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

MINUTES

WEDNESDAY, SEPTEMBER 16, 2009 2:00 p.m.

I. <u>CALL TO ORDER</u> – The meeting convened at 2:00 p.m. Those present were Hearing Officer Mike Grattan, City Attorney John Shaver, and Deputy City Clerk Debbie Kemp.

II. APPLICATIONS TO RENEW LIQUOR AND BEER LICENSES

 Ad-In Enterprises, LLC dba Junction Indoor Tennis Center, 535 25 ½ Road, Grand Junction, CO 81505, Tavern (Continued from September 2, 2009)

Roger Speyer, General Manager of Junction Indoor Tennis Center, was present.

Ms. Kemp reported that this was continued due to the applicant not meeting the food service requirements.

Mr. Speyer advised that they have now complied with the requirements.

The application for renewal was found to be in order and approved contingent on the applicant providing a letter or menu to the City Clerk's office indicating the food available at the establishment.

2. LOCO, Inc. dba LOCO Food Store No. 12, 107 Grand Avenue, Grand Junction CO 81501, 3.2% Retail Beer (Off-Premises)

Paula Ward, Manager of LOCO Food Store No. 12, was present.

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

3. LOCO Inc., dba LOCO Food Store No. 16, 2249 Broadway, Grand Junction, CO 81507, 3.2% Retail Beer (Off-Premises)

Heather Scott, Manager of LOCO Food Store No. 16, was present.

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

4. GJ Super Bowl, LLC dba GJ Scores, 2445 F ³/₄ Road, Grand Junction, CO 81505, Tavern

Daniel Lotfinia, representing the applicant, was present.

Hearing Officer Grattan disclosed that he had been contacted by a young gentleman regarding a brawl he was in and is being sued by GJ Super

Bowl. Hearing Officer Grattan provided him some information just to help him out. He did not feel this was a conflict. The applicants' representative, Daniel Lotfinia, and City Attorney John Shaver did not find it to be a conflict.

Ms. Kemp reported that Selina Sims, an employee of GJ Scores, violated the Colorado Liquor Code by selling to a visibly intoxicated person on January 10, 2009.

Mr. Lotfinia reported that the charges against Ms. Sims were dismissed.

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

5. DOS Inc., dba Dos Hombres, 421 Brach Dr., Grand Junction, CO 81503, Hotel and Restaurant

No one was present representing the applicant.

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

6. DSDJ Entertainment, Inc., dba Weaver's Tavern, 103 N. 1st Street, Grand Junction, CO 81501, Hotel and Restaurant

David and Sanna Weaver, owners of Weaver's Tavern, were present.

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

II. <u>APPLICATIONS TO RENEW LIQUOR AND BEER LICENSES WITH</u> OUTDOOR DINING LEASE

1. Knaysi Enterprises, Inc. dba Pablo's Pizza, 319 Main Street, Grand Junction, CO 81501, Beer and Wine with Outdoor Dining Lease

No one was present representing the applicant.

The application for renewal with outdoor dining lease was found to be in order and approved.

III. APPLICATION FOR A MODIFICATION OF PREMISES

1. Areios Western Slope Colorado, LLC, dba Smash Burger, 115 A & B W. Grand Avenue, Grand Junction, CO 81501, Beer and Wine

Add outdoor patio with 32 seats to liquor licensed premises

Todd Colosimo, Director of Operations for Areios Western Slope Colorado, LLC, and Sarah Wilhoit, circulator of survey, were present.

Ms. Kemp read the results of the survey conducted into the record (attached) noting that there was some misunderstanding of the questions on the survey.

City Attorney Shaver asked Mr. Colosimo if he heard the results and believed the findings were a true and accurate representation of the survey. Mr. Colosimo said yes.

City Attorney Shaver asked Ms. Wilhoit if she heard the results and believed the findings were a true and accurate representation of the survey. Ms. Wilhoit said yes. City Attorney asked Ms. Wilhoit to explain the white-out on the survey. Ms. Wilhoit said that she somehow misunderstood the questions when it was explained to her by Ms. Kemp. Rather than to call the City Clerk's office to get clarification, she used white-out on question one. City Attorney asked when and how the survey was conducted. Ms. Wilhoit said that it was between September 2nd and 7th in the afternoon. She told people that she was conducting a survey for Smash Burger to add 32 outdoor seats to their liquor licensed premises. City Attorney Shaver asked Ms. Wilhoit to describe Exhibits #1 through #4 that were attached to the survey. Ms. Wilhoit explained that she was advised to keep track of every place she approached and indicate if the people are not at home, didn't want to participate, etc.

Hearing Officer Grattan asked Ms. Kemp if the findings of the survey included any of the white-out. Ms. Kemp said they did not include the white-out numbers. Mr. Grattan noted that there were 29 white-out's that indicated yes on #1 which would bring the total to 71 on #1. Ms. Wilhoit clarified the coding she used on the exhibits indicating no participation, no answer, no solicitation, etc.

The application for modification of premises was found to be in order and approved.

IV. APPLICATION FOR SPECIAL EVENTS PERMIT

 March of Dimes, 634 Main St., Suite 105, Grand Junction, CO 81501 – Event "Signature Chefs Event", located at the Colorado Airlines Hanger on October 10, 2009, Malt, Vinous, and Spirituous Liquors

President: Shelly Goodchild, 3227 W 22nd Avenue, Denver CO 80211 Event Manager: Deb Horwitz, 787 Jordana, Grand Junction, CO 81501

Deb Horwitz, Event Manager, was present.

City Attorney Shaver asked Ms. Horwitz if the letter provided stating no other licensed facilities were available was hers. Ms. Horwitz said yes. City Attorney Shaver asked Ms. Horwitz to describe the event for the Authority. Ms. Horwitz said that the event is a fundraiser. There will be 8 or 9 restaurants donating food and services for the event and Crossroads Wine and Spirits will donate alcoholic beverages for the event. Other facilities did not want to participate in an event where everything was donated. City Attorney Shaver asked how many people would be attending the event. Ms. Horwitz said around 200 guests.

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

 B.P.O. Elks Lodge #575, PO Box 1987, Grand Junction, CO 81502 – Event "Oktoberfest", located at the NW corner of 3rd and Main Streets on October 3, 2009, Malt and Vinous Liquors

President: Shawna Compton, 924 Squire Ct., Fruita, CO 81527 Event Manager: Ron Ward, 739 Corral Dr., Grand Junction, CO 81505

Ron Ward, Event Manager, was present.

City Attorney Shaver asked Mr. Ward if the letter provided stating no other licensed facilities were available was his. Mr. Ward said yes, except his letter indicated Colorado Avenue instead of Main Street in error because originally they were going to have Oktoberfest on Colorado Avenue. City Attorney Shaver asked Mr. Ward to describe the content of the letter for the Authority. Mr. Ward said that the event is an outdoor event at 3rd and Main Street. There are no facilities large enough to handle the event. There will be approximately 8,000 people attending the event. They are adding a kid's area this year.

City Attorney Shaver asked if this has historically been an outdoor event. Mr. Ward said that it has for 21 some years.

Hearing Officer Grattan asked what the numbers are referencing on their diagram provided. Mr. Ward said the numbers indicate where the vendors are.

Hearing Officer Grattan asked Mr. Ward if the kid's area is part of the licensed area. Mr. Ward said that it will not be.

City Attorney Shaver asked Mr. Ward if he is modifying his diagram to show that the kid's area is not part of the licensed premises. Mr. Ward said yes. City Attorney Shaver made the modification to the diagram and had Mr. Ward initial it.

Hearing Officer Grattan noted two changes, the letter dated July 7, 2009 should indicate Main and 3rd Street instead of Colorado Avenue for the event and the modified diagram identified as Exhibit A (attached).

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

V. SHOW CAUSE HEARING AND LIQUOR LICENSE RENEWAL

1. CJ North Avenue Liquors Inc., dba North Avenue Liquors, 801 North Avenue, Grand Junction, CO 81501, Retail Liquor Store

On July 16, 2009, the Licensee, through its employee/agent Christopher Prickett, engaged in a violation for the Conduct of the Establishment.

Dave McCarty, owner of North Avenue Liquors, was present.

DeLayne Merritt, Staff Attorney, advised the Authority that the City has reached a plea agreement with Mr. McCarty. They have agreed to a 7

day suspension of the license with 2 days of active suspension on October 16th and 17th and 5 days would be held in abeyance for a period of one year from the date of the approval pending no further violations of the Colorado Liquor Code or local ordinances or regulations during that period.

Hearing Officer Grattan reviewed the plea agreement.

Hearing Officer Grattan asked Mr. McCarty if he has reviewed the stipulation and understands it. Mr. McCarty said he has reviewed it and he does understand it. Hearing Officer Grattan asked if he entered into the agreement voluntarily. Mr. McCarty said he did. Hearing Officer Grattan asked if he understands the agreements ramifications. Mr. McCarty said he does.

Hearing Officer Grattan modified the agreement to add a new paragraph referencing the regulation 1 CCR 2, Section 47-900 (c)(1)(a) and asked Ms. Merritt and Mr. McCarty if that is acceptable. Ms. Merritt and Mr. McCarty said yes.

Hearing Officer Grattan signed the agreement and asked that the City Clerk's office mail out the signed agreement in accordance with the certificate of mailing.

2. Western Colorado Real Estate Market Inc., dba Bottle Shop Liquors, 725 Pitkin Avenue, Grand Junction, CO 815001, Retail Liquor Store

On August 15, 2009, the Licensee, through its employee/agent Lonnie D. Douglass, permitted the selling, serving, giving, exchanging, or procuring of an alcoholic beverage to Jeffrey E. Martin, a severely intoxicated customer.

Staff Attorney Merritt advised the Authority that Mr. Barnett, owner of Bottle Shop Liquors, has faxed a signed plea agreement to her office. She asked Mr. Barnett if he had any questions and he said he did not.

Ms. Merritt showed the agreement to Hearing Officer Grattan.

Hearing Officer Grattan advised that he would prefer the licensee be present so that he could make sure they entered into the agreement voluntarily.

Hearing Officer Grattan modified the agreement to add a new paragraph referencing the regulation CRS, Section 12-47-901 (1)(a) and asked Ms. Merritt if that is acceptable. Ms. Merritt said yes.

Hearing Officer Grattan asked that, in the future, the Licensee either be present in a situation like this, or at least there be a statement in the agreement that they are entering it voluntarily.

Hearing Officer Grattan signed the agreement and asked that the City Clerk's office mail out the signed agreement in accordance with the certificate of mailing.

3. Erich and Barb, LLC, dba The Snowflake, 539 Colorado Avenue, Grand Junction, CO 81501, Tavern

On July 8, 2009, the Licensee, through its employee/agent Holly Kuntz, permitted the selling, serving, giving, exchanging, or procuring of an alcoholic beverage to two severely intoxicated customers.

Erich Frei, owner of The Snowflake, was present.

Staff Attorney Merritt advised the Authority there are actually three counts on this notice: July 8, 2009 for violating CRS Section 12-47-901 (1)(a) for selling to intoxicated customers, July 28, 2009 procuring or giving to an intoxicated person, being the bartender on duty, and on July 28, 2009 for violating CRS 12-47-307(1)(a)(V) for employing of a person (the bartender) who is not of good character and reputation satisfactory to the respective licensing authorities. Ms. Merritt said that the City has reached a plea agreement with Mr. Frei. They have agreed to a 14 day suspension of the license with 4 days of active suspension. They had not reached an agreement to what days, whether it is 2 separate weekends on Friday and Saturday or 4 continuous days.

Hearing Officer Grattan reviewed the plea agreement.

Hearing Officer Grattan asked Mr. Frei if he has reviewed the stipulation and understands it. Mr. Frei said he has reviewed it and he does understand it. Hearing Officer Grattan asked Mr. Frei if he needs more time to review the stipulation. Mr. Frei said he did not need more time. Hearing Officer Grattan asked if he entered into the agreement voluntarily. Mr. Frei said he did.

City Attorney Shaver said that the Authority's past practice has been that when there is a two day suspension imposed, it is generally on a Friday and Saturday as Ms. Merritt indicated and it has been done as a punitive measure. There has not been a past policy of continuous days.

Hearing Officer Grattan asked Mr. Frei what his preferences of dates are for the suspension.

Mr. Frei advised that he will be out of town early November and he would give an extra day of suspension if he could do it then.

Ms. Merritt advised that Mr. Frei had said he could be closed on September 18th and 19th and October 16th and 17th if he needed to be closed two separate weekends.

Hearing Officer Grattan asked Mr. Frei what he would prefer to do. Mr. Frei said he would offer one more day of suspension if he could be closed in November.

Hearing Officer Grattan asked Ms. Merritt if she would agree to 5 days in November. Ms. Merritt said it would be fine, however, originally they wanted the active suspension to be done in a more recent time frame. Hearing Officer Grattan agreed to the active suspension being 5 days, but the actual 5 days suspension is up to Mr. Frei and Ms. Merritt. He said if the 5 days are November 3rd through November 7th, he would sign the agreement. He asked Ms. Merritt to modify the agreement to reference the active suspension time frame and also to reference statutory or regulatory violations on the agreement for each violation.

Hearing Officer Grattan called a recess at 3:15 p.m.

The meeting reconvened at 3:20 p.m.

Hearing Officer Grattan asked Ms. Merritt if she and Mr. Frei came to an agreement. Ms. Merritt said they did. Mr. Frei agreed to a 15 day suspension of his license, 5 days of active suspension from 12:01 a.m. on the 3rd of November, 2009 until 11:59 p.m. on the 7th day of November, 2009.

Hearing Officer Grattan asked Mr. Frei if he had an opportunity to review the agreement and asked him if he is entering into it voluntarily. Mr. Frei said yes. Hearing Officer asked Mr. Frei if he understands and asked if he needs further time to consider it. Mr. Frei said he understands and does not need further time.

Hearing Officer Grattan signed the agreement and asked that the City Clerk's office mail out the signed agreement in accordance with the certificate of mailing.

VI. OTHER BUSINESS

Hearing Officer Grattan asked Ms. Merritt for two items to be included on future stipulation agreements. One item being a refutation of the citation for the violation and the other being that the agreement is entered into knowingly, voluntarily, and with the opportunity to discuss it with Counsel or anyone else. Ms. Merritt asked if he would like to see any mitigating factors if they have done any rehabilitation or taken steps forward. Mr. Grattan said that it wouldn't hurt.

City Attorney Shaver also advised that a waiver of appearance would be good as part of the agreement.

VII. <u>ADJOURNMENT</u> – The meeting was adjourned at 3:25 p.m.

NEXT REGULAR MEETING – October 7, 2009



| | MEMO: | Local Licensing Authorit |
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- FROM: Debbie Kemp, Deputy City Clerk
- DATE: September 9, 2009
- SUBJECT: Application for a modification of premises to add 32 outdoor patio seats to a beer and wine liquor license by Areios Western Slope Company LLC, dba Smash Burger, 115 A&B, W. Grand Avenue

Areios Western Slope Company, LLC filed an application with the Local Licensing Authority on July 13, 2009 for a modification of premises to add 32 outdoor patio seats to a beer and wine liquor license permitting sales of malt and vinous liquors by the drink for consumption on the premises at 115 A&B W. Grand Avenue, under the trade name of Smash Burger.

In order to address the reasonable requirements of the neighborhood and the desires of the adult inhabitants of the neighborhood, the applicant conducted a survey. The neighborhood was defined as the area bounded on the North by North Avenue, D Road on the South, 6^{th} Street on the East, and on the West by 25 ½ Road. The results of that survey are as follows:

1. As an owner of property in the neighborhood, an employee or a business lessee of property in the neighborhood, and/or an inhabitant residing in the neighborhood for more than six months each year, I believe the modification of premises to add 32 outdoor patio seats will not conflict with the reasonable requirements of the neighborhood or the desires of the inhabitants.

| Yes | 42 |
|-----|----|
| No | 1 |

2. As an inhabitant who resides in the neighborhood for more than six months each year, it is my desire that the modification of premises be approved.

| Yes | 62 |
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| No | 0 |
| Disqualified | 1 |

One signature was disqualified for being out of the area.

Exhibits were provided for a record of attempts at the survey due to no answer, no solicitation, non participant, no one who qualified to respond, participated in survey, or come back later. These are attached as Exhibits 1-5.

Please note that there must have been some misunderstanding on the survey form. The persons conducting the survey had businesses only answer question #1, which is correct, but they had residential answer only question #2 instead of both questions.

That concludes this report.

cc: Applicant John Shaver, City Attorney Lisa Maestas, Grand Junction Police Department Sarah Wilhoit, Survey circulator Brian Leonhardt, Survey circulator File

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