



STATE OF ARIZONA
ARIZONA STATE LIQUOR BOARD
800 WEST WASHINGTON, 5TH FLOOR
PHOENIX, AZ 85007
PHONE: 602-542-9789 FAX: 602-542-5707
Website: www.azliquor.gov

DOUGLAS A. DUCEY
Governor

TROY L. CAMPBELL
Board Chair

TRACY UFFELMAN
Director

Arizona State Liquor Board Hearing Minutes
December 8, 2022

Members Present: Troy L. Campbell – Chair, Lynn Shulman – Vice Chair, Jill Pernice, Matthew Roemer, Victoria Yarbrough and Paul David

Members Absent: None

Counsel Present: Mark Brachtl, Assistant Attorney General

Staff Present: Denise Bale, Board Administrator
Arlene Moreno, Interim Board Administrator

A. Call to Order

The hearing of the Arizona State Liquor Board was called to order on December 8, 2022 at 9:00 a.m. with Chair Campbell presiding. Google Meet was utilized for facilitating the meeting. Board members, staff, and all parties participated either online or telephonically.

Board members were asked if they have, or a relative who has, a substantial interest or a remote interest with any of the matters on the agenda. Each member declared that he/she did not have a conflict of interest with any matters on the agenda.

Roll Call

All members were present.

B. 9:00 a.m. Agenda: Review, consideration and action

1. Beer and Wine Bar Liquor License 07070720, Application No. 180396 - Person and Location Transfer Application

Christian Nava-Cruz, Agent
C.N.C.G. LLC
Chicas Cabaret
2802 N. 35th Avenue
Phoenix, AZ 85009

The Arizona State Liquor Board voted to grant Applicant's Motion to Disqualify all Three Protestors, Newco Land Management LLC, Dalton Corporation, and Jordan Scott Properties LLC, of the

Person and Location Transfer Application for Beer and Wine Bar Liquor License No. 07070720, Application No. 180396, after a hearing at its Board meeting on September 8, 2022. The Protestors, through its counsel Kimberly A. Eckert, timely filed Amended Motion for Rehearing on Order Granting Applicant's Motion to Disqualify Protestors Dalton Corporation, and Jordan Scott Properties, LLC (Amended Motion) on October 21, 2022. This matter was scheduled for the Board to consider, discuss, and take action, on the Amended Motion. Kimberly A. Eckert appeared on behalf of Protestors Dalton Corporation and Jordan Scott Properties LLC. Robert Wallace and Darrell Wallace appeared in support of the Protestors. Thomas R. Aguilera appeared on behalf of the Applicant, C.N.C.G. LLC. Christian Nava-Cruz appeared in support of the Applicant.

Mark Brachtl addressed two points of order to the Chair. First, the decision of the board is whether to grant a rehearing in whole or in part on any issues or all issues; and because this is a request for rehearing, per rules, there is no testimony allowed. For this issue of rehearing, it is going to be limited to argument alone. Second, the Amended Motion includes a sentence about requesting disqualification of two Board members. Ms. Eckert stated that Chair Campbell and Vice Chair Shulman have a conflict of interest because they were named defendants in previous litigation with her client, Robert Wallace. Mr. Brachtl asked Ms. Eckert to clarify the conflict of interest that she is alleging in her rehearing motion. Ms. Eckert confirmed that she is not alleging a statutory conflict of interest (board member has a money interest in the case, or a property or proprietary interest).

Ms. Eckert argued that her clients should be allowed to protest the liquor license application. Robert Wallace should be allowed to protest because he is an aggrieved party and he is the owner of Dalton Corporation. There is ongoing litigation alleging that Mr. Nava-Cruz wrongfully inactivated the liquor license at that location in order to obtain this new liquor license. Mr. Darrell Wallace should be allowed to protest because he is the statutory agent of Dalton Corporation. In addition, Robert Wallace and Regina Scott are property owners within the one-mile radius of the premises and they should be allowed to protest.

Mr. Aguilera stated that he stands on his briefs. He noted that Ms. Eckert is attempting to represent Dalton Corporation because it was the original protestor. In her opening comments, however, she is indicating that she represents Robert Wallace the individual. Mr. Aguilera objected to Ms. Eckert's Exhibit A because it adds new evidence under R19-1-703(C)(4).¹ Mr. Aguilera objects to any new evidence Ms. Eckert provided relative to the corporate documents associated with JSP, Jordan Scott Properties, that were not submitted originally. The documents that Ms. Eckert submitted are not documents that could not have been discovered at the time of the filing. Mr. Aguilera also objects to Ms. Eckert representing Dalton Corporation for the reasons stated in his briefs.

Mr. Brachtl discussed the issue of conflict of interest. It has been limited by Protestors' counsel that there is some sort of bias or prejudice, which would be grounds for recusal if it exists. The test or standard for bias or prejudice is if a board member entertains strong feelings about the specific facts of the case at hand today, which would influence their opinion regardless of the evidence. Mr. Brachtl suggested if Chair Campbell and Vice Chair Shulman would like to go on the record and state that there is no bias or prejudice on their part and that they are prepared to make a fair and impartial decision, it is the Board's call. Chair Campbell stated that there is no bias or prejudice on his behalf in making a fair and impartial decision on this matter. Vice Chair Shulman stated that she has no bias or prejudice and that she can make a fair and impartial decision concerning this case.

There was Board discussion.

¹ C. The Board may grant a rehearing or review for any of the following reasons materially affecting a party's rights:

...

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

Ms. Pernice made a motion:

In the matter of Beer and Wine Bar Liquor License No. 07070720, Application No. 180396, for C.N.C.G. LLC doing business as Chicas Cabaret, at 2802 N. 35th Avenue, Phoenix, Arizona 85009, I would like to make a motion that the Board deny the Amended Motion for Rehearing for Order Granting Applicant's Motion to Disqualify.

Motion to deny rehearing -	Pernice
Seconded -	Shulman
Yay -	Pernice, Shulman, Campbell, Roemer, Yarbrough, David
Nay -	None
Abstained -	None
Disposition -	Amended Motion for Rehearing denied

2. Restaurant Liquor License, Application No. 196684 - Original Application

Ana Luisa Castro Gonzalez, Agent
Raspados El Paraiso LLC
Raspados El Paraiso
7701 E. Golf Links Road
Tucson, AZ 85730

This matter was continued from the October 13, 2022 hearings. This matter is set for hearing because the Tucson City Council recommended disapproval. The Applicant, Raspados El Paraiso LLC, and its Agent, Ana Luisa Castro Gonzalez, apparently did not appear at the hearing. Ms. Bale testified about the notice that was provided to alert the Agent to attend the hearing. Jason Beaudoin, representing the Applicant, appeared at the hearing and did not provide testimony. Ms. Castro Gonzalez was on the call with Mr. Beaudoin. Mr. Beaudoin described how the liquor license fits into the Applicant's business plan.

Principal Assistant City Attorney Shilpa Hunter-Patel appeared on behalf of the City of Tucson. The City held a hearing on the application and the City Council voted to recommend denial of the application. The reason for the denial is the application is administratively incomplete. The City has a local requirement that applicants that have an establishment within 300 feet of a residential area need to submit to the City of Tucson a mitigation plan to address certain issues. One of those issues is the type that has been raised in numerous complaints about this application. The City had received numerous complaints about noise from neighbors in the area near Raspados El Paraiso. In these circumstances, the City requires a mitigation plan to be submitted with the application. The Applicant did not submit a mitigation plan with its application, and the City remains in a position to recommend denial.

Mr. Beaudoin did not call any witnesses. Ms. Hunter-Patel called her witness, Russlyn Wells. Ms. Wells is a planner with the City of Tucson. Her duties include review of liquor license applications, and other zoning matters. She is formerly the City Zoning Administrator, recently retired. Part of her duties include making recommendations to the mayor and council regarding whether or not applications are complete and should be approved or denied. Under the City of Tucson code, the purpose of the mitigation plan is for the applicant to provide information on how they will mitigate potential negative impacts to adjacent properties, such as noise, lighting, music, parking, etc. Ms. Wells testified that in prior years, the City could reach out to the Department and get extensions of time to process an application at the discretion of the Department. The policy simplified the process and made it more successful for the license applicants.

There was Board discussion. Ms. Shulman made a motion:

The board finds that the proprietary of the location is not contested, that the record before the board establishes that the public convenience requires and that it is in the best interest

of community. I move that the Board finds that the Applicant is not capable, qualified and reliable as required by A.R.S. Section 4-203, and that the Board deny the application based on the following facts: the application is incomplete for Restaurant Liquor License 196684.

Mr. Campbell suggested an amendment that the application is incomplete *with the City of Tucson*. Ms. Shulman accepted the amendment.

Motion to deny license -	Shulman
Seconded -	David
Yay -	Shulman, David, Campbell, Pernice, Roemer, Yarbrough
Nay -	None
Abstained -	None
Disposition -	License denied

Motion to take a five-minute recess -	Campbell
Seconded -	Shulman
Yay -	Campbell, Shulman, David, Pernice, Roemer, Yarbrough
Nay -	None
Abstained -	None
Disposition -	Board recessed at 10:17 a.m. and reconvened at 10:22 a.m.

C. Training on 2022 Legislative Changes to Title 4

Assistant Attorney General Deanie Reh and Chief Wes Kuhl presented 2022 legislative changes to Title 4. Ms. Reh suggested that Board Members refer to the copy of the PowerPoint presentation that was sent to them prior to the meeting. The training would cover substantive changes to Title 4.

- HB 2612, which changes section 4-210, was universal throughout the licensing agencies. This bill eliminated the ability to consider a person's good moral character in determining licensure.
- SB 1248 changed section 4-244. It added an additional unlawful act that a supplier cannot coerce a wholesaler to accept delivery of beer that they have not ordered or an order that was canceled. The bill eliminated the coercion part so that suppliers cannot force extra product on the wholesalers.
- SB 1248 also changed section 4-246 in conjunction with section 4-244. Subsection G was added to section 4-246 to prescribe that the civil penalty for the new unlawful act under section 4-244(47) shall be that listed in section 4-210.01: "at least \$200 and not more than \$3,000 for each violation."
- HB 2660 made multiple changes to Title 4.
 - Section 4-205.04(D), which allowed grouping of farm winery licenses, was deleted; and that ability to group farm winery licenses was added to section 4-243.03.
 - Section 4-207 removes the restriction on issuing a retailer's license to premises that are located within 300 feet of a church.
 - Sections 4-207.03 and 4-215 are entirely new statutes providing for extended premises for on-sale spirituous liquor licenses and regional shopping centers.
 - Section 4-210 specifies in section A(10), that a licensee's duty to protect the safety of a customer does not limit the licensee from using, as necessary, reasonable intervention, restraint or removal of a person from the premises to prevent that person from injuring other persons or damaging or disrupting the premises.
 - Section 4-243 excludes dispensing or tapping machines or equipment from the definition of promotional items that may be provided by a wholesaler to an on-sale retailer.

- o Section 4-244 allows the Governor, in consultation with the Governor's Office of Highway Safety and the public safety community in Arizona, to issue an executive order that extends the sale of spirituous liquor in connection with a professional or collegiate national sporting championship from 2:00 am to 3:00 a.m. Section 4-244 also extends spirituous liquor consumption on a retail premises from 2:30 a.m. to 3:30 a.m., if a gubernatorial executive order extends the sale of liquor in connection with a professional or collegiate national sporting championship.

D. Minutes: Review, Consideration and Action

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

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

The next Board meeting is scheduled for January 12, 2023. Since there are no matters set for hearing, Chair Campbell cancelled the January meeting. The 56th Legislature 1st Regular Session convenes on Monday, January 9, 2023. The Board will meet again on February 2, 2023. The Board will hold elections for Chair and Vice Chair. Chair Campbell has been serving since May of 2019 and Vice Chair Shulman has been serving since February of 2021.

Mr. David described the Department's Prevention Unit that recently visited a few schools in Graham County. He recommended the Unit as a highly excellent resource for communities with underage drinking or over serving issues. The Unit is funded by the Department and it is available statewide.

F. Call to the Public

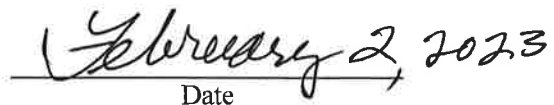
Thomas Aguilera addressed the Board. Mr. Aguilera serves on a stakeholders committee that works on a liquor omnibus bill every year. Mr. Aguilera provided some background on the bills that were presented in the training on 2022 Legislative Changes to Title 4.

Motion to adjourn meeting -
Seconded -
Disposition -

Campbell
Shulman
Meeting adjourned at 11:56 a.m.



Denise M. Bale
Administrator of the
Arizona State Liquor Board



Date