

COLORADO SPRINGS, COLORADO
COUNCIL CHAMBERS
CITY HALL - 107 N. NEVADA AVE.
JANUARY 15, 2010 – 9:00 A.M.

The Liquor and Beer Licensing Board met in regular session.

There were present: Chairman Stephens, Ms. Abrams, Mr. Clauss, Mr. Kouba, Ms. Lloyd, Mr. Nemeth and Mr. Wright. Also present, Board Legal Advisor Marc Smith.

MINUTES

1. **Approval of the Minutes of the Board Meeting of December 18, 2009.**

Motion by Kouba, second by Nemeth, that the Minutes of the Board meeting of December 18, 2009 be approved as written. The motion unanimously carried.

COMMUNICATIONS

2. There was no action taken.

TRANSFER APPLICATIONS

3. **Application of Arceo Family Mexican Restaurant, LLC dba Arceo's to transfer the Hotel and Restaurant Liquor License currently issued to La Casita Mexican Restaurants, Inc., dba Arceo's, 1605 South Nevada Avenue.**

Attorney Andrew Derickson entered his appearance on behalf of the applicant.

Jose Arceo was sworn and stated he is purchasing the business from his brother for \$50,000 of which said funds were derived from a promissory note in the amount of \$45,000 and \$5,000 from personal savings; that he has managed the establishment for the past five years; that the lease term is five years; that he has read and understands the Liquor Code.

Motion by Kouba, second by Nemeth, that the application of Arceo Family Mexican Restaurant, LLC dba Arceo's to transfer the Hotel and Restaurant Liquor License currently issued to La Casita Mexican Restaurants, Inc., dba Arceo's, 1605 South Nevada Avenue, be approved as it appears all criteria has been met. The motion unanimously carried.

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4. **Application of Hawk 1 Enterprises, LLC dba Loonees Comedy Corner to transfer the Tavern Liquor License currently issued to No Problem Optical, Inc., dba Loonees Comedy Corner, 1305 North Academy Boulevard.**

Patrick Hawkinson, President and sole owner and Erik Hawkinson, Manager, were sworn.

Mr. Patrick Hawkinson stated all employees will attend formal alcoholic beverage training; that the lease term is 2 ½ years with an option to extend; that Erik Hawkinson will be the General

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Manager. He stated \$100,000 is being invested in the business of which said funds were derived from personal savings.

Mr. Erik Hawkinson stated he was previously an employee of Amoco for five years and managed a store for two years.

In response to a question from the Board, Mr. Erik Hawkinson stated he was charged in 2006 for operating an underground gambling operation; that he received a deferred sentence.

Motion by Wright, second by Abrams, that the application of Hawk 1 Enterprises, LLC dba Loonees Comedy Corner to transfer the Tavern Liquor License currently issued to No Problem Optical, Inc., dba Loonees Comedy Corner, 1305 North Academy Boulevard, be approved, as it appears all criteria has been met. The motion unanimously carried.

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5. **Application of Music Street Tavern LLC dba Music Street Tavern, to transfer the Tavern Liquor License currently issued to Beatrice D. and Alejandro D. Padron dba Bea's Tavern, 204 North Union Boulevard.**

Michael Swett was sworn and stated he was in the military for eight years; that \$16,000 is being invested in the business of which said funds were derived from personal savings which he and Mr. Rogers are investing \$8,000 each. He stated all employees will attend formal alcoholic beverage training; that they have been operating the business for three months with a temporary permit; that the lease term is five years.

Ronald Rogers was sworn and stated he currently owns and operates a home security business.

Motion by Kouba, second by Wright, that the application of Music Street Tavern LLC dba Music Street Tavern, to transfer the Tavern Liquor License currently issued to Beatrice D. and Alejandro D. Padron dba Bea's Tavern, 204 North Union Boulevard, be approved with the condition that proof of formal alcoholic beverage training be provided to the City Clerk's Office prior to the issuance of a permanent license. The motion unanimously carried.

APPLICATION HEARING

6. **Application of The Noodle Shop Co. – Colorado, Inc., dba Noodles & Company for a Hotel and Restaurant Liquor License at 5166 North Nevada Avenue.**

Kim Deluca was sworn and stated the corporation currently owns and operates 200 stores, 40 of which are in Colorado; that the store is approximately 2535 square feet with a patio area surrounded by a three foot fence. She stated the restaurant managers are the only employees that can serve alcohol as a sale requires a specific card activation; that all employees are required to attend formal training.

Matt Connors was sworn and stated he has been an employee of Noodles & Company for eight years and a manager for the past six years; that he has never had a Liquor Code violation at stores he has managed.

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Max Scott, Oedipus, Inc., was sworn and stated his company conducted the petition survey which resulted in 152 favoring, 9 opposing, and 2 no opinion signatures.

Motion by Clauss, second by Wright, that the application of The Noodle Shop Co. – Colorado, Inc., dba Noodles & Company for a Hotel and Restaurant Liquor License at 5166 North Nevada Avenue, be approved as it appears all criteria has been met. The motion unanimously carried.

SUSPENSION/REVOCAION HEARING

7. **Suspension/Revocation Hearing concerning the Tavern Liquor License issued to Murray Street Darts, Inc. dba Murray Street Darts, 609 North Murray Boulevard.**

Attorney James Dodd entered his appearance on behalf of the licensee stating he believes the licensee was improperly served with the Show Cause Order; that the licensee was served by the City Clerk's Office and he contends the Liquor and Beer Licensing Board is the only authority who may issue a Show Cause Order; that Rule 7 of the Liquor and Beer Licensing Board Rules provides delegation to the City Clerk's Office to conduct investigations and issue a report to the Board, however there is no similar rule for suspension cases; that Rule 19.01 grants the City Clerk authority to set the time and date for the hearing not determine whether there are specific evidence or facts to justify the issuance of a Show Cause Order. He stated the Show Cause was issued in the Board's name not the City Clerk's Office acting on behalf of the Board. He cited the Jayhawk v. City of Colorado Springs case where the Board expressly delegated the investigation to the Clerk which did not occur in this matter.

City Prosecuting Attorney Scott Patlin entered his appearance on behalf of the City and stated the Jayhawk case is not relevant in this matter; that it is proper for the City Clerk's Office to conduct the investigation; that the City Clerk's Office can issue a Show Cause Order on behalf of the Board. He submitted a copy of a Motion to Quash received from Mr. Dodd to the Board.

Mr. Dodd stated he believes the licensing authority is required to conduct an investigation into whether there is probable cause or cause to believe there is a violation in order to issue a Show Cause.

Mr. Patlin stated the City Attorney's Office prepares the legal paperwork for the proceedings, but does not conduct the investigation.

Mr. Smith advised the Board that it can determine it has jurisdiction and move forward with the hearing, determine it does not have jurisdiction and vacate the show cause, or postpone the item to allow him to complete additional research relating to the issues raised by the attorneys.

Chairman Stephens stated the Jayhawk case cited by Mr. Dodd was relative to a new license application and the matter today is a Show Cause for a license violation; that the question raised by Mr. Dodd is whether or not the City Clerk's Office has the authority to issue Show Cause. He read Rule 2.01 identifying the Liquor and Beer Licensing Authority as the Board except as otherwise provided by ordinance; that the City Clerk's Office shall act as Local Licensing Authority or agent of the Authority pursuant to the Code and Rules, as applicable. He read Rule 2.02 relating to jurisdiction of authority and designating the City Clerk with the jurisdiction to set the agenda of the Board and act as the Local Licensing Authority or as agent of the Authority pursuant to City Code and requirements, and Rule 2.05 which states the City

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Clerk's Office shall assist the Board by receiving applications, conducting investigations, coordinating with other City departments and scheduling public hearings.

Mr. Wright stated he believes the Board should make a determination as to whether the Jayhawk case is applicable in this matter; that it appears the Jayhawk case would not be applicable to the Board, but to the Court.

Mr. Kouba stated this is a lay Board and he is unsure if this is the body where a legal determination should be made.

Chairman Stephens stated the Board can proceed with the hearing today, quash the hearing today or allow the Board Legal Advisor to review and analyze the matter and bring it back to the Board.

Mr. Smith stated if the Board wants him to make a case law review and presentation to the Board, he will require time to prepare.

Mr. Wright stated he believes the Board or Courts should make a determination relating to the Jayhawk case before the Board moves forward.

Mr. Nemeth and Ms. Lloyd requested the matter be heard today.

Mr. Kouba stated the Board can decide to proceed today and take action on the evidence presented, and the licensee has the option of taking the matter to the court if it chooses.

Mr. Dodd stated he believes if the Board does not make a determination today on the matter and he takes it to Court, the Court will likely send it back to the Board because it did not decide upon the issue brought before it.

Motion by Kouba, that this matter be continued to the Board meeting of February 19, 2010 to allow the Board's Legal Advisor to conduct additional research relating to the Board's jurisdiction; that both Counsels should be prepared to proceed at that time. The motion was seconded by Mr. Clauss.

Ayes: Abrams, Clauss, Kouba, Stephens, Wright
Noes: Lloyd, Nemeth
Absent: None

Chairman Stephens declared the motion carried.

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At 11:23 a.m., motion by Kouba, second by Wright, that the Board adjourn.

**Cindy N. Conway, CMC
Deputy City Clerk**