



STATE OF ARIZONA
ARIZONA STATE LIQUOR BOARD
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DOUGLAS A. DUCEY
Governor

J. D. GHELFI
Board Chair

ALAN EVERETT
Director

Arizona State Liquor Board Hearing Minutes
January 8, 2015

Members Present: J.D. Ghelfi - Chairman, Cyndy Valdez - Vice Chairman, Bill Du Pont, Robin Cantrell, Jim Carruthers, and Pud Colquitt

Members Absent: Vikki Scarafiotti

Counsel Present: Sarah Selzer, Assistant Attorney General
Mary Jo Foster, 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 January 8, 2015 at 10:18 a.m. with Mr. Ghelfi presiding.

Roll Call

Ms. Scarafiotti was absent. All other board members were present.

B. Agenda: review, consideration and action

1. Restaurant Liquor License No. 12104320 - Original Application

Thomas R. Aguilera, Agent
Goodness-U, LLC
Goodness
1011 N. Tyndall Avenue, Suites R1 & R2
Tucson, AZ 85719

This matter is set for hearing due to public protest. The Agent, Thomas R. Aguilera, appeared at the hearing. Jason Anderson, Andre Joffroy and April McMahon appeared on behalf of the Applicant and were sworn. Mr. Anderson and Ms. McMahon testified. Public protestor Islamic Center of Tucson ("ICT") was represented by counsel, Jeffrey W. Crockett and Ishra K. Solieman. Kamel Didan appeared on behalf of ICT and was sworn and testified. Mr. Crockett explained that the protest was not in opposition to the Applicant's capability, qualification and reliability.

Ms. Valdez disclosed that this applicant is in the territory of her employer, Golden Eagle Distributors, Inc. If the license is granted, it is likely her employer will be selling products to this account. In terms of the company's bottom line, it makes little difference. Ms. Valdez stated that she is not an owner or shareholder of Golden Eagle Distributors. She is an employee of the company. She does not believe this will effect her decision in anyway and she is not inclined to recuse herself unless there are objections from the parties. Additionally, Ms. Valdez disclosed that her youngest daughter resides at Level. She resides on the third floor facing Tyndall Avenue, and she does not have a balcony. There were no objections.

Mr. Du Pont disclosed that he has been a neighborhood president for twenty-seven years with his neighborhood association. There are students living in his neighborhood and there have been concerns and issues with the students. Mr. Du Pont attended a meeting held by Tucson City Council Member Steve Kozachik at the University of Arizona in early December 2014. He was notified of that meeting because of his involvement with neighborhood action. He attended the meeting but did not speak on behalf of the neighborhood. Mr. Du Pont serves on the Board as a neighborhood representative and he does not believe that will impact his decision. There were no objections.

The Applicant through its counsel, Mr. Aguilera, filed a prehearing Motion to vacate the hearing on this matter, or if a hearing is scheduled, to set the hearing on the Board's December agenda. ICT responded through its counsel, Mr. Crockett. Applicant waived its right to reply in support of its motion. The Board denied the motion and set the hearing on January 8, 2015.

Applicant through its counsel, Mr. Aguilera, filed a prehearing Motion to exclude the materials filed by ICT as untimely because it is not within the timeframes set forth in R19-1-704(B)(1). ICT responded through its counsel, Mr. Crockett. The Board denied the motion.

Mr. Aguilera delivered an opening statement. Mr. Crockett delivered an opening statement.

Mr. Aguilera called his first witness, Jason Anderson. Mr. Anderson described his background, the restaurant group behind Goodness, and the menu. Mr. Aguilera distributed printed copies of Exhibit A to Applicant's Brief in Support of the Application to Board members. Mr. Anderson described the mitigation plan, training provided to managers and employees, and the outreach to the community. Mr. Crockett cross-examined Mr. Anderson about the floor plan, the distance from the patio seating to the door of the ICT, and the menu.

The Board recessed from 11:25 a.m. to 11:38 a.m.

Mr. Crockett continued his cross-examination of Mr. Anderson. On redirect, Mr. Anderson discussed the Title 4 all employees have completed. Board questions concerned other liquor establishments within a one mile radius, the hours of operations, the clientele, the menu and outreach to the community. Mr. Anderson described his meeting with Steve Kozachik and Chris Ganz of WUNA. Goodness completed a mitigation plan even though it is not required for the liquor license application. Mr. Anderson testified that his company does a mitigation plan for every restaurant they open.

Mr. Ghelfi announced that the Board is limited in the time it has to complete this hearing. Another hearing is scheduled at 1:00 p.m. in auditorium on the first floor. Mr. Aguilera proffered his witness, April McMahon. Ms. McMahon is a legal assistant to Mr. Aguilera and she is responsible for mitigation plans with the City of Tucson. Ms. McMahon described a mitigation plan as it relates to a liquor license applicant. There were Board questions. Mr. Ghelfi stepped out of the meeting and Ms. Valdez assumed the chair's role.

Mr. Crockett called his first witness, Kamel Didan. Mr. Didan is a Research Professor for the University of Arizona. He has been involved with the University of Arizona as a student and professor since 1990. Mr. Didan is the Vice Chair of the Board of Trustees for the Islamic Center of Tucson. He described his duties for the ICT. Mr. Crockett displayed Exhibit A, an enlarged photograph of the ICT in relation to the student apartment buildings. Professor Didan discussed the activities at ICT and the people who typically attend these activities. Professor Didan discussed the violence and vandalism that have recently occurred in the neighborhood and how the ICT has addressed those issues. Professor Didan discussed the change of dynamics in the neighborhood due to the influx of 2,100 students within several feet of the ICT. Mr. Crockett showed two news clips about the violence and vandalism that have taken place. Mr. Aguilera objected to hearsay in the testimony. Mr. Crockett continued his questioning.

Mr. Ghelfi suggested the parties continue this hearing telephonically in order to allow enough time for the parties to present their cases and for the Board to deliberate and arrive at a decision. A large crowd was waiting in the auditorium on the first floor for the afternoon hearing scheduled at 1:00 p.m. Mr. Aguilera objected to the continuance.

Motion to convene in executive session for legal advice -	Ghelfi
Seconded -	Colquitt
Yay -	Ghelfi, Valdez, Colquitt, Du Pont, Cantrell, Carruthers
Nay -	None
Abstained -	None
Disposition -	Convene in executive session

The Board convened in executive session at 1:18 p.m. and reconvened in open session at 1:24 p.m.

Mr. Ghelfi announced that the hearing would continue until 2:00 p.m. and that a decision would be made. Professor Didan testified that he believes a liquor license at this location is not in the best interest of the community. Both parties' exhibits were entered into the record without objection. Mr. Aguilera cross-examined Professor Didan. There were Board questions. Mr. Aguilera made a closing statement. Mr. Crockett made a closing statement. There was Board debate.

Ms. Valdez made a motion regarding Liquor License No. 12104320: Based upon the following factors, there is no protest by the Department of Liquor Licenses and Control; the application was considered and recommended for approval by the City of Tucson; the Islamic Center did not oppose the application on the applicant's personal qualification, the applicant has completed the Title 4 basic and management law training as has the staff also; the applicant holds other licenses; the applicant has policies in place as to service and handling of alcohol. I move that we find the applicant is capable, qualified and reliable as required by A.R.S. §4-203(A). And based upon the following factors, the customers have asked for the wine and craft beers to be served to complement the food available, the local governing board did not object to location issue, but recommended approval, the applicant reached out to WUNA and other local neighborhood associations to work with and through any concerns; the mitigation plan was not required but they submitted one anyway and worked through it; 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) and that the liquor license application is granted.

Motion to grant license -	Valdez
Seconded -	Du Pont
Yay -	Carruthers, Cantrell, Colquitt, Du Pont, Valdez
Nay -	Ghelfi
Abstained -	None
Disposition -	License granted

The Board recessed from 1:58 p.m. to 2:35 p.m.

C. 1:00 p.m. Agenda: review, consideration and action (Industrial Commission Auditorium, 1st Floor)

The hearing of the Arizona State Liquor Board was called to order at 2:38 p.m. with Mr. Ghelfi presiding. Ms. Scarafiotti was absent. All other board members were present.

The two matters before the Board were continued from the November 6, 2014 meeting. Prior to the November meeting, a motion to consolidate the applications was approved by the Board.

2. Liquor Store Liquor License No. 09010003 - Person Transfer Application

Gary Allen McDonald
 Red Barn Trading Post
 1/4 Mile South of I-40 Highway 191
 Sanders, Arizona 86512

George Albert Ryan
 Red Ranch Liquors, LLC
 Red Barn Trading Post
 1/4 Mile South of I-40 Highway 191
 Sanders, Arizona 86512

This matter is set for hearing because Apache County recommended disapproval of this application and due to Department protest. This matter is also set for hearing due to public protest. There is an interim permit in place.

3. Liquor Store Liquor License No. 09010016 - Person Transfer Application

Gary Allen McDonald
Lee's Liquors
2 Miles North of Chambers on Highway 191
Sanders, Arizona 86502

George Albert Ryan
9 + 2 Enterprises, LLC
Lee's Liquors
2 Miles North of Chambers on Highway 191
Sanders, Arizona 86502

This matter is set for hearing because Apache County recommended disapproval of this application and due to Department protest. This matter is also set for hearing due to public protest. There is an interim permit in place.

The Applicant, George Albert Ryan, appeared at the hearing and was represented by counsel, H.J. Lewkowitz. County Attorney Michael B. Whiting appeared on behalf of the Apache County Board of Supervisors. Gregory Y. Harris appeared as co-counsel for Apache County. Assistant Attorney General Sarah Selzer appeared on behalf of the Department of Liquor Licenses and Control ("Department"). Assistant Attorney General Mary Jo Foster, from the Solicitor General's Office, was present and provided independent legal advice to the Board. Vicki Motzkin assisted Mr. Lewkowitz.

Disclosures

Ms. Valdez disclosed that she is employed by Golden Eagle Distributors, Inc., the Budweiser distributor in the area of Flagstaff. Ms. Valdez stated that she is not an owner, she does not own stock, and her compensation is not tied to the revenue of the company. Golden Eagle did sell products to the licenses owned by Mr. McDonald and by Mr. Ryan. In addition, she was contacted by the Navajo Nation Commission on Human Rights by Stewart Calnimpewa and she also spoke with his supervisor, Lauren Bernally, as the custodian of records for invoices regarding those sales. Subsequent to those two conversations, she exchanged an email with Mr. Harris and the Director, directing Mr. Harris to send all future correspondence through the Department. Ms. Valdez does not believe that Golden Eagle's business with those accounts or her contact with the Navajo Nation or its counsel will have any effect on her ability to be neutral or fair in considering the testimony today. She is not inclined to recuse herself unless there are objections by counsel. There were no objections.

Mr. Ghelfi disclosed that he had an interaction with Mr. Lewkowitz at an event on Monday. Nothing of any substance was discussed. Mr. Ghelfi does not feel that would taint his ability to preside over this hearing fairly. He also had a phone call from Senator Carlyle Begay yesterday. Senator Begay represents this District and he wanted to know what procedurally happens at a Board hearing. The phone call lasted approximately 15 minutes. Nothing was discussed as it relates to rulings, just the fact that there are pending rulings. The senator indicated what happens in those cases and Mr. Ghelfi told him a number of things that could happen depending on what the rulings were. It was a courtesy call as it relates to the senator. Mr. Ghelfi does not feel that conversation would in any way taint his ability to preside over this hearing fairly. There were no objections.

Prehearing Motions

The Department through its counsel, Sarah Selzer, filed a Motion in Limine to Preclude Testimony about Location, Inactive Licenses and Previous Ownership during the hearing on this matter. The Navajo Nation responded through its counsel, Gregory Y. Harris. The Department replied in support of its motion. The Board granted the Motion. Subsequent to the Board's Order granting the Motion, the Apache County Board of Supervisors through its County Attorney, Michael B. Whiting, filed its Request for the Board to reconsider its ruling on the Department's Motion in Limine. The Department filed its Joinder with Apache County's request. The Board granted the County's Motion to reconsider yesterday. Ms. Selzer requested there be Board discussion as it relates to the Motion to reconsider. She explained that she had last minute concerns that the Motion in Limine was more substantive than procedural, and therefore more properly ruled on by the Board and not the Board chair.

Mr. Whiting presented the County's opposition to the Motion in Limine, arguing the history of the establishments and the relationship between Mr. McDonald and Mr. Ryan should be considered by the Board. Mr. Harris argued in opposition to the Motion in Limine and the Motion to Dismiss the Navajo Nation as a protestor. Mr. Harris recognized President Ben Shelly of the Navajo Nation who was seated in the audience. Mr. Lewkowitz presented the Applicant's position in favor of the Motion in Limine and the Motion to Dismiss. Mr. Ghelfi addressed the Motion in Limine which was filed October 21, 2014. Typically there is a fifteen day timeframe in which to respond and then a five day period in which to reply. The Motion was filed appropriately prior to the November 6 hearing; and it was not responded to until December. Mr. Ghelfi made a ruling on the Motion as it relates to a procedural

issue. Mr. Ghelfi stated he views the Motion in Limine as a procedural issue entirely. He views the Motion to Dismiss, the Motion for the administrative law judge, and the Motion to continue as a procedural issues rather than substantive issues. Ms. Valdez suggested the Board hear the Motion in Limine new and vote as a six panel Board on a decision. The Board members unanimously agreed.

All parties agreed that location is not at issue before the Board. Mr. Whiting and Mr. Harris argued that the inactive licenses and the relationship between Mr. McDonald and Mr. Ryan should be considered in determining Mr. Ryan's capability, qualification and reliability to hold a liquor license. Ms. Valdez made a motion to grant in part and deny in part the Department's Motion in Limine, in joinder by the Applicant, and in opposition filed by the Navajo Nation and joined by the County, precluding all references to the location of the licensed premises and to Gary McDonald's ownership. The two inactive licenses may be discussed only as it relates to false and misleading information.

Motion to grant in part and deny in part Department's Motion in Limine -	Valdez
Seconded -	Cantrell
Yay -	Valdez, Cantrell, Carruthers, Colquitt, Du Pont
Nay -	Ghelfi
Abstained -	None
Disposition -	Motion in Limine granted as to items (1) and (2); and denied as to item (3)

Apache County through its County Attorney, Michael B. Whiting, filed a Request to Continue the January 8, 2015 Hearing before the Board. The Navajo Nation through its counsel, Gregory Y. Harris, filed its Joinder to Apache County's Request to Continue. The Department through its counsel, Sarah Selzer, responded in opposition. The Applicant through its counsel, H.J. Lewkowitz, responded in opposition. Mr. Ghelfi ruled on the Motion to continue as it was a procedural issue. There was no objection by the other Board members. The Motion to continue was denied and it remains in effect.

The Navajo Nation through its counsel, Gregory Y. Harris, filed a Motion for Hearing before an Administrative Law Judge Pursuant to A.R.S. §4-201(F). The Apache County Board of Supervisors through its County Attorney, Michael B. Whiting, filed its Joinder to the Navajo Nation's Motion requesting the Board refer this matter to an administrative law judge. The Department through its counsel, Sarah Selzer, responded in opposition. The Applicant through its counsel, H.J. Lewkowitz, responded in opposition. Mr. Ghelfi ruled on the Motion to remove to an Administrative Law Judge ("ALJ") as it was a procedural issue. There was no objection by the other Board members. The Motion to remove to an ALJ was denied and it remains in effect.

The Department through its counsel, Sarah Selzer, filed a Motion to Dismiss Protestor Navajo Nation and Protestor Nahata Dziil Commission Governance. The Navajo Nation through its counsel, Gregory Y. Harris, responded in opposition and was joined by Apache County. The Applicant through its counsel, H.J. Lewkowitz, responded in support of the Department's Motion. Mr. Ghelfi ruled on the Motion to Dismiss as a procedural issue and based his ruling on statutory findings and limitations. There was no objection by the other Board members. The Motion to Dismiss was granted and it remains in effect. The Navajo Nation and Nahata Dziil Commission Governance members or spokesperson(s) may be called as a witness(es) by the Apache County Attorney or the Department, as well as any witness that Apache County or Department deem necessary and relevant to establish their basis for denying the Applicant.

Presentation of the Case

Mr. Lewkowitz presented the Applicant, George Ryan, and his witnesses, Lynn Ryan and Glendora Burnside. Ms. Selzer presented the Department's witnesses, Deputy Director Wes Kuhl and Investigator Herb Carruthers. Mr. Whiting presented his witnesses, Barry Weller, Ina Noggle, Lorenzo Curley, Etta Baldwin, Julie Konheiser, Leonard Gorman, Stewart Calnimpewa, Darryl Ahasteen, Tobie Keiser, Tom White and Joe Shirley. The witnesses were sworn.

Mr. Lewkowitz presented his opening statement and circulated Exhibit A, current photographs of Red Barn Trading Post and Exhibit B, spiral notebooks containing the record of sales from September 4, 2014 to January 6, 2015. Mr. Whiting presented his opening statement. Ms. Selzer waived an opening statement. Mr. Lewkowitz called his first witness, Glendora Burnside. Ms. Burnside lives in Sanders, Arizona and has been employed by George Ryan for four years. Prior to Mr. Ryan's ownership, Ms. Burnside worked for Dianne McDonald and Gary McDonald for nine years. Her position is salesclerk and bartender. She has worked at the liquor store and High Country Tavern.

Ms. Burnside described the information that is routinely recorded in spiral notebooks. Mr. Whiting questioned the witness about "walk-ups" and the "doggy house." There were Board questions. There was redirect by Mr. Lewkowitz and additional Board questions.

The Board recessed from 4:27 p.m. to 4:47 p.m.

Mr. Lewkowitz called an additional witness, Amy Schraff. Ms. Schraff was sworn and testified. She is employed by the Lewkowitz Law Office as a legal assistant. She is responsible for completing paperwork. Mr. Whiting cross-examined the witness. There were no questions by the Department or the Board.

Applicant George Ryan was called to testify. Mr. Ryan purchased Red Barn Trading Post, Lee's Liquors, High Country Liquors, and High Country Tavern in May 2014. He intends to operate Red Barn and Lee's Liquors. He has been involved with Red Barn and Lee's Liquors since January 2014 when he was asked to help with business operations after Dianne McDonald's death. Mr. Ryan stated that he infused \$10,000 into the businesses and paid \$25,000 for the four liquor licenses. Mr. Ryan acknowledged that he made a down payment of \$5,000 on the four licenses and he owes \$20,000 on the contract. He explained that he was given power of attorney for Gary McDonald because everything was in Dianne McDonald and Gary McDonald's names, and he needed to pay bills to keep the businesses in operation. Mr. Ryan explained the incidents that occurred at George's Place Too and that he reported the incidents to local law enforcement. Mr. Ryan described the improvements he made to Red Barn including inventory and security cameras. Mr. Ryan testified that he pays rent to Mr. McDonald and that he took over the obligation of over \$5,900 a month to the Lee Family for the real property on which the licenses are located.

Mr. Whiting questioned Mr. Ryan about the Renewal for High Country Tavern and the Inactive Status Form for High Country Liquor; admitted as Exhibit 1 and Exhibit 2, only as it relates to the truthfulness of the information. When asked if Mr. Ryan filled out the form, he said he could not remember. He acknowledged that he signed the form and did not read it. Mr. Whiting introduced Information filed by the Apache County Attorney in Apache County Superior Court Case No. CR-99-159, as Exhibit 3. There was counsel and Board discussion about the rule for reporting incidents or acts of violence to the Department. Mr. Whiting referenced a summary and transcription of telephone calls from Gary McDonald, calling from the Apache County jail, to Mr. Ryan. Mr. Whiting stated that he created the documents. Mr. Lewkowitz objected. When questioned about his business plan for the Red Barn and Lee's Liquor, Mr. Ryan testified that he will have a business plan when he has the liquor licenses. Mr. Whiting introduced Certificate of Title 4 Training Completion for George Ryan as Exhibit 4. Ms. Selzer questioned Mr. Ryan about the partial payment he gave Mr. McDonald's daughter, Chentall Investor, for the liquor licenses and the indebtedness he listed on the application. Ms. Selzer questioned Mr. Ryan about reporting criminal incidents to the Department. There were redirect questions by Mr. Lewkowitz. There were Board questions. Mr. Ryan testified that he believed the licenses go back to the Department if the applications are denied by the Board.

Motion to convene in executive session for legal advice -	Valdez
Seconded -	Cantrell
Yay -	Valdez, Cantrell, Ghelfi, Colquitt, Du Pont, Carruthers
Nay -	None
Abstained -	None
Disposition -	Convene in executive session

The Board convened in executive session at 6:06 p.m., recessed at 6:12 p.m., and reconvened in open session at 6:33 p.m.

Board examination and questions for Mr. Ryan continued. Ms. Selzer stated the record cite for returned product is R19-1-321(H) which establishes the parameters for returning malt liquor and other spirituous liquor products. Mr. Ryan testified that he did not go to the County after the Board of Supervisors meeting to see what he could do to resolve the issues that were presented. Mr. Ryan was asked why he answered "0" on the license application for the total business indebtedness. Mr. Ryan stated that he did not understand that the liquor licenses were real property. He did not know he could move them anywhere in Apache County. He said the purchase price of \$25,000 for the four liquor licenses was given to him by Mr. McDonald and his daughter. On redirect, Mr. Ryan stated that he considered his indebtedness to be personal rather than business.

Mr. Lewkowitz called his fourth witness, John Lee, who will appear via teleconference. Ms. Motzkin had attempted to reach him; however, it was after business hours and he had not answered the calls. Mr. Lewkowitz called Lynn Ryan as his next witness. Mrs. Ryan is the Applicant's spouse. Mrs. Ryan worked at Red Barn from October 2012

to January 2013 and from January 2014 to the present. She keeps all the accounting records, writes checks to pay bills; she processes all payroll; and performs all tasks necessary to pay unemployment taxes, business taxes, state taxes, and sales tax. She occasionally pays inventory invoices. She is the co-signer on the two business accounts, Red Ranch Liquors and 9 + 2 Enterprises. All income taxes are prepared by an accounting firm in Phoenix. She confirmed the monthly amount that is paid to the Lee Family Estate. She spends most weekdays at Red Barn. She stated that there have been no liquor violations at either Red Barn or Lee's Liquors since she and Mr. Ryan took over the businesses. Mrs. Ryan and the employees have received liquor law training. She testified that she knew Mr. McDonald but did not know him well.

Mr. Whiting cross-examined Mrs. Ryan about her involvement in the day-to-day operation of Red Barn. She stated that she has nothing to do with the serving of liquor. When asked whether she had seen intoxicated persons around the Red Barn, Mrs. Ryan testified that people are not allowed to linger at the Red Barn; however, she has seen them across the street. Ms. Selzer asked about the business ownership. Mrs. Ryan confirmed that she is not an owner and that she did loan \$5,000 to her husband for the down payment on the liquor licenses. On redirect, Mrs. Ryan said her office is approximately 40 feet from the walk-up window. The Board asked about unpaid taxes owed when she and Mr. Ryan took over the business from Mr. McDonald. Mrs. Ryan stated there were back taxes owed and that the business taxes are current for 2014.

There was another attempt to reach John Lee which was unsuccessful. In the interest of time, Mr. Lewkowitz rested his primary case.

Ms. Selzer said in the interest of time, she would submit the Department's case on the record. The sworn witnesses could be called upon to answer questions. Ms. Selzer explained that the zero indebtedness on the applications prompted the Department's interview with the Applicant. That interview was complicated, confusing, left unanswered questions and did not convince the Department that this was actually a solid money trail. The Department consistently has concerns with the money trail because it goes to the core of an applicant's ability to be capable, qualified and reliable to hold a liquor license. The Department's case for both applications is the finances.

Mr. Whiting called the Department's witness, Investigator Herb Carruthers, as Apache County's first witness. Investigator Carruthers has been a full authority peace officer for 12 years and has worked for the Department since May 2013. He conducted an interview with Mr. Ryan and his wife in August 2014. During the interview it was found that approximately \$165,000 was owed on Mr. Ryan's behalf. Mr. Ryan owed \$25,000 for the four liquor licenses and \$140,000 to the Lee Family to pay off a lien against the property on which the licenses are located. Mr. Ryan paid \$4,000 to Chentall Lester, Mr. McDonald's daughter, and \$1,000 to the McDonald Estate as a down payment on the licenses. In the interview, Mr. Ryan stated that he was assuming all the debt to the Lee Family. When the debt was brought to his attention, Investigator Carruthers advised Mr. Ryan that the debt needed to be divulged. Mr. Whiting asked Investigator Carruthers based on the testimony he had heard today, would that change his report. Investigator Carruthers answered, no, he stands on his report. Mr. Lewkowitz showed a letter to Investigator Carruthers and asked if he recalled receiving it. Investigator Carruthers testified that he recalled the letter and at the end of the interview with Mr. Ryan, he advised that the application needed to be amended.

Mr. Whiting called the County's next witness, Lorenzo Curley. Mr. Curley is a former Navajo Nation Council delegate. He stated that he has observed intoxicated persons milling around Red Barn. Mr. Lewkowitz asked if the property around Red Barn has improved. Mr. Curley stated that he was part of a discussion group with ADOT (Arizona Department of Transportation) to extend U.S. 191, to widen the road, add sidewalks, add street lights, and improve the landscaping on both sides of Red Barn and across the street. Mr. Curley testified that ADOT did most of the work to improve the landscape.

Mr. Whiting called Tobie Keiser. Ms. Keiser lives within one mile of Red Barn and has lived at that location since 1998. Mr. Whiting questioned her about the clean up efforts in the community. Ms. Keiser has not heard of any efforts by Mr. Ryan to clean up the area. She is opposed to the license transfer because intoxicated people are allowed to purchase alcohol at Red Barn. She witnesses "walk ups" that walk down the road near her home in the morning and walk back up the road in the evening. Ms. Keiser said the "walk ups" hang around Red Barn during the day and this activity takes place year round.

Mr. Whiting called Ina Noggle. Ms. Noggle lives in Sanders one mile east of High Country. Mr. Whiting withdrew this witness. Mr. Whiting called Darryl Ahasteen. Mr. Ahasteen lives in Sanders, ten miles from Red Barn. He is a Commission president, which is equivalent to a mayor. As the community leader, Mr. Ahasteen stated that Mr. Ryan has never approached him about improving the community. Mr. Ahasteen testified that he has not seen any changes in the operations at Red Barn or Lee's Liquors since Mr. Ryan took over those businesses.

Mr. Ahasteen discussed ADOT improvements and landscaping in front of the Red Barn that were completed approximately six months ago. Mr. Ahasteen answered Board questions about the "dog house" across the street from Red Barn.

Mr. Whiting called Stewart Calnimptewa. Mr. Calnimptewa resides in Porcupines, Arizona and has been employed by the Navajo Nation since May 2014. His role was to spend five weeks in Sanders and Chambers observing and documenting Title 4 violations. Mr. Whiting showed the contents of a three-ring binder to Mr. Calnimptewa and asked him to describe the map and photographs. Mr. Lewkowitz objected. Ms. Selzer raised issues with the photographs.

The Board recessed from 8:28 p.m. to 8:42 p.m.

Mr. Whiting continued questioning Mr. Calnimptewa. Mr. Lewkowitz cross-examined. Mr. Calnimptewa testified that he had observed two inebriated individuals purchase beer, wine and/or spirits at the Red Barn during the five weeks he was in Sanders and Chambers and that he did not report the incidents to law enforcement. Mr. Calnimptewa answered Board questions about action taken by the Navajo Nation to resolve any of the issues he observed during his five week assignment.

Mr. Whiting called Leonard Gorman. Mr. Gorman is employed by the Navajo Nation. He testified that the Navajo Nation passed a resolution to oppose the renewal and transfer of these four liquor licenses. Mr. Gorman's concerns with Mr. Ryan are selling to individuals who are inebriated and not having a business plan to ensure that sales and trash are controlled. On cross examination, Mr. Gorman testified that he has not witnessed an inebriated individual purchase alcohol at Red Barn or Lee's Liquors within the last eight months.

Mr. Whiting called Barry Weller. Mr. Weller is one of three elected officials on the Apache County Board of Supervisors. Mr. Weller discussed the importance of economic development to Apache County. Mr. Weller explained some of the issues raised when the Board of Supervisors voted unanimously to recommend denial of the transfer applications. Mr. Weller testified that since his election in 2012, he has witnessed the Red Barn building continue to deteriorate and the clean up is irregular. He stated that there are always inebriated individuals in the area and it is associated with the only liquor establishment in town. Mr. Weller testified that after hearing all the concerns and issues at the Board of Supervisors meeting, Mr. Ryan did not approach Apache County to see what he could do to rectify their concerns.

Closing statements were made by Mr. Lewkowitz, Mr. Whiting, and Ms. Selzer. There was Board discussion. Ms. Valdez made a motion regarding Liquor License No. 09010003 and No. 09010016: The Apache County Board of Supervisors unanimously recommended disapproval based upon lack of capability, qualifications, and reliability; the Applicant made no effort to meet with the County regarding concerns that were raised at the Board of Supervisors meeting held in July 2014; that the Department of Liquor Licenses and Control is protesting based on the fact that there was false or misleading information on the application or that the Applicant was otherwise not truthful in answering questions in the application and questions that were presented by Investigator Carruthers, namely the answers regarding the debt. The Applicant's answers during the DLLC interview were not credible nor do I believe they were credible during cross, and by the Board's questions. There was testimony that ADOT did most of the clean up around the Red Barn versus the Applicant. He has no business plan to prevent or even reduce the number of sales to patrons of both stores who are inebriated; that the Applicant did not understand the nature of the licenses, i.e., the value of the licenses, the fact that they were property; that he made statements that he did not know what he was signing, I move that we find the Applicant is not capable, qualified and reliable as required by A.R.S. §4-203(A) and that the Board deny these applications for person transfer.

Motion to deny person transfer applications -	Valdez
Seconded -	Du Pont
Yay -	Carruthers, Cantrell, Colquitt, Ghelfi, Du Pont, Valdez
Nay -	None
Abstained -	None
Disposition -	Applications denied

Motion to revoke the interim permits at both locations, effective immediately -	Valdez
Seconded -	Du Pont

Yay -	Carruthers, Cantrell, Colquitt, Ghelfi, Du Pont, Valdez
Nay -	None
Abstained -	None
Disposition -	Interim permits revoked

D. Minutes

Motion to approve the	
December 4, 2014 minutes -	Du Pont
Seconded -	Valdez
Yay -	Du Pont, Valdez, Ghelfi, Colquitt, Carruthers, Cantrell
Nay -	None
Abstained -	None
Disposition -	December 4, 2014 minutes approved

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

The next Board meeting is scheduled for February 5, 2015. There will be election of officers, a Chairman and Vice Chairman. Mr. Ghelfi indicated he has not applied to be considered for another term on the board, so this might be his last hearing. In the event that it would be his last hearing, he thanked the board. Ms. Selzer announced that this will be her last meeting and that she has accepted a position outside of state government. Mr. Ghelfi requested a future agenda item for discussion of the rules related to receiving Board materials.

F. Call to the Public

None.

The Board adjourned at 10:10 p.m.



 Denise M. Bale
 Administrator of the
 Arizona State Liquor Board



 Date