

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

July 2, 2014

The regular meeting of the Alcohol, Gambling & Tobacco Commission was held on Wednesday, July 2, 2014, at 4:45 p.m., in the City Council Chambers, 3rd Floor, City Hall.

ROLL CALL: Present: Lindsay Bartholomew-Kolu Dennis Birchland, Bjorn Braaten, Bryn Pollard, Jeff Rosenthal, Ryan Stauber

Absent: President Pekkala

May 7, 2014 minutes of the Alcohol, Gambling and Tobacco Commission. -Unanimously Approved.

**COMMUNICATIONS:**

CITY ATTORNEY SUBMITTING NOTICE RESCHEDULING DISCIPLINARY HEARINGS FOR DUKE PARTNERS, LLC (SPURS ON 1<sup>st</sup>), 109 W. 1<sup>ST</sup> STREET, AND HOSPITALITY ASSOCIATES OF DULUTH, LLC (ACES ON FIRST), 113 W 1<sup>ST</sup> STREET. 14-08 – Received.

The City Clerk notified the Commission of a late addition to the agenda of the application for transfer of the on-sale intoxicating liquor license to Red Lobster Hospitality, LLC. The City Clerk made a recommendation for a motion to suspend the rules to consider the matter.

Mr. Birchland moved TO SUSPEND THE RULES TO CONSIDER THE APPLICATION FOR TRANSFER OF THE ON SALE INTOXICATING LIQUOR LICENSE AND ON SALE SUNDAY LICENSE, FOR THE PERIOD ENDING AUGUST 31, 2014, TRANSFERRED FROM GMRI, INC., (RED LOBSTER), SAME ADDRESS. Mr. Rosenthal seconded the motion, and it was unanimously approved.

**UNFINISHED BUSINESS:**

*(TABLED)* **GRANDMA'S RESTAURANT CO., (LITTLE ANGIE'S CANTINA), 11 EAST BUCHANAN STREET** - APPLICATION FOR PERMANENT EXPANSION OF THE LICENSED PREMISES OF THEIR ON SALE INTOXICATING LIQUOR LICENSE FOR THE PERIOD ENDING AUGUST 31, 2014. – remained on the table.

**NEW BUSINESS:**

**RUSTIC BAR, INC. (THE RUSTIC BAR), 401 N CENTRAL AVE** - APPLICATION FOR TEMPORARY EXPANSION OF THE LICENSED PREMISES OF THEIR ON SALE INTOXICATING LIQUOR LICENSE FOR JULY 30 – AUGUST 1, 2014.

**JMMP ENT. LLC, (KOM-ON-INN), 332 N 57<sup>th</sup> AVE W** – APPLICATION FOR TEMPORARY EXPANSION OF THE LICENSED PREMISES OF THEIR ON SALE INTOXICATING LIQUOR LICENSE FOR JULY 30 – AUGUST 1, 2014.

**D&D ENTERPRISE OF CLOQUET (MR. D'S BAR AND GRILL), 5622 GRAND AVE – APPLICATION FOR TEMPORARY EXPANSION OF THE LICENSED PREMISES OF THEIR ON SALE INTOXICATING LIQUOR LICENSE FOR JULY 30 – AUGUST 1, 2014.**

Al Terwey, Pam Houle and Jeff Flynn appeared on behalf of the applications for Mr. D's Bar and Grill, Kom-On-Inn, and the Rustic Bar. Mr. Terwey explained that on July 30 and 31 they would not conduct outside service but allow 21 and over patrons to walk outside with alcoholic beverages in the designated and fenced area. They monitor the area with APS security and have live music in the designated area until 10:00 p.m. On August 1<sup>st</sup>, each application is for an outside serving area that is fenced in, there is a cover charge, Duluth Police Officers ID and wrist bands are provided to 21 years and older patrons. No minors are allowed into the street dance. Officer Hansen is in charge of security. The live music stops at 1:00 a.m. and all the outside and inside bars shut down at 1:00 a.m. To questioning from the Commission, Mr. Terwey stated they have held the street dance for 35 years. Mr. Vang stated there were no issues with the security plan. Mr. Pollard moved to APPROVE THE APPLICATIONS FOR TEMPORARY EXPANSION OF THE LICENSED PREMISES OF THEIR ON SALE INTOXICATING LIQUOR LICENSE FOR JULY 30 – AUGUST 1, 2014 FOR D&D ENTERPRISE OF CLOQUET (MR. D'S BAR AND GRILL), JMMP ENT. LLC (KOM-ON-INN), AND RUSTIC BAR INC. (THE RUSTIC BAR.) Mr. Birchland seconded the motion, and it was unanimously approved.

**SIR BENEDICTS, III, LLC (SIR BENEDICTS TAVERN ON THE LAKE), 805 E SUPERIOR STREET – APPLICATION FOR TEMPORARY EXPANSION OF THE LICENSED PREMISES OF THEIR ON SALE INTOXICATING LIQUOR LICENSE FOR JULY 26, 2014.**

Aura and Antonino Coppola were present on behalf of the application. Ms. Coppola stated the application is for a vintage motorcycle rally. Mr. Coppola stated they would be in contact with the Duluth Police Department and they have not had any issues with the event in the past. Ms. Bartholomew-Kolu moved to APPROVE THE APPLICATION FOR SIR BENEDICTS, III, LLC (SIR BENEDICTS TAVERN ON THE LAKE), 805 E SUPERIOR STREET FOR A TEMPORARY EXPANSION OF THE LICENSED PREMISES OF THEIR ON SALE INTOXICATING LIQUOR LICENSE FOR JULY 26, 2014. Mr. Rosenthal seconded the motion, and it was unanimously adopted.

**LAKE SUPERIOR BREWING COMPANY, LLC (TWIN PORTS BRIDGE FESTIVAL), BAYFRONT PARK – APPLICATION FOR TEMPORARY ON SALE INTOXICATING LIQUOR LICENSE FOR SEPTEMBER 5-6, 2014, WITH DON HOAG, PRESIDENT.**

Don Hoag was present on behalf of the application. Mr. Hoag stated there was a change in the event in regard to the dates. At this time there is a Saturday event but there may be a Friday event as well which is reflected in the application. If the Friday event is not added, Mr. Hoag indicated that date would be dropped from the application. Mr. Hoag stated a draft security plan was submitted to the Police Department. The security plan and event is similar to the past 3 to 4 events. Mr. Hoag stated they have not had any issues with the event. Mr. Birchland moved to APPROVE THE APPLICATION FOR LAKE SUPERIOR BREWING COMPANY, LLC (TWIN PORTS BRIDGE FESTIVAL), BAYFRONT PARK FOR A TEMPORARY ON SALE INTOXICATING LIQUOR LICENSE FOR SEPTEMBER 5-6, 2014, WITH DON HOAG, PRESIDENT. Ms. Bartholomew-Kolu seconded the motion, and it was unanimously approved.

**RED HERRING, LLC (THE RED HERRING LOUNGE), 208 E 1<sup>ST</sup> STREET - APPLICATION FOR PERMANENT EXPANSION OF THE LICENSED PREMISES OF THEIR ON SALE INTOXICATING LIQUOR LICENSE FOR THE PERIOD ENDING AUGUST 31, 2014.**

Bob Monahan was present on behalf of the application. Mr. Monahan stated they are applying for a 3x12 foot section of outside seating accommodating 3 to 4 high top tables. In response to questioning from the commission, Mr. Monahan stated this area was on the sidewalk but there would also be the necessary clearance area. In response to questioning from Attorney Lutterman, Mr. Monahan stated he had applied for a sidewalk use permit from the planning department. Mr. Rosenthal commented that he had been to the bar on opening night and was impressed with the security. Officer Vang commented that he reviewed the site and Mr. Monahan indicated they would be closing outside service at 10:00 p.m. Mr. Monahan also indicated that the only access would be from inside the restaurant and the area would be completely fenced. Mr. Pollard moved to approve the APPLICATION FOR RED HERRING, LLC (THE RED HERRING LOUNGE), 208 E 1<sup>ST</sup> STREET FOR PERMANENT EXPANSION OF THE LICENSED PREMISES OF THEIR ON SALE INTOXICATING LIQUOR LICENSE FOR THE PERIOD ENDING AUGUST 31, 2014. Ms. Bartholomew-Kolu seconded the motion, and it was unanimously approved.

**BPO ELKS DULUTH LODGE #133, (ELKS CLUB), 4250 HAINES RD. – APPLICATION FOR ON SALE CLUB LIQUOR LICENSE AND ON SALE SUNDAY LICENSE FOR THE PERIOD BEGINNING SEPTEMBER 1, 2014, AND ENDING AUGUST 31, 2015.**

Jeff Haus was present on behalf of the application. Mr. Haus indicated they would like to change their liquor license to a club license instead of a public license. He indicated the Elks Club is a small club with around 300 members; their facility is not large enough to rent to the public and the club generally rents to members only. Mr. Braaten moved to APPROVE THE APPLICATION FOR BPO ELKS DULUTH LODGE #133, (ELKS CLUB), 4250 HAINES RD. FOR ON AN SALE CLUB LIQUOR LICENSE AND ON SALE SUNDAY LICENSE FOR THE PERIOD BEGINNING SEPTEMBER 1, 2014, AND ENDING AUGUST 31, 2015. Mr. Birchland seconded the motion, and it was unanimously approved.

*(Filed After Deadline)* **RED LOBSTER HOSPITALITY, LLC (RED LOBSTER), 301 SOUTH LAKE AVENUE, - APPLICATION FOR TRANSFER OF THE ON SALE INTOXICATING LIQUOR LICENSE AND ON SALE SUNDAY LICENSE, FOR THE PERIOD ENDING AUGUST 31, 2014, TRANSFERRED FROM GMRI, INC., (RED LOBSTER), SAME ADDRESS.**

Kelly Wade, general manager, was present on behalf of the application. Ms. Wade stated the restaurant was affiliated with Darden prior but going forward they will not be affiliated with Darden. There will be no significant changes to the restaurant but the ownership will not be private v. corporate. She stated the ownership change is anticipated to occur on July 31, 2014. Ms. Wade stated the name would still be Red Lobster, no other changes but they would be owned by a different company. Attorney Lutterman indicated that the managing agent indicated on the application is a resident of Superior, WI and the City Code requires the agent to be a resident of Minnesota, residing within 50 miles of Duluth. Attorney Lutterman stated the applicant would need to identify another designated managing agent. Ms. Wade indicated they would designate Stephen Kilo, staffing manger, who resides in Duluth. Officer Vang requested that approval be conditioned on the completion of background checks because those checks had not been returned yet. Mr. Birchland moved to APPROVE THE APPLICATION FOR RED LOBSTER HOSPITALITY, LLC (RED LOBSTER), 301 SOUTH LAKE AVENUE FOR TRANSFER OF THE ON SALE INTOXICATING LIQUOR LICENSE AND ON SALE SUNDAY

LICENSE, FOR THE PERIOD ENDING AUGUST 31, 2014, TRANSFERRED FROM GMRI, INC., (RED LOBSTER), SAME ADDRESS CONDITIONED UPON RECEIPT OF ACCEPTABLE BACKGROUND CHECKS AND CHANGE OF THE ON-SITE MANAGER. Ms. Bartholomew-Kolu seconded the motion, and it was unanimously approved.

**LAWFUL GAMBLING:**

Northern Lights Foundation

raffle - 60 day waiver request

Ken Larson was present on behalf of the application. Mr. Larson indicated the raffle would occur at Wade Stadium for a fundraiser called guns & hoses, where the police department plays against the fire department. Mr. Larson stated the event has been held for several years. In response to questioning from the Commission Mr. Larson stated there are no changes from prior year events. Mr. Pollard moved THAT THE 60 DAY WAIVER REQUEST OF NORTHERN LIGHTS FOUNDATION BE APPROVED, AND THE SAME BE RECOMMENDED TO THE CITY COUNCIL FOR APPROVAL. Mr. Braaten seconded the motion, and it was unanimously approved.

**THE DUKE PARTNERS, LLC (SPURS ON 1<sup>ST</sup>), 220 W SUPERIOR ST** - APPLICATION FOR TEMPORARY EXPANSION OF THE LICENSED PREMISES OF THEIR ON SALE INTOXICATING LIQUOR LICENSE FOR AUGUST 22, 2014 (RAIN DATE SEPT. 19TH).

Mr. Patronas was present on behalf of the application. Mr. Patronas stated that this application is for a street dance. He stated the area would be enclosed with snow fence and there would be a large country band performing. Mr. Patronas spoke with Officer Vang and Officer Hansen and there would be police presence. Officer Vang stated there were no concerns from the police department. Attorney Lutterman inquired if a special event permit had been applied for to close the street. The City Clerk stated that permit had been applied for. Mr. Birchland moved to APPROVE THE THE DUKE PARTNERS, LLC (SPURS ON 1<sup>ST</sup>), 220 W SUPERIOR ST APPLICATION FOR TEMPORARY EXPANSION OF THE LICENSED PREMISES OF THEIR ON SALE INTOXICATING LIQUOR LICENSE FOR AUGUST 22, 2014 (RAIN DATE SEPT. 19TH). Ms. Bartholomew-Kolu seconded the motion, and it was unanimously approved.

**HEARING TO DECIDE WHAT, IF ANY, DISCIPLINARY ACTION SHOULD BE TAKEN REGARDING THE ON SALE LIQUOR LICENSE OF THE DUKE PARTNERS, LLC (SPURS ON 1ST), 109 W. 1ST STREET.**

**HEARING TO DECIDE WHAT, IF ANY, DISCIPLINARY ACTION SHOULD BE TAKEN REGARDING THE ON SALE LIQUOR LICENSE OF HOSPITALITY ASSOCIATES OF DULUTH, LLC (ACES ON FIRST), 113 W 1ST STREET.**

See attached transcript.

**Alcohol, Gambling, and Tobacco Hearing  
July 2, 2014**

**Company Name, d/b/a the Duke Partners, LLC (Spurs on First), 109 W 1<sup>st</sup> Street  
and Hospitality Associates of Duluth LLC (Aces on First), 113 W 1<sup>st</sup> Street**

- Helmer: Hearing to decide what, if any, disciplinary action should be taken regarding the on sale liquor license of the Duke Partners, LLC (Spurs on First), 109 West 1<sup>st</sup> Street.
- Cox: Nick, the City Attorney's office will kind of give an opening of where it's at and everything and then there'll be time for you to comment. Okay?
- Patronas: Okay. Thanks.
- Lehr: Good evening, Commissioners. There are actually two matters before the Commission tonight. With the same ownership of the licensees. It's both Duke Partners, LLC doing business as Spurs on First and also Hospitality Associates of Duluth LLC doing business as Aces on First. On April 2<sup>nd</sup> of this year, both licensees were served with a Notice of Hearing and the hearing was set for May 7<sup>th</sup> of this year. If you recall, that hearing was rescheduled to tonight at the request of Mr. Patronas. So, we are here tonight to hear both of these matters. The violation before the Commission tonight involves the unlawful purchase of alcohol by Duke's Partners from Hospitality Associate. The factual details and supporting documents are set forth in the two Notices of Hearing that have been filed and served. As a result of the State investigation, Duke Partners was fined \$500.00 by the State. The licensee, Duke Partners, had the option of challenging that fine but they did not appeal it. Instead, they told us to pay the fine. So once the State case was concluded then that State investigation became the basis of Notices on both of the licensees and we are here tonight because the City Code says that any violation of any alcohol law that is a good.... is a basis to determine whether additional discipline should be imposed on the licensee. So, tonight the Commission will decide what discipline, if any, should be imposed with regard to both of these licensees that were involved in the transfer of liquor back and forth between the two licensees. For both of these licensees tonight, it is considered a first violation and so the presumptive penalty would apply and the presumptive penalty is a \$500.00 fine. I have discussed both of these matters with Mr. Patronas. He does not dispute the facts that are set forth in the Notices so we basically have an admission of the behavior but Mr. Patronas is here and he does wish to address the Commission with regard to the proposed penalty.

Patronas: Thank you. Regarding that, we did go on the State list when I was sick the first time in the fall and I had enough inventory at Spur's but we ran short of a couple cases of beer and a couple bottles of whiskey and we took it from Aces next door not realizing that was not proper. I never would have agreed and I think Investigator Dan Perin came up from the State and he talked to my guy there. It was in the morning. "Well, how are you getting your booze?" and we didn't buy any booze from any liquor store but we had enough inventory there until we paid the State sales tax but he said we had to borrow a couple of cases of beer and a couple bottles of whiskey. And then he asked me, "Did you do that?" I said, "Yes, we did. We didn't purchase it. We just borrowed it next door." I assumed that because I own both bars that I could bring a whiskey or two and a couple cases of beer back and forth so. I'd been doing that a while. We haven't done it subsequently. I did bring some Red Bull one night from one bar to the other but that's not considered whiskey or the beer so...I never would have agreed to pay the fine to the State if I knew it would have come to this, too, because we didn't purchase....we did not purchase so I guess when I paid the \$500.00 to the State it was basically agreeing that I sold booze from one bar to another. Mr. Perin said that he appreciated that we were very honest. He appreciated the fact that we didn't buy booze from a liquor store and he appreciated the fact that he was going to tell his boss to make the fine \$250.00. But his boss .... I talked to his boss and he gave me a \$500.00 fine. Aces did not get fined because they didn't get any booze. They supplied it though to Spurs. Spurs subsequently "purchased it" from Aces. That's why I got the \$500.00 fine. I hope I do not get a fine tonight because as you know, times are tough but I understand the position you're in, too. Aces did not do anything. I hope they don't get a fine. If I do get a fine for Spurs, I hope it's smaller one than the \$500.00 one recommended by the City statutes. So, I leave it in your hands. I just want you to know that I did not buy booze from any body else. I borrowed a few cases from my bar next door. I realize that was wrong now. So.... that's all I have to say on it.

Stauber: I certainly appreciate you coming in and explaining the situation and being very honest with us. We certainly appreciate that. Some people during hearings are not so forth right. Understandable.

Lutterman: I just want to address the Commission on your options under the penalty provision of Section IX. As the code is currently written, the first offense, \$500.00 civil penalty is a penalty but it can be adjusted if you find aggravating or mitigating circumstances. So if you are inclined do something other than a \$500.00 penalty for these two violations, you will need to identify in the record what you believe are aggravating or mitigating circumstances.

Birchland: I can understand the confusion with owning two establishments very close together. It's not like you're running across town to another place to purchase. I firmly believe that it was probably a mistake made and corrected now. Haven't, in that location, we haven't heard complaints about that where we have in so many other places. I sure wish we could find a way to at least reduce that fine. I hope that someone can come up with some way to word that.

Stauber: At the time this happened, Nick, was ... you were in poor health at that time also?

Patronas: Well, that's the reason that I wasn't around there. We got a little behind on one of the bars so obviously if you could say for circumstances, yes, I wasn't in the best of health but if I was in good health, I probably would have borrowed the booze from the bar next door any way. So...

Birchland: Let's see. The State didn't find a violation with Aces. I don't know how exactly we would be able to but I suppose

Lutterman: The... Commissioner Birchland, the State and the City have concurrent jurisdiction in these matters and under Minnesota Statute §348.415 what one entity does is not binding in any way on the other.

Birchland: I wasn't trying to say it was binding. I'm just thinking if it was their thought, I'd be more inclined to forgo the one against Aces and for conversation, you know, maybe cut the fine on Duke's in half. They've already paid some and I know that they're different situations but I'll listen to other people, too.

Stauber: Thank you.

Patronas: Do to the State finding no violation for Aces, I'd be very agreeable to that .. Finding no violation as well.

Lutterman: Commissioner Stauber, I just want to correct the record. The State didn't find a no violation as to Aces. They didn't investigate Aces.

Bartholomew-Kolu: I agree with what you're saying though. And how much would be the fine for Spurs?

Lutterman: Well, the mandatory fine is \$500.00.

Bartholomew-Kolu: Oh, it's a mandatory fine? Okay.

Stauber: Or we could reduce it if we find mitigating circumstances or we could

increase it we find aggravating circumstances.

Bartholomew-Kolu: Okay. If we took Aces out of the mix then maybe...could we reduce it? I mean, due to the fact that they didn't investigate Aces?

Lutterman: The Commission has the option of recommending to City Council a finding of no violation as to Aces, a finding of violation as to Aces and also a finding of violation as to Spurs and to no violation as to Spurs. That's certainly within the prerogative of the Commission to recommend to the City Council. The Commission can also recommend to City Council a reduction in the presumed penalty but in that circumstance, the Commission would need to identify in it's motion the mitigating circumstance.

Bartholomew-Kolu: Thank you for the clarification.

Birchland: I don't know, would a mitigating circumstance, in my opinion, just not knowing the laws isn't an excuse but just the confusion there that they didn't sell and they just borrowed, therein, that it should be lowered.

Stauber: How long has Aces been open?

Patronas: About nine years.

Rosenthal: Okay. Has there been any previous violation in regards to selling alcohol to a minor or something like that?

Patronas: We've had two cases for minors in nine years. We've been checked, I think, last count on our log was over 150 times. We got caught two times.

Rosenthal: Okay.

Patronas: Both times we got fined. Both times we paid the penalty, so... We were wrong. And Spurs has not ever had incidences for minors or anything that ? And mostly that come by there not that employ three or four door guys work on the busy nights and we're pretty adamant about carding people all the time so....

Birchland: I agree with the sentiment and I'll make a motion that we find no violation on Aces with the admission on Spurs that we cut the fine to \$250.00. Cut it in half and using the mitigating circumstances that the Commissioners have given, the close proximity of the two businesses an understandable mistake. No sale, the bar owing, is the one I would recommend to the City Council.



Stauber: Seeing as it's two hearings in two but one motion, can we carry it that way? Or do we need to split them up?

Lutterman: Recommend splitting them up. Why don't you deal with the Aces matter first. I believe Commissioner Birchland's motion is a motion to recommend to City Council no violation.

Birchland: That was my motion.

Rosenthal: Second that.

Stauber: So a motion has been made and seconded to find no violation for Aces. All those in favor signify by saying "Aye".

All: Aye.

Stauber: Any opposed? Seeing none. Motion carries.

Birchland: And the second motion then would be the fine for Duke's would be reduced to \$250.00 with the reasons given.

Stauber: Okay a motion has been made and seconded to fine Duke's and find violation and fine \$250.00. All those in favor signify by saying "Aye".

All: Aye.

Stauber: Any opposed? Seeing none. Motion carries.

Patronas: Thank you.

Stauber: Thank you for coming.

Patronas: That was very fair and I appreciate it. Thanks a lot.