

**COLORADO SPRINGS, COLORADO  
COUNCIL CHAMBERS  
CITY HALL - 107 N. NEVADA AVE.  
APRIL 16, 2010 – 9:00 A.M.**

The Liquor and Beer Licensing Board met in regular session.

There were present: Ms. Abrams, Mr. Clauss, Mr. Kouba, Ms. Lloyd, and Mr. Wright. Absent, Chairman Stephens and Mr. Nemeth. In the absence of Chairman Stephens and Vice-Chairman Nemeth, it was moved and approved by unanimous consent, that Mr. Kouba be elected Acting Chairman. Also present, Board Legal Advisor Marc Smith.

**COMMUNICATIONS**

1. City Prosecuting Attorney Scott Patlin requested Item No. 10 be withdrawn from the agenda.

Motion by Wright, second by Abrams, that Item No. 10 be withdrawn. The motion unanimously carried. Absent, Chairman Stephens and Mr. Nemeth.

**MINUTES**

2. **Approval of the Minutes of the Board Meetings of March 10, March 19, and April 2, 2010.**

Motion by Clauss, second by Wright, that the Minutes of the Board meetings of March 10, March 19 and April 2, 2010, be approved as written. The motion unanimously carried. Absent, Chairman Stephens and Mr. Nemeth.

**CONSENT CALENDAR**

3. The City Clerk's Office reports that boundaries were set and Temporary Permits were issued for the following applications:

- A-1. Dat's Italian, LLC dba Dat's Italian, 2514 West Colorado Avenue, Ste. 102:

North: South side of East Uintah Street extended  
South: North side of Howbert Street extended  
East: West side of 18<sup>th</sup> Street extended  
West: East side of 31<sup>st</sup> Street extended

- A-2. Chavanon Restaurants, LLC dba Marigold Cafe & Bakery, 4605 Centennial Boulevard:

North: South side of Territory Trail extended  
South: North side of Chesham Circle extended  
East: West side of Forge Road extended  
West: East side of Brodie Grove extended

- B-1. K2 Enterprises, Inc., & 7-Eleven, Inc.,  
dba 7-Eleven Store #26292A  
825 North Nevada Avenue

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- B-2. AmRest, LLC  
dba Applebee's Neighborhood Grill & Bar  
495 Garden of the Gods Road
- B-3. AmRest, LLC  
dba Applebee's Neighborhood Grill & Bar  
3708 East Galley Road
- B-4. AmRest, LLC  
dba Applebee's Neighborhood Grill & Bar  
7625 Goddard Street

Motion by Clauss, second by Abrams, that the Consent Calendar be approved. The motion unanimously carried. Absent, Chairman Stephens and Mr. Nemeth.

### TRANSFER APPLICATION

- 4. **Application of Reseach Wine & Liquor Corp., dba Research Wine & Liquor, to transfer the Retail Liquor Store License currently issued to Fairfax Liquors, Inc., dba Fairfax Liquors, 5490 Powers Center Pt. #100.**

Lisa Meacham was sworn and stated she is investing \$100,000 in the business of which said funds were derived from personal savings; that she has attended formal alcohol training classes; that the lease term is 10 years.

Motion by Wright, second by Lloyd, that the application of Reseach Wine & Liquor Corp., dba Research Wine & Liquor, to transfer the Retail Liquor Store License currently issued to Fairfax Liquors, Inc., dba Fairfax Liquors, 5490 Powers Center Pt. #100, be approved as it appears all criteria has been met. The motion unanimously carried. Absent, Chairman Stephens and Mr. Nemeth.

### MODIFICATION OF THE PREMISES

- 5. **Application of St. Claire Investments, Inc. dba Redstone to Modify the Premises where liquor is served at 414 West Fillmore Street.**

Attorney Erika Kaiser entered her appearance on behalf of the licensee and stated the licensee intends to surrender the license and requested the item be withdrawn.

Motion by Lloyd, second by Clauss, that this item be withdrawn. The motion unanimously carried. Absent, Chairman Stephens and Mr. Nemeth.

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- 6. **Application of Murray Street Darts, Inc., dba Murray Street Darts to Modify the Premises where liquor is served at 609 North Murray Boulevard.**

Attorney James Dodd entered his appearance on behalf of the licensee and stated the proposed modification will reduce the premises; that a closet of approximately 18 square feet

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has been constructed for use as a separate business where tobacco products will be sold. He submitted an informal petition of the neighborhood relating to needs and desires.

Motion by Lloyd, second by Wright, that the application of Murray Street Darts, Inc., dba Murray Street Darts to Modify the Premises where liquor is served at 609 North Murray Boulevard, be approved as it appears all criteria has been met. The motion unanimously carried. Absent, Chairman Stephens and Mr. Nemeth.

Mr. Dodd stated the licensee was previously issued a suspension for modification of the premises without approval; that the Board findings required an application for modification be submitted and that no further violations occur within a one year period; that because the licensee complied with the Order, he requests the Board remove the one year condition; that if the one year condition of the Findings and Conclusion Order is removed, upon acceptance by his clients, he will file a motion for dismissal of the pending appeal.

Mr. Patlin stated the licensee is now in compliance, and there is no objection to the request.

Motion by Clauss, second by Wright, that the Board approve a revision to the Findings and Conclusions Order previously issued to the licensee, dismissing the five days suspension in abeyance and no further violations occur within one year, pending the filing of a motion for dismissal of the appeal by the licensee.

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

Acting Chairman Kouba declared the motion carried.

### **SUSPENSION/REVOCAION HEARINGS**

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

City Prosecuting Attorney Anthony Moore entered his appearance on behalf of the City and stated a Stipulation and Agreement has been reached in this matter; that the licensee has admitted to two counts of sales to minors on November 19, 2009 and December 22, 2009; that the Stipulation provides 30 days suspension, 7 days actual, and 23 days to be held in abeyance for one year pending future violations; that the licensee will attend TIPS training and participate in a "Cops in Shops" program to educate and prevent the sale of alcohol to minors.

Attorney Kevin Donovan entered his appearance on behalf of the licensee and stated the licensee agrees to the proposed Stipulation and Agreement.

Motion by Wright, second by Clauss, that the Stipulation and Agreement be accepted. The motion unanimously carried. Absent, Chairman Stephens and Mr. Nemeth.

Motion by Wright, second by Clauss, that the Findings and Conclusion be adopted imposing 30 days suspension, 7 days actual, and 23 days to be held in abeyance for one year pending future violations; that the licensee attend formal alcohol beverage training classes and

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participate in the “Cops in Shops” program; that the suspension is effective immediately. The motion unanimously carried. Absent, Chairman Stephens and Mr. Nemeth.

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8. **Suspension/Revocation Hearing concerning the Retail Liquor Store License issued to Aracely Vazquez dba Guzman’s Liquor, 3746 East Pikes Peak Avenue.**

City Prosecuting Attorney Scott Patlin entered his appearance on behalf of the City and stated a Stipulation and Agreement has been reached in this matter; that the licensee has admitted to a violation of sale to a minor on December 11, 2009; that the Stipulation provides three days suspension all to be held in abeyance for one year pending future violations.

Jamie Londono was sworn as interpreter for the licensee.

Aracely Vazquez, was sworn and stated, through the interpreter, that she agrees to the proposed Stipulation and Agreement.

Motion by Wright, second by Clauss, that the Stipulation and Agreement be accepted. The motion unanimously carried. Absent, Chairman Stephens and Mr. Nemeth.

Motion by Wright, second by Clauss, that the Findings and Conclusion be adopted imposing three days suspension, all to be held in abeyance for one year pending future violations. The motion unanimously carried. Absent, Chairman Stephens and Mr. Nemeth.

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9. **Suspension/Revocation Hearing concerning the Tavern Liquor License issued to Carefree Wine & Liquor, Inc., dba Bombers, 460 North Murray Boulevard.**

City Prosecuting Attorney Anthony Moore entered his appearance on behalf of the City and requested sequestration of the witnesses.

Attorney Kevin Donovan entered his appearance on behalf of the licensee.

In response to questions from Mr. Moore:

Colorado Springs Police Detective Jeff True was sworn and stated anonymous calls of illegal gambling, prompted an investigation of the establishment; that he was at the premises on January 15, 2010 when the Flying Aces Poker Club held a no cash game and a subsequent cash game of Texas Hold-Em Poker; that the dealer was introduced as “Adrian”; that on that evening, he also observed service to a visibly intoxicated man by the name of Larry; that John Dues, identified as manager, was on the premises.

In response to a question from Mr. Donovan, Det. True stated it was his observation that Flying Aces Poker Club was operating the game.

In response to questions from Mr. Moore:

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Det. True stated Adrian had previously identified himself as a cook at the tavern. He explained the difference between the free game and the cash game.

In response to questions from Mr. Moore:

Colorado State Liquor Enforcement Officer Russ Elliott was sworn and stated warning letters relating to illegal gambling were issued by the State of Colorado to the licensee on June 10, 2008 and April 22, 2009.

In response to questions from Mr. Moore:

Sgt. Richard Duvall was sworn and stated he was at Bombers with Det. True on January 15, 2010; that he did not participate in the cash game, but did observe and talk with a man named Larry at the bar; that he later observed a man walk outside the establishment with a 22 oz. bottle of Coors Light; that no one attempted to stop the man from leaving the establishment.

In response to questions from Mr. Moore:

El Paso County Sheriff's Office Det. Chris Ganstine was sworn and stated he was at the tavern on January 15, 2010 earlier in the evening; that after he left, he later received a call from Sgt. Duvall notifying him that an intoxicated man had left the establishment with alcohol.

In response to questions from Mr. Donovan:

Det. Ganstine stated the man was not arrested; that he does not recall if the man was wearing a jacket that may have concealed the beer bottle when he left the premises.

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**The Board recessed for lunch from 12:00 Noon to 12:30 p.m.**

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Board discussion was held after allegations that a man identified as Larry was observed listening to testimony at the doors of the Chambers and repeating it to other witnesses in violation of the sequestration order. The Board determined that future witnesses would be questioned relating to the allegation prior to their testimony.

In response to questions from Mr. Donovan:

Jacqueline Dues was sworn and stated she has owned the establishment for approximately 15 years; that she was not at the premises on January 15, 2010.

In response to questions from Mr. Moore:

Ms. Dues stated she authorized Flying Aces to conduct poker tournaments; that they have contracted with companies in the past to conduct poker tournaments.

In response to questions from Mr. Donovan:

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James Bolens was sworn and stated he owns the Flying Aces Poker Club; that his company managed the poker tournament on January 15, 2010; that Adrian is not an employee of his.

In response to questions from Mr. Moore:

Mr. Bolens stated he conducts free poker tournaments at several establishments in the City; that his contract at this establishment is with John Dues.

In response to questions from Mr. Donovan:

Larry Humphrey was sworn and stated he is a dealer for the Flying Aces Poker Club; that he only played free poker at the establishment on January 15, 2010; that he takes medication which may have affected his behavior on that evening.

In response to questions from Mr. Donovan:

Jeff Erickson was sworn and testified he is a taxicab driver; that he drove Mr. Humphrey home from Bombers on January 15, 2010, and he did not appear intoxicated.

In response to questions from Mr. Donovan:

John Dues was sworn and stated he is manager of the tavern; that he was at the establishment on January 15, 2010 until about 7:45 p.m.; that Flying Aces Poker Club has a contract to conduct free poker games; that he is aware of two warning letters from the State; that Adrian has previously dealt cards at the premises, but he is not an employee of the tavern; that all of the bartenders are TIPS certified.

In response to questions from Mr. Moore:

Mr. Dues stated he has told people he is the licensee, but he is not; that the Flying Aces Poker Club was hired to conduct the poker game on January 15, 2010; that Adrian was at the establishment that evening, but was told not to deal and no cash games were to be played; that he was not at the premises later in the evening and is not responsible if a cash game was played after he left.

In response to questions from Mr. Moore:

Det. True stated each time he has been at the tavern, Adrian has also been there dealing cards; that he has observed Mr. Humphrey playing both free and cash games.

Mr. Moore stated the evidence presented establishes violations of the Liquor Code occurred; that the licensee permitted gambling on the premises; that none of the players had a bonified social relationship; that Mr. Humphrey was visibly intoxicated on the evening, and a patron removed an alcoholic beverage from the licensed premises.

Mr. Donovan stated CRS 12-47-601 states a licensee may be punished if its agents, servants or employees violate the Liquor Code; that in this case two warning letters relating to gambling were issued, and based on those letters, corrective action was taken and an independent contractor was hired which was not an employee, servant or agent; that any violation incurred by Flying Aces Poker Club was not the responsibility or violation of Bombers. He stated no

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one was charged with service to a visibly intoxicated person; that the Board must find that a person was permitted to leave the establishment with a beer in order for there to be a violation.

Mr. Donovan submitted an exhibit providing a definition of independent contractor which was rejected by the Board as it was not specific to Colorado.

Mr. Moore stated pursuant to CRS 12-47-901(5)(n)(I), a licensee is prohibited from authorizing or permitting gambling; that the licensee permitted the conduct to occur by hiring a company to conduct poker games on the licensed premises as it deemed appropriate; that the licensee is responsible for the conduct on the premises.

Mr. Donovan stated the game was run by an independent contractor which shields the licensee from liability of the actions of the independent contractor's employees and agents; that the licensee did not violate the Code.

Acting Chairman Kouba stated based on the testimony, he believes a cash poker game took place which represents illegal gambling; that while there are disagreements about whether the Flying Aces Poker Club or Bombers was responsible for the game, the fact is, based upon the evidence, that illegal gambling took place; that testimony was also heard that Larry Humphrey was served while visibly intoxicated, and a man was observed walking out of the bar with a beer bottle; that it is unconscionable that an owner or manager would use the defense that because they weren't at the establishment when a violation occurred, they are not responsible.

Mr. Clauss agreed and stated it is an unacceptable business practice for the licensee to say they did not see it and because they did not see, it did not happen.

Motion by Wright, that the licensee is guilty of Count 1, Unlawful Acts and Gambling; Count 2, Unlawful Acts and Conduct of Establishment; and Count 3, Removal of Alcohol Beverages from the Premises of the Show Cause Order. The motion was seconded by Mr. Clauss. The motion unanimously carried. Absent, Chairman Stephens and Mr. Nemeth.

Mr. Moore requested the Board impose six months suspension, 1 month active and 5 months to be held in abeyance for one year pending future violations.

In response to questions from Mr. Donovan:

Ms. Dues stated she has no prior violations and has installed security cameras since knowledge of the violations.

Motion by Wright, second by Clauss, that the Tavern Liquor License issued to Carefree Wine & Liquor, Inc., dba Bombers, 4601 North Murray Boulevard, be suspended for 40 days, 10 days active and 30 days to be held in abeyance for one year pending future violations; that the suspension is effective immediately. The motion unanimously carried. Absent, Chairman Stephens and Mr. Nemeth.

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**Ms. Abrams was excused.**

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10. **Suspension/Revocation Hearing concerning the Hotel and Restaurant Liquor License issued to Yu Bing Zheng & Lian Lin Tian dba China Inn II, 5925 Delmonico Drive.**

**SEE ACTION TAKEN EARLIER IN THE MEETING.**

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11. **Suspension/Revocation Hearing concerning the Tavern Liquor License issued to Mile High Saloon, LLC dba Mile High Saloon, 5943 Delmonico Drive.**

Mr. Moore stated this hearing relates to the sale of an alcohol beverage without a valid license.

In response to questions from Mr. Moore:

Deputy City Clerk Cindy Conway was sworn and stated she went to the establishment on March 30, 2010 to serve the Show Cause Order and the premises were vacant; that a Show Cause Order was then mailed certified on April 6, 2010 with no response.

There was no one present to represent the licensee.

Motion by Wright, second by Lloyd, that the hearing proceed in abstentia of the licensee. The motion unanimously carried. Absent, Chairman Stephens, Ms. Abrams and Mr. Nemeth.

In response to questions from Mr. Moore:

Ms. Conway stated the license expired September 9, 2009; that an application for renewal was filed in October 12, 2009 with appropriate late fees and application fees, however, the license is pending and has not yet been issued by the State due to delinquent taxes.

In response to a question from Mr. Moore, Detective Jeff True stated he was served an alcohol beverage at the tavern on September 24, 2009 following a complaint of an expired license.

Upon further discussion, Mr. Moore stated due to the status of the license, he would request this item be withdrawn without prejudice.

Motion by Clauss, second by Wright, that this item be withdrawn without prejudice. The motion unanimously carried. Absent, Chairman Stephens, Ms. Abrams and Mr. Nemeth.

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At 2:45 p.m., motion by Clauss, second by Lloyd, that the Board adjourn.

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