

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

MINUTES

WEDNESDAY, DECEMBER 19, 9:00 A.M.

I. **CALL TO ORDER** – The meeting was convened at 9:01 a.m. Those present were Hearing Officer Phil Coebergh, Assistant City Attorney John Shaver and Deputy City Clerk Christine English.

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

1. JEMSKT Incorporated dba Ranch Liquors, 2314 Highway 6 & 50, Retail Liquor Store

The application was found to be in order and approved.

2. Mimosa Incorporated dba Fairground Wine & Liquor, 2771 B ½ Road, Retail Liquor Store

The application was found to be in order and approved.

III. **APPLICATION FOR RENEWAL AND REPORT OF CHANGE IN CORPORATE STRUCTURE-**

Continued from December 5, 2001

1. Beye Lotz Grand Junction VFW Post #1247, 1404 Ute Avenue, Tavern

Sr. Vice President: Joseph D. Shelleman replaces Joseph Frost

Jr. Vice President: Frederick Castro replaces Ronald Nolan

Trustee: Edward R. VanWestenberg replaces Carl Munger

Robert Noland, Quartermaster, and Frederick Castro were present. Mr. Shelleman was not present due to a death in the family. The renewal application was found to be in order. The Police report on the change in corporate structure shows Mr. Castro and Mr. Shelleman had arrests in their backgrounds that were not revealed on the individual histories.

Mr. Castro stated the arrests had been resolved and cleared. Mr. Coebergh asked for clarification on the term “cleared”. Mr. Castro stated one charge was a domestic violence incident and the other arrest was for writing a bad check. A guilty plea was entered on the domestic violence charge and a guilty plea was entered on the bad check charge. Restitution has been paid to the State of South Dakota on the bad check charge.

Ms. English stated the Police report shows an arrest for ‘fugitive from justice’ in April of 1999 and in January in 1999 an arrest for 3rd degree assault. Mr. Castro disclosed a DUI arrest and a suspended sentence on the bad check arrest. But there was no disclosure of the domestic violence charge.

Mr. Castro stated he did put the arrest on the form. Ms. English showed the form to Mr. Coebergh who in turned gave it to Mr. Castro to view. There was no disclosure on the domestic violence charge.

Mr. Shaver stated the individual history form is signed under the penalty of perjury. The Licensing Authority has in the past referred these type issues to law enforcement for investigation and possible prosecution.

Mr. Castro submitted an FBI investigative report to Mr. Coebergh (placed in applicant's file). Mr. Coebergh stated the report refers to Mr. Castro being a multi-state offender including a concealed weapons and physical assault arrests in Florida. Mr. Castro stated that was false and gave a brief explanation of the concealed weapon actually being a box cutter that he carried on his belt. Mr. Castro stated he was arrested for a physical assault.

Mr. Coebergh asked to continue this to the first meeting in January 2002. Mr. Shaver stated the change in corporate structure takes place each year as part of the organizational structure of the entity. As long as the majority of officers are in place, the replacement of any officers can take place at a later date. Mr. Shaver recommended approving the renewal today and continuing the matter on Mr. Castro and Mr. Shelleman until the January 2, 2002 meeting when Mr. Shelleman would also be available to answer any questions of the Licensing Authority.

Mr. Nolan stated he has submitted minutes from a meeting that took place last night where it was decided that if the change in corporate structure could not be approved with Mr. Castro and Mr. Shelleman, they would be removed from office and a new election would take place at the end of January 2002.

Mr. Coebergh stated the matter with Mr. Shelleman is far enough in the past that it is not a concern at this point, but there is considerable concern with the character of Mr. Castro. Mr. Coebergh approved the renewal application and continued the matter on the change in corporate structure to the January 2, 2002 meeting.

IV. APPLICATION FOR TRANSFER OF OWNERSHIP

1. Green Wave LLC dba Redlands Liquor, 2500A Broadway, Retail Liquor Store

Transfer of Ownership from Redlands Green Wave Incorporated dba Redlands Liquor to Green Wave LLC dba Redlands Liquor, 2500A Broadway

Applicant: Green Wave LLC
Managing Member: Patricia Tugman, 697 26 ½ Road, Grand Junction, CO 81506

Patricia Tugman was present. The application is for a change from a corporation to an LLC. There is not change in actual ownership. The application was found to be in order and approved,

V. RESOLUTION OF FINDINGS AND DECISION RE: APPLICATION FOR NEW LICENSE

1. LHB, LLC dba Eastgate Liquors, 2830 North Avenue, Retail Liquor Store

Applicant: LHB, LLC
Managing Member: Louis H. Boyd, Jr., 1277 N Road, Loma, CO 81524

Terry Slater, attorney for the applicant, and Louis Boyd was present. Ms. English read the results of the survey conducted by the applicant into the record (see attached). One letter of opposition was filed on December 14, 2001 (on file in the City Clerk's office). A new affidavit of financial interest was filed on December 17, 2001 (placed in applicant's file).

Ms. English stated the report was amended and resubmitted because there was an additional street, Normandy Drive, which did not appear on the map used to verify the signatures that is actually within the survey area. Mr. Boyd came into the City Clerk's office and examined the petitions and pointed this out using a more current map supplied by the Community Development Department. The petitions were reexamined and additional signatures were found that were inside the survey area so the totals were adjusted accordingly.

Mr. Slater stated there had been an issue involving a possible indirect interest in another liquor license. The liquor license has been formerly surrendered. Mr. Boyd was not an owner of that business but he did hold the status of guarantor on a note on the property. That license has been surrendered and the club is now closed so there would be no question on indirect financial interest on this application. Mr. Slater stated the survey shows the neighborhood is in favor of the approval of this license. The location of this establishment is convenient and appropriate for this type of liquor license. The undue concentration issue, there would not be any additional taxing of police resources. It fits within the needs of the community.

Mr. Shaver questioned Mr. Slater on the survey. Mr. Slater stated the survey was conducted under the supervision of Mr. Boyd. Three individuals were hired to conduct the survey. Mr. Boyd stated they were paid an hourly wage and that the report read into the record was a true and accurate accounting of the survey. Mr. Boyd himself conducted approximately 90% of the survey on Sundays. The survey was presented to the people to read and then to answer the questions.

Mr. Coebergh asked Mr. Shaver if there was any conflict over the license that was surrendered. Mr. Shaver stated since the license has been surrendered and is no longer active, the issue is null and void.

Mr. Coebergh opened the hearing at 9:35 a.m.

There was no one present in favor of issuance of the license other than the applicant.

Those speaking in opposition to the issuance of the license were:

Bridget and Larry Evenson, 567 Greenfield Circle East, owners of Earl's House of Spirits located at 1560 North Avenue. Ms. Evenson stated in June of 2000 a new retail liquor store license application was submitted which was located 1 block from their store. During the hearing on that application the issue of undue concentration was brought up. Detective Culver, Grand Junction Police Department, was asked to submit his opinion as to undue concentration and how it would impact local law enforcement. Detective Culver submitted a memorandum and report dated June 4, 2000. Ms. Evenson submitted a copy to the Licensing Authority (on file in the City Clerk's office). Detective Culver concluded there is a correlation between the amount of work generated for law enforcement in relation to the number of licenses in an area. The same issues and concerns for increased law enforcement activities would apply in this situation also since there is another liquor store almost directly across the street. This license would not be in the best interests of the neighborhood.

Mr. Coebergh asked Mr. Shaver concerning this issue. Mr. James Majors was the Hearing Officer at that meeting, and based on a combination of different issues that included a conflict in the applicant's and the oppositions. That application was denied.

Mr. Clifford Stout, 2508 Kennedy, spoke in opposition to the license. There are too many liquor stores in the area all ready.

Pam Hambright, 740 Golfmore Drive, owner of Bookcliff Liquor. Ms. Hambright had opened a retail liquor store in that same area 6 years ago. It did not do well in that location and it was moved to 3026 F Road. There have been 2 new liquor stores approved in the east end of town. The existing liquor stores are meeting the needs of the area and she requested the denial of this new license. Mr. Slater asked if Ms. Hambright currently owns a liquor store or any members of her family. Ms. Hambright stated she owns Bookcliff Liquor and her husband, Joe Hambright, owns College Liquor. Mr. Slater asked Ms. Hambright if her major concern was the competition that would exist between the liquor stores located in this area. Ms. Hambright stated yes.

Tony Azzam, 1631 19th Street, owner of Teller Arms Liquor located at 2353 Belford Avenue. Mr. Azzam submitted a petition to the Licensing Authority (on file in the City Clerk's office). Mr. Azzam stated there is all ready too much competition in the area due to the undue concentration of this type of license. Mr. Azzam also stated the needs of the neighborhood are all ready being met and another liquor store would cause law enforcement problems for the area. Mr. Coebergh asked Mr. Azzam to explain the type of problems the police would have. Mr. Azzam stated the Eastgate parking lot is very difficult to maneuver in, and even though the law states people should not be driving under the influence, the reality is that people do drive while under the influence. With the parking lot and the traffic on North Avenue, there will be increased traffic accidents and problems.

Joe Croker, attorney representing Don Compte owner of Crown Liquor located at 2851 ½ North Avenue. Mr. Croker submitted a circulator's affidavit and a petition conducted by Mr. Don Compte conducted within the neighborhood (on file in the City Clerk's office). Mr. Croker stated Mr. Compte's survey shows that the needs and desires of the neighborhood were all ready being met and that the majority of the people within the survey area did not want the license issued.

Mr. Shaver stated on the first page of the survey form, the answer 'Yes' was marked on question #1. Who marked this and why. Mr. Compte came forward to answer that question. Mr. Compte stated the individual's who signed the survey had the opportunity to mark either yes or no. He did circle 'Yes' on question #1 on some of the petitions.

Mr. Croker submitted a letter from Brian Ladage, L and L Auto Glass LLC, located at 2851 North Avenue (on file in the City Clerk's office). Mr. Ladage's letter is in opposition to the issuance of the license. Mr. Croker stated it is the position of Mr. Compte that he is in opposition to the issuance of the license. The needs of the neighborhood are currently being met. The applicant's and the opposition surveys basically wash each other out. Due to the amount of retail liquor store licenses currently in the area, the needs of the neighborhood are currently being met. Mr. Croker cited C.R.S. 12-47-301(2)(b) and stated there are 5 points to support this. Mr. Croker submitted to the Licensing Authority an outline on how he would address items #1, 2 and 3 of C.R.S. 12-47-301 (on file in the City Clerk's office). Mr. Croker also submitted a map showing the concentration of licenses in the area, and a 2000 Census Population by Traffic Zones list (on file in the City Clerk's office). Mr. Croker stated the memorandum referred to by the Evenson's is quite important to his presentation. Mr. Shaver stated the memorandum submitted by the Evenson's is not the complete memorandum, it is only 1 page.

Mr. Coebergh asked Mr. Croker to define the neighborhood that he is referring to. Mr. Croker stated it is Orchard Avenue to the north, the I70 Business Loop to the south, 23rd Street on the west and 28 ¾ Road on the east, the same area as the applicant's area.

Mr. Croker stated the address of Mr. Compte's business is 2851 1/2 North Avenue and the applicant's address is 2830 North Avenue. These are in very close proximity to each other. Mr. Croker referred to page 4 of the memorandum which shows that retail liquor stores generate more calls for police service than any other type of liquor license. In conclusion, Mr. Croker stated all the criteria of C.R.S. 12-47-301 have been addressed and requested that the application be denied. Mr. Croker submitted to the Licensing Authority a map of the surrounding retail liquor store establishments (on file at the City Clerk's office).

Dave McCarty, owner of North Avenue Liquor, spoke in opposition to the issuance of the license. Mr. McCarty stated he is located outside of the petition area, but there are more things to be considered here. Mr. McCarty stated the sales for his business was down 30% in 2001 and that seems to be consistent with the loss of sales at the other establishments.

There was no other opposition present.

Mr. Slater responded to the opposition. Mr. Slater stated the ratios and the data presented by Mr. Croker are based upon the total number of licenses and not a tally of the retail liquor store licenses. The 38 existing licenses are not strictly retail liquor store licenses. The number of retail liquor store licenses in the City is 19 and total number in Mesa County is 36. It would be inappropriate to base a denial on that information. The commercial businesses on North Avenue draw shoppers from across the Grand Junction area. North Avenue is a major thoroughfare. There are problems with the methodology of the opposition surveys. The fact of competition depleting sales of other small business owners in this arena should not be a basis of denial of this license. Mr. Slater requested approval of the application.

Mr. Shaver stated there are a couple of corrections on the memorandum. The pages themselves are out of order and the pencil notations made on the pages are not his work, this had been added by someone else. This is a fairly new legislative enactment and regulatory measure. It is not particularly clear. There maybe additional information available now which was not available in 2000 when the memorandum was composed in reference to a different retail liquor store application. The statutory and legal requirements remain the same. The reasonable needs and desires of the neighborhood must be demonstrated to the satisfaction of the Hearing Officer. Mr. Shaver recommended continuing this matter for the purpose of verifying the signatures on the submitted opposition petitions. Mr. Coebergh requested the City Clerk's office to begin the process of verifying the signatures and present the results by Friday, December 21, 2001 whereupon a decision will be rendered and a resolution of findings prepared without an open session being held.

Mr. Slater entered on behalf of his client for the record a due process objection for the consideration of police resources without the testimony of the preparing officer and to the introduction of a memorandum developed in another matter without the ability to cross examine on that. Particularly as to the police resources issue that is central to the legal issue of the regulation which has been discussed here today.

Mr. Shaver stated the objection is certainly appropriate.

Mr. Croker responded to the objection. The objection should have been made at the time the information was presented and that all of the information was provided to the applicant in a timely manner. Any information presented today that had not been reviewed by the applicant there is no provision that the applicant has a right to review before this open meeting. The effort was made to conceal this information. The information was compiled fairly recently. Mr. Croker requested denial of the application.

VI. ADJOURNMENT – The meeting was adjourned at 10:48 a.m.

NEXT REGULAR MEETING – January 2, 2002

AMENDED

Memo to: Local Licensing Authority
From: Christine English, Deputy City Clerk
Date: December 12, 2001
Subject: Application by LHB, LLC for a Retail Liquor Store liquor license at 2830 North Avenue under the name of Eastgate Liquors

LHB, LLC filed an application with the Local Licensing Authority on November 19, 2001, for a new retail liquor store liquor license, for the sales of malt, vinous and spirituous liquors in sealed containers for consumption off the premises at 2830 North Avenue under the trade name of Eastgate Liquors. The application and supplementary documents were reviewed, found to be in order and accepted. The application has been forwarded to the state for a concurrent review. The hearing date was set for December 19, 2001. The Notice of Hearing was posted on the proposed premises on December 7, 2001. A display ad was published in The Daily Sentinel on December 7, 2001.

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 defined the neighborhood as the area bounded by Orchard Avenue on the north, I70 Business Loop on the south, 23 rd Street on the west and 28 3/4 Road on the east and included both sides of the streets as the outer boundaries. The results of that survey are as follows:

1. As an owner of property in the neighborhood, an employee of or 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 reasonable requirements of the neighborhood are all ready being met by existing outlets.

YES: 28
NO: **450**

2. As an inhabitant residing in the neighborhood more than six months each year, it is my desire that the license be issued.

YES: **398**
NO: 8
NOT APPLICABLE: 2

One (1) signature could not be counted, as the signer did not give an address. **Six (6) signatures could not be counted because they were outside of the survey area**; one (1) signer did not mark an answer to the questions and one (1) signature was all ready lined out when the survey was turned in.

No letters of opposition or counterpetitions have been filed to date.

A report was requested from the Grand Junction Police Department on the corporate officer's background. No local criminal history was found. The fingerprints have been forwarded to the Colorado Bureau of Investigation for further processing. A final inspection report has been requested from the Grand Junction Fire Department. The Code Enforcement Department reported the Notice of Hearing was posted in a timely manner and they will inspect the premises prior to opening to ensure that the diagram submitted matches the actual layout of the premises.

The Community Development Department has determined that no Conditional Use Permit is required and the proposed use is allowed in this zone district.

The number of similar-type outlets in the survey area is as follows:

Retail Liquor – 2 (Crown Liquors and Teller Arms)

The number of similar type outlets in a one mile area in addition to the above are:

Retail Liquor – 2 (Earl's House of Spirits and All Pro Liquor)

That concludes this report.

cc: John Shaver, Assistant City Attorney
Lori Wilkins, Grand Junction Police Department
Applicant
File