MINUTES 14-006
HAMILTON LICENSING TRIBUNAL
10:00 a.m.
Thursday, December 11, 2014
Room 264, 2nd Floor
Hamilton City Hall
71 Main Street West

Present: Councillors T. Whitehead (Chair), C. Collins (Vice Chair), S. Duvall and M. Green

Absent with regrets: Councillor B. Johnson - Personal

Also Present: Patricia Kennedy, Solicitor
              Angela Severson, Solicitor
              Gary Bishop, Adjudicator
              Vanessa Robicheau, Legislative Coordinator

Other Attendees: Darwin Tchir, Appellant (Item 4.1)

1. **SHOW CAUSE HEARING:** Darwin Tchir, Eating Establishment – Restaurant License for 8631646 Canada Inc. operating as Social Bar & Grill, Nightclub, Lounge & Restaurant, located at 115 George Street, Hamilton, Ontario (File No. 13 285394 1J) (Item 4.1)

   (Collins/Duvall)
   That the request for second adjournment of the Show Cause Hearing for Darwin Tchir, Eating Establishment – Restaurant License for 8631646 Canada Inc. operating as Social Bar & Grill, Nightclub, Lounge & Restaurant, located at 115 George Street, Hamilton, Ontario, to allow for additional time to prepare for the hearing, be approved to the January 29, 2015 hearing date, on a peremptory basis on the Appellant.

   CARRIED
FOR THE INFORMATION OF THE TRIBUNAL:

(a)  **CHANGES TO THE AGENDA (Item 1)**

Changes to the agenda were as follows:

AA.  Appointment of Chair and Vice-Chair

5.1  July 14 September 11, 2014 – Closed Session Minutes

*(Duvall/Green)*

That the December 11, 2014 agenda for the Hamilton Licensing Tribunal be approved, as presented.

CARRIED

(b)  **APPOINTMENT OF CHAIR AND VICE-CHAIR (Item AA)**

*(Collins/Duvall)*

That Councillor Whitehead be appointed as Chair of the Hamilton Licensing Tribunal for 2015.

CARRIED

*(Duvall/Green)*

That Councillor Collins be appointed as Vice-Chair of the Hamilton Licensing Tribunal for 2015.

CARRIED

(c)  **DECLARATIONS OF INTEREST (Item 2)**

There were no declarations of interest.

(d)  **APPROVAL OF MINUTES OF PREVIOUS MEETINGS (Item 3)**

(i)  **September 11, 2014 (Item 3.1)**

*(Collins/Duvall)*

That the Minutes of the September 11, 2014 Hamilton Licensing Tribunal be approved, as presented.

CARRIED
(e) **SHOW CAUSE HEARING: Darwin Tchir, Eating Establishment – Restaurant License for 8631646 Canada Inc. operating as Social Bar & Grill, Nightclub, Lounge & Restaurant, located at 115 George Street, Hamilton, Ontario (File No. 13 285394 1J) (Item 4.1)**

On August 8, 2014, the Issuer of Licenses corresponded with the Legislative Coordinator for the Hamilton Licensing Tribunal, requesting that a Show Cause hearing be scheduled and brought before the Hamilton Licensing Tribunal to consider whether the above referenced license should be revoked, suspended or conditions imposed upon it.

Pursuant to Section 8 of the *Statutory Powers Procedure Act*, R.S.O.1990, c. S22 the grounds for revocation or suspension or the imposition of conditions at this hearing are:

(i) City of Hamilton Licensing By-Law 07-170, Section 12(1)(c)(i), as amended, the Issuer of Licenses shall refuse to issue a licence or may recommend the suspension or revocation of a licence when the applicant or the licensee has not met any of the requirements under this By-law including the applicable Schedule;

(ii) City of Hamilton Licensing By-Law 07-170, Section 12(1)(c)(iii), as amended, the Issuer of Licenses shall refuse to issue a licence or may recommend the suspension or revocation of a licence when the applicant or the licensee has not paid any fee to be paid under this By-law including the applicable Schedule;

(iii) City of Hamilton Licensing By-Law 07-170, Section 12(1)(c)(vi)(3), as amended, the Issuer of Licenses shall refuse to issue a licence or may recommend the suspension or revocation of a licence when in the opinion of the Issuer of Licenses the conduct of the applicant or licensee (in the case of partnership, the conduct of its partners, employees or agents or in the case of a corporation, the conduct of its officers, directors, employees or agents) affords reasonable grounds for belief that the applicant or licensee will not carry on or engage in the business in accordance with the law or with honesty or integrity; and,

(iv) City of Hamilton Licensing By-Law 07-170, Schedule 21, Section 12, as amended, every Hess Village Entertainment District licence holder shall contribute a prorated share, based on the total capacity of their premises under their liquor licence, to the cost of the Special Duty Police Officers required under section 10, as may be changed under section 11, and their licence shall be conditional on such contribution being paid in full in a timely fashion.

Namely:

1. That the licence holder, Darwin Tchir, 8631646 Canada Inc. Inc operating as Social Bar & Grill, Nightclub, Lounge, and Restaurant
has not paid the applicable fees pertaining to the Eating Establishment, Restaurant Licence; specifically, Special Duty Police Officers in a timely manner; and,

2. The licence expires on January 16, 2015. If the hearing has not been completed before the licence expires; and,

   (aa) If the licence holder has not submitted a completed application for a renewal, the City will request that the hearing be cancelled. If this is the case, and the licence holder keeps operating without a licence, he will be doing so contrary to the Licensing By-law; or,

   (bb) If the licence holder has submitted a completed application for a renewal, the City will request that the hearing proceed under Section 12(1) of the Licensing By-law as a refusal of the licence rather than as a recommendation to revoke or suspend the licence.

At the September 11, 2014, hearing, Mr. Dawrin Tchir’s requested an adjournment in order to have additional time to obtain legal counsel.

On September 11, 2014, Mr. Tchir’s request for an adjournment, to provide additional time to obtain legal counsel, was approved on a peremptory basis, on the Appellant, to the July 11, 2012 December 11, 2014 hearing date.

December 11, 2014 Hearing:

Mr. Darwin Tchir provided his Opening Statement that included, but was not limited to, the following:

- The Appellants advised that there is not legal counsel in attendance because there was a conflict of interest within the law firm they had intended to use.

Mr. Bishop provided his Opening Statement that included, but was not limited to, the following:

- The case presently before you today involves the business license of the Social Bar and Grill Nightclub and Lounge located at 115 George Street in Hess Village and is a result of not paying, in a timely fashion, the fees for police services, as required under the By-law.

- The Owner, Darwin Tchir, is the license holder and owes over $5,600.00 to the City for Special Duty Officer charges. Since receiving the license,
none of the fees have been paid. Also, since receiving the notice, none of the fees have been paid.

- Specifically, the Licensing By-law 07-170, Schedule 21, Section 12, stipulates that each Hess village Entertainment District Licence holder shall contribute their prorated share of special duty police officer fees.

- The request is that the fees be paid within 45-days and that Mr. Tchir comply with the by-laws that govern the business.

Mr. Darwin Tchir requested a second adjournment in order for them to find resolution to all of the outstanding information they wish to collect prior to the hearing, including, but not limited to, the following:

- The legal counsel that the Appellant sought was from Winche Law Firm and they were willing to provide advice pro-bono, however, the associate's relative is the owner of the property in question.

- The Appellant will need to seek alternative, affordable legal counsel.

- The Appellant attempted to schedule a face-to-face interview with Councillor Farr.

- The Appellant is waiting for police reports from areas such as Augusta St., James St. N and Locke St.

- The Appellant is waiting for financial information from September and October for his establishment.

- There was also a meeting in Hess Village where the police were supposed to attend in October but was cancelled due to unforeseen circumstances, the meeting was supposed to be rescheduled for November but it has yet to take place.

Mr. Bishop advised that following the September 11, 2014 date, no communications were received from the Appellant. The Appellant also met with the Director of Licensing. Mr. Bishop advised that the license for this establishment is up for renewal on January 15, 2015. Mr. Bishop commented that he has a witness and is prepared to move forward with this hearing.

(Green/Duvall)
That the Hamilton Licensing Tribunal move into Closed Session, at 10:13 a.m., to deliberate upon the submissions of the parties, respecting the show cause hearing for Darwin Tchir, respecting Social Bar & Grill, Nightclub, Lounge & Restaurant located at 115 George Street, Hamilton, Ontario.

CARRIED
The Tribunal reconvened in open session 10:19 a.m.

Councillor Duvall asked a clarifying question respecting the license for the establishment which is expiring on January 15, 2015.

Mr. Bishop advised that if the fees are not paid in full, the license would not be granted.

Councillor Whitehead provided clarity to the applicants that the tribunal is willing to grant a second adjournment of 60 days, on a peremptory basis on the Appellant.

Councillor Green also provided clarity to the applicants that license will not be granted in January 15, 2015 despite the second adjournment, on a peremptory basis on the Appellant.

Mr. Darwin Tchir began explaining details about the business and the finances that would be appropriate for a hearing and was advised by Councillor Whitehead that the current discussion surrounds the request for a second adjournment.

Mr. Darwin Tchir confirmed that they are aware of their license being lost on January 15, 2015 and Mr. Tchir feels his license is being held hostage and reiterated the reasons for the request for second adjournment.

Councillor Whitehead clarified that Tribunal can proceed today with the Show Cause hearing, however the by-law governing the establishment is not under question and that this is not the appropriate forum to seek a change to the by-law. The Appellant reiterated that they will not put evidence forward today, the Appellant is asking for a second adjournment.

(Green/Duvall)
That the Tribunal recess for 15 minutes, returning at 11:00 a.m. CARRIED

The Tribunal reconvened at 11:03 a.m.

(Duvall/Green)
That the Hamilton Licensing Tribunal move into Closed Session, at 11:04 a.m., to deliberate upon the submissions of the parties, respecting the show cause hearing for Darwin Tchir, respecting Social Bar & Grill, Nightclub, Lounge & Restaurant located at 115 George Street, Hamilton, Ontario. CARRIED

The Tribunal reconvened in open session 11:09 a.m.

Mr. Bishop informed the Tribunal that there is no resolution reached with the Appellant.
Mr. Dawin Tchir proposed that there be an extension of their license to January 30, 2015 in order for the Appellant to come back to the January 29, 2015 Licensing Tribunal date where he will have a payment plan for the amount owing and further information regarding their financial hardship. Mr. Tchir advised of the intention to repay the fees before the new season of paid duty police officers at Hess Village.

Councillor Duvall confirmed that the Tribunal is in place to enforce the By-law and that no extension would be provided for the license and the Tribunal is not in support of the Appellant operating without a license.

Having considered the submissions of the parties, the Tribunal provided their decision, which is shown as Item 1 above.

(f) PRIVATE & CONFIDENTIAL (Item 5)

(i) September 11, 2014 – Closed Session Minutes (Item 5.1)

As the Tribunal determined that no discussion, respecting the Closed Session Minutes of September 11, 2014 meeting of the Hamilton Licensing Tribunal was required, the Minutes were approved in Open Session, as shown below:

(Duvall/Collins)
(a) That the Closed Session Minutes of the September 11, 2014, meeting of the Hamilton Licensing Tribunal be approved, as presented.

(b) That the Closed Session Minutes of the September 11, 2014 meeting of the Hamilton Licensing Tribunal, remain confidential and restricted from public disclosure.

CARRIED

(g) ADJOURNMENT (Item 6)

(Green/Duvall)
That, there being no further business, the Hamilton Licensing Tribunal be adjourned at 11:16 a.m.

CARRIED

Respectfully submitted,

Councillor T. Whitehead, Chair
Hamilton Licensing Tribunal

Vanessa Robichard
Legislative Coordinator
Office of the City Clerk