

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE LIQUOR CONTROL ACT

- and -

**IN THE MATTER OF** an application by **3297426 NOVA SCOTIA LTD. o/a MARITIME BILLIARDS COUNTRY LOUNGE**, for an Eating Establishment Liquor License and a Lounge Liquor License for premises known as Maritime Billiards Country Lounge, located at 211 Main Street, Dartmouth, Nova Scotia

**BEFORE:** David J. Almon, LL.B., Panel Chair  
Richard J. Melanson, LL.B., Member

**COUNSEL:** **3297426 NOVA SCOTIA LTD.**  
o/a **MARITIME BILLIARDS COUNTRY LOUNGE**  
Timothy J.C. Hall, LL.B.

**SERVICE NOVA SCOTIA**  
**ALCOHOL GAMING FUEL and TOBACCO**  
Duane A. Eddy, LL.B.

**HEARING DATE:** January 10, 2017

**DECISION DATE:** February 6, 2017

**DECISION:** Application is granted for an Eating Establishment Liquor License and a Lounge Liquor License.

## I INTRODUCTION

[1] On September 27, 2016, Peter Gurnham, Q.C., Chair of the Nova Scotia Utility and Review Board ("Board"), received the following letter from John MacDonald, Executive Director, Alcohol, Gaming, Fuel and Tobacco Division of Service Nova Scotia ("AGFT"):

3297246 Nova Scotia Limited (the "Applicant") has applied for an eating establishment and lounge liquor license. Public consultation was conducted by the Executive Director pursuant to section 85A of the Liquor Licensing Regulations (the Regulations).

This matter is being referred by the Executive Director to the Utility and Review Board (the Review Board) pursuant to Section 47(3) of the *Liquor Control Act* (the Act).

The reason for this referral is pursuant to Liquor Licensing Regulation 85E; to address concerns raised through the public consultation process. During the consultation period we did not receive any letters of objection; however received 12 letters of objection from the time consultation closed until today. These letters will be forwarded with disclosure to the Board, all respondents have been issued a notification of receipt. There was also a "town hall" style meeting organized by the applicant and Counselor Tony Mancini which was held on Friday, September 9, 2016. A representative from AGFT attended. There were approximately 80 residents in attendance and a significant amount of public concern was expressed.

### Notice of referral to Review Board

- 82 (1) If the Executive Director refers a licensing matter to the Review Board under subsection 47(3) of the Act or refers a disciplinary action to the Review Board under clause 47B(1)(b) of the Act, a notice of referral must be
- (a) Filed with the Review Board; and
  - (b) served on the permanent licensee or applicant for a permanent license who is the subject of the referral

(2) A notice of referral may be in any form, but it must be in writing and include all of the following:

- (a) Whether the referral is made under subsection 47(3) or clause 47B(1)(b) of the Act;
- (b) The matter to be determined by the Review Board;
- (c) A statement that the permanent licensee or applicant for a permanent license has a right to participate in the referral process.

### Determination after Public Consultation

85E (1) After holding a public consultation for the purpose of determining whether to grant a license, in accordance with subsection 49 (8) of 49 (12) of the Act, the Executive Director must do one of the following (inter alia):

- (a) grant the application for a permanent license, and impose any conditions on the license that the Review Board determines, in accordance with the Act and these regulations;
- (b) refuse to grant the application for a permanent license;
- (c) refer the matter to the Review Board in accordance with subsection 47(3) of the Act.

(please note: reference to "Executive Director" in reg. 85(E) is required to be read as referring to the "Review Board" as per section 47 (3) of the Act and Section 2A of the Regulations).

Enclosed please find all documentation received by the Executive Director which was submitted by the applicant during the initial application process. Please be advised that the applicant has been provided with a copy of this letter and all of the documentation attached hereto. The applicant has also been advised that the company is entitled to be made a party, as of right, to the hearing of the company's application before the Review Board pursuant to section 82(2)(c) of the Liquor Licensing Regulations.

In addition, the Alcohol and Gaming Division requests that it be granted standing as "the regulator", pursuant to Liquor Procedural Rule 4.

Regards,



John MacDonald

C 3297246 Nova Scotia Limited

[Exhibit M-1]

[2] This decision is further to a public hearing held on January 10, 2017, in the Board hearing room in Halifax, Nova Scotia, in the matter of an Application by 3297426 Nova Scotia Limited o/a Maritime Billiards Country Lounge (“Maritime Billiards”/“Applicant”) for an Eating Establishment Liquor License and a Lounge Liquor License for its establishment located at 211 Main Street, Dartmouth, Nova Scotia.

[3] The Board issued a Notice of Public Hearing and a Hearing Order on November 15, 2016. The Notice was published in the *Halifax Chronicle Herald* on November 19, 2016, as well as being posted on the premises of the establishment and on the Board’s website.

[4] The disclosure package received from AGFT included a list of supporters, together with their comments (all of which were received during consultation) as well as a list of objectors, along with their comments (all of which were received by the AGFT after consultation was closed), and are all part of Exhibit M-2.

[5] Timothy J. C. Hall, LL.B., represented the Licensee and Duane A. Eddy, LL.B., represented AGFT.

## **II EVIDENCE**

[6] Brian James White resides in Kennetcook, Nova Scotia. In addition to being the proprietor of Maritime Billiards, he is the owner/operator of a sawmill, Russell White Lumber, a family business operating since 1970. As well, he carries out part-time work installing and selling pool tables and gaming supplies.

[7] He testified that he purchased 211 Main Street on June 1, 2016. He has received his occupancy and fire prevention permits, and is seeking a third permit with this Application for the liquor licenses.

[8] Mr. White testified that he has been playing pool and/or snooker for well over 40 years. He participates approximately three times per week. He referred to it as his "passion" and the main reason for opening the establishment. He has won the Provincial 8-Ball Tournament and is a past winner of the Atlantic 9-Ball Championship. He is, currently, a member of the Metro Pool League which has over 600 members and, in the summer, he plays in Mixed Metro (men and women), which has over 100 members.

[9] Mr. White spoke of his experience in the industry, having owned two establishments, Shannon 8-Ball and the Burnside Snooker Club, both of which have ceased operations.

[10] In the years that he operated the two enterprises which were licensed, he testified that he never received any noise complaints from neighbours or other businesses. There were no instances of drunken or disorderly behavior.

[11] When asked what kind of establishment he plans to run, he testified that he expects it to be "very family friendly" with no live music or live entertainment and no dancing. As well as hiring additional staff, he anticipates that his wife and daughter will help as they did at his other establishments. He plans to have five video lottery terminals ("VLTs") to assist in making the premises financially viable. He intends to use amplified background music either from a radio or a sound system. He also noted that the establishment has air conditioning and the windows will be kept closed at all times.

[12] Addressing the use of ambient music, Mr. White testified that pool players “frown on loud music” as it interferes with their concentration. His customers prefer an environment where there is minimal noise. He said that the hours of operation, Monday to Thursday, would probably run from 10 o’clock in the morning until midnight. On Fridays, he thought they might close at 1:00 a.m., and on Saturdays, it would probably be the same. On Sundays, he expected the premises to be open at 12 noon until midnight, but he might be willing to close a little bit earlier on Sunday.

[13] Mr. White estimated that at one time there would, probably, be anywhere from 12 to 15 patrons using the premises, and at the very most, 40 patrons. He anticipates having five or six major tournaments, which usually take place on a Saturday night and would accommodate upwards of 40 patrons.

[14] He estimated that he has 16 to 17 parking spaces on his premises and if necessary, he would increase this to 25 parking spaces. He also has access to a friend who has a taxi and limousine service, if required, for his patrons.

[15] Mr. White read into the record a letter from a Douglas Brown, LL.B., Membertou First Nation, Cape Breton, who wrote:

Mr. White himself is also an avid, long time high level player who knows the optimal atmosphere for billiards and snooker excellence. Loud music and other types of distractions are detrimental to high performance on the table. Mr. White has always demonstrated this insight in his previous two establishments (Shannon Billiards and Shotz). His establishments have been well attended by both “serious” players as well as league players and occasional “social” players. He has run his establishments in a very “business-like” and professional manner ensuring that patrons are not unduly distracted or interfered with.

[Exhibit M-6]

[16] Mr. Hall called six individuals who supported Mr. White’s Application.

[17] Pastor Terry Smith has been a minister for 35 years. He resides near Caledonia Road and testified he frequented the pool hall in Burnside approximately four times per week. He has played snooker for 20 years and described the premises and game as “a comfortable place to relax” pointing out the need for quiet during play. He never witnessed any disorderly conduct in the other premises owned by Mr. White and is very supportive of the Application.

[18] Ken Shea is a Nova Scotia Sports Hall of Fame inductee. He has played snooker for approximately 64 years. He listed his many stellar accomplishments and victories, playing in tournaments around the world. He endorses the Application and plans to frequent the premises should Mr. White be successful in obtaining his licenses.

[19] Thariq Ali owns Prestige Limousine Services and has known the Applicant for ten years. He has also frequented his previous premises and noted that he has taxis and limousines available for Mr. White’s patrons should they be required.

[20] Bob Massia resides in Colby Village and is a retired Chief Petty Officer, DND. He plays both pool and snooker every day and enthusiastically endorses the Application.

[21] Kelly Brimicombe is a local community pool player and has known the Applicant for 20 years. She has played at both of Mr. White’s clubs and never witnessed any disorderly conduct, and supports his Application.

[22] Bruce Lilly is a current member of the Department of National Defence and Past President of Cue Sport Nova Scotia. He described himself as being in the “submarine business” and has known the Applicant for 18 years. He prefers snooker and

plays two or three times per week. He has never witnessed any disorderly conduct and, like the other witnesses for the Applicant, stressed that a quiet atmosphere is very important for snooker. He unreservedly supports the Application.

[23] Jonpaul Landry is the Director of Licensing and Registration at AGFT, a position which he has held for the past four years. Prior to that he was the Director and Regional Manager of Investigation and Enforcement and a Liquor Inspector. His primary duties are to ensure compliance with the application process for liquor and gaming applications. He reviewed Mr. White's license Application and testified that he was aware of his previous premises, and had been involved with the issuance of liquor licenses for the Shannon 8-Ball and Burnside Snooker Club.

[24] He testified that zoning is the critical part of any application and it must be ascertained that the establishment is permitted through the enacting by-laws and zoning, to conduct business at the particular address which, he said, was confirmed during the time of the Application. The property is zoned C-2, General Business. He emphasized that Maritime Billiards is in an area that is zoned for a dining room and lounge, and that there are several dining rooms and lounges near the Applicant's premises.

[25] Mr. Landry testified that, initially, after the Application was made, public consultation did not garner any immediate objections. However, upon closing of the public consultation process, residents of the neighbourhood and a councillor brought it to the attention of AGFT that there were concerns with the premises. As they moved forward and after the subsequent town hall meeting, it was Mr. Landry's recommendation to the Executive Director, that the matter be forwarded to the Board for its consideration.

[26] With respect to quiet enjoyment issues, Mr. Landry testified:

Jonpaul Landry: It would be in keeping with conditions and approaches that we've seen in the past. The matter at this time, the September 23rd, and if you go back to the 14th, we had waited for that to come in and this would be consistent with what he offered of conditions the Board would normally implement to address the noise concerns, i.e., in the past we had licensed premises where the Board condition that they couldn't open the windows after a certain time, doors had to remain closed after a certain time, amplified music must stay at a background conversation level, so they very much addressed many of those previous conditions applied on other licenses.

Duane Eddy: And you mentioned amplified music. That was checked as a box, correct, in Mr. White's Application?

Mr. Landry: Ya, if I can just take a moment to explain that. Many of the concerns raised from the residents was why there were some patron accommodation above 200, why was there dance music. What it is, is at the time of application because we don't know what the occupancy permit is going to be or the type of entertainment, it's a preliminary consultation. We put out everything that they could be eligible for to elicit these types of responses so people know its capable of having 200 people although Fire put it at 100 now. At the time, to the best of our knowledge, it was capable of that. Amplified music is another one. It's amplified music but often in these situations not even through condition, just through business plan, the amplified music is held at a conversational level only as background music. The condition will often read that so it's easier for our officers to enforce the regulations or conditions of license to ensure that that music isn't causing a disturbance.

Mr. Eddy: And if the Board granted the licenses to this licensee, what continuing regulatory role would the AGFT have in ensuring quiet enjoyment with respect to this licensed premises?

Mr. Landry: Similar to, and I'll speak to the other premises that Mr. White had, that's why I am fairly confident he has met with our staff. It may not be the moment in time that you totally recall and resonate but typically, you'll meet with a member of our staff, a liquor inspector, and they'll go over the regulations and conditions of license and that will also be with the staff. And at that time the manager, through a background check, will also be submitted to our office to ensure that they meet the requirements of the police systems background check. That staff instruction happens right at the granting of the license before it opens. That training consists of an hour to two hours and it will be broad. It will be on how to identify over service, control, underage, so that training will take place. The Board and our office also apply a condition that the owner license must take a Good Servers Course so that most likely would be applied here. It's a common condition to ensure moving forward that they also understand the Regulations and their responsibilities and requirements.

Mr. Eddy: And as part of that staff instruction, does the AGFT review the *Liquor Licensing Regulations* with all those who participate?

Mr. Landry: In detail; many conditions as you can appreciate licenses have different conditions of license. It could be because of the Board's previous decisions, could be

because of zoning so there's always a uniqueness to every license so the officer is conducting the staff instruction will go over that in detail.

[Hearing Sound File, Track 8, January 10, 2017]

[27] Regarding the regularity of inspections of premises Mr. Landry noted:

Mr. Landry: ...a dining room and lounge is typically inspected once a week so there's an officer that will be there once a week and when they are inspecting a license they are looking for any disturbances on or about the premise so that will be inspected and that will be accounted for and concerns of quiet enjoyment are continuing. We have three pillars that an inspector, when they are approaching a premise or they are inspecting a premise, would be control, over service and under age. The control being the quiet enjoyment, the disturbance, so that is what they'd be looking at but to say parking, no. We have many premises that don't even have parking facilities *per se* designated. We would be looking for outside noise, loitering, things of that nature.

[Hearing Sound File, Track 8, January 10, 2017]

[28] Mr. Landry testified that, in terms of quiet enjoyment, with respect to the other licensed premises in the Applicant's neighbourhood, AGFT has not had any complaints in that particular block. He also added that, regarding the Applicant, there were no records of any disciplinary matters or concerns on record with his office.

[29] He testified that VLTs fall within the jurisdiction of Atlantic Lottery Corporation. AGFT simply regulates the use and location of VLTs within a premises.

[30] Mr. Landry was asked whether there were any complaints with both the previous businesses at 211 Main Street:

Timothy Hall: So there had been prior complaints about when there was a church there and when there was Tae Kwon Do there?

Mr. Landry: From what I understood, yes.

Mr. Hall: Am I guessing that [indecipherable] and things like that at Tae Kwon Do would be heard out the window?

Mr. Landry: Ya, it seemed like, again definitely varied from noise of people leaving or just hanging about. It definitely seemed that the increased traffic and when I say traffic I don't mean vehicle traffic, I mean traffic of pedestrians and patrons of both the church and the Tae Kwon Do, seemed to bring concerns to the neighbours and the residents.

Mr. Hall: About the commercially zoned premises?

Mr. Landry: Right.

Mr. Hall: And Mr. Landry, just in closing, so some of the neighbours that took part in the community meeting opposing Mr. White's Application, after the legislated deadline...

Mr. Landry: I would just say it's a policy, it's not legislated.

Mr. Hall: Okay. They are, some of them, the same people that complained about a church being there?

Mr. Landry: Yes, there were complaints about the church and there was complaints about the Tae Known Do facility, I don't know what the...

Mr. Hall: That is very helpful, Mr. Landry. Thank you very much and those are all my questions.

[Hearing Sound File, Track 8, January 10, 2017]

[31] In imposing conditions on the licenses to ensure quiet enjoyment Mr. Eddy clarified his client's evidence:

Mr. Eddy: Mr. Chair, if I may interject. In terms of characterizing Mr. Landry's evidence I don't believe this witness gave evidence that he was suggesting that conditions be imposed on this licenses so I know your line of questioning; however, I don't believe this witness's evidence was that the AGFT wants conditions to limit amplified music or entertainment or anything of that nature, so I would, perhaps if we could ask this witness: is it the AGFT's position that conditions should be imposed on this license?

Mr. Landry: No, I think to clarify that, is I was asked about the entertainment and the live music at Dave Dolittles and in that situation where you are having live music the yes, a security plan and policy around those procedures, but in light of...

Chair: It's a different situation.

Mr. Landry: It's a different situation. I don't see that being a need or relevant to mitigate the concerns because the background music is just that, background music, which is easily enforceable by our officers and easy to monitor.

Chair: I think you've clarified that.

[Hearing Sound File, Track 8, January 10, 2017]

[32] Three individuals spoke at the evening session. All were opposed to granting liquor licenses to the Applicant.

[33] Lorraine Kent resides with her husband, Fred, on Raymoor Drive. She opposes the granting of a license to the Applicant because of the impact she feels the

opening of a billiards hall and lounge will have on the residents of Raymoor Drive and adjacent streets. She expressed concerns about traffic, parking, noise and loitering citing her main concern as the close proximity of a high school, community centre, Caledonia Junior High School and the Community College along with two daycare facilities, places of worship and a residential care facility. She feels that having a pool hall, lounge and VLTs will negatively impact the youth of the area. She concluded her remarks by noting that the Dartmouth Main Street's Business Improvement District, is aimed to create "a sustainable, socially responsible neighbourhood that puts people first." She wants the Board to be socially responsible and put the people of this area first and not grant a liquor license to the Applicant.

[34] Nancy Edwards, along with her partner, Ian Fergusson, are also residents of Raymoor Drive. She testified that it is a long-established residential, family-oriented neighbourhood and expressed great concern about the ramifications this type of business will have on her street and surrounding neighbourhoods.

[35] Ms. Edwards noted that while the premises may have a Main Street civic address it is accessible only from Raymoor Drive. Ms. Edwards indicated noise emanating from within the establishment itself was not her primary concern. She expressed concerns about the hours of operation, insufficient parking, traffic noise, noise from patrons making their way to and from the premises, and safety concerns. She questioned why the property was even designated a C-2 Zone, given its proximity to a quiet residential neighbourhood. She would welcome residential-oriented and family-friendly businesses. She concluded that the type of business proposed here belongs in

a strip mall and not in a residential neighbourhood. She also expressed concern about the impact of this proposed establishment on property values.

[36] Andrew Younger, MLA, represents the electoral district of Dartmouth East where 211 Main Street is located. He suggested that there is no way to issue a liquor license at this site, without impacting the quiet enjoyment of the area. He also stated that having a licensed establishment on the proposed site would have significant impact on the community with respect to parking on a daily basis, which has been an issue but more importantly, patron and traffic noise which is inevitable with this proposal. He, too, cited the Main Street Business Improvement District, adding this site is not intended for licensed facilities nor is that contemplated in the planning. If the Board grants the liquor license, again at this location, Mr. Younger argued it would undermine the hard work of the community over the past ten years working to minimize opportunity for conflict.

[37] He pointed out that the Main Street area does provide space appropriate for licensed establishments noting that there are bars and other licensed facilities within the business portion providing community licensed establishment. In that area, he suggests, this proposal would be welcomed.

[38] Mr. Younger concluded his remarks by suggesting that the Board should not approve the liquor licenses at this location; however, if the Board does approve the licenses, he feels it should place conditions on the licenses to enforce the commitments the Applicant made at a previous meeting.

### III SUBMISSIONS

[39] Following the hearing, Mr. Hall submitted a post-hearing brief. In it he reviewed the background and facts and provided the law and analysis in support of his client's application. In his conclusion, he argued:

The claims of interference with quiet enjoyment are premature and unsubstantiated. As Mr. White and other witnesses testified, the nature of a billiards lounge does not involve loud music, nor have Mr. White's past lounges attracted undesirable persons, as suggested by some of the opponents. Mr. White confirms he will remove anyone disturbing his quiet environment. Mr. White would not want his wife and daughter, who have frequently helped him with his business in the past, subjected to a negative work environment.

With respect to noise, if for some reason the Lounge's sound proofing is less than desirable for the immediate neighbours, sections 28 and 29 of the Regulations provide opportunity to cure such an interference with quiet enjoyment if necessary.

This application is not for a night club. It is for a billiards lounge. On the Notification of Entertainment filed with the NS Alcohol and Gaming Division, Mr. White identified that the only type of entertainment requested was for amplified background entertainment (i.e., background music). It is important to note that the following types of entertainment were not requested and therefore will not be permitted: 1) Live amplified; 2) Live Non-amplified; 3) Patron Dancing; and 4) Adult Entertainment. Adult entertainment and bars permitting bands are only a few blocks away incidentally including one that backs on residential housing as confirmed in Mr. Landry's evidence. Consistent with the decision in the 2002 NSUARB 57, *Maxx Entertainment Inc.*, (**Tab 5**) involving the relocation of a Dooly's; the nature of a billiards lounge is very different from an entertainment lounge with live music; interference with quiet enjoyment should not be the presumption.

Mr. White has purchased this commercially zoned building for the purpose of opening a billiards lounge. This lounge will create multiple jobs and provide a safe and fun atmosphere for local pool and snooker enthusiasts. Considering the significant amount of resources Mr. White is personally putting into the company, he will certainly do everything in his capacity to ensure the successful operation of this business and be a responsible neighbour to the Main Street Dartmouth Community. Quiet enjoyment of his neighbours is consistent with the need of quiet enjoyment for his patrons.

The approval process has cost Mr. White significantly already. We respectfully submit that this application for an eating establishment and lounge liquor license should be approved without further delay.

[Hall Post-Hearing Submission; pp.10-11]

#### IV ANALYSIS AND FINDINGS

[40] When a matter is referred to the Board, Section 47(3) of the *Act* confers the Executive Director's licensing powers upon the Board as follows:

##### **Liquor licenses**

47 (3) The Executive Director may refer any matter respecting licensing pursuant to subsection (1) to the Review Board for determination and for the purpose of this subsection, all references to the Executive Director in subsection (1) shall be read as references to the Review Board.

[41] The Board's licensing powers are confirmed by Section 82A(6) of the *Regulations*, which states, in part:

##### **Referral of licensing matter**

82A (6) As set out in subsections 47(1) and (3) of the Act, in determining a licensing matter, the Review Board may, subject to the Act, but otherwise in the Review Board's discretion, do any of the following:

- (a) grant, renew and transfer licenses to sell liquor in accordance with the conditions of the licenses and of the Act and these regulations;
- (b) impose conditions on any license or rescind or amend existing conditions on a license in accordance with the Act and these regulations;
- ...
- (e) order, in accordance with the Act and their Regulations, another remedy that the Review Board considers appropriate.

[42] Mr. Hall raised the issue that no letters of objection were received by the Executive Director by the deadline set out in the public consultation process. In such circumstances, Maritime Billiards submits the Executive Director should have granted the licenses and no referral to the Board should have occurred.

[43] *Regulation* 85D (1) indicates a matter may be referred to the Board, pursuant to section 47(3) of the *Act*, after consultation has been completed. As well, the *Act and Regulations* do not specify any limits on the exercise of the Executive Director's

discretion. Therefore, the absence of objections after completion of the public consultation does not preclude the Executive Director from making the referral in this matter.

[44] Once the matter is referred to the Board, in a case such as this, the Board's own procedures govern the future conduct of the application, as permitted pursuant to section 82A(1) of the *Regulations*. At this stage, the Board is tasked with determining the application in accordance with the *Act* and the *Regulations*.

[45] The Applicant tacitly acknowledges this state of affairs as follows:

Notwithstanding the above, and since this matter has been referred to the Review Board, the test that the Applicant must meet is satisfying the Review Board that the operation of the Licensed premises will not interfere with quiet enjoyment of neighbouring properties to 211 Main Street, nor will it interfere with schools, churches, hospital, or nursing homes.

[Hall Post-Hearing Submission, p.5]

[46] The Board agrees with the Applicant that the issue to be addressed by the Board in this proceeding relates to quiet enjoyment principles.

[47] The *Regulations* contain various provisions that aim to protect the quiet enjoyment of surrounding properties:

**Eligibility criteria for permanent license**

8 In addition to the criteria in subsection 48(3) and (5) to (8) of the Act and the requirements for specific classes of permanent licenses set out in Sections 9 to 14, a permanent license may be granted, renewed or transferred by the Executive Director only if all of the following eligibility criteria are met:

- (b) the Executive Director is satisfied that operating the licensed premises will not interfere with the quiet enjoyment of neighbouring properties;
- (c) the Executive Director is satisfied that operating the licensed premises will not interfere with or cause inconvenience to schools, churches, hospitals, nursing homes or similar institutions.

...

**Conditions on permanent license to ensure quiet enjoyment of properties**

28 The Executive Director may impose conditions on a permanent licensee to ensure that operating the licensed premises will not interfere with the quiet enjoyment of neighbouring properties, including conditions on the entertainment to be presented in the licensed premises.

**Interference with quiet enjoyment**

29 (1) A person may request in writing that the Executive Director cancel a permanent license or place conditions on a permanent license on the basis that the operation of the licensed premises is interfering with the quiet enjoyment of neighbouring properties.

(2) On receiving a request under subsection (1), the Executive Director may make inquiries of, or request documentation from, the licensee or any other person for the purpose of determining the matter.

...

(5) If the Executive Director is satisfied that the operation of a licensed premises is interfering with the quiet enjoyment of neighbouring properties, the Executive Director may do any of the following:

(a) impose conditions on the licensee's license or rescind or amend existing conditions on the license;

(b) cancel all or any part of the licensee's license.

(6) The Executive Director may refer a matter under this Section to the Review Board in accordance with subsection 47(3) of the *Act*.

...

**Activities not permitted in licensed premises**

64

...

(2) A licensee must not permit any activity in or about their licensed premises that may interfere with the quiet enjoyment of neighbouring properties.

[48] Quiet enjoyment principles have been a key component of the Board's review of liquor license applications for many years.

[49] Mr. Hall has referred the Board to *Re: 3023423 Nova Scotia Limited*, [2011 NSUARB 86], which provides an overview of some Board decisions relating to quiet enjoyment:

[46] The Board has considered the issue of quiet enjoyment in a number of its previous decisions. In the Liquor License Board's **Ellingbo** Decision dated March 21, 1995 concerning an application for a lounge license in Port Hawkesbury, Nova Scotia, the Board made the following comments:

In the Board's opinion, even the most exemplary management cannot wholly insulate a neighbour from the inevitable consequences of living close to a licensed lounge. There will be late night traffic, there will be consumption of alcohol, there will be noise as patrons leave the establishment. Management practices may mitigate the degree of annoyance this activity results in, but no lounge operator can eliminate it. It is a fact of life in the liquor business... The residents who are now objecting have raised the issue of quiet enjoyment, and the Board's responsibility to protect the public interest in this regard.

[*Ellingbo* Decision, p. 7]

[47] Further, in a Decision of the Liquor License Board dated November 29, 1993 involving the renewal of entertainment privileges for the **Sternwheeler and Portland Landing Lounges** in Dartmouth, Nova Scotia, the Liquor License Board elaborated on the issue of quiet enjoyment:

The concept of "quiet enjoyment" as it relates to licensing criteria, has been part of Liquor License Board regulations for ten years. It served to replace the previous requirement of an applicant to satisfy the Board that there was a "need" for a liquor license. Over the years, "quiet enjoyment" has been the basis of many denials of applications for license. While difficult to define in tangible terms, it has not been restricted to a narrow interpretation. *The right of a person to quiet enjoyment of property, reasonably free from the disturbances and noise emanating from drinking establishments, is considered by the Board to be a paramount consideration. These disturbances are not limited to actual assaults on residents, or break-ins of homes or businesses. Interference with property, in terms of licensing criteria, is considered to be offensive or disturbing activity connected with a bar that significantly limits the use and enjoyment of a person's property.* [Emphasis added]

[*Sternwheeler* Decision, p. 37]

[48] The Board has also taken into account how the nature of activities to be carried out in a proposed licensed premises may affect nearby properties. In **Maxx Entertainment**, the Board considered an application for the relocation of a Dooly's franchise to an area along the fringe of the commercial downtown district in Bridgewater, Nova Scotia, near residential properties. At paragraphs 19 to 24, the Board concluded:

[19] While some of the concerns of neighbouring properties were addressed in the development agreement (i.e., the placing of a fence along the Ley property and restricting live entertainment to four times per year), the task before the Board in the present appeal is restricted to its jurisdiction under the **Liquor Control Act** and the **Regulations** thereunder. Thus, *despite Board approval of Town Council's decision to approve the development agreement in a prior planning appeal, the Board must now consider the present application in light of liquor licensing*

*legislation and regulations, which relate primarily, in this application, to the issue of quiet enjoyment.*

[20] The Board has experience dealing with applications where licensed premises are proposed to be located in commercial areas which border on residential properties. Conditions can be placed on licenses which attempt to mitigate potential problems, such as restricting the hours of operation, sound-proofing requirements, prohibition on conversion privileges, limitations on entertainment, etc. The Board observes that the development agreement in the present matter already limits live entertainment to four times per year. The Board has the discretion to determine whether a further public hearing is necessary to amend or delete any conditions.

[21] Obviously, the objections of neighbouring residents are of great concern to the Board. In many cases, when quiet enjoyment arguments are raised by neighbours, applications are denied. *If this application was for a large late night drinking and entertainment lounge, the objections filed by the objectors would very likely have caused the Board to deny this application.*

[22] However, with the greatest respect to the views of Mr. Ley, and others who filed objections, the Board does not find that the application, as presented, has the potential to interfere with the quiet enjoyment of their neighbouring properties. In the Board's view, the proposed relocation will not add to the existing noise or activity. In fact, the Board considers that the relocation may in fact help reduce some of the current problems around the proposed location, which is now vacant after normal working hours.

[23] The Board is comforted in this finding by the nature of the business conducted by Dooly's, as described in the testimony of Mr. Benjamin, Mr. MacPherson, and the three patrons who spoke in support of the application. The Board accepts their evidence respecting the quiet environment promoted within the premises during business hours. Clearly, this is an environment which is intended to attract a more mature clientele seeking a quiet and relaxed atmosphere in which to socialize. The Board infers that the current loitering and noise problems faced by the neighbourhood are not compatible with the nature of the Licensee's business, as their impact would likely cause some mature patrons to avoid the premises. Thus, in the Board's view, it is likely the Licensee will take steps to reduce or eliminate such problems.

[24] The Board is also satisfied that the relocation of the licensed premises to the new location will not add significantly to the late evening or early morning traffic in the neighbourhood. The Board accepts the evidence of Mr. MacPherson, and others, who testified that patrons typically trickle out of the premises throughout the evening, leaving only a few patrons at closing time. Thus, the relocation of the premises should have little effect on the noise problems currently experienced by neighbouring residential properties in the late evening and early morning hours. [Emphasis added]

[2002 NSUARB 57]

[50] The Board has carefully considered the evidence, the submissions made at the hearing and Mr. Hall's brief.

[51] Maritime Billiards has the burden of showing, on a balance of probabilities, that the granting of the requested liquor licenses as provided for in s.8(b) and (c) of the *Regulations*, will not interfere with the quiet enjoyment of neighbouring properties, or cause inconvenience to schools, churches, hospitals, nursing homes or similar institutions.

[52] The main issues raised by the neighbourhood residents, in letters to the Executive Director, the Board, and, in the presentations before the Board at the evening session, can be summarized as follows:

- a) the potential impact on places of worship, schools, nursing homes, or similar institutions such as daycare facilities and a Boys and Girls Club;
- b) potential noise emanating from loud music, loud voices, car doors and drunken behavior;
- c) traffic and parking issues related to the number of parking spaces available at the premises and the maximum occupancy load;
- d) potential introduction of drugs, criminal activity and the criminal element to the neighbourhood, including the potential for increased vandalism and garbage;
- e) the potential impact on the feeling of security for seniors and young families;
- f) the potential impact on young people;
- g) the potential impact on property values;
- h) the potential impact on future zoning plans and the Main Street Business Improvement Plan; and
- i) the negative impact of VLTs if introduced into the proposed licensed premise.

[53] While the Board does not wish to minimize the fears expressed by the residents, its decision must be based on evidence. In the Board's view, given the nature of the proposed licensed premises, and the clientele it is targeting, the evidence presented at the hearing shows that granting the licenses should not have any material impact on the quiet enjoyment of the neighbouring properties, provided limited conditions are imposed on Maritime Billiards.

[54] The Board notes no objections were received from churches, schools, hospitals, nursing homes, or similar institutions, such as daycare facilities, or the Boys and Girls Club. There is no evidence of a hospital being located in the area. There is no evidence to show the operation of the proposed billiards and snooker lounge will have any impact on such institutions.

[55] With respect to quiet enjoyment generally, the issue of noise was addressed directly by Maritime Billiards. The plan is to have background music from a sound system which could play CD's or radio music. The Application indicates there is some sound proofing. Mr. White testified windows would be kept closed, as players prefer this and the premises is air conditioned. Mr. White is also willing to close earlier than the maximum hours allowed for these types of licenses.

[56] As well, the testimony from witnesses, many with impressive backgrounds in the snooker/pool playing world, and who had considerable experience in attending the two clubs previously operated by Mr. White, was consistent and persuasive. None of these witnesses experienced loud or unruly behavior by patrons in and about his prior establishments.

[57] While one cannot conclusively establish the behavior in past locations will be duplicated in a new establishment, it is the nature of the proposed business which leads the Board to conclude, on a balance of probabilities, that the evidence of the witnesses who supported Maritime Billiards' Application provides a reasonable indication of future conduct.

[58] The Applicant's submissions are persuasive on this point:

The Applicant appreciates the community concerns, however, the introduction of a billiards lounge is not the same as a night club or even a pub with live entertainment. Rather, a billiards club, and its customers, prefer a relaxing environment with only minimal noise.

...

This concept of quiet pool and snooker play was echoed by basically all witnesses for the Applicant.

[Hall Post-Hearing Submissions, p.8]

[59] Mr. White has also made arrangements with a local taxi service to obtain transportation from the premises, on short notice, if required.

[60] In the end, given the evidence concerning the likely noise levels, considered in light of the evidence relating to how much traffic noise already emanates from Main Street, Dartmouth, and the proposed hours of operation, the Board finds it is unlikely the noise generated by the licensed establishment will interfere with the neighbours' quiet enjoyment.

[61] Traffic and parking were raised as concerns. The Board notes this issue was originally raised prior to the issuance of an occupancy permit, when the maximum potential occupancy load was estimated at 217 patrons, based on the formula set out in the *Regulations*.

[62] Maritime Billiards has now obtained an occupancy permit, which established the maximum occupancy load at 100 patrons. Mr. White's testimony

indicated it was unlikely there would ever be more than 40 patrons at one time. This number would probably only be achieved during the course of tournaments, which are likely to occur on five or six Saturdays each year. The norm is expected to be 12 to 15 players at one time. While the Board would anticipate Mr. White will attempt to grow his business, these estimates appear to be in the ball park, in light of the number of pool and snooker tables available for play.

[63] Except as it may indirectly relate to the issue of quiet enjoyment, parking, in itself, is a land-use issue, and is not a matter relevant for consideration by the Board. Given the anticipated number of patrons, the potential for carpooling, the availability of public transportation, and the possibility of some limited expansion of the premises' parking lot, the evidence indicates that traffic and parking for the proposed lounge should not interfere with quiet enjoyment.

[64] Concerns related to the introduction of the criminal element, if the Application is approved, appear at odds with the evidence presented at the hearing. The witnesses called in support of Maritime Billiards' application testified as to the nature of the clientele at Mr. White's previous establishments. The pool and snooker playing community which was associated with Mr. White's prior businesses did not give rise to concerns about drug use, vandalism, garbage issues, unruly behavior or other issues associated with the criminal element.

[65] The Board found Pastor Terry Smith's testimony compelling. He made it clear he would not have associated himself with establishments which tolerated unruly behavior. As he put it, he "would not be able to conscientiously frequent a place where...

loud music, and quite frankly, sinful type activities...I wouldn't want to be associated with that."

[66] Based on the evidence presented, the Board finds the nature of the anticipated clientele does not give rise to criminal element concerns, nor safety and security issues associated with this proposed establishment.

[67] The Board agrees with Mr. Hall's submission concerning the potential impact of this establishment on young people. The admission of young people to a licensed establishment is strictly controlled by the *Act* and *Regulations*. Minors will simply not be allowed to play pool or drink at Mr. White's billiards/snooker hall.

[68] The same type of rationale applies to VLTs. While it remains uncertain whether the establishment will be eligible for VLTs, the fact remains that the location of VLTs, and access thereto, is strictly controlled. The presence of VLTs, which are lawful and regulated, in and of itself, is not a basis for invoking quiet enjoyment principles to deny a license application. There is no evidence the presence of VLTs will impact on quiet enjoyment.

[69] The potential impact on property values is not pertinent in this case. Given the Board's findings, any speculative, unquantified, impact on property values, not directly related to interference with quiet enjoyment, is not relevant.

[70] Finally, any future plans for potential rezoning of this property, or business improvement plans, do not give rise to quiet enjoyment considerations. The property is currently zoned C-2, by Halifax Regional Municipality, which permits the type of establishment proposed by the Applicant.

[71] Zoning comes into play in a peripheral sense in that, as discussed in *Maxx Entertainment*, the Board has considerable experience dealing with applications where licensed premises are proposed to be located in commercial areas which border on residential properties.

[72] Conditions can be placed on liquor licenses which attempt to address potential problems. The issue remains whether it is appropriate to impose conditions on the granting of this license.

[73] Mr. Landry testified at the hearing as to the types of conditions that have been imposed in some cases in the past, where licensed establishments are located adjacent to residential properties. However, it was clear that the AGFT is not seeking to impose conditions in this matter.

[74] Mr. Hall addressed the issue of conditions as follows:

...Furthermore, there should hopefully not be the need for any conditions other than those offered voluntarily by the Applicant, which he offered out of respect for the neighbours fears, whether valid or not.

[Hall Post-hearing Submissions, p. 10]

[75] In addition to standard conditions set out in most Board orders, the Board finds a limited number of conditions would help address quiet enjoyment concerns. The only conditions which the Board deems necessary in this case are those which were voluntarily offered by the Applicant, which related to hours of operation, amplified music and keeping windows closed, to limit any potential noise issues.

[76] Accordingly, the Board grants the Application for an Eating Establishment Liquor License and Lounge Liquor License on the following conditions:

- a) The management and control respecting the operation of the licensed aspects of the premises shall be limited to Brian White, on behalf of the Licensee,

- b) Pursuant to sections 22 and 67 of the *Liquor Licensing Regulations* (the "*Regulations*"), the maximum number of persons permitted in the licensed establishment is 100, as specified in the Occupancy Permit dated August 11, 2016.
- c) The premises must pass a final inspection conducted by a member of the Investigation and Enforcement Division, AGFT.
- d) Unless the Board otherwise directs, the grant of a license terminates if the grant of license is not acted upon within six months from the date of the grant.
- e) The hours of operation shall be as follows:
  - Monday to Thursday – 10:00 a.m. to midnight
  - Friday and Saturday – 10:00 a.m. to 1:00 a.m.
  - Sunday – noon until midnight;
- f) Only amplified background music at a conversational level shall be permitted;
- g) Windows in the licensed premises are to be kept closed at all times;
- h) The Licensee and staff must meet with a member of the Investigation and Enforcement Division, AGFT, to review the *Regulations* and policies pertaining to the operation of a licensed eating establishment and lounge;
- i) The Board requires the Licensee and staff to take the Responsible Beverage Service Program "It's Good Business" conducted by the Tourism Industry Association of Nova Scotia within one month of the granting of the licenses; and
- j) The Licenses cannot be transferred without the consent of the Executive Director, pursuant to s. 21 of the *Regulations*.

[77] Should local residents encounter any difficulties with noise or unruly behaviour associated with the licensed premises, the incidents should be reported to the AGFT as soon as possible. It is assumed that the AGFT will also be monitoring the premises for any breaches affecting the quiet enjoyment of neighbouring properties.

**V SUMMARY OF BOARD FINDINGS**

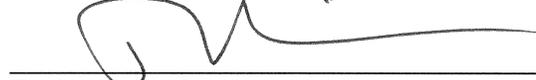
[78] The Board finds that, based on the nature of the proposed establishment, being a billiards/snooker lounge, and not a pub or nightclub-type facility, and the evidence relating to the likely mode of operation and clientele, the Application for the Eating Establishment and Lounge Liquor Licenses can be granted, with limited conditions, without interfering with the quiet enjoyment of neighbouring properties.

[79] An Order will issue accordingly.

[80] **DATED** at Halifax, Nova Scotia, this 6<sup>th</sup> day of February, 2017.



David J. Almon



Richard J. Melanson