

RESOLUTION NO. 7-94

**DECISION ON APPLICATION FOR A HOTEL-RESTAURANT
LIQUOR LICENSE BY STEVEN WARNER SMIDT AND JEANINE MARIE SMIDT,
UNDER THE TRADE NAME OF "BLONDIES"
LOCATED AT 509 28 1/2 ROAD, GRAND JUNCTION, COLORADO**

A public hearing was held on July 6, 1994, by the Local Licensing Authority for the City of Grand Junction (hereinafter "City"), on the application submitted by Steven Warner Smidt and Jeanine Marie Smidt (hereinafter "Applicants") for a Hotel-Restaurant Liquor License under the trade name of "Blondies" located at 509 28 1/2 Road, Grand Junction, Colorado. The Local Licensing Authority having duly considered the evidence adduced at said hearing, FINDS:

1. The hearing on July 6, 1994, on the application was held after proper notice thereof, as required by 12-47-136 C.R.S., et. seq.

2. A survey of the neighborhood was conducted by the applicant. The results, as presented at the hearing, are in the minutes of the meeting attached and incorporated herein by reference. The results of all surveys turned in to the City Clerk's office by the applicant indicated that within the survey area, 3 persons felt the needs of the neighborhood were being met, 329 persons felt the needs of the neighborhood were not being met, 318 persons desired that the license be issued, 1 person did not desire that the license be issued and 1 person indicated that the question was not applicable to him as he was not an inhabitant of the neighborhood.

3. There were counterpetitions filed in regards to this application by Ralph Kuhn and Billy Louthan. The results of the counterpetitions, as presented at the hearing, are also in the minutes of the meeting attached and incorporated herein by reference. The results of all surveys turned into the City Clerk's office by the counterpetitioners indicated within that survey area, 79 persons felt the needs of the neighborhood were being met, 7 persons felt the needs of the neighborhood were not being met, zero persons desired that the license be issued, and 85 persons did not desire that the license be issued. No one responded that the question was not applicable to them.

4. The moral character and reputation of the applicants is good as determined by a check performed by the Grand Junction Police Department.

5. The building where the license is sought is located more than 500 feet from any public or parochial school or the principal campus of any college, university or seminary.

6. Inspections of the premises by the Grand Junction Fire Department and the Building Department revealed no code violations. A report from the Mesa County Health Dept. had not been received.

7. There is 1 existing hotel-restaurant liquor license and 4 beer & wine licenses within a one mile radius, all of which being within the area surveyed by the applicant.

8. There were persons present at the hearing that spoke in favor of the application and persons present that spoke in opposition to the application. That testimony is summarized in the minutes of meeting, attached and incorporated herein by this reference, as prepared by the office of the City Clerk.

Having reviewed the evidence presented at the July 6, 1994, hearing, as well as taking judicial notice of the evidence presented at the hearing on the previous application for this license on April 6, 1994, the documents and surveys placed in the file, and the statements of counsel, I reach the following conclusions:

a. The Local Licensing Authority must reach its conclusion based on the statutory constraints of C.R.S. 12-47-106(2) and case law interpreting that section. The two factors used to determine whether to approve or deny an application are (1) the reasonable requirements of the neighborhood and (2) the desires of the adult inhabitants.

b. The Local Licensing Authority has no power to regulate the hours of a licensed establishment absent an agreement from the applicant regarding the hours. The applicant stipulated that various conditions could be considered in deciding whether this license would be approved or denied, including a restriction on the hours of operation. Despite such stipulations by the applicant, the opposition remained similar to that at the hearing on April 6, 1994.

c. Both the reasonable requirements of the neighborhood and the desires of the inhabitants must be evaluated. Regardless of the reasons, the desires of the inhabitants are to be considered. At the hearings of April 6, 1994 and on July 6, 1994, basically similar information was presented both in favor and in opposition to the license.

d. The fact that a greater number of inhabitants has signed a petition favoring the issuance of the license does not of itself mandate the issuance of the license. The extensive opposition to the license, especially as expressed by inhabitants at both the April 6, 1994 and the July 6, 1994 hearings, must be weighed carefully in this decision.

e. A review of the evidence in this case shows the strong desire of the inhabitants of the area immediately north of the proposed location that the license not be issued. The area to the south of the proposed location is commercial, whereas the area to the north is residential.

f. There has been extensive evidence presented both on April 6, 1994, and July 6, 1994, of severe problems in the past with this location. These problems relate to disturbances, littering, noise, fights, and concerns with traffic, especially around closing time. The problems often have occurred in late evening

hours and early morning hours when the residents have been trying to sleep. The problems have been alleviated since the prior licensed establishment at the location has been closed. Even though the location is now being run as a restaurant without a liquor license, the previous problems have not resurfaced. The evidence shows that the problems relate to whether or not the establishment has a liquor license and the activities commonly associated with liquor licensed establishments.

g. Based on the above, including evidence from the hearing of April 6, 1994, as well as that presented on July 6, 1994, and the statements of counsel, I conclude that the desires of the adult inhabitants are that the license not be issued. The evidence supports the conclusion that the desires of the adult inhabitants are that the license application be denied, as well as the conclusion that the needs of the neighborhood are being met.

h. It is therefore my decision that the application be denied, and that no further applications be accepted for this location for a period of two years in accordance with C.R.S. 12-47-138.

NOW, THEREFORE, BE IT RESOLVED BY THE LOCAL LICENSING AUTHORITY OF THE CITY OF GRAND JUNCTION:

That the application submitted by Steven Warner Smidt and Jeanine Marie Smidt for a Hotel-Restaurant Liquor License, under the trade name of "Blondies", located at 509 28 1/2 Road, Grand Junction, Colorado, be denied.

DONE this 20th day of July, 1994.

— /s/ Philip Coebergh
Philip Coebergh, Hearing Officer
Local Licensing Authority for the
City of Grand Junction

ATTEST:

/s/ Stephanie Nye
Stephanie Nye, City Clerk

**LIQUOR AND BEER MEETING
LOCAL LICENSING AUTHORITY
CITY OF GRAND JUNCTION, COLORADO
CITY/COUNTY AUDITORIUM, 520 ROOD AVENUE**

M I N U T E S

WEDNESDAY, JULY 6, 1994, 8:00 A.M.

I. CALL TO ORDER

II. DECISION - LIQUOR AND BEER CODE VIOLATIONS

- A. Show Cause Hearing - Tall Pine, Inc., dba The Bottle Shop, 725 Pitkin Avenue -

City Attorney John Shaver stated that he has discussed this matter with the licensee and proposed stipulations have been prepared resolving the matter. The licensee and Mr. Shaver tendered a proposal to the Hearing Officer providing for a one-day suspension with a payment in lieu of suspension. That stipulation has been signed by the licensee.

There was no one present representing Tall Pine, Inc. Hearing Officer Philip Coebergh stated that he has not reviewed the stipulation, and therefore postponed a decision until the July 20, 1994, meeting.

- B. Show Cause Hearing - Joe Velarde dba La Mariposa, 159 Colorado Avenue -

City Attorney John Shaver stated that he has discussed this matter with the licensee and proposed stipulations have been prepared resolving the matter. The licensee and Mr. Shaver tendered a proposal to the Hearing Officer providing for a three-day suspension with a payment in lieu of suspension. Mr. Velarde has not signed the agreement, but has stated off the record that it is acceptable to him pending approval by the Hearing Officer.

Mr. Joe Velarde, licensee, was present. He stated he agrees to the stipulation, but has not had time to sign the agreement. The Hearing Officer stated that the agreement must be signed by Mr. Velarde. Mr. Coebergh will review the agreement and make a decision on July 20, 1994.

Assistant City Attorney Shaver stated that Mr. Velarde has indicated to him that he will sign the agreement today and tender

the stipulation to the City Clerk some time today.

Liquor and Beer Meeting
1994

-2-

July 6,

III. APPLICATIONS TO RENEW LIQUOR AND BEER LICENSES

- A. Cottonwood Liquors, 2513 Highway 6 & 50 (Retail Liquor Store)
The Clerk stated that the application was in order. The application was approved.
- B. City Market Store No. 9, 1909 N. 1st Street (3.2% Beer)
The application was in order, and approved.
- C. Loco Food Store No. 18, 722 Horizon Drive (3.2% Beer)
The application was in order, and approved.
- D. Junct'n Square, 119 N. 7th Street, (Hotel-Restaurant)
There was no one present representing this application. The Clerk reported that the application was in order, although the Mesa County Health Department has requested that the Authority be made aware that they are still awaiting a compliance schedule that was agreed upon in March, 1993, when Mesa county Health Department granted a variance to this establishment. The compliance schedule is needed to bring the basement up to Code. The Health Department has been waiting over one year for the compliance schedule. The Hearing Officer approved the renewal application. He stated that the compliance schedule can be handled through a Show Cause Hearing or the Health Department can deal with this problem through their own methods as opposed to dealing with it through the Liquor Code.

IV. APPLICATIONS FOR CHANGE IN CORPORATE STRUCTURE

- A. Diamond Shamrock Refining and Marketing Company (Diamond Shamrock) appointing Jerry D. King as Director
 - 1. Diamond Shamrock, 2903 North Avenue
 - 2. Diamond Shamrock, 2525 Broadway
 - 3. Diamond Shamrock, 201 North Avenue
 - 4. Diamond Shamrock, 2498 F Road

The Clerk reported that the change is in order. Mr. King is a current officer of the corporation, and is now being named a director also. The Change in Corporate Structure was approved.

V. HEARING - APPLICATION FOR CHANGE OF OWNERSHIP

- A. Application for a Hotel-Restaurant Liquor License and Extended Hours Special License by Good Pastures, Inc. dba Good Pastures Restaurant, 733 Horizon Drive - (License presently held by Airport Quality Inn Restaurants, Inc.)

- 1. Registration of Kathryn L. Walt as Manager

Mr. Richard Talley was present to represent the application. He stated that the ownership has changed. There are new owners.

City Clerk Nye stated that the application is in order. The application was approved.

Liquor and Beer Meeting
1994

-3-

July 6,

VI. APPLICATION FOR SPECIAL EVENTS PERMIT

- A. Application by the Grand Junction Downtown Association for a Malt and Vinous Special Events Permit on July 23, 1994, from 9:00 a.m. to 12:00 Midnight, in the 300 to 700 blocks of Main Street, for the annual Dino Days.

There was no one present representing this application. The City Clerk stated that the application was in order. The letter from Barbara Creasman, Downtown Development Authority Director, stating the need for use of this particular area was read into the record by Clerk Nye. The application was approved.

VII. HEARINGS - APPLICATIONS FOR NEW LICENSES

- A. Application for a Hotel-Restaurant Liquor License and Extended Hours Special License by Steven Warner Smidt and Jeanine Marie Smidt dba Blondies, 509 28-1/2 Road

Mr. Coebergh stated that this matter came up for hearing within the past couple of months. He will take judicial notice of what happened at that hearing and incorporate it into whatever takes place today, and will consider all of these matters in making a determination regarding this application. City Clerk Stephanie Nye stated that the application is in order. A report from the Mesa County Health Department has not been received as of this date. Ms. Nye stated that the applicants have been operating the restaurant without a liquor license. Clerk Nye read into the record an amended survey report regarding this application.

A hearing was held after proper notice. Ms. Kathy Portner, Community Development Department, was present. Mr. John Williams was present representing the applicants and Mr. Jack Perrin, the owner of the subject property. Mr. Williams stated that Jeanine Smidt was unable to attend this hearing due to business obligations. He stated that the date of the last hearing was April 6, 1994. Steve and Jeanine Smidt heard the comments that were made in opposition to their application. Some extensive negotiations have taken place with the City of Grand Junction and the Community Development Department. The Smidts and Mr. Perrin have agreed to amend and add conditions to the existing conditional use permit. There has been a conditional use permit in existence since 1977 which was issued to the Lucero family in conjunction with El Escondido. The testimony on April 6 had to do primarily with late

hours and excessive noise from a band, and related activities. Mr. Williams submitted a letter dated June 8, 1994, from Assistant City Attorney John Shaver, in response to Mr. Williams' correspondence dated June 22, 1994. He talked with Ms. Kathy Portner of the Community Development Department the previous day and a written conditional use permit had not been prepared as of 2:00 p.m. the previous day. He showed by letter the substance of conditions that have been agreed upon. Mr. Williams summed up the following conditions:

Liquor and Beer Meeting
1994

-4-

July 6,

Several of the conditions have to do with the premises itself. It has to do with privacy fencing on the north between the Creekside Apartments and the premises, a fence on the west side of the building. The letter from Mr. Shaver talks about chain link fence. In Mr. Perrin's and Mr. Smidt's conversations with Kathy Portner she agrees with a 6 foot privacy type of fence thinking that maybe visually if it is cut off from the west and the south it makes some sense. The applicant has agreed to conduct all customer activity to the south of the building rather than on the north. The residential areas begin on the north side of the premises. There is a fairly large creek between the apartment building and Blondies restaurant, and a fairly dense wooded area.

Mr. Smidt has agreed that any meals will be served on the south side. Customer parking will be on the south side. The only parking on the north side will be designated as employee parking. Those are the site changes.

Mr. Smidt has agreed to restricted hours which would be Monday through Thursday, closing at 11:00 p.m., Friday, Saturday, and Sunday, closing at midnight. That is a substantial difference from what would be allowed under the present Liquor Code.

Hearing Officer Coebergh questioned that the original letter from Assistant Attorney John Shaver stated midnight closing 7 days a week. Mr. Williams stated that Mr. Smidt would very much like to stay open every night until midnight. The discussions with the owner of the apartment building, Mr. Smidt's counsel, and also with the City, has resulted in one more concession made by Mr. Smidt. This may be an economic hardship to have his hours restricted, but Mr. Smidt believes enough in the business and his ability to manage the business that he can survive with the hours as agreed to now with the City. A third area that Mr. Smidt has agreed to is no live music. At the previous hearing there was much to do about the effect of a live band on the neighborhood, the sound, and the type of crowd that it draws. One of the early concessions in settlement agreements made with the City through the Community Development Department is that there will be no live music, no bands. Lastly, an area of concern had to do with the parking lot. Mr. Smidt will be required under the conditional use permit to provide parking lot security after 9:00 p.m. It is also his intent that when the premises close, the cars will be moved out of the parking lot. He is intent on coming up with some security device, whether it's a chain across the entrance, or what, to keep cars from parking there at later hours. Mr.

Williams stated that much of what happens in this town has little to do with business owners. You can find cars parked in the various shopping centers up and down North Avenue at all hours of the evening. One of the solutions that Mr. Smidt has come up with is to somehow block off the parking lot. All of this has been done at a fairly large expense both to the owner and the applicant. Their intent, however, for economic reasons, is to be granted this liquor license which is very important to them. At the same time they very much want to be good neighbors.

Liquor and Beer Meeting
1994

-5-

July 6,

The second change is that for approximately two months Mr. and Mrs. Smidt have operated the premises as a restaurant. There was much to do at the April 6 hearing about "this really isn't a restaurant. This really is a tavern." Mr. Williams felt a lot of it was warped out of shape a little bit. He submitted a menu for the restaurant which is a full breakfast and lunch menu, and a kids' menu. It is a restaurant. It has a full kitchen. There is an experienced chef on staff who has worked at other establishments in town. This premises should not be postured as a place that microwaves sandwiches and desires to serve a lot of alcohol. That is not the intent of the applicant.

Mr. Williams continued stating that there are those present at today's hearing that would like to speak on behalf of Mr. Smidt. In addition, there are the petitions which have been summarized. He was happy that the Hearing Officer is taking judicial notice of the last hearing because although Mr. Smidt was not successful in the application as a result of that hearing, he still believes by Statute, Case Law and the plain facts, that those petitions and signatures are quite relevant to a neighborhood. It was a mile on each side and there were six hundred to seven hundred signatures in favor, and very few against.

Hearing Officer Coebergh questioned whether these conditions are to be part of the liquor license or to be separate and only part of the conditional use permit. Mr. Williams responded that his intent is that it be part of the conditional use permit only. He stated that it is Mr. Shaver's position that enforcement is more readily available through the Community Development Department. The State Liquor Enforcement staff has two representatives to enforce the entire area west of the Continental Divide. In that, the City is more comfortable. There is a political process by which conditional use permits can change. If Mr. Smidt proves himself in the next six months, year, or whatever, that he is a good neighbor, and he will be, he has the opportunity to apply to the Planning Commission of the City of Grand Junction, and after a full publication and hearing and notice, present his case to the Planning Commission for example, extended hours, meaning to midnight 7 days a week. It gives Mr. Smidt that option. It is not a negotiated change, however, it is a change after full public hearing. He does not see that as a possibility if it is attached

to the liquor license. He thinks Mr. Smidt deserves that opportunity to prove himself. Mr. Coebergh wondered if he would be considering these conditions on making his decision on the license application or not. Unless there is some stipulation as to these conditions being a part of the liquor license application process, he did not think he could consider them in the decision that he makes. Otherwise, they are simply statements by the applicant that these are part of the plan. Mr. Shaver stated that Ms. Portner is in the audience and can state that also so there will be some assurance to any opposition, that these are conditions, but they would be conditions of a conditional use permit, and not conditions of a liquor license. Unless they are being proposed as part of the liquor license, or something is shown to Mr. Coebergh to convince him to the contrary, he will not be considering those matters as to whether or not to issue this license. Mr. Coebergh wants to be clear so that every-one knows how the Local Licensing Authority will be looking at these conditions.

Liquor and Beer Meeting
1994

-6-

July 6,

Assistant City Attorney John Shaver agreed with Mr. Coebergh and Mr. Williams. He proposed that it would be appropriate to have these be stipulated conditions of the liquor license. He thinks that is at the applicant's discretion. If he chooses to indicate that they are stipulated conditions, under the Law the Hearing Officer may accept those as stipulated conditions of the license. There is legal basis to support that. The comments of Mr. Williams regarding enforcement, it has been discussed that enforcement is more likely to occur if it is necessitated through the City processes than through the State Liquor Enforcement. That, in and of itself, is not conclusive in Mr. Shaver's mind as to whether or not they should be stipulated conditions. If both entities are capable of enforcement, the City has no objection to having both being enforced.

Mr. Williams stated that largely this is being done to satisfy and communicate to the neighborhood what his client's intents are and what he is willing to do. At the same time he heard Mr. Coebergh say that he would not consider them as part of this liquor license application. He stated that statement is nonsensical to him. If that is Mr. Coebergh's ruling, Mr. Williams needed to go out and talk to his client privately. He feels there are legal ramifications either way, particularly as Mr. Williams had suggested a way to amend the Conditional Use Permit through the Planning Commission. The liquor license cannot exist without a conditional use permit. Mr. Shaver went back to the issue of whether it is a bar or a restaurant. Mr. Shaver stated that the current version of the Zoning and Development Code says "for a bar, a conditional use permit must be required." Mr. Williams stated that the issue is then back to a differentiation in licenses between a tavern license and a hotel-restaurant license. Mr. Williams reiterated Mr. Coebergh's statement that he cannot consider the conditions of the conditional use permit as part of his decision on the liquor license. Mr. Coebergh responded that he can look at it as part of the overall picture, but there are statutory ramifications that he must consider for purposes of determining whether or not the Statute has been met to issue a liquor license. Unless these

conditions are to be stipulated for consideration by the Liquor Authority, Mr. Coebergh did not feel he could consider those as conditions of the liquor license. He can only go by what the Statute says unless there is some stipulation that goes beyond that. He is not saying that it needs to be one way or the other.

He just needs to know how it's going to be. He thinks any opposition also needs to know that because unless these stipulations become part of the liquor license process, the City would have no basis on which to have any possible violations brought up before this Authority. It would only be matters, again, specifically, in violation of the Code that could be dealt with here as opposed to problems with, say, being open beyond midnight on Friday, Saturday, or Sunday. Those matters could be brought up before the Planning Commission, but they would not be something that could be dealt with through the liquor license process because they would not be a violation of the law in that regard. He wished to be clear on what he is considering.

Mr. Williams asked Mr. Shaver, as a representative of the City, if he has a need to have this as a conditional use permit if in fact, it is attached to the liquor license, the same ten conditions?

Liquor and Beer Meeting
1994

-7-

July 6,

Mr. Shaver responded affirmatively. The reason is that the Community Development Department has made a determination that in addition to any conditions of a liquor license, if they were to be stipulated and be imposed, that under the land use jurisdiction of the Zoning and Development Code, a conditional use permit would be required given the fact that the permit has been in effect since 1977. They want to bring it up to current and currently reflect conditions. Mr. Williams stated that the City's classification for land use purposes is different than the Liquor Code. Mr. Shaver stated that is correct. Mr. Williams requested that he take a few minutes to confer with his client.

Mr. Coebergh suggested that the balance of today's agenda be considered while Mr. Williams takes a few moments with his client.

- B. Application for a Hotel-Restaurant Liquor License and Extended Hours Special License by L. S. & L. Restaurant Corporation dba Big Cheese Pizza, 810 North Avenue

City Clerk Stephanie Nye stated that the application was in order.

She read into the record the report giving results of the survey.

Applicant Leo Seiler was present. He stated that he hopes to complete his building by the latter part of October, 1994. He stated that he has operated at 1320 North Avenue for the past ten years with a 3.2% Beer License at that location.

A hearing was held after proper notice. There were no opponents, letters or counterpetitions. The Hearing Officer stated that a decision will be given at the July 20, 1994, meeting.

CONTINUATION OF HEARING ON APPLICATION BY STEVEN AND JEANINE SMIDT FOR A HOTEL-RESTAURANT LIQUOR LICENSE UNDER THE TRADE NAME OF

BLONDIES, 509 28-1/2 ROAD

Mr. John Williams apologized to Mr. Coebergh for the use of the word "nonsensical" earlier. He stated that in talking to Mr. Smidt he is agreeable to making the conditions that have been negotiated with the City conditions of the issuance of, or conditions attached to the issuance of the liquor license. He understands that ramifications of that. The conditions were done for a purpose, and this fulfills that purpose.

Those speaking in favor of the issuance of the license are as follows:

Jeffrey Vincent Reekers dba Reekers & Sons Sheetmetal Mechanical, 488 Melody Lane, stated that he has conducted his business at this address since 1976. His residence and business are located at this address. He wished the Smidt family success. He was concerned that he bought the property and it is commercial property. He can bang sheetmetal all night. He has to have the Wal-Mart street sweeper at 12:00 every Sunday night, and you hear that thing. If he wants to get away from that then he should move away to a residential area. His business is different than a liquor business. Blondies is two blocks from his establishment and he has noticed through the years that this establishment is used for

Liquor and Beer Meeting
1994

-8-

July 6,

socializing. You see a whole lot of people who live in that neighborhood. You get to know these people. He feels it becomes a friendlier community when people come together and socialize. Then people look out for each other, the "neighborhood watch" goes into effect instead of it being nobody knows anybody. He worked in Houston and New Orleans when he was younger and those communities have little social watering holes all over, and you see a real closeness of people that see each other daily, talk about what they did that day at work, and this and that and other, and if we don't have a place to go down there to sit and have a cocktail or a beer. I don't go down there real frequent, but once a twice or month I get to see a lot of people I haven't seen. Now it's closed down. Maybe he doesn't like to go up to Gators, that's quite a ways. But by not having that there he thinks you spread it all out. He thinks they do have the proper zoning there. And that should be respectfully looked at. That's the most important thing to Mr. Reekers. He stated that this property is 1/10 of a block off of North Avenue. He thinks it's zoned for this. He can't believe that Mr. Smidt is having to agree to these hours. He stated that the City is making it awful hard for this man to make a business.

Mr. Coebergh stated that Mr. Smidt is not having to agree to anything. He asked that everyone speaking at this hearing state his or her position only regarding this application. Mr. Reekers continued that he would just like to see somebody have a fair chance at being successful at the business that they're trying to do. He thinks that at that location that if he is not granted a place to do business in that location then why do we zone property

the way that we zone it. That was his concern. He stated that let's use the property for what it's zoned for, and let's use residential property for what it's zoned for. He stated that he would appreciate the Hearing Officer consider in favor of him and his neighbors having a place to socialize.

Lewis O'Connell stated that he used to work at the bar Rafters. He wanted to make it clear to those who have not been to the bar since Steve Smidt has taken it over, that there has been extensive remodeling. The decorum inside the place is a whole different decorum. It's more along the lines of a family oriented place. There are flowers on the tables when you go in there in the mornings and the afternoons. It's clean. It's fresh. It doesn't look anything like it's ever looked since it was a mexican food restaurant years ago. The whole atmosphere of the place requires a new point of view about what restaurants might want to be like here in the future in our town. He stressed that this liquor license would just make it convenient for people who like to have cocktails with their lunch or something along those lines. It is not geared up for a place to hang out, for the locals to forget their troubles or something like that.

Harry Tucker, he and his wife reside at LeMaster Motel. He listened to the last liquor license application and noted that within that survey area there were 19 hotel-restaurant liquor licenses. In this area there are zero. There is no place in this area for motel guests and residents to walk to have a drink. This

Liquor and Beer Meeting
1994

-9-

July 6,

area is located between K-Mart and Wal-Mart on North Avenue which is the busiest commercial street in this town. He knows that everyone who has a house would like to have no traffic by that house. He knows that there were objections to traffic on North Avenue. Eastgate City Market borders this street. They are open 24 hours a day. The only way to cut down that traffic is to shut down Eastgate Shopping Center and the traffic will decrease a great deal. This is a commercial street. To say that in this area the economic development is not going to be allowed, liquor licenses are going to be denied because residents a block or two blocks away don't want cars going by their house, he felt would be economic folly. There are no other licenses within one mile of this location. There needs to be one or more. He would hope that the Hearing Officer will take judicial notice of this location. It is the busiest part of North Avenue yet other parts of the City have 19-20, sometimes more licenses in that area. And there are none here. He does not think that it is good financial policy for this City to continue that. He hoped that this license is granted.

Mr. Williams asked Mr. Tucker if he lived in the neighborhood. Mr. Tucker stated that he lives at 2858 North Avenue. He resides there. Mr. Williams stated that one of the issues from the last hearing had to do with traffic up and down 28-1/2 Road. He asked Mr. Tucker to tell Mr. Coebergh about the traffic up and down 28-1/2 Road, and in particular, how it has varied from Rafters to no

restaurant to the present Blondies location, if there has been a variance, and what it is. Mr. Tucker stated that frankly he has not seen any change in that traffic. The primary draw for that traffic is traffic going to City Market or the Eastgate Shopping Center. There is a liquor store across the street from him on North Avenue and a C & F Food Store. The late night traffic primarily concerns the C & F Food Store. He knows there were complaints about liquor bottles on their lawns. Certainly hotel-restaurant is not allowed to serve packaged liquor. Those liquor bottles are not coming from Rafters or Blondies. He is still getting them on his lawn, and they are coming from C & F and Crown Liquors. He knows it's not a desirable situation but to say we can't have a place that serves by the drink because liquor bottles which come from packaged liquor stores or beer and wine licensed stores appear on the lawn just does not make sense. There has not been a change in the traffic. There is still a lot of late night traffic. Mr. Tucker is out on that property at all hours of the night because of the nature of his business he usually does not get to bed until about 3:00 in the morning, and to say that there is a decrease in traffic because Rafters isn't there, or it has increased again because Blondies is operating as a restaurant just is not the case. He is sure that if the City put out a traffic counter it would not vary 5 cars all night from what it was a year ago to what it is right now.

Roger Venea stated that he has been living two blocks up from the subject location. He has also lived within a quarter mile of this location for the past four years in three different locations. He has had lots of vandalism from juveniles. If there's any problem in that neighborhood, it is with the juvenile crowd. There is very little trouble with the crowd that actually even went to the bar before when it was called Rafters. As far as the trash and the

Liquor and Beer Meeting
1994

-10-

July 6,

beer bottles around, if you look closely and know anything about a beer bottle, a long neck bottle comes from a bar. A short packaged bottle comes from a 12-pack, and they're everywhere up and down that street. In other words, they did not come from that bar. If they did, they came out of their vehicle and they were brought in to the premises. As far as the traffic goes, the traffic hasn't changed at all. The traffic in this town has probably doubled since he's been here in four years, so of course it's going to double. And that's a main artery to get to. Look at the all the trailers in the trailer court he lives in. He doesn't know how many trailers are there but there's a lot of people that live there. The response with his neighbors has all been positive. He has yet to have one person stand up and tell him they definitely do not want to have that place open up, all of his neighbors, he's talking 100 people, within two blocks. He also has neighbors who used to live in those apartments next door to Blondies right on the corner and they said they never heard any problems at all. He wished they could have been here today but his wife is having a baby and he can't make it.

Ed Benson, owner of property on Melody Lane, also in a business

there that he has operated since 1977. He does not know the Smidts personally but he has utilized that facility frequently as a meeting spot for lunches and dinners, business lunches. He personally finds it refreshing to have a spot that's not directly on North Avenue or a main thoroughfare. He thinks that's a real advantage, not a disadvantage. He thinks that more community meeting spots like that not directly on a main thoroughfare are needed in the City.

Jeffrey Flannery, 2828 Orchard Avenue, has resided there for 2-1/2 years. He worked for the previous business at 509 28-1/2 Road which was Rafters. That business was out of control. Steve Smidt has done a lot since he's been there. He helped him remodel the place. It's much cleaner. Mr. Smidt is cutting his hours back which financially is going to hurt him, and the people he works for. But he's just trying to get in there and get a well established business here in town. He's been here for over 2 years as Blondies Limousine. He thinks Mr. Smidt deserves a chance to open the restaurant with a liquor license, which one cannot compete without a liquor license. The only restaurants that operate in this town without a liquor license are mainly fast food. You cannot sit down anywhere without having a restaurant offering a beer or wine with your dinner. And you cannot compete with the dinner crowd without it. He thinks Mr. Smidt has been more than fair about these concessions of backing off his hours, changing his entertainment schedule, which there will be no live entertainment. And he has done all this basically to appease the neighbors. He thinks he deserves a chance to open up and prove that he will manage the business well.

Edna Hunt, lives right across the street. She has lived there for 28 years. There has been a lot of changes, traffic, population, in fact, the neighborhood has completely changed. As far as traffic is concerned it's probably increased even since the Rafters closed. Now 28-1/4 Road is a bingo place. If anybody has been down through there, they know what a traffic jam that is. There's a lot of

people leaving 28-1/4 Road and coming up on 28-1/2 Road. As far as the trash is concerned, that has been an ongoing problem, and she doesn't believe that the business had anything to do with it. It's the street. And south of her there are people down there that do not take care of their trash. They set it out, and it might set there for a week before the City picks it up. When the wind blows it blows from the south, so she and the neighbors all pick up trash. As far as the bottles and containers and stuff, they do not come from the restaurant. They come from the people on the street. There is also a lot of foot traffic in the area, people going to Eastgate or C & F, or wherever. They get drinks or candy bars or whatever. By the time they get to her place, that's their throwing off place. As far as their creek is concerned, the years that she has lived there, they have developed a creek, but it's nothing but a drainage ditch. There is a lot of water that comes down through there. And it's fascinating for the young people, or whoever. The people that come down might stand there and watch the creek for a while, so there are cups and

whatever in the ditch. She thinks that Steve and his wife should have a chance to make a go of their business. They've done a lot of work over there and she hopes that the Hearing Officer will consider issuing the license.

Jack Perrin, owner of the building at 509 28-1/2 Road. He re-emphasized some of the statements that he made at the last hearing. He realizes there have been some problems at that building. Perhaps he is at fault in not being aware of some of the problems, but these petitions, and hearing these people testify, he is definitely aware of their problems. He is not saying that they didn't happen. He wants to assure the inhabitants of this neighborhood, as a property owner, that these problems will not exist anymore. He will be on top of the situation. The new lease states that if any of the lessees jeopardize this liquor license in any way, the lease will be terminated immediately. If a liquor license is granted he will be contacting the proper authorities, that they contact Mr. Perrin if there's problems down there so that he can take care of it. He personally feels that this is one area that perhaps the City has been a little weak at, that he should have been contacted and explained some of the problems so that he could have taken care of it. Once he was made aware of the problems, especially with the last lessee, he feels he had personally demonstrated that he was concerned about their concerns and that the problems were taken care of. This problem has been a tremendous financial burden on him. He has personally invested over the past several months approximately \$30,000 to accommodate some of the problems of remodeling, etc. He listened to their concerns. He definitely does not want to go through this thing again. He feels that the past petitions show a need for this type of business. He feels that Steve can run a good business down there. He's young and he's aggressive. He's aware of the problems. Mr. Perrin is convinced that Steve can run the business in that neighborhood as one to be proud of and to be an asset there.

Steve Smidt, applicant, manager and owner of Blondies. He has the restaurant opened and operating just over five weeks. He has pretty much done what he said he was going to do with the restaurant as far as getting it open, making it run, making it happen down there. They have an extensive menu for lunch,

breakfast, and hoping to open for dinner. On the average they have from 10-15 people per day on busy Fridays, Saturdays and Sundays come in and they would like to have a beer or cocktail with their sandwich. Basically, these people turn around, walk out and go to another establishment due to not having the availability. It's important for them when they do open up for dinner that they do have a license to accommodate these people who do come in and want to have their choice of other drinks or beer.

He circulated the petitions. Actually, they probably did less of an area than what they put on the petitions. They actually only went to about 28-1/4 Road and over to about 28-3/4 Road. They did have the whole area there if they wanted to do it. The response was really well. Ninety-nine percent of the people in the area

are in favor of the deal. They want to see the Smidt's make a go of it, the food is good. There have been a lot of people from the neighborhood come in and have lunch or breakfast with them. They have a lot of those people coming back on a regular basis that work in the area, construction, the people from Auto Zone coming over. There have been people from the other restaurants come over and have lunch with them. The location of the building is in a commercial zone. The property is surrounded by commercial, and the apartments right north of the restaurant are not strictly residential. They are zoned in a commercial area. Mr. Smidt did not know the exact numbers that they used for the commercial zoning, but it is not strictly residential. Most of the neighborhood are in favor of the license. He has had a good response with their menu. The live music is not going to be there. He has made personal contact with a ton of people in the neighborhood. He has been out trying to making it happen with these people. Most of the people that are probably against Mr. Smidt haven't come in and had anything to eat, haven't come in and looked at the place even. Fighting something that you don't really know what you're against does not make a whole lot of sense. He has talked to Mr. Perry, on occasion, and invited him down. He is a fairly busy man. He has said what his concerns are about the property and they've talked about that, the noise, the trash, the fast driving and stuff like that. You know if it's a commercial area, it is a commercial area. You're going to have some of that stuff. Since February he has had approximately four vandalism calls to the property, broken windows, tipped over trash cans, etc. That's not caused by people who come to his restaurant or his bar. That's a neighborhood problem. He put security in there over night and stuff like that to see what's going on. He talked to Police Chief Sloan. He called the other day and stopped in and checked out the establishment. Mr. Smidt stated that Chief Sloan was real concerned about what had happened in the past and wanted to know what Mr. Smidt's plans were. They talked for about ten or fifteen minutes. He was concerned, of course, as Mr. Smidt was, over the problems that do arise at something like this. Mr. Smidt submitted a petition from people in the area that have to work or have other obligations, and signed the petition saying "Blondies deserves my verbal support at the meeting, but I am unable to personally attend due to work or other obligations." That petition was signed by approximately 70 people. Mr. Smidt went through the Creekside Apartments. They received 3 in favor of the liquor license. They had 10 that verbally stated that they weren't against the issuance of the license, but did not sign the petition. There were 7 people like that. There was one

tenant that was against the use of alcohol because of the loss of family members and things like that, that alcohol was just not their thing. There were two people that were against the liquor license in that area. They went to another ten apartments which no body answered. One tenant had just moved in so he had no opinion. He didn't know what was going on and didn't want to get involved in something like that. He kind of left himself out of it. The security from 9:00 p.m to 12:15 a.m. is what he has agreed with to take care of the problems that they were receiving

after the hours of the establishment being closed. He has also had a few private parties there since he has been open as a restaurant, and have had the music turned up. When talking to one of the tenants from Creekside, Mr. Smidt asked her if she had heard anything because she lives right on the top corner. She said "No, it has been great since you guys have been closing at 3:00." Mr. Smidt said he has parties in there after 3:00 and taken precautions to keep the noise down, so they have made the proper installation speakers to make it work better for the neighborhood. The hours have been agreed to. Realistically, the business that he is going into, you really don't need to be open until 2:00 a.m. It just causes some problems. Mr. Smidt submitted two letters from residents of the area that are also in favor of the issuance of the license.

John Williams asked Mr. Smidt to tell the Hearing Officer what he and Mr. Perrin have done about noise levels. And he asked if Mr. Smidt has specifically gone outside when the volume is up and tried to determine a noise level outside?

Steve Smidt stated that Mr. Perrin has spent drastic amounts of money, as far as Mr. Smidt was concerned, to appease and make things work for everybody in the area. He has moved the deck to the south side, which closing off approximately a \$10,000 deck that was built on the north side, has been closed and rendered totally useless at this point. They have also 5/8th the north wall again so the wall there is probably at least a foot and one half thick. The speakers have all been directed away from the north part of the building, directed to the south, put a deck on the south side of the building that has not been used because of the heat. But it has been done to make things better for the north side. He has turned the stereo up and when you hit the north side of the building and even when it's on 5 or 6 on the stereo you can barely hear a murmur over the creek. The creek is louder than what he playing inside the building. They have really tried to direct the noise away from the businesses over there.

Those speaking in opposition to the application were as follows:

Fred Aldrich, business address is 200 Grand Avenue, attorney assisting Mr. Perry, the owner of the Creekside Apartments which lie directly to the north of Blondies. Mr. Aldrich was present two months ago to address this same issue. He is here again with the exact same petitioner for the exact same location for the exact same license. Nothing has changed except now this is round 2 of this application. There are many people who were here last time who can't be here today. There are many people who can't believe that another round is taking place. They don't understand why it could be decided once and be appealed. So there is something about

repeated attempts to achieve this license. It may be legal under the reading of the Statute, but it defeats the intent of the Code. There are people here today speaking in opposition and they will tell you the same kinds of things that you heard two months ago.

Today you've heard an attempt to play off the traffic, the trash and the bottles to things unrelated to this establishment and its prior operation. As a matter of fact, as you recall back to the testimony that was offered for the same petition of the same location, same type of license, it was site specific, not just general. Mr. Aldrich felt it was important to point out that the general discussions with the City concerning the conditional uses, etc. were really only driven subsequent to the denial of the license. They have now been offered, as a condition of the license, but he thinks it is important to note in Mr. Shaver's letter paragraph 10, itself, is "neighborhood consent, adjoined neighbors immediately to the north." That consent has not been obtained. The final point is that they do not now, and never have, opposed the operation of a true restaurant in this location.

That is not the issue. The issue is the effect of the value of the term "extended hours" to mean "operations until midnight." He is talking about operations until midnight which will drive the bar/tavern type of patron back. That is why there are two bars in this restaurant, and a dance floor, and an extensive stereo system. So it is these hours of operation that will drive the type of patron that comes there. It was interesting that those persons who spoke in favor of the petition, those who talked about food, talked about lunch and dinner, and those that talked about drinking, talked about something altogether different. Are we looking at a true restaurant? Are we going to take another bite of the apple for the same people, for the same location, the same license with hours that are beyond what a typical restaurant would operate in order to accommodate the uses that are proposed?

Hearing Officer Phil Coebergh stated that he appreciates the concern with this being re-done at such short notice, and he acknowledged that the Liquor Code talks about not having an application for the same location within a two year period of time. It has been his impression from the previous hearing that there were concerns that possibly could be addressed. He also had concerns that there was a great indication at the previous hearing of a desire that the license be issued, but there was also a desire that it not be issued based on various problems that were brought up. That led Mr. Coebergh to, at that time, deny the application. Mr. Coebergh probably opened the door for this to be re-done at that time. He certainly wanted it to be known that if the opposition is severe enough, and assuming the license is to be issued, that's an appellate issue that's pretty open. He did not know what would result from that if it were appealed. He did appreciate the concern with this being re-done in this fashion. It had certainly been his hope that there would have been a more consensus of opinion but at least initially from the statement of the opposition, that's not what he is hearing. He just wanted to interject that.

Mr. Aldrich stated that he will be introducing Mr. Perry. Mr. Aldrich will not be orchestrating any of the speakers.

Coebergh's comments, Mr. Perry was dismayed that he is here again. He could not believe it. It is his understanding that Mr. Coebergh's decision of approximately April 6 is currently under appeal, so being a lay person and not that familiar with the law, if Mr. Coebergh renders a decision in favor of a liquor license this time he assumes he has the opportunity to appeal that decision. And that means that the liquor applicants could, in fact, make another application, and then will they be here three months from now, and there will be two cases under appeal. Just being an average citizen, this is beginning to get expensive. The neighborhood right now is up in arms. They have come to Mr. Perry, or Mr. Perry has gone to them and they say "We thought this was resolved, when in fact it is not." Or it doesn't appear to be. There have been a couple of things brought up today that also concerns Mr. Perry. For whatever reason of the petitions that were submitted to the City Clerk, two of the petitions were denied or thrown out for whatever reason, he was not sure why. He understood he had around 70 signatures again, at least. He was not notified that....

Mr. Coebergh asked City Clerk Stephanie Nye to clear that up.

Ms. Nye felt that the two counterpetitions should be deemed invalid based on the following reasons: The circulator affidavit states on the first one, "I, Ralph Kuhn, who reside at 515 28-1/2 Road, Grand Junction, Colorado, do hereby swear or affirm that I circulated the foregoing survey for a liquor license application within the area described as the neighborhood on the dates of 6-27-94 through 7-4-94 and that each signature thereon was affixed in my presence and that each signature thereon is the signature of the person whose name it purports to be, and that to the best of my knowledge and belief, each of the persons signing was at the time of signing an owner of property in the neighborhood, an employee or business lessee of the property in the neighborhood for more than six months each year and that the signers were not paid and will not be paid, directly or indirectly, any money or other thing of value for the purpose of inducing or causing signature of the survey." signed by Ralph Kuhn. It appeared to Ms. Nye that there were more than one signatures that were made by the same person on more than one occasion for different names. For that reason she deemed that petition invalid. The other petition circulated also by Ralph Kuhn stating the same, on that petition it appeared to Ms. Nye that there were more than one signature signed by the same person, for different people. For those reasons, those two petitions were deemed invalid. The whole petitions were deemed invalid due to the circulators affidavit being deemed invalid.

Mr. Perry stated that what Ms. Nye was saying was that it appeared to her that there were two signatures signed by the same individual, different names. He did not know what the procedure is. He asked if the Clerk questions the petitioner at the time, or what, or does she generally throw it out.

Mr. Coebergh stated that he did not know that there is a procedure, so Mr. Perry is presenting information in opposition at this point. He could not direct Mr. Perry as to a particular procedure.

Mr. Perry stated that was a concern of his. He hoped that on one of the petitions that were thrown out, that his signature was not thrown out, because if his name was on that petition, he certainly in opposition to it.

Mr. Coebergh stated that the problem apparently is not with the individuals who signed the petitions. There seems to be a problem with the affidavit as to those signatures, at least an allegation that one person signed more than one time using different names. That would certainly raise some flags as to potential problems with those petitions. He asked that Mr. Perry keep in mind that he started today's process indicating that he was taking judicial notice of the past proceeding, which means he is considering what happened at the earlier hearing as much as he is considering what is happening at this hearing. He is considering both of those so that if Mr. Perry's signature happened to be on one of the petitions, or if something else concerned him that way, Mr. Coebergh is still going to be looking at the previous information as well.

Mr. Perry submitted two letters, one from Mr. and Mrs. Fred Valdez who live on 28-1/2 Road. They could not be here today, voicing their opposition. Another affidavit was from a Doris Sammons that talks about she was told that Tony Perry, apartment owner, was not against the bar opening up again, so she went ahead and signed the petition when, in fact, she was surprised that when she found out that Mr. Perry was still against it. Mr. Perry was not sure exactly what was said in the heat of the moment in trying to get signatures by the folks filing the application. There has been much said about the letter from John Shaver directed to John Williams, dated June 8, 1994, concerning the possibility of an amendment to the conditional use permit for that property. He stated that although he had approximately two or three conversations with John Shaver about a month and a half ago, he, himself, was not involved in any of the negotiations that eventually came down into this letter. Some of the items 1-10 he believed came out of a previous letter from the Community Development people, and appears to be somewhat of a softening or a compromise to that original letter. In receipt of this letter which he received approximately two weeks ago, a couple of things came to his mind, and he contacted Fred Aldrich to contact John Shaver about it. One of the questions he had was closing the access and exit entrance to the north area parking lot. That was, in fact, part of the letter that was originally written by the Community Development people. It is not included in this letter, this letter being dated June 8. He also questioned the letter's discussion of closing at 11:00 during the weekdays, then 12:00 on the weekends. Mr. Perry's idea of "closed" is 11:00, lights are off, everybody is gone. Since he does frequent bars, that would tell him that in fact it's lights on at about 10:15 or 10:30, and everyone is gone. He does not see anything talking about what is closed. The enforcement of this too, who is going to enforce this. Is it Tony Perry or his managers or someone in the neighborhood? Are they the ones who have to carry the club? Are they the ones that have to call 911, as they have done in the

past? Are they the

Liquor and Beer Meeting
1994

-17-

July 6,

ones that call the bar and get shunned? Are they the ones that wait for the police to arrive, and in some cases, don't arrive, if Police are needed? Are they the "heavies"? They being again the "neighborhood." As to the amendment to a conditional use permit, he was sure the lawyers can go on and on about that. He became extremely concerned in reading John Shaver's letter where he talks about the purposes of enforcement of current zoning code requirements, "Blondies shall not be required to meet a minimum food service requirements." Again, being a lay person, he understood that if you have a restaurant type liquor license, the State requirement requires you have 25% gross receipts in food. Yet the City Attorney is, in effect, saying "Don't worry about that." It's going against the State. Mr. Perry did not know how that can be done. He was sure the lawyers will work that out.

Assistant City Attorney John Shaver clarified that specifically that sentence refers to the Zoning Code requirements. The Grand Junction Zoning Code has a specific food provision over and above that provided by the State Liquor laws. There is no waiver of any State law that is not anticipated, simply the Zoning Code requirement.

Mr. Perry said that in effect, with the City saying "Don't worry about the 25% gross receipts"...

John Shaver called Mr. Perry's attention to the introductory part of the sentence which says "for purposes of enforcement of current zoning code requirements." That specifically refers to the Zoning and Development Code having a 75% requirement rather than 25%.

Mr. Perry questioned if that means 25% requirement for food?

Mr. Shaver stated that the Planning Supervisor Kathy Portner was present and would be happy to explain it further if the hearing officer desires. Essentially what is required is that there is a distinction between restaurants and bars, and for a restaurant to be classified as a restaurant under the current iteration of the Zoning Code, it requires the minimum of 75% food sales or no more than 25% alcohol sales. That is at variance with the State law which simply requires a minimum 25% food sales.

Mr. Perry stated that the City would not be looking at this as a restaurant. It would be looking at it as a bar?

Mr. Shaver said the difficulty is as discussed at the previous hearing and again this morning, that the fact that the conditional use permit is based upon an old version of the Zoning and Development Code which had a category called "restaurant/bar." But under the current Zoning Code, there is no such category.

Mr. Perry stated that when he received the letter approximately

three weeks ago, it was basically red lights and sirens once he got over the shock of a new application being filed, then trying to organize people to do petitions. If anything, they were a little bit lax, but as you can see, the folks from the neighborhood are here to voice their displeasure of another application for a bar

coming to their area. He wished to emphasize that the comments for the bar are it would be a great restaurant, the food is great, this and that. And it probably would be a great restaurant. But they are not set up as a restaurant. And that's the cold, hard facts. When Mr. Perry was invited by Mr. Smidt and Mr. Perrin down to the place to see the renovation in progress. When he was there he saw two bars, quite long. He saw a bandstand, the spotlights, the speakers, and the dance floor. Mr. Perry is tired of the facade of "we're a restaurant, but gee, we'll also be a bar after we stop serving food." There are a number of restaurants in the neighborhood, and those restaurants general, from what Mr. Perry has seen, have hours of operation up to about 10:00 p.m. He does not know if they have this hotel/restaurant liquor license or if it's a wine license, or some other type license. If that's the case, and if there is, in fact, a true restaurant, let them apply for that type of license. Maybe that is too simple. At one time Mr. Perrin had suggested that if, in fact, the neighborhood would go along with this, let's try it for a six month probationary period. For whatever reason, that is not here in this letter. Mr. Perry has no ax to grind with Steve Smidt or Jack Perrin. He said that if we don't look at what has happened in the past, basically we're destined to repeat it. That is all they have to go by. Their neighborhood has been, in effect, terrorized since this metamorphosis has taken place from El Escondido, to Jack's Place, to the Double R Bar, to Rafters, and now closed. Neighbors will stand up today and say there has been a definite change in the traffic in the area. Quite frankly, it has been quite nice on the weekends when you don't have police showing up at 11:00 at night, and there's not light out in the parking lot. Those things happen when you have bar patronage, whether it's Blondies restaurant or Cahoot's, or any of the other places that are out there. Those things happen. The neighborhood has been solidly against this type of license. They welcome a true restaurant, but let's quit the facade that we're a restaurant, but we're also a disco joint. Some of the other restaurants in the area are Mama Longo's in the Eastgate Shopping Center, Cahoot's bar has dancing, live music, that kind of thing, Silver House, there are a number of restaurants and are fairly well concentrated in their area. Western Sizzler, he does not know if they serve beer or beer-wine, but he thinks they serve beer-wine. He does not think they serve hard liquor. He pointed out that all of these places may not have a liquor license, but he is presuming they do. All of these places, with the exception of Cahoot's, do close around 10:00 p.m. They are truly restaurants. He believes the needs of the neighborhood have been met, and he thinks a number of the folks present at this hearing will stand up and say they think so too. In addition, with the existing restaurants and bars in the

immediate area, the need has been met. If you just go a mile or two beyond that, then we are probably overcome. Some people have said that it is very close and convenient to go to this restaurant, and it would certainly be close and convenient for his people in his apartment complex. But in the past, it has not been operated as a restaurant. It has been more of a bar.

Andrea Christensen, 515 28-1/2 Road, Creekside Apartments. Her previous talk at the previous hearing is a matter of record. Her main concern is the past record, nothing against the new people.

Liquor and Beer Meeting
1994

-19-

July 6,

She cannot get that out of her mind. The issue of the traffic - it is very true that Grand Junction is growing and it has a lot more traffic as years go by. That is not the point. It is the type of traffic that a bar brings. What you have then is people who are drinking, people revving up the engines in the parking lot which wakes you up. It's wonderful to be able to sleep through a night without being woken up, without worrying about somebody getting hit on the road, or hearing that noise. When Jack Perrin and Mr. Smidt were going around with their petition, she talked to them and had nothing against someone wanting to open a new business. She did not appreciate the psychological tactics of insinuating that Tony Perry was not going to be fighting this application again. She was told that Tony did not live at the Creekside Apartments anymore. She knew that. There was an insinuation that there would not be much of a battle.

Ralph Kuhn, manager of the Creekside Apartments, 515 28-1/2 Road. Mr. Kuhn does not understand why his petitions were declared invalid.

Mr. Coebergh stated that it was not his understanding that Ms. Nye was indicating that the same person signed the same name twice. It was her concern that from what she could tell the same person signed two different names.

Mr. Kuhn did not understand that. It seemed to him that there was one person who signed for his wife who couldn't write. There were quite a few older people. You will see some of the signatures on the petition can hardly be read. He didn't know if anyone signed for anyone else.

Mr. Coebergh stated that perhaps someone did sign for his or her spouse?

Mr. Kuhn said yes, that could have happened. He could not remember. He had one man who couldn't even hardly write his name at all.

Mr. Coebergh asked if those signatures would have been contiguous or right next to each other on the petition?

Mr. Kuhn said they probably would have been. Ms. Nye, do you recall what the situation would have been in that regard?

Ms. Nye stated that she did not know the situation. All she knew was that the two signatures appear to be the exact duplications of hand writing.

Mr. Coebergh said that it would appear to be "Paul E. Goble" and Betty L. Goble" which would coincide now with the possibility of what Mr. Kuhn has just indicated.

Ms. Nye stated that there is also a "Kim McHotchkins" and "Randy McHotchkins", again, identical.

Liquor and Beer Meeting
1994

-20-

July 6,

Mr. Coebergh stated that again, those are next to each other on the petition and would again coincide with the explanation for this as presently being given by Mr. Kuhn.

Kim McHodgkins, stated that she did sign for her husband, and she signed it in Mr. Kuhn's presence. Her husband was busy in the yard and the gentleman came up and we had talked to him in the past about this, we had signed other petitions. Her husband was busy in the yard so she just signed for him in his presence.

Mr. Kuhn continued that he is not concerned about the traffic on North Avenue. He knows that is heavy. They are concerned with the traffic on 28-1/2 Road. The traffic on 28-1/2 Road has been a lot less traffic. You don't have the late traffic at night. It has been really nice where you can sleep at night now. The people that Mr. Kuhn contacted were in the immediate impact area. He did not go very far out of the area there. People living three or four blocks away don't care what happens. They can go to the bar, have a drink and leave. The late hours, the traffic and the noise does not concern them. They don't have to sleep there at night like Mr. Kuhn does. He has a full time 8-hour job and he does not go to bed until about 11:30 or 12:00 at night, and he gets up at 6:00 a.m. He likes to sleep those hours. When that bar has been open, the traffic at night, you just can't sleep there. They're spinning their tires out there at night. It has been in the past and he doesn't see how it's going to change when you have liquor involved. Who is going to take care of the people once they leave the doors of the bar. Are they going to take them home once they leave their door and their drinking? He doesn't think they'll shut them down whenever they have had enough to drink. And when they get in that car, who is going to keep them from going on that street or killing people whenever they leave. That is a problem with every bar. He is not totally against liquor. He feels that the people that have stated that there is no difference in the traffic, do not live right there and listen to that traffic all the time. There has been a lot less traffic since it has not been open. He said that Mr. Smidt was talking about having a party over there and that goes to show that there was no liquor involved, so you don't have the noise. He said he had a party over there and the neighbors didn't know anything about it. It was a quiet party. There was no liquor involved. It kind of

shows you something right there. The parties late at night that they have had over there certainly are not like that.

Mr. Coebergh indicated that he will take some time to evaluate the petitions and look at the situation. He was glad that the problem has been somewhat cleared up as to the problem with the signatures by the same person.

Mr. Kuhn stated that he appreciates that. It took a lot of time to collect the signatures.

Paul Goble, 529 28-1/2 Road, Texas and 28-1/2 Road. Within one quarter of a mile square there are at least five liquor outlets. The traffic and noise has changed a lot. Mr. Goble was against the issuance of the license.

Liquor and Beer Meeting
1994

-21-

July 6,

Alma Franklin, 2842 Mesa Avenue. She lives behind the Bookcliff Church of Christ. Since Rafters has been closed she can sleep at night. They come up there and run their cars around and slam on their brakes running around the church building, and drive down Mesa Avenue and slam on their brakes at the stop sign. They have people that are out walking at night. At least 20 of her neighbors are very concerned about this and there is one young couple that have a little girl about 5 years old and an 11-month old little boy, and they would really like to have their neighborhood safe and quiet for their children to play. There are quite a few elderly people in the area and they want their quiet so they can sleep at night. All the neighbors are in favor of a nice, family restaurant and really could use one in their neighborhood. It would be nice to walk down there and support it and they would like them to make a living and do fine, but they would appreciate no liquor.

Gene Pinkerton, 519 28-1/2 Road. Mr. Pinkerton has lived here for over 28 years. He was concerned about appearing a second time after going through this entire proceeding once before. He wondered if the applicant is trying to wear the neighborhood down through attrition or can they get this thing ended and settled and get it over with.

Billy Louthan, Manager of Villas San Marcos Apartments, located north of the bar in question. She turned in a petition. Most of her tenants are very definitely against a bar, or sports bar. Some of them have gone over there to eat. They said the food is fine and they really enjoyed that part. They hoped they would have a restaurant with, perhaps, a liquor license. But they also commented it has been so very quiet this summer because they haven't had the bar. They have had fighting, drunks pulling clear into their complex, get out of the car, and fight, and of course there's guns, that's a big problem these days. One drunk hit their building and caused considerable damage. She has seen them pull out of the bar. Like the other complex, they are encroaching on their property too.

Kim McHodgkins, 518 28-1/2 Road. She does not want a bar. She

has lived there for six years. She has lived through Rafters, Jack's Place, there has been a lot of fighting out in the street and at night. It has been very quiet since this bar has been closed down. She does welcome a restaurant, but the late night scene they are wanting to avoid. Several times they have had mailboxes knocked down by people on foot who are fighting. Her mailbox has been run over a couple of times. She has just recently replaced it and is hoping to keep it up.

Ellen Allan, 515 28-1/2 Road. She stated that it has been very nice and quiet lately. Before it was terrible. She had to call 911 with officers coming over and everything. It is a pleasure. She does want a restaurant, but no liquor.

Evelyn Kuhn, Manager of Creekside Apartments. She said that someone had mentioned earlier that property is commercially zoned. If it is there's something wrong. She feels the residents in that apartment complex should have as many rights as the rest of the residents in this City to a peaceful, quiet life. One can't

Liquor and Beer Meeting
1994

-22-

July 6,

really sleep at night with a bar there. Whoever says that the traffic is no different is telling a terrible lie because it is so much different. She is in favor of a restaurant, but not a bar.

The Hearing Officer declared a brief recess. Upon reconvening, all staff were present. Mr. Coebergh opened up the hearing for rebuttal by the applicant.

John Williams, attorney, wished to clarify the record on two items: (1) The conditional use permit that talked about the conditions to this liquor license, #10 has been altered. It is not "consent of the neighborhood." It is "a reasonable effort to gain consent of the neighborhood." The requirements of Mr Smidt is to make an effort to go out in the neighborhood and talk to the inhabitants. He stated that Andrea Christensen said there was some pressure and insinuation placed upon her about Mr. Perry not being in opposition of this application. The whole effort to go visit with Andrea had to do with that requirement. The whole effort that Mr. Smidt made and he summed up in his testimony at the Creekside Apartment was to go talk to the very people that had concerns. Some people had changed their minds, some did not. The reasonable efforts have been made, will be made, it's an ongoing process. (2) The message that has been given the Hearing Officer is that Mr. Perry has been left out of this process somehow. Mr. Williams stated that Mr. Smidt has called Mr. Perry over and over and often times those phone calls are not answered. Mr. Smidt and Mr. Perry have met once in the establishment and they have talked. Mr. Williams has personally called Mr. Perry's attorney on a number of occasions. They have traded correspondence. Mr. Williams has sent Mr. Aldrich copies as they went along. Many of his phone calls have not been returned. When his law partners have called Mr. Aldrich last week it was left unreturned. He does know if that is tactics, or what. But it is not a matter of being left out of the process, and being surprised. There are so many times

you can reach out knowing that Mr. Perry has a vested interest in the neighborhood and spoken in opposition, and have it not responded to, then you go about your business knowing that this hearing is going to take place, and there is going to be opposition. With that said, Mr. Williams stated that the stipulations placed on this license answer all the concerns that the opponents that are here today have spoken to. They talk about late hours, security in the parking lot, chaining off the parking lot, privacy fences, reducing the hours, no bands. All those things in a good faith way. In a good faith way, Mr. Smidt wants to be a good neighbor and does not want to be judged by the past.

Mr. Williams heard no one that testified against Mr. Smidt talk about going in the premises. No one has been in to even see it. He is judged on Rafters, on Jack's Place, on Double R Bar. Mr. Smidt has conditions and restrictions, and it is a different place. He discussed previous discussions of operation of a "true" restaurant, hours beyond a typical restaurant. He heard that from Mr. Aldrich and Mr. Perry. He heard no specific testimony about exactly what a "true" restaurant is, or what their hours are. He didn't hear when Mama Longo's closes, or the Winery closes, or Gladstone's, or any other establishment in town. It's this vague concept about the difference between a restaurant and a bar. This is a restaurant. Under the Liquor Code Mr. Smidt has to serve at least 25% food. Mr. Williams thinks Mr. Smidt will double that.

Liquor and Beer Meeting
1994

-23-

July 6,

He doesn't know that. But even with the liquor license Mr. Williams thinks Mr. Smidt will exceed the 25%. There is a full menu. It will be expanded for dinner if he has the opportunity to have a liquor license to complement that. He needs it economically. Mr. Williams hears from Mr. Perry that the neighborhood is up in arms. He wished to emphasize that there are some people in close vicinity to the restaurant that do not wish for this license to be approved. Mr. Williams understands that. He heard from them today. Once again, he thinks that the stipulations for the license will solve most of those problems, all those problems. Secondly, the neighborhood is a greater body of people than that. The people who testified on behalf of Mr. Smidt had businesses two blocks away. One gentleman, Mr. Reeker, from the sheet metal business, talked about the community spirit that an establishment provides. You have an establishment in the community, in the neighborhood, it's a place where people can congregate for a meal after work. That's really the true sense of neighborhood. We're talking about several hundred yards from six or seven or eight people that opposed the license. He also heard from Mrs. Hunt, who is an elderly resident who lives across the street, Roger Venea, Mr. Tucker. There is conflicting evidence about traffic, but it is a main arterial. The traffic is not totally tied to this establishment, neither is the trash problem.

That was addressed from both sides today. Bottom line, Mr. Williams did not think Mr. Smidt has been given a fair chance because of a very, very small minority, and not considering the entire neighborhood, where contrary to the testimony, there is only one other outlet of a similar type within a one mile radius.

The State Statute that has to do with whether the requirements of the neighborhood are being met and whether the inhabitants desire

the issuance of the license. And neighborhood is a concept that has been defined as a half mile on each side, and in the previous hearing, a mile on each side. There a bunch of signatures on petitions from the last hearing and this hearing overwhelmingly support the issuance of this license based on the requirements of the neighborhood, and based on their desires. Once again, the percentages from today's hearing are like 99%. The percentages for the past hearing was in the 97% and 98% depending on whether it was requirements or need. The petitions which are authorized in Statute can be presented by petitions or remonstrances. That is in the same Statute which is 12-47-106. It should be given some pretty substantial weight. Mr. Smidt also testified that there were a number of people that would have liked to have stood up and talked about the issuance of this license today. And Mr. Smidt submitted a sort of a petition of his own which contains approximately 70 signatures of people that state "we would be there, but we have conflict." There are a number of people that would have been here today if it had been an 8:00 p.m. meeting. Mr. Williams requested that Mr. Smidt's application not be judged by the history. He requested that the Hearing Officer listen to the testimony of those appearing at today's hearing, very much look at the petitions, decide for himself whether it's a restaurant or a bar. The food service has been discussed. Mr. Smidt has been open for several months. He is in the food business and will continue in the food business. He requested that Mr. Coebergh not be swayed by the concept of "bar." Mr. Smidt deserves the opportunity. The neighborhood needs it. There is only one other

Liquor and Beer Meeting
1994

-24-

July 6,

outlet a mile west. Ninety-nine percent of the people who signed are for this. They desire it. He requested that the Hearing Officer grant the license.

Mr. Coebergh will evaluate the situation, look at the situation carefully, and a Resolution of Decision will be presented at the next regularly scheduled meeting on July 20, 1994.

VIII. ADJOURNMENT

NEXT REGULAR MEETING - July 20, 1994