



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
 December 1, 2011

Members Present: J.D. Ghelfi -Chair, Bill DuPont -Vice-Chair, Robin Cantrell, Tim Linden, Mike Farley, Vikki Scarafiotti
 Members Absent: Jim Carruthers
 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 December 1, 2011 at 9:01 a.m. with Mr. Ghelfi presiding.

Roll Call

Mr. Carruthers was absent. All other board members were present.

B. Agenda: review, consideration and action

1. Restaurant Liquor License No. 12078823-Original Application

Araik Khachatryan, Agent
 Arik Company LLC
 Aros Grill
 1606 E, Bell Road, Ste 101-104
 Phoenix, AZ 85022

This matter was set for hearing due to Department protest and because the City of Phoenix recommended disapproval of the application. The applicant did not appear at the hearing and was represented by counsel, Peter Schelstraete. Assistant City Prosecutor Barbara Parascandola appeared on behalf of the City of Phoenix. Assistant Attorney General Keely Verstegen appeared on behalf of the Department of Liquor Licenses and Control. Chairman Ghelfi noted that a request to continue the hearing was filed by the applicant. There was no objection.

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

2. Restaurant Liquor License No. 12078806- Original Application

En T. Nguyen, Agent
 Hoa Binh

1818 W. Bethany Home Road
Phoenix, AZ 85015

This matter was set for hearing because the City of Phoenix has recommended disapproval of the application. The applicant, En Nguyen, was present 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.

It was recommended the matter be continued to the next hearings allow the applicant to obtain an interpreter.

Motion to Continue -	DuPont
Seconded -	Farley
Yay -	Ghelfi, DuPont, Cantrell, Linden, Farley, Scarafiotti
Nay -	None
Abstained -	None
Disposition -	Continued to the January 12, 2012 hearings

3. Bar Liquor License No. 06040030- Person & Location Transfer Application

From:	To:
Kelly Roberta Haydon, Agent Aurora Property & Management, LLC Kelly's Broad Street Brewery 190 N. Broad Street Globe, AZ 85501	Elliott Jon Glasser, Agent CCLX, LLC CCLX 4305 E. State Highway 260, Ste 2 Star Valley, AZ 85547

This matter was continued from the October 6, 2011 and November 3, 2011 board hearings and is set for hearing because the Town of Star Valley failed to provide a recommendation. The applicant was not present at the hearing and was represented by Counsel, Donna McDaniel. Assistant Attorney General Keely Verstegen was present to provide legal advice to the Board. Ms. McDaniel requested the application be withdrawn on behalf of the applicant. The matter was moved to the end of the agenda to allow a withdrawal form to be filed with the Department.

The Board proceeded to item #4.

4. Restaurant Liquor License No. 12078791- Original Application

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

This matter was continued from the November 3, 2011 board hearings and is set for hearing due to Department protest and because the City of Glendale recommended disapproval of the application. The applicant was not present at the hearing and was represented by counsel, Harvey Yee. Assistant Attorney General Keely Verstegen and Officer Mary Jaramillo appeared on behalf of the Department of Liquor Licenses and Control. Assistant City Prosecutor Paul Li and Detective Mitchell Ervin appeared on behalf of the City of Glendale.

Ms. Verstegen stated the Department's position to deny the liquor license application based upon information provided demonstrating that the applicant is not capable, qualified or reliable to hold a liquor license and that the establishment does not meet the restaurant criteria. Mr. Yee asked that the matter be moved to the end of the agenda to allow time to share documents with counsel for the City of Glendale and the Department. Mr. Yee also stated that the applicant intends to withdraw the application as a deal between Paul Wicher and Damian Hartz has been terminated and a new buyer exists. There was no objection to moving the item to the end of the agenda.

The Board proceeded to item #5.

5. Restaurant Liquor License No. 12104137- Original Application

Jesus Efrain Escalante, Agent
Mariscos El Nuevo Mazatlan
4749 S. 12th Avenue
Tucson, AZ 85714

This matter was set for hearing because the City of Tucson recommended disapproval of the application and due to public protest. The applicant, Jesus Efrain Escalante, appeared at the hearing and was represented by counsel, Thomas Aguilera. Oscar Guerrero was present at the hearing to interpret for the applicant. Hector Hernandez and Kate Kish were also present and were sworn and testified. Assistant City Attorney C. Hay-Mie Cho appeared on behalf of the City of Tucson. There were no public protestors present at the hearing and they were not represented by counsel.

Administrative matters were presented to the board in regards to three letters of protest that were filed with the city and the board. All three letters were found to be filed in a timely manner. It was determined that the individual letters of protest filed by Yolanda Herrera and Beki Quintero were invalid as they live outside the 1-mile radius. Mr. Aguilera asked that these letters be excluded from evidence. The Board granted the exclusion. Mr. Aguilera next addressed the protest letter filed by the Sunnyside Neighborhood Association and noted that a letter of authority designating a spokesperson was not filed. Mr. Aguilera asked that this letter of protest also be excluded from evidence. There was discussion regarding A.R.S. § 4-201(E) and the guidelines adopted by the Board in regards to letters of authority designating a spokesperson.

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

The Board convened in executive session at 9:36 a.m. and reconvened in open session at 9:41 a.m.

Mr. DuPont noted that based on the advice from legal counsel the Board would enforce the statutes relating to letters of protest. The motion to exclude the letter of protest filed by the Sunnyside Neighborhood Association was granted. Witnesses Hector Hernandez, Jesus Escalante and Katherine Kish were sworn. Interpreter Oscar Guerrero was also sworn and noted his background and qualifications.

Ms. Kish, Legal Assistant to Mr. Aguilera, was called as witness. Photos were presented to the Board. The city had no objection. There was testimony regarding restaurant liquor licenses in the area, communication with neighbors and business owners in the area and a letter of support. There was a motion to enter the letter as an exhibit. The City of Tucson objected on the grounds that it was untimely.

Mr. Hernandez was called as witness. He noted his professional background, liquor training, his relationship with the applicant and intentions to manage the proposed establishment. Mr. Hernandez testified that he helped the applicant apply for permits with the City of Tucson and worked with the applicant to bring the building up to code. There was testimony regarding the menu, expansion and improvement plans, installation of lighting, and financial interest.

The Board recessed at 10:28 a.m. and reconvened at 10:38 a.m.

Mr. Escalante was called as witness. Oscar Guerrero was present to interpret. Mr. Escalante noted his experience in the restaurant industry and preparing seafood. There was testimony regarding the menu, number of hours worked at the restaurant, plans to hire 4-5 employees, a past health permit violation, loss of sales due to the absence beer, liquor training, neighborhood support, improvements, personal investment, and a past DUI charge.

The City did not call any witnesses. Both parties made closing arguments. During board discussion, Mr. DuPont noted that saturation was not an issue. Mr. Farley discussed the DUI, permits obtained, and lighting at the establishment. Mr. Linden made a motion to grant the license based on the applicant's completion the appropriate liquor law training and the applicant has met the requirements of the City of Tucson and those of the Department of Liquor License and Control.

Motion to Grant -	Linden
Seconded -	DuPont
Yay -	Ghelfi, DuPont, Cantrell, Linden, Farley, Scarafiotti
Nay -	None
Abstained -	None
Disposition -	License granted

The Board went back to item #3. The Board was presented with a certified motion to withdraw Liquor License No. 06040030. There was no Board discussion.

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

The Board went back to item #4. The Department and the City of Glendale did not support a withdrawal of application therefore the hearing continued. Mr. Yee had no witnesses to call. There was discussion regarding who Mr. Yee was representing at the hearing and the ownership of Shark Bite, LLC. Mr. Yee stated Paul and Jennifer Wicher no longer own interest in Shark Bite, LLC and clarified that he represents the entity Shark Bite, LLC. Mr. Yee stated that on June 17, 2011 Damian Hartz sold the membership interest in Shark Bite, LLC to Paul and Jennifer Wicher subject to contingencies. The parties have now terminated their agreement therefore the shares now belong to Damian Hartz.

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

The Board convened in executive session at 11:35 a.m. and reconvened in open session at 11:46 a.m.

Mr. Yee waived opening statements and presented no witnesses or testimony. Mr. Li also waived opening statements and noted he would call one witness for testimony. Ms. Verstegen stated the Department's position to deny the license and noted Officer Jaramillo was available for questions. There was discussion regarding the issue of location and meeting the restaurant requirements.

Mr. Li called Detective Ervin as witness. There was testimony regarding the review of the liquor license application, floor plan, site inspection, menu items, entertainment, advertisements, and operation plan. Detective Ervin stated that the establishment did not meet the requirements for a restaurant liquor license. Mr. Yee made record that a copy of the Department protest and City discovery was not provided to him prior to the hearing and an appeal may be filed. There was discussion regarding an application filed by Diane McCallum and an interview. Mr. DuPont recommended a continuance to allow Mr. Yee to obtain copies of the protests and discovery materials.

Motion to convene in executive session -	Scarafiotti
Seconded -	DuPont

Yay -	Ghelfi, DuPont, Cantrell, Linden, Scarafiotti
Nay -	Farley
Abstained -	None
Disposition -	Convene in executive session

The Board convened in executive session at 12:20 p.m. and reconvened in open session at 12:32 p.m.

Mr. Yee did not make an objection as it relates to disclosure. There were was no further discussion. Mr. Yee waived closing arguments. Mr. Li made closing arguments and noted there was sufficient evidence to show that this establishment is a bar and to deny the restaurant liquor license application. Ms. Verstegen made closing arguments and referenced page 9 of the investigative report regarding restaurant criteria and made a request to deny the license application and pull the interim permit in place. There was Board discussion.

Ms. Scarafiotti made a motion to deny the liquor license application as to person and location as the public convenience will not be served and the applicant is not capable, qualified or reliable, and included that the interim permit be revoked. Chairman Ghelfi asked that motion be amended to include the fact that no evidence was presented as it related to the personal qualifications of the applicant and location. Mr. Farley seconded the motion. Mr. DuPont asked that the motion be amended to include the bar atmosphere including the number of high top chairs, televisions, menu and liquor advertisements on Facebook. Ms. Scarafiotti did not amend her motion. Mr. Farley withdrew his second to the motion. There being no second, the motion failed.

Mr. DuPont made a motion to deny the liquor license application based on person qualifications as no testimony was presented therefore the applicant failed to make a satisfactory showing of being capable, qualified and reliable to hold a liquor license and based on the current location as it exists, the floor plan consists of 95% high-top tables, numerous televisions and the menu has been reduced to appetizers and finger foods and live entertainment and advertisements on Facebook indicate that the location operates as a bar.

Motion to Deny P&L -	DuPont
Seconded -	Farley
Yay -	Ghelfi, DuPont, Cantrell, Linden, Farley, Scarafiotti
Nay -	None
Abstained -	None
Disposition -	License denied as to Person and Location

Motion to revoke the interim permit -DuPont	
Seconded -	Farley
Yay -	Ghelfi, DuPont, Cantrell, Linden, Farley, Scarafiotti
Nay -	None
Abstained -	None
Disposition -	Interim permit revoked

Mr. Linden left the hearings.

6. Bar Liquor License No. 06070620- Person & Location Transfer Application

From:	To:
Lynda Renee Losee, Agent	Jesus Manuel Altamirano, Agent
Renee’s Grand Avenue Tavern LLC	Antars Sports Bistro I, LLC
Renee’s Grand Avenue Tavern	Antars Sports Bistro
2448 Grand Avenue	699 S. Mill Avenue #201
Phoenix, AZ 85009	Tempe, AZ 85281

This matter was continued from the November 17, 2011 board hearings and was set for hearing due to Department protest. Subsequent to this matter being scheduled for hearing, the Department withdrew its protest. The Board conducted a hearing regarding the applicant’s capability, qualifications and reliability to hold a license. The applicant, Alan Antar, appeared at the hearing and was represented by counsel, William Lally. David Antar,

Executive Chef, and Theresa Morse, Liquor Law Trainer/Consultant, were also present and were sworn. The Department of Liquor Licenses and Control was not represented at the hearing.

Mr. Lally made a brief opening statement and noted the support of the Department after meetings with the Investigations Division and presenting requested documents to answer ownership questions and the withdrawal of the liquor license at the Phoenix location and the inactive status of the interim permit at the Tempe location. There was discussion regarding the contract in place with Arizona State University.

David Antar, Manager and Executive Chef, was called as witness. Mr. Antar noted his professional experience in the gourmet restaurant industry, liquor license training and chef and catering duties at both the Phoenix and Tempe locations. There was testimony regarding his role as Chef at the Phoenix location, partnership issues and past violations while operating on an interim permit. He testified that changes to management and staff and improvements to security and operations policies are in place to make the Tempe location successful as a gourmet sports bar. Mr. DuPont noted concerns having staff with liquor violations working at the Tempe location near the college and underage students.

Alan Antar was called as witness. There was testimony regarding the dissolution of professional and financial ties with former partner Michael Columbia. There was testimony regarding the number of hours worked at the Tempe location, liquor law training and continual education, changes to staff, dress code and expansion plans.

The Board recessed at 2:00 p.m. and reconvened at 2:12 p.m.

Mr. Antar concluded testimony. Theresa Morse, liquor law trainer and consultant, was called as witness. Ms. Morse testified as her to role in the application processes, liquor law training, security manual and improvements to the establishment to ensure compliance. Mr. Lally made closing arguments and there was Board discussion. Chairman Ghelfi noted potential problems at the Tempe location versus Phoenix due to proximity and location to the university. Mr. Farley noted that the applicant has made efforts to resolve issues and retained counsel and professional assistance. Ms. Scarafiotti noted her objection to the liquor license application due to history, poor management decisions, past violations, and sensitivity of the new location. Mr. DuPont noted the difference in clientele and concerns with judgment and behavior. Ms. Cantrell noted her objection to the way the Phoenix location was managed. Chairman Ghelfi noted concerns with the Phoenix location and the issuance of an interim permit at the Tempe location. There was more discussion regarding the security plan, lease agreement, management, the number of bars on Mill Avenue and the demographics in Tempe.

Mr. Farley made a motion to grant the liquor license as the applicant has made efforts to correct problems at the previous and current locations therefore demonstrating they are capable, qualified and reliable to hold a liquor license and they have hired professional services including accounting, legal, liquor law and security.

Motion to grant -	Farley
Seconded -	Cantrell
Yay -	Ghelfi, DuPont, Cantrell, Farley
Nay -	Scarafiotti
Abstained -	None
Disposition -	License granted

C. 2012 Hearing Schedule: Review, discussion and possible action

There was Board discussion regarding the draft 2012 hearing schedule presented. Ms. Cantrell made a recommendation to move the hearings from the first Thursday of each month to the first Monday of each month. There was no objection. Chairman Ghelfi recommended a trial period through May. It was noted that there were applications that have already been scheduled or continued to the January and February 2012 hearings. Chairman Ghelfi made a recommendation to approve the hearing schedule as amended, leaving January and February set for the first Thursday of the month, and the March through May hearings will be held on the first Monday of the month with the matter coming back before the Board at the April hearings to adopt hearing dates for June through December.

Motion to approve 2012 Hearing Schedule as amended-	Farley
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Seconded - Scarafiotti
Yay - Ghelfi, DuPont, Cantrell, Farley, Scarafiotti
Nay - None
Abstained - None
Disposition - 2012 hearing schedule approved as amended

D. Minutes

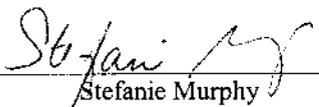
Motion to approve October 2011 minutes - Farley
Seconded - Cantrell
Yay - Ghelfi, DuPont, Cantrell, Farley, Scarafiotti
Nay - None
Abstained - None
Disposition - October 2011 minutes approved

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

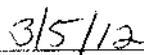
E. Call to the Public

None.

The Board adjourned at 3:25 p.m.



Stefanie Murphy
Administrator of the
Arizona State Liquor Board



Date