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October 19, 2015

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The Honorable Mayor and City Council Members  
City of St. Paul  
15 West Kellogg Boulevard  
St. Paul, MN 55102

RE: Liquor On Sale - Club under 200 Members A license application submitted by The Lex, Inc. d/b/a The Lex for the premises located at 976 Concordia Avenue in Saint Paul  
License ID #20140003433  
OAHDOcketNo.: 65-6020-32515

Dear Mayor and Council Members,

We represent The Lex, Inc. in connection with its application for a "Liquor On Sale - Club under 200 Members A license" for the premises located at 976 Concordia Avenue in Saint Paul. Please accept this correspondence as The Lex, Inc.'s formal exceptions to the Report and Recommendations of the Administrative Law Judge ("ALJ") issued August 31, 2015.

Please also be advised, that in addition to this correspondence and its attachments, The Lex, Inc. intends to present oral argument to the Council at the public hearing scheduled on Wednesday, October 21, 2015.

#### **Factual Background**

The facts underlying this dispute are set forth in the memoranda of law submitted by The Lex, Inc. in the administrative proceeding. A copy of The Lex, Inc.'s Memorandum of Law in Support of its Motion for Summary Disposition is attached hereto as Exhibit A and incorporated by this reference.<sup>1</sup>

In short, the City of St. Paul's Department of Safety and Inspections (the "Department") improperly refused to process the on-sale liquor license submitted by The Lex, Inc. on the purported basis that the location of its operations are not within the area of the City where

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<sup>1</sup> Due to their length, the declarations/affidavits submitted with this memorandum have not been attached, however, The Lex, Inc. would be happy to make them available to the Council, if requested.

“clubs” can obtain such licenses. The Department’s refusal, and the ALJ recommendation approving it, were in error because the property where The Lex, Inc. operates is a “grandfathered” on-sale liquor club location. Moreover, even if it were not a grandfathered location, the City must be estopped from claiming it to be otherwise because of the express representations made by the Department’s staff.

The Lex, Inc. preserved the status of the property at issue in this case as a “grandfathered” on-sale liquor club location by fully complying with the terms of the applicable St. Paul Legislative Code (the “Code”) provisions, and by following the express directions of the Department’s staff. Since The Lex, Inc. established its business, obtained a business license, and applied for an on-sale liquor license all within the time periods identified by Department staff and the Code, the ALJ’s recommendation must be disregarded and the City must consider the merits of The Lex, Inc.’s liquor license application.

### **Exceptions to the Administrative Law Judge’s Report and Recommendations**

The ALJ determined that City Staff properly refused to consider The Lex, Inc.’s application for an on-sale liquor license because the location where The Lex, Inc. operates is not one where the City of St. Paul issues on-sale liquor licenses to “clubs.” Respectfully, the ALJ failed to give proper consideration to the fact that The Lex, Inc.’s location at 976 Concordia Avenue in St. Paul (the “Property”) is a “grandfathered” on-sale liquor license location.

Under St. Paul Legislative Code §409.03, any location where a historical on-sale liquor club was located enjoys a “grandfathered” status. Such locations are not subject to the Code’s restrictions on the issuance of on-sale liquor licenses outside the downtown and commercial business development districts.

Notably, the grandfathered status is not limited to just the original licensee at the property. Instead, under the Code, a historical on-sale liquor club location can maintain its grandfathered status as long as an application for an on-sale liquor license is made within two years after the prior licensee’s license expires or is terminated. *See* St. Paul Legislative Code §409.03(a)(1). If the application is made, the grandfathered status remains intact. More importantly, when a location maintains a grandfathered status, it is a location where the City *can* legally issue an on-sale liquor license to a club.

In January 2014, Charles Carter met with Department of Safety and Inspections’ representative, Larry Zangs to discuss The Lex, Inc.’s plan to operate an “On-Sale Liquor Club” at the site formerly owned and operated by Attucks-Brooks Post No. 606, The American Legion, Department of Minnesota (the “American Legion”). At and after this meeting, Mr. Zangs informed Mr. Carter that although the location of his club was outside the area where on-sale liquor licenses can usually be issued to clubs, Mr. Carter could continue his on-sale liquor club at the property if he met two conditions. Specifically, Mr. Zangs represented to Mr. Carter that his club could remain an “On-Sale Liquor Club” if he established his business at the location of the

former American Legion and obtained a business license within a year of the closure of the American Legion.

More importantly, Mr. Zangs informed Mr. Carter that securing business license within one year meant he would “comply with the Zoning Ordinance *and* can continue the nonconforming use as [an] On-Sale Liquor Club.” See the attached Exhibit B, p. 1 (emphasis added). The language Mr. Zangs chose indicated that securing a business license secured *both* zoning compliance and a continued status as a location where a liquor license can be issued (i.e., a grandfathered status as an on-sale liquor club location).

Mr. Carter fully complied with the City’s stated requirements. The Lex, Inc. established its operations at the Property and has continuously operated there from October 2013 to the present. Moreover, within one year of the closure of the American Legion, The Lex, Inc. secured the required business licenses from the State of Minnesota’s Department of Health, including the license needed to maintain a “bar” at the property.

In the ALJ proceeding, the Department took the position that Mr. Zangs’ letter did nothing more than explain the zoning requirements to Mr. Carter. However, the facts show that Mr. Zangs explicitly represented to Mr. Carter that securing a business license was sufficient to maintain his club’s status – *not just as a private club* – but as an *on-sale liquor club*. There is no question that a lay person, like Mr. Carter would interpret Mr. Zangs’ representation to mean that securing a business license was all that was needed to maintain the property’s status as an “on-sale liquor club” – a place where the City could still issue on-sale liquor licenses to a club outside the downtown and commercial development districts.

Citing Section 409.03(a)(1), the Department also took the position that the property at 976 Concordia Avenue could only be a “grandfathered” on-sale liquor location if there had “been no breaks in licensure of greater than two years” at the site. However, this contention, which was apparently accepted by the ALJ, is at odds with the plain language of Section 409.03(a)(1), and would, in fact, add a new requirement to the Code that does not exist in its text.

The text of Section 409.03 merely requires that an *application* for a new license be made within two years after the prior license expired – it does not require the applicant successfully obtain or secure the liquor license. See St. Paul Legislative Code §409.03(a)(1) (“A new license *may be issued* for a location ... if there had previously been an on-sale intoxicating liquor license issued for that location, unless: ... The previous license had terminated or expired more than two (2) years before the new license *had been first applied for*....”). In short, and contrary to the ALJ’s finding, the Code makes clear that merely *applying* for a liquor license tolls the two year period and preserves the property’s status as a grandfathered on-sale liquor club location.

There is no dispute that The Lex, Inc. made an application for an on-sale liquor license for the Property in March 2013 – *well within the two year period* after the American Legion ceased operations. Since filing an application for a liquor license within two years is all that Section

409.03(a) requires to maintain a property's status as a grandfathered on-sale liquor club location, The Lex, Inc. fully complied with the Code and the Property remains in its grandfathered status.

Moreover, even if the two year limitations period set forth in Section 409.03 did not reset as a result of The Lex, Inc.'s application, at a minimum, equity requires that the time period during which The Lex, Inc.'s application was pending be excluded from the calculation of the two year period. The Lex, Inc. filed its initial application for an on-sale liquor license in March 2013 and that application was pending until September 27, 2013 – a period of five months. If those five months are excluded from the two year “renewal” period, The Lex, Inc.'s renewed application – filed with the City in November 2014 – was made within two years of the date the American Legion ceased operations. Accordingly, even if the initial application did not reset the two year application period, the five months during which The Lex, Inc.'s initial application was pending should be excluded from the limitations period and The Lex, Inc.'s renewed application for the same license should be considered timely.

In any event, equity requires that the City consider The Lex, Inc.'s application on its merits because of the express representations made to Mr. Carter. It would be completely inequitable for The Lex, Inc. to lose its grandfathered status when Mr. Carter relied on the Department's representations, fully complied with the requirements set out by the Department, and would suffer significant harm from the inability to secure an on-sale liquor license for the Property. As such, the City should depart from the ALJ's determination and find that it is estopped from refusing to process The Lex, Inc.'s application.

#### **Request for Public Testimony**

Finally, The Lex, Inc. respectfully requests that the Council allow and consider public testimony before deciding whether to accept the ALJ's recommendations.

As the Council is aware, this matter was determined by the ALJ on “summary disposition,” meaning there was no formal administrative hearing where live testimony could be presented or the public could be heard. As a result, there was no opportunity for members of the public to give input regarding The Lex, Inc.'s license application or the impact that denying that application would have on their neighborhood.

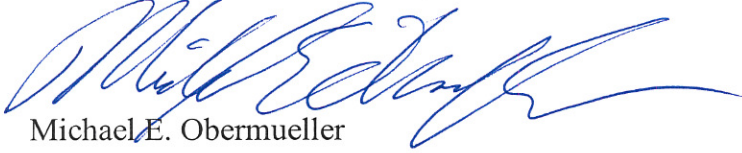
The Property at issue has been a fixture of the Rondo neighborhood for decades, and has been the site of a myriad of community gatherings and fundraisers. Before the Council votes to forever preclude any current or future club from operating with an on-sale liquor license at this location, it should consider the impact of that a decision on the people who actually live in this neighborhood. As such, The Lex, Inc. respectfully requests that the Council allow and consider public testimony at the public hearing on October 21, 2015.

The Honorable Mayor and City Council Members  
October 19, 2015  
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Thank you in advance for your consideration of this important matter.

Sincerely,

WINTHROP & WEINSTINE, P.A.

A handwritten signature in blue ink, appearing to read "Michael E. Obermueller", is written over the typed name.

Michael E. Obermueller

MEO/se

Enclosures  
11039324v1

Exhibit A

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE CITY OF ST. PAUL

In the Matter of the Liquor On Sale—Club  
Under 200 Members A license application  
submitted by The Lex, Inc. d/b/a The Lex  
for the premises located at 976 Concordia  
Avenue in St. Paul

**RESPONDENTS CHARLES CARTER, THE LEX, INC. AND ANICCA, LLC'S**  
**MEMORANDUM OF LAW IN SUPPORT OF**  
**MOTION FOR SUMMARY DISPOSITION**

**INTRODUCTION**

Respondents Charles Carter (“Mr. Carter”), The Lex, Inc. d/b/a The Lex (“The Lex Inc.”), and Anicca, LLC (“Anicca”) respectfully submit this Memorandum of Law in Support of their respective Motions for Summary Disposition.

Summary disposition is warranted in this case because the undisputed facts demonstrate that the City has no legitimate basis for denying The Lex, Inc.’s renewed application for an on-site liquor license for its club located at 976 Concordia Avenue in St. Paul.

First, the City of St. Paul (the “City”) is improperly refusing to process the on-sale liquor license submitted by The Lex, Inc. on the purported basis that the location of its operations are not within the area of the City where “clubs” can obtain such licenses. However, the City has ignored the fact that the property where The Lex, Inc. operates is a “grandfathered” on-sale liquor club location, and as such, is a location where the City’s Department of Safety and Inspection is permitted to issue on-sale liquor licenses. Since The Lex, Inc. established its

business, obtained a business license, and applied for an on-sale liquor license within the time periods identified by City staff and the St. Paul Legislative Code (the “Code”), the City is required to consider its license application.

Second, the City has stipulated in this action that The Lex, Inc. meets the Code’s definition of a “club” eligible to obtain an on-sale liquor license. As such, the City cannot refuse to process the on-sale liquor license submitted by The Lex, Inc. on the basis that it is not an established “club.”

Third, while the City speculates that The Lex, Inc. may have sold alcohol at a February 27, 2015 private party for one of its members, there is no actual evidence that any such sale actually occurred. Instead, the undisputed evidence demonstrates all alcohol served at the party was provided free of charge to club members – conduct that does not violate Minnesota law or the City’s Code.

Since Mr. Carter, The Lex, Inc. and Anicca have continually expressed their intent to maintain the property at issue as a grandfathered, on-sale liquor club, and the City has no legitimate basis for denying The Lex, Inc.’s application, this Motion for Summary Disposition should be granted.

#### **STATEMENT OF UNDISPUTED MATERIAL FACTS**

##### **A. The Parties And The Property.**

1. Respondent The Lex, Inc., formerly known as “Ladies’ Choice Social Club, Inc. d/b/a Big Jazz Kickstand” is a non-profit corporation formed under the laws of the State of Minnesota in May 2009.<sup>1</sup>

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<sup>1</sup> Declaration of Charles Carter (“Carter Decl.”), ¶ 2; Declaration of Michael E. Obermueller (“Obermueller Decl.”), Ex. A.



2. The Lex, Inc. is a “club” as defined in St. Paul Legislative Code §409.02 and meets the statutory requirements under applicable law to be eligible for an on-sale liquor license.<sup>2</sup>

3. Respondent Anicca, LLC is a Minnesota limited liability company formed in May 2004.<sup>3</sup>

4. Anicca owns the commercial building located at 976 Concordia Avenue, St. Paul, Minnesota (the “Property”).<sup>4</sup>

5. The Lex, Inc. has leased the Property since October 31, 2012, and since that time has operated a private, members-only club on the premises.<sup>5</sup> Specifically, The Lex, Inc.’s events and activities are open only to its members and their bona fide guests, and they are not open to the public.<sup>6</sup>

6. Further, the Property leased by The Lex, Inc. is private property used solely for The Lex, Inc.’s operations.<sup>7</sup>

7. No part of the Property is open to the public or considered by The Lex, Inc. or Anicca to be a “public place.”<sup>8</sup>

B. The Property Was An On-Sale Liquor Club For Decades.

8. Attucks-Brooks Post No. 606, The American Legion, Department of Minnesota (the “American Legion”) is a non-profit corporation formed under the laws of the State of Minnesota in March 1955.<sup>9</sup>

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<sup>2</sup> Carter Decl. ¶ 3; Obermueller Decl., ¶ 7.

<sup>3</sup> Declaration of Joshua Howe (“Howe Decl.”), ¶ 2; Obermueller Decl., Ex. B.

<sup>4</sup> Howe Decl., ¶ 3

<sup>5</sup> Carter Decl., ¶ 4; Howe Decl., ¶ 4.

<sup>6</sup> Carter Decl., ¶ 5; Howe Decl., ¶ 5.

<sup>7</sup> Carter Decl., ¶ 6; Howe Decl., ¶ 6.

<sup>8</sup> Carter Decl., ¶ 6; Howe Decl., ¶ 7.

<sup>9</sup> Obermueller Decl., Ex. C.

9. For more than twenty years prior to September 2012, the American Legion operated an on-sale liquor club at the Property.<sup>10</sup>

10. On September 26, 2012, the St. Paul City Council suspended the American Legion's on-sale liquor license as a result of its failure to pay, among other things, the required license renewal fee.<sup>11</sup>

11. The City claims American Legion's on-sale liquor license was "deactivated," however, there is no allegation or evidence that this license has ever been revoked or terminated by the City of St. Paul.<sup>12</sup>

C. The Lex, Inc. Is Entitled To Operate An On-Sale Liquor Club At The Property.

12. On January 3, 2013, Charles Carter, the owner of The Lex, Inc. met with Larry Zangs of the City of St. Paul's Department of Safety and Inspections ("DSI" or "Department") regarding Mr. Carter's proposal to operate an On-Sale Liquor Club at the Property.<sup>13</sup>

13. The purpose of the meeting was for Mr. Carter to get information from the City regarding the City's requirements for Mr. Carter to operate an On-Sale Liquor Club at the Property.<sup>14</sup>

14. Shortly after the meeting, Mr. Zangs sent Mr. Carter a written Project Review Summary that summarized the items discussed during their January 3, 2013 meeting (the "Project Review Summary").<sup>15</sup>

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<sup>10</sup> Howe Decl., ¶ 8.

<sup>11</sup> Obermueller Decl., Ex. D.

<sup>12</sup> Obermueller Decl., Ex. E.

<sup>13</sup> Carter Decl., ¶ 7.

<sup>14</sup> Carter Decl., ¶ 8.

<sup>15</sup> Carter Decl., ¶ 9, Ex. 1.

15. In the Project Review Summary, Mr. Zangs acknowledged and confirmed that Mr. Carter's proposed use of the Property as an "On-Sale Liquor Club" was a "legal nonconforming" use in the applicable zoning district.<sup>16</sup>

16. Mr. Zangs also reported that he had spoken with the Zoning Administrator, and determined that since "the use is nonconforming in the ... zoning district, the On-Sale Liquor Club business will need to be established within one year of the former club's ceasing operation."<sup>17</sup>

17. Importantly, Mr. Zangs also informed Mr. Carter: "as long as you are able to *obtain a business license* within one year of the closing of the former [American Legion] Club ... then you comply with the Zoning Ordinance *and can continue the nonconforming use as [an] On-Sale Liquor Club.*"<sup>18</sup>

18. Mr. Zangs never informed Mr. Carter that he had to obtain any specific business license in order to maintain the Property's legal nonconforming use.<sup>19</sup> Instead, he expressly informed Mr. Carter that the only thing he needed to do to maintain the Property's legal nonconforming use as an On-Sale Liquor Club was to "obtain a business license."<sup>20</sup>

19. In reliance on the Project Review Summary – and within one year of the American Legion's cession of operations – Mr. Carter's company, The Lex, Inc. (then known as Ladies Choice Social Club, Inc. d/b/a Big Jazz Kickstand) commenced business operations pursuant to a business license obtained from and issued by the Minnesota Department of Health.<sup>21</sup>

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<sup>16</sup> Carter Decl., ¶¶9-10, Ex. 1, p. 1.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* (emphasis supplied).

<sup>19</sup> Carter Decl., ¶ 11.

<sup>20</sup> Carter Decl., ¶ 12, Ex. 1, p. 1.

<sup>21</sup> Carter Decl., ¶¶ 12-13, Ex. 2.

20. Specifically, on August 28, 2013, the Minnesota Department of Health issued a Limited Food Menu license permitting The Lex, Inc. to operate at the Property.<sup>22</sup>

21. The Lex, Inc.'s business license was renewed on August 28, 2014.<sup>23</sup> The business license issued to The Lex, Inc. by the Minnesota Department of Health states in pertinent part: "License Categories: *Alcohol Bar Service License*, Base Fee – FBL, Hospitality Fee, Limited Food Menu."<sup>24</sup> The Lex, Inc. paid an additional \$165.00 Alcohol Bar Service License fee so it could maintain the free standing bar on the Property.<sup>25</sup>

D. The Lex, Inc. Applied For An On-Sale Liquor License Just A Few Months After The American Legion Ceased Operations.

22. Also, within one year of the time the American Legion ceased operations, Mr. Carter applied to the Department for a "Liquor On Sale-Club under 200 Member A license" for The Lex, Inc. (then known as Ladies' Choice Social Club, Inc. d/b/a Big Jazz Kickstand).<sup>26</sup>

23. Importantly, The Lex, Inc. made its initial application for an on-sale liquor license just a few months after the closure of the American Legion.<sup>27</sup>

24. Although City staff had been evaluating Mr. Carter's application for several months, the City officially commenced its review of Mr. Carter's on-sale license application at the latest on April 22, 2013.<sup>28</sup>

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<sup>22</sup> *Id.*

<sup>23</sup> Carter Decl., ¶¶ 13-14, Ex. 3.

<sup>24</sup> *Id.* (emphasis supplied)

<sup>25</sup> Carter Decl., Ex. 2; Minn. Stat. §157.16(d)(7) (noting additional \$165.00 fee for "Alcoholic beverage service, other than beer or wine table service" defined as "a fee category where alcoholic mixed drinks are served or where beer or wine are served from a bar.")

<sup>26</sup> Carter Decl., ¶ 15.

<sup>27</sup> *Id.*

<sup>28</sup> Carter Decl., ¶ 16; Obermueller Decl. at Ex. F (noting that the "Original license request by [The Lex, Inc.] and Charles Carter applied for on April 22, 2013.")

25. On May 16, 2013, the City issued a formal Notice of Intent to Deny Licenses to Mr. Carter and his club.<sup>29</sup>

26. Within the time stated in the Notice of Intent to Deny Licenses, Mr. Carter requested that the facts underlying the City's Notice and the conclusions stated therein be determined by an Administrative Law Judge.<sup>30</sup>

27. Mr. Carter subsequently withdrew this request on September 27, 2013 primarily because he could neither afford to pay an attorney to pursue the proceedings nor afford to upgrade the Property's facilities as the City was demanding.<sup>31</sup>

28. At no time did the City tell Mr. Carter, Anicca or The Lex, Inc. that withdrawing the application would end the Property's grandfathered status as an "On-Sale Liquor Club" or prevent Mr. Carter from renewing The Lex, Inc.'s application.<sup>32</sup>

29. Notably, The Lex, Inc.'s initial on-sale liquor license application was formally pending before the City for a period more than five months – from at least April 22, 2013 to September 27, 2013 – during the year after the American Legion ceased operations.<sup>33</sup>

E. The City Concludes That The Lex, Inc. Is A Club Eligible To Obtain An On-Sale Liquor License, But Refuses To Process The Same.

30. In November 2014, The Lex, Inc. revived and renewed its application for a "Liquor On Sale-Club under 200 Member A license."<sup>34</sup>

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<sup>29</sup> Carter Decl., ¶ 17.

<sup>30</sup> *Id.*, ¶ 18.

<sup>31</sup> *Id.*, ¶ 19.

<sup>32</sup> Carter Decl., ¶ 20; Howe Decl., ¶¶ 12-16

<sup>33</sup> Carter Decl., ¶ 21; Howe Decl., ¶ 17; Obermueller Decl., Ex. F. Of course, the City had the application as early as January 2013, four additional months before it commenced its formal review. *Id.* Thus, the application was under evaluation by the City for *nine months* before it was ultimately withdrawn.

<sup>34</sup> Carter Decl., ¶ 22.

31. The Department's representative, Larry Zangs, was again assigned to conduct an analysis of The Lex, Inc.'s application.<sup>35</sup>

32. On December 5, 2014, Mr. Zangs sent his colleagues a letter summarizing the results of his research regarding whether The Lex, Inc. had established its On-Sale Liquor Club business within one year of the closure of the American Legion.<sup>36</sup>

33. Mr. Zangs' December 5, 2015 correspondence noted that "Mr. Carter's club *was established within a year* (actually < one month) of when the previous club...ceased operations and vacated the property."<sup>37</sup>

34. Mr. Zangs' December 5, 2015 correspondence also stated "On the issue of whether a social club is a different use than a on sale liquor club, *I think they are the same use* but want to discuss this further too."<sup>38</sup>

35. On December 15, 2015, Mr. Zangs sent additional correspondence to his colleagues at the Department in which he expressed his conclusion that because The Lex, Inc. commenced operations well within a year of the closure of the American Legion, "Mr. Carter's club Ladies Choice Social Club *can continue as a legal nonconforming use*" and that "there is *no difference between a 'club' with or without liquor from a zoning perspective* since the zoning code does not make such a distinction...."<sup>39</sup>

36. Nonetheless, by letter dated December 18, 2014, the Department informed Mr. Carter that it *would not consider* The Lex, Inc.'s renewed application for an on-site liquor license because the City of St. Paul "does not issue liquor licenses to clubs, outside of the

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<sup>35</sup> *Id.*; Obermueller Decl., Exs. F and G.

<sup>36</sup> *Id.*, Ex. F.

<sup>37</sup> *Id.*, Ex. F (emphasis supplied).

<sup>38</sup> *Id.*, Ex. F (emphasis supplied).

<sup>39</sup> *Id.*, Ex. G (emphasis supplied).

downtown and commercial development districts.”<sup>40</sup> The City also informed Mr. Carter that because the Property was not within one of these districts, he could *only* be considered for a liquor license if he operated as a restaurant.<sup>41</sup>

37. On March 30, 2015, the City issued its formal Notice of Intent to Deny License to Mr. Carter.<sup>42</sup> In its correspondence, the City identified only one basis for its intention to deny the license – that club operated by The Lex, Inc. was not located in a downtown or commercial development district.<sup>43</sup> Specifically, the City’s letter stated:

The property you lease at 976 Concordia is not located in either a downtown or commercial development district. Further, the property you lease is not a hotel, restaurant, or private nonprofit college, and is not zoned for any of those uses. Accordingly, *DSI is not currently able to process your application* for a liquor license at 976 Concordia.<sup>44</sup>

38. Mr. Carter and The Lex, Inc. relied on the representations by Mr. Zangs in the Project Review Summary that the Property would continue to be a grandfathered “On Site Liquor Club” if Mr. Carter obtained a business license within one year of the closure of the American Legion.<sup>45</sup>

39. At no time did anyone from the City inform Mr. Carter, The Lex, Inc. or Anicca that they were at risk of losing their grandfathered status as an On-Sale Liquor Club as a result of Mr. Carter withdrawing his initial application for the license he seeks.<sup>46</sup>

40. The Lex, Inc. will suffer significant harm if the City is not estopped from denying its license application. The Lex, Inc.’s business model is built largely on gathering its members

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<sup>40</sup> Carter Decl., ¶ 23, Ex. 4.

<sup>41</sup> Carter Decl., ¶ 24, Ex. 5.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* (emphasis supplied).

<sup>45</sup> Carter Decl., ¶ 25.

<sup>46</sup> Carter Decl., ¶ 26; Howe Decl., ¶¶ 12-16.

for social and charitable events.<sup>47</sup> The inability to secure an on-sale liquor license will decrease the number of members who attend these events and will put a significant strain on The Lex, Inc.'s finances.<sup>48</sup> It may even force the Lex, Inc. to close its doors.<sup>49</sup> Further, The Lex, Inc. will inevitably lose members to other clubs and organizations who can sell alcohol at their establishments and events.<sup>50</sup>

F. There Is No Evidence That The Lex, Inc. Sold Alcohol Without A License.

41. As noted above, The Lex, Inc. is a private, non-profit club.<sup>51</sup>

42. The Lex, Inc. is not open to the public and does not permit entry to people who are not club members or their bona fide guests.<sup>52</sup>

43. On February 27, 2015, The Lex, Inc. hosted a private party for a club member.<sup>53</sup> Only club members and their bona fide guests were permitted to attend.<sup>54</sup>

44. Beer and a variety of mixed drinks were available to club members, *free of charge*, during the party.<sup>55</sup>

45. Club member, Michelle Evans, volunteered to make mixed drinks for members who wanted them and was responsible for making sure that no unauthorized persons had access to alcohol during the party.<sup>56</sup>

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<sup>47</sup> Carter Decl., ¶ 38.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> Carter Decl., ¶¶ 2-3.

<sup>52</sup> Carter Decl., ¶ 27.

<sup>53</sup> Carter Decl., ¶ 28.

<sup>54</sup> *Id.*

<sup>55</sup> Carter Decl., ¶ 29.

<sup>56</sup> Carter Decl., ¶ 30; Declaration of Michelle Evans ("Evans Decl."), ¶¶ 2-5. Ms. Evans is not an employee of The Lex, Inc. but does serve as one of the Club's volunteer board members. Evans Decl., ¶ 1.



46. Ms. Evans was present for the entire event on February 27, 2015 and spent substantially all of her time at or near the members' bar area.<sup>57</sup>

47. Ms. Evans did not personally sell anyone any alcohol and did not observe anyone else sell any alcohol at the party.<sup>58</sup> Instead, beer and mixed drinks were given away for free to a limited number of party attendees.<sup>59</sup>

48. No alcohol was sold by Ms. Evans or The Lex, Inc. to anyone during the party on February 27, 2015.<sup>60</sup>

49. The Lex, Inc. owns two cash registers that it occasionally uses in connection with the sales of food pursuant to its Limited Food Menu license.<sup>61</sup> These cash registers are stored in the bar area.<sup>62</sup>

50. Neither of the cash registers were in use on the night of the party.<sup>63</sup>

51. There was receipt paper coming out of one of the cash registers on February 27, 2015.<sup>64</sup> This receipt paper related to "No Sales" (i.e., attempts to open the cash drawer) and the sale of a few food items that occurred prior to February 27, 2015.<sup>65</sup> The receipt paper had nothing to do with the sale of alcohol, as no alcohol was sold.<sup>66</sup>

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<sup>57</sup> Evans Decl., ¶ 4.

<sup>58</sup> Evans Decl., ¶¶ 5-7.

<sup>59</sup> *Id.*

<sup>60</sup> Carter Decl., ¶ 31; Evans Decl., ¶¶ 7-8.

<sup>61</sup> Carter Decl., ¶ 32; Evans Decl., ¶ 9.

<sup>62</sup> *Id.*

<sup>63</sup> Carter Decl., ¶ 33; Evans Decl., ¶ 10.

<sup>64</sup> Carter Decl., ¶ 34; Evans Decl., ¶ 11.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

52. Ms. Evans did not use the cash registers during the private party on February 27, 2015.<sup>67</sup> Further, Ms. Evans could not have used the cash registers that night even if she had wanted to because they were not working properly as of February 27, 2015.<sup>68</sup>

53. The Lex, Inc. did not directly or indirectly, on any pretense, sell, barter, charge for possession or otherwise dispose of alcoholic beverages as part of a commercial transaction during the private party on February 27, 2015, and none of its representatives engaged in such conduct either.<sup>69</sup>

54. Neither The Lex, Inc. nor its representatives sold, bartered or furnished intoxicating liquor or liquors in violation or evasion of law during the private party on February 27, 2015.<sup>70</sup>

## LEGAL ARGUMENT

### A. Standard Of Review.

Summary disposition is the administrative law equivalent to summary judgment.<sup>71</sup> Summary disposition is appropriate “where there is no genuine issue of material fact and where a determination of the applicable law will resolve the controversy.”<sup>72</sup> The Office of Administrative Hearings follows the summary judgment standards developed in the district courts in considering motions for summary disposition.<sup>73</sup>

In a motion for Summary Disposition, the moving party has the initial burden of showing the absence of a genuine issue concerning any material fact.<sup>74</sup> Once the moving party sets forth a

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<sup>67</sup> Carter Decl., ¶ 35; Evans Decl., ¶ 12.

<sup>68</sup> Carter Decl., ¶ 35; Evans Decl., ¶ 12.

<sup>69</sup> Carter Decl., ¶ 36; Evans Decl., ¶ 13.

<sup>70</sup> Carter Decl., ¶ 37; Evans Decl., ¶ 14.

<sup>71</sup> *In the Matter of G.H. Holdings, LLC*, OAH 61-6020-21226-3, p. 7 (O’Reilly, J.)

<sup>72</sup> *Id.*; Minn. R. 1400.5500(K); Minn. R. Civ. P. 56.03.

<sup>73</sup> *Id.*, p. 8 (citing Minn. R. 1400.6600)

<sup>74</sup> *Id.*, p. 8 (citing *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988)).

prime facie case, the burden shifts to the nonmoving party to show specific facts that are in dispute that can affect the outcome of the case.<sup>75</sup> The nonmoving party may not rest on mere allegations, assumptions, or denials, but must present specific facts demonstrating a genuine issue for trial.<sup>76</sup>

**B. The Lex, Inc. Preserved Its Status As An On-Sale Liquor Club By Securing A Business License Within One Year Of The Closure Of The American Legion.**

In this case, the Department of Safety and Inspections has refused to process The Lex, Inc.'s license application on the sole basis that the City purportedly does not issue on-sale liquor licenses to clubs like The Lex, which are located outside the downtown and commercial development districts. However, on January 4, 2014 the Department expressly represented to Mr. Carter that his club would remain an "On-Sale Liquor Club" if he established his business and obtained a business license within a year of the closure of the American Legion. Since Mr. Carter relied on these representations, fully complied with the requirements set out by the City, and would be significantly harmed if the City were permitted to disregard its express representations, the City must be estopped from refusing to process The Lex, Inc.'s application.

In order to establish a claim for estoppel, a party must show: (1) the opposing party made specific representations; (2) the party reasonably relied on the representations; and (3) the party will be harmed if the opposing party is not estopped from asserting its strict legal rights.<sup>77</sup> While

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<sup>75</sup> *Id.*, p. 8 (citing *Highland Chateau, Inc. v. Minnesota Dep't of Public Welfare*, 356 N.W.2d 804, 808 (Minn. Ct. App. 1984), rev. denied (Minn. Feb. 6, 1985)).

<sup>76</sup> *Id.*, p. 8 (citing *Thiele*, 425 N.W.2d at 583; *Hunt v. IBM Mid America Employees Federal Credit Union*, 384 N.W.2d 853, 855 (Minn. 1986)); Minn. R. Civ. P. 56.05.

<sup>77</sup> *Department of Human Servs. v. Muriel Humphrey Residences*, 436 N.W.2d 110, 117 (Minn.App. Ct. 1989); *Schultz v. Minnesota Bd. of Psychology*, No. C9-99-818, 1999 WL 1101219 \*2 (Minn. Ct. App., November 30, 1999).

a court should not freely apply estoppel against the government, “*the remedy is available against a government agency if justice so requires.*”<sup>78</sup>

When applying estoppel to a governmental agency, the ALJ “must carefully weigh the equities of the case against any public interests that may be infringed by estoppel.”<sup>79</sup> However, one type of estoppel claim does not require such a restrictive application of estoppel – when “the claimant invokes estoppel to gain access to government benefits which the claimant could have obtained had a government official provided correct information.”<sup>80</sup> In such cases, “the rationales that justify a restrictive application of estoppel are inapplicable.”<sup>81</sup>

Here, in January 2013, the City explicitly represented to Charles Carter that he would be permitted to continue the Property’s nonconforming use as an “On-Sale Liquor Club” as long as he established his business and obtained a “business license” within one year of the closure of the American Legion.<sup>82</sup> The City’s statements constituted an express representation that if Mr. Carter met these two conditions, his business would be grandfathered in as an “On-Sale Liquor Club,” meaning the club would not be subject to the restriction on issuing on-sale liquor licenses to clubs outside of the downtown and commercial development districts.

Mr. Carter fully and justifiably relied on the City’s representations that his business would be grandfathered in as an “On-Sale Liquor Club” if he established his business and obtained a business license. In reliance on the City’s representations, Mr. Carter established his

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<sup>78</sup> *Muriel Humphrey Residences*, 436 N.W.2d at 118(emphasis supplied); *Petition of Halberg Const. & Supply, Inc.*, 385 N.W.2d 381, 383-84 (Minn. Ct. App. 1986); *Beaty v. Minnesota Board of Teaching*, 354 N.W.2d 466, 471 (Minn. Ct. App. 1984).

<sup>79</sup> *Muriel Humphrey Residences*, 436 N.W.2d at 118.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> Carter Decl., Ex. A, p. 1.

business by continuously operating the club at the Property from and after January 3, 2013.<sup>83</sup> He also timely obtained a business license for his On-Sale Liquor Club from the Minnesota Department of Health. Specifically, Mr. Carter obtained a “Food Beverage and Lodging” (FBL) license that permitted him to sell a Limited Food Menu.<sup>84</sup>

Importantly, Mr. Carter complied with both of the City’s stated requirements *well within one year* of the date on which the American Legion’s ceased operations on September 26, 2012. Indeed, the City’s internal correspondence demonstrated that Mr. Zangs conclusively determined that Mr. Carter established his business *less than a month* after the American Legion failed to reopen. Further, The Lex, Inc. first obtained its business license in August 2013, less than one year after the American Legion’s prior licenses were suspended by the City Council.<sup>85</sup>

The Lex, Inc. will indisputably suffer significant harm if the City is not estopped from denying its license application.<sup>86</sup> The Lex, Inc.’s business model is built largely on gathering its members for social and charitable events. The inability to secure an on-sale liquor license will dramatically decrease the number of members who attend these events and will put a significant strain on The Lex, Inc.’s finances. It may even force the Lex, Inc. to close its doors. Further, The Lex, Inc. will inevitably lose members to other clubs and organizations who can sell alcohol at their establishments and events.

Finally, the equities of the case outweigh any public interests that may be infringed by the application of estoppel against the City. As an initial matter, the City of St. Paul does not have a policy against the issuance of *all* licenses to clubs outside the downtown and commercial

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<sup>83</sup> Indeed, Mr. Carter has been operating his business at the Property since October 31, 2012. Carter Decl., ¶ 4.

<sup>84</sup> Businesses that obtain a Limited Food Menu license are permitted to serve among other things, “prepackaged food that receives heat treatment and is served in the package, continental breakfast, soft drinks, coffee, and other beverages. See Obermueller Decl., Ex. H.

<sup>85</sup> Carter Decl., ¶¶ 12-13.

<sup>86</sup> Carter Decl., ¶ 38.

development districts, it simply *limits the number and location* of those licenses to places where they have historically been located.<sup>87</sup> Further, the City's Code demonstrates that the issuance of licenses at these historical club locations enjoy a favored status.<sup>88</sup> Here, the Property has been operated as an On-Sale Liquor Club for several decades. The public interest will not be harmed if the City is estopped from eliminating this historical club location, especially when the community has expressed support for its operation.<sup>89</sup> By contrast, the public interest will be harmed if members of the public can no longer rely on the express representations made by City staff. The City's representations in this case flowed from the "project review" process – a system specifically designed to inform prospective applicants as to the steps they need to take to obtain the licenses and permits they need to conduct their desired business. If applicants cannot rely on what they are told during this process, it becomes meaningless and would undermine public trust in its government.

Having informed Mr. Carter that establishing his business and obtaining a business license were sufficient to maintain the Property's grandfathered status, the City cannot now reverse course and refuse to consider Mr. Carter's renewed application for an on-site liquor license.<sup>90</sup> Instead, the City must be estopped from ignoring its explicit representation to Mr. Carter that securing a business license was sufficient to maintain his club's status– not just as a club – but as an *On-Sale Liquor Club*.

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<sup>87</sup> See St. Paul Legislative Code §409.03 (titled "Number of licenses").

<sup>88</sup> St. Paul Legislative Code §409.03(a) (noting that historical establishments "*shall be entitled* to have such licenses renewed" unless the club is out of compliance with some other law (emphasis supplied)).

<sup>89</sup> Carter Decl., ¶ 39.

<sup>90</sup> Notably, the City's Project Review Summary did not say that obtaining a license would permit Mr. Carter to maintain a mere "social club" – it explicitly says obtaining a business license entitled him to maintain his status as an "On-Sale Liquor Club." Carter Decl., Ex. 1, p. 1.

**C. The Lex, Inc. Met The Requirements Of St. Paul Legislative Code Section 409.03 By Making Its Initial Application For An On-Sale Liquor License Within Two Years Of The Suspension Of The American Legion’s License.**

Even if The Lex, Inc.’s did not definitively secure its grandfathered status as an On-Sale Liquor Club by obtaining its business license as directed by the Department (which it did), The Lex, Inc. indisputably filed an application for an on-sale liquor license within two years of the date the City suspended the licenses of the American Legion.

St. Paul Legislative Code §409.03 provides that notwithstanding any limitations on the number of licenses to be issued outside the downtown and commercial development districts:

A new license *may be issued* for a location in such other areas of the city if there had previously been an on-sale intoxicating liquor license issued for that location, unless:

- a. The previous license had been revoked by the council for any reason other than nonpayment of license fees within the previous fifteen (15) years; or
- b. The previous license had terminated or expired more than two (2) years before the new license *had been first applied for....*<sup>91</sup>

Notably, the Code does not require that the applicant *successfully obtain* a liquor license as a result of its application – only that it *apply* for one within the two year period.<sup>92</sup>

Here, it is undisputed that The Lex, Inc. “first applied” for an on-sale liquor license in Spring 2013, just a few months after the American Legion’s on-sale liquor license was suspended by the City Council. Since The Lex, Inc. first applied for its on-sale intoxicating liquor license well within the two year period required by St. Paul Legislative Code §409.03(a)(1), The Lex, Inc. is a grandfathered On-Sale Liquor Club – not subject to the restrictions relating to other clubs outside the downtown and commercial development districts.

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<sup>91</sup> St. Paul Legislative Code §409.03(a)(1) (emphasis supplied)

<sup>92</sup> St. Paul Legislative Code §409.03(a)(1)(b) (noting requirement that applicant must “first apply” for a new license within 2 years of the termination of the original license).

Further, the obvious purpose of the two year requirement is to ensure that the applicant timely expressed an intent to keep the property as a grandfathered On-Sale Liquor Club location. The mere filing of an application within the two year period demonstrates that intent, regardless of whether the City deems that specific application to be sufficient. Accordingly, since The Lex, Inc. made clear that it intended to maintain the Property's grandfathered status well within the two year period, it is immaterial that the City ultimately did not act on The Lex, Inc.'s initial application. The Lex, Inc. clearly "first applied" for an on-sale liquor license within the two year period, and therefore remains a grandfathered On-Sale Liquor Club.

**D. The City May Not Take Away Anicca's Grandfathered Location When It Clearly Expressed Its Intent To Maintain That Status Within The Two Year Application Period.**

Independent of any determination regarding whether The Lex, Inc.'s application was timely, the City may not strip *Anicca* of its valuable property rights. Under St. Paul Legislative Code §409.03, any location where an historical On Site Liquor Club was located enjoys a "grandfathered" status – they are not subject to the Code's restrictions on the issuance of on-sale liquor licenses outside the downtown and commercial business development districts. Thus, under the Code, Anicca owns a valuable property right – a location outside the downtown and commercial business districts that can be used as an On-Sale Liquor Club.

The City appears to contend the Property lost its grandfathered status because no on-sale liquor license was issued for that site within the last two years. However, this contention ignores the plain text of the Code which requires only that an application for a new license be made within the two year period, not that a license be issued. Moreover, the City's interpretation of its Code would effectively take Anicca's valuable property interest away, despite the fact that an application for an on-sale liquor license was made more than 18 months prior to the expiration of



the two year limitation period. Further, the City's interpretation would essentially penalize Anicca for the unsuccessful application of its tenant, when it has no control over whether that application is granted or even maintained.

Anicca has never given any indication that it intended to abandon or forfeit the Property's status as a grandfathered On-Sale Liquor Club.<sup>93</sup> To the contrary, Anicca has demonstrated its absolute intent to maintain the Property's grandfathered status – it made sure that The Lex, Inc. obtained a business license as directed by the Department in the Project Review Summary; it ensured that a timely application for an on-sale liquor license was made; and it actively engaged with the City through the last two years in an attempt to secure the on-sale liquor license it needs for the Property. Under these circumstances Anicca preserved the Property's status as a grandfathered location for an On-Sale Liquor Club, and the City's refusal to grant a license to Anicca's tenant would constitute an unlawful taking of Anicca's valuable property rights.

**E. There Is No Evidence That The Lex, Inc. Actually Sold Alcohol On February 27, 2015.**

The Department's March 30, 2015 "Notice of Intent to Deny License" stated only a single basis for recommending denial of The Lex, Inc.'s license applications – that the club was outside the downtown and commercial development districts.<sup>94</sup> However, in its "Notice and Order for Pre-Hearing Conference and Hearing," the City raised for the first time allegations that The Lex, Inc. "sold intoxicating liquor without a license, in violation of St. Paul Legislative Code §409.01(a)" at an event on February 27, 2015.<sup>95</sup>

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<sup>93</sup> Howe Decl., ¶¶ 9-17. See *County of Isanti v. Peterson*, 469 N.W.2d 467, 470 (Minn. Ct. App. 1991) (landowner is entitled to rebut any presumption of abandonment of nonconforming use)

<sup>94</sup> Carter Decl., Ex. 5.

<sup>95</sup> Obermueller Decl. at Ex. E.

Summary disposition is warranted on the City's new claim for the most basic of reasons – the City has no evidence that The Lex, Inc. *actually sold* any alcohol to anyone on February 27, 2015. As such, Respondents' motions should be granted.

As described above, on February 27, 2015, The Lex, Inc. hosted a private party for a club member.<sup>96</sup> Only club members and their bona fide guests were permitted to attend this party.<sup>97</sup> While beer and a variety of mixed drinks were available to club members during the party, these drinks were provided to the members *free of charge*.<sup>98</sup> Indeed, there is no evidence that The Lex, Inc. or any of its representatives actually *sold* alcohol at the party.

To the contrary, the evidence shows that club member Michelle Evans was present for the entire event on February 27, 2015 and spent substantially all of her time at or near the members' bar area.<sup>99</sup> Ms. Evans did not personally sell anyone any alcohol and did not observe anyone else sell any alcohol at the party.<sup>100</sup> Instead, beer and mixed drinks were given away for free to a limited number of party attendees.<sup>101</sup>

To support its claim, the City apparently relies on the fact that there were two cash registers in the bar area. However, that is not evidence that alcohol was sold by The Lex, Inc. As Ms. Evans has explained, neither of the cash registers were in use on the night of the party, because the cash registers were not even in working order.<sup>102</sup>

There is no evidence that The Lex, Inc. directly or indirectly, on any pretense, sold, bartered, charged for possession or otherwise disposed of alcoholic beverages as part of a commercial transaction during the private party on February 27, 2015. Likewise, there is no

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<sup>96</sup> Carter Decl., ¶¶ 27-28.

<sup>97</sup> *Id.*

<sup>98</sup> Carter Decl., ¶ 29; Evans Decl., ¶ 4.

<sup>99</sup> Evans Decl., ¶¶ 4-8.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> Evans Decl., ¶¶ 11-12 .

evidence that The Lex, Inc. or its representatives sold, bartered or furnished intoxicating liquor or liquors in violation or evasion of law during the private party on February 27, 2015. Since the City's claim is based exclusively on its *speculation* that alcohol was sold, rather than admissible evidence that it actually was, The Lex, Inc.'s Motion for Summary Disposition should be granted on this claim.

CONCLUSION

For the foregoing reasons, Respondents Charles Carter, The Lex, Inc. and Anicca LLC respectfully request that their Motions be granted in their entirety.

Respectfully submitted,

Dated: July 14, 2015

WINTHROP & WEINSTINE

By 

Michael E. Obermueller, #031772X

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Minneapolis, MN 55402  
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*Attorneys for Respondents Charles Carter,  
The Lex, Inc. and Anicca LLC*

Exhibit B



CITY OF SAINT PAUL  
Christopher Coleman, Mayor

375 Jackson St, Suite 220  
Saint Paul, Minnesota 55101-1806

Telephone: 651-266-8989  
Facsimile: 651-266-9124  
Web: [www.stpaul.gov/dsi](http://www.stpaul.gov/dsi)

Project Review Summary - 13 139780 Date of Report: 01/03/2013

Project Name: On-Sale Liquor Club – Change of Ownership

Property Address: 976 CONCORDIA AVE PIN: 352923340005 Zoning District: RT1

#### Project Applicant Contact Information

Mr Charles Carter  
Big Jazz Kickstand LLC  
651-403-0525

The following summarizes the items discussed on **January 3, 2013** regarding the steps necessary to obtaining approval for the project referenced above:

#### Zoning Requirements

The proposed use is legal nonconforming in this zoning district as an On-Sale Liquor Club. I had a discussion with the Zoning Administrator about this proposal after our meeting. Since the use is nonconforming in the RT1 residential zoning district, the On-Sale Liquor Club business will need to be established within one year of the former club's ceasing operation. Additionally, the zoning code now makes a distinction between "restaurant", a food and drink establishment that closes before midnight; and a "bar", a food and drink establishment that closes after midnight. At the meeting, we talked about the implication this would have from the zoning off-street parking perspective but, base on these zoning classifications, if you were to close your establishment before midnight, you would be considered a restaurant and that would be a change of use, per the zoning code. This would mean that you would have to request a Change of Nonconforming Use Permit from the Saint Paul Planning Commission. A Public hearing would be required.

Based on your current proposal, as long as you are able to obtain a business license within a year of the closing of the former Attucks Brook American Legion Club and you keep the "option" of being opened passed midnight, then you comply with the Zoning Ordinance and can continue the nonconforming use as a On-Sale Liquor Club.

No additional parking is required to meet zoning code parking standards, as long as the business operation as described above is maintained. The existing off-street parking on the property must be maintained for this use.

A business sign plan must be submitted along with the site plan application. A separate permit is required to install signage.

### **Building Code Requirements**

This proposal will require a building permit for the construction of the restrooms. In addition to the building permit, separate permits are required for any plumbing, electrical or mechanical work. These permits must be obtained and the work performed by City license contractor in each of the respective trades.

Two sets of complete construction documents (including floor plans and any structural or mechanical ventilation plans) must be submitted with permit application to our plan review group.

Plans must be dimensioned, drawn to scale and sufficiently detailed to denote the scope of work to be performed and the method of construction. It may be advisable to have plans professionally prepared to avoid delays in issuing the building permit.

You will need to obtain an analysis from a license HVAC contractor, that the existing ventilation system, **including the hood over the stove**, meets State Mechanical Code requirements. We will need either a letter from a contractor that verifies the existing system meets the code requirements for the intended use or the contractor provides plans and a permit for how the HVAC system can be upgraded to meet the code requirements. The ventilation contractor should contact Ron Haider (651-266-9063), our senior mechanical inspector, if they have questions about whether engineered drawings are necessary.

The plumbing and electrical contractors for this project should contact our office if they have questions about whether plans need to be submitted with their permit request. The senior plumbing inspector is Rick Jacobs at 651-266-9051 and the senior electrical inspector is Dan Moynihan at 651-266-9036

The construction documents shall include architectural, structural, mechanical, electrical and plumbing plans signed and stamp by appropriate design professionals, registered in the State of Minnesota.

### Additional Building Code Items Discussed:

- Discussed requirement that the designer of record provide a code analysis with the construction documents.
- Code analysis should include a calculation of plumbing fixture count to verify the adequacy of toilet facilities for the existing and planned uses of the building. The architect must confirm with Stephen Ubl, the Building Official, that proposed toilet fixture count, will be acceptable.

Depending on the proposal, additional information or professional documentation may be required. Contact our plan review group with questions about specific plan submission requirements at 651- 266-9007.

### **\*SAC, or Service Availability Charge**

The propose project will **not require** a SAC determination from the Metropolitan Council Environmental Services (MCES) since the use of the building is not changing ( per decision of the building official)

### **Fire Prevention**

Since the proposal is not a change of use, a sprinkler system for fire suppression for fire alarms are not required. If architect has questions, contact the fire engineer, Angie Wiese at 651-266-8953.

### **Health Code Requirements**

The improvements to the kitchen will depend on the type of food service that is needed. As discussed, if you are successful in getting your organization approved by the State as a Club operating for at least three years, you will not need a full prep kitchen and will be able to get by with a limited menu. If you cannot get the State recognition, you will need to apply for a full liquor license. The City's ordinance would require that you have a kitchen that can prepare food. It was decided that you would get the decision from the State and then address the kitchen plans based on that decision.

In any case, the City's environmental health specialist must review and approve the plans and specification for the proposed food service establishment in conjunction with the construction plans submitted for building permit. The building permit cannot be issued without health inspector approval of the plan.

Please submit the following information for Environmental Health plan approval:

**Allow at least 30 working days for plan review approval.** A completed license application (including applicable license fees) must be submitted before plan review may begin. Please send plans certified mail or

equivalent if you need assurance they were received. Plan approval must be given prior to constructing, enlarging, altering, or converting any building for use as a food establishment.

**The following items are required for Food Code plan review:**

- Menu, statement of food activities, description of food and beverage items.
- Plans including site, building, floor, plumbing, and mechanical schematics.
- Seating capacity and square footage must be indicated.
- Room and area finish schedules for walls, ceilings, floors and floor base.
- Equipment layout plan and a corresponding equipment schedule.
- Shop drawings for all custom equipment, counters, countertops and cabinets.
- Equipment specifications (cut sheets) indicating manufacturer and model.
- Used equipment must be evaluated and approved prior to installation.

All food equipment must be listed by NSF/ANSI, Edison Testing Laboratories (ETL) or Underwriters Laboratory (UL) as meeting applicable NSF/ANSI Standards. The proposed construction or remodeling shall conform to the Minnesota Food Code. The Minnesota Department of Health Food Service Construction Guide is available at:

<http://www.health.state.mn.us/divs/eh/food/license/prconreq.pdf>

If any changes are proposed after this Department approves the plans, written changes or additional plans may be required in writing to receive approval. Provide a minimum of **14 days notice** to the Environmental Health Specialist prior to the opening date. All license and Environmental Plan Review fees must be submitted before the opening inspection.

You may not operate until applications and fees are submitted and final approval is given.

**Contact Brian Krawiecki at (651) 266-9134 with questions concerning Food Code plan review requirements.**

**NOTE:** Construction must comply with other applicable code requirements.

You may be required to submit additional information to demonstrate compliance.

**Contact Jeff Fischbach at 266-9106 or Larry Zangs at 266-9109 for a coordinated review of your project**

**City Licensing Requirements**

Depending on the State decision about your club, the following is a list of potential business licenses you may need

License Type	Annual Fee
Restaurant 4: 51 - 150 seats	\$631.00
Environmental Plan Review	\$625.00
Environmental Change of Ownership Review	\$156.25
Liquor On Sale Club A ( Under 200 members)	\$300.00
Liquor On Sale Club b (201 to 500 members)	\$500.00
Liquor On Sale – 181-290 seats	\$5,414.00
Liquor On Sale – 101-180 seats	\$5,054.00
Liquor On Sale – 100 seats or less	\$4,564.00
Liquor On Sale Sunday	\$200.00
Liquor On Sale 2 AM Closing	\$50.00 (state fee varies)

City license(s) identified for the proposed business require a ~~15~~ day public notice. In instances where a notice of a license request is required, processing time for the license can take 75 to 90 days.

**General statement about the review process**

When applying for a business license or building permit you will need to resolve any zoning issues first before the permit or license can be issued.

The business license will be issued when all information on the application has been verified, the proper notice time has expired without objections from the neighboring properties and the construction work is completed and approved by the building official.

Larry Zangs  
Department of Safety & Inspection  
375 Jackson St – Suite 220  
Saint Paul MN 55101  
651-266-9109  
E- Mail: larry.zangs@ci.stpaul.mn.us

Disclaimer: All information provided herein summarizes the City's current understanding of the project as described by the applicant and may not be a complete list of the items necessary for the required approvals.

Cc: Stephen Ubl - Building Official  
Angie Wiese – Fire Engineer  
Wendy Lane – Zoning  
Brian Krawiecki – Env. Health  
Joshua Howe – Building Owner  
Mike Eckardt – Architect  
Charles Carter – Applicant  
Kris Schweinler - Licensing



**Obermueller, Michael**

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**From:** Joshua Howe <zookeeper@thelocalbar.com>  
**Sent:** Wednesday, April 01, 2015 3:19 PM  
**To:** Diehm, Tami  
**Cc:** Michael T. Hatting  
**Subject:** Fwd: 976 Concordia - Jan 3rd Meeting Summary  
**Attachments:** 2998052016.DOC; ATT00001.htm

Joshua Howe

+1 917 340 2414 (Mobile)  
+1 612 638 2603 (Direct)

Begin forwarded message:

**From:** Charles Carter <[mr.jazz1000@gmail.com](mailto:mr.jazz1000@gmail.com)>  
**Date:** April 1, 2015 at 3:03:32 PM CDT  
**To:** Joshua Howe <zookeeper@thelocalbar.com>  
**Subject:** Fwd: 976 Concordia - Jan 3rd Meeting Summary  
**Reply-To:** Charles Carter <[mr.jazz1000@gmail.com](mailto:mr.jazz1000@gmail.com)>

--  
Sent from myMail app for Android

----- Forwarded message -----

**From:** "Zangs, Larry (CI-StPaul)" <[larry.zangs@ci.stpaul.mn.us](mailto:larry.zangs@ci.stpaul.mn.us)>  
**To:** "Schweinler, Kristina (CI-StPaul)" <[kristina.schweinler@ci.stpaul.mn.us](mailto:kristina.schweinler@ci.stpaul.mn.us)>, "Bloom, Jim (CI-StPaul)" <[jim.bloom@ci.stpaul.mn.us](mailto:jim.bloom@ci.stpaul.mn.us)>, "Ubl, Stephen (CI-StPaul)" <[stephen.ubl@ci.stpaul.mn.us](mailto:stephen.ubl@ci.stpaul.mn.us)>, 'Mike Eckardt' <[mikeeckardt@comcast.net](mailto:mikeeckardt@comcast.net)>, "mr.jazz1000@gmail.com" <[mr.jazz1000@gmail.com](mailto:mr.jazz1000@gmail.com)>, 'Joshua Howe' <zookeeper@thelocalbar.com>, "Krawiecki, Brian (CI-StPaul)" <[brian.krawiecki@ci.stpaul.mn.us](mailto:brian.krawiecki@ci.stpaul.mn.us)>, "Wiese, Angie (CI-StPaul)" <[angie.wiese@ci.stpaul.mn.us](mailto:angie.wiese@ci.stpaul.mn.us)>  
**Date:** Friday, 04 January 2013, 06:05PM -06:00  
**Subject:** 976 Concordia - Jan 3rd Meeting Summary

See attached  
Lawrence R. Zangs  
Project Facilitator  
Dept. of Safety and Inspection  
375 Jackson St - Suite 220  
Saint Paul MN. 55101-1806  
Direct: 651-266-9109  
Fax: 651-266-9040  
E-Mail: [larry.zangs@ci.stpaul.mn.us](mailto:larry.zangs@ci.stpaul.mn.us)