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**STATE OF WISCONSIN
SUPREME COURT**

01-03-2012

Appeal No. 2010-AP-2900

**CLERK OF SUPREME COURT
OF WISCONSIN**

WISCONSIN DOLLS, LLC,

Plaintiff – Appellant – Petitioner,

v.

**TOWN OF DELL PRAIRIE and
TOWN OF DELL PRAIRIE TOWN BOARD**

Defendants-Respondents.

**BRIEF AND APPENDIX OF
PLAINTIFF-APPELLANT-PETITIONER
WISCONSIN DOLLS, LLC**

**APPEAL FROM THE SEPTEMBER 1, 2011
DECISION OF THE COURT OF APPEALS, DISTRICT IV**

MURPHY DESMOND S.C.

Matthew J. Fleming

State Bar No. 1031041

Margery Tibbetts-Wakefield

State Bar No. 1012321

33 East Main Street, Suite 500

P.O. Box 2038

Madison, WI 53701-2038

(608) 257-7181

Attorneys for Plaintiff-Appellant-Petitioner,

Wisconsin Dolls, LLC

January 3, 2012

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STATEMENT OF ISSUES ON APPEAL

1. Was the premises description on Wisconsin Dolls' five previous alcohol licenses issued by the Town of Dell Prairie insufficient as a matter of law?

Trial court answered: "No."

Court of Appeals answered: "Yes."

2. Was the reduction in size of the licensed premises of Wisconsin Dolls' license a nonrenewal requiring compliance with the procedures of Wis. Stats. §125.12(3)?

Trial court answered: "No."

Court of Appeals answered: "No," because Wisconsin Dolls' previous licenses were void.

3. Does an insufficient premises description on an alcohol license render the license void?

Trial court: Did not answer.

Court of Appeals answered: "Yes."

STATEMENT OF THE CASE

Wisconsin Dolls, LLC owns and operates a bar and resort facility located in the Town of Dell Prairie, Adams County, Wisconsin. (Record, p. 5:47-51; A.App. 029-033). Wisconsin Dolls has been licensed to sell alcohol beverages on its property since 2005 when the Town Board of the Town of Dell Prairie issued a Class “B” license for fermented malt beverages, and “Class B” license for intoxicating liquor. (Record, p. 5:57; A.App. 038). That initial license, referred to hereafter as the “alcohol license,” contained a premises description referencing the street address of the business and “All 8 acres of the resort.” (Record, p. 5:57; A.App. 038).

Subsequent renewal applications, beginning the license year 2005-06 through license year 2008-09, requested renewal of the same license for the entire eight acre resort. (Record, p. 5:47-51, 62; A.App. 029-033, 039). The Town Board renewed the alcohol licenses for the entire eight acres of the resort in response to each of these applications. (Record, p. 5:54-57; A.App. 035-038).

No record exists of any law violations having occurred on the premises. No record exists of any complaints of any kind about Wisconsin Dolls’ operation during these license years. (Record, pp. 5:8-10, 5:32; A.App. 024-027).

As for all previous years through the 2008-2009 license year, Wisconsin Dolls submitted essentially the same renewal application for the 2009-2010 license year. Unlike the previous years, however, the Town Board did not renew the

licenses for which Wisconsin Dolls applied. Instead, at a meeting on June 9, 2009, Dell Prairie approved the issuance of an alcohol license with a premises description limited to the “Main Bar/Entertainment Building.” (Record, p. 5:10, 53; A.App. 026, 034).

The five types of alcohol licenses issued by municipalities for businesses to sell alcohol (Class “A”, “Class A”, Class “B”, “Class B” and Class “C”), address three items:

- (1) The type of beverages that may be sold (beer, intoxicating liquor and/or wine);
- (2) Whether open containers of alcohol beverages may be sold for on-premises consumption or only closed containers for off-premises consumption; and
- (3) The physical limitations of the location where this business may be conducted.

See Wis. Stats. §§125.25, 125.26 and 125.51. Each of these are important defining characteristics of an alcohol license. Altering any of these defining characteristics fundamentally changes the nature of what activity is permitted or where it may occur.

All of these alcohol licenses must “particularly describe the premises” for which the license is issued. Wis. Stats. §§125.25(3), 125.26(3), 125.51(2)(c) and 125.51(3)(d). The premises description defines the area within which all alcohol-

related aspects of the business may occur. No alcohol may be sold, served, consumed or stored except upon the premises described in the license. Wis. Stats. §§125.04(1) and (3)(a)3., 125.09(1). (*See also*, Section V.A., Town of Dell Prairie Ordinance 2008-04; (Record, p. 5:64; A.App. 040).

Under the Class “B” and “Class B” licenses Wisconsin Dolls held for over four years through June 30, 2009, Wisconsin Dolls was entitled to permit guests to purchase and consume alcohol anywhere on its property. It could have had outdoor seating, or outdoor volleyball courts where people could consume an alcohol beverage while participating or observing a game. It could have had a Frisbee golf course on its property and permitted people to drink a beer while playing. It could have expanded its storage of alcohol beverages to other storage areas on its property.

After the Town Board action on renewal of its licenses for the 2009-10 license year, however, the area within which Wisconsin Dolls was permitted to serve, sell or store alcohol beverages was reduced to the confines of the four walls of its “Main Bar/Entertainment Building.” Thus, Dell Prairie took away Wisconsin Dolls’ ability to store or serve any alcohol anywhere else on its eight acre property.

Dell Prairie provided no written notice to Wisconsin Dolls that it intended to refuse to renew the licensure of Wisconsin Dolls’ previously licensed premises under Wis. Stats. §125.12(3). Dell Prairie provided no written notice explaining

why the Board might take such an action. Dell Prairie provided no opportunity for a hearing to Wisconsin Dolls. Dell Prairie provided no written explanation of its action.

The transcript of the June 9, 2009 meeting at which Dell Prairie non-renewed Wisconsin Dolls' licenses as to its then-existing premises except inside one building, reveals no clear supporting rationale. From the discussion, it appears the Town Board Chairperson was convinced that prior Town Boards failed to perform their duty to scrutinize license applications. (Record, pp. 5:8-10; A.App. 024-026). The Chairperson speculated about the potential for improper activities that might occur by having the alcohol license cover the entire eight acre parcel, although no evidence exists in the record, however, of any actual wrongdoing or trouble in over four years of business. (Record, p. 5:8-10; A-App. 024-026).

Wisconsin Dolls commenced this action for certiorari review of the Town Board's action pursuant to Wis. Stats. §§125.12(3) and 125.12(2)(d). Wisconsin Dolls argued that the Board was required to follow notice and hearing procedures required by Wis. Stats. §125.12(3) because the Town Board's action effectively non-renewed the license Wisconsin Dolls previously had over its entire property. Further, Wisconsin Dolls argued that any such action must be supported by cause as set forth under Wis. Stats. §§125.12(3) and 125.12(2)(ag). Because the Board failed to give any notice of its intended non-renewal or hold any quasi-judicial

hearing, and lacked cause to refuse to renew its previous license, Wisconsin Dolls argued the Board's decision must be overturned with directions to issue the license as applied or comply with Wis. Stats. §125.12(3).

The circuit court concluded that the Board's action did not constitute a nonrenewal of Wisconsin Dolls' license. Therefore, no notice or hearing was required, nor did the Board's action need to be supported by cause under Wis. Stats. §125.12(2)(ag). (Record, p. 11:5; A.App. 019).

The Court of Appeals affirmed on different grounds, holding that the premises description on Wisconsin Dolls' previous alcohol licenses was insufficient as a matter of law because the licenses failed to "particularly describe" the premises. As a result, the Court of Appeals held that all five Wisconsin Dolls' previous licenses were void under its interpretation of *Williams v. City of Lake Geneva*, 2002 WI App 95, ¶8, 253 Wis.2d 618, 643 N.W.2d 864. See Court of Appeals Decision, ¶ 26; A.App. 011-012).

ARGUMENT

Introduction

The central question is whether Wisconsin Dolls was entitled to the non-renewal procedures under Wis. Stats. §125.12 before the Town Board eliminated a large portion of Wisconsin Dolls' previously licensed premises. The Court of Appeals concluded it was not because its previous license was void. Dell Prairie contends no such procedures were required because Wisconsin Dolls received a license, albeit with a significantly reduced premises description.

This case involves, primarily, a dispute over statutory interpretation. The Supreme Court reviews questions of statutory interpretation *de novo*. *State ex. rel. Stupar River LLC v. Town of Linwood Portage County Board of Review*, 2011 WI 82, ¶20, 336 Wis.2d 562, 800 N.W.2d 468.

Although resolution of this case depends primarily on the interpretation of portions of Wis. Stats. Chap. 125, the application of these statutes implicates constitutional questions regarding property rights an alcohol license holder possesses for renewal of its license for purposes of due process. *See Manos v. City of Green Bay*, 372 F. Supp. 40, 49 (E.D. Wis. 1974).

Wisconsin Dolls recognizes that local governments, as the licensing authority for most alcohol-related businesses, are entrusted with an important responsibility for the regulation and distribution of alcohol in Wisconsin. A great deal of discretionary authority has been bestowed upon local governments to meet this responsibility through the 21st Amendment to the United States Constitution and Wis. Stats. Chap. 125. *Eichenseer v. Madison-Dane County Tavern League*, 2008 WI 38, ¶¶58-60, 308 Wis.2d 684, 748 N.W.2d 154.

Wisconsin Dolls urges an interpretation that rationally balances these important interests. While local governments have broad authority to define the limits of a licensed premise, the fullest breadth of that authority exists at the time of initial issuance. Once an alcohol beverage license has been issued to a business, however, later governing bodies of local government should not be able

to second guess the wisdom of predecessor boards and cause potentially grievous injury to the licensee by altering the scope of an operating business without providing due process to the licensee.

The Court of Appeals avoided the central questions posed by this case in holding Wisconsin Dolls' previous licenses were void. It did so upon a strained interpretation of the statutory requirement that licenses "particularly describe the premises" to which they apply. This interpretation leads to unreasonable results. Further, its conclusion that an insufficient premises description renders the license void deprives a license holder of substantial benefits upon which it has reasonably relied without serving any identifiable public interest.

Wisconsin Dolls' previous licenses adequately described the premises. The Court of Appeals' decision must be overturned. The Court should order Dell Prairie to renew Wisconsin Dolls' license using its original premises description covering its entire parcel or to follow the nonrenewal procedures under Wis. Stats. §125.12(3) if cause exists to nonrenew all or any portion of Wisconsin Dolls' license.

I. THE STANDARDS FOR CERTIORARI REVIEW ARE WELL ESTABLISHED.

The Supreme Court, on certiorari review of a decision of a Town Board, reviews the Board's decision, not the circuit court's or the court of appeals' decisions, although it may benefit from their analyses. *ABKA Ltd. Partnership v.*

Board of Review of Village of Fontana-on-Geneva Lake, 231 Wis.2d 328, 335, 601 N.W.2d 217 (1999). The Court's review is limited to:

(1) whether the board kept within its jurisdiction; (2) whether it acted according to the law; (3) whether its action was arbitrary, oppressive, or unreasonable and represented its will and not its judgment; and (4) whether the evidence was such that it might reasonably make the order or determination in question.

State ex. rel. Campbell v. Delavan, 210 Wis.2d 239, 254-255; 565 N.W.2d 209 (Ct. App. 1997).

II. THE PREMISES DESCRIPTION ON WISCONSIN DOLLS' PREVIOUS LICENSE WAS NOT LEGALLY DEFICIENT.

The Court of Appeals held that a premises description consisting of an address or an address plus a description of the entire property does not satisfy the requirements of Wis. Stats. §§125.26(3) and 125.51(3)(d). (Appeal No. 2010-AP-2900 September 1, 2011, slip op. at ¶20; A.App. 009). It concluded that a premises description must "identify the specific area or areas in the total acreage where the licensed activity will occur." (*Id.*, at ¶20).

No such requirement is found in Wis. Stats. §§125.26(3) or 125.51(3)(d) exists. Further, such an interpretation and the rationale upon which it rests leads to unreasonable results. A premises description must be no more particular than necessary to define the area within which the licensed activity is to occur, and the Legislature has given municipalities the discretion to determine the appropriate limits of the premises description at the time of initial license issuance. That is what Dell Prairie did when it issued Wisconsin Dolls' initial license in 2005 when

it granted a license for Wisconsin Dolls' entire parcel. No basis exists to alter that decision.

A. The Statutory Language Does Not Compel the Court of Appeals' Conclusions.

As the Court of Appeals recognized, the statutory definitions the Legislature provided to interpret the phrase "particularly describe the premises" are not tremendously detailed. (Court of Appeals Decision, ¶17-18; A.App. 008). The term "premises" is explicitly defined only as "the area described in the license." Wis. Stats. §125.02(14m). No definition of "describe" or "particularly" exists. (Court of Appeals Decision, ¶18-19; A.App. 008-009).

With regard to the term "premises," the Court of Appeals looked beyond the explicit definition the Legislature provided to language found in Wis. Stats. §125.04(3), which directs the Department of Revenue to prepare application forms. Wis. Stats. §125.04(3)(a) directs the Department to request certain information in the application form. Under Wis. Stats. §125.04(3)(a)3., that information is to include "[t]he premises where alcohol beverages will be sold or stored or both." From this, the Court of Appeals concluded the term "premises" has a narrower definition than the Legislature explicitly provided by holding "premises" means the area where alcohol beverages will be sold or stored or both." (Court of Appeals Decision, ¶17; A.App. 008).

The Court of Appeals failed to identify any rule of statutory construction that directs it to presume the Legislature would have defined the term "premises"

in an inadequate manner or differently from the meaning it intended. To the contrary, courts are not to read extra words into a statute to achieve a specific result. *Cavey v. Walrath*, 229 Wis. 2d 105, 111, 598 N.W.2d 240 (Ct. App. 1999).

While statutory language should be interpreted in context and in relation to the language of surrounding or closely-related statutes (*Kolupar v. Wilde Pontiac-Cadillac, Inc.*, 2007 WI 98, ¶27, 303 Wis. 2d 258, 735 N.W. 2d 93), this rule of construction fails to support the Court of Appeals' interpretation. Simply because the Department is required to develop a form asking for "the premises where alcohol beverages will be sold or stored or both" does not logically and necessarily lead to the conclusion that the premises must be *limited* to only those specific areas where actual sale and storage will occur. Wis. Stats. §125.04(3)(a) requires only that the premises description include these areas. Nothing in Wis. Stats. Chap. 125 suggests Dell Prairie is not authorized to exercise the discretion to license Wisconsin Dolls to sell or store alcohol anywhere on its eight acre parcel. The statutes require a "particular description," but do not constrain municipal discretion by specifying a restrictive standard of particularity to which a municipality must adhere.

B. The Court of Appeals Decision Creates an Unworkable Result.

The Court of Appeals' decision fails to offer any standard establishing what threshold of particularity "Main Bar/Entertainment Area" meets that is qualitatively different from identifying Wisconsin Dolls' entire parcel. For example, Wisconsin Dolls' 2007-08 application identified "Bar, cooler, Lg Room

in Office and all 8 acres of resort” as the premises description. (Record, p. 5:49; A.App. 031). That description is clearly more particular in that it references specific areas of the property even though it does not limit licensed activities to those areas. Yet, this description illustrates ways in which a premises description could be more particular with respect to the places of sale, storage or both. Surely actual sale or storage does not occur on every square inch of the “Main Bar/Entertainment Area.” What statutory language establishes the sufficiency of this level of particularity compared to other possible descriptions?

Upon what basis is anyone to determine what is particular enough under the Court of Appeals’ formulation? The Court of Appeals seems to suggest that a premises description must necessarily consist only of a portion of the parcel upon which a business operates. Under this view, however, taverns located in downtown areas where buildings often encompass the entire parcel have a problem. Whereas “Main Bar/Entertainment Building” would be a more particular subset of an eight acre parcel, a similar description in the downtown context would not be particular enough because it includes the entire parcel. The description would, for no identifiable reason, have to exclude some area of the building.

The Court of Appeals’ interpretation is inconsistent with other provisions of Wis. Stats. Chap. 125 that sales and storage are not the only activities sanctioned by an alcohol license. As noted previously, no alcohol may be consumed in any

public place unless the premises are subject to the appropriate license. Wis. Stats. §125.09(1). Thus, under the Court of Appeals' interpretation, no consumption of alcohol beverages can occur except in the same particular place as the alcohol is sold or stored. Does that mean the same building? The same room? The same parcel of land (as long as it is some unspecified size smaller than eight acres)? The Court of Appeals' interpretation holds no answers to these questions and fails to demonstrate why its outcome is any more reasonable than a number of other outcomes in this very same fact situation.

The Court of Appeals confuses the matter further by claiming to find support for its interpretation in Wis. Stats. §125.04(10)(a) and (b). Under Wis. Stats. §125.04(10)(b), the license must "be conspicuously displayed for public inspection at all times in the room or place where the activity subject to permit or licensure is carried on." According to the Court of Appeals, this language cannot be reconciled with the concept of licensure of an entire parcel. (Court of Appeals Decision, ¶21; A.App. 009).

Wis. Stats. §125.04(10)(b) says the license must be posted in "the room *or* place" where the licensed activity occurs (emphasis supplied). Again, the Court of Appeals fails to identify the necessary limits of a "place." It fails to explain why Wisconsin Dolls' entire parcel is not a specific place distinguishable from all other properties in the Town. Must a "place" be in the same building? May it include some outdoor area? If so, how much? May it include as much outdoor area as

desired as long as it excludes some portion of the parcel? How much of a parcel is too much? Clearly eight acres is too much for the Court of Appeals, but would seven acres pass muster?

C. The Decision Conflicts With Other Statutory Language.

The Court of Appeals purports to identify a definitive statutory standard of particularity to which municipalities must adhere, yet the foregoing discussion reveals its formulation is entirely arbitrary. Examined further, this construction is unworkable – a result that must be avoided. *Kolupar*, 2007 WI 98, ¶27.

Not only does the Court of Appeals interpretation create a totally arbitrary distinction not necessitated by any statute, it conflicts with other language in Chapter 125. For instance, under Wis. Stats. §125.07(3), underage persons “may not knowingly attempt to enter or be on any premises for which a license or permit for the retail sale of alcohol beverages has been issued . . .” The Legislature has created several exemptions to this restriction. Among those exemptions are “golf courses and golf clubhouses.” Wis. Stats. §125.07(3)(a)5. Clearly, the Legislature anticipated that entire golf courses might be included within a licensed premises. The Court can take judicial notice of the fact that most standard 18 hole golf courses are both outside and cover much more land than eight acres. *Sisson v. Hansen Storage Company*, 2008 WI App. 111, ¶11, 313 Wis.2d 411, 746 N.W.2d 667 (court may take judicial notice of facts readily capable of accurate determination by resort to sources whose accuracy cannot be reasonably questioned). Yet, the Court of Appeals’ rationale would seem not to permit

licensure of the golf course because the entire course is not in the same “place” as where the license is likely posted – in the clubhouse.

D. The Decision Is Contrary To Existing Precedent.

The Court of Appeals points to *Alberti v. City of Whitewater*, 109, Wis.2d 592, 327 N.W.2d 150 (Ct. App. 1982), as authority supporting its interpretation because it is consistent with municipal “power to control the grant, transfer, revocation, and renewal of licenses, and provides for notification to the public.” (Court of Appeals Decision, ¶22; A.App. 009). According to the Court of Appeals, “interpreting Wis. Stats. §125.26(3) and 125.51(3)(d) to authorize the issuance of a license for the entire acreage of a licensee’s property would allow the licensee to unilaterally expand the areas within that acreage where the licensed activity takes place, without any oversight by the issuing authority.” (Court of Appeals Decision, ¶21; A.App. 010).

Rather than being supportive of municipal power, the Court of Appeals’ holding is unduly restrictive. Nothing in Wis. Stats. Chap. 125 prohibits a municipality from issuing a license for a property and permitting the licensee to make use of as much or as little of that property as the licensee sees fit. It may be entirely reasonable for a municipality to refuse to initially license an entire property, but nothing in Wis. Stats. Chap. 125 prohibits a municipality from exercising its discretion in that manner.

What if Wisconsin Dolls, at the time of applying for the license, wanted to build a miniature golf course on its property and wanted to allow people to

consume alcohol while playing? Why could the Town Board not issue the license for the whole playing area and leave it to Wisconsin Dolls to determine the timing of those improvements?

Issuing a license with a premises description within which a licensee is given some discretion in timing expansions is not the same thing as permitting the expansion of an existing defined premises. In *Alberti*, the existing license was for a defined area and the licensee wished to expand the business beyond the licensed premises. *Alberti*, 109 Wis.2d at 151-52. During initial issuance, neither the public nor the governing body had any input or review over this expansion. In Wisconsin Dolls' case, the Board and public would have known that the premises description encompassed the entire parcel. While it may not have been known exactly what expansions, if any, were planned for the entire parcel, unlike in *Alberti* that possibility would have been known and the public and Board were able to have input on whether a smaller premises description should have been imposed from the outset.

The only Wisconsin authority Wisconsin Dolls has located discussing the requirement to describe the premises is from the Wisconsin League of Municipalities' publication, *Municipal Licensing and Regulation of Alcohol Beverages*, American Legal Publishing Corp. 4th Ed., Feb. 2002. (A.App. 041-042). The League, with respect to the premises description, opines that entire

parcels of land can lawfully be covered by an alcohol license and even be described with reference to nothing more than the property address:

“3. Use of street address to describe the premises:

a. Use of a city or village street address is possible only if the applicant has been granted a license to cover the entire location: i.e., the building(s) and land area at that address.

If the license is to cover the building or a part of the building only, then the applicant must describe the building or portion of the building at the appropriate street address as shown on the license application.”

Given the lack of any defined limits as to the degree of “particularity” required, and given the broad discretion granted to municipalities in the issuance of alcohol licenses, it is illogical to conclude prior Dell Prairie town boards did not have the authority to grant a license for Wisconsin Dolls’ entire parcel. The only manifest purpose of the requirement to particularly describe the licensed premises is to ensure that some defined area of operation is identified so the physical limits of the licensed operation are reasonably known to all. Nobody contends Wisconsin Dolls’ previous premises descriptions failed in that regard.

III. DELL PRAIRIE MAY NOT ELIMINATE PORTIONS OF WISCONSIN DOLLS PREVIOUSLY LICENSED PREMISES WITHOUT COMPLYING WITH WIS. STATS. §125.12(3).

“It is significant that most of the provisions of the Bill of Rights are procedural, for it is procedure that marks much of the difference between rule by law and rule by fiat.” *Wisconsin v. Constantineau*, 400 U.S. 433, 436 (1971). Dell Prairie apparently believed that as long as it issued some kind of license to

Wisconsin Dolls, it was permitted to exercise unfettered discretion over the terms and scope of the renewal license it chose to issue. The power Dell Prairie assumes for itself, however, does not comport with the procedural protections the Legislature has established to protect a business' interests in the licenses upon which the business depends.

Under Wis. Stats. §125.12(3):

A municipality issuing licenses under this chapter may refuse to renew a license for the causes provided in sub. (2)(ag). Prior to the time for the renewal of the license, the municipal governing body or a duly authorized committee of a city council shall notify the licensee in writing of the municipality's intention not to renew the license and provide the licensee with an opportunity for a hearing. The hearing shall be conducted as provided in sub. (2)(b) and judicial review shall be as provided in sub. (2)(d).

Thus, essentially the same procedural protections applicable to revocation and suspension of licenses apply to a decision not to renew a license.

Wis. Stats. §125.12 addresses revocations, suspensions and nonrenewals. Under Dell Prairie's view, local governments may deprive a license holder of significant benefits conferred by a license, benefits upon which the very existence of the business may depend, without due process. All it must do is grant a new license for some of the area previously licensed. This cannot be the law. Such an interpretation is contrary to the very purpose the Legislature intended to serve when it enacted Wis. Stats. §125.12. "A cardinal rule in interpreting statutes is to favor an interpretation that will fulfill the purpose of a statute over an interpretation that defeats the manifest objective of an act." *City of Menasha v.*

Wisconsin Employment Relations Commission, 2011 WI App 108, ¶10, 335 Wis.2d 250, 802 N.W.2d 531.

Eliminating part of a previous premises description eliminates the right to carry on the licensed activity in all places no longer encompassed within the description. This is a non-renewal of the license, and could have a dramatic adverse effect on the licensed business.

For instance, consider a restaurant with a bar in a separate room operating under a combination Class “B” and “Class B” license that describes the entire building, including both the bar and restaurant seating. Under that license, the owner may sell and serve alcohol beverages for consumption in the bar or at the restaurant tables. If the premises description were altered on license renewal to cover only the bar area, no more alcohol, wine or beer could be consumed at the restaurant tables. That restaurant is instantly disadvantaged.

Consider a tavern that operates with outside seating or outdoor volleyball courts. To serve alcohol in these areas, the premises description would have to include these areas. If the premises description were reduced on license renewal to include only the indoor bar area, the outdoor areas would instantly become less attractive to customers and those customers that patronized the business to enjoy these outdoor areas are likely to take their business elsewhere.

Private golf courses, in order to serve alcohol on the course, must have the entire course included in their premises description if they wish to sell or permit

consumption of alcohol beverages on the course. Restricting the premises description to the clubhouse would eliminate the ability to offer that amenity.

Greater extremes than these examples can be imagined. Consider a business with a premises description that was initially licenses throughout an entire building being reduced, on renewal, to a total of three square feet of licensed premises. That business would have a license, however, such reduction would kill the business as surely as a revocation.

If renewal of any license with any premises description whatsoever removes the obligation to follow the procedures under Wis. Stats. §125.12(3), each change in the premises description described above could occur at the complete and unfettered discretion of the local government. The Legislature, however, expressly granted due process protections to licensees under Wis. Stats. §125.12 to protect licensees' substantial interests in licenses previously issued.

The Legislature created Wis. Stats. §125.12 under 1981 Wis. Laws, Chap. 79, as part of a comprehensive rewrite of Wisconsin's alcohol beverage laws. Prior to that, initial "applications and renewals [were] treated alike, and this court [had] held the exercise of discretion for the original application and for the renewal [was] the same." *State ex. rel. Ruffalo v. Common Council of the City of Kenosha*, 38 Wis. 2d 518, 524, 157 N.W.2d 518 (1968). The notion that any property right existed in the renewal of a previously issued alcohol license was

considered to be against public policy, such license being a privilege, not a vested or property right. *Id.* at 523.

The decision to renew an alcohol license was considered a purely legislative function reviewable by the judiciary to determine only whether the action was arbitrary, capricious or discriminatory. *Id.* at 524. Review of a legislative decision is not a review of the record of a quasi-judicial hearing with testimony given under oath and subject to cross examination. Instead, it is only a review of those “facts which lie within the knowledge of the agency” or body making the decision. *Id.* at 524.

Around the time *Ruffalo* was decided, the United States Supreme Court was developing a different view of the nature of “privileges” granted by the government:

[T]his Court now has rejected the concept that constitutional rights turn upon whether a governmental benefit is characterized as a “right” or a “privilege.”

Graham v. Richardson, 403 U.S. 365, 374 (1971). The court recognized a broader view of the liberty and property interests to be protected under the Fourteenth Amendment:

The Fourteenth Amendment’s procedural protection of property is a safeguard of the security of interests that a person has already acquired in specific benefits. These interests – property interests – may take many forms.

Board of Regents of State Colleges v. Roth, 408 U.S. 564, 576 (1972).

Property interests for purposes of due process had been recognized for the receipt of welfare benefits (*Goldberg v. Kelly*, 397 U.S. 254 (1970)), employment under tenure provisions (*Slochower v. Board of Education*, 350 U.S. 551 (1956)), as well as employment under “a clearly implied promise of continued employment” (*Connell v. Higginbotham*, 403 U.S. 207, 208 (1971)).

To have a property interest in a benefit, a person must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it. It is a purpose of the ancient institution of property to protect those claims upon which people rely in their daily lives, reliance that must not be arbitrarily undermined. It is a purpose of the constitutional right to a hearing to provide an opportunity for a person to vindicate those claims.

Roth, 408 U.S. at 577.

The first time property interests in renewal of a Wisconsin alcohol license were recognized was in *Manos v. City of Green Bay*, 372 F.Supp. 40 (E.D. Wis.1974). Relying on *Roth*, the *Manos* court held that, “[o]ne must look not to the ‘weight’ but to the ‘nature’ of the interest at stake to determine if due process requirements apply in the first place.” *Manos*, 372 F. Supp. at 48. In the context of an alcohol license, the court recognized that the license governs the manner in which the subject business derives its income and can affect substantial business investments. *Id.* at 48-49. The court further recognized that when an alcohol license is not renewed, the licensee cannot simply open a new tavern in the vicinity. *Id.* at 49. Unlike *Roth*, absent some reason justifying revocation of the

license, most tavern owners expect to be in business for more than a single license year. *Id.* at 49.

Accordingly, the *Manos* court held that, under the Fourteenth Amendment to the United States Constitution, an alcohol license, once issued, implicated sufficient “property” interests “to warrant the guarantee of minimal standards required by procedural due process” before a licensing authority could refuse to renew. *Id.* at 49.

Those minimal standards are as follows:

- (1) notice of the charges upon which denial of the liquor license is predicated,
- (2) an opportunity to respond to and challenge such charges,
- (3) an opportunity to present witnesses under oath,
- (4) an opportunity to confront and cross-examine opposing witnesses under oath, and
- (5) the opportunity to have a verbatim, written transcript made upon his own initiative and expense.

In addition, the conclusions made by the hearing body must be based on the evidence adduced at the hearing.

Id. at 51.

The Legislature’s response to the *Roth* criteria and to *Manos* is manifest in the language of Wis. Stats. §125.12(3) and Wisconsin’s alcohol licensing. Clearly a licensee has more than an “abstract need or desire” to renew an alcohol license. One may not conduct an alcohol related business without it. Once issued, the licensee has more than a unilateral expectation that it be renewed because Wis.

Stats. §125.12(3) states a license is to be renewed except for cause under Wis. Stats. §125.12(2)(ag). Due process is, therefore, to be afforded to permit those expectations to be vindicated. *Roth*, 408 U.S. at 577.

The Wisconsin Court of Appeals has since twice reaffirmed that “the interest in renewal of a liquor license is a ‘property interest’ for purposes of the fourteenth amendment.” *Tavern League of Wisconsin v. City of Madison*, 131 Wis. 2d 477, 489, 389 N.W.2d 54 (Ct. App. 1986); *City News and Novelty v. City of Waukesha*, 231 Wis. 2d 93, 125, 604 N.W.2d 870 (Ct. App. 1999). This Court has not reconsidered the issue since *Ruffalo*, however, it has applied the *Roth* analysis in other licensing contexts such as the licensing of solid waste disposal sites. *Waste Management of Wisconsin v. State of Wisconsin Department of Natural Resources*, 128 Wis. 2d 59, 70, 381 N.W.2d 318 (1986).

The holding in *Manos* was expressly codified in Wis. Stats. §125.12. According to the Legislative Council notes to 1981 Wis. Laws, Chap. 79:

Section 125.12 revises the procedure to ensure that prior to any revocation or suspension of, or *refusal to renew*, an alcohol beverage license or permit, the licensee or permittee is afforded 1) notice of the charges upon which the action is predicated, 2) a hearing at which the licensee has an opportunity to challenge the charges and present and cross-examine witnesses. In addition, the permittee or licensee may have a written transcript of the hearing prepared at his or her own expense . . . *These notice and hearing requirements appear to be required by the due process clause of the U.S. constitution. See Manos v. City of Green Bay*, 372 F.Supp. 40 (E.D. Wis. 1974), relating to license nonrenewals. (Emphasis supplied).

Now, before important property interests may be extinguished through nonrenewal of an alcohol license under Wis. Stats. §125.12(3), a municipality must provide:

- (1) Written notice of the intention to not renew including written notice of the reasons for the intended action.
- (2) The opportunity for a hearing conducted in the same manner as that for revocation and suspension hearings under Wis. Stats. §125.12(2)(b). This procedure further includes the right to “produce witnesses, cross-examine witnesses and be represented by counsel.”
- (3) Proof of cause under Wis. Stats. §125.12(2)(ag).

No doubt can exist that property interests exist for purposes of due process in an alcohol license. Did the Legislature, however, intend that the “minimal dictates of procedural due process” (*Manos*, 372 F. Supp. at 50) would only apply to situations where the municipality intends to issue no license at all? If due process is required where a license holder may be “condemned to suffer a grievous loss” (*Manos*, 372 F. Supp. at 48), did the Legislature intend to permit municipalities to dramatically alter defining characteristics of a license and still call it a renewal of the previous license, eliminating the obligation to provide due process?

It is axiomatic that a premises description is a defining characteristic of an alcohol license. What good is a license to conduct a business apart from a place in which it can be conducted? How then can a license with a different premises description be considered a renewal of the same license? How can a license

authorizing business activities over eight acres of property be the same license as one that limits the business to the “Main Bar/Entertainment Building”?

Alberti supports the view that eliminating the licensure of previously licensed premises, even where a new license is issued, is the equivalent of a nonrenewal. Under the predecessor to Wis. Stats. §125.04(3)(h), the tavern owner believed he could expand his premises description by simply notifying the city of a subsequent change in information submitted with his prior application. The court, however, disagreed that the owner could unilaterally alter the premises description:

We conclude that the expansion of the premises on which the licensee is legally entitled to sell liquor *is analogous to the entire relocation of his licensed premises*. The chief difference between a licensee who proposes to expand his premises and one who proposes to relocate is that one who opts for expansion wants to have his original licensed premises and the new premises as well.

Alberti, 109 Wis.2d at 601 (emphasis supplied).

Similarly, although Wisconsin Dolls was issued a license for a portion of its previously licensed premises, the failure to renew its license as to the remainder of its previously licensed premises is analogous to a complete nonrenewal of its previous license and the issuance of a different license. The license Wisconsin Dolls received did not renew its old license. The new license restricted its business operation to a much smaller premises. This case is *Alberti* in reverse.

This Court’s analysis in *Waste Management* further supports the conclusion that due process rights can attach to individual components of a

license. In *Waste Management*, the petitioner argued it had a vested right in an approved “plan of operation” for a waste disposal site entitling it to a full contested-case, due process hearing. *Waste Management*, 128 Wis. 2d at 74-75. The approval letter for its plan of operation and subsequent license contained numerous conditions that had to be satisfied, and Waste Management was expressly informed that the plan of operation was subject to further modification.

Thus, Waste Management had only a “unilateral expectation that the approved plan of operation is final and that they [could] operate the Omega Hills site free from further modification by the DNR.” *Id.* at 76. The Court held, however, that Waste Management had “a legitimate claim of entitlement to operate the site free only from modification of the conditions regarding the construction of the site” since DNR determined it had satisfied the original construction conditions. *Id.* at 77.

In contrast, no “conditions” were placed upon Wisconsin Dolls’ license except the statutorily implied conditions that the business operates in accordance with Wis. Stats. Chap. 125 and local ordinances. Wisconsin Dolls did not simply have a unilateral expectation to the renewal of the same license it had been issued for over four years. Instead, its expectation arose from the lack of any conditions dispelling such expectation, the lack of notice of any cause under Wis. Stats. §125.12(2)(ag) to take adverse action against the license and Dell Prairie’s previous actions renewing the license in the past without question.

Other courts have concluded that alterations of the terms of existing licenses on renewal trigger the need to provide due process protections. In *Pro Sports Bar & Grill, Inc. v. City of Country Club Hills*, 589 F.3d 865, 872 (7th Cir. 2009), the court held that Pro Sports Bar and Grill was deprived of a property interest without due process when its alcohol license was renewed with hours limitations that were not imposed upon the previous license. Similarly, in *City of Evanston v. Whirl Inn, Inc.*, 647 P.2d 1378, 1386 (Wy. 1982), the court held the City of Evanston had violated Wyoming's statute regarding renewals of licenses when it restricted the Whirl Inn's area for alcohol sales from a previously larger area to its only drive up window. The court, on the basis of a new hearing held before a district court, found that the evidence failed to meet the statutory standards that might justify nonrenewal. *Id.* at 1384, fn 6; 1386-87.

The goal of a statutory interpretation is to determine the intent of the Legislature. *In interest of JWT*, 159 Wis.2d 754, 761, 465 N.W.2d 520 (Ct. App. 1990). “[A] court must ascertain the legislative intent from the language of the statute in relation to its context, history, scope, and objective intended to be accomplished, including the consequences of alternative interpretations.” *City of Menasha*, 2011 WI App 108, ¶10. The context, history, scope, and objectives of Wis. Stats. §125.12(3) strongly favor an interpretation entitling Wisconsin Dolls to the process established therein before its premises description could be reduced upon renewal of its license.

The Legislature unambiguously intended to provide due process to the license renewal process when it enacted Wis. Stats. §125.12(3). Due process is required before property interests in a license can be modified. Under *Waste Management*, it is clear that due process interests exist in the terms of a license short of total revocation or nonrenewal where such expectations are not unilateral. *Waste Management*, 128 Wis. 2d at 76-77. *Alberti* demonstrates that premises descriptions are a defining characteristic of an alcohol license. *Alberti*, 109 Wis.2d at 601. Finally, it is clear that grievous injury can be caused by drastic modifications to a license such as a decrease in premises description. Given that “confidence in local government is so important in a democracy” under these circumstances, it is logical to conclude that it is not “unduly harsh to require local licensing bodies in these matters to respect the minimal dictates of procedural due process” and that the Legislature came to the same conclusion when enacting Wis. Stats. §125.12(3). See *Manos*, 372 F. Supp. at 50.

IV. AN INSUFFICIENCY OF PREMISES DESCRIPTION DOES NOT RENDER AN ALCOHOL LICENSE VOID.

The Court of Appeals erred in holding Wisconsin Dolls’ 2008-09 alcohol license void under Wis. Stats. §125.04(2) as the consequence of finding that the premises description was not sufficiently particular. (Court of Appeals Decision, ¶11; A.App. 005). Even if one assumes, for sake of argument, that the premises description on Wisconsin Dolls’ previously issued license was legally deficient, the license was still not void. The Court of Appeals’ interpretation of Wis. Stats.

§125.04(2) in this instance leads to an unjust result that fails to advance any identifiable public interest contrary to the principles of due process and fair play. Such result is directly contrary to the Legislature's clearly expressed intent that licensed businesses not be arbitrarily deprived of the licenses upon which their existence depends. Finally, even if the Court of Appeals' holding is correct, it should not be applied retroactively to void Wisconsin Dolls' license.

A. Declaring Wisconsin Dolls' Previous Licenses Void Is Contrary To Due Process Principles.

According to the Court of Appeals, if the premises description on an issued alcohol license is, for any reason, deemed insufficient, no matter how long the business has been in operation in reasonable reliance on the validity of the license, and no matter how many times the local government has approved the premises description on previous renewals, the license is void. Thus, even if the licensee requests a premises description on its license application that is sufficient, if the municipal clerk issues a license with an insufficient description, the license is void and the licensee has lost all due process rights in the license the moment it is issued. It is notable that Wisconsin Dolls' 2007-08 application included specific descriptions of places of sale and storage on the parcel, yet the license issued by Dell Prairie for that year described only the address and the entirety of the resort. (Record, p. 5-49; A.App. 031).

This result is contrary to due process. In this case, Wisconsin Dolls had operated for over four years in reliance on the license description that Dell Prairie

approved. For over four years this license was subject to public hearings, and the record is devoid of any indication any public official or member of the public voiced any objection to the particularity of the premises description. Furthermore, the record contains no allegations whatsoever that any problems of any kind have occurred with Wisconsin Dolls' operation. Had the business been accused of wrongdoing, Wis. Stats. §§125.12(2) or (3) would have guaranteed it a due process hearing before its license could have been revoked, suspended, or non-renewed. In this case, through no fault of its own and based upon a Court of Appeals ruling on an issue of first impression in Wisconsin, Wisconsin Dolls' license is deemed void.

The Court of Appeals' interpretation of Wis. Stats. §125.04(2) in this case subjects Wisconsin Dolls to grievous loss through the voiding of its alcohol license and the elimination of its due process rights. No interest is served by Wisconsin Dolls' license being rendered void in this instance.

The extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may 'be condemned to suffer grievous loss' and depends upon whether the recipient's interest in avoiding that loss outweighs the governmental interest in summary adjudication.

Goldberg v. Kelly, 397 U.S. 254, 262-63 (1970).

Under the Court of Appeals' interpretation, all due process rights vanish the moment the municipal clerk issues a license with an invalid premises description. It is a violation of due process for interests in previously issued licenses to be summarily eliminated by operation of law absent an overriding public interest.

Wis. Stats. §125.04(2) cannot be interpreted in a manner consistent with notions of due process and manifest legislative intent by abandoning all sense of fairness:

For all its consequence, “due process” has never been, and perhaps can never be, precisely defined. “[U]nlike some legal rules,” this Court has said, due process “is not a technical conception with a fixed content unrelated to time, place and circumstances.” *Cafeteria Workers v. McElroy*, 367 U.S. 886, 895, 81 S.Ct. 1743, 1748, 6 L.Ed.2d 1230. Rather, the phrase expresses the requirement of “fundamental fairness,” a requirement whose meaning can be as opaque as its importance is lofty. Applying the due process clause is, therefore, an uncertain enterprise which must discover what “fundamental fairness” consists of in a particular situation by first considering any relevant precedents and then by assessing the several interests that are at stake.

Lassiter v. Dep't of Soc. Servs. of Durham County, N.C., 452 U.S. 18, 24 (1981).

Given the clear legislative purpose of affording due process expressed in Wis. Stats. §125.12, automatic voiding of licenses after their issuance, absent the service of any public interest, was unlikely what the Legislature had in mind when it enacted Wis. Stats. §125.04(2).

Unlike this case, in *Williams v. City of Lake Geneva*, 2002 WI App. 95, 253 Wis.2d 618, 643 N.W.2d 864, an identifiable public interest was served by voiding the license. In *Williams*, an alcohol license, issued without compliance with statutory public notice requirements under Wis. Stats. §125.04(3)(g), was held to be void pursuant to Wis. Stats. § 125.04(2). *Id.* at ¶ 8. Like this case, the result of *Williams* is harsh given that the failure to publish the applications was the fault of the municipality, not the licensee. *Id.* at ¶2. Although the Court of

Appeals did not expressly hold the license Dell Prairie issued for the “Main Bar/Entertainment Building” void, the Court of Appeals’ ruling puts this license and Wisconsin Dolls’ entire business at risk because, under *Williams*, “a void license is an absolute nullity; it is of no legal effect . . . a void license is no license.” *Id.* at ¶9. Because its license was found void, Wisconsin Dolls “could not apply for an appropriate liquor license via renewal of that void license. The only way for [it] to obtain an appropriate license was to file an application for an original Alcohol Beverage License.” *Id.* at ¶14.

This case, however, presents a very different situation than presented in *Williams*. In *Williams*, the license was issued without compliance with a mandatory procedural requirement – notice to the public. *Id.* at ¶8. In this case, no procedural violations appear in the record. In this case, the supposed legal infirmity lies in the form of the approved license – the premises description appearing on the license. In *Williams*, the only remedy to a procedural violation, to protect the public interest, is to return the legal status of the license to that which existed at the time of violation. In this case, no public interest is served by voiding Wisconsin Dolls’ license.

The Legislature bestowed an important procedural benefit upon the public - notice of an application prior to license issuance. Wis. Stats. §125.04(3)(g). Presumably, the purpose of the notice requirement is to permit members of the public an opportunity to make known any objections or concerns about a particular

licensee. Thus, deeming a license void is the only possible remedy for failure to offer this statutorily mandated opportunity. If the license is not considered void as a result of such procedural violation and thereby returned to the legal status existing prior to the violation, the licensee would have obtained due process rights to the license. The kinds of public concerns the municipality could address would be left to those that the form of grounds for suspension or revocation under Wis. Stats. § 125.12 rather than the broader discretion it enjoys at the time of initial issuance. *Williams*, at ¶¶ 11-12.

No similar problems attach to renewal of a license issued with an insufficiently particular license description. Notice under Wis. Stats. §125.04(3)(g) does not require notice of the particular premises description. Wis. Stats. §125.04(3)(g) requires only that notice be given of “the location of the premises to be licensed.” The public is still provided the same opportunity to give input about any concerns it may have about a license regardless of the premises description. If a license is erroneously issued with an inaccurate or insufficient premises description, why shouldn’t it be permissible to correct that error without voiding Wisconsin Dolls’ license? What possible public interest is served by automatic voiding of a previously issued license because of an error in the form of the license committed by the municipality in previous years?

Consideration of the public interests at stake is important. An alcohol licensee that has operated and made business investments in reasonable reliance

on a license under which it has operated for over four years is no less damaged by the sudden declaration that the license is void than if the municipality arbitrarily declined to renew the license.

B. The Court of Appeals' Interpretation is Inconsistent With the Legislature's Intent to Safeguard Licensee's Rights to Due Process.

The Legislature has unambiguously included due process protections within Wisconsin's statutory alcohol licensing scheme. *See* Wis. Stats. §125.12. Statutes must be interpreted in context and in relation to the objectives of related statutes. *City of Menasha* 2011 WI App 108, ¶10. If fundamental fairness is the hallmark of due process (*Lassiter*, 452 U.S. at 24), it would be inconsistent with this clear expression of legislative intent to safeguard due process to permit municipalities to deprive businesses of their licenses without process and in furtherance of no identifiable public interest to be served. This is especially so when such deprivation occurs as the result, in whole or in part, of the error of the licensing authority.

The unfairness of the result of the Court of Appeals' decision is amplified in light of its first-impression interpretation of the requirement to "particularly describe" the licensed premises. Unlike the notice requirements in *Williams*, the degree of particularity required for a premises description is not plainly set forth in the statutes. As described in Section II of this brief, even under the Court of Appeals decision, the limits of this requirement remain unclear. Both Dell Prairie

and Wisconsin Dolls assumed for over four years that Wisconsin Dolls' premises description was lawful.

The need to assess fundamental fairness and the balance of interests is implicit in other statutory contexts as well. For instance, while Wis. Chap. 32 is to be strictly construed in favor of property owners, only those statutory violations that go to the fundamental purpose of Wis. Stats. Chap. 32 will operate to divest a condemning authority of the "right to take." *Warehouse II, LLC v. DOT*, 2006 WI 62, ¶10, 291 Wis.2d 80, 715 N.W.2d 213. Similarly, although a municipality is generally entitled to injunctive relief once it has proven the existence of a zoning violation, a court is, nonetheless, empowered to weigh the equities before granting such relief. *Forest County v. Goode*, 219 Wis.2d 654, 683, 579 N.W.2d 715 (1998). No reason exists to ignore such balancing of interests here.

Wis. Stats. §125.04(2) states as follows:

(2) LICENSES OR PERMITS ISSUED IN VIOLATION OF THIS CHAPTER. No license or permit may be issued to any person except as provided in this chapter. Any license issued in violation of this chapter is void.

Clearly, Wis. Stats. §125.04(2) prohibits the issuance of any license to any person not entitled to hold such license or contrary to the procedural requirements under the Chapter. It is not apparent, however, that a license containing a premises description approved by a local government five times previously can be deemed to be "issued" in violation of the chapter.

Courts are to apply statutes as written. *State ex rel. Adell v. Smith*, 2000 WI App. 188, ¶ 7, 238 Wis. 2d 65, 618 N.W.2d 208. Nonetheless, it is consistent with the plain meaning rule to consider whether an interpretation “contravene[s] a textually or contextually manifest statutory purpose.” *State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, ¶49, 271 Wis. 2d 633, 681 N.W. 2d 110. Ambiguity may arise since the contravention of such statutory purposes can lead to different persons reaching different reasonable conclusions about the plain meaning of the language. *Id.* at ¶49.

In light of the Legislature’s concerns about due process, it is unclear that the phrase “issued in violation of this chapter” is meant to apply to every defect of any kind. It seems more likely that the Legislature’s intent was only to ensure no expectation of entitlement would be obtained in a license or permit issued to one lacking the statutory qualifications, issued contrary to statutory procedures or otherwise was issued contrary to the fundamental goals of Wis. Stats. Chap. 125. Interpreting the statute to apply only to such instances would be consistent with the Legislature’s due process concerns and would also ensure that no grievous injury would result to a licensee absent an off-setting public interest. *Goldberg*, 397 U.S. at 262-63.

C. The Court of Appeals’ Decision Should Not Apply Retroactively to Void Wisconsin Dolls’ Due Process Rights to Continue to Receive an Alcohol License.

Finally, even assuming the Court of Appeals decision is correct, it should not apply retroactively to void Wisconsin Dolls’ previous licenses. “Normally a

new rule applies prospectively.” *State v. Beaver Dam Area Development Corporation*, 2008 WI 90, ¶95 312 Wis.2d 84, 124, 752 N.W.2d 295.

However, applying a new rule to circumstances in which actors reasonably rely on contrary views may be unsettling. This court will therefore occasionally apply a new rule prospectively to limit such an effect. We examine three factors in deciding whether our determination is to apply retroactively or prospectively:

- (1) whether the decision establishes a new principle of law, either by overruling clear past precedent on which litigants may have relied, or by deciding an issue of first impression whose resolution was not clearly foreshadowed;
- (2) whether retroactive application would further or retard the operation of the new rule;
- (3) whether retroactive application could produce substantial inequitable results. (Citations omitted.)

Id. at ¶96.

Both the first and third factors in this case support limiting the Court of Appeals’ decision to prospective application.

The Court of Appeals’ decision that a premises description cannot apply to an entire parcel and that such defect voids such a license is one of first impression that was not clearly foreshadowed. The only Wisconsin authority on the question of the sufficiency of a premises description supported the conclusion that an entire parcel could be licensed and that a license could particularly describe such premises through the use of the parcel address alone. *Municipal Licensing and Regulation of Alcohol Beverages*, American Legal Publishing Corp. 4th Ed., Feb. 2002. (A.App. 041-042). No clear statutory definitions exist that would easily lead one to come to the same conclusion as the Court of Appeals. Indeed, both parties in this case relied on the same premises description for over four

years. Accordingly, the resultant voiding of such a license could also not be foreseen.

Substantial inequitable results also flow from the Court of Appeals decision. No due process protections attach to a void license. Nonetheless, Wisconsin Dolls has operated for over four years in reliance on an alcohol license with a premises description Dell Prairie repeatedly approved. Now, as a result of the Court of Appeals decision, its right to any alcohol license with any premises description is now in jeopardy.

If the Court of Appeals decision is upheld, the Court should limit the effect of its decision to declare Wisconsin Dolls' previous license void to prospective application only.

CONCLUSION

The Court of Appeals erred in holding Wisconsin Dolls' premises description on its previous licenses was insufficient. The Court should hold that municipalities have the discretion to define the limits of a licensed premises as they see fit and that the Dell Prairie Town Board acted properly when it issued an initial alcohol license for Wisconsin Dolls' entire parcel in 2005. Because Wisconsin Dolls' initial license was lawful, as were all subsequent licenses issued through the 2008-09 license year, the Court should hold that Dell Prairie lacked the authority to reduce Wisconsin Dolls' premises description without compliance with the non-renewal procedures established by Wis. Stats. §125.12(3) and remand to the Board with orders to reinstate Wisconsin Dolls' original premises

description or comply with Wis. Stats. §125.12(3). In the event the Court upholds the Court of Appeals' ruling with respect to the legality of Wisconsin Dolls' original premises description, it should hold that Wis. Stats. §125.04(2) does not render its license void in this instance, but instead that Dell Prairie could make the description conform to legal requirements without jeopardy to Wisconsin Dolls' interests in its license.

Dated this 3rd day of January, 2012.

MURPHY DESMOND S.C.
Attorneys for Plaintiff-Appellant-Petitioner,
Wisconsin Dolls, LLC

By: 

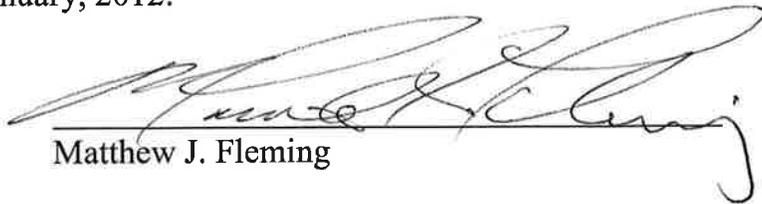
Matthew J. Fleming, SBN: 1031041
E-mail: mfleming@murphydesmond.com
Margery Tibbetts-Wakefield, SBN: 1012321
E-mail: mtibbetts@murphydesmond.com
33 East Main Street, Suite 500
P.O. Box 2038
Madison, WI 53701-2038
(608) 257-7181

CERTIFICATION

I certify that this brief conforms to the rules contained in s. 809.19(8)(b) and (c) for a brief produced using the following font:

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Dated this 3rd day of January, 2012.


Matthew J. Fleming

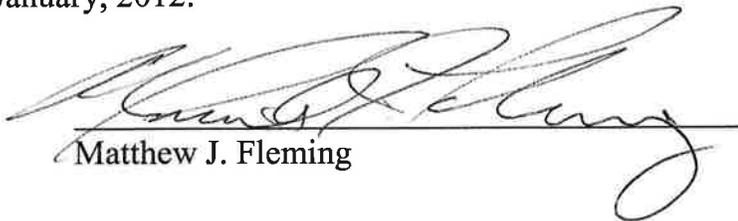
CERTIFICATION OF COMPLIANCE WITH RULE 809.19(12)

I hereby certify that I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of s. 809.19(12).

I further certify that this electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 3rd day of January, 2012.


Matthew J. Fleming

RECEIVED

**STATE OF WISCONSIN
SUPREME COURT**

Appeal No. 2010-AP-2900

01-03-2012

**CLERK OF SUPREME COURT
OF WISCONSIN**

WISCONSIN DOLLS, LLC,

Plaintiff - Appellant,

v.

**TOWN OF DELL PRAIRIE and
TOWN OF DELL PRAIRIE TOWN BOARD**

Defendants-Respondents.

**APPENDIX TO BRIEF OF
PLAINTIFF-APPELLANT-PETITIONER WISCONSIN DOLLS, LLC**

MURPHY DESMOND S.C.

Matthew J. Fleming

State Bar No. 1031041

Margery Tibbetts-Wakefield

State Bar No. 1012321

33 East Main Street, Suite 500

P.O. Box 2038

Madison, WI 53701-2038

(608) 257-7181

Attorneys for Plaintiff-Appellant-Petitioner

January 3, 2012

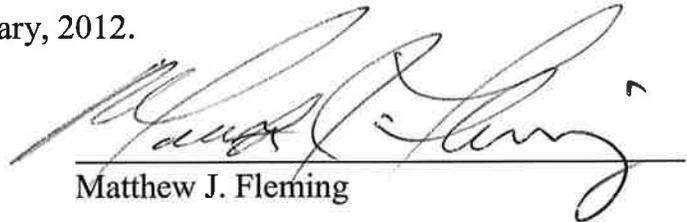
CERTIFICATION FOR APPENDIX

I hereby certify that filed with this Brief, either as a separate document or as a part of the Petition, is an Appendix that complies with Wis. Stats. § 809.19(2)(a) and § 809.62(2)(f) for the Petitioners' Appendix, and that contains:

- (1) A Table of Contents;
- (2) Relevant Trial Court Record entries;
- (3) Decision of Court of Appeals;
- (4) Decision of Trial Court; and
- (5) Portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the trial court's reasoning regarding those issues.

I further certify that if the record is required by law to be confidential, the portions of the record included in the Appendix are reproduced using first names and last initials, instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality, and with appropriate references to the record.

Dated this 3rd day of January, 2012.



Matthew J. Fleming

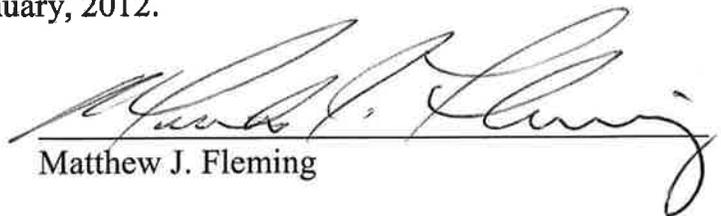
CERTIFICATION OF COMPLIANCE WITH RULE 809.19(13)

I hereby certify that I have submitted an electronic copy of this appendix, which complies with the requirements of §809.19(13).

I further certify that this electronic appendix is identical in content and format to the printed form of the appendix filed as of this date.

A copy of this certificate has been served with the paper copies of this appendix filed with the court and served on all opposing parties.

Dated this 3rd day of January, 2012.



Matthew J. Fleming

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**COURT OF APPEALS
DECISION
DATED AND FILED**

September 1, 2011

A. John Voelker
Acting Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See Wis. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2010AP2900
STATE OF WISCONSIN**

Cir. Ct. No. 2010CV61

**IN COURT OF APPEALS
DISTRICT IV**

WISCONSIN DOLLS, LLC,

PLAINTIFF-APPELLANT,

v.

TOWN OF DELL PRAIRIE AND TOWN OF DELL PRAIRIE TOWN BOARD,

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Adams County:
CHARLES A. POLLEX, Judge. *Affirmed.*

Before Vergeront, Higginbotham and Blanchard, JJ.

¶1 VERGERONT, J. This case arises out of the 2009-2010 license for the retail sale of alcohol issued to Wisconsin Dolls, LLC, by the Town of Dell

Prairie Town Board.¹ This license identified the premises as “Main Bar/Entertainment Building.” However, previous alcohol licenses issued to Wisconsin Dolls by the Town listed the premises as including all eight acres of Wisconsin Dolls’ property. Wisconsin Dolls filed this certiorari action, seeking reversal of the Town’s decision and a remand with directions to the Town to issue a license covering all eight acres of Wisconsin Dolls’ property or to hold a hearing as set forth by WIS. STAT. § 125.12(3) (2009-10)² (identifying the procedure for nonrenewal of an alcohol license). The circuit court affirmed the Town’s decision, dismissing the complaint, and Wisconsin Dolls appeals.

¶2 The primary issue on appeal is whether the issuance of a license for all eight acres of Wisconsin Dolls’ property violated any provision in WIS. STAT. ch. 125, which governs alcohol beverages. We conclude it did and that the license covering all eight acres is therefore void. We further conclude that, because the 2008-2009 license was void, Wisconsin Dolls was not entitled to the statutory protections for license renewal under § 125.12(3) nor to procedural due process under the Fourteenth Amendment to the United States Constitution. Accordingly, we affirm the circuit court’s order dismissing the complaint.

BACKGROUND

¶3 The relevant facts are undisputed. Wisconsin Dolls owns and operates an adult-oriented resort facility in Wisconsin Dells. In December 2004,

¹ The Town of Dell Prairie and the Town of Dell Prairie Town Board are defendants. For ease of reference, we refer to them collectively as “the Town.”

² All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

Wisconsin Dolls applied for a combination Class “B” license for fermented malt beverages and “Class B” license for intoxicating liquor. On the application for the license, next to “Premises description,” Wisconsin Dolls filled in “all 8 acres of resort.” The application was approved and the Town issued a license to Wisconsin Dolls that identified the premises as “Wisconsin Dolls Resort, 4179 State Highway 13, All 8 acres of the resort.” The license was to expire on June 30, 2005.

¶4 In May 2005 and in each of the three years following, Wisconsin Dolls filed an application to renew its license for another year, and each year the Town granted the renewal. Each of these applications included “all 8 acres of the resort” in the “Premises description.”³ The licenses issued for 2005-2006 and 2006-2007 identified the premises as “Wisconsin Dolls Resort, 4179 State Highway 13, Wisc. Dells, WI, All 8 acres of the resort”; there is no license for 2007-2008 in the record. The 2008-2009 license, the license issued the year before this dispute arose, identified the premises only by Wisconsin Dolls’ address.

¶5 In May 2009, Wisconsin Dolls again filed a renewal application, which described the premises as “All buildings & property comprising approx. 8 acres.” At this time, a new Town clerk began to review all alcohol licenses and applications. Upon review of Wisconsin Dolls’ application, the clerk concluded that it contained an inadequate description of the premises.

³ The renewal applications filed in 2005, 2006, and 2007 each listed specific areas in addition to “all 8 acres of resort”: “Bar, cooler, lg room in office, all 8 acres of resort.” The 2008 renewal application listed the premises as “All buildings and property comprising approximately 8 acres.”

¶6 The Town Board convened to discuss various alcohol license applications, including Wisconsin Dolls'. The Town Board Chairman explained that he believed the description of the premises as "8 acres of the resort" on Wisconsin Dolls' application was too vague and needed to be amended. He noted that the application required the applicant to identify "where you keep the alcohol, where you serve the alcohol and where you keep your records..." and that Wisconsin Dolls had failed to include this information. The Board postponed the vote on Wisconsin Dolls' license to allow the application to be amended.

¶7 Subsequently the Town Board voted to issue the license if the application was amended to restrict the premises to the main bar building and storage area. It appears undisputed that Wisconsin Dolls never amended its application. Nevertheless, the clerk issued a license to Wisconsin Dolls on June 30, 2009. The license described the premises as "Wisconsin Dolls, LLC, 4179 State Road 13, Wisconsin Dells, WI 53965 (Main Bar/Entertainment Building)."

¶8 Wisconsin Dolls sought circuit court review by certiorari of the Town's decision, asserting that the Town's action constituted a nonrenewal of Wisconsin Dolls' license. Therefore, Wisconsin Dolls argued, the Town was required to follow the notice and hearing procedures in WIS. STAT. § 125.12(3) and could deny renewal only for statutorily prescribed reasons. The circuit court concluded that the Town's action was not a nonrenewal and dismissed the complaint.

DISCUSSION

¶9 Wisconsin Dolls contends that the Town's act of limiting the premises description in its 2009-2010 license to "Main Bar/Entertainment Building" is the equivalent of a nonrenewal of its 2008-2009 license, or at least a

partial nonrenewal. According to Wisconsin Dolls, this triggers the procedural requirements of WIS. STAT. § 125.12(3) and the procedural due process requirements of the Fourteenth Amendment.

¶10 The Town responds that it has the authority to modify an alcohol license and it exercised that power in this case. The Town also argues that Wisconsin Dolls has no property interest in an alcohol license.

¶11 We frame the issues differently than do the parties. We identify the primary issue as whether the issuance of a license for 2008-2009 for all eight acres of Wisconsin Dolls' property violated any provisions in WIS. STAT. ch. 125.⁴ We conclude that it did and that the license covering all eight acres was therefore void. Based on this conclusion, for the reasons we explain, Wisconsin Dolls did not have a right to the statutory procedures relating to license renewal in § 125.12(3) before the Town limited the premises description to "Main Bar/Entertainment Building." For similar reasons, Wisconsin Dolls did not have the right to procedural protections under the due process clause of the Fourteenth Amendment before the Town limited the premises description.

⁴ Wisconsin Dolls' position is that the use of its address alone to identify the premises in the 2008-2009 license means that the licensed premises were all eight acres of the resort, as was explicitly stated on the licenses issued prior to the 2008-2009 license. The Town does not appear to dispute this. Rather, its argument focuses on its authority to modify the licensed premises. We therefore assume without deciding, for purposes of this opinion only, that use of Wisconsin Dolls' address alone as a premises description on the 2008-2009 license means all eight acres of the resort. The real estate of the resort consists of eight acres. We therefore use "all eight acres of the resort" and "all eight acres of Wisconsin Dolls' property" interchangeably.

I. Standard of Review

¶12 Both parties agree that we review the Town's decision to issue Wisconsin Dolls a 2009-2010 license only for its "Main Bar/Entertainment Building" by certiorari.⁵ On certiorari review, our inquiry, like that of the circuit court, is limited to the following questions: "(1) whether the [Town] stayed within its jurisdiction; (2) whether it acted according to law; (3) whether its action was arbitrary, oppressive, or unreasonable, representing its will instead of its judgment; and (4) whether the evidence was such that it might reasonably have made the determination under review." *State ex rel. Smith v. City of Oak Creek*, 131 Wis. 2d 451, 455, 389 N.W.2d 366 (Ct. App. 1986) (citation omitted).

¶13 Only the second question is implicated on this appeal: whether the Town acted according to law—both statutory and constitutional law—in issuing Wisconsin Dolls a license for 2009-2010 only for the main bar and entertainment building. Because this presents a question of law, our review is de novo. See *Town of Avon v. Oliver*, 2002 WI App 97, ¶7, 253 Wis. 2d 647, 644 N.W.2d 260 (interpretation and application of a statute presents a question of law); *Tateoka v. City of Waukesha Bd. of Zoning Appeals*, 220 Wis. 2d 656, 668-69, 583 N.W.2d 871 (Ct. App. 1998) (whether there is a violation of due process presents a question of law, which we review de novo).

⁵ Because both parties agree that certiorari review of the Town's decision properly defines our scope of review, we accept that premise and do not discuss the judicial review provision in WIS. STAT. § 125.12(2)(d).

II. Validity of 2008-2009 License for All Eight Acres

¶14 WISCONSIN STAT. ch. 125 governs the issuance of alcohol licenses by municipalities. No license “may be issued to any person except as provided in this chapter,” and “[a]ny license ... issued in violation of this chapter is void.” § 125.04(2). Thus, the starting point of our analysis is to determine whether the 2008-2009 license for all eight acres of the resort was issued “as provided in [chapter 125].”

¶15 The license issued to Wisconsin Dolls in 2008-2009 and each preceding year was a combination Class “B” and “Class B” license, which authorizes the retail sale of fermented malt beverages and intoxicating liquor. WIS. STAT. §§ 125.26, 125.51. Both Class “B” and “Class B” licenses must “particularly describe the premises for which issued.” § 125.26(3) (Class “B” licenses); § 125.51(3)(d) (“Class B” licenses). The parties dispute the meaning of “particularly describe the premises.” Wisconsin Dolls contends that the phrase “all 8 acres of the resort” does particularly describe the premises for which the license is issued. The Town, in contrast, contends that this phrase is not a particular description of the premises for which the license is issued.

¶16 When we interpret a statute, we begin with the language of the statute and give it its common, ordinary, and accepted meaning, except that technical or specially defined words are given their technical or special definitions. *State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110. We interpret statutory language in the context in which it is used, not in isolation but as part of a whole, in relation to the language of surrounding or closely related statutes, and we interpret it reasonably to avoid absurd or unreasonable results. *Id.*, ¶46. We also consider the scope, context, and

purpose of the statute insofar as they are ascertainable from the text and structure of the statute itself. *Id.*, ¶48. If, employing these principles, we conclude the statutory language has a plain meaning, then we apply the statute according to that plain meaning. *Id.*, ¶46.

¶17 We begin by discussing the meaning of the word “premises” as used in WIS. STAT. §§ 125.26(3) and 125.51(3)(d). WISCONSIN STAT. § 125.02(14m) defines “premises” as “the area described in a license or permit.” This definition does not tell us how “the area described in a license” is to be determined. However, § 125.04(3), which governs applications for licenses, provides additional aid in understanding the meaning of “premises.” This section provides that the Department of Revenue (DOR) shall prepare an application form for each type of license issued under ch. 125 and that each form shall require certain information, including “[t]he premises where alcohol beverages will be sold or stored or both.” § 125.04(3)(a)3. The only reasonable reading of § 125.04(3)(a)3., when read together with §§ 125.02(14m), 125.26(3), and 125.51(3)(d), is that “premises” means the area where alcohol beverages will be sold or stored or both.

¶18 Turning to the word “describe” in the phrase “particularly describe the premises,” we see that this word is not defined in WIS. STAT. ch. 125. We may therefore consult a standard dictionary to establish the common meaning. *See Swatek v. County of Dane*, 192 Wis. 2d 47, 61, 531 N.W.2d 45 (1995). To “describe” means to “present distinctly by means of properties and qualities.” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 610 (1993). “Distinct,” in turn, means “characterized by qualities individualizing or distinguishing as apart from, unlike, or not identical with another or others.” *Id.* at 659.

¶19 The word “particularly” is also not defined in WIS. STAT. ch. 125. A standard dictionary definition of “particular” is “concerned with or attentive to details.” *Id.* at 1647.

¶20 When the meanings of these words are considered together, “particularly describe the premises” means that the license must contain sufficient detail to identify the specific areas where the alcohol beverages will be sold or stored or both. We conclude that merely identifying the total amount of acreage of the licensee’s property does not fulfill this definition. It does not identify the specific area or areas in the total acreage where the licensed activity will occur.

¶21 The statutory provision requiring posting of the license supports our interpretation. WISCONSIN STAT. § 125.04(1)(a) and (b) require that a license issued for the sale of alcohol must be “conspicuously displayed for public inspection at all times *in the room or place where the activity subject to the ... licensure is carried on*” (emphasis added). This provision indicates that the activity subject to licensure occurs in a specific place. This provision cannot be reconciled with Wisconsin Dolls’ view that a license may give it the authority to carry on licensed activity anywhere on the eight acres of its property.

¶22 Our interpretation is also supported by our reasoning in *Alberti v. City of Whitewater*, 109 Wis. 2d 592, 327 N.W.2d 150 (Ct. App. 1982). The issue presented there was whether a licensee, during the license year, could unilaterally expand the size of the licensed premises as long as the expanded area was connected to the premises on which the license permitted the sale of alcohol. *Id.* at 597-98. In resolving this issue against the licensee, we construed WIS. STAT.

§ 125.04(3)(h), which requires licensees to notify the issuing authority of a change in any fact set out in the application for a license within ten days of the change.⁶ We viewed this provision in the context of the entire statutory scheme, which gives the municipality the power to control the grant, transfer, revocation, and renewal of licenses, and provides for notification to the public at certain points in the process. *Id.* at 599-600. We concluded that, in light of the statutory scheme and the broad power of the government to regulate the liquor traffic industry, the purpose of WIS. STAT. § 125.04(3)(h) was to “facilitate monitoring of ongoing liquor sales by the government and the public.” *Id.* at 599. It would be inconsistent with that purpose and unreasonable, we held, to confer unilateral power on the licensee to expand the size of the licensed premises during the license year. *Id.* at 601.

¶23 Similarly, interpreting WIS. STAT. §§ 125.26(3) and 125.51(3)(d) to authorize the issuance of a license for the entire acreage of a licensee’s property would allow the licensee to unilaterally expand the areas within that acreage where the licensed activity takes place, without any oversight by the issuing authority. This is not consistent with the legislative intent to give municipalities the power to control the grant and renewal of licenses to sell alcohol.

¶24 Finally, our interpretation of the phrase “particularly describe the premises” is consistent with DOR’s interpretation of this phrase. As already noted, DOR has been charged with creating the application forms for alcohol licenses. WIS. STAT. § 125.04(3)(a); *see also* § 125.04(3)(b) (relating to renewal

⁶ WISCONSIN STAT. § 125.04(3)(h) was numbered §176.14 (1979-80) at the time we decided *Alberti v. City of Whitewater*, 109 Wis. 2d 592, 327 N.W.2d 150 (Ct. App. 1982).

forms). Both the original application form and the renewal application form prepared by DOR provide the following instructions with respect to the “Premises description”:

Premises description: Describe building or buildings where alcohol beverages are to be sold and stored. The applicant must include all rooms including living quarters, if used, for the sales, service, and/or storage of alcohol beverages and records. (Alcohol beverages may be sold and stored only on the premises described.)

DOR AT-106 (R.9-03); DOR AT-115(R.3-09). Thus, these forms expressly require identification of the specific places in which alcohol is sold, served, and stored or records kept.⁷

¶25 In summary, the license the Town issued to Wisconsin Dolls in 2008-2009 did not “particularly describe the premises” as required by WIS. STAT. §§ 125.26(3) and 125.51(3)(d). Thus, that license was issued in violation of these sections.

¶26 Because a license issued in violation of WIS. STAT. ch 125 is void, *see* § 125.04(2), the question arises whether Wisconsin Dolls had a license to

⁷ Neither party addresses whether these forms or the “Premises description” item in particular is an administrative rule. *See* WIS. STAT. § 227.01(13) (defining “rule”); *cf. Racine Educ. Ass’n v. ERC*, 2000 WI App 149, ¶¶34-35, 238 Wis. 2d 33, 616 N.W.2d 504 (concluding that two forms promulgated by the Wisconsin Employment Relations Commission (WERC) were “a product of WERC’s rule-making authority”). Nor does either party address whether, in interpreting §§ 125.26(3) and 125.51(3)(d), we must accord deference to the meaning DOR gives to “Premises description” in the forms. *See Racine Harley-Davidson, Inc. v. Division of Hearings & Appeals*, 2006 WI 86, ¶16, 292 Wis. 2d 549, 717 N.W.2d 184 (although interpretation of a statute is a question of law, which we review *de novo*, in certain situations we give deference to agency’s interpretation of a statute that it is charged with administering). We therefore do not address these issues but simply consider the “Premises description” item in the DOR forms as support for our interpretation of the disputed statutory phrase, “particularly describe the premises.” *See* §§ 125.26(3), 125.51(3)(d).

renew in 2009. In *Williams v. City of Lake Geneva*, 2002 WI App 95, ¶8, 253 Wis. 2d 618, 643 N.W.2d 864, we held that a violation of the requirement that a notice of application be published, *see* § 125.04(3)(g), rendered the license issued upon that application void under § 125.04(2). “Void,” we concluded, meant “an absolute nullity[,] ... of no legal effect.” *Id.*, ¶9. We further held that the procedural protections for renewal in § 125.12(3) do not apply to a license that is void, and the only way the holder of a void license may obtain a valid license is to file an application for an original license. *Id.*, ¶¶12-14.

¶27 We conclude that *Williams* forecloses Wisconsin Dolls’ argument that it is entitled to the procedures in WIS. STAT. § 125.12(3) before the Town can decide not to renew its license for all eight acres of the resort. Wisconsin Dolls did not have a valid license for all eight acres. Therefore, the procedural protections for renewal in § 125.12(3) do not apply. *See id.*, ¶¶13-14.

¶28 We recognize that *Williams* suggests there may be a question in this case concerning the Town’s authority to issue Wisconsin Dolls a license for 2009-2010 with a particular description of the premises as required by WIS. STAT. §§ 125.26(3) and 125.51(3)(d), without requiring Wisconsin Dolls to file an original application. However, we do not address this question. In particular, we do not address the Town’s argument that it has the authority to issue a modified license with a more limited premises description. Wisconsin Dolls is not challenging the Town’s issuance of a license with a more limited and specific description of the premises, *if*, as we have already decided, it did not have a license to conduct the licensed activity on all eight acres. Nor does Wisconsin Dolls challenge the definition of premises the Town chose, “Main Bar/Entertainment Building,” on any ground other than the one we have already rejected.

III. Procedural Due Process

¶29 Wisconsin Dolls also asserts that it has a property interest under the Fourteenth Amendment in the renewal of its 2008-2009 license covering all eight acres of the resort. Therefore, it contends, it was entitled to procedural due process before the Town could change the premises description to “Main Bar/Entertainment Building.”

¶30 Section 1 of the Fourteenth Amendment provides that “[n]o State shall ... deprive any person of life, liberty, or property, without due process of law....” U.S. CONST. amend. XIV, § 1. The existence and scope of a property interest for purposes of this constitutional provision is determined by state law. *See Board of Regents v. Roth*, 408 U.S. 564, 577 (1972); *Kraus v. City of Waukesha Police & Fire Comm’n*, 2003 WI 51, ¶55, 261 Wis.2d 485, 662 N.W.2d 294. Rather than analyze whether an alleged property interest is a “right” or “privilege,” as the parties do, the proper inquiry is whether state law creates a “legitimate claim of entitlement” to the alleged property interest. *See Roth*, 408 U.S. at 577.

¶31 In this case we need not decide whether the holder of a valid license under WIS. STAT. ch. 125 has a property interest in the renewal of the license such that the holder is entitled to procedural protections under the due process clause before the municipality can decide not to renew the license. For the reasons we have already discussed, Wisconsin Dolls did not have a valid 2008-2009 license under ch. 125 for all eight acres of the resort. That license is void because it was issued in violation of §§ 125.26(3) and 125.51(3)(d). *See* § 125.04(2); *see also Williams*, 253 Wis. 2d 618, ¶¶8-9. Wisconsin Dolls therefore does not have a legitimate claim of entitlement under ch. 125 to the renewal of a license for all

eight acres of the resort. *See Williams*, 253 Wis. 2d 618, ¶¶12-14. Accordingly, it is not entitled to procedural due process under the Fourteenth Amendment before the Town may issue a license with a more limited description of the premises.

CONCLUSION

¶32 We affirm the circuit court's order dismissing Wisconsin Dolls' complaint.

By the Court.—Order affirmed.

Recommended for publication in the official reports.

WISCONSIN DOLLS, LLC,

Case No. 2010-CV-61

Plaintiff,

Oral Ruling

vs.

TOWN OF DELL PRAIRIE and
TOWN OF DELL PRAIRIE TOWN BOARD,

Defendants.

HONORABLE CHARLES POLLEX

JUDGE PRESIDING

APPEARANCES:

ATTORNEY MARGERY M. TIBBETTS-WAKEFIELD, appearing on behalf of the
Plaintiffs via telephone.

ATTORNEY MARK B. HAZELBAKER, appearing on behalf of the Defendants via
telephone.

Date of Proceedings: October 19, 2010

Karen E. Murray
Official Court Reporter
Friendship, WI 53934

 **COPY**

R11:1

A-App. 015

1 PROCEEDINGS

2 October 19, 2010

3 THE COURT: Good afternoon. This is Judge Pollex, we
4 are in the circuit courtroom at the courthouse in Friendship. At this point I
5 call on for proceeding the case of Wisconsin Dolls, LLC versus the Town
6 of Dell Prairie and others, the file number is 2010-CV-61. This date and
7 time has been set for an oral ruling regarding the Writ of Certiorari which
8 has been filed with the Court. Do we have any personal appearances on
9 this matter?

10 MS. TIBBETTS-WAKEFIELD: Your Honor, this is
11 Attorney Margery Tibbetts-Wakefield of the law firm Murphy Desmond
12 in Janesville. I appear on behalf of the Plaintiff Wisconsin Dells, LLC.

13 THE COURT: Your name is Margery Tibbetts?

14 MS. TIBBETTS-WAKEFIELD: Actually since we filed
15 the initial pleadings, my name has changed. It's now Margery Tibbetts-
16 Wakefield, W-a-k-e-f-i-e-l-d.

17 THE COURT: All right. That will be noted. And
18 appearing on behalf of the Respondents?

19 MR. HAZELBAKER: Attorney Mark Hazelbaker, Your
20 Honor.

21 THE COURT: I can't hear you very well. Could you turn
22 up the volume a little bit, Mr. Hazelbaker?

23 MR. HAZELBAKER: It's Attorney Mark Hazelbaker.
24 I'm sorry you can't hear. I apologize.

1 THE COURT: I'm afraid that the reporter is not going to
2 be able to take it down. Can you speak any louder or perhaps –

3 MR. HAZELBAKER: I was on the speaker phone.
4 Perhaps this is better.

5 THE COURT: That is much better. Thank you.

6 MR. HAZELBAKER: Attorney Mark Hazelbaker
7 appearing on behalf of the Town of Dell Prairie.

8 THE COURT: Very well. As indicated, this is the date
9 and time set for an oral ruling on the Plaintiff's Writ of Certiorari which
10 asked the Court to review the action taken by the Defendant Town Board
11 of the Town of Dell Prairie regarding the issuance of permitted malt
12 beverage and alcoholic beverage licenses issued for the years 2009
13 through 2010. The file number is 2010-CV-61.

14 In summary, the facts indicate that the Defendant Town
15 Board changed the description of the licensed premises from all eight
16 acres of the resort, which had been in effect for a period of time
17 apparently, to the main bar/entertainment building with regard to – when
18 they issued the 2009/2010 Class B permitted malt beverage license, and
19 the Class B intoxicating liquor license.

20 I have reviewed the matter as it has been presented in
21 regard to this action. The Court understands as a matter of analysis that on
22 certiorari review the Court considers first whether the Board kept within
23 its jurisdiction; secondly, whether it acted according to law; third, whether
24 its actions was arbitrary, oppressive or unreasonable and represented its
25 will and not its judgment; and, fourthly, whether the evidence was such

1 that it might reasonably make the order or determination in question. That
2 is taken from State ex rel Campbell versus Delavan, 210 Wis. 2d 239.

3 In conducting its review, the Court makes the following
4 findings of fact. First of all, the record presented to the Court for review
5 reflects that the Defendant Board lacked any evidence of any of the causes
6 required for refusal to renew a license under sec. xxx125.12(3)(2)(ag) of
7 the statutes. The Court further finds that the Board gave no prior written
8 notice to the Plaintiff as to why the Board would take action to deny
9 renewal of the license, and there was no opportunity for the Plaintiff to be
10 heard, and no written explanation why the action was taken.

11 The Court concludes as a matter of law, and to clarify the
12 standard of review from this record, that the Town Board is entitled to a
13 common law presumption of regularity. That's the Fortney versus School
14 District of West Salem case at 108 Wis. 2d 167 quoting from Page 185.

15 So with those findings and conclusions, the Court in
16 reviewing the record presented concludes that the issue that is controlling
17 in this case is whether or not the action taken by the Town of Dell Prairie
18 Board constitutes a refusal by the local authorities as to entitle the Plaintiff
19 to the protections afforded by sec. 125.12 of the Wisconsin Statutes. That
20 is the issue which the Court finds to be controlling in this case. The
21 specific issue here then is whether or not the Plaintiff is correct in its
22 position that this is a refusal so as to afford the Plaintiff the protections
23 and process requirements provided in sec. 125.12 of the statutes.

24 The Court finds and concludes that the action taken by the
25 Town of Dell Prairie did not and does not constitute a refusal to renew the

1 license of the Plaintiff. In issuing the licenses in question, the Board is
2 directed under the provisions of sec. 125.26(3) and sec. 125.51(3)(d) of
3 the statutes to particularly describe the premises for which it is issued.
4 And the Court finds and concludes that that is what was done by the Town
5 Board in this case.

6 The Court could not find a case specifically on point. I
7 outlined at the beginning of my decision today that what the Board did
8 was to change the description of the licensed premises from all eight acres
9 of the resort to the main bar and entertainment building in issuing the
10 license. The question then of whether or not this action on the part of the
11 Board constitutes a refusal to renew the license is in the view of the Court
12 controlling in this case. I have concluded that by being more specific as to
13 the licensed premises that the Board kept within its jurisdiction, that it
14 acted according to law, that its action was not arbitrary, oppressive or
15 unreasonable, and that it did not represent its will rather than its judgment.
16 And, finally, I conclude that the evidence, limited as it was, suggested that
17 the Board might reasonably make the order or determination in question.

18 Accordingly, the Plaintiff's request for an order
19 determining the action of the Board to be contrary to law is dismissed.
20 The decision of the Court as is rendered here today is final for purposes of
21 appeal, and counsel for the Defendant is directed to prepare final judgment
22 consistent with this ruling. Do you have any question, Ms. Tibbetts-
23 Wakefield?

24 MS. TIBBETTS-WAKEFIELD: I dot not. Thank you.

25 THE COURT: Mr. Hazelbaker?

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MR. HAZELBAKER: Your Honor, there were some claims for damages that were pled as part of this claim. It would be our understanding that those claims would necessarily fall with the merits having been disposed in the manner that you are doing, so I would inquire if that is what you contemplated.

THE COURT: That is the intent of the Court, and you may so provide in preparing the final judgment. Anything further, Mr. Hazelbaker?

MR. HAZELBAKER: Your Honor, I'll draft an order with the judgment. I will send it to Ms. Tibbetts-Wakefield for her review and then we'll get it up to you for signature.

THE COURT: All right. That concludes the matter then. I'll await receipt of the proposed order and that will be submitted under the five-day rule. That's all.

MS. TIBBETTS-WAKEFIELD: Thank you.

MR. HAZELBAKER: Thank you, Your Honor.

(Whereupon, the proceedings were concluded).

STATE OF WISCONSIN)

ADAMS COUNTY)

I, Karen E. Murray, hereby certify that I am the official court reporter for Adams County Circuit Court, Wisconsin; that I have carefully compared the foregoing pages with my stenographic notes; and that the same is a true and correct transcript.

Dated this 11th day of November, 2010

KEM

Karen E. Murray

WISCONSIN DOLLS, LLC
4179 State Road 13
Wisconsin Dells, WI 53965

"AUTHENTICATED"
Case No.: 10 CV 61
Case Code: 30955

Plaintiff,

v.

TOWN OF DELL PRAIRIE
c/o Joni Gehrke, Clerk
736 County Road C
Wisconsin Dells, WI 53965

RECEIVED AND FILED
CLERK OF CIRCUIT COURT

NOV 02 2010

ADAMS COUNTY
FRIENDSHIP, WI 53934

and

TOWN OF DELL PRAIRIE TOWN BOARD
c/o Joni Gehrke, Clerk
736 County Road C
Wisconsin Dells, WI 53965

ORDER AND JUDGMENT

The above-captioned matter came before the Court on October 19, 2010 with the appearances being: Plaintiff Wisconsin Dolls, LLC by Murphy Desmond S.C., by Margery Tibbetts-Wakefield, and Defendants Town of Dell Prairie Town Board, by Hazelbaker & Associates, S.C. by Mark B. Hazelbaker.

The Court reviewed the briefs filed by the parties and considered the arguments therein in light of the Record submitted to the Court. The Court then rendered an oral ruling which is incorporated into this Judgment by reference. On the basis of that oral ruling, the Court hereby Orders that the Plaintiff's complaint be dismissed, with prejudice.

Judgment is, therefore, granted to Defendants dismissing the Plaintiff's Complaint, on its merits, and with prejudice.

THIS ORDER DISPOSES OF THE ENTIRE MATTER IN LITIGATION AND IS THE FINAL JUDGMENT IN THIS CASE FOR THE PURPOSES OF APPEAL, PURSUANT TO SEC. 808.03 (1), WIS. STATS.

Dated this 2nd day of November, 2010.

/S/ CHARLES A. POLLEX

Charles A. Pollex

Circuit Judge, Adams County

TAXATION OF COSTS

The Defendant having presented a Bill of Costs and the Clerk having determined that the costs are allowable, costs are hereby taxed against the plaintiff in the amount of 321.40 and are inserted in the judgment.

Charmaine M. Keach, Deputy

Clerk of Circuit Court

Judgment Debtor:

WISCONSIN DOLLS, LLC
4179 State Road 13
Wisconsin Dells, WI 53965

1 website.
 2 THE CHAIRMAN: Okay. The correct
 3 address of -- her address is -- is --
 4 UNIDENTIFIED FEMALE SPEAKER: That
 5 is the physical address, and then they have a
 6 PO box for the Janesville address for
 7 business purposes.
 8 THE CHAIRMAN: Okay.
 9 UNIDENTIFIED FEMALE SPEAKER: And
 10 Attorney Werner sent her -- we could do --
 11 you know, leave that and --
 12 THE CHAIRMAN: Okay. Because --
 13 well, what -- on their tax listing, they have
 14 the post office box number that we have.
 15 Okay. Is she the only member of that
 16 LLC?
 17 UNIDENTIFIED FEMALE SPEAKER: I
 18 believe so.
 19 THE CHAIRMAN: On the
 20 (inaudible) -- is he the only member on it
 21 too?
 22 UNIDENTIFIED FEMALE SPEAKER: Yep.
 23 And (inaudible).
 24 THE CHAIRMAN: Okay. What they --
 25 if there are other members, they should have
 Page 17

1 been listed.
 2 UNIDENTIFIED FEMALE SPEAKER: Yeah.
 3 THE CHAIRMAN: Is --
 4 UNIDENTIFIED MALE SPEAKER: This is
 5 the list of the corrected or (inaudible).
 6 THE CHAIRMAN: Did they send you
 7 another one back?
 8 UNIDENTIFIED FEMALE SPEAKER:
 9 Uh-huh.
 10 THE CHAIRMAN: Why don't I read
 11 this question right here. Does the applicant
 12 understand that they must purchase alcohol
 13 beverages only from the Wisconsin
 14 wholesalers? They corrected it no -- or
 15 checked it no, that they don't. If they
 16 don't purchase it from the wholesalers, I
 17 guess the State can come in there and create
 18 problems.
 19 UNIDENTIFIED MALE SPEAKER: Who is
 20 that there?
 21 THE CHAIRMAN: That is -- you wrote
 22 a C down there, and you put a 3 --
 23 UNIDENTIFIED MALE SPEAKER: No.
 24 Whose application?
 25 THE CHAIRMAN: That is --
 Page 18

1 UNIDENTIFIED FEMALE SPEAKER: The
 2 Dolls.
 3 THE CHAIRMAN: -- the Dolls. They
 4 have been (inaudible) out. So where are they
 5 buying their alcohol? From the local grocery
 6 store? I would like to -- that is --
 7 Attorney Wood didn't bring that up, did he?
 8 UNIDENTIFIED FEMALE SPEAKER: No.
 9 THE CHAIRMAN: Okay. You read the
 10 article that Attorney Wood -- and I also
 11 talked to the town's association and Attorney
 12 Carol, and there are -- our situation in here
 13 was the -- that all buildings and traffic
 14 comprising of the approximately 80 acres and
 15 what -- she said that if you have all that
 16 property open, that any -- anyone under 21
 17 through there -- you don't store. You don't
 18 serve alcohol on all eight acres and all of
 19 the units over there. If they need to store
 20 stuff in an additional building, that should
 21 be specified as part of the application; but
 22 otherwise, the bar building is the main
 23 building.
 24 Now, when that original liquor
 25 license was gotten by Halbach, who had that
 Page 19

1 motel for years -- and he's the one that sold
 2 it to the prior owners that -- they had
 3 before this and he had the bar.
 4 He started out with a beer bar
 5 because he was serving meals and everything
 6 in the main part of the hotel complex. And
 7 so when Halbach got this and they put it into
 8 the Dolls, apparently they -- they put all
 9 buildings in and all eight acres on the
 10 application. Well, the application was never
 11 shown to the board members, and there was
 12 never an approval to change it to all of this
 13 part. I was the one that started digging,
 14 and I want to see what these applications
 15 look like.
 16 It's not that we weren't -- we are
 17 not taking the license away from that portion
 18 of the -- the building. It's -- the fact is
 19 that all eight acres -- it doesn't make
 20 sense. Okay.
 21 Now, at the beginning of the year
 22 when they filed for the adult entertainment
 23 aspect, they asked to be allowed to have a
 24 juice bar there. Well, the purpose of a
 25 juice bar is to get the 18-year-olds to
 Page 20

1 21-year-olds to come in; but they can't drink
 2 alcohol. Now, if you have got a license
 3 running on the whole premises, there's
 4 (inaudible) that creates a -- a legal
 5 problem.

6 UNIDENTIFIED MALE SPEAKER:
 7 (Inaudible) have the juice bar if they are
 8 going to serve alcohol on all eight acres.
 9 Anybody under 21 can't be there without a
 10 parent --

11 THE CHAIRMAN: Right. If they --

12 UNIDENTIFIED MALE SPEAKER: -- or
 13 on that property.

14 THE CHAIRMAN: Right. So anyway,
 15 that is why -- as far as the main building
 16 and -- if they need storage in one of the
 17 other buildings of -- I don't have a problem
 18 with that at all. We actually approved it
 19 subject to -- but we are not -- we are not
 20 approving that it covers the entire eight
 21 acres. So that is -- that's where we sit on
 22 that issue. And we had the letter from --
 23 here we are really not taking away a license
 24 for his main business right there so --

25 And to be serving and storing and
 Page 21

1 want to do it -- there has not been many
 2 problems that I am aware of, of serving
 3 minors around the rest of the property over
 4 there but --

5 Okay. When you got a juice bar and
 6 you are allowing 18 -- what was said by the
 7 attorney -- is that bar should be shut down
 8 liquorwise totally if they are going to have
 9 any teenagers in there with a juice bar.
 10 Okay. That's -- their situation is -- if the
 11 police department or the revenue department
 12 wants to go check this all out, they can do
 13 that. Our concern is -- or my concern is
 14 that the main building should be licensed and
 15 any other building that needs to be for
 16 storage of -- of liquor.

17 And the next thing I'm concerned --
 18 is -- why doesn't he -- the applicant -- does
 19 the applicant understand that they must
 20 purchase alcohol beverages from -- only from
 21 Wisconsin wholesalers, and he checked it no.
 22 Now, why doesn't he know that? So we're
 23 going to have to -- as far as I'm concerned,
 24 the license should -- for the main building
 25 should be approved subject to -- he better
 Page 23

1 having the records in all of the buildings
 2 and on the eight acres is too big, and --

3 UNIDENTIFIED MALE SPEAKER: And
 4 first --

5 THE CHAIRMAN: -- the attorney --

6 UNIDENTIFIED MALE SPEAKER: -- the
 7 only problem is it's been granted in the past
 8 and --

9 UNIDENTIFIED MALE SPEAKER: We
 10 didn't get to see these in the past. The
 11 clerk would tell us the background check was
 12 good. This isn't --

13 THE CHAIRMAN: The board -- the
 14 board in the past never looked at these
 15 applications. I was -- I was the first
 16 one -- when I became chairman, I said I want
 17 to see these applications -- as to what --
 18 what was written there and what isn't. And
 19 then we started going through. And then we
 20 had Dan Wood go through every one all the way
 21 through here because there was too many
 22 things that -- that just weren't proper. So
 23 they are --

24 Having a liquor license is a
 25 privilege, not a guarantee. And so if you

Page 22

1 get educated on that part; and if he wants to
 2 adjust it -- but I'm not agreeing to all
 3 eight acres. This is going to have to be
 4 a -- the main building and a storage
 5 building -- whatsoever for that -- that, I
 6 can agree with, but not the eight acres.
 7 Okay.

8 UNIDENTIFIED MALE SPEAKER: So do
 9 you -- I agree. Do you want to approve the
 10 license just strictly for the main building
 11 and --

12 THE CHAIRMAN: Right.

13 UNIDENTIFIED MALE SPEAKER: -- and
 14 for --

15 THE CHAIRMAN: Right. Are we going
 16 to amend that? The application has got to be
 17 amended to specify the main -- the main
 18 business building there, and we will allow
 19 it -- an -- some additional storage
 20 buildings, but that's it. I don't think it's
 21 a -- they have parties out -- in a lot. So
 22 this -- this is a -- if he decides to build a
 23 monstrous complex there that -- at that
 24 point, the whole thing would be --

25 UNIDENTIFIED MALE SPEAKER:

Page 24

1 Basically, you don't want to (inaudible).
 2 You just want to restrict the license?
 3 THE CHAIRMAN: Right. And then the
 4 biggest -- okay. Our -- our position as
 5 board members is for the health, the safety
 6 and welfare of the people in the township.
 7 Okay.
 8 When you have an open situation like
 9 this -- that you are going to have people
 10 from 19 to 21 or even other kids could come
 11 on the property, that's not in their best --
 12 the best interest of these people -- to be in
 13 an establishment such as that -- in the
 14 liquor -- and the liquor being available --
 15 to get served alcohol and that -- now, that's
 16 my -- my concern right there. We -- we have
 17 got to look out for that part. I mean, it's
 18 just -- this is too vague, too open and --
 19 And, again, when you -- I -- I don't
 20 have a problem with the main -- the main --
 21 the main lodge and a storage building at this
 22 point.
 23 UNIDENTIFIED MALE SPEAKER: The
 24 only thing is -- what's -- when you do this,
 25 you know, (inaudible) we're restricting them.
 Page 25

1 regulations.
 2 THE CHAIRMAN: Well, this is not
 3 our regulations. This regulation -- this is
 4 a regulation coming right from the State and
 5 the Department of Revenue.
 6 UNIDENTIFIED MALE SPEAKER: We have
 7 had this, and the State is going to back it
 8 up?
 9 THE CHAIRMAN: The State will --
 10 UNIDENTIFIED MALE SPEAKER:
 11 Absolutely.
 12 THE CHAIRMAN: Oh, yeah. So it's
 13 not stopping the business. It's just -- if
 14 they want to expand the building -- build a
 15 ten times bigger building, well, then that
 16 bigger building would be included in all --
 17 the whole license. Okay.
 18 Next on the list here.
 19 UNIDENTIFIED FEMALE SPEAKER: What
 20 is the motion for this -- the stated motion
 21 is?
 22 THE CHAIRMAN: Well, the motion
 23 would be to issue the license restricting it
 24 to the main building and an additional
 25 building for storage purposes.
 Page 27

1 How -- how -- how are we going to enforce it?
 2 THE CHAIRMAN: That's the police
 3 department's responsibility. If they are --
 4 if they are serving alcohol and storing it --
 5 that's why the loss -- the very -- the -- to
 6 have it on --
 7 They want the description of the
 8 premises, and this is too vague. The
 9 premises where it's at, where you keep the
 10 alcohol, where you serve the alcohol and
 11 where you keep your records -- that's right
 12 on this whole application. Premises
 13 description, describe the building or
 14 buildings where alcohol beverages are to be
 15 sold and stored. And the applicant must
 16 include all rooms including living quarters
 17 if used for sales, service and storage; and
 18 they don't -- they don't do it. So, I
 19 mean --
 20 UNIDENTIFIED MALE SPEAKER: I
 21 just (inaudible). I have to ask. Now, when
 22 we make all these different regulations and
 23 we have no way, I mean, as far as
 24 (inaudible). The sheriff says he -- he ain't
 25 going to mess around enforcing our
 Page 26

1 UNIDENTIFIED MALE SPEAKER: I'll
 2 second it.
 3 THE CHAIRMAN: We want a roll call
 4 vote on that.
 5 UNIDENTIFIED FEMALE SPEAKER:
 6 (Inaudible) want to vote on that?
 7 THE CHAIRMAN: I'm (inaudible)
 8 voting.
 9 UNIDENTIFIED FEMALE SPEAKER: Dan?
 10 UNIDENTIFIED MALE SPEAKER: Yes.
 11 UNIDENTIFIED FEMALE SPEAKER:
 12 (Inaudible)?
 13 UNIDENTIFIED MALE SPEAKER: Yes.
 14 THE CHAIRMAN: So do you see any
 15 problems with that?
 16 UNIDENTIFIED MALE SPEAKER: Not
 17 yet.
 18 THE CHAIRMAN: You can't think of
 19 anything?
 20 UNIDENTIFIED MALE SPEAKER: I'm not
 21 the agent so --
 22 THE CHAIRMAN: Okay. Anyway, you
 23 see the purpose of what I have. And he has
 24 made a comment that if he wanted to enlarge
 25 the whole thing -- that's why he wanted it
 Page 28

New Business:

1. **Tammy Thomas:** Ms. Thomas did not attend the meeting, as she is having trouble getting the forms filled out at the county level.
2. **Alcohol License Applications:** Chairman Schulz stated that Attorney Dan Wood was invited to this meeting to review all of the alcohol license applications. Chairman Schulz informed the board that previous town boards had not received copies of license applications from the clerks and more than likely the applications were filed with various errors. Attorney Wood stated that out of eight applications the board has received, only one application was completely and accurately filled out, which Stuff's Restaurant was. The board was presented with a summary from Attorney Wood regarding the issues with the renewal license applications and the following action was taken:
 - A. **Wisconsin Dolls, LLC:** The address for Wisconsin Dolls, LLC on the application is different than the address listed on the Wisconsin Department of Financial Institutions website. This will need to be amended and also the description of the premises is very vague and needs to be more specific to meet the requirements of Chapter 125 in regards to covering 8 acres.
 - B. **Tourdot Winery, LLC:** The renewal of this license is missing the name and address of the agent. The clerk, Joni Gehrke, informed the board that prior to the start of the meeting, James Tourdot filled in the missing information and has paid the remaining balance owed for the licenses.
 - C. **Chula Vista Golf, Inc.** filled out an original application for a Class B Beer License for the premises that a volleyball tournament will take place, which is on 9th Lane. This application was amended by Mike Kaminski to list the correct name of Chula Vista Golf, Inc. on the application.

A motion was made by Supervisor Mitchell and seconded by Supervisor Stanford to approve the licenses for Stuff's Restaurant, Tourdot Winery, and Chula Vista Golf, Inc. A roll call vote was made with all three board members voting yes.

- D. **Holiday Shores Campground and Resort, Pinecrest Par 3 Golf Course, and B&H Trout Farm & Bait Shop** all were missing the question in Section C, line 3.

Supervisor Mitchell made a motion to approve these three licenses subject to the clerk getting the amendments made on these applications and Supervisor Stanford seconded the motion. A roll call vote was made and all three board members voted yes.

- E. **Fur, Fin and Feather:** The LLC information was not listed on the application and this will need to be amended.
- F. **Lake of the Dells, LLC** was missing the name and address of the agent. The identification of the premises was also vague and requires more specific information in regards to the premises and building involved. Supervisor Stanford questioned if Lake of the Dells, LLC is in compliance with the town ordinance in regards to being open to the public for 90 days. Attorney Wood suggested getting an affidavit of compliance from the owners.

A motion was made by Supervisor Stanford to postpone the decision on Fur, Fin and Feather, LLC, Lake of the Dells, LLC and Wisconsin Dolls, LLC until all amendments to the applications get these issues resolved before the next meeting. Attorney Wood suggested a provisional license be issued to Chula Vista Golf, Inc. which would be effective for 60 days and that the Class "B" license be issued before then. Supervisor Mitchell made a motion to approve the provisional Class

ADULT-ORIENTED ESTABLISHMENT LICENSE

WHEREAS, the Town Board of the Town of Dell Prairie, Adams County, Wisconsin, has, upon application duly made, granted and authorized the issuance of an Adult-Oriented Establishment License to Wisconsin Dells, LLC

as defined by and pursuant to Town of Dell Prairie Ordinance No. 4-2004.

AND WHEREAS, the said applicant has paid the Town of Dell Prairie Treasurer the sum of \$ 100.00

for such Adult-Oriented Establishment License as required by Town Ordinance,

LICENSE IS HEREBY ISSUED to said applicant to operate an Adult-Oriented

Establishment at the following described premises 4119 State Road 13,

Wisconsin Dells, WI 53965; Parcel # 008-00868-0000;

All buildings on the entire 8 acres.

FOR THE PERIOD from January 11, 2009 to January 10, 2010.

Given this date December 8, 2009

Town of Dell Prairie

Adams County, Wisconsin

[Signature]
Town Clerk

(Town Seal)

RENEWAL ALCOHOL BEVERAGE LICENSE APPLICATION

Submit to municipal clerk. Read instructions on reverse side.

For the license period beginning: July 1, 2009 ending: June 30, 2010
(MM DD YYYY) (MM DD YYYY)

TO THE GOVERNING BODY of the: Town of } Dell Prairie
 Village of }
 City of }

County of Adams Aldermanic Dist. No. _____ (if required by ordinance)

CHECK ONE Individual Partnership Limited Liability Company
 Corporation/Nonprofit Organization

Complete A or B. All must complete C.

A. Individual or Partnership:
 Full Name(s) (Last, First and Middle Name) _____ Home Address _____

B. Full Name of Corporation/Nonprofit Organization/Limited Liability Company Wisconsin Dolls, LLC
 Address of Corporation/Limited Liability Company (if different from licensed premises) _____
 All Officer(s) Director(s) and Agent of Corporation and Members/Managers and Agent of Limited Liability Company:
 Title Name (Inc. Middle Name) Home Address Post Office & Zip Code
 President/Member Rebecca L. Halbach 3337 S. Schuman Road Orfordville, WI 535
 Vice President/Member _____
 Secretary/Member _____
 Treasurer/Member _____
 Agent James Halbach
 Directors/Managers _____

- C. 1. Trade Name Wisconsin Dolls Business Phone Number (608) 254-8708
 2. Address of Premises 4179 State Rd. 13 Post Office & Zip Code Wisconsin Dells, WI
 3. Does the applicant understand that they must purchase alcohol beverages only from Wisconsin wholesalers? Yes No⁵
 4. Premises description: Describe building or buildings where alcohol beverages are to be sold and stored. The applicant must include all rooms including living quarters, if used, for the sales, service, and/or storage of alcohol beverages and records. (Alcohol beverages may be sold and stored only on the premises described.) All buildings & property comprising app 8 acres
 5. Legal description (omit if street address is given above): _____
 6. a. Since filing of the last application, has the named licensee, any member of a partnership licensee, or any member, officer, director, manager or agent for either a limited liability company licensee, corporation licensee, or nonprofit organization licensee been convicted of any offenses (excluding traffic offenses not related to alcohol) for violation of any federal laws, any Wisconsin laws, any laws of other states, or ordinances of any county or municipality? If yes, complete reverse side ... Yes No
 b. Are charges for any offenses presently pending (excluding traffic offenses not related to alcohol) against the named licensee or any other persons affiliated with this license? If yes, explain fully on reverse side ... Yes No
 7. Except for questions 6a and 6b, have there been any changes in the answers to the questions as submitted by you on your last application for this license? If yes, explain. Yes No
 8. Was the profit or loss from the sale of alcohol beverages for the previous year reported on the Wisconsin Income or Franchise Tax return of the licensee? If not, explain. Yes No
 9. Does the applicant understand a Wisconsin Seller's Permit must be applied for and issued in the same name as that shown under Section A or B above? [phone (608) 266-2776] ... Yes No
 10. Does the applicant understand that alcohol beverage invoices must be kept at the licensed premises for 2 years from the date of invoice and made available for inspection by law enforcement? Yes No
 11. Is the applicant indebted to any wholesaler beyond 15 days for beer or 30 days for liquor? Yes No

READ CAREFULLY BEFORE SIGNING: Under penalty provided by law, the applicant states that each of the above questions has been truthfully answered to the best of the knowledge of the signers. Signers agree to operate this business according to law and that the rights and responsibilities conferred by the license(s), if granted, will not be assigned to another. (Individual applicants and each member of a partnership applicant must sign; corporate officer(s), members/managers of Limited Liability Companies must sign.)

SUBSCRIBED AND SWORN TO BEFORE ME
 this 14th day of May, 2009

(Notary/Notary Public)
 My commission expires is permanent

Rebecca Halbach Member
(Officer of Corporation/Member/Manager of Limited Liability Company if Partnership)

(Officer of Corporation/Member/Manager of Limited Liability Company if Partnership)

(Additional Partner(s)/Member/Manager of Limited Liability Company if Any)

TO BE COMPLETED BY CLERK
 Date received and filed with municipal clerk 5/15/09 Date reported to council/board 6/9/09 Date license granted _____
 License number issued 7 Date license issued 6/30/09 Signature of Clerk / Deputy Clerk _____
 Wisconsin Department of Revenue

004-40002256400-01

Applicant's Wisconsin Seller's Permit Number	
Federal Employer Identification Number (FEIN) <u>30-2111085</u>	
LICENSE REQUESTED	
TYPE	FEE
<input type="checkbox"/> Class A beer	\$
<input checked="" type="checkbox"/> Class B beer	\$ <u>75.-</u>
<input type="checkbox"/> Wholesale beer	\$
<input type="checkbox"/> Class C wine	\$
<input type="checkbox"/> Class A liquor	\$
<input checked="" type="checkbox"/> Class B liquor	\$ <u>225.-</u>
<input type="checkbox"/> Reserve Class B liquor	\$
Publication fee	\$ <u>15.-</u>
TOTAL FEE	\$ <u>315.</u>

RENEWAL ALCOHOL BEVERAGE LICENSE APPLICATION

Submit to municipal clerk. Read Instructions on Reverse Side.

For the license period beginning July 1, 2008 ~~to~~; ending June 30, 2009 ~~to~~

TO THE GOVERNING BODY of the Town of Dell Prairie
 Village of _____
 City of _____

County of Adams Aldermanic Dist. No. _____ (if required by ordinance)

CHECK ONE: Individual Partnership Corporation/Nonprofit Organization
 Limited Liability Company

Complete A or B. All must complete C.

A. Individual or Partnership:
 Full Name(s) (Last, First and Middle Name) _____ Home Address _____

B. Full Name of Corporation/Nonprofit Organization/Limited Liability Company Wisconsin Dolls, LLC
 Address of Corporation/Limited Liability Company (if different from licensed premises) _____
 All Officer(s) Director(s) and Agent of Corporation and Members/Managers and Agent of Limited Liability Company:
 Title Name (Inc. Middle Name) Home Address Post Office & Zip Code
 President/Member Rebecca L. Halbach 3337 S. Schuman Road Orfordville, WI 53571
 Vice President/Member _____
 Secretary/Member _____
 Treasurer/Member _____
 Agent James Halbach
 Directors/Managers _____

C. 1. Trade Name Wisconsin Dolls Business Phone Number (608)254-8708
 2. Address of Premises 4179 State Rd. 13 Post Office & Zip Code Wisconsin Dells, WI

3. Is agent of corporation/limited liability company subject to completion of the responsible beverage server training course for this license period? Yes No
4. Premises description: Describe building or buildings where alcohol beverages are to be sold and stored. The applicant must include all rooms including living quarters, if used, for the sales, service, and/or storage of alcohol beverages and records. (Alcohol beverages may be sold and stored only on premises described.) All buildings and property comprising approximately 8 acres.
5. Legal Description (omit if street address is given above) _____
6. a. Since filing of the last application, has the corporation, or limited liability company or any individual, partner, corporate officer, director, member/manager, limited liability company or agent been convicted of any felony or misdemeanor (other than traffic unrelated to alcohol beverages) for violation of any federal law, any Wisconsin laws, any laws of any other states or ordinances of any municipality? If yes, complete reverse side. Yes No
- b. Are there any criminal charges (other than traffic unrelated to alcohol beverages) presently pending against such persons since previous application? If yes, explain fully on reverse side. Yes No
7. Except for questions 6a and 6b, have there been any changes in the answers to the questions as submitted by you on your last application for this license? Yes No
 If yes, explain. _____
8. Was the profit or loss from the sale of alcohol beverages for the previous year reported on the Wisconsin Income or Franchise Tax return of the licensee? Yes No
 If not, explain. _____
9. Does the applicant understand a Wisconsin Seller's Permit must be applied for and issued in the same name as that shown under Section A or B above? Yes No
10. Does the applicant understand a Special Occupational Tax must be paid to the Federal Bureau of Alcohol, Tobacco and Firearms before beginning business? Yes No

READ CAREFULLY BEFORE SIGNING: Under penalty provided by law, the applicant states that each of the above questions has been truthfully answered to the best of the knowledge of the signers. Signers agree to operate this business according to law and that the rights and responsibilities conferred by the license(s), if granted, will not be assigned to another person. (Individual applicants and each member of a partnership applicant must sign; corporate officer(s), limited liability company members/managers must sign.)

SUBSCRIBED AND SWORN TO BEFORE ME
 this 13th day of May, 2008
[Signature]
 (Clerk/Notary Public)

[Signature]
 (Officer of Corporation/Partner/Individual Member/Manager of Limited Liability Company)
[Signature]
 (Officer of Corporation/Partner/Member/Manager of Limited Liability Company)
[Signature]
 (Additional Partner(s)/Member/Manager of Limited Liability Company if Any)

TO BE COMPLETED BY CLERK:

Date received and filed with municipal clerk <u>May 16, 2008</u>	Date reported to council/board <u>6/18/08</u>	Date li
License number issued	Date license issued <u>6/18/08</u>	Signat <u>[Signature]</u> Wisconsin Department of

Applicant's Wisconsin Seller's Permit Number: <u>004-40002256</u>	
Federal Employer Identification Number (EIN): <u>20-2111085</u>	
LICENSE REQUESTED	
TYPE	FEE
<input type="checkbox"/> Class A beer	\$
<input checked="" type="checkbox"/> Class B beer	\$ <u>75</u>
<input type="checkbox"/> Wholesale beer	\$
<input type="checkbox"/> Class C wine	\$
<input type="checkbox"/> Class A liquor	\$
<input checked="" type="checkbox"/> Class B liquor	\$ <u>22</u>
<input type="checkbox"/> Reserve Class B liquor	\$
Publication fee	\$ <u>15</u>
TOTAL FEE	\$ <u>315</u>
Post Office & Zip Code	

A-App. 030

RENEWAL ALCOHOL BEVERAGE LICENSE APPLICATION

Submit to municipal clerk. Read Instructions on Reverse Side.

For the license period beginning July 1 2007 ending June 30 2008

TO THE GOVERNING BODY of the Town of Deer Prairie
 Village of _____
 City of _____
 County of Adams Aldermanic Dist. No. _____ (if required by ordinance)

CHECK ONE: Individual Partnership Corporation/Nonprofit Organization
 Limited Liability Company

Complete A or B. All must complete C.

A. Individual or Partnership:
 Full Name(s) (Last, First and Middle Name) _____ Home Address _____

B. Full Name of Corporation/Nonprofit Organization/Limited Liability Company WISCONSIN DOLLS LLC
 Address of Corporation/Limited Liability Company (if different from licensed premises) P.O. BOX 1840 STANESVILLE, WI 535
 All Officer(s) Director(s) and Agent of Corporation and Members/Managers and Agent of Limited Liability Company:

Title	Name (Inc. Middle Name)	Home Address	Post Office & Zip Code
President/Member	<u>REBECCA L. HALBACH</u>	<u>3337 SCHUMAN RD. ORFORDVILLE, WI</u>	<u>535</u>
Vice President/Member			
Secretary/Member			
Treasurer/Member			
Agent	<u>JAMES HALBACH</u>	<u>3337 SCHUMAN RD. ORFORDVILLE, WI</u>	<u>53576</u>

C. 1. Trade Name WISCONSIN DOLLS RESORT Business Phone Number 608 254-8700
 2. Address of Premises 4179 Hwy 13 Wis. Dells, WI Post Office & Zip Code 53965

3. Is agent of corporation/limited liability company subject to completion of the responsible beverage server training course for this license period? Yes No
4. Premises description: Describe building or buildings where alcohol beverages are to be sold and stored. The applicant must include all rooms including living quarters, if used, for the sales, service, and/or storage of alcohol beverages and records. (Alcohol beverages may be sold and stored only on premises described.) BAR, COOLER, 19 ROOM IN OFFICE AND ALL 8 ACRES OF RESORT
5. Legal Description (omit if street address is given above) _____
6. a. Since filing of the last application, has the corporation, or limited liability company or any individual, partner, corporate officer, director, member/manager, limited liability company or agent been convicted of any felony or misdemeanor (other than traffic unrelated to alcohol beverages) for violation of any federal law, any Wisconsin laws, any laws of any other states or ordinances of any municipality? If yes, complete reverse side. Yes No
- b. Are there any criminal charges (other than traffic unrelated to alcohol beverages) presently pending against such persons since previous application? If yes, explain fully on reverse side. Yes No
7. Except for questions 6a and 6b, have there been any changes in the answers to the questions as submitted by you on your last application for this license? Yes No
 If yes, explain. _____
8. Was the profit or loss from the sale of alcohol beverages for the previous year reported on the Wisconsin Income or Franchise Tax return of the licensee? Yes No
 If not, explain. _____
9. Does the applicant understand a Wisconsin Seller's Permit must be applied for and issued in the same name as that shown under Section A or B above? Yes No
10. Does the applicant understand a Special Occupational Tax must be paid to the Federal Bureau of Alcohol, Tobacco and Firearms before beginning business? Yes No

READ CAREFULLY BEFORE SIGNING: Under penalty provided by law, the applicant states that each of the above questions has been truthfully answered to the best of the knowledge of the signers. Signers agree to operate this business according to law and that the rights and responsibilities conferred by the license(s), if granted, will not be assigned to another person. (Individual applicants and each member of a partnership applicant must sign; corporate officer(s), limited liability company members/managers must sign.)

SUBSCRIBED AND SWORN TO BEFORE ME
 this 30 day of April, 2007
Dawn Miller
 (Clerk/Notary Public)

Rebecca L. Halbach
 (Officer of Corporation/Partner/Individual Member/Manager of Limited Liability Company)

 (Officer of Corporation/Partner/Member/Manager of Limited Liability Company)

 (Additional Partner(s)/Member/Manager of Limited Liability Company if Any)

My commission expires 5/2/2010

TO BE COMPLETED BY CLERK:		Date license granted
Date received and filed with municipal clerk <u>May 2, 2007</u>	Date reported to council/board <u>June 2, 2007</u>	<u>2007</u>
License number issued	Date license issued	Signature <u>[Signature]</u>

Applicant's Wisconsin Seller's Permit Number <u>001-4000-22564</u>	
Federal Employer Identification Number (FEIN) <u>30-211085</u>	
LICENSE REQUESTED	
TYPE	FEE
<input type="checkbox"/> Class A beer	\$
<input checked="" type="checkbox"/> Class B beer	\$ <u>75</u>
<input type="checkbox"/> Wholesale beer	\$
<input type="checkbox"/> Class C wine	\$
<input type="checkbox"/> Class A liquor	\$
<input checked="" type="checkbox"/> Class B liquor	\$ <u>225</u>
<input type="checkbox"/> Reserve Class B liquor	\$
Publication fee	\$ <u>15</u>
TOTAL FEE	\$ <u>315</u>
Post Office & Zip Code	

RENEWAL ALCOHOL BEVERAGE LICENSE APPLICATION

Submit to municipal clerk. Read instructions on reverse side.

For the license period beginning July 1, 2006 ending June 30, 2007

TO THE GOVERNING BODY of the: Town of } Dell Prairie
 Village of }
 City of }

County of Adams Aldermanic Dist. No. (if required by ordinance)

CHECK ONE Individual Partnership Limited Liability Company
 Corporation/Nonprofit Organization

Applicant's Wisconsin Seller's Permit Number: <u>004-400022564</u>	
Federal Employer Identification Number (FEIN): <u>20-211085</u>	
LICENSE REQUESTED	
TYPE	FEE
<input type="checkbox"/> Class A beer	\$
<input checked="" type="checkbox"/> Class B beer	\$ <u>75</u>
<input type="checkbox"/> Wholesale beer	\$
<input type="checkbox"/> Class C wine	\$
<input type="checkbox"/> Class A liquor	\$
<input checked="" type="checkbox"/> Class B liquor	\$ <u>225</u>
<input type="checkbox"/> Reserve Class B liquor	\$
Publication fee	\$ <u>15</u>
TOTAL FEE	\$ <u>315</u>

Complete A or B. All must complete C.

A. Individual or Partnership:
 Full Name(s) (Last, First and Middle Name) _____ Home Address _____

B. Full Name of Corporation/Nonprofit Organization/Limited Liability Company Wisconsin Dolls LLC
 Address of Corporation/Limited Liability Company (if different from licensed premises) Po Box 1840 Janesville WI 5354
 All Officer(s) Director(s) and Agent of Corporation and Members/Managers and Agent of Limited Liability Company:

Title	Name (Inc. Middle Name)	Home Address	Post Office & Zip Code
President/Member	<u>Rebecca L. Halbach</u>	<u>3337 Schuman Rd</u>	<u>Delfordville WI 53576</u>
Vice President/Member			
Secretary/Member			
Treasurer/Member			
Agent	<u>James Halbach</u>	<u>3337 Schuman Rd</u>	<u>Delfordville WI 53576</u>
Directors/Managers			

C. 1. Trade Name Wisconsin Dolls Resort Business Phone Number 608-254-8708
 2. Address of Premises 4179 Hwy 13 WI Dells 53965 Post Office & Zip Code 53965

3. Is agent of corporation/limited liability company subject to completion of the responsible beverage server training course for this license period? Yes No
4. Premises description: Describe building or buildings where alcohol beverages are to be sold and stored. The applicant must include all rooms including living quarters, if used, for the sales, service, and/or storage of alcohol beverages and records. (Alcohol beverages may be sold and stored only on the premises described.) bar-cooler, lg room in office - all 8 acres c
5. Legal description (omit if street address is given above): _____
6. a. Since filing of the last application, has the named licensee, any member of a partnership licensee, or any member, officer, director, manager or agent for either a limited liability company licensee, corporation licensee, or nonprofit organization licensee been convicted of any offenses (excluding traffic offenses not related to alcohol) for violation of any federal laws, any Wisconsin laws, any laws of other states, or ordinances of any municipality? If yes, complete reverse side Yes No
- b. Are charges for any offenses presently pending (excluding traffic offenses not related to alcohol) against the named licensee or any other persons affiliated with this license? If yes, explain fully on reverse side Yes No
7. Except for questions 6a and 6b, have there been any changes in the answers to the questions as submitted by you on your last application for this license? Yes No
- If yes, explain. _____
8. Was the profit or loss from the sale of alcohol beverages for the previous year reported on the Wisconsin Income or Franchise Tax return of the licensee? Yes No
- If not, explain. _____
9. Does the applicant understand a Wisconsin Seller's Permit must be applied for and issued in the same name as that shown under Section A or B above? [phone (608) 266-2776] Yes No
10. Does the applicant understand a Special Occupational Tax must be paid to the National Revenue Center before beginning business? [phone 1-800-937-8864] Yes No
11. Is the applicant indebted to any wholesaler beyond 15 days for beer or 30 days for liquor? Yes No

READ CAREFULLY BEFORE SIGNING: Under penalty provided by law, the applicant states that each of the above questions has been truthfully answered to the best of the knowledge of the signers. Signers agree to operate this business according to law and that the rights and responsibilities conferred by the license(s), if granted, will not be assigned to another. (Individual applicants and each member of a partnership applicant must sign; corporate officer(s), members/managers of Limited Liability Companies must sign.)

SUBSCRIBED AND SWORN TO BEFORE ME
 this 10 day of May, 2006
Susan Mullin
 (Clerk/Notary Public)
 My commission expires 1-13-2008

Rebecca L. Halbach
 (Officer of Corporation/Member/Manager of Limited Liability Company /Partner/Individual)

 (Officer of Corporation/Member/Manager of Limited Liability Company /Partner)

 (Additional Partner(s)/Member/Manager of Limited Liability Company If Any)

TO BE COMPLETED BY CLERK		Date reported to council/board	Date license granted
Date received and filed with municipal clerk	<u>May 16, 2006</u>	<u>June 13, 2006</u>	<u>June 13, 2006</u>
License number issued	<u>1</u>	Date license issued	<u>June 14, 2006</u>
			Signature of Clerk / Deputy Clerk <u>Aronica A. O'Brien</u> Wisconsin Department of Revenue

RENEWAL ALCOHOL BEVERAGE LICENSE APPLICATION

Submit to municipal clerk. Read instructions on reverse side.

For the license period beginning July 1, 2005; ending June 30, 2006

TO THE GOVERNING BODY of the: Town of Dell Prairie
 Village of
 City of

County of Adams Aldermanic Dist. No. _____ (if required by ordinance)

CHECK ONE Individual Partnership Limited Liability Company
 Corporation/Nonprofit Organization

Complete A or B. All must complete C.

A. Individual or Partnership: Full Name(s) (Last, First and Middle Name) _____ Home Address _____

B. Full Name of Corporation/Nonprofit Organization/Limited Liability Company Wisconsin Dells, LLC
 Address of Corporation/Limited Liability Company (if different from licensed premises) P.O. Box 1840 Janesville, WI 53599
 All Officer(s) Director(s) and Agent of Corporation and Members/Managers and Agent of Limited Liability Company:

Title Name (inc. Middle Name) Home Address Post Office & Zip Code
 President/Member Rebecca L. Halbach 3337 Schuman Rd Oxfordville, WI 53576
 Vice President/Member _____
 Secretary/Member _____
 Treasurer/Member _____

Agent James Halbach 3337 Schuman Rd Oxfordville, WI 53576
 Directors/Managers Business Phone Number 608-254-8708
James Halbach 3337 Schuman Rd Oxfordville, WI 53576 Post Office & Zip Code 53965

C. 1. Trade Name Wisconsin Dells Resort Business Phone Number _____
 2. Address of Premises 5179 Hwy 13 Wt Dells, WI Post Office & Zip Code _____

3. Is agent of corporation/limited liability company subject to completion of the responsible beverage server training course? Yes No

4. Premises description: Describe building or buildings where alcohol beverages are to be sold and stored. The applicant must include all rooms including living quarters, if used, for the sales, service, and/or storage of alcohol beverages and records. (Alcohol beverages may be sold and stored only on the premises described.) Bar, cooler, 49 room in office all BACKS of R

5. Legal description (omit if street address is given above): _____

6. a. Since filing of the last application, has the named licensee, any member of a partnership licensee, or any member, officer, director, manager or agent for either a limited liability company licensee, corporation licensee, or nonprofit organization licensee been convicted of any offenses (excluding traffic offenses not related to alcohol) for violation of any federal laws, any Wisconsin laws, any laws of other states, or ordinances of any municipality? If yes, complete reverse side. Yes No

b. Are charges for any offenses presently pending (excluding traffic offenses not related to alcohol) against the named licensee or any other persons affiliated with this license? If yes, explain fully on reverse side. Yes No

7. Except for questions 6a and 6b, have there been any changes in the answers to the questions as submitted by you on your last application for this license? Yes No

8. Was the profit or loss from the sale of alcohol beverages for the previous year reported on the Wisconsin Income or Franchise Tax return of the licensee? Yes No

9. Does the applicant understand a Wisconsin Seller's Permit must be applied for and issued in the same name as that shown under Section A or B above? (phone 608-268-2776) Yes No

10. Does the applicant understand a Special Occupational Tax must be paid to the National Revenue Center before beginning business? (phone 1-800-937-8864) Yes No

11. Is the applicant indebted to any wholesaler beyond 15 days for beer or 30 days for liquor? Yes No

READ CAREFULLY BEFORE SIGNING: Under penalty provided by law, the applicant states that each of the above questions has been truthfully answered to the best of the knowledge of the signers. Signers agree to operate this business according to law and that the rights and responsibilities conferred by the license(s), if granted, will not be assigned to another. (Individual applicants and each member of a partnership applicant must sign; corporate officer(s), members/managers of Limited Liability Companies must sign.)

SUBSCRIBED AND SWORN TO BEFORE ME this 24 day of May, 2005
Susan K Miller (Clerk/Notary Public)
 My commission expires 1-18-2008

Rebecca L. Halbach
 (Officer of Corporation/Member/Manager of Limited Liability Company/Partner/Individual)
Rebecca L. Halbach
 (Officer of Corporation/Member/Manager of Limited Liability Company/Partner)
Rebecca L. Halbach
 (Additional Partner/Member/Manager of Limited Liability Company if Any)

TO BE COMPLETED BY CLERK		Date reported to council/board	Date license granted
Date received and filed with municipal clerk	<u>May 25, 2005</u>	<u>June 14, 2005</u>	<u>June 14, 2005</u>
License number issued	<u>604</u>	Date license issued	<u>6-14-05</u>
		Signature of Clerk (Deputy Clerk) <u>Victoria M. Brown</u> Wisconsin Department of Revenue	

COMBINATION FORM

CLASS B RETAIL LICENSE
For The Sale Of

No.: 07
\$300.00

FERMENTED MALT BEVERAGE and INTOXICATING LIQUORS

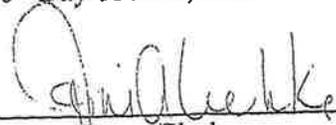
WHEREAS, the local government body of the TOWN of DELL PRAIRIE, County of Adams, Wisconsin, has, upon application duly made, granted and authorized the issuance of a Retail Class "B" License to WISCONSIN DOLLS, LLC, Rebecca Halbach, Agent, to sell Fermented Malt Beverages as defined by and pursuant to Section 125.26(1) of the Statutes of the State of Wisconsin, and Local Ordinances and the said applicant has paid the treasurer the sum of \$75.00 for such Class "B" Retailer's Fermented Malt Beverage License as required by local ordinances,

AND WHEREAS, the local governing body has granted and authorized the issuance of a Class "B" Intoxicating Liquor License to said applicant to sell intoxicating liquor as defined in and pursuant to Section 125.51(3) of the Statutes of the State of Wisconsin and local ordinances and the said applicant has paid to the treasurer the sum of \$225.00 for such "Class B" Intoxicating Liquor License as provided by local ordinances and has complied with all the requirements necessary for obtaining such licenses, LICENSES ARE HEREBY ISSUED to said applicant to sell, deal and traffic in, at retail, Fermented Malt Beverages and Intoxicating Liquors at the following described premises:

Wisconsin Dolls, LLC
4179 State Road 13, Wisconsin Dells, WI 53965
(Main Bar/Entertainment Building)

FOR THE PERIOD from July 1, 2009 to June 30, 2010

Given under my hand and the corporate seal of the TOWN of
DELL PRAIRIE, County of Adams, State of Wisconsin,
This 30th Day of June, 2009.


Dell Prairie Town Clerk

This License must be FRAMED and POSTED in a conspicuous place in the room or place where Fermented Malt Beverages and Intoxicating Liquors are sold or served.

R5:53

A-App. 034

CLASS B RETAIL LICENSE

COMBINATION FORM

for the sale of

No5.....
\$...300.00.....

FERMENTED MALT BEVERAGES and INTOXICATING LIQUORS

WHEREAS, the local government body of the TOWN of DELL PRAIRIE, County of Adams, Wisconsin, has, upon application duly made, granted and authorized the issuance of a Retail Class "B" License to **Wisconsin Dolls, LLC, Rebecca Halbach,** agent, to sell Fermented Malt Beverages as defined by and pursuant to Section 125.26(1) of the Statutes of the State of Wisconsin, and Local Ordinances and the said applicant has paid the treasurer the sum of \$ 75.00 for such Class "B" Retailer's Fermented Malt Beverage License as required by local ordinances, AND WHEREAS, the local governing body has granted and authorized the issuance of a Class "B" Intoxicating Liquor License to said applicant to sell intoxicating liquor as defined in and pursuant to Section 125.51(3) of the Statutes of the State of Wisconsin and local ordinances and the said applicant has paid to the treasurer the sum of \$225.00 for such "Class B" Intoxicating Liquor License as provided by local ordinances and has complied with all the requirements necessary for obtaining such licenses, LICENSES ARE HEREBY ISSUED to said applicant to sell, deal and traffic in, at retail, Fermented Malt Beverages and Intoxicating Liquors at the following described premises:

Wisconsin Dolls, LLC

4179 State Rd 13 Wis Dells, WI 53965

FOR THE PERIOD from July 1, 2008, to June 30, 2009.

Given under my hand and the corporate seal of the
TOWN of DELL PRAIRIE, County of Adams, State of Wisconsin,

This 10th day of June 2008.

Kathryn Dela Pena

Deputy Clerk

This License must be FRAMED and POSTED in a conspicuous place in the room where Fermented Malt Beverages and Intoxicating Liquors are sold or served.

R5:54

A-APP. 035

COMBINATION
FORM

CLASS B RETAIL LICENSE

NO. 1
\$ 300.00

for the sale of
FERMENTED MALT BEVERAGES and INTOXICATING LIQUORS
Dell Prairie

WHEREAS, the local governing body of the (City - Town - Village) of

County of ... Adams ... Wisconsin, has, upon application duly made, granted and authorized the issuance of a Retail Class "B" License to Wisconsin Dolls, LLC James Halbach, Agent to sell Fermented Malt Beverages as defined by and pursuant to Section 125.26 of the Statutes of the State of Wisconsin, and Local Ordinances and the said applicant has paid the treasurer the sum of \$ 75.00 for such Class "B" Retailer's Fermented Malt Beverage License as required by local ordinances,

AND WHEREAS, the local governing body has granted and authorized the issuance of a "Class B" Intoxicating Liquor License to said applicant to sell intoxicating liquor as defined in and pursuant to Section 125.51(3) of the Statutes of the

State of Wisconsin and local ordinances and the said applicant has paid to the treasurer the sum of \$ 225.00 for such "Class B" Intoxicating Liquor License as provided by local ordinances and has complied with all the requirements necessary for obtaining such licenses, LICENSES ARE HEREBY ISSUED to said applicant to sell, deal and traffic in, at retail, Fermented Malt Beverages and Intoxicating Liquors at the following described premises:

Wisconsin Dolls Resort
4179 State Highway 13 Wisc. Dells WI
All 8 acres of the resort

FOR THE PERIOD from July 1, 2006 Year, to June 30, 2007 Year

Given under my hand and the corporate seal of the
(City - Town - Village) of Dell Prairie
County of Adams State of Wisconsin,
2006

this 13th day of June Year
Veronica M. Caborn

(Corporate Seal) Clerk

This License must be FRAMED and POSTED in a conspicuous place in the room where Fermented Malt Beverages and Intoxicating Liquors are sold or served.

COMBINATION
FORM

CLASS B RETAIL LICENSE

NO. 004

for the sale of

\$ 300.00

FERMENTED MALT BEVERAGES and INTOXICATING LIQUORS

Dell Prairie

WHEREAS, the local governing body of the (City - Town - Village) of

County of Adams, Wisconsin, has, upon application duly made, granted and authorized the issuance of a Retail Class "B" License to Wisconsin Dells, LLC James Halbach, Agent to sell Fermented Malt Beverages as defined by and pursuant to Section 125.26 of the Statutes of the State of Wisconsin, and Local Ordinances and the said applicant has paid the treasurer the sum of \$ 75.00 for such Class "B" Retailer's Fermented Malt Beverage License as required by local ordinances.

AND WHEREAS, the local governing body has granted and authorized the issuance of a "Class B" Intoxicating Liquor License to said applicant to sell intoxicating liquor as defined in and pursuant to Section 125.51(3) of the Statutes of the

State of Wisconsin and local ordinances and the said applicant has paid to the treasurer the sum of \$ 225.00 for such "Class B" Intoxicating Liquor License as provided by local ordinances and has complied with all the requirements necessary for obtaining such licenses, LICENSES ARE HEREBY ISSUED to said applicant to sell, deal and traffic in, at retail, Fermented Malt Beverages and Intoxicating Liquors at the following described premises:

Wisconsin Dells Resort

4179 State Highway 13 Wisc. Dells, WI

All 8 acres of the resort

FOR THE PERIOD from July 1, 2005 Year to June 30, 2006 Year

Given under my hand and the corporate seal of the
(City - Town - Village) of Dell Prairie

County of Adams, State of Wisconsin,

this 14th day of June 2005



(Corporate Seal)

Clerk

This License must be FRAMED and POSTED in a conspicuous place in the room where Fermented Malt Beverages and Intoxicating Liquors are sold or served.

COMBINATION
FORM

CLASS B RETAIL LICENSE

NO. 009
\$ 150.00

for the sale of
FERMENTED MALT BEVERAGES and INTOXICATING LIQUORS

WHEREAS, the local governing body of the (City - Town - Village) of Dell Prairie

County of Adams, Wisconsin, has, upon application duly made, granted and authorized the issuance of a Retail Class "B" License to Wisconsin Dolls, LLC James Halbach, Agent to sell Fermented Malt Beverages as defined by and pursuant to Section 125.26(1) of the Statutes of the State of Wisconsin, and Local Ordinances and the said applicant has paid the treasurer the sum of \$ 37.50 for such Class "B" Retailer's Fermented Malt Beverage License as required by local ordinances,

AND WHEREAS, the local governing body has granted and authorized the issuance of a "Class B" Intoxicating Liquor License to said applicant to sell intoxicating liquor as defined in and pursuant to Section 125.51(3) of the Statutes of the

State of Wisconsin and local ordinances and the said applicant has paid to the treasurer the sum of \$ 112.50 for such "Class B" Intoxicating Liquor License as provided by local ordinances and has complied with all the requirements necessary for obtaining such licenses, LICENSES ARE HEREBY ISSUED to said applicant to sell, deal and traffic in, at retail, Fermented Malt Beverages and Intoxicating Liquors at the following described premises:

Wisconsin Dolls Resort

4179 State Highway 13

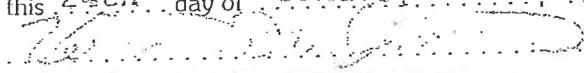
All 8 acres of the resort

FOR THE PERIOD from January 24, 2005 to June 30, 2005
Year Year

Given under my hand and the corporate seal of the
(City - Town - Village) of Dell Prairie

County of Adams, State of Wisconsin,

this 24th day of January, 2005
Year



(Corporate Seal)

Clerk

R5:57

RENEWAL ALCOHOL BEVERAGE LICENSE APPLICATION

Submit to municipal clerk. Read instructions on reverse side.

For the license period beginning July 04; ending July 05

TO THE GOVERNING BODY of the: Town of } DELL PRAIRIE
 Village of }
 City of }

County of ADAMS Aldermanic Dist. No. _____ (if required by ordinance)

CHECK ONE Individual Partnership Limited Liability Company
 Corporation/Nonprofit Organization

Complete A or B. All must complete C.

A. Individual or Partnership:
 Full Name(s) (Last, First and Middle Name) CANHAM JAMES D Home Address 4179 HWY STATE 13 Post Office & Zip Code PO BOX 299 53965

B. Full Name of Corporation/Nonprofit Organization/Limited Liability Company _____
 Address of Corporation/Limited Liability Company (if different from licensed premises) _____
 All Officer(s) Director(s) and Agent of Corporation and Members/Managers and Agent of Limited Liability Company:
 Title Name (Inc. Middle Name) Home Address Post Office & Zip Code

President/Member _____
 Vice President/Member _____
 Secretary/Member _____
 Treasurer/Member _____
 Agent _____
 Directors/Managers _____

C. 1. Trade Name ARROWHEAD RESORT/HILL BAR & GRILL Business Phone Number 608-254-8708
 2. Address of Premises 4179 HWY STATE 13 Post Office & Zip Code PO BOX 299 53965

3. Is agent of corporation/limited liability company subject to completion of the responsible beverage server training course for this license period? Yes No

4. Premises description: Describe building or buildings where alcohol beverages are to be sold and stored. The applicant must include all rooms including living quarters, if used, for the sales, service, and/or storage of alcohol beverages and records. (Alcohol beverages may be sold and stored only on the premises described.) BAR & BASEMENT

5. Legal description (omit if street address is given above): _____

6. a. Since filing of the last application, has the named licensee, any member of a partnership licensee, or any member, officer, director, manager or agent for either a limited liability company licensee, corporation licensee, or nonprofit organization licensee been convicted of any offenses (excluding traffic offenses not related to alcohol) for violation of any federal laws, any Wisconsin laws, any laws of other states, or ordinances of any municipality? If yes, complete reverse side Yes No

b. Are charges for any offenses presently pending (excluding traffic offenses not related to alcohol) against the named licensee or any other persons affiliated with this license? If yes, explain fully on reverse side Yes No

7. Except for questions 6a and 6b, have there been any changes in the answers to the questions as submitted by you on your last application for this license? Yes No

If yes, explain: _____

8. Was the profit or loss from the sale of alcohol beverages for the previous year reported on the Wisconsin Income or Franchise Tax return of the licensee? Yes No

If not, explain: _____

9. Does the applicant understand a Wisconsin Seller's Permit must be applied for and issued in the same name as that shown under Section A or B above? [phone (608) 266-2776] Yes No

10. Does the applicant understand a Special Occupational Tax must be paid to the National Revenue Center before beginning business? [phone 1-800-937-8864] Yes No

11. Is the applicant indebted to any wholesaler beyond 15 days for beer or 30 days for liquor? Yes No

READ CAREFULLY BEFORE SIGNING: Under penalty provided by law, the applicant states that each of the above questions has been truthfully answered to the best of the knowledge of the signers. Signers agree to operate this business according to law and that the rights and responsibilities conferred by the license(s), if granted, will not be assigned to another (Individual applicants and each member of a partnership applicant must sign; corporate officer(s), members/managers of Limited Liability Companies must sign.)

SUBSCRIBED AND SWORN TO BEFORE ME
 this 14 day of May, 20 04
April E. J. Joffe
 (Clerk/Notary Public)
 My commission expires June 12, 2005

James D. Canham
 (Officer of Corporation/Member/Manager of Limited Liability Company (Partner/Individual)
James D. Canham
 (Officer of Corporation/Member/Manager of Limited Liability Company (Partner)
 (Additional Partner(s)/Member/Manager of Limited Liability Company (if Any)

39-	
Applicant's Wisconsin Seller's Permit Number:	02000465
Federal Employer Identification Number (FEIN):	686437
LICENSE REQUESTED	
TYPE	FEE
<input type="checkbox"/> Class A beer	\$
<input checked="" type="checkbox"/> Class B beer	\$ 75
<input type="checkbox"/> Wholesale beer	\$
<input type="checkbox"/> Class C wine	\$
<input type="checkbox"/> Class A liquor	\$
<input checked="" type="checkbox"/> Class B liquor	\$ 225
<input type="checkbox"/> Reserve Class B liquor	\$
Publication fee	\$ 15
TOTAL FEE	\$ 315

TO BE COMPLETED BY CLERK		
Date received and filed with municipal clerk	Date reported to council/board	Date license granted
<u>5-19-04</u>	<u>6-8-04</u>	<u>6-8-04</u>
License number issued	Date license issued	Signature of Clerk / Deputy Clerk
<u>7</u>	<u>6-22-04</u>	<u>Resurrection Libon</u>
		Wisconsin Department of Revenue

SECTION V – COMPLIANCE CONDITIONS

- A. Any building or place where alcohol beverages are sold, possessed, stored, brewed, bottled, manufactured, or rectified without a valid permit or license issued under this Ordinance or Chapter 125 or 139, Wis. stats., or where persons are allowed to drink alcohol beverages in violation of this chapter is a public nuisance and may be closed until the activity in violation of this Ordinance is abated. When the activity is abated, the building or place may be used for any lawful purpose.
- B. It shall be unlawful for the licensee, or any employee, operator, or manager of a tavern or other licensed or permitted establishment to be under the influence of an intoxicant, or a controlled substance or a combination of an intoxicant and a controlled substance while performing services on the licensed premises in the Town.
- C. As a condition of renewing and keeping any license issued under this Ordinance or Chapter 125 Wis. Stats., the licensed premise must be in full compliance with all sanitary, safety and health requirements of the Department of Commerce pertaining to buildings and plumbing, to the rules and regulations of the Department of Health and Family Services applicable to restaurants and to all such ordinances, codes and regulations adopted by the Town and must demonstrate business continuance for the prior license term. Business continuance means being open for business to the general public for a minimum of 90 days during the license period. Issuance or retention of a license to a party not open for business and not demonstrating business continuance is hereby declared by this Ordinance to be against public policy for the Town. A determination by the Town Board that a premise is not in compliance or is not demonstrating business continuation establishes grounds for non-renewal of the alcohol beverage retail sale license. The Town Board shall issue a summons and set a hearing to determine whether the license shall be not renewed under this subsection. The hearing shall be held not later than 30 days after the summons is issued. The Town Board may make its decision effective on a later date, in its discretion. The procedure for the hearing shall be in accordance with sec. 125.12, Wis. Statutes. Testimony of any party, any eviction notice, court documentation, or other valid evidence of such actions may be presented. All testimony shall be under oath.
- D. Every applicant procuring a license thereby consents to the entry of police or other duly authorized representatives of the Town at all reasonable hours for the purpose of inspection and search and consents to the removal from said premises of all things and articles the applicant had in violation of Town Ordinances or state laws, and consents to the introduction of such things and articles in evidence in any prosecution that may be brought for such offenses.

Municipal Licensing and Regulation of Alcohol Beverages

Premises

Premises

Premises / 1. Description:

1. Description:

- a. The applicant must “particularly describe the premises” - the building(s), room(s), and/or land area under his/her control where alcohol beverages will be sold, served, consumed, or stored. §§ 125.25(3), 125.26(3), 125.28(3), 125.51(2)(c) and 125.51(3)(d).
- b. Any questions about the extent of the described premises should be clarified with the applicant before the license is granted.
- c. The municipal official must issue the license with a premises description identical to that shown on the application and approved by the governing body.

Premises / 2. Changing the description:

2. Changing the description:

- a. If the request is made for a new license year, the applicant may add to the description on the application any change from the previous year.
- b. For any revision during the license year, the licensee must file a written request with the municipal official to amend the premises description. It is within the discretion of the governing body to approve or disapprove the change. *Alberti v. City of Whitewater*, 109 Wis.2d 592, 327 N.W.2d 150 (1982). See also § 125.04(3)(h).
- c. If the change is approved, the municipal official must amend the license and the license must be posted on the premises.

Premises / 3. Use of street address to describe the premises:

3. Use of street address to describe the premises:

- a. Use of a city or village street address is possible only if the applicant has been granted a license to cover the entire location: i.e., the building(s) and land area at that address.

Municipal Licensing and Regulation of Alcohol Beverages

If the license is to cover the building or a part of the building only, then the applicant must describe the building or portion of the building at the appropriate street address as shown on the license application.

b. If an applicant has a town address that pinpoints the location of the premises, the same procedure would be followed as above.

The use of a route number, a highway number (or the legal description) in itself does not properly identify the area under the control of the applicant where the alcohol beverages will be sold, served, consumed, or stored.

Premises / 4. Sale, service, or consumption outside barroom:

4. Sale, service, or consumption outside barroom:

Sale, service, or consumption of alcohol beverages outside the barroom is permissible only if the area in question (e.g., a porch, outdoor volleyball court, terrace, "beer garden" or lawn area) is described in the license as being part of the licensed premises.

RECEIVED

STATE OF WISCONSIN
SUPREME COURT
APPEAL NO. 2010-AP-2900

02-03-2012

**CLERK OF SUPREME COURT
OF WISCONSIN**

WISCONSIN DOLLS, LLC,

Plaintiff-Appellant-Petitioner,

-v-

**TOWN OF DELL PRAIRIE and
TOWN OF DELL PRAIRIE TOWN BOARD,**

Defendants-Respondents.

**BRIEF AND APPENDIX OF
DEFENDANTS-RESPONDENTS TOWN OF DELL PRAIRIE
AND TOWN OF DELL PRAIRIE TOWN BOARD**

**APPEAL FROM THE SEPTEMBER 1, 2011
DECISION OF THE COURT OF APPEALS, DISTRICT IV**

HAZELBAKER & ASSOCIATES, S.C.
Mark B. Hazelbaker
State Bar No. 1010302
Michael R. O'Callaghan
State Bar No. 1058555
3555 University Avenue
Madison, WI 53705
(608) 663-9770
(608) 204-9631 - fax
mark@hazelbakerlaw.com
michael@hazelbakerlaw.com

*Attorneys for Defendants-
Respondents*

February 3, 2012

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STATEMENT ON PUBLICATION

The Town of Dell Prairie ("Dell Prairie") agrees with Wisconsin Dolls, LLC, that this case should be published because it involves the application of section 125 Wis. Stats., to a set of facts not explicitly addressed in prior case law.

STATEMENT ON ORAL ARGUMENT

Dell Prairie believes that oral argument will help to further develop the issues presented.

STATEMENT OF THE CASE

PROCEDURAL POSTURE OF THE CASE

Wisconsin Dolls, LLC ("Wisconsin Dolls") commenced this certiorari action in Adams County Circuit Court by summons and complaint on February 17, 2010. Wisconsin Dolls alleged that the Town of Dell Prairie ("Dell Prairie" or "the Town") infringed Wisconsin Dolls' property rights and acted contrary to Wisconsin's statutory non-renewal procedures when the Town issued Wisconsin Dolls its 2009-2010 alcohol license with a different premises description than that contained in the predecessor license. Dell Prairie filed the record of the proceedings before the Town and both parties submitted briefs. The Circuit Court rendered an oral ruling on October 19, 2010 upholding Dell Prairie's action on Wisconsin Dolls' 2009-2010 alcohol license. The Circuit Court ruled that the Town's action was not a non-renewal of Wisconsin Dolls' license under sec. 125.12(3), Wis. Stats., and did not otherwise infringe upon Wisconsin Dolls' rights. Wisconsin Dolls appealed to the Court of Appeals for the Fourth District. The parties submitted briefs. On September 1, 2011, the

Court of Appeals ruled in favor of the Town, on different grounds from the Circuit Court. The Court of Appeals held that the insufficient premises descriptions in Wisconsin Dolls' licenses for prior years rendered those licenses void. Therefore, the statutory procedures for non-renewal were unavailable. The decision was ordered published. The Supreme Court granted Wisconsin Dolls' petition for review on December 1, 2011.

STATEMENT OF FACTS

Wisconsin Dolls, LLC is the corporate owner of a tavern located on Highway 13, north of Wisconsin Dells. [R5:53; Plaintiff-Appellant-Petitioner's Appendix (hereinafter "A.App.") A.App. 034]. Wisconsin Dolls acquired the property from its previous owner in 2004 and first applied for an alcohol license December 31, 2004. [R5:52; Defendants-Respondents' Supplemental Appendix (hereinafter (S.App.") S.App.001]. At that time, Wisconsin Dolls also obtained a license for an adult-oriented establishment and began operating the tavern as a gentlemen's club, offering adult entertainment. [R5:40; S.App.002]. Dell Prairie has

never sought to sanction Wisconsin Dolls for providing adult entertainment. Dell Prairie routinely renewed both Wisconsin Dolls' alcohol license and its adult-oriented establishment license, required by Town ordinance. [R5:53-57,36; A.App.053-057,028].

Several years later, as part of a routine review of all existing alcohol licenses for retail establishments in Dell Prairie, a new Town Clerk noticed that there were problems with several licenses. [R5:35; S.App.004]. She noted that some, including Wisconsin Dolls' license, did not include a particular premises description required by state law, specifically defining the locations where alcohol is sold or stored. [Id.] In the case of Wisconsin Dolls, the 2008-2009 license described the licensed premises only by its street address. [R5:54; A.App.035] The Town Board decided to renew the license, but revised the description of the licensed premises to limit the premises to the tavern building on Wisconsin Dolls' property. [R5:34; S.App.004] The license issued for 2009-2010 described the premises as:

Wisconsin Dolls, LLC
4179 State Road 13, Wisconsin Dells, WI 53965

(Main Bar/Entertainment Building)

[R5:53; A.App.034]

Wisconsin Dolls' objected, claiming that it might wish to enlarge the area in which it serves alcoholic beverages at some future date. Wisconsin Dolls' real estate property at the above address is approximately eight (8) acres in area. The property contains several motel buildings. [R5:41-46; S.App.005-010]. Wisconsin Dolls has not contended that it serves or stores alcohol anywhere other than the main tavern building. Wisconsin Dolls' adult-oriented establishment license applications represented that alcohol would be served in the Gentlemen's Club. Those applications indicated there would be no service in other areas of the property, including an 18-and-over "juice bar." [R5:41-46; S.App.005-010].

This action challenges the Town's decision to include the additional language "Main Bar/Entertainment Building" in the description of the licensed premises for Wisconsin Dolls' 2009-2010 alcohol license. The official records and minutes of Dell Prairie indicate

the process by which Dell Prairie arrived at the description of the premises included in the license.

In May 2009, Wisconsin Dolls applied for renewal of its alcohol beverage license for 2009-2010. [R5:47; A.App.029]. The application asked for renewal of a license which described the premises as consisting of all buildings and real property, comprising eight (8) acres. [R5:47; A.App.029].

The first meeting at which alcohol licenses for the 2009-2010 license year were discussed was June 9, 2009. [R5:31-33; S.App.011-013]. The approved minutes state "the clerk presented an Affidavit of Proper Meeting Notice to the Chairman." [R5:31; S.App.011]. Those meeting minutes describe the concerns identified to Dell Prairie. The minutes state as follows under the topic "New Business:"

"2. Alcohol License Applications: Chairman Schulz stated that Attorney Dan Wood was invited to this meeting to review all of the alcohol license applications. Chairman Schulz informed the Board that previous town boards had not received copies of license applications from the clerks and more than likely the applications were filled with various errors. Attorney Wood stated that out of eight applications that the Board had received, only one (1) application was completely and accurately filled out which

Stuff's restaurant was. The Board was presented with a summary from Attorney Wood regarding the issues with the renewal applications and the following action was taken:

A.Wisconsin Dolls, LLC: "The address for Wisconsin Dolls, LLC on the application is different than the address listed on the Wisconsin Department of Financial Institutions website. This will need to be amended and also the description of the premises is very vague and needs to be more specific to meet the requirements of Chapter 125 in regards to covering eight acres."

[R5:32; S.App.012].

The summary goes on to list problems with other licenses. The response to Attorney Woods' report included in the minutes was:

"A motion was made by Supervisor Stanford to postpone the decision on Fur, Fin & Feather, LLC, Lake of the Dells, LLC, and Wisconsin Dolls, LLC until all amendments of the applications get these issues resolved before the next meeting."

[R5:32; S.App.012].

The Board received a report from its clerk prior to the next Board meeting. [R5:35]. In that report, Clerk Gehrke stated:

Wisconsin Dolls, LLC Section B. Per a phone conversation with Jim Halbach and also a phone conversation with his Attorney Steve Werner, the address listed is the home address of the

Halbach's. The business address is PO Box 1840 Janesville, WI. Attorney Werner stated to me that the address listed on the Wisconsin Department of Financial Institution website is Beloit, however, that was an error on the part of the accountant for Wisconsin Dolls, LLC and I was informed that it has been corrected and changed on the website. The premises description has not been resolved, see attached copies that concern this matter.

[R5:35, A.App.004].

The Dell Prairie Board convened at a special meeting on June 13, 2009. The minutes of that meeting found in the Record, indicate that:

"The clerk, Joni Gehrke provided the affidavit of the meeting notice to the Chairman and also stated that in addition to all of the posting places, the agenda was also placed on the Adams County Website under the Dell Prairie Municipality Page, and also stated that she called and left a message on Jim Halbach's cell phone of the meeting and also called Chris Brandt of Lake of the Dells, and Ms. Brandt stated that she had out-of-town guests coming and could not attend the meeting.

[R5:34, S.App.003].

As was the case with the June 9, 2009, meeting, lawful notice of the meeting pursuant to the Wisconsin Open Meetings Law was given. No complaint has been raised or facts alleged by the Wisconsin Dolls contending otherwise. At the June 13, 2009 meeting,

there were discussions about amendments needed for license approvals. The minutes indicate:

"Discussion occurred in regards to the premises description on the application from Wisconsin Dolls. A copy of the letter received by Attorney Steve Werner was presented to the Board members as well as a copy of the letter Attorney Woods sent to Attorney Werner. Chairman Schulz also mentioned that in Section C, Question 3 was answered no and it was thought that it could have been just a typo. Chairman Schulz made a motion to issue the license to Wisconsin Dolls if the application is amended restricting the premises to the main bar building and storage area and Supervisor Mitchell seconded the motion. A roll call vote was made with all three (3) board members voting yes. Chairman Schulz will have Attorney Wood prepare a letter stating the decision made and have it sent to Attorney Werner."

[R5:34; S.App.003].

Wisconsin Dolls filed a certiorari action contesting the Town's action. Further facts will be referenced throughout the text of this brief.

ISSUES PRESENTED

1. Did Dell Prairie violate the alcohol license renewal provisions of section 125.12(3), Wis. Stats., when the Town renewed Wisconsin Dolls' liquor license, but amended the description of the licensed premises from the street address to specify the physical area actually used by Wisconsin Dolls to serve and store alcohol?

Circuit Court answered no.

Court of Appeals held that predecessor licenses describing the premises as the entire land parcel or street address were void as a matter of law; the renewal provisions of Wis. Stat. 125 were unavailable to Wisconsin Dolls as a result.

2. By the same action, did Dell Prairie deprive Wisconsin Dolls of a property interest without due process of law in violation of the Constitution?

Circuit Court answered no.

Court of Appeals did not address the issue because it held Wisconsin Dolls' previous licenses were void.

STANDARD OF REVIEW

This matter is before the Supreme Court on appeal from the decisions of the Circuit Court and Court of Appeals. The Circuit Court reviewed Dell Prairie's action on certiorari. The courts' review on certiorari actions is limited to: (1) whether the board kept within its jurisdiction; (2) whether it acted according to the law; (3) whether its action was arbitrary, oppressive, or unreasonable and represented its will and not its judgment; and (4) whether the evidence was such that it might make the order or determination in question. State ex. rel. Campbell v. Delavan, 210 Wis.2d 239, 254-255; 565 N.W.2d 209 (Ct. App. 1997).

Certiorari review is highly deferential. "The presumptions are all in favor of the rightful action of the board." Saddle Ridge Corp. v. Board of Review for Town of Pacific, 325 Wis.2d 29, 43, 784 N.W.2d 527, 534 (2010). Dell Prairie's action is entitled to a common law presumption of regularity, Fortney v. School Dist. of West Salem, 108 Wis.2d 167, 185, 321 N.W.2d

225, 236 (1982). Dell Prairie is also entitled to a presumption that it acted in good faith. State ex rel. Richey v. Neenah Police and Fire Commission, 48 Wis.2d 575, 180 N.W.2d 743 (1970).

INTRODUCTION

Wisconsin Dolls fails to show a statutory or Constitutional violation in the Town's decision to issue it an alcohol license which described of the premises as the area actually used for alcohol sales and storage (as required by state statute), rather than a description of the entire real estate property. That broader description had erroneously been included in prior years' licenses. Wisconsin Dolls argues that the Town "eliminated portions of its license," and therefore non-renewed its license without an opportunity to be heard under statutory procedures for non-renewal. In reality, the Town renewed Wisconsin Dolls license to the fullest extent such license had been exercised by Wisconsin Dolls in previous years.

Wisconsin Dolls believes it had a constitutionally protected property right in the premises description of its previous license, and that the Town infringed this property right by eliminating the perception of blanket approval for future expansion of alcohol service to any area of their property. Wisconsin Dolls has not articulated a single respect in which its legally

protectable economic interests are undermined by the Town's decision to issue a license with a narrower description of the premises.

Wisconsin Dolls' analysis fails because it fundamentally misapprehends the nature of an alcohol license. There are statutory protections which require showing cause at a full evidentiary hearing before non-renewing an alcohol licenses. That requirement does not transform alcohol licenses into a property right of the license holder which cannot be altered by the issuing local government except after a full evidentiary hearing and showing of cause. The procedures for nonrenewal do not, without more, make the license a form of property. Selling alcohol is a privilege granted by action of the government. The extent to which a licensee is allowed to sell liquor is a police power determination of the issuing agency, not a property right vested in the license holder.

ARGUMENT

As a matter of law, no property interests belonging to Wisconsin Dolls were infringed by the Town's actions, therefore, no due process violations occurred. The Supreme Court should affirm Dell Prairie's action to revise the description of the licensed premises when renewing Wisconsin Dolls' license for 2009-2010, by affirming the Circuit Court's decision.

I. THE TOWN WAS WITHIN ITS AUTHORITY AND DID NOT ACT ARBITRARILY, OPPRESSIVELY, OR UNREASONABLY IN ISSUING WISCONSIN DOLLS ITS 2009-2010 ALCOHOL LICENSE.

A. Dell Prairie Acted Within Its Authority.

Regulation of the sale and consumption of alcohol beverages has had a unique history in American law, one which greatly distinguishes its modern regulation from that of other industries. After the "Noble Experiment" of Prohibition was repealed by the 21st Amendment to the United States Constitution, section two of that Amendment delegated control of alcohol to the states. 324 Liquor Corp. v. Duffy 479 U.S. 335, 346, 107 S.Ct. 720, 726 (1987).

Nineteen states responded by creating a complete or partial state monopoly on the sale of alcohol. See, <http://www.nabca.org/States/States.aspx>. Wisconsin is one of 31 other "license states" where the state grants private operators the privilege to sell alcohol beverages under terms and conditions established by the State. In license states, the right to sell alcohol is not a common law property right. Selling alcohol is a privilege which is directly created by the State itself. It is a unique industry because it may be the only industry created out of a government monopoly.

Wisconsin divides alcohol regulation between the Wisconsin Department of Revenue, which issues permits, and towns, cities and villages, which issue licenses. See, section 125.02 (13), Wis. Stats. Wisconsin Dolls has a Class "B" license under Section 125.26, Wis. Stats. and a "Class B" license under Section 125.51 (3), Wis. Stats.

Local licensing agencies have been delegated discretion by the statutory provisions for issuing licenses found in section 125.04, Wis. Stats. Local agencies must follow the procedures in section 125.12,

Wis. Stats., to conduct revocations or non-renewals of licenses. However the State has delegated substantial supplemental authority to local licensing agencies. Section 125.10 (1), Wis. Stats., provides:

(1) Authorization. Any municipality may enact regulations incorporating any part of this chapter and may prescribe additional regulations for the sale of alcohol beverages, not in conflict with this chapter. The municipality may prescribe forfeitures or license suspension or revocation for violations of any such regulations. Regulations providing forfeitures or license suspension or revocation must be adopted by ordinance.

Section 125.10, Wis. Stats., was created as part of the recodification of Wisconsin's alcohol beverage laws, Chapter 79, Laws of 1981, following a study by the Wisconsin Legislative Council. The recodification allows local authority to be exercised by ordinance or by rule. Section 125.01(17), Wis. Stats. (defining the term "regulation"). The Legislative Council notes to Section 125.10, Wis. Stats. explain:

2. The authorization to prescribe regulations has been restated to clarify that the regulations may incorporate state law or provide additional regulations so long as the regulations do not conflict with state law.

3. Specific mention of the requirement that a municipal regulation be "reasonable" [see s.

66.054(1) (i) and (12)] has been deleted in s. 125.10(1) as unnecessary. The test used by courts when municipal regulations are challenged is one of "reasonableness" [see Kmiec v. Town of Spider Lake, 60 Wis. 2d 640, 652 (1973)]

4. Section 125.10(1) authorizes municipalities to prescribe municipal regulations on the sale of alcohol beverages. Under s. 125.01(17) "regulation" means "any rule or ordinance adopted by a city council or town or village board". Thus, regulations on the sale of alcohol beverages may be prescribed by ordinance or by rule. However, s. 125.10(1) provides that regulations providing civil forfeitures or license suspension or revocation may only be prescribed by ordinance [see also, ss. 66.054(15) (b) and 176.43]. This ensures procedural due process (notice, hearing, etc.) in the development of regulations imposing such sanctions.

The Wisconsin Supreme Court has endorsed an expansive view of municipal authority under Section 125.10, Wis. Stats. The Court discussed the significance of section 125.10, Wis. Stats., in Eichenseer v. Madison-Dane County Tavern League, Inc., 308 Wis. 2d at 693-94, 748 N.W.2d at 158-59, a case dealing with a municipality's authority to regulate alcohol consumption by imposing anticompetitive measures on liquor licenses.

The Eichenseer case grew out of a campaign by the University of Wisconsin-Madison and other agencies to induce Madison campus-area taverns to ban cheap drink specials. The plaintiff claimed that the taverns' concerted action to raise prices violated antitrust laws. The Supreme Court dismissed the complaint, and in the course of analyzing the claims, reviewed the nature of the defendant taverns' relationship to the City of Madison and the State. The Supreme Court concluded that the Legislature had delegated substantial power to regulate the alcohol industry to the City, supplanting the use of antitrust laws as a means of protecting competition. Indeed, the Court found that liquor laws sometimes are anticompetitive. The Supreme Court cited section 125.10, Wis. Stats., as the authority for the City of Madison's restrictions on aggressive drink special pricing and stated:

Within reason, municipalities have broad statutory authority to prescribe or orchestrate anticompetitive regulation in the sale and consumption of alcohol if that regulation serves an important public interest.

Eichenseer, 308 Wis.2d 684, 721, 748 N.W.2d 154, 172 (2008).

The Supreme Court's decision squarely supports Dell Prairie's actions. Dell Prairie's action here was far less dramatic in its impact than the City of Madison's actions. All Dell Prairie did was insist that the premises of the liquor licenses of Wisconsin Dolls (and another licensee) be described as the specific premises actually used for serving or storing alcohol. The City of Madison actually took away a portion of the tavern's existing sales.

The framework for reviewing Dell Prairie's action is highly deferential. When determining whether an action is reasonable, courts "will not interfere with the exercise of police powers by a municipality unless it is clearly illegal and that if there is any reasonable basis for the enactment of an ordinance it must be sustained." Kmiec v. Town of Spider Lake, 60 Wis. 2d 640, 652, 211 N.W.2d 471, 476 (1973).

B. Dell Prairie Did Not Act Arbitrarily, Oppressively, Or Unreasonably And The Record Supports Its Decision.

Wisconsin Dolls was not singled out by the town's renewal of its alcohol license for 2009-2010. The record shows that Dell Prairie acted to amend the

description of Wisconsin Dolls licensed premises as part of a routine review of Town alcohol licenses to ensure compliance with state and local regulations. [R5:32; A.App.027]. The Town addressed many deficiencies in many license applications, including insufficient premises descriptions submitted by licensees other than Wisconsin Dolls. [Id.]

The Town of Dell Prairie acted under its authority to adopt reasonable regulations governing licensees under Section 125.10, Wis. Stats. The Town provided specific notice to Wisconsin Dolls of its meetings to review its license renewal application, in addition to more general public notice. [R5:34, S.App.003].

Within the scope of a certiorari action, unless Dell Prairie's action was flatly unlawful, any reason the reviewing court may find is sufficient to sustain the action. Here, the Town's decision to undertake a routine review of alcohol licenses without focusing any one licensee was completely reasonable.

II. THE RENEWAL OF WISCONSIN DOLL'S ALCOHOL LICENSE WITH A REVISED PREMISES DESCRIPTION WAS NOT A NON-RENEWAL.

A. Dell Prairie Renewed Wisconsin Dolls' License.

Dell Prairie granted Wisconsin Dolls' request for renewal of its alcohol license for 2009-2010. The only change Dell Prairie made involved inserting the first particular description of premises which the license had ever had. Despite that change, Dell Prairie's action can only be characterized as a renewal under the statutes.

The material statute is section 125.12, Wis. Stats. That statute sets forth the process by which a local licensing agency may revoke, suspend or refuse to renew a license. Section 125.12(3), Wis. Stats., provides for non-renewal of licenses. It reads:

(3) Refusals by local authorities to renew licenses. A municipality issuing licenses under this chapter may refuse to renew a license for the causes provided in sub.(2)(ag). Prior to the time for the renewal of the license, the municipal governing body or a duly authorized committee of a city council shall notify the licensee in writing of the municipality's intention not to renew the license and provide the licensee with an opportunity for a hearing. The notice shall state the reasons for the intended action. The

hearing shall be conducted as provided in sub.(2)(b) and judicial review shall be as provided in sub.(2)(d). If the hearing is held before a committee of a city council, the committee shall make a report and recommendation as provided under sub.(2)(b)3. and the city council shall follow the procedure specified under that subdivision in making its determination.

The statute creates a procedure to be followed if a local agency wishes to "refuse to renew a license." The term "license" is defined by Section 125.02 (9), Wis. Stats.: " 'License' means an authorization to sell alcohol beverages issued by a municipal governing body under this chapter."

Dell Prairie renewed Wisconsin Dolls' license because the Town continued to authorize Wisconsin Dolls to sell alcohol beverages for the period from July 1, 2009 to June 30, 2010. The issued license differed from previous licenses only in that it contained a particular description of the premises. The previous license did not. The particular description of the premises did not reduce the area in which alcohol could be served by comparison to where alcohol had been served. There is no sense, then, in which Dell

Prairie's action can be characterized as a non-renewal. Wisconsin Dolls lost nothing in the process of renewal.

B. The Premises Description In Wisconsin Dolls Previous Licenses Did Not Comply With Statutory Requirements.

Providing a truly particular description was not only permissible, it was mandatory. Section 125.26(3), Wis. Stats., states that "Class "B" licenses shall particularly describe the premises for which issued and are not transferable, except as provided in s. 125.04 (12). A Class "B" license is subject to revocation for violation of any of the terms or provisions thereof. "Section 125.51 (3)(d) states "Class B" licenses shall particularly describe the premises for which issued and are not transferable, except as provided in s.125.04 (12)."

Wisconsin Dolls asserts too much in contending that it had a license which covered its entire 8-acre parcel. A license of that extent is hardly "particular," unless one envisions a 348,480 square foot area spanning large outdoor spaces, as well as multiple types of buildings as particularized. It is also incompatible with the information that Wisconsin

Dolls supplied the Town in its applications for adult-oriented establishment licenses. Those license applications specifically represent that underage persons would be present on Wisconsin Dolls' 8 acre parcel, although not in the gentlemen's club comprising the main tavern building. [R5:41-46; S.App.005-010].¹

Wisconsin Dolls' complaint appears to be that by including a particular premises description, Dell Prairie eliminated the possibility of Wisconsin Dolls unilaterally increasing the size or scope of its alcohol service. Wisconsin Dolls would prefer not to be restricted by the inclusion of a particular description of where alcohol will be sold or stored. It prefers instead to have discretion to serve alcohol at some future date, somewhere else on its property. But there is no way to reconcile Wisconsin Dolls' assertion that the property's street address is a particular description with the fact that some areas of the property cannot lawfully be licensed for alcohol service. Alcohol cannot be sold or stored within an underage "juice bar" located on Wisconsin Dolls'

¹ Underage persons are not allowed on Class B premises with few exceptions. See, sec. 125.07(3), Wis. Stats.

property. The statutes require a particular description for exactly this reason.

The Court of Appeals correctly concluded in this case that listing only the street address or describing the real estate parcel does not satisfy the requirements of Section 125.26(3), Wis. Stats. Wisconsin Dolls flatly misstates how the Court of Appeals went about its statutory construction analysis of this requirement. Wisconsin Dolls correctly notes that "premises" is a defined term in the statute. [Pet. Br. Pg. 9]. But Wisconsin Dolls then goes on to complain that "the Court of Appeals went beyond the explicit definition the Legislature provided to language found in Wis. Stats. § 125.04(3)..." and "The Court of Appeals failed to identify any rule of statutory construction that directs it to presume the Legislature would have defined the term "premises" in an inadequate manner or differently from the meaning it intended." [Pet. Br. Pages 9-10]. The Court of Appeals actually started by noting that the statutory definition of "premises" is "the area described in the license." Then the Court sought to determine the

meaning of the statutory requirement that the license "particularly describe" the premises. The fact that the Court of Appeals interpreted these two additional words in the statute does not mean that the Court circumvented the Legislature's choice to provide a definition for "premises."

Wisconsin Dolls' contention that the Court of Appeals' interpretation produces "unworkable results" is even less convincing. Wisconsin Dolls tries to leverage a bizarre analogy that a premises description consisting of an entire street address is the same as a describing a tavern building in which alcohol is only served on some of the square inches within it. It is this kind of absurd result, not those derived from the Court of Appeals' interpretation, that this Court insists must be avoided. Kolupar v. Wilde Pontiac-Cadillac, Inc., 2007 WI 98, 303 Wis.2d 258, 735 N.W.2d 93.

Wisconsin Dolls further strains credulity by stating that the description in its predecessor licenses was "clearly more particular in that it references specific areas of the property even though

it does not limit licensed activities to those areas.” [Pet. Br. Page 11]. There is simply no way that eight acres is more precise than one building. If the purpose of requiring a description of the licensed premises is to determine where certain activity is permitted, then not limiting licensed activity to any specific areas is precisely what makes that description less particular.

Finally, Wisconsin Dolls attacks the Court of Appeals for supposedly determining that no licensed premises could ever be comprised of the entire area within a real estate parcel or that the licensed premises could ever be a large outdoor area. Of course, the Court of Appeals did not make such broad statements or bright line rules. And the counterfactual scenarios posited by Wisconsin Dolls do not help their case. Wisconsin Dolls’ property is not a golf course and it is not a downtown tavern with a building whose dimensions are coterminous with the property lines. It is an eight-acre parcel of land which includes a tavern as well as large areas where alcohol will not or cannot be sold. An address or

parcel description does not particularly describe the licensed premises on such a piece of real estate.

Dell Prairie did not violate the non-renewal provisions of section 125, Wis. Stats. by including a particular premises description limited to where alcohol was being sold or stored. What remains to be seen is whether Dell Prairie's action somehow violated Wisconsin Dolls' due process rights by modifying the license without holding an evidentiary hearing. As will be seen, Wisconsin Dolls' interests in serving alcohol within a broader area of licensed premises are not "property rights." The legislative action taken by the Dell Prairie was all the process due.

III. DELL PRAIRIE DID NOT DEPRIVE PETITIONER OF A PROPERTY RIGHT NOR DENY PETITIONER DUE PROCESS.

Beyond alleging a statutory non-renewal violation, Wisconsin Dolls argues that Dell Prairie's decision to issue a 2009-2010 license was contrary to the Constitution because it denied Wisconsin Dolls a property right embodied in their predecessor license without due process. The extent of Wisconsin Dolls' right to continuation of a particular premises

description determines the extent of due process to be afforded the licensee. The threshold question is whether Wisconsin Dolls had a property right in their 2008-2009 license at all.

A. Alcohol Licenses Are Privileges, Not Property.

Central to Wisconsin Dolls' argument is its contention that the ability to serve liquor anywhere on its eight-acre parcel is a property interest protected by a right to a full due process hearing before deprivation of that right. This is an inaccurate interpretation of applicable law.

We start with the proposition that property rights are those which are recognized by state laws. Bishop v. Wood, 426 U.S. 341, 344, 96 S.Ct. 2074, 48 L.Ed.2d 684 (1976). The Federal Constitution requires that states abide by minimum due process requirements in adjudicating issues related to property rights, but the Federal Constitution does not itself create property rights. State law does. Board of Regents of State Colleges v. Roth, 408 U.S. 564, 577, 92 S.Ct. 2701, 2709 (1972).

The extent of Wisconsin Dolls' interest in its alcohol license is, therefore, a question of Wisconsin state law. The Wisconsin Supreme Court has for decades held liquor licenses are not property rights:

In this state a liquor license is a privilege and terming it a right is considered to be against public policy. Marquette Savings & Loan Asso. v. Twin Lakes (1968), 38 Wis.2d 310, 315, 156 N.W.2d 425, 427; State ex rel. Ruffalo v. Common Council (1968), 38 Wis.2d 518, 157 N.W.2d 568.

Moedern v. McGinnis, 70 Wis.2d 1056, 1066-1067, 236 N.W.2d 240, 245 (1975).

As recently as 2008, the Wisconsin Supreme Court noted that alcohol licenses are not property rights. Eichenseer v. Madison-Dane County Tavern League, Inc., 308 Wis.2d 684, 748 N.W.2d 154 (2008). Of note for this case, the Supreme Court stated flatly:

Alcohol sales licenses are issued on an annual basis by the municipality; they are considered privileges rather than vested property rights, See *State ex rel. Ruffalo v. Common Council of City of Kenosha*, 38 Wis.2d 518, 523, 157 N.W.2d 568 (1968). Both "Class A" and "Class B" licenses may be revoked by the municipality if the terms of the license are not honored. Wis. Stat. §§ 125.25(3), 125.26(3).

Eichenseer, 308 Wis.2d 684, 720, 748 N.W.2d 154, 172 (2008).

The Eichenseer case demonstrates that Wisconsin Dolls' has no property right in its license. The case cited by Wisconsin Dolls in support of that proposition, Manos v. City of Green Bay, 372 F.Supp. 40, 48-49 (E.D.Wis.1974) is not binding authority.

The Wisconsin Supreme Court is the final arbiter of Wisconsin state law. The Supreme Court's decisions obviously supersede those of the Wisconsin Court of Appeals. On issues of state law, the Wisconsin Supreme Court also supersedes erroneous interpretations of state law by federal courts, Olson v. Connerly, 156 Wis.2d 488, 501, 457 N.W.2d 479, 484 (1990). [Seventh Circuit decision on County's duty to indemnify under Wisconsin State law was not followed by Wisconsin Supreme Court].

Neither is it helpful to Wisconsin Dolls that the drafting note to Section 125.12, Wis. Stats., indicates that the statute was intended to codify the Manos case. The Supreme Court's opinion in Eichenseer is the definitive determination under Wisconsin law as to the nature of liquor licenses. They are privileges, not property rights, and can be modified by legislative

action. Only the loss of an active licensed activity requires an evidentiary hearing.

Wisconsin state law, then, provides that liquor licenses are privileges not property rights. Because the liquor license is not a property right, Wisconsin Dolls rights to pre-deprivation hearings, if any, do not arise from the Federal Constitution. Wisconsin Dolls has only the protection provided by Wisconsin state law.

To put it another way, Wisconsin Dolls views their liquor license as being akin to an easement granted in favor of their entire eight-acre parcel. Once granted, of course, an easement becomes part of the title to the parcel. The government could no more decide to withdraw an easement from six acres of an eight-acre parcel than it can take any property without just compensation. See, AKG Real Estate, LLC v. Kosterman, 296 Wis.2d 1, 19-20, 717 N.W.2d 835, 844-45 (2006).

However when the government confers a license or other permission which improves the usability of a parcel of real estate, that grant is a matter of

legislative grace. The government can later withdraw a portion of the license granted, the value added and the permission extended, without having to pay just compensation or without requiring the due process protections attendant to deprivations of property. Rainbow Springs Golf Co., Inc. v. Town of Mukwonago, 284 Wis.2d 519, 525-526, 702 N.W.2d 40, 43 (Ct.App. 2005).

In the Rainbow Springs case, the plaintiff resort had been issued conditional use permits (CUPs) allowing the resort to operate several businesses on its land. There was a fire which destroyed much of the structures on the land. When the resort failed to restore the structures in a timely fashion, the town and county decided to revoke the CUPs. The resort sued, alleging that revocation of the CUPs was an unconstitutional taking of its property. The Court of Appeals, disagreed, holding that a police-power regulation such as a CUP was not property and could be rescinded. Rainbow Springs, 284 Wis. 2d at 529, 702 N.W.2d at 45.

The Court of Appeals also rejected the resort's contention that the Town's ordinance granting it a

hearing before termination gave the resort a property right in the CUP. To paraphrase what the Court of Appeals stated, termination of property rights requires a due process hearing, but not all due process hearings involve property rights. Rainbow Springs at 528-29.

The police power allows municipalities to increase the extent of regulation in a manner which diminishes the owners' enjoyment of their property. Zealy v. City of Waukesha, 201 Wis.2d 365, 381-382, 548 N.W.2d 528, 534-35 (1996). [Wetland regulation which precluded any development or use of substantial portion of a parcel of land was not a taking of property].

Wisconsin Dolls may have certain procedural rights under state statutes, but those statutory procedures do not create a property right. The statutory procedures simply create procedural rights. In the present case, this is critical. Wisconsin law can protect licensees from arbitrary revocation and/or non-renewal of the privilege of serving alcohol. But that does not mean the government has lost all discretion to adjust and to modify the extent to which licensees can exercise that privilege on a parcel of real estate. That distinction

sustains the action of Dell Prairie in this instance. See, Kraus v. City of Waukesha Police and Fire Com'n, 261 Wis.2d 485, 512-513, 662 N.W.2d 294, 307-08 (2003). [Tenured police officer serving probationary period for his promotion to sergeant had no property right in the promotion, only in his original position].

Because Dell Prairie's action in this matter was wholly discretionary, Dell Prairie did not owe Wisconsin Dolls any due process beyond the consideration the matter received. Wisconsin Dolls filed an application for renewal of its license. The renewal, which was granted, took place at two public meetings of the Dell Prairie Town Board. Legal notices of these meetings were published.

Wisconsin Dolls may have believed that its erroneous 8-acre premises description was a property right, but that expectation is not enough to require a full evidentiary hearing.

To be protected, a person must have a legitimate claim of entitlement rather than only a unilateral expectation of some benefit. *Amendola v. Schliewe*, 732 F.2d 79, 83 (7th Cir.1984). We look to independent sources, such as state law, to determine the scope of property interests. Thus, "a public employee must have an enforceable expectation of

continued employment under state law to trigger the due process requirement of pretermination notice and hearing." *Id.*

Dixon v. City of New Richmond, 334 F.3d 691, 694 (7th Cir. 2003).

Here, Wisconsin Dolls has no more than an unreasonable unilateral expectation of continued renewal of a liquor license which was potentially void for vagueness. That is not enough to entitle the tavern to a full evidentiary hearing.

B. Wisconsin Dolls Has Not Shown Reliance On The Previous Premises Description For Any Business Activities.

Wisconsin Dolls goes to great length imagining hypothetical situations wherein a licensing municipality would cause grievous injury to the licensee by altering the scope of an operating business without providing due process to the licensee. But Wisconsin Dolls has not even suggested that the change in the description of their licensed premises affects their ongoing business.

Cases cited by Wisconsin Dolls to support its property right theory involve a curtailment of an ongoing business activities or preparations which the licensees undertook in reasonable reliance on their licenses. In some instances, the cases do not apply at all.

For instance City of Evanston v. Whirl Inn, Inc., 647 P.2d 1378 (Wy. 1982) does not, as petitioner's contend, stand for the proposition that "alterations of existing licenses on renewal trigger the need to provide due process protections." City of Evanston is only

superficially similar to the case before this court. In City of Evanston, Wyoming's supreme court affirmed an appellate court ruling that the City acted arbitrarily, and therefore in violation of state law, when making decisions affecting Whirl Inn's liquor license. The Wyoming Supreme Court explicitly declined to address whether the owner of a liquor license has a constitutionally protected property interest in that license:

Evanston's third claim of error contests the district court's conclusion that the owner of a retail liquor license has a constitutionally protected property interest in the license. We need not address this issue since the district court's decision that the city's action unconstitutionally denied Whirl Inn its property was in addition to its finding of an abuse of discretion. Because we have already found the latter conclusion a permissible basis for the district court's reversal, we need not consider the district court's alternate basis for its action. We must affirm the district court if its decision can be sustained on any theory. (Citation omitted).

City of Evanston v. Whirl Inn, Inc., 647

P.2d 1378, 1387 (Wyo. 1982)

In Pro Sports Bar & Grill, Inc. v. City of Country Club Hills, 589 F.3d 865, 872 (7th Cir. 2009), also

cited by Wisconsin Dolls as authority that alcohol licenses are property rights, it was undisputed that the restriction curtailed the ongoing business activities around which the licensee had already built the business. This was precisely the type of acquired expectation, founded on reasonable reliance in daily life that the U.S. Supreme Court contemplated in its discussion of property interests in Board of Regents of State Colleges v. Roth. By contrast, Wisconsin Dolls has only vague notions that it might decide to install a Frisbee golf course or a volleyball court at some point in the future, but maybe not.

C. Dell Prairie Provided All The Notice That Was Due Wisconsin Dolls.

Dell Prairie's action did not constitute a refusal to renew, which would trigger the procedural requirements of the statute, section 125.12, Wis. Stats. Dell Prairie's action was purely legislative in character, and required no more notice than is required of all such actions by the Wisconsin Open Meetings law.

If Wisconsin Dolls failed to read the agenda of Dell Prairie, that is Wisconsin Dolls' fault. Indeed,

the Record contains evidence that the Dell Prairie Clerk did more than required by the Open Meetings law; she called the agent for Wisconsin Dolls and left a message for him. [R5:34, first paragraph; S.App.003]. There was correspondence to Wisconsin Dolls' attorney. [Id. at point 5]. Wisconsin Dolls does not identify what information it would have presented at a hearing that would have changed the outcome. The "due process" to be afforded under these circumstances is a legislative action, not a contested-case hearing. Dell Prairie conducted such a process, using common sense and following state law to conclude that it was necessary to issue an alcohol license with a proper and particular description of the premises.

IV. THE COURT OF APPEALS DID NOT NEED TO REACH THE ISSUE OF WHETHER WISCONSIN DOLLS' PRIOR LICENSE WAS VOID.

The Court of Appeals' decision came to the right result, affirming the trial court. But in doing so the Court of Appeals held that Wisconsin Dolls' licenses prior to 2009-2010 were void. This is a result that was never sought by Dell Prairie, nor required to resolve the case presented.

Dell Prairie may bear some responsibility for the Court of Appeals' detour, since the undersigned counsel did mention that Wisconsin Dolls' license description might be void. That was not the result sought. Rather, Dell Prairie sought to argue that the Town's action in this matter was a reasonable exercise of the police power to correct what appears by all accounts to have been an oversight.

In this respect, it is significant that the Legislature did not choose to provide a statutory definition of the word "particularly." Under the section 990.01(1), Wis. Stats., statutory words which are not defined must be used according to ordinary and accepted meaning. Courts resort to dictionaries when confronted with the need to construe an undefined term. In this matter, the Town Board used an even more basic reference—common sense. By leaving the term "particularly" undefined, the Legislature committed the determination of what is reasonably "particular" to the local licensing agency, subject to the abuse of discretion standard that a circuit court may employ in reviewing a local licensing action on certiorari.

Thus, it was Dell Prairie's decision to conclude that an eight-acre description was not reasonably particular. That is the kind of decision that classically belongs at the local level. It simply is not feasible for any hard and fast rules about proper premises description to be inflexibly applied. Local officials, elected by their communities, are in the best position to evaluate whether a premises description meets the public interest in their own community.

By contrast, under Dell Prairie's construction of the statutes, courts everywhere would be in the position of evaluating the propriety of licensing decisions without deference to the Town Board as these would be questions of law. With all due respect to the judiciary, judges simply lack the institutional capacity to make those types of choices. The decision about what premises are appropriate is not one which is governed by legal standards, or made on the basis or the kind of criteria that judges can readily access.

The decision about what is and is not a sufficient premises description ultimately belongs to the local

community. The Legislature did place outer limits on the discretion of municipal authorities. Municipal authorities cannot refuse to allow continued sales of alcohol beverages by a licensee unless they have given that licensee notice, charges, and an opportunity for hearing. However, municipal officials modify the terms and conditions of liquor licenses all the time. Those changes may have the effect of either increasing or reducing the volume of sales. Those modifications are an incident of police power, not a revocation.

In this particular action, correcting a license that had been issued with a description of too large and too vague an area was neither a non-renewal nor recognition that the license was void. It was simply a wise, common-sense decision to allow a licensee to continue to sell liquor in an appropriate manner, but assure that the licensee did not unilaterally change the area within which alcohol was actually sold without involving the municipality. The Court of Appeals correctly noted that Wisconsin law recognizes that decisions involving the area within which alcohol may be served are subject to municipal discretion and prior

approval, Alberti v. City of Whitewater, 109 Wis.2d 592, 327 N.W.2d 150 (Ct.App.,1982), pet. for rev. den'd, 109 Wis.2d 703, 329 N.W.2d 214.

The Court of Appeals' decision may have gone too far in that it invites uncertainty and difficulties. If, on the one hand, the term "particularly" is to be given a meaning which is a matter of judicial construction, then the question of whether certain licenses are void because their premises description is indefinite will surely be raised in future cases. The Legislature did not intend for the courts to be the licensing agencies. It delegated that authority to towns, cities, and villages.

The Court of Appeals' analysis also failed to acknowledge that liquor licenses are an incident of the police power, and therefore, readily subject to common sense management by the agencies assigned the exercise of that police power. Under the Court of Appeals' formulation, if a municipality does its due diligence and discovers errors with a liquor license, the municipality would face the choice of either ignoring the problem or subjecting the licensee to the

requirement that a new license be issued. This is unfair to licensees, who may have substantial resources and assets invested in an operation. Indeed, Dell Prairie had no purpose or intention whatsoever of depriving Wisconsin Dolls of any existing investment-backed expectation connected with its operations.

And that, in the final analysis, is where one has to draw the line. If we took Wisconsin Dolls' argument to its logical conclusion, then by modifying the licensed premises description in the license, Dell Prairie took property of Wisconsin Dolls without paying just compensation. That assertion is flatly at odds with decades of jurisprudence under the Fifth Amendment and the Wisconsin Takings Clause, Article I, Clause 13, Wisconsin Constitution. Regulatory approvals are subject to denial or revision by the conferring agency unless they have reached the point where it is an investment-backed expectation in the license. Pace Res., Inc. v. Shrewsbury Twp., 808 F.2d 1023, 1033 (3d Cir. 1987); R.W. Docks & Slips v. Department of Natural Resources, 628 N.W.2d 781, 244 Wis.2d 497 (Wis. 2001).

In both the Pace and R.W. Docks & Ships cases, the plaintiffs contended that by denial of their license or permit, they lost a substantial portion of the value of the properties they had hoped to use. There was no taking because the licenses or permits themselves were not property and because other uses were possible, precluding a taking claim.

Both courts explicitly recognized the background public interest against which the licensing or permitting schemes operated. The Pace court stated:

First, distinct, investment-backed expectations are reasonable only if they take into account the power of the state to regulate in the public interest. Second, even where distinct, investment-backed expectations are involved, a taking through an exercise of the police power occurs only when the regulation "has nearly the same effect as the complete destruction of [the property] rights" of the owner.

Pace Res., Inc. v. Shrewsbury Twp., 808 F.2d 1023, 1033 (3d Cir. 1987).

There is no evidence in the record, nor could there be, that limiting the Wisconsin Dolls' premises to the area of service they already used cost them anything. The hypothetical future growth is not anything that Wisconsin Dolls has a legal right to

depend upon. Alcohol licenses are subject to revision, as noted in Eichenseer.

This Court should affirm the result reached by the circuit court, and part from the Court of Appeals insofar as the Court of Appeals went further than necessary by analyzing Wisconsin Dolls' predecessor licenses as void. The licenses were simply in need of correction by the local community within the exercise of the Town's police power. Dell Prairie submits that that is the only functional way that these relationships can be managed in a reasonable fashion. Common sense exercised by local elected officials works.

CONCLUSION

The Court of Appeals should affirm the Circuit Court. Dell Prairie acted completely within its police powers in deciding to correct the premises description of Wisconsin Dolls' liquor license.

Dated this 3rd day of February, 2012.

s/Mark B. Hazelbaker

Mark B. Hazelbaker
State Bar No. 1010302
Michael R. O'Callaghan
State Bar No. 1058555
HAZELBAKER & ASSOCIATES, S.C.
3555 University Avenue
Madison, WI 53705
(608) 663-9770
(608) 204-9631 - fax

CERTIFICATION AS TO FORM/LENGTH

I hereby certify that this brief meets the form and length requirements of Rule 809.19(8)(b) and (c) in that it is: proportional serif font, minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of minimum 2 points and maximum of 60 characters per line of body text. The length of the brief is 7,997 words.

February 3, 2012.

HAZELBAKER & ASSOCIATES, S.C.

s/Mark B. Hazelbaker
Mark B. Hazelbaker
Attorney at Law
State Bar No. 1010302
Michael R. O'Callaghan
State Bar No. 1058555

3555 University Avenue
Madison, WI 53705
(608) 663.9770
mark@hazelbakerlaw.com

*Attorneys for Defendants-
Respondents*

CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12)

I hereby certify that: I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of sec. 809,19(12). I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed on or after this date.

A copy of this certificate has been served with the paper copies of this brief filed with the Court and served on all opposing parties.

Dated this 3rd day of February, 2012.

HAZELBAKER & ASSOCIATES, S.C.

s/Mark B. Hazelbaker
Mark B. Hazelbaker
Attorney at Law
State Bar No. 1010302
Michael R. O'Callaghan
State Bar No. 1058555

3555 University Avenue
Madison, WI 53705
(608) 663.9770
mark@hazelbakerlaw.com

*Attorneys for Defendants-
Respondents*

APPENDIX CERTIFICATION

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with s. 809.19(2)(a) and that contains: (1) a table of contents; (2) relevant trial court record entries; (3) the findings or opinion of the trial court; and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the trial court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

HAZELBAKER & ASSOCIATES, S.C.

s/Mark B. Hazelbaker
Mark B. Hazelbaker
Attorney at Law
State Bar No. 1010302
Michael R. O'Callaghan
State Bar No. 1058555
3555 University Avenue
Madison, WI 53705
(608) 663.9770
Attorneys for Defendants-
Respondents

RECEIVED

02-03-2012

**CLERK OF SUPREME COURT
OF WISCONSIN**

A P P E N D I X

**STATE OF WISCONSIN
SUPREME COURT
APPEAL NO. 2010-AP-2900**

WISCONSIN DOLLS, LLC,

Plaintiff-Appellant-Petitioner,

-v-

**TOWN OF DELL PRAIRIE and
TOWN OF DELL PRAIRIE TOWN BOARD,**

Defendants-Respondents.

**APPENDIX OF DEFENDANTS-RESPONDENTS TOWN OF DELL PRAIRIE
AND TOWN OF DELL PRAIRIE TOWN BOARD**

**APPEAL FROM THE SEPTEMBER 1, 2011
DECISION OF THE COURT OF APPEALS, DISTRICT IV**

HAZELBAKER & ASSOCIATES, S.C.
Mark B. Hazelbaker
State Bar No. 1010302
Michael R. O'Callaghan
State Bar No. 1058555
3555 University Avenue
Madison, WI 53705
(608) 663-9770
(608) 204-9631 - fax
mark@hazelbakerlaw.com
michael@hazelbakerlaw.com

*Attorneys for Defendants-
Respondents*

February 3, 2012

INDEX TO APPENDIX

Wisconsin Dolls' Original Alcohol License Application (12/31/2004)	R5:52	S-App. 001
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Application for License for Adult-Oriented Establishment (2009, 2008, 2007, 2006, 2005, and 2004)	R:41-46	S-App. 005-10
Town of Dell Prairie Meeting Minutes (June 9, 2009)	R5:31-33	S-App. 011-13

ORIGINAL ALCOHOL BEVERAGE LICENSE APPLICATION

Submit to municipal clerk.

For the license period beginning 20 05 ;
ending 6/30 20 05

TO THE GOVERNING BODY of the: Town of } DEU PRAIRIE
 Village of }
 City of }

County of ADAMS Aldermanic Dist. No. _____ (if required by ordinance)

1. The named INDIVIDUAL PARTNERSHIP LIMITED LIABILITY COMPANY
 CORPORATION/NONPROFIT ORGANIZATION

hereby makes application for the alcohol beverage license(s) checked above.

2. Name (individual/partners give last name, first, middle; corporations/limited liability companies give registered name): WISCONSIN DOLLS, LLC

An "Auxiliary Questionnaire," Form AT-103, must be completed and attached to this application by each individual applicant, by each member of a partnership, and by each officer, director and agent of a corporation or nonprofit organization, and by each member/manager and agent of a limited liability company. List the name, title, and place of residence of each person.

	Title	Name	Home Address	Post Office & Zip Code
President/Member	<u>PRES.</u>	<u>REBECCA L. HALBACH</u>	<u>3337 SCHUMAN</u>	<u>ORFORDVILLE WI 53576</u>
Vice President/Member				
Secretary/Member				
Treasurer/Member				
Agent		<u>JAMES HALBACH</u>	<u>3337 SCHUMAN RD</u>	<u>ORFORDVILLE WI 53576</u>
Directors/Managers				

3. Trade Name WISCONSIN DOLLS Business Phone Number 608-254-8708
4. Address of Premises 4179 STATE HWY 13 Post Office & Zip Code WISCONSIN DOLLS, WI 53
5. Is individual, partners or agent of corporation/limited liability company subject to completion of the responsible beverage server training course for this license period? Yes No
6. Is the applicant an employe or agent of, or acting on behalf of anyone except the named applicant? Yes No
7. Does any other alcohol beverage retail licensee or wholesale permittee have any interest in or control of this business? Yes No
8. (a) Corporate/limited liability company applicants only: Insert state WI and date 12/1/04 of registration.
(b) Is applicant corporation/limited liability company a subsidiary of any other corporation or limited liability company? Yes No
(c) Does the corporation, or any officer, director, stockholder or agent or limited liability company, or any member/manager or agent hold any interest in any other alcohol beverage license or permit in Wisconsin? Yes No
(NOTE: All applicants explain fully on reverse side of this form every YES answer in sections 5, 6, 7 and 8 above.)
9. Premises description: Describe building or buildings where alcohol beverages are to be sold and stored. The applicant must include all rooms including living quarters, if used, for the sales, service, and/or storage of alcohol beverages and records. (Alcohol beverages may be sold and stored only on the premises described.) ALL 3 ACRES OF RESORT
10. Legal description (omit if street address is given above): _____
11. (a) Was this premises licensed for the sale of liquor or beer during the past license year? Yes No
(b) If yes, under what name was license issued? Jim Canham
12. Does the applicant understand a Special Occupational Tax must be paid to the National Revenue Center before beginning business? [phone 1-800-937-8864] Yes No
13. Does the applicant understand a Wisconsin Seller's Permit must be applied for and issued in the same name as that shown in Section 2, above? [phone (608) 266-2776]. Yes No
14. Is the applicant indebted to any wholesaler beyond 15 days for beer or 30 days for liquor? Yes No

READ CAREFULLY BEFORE SIGNING: Under penalty provided by law, the applicant states that each of the above questions has been truthfully answered to the best of the knowledge of the signers. Signers agree to operate this business according to law and that the rights and responsibilities conferred by the license(s), if granted, will not be assigned to another. (Individual applicants and each member of a partnership applicant must sign; corporate officer(s), members/managers of Limited Liability Companies must sign.) Any lack of access to any portion of a licensed premises during inspection will be deemed a refusal to permit inspection. Such refusal is a misdemeanor and grounds for revocation of this license.

SUBSCRIBED AND SWORN TO BEFORE ME

this 31st day of December, 20 04

Kathleen D Wilton
(Clerk/Notary Public)

My commission expires August 3, 2008

Rebecca L. Halbach
(Officer of Corporation/Member/Manager of Limited Liability Company /Partner/Individual)

(Officer of Corporation/Member/Manager of Limited Liability Company /Partner)

(Additional Partner(s)/Member/Manager of Limited Liability Company If Any)

TO BE COMPLETED BY CLERK

Date received and filed with municipal clerk <u>12-31-04</u>	Date reported to council/board <u>1-24-05</u>	Date provisional license issued _____	Signature of Clerk / Deputy Clerk <u>Therese M. Wilton</u>
Date license granted <u>Conditional 1-24-05</u>	Date license issued <u>1-25-05</u>	License number issued <u>008</u>	

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ADULT-ORIENTED ESTABLISHMENT LICENSE

WHEREAS, the Town Board of the Town of Dell Prairie, Adams County, Wisconsin, has, upon application duly made, granted and authorized the issuance of an Adult-Oriented Establishment License to JAMES HALBACH

as defined by and pursuant to Town of Dell Prairie Ordinance No. 4-2004.

AND WHEREAS, the said applicant has paid the Town of Dell Prairie Treasurer the sum of \$ 300.00

for such Adult-Oriented Establishment License as required by Town Ordinance, LICENSE IS HEREBY ISSUED to said applicant to operate an Adult-Oriented Establishment at the following described premises

4179 STATE ROAD 13
WISC. DELLS, WI 53965

FOR THE PERIOD from Jan. 11, 2005 to Jan. 10, 2006.

Given this date Jan. 11, 2005
Town of Dell Prairie
Adams County, Wisconsin

Therese M. Cabore
Town Clerk

(Town Seal)

Copy

Meeting Minutes of the Special Board Meeting June 13, 2009

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The meeting was called to order by Chairman Schulz at 8:05 a.m. in the Dell Prairie Town Hall. The Clerk, Joni Gehrke, provided the affidavit of the meeting notice to the Chairman and also stated that in addition to all of the posting places, the agenda was also placed on the Adams County website under the Dell Prairie Municipality page, and also stated that she called and left a message on Jim Halbach's cell phone of the meeting and also called Chris Brandt of Lake of the Dells, and Ms. Brandt stated that she had out of town guests coming and could not attend the meeting. Supervisor Mitchell made a motion to approve the agenda with Supervisor Stanford seconding the motion. All three board members along with the clerk proceeded on the road tour and returned to the town hall at 9:20 a.m. The following items were discussed:

1. **9th Avenue:** Supervisor Mitchell made a motion to have Ken Jensen continue with more limestone on the shoulder and Supervisor Stanford seconded the motion to re-shoulder Grouse to Golden. Supervisor Mitchell made a motion to seal coat ½ to 1 mile and Supervisor Stanford seconded the motion. Supervisor Mitchell will mark the road and bid it out.
2. **River Road:** Supervisor Mitchell made a motion to have a culvert placed at the DNR entrance road on River road and Chairman Schulz seconded the motion.
3. **Indian Shores:** Discussion occurred and Ken Jensen will add gravel. Once the drainage plan is completed they will figure out the plan and get costs associated with this. Both culdesacs will be tore up and will have gravel put on it. Supervisor Stanford said that he can shoot the grade and mark it out. No motion is needed for this action until the additional plans are made before a final decision can be made.
4. **Gale Avenue:** Chairman made a motion to do the dirt work and straighten out the road to where it should be along with drainage on the right side according to the survey marks and Supervisor Stanford seconded the motion.
5. **Liquor License Amendments:** The clerk, Joni Gehrke, provided the board members with a synopsis of actions taken by her in regards to the amendments needed for the license approvals. Please see attached summary. Discussion occurred in regards to the premises description on the application from Wisconsin Dolls. A copy of the letter received by Attorney Steve Werner was presented to the board members as well as a copy of the letter Attorney Wood sent to Attorney Werner. Chairman Schulz also mentioned that in Section C, question 3, was answered no and it was thought that could have been just a typo. Chairman Schulz made a motion to issue the license to Wisconsin Dolls if the application is amended restricting the premises to the main bar building and storage area and Supervisor Mitchell seconded the motion. A roll call vote was made with all three board members voting yes. Chairman Schulz will have Attorney Wood prepare a letter stating the decisions made and have it sent to Attorney Werner. Discussed then ensued regarding Lake of the Dells, LLC. A copy of the letter that Chris Brandt wrote to the board was given to the board members. Chairman Schulz stated that Lake of the Dells was not being singled out as to the compliance of the town ordinance in regards to being open for 90 days, due to the fact that all of the other license holders have been open to the public for 90 days. Chairman Schulz made a motion to have Attorney Wood send a letter asking for an affidavit of compliance from both John Brandt, as he is listed as the agent, and Chris Brandt. Supervisor Mitchell seconded this motion.
6. **Chula Vista Golf, Inc:** Chairman Schulz informed the board that he has received the completed re-zoning application from Mike Kaminski. Chairman Schulz made a motion to accept and approve the request for the re-zoning and conditional use permit for the property for the Champion Village Project and the liquor license application for Chula Vista Golf, Inc for the property in Section 27 (Golden Drive??) and Supervisor Stanford seconded the motion. A roll call vote was made and all three board members voted yes.

Supervisor Mitchell made a motion to adjourn the meeting at 10:23 a.m. and Chairman Schulz seconded the motion.

Respectfully submitted,

Joni Gehrke, Dell Prairie Clerk

Clerk's Report To The Dell Prairie Town Board Regarding Amended Liquor Licenses

1. Wisconsin Dolls, LLC: Section B. Per a phone conversation with Jim Halbach and also a phone conversation with Attorney Steve Werner, the address listed is the home address of the Halbach's. The business address is P.O. Box 1840, Janesville, WI. Attorney Werner stated to me that the address listed on the Wisconsin Department of Financial Institution website is Beloit, however that was an error on the part of the Accountant for Wisconsin Dolls, LLC and I was informed that it has been corrected and changed on the website. The premises description has not been resolved, see attached copies that concern this matter.
2. Tourdot Winery, LLC: James Tourdot attended the meeting on June 9th, 2009 and prior to the start of the meeting completed the missing information for the name and address of the agent for the LLC.
3. Holiday Shores Campground & Resort, Inc: This form was personally taken to Holiday Shores to have the incomplete question #3 of section C amended/answered by Alice Ward.
4. Fur, Fin & Feather: This application form was personally taken to Fur, Fin & Feather to have the missing members name and address filled in on section B. There is only one member for this LLC, so only Daniel Oberdorf's name and address needed to be filled in.
5. Lake of the Dells, LLC: This application was personally taken to Chris Brandt's home and left with her to have John Brandt fill in the missing agent information. I also informed Ms. Brandt that the board has requested an affidavit from Lake of the Dells, LLC, stating that the corporation has complied with the town ordinance. Ms. Brandt stated that she felt she was singled out and per her attorney, stated that they did not need to provide this information. This form was returned to me along with the attached letter from the applicant.
6. Pinecrest Par 3 Golf Course: This application was personally taken to Par 3 to have the incomplete question #3 of section C amended/answered by Mark Nickeas.
7. B&H Trout Farm and Bait Shop: This application was personally taken to B&H Trout Farm to have the incomplete question #3 of section C amended/answered by Kristina Bakaj.

All of the applications have been amended to satisfy the concerns noted by Attorney Wood and the Dell Prairie Town Board except for Wisconsin Dolls, LLC and Lake of the Dells, LLC. Please see the attached documents that pertain to each of the above listed businesses.

Joni Gehrke
Dell Prairie Town Clerk

**APPLICATION FOR LICENSE FOR
ADULT-ORIENTED ESTABLISHMENT**

1. Name and address of applicant. If partnership, all partners must be listed. Use reverse side if necessary.

Wisconsin Dolls, LLC 4179 State Rd. 13
Wisconsin Dells, WI 5391

2. Copies of proof that all persons listed in item no. 1 are at least 18 years of age must be attached. Do not attach originals.

3. Address of Adult-Oriented Establishment to be operated by applicant(s).

4179 State Rd. 13
Wisconsin Dells 53965

4. If applicant is a corporation:

Name of corporation, date and state of incorporation

Wisconsin Dolls, LLC 12/04

Name and address of registered agent

JAMES HALBACH 3337 S. Schuman Rd.
DeFordville, WI 53576

Names, addresses and titles of all officers and directors of the corporation, names and addresses of everyone owning more than 5% of stock in corporation

Rebecca L Halbach
3337 S. Schuman Rd.
DeFordville, WI 53576

5. Use other side if more space is needed. Attach copies of proof that all persons listed in no. 4 are at least 18 years of age.

Subscribed and sworn to before me

this 30 day of November, 2009

Jessie Harnack
(Clerk/Notary Public)

My commission expires 8/22/2010

James R Halbach
(Applicant)

(Clerk)

(Date Received)

* Aspects of Business include Swingers Motel, Adult Toy and Novelty Store, Gentlemen's Club with Alcohol, 18 yrs Juice Bar without Alcohol & other Adult Entertainment on 11th St. DeFordville, WI 53576

APPLICATION FOR LICENSE FOR
ADULT-ORIENTED ESTABLISHMENT

1. Name and address of applicant. If partnership, all partners must be listed. Use reverse side if necessary.

WISCONSIN DOLLS, LLC. 4179 State Rd 13
WISCONSIN DELLS, WI 53965

2. Copies of proof that all persons listed in item no. 1 are at least 18 years of age must be attached. Do not attach originals.

3. Address of Adult-Oriented Establishment to be operated by applicant(s).

4179 State Rd 13
WISCONSIN DELLS, WI 53965

4. If applicant is a corporation:

Name of corporation, date and state of incorporation

WISCONSIN DOLLS LLC 12/04

Name and address of registered agent

JAMES HALBACH, 9337 S. SCHUMAN RD
ORFORDVILLE, WI 53576

Names, addresses and titles of all officers and directors of the corporation, names and addresses of everyone owning more than 5% of stock in corporation

REBECCA L. HALBACH
9337 S. SCHUMAN RD
ORFORDVILLE, WI 53576

5. Use other side if more space is needed. Attach copies of proof that all persons listed in no. 4 are at least 18 years of age.

Subscribed and sworn to before me

this 28 day of November, 2008

Susan K. Muller
(Clerk/Notary Public)

My commission expires Jan. 8, 2012

JR Hall
(Applicant)

Kathy Dela Pena 11/28/08
(Clerk) (Date Received)

* Aspects of Business include Swingers Motel, Adult Toy AND Novelty Store, Gentlemens Club with Alcohol, 18 year old Juice Bar without alcohol AND other ADULT ENTERTAINMENT on the whole resort property, including movies on the

APPLICATION FOR LICENSE FOR
ADULT-ORIENTED ESTABLISHMENT

1. Name and address of applicant. If partnership, all partners must be listed. Use reverse side if necessary.

WISCONSIN Dells, LLC. 4179 State Rd 13
WISCONSIN Dells 53965

2. Copies of proof that all persons listed in item no. 1 are at least 18 years of age must be attached. Do not attach originals.

3. Address of Adult-Oriented Establishment to be operated by applicant(s).

4179 State Rd 13
WISCONSIN Dells, WI. 53965

4. If applicant is a corporation:

Name of corporation, date and state of incorporation

WISCONSIN Dells LLC. 12/04

Name and address of registered agent

James Halbach 3337 Schuman Rd Orfordville WI. 53576

Names, addresses and titles of all officers and directors of the corporation, names and addresses of everyone owning more than 5% of stock in corporation

Rebecca L. Halbach 3337 Schuman Rd Orfordville, WI.

5. Use other side if more space is needed. Attach copies of proof that all persons listed in no. 4 are at least 18 years of age.

Subscribed and sworn to before me

this 28 day of November, 2007

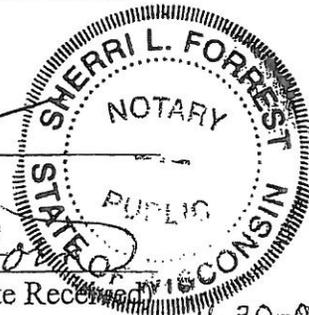
Sherril R. Forrest
(Clerk/Notary Public)

My commission expires 4-6-2008

James R. Hae
(Applicant)

Jessica M. Coburn
(Clerk)

(Date Received) 11-30-07



* Aspects to our business include, Swinger motel, Adult Toy & Novelty store, Gentlemans club with Alcohol, 18 yr old Juice bar without Alcohol, and other Adult entertainment on the whole resort including movies on the 8 acres.

APPLICATION FOR LICENSE FOR ADULT-ORIENTED ESTABLISHMENT

1. Name and address of applicant. If partnership, all partners must be listed. Use reverse side if necessary.

WISCONSIN DOLLS LLC. 4179 STATE RD 13 WISC. DELLS WI
53965

2. Copies of proof that all persons listed in item no. 1 are at least 18 years of age must be attached. Do not attach originals.

3. Address of Adult-Oriented Establishment to be operated by applicant(s).

4179 STATE RD 13 WISCONSIN DELLS, WI 53965

4. If applicant is a corporation:

Name of corporation, date and state of incorporation

WISCONSIN DOLLS LLC 12/04

Name and address of registered agent

JAMES HALBACH 3337 SCHUMAN RD ORFORDVILLE, WI 53576
REBECCA L. HALBACH " " " " " " " " " "

Names, addresses and titles of all officers and directors of the corporation, names and addresses of everyone owning more than 5% of stock in corporation

Rebecca L. HALBACH 3337 SCHUMAN Rd ORFORDVILLE, WI 53576

5. Use other side if more space is needed. Attach copies of proof that all persons listed in no. 4 are at least 18 years of age.

Subscribed and sworn to before me
this 16 day of NOVEMBER, 2006
William Mulneiz
(Clerk/Notary Public)

Rebecca L. Halbach
(Applicant)

My commission expires PUBLIC S. Q. 2010
STATE OF WISCONSIN

Veronica M. Deborn
(Clerk) (Date Received) Nov 20, 2006

* ASPECTS TO OUR BUSINESS INCLUDE, SWINGERS MOTEL, ADULT TOY + NOVELTY STORE, GENTLEMANS CLUB WITH ALCOHOL, 18 year old JUICE BAR WITH OUT ALCOHOL, AND OTHER ADULT ENTERTAINMENT ON THE whole RESORT INCLUDING MOVIES ON THE 8 ACRES.

41

APPLICATION FOR LICENSE FOR ADULT-ORIENTED ESTABLISHMENT

1. Name and address of applicant. If partnership, all partners must be listed. Use reverse side if necessary.

Wisconsin Dolls LLC
4179 State Rd 13
Wisconsin Dolls, WI 53965

Rebecca Halbach
3337 Schuman Rd
Orfordville, WI 53576

2. Copies of proof that all persons listed in item no. 1 are at least 18 years of age must be attached. Do not attach originals.

3. Address of Adult-Oriented Establishment to be operated by applicant(s).

4179 State Rd 13
Wisconsin Dolls, WI 53965

4. If applicant is a corporation:

Name of corporation, date and state of incorporation

Wisconsin Dolls, LLC 12/04

Name and address of registered agent

James Halbach 3337 Schuman Rd Orfordville, WI 53576

Names, addresses and titles of all officers and directors of the corporation, names and addresses of everyone owning more than 5% of stock in corporation

Rebecca L. Halbach
3337 Schuman Rd
Orfordville, WI 53576

5. Use other side if more space is needed. Attach copies of proof that all persons listed in no. 4 are at least 18 years of age.

Subscribed and sworn to before me

this 2 day of Dec, 2005

Susan K. Miller
(Clerk/Notary Public)

My commission expires 1-13-2008

Rebecca K. Halbach
(Applicant)

Veronica M. Osborn
(Clerk) (Date Received)

Dec. 3, 2005

APPLICATION FOR LICENSE FOR
ADULT-ORIENTED ESTABLISHMENT

I HOPE WITH BASE ON
HERE IS WHEN THE DEETS
SUGGESTION US WIK I
AND WE BE GRATEFUL
FOR HOPEFULLY
THANK SO MUCH
FOR YOU HELP
J. Halbach

1. Name and address of applicant. If partnership, all partners must be listed. Use reverse side if necessary.

WISCONSIN DOLLS, LLC 4179 STATE RD 13 WISCONSIN DOLLS 53965

2. Copies of proof that all persons listed in item no. 1 are at least 18 years of age must be attached. Do not attach originals.

3. Address of Adult-Oriented Establishment to be operated by applicant(s).

4179 STATE RD 13 WISCONSIN DOLLS WI 53965

4. If applicant is a corporation:

Name of corporation, date and state of incorporation

WISCONSIN DOLLS, LLC 12/04

Name and address of registered agent

JAMES HALBACH 3337 SCHUMAN RD ORFORDVILLE WI 53576

Names, addresses and titles of all officers and directors of the corporation, names and addresses of everyone owning more than 5% of stock in corporation

REBECCA L. HALBACH 3337 SCHUMAN RD ORFORDVILLE WI 53576

5. Use other side if more space is needed. Attach copies of proof that all persons listed in no. 4 are at least 18 years of age.

Subscribed and sworn to before me
this 31st day of December, 2004
Kathleen D. Witek
(Clerk/Notary Public)
My commission expires August 3, 2008

Rebecca L. Halbach
(Applicant)

Veronica M. Gibson Dec. 31, 2004
(Clerk) (Date Received)

* ASPECTS TO OUR BUSINESS INCLUDE, SWINGERS MOTEL, ADULT TOY + NOVELTY STORE, GENTLEMANS CLUB WITH ALCOHOL, 18 year old JUICE BAR WITH OUT ALCOHOL, AND OTHER ADULT ENTERTAINMENT ON THE WHOLE RESORT INCLUDING MOVIES, ON THE 8 AC RES. ~~RESORT~~.

**Minutes of the Dell Prairie Town Board Meeting
June 9, 2009**

Chairman Darrell Schulz called the meeting to order at 7:00 p.m. in the Dell Prairie Town Hall. Also present were Supervisors Dan Mitchell and Glen Stanford, Treasurer Audrey Jensen, Clerk Joni Gehrke, and Attorney Dan Wood. The Pledge of Allegiance was recited followed by approval of the agenda after a motion made by Supervisor Mitchell and seconded by Glen Stanford. The clerk presented an affidavit of proper meeting notice to the Chairman.

The minutes of the May meeting were read and approved by a motion made by Supervisor Mitchell and seconded by Supervisor Stanford.

Treasurer Report: Audrey Jensen presented the Treasurer's financial report to the board.

Clerk Report: Joni Gehrke presented the monthly financial report to the board. Chairman Schulz stated that the financial report will be presented at the July meeting via the overhead projector and will show 1st and 2nd quarter information.

Highway Superintendent Report: Ken Jensen reported that the wedging is done on 10th Ave. Kenny also stated that loggers were logging on the Waydick's property and the trees that were leaning over Golden Court were cut which will reduce the icy conditions in the winter and has improved the visibility on the road.

County Superintendent Reports: Diane England provided follow up from the last meeting in regards to the properties listed at 834 Golden Court, 3790 9th Drive, and 3705 Hwy 13. Diane stated that Joe Lally from Adams County has inspected three properties and is in the process of sending letters to the owners. Supervisor Stanford asked if the results of Joe Lally's recommendations will have to go thru Adams County Planning and Zoning and Attorney Dan Wood stated that Mr. Lally will work with the people but enforcement is limited because he doesn't have the authority. Attorney Wood suggested a follow up letter to Joe Lally's recommendation be sent to Adams County Planning and Zoning. Glen Licitar reported that the re-zoning request for the Plainville Cemetery was approved by the zoning committee and will go before the county board at the June 16th meeting. Supervisor Stanford questioned why the township had to pay \$400.00 for the re-zoning request of the cemetery since it is a township matter and Glen Licitar stated that he will bring this up at the next county board meeting since this is a concern for townships.

Chairman Report: Chairman Schulz reported that he attended a meeting with the City of the Dells, Adams County called by Attorney Sweeney, Chula Vista's attorney. Ron Chamberlain reported that all of the first phase stimulus money received is going to the County for Hwy Z road work and that none will be received by us for the River Road work. Ron Chamberlain is also working on a meeting with the same group of people for a second phase stimulus package which includes a bike trail. Chairman Schulz reported that both he and Ken Jensen attended a seminar in Barneveld regarding Safety and Speed Limits. The DOT doesn't agree with our speed limits and suggested a study be done to the traffic flows to find out the average speed limit. DOT wants the speed limits at 85% of the average traffic speed. Speed limits set at too high or too low are safety concerns with people then driving too slow and too fast which increases accident rates. Chairman Schulz stated that the DOT can do the speed study for us but stated that the town has the equipment from Ed Anen and that we could do it ourselves to save money as long as we use the forms required for the data collected from the DOT. Chairman Schulz also stated that residential subdivision roads should be 25mph unless there is more than 150 feet between houses, then the limit can be raised to 35 miles per hour. Chairman Schulz stated that the Raze orders were issued for the burnt house on 9th Ct.

Public Comments: None

New Business:

1. **Tammy Thomas:** Ms. Thomas did not attend the meeting, as she is having trouble getting the forms filled out at the county level.

2. **Alcohol License Applications:** Chairman Schulz stated that Attorney Dan Wood was invited to this meeting to review all of the alcohol license applications. Chairman Schulz informed the board that previous town boards had not received copies of license applications from the clerks and more than likely the applications were filed with various errors. Attorney Wood stated that out of eight applications the board has received, only one application was completely and accurately filled out, which Stuff's Restaurant was. The board was presented with a summary from Attorney Wood regarding the issues with the renewal license applications and the following action was taken:
 - A. **Wisconsin Dolls, LLC:** The address for Wisconsin Dolls, LLC on the application is different than the address listed on the Wisconsin Department of Financial Institutions website. This will need to be amended and also the description of the premises is very vague and needs to be more specific to meet the requirements of Chapter 125 in regards to covering 8 acres.

 - B. **Tourdot Winery, LLC:** The renewal of this license is missing the name and address of the agent. The clerk, Joni Gehrke, informed the board that prior to the start of the meeting, James Tourdot filled in the missing information and has paid the remaining balance owed for the licenses.

 - C. **Chula Vista Golf, Inc.** filled out an original application for a Class B Beer License for the premises that a volleyball tournament will take place, which is on 9th Lane. This application was amended by Mike Kaminski to list the correct name of Chula Vista Golf, Inc. on the application.

A motion was made by Supervisor Mitchell and seconded by Supervisor Stanford to approve the licenses for Stuff's Restaurant, Tourdot Winery, and Chula Vista Golf, Inc. A roll call vote was made with all three board members voting yes.

- D. **Holiday Shores Campground and Resort, Pinecrest Par 3 Golf Course, and B&H Trout Farm & Bait Shop** all were missing the question in Section C, line 3.

Supervisor Mitchell made a motion to approve these three licenses subject to the clerk getting the amendments made on these applications and Supervisor Stanford seconded the motion. A roll call vote was made and all three board members voted yes.

- E. **Fur, Fin and Feather:** The LLC information was not listed on the application and this will need to be amended.

- F. **Lake of the Dells, LLC** was missing the name and address of the agent. The identification of the premises was also vague and requires more specific information in regards to the premises and building involved. Supervisor Stanford questioned if Lake of the Dells, LLC is in compliance with the town ordinance in regards to being open to the public for 90 days. Attorney Wood suggested getting an affidavit of compliance from the owners.

A motion was made by Supervisor Stanford to postpone the decision on Fur, Fin and Feather, LLC, Lake of the Dells, LLC and Wisconsin Dolls, LLC until all amendments to the applications get these issues resolved before the next meeting. Attorney Wood suggested a provisional license be issued to Chula Vista Golf, Inc. which would be effective for 60 days and that the Class "B" license be issued before then. Supervisor Mitchell made a motion to approve the provisional Class

"B" license to Chula Vista Golf, Inc. and to defer consideration of the issuance of a regular Class "B" license to the next meeting so publication could occur and Supervisor Stanford seconded the motion. A roll call vote was made with all three board members voting yes.

- G. **Champions Baseball Project:** Mike Kaminski of Chula Vista and Brad Boettcher presented plans on the scaled down plans of the project. They stated that the overall concept has not changed, however, they would like to start with 8 baseball fields, a smaller parking lot, a small concession stand and a maintenance building. Mr. Kaminski and Mr. Boettcher wanted to inform the board of this prior to submitting the re-zoning applications to the county. They stated that they would like to stay in the town of Dell Prairie due to tax reasons and if the board did not agree, they would go to the city of Wisconsin Dells. Supervisor Stanford questioned the traffic and the road conditions that would occur if this project was approved. Mr. Kaminski and Mr. Boettcher stated that they would come up with a Developer's Agreement and that they would pay for the road work if it was needed. Discussion occurred and a suggestion of a shuttle bus from the resort to the ball park was brought up and Mike Kaminski stated that the shuttle could be an option if traffic was a problem. Mr. Boettcher also informed the board that Highway 13 is scheduled to be re-constructed in 2011 and that the plans don't call for any traffic lights to be installed, but instead has plans for protected left and right lanes. Supervisor Stanford also inquired if the neighbors have been informed and asked their opinions on this project. Mr. Kaminski stated that they will include all of the suggestions made by the Champions Field Committee in the Developer's Agreement and bring this to the next board meeting. Mr. Kaminski stated that there would only be one set of light in the middle of the field, the PA system would only be used in case of an emergency (missing child or weather emergency) and they would not announce overhead during the games. They have also looked into low voltage technology for the speaker systems and that it would not be loud. Once the Developer's Agreement has been completed, it will be reviewed by Mike Kaminski, Brad Boettcher, Darrell Schulz, and Attorney Wood in sessions with the Chula Vista, Golf Inc. attorney for negotiation processes.
- H. 9th Avenue shoulder reconstruction, Gale Avenue and Gem Court reconstruction decisions will be made at the special meeting scheduled for Saturday, June 13th, after a road tour of these areas. Also, decisions on the amended liquor applications will be on the meeting agenda.
- I. Road Compactor Purchase: Discussion occurred regarding the compactor purchase at \$3,000. A motion was made by Glen Stanford and seconded by Chairman Schulz .
- J. Brion Stecky's application was reviewed by the board and they have all agreed to hire Brion as a part time as needed road crew employee.

A 5 minute recess was taken at 9:00 p.m and bills were presented for approval of payment by the board.

The meeting was adjourned at 9:15 p.m.

Respectfully submitted,

Joni Gehrke
Dell Prairie Town Clerk

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**STATE OF WISCONSIN
SUPREME COURT**

02-20-2012

Appeal No. 2010-AP-2900

**CLERK OF SUPREME COURT
OF WISCONSIN**

WISCONSIN DOLLS, LLC,

Plaintiff – Appellant – Petitioner,

v.

**TOWN OF DELL PRAIRIE and
TOWN OF DELL PRAIRIE TOWN BOARD,**

Defendants-Respondents.

**REPLY BRIEF OF
PLAINTIFF-APPELLANT-PETITIONER
WISCONSIN DOLLS, LLC**

**APPEAL FROM THE SEPTEMBER 1, 2011
DECISION OF THE COURT OF APPEALS, DISTRICT IV**

MURPHY DESMOND S.C.

Lawrence E. Bechler

State Bar No. 1016711

Matthew J. Fleming

State Bar No. 1031041

Margery Tibbetts-Wakefield

State Bar No. 1012321

33 East Main Street, Suite 500

P.O. Box 2038

Madison, WI 53701-2038

(608) 257-7181

Attorneys for Plaintiff-Appellant-Petitioner,
Wisconsin Dolls, LLC

February 20, 2012

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I. ONCE ITS PREMISES WERE LICENSED, WISCONSIN DOLLS WAS ENTITLED TO KEEP THEM LICENSED UNLESS REVOKED OR NON-RENEWED UNDER WIS. STATS. § 125.12(2) OR (3).

Since due process is an issue in this case, it is important to determine what process is due to Wisconsin Dolls.

Conspicuous by its absence is any citation to the record that Dell Prairie complied with the requirement of Wis. Stats. § 125.12(3), requiring written notice of Dell Prairie's intent not to renew the license to nearly all of its eight acre parcel. All Dell Prairie can show is that it gave Wisconsin Dolls notice that its license was up for renewal.

Thus, on this record, Wisconsin Dolls submitted for renewal of its alcohol beverage license on the same basis as previous years. What internal discussions Dell Prairie might have had previously was unknown to Wisconsin Dolls.

Had Dell Prairie claimed that the prior premises description did not entitle Wisconsin Dolls to renewal, then that is clearly a reason which Dell Prairie could have pursued revocation or non-renewal. In essence, the Court of Appeals determined that Wisconsin Dolls' description violated Chapter 125. Such a claim is one for which non-renewal by statute is the exclusive remedy.

A municipality may refuse to renew a license "for the causes provided in sub. (2)(ag)." Wis. Stats. § 125.12(3). Among the reasons identified in Wis. Stats. § 125.12(2)(ag) are:

"1. The person has violated this chapter . . .

4. The person does not possess the qualifications required under this chapter to hold the license.”

In essence, Dell Prairie’s staff decision concerning the Wisconsin Dolls premises description was just that. It follows that since the reasons for its action were those specified in Wis. Stats. §§ 125.12(2)(ag)1. and 4., the “Class B” license could only be non-renewed under the process for doing so in Wis. Stats. § 125.12(3). This Dell Prairie did not do.

In addition, Dell Prairie justified its positions on shrinking the license as essentially equivalent to actions on initial issuance of an alcohol beverage license under Wis. Stats. § 125.12(3m) where giving reasons in writing is all that is necessary. But, Wisconsin Dolls had been in business for four years, and should have been treated like any other established alcohol beverage licensee.

Thus, both Dell Prairie and the Court of Appeals failed to address a key component of this case – that Wisconsin Dolls had obtained and twice renewed a license with a premises description that, once granted, could only be non-renewed under Wis. Stats. § 125.12(3), since the reasons for non-renewal were reasons expressly identified in Wis. Stats. § 125.12(2)(ag).

II. THE NATURE AND EXTENT OF WISCONSIN DOLLS’ ACTUAL PRIOR OPERATION IS IRRELEVANT.

Dell Prairie argued it renewed Wisconsin Dolls’ license with a premises description consistent with then-actual operations and, therefore, no deprivation of any legal rights occurred. The question is not the degree of harm caused, but whether Dell Prairie’s action was contrary to Wis. Stats. §125.12(3). Dell Prairie

held no hearing to allow Wisconsin Dolls to establish a record of how it operated its business. Even if such a hearing had occurred, the extent to which Wisconsin Dolls had actually used its entire eight acres is irrelevant. The Legislature did not condition a licensee's rights under Wis. Stats. §125.12(3) upon the extent to which the licensee previously used the license.

A. Dell Prairie Held No Hearing To Establish The Facts Upon Which It Relies.

Assuming that the extent of actual use of the rights approved in a license is relevant, Dell Prairie failed to provide any process by which it could reliably conclude that its action would cause no harm. The Legislature did not intend that municipalities would take potentially damaging actions against a license based on speculation.

The Court must presume the Legislature was aware of the state of the law when it enacted Wis. Stats. §125.12(3). *C&A Investments v. Kelly*, 2010 WI App. 151, ¶10, 330 Wis. 2d 223, 792 N.W.2d 644. The Legislature intended to provide due process protections to alcohol beverage licensees. *Legislative Council Notes*, 1981 Wis. Laws, Ch. 79, p. 679. Due process requires that notice and a hearing be provided *prior* to any constitutional deprivation, regardless of the adequacy of any post-deprivation remedy. *Fuentes v. Shevin*, 407 U.S. 67, 80-81 (1972). Exceptions to this rule exist only where a pre-deprivation hearing is infeasible or unduly burdensome. *Zinerman v. Burch*, 494 U.S. 113, 132 (1990).

The record reveals no emergency that would have rendered impractical a due process hearing before shrinking Wisconsin Dolls' premises description to determine the extent of harm. Since Wis. Stats. §125.12 provides for notice and hearing before revoking licenses for violations of law, surely the Legislature did not intend to permit prehearing deprivations to a licensee accused of no wrongdoing.

Dell Prairie's claim that Wisconsin Dolls never served alcohol anywhere except within the Main Bar/Entertainment Building is based solely on the Town Chairman's unsupported claims untested by cross-examination. (R. 5: 8-10; A.App. 024-026). The record contains no evidence that Wisconsin Dolls had any opportunity to dispute those claims. The record references communication between Dell Prairie and Wisconsin Dolls' representatives; however, the content of those communications is not in the record. (R. 5:34, 35, A.App 003, 004).

Dell Prairie also relies on Wisconsin Dolls' Adult Entertainment License applications for its claim that it operated a juice bar permitting underage persons on the premises. No evidence, however, exists that it actually operated a juice bar, or ever actually allowed underage persons on its premises. If underage persons had ever been permitted on the premises, nothing in the record establishes that such presence was not pursuant to an exemption under Wis. Stats. §125.07(3)(a). Dell Prairie never alleged Wisconsin Dolls unlawfully allowed underage persons on its licensed premises.

What if Dell Prairie's unsupported conclusions about the extent of operations were wrong? Without following Wis. Stats. §125.12(3) before acting, actual damage could occur based upon factual inaccuracies and without due process. Under Dell Prairie's view of the law, it is permitted to shoot first and ask questions later. Due process and the Legislature's intent to provide such protections invalidate this view.

B. Wis. Stats. §125.12 Does Not Condition Entitlement to Procedural Rights Upon Actual Use of the License.

Wis. Stats. §125.12 contains no language conditioning its procedures upon actual use of the license. In concluding that more than one license may be issued to different persons for the same premises, the Attorney General noted:

Whether or not a licensee avails himself of the privilege granted is purely a matter of his own concern. The obtaining or retention of rights of possession of the premises during the license year, so as to be able to enjoy the privileges granted by the license, is a matter solely within the control of the licensee and which he must arrange. 28 O.A.G. 123, 125 (1939).

Similarly, in *Smith v. City of Whitewater*, 251 Wis. 306, 311, 29 N.W.2d 33 (1947), the court held that an issued license continues to be valid "during the term of the license until revoked pursuant to law or until terminated by voluntary surrender" despite the termination of the licensee's lease.

Absent language in Wis. Stats. §125.12 conditioning its procedural protections upon actual use of the license, the extent of Wisconsin Dolls' actual use is irrelevant.

III. WISCONSIN DOLLS' LICENSE DESCRIPTION WAS NOT STATUTORILY DEFICIENT.

Dell Prairie insists, without any support, that a premises description including all eight acres of Wisconsin Dolls' property was insufficiently particular as a matter of law. (*Respondent's Brief*, pp. 24-29.) It seems to implicitly support the Court of Appeals' rationale at page 26 of its Brief; however, it later rejects that same analysis in arguing the Court of Appeals went too far in declaring Wisconsin Dolls' license void. (*Respondent's Brief*, p. 42.)

The Legislature required no more than a description sufficiently particular to ascertain where the municipality has authorized licensed activities to occur. It was within Dell Prairie's power in 2005 to grant or fail to grant Wisconsin Dolls a license covering its entire eight acre parcel. Once granted, Dell Prairie was barred from altering that premises description without compliance with Wis. Stats. §125.12(2) or (3).

Wisconsin Dolls and Dell Prairie agree on at least one thing: "By leaving the term 'particularly' undefined, the Legislature committed the determination of what is reasonably 'particular' to the local licensing agency." (*Respondent's Brief*, p. 42.) Dell Prairie goes on to argue:

Thus, it was Dell Prairie's decision to conclude that an eight-acre description was not reasonably particular. That is the kind of decision that classically belongs at the local level. It simply is not feasible for any hard and fast rules about proper premises description [*sic*] to be inflexibly applied. Local officials, elected by their communities, are in the best position to evaluate whether a premises description meets the public interest in their own community. (*Respondent's Brief*, p. 43.)

The only obstacle to Wisconsin Dolls' endorsement of this statement is that it is not limited to the initial licensing decision.

Dell Prairie asserts a continuing power to change its mind as to the reasonable limitations of a premises description. The statutes, however, fail to give municipalities unlimited discretion after initial licensure. Given the importance of the premises description to the license, it is unlikely the Legislature intended to permit annual premises adjustments without cause, notice or hearing. Such power could result in grievous harm to a licensed business without any pre-deprivation due process contrary to the Fourteenth Amendment. *Fuentes*, 407 U.S. at 80-81.

Why would such discretion be necessary? If problems triggering proceedings under Wis. Stats. §125.12(2) or (3) have not occurred, on what basis may the current governing body second guess the decisions of prior governing bodies?

Dell Prairie seems to argue much more deference is owed to the judgments of the 2009 Town Board than to the 2005 Town Board. This view is completely incongruent to a licensing process that gives no due process rights to initial applicants for alcohol licenses, but bestows such rights in succeeding years. See *Williams v. City of Lake Geneva*, 2002 WI App. 95, ¶¶11-12, 253 Wis. 2d 618, 643 N.W.2d 864. Dell Prairie's 2005 decision to issue a license for the entire eight acres is the decision to which deference was owed.

Neither Dell Prairie nor the Court of Appeals have identified any statutory language requiring that a premises description must be limited to only those places the licensee intends to immediately use or is currently using for licensed activities. It is undisputed that a licensee may not expand licensed premises into areas previously unauthorized under *Alberti v. City of Whitewater*, 109 Wis.2d 592, 327 N.W.2d 150 (Ct. App. 1982). Neither *Alberti* nor Wis. Stats. Chap. 125 deprive a municipality of the discretion to issue a license allowing for potential expansion.

Dell Prairie fails to present any rational, workable or consistent interpretation of the law. In what appears to be a Freudian slip, Dell Prairie states:

By contrast, under Dell Prairie's construction of the statutes, courts everywhere would be in the position of evaluating the propriety of licensing decisions without deference to the Town Board as these would be questions of law. (*Respondent's Brief*, p.43.)

This cautionary statement should be heeded.

Both Dell Prairie's and the Court of Appeals' construction of the "particularity" requirement transform what should be a local determination based on the individual licensing circumstance and the public interest into a question of law. More troubling still is that it transforms this question into, potentially, an annual dispute between licensees and municipalities. Each year, successive governing bodies may interpret the Court of Appeals' formulation of "particularity" differently or may make different determinations about what is "reasonable" no matter how long a business has operated.

No evidence exists that the Legislature intended such uncertainty. Instead, absent cause as established in Wis. Stats. §125.12(2)(ag), the Legislature intended the annual renewal process to be a truncated process, even authorizing an abbreviated application for renewals. Wis. Stats. §125.04(3)(b).

IV. “PARTICULAR” IS NOT SYNONYMOUS WITH “SMALLER.”

Dell Prairie fails to offer any explanation for how its revised description is any more particular than Wisconsin Dolls’ original description. It relies solely upon statements contrasting the size of the area covered by the two descriptions:

A license of that extent is hardly ‘particular,’ unless one envisions a 348,480 square foot area spanning large outdoor spaces, as well as multiple types of buildings as particularized. (*Respondent’s Brief*, p. 24.)

There is simply no way that eight acres is more precise than one building. (*Respondent’s Brief*, p. 28.)

As the Court of Appeals recognized, “[a] standard dictionary definition of ‘particular’ is ‘concerned with or attentive to details.’” (Court of Appeals’ Decision, ¶19).

“Particular” is not, however, synonymous with “smaller.”

Defining “particularity” premised solely upon contrasting the size of different descriptions leads to absurd results. If smaller is always more particular, it seems municipalities, in all instances, would have to shrink premises descriptions to the absolute smallest area within which one might operate a business. Dell Prairie totally ignores the impact its rationale would have on an 18 hole golf course, yet the law must apply equally to Wisconsin Dolls as it applies to

that type of business. No language exists in Wis. Stats. Chap. 125 requiring the smallest possible premises description, nor can any discernible public interest or purpose be found in such a rule. All that is required is that the premises description *include* all those places where licensed activities are permitted to occur – sale, storage and consumption. Wis. Stats. §§125.04(3)(a), 125.09(1).

V. AFTER INITIAL ISSUANCE, MUNICIPALITIES MUST PROVIDE DUE PROCESS.

A. The Legislature Provided Due Process Protections.

Dell Prairie claims that “municipal officials modify the terms and conditions of licenses all the time.” (*Respondent’s Brief*, p. 44.) Without any citation to authority or the record to give it weight, this claim should be ignored. *State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W. 2d 633 (Ct. App. 1992).

Dell Prairie’s reliance on *Eichenseer v. Madison-Dane County Tavern League*, 2008 WI 38, 308 Wis. 2d 684, 748 N.W.2d 154, is misplaced. *Eichenseer* did not consider the issue presented in this case. Instead, *Eichenseer* decided that the regulatory pressure brought upon bar owners by Madison exercising power under Wis. Stats. Chap. 125 trumped anti-trust regulations. *Id.* at ¶89.

Madison did not alter any existing licenses. In fact, Madison appeared to recognize it could only impose conditions upon new licenses or licensees seeking expansion or relocation. *Id.* at ¶¶9-10. The validity of the proposed ordinance as it applied to existing licenses was not decided since it was never enacted.

The Court cannot accept Dell Prairie's claim that the Legislature did not bestow due process rights upon alcohol licensees after initial issuance. It offers no support for its claim that the Supreme Court decision in *Eichenseer* trumps the expressed intent of the Legislature to codify *Manos v. Green Bay*, 372 F. Supp. 40 (E.D. Wis. 1977), and provide due process rights in an alcohol license.

B. Due Process Rights in Maintaining Existing Licenses Are Well Established.

Dell Prairie ignores the fact that *Manos* was cited as being Wisconsin's law in *City News & Novelty, Inc. v. City of Waukesha*, 231 Wis. 2d 93, 125, 129, 604 N.W.2d 870 (Ct. App. 1999). In *City News*, the court recognized the need for a local government to provide procedural due process to the holder of an alcohol beverage license.

A similar rule was elucidated by the Seventh Circuit (Posner, J.) in *Reed v. Village of Shorewood*, 704 F.2d 943, 948, (7th. Cir. 1983) – while a lawfully issued liquor license may not be “property” in the strict, legal sense, it has some of the aspects of a property right for purposes of the due process clause so that a license holder is protected from arbitrary interference by a local licensing board.

Reed held that an alcohol beverage license was “property” in a functional sense. *Id.*, at 948:

The [alcohol beverage] license is good for one year and during that time, clearly, it is securely held, for it can be revoked only for cause, after notice and hearing, and subject to judicial review.

Reed also disposed of the claimed distinction between an alcohol beverage license being a right or a privilege, *id.*, at 949, finding a deprivation of use of property to be equivalent to taking of property.

This Court is not bound directly by *Manos* or *Reed*, but when interpreting statutes, the Legislature's intent controls. *In Interest of J.W.T.*, 159 Wis. 2d 754, 761, 465 N.W.2d 520 (Ct. App. 1990). The Court is further bound by decisions of the United States Supreme Court. *Society Insurance v. Labor & Industry Review Commission*, 2010 WI 68, ¶56, 326 Wis. 2d, 444, 479, 786 N.W.2d 385, 403. For example, in *Bell v. Burson*, 402 U.S. 535, 539 (1971), the Supreme Court held that licenses "essential to the pursuit of a livelihood," once issued may not be taken away without due process.

C. Dell Prairie Abused Its Discretion.

Dell Prairie did not correct an error. It took away a substantial portion of Wisconsin Doll's previously licensed premises. The only basis Dell Prairie offers is its erroneous position that the prior premises descriptions were unlawful. Even if the Court concluded the unilateral modification of a premises on renewal was subject to legislative discretion, even that discretion must be exercised in a manner that is not arbitrary or capricious constituting an abuse of discretion. *State ex. rel. Boroo v. Town Board of Barnes*, 10 Wis. 2d 153, 162, 102 N.W.2d 238 (1960). Action based upon an erroneous interpretation of the law is an abuse of discretion the Court may overturn. *Id.*

CONCLUSION

For the foregoing reasons, the Court should order the reinstatement of Wisconsin Dolls' previous premises description.

Dated this 20th day of February, 2012.

Respectfully submitted,

MURPHY DESMOND S.C.

Attorneys for Plaintiff-Appellant-Petitioner,
Wisconsin Dolls, LLC

By: 

Lawrence E. Bechler, SBN: 1016711

Matthew J. Fleming, SBN: 1031041

E-mail: mfleming@murphydesmond.com

Margery Tibbetts-Wakefield, SBN: 1012321

E-mail: mtibbetts@murphydesmond.com

33 East Main Street, Suite 500

P.O. Box 2038

Madison, WI 53701-2038

(608) 257-7181

CERTIFICATION

I certify that this brief conforms to the rules contained in s. 809.19(8)(b) and (c) for a brief produced using the following font:

- Monospaced font: 10 characters per inch; double spaced; 1.5 inch margin on left side and 1 inch margins on the other 3 sides. The length of this document is _____ pages.
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Dated this 20th day of February, 2012.



Lawrence E. Bechler

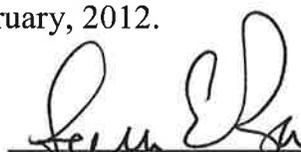
CERTIFICATION OF COMPLIANCE WITH RULE 809.19(12)

I hereby certify that I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of s. 809.19(12).

I further certify that this electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 20th day of February, 2012.



Lawrence E. Bechler

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**STATE OF WISCONSIN
SUPREME COURT**

02-27-2012

**CLERK OF SUPREME COURT
OF WISCONSIN**

APPEAL NO. 2010-AP-2900

WISCONSIN DOLLS, LLC,

Plaintiff-Appellant-Petitioner

v.

**TOWN OF DELL PRAIRIE and
TOWN OF DELL PRAIRIE TOWN BOARD,**

Defendants-Respondents

**BRIEF AND APPENDIX OF AMICUS CURIAE
TAVERN LEAGUE OF WISCONSIN, INC.**

BOARDMAN & CLARK LLP

Michael J. Lawton
State Bar No. 1016419
Kenneth B. Axe
State Bar No. 1004984
740 Regent Street, Suite 400
P.O. Box 1507
Madison, Wisconsin 53701-1507
(608) 257-7766

Attorneys for the
Tavern League of Wisconsin, Inc.

February 27, 2012

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INTEREST AND POSITION OF AMICUS CURIAE TAVERN LEAGUE

Tavern League of Wisconsin, Inc. (“the League”) is a voluntary, non-profit organization authorized and organized under Chapter 181, Wis. Stats., comprised of approximately 4700 retail beer and liquor licensees throughout the State of Wisconsin. As the largest such association in the country, its membership runs the gamut from small rural taverns to the largest establishments, and includes golf courses, campgrounds, and resorts. Collectively, members own hundreds of millions of dollars worth of property, pay substantial state and local taxes, and employ thousands of employees. Without a license, much of these investments would be practically worthless.

The sufficiency of a description of a licensed premises, and the impact of an insufficient description, are of vital, statewide importance to the League’s members. Many have longstanding licenses describing their licensed premises using only a street address. Unless the court of appeals’ decision is reversed, those licenses are now in jeopardy. Accordingly, the livelihoods and investments of many League members are at risk.

The appellate court erred in creating an impractical, unworkable standard, which goes beyond that required by statute and precedent. A street address is sufficient to describe the premises where the entire property is available for the selling and consumption of alcoholic beverages. If local authorities wish to limit

licensees to a portion of the property, they may do so in the initial license approval process, rather than, as here by unilateral action in the renewal process. The opinion flies in the face of longstanding practice in the licensing of tracts of land, such as golf courses, campgrounds, resorts and sporting facilities.

Under the court of appeals' decision, municipalities would be free to discriminate against licensees and circumvent the statutory procedural protections for non-renewal and revocation under § 125.12, Wis. Stats.

In light of these real world consequences, the League urges this Court to avoid an absurd result which flies in the face of statutory language, precedent, and the intent behind the statutes at issue, by reversing the decision below.

ARGUMENT

I. **A STREET ADDRESS IS SUFFICIENTLY DESCRIPTIVE OF THE LICENSED PREMISES UNDER THE APPLICABLE STATUTES.**

A. The Court of Appeals Ignored the Plain Meaning of the Statutory Language and Applicable Precedent.

The primary issue before the Court is whether use of a street address on an alcohol beverage license is sufficiently definite to comply with the requirement that the application "particularly describe the premises" for which the license is issued. *See* Wis. Stats. §§ 125.25(3), 125.26(3), 125.51(2)(c) and 125.51(3)(d) (2011). Secondary is whether, if not, the license is rendered void *per se* without the need for a due process hearing.

The court of appeals concluded that “the only reasonable reading of § 125.04(3)(a)3., when read together with §§ 125.02(14m), 125.26(3), and 125.51(3)(d), is that ‘premises’ means the area where alcoholic beverages will be sold or stored or both.” (Dec. at 8; A-App.008). This begs the question. The statute requires that such area be described; however, that description may be a subset of the area where such beverages may be stored, sold, or consumed, as in the case of a golf course or resort. Nothing in the statute so limits the premises, and a street address has been held sufficiently definite for enforcement purposes.

By analogy to Prohibition era cases, if a street address is adequate for a warrantless search of a licensed premises, then it also complies with the statutes here. Nor are the premises limited by statute to the site of actual storage or sale at the time of application.

The term “premises” means, in relevant part, “a piece of real estate, house or building and its land.” *Webster’s New World College Dictionary*, 1134 (4th Ed. 2002), *Accord*, *Black’s Law Dictionary*, 1219 (8th Ed. 2004).

Opinions of the Wisconsin Attorney General have concluded that the term “premises” in the predecessor to Ch. 125 included a street address. In 27 Op. Att’y Gen. 702 (1938), the attorney general responded to a request for a definition of the term “premises” in statutes relating to the issuance of alcoholic beverage licenses. (The statutes did not define the term). After resorting to the dictionary, the attorney general noted that the term had “received consideration by the

Wisconsin Supreme Court” in connection with the former Prohibition law. *Id.*, citing *Vaivada v. State*, 182 Wis. 309, 310, 195 N.W. 937 (1923); *Bombinski v. State*, 183 Wis. 351, 354, 197 N.W. 715 (1924); *Wyss v. State*, 192 Wis. 619, 213 N.W. 318 (1927); and *State v. Becker*, 201 Wis. 230, 231, 229 N.W. 857 (1930). The key was whether the licensee had access and dominion over the land or real estate in question.

In 38 Op. Att’y Gen. 10 (1949), the attorney general responded to a district attorney’s inquiry whether a prohibitory feature of sec. 176.05(9m), 1947 Stats., applied to require a transfer where a tavern owner desired to move a barroom from the ground floor to the basement of another portion of the same building. His conclusion was that, “Both the present and intended locations of the bar are part of the licensed premises of the operator and were such prior to June 30, 1947.” Thus the bar could be located upon any part of the premises “that the operator desire[d]...” *Id.* at 10-11.

Furthermore, “it is sufficient to note premises has been held to mean not only the bar room or the particular room or rooms where liquor is sold or dispensed, but is, roughly, inclusive of the entire business space or property.” *Id.* at 11.

In an opinion seemingly on all fours with the instant case, the attorney general received an opinion request from the district attorney in Eagle River, Wisconsin, framed as follows: “You inform us that there are many resorts in your

county and that the area covered by these resorts frequently totals many acres. You asked whether a licensee who obtains a license for the entire resort may operate more than one bar on his place.” 37 Op. Att’y Gen. 534 (1948).

Noting that the term “premises” was not defined in § 176.05, 1947 Stats., in language mirroring that of the present § 125.02(14m), Wis. Stats., the opinion states:

In effect the “licensed premises” means that which is described in the license itself. Subsec. (5) provides for the form of the application and license, stating that they shall *designate the premises* where the liquor is to be sold. From this it is clear that if the application and the license describe the entire resort, then such constitutes the licensed premises and the owner or operator is entitled to sell liquor from any part of the premises. For example, he may have a tavern in a building within the limits of the resort and a service bar in the dining room of the main lodge of the resort.

Id. at 534-35 (emphasis added).

Thus, “where as in this case, the premises are described only by street and number, it is plain that the licensed premises are the premises owned by the licensee at that address.” *Id.* at 535, quoting *Fortino v. State Liquor Auth.*, 273 N.Y. 31, 35, 6 N.E.2d 86 (1936).

Even if a highway divided the resort with a bar on either side, that would “not alter the conclusion . . . so long as the entire resort was described in the license and the whole was operated as a single enterprise.” *Id.*

Of course reasonable limits would have to be observed in all cases. Here, as in other fields, rules of reason and common sense must be applied. If the premises sought to be licensed is a continuous, unified enterprise, all under the control of the applicant, then the whole property can be included in the licensed premises and liquor can be sold on any part of it.

Id. (emphasis added).

Finally, the attorney general was asked whether liquor purchased in a room licensed for consumption off the premises, could be consumed in a restaurant licensed to serve beer, on the same property. 38 Op. Att'y Gen. 540 (1949).

Citing prior opinions, the attorney general concluded:

Although these opinions consider the problem from the standpoint of search without a warrant, sec. 176.05(5) provides that the application for a license shall "designate the premises" where such liquor is to be sold. It does not provide for the licensing of a portion of the premises. If it were permissible to license a portion of, or a room on, the premises, it would be very difficult to enforce the laws pertaining to the regulation of intoxicating liquor, and I do not believe that the legislature so intended. The answer to your question would depend upon all of the facts and circumstances involved. For example, if the building where the liquor is sold is a portion of premises operated as a single enterprise, such as a resort, I would say that it [the packaged liquor] could not be consumed on any portion of the resort property. On the other hand, if the liquor store is a separate and distinct property having no relation whatsoever to the restaurant, I would say that it would be permissible to consume the liquor purchased there in the restaurant.

Id. at 542-43 (emphasis added).

Thus in opinions dating back as far as 74 years, the attorney general has consistently opined that the statutes regulating liquor should be construed such that the licensed premises consist of the entire property described in the license, including, for example, an entire resort property described by a street address. The only relevant statutory change after these opinions was the creation of § 125.02(14m), Wis. Stats., which simply states that the term "premises" means the "area described in the license or permit." This is wholly consistent with the definition applied by the attorney general.

Clearly, the legislature acquiesced in these longstanding constructions by this Court and the attorney general. It is assumed that whenever the legislature

enacts a provision, it had in mind previous statutes relating to the same subject matter, *State v. Hungerford*, 84 Wis. 2d 236, 267 N.W.2d 258 (1978), and acted with full knowledge of existing laws, including decisions of the Supreme Court interpreting the relevant statutes, *Glinski v. Sheldon*, 88 Wis. 2d 509, 276 N.W.2d 815 (1979). Constructions by the attorney general also have important bearing on the meaning of a statute, and when there is a longstanding legislative acquiescence in such constructions, that acquiescence is to be given considerable weight. See *State ex rel. City of W. Allis v. Dieringer*, 275 Wis. 208, 219, 81 N.W.2d 533 (1957); *State v. Anderson*, 160 Wis. 2d 435, 441-42, 466 N.W.2d 681 (Ct. App. 1991).

This construction is further supported by foreign precedent and Wisconsin precedent in analogous areas, as well as by the Department of Revenue's application forms created pursuant to §§ 125.04(3)(a), (3)(b), Wis. Stats. Both the original and the renewal application forms contain small spaces to insert the address of the premises at line 4, approximately one-half a line for the premises description at line 9, and a half line for a legal description (if a street address was given at line 10), leaving little room for a detailed description of rooms within buildings. (See S-App.001; A-App.029) These forms are usually filled out, submitted and processed by laypersons, not lawyers. This longstanding construction of the statutes is also supported by the League of Wisconsin

Municipalities, Municipal Licensing and Regulation of Alcohol Beverages, at 31-32 (4th Ed. 2002). (A-App.041-042)

In *State v. Hall*, defendant challenged § 161.49, Wis. Stats., on the basis that it was void for vagueness because it did not define the term “premises” as either a school building or the land on which it was located. 196 Wis. 2d 850, 872, 540 N.W.2d 219 (Ct. App. 1995), rev'd on other grds., 207 Wis. 2d 54, 557 N.W.2d 778 (1997).

Rejecting this contention, the court explained:

The term “premises” is not defined in the statute. However, a person of ordinary intelligence is well apprised of its meaning. The American Heritage College Dictionary 1080 (3rd Ed. 1993) defines “premises” to include “land and the buildings on it.” Black’s Law Dictionary 1180 (6th Ed. 1990) defines “premises” to include “land with appurtenances and structures thereon.”

Id. at 872-73.

Thus the statute provided fair warning that the region contemplated by the statute began at the school property line. *Id.*; see also *R&J Farms, Inc. v. N.Y. State Liquor Auth.*, 599 N.Y.S.2d 62, 194 A.D.2d 611 (1993); *Davis v. City of Charlotte*, 242 N.C. 670, 675, 89 S.E.2d 406 (1955); *State v. Camper*, 261 S.W.2d 465 (Tex. Civ. App. 1953).

Courts interpret statutes reasonably, to avoid absurd results. *Dahir Lands, LLC v. American Transmission Co., LLC*, 2010 WI App 167, ¶13, 330 Wis. 2d 556, 794 NW.2d 784. As the license imposes a restriction on land, as with building restrictions in zoning ordinances, the statutes should be strictly construed in favor of the licensee. *State ex rel. Bollenbeck v. Vill. of Shorewood Hills*, 237

Wis. 501, 297 N.W. 568 (1941). Any ambiguities should be construed in favor of free and unrestricted use of property. *State ex rel. B'Nai B'Rith Found. of the U.S. v. Walworth County Bd. of Adjustment*, 59 Wis. 2d 296, 208 N.W.2d 113 (1973)

Therefore, use of a street address is sufficiently definite to describe the licensed premises as all of the land and buildings situated thereon. It also complies with the longstanding interpretation and construction by licensors, licensees, the attorney general and this Court.

B. The Court of Appeals Created a New, Impractical, Imprecise and Unworkable Standard.

The court of appeals did not draw a bright line, but instead indicated that the street address used in this case was insufficient, creating by judicial fiat a standard with no clear ending point. If a street address is insufficient, would a legal description of a resort or country club be any more specific or precise? If the description is limited to that area where beverages are sold or stored, then what if they are consumed elsewhere on the premises? Must the license describe the exact dimensions of the barroom? Of the bar itself? The court does not say.

II. UNDER THE COURT OF APPEALS' DECISION LICENSES CAN BE REVOKED OR NON-RENEWED WITHOUT DUE PROCESS, IN VIOLATION OF STATUTE AND APPLICABLE PRECEDENT.

The new standard could be used to effect a *de facto* nonrenewal without due process. The court concluded that the license was void because it found the description had failed to meet the statutory requirements. Therefore, even though

a license had been granted under which the licensee had operated for four years, its continuation was placed in legal limbo. Although the court stopped short of saying that there was no license, the implication is clear. Thus, the license was rendered void without the protections of a due process hearing under § 125.12, Wis. Stats., or at a minimum, was non-renewed as to the remaining portion of the licensee's property without a due process hearing.

While a licensing body can exercise legislative discretion in issuing a license, it can only non-renew or terminate for specified causes using the procedures under § 125.12, Wis. Stats. The power to unilaterally reduce the area of a license on nonrenewal would be subject to abuse, leading to litigation, as many similarly situated licensees would seek to determine whether they still had a valid license.

This Court should not permit such an unreasonable, unfair and unjust result. Such a decision could wreak havoc throughout the state, jeopardizing many licenses and businesses, and is contrary to applicable precedent. *See Pascoe v. State*, 195 Wis. 348, 218 N.W. 365 (1928) (license held valid license despite clerk's error in failing to describe the licensed premises); *State v. Tarsitano*, Case No. 1207-C (Kenosha County Court June 20, 1995) (T-App.001-005) (dismissing charge of operating without license):

It strikes this Court as being grossly unfair to permit the city to issue a license and collect the fee, and then have the State charge the defendant with selling liquor without a license and subjecting him to a criminal penalty without the State first having to establish the invalidity of a license issued by the city.

Section 176.121, Stats. sets forth the procedure for revoking a license because of the invalidity of its issuance.

Slip Op. at 4.

“Constitutional due process protections apply to procedures affecting licenses necessary to engage in one’s livelihood, *Bell v. Burson*, 402 U.S. 535, 539 (1971), and it has been held that the interest in renewal of a liquor license is a property interest for purposes of the fourteenth amendment.” *Tavern League v. City of Madison*, 131 Wis. 2d 477, 489, 389 N.W.2d 54 (Ct. App. 1986), *petition to review denied* (citation omitted). It is for that reason that the legislature created the due process protections of Wis. Stat. § 125.12. *Id.*

III. IN THE ALTERNATIVE, THE COURT’S DECISION SHOULD BE PROSPECTIVELY APPLIED.

If this Court were to find the street address insufficient, its decision should be given prospective application to new applicants only.

This Court generally adheres to the “Blackstonian Doctrine” of retrospective operation. However, it has acknowledged that inequities may incur when a court departs from precedents and announces a new law. Therefore, it uses the device of prospective overruling, sometimes known as “sunbursting”, to limit the effect of a newly announced rule. *Harmann v. Hadley*, 128 Wis. 2d 371, 379, 382 N.W. 673 (1986) (citations omitted).

Whether to prospectively apply a judicial holding is a question of policy. “An appellate court employs the technique of prospective overruling to mitigate

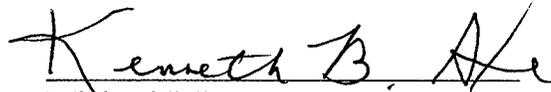
hardships that may occur in the retroactive application of new rules.” *Id.* at 378-79. Avoidance of draconian results justifies prospective application of any such ruling in this case.

CONCLUSION

For the reasons set forth above, amicus curiae Tavern League of Wisconsin, Inc., respectfully requests that this Court issue its order reversing the decision of the court of appeals and holding that the license renewal application properly complied with all applicable statutes in describing the licensed premises.

Dated this 27th day of February, 2012

BOARDMAN & CLARK LLP



Michael J. Lawton

State Bar No. 1016419

Kenneth B. Axe

State Bar No. 1004984

740 Regent Street, Suite 400

P.O. Box 1507

Madison, Wisconsin 53701-1507

(608) 257-7766

Attorneys for

Tavern League of Wisconsin, Inc.

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(Kenosha County Circuit Court, June 20, 1995).....T-App.001-005

CERTIFICATION OF COMPLIANCE WITH RULE § 809.19(8)(b) and (c)

I hereby certify that this brief conforms to the rules contained in § 809.19(8)(b) and (c) for a brief and appendix, if any, produced using the following font:

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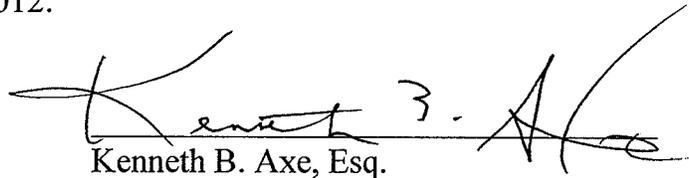
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Dated this 27th day of February, 2012.


Kenneth B. Axe, Esq.

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STATE OF WISCONSIN
SUPREME COURT

02-27-2012

**CLERK OF SUPREME COURT
OF WISCONSIN**

APPEAL NO. 2010-AP-2900

WISCONSIN DOLLS, LLC,

Plaintiff-Appellant-Petitioner

v.

**TOWN OF DELL PRAIRIE and
TOWN OF DELL PRAIRIE TOWN BOARD,**

Defendants-Respondents

**BRIEF AND APPENDIX OF AMICUS CURIAE
TAVERN LEAGUE OF WISCONSIN, INC.**

BOARDMAN & CLARK LLP

Michael J. Lawton
State Bar No. 1016419
Kenneth B. Axe
State Bar No. 1004984
740 Regent Street, Suite 400
P.O. Box 1507
Madison, Wisconsin 53701-1507
(608) 257-7766

Attorneys for the
Tavern League of Wisconsin, Inc.

February 27, 2012

STATE OF WISCONSIN : CIRCUIT COURT : KENOSHA COUNTY
BRANCH NO. II

STATE OF WISCONSIN,

Plaintiff,

-vs-

DAMIANO TARSITANO,

Defendant.

DECISION
Case No. 1207-C

This matter comes before the Court on a motion by the defendant to dismiss the complaint of the plaintiff. The defendant was arrested on the 10th day of February, 1970, at the City of Kenosha, Wisconsin. The complaint on which the warrant was issued charges that the defendant:

".....did, without a license or permit, sell intoxicating liquors; in that at approximately 5:53 P.M. on said date said defendant sold affiant two 'shots' of brandy with water at defendant's Blue Carpet Bar located at 3931 - 45th Street, in said city; that at the time of said sales defendant's alcohol beverage license was void because on the date of defendant's application and on the date of the issuance of said license defendant was indebted to Gerolmo Wholesale Beverage Company, 2211 - 56th Street, in said city, in the amount of \$230.70, for the purchase of intoxicating liquor received on invoice #2990, dated May 22, 1968; that said indebtedness had existed for a period of more than 30 days, to wit, 404 days; that affiant has knowledge of the above alleged facts from his own personal observation of the invoice records of said Gerolmo Wholesale Beverage Company and of defendant's liquor beverage license application filed on April 15, 1969, which license was granted on May 19, 1969, and issued as License Number 42 on June 28, 1969; said conduct by the defendant being contrary to the provisions of section 176.04(1). wfe

The issue raised by the defendant's motion is: Was the license issued on June 28, 1969, void or merely voidable? Secondly, if the Court holds the license to be void, are the provisions of sec. 176.05 (23) Stats. unconstitutional?

Under the pleadings it is undisputed that at the time of the arrest the defendant had a license for the sale of intoxicating liquor, which had been issued to him on June 28, 1969, for use at the premises involved. The real basis for the arrest was that the license was void because it was issued contrary to the provisions of sec. 176.05 (23) Stats., which provides as follows:

"(23) Credit Restrictions. (a) No retail licensee under this section shall receive, purchase or acquire intoxicating liquors directly or indirectly from any permittee except upon terms of cash or credit for not exceeding 30 days.

"(f) No retailers' license shall be issued for a term beginning on or after July 1, 1958, to any person having any indebtedness for intoxicating liquors to any permittee under this chapter of more than 30 days standing. In each application for a license for a term beginning on or after July 1, 1958, the applicant shall state whether or not he has any indebtedness for intoxicating liquors to any such permittee which has been outstanding more than 30 days."

The plaintiff contends that the license under which the defendant was operating at the time of the offense was void in accord with the provisions of sec. 176.05 (5), the pertinent part of which provides as follows.

"The application for a license to sell or deal in intoxicating liquor and fermented beverages as defined in s. 66.054 shall be in writing on a form furnished by the commissioner of taxation and sworn to by the applicant..... No license shall be issued to any person in violation of any provisions of this chapter, and any license so issued shall be void.

The defendant contends that if the license was issued contrary to the provisions of sec. 176.05 (23), such license was merely voidable and proceedings first had to be taken under the provisions of sec. 176.121 Stats., which provides:

"(1) Upon complaint filed by the commissioner of taxation, or any of his duly authorized employes, with the clerk of any court of record in the jurisdiction in which premises of the licensed person complained of are situated, that any such licensed person therein has at any time violated any provision of this chapter..... or that he does not possess the qualifications required by this chapter to entitle him to a license, the clerk of said court shall issue a summons commanding the person so complained of to appear before it not less than 20 days from its date, and show cause why his license should not be revoked or suspended. Such summons and a copy of the complaint shall be served at least 20 days before the time in which such person is commanded to appear, and may be served either personally or upon the person in charge of the place to which such license relates.

"(2) If such person shall not appear as required by the summons, the allegations of the complaint shall be taken as true; and if the court shall deem such allegations sufficient, it shall order the license suspended for a period not exceeding 90 days or revoked, and notice thereof shall be given by the clerk of said court to the person whose license is so revoked or suspended; but if such person

shall appear and answer the complaint, the court shall fix a date for trial not more than 30 days after the return date of the summons, at a place within the judicial circuit if the complaint is filed in a circuit court. Trial shall be had before the court without a jury. If upon such trial the court shall find the allegations of the complaint to be true it shall order the license suspended for a period not exceeding 90 days or revoked, and if untrue the proceeding shall be dismissed. When a license is revoked or suspended, the local licensing body which issued such license shall be notified by the clerk; and if such license be revoked, no other license shall be granted to such person or to any person in privity of interest with him as owner, lessor, bailor or lender, within 12 months of the date of its revocation, and no other license shall be granted to cover the premises covered by any revoked license within 60 days of the date of the revocation of such license; nor shall any part of the money paid for any license so revoked be refunded. If any appeal be taken from such revocation, any period during which the order is stayed shall be added to the 12 months and to the 60 days, respectively. The findings and order of the court shall be filed within 10 days after the trial and said order shall be final unless appeal be taken to the supreme court in the manner provided for appeals in civil cases."

It strikes this Court as being grossly unfair to permit the City to issue the license and collect the fee, and then have the State charge the defendant with selling liquor without a license and subjecting him to a criminal penalty without the State first having to establish the invalidity of the license issued by the City. Section 176.121 Stats. sets forth the procedure for revoking the license because of the invalidity of its issuance.

The license once having been issued, if it was subsequently determined by the City that it was issued in violation of the provisions of Chapter 176, the procedure for its revocation is set forth in Sec. 176.11 Stats. If, on the other hand, it is the contention of the State that the issuance of such license by the municipality was void, Sec. 176.121 of the statutes sets forth the proceedings that are to be taken to revoke the license.

The very existence of the two provisions referred to above for the revocation of an alleged void license indicates the legislative intention that the procedure will be followed rather than the licensee being arrested and charged with violating the provisions of Chapter 176 by selling intoxicating liquor under a license that is alleged to be void.

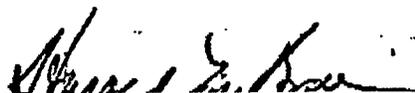
Also see 33 Am Jur, page 383 from which the following is quoted:

"Licenses from the public are in all cases granted under statutory enactments or municipal ordinances, and where these provide a method of revocation, that method must be followed."

For the foregoing reasons it appears to this Court that under the circumstances the specific charge made against the defendant must here be dismissed, and accordingly the motion of the defendant is granted.

Dated January 20, 1971.

BY THE COURT:



CERTIFICATION OF COMPLIANCE WITH RULE § 809.19(8)(b) and (c)

I hereby certify that this brief conforms to the rules contained in § 809.19(8)(b) and (c) for a brief and appendix, if any, produced using the following font:

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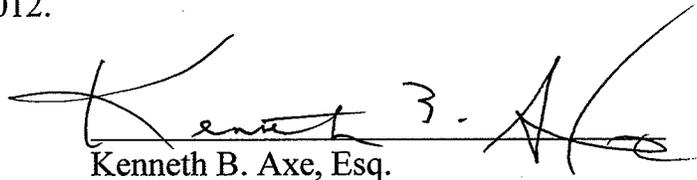
CERTIFICATION OF COMPLIANCE WITH RULE § 809.19(12)(d)

I hereby certify that I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of § 809.19(12)(d).

I further certify that the electronic brief is identical to the text and format to the paper copy of the brief filed.

A copy of this certificate has been served with the paper copies of this filing with the court and served on all opposing parties.

Dated this 27th day of February, 2012.


Kenneth B. Axe, Esq.