COLORADO SPRINGS, COLORADO COUNCIL CHAMBERS CITY HALL - 107 N. NEVADA AVE. FEBRUARY 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 and Mr. Wright. Absent, Mr. Clauss and Mr. Nemeth. Also present, Acting Board Legal Advisor Will Bain.

MINUTES

1. Approval of the Minutes of the Board Meeting of February 5, 2010.

Motion by Lloyd, second by Wright, that the Minutes of the Board meeting of February 5, 2010, be approved as written. The motion unanimously carried. Absent, Mr. Clauss and Mr. Nemeth.

COMMUNICATIONS

2. Attorney Gary Dailey entered his appearance on behalf of Item No. 7 and stated the licensee's Attorney has requested the item be postponed due to an out of town court commitment.

City Prosecuting Attorney Scott Patlin requested the item be heard today as he believes there is a safety interest.

Mr. Dailey stated he represents the licensee for administrative matters only and not in violation matters.

Mr. Patlin stated the licensee was served with the Show Cause Order February 1, 2010.

Mike Laughlin, licensee, was sworn and stated he does not know why his attorney delayed contacting the City to request postponement due to a previous court commitment.

Mr. Wright stated he thinks there was a lack of concern from the license and attorney and the Board should hear the matter today.

Ms. Abrams stated the licensee could have contracted with other attorneys to represent the case if Mr. Cassens was not available.

Mr. Kouba inquired what position is the Board in should it decide to proceed with the hearing today, and Deputy City Attorney Municipal Operations Wynetta Massey entered her appearance and stated a continuance is discretionary; that if a hearing is conducted today the licensee has an option to appeal any decision to the Court.

Chairman Stephens stated he thinks this matter was handled fairly innocuously by the licensee's attorney, however, he understands a situation where an attorney may be forced to have a court hearing.

Mr. Patlin stated if the Board chooses to grant a postponement, Mr. Cassens is requesting postponement to March 19, 2010.

Motion by Lloyd, that the Board postpone this item to the Board meeting of March 19, 2010.

Mr. Kouba stated while he agrees a postponement may be necessary, he does not believe it should be scheduled around the attorney; that if he is not available, other counsel should be available.

Ms. Abrams agreed.

The motion died for lack of a second.

Then, motion by Abrams, second by Kouba, that Item No. 7 be postponed to the Board meeting of March 5, 2010.

Ayes: Abrams, Kouba, Lloyd, Stephens

Noes: Wright

Absent: Clauss, Nemeth

Chairman Stephens declared the motion carried.

CONSENT CALENDAR

- 3. The City Clerk's Office reports that boundaries were set and Temporary Permits were issued or extended for the following applications:
- A-1. Sodexo America, LLC dba Sodexo, 1420 Austin Bluffs Parkway:

North: South side of Alta Point extended

South: North side of Cumberland Street extended
East: West side of Cragwood Drive extended
West: East side of Mariposa Street extended

A-2. CC & T, LLC dba GS Lounge, 315 Arvada Street:

North: South side of Victoria Street extended
South: North side of Southgate Road extended
East: West side of Arcadia Street extended
West: East side of Sierra Madre Street extended

A-3. Pahk Beverages, LLC dba P Westside Liquors, 1431 West Colorado Avenue:

North: South side of Platte Avenue extended South: North side of Cimarron Street extended

East: West side of 8th Street extended

West: East side of Woodbine Avenue extended

- B-1. KR Management Co. dba Krown Liquor 2850 South Academy Boulevard #120
- B-2. Loyal T's LLC dba Bar V 19 East Kiowa Street
- B-3. I-95, LLC dba I-95 Restaurant & Bar 5934 Stetson Hills Boulevard
- B-4. Research Wine & Liquor Corp. dba Research Wine & Liquor 5490 Powers Center Pt. #100

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

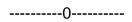
TRANSFER APPLICATIONS

4. Application of NY Boys, LLC dba Boriello Brothers NY Pizza, to transfer the Hotel and Restaurant Liquor License currently issued to CSRPP LLC dba Rotelli Pizza Pasta, 3240 Centennial Boulevard.

Attorney Gary Dailey entered his appearance on behalf of the applicant.

Mike Clemente was sworn and stated the establishment is 2280 square feet and seats 81 persons; that the patio area is approximately 950 square feet, seats 40 persons, and is surrounded by a fence; that \$200,000 is being invested in the business which was derived from a loan; that formal training will be provided to all employees; that the lease is 7 years.

Motion by Kouba, second by Abrams, that the application of NY Boys, LLC dba Boriello Brothers NY Pizza, to transfer the Hotel and Restaurant Liquor License currently issued to CSRPP LLC dba Rotelli Pizza Pasta, 3240 Centennial Boulevard, be approved as it appears all criteria has been met. The motion unanimously carried. Absent, Mr. Clauss and Mr. Nemeth.



5. Application of Bijou St Coffee LLC dba The Coffee Exchange, to transfer the Hotel and Restaurant Liquor License currently issued to Gracehill, LLC dba Coffee Exchange, 526 South Tejon Street.

Donna Gazzana was sworn and stated \$110,000 is being invested of which said funds were derived from savings in the amount of \$60,000 and a loan from the previous owner in the amount of \$50,000; that she has attended formal alcoholic beverage training; that the establishment is 1670 square feet and seats 36 persons; that there is a patio that seats 12 persons; that she has no criminal history.

Motion by Lloyd, second by Wright, that the application of Bijou Street Coffee LLC dba The Coffee Exchange, to transfer the Hotel and Restaurant Liquor License currently issued to Gracehill, LLC dba Coffee Exchange, 526 South Tejon Street, be approved as it appears all criteria has been met. The motion unanimously carried. Absent, Mr. Clauss and Mr. Nemeth.

SUSPENSION/REVOCATION HEARINGS

6. <u>Suspension/Revocation Hearing concerning the Tavern Liquor License issued to Murray Street Darts, Inc. dba Murray Street Darts, 609 North Murray Boulevard.</u>

It was the consensus of the Board that as a result of the January 15, 2010 meeting, a legal opinion was provided to the Board and based on the legal opinion, the Board finds it has jurisdiction to hear this matter.

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

Attorney James Dodd entered his appearance on behalf of the licensee.

In response to questions from Mr. Patlin:

Officer Jason Gaspar was sworn and testified he was at the establishment January 29, 2009 when he observed a tobacco store business; that cigarettes were displayed and sold from the booth. He stated the structure is located to the right of the second entrance; that a sign reading CJ's Tobacco Shop was on the structure.

Mr. Patlin submitted Exhibit 1, a copy of permit application and report of changes with a diagram of a floor plan dated in 2006.

In response to questions from Mr. Patlin:

Bruce Hicks was sworn and testified he is 80% stockholder of the corporation; that he signed a report of changes June, 2006.

Mr. Dodd stated he would stipulate that no application for modification of the establishment has been filed relating to the booth type structure.

Mr. Hicks described the modification as an oval shape with plexiglass, approximately 3' x 5' and 7.7' in height; that the booth is not attached to the ceiling; that there is a window that opens to the lobby area, as well as from the inside of the bar window.

Mr. Dodd submitted Exhibit B, a copy of a diagram reflecting the booth.

Mr. Hicks stated the walls of the structure were erected in October, 2008; that the area was previously a deejay and doorman booth; that a lease was entered into for the sale of tobacco; that the seating capacity has not changed.

In response to a question from Mr. Patlin, Mr. Hicks stated the structure was not previously identified as part of the licensed premises.

In response to a question from Ms. Abrams, Mr. Hicks stated CJ's Tobacco Shop is his business and cigarettes, cigars and smoking accessories are sold.

In response to questions from Mr. Dodd:

Amanda Bratovsky, President of the corporation, was sworn and testified the establishment was purchased in 2002; that when the business was purchased, the area previously had a half wall partition; that the area is not portable. She stated patrons approach both the structure and the bar area to purchase cigarettes.

In response to a question from Mr. Dodd, Mr. Hicks stated the booth is attached to two walls of the premises, but not to the ceiling.

Mr. Patlin cited Colorado State Regulation 47-302(A) of the Liquor Code which relates to modification of the premises and stated the Board is hearing this matter because the licensee failed to file a modification of the premises. He stated the modification is a substantial change to the existing premises.

Mr. Dodd stated Regulation 47-302 provides that a licensee has no obligation to file anything with the licensing authority if it is not a physical change that materially or substantially changes the licensed premises; that the licensee is required to file an application only when a modification or alteration will affect the usage of the premises. He stated he does not feel this was a substantial enough change to require an application for modification.

Ms. Abrams stated she believes the current use is a substantial change to the establishment by offering a retail area for sales of tobacco products.

Ms. Lloyd stated she does not feel the modification is substantial.

Mr. Wright stated he feels the modification is a structural change with a separate business which changes the usage of the premises.

Chairman Stephens stated he does not feel the modification was a substantial change and the use of the establishment has not changed except for the fact that a separate business is operated within the premises.

Mr. Kouba stated he agrees with Ms. Abrams and Mr. Wright; that while the usage of the premises may not be altered, there was a physical change.

Motion by Lloyd, that the licensee did not violate Regulation 47-302 of the Colorado Liquor Code.

The motion died for lack of a second.

Then, motion by Kouba, that the Board find the licensee violated Regulation 47-302 of the Colorado Liquor Code modifying the premises without prior written consent of local and state licensing authorities. The motion was seconded by Mr. Wright.

Ayes: Abrams, Kouba, Wright

Noes: Lloyd, Stephens Absent: Clauss, Nemeth

Chairman Stephens declared the motion carried.

Mr. Patlin stated the City requests 20 days suspension, 5 days active and 15 days to be held in abeyance for one year pending future violations; that the licensee also be ordered to restore the premises to its previous condition or file for a modification of the premises with the authorities.

Mr. Dodd stated he would oppose filing a modification of the premises; that it is the City Clerk's position that a modification would have to come back before the Board and a petition would have to be circulated. He cited Liquor and Beer Board Rule 21(C). He requested any penalty be stayed pending consideration of judicial review.

Mr. Kouba stated he does not support the level of penalty suggested by the City Attorney's Office; that the issue is to correct the situation; that he would support a motion which imposed a small suspension of one to three days all to be held in abeyance to allow the licensee to come into compliance; that the Rules contemplates there has to be evidence of needs and desires of the neighborhood which does not necessarily require a survey.

Chairman Stephens stated the licensee has the option to either apply for a modification or restore the premises to its original condition on file.

Mr. Dodd requested the licensee be provided 45 days to come into compliance which will allow the licensee 30 days to file an appeal in District Court as an option.

Ms. Abrams stated the licensee has indicated regardless of the Board's decision, it will either file for a Stay or file an appeal, and she feels the Board should take action based on the modification application itself.

Motion by Kouba, that the Tavern Liquor License issued to Murray Street Darts, Inc., dba Murray Street Darts, 609 North Murray Boulevard, be suspended for five days all to be held in abeyance for a period of one year pending future violations; that as a condition of the abeyance, the licensee should come into compliance within two weeks by removing the structure or filing a modification of the premises with the City Clerk's Office. The motion was seconded by Mr. Wright. The motion unanimously carried. Absent, Mr. Clauss and Mr. Nemeth.

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7. <u>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.</u>

SEE ACTION TAKEN EARLIER IN THE MEETING.

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At 12:25 p.m., motion by Kouba, second by Wright, that the Board adjourn.

Cindy N. Conway, CMC Deputy City Clerk