

LICENSE HEARING MINUTES
Hoa Bien, 1105 University Avenue West
Thursday, October 6, 2011, 10:00 a.m.
330 City Hall, 15 Kellogg Boulevard West
Nhia Vang, Deputy Legislative Hearing Officer

The hearing was called to order at 10:00 a.m.

Staff Present: Kristina Schweinler, Department of Safety and Inspections (DSI)

Applicant: Linda Do Pham, owner; Yen Pham, daughter of owner (provided translation for mother)

Others Present: Kevin Foley, friend of the family; Officer David Pavlak, off-duty Police Officer with the St. Paul Police Department; Stephen Schmael, 1122 Sherburne Avenue

Hoa Bien: Add an Entertainment (B) license to the existing Restaurant (5) -151 and Over, Wine On Sale, and Malt On Sale (Strong) licenses

Ms. Vang stated that this was an informal legislative hearing for a license application. This particular license required a Class N notification which means the neighborhood was notified and people had the chance to voice their concerns. The City received one (1) letter of concern from the which triggered the hearing. There were three possible results from this hearing: 1) she may recommend that the City Council issue this license without any conditions; 2) she may recommend that the City Council issue this license with agreed upon conditions; or 3) she may recommend that the City Council not issue this license but refer it to the city attorney to take an adverse action on the application, which could involve review by an administrative law judge. The applicant will be required to sign a Conditions Affidavit demonstrating the understanding of the conditions.

DSI staff will explain their review of the application and state their recommendation. Ms. Vang will then ask the applicant to discuss their business plan. At the end of the hearing, she will make a recommendation for the City Council to consider. Her recommendation will be on the Consent Agenda; the City Council is the final authority on whether the license is approved or denied.

Ms. Schweinler stated that DSI was suggesting the following license conditions:

1. Per City of Saint Paul Legislative Code 409.15(a)(2), On-sale wine license shall mean a license authorizing the sale of wine not exceeding fourteen (14) percent alcohol by volume, for consumption on the licensed premises only in conjunction with the sale and service of food (menu item only). The sale of Malt (Strong) beverages (i.e., beer) will also take place only in conjunction with the sale and service of food.
2. Per City of Saint Paul Legislative Code 409.15(d), licensee must be able to show that gross receipts are at least sixty (60) percent attributable to the sale of food.
3. Licensee will submit to the Department of Safety and Inspections (DSI) annual gross receipts for food and liquor for each year the license is renewed
4. The licensee shall take all reasonable steps to lessen the possibility that noise generated by any entertainment provided on the premises will disturb the surrounding residential neighborhood. Steps could include, but may not be limited to, keeping all doors and/or windows closed whenever entertainment is provided.

5. The licensee shall take all necessary action(s) to ensure that the only alcoholic beverages consumed on the premises are those specified under license condition #1 above. No other alcoholic beverages are permitted on the property, regardless of whether they are or are not provided by the licensee.

Ms. Schweinler explained that conditions 1 through 3 related to the existing beer and wine license and conditions 4 and 5 related to the entertainment license which the applicant had applied for in 2007; however, never pursued the entertainment part of the license until this time. The district council submitted a letter of support for this license application.

Ms. Vang asked Ms. Pham whether she understood and was in agreement with the license conditions proposed by DSI. Yen Pham responded that her mother understood and was in agreement with the license conditions. Ms. Vang asked Ms. Pham to discuss her business plan: hours of operation; types of events hosted; number of employees; parking accommodations; etc.

Mr. Foley offered to explain the operation of the business on behalf of Ms. Pham. The family had bought the adjoining buildings at the corner of University and Lexington in order to expand their business and had operated their restaurant for approximately the past 25 years. The parking lot accommodates approximately 90 vehicles and they also have an agreement with the Vietnamese Center, which was approximately a block away, to use 25 spaces for overflow parking. They had seven employees and the hours of operation were Sunday through Thursday, 10 a.m. to 9 p.m.; Friday and Saturday, 10 a.m. to 10 p.m. Ms. Pham had applied for the entertainment B license in order to host events in their banquet facility which can accommodate up to 300 people. They host approximately 10 events per year, usually weddings, and hired additional employees to work these events. When they had such events, they would close the restaurant for general dining in order to accommodate the event. The city had informed Ms. Pham that since she did not have an entertainment license, they were only allowed to apply for three temporary license permits for the year. They currently did not have any events scheduled since they did not have the necessary entertainment license. As a consequence with the light rail construction, they lost about 40 percent in business and needed this entertainment license to host special events in order to bring in revenue.

Ms. Vang asked Ms. Schweinler whether the parking requirements had been met for this license. Ms. Schweinler responded that it did meet the parking requirements for an entertainment B license.

Ms. Vang reviewed the drawing of the floor plan; she asked where the stage was located as well as which area accommodated the banquet hall and restaurant dining. Mr. Foley explained the layout of the banquet hall in relation to the restaurant in addition to where the stage was located. Ms. Vang asked whether the building was soundproofed so that music could not be heard by neighbors outside of the building. Ms. Schweinler responded that since it was a new building, she believed it was equipped with adequate soundproofing. Mr. Foley responded that there was a privacy fence along the alley and that Officer Pavlak could respond to concerns regarding noise complaints.

Officer Pavlak read a prepared statement into the record. He had been a St. Paul Police Officer for the past 22 years and had worked as an off-duty police officer providing security at the restaurant for special events for the past five years. In his capacity, he checked identification of patrons for legal drinking age, checked packages to ensure that no alcohol was being brought in or removed from the restaurant, and ensured the safety of patrons as well as the neighbors. As part of his routine, he walked outside the restaurant every 10 to 15 minutes to monitor the sound coming from

inside the building. It was his experience that he never heard any music when he was outside coming from inside the building. The owner's decision to hire security for events was not the result of any complaints or adverse action; in his 22-years experience, he had never had a business that worked so diligently to ensure the safety of their patrons and the neighborhood. Approximately one and one-half years ago, he began receiving complaints of loud music coming from the restaurant. Each time, he would walk around the building to determine whether there was a noise violation coming from the restaurant. In each instance, he could not hear any audible violation outside coming from inside the business. When he found out where the complaint was coming from, he would walk to the edge of the boundary of the business closest to the complainant and could find no audible violation coming from inside the business. What he did find was traffic proceeding down University Avenue, which was clearly audible, drowning out any other ambient noise coming from the area. After monitoring the noise levels and finding no violations, he contacted the owners to let them know of the complaints. Each time, the owners decided to turn the volume of the music down to make sure there were no further disturbances. Each time a complaint was received into the Com Center, he attempted to contact the complainant and each time, the calls were either anonymous or from one individual. When he was able to contact the individual, twice while he was driving through the parking lot, he talked to him about his concerns. On one occasion, the complainant stated that the base was too loud and on the other occasion, the complainant agreed that music could not be heard coming from the business. On both of these occasions, passing traffic on University Avenue was louder than any other noise coming from the area. He related the concerns to the owners and on both occasions, the owners had the music and the base level turned down. This business has been in existence for 25 years and when they expanded, they built a beautiful structure and erected a six-foot privacy fence on the north side to benefit the homes on that side of the block. They volunteer their restaurant to sponsor many charitable events throughout the year such as Amer-Asian charities, St. Columba Catholic Church's annual dinner and fundraising event, and events for veterans of the Vietnam War. The restaurant serves as an anchor for the neighborhood providing cultural events for the Vietnamese community. The owners have taken every step to be a good neighbor and he urged their request for the entertainment license be granted.

Ms. Vang asked Officer Pavlak whether other security personnel worked with him for events or whether he worked by himself; she also asked if his first response was to the city as a police officer or in his role as providing security for an establishment. Officer Pavlak responded that he worked alone and his first obligation was to the city as an officer to ensure that all laws were complied with. Any time official action was taken by an off-duty officer, they were working in their capacity for the police department and not the establishment they were providing security detail for.

Ms. Vang reviewed the police incident report for the past year and referred to the off-duty status of Officer Pavlak. She understood most of the abbreviations concerning the disposition of calls; however, she questioned whether "RR" on the report meant written report and whether writing a report would have been done to substantiate an issue of a more serious nature, such as a violation, or whether there was a different meaning for this abbreviation. Officer Pavlak responded that "RR" was the connotation for a written record of the incident; however, it did not necessarily denote that a violation had occurred. In the case where an individual continuously calls in a complaint, a report may be written to delineate the nuance of the calls or in some cases, because the complainant may have requested what may have happened with their complaints.

Ms. Vang invited Mr. Schmahl to testify and stated that since he was present at the hearing, she would not read his letters into the record.

Mr. Schmahl stated that he appreciated the opportunity to be present and testify; however, he found this to be a learning process and somewhat frustrating. He highlighted his concerns as outlined in his letter dated September 12, 2011 which is made a part of this record. In addition to comments made in his letter of record, Mr. Schmahl indicated that in talking to city staff, the city had not implemented any parking management plan and with the introduction of light rail, parking in and around University Avenue will be at a premium. He said he had also spoken with Monica Beeman, a civil engineer in Public Works, who indicated that a parking plan had not been discussed in conjunction with the light rail project and that such a plan would not be discussed until after this project was completed and the trains were up and running after 2014. She also told him that the city intended to have an open, public process for the community to contribute once it was determined what the traffic and parking needs would be for this area. He explained that he had moved back to his childhood home in 2001 to care for his mother and he and his brother owned the home on Sherburne Avenue in joint tenancy. It was his contention that the overflow parking lot for Hoa Bien at the Vietnamese Center was insufficient and that when Arnellia's had special events, located at 1183 University, he counted 110 cars, and on another occasion, there were 93 (this did not include the vehicles in their parking lot). Arnellia's also used the Vietnamese Center for overflow parking so he did not believe their lot would provide sufficient parking for both establishments when they had events on the same evenings. Parking on University Avenue would also be lost when the light rail project is completed. Mr. Schmahl then went on to address the fact that the restaurant was hosting entertainment events, without the proper license, above and beyond the three temporary licenses which they had been issued.

Ms. Vang asked whether DSI had investigated the complaint of events occurring without the proper license. Ms. Schweinler responded that the restaurant had applied for the entertainment B license in 2007 and never pursued obtaining this license. DSI was not aware that entertainment events were being held at the establishment until they received the complaint. Once DSI became aware, they contacted the owner and told them that they could only obtain three temporary licenses per year and would need to pursue the entertainment B license. The restaurant has not held any events since they have used all three of their temporary licenses for this past year.

Mr. Schmahl went on to address the petition requirements. He had a letter from a neighbor who wished to retract their signature in support of the license. Ms. Schweinler reviewed the letter Mr. Schmahl submitted and the petition in support of the license and responded that DSI will not accept a retraction letter seven days after signing the petition in support. In this particular case, the petition was signed on June 25, 2011 by Ms. Davies which would be beyond the date to withdraw their signature. She noted that the applicant obtained 57 percent support from the neighbors along with the support of the district council.

Mr. Schmahl stated that he had worked with Officer Pavlak and said he was very responsive; however, he took exception to the statement that noise was not coming from the establishment when in fact he did hear noise/vibrations from the base; it was not acoustics related to traffic on University Avenue.

Mr. Foley responded that the owners will ensure that in the future, the base will be lowered to a minimal level so as not to upset any of the neighbors. Most of the neighbors had supported the restaurant and signed the petition. There were seldom any problems at the restaurant that spilled into the parking lot. He did relate that someone had backed their car into the privacy fence along

the alley and then demanded compensation from the owners for damages to their car. When the owners refused to pay is when the complaints began.

Ms. Vang asked Mr. Schmahl what he desired as the outcome of this process. Mr. Schmahl responded that since the city lacked a comprehensive parking management plan and the restaurant will draw more customers as a result of being granted the entertainment license, he believed this issue needed to be resolved before the license was granted. Ms. Vang countered that the restaurant had met the requirements for parking under the entertainment B license, had made arrangements for overflow parking, and they cannot be held responsible for all the parking problems in the neighborhood as it was outside the scope of their license requirements.

Mr. Schmahl went on to say that he had tried calling the phone number for the restaurant that is listed in the phone book on several occasions and the voicemail box was always full so he could not leave a message. On each occasion he had a complaint about the music, he called the restaurant and got the same recording that the voicemail box was full. Mr. Foley responded that Ms. Pham would provide him with a personal cell phone number so that he could relate his complaints directly to her. Mr. Schmahl refused stating that the owners needed to be responsive to all of the neighbors and not just to him as an individual. He then requested DSI send out a letter with the personal number of the owners. Ms. Schweinler responded that this was out of the purview of the department. Mr. Foley stated that the voicemail box would be cleared so that customers/neighbors can again leave messages. Ms. Vang stated that this was a matter which was outside the scope of the hearing process and encouraged Mr. Schmahl and the owners to exchange telephone numbers and to work together to resolve any issues. Officer Pavlak suggested that if there is a complaint, they can always call the police department who will contact the off-duty officer to respond to the complaint.

Ms. Vang asked Ms. Pham what attempts had been made to obtain the required signatures in support of their license. Ms. Pham responded that they went out around the neighborhood on different days and varying times in an attempt to obtain signatures. Mr. Foley stated that he also went around the neighborhood collecting signatures. The residents who refused to sign were not against the restaurant license; however, they expressed that they didn't believe the restaurant should have to go through the petition process; others believed they would be referred for jury duty if they signed the petition.

Mr. Schmahl asked what the petition requirements were and whether the restaurant had obtained the required number of signatures. Ms. Schweinler responded that Hoa Bien had obtained 57 percent signatures and the requirement was for 60 percent. Since Hoa Bien also obtained support from the district council, they met the requirements under the ordinance for granting the entertainment license. Mr. Schmahl responded that he never had a chance to submit his objection to the district council despite his repeated attempts to reach them. Ms. Vang responded that this again was out of the purview of the hearing process since the department had made the proper evaluation.

Ms. Vang asked Ms. Schweinler how DSI handled any violations against a business license. Ms. Schweinler responded that when they received the complaint that Hoa Bien was hosting entertainment events, staff contacted the owners to let them know that they could not have entertainment without a license. The owners then obtained the limited temporary licenses and thereafter, discontinued hosting events. They were also told that they could not allow patrons to bring in their own alcohol to be served at events. She explained DSI's process when a violation against a license is found: first, a warning is issued; second, an adverse action is taken against the

license which requires payment of a \$500 fine; and third, from there the fine increases to \$1,000 to \$2,000 before revocation of the license is pursued.

Mr. Schmahl requested that the decision on the license be delayed until the light rail system was up and running so that the city could address the parking needs of the neighborhood.

Ms. Vang responded that this parking plan related to the light rail again was out of her purview in the hearing process. She stated that she was satisfied that the business had demonstrated that they met all of the requirements and recommended approval of the license with the conditions proposed by DSI.

The hearing adjourned at 11:10 a.m.

The Conditions Affidavit was submitted on August 9, 2011

Submitted by:
Vicki Sheffer