Wednesday, December 08, 2010

Meeting

The Local Liquor Licensing Authority of the City of Golden, County of Jefferson, State of Colorado, met in the Council Chambers, City Hall, at 911 10th Street, Golden, Colorado at the hour of 2:00 p.m.

Hearing Officer Kendra L. Carberry, presiding, called the meeting to order.

Those members of staff also present were as follows:
William P. Hayashi, City Attorney
Mary Lynn Benham, Assistant City Attorney
Andrea L. Banks, Deputy City Clerk
Dan Hyde, Police Officer
Glenn Moore, Police Officer

Approval of Minutes of November 18, 2010

The Authority approved the minutes of November 18, 2010.

Acceptance of Application for New Hotel and Restaurant Liquor License from The Marcelos Inc. d/b/a Marcelos Mexican Restaurant, 109 N. Rubey Drive, Unit I, Golden, CO 80403. Set the public hearing date for January 26, 2011, establish the neighborhood to be surveyed and approve concurrent review of the application

Grace Montoya, owner, was present and stated she agreed with the designated survey area.

The Authority stated that the application was accepted, approved for concurrent review, the neighborhood to be surveyed was established as indicated on the submitted map, and the public hearing would be set for January 26, 2011 at 2:00 p.m.

Request for Issuance of Order to Show Cause to Ace Hi Tavern Company d/b/a Ace Hi Tavern, 1216 Washington Ave., Golden

The Authority reviewed the memorandum provided by Assistant City Attorney Mary Lynn Benham, which stated that the facts in the proposed Order to Show Cause are legally sufficient to establish probable cause that the licensee has violated Colorado Liquor Code Sections 12-47-901(1)(a.5)(I) and (5)(a)(I), which make it unlawful for any person, or person licensed to sell at retail under the Colorado Liquor Code, to sell an alcohol beverage to a person under twenty-one years of age.

The Authority approved the issuance of a Notice of Order to Show Cause to Ace Hi Tavern Company d/b/a Ace Hi Tavern, 1216 Washington Ave., Golden, for hearing on January 26,
2011.

Request for Issuance of Order to Show Cause to Rocky Mountain Swirl Inc. d/b/a Lighthouse Liquors West, 14799 W. 6th Ave, Golden

The Authority reviewed the memorandum provided by Assistant City Attorney Mary Lynn Benham, which stated that the facts in the proposed Order to Show Cause are legally sufficient to establish probable cause that the licensee has violated Colorado Liquor Code Sections 12-47-901(1)(a.5)(I) and (5)(a)(I), which make it unlawful for any person, or person licensed to sell at retail under the Colorado Liquor Code, to sell an alcohol beverage to a person under twenty-one years of age.

The Authority approved the issuance of a Notice of Order to Show Cause to Rocky Mountain Swirl Inc. d/b/a Lighthouse Liquors West, 14799 W. 6th Ave, Golden, for hearing on January 26, 2011.

Show Cause Hearing - Marleez, Inc. d/b/a The Buffalo Rose, 1119 Washington Ave., Golden

Hearing Officer Carberry called the hearing to order. She noted there were two preliminary items to address. In regard to the Motion to Quash filed by counsel for the Buffalo Rose, she stated that it was being denied for two reasons; she noted that the witness was willing to be placed under oath and testify via phone, and would be able to be cross-examined by both parties. In regard to the Motion to Dismiss filed by counsel for the Buffalo Rose, she stated there was insufficient evidence to rule on that motion until she had heard evidence to be presented in the hearing.

City Attorney Hayashi requested giving an oral statement of response to the Motion to Dismiss, to be followed up by a written response submitted to the Authority within seven days. The Authority granted the request. The City Attorney stated that the licensee does not dispute the facts presented as to making statements over an outdoor loudspeaker system on the outdoor back patio of the Buffalo Rose, and that the government may regulate the conduct in question, even though such regulation is an incidental limitation on First Amendment expression, so long as the regulation furthers a sufficiently important governmental interest. He noted that the City is authorized to regulate liquor licensed establishments to protect the community, as well as to enforce and ensure compliance with the liquor code.

David Lane, attorney for the licensee, stated in reply that the licensee was engaging in constitutionally protected activity when he made his speech on August 17, 2010, did not violate Colorado Liquor Code Regulation 47-900(A) in the conduct of his establishment and in fact had the disorderly conduct citation dismissed by the municipal court. He noted that the liquor regulations cannot trump the First Amendment, which guarantees the right to freedom of speech, and stated that absent a compelling state interest, free speech cannot be suppressed.

Attorney Lane requested that the Hearing Officer sequester witnesses for the hearing on the Order to Show Case. Hearing Officer Carberry granted the request, sequestered witnesses and
proceeded to hear testimony.

Officer Dan Hyde, witness for the city, was sworn in, testified that he was dispatched to the Buffalo Rose on the evening of August 17, 2010 at 9:30 p.m. in response to a noise complaint and gave details of his investigation. He stated he was dispatched back to the bar at 10:00 p.m. on a report of chants coming from the patio. He spoke with owner Murray Martinez. He gave details of subsequent interviews of condominium residents, who reported hearing offensive comments over the Buffalo Rose’s amplified loudspeaker system. He returned to the Buffalo Rose after speaking to the residents, where he contacted owner Murray Martinez and told him what the residents had reported, at which time he issued Mr. Martinez a summons for disturbing the peace. Officer Hyde reviewed his police report, which was admitted as City’s Exhibit 2, with the section written by Officer Pearson struck from the report by the Hearing Officer, since it was noted that Officer Pearson was not present to be cross examined.

Officer Glenn Moore, witness for the city, was sworn in and testified that Captain Hollingsworth asked him to do follow-up interviews of the witnesses the day after the incident. He gave details of his interviews of the residents, who stated they were offended by comments made my Buffalo Rose owner Murray Martinez, who inserted them into the lyrics of a song and which appeared directed at the condo owners.

In response to cross examination by licensee attorney David Jones, Officer Moore noted that his duties as community resource officer include problem solving with residents and business owners, and finding ways to address noise concerns raised through complaints made by residents, as well as how to strike a balance to meet the needs of residents and business owners.

David Moos, witness for the city, primary residence 22802 Chaus Court, Katy, TX and secondary residence 1275 Washington Avenue, Unit 311, Golden, CO, was contacted via telephone and sworn in, testifying that he has owned a second condominium residence in Golden since July of 2009 and visits about once a month. He reported being at the Buffalo Rose on the outdoor patio around 9:30 p.m. on August 17, 2010, where he was having a beer and listening to the music and left after he heard and was offended by the comments made by owner Murray Martinez.

In response to cross examination by licensee attorney David Jones, Mr. Moos stated he did not know why the police officer visited the Buffalo Rose the first time. He noted that the music was not too loud. He reported hearing the comments made by Mr. Martinez when he sang them in a song. At the end of the song, Mr. Martinez offered additional comments about people losing more of their rights every day.

In response to questions from Hearing Officer Carberry, Mr. Moos stated his principal residence to be in Katy, TX. He noted he was at the Buffalo Rose after 9:00 p.m. and was there for about an hour. The second visit by the police was after the band finished playing and after Mr. Martinez had finished at the mic. He stated he is not a resident of Colorado and noted that the bar was pretty full while he was there. He did not hear cheering when Mr. Martinez made
his comments in the song.

Holly Latour, witness for the city and Gateway Station resident, was sworn in, and testified that she contacted the police department on August 17, 2010 in reference to comments she heard from the patio of the Buffalo Rose, stating she was personally offended by the content of the comments.

In response to cross examination by licensee attorney David Lane, Ms. Latour stated that the volume of the music was not a problem but that the comments were a problem, and that she took them personally. She concurred that there have been disputes between residents and the Buffalo Rose over noise problems and that she has acted as a mediator in those matters and been a big supporter of the Buffalo Rose.

Leslie Hildebrand, witness for the city, 1275 Washington Avenue, Unit 505, was sworn in, and testified she was home on the night of August 17, 2010 and had a cousin visiting, Callie Helms. She heard the music coming from the Buffalo Rose and the comments coming from the same direction. She called her neighbor Holly to see if she heard the same comments and then called the police to report the incident. She was surprised and offended by the comments. She heard the crowd cheer and sound riled up and excited by the comments.

The Authority called a recess at 3:55 p.m. The meeting resumed at 4:03 p.m.

Johnny Friedkin, witness for the licensee and Buffalo Rose bartender, was sworn in, and testified that the police came into the bar at 9:30 p.m. on a noise complaint but determined the volume of music was not too loud. Mr. Friedkin told police he would let Mr. Martinez know about the complaint. He stated that Mr. Martinez took the stage 20 minutes later and integrated different humorous lyrics into the song “Keep on Rockin’ in the Free World,” which received strong crowd support. Mr. Friedkin observed that the performance was a method of venting frustration.

In response to cross examination by the city attorney, Mr. Friedkin stated that he found the changed lyrics to be humorous, and that they made him and others chuckle. He stated he was aware of an unwritten verbal agreement to end the music by 10:00 p.m.

Murray Martinez, co-owner of the Buffalo Rose, was sworn in, and testified that he has owned the Buffalo Rose for 12 years and was awarded Business of the Year by the City of Golden in 2004. He described the change in clientele in recent years, to include the loss of a large biker club clientele. He stated that those patrons left after being hassled during police walk-throughs or when being pulled over on their bikes. The issue settled down in 2005 after he and the police department communicated about it, but the biker patrons still stayed away. After the condominiums were built, the residents made complaints against noise from his establishment, so he changed the business to feature more music and entertainment, which still brought forth complaints. On August 17, 2010, the police department visited and spoke with the bartender about a noise complaint. Mr. Martinez became very frustrated because he felt he was doing what he was supposed to do by keeping tabs on the volume of the music by using the noise monitor, and he felt that his establishment was visited by the police more often than was
necessary. He made a protest in song to stand up for and exercise his rights, which he feels are being lost little by little. The crowd showed support for his comments. He noted that the ticket he was issued for disturbing the peace was eventually dismissed.

In response to cross examination by the city attorney, Mr. Martinez acknowledged that as a liquor licensee he is responsible for complying with the liquor code and subject to visits by the police who do regular walk-throughs as part of their duties and responsibilities. He acknowledged that the noise meter was part of a cooperative effort with the city to address the outdoor noise issues downtown and that he was involved in that effort. He concurred that he was sent by the city to a conference in Texas with members of the police department about how to address downtown area noise and activity issues. He acknowledged that the officer came to the bar that evening in response to a noise complaint and found no problems, and that the second visit by the police was after Mr. Martinez made the comments over the amplified sound system.

Hearing Officer Carberry stated that she would await written responses from both parties, with the city submitting their response within seven days and the licensee responding within seven days after that. She directed that the responses include arguments that address the portion of the liquor code Regulation 47-900(A) which states, “Each person licensed under Article 46,47, and 48 of Title 12, and any employee or agent of such licensee shall conduct the licensed premises in a decent, orderly and respectable manner; ……nor shall a licensee permit rowdiness, undue noise, or other disturbances or activity offensive to the senses of the average citizen, or to the residents of the neighborhood in which the licensed establishment is located.”

Renewal - Marleez, Inc. d/b/a The Buffalo Rose, 1119 Washington Ave., Golden

Hearing Officer Carberry continued the renewal matter to the next meeting of the Authority on January 26, 2011, pending the outcome of the show cause matter.

Adjournment

There being no further business to come before the Authority, the meeting adjourned at 4:47 p.m.

Susan M. Brooks, MMC
City Clerk

Andrea L. Banks, Deputy City Clerk
Secretary to the Local Licensing Authority

Approved by Licensing Authority:

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Kendra L. Carberry
Hearing Officer