

OREGON LIQUOR CONTROL COMMISSION

MINUTES

June 18, 2009

Thursday, June 18, 2009

9:30 A.M. The Commissioners present were Alex Duarte, Christine Lewandowski and Bob Rice, Ron Roome and Chairman Phil Lang. Others present were Executive Director Steve Pharo, and members of staff.

Minutes – Chairman Lang asked if there were any changes to the draft minutes of the May 20 Commission Meeting. There were none and they were approved as written.

PUBLIC FORUM

No one was present for public forum.

ADMINISTRATION

Tom Erwin, Government Affairs and Communications Director presented an update on all OLCC sponsored legislation and some other high priority legislation.

Commissioner Rice asked about HB 3201 and what the status was on this legislation. Mr. Erwin said that it was on life support. It has had a hearing, but has not moved out of the senate rules committee where it is currently.

COMPLIANCE

Becky Voelkel, Administrative Process Program presented.

There were 16 settlement agreements before the commissioners for ratification; Don Camaron Grill Bar & Nightclub, Westside 76, Southgate Mini Mart, The Spare Room, Twilight Café and Lounge, Another Round, Bora Bora, Skyway Bar & Grill, Farmer John's Produce, Jameson's Bay 13 Restaurant, Pendleton Market, Big Smoke, Mary's Club & el Grillo, 7-Eleven Store #2363-23071B, and EZ Stop Grocery & Deli.

Commissioner Lewandowski moved to ratify the 16 settlement agreements. Passed 5/0.

LICENSE MATTERS

Dan Croy, Administrative Process Program presented.

Crooked River Dinner Train- NE O'Neil Way, Redmond. Change in owner, Full On-Premises, Public Passenger Carrier. Manager Member Jimmy Brundage appeared before the Commissioners. The matter is before the Commissioners due to Mr. Brundage's driving record which has included convictions for DUII, but he has completed treatment.

Commissioner Lewandowski asked Mr. Brundage if he has been licensed previously. Mr. Brundage said he has had a catering license in the past. She asked him about his treatment and why the Commissioners should believe that the treatment worked this time. Mr.

Brundage said that he now realizes that he is an alcoholic and must abstain from alcohol. He does not ever want to drink again. Commissioner Lewandowski asked Mr. Brundage what he did before catering. He said he was a Vice President with T-Mobile in their sales division in Seattle, but has also done some catering work in the past. Commissioner Rice warned Mr. Brundage that the Commissioners are considering a restriction on this license that he must abstain from alcohol at all times. This means there is no turning back if that restriction is violated, the only recourse is cancellation. Commissioner Duarte told Mr. Brundage he appreciated his sincerity and asked if he thought there may be too many temptations in this type of environment. Mr. Brundage said that his sponsor is also a

business partner and he is fully aware of these concerns. Mr. Brundage has also discussed his issues with his staff. Commissioner Roome asked Mr. Brundage if he has discussed this with the City of Prineville as they own the train. Mr. Brundage has a substantial Liquor Liability Insurance policy and has fully disclosed his history to them. He said that he feels being honest with everyone is very important. Commissioner Rice moved to grant the license with the restriction that applicant must abstain from alcohol at all times. Passed 5/0.

Plate and Pitchfork Inc.- SE Lower Island Rd. Dayton. Temporary Sales License (TSL). Local land use issues; Yamhill County provided an unfavorable recommendation because it determined the proposed event does not qualify for land use approval. OLCC does not have criteria that allow a denial based on land use laws.

Chairman Lang commented that he found it odd that we had no authority to deny when there is a code violation. He recommends that this be addressed in the next legislative session. Commissioner Duarte asked if the applicants could explain the issues. The applicants said that they have not had issues in the past because they have not had a Yamhill County event, and other counties have interpreted this zoning ordinance in a different way. The Department of Agriculture allows farm events daily up to 750 people, but Yamhill County does not believe the proposed event meets the criteria. Commissioner Lewandowski asked how this differs from a catering license. Commissioner Rice said that the commission has historically not allowed zoning issues to interfere with liquor licensing. He moved to grant the license. Passed 5/0.

Primetime Bar & Grill- SE Stark St., Portland. Change in owner, Full On-Premises, commercial. Applicant Ramin Razilov and attorney Mike Mills appeared before the Commissioners. The City of Portland provided an unfavorable recommendation on this application based on a history of serious and persistent problems. The staff report found that only three incidents were relevant under ORS 471.313(5), which did not rise to the level of establishing a history of serious and persistent problems at this premises. Commissioner Rice asked if this application was a change of ownership or renewal. The city's opposition was categorized as a renewal. Mr. Mills said that this is a new owner. Commissioner Rice followed up and asked about the operating plan, as there was a discrepancy in the report. The applicant said that he plans to have dancing and karaoke. Commissioner Roome asked about a serious incident that occurred in March 2008. It was under the prior owners. Commissioner Rice moved to grant. Commissioner Lewandowski clarified that there were no restriction in Commissioner Rice's motion. Commissioner Duarte clarified that the applicant voluntarily agreed to the operating plan. The applicant confirmed. Passed 4/1, Lewandowski no.

Joq's-NE Broadway St., Portland. License Renewal, Full On-Premises. Licensee Jerry Quaring and manager Lloyd Perry appeared before Commissioners. Commissioner Rice asked Mr. Quaring if he understood that there was a recommendation for restrictions on the license and if Mr. Quaring understood what those restrictions would mean to him. Commissioner Roome asked Mr. Croy if we consider a DUII arrest without a conviction in an applicant's history. Mr. Croy said that the rules allow a consideration whether or not there was a conviction. Commissioner Lewandowski commented that she always considers convictions moreso than arrests. Chairman Lang commented on the differences between criminal and civil applications of the law. Commissioner Lewandowski moved to grant with restriction that Mr. Quaring abstain from alcohol at all times. Passed 5/0.

Club Rouge- SW Stark St, Portland. New Outlet, Full On-Premises Sales, Commercial. Applicant Tim Carper and Shawn Carey and attorney Lane Paraguay appeared before Commissioners. Mr. Paraguay commented on the inconsistencies between staff report and police report, and that there have been other licenses issued in the area after this application was submitted which did not receive an unfavorable recommendation from the police. Commissioner Roome confirmed that Mr. Paraguay stated that there have only been complaints submitted about this bar, not the others in the area. Mr. Paraguay said that Club Rouge is not open; he is referring to letters of opposition, not complaints. Chairman Lang commented on the unsuccessful history of licensees at the location. Commissioner Duarte asked about the other licensees and objections that were on this license and why they were not on the other licenses in the area. Mr. Paraguay said he is not sure, but he understands that some of the people who object to the license are here to testify. Chairman Lang asked about the control plan and why it restricts the sale of wine by the bottle. Mr. Croy said that the control plan does restrict the sale of wine, but that the control plan is not enforceable and there are no restrictions recommended on the staff report. Mr. & Mrs. Englegau of Berlitz Language School came forward to express opposition to the application. Commissioner Roome asked if the proposed changes to the doorway will help alleviate their concerns. Mr. Englegau said it would help, but they still have concerns, especially with people smoking outside of the business. Martin Solloway of Central City Concern came forward to express opposition to the license. The opposition is based on the facilities they operate in the area, one around the corner and another two blocks away: low income housing for those people who have a history of drug problems, homelessness and are recovering from medical issues. He commented on the fragility of the people who are residing in this housing, some do have a history of sex abuse. Lisa Frish of the Portland Business Alliance came forward to testify on behalf of the Downtown Retail Council. They believe that this license would be detrimental to the neighborhood. Theresa Marchetti liquor licensing specialist of the City of Portland, Office of Neighborhood Involvement came forward to clarify that the area has had problems and she is actively working on getting other licenses in the area restricted in the future. Commissioner Roome asked if there has been a change in the number of incidents in the area in the past six months. Ms. Marchetti said she could get that information. She thinks it hasn't dropped substantially but the area has been targeted for cleanup. Commissioner Lewandowski asked if the other licenses in the area had restrictions. Mr. Croy said he wasn't sure. Commissioner Lewandowski reviewed the three proposed restrictions for this licensee. Commissioner Lewandowski commented on her empathy for the businesses in the area and their concerns over this type of establishment, but that the Commission could only consider liquor licensing issues, not entertainment. She moved to grant the license with restrictions amending the second restriction to allow for sale of bottles of wine for on-premises consumption. Commissioner Duarte commented on his concerns with the issues, but that Commissioners must uphold the responsibilities of the commission. Passed 5/0.

Service Permit Refusals- There were 13 service permit refusals before the Commissioners for ratification. Commissioner Lewandowski moved to ratify the service permit refusals under tab 2A. Passed 5/0.

RULES

Jennifer Huntsman, Rules Coordinator, presented.

INITIAL ACTION

OAR 845-013-0080 Manufacturer or Wholesaler Sponsorship of Temporary Special Events

This rule will describe the items and services that a supplier may provide to a retail licensee for use at a temporary special event. Staff is recommending adoption of a new rule regulating sponsorships which would prohibit direct monetary payments and specify a limited list of allowable items that are not for the licensee's ongoing business operations.

Commissioner Rice expressed concerns about the rule as proposed and said he would be happy to participate as it moves forward; he moved to initiate rulemaking to adopt OAR 845-013-0080 and to hold a rulemaking hearing at staff's discretion. Passed 5/0.

FINAL ACTION

Private Club Package

OAR 845-008-0045 (Service to Guests by Full On-Premises Sales Licensees) describes to whom and under what conditions private clubs may sell and serve alcoholic beverages under the privileges of their full on premises sales license. This rule package would restructure the rules governing the licensing criteria and compliance requirements rule by eliminating the tracking of different types of events and guest relationships and also eliminating the need to maintain a guest list.

Commissioner Duarte moved to amend OAR 845-005-0320, adopt OAR 845-005-0321 and amend and renumber OAR 845-008-0045 to OAR 845-006-0490 effective July 1, 2009. Passed 5/0.

OAR 845-006-0425 Hours of Sale

The Food & Beverage Concessionaries at the Portland International Airport (PDX) petitioned the agency to amend this rule by adding language which would allow both On-Premises and Off-Premises sales licensees located at PDX to sell and serve alcohol between the hours of 5:00 a.m. and 2:30 a.m. In order to keep the exception as narrow as possible, the rule amendments recommended by staff differ from the petitioner's original request in that they would only allow Off-Premises sales at PDX between the hours of 5:00 a.m. and 7:00 a.m., and only to a ticketed airline passenger with a valid same-day boarding pass. Because the petitioners also requested On-Premises sales, an alternate option, which would not be quite as narrow, would be to allow both On-Premises and Off-Premises sales at PDX between the hours of 5:00 a.m. and 7:00 a.m., and again, only to a ticketed airline passenger with a valid same-day boarding pass.

Commissioner Roome asked for more information on the recommended motions. Mr. Joly of Capers Café came forward to comment on the reasons they are looking for this exception. Commissioner Duarte asked about airport operations and whether there are very many red eye flights arriving at PDX. Mr. Joly confirmed that most are departures. He also noted that the boarding pass is expired for arriving passengers and would not be considered a valid boarding pass for service. Candace Vincent of Made in Oregon came forward and asked Commissioners to consider allowing both on and off premises sales at the airport. Commissioner Duarte asked about taking liquids through security TSA requirements. Commissioner Rice commented on the needs of the customers in that type of environment and the businesses there to serve the public needs. He feels that the valid boarding pass requirement will stop other licensees from seeking this same exception. Commissioner Rice moved to amend OAR 845-006-0425 as proposed in the Option B draft, effective July 1, 2009. Passed 5/0.

ADMINISTRATION

Privilege Tax Update-

Michael O' Connor, Financial Services Director presented an update to Commissioners on the status of advice from the department of Justice on the collection of privilege tax. Chairman Lang said that he intends to ask for a suspension of the collection of privilege tax until we have an answer from the Department of Justice. Oregon Wine Board Executive Director Ted Farthing appeared before Commissioners to give an update from the OWB's perspective and thanked Chairman Lang for his comments and actions. OWB Attorney Jess Lyons also appeared before Commissioners to answer any questions they may have. Chairman Lang moved to temporarily suspend collection of the privilege tax pending the outcome of advice we are seeking on the matter from the DOJ at that time we will engage in rulemaking to further clarify as necessary. Passed 5/0.

Recessed: 11:50 a.m.

Reconvened: 1:30 p.m.

Chairman Lang asked if there was any objection to withdrawing his previous motion from the morning session. There were none and it was withdrawn.

Chairman Lang offered a new motion, that OLCC suspend the practice recently implemented of requiring monthly reporting and payment of privilege taxes on wine that is removed from bond but that may qualify for the small producer exemption or the export exemption, until advice is received from the Department of Justice. Passed 5/0.

CONTESTED CASE HEARINGS

Judith Bracanovich, Administrative Process Division Director, presented.

Peggy J Travis- OLCC -08-SPR-064. A proposed order was issued on March 27, 2009. Ms. Travis appeared before the Commissioners to address her exceptions to the proposed order. Staff rested on the proposed order.

US Market # 180, LLC, Parveen Parveen Member, Lal Sidhu, Member, dba - OLCC-08-V-043, -043A, -043B, OLCC-08-L-007, -007A, -007B. A proposed order was issued on March 26, 2009. Attorney Terrence McLaughlin was present before the commissioners to address staff's exceptions to the proposed order. Becky Voelkel, Administrative Policy and Process Division, appeared to present staff's exceptions to the proposed order. Commissioner Roome asked questions about the age verification machine's approval print out. Commissioner Duarte asked if there was any evidence in the records regarding manipulation of the machine. Ms. Voelkel said that there was the admission of the clerk that she 'must have pushed the wrong button.' Commissioner Roome asked Mr. McLaughlin if the clerk was doing what she was supposed to do if she did not verify the age. Mr. McLaughlin said that the clerk testified that she saw the word approved on the age verification print out and that was why she made the sale.

Dr. Feelgood's Pub, Donald Harvey and Rachel Harvey, dba- OLCC-08-V-052 and OLCC-08-V-074. A proposed order was issued on April 13, 2009. Donald Harvey was present to present his exceptions to the proposed order. Kelly Routt, Administrative Process Division presented staff comments. Commissioner Duarte asked Mr. Harvey about the problems occurring at and after midnight and whether they had ever considered closing earlier. Mr. Harvey said they would have done anything they were asked to do. Commissioner Roome asked Mr. Harvey to clarify his concerns with the communication

from the commission. Mr. Harvey said that they wanted help to control the premises and didn't receive it and the assigned inspectors were always changing. Commissioner Roome discussed the parking lot concerns and the terminated employee list with Mr. Harvey. Commissioner Duarte asked for clarification on the date of the last incident. Ms Routt said it was in September 2008.

Downtown Deli & Greek Cusina, Downtown Delicatessen, Inc., Ted Papas, President, John Papatheodorou, Secretary, dba- OLCC-08-V-028, -028A, -028B. A proposed order was issued on April 17, 2009. Licensee Ted Papas and Attorney Victor Calzaretta were present before commissioners to address their exceptions. Kelly Routt, Administrative Policy & Process Division appeared to present staff exceptions.

Recessed to deliberate contested case items: 3:05 p.m.
Reconvened: 5:10 p.m.

DECISIONS ON CONTESED CASES

Peggy J. Travis

Commissioner Lewandowski moved to continue deliberations until the August meeting. Passed 5/0.

US Market# 180

Commissioner Rice moved to continue deliberations until the August meeting. Passed 5/0.

Dr. Feelgood's Pub-

Commissioner Roome moved to amend the proposed order per the list that will accompany the minutes and adopt the amended order as the final order. Passed 5/0.

Downtown Deli & Greek Cusina-

Commissioner Duarte moved to continue deliberations to the August meeting. Passed 5/0.

Recessed: 5:15 p.m.

June 19, 2009

Reconvened: 9:30 a.m.

The Commissioners present were Alex Duarte, Christine Lewandowski and Bob Rice, Ron Roome and Chairman Phil Lang. Others present were Executive Director Steve Pharo, Deputy Director Rudy Williams and members of staff.

RETAIL SERVICES

Jim MacAlistaire, Retail Services Director, presented

Agent Appointment A-1199, Portland- Center

This vacancy is a result of the resignation of agent, Shalene Gibson. 5 applicants were interviewed. There were three finalists. Dorsey Green, Shellie O'Donnell and Raymond 'Sonny' Strom appeared before Commissioners to present their qualifications.

Agent Appointment A-1109, Harrisburg

This vacancy is a result of the retirement of agent, Donald Shipley. Two applicants were interviewed. The applicants, Rebecca Kinyon and Mike Singh appeared before

Commissioners to present their qualifications. Commissioner Duarte asked if the store would be in a different location than it is currently. Mr. Singh confirmed it would be in a new location. Commissioner Roome asked where the new store is located. Mr. Singh explained the new location.

Recessed to Executive Session to deliberate agent selection: 10:10 a.m.

Reconvened: 10:35 a.m.

Commissioner Lewandowski moved to appoint Dorsey Greene as agent for A-1199, Portland Center. Passed 5/0.

Commissioner Duarte moved to appoint Mike Singh as agent for A-1109, Harrisburg. Passed 5/0.

ADMINISTRATION

NCSLA 2009 Best Practices, Social Responsibility Award Recipient, Last Call- Executive Director Pharo asked Deputy Director Rudy Williams to give Commissioners a report on the Best Practices Award the agency had just been presented at the National Conference of State Liquor Administrators in Nashville. The award was for the Social Responsibility category for the "Last Call" video for alcohol servers. Deputy Director Williams recognized the Alcohol Server Education staff who had worked on the project. Chairman Lang offered congratulations to Deputy Director Williams and staff for the success of the project.

Farewell to Commissioner Lewandowski- Deputy Director Williams presented a plaque to Commissioner Lewandowski in recognition and appreciation of her years of service to the Commission.

Adjourned 10:55 a.m.

_____/s/_____
Phil Lang, Chairman

_____/s/_____
Alex Duarte, Commissioner

_____/s/_____
Christine Lewandowski, Commissioner

_____/s/_____
Bob Rice, Commissioner

_____/s/_____
Ron Roome, Commissioner

_____/s/_____
Stephen A. Pharo, Executive Director
and Secretary to the Commissioners