



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

J. D. GHELFI  
Board Chair

ALAN EVERETT  
Director

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Arizona State Liquor Board Hearing Minutes  
September 12, 2013

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

Members Absent: None

Counsel Present: Sarah Selzer, 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 September 12, 2013 at 9:00 a.m. with Mr. Ghelfi presiding.

**Roll Call**

All board members were present.

**B. Agenda: review, consideration and action**

**1. Restaurant Liquor License No. 12079429 - Original Application**

Randy D. Nations, Agent  
Boston's The Gourmet Pizza  
400 W. University Drive  
Tempe, AZ 85281

This matter was continued from the August 1, 2013 meeting and is set for hearing because the City of Tempe denied the application based on unpaid transaction privilege taxes owed to the City. There is an interim permit in place at this location. Subsequent to this matter being scheduled for hearing, Assistant City Attorney David Park filed on behalf of the City of Tempe its Motion to Withdraw Recommendation to Deny Application. Aaron Babcock, CEO of ACT Business LLC, and Jacob Guzman, General Manager of Boston's The Gourmet Pizza, appeared on behalf of the applicant. Mr. Babcock and Mr. Guzman were sworn. Mr. Babcock testified that payment arrangements with the City of Tempe had been satisfied.

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

**2. Beer and Wine Store Liquor License No. 10103694 - Request for Rehearing**

Clare Hollie Abel, Agent  
Wal-Mart Stores, Inc.  
Wal-Mart Supercenter #3884  
3435 East Broadway Road  
Tucson, AZ 85716

The Arizona State Liquor Board voted to deny an Original Application for Beer and Wine Store Liquor License No. 10103694 after a hearing at its Board meeting on July 11, 2013. The Applicant timely filed a Request for Rehearing and Protestors Colonia Solana Homeowners' Association and El Encanto Estates Homeowners' Association, Inc. timely filed a Response to Applicant's Request for Rehearing. The City of Tucson timely filed a Motion in Opposition to the Request for Rehearing. The Applicant also filed a Supplement to its Request for Rehearing. Protestors Colonia Solana Homeowners' Association and El Encanto Estates Homeowners' Association, Inc. also filed a Withdrawal of Response to Applicant's Request for Rehearing. Protestors San Clemente Neighborhood Association, Rosalie Anderson, Frank Babb, Betty F. Iventosch, Deborah Baker, Jean-Paul Bierny, Chris Tanz, Jeff Burgman, Cathy G. Davis, Susan Dubow, Shannon Edwards, Bonnie Sedlmayr-Emerson, Randy Emerson, Steven Vig, Joy Greenway, Barbara Jamieson, Rochelle Katzeff, Melinda Kinard, David J. Lajack, Daniel J. Lajack, Michael Lajack, Pierre Landau, Nina Ossanna, Katharine K. Peterson, Katya Peterson, Leighton H. Rockafellow, Anne Ryan, and Louis Stamler filed Protestor's Withdrawal of Response to Applicant's Request for Rehearing.

This matter was set to consider the Request for Rehearing, Protestors' Response, Motion in Opposition, Applicant's Supplement and Protestors' Withdrawals. The Applicant's Agent, Clare Hollie Abel, appeared at the hearing. Assistant City Prosecutor Stacy Stauffer appeared on behalf of the City of Tucson. Mr. Carruthers was not present at the July 11, 2013 hearing and abstained from the vote on this decision. Due to a conflict, Mr. DuPont recused himself from the July 11, 2013 hearing and he recused himself from this hearing.

Mr. Ghelfi began by stating the Request for Rehearing is in two parts and it is based on negotiations between Wal-Mart Supercenter #3884 and the neighborhood associations. Ms. Stauffer stated the City does not oppose the request for rehearing or reconsideration. Ms. Abel requested the Board's approval of reconsideration because the Applicant eliminated the opposition to the application. There was discussion between counsel and the Chair about the purpose of this hearing, which is to decide whether to grant a rehearing to Wal-Mart Supercenter #3884. Mr. Ghelfi initiated Board discussion by asking if the negotiated agreements and protest withdrawals are new information that was not discoverable or readily available at the July 11 2013 hearing.

Ms. Cantrell made a motion to convene in executive session to receive legal advice.

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

The Board convened in executive session at 9:24 a.m. and reconvened in open session at 9:46 a.m.

Board discussion continued. Mr. Ghelfi discussed the statute governing the Board's decision and quoted R19-1-703(C)(4) as the reason to overcome in granting a rehearing.

4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;

Ms. Scarafiotti made a motion that rehearing be denied based R19-1-703(C)(4): Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing. The request does not meet the criteria for that and the rehearing is denied.

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

Mr. Ghelfi addressed the second issue that was filed which is to amend the language of the Order denying the license (No. B-021-13) as it relates to the Board’s determination that alcohol sales leads to higher crime as presented by the protestors. The City of Tucson rested on its Motion in Opposition to the Request for Rehearing.

There was Board discussion. Ms. Scarafiotti, who made the motion denying the license, explained there were facts presented substantiating other pieces about crime and alcohol, and there was a perception by the protestors of what would occur in their neighborhoods. Ms. Scarafiotti made a motion to amend the order to specifically strike the language “the increase of crime related to alcohol sales,” from Board Order No. B-021-13.

Motion to amend Order -	Scarafiotti
Seconded -	Cantrell
Yay -	Scarafiotti, Cantrell, Linden
Nay -	Ghelfi
Abstained -	Carruthers
Disposition -	Order is amended

**3. Bar Liquor License No. 06100114 - Person and Location Transfer Application**

From:	To:
Hector Rudolpho Rodriguez, Agent Original Ideas Inc. Hector’s Oasis 4844 E. 22 <sup>nd</sup> Street Tucson, AZ 85711	Thomas Robert Aguilera, Agent JA Tucson, LLC Hudson-Restaurant Bar 201 N. 4th Avenue Tucson, AZ 85705

This matter was set for hearing due to public protest. The Agent, Thomas Robert Aguilera, appeared at the hearing. Public protestors Stephen H. Paul and Elaine Paul, owners of the Tophoy Building, and William Nugent, owner of The Shanty, were not present. Mr. Ghelfi noted that Mr. Nugent contacted the Board Administrator and informed her that he would not be able to attend the hearing because he is recovering from surgery. Mr. Ghelfi stated the protest letters are included in the official record.

Mr. Aguilera moved that the two protests are not valid protests because they did not comply with A.R.S. § 4-201(E).

. . . If the written arguments are filed by a person on behalf of a corporation or other legal entity or association, the written arguments must be accompanied by a copy of the entity’s organizing document, a designation of the office or position that the person holds within the organization and a copy of the written appointment of the person to speak on behalf of the organization. . . .

Mr. Aguilera stated he did not receive copies of organization documents and appointment of the spokesperson with either protest letter. 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 -	DuPont
Yay -	Ghelfi, DuPont, Linden, Scarafiotti, Cantrell, Carruthers
Nay -	None
Abstained -	None
Disposition -	Convene in executive session

The Board convened in executive session at 10:01 a.m. and reconvened in open session at 10:07 a.m.

Mr. Ghelfi addressed Mr. Aguilera's motion. The Shanty protestor purports to represent a number of entities and individuals. Based on statute, The Shanty is not a valid protestor. The owners of the Tophoy Building are business owners of real property within a one mile radius, and will stand as a valid protestor.

Mr. Aguilera introduced Jason Anderson, the owner of JA Tucson, LLC. Mr. Anderson was sworn. Mr. Aguilera discussed Mr. Anderson's meetings with the Fourth Avenue Merchants Association and the Tucson City Council to go over business plans. He described the letter of support submitted by the Iron Horse Neighborhood Association to the City Council when the liquor license application was heard at the local level. Mr. Aguilera noted the protest letter accepted by the Board is about location and how the owners would like to see tenants that are dependent on food. He explained how Mr. Anderson's business is located in an entertainment district and is close to the new streetcar depot. With respect to capability, qualification and reliability, Mr. Anderson is currently a licensee and has a good record with local police and liquor licensing agencies.

Board discussion concerned the issue of the protest. Mr. DuPont discussed the nature of this entertainment district with a number of bars and its student population. He described the City's efforts for community improvements including the streetcar structure for 4<sup>th</sup> Avenue and the police patrol walking the street. There was Board consensus that this was an appropriate location for the business. The Board asked about Mr. Anderson's liquor training and previous licenses.

Mr. DuPont made a motion to grant Liquor License No. 06100114: Based upon the applicant's training, I move that we find the applicant is capable, qualified and reliable as required by A.R.S. § 4-203(A). Based on the City of Tucson's Mayor and Council approval and proceeding from there with support, I move that we find the public convenience does require and the best interest of the community will be served as required by A.R.S. § 4-203(A) by granting this person and location transfer license and that the Board grant this application.

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

The Board recessed from 10:21 a.m. to 10:38 a.m.

#### **4. Beer and Wine Bar Liquor License No. 07070656 - Person and Location Transfer Application**

From:	To:
Norman Andrus, Agent Card Room 101 10908 E. Apache Trail Apache Junction, AZ 85220	H. J. Lewkowitz, Agent BAB I, LLC T & A Cabaret II 3790 Grand Avenue Phoenix, AZ 85019

This matter was set for hearing because the City of Phoenix has recommended disapproval of this application based on concerns with the location, and belief this liquor license was not in the best interest of the community and its issuance would negatively impact ongoing revitalization efforts in the area. This matter was also set for hearing due to public protest. The Agent, H.J. Lewkowitz, appeared at the hearing. Jason Blechmann, James Nordstrom, and Jennifer Moreno appeared on behalf of the Applicant and were sworn and testified. Assistant City Prosecutor Elizabeth A. Sugges appeared on behalf of the City of Phoenix. Detective Oscar Cortez of the Phoenix Police Department appeared on behalf of the City of Phoenix and was sworn and testified. Public protestors Lawrie Fitzhugh, representing Sevilla Neighborhood Association, and Diane Harris, representing Alhambra Neighborhood Association, were sworn and testified.

Mr. Lewkowitz presented his motion objecting to participation by the City of Phoenix at the hearing before the State Liquor Board based on A.R.S. § 4-201(C) and (E). Ms. Sugges responded that presentation of witnesses and

evidence by a local governing body to the Board are appropriate, citing A.R.S. §§ 4-112 (A)(2) and (3); 4-201(E); and Rule 19-1-102, A.A.C. Mr. Ghelfi denied the motion.

Mr. Lewkowitz presented his opening argument and provided a map of the area for demonstrative purposes. Mr. Blechmann is the sole owner of BAB 1, LLC and has a Series 07 and a Series 06 liquor license. Mr. Blechmann has never received a violation of the state liquor code, personally or for a business. This particular location has been operated as an all nude establishment for close to 20 years. Mr. Lewkowitz named three advantages for having a liquor license at this location: (1) minimum age of clientele would be 21 years old; (2) full nudity of employees and entertainers would be restricted; and (3) the establishment must close at 2:00 a.m.

Ms. Sugges and provided a map of the area for demonstrative purposes and remarked about the proximity and impact of the licensed location to the surrounding residential neighborhoods.

Jennifer Moreno was called as witness and testified about management practices, security, job responsibilities, residential neighborhoods in the area, and liquor training. James Nordstrom was called as witness and testified about his role as general manager and management practices, his prior experience in bars and gentleman clubs, his liquor training, and community outreach.

The Board recessed from 11:41 a.m. to 11:54 a.m.

Jason Blechmann was called as witness and testified. He discussed his businesses, his education and experience in the hospitality industry, traffic flow and access to T & A Cabaret II, and his community outreach efforts. He also described his investment in renovations and improvements to the property. Mr. Blechmann discussed management and security practices. Ms. Sugges asked about the neighborhood. The Board asked about the loan and lease agreement on file. Mr. Linden moved to convene in executive session.

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

The Board convened in executive session at 12:43 p.m. and reconvened in open session at 12:47 p.m.

The Board recessed from 12:47 p.m. to 1:29 p.m.

Mr. Ghelfi discussed the issue of hidden ownership and asked Mr. Blechmann to explain the loan he received. There were questions from the Board and discussion about the lease agreement. Mr. Ghelfi moved to convene in executive session.

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

The Board convened in executive session at 1:44 p.m. and reconvened in open session at 1:49 p.m.

Questions from the Board continued. Mr. Blechmann discussed his efforts to become involved in the community.

Ms. Sugges called the City's first witness, Diane Harris, representing the Alhambra Neighborhood Association. Ms. Harris has lived in her home since 1986. Ms. Harris stated that there are ten sexually oriented businesses within one and a-half miles of 3790 Grand Avenue; and there are 74 liquor licenses within the 85019 zip code. Ms. Harris discussed her preference for an all nude establishment rather than a liquor-licensed establishment.

Ms. Sugges called the City's second witness, Lawrrie Fitzhugh, representing the Sevilla Neighborhood Association. Ms. Fitzhugh discussed discrepancies in the Applicant's paperwork. She discussed the US-60/Grand Avenue COMPASS, a regional compact, West Phoenix Revitalization, and Canyon Corridor as public efforts to redevelop the area surrounding 3790 Grand Avenue. Ms. Fitzhugh discussed her preference for an all nude establishment rather than a liquor-licensed establishment.

Ms. Sugges called the City's last witness, Detective Oscar Cortez of the Phoenix Police Department. Detective Cortez has worked in the Cactus Park police precinct since 2001 in a patrol capacity and in his current position. He discussed the number of schools and day care centers within one mile of 3790 Grand Avenue, the criminal activity in the area, and the community improvements. The Board asked about his experience with establishments that serve alcohol.

The Board recessed from 3:10 p.m. to 3:15 p.m.

There was Board discussion and consensus that the Applicant is capable, qualified and reliable. With respect to location, the Board discussed the number of sexually oriented businesses in the area, traffic patterns and accessibility to the neighborhoods, industrial zoning, and tighter business regulation under Title 4. The Board raised concerns about the area undergoing redevelopment, the number of schools and density of children in the area, and testimony of the protestors that revitalization is taking place.

Motion to deny license -	DuPont
Seconded -	Cantrell
Yay -	DuPont, Scarafiotti, Cantrell
Nay -	Ghelfi, Linden, Carruthers
Abstained -	None
Disposition -	Tie vote

Ms. Cantrell and Mr. Linden needed to leave the meeting. There was discussion about continuing the hearing telephonically in order for all Board members to be present for the vote. Ms. Cantrell left the meeting at 3:46 p.m.

Motion to continue hearing -	Carruthers
Seconded -	Scarafiotti
Yay -	DuPont, Scarafiotti, Ghelfi, Linden, Carruthers
Nay -	None
Abstained -	None
Disposition -	Tie vote

Mr. Linden left the meeting at 3:48 p.m. The remaining Board members proceeded to item C.

**The hearing for Beer and Wine Bar Liquor License No. 07070656 continued (telephonically) on September 13, 2013 at 1:50 p.m. and concluded at 2:15 p.m.**

All Board members were present. Ms. Selzer, Mr. Lewkowitz, Ms. Sugges, Mr. Blechmann, Ms. Fitzhugh, and the Board Administrator were present.

Mr. Ghelfi recapped the discussion and vote on the motion to deny the license during the September 12, 2013 hearing. Board discussion continued. With or without liquor, the business is a sexually oriented business. Having a liquor license will raise the age of the clientele, limit complete nudity of entertainers, and change the hours of operation to closing at 2:00 a.m. There will be greater law enforcement presence in the area and tighter regulation. The best interest of the community is at issue. It is a neighborhood in transition. Community members fear that bringing alcohol to that location will bring more people and traffic. The public convenience is already being served by the other establishments serving liquor in the area. The applicant has been doing a good job of providing security and has not had problems.

Mr. Linden made a motion to approve Liquor License No. 07070656. The Applicant has proved that he is capable, qualified and reliable as required by A.R.S. § 4-203(A), and that the public convenience requires and the best interest of the community will be substantially served by granting a liquor license to this location. The reasons for

approving this liquor license are the age of the patrons increases from 18 to 21 years old; the hours of operation will be from 11:00 a.m. to 2:00 a.m.; there is more regulation of the business under Title 4; the applicant has had training; the applicant has a good security plan with its existing business and with this business; and the applicant does not have any violations at his current location.

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

Ms. Selzer confirmed the motion passes under A.R.S. § 4-201(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.

**C. Minutes**

Motion to approve the February 13, 2013 minutes -	DuPont
Seconded -	Carruthers
Yay -	Ghelfi, DuPont, Scarafiotti, Carruthers
Nay -	None
Abstained -	None
Disposition -	February 13, 2013 minutes approved

Motion to approve the March 7, 2013 minutes -	Scarafiotti
Seconded -	DuPont
Yay -	Ghelfi, DuPont, Scarafiotti, Carruthers
Nay -	None
Abstained -	None
Disposition -	March 7, 2013 minutes approved

Motion to approve the August 1, 2013 minutes -	DuPont
Seconded -	Scarafiotti
Yay -	Ghelfi, DuPont, Scarafiotti, Carruthers
Nay -	None
Abstained -	None
Disposition -	August 1, 2013 minutes approved

Motion to approve the August 1, 2013 Executive Session minutes -	DuPont
Seconded -	Carruthers
Yay -	Ghelfi, DuPont, Scarafiotti, Carruthers
Nay -	None
Abstained -	None
Disposition -	August 1, 2013 Executive Session minutes approved

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

Mr. Ghelfi announced the October Board meeting has been cancelled.

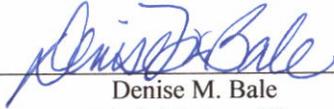
**E. Review of Time Limits of Hearings**

Mr. Ghelfi stated the Board will continue to review time limits of hearings.

**F. Call to the Public**

None.

The Board adjourned at 3:53 p.m.



Denise M. Bale  
Administrator of the  
Arizona State Liquor Board



Date