

PUEBLO LIQUOR & BEER LICENSING BOARD
MINUTES -- REGULAR MEETING
CITY HALL -- COUNCIL CHAMBERS
JANUARY 15, 2014 – 6:00 P.M.

The Pueblo Liquor & Beer Licensing Board convened the Regular Meeting of January 15, 2014 at 6:00 p.m., with Chairwoman Doris Harrison presiding.

ROLL CALL

Present: Board Members Don DiFatta, Mike Ferris, Doris Harrison, Charles Pullaro, Jr. and Tom Rose. Also Present—Assistant City Attorney Bob Jagger, Assistant City Attorney Lisa Macchietto and Deputy City Clerk Lori Bravo-Neff.

APPROVAL OF MINUTES

Mr. Pullaro, seconded by Mr. Rose, moved to approve the minutes of the Regular Meeting of December 18th, 2013. Roll Call: Ayes—DiFatta, Ferris, Harrison, Pullaro and Rose. Motion carried unanimously.

CONSENT AGENDA

- 1 HOTEL & RESTAURANT LIQUOR LICENSE APPLICATIONS-RENEWALS-TOTAL OF 5 RENEWALS**
Colorado Hospitality Services, Inc. d/b/a ValuStay Inn, 2001 N. Hudson Avenue
Apple Colorado, LLC d/b/a Applebee's Neighborhood Grill & Bar, 3428 N. Elizabeth Street
Wild Wings USA, LLC d/b/a PT's Wings N' Ribs, 1747 S. Pueblo Boulevard
RMR Colorado, LLC d/b/a Black Eyed Pea, 801 Highway 50 West
Brinker Restaurant, Corporation d/b/a Chili's Grill & Bar, 5600 N. Elizabeth Street
- 2 TAVERN LIQUOR LICENSE APPLICATION-RENEWALS-TOTAL OF 3 RENEWALS**
Broken Dollar, Inc. d/b/a Broken Dollar Saloon, 2301 Lake Avenue
J.D.'s Klamm Shell, Inc. d/b/a J.D.'s Klamm Shell, 424 W. Northern Avenue
Veteran's Tavern, Inc. d/b/a Veteran's Tavern, 315 E. Northern Avenue
- 3 3.2% BEER LICENSE-CONSUMPTION OFF-PREMISES-RENEWALS-TOTAL OF 3 RENEWALS**
Mini Mart, Inc. d/b/a Loaf 'N Jug #202, 1818 N. Norwood Avenue
7-Eleven, Inc. d/b/a 7-Eleven #13111, 2727 S. Prairie Avenue
7-Eleven, Inc. d/b/a 7-Eleven #23811, 327 W. 8th Street
- 4 3.2% BEER LICENSE-CONSUMPTION BOTH ON AND OFF-PREMISES-RENEWAL-PASS KEY, INC. D/B/A PASS KEY, 518 E. ABRIENDO AVENUE**
- 5 RETAIL LIQUOR STORE LIQUOR LICENSE-RENEWALS-TOTAL OF 3 RENEWALS**
Bolsa Investments, Inc. d/b/a Prairie Liquors, 1659 S. Prairie Avenue
HMC, LLC d/b/a Powder Keg Liquors, 2001 E. Evans Avenue
Northern Avenue Liquors, Inc. d/b/a Northern Avenue Liquors, 213 W. Northern Avenue
- 6 CABARET LICENSE APPLICATION-RENEWAL- COLORADO HOSPITALITY SERVICES, INC. D/B/A VALUSTAY INN, 2001 N. HUDSON AVENUE**
- 7 PERMIT APPLICATION AND REPORT OF CHANGES-CHANGE OF MANAGER – 3.2% BEER LICENSE –MINI MART, INC. D/B/A LOAF 'N JUG #202, 1818 N. NORWOOD AVENUE (NEW MANAGER JOHANNA WYATT REPLACES KEVIN FRANK)**

Mr. Pullaro, seconded by Mr. Ferris, moved to approve the Consent Agenda as read. Roll Call: Ayes—DiFatta, Ferris, Harrison, Pullaro and Rose. Motion carried unanimously.

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8 REPORT OF CHANGES-CHANGE OF CORPORATE STRUCTURE-CLUB LIQUOR LICENSE: FRATERNAL ORDER OF EAGLES D/B/A FRATERNAL ORDER OF EAGLES #145, 1615 S. PRAIRIE AVENUE (NEW PRESIDENT STEPHEN LEE REPLACES DAN URENDA)

New president Stephen R. Lee, 2620 West Street, was sworn in and answered questions from the Board. The moral character of Mr. Lee was satisfactory to the Board. Mr. Lee has never held or worked in or for a liquor-licensed establishment although he stated this is his 3rd term as president. Mr. Lee stated they employ approximately 20 employees and to his knowledge these employees do not have criminal histories. Mr. Lee explained that the secretary is responsible for hiring and firing employees. He stated he believes they do conduct background investigations on potential employees. Mr. Lee described what an approved I.D. is. He further explained they check the identification of individuals applying to become a member of their organization as potential members must be 21 years of age to join. If a member brings a guest, the guest's identification is checked. The bartender is responsible for checking I.D. Mr. Lee stated they will "cut-off" a customer's drinks, if they appear intoxicated and they will then drive them home. Mr. Rose encouraged Mr. Lee to attend a Seller/Server Training course and stated it would also be beneficial for their staff to attend as well. Mr. Lee was provided with a copy of the State's approved vendors list.

Mr. Rose, seconded by Mr. DiFatta, moved to approve this Change of Corporate Structure. Roll Call: Ayes—DiFatta, Ferris, Harrison, Pullaro and Rose. Motion carried unanimously.

9 HEARING: TRANSFER OF OWNERSHIP APPLICATION—TAVERN LIQUOR LICENSE—STEEL CITY TAVERN, INC. D/B/A STEEL CITY TAVERN, 1335 E. EVANS AVENUE, (CURRENTLY LICENSED TO R&R BLUES LIMITED D/B/A THE DOWNBEAT, LICENSE EXPIRES AUGUST 8, 2014)

New owner/corporate president Adam C. Griggs, 1564 27th Lane, was sworn in and answered questions from the Board. The moral character of Mr. Griggs was satisfactory to the Board. Mr. Griggs explained he worked as a busboy in a liquor-licensed establishment; however, he was not sure whether or not there had ever been a violation at that establishment. Mr. Griggs stated there are no silent partners or financial backers not disclosed in his application. Mr. Griggs stated he will employ 3 employees and to his knowledge these employees do not have criminal histories. He will not conduct background investigations on potential employees. Mr. Griggs described what an approved I.D. is. Mr. Ferris strongly encouraged Mr. Griggs to become certified in a Seller/Server Training program, preferably one approved by the State. Mr. Griggs stated he was previously provided with a copy of the State's approved vendor list and he does intend on attending a class of this nature.

For the record, it was determined there was no one present in opposition to this transfer of ownership.

Mr. DiFatta, seconded by Mr. Ferris, moved to approve this transfer of ownership. Roll Call: Ayes—DiFatta, Ferris, Harrison, Pullaro and Rose. Motion carried unanimously.

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- 10 HEARING: TRANSFER OF OWNERSHIP APPLICATION—CABARET LICENSE—STEEL CITY TAVERN, INC. D/B/A STEEL CITY TAVERN, 1335 E. EVANS AVENUE, (CURRENTLY LICENSED TO R&R BLUES LIMITED D/B/A THE DOWNBEAT, LICENSE EXPIRES NOVEMBER 17, 2014)**

Mr. DiFatta stated he would like the Board to take administrative notice of the testimony given by Mr. Griggs in Item #9.

Mr. DiFatta, seconded by Mr. Ferris, moved to approve this transfer of ownership of the cabaret license. Roll Call: Ayes—DiFatta, Ferris, Harrison, Pullaro and Rose. Motion carried unanimously.

- 11 HEARING: RE PENDING TAVERN LIQUOR LICENSE RENEWAL-GINO'S LOUNGE, LLC D/B/A MARGUERITE'S AT TOG'S, 112 W. 7TH STREET**

Assistant City Attorney Carla Sikes, entered her appearance and was present to represent the City Sales Tax Division on a communication requesting that the liquor license renewal for this establishment be denied.

Also present on behalf of this matter was the owner Marguerite Crowell-Even, 25750 Hillside Road. Ms. Crowell-Even was sworn in.

Ms. Sikes distributed a packet of exhibits to the Board and to Ms. Crowell-Even, which were marked as *Exhibits 1-13*. Ms. Sikes briefly explained *Exhibits 1-6* consisted of communications, stipulations and Findings & Orders from previous records and proceedings of the Liquor Board regarding *Marguerite's at TOG's*. Ms. Sikes explained the City is tendering these documents for the sake of convenience and requested the Board take Administrative Notice of *Exhibits 1-6*. Ms. Crowell-Even had no objection to taking Administrative Notice of *Exhibits 1-6*.

Ms. Sikes then called her first witness to testify.

David Gemmell, City of Pueblo Tax Auditor II, 130 Central Main Street was sworn in. Mr. Gemmell was then questioned by Ms. Sikes. He stated he has worked in his current position for 8 years; he did conduct an audit on this establishment as a result of the Liquor Board's order from May 2013. Mr. Gemmell stated he had requested all sales and purchase documents relating to this business but Ms. Crowell-Even could not provide the sales documents, such as cash register receipts and accountant reports that justify sales. Mr. Gemmell stated Ms. Crowell-Even explained she could not provide these documents as they were destroyed by a flood and were illegible. He stated due to the lack of sales receipts, the documents he had to rely upon were alcohol purchase receipts and he essentially had to "back-in" what the sales would have been based on a very conservative estimate. Mr. Gemmell stated the audit period was from May 2009 – April 2013; he briefly described the method he used to determine the value for sales out of those purchases explaining he used industry standards. Mr. Gemmell further explained after talking with the taxpayer and using "happy-hour prices," which is a very conservative estimate in favor of the taxpayer, he adjusted the sales down to approximately two and a half times the alcohol purchases in an attempt to determine what the sales would have been. Mr. Gemmell stated this audit was completed in July 2013 and the audit showed a deficiency in sales tax liability which was due to the City; notice of the results was mailed to Ms. Crowell-Even. Mr. Gemmell explained that *Exhibit 8* was a true and accurate copy of the audit assessment he prepared and bears his signature. Ms. Sikes moved for admission of *Exhibit 8* and there were no objections by Ms. Crowell-Even. Mr. Gemmell explained they received a request for an appeal from the taxpayer, pursuant to the Municipal Code, and

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marked as *Exhibit 9*, which Mr. Gemmell stated was a true and accurate copy of what they received from the taxpayer. Ms. Sikes moved for admission of *Exhibit 9* and there were no objections by Ms. Crowell-Even. Mr. Gemmell explained a hearing was held with Deborah Morton, Interim Director of Finance and a copy of the notice of hearing was mailed to the taxpayer. He acknowledged that *Exhibit 10* was a true and accurate copy of that hearing notice and bears his signature. Ms. Sikes moved for admission of *Exhibit 10* and there were no objections by Ms. Crowell-Even. Mr. Gemmell acknowledged that an appeal hearing was held on September 11, 2013 and stated those in attendance of this hearing, in addition to him, were Deborah Morton, Interim Director of Finance; Bob Jagger, Assistant City Attorney; Mr. Gemmell's supervisor Valerie Palumbo and Ms. Crowell-Even. Mr. Gemmell stated Ms. Crowell-Even did provide a statement/evidence at that hearing. Mr. Gemmell acknowledged that *Exhibit 11*: "Notice of Final Determination" was issued by the Interim Director of Finance. Mr. Gemmell explained that Ms. Morton decided to uphold the assessment with an abatement of the penalty-interest only; after the appeal was over, it was determined that an amount of \$8790.40 was owed to the City. Ms. Sikes moved for admission of *Exhibit 11* and there were no objections by Ms. Crowell-Even. Mr. Gemmell acknowledged that the Pueblo Municipal Code does allow for further appeal of the hearing determination and explained what the taxpayer's rights are. He stated, to his knowledge, Ms. Crowell-Even did not file any appeals and all time frames have expired. Mr. Gemmell stated after the final assessment, he did have a discussion with Ms. Crowell-Even regarding payment of the assessment. He explained that Ms. Crowell-Even has made three \$200 payments. Mr. Gemmell acknowledged that page 1 of *Exhibit 12* is a copy of a receipt, dated 11/8/13 for a \$200 payment on the audit and page 2 of this exhibit is a copy of a receipt, dated 12/20/13 for a \$200 payment on the audit. Ms. Sikes moved for admission of *Exhibit 12* and there were no objections by Ms. Crowell-Even. Mr. Gemmell stated in addition to these two payments, another \$200 payment on the audit was made on 1/15/14. Mr. Gemmell stated in a conversation he had with Ms. Crowell-Even regarding a payment plan on the assessment, he stated he had explained to her that he was not authorized to make that type of arrangement. He stated that payment plans are not typically allowed and that a liquor-licensee is required to be current when they submit their renewal. Mr. Gemmell acknowledged that due to the non-payment of the assessment, the Sales Tax Division refused to sign-off on Ms. Crowell-Even's liquor license renewal. Mr. Gemmell acknowledged that *Exhibit 13* is a "Notice of Sales/Use Tax Lien" which is authorized under the Pueblo Municipal Code and this was recorded with the Pueblo County Clerk & Recorder's Office. He stated, to his knowledge, this is now a public record and that this is a true and accurate copy of the lien that was filed. Ms. Sikes moved for admission of *Exhibit 13* and there were no objections by Ms. Crowell-Even. Mr. Gemmell acknowledged that based upon the audit conducted from May 2009 – April 2013, the tax returns filed by Ms. Crowell-Even were not accurate and the licensee did not accurately reflect her sales in those sales tax returns for that period of time. Ms. Sikes had no further questions.

Ms. Crowell-Even was given an opportunity to question Mr. Gemmell. Regarding *Exhibit 11*: Ms. Crowell-Even asked Mr. Gemmell if he recalled giving her a copy of this exhibit on or about September 27th or 28th and Mr. Gemmell stated he did recall this. Ms. Crowell-Even explained that she never received a copy in the mail stating she just wanted to clarify that fact. Ms. Crowell-Even was instructed to direct questions to Mr. Gemmell and to not give testimony at this time. Mr. Gemmell stated he did recall telling Ms. Crowell-Even that he did not have the authority to set up a payment plan and that he did instruct Ms. Crowell-Even to make a "good-faith payment" until he could speak to his supervisor, Valerie Palumbo. Mr. Gemmell stated he does remember that her accountant was present via telephone, at her appeal hearing on September 11, 2013. Mr. Gemmell stated he did not recall whether or not he had told Ms. Crowell-Even that she could file another appeal and that she would have an additional 30-

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days to do so, but he explained that information was included in the notice of final determination. Mr. Gemmell acknowledged that Ms. Crowell-Even had made the statement to him that her records were destroyed in two sewer line breakages and not a flood. Ms. Crowell-Even asked Mr. Gemmell if he recalled sending her an e-mail with the findings of his first audit indicating an amount of \$27,000 being owed and Mr. Gemmell stated he did. Regarding the 2nd audit: Ms. Crowell-Even asked Mr. Gemmell if he remembered her explaining that industry-standards were not the same as what she was selling in Pueblo County and following her explanation, the new amount indicated in *Exhibit 11*, was the result of his findings and he stated that was correct. Ms. Crowell-Even stated she did not have any further questions.

Ms. Sikes cross-examined Mr. Gemmell and asked for clarification on Ms. Crowell-Even's statement regarding a first and second audit. Mr. Gemmell stated that only one audit was performed for this licensee. He explained it is all one audit until a final assessment is issued. He further explained how he arrived at the two different dollar amounts and why the second dollar amount was significantly lower. Mr. Gemmell stated in looking at the purchase records, he took into account that this licensee primarily sells beer and not hard-alcohol. He stated this method tended to be more beneficial to the taxpayer as hard-alcohol provided more of a profit than the sale of beer. Mr. Gemmell acknowledged that the final assessment was issued on July 2nd, 2013 and the final assessed amount was \$8790.40. Mr. Gemmell explained what the contents of the packet sent out with the final assessment to the taxpayer contains (*Exhibit 8*) stating that the letter that gets sent out references ordinance sections and explains what the taxpayer's appeal rights are. Mr. Gemmell acknowledged that it was of Ms. Crowell-Even's own volition to make payments on the assessed amount. He stated they will always take a payment on an assessment when it is due, but he did not have to consult with Ms. Palumbo. He further stated that Ms. Crowell-Even had offered the title to her car as payment and he explained to Ms. Crowell-Even that this was not something the City could accept. Mr. Gemmell stated that any payment agreement would have to be directed to his manager, not to the Director of Finance. He stated they will never turn down a payment. Mr. Gemmell stated it does not change the fact that the entire assessment needs to be made in full before they will sign-off on the liquor license renewal. Ms. Sikes had no further questions.

The Board then questioned Mr. Gemmell for points of clarification. With all questions and concerns addressed, Ms. Sikes called her next witness.

Valerie Palumbo, Tax Audit Manager, 130 Central Main Street was sworn in. Ms. Sikes then questioned Ms. Palumbo. Ms. Palumbo has worked as the Tax Audit manager for the past 5 years and briefly described her job responsibilities. Ms. Palumbo acknowledged she was familiar with Ms. Crowell-Even's history with the City as it pertains to her filing of sales and use tax returns. Ms. Palumbo gave the Board a brief background regarding sales tax and use tax; she also explained the timelines and due dates for filing of sales tax. Ms. Palumbo explained how it is determined an audit should be performed. She stated this audit was conducted pursuant to the Liquor Board's order. Ms. Palumbo stated the audit was requested as there was some indication that the tax returns that were filed were not accurate and over the course of the past 2 years, four communications have been forwarded to the Liquor Board regarding this taxpayer. Ms. Palumbo explained the contents of the following exhibits:

- *Exhibit 1* – a copy of the communication to the Liquor Board from Ms. Palumbo, dated June 15, 2012 explaining that this taxpayer was non-compliant and had not filed sales tax returns for several periods.

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- *Exhibit 2* – a copy of the *Stipulated Findings and Order* indicating Ms. Crowell-Even stipulated to the violation of failing to timely file sales and use tax returns; 3-days suspension, 0-days served, 3-days held in abeyance for a period of 1 year.
- *Exhibit 3* – a copy of the communication to the Liquor Board from Ms. Palumbo, dated January 25, 2013 indicating the taxpayer continued to be delinquent in remitting her sales tax. This matter was also heard by the Liquor Board and resolved by stipulation.
- *Exhibit 4* – a copy of the *Stipulated Findings & Order* indicating Ms. Crowell-Even received 3-days suspension of her liquor license and ordered to become compliant.
- *Exhibit 5* – a copy of the communication to the Liquor Board from Ms. Palumbo, dated March 27, 2013 indicating the taxpayer continued to be delinquent in filing her sales tax returns.

Ms. Palumbo acknowledged that the taxpayer had not come into compliance pursuant to the previous stipulation heard by the Board. Referring to *Exhibit 6*: Ms. Palumbo stated the outcome of Ms. Crowell-Even's failure to become compliant resulted in a suspension of 45-days: 14-days were credited for days of suspension served and it was as a result of this hearing that the audit was ordered. Ms. Palumbo stated Ms. Crowell-Even only supplied a portion of the documents requested pursuant to the Board's order and to her knowledge the records she did not submit were the type of records that would verify her sales. Ms. Palumbo stated they had nothing to go on that would verify Ms. Crowell-Even's actual sales. Ms. Palumbo acknowledged that Mr. Gemmell had conducted the audit which showed a sales tax deficiency in the amount of \$8,790.40; the Director of Finance did abate the penalty-interest amount and Ms. Crowell-Even has paid a total of \$600.00. Ms. Palumbo stated that a payment plan is not typically allowed in this type of situation. She explained that those taxpayers that hold a liquor license are mandated to become compliant and pay any sales and use tax they owe when renewing their liquor license. Ms. Palumbo stated this requirement is used across the Board with every single taxpayer. Ms. Palumbo stated she had sent a communication to the Liquor Board to inform them that this audit did take place, there was a final determination made and there was an assessment of deficiency owed and it was not paid. She stated the copy of the communication does bear her signature and it was sent on or about December 13, 2013. Ms. Sikes moved for admission of *Exhibit 7*. There were no objections by Ms. Crowell-Even. Ms. Palumbo stated that the results of the audit did demonstrate that the amounts of Ms. Crowell-Even's sales tax return amounts were not accurate. Ms. Palumbo stated she was asking the Board to deny the renewal of Ms. Crowell-Even's liquor license. Ms. Palumbo cited the following reasons for her request for denial and why a denial would be appropriate:

- The taxpayer is not compliant in her sales tax remittance;
- There is concern of factual acknowledgment of sales;
- The proper documents required by ordinance to be kept are not being kept by the taxpayer;
- There is a continual on-going non-compliant situation which has had to be brought before the Liquor Board on several occasions and there is a fear that they will have to continue to do that if the license is renewed.

Ms. Palumbo stated in her estimation, if the liquor license is renewed, the taxpayer will not remain compliant in the future. Ms. Sikes had no more questions for Ms. Palumbo and had no other witnesses for the City. Ms. Crowell-Even did not have any questions for Ms. Palumbo.

Admission of Exhibits 7-13 were entered into the record.

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The Board then questioned Ms. Palumbo for points of clarification. With all questions and concerns addressed, Ms. Crowell-Even gave her testimony.

Ms. Crowell-Even stated she felt the Board was fully aware of all the details in Exhibits 1-6 and her history prior to May 13th, 2013 when she came before them for delinquent taxes. She stated she would not rehash all her personal, family issues. Ms. Crowell-Even stated she has been compliant with filing her sales tax returns every month since May, 2013. She stated she did speak to Mr. Gemmell about how she and her husband had attempted to obtain a bank loan from three different institutions in an attempt to pay the assessed amount, but was unsuccessful. Ms. Crowell-Even stated she told Mr. Gemmell that she was trying to sell her vehicle and she will be getting an income tax refund in the amount of approximately \$8,600.00. She asked Mr. Gemmell to speak to Ms. Palumbo to see if she could continue to make her good-faith payments until Ms. Palumbo was back in the office as he was unable to authorize a payment plan. Ms. Crowell-Even stated she had also told Mr. Gemmell that if she could have until April 1st or April 30th, that she could pay this debt off in full. Ms. Crowell-Even stated the Finance Director did say she could make payments on the penalty and interest portion of her tax debt, but could not make payments on the principal portion. She stated she has attempted to work with the Finance Department, Ms. Palumbo and Mr. Gemmell. She stated if she sells her vehicle this weekend, she could pay the assessment on Monday; if not, she would have to wait for her income tax return. Ms. Crowell-Even explained she has filed her liquor license renewal with the City Clerk's Office and paid all fees, pending the outcome of the Board's decision. Ms. Crowell-Even hoped the Board would consider giving her additional time to pay this assessment as her monthly taxes are current. She stated her business is starting to improve and described various events she has lined up that would help her business to flourish. Ms. Crowell-Even stated it has been difficult because of the opening of new bars in the area. She stated she hoped the Board would allow her more time to pay her debt stating that the I.R.S. and the judicial court system allow for payment plans and even offer community service. Ms. Crowell-Even stated if the Board does allow her additional time and she doesn't pay the audit amount as she has stated, they should take her liquor license. Ms. Crowell-Even stated she was not aware she had an opportunity to file a second appeal or she would have most certainly done so. Ms. Crowell-Even stated she has asked an accountant she knows to conduct an independent audit for her, using the same figures Mr. Gemmell used, after this hearing. She also stated after the September 11th meeting, her accountant went to the City Sales Tax office and they showed her how to do her taxes. Ms. Crowell-Even stated the cash register she uses is somewhat out-dated and does not have the technology of the newer ones today. She stated when she submitted her books to Mr. Gemmell, she really believed that her accountant was doing her taxes correctly. Ms. Crowell-Even stated her bar is closed tonight because of plumbing issues.

Ms. Sikes then questioned Ms. Crowell-Even. Ms. Crowell-Even gave the following dates she had plumbing issues:

- 2007 – 2008: Sewer back-up
- 2009 – Water main break
- 2012 – full-blown sewer back-up

Ms. Sikes asked Ms. Crowell-Even why she kept storing her documents in a place where they could be destroyed. Ms. Crowell-Even explained she moved her documents to different areas each and every time an issue would arise and this building is very old. Ms. Crowell-Even acknowledged receipt of *Exhibit 8* at her home; regarding *Exhibit 10*: Ms. Crowell-Even stated she did not receive a copy at her home and stated she was advised by the City Clerk's Office to check her e-mail as she had been sent

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some correspondence; regarding *Exhibit 11*: Ms. Crowell-Even acknowledged that this correspondence was also addressed to her home and was dated September 25th and that she never received it until she obtained a copy which was handed to her by Mr. Gemmell at the Sales Tax office on September 27th or 28th. Ms. Crowell-Even stated she felt a final determination should not have been made until 30-days after the September 11th meeting which would have allowed her time to either pay it or come up with a payment arrangement. Ms. Crowell-Even stated she does recall from previous Liquor Board hearings that they told her she should keep the sales tax money separate from her general fund. She did recall that Ms. Palumbo had told her that sales tax was actually trust funds held for the benefit of the City and she does understand that those funds do not belong to her or her business. Ms. Crowell-Even stated she did make changes in her business practices and briefly reviewed those changes; she explained that register tapes, invoices and purchases go to her accountant and her business is strictly a cash business. Ms. Sikes asked Ms. Crowell-Even what she did on a daily basis to separate the cash for sales tax compared to other operating funds and Ms. Crowell-Even stated she keeps a separate envelope for the sales tax funds and when she goes in to pay her sales tax, she pays with the cash she has kept. Ms. Sikes did not have any further questions for Ms. Crowell-Even.

The Board then questioned Ms. Crowell-Even. Ms. Crowell-Even stated she is currently remitting her sales tax monthly now; she does not recall being specifically told by the Board to open up an account to where the tax money would be kept and separate from her operational funds. Ms. Crowell-Even explained she is now over-paying on her taxes and has been in compliant. She stated she trusts Mr. Gemmell, who has been very considerate and nice; that he advised her to make good-faith payments and even though they are accepting her payments as a result of the audit, they still don't want to give her a liquor license. Ms. Crowell-Even stated if the Board is not going to grant her renewal, she would have to ask for time so that she could either do a transfer of ownership or sell her bar. Ms. Crowell-Even did not have any witnesses. Ms. Sikes had no rebuttal witnesses to present.

The Board recalled Ms. Palumbo; there were no objections by Ms. Crowell-Even. Ms. Palumbo acknowledged that Ms. Crowell-Even was offered an opportunity whereby if she paid the \$7085.98, that the City would be willing to accept payments on the penalty and interest which was discussed at the September 11th, 2013 hearing. Ms. Palumbo stated she believes that Ms. Crowell-Even has been in on a monthly basis to timely pay her taxes. Ms. Palumbo was excused.

Ms. Sikes presented her arguments. She stated the question of whether or not the licensee has been up-to-date since May is a good one, but feels the more important issue is, was the licensee truthful and accurate in the filings that have been filed with the City for the past three years for the compliance period. During the last hearing, the licensee testified that if she owed any tax, it would only be \$300.00 for the period of those three months. Ms. Sikes stated at that time, one of the reasons the City requested an audit, was because the City doubted the accuracy of that statement. Ms. Sikes explained that the audit has proven that fact and in looking back at the amount that was owed, the unreported income in those tax returns, was over \$200,000, which if divided by 36 months, is approximately a monthly income of \$5,623.79 and that the licensee had testified that she was bringing in less than \$1,000 per month. Ms. Sikes briefly reviewed the Colorado Revised Statute which in part states, "No license shall be issued to or held by any person unless such person's character, record or reputation are satisfactory to the respective licensing authority" and explained that is the issue that is before them. Ms. Sikes stated despite the assurances that Ms. Crowell-Even will remain compliant, there is inconsistent testimony. Ms. Sikes stated the real story has been demonstrated by the record, which is a record of failure to pay, inability to pay and poor business practices and that is why the City is asking that this liquor license be denied and why the licensee should no longer be able to hold a license.

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Ms. Crowell-Even then gave her closing arguments. She stated she opened her business in 2007; she has had ups and downs and has had some very unusual circumstances, including a 14-days suspension. She stated she has made mistakes; she hasn't been compliant and has had failures but she has gained an education throughout this process. Ms. Crowell-Even stated she is now going to someone who is giving her free classes and who is teaching her how to finance and to do things differently. Ms. Crowell-Even stated she has been compliant since her last hearing in May and the only thing she has not done that the Board has asked her to do is to open a separate account because she was fearful that someone would put a freeze on her account and she wouldn't be able to catch up. She stated she is willing to pay the audit amount but needs more time and if the Board is leaning towards not renewing her license, that she be given an opportunity to sell her business.

Ms. Sikes had a short rebuttal explaining how the monthly income was calculated and also stated as far as this taxpayer requesting additional time, she has had 3-years or more of delays to get her accounts current and she has not done so.

Seeing no one further wishing to speak, the hearing was closed and the Board entertained a motion.

Mr. Ferris, seconded by Mr. DiFatta, moved to not renew this license.

The Board then held a discussion citing their reasons for non-renewal of this liquor license and following these statements, the Board then cast their votes.

Roll Call: Ayes—DiFatta, Ferris, Harrison, Pullaro and Rose. Motion carried unanimously.

Ms. Macchietto read the proposed Findings and Order for the Board's consideration.

Mr. Ferris, seconded by Mr. DiFatta, moved to approve the Findings and Order. Roll Call: Ayes—DiFatta, Ferris, Harrison, Pullaro and Rose. Motion carried unanimously.

It was briefly explained to Ms. Crowell-Even that she could appeal this decision within 30-days through District Court. Ms. Crowell-Even asked if she paid the audit in full, if the Board would reconsider and it was explained to her by Mr. Jagger that the Board has made a determination of non-renewal and that he was unable to advise her how she should proceed but that she had the right to appeal the denial and he cited the section number for her.

12 HEARING: RE PENDING CABARET LICENSE RENEWAL-GINO'S LOUNGE, LLC D/B/A MARGUERITE'S AT TOG'S, 112 W. 7TH STREET

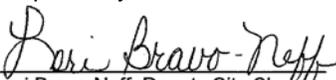
Note: No action was taken on this renewal, since the liquor license was not renewed.

OTHER BUSINESS

Chairwoman Harrison directed that a letter they received from a citizen on an undisclosed liquor-licensed establishment, be sent to the Police Department for further investigation.

ADJOURN – With no further business to come before the Board, the meeting was adjourned at 8:45 p.m.

Respectfully submitted,


Lori Bravo-Neff, Deputy City Clerk
City Clerk's Office