

**SPECIAL MEETING
OF THE MAYOR AND COUNCIL
SEPTEMBER 26, 2019**

THE SPECIAL MEETING OF THE MAYOR AND COUNCIL OF THE BOROUGH OF MANVILLE, COUNTY OF SOMERSET, STATE OF NEW JERSEY, WAS HELD ON SEPTEMBER 26, 2019 IN THE MANVILLE MUNICIPAL COURTROOM, 325 NORTH MAIN STREET, MANVILLE, NEW JERSEY AT 7:00 P.M.

MAYOR RICHARD ONDERKO PRESIDED

The Borough Clerk announced that proper notice had been given by the posting of the Regular Meeting Notice and by providing adequate notice of the Regular Meeting to the Courier News and the Star Ledger.

ROLL CALL:

MAYOR RICHARD ONDERKO
COUNCILMAN JOSEPH LUKAC, III
COUNCILMAN PHILIP E. PETRONE--ABSENT
COUNCILMAN RON SKIRKANISH
COUNCILMAN STEPHEN SZABO
COUNCILWOMAN PATRICIA ZAMORSKI
COUNCIL PRESIDENT MICHELE MAGNANI

ALSO PRESENT:

SHERRI ORENBERG-RUGGIERI, ESQ., SUBSITUTE FOR BOROUGH ATTORNEY
THADDEUS R. MACIAG, BOROUGH SPECIAL LITIGATION ATTORNEY
WILLIAM C. FAY, IV, ESQ. BOROUGH SPECIAL ATTORNEY-LIQUOR LICENSE
BRETT RADI, BOROUGH ADMINISTRATOR
MARK PELTACK, CHIEF OF POLICE
WENDY BARRAS, TEMPORARY ACTING BOROUGH CLERK

SALUTE TO THE FLAG AND A MOMENT OF SILENCE

RESOLUTION (To be taken separately)

Mayor Onderko requested a motion to adopt Resolution #2019-192. Council President Magnani seconded by Councilman Lukac made a motion to adopt Resolution #2019-192.

**ROLL CALL: AYES: MAGNANI, LUKAC, SKIRKANISH, SZABO, ZAMORSKI
 ABSENT: PETRONE**

**Resolution #2019-192
Closed Session**

BE IT RESOLVED by the Mayor and Council of The Borough of Manville, that an Executive Session of the Mayor and Council, from which the public will be excluded will be held upon adoption of this resolution for the purpose of discussing:

- Litigation Matters Involving the NJ Division of Alcoholic Beverage Control and Mike Wins Bar LLC, doing business as Foxtail Lounge

Exclusion of the public for this purpose (s) stated is expressly permitted by the provisions of the "OPEN PUBLIC MEETINGS ACT", N.J.S.A. 10:4-6, et. seq. It is not anticipated that the contents of the discussion will be made known until it has been determined that disclosure of the subject matter will not adversely affect the public interest and until the Mayor and Council have adopted a Resolution so concluding.

Borough of Manville
/s/ Richard M. Onderko, Mayor

At 7:03 pm the meeting moved into Closed Session.

At 7:11pm Mayor Onderko requested a motion to come out of Closed Session. Councilman Szabo seconded by Councilman Lukac made a motion to come out of Closed Session.

All present were in favor.

PUBLIC HEARING

Mayor Onderko requested a motion to open the Public Hearing. Councilman Skirkanish seconded by Councilman Szabo made a motion to open the Public Hearing.

All present were in favor.

Mayor Onderko turned the meeting over to Attorney Maciag, who presided as the officer for the Public Hearing. Mr. Maciag explained the procedure of the Public Hearing to the Public. He stated the Liquor License renewal for the 2019-2020 term for Mike Wins Bar, LLC dba Foxtails Lounge is the matter being decided this evening.

Mr. Jannarone, attorney for Mr. Michael Winston owner of Mike Wins Bar, LLC delivered his opening statement. He stated the License was not renewed because of ongoing police investigation at the establishment. He further explained that the calls for service have decreased and most of those calls resulted in an unfounded conclusion.

Mr. Fay, attorney representing the Borough of Manville, stated he will present the investigative report prepared by Detective Sgt. Sheffrin of the Manville Police Department. He stated this report will be efficient in representing the case for the Borough whether to deny or grant the renewal for Mike Wins Bar, LLC.

Mr. Jannarone requested Detective Sgt. Sheffrin to testify and he was placed under oath. Mr. Jannarone verified with Detective Sgt. Sheffrin the number of complaints and the manner in which they were categorized. Detective Sgt. Sheffrin stated that a complaint is a call for service. Mr. Jannarone questioned if an officer who is working the detail at Foxtails if whether the officer would call into dispatch to report an incident. Detective Sgt. Sheffrin stated it would depend on the officer and the situation presented. Mr. Jannarone and Detective Sgt. Sheffrin discussed and commented on the 35 calls for service that were presented in the report created by Detective Sgt. Sheffrin. Mr. Jannarone stated that 62% of the noise complaints were reported by the same individual and all concluded as unfounded. Detective Sgt. Sheffrin testified he viewed the reporter of these calls as credible. They discussed the calls for service for large groups and disorderly persons and fights. Mr. Jannarone asked Detective Sgt. Sheffrin about the bi weekly meetings with Mr. Winston. He commented on the general nature of the meetings and agreed Mr. Winston has been receptive to any

issue brought forth. Detective Sgt. Sheffrin stated the renewal of the license is not dependent him but upon the Council.

Mr. Jannarone requested Mr. Michael Winston to testify and he was placed under oath. Mr. Jannarone questioned Mr. Winston on an incident at Foxtails that occurred on November 3, 2018. Mr. Winston also explained an incident that occurred on March 29, 2019 between two employees at the establishment. There was discussion between Mr. Jannarone and Mr. Winston regarding the bi weekly meetings.

Mr. Fay asked Mr. Winston about how long his patrons linger about the establishment at closing time. He also questioned him about the incident on November 3, 2018 and March 29, 2019. Mr. Fay asked Mr. Winston if he felt there was a decrease in the number of calls to his establishment. Mr. Winston felt 60% of the calls for service are due to hyper sensitive neighbors.

Mr. Jannarone re directed Mr. Winston about the number of calls from last year to this year.

Mr. Fay asked Detective Sgt. Sheffrin to state his position and number of years with Manville Police Department. Detective Sgt. Sheffrin explained his history with the liquor license of Mike Wins Bar, LLC. Mr. Fay asked about the order authorizing Mike Wins Bar to remain open pending appeal from Director Rival to be marked as Evidence S1. There was no objection from Mr. Jannarone. Mr. Fay asked the investigation report prepared by Detective Sgt. Sheffrin as Evidence S2. This report was discussed between Detective Sgt. Sheffrin and Mr. Fay. Mr. Fay questioned Detective Sgt. Sheffrin regarding the prostitution charge that was brought against an employee of Mike Wins Bar, LLC. Detective Sgt. Sheffrin stated he was present during the criminal case and a consent order was placed against Mike Wins Bar, LLC. The consent order included a 24 day suspension of liquor license against Mike Wins Bar, LLC that was agreed upon by both parties. Mr. Fay requested to move the Consent Order into Evidence as S3. Mr. Fay asked Detective Sgt. Sheffrin regarding the number of calls for service at Mike Wins Bar, LLC and the calls there far exceed those of any other Liquor License establishment. Mr. Fay questioned Detective Sgt. Sheffrin if in his opinion if the liquor license of Mike Wins Bar, LLC should be renewed and he answered he did not feel it should be renewed.

Mr. Jannarone asked Detective Sgt. Sheffrin about the bi weekly meetings he had with Mr. Winston and about any suggestions that were brought forth to Mr. Winston. Mr. Jannarone questioned there wasn't more communication between him and Mr. Winston regarding the nature of the calls for service and why Detective Sgt. Sheffrin offers him more suggestions.

Mr. Fay stated he had no further witnesses to question.

Mr. Maciag stated at this time both attorneys would present their closing statements. He reminded Mr. Jannarone the Governing Body had reviewed the criminal complaint in Municipal Court, the Consent Order from August of this year, and the summary of testimony from 2018.

At this time Mr. Jannarone redirected Mr. Winston regarding the prostitution charge brought forth by the Municipal Court against Mike Wins Bar, LLC. Mr. Winston explained the policy and procedures that are displayed throughout the bar. Mr. Winston stated he was surprised to find out the amount of calls are the same from last year. Mr. Winston explained he was always open to suggestions to improve conditions at his establishment.

Mr. Fay questioned Mr. Winston if he felt the nuisance was more from the residents than his establishment. Mr. Winston explained his thoughts concerning the matter of calls from the residents. Mr. Fay also questioned Mr. Winston regarding any prostitution in his establishment.

There was a clarification as to the time frame of S2, which is from October 2018 to July 2019.

Mr. Jannarone in closing remarks stated there is a discrepancy in the reports generated from the Police Report as to the nature of the calls for service. He stated his client feels betrayed when he is cooperating fully with the Police Department and the municipality. Mr. Jannarone stated there was too much speculation involved in the report generated by Detective Sgt. Sheffrin. He stated the License should be renewed and take the opportunity to work on the issues that need to improve.

Mr. Fay stated that the establishment is failing in the ability to control the issues such as fights, prostitution, and loud noise. He stated it is the opinion of the Police Department not to renew the liquor license of Mike Wins Bar, LLC.

Mayor Onderko requested a motion to close the Public Hearing. Councilman Szabo seconded by Councilman Lukac made a motion to close the Public Hearing.

All present were in favor.

Mayor Onderko requested a motion to open the Public Portion. Councilman Szabo seconded by Council President Magnani made a motion to open the Public Portion.

All present were in favor.

Mary Jane Lisny, 131 South 3rd Ave., Stated the time frame of incidents is inconsistent with the time reported and the incident occurs for sometime before a resident makes a call to the police department for assistance.

Mayor Onderko thanked her for her comments.

Jon Grzeckowicz, 115 Pearl St., Stated he is concerned because nothing is being done with the establishment. Explained the residents in the area are simply tired of the issues surrounding the bar.

Mayor Onderko thanked him for his comments.

Maria Janucik, 720 E. Frech Ave., Questioned the liquor license number of the establishment and type of liquor license it is. Stated this establishment is having a very negative impact on the neighborhood.

When no else wished to comment Mayor Onderko requested a motion to close the Public Portion. Councilman Szabo seconded by Councilman Lukac made a motion to close the Public Portion.

All present were in favor.

RESOLUTION (To be taken separately)

#2019-193 Closed Session

Litigation Matters Involving the NJ Division of Alcoholic Beverage Control and
Mike Wins Bar LLC, doing business as Foxtail Lounge

Mayor Onderko requested a motion to adopt Resolution #2019-193. Councilman Skirkanish seconded by Council President Magnani made a motion to adopt Resolution #2019-193.

ROLL CALL: AYES: MAGNANI, LUKAC, SKIRKANISH, SZABO, ZAMORSKI

ABSENT: PETRONE

BE IT RESOLVED by the Mayor and Council of The Borough of Manville, that an Executive Session of the Mayor and Council, from which the public will be excluded will be held upon adoption of this resolution for the purpose of discussing:

- Litigation Matters Involving the NJ Division of Alcoholic Beverage Control and Mike Wins Bar LLC, doing business as Foxtail Lounge

Exclusion of the public for this purpose (s) stated is expressly permitted by the provisions of the "OPEN PUBLIC MEETINGS ACT", N.J.S.A. 10:4-6, et. seq. It is not anticipated that the contents of the discussion will be made known until it has been determined that disclosure of the subject matter will not adversely affect the public interest and until the Mayor and Council have adopted a Resolution so concluding.

Borough of Manville
/s/ Richard M. Onderko, Mayor

At 9:41 pm the meeting moved into Closed Session.

At 9:55pm Mayor Onderko requested a motion to come out of Closed Session. Councilman Szabo seconded by Councilman Lukac made a motion to come out of Closed Session.

All present were in favor.

Mayor Onderko stated the Borough Council will be taking formal action as a result of the Closed Session. Mayor Onderko requested a motion to amend the agenda to include Resolution #2019-194. Council President Magnani seconded by Councilman Szabo to amend the Agenda to include Resolution #2019-194.

**ROLL CALL: AYES: MAGNANI, LUKAC, SKIRKANISH, SZABO, ZAMORSKI
ABSENT: PETRONE**

Mayor Onderko requested a motion on Resolution #2019-194. Councilman Szabo seconded by Councilman Lukac made a motion to deny the Liquor License of Mike Wins Bar, LLC (Foxtail Lounge).

**ROLL CALL: AYES: MAGNANI, LUKAC, SKIRKANISH, SZABO, ZAMORSKI
ABSENT: PETRONE**

Motion passed 5 to 0 to deny the license.

Councilman Lukac stated a possible reason for the low public turn out at tonight's meeting could be because there was back to school night at Weston Elementary School.

Temporary Acting Borough Clerk Barras read Resolution #2019-194 into the public record.

**Resolution #2019-194
Resolution Denying
The Application For Renewal Of
Liquor License For Mike Wins Bars, L.L.C. (Foxtail Lounge)**

WHEREAS, an application was filed for renewal of the following Plenary Consumption, Plenary Retail Distribution, or Club License (the “License”):

License Name	Business Name and Address	License Number
Mike Wins Bars, L.L.C.	Foxtail Lounge 39 South Street	1811-33-018-012

WHEREAS, the governing body is aware of news reports of criminal charges that have been filed in regard to alleged engaging in prostitution by an employee of the Licensee which took place at Foxtail Lounge in May 2019; and

WHEREAS, the governing body is aware that after an investigation conducted by the Manville Police Department and the Somerset County Prosecutor’s Office, a Criminal Complaint [#1811-SC-2019-000071] was filed, and a stipulation admitting to the facts of the Criminal Complaint including as to its allegations of the Licensee’s employee engaging in prostitution per N.J.S.A. 2C:34-1.1 was entered into on June 24, 2019; and

WHEREAS, the governing body is aware that a Notice of Charges from the Borough as the Licensing Authority was preferred against the Licensee on June 26, 2019 in regard to the May 2019 prostitution allegations, and that, in a Consent Order dated August 15, 2019, the Licensee entered a plea of **non vult** to said Notice of Charges as to illegal activity and lewdness; and

WHEREAS, the governing body is aware that the Borough denied renewal of the instant license for the 2018-2019 term by Resolution #2018-177 on August 23, 2018, which Denial was appealed by the Licensee, resulting in the September 7, 2018 “Order Extending License & Imposing Special Conditions Pending Appeal”, as entered on that date by the Director of the N.J. State Division of Alcoholic Beverage Control, which appeal is presently pending before the New Jersey Office of Administrative Law; and

WHEREAS, the governing body previously adopted Resolution #2019-141 dated June 24, 2019, which Resolution denied renewal of the instant License for the period 2019-2020, pending a Public Hearing to be held to address the issues referenced hereinabove and issues as to the licensee’s operations since 2012 and over the period June 30, 2018 to date; and

WHEREAS, the borough and the licensee jointly agreed to schedule and conduct said hearing on September 26, 2019; and

WHEREAS, said Public Hearing, being duly noticed in accord with applicable law, was held on September 26, 2019, commencing at 7:00pm (the “Public Hearing”) and completed that evening; and

WHEREAS, the Applicant, Mike Wins Bars, L.L.C. was represented at said Public Hearing by its Counsel, Thomas Jannarone Esq. and the Manville Police Department was represented at said Public hearing by William Fay, Esq., and

WHEREAS, six of the seven members of the governing body were present for the entirety of said Public Hearing, and listened to the evidence presented, the testimony of witnesses and examination and cross-examination of same by counsel, the Exhibits presented, and the community sentiment presented in comments by members of the public; including but not limited to the following information presented to and considered by the Mayor & Council at the Public Hearing:

(1) The opening statements of both William Fay Esq. and Thomas Jannarone, Esq.;

(2) The testimony of Manville Borough Police Detective Sergeant David Sheffrin, including direct examination and re-direct examination by Mr. Fay and cross-examination and re-cross by Mr. Jannarone, and including review of Exhibits presented, as to the Detective's experience with and interaction with the Applicant, its principal and the premises in question, and the history and timing of police calls involving the Licensee's premises, at the close of which testimony the Detective recommended that the License not be renewed;

(3) The information and summary of the prior proceedings, including the stipulations, pleas, consent orders, and prior orders and resolutions as referenced in the WHEREAS clauses set forth hereinabove; and

(4) The testimony of Manville Borough Police Detective Sheffrin, including direct examination and re-direct examination by Mr. Fay and cross-examination and re-cross by Mr. Jannarone, and including review of Exhibits presented, as to the Detective Sergeant Sheffrin's experience with and interaction with the Applicant, its principal and the premises in question, and including any questions by members of the governing body; at the close of which testimony Detective Sergeant Sheffrin recommended that the License not be renewed;

(5) Said testimony of Detective Sergeant Sheffrin, and the exhibits presented in regard to same, provided the Mayor & Council with a history of the Applicant's operations in the Borough of Manville since June 2018, including that the Bar is located in a residential neighborhood, and including its effects on the adjacent residential neighborhood, and including but not limited to relevant Manville Police Department reports of activity and incidents over that period;

(6) Oral argument and testimony presented by the attorney for the Applicant, including direct examination and re-direct examination by Mr. Jannarone of Detective Sergeant

Sheffrin and Mr. Michael Winston and cross-examination and re-cross by Mr. Fay, and including any questions asked by members of the governing body;

(7) The community sentiment and public comments presented after the close of the testimony of witnesses, the Mayor opened the Public Hearing to comments from the public;

(8) The governing body also reviewed Resolution #2018-177 dated August 23, 2018, which listed the public comments presented at the August 21, 2018 public hearing as to the prior history of operations of the licensee, including the Resolution #2018-177 summary of those August 23, 2018 public comments as follows:

(a) public comments presented by employees of the Applicant as to the inability of the bar owner and his employees to control what patrons do once they are outside the interior of the bar premises and suggesting that the Bar owner should not be held responsible for patrons' behavior outside of the Bar itself, and as to the detrimental effect on employees' personal finances if the liquor license were not renewed;

(b) public comments from nearby business owners, including landlords of two adjacent neighborhood small apartment buildings, as to the detrimental effect on their business' finances in that several of their tenants have moved out due to fears for their safety given repeated incidents at the Bar, leaving those landlords with several vacant apartment units;

(c) comments from residents of the immediate neighborhood surrounding the Bar as to matters having gotten worse as to incidents from the Bar over the years, as to fear for their lives and their children's lives in regard to gunshot incidents on the street in front of the bar; as to those residents fear for their safety, including but not limited to their fears of not being safe while sitting on their porches, walking their dogs, walking on their street, walking to and from their cars; or being outside in their yards; reports of several hundred dollars of damages incurred on resident's automobiles, homes, backyard furniture, etc.; reports of fights, of what the residents believed to be apparent prostitution and apparent sexual harassment by bar patrons; broken bottles and vast quantities of trash left on the street and in front of their homes by bar patrons; reports of frequent urination and vomiting by bar patrons in front of their homes, on their vehicles, or on the sidewalks or street; reports of fist-fights, yelling, cursing, swearing and loud noises from bar patrons; and reports of how while there had been a liquor license located at the premises for several decades, previous owners had operated same as a family bar with a different type of clientele that had in the past not resulted in anywhere

near the seriousness or number of incidents as have occurred during operation of the premises by the present Applicant.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Manville:

(1) That based on the testimony of the Manville Police Department which has recommended that the instant liquor license not be renewed for the 2019-2020 term; based on the Exhibits presented; based on due consideration of the testimony and argument presented on behalf of the licensee; based on the testimony and exhibits presented at the September 26, 2019 hearing; based on the extensive prior history of this Applicant as set forth hereinabove; and based on the Public Comments and Community Sentiment expressed at the Public Hearing, the Mayor & Council have determined that it is not in the best interests of the health, safety and welfare of the community to renew the Liquor License in Question; and

(2) That the application of Mike Wins Bar, L.L.C. doing business as Foxtail Lounge at 39 South Street, Manville, N.J. for Renewal of its Liquor License #1811-33-018-012 be and hereby is **DENIED**; and

(3) That a true copy of this Resolution shall be served by the Borough Clerk on the Applicant and his attorney.

Borough of Manville
/s/ Richard M. Onderko, Mayor

Mayor Onderko requested a motion to adopt Resolution #2019-194 as modified and read into the Public Record. Councilman Lukac seconded by Council President Magnani made a motion to adopt Resolution #2019-194 as modified.

ROLL CALL: AYES: MAGNANI, LUKAC, SKIRKANISH, SZABO, ZAMORSKI
ABSENT: PETRONE

Mayor Onderko requested a motion to open the Public Portion. Councilman Szabo seconded by Councilman Lukac made a motion to open the Public Portion on Resolution #2019-194.

All Present were in Favor.

Maria Janucik, 720 E. Frech Ave.,- Commended the Governing Body on denying the Liquor License.

When no else wished to comment Mayor Onderko requested a motion to close the Public Portion. Councilman Szabo seconded by Councilman Lukac made a motion to close the Public Portion.

All Present were in Favor.

Mayor Onderko requested a motion to adjourn. Councilman President Magnani seconded by Councilman Lukac made a motion to adjourn.

All Present were in Favor.

The meeting was adjourned at approximately 10:07 p.m..

ATTEST:

A handwritten signature in cursive script that reads "Wendy Barras". The signature is written in black ink and is positioned above the printed name and title.

Wendy Barras
Temporary Acting Borough Clerk