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8 February 2008

Alcohol License Review Committee  
Attn: City Clerk  
101 City-County Building  
210 Martin Luther King Jr. Blvd.  
Madison, WI 53703

Re: Quinton's, 319 W. Gorham Street, Madison, Wisconsin

Dear Committee Members:

We represent Quinton's with respect to a potential action with respect to their alcohol beverage license located at 319 W. Gorham Street. This license was granted on March 29, 2005 and it started operations in early 2006 after making a substantial financial investment in gutting and refurbishing the then existing premises.

I did have the opportunity to review the audio and visual record of your meeting of January 16, 2008 at which time there was an extended discussion regarding the restaurant status of the establishment following an audit conducted by Deb Simon of the Comptroller's Office. To my knowledge this is only the second time that an audit for determining whether an establishment is a restaurant has been conducted over the last several decades. The only other instance of which I am personally aware was the Angelic Brewpub in 1999. By way of information the audit conducted at that time indicated that the Angelic Brewpub did not meet the definition of a restaurant. The numbers came in very close to 50% but slightly over on the alcohol side of the equation. As a result of that audit and subsequent meetings with the City, no action was taken with respect to the license at that time. It did however present the opportunity to raise significant and substantial issues with respect to the restaurant definition and the implications of various methodologies to determine restaurant status. However it appears that as a result of that initial exposure to the issue that no substantive attempts were made to deal with an issue which has been of some concern, at least over the last decade or so.

In 1999 then Mayor Sue Balman convened a downtown alcohol work group at which time one of the issues discussed and explored was also the propriety of the definition of a restaurant, and the implications of auditing downtown establishments on a regular basis. Even

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as a result of that somewhat more thorough review and analysis, no further regulatory features were considered nor introduced to deal with that issue.

With respect to Quinton's, we are now almost a decade later faced once again with the same issues, and as with Angelic we are faced with the issue within the context of the potential license action.

Permit me to share with you that at the time of the Mayor's downtown alcohol workgroup, I did discuss with members of that workgroup the implications of routine audits of establishments that have had a long and successful history in the City of Madison. Although I am not privy to any specific information with respect to any particular establishment, it would not surprise me that audits of many fine establishments in the downtown area would result in a finding that the definition of a restaurant was not met. This then calls into question significant policy issues as well as political issues related to the potential ramifications of alcohol beverage licenses of a long term nature and in good standing but for the restaurant definition problem. This is an issue in my view which is significant enough to warrant a broader analysis but not within the context of a specific licensee.

Bear in mind that the definition contained in § 38.02 of the Ordinances has been in existence for a very long time. The industry has grown accustomed to living with that definition, the long and short of which is that alcohol is on one side of the equation and every other source of revenue is on the other side of the equation. While it can be argued that such a distinction is a poor method of determining whether an operation is truly a restaurant is a legitimate question. The real question posed is, however, what should replace it and what is the impact on currently existing establishments? While I think it is appropriate to have an extensive and careful analysis of that broader issue, I think it is grossly unfair to do that within the context of this particular licensee, and potentially others down the road who might find themselves in the same situation should you see fit to conduct further audits. Some of the related issues which should be reviewed are the type of records which may be required to be kept. There are no standards presently existing in terms of ordinances, resolutions or even rules of the Alcohol License Review Committee which dictate how records are to be kept, and how various gross revenue items should be dealt with in terms of the ultimate determinations as to whether an establishment is a restaurant. Furthermore, there are no requirements with respect to routine reports to be provided to the City on a periodic basis. There are also no accounting standards denominated which must be met with respect to those audits. There are no requirements for an independent audit meeting specific audit standards. There is nothing other than the plain words of 38.02 that addresses a particular gross receipt item on the food or alcohol side of the equation (although I use the term food here very loosely).

Pricing structures of various establishments also can lead to wildly different audit results. There are establishments on State Street for example which might serve a \$5.00 burger

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along with a \$1.00 Miller Lite. In that scenario, for each burger one could sell five Miller Lites to go with it and still be at a fifty-fifty breakdown. On the other hand, an establishment who also serves a \$5.00 burger that specializes in microbrews that also cost \$5.00 each, if one has simply two beers along with the burger, that establishment doesn't even come close to meeting the restaurant definition, yet I am sure we can all agree that the microbrew operation is more in the nature of a restaurant than the establishment that serves a \$5.00 burger and a \$1.00 Miller Lite.

Another related issue, which should not be lost from a public policy prospective is the fact that even full blown full service legitimate restaurant operations, after a certain time of the day such as 9:00 p.m. for example, do not function as restaurants after 9:00; if one looks at gross receipts in terms of an hour of the day or a day of the week. The definition of gross receipts as it presently exists is not a snapshot definition. It has no time limits. The practice has always been to look at gross numbers over a substantial period of time in order to make the determination as to whether the test is met. Is that an appropriate way to review it? That is a significant public policy issue that can be addressed.

Permit me to also briefly discuss some of the other issues that were raised and discussed at your meeting of January 16<sup>th</sup> with respect to the licensee. If a decision is made to proceed with the possible suspension or revocation of the license, a complaint must be drafted and common counsel must authorize a resolution for the clerk to summons in the licensee. As to the conduct of the hearing, Madison has a long history of having the City Attorney prosecute those cases and the City hires outside counsel to advise the committee with respect to the legal issues that are raised either by the City or counsel for complainant. The City also has a history of hiring a court reporter who will produce a transcript of the proceedings. Both the hiring of outside counsel as well as procuring the services of a court reporter are upfront monetary expenses.

Permit me to also share my opinion with you with respect to what happens if a complaint is filed. you hold a hearing and make a determination that the license condition has been violated. Your next job is then to make a recommendation to the common counsel with respect to appropriate action. That action can include a suspension of not less than three days, a revocation, no action at all or requesting the common counsel to place some defined additional conditions on the license.

I will also share with you some additional information which you may think is not relevant but I believe should be considered in terms of your decision about how and whether to proceed. I did review a call records checklist from the Madison Police Department for the address at which Quinton's is located. That information discloses that Quinton's is not an extraordinary call generator. If it were a problem establishment such is not demonstrated by the number and nature of the calls to which the police department responds. I have also

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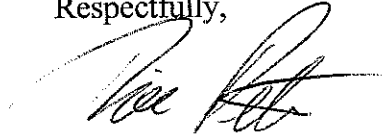
discussed with the police department whether they have experienced any problems that might be out of the ordinary. I have talked to Captain Carl Gloede by phone and shared e-mails with Captain Gloede, Captain Schauf and Lt. Joe Balles. Those discussions, however, did not relate to the restaurant versus not a restaurant license condition, but only to the question of whether they had concerns from an operational prospective. One of my purposes in terms of bringing this to your attention is not to argue that this somehow forgives them for potentially not operating as a restaurant (I do not admit that they operate other than as a restaurant), but rather to raise the question with you as to what generated the audit in the first place.

Based upon discussions that I have had with various sources, it seems pretty clear that the audit was driven by the Capital Neighborhood Association. This comes on the heels of the Association's strong support for last year's alcohol license density plan. As you may recall that density plan restricted the number of non-restaurant operations in the immediate downtown area from being granted new licenses. While that is now established as law with respect to new licenses, it does not apply to presently existing licenses. My view is that this is an attempt to not only restrict the granting of new licenses in the immediate downtown area, but also to go after those suspected of not technically meeting the definition that already exists in the downtown area.

I say this not to suggest that this is not a legitimate policy issue. However, it seems to me that to the extent that it is a policy issue, it should be discussed outside of the context of a license action against a presently existing licensee. In point of fact, it appears that the opportunity to open that discussion could well be one of the results of a soon to be executed contract between Downtown Madison Incorporated (which is partially funded by the City of Madison) and the Hospitality Institute to study, with stake holder participation, the entire landscape of the downtown as it relates to alcohol policies as well as an entertainment component. It is quite conceivable that the restaurant issue will be one of many discussed and out of which process may come a consensus with respect to further regulation which would ultimately come before you for your consideration. I suggest to you that it is appropriate to have that community input and participation prior to considering action on presently existing licensees. I thank you for your time and attention and ask you to call me if you have any comments, questions or concerns. As you may know, I will be out of state from February 10 to February 20<sup>th</sup> but I can be reached on my cell phone at 235-2262. In addition, I will be monitoring my emails during that period of time.

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Respectfully,

A handwritten signature in black ink, appearing to read "Rick Petri", written in a cursive style.

Rick Petri

RP:irs  
080422

Alcohol committee lt

cc: Assistant City Attorney Steven Brist  
Capital Mary Schauf  
Capital Carl Gloede  
Lieutenant Joe Balles  
Jimmy Powers