

**LIQUOR AND BEER MEETING  
LOCAL LICENSING AUTHORITY  
CITY OF GRAND JUNCTION, COLORADO  
TWO RIVERS CONVENTION CENTER, 159 MAIN STREET**

**MINUTES**

**WEDNESDAY, SEPTEMBER 15, 1999, 8:00 A.M.**

I. **CALL TO ORDER** – The meeting was convened at 8:01 a.m. Those present were Hearing Officer Phil Coebergh, Assistant City Attorney John Shaver and Senior Administrative Assistant Christine English.

II. **REPORT OF CHANGE IN CORPORATE STRUCTURE**

1. Buon Appetito, Incorporated dba il Bistro Italiano, 400 Main Street, Hotel and Restaurant

New Stockholder: Luana Guarlerzi (30%)

John Williams, attorney for Buon Appetito, was present. Mr. Williams stated the Certificate of Good Standing would be filed with the City Clerk's office. The application was in order and approved.

III. **APPLICATION FOR TWO (2) OPTIONAL PREMISES**

1. The Pinon Grill incorporated dba The Pinon Grill at Tiara Rado, 2063 South Broadway, Hotel and Restaurant with Optional Premise

Addition of two (2) optional premises licenses to include golf course and driving range.

Pat Kennedy, owner, was present. The application was in order. The Learning Center and the first tee were posted with the Notice of Hearing. Mr. Kennedy stated the area referred to as the Learning Center is really the driving range that was not completed at the time of the first application for an optional premise license. This area is where golf lessons will be given and there are target greens there also. It is on one side of South Broadway while the rest of the golf course is on the other, and this is the issue. The map included in the application was referred to as to the location of the (2) optional premises licenses.

Mr. Coebergh asked for clarification as to where the liquor will be served. Will people be purchasing alcohol at the golf course and taking it to the Learning Center? Mr. Kennedy stated the plan was to take a beverage cart to the Learning Center and sell beverages from the cart. Mr. Coebergh asked if the expectation was people buying liquor at the golf course and taking it on their golf carts down to the Learning Center? Mr. Kennedy stated perhaps, but he envisioned people buying beverages off the cart. Mr. Coebergh stated this could cause a significant problem if people were going to be buying liquor at either the golf course or the Learning Center and transporting it. They would then be transporting it off of the licensed premises, which is not appropriate, and taking it back onto a licensed premise. Mr. Kennedy stated there is a route across South Broadway. It will be highly discouraged for people to be taking carts up and down South Broadway. The City will be putting an underpass under South Broadway or they will have a golf cart situation where people can drive across instead of on South Broadway. The City will not allow people to drive golf carts on South Broadway. Mr. Coebergh stated it is not allowable for people to take liquor out of an establishment that sells liquor for consumption on the premises

Mr. Shaver stated Mr. Kennedy was sensitive to the fact of going from one licensed premise to another. The product should remain on the licensed premises, as the premises are not contiguous. Legally, there is nothing that says there has to be absolute contiguity but the theory is this license would be issued under the umbrella of the existing hotel and restaurant license. There is no legal preclusion to the issuance of this license. Mr. Kennedy and his staff will have to monitor the use of the alcohol just as they would anywhere else on the golf course. There is a road that bisects a portion of the course where someone could potentially take the product off the licensed premise as well.

Mr. Coebergh questioned Mr. Kennedy as to his understanding that anytime someone is on either of the two licensed premises and they take liquor off these premises, the licensee is in violation of the liquor code. Even if there is an underpass built, as long as that is not a part of the established premises, it will be a violation of the liquor code. Mr. Kennedy asked if there was a resolution to this problem. Mr. Coebergh and Mr. Shaver concurred that there has to be a designated licensed premise in order for the product to be lawful in being there. Mr. Kennedy stated the Parks and Recreation Department is working on a designated pathway along the irrigation canal bank that is used for the golfers to get from the golf course itself over to the new driving range. That will ultimately be the route chosen for the golfers to use to get to the new driving range. The City will have access to the canal bank and it will be designated under City property for the golfers to use. Mr. Shaver stated that was fine, but it would not be part of the licensed premises. The license, once the path is designated, needs to be amended to show that it is lawful for the alcohol to be there. Mr. Kennedy asked if it would be better to exclude this area at this point? Mr. Shaver stated it is not a matter of what is better or worse, this is an awareness issue. Mr. Coebergh stated it is normal for people to buy a beer in one location and if they can take it out on the golf cart, they will assume they can take it over to the Learning Center. That is a false assumption because it is illegal. Mr. Coebergh asked if Mr. Kennedy would provide signage? Mr. Coebergh stated this situation provides the potential for daily violations. Mr. Kennedy asked if a sign on the cart path stating "No alcoholic beverages beyond this point" would help that situation? Mr. Shaver stated it would certainly help. The problem is the cart travel is probably in and of itself illegal along the road, under the City's ordinance which allows carts to be operated on roadways, it applies to a discrete area in the northeast part of town for Bookcliff Country Club. This is not to say that it may not be possible to add this, if the portion of South Broadway is within the City limits. The combination of the alcohol and the cart traffic does create a problem. Mr. Kennedy stated the cart travel is not on South Broadway but across South Broadway.

Mr. Coebergh stated he has concerns about this. It would seem to have the potential of regular violations of the code. If there were an impediment to the issuance of the optional premise license this would be it. Mr. Shaver stated the optional premises license is not for regular service. There has to be a designated time for service with certain events and other kinds of activities. Mr. Kennedy stated the reason for doing the optional premise is for daily service. Mr. Shaver restated his statement that it would be Mr. Kennedy's intention under the notice to be filed with the City Clerk that this be included as a daily service area. If this was the case, then the admonition that Mr. Coebergh offered is even more important about confining the product to the licensed premise. Mr. Kennedy stated this was a surprise to him. His understanding was as long as it was adjacent to the golf course and perceived as contiguous to the golf course, it was all City property. Mr. Shaver stated it was not. The City may have surrounding property around the driving range but in terms of the legal requirement, this area is a public right of way which creates a problem of having the alcohol in the street. The City has an ordinance about no open containers in the vehicles. If these people are buying the beer, driving the golf carts and are in the City, it is a violation, by that person, every time they go off the property onto the street, of the City ordinance. Mr. Kennedy stated he wants to be in compliance with the

liquor code. He knows that people are going to want to take beer down to the driving range. Mr. Coebergh stated this was exactly the problem, people taking beer down to the driving range. It is illegal. They can have it there but can not take it there or take it from there. There can be service there but it must be confined to the licensed premise with no transporting of product. The signage may be one way of trying to address this problem.

Mr. Shaver stated in May 1999, the clubhouse and a large portion of the golf course were designated under the hotel and restaurant liquor license. An optional premise license was issued to cover the rest of the golf course. The State frowned upon that, as there would be an expectation of food service for the majority of the course. With the approval this morning, the clubhouse would now be a discrete hotel and restaurant license and the 2 optional premises licenses will cover the golf course along with the previously approved optional premise license. The State suggested the option before the Authority today.

Mr. Coebergh asked if the decision on this had to be immediate, or if it would be better to continue this giving time for further options. Mr. Shaver recommended conducting the hearing today and making a determination. This does create potential problems for the licensee. It was Mr. Shaver's understanding that the majority of the golf course would be treated as an optional premise. This would be the third optional premises license.

Mr. Kennedy stated initially they started with two liquor licenses; one was a hotel and restaurant liquor license, and one was a 3.2% beer license. The 3.2% beer license was for the golf course and the hotel and restaurant was for the dining room and the patio at the clubhouse. This created a conflict with the golfers as they did not understand why they could go to Adobe Creek, have a cocktail and take it onto the course and yet they could not do this at Tiara Rado. They could also do this at Bookcliff Country Club and other golf courses on the Western Slope. There was also a concern with having two licenses and the storage of beer; canned beer would be on one side of the walk-in and bottled beer on the other side. The canned beer was the 3.2% beer and the bottled beer was stronger. It was in their best interest to have one liquor license, eliminating the need for two separate storage areas and it would also eliminate some of the conflict with the golfers. It had become very cumbersome. Two residential streets cut off holes 5 and 6 and this was deemed as the only optional premise that was needed. The City Clerk, Stephanie Nye, was in communication with the State and it was thought since they were not offering full food service on the golf course, that they needed to include the other sixteen holes as part of the optional premise also. They do offer food service, say a hamburger, on the golf course, but again it is not the spirit of the law. At that point Ms. Nye decided that they needed to have a second optional premise for the other holes that were contiguous to the clubhouse. The third one is for the driving range. Mr. Coebergh asked if there was a street problem on one of the other two optional premises. Are people crossing the public street with alcohol in their golf carts going from one optional premise to the other optional premise? Mr. Kennedy stated it was more the beverage cart crossing the street, but yes, there are people crossing the streets. The beverage cart has to cross the street to go from hole 4 to hole 5 on the golf course. Mr. Coebergh asked if there were not also golfers with alcohol crossing, so they are taking the alcohol from one optional premise to another optional premise. Mr. Kennedy stated yes. Mr. Coebergh stated that it was clearly a violation of the liquor code. Mr. Coebergh asked Mr. Kennedy if he understood that. Mr. Kennedy stated he did understand, but not until this morning that it was a problem. Mr. Kennedy stated this is how the golf course has been for the last 25 years. This is an issue that has either not been brought up before, or just never resolved.

Mr. Shaver asked if the street being crossed now is a publicly dedicated street. Mr. Kennedy stated yes. Mr. Coebergh stated it was a City owned property, but the City is

not the licensee, yet the City is, in essence, by indicating that it wants to go along with this, condoning what appears to be daily violations of the liquor code. Mr. Coebergh stated there could be a situation, especially with the Learning Center, with someone in a golf cart with alcohol crossing the road and causing an accident. There would be a violation of the open container law and the liquor code and it would subject not only the licensee but also the City to significant liability. Golf carts crossing streets can be a real hazard. Mr. Shaver stated the lower volume residential street is a concern. The path has existed perhaps since the inception of the golf course. Mr. Shaver advised to treat this as a hearing. If Mr. Coebergh decides to take the matter under advisement, some additional research can be done in relation to this; or if Mr. Coebergh is comfortable with the admonition that the licensee has received this morning about containing the product to the specific areas. Mr. Coebergh stated it was his understanding that the City Attorney's office would recommend approval of the application of the two optional premises licenses. Mr. Shaver stated yes, and that approval be open to review to see if there is some issue that may not be fully understood with the relationship with the roadway on the previous license. The licensee will be liable for following the Municipal Code and State Law concerning the product remaining on the licensed premises at the Learning Center.

Mr. Coebergh stated he saw no impediment in the legal sense to the approval of the optional premises licenses. Mr. Coebergh stated he felt that significant problems could arise, and he did not like the concept of being asked to approve something that everyone has acknowledged will likely be having daily violations of the liquor code. Based on the Assistant City Attorney's recommendation, Mr. Coebergh approved the application with the admonition that something be done to keep the alcohol off the public areas. Mr. Shaver stated the previous license may be subject to some additional examination, but that is not before the Hearing Authority this morning, just dealing with the main golf course.

Mr. Shaver stated for the record, he was referring to the diagram, which was submitted with the application that indicates the outlines of the licenses being proposed.

## **V. APPLICATIONS TO RENEW LIQUOR AND BEER LICENSES**

1. Warren G. Roger dba This Is It Grocery, 215 11<sup>th</sup> Street, 3.2% Beer Off Premise

The application was in order and approved.

2. Marie O. Dam dba C & D Food Store, 2685 Unawep Avenue, 3.2% Beer Off Premise

The application was in order and approved.

3. Grand Junction London Pub Incorporated dba Chelsea London Pub, 2424 US 6 & 50 #300, Hotel and Restaurant

Marsha Glover, general manager, was present. The application was in order and approved.

4. LS & L Restaurant Corporation dba Big Cheese Pizza, 810 North Avenue, Hotel and Restaurant

The Fire Department reported 1 critical violation. The application was in order and approved contingent on a favorable Fire Department reinspection.

**V. APPLICATION FOR RENEWAL AND DECISION ON CAUSE FOR LATE FILING – Continued  
from September 1, 1999**

1. Heather L. Shuman dba Racquet Club Pub, 535 25 ½ Road, Tavern

No one was present representing the Racquet Club Pub. Mr. Coebergh stated since Mr. Shaver was not present at the last meeting, that Mr. Shuman was present at the September 1, 1999 meeting representing Ms. Shuman. Mr. Shuman is not the licensee and this application was continued to this meeting so that Ms. Shuman could be present. Mr. Coebergh asked for the recommendations of the City Clerk's office and the Assistant City Attorney on how to proceed with this application.

Ms. English stated the licensee was notified by letter that the application had been continued to this date and that she needed to be present. There has not been any response from Ms. Shuman. Mr. Shaver asked how Ms. Shuman had been notified. Ms. English stated Ms. Shuman had been sent a copy of the agenda and wrote on the agenda itself that Ms. Shuman needed to be present at the hearing. A letter was also sent on September 1, 1999 notifying her of the continuance. Both the agenda and the letter were sent to the licensed address. Mr. Coebergh stated that Mr. Shuman was advised repeatedly at the September 1, 1999 meeting that Ms. Shuman needed to be present. Mr. Shaver stated the statutes talk about communication with the licensee at the address of the license. Assuming this is a good mailing address, the Authority's notice can be presumed to be delivered. The license can be held in abeyance until the licensee appears and to further compel her to attend by a show cause or a more formal kind of order. This can be continued to the next meeting. At this point the Authority is within its legal rights to not continue the license. There has to be a showing of good cause by the licensee and if that showing is not made, then the license should be subject to being terminated.

Ms. English stated the expiration date of the license was June 4, 1999 and the renewal application was filed within the 90-day time frame, but at this point it is beyond the that 90 days. Mr. Shaver concurred with this. Under state statute, any late renewal must be filed within 90-days of the expiration date. If this is not done, then there is no renewal but the licensee will need to file an application for a new license. This is regulation 47-302(2)(b). Even though the renewal application was made within the 90 days, the cause for late filing has not been made prior to the 90-day expiration. Ms. Shuman has been given opportunity to support the application, that did not occur, and because of her failure, the 90-day time period has now expired.

Mr. Coebergh stated the only cause for the late filing is a letter submitted by Mr. Shuman at the last meeting with nothing supplied by Heather Shuman at all. Mr. Coebergh continued the application for two weeks and asked that some more communication be attempted with Heather Shuman and give her the opportunity to clear this up. If something is not done then a show cause hearing will have to be held as to whether or not there is a license in existence at this time. The license was not denied or approved but continued for two weeks.

Mr. Shaver stated there could be an argument that there should be no service. Under the same statute, 47-302(2)(a), once there is a late filing, while any decision on the late filing is pending the licensee may continue to sell alcoholic beverages. If the application to renew is not denied, this should continue for another two weeks. Mr. Coebergh concurred with this.

## **VI. DECISION – LIQUOR AND BEER CODE VIOLATIONS**

1. In the Matter of The Pour House LLC, dba The Pour House, 715 Horizon Drive, Tavern

Regarding Violation of 12-47-901(1)(a) C.R.S. **UNLAWFUL ACTS** and Colorado Liquor Regulation 47-900; and 12-47-901(1)(h)(l) C.R.S. **UNLAWFUL ACTS** and Colorado Liquor Regulation 47-900

Mr. Coebergh stated it was his understanding that a stipulation had been entered into. He has reviewed the stipulation that provided for a dismissal of the show cause matter.

Mr. Shaver stated he had opportunity to consult with the licensee's counsel on this matter and the supplementary information as being available from the police, in fact, is not available or does not provide sufficient notice to the licensee. There is a case called Costaphix vs. Lakewood. That case stands for the proposition that in order to have fundamental fairness, there must be some fairly accurate dealing of the alleged violation and also the people that participated in or committed the violation. That unfortunately was not available in this case. The matter is being dismissed. The stipulation that was entered into acknowledges that this licensee has had trouble in the past and that they are specifically obligated to adhere to the law. It is not much but they are on notice for any subsequent violations. If there are any further violations, Mr. Shaver recommended sustaining those violations and that the penalty be fairly severe.

Mr. Coebergh stated it did appear that there were problems with the police reports from the hearing that was held some months ago. Mr. Coebergh concurred with the dismissal and agreed that this license has had significant problems in the past.

- ## **VII. ADJOURNMENT – The meeting was adjourned at 8:42 a.m.**

**NEXT REGULAR MEETING - October 6, 1999**