

**EDMONTON
COMMUNITY STANDARDS AND LICENCE APPEAL COMMITTEE**

Citation: v Development Services (City of Edmonton), 2024 ABESLAC 10005

Date: May 14, 2024
Order Number: 342054035-002
CSLAC File Number: CSLAC-24-005

Between:

and

The City of Edmonton, Development Services

Committee Members

Kathy Cherniawsky, Chair
Don Fleming
Chris Samuel

DECISION

- [1] On May 7, 2024, the Community Standards and Licence Appeal Committee (the "Committee") heard an appeal that was filed on March 15, 2024. The appeal concerned the decision of Development Services to place conditions on Business License 342054035-002 issued to Southy Public House Ltd. (The Twin Otter Pub), pursuant to Section 25 to 26 of the *Business License Bylaw 20002*.
- [2] The subject property is located at 1305 - 175 Street SW.
- [3] The appeal hearing on May 7, 2024 was held through a combination of written submissions and video conference. The following documents were received prior to the hearing and form part of the record:
 - The City of Edmonton submissions, including a submission from the Edmonton Police Service and submissions the Appellant has provided during the licence review.
- [4] The following exhibit was presented during the hearing and forms part of the record:
 - Exhibit A – Email from Anger Management Course instructor.

Preliminary Matters

- [5] At the outset of the hearing, the Chair confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [6] The Chair outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [7] The Chair proposed that the appeals for CSLAC-24-005 and CSLAC-24-006 be heard together as the parties, the reasons for decision, all the documentation and background evidence are identical.
- [8] There was no opposition from the parties.
- [9] The appeal was filed on time, in accordance with Section 30(1) of the *City of Edmonton Bylaw 20002 Business Licence Bylaw (Business Licence Bylaw)*.

Summary of Hearing

- i) Position of the Appellant,*
 - [10] The Appellant provided the Committee with a letter from his anger management instructor (marked Exhibit A).
 - [11] He has been in this business for 30 years and is serious about the operation of the businesses in this industry.
 - [12] In his opinion, the evidence provided by the Edmonton Police Service is not accurate.
 - [13] He has been targeted by the Edmonton Police Service as someone who is dangerous and does not understand the responsibilities of being an owner and manager in this business.
 - [14] He accepts the evidence provided by the Police at his court date. He accepted a guilty plea with a conditional discharge of 18 months probation. This would allow him to travel to the United States to watch his son play University lacrosse.
 - [15] There was a charge in 2015 for an assault. He is unsure how the Police Officer got that information.
 - [16] In the 2015 incident, a gentleman was arguing with him in a liquor store and charged at him. He pushed the man into a wall to get him away from him. The Crown Prosecutor never brought the case to trial because it was deemed that he was reacting to being in an unsafe position at that time.
 - [17] The Police Officer indicated that alcohol was involved during the most recent incident. Being a responsible business owner for 30 years, he does not drink while he is working. He has a strict set of guidelines for himself and his employees.

- [18] The Judge and Crown Prosecutor accepted that the police report about the recent incident was wrong when it stated that he punched the individual. The individual had been argumentative towards him for 20 minutes which is all on video. He asked the individual to step away, but he did not punch him. It was accepted in Court that he grabbed the individual by the shoulder and pulled him to the ground.
- [19] The Police have never talked to him about the incident, asked for a statement, or asked for a breathalyzer. He called the Police to have the incident put on record, but nobody called him back. The only time there was any involvement with the Edmonton Police Service was when they phoned him the next day and asked him to come to the police station as they were charging him with assault.
- [20] He has broken up multiple altercations in his years of business. The Edmonton Police Service and the Liquor Control Board of Alberta have attended his businesses to do inspections and have commended him on how well he operates them.
- [21] In 2013, he hired the individual involved in the assault incident as a part time cook who was a hard working employee with a passion for cooking. After a short time, he promoted the employee to a part time kitchen manager. The full time kitchen manager then quit and, after several years, the part time manager was promoted to the full time kitchen manager.
- [22] In 2016, he was given the opportunity by the owners of Cameron Home Developments to open a new bar in the Windermere area which was called the Twin Otter Pub.
- [23] The Appellant approached the kitchen manager and offered him the opportunity to be kitchen manager at both pub locations and to invest in the restaurant. The individual agreed. The Appellant was then notified by someone from the kitchen manager's previous job that the individual had been fired for sexual harassment.
- [24] The Appellant had hired a general manager for the Twin Otter Pub even though he heard he had substance abuse issues. He opened the pub on November 27, 2019, around the time Covid started. That is when he realized the gentleman had serious drug issues and was relieved of his duties. The full time kitchen manager was then given more responsibilities to help keep the business open. Once Covid was rampant, they had to close the business for a short time.
- [25] The kitchen manager then assumed the duties of the acting manager but when the Appellant found out the acting manager had a sexual assault/harassment history, he approached the employee about the claim and they exchanged words.
- [26] Due to financial restraints, he had to lay off all of his employees and tried to keep up the building and business himself. He approached the kitchen manager who was laid off and asked him to come and clean the place and help him keep the business open. The individual became hostile as he did not want to be a janitor.

- [27] After a few years, he reopened the business while following the Covid rules.
- [28] He provided letters from individuals stating that the manager was hostile. The Appellant's business partner also indicated that he was not happy with that employee and wanted him demoted back into the kitchen. The employee found out and an altercation took place where the employee was yelling at him because of the demotion.
- [29] As soon as the charges were in place, a lawsuit was filed against him by the employee.
- [30] The Appellant is serious about his businesses and agreed to take an anger management course. He does not like to be labeled by the Edmonton Police as a danger to the community.
- [31] The Appellant provided the following information in response to questions by the Committee:
 - a) He would like all three of the conditions to be removed.
 - b) The issues started after the manager became an investor in the business which comes with a certain level of expectation that did not happen. There were constant issues.
 - c) He continually struggled to keep the businesses open in the wake of Covid and ongoing issues with the employees.
 - d) He and his partner agreed to demote the manager due to altercations.
 - e) He took full responsibility for his altercation with the employee and chose to plead guilty to the charge and was given a conditional discharge so he could travel to the United States to watch his son play lacrosse.
 - f) Wanting to keep the business operating, the Appellant took over the employee's position and he is no longer employed at the business.
 - g) During the altercation, the employee was yelling loudly and the Appellant grabbed the employee to remove him from the situation. The Appellant went outside and immediately called the Police who arrived several hours later, retrieved a video and asked for witness statements.
 - h) Charges were resolved in January. To his knowledge he did not have any restrictions or conditions placed on him after he was charged.
 - i) Following his court date he was required to contact his Probation Officer. His Probation Officer deemed him a low risk after two sessions. He no longer has to report to her in person. He reports by phone interviews or through the App on his phone where he answers three questions every month in the report to his Probation Officer.

- j) He was advised to take an anger management course which he did. He is not allowed to have any contact with the former employee.
- k) With respect to the 2015 charge, he went to the police station regarding an altercation at the liquor store and provided the Police with his statement. After his lawyer reviewed the file, it went to the Crown Prosecutor. The charges were withdrawn approximately two months later.
- l) His probation for the 2023 incident will be complete by May 25, 2025.

ii) Position of the Decision Maker

- [32] S. Exner is the Business Licencing Program Manager for the City of Edmonton and was joined by several other City Parties and Sgt. Newell, Edmonton Police Service.
- [33] He provided all of the evidence that was considered when he made the decision.
- [34] He is the delegated authority to make business license review decisions.
- [35] He reviewed the events that took place when he reviewed the business license and his decision to impose conditions for The Bend Lounge and The Twin Otter Pub.
- [36] A copy of the Appellant's Police information check and the additional details that Sgt. Newell provided from EPS were also included with the licensing record that was provided to CSLAC.
- [37] On January 25, 2024, the renewal applications for both of these business licenses were initiated when they received the managers police information checks that are required under the minors prohibited alcohol sales business license category. The police information check for the Appellant indicated the recent conviction for an assault that had occurred on March 3, 2023.
- [38] As required under the *Business License Bylaw* for any minors prohibited drinking establishments, the police information checks were forwarded to the Edmonton Police Service members of the City's Public Safety Compliance Team on January 25, 2024 for review. The Edmonton Police Service responded on February 1, 2024 and provided more details of the assault that had occurred at The Twin Otter Pub between the Appellant and his employee/business partner in the presence of customers and employees.
- [39] Edmonton Police Service indicated that alcohol may have been a factor in the incident, but did not provide any detail regarding who was alleged to have consumed alcohol. EPS provided details of a prior incident in 2015 that resulted in the Appellant being charged with assault. While the charge was subsequently withdrawn, EPS indicated that it draws a pattern of violence and physical confrontation. Their recommendation was that if a business license was issued, it should be with the condition that the Appellant has no involvement with the businesses. The renewal applications were escalated to him for

business license review based on that recommendation. After the renewal documents were reviewed, a notice was issued with the proposed conditions for both businesses.

- [40] The conditions originally proposed were consistent with EPS's recommendation, but not quite as restrictive. EPS recommended that the Appellant should not be involved in any business activities. He felt this was not reasonable or practical given that the Appellant has ownership in both businesses. He imposed conditions that would restrict the Appellant from any business activities on the premises only during public operating hours with a separate manager required to be in control of the premises during those times. That notice of proposal was issued February 15, 2024. The Appellant was given two weeks to respond before a final decision would be made.
- [41] He received a written response from the Appellant on March 1, 2024 that was dated February 27, 2024. In his response, the Appellant outlined his 30 years of experience in the hospitality industry, including as a business owner and operator over the past 15 years. He also outlined his charitable fundraising work. The Appellant provided additional information about the incident on March 3, 2023 and the court proceedings, specifically that he had not consumed alcohol as EPS had suggested. He indicated that the assault was triggered by significant provocation from the employee. The Appellant had assumed responsibility for his role in the incident including having pled guilty to the assault charge and completing anger management training. The Appellant supplied numerous statements from current and former employees and customers and business associates who spoke very highly of him as a responsible business owner and manager.
- [42] He identified a pattern of hostile and aggressive behavior exhibited by the employee over several years leading up to the incident on March 3, 2023. The appellant alluded to some video evidence that proves the incident with the employee was relatively minor. However, there was no video record with the response the Appellant submitted and did not address the circumstances around the 2015 assault charge which was subsequently withdrawn. Upon reviewing all the information that the Appellant supplied, he identified a number of mitigating factors that he felt should affect his decision. That includes the Appellant's reputation as a responsible business owner. Characterizations of the employee suggests that there was a strong likelihood that he did, to some extent, provoke the Appellant to assault him in March of 2023 even though the assault did not result in any serious injury.
- [43] The Appellant's willingness to accept responsibility for his actions and the likelihood that he was not intoxicated at the time of the incident supports his claim that the incident was provoked. Based on that information, he determined that the conditions originally proposed were too restrictive but necessary. He relaxed the proposed conditions to allow the Appellant to maintain more site management responsibilities with the expectation that one other manager would still be on the premises while the business is open to the public. The Appellant was to notify him within 30 days if he was charged with another offense. Given the lengthy pattern of behavior by the employee, he imposed a new condition that

prohibits the employee from being employed as a manager of either of these businesses during operating hours.

- [44] While he appreciates the Appellant's accountability for his actions, including the most recent submission about his anger management work, the efforts related positively to his employees and business associates, there were still a number of factors that he could not overlook. Particularly the 2023 assault and the alleged assault in 2015 to establish some pattern of physical confrontation. From a public safety perspective, this is concerning behavior in someone who's the manager of a drinking establishment. Particularly the incident in March, 2023.
- [45] As the manager of a drinking establishment, that individual is responsible for ensuring that a business complies with relevant law requirements and one of those requirements under the *Business License Bylaw* is to refuse entry and remove any patron who is combative, righteous, disorderly or intoxicated from the premises. Based on that information, the Appellant seemed unable to resolve or diffuse a hostile situation with a colleague without resorting to physical violence and while that instant may have been provoked, it is in his opinion, that it does not excuse the escalation to violence. In his opinion, the Appellant's behavior has been called into question and to some extent, his ability to safely and effectively handle similar situations that would involve patrons of his businesses particularly given that it is a setting where intoxicated patrons, maybe more prone to provoking negative reactions in other people.
- [46] The witness statements and the testimonials that the Appellant submitted indicate that the employee demonstrated a pattern of troubling behavior with colleagues, customers, and business associates that date back to at least 2016. The employee was allowed to maintain his employment at The Bend Lounge and was given management responsibilities and ownership stake in The Twin Otter Pub by the Appellant in 2019. In his opinion, this is not consistent with the high standard of safety, security, leadership, and accountability. He appreciates that there are recruiting challenges for service industry management positions; however, the Appellant had ample opportunities to address the employee's behavior or sever his professional relationship with him entirely well before that incident.
- [47] Given the Appellant's recent assault conviction, it is his opinion that there needs to be some additional management oversight to ensure that both of these establishments are safe for both patrons and employees.
- [48] On March 7, 2024, he submitted his final decision to issue both licenses with conditions. The conditions are eligible for review before June 9, 2025 with the anticipated conclusion of the Appellant's probationary period that is expected to end on May 26, 2025.
- [49] If there are no further incidents of violence, subsequent criminal charges, or convictions involving either the Appellant or other managers, then consideration will be given to relaxing the conditions further or removing them entirely. The Appellant is still the manager and the majority shareholder for both of these establishments.

[50] It is his recommendation that the Community Standards and Licence Appeal Committee uphold his March 7, 2024 decision to impose the following conditions:

1. During all hours that the business is open to the public, the Licensee must ensure that at least one primary manager, other than [the Appellant], is on the premises and in care and control of the business.
2. The licensee must notify the Business Licensing Program Manager for the City of Edmonton of any new charges against [the Appellant] within 30 days of the date he is charged, if applicable.
3. The licensee must ensure that the employee is not in care and control of the premises and is not involved in any management responsibilities on the premises during all hours that the business is open to the public. The employee may be employed on the premises in a non-management capacity during operating hours, and may be involved in management activities as long as they do not take place on the premises during operating hours.

[51] The Decision Maker provided the following information in response to questions by the Committee:

- a) He is tasked with reviewing the information that is before him.
- b) Business License reviews were not very common until just a few years ago.
- c) There is a possibility that there were previous incidents that did not escalate for a review and he did not consider that too heavily in his decision.
- d) The incident is relatively recent and coupled with the 2015 assault charge there was reference to some video evidence that corroborated some of the events of 2015. Even though it did not result in a conviction or trial, there was still the potential that there was some pattern dating back to at least 2015.
- e) Generally speaking, the decision is based on the incident before him and the materials the EPS and the Appellant provided.
- f) What was more compelling was the witness testimonials that spoke to the Appellant's reputation on an ongoing basis. Not specifically the length of time that he's been in the industry, but rather his reputation with his colleagues, his business associates, and his employees indicated he was a responsible business owner. That was a more compelling piece that came from the Appellant's response.

- g) The *Bylaw* requirements refer to removal or refusal of a person who behaves in a concerning way, but does not necessarily distinguish that person being a patron or an employee. That regulation is geared primarily towards patrons. Incidents with colleagues that cannot be resolved without violence are potentially an indication that it would also be challenging to resolve similar disputes with the patron.
- h) There is a requirement for all managers and owners to supply police information checks for review upon renewal and those police checks then are forwarded to the Edmonton Police Service for a consultation. EPS will review the police information check and provide some additional background information and then make a recommendation about whether to issue the license, refuse the license, or impose conditions on the business license. That is what we would consider a negative recommendation and trigger a business license review.
- i) The Appellant's position as the manager of a drinking establishment should exercise good judgment and deal with patrons on a regular basis. He is the individual who would need to be held to a higher standard around the conduct of things.
- j) It is not just the review of the refusal of entry to patrons, it is being able to properly and safely remove them from the premises without resorting to physical violence.
- k) He factored into the decision to relax the condition that would allow the Appellant to maintain on site management responsibilities during public operating hours. However, some additional management support would be required while the Appellant is under probation to be able to kind of intervene if there is a situation involving another employee or patron where some additional support might be required.
- l) His role is to review the information that's presented to him. He could not comment on the transcript of the guilty plea that was entered in Court.
- m) Sgt. Newell indicated that he does not have access to the Court transcript. The information he has is what EPS is bringing forward to the court process and the outcome of the court process.
- n) S. Exner indicated that the licences would have been up for renewal on November 30, 2024. The renewal period begins 45 days leading up to November 30, 2024 and 90 days following that.
- o) Section 24(e) is structured differently than the previous *Business Licence Bylaw* which was prescriptive in the types of conditions that could be applied but still established grounds for a license review and conditions being imposed one possible outcome. The *Bylaw* was restructured so the grounds for a license review were discussed in Section 24 of the *Bylaw* and, in this case particularly, it would be Section 24(e) of the *Bylaw* that states:

In the opinion of the City Manager, based on reasonable grounds, it is in the public interest to review the license under one or more of the following reasons:

- (iv) concerns are raised by a consulting agency through a consultation in accordance with section 11; or any other public interest reason.
- (v) any other public interest reason.

p) C. Hodgson-Mousseau indicated that Section 2(l) of the *Business Licence Bylaw* defines Licence Review and states in part it means a review of the application, or licence, or Business Category to determine if the issuance or renewal will be refused, if the existing licence or Business Category will be suspended or cancelled, or if conditions will be imposed on the licence.

s) S. Exner clarified that there was video evidence of the 2015 incident, but he did not receive a copy of the video evidence from EPS or the Appellant. The Appellant indicated there may have been evidence in the 2023 incident as well, but did not supply it.

t) The 2015 incident did not result in a conviction. He was presenting the information that EPS gave to him with the intention to demonstrate that there was at one point substantial cause to bring charges in the first place that could point to a potential pattern. However, he would still consider the 2023 incident, specifically the recency of that incident and the fact that it occurred on the business premise in full view of customers, the more substantial of the two. He considers 2015 to be a minor point against the Appellant in this case.

u) He would consider this situation as a potentially emerging pattern or potentially an escalating pattern. However, a very short one. Considerations for conditions placed on the other types of establishment where there's a long pattern of calls for service are distinguishable. All business license reviews are treated independently, so the circumstances around those reviews are very different. The conditions that are imposed are usually also very different. They have had anywhere from about 7 to 11 conditions that have been imposed on those particular establishments that are very restrictive on very specific operating practices that speak specifically to public safety, kind of like operational deficiencies.

v) In this case, this has more to do with leadership and accountability in terms of ensuring a safe space and being responsible for patrons and customers.

w) These are very different circumstances and the conditions are proportionate to the severity of each one and related to the Appellant's role as a manager of a licensed drinking establishment which does have corresponding *Bylaw* requirements to be able to address such situations safely.

- x) He has imposed similar conditions on two other occasions, but those were slightly different. Those involved managers that had sexual assault charges pending and in some of the cases, they limited their presence and business activities until the charges were resolved or convictions were recorded. There was one recent case involving conditions in response to a trafficking conviction, so this case is not without precedent.
- y) Generally, conditions are put on a particular manager when there is a clear and direct connection to the business activity. In this case, the Appellant is the manager of an establishment and has a responsibility to refuse entry or to eject people who behave poorly as the employee did.
- z) Regarding the 2015 incident, it was presented to him as occurring in a business setting so he was not aware, based on the information in front of him, that it occurred off the premises of the licensed establishments. Knowing that, if he was reviewing the information today, he would have considered that even less of a factor but not negating it as the appropriateness of conditions given the 2023 incident that occurred.
 - aa) He agreed that based on the one conviction and the circumstances around that would be a precedent with the same kind of conditions.

iii) Rebuttal of the Appellant,

- [52] He agreed with the Respondent's submissions of the events that took place.
- [53] He has had to deal with several hundred interactions over the years in the two pub locations and the Police have rarely attended the pubs to deal with issues and the patrons.
- [54] He took responsibility for the most recent employee altercation, but he does not believe the 2015 incident should be part of this appeal.
- [55] He takes pride in what he does and the operation of his businesses.
- [56] He has received positive feedback from the Police and the community.

Decision

- [57] The appeals are allowed. Business Licence 342054035-002 AND Business Licence 80176623-001 are renewed as issued with the following change:

The statements "Conditions are imposed on this licence, see Schedule A of decision notice issued March 7, 2024" are deleted and the three conditions stated in the cited decisions are deleted.

Reasons for Decision

- [58] The Committee heard two appeals concerning conditions imposed by the Program Manager of Business Licencing (the “Decision Maker”) pursuant to renewals of Business Licence 342054035-002 Southy Public House Ltd and Business Licence 080176623-001 1371195 Alberta Ltd. The renewals were processed under three categories: Alcohol Sales (Consumption On-Premises/Minors Prohibited); Amusement Establishment; and, Restaurant or Food Service.
- [59] The two appeals were heard contemporaneously as the imposed conditions, rationales and supporting submissions of both parties are identical and involve the same Licensee (the “Appellant”). These reasons apply with equal force to both appeals.

Background Chronology and Submissions:

- [60] In January 2024, the City received a Police Information Check (PIC) for the Appellant in accordance with section 9 of the *Business Licence Bylaw* as part of the normal renewal process for Alcohol Sales (Consumption On-premises/Minors Prohibited). The PIC showed that the Appellant had a recent conviction for assault.
- [61] Accordingly, on January 25, 2024, the Decision Maker requested a consultation concerning the renewals from the Edmonton Police Service (EPS) in accordance with section 11(1) of the *Business Licence Bylaw*.
- [62] On February 1, 2024, EPS responded by providing additional information and stated they would not support business license renewals if the Appellant remained involved with the businesses due to the March 2023 incident and a 2015 incident captured on video that led to an assault charge which was later withdrawn. The consulting EPS officer who had reviewed EPS files concluded:

Based on the noted information, I, on behalf of the Edmonton Police Service, cannot confirm the PICS nor do I support [the Appellant] to be an operating manager, or be left in the care and control of the Twin Otter Pub, The Bend Lounge, or any other licensed premise. Should the business license for the two noted locations be granted, my recommendation would be that they be granted with the condition that [the Appellant] provides a declaration of non-involvement with the businesses.

- [63] With this additional information, on February 15, 2024, the Decision Maker sent a Notice of Proposal to Impose Conditions on the two business licences to the attention of the Appellant:

Proposed Conditions

1. During the hours that the business is open to the public, the licensee must ensure that [the Appellant] is not in care and control of the premises, and is not otherwise involved in any management

responsibilities or business activities on the premises. [The Appellant] may be involved in any other business activities not specified here as long as they do not take place on the premises during operating hours.

2. The licensee must ensure that at least one manager, other than [the Appellant], is in care and control of the premises at all times during the hours that the business is open to the public.

[64] As entitled under section 25 of the *Business Licence Bylaw*, the Appellant sent a 28 page written response dated February 27, 2024. The Appellant objected to the proposed conditions on the following basis:

- (a) He has 30 years experience in hospitality industry and running nightclubs, bars and lounges, including 15 years successfully at the helm of lounges, taverns and pubs
- (b) Over the years, several liquor inspectors and police commended him for how professionally he runs his bars.
- (c) He takes pride in his record, training practices, employee retention rate and community service.
- (d) He acknowledges the March 2023 incident and he took responsibility for it.
- (e) The PIC and additional EPS report was authored by an officer who had no personal involvement in the matter and he takes issue with some of the allegations therein, including some that were refuted on the record in court where it was agreed the incident was very minor.
- (f) He is completing an anger management course and he has been deemed low risk by his probation officer whose contact information was included in the response.

[65] The Appellant's response included 10 letters of reference and support from employees, a landlord, a business partner, and long time patrons. Several of the writers were on site on March 3, 2023 and provided first hand accounts of the argument and assault that support the Appellant's description of the incident.

[66] On March 7, 2024, the Decision Maker issued two Decisions to Impose Conditions on the business licences. The Decisions state that after carefully considering the Appellant's response in addition to the previously submitted materials, three revised and less restrictive conditions would be imposed:

1. During all hours that the business is open to the public, the Licensee must ensure that at least one primary manager, other than [the Appellant], is on the premises and in care and control of the business.

2. The licensee must notify the Business Licensing Program Manager for the City of Edmonton of any new charges against [the Appellant] within 30 days of the date he is charged, if applicable.
3. The licensee must ensure that (the employee) is not in care and control of the premises and is not involved in any management responsibilities on the premises during all hours that the business is open to the public. [The employee] may be employed on the premises in a non-management capacity during operating hours, and may be involved in management activities as long as they do not take place on the premises during operating hours.

[67] On March 15, 2024, the Appellant appealed the two decisions to this Committee.

[68] At the hearing, the Appellant asked for removal of all three conditions. He reiterated the comments in his written submission and argued:

- (a) The 2015 incident was mischaracterized, it occurred at another business and the charges were dropped after a couple months and before any court appearance. It is unrelated to his role in care and control at drinking establishments.
- (b) The 2023 incident was the result of built up difficulties and instigated by the employee who provoked him. He immediately removed himself from the business and waited in the parking area as the employee continued to make a scene at the pub. The Appellant called police to make sure that his version of the event was in front of police. He concedes the situation with the employee should have been resolved earlier despite his other business and financial pressures. Further, he admits that his reaction on March 3 arguing, shouting and bringing the employee to the ground and moving him was a big mistake.
- (c) He pled guilty to avoid any possibility of a criminal record that would prevent him from entering the United States and visiting his son at college. At the trial, the prosecutor and judge agreed there had not been a sucker punch. The Appellant received a conditional discharge, which required him to abide by a period of probation.
- (d) After the court hearing, he reported into his probation officer as required and finished an anger management course. The instructor provided positive feedback. Currently he is classified as "low risk" and is not required to report personally. He need only answer questions on a phone app for the remainder of his probation period to receive the discharge. The probation period is set to expire in May 2024.
- (e) He has had no contact with the employee since that event and the employee has no involvement in the business whatsoever. The employee and the Appellant are involved in ongoing litigation arising out of the event.

- (f) These two incidents do not show a pattern of violent behaviour. To the contrary, his 30 years of experience and 15 years as an owner shows a pattern of good behaviour including defusing thousands of conflicts with patrons and raising funds for the community. This 30 year record outweighed the incidents.
- (g) There have been no incidents since March 3, 2023 and the business is prospering with new managers hired to replace the employee.
- (h) He takes responsibility for his mistake and has been completing all tasks as required by the probation officer. Adding the proposed conditions will constitute an additional penalty and an unwarranted blemish on his business reputation which is key to restaurant and bar survival.

[69] The Decision Maker led the Committee through his decisions and considerations in detail. In his view, the letters from colleagues, employees, partners and patrons were persuasive and led to a relaxation of the conditions that were originally proposed by the EPS and his original decision.

[70] Nonetheless, he believed that the revised conditions were warranted on reasonable grounds for the public interest even after hearing the Appellant's oral submissions because:

- (a) The two incidents of assault show a pattern of behaviour demonstrating a tendency to resort to physical interference that could be a danger to the public as the Appellant must regularly deal with the public and often with intoxicated individuals who act out in provocative ways.
- (b) He did recognize the 2015 incident was nine years earlier and the matter had been dropped before court; regardless, the 2023 incident on its own showed a more recent potential of developing a propensity to act inappropriately.
- (c) The Appellant showed bad judgment by continuing to employ and promote the employee despite the fact that the Appellant knew (and all participants agreed) the employee had exhibited problematic behaviour for many years.
- (d) The condition to prohibit the employee from management but allow him to work at the business recognised his role in the incident and also served to protect the public and the employees who might report to him.
- (e) In his view, conditions were justified even though there was no record of police calls to the businesses run by the Appellant. The three conditions were placed on the Appellant personally as a result of his actions and not really related to the overall business record.

Legal Framework:

[71] The decisions under appeal are Licence Reviews regulated under the *City of Edmonton Bylaw 20002 Business Licence Bylaw*.

[72] Section 2(l) defines Licence Review and grants the Decision Maker the authority to impose conditions on business licences:

“Licence Review” means a review of the application, or licence, or Business Category to determine if the issuance or renewal will be refused, if the existing licence or Business Category will be suspended or cancelled, **or if conditions will be imposed on the licence**; [Emphasis added]

[73] Section 24 of the *Business Licence Bylaw* authorizes the Decision Maker to conduct Licence Reviews:

24 The City Manager may proceed with a Licence Review if:

...

(e) in the opinion of the City Manager, based on reasonable grounds, it is in the public interest to review the licence under one or more of the following reasons:

(i) conditions are required for the proper regulation of the Business licensed under the General Business or Adult Service Business Category,

(ii) there is evidence the Business is causing or could imminently cause a danger to patrons or the public,

(iii) the Business failed a safety codes or fire code inspection for reasons that could lead to imminent danger or to serious public harm,

(iv) concerns are raised by a consulting agency through a consultation in accordance with section 11; or

(v) any other public interest reason.

[74] The Appellant’s right to appeal is found in section 30 of the *Business Licence Bylaw*:

30 (1) A person who has been given a decision under section 26 or 28(4), may appeal the decision within 14 calendar days of the date of service, with the appeal filed in accordance with the provisions of the *Community Standards and Licence Appeal Committee Bylaw*.

[75] The appellate authority of this Committee is found in the *CSLAC Bylaw 19003*. The relevant sections provide:

2(e) “licensing decision” means a decision of the City Manager to refuse, cancel, suspend, or impose conditions on a licence issued pursuant to the City’s:

...

(ii) Business Licence Bylaw, Bylaw 20002;

8(1) CSLAC may decide appeals of:

(a) licensing decisions; and

(b) orders.

(2) When deciding an appeal of a licensing decision or a written notice under section 29.2 of the City's Community Standards Bylaw, Bylaw 14600, **CSLAC has the same authorities granted to the City Manager under the applicable bylaw** [Emphasis added].

[76] Read together in a purposive manner, Sections 2(l) and 24 of the *Business Licence Bylaw* and Section 8(1) of the *CSLAC Bylaw* give the Decision Maker and therefore this Committee broad discretionary authority to impose conditions on the business licences at issue.

[77] While there are no specific instructions or guidelines with regard to the type of conditions which may be imposed, the situations when licence reviews are permissible is instructive. Section 24 provides that licence reviews may be conducted when, based on reasonable grounds, it is in the public interest. Examples of triggering circumstances are outlined in Section 24(e): where the type of business warrants a review; danger or imminent danger to patrons or the public; safety code and fire code issues; concerns raised by consulting agencies; or, for any other public interest reason.

Analysis:

[78] The Committee finds that the circumstances in this case triggered the Decision Maker's authority to conduct a Licence Review and the authority to impose conditions. However, after considering all the written materials and the oral submissions, the Committee has decided to remove the conditions attached to the two business licences under appeal.

[79] Based on the information before it, the Committee finds that the three conditions were not justified for the following reasons:

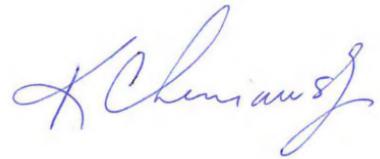
- (a) The Committee disagrees that the March 3, 2023 incident and the 2015 incident establish some pattern of resorting to physical confrontation that creates a public safety concern if the Appellant is the manager in care and control of a drinking establishment.
- (b) In the Committee's view, the 2015 incident is not particularly germane. The Committee notes that during the hearing the Decision Maker indicated he gave this incident little weight. The matter never went to court and the charge was dropped within two months. The Appellant acknowledged that he was involved in a physical altercation when he was shopping in a liquor store and did not occur in the context of his professional managerial role in care and control of a business.
- (c) The Committee is not persuaded that this incident supports the proposition that the Appellant shows a pattern of resort to physical force in confrontational situations. The overwhelming evidence before the committee was to the contrary.

- (d) There were no similar incidents whatsoever documented in the intervening 9 years.
- (e) The Appellant has been working in establishments that serve alcohol including bars, pubs, clubs and restaurants for over 30 years (including over ten years as an owner operator). As part of this work, the Appellant has had thousands of interactions with patrons and employees. There is no evidence that EPS was ever called out to deal with an altercation at the Appellant's businesses or any involving the Appellant at his workplace.
- (f) There was no evidence to refute the Appellant's assertion that inspectors and EPS officers have commended the Appellant for his professionalism and for the manner in which his establishments are operated.
- (g) The Appellant provided ten letters of reference from employees, business associates and patrons that describe extenuating circumstances leading up to and during the March 3, 2023 incident. These letters contradict the suggestion that the Appellant has a pattern of inappropriate behaviour contrary to the public interest or safety.
- (h) There is no evidence of any other incidents whatsoever involving the Appellant at either of the businesses since March 3, 2023 when the Appellant removed himself from the premises and called EPS himself to report the incident.
- (i) The Committee considered that part of the Decision Maker's rationale for imposing conditions was that the Appellant showed poor judgment in continuing to work with and promoting the employee despite his escalating poor behaviour. The Committee finds this rationale somewhat counterintuitive to support a condition requiring the Appellant to have at least one primary manager, other than himself, on the premises and in care and control of the business.
- (j) In view of the history and the ongoing legal dispute between the employee and the Appellant, it is highly unlikely he will return to any involvement with either business. The Committee finds Condition 3 is practically unnecessary to protect public interest.

Conclusion:

[80] In sum, the Committee concludes that the March 3, 2023 assault was an unfortunate and isolated aberration. The Appellant took responsibility for a serious error and has experienced personal, legal and financial repercussions for his actions. The Appellant's prior 30 year record is unremarkable. There have been no similar incidents involving the Appellant in any business or personal situation during the 14 months since the altercation. The Committee is not persuaded that the materials before it show a pattern of behavior that would put the public at risk if he were to continue to work in a managerial capacity at the businesses.

[81] For all of the above reasons, the Committee's decision is to allow the appeals and issue the business licences with no conditions.



Kathy Cherniawsky, Chair
Community Standards and Licence Appeal Committee

EDMONTON
COMMUNITY STANDARDS AND LICENCE APPEAL COMMITTEE

Citation: v Development Services (City of Edmonton), 2024 ABESLAC 10006

Date: May 14, 2024
Order Number: 080176623-001
CSLAC File Number: CSLAC-24-006

Between:

and

The City of Edmonton, Development Services

Committee Members

Kathy Cherniawsky, Chair
Don Fleming
Chris Samuel

DECISION

- [1] On May 7, 2024, the Community Standards and Licence Appeal Committee (the "Committee") heard an appeal that was filed on March 15, 2024. The appeal concerned the decision of Development Services to place conditions on Business License 080176623-001 issued to 1371195 Alberta Ltd. (The Bend Lounge), pursuant to Section 25 to 26 of the *Business License Bylaw 20002*.
- [2] The subject property is located at 14743 - 40 Avenue NW, Edmonton.
- [3] The appeal hearing on May 7, 2024 was held through a combination of written submissions and video conference. The following documents were received prior to the hearing and form part of the record:
 - The City of Edmonton submissions, including a submission from the Edmonton Police Service and submissions the Appellant has provided during the licence review.
- [4] The following exhibit was presented during the hearing and forms part of the record:
 - Exhibit A – Email from Anger Management Course instructor.

Preliminary Matters

- [5] At the outset of the hearing, the Chair confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [6] The Chair outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [7] The Chair proposed that the appeals for CSLAC-24-005 and CSLAC-24-006 be heard together as the parties, the reasons for decision, all the documentation and background evidence are identical.
- [8] There was no opposition from the parties.
- [9] The appeal was filed on time, in accordance with Section 30(1) of the *City of Edmonton Bylaw 20002 Business Licence Bylaw (Business Licence Bylaw)*.

Summary of Hearing

- i) Position of the Appellant,*
 - [10] The Appellant provided the Committee with a letter from his anger management instructor (marked Exhibit A).
 - [11] He has been in this business for 30 years and is serious about the operation of the businesses in this industry.
 - [12] In his opinion, the evidence provided by the Edmonton Police Service is not accurate.
 - [13] He has been targeted by the Edmonton Police Service as someone who is dangerous and does not understand the responsibilities of being an owner and manager in this business.
 - [14] He accepts the evidence provided by the Police at his court date. He accepted a guilty plea with a conditional discharge of 18 months probation. This would allow him to travel to the United States to watch his son play University lacrosse.
 - [15] There was a charge in 2015 for an assault. He is unsure how the Police Officer got that information.
 - [16] In the 2015 incident, a gentleman was arguing with him in a liquor store and charged at him. He pushed the man into a wall to get him away from him. The Crown Prosecutor never brought the case to trial because it was deemed that he was reacting to being in an unsafe position at that time.
 - [17] The Police Officer indicated that alcohol was involved during the most recent incident. Being a responsible business owner for 30 years, he does not drink while he is working. He has a strict set of guidelines for himself and his employees.

- [18] The Judge and Crown Prosecutor accepted that the police report about the recent incident was wrong when it stated that he punched the individual. The individual had been argumentative towards him for 20 minutes which is all on video. He asked the individual to step away, but he did not punch him. It was accepted in Court that he grabbed the individual by the shoulder and pulled him to the ground.
- [19] The Police have never talked to him about the incident, asked for a statement, or asked for a breathalyzer. He called the Police to have the incident put on record, but nobody called him back. The only time there was any involvement with the Edmonton Police Service was when they phoned him the next day and asked him to come to the police station as they were charging him with assault.
- [20] He has broken up multiple altercations in his years of business. The Edmonton Police Service and the Liquor Control Board of Alberta have attended his businesses to do inspections and have commended him on how well he operates them.
- [21] In 2013, he hired the individual involved in the assault incident as a part time cook who was a hard working employee with a passion for cooking. After a short time, he promoted the employee to a part time kitchen manager. The full time kitchen manager then quit and, after several years, the part time manager was promoted to the full time kitchen manager.
- [22] In 2016, he was given the opportunity by the owners of Cameron Home Developments to open a new bar in the Windermere area which was called the Twin Otter Pub.
- [23] The Appellant approached the kitchen manager and offered him the opportunity to be kitchen manager at both pub locations and to invest in the restaurant. The individual agreed. The Appellant was then notified by someone from the kitchen manager's previous job that the individual had been fired for sexual harassment.
- [24] The Appellant had hired a general manager for the Twin Otter Pub even though he heard he had substance abuse issues. He opened the pub on November 27, 2019, around the time Covid started. That is when he realized the gentleman had serious drug issues and was relieved of his duties. The full time kitchen manager was then given more responsibilities to help keep the business open. Once Covid was rampant, they had to close the business for a short time.
- [25] The kitchen manager then assumed the duties of the acting manager but when the Appellant found out the acting manager had a sexual assault/harassment history, he approached the employee about the claim and they exchanged words.
- [26] Due to financial restraints, he had to lay off all of his employees and tried to keep up the building and business himself. He approached the kitchen manager who was laid off and asked him to come and clean the place and help him keep the business open. The individual became hostile as he did not want to be a janitor.

- [27] After a few years, he reopened the business while following the Covid rules.
- [28] He provided letters from individuals stating that the manager was hostile. The Appellant's business partner also indicated that he was not happy with that employee and wanted him demoted back into the kitchen. The employee found out and an altercation took place where the employee was yelling at him because of the demotion.
- [29] As soon as the charges were in place, a lawsuit was filed against him by the employee.
- [30] The Appellant is serious about his businesses and agreed to take an anger management course. He does not like to be labeled by the Edmonton Police as a danger to the community.
- [31] The Appellant provided the following information in response to questions by the Committee:
 - a) He would like all three of the conditions to be removed.
 - b) The issues started after the manager became an investor in the business which comes with a certain level of expectation that did not happen. There were constant issues.
 - c) He continually struggled to keep the businesses open in the wake of Covid and ongoing issues with the employees.
 - d) He and his partner agreed to demote the manager due to altercations.
 - e) He took full responsibility for his altercation with the employee and chose to plead guilty to the charge and was given a conditional discharge so he could travel to the United States to watch his son play lacrosse.
 - f) Wanting to keep the business operating, the Appellant took over the employee's position and he is no longer employed at the business.
 - g) During the altercation, the employee was yelling loudly and the Appellant grabbed the employee to remove him from the situation. The Appellant went outside and immediately called the Police who arrived several hours later, retrieved a video and asked for witness statements.
 - h) Charges were resolved in January. To his knowledge he did not have any restrictions or conditions placed on him after he was charged.
 - i) Following his court date he was required to contact his Probation Officer. His Probation Officer deemed him a low risk after two sessions. He no longer has to report to her in person. He reports by phone interviews or through the App on his phone where he answers three questions every month in the report to his Probation Officer.

- j) He was advised to take an anger management course which he did. He is not allowed to have any contact with the former employee.
- k) With respect to the 2015 charge, he went to the police station regarding an altercation at the liquor store and provided the Police with his statement. After his lawyer reviewed the file, it went to the Crown Prosecutor. The charges were withdrawn approximately two months later.
- l) His probation for the 2023 incident will be complete by May 25, 2025.

ii) Position of the Decision Maker

- [32] S. Exner is the Business Licencing Program Manager for the City of Edmonton and was joined by several other City Parties and Sgt. Newell, Edmonton Police Service.
- [33] He provided all of the evidence that was considered when he made the decision.
- [34] He is the delegated authority to make business license review decisions.
- [35] He reviewed the events that took place when he reviewed the business license and his decision to impose conditions for The Bend Lounge and The Twin Otter Pub.
- [36] A copy of the Appellant's Police information check and the additional details that Sgt. Newell provided from EPS were also included with the licensing record that was provided to CSLAC.
- [37] On January 25, 2024, the renewal applications for both of these business licenses were initiated when they received the managers police information checks that are required under the minors prohibited alcohol sales business license category. The police information check for the Appellant indicated the recent conviction for an assault that had occurred on March 3, 2023.
- [38] As required under the *Business License Bylaw* for any minors prohibited drinking establishments, the police information checks were forwarded to the Edmonton Police Service members of the City's Public Safety Compliance Team on January 25, 2024 for review. The Edmonton Police Service responded on February 1, 2024 and provided more details of the assault that had occurred at The Twin Otter Pub between the Appellant and his employee/business partner in the presence of customers and employees.
- [39] Edmonton Police Service indicated that alcohol may have been a factor in the incident, but did not provide any detail regarding who was alleged to have consumed alcohol. EPS provided details of a prior incident in 2015 that resulted in the Appellant being charged with assault. While the charge was subsequently withdrawn, EPS indicated that it draws a pattern of violence and physical confrontation. Their recommendation was that if a business license was issued, it should be with the condition that the Appellant has no involvement with the businesses. The renewal applications were escalated to him for

business license review based on that recommendation. After the renewal documents were reviewed, a notice was issued with the proposed conditions for both businesses.

- [40] The conditions originally proposed were consistent with EPS's recommendation, but not quite as restrictive. EPS recommended that the Appellant should not be involved in any business activities. He felt this was not reasonable or practical given that the Appellant has ownership in both businesses. He imposed conditions that would restrict the Appellant from any business activities on the premises only during public operating hours with a separate manager required to be in control of the premises during those times. That notice of proposal was issued February 15, 2024. The Appellant was given two weeks to respond before a final decision would be made.
- [41] He received a written response from the Appellant on March 1, 2024 that was dated February 27, 2024. In his response, the Appellant outlined his 30 years of experience in the hospitality industry, including as a business owner and operator over the past 15 years. He also outlined his charitable fundraising work. The Appellant provided additional information about the incident on March 3, 2023 and the court proceedings, specifically that he had not consumed alcohol as EPS had suggested. He indicated that the assault was triggered by significant provocation from the employee. The Appellant had assumed responsibility for his role in the incident including having pled guilty to the assault charge and completing anger management training. The Appellant supplied numerous statements from current and former employees and customers and business associates who spoke very highly of him as a responsible business owner and manager.
- [42] He identified a pattern of hostile and aggressive behavior exhibited by the employee over several years leading up to the incident on March 3, 2023. The appellant alluded to some video evidence that proves the incident with the employee was relatively minor. However, there was no video record with the response the Appellant submitted and did not address the circumstances around the 2015 assault charge which was subsequently withdrawn. Upon reviewing all the information that the Appellant supplied, he identified a number of mitigating factors that he felt should affect his decision. That includes the Appellant's reputation as a responsible business owner. Characterizations of the employee suggests that there was a strong likelihood that he did, to some extent, provoke the Appellant to assault him in March of 2023 even though the assault did not result in any serious injury.
- [43] The Appellant's willingness to accept responsibility for his actions and the likelihood that he was not intoxicated at the time of the incident supports his claim that the incident was provoked. Based on that information, he determined that the conditions originally proposed were too restrictive but necessary. He relaxed the proposed conditions to allow the Appellant to maintain more site management responsibilities with the expectation that one other manager would still be on the premises while the business is open to the public. The Appellant was to notify him within 30 days if he was charged with another offense. Given the lengthy pattern of behavior by the employee, he imposed a new condition that

prohibits the employee from being employed as a manager of either of these businesses during operating hours.

- [44] While he appreciates the Appellant's accountability for his actions, including the most recent submission about his anger management work, the efforts related positively to his employees and business associates, there were still a number of factors that he could not overlook. Particularly the 2023 assault and the alleged assault in 2015 to establish some pattern of physical confrontation. From a public safety perspective, this is concerning behavior in someone who's the manager of a drinking establishment. Particularly the incident in March, 2023.
- [45] As the manager of a drinking establishment, that individual is responsible for ensuring that a business complies with relevant law requirements and one of those requirements under the *Business License Bylaw* is to refuse entry and remove any patron who is combative, righteous, disorderly or intoxicated from the premises. Based on that information, the Appellant seemed unable to resolve or diffuse a hostile situation with a colleague without resorting to physical violence and while that instant may have been provoked, it is in his opinion, that it does not excuse the escalation to violence. In his opinion, the Appellant's behavior has been called into question and to some extent, his ability to safely and effectively handle similar situations that would involve patrons of his businesses particularly given that it is a setting where intoxicated patrons, maybe more prone to provoking negative reactions in other people.
- [46] The witness statements and the testimonials that the Appellant submitted indicate that the employee demonstrated a pattern of troubling behavior with colleagues, customers, and business associates that date back to at least 2016. The employee was allowed to maintain his employment at The Bend Lounge and was given management responsibilities and ownership stake in The Twin Otter Pub by the Appellant in 2019. In his opinion, this is not consistent with the high standard of safety, security, leadership, and accountability. He appreciates that there are recruiting challenges for service industry management positions; however, the Appellant had ample opportunities to address the employee's behavior or sever his professional relationship with him entirely well before that incident.
- [47] Given the Appellant's recent assault conviction, it is his opinion that there needs to be some additional management oversight to ensure that both of these establishments are safe for both patrons and employees.
- [48] On March 7, 2024, he submitted his final decision to issue both licenses with conditions. The conditions are eligible for review before June 9, 2025 with the anticipated conclusion of the Appellant's probationary period that is expected to end on May 26, 2025.
- [49] If there are no further incidents of violence, subsequent criminal charges, or convictions involving either the Appellant or other managers, then consideration will be given to relaxing the conditions further or removing them entirely. The Appellant is still the manager and the majority shareholder for both of these establishments.

[50] It is his recommendation that the Community Standards and Licence Appeal Committee uphold his March 7, 2024 decision to impose the following conditions:

1. During all hours that the business is open to the public, the Licensee must ensure that at least one primary manager, other than [the Appellant], is on the premises and in care and control of the business.
2. The licensee must notify the Business Licensing Program Manager for the City of Edmonton of any new charges against [the Appellant] within 30 days of the date he is charged, if applicable.
3. The licensee must ensure that the employee is not in care and control of the premises and is not involved in any management responsibilities on the premises during all hours that the business is open to the public. The employee may be employed on the premises in a non-management capacity during operating hours, and may be involved in management activities as long as they do not take place on the premises during operating hours.

[51] The Decision Maker provided the following information in response to questions by the Committee:

- a) He is tasked with reviewing the information that is before him.
- b) Business License reviews were not very common until just a few years ago.
- c) There is a possibility that there were previous incidents that did not escalate for a review and he did not consider that too heavily in his decision.
- d) The incident is relatively recent and coupled with the 2015 assault charge there was reference to some video evidence that corroborated some of the events of 2015. Even though it did not result in a conviction or trial, there was still the potential that there was some pattern dating back to at least 2015.
- e) Generally speaking, the decision is based on the incident before him and the materials the EPS and the Appellant provided.
- f) What was more compelling was the witness testimonials that spoke to the Appellant's reputation on an ongoing basis. Not specifically the length of time that he's been in the industry, but rather his reputation with his colleagues, his business associates, and his employees indicated he was a responsible business owner. That was a more compelling piece that came from the Appellant's response.
- g) The *Bylaw* requirements refer to removal or refusal of a person who behaves in a concerning way, but does not necessarily distinguish that person being a patron or an employee. That regulation is geared primarily towards patrons. Incidents with colleagues that cannot be resolved without violence are potentially an indication that it would also be challenging to resolve similar disputes with the patron.

- h) There is a requirement for all managers and owners to supply police information checks for review upon renewal and those police checks then are forwarded to the Edmonton Police Service for a consultation. EPS will review the police information check and provide some additional background information and then make a recommendation about whether to issue the license, refuse the license, or impose conditions on the business license. That is what we would consider a negative recommendation and trigger a business license review.
- i) The Appellant's position as the manager of a drinking establishment should exercise good judgment and deal with patrons on a regular basis. He is the individual who would need to be held to a higher standard around the conduct of things.
- j) It is not just the review of the refusal of entry to patrons, it is being able to properly and safely remove them from the premises without resorting to physical violence.
- k) He factored into the decision to relax the condition that would allow the Appellant to maintain on site management responsibilities during public operating hours. However, some additional management support would be required while the Appellant is under probation to be able to kind of intervene if there is a situation involving another employee or patron where some additional support might be required.
- l) His role is to review the information that's presented to him. He could not comment on the transcript of the guilty plea that was entered in Court.
- m) Sgt. Newell indicated that he does not have access to the Court transcript. The information he has is what EPS is bringing forward to the court process and the outcome of the court process.
- n) S. Exner indicated that the licences would have been up for renewal on November 30, 2024. The renewal period begins 45 days leading up to November 30, 2024 and 90 days following that.
- o) Section 24(e) is structured differently than the previous *Business Licence Bylaw* which was prescriptive in the types of conditions that could be applied but still established grounds for a license review and conditions being imposed one possible outcome. The *Bylaw* was restructured so the grounds for a license review were discussed in Section 24 of the *Bylaw* and, in this case particularly, it would be Section 24(e) of the *Bylaw* that states:

In the opinion of the City Manager, based on reasonable grounds, it is in the public interest to review the license under one or more of the following reasons:

- (iv) concerns are raised by a consulting agency through a consultation in accordance with section 11; or any other public interest reason.
- (v) any other public interest reason.

- p) C. Hodgson-Mousseau indicated that Section 2(l) of the *Business Licence Bylaw* defines Licence Review and states in part it means a review of the application, or licence, or Business Category to determine if the issuance or renewal will be refused, if the existing licence or Business Category will be suspended or cancelled, or if conditions will be imposed on the licence.
- s) S. Exner clarified that there was video evidence of the 2015 incident, but he did not receive a copy of the video evidence from EPS or the Appellant. The Appellant indicated there may have been evidence in the 2023 incident as well, but did not supply it.
- t) The 2015 incident did not result in a conviction. He was presenting the information that EPS gave to him with the intention to demonstrate that there was at one point substantial cause to bring charges in the first place that could point to a potential pattern. However, he would still consider the 2023 incident, specifically the recency of that incident and the fact that it occurred on the business premise in full view of customers, the more substantial of the two. He considers 2015 to be a minor point against the Appellant in this case.
- u) He would consider this situation as a potentially emerging pattern or potentially an escalating pattern. However, a very short one. Considerations for conditions placed on the other types of establishment where there's a long pattern of calls for service are distinguishable. All business license reviews are treated independently, so the circumstances around those reviews are very different. The conditions that are imposed are usually also very different. They have had anywhere from about 7 to 11 conditions that have been imposed on those particular establishments that are very restrictive on very specific operating practices that speak specifically to public safety, kind of like operational deficiencies.
- v) In this case, this has more to do with leadership and accountability in terms of ensuring a safe space and being responsible for patrons and customers.
- w) These are very different circumstances and the conditions are proportionate to the severity of each one and related to the Appellant's role as a manager of a licensed drinking establishment which does have corresponding *Bylaw* requirements to be able to address such situations safely.
- x) He has imposed similar conditions on two other occasions, but those were slightly different. Those involved managers that had sexual assault charges pending and in some of the cases, they limited their presence and business activities until the charges were resolved or convictions were recorded. There was one recent case involving conditions in response to a trafficking conviction, so this case is not without precedent.
- y) Generally, conditions are put on a particular manager when there is a clear and direct connection to the business activity. In this case, the Appellant is the manager of an

establishment and has a responsibility to refuse entry or to eject people who behave poorly as the employee did.

- z) Regarding the 2015 incident, it was presented to him as occurring in a business setting so he was not aware, based on the information in front of him, that it occurred off the premises of the licensed establishments. Knowing that, if he was reviewing the information today, he would have considered that even less of a factor but not negating it as the appropriateness of conditions given the 2023 incident that occurred.
 - aa) He agreed that based on the one conviction and the circumstances around that would be a precedent with the same kind of conditions.

iii) Rebuttal of the Appellant,

- [52] He agreed with the Respondent's submissions of the events that took place.
- [53] He has had to deal with several hundred interactions over the years in the two pub locations and the Police have rarely attended the pubs to deal with issues and the patrons.
- [54] He took responsibility for the most recent employee altercation, but he does not believe the 2015 incident should be part of this appeal.
- [55] He takes pride in what he does and the operation of his businesses.
- [56] He has received positive feedback from the Police and the community.

Decision

- [57] The appeals are allowed. Business Licence 342054035-002 AND Business Licence 80176623-001 are renewed as issued with the following change:

The statements "Conditions are imposed on this licence, see Schedule A of decision notice issued March 7, 2024" are deleted and the three conditions stated in the cited decisions are deleted.

Reasons for Decision

- [58] The Committee heard two appeals concerning conditions imposed by the Program Manager of Business Licencing (the "Decision Maker") pursuant to renewals of Business Licence 342054035-002 Southy Public House Ltd and Business Licence 080176623-001 1371195 Alberta Ltd. The renewals were processed under three categories: Alcohol Sales (Consumption On-Premises/Minors Prohibited); Amusement Establishment; and, Restaurant or Food Service.
- [59] The two appeals were heard contemporaneously as the imposed conditions, rationales and supporting submissions of both parties are identical and involve the same Licensee (the "Appellant"). These reasons apply with equal force to both appeals.

Background Chronology and Submissions:

[60] In January 2024, the City received a Police Information Check (PIC) for the Appellant in accordance with section 9 of the *Business Licence Bylaw* as part of the normal renewal process for Alcohol Sales (Consumption On-premises/Minors Prohibited). The PIC showed that the Appellant had a recent conviction for assault.

[61] Accordingly, on January 25, 2024, the Decision Maker requested a consultation concerning the renewals from the Edmonton Police Service (EPS) in accordance with section 11(1) of the *Business Licence Bylaw*.

[62] On February 1, 2024, EPS responded by providing additional information and stated they would not support business license renewals if the Appellant remained involved with the businesses due to the March 2023 incident and a 2015 incident captured on video that led to an assault charge which was later withdrawn. The consulting EPS officer who had reviewed EPS files concluded:

Based on the noted information, I, on behalf of the Edmonton Police Service, cannot confirm the PICS nor do I support [the Appellant] to be an operating manager, or be left in the care and control of the Twin Otter Pub, The Bend Lounge, or any other licensed premise. Should the business license for the two noted locations be granted, my recommendation would be that they be granted with the condition that [the Appellant] provides a declaration of non-involvement with the businesses.

[63] With this additional information, on February 15, 2024, the Decision Maker sent a Notice of Proposal to Impose Conditions on the two business licences to the attention of the Appellant:

Proposed Conditions

1. During the hours that the business is open to the public, the licensee must ensure that [the Appellant] is not in care and control of the premises, and is not otherwise involved in any management responsibilities or business activities on the premises. [The Appellant] may be involved in any other business activities not specified here as long as they do not take place on the premises during operating hours.
2. The licensee must ensure that at least one manager, other than [the Appellant], is in care and control of the premises at all times during the hours that the business is open to the public.

[64] As entitled under section 25 of the *Business Licence Bylaw*, the Appellant sent a 28 page written response dated February 27, 2024. The Appellant objected to the proposed conditions on the following basis:

- (a) He has 30 years experience in hospitality industry and running nightclubs, bars and lounges, including 15 years successfully at the helm of lounges, taverns and pubs
- (b) Over the years, several liquor inspectors and police commended him for how professionally he runs his bars.
- (c) He takes pride in his record, training practices, employee retention rate and community service.
- (d) He acknowledges the March 2023 incident and he took responsibility for it.
- (e) The PIC and additional EPS report was authored by an officer who had no personal involvement in the matter and he takes issue with some of the allegations therein, including some that were refuted on the record in court where it was agreed the incident was very minor.
- (f) He is completing an anger management course and he has been deemed low risk by his probation officer whose contact information was included in the response.

[65] The Appellant's response included 10 letters of reference and support from employees, a landlord, a business partner, and long time patrons. Several of the writers were on site on March 3, 2023 and provided first hand accounts of the argument and assault that support the Appellant's description of the incident.

[66] On March 7, 2024, the Decision Maker issued two Decisions to Impose Conditions on the business licences. The Decisions state that after carefully considering the Appellant's response in addition to the previously submitted materials, three revised and less restrictive conditions would be imposed:

1. During all hours that the business is open to the public, the Licensee must ensure that at least one primary manager, other than [the Appellant], is on the premises and in care and control of the business.
2. The licensee must notify the Business Licensing Program Manager for the City of Edmonton of any new charges against [the Appellant] within 30 days of the date he is charged, if applicable.
3. The licensee must ensure that (the employee) is not in care and control of the premises and is not involved in any management responsibilities on the premises during all hours that the business is open to the public. [The employee] may be employed on the premises in a non-management capacity during operating hours, and may be involved in management activities as long as they do not take place on the premises during operating hours.

[67] On March 15, 2024, the Appellant appealed the two decisions to this Committee.

[68] At the hearing, the Appellant asked for removal of all three conditions. He reiterated the comments in his written submission and argued:

- (a) The 2015 incident was mischaracterized, it occurred at another business and the charges were dropped after a couple months and before any court appearance. It is unrelated to his role in care and control at drinking establishments.
- (b) The 2023 incident was the result of built up difficulties and instigated by the employee who provoked him. He immediately removed himself from the business and waited in the parking area as the employee continued to make a scene at the pub. The Appellant called police to make sure that his version of the event was in front of police. He concedes the situation with the employee should have been resolved earlier despite his other business and financial pressures. Further, he admits that his reaction on March 3 arguing, shouting and bringing the employee to the ground and moving him was a big mistake.
- (c) He pled guilty to avoid any possibility of a criminal record that would prevent him from entering the United States and visiting his son at college. At the trial, the prosecutor and judge agreed there had not been a sucker punch. The Appellant received a conditional discharge, which required him to abide by a period of probation.
- (d) After the court hearing, he reported into his probation officer as required and finished an anger management course. The instructor provided positive feedback. Currently he is classified as "low risk" and is not required to report personally. He need only answer questions on a phone app for the remainder of his probation period to receive the discharge. The probation period is set to expire in May 2024.
- (e) He has had no contact with the employee since that event and the employee has no involvement in the business whatsoever. The employee and the Appellant are involved in ongoing litigation arising out of the event.
- (f) These two incidents do not show a pattern of violent behaviour. To the contrary, his 30 years of experience and 15 years as an owner shows a pattern of good behaviour including defusing thousands of conflicts with patrons and raising funds for the community. This 30 year record outweighed the incidents.
- (g) There have been no incidents since March 3, 2023 and the business is prospering with new managers hired to replace the employee.
- (h) He takes responsibility for his mistake and has been completing all tasks as required by the probation officer. Adding the proposed conditions will constitute an additional penalty and an unwarranted blemish on his business reputation which is key to restaurant and bar survival.

- [69] The Decision Maker led the Committee through his decisions and considerations in detail. In his view, the letters from colleagues, employees, partners and patrons were persuasive and led to a relaxation of the conditions that were originally proposed by the EPS and his original decision.
- [70] Nonetheless, he believed that the revised conditions were warranted on reasonable grounds for the public interest even after hearing the Appellant's oral submissions because:
 - (a) The two incidents of assault show a pattern of behaviour demonstrating a tendency to resort to physical interference that could be a danger to the public as the Appellant must regularly deal with the public and often with intoxicated individuals who act out in provocative ways.
 - (b) He did recognize the 2015 incident was nine years earlier and the matter had been dropped before court; regardless, the 2023 incident on its own showed a more recent potential of developing a propensity to act inappropriately.
 - (c) The Appellant showed bad judgment by continuing to employ and promote the employee despite the fact that the Appellant knew (and all participants agreed) the employee had exhibited problematic behaviour for many years.
 - (d) The condition to prohibit the employee from management but allow him to work at the business recognised his role in the incident and also served to protect the public and the employees who might report to him.
 - (e) In his view, conditions were justified even though there was no record of police calls to the businesses run by the Appellant. The three conditions were placed on the Appellant personally as a result of his actions and not really related to the overall business record.

Legal Framework:

- [71] The decisions under appeal are Licence Reviews regulated under the *City of Edmonton Bylaw 20002 Business Licence Bylaw*.
- [72] Section 2(l) defines Licence Review and grants the Decision Maker the authority to impose conditions on business licences:

“Licence Review” means a review of the application, or licence, or Business Category to determine if the issuance or renewal will be refused, if the existing licence or Business Category will be suspended or cancelled, **or if conditions will be imposed on the licence**; [Emphasis added]
- [73] Section 24 of the *Business Licence Bylaw* authorizes the Decision Maker to conduct Licence Reviews:
 - 24 The City Manager may proceed with a Licence Review if:

...

(e) in the opinion of the City Manager, based on reasonable grounds, it is in the public interest to review the licence under one or more of the following reasons:

- (i) conditions are required for the proper regulation of the Business licensed under the General Business or Adult Service Business Category,
- (ii) there is evidence the Business is causing or could imminently cause a danger to patrons or the public,
- (iii) the Business failed a safety codes or fire code inspection for reasons that could lead to imminent danger or to serious public harm,
- (iv) concerns are raised by a consulting agency through a consultation in accordance with section 11; or
- (v) any other public interest reason.

[74] The Appellant's right to appeal is found in section 30 of the *Business Licence Bylaw*:

30 (1) A person who has been given a decision under section 26 or 28(4), may appeal the decision within 14 calendar days of the date of service, with the appeal filed in accordance with the provisions of the *Community Standards and Licence Appeal Committee Bylaw*.

[75] The appellate authority of this Committee is found in the *CSLAC Bylaw 19003*. The relevant sections provide:

2(e) "licensing decision" means a decision of the City Manager to refuse, cancel, suspend, or impose conditions on a licence issued pursuant to the City's:

...

- (ii) Business Licence Bylaw, Bylaw 20002;

8(1) CSLAC may decide appeals of:

- (a) licensing decisions; and
- (b) orders.

(2) When deciding an appeal of a licensing decision or a written notice under section 29.2 of the City's Community Standards Bylaw, Bylaw 14600, **CSLAC has the same authorities granted to the City Manager under the applicable bylaw** [Emphasis added].

- [76] Read together in a purposive manner, Sections 2(l) and 24 of the *Business Licence Bylaw* and Section 8(1) of the *CSLAC Bylaw* give the Decision Maker and therefore this Committee broad discretionary authority to impose conditions on the business licences at issue.
- [77] While there are no specific instructions or guidelines with regard to the type of conditions which may be imposed, the situations when licence reviews are permissible is instructive. Section 24 provides that licence reviews may be conducted when, based on reasonable grounds, it is in the public interest. Examples of triggering circumstances are outlined in Section 24(e): where the type of business warrants a review; danger or imminent danger to patrons or the public; safety code and fire code issues; concerns raised by consulting agencies; or, for any other public interest reason.

Analysis:

- [78] The Committee finds that the circumstances in this case triggered the Decision Maker's authority to conduct a Licence Review and the authority to impose conditions. However, after considering all the written materials and the oral submissions, the Committee has decided to remove the conditions attached to the two business licences under appeal.
- [79] Based on the information before it, the Committee finds that the three conditions were not justified for the following reasons:
 - (a) The Committee disagrees that the March 3, 2023 incident and the 2015 incident establish some pattern of resorting to physical confrontation that creates a public safety concern if the Appellant is the manager in care and control of a drinking establishment.
 - (b) In the Committee's view, the 2015 incident is not particularly germane. The Committee notes that during the hearing the Decision Maker indicated he gave this incident little weight. The matter never went to court and the charge was dropped within two months. The Appellant acknowledged that he was involved in a physical altercation when he was shopping in a liquor store and did not occur in the context of his professional managerial role in care and control of a business.
 - (c) The Committee is not persuaded that this incident supports the proposition that the Appellant shows a pattern of resort to physical force in confrontational situations. The overwhelming evidence before the committee was to the contrary.
 - (d) There were no similar incidents whatsoever documented in the intervening 9 years.

- (e) The Appellant has been working in establishments that serve alcohol including bars, pubs, clubs and restaurants for over 30 years (including over ten years as an owner operator). As part of this work, the Appellant has had thousands of interactions with patrons and employees. There is no evidence that EPS was ever called out to deal with an altercation at the Appellant's businesses or any involving the Appellant at his workplace.
- (f) There was no evidence to refute the Appellant's assertion that inspectors and EPS officers have commended the Appellant for his professionalism and for the manner in which his establishments are operated.
- (g) The Appellant provided ten letters of reference from employees, business associates and patrons that describe extenuating circumstances leading up to and during the March 3, 2023 incident. These letters contradict the suggestion that the Appellant has a pattern of inappropriate behaviour contrary to the public interest or safety.
- (h) There is no evidence of any other incidents whatsoever involving the Appellant at either of the businesses since March 3, 2023 when the Appellant removed himself from the premises and called EPS himself to report the incident.
- (i) The Committee considered that part of the Decision Maker's rationale for imposing conditions was that the Appellant showed poor judgment in continuing to work with and promoting the employee despite his escalating poor behaviour. The Committee finds this rationale somewhat counterintuitive to support a condition requiring the Appellant to have at least one primary manager, other than himself, on the premises and in care and control of the business.
- (j) In view of the history and the ongoing legal dispute between the employee and the Appellant, it is highly unlikely he will return to any involvement with either business. The Committee finds Condition 3 is practically unnecessary to protect public interest.

Conclusion:

[80] In sum, the Committee concludes that the March 3, 2023 assault was an unfortunate and isolated aberration. The Appellant took responsibility for a serious error and has experienced personal, legal and financial repercussions for his actions. The Appellant's prior 30 year record is unremarkable. There have been no similar incidents involving the Appellant in any business or personal situation during the 14 months since the altercation. The Committee is not persuaded that the materials before it show a pattern of behavior that would put the public at risk if he were to continue to work in a managerial capacity at the businesses.

[81] For all of the above reasons, the Committee's decision is to allow the appeals and issue the business licences with no conditions.

A handwritten signature in blue ink, appearing to read "K Cherniawsky".

Kathy Cherniawsky, Chair
Community Standards and Licence Appeal Committee