



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
May 2, 2013

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

Members Absent: None

Counsel Present: Montgomery Lee, Assistant Attorney General
Diana Rasner, Assistant Attorney General

Staff Present: Denise Bale, Board Administrator

A. Call to Order

The hearing of the Arizona State Liquor Board was called to order on May 2, 2013 at 9:09 a.m. with Mr. Ghelfi presiding.

Roll Call

All board members were present.

B. Agenda: review, consideration and action

1. Restaurant Liquor License No. 12079318 - Original Application

Robert Farrell Reinke, Agent
Cingroup 500, LLC
Gus's New York Pizza Bar and Grill
6135 N. 35th Avenue #123B
Phoenix, AZ 85138

This matter is set for hearing because the City of Phoenix recommended disapproval of this application and due to Department and public protest. There is an interim permit in place at this location. Assistant Attorney General Montgomery Lee appeared on behalf of the Department of Liquor Licenses and Control. Assistant City Prosecutor Elizabeth Sugges appeared on behalf of the City of Phoenix. Assistant Attorney General Diana Rasner was present to provide legal advice to the Board. The Department filed a Motion to Continue. The City of Phoenix filed a Non-Opposition Motion. Ms. Sugges stated that all of the public protestors are aware of the continuance and have sent in their no opposition notices.

Motion to continue to June

hearing –	DuPont
Seconded -	Linden
Yay -	DuPont, Linden, Scarafiotti, Ghelfi, Cantrell, Carruthers
Nay -	None
Abstained -	None
Disposition -	Matter continued to June meeting

2. Restaurant Liquor License No. 12079329 - Original Application

Maria Hernandez, Agent
El Moro Mexican Grill
2145 E. Van Buren Street
Phoenix, AZ 85034

This matter is set for hearing due to public protest. The applicant, Maria Hernandez, appeared at the hearing and was not represented by counsel. The Board provided the applicant the opportunity to postpone the hearing to obtain counsel; the applicant chose to proceed without counsel. Frylan Guillen and Linda Medina appeared on behalf of the applicant. Mr. Guillen and Ms. Medina were sworn and testified. Public protestor Pedro Marques was present and was represented by counsel, H.J. Lewkowitz. David Doherty and Tony Banda appeared on behalf of Mr. Marques and were sworn and testified.

Ms. Hernandez discussed her background in the restaurant industry and her vision of El Moro Mexican Grill. She has not owned a liquor license prior to making this application. Ms. Hernandez described the basic and management liquor law training she completed. She also discussed her personal strengths. Mr. Ghelfi asked her to discuss the location of the restaurant, which is the subject of public protest. Ms. Hernandez introduced Ms. Medina, the owner of the property. Ms. Hernandez stated that she was not aware of the structural problems, required permits, zoning, and parking issues when she took over the restaurant. She stated she has obtained all the necessary permits for improving the property, and the location is appropriate because it is surrounded by businesses and does not interfere with the residents in the community.

Frylan Guillen was called as witness and testified. Mr. Guillen has been managing the construction and obtaining the necessary permits for the restaurant. Mr. Guillen is a licensed contractor and has been in that business since 2007. He discussed the demolition of structures and permits issued by the City of Phoenix to rebuild the patio and storage. Mr. Guillen produced structural plans, Building Permit – Project 12-3108 and photographs of the building for the Board. Mr. Lewkowitz did not object to the exhibits. The structural plans and building permit were used for demonstrative purposes. The photographs were entered as Applicant's Exhibits A, B and C.

Linda Medina was called as witness and testified. Ms. Medina has owned the restaurant since 1991. Ms. Medina discussed the structural problems that were created years ago and how Ms. Hernandez and Mr. Guillen have rectified them. She stated the building has passed the inspections for a restaurant. Mr. Lewkowitz questioned Ms. Medina, Mr. Guillen and Ms. Hernandez.

Mr. DuPont asked Ms. Medina about the wall and shed that were on the property. Mr. Linden asked Mr. Guillen to describe the bar area in the restaurant and the parking agreement with Cactus Jack's. Ms. Cantrell asked Ms. Hernandez why Mr. Guillen is not listed as the manager on her application paperwork. She asked Mr. Guillen to explain when he became involved in the restaurant and the amount of time he spends working there. She also asked about the square footage and hours of operation. Mr. Linden asked about Mr. Guillen's previous work experience with Sky Lounge. Mr. Ghelfi asked if Ms. Hernandez is currently listed as the manager and when she would formally hire Mr. Guillen to be the restaurant manager. Mr. DuPont asked about Mr. Guillen's current duties. Mr. Linden asked about the number of employees at the restaurant.

David Doherty was called as witness and testified. Mr. Doherty is the owner of Cactus Jack's used car lots. Mr. Doherty has been the owner for over twenty years. Mr. Lewkowitz asked about the testimony regarding overflow parking for the restaurant would be provided at Cactus Jack's lot on 22nd Street. Mr. Doherty testified that the company has never been approached for overflow parking in any manner. He further testified that the company has never provided parking for anyone. Mr. Ghelfi and Mr. DuPont asked Mr. Doherty about his knowledge of the parking issue. Mr. Doherty stated he was notified a few days ago. Mr. Lewkowitz presented an aerial photograph of the area. Ms. Cantrell, Mr. DuPont and Mr. Linden asked about the portion of Monroe that was closed for El Capri parking.

Tony Banda was called as witness and testified. Mr. Banda has been employed by Mr. Marques for twelve years. He does sales for the radio station and marketing promotions for El Capri night club. Mr. Banda also assists Mr. Marques with his other properties. Mr. Banda discussed his education and experience. He also discussed the

Phoenix City Council meeting where the Council recommended approval of the liquor license for El Moro. Mr. DuPont asked about the overflow parking at Cactus Jack's. Mr. Linden asked about El Capri parking. Ms. Scarafiotti asked about sharing parking with the restaurant. Ms. Cantrell asked about the restaurant's shed. She also asked about the number of liquor licenses that are located in the area. Mr. DuPont asked how many years El Capri has had private security.

Pedro Marques was called as witness and testified. Mr. Marques is the owner of El Capri. Mr. Marques discussed his background. He and his brother bought the El Capri in 1981 and built a new building for the nightclub in 1991. He discussed the history of parking problems and criminal activity on Van Buren. Mr. Marques described his investment in security and property improvements. Mr. Marques expressed concerns about the capability, reliability and qualification of the applicant. Mr. Linden asked if the split premise of El Capri creates an underage drinking problem in the parking lot. Ms. Scarafiotti congratulated Mr. Marques on his efforts to clean up Van Buren and asked if the area had improved since 1991. Ms. Cantrell asked about Mr. Marques' relationship with the landowners.

Mr. Lewkowitz made closing statements. There was Board discussion. Applicant's Exhibits A, B and C (photographs) and Protestor's Exhibit 1 (map) were entered as evidence.

Mr. DuPont made a motion as to Liquor License No. 12079329. Based upon the applicant completing the appropriate liquor law training, working with the Phoenix City Council to address all concerns and regulations regarding zoning and permitting, and obtaining the necessary permits, the applicant is found to be capable, qualified and reliable as required by A.R.S. § 4-203. Based upon the premises being an existing restaurant for several years and the public has been to this establishment, that the public convenience requires and the best interest of the community will be served as required by A.R.S. § 4-203(A) by granting a liquor license to this application.

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

3. Beer and Wine Store Liquor License No. 10076348 - Original Application

Karen Yvette McCarrell, Agent
Discount Smokes, LLC
Discount Smokes
16625 N. Cave Creek Road
Phoenix, AZ 85032

This matter is set for hearing because the City of Phoenix has recommended disapproval of this application based on the applicant's failure to disclose criminal history and possible hidden ownership. The applicant, Karen McCarrell, appeared at the hearing. Robert Mothershead introduced himself as counsel for the applicant. Assistant City Prosecutor Jessica Breedlove appeared on behalf of the City of Phoenix. Ms. Breedlove stated Mr. Mothershead is not licensed to practice law in the state of Arizona and provided a printout from the State Bar of Arizona website to Mr. Ghelfi. Mr. DuPont made a motion to convene in executive session to receive legal advice.

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

The Board convened in executive session at 12:50 p.m. and reconvened in open session at 12:53 p.m.

Mr. Ghelfi stated Mr. Mothershead's statements and the documentation provided do not provide him the opportunity to practice law before the Board. Mr. Ghelfi provided the applicant the opportunity to postpone the hearing to obtain counsel. Ms. McCarrell and Mr. Mothershead left the room to discuss the applicant's decision. The applicant chose to proceed without counsel. In explaining the hearing process and directing the applicant's opening statements, Mr. Ghelfi asked Ms. Breedlove if location was part of the City's protest. Ms. Breedlove stated the City's issue is with the applicant. Lesley Williams and Robert Mothershead appeared on behalf of the applicant. Mr. Mothershead and Mr. Williams were sworn and Mr. Mothershead testified. Detective Eric Breindle and Department Investigator Keith Turner appeared on behalf of the City of Phoenix. Detective Breindle and Investigator Turner were sworn and testified.

Ms. McCarrell described her business background and experience. She described the letters of support she has entered into evidence with the City of Phoenix. She stated that she is the sole member and manager of Discount Smokes, LLC and that it is her sole and separate property. Ms. McCarrell discussed her two prior citations, one of which occurred subsequent to her application with the City. Both citations were dismissed. The City of Phoenix waived its opening statement. Mr. Ghelfi asked about her previous work experience with Circle K and whether she had liquor training then and now.

Ms. Breedlove questioned Ms. McCarrell about her relationship with the previous owner of Discount Smokes and her role in the company. Ms. Breedlove asked about contact with the Bureau of Alcohol, Tobacco, Firearms and Explosives (USDOJ/ATF). She also asked about the purchase agreement and current lease for the property. Ms. Breedlove questioned Ms. McCarrell about the employment history and criminal history Ms. McCarrell provided on her Arizona Lottery application.

Mr. DuPont made a motion to convene in executive session to receive legal advice.

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

The Board convened in executive session at 1:36 p.m. and reconvened in open session at 1:38 p.m.

Ms. Breedlove continued cross-examining the applicant. She asked about documentation listing Mr. Mothershead as a member of Discount Smokes, LLC. She asked about Ms. McCarrell's and Mr. Mothershead's Questionnaire answers. Ms. Breedlove questioned about Ms. McCarrell's meeting with Det. Breindle, Investigator Keith Turner and Det. Karen Hughes. She asked Ms. McCarrell for the source of the money she used to purchase Discount Smokes. She also asked whether Ms. McCarrell had completed liquor law training and obtained the required permits for selling alcohol. Mr. Ghelfi asked the Board for questions. Mr. Linden and Ms. Cantrell asked about bath salts, potpourri, spice and similar products. Mr. DuPont asked Ms. McCarrell about her non-profit and charitable activities.

Robert Mothershead was called as witness and testified. Mr. Mothershead discussed Ms. McCarrell's capability, reliability and qualification for having a liquor license. Mr. Mothershead described 200 letters of support, which were provided to the Phoenix City Council, for Discount Smokes having a beer and wine store liquor license. Ms. Breedlove asked Mr. Mothershead about the criminal history he indicated on the Department's Questionnaire and on an Arizona State Lottery application questionnaire. There were no questions from the Board for Mr. Mothershead.

Ms. Breedlove made closing remarks regarding the capability, reliability and qualification of the applicant. There was Board discussion.

Mr. Linden made a motion to deny the application of Liquor License No. 10076348 because the applicant is not capable, qualified and reliable as required by A.R.S. § 4-203. Based on the inconsistencies in the application, missing information about criminal citations, and in direct questioning, applicant was asked about the content of the applications and she stated that someone else filled out the form and signed it. Mr. DuPont offered an amendment to include concerns about conflicting employment history.

Motion to deny -	Linden
Seconded -	DuPont
Yay -	Linden, DuPont, Scarafiotti, Ghelfi, Cantrell, Carruthers
Nay -	None
Abstained -	None
Disposition -	License denied as to person

4. Beer and Wine Bar Liquor License No. 07100484 - Person and Location Transfer Application

From:	To:
Gregg N. Del Principe, Agent Del Principe Gregg et al. Luke's 101 E. Fort Lowell Road Tucson, AZ 85705	Kevin Arnold Kramber, Agent Maracana Indoor Sports Arena, LLC Maracana Indoor Sports Arena 555 E. 18 th Street Tucson, AZ 85701

This matter is set for hearing because the City of Tucson recommended disapproval of this application and due to public protest. The applicant, Kevin Kramber, appeared at the hearing and was represented by counsel, Thomas Aguilera. Mladen Kozak and Jessica Kozak Zeitlek were also present at the hearing. Mr. Kramber, Mr. Kozak and Ms. Zeitlek were sworn and testified. Assistant City Prosecutor Stacy Stauffer appeared on behalf of the City of Tucson. Mr. Ghelfi noted for the record there are fifteen public protestors who submitted letters against this application. Ted Vance and Jay Millbrandt were present. Mr. Vance was sworn and testified.

Mr. Aguilera presented opening statements. Ms. Stauffer reserved opening statements. Kevin Kramber was called as witness and testified. Mr. Kramber described his qualifications as a liquor license agent and Title IV training provider. Mr. Kramber discussed his involvement with the owners, Mladen Kozak and Dragan Kozak. He discussed the classroom liquor law training the owners completed. Mr. Aguilera distributed the floor plan of the Maracana for demonstrative purposes. Mr. Aguilera described a letter in support of the application that was filed with the City from Steven Jackson, a resident of the Armory Park Neighborhood.

Ms. Stauffer cross-examined about the other sports arenas that Mr. Kramber mentioned which are located in Arizona and similar to Maracana. Ms. Stauffer asked what types of neighborhoods surrounded the other establishments, the distance between the closest residences and the Maracana, whether Mr. Kramber lives in that neighborhood and if he is aware of continuing concerns about noise and parking. Ms. Stauffer asked about the petition of support signatures, how they were collected, and whether the signers lived in within 500 feet of the facility. Mr. Ghelfi asked for questions from the Board. Mr. DuPont asked if Mr. Kramber had considered a Series 12 liquor license for the facility and whether a Series 7 would attract a particular clientele to the facility. Mr. Aguilera asked about the recently filed manager application of Branko Oblan-Birindzic. Mr. Kramber stated that Mr. Oblan-Birindzic completed Manager liquor law training and has submitted fingerprints, questionnaire and alien status to the Department.

Jessica Kozak Zeitlek was called as witness and testified. Ms. Kozak Zeitlek is Mladen Kozak's spouse. She described her involvement with Maracana. Mr. Aguilera asked her to discuss parking issues. Ms. Stauffer asked about the petition of support signatures, where they were collected, and the number of signers who lived in the neighborhood. Ms. Stauffer asked about the hours of operation whether there had been complaints about parking, noise and trash. Mr. Aguilera asked if the area had improved with respect to loitering, graffiti and other negative elements since Maracana opened for business. Mr. Ghelfi asked for questions from the Board. Ms. Scarafiotti asked about the number and ages of people using the facility. She also asked about security. Ms. Cantrell asked about the floor plan. Mr. Aguilera presented pictures of the facility's interior for demonstrative purposes. Mr. Aguilera asked Ms. Kozak Zeitlek to describe the non-profit activities that will take place at the facility.

Mladen Kozak was called as witness and testified. Mr. Kozak started the Maracana Indoor Sports Arena business in March 2010. He discussed his family background, his experiences as a refugee from Croatia, his education, his work experience, his soccer background, the business plan and his brother's role in the company. Mr. Kozak described the time and financial investment in setting up the business. He discussed promotion including the

Facebook page. Mr. Kozak described an open house that was held for the Armory Park neighborhood to discuss the liquor license application. He discussed some of the complaints he received from the neighborhood when he first opened the business. He described adding outdoor lighting and discussed adding staff and security as part of his business plan.

Ms. Stauffer asked how Mr. Kozak would address the problems associated with people who have been drinking and coming out of the facility acting boisterous or violent. Ms. Stauffer asked about security, speeding, parking, noise and trash. Mr. Ghelfi asked for questions from the Board. Mr. Linden and Mr. DuPont asked about parking. Mr. Linden also asked about packaging. Mr. DuPont asked how many people use the facility. Ms. Scarafiotti asked how many more people could be added to bring the facility to full capacity. Mr. Ghelfi asked about the cost of playing at Maracana and what is the projected revenue increase from liquor sales.

Ms. Stauffer waived opening argument. Ted Vance was called as witness and testified. Mr. Vance lives in the house next to Maracana. He purchased the house 28 years ago. Mr. Vance described the nonstop noise from Maracana including children playing in the street between games. Mr. Vance stated that some houses in the neighborhood do not have parking and the residents need to park in front of their homes. Due to the demand for parking, it is sometimes difficult for these residents to park near their homes. Mr. Ghelfi asked if a security guard on the premises would help. Ms. Cantrell asked about noise ordinances. Mr. Carruthers asked about speeding problems and possible assistance from the City's Police Department. Mr. DuPont asked if Park Wise is available to the neighborhood. Mr. Aguilera cross-examined Mr. Vance regarding other businesses that had occupied the space where Maracana is located. Ms. Stauffer had no further questions for the witness. Mr. Ghelfi asked for questions from the Board. Mr. DuPont asked about speed bumps and four way stops in the neighborhood. He also asked if Mr. Kozak had been responsive and tried to cooperate with the neighborhood.

Mr. Aguilera made a closing statement highlighting the capability, qualification and reliability of the Applicant. Ms. Stauffer made a closing statement directed at the location, the close proximity of the Armory Park Neighborhood and the inconvenience of its residents. Mr. Ghelfi read a list of protestors to be included in the record: Allen B. Veaner, John McLain, Elizabeth Garber, Wendy Lotze, Sloane Haywood, Lauren Dasse, Todd Miller, Phyllis E. Factor, Ruben A. Huerta, Nadine H. Rund, Tim Vanderpool, Joanne Kerrihard, Michael Drucker, Mary Caroline Rogers, Tom Philabaum and Dabney Philabaum.

There was Board discussion. Members agreed that City zoning is the main issue. Mr. Ghelfi stated the Applicant is capable, qualified and reliable. He expressed empathy for the protestors and discussed the difficulty of deciding this case. Mr. Carruthers spoke about the soccer community being served by the facility. Ms. Scarafiotti thanked Mr. Vance for his testimony and for being the voice of the other protestors. She stated that public convenience was not served at this time. Mr. Linden discussed the Applicant's availability to the neighbors and his willingness to work with them. He suggested strategies for reducing noise in the neighborhood. Mr. Ghelfi discussed whether having a liquor license would generate additional revenue for security or exacerbate the problem in the neighborhood. Mr. Ghelfi stated he will vote in favor. Mr. Aguilera asked for the number under A.R.S. § 4-201(J).

J. If the governing body of a city or town recommends disapproval by a two-thirds vote of the members present and voting on an application for the issuance or transfer of a spirituous liquor license that, if approved, would result in a license being issued at a location either having no license or having a license of a different series, the application shall not be approved unless the board decides to approve the application by a two-thirds vote of the members present and voting.

Mr. Ghelfi stated, "Four."

Mr. DuPont stated that he understands how noise affects quality of life. Mr. DuPont described his work as a neighborhood representative in Tucson. He agreed with other Members who addressed the lack of police response in controlling noise ordinances. Ms. Cantrell suggested ways for neighbors to cooperatively reduce parking and noise problems.

Mr. DuPont made a motion concerning Liquor License No. 07100484. Based upon the applicant's business plan; his training; his communication with the neighborhoods; his ability to contact the neighborhoods, to respond and work with the neighborhood; and his concern for the general population and the soccer industry as far as children of different ethnicities and cultures are involved, I move that we find the applicant is capable, qualified and reliable as required by A.R.S. § 4-203(A). Based upon the uniqueness of this facility to serve the community which is

expanding in the Tucson area, we find that the public convenience does require and that the best interest of the community will be served, as required by A.R.S. § 4-203(A), by granting this liquor license and that the Board grant the application. Mr. Ghelfi suggested an amendment that the limited square footage and additional outside lighting improve the location. Mr. DuPont agreed to the amendment. Mr. Carruthers discussed the needs of both communities – the soccer community and the neighborhood – must be considered.

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

C. Minutes Review, consideration and action

Motion to approve minutes of July 12, 2012	
Motion to approve -	DuPont
Seconded -	Linden
Yay -	Linden, DuPont, Scarafiotti, Ghelfi, Cantrell
Nay -	None
Abstained -	Carruthers
Disposition -	Motion passes

Motion to approve minutes of July 12, 2012 – Executive Session	
Motion to approve -	DuPont
Seconded -	Cantrell
Yay -	Linden, DuPont, Scarafiotti, Ghelfi, Cantrell
Nay -	None
Abstained -	Carruthers
Disposition -	Motion passes

Motion to approve minutes of August 2, 2012	
Motion to approve -	Carruthers
Seconded -	Cantrell
Yay -	Carruthers, Cantrell, Linden, Ghelfi
Nay -	None
Abstained -	DuPont, Scarafiotti
Disposition -	Motion passes

Motion to approve minutes of October 23, 2012	
Motion to approve -	Scarafiotti
Seconded -	Cantrell
Yay -	Linden, DuPont, Ghelfi, Scarafiotti, Cantrell, Carruthers
Nay -	None
Abstained -	None
Disposition -	Motion passes

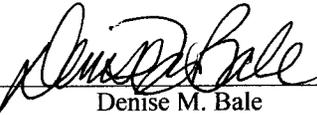
D. Reports on Current Events, matters of Board procedure, Requests and items for Future Agenda

Mr. Ghelfi stated the July 11th Board meeting will be held in Tucson. Ms. Scarafiotti suggested the Board review procedures and discuss at its next meeting time limits on testimony. Mr. Ghelfi asked for time limits on testimony to be an agenda item in June. There was Board discussion.

E. Call to the Public

None.

The Board adjourned at 7:17 p.m.



Denise M. Bale
Administrator of the
Arizona State Liquor Board



Date