

**COLORADO SPRINGS, COLORADO  
COUNCIL CHAMBERS – CITY HALL  
107 NORTH NEVADA AVENUE  
OCTOBER 5, 2012 – 9:00 A.M.**

The Liquor and Beer Licensing Board met in regular session.

There were present: Chairman Stephens, Mr. Bursell, Mr. Clauss, and Mr. Nemeth. Absent: Mr. Kouba and Ms. Frias. Also present: Board Legal Advisors Kyle Sauer and Marc Smith.

**COMMUNICATIONS**

1. There was no action taken on this item.

**MINUTES**

2. Motion by Clauss, second by Bursell, that the Minutes of the Board meetings of June 15, 2012, July 20, 2012, August 3, 2012, and August 17, 2012 be approved as written. The motion unanimously carried. Absent, Mr. Kouba and Ms. Frias.

**CONSENT CALENDAR**

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

- A-1. Kum & Go LC dba Kum & Go #663, 5771 North Carefree Circle:

North: South side of Championship View extended  
South: North side of Carefree Circle extended  
East: West side of Birdie Court extended  
West: East side of Inspiration Drive extended

- A-2. Kum & Go LC dba Kum & Go #658, 6125 Barnes Road:

North: South side of Moon Ridge Drive extended  
South: North side of Range Overlook Heights extended  
East: West side of Lasater Trail extended  
West: East side of Integrity Center Point extended

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

**TRANSFER APPLICATION**

4. **Application of Kanatzar Restaurants LLC dba Shuttles Restaurant, to transfer the Hotel and Restaurant Liquor License currently issued to The 2 Brothers, LLC dba Cosmos Restaurant & Bar, 411 Lakewood Circle.**

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Stephen Kanatzar was sworn and stated that he is sole managing member and owner of the corporation; that the lease term is one year; that three employees have been TIPS trained and the remaining and future employees will be trained as well.

In response to questions from the Board, Mr. Kanatzar stated he previously managed restaurants prior to owning his own in Colorado Springs, including Pelican's, Solo's, and the Airplane Restaurant; that previous liquor code violations in 1992, 1997 and 2009 were dismissed or resolved with a warning letter; that \$7000 is being invested of which said funds were derived from personal savings; that the upstairs patio area is accessible only through the restaurant, as the gate from the swimming pool to the patio is locked; and that there are banquet spaces in the lower level which are included as part of the licensed area which will total 24,000 square feet.

Motion by Clauss, second by Nemeth, that the application of Kanatzar Restaurants LLC dba Shuttles Restaurant, to transfer the Hotel and Restaurant Liquor License currently issued to The 2 Brothers, LLC dba Cosmos Restaurant & Bar, 411 Lakewood Circle, be approved as it appears all criteria have been met. The motion unanimously carried. Absent, Mr. Kouba and Ms. Frias.

### APPLICATION HEARINGS

5. **Application of MC Enterprise, Inc. & 7-Eleven, Inc. dba 7-Eleven Store 35534A for a 3.2% Beer Off Premises License at 5280 Astrozon Boulevard.**

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

Carol Johnson, Esquire Petitioning Services, was sworn and stated her company conducted the petition survey which resulted in 121 favoring, 7 opposing, and 2 no opinion signatures.

Carol Spoden was sworn and stated that she is sole owner and President of MC the corporation with a franchise agreement with 7-Eleven, Inc.; that she has no criminal history; that she worked for 7-Eleven over 13 years; that the store has been open for six days and there have been requests for beer; that during her time as a manager, her stores had no violations of the liquor code; that all employees are required to complete an in-house training through 7-Eleven; that 7-Eleven owns the property and she leases from them; that she has a loan from 7-Eleven in the amount of \$139,750 and \$104, 648 in existing corporate funds.

In response to questions from the Board, Ms. Spoden stated the beer coolers are locked to during prohibited hours; that there are cameras and recordings of all transactions; that previous liquor code violations listed are relative to 7-Eleven and not her corporation.

Motion by Bursell, second by Clauss, that the application of MC Enterprise, Inc. & 7-Eleven, Inc. dba 7-Eleven Store 35534A for a 3.2% Beer Off Premises License at 5280 Astrozon Boulevard, be approved as it appears all criteria has been met. The motion unanimously carried. Absent, Mr. Kouba and Ms. Frias.

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6. **Application of 7-Eleven Inc. dba 7-Eleven Store 35822H for a 3.2% Beer Off Premises License at 3502 North Academy Boulevard.**

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

Carol Johnson, Esquire Petitioning Services, was sworn and stated her company conducted the petition survey which resulted in 140 favoring, 13 opposing, and 0 no opinion signatures; that there is one similar license type within the neighborhood boundary.

Allen Young was sworn and stated he is the field consultant for 7-Eleven which covers 14 stores in the area; that employees that violate the beer sales policies and training will be terminated; that the lease term is 10 years; that the location was formally a Bennigan's Restaurant and is anticipated to open in January, 2013; that a site manager will be appointed and reported when the store opens, that approximately \$1,600,000 will be invested from corporate funds.

Motion by Clauss, second by Nemeth, that the application of 7-Eleven Inc. dba 7-Eleven Store 35822H for a 3.2% Beer Off Premises License at 3502 North Academy Boulevard, be approved as it appears all criteria have been met. The motion unanimously carried. Absent, Mr. Kouba and Ms. Frias.

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7. **Application of 7-Eleven Inc. dba 7-Eleven Store 35600H for a 3.2% Beer Off Premises License at 7718 East Woodmen Road.**

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

Carol Johnson, Esquire Petitioning Services, was sworn and stated her company conducted the petition survey which resulted in 31 favoring, 1 opposing, and 2 no opinion signatures; that there are no similar license types within the neighborhood boundary.

Allen Young stated the testimony provided in Item No. 6 relating to the operation of the store and employee training is relative to this item; that the store is anticipated to open December, 2012; that approximately \$1,570,000 will be invested from corporate funds.

Motion by Clauss, second by Nemeth, that the application of 7-Eleven Inc. dba 7-Eleven Store 35600H for a 3.2% Beer Off Premises License at 7718 East Woodmen Road, be approved as it appears all criteria have been met. The motion unanimously carried. Absent, Mr. Kouba and Ms. Frias.

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8. **Application of Ramon Q's Cantina, LLC dba Ramon Q's Cantina for a Hotel and Restaurant Liquor License at 1005 West Colorado Avenue.**

Elizabeth St. James was sworn and stated she is sole owner and managing member of the corporation, as well as the Registered Manager; that she has no criminal history; that the lease term is two years; that all employees have attended formal alcohol service training; that the

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square footage is 1845 and seats 40; that there is a patio area which is enclosed by a four foot fence; that the patio will be supervised at all times; that there is a clear view from inside the premises and she intends to install security cameras for the premises; that \$10,000 is being invested of which said funds were derived from personal savings.

Sue Duffy Schwall, Liquor Licensing Professionals, was sworn and stated her company conducted the petition survey which resulted in 137 favoring, 3 opposing, and 7 no opinion signatures.

In response to questions from the Board, Ms. St. James stated the establishment will be operated as a restaurant, not a bar; that the fence surrounding the patio has a gate that a customer would walk through to get to the front entrance door.

Motion by Bursell, second by Clauss, that the application of Ramon Q's Cantina, LLC dba Ramon Q's Cantina for a Hotel and Restaurant Liquor License at 1005 West Colorado Avenue, be approved as it appears all criteria have been met. The motion unanimously carried. Absent, Mr. Kouba and Ms. Frias.

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9. **Application of Jumar, Inc. dba Peak Liquor for a Retail Liquor Store License at 6455 Source Center Point.**

Attorney Erika Kaiser appeared her appearance on behalf of the applicant.

Sue Duffy Schwall, Liquor Licensing Professionals, was sworn and stated her company conducted the petition survey which resulted in 103 favoring, 44 opposing, and 10 no opinion signatures; that there are no similar license types within the neighborhood boundary.

Julie Whitmoyer was sworn and stated she is President of the corporation, whose stock is owned by Jumar, Inc profit sharing plan; that \$2,473,282.03 is being invested of which said funds were derived from a loan in the amount of \$2,082,500; retirement funds of Mark Whitmoyer in the amount of \$34,216.28, retirement funds of Julie Whitmoyer in the amount of \$352,565.75 and personal savings of Julie Whitmoyer in the amount of \$4,000; that the investment includes the property and build-out; that the building is 5500 square feet, and the liquor store premises will be 2236 square feet with a separate entrance and address; that the store will be opened upon construction completion and licensing; that she will also operate an adjacent convenience store accessible from the liquor store; that there will be three employees who will attend formal training; that she has no criminal history; that her husband, Mark Whitmoyer, currently holds 3.2% Beer license at a 7-Eleven store without any violation history.

In response to questions from the Board, Ms. Whitmoyer stated they own the entire property and will also operate the convenience store and a Pita Pit restaurant; that access to the convenience store is through a turnstile; that a gate will block access between units during the hours the liquor store is closed; that all employees, including those working in the convenience store will attend formal alcohol training; that there will be cameras throughout the building.

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Motion by Clauss, second by Bursell, that the application of Jumar, Inc. dba Peak Liquor for a Retail Liquor Store License at 6455 Source Center Point, be approved as it appears all criteria has been met. The motion unanimously carried. Absent, Mr. Kouba and Ms. Frias.

### SUSPENSION/REVOCAION HEARING

10. **Suspension/Revocation Hearing of the Tavern Liquor License Temporary Permit issued to M & JB, LLC dba Irish House IV, 2001 East Platte Avenue.**

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

Attorney Vince Linden entered his appearance on behalf of the licensee and requested sequestration of witnesses, which was agreed to by Chairman Stephens.

Mr. Moore stated on or about September 5, 2012 the licensee and/or its managers, employees or agents engaged in or allowed narcotics transactions to take place on the premises in violation of Colorado Code of Regulations and Colorado Revised Statutes.

Detective Greg Young, Colorado Springs Police Department's Metro Vice Narcotics Intelligence Division, was sworn and stated on August 30, 2012 he purchased methamphetamine and oxycodone from Anna Marie Santistevens at her residence; that he arranged for a future purchase on September 5, 2012 at the Irish House IV

During the testimony of Detective Young, Mr. Moore submitted Exhibit 1, a diagram of the interior of the premises; Exhibits 2 through 8, various photographs of the interior; Exhibit 9, 10 and 12, photographs of methamphetamine and oxycodone purchased, and Exhibit 11, field test kit results.

Detective Young testified he went into the Irish House bar with Detective Henderen who remained outside; that approximately 10 to 15 other people were in the bar; that he sat at the bar and when Ms. Santisteven phoned, he went outside to meet her; that when they came back inside, they sat at a table near the door and negotiated a price for the transaction; that Ms. Santistevens pointed out the meth dealer sitting on the other side of the room; that he counted out \$370 on top of the table and handed the money to Ms. Santistevens who walked across room to the dealer and exchanged the money for an item inside a white plastic grocery bag without attempt to conceal the transaction. He stated Ms. Santistevens then walked over to the pill dealer seated at the bar, and they walked to the hallway/restroom area, and were gone for an extended period of time; that when they returned, Ms. Santistevens gave him a ziploc bag of meth and a crumpled up paper towel containing pills; that when he counted, there were nine pills and he told Ms. Santistevens who returned to the pill dealer seated at the bar who handed Ms. Santistevens another pill without an effort to conceal; that it appeared to him that the demeanor of the dealers and Ms. Santistevens was such that they were comfortable making the transactions in the open; that he walked out of bar and conducted a field test on the suspected meth, which showed a positive result, and following examination of the pills, they were determined to be positive for oxycodone.

In response to questions from Mr. Linden, Detective Young stated the prior purchase in August, 2012 was at Ms. Santistevens' home, and the meth dealer was different than the one

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at the Irish House; that he did not know the identity of the pill dealer, but thought it was a relative of Ms. Santistevens; that Ms. Santistevens selected the Irish House as the location for the transaction because she knew of the bar as a one stop shop. He stated to his recollection, there have not been prior allegations before the Board relating to drug activity at the establishment; that Ms. Santistevens is known to the CSPD as a dealer; that separate reports were written by Detectives Young, Genta, and Manzanilla without first comparing notes or debriefing; that Detectives Genta and Manzanilla arrived earlier and were inside playing pool for officer security and to witness any potential transaction; that he did not personally witness or hear any conversation between Ms. Santistevens and the bartender; that he did not see any cameras in the establishment.

In response to questions from the Board, Detective Young stated per Detective Genta, Ms. Santistevens was at the bar prior to his arrival and had asked the bartender, "was he there yet"; that to his knowledge the bartender did not converse with Ms. Santistevens or the dealers while he was present; that he was not aware if the dealers were drinking alcoholic beverages; that Ms. Santistevens did not recount the money; that the lighting in the bar was adequate; that there is no field test for identifying prescription drugs.

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**The Board recessed for lunch from 12:45 P.M. to 1:30 p.m.**

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Police Detective Kristen Genta, Metro Vice Narcotics and Intelligence Division, was sworn, and stated on September 5, 2012 she was on duty at the Irish House bar for officer safety, as well as to observe any potential transactions; that she and Detective Manzanilla arrived at approximately 1:30 P.M., ordered drinks and played pool; that she observed a group of individuals enter that appeared to know each other, and the group included an individual that matched the physical description of Ms. Santistevens; that it appeared the bar patrons were aware of the activities of Detective Young and Ms. Santistevens; that the activities she observed were not concealed; that the behavior of the bar patrons led her to believe they were aware a narcotics transaction was taking place; that the bartender had a clear view of the bar and patrons; that once Detective Young left the bar, about five people, including Ms. Santistevens left.

In response to questions from Mr. Linden, Detective Genta testified that they were at the bar to provide officer safety and to witness any narcotic transactions; that she was acting as surveillance during the August transaction, but was unable to see Ms. Santistevens from her vantage of about a block away; that Ms. Santistevens arrived at the bar prior to Detective Young; that Detective Young entered the bar, placed a phone call, and then both he and Ms. Santistevens went outside for a couple of minutes and returned; that she observed Ms. Santistevens approach two Hispanic woman separately, but did not witness the actual drug transaction or any exchange of money.

In response to questions from the Board, Detective Genta stated she was in the bar approximately 20 minutes; that the bartender was focused on the patrons; that she heard the

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bartender ask the person seated at the bar "is he here yet?", but it was not Ms. Santistevens he asked.

Michael Bowden, owner of the Irish House IV, was sworn and stated he purchased the bar and has been operating with a temporary permit since April 12, 2012; that he works at the bar approximately 60 hours a week; that he has no criminal convictions, and has never seen any activity that could be considered drug activity.

Mr. Linden submitted Exhibits A through L, photographs of the interior of the bar.

Mr. Bowden testified that on September 5, 2012, Tina Trevizo was the employee on duty; that he does not believe there are customers dealing drugs in his establishment; that he has installed a security system alarms and seven cameras, however the recording is only retained 14 days and the monitor display was not functioning properly during that time period, so there is no recording of the day's events; that he does not know Ms. Santistevens by description or by name; that the bar has been closed since the summary suspension of September 21, 2012; that patrons who do not order food or beverage are asked to leave and not loiter; that when light is coming through the door and windows, it is difficult to see the entire interior area from behind the bar.

In response to questions from Mr. Moore, Mr. Bowden testified that he tries to maintain his schedule to be at the bar when the highest activity takes place, but does not notify or coordinate his time with employees; that when he is not there, the bartender on duty is in charge; that some customers come in to socialize so he is uncertain of what the typical duration of time is for patrons, but they are not allowed to remain or loiter in the premises without purchasing food or drink; that he is aware of the reputation of the Platte Avenue area; that he has had discussions with employees regarding the procedures if anything occurs, that not all areas of the establishment are completely visible from the bar, however he installed cameras in order to monitor less visible areas even though they were not in proper operation on that day; that he and his staff were unaware of any of the alleged activity until the order for summary suspension was served September 21, 2012.

In response to questions from the Board, Mr. Bowden stated the bar hours are 10:00 AM to 2:00 AM; that he has three employees in addition to himself; that the busiest time of the week is during Happy Hour and Thursday night through the weekend, with about 30 to 40 customers; that the seating capacity is 49; that generally the bartender stays behind the bar, and there is no table service; that during slower times, only the bartender on duty is responsible for both bar service and food preparation, and could be occupied by other duties away from the bar area for a few minutes at a time.

Mr. Moore stated due to the testimony, the prosecution would rescind the accusation that the bartender on duty asked Ms. Santistevens, "was he there yet".

Mr. Linden submitted Exhibit N, Detective's Statement by Detective D. Manzanilla, dated September 12, 2012.

Mr. Moore stated there is sufficient evidence that narcotics transactions occurred and the drugs later tested positive; that the licensee or employees had constructive knowledge of the

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illegal activity; that the permit holder has a responsibility to ensure these activities do not occur; that the drug transactions are offensive to the senses of the average citizen, and therefore, the Board should find that violations of the Colorado Code of Regulations 47-900(A), Conduct of Establishment, did occur.

Mr. Linden stated that there was no evidence presented that the permit holder or its employees allowed or had knowledge of any drug activity, and it has not been established that the pills were even illegal substances; that the field test should not be admissible; that just attempting to pass narcotics, whether real or not, is not a technical violation; that if the detectives were there for the purpose of witnessing the transaction, and did not see any money or drugs change hands, the bartender could not possibly be expected to when the alleged transaction was out of view of the bartender; that Detective Young's testimony was faulty and even false, as he could not identify that the suspect was already in the bar until he called her on the phone; that the sum total of evidence used to order the summary suspension was inaccurate; that Santistevens is currently being held in the Criminal Justice Center and could have been subpoenaed to present testimony.

Mr. Moore stated any confusion has been cleared up with the Board during the hearing, and nothing in the testimony presented was false; that Detective Young's testimony was corroborated and he was the primary credible witness; that courts have ruled that circumstantial evidence such as field tests are admissible; that charges are brought forward when the City believes there is sufficient evidence of violations.

Mr. Clauss stated he does not believe there was a foundation or proof that the permit holder had any constructive or inferred knowledge of the alleged violations; that the basis for the summary suspension has not been proven; that he does not find it unusual that there would be patrons that did not order food or beverages in that neighborhood.

Mr. Bursell stated the evidence presented today did not reach the level of the allegations that led to the summary suspension and were substantially different than the activity described in that hearing, and the underlying basis for the summary suspension was not upheld by the testimony and evidence presented; that there was no indication that the permit holder engaged in, or permitted unlawful activity; that the bartender's actions as presented did not indicate any deliberate ignorance or constructive knowledge that permitted the activity.

Mr. Nemeth stated he would have liked to have heard testimony from the bartender, however, even though the testimony of Detective Young indicated that the drug transactions occurred on the premises, the preponderance of the evidence did not reach the level of constructive knowledge by the permit holder or its employees, and are not enough to revoke the privileges of the permit.

Chairman Stephens stated given the various discrepancies, he does not believe there was any substantial testimony upholding the allegation that the permit holder or employee permitted the unlawful behaviors; that since there were no previous allegations of drug activity or compliance issues, and since the other detectives present did not witness the transactions, the average citizen probably could not see it or be offended; that while there probably was a drug transaction, the preponderance of the evidence does not reach the level of knowledge by the permit holder or its employees.

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Motion by Bursell, second by Clauss, that based upon the testimony and evidence, the allegations of the Order to Show Cause of M & JB, LLC dba Irish House IV, 2001 East Platte Avenue, are not supported, and therefore, the suspension is lifted and the business is allowed to resume sales immediately. The motion unanimously carried. Absent, Mr. Kouba and Ms. Frias.

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At 3:55 P.M., there being no further business, the

**BOARD ADJOURNED**

Lee McRae  
License Enforcement Officer