



**Town of Arlington
Legal Department**

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To: Board of Selectmen

Cc: Adam Chapdelaine, Town Manager
Frederick Ryan, Chief of Police
Christine Bongiorno, Director of Health and Human Services

From: Douglas Heim, Town Counsel

Date: December 3, 2015

Re: Hearing to Examine Potential G.L. c. 138 § 69 Violations by "Common Ground"

As noticed by the Office of the Board of Selectmen on November 16, 2015, and after an agreed upon postponement, the Board must examine whether or not Blog LLC (d/b/a Common Ground), violated the terms of its alcohol license by serving alcoholic beverages to an intoxicated person in violation of G.L. c. 138, § 69 and 204 C.M.R. 2.05(2) on or about December 31, 2014. Specifically, the Arlington Police Department in conjunction with the Alcohol Beverage Control Commission ("ABCC") conducted a joint investigation into the facts and circumstances surrounding the death of Mr. James McLaughlin who was driving under the influence of alcohol when he crashed his vehicle in the vicinity of 135 Pleasant Street at approximately 1:30 a.m. January 1, 2015, resulting in his death and injuries to two passengers.

The investigation, which included review of Common Ground's relevant security videos, interviews with Common Ground employees and other witnesses, examination of germane police incident reports, and forensic information, revealed the following facts pertinent to your examination:

- At approximately 1:28 a.m. on January 1, 2015, Mr. McLaughlin crashed his vehicle into a tree in the vicinity of 135 Pleasant Street.
- He was accompanied by two adult passengers – his daughter, and a person believed to be his daughter's friend and co-worker, both of whom are employees of Common Ground.
- Mr. McLaughlin, who was not wearing a seatbelt at the time of the accident, ultimately succumbed to injuries he sustained while the passengers suffered non-life threatening injuries.
- Subsequent blood tests revealed that Mr. McLaughlin's Blood Alcohol Content at the time of the accident was approximately 0.18%.
- There were no remarkable conditions on Pleasant Street at the time of the accident noted by responding APD personnel.
- One passenger provided false information asserting that Mr. McLaughlin came to pick the passengers up at Common Ground before the accident, while the other would not say where Mr. McLaughlin had been prior to the accident.
- Mr. McLaughlin had in fact been at Common Ground with the passengers immediately prior to the accident, leaving at approximately 1:22 a.m., some twenty minutes after closing.

- Mr. McLaughlin had been served food and alcohol at Common Ground throughout the day beginning sometime between 2:00 and 3:00 p.m., leaving and returning several times for a total of at least four (4) visits to the restaurant. To various bartender and staff's recollections, he ordered one to two drinks during each visit. Video evidence corroborates approximately 5 total drinks throughout the day and evening. During his final visit he returned sometime between 11:00 and 11:30 p.m., and is believed to have been served a Guinness lager and a "small glass of champagne" between such time and last call.
- During at least three (3) visits, Mr. McLaughlin was drinking and socializing with Common Ground employees who had completed their shifts, including one of the passengers in his car at the time of the accident.
- None of the serving bartenders or other witnesses recall Mr. McLaughlin appearing intoxicated. Further, many staff reported engaging Mr. McLaughlin in conversation throughout the evening without perceiving any signs of intoxication.
- In further inquiries, this Office expressed concern over Mr. McLaughlin's apparent drinking with Common Ground staff coming off of their shifts. The license holder and his counsel responded that he was a regular patron at the restaurant who was friendly and familiar to many staff, but insist that alcohol can only be served from the bar, consistent with their internal alcohol policies and regulations.
- Security video footage of each of Mr. McLaughlin's patronage at Common Ground that New Year's Eve does not show any evidence that Mr. McLaughlin received alcohol from any source other than appropriate, on-shift staff. It does

not depict exaggerated visual signs of intoxication, though it also does not provide audio of events or resolution sufficient to see details of Mr. McLaughlin's face to corroborate or counter witness statements.

The events set forth above demonstrate a potential violation of the state liquor licensing law and the regulations of the ABCC ("ABCC"). Specifically, Section 69 of Chapter 138 prohibits the sale or delivery of alcoholic beverages an intoxicated person, while 204 C.M.R. 2.05(2) prohibits any illegality (such as a violation of Section 69) on licensed premises.

If, after a hearing, the Board concludes that violations of the law occurred, it may decide to "modify, suspend, revoke, or cancel" the liquor license of the establishment. See G.L. c. 138, § 23. Upon information and belief, Common Ground has not previously been found to have violated any liquor licensing laws either in Arlington or in its Boston location. Nonetheless, the Board has significant discretion to mete out appropriate terms of license modification or suspension in addition to revocation. However, I note that § 69 determinations vary widely based on the specific facts and circumstances at issue in each case, with some violations resulting in warnings alone, and others resulting in significant suspensions or revocations. Factors of import include the amount of alcohol served, the level of obviousness of intoxication, previous violations by the establishment, and other conditions under which over-service occurred.

I also note that there is precedence for resolution of allegations by mutual agreement of terms in cases of alleged § 69 violations given the prevalence of both competing evidence and mutual concerns of licensing authorities and license holders.

I look forward to providing further details of this matter and answering your questions at the hearing.