

**COLORADO SPRINGS, COLORADO
COUNCIL CHAMBERS
CITY HALL – 107 N. NEVADA AVENUE
JULY 17, 2009 – 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 and Mr. Wright. Absent, Mr. Nemeth. Also present, Board Legal Advisor Marc Smith.

MINUTES

1. Approval of the Minutes of the Board Meeting of June 19, 2009.

Motion by Wright, second by Kouba, that the Minutes of the Board meeting of June 19, 2009 be approved as written. The motion unanimously carried. Absent, Mr. Nemeth.

COMMUNICATIONS

2. Attorney Erika Kaiser entered her appearance on behalf of Bara Sushi & Grill at Briargate, Inc. and requested Item No. 8 be postponed to the Board meeting of August 7, 2009.

Motion by Clauss, second by Wright, that Item No. 8 be postponed to the Board meeting of August 7, 2009. The motion unanimously carried. Absent, Mr. Nemeth.

CONSENT CALENDAR

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

A-1. Mountain Shadow Management, LLC dba City Auditorium Concessions, 221 East Kiowa Street:

North: South side of Willamette Avenue extended
South: North side of Cimarron Street extended
East: West side of Prospect Street extended
West: East side of Interstate 25 extended

A-2. Jayhawk Cafe, LLC dba Dale Street Cafe, 115 East Dale Street:

North: South side of San Miguel Street extended
South: North side of Bijou Street extended
East: West side of El Paso Street extended
West: East side of Spruce Street extended

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

TRANSFER APPLICATIONS

4. **Application of Gunina, Inc., and 7-Eleven, Inc. dba 7-Eleven Store 27082A, to transfer the 3.2% Beer License for Off Premises Consumption Only, currently issued to 7-Eleven, Inc., dba 7-Eleven Store 27082, 450 North Murray Boulevard.**

Attorney Alan Dill entered his appearance on behalf of the applicant.

Nandip Kumar was sworn and stated he is investing \$126,000 in the business of which said funds were derived from personal savings; that he has attended training classes relating to the operation and sale of alcoholic beverages conducted by 7-Eleven, Inc.; that anyone purchasing 3.2% beer will be required to present identification before a sale is made.

Motion by Kouba, second by Wright, that the application of Gunina, Inc., and 7-Eleven, Inc. dba 7-Eleven Store 27082A, to transfer the 3.2% Beer License for Off Premises Consumption Only, currently issued to 7-Eleven, Inc., dba 7-Eleven Store 27082, 450 North Murray Boulevard, be approved as it appears all criteria has been met. The motion unanimously carried. Absent, Mr. Nemeth.

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5. **Application of A.K.A. Wilson, LLC dba Willy's Pub, to transfer the Hotel and Restaurant Liquor License, currently issued to Kelsandrad, LLC dba Extra Innings, 2894 Resnick Drive.**

Curt Wilson was sworn and stated he currently owns a subway sandwich store; that he was granted a contract with the City of Colorado Springs to operate a softball field concession, and has been operating with a temporary permit for three months; that he is investing approximately \$6,500 in the business which was derived from personal savings; that the establishment will be open 5:00 p.m. to 9:00 p.m. or 1:00 a.m. depending upon the league games schedule; that he has no criminal history; that the main complex has a full kitchen; that he has a three year contract with an additional three year option; that the complex is open April through October. He stated patrons are issued wrist bands before the purchase of alcoholic beverages; that all employees serving alcoholic beverages are TIPS certified; that he and employees will walk the complex to ensure no alcoholic beverages are brought in or taken out of the premises.

The Board expressed concern with the applicant's knowledge of the Liquor Codes.

Motion by Kouba, second by Clauss, that the application of A.K.A. Wilson, LLC dba Willy's Pub, to transfer the Hotel and Restaurant Liquor License, currently issued to Kelsandrad, LLC dba Extra Innings, 2894 Resnick Drive, be approved with the condition that the applicant complete formal training in the sale of alcoholic beverages and present a certificate of completion to the City Clerk's Office prior to issuance of the liquor license. The motion unanimously carried. Absent, Mr. Nemeth.

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6. **Application of Paradise Liquor, LLC dba South Nevada Liquor, to transfer the Retail Liquor Store License currently issued to J C L Liquors, Inc. dba South Nevada Liquors, 1107 South Nevada Avenue.**

Kathy Hyun was sworn as translator.

Motion by Kouba, second by Wright, that Ms. Hyun be qualified as a translator. The motion unanimously carried. Absent, Mr. Nemeth.

Eun Soo Choi Kim was sworn and through the interpreter stated she is sole owner of the business, and has no criminal history; that she and her husband previously operated Paradise Smoothie's for three years; that she is investing \$381,708 in the business of which said funds were derived from \$150,000 in personal savings and the sale of her previous business, and \$231,708 is from a promissory note with the previous owner. She stated she has attended two separate training courses in the sale of alcoholic beverages.

Motion by Clauss, second by Wright, that the application of Paradise Liquor, LLC dba South Nevada Liquor, to transfer the Retail Liquor Store License currently issued to J C L Liquors, Inc. dba South Nevada Liquors, 1107 South Nevada Avenue, be approved as it appears all criteria has been met. The motion unanimously carried. Absent, Mr. Nemeth.

MODIFICATION OF PREMISES

7. **Request by T S J Properties, Inc., dba Bob's Liquors, to Modify the Premises where liquor is sold at 3519 North El Paso Street.**

Tom Jackson was sworn and stated he has owned the store for approximately 21 years; that when he originally applied for the license, the basement of the store was used as a residence and he is now requesting to license the basement for storage; that he is the owner of the property and the proposed modification has been approved by Zoning.

Motion by Wright, second by Clauss, that the request by T S J Properties, Inc., dba Bob's Liquors, to Modify the Premises where liquor is sold at 3519 North El Paso Street, be approved, as it appears all criteria has been met. The motion unanimously carried. Absent, Mr. Nemeth.

APPLICATION HEARINGS

8. **Application of Bara Sushi & Grill at Briargate, Inc. dba Bara Sushi & Grill at Briargate for a Hotel and Restaurant Liquor License at 1645 Briargate Parkway #C245.**

SEE ACTION TAKEN EARLIER IN THE MEETING.

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9. **Application of DSH Liquors, Inc., dba DSH Liquors for a Retail Liquor Store License at 5046 North Nevada Avenue.**

Attorney Alan Dill entered his appearance on behalf of the applicant.

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Max Scott, Oedipus, Inc., was sworn and stated his company conducted the petition survey which resulted in 154 favoring, 24 opposing, and 7 no opinion signatures.

Tom Zyne, Costco Wholesale, 5050 North Nevada Avenue, spoke in support of the application.

David Herrmann was sworn and stated he resides in Texas; that he is sole shareholder and is investing \$300,000 in the business of which said funds were derived from a line of credit; that the store is approximately 3880 square feet; that he has obtained training in the sale of alcoholic beverages as well as corporate training; that he currently owns Grady's Bar-B-Q which is a family owned business; that his cousin and sister also hold liquor licenses in Colorado.

Motion by Clauss, second by Kouba, that the application of DSH Liquors, Inc., dba DSH Liquors for a Retail Liquor Store License at 5046 North Nevada Avenue, be approved as it appears all criteria has been met.

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

Chairman Stephens declared the motion carried.

SUSPENSION/REVOCAION HEARINGS

11. **Suspension/Revocation Hearing concerning the Hotel and Restaurant Liquor License issued to Antonio's Ristorante, LLC dba Antonio's Italian Restaurant, 4475 Northpark Drive.**

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

Lawrence Tillman, licensee, was sworn and stated he is sole owner and shareholder of the corporation; that he is requesting this item be postponed so that he may secure an attorney.

Mr. Moore stated the City would oppose a postponement; that the Show Cause Order was served on the licensee June 18, 2009 which is approximately 30 days ago and no contact has been made with the City Attorney's Office by Mr. Tillman.

Motion by Clauss, second by Wright, that the request for postponement be denied.

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

Chairman Stephens declared the motion carried.

Mr. Moore stated upon submittal of a Change of Corporate Structure application, Mr. Tillman failed to disclose misdemeanor charges of his criminal history; that he failed to disclose three criminal convictions, two for domestic violence and one for forgery; that the crimes are of moral turpitude.

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Mr. Tillman stated he has been in the restaurant business for approximately 25 years and has worked at Antonio's four years; that he began managing the business approximately one and one-half years ago.

Detective Jeff True, Colorado Springs Police Department, was sworn and stated he conducted the background investigation of Lawrence Tillman in March, 2009.

Mr. Moore submitted Exhibit No. 1, a copy of the application for Report of Changes for the limited liability corporation. He stated Mr. Tillman signed the oath at the bottom of the application indicating the information was true and correct.

Mr. Moore submitted Exhibit No. 2, a copy of the Liquor License Applicant Interview form.

In response to questions from Mr. Moore, Det. True stated the criminal history form requires disclosure of information regarding criminal or liquor violations and Mr. Tillman indicated he had two liquor DUI charges only.

Mr. Moore submitted Exhibit No. 3, a copy of the Individual History Record form.

In response to questions from Mr. Moore:

Det. True stated the oath states that any falsehood of information may result in denial; that Question No. 10 of that form asks "whether you have ever been convicted of a crime" and the two DUI charges were the only violations listed. He stated the NCIC and CCIC background investigations showed an additional three violations to include third degree assault, domestic violence, and forgery.

Mr. Moore submitted Exhibit Nos. 4 and 5, copies of court documents relating to charges of Mr. Tillman.

In response to questions from Mr. Moore:

Det. True stated January 1, 2001 indicated a previous assault in September, 2000 and the conviction of Exhibit No. 5 was in July, 2001 for third degree assault which Mr. Tillman was sentenced to two years probation and 165 days in jail; that the sentence was then revised following another violation.

Mr. Moore submitted Exhibit No. 6, a copy of a court document relating to a charge of forgery. He stated on July 7, 2004, Mr. Tillman was charged with forgery and sentenced to pay restitution, probation from a previous charge was revoked and an additional probation was issued; that the forgery charge related to child support checks.

Mr. Tillman stated he was requested by a girlfriend to deposit the checks and when they separated, she reported the checks as forged.

Mr. Kouba stated the questions provided on the application regarding disclosure of criminal charges or violations are clear.

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Mr. Tillman stated this restaurant has been open 22 years; that approximately 40% of the customers request an alcoholic beverage with their meals and not having a liquor license would hurt the business operation.

Mr. Moore stated Mr. Tillman failed to disclose any criminal charges in violation of State Regulation 47-310(D); that there has been ample proof today of three criminal convictions that were not disclosed; that the convictions are crimes of moral turpitude which makes Mr. Tillman a person prohibited by law from holding a liquor license; that CRS 18-5-104(1) defines second degree forgery and domestic violence as crimes of moral turpitude; that it was only four months after the first assault that Mr. Tillman was convicted of a second assault and also ran from police; that the City would suggest that any rehabilitation should not be accepted due to the omission of the charges on the application.

Mr. Tillman stated the forgery charges were the result of retaliation from his ex-wife after her request that he deposit checks; that he is raising his two children and has attended parenting classes.

Ms. Lloyd stated Mr. Tillman has had no charges since 2005 and it appears a misunderstanding may have precipitated some of the charges.

Ms. Abrams stated the oath is very clear and failure to disclose was also failure to understand the importance of the application.

Motion by Kouba, that Counts II (a), (b) and (c) and III (a) and (b) alleged in the Show Cause Order be upheld finding the licensee did violate the Colorado Liquor Code and failed to disclose the charges on the application and conviction of various charges. The motion was seconded by Ms. Abrams. The motion unanimously carried. Absent, Mr. Nemeth.

Board Legal Advisor Marc Smith stated CRS 12-47-307 defines persons prohibited as licensees; that determination of bad moral character prohibits a person from holding a liquor license; that while the Board has not made a determination of bad moral character at this point, the past violations and sentencing of Mr. Tillman could affect his moral character.

Ms. Lloyd stated she believes Mr. Tillman has been making efforts of rehabilitation and should be given an opportunity to operate the business.

Mr. Clauss stated Mr. Tillman chose to not bring an attorney for representation today and the past choices affects his life and character.

Mr. Kouba stated he is concerned that very clear questions on the application were not answered wholly and truthfully as required.

Motion by Kouba, that the findings of the first motion be incorporated and furthermore, that the Board find the following Finding and Conclusion that regarding the count in the Show Cause Order which reads Mr. Tillman failed to fully, faithfully, truthfully and fairly disclose the convictions and therefore is not a person of good moral character. The motion was seconded by Mr. Wright.

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

Chairman Stephens declared the motion carried.

Motion by Kouba, second by Wright, that the Hotel and Restaurant Liquor License issued to Antonio's Ristorante, LLC dba Antonio's Italian Restaurant, 4475 Northpark Drive, be revoked.

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

Chairman Stephens declared the motion carried.

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

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12. **Suspension/Revocation Hearing concerning the Tavern Liquor License issued to Corner Pocket Fillmore, Inc., dba Corner Pocket Fillmore, 620 East Fillmore Street.**

City Prosecuting Attorney Kenny Hodges entered his appearance on behalf of the City and stated on November 13, 2008, November 18, 2008, November 25, 2008 and December 22, 2008, undercover police officers were permitted to play in Poker and Texas Hold-Em card games and on December 23, 2008, two liquor code violations were found, one for the sale of alcoholic beverages after hours at approximately 4:05 a.m. and the second for leaving the licensed premises with an alcoholic beverage.

Alan Norris, licensee, was sworn and stated he purchased the Corner Pocket North in 1991 and purchased the Corner Pocket Fillmore in 1998, sold it and bought it back five years ago.

In response to questions from Mr. Hodges:

Det. Jeff True stated he was at Corner Pocket on the evening of November 18, 2008 with Russ Elliott and Shanna Frank, State Enforcement Officers; that Ms. Frank entered a poker game with VNI funds and played approximately two hours; that on November 25, 2008, he contacted a man named Keith at Paul's and was told that while Paul's was closed to new players, a cash game was being played at Corner Pocket; that at Corner Pocket, he contacted "Alicia" and "Kevin" and Mr. Elliott and he bought into a poker game with VNI funds; that before beginning the game, Kevin, one of the dealers, walked everyone outside the establishment and requested they introduce themselves to each other; that he and Mr. Elliott again went to the establishment on December 22, 2008 with VNI funds and spoke to the Manager Shawn Draper; that they played cards until approximately 4:15 a.m.. He stated Mr. Draper played 1 ato 1 ½ hours and told everyone at the establishment that they could stay after hours if they moved their cars to the back of the building, away from the view of Police, they then moved the card table to the bar area so it would not be in view and requested money be contributed to keep Bruce, the bartender, for him to stay after hours; that Bruce was bartending and stated

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after Mr. Draper left he would serve alcoholic beverages; that when they were leaving the building, they raised their glasses of beer to the other players and left the establishment with the cup of beer.

In response to a question from Mr. Kouba, Det. True stated he did not observe the house taking a cut of each pot, but following each hand, a tip was given by the pot winner to the dealer.

In response to questions from Mr. Hodges:

Russ Elliott, Criminal Investigator with the Colorado Department of Revenue, Liquor Enforcement, was sworn and stated on November 13, 2008, he entered the establishment with other State investigators who arrived at different times, who were also associated with the case; that he observed Shanna Frank playing Texas Hold-Em and other people buying into the game; that he returned to the establishment on November 18, 2008 with Det. True, and Ms. Frank who went in separately. He stated Ms. Frank played approximately 1 to 2 hours; that when she left the establishment, they met at a location where she returned the remaining VNI buy funds to Det. True; that on December 22, 2008, he went to Paul's bar with other investigators and asked if they could play cards and was told by "Keith" that while they could not play there, they could go to Corner Pocket; that when he arrived at Corner Pocket, he approached Kevin and told him Keith had referred him and told him they could get into the game; that before they were allowed to sit and play cards, everyone had to go outside so they could state there was a bonified social relationship outside the establishment; that he bought in the game with \$20.00 and cashed out at \$82.75, however, he was given only \$77.00 of the \$82.75. He stated on November 13, 2008 while he was in the establishment, Shawn Draper told him he was the owner of the establishment, and later said he was 3% owner; that approximately 10 players were at the establishment that evening; that he left at approximately 4:20 a.m. or 4:30 a.m. and the game continued while they were leaving. He stated on November 18, 2008 at approximately 3:45 a.m., Bruce, the bartender, served him beer in a plastic cup and at approximately 4:15 a.m., Det. True and he raised the cups of beer to everyone and left the establishment with the beer. He stated on December 22, 2008, Mr. Draper said if they had to buy something if they were going to play in the game.

In response to questions from Mr. Norris:

Mr. Elliott stated Bruce told them beer would be served after hours once Mr. Draper left; that on November 25, 2008, it did not appear the game was conducted by an official gambling organization; that the investigation began early November, 2008 and ended in March, 2009; that when they went in February, 2009 to join a game, Mr. Draper stated a confidential informant had indicated that an investigation was being conducted and they would resume the games later.

Rob Neely, 142 Lawrence Street, Central City, Colorado, was sworn and stated he is a Senior Investigator with the Colorado Gaming Division and a table games expert for the State; that he has testified for the City and County of Denver and other jurisdictions; that he writes the rules and regulations used by Colorado casinos. He described various gambling activities.

Mr. Norris stated he was first made aware of the violations in March, 2009; that the card games began when Mike Priestly, a dealer, approached Mr. Draper and said there was a way to have legal gambling; that they have offered poker games in the bar for many years; that

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when the relationship was broken with Mr. Priestly, they continued to have poker games; that he believed the poker games would be operated according to law and stopped the games when he found they were not.

Mr. Clauss stated it appears Mr. Norris is claiming ignorance of the law as a defense and stating the agents/employees were not representing the bar.

Mr. Norris stated he believes his interpretation of the law is correct and the poker games were not illegal.

In response to a question from Mr. Kouba that Mr. Norris then believes taking people outside of the establishment and asking them to introduce themselves to each other is a bonfied social relationship, Mr. Norris replied in the negative and stated the dealers were supposed to bring in their own players and they trusted the laws would be followed.

In response to a question from Chairman Stephens, Mr. Norris stated while he is responsible for what occurs in the establishment, he delegated a lot of the responsibility to his manager.

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Ms. Lloyd was excused.

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Mr. Hodges stated CRS 12-47-901(1)(5)(n)(l) prohibits gambling in a liquor licensed establishment which occurred on four occasions; that CRS 12-47-412(1) states a tavern license shall be issued for consumption on the licensed premises only and Colorado Regulation 47-918 addresses removal of alcoholic beverages. He requested the Board find the licensee guilty of all counts.

Mr. Norris stated the violations of the liquor laws were due to a rogue employee which occurs in many businesses, and there is nothing anyone can do to stop those type of employees.

Mr. Kouba stated the Board has heard testimony and reviewed evidence; that there seems to be little or no conflict regarding the events that occurred just the meaning of the events; that he moves the Board find the licensee guilty of Counts 1, 2, 3, 4, 5 and 6 of the Show Cause Order; that gambling was permitted, that alcoholic beverages were served after permitted hours, and alcoholic beverages were removed from the licensed premises. The motion was seconded by Mr. Wright. The motion unanimously carried. Absent, Ms. Lloyd and Mr. Nemeth.

Mr. Hodges requested the license be revoked; that the licensee has no remorse for the violations and disputes the law stating he believes his interpretation that there was no violation is correct, and the City interpretation is incorrect.

Mr. Norris stated he believes they did their best, and while it may fall short of the Liquor Board's expectations, he runs a clean business.

Mr. Clauss stated he is astounded that Mr. Norris believes that the activity was legally okay; that whether the house took money or not was immaterial to the gambling charges; that every

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business owner is required to know the ramifications and laws of the activities conducted at the establishment; that Mr. Norris is responsible for the activities at the establishment and he would support a suspension of the liquor license.

Mr. Wright and Ms. Abrams stated they too would support a suspension.

Motion by Kouba, that the comments relative to the testimony and evidence from the first motion be incorporated; that the license be suspended for six months, thirty days active suspension to begin today at 6:00 p.m., and five months to be held in abeyance for one year pending future violations. The motion was seconded by Mr. Clauss. The motion unanimously carried. Absent, Ms. Lloyd and Mr. Nemeth.

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At 2:45 p.m., motion by Wright, second by Abrams, that the Board adjourn.

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