



City of Grand Island

Tuesday, December 06, 2011

Council Session

Item E1

**Public Hearing on Request from GIPH Restaurants, LLC dba
Pizza Hut, 707 North Diers Avenue for a Class “A” Liquor License**

Staff Contact: RaNae Edwards

Council Agenda Memo

From: RaNae Edwards, City Clerk

Meeting: December 6, 2011

Subject: Public Hearing on Request from GIPH Restaurants, LLC dba Pizza Hut, 707 North Diers Avenue for a Class "A" Liquor License

Item #'s: E-1 & I-1

Presenter(s): RaNae Edwards, City Clerk

Background

Section 4-2 of the Grand Island City Code declares the intent of the City Council regarding liquor licenses and the sale of alcohol.

Declared Legislative Intent

It is hereby declared to be the intent and purpose of the city council in adopting and administering the provisions of this chapter:

- (A) To express the community sentiment that the control of availability of alcoholic liquor to the public in general and to minors in particular promotes the public health, safety, and welfare;
- (B) To encourage temperance in the consumption of alcoholic liquor by sound and careful control and regulation of the sale and distribution thereof; and
- (C) To ensure that the number of retail outlets and the manner in which they are operated is such that they can be adequately policed by local law enforcement agencies so that the abuse of alcohol and the occurrence of alcohol-related crimes and offenses is kept to a minimum.

Discussion

GIPH Restaurants, LLC dba Pizza Hut, 707 North Diers Avenue has submitted an application for a Class "A" Liquor License. A Class "A" Liquor License allows for the sale of beer on sale only inside the corporate limits of the city.

City Council action is required and forwarded to the Nebraska Liquor Control Commission for issuance of all licenses. This application has been reviewed by the Clerk, Building, Fire, Health, and Police Departments. (See attached Police Department Report.)

Also submitted with the application was a request from Scott Kemery, 4156 Vermont Avenue for a Liquor Manager designation. Due to a conviction in 1995 for procuring/sale of alcohol to a minor, this automatically disqualifies Mr. Kemery from becoming the liquor manager. The Police Department report recommends denial of the Liquor Manager Designation for Mr. Kemery based on the Liquor Control Rules and Regulations Section 53-131.01 (d).

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Approve the application.
2. Forward to the Nebraska Liquor Control Commission with no recommendation.
3. Forward to the Nebraska Liquor Control Commission with recommendations.
4. Deny the application.

Recommendation

Based on the Nebraska Liquor Control Commission's criteria for the approval of Liquor Licenses, City Administration recommends that the Council approve this application.

Sample Motion

Move to approve the application for GIPH Restaurants, LLC dba Pizza Hut, 707 North Diers Avenue for a Class "A" Liquor License contingent upon final inspections and **deny** the Liquor Manager designation for Scott Kemery, 4156 Vermont Avenue based on the Liquor Control Commission Rules and Regulations Section 53-131.01 as submitted by the Police Department report.

11/29/11
450

Grand Island Police Department

12:01
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LAW INCIDENT TABLE

Page:

City : Grand Island
Occurred after : 11:17:18 11/21/2011
Occurred before : 11:17:18 11/21/2011
When reported : 11:17:18 11/21/2011
Date disposition declared : 11/21/2011
Incident number : L11112579
Primary incident number :
Incident nature : Liquor Lic Inv Liquor License
Investigation
Incident address : 707 Diers Ave N
State abbreviation : NE
ZIP Code : 68803
Contact or caller :
Complainant name number :
Area location code : PCID Police - CID
Received by : Vitera D
How received : T Telephone
Agency code : GIPD Grand Island Police Department
Responsible officer : Vitera D
Offense as Taken :
Offense as Observed :
Disposition : ACT Active
Misc. number : RaNae

Geobase address ID : 18777
 Long-term call ID :
 Clearance Code : CL Case Closed
 Judicial Status : NCI Non-criminal Incident

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INVOLVEMENTS:

Px	Record #	Date	Description	Relationship
LW	L11112580	11/21/11	Liquor Lic Inv	Related
NM	170426	11/22/11	Kemery, Scott B	Liquor Manager
NM	171726	11/22/11	Staab, Susan K	Michael's Wife
NM	171727	11/22/11	Staab, Lisa D	Curtis' Wife
NM	171728	11/22/11	Kemery, Rhonda	Scott's Wife
NM	52824	11/21/11	Staab, Curtis W	Part Owner
NM	67301	11/21/11	Staab, David W	Part Owner
NM	121900	11/21/11	Staab, Jill K	David's Wife
NM	124499	11/21/11	Staab, Michael G	Part Owner

LAW INCIDENT CIRCUMSTANCES:

Se Circu Circumstance code : Miscellaneous

1 LT21 Restaurant

LAW INCIDENT NARRATIVE:

I Received a Copy of a Liquor License Application from Pizza Hut and a
 Liquor
 Manager Application from Scott Kemery.

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Grand Island Police Department

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LAW INCIDENT TABLE

Page:

LAW INCIDENT RESPONDERS DETAIL:

See Responding office Unit number

1 Vitera D 318 Vitera D

LAW SUPPLEMENTAL NARRATIVE:

Seq Name Date

1 Vitera D 14:53:29 11/21/2011

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Grand Island Police Department

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LAW INCIDENT TABLE

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Grand Island Police Department

Supplemental Report

Date, Time: Mon Nov 21 14:53:42 CST 2011

Reporting Officer: Vitera

Unit- CID

Kenneth and Rose Mary Staab gifted all of their shares of common stock in Staab

PH Restaurant Operations, Inc. to David Staab, Michael Staab, Gary Staab, and

Curtis Staab. Since the makeup of the corporation has changed, a new Class A

(beer on sale only) LLC liquor license is being applied for at the South Locust

and Diers location. A Temporary Operating Permit (TOP) was applied for and

granted by the NLCC for each restaurant. A liquor manager application was also

received from Scott Kemery. His wife, Rhonda, signed a Spousal Affidavit of Non Participation form.

In reviewing the application, all of the owners have wives, and none of the

wives filled out a Spousal Affidavit of Non Participation form. David's wife is

Jill. Gary's wife is Lissi. Curtis' wife is Lisa, and Michael's wife is Susan.

David and Jill have lived in Grand Island since 1991. Gary and Lissi have

lived in Golden, Colorado and Kearney, Missouri since 2001. Curtis and Lisa

have lived in Lincoln since at least 2001, and Michael and Susan have also lived

in Lincoln since at least 2001.

On the liquor license application and the liquor manager application, it clearly

asks "Has anyone who is a party to this application, or their spouse, ever been

convicted of or plead guilty to any charge. Charge means any charge alleging a

felony, misdemeanor, violation of a federal or state law, a violation of a local

law, ordinance or resolution." David Staab disclosed a DUI from 1986 or 1987.

No other convictions were disclosed.

I checked all of the applicants through Spillman and NCJIS. I located entries

in Spillman for David, Curtis, Michael, and Jill. David and Curtis appear to

have speeding convictions. No potential convictions were located in Spillman

for Michael or Jill.

When I checked NCJIS, I learned that David has eleven undisclosed speeding

convictions and one reckless driving conviction from 1982. Jill has no

convictions listed in NCJIS. Gary and Lissi have no entries in NCJIS. Curtis

has eight undisclosed speeding convictions in NCJIS. Lisa has no convictions

listed in NCJIS. Michael has one undisclosed speeding conviction, and Susan has

no convictions listed in NCJIS.

Since I can't run out of state criminal history checks on liquor license

investigations, fingerprint submissions by Gary and Lissi will have to determine

their eligibility.

The failure of David, Curtis, and Michael to disclose their speeding convictions

technically makes the application false according to the Nebraska Liquor Control

Act (Part II Chapter 2 Section 010.01). The undisclosed convictions would fall

under state law or local ordinance. Either way, the convictions are either

infractions or misdemeanors that don't rise to the level of a Class I

Misdemeanor in a specified crime under Nebraska State Statute Chapter 28 that

would automatically nullify the liquor license. A speeding conviction here or

there is an understandable omission. However, a dozen undisclosed convictions

by David and seven by Curtis is a little hard to overlook.

Marc Julian for Staab Management is listed on the application as a person who

assisted with the application. On 11/22/11, I called Mr. Julian, left him a

voicemail, and asked him to call me.

In reviewing the liquor manager application, Scott and Rhonda Kemery moved to

Grand Island this year. Before that, they lived in Omaha since at least 1998.

Scott has an entry in Spillman for reporting a theft from Pizza Hut. Rhonda

does not have a Spillman entry. I also checked them both through NCJIS. Rhonda

has an undisclosed speeding conviction, and Scott has three undisclosed

convictions. One is for speeding, one is for improper passing, and the other is

for procure/sale of alcohol to a minor in 1995. The alcohol related conviction

appears to automatically disqualify Scott from becoming the liquor manager. The

applicable statute is 53-131.01 which reads in part...

(1) The application for a new license shall be submitted upon such forms as the

commission may prescribe. Such forms shall contain, (d) a statement that the

applicant is a citizen of the United States, that the applicant and the spouse

of the applicant are not less than twenty-one years of age, and that such

applicant has never been convicted of or pleaded guilty to a felony or been

adjudged guilty of violating the laws governing the sale of alcoholic liquor or

the law for the prevention of gambling in the State of Nebraska, except that a

manager for a corporation applying for a license shall qualify with all

provisions of this subdivision as though the manager were the applicant, except

that the provisions of this subdivision shall not apply to the spouse of a manager-applicant.

On 11/22/11, I spoke with Scott Kemery over the phone. He advised that his sale

to a minor occurred when he owned Max MaGruder's in Kearney at the Hilltop Mall.

Scott said he had no excuses, but he got caught up in a "sting." Scott also

pointed out that he has since been the liquor manager for Pizza Hut in Fremont

and currently is the liquor manager for the Pizza Hut in McCook. Question

number two on the manager application covers Scott's position in Fremont and

McCook. Question number three asks if he qualifies under 53-131.01 as a

manager. The yes box is checked, however, it doesn't appear that he technically

qualifies. I informed Scott that the police department plans on recommending to

the city council that they deny his application. I also asked him to have Marc

Julian or one of the Staabs call me.

Shortly after I got off the phone with Scott, I received a call from Marc

Julian. I explained to him what I had told Scott about the manager application.

I also told him that David and Curtis have multiple undisclosed traffic convictions. Marc said he would check with them and see if they agree and call

me back with their disclosure. He assured me that he would have the information

for me by 12/1/11.

On 11/29/11, I received a call from Marc Julian who advised that he had been in

contact with David and Curtis Staab. David and Curtis acknowledged to Marc that

they each had several undisclosed speeding convictions. I told Marc that I

would consider what they said as a full disclosure.

In summary, the Grand Island Police Department (GIPD) recommends that the city

council approve the liquor license applications from Staab Management for Pizza

Hut on Diers and South Locust. However, the GIPD recommends that the city

council deny the liquor manager application from Scott Kemery based on his sale

to a minor conviction that excludes him from being a manager according to

53-131.01.