



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 10, 2013

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

Members Absent: None

Counsel Present: Sarah Selzer, 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 10, 2013 at 9:03 a.m. with Mr. Ghelfi presiding.

Roll Call

All board members were present.

B. Agenda: review, consideration and action

1. Beer and Wine Store Liquor License No. 10033181 - Original Application

Lauren Kay Merrett, Agent
 Maverik, Inc.
 Maverik
 4190 E. Butler
 Flagstaff, AZ 86001

This matter was set for hearing because the City of Flagstaff recommended disapproval of this application. Mr. Ghelfi noted a request to withdraw the application was filed with the Department. The applicant, Maverik, Inc., appeared at the hearing through its counsel, Harvey Yee. There was no objection.

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

The Board proceeded to item #3.

2. Beer and Wine Store Liquor License No. 10113231 - Original Application

Elizabeth Ann Taylor, Agent
RCCM Food Town, Inc.
Food Town IGA
10601 W. Battaglia Drive
Arizona City, AZ 85123

This matter was set for hearing because Pinal County recommended disapproval of this application. The Applicant, Elizabeth Ann Taylor, appeared at the hearing and was not represented by counsel. Ms. Taylor waived her right to an attorney. Richard Hagen was sworn and testified on behalf of the applicant. There was no representation from Pinal County at the hearing.

Ms. Taylor stated RCCM Food Town, Inc. currently holds a Series 9 liquor license at a grocery store in Eloy, Arizona. Ms. Taylor and Mr. Hagen have been partners since 1989. They had planned to open Food Town IGA in the fall of 2012; however, the building permit was not issued until December 31, 2012. The store has received a provisional health permit and they plan to open in six to eight weeks. Food Town IGA will be the only grocery store in Arizona City. Ms. Taylor and the store manager in Eloy have completed the required liquor law training. They have never received a citation during the time they have been in business. Mr. Hagen testified that their corporation has held a Series 9 license since 1978 and that he has been involved with the Eloy store for twenty-four years. He reiterated Ms. Taylor's remarks regarding Food Town IGA will be the only store selling fresh produce in the area. Questions from the Board concerned employee training, the number of years the corporation has sold liquor without having any violations or problems with underage sales, and the issues with Pinal County's recommendation.

Mr. Carruthers made a motion to approve the application based on the applicant has completed the appropriate liquor law training, the applicant has experience running similar stores with no fines or sanctions, and is found to be capable, qualified and reliable. Mr. Ghelfi asked if Mr. Carruthers would amend his motion to include the fact that this location is not contested and the Board received information that it would be beneficial to the community. Mr. DuPont requested for the record to include the applicant has been in business for twenty-four years with a Series 9 liquor license without having a violation.

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

The Board proceeded to item #2.

3. Beer and Wine Store Liquor License No. 10076320 - Original Application

Mike B. Baqseh, Agent
Arizona Wireless and Tobacco Inc.
Mikes Smoke Shop
8021 N. 43rd Avenue #1A
Phoenix, AZ 85051

This matter was set for hearing due to public protest. The Applicant, Mike B. Baqseh, was present and was not represented by counsel. Mr. Baqseh waived his right to an attorney. Protestor Frances Adair was also present at the hearing and was not represented by counsel. Mr. Baqseh and Ms. Adair were sworn and testified.

Mr. Baqseh has been in business for sixteen years and at this location for twelve years. His business suffered when the roll-your-own machines were closed in July 2012. He is seeking the beer and wine store liquor license to help grow his business. Mr. Baqseh and all of his employees have completed liquor training. Questions from the Board concerned the protest filed, the security system for the beer and wine, square footage of the store and spice or potpourri sales.

Ms. Adair stated she became involved in the protest because she is in the process of adopting six children and she provides care for her grandmother. She feels there are too many places selling liquor in her neighborhood. Questions and comments from the Board concerned why Ms. Adair is the only protestor and no one protested at the City Council meeting.

The Board discussed the training the Applicant and his employees have completed; the process the Applicant has in place to control the alcohol; issues of having liquor licenses on four corners of the intersection; and the City Council's support of the application.

Mr. DuPont made a motion to grant Liquor License 10076320: Based upon the personal qualifications, that the Applicant has completed liquor law and management training and has subjected his employees to liquor training, that the Applicant has been in business for approximately twelve years at that location, that he contacted the neighborhood association representatives, that there are no concerns by the Police Department and the Department of Liquor Licenses and Control, and that the Mayor and Council voted for approval, we find the Applicant is capable, qualified and reliable as required by A.R.S. § 4-203; and that the location is in the middle of a busy intersection and has the support of the council person of that district, we find that the public convenience does require and that the best interest of community will be served by granting the liquor license and that the Board grant the application.

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

4. Beer and Wine Store Liquor License No. 10023135 - Original Application

Rodney Scott Herbert, Agent
Reay's Ranch Investors LLC
Super Stop
5620 S. Highway 92
Hereford, AZ 85615

Mr. Linden recused himself from the hearing. Ms. Cantrell recused herself from the hearing. This matter was set for hearing due to public protest. The Applicant, Rodney Scott Herbert, was present and was represented by counsel, Thomas Aguilera. Mr. Herbert was sworn and testified. There were no public protestors present at the hearing.

Mr. Aguilera presented Liquor License No. 10023104, which was issued to this location in 2007, and explained the address change. He discussed the qualifications of Reay's Ranch Investors, holding several liquor licenses in Arizona. Mr. Aguilera described the location as a state-of-the-art convenience market. The location is supported by the County and members of the community. There are no other Series 10 liquor licenses within one mile of this location.

Mr. Ghelfi asked Mr. Herbert to describe training and security, and to explain past violations. Mr. Herbert has worked for Reay's Ranch Investors for 34 years. He is an agent for 37 locations. This location is approximately one mile away from another store owned by the company, and will include eight fueling sites and a car wash. The company has 430 employees statewide. Employees receive liquor law training. The liquor management training for managers and supervisors is conducted at the corporate offices. Twenty locations have switched to a security camera system that can be monitored at corporate headquarters. Mr. Herbert explained the liquor violations that have occurred in the last ten years. The company's policy is termination if a liquor or tobacco violation occurs. There were no further questions from the Board.

Mr. DuPont made a motion concerning Liquor License 10023135: Based upon the personal qualifications, that the Applicant has liquor training for management and employees, has specific training for management and supervisors at the corporate level, has a policy in place of termination for violation of liquor laws, has explained the liquor violations that have occurred in the past ten years, the Board of Supervisors recommended approval, there has been

no input by the police department, and the location was previously licensed in 2007, I move that we find the Applicant is capable, qualified and reliable as required by A.R.S. § 402-3(A); and based upon the business is on the highway, the existing business will be closed and moved to this new location where it has served the public convenience for several years, we find that the public convenience does require and that the best interest of community will be served as required by A.R.S. § 402-3 by granting the liquor license, and that the Board grant the application. Mr. Aguilera noted a factual misstatement in the motion and Mr. DuPont amended his motion to strike the statement about the existing business being closed and moved.

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

The Board recessed from 10:06 to 10:20 a.m. All members were present.

5. Restaurant Liquor License No. 12079274 - Original Application

Daniel Charles Eastwood, Agent
Times 3 Bar & Grill LLC
Times 3 Bar & Grill
8279 W. Lake Pleasant Parkway #101-103
Peoria, AZ 85382

This matter was set for hearing because the City of Peoria recommended disapproval of this application and due to public protest. The Applicant, Daniel Charles Eastwood, was present and was not represented by counsel. Mr. Eastwood waived his right to an attorney. Nicole Frilot appeared as a witness and was sworn and testified on behalf of the Applicant. City Attorney Stephen M. Kemp appeared on behalf of the City of Peoria. Chris Jacques, Planning Director, appeared as a witness and was sworn and testified on behalf of the City of Peoria. Public protestors Michael McCauley, George Brown, Tevis West, Ian Hasegawa, Ismael Hamad and Jigar Patel were also present at the hearing and were sworn and testified.

Daniel Eastwood has been in hospitality industry for over twenty-five years. In the state of Arizona, he has been the manager and/or agent on liquor licenses since 1993. He is currently the agent for Toby Keith's restaurant in Tucson. He is the regional manager for Toby Keith's in Arizona and California, and he has completed all of the required liquor law and management training. Mr. Eastwood discussed the location as a site that is zoned for restaurant/retail and was previously occupied by a restaurant bar. He addressed the complaints about the previous occupant and said that he is willing to work with the neighbors. The Board questioned Mr. Eastwood about past violations, his connection with the previous owner, security concerns, square footage, entertainment, menu, hours of operation, distance to the nearest residential neighbor, and whether he met with the neighbors to address their concerns.

Nicole Frilot discussed her connection with the previous owners. She currently operates two bar-and-grills and has had no problems with violations. The Board questioned her about the menu, the hours of operation, if she made any attempt to meet with the neighbors prior to city council meeting, and if she had any contact with neighbors at the other locations she operates.

Mr. Kemp cross-examined Mr. Eastwood concerning members of Times 3 Bar & Grill LLC meeting with the Peoria Police Department before or after the City Council meeting, the extent to which Mr. Eastwood researched with other City departments regarding the location, and the menu that was submitted with the state liquor license application. Mr. Kemp offered the menu as an exhibit, as part of the Applicant's file. Mr. Eastwood stated the menu was subject to change. Board redirect indicated the menu represents a sports bar, and asked Mr. Eastwood what the number of employees at Times 3 Bar & Grill will be.

Mr. Kemp cross-examined Ms. Frilot concerning her contact with the City of Peoria, her contact with neighbors, and the opening of the restaurant. Ms. Frilot indicated that opening the restaurant is contingent upon having the liquor license.

Board recessed from 11:15 to 11:28 a.m.

Mr. Kemp waived his opening and called his first witness, Chris Jacques, the Peoria Planning Director. Mr. Jacques is the zoning administrator for the City. He presented a vicinity map and Mr. Kemp moved the admission of the exhibit. Mr. Jacques described the approximate distances between the exterior edge of the building to the nearest exterior wall (~56 feet) and the patio of the former establishment to the nearest exterior wall (~70 feet). Mr. Jacques discussed the City's concerns about the compatibility of the restaurant with the adjacent neighborhood. The late hours of operation are a factor. Current zoning code states a bar cannot be within 200 feet of residential use, unless a conditional use permit has been issued.

The Board questioned Mr. Jacques concerning zoning and permitting changes that went into effect after the previous establishment was closed, the dates of the code changes, and whether those changes were communicated to the Applicant. Changes to zoning and permitting were passed in 2007-2008. The Board requested clarification on compatibility concerns and whether incompatibility was discussed with the Applicant or presented to the City Council. Mr. Jacques said that no one in Planning discussed incompatibility with the Applicant. He explained that Planning is one of several departments that has input to the City Council on liquor licenses and compatibility was not part of the recommendation to the City Council.

Ian Hasegawa addressed the Board and indicated the location of his house on the exhibit. He described the only difference between the previous establishment and Times 3 is the patio will not be used. Mr. Hasegawa is concerned about smoking outside of fifty feet from the building. He stated the location should not have a liquor license because it is not in the best interest of the community.

George Brown addressed the Board and indicated the location of his house on the exhibit. He discussed the investment he has in his house and how a sports bar impacts the value of the homes in the neighborhood. Mr. Brown expressed concerns about the hours of operation and traffic safety.

Ismael Hamad addressed the Board and indicated the location of his house on the exhibit. He discussed lower home values as a result of having a bar at that location. Mr. Hamad described the day care center and youth karate classes that are part of the retail center.

Jigar Patel addressed the Board and indicated the location of his house on the exhibit. He purchased his house before the retail center was built. Mr. Patel expressed concern about the previous owner having a connection to the Applicant, the marketing of Times 3 as a bar, and having a bar at this location is not in the best interest of the neighborhood.

The Board recessed from 12:31 to 12:40 p.m.

Tevis West addressed the Board and indicated the location of his house on the exhibit. He built his house in 2001. Mr. West described the problems he had with the previous owner's patrons. He said that several meetings were held with the previous owner and the police department to resolve issues with the patrons. Mr. West also said that there have been discussions with the City of Peoria and the retail center owners about allowing another liquor establishment in that space because of noise and disruption to the neighborhood.

Michael McCauley, President of Fletcher Heights Homeowners Association, addressed the Board. He discussed the concern about increased traffic by the day care center, how this business will not enhance the community and the HOA's protest to the City Council.

Mr. Kemp made a closing argument that Times 3 Bar and Grill was not compatible with other businesses in area, that it was in close proximity to a day care, and that it would not serve the best interest of the community.

There was Board discussion concerning the proximity not being in the best interest of the immediate community, zoning issues, advertising as a sports bar, sports bar culture not fitting in this location, Applicant's lack of representation, and the responsibilities of the Applicant and the City. The Board discussed capability, qualification and reliability are not issues in this application.

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

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

The Board convened in executive session at 1:05 p.m. and reconvened in open session at 1:10 p.m.

Mr. DuPont made a motion concerning Liquor License 12079274: Regarding personal qualifications, the Board has agreed that it is not an issue in this matter. We find that the location is in close proximity to adjoining neighborhoods, that the neighborhood organization in the past has moved to rectify this situation and continues to, that a no smoking ordinance with a fifty foot requirement impacts the neighborhood, and that the elimination of trash and the distribution of materials to the location via freight is too close to the neighborhood. We find that the public convenience does not require and that the best interest of the community will not be served as required by A.R.S. § 402-3 by granting this license and that the Board deny the application based on location only.

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

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


Mr. Ghelfi announced the Board will not meeting in February. Mr. Ghelfi asked Ms. Murphy to make a future agenda item on the March agenda: Discussion and possible action on reviewing Board Administrator duties and abilities to address requests to continue and withdraw.

The Board expressed appreciation for Mr. Farley's two and a half years of service on the Board.

D. Call to the Public

None.

The Board adjourned at 1:16 p.m.



 Denise M. Bale
 Administrator of the
 Arizona State Liquor Board



 Date