

PURCHASING AND LICENSING COMMITTEE

11-0044R

RESOLUTION IN THE MATTER OF THE ON SALE INTOXICATING
LIQUOR LICENSE OF GOLDEN EAGLE LIQUORS, LLC,
(SPORTSMEN'S LIQUOR), 3904 GRAND AVENUE.

CITY PROPOSAL:

BE IT RESOLVED, that the city council of the city of Duluth makes the following findings of fact:

(a) On August 4, 2010, October 6, 2010, and November 3, 2010, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of Golden Eagle Liquors, LLC, d/b/a Sportsmen's Liquor, 3904 Grand Avenue, and has submitted its report to the city council of the city of Duluth as Public Document No. _____;

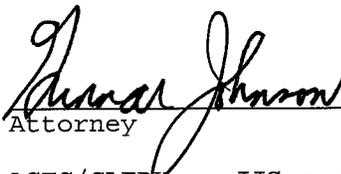
(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on January 24, 2011, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. _____ regarding any suspension, revocation and/or civil penalty relating to the off sale intoxicating liquor license of Golden Eagle Liquors, LLC, d/b/a Sportsmen's Liquor, 3904 Grand Avenue, are adopted.

BE IT FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: that the city council impose a \$1,000 civil penalty payable within 30 days of final council action with \$500 be stayed for one year and abated if the licensee has no same or similar violations for a period of one year from the date of final council action; and a five day license suspension to occur within 30 days of final council action, four of said five suspension days stayed for a period of one year and abated if

the licensee has no same or similar violations for a period of one year from the date of final council action.

Approved as to form:


Attorney

AGTC/CLERK JJC:mao 1/12/2010

STATEMENT OF PURPOSE: The alcohol, gambling and tobacco commission (AGTC) held a hearing on August 4, 2010, October 6, 2010, and November 3, 2010, regarding the liquor license of Sportsmen Liquor. On March 3, 2010, the police department conducted an alcohol compliance check and the licensee was charged for serving to an underage individual. The hearing took place on August 4 and was continued until October 6 and then concluded on November 3. This was the third offense as the licensee was also ticketed for a violation occurring June 30, 2008, and May 4, 2009. Section 8-9 provides that the presumptive penalty for a third offense within two years is a \$1,000 penalty and a five day suspension. The recommendation of the AGTC is to impose a civil penalty of \$1,000 payable within 30 days but staying \$500 for one year pending no further violations, and a five day suspension but staying four suspension days for one year pending no further violations with the one day suspension served within 30 days of final council action.

CITY OF DULUTH

ALCOHOL, GAMBLING AND TOBACCO COMMISSION

REPORT TO THE CITY COUNCIL

Golden Eagle Liquors, LLC d/b/a Sportsmen's Liquor, 3904 Grand Avenue, Duluth, Minnesota

The above-entitled matter came on for hearing before the Duluth Alcohol, Gambling and Tobacco Commission on August 4, 2010, October 6, 2010, and November 3, 2010, in the City Council Chambers in Duluth, Minnesota. The hearing record closed on November 3, 2010, upon completion of the hearing.

Steven B. Hanke, Assistant City Attorney, City of Duluth, Office of the City Attorney, 410 City Hall, Duluth, Minnesota, 55802, appeared on behalf of the City licensing staff. Licensee appeared through its managing agent and owner, Rick McArthur.

This Report is a recommendation, not a final decision. The Duluth City Council will make the final decision after a review of the record which may adopt, reject or modify the Findings of Fact, Conclusion and Recommendations contained herein. Pursuant to Minn.Stat. §14.61, the final decision of the Council shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by the Report to file exceptions and present argument to the City Council. Parties should contact the City Clerk to ascertain the procedure for filing exceptions or presenting argument.

FINDINGS OF FACT

The commission makes the following findings of fact.

1. Licensee is licensed by the City of Duluth to sell intoxicating liquor "off-

- sale” at a premises located at 3904 Grand Avenue, Duluth, Minnesota.
2. On March 3, 2010, an employee of Licensee was charged for selling intoxicating liquor to a person under the age of 21 years old in violation of city code. The employee was convicted of the criminal violation on October 12, 2010. *See State of Minnesota vs. Michael Derek Rogers, St. Louis County District Court File No. 69DU-VB-10-8761.*
 3. The Licensee was also charged as licensee liable for the unauthorized sale, as provided in Duluth City Code Section 8-35. This criminal matter has not yet been adjudicated. *See State of Minnesota vs. Golden Eagle Liquors LLC, St. Louis County District Court File No. 69DU-VB-10-6533*
 4. The Commission then issued its Notice and Order for Hearing and set a hearing date of August 4, 2010. The hearing took place on August 4, 2010, and continued to October 6, 2010, and November 3, 2010. Licensee appeared through its managing agent and owner, Rick. McArthur, on all three hearing dates.
 5. The Licensee was previously disciplined on February 8, 2010, as a result of a similar violation occurring on May 4, 2009. *See Council Resolution 10-0072R approved on 02-08-2010.* As a result of that violation the following penalties were imposed:
 - A. \$850.00 civil penalty;
 - B. A one day license suspension; and
 - C. Payment of the \$250 civil penalty that was previously stayed pursuant to City Council Resolution 09-0066R. *See Council Resolution 09-0066R approved on 01-26-2009.*
 6. The Licensee was previously disciplined on January 26, 2009 as a result of a similar violation occurring on June 30, 2008. As a result of that violation a \$500.00 civil penalty was imposed. *See Council Resolution 09-0066R approved on 01-26-2009.*
 7. Section 8-9(b)(1) of the Duluth Legislative Code provides that grounds for

disciplinary action include the operation of a liquor establishment in violation of any law. Section 8-35 provides that every licensee shall be responsible for the conduct of the licensee's place of business and that any violation of Chapter 8 of the Duluth Legislative Code committed on the licensed premises by an employee of the licensee shall be deemed the act of the licensee as well as the employee.

8. Since March 3, 2010, the date of the alleged violation, the Licensee has taken the following corrective action:
 - A. Installed video surveillance equipment inside the premises;
 - B. Added a full-time manager (was previously part-time); and
 - C. Created an incentive program to reward employees when they pass compliance checks.

CONCLUSIONS

Based upon these facts, the commission makes the following conclusions:

1. That the violation as alleged in the Notice of Hearing occurred.
2. That the Licensee is responsible for the violation.
3. That pursuant to Duluth City Code Section 8-9, absent aggravating or mitigating circumstances, the presumptive penalty for the current violation is a \$1,000.00 civil penalty and five day license suspension as a "third offense within two years."
4. Mitigating circumstances exist because the Licensee has taken corrective action.

RECOMMENDATION

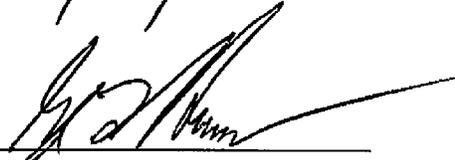
It is the recommendation of the Duluth Alcohol, Gambling and Tobacco Commission that the Duluth City Council impose the following civil penalty:

1. Payment of a \$1,000.00 penalty within 30 days of final council action, \$500.00 of said \$1,000.00 penalty stayed for a period of one year and

abated if Licensee has no same or similar violations for a period of one year from the date of final council action ; and

3. A five day suspension of the Licensee's liquor license to occur within 30 days of the date of final council action, four of said five suspension days stayed for a period of one year and abated if the Licensee has no same or similar violations for a period of one year from the date of final council action.

Dated: 1/5/2011

By: 
George Hanson, President

**DULUTH ALCOHOL,
GAMBLING
AND TOBACCO
COMMISSION**

CITY OF DULUTH

ALCOHOL, GAMBLING AND TOBACCO COMMISSION

NOTICE OF AND ORDER FOR HEARING

TO: Golden Eagle Liquors, LLC d/b/a Sportsmen's Liquor, 3904 Grand Ave. Duluth, Minnesota 55807

PLEASE BE ADVISED that on **August 4, 2010**, at 4:45 p.m. in the Council Chambers at City Hall in the City of Duluth, the Duluth Alcohol, Gambling and Tobacco Commission will hold a hearing, pursuant to Minnesota Statutes §340A.415 and Section 8-9 of the Duluth City Code, to consider what, if any, disciplinary action, including suspension or revocation or a civil fine of not to exceed \$2,000, will be recommended to the Duluth City Council with respect to your intoxicating liquor license.

If you do not appear at said hearing, the Alcohol, Gambling and Tobacco Commission may, in your absence, recommend that the Duluth City Council consider the allegations contained herein to be true.

At the above-mentioned hearing, you may, at your option, be represented by legal counsel.

The Rules for Contested Case Hearings Minnesota Rules Chapter 1400, Part 5550, et.seq, to the extent applicable, and Minnesota Statutes §14.57 thru §14.69 govern. Copies of these laws and rules may be obtained at the Duluth Public Library or online from the official web site of the State of Minnesota.

The City will present its case, and then you will have an opportunity to present your case. At the time of the hearing, you should be prepared to produce any evidence and arguments you feel are relevant to the issues raised. You or your attorney will be allowed to cross-examine all adverse witnesses. If needed, subpoenas are available (Minnesota Rules 1400.7000).

You must advise the Commission if you seek to admit evidence that is classified not public. If data that is not public is admitted, it may become public. Relief is available under Minnesota Statutes §14.60, subd. 2. If an interpreter is needed, you must inform the Commission and one will be appointed.

A notice of appearance must be filed with the City Clerk within 20 days of the date of service of the notice of hearing if you intend to appear at the hearing, unless the hearing date is less than 20 days from the issuance of the notice of hearing.

The person representing the City, who you should contact to discuss settlement or other concerns is Steven B. Hanke, Assistant City Attorney.

The hearing will be open to the public.

The following facts give rise to the inquiry and hearing mentioned above:

1. The above-identified licensee is licensed by the City of Duluth to sell intoxicating liquor "off-sale" at a premises located at 3904 Grand Ave. Duluth, Minnesota, **55807**.
2. On March 3, 2010, Michael Derek Rogers, III, an employee of Licensee, was cited for sale of intoxicating liquor to a person under the age of 21 years old in violation of city code. A record of that citation is unavailable. *See City Doc. No. 1 (City of Duluth Police Report Case No. 10236150)*
3. The Licensee was also charged for the March 3, 2010, violation as licensee liable for an unauthorized sale, pursuant to Duluth City Code Section 8-35. That citation was e-file on June 24, 2010 and a fine was assessed. *See City Doc. No. 2. (State of Minnesota v Golden Eagle Liquors LLC, St. Louis County File No. 69DU-CR-10-6533.)*
4. The Licensee was previously disciplined on February 8, 2010, as a result of a similar violation occurring on May 4, 2009. *See City Doc. No. 4 (Resolution 10-0072R approved on 02/08/2010)*. As a result of that violation the following penalties were imposed:
 - A. \$850.00 civil penalty;

- 1
- B. A one day license suspension; and
 - C. Payment of the \$250 civil penalty that was previously stayed pursuant to City Council Resolution 09-0066R. *See City Doc. No. 4 (Resolution 09-0066R approved on 01/26/2009).*
5. The Licensee was previously disciplined on January 26, 2009 as a result of a similar violation occurring on June 30, 2008. As a result of that violation a \$500.00 civil penalty was imposed. *See City Doc. No. 4 (Resolution 09-0066R approved on 01/26/2009).*
 6. The Licensee was also previously disciplined on November 13, 2007, as a result of a similar violation occurring on October 4, 2006. As a result of that violation a \$500 civil penalty was imposed. *See City Doc. No. 5 (Resolution 07-0694R approved on 11/13/2007).* However, the October 4, 2006, violation is outside the look-back period for purposes of the presumptive penalty for the current violation.
 7. Pursuant to Duluth City Code Section 8-9, absent aggravating or mitigating circumstances, **the presumptive penalty for the current violation is a \$1,000.00 civil penalty and five day license suspension as a “third offense within two years.”**

Pursuant to City Code Sections 8-9(a) and (b)(1) the Alcohol, Tobacco and Gambling Commission will consider whether the violation alleged is good cause for suspension or revocation of the liquor license or for the imposition of a civil penalty.

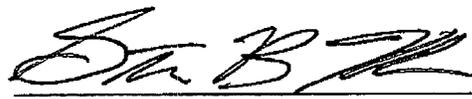
(Records Supporting This Notice Are Attached As City Documents Nos. 1-5).

Dated: July 2, 2010

JEFFREY J. COX, Secretary
Alcohol, Gambling and Tobacco
Commission

and

1



STEVEN B. HANKE (0387429),
Assistant City Attorney

Gunnar B. Johnson, City Attorney
Attorneys for the Alcohol, Gambling and
Tobacco Commission

Duluth Police Department
Main Office

Reported Date: 03/04/2010 Time: 16:19 Case No.: 10236150
Code: 340A.503.2(1) Crime: Liquor-Purchase/Sell/Barter/Furnish/Give to u/21 yr- GM
Class: M4106 Occurrence Date: 03/04/2010
Location: 3904 GRAND AVE, 1DU, DULUTH, MN, , 55807

NARRATIVE

SYNOPSIS

On 03/04/10, at 1625 hours, I, Officer Padden was doing alcohol compliance checks in the city of Duluth. One of the establishments that we needed to check was Sportsman's Liquor at 3904 Grand Avenue. The clerk there, identified as ROGERS, subsequently sold alcohol to my decoy, who is under 21 years of age.

NARRATIVE

On 03/04/10, at 1625 hours, I, Officer Padden, was doing alcohol compliance checks in the city of Duluth. One of the establishments that needed to be checked was Sportsman's Liquor at 3904 Grand Avenue. My decoy entered the store, took a six-pack of Budweiser from the cooler to the counter. He was able to purchase this without being asked for identification or proof of age. The decoy then returned to the vehicle I was waiting in and handed me a receipt. I looked at the receipt and noticed that at 4:16 p.m., when the sale occurred, on the receipt, it states "age verified." I asked VUCHETICH if he was asked to present any sort of ID or proof of age and VUCHETICH said he was not asked for anything. He was told the amount was \$6.06, and VUCHETICH gave him a \$20 bill and was given \$13.94 in change.

I then went into Sportsman's Liquor and spoke to the clerk, identified as MICHAEL DEREK ROGERS, III, DOB/05/13/87. I identified myself as a police officer and was in full uniform. I explained to ROGERS that he had just sold alcohol to an underage person. ROGERS said, "I did?" I explained that on the receipt, it said that age was verified. ROGERS indicated that if they know the person, they can override the age verification. ROGERS did not know VUCHETICH.

I asked ROGERS for his ID, at which time he gave me it. I issued him a citation for Sale of Alcohol to a Minor with a court date of 04/20/10, at 1330 hours. The six-pack of Budweiser was subsequently photographed at headquarters for evidence and then destroyed.

Logout My Account Search Menu New Criminal/Traffic/Petty Search Refine Search Back

Location : All MNCIS Sites - Case Search Help

REGISTER OF ACTIONS
CASE NO. 69DU-VB-10-6533

State of Minnesota vs GOLDEN EAGLE LIQUORS LLC

§
§
§
§
§

Case Type: Crim/Traf Non-Mand
Date Filed: 06/24/2010
Location: - St. Louis-Duluth

PARTY INFORMATION

Defendant	GOLDEN EAGLE LIQUORS LLC	Lead Attorneys
Jurisdiction	State of Minnesota NONE	MARY E ASMUS 218-730-5490(H)

CHARGE INFORMATION

Charges: GOLDEN EAGLE LIQUORS LLC	Statute	Level	Date
1. DPD-ALCOHOL-LICENSEE LIABLE FOR UNAUTHORIZED SALES	DU8.35	Petty Misdemeanor	03/04/2010

EVENTS & ORDERS OF THE COURT

	OTHER EVENTS AND HEARINGS
06/24/2010	Citation E-Filed

FINANCIAL INFORMATION

	Defendant GOLDEN EAGLE LIQUORS LLC	
	Total Financial Assessment	585.00
	Total Payments and Credits	0.00
	Balance Due as of 07/02/2010	585.00
06/24/2010	Transaction Assessment	85.00
06/24/2010	Transaction Assessment	500.00

PURCHASING AND LICENSING COMMITTEE

10-0072R

RESOLUTION IN THE MATTER OF THE OFF SALE INTOXICATING LIQUOR LICENSE OF GOLDEN EAGLE LIQUORS, LLC, (SPORTSMEN'S LIQUOR), 3904 GRAND AVENUE.

CITY PROPOSAL:

BE IT RESOLVED, that the city council of the city of Duluth makes the following findings of fact:

(a) On December 2, 2009, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of Golden Eagle Liquors, LLC, d/b/a Sportsmen's Liquor, 3904 Grand Avenue, and has submitted its report to the city council of the city of Duluth as Public Document No. _____;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on February 8, 2010, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. _____ regarding any suspension, revocation and/or civil penalty relating to the off sale intoxicating liquor license of Golden Eagle Liquors, LLC, d/b/a Sportsmen's Liquor, 3904 Grand Avenue, are adopted.

BE IT FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: that the city council impose a \$850 civil penalty payable within 60 days of final council action with no portion of which shall be stayed; a one day license suspension to be served on the second Monday following council action; and payment of the \$250 civil

passed ~~XXXX~~
02/08/2010

penalty that was stayed for one year pursuant to Resolution 09-0066, payable within 60 days of final council action.

Approved as to form:

Attorney

CLERK JJC:mao 1/27/2010

STATEMENT OF PURPOSE: The alcohol, gambling and tobacco commission (AGTC) held a hearing on December 2, 2009, regarding the liquor license of Sportsmen's Liquor, 3904 Grand Avenue. On May 4, 2009, the police department conducted a alcohol compliance check and an employee of the licensee sold intoxicating liquor to a person under the age of 21 which is in violation of City Code and state law. Section 8-34 of City Code provides that the licensee is responsible for the conduct of its place of business. This licensee was previously disciplined in January 26, 2009, as a result of a similar violation that occurred in June 2008. As a result of that violation, a \$500 penalty was imposed, however, \$250 was stayed for one year pending no further same or similar violations. (Resolution 09-0066 approved on 1/26/09). The violation that took place on May 4, 2009, took place during the one year abatement period and within the one year of the June 30, 2008, violation.

The AGTC decided that aggravating factors exist which justify an upward departure from the presumptive penalty in Section 8-9 of City Code which is a \$750 fine and a one day suspension for a second offense in one year. The licensee was granted a conditional off sale license allowed by the State which reduces the license fee by \$100. The conditional license is based on the agreement that the licensee would post a policy requiring identification checks for all persons appearing to be 30 years old or younger. Sportsmen's Liquor has posted an age verification policy, however, the employee failed to ask the underage person for identification and therefore did not enforce its own posted policy which is a specific condition of the licensee's conditional license. The AGTC is recommending a \$750 fine and a one day suspension, plus an additional \$100 for the violation of the licensee's posted policy. Payment of the \$250 fine that was stayed for one year is also due with all fines payable within 60 days of final council action with no portion stayed. The one day suspension to be served on the first Monday following council action.

PURCHASING AND LICENSING COMMITTEE

09-0066R

RESOLUTION IN THE MATTER OF THE OFF SALE INTOXICATING LIQUOR LICENSE OF GOLDEN EAGLE LIQUORS, LLC (SPORTSMEN'S LIQUOR), 3904 GRAND AVENUE.

CITY PROPOSAL:

BE IT RESOLVED, that the city council of the city of Duluth makes the following findings of fact:

(a) On December 3, 2008, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of Golden Eagle Liquors, LLC (Sportsmen's Liquor), 3404 Grand Avenue, and has submitted its report to the city council of the city of Duluth as Public Document No. _____;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on January 26, 2009, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. _____ regarding any suspension, revocation and/or civil penalty relating to the off sale intoxicating liquor license of Golden Eagle Liquors, LLC (Sportsmen's Liquor), 3404 Grand Avenue, are adopted.

BE IT FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: that the Duluth City Council fine the licensee \$500 for the first offense, however that \$250 of the fine be due and payable within 30 days of final council action. The remaining

fine amount to be stayed for a period of one year following final council action and be abated if no same or similar violations occur during that one year period.

Approved as to form:

Attorney

AGTC/CLK JJC:mao 1/15/2009

passed 1/26/09

Alcohol, gambling and tobacco commission (AGTC) discussion: The alcohol, gambling and tobacco commission held a hearing on December 3, 2008, regarding the on sale intoxicating liquor license of Golden Eagle Liquors, LLC (Sportsmen's Liquor), 3404 Grand Avenue. The police department conducted alcohol compliance checks on June 30, 2008, at several on and off sale intoxicating liquor license establishments. Seventeen establishments were written tickets for selling alcohol to an underage individual. This was the first offense for Sportsmen's Liquor and the AGTC fined the licensee \$500 payable in 30 days, but stayed \$250 of the fine if no same or similar violations occur during a one year period which is in accordance with the guidelines set forth in Section 8-9 of the City Code.

DISCLAIMER

07-0694R

RESOLUTION IN THE MATTER OF THE OFF SALE
INTOXICATING LIQUOR LICENSE OF GOLDEN EAGLE
LIQUORS, LLC, (SPORTSMEN'S LIQUOR), 3904 GRAND
AVENUE.

BY COUNCILOR KRAUSE:

BE IT RESOLVED, that the city council of the city of Duluth makes the following findings of fact:

(a) On October 3, 2007, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of Golden Eagle Liquors, LLC, d/b/a Sportsmen's Liquor, 3904 Grand Avenue and has submitted its report to the city council of the city of Duluth as Public Document No. _____;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on October 3, 2007, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. _____ regarding any suspension, revocation and/or civil penalty relating to the off sale intoxicating liquor license of Golden Eagle Liquors, LLC, d/b/a Sportsmen's Liquor, 3904 Grand Avenue, are adopted.

BE IT FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: that the Duluth City Council fine the licensee \$500 for the first offense payable within 60 days of final city action.

Alcohol, gambling and tobacco commission discussion of 10/3/07: The police department conducted alcohol compliance checks on October 4, 2006, at several on and off sale intoxicating liquor locations in Duluth. Fifteen establishments were written tickets for selling alcohol to an under age individual. The Alcohol, gambling and tobacco commission (AGTC) held a hearing on October 3, 2007, regarding the off sale intoxicating liquor license of Sportsmen's Liquor. This was the first offense for Sportsmen's Liquor and the AGTC fined the licensee \$500 which is accordance with the guidelines set forth in Section 8-9 of the City Code.

passed 11/13

Alcohol, Gambling, and Tobacco Hearing
August 4, 2010
Golden Eagle Liquors, LLC, d/b/a Sportsmen's Liquor, 3904 Grand Avenue

Hanson: Okay. Next.

Oswald: The last one is Sportmen's Liquor at 3904 Grand Avenue.

Hanke: Good evening, Commissioners.

Hanson: And you are, sir?

McArthur: Rick McArthur.

Hanson: Welcome, Rick.

McArthur: Half owner of Sportmen's Liquor.

Hanson: We will let Council Hanke present the City's case just like we did previously and try to stick to some kind of procedure here.

Hanke: Good evening, Commissioners. This matter involves a hearing on an alleged violation of Golden Eagle Liquors, LLC doing business as Sportsmen's Liquors. Sportsmen's Liquors is licensed to sell intoxicating liquor off sale at 3904 Grand Avenue in Duluth, Minnesota. This matter has not been adjudicated in criminal court and so some of you were here for the last hearing last month. What I'd like to do is do a hearing two fold. First you need to find that a violation did occur based on the facts presented to you and then, if you do find a violation occurred, then it's up to you to decide a penalty. So as far as the violation, I'd like to call as a witness Officer Padden of the Duluth City Police Department.

Hanson: Welcome, Officer Padden.

Hanke: Officer Padden, could you please state your name for the record.

Padden: Ann Padden.

Hanke: And, how are you employed by the City of Duluth?

Padden: I'm a police officer.

Hanke: How long have you been employed by the City in that position?

Padden: 10 years.

Hanke: And, what are your primary duties as a police department officer?

Padden: My duties? We enforce the laws.

Hanke: Do you have any prior experience before the City of Duluth Police Department?

Padden: Yes.

Hanke: And, could you explain some of the training and education that's required for a Duluth City Police officer?

Padden: Lots of training. The criminal procedure, how the laws work, lots of training on case laws, offensive tactics, firearms

Hanke: Were you on duty on March 4th of this year in the City of Duluth?

Padden: Yes.

Hanke: What were your duties that day?

Padden: We were conducting alcohol compliance checks.

Hanke: And, as part of those checks, were you at Sportsmen's Liquor at 3904 Grand Avenue?

Padden: Yes.

Hanke: Were any other officers with you at that time?

Padden: Officer Hakala was with me I believe that day.

Hanke: And these liquor compliance checks usually have a decoy. Did you have a decoy with you at this time?

Padden: Yes.

Hanke: And, did you verify that this decoy was, in fact, under the age of 21?

Padden: Yes, by his Minnesota driver's license.

Hanke: At Sportsmen's Liquor, how did you proceed with the compliance check?

Padden: I give the decoy money. I have him walk into the store and attempt to purchase an alcoholic beverage from the establishment. He's instructed that if he goes up to the counter and they ask for an identification that he's to give his i.d. to them. If he isn't asked for his i.d. and they accept his money to get a receipt for it and then he brings it back - that information to me.

Hanke: And, on March 4th of 2010, you had this decoy enter Sportsmen Liquor.

Padden: Yes.

Hanke: Did you enter with him?

Padden: No.

Hanke: And this decoy exited the Sportsmen Liquor with alcohol?

Padden: Yes.

Hanke: And, how did he explain that he received that alcohol?

Padden: He explained that he went to the cooler and got the beer. I believe it was a six pack of Budweiser, brought it to the counter. He was rang up without being asked to provide proof of age or asked for an identification.

Hanke: And, did he present you with a receipt?

Padden: Yes.

Hanke: And, that indicated that he paid at Sportsmen Liquor for alcohol?

Padden: Yes.

Hanke: How did you proceed?

Padden: I then look at the receipt and obviously the alcohol, and asked him kind of what happened, and then I entered the store. I am in full uniform in an unmarked vehicle. I then enter the store, my decoy gave me a description of the clerk if there happens to be more than one, and then I identify the person who is working the cash register and explain to them who I am and what I'm there for.

Hanke: And did you identify the clerk, Michael Derek Rogers, III?

Padden: Yes.

Hanke: How did you identify him?

Padden: His Minnesota driver's license.

Hanke: And, how did you know he was employed by Sportsmen's Liquor?

Padden: He admitted so.

Hanke: What other conversation did you have with this employee?

Padden: I just explained that I am a police officer and we're conducting alcohol compliance checks and that he did, in fact, sell alcohol to an underage person.

Hanke: And, how did you proceed?

Padden: I then ask him for his i.d. I asked him if he understood what the process is. He wasn't very clear at it. So, I explained that he's issued a citation and kind of went on to explain the process of how this type of action works.

Hanke: And, after issuing this employee the citation, how did you proceed?

Padden: I asked him if he had any questions about the citation or anything else and he did not. So then I left the store.

Hanke: No further questions. Thank you, Officer.

Hanson: Questions from the Board? For Counselor Hanke or for Officer Padden? Counselor Lutterman.

Lutterman: Yes. Thank you, President Hanson. I just wanted to remind the President that the licensee also does have an opportunity to question the officer.

Hanson: Thank you for reminding me. Rick, do you have any questions for Officer Padden or thoughts on any of the information that's been presented here? Okay. Well, then you get a chance to state your case.

McArthur: Well, actually I haven't been in charge of the liquor store for about 11 months. After the last one, me and my partner, me being there two hours a day wasn't cutting it. So I had my wife, she's here right now. She quit her job as a computer analyst to take over the store so she's the operator of the store. I'm just the owner of it now. I don't have anything to do with the deposits and stuff. I do run an incentive program. We harp on these people constantly. Camera systems that George said he was putting in. I

put it in over a year ago already so we can watch. Keep track of the underage kids they catch. We track the fees. We even put em on the computer system when you walk into the store. I notify other stores of the underage kids. We take pictures of em. We run our cell phones and stuff with it. I don't really know what else to do other than, like I say, we preach to em constantly but I know this happens. But it falls on my shoes and I've got everything riding on this. I know it's like the third time or whatever it is, and I really still haven't done anything wrong. I still don't believe there is any intent to do anything wrong by these kids. You know, both my last two clerks that received tickets are here right now. I know the last time we tried to explain what happened to Alex. I wasn't allowed to explain it because I wasn't there so therefore, it was heresay. So I brought both clerks so they could explain their situation.

Hanson: Would you like to bring them up. You're welcome to.

McArthur: My wife is here. She can explain.

Hanson: Yep.

McArthur: We were doing the right thing.

Hanson: You can bring em all up. If you weren't there, I guess I'd rather hear what they have to say. Anybody on the Board have an objection to that? Counselor Lutterman.

Lutterman: Yes. Thank you, President Hanson. I think it would be appropriate if either of the clerk's were here to testify, do so. One of them was the clerk that was involved in this incident?

Hanson: That's the one I want to hear from.

Lutterman: That individual has not yet been adjudicated in court and that individual needs to understand that anything they say here this evening can be used against them in their criminal proceeding.

: My court date was set for April 10th at 1:30 p.m. I walked into the court building. No one was in sight. I sat there until 2:00. Still wasn't there. I called the office and no one returned my calls or nothing like that.

Hanson: I have no idea what could have happened.

Rogers: It must have been the cop that wrote it on there. The officer that was just here. She wrote down that April 10th at 1:30 p.m. I have a court date.

Hanson: Did you get any notice in the mail beyond the ticket?

Rogers: Nope. No call back. Nothing.

Hanson: So, are you scheduled to appear in court at this time? Do you know?

Rogers: No.

Hanson: Could somebody from the City give me some help here.

Rogers: I called the office on Monday.

Lutterman: President Hanson. We can certainly pass that information on to our prosecutor's division and they can figure out why the court hasn't re-scheduled that gentleman's hearing in criminal court.

Hanson: And then if and why he was stood up on the previous hearing would be a good idea.

Lutterman: Well, I'm sure there is probably a paperwork snafu over the court. Those have been happening a lot lately. The point being, he is still subject to criminal sanction and the Fifth Amendment to the Constitution gives him a right to remain silent but if you wanted to testify here today he needs to understand that that testimony is gonna be provided to the prosecutor and available in you criminal proceedings.

Hanson: So, anything you say here can and very likely would be used against you in the criminal proceeding.

Rogers: Okay.

Hanson: Commissioner Peterson.

Peterson: Will your clerk testimony be germane to your defense here?

McArthur: No cause he said he'd be going to court.

Rogers: I don't know the right way to go about this.

Hanson: Yeah. You and me both. This is a twist.

McArthur: Am I gonna put him in jeopardy?

Hanson: I do not want to put him in jeopardy.

McArthur: I don't either but I mean if he's not gonna get a ticket and this didn't happen yet, or

Hanson: Say again, please, Counselor.

Lutterman: The issue isn't whether he got a ticket or not. He has received a ticket. That ticket has gotten lost in courtland and it's gonna get promptly found. Probably tomorrow and he is gonna get re-scheduled for a hearing and so he needs to understand that.

Hanson: It's not just gonna go away because they couldn't find you.

Rogers: Well, I know that.

Hanson: And, just a quick question. Is the address that you gave the officer current?

Rogers: Yes.

Hanson: So that if they mailed anything to you, you would get it in the mail?

Rogers: Yep.

Hanson: Okay. I mean, you're welcome to do whatever you want but I'm strongly advising you to be aware that anything you say here is record and will be used.

Peterson: President Hanson.

Hanson: Commissioner Peterson.

Peterson: I am going to make a motion that we table this matter if it doesn't matter as far as the outcome of this case to our next Commission meeting, so that the defendant can get into court, get his issue resolved, and we can then decide this on the merits on this case.

Birchland: Second.

Lutterman: Motions to table are not debatable. They have to be voted on without discussion.

Hanson: Can I ask the defendant if it's okay with them to table it.

Lutterman: No. Motions to table are not debatable.

Hanson: Cause I may personally vote one way or the other on this but it imposes an imposition on the business owner, you know, it's like why?

Lutterman: The body would have to waive the rule in order to debate a motion to table.

Hanson: All right. Motion's been made and seconded to table this until next month or what? The matter's been adjudicated with the clerk in the store?

Peterson: My motion is that we table it for one month. We can always table it again next month is my reasoning.

Hanson: The only problem with that there are one, two, three, four people involved in the ownership of this small business. They're standing here when they could be gainfully working somewhere else.

Peterson: I understand that but I would trust that our court system would, at this point, expedite this through.

Hanson: Counselor, will you help me out with the timing on this? I just find it hard to believe if they lost it they're not gonna do this in 30 days.

Lutterman: I cannot guarantee you anything about the court system right now. What the reports we're hearing right now from our prosecutors is that they are so far behind over there that, it's not even funny.

Peterson: Okay. If it's acceptable, I will amend it. That we will table it for two months and then to be back to resolve this issue.

Hanson: Is that okay with the second?

Birchland: I would agree to that.

Hanson: Motion's been made and seconded to table this for two months. All in favor say "Aye".

Hanson: Motion passes. Two months. It's all I can tell you. If you can bring the same folks back

McArthur: I'm letting you know we're working on it. I'm doing everything we can. Actually, one of my bartenders now does the training.

Hanson: Bring anything and everything you can to help us, you know, recommend leniency. If you bring nothing, it's gonna go just like the last two cases did, we're gonna go by the book.

Hanson: Commissioner Pekkala.

Pekkala: I think the one idea I like the most of anybody who's come in so far with all of these, has been the owner of the Gopher. He does compliance checks on his own.

McArthur: We've done that, too. I really don't know. I don't know what else I can do. That's what me and my partner thought. Me being there from eight to ten in the morning wasn't working. My wife is there 50 hours a week now. These are the two guys that got hit the last time. They fully understand and aware. It's 100% check right now unless they know em and they've checked it before. I passed the last three compliance checks.

Hanson: So, if I come in the bar, are you guys gonna card me?

McArthur: They better. That's a bar.

Hanson: I mean your store.

McArthur: For years, I passed every one. I've never not passed a compliance check when I was at the bar.

Hanson: So, if I come in the liquor store, are you gonna card me?

McArthur: If not, I'll be at home watching it on my computer cause I already put the same system George's putting in.

Hanson: What's your lead time on that? Is it just a phone call away then or?

McArthur: I can see you as you walk in the store. I can see you coming up from the outside.

Hanson: No, but how can you stop them from making the sale?

McArthur: It's all I can do.

Hanson: Okay.

McArthur: But honestly, we don't sit and watch it at home.

Hanson: You don't lock up the cash register by remote then?

McArthur: You know, I'll tell you another thing though that I have been trying to do for the last eight years is the MLBA. We've been trying to get vertical license but the state won't do it. That would change things so that when you seen

the i.d. it would know automatically that this person doesn't have a horizontal license.

Hanson: This item has been tabled and we will see you in two months.

McArthur: Thanks.

Alcohol, Gambling, and Tobacco Hearing
October 6, 2010
Golden Eagle Liquors, LLC, d/b/a Sportsmen's Liquor, 3904 Grand Avenue

Hanke: We have information from the court that a citation was e-filed and a notice was sent to Mr. Rogers. He hasn't paid or appeared.

McArthur: He just told me that he hasn't got it and it's all I know.

Birchland: Councilor, what's the date on that?

Hanke: The citation was e-filed on August 20th of 2010. He was given a notice to pay or appear by September 28th of 2010. The address I have here is an address - 1210 N. 8th Street in Superior, Wisconsin?

Rogers: That's incorrect cause I check my mom's everyday and there's no mail from St. Louis County of anything. And I was just here yesterday and got my birth certificate, and they didn't say anything to be me about it either.

Hanke: President Hanson, I just have the court record. We don't administer the citations or make sure they're filed with the alleged violator.

Hanson: That's kind of a sticky point here because we postponed this hearing for a month last time because this individual had not gone to court yet. Counselor Lutterman, can you advise me here or advise us? What is going on here?

Lutterman: Well, I understand that the issue here is that the licensee would like his employee to testify. The employee has yet to have his criminal case adjudicated, and therefore, anything that the employee says in this proceeding may be used against him in his criminal case. The employee always has the right to waive his Fifth Amendment Constitutional Rights but with the last time that we were here, we did advise the employee of his right not to be compelled to testify, and I think at that time he chose not to subject himself to compelled testimony. The Board has several options. It can ask the employee if he understands his rights, and if he wants to waive his rights, he testifies and anything he says can be used against him in his criminal proceedings. If he chooses not to waive his rights, the licensee can continue here today without his employee's testimony if he so chooses. The matter could be tabled for another month, and I would recommend that the employee stop over at the court house tomorrow and talk to the people in the criminal division about this outstanding ticket and get scheduled for an appearance date before he gets picked up on a warrant. He wouldn't want to get stopped for speeding and have it come

up as a warrant on this particular matter.

Hanson: Do we know if a warrant has been issued yet?

Hanke: There hasn't been a warrant issued.

Hanson: All right. Counselor Hanke, would you accept if the witness here will agree to pick up his notice tomorrow and get in here and get this taken care of, get scheduled for a court date? Is that acceptable to you so we could delay this proceeding a reasonable period of time for that to be heard?

Rogers: Yeah. I agree. I'll do that.

Hanke: I would just like to proceed in this matter. I think this has been an on-going issue. The issue here is whether a violation has occurred by the licensee and I think the employee's testimony only goes to a potentially aggravating or mitigating factor in this case.

Hanson: Mr. McArthur, if I recall correctly, you weren't even present when all this went on? When this incident happened? How important do you feel your witness's testimony would be to your case?

McArthur: I think the last two people shed a little light about how the cops or how they're dealing with what we're looking at. Part of the entrapment issue.

Hanson: So, what are you telling me? That you'd like to delay this then or you're ready to proceed? Tell me what your wishes are.

McArthur: I'd rather delay it and have both my people here. Because of the short notice, my other employee had to go to school. So, the last time he was here, I wasn't able to say what happened on that one cause it was here say. When I brought Alex here the last time everything got postponed because Derek didn't have anything.

Hanson: Can you have both these people here next time? Is it feasible that this individual's case will be heard by the criminal court prior to next month?

Hanke: President Hanson, it partially depends on whether the employee is pleading guilty or whether he is going to fight the charge. If he does fight the charge, we're potentially looking at many months. It eventually wouldn't get adjudicated in 2010.

Hanson: And, so if that were the case, then it would be incumbent on who then to let us know so that we don't have it coming up on the agenda every single month?

Lutterman: Well, if the motion is to table until the employee's criminal matter is adjudicate, we'll then tickle it out and keep track of the employee's criminal matter.

Hanson: And what if he decides to move Canada?

Lutterman: Well, that means that the licensee would simply have to proceed without the testimony of an unavailable witness.

Hanson: I'm open to suggestions and questions from the Commissioners.

Birchland: President Hanson, my question is if the ticket was issued to you at your mother's address, where do you live that you can't pick up your mail?

Rogers: I only live two blocks away from my mom. I'm there like every day.

Birchland: I understand that but where is your license issued?

Rogers: I haven't got it changed yet but my mom's address at 1210 N. 8th Street.

Birchland: How long have you lived away from you mother's address?

Rogers: A month, not even.

Hanson: When was this mailed?

Hanke: It indicates that this citation was e-filed in August of this year.

Hanson: E-filed which means it was mailed when?

Hanke: It doesn't state that.

Hanson: So, what evidence....do we have any evidence that it was mailed?

Hanke: We have the court record that the notice to pay or appeal was filed. I would trust the judgment of the court and trust the court record that it actually did get mailed to the address that he had on his driver's license. That's typically the address that the court has.

Hanson: What's the normal lag time from an e-file to an actual mailing.

Hanke: President Hanson, I really can't answer that as I don't work for the court.

Hanson: But, certainly it wouldn't take a month and a half. Is that possible that it would take a month and a half?

Hanke: President Hanson, I don't know.

Hanson: Commissioner Donahue.

Donahue: Straight up. Are you gonna fight it? Because here's my concern. You guys are gonna show up every month. The next time, November 3rd, you know. Mark that on your calendar but here's my concern. We're gonna waste your time, staff time, our time and everyone's time by playing a shell game. I mean, if you're gonna fight it, I'd sure like to have a head's up so we can either nip it in the bud now and take it as Attorney Hanke says or come up with a clear plan of action. But to sit here and even wonder is he gonna contest it or not? I just think you'd be doing us a great service so we're not sitting here wasting everyone's time.

Rogers: I can say that I'm guilty I sold to a minor, but I haven't gone to court yet or anything.

Hanson: Is it feasible that this could be scheduled for a court date if Derek picks up his paper work tomorrow within 30 days or do we need to stretch this out for 60 days or more? Do we need to get somebody from St. Louis County Court House in here to get an answer? I'm getting a little frustrated here.

Hanke: President Hanson, it depends on the court system. I think if you want to ask somebody from the court system, we could bring somebody in or I could follow up with that. I can't answer for the administration of the court.

Hanson: Any advice there, Counselor Lutterman?

Lutterman: Well, I do have a suggestion. If you're so inclined to table this until November 3rd, next meeting, do so and then we can check the matter a few weeks before November 3rd. If the matter's been adjudicated, then it will proceed on November 3rd. If the matter hasn't been adjudicated, we can move it out to December 3rd, if you want to provide to us the authority to do that without further motion of the Board.

Hanson: All right. So you will take responsibility to make sure we're not tying up one, two, three, four, five employees.

Lutterman: Yes.

Hanson: And, one, two, three, four, five....at least six, or at least four volunteers and one, two, three people from there? I mean we got over.....we got practically a dozen people standing here – sitting here wasting our time. I don't want to see this again.

Lutterman: We'll tickle it and make sure that if that if the matter isn't resolved at the District Court before November 3rd that no one's showing up here on November 3rd.

Hanson: Thank you. All right. So can we let these folks go without further motion or do we need a motion to table this? Then I'm open for a motion.

Donahue: Motion to table it until November 3rd contingent upon resolution to the matter.

Hanson: All right. Can you verbalize that in a motion that we can work with here?

Donahue: I make a motion to table until Wednesday, November 3rd if the ticket has been adjudicated or tabled to December 1st, if not adjudicated by November 3rd.

Hanson: Fine. Do I have a second?

Birchland: Second.

Hanson: Any further discussion? And, do we need clarification of the motion?

McArthur: I understand the motion.

Hanson: All right. And, Derek, you do also?

Rogers: Yep.

Hanson: All right. Get your address stuff straightened out because there may be further notices. If you need to get your driver's license updated, I strongly urge you to do that cause, you know, if every thing was working timely right now a warrant could be issued for you right now and they could be picking you up which means a night in jail. You don't want to go down that road. Trust me.

Rogers: Okay.

Hanson: All right. A motion's been made and seconded. All in favor say "Aye".

Hanson: Motion passes unanimously. Hopefully we'll see you in November. If not, then December.

McArthur: Okay.

Rogers: Thank you.

Alcohol, Gambling, and Tobacco Hearing
November 3, 2010
Golden Eagle Liquors, LLC, d/b/a Sportsmen's Liquor, 3904 Grand Avenue

- Oswald: The Unfinished Business is a hearing to decide if any disciplinary action should be taken against the off sale intoxicating liquor license of the Golden Eagle Liquors, Sportsman Liquor, at 3904 Grand Avenue.
- Hanson: All right. So, we're all here again. Could you approach the microphone, please? Yes. Has your employee's case been adjudicated yet?
- McArthur: Yes. He went and arranged payment.
- Hanson: Okay. So, there's no reason we shouldn't be able to proceed with this tonight?
- McArthur: We can proceed.
- Hanson: So, I guess we'll start with Counselor Hanke.
- Hanke: Thank you, President Hanson. Commissioners. Just to follow up on Mr. McArthur's statement, I do have the register of actions on the matter. It does indicate that he did enter into a payment plan and thus admitted guilt, at least the employee did, for selling underage, and I'll approach and give you a copy of that. I'll also give you a copy of the transcript from August in which we had Officer Padden here.
- Hanson: That would be appreciated and then can you make sure that this gentleman has a copy of that also?
- Hanke: Okay.
- Hanson: Okay. Then, we'll give him a few minutes to look through it.
- All right. You can go ahead and proceed there, Counselor.
- Hanke: Thank you, President Hanson. Commissioners. The history of this is that we did start in August. We presented the City Administration's case. We had Officer Padden come in and testify. You may recall. You got the transcript of those proceedings. The police report was primary evidence. It's the City Administration's recommendation that the presumptive penalty be followed for this violation. It's to be \$1,000.00 civil penalty and a five day liquor license suspension because it's the third offense in two years. At this point, I don't have anything further for the Commission.

Hanson: Is it Mr. McArthur?

McArthur: Correct.

Hanson: Okay. Do you have any questions regarding the documents you received or the testimony? Any cross examination? Counselor Lutterman?

Lutterman: Thank you, President Hanson. Mr. Hanke is not a fact witness in this matter and is not subject to cross examination and Officer Padden, who previously appeared, was in fact a witness and at that time Mr. McArthur had the opportunity to cross examine her. But it would not be appropriate for Mr. McArthur to cross examine Mr. Hanke who is an attorney representing the City and not a fact witness.

Hanson: So, you have nothing more to say at this time, Counselor Hanke?

Hanke: I don't.

Hanson: All right. Mr. McArthur, would you like to speak on your own behalf?

McArthur: I'd like to ask for a bit of leniency on the five day suspension. That would cost me a ton of money. Struggling out there right now with the I-35 reconstruction. Our business is down over 20 percent out there. I know what's going on is wrong, and we're trying to correct it. We've made a lot of moves to correct this thing. We've done a lot of the same things that Kenwood Liquor did that you guys liked and we already installed them. You know, I had my wife quit her full-time job. We've got a full-time manager. They're working 45 hours a week now. We put in a new surveillance system in there. We put a new scanning system in there. We've put incentive programs for our employees. We're pushing em hard. The biggest problem I have with this is a lot of this stuff is out of our control. I understand I have the license. It's an honor to have the license and a privilege, but to get punished and hit this hard, I mean, that could cost me ten to fifteen thousand dollars in sales. Five days. It's a lot of time. And I believe we passed the last five, what do you call them

Hanson: Compliance checks.

McArthur: Compliance checks cause the last two times we were here you guys did a compliance check on us approximately at 4:00 in the afternoon both days we were here. So, I mean, we're doing good. We're pushing our employees to push hard. You know, we're checking everybody. We actually hired another employee. We got two employees working every night of the week now. So, we're working hard at this. This isn't something I take very lightly, you know. This is my business. Got our

house mortgage on this thing. I've owned a bar for 12 years. I've never had a problem and these instances are all separate people. You know, it isn't me every time that's doing this. I've never done it. It's different people. You know, we've kept the last two just because they understand the demeanor of this and how important and how big it is. You know, in Derek's instance he could tell you what happened, which still doesn't make it right, but there was a little deception involved there. Which still doesn't make it right cause I don't think the Duluth Police Department has a policy on how they do the compliance check. You know, there's a lot of cities in the State of Minnesota that have a policy on what they can and can't do when they go into these stores. I'm not trying to complain cause I still want the compliance check done. You know, we've caught minors in the store and we can't get nothing done about it because the police don't show up for it. You know, it's not a high priority. Once again, I'm still not making light of this. We still take this very seriously. You know, I spent a few thousand dollars on camera systems. I can actually sit at home and watch what's going on at my store. Actually, I think I could almost plug into Martha's computer and you guys could watch what's going on in my store right now, inside the building and through the outside.

Hanson: I don't think they pay us quite enough for that.

McArthur: We're sending our employees twice a year through training now through the MLBA. I don't know if there is any training the City of Duluth does to help us out on this. I don't think the police or the District Attorney's office offer any kind of training on this. I really feel punishing the owner this hard is very harsh, and I understand it's extremely serious matter. It hurts me because I think I haven't done anything wrong. I own the license. I know it's very serious to own the license, but I've got three separate employees that have done the wrong thing. I totally agree but I think we've taken some very good measures to try and correct this. Like I said, the first four years I owned the liquor store, I worked there like three hours a day. I was out of there by ten in the morning over at the bar all day long and I realize, you know, that wasn't working. I needed a full-time employee so I had my wife quit her computer job, take about a \$20,000 cut in pay to keep the liquor store going before we lost it and things have gotten a lot better. You know, even our theft is finally going down and we also send kids from high school, my daughter's friends in there. We've done this now within the last couple months. We've done it about four times now. Send in minors in there to try and see if the employees and they carded them right away.

Hanson: If there's somebody in there that looks about 30 years old that's 20 and see how they do.

McArthur: They're actually sending the kids that are, you know, that look like they're 20. We're not sending a 6'4" 270 pound kids with beards in. We're sending some football players and some girls that look like they're over 20 cause we're pushing hard on this. I mean, I do the same at my bar. I said for 12 years for I've never, never missed a compliance check and I've trained my employees the exact same way. I'm just asking for a little bit of leniency on the five days. That could really hurt me. It's a struggle out there. Right now I don't think there are any other businesses on Grand Avenue that are booming right now. I mean, there might be a ton of traffic on there but there ain't nobody stopping. Cause you try to get out of my liquor store at 5:00, you can sit there for ten, fifteen minutes. They just don't go there. If you check my sales tax and I'm down 20 percent. I'm just asking for leniency. The \$1,000 fine has gotta be done or a day suspension is fine but that's a ton of money and we're struggling and I really, truly believe we're trying to do the right thing. I'm not trying to buck the system and I ain't trying to do anything wrong. This is my whole business on line. This is me and my wife. She quit her job. This is what we have.

Hanson: Well, it sounds like you're making progress.

McArthur: I'm doing the very best I think I can. Is there something better I can do?

Hanson: If you're checking yourself?

McArthur: We're doing the checks on ourselves now just to make sure and like I said, we also put another employee on at night so things are being watched closed. We're trying to watch each other, trying to go the right way, I believe. I think it's on the right path. I don't know if you guys agree or not but I don't know what other path to take.

Hanson: Do you have anything more to offer? Any questions from the Board here?

McArthur: That's about all the begging I can do tonight. I'm sorry. I'm doing the best I can.

Hanson: Questions?

McArthur: My wife and Derek are here, too, if you want to ask them or talk to them? They're both here.

Hanson: Gentlemen? Anything else, Mr. Hanke? I guess I'd be looking for discussion or a motion or something or some form of action here. If I don't hear a motion, I'm gonna dismiss the case. So, there you go guys. Time to move.

Hammack: I move to recommend a \$1,000.00 fine and a five day suspension. I move the \$1,000.00 but defer \$500.00 of it and defer the five day suspension to one. Next time, the hammer falls.

Hanson: And this would be within 30 days of Council action?

Hammack: Within 30 days.

Hanson: Anything else we need to add there? Do I hear a second for discussion?

Donahue: I second.

Hanson: Okay. A motion's been made and seconded. Now, is there any discussion?

Birchland: I really appreciate you coming in here and giving us information on what you've done to change. I think those changes are good. It sounds like you put a lot of money into the security cameras and all that, so I would support reducing the penalty that they recommend there.

Hanson: Commissioner Donahue?

Donahue: Rick, I'd be interested in coming down and looking at the security system. I think we should just set up a time and just see how it's going so I can come back here and tell everyone what's going on.

McArthur: Whatever you wish.

Donahue: Knowing you, I'm just gonna let you gentlemen here make the decision and go along with them. I do know that you are making strides in this progress, but I'm tired of seeing you in here. Like Mr. Hammack says, next time, the hammer's gonna fall.

McArthur: I agree.

Donahue: It's not gonna be pretty.

McArthur: I know. I agree totally.

Donahue: But, you know, I'm just trying to clarify it. If we see you again, Rick, the hammer's gonna fall.

McArthur: I know. I mean, my house is on the line here. If one of my employees sells to a minor, there's a good chance I'll be sitting on the street. I won't be able to make my second mortgage payments without the business in

the liquor store.

Hanson: Commissioner Hammack?

Hammack: Well, I, too, am impressed with the fact the you're trying and you're doing some stuff and like I said, the hammer will fall next time heavy. But I just felt that we should defer some of this and take an opportunity to show our appreciation for what you're doing to try and make your business better.

McArthur: Thank you.

Hanson: Any more comments or discussion from the Board? Anybody else? Counselor Hanke?

Hanke: Clarify the motion please?

Hammack: Stay four days and staying \$500.00 of the fine.

Hanson: And then, if there's no same or similar within the allotted time period, then that's all it'll be.

Lutterman: Commissioner Hammack, with regard to the staying of the \$500.00 of the fine and four days of the suspension, was there a period in which you want to hold the licensee accountable for that \$500.00 and four days?

Hanson: She's referring to the no same or similar for like a one year period or a two year period like we normally do.

Hammack: One full year.

Hanson: Is that okay with the second? Commissioner Donahue?

Donahue: Agreeable.

Hanson: All right. So is that clear? Before we vote on this, I just have a short comment. I fully appreciate the tough circumstances with the construction out there, and I am very pro-business. I want you to stay alive, and I want your business to continue. I want you to get through this rough spot; however, there is one thing that you mentioned that concerns me a little bit. I understand you've been taking a lot of action, but you are the license holder. You had three different incidents with three different people. It's still your responsibility. It still falls on you.

McArthur: I realize that.

Hanson: You gotta understand that and you gotta know that because otherwise you're gonna be back in here and you don't wanna be back in here for this kinda stuff.

McArthur: I know. I'm pushing it very hard. I said I've been 12 years at the bar. I've had way more employees at the bar and never had a problem but I had a string of bad luck so hopefully..... I'm working on it.

Hanson: Whatever you have to do to get your guys to card everybody that comes in there to prevent any sale to anybody under 21, you gotta do it and if I walk in there and they don't card me, I'm gonna wonder why not and it's not because I think I'm a young guy.

McArthur: That's what Duluth has gotta get to. It's just like the Cities. You can't go anywhere in the Cities without an i.d. You can't go into any bar. You can't go into a liquor store without an i.d. and Duluth just hasn't accepted all that. We're trying to push that.

Hanson: So, anyway I just wanna make sure you understand that it's on you.

McArthur: I realize how serious it is us. Me and my wife, we got a second mortgage on this. If this falters, I'm in deep trouble.

Hanson: Out of curiosity, do you keep a log? Do you have your people that work for you keep a log, an incident report, or log?

McArthur: Yeah.

Hanson: So, they write it down in there?

McArthur: We have some things that have happened. I don't wanna get into that cause things are going really good right now.

Hanson: Do you have incentives for?

McArthur: Yeah. We told you last time, we got a time share in the Bahamas. They can both go if they got a year without any incidents. Alex and Brian can go to the Bahamas

Hanson: All right. Motion's made and seconded. All in favor say "Aye".

Hanson: Motion carries unanimously. I would encourage you to appear in front of the City Council because they may not agree with us. They may want to hear your tale of woe cause you have one and to encourage them to go along with our recommendation for clemency or leniency. They don't have

to. They have reversed our decisions before and went against our advice and we wound up in court because of it and lost. That doesn't matter. In the meantime, it's your inconvenience. So I would encourage you to be there. You make your choice whether you want to speak to them. Otherwise, it will probably be on the consent agenda and they'll just, you know, unless somebody pulls it off, but it would be a good idea to be there in case somebody wants to pull it off.

McArthur: All right. Thank you. I appreciate it.