



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

MICHAEL J. TROYAN
Board Chair

JOHN COCCA
Director

Arizona State Liquor Board Hearing Minutes
October 4, 2018

Members Present: Michael J. Troyan – Chair, Troy L. Campbell – Vice Chair, Jeffrey K. Oravits, and Walter W. Jahn

Members Absent: Michael N. Widener

Counsel Present: Michael Raine, Assistant Attorney General
John R. Tellier, Licensing & Enforcement Section Chief Counsel, Independent Advisor to the Board

Staff Present: Denise Bale, Board Administrator

A. Call to Order

The hearing of the Arizona State Liquor Board was called to order on October 4, 2018, at 10:00 a.m. with Mr. Troyan presiding.

Roll Call

Mr. Widener was absent. All other members were present.

B. 10:00 a.m. Agenda: Review, consideration and action

1. Beer and Wine Store Liquor License, Application No. 20961 - Original Application

Dwarika Adhikari, Agent
Sefar Nepal Travels and Tours LLC
D & K Market
2880 W. Drexel Road
Tucson, AZ 85746

This matter is set for hearing because of a recommendation for disapproval by the Pima County Board of Supervisors and because of public protests. The Agent, Dwarika Adhikari, did not appear at the hearing and was not represented by counsel. Counsel for Pima County did not appear at the hearing. None of the public protestors appeared at the hearing and none were represented by counsel. The Applicant filed an application withdrawal with the Board.

Motion to accept application withdrawal -	Campbell
Seconded -	Jahn
Yay -	Troyan, Campbell, Jahn
Nay -	None
Abstained -	None
Disposition -	Application withdrawal accepted

2. Bar Liquor License No. 06070280 - Request for Rehearing or Review

From:	To:
James William Boyd, Jr.	Patrick Henry Zanzucchi
AZIZ Holdings, LLC	Peoria Ave LLC
Welch's Garage	Centerfolds Cabaret
7345 E. Evans Road #116	2031 W. Peoria Avenue
Scottsdale, AZ 85260	Phoenix, AZ 85029

This matter was continued from the August 2, 2018, meeting. This matter is set to consider the Applicant's request for rehearing or review filed with the Board. This Person and Location Transfer Application was denied at the June 7, 2018, Board meeting. The Applicant, through its counsel David W. Dow, timely filed a Request for Review or Rehearing. The Department of Liquor Licenses and Control (Department), through its counsel Michael Raine, filed a Response to Applicant's Request. The City of Phoenix (City) through its counsel, Jessica J. Breedlove, filed a Response to Applicant's Request for Review or Rehearing. The Applicant filed a Reply to the Department's and City's Responses. Each counsel gave oral argument on the motion for rehearing or review.

Mr. Dow argued that the terms "capability, qualifications and reliability," which are cited in the Department's Investigation report, are ambiguous and past liquor violations of Applicant's owners are not relevant to this application. Mr. Dow stated that the Administrative Law Judge (ALJ) lacked experience in liquor licensing. Mr. Dow argued that the location has been a bar for 25 years and one horrific incident (referring to an assault on a customer that resulted in death) should not be used to deny the location. Mr. Dow stated that the 2013 Phoenix Redevelopment Area Resolution contains misleading statements and refers to the residential neighborhood. Finally, Mr. Dow stated that Board Member Widener should have recused himself from hearing the Applicant's case in order to remove the appearance of a conflict of interest.

Mr. Raine argued that the issue of the Applicant's owner's past liquor law violations have come before the Board and the ALJ numerous times. The Board has ruled that an owner's past liquor violations is relevant evidence depending on the owner's share of ownership, the age of the violation and the type of violation. Mr. Raine argued that the Board and ALJ similarly ruled that how the Applicant's owners run their other businesses is relevant. Mr. Raine argued that it is inappropriate to challenge the qualifications of the ALJ. With respect to Applicant's argument that "capability, qualification and reliability" are ambiguous terms, Mr. Raine stated that this is the first time Applicant has raised the issue and it should have been raised at the hearing, not at the motion for rehearing. Mr. Raine argued that the incident resulting in a fireman's murder was expressly left out of the Department's argument and exhibits, and it was never a basis for denying the license. Mr. Raine stated that Applicant waived objection to Mr. Widener's participation at the hearing on June 7, 2018; and further, there is no conflict.

Ms. Breedlove reviewed the reasons given in A.A.C. R-19-703 for granting a rehearing or review by the Board. Ms. Breedlove argued that Applicant's motion for review or rehearing has produced no new evidence or information that has not already been heard and rejected by the Board or waived by the Applicant. Ms. Breedlove stated that "capability, qualification and reliability" is in statute and that is the standard the Board applied to the Applicant. Ms. Breedlove argued that Applicant could have contested the ALJ assigned to the hearing, but it chose not to do that. Ms. Breedlove indicated that the ALJ made

the determination that the Applicant did not meet their burden to establish that this was an appropriate location, and the topic of the firefighter's murder was never part of the discussion about location. Ms. Breedlove clarified the context of a comment made by Mr. Widener during Board discussion regarding the redevelopment area and Protestor Marcia Viedmark. Ms. Breedlove argued that Applicant expressed no objection to Mr. Widener participating in the decision on October 3, 2017 to refer the entire matter to the Office of Administrative Hearings (OAH), and specifically waived the conflict at the hearing on June 7, 2018.

Mr. Dow argued that the Board should grant a rehearing to be fair to his client. There were Board questions.

Motion to convene in executive session for the purpose of receiving legal advice -	Campbell
Seconded -	Troyan
Yay -	Campbell, Troyan, Oravits, Jahn
Nay -	None
Abstained -	None
Disposition -	Convene in executive session

The Board convened in executive session at 11:09 a.m. and reconvened in open session at 11:15 a.m.

Mr. Campbell made a motion: Fellow Board Members, based on the arguments that were heard today and also submitted within the record, I believe that the Applicant has not demonstrated it comes within the requirements of the Arizona Administrative Code regulation R19-1-703, also known as Rule 703 for the motion to review, and should be denied.

Motion to deny the request for rehearing or review -	Campbell
Seconded -	Oravits
Yay -	Campbell, Oravits, Troyan, Jahn
Nay -	None
Abstained -	None
Disposition -	Request for rehearing or review denied

Mr. Troyan recalled the previous matter to ratify with a quorum vote.

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D & K Market
2880 W. Drexel Road
Tucson, AZ 85746

Motion to accept application withdrawal -	Campbell
Seconded -	Jahn
Yay -	Troyan, Campbell, Jahn, Oravits
Nay -	None
Abstained -	None
Disposition -	Application withdrawal accepted

C. Minutes: Review, consideration and action

Minutes are not available and will be considered at the next meeting.

D. Board training: “Changes to Arizona Open Meeting Laws”

Mr. Raine advised on email communication and emphasized that Members should never “Reply to All” as it will be an open meeting violation. If Board members have a question, they are welcome to email Mr. Raine. If there is an issue during a meeting, Mr. Raine will warn members. If they ignore the warning, he will leave the meeting. The previous fine for an open meeting violation was a maximum of \$500. The new law is no penalty for the first violation, then \$1,000 for the second violation, and \$2,500 for the third violation.

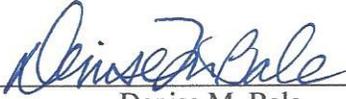
E. Reports on Current Events, Matters of Board Procedure, Requests and Items for Future Agenda

There are no matters scheduled for November. The November meeting will be cancelled and the next meeting will be December 6th.

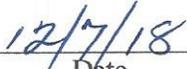
F. Call to the Public

None.

The Board adjourned at 11:30 a.m.



Denise M. Bale
Administrator of the
Arizona State Liquor Board



Date