

## CITY OF VANCOUVER



## BUSINESS LICENSE HEARING MINUTES

JULY 24, 2008

## CITY OF VANCOUVER

A Business License Hearing of the Council of the City of Vancouver was held on Thursday, July 24, 2008, at 7:30 p.m., in the Council Chamber, Third Floor, City Hall, to determine whether or not the 2008 City of Vancouver business licenses granted to Thi Giang Vo doing business as Star Night Vietnamese Restaurant (the "Licensee"), for a Restaurant Class 1 and Dining Lounge located at #101 - 1638 East Broadway, Vancouver, British Columbia (the "Premises") should be suspended or revoked.

**PRESENT:** Councillor Raymond Louie, Chair  
Councillor Heather Deal  
Councillor Tim Stevenson

**CITY CLERK'S OFFICE:** Laura Kazakoff, Meeting Coordinator

1. **Thi Giang Vo (dba Star Night Vietnamese Restaurant)  
#101 - 1638 East Broadway, Vancouver, BC**

The Business License Hearing Panel had before it for consideration an Evidence Brief, prepared by the City of Vancouver's Legal Department, which contained the following material (*on file in the City Clerk's Office*) and the evidence of witnesses:

- 1 **License & Inspections Department**

Title Search

Business License Application Form dated January 2, 2007

2007 Business License #07-153370 dated February 7, 2007 - RR

Letter to Thi Giang Vo from Barb Windsor dated October 25, 2007

Handwritten Notes dated October 29, 2007

Letter to Thi Giang Vo from Paul Teichroeb dated November 2, 2007

Suspension Notice

Handwritten Notes dated January 2, 2008

Business Plan

Handwritten Notes dated January 15, 2008

2008 Business License #08-159867 dated January 15, 2008 - RR

2008 Business License #08-159868 dated January 15, 2008 - DQ

Food Primary License dated March 17, 2008

Letter to Thi Giang Vo from Barb Windsor dated May 23, 2008

Property Use Inspection Report #UI 35484 dated May 23, 2008

Handwritten Notes dated May 29, 2008

Letter to Thi Giang Vo from Paul Teichroeb dated June 5, 2008

Property Use Inspection Report #UI 35594 dated June 6, 2008

Property Use Inspection Report #UI 35631 dated June 10, 2008

Property Use Inspection Report #UI 35708 Dated June 19, 2008  
Letter to Thi Giang Vo from Barb Windsor dated June 27, 2008  
Property Use Inspection Report #UI 35881 dated June 30, 2008  
City of Vancouver Document Notes dated June 30, 2008  
Letter to Johannes Schenk from Barb Windsor dated July 11, 2008  
Ministry of Public Safety and Solicitor General document entitled "What is 'Serving It Right'"  
Photocopies of nine colour photographs of area surrounding Star Night Vietnamese Restaurant

**2 Health Department**

Inspection Report #22, dated December 14, 2006  
Inspection Report #23, dated January 12, 2007  
Inspection Report #24, dated January 16, 2007  
Inspection Report #25, dated May 22, 2007  
Inspection Report #26, dated May 30, 2007  
Inspection Report #27, dated August 23, 2007  
Environmental Health Report Form dated January 11, 2008

**3 Police Department**

Memo to Barb Windsor from Jodyne Keller dated May 21, 2008  
Report #2007-182146  
Report #2007-200086 and Police Licensed Premises Check (LPC)  
Report #2007-203418  
Report #2007-224819  
Report #2008-36041  
Report #CP48711-2008  
Report #2008-77248  
Report #2008-84511  
Call Hardcopy Report

The Panel also had before it a photocopy of the Star Night Vietnamese Restaurant menu, which was submitted by counsel for the Licensee.

Iain Dixon, Counsel, was present on behalf of the City of Vancouver. Thi Giang Vo, the Licensee, was present and was represented by Johannes Schenk, Schenk & Associates. Ms. Vo was also aided by a Vietnamese interpreter, Chanh Bui.

Mr. Dixon advised this matter had been referred to City Council by the Deputy Chief License Inspector pursuant to Section 278 of the Vancouver Charter and Section 275 of the Charter which states that Council has broad powers to revoke, suspend or uphold a business license. He noted the issue to consider is one of management; whether the business has been managed properly in the past and is likely to be managed properly in the future. Council must also consider the impacts on the neighbourhood, whether the business is a drain on City resources, or is in contravention of any federal, provincial or municipal legislation. Mr. Dixon

noted the rules of natural justice apply and if Council chooses to suspend or revoke the licenses, it must state the reasons for that decision.

Mr. Dixon referred the Panel to the Notice of Hearing contained within the afore-mentioned Evidence Brief, which sets out the allegations that the Licensee has failed to properly manage the business premises by:

- (a) failing to maintain control over the licensed premises;
- (b) failing to operate as a Restaurant Class 1 or a Dining Lounge;
- (c) failing to comply with the provisions of the *Liquor Control and Licensing Act* regarding the licensed premises;
- (d) failing to comply with the provisions of the *Health By-law* in regards to the licensed premises;
- (e) operating as a social club without a development permit in contravention of the *Zoning and Development By-law*;
- (f) carrying on business as a social club without a business license.

In support of the allegations set out in the reports and evidence contained within the Evidence Brief, Mr. Dixon called the following witnesses:

1. Barb Windsor, Deputy Chief License Inspector
2. Police Constable Jodyne Keller #1760
3. Sergeant Cam Lawson #1682
4. Police Constable Darrell EII #1852
5. Detective Constable Bryan Carkner #1972
6. Sy Jung, Property Use Inspector

Mr. Schenk also directed questions to the witnesses.

*Mr. Schenk requested a short recess in order to confer with the Licensee. The Business License Hearing was recessed at 9:25 p.m. and reconvened at 9:38 p.m. with all members present.*

Mr. Schenk called Thi Giang Vo, the Licensee, as a witness. During her testimony, Ms. Vo submitted that prior to serving the business license suspension she would attend at the restaurant approximately 4 days per week and her daughter would be there the other days. She noted she is able to prepare all the food items on the menu, and a cook was also employed prior to the suspension. Since the suspension, police have been coming to the restaurant regularly and the customers have disappeared. The only customers who visit now are the manager's friends, who stop by to help him out. Ms. Vo submitted that they no longer serve alcohol after hours and have stopped playing karaoke. She advised that if her licenses are upheld she would like to change the business to a sushi restaurant.

During questioning from the Panel Members, Ms. Vo noted that she would like to sell the business to the manager, and he has paid her half of the purchase cost so far.

Mr. Dixon also directed questions to Ms. Vo.

Mr. Schenk called Thien Minh Vu, manager of Star Night Vietnamese Restaurant, as a witness. In his testimony, Mr. Vu submitted that he has Serving it Right and Food Safe and that since the license suspension he has been serving alcohol in compliance with the *Liquor Control and Licensing Act*. He advised the restaurant has a full kitchen and he is able to prepare approximately 40% of the items on the menu. Mr. Vu noted they do not currently employ a cook because customers have stopped coming to the restaurant because they felt harassed by the police constantly coming in and checking IDs. Mr. Vu noted the Police had visited approximately 10 times and had never told him the door should be unlocked. He advised the karaoke machine was gone and the curtains were no longer drawn. Mr. Schenk showed him several restaurant receipts and asked him to comment on them. The receipts were also passed around to the Panel and counsel for the City. Mr. Vu submitted the restaurant could operate at full capacity again if the police did not show up all the time. He also provided information regarding an incident with a customer who was not allowed to visit the washroom but was told to pee in a cup by a police officer.

Panel Members and Mr. Dixon also directed questions to Mr. Vu.

Mr. Dixon submitted that Ms. Vo is quite clear in her testimony that she has no interest or ability to run this business. He noted that the issue before the Panel is whether Ms. Vo, the Licensee, should be running this business. He further noted that while Mr. Vu has been running the business, he has not demonstrated himself as someone capable of doing so. Ms. Vo's continuing employment of Mr. Vu as the manager indicates she should not retain her licenses.

Mr. Schenk, in his closing, queried why the testimony of police officers was presented if the only issue is whether or not Ms. Vo is interested in running a business. He noted the 60-day closure of the business and the regular visits by police following the mid-January re-opening resulted in the loss of customers and suggested that other restaurants would also not be able to operate if they received so many police visits. Mr. Schenk further noted the police have stated they feel there are criminal activities at this premises, however, they have given no proof of such activities and have used suspect tactics and rationale for gaining access to the premises. He submitted a business license cannot be denied based only on the fact that the police do not like the business.

Following a brief conference with the Licensee, Mr. Schenk submitted that the Licensee is prepared to work to allay the concerns of the police and the City. She has agreed to take the curtains out, disconnect the surveillance equipment, get someone in to do the cooking, and the karaoke machine is already gone. In return, Mr. Schenk requested the restaurant not be closed, but granted a harassment-free period of time and be allowed to operate on a probationary basis and under terms set by the Panel.

## PANEL DISCUSSION

Prior to a decision on this matter Panel Members noted the evidence, taken cumulatively, is overwhelming and compelling and it is clear the Licensee is not exercising control over the premises and has no interest in running the business.

MOVED by Councillor Deal

THAT the 2008 City of Vancouver business licenses issued to Thi Giang Vo, doing business as Star Night Vietnamese Restaurant (the "Licensee"), for a Restaurant Class 1 and Dining Lounge located at #101 - 1638 East Broadway, Vancouver, British Columbia (the "Premises"), be revoked because the Licensee has failed to properly manage the Premises by:

- (a) failing to maintain control over the licensed premises;
- (b) failing to operate as a Restaurant Class 1 or a Dining Lounge;
- (c) failing to comply with the provisions of the *Liquor Control and Licensing Act* regarding the licensed premises;
- (d) failing to comply with the provisions of the *Health By-law* in regards to the licensed premises;
- (e) operating as a social club without a development permit in contravention of the *Zoning and Development By-law*;
- (f) carrying on business as a social club without a business license.

CARRIED UNANIMOUSLY

The Business License Hearing Panel adjourned at 11:10 p.m.

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