



THE CITY OF SPRINGFIELD, MASSACHUSETTS

MAYOR CHARLES V. RYAN

January 4, 2008

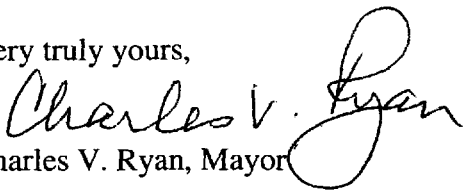
Thomas Lesser, Esq,
Lesser Newman et al
39 Main Street
Northampton, MA 01060

Re: *Hearing on Application for Entertainment License*
Amazing.Net (a.k.a Capital Video Corp.)
486B Bridge Street
Springfield, MA 01005

Dear Attorney Lesser:

Enclosed Please find original Findings and Decision with regard to the hearing in the above referenced matter.

Very truly yours,


Charles V. Ryan, Mayor

cc: Police Commissioner
Code Enforcement Commissioner
City Clerk
Law Department

6. With regard to the 2008 application, at the January 3, 2008 hearing Attorney Michael Mulcahy of the Springfield Law Department, presented witnesses and documents from the Code Enforcement Department and Police Department. Capital Video, by Attorney Thomas Lesser, Lesser Newman et al, 39 Main Street, Northampton, MA 01060, and Barry N. Covert, Esq., Lipsitz, Green, et al, 42 Delaware Ave, Suite 300, Buffalo, NY 14202-3857, presented witnesses and documents on its behalf.
7. The 2008 application (Exhibit 1) admits in Section 9b and an attached exhibit "B" to the application that the applicant was informed on November 16, 2007 that its Entertainment License was revoked and counsel for Capital Video stipulated that the 2007 Licenses were revoked on that date. Although the 2008 application indicates in Exhibit "B" that the applicant intends to appeal the Findings and Decision, there was no evidence presented that any such appeal has ever occurred.
8. After due consideration of the evidence elicited during the hearing, the following shall constitute the findings and decision on this Matter.

Findings

9. I find that issuance of entertainment licenses for the video booths would lead to the creation of a nuisance and would endanger the public health, safety or order by increasing the incidence of disruptive conduct in the area in which the premises are located.
10. The anticipated harm is significant and the likelihood of its occurrence is not remote.
11. I find that the nuisance relating to this establishment as described in the Findings and Decision revoking the 2007 entertainment licenses would likely be aggravated by the issuance of licenses to this applicant which has flagrantly refused to comply with my decision of November 16, 2007 and the laws of the Commonwealth of Massachusetts that prohibit such activity without a license.
12. The type of behavior associated with these booths, as described in the testimony and Exhibits presented at the revocation hearing, and which were introduced as Exhibits in the hearing on January 3, 2008 and described in the Findings and Decision I issued on November 16, 2007, presents a grave threat to the health and welfare of the men patronizing this establishment in question and to society as a whole due to the virulence and ease of transmission of the human immunodeficiency virus (HIV), associated with acquired immune deficiency syndrome (AIDS) and other sexually transmitted diseases (STDs). See *Com. v. Can-Port Amusement Corp.*, 2005 WL 937312.

13. Notice of this denial shall be delivered to the applicant in writing and shall be accompanied by this "Findings and Decision" as the statement of the reasons therefor.
14. A review of the 2008 application, (submitted November 30, 2007), seeks licenses for "16 video monitors" which are "currency operated in booths depicting adult content; this area is separate from the retail area". (Ex. 1 - Section 5 on p.2 of Application) The 2007 licenses only authorized "13 video monitors".
15. Section 8 of the 2008 application (Ex. 1) indicates that as part of the entertainment, there will be "person[s] depicted on DVD pre-recorded adult content" in a manner or attire to expose to public view any portion of the pubic area, anus, or genitals, or any simulation thereof, and that female persons depicted in the DVD's will include exposure to the public view portions of the breast below the top of the areola, or any simulation thereof.
16. In the "Findings and Decision" concerning the revocation hearing for the 2007 licenses, facts were introduced, without dispute, that showed the video booths on the Capital Video premises have been used for prostitution, assignation or lewdness, sexual assaults and are connected to drug activity and therefore, the video booths were deemed a nuisance and substantial grounds for denial or revocation of the 2007 licenses was found.
17. Despite the revocation, the evidence at the hearing on January 3, 2008 indicated that the booths remained in use by patrons at all times after notice on November 16, 2007 of revocation of the 2007 entertainment license and remain in use by patrons to this date.
18. City of Springfield Code Enforcement Inspector Jerald LaRose testified that he inspected the premises 6 or 7 times beginning December 6, 2007. He took photos depicting the exterior and interior of the booths on several of those dates. The dates of his inspections include December 6, 2007, December 10, 2007, December 12, 2007, December 14, 2007, and January 2, 2008. He testified there were approximately 16 booths. This is 3 booths more than licensed in 2007. His inspection revealed the booths were in use by patrons. He testified that he observed customers using the booths. During his inspections he identified himself to management of the business as a representative of Springfield's Code Enforcement Department and was told that the booths have remained in use by patrons.
19. Photos depicting the interior of the booths show the video monitors operating a continuous trailer of an adult entertainment video clip which the Inspector explained ends upon the insertion of currency which starts the running of an adult entertainment DVD.

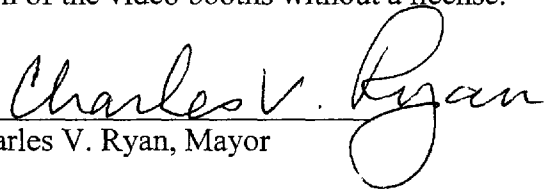
20. Sergeant Norman Charest, of the Springfield Police Department Vice Squad, testified that he visited the property on January 2, 2008 and January 3, 2008 and observed that the booths were operational and that customers were using the booths. Sgt. Charest testified that he spoke to the manager who told him that she has been employed by the applicant at the premises since May 2007 and that the booths have remained in continuous operation as long as she had been there. Charest also observed the large windows that were installed between booths. The windows were opaque unless each occupant on either side of the window would press a button which caused the window to clear so that the occupants in adjoining booths could observe each other.
21. Photos were submitted (Exhibits 3 through 12) which were taken by Inspector LaRose on his visits and are date stamped for the date they were taken. These photos include photos of the video trailer, (Ex. 7a, 8a and b, 10a, 11a and b, 12a and b) the opaque window, (Ex. 9a, 10 a and b, 11b) and the use of the booth by an occupant (Ex. 7b).
22. The applicant has flagrantly and outrageously violated the laws of this Commonwealth which prohibit unlicensed entertainment by continuing to operate the unlicensed booths despite the revocation on November 16, 2007 of the 2007 licenses.
23. Moreover, the applicant has also failed to adhere to at least three of the conditions of the 2007 license. (See list in Ex. 13 at Tab 6) The conditions as agreed to as a prerequisite for issuance of the 2007 license also required permanent closure of three of the 16 booths; the presence of "at least two employees" working at any given time; and metal sheets attached to common walls. The and the testimony of Code Enforcement Inspector LaRose as well as Sgt. Charest indicated that these conditions were not satisfied as indicated by the operation of 16 booths, only one employee at most times, and the presence of opaque windows which clear to allow viewing between booths upon the consent of users in adjoining booths.
24. The purpose of licensing statutes such as Mass. Gen. Law, Ch. 140, Section 181 is the preservation of public order at public entertainments. See *Mosey Cafe v. Licensing Board for the City of Boston*, 338 Mass. 199, 154 N.E.2d 585 (1958).
25. The evidence before me amply warrants the conclusion that management of Capital Video authorized, encouraged and was engaged in operating the video booths without any license from November 16, 2007 through December 31, 2007 as well as the first three days of calendar year 2008, and, in addition, as stated above, failed to comply with conditions agreed to before issuance of the 2007 license.

26. The applicant has shown egregious contempt for the Findings and Decision of November 16, 2007 through continued unlicensed activity and the clear and undoubted disobedience of the laws of the Commonwealth of Massachusetts.

Decision

27. The application for 2008 entertainment licenses is denied.

28. The denial of the license is not intended to in any way punish the applicant for the failure to adhere to the law, but is intended to prevent the creation, or aggravation, of the nuisance and endangerment to the public health, safety or order by increasing the incidence of disruptive conduct in the area in which the Capital Video premises (hereinafter "Premises") are located which has been documented in the past as conditions which justify denial of the application for such licenses. The Law Department should petition the Superior Court Department of the Trial Court to enjoin any violation of Mass. Gen. Law ch. 140, Section 181 and the Springfield Police Department should seek criminal complaints for operation of the video booths without a license.


Charles V. Ryan, Mayor

Date: *Jan 4, 2008*

TRANSMISSION VERIFICATION REPORT

TIME : 01/04/2008 15:50
NAME : SPFLD LAW DEPT
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FROM: EDWARD M. PIKULA, CITY SOLICITOR
RE: HEARING ON ENTERTAINMENT LICENSE(S) OF CAPITAL VIDEO
CORPORATION, d/b/a AMAZING.NET -- FINDINGS AND DECISION
