

**COLORADO SPRINGS, COLORADO
COUNCIL CHAMBERS
CITY HALL - 107 N. NEVADA AVE.
MARCH 19, 2010 – 9:00 A.M.**

The Liquor and Beer Licensing Board met in regular session.

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

MINUTES

1. **Approval of the Minutes of the Board Meetings of February 19, 2010 and March 5, 2010.**

Motion by Wright, second by Kouba, that the Minutes of the Board Meetings of February 19, 2010 and March 5, 2010, be approved as written. The motion unanimously carried. Absent, Mr. Clauss.

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Mr. Kouba was excused.

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COMMUNICATIONS

2. Deputy City Clerk Cindy Conway stated a request has been received to postpone Item No. 8 to the Board meeting of April 2, 2010.

Motion by Wright, second by Nemeth, that Item No. 8 be postponed to the Board meeting of April 2, 2010. The motion unanimously carried. Absent, Mr. Clauss and Mr. Kouba.

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Mr. Kouba returned.

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Attorney Kevin Donovan entered his appearance on behalf of Item No. 12 and requested the item be postponed to the Board meeting of April 16, 2010.

Motion by Nemeth, second by Wright, that Item No. 12 be postponed to the Board meeting of April 16, 2010.

Ayes: Abrams, Lloyd, Nemeth, Stephens, Wright
Noes: Kouba
Absent: Clauss

Chairman Stephens declared the motion carried.

LIQUOR AND BEER LICENSING BOARD MEETING – MARCH 19, 2010

CONSENT CALENDAR

3. The City Clerk's Office reported that a Temporary Permit was issued for the following application:

A-1. J and S Chana LLC
dba Oddone's Liquor
441 North Union Boulevard

Motion by Kouba, second by Wright, that the Consent Calendar be approved. The motion unanimously carried. Absent, Mr. Clauss.

TRANSFER APPLICATIONS

4. Application of Geo, Inc., and 7-Eleven, Inc., dba 7-Eleven Store 26644A, to transfer the 3.2% Beer License for Off Premise Consumption currently issued to 7-Eleven, Inc., dba 7-Eleven Store 26644, 1801 East Platte Avenue.

Attorney Kevin Coates entered his appearance on behalf of the applicant.

Imran Tauseef was sworn and stated he has attended formal training required by the 7-Eleven corporation; that he is 100% shareholder; that \$120,100 is being invested of which said funds were derived from personal savings in the amount of \$80,100 and a line of credit in the amount of \$40,000; that he also owns a 7-Eleven store on Austin Bluffs Parkway.

Motion by Wright, second by Kouba, that the application of Geo, Inc., and 7-Eleven, Inc., dba 7-Eleven Store 26644A, to transfer the 3.2% Beer License for Off Premise Consumption currently issued to 7-Eleven, Inc., dba 7-Eleven Store 26644, 1801 East Platte Avenue, be approved as it appears all criteria has been met. The motion unanimously carried. Absent, Mr. Clauss.

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5. Application of Loyal T's dba Bar V, to transfer the Tavern Liquor License currently issued to CRL Enterprises dba Bar V, 17 & 19 E. Kiowa Street.

Attorney Vince Linden entered his appearance on behalf of the applicant.

Ronald and Brian Moore were sworn.

Brian Moore stated he owns 46% of the business, Ronald Moore owns 45%, and the previous owner is retaining 9% ownership. He stated he has owned Westside Tattoos since 2005; that \$180,000 is being invested in the business of which he and Ronald Moore are each investing \$25,000 personal savings and \$130,000 is derived from a promissory note with the previous owner; that they have been operating the business since January, 2010; that while they have no previous experience, they have been training with the previous owner and have attended formal alcohol beverage training classes.

LIQUOR AND BEER LICENSING BOARD MEETING – MARCH 19, 2010

Motion by Wright, second by Nemeth, that the application of Loyal T's dba Bar V, to transfer the Tavern Liquor License currently issued to CRL Enterprises dba Bar V, 17 & 19 E. Kiowa Street, be approved as it appears all criteria has been met. The motion unanimously carried. Absent, Mr. Clauss.

MODIFICATION OF THE PREMISES

6. **Application of St. Claire Investments, Inc., dba Redstone to modify the premises at 414 West Fillmore Street.**

Dean Portnova was sworn and stated the modification request is to add a deck onto the back of the premises.

Upon further questioning by the Board, Mr. Portnova requested this matter be continued to the Board meeting of April 2, 2010.

Ayes: Abrams, Kouba, Nemeth, Stephens, Wright
Noes: Lloyd
Absent: Clauss

Chairman Stephens declared the motion carried.

APPLICATION HEARINGS

7. **Application of Blazin Wings, Inc., dba Buffalo Wild Wings Grill & Bar, for a Hotel and Restaurant Liquor License at 2905 Geyser Drive.**

Attorney Brian Profitt entered his appearance on behalf of the applicant and stated a liquor license was granted for this establishment last year, however, due to contractual lease issues, the application was withdrawn before the license was issued.

Kelly Pietrs, Esquire Petitioning Services, was sworn and stated her company conducted the petition survey which resulted in 132 favoring, 3 opposing, and 3 no opinion signatures.

Kandi Simmons, Regional Manager, was sworn and stated \$2.2 million is being invested in the business which was derived from corporate funds; that there is a five year lease of the premises; that the establishment is 5700 square feet and seats 306 persons; that there is a patio area of 750 square feet; that all employees will receive formal alcohol beverage training.

Motion by Wright, second by Nemeth, that the application of Blazin Wings, Inc., dba Buffalo Wild Wings Grill & Bar, for a Hotel and Restaurant Liquor License at 2905 Geyser Drive, be approved as it appears all criteria has been met. The motion unanimously carried. Absent, Mr. Clauss.

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LIQUOR AND BEER LICENSING BOARD MEETING – MARCH 19, 2010

8. **Application of Sodexo America, LLC dba Sodexo, for a Hotel and Restaurant Liquor License at 1420 Austin Bluffs Parkway.**

SEE ACTION TAKEN EARLIER IN THE MEETING.

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9. **Application of CC & T, LLC dba GS Lounge, for a Tavern Liquor License at 315 East Arvada Street.**

Lawrence Cantrell was sworn and stated \$10,000 is being invested in the business of which said funds were derived from personal savings of the three members; that all employees will attend a formal alcohol beverage training class.

In response to questions from Mr. Wright, Mr. Cantrell stated the discrepancy in the financial documents is related to a failure to note the additional \$5,000 invested; that there is no patio area and the diagram submitted with the application will be amended to indicate that.

Mr. Nemeth noted a condition of the liquor license placed on the premises by the Planning Department requiring the licensee to maintain 50% food sales.

Motion by Kouba, second by Nemeth, that the application of CC & T, LLC dba GS Lounge, for a Tavern Liquor License at 315 East Arvada Street, be approved with the condition that the financial documentation be amended and that the premises diagram be amended deleting the patio area. The motion unanimously carried. Absent, Mr. Clauss.

SUSPENSION/REVOCAION HEARINGS

10. **Suspension/Revocation Hearing concerning the Tavern Liquor License issued to Syn, Inc., dba Syn Night Club, 217 East Pikes Peak Avenue.**

City Prosecuting Attorney Anthony Moore entered his appearance on behalf of the City.

Attorney Damon Cassens entered his appearance on behalf of the licensee.

The witnesses scheduled to testify were sequestered.

Mr. Moore stated due to a visible and regular gang presence, the licensee was put on notice about the possibility of a serious incident occurring in the licensed premises; that the regular occurrence of violent crime in the area in front of the premises put the licensee on further notice that a disturbance offensive to the average citizen was likely to occur; that the Police Department also notified the licensee there was a potential of a disturbance occurring inside the premises; that on March 6, 2010 and March 7, 2010, Syn Night Club allowed rival rap groups to perform and the licensee failed to maintain order on the premises, failed to take reasonable precautions and as a result permitted a disturbance that spilled out onto the public streets in violation of Colorado Liquor Code of Regulations 47-900(A), Conduct of the Establishment; that the Colorado Springs Police Department Community Impact Team

LIQUOR AND BEER LICENSING BOARD MEETING – MARCH 19, 2010

(COMMIT), in the past few months, has been stationed outside the nightclub on Friday and Saturday evenings to respond to nightclub violence.

Mr. Cassens stated the licensee was charged with an act that occurred on one evening; that the past history of the licensee is irrelevant to today's hearing.

In response to questions from Mr. Moore:

Sgt. Joshua Benner was sworn and stated he is a member of the COMMIT team; that he has observed gang related activity and fights occur at the premises the majority of Friday and Saturday nights; that the public street on which the nightclub is located has been closed six to eight times in the past few months; that on March 7, 2010 at approximately 1:45 a.m., he was patrolling on the street in front of the entrance, when several employees of the establishment came out and said there was a fight inside; that there appeared to be a crowd of 75-100 persons; that officers used an OC fogger to disperse the crowd and closed the street; that the Police Department was trying to get inside the club to see if there were victims. He stated 22 patrol cars arrived at the establishment; that inside the club, furniture had been tossed around and there was a pool of blood from one of the victims.

In response to a question from Mr. Cassens, Sgt. Benner stated employees of the establishment will, on occasion, notify them if there are any activities that may be of concern.

In response to a question from Mr. Moore, Sgt. Benner stated an employee named "Rance" tried to keep police informed of any potential activities of concern.

In response to a question from Mr. Moore:

Officer Jackson Andrews was sworn and stated he has observed confirmed gang members at the premises.

Mr. Cassens objected to Officer Andrews' testimony stating testimony should be limited to the March 7, 2010 date only.

Mr. Moore stated the past history of crowd behavior provides some evidence as to what may have occurred.

In response to questions from Mr. Moore:

Officer Andrews stated he has met with the manager of the establishment in the past to discuss the activities and possible solutions that may alleviate the potential behaviors; that he has also spoken with the licensee and offered to meet with him to discuss the gang presence; that on March 7, 2010, police officers were unable to disperse the crowd; that after an OC fogger was deployed, police officers were able to enter the club; that staff was injured and the club was in disarray.

Mr. Moore submitted Exhibit Nos. 1 – 5, copies of photographs taken inside the establishment on March 7, 2010.

LIQUOR AND BEER LICENSING BOARD MEETING – MARCH 19, 2010

In response to questions from Mr. Cassens:

Officer Andrews stated gang members patronize other establishments within the City and the Police Department does not go into every establishment to inform them that gang members are on the premises; that he did not go inside the establishment on March 7, 2010 to notify the employees of gang presence; that he is aware that an arrest was made on that evening for failure to disperse.

In response to a question from Mr. Moore, Officer Andrews stated the names and identity of known gang members are not made available to the public.

In response to questions from Ms. Abrams:

Officer Andrews stated while he has not observed people being turned away at the door in the past, on that night, he did see people being turned away and when he spoke to the club staff, they said a policy had been implemented within the past couple weeks that no one under the age of 21 years would be admitted.

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The Board recessed for lunch from 11:30 a.m. to 12:15 p.m.

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In response to questions from Mr. Moore:

Officer Brett McCulloch was sworn and stated he is a member of the COMMIT team; that he contacted employees of the club on March 7, 2010 following the disturbance; that one employee, Jay Thomas, told him several fights had broken out that night and there were two rival rap groups at the establishment.

In response to a question from Mr. Cassens, Officer McCulloch stated Mr. Thomas did not say anything about gang members in the club, only the presence of rap groups.

In response to questions from Mr. Moore:

Officer Christopher Fish was sworn and stated he contacted a victim at Penrose Hospital on March 7, 2010. He described the injuries of the victim on the face, hand, and ear.

Mr. Moore submitted Exhibits Nos. 6 – 8, pictures of the victim's injuries.

In response to a question from Mr. Cassens, Officer Fish stated the physician declined to identify the injuries as serious.

In response to questions from Mr. Moore:

Officer Daniel Mork was sworn and stated he is a member of the COMMIT team; that he was at the establishment on March 7, 2010 prior to 1:45 a.m. and observed gang members going

LIQUOR AND BEER LICENSING BOARD MEETING – MARCH 19, 2010

into the establishment; that he has spoken with the establishment's security staff in the past regarding the presence of gang members; that he observed 30 to 40 people involved in the physical disturbance; that an OC fogger was deployed to disperse the crowd.

In response to questions from Mr. Cassens:

Officer Mork stated a security staff member had previously attempted to work with the Police Department to address the activity; that on this evening, employees of the club requested Police Department assistance to stop the fight.

In response to questions from Ms. Lloyd:

Officer Mork stated because of officer safety concerns and the fact there were only six to seven officers at the establishment when the disturbance began, they did not separate and enter the club.

In response to a question from Mr. Nemeth, Officer Mork stated Rance Abrams, the head of security at the establishment, was working with the police to alleviate some of the concerns.

In response to questions from Mr. Moore:

Officer Jessica Kundert was sworn and stated she is a member of the COMMIT team; that she was at the premises on March 7, 2010 and observed persons wearing attire associated with gang members; that on the evening of the disturbance, she spoke with persons who had been inside the establishment and indicated they were uncertain what instigated the fight; that she spoke with the assault victim, _____ Olson, on March 11, 2010 who described a group of individuals and the person he thought started the fight.

In response to a question from Mr. Cassens, Officer Kundert stated Mr. Olson told her one person initially started the fight and then a group of seven to eight men wearing black clothing encircled him on the dance floor.

In response to questions from Mr. Moore:

Officer Erik Gulbrandson was sworn and stated he is a member of the COMMIT team. He described various behaviors he has observed by gang members and stated the police officers did not go into the establishment on March 7, 2010 due to officer safety concerns.

In response to questions from Mr. Cassens:

Officer Gulbrandson stated on March 7, 2010, he observed some patrons being pushed out of the club by who appeared to be employees of the establishment; that he spoke with Thomas Urskine, an employee, who told him he was trying to get persons who he had observed making overt gang signs out of the establishment.

In response to a question from Mr. Moore, Officer Gulbrandson stated he did not feel there was a sufficient number of police officers to handle the disturbance when it initially broke out.

LIQUOR AND BEER LICENSING BOARD MEETING – MARCH 19, 2010

In response to questions from the Board, Officer Gulbrandson stated fights occur at other establishments, but this was not a typical fight; that he saw an unconscious person carried out of the establishment and some employees exiting the establishment were injured.

In response to questions from Mr. Moore:

Officer Vern Thomson was sworn and stated he is a member of the COMMIT team; that since November, 2009, he has observed gang presence and acts of violence at the establishment; that approximately one week prior to the March 7, 2010 disturbance, he was dispatched to the establishment relating to a disturbance and was told an injured male had been taken outside the club; that while the man was transported to the hospital for lacerations, no charges were filed, however the Police Department has a recording of the call. He stated Rance would tell officers of activities going on in the club that evening, and officers would communicate their observations to him; that he does not believe Rance was at the establishment on the evening of March 7, 2010; that on March 7, 2010, several people exiting the club had abrasions or lacerations. He stated he is aware of one arrest made at the establishment on that evening. He stated the bar manager of the establishment told him he was in the back of the club when he heard there was a disturbance in the main room; that he observed two males fighting and when he and other employees tried to break up the fight, they were hit by other people.

In response to a question from Mr. Cassens, Officer Thomson stated Rance later told him that the fight was gang related.

In response to questions from the Board, Officer Thomson stated it took about 15 minutes before officers could enter the establishment from when they first became aware of the disturbance; that while he has seen other fights in clubs, they have not been to the magnitude of this disturbance; that the crowd was out of control and the environment was unsafe.

In response to a question from Mr. Moore, Officer Thomson stated approximately 80 to 100 people were involved in the disturbance.

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Ms. Lloyd was excused.

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In response to questions from Mr. Moore:

Detective Jeff True was sworn and stated he is responsible for liquor enforcement; that he has periodically been inside the establishment in an investigative capacity since November, 2009, and has observed gang presence; that he has observed other liquor licensed establishments which require dress codes and has seen patrons being asked to leave the premises if they don't dress appropriately and if it appears there may be gang behavior or activities.

In response to a question from Mr. Cassens, Det. True stated he believes a strict dress code is a measure that can be taken which may affect the club's atmosphere.

LIQUOR AND BEER LICENSING BOARD MEETING – MARCH 19, 2010

In response to questions from Mr. Moore:

Detective Chris Ganstine was sworn and stated he has been inside the establishment in an investigative capacity and observed gang members; that he does not believe the licensee has taken measures to address the activities.

In response to questions from Mr. Moore:

Sergeant Jeff Strossner was sworn and stated he oversees a team of officers assigned to assist with patrolling the downtown area establishments; that since January 1, 2010, he has met with the licensee approximately five times and discussed tactics to minimize some of the activities at the establishment which included lighting, staggering of closing hours, and handling of patron behavior; that while there have been other crowd concerns at downtown venues, one of the bar owners has elected to hire off-duty officers to ensure police presence.

In response to a question from Mr. Cassens, Sgt. Strossner stated the Police Department has possession of the establishment's security system; that fights have occurred at other downtown establishments.

In response to a question from Mr. Wright, Sgt. Strossner stated he met with Rance a couple times and discussed the establishment's dress code; that Rance said he was formerly a gang member, and knew how to identify and communicate with them; that the first meeting was initiated by Michael Laughlin.

Mr. Moore stated a violation of Liquor Code Regulation 47-900 and CRS 18-9-106 relating to offenses against public peace and disorderly conduct has occurred; that the presence of gangs has been regular and visible at this location; that the licensee had constructive knowledge of the violence that erupted on March 7, 2010 due to earlier events that put them on notice; that a reasonable, diligent licensee would have seen what was going on and what could happen if practices weren't changed; that even if the licensee was not directly aware of the situation, the employees had knowledge; that knowledge of visible problems and conversations was made through testimony; that even if only the employees had knowledge, that knowledge is imputed to the licensee; that the licensee had actual knowledge of the volatile activities at the nightclub as Sgt. Strossner testified he met with the licensee to discuss practices that should be changed which were not implemented. He stated the licensee permitted acts of disorderly conduct provided in CRS 18-9-106 which indicates it is a violation of the disorderly conduct statute if a fight occurs in a public place; that the licensee permitted activities and criminal conduct offensive to the average citizen; that he requests the Board find the licensee was on notice, that the licensee failed to take adequate steps to prevent the activities and failed to take action or respond. He stated officers testified that it was so dangerous at the establishment that the police officers could not enter the premises due to concerns for their safety.

Mr. Cassens stated "knowingly" means you were aware of what was going on and "permitted" means you allowed it to happen; that the evidence is clear that when a problem started in the bar they were thrown out; that the Board heard today it was a regular evening and when a fight erupted, staff tried to get people out of the establishment; that the licensee contacted the police to assist with the disturbance, to no avail; that there were no disturbances before the fight broke out and the licensee acted immediately to stop the fight; that there is not a single

LIQUOR AND BEER LICENSING BOARD MEETING – MARCH 19, 2010

sign that was brought up on testimony that doesn't occur at every bar within the City. He stated the licensee did not violate Liquor Code Regulation 47-900(A), as the licensee did not willingly or knowingly permit the behavior; that to "knowingly allow" means nothing was done and "knowingly permitting" means the environment was fostered, but if the behavior was fostered why were people being removed from the club and the security system installed; that the club took action and tried to bring in outside help to stop the disturbance.

Mr. Moore stated the Board did not hear any testimony that the employees removed anyone from the premises that night; that there was no testimony about stabbings and shootings elsewhere in the City, and there was no testimony from the club as to what they were doing to avoid this behavior, however, the Police Department did address the lack of practices that could have alleviated the behaviors; that while there was no officer in the premises when the fight broke out, officers testified to the conduct that was occurring at the establishment. He stated the licensee did not hire additional security to ensure this did not occur but relied on the Police Department to ensure the business was operated in an orderly fashion which is not its obligation, but the licensee's.

Mr. Cassens stated the City argues the security staff of the establishment was insufficient to get the situation under control, but the police officers did not enter the club until the fight was over.

Mr. Nemeth stated Mr. Cassens said "knowingly permitted" which he interprets to mean that rival gangs and rival deejays could be a potential for problems; that it appears Rance encouraged the presence of gangs to talk with them about getting out of the gangs; that Sgt. Strossner indicated a program was put together to assist the licensee; that the staff of the establishment was not adequate to address the activities and not having an appropriate number of people to manage the crowd and allowing two rival factions in the club means to him that the licensee knowingly permitted the disturbance to occur.

Mr. Kouba stated he believes the owners and operators of the bar were aware of the situation and heightened measures should have been taken to make the establishment safe and secure; that he believes the knowing and permitting part is found by the licensee's failure to take appropriate steps to prevent the behavior; that a disturbance with 100 people involved is more than a fight.

Ms. Abrams stated one of the criteria for licensure is that the licensee has the ability to conduct the business according to law and it is their burden to ensure and make certain that codes and regulations are adhered to; that the testimony regarding March 7, 2010 does not indicate to her that the premises were conducted in a decent, orderly or respectable manner.

Chairman Stephens stated he believes the conduct of the establishment was not reasonable; that testimony was made that the licensee said patrons were removed from the establishment when there were problems, which means to him that the licensee was aware of the problems; that testimony indicated different areas of the premises held different elements and to say they did not know there would be a problem is an untruth; that any reasonable person, seeing people with particular markings and segregating themselves, would be aware of the situation and know something wasn't right; that the statement was made that the City has had to deploy a unit, that is supposed to be all over town, for over three months at one facility because of the

LIQUOR AND BEER LICENSING BOARD MEETING – MARCH 19, 2010

continued perception of problems happening. He stated he believes that two rival deejay's with rival factions supporting them on the same night fostered this sort of environment; that the defense counsel stated when staff saw the problem people were removed, but the behavior continued; that the licensee knowingly and willingly permitted this behavior to happen; that it is a fact that fights occur at bars around town, however, this was not a small fight, but a situation that involved 80 to 100 people with 22 police vehicles which is beyond the purview of a minor incident and he believes the public is in danger with this establishment at this point.

Motion by Kouba, second by Wright, that the licensee be found guilty of Counts 1 and 2 of the Show Cause Order relating to Liquor Code Regulation 47-900(A) Conduct of Establishment – Orderliness, loitering, and serving of intoxicated persons, and that the violation occurred in contravention of the Board's earlier order to the licensee on March 20, 2009 that no further violations for a period of one year occur. The motion unanimously carried. Absent, Mr. Clauss and Ms. Lloyd.

Mr. Moore stated the March 7, 2010 disturbance affects the licensee's ability to operate the premises in an orderly manner and in accordance with law; that the patrons and public were endangered, and the licensee's business practices have fostered a hostile environment; that there is also 60 days suspension pending which has been in abeyance since March 20, 2009 and he would request revocation of the license.

Mr. Nemeth stated he believes revocation is appropriate in this case; that on March 7, 2010, the licensee allowed and knowingly promoted an atmosphere at the establishment which was a detriment to the citizenry and customers.

Mr. Kouba stated as public safety issue, he would support revocation of the license.

Chairman Stephens stated testimony was given that Rance regularly spoke with the police officers to let them know if he was anticipating problems, but at the same time, that means the club was aware there were or could be problems; that Sgt. Strossner contacted the licensee to discuss what could be done to alleviate problems, but the only thing the licensee did was erect a light; that the City was in some degree of jeopardy with the number of officers that had to be called out for the disturbance.

Motion by Kouba, second by Nemeth, that the Tavern Liquor License issued to Syn, Inc., dba Syn Night Club, 217 East Pikes Peak Avenue, be revoked effective immediately. The motion unanimously carried. Absent, Mr. Clauss and Ms. Lloyd.

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11. **Suspension/Revocation Hearing concerning the Tavern Liquor License issued to 13 Pure, Inc./Syn, Inc., dba 13 Pure/Syn Night Club, 217 East Pikes Peak Avenue.**

City Prosecuting Attorney Scott Patlin entered his appearance on behalf of the City.

Motion by Kouba, second by Nemeth, that this matter be continued to the Board meeting of April 2, 2010. The motion unanimously carried. Absent, Mr. Clauss and Ms. Lloyd.

LIQUOR AND BEER LICENSING BOARD MEETING – MARCH 19, 2010

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12. **Suspension/Revocation Hearing concerning the Retail Liquor Store License issued to N & K, Inc., dba Vickers Liquor Store, 5690 North Union Boulevard.**

SEE ACTION TAKEN EARLIER IN THE MEETING.

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At 4:20 p.m., motion by Kouba, second by Nemeth, that the Board adjourn.

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