A regular meeting of the Beer Board, including a violation hearing, was held November 20, 2012 at 6:00pm in the Board Chambers at Town Hall, 500 Poplar View Parkway.

Mr. Crews called the meeting to order.

**INVOCATION**

Mr. Cotton gave the invocation.

**PLEDGE OF ALLEGIANCE**

Mr. Stewart led the Pledge of Allegiance.

The following members of the Board were present: Walter Crews (Chairman), Richard Stewart (Vice Chairman), Scott Brack, Gregory Cotton, Kim Perry and Hampton Parr. Absent was Terri O’Connor.

Also present was Assistant to the Town Administrator Josh Suddath and Town Prosecutor Mark McDaniel.

**APPROVAL OF THE MINUTES – OCTOBER 23, 2012**

Mr. Crews asked for any deletions or additions needed to the Beer Board minutes from October 23, 2012. There were no deletions or additions requested.

Mr. Brack made a motion, seconded by Mr. Cotton, to approve the minutes as written from the October 23, 2012, Beer Board meeting for the Town of Collierville.

Mr. Crews asked Mr. Suddath to call the roll.

ROLL CALL: Cotton – yes, Brack – yes, Stewart – yes, Crews – yes, Perry – yes, Parr – yes,

**CLASS I – ON-PREMISES BEER PERMIT – CIAO BABY PIZZERIA, LLC, LOCATED AT 890 WEST POPLAR AVENUE**

Mr. Suddath stated that Ciao Baby Pizzeria, LLC, has paid all their fees in full. A background check has been conducted and came back clear. The Town is still waiting on their Surety Bond, and for the Fire Department and the Building & Codes Department to sign off on their final inspections.

Mr. Suddath stated that staff recommends approval contingent upon them fulfilling those requirements of the Beer Ordinance.

Mrs. Suddath stated that the applicant, Ms. Ashley Arcuri, is in attendance tonight for any questions that the Board may have for her.

Mr. Stewart asked Ms. Arcuri what her experience is with selling of beer products.

Ms. Arcuri stated that she has never had any experience selling beer. She stated that she is an x-ray technician and has just started in the food industry. Her family has a business and she works with them. She stated that she does understand the rules and will abide by them.
Mr. Cotton asked Ms. Arcuri what system she plans to use to make sure every person’s ID is checked.

Ms. Arcuri stated that there will only be designated people that will be handling the alcohol. She stated that it would be her and the people that she hires that she will have obtain a beer ID. It will be a select few.

Mr. Cotton asked Ms. Arcuri if she already has a beer ID.

Ms. Arcuri stated that she does not have a beer ID yet.

Mr. Parr asked Ms. Arcuri what kind of training she provides to those employees who will be serving beer to make sure that they check ID’s.

Ms. Arcuri stated that she will train them, and there is also a tips course that they can go to in making sure that they are following the rules and that everyone is of age. She stated that she will enforce it.

Mr. Crews asked Ms. Arcuri when she planned to open.

Ms. Arcuri stated that she plans to open at the end of December or the beginning of January.

Ms. Perry asked Ms. Arcuri how many employees she will have.

Ms. Arcuri stated that she will have ten employees.

Ms. Perry asked Ms. Arcuri how many employees she expects to acquire beer ID’s.

Ms. Arcuri stated that it would be approximately four or five employees.

Mr. Stewart asked Ms. Arcuri if she understood the information in the copy of the Beer Ordinances that she received.

Ms. Arcuri stated that she does understand the Beer Ordinances.

Mr. Stewart asked Ms. Arcuri if she also was aware that the Collierville Police Department conducts undercover sting investigations, and that it is a matter of “when” they do them and not “if” they do them.

Ms. Arcuri stated that she was aware of undercover sting investigations happening.

Mr. Suddath informed the Board that this business will be going into the space that is located next to Dink’s, the hamburger place, and where the cupcake place used to be on Poplar Avenue.

With no further questions or comments, Mr. Crews called for a motion.

Mr. Cotton made a motion, seconded by Mr. Stewart, that the Collierville Beer Board approves a Class I On-premises Beer Permit for Ciao Baby Pizzeria, LLC, located at 890 Poplar Avenue, contingent upon them receiving their Certificate of Occupancy and the applicant supplying the
$2,500 Surety Bond to the Town of Collierville. With no further discussion, Mr. Crews asked Mr. Suddath to call the roll.

ROLL CALL: Cotton – yes, Brack – yes, Stewart – yes, Crews – yes, Perry – yes, Parr – yes, Motion is approved.

Ms. Arcuri thanked the Board.

Mr. Crews congratulated Ms. Arcuri.

**BEER ORDINANCE VIOLATION HEARING**

- **Review of Beer Ordinance Penalty Rules**

Mr. Suddath stated that he would like to review the rules for this hearing so the Beer Board understands what level of civil penalty they are authorized by the Beer Ordinance to levy, or what length of suspension or revocation of a business’ Beer Permit. He also stated that his intent is to inform the permit holder what to expect.

Mr. Suddath stated that the next portion of this meeting will be the violation hearing wherein the evidence against the alleged violator will be heard. He also reviewed for the Beer Board and the audience a few points on how these proceedings are conducted.

The rights granted to the Beer Board by the Beer Ordinance are as follows. “The Beer Board may revoke or suspend the violator’s beer permit if they are found guilty of selling to an underage person.” This is completely at the Beer Board’s discretion, whichever course of action they choose to take.

Mr. Suddath stated that the default is that the Beer Board issues a suspension, whether it is 5, 15 or 30 days. The Beer Board has the option of offering a civil penalty in lieu of that suspension. After deciding on a suspension period, the Beer Board may, at its discretion, offer the Beer Permit holder the option of paying that civil penalty or serving a suspension.

“The Beer Board may levy a civil penalty of up to $2,500.00 for each offense of allowing sales to minors.” Mr. Suddath stated that the business that is here tonight is charged selling beer to a minor.

“The Beer Board may also levy a civil penalty of up to $1,000.00 for every other offense, including those offenses wherein employees do not have their Town of Collierville Beer ID”.

Mr. Suddath addressed the representative of the business and stated that if the Beer Board levies a civil penalty tonight, the beer permit holder has seven days to pay it, or the suspension that was initially levied is automatically imposed. This means that any civil penalty levied here tonight must be paid in full by the close of business next Tuesday, November 27, 2012. If the permit holder fails to make this payment, the permit is automatically suspended for the length of time that the Beer Board has chosen to suspend it.

If the Beer Board decides to suspend or revoke a beer permit, or the violator fails to pay the civil penalty, the penalty that was levied will then become effective the 15th day following the hearing. That suspension or revocation will become effective Wednesday, December 5, 2012, at 12:01am.
Mr. Suddath stated that the two dates that need to be kept in mind are November 27th, 2012, for a suspension, and a civil penalty is due December 5, 2012.

Mr. Suddath stated that a certified letter will be sent out within the next 48 hours to that effect to the business here tonight if it should receive a penalty.

- **OSAKA JAPANESE CUISINE, LOCATED AT 3670 HOUSTON LEVEE ROAD**

Mr. Suddath stated that Osaka Japanese Cuisine, located at 3670 Houston Levee Road, violated Section 116.37(m) of the Collierville Beer Ordinances, which is the sale of beer to a minor, and also failure of the Beer Permit Holder to register an employee with the Collierville Beer Board.

Mr. Suddath stated that he was now turning this matter over to the Town Prosecutor, Mr. Mark McDaniel.

Mr. McDaniel stated that the matter before the Beer Board tonight is a violation against Osaka Japanese Cuisine, located at 3670 Houston Levee Road. He stated that proof will show that on August 16, 2012, the Collierville Police Department conducted an undercover sting investigation of the Class I “On-premises” Beer Permit holders in the Town of Collierville. On that date, a cooperating individual (CI) working with the Collierville Police Department, who was 19 years of age, entered Osaka Japanese Cuisine, ordered and received a beer from employee Chelsea Marino. Ms. Marino did check the identification before serving the beer. Detective Smith, from the Collierville Police Department, witnessed this transaction and the server was issued a misdemeanor citation for selling beer to a minor.

Mr. McDaniel stated that, in addition, it was later determined that Ms. Marino had never registered with the Collierville Beer Board, which is also a violation of the Collierville Beer Ordinance, Section 116.37(r). He stated that they submit this as the proof to be presented before the Board tonight if this matter was to be heard in a contested fashion. He stated that he has spoken with Mr. Robert Wampler, who is present at this hearing, and is the attorney representing Osaka Japanese Cuisine. Mr. Wampler has indicated that he will, on Osaka Japanese Cuisine’s behalf, enter a “no contest” plea to the accusations.

Mr. Wampler came forward and introduced himself to the Beer Board, and stated that he is representing Osaka Japanese Cuisine. Ms. Vivian Le, one of the owners of Osaka Japanese Cuisine, is also here. He stated that they will enter a “no contest” plea, and they will stipulate that it would be substantially the Town’s proof had this matter gone to trial. He also stated that he has some statements to make in litigation on what the Board may decide to do.

Mr. Wampler stated that Osaka Japanese Cuisine is a Japanese restaurant that has been here for some time. He stated that he believed that they had a prior violation in 2008. There have been several stings since 2008, and there has been no offense by Osaka since 2008.

Mr. Wampler stated that any business owner would like to vouch for the intelligence of their employees. But in the food service industry, this is difficult to do. The employees in the food service business are difficult to get, they are very difficult to maintain, and they move from place to place. This employee, Chelsea Marino, came from another Osaka Japanese Cuisine location and was not to be a server that night, but a hostess. The restaurant got so busy that night that a server
cleared a table for her and asked her to take care the guests at the table. Ms. Marino checked the ID, but didn’t see that it was under 21 years of age. She made a mistake, a human error.

Mr. Wampler stated that in the future, they are liable to have more human errors. They have a lot of employees and four locations now. A lot of the employees that have been given jobs are from foreign countries. He also stated that they pay thousands of dollars in sales tax to the Town of Collierville. He stated that it is a great restaurant and they employ a lot of people.

Mr. Wampler stated that they are asking for a little empathy, if the Board members have employees in their businesses, or sympathy, if they do not. He stated that they in no way intend to serve minors, and that human error happens.

Mr. Wampler stated that this is a good quality restaurant, and that it is not a bar or a dive, and Ms. Le does a lot for the Town of Collierville. She has no violations, except for the one back in 2008. She does all she can to prevent the human errors.

Mr. Wampler stated that whatever the Town of Collierville thinks about Osaka Japanese Cuisine, he said that he will not use the word “reward” her, but it should “thank her” for the sales taxes, for the employment, and for the leasing of the space here to promote Collierville and to help Collierville. He asked the Board to consider this.

Mr. Crews asked the Board for any questions or comments they may have.

Mr. Cotton asked Mr. Wampler what action, if any, was taken with the alleged violator, Ms. Marino.

Mr. Wampler stated that Ms. Marino has quit and does not work there anymore. She was registered at the other location with the Tennessee Alcohol Commission, but was not registered with the Town of Collierville because she was a transfer. They were in a bind and got someone from somewhere else.

Mr. Wampler clarified that Ms. Marino decided to quit and that she was not fired.

Mr. Cotton stated that he understood that.

Mr. Stewart asked Mr. Wampler about how busy they were at 2:04pm in the afternoon.

Mr. Wampler stated that they are busy at that time, and the table was being cleared off for people waiting to be seated. That is why Ms. Marino was asked to serve them.

Ms. Le asked to step forward to clarify what happened.

Mr. Wampler re-introduced Ms. Vivian Le, who is one of the owners of the four Osaka Japanese Cuisine restaurants in Memphis and the surrounding area.

Ms. Le stated that Ms. Marino was doing the hostess job that morning because they did not have one at this Collierville restaurant. Ms. Le transferred her here from another location.
Ms. Le stated that the situation at that time was that the undercover person and the underage girl came in and they sat at the bar. Ms. Le stated that Ms. Marino assumed that they were waiting for the rest of their party so that they can be seated.

Ms. Le stated that Ms. Marino acknowledged that they sat there for awhile and then went to them and asked if she could help them. Ms. Le stated that Ms. Marino told her that they said that they wanted to sit at the bar and order. Ms. Marino tried to inform the server about this request, but the server was so busy at that time, he couldn't take anymore orders. The server asked Ms. Marino if she would take the drink order for him and he would be right back. She tried to be helpful and not ignore the customers.

Ms. Le stated that more and more customers kept coming in. She stated that Ms. Marino’s main job that day was hosting, not serving. At the same time, she was trying to help. Ms. Marino took the order and did check the ID, but must have miscalculated the birth date. Ms. Le stated that not everyone is perfect in math, which is the common problem among human beings. Ms. Le stated that Ms. Marino needed to be doing her main job and not be distracted doing other jobs. That is how this happened.

Ms. Le stated that what she really does not understand is, whether they served to a minor or not, why they didn’t ask the hostess to assign them a table. Ms. Le stated that they could have tested any of her other servers. She stated that at lunchtime, they don’t serve anyone at the bar.

Ms. Le stated that she wanted the Beer Board to understand that they have been in business for eight years. She gets up every morning at 7am and gets home at 12:00. She stated that no one thinks that they get up in the morning and go to work to violate the law. She understands this completely with the very heavy fine.

Ms. Le stated that they sell $2,000 - $2,500 a month in beer sales. She says her profit is about $500 or $600, and the fine is $3,500. They do not need such a stupid mistake. She stated that the cost of one beer is $1.00, and she charges $3.00, which gives her a $2.00 profit. She would not want to sell to an underage individual to make just $2.00, versus the $3,500 fine. She asked the Board to think about their decision.

Mr. Parr asked Mr. McDaniel if he had a copy of the identification used in the undercover sting investigation.

Mr. McDaniel stated the he did, and circulated it with the Beer Board members.

Mr. Parr stated the Ms. Le had said that the math was miscalculated in determining the age of the cooperative individual. He stated that the identification clearly shows that the person is under age without having to calculate.

Mr. Wampler stated that the employee may not have known what they were looking for on the ID and probably should have, but that since 2008, they have not had any violations. These people made mistakes.

Ms. Perry asked Mr. Wampler if this instance has caused the organization to have a refresher course for all the servers that are regularly serving beer.
Mr. Wampler stated that this was not a regular server that day, this was a hostess.

Ms. Perry stated that she understood this, but was asking if the regular servers have been refreshed.

Mr. Wampler stated that he can assure the Board that Ms. Le has training sessions for her servers and employees constantly. He stated that none of Ms. Le’s other locations have ever had a violation. He stated that Ms. Le has put hundreds of thousands of dollars into these restaurants, and didn’t do this to violate the law. He stated that Ms. Le put in a million and a half at the restaurant at Poplar Plaza. She is not in business to sell beer to minors. He stated that he is asking for mercy, and to please consider it.

Mr. Crews asked for anything further.

Mr. McDaniel stated that in the proof that he submits to the Board, he has set forth factual basis for the violations, and there has been a plea of “no contest” entered. The Board needs to vote on whether or not there have in fact been violations. Then, once this determination has been made, the hearing can proceed from there.

Mr. Crews asked Mr. McDaniel if the Town has a recommendation.

Mr. McDaniel stated that the Town recommends that the Board make a motion to find Osaka Japanese Cuisine violated the Beer Ordinance relating to the sale to a minor and that they violated the Ordinance as to an unregistered sale. The motion should be made that the violations did, in fact, take place.

Mr. Crews called for a motion.

Ms. Perry made motion, seconded by Mr. Brack, to find that Osaka Japanese Cuisine, located at 3670 Houston Levee Road, guilty of a violation of the Collierville Beer Ordinance regarding selling beer to a minor, and guilty for not registering an employee with the Collierville Beer Board.

ROLL CALL:   Cotton – yes, Brack – yes, Stewart – yes, Crews – yes, Perry – yes, Parr – yes, Motion is approved.

Mr. Crews stated that the motion has been made and called for any discussion.

Mr. Crews confirmed with Mr. McDaniel that this restaurant has one previous violation.

Mr. McDaniel stated that this is correct.

Mr. Crews confirmed that the previous violation was for just one violation.

Mr. McDaniel stated that this is correct.

Mr. McDaniel stated that as far as the Town’s position on what the appropriate remedy would be, he suggested that because there have been four years and a number of stings in between the first violation, and now with no further problems, and based on the representations made as to the particular circumstances surrounding this sale, let the Board consider on the violation of the
underage sale, a 14-day suspension, or a $1,500 civil penalty. As to the unregistered sale, consider a $1,000 civil penalty, in lieu of a 14-day suspension concurrently. This would be in keeping with somewhat of a hybrid first offense. It is a little more than would be recommended on a first offense.

Mr. Suddath reminded the Beer Board that they are not obligated to concur with staff’s recommendation. The Beer Ordinance authorizes the Board to fine up to $2,500 for the underage charge, and $1,000 for the lack of a beer ID for the employee.

Mr. McDaniel stated that these human error cases are difficult for anyone with any level of compassion. He stated that, as Mr. Wampler pointed out, this business is not a dive, and is apparently a respectable restaurant that does contribute quite a bit to the community.

Mr. McDaniel stated that he does not think the Town, in and of itself, wants to discourage businesses such as this from coming here to Collierville and providing this type of venue for the citizens here. He stated that he does not want this to be an opportunity to penalize or to capitalize on someone’s mistake. He stated that the flipside of this is that this is a strict liability type circumstance and beer permits are an important part that can either be constructive or destructive to a business depending upon how they are used. This does not appear to be malicious or an intentional act of disobedience, but it is a violation.

Mr. McDaniel stated that he realizes that the Board has quite a bit of discretion on what it chooses to do. He stated that the Town’s recommendation is to try and be consistent with precedent, or prior violators, even though circumstances can be different with each matter.

Mr. Cotton stated that, as far as the second tier of this penalty, the unregistered employee serving, he suggests a $500 civil penalty in lieu of a 14-day suspension for that particular aspect of it.

Mr. Crews asked the other Beer Board members if they agreed with this suggestion.

Mr. Crews addressed Ms. Le to make a statement to her on behalf of his Beer Board colleagues and him.

Mr. Crews stated that the Board is in no way there to stigmatize her business or to emphasize, or even imply, that she is running some sort of business that furnishes alcohol for children. He stated that the Board wants her to know that. He stated that the Board hears these cases every month and that they are all volunteers, but they have to enforce the law. That is why they are there. He stated that the Board knows that she has a legitimate business, and that many of the Board members are probably patrons hers and will continue to be. He asked her to try to visualize the Board members as merely volunteers for the Town of Collierville in trying to keep everyone’s children safe on the street. That is the purpose of the Board, as well as making sure the ordinances are supported here in a judicial fashion.

Mr. Crews called for a motion.

The Board members further discussed the consistency in the penalties.
Mr. Parr stated that this is a good opportunity to put in place as many safe guards against human error as possible, especially with four restaurants now. Perhaps formalized training class or best practices of the industry could be explored to minimize human error.

Mr. Wampler stated that he cannot guarantee that there won’t be another human error. He stated that they do all that they can do, but that they have many foreign employees. He stated that he is willing to listen to any better solutions the Board may have. He stated that he appreciates the Board’s attention, but just cannot agree with the penalty and thinks that it is punitive.

Mr. Crews asked Mr. Wampler if he was aware that the fine being assessed is normally one that is assessed on a first offense.

Mr. Wampler stated that he was aware. He stated that in talking with his friend, Mr. McDaniel, it is not a fine, but a civil penalty. He stated that Mr. McDaniel straightened that out for him.

Mr. Wampler also stated that he is just giving his opinion, and that if he could tell the story of this woman, Ms. Le, escaping Vietnam, it would make you cry. He stated to the Board that they do what they have to do, and he appreciates their attention and that he is not trying to be argumentative with them.

Mr. Crews thanked Mr. Wampler.

Mr. Brack informed Mr. Wampler and Ms. Le that there are new technologies that other businesses have that scan driver licenses and tell whether or not to sell a beer. There are other procedures and safeguards that can be put in place to stop some of this human error. The systems read the bar code on the back.

Mr. Stewart added that the age of the person is spelled out on the driver’s license and it just has to be read.

Mr. Wampler agreed, and that Ms. Marino did not do this. He stated that it sometimes is just impossible to get competent employees, and then supervise close to 100 employees. He stated that it was not intentional, and that he could assure the Board of that.

Mr. Stewart stated that this is the reason that they are discussing a first offense penalty rather than a second offense penalty amount.

Mr. Wampler stated that he thinks that the civil penalties are outrageous.

Mr. Cotton made motion, seconded by Mr. Stewart, that following an entry of a “no contest” plea by Osaka Japanese Cuisine, located at 3670 Houston Levee Road, in Collierville, that a civil penalty of $1,500, in lieu of a 14-day suspension, for the sale of a beer to a minor be imposed, as well as a civil penalty of $500, in lieu of a 14-day suspension, for not registering an employee with the Collierville Beer Board, with these suspension times to run concurrently.

ROLL CALL: Cotton – yes, Brack – yes, Stewart – yes, Crews – yes, Perry – yes, Parr – yes, Motion is approved.

Mr. Suddath reiterated that the civil penalty is due on November 27th, 2012, by close of business.
Mr. Wampler stated that he knows that all the Board members are volunteering their time and that they do not have to do this, and that they are trying to protect the children of the citizens of Collierville. He stated that as a volunteer himself, he appreciates them doing this.

Mr. Crews thanked Mr. Wampler.

Mr. Suddath stated to Mr. Crews that he did not have anything else for the Beer Board.

Mr. Crews thanked the members of the Police Department for being at the meeting tonight.

Mr. Crews thanked Ms. Le as well.

Mr. Crews asked if there was any further business to address.

**ADJOURNMENT**

There being no further business, Mr. Crews adjourned the meeting at approximately 7:30pm.

_________________________     _________________________________
Walter Crews, Chairman     Josh Suddath, Assistant to Administrator