor license renewal.

B. *This Applicant Violated 28-A M.R.S.A. § 654.*

This application is also denied based upon the legal criteria in 28-A M.R.S.A. § 654. That section states as follows:

In issuing or renewing licenses, the bureau, the municipal officers or the county commissioners, as the case may be, shall give consideration to:

- A. The character of any applicant;
- B. The location of the place of business;
- C. The manner in which the business has been operated; and
- D. Whether the operation has endangered the safety of persons in or on areas surrounding the place of business.

In this case the applicant's owner is Tom Manning. He has not only owned and operated a number of bars in Portland for the past 12 years, but that he has also lost a liquor license in relation to one prior business, namely Digger's/Liquid Blue, another Old Port bar. He also had the license for the Cactus Club denied by this Council and the Bureau of Liquor Enforcement for the license year 2008-2009. Given this experience, Mr. Manning should have known and done a

lot better in managing the Cactus Lounge and its patrons from December 18, 2009 to December 17, 2010 which is the license year in question.

The location of this particular bar is in the Old Port area where the total number of bars makes it vital that whoever is responsible for owning and managing an alcohol serving business does so in a manner that maximizes the safety of not only their employees and patrons but that of others who use and frequent the area.

Based on the incidents listed in the Liquor License Review and the supporting PPD documents and testimony, the manner in which the Cactus Lounge has been operated has endangered the safety of persons in or on areas surrounding the place of business, particularly that of the 3 women involved in the incidents on March 3, 2010 and November 28, 2010.

We adopt the following findings and conclusions from the Liquor License Review as our own:

We point to the instance of two highly intoxicated young women being removed from the club and left on the sidewalk, unable to stand. Both women had been drinking at the Cactus Club and no other establishments. What is most concerning is the treatment of these women by the staff. They were in need of medical attention and certainly at risk for victimization given their condition and inability to care for themselves. Staff responded by ejecting them after having over served liquor.

This tactic of ejecting individuals who have been over served has presented a significant problem in the Old Port. Calls for service to a specific bar are reduced while police problems such as fighting and other crimes of disorder in the area increase.

We have no confidence that the management of the Cactus Club will either accept responsibility for these actions or take meaningful corrective action on any significant level. It appears that they may simply be utilizing the back door that empties onto Wharf Street to avoid calls to the club.

The applicant's claim that they are being treated unfairly because there are other establishments in Portland with more violations that have had a license renewed is without merit.

Each license that comes before the PPD and the Council is considered on its own merits, not in relation to the performance of other facilities. It is no defense when one is caught driving while intoxicated that other drivers were more intoxicated, nor is it a defense when a bar such as this one has violated state law to claim that other bars may have worse violations. In cases like these the basic premise of the law is that a person should be held accountable for his or her own conduct which is precisely what this Council is doing by denying this application.

This Council has confidence that the Portland Police Department, based on its actual on the street experience, has a good sense of those facilities that are effectively managing their employees and patrons and reducing public safety problems and risks and those that are not.

This bar clearly falls into the second category and for that reason this application for renewal is denied based on the criteria in § 654.

(2) *The Special Entertainment Permit*

The application for renewal of the applicant's Special Entertainment permit is denied pursuant to 28-A M.R.S.A. § 1054 and Chapter 4, Section 4-54 and 4-55 and Chapter 15, Section 15-8(2), (3) and (4) of the Portland City Code.

A Special Entertainment Permit is a state license directly related to only establishments that have a state liquor license. It is controlled by 28-A M.R.S.A. § 1054 which describes it as a special permit for music, dancing or entertainment.

These licenses are separate and distinct from the liquor license and can be acted upon separately from the Council's action on the liquor license.

The term of the Special Entertainment Permit is concurrent with that of the State Liquor License (see § 1054(3): a permit is valid only for the license year of the existing license).

The criteria created by the statute for review is in § 1054(5) which states as follows:

5. Permit requirements. The municipal officers shall grant a permit unless they find that issuance of the permit would be detrimental to the public health, safety or welfare, or would violate municipal ordinances or rules and regulations.

That standard is repeated in the Portland City Code, Section 4-54 which requires the Council to conclude that issuing a license would constitute a detriment to public, health, safety or welfare. We reach that conclusion based on the previously stated findings of fact.

Section 4-55 incorporates more specific standards from Chapter 15 to be applied to Special Entertainment Permits.

Section 4-55 states that:

Licenses shall be granted, denied, suspended, revoked or granted with a condition or conditions in accordance with Chapter 15...

That Section also goes on to authorize the Council to "Grant temporary entertainment permits for a period of less than one year when in its sole discretion it determines that one or more trial periods is necessary to evaluate the impact of the entertainment on the peace and quiet of the neighborhood and on the public health, safety and welfare."

Section 15-8 is the operative section in Chapter 15 that imposes the more specific standards for renewing all city licenses including special entertainment licenses. That section states in pertinent part (Section 15-8(a)(1-7) that the following are grounds for not granting or renewing a license or for suspending a license:

- (1) Failure to fully complete the application forms; knowingly making an incorrect statement of a material nature on such form; or failure to supply any additional documentation required or reasonably necessary to determine whether such license is issuable, or failure to pay any fee required hereunder;

- (2) The licensed activity, or persons on the premises for the purpose of participating in the licensed activity, or persons patronizing in the licensed activity, or persons patronizing the licensed device have caused one (1) or more breaches of peace; or
- (3) There is a clear danger that a breach of the peace will occur if the licensed activity is permitted; or
- (4) The licensed activity or persons patronizing the licensed premises will substantially and adversely affect the peace and quiet of the neighborhood, whether or not residential, or any substantial portion thereof;
- (5) The licensee has violated any provision of this Code in the course of the conduct of the activity or device for which the license or licenses have been applied for, or have been issued; or
- (6) The occurrence of any event subsequent to issuance of the license which event would have been a basis for denial of the license shall be grounds for revocation thereof; or
- (7) The applicant's or licensee's real or personal property taxes, or final judgments due and payable to the City, are determined to be in arrears as of the date of the license or application; or that real or personal property taxes or final judgments due and payable to the City on account of the premises for which application has been made or a license issued have not been paid in full as of the date of the license or application.

We conclude that the facts in this case fully support not renewing the Special Entertainment Permit based on the standards set out in 15-8(2), (3) and (4) which we conclude exist in this case and therefore deny the license renewal.

Date of Original Vote: February 7, 2011

Date Written Decision
Approved and Signed: February 23, 2011

Date Decision mailed to Bureau of
Liquor Enforcement and Applicant: February 24, 2010

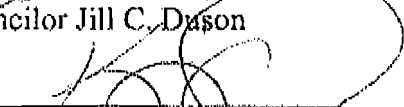
Councilor John Anton



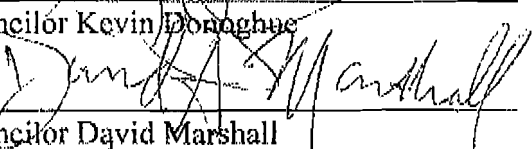
Councilor John Coyne



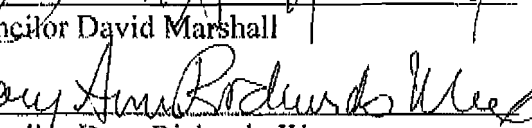
Councilor Jill C. Dason



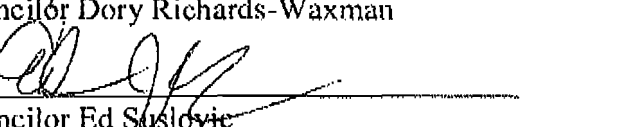
Councilor Kevin Donoghue



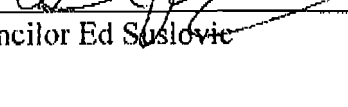
Councilor David Marshall



Councilor Dory Richards-Waxman



Councilor Ed Suslovic



A/21/11

**ALLIED RESOURCES INC.
MEMORANDUM**

TO: Board of Appeals for the City of Portland

FR: Allied Resources, Inc.

DT: April 19, 2011

RE: Memorandum Supporting the Approval of Special Entertainment License

Dear Sirs and Madams;

In response to the City of Portland's decision of denial of our special entertainment license of February 23rd, 2011, we strongly disagree with that decision, we object to it, we appeal, and we seek reversal and reinstatement by your Board and/or by the Courts.

The **STANDARD OF REVIEW** for this process is defined that the "The municipal board of appeals may grant or reinstate the permit if it finds that the PERMITTED ACTIVITIES would not constitute a detriment to the public health, safety or welfare, OR that the denial was ARBITRARY OR CAPRICIOUS."

First and Foremost, Title 28-A, Section 1054, Subsection 6, Issuance of a Permit; states clearly that **"Within 15 days of receiving the permit application, the municipal officers shall give the applicant written notice of their decision."** The application for this permit was submitted in November of 2010 and the municipal officers did not provide applicant with its decision within the prescribed 15 days, thus the permit is deemed approved. ?

In this case, the "Permitted Use" is the ^{Entertainment} playing of music which has not and did not cause any of the alleged breaches of the peace put forth by the City in any of its incidents described. The "Permitted Use", the playing of music has not and did not cause any disturbances of the peace inside or outside of the premises. We play mainstream top 40 music that you would find on any radio station. We do NOT play any gangster rap or hip hop music like other bars do in Portland that may have violent overtones. We have never had any loud music and/or noise complaints by any of our neighbors. None of our neighbors, patrons or staff have ever spoken against the "Permitted Use". Certainly, the "Permitted Use" of the playing of music has not and

does not constitute a detriment to the public health, safety or welfare of the City of Portland or its citizens.

Regardless of any assertions made by Corporation Counsel, CLEARLY, the State Statute Section 1054 prevails and sets the ONLY standard of review which is defined in Ch 4 Amusements Sec 4-54. The State Statute Section 1054 is narrowly focused and pertains to entertainment licensing as defined in its Subsection 8, Appeals Procedure.

The City has argued that the incidents were caused by and the result of "the service of alcohol" which is NOT the "Permitted Use" in question in this proceeding. The KEY FOCUS and the ONLY FOCUS THAT DRIVES this proceeding is that of the "Permitted Use" which is the playing of music, not the service of alcohol. The service of alcohol is controlled by the State Liquor License which would be heard in front of a different hearing panel. For this reason alone and in conforming with the strict construction of the statute, one must approve and grant the Special Entertainment License. That meaning any ambiguity in a statute or ordinance would be decided against the State Statute as it is defined.

The denial of the Special Entertainment License was ARBITRARY AND CAPRICIOUS because certain members of the City including certain members of its Police Department have feelings of ill will toward the applicant because it was successful in a previous licensing years' appeal process. The obvious retribution was most eloquently stated by our Mayor Nick Mavodonnos who voted in FAVOR of our license. He got it right when he stated that he was very concerned that members of the Council and others were looking OUTSIDE the twelve month review cycle period and that that was influencing their vote. There is a clear and obvious vindictive position taken by many Councilors and the Police Department because of our correct and favorable outcome in our previous appeal to the Maine Supreme Court. 2008 Denial

The decision was ARBITRARY AND CAPRICIOUS because the issues described as reasons for denial are CLEARLY NOT caused by the "Permitted Use" under Title 28-A, Section 1054, Subsection 8.

The decision was also ARBITRARY AND CAPRICIOUS because the Portland Police Department has continuously harassed this business over the last two years as CLEARLY documented by the Protection from Harassment Order that we filed against the Department and documented by many pages of charts and pictures. There is an unexplained animosity and vindictiveness that is coming from certain members of the Police Department toward this business and its licensee. The Police Department's recommendation for denial weighs extremely heavily with and strongly influences City Councilor members in their votes. This

vindictive nature and harassment is totally unwarranted and inappropriate and the special attention this licensee has been paid versus other businesses in the immediate area with much worse records is a travesty and a waste of public resources.

For the reasons above, we respectfully seek:

- Reinstatement of our Special Entertainment License
- That is be referred back to City Council for further review and/or with conditions
- Reinstatement of our Special Entertainment License with conditions if deemed necessary by this Board.

If we are not granted Approval, we respectfully request a Stay so we can exercise our full due process rights under the law in the courts. Please know that our business will continue to operate peaceably and without issue as it has been doing so with no risk to public safety.

Thank you for your time and consideration.

Most Sincerely Yours,

Thomas Manning of Allied Resources

4/21/11

Chapter 4 AMUSEMENTS*

***Cross reference(s)**--Zoning regulation of adult business establishments, § 14-373 et seq.

State law reference(s)--Pinball machines, 8 M.R.S.A. § 441 et seq.

Art. I. In General, §§ 4-1--4-15

Art. II. Amusement Devices, §§ 4-16--4-40

Div. 1. Generally, §§ 4-16--4-25

Div. 2. License, §§ 4-26--4-40

Art. III. Music, Dancing and Special Entertainment, §§ 4-41--4-70

Div. 1. Generally, §§ 4-41--4-50

Div. 2. License, §§ 4-51--4-70

Art. IV. Gaming, §§ 4-71--4-82

Div. 1. Generally, §§ 4-71--4-80

Div. 2. License, §§ 4-81, 4-82

Art. V. Nudity in Licensed Businesses, §§ 4-83--4-96

Div. 1. Generally, §§ 4-83, 4-84

Div. 2. License, §§ 4-85--4-97

ARTICLE I. IN GENERAL

Sec. 4-1. Chapter 15 provisions apply.

Except to the extent that this chapter contains a contrary provision, all provisions of chapter 15 shall apply to and be additional to the provisions of this chapter.

(Ord. No. 165-06/07, 4-4-07)

Sec. 4-2. Reserved.

Sec. 4-3. Reserved.

Sec. 4-4. Reserved.

Sec. 4-5. Reserved.

Sec. 4-6. Reserved.

Sec. 4-7. Reserved.

Sec. 4-8. Reserved.

Sec. 4-9. Reserved.

Sec. 4-10. Reserved.

Sec. 4-11. Reserved.

From: Mary Costigan
To: Marge Schmuckal
CC: sdbither@ghi.net
Date: 4/20/2011 12:05 PM
Subject: April 21st ZBA
Attachments: Cactus Club.doc

Marge -

As you know, the Board will be considering a decision by the City Council tomorrow night. Gary Wood will be representing the City and therefore we have decided to have an outside attorney, Stephen Bither, represent the Board.

I have prepared the attached decision document to guide the Board's discussion. You will note that the document only contains the two review standards for discussion and not a final conclusion. Stephen will be recommending to the Board that it not reach a final decision at tomorrow's hearing. Rather, the board members can have a discussion and straw pole regarding the two standards of review. Stephen will take that information and prepare a written decision for the Board to act on at the first meeting in May.

Please forward this email to the Board.

thanks -

Mary

**CITY OF PORTLAND, MAINE
M E M O R A N D U M**

TO: Board of Appeals for the City of Portland

FROM: Gary Wood, Corporation Counsel

DATE: April 15, 2011

RE: Memorandum Supporting Denial of Special Entertainment Permit for Music,
Dancing or Entertainment for Allied Resources, Inc., d/b/a The Cactus Club, 416
Fore Street

APR 15 2011

I. Facts and Procedural Background

This application came before the City Council for consideration on February 7, 2011 at which time the Council voted to deny both the liquor license sought by Allied Resources, Inc. d/b/a The Cactus Club, and the special entertainment permit (SEP) required by state law in order to have entertainment in an establishment that has a liquor license. On February 21, 2011 the Council formerly approved the written decision reflecting their earlier decision. On March 7, 2011, the applicant filed a timely appeal to the Board of Appeals as allowed by state law.

The Council's decision is set out in a 16 page written decision at the beginning of the record. It contains a detailed explanation of the Council's decision as well as citations to the record that support that decision. Pages 1-6 contain a description of the procedural background and the Council's findings of fact. Pages 13-15 contain the Council's analysis and conclusions regarding the SEP.

II. Applicable Law

This appeal comes before the Board pursuant to 28-A M.R.S.A. § 1054 (attachment 1).

Subsections 1 and 2 of § 1054 require a business that has a liquor license to also obtain a special entertainment permit before they can allow entertainment of any sort on the premises except music from a radio or other mechanical device¹.

Subsection 5 of § 1054 lays out the standard created by state law. That Section states as follows:

¹ § 1054, Subsection 2, Special amusement permit required. If a licensee for sale of liquor to be consumed on the premises provides activities or entertainment listed in subsection 1, the licensee must first obtain a special amusement permit from the municipality in which the licensed premises are located.

The municipal officers shall grant a permit unless they find the issuance of the permit would be detrimental to the public health, safety or welfare, or would violate municipal ordinances or rules and regulations.

Subsection 8 describes the appeal procedure. That Section states as follows:

(8) Appeal Procedure. Any licensee who has applied for a permit and has been denied, or whose permit has been revoked or suspended, may appeal the decision to the municipal Board of Appeals as defined in Title 30-A Section 2691, within 30 days of the denial, suspension or revocation. The municipal Board of Appeals, if the municipality has such a Board, may grant or reinstate the permit if it finds that:

- A. The permitted activities would not constitute a detriment to the public health, safety or welfare or violate municipal ordinances or regulations; or
- B. The denial, revocation or suspension was arbitrary and capricious.

Subsection 11 of § 1054 authorizes a municipal ordinance or regulations related to special entertainment permits and specifically authorizes ordinance “limitations on these activities required to protect the public health, safety and welfare”.

Chapter 4, Article III, and Chapter 15, Section 15-8, which Chapter 4, Article III incorporates, of the Portland City Code are municipal ordinances that govern the issuance of special entertainment permits and to set standards for the denial, revocation, or suspension of those permits. In Section 15-8, the paragraphs that are directly applicable to the application of the Cactus Club are Sections 15-8 (a) (2), (3) and (4).

These standards allow a license to be denied, suspended or revoked upon a determination of the existence of one or more of the following grounds:

- (2) The licensed activity, or persons on the premises for the purpose of participating in the licensed activity, or persons patronizing the licensed device have caused one (1) or more breaches of the peace; or
- (3) There is a clear danger that a breach of the peace will occur if the licensed activity is permitted; or
- (4) The licensed activity or persons patronizing the licensed premises will substantially and adversely affect the peace and quiet of the neighborhood, whether or not residential, or any substantial portion thereof.

The standards cited above from Section 15-8 are incorporated into the special entertainment permit application and decision making process by Section 4-52² and Section 4-

² Chapter 4, Section 4-52, “Application for a license under this division shall in addition to the requirements of chapter 15 (*emphasis added*)...”

55³. They are essentially the same as the state law standard, in 28-A M.R.S.A. § 653 (2) (C) and (D)⁴, that govern the City action on the State liquor license in this case.

Under the hearing standards set forward in § 1054 and Section 4-54 of the City Code, which repeats those standards, the Board must hold a hearing to determine if the evidence presented to the Board by the Portland Police Department demonstrates that it would be detrimental to the public health, safety or welfare or violate municipal ordinances to grant the special entertainment permit sought by the applicant.

III. The Record demonstrates that the operation of the Cactus Club and the behavior of its employees and patrons is detrimental to the public health, safety, and welfare

The Council's decision denying the special entertainment license can be found on pages 13 to 15 of the written decision approved by the Council on February 21st, 2011. The Council's findings of fact are on page 1 to 7 of its decision. The reasoning of the Council and the record references in that decision are hereby incorporated into this memorandum and the City respectfully requests that the Board review that decision and the findings and police records allo of which are included in the record before the Board.

Members of the Portland Police Department will be present to explain the record keeping process and the basis for their recommendation of denial of both the liquor license ad the related SEP.

In considering the record the key document is Lieutenant Gary Hutcheson's Liquor License Review report for the licensing period of 12/17/09 to 11/29/10 at pages 3-5 in the record. That report is a summary of incidents that occurred and generated police records that support the recommendation of denial and the Council's decision. These police records are prepared and kept in the normal course of proceedings by the Portland Police Department. The back up police reports related to the specific incidents in Lt. Hutcheson's report can be found on pages 6 to 33 of the record. They consist of two basic types of record: the CAD (Computer Aided Dispatch) entries have the information that was recorded at the time a call came in to Police Dispatch and includes some basic information about the nature of the call, the time, and where it was taking place.

³ Chapter 4, Section 4-55 "Licenses shall be granted, denied, suspended, revoked or granted with a condition or conditions in accordance with chapter 15 (*emphasis added*)..."

⁴ § 653 (2) allows a liquor license to be denied if the Council finds (C) "conditions of record such as waste disposal violations, health or safety violations or repeated parking or traffic violations on or in the vicinity of the licensed premises and caused by persons patronizing or employed by the licensed premises or other such conditions caused by persons patronizing or employed by the licensed premises that unreasonably disturb, interfere with or affect the ability of persons or businesses residing or located in the vicinity of the licensed premises to use their property in a reasonable manner"; or, (D) "repeated incidents of record of breaches of the peace, disorderly conduct, vandalism or other violations of law on or in the vicinity of the licensed premises and caused by persons patronizing or employed by the licensed premises."



City of Portland Zoning Board of Appeals

April 12, 2011

Tom Manning
Allied Resources, Inc.
416 Fore Street
Portland, ME 04101

Dear Mr. Manning,

Your Miscellaneous Appeal has been scheduled to be heard before the Zoning Board of Appeals on **Thursday, April 21, 2011 at 6:30 p.m.** in room 209 located on the second floor of City Hall.

Please remember to bring a copy of your application packet with you to the meeting to answer any questions the Board may have.

I have included an agenda with your appeal highlighted, as well as a handout outlining the meeting process for the Zoning Board of Appeals.

I have also included the bill for the processing fee, legal ad and the notices for the appeal. The check should be written as follows:

MAKE CHECK OUT TO:	City of Portland
MAILING ADDRESS:	Room 315
	389 Congress Street
	Portland, ME 04101

Please feel free to contact me at 207-874-8709 if you have any questions.

Sincerely,

Ann B. Machado
Zoning Specialist

Cc: File

Marge Schmuckal - ZBA meeting on 4/21, 2011

From: Marge Schmuckal
To: Thomas Manning
Date: 4/5/2011 4:19 PM
Subject: ZBA meeting on 4/21, 2011

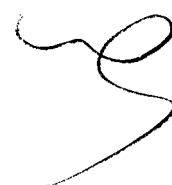
Tom,

I am again requesting you to submit the necessary paperwork concerning your appeal. We have written and I have left messages. You are responsible for submitting the information from the City Council concerning your appeal. As I understand it, you were given two complete copies after the Council decision. You need to submit 11 copies of this paperwork for your appeal. The Zoning Board members need those copies ahead of time so that they can review the information. Our appeal requirements given to you outline that you are responsible for submitting those 11 copies. Your appeal may be in jeopardy if you fail to submit *a//* the required information for your appeal.

If you have any questions, you can call me at 874-8695.

Marge

4/6/11 2:00pm Tom Manning came in & picked up
copies of the ZBA Rules & Regulations -
I again stated that we needed 11 copies
of the Council Record by Monday -



March 24, 2011

Marge Schmuckal
Zoning Board of Appeals
389 Congress St.
Portland, ME 04101
Hand Delivered

MAR 28 2011

Re: Request for Hearing Date for Special Entertainment License for Allied Resources/The Cactus Club to be set for April 21st or sometime in May.

Dear Marge:

I was extremely ill and caught that flu that has been going around which laid me up in bed for all of last week and weekend. I haven't been this sick in five years. I am just getting back on my feet now and have just seen an email from last week stating that the hearing is being scheduled for April 7th against my request of April 21st or sometime in May.

The Legal Counsel for the City is pushing this hearing too quickly and is not giving me what is a reasonable time to prepare. I must hire an attorney for representation, educate and bring them up to speed on the enormous amount of documentation, history and information related to this matter. All though the City's Legal counsel has a team of legal people to work on this matter, I do not. I am only one person who also is trying to hire an affordable attorney which whom will also most likely be a one person small shop. I and we do not have a team of legal people to prepare as quickly as the City would suggest. For the City's Counsel to suggest that I am stalling and using the hiring of an attorney as a delay tactic is ludicrous and extremely offensive and just not true. Financially, times are very tight, and I am trying to afford and hire an attorney in order to represent my business and protect our rights under the law. A request to have the hearing heard on April 21st or sometime in May certainly can not be unreasonable in order to allow me the necessary time to assemble our presentation and solicit proper representation. I would respectfully ask to please give us the time to have the proper ability to be prepared for this upcoming hearing.

It is been stated that your office has the authority, not the City's legal counsel, to determine and set the hearing dates. At this time, Marge, I would respectfully ask that we reset this hearing for either April 21st, 2011 or sometime on a May agenda. Reasonably speaking, I CAN NOT practically and reasonably be prepared and have proper legal counsel

prepared by April 7th. This is a new hearing and we need to be afforded enough time to prepare as a new hearing. The information that surrounds this license is hundreds of pages long and requires new and additional preparations.

Are there ordinances and or rules and regulations regarding these hearings that defines the procedures and standards of review, etc? Would someone in your office please provide to us copies of any ordinances and rules and regulations related to this hearing process so we can have time to review. I am also not clear on whom needs to supply the record from the City's meeting for this hearing process? Is there somewhere in the rules and regulations that defines whom is to provide such materials or do we just provide what materials we wish in order to make our presentation to the Board?

Please know that by giving us a proper amount of time to prepare for the hearing, there is no present threat to public safety or harm here. The Cactus Club has been running without issue. I can assure you that between now and our hearing that the Cactus Club will continue to run safely and peaceably.

Thank you for your time and consideration.

Most Sincerely Yours,

A handwritten signature in black ink, appearing to read 'Thomas Manning', with a stylized flourish at the end.

Thomas Manning of Allied Resources



PORTLAND MAINE

Strengthening a Remarkable City, Building a Community for Life • www.portlandmaine.gov

*Penny St. Louis - Director of Planning and Urban Development
Marge Schmuckal, Zoning Administrator*

March 21, 2011

Tom Manning
Allied Resources, Inc.
Cactus Club
416 Fore Street
Portland, ME 04101

Re: 416 Fore Street 0 032 N010 – B-3 – miscellaneous appeal to the ZBA

Dear Mr. Manning,

When you submitted the Miscellaneous Appeal application to Marge Schmuckal on March 9, 2011, she told you that the appeal would be scheduled for April 7, 2011. I am just confirming that the Miscellaneous Appeal for 416 Fore Street is on the agenda for the April 7, 2011 Zoning Board of Appeals meeting.

Also when you submitted your Miscellaneous Appeal Application on March 9, 2011, Marge Schmuckal told you that the application was incomplete because our office needed the information that was submitted to the City Council at the meeting on February 23, 2011. Gary Wood has stated that it is up to you as the applicant to provide our office with eleven copies of the record on appeal as part of your application. We need these eleven copies as soon as possible, so they can be mailed out to the Zoning Board of Appeals members before the hearing on April 7, 2011.

Please feel free to contact me at 874-8709 or Marge Schmuckal at 874-8695 if you have any questions.

Yours truly,

Ann B. Machado
Zoning Specialist
(207) 874-8709

CITY OF PORTLAND
DEPARTMENT OF PLANNING & DEVELOPMENT

389 Congress Street
Portland, Maine 04101

INVOICE FOR FEES

Application No:	2011-199	Applicant:	Tom Manning
CBL:	032 N010	Application Type:	Miscellaneous Appeal
Location:	416 Fore Street	Invoice Date:	4/12/11 2nd one sent 5/9/11

<u>Fee Description</u>	<u>QTY</u>	<u>Fee/Deposit Charge</u>
Legal Advertisements	1	\$103.64
Notices	66	\$49.50
Processing Fee	1	\$50.00
Zoning Practical Difficulty	1	\$100.00

Total Current Fees:	\$303.14
Total Current Payments:	-\$100.00
<u>Amount Due Now:</u>	<u>\$203.14</u>

Bill to:	CBL: 032 N010	Application No: 2011-199
Tom Manning	Invoice Date: 4/12/11	<u>Total Amount Due: \$203.14</u>
416 Fore Street		(due on receipt)
Portland, ME 04101		

Ann Machado - Re: Zoning Board of Appeals Legal Ad

From: Joan Jensen <jjensen@pressherald.com>
To: Ann Machado <AMACHADO@portlandmaine.gov>
Date: 4/12/2011 9:58 AM
Subject: Re: Zoning Board of Appeals Legal Ad
Attachments: Portland 4:15.pdf

Hi Ann,

All set to publish your ad on Friday, April 15.
The cost is \$103.64 includes \$2.00 on-line charge. I included a proof.
Thank you,
Joan

--

Joan Jensen
Legal Advertising
Portland Press Herald/Maine Sunday Telegram
P.O. Box 1460
Portland, ME 04104
Tel. (207) 791-6157
Fax (207) 791-6910
Email jjensen@pressherald.com

On 4/12/11 9:43 AM, Ann Machado wrote:

Joan -

Attached is the Zoning Board of Appeals legal ad for Friday, April 15, 2011.

Thank you.

Ann Machado
874-8709



CITY OF PORTLAND, MAINE

Division of Building Inspections

Original Receipt

March 9, 2011

Received from Allied Resources INC.

Location of Work 416 Fore Street

Cost of Construction \$ _____ Building Fee \$ _____

Permit Fee \$ _____ Site Fee \$ _____

Certificate of Occupancy Fee \$ _____

Total: _____

Building (IL) _____ Plumbing (I5) _____ Electrical (I2) _____ Site Plan (U2) _____

Other Board of Appeal

CBL: 32-N-10

Check #: _____ Total Collected \$100⁰⁰
CASH

No work is to be started until permit issued.

Please keep original receipt for you records.

Taken by: [Signature]

3/9/11

Project ID- 2011-199

City of Portland GIS

ESRI Support Center Help Assessors Page Export

Find Property Find Address NotificationCBL NotificationSelection Print

Results

- ☒ 032 n010 (1)
 - ☒ Parcels (1)
 - ☒ 032 N010

Map Contents

☒ Viewer

- ☒ Annotation
- ☒ House Number
- ☒ Major Roads
- ☒ Interstate
- ☒ Unit Lines
- ☐ Utilities
- ☒ Streets
- ☒ Buildings
- ☒ Parcels
- ☒ Traveled Ways
- ☒ Stream
- ☒ Wetland





CBL	OWNER	OWNER MAILING ADDRESS	PROPERTY LOCATION	UNITS
	10 DANA STREET LLC	340 FORE ST PORTLAND , ME 04101	10 DANA ST	1
	10 EXCHANGE PROPERTIES LLC	PO BOX 4894 PORTLAND , ME 04112	10 EXCHANGE ST	1
	217 COMMERCIAL STREET ASSOCIATES INC	225 COMMERCIAL ST STE 404 PORTLAND, ME 04101	217 COMMERCIAL ST	1
	225 COMMERCIAL ST ASSOC INC	225 COMMERCIAL ST PORTLAND, ME 04101	225 COMMERCIAL ST	1
	237 COMMERCIAL STREET LLC	225 COMMERCIAL ST PORTLAND, ME 04101	1 UNION ST	1
	36 MARKET ST	42 MARKET ST PORTLAND, ME 04101	36 MARKET ST	1
	386 FORE STREET LLC	PO BOX 7225 PORTLAND , ME 04112	386 FORE ST	1
	395 FORE STREET LLC	PO BOX 7225 PORTLAND , ME 04112	395 FORE ST	1
	420 FORE LLC	PO BOX 4894 PORTLAND , ME 04112	416 FORE ST	5
	428 FORE STREET LLC	42 CHAMBERLAIN AVE PORTLAND , ME 04101	428 FORE ST	1
	44 EXCHANGE STREET LLC	1 CITY CENTER PORTLAND , ME 04101	44 EXCHANGE ST	1
	45 EXCHANGE STREET LLC	1 CITY CENTER PORTLAND , ME 04101	45 EXCHANGE ST	1
	46 MARKET ST LLC	845 LAFAYETTE RD SEABROOK , NH 03874	46 MARKET ST	1
	7-9 MOULTON LLC	336 DANFORTH ST PORTLAND, ME 04102	7 MOULTON ST	1
	ADRIENNE-JANE INCORPORATED	10 MOULTON ST 4TH FLOOR PORTLAND , ME 04101	4 MOULTON ST	2
	B & C LIMITED	37 A ST SOUTH PORTLAND , ME 04106	31 EXCHANGE ST	1
	BEER GUYS LLC	396 FORE ST PORTLAND , ME 04101	396 FORE ST UNIT 2	1
	BEER GUYS LLC	396 FORE ST PORTLAND , ME 04101	396 FORE ST UNIT 3	1
	BEER GUYS LLC	396 FORE ST PORTLAND , ME 04101	396 FORE ST UNIT 1	1
	BOYD PROPERTIES INC	100 SILVER ST PORTLAND , ME 04101	182 MIDDLE ST REAR	0
	BUCKSTAR LLC	100 SILVER ST PORTLAND , ME 04101	182 MIDDLE ST	0
	BUCKSTAR LLC	100 SILVER ST PORTLAND , ME 04101	188 MIDDLE ST	1
	CASCO VIEW HOLDINGS LLC	PO BOX 11409 PORTLAND, ME 04104	245 COMMERCIAL ST	1
	CENTRAL MAINE POWER CO LAND MANAGEMENT DEPT	70 FARM VIEW DR NEW GLOUCESTER , ME 04260	40 UNION ST	1
	CM WATERFRONT PROPERTIES	PO BOX 7467 PORTLAND, ME 04112	250 COMMERCIAL ST	1
	COMPARK LLC	336 DANFORTH ST PORTLAND, ME 04102	185 COMMERCIAL ST	0

CBL	OWNER	OWNER MAILING ADDRESS	PROPERTY LOCATION	UNITS
	COW PLAZA 1 LLC	100 COMMERCIAL ST PORTLAND , ME 04101	CANAL PLAZA	0
	COW PLAZA 1 LLC	100 COMMERCIAL ST PORTLAND , ME 04101	1 CANAL PLAZA	1
	COW PLAZA 1 LLC	100 COMMERCIAL ST PORTLAND , ME 04101	44 EXCHANGE ST	0
	COW PLAZA 1 LLC	100 COMMERCIAL ST PORTLAND , ME 04101	401 FORE ST	0
	COW PLAZA 2 LLC	100 COMMERCIAL ST PORTLAND , ME 04101	2 CANAL PLAZA	1
	COW PLAZA 3 LLC	100 COMMERCIAL ST PORTLAND , ME 04101	3 CANAL PLAZA	1
	COW PLAZA GARAGE LLC	100 COMMERCIAL ST PORTLAND , ME 04101	425 FORE ST	410
	DICTAR ASSOCIATES II	PO BOX 3572 PORTLAND, ME 04104	468 FORE ST	2
	DICTAR ASSOCIATES II	PO BOX 3572 PORTLAND, ME 04104	470 FORE ST	2
	DIMILLO ARLENE ETALS	LONG WHARF PORTLAND , ME 04101	144 COMMERCIAL ST	2
	E L C INC	42 MARKET ST PORTLAND, ME 04101	30 MARKET ST	1
	ELEVEN EXCHANGE LLC	PO BOX 4894 PORTLAND , ME 04112	1 EXCHANGE ST	1
	ELEVEN EXCHANGE LLC	PO BOX 4894 PORTLAND , ME 04112	9 EXCHANGE ST	1
	ELEVEN EXCHANGE LLC	PO BOX 4894 PORTLAND , ME 04112	363 FORE ST	1
	ELEVEN EXCHANGE LLC	PO BOX 4894 PORTLAND , ME 04112	375 FORE ST	1
	ELEVEN EXCHANGE LLC	PO BOX 4894 PORTLAND , ME 04112	375 FORE ST	1
	ELEVEN EXCHANGE LLC	PO BOX 4894 PORTLAND , ME 04112	379 FORE ST	1
	FITZGIBBONS VIRGINIA S & LEE F STREET TRUSTEES	318 KANSAS RD BRIDGTON , ME 04009	50 EXCHANGE ST	1
	FLEMING CREEK LLC ETALS	150 METRO PARK ROCHESTER , NY 14623	145 COMMERCIAL ST	1
	FORE STREET PARTNERSHIP LIMITED PARTNERSHIP	410 FORE ST PORTLAND, ME 04101	398 FORE ST	1
	FORE STREET PROPERTIES LIMITED PARTNERSHIP	410 FORE ST PORTLAND, ME 04101	398 FORE ST	1
	GEF LLC	PO BOX 2808 SOUTH PORTLAND, ME 04116	184 COMMERCIAL ST	1
	GRANITE FACE LLC	PO BOX 7626 PORTLAND , ME 04112	211 COMMERCIAL ST	1
	GVF PROPERTIES LLC	287 MAIN ST STE 403 LEWISTON , ME 04240	34 WHARF ST	1
	HARBOR PLAZA ASSOCIATES II	PO BOX 3572 PORTLAND , ME 04104	468 FORE ST	98
	HARDING RICHARD B ETAL	207 COMMERCIAL ST PORTLAND, ME 04101	422 FORE ST	1

CBL	OWNER	OWNER MAILING ADDRESS	PROPERTY LOCATION	UNITS
	INGALLS ROGER E	22 CARROLL ST PORTLAND, ME 04102	398 FORE ST	1
	INGALLS ROGER E	22 CARROLL ST PORTLAND, ME 04101	398 FORE ST	1
	LANDFALL LLC	207 COMMERCIAL ST PORTLAND, ME 04101	205 COMMERCIAL ST	1
	MAINELAND REAL ESTATE CONSULTANTS LLC	30 EXCHANGE ST PORTLAND, ME 04101	30 EXCHANGE ST	1
	MCGEE CHARLES T & RICHARD P HERRERA TR	11 MOULTON ST PORTLAND, ME 04101	366 FORE ST	1
	MOULTON STREET REALTY LLC	5 MOULTON ST PORTLAND, ME 04101	5 MOULTON ST	1
	OCEAN BLOCK ASSOCIATES	42 MARKET ST PORTLAND, ME 04101	42 MARKET ST	1
	OCEAN BLOCK ASSOCIATES	42 MARKET ST PORTLAND, ME 04101	30 MILK ST	1
	OLD PORT ARMS	PO BOX 368 SCARBOROUGH, ME 04074	52 EXCHANGE ST	1
	OLD PORT RETAIL HOLDINGS LLC	101 RICHARDSON ST BROOKLYN, NY 11211	432 FORE ST	1
	OLD PORT RETAIL HOLDINGS LLC	101 RICHARDSON ST BROOKLYN, NY 11211	434 FORE ST	1
	OLD PORT RETAIL HOLDINGS LLC	101 RICHARDSON ST BROOKLYN, NY 11211	436 FORE ST	2
	OLD PORT RETAIL HOLDINGS LLC	101 RICHARDSON ST BROOKLYN, NY 11211	446 FORE ST	1
	OLD PORT RETAIL HOLDINGS LLC	101 RICHARDSON ST BROOKLYN, NY 11211	42 WHARF ST	1
	OLD PORT RETAIL HOLDINGS LLC	101 RICHARDSON ST BROOKLYN, NY 11211	50 WHARF ST	1
	ONE DANA LLC	PO BOX 4894 PORTLAND, ME 04112	1 DANA ST	1
	PALACCI ALBERT	4761 BROADWAY NEW YORK, NY 10034	39 EXCHANGE ST	1
	PALACCI ALBERT	4761 BROADWAY NEW YORK, NY 10034	49 EXCHANGE ST	1
	PALACCI SION & JOSEPH PALACCI	4761 BROADWAY NEW YORK, NY 10034	34 EXCHANGE ST	1
	PFEFFER RICHARD A & J EDWARD STEBBINS	396 FORE ST PORTLAND, ME 04101	392 FORE ST	1
	PFEFFER RICHARD A & JAMES E STEBBINS JR	46 SANDY TER PORTLAND, ME 04102	396 FORE ST UNIT B	1
	PORTLAND REGENCY INC	20 MILK ST PORTLAND, ME 04101	43 MARKET ST	0
	PORTLAND REGENCY INC	20 MILK ST PORTLAND, ME 04101	11 MILK ST	0
	PORTLAND REGENCY INC	20 MILK ST PORTLAND, ME 04101	20 MILK ST	95
	PROPRIETORS OF UNION WHARF	36 UNION WHARF PORTLAND, ME 04101	218 COMMERCIAL ST	0
	PROPRIETORS OF UNION WHARF	36 UNION WHARF PORTLAND, ME 04101	218 COMMERCIAL ST	1

CBL	OWNER	OWNER MAILING ADDRESS	PROPERTY LOCATION	UNITS
	PROPRIETORS OF UNION WHARF 36 UNION WHARF	PO BOX 7467 PORTLAND, ME 04112	230 COMMERCIAL ST	0
	PROPRIETORS OF UNION WHARF	36 UNION WHARF PORTLAND, ME 04101	1 UNION WHARF	2
	PROPRIETORS OF UNION WHARF	36 UNION WHARF PORTLAND, ME 04101	30 UNION WHARF	6
	PROPRIETORS OF UNION WHARF	36 UNION WHARF PORTLAND, ME 04101	35 UNION WHARF	1
	PS ONE REALTY LLC	ONE CITY ENTER 4TH FLOOR PORTLAND, ME 04101	1 PORTLAND SQ	1
	RICH JOHN H JR & DORIS LEE JTS HANNAFORD COVE	TWO LIGHTS RD CAPE ELIZABETH, ME 04107	414 FORE ST	1
	ROBDOG REALTY LLC	336 DANFORTH ST PORTLAND, ME 04102	161 COMMERCIAL ST	1
	RREEF AMERICA REIT III CORP Z4	PO BOX 4900 DEPT 207 SCOTTSDALE, AZ 85261	1 PORTLAND SQ	1
	RREEF AMERICA REIT III CORP Z4	PO BOX 4900 DEPT 207 SCOTTSDALE, AZ 85261	2 PORTLAND SQ	1
	SLM PROPERTIES INC	241 COMMERCIAL ST PORTLAND, ME 04101	241 COMMERCIAL ST	13
	SOLETSKY LIMITED LIABILITY CO	100 COMMERCIAL ST PORTLAND, ME 04101	424 FORE ST	1
	TRANSMINE C/O STEPHEN K MCDUFFIE	230 ANDERSON ST PORTLAND, ME 04101	7 DANA ST	1
	U S S 200	ONE UNION ST SUITE 200 PORTLAND, ME 04101	1 UNION ST	1