

CARSON CITY LIQUOR AND ENTERTAINMENT BOARD

Minutes of the April 4, 2013 Meeting

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A meeting of the Carson City Liquor and Entertainment Board was held during the regularly scheduled Board of Supervisors meeting on Thursday, April 4, 2013 in the Community Center Sierra Room, 851 East William Street, Carson City, Nevada.

PRESENT: Chairperson Robert Crowell
Member Karen Abowd
Member Brad Bonkowski
Member Ken Furlong
Member John McKenna
Member Jim Shirk

STAFF: Larry Werner, City Manager
Alan Glover, Clerk - Recorder
Randal Munn, Chief Deputy District Attorney
Kathleen King, Deputy Clerk / Recording Secretary

NOTE: A recording of these proceedings, the board's agenda materials, and any written comments or documentation provided to the Clerk during the meeting are part of the public record. These materials are on file in the Clerk's Office, and available for review during regular business hours.

11. CALL TO ORDER AND ROLL CALL (8:54:48) - Chairperson Crowell called the meeting to order at 8:54 a.m., noting the presence of a quorum, including Sheriff Ken Furlong.

12. POSSIBLE ACTION ON APPROVAL OF MINUTES - February 7, 2013 (8:55:12) - Chairperson Crowell entertained a motion. **Member Abowd moved to approve the minutes. Member Bonkowski seconded the motion. Motion carried 6-0.**

13. PUBLIC WORKS DEPARTMENT, BUSINESS LICENSE DIVISION - POSSIBLE ACTION TO APPROVE REYNALDO ORTIZ AS THE LIQUOR MANAGER FOR BELLA FIORE WINES, LIQUOR LICENSE NO. 13-29538, LOCATED AT 224 SOUTH CARSON STREET, CARSON CITY (8:55:33) - Chairperson Crowell introduced this item, and Senior Permit Technician Lena Reseck reviewed the agenda materials. Chairperson Crowell invited Mr. Ortiz and Attorney Chris MacKenzie to the podium. (8:56:25) At Chairperson Crowell's request, Mr. Ortiz discussed the background investigation which was included in the agenda materials. Mr. MacKenzie and Ms. Reseck provided additional clarification in consideration of the Code provisions, and discussion ensued. Mr. MacKenzie responded to questions of clarification relative to dismissal of the conviction. He pointed out the board's authority to grant conditional approval of the liquor license application.

(9:05:58) Mr. Ortiz advised that he would be required to close his business without approval of the liquor license application. He acknowledged that the purchase transaction of Bella Fiore Wines is complete, and that he could operate the business but without the ability to serve wine. Member Bonkowski suggested the possibility of Mr. Ortiz retaining ownership of his LLC and establishing "an additional LLC ... that holds the liquor license that would have an interest of another party." Mr. MacKenzie provided additional clarification of the Code provisions in response to a question. In response to a further question, he explained the process and effect of expungement of a record and extensive discussion ensued.

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Mayor Crowell entertained public comment. (9:20:15) Nita Hathaway, an employee of Bella Fiore Wines, discussed the requirements for employees to participate in the alcohol server training course and Bella Fiore Wines' community contributions. In response to a question, Ms. Hathaway advised she is married to Mr. Ortiz.

Member Abowd noted that the board had previously granted a liquor license "to an establishment where a ... shooting was committed. And that was ... last year." She expressed the opinion that Mr. Ortiz "does not demonstrate that same sort of issue ...; that he's learned from his mistakes." She expressed the further opinion that a conditional liquor license should be issued. In response to a question, Mr. Munn advised that the current ordinance language "is problematic. It grants you the authority to grant or deny an application based on your ordinance. That ordinance goes on to say that the following individuals are unsuitable." He further advised that the board has discretion to license an unsuitable person, but cautioned against establishing a precedent. "... you've got to set the bar high enough that you're not going to have an equal protection argument for the next person that steps up with a DUI. ... The biggest issue for your discretion, under the case law, is that, without any standards at all, you have pretty much unlimited discretion. Once you set standards, those are the standards that you give people due process on and those are the limits of your discretion. In this regard, you would have to base a denial on one of your standards. To ignore one of your standards certainly ... is within your general authority, but it is a precedent ... and it would be someone you're licensing who is defined by our Code as being unsuitable."

In response to a comment, Mr. Munn advised that his understanding of the California statute "essentially is, without getting into legislative history, ... directed towards allowing people, after two years, to clean up their record for the purposes of employment not licensure. ... the statute expressly says that you can't rely on this for essentially saying that your condition has been expunged for the purposes of licensure." Mr. Ortiz acknowledged that Firkin and Fox has held the liquor license, on behalf of Bella Fiore Wines, since February.

Chairperson Crowell suggested a conditional liquor license, and entertained comments of the board members. Member Furlong referred to the Code provisions as a community standard, and stated, "Unfortunately, this applicant does not meet that standard." In response to a question, Ms. Reseck advised that Ms. Hathaway could hold the liquor license as long as Mr. Ortiz has no managerial responsibilities in the business. Ms. Reseck described a similar situation in which an "unsuitable" owner removed himself from an LLC so that his spouse could hold the liquor license for the business. She responded to questions of clarification and discussion ensued.

Member McKenna thanked Mr. MacKenzie for presenting "a lot of things that we should consider. ... As to the discussion of who owns the LLC or who's the manager or who's the member ...," he expressed the opinion "that's all on the applicant and his legal counsel." He suggested that the issue is "to either close a Carson City business that is well liked and successful and a substantial amount of money involved or, at least, to force it back on them to figure out a way of meeting our statute or to invalidate the statute. I choose not to invalidate the statute." **Member McKenna moved to not approve Reynaldo Ortiz as the liquor manager for Bella Fiore Wines, liquor license no. 13-29538, located at 224 South Carson Street, Carson City.** At Mr. Munn's request, Member McKenna noted, for the record, the basis for the denial as "a DUI conviction within five years." **Member Bonkowski seconded the motion. Motion carried 5-1.** Mr. MacKenzie thanked the board for their time.

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14. PUBLIC COMMENT (9:36:10) - Mayor Crowell entertained public comment. Mark Lopiccolo advised that he and his wife own the building which houses Bella Fiore Wines. He further advised the board that “you just closed a business in town. They have no other avenues, so we’re done. And so you have income tax revenue. The guy has shown ... good faith and done a good job, been a part of the community.” Mr. Lopiccolo expressed disappointment. Member McKenna expressed understanding for Mr. Lopiccolo’s comments, and advised of having been reluctant to deny the application. He explained, “I have to go back to who’s driving this bus. And it wasn’t us that closed this business. It was that man’s activities. And I’m sorry that happened. I’m sorry you’re out money. But ... where do you draw the line? And, as you saw up here, it was a tough decision.” In response to a question, Member McKenna advised that “the expungement did not invalidate the prior conviction. It simply removed it from his record so that it didn’t show up when somebody was going to hire him. Had Mr. MacKenzie, who is an able lawyer, brought forward something that said he was never convicted, I would have taken that into account and given the guy the [liquor] license.”

Member Bonkowski stated, “If it felt that we had any authority to grant the license, I would have voted for it. I don’t see anything that was presented today that gave us that authority.” Chairperson Crowell suggested having Ms. Hathaway work with Business License Division staff to secure the liquor license in her name.

15. ACTION TO ADJOURN (9:38:44) - Chairperson Crowell adjourned the meeting at 9:38 a.m.

The Minutes of the April 4, 2013 Carson City Liquor and Entertainment Board meeting are so approved this _____ day of June, 2013.

ROBERT L. CROWELL, Mayor

ATTEST:

ALAN GLOVER, Clerk - Recorder