

**LIQUOR AND BEER MEETING
LOCAL LICENSING AUTHORITY
CITY OF GRAND JUNCTION, COLORADO
MUNICIPAL HEARING ROOM, CITY HALL, 250 NORTH 5TH STREET**

MINUTES

WEDNESDAY, SEPTEMBER 2, 2009 2:00 p.m.

I. **CALL TO ORDER** – The meeting convened at 2:00 p.m. Those present were Hearing Officer Jim Majors, City Attorney John Shaver, and Deputy City Clerk Debbie Kemp.

II. **APPLICATIONS TO RENEW LIQUOR AND BEER LICENSES**

1. Myths and Legends Inc., dba Quincy Bar & Grill, 609 Main Street, Grand Junction, CO 81501, Tavern

Adelle and William Lloyd, owners, were present.

Ms. Kemp read a letter into the recorded that was provided by the applicant regarding three liquor violations received in 2008.

Ms. Lloyd stated that they do have the fence up for the outdoor area which was previously approved by the Liquor Licensing Authority and they are finishing up a couple of things before using the outdoor area. She said they have terminated all of their employees because of the problems from the past and have started from scratch. They have a no tolerance policy.

The application for renewal was found to be in order and approved. Hearing Officer Majors commended the applicants for attending the meeting and being attentive to the concerns that have been raised.

2. Ad-In Enterprises, LLC dba Junction Indoor Tennis Center, 535 25 ½ Road, Grand Junction, CO 81505, Tavern

No one was present representing the applicant.

Ms. Kemp reported that she had received notice from Lisa Maestas with the Police Department stating that the applicant is not meeting the food service requirements and that Ms. Maestas had spoken with an employee of the establishment and advised them of the violation.

Hearing Officer Majors set the application for renewal over to the September 16, 2009 liquor and beer meeting and asked that Ms. Kemp notify the applicant in writing and to have a representative of the establishment present at that meeting.

3. RLJII – C Grand Junction Lessee, LLC dba Courtyard by Marriott Grand Junction, 765 Horizon Drive, Grand Junction, CO 81506, Tavern

No one was present representing the applicant.

The application for renewal was found to be in order and approved.

III. APPLICATION FOR CHANGE IN CORPORATE STRUCTURE

1. Hong Luong Inc., dba Bamboo City, 2472 F Road #2, Grand Junction, CO 81505, Beer and Wine

Vice President: Lisa Luong, 960 Bookcliff Avenue, #208, Grand Junction, CO 81501 replaces Onnie Hong

No one was present representing the applicant.

The application for change in corporate structure was found to be in order and approved.

2. Western Colorado Real Estate Market Inc., dba Bottle Shop Liquors, 725 Pitkin Avenue, Grand Junction, CO 81501, Retail Liquor Store

Addition: Cheryl Burnett, VP & Sec., 2846 ½ Unaweep, Grand Junction, CO 81503

No one was present representing the applicant.

Ms. Kemp advised that the establishment was issued a violation for sale to a visibly intoxicated person but that happened after the application for change in corporate structure had been submitted.

City Attorney Shaver advised the Hearing Officer that the complaint on the violation is pending and should not be considered in the decision of this application.

The application for change in corporate structure was found to be in order and approved.

IV. APPLICATION FOR SPECIAL EVENT PERMIT

1. Grand Junction Parks and Recreation, 1340 Gunnison Avenue, Grand Junction, CO 81501, Pork and Hops, September 18 and 19, 2009, Lincoln Park Practice Area, Malt and Vinous

President: Rob Schoeber, 2856 Patterson Road, Grand Junction, CO 81504
Event Manager: Larry Manchester, 2287 Vista Rio Court, Grand Junction, CO 81503

Larry Manchester, Event Manager, was present.

Ms. Kemp reported that the paperwork was in order and all the reports came back fine.

Hearing Officer Majors noted that the applicant provided a letter that identified six licensed venues that could not meet the capacity required for the event which meets the requirements of 12-48-103, C.R.S.

The application for a special events permit was found to be in order and approved.

V. SHOW CAUSE HEARING AND LIQUOR LICENSE RENEWAL

1. GJ North Avenue Liquors Inc., dba North Avenue Liquors, 801 North Avenue, Grand Junction, CO 815001, Retail Liquor

On June 11, 2009 served a severely intoxicated customer pursuant to Section 12-47-901 (1)(a), C.R.S.

Hearing Officer Majors explained the rules that govern the procedure of the hearing.

The show cause hearing was opened at 2:20 p.m.

City Staff Attorney DeLayne Merritt began the hearing with an opening statement to summarize the information that will be provided by the City to show that North Avenue Liquors violated Section 12-47-901, subsection (1)(a), of the Colorado Revised Statutes.

David McCarty, owner of North Avenue Liquors, said that he would like to have a chance to share his side of what happened. Hearing Officer Majors advised Mr. McCarty that he will have a chance to do that as soon as the City is finished presenting their evidence.

City Staff Attorney Merritt called Grand Junction Police Officer Chip McIntyre to testify.

Hearing Officer Majors administered an oath to Officer McIntyre.

Staff Attorney Merritt asked Officer McIntyre to state his name and his place of employment to which Officer McIntyre stated his name and said he was employed with the Grand Junction Police Department. Ms. Merritt asked if Officer McIntyre was employed on June 11, 2009 to which Officer McIntyre said yes. Ms. Merritt asked Officer McIntyre what his functions were on June 11, 2009 and Officer McIntyre said that he was patrolling the streets of Grand Junction. Ms. Merritt asked if he was dispatched to 801 North Avenue. Officer McIntyre said he was not dispatched to 801 North Avenue, two other officers were, but because he was only one or two blocks away, he responded to the call. Ms. Merritt asked what Officer McIntyre found when arriving at the location. Officer McIntyre said that there was a white male subject on the west side of the building which he knew from previous contacts to be John Lusch and that he believes the initial call was to assist an ambulance. Ms. Merritt asked, normally when called out on an assist of an ambulance, is it to help out with a violent or an intoxicated subject. Officer McIntyre said that it is. Ms. Merritt asked what the subjects demeanor was when he arrived. Officer McIntyre said that the subject was standing against the building and staggered over to the curb area where Officer McIntyre told the subject to have a seat on the curb area. The subject did not listen to his commands and he had to tell him several times. Officer McIntyre noticed Mr. Lusch's speech was slurred. Ms. Merritt asked Officer McIntyre if he had a face to face conversation with Mr. Lusch and Officer McIntyre said he did. Ms. Merritt asked if he noticed a smell emanating from the subject. Officer McIntyre said he noticed the smell of an alcoholic beverage as well as a strong body odor. Ms. Merritt asked if the subject had an alcoholic beverage on his person. Officer McIntyre said he didn't have it on his person but there was a 200 ml bottle of Skol vodka with the cap off next to the building where he was originally standing. Ms. Merritt asked if Officer McIntyre questioned Mr. Lusch about the vodka. Officer McIntyre said he asked Mr. Lusch if the vodka was his and asked if he had anything else to drink during the day to which Mr Lusch told him he'd had a beer and a fifth of bourbon prior to purchasing the vodka. Ms. Merritt asked

Officer McIntyre what time he arrived at the location. Officer McIntyre said the he believed it was around 2:45 p.m. Ms. Merritt asked if Officer McIntyre had asked Mr. Lusch where he had purchased the vodka. Officer McIntyre said that Mr. Lusch had told him he purchased it right there at that liquor store. Ms. Merritt asked if North Avenue Liquors is the only liquor store in that complex. Officer McIntyre said it is. Ms. Merritt asked how much of the vodka was remaining in the bottle. Officer McIntyre said it was approximately $\frac{3}{4}$ full. Ms. Merritt asked Officer McIntyre if he is trained and what kind of training he has in recognizing the effects of consumption of alcohol. Officer McIntyre said he is trained in DUI, sobriety, SFST (Standardized Field Sobriety Testing), and recognizing the signs of someone who is under the influence of alcohol or drugs. Ms. Merritt asked Officer McIntyre what some are the factors displayed by Mr. Lusch to show that he was intoxicated. Officer McIntyre said it was his staggering, unable to keep his balance, slurred speech, and the odor of alcoholic beverage coming from his person. Ms. Merritt asked Officer McIntyre if it appeared clear that Mr. Lusch had consumed prior to entering North Avenue Liquors. Officer McIntyre said he believed he had and Mr. Lusch had stated that he had. Ms. Merritt asked what Officer McIntyre's next step was after finishing the conversation with Mr. Lusch. Officer McIntyre said the squad arrived on scene. Mr. Lusch complained of an injury to his leg or knee. The squad questioned Mr. Lusch as to the injury. Mr Lusch was transported to the hospital. Ms. Merritt asked Officer McIntyre if he contacted Liquor Enforcement Officer Lisa Maestas. Officer McIntyre said he contacted dispatch to contact Ms. Maestas right after the squad had left with Mr. Lusch because he believed that Mr. Lusch was intoxicated when he purchased the vodka from North Avenue Liquors.

David McCarty asked Officer McIntyre if there was proof or evidence of Mr. Lusch consuming beer or a fifth of bourbon prior to him entering North Avenue Liquors. Officer McIntyre said that was no evidence found.

Ms. Merritt asked Officer McIntyre if there was beer near the curb at the location where Mr. Lusch was contacted. Officer McIntyre said he didn't remember seeing any beer, just the vodka. Ms. Merritt asked again how much of the bottle of vodka had been consumed. Officer McIntyre stated there was about $\frac{3}{4}$ of the bottle remaining so there was approximately $\frac{1}{4}$ of the bottle consumed. Ms. Merritt asked if the factors Mr. Lusch displayed of consumption was consistent with more than the amount that was emptied from the vodka. Officer McIntyre said it depends on who's drinking it but from his previous contacts with Mr. Lusch, he would say yes.

Hearing Officer Majors asked Officer McIntyre if he believes Mr. Lusch had consumed approximately 50 ml of the bottle of vodka. Officer McIntyre said that it was a guesstimate at the best because it had gotten knocked over by the paramedics. Hearing Officer Majors asked Officer McIntyre if he could share any further information of what he knew about Mr. Lusch. Officer McIntyre said he had two other similar contacts with Mr. Lusch where he was staggering in the roadway or wandering into a business, was trespassing and was severely intoxicated and was either transported to Colorado West or hospital. Hearing Officer Majors asked if it was Officer McIntyre's conclusion that 50 ml of consumption was not enough for Mr. Lusch to have consumed and display the signs of intoxication that he was displaying. Officer McIntyre said that he believes that Mr. Lusch has a higher tolerance to alcoholic beverages than some people. Hearing Officer Majors asked Officer McIntyre if he acquired any knowledge of what Mr. Lusch's BAL (Blood Alcohol Level) was. Officer McIntyre said he did not.

Ms. Merritt asked Officer McIntyre if Mr. Lusch had spoken to him regarding consumption of bourbon prior. Office McIntyre replied that Mr. Lusch had said he's had a beer and a fifth of bourbon.

Officer McIntyre was excused.

Ms. Merritt called Grand Junction Police Officer Isaac Gallegos to testify.

Hearing Officer Majors administered an oath to Officer Gallegos.

Staff Attorney Merritt asked Officer Gallegos to state his name and his place of employment to which Officer Gallegos stated his name and said he was employed with the Grand Junction Police Department. Ms. Merritt asked if Officer McIntyre was employed on June 11, 2009 to which Officer Gallegos said yes. Ms. Merritt asked Officer Gallegos what his duties were on June 11, 2009 and Officer Gallegos said that he was on routine patrol. Ms. Merritt asked if he received a dispatch to 801 North Avenue. Officer Gallegos said he did. Ms. Merritt asked what the reasoning was for the dispatch call. Officer Gallegos said that he was dispatched to assist an ambulance. There was a white male subject on the west side of the building which he knew from previous contacts to be John Lusch and that he believes the initial call was to assist the ambulance with an intoxicated male. Ms. Merritt asked if dispatch received the call from personnel at North Avenue Liquors. Officer Gallegos said yes. Ms. Merritt asked if Officer Gallegos if he knew who the reporting party was. Officer Gallegos said he did not. Ms. Merritt asked if Officer Gallegos saw the male party upon arrival. Officer Gallegos said that the ambulance was already there and he did not see the intoxicated male but he knew by the description most likely who it was. Ms. Merritt asked if that gentleman's name was John Lusch. Officer Gallegos said yes. Ms. Merritt asked Officer Gallegos if it was his duty upon arrival to speak with the parties that were present to receive more information. Officer Gallegos said yes. Ms. Merritt asked if Jane Nemhauser was present. Officer Gallegos said that she was in a store right next to the liquor store. Ms. Merritt asked Officer Gallegos what she does or what her business is. Officer Gallegos said that she owns a tattoo parlor. Ms. Merritt asked Officer Gallegos why he sought Ms. Nemhauser in the investigation. Officer Gallegos said that he had heard that whoever owned the tattoo parlor had been around the area during the time of the incident. Ms. Merritt asked Officer Gallegos where he was when he questioned Ms. Nemhauser. Officer Gallegos said he was on the west side of the building which he believes is the back entrance to her shop which is also the side of the building where the ambulance was. Ms. Merritt asked if Ms. Nemhauser had any questions why she was being asked about the incident. Officer Gallegos said that when he went to talk to her he explained to her that they are investigating an incident of an intoxicated male with a leg injury and she indicated that she knew who he was talking about. Ms. Merritt asked Officer Gallegos if he asked Ms. Nemhauser if she was present in the liquor store at the time of the incident. Officer Gallegos said that he did and Ms. Nemhauser said that she was going into the liquor store as Mr. Lusch was leaving the store. Ms. Merritt asked if that was him coming out after the purchase of the vodka. Officer Gallegos said that he wasn't sure. Ms. Merritt asked how Ms. Nemhauser described Mr. Lusch's demeanor as he was going out. Officer Gallegos said that he had asked Ms. Nemhauser how Mr. Lusch appeared and Ms. Nemhauser had told him that he was definitely either intoxicated or high on something. Ms. Merritt asked if she had described his actions at that time. Officer Gallegos said that she had said that he was talking in a fast paced manner and acting detached and in an odd manner. Ms. Merritt asked Officer Gallegos if he is trained and what kind of training he has in recognizing the effects of consumption of alcohol. Officer Gallegos said he is trained in SFST (Standardized Field Sobriety Testing) as well as several years of personal experience dealing with intoxicated individuals. Ms. Merritt asked Officer Gallegos if speaking in a fast paced manner and being detached are symptoms of intoxication. Officer Gallegos said that they are symptoms of either intoxication or impairment of some kind of drug. Ms. Merritt asked if Ms. Nemhauser was aware that

Officer Gallegos was investigating a sale by North Avenue Liquors. Officer Gallegos said that he did not believe that he told her that it was in regards to a sale.

David McCarty asked Officer Gallegos if there was proof or evidence of Mr. Lusch consuming beer or a fifth of bourbon prior to him entering North Avenue Liquors. Officer Gallegos said that the only evidence he saw was that of an empty bottle of Skol that he understood had been kicked over.

Ms. Merritt asked that Hearing Officer Majors restrict Mr. McCarty to only those questions that she had asked. Hearing Officer Majors said he is going to be a bit relaxed in that and told Mr. McCarty to continue.

Mr. McCarty asked Officer Gallegos if June 11, 2009 was the date of the incident as indicated in his police report. Officer Gallegos said yes. Mr. McCarty asked if Ms. Nemhauser had stated that Mr. Lusch is always intoxicated. Officer Gallegos said yes. Mr. McCarty asked if it is true that Ms. Nemhauser had stated that Mr. Lusch is either always intoxicated or high on something. Officer Gallegos said yes. Mr. McCarty asked what he meant by saying that "she said that Mr. Nemhauser was acting in a detached manner." Officer Gallegos said that was probably a grammatical error on his part, it should have been Mr. Lusch. Mr. McCarty asked about Officer Gallegos using the words "rescue her" in his report when talking about the Ms. Nemhauser going into the liquor store. Officer Gallegos said that in completing his reports, anything said verbatim, he uses quotes around the words or the statement and the words "rescue her" were used.

Ms. Merritt asked Officer Gallegos if it appeared that Ms. Nemhauser and Ms. Prickett were friends or acquaintances after speaking to Ms. Nemhauser. Officer Gallegos said yes. Ms. Merritt asked, in reference to "rescue her", if it meant Ms. Nemhauser rescuing the liquor store clerk Ms. Prickett. Officer Gallegos said yes.

Officer Gallegos was excused.

Ms. Merritt called Police Service Technician Lisa Maestas to testify.

Hearing Officer Majors administered the oath to Ms. Maestas.

Ms. Merritt asked Ms. Maestas to state her name for the record and asked where she was employed on June 11, 2009 and what her job title was. Ms. Maestas said she is Lisa Maestas, was working for the Grand Junction Police Department on June 11, 2009 assigned to the investigations department doing liquor enforcement. Ms. Merritt asked Ms. Maestas to explain what that task is. Ms. Maestas explained that it includes a variety of things from investigating liquor violations, inspections on liquor license premises, going out on underage drinking enforcement, and a lot of monitoring liquor establishments. Ms. Merritt asked if Ms. Maestas was investigating the violation at North Avenue Liquors for the sale to an intoxicated person by employee Miranda Prickett. Ms. Maestas said yes. Ms. Merritt asked Ms. Maestas how she was notified of the incident. Ms. Maestas advised that she was contacted by dispatch and she called Officer McIntyre to find out details and he advised her that he had responded to a call to assist and that there was a severely intoxicated person that he believed had purchased alcohol at North Avenue Liquors. Ms. Merritt asked if the severely intoxicated person was present when she arrived. Ms. Maestas said no. Ms. Merritt asked if she had spoken with anyone at North Avenue Liquors. Ms. Maestas said she spoke with the store clerk Miranda Prickett. Ms. Merritt asked if she had asked Ms. Prickett if she had sold any alcohol to Mr. Lusch. Ms. Maestas said yes, however, the

clerk had not known Mr. Lusch by name but she did know who she was talking about. Ms. Merritt asked Ms. Maestas for the name of the store clerk. Ms. Maestas said Miranda Prickett, she believes. Ms. Merritt asked Ms. Maestas if it is her understanding that Ms. Prickett is employed at North Avenue Liquors. Ms. Maestas said yes. Ms. Merritt asked what type of liquor had Ms. Prickett said she sold to Mr. Lusch that day. Ms. Maestas replied that Ms. Prickett had said that Mr. Lusch had requested the smallest bottle of vodka, so Ms. Prickett had retrieved a 200 ml bottle of Skol vodka for Mr. Lusch. Ms. Merritt asked if Ms. Prickett had indicated whether she had a close conversation with him. Ms. Maestas said that she had asked Ms. Prickett and she had replied that their conversation was over the counter, approximately a 3 foot distance apart. Ms. Merritt asked if Ms. Maestas had asked Ms. Prickett if she had smelled anything on Mr. Lusch's person. Ms. Maestas said that she had asked that and Ms. Prickett said that due to her pregnancy, she had a very heightened sense of smell and that she hadn't smelled anything. Ms. Merritt asked if that was different than what Officer McIntyre had told her. Ms. Maestas said that it was, Officer McIntyre had advised her that Mr. Lusch had a very strong smell of alcoholic beverage on his person along with body odor. Ms. Merritt asked Ms. Maestas if she had asked Ms. Prickett if Mr. Lusch had shown signs of intoxication. Ms. Maestas said that she had and Ms. Prickett hesitated in her response. She did say that he showed no signs of intoxication. Ms. Merritt asked if Ms. Maestas had said why she had called the ambulance that day. Ms. Maestas said that Ms. Prickett told her that Mr. Lusch had come back into the store 15 to 20 minutes after purchasing the alcohol and at that time showed very visible signs of intoxication and Ms. Maestas believes that Ms. Prickett said that he had requested her to call an ambulance. Ms. Merritt asked Ms. Maestas if at any time during the investigation if she had spoken with Officer Gallegos and had he told her about the witness Ms. Nemhauser who had seen Mr. Lusch during the time of purchase. Ms. Maestas said she had spoken to Officer Gallegos and he had told her about Ms. Nemhauser. Ms. Merritt asked what from her understanding did Ms. Nemhauser indicate from her perspective. Ms. Maestas said that Officer Gallegos had told her that Ms. Nemhauser (Jane) had told him that Mr. Lusch was highly intoxicated as he was leaving the store. Ms. Merritt asked Ms. Maestas at what point in time did she determine it would be appropriate to issue the summons regarding a liquor violation. Ms. Maestas stated that she felt it was appropriate to issue the summons after she spoke to the witness.

Mr. McCarty asked Ms. Maestas if she found an empty can of beer or a fifth of bourbon in or around the premises at all. Ms. Maestas said she didn't look for a can of beer or a fifth of bourbon at all and she didn't see any. Mr. McCarty asked Ms. Maestas if June 11th was the date of the instance. Ms. Maestas said that was correct. Mr. McCarty asked if she issued the ticket to Miranda on the same day. Ms. Maestas said she did. Mr. McCarty said that the date on the ticket was June 10th and asked if that was just an error on her part. Ms. Maestas said it was an error and the ticket was issued on the 11th.

Ms. Merritt advised Hearing Officer Majors that the summons being referred to was written into County Court.

Mr. McCarty showed Hearing Officer Majors a copy of the summons that was issued to Ms. Prickett.

Mr. McCarty started to ask Ms. Maestas about her interview with Ms. Nemhauser. Ms. Maestas advised that she had not interviewed Ms. Nemhauser. Mr. McCarty read what Ms. Maestas had in her report regarding what Officer Gallegos had told her and asked Ms. Maestas if it is true. Ms. Maestas said it was true. Mr. McCarty asked who was

still at the location when Ms. Maestas arrived. Ms. Maestas said Office McIntyre and Officer Gallegos were there, the paramedics and Mr. Lusch were not there. Mr. McCarty asked if Ms. Maestas had told Ms. Prickett that it is just easier to tell the truth. Ms. Maestas did not remember telling Ms. Prickett that. Mr. McCarty asked Ms. Maestas if she had asked Ms. Prickett about the security camera and asked what Ms. Prickett's comments were. Ms. Maestas said that she did ask about the security camera and was told that they do not record. Mr. McCarty asked Ms. Maestas if she had asked Ms. Prickett if the security camera didn't record or did she just not know how to work them. Ms. Maestas said that she did ask that because in many cases employees do not know how to work the security cameras.

Ms. Maestas was excused.

Ms. Merritt called Lincoln Folkers, Paramedic from the Grand Junction Fire Department, to testify.

Hearing Officer Majors administered the oath to Mr. Folkers.

Ms. Merritt asked Mr. Folkers to state his name for the record and asked where he was employed on June 11, 2009 and what his job title was. Mr. Folkers said he is Lincoln Folkers, was working for the Grand Junction Fire Department on June 11, 2009 as a paramedics/fire fighter. Ms. Merritt asked Mr. Folkers if he received a dispatch call for 801 North Avenue. Mr. Folkers said they did. Ms. Merritt asked what the call was regarding. Mr. Folkers said the call was regarding an intoxicated subject with left knee pain. Ms. Merritt asked if when they arrived on the scene if they found a subject fitting that description. Mr. Folkers said yes, they did. Ms. Merritt asked Mr. Folkers if he recalled the name of the subject from his report. Mr. Folkers said John Lusch. Ms. Merritt asked what Mr. Lusch's symptoms were upon arriving. Mr. Folkers said he was intoxicated and complaining of left knee pain. Ms. Merritt asked Mr. Folkers if he had questioned if Mr. Lusch had been drinking that day. Mr. Folkers said that they did and Mr. Lusch had replied yes. Ms. Merritt asked if he had indicated what he'd been drinking. Mr. Folkers said he did not. Ms. Merritt asked if there was any alcohol near him. Mr. Folkers said there was a bottle of alcohol near him. Ms. Merritt asked if a portion of the bottle was empty. Mr. Folkers said that it was probably one-quarter of the way gone. Ms. Merritt asked if he recalled what size of bottle it was. Mr. Folkers said he did not. Ms. Merritt asked, as a paramedic, if he is trained to determine intoxication levels. Mr. Folkers said he is not. Ms. Merritt asked if it appeared that Mr. Lusch had consumed enough alcohol to be intoxicated. Mr. Folkers said it appeared that he was intoxicated and had drank enough alcohol to be intoxicated but he could not speak to volume. Ms. Merritt asked if he saw any beer or other liquor at the incident. Mr. Folkers said he did recall seeing a can of beer, but he can't be 100% certain. Ms. Merritt asked if they emptied the bottle of vodka. Mr. Folkers said they did. Ms. Merritt asked if they felt Mr. Lusch could be cleared at the scene. Mr. Folkers said no, on the protocols, if a subject shows visible signs of intoxication, they are unable to clear them at the scene. Ms. Merritt asked if Mr. Lusch was transported by ambulance to a local hospital. Mr. Folkers said yes. Ms. Merritt asked if Mr. Lusch had indicated when he had consumed the alcohol. Mr. Folkers did not recall if Mr. Lusch had given a timeline, however Mr. Lusch did say that he had been drinking all day. Ms. Merritt asked if he remembered what time he had contact with him. Mr. Folkers said that it was right around 3:00. Ms. Merritt asked if that was on June 11th. Mr. Folkers said that it was.

Mr. McCarty asked if Mr. Folkers saw any evidence of an empty bottle of bourbon. Mr. Folkers said he did not. Mr. McCarty asked if he smelled alcohol on Mr. Lusch. Mr. Folkers said yes.

Mr. Folkers was excused.

Ms. Merritt called Josh Evans, Paramedic from the Grand Junction Fire Department, to testify.

Hearing Officer Majors administered the oath to Mr. Evans.

Ms. Merritt asked Mr. Evans to state his name for the record and asked where he was employed on June 11, 2009 and what his job title was. Mr. Evans said he is Josh Evans, was working for the City of Grand Junction Fire Department on June 11, 2009 as a fire fighter/EMT on ambulance 11. Ms. Merritt asked Mr. Evans if he received a dispatch call for 801 North Avenue. Mr. Evans said they did. Ms. Merritt asked what the call was regarding. Mr. Evans said the call was regarding an intoxicated male with a complaint of knee pain. Ms. Merritt asked if when they arrived on the scene if they found a subject fitting that description. Mr. Evans said yes, they did and the subject was sitting on the west side of the building and appeared to be intoxicated. Ms. Merritt asked Mr. Evans if the subject had spoken to him and said he had consumed any alcohol that day. Mr. Evans said that he did say that he had been drinking earlier in the day. Ms. Merritt asked is the subject had referenced any time that he had been drinking. Mr. Evans said no. Ms. Merritt asked what signs had he shown that indicated he'd been drinking. Mr. Evans said he had slurred speech, staggered gate, and wasn't able to ambulate by himself. Ms. Merritt asked if he could smell any signs of alcohol. Mr. Evans said he did smell alcohol as well as body odor. Ms. Merritt asked if he saw any liquor in the subject's possession. Mr. Evans said that there was a small bottle of alcohol and it was mostly full. Ms. Merritt asked if he saw any beer by the subject. Mr. Evans said he believes he saw a can of beer that was opened he couldn't be certain because he had several items with him. Ms. Merritt asked if there was anyone else around that appeared to be intoxicated. Mr. Evans said no. Ms. Merritt asked if the beer was located near his other items. Mr. Evans said yes. Ms. Merritt asked what the final evaluation was of Mr. Lusch. Mr. Evans said because of their protocols, they were not able to leave him in his current condition, transporting him was required. Ms. Merritt asked if that current condition was intoxication. Mr. Evans said he had signs of intoxication and they would not be comfortable leaving him there.

Mr. McCarty asked if Mr. Evans if he had kicked over the half pint of vodka. Mr. Evans said yes, he had accidentally knocked it over. Mr. McCarty asked what was done with the bottle. Mr. Evans said he believes they threw it away in a nearby trashcan.

Mr. Evans was excused.

Ms. Merritt called Jane Nemhauser to testify.

Hearing Officer Majors administered the oath to Ms. Nemhauser.

Ms. Merritt asked Ms. Nemhauser to state and spell her name for the record. Ms. Nemhauser stated that her name was Jane Nemhauser and spelled it out for the record. Ms. Merritt asked her where she was employed on June 11, 2009. Ms. Nemhauser said she has her own business next to the liquor store. Mr. McCarty is the owner of the whole mall there plus the North Avenue Liquors and is her landlord. She said she has been there almost two years. Ms. Merritt asked what the address is of

her location. Ms. Nemhauser said 803 North Avenue. Ms. Merritt asked for the name of the store that she works at. Ms. Nemhauser said Calamity Jane's Tattoos. Ms. Merritt asked if she entered North Avenue Liquors around 2:00 or 3:00. Ms. Nemhauser said she did, she went in to say hi to Miranda. Ms. Merritt asked who Miranda is for the record. Ms. Nemhauser said that Miranda Prickett works for the liquor store and has for over a year. Ms. Merritt asked if she is acquaintances or friends with Ms. Prickett. Ms. Nemhauser said yes, they are neighboring business workers. Ms. Merritt asked if she had noticed any male customers present when she entered the liquor store. Ms. Nemhauser said yes, John Lusch had his back to her, she went around him to talk to Miranda, she didn't want to talk to him because she has been around crazy people before. Ms. Merritt asked where Mr. Lusch was. Ms. Nemhauser said he was at the door with his back to her. Ms. Merritt asked if it appeared that he was entering or exiting the store. Ms. Nemhauser said he was exiting the store. Ms. Merritt asked if he had smelled of alcohol. Ms. Nemhauser said she smelled nothing. Ms. Merritt asked if she recalled speaking with Officer Gallegos on June 11, 2009. Ms. Nemhauser said absolutely. Ms. Merritt asked if she had remembered telling him that Mr. Lusch was speaking in a fast manner and appeared to be intoxicated and/or high. Ms. Nemhauser said she has filed an affidavit stating that she did not say that. Ms. Merritt asked if Mr. Lusch was speaking quickly or appeared out there or detached. Ms. Nemhauser said she didn't speak to him, he was wrapping up an incoherent conversation with Miranda. Ms. Nemhauser continued speaking and Ms. Merritt advised the Hearing Officer that she has not asked her any of those questions. Hearing Officer advised Ms. Nemhauser to just answer the questions. Ms. Merritt asked if she rents the space for Calamity Jane's from Mr. McCarty. Ms. Nemhauser said yes. Ms. Merritt asked if he is the Licensee or owner of North Avenue Liquors. Ms. Nemhauser said yes. Ms. Merritt asked if she is friends or acquaintances with Mr. McCarty. Ms. Nemhauser said no, just rents her space from him.

Mr. McCarty asked Ms. Nemhauser if she use the word intoxicated when speaking to the Officer. Ms. Nemhauser said never.

Ms. Merritt asked Ms. Nemhauser if she was questioned by Officer Gallegos on more than one occasion. Ms. Nemhauser said Officer Gallegos came into her business once and might have come back for one more question. Ms. Merritt asked if upon the first incident if she was aware that the law enforcement was investigating intoxication. Ms. Nemhauser said that it seemed to be the focus of the issue. Ms. Merritt asked if she knew upon the second contact that Ms. Prickett was being issued a citation for sale to an intoxicated person. Ms. Nemhauser said she didn't know that at that time. Ms. Merritt asked if she and Ms. Prickett are friends. Ms. Nemhauser said they are neighboring businesses and they look out for neighboring businesses. Ms. Merritt asked if she was concerned that she received a citation. Ms. Nemhauser said she was later very, very concerned. Ms. Merritt asked if she speaks with Ms. Prickett on a daily basis. Ms. Nemhauser said almost everyday. Ms. Merritt asked if they see each other every day when they both are on shift. Ms. Nemhauser said yes, since Ms. Prickett can't leave the store, she goes over and talks to her to see if she needs anything.

Ms. Nemhauser asked Hearing Officer Majors if she can make a statement. Hearing Officer Majors said no.

Ms. Nemhauser was excused.

Ms. Merritt called Miranda Prickett to testify.

Hearing Officer Majors administered the oath to Ms. Prickett.

Ms. Merritt asked Ms. Prickett to state and spell her name for the record. Ms. Prickett stated that her name was Miranda Prickett and spelled it out for the record. Ms. Merritt asked her where she was employed on June 11, 2009. Ms. Prickett said she was employed with the liquor store, but the incident happened on the 10th. Ms. Merritt asked her what liquor store she works at. Ms. Prickett said North Avenue Liquors. Ms. Merritt asked if it is at 801 North Avenue. Ms. Prickett said yes. Ms. Merritt asked if Ms. Prickett sold liquor on or about June 11th to John Lusch. Ms. Prickett said she later found out that it was John Lusch. Ms. Merritt asked what items she sold to him. Ms. Prickett said she sold him a 200 ml bottle of Skol. Ms. Merritt asked if that was a type of vodka. Ms. Prickett said yes. Ms. Merritt asked what time she sold that to Mr. Lusch. Ms. Prickett said it was around 2:15 or 2:20. Ms. Merritt asked if the counter where the customers approach is about three feet apart between her and the customer. Ms. Prickett said she does not know. Ms. Merritt asked if at some point she was close to Mr. Lusch. Ms. Prickett said somewhat close. Ms. Merritt asked if he was staggering at all when he entered. Ms. Prickett said no, he was limping because of his knee. Ms. Merritt asked if he purchased anything else. Ms. Prickett said a can of Dr. Pepper. Ms. Merritt asked if he left the store after he purchased the vodka. Ms. Prickett said he pulled out a cigarette as he was walking out and told her he would walk on in about five minutes after he smoked the cigarette as he has a three mile walk and his leg was hurting him. Ms. Merritt asked if he reentered the store at anytime. Ms. Prickett said he came back 20 to 25 minutes later. Ms. Merritt asked if at that time he showed signs of liquor consumption. Ms. Prickett said she didn't get close to him. Ms. Merritt asked if he appeared staggering or in an intoxicated manner. Ms. Prickett said she never said he appeared intoxicated, she said he appeared out of it. His eyes were glassy and red. Ms. Merritt asked if she noticed any smell when he first entered the store. Ms. Prickett said no. Ms. Merritt asked if she noticed any smell including body odor when he reentered the store. Ms. Prickett said no.

Mr. McCarty asked Ms. Prickett if Mr. Lusch was slurring his words when he asked for the cheapest bottle of vodka. Ms. Prickett said no, he said it very matter-of-factly. Mr. McCarty asked if she smelled anything on him. Ms. Prickett said no. Mr. McCarty asked if she retrieved the soda pop for him. Ms. Prickett said she opened the cooler and he got it. Mr. McCarty asked if he was stumbling. Ms. Prickett said he was limping. Mr. McCarty asked if he showed signs of slurred speech, glassy eyes, or had the smell of alcohol. Ms. Prickett said no. Mr. McCarty asked if his hands were shaking when he paid her the money. Ms. Prickett said no, he got three dollars out of his pocket. Mr. McCarty asked if he fumbled with the money. Ms. Prickett said no. Mr. McCarty asked Ms. Prickett if Mr. Lusch asked her if he could smoke a cigarette when exiting the store. Ms. Prickett said he just informed her he was going to take five minutes to smoke a cigarette and then walk on. Mr. McCarty asked if she had any visual contact with him after he first left the store but before he reentered the store. Ms. Prickett said she did not. She was going to go and check on him, but the store got busy.

Ms. Merritt asked Ms. Prickett if Ms. Nemhauser was present in the store when Mr. Lusch was in the store. Ms. Prickett said yes, when he was leaving. Ms. Merritt asked who her employer is. Ms. Prickett said Dave McCarty. Ms. Merritt asked if he is the owner of North Avenue Liquors. Ms. Prickett said yes. Ms. Merritt asked how long she has been employed by Mr. McCarty. Ms. Prickett said about two years. Ms. Merritt asked if they are friends or just employee/employer. Ms. Prickett said employee/employer.

Hearing Officer Majors asked Ms. Prickett why Ms. Nemhauser came into the store to tell her who John Lusch was. Ms. Prickett said that many times there are crazy people around and they try to let each other know so they don't let them hang around the complex. A few days prior, Ms. Nemhauser had talked about an incident, and she wanted to let her know that Mr. Lusch is who she was talking about, who she had a previous run-in with. Hearing Officer Majors asked if Ms. Nemhauser told her anything else about Mr. Lusch. Ms. Prickett said just about the incident that had happened prior. Hearing Officer Majors asked Ms. Prickett why she was going to check on Mr. Lusch when he said he was going to smoke a cigarette. Ms. Prickett said that if he hadn't left, she was going to tell him he needed to leave. Hearing Officer Majors asked if it was a loitering issue that she was afraid of. Ms. Prickett said yes. Hearing Officer Majors asked how much time had passed between the time Mr. Lusch left and then came back in. Ms. Prickett said 20 to 25 minutes. Hearing Officer Majors asked if she had popped her head out to see if he was still there. Ms. Prickett said she did not, she was about to, but then got busy. Hearing Officer Majors asked what Mr. Lusch said when he came back into the store. Ms. Prickett said when he first came back, she said she would not sell anything to him and that he needs to leave. She said Mr. Lusch said that he didn't want to buy anything, he just wanted an ambulance. She said ok, and called an ambulance. Hearing Officer Majors asked why Mr. Lusch wanted her to call an ambulance. Ms. Prickett said because of his leg, that Mr. Lusch said he had been hit by a truck. Hearing Officer Majors asked what it was that Ms. Prickett heard about Mr. Lusch that made her say he wasn't allowed at the liquor store anymore. Ms. Prickett said that Ms. Nemhauser had told her about the incident where he was at the laundromat and had picked up a newspaper rack and threw it towards someone's truck and the police were called. Hearing Officer Majors asked if Ms. Prickett had any information of Mr. Lusch being intoxicated during the incident at the laundromat. Ms. Prickett said she didn't remember any conversation about him being intoxicated, just that he was a very crazy guy, that he had been throwing rocks, or something. Hearing Officer Majors asked if Mr. Lusch had the appearance of alcohol intoxication when he came in a second time. Ms. Prickett said that all she saw was that he was very out-of-it, red faced, and mumbling something about being hit by a truck and in horrible pain. Hearing Officer Majors asked if this was the first time she had sold alcohol to Mr. Lusch. Ms. Prickett said yes.

Ms. Merritt asked Ms. Prickett if her conversation with Ms. Nemhauser regarding Mr. Lusch included anything else besides his loitering. Ms. Prickett asked for clarification. Ms. Merritt said that the report indicated that Ms. Nemhauser had come in to rescue Ms. Prickett. Ms. Prickett said Ms. Nemhauser just said that she was letting her know that this is the crazy guy that they had the problem with. Ms. Merritt asked if Ms. Nemhauser had indicated anything about intoxication or his demeanor and why was she warning her about him. Ms. Prickett said because he was throwing things at vehicles and the cops had to be called and they had said that they had many run-ins with him. Ms. Merritt asked if any of those run-ins involved intoxication. Ms. Prickett said not that she recalled.

Mr. McCarty asked Ms. Prickett if Mr. Lusch's personality was any different when she was calling the ambulance. Ms. Prickett said that he became louder and talking a lot more crazy, more so than before she called the ambulance.

Ms. Prickett was excused.

Hearing Officer Majors explained to Mr. McCarty that the City will not be presenting anymore evidence, it is his chance to present his case in defense, and then the City will have a chance for rebuttal testimony or evidence.

Hearing Officer Majors called for a recess at 3:33 p.m.

The Hearing resumed at 3:40 p.m.

Mr. McCarty advised that he is going to testify.

Hearing Officer Majors administered the oath to Mr. McCarty.

Mr. McCarty stated that he is Dave McCarty, owner of North Avenue Liquor Store and the owner of the complex that the store is located in. He stated that he has very strict rules about serving to intoxicated or underage people. He said that Mr. Lusch was at the complex just three days prior to the incident. He said he had a letter from another person named Virginia who has a bookshop located nearby. Hearing Officer Majors advised Mr. McCarty that he will not allow statements made by another person. He could have had them present to testify. Mr. McCarty said that Mr. Lusch has been around for some time doing crazy stuff and acting in a detached manner. He said he understands that Mr. Lusch walked into the liquor store and did not appear intoxicated. Hearing Officer Majors advised Mr. McCarty that he is there to give testimony based on his own personal knowledge, his own observation of what occurred. Mr. McCarty said that, based on the evidence that has presented, he feels that the police report is inaccurate, that there are manufactured statements in the police report because he has an affidavit by Jane Nemhauser that contradicts some of the statements in the police report and offered a copy of the affidavit to Hearing Officer Majors.

Hearing Officer Majors asked Ms. Merritt what her position is on the affidavit that has been referred to a bit already. Ms. Merritt said that the said affidavit has been referred to by Mr. McCarty a couple of times and it has never been stated why it was written. She recommends some testimony as to why it was written prior to it being entered as evidence.

Hearing Officer Majors advised Mr. McCarty that if he wants to use that affidavit as evidence, he should ask Ms. Nemhauser some questions in reference to the affidavit.

Mr. McCarty called Jane Nemhauser to testify.

Hearing Officer Majors advised Ms. Nemhauser that she is still under oath.

Mr. McCarty showed Ms. Nemhauser a copy of the affidavit filed by her regarding the police report filed by Officer Gallegos and asked her if this was her affidavit. Ms. Nemhauser said she did file the affidavit and she has copies of it as well.

Ms. Merritt said she had an objection to the admission of the affidavit as evidence because it has not been shown when or why it was written. She also has reason to believe that Ms. Nemhauser created that affidavit only after she found out that Ms. Prickett was issue a citation which she can present through rebuttal testimony.

Hearing Officer Majors overruled Ms. Merritt's objection because the witness has already indicated that she did prepare the affidavit and that is concerning the incident that happened on June 11, 2009 and he advised Ms. Merritt that she is free to question the witness as to the veracity of the affidavit.

The affidavit was submitted to Hearing Officer Majors (attached).

Ms. Merritt said she would like to review a copy of the affidavit if the witness is going to be asking questions pertaining to it.

Mr. McCarty stated that he has not seen a blood alcohol content on John Lusch.

Ms. Merritt advised Hearing Officer Majors that she is not sure if this argument or a question for the witness. Hearing Officer Majors advised he would sustain that objection and asked Mr. McCarty if he had any more questions for the witness.

Mr. McCarty said he has no further questions.

Ms. Merritt was given the affidavit for review.

Ms. Merritt asked Ms. Nemhauser what date she completed the affidavit. Ms. Nemhauser answered August 25, 2009. Ms. Merritt asked Ms. Nemhauser if the incident between Ms. Prickett and John Lusch happened on June 11th. Ms. Nemhauser said yes. Ms. Merritt asked Ms. Nemhauser if Officer Gallegos contacted her prior to August 26th regarding the issuance of the citation to Ms. Prickett. Ms. Nemhauser said no.

Ms. Merritt asked Ms. Nemhauser if at any time she used any synonyms for intoxication for Mr. Lusch like under the influence or drunk. Ms. Nemhauser said no.

Ms. Nemhauser was excused.

Ms. Merritt called Officer Gallegos to testify.

Hearing Officer Majors advised Officer Gallegos that he was still under oath.

Ms. Merritt asked Officer Gallegos if Ms. Nemhauser had indicated that she saw Mr. Lusch immediately after the purchase of the Skol vodka. Officer Gallegos said that they didn't talk specifically about the purchase. Ms. Merritt asked if Ms. Nemhauser could have used other synonyms for intoxication like drunk but he used intoxication in his report. Officer Gallegos said he does not record all of his interviews with people and his reports are not verbatim. Certain words or phrases that are direct quotes, that are verbatim, he puts in quotations. Ms. Merritt asked since the words intoxicated are not in quote marks if that means they are not verbatim. Officer Gallegos said yes. Ms. Merritt asked if Officer Gallegos would have used the statements in his report if they were not part of his investigation or shared by Ms. Nemhauser. Officer Gallegos said he would not have. Ms. Merritt asked how many times he spoke to Ms. Nemhauser. Officer Gallegos said two separate occasions. Ms. Merritt asked if the first time he spoke to Ms. Nemhauser he mentioned he was investigating the sale or purchase of alcohol. Officer Gallegos said that he did not think he mentioned anything about the sale, just about Mr. Lusch and the observation of him. Ms. Merritt asked that at that time did Ms. Nemhauser indicate that Mr. Lusch appeared to be drunk. Officer Gallegos said yes. Ms. Merritt asked if, on the second visit with Ms. Nemhauser, he mentioned a citation to Ms. Prickett, her friend, acquaintance, neighboring employee. Officer Gallegos said that he didn't remember if she asked specifically but he did mention the citation to Ms. Prickett.

Ms. Merritt asked if Ms. Nemhauser demeanor changed when told of the citation. Officer Gallegos said that she became upset and said that Ms. Prickett and her husband are nice people and that she didn't need to have a citation issued. Ms. Merritt asked if Ms. Nemhauser had made comment that her statements were incorrect that

she made prior. Officer Gallegos said she did not. Ms. Merritt asked if Officer Gallegos was contacted by another officer or person that Ms. Nemhauser may change her statements because she did not want Ms. Prickett to get into trouble. Officer Gallegos said he was informed by another officer that Ms. Nemhauser had told that officer that she was upset with him because of the statements he had conveyed in his report. Ms. Merritt asked if she had said to him or the other officer that the statements were incorrect. Officer Gallegos said he had not heard that. Ms. Merritt asked if Ms. Nemhauser indicated that she wanted to change her report. Officer Gallegos said she had not.

Officer Gallegos was excused.

Ms. Merritt called Ms. Maestas to testify.

Hearing Officer Majors advised Ms. Maestas that she is still under oath.

Ms. Merritt asked Ms. Maestas what day was the violation when Ms. Prickett served Mr. Lusch. Ms. Maestas said that it was June 11th. Ms. Merritt who puts that date into the report, is it manually or by dispatch. Ms. Maestas said that it is an auto calculated date done by dispatch. Ms. Merritt asked Ms. Maestas if she spoke to Ms. Prickett while she was working on June 11th. Ms. Maestas said she did. Ms. Merritt asked if the statement made by Ms. Prickett saying it was June 10th was incorrect. Ms. Maestas said yes it was. Ms. Merritt asked if dispatch indicates that the call for an ambulance was on June 11th. Ms. Maestas said yes it was. Ms. Merritt asked if she clearly saw Ms. Prickett working on June 11th. Ms. Maestas said yes she did. Ms. Merritt asked when she uses quotations around wording. Ms. Maestas said when she is writing the exact wording said in an interview. Ms. Merritt asked who had made the statement that Mr. Lusch was definitely intoxicated or high or on something. Ms. Maestas said that it was what Officer Gallegos had told her. Ms. Merritt asked if that was regarding what Ms. Nemhauser had told him. Ms. Maestas said yes. Ms. Merritt asked Ms. Maestas about the statement in her report made by Ms. Prickett stating that he smelled of alcohol and he seemed intoxicated and if that was a quote. Ms. Maestas said she would have to reference her report, but if it was in quotations, it was a quote. Ms. Merritt asked if Ms. Prickett could have used another synonym like drunk to describe Mr. Lusch. Ms. Maestas said yes. Ms. Merritt asked why the information would appear in her report if it was not part of the investigation. Ms. Maestas said it would not have.

Ms. Maestas was excused.

A closing statement in regards to argument was made by Ms. Merritt. She said that the evidence presented proved that a violation occurred on June 11, 2009 violating section 12-47-901(1)(a) including selling, serving, giving, exchanging, or procuring of, any alcohol beverage to an intoxicated person who was identified as John Lusch, who is an individual who has been contacted by Grand Junction Police department on numerous occasions, many of those because he was intoxicated. Officer McIntyre was informed by John Lusch that he consumed a fifth of bourbon and a beer prior to entering North Avenue Liquors on June 11th, which he purchased liquor (200 ml Skol vodka) from Miranda Prickett. She also said that Officer Gallegos had a clear conversation with Jane Nemhauser, an independent witness, with a business at 803 North Avenue where she advised Officer Gallegos that he was intoxicated or high on something after passing him at the entrance in the liquor store. The statements that she made in her affidavit occurred at a later date after she was informed that her friend had been cited for the violation. Ms. Merritt believes that her credibility is being challenged in regards

to her relationship because she is not only the tenant of Mr. McCarty, but she is also friends with Ms. Prickett who was cited for the violation. According to the report from Ms. Maestas, Ms. Prickett indicated that Mr. Lusch was acting in a detached manner and appeared intoxicated. There is question as to what Ms. Prickett remembers because the reports indicate the incident happened June 11th and Ms. Prickett said the violation happened on June 10th. The paramedics also indicated that Mr. Lusch was intoxicated and Mr. Evans noticed the beer by Mr. Lusch's belongings as well as the Skol vodka. The paramedics included that with the level of intoxication, they didn't feel that they could release Mr. Lusch and transferred him to the hospital. At least four witnesses testified that Mr. Lusch they smelled of alcohol and had body odor. Ms. Prickett, who was in close proximity, said she couldn't smell either alcohol or body odor. Ms. Merritt stated that she feels there is proof of the violation and that the license of Mr. McCarty should be reviewed.

Mr. McCarty made a statement. He said he is going to go with no opinions. He stated that there is no proof of Mr. Lusch being intoxicated. With the evidence presented, he does not feel there is any evidence of him drinking a fifth of bourbon before he entered his store. The evidence didn't provide anything showing he smelled of alcohol until the police arrived. He does not believe that Mr. Lusch was visibly intoxicated at the time of the sale. There is no question that something was wrong with Mr. Lusch 20 minutes after the sale. He doesn't question the fact that he smelled like alcohol 20 or 25 minutes after the sale. He has seen no evidence of blood alcohol content from the hospital or otherwise or any evidence of any other drug Mr. Lusch may have been on. He explained that he has owned the store 15 years and has had a couple of violations. He believed Miranda Prickett is a good, honest employee that has been well educated on intoxicated people. She has expressed good judgment in kicking people out. Mr. McCarty said he has not been "stung" by the operations conducted by the police. He knows he has been tested. He's received letters of congratulations from the Police Department. He did have a violation years ago for selling to an intoxicated person and probably a violation for selling to an underage person. He sets rules, regulations, and company policies. He has been a member of alcoholics anonymous since 1994. He is educated about alcoholics and their ways. He has low tolerance for intoxicated or verbally abusive people. They have a policy to card people. He believes he has a good history and he hopes the City recognizes that.

Hearing Officer Majors called a recess at 4:19 p.m.

The hearing reconvened at 4:30 p.m.

Hearing Officer Majors found the following: G J North Avenue, Inc. dba North Avenue Liquors, holder of a liquor license issued by the City of Grand Junction, subject to review by the Department of Revenue, State of Colorado. Miranda Prickett is an employee of said licensee. On June 11, 2009, John Lusch was sold a 200 ml bottle of Skol vodka by Ms. Prickett and at that time Mr. Lusch was intoxicated. Findings of intoxication was based on statements made to Officer Chip McIntyre of the Grand Junction Police Department by Lusch's own admittance that he had consumed a fifth of bourbon and a beer prior to the purchase and sale of vodka from the licensee. Further statements indicate that Mr. Lusch was visibly intoxicated all be it that the contact with Mr. Lusch was after the purchase of the alcohol, it appears there were 20 to 25 intervening minutes since he purchased the vodka and it also appears from the evidence that he consumed 50 ml of vodka based on the knowledge of Mr. Lusch presented by Officer McIntyre. Hearing Officer Majors said he could not believe that 50 ml consumption of the vodka would have resulted in the signs of intoxication Mr. Lusch was exhibiting when contacted by two officers from the Grand Junction Police

Department, two fire department technicians who also observed him and testified that he was clearly showing signs of intoxication. The additional statement made by Mr. Lusch to Officer McIntyre that he had been drinking all day confirms that Mr. Lusch was intoxicated when he purchased and was provided with the 200 ml bottle of Skol vodka by an employee of the Licensee. In terms of credibility, Ms. Merritt requested the Hearing Officer to consider the credibility of statements made after the fact by Ms. Nemhauser and he believes that Ms. Nemhauser had plenty of opportunity to contact the police officer to say that she didn't think that the statement she made to him on June 11th were correct. He was guided by the notion that the closer in time that the statements are made, the truer they are. He didn't think that the submission of an affidavit at such a late date, August 25th, had any bearing on this case. What he was able to ascertain by the evidence of Officer Gallegos's report was that it was correct in the statements attributed to Ms. Nemhauser that she indicated that Mr. Lusch was drunk, intoxicated, or high on something. Implicit with the holding of a liquor license, there is a responsibility not to serve or not to sell to persons that are visibly intoxicated.

Based on Hearing Officer Major's findings and based on the evidence and testimony presented, the evidence does support the charges that an employee of the Licensee, G J North Avenue Liquors, Inc. dba North Avenue Liquors did sell alcohol to a visibly intoxicated person on June 11, 2009 in the City of Grand Junction and that was a violation of the Colorado Statute 12-47-901(a)(1).

Mr. McCarty said he is sorry this happened. He advised that Ms. Prickett has not yet been convicted of the crime and she maintains her innocence. He said it is hard to make a determination of intoxicated people when it includes the homeless. He thanked the Authority for their time.

Ms. Merritt said she had no aggravating factors to add. She felt Mr. McCarty's demeanor throughout the hearing was appropriate.

Hearing Officer Majors imposed a suspension upon the license for a period of two days and authorized a fine in lieu of suspension with the two days held in abeyance for a period of one year.

Hearing Officer Majors advised Mr. McCarty that he has the right to appeal his decision to Mesa County Court within 30 days.

City Attorney Shaver advised that his office will contact Mr. McCarty and finalize the details based upon the order entered.

Hearing Officer Majors found the application for renewal in order and approved it. He advised Mr. McCarty that he will need to disclose this violation on his renewal next year and encouraged Mr. McCarty to avail himself and his staff to the Alcohol Server Responsibility Trainings that the City offers.

VI. OTHER BUSINESS

There was none.

VII. ADJOURNMENT – The meeting was adjourned at 4:50 p.m.

NEXT REGULAR MEETING – September 16, 2009

AUG 25 2009

Affidavit by Victim or Witness

Case Number: 09M1695 Next Court Date: 8-26-06 Status: open

Judge: Larson DA: Jennifer Springer

People -VS: Prickett, Miranda

Name of Victim or Witness: Jane V. Nemhauser

Address: 11954 White Ave Grand Junction, CO 81501

E-Mail: cj.tattoo@bresnan.net

Telephone Number: work (970) 424-5065

Driver's License: 92-167-5771 State: CO

I, JANE VIVIAN NEMHAUSER, state as follow:
(print your name)

want to feel confident that my standard of honesty is being upheld by the courts. I did not say the following highlighted items. I want to make sure statements are true and correct.

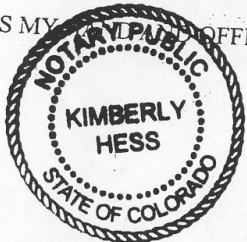
I have been a neighboring business for almost two years and been able to observe the daily actions of North Ave. Liquors and of Miranda Prickett.

Being of lawful age and being duly sworn upon oath, I state that the above is true and accurate to the best of my knowledge.

[Signature]
(Signature)

SUBSCRIBED AND SWORN TO BEFORE ME THIS 25th DAY OF August 2009.
BY: JANE VIVIAN NEMHAUSER

WITNESS MY OFFICIAL SEAL:



NOTARY PUBLIC Kimberly Hess

MY COMMISSION EXPIRES 10.29.11

ABOVE ID WAS VERIFIED [checkmark]

In Reference to Incident # 09-034790-001
occurring at North Ave Liquors on 6/10/09:

Jane Nemhauser has been falsely quoted in this incident report.
Corrections follow in my words:

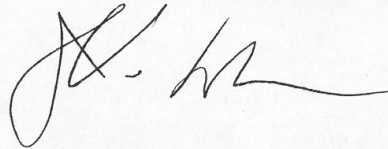
GALLEGOS REPORT p. 3

- 1) "wrong date"- incident occurred 6-10
- 2) "...always intoxicated"- I never said that to anyone.
- 3) "...definitely..drunk..or high"- I did not say that
- 4) "...liquor store employee"- I informed Miranda Prickett that her customer had been arrested for violent behavior at the Laundromat a few days earlier and not to hesitate to call the police. Miranda Prickett called for an ambulance on the customer's request.

MAESTAS REPORT p.3

- 1) "...intoxicated..."- I never stated that any individual was intoxicated.
- 2) "...intoxicated..." - I never said anyone was intoxicated.
- 3) "...intoxication upon re-entry..."- I was not there and did not say anything to that effect.

Noted and underlined as my comment which follows: This is a prejudicial statement by the officer as he stated he "arrests individual regularly"



Jane V. Nemhauser

8-1-09

GRAND JUNCTION POLICE DEPT
625 UTE AVENUE,
GRAND JUNCTION, COLORADO 81501
(970) 244-3555

Incident Number: 09-034790-001

Narratives

ENTERED DATE/TIME: 6/11/2009 16:42:00
SUBJECT: FBR NARRATIVE
AUTHOR: GALLEGOS, ISAAC

Supplemental report only.

1) *wrong*

On 06-11-09 at about 1445 hours I responded to an assist to the medical squad at 801 North Avenue in Grand Junction, Mesa County, Colorado. The ambulance had been dispatched for an intoxicated male with a leg injury. This male was identified as [REDACTED] a person whom I have had numerous encounters with.

By the time I arrived the squad was leaving and had transported [REDACTED] to the hospital. The person who had called 911 was an employee of a liquor store at that address. [REDACTED] had come into the store and purchased a bottle of Vodka prior to the ambulance being called.

[REDACTED] is a male whom the police deal with on a frequent basis for intoxication related problems. PST Lisa Maestas was on scene to investigate the liquor establishment for selling the Vodka to [REDACTED]. While PST Maestas was speaking to the store employee, I went to Jane's Tattoo parlor, which is located next to the liquor store. I spoke to the owner, Jane Nemhauser.

Nemhauser said that she is familiar with [REDACTED] because he is always intoxicated and causing problems for the businesses in that area. Nemhauser said that she went in to the liquor store just as [REDACTED] was walking out. I asked Nemhauser if [REDACTED] appeared intoxicated to her and she said that he was most definitely either drunk or high on something. I asked Nemhauser why she believed this and she said that [REDACTED] was speaking in a fast paced manner and [REDACTED] (She said that Nemhauser was acting in a detached manner.) Nemhauser mentioned that because of [REDACTED] demeanor she began engaging in conversation with the liquor store employee to "rescue" her in a manner of speaking. *2) deny* *Gallegos sez motor* *3) deny* *4) deny*

I advised Nemhauser that [REDACTED] is becoming more of a problem for the police lately and I educated her on the trespass laws so that she could better protect her business along with the rest of the patrons of the business complex.

This is the extent of my involvement in this incident.

List of Documents

Subject:	Author:	Entered Date/Time:
FBR REPORT JUN 11 2009 10:23PM		6/11/2009 22:23:01

Incident Report

GRAND JUNCTION POLICE DEPT
625 UTE AVENUE,
GRAND JUNCTION, COLORADO 81501
(970) 244-3555

Incident Number: 09-034790-002

MAESTAS Report

I asked Prickett if she noticed any visible signs of intoxication when Lusch entered the store. Prickett hesitated for a minute, and then stated she did not. Prickett then went on to state approximately twenty minutes after Lusch bought the vodka from her, he returned to the store. Prickett stated that he seemed "crazy", and was showing definite signs of intoxication. Prickett stated he was swaying; he looked "out of it", was asking for an ambulance and speaking really fast.

I asked Prickett if the security cameras located above the register worked. Prickett advised that the cameras did not work. Prickett stated they did turn on, but had no recording function.

While I was speaking with Prickett Ofc. Gallegos entered the store and pulled me aside to speak with me. Ofc. Gallegos stated that he had just finished speaking with JANE NEMHAUSER (10-15-52), who had advised she walked into the store immediately after Lusch purchased the alcohol, and stated "that guy was definitely intoxicated or high on something". (See Ofc. Gallegos report for interview with Nemhauser).

1) deny

I returned to Prickett and advised her that based on the ^{witness comment follows} officers observations of extreme intoxication, the statements of Nemhauser that Lusch was intoxicated while in the store, her own statements that Lusch was showing signs intoxication upon re-entry into the store I had reason to believe that Lusch was showing visibly signs of intoxication upon his initial entrance into the store, and she would be receiving a summons for 12-47-901 Sell of alcohol to a visibly intoxicated person.

2) deny

3) deny

Case Status: Cleared by arrest

Signatures

Reporting Officer _____ Date

Supervisor _____ Date