

## MEMORANDUM

### **Business Item A**

From: Administrator/Staff  
To: Town Board  
Re: Town Board review & consideration of the following Alcohol License Application:

The following party has submitted an application for a Class "B" license to sell fermented malt beverages, on file in the Town of Clayton Clerk's Office for the licensing period of July 1, 2023, through June 30, 2024, the granting of which is now pending and subject to compliance with State Statutes and Municipal Ordinances:

- a. Dale Mart LLC (DBA Kitchen Comfort), 8510 State Rd 76 Unit #2, Neenah, WI 54956:  
Agent: Dinesh Tiwari

Staff has received and reviewed the application and been in contact with both Agent Dolan at the DOR Alcohol & Tobacco Enforcement Unit and Bill Larson at MGM Law for guidance on this application. The application is provided for the Board to consider, including building plans denoting a doorway between the currently licensed "Class A" premises and proposed Class "B" premises.

Staff has received the following comments from Agent Dolan:

*"Here is some additional information on connecting premises. Sec. 125.51(8), Wis. Stats., provides that (with the exception of hotels) no person may hold both a "Class A" and a Class "B" license for the same or connecting premises. The department has issued guidance that if these licenses are issued for connecting premises, the licensee must create physical separation of the "Class A" and Class "B" licensed premises to be in compliance with this statute. Physical separation may be achieved by floor to ceiling walls or closed doors. Each premises must have its own outside entrance. The licensed premises description for each premises may not include any common licensed premises overlapping one another. "Class A" and Class "B" premises separated, as described above would be considered "separate", rather than "connecting" premises."*

Staff has received the following comments from Attorney Larson regarding the Town's obligations if the Board chooses to deny the application:

*"...the Town has wide latitude in deciding on liquor licenses. An applicant "has no clear legal right to the issuance of a liquor license. Wisconsin courts have long held that a liquor license is a privilege, not a right. Moedern v. McGinnis, 70 Wis. 2d 1056, 1066, 236 N.W.2d 240 (1975). Whether a license should be issued to a particular applicant is a matter of local concern, State ex rel. Smith v. City of Oak Creek, 139 Wis. 2d 788, 801, 407 N.W.2d 901 (1987), and is within the discretion of the licensing authority, Rawn v. City of Superior, 242 Wis. 632, 636-37, 9 N.W.2d 87 (1943)." Buena Vista Hall, LLC v. City of Milwaukee, 921 N.W.2d 528 (Wis. App. 2018). That said the Town does need to make sure it does not reject the application for an improper purpose such that it would be arbitrary, capricious, or discriminatory. The Town also needs to provide due process and give the Applicant a chance to be heard on the matter.*

*I recommend include multiple reasons for the denial such as the following:*

1. *You can certainly include the 125.8 violation, but I will note that it is not bulletproof. The Applicant could argue that because the licenses are held by different LLCs it does not violate the prohibition that "no person may hold both a "Class A" license and either a "Class B" license or permit, a Class "B" license or permit or a "Class C" license for the same premises or for connecting premises." Nonetheless, the Town could rely on the portion of the definition of person at 125.02(14)*

*that also states a person can be a natural person and the natural person that is listed as President of both LLC is the same.*

2. *A policy based on concern about having the Class A and Class B licenses connecting.*
3. *The response to question 5(a) on the application appears to be false or misleading, because the Applicant did not disclose the existing Class A license in the same or connecting premises.*
4. *Any objections from the public that might be raised.*
5. *Any other legitimate local policy based concerns with the set up.”*

Based on these comments, Staff is looking to the Board as the ultimate authority for granting or denying the license application, for guidance. Two possible motion options are included below for the Board to reference when making their final decision.

**Suggested Motion A:**

*Motion to **approve** the following application submitted for a Class “B” license to sell fermented malt beverages for the licensing period July 1, 2023, through June 30, 2024 subject to compliance with State Statutes and Municipal Ordinances:*

- *Dale Mart LLC (DBA Kitchen Comfort), 8510 State Rd 76 Unit #2, Neenah, WI 54956:  
Agent: Dinesh Tiwari*

**Suggested Motion B:**

*Motion to **deny** the submitted application of Dale Mart LLC (DBA Kitchen Comfort), 8510 State Rd 76 Unit #2, Neenah, WI 54956: Agent: Dinesh Tiwari for a Class “B” license to sell fermented malt beverages for the licensing period July 1, 2023, through June 30, 2024 for the following reasons:*

1. *Sec. 125.51(8), Wis. Stats., provides that no person may hold both a “Class A” and a Class “B” license for the same or connecting premises. The licensee must create physical separation of the “Class A” and Class “B” licensed premises to be in compliance with the Statute.*
2. *In the response to question 5(a) on the application, the Applicant did not disclose the existing “Class A” license in the same or connecting premises.*

Should you have any questions relative to this information, please feel free to call or e-mail me.

Respectfully Submitted,  
Kelsey