



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
February 6, 2014

Members Present: J.D. Ghelfi - Chair, Tim Linden, Vikki Scarafiotti Robin Cantrell, Jim Carruthers
Members Absent: Bill DuPont – Vice-Chair
Counsel Present: Sarah Selzer, Assistant Attorney General
Christopher Munns, 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 February 6, 2014 at 9:00 a.m. with Mr. Ghelfi presiding.

Roll Call

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

B. Agenda: review, consideration and action

1. Domestic Farm Winery Liquor License No. 13103007 - Original Application

Gerald Kendall Smith
Sierra Bonita Vineyards
6720 E. Camino Principal #101
Tucson, AZ 85715

This matter was set for hearing due to public protest. The applicant, Gerald Kendall Smith, did not appear at the hearing and was represented by counsel, John Smith. Public protestors Dennis Wayne Fried and Margaret Mary Fried were not present at the hearing. Mr. Smith described his family business which includes ten acres near Willcox. The business received its first Series 13 liquor license in 2010. In order to move their product, the family decided to open a tasting room in Tucson. The City of Tucson unanimously agreed to grant the business license for Sierra Bonita Vineyards. Mr. Smith is a lawyer by profession and has worked in the vineyards for ten years. His sister is a Master Grower and Master Vintner in Napa, California and his wife is a Certified Wine Maker. His parents have both completed Title 4 training and certification for serving wine. Mr. Smith discussed the location and addressed the protestors' concern about crime and homelessness increasing in the area. He also discussed noise and stated the hours of operation for the tasting room will be 10:00 a.m. to 5:00 p.m. Wednesday through Friday and 12:00 to 7:00 p.m. Saturday and Sunday.

Mr. Linden made a motion concerning Liquor License No. 13103007: The Board finds that the personal qualifications are not contested and that the record before the Board establishes that the Applicant is capable, qualified and reliable as required by A.R.S. § 4-203 to hold a liquor license. I move that the Board finds that the public convenience does require and that the best interest of the community will be substantially served by granting a liquor license to this location as required by A.R.S. § 4-203, and that the Board grant the application based on the

Applicant has completed liquor training, has done his homework and understands the business, and has support of the Tucson City Council.

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

2. Bar Liquor License No. 06100195 - Person and Location Transfer Application

Thomas Robert Aguilera, Agent
Babylon AD, LLC
Eden Cabaret & Cafe
3650 E. Speedway Blvd.
Tucson, AZ 85716

Thomas Robert Aguilera, Agent
Sidecar, LLC
Sidecar
139 S. Eastbourne Avenue
Tucson, AZ 85716

This matter was set for hearing due to public protest. The Agent, Thomas Robert Aguilera, appeared at the hearing. Sidecar, LLC Members Ari Shapiro and Page Repp were also present. Mr. Shapiro and Mr. Repp were sworn and testified. Public protestor Katherine Stires was present at the hearing and was sworn and testified. Mr. Ghelfi asked Ms. Stires if she had an issue with the Applicants' personal qualifications and she stated that she did not.

Mr. Aguilera referenced his brief and asked Mr. Shapiro to elaborate on his plans for Sidecar and the proposed location in Broadway Village. Mr. Shapiro opened a pizzeria, Falora, in Broadway Village a year ago. Sidecar is going to be a small upscale bar without live entertainment, televisions and pool tables. There is a small patio. Mr. Shapiro described his other Tucson businesses and the demographic he is targeting. He discussed available parking for the shopping center. Mr. Repp drew a diagram of Broadway Village, indicating parking lots and the location of Sidecar. Questions from the Board concerned parking and clientele. Mr. Aguilera asked Mr. Shapiro to discuss the Planned Area Development (PAD) approval process through the City of Tucson.

Mr. Aguilera asked Mr. Repp to describe his work for Sidecar, LLC. Mr. Repp is the owner of Repp Mclain Design and Construction which is the Architect of Record for Sidecar and other businesses in the neighborhood. Mr. Repp discussed the progress with City permits. The Board asked Mr. Repp about the distance from the shopping center to the apartment complex and the availability of additional parking.

Ms. Stires began her presentation with photographs of the area, which were for demonstrative purposes. Mr. Aguilera stated the photographs depicted the area. Ms. Stires illustrated traffic flow and street parking spots on the diagram. She described the parking problems she and other apartment residents have experienced as a result of a popular restaurant in Broadway Village. She discussed the safety issues with impatient drivers searching for parking space. She argued that trespass parking, late night noise, and increased traffic are not in the best interest of the community. Mr. Aguilera asked Ms. Stires about her concerns and whether she protested Falora's liquor license. Questions from the Board concerned the length of time Ms. Stires has lived in the apartment complex, the noise she hears from the existing restaurants, and the parking problems.

Mr. Aguilera delivered a closing argument. There was Board discussion regarding zoning issues, Mr. Shapiro's personal qualifications, the City Council's approval, and appropriate use for the location based on the PAD.

Mr. Linden made a motion concerning Liquor License No. 06100195: Since the Applicant's personal qualifications are not at issue today, I will make my motion based on location only. The Board finds that the Applicant's personal qualifications are not contested and that the record before the Board establishes that the Applicant is capable, qualified and reliable as required by A.R.S. § 4-203 to hold a liquor license. I move that the Board further finds that the public convenience does require and that the best interest of the community will be substantially served by granting this license to this location as required by A.R.S. § 4-203, and that the application be granted based upon the following: that the Applicant has multiple locations that have not had issues; that the Applicant has passed all of the City requirements; that the Applicant, for the location, is basically is not really doing anything that was in the protest, I find that the Applicant is qualified and that we grant this license.

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

The Board recessed from 10:50 to 11:05 a.m.

3. Beer and Wine Bar Liquor License No. 07100124 - Person Transfer Application

From:	To:
Steven Mitchel Boccardo	Sylvia Julia Williams
Jacks Original Bar B Q LLC	Sylvia and Henry's Corporation
Jack's Original Bar-B-Q	Jack's Original Bar-B-Q
5250 E. 22nd Street	5250 E. 22nd Street
Tucson, AZ 85711	Tucson, AZ 85711

This matter was set for hearing because the City of Tucson recommended disapproval of this application. The Applicant, Sylvia Julia Williams, did not appear at the hearing and was not represented by counsel. Assistant City Attorney Stacy Stauffer appeared on behalf of the City of Tucson.

Mr. Ghelfi asked Ms. Stauffer if the issue in this matter is the \$1,636.00 application fee to the City that had not been paid. Ms. Stauffer stated the Applicant's check was returned by the bank for insufficient funds. The Applicant was given time to correct this issue. Ms. Stauffer checked and there has been no conversation with the City Clerk's office or the Finance office to pay the fee. It is in Collections and the Applicant has made no response. Ms. Stauffer submitted on the record that the Applicant has not communicated with the City and the debt is still due. She argued that by not appearing at the hearing, the Applicant has not met the burden of proving capability, qualification and reliability. The Applicant has done nothing to correct the returned check from the application fee. Ms. Stauffer argued the evidence shows that the Applicant is not capable, qualified and reliable.

Mr. Carruthers made a motion: In the case of Liquor License No. 07100124, I move that we disapprove their application for transfer of liquor license due to an outstanding debt which they have not taken care of with the City of Tucson, nor have they made any attempt to reconcile that with Finance and the appropriate places. In so being, they are not capable, qualified and reliable as required by A.R.S. § 4-203.

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

The Board proceeded to item letter D.

D. Election of Chairman and Vice Chairman pursuant to A.R.S. § 4-111(C)

Motion to elect	
J.D. Ghelfi as Chairman -	Linden
Seconded -	Scarafiotti
Yay -	Linden, Scarafiotti, Cantrell, Carruthers
Nay -	None
Abstained -	Ghelfi
Disposition -	J.D. Ghelfi elected Chairman

Motion to elect
 Bill DuPont as Vice Chairman - Linden
 Seconded - Cantrell
 Yay - Linden, Cantrell, Ghelfi, Carruthers, Scarafiotti
 Nay - None
 Abstained - None
 Disposition - Bill DuPont elected Vice Chairman

The Board proceeded to item letter E.

E. Minutes

Motion to approve the
 December 5, 2013 minutes - Linden
 Seconded - Cantrell
 Yay - Linden, Cantrell, Ghelfi, Carruthers
 Nay - None
 Abstained - Scarafiotti
 Disposition - December 5, 2013 minutes approved

Motion to approve the
 December 5, 2013
 Executive Session minutes - Linden
 Seconded - Cantrell
 Yay - Linden, Cantrell, Ghelfi, Carruthers
 Nay - None
 Abstained - Scarafiotti
 Disposition - December 5, 2013 Executive Session minutes approved

Motion to approve the
 January 10, 2013 minutes - Carruthers
 Seconded - Cantrell
 Yay - Carruthers, Cantrell, Linden, Ghelfi, Scarafiotti
 Nay - None
 Abstained - None
 Disposition - January 10, 2013 minutes approved

Motion to approve the
 January 10, 2013
 Executive Session minutes - Carruthers
 Seconded - Scarafiotti
 Yay - Carruthers, Scarafiotti, Linden, Ghelfi, Cantrell
 Nay - None
 Abstained - None
 Disposition - January 10, 2013 Executive Session minutes approved

Motion to approve the
 December 6, 2012 minutes - Cantrell
 Seconded - Linden
 Yay - Cantrell, Linden, Carruthers, Ghelfi, Scarafiotti
 Nay - None
 Abstained - None
 Disposition - December 6, 2012 minutes approved

Motion to approve the
December 6, 2012
Executive Session minutes - Carruthers
Seconded - Cantrell
Yay - Carruthers, Cantrell, Linden, Ghelfi, Scarafiotti
Nay - None
Abstained - None
Disposition - December 6, 2012 Executive Session minutes approved

The Board proceeded to item letter F.

F. Reports on Current Events, Matters of Board Procedure, Requests and Items for Future Agenda

Mr. Ghelfi introduced for Board discussion the decision to access Board documents through the Department's intranet and to stop mailing thumb drives to the members. There is a small savings in time and postage; however, there are technical difficulties with Wi-Fi when several users are trying to access the same document at the same time. In addition, Board members would need an internet connection whenever they prepared for hearings. There was consensus among the members that the ease and convenience of thumb drives outweighs other options for distributing Board documents. Until further notice, Ms. Bale will continue the practice of sending thumb drives via First Class mail prior to Board meetings.

The Board recessed from 11:20 a.m. to 1:10 p.m.

The Board proceeded to item letter C.

C. 1:00 P.M. Scheduled Agenda: review, consideration and action

4. Private Club Liquor License No. 14070016 - Appeal of Director's Decision & Order

Leonard Cassidy, Agent
BPOE #2656, also known as Mesa Buckhorn Elks #2656
6718 East Avalon Street
Mesa, AZ 85205

This matter was set for hearing because the Licensee requests that the Board reverse the Decision and Order of the Department Director. Co-counsel for the Agent, Nicholas C. Guttilla and Charles E. Buri, appeared at the hearing. Assistant Attorney General Sarah Selzer appeared on behalf of the Department of Liquor Licenses and Control ("Department"). Assistant Attorney General Christopher Munns, from the Solicitor General's Office, was present and provided independent legal advice to the Board.

Mr. Guttilla introduced Mr. Buri, who is co-counsel for the Licensee and counsel for Patriots Land Group, LLC. Patriots Land Group is the leasing company that leases the sweepstakes software and equipment to the Licensee. Mr. Buri has filed a declaratory judgment action for Patriots Land Group. Mr. Gutilla described a chronology of events beginning in April 2010. He stated that other charitable organizations in the area offer similar sweepstakes for fund raising. He argued that the Licensee did not know that they were in violation of A.R.S. § 4-244(26) by knowingly permitting unlawful gambling on their licensed premise. Mr. Buri cited a 1987 Attorney General Opinion regarding the legality of raffles and casino nights hosted by charitable organizations. He argued that the Licensee's sweepstakes is lawful gambling.

Ms. Selzer requested that the Board correct an attribution error in the Administrative Law Judge's Findings of Fact at paragraph 16 as to who testified at the hearing. She argued that the Administrative Law Judge was correct in determining that the Licensee's sweepstakes is gambling and that it does not qualify as a nonprofit exemption. Ms. Selzer stated the 1987 Opinion qualified that those casino nights involved chips or scripts that were never redeemable for cash. Participants in the Licensee's sweepstakes can go to the bartender and convert their tokens to cash. Ms. Selzer referenced a 1990 Opinion interpreting direct and indirect participation. Only the nonprofit can participate directly or indirectly in running the raffle. There was testimony at the hearing that Patriots Land Group directly monitored through the internet money in and money out, and would regularly generate invoices that the Licensee would pay. Patriots Land Group also provided local technical support for the machines and software.

Ms. Selzer referenced another 1990 Opinion which stated the nonprofit cannot use a percentage of sales as a fee to an outside company. The leasing program with Patriots Land Group was based on a percentage of proceeds taken in during that month. Ms. Selzer argued that the Licensee knowingly permitted gambling.

Mr. Ghelfi made a motion to correct the attribution error in the Administrative Law Judge's decision to replace "Joe Vernier, a Supervisor with the Department" with "Sergeant Kuhl" on page 6, line 14.

Motion to modify	
ALJ decision -	Ghelfi
Seconded -	Linden
Yay -	Ghelfi, Linden, Scarafiotti, Cantrell, Carruthers
Nay -	None
Abstained -	None
Disposition -	ALJ decision modified

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

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

The Board convened in executive session at 1:46 p.m. and reconvened in open session at 1:54 p.m.

There were questions from the Board followed by Board discussion. There was discussion about upholding the Director's decision. Mr. Munns explained there is one violation with two elements: (1) gambling and (2) knowingly permitted.

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

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

The Board convened in executive session at 2:37 p.m. and reconvened in open session at 2:44 p.m.

Board discussion continued. Mr. Linden made a motion to uphold the Director's decision in whole.

Motion to affirm	
Director's decision in whole -	Linden
Seconded -	Carruthers
Yay -	Linden, Scarafiotti, Cantrell, Carruthers
Nay -	Ghelfi
Abstained -	None
Disposition -	Director's decision affirmed

5. Restaurant Liquor License No. 12079592 - Original Application

Walter Salazar Lopez
Villa Peru Restaurant
1857 N. Scottsdale Road
Tempe, AZ 85281

This matter was continued from the December 5, 2013 hearings in order to allow the Applicant to obtain an interpreter. This matter was set for hearing due to Department protest. The Applicant, Walter Salazar Lopez, appeared at the hearing and was not represented by counsel. Carmen Cota was present to interpret for the Applicant. Ms. Cota was sworn. Mr. Salazar Lopez was sworn and testified. Assistant Attorney General Sarah Selzer appeared on behalf of the Department of Liquor Licenses and Control ("Department"). Investigators Adam Palubeskie and Herbert Carruthers appeared on behalf of the Department and were sworn and testified. Assistant Attorney General Christopher Munns, from the Solicitor General's Office, was present and provided independent legal advice to the Board.

Ms. Selzer stated the Department is not contesting the location. Mr. Salazar Lopez described his restaurant as a small family business. His family moved from Tucson and has operated the restaurant for two years. He discussed what occurred the day the investigators purchased beer in the restaurant. He explained the beer on the premises, the cash register receipt, and the underage employee who was working in the restaurant that day. Mr. Salazar Lopez was not present when the beers were sold.

Ms. Selzer asked Mr. Salazar Lopez if he intended to sell brands of beer other than those listed on the receipt. She asked why he waited two years to apply for a liquor license. Ms. Selzer asked if he and his employees had completed liquor law training. Mr. Salazar Lopez discussed the approval process with the City of Tempe. Mr. Ghelfi asked Investigator Carruthers to describe the how the purchase took place and there were questions from the Board. Investigator Palubeskie stated that three separate complaints for selling alcohol without a liquor license came to the Department beginning in July 2012. Following two complaints, Investigator Palubeskie met with Mr. Salazar Lopez in November 2012. The third complaint, received in July 2013, was for selling alcohol without a liquor license and listed two specific brands of beer. After the third complaint, Investigator Carruthers went to the restaurant and purchased those two brands of beer. Mr. Salazar Lopez explained why the beers were in his restaurant and testified that he had a BYOB permit. Ms. Selzer asked Investigator Palubeski to explain the BYOB exemption. Mr. Salazar Lopez does not have an interim permit.

There was Board discussion. Mr. Linden made a motion: In regards to Liquor License 12079592, and this goes to person and not location, the Board finds that the propriety of the location is not contested and that the record before the Board establishes that the public convenience requires and that the best interest of the community will be substantially served; however, I move that the Board finds the Applicant is not capable, qualified and reliable as required by A.R.S. § 4-203(A) and the Board deny the application based on the following facts: the Applicant was selling alcohol without a license, that he brought alcohol in from elsewhere and was selling it, the individual that was selling it was eighteen and for these reasons, I move that we deny the license.

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

6. Liquor Store Liquor License No. 09070674 - Person Transfer Application

From:
Samir Mahmud Arikat
Diyana LLC
Sun Liquors
305 W. Hatcher
Phoenix, AZ 85021

To:
Amir Paimon Ezedinlo
Arizona Liquor LLC
Sun Liquors
305 W. Hatcher
Phoenix, AZ 85021

This matter was set for hearing because the City of Phoenix recommended disapproval of this application and due to Department protest. The Applicant, Amir Paimon Ezedinlo, did not appear at the hearing and was not represented by counsel. Assistant City Prosecutor Robert Smith appeared on behalf of the City of Phoenix. Detective Eric Breindle and Department Liquor Licenses and Control ("Department") Investigator Herbert Carruthers appeared on behalf of the City of Phoenix and were sworn. General Sarah Selzer appeared on behalf of the Department. Assistant Attorney General Christopher Munns, from the Solicitor General's Office, was present and provided independent legal advice to the Board. Notice of hearing was sent to the Applicant via certified mail to the address of record.

Mr. Smith asked that the Board would rest on the reports and all the documents in discovery that have been submitted for the City. Mr. Smith stated the Applicant is not capable, qualified and reliable. Ms. Selzer stated the Department would also submit on the pleadings. Mr. Ghelfi clarified that this particular application has approximately nine arrests and only disclosed two. Mr. Ghelfi summarized the types of arrests and dispositions. There was no Board discussion.

Mr. Carruthers made a motion in relation to Liquor License 09070674: Due to the litany of convictions and the people not here to show up and defend themselves, and the information we have and have reviewed, we find that the applicant is not capable, qualified and reliable as required by A.R.S. § 4-203 and that we not grant this person the transfer of license.

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

The Board proceeded to item letter G.

G. Call to the Public

None.

The Board adjourned at 3:40 p.m.



Denise M. Bale
Administrator of the
Arizona State Liquor Board



Date