

**MINUTES OF THE REGULAR MEETING OF THE
ALCOHOL, GAMBLING & TOBACCO COMMISSION**

September 5, 2012

The regular meeting of the Alcohol, Gambling & Tobacco Commission was held on Wednesday, September 5, 2012, at 4:45 p.m., in the City Council Chambers, 3rd Floor, City Hall.

ROLL CALL: Present: Dennis Birchland, Heath Hickok, Chris Pekkala,
Ryan Stauber, and President Donahue - 5
Absent: George Hanson - 1

COMMUNICATIONS:

CITY ATTORNEY SUBMITTING NOTICE OF HEARING AND POLICE REPORT TO DECIDE WHAT, IF ANY, DISCIPLINARY ACTION SHOULD BE TAKEN REGARDING THE OFF SALE INTOXICATING LIQUOR LICENSE OF CITY WINE & LIQUOR STORE, INC. (WAREHOUSE LIQUOR STORE), 104 WEST CENTRAL ENTRANCE. #12-05 - Received.

CITY ATTORNEY SUBMITTING NOTICE OF HEARING AND POLICE REPORT TO DECIDE WHAT, IF ANY, DISCIPLINARY ACTION SHOULD BE TAKEN REGARDING THE ON SALE CLUB LICENSE OF RIDGEVIEW COUNTRY CLUB, 700 WEST REDWING STREET. 12-06 - Received.

NEW BUSINESS:

HACIENDA DEL SOL, INC. (HACIENDA DEL SOL), 319-321 EAST SUPERIOR STREET -
APPLICATION FOR AN ON SALE INTOXICATING LIQUOR LICENSE AND ON SALE SUNDAY LICENSE FOR THE PERIOD ENDING AUGUST 31, 2013, WITH KEVIN DEUTSCH, 100% STOCKHOLDER.

Kevin Deutsch was present on behalf of the application. Mr. Deutsch explained that his restaurant has been closed but is hoping and planning on reopening by the end of October, but stated he needs to work things out with the City.

Attorney Lutterman reviewed that when considering the application, they can legitimately consider the applicants past financial performance as to whether they're going to be able to comply with the requirements of the liquor code going forward. She continued saying the City has information to share with the Board with regards to this applicant's prior financial responsibility performance including amounts owed by this license applicant for tourism food and beverage tax, monies owed to Comfort System, monies owed to the steam plant, monies owed unpaid administrative fines, and monies owed on property taxes.

Brian Hansen, City Treasurer, reviewed that outstanding bills with the various departments of the City need to be paid in order for the city to proceed with issuing a liquor license. He went on to say that Mr. Deutsch has a plan to make a formal settlement agreement with the City, but he has not contacted the City as to the details. Mr. Hansen explained that until he hears the plan he cannot say whether the city would issue a liquor license. To the commission's questioning,

Mr. Hansen replied that all the outstanding city balances would amount to excess of \$33,000. Mr. Deutsch stated he is aware of the amount and that it must be paid in order to get his restaurant opened quickly.

The Commission questioned if Mr. Deutsch is optimistic about his time frame and should come back in October and update the Commission on the status of the \$33,000. Mr. Deutsch replied that while it might be an optimistic time frame, he is working in good faith with the City and the City has been very cooperative with everything he has been doing.

Attorney Lutterman reviewed while the City can't issue the license under our current code, the issue also before the Board is whether, given past performance and the amount owed, does this applicant have the financial ability to operate his business in the future in a manner that won't cause delinquencies to the City. She stated the concern of the City in this regard is how's he going to pay his bills in the future going forward?

Mr. Deutsch replied that the City has legitimate concerns, however there were many contributing factors that happened that got him to the situation that he was in. He continued saying that there is financing available to him that he didn't have before. The commission questioned how the City has been helping him, and if he was concerned he would have to request the same help from the City again. Mr. Deutsch replied that the City has been willing to set up payment programs and other things. He reviewed again that the original causing factor of his financial stress was the great amount of damage that was done to his building during the building of the Sheraton development and an unsatisfactory settlement with that. He explained that after the fire his business went down the tubes.

The Commissioners stated that they don't want to approve this license unless the City can be assured that in the future there aren't any more issues for the City staff. Mr. Deutsch stated he is the one person responsible for all these situations and bear some of the accountability for this situation getting to the point that it did. He stated that he needs better communication with the City. To questioning from the Commission, Mr. Deutsch replied that he has the money to make the payments that are need to pay off his debt in the next month or two.

There being no further discussion, Mr. Birchland moved that THE APPLICATION OF HACIENDA DEL SOL, INC. (HACIENDA DEL SOL), 319-321 EAST SUPERIOR STREET FOR AN ON SALE INTOXICATING LIQUOR LICENSE AND ON SALE SUNDAY LICENSE FOR THE PERIOD ENDING AUGUST 31, 2013, WITH KEVIN DEUTSCH, 100% STOCKHOLDER, BE APPROVED, AND THE SAME BE RECOMMENDED TO THE CITY COUNCIL FOR APPROVAL. Mr. Pekkala seconded the motion, and it was unanimously approved.

LAWFUL GAMBLING:

Women's Care Center

raffle exemption - 60 day waiver

Angela Wambach was present on behalf of the application. Ms. Wambach explained this their second annual raffle fundraiser for the Women's Care Center with all proceeds going to this facility. Officer Vang stated he has approved this application. There being no further discussion, Mr. Hickok moved that the 60 DAY RAFFLE EXEMPTION FOR WOMEN'S CARE CENTER BE APPROVED, AND THE SAME BE RECOMMENDED TO THE CITY COUNCIL FOR APPROVAL. Mr. Pekkala seconded the motion, and it was unanimously approved.

HEARING TO DECIDE WHAT, IF ANY, DISCIPLINARY ACTION SHOULD BE TAKEN REGARDING THE OFF SALE INTOXICATING LIQUOR LICENSE OF CITY WINE & LIQUOR STORE, INC. (WAREHOUSE LIQUOR STORE), 104 WEST CENTRAL ENTRANCE.

Mallow: I am Randy Mallow and owner of Warehouse Liquor.

Lehr: Commission members. This matter is not contested. I spoke with Mr. Mallow the other day and he is stipulating that the violation alleged in the Notice of Hearing did occur at the licensed premises which is a violation on April 11 of this year a sale to a minor. Mr. Mallow is president of the licensee and acknowledges that the violation did occur but he does wish to be heard in regards to the proposed penalty.

Mallow: I just want to let you know what happened and what actions I have taken since then to keep that from happening again. The clerk had asked, at least that is what I have been told, the clerk had asked for the person's ID. She unfortunately didn't look at it closely enough to get the right date on it. But immediately after she was fired on the spot. I personally retrained all the clerks in not only asking for the ID's, but looking at the dates very carefully. When her name came in the paper with the fine, I made copies and they are all hanging on the registers for the clerk to look at when they are working.

Hickok: Have you ever had a violation before?

Mallow: I had on other violation quite a few years ago but I am not exactly sure.

Hickok: Is that on the city's records as far as how long ago it was?

Lehr: I don't have the information so I'm not sure when it was.

Mallow: I have owned the store for 36 years. It has been pretty good most of the time.

Hickok: Do you have a training process for your staff?

Mallow: Yes I do. I have a training process and every few months I go through with each person and talk to them about it again and go over it. To make sure they are aware of it and not just letting it slide and forgetting about. Like I said, she did ask for the person's ID. She just said she didn't have her glasses. I guess that is what I get for hiring an older person. I apologize for that.

Hanson: Have you ever sent your people or you attending any of the classes?

Mallow: No.

Hanson: I might suggest you might want to give that a try. There are some positive reinforcement techniques that are available that might even be more effective.

Mallow: I do have it posted that if someone who is underage that is not sold to, I do give them a reward of \$50.

Hanson: I am personally of the opinion that a positive approach is better for personnel and better in the long run. According to this, Heather Axtell has not paid her fine?

Mallow: She was my employee.

Hanson: What were you assessed?

Mallow: So far I have paid \$200 to the city.

Hanson: Wasn't there another \$200?

Lehr: The fine for the licensee violation is typically \$200 or \$250 dollars. In this particular case, the employee paid a higher fine because she was issued a District Court ticket, and often times the judges on the local bench will decide for themselves what type of fine they wish to impose. They might impose a \$200 or \$250 and I have seen the fines go as high as \$500 from the local bench.

Hanson: Thank you Ms. Lehr.

Mallow: Hers was actually \$585. I have to tell you that it is quite a deterrent. Just as a side comment, I know that it is my responsibility as the licensee. But I know clerks in the past that have gotten off pretty easy. This is a real good deterrent to punish the person who actually does it.

Pekkala: I kind of like the idea that you having the ticket hanging there on the register. If a clerk sees that it may cost them almost \$600, it is a pretty good deterrent. Any other questions from the commission?

Hanson: Do you have anything to offer that would make us think there were mitigating circumstance to suggest a reduction in the fine?

Mallow: Not really. The only thing is that I have a pretty good record for many years. Being a small family owned business I am there pretty much every day keeping on top of it, like a lot of them now days. I really don't have anyone on hand that is really in charge or cares about it. I care about it.

Hickok: I would like to make a motion to reduce your fine from \$500 to \$300, contingent on Commissioner's Hanson's suggestion you do either yourself or you send one of your managers to an official training that he referenced. In doing so, then you will have the official process in place to properly train your employees and other staff. I just think that both the positive reinforcement and the measures you took were good to see as well. And also considering the fact that you haven't been here for a violation for quite some time. All those variables taken into consideration along with you agreeing to take that official training warrants a reduction in the fine.

Lutterman: Commissioners. The code as it currently reads does not allow the commission to make a recommendation that any portion of the fine be stayed in any way, shape, or form. In order to reduce the presumptive penalty, the commission must make findings of mitigating circumstances that would justify a reduction of the fine. So there is a difference between staying the payment conditioned upon certain things, that is not allowed any longer in the code. If you believe a reduced fine is appropriate in this case, you need to identify what mitigating circumstances justify that reduction.

Hickok: In this case, the mitigating circumstances would be he hasn't had a fine in quite some time, and the employee did ask for the ID, but just didn't thoroughly check it and follow through. I think that is something the training would help the business owner in training the

staff. Taking into the consideration those variables, I would think those would be the mitigating circumstances.

Pekkala: Motion has been made and second. Motion fails for a lack of a second.
Anyone else with a motion?

Hanson: I move that we follow the recommendation of the city attorney of the first offense of \$500 payable within 30 days.

Birchland: I'll second that.

Pekkala: All those in favor say yea?
Yeas: Birchland, Hanson, Stauber, Pekkala - 4
Nays: Hickok - 1

Motion passes.

Mallow: Thank you.

HEARING TO DECIDE WHAT, IF ANY, DISCIPLINARY ACTION SHOULD BE TAKEN REGARDING THE ON SALE CLUB LIQUOR LICENSE OF RIDGEVIEW COUNTRY CLUB, 700 WEST REDWING STREET.

Lehr: Thank you, President Pekkala. In this matter, we do have a written stipulation and I'm hoping that the Commission members were provided with a copy of the stipulation and so it basically bears agreement that the violation did occur and also in agreement with the presumptive penalty of a \$500.00 civil fine for the members at the location. There was a prior violation with this particular licensee that occurred in 2009 but because it was far enough back it did not affect the presumptive penalty which would still be a \$500.00 fine in this instance.

Johnson: Thank you. Good afternoon. My name is Clint Johnson. I'm the general manager at Ridgeview Country Club. When the offense occurred, I was not employed there. Since the incident has occurred, we have undergone training with the Minnesota Licensed Beverage Association. It was one of the first things I did after hearing about it. I have worked at Northland Country Club for the past six years prior and I've gone through extensive training there to make sure that no penalties, nothing of this instance occurred. In the three months that I've been at Ridgeview, I don't know if we've been stung and that might be something on the positive re-enforcement lines if the police would let any establishment know that they passed a sting, I think that would go a long ways towards letting you know that you are doing a good job. But, with each employee orientation, license readability, i.d. checking, and making sure we're compliant with our club license is first and foremost with all new employees.

Hanson: How do you identify your members?

Johnson: You ask for their member number and who their guests are.
Hanson: So, I understand this was prior to your taking over.

Johnson: Yes.

Hanson: I remember you were in here with J.D.

Johnson: That was a person named Jeff.

Hanson: And I don't golf so I'm just completely ignorant your procedures but I was just curious. How did this happen?

Johnson: For this instance on April 12th, I heard that it was this employee's first day on the job. It was a mens' league night so you've got about 100 people in there all at the same time and this person walks up to the bar. The person hadn't started their shift yet but was standing behind the bar and felt like they needed to get this person what they needed as soon as possible because I'm at a country club and I can't let any of my members wait. So, open the beer, put it in front of the customer and the customer walked out. The police came back in. Failed. Which is completely understandable. The person should have probably been on a tighter leash so to speak. At that time, and the way I manage, I'm there quite a bit. I like to keep an eye on the operation and make sure everybody knows who everybody is. If you see anybody, that's one of the biggest things is getting to know your membership. I've got about 300 members. I would say I know 75% of them by now and you're always asking that question, introducing yourself and getting their member number before you start a ticket or serve anybody anything. And that's our goal moving forward. Also, we'll be back with the Minnesota Beverage License Association each spring when you bring in new hires, partnering up with a couple other businesses in the area to go through their orientation and their classes each spring.

Hanson: So, there's a new sheriff in town, huh?

Johnson: There's a new sheriff in town.

Hickok: Clint, is this similar to what the process was at Northland Country Club as well? Is it the same there?

Johnson: Definitely the process is very similar. I think you're just dealing with two different clienteles. Northland, you notice anybody off the street, not too just disparage anybody, it just didn't feel as comfortable walking into that club as they do at Ridgeview. Ridgeview's a little homeier place and it's not always members. A lot of guests up there. We applied for a special license for the Arrowhead Golf Tournament so that we could host a bunch of guests for that week and we do a lot more outside events at Ridgeview where it's more open to the public. So, it's a little trickier to manage. Absolutely.

Hanson: For that special event weren't you using wristbands or something like that to identify everybody or?

Johnson: No wristbands for that event. It was just a gallery of about 100 people that came to watch golf on Sunday. If they were gonna have a beverage, it was all on our premise, but includes where we serve on the course. See sometimes somebody would park on Howard Gnesen and walk onto the course. You still gotta identify by age but we were open to serve them as a registered guest of the club.

Hanson: It's any awful big license area to control.

Johnson: It's huge. The property tax backs that up. It is. Like the gentleman before mentioned his employees. I'm dealing with and I love it, part-time employees, college students. Sometime they're here today, gone tomorrow. But backing them up and staying in touch with them on a daily basis is huge so that they understand what our goals are and what the most

important thing is is safe service. I don't want to come to this meeting every three months I promise you that.

Hanson: I don't want to see you either.

Johnson: I bet you don't.

Hickok: Would mitigating circumstances possibly include the fact that there's new management or that it was old management. I'm trying to understand how that language works.

Lutterman: President Pekkala and Commissioner Hickock, I don't think that the fact that there's new management is necessarily a circumstance that is mitigating under these circumstances as we understand that the change in management was the result of the unfortunate death of Mr. Anderson. If there had been a problem with an old manager, then the club's board had terminated that person for their performance and imposed a new sheriff in town, whether that would be mitigating circumstances or not I'd leave to the discretion of the Board. But usually what mitigation involves is there is some special circumstance present at the time that the offense occurred that in a way excuses or somewhat justifies the failure to comply with the law.

Johnson: In this case, the only mitigating circumstance was that it was the employee's first night and I can tell you that the employee is still with Ridgeview Country Club and has come a long way since that day.

Hanson: I'll make a motion that we follow the recommendation and I don't really see any mitigating circumstances here and just hopefully we won't see you in the future and impose the \$500.00 fine with payment due within 30 days of City Council action.

Hickok: Second.

Pekkala: A motion has been made and seconded. All those in favor say "Aye".

Motion passes unanimously.

Johnson: Thank you very much for your time.

There being no further business to bring before the commission, the meeting was declared adjourned at 6:00 p.m.