



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
September 6, 2018

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

Members Absent: Michael J. Troyan – Chair

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 September 6, 2018, at 10:00 a.m. with Mr. Campbell presiding.

Roll Call

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

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

1. Bar Liquor License No. 06070397 – Person and Location Transfer Application

From:
Theresa June Morse, Agent
Diesel 01 LLC
Pink Rhino Cabaret
3613 E. Van Buren Street
Phoenix, AZ 85008

To:
Patrick Henry Zanzucchi, Agent
PHZ-MSC LLC
Pink Rhino Cabaret
3613 E. Van Buren Street
Phoenix, AZ 85008

This matter is set for hearing because of a Department protest and a recommendation for disapproval by the City of Phoenix. This matter was continued from the January 11, 2018, meeting. The Board, through its chair, Michael J. Troyan, issued Board Order No. B-003-18, continuing the Board's scheduled hearing for an indefinite period of time until the administrative process was completed and one party or all of the parties agreed to bring the matter before the Board. The Applicant PHZ-MSC, LLC, through its Agent Patrick Henry Zanzucchi, filed a Bill of Sale of Liquor License No. 06070397 from PHZ-MSC, LLC (Seller) to AZIZ Holdings, LLC (Buyer). Harvey M. Yee appeared on behalf of the Applicant. Jessica J. Breedlove appeared on behalf of the City of Phoenix. Mr. Raine appeared on behalf of the Department of Liquor Licenses and Control (Department). Mr. Tellier was available to provide

independent legal advice to the Board. The Applicant filed a request to withdraw its application and there were no objections.

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

2. Restaurant Liquor License No. 12104562 – Original Application

Javier Ramos Mora, Agent
El Patron Bar & Grill, Inc.
El Patron Bar & Grill
4581 S. 12th Avenue
Tucson, AZ 85714

This matter is set for hearing because of a Department protest and a recommendation for disapproval by the Tucson City Council. The Applicant, El Patron Bar & Grill, Inc. was represented by Thomas R. Aguilera and Justin M. Ruggieri. Principal Assistant City Attorney Stacy Stauffer appeared telephonically on behalf of the City of Tucson. Mr. Raine appeared on behalf of the Department. Mr. Tellier was available to provide independent legal advice to the Board. A Stipulated Motion to Withdraw Application was filed with the Board and there were no objections.

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

3. Liquor Store Liquor License No. 09100176 – Location Transfer Application

From:	To:
Hiam Ibrahim Innabi, Agent	Hiam Ibrahim Innabi, Agent
Super H	Sunshine Reem, Inc.
2710 Ruthrauff Road	Lucky 777 Liquor Store
Tucson, AZ 85705	2802 N. Stone Avenue
	Tucson, AZ 85705

This matter is set for hearing because of a recommendation for disapproval by the City of Tucson. The Agent, Hiam Ibrahim Innabi, did not appear at the hearing and was not represented by counsel. Principal Assistant City Attorney Stacy Stauffer appeared telephonically on behalf of the City of Tucson. The Applicant filed a request to withdraw its application and there were no objections.

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

4. Beer and Wine Store Liquor License No. 19182 – Original Application

Faris Y. Shaaya, Agent
Ravena LLC
Discount King Market
2101 W. Adams Street
Phoenix, AZ 85009

This matter is set for hearing because of public protests. The Agent, Faris Y. Shaaya, did not appear at the hearing and was not represented by counsel. Public protestors Kristin Elfering and Justin Winters did not appear at the hearing and were not represented by counsel. The Applicant filed a request to withdraw its application and there were no objections.

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

5. Bar Liquor License No. 06070159 – Appeal of Director’s Decision and Order

Frank Mario Zanzucchi, Jr., Agent
4716, Inc., dba Hi-Liter Gentleman’s Club
4716 N. 12th Street
Phoenix, AZ 85014

Laurence Dellheim, Lienholder
4716, Inc., dba Hi-Liter Gentleman’s Club
4716 N. 12th Street
Phoenix, AZ 85014

This matter is set for hearing to consider the Appeal of Director’s Decision and Order filed by the Licensee and the Lienholder. Counsel for the Agent, Jacquese L. Blackwell, and Counsel Pro Hac Vice, J. Michael Murray, appeared at the hearing. Counsel for the Lienholder, Harvey M. Yee, appeared at the hearing. Frank Zanzucchi appeared in support of the Licensee. Mr. Raine appeared on behalf of the Department. Mr. Tellier was available to provide independent legal advice to the Board.

Mr. Widener made a declaration for the record. One of the parties in this matter is the City of Phoenix. Mr. Widener disclosed that he periodically acts as a contract hearing officer for the City of Phoenix. Mr. Widener was not in any way involved recently nor historically in hearing any matters relating to the Hi-Liter Gentleman’s Club (Hi-Liter). Mr. Widener has reviewed both the Arizona Revised Statutes in Title 38, and he has also reviewed the case of Hughes v. Jorgensen¹, cited by the Supreme Court in July of 2002. Mr. Widener has no reason to believe that in any way he violates the conflict of interest statutes for public officials. Mr. Widener has no pecuniary or proprietary interest in the decisions. Mr. Widener has not received nor will receive any direct economic benefit nor endure any detriment as a result of his participation as a hearing officer periodically for the City of Phoenix. Mr. Widener intends to participate in this hearing. There were no objections.

Mr. Yee suggested that the Board consider and vote upon the appeal of the licensee and the appeal of the lienholder separately. Mr. Campbell agreed with the suggestion.

Mr. Murray argued Appellant’s motion to lodge additional exhibits in support of its appeal. The three exhibits were Declaration of Angela Zydonis, Declaration of H.J. Lewkowitz, and Declaration of Frank Mario Zanzucchi. Mr. Raine argued in opposition to admitting the exhibits. Mr. Widener made a motion to allow the supplemental evidence.

¹ Hughes v. Jorgenson, 50 P.3d 821 (Arizona 2002).

Motion to allow supplemental evidence -	Widener
Seconded -	Jahn
Yay -	Widener, Jahn
Nay -	Oravits, Campbell
Abstained -	None
Disposition -	Motion does not carry

Motion to reject supplemental evidence -	Oravits
Seconded -	Campbell
Yay -	Oravits, Campbell
Nay -	Widener, Jahn
Abstained -	None
Disposition -	Motion does not carry

There was Board discussion. Mr. Widener renewed his original motion to allow the supplemental evidence.

Motion to allow supplemental evidence -	Widener
Seconded -	Jahn
Yay -	Widener, Jahn, Campbell
Nay -	Oravits
Abstained -	None
Disposition -	Supplemental evidence entered into the record

Mr. Murray argued for the appeal and noted that the Consent Agreement between the licensee and the Department was signed July 1, 2016. Charges for violations occurring in March 2016 were introduced as evidence in the hearing before the Administrative Law Judge (ALJ) of the Office of Administrative Hearings (OAH). Mr. Murray argued that the March 2016 violations should not have been admitted as evidence in the OAH hearing; and admitting that evidence tainted the decision of the ALJ and the Director. Mr. Murray concluded that because of the Consent Agreement, Case No. 17A-0004-LIQ should be sent back to OAH for re-argument and reconsideration of an appropriate penalty.

Mr. Raine's argument included the Department's compliance process of investigation, charging violations, and resolving complaints. Mr. Raine noted the role and responsibility of a manager to prevent any unlawful activity from occurring on the premises.

There was Board discussion. Mr. Widener made a motion that the Director's Order revoking the license be upheld. The basis for that is there was sufficient evidence at the administrative law judge hearing the Director could rely upon in order to impose that sanction.

Motion to affirm Director's Order -	Widener
Seconded -	Campbell
Yay -	Widener, Campbell
Nay -	Oravits, Jahn
Abstained -	None
Disposition -	Motion does not carry

There was Board discussion.

Motion to recess -	Widener
Seconded -	Jahn
Yay -	Widener, Jahn, Campbell, Oravits
Nay -	None
Abstained -	None
Disposition -	Recess for 10 minutes

The Board recessed from 12:05 p.m. to 12:25 p.m.

Mr. Campbell called the meeting to order and announced that the Board would have three minutes for questions. There were Board questions. Mr. Murray and Mr. Raine delivered their closing statements.

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

The Board convened in executive session at 12:41 p.m. and reconvened in open session at 12:57 p.m.

Mr. Oravits made a motion to deny the appeal. There was Board discussion regarding preponderance of evidence.

Motion to deny the appeal -	Oravits
Seconded -	Jahn
Roll call vote:	Widener - Yay
	Oravits - Yay
	Jahn - Yay
	Campbell - Yay
Nay -	None
Abstained -	None
Disposition -	Director's Decision upheld

Mr. Campbell called the appeal of the lienholder in this matter. Mr. Yee addressed the Board. In 1999, his client, the Lienholder, entered into an agreement with the Department that he would divest and get out of the business. Mr. Dellheim is the manager of the two companies that own the property. A few weeks prior to the OAH hearing, Mr. Yee submitted to the ALJ a Notice of Summary of the Lienholder's Position. If there is a violation against the lease, the lienholder has a security interest. The ALJ found that the Lienholder did not try to make the license holder give him reports of the conduct of business. Mr. Yee asked the Board to send the case back to the Director to deal with the issue because of the incompleteness of the ALJ's report.

Motion to deny the appeal of the lienholder -	Widener
Seconded -	Campbell
Roll call vote:	Widener - Yay
	Campbell - Yay
	Oravits - Yay
	Jahn - Yay
Nay -	None
Abstained -	None
Disposition -	Director's Decision upheld

The Board recessed from 1:51 p.m. to 1:59 p.m.

6. In State Farm Winery Liquor License, Application No. 11890

Robert Kenneth Mitchell Jr., Agent
 Below The Rim Meadery LLC
 Below The Rim Meadery
 626 North Forest Service Road 199
 Payson, AZ 85541

This matter was continued from the August 2, 2018, meeting. This matter is set for hearing because of a recommendation for disapproval by the Gila County Board of Supervisors. This matter is also set for hearing because of a public protest. The Applicant, Below the Rim Meadery, LLC, and its Agent, Robert Kenneth Mitchell, Jr., appeared at the hearing and was represented by counsel, Michael J. Harper. Angela J. Mitchell, Roger Turner, David Owens, and Jerald Gibson appeared in support of the Applicant. Deputy County Attorney Jefferson R. Dalton appeared on behalf of Gila County. Supervisor Tim Humphrey, Steve Sanders, Ron Danner, Don Ascoli, William Puffer, and Katherine Peterson appeared in support of Gila County. Protestor Sherri Farrell appeared and was not represented by counsel.

Gila County filed Gila County's Motion That the Board Find That the Applicant is Not Reliable Under A.R.S. § 4-203(A); Gila County's Motion That the Board Find That a Farm Winery License is not Exempt from the Requirements of A.R.S. § 4-203(A); and Document Submission. The Applicant filed Applicant's Objection to Gila County's "Rebuttal" Arguments. Gila County filed Gila County's Rebuttal to the Applicant's August 22, 2018 Submittal Titled: "Applicant's Objection to Gila County's 'Rebuttal' Arguments". The Applicant filed Applicant's Response to Motion that Bond [sic] Find that Applicant is Unreliable Under A.R.S. § 4-203(A); and Applicant's Response to Motion that Board Find That a Farm Winery License is Not Exempt From the Requirements of A.R.S. § 4-203(A).

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

The Board convened in executive session at 2:01 p.m. and reconvened in open session at 2:25 p.m.

Mr. Harper made an opening statement and called Angela Mitchell to testify. Ms. Mitchell is a member of Below the Rim Meadery. Ms. Mitchell discussed the reasons, demand and how the meadery came into existence. The Mitchells began making gluten free mead four years ago. The Mitchells found

that there is a demand for mead that is not being met. Ms. Mitchell stated the vision is to operate a family farm winery that would produce small batches on a seasonal basis. There are plans for a patio and tasting room. Ms. Mitchell showed photographs of the property. The hours of operation would be dawn to dusk with on-site sales but not on-site consumption. Tasting would be scheduled by appointment only. Mr. Harper called Robert Mitchell, Roger Turner, David Owens, and Jerald Gibson to testify. Mr. Mitchell discussed the history of the land surrounding their property and how the winery would complement the homestead heritage of the area. He also described efforts to work with neighbors and the community at large. Mr. Turner is a mechanical engineer and has been a home brewer for over 22 years. Mr. Owens and Mr. Gibson each spoke in favor of the Mitchells and the winery.

The Board recessed from 3:03 p.m. to 3:07 p.m.

There were Board questions and cross-examination by Mr. Dalton. Sherri Farrell addressed the Board. There were Board questions and cross-examination by Mr. Harper.

Mr. Dalton called Steve Sanders, Director of Public Works for Gila County. Mr. Sanders narrated a video presentation of driving on the Forest Service Road leading to the Mitchell's property. There was cross-examination. Gila County Supervisor Tim Humphrey testified about access and safety. There was cross-examination. Ron Danner testified about his experience with wineries. There were no questions or cross-examination. Don Ascoli testified about the road conditions and the petition he circulated. There was cross-examination. William Puffer testified about flooding and safety. There were questions. Katherine Peterson testified about the number of people who use the road.

There were Board questions and discussion. Mr. Widener suggested a written agreement with the Applicant that could be enforced by the County. The agreement would include (a) tasting hours from noon to dusk; (b) dustproofing of their parking area and of the access from their front gate to that parking area; (c) that they agree not to improve any access from their patio to the picnic site by the river, to make it deliberately difficult for people to go down there; (d) that they don't, in fact develop a parking lot on the river lot; (e) that they agree in writing that the tasting will only be done by appointment; (f) that they won't seek any additional tasting room space under section 4-205(12), which does allow changing ownership slightly for another owner to have another tasting room that shares the same physical area as the existing tasting room. There was discussion and Board questions.

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

The Board convened in executive session at 4:48 p.m. and reconvened in open session at 4:56 p.m.

Mr. Oravits made a motion.

I move that we find the Applicant is capable, qualified and reliable as required by A.R.S. 4-203. Received the training, as far as capability. Qualified, home brewer, 20 plus years' experience, engineer, business owner, teacher. Reliable: long standing Arizona residents, no liquor violations. Further, I move that we find the public convenience does require that the public convenience will be substantially served by granting the liquor license under 4-203. There are no other licenses of this type in the area. Also the hours of operation – I want to talk about that because there is an issue on this – if they will agree to submit an affidavit with the County agreeing to Mr. Widener's conditions in fifteen days . . . amend that to the Liquor Department.

Mr. Widener offered an amendment to Mr. Oravits motion.

I agree with you on the CQR aspect, but my proposed amendment would actually be for a denial of the license because they don't satisfy the location requirements, unless, within fifteen days of today's date they submit a sworn affidavit that incorporates every single one of the conditions that I laid out.

Mr. Oravits accepted the amendment. Mr. Campbell seconded the motion with the amendment.

Motion to deny the license upon location unless a sworn affidavit agreeing to the conditions set by the Board is received by the Department within fifteen days -

Seconded -

Yay -

Nay -

Abstained -

Disposition -

Widener

Campbell

Widener, Campbell, Oravits, Jahn

None

None

License denied

C. Board training: "Changes to Arizona Open Meeting Laws"

Rescheduled to next Board meeting.

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

None.

E. Call to the Public

None.

The Board adjourned at 5:02 p.m.



Denise M. Bale
Administrator of the
Arizona State Liquor Board



Date