

**MINUTES OF THE
OAK RIDGE BEER BOARD**
Regular Meeting

Training Room – Municipal Building
June 10, 2013
12:00 noon

PRESENT: Colin Colverson, Pedro Otaduy, Theresa Scott, Debra Solmonson, Chairman
Randy Tedford, and Wendy Williams

ABSENT: Secretary Barton Bailey
(Secretary Bailey gave prior notice of his absence to the Legal Department)

ALSO
PRESENT: Tammy Dunn, Senior Staff Attorney
Alan Massengill, Deputy Police Chief

AUDIENCE
MEMBERS: Michael Foster, Allies for Substance Abuse Prevention

ATTENDANCE

Chairperson Tedford called the meeting to order at 12:00 noon. All members were present for the meeting except Secretary Bailey who informed the Legal Department of his absence in advance and Mr. Colverson who arrived to the meeting at approximately 12:05 p.m.

APPROVAL OF MINUTES

Chairman Tedford and Ms. Solmonson both stated their intention to abstain from the vote as they were not present at the May 13, 2013 meeting. Ms. Williams moved, seconded by Ms. Scott, to approve the May 13, 2013 minutes. Prior to a vote, Mr. Otaduy stated he would like for the meetings to be (audio) recorded because the printed words in the minutes do not reflect the nuances of the meeting and, further, that the minutes did not contain some information that he would have put in the minutes. Chairman Tedford stated the issue of recording the meetings was later on the agenda and asked Mr. Otaduy if he would like to propose any corrections or specific changes to the minutes. Mr. Otaduy stated he would vote against the minutes. Ms. Solmonson moved, seconded by Chairman Tedford, to wait to vote on approval of the minutes until Mr. Colverson arrived at the meeting and the motion carried unanimously.

[See below for continuation of minutes]

APPLICATIONS FOR NEW BEER PERMITS AND THEIR ASSOCIATED MANAGER APPROVALS

None

ACTING SECRETARY

Ms. Scott nominated Mr. Colverson to be Acting Secretary. Ms. Solmonson seconded the nomination. Mr. Colverson was appointed Acting Secretary by a vote of 5-0 with Mr. Colverson abstaining. Mr. Colverson accepted the nomination. [This item was actually voted on during the discussion of Mr. Williams' manager application.]

NEW MANAGER APPROVAL APPLICATIONS

**Jerrold Anthony Williams
Oak Ridge Country Club
150 Gum Hollow Road**

Mr. Williams was present to discuss his application. Chairman Tedford asked Mr. Williams to post a notice in the manager's office that any change in manager will require submittal of an application to the board for approval. This was requested due to the timeframe between which the last approved manager left employment and the time of Mr. Williams' application.

The Board discussed the establishment's beer sales process with Mr. Williams. Mr. Williams stated beer is served on the premises, including on the golf course itself, and that all beer servers (about five) have ABC cards. Mr. Williams stated he has an ABC as well. Mr. Williams stated beer sales occur on the golf course through a beverage cart service. Mr. Williams stated he relies on the integrity of his staff and he trusts golfers to not break the law by handing beer to someone underage. Mr. Williams stated his inventory monitoring service shows the establishment has no less than a 98% rating. Mr. Williams recalled a previous incident where one golfer in a group did not have his ID on his person and beer was not sold to that individual. Mr. Williams also stated that employees know they will lose their job if caught selling to underage persons or breaking the rules.

Acting Secretary Colverson inquired of Mr. Williams how beer is legally transported/consumed while operating a golf cart, and Mr. Williams stated this was a practice everywhere but he had not specifically looked into whether it was legal or not. Mr. Otaduy told Mr. Williams Tennessee law allowed it. Ms. Scott indicated it was most likely permissible because it was on private property.

Mr. Otaduy inquired of Mr. Williams about employees handling/transporting beer under the ages of twenty-one (21) and eighteen (18). Mr. Otaduy spoke to Mr. Williams about Tennessee Code Annotated §57-5-301(e)(1) regarding possession/transportation of beer in the course of employment by persons under the age of twenty one (21), in contrast with City Code §8-801(3) regarding possession of beer in the course of employment by persons under the age of eighteen (18). Mr. Otaduy told Mr. Williams that employees under the age of eighteen (18) could ring up beer, sell beer, and transport beer to a vehicle provided an employee over the age of eighteen (18) approves it. Mr. Otaduy offered to email Mr. Williams the referenced information. Chairman Tedford stated the board was not a legal advisor and that statutes/ordinances were available online. Mr. Otaduy stated that was Chairman Tedford's interpretation. Chairman Tedford stated that is the way the board has always operated and Mr. Otaduy could propose a change to that process later. Mr. Otaduy stated Chairman Tedford had no right to restrain him. Chairman Tedford stated this issue would be discussed later and asked if there were any relevant questions for Mr. Williams.

Acting Secretary Colverson inquired of Mr. Williams why there was a year and a half delay in submitting his application. Mr. Williams stated he was not aware of the need to submit an application until he received a letter from the City a few months ago.

Mr. Otaduy moved, seconded by Acting Secretary Colverson, to approve the application without conditions and the motion carried unanimously.

Barry Bergren
Eagles
1650 Oak Ridge Turnpike

Mr. Bergren was not present at the meeting. This was the second meeting Mr. Bergren has missed. Mr. Bergen was reminded of the meeting by letter. Mr. Otaduy moved, seconded by Chairman Tedford, to give Mr. Bergren one more opportunity to attend a meeting and the motion carried unanimously. Incorporated into the motion was Ms. Scott's suggestion that the letter be sent by certified mail.

APPROVAL OF MINUTES (RE-VISITED)

[This item was taken back up from earlier in the meeting.]

Chairman Tedford asked Mr. Otaduy to state his issue with the minutes for the benefit of Acting Secretary Colverson. Mr. Otaduy repeated that there are nuances in the meeting that are not reflected in the minutes. Mr. Otaduy stated the minutes were fairly good, but not 100%, and there were some things he would have placed in the minutes. Mr. Otaduy stated he would prefer for the minutes to be recorded.

As examples, Mr. Otaduy stated the minutes did not reflect Deputy Chief Massengill's conversation with the owner of one of the establishments that was reported on by the Police Department under "Old/New Business" which was a personal accountant of the incident. Additionally, Mr. Otaduy stated the other establishment that was reported on was not a personal account of the incident by Deputy Chief Massengill but was a statement made by a drunk person who he did not think should necessarily be given credence. Mr. Otaduy stated it was also not clear who called the police to report the incidents. Mr. Otaduy stated the minutes were biased toward one establishment and were not perfect.

Ms. Williams stated the minutes were a good representation of what was said. Ms. Williams also stated that even if the meetings were recorded, there would be no expectation that everything said would be in the minutes or the minutes would be too bulky. Mr. Otaduy agreed, however, he stated City Council records meetings and court does as well.

Acting Secretary Colverson stated the minutes are not a transcript of the meeting but a summary. Acting Secretary Colverson stated the minutes could be corrected if needed, but that the minutes adequately captured the meeting, the minutes were not biased, and the minutes were not missing any substantive facts. Mr. Otaduy stated they did not need a transcript. Acting Secretary Colverson stated transcripts are expensive and require the services of a court reporter.

Acting Secretary Colverson moved, seconded by Ms. Scott, to approve the minutes as submitted and the motion failed by a vote of 3-1, with Mr. Otaduy voting against. Chairman Tedford and Ms. Solmonson abstained from the vote.

Note: At the meeting, it was believed that the vote was sufficient to approve the minutes because there was a majority vote of those who voted. However, City Code §8-603(2) requires a majority of those *present* at the meeting in order to take any action. This was not noticed until after the meeting and the minutes will be placed back on the agenda for approval at a future date.

NEW / OLD BUSINESS

A. Schedule Show Cause Hearing

At the May 13, 2013 meeting, the Board voted to hold a show cause hearing for Back to Brewski's regarding two arrests on April 14, 2013 occurring inside/outside the premises as reported to the Board by Deputy Chief Massengill. The vote included a requirement that the owners/managers be present at the show cause hearing and bring camera/video footage to the hearing. The Board then unanimously voted to decide on a show cause hearing date/time at the next regular meeting when more members would be present. Chairman Tedford moved, seconded by Ms. Scott, to schedule the show cause hearing immediately after the regular meeting in July 2013. Mr. Otaduy suggested a meeting date of July 8, 2013. Chairman Tedford stated the date needed to be realistic. Mr. Otaduy stated a hearing was not appropriate at this time and was not justified.

The motion carried by a vote of 5-1, with Mr. Otaduy voting against. The show cause hearing will be held immediately after the regular meeting in July 2013.

B. Audio Tape Recordings

At the May 13, 2013 meeting, Mr. Otaduy stated he would like for the meetings to be audio tape recorded for benefit of writing the minutes. While Mr. Otaduy's motion failed for lack of a second, Ms. Scott suggested this issue be discussed at the June 10, 2013 meeting.

Mr. Otaduy stated City Council meetings were recorded as well as City Court. Ms. Dunn stated City Court is not recorded as it is not a court of record. Mr. Otaduy stated he knew that City Court was recorded, but maybe that practice had stopped. Chairman Tedford stated City Court previously had General Sessions jurisdiction, but does not anymore. Chairman Tedford stated that current General Sessions court is recorded, but City Court matters are civil in nature and not recorded. Acting Secretary Colverson asked for a motion.

Mr. Otaduy moved to audio record the proceedings by either the staff liaison or a member of the board. Acting Secretary Colverson stated he may support a motion to record meetings that could involve litigation, such as show cause hearings and meetings where show cause hearings may be decided upon, but not all meetings. Chairman Tedford stated the meetings are public and anyone can attend. Ms. Solmonson agreed.

The motion failed for lack of a second.

C. Throttle Down Bar & Grill (Not Originally On Agenda)

Ms. Dunn reported that Ms. Betty Reynolds stopped by her office prior to the meeting and requested her name be removed as manager of the establishment. Ms. Reynolds stated she quit. Ms. Reynolds also said Ms. Aycock was no longer employed there. Ms. Scott suggested confirmation of whether Ms. Aycock (prior manager) is still employed in that capacity. Ms. Dunn stated the owner would receive a letter requesting a new manager application within the 15-day timeframe if Ms. Aycock was not a current manager and the letter would be delivered by the Police Department to obtain a status update on Ms. Aycock.

D. Breadbox (Not Originally On Agenda)

Ms. Dunn stated a request had been made by the Accounting Office of Breadbox for a special meeting to approve a new beer permit application due to changes in ownership. No member of the board made a motion to schedule a special meeting, therefore, the application will be

presented at the next regular meeting.

E. Agenda Order / Keeping to the Issues (Continuation of Prior Discussion)

Chairman Tedford addressed Mr. Otaduy about keeping to the issues as much as practically possible, especially since some members are using their lunch break from work to attend meetings. Chairman Tedford stated the importance of following the agenda to keep a good flow to the meeting and for members to state any objections, be accurate, and to the point. Ms. Williams stated it was especially important to keep to the agenda when applicants were present. Ms. Scott agreed. Mr. Otaduy suggested minutes be moved last on the agenda.

Chairman Tedford suggested minutes could be moved during a meeting if there were any objections to the minutes. Mr. Otaduy suggested the minutes be placed under "Old/New Business." Ms. Williams suggested that applicants could wait outside during discussions of the minutes. Chairman Tedford stated the meeting was open to the public and applicants could not be required to wait outside. Ms. Williams stated it was an awkward discussion at this meeting in front of the applicant. Chairman Tedford suggested that if there were problems with the minutes that the item could be moved to later in the agenda for discussion, like was done at this meeting, but to otherwise stay in the same agenda order. Mr. Otaduy stated he was fine with this as it offered flexibility.

Chairman Tedford moved, seconded by Ms. Scott, to adjourn the meeting. Mr. Otaduy wanted to discuss the application form.

F. Application Form (Not Originally On Agenda)

Mr. Otaduy expressed concern over the application form and indicated it was not informative regarding the ability of employees under eighteen (18) and under twenty-one (21) to handle beer. Mr. Otaduy stated if the purpose of the list on the back of the application is to remind applicants and inform them, then the list missed the point. Mr. Otaduy stated the list was confusing and redundant. Chairman Tedford asked whether there was any interpretation on the state's use of the word "transport/transportation" in the statute governing beer. Ms. Dunn stated she did not find anything that interpreted that word during the previous discussions on this issue and that the board approved the language on the application at a prior meeting. Ms. Dunn did state the City could attempt to obtain an Attorney General's Opinion but that such requests have to go through the state legislature. Ms. Scott asked what information applicants receive when requesting an application. Ms. Dunn stated the application packet contains instructions, the applications, and a copy of the City's beer ordinances.

Ms. Scott stated it was not right for a member of the board to give personal or legal interpretations to applicants regarding the meaning of state statutes. Ms. Scott stated if applicants had concerns over such matters, they could contact their own attorney and it was not for Mr. Otaduy to give an opinion. Ms. Scott stated applicants sign the application indicating they agree to comply with state and local beer laws. Acting Secretary Colverson echoed Ms. Scott's point. Acting Secretary Colverson stated the board is charged with issuing beer permits for the sale of beer and that acting beyond that charge is going beyond the board's authority. Acting Secretary Colverson stated the board has no interpretation authority over state law and it is illegal for the board to give legal advice. Acting Secretary Colverson cautioned Mr. Otaduy from speaking on behalf of the board regarding legal matters because if that information is wrong, the applicant can sue the board and the individual.

Mr. Otaduy stated he was not giving advice, but only reading the statute and the ordinance to the applicant at which point Mr. Otaduy read a city ordinance to Ms. Scott. Mr. Otaduy stated it was not his opinion he was giving and that the law was very clear. Mr. Otaduy then stated the

list on the application form was ridiculous list to try to inform applicants. Mr. Otaduy stated he was not giving legal advice, was not giving an interpretation, and that the board should change what an applicant is required to sign.

Chairman Tedford suggested the board no longer allow any interpretations of statutes to applicants, and that if an applicant does not understand a statute or requirement then the applicant should not sign the application.

ADJOURNMENT

The meeting adjourned at 1:05 p.m. upon the prior motion of Chairman Tedford that was seconded by Ms. Scott. The vote for adjournment was 5-1, with Mr. Otaduy voting against adjournment.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Debra Solmonson", written over a horizontal line.

Debra Solmonson, Acting Secretary