

RESOLUTION NO. 2-89

DECISION CONCERNING THE REQUEST BY  
GEORGE SANG T. CHAC  
FOR A RETAIL LIQUOR STORE LICENSE  
AT THE EASTGATE SHOPPING CENTER

George Sang T. Chac applied to the City of Grand Junction's Liquor Licensing Authority for a retail liquor store license to be located at 2830 North Avenue, Unit C-1-A, Eastgate Shopping Center, doing business under the trade name of Eastgate Liquors. A hearing on this matter was held on March 1, 1989.

Mr. Chac appeared by his attorney Don Huntzinger who identified the initial issue as being the definition of the applicable neighborhood. The petitioner says that the neighborhood should include those lands lying between the City of Fruita, approximately ten miles to the west of Grand Junction, to the Town of Palisade, approximately ten miles to the east of Grand Junction, and should include all of the Grand Valley between these points. The petitioner submitted information from the City's Engineering Department that there exists a great deal of traffic in the area. The petitioner also supplied information obtained from the City's Finance Department which shows that, city-wide, retail sales in the city have increased dramatically over the last several years. Petitioner submitted petitions in favor of the application. Those petitions were circulated in three different locations: a part-time employee of the petitioner (whose name the petitioner could not recall) apparently set up a table in front of the City Market store (located in the same shopping center as the proposed liquor store) and obtained most of the signatures in favor of the issuance of the license. In addition, employees or friends of the petitioner circulated petitions at the Western Sizzler Restaurant in the City and at the Universal Restaurant also located in the City. The petitioner testified that the customers who signed at Western Sizzler and the Universal Restaurant would primarily constitute customers from the Grand Junction area. The petitioner further indicated that no one signed the petition in opposition although the petitioner does not know if persons were given the option of signing a petition in opposition. A review of the names attached to the petition indicates that the substantial majority were in fact residents of the area between Fruita and Palisade although persons signing the document appeared to be located as far away as the State of Georgia.

As was indicated by the City Clerk Neva Lockhart, in accordance with the City's standard protocol, the City engaged the services of a surveying company which delivered petitions to each residence located within the area bounded by 28 Road on the west, Orchard Avenue on the north, 29 Road on the east, and south to the I-70 Business Loop, and including both sides of the streets listed as the outer boundaries, but excluding the I-70 Business Bypass. The

results of that survey are that 353 of those persons who responded (out of a total of 464) believe that the reasonable requirements of the neighborhood are presently being met. That same survey asked whether or not the responding person desires that the license be issued. Of those who responded, 260 indicated their desire that the license not be issued and 177 desired that the license be issued. The surveying technique used by the City involves a personal contact and, if no one is home, placing at least two copies of the form at the front door of each residence within the defined area. Of the total number of residents in the surveyed area, approximately 15% responded.

The City Clerk stated that there is one similar outlet within the survey area, that being Crown Liquors located along North Avenue approximately one quarter mile to the east. Including Crown Liquors, there are a total of four similar type outlets within one mile of the proposed licensed premises.

Following the petitioner's presentation, John Williams, an attorney representing Dale Mitchell, the owner/operator of Crown Liquors, presented Dale Mitchell's testimony. Mitchell stated that he had begun a survey, but that the neighborhood apparently was confused by similarities between his survey and the City's survey. Therefore, he discontinued his survey. Exhibit A indicated that of those who signed his preliminary survey, 42 people expressed their desire that the license not be issued. At his store, Mitchell secured 205 signatures in opposition (Exhibit B). Mitchell argued that the competition for liquor sales in the Grand Valley is very fierce so that prices are nearly equivalent to Denver. His argument was that there is already enough competition to keep prices down and that the addition of another liquor outlet would only serve to put someone else out of business. John Williams argued that the City's survey should be relied on exclusively in that it is neutral. He summarized the City's results as indicating that 76% of those responding felt that the reasonable requirements of the neighborhood are already being met and that 60% desired that the license not be issued. Williams argued that the petitioner's survey was suspect. He also argued that, to the extent that the Authority adopts the definition of the neighborhood propounded by the petitioner, the testimony of the several opposing liquor store (owners who testified that competition is stiff) indicates that the needs of the neighborhood are in fact already being met due to the fact that there is very little growth in liquor sales.

In response, petitioner's attorney pointed out that: the opponents are nearly all competing liquor store owners whose testimony should therefore be disregarded; and that the petition with 1000+ signatures in favor of the application indicates that the neighborhood needs are not being met.

The following persons also testified in opposition:

1. John Henson, the owner of the House of Spirits, a competitor, located approximately one mile west of the proposed location.
2. Larry Vezakis, the owner of Clifton Liquor Store (located just east of the city limits approximately four miles to the east of the proposed location), who indicated that the "pie" was not large enough to allow for additional slices to be made.
3. Angela deRocha, a resident of the neighborhood, who said that there are an abundance of liquor stores in the area. She said that while she is not in the liquor business, she does drink alcohol and that there are two stores (being Crown Liquors and The House of Spirits) within walking distance of her residence which is just north of the proposed location. She also indicated that she saw the petitioner's agent in front of City Market and was not given the opportunity to sign a counter petition.
4. Bob Crigger, owner of the Teller Arms Liquor Store, who suggested that a loss of 15 to 20% of his business, which would be likely if another liquor license were issued, would force him out of business.
5. James Holmes, the owner of a liquor store on the west side of the City of Grand Junction, also testified to his belief that there was no need for additional outlets in the City, or at least in this area.
6. Rich Craig, an employee of a liquor licensee on the west side of the City, testified that the neighborhood needs were being met. He testified that there was not enough volume in liquor sales in the Grand Junction area to support another store, again using the analogy that the "pie" was not large enough.

CONCLUSIONS:

Having reviewed the record and the various petitions submitted, the Local Licensing Authority finds and concludes that the reasonable requirements of the neighborhood are being met and that the desires of the inhabitants show a strong preference that the license not be issued.

The Authority determines that the neighborhood as reflected by the city survey is an appropriate neighborhood and, for the purposes of this application, defines "neighborhood" as being the boundaries as listed in the city survey described above. While there is only one outlet within the confines of that neighborhood, there

four (including the one within the survey area) within a mile plus the outlet just east of the city limits. Based on the findings made by the Court in Anderson v. Spenser, 426 P.2d. 970, the Authority determines that it must also consider the outlet immediately east of the city limits.

The Authority starts with the rule that the applicant has the burden of proof to meet the statutory criteria. Although both sides presented evidence, the Authority finds the evidence developed by the City survey to be the most compelling inasmuch as it was neutral and the methods of obtaining the information are known. While there is evidence that suggests that there are persons in the greater Grand Valley area who desire that the outlet be authorized, the Authority finds that the majority of the residents of the neighborhood affected believe that the needs of the neighborhood are adequately being met. Also it is the desire of the inhabitants that the license not be issued. Several petitions submitted by the applicant and by the opposition were in a form that suggests that such petitions were not entirely clear nor free from bias in the method of presentation. Nevertheless, the Authority has considered all of those petitions and finds that the desires of the inhabitants of the neighborhood, as defined, is that the license not be issued. The Authority recognizes that there were many signatures presented by the petitioner from area residents who were in favor of the license being issued.

The Authority finds that the reasonable requirements of the neighborhood are presently being met by existing outlets, and that the adult inhabitants of the neighborhood desire that this license not issue. The large number of outlets in the City and the prices of liquor in the City and its environs show adequate competition. For the reasons stated, the application for issuance of the license is denied.

PASSED AND ADOPTED this 15th day of March,  
1989.

Attest:

Neva B. Lockhart, CMC  
City Clerk

Philip Cobey  
Local Licensing Authority  
Grand Junction, Colorado