

## MINUTES

The Garrett County Board of License Commissioners / Liquor Control Board held their November meeting in the Commissioner's Public Meeting Room on Thursday, November 9, 2017 at 8:30 AM. Present for the meeting was Chairperson Lisa Herman, Commissioner Michael Fratz, Commissioner David Moe, Administrator to the Board Deborah Owston, Attorney to the Board Elizabeth Georg and Agent Dave Marple from the Comptroller's Office.

Chairperson Herman called the meeting to order. The Board signed mileage sheets.

The October 12, 2017 minutes were reviewed and approved by the Board. Commissioner Moe made the motion to approve the minutes. The motion was seconded by Commissioner Fratz and unanimously approved by Chairperson Herman.

There was general discussion. The 2018 proposed legislation was discussed. A BWL Tasting License would allow limited serving sizes and quantities of distilled spirits where authorized. The Art Establishment License would allow a qualifying non-profit organization to sell or sever beer or wine at retail for on-premises consumption. The Beer & Wine Street Festival License would allow a qualifying non-profit organization to conduct an entertainment event in an arts and entertainment district. During the venue, participants could purchase beer and wine from the qualifying non-profit or from license holders in the approved area. The alcohol must be served in an approved designated container and is permitted to be consumed on the temporary license premise as well as on the premises of any license holder with on-premise privileges. The current two-year residency requirement will be amended to a one-year residency requirement. There will be a Festival License that would allow for both wine and beer to be sold or served. The current Beer Festival License would be amended to allow a qualifying non-profit to apply. Cornish Café was inspected on October 12, 2017. The license was removed until a new Sales & Use tax number is obtained. The 2018 LCB meeting dates were approved for the second Thursday of the month except Friday, February 9<sup>th</sup>, Tuesday, April 10<sup>th</sup> and Tuesday, May 1<sup>st</sup>. Friendsville VFRD catered an event with food and alcohol for The Mountain Loggers Community Foundation dinner on October 21, 2017. The Board discussed the fire department's per diem multi-event license privileges and determined that in the future The Mountain Loggers Community Foundation should apply for a one-day per diem license. The Chamber of Commerce conducted a Business After Hours event at First United Bank on November 9, 2017. The food and alcohol was catered by Ace's restaurant. Eastern Garrett VFD will hold a Gun and Cash Bash on November 18, 2017.

A violation hearing was scheduled for 9:20 AM for Midway Discount Liquors located at 464 Weber Road in Oakland. Licensees Jeanne C. Devine and Denver K. Eichorn, II were present for the hearing as well as their council Nicholas Monteleone. The violation hearing was the result of a failed inspection on July 17, 2017 conducted by the Comptroller of Maryland Field Enforcement Division. The business was cited with two violations of the Alcoholic Beverages Article (AB) and one violation of the Tax General Article (TG). AB § 6-311, specifically, did unlawfully purchase or keep alcoholic beverages on licensed premises which were purchased from other than a duly licensed manufacturer or wholesaler. AB § 1-

408, specifically, did unlawfully fail to keep complete and accurate records of all alcoholic beverages purchased. TG § 5-302, specifically, did unlawfully possess, buy, transport, sell, store, or allow another person to buy, sell or transport an alcoholic beverage upon which the tax provided by law has not been paid. Attorney Liz Georg swore in Agent Marple to testify and review the inspection report. Agent Marple said during the inspection several mason jars containing suspected moonshine were discovered on the licensed premise behind counter. Agent Marple questioned the jars and he was told it was moonshine that various customers brought in the store but it was not for sale. The suspected alcoholic beverages were seized by the Comptroller's Office and a full report was sent to the Board. The seized mason jars were tested at the Comptroller's Laboratory in Jessup, Maryland and determined to be alcoholic beverages varying from 43 proof to 92.76 proof. Commissioner Moe questioned if Agent Marple had ever encountered a similar type of violation with moonshine. Agent Marple stated he had never encountered a moonshine violation in a retail establishment. Mr. Monteleone called licensee Denver K. Eichorn, II as a witness. Mr. Eichorn was sworn in to testify about the incident. He mentioned that he has customers who come in on occasion who have purchased grain alcohol along with flavored Pucker and Dekuyper alcoholic beverages and mix the two products to create bar shot drinks and bring them to the store for him to try. Mr. Eichorn was asked if he had any reason to believe that the product in the mason jars was anything other than products purchased from the store. Mr. Eichorn stated no. Mr. Monteleone stated then that it was product that was purchased from the wholesaler and retailer and the taxes were paid for. Mr. Eichorn agreed. Mr. Monteleone questioned if any of it was ever made available for consumption or offered for sale. Mr. Eichorn stated that it was not. Mr. Monteleone asked Mr. Eichorn to describe the area where the jars were kept. Mr. Eichorn stated that he calls the shelf the junk collection area. It has miscellaneous things that are on it including bottles that need to be returned to the wholesaler that are were out of date or the seal was broken. A picture of the shelf was presented. The picture showed other personal items that were obviously not for sale. Mr. Monteleone asked Mr. Eichorn if he was there when the items were brought to the store by customers. Mr. Eichorn said he may have been there for a few. Mr. Eichorn said he considered them as a gift to him and didn't think anything other. Mr. Monteleone asked Mr. Eichorn if it was his belief and understanding that whatever was in the mason jar was a mixture of product that was previously purchased by the customer from your store. Mr. Eichorn stated yes. Mr. Monteleone asked if Mr. Eichorn now appreciates that they should not be on the premises. Mr. Eichorn acknowledged his statement. Mr. Monteleone questioned if there was a particular reason the jars were stored on the shelf. Mr. Eichorn said because that was his to do away with shelf. Mr. Monteleone further asked if it was his intention to ultimately do away with and get it out of there along with the rest of the materials on the shelf. Mr. Eichorn said it was. Mr. Monteleone asked if it was ever his intention to sell it. Mr. Eichorn stated absolutely not. Mr. Monteleone said so you didn't sell it, didn't consume it, didn't offer it for consumption to anyone coming in the store. Mr. Eichorn said no to all of the questions. Mr. Monteleone asked if the shelf in the photograph was a shelf

were they ever displayed product for sale. Mr. Eichorn replied no. Mr. Monteleone stated that the shelf is behind the counter and questioned if it was in area where someone could just walk behind and pick something out to take to the counter. Mr. Eichorn said he guessed they could, but typically not. Mr. Monteleone said so it is basically a place where you store some junk and items that are being returned. Mr. Eichorn said exactly. Mr. Monteleone noted that Mr. Marple testified about the cups. He then asked Mr. Eichorn where they were from. Mr. Eichorn stated that the day prior, the sales rep came in and wanted him to try some wine that he was peddling and the salesman was out of cups at the time so he went over to the shelf where they sell them and opened one up and pulled a couple cups out and continued with his sample. Mr. Monteleone then asked if the cups were ever related in any way to the mason jars. Mr. Eichorn said no. Mr. Monteleone asked if they were ever used in connection with the mason jars or to taste what was in the mason jars. Mr. Eichorn said no. Mr. Monteleone said so the mason jars come in and they sit there until they are discarded. Mr. Eichorn said correct. Ms. Georg asked Mr. Eichorn if it was his testimony that those bottles of moonshine were bought in your store by your customer. Mr. Eichorn stated that the products that were in it were purchased previously to those jars being brought in. Ms. Georg asked if there were any receipts for those. Mr. Eichorn questioned, "receipts for" and Ms. George said for the product that was bought in your store by your client. Mr. Eichorn said he did not. Ms. Georg questioned why they were in different bottles than what they were purchased in. Mr. Eichorn stated because people buy this stuff and they know that he tries everything that comes in there. He said it is like if you live beside a baker and you make a cake and you make a cake that you are proud you want your neighbor to try so you make him one. He said that is the only way he can explain it. They take stuff home, they mix it up and they bring it back and say here try it and tell me what you think. Ms. Georg asked if the Board had any questions. Mr. Monteleone stated he had a follow up. Mr. Monteleone said to Mr. Eichorn, you have receipts for what was purchased that is in the jar; correct; for the original purchase. Mr. Eichorn stated they he had receipts from where he purchased from the wholesaler. Mr. Monteleone said yes exactly. Mr. Monteleone said to Mr. Eichorn so this material or liquid in the jar, do you understand that to be something that was manufactured out there somewhere and brought to your store or is it your understanding that it is a mixture of things previously purchased from your store, legitimate purchases. Mr. Eichorn said it is a mixture of things previously purchased. Mr. Monteleone asked why do people do that, explain that for me, what is actually happening, what are they doing compared to making a cake. Mr. Eichorn said they're trying to duplicate bar shots that they have sampled. If people try a bar shot that they really like, the first thing they do when they get home is look on the internet for the recipe. He said then they come to him and say this is the alcohol that I need. Mr. Monteleone said so they come in and buy the ingredients and in continuing with the analogy of baking the cake; they see a recipe for some drink, they come in and buy the necessary beverages and then they mix them in some fashion to make this drink. Mr. Eichorn said correct. What happens next, they bring something in to you. Mr. Eichorn acknowledged the statement. Mr. Monteleone said so they come in to the store

and say hey I made this. Mr. Eichorn said yes. So they bring it to you and it is put on that shelf because you know you can't sell it. Mr. Eichorn said yes and then Mr. Monteleone stated again so they bring it to you and you immediately put it over there on the shelf. Mr. Eichorn agreed. Ms. Georg said she had a follow up and asked if Mr. Monteleone was finished. He said he was not. Mr. Monteleone said I've heard the word moonshine used. He then asked is this moonshine, because when I hear the word moonshine, I think of something that was made back in the woods with a still that's hidden in the trees. Mr. Eichorn said he refers to it as moonshine because that is how the customer refers to it. Mr. Eichorn said they like to feel back in the day when you could, used to be able to, or whatever. Mr. Monteleone said so this is their term or slang term for the drinks that they made based on what they've already purchased from the store. Mr. Eichorn agreed. Mr. Monteleone asked, was it your intention at some point to discard everything on the shelf, is that correct. Mr. Eichorn said it was. Mr. Monteleone said thank you sir. Ms. Georg questioned if it was Ms. Devine's intention to testify and be sworn in too. She declined. Commissioner Moe asked Mr. Eichorn if he witnessed this mixture. Mr. Eichorn said he did not. Commissioner Moe said so it is hearsay, you are taking their word for it. Mr. Eichorn said correct. Ms. Georg asked when Mr. Marple came in to the store that day and he discussed these items with you did you explain this to him. Mr. Eichorn said probably not, not in those terms, no. Ms. Georg questioned Mr. Eichorn if he knew what the underlying product was. Mr. Eichorn said he can only assume that it is stuff that was purchased from him. He said, but no, he wasn't there, he didn't see the mixture. He said he didn't even try the product because as Mr. Marple and him spoke that day, he said he didn't know what was in it and he is not going to trust what someone brings in to be what they are telling him it's to be, so no he didn't sample it, he didn't test it, he doesn't know what was in it. He said he just assumed that since it was someone prior to or after making a purchase from me that it was a store bought product. Ms. Georg said okay, thank you. Commissioner Moe said he had one more question. He said when people do make moonshine, do they normally put it in a quart type mason jars. Mr. Eichorn said I assume, I have no idea. He said he has never dealt with moonshine. Commissioner Moe said thank you. Ms. Georg said she had no further questions. Chairperson Herman asked how long the jars on the shelf were. Mr. Eichorn said he couldn't even recollect to tell her, he has no idea. He said some of them may have been a week, some of them may have been three, he honestly didn't know. Chairperson Herman asked if behind the counter where the picture showed the outdated stuff, is there anything else behind the counter for sale. She said do you sell anything that is behind the counter that is for sale. Mr. Eichorn said tobacco. Mr. Monteleone said to Mr. Eichorn, so if a customer comes in and wants to buy something from behind the counter, the person working, the employee or you would have to get it for them, right. Mr. Eichorn said correct. Mr. Monteleone said they can't just reach behind the counter and get cigarettes. Mr. Eichorn said they have to ask for what they want. Mr. Monteleone said that is all he has. Ms. Georg said she had no questions. Ms. Georg asked if anyone else had any. Ms. Georg asked if they had any further witnesses. Mr. Monteleone said he did not. Ms. Georg then said based

on the testimony here today, and in front of you today, it's my belief that you should find Midway guilty of these violations. Mr. Monteleone said, if I may be heard. The purpose of coming here today was to explain the facts and the circumstances underlining this. The establishment and Mr. Eichorn appreciate that these items shouldn't be on the premises. They get that. The problem with it is, there are some serious litigating circumstances. You don't wish to offend the customer. If a customer comes in with material that you honestly believe was purchased from your store and they've gone home done some recipe maybe it's something they found on the internet, whatever it is and they'll go Mr. Eichorn would you like to try. These people come in and they bring it as a courtesy and you think ok and you kind of put it back on the shelf. It's out of site, it's behind the other bottles that are being returned, and it's not readily visible, it's behind the counter, it's not consumed, or offered for consumption and it's not sold. So then you have an establishment that is playing by the rules but something happens and now we are in this set of circumstances. When you look at it from that standpoint, you have to appreciate I think, that this is an establishment and a manager that's playing by the rules but things happen. I don't think Mr. Eichorn appreciated perhaps the need to get that off the premises immediately. It's like everything else, and we all do it at home. You put it aside, it's out of sight, or when you get to that and now it sits there. And now a week goes by, or 10 days, or two weeks or whatever it is and of course the inspector shows up and there it is. No one's denying anything. The important point is that nothing illegal was ever done with it. The inferences and the assumptions that Mr. Eichorn makes about what's in the jar are reasonable inferences, because these are people who come in he recognizes. They come in, they buy things, and apparently this is something that people do, they talk about it, and I guess in this business, that's well known. They bring it in almost like, hey here's the cake I made last week or last night I guess. They wouldn't bring a stale cake. You know, here it is, do you want to try it and he appreciates that he can't do that, so the employee or whoever takes it puts it aside. Remember that Mr. Eichorn is the manager and is not there when this happens. It may have happened once or twice when he was there but they come in at different times. We're not talking about a regular practice. We're not talking about fifteen, twenty bottles or a full stash of this stuff. If you had a big stash of this, you might assume wait a minute maybe this was being offer for sale. This was five bottles. That's not inventory. You kind of get that. From a business standpoint, that's not something that constitutes business inventory. It's back on a shelf with everything else to be discarded or in other cases returned to the wholesale vendor. Mr. Monteleone said, I would ask you to take those things consideration in making your decision in this case because it's very important to the establishment. This is an establishment that tries hard to play by the rules. It's been in business for 40 years and over the course of 40 years, that's a long time and it's thousands upon thousands of customers over those years. It's a pretty good record. Not suggesting that it's not a perfect record, but it's a pretty good one. Chairperson Herman made a motion that the Board find Midway guilty on all three violations. The penalty will be a fine of \$2,000 and suspension of five-days. However, the Board will offer Midway probation before judgement and a suspension of all days but one and

suspended \$1,000 of the fine. Commissioner Fratz seconded the motion and the affirmative vote of the Board was unanimous by Commissioner Moe. The establishment will be on probation for a period of one year from November 9, 2017. If during this probationary time there is a violation, the remainder of the fine and suspension will be implemented. The fine of \$1,000.00 is due within 30-days and the one-day suspension must be served within 60-days on a regular business day. The license holders indicated they would accept the probation before judgment and waived their right to appeal and would notify this office of the date of the suspension. Ms. Owston stated that during the suspension period the licensee is suspended from selling alcohol. You could remain open and sell non-alcoholic products, however there are to be no deliveries, or moving of alcoholic beverages. Mr. Eichorn said he's not taking any chances, the store will be closed.

A new Class B Resort BWL On-Sale 7-Day License and Draft Beer License hearing was held at 10:00 AM for the Deep Creek Marina, LLC dba Monkey Business. The business is located at 970 Deep Creek Drive in McHenry. Adrian A. Spiker II is the sole applicant for the license. He was present for the hearing as well as Karen Myers. Ms. Myers gave the Board an overview on the planned operations and proposed hours at the aerial adventure park. She noted that the new building that is currently under construction in Phase I was determined not to be big enough for all of the planned activities. As a result, until a kitchen facility is available in Phase II of the project, the Health Department has approved the food to be prepared and packaged in sealed containers at the club location. It was noted that in Phase I there will also be limited beverage service. The beverages would be sold prepacked and sealed as individual servings. As soon as the U&O is issued for Phase I they will start Phase II. They hope for this to happen within a month. Phase II will have a full kitchen and service bar operations and is anticipated to be completed sometime in April. The draft beer system will be included in the Phase II construction project. The operations of the adventure park is planned year round but on days when the temperatures are very low it won't be open. Ms. Owston pointed out that Mr. Spiker already holds a Class B license at the Deep Creek Marina Club. The marina club has a special exception approval as a club membership, so it's not quite open to the public but this application would be open to the public. Monkey Business qualifies as a recreational facility of the Resort License. Ms. Owston said that employees would have to be 21 or older for the alcohol service in Phase I. The Deep Creek Watershed Board of Appeals (DCWSBA) Special Exception SE-460 was reviewed in regards to the hours of operations. The initial application for the aerial adventure park was approved to be open until dusk except for July and August when they could be open until 9:00 PM. Ms. Myers said there will be an expansion plan submitted and presented to the DCWSBA on December 21, 2017 to have the hour restriction lifted for the indoor activities. Ms. Owston mentioned that the Board's approval will be pending DCWSBA mandated hours. Ms. Myers agreed. Ms. Owston said let the record reflect that there was no one in attendance to protest the application and she read one of the DCWSBA findings of SE-460. *The Board believes that the applicant is required to abide by guidelines*

*established by zoning, the health department, the State, County Public Works, the Liquor Control Board and other agencies that oversee operation and permitting of such a business. The Board also believes that allowing the onsite consumption of alcoholic beverages here is a serious responsibility, should not be taken lightly and should be properly monitored by the applicant.* Ms. Owston then noted that the marina club has several employees with alcohol awareness training and that DaVina Griffith who teaches TIPS mentioned the inquiry for an on-site training in the future. The outstanding administrative items include an approved Health Permit and U&O approval from the appropriate agencies. Ms. Owston informed them to keep the Board posted on any permitted changes to the hours of if they plan to close for an expanded period of time greater than 10 days. Ms. Myers questioned whether or not they should just file something in late December noting the planned hours and the fact that they may change due to weather conditions. Ms. Owston said that would be fine and make sure to include and changes from the DCWSBA meeting on December 21, 2017. She also mentioned that the proposed arcade games require additional licensing. Ms. Myers acknowledged her statement and said she does not anticipate the arcade to be operating until the spring. Commissioner Moe questioned the opening dates. Ms. Myers said the park is open now and the food and beverage service will be later. Mr. Spiker explained activities at the aerial park. Ms. Owston said let the record reflect that the application is just in Mr. Spiker's name and the Deep Creek Marina Club license is in both Mr. Spiker and Ms. Elizabeth Spiker Holcomb's name. A Unanimous Written Consent legal document was submitted indicating that Ms. Elizabeth Spiker Holcomb in no longer a member of Deep Creek Marina, LLC. As a result, the current Class B BWL On-Sale License issued to Deep Creek Marina Club will have to be amended to a Resort License as well. Commissioner Fratz made a motion to approve the Class "B" BWL Resort On-Sale 7-Day License and Draft Beer License pending the administrative requirements big met. The motion was seconded by Commissioner Moe and unanimously approved.

A transfer hearing was held at 10:20 AM for the license issued Ms. Emily Berry of Avalon Business Ventures, Inc. dba The Cornish Café. Cornish Café Inc. is the new legal entity. Ms. Berry will remain the sole member / applicant. Ms. Berry was present at the hearing. The business will continue to operate the same as it has in the past, the only change is the legal entity, Sales & Use Tax Number, etc. Ms. Owston noted that the transfer would be approved pending the outstanding administrative items including the Bulk Transfer Permit and a copy of the Sales & Use Tax Number. Commissioner Fratz made a motion to approve the Class "B" Beer & Wine On-Sale 6-Day License pending the administrative requirements big met. The motion was seconded by Commissioner Moe and unanimously approved.

The next regular meeting of the Board of License Commissioners is scheduled for Monday, December 4, 2017 is needed.

There being no further business to discuss, Chairperson Herman made a motion to adjourn the meeting.

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Lisa M. Herman  
Chairperson

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December 4, 2017  
Date