

MINUTES
REGULAR MEETING OF
LAKEWOOD LIQUOR AND FERMENTED MALT BEVERAGE
LICENSING AUTHORITY

August 13, 2009

A Regular Meeting of the Lakewood Liquor and Fermented Malt Beverage Licensing Authority was held on this date in the City Council Chambers.

ITEM 1 – CALL TO ORDER

Hearing Officer Richard Miller called the meeting to order at 2:00 p.m.

ITEM 2 – SHOW CAUSE HEARING (Continued from 7/23/09)

Hotel & Restaurant License
The Penalty Box, Inc.
d/b/a The Penalty Box Bar and Grill
1862 S. Wadsworth Blvd.

Jennifer Roth, Lakewood Municipal Prosecutor, was present at the hearing.

Patrick Delants, Vice-President and Manager of The Penalty Box Bar and Grill, Inc. was also present.

Mr. Miller stated that Ms. Roth and Mr. Delants had been given copies of the Findings, Conclusions and Order.

Ms. Roth stated that she did not have any comments regarding the Findings, Conclusions and Order.

Holly Delants, 7574 Haleys Dr., Littleton, CO 80125, was sworn in by Sharon Blackstock, City of Lakewood. Ms. Delants stated that she wanted to clarify a couple of items so that her husband would not be in violation again. Ms. Delants stated that there were comments regarding the condition of the kitchen of the Penalty Box and that it did not look like it was being used as a working kitchen even though the fryers were on, the grill was lit, there was food portioned in the coolers and she wanted to know what was used to determine whether a kitchen was or was not being used as a working kitchen.

Mr. Miller stated that in the case of The Penalty Box, he had relied on the testimony of the inspector who had taken photos of the kitchen and had looked at the kitchen. Mr. Miller stated that the kitchen looked unused and that it did not appear to be prepared to serve meals on a regular basis. Mr. Miller stated that The Penalty Box had a Hotel and Restaurant License which meant that the business was a restaurant and one expected to see, when walking into a restaurant, a stockpile of food or food

simmering that was ready to be served. Mr. Miller stated that that was simply an additional factor and was not the determining factor. Mr. Miller stated that the main reason was that The Penalty Box was not serving meals that equaled 25% of the gross sales which was based on the accounting and financial issues.

Ms. Delants asked what would be acceptable proof of meeting the 25% food requirement. Ms. Delants stated that they did not have the resources to get a better system than what they currently had in place.

Mr. Miller stated that Ms. Delants would have to sit down with someone at the City and ask them for their guidance on how to better document their food sales. Mr. Miller stated that although the recordkeeping at The Penalty Box was poor and what was available for the City to review was inadequate, which was also a violation of the code; he did not address the inadequate recordkeeping as a violation. Mr. Miller stated that to satisfy the City, The Penalty Box must have adequate records that showed that the food service was in excess of 25%.

Michelle LaCrue, Lakewood Tax Auditor, stated that old-fashioned record keeping was perfectly acceptable. Ms. LaCrue stated that paper receipts and tickets of food ordered that were filed on a monthly basis would be acceptable and the City could review them or do an audit using them.

Ms. Roth stated that at the last hearing, her understanding was that Mr. Delants was going to apply for a Tavern License.

Mr. Delants stated that he had all of the paperwork but Joyce Wamboldt, Lakewood Liquor Licensing Specialist, was out of the office and not due back into the office until Monday, August 17, 2009. Mr. Delants stated that he was told that Ms. Wamboldt was the only person who could accept the paperwork.

Ms. Roth stated that Ms. Wamboldt had to review the paperwork to see if all of the documentation needed was there. Ms. Roth stated that she would recommend that Mr. Delants be given a date where he would have to submit the paperwork to the City, preferably early in the following week. Ms. Roth stated that this had been an ongoing issue for quite awhile. Ms. Roth stated that she would recommend that the paperwork be submitted in its entirety, reviewed by Ms. Wamboldt, and if the paperwork was not done by a certain date, that the Hotel and Restaurant License be surrendered.

Mr. Delants stated that they were planning to submit all of the paperwork to Ms. Wamboldt on Monday morning. Mr. Delants stated that he had been trying to get it done before Ms. Wamboldt left for vacation but there was an incredible amount of paperwork involved and background information required. Mr. Delants stated that he wanted to make sure everything was correct before he submitted the documents and that he had all of the paperwork ready to go now.

In answer to Mr. Miller's questions regarding whether Mr. Delants was prepared to pay the fees, Mr. Delants stated that the only check that would be cashed right away would be the City check and the State check would be cashed a couple of weeks later. Mr. Delants stated that he had the funds to pay the City and, hopefully, by the time that the paperwork was submitted to the State, the money would be in the account.

Ms. Delants stated that they would have the money to cover the State funds in about three days.

Mr. Miller stated that there needed to be a resolution to this problem. Mr. Miller stated that if Mr. Delants could not satisfy the food requirement for a Hotel and Restaurant license, then it was pointless for them to continue with that license and that they would be back before the Liquor Licensing Authority again. Mr. Miller stated that if Mr. Delants could not meet the 25% food requirement, then revocation of the license would be the next step. Mr. Miller stated that if Mr. Delants was going to go forward with applying for a Tavern License, Mr. Delants would have to do the Needs and Desires of the Neighborhood, as if it were a new license. Mr. Miller stated that it was not totally without risk of being denied but it seemed to be the only alternative unless Mr. Delants had some plans as to how he was going to operate as a restaurant and meet the 25% food sales requirement.

Mr. Delants stated that when they were shut down for the four days for the incident involving the altercation at the bar, he remodeled the bathrooms, upgraded the patio, and since he did the remodeling, he was seeing a rise in business. Mr. Delants stated that one of the problems with his facility was that there were not enough windows so people did not look at it as a place that they would want to go to eat. Mr. Delants stated that it was a little dim inside but even when the lights were on, since there were no windows to bring external light in, it did not brighten up that much. Mr. Delants stated that with the new patio, he had seen people start coming in and eating a little more. Mr. Delants stated that they were going to start offering food specials and lunch specials but that he would rather go forward with trying to obtain the Tavern License and not have the 25% food service come into question. Mr. Delants stated that, hopefully, he could submit the application on Monday.

In answer to Mr. Miller's question regarding the disciplinary history for The Penalty Box, Ms. Blackstock stated there was a Sale to Minor violation that occurred on May 16, 2007, the hearing was held July 26, 2007 with a penalty of ten days suspension with 5 days held in abeyance for one year from July 27, 2007 and the licensee paid a fine in lieu of suspension. Ms. Blackstock stated there was a Conduct of Establishment violation that occurred on February 2, 2009, the hearing was held on June 11, 2009 and continued to June 25, 2009 for the decision. Ms. Blackstock stated that the penalty for that violation was fourteen days suspension with ten days held in abeyance for one year from June 25, 2009 and the licensee served a four-day suspension.

Mr. Miller stated that he would read the conclusion portion of the Findings, Conclusions and Order of the Authority into the record:

II. Conclusion

15. Based upon testimony and the exhibits and the findings made, the Authority concludes that the licensee had failed for a substantial period of time, to meet the requirement that a Hotel and Restaurant licensee operate in fact a substantial food sale operation comprising of at least 25% of the licensee's gross food and drink sales.

16. There was no evidence to support a conclusion that the licensee was currently meeting a 25% food sales requirement.

17. The Authority, therefore, concludes that the licensee, The Penalty Box, Inc., d/b/a The Penalty Box Bar and Grill, was in violation of Section 12-47-411(1)(a) of the Colorado Revised Statutes by failing to actually and regularly serve meals the sales of which provide not less than twenty-five (25%) of the gross income from sales of food and drink of the business of the licensed premises.

Mr. Miller stated that in his view, the evidence suggested that the licensee had not met that 25% requirement, going back to the year 2007. Mr. Miller stated that the beginning date of the audit was September of 2007 through September of 2008. Mr. Miller stated that the audit concluded that the food sales were 5 or 6% of the gross sales for that one year period and there was no indication since that time that the licensee had done any better than that.

In answer to Mr. Miller's questions, Ms. Roth stated that the approval process for a new liquor license would take several months because of the background investigation.

Mr. Miller stated that he would impose a fifteen-day suspension and that the fifteen-day suspension would be held until a complete package was submitted to the City of Lakewood no later than the close of business on August 17, 2009, along with all the fees. Mr. Miller stated that the suspension would be held pending final action on the Tavern License. Mr. Miller stated that if the Tavern License was approved, then the fifteen-day suspension would be set aside, and if the Tavern License was denied, then the dates would be set for the fifteen-day suspension to begin.

Mr. Miller stated that Ms. Wamboldt would make the determination as to whether the application was complete. If Ms. Wamboldt determined that the package was not complete or if the application was not submitted by August 17, 2009, then the fifteen-day suspension would commence at 7:00 a.m. on September 14, 2009 and would end at 7:00 a.m. on September 29, 2009.

ITEM 3 – GENERAL BUSINESS

There was no general business to be discussed.

ITEM 4 – ADJOURNMENT

There being no further business to come before the Authority, Richard Miller adjourned the meeting at 2:24 p.m.

Richard Miller, Hearing Officer,
Lakewood Liquor and Fermented
Malt Beverage Licensing Authority

Joyce Wamboldt, Liquor Licensing Specialist