



STATE OF ARIZONA
 ARIZONA STATE LIQUOR BOARD
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JANICE K. BREWER
 Governor

J. D. GHELFI
 Board Chair

ALAN EVERETT
 Director

Arizona State Liquor Board Hearing Minutes
 January 12, 2012

Members Present: J.D. Ghelfi -Chair, Bill DuPont -Vice-Chair, Robin Cantrell, Jim Carruthers, Tim Linden, Mike Farley, Vikki Scarafiotti

Members Absent: None

Counsel Present: Keely Verstegen, Assistant Attorney General

Staff Present: Stefanie Murphy, Board Administrator

A. Call to Order

The hearing of the Arizona State Liquor Board was called to order on January 12, 2012 at 9:02 a.m. with Mr. Ghelfi presiding.

Roll Call

All board members were present.

B. Agenda: review, consideration and action

1. Restaurant Liquor License No. 12078668-Original Application

Theresa June Morse, Agent
 The Neutral Korner, LLC
 The Neutral Korner Restaurant
 3611 S. 16th Street
 Phoenix, AZ 85040

This matter was continued from the November 3, 2011 hearings and was set for hearing due to Department protest. The applicant, Bessie Mae Childers Santa Cruz, appeared at the hearing and was not represented by counsel. Assistant Attorney General Keely Verstegen appeared on behalf of the Department of Liquor Licenses and Control. Chairman Ghelfi noted that a request to withdraw the application was filed by the applicant. There was no objection.

Motion to Withdraw - Farley
 Seconded - Carruthers
 Yay - Ghelfi, DuPont, Cantrell, Carruthers, Linden, Farley, Scarafiotti
 Nay - None
 Abstained - None
 Disposition - Withdrawal of application granted

2. Bar Liquor License No. 06070674- Location Transfer Application

From:
 Combos Club
 6444 W. Glendale Avenue

To:
 Theresa June Morse, Agent
 Combos Club, LLC

Glendale, AZ 85301

Mr. Lucky's
3660 NW Grand Avenue
Phoenix, AZ 85019

This matter was set for hearing because the City of Phoenix recommended disapproval of the application and due to public protest. The applicant was not present and was represented by counsel, Peter Schelstraete. Assistant City Prosecutor Elizabeth Sugges appeared on behalf of the City of Phoenix. Assistant Attorney General Keely Verstegen was present to provide legal advice to the Board. Chairman Ghelfi noted that a request to withdraw the application was filed by the applicant as they were unable to obtain the required use permits through the city. There was no objection. The matter was moved to the end of the agenda to allow a withdrawal form to be filed with the Department.

Motion to Withdraw -	Farley
Seconded -	Cantrell
Yay -	Ghelfi, DuPont, Cantrell, Carruthers, Linden, Farley, Scarafiotti
Nay -	None
Abstained -	None
Disposition -	Withdrawal of application granted

3. Restaurant Liquor License No. 12078806- Original Application

En T. Nguyen, Agent
Hoa Binh
1818 W. Bethany Home Road
Phoenix, AZ 85015

This matter was continued from the December 1, 2011 board hearings to allow the applicant to obtain an interpreter and was set for hearing because the City of Phoenix recommended disapproval of the application. The applicant, En T. Nguyen, was present at the hearing along with her daughter and was not represented by counsel. Assistant City Prosecutor Barbara Parascandola appeared on behalf of the City of Phoenix. Assistant Attorney General Keely Verstegen was present to provide legal advice to the Board. The applicant's daughter explained that she was unable to obtain a court certified interpreter or retain an attorney. It was noted that a withdrawal form was filed by the applicant with the Department. There was no objection.

Motion to Withdraw -	Carruthers
Seconded -	Farley
Yay -	Ghelfi, DuPont, Cantrell, Carruthers, Linden, Farley, Scarafiotti
Nay -	None
Abstained -	None
Disposition -	Withdrawal of application granted

The Board proceeded to item #5.

4. Restaurant Liquor License No. 12113204- Original Application

Mehmood Mohiuddin, Agent
Hitching Post Gold Canyon LLC
Hitching Post Gold
6030 S. Kings Ranch Road
Gold Canyon, AZ 85118

This matter was set for hearing due to public protest. The applicant, Mehmood Mohiuddin, was present at the hearing and was represented by counsel, Peter Schelstraete. The public protestor, Lori Hlavin, was present at the hearing and was represented by counsel, Kimberly Mooney. Assistant Attorney General Keely Verstegen was present to provide legal advice to the Board.

Ms. Mooney presented support materials to the Board. Mr. Schelstraete noted that he had not received the support materials for review. The Board recessed from 10:42 a.m. to review the support material and reconvened at 10:53 a.m. Mr. Schelstraete noted an objection to the filing of the support material as they were not filed within two weeks of the hearing. Chairman Ghelfi recommended a continuance to allow the parties to review the materials.

Motion to Continue -	Farley
Seconded -	Carruthers
Yay -	Ghelfi, DuPont, Cantrell, Carruthers, Linden, Farley, Scarafiotti
Nay -	None
Abstained -	None
Disposition -	Continued to the February 2, 2012 hearings

The Board proceeded to item C.

5. Restaurant Liquor License No. 12078791- Request for Rehearing

Paul Daniel Wicher, Agent
Shark Bite, LLC
Dirty Pelican Grill
6718 E. Deer Valley Road #101-104
Glendale, AZ 85310

This matter was set to consider the applicant's Request for Rehearing filed with the Board. This application was denied at the December 1, 2011 board hearings. The applicant, Shark Bite LLC, appeared at the hearing through its counsel, Harvey Yee. Assistant City Attorney Paul Li appeared on behalf of the City of Glendale. Assistant Attorney General Keely Versteegen appeared on behalf of the Department of Liquor Licenses and Control.

Mr. Yee confirmed that the Board received the pleadings from the City and the Department. He noted that the Board order from the December hearing was improper as restaurant criteria was used as the basis to deny the location. He noted an objection to the City's request for findings in respect to Damian Hartz and cited case law. Chairman Ghelfi stated that if a rehearing is granted it would be a de novo hearing. Mr. Yee also noted an objection to documents never presented to the Board or the Department and Chairman Ghelfi stated this would be addressed at the time of a rehearing if granted. Mr. Yee asked that the board order be amended to remove the location denial and instead find the applicant failed to meet restaurant criteria rules and deny the license as to person based on failure to establish capability, reliability, and qualification. Mr. Yee noted a rehearing is not necessary if the order is amended. Mr. Li noted Mr. Hartz' role in the operation of the business and asked the Board to make a finding. Mr. Li also noted that the detective from the City and the State investigator would be available to testify. Ms. Versteegen stated the Department's position and noted that a denial based on location is improper and stated the Department's protest is based on restaurant criteria. The Department asked that the Board consider granting a rehearing limited to reconsider the order. Mr. Yee referenced page 6 of his filing and noted that the request was limited to reversing the denial as to location and was not a request for a rehearing. There was discussion regarding presumed facts and lack of evidence, witnesses and testimony presented at the last hearing. There was also discussion regarding the issuance of an interim permit at a new location. Chairman Ghelfi noted his request for a de novo hearing and to not limit the hearing to location. Mr. Li offered a solution which included Mr. Yee presenting a witness for cross examination. Mr. Yee said a witness is not needed as Department records would establish the existing license at the location.

There was Board discussion regarding the action to be taken regarding the request for rehearing in this matter. Ms. Cantrell had questions regarding the current ownership of the corporation. Mr. DuPont noted the application should have been withdrawn when the ownership changed and a new application be filed.

Mr. Carruthers recused himself as he was not present at the December hearings in which this matter was heard and the license was denied. Chairman Ghelfi noted Mr. Carruthers would not vote on this matter.

Mr. Yee stated the Board could not deny as to location and could deny as to personal qualification and restaurant criteria. There was discussion regarding the amendment to the board order and the one year prohibition that comes with a denial as to location.

Motion to convene in executive session - Ghelfi
 Seconded - Farley
 Yay - Ghelfi, DuPont, Cantrell, Linden, Farley, Scarafiotti
 Nay - None
 Abstained - Carruthers
 Disposition - Convene in executive session

The Board convened in executive session at 9:52 a.m. and reconvened in open session at 10:29 a.m.

Chairman Ghelfi stated his position to approve a rehearing as a de novo hearing. The board discussed the process of a de novo hearing.

Motion to Grant Rehearing (de novo hearing)-DuPont
 Seconded - Linden
 Yay - Ghelfi, DuPont, Cantrell, Linden, Farley, Scarafiotti
 Nay - None
 Abstained - Carruthers
 Disposition - Rehearing (de novo hearing) granted

The Board discussed the time and date of the rehearing. The parties agreed to hold the rehearing on February 2, 2012.

The Board proceeded to item #4

C. Minutes

Motion to approve November 3, 2011 minutes -Farley
 Seconded - Cantrell
 Yay - Ghelfi, DuPont, Cantrell, Carruthers, Linden, Farley, Scarafiotti
 Nay - None
 Abstained - None
 Disposition - November 3, 2011 minutes approved

Motion to approve November 3, 2011 executive minutes -Farley
 Seconded - Cantrell
 Yay - Ghelfi, DuPont, Cantrell, Carruthers, Linden, Farley, Scarafiotti
 Nay - None
 Abstained - None
 Disposition - November 3, 2011 executive minutes approved

It was noted that Ms. Cantrell was not present at the November 17, 2011 hearings.

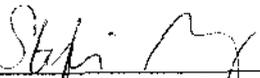
Motion to approve November 17, 2011 minutes -DuPont
 Seconded - Farley
 Yay - Ghelfi, DuPont, Carruthers, Linden, Farley, Scarafiotti
 Nay - None
 Abstained - Cantrell
 Disposition - November 17, 2011 minutes approved

D. Call to the Public

Diane Harris of the Alhambra Neighborhood Association addressed the Board regarding A.R.S. 4-201(E) and the guidelines adopted by the Board to designate a spokesperson. She noted Alhambra Neighborhood Association is a registered neighborhood association with the City of Phoenix and does not have elected officers. She described the various roles, liaisons and spokespersons within the association. She stated A.R.S. 4-201(E) presents an issue for her association and others that do not have elected officers. She noted discussions with Mr. Isaacson regarding the liquor

omnibus bill that introduced the requirement of a letter of authority designating a spokesperson and the association's standing with various boards and commissions. She stated she was voted as the spokesperson for the Alhambra Neighborhood Association in all liquor matters. She noted discussion with Pearlette Ramos, Assistant Director of Administration of the Department of Liquor Licenses and Control regarding neighborhood associations being exempt and the association having standing to testify at the hearings. She noted the association did not need to testify at today's hearings due to the use permit being denied by the city and the Board of Adjustments. Ms. Verstegen recommended an agenda item be set for the upcoming agenda for review, discussion and possible action regarding the guidelines. Chairman Ghelfi asked that the item be on the February 2, 2012 hearings. Mr. DuPont recommended Ms. Harris contact the city of Phoenix for assistance.

The Board adjourned at 11:14 a.m.



Stefanie Murphy
Administrator of the
Arizona State Liquor Board

4/2/12

Date