

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

Municipal Building Training Room – Room 104
Monday, August 12, 2013
12:00 noon

PRESENT: Secretary Barton Bailey, Colin Colverson, Theresa Scott, Debra Solmonson,
Chairman Randy Tedford, and Wendy Williams

ABSENT: None

ALSO PRESENT: Tammy Dunn, Senior Staff Attorney
Brad Jenkins, Lieutenant
Derrick Dalton, Special Agent Tennessee Alcoholic Beverage Commission

AUDIENCE MEMBERS: Michael Foster, Allies for Substance Abuse Prevention
Stacy Pratt, Allies for Substance Abuse Prevention
Kim Pouncey, Top Shelf
Bob Fowler, Knoxville News Sentinel
John Huotari, Oak Ridge Today

ATTENDANCE

Chairperson Tedford called the meeting to order at 12:03 p.m. All members were present.

APPROVAL OF MINUTES

Ms. Williams moved, seconded by Ms. Scott, to approve the minutes of the July 15, 2013 meeting and the motion carried by a vote of 4 to 0 with Secretary Bailey and Mr. Colverson abstaining from the vote due to their absence at the July meeting.

APPLICATIONS FOR NEW BEER PERMITS AND THEIR ASSOCIATED MANAGER APPROVALS

(None)

NEW MANAGER APPROVAL APPLICATIONS

Melanie Butts
Bread Box #3471
680 Emory Valley Road

Ms. Butts was present to discuss her application. The Board inquired about Ms. Butts' experience in selling beer and her managerial experience. The Board also reminded Ms. Butts about the responsibility to make sure no unlawful activity is occurring in the parking lot, such as beer consumption, and to call the police if there is any trouble. Lieutenant Jenkins reported there were no recent issues at the Bread Box.

Secretary Bailey moved, seconded by Ms. Scott, to approve the manager application and the motion carried unanimously.

NEW / OLD BUSINESS

Secretary Bailey moved, seconded by Ms. Scott, to discuss the item under New/Old Business out of order on the agenda and the motion carried unanimously.

Show Cause Hearing # 2013-03 – Back 2 Brewski's

Nang Crossno, owner of Back 2 Brewski's, and Dondie Jai Hensley were present at the meeting to request the Board to modify the decision made at the July 15, 2013 show cause hearing. Mr. Crossno handed out a letter, dated August 12, 2013, to the Board members at the meeting. Chairman Tedford responded to this letter by telling Mr. Crossno the reason for the Board's action at the show cause hearing was not due to the calls to the police but was due to the problems at the establishment that appeared to be a direct result of not cutting patrons off from beer consumption in a timely manner. Chairman Tedford also stated the Board had already decided this hearing and had never in the Board's history opened a hearing back up after a decision was made.

Mr. Colverson stated the Board would like to incentivize establishments to call the police when problems arise and that Mr. Crossno's letter begs the question of whether the police would have even known about the situation had the establishment not called for assistance. Chairman Tedford reiterated that the decision of the Board was not to penalize the establishment for calling the police. Chairman Tedford further stated he made the motion to allow half of the suspension to be lifted if all of the employees were trained particularly in how/when to cut off patrons from beer consumption.

Mr. Crossno stated he felt the decision was too harsh but did not disagree that some type of action should have been taken by the Board. Ms. Scott stated the opportunity for explanations was at the show cause hearing and it was unfortunate that Mr. Crossno now had a different responsible. Ms. Scott stated at the show cause hearing the establishment was found to be irresponsible and the Board was being kind by allowing one week of the suspension to be lifted if employees were trained. Mr. Crossno stated this was a lesson learned and he should have brought an attorney to the show cause hearing. Mr. Crossno asked the Board to amend the motion to allow for a civil penalty to be paid. Lieutenant Jenkins reported on an incident recently occurring outside the establishment (August 10, 2013) regarding intoxication.

Ms. Scott moved to leave the decision as is. This motion died for lack of a second.

Mr. Colverson moved, seconded by Ms. Solmonson, to maintain the two week suspension and to continue to allow one week of the suspension to be lifted if employee training occurred by the deadline, but to add a \$1,000 civil penalty in lieu of the remaining one week suspension and the motion carried by a vote of 5 to 1 with Ms. Scott voting against. Mr. Crossno stated training is scheduled for August 22, 2013 at 9:00 a.m. The Board informed Mr. Crossno that the civil penalty must be paid seven days prior to the suspension (scheduled to begin on September 1, 2013). Mr. Crossno stated he was aware of the seven day requirement.

Chairman Tedford stated this was extraordinary circumstances and in most cases he would be reluctant to change a show cause decision of the Board. Chairman Tedford stated he was not entirely comfortable with changing the decision and asked Mr. Crossno to please be careful and have no repeat offenses.

SHOW CAUSE HEARING

Show Cause Hearing # 2013-04

Applebee's Neighborhood Bar & Grill

1213 Oak Ridge Turnpike

Class "C" Beer permit # 1220, Approved: 6/8/1998

Owner: Quality Restaurant Concepts LLC

Manager: Amy Ann Steele (Approved 6/14/2010)

Chairman Tedford announced the show cause hearing and swore in the witnesses.

Bobby Prince, Regional Manager, and Andy Keck, General Manager, were present for the hearing. Mr. Prince advised that Ms. Steele is no longer employed as a manager of the establishment.

Special Agent Derrick Dalton, Tennessee Alcoholic Beverage Commission (TABC), reported to the Board that the TABC conducted a minor compliance check in Anderson County on March 18, 2013. As part of this compliance check, seven establishments sold beer to a minor which included Applebee's. According to prior history, this was the second offense for the sale of beer to a minor by Applebee's with the first occurring in May 2012. Since this was the second offense within a three year period, the TABC's approach was more aggressive and the TABC and Applebee's agreed to a five day suspension of the liquor by the drink permit and a \$500.00 penalty.

When asked by the Board, Special Agent Dalton could not explain why the City/Board did not receive notice of the prior offense; however, he did explain that notice of the recent offense was in response to a pilot project by the State. Special Agent Dalton listed the other businesses that also sold beer to a minor, but reported these were a first offense: Moose Lodge, Lincoln's, Hildalgo, Aubrey's, Hacienda, and Ruby Tuesday.

Ms. Williams asked Ms. Dunn if she received any detail on the other businesses. Ms. Dunn stated she did not, however, she did ask the State about whether information would be sent and was told the information was not sent because the businesses were first offenders. Special Agent Dalton stated he would like to have a working relationship with the City for notifications.

Secretary Bailey inquired of Applebee's what happened since the information shows their employee looked at the minor's driver's license but still sold him a beer. Mr. Prince stated there was an issue in calculating the date. Mr. Prince noted that there has been a complete change in leadership at Applebee's and he is now the Regional Manager for this location and Mr. Keck is the General Manager.

Mr. Prince gave the Board a four-page document regarding the courses of action that have been implemented by Applebee's since the unlawful sale occurred. As part of the change in leadership, a more direct and aggressive policy on alcohol and beer sales was implemented. This policy includes requiring a valid ID from all patrons desiring to purchase alcohol and beer, the use of a TABC Overlay Card that helps identify the date of birth, a requirement that the date of birth be written on the order pad and placed in the order system, a requirement that bartenders not process the order without the date of birth, a requirement that all employees be ABC certified prior to any employment involving alcohol/beer sales, a requirement for managers to check for the Overlay Card at each pre-shift daily meeting, a requirement that managers validate the "We ID Sign" daily, and a requirement that all employees complete the Serv-Safe Alcohol Program. Additionally, Mr. Prince stated there is a no tolerance policy for failure to comply. Mr. Prince also stated managers are required to personally observe any patron who orders a second alcohol/beer beverage for any signs of intoxication. Ms. Kim Pouncey with Top Shelf stated her organization created the Overlay Card that is being used at Applebee's.

Mr. Prince stated immediate action was taken against the employee, though he cannot explain why the employee did not realize the patron was underage. Mr. Prince stated all employees must sign a contract to comply with the policy and there has been some turnover because of the new policy.

Mr. Colverson stated Applebee's had taken exemplary mitigative measures, however, this was the second offense for the sale of beer to a minor even though it is the first time before the Board. Mr. Colverson also stated the sale of beer to a minor is the most offensive violation. Mr. Prince stated he was not the Regional Manager at the time of the first offense; however, there were consequences for the first offense with the TABC. Mr. Prince stated he would like to move forward and mentioned immediate action was taken when this sale of beer occurred. Mr. Colverson asked Mr. Prince what his thoughts would be if the Board initiated a civil penalty. Mr. Prince stated he feels they have already been penalized for the unlawful sale by the State and the penalty had an impact on the business through a large loss in revenue. Secretary Bailey asked if beer was sold during the suspension of the liquor license and Mr. Prince said it was. Ms. Scott asked if there were any other complaints against Applebee's and Lieutenant Jenkins stated there was one complaint but it was unfounded.

Ms. Scott pointed out that Applebee's does a lot for the community, such as pancake breakfasts and fundraisers, which encourages a younger crowd but beer was sold to a minor. Mr. Prince stated they are a family oriented establishment and do not cater to one demographic. Ms. Scott stated she liked what Applebee's has done in response to the unlawful sale.

Ms. Solmonson moved, seconded by Ms. Williams, that Applebee's had shown sufficient cause for the Board to not take any negative action against the beer permit. Chairman Tedford stated they do need better communication with the State in a more timely manner. Secretary Bailey stated he would not support the motion because there had been no action against the beer permit. While Secretary Bailey stated Applebee's response was beautiful corrective action and could even be used as a model for other businesses, beer was still sold twice to a minor with the last year. Mr. Prince stated they have been penalized by the organization that conducted the sting operation. Secretary Bailey stated had the Oak Ridge Police Department conducted the sting operation and there were two offenses for selling beer to a minor, he would move for revocation. Mr. Colverson echoed Secretary Bailey's position against the motion and stated it is a big problem to allow the sale of beer to a minor so how could the Board not take any action. Mr. Prince stated it was not fair to use them as an example for lack of communication with the State. Mr. Colverson stated there are two systems in place here – a liquor license and a beer permit – that are operated independently by parallel governments.

Ms. Solmonson stated she sees a difference with this establishment because they have a clear path forward and owned the mistake, which did not happen with last month's show cause hearing.

Mr. Prince stated it is not their practice to sell beer to a minor and for the Board to punish them would be like double jeopardy. Mr. Dalton stated he will speak to his lieutenant about ways to improve communication. Mr. Colverson called the question. The motion failed by a vote of 2 to 4 with Ms. Solmonson and Ms. Williams voting in favor, and Chairman Tedford, Secretary Bailey, Mr. Colverson, and Ms. Scott voting against.

Mr. Colverson moved, seconded by Secretary Bailey, that Applebee's had not shown adequate cause as to why the Board should not take negative action against the beer permit and the motion carried by a vote of 4 to 2 with Chairman Tedford, Secretary Bailey, Mr. Colverson, and Ms. Scott voting in favor, and Ms. Solmonson and Ms. Williams voting against.

Mr. Colverson asked what Mr. Prince's thoughts were about a five day suspension or a \$2,500 civil penalty. Mr. Prince stated he thought \$2,500 was steep and again was concerned about being punished twice.

Mr. Colverson moved, seconded by Secretary Bailey, to impose a five day suspension and to offer a \$2,500 civil penalty in lieu of suspension and the motion carried by a vote of 4 to 2 with Chairman Tedford, Secretary Bailey, Mr. Colverson, and Ms. Scott voting in favor, and Ms. Solmonson and Ms. Williams voting against. Mr. Colverson moved, seconded by Secretary Bailey, to impose the suspension beginning September 30, 2013 and the motion carried by a vote of 4 to 2 with Chairman Tedford, Secretary Bailey, Mr. Colverson, and Ms. Scott voting in favor, and Ms. Solmonson and Ms. Williams voting against.

Mr. Prince stated they would comply but asked that the Board be consistent.

NEW / OLD BUSINESS

(Resumed)

Chairman Tedford moved, seconded by Secretary Bailey, for the staff liaison to formally communicate with the TABC and ask that the City/Board be informed in the future any the results of any TABC operation. Secretary Bailey asked that the motion be amended to ask the TABC to provide records going back five years for results of sting operations. Chairman Tedford was agreeable to that amended language. The motion carried unanimously.

Ms. Scott moved, seconded by Secretary Bailey, to hold a show cause hearing for Lincoln's for the unlawful sale of beverage containing alcohol to a minor and to require Scott Green, Mike Lincoln, and Lisa Green to be present and for the show cause hearing to take place at the next available regularly scheduled meeting of the Board provided the City receives the necessary documentation from the TABC and the motion carried unanimously.

Michael Foster, Allies for Substance Abuse Prevention, handed out ID cards to the Board members. Mr. Foster also introduced Stacy Pratt, Allies for Substance Abuse Prevention, and stated she may be present at future meetings in his absence.

Chairman Tedford stated he would like the staff liaison to look into amending the ordinance to require anyone cited by the TABC to notify the City/Board within ten (10) working days.

Ms. Pouncey, Top Shelf, informed the Board that she conducts training and can give the Board a list of who completed training for each establishment that she trains. She also passed out business cards and asked anyone to call her with questions.

Ms. Scott asked how the Board would go about requiring all owners to take a class prior to receiving the beer permit. Ms. Dunn stated it would require an ordinance amendment. Ms. Scott asked that information be presented at the next meeting on this issue. Mr. Crossno stated it may need to be for managers if the business is larger.

ADJOURNMENT

Secretary Bailey moved, seconded by Mr. Colverson, to adjourn the meeting and the motion carried unanimously. Meeting adjourned at 1:45 p.m.

Respectfully submitted,

(Signature on official copy)

Barton Bailey, Secretary