

**CITY OF BRISTOL, TENNESSEE
MINUTES OF THE BEER BOARD MEETING
HELD OCTOBER 18, 2017**

BOARD MEMBERS PRESENT

Mr. Craig Kistner – Chairman
Mr. Mike Ketron – Vice Chairman
Mr. Vince Turner
Mr. Spike Tickle
Mr. Jason Walden

CITY EMPLOYEES PRESENT

Chief Blaine Wade
Capt. Charlie Thomas
Capt. Glenn James
Lt. Brad Tate
Inv. Mike Carlson
Ms. Danielle Kiser, City Atty.
Ms. Robin Stedman

Call to Order – At approximately 5:00 pm on October 18, 2017, Mr. Kistner, Chairman of the Beer Board for the City of Bristol, Tennessee, called the meeting to order in the Conference Room of the Ewell L. Easley Municipal Bldg., located at 104 Eighth St., Bristol, Tennessee.

Review of Minutes – After review of the minutes Mr. Turner requested a change on page 3, line 8, to read “. . . Mr. Kistner, Mr. Ketron, and Mr. Tickle opposed.”, everything else was approved.

NEW BUSINESS

Bristol Beer and Cigar Emporium, 1182 Volunteer Pkwy., Suite 2, Bristol, TN – Ms. Vickie Dugger and Mr. Mark Dugger appeared before the Board to request an Off-Premises Permit. Capt. James advised the Application is in order, all fees paid, and background checks conducted. He related Ms. Dugger and two employees successfully completed Alcohol Education and Awareness Training. Mr. Kistner called for questions/comments from the public, there were none. He called for questions from the Board, there were none. Mr. Turner made a motion to approve the Application, seconded by Mr. Ketron. The motion was approved by unanimous vote.

Zachary’s Steak House, 724 State St., Bristol, TN – Mr. Yared Desalegn, Owner, appeared before the Board on a violation of selling beer to an underage Confidential Informant (CI). Mr. Kistner called Inv. Mike Carlson to brief the Board. Inv. Carlson advised on September 16, 2017, during the Rhythm and Roots Reunion in downtown Bristol, the Bristol TN Police Dept. Street Crimes Unit conducted several alcohol compliance checks. The CI, DOB November 26, 1996, was instructed to show her legally issued ID if asked, and answer any questions truthfully. They went to Zachary’s Steak House and sat in the designated outside seating area, the server approached and the CI ordered a beer, the server brought her the beer without asking for any ID. Inv. Carlson identified himself to the server, who related he thought the Rhythm and Roots wristband was an over 21 wristband. Inv. Carlson then issued a citation for the violation. Inv. Carlson passed out a picture of the CI’s Virginia Driver License and the wristband purchased for entrance to the Rhythm and Roots Reunion. The ID is printed vertical and shows the holder is under 21 years of age, Mr. Turner asked if all Virginia under 21 licenses are printed vertical, Inv. Carlson said they are, and once the holder is 21 they can obtain a license printed horizontally. Mr. Kistner related that is a good idea as it is immediately

recognizable. Mr. Walden asked if the wristband has anything to do with age, Inv. Carlson said it did not, it only shows that the wearer has paid the entrance fee. Mr. Kistner asked Mr. Desalegn if he had any questions, he did not, he related the server was confused about the wristbands and mistook the Rhythm and Roots wristband for the one issued to customers over the age of 21. Mr. Tickle asked if this is the first violation for this business, Capt. James advised it is. Mr. Turner asked if Mr. Desalegn is a Certified Vendor under the Tennessee Responsible Vendor Act, he is not. Mr. Kistner called for further discussion, there was none, he then called for a motion. Mr. Tickle made a motion to suspend the permit for ten days with the option of a \$1500 Civil Penalty, seconded by Mr. Walden. Mr. Kistner called for a vote, the motion was approved by unanimous vote.

OLD BUSINESS

The Sportsman, LLC, 1403 Bluff City Hwy., Bristol, TN – Ms. Patty Howington, Co-Owner and holder of the Beer Permit, and Mr. James Howington, Co-Owner, with Attorney Matt King, appeared before the Board to answer a Petition submitted by Chief Blaine Wade, Chief of Police. The Petition is for Violation of Chapter 6, Article 3, of the Code of Ordinances, by maintaining and operating a premises in such a manner as to be detrimental to the public health, safety, and morals. Mr. Kistner called on Ms. Howington who advised Mr. King will be speaking for them. Mr. King asked to address the Board first, Mr. Kistner advised him this is an informal format, so he could do so. Mr. King advised he reviewed the Petition and City Ordinance before this meeting, and would like to stress that the Beer Permit is in Ms. Howington's name, and there were no allegations listed in the petition to revoke the permit against her as an individual. Mr. Howington pled guilty in court and took full responsibility for any criminal violations committed at the business. He related Ms. Howington, as the Beer Permit holder, has not been charged but was cleared in the investigation conducted by the police department. Mr. King advised all evidence in the court case pointed at a bartender violating the law during an undercover investigation, Ms. Howington was not present during that time and there were no allegations that she had knowledge of or participated in any illegal activities. Mr. King related the character and reputation of the permit holder can be considered by the Board, the Ordinance states, "No Permit shall be issued to any person who is not of good standing, or of good character.", and there is nothing in the Petition that challenges Ms. Howington's standing as an individual. Mr. King proposed the Board treat The Sportsman, despite past criminal activity conducted while not under her watch as the permit holder, as a first offender. He advised he has reviewed minutes of past meetings, and noted that first time offenders are usually subject to a reprimand or a fine. He related Ms. Howington has taken steps to re-incorporate the LLC, which lists Mr. Howington as an officer, and remove him from that position due to his conduct and the seriousness of the charges. She no longer allows him to have anything to do with running the business. Their business arrangement was that Mr. Howington would handle day to day business, be on premises, handle hiring and firing of employees, Ms. Howington helped start the business but functioned more as a silent partner. Mr. King stated Ms. Howington will take over day to day operations, and will hire a new manager. He stated that any criminal acts were committed by employees who were not properly supervised, and they put Ms. Howington in this position. Mr. King then asked Ms. Howington to step up so she could address the Board.

Ms. Howington advised she is an accountant, and when they started the business she did the accounting, payroll, and taxes, and he ran the business, so she had no idea that anything illegal was happening. She stated she believes she can take over and run the business the way it should be

run. Her daughter will be the manager, she's cleaned the place up, their food sales are up and problems are down. Mr. Kistner asked whose name is on the Beer Permit, she advised only hers. Mr. Turner asked how long she's held the Permit, she replied four years. Mr. Tickle asked if there are any past occurrences, she replied no, this is the first time she's been summoned before the Beer Board. Mr. Tickle asked if she holds an ABC Permit, she said she does not. Mr. Turner asked if she was charged in criminal court, Mr. King related she was not charged and will not be charged according to the District Attorney's Office. Mr. Kistner asked if her husband ran the business, how often did she visit when the bar was open? She advised maybe once a month because she has a full time job, she would do the payroll at home and give the checks to him to distribute. Mr. Kistner asked if she ever asked her husband how things were going at the bar, or did anyone ever come to her and tell her what was going on. She advised she thought the only thing going on was a dice game where the customer paid a dollar and tried to win a beer, and they thought that was no big deal. Mr. Walden asked if liquor was being served, she said they had a "brown bag" policy that allowed customers to bring their own liquor in and the bar would sell them the mixer for it. One of the bartender's had a boyfriend with a bottle of liquor there, and she was selling his liquor and pocketing the money, none of it was going in the cash register. Mr. Turner asked if "brown bagging" is permitted in Tennessee, Ms. Kiser did not know. Mr. King advised that any liquor seized from the business was brought there for the personal use of the person who brought it, however, a couple of employees may have been selling some of it and pocketing the money. Mr. Kistner asked if the liquor brought in by a customer left with them, Ms. Howington said they can put their name on the bottle and it is placed in a storage area behind the bar. Mr. Ketron asked Ms. Kiser what the law is reference storing a personally owned, open bottle of liquor at the bar. She said she would research it as she did not know. There being no further questions for Ms. Howington, Mr. Kistner called Lt. Tate to brief the Board.

Lt. Tate advised in July 2016 the Street Crimes Unit (SCU) received a tip that there was a dice game being held at The Sportsman bar. On July 19, 2016 undercover officers went into the bar, they did not see any dice games but did see a sign with \$4660 listed on it. Undercover officers returned on August 5, 2016 and participated in a raffle and dice games, and observed pull tab games. They went back in on August 18, 2016 and again participated in dice games, they were told the pull tab games had ended, and they purchased fireball whiskey on that visit. On August 23, 2016 officers served a Search Warrant on the establishment, outside the business they spoke with Mr. Howington, who told them he was a patron and had nothing to do with the business, he also attempted to hand off evidence to another man at the bar. On Mr. Howington they found keys to the cash register, an envelope with \$150 and "Jimmy" written on it, an envelope with \$280 and "Hogaritaville" written on it, and a ledger with names and dollar amounts listed. During the search they found paperwork that listed Mr. Howington as an owner, along with dice, liquor, video poker machines, raffle tickets, and pull tab games. The police interviewed several former employees who told them Mr. Howington did run the day to day operation, and he told them how to handle the liquor and the games. The case was presented to the Sullivan County Grand Jury on August 8, 2017, and the indictment was for Mr. James Howington. Ms. Patty Howington and Ms. Emily Howington were named in the presentment but unindicted. On August 28, 2017 Mr. Howington entered a guilty plea, and as a condition of the plea Patty Howington and Emily Howington would not be charged. Lt. Tate advised he had a copy of the Permit Application showing that Mr. Howington has at least a 5% ownership and is listed as the manager of the bar. He also had a copy of the presentment, and advised Mr. Howington entered a guilty plea on charges of Aggravated Gambling Promotion,

Possession of Gambling Devices, Selling Liquor Without a License, and Attempt to Tamper With Evidence, and as a special condition to his plea the State would not prosecute Patty or Emily Howington for their involvement. Board Members reviewed the Beer Permit Application, dated November 18, 2013, Mr. Kistner noted that the names listed on the Application are Patty D. Howington and James E. Howington, 3rd as having at least 5% ownership in the business. Mr. Turner asked if Mr. Howington's guilty plea reference the sale of liquor at the business was entered as operator of the business, not personally selling the liquor, Lt. Tate said it was. Mr. Tickle said as he understood it, a bartender was actually selling the liquor, Lt. Tate said it was, Mr. Howington himself did not. Mr. Turner asked if liquor was sold to other patrons while undercover officers were at the bar, Lt. Tate said it was, they did not bring it in. He explained he was not in the bar himself, he was there to monitor undercover operations, the primary undercover officer was not able to be at this meeting. Mr. Turner wanted to clarify that other patrons were sold the actual liquor, not just a mixer or coke. Lt. Tate said the liquor sold to patrons was not "brown bagged", it came from the back of the bar, they did not hand it over to the bartender. He advised when the search warrant was served, a large quantity of liquor was found, but only one bottle was found with a name on it. Statements from employees stated Mr. Howington would purchase liquor and bring it in himself. Mr. Ketron clarified that undercover officers themselves were sold fireball whiskey, Lt. Tate said they were. Mr. Tickle wondered why not simply apply for a Liquor License from the ABC if they wanted to operate as a full bar. He asked what gambling device was found, Lt. Tate advised they had video poker machines, which are illegal in Tennessee. Mr. Kistner advised the machines did not apply to the Beer Permit, but went to the core charge of "... detrimental to the public health, safety, and morals." Mr. Tickle asked what happened to the machines, Lt. Tate advised they were seized. Mr. Turner asked Ms. Kiser for guidance on how the Board should look at this situation, considering who was actually charged with the violations of the law versus whose name is on the Beer Permit. Mr. Ketron wondered where the ultimate responsibility lies? Mr. Turner agreed, and said he takes this entire case very seriously, that taking the Beer Permit permanently affects more than just the person who holds the Permit, it affects their employees also. Mr. Ketron observed that although only Ms. Patty Howington's name is on the Beer Permit, the LLC is held by both her and Mr. Howington. Mr. Turner stated the only thing the Board is considering is the Permit. Mr. Kistner replied the Board often considers what goes on in Criminal Court, but not necessarily what happens there, and most times the person who appears before the Board is not the one who committed the actual violation, but is the one who holds the Permit. Mr. Turner asked if, prior to July 2016, there were any other problems requiring police response under this Permit holder. Lt. Tate advised a few fights, and one year ago the same complaint of gambling was made. However, undercover officers were not able to pursue the complaint at that time. Mr. Tickle asked Capt. James if the corporation is being reorganized or renamed, will a new Permit be required, Capt. James advised if there is a 51% change it would, Ms. Kiser advised she would need to do more research after finding out how it was being changed. Mr. Ketron advised he believes that is something the Board definitely needs to know. Mr. Walden asked how much liquor was found on premises, Lt. Tate said it filled the back seat of a Chevrolet Tahoe but he does not know the number of bottles seized. Mr. Walden asked where the money to purchase the liquor came from, Lt. Tate did not know. Mr. Ketron said he is concerned about the lack of oversight by the Permit holder, they put the Permit in her name only, giving her responsibility for what occurs in the business, but he runs it. Now the Board is being asked to be lenient with her, claiming it is not her fault. Mr. Turner said he understands, it's taking the Permit permanently that concerns him. Mr. Ketron advised he believes it was set up like it is in an attempt to defuse responsibility, Mr. Turner replied

he's not completely sure that is why it was set up the way it is. Mr. Ketron pointed out the gambling, selling liquor by the drink, a blatant disregard for the law. Mr. Walden asked why there was no red flag with Mr. Howington buying quantities of liquor and selling it in the bar, Ms. Howington is an accountant and does the books. Mr. Kistner said too much liquor was seized for it all to be "brown bagged", which tells him something else was going on. Mr. Tickle asked what difference it makes whose name the Permit is held in, all the illegal activities took place at The Sportsman resulting in criminal charges. The Beer Permit was issued for The Sportsman, not Ms. Howington personally, but for the location, so what difference does it make whose name is on the Permit. Mr. Kistner advised that many times the individual appearing before the Board is a regional officer, because the name on the permit is a corporate officer, someone who doesn't live anywhere near Bristol, TN. Mr. Turner explained he brought it up because the criminal charges were not against the Permit holder. Capt. James explained Ms. Howington is listed as "Name of Applicant" for sale of beer at The Sportsman. Mr. Turner asked where the money went when liquor was sold, Lt. Tate said he was advised by undercover officers it went into the cash register. Mr. Turner asked if any of the undercover officers were present, they were not, he said that is information the Board should know. Mr. Ketron asked if Mr. Howington personally sold any liquor, Lt. Tate advised he did not, the bartender did. Mr. Kistner asked how big the video poker machines were, Lt. Tate said about the size of an old box television, that they sat on the bar in view of the front door. Mr. Turner asked if the machines paid out, Lt. Tate advised they were paid out behind the bar. He said the machines themselves are not illegal, it becomes illegal if they are paid out behind the bar. Mr. Kistner called for any more questions for Lt. Tate, there were none.

Mr. Turner wanted to know if the practice of "brown bagging" and storing the liquor at the bar is legal in Tennessee, Ms. Kiser said she does not know, and had added it to the list of questions she will research for the Board.

Mr. Kistner asked Mr. King if he had any questions for Lt. Tate, he said he did. Mr. King asked Lt. Tate if he uncovered any evidence that any patrons he saw purchase liquor did not have it stored on premises. Lt. Tate advised he could not answer that question because it was not his case. Mr. King asked if Lt. Tate, or anyone else involved in the investigation, personally observed anyone who played the video poker be paid out from behind the bar. Lt. Tate advised he did not personally, but could not answer for the two undercover officers who went into the bar. He stated there were payouts for gambling, but he could not state if it was for the video poker or another game. Mr. King asked if the information that Mr. Howington purchased and brought liquor to the bar came from a bartender, Lt. Tate said it was a former employee. Mr. King asked if it was possible the informant had a motive for giving them the information, Lt. Tate said he personally could not address that issue, however, the person is considered a witness who was sought out by investigating officers, he did not come to them. Mr. King asked if he (Lt. Tate) knew the individual had been terminated, Lt. Tate said he knew one of the witnesses interviewed had been terminated but not which one. Mr. King asked how much money was seized from the business, Lt. Tate did not know, other than that seized from Mr. Howington, how much money was taken, but advised it would be listed on the evidence log, a copy of the log showed \$381 was taken from the till and under the till was another envelope containing \$5 with "Jud" written on it. Mr. King asked if there is any evidence the money seized was from illegal proceeds, Lt. Tate advised ledgers were found with names and payouts listed. Mr. King asked if Mr. Howington brought the envelopes with cash in them to the bar when he arrived, Lt. Tate said Mr. Howington was already there when officers

arrived, and he did not know where he took the envelopes from. Mr. Turner asked if Mr. Howington's guilty plea on gambling was because of the poker machines sitting on the bar, Lt. Tate advised it included all of the games, video machines, dice, pull tab tickers, etc. Mr. Ketron asked if it was a misdemeanor or felony, Lt. Tate advised it is a misdemeanor. Mr. Kistner asked Mr. King if he had any further questions for Lt. Tate, he did not. Mr. Kistner asked Chief Wade if any other officers were present to speak, he advised the investigator who went in undercover was not able to be at this meeting.

Mr. Kistner asked Mr. Ketron if he feels that the questions to be researched by Ms. Kiser need to be answered before the Board makes its decision, Mr. Ketron said he does. Board Members all agreed they would like a little more time to process all the information they've received. Mr. King asked to address the Board again, Mr. Kistner invited him to step forward. Mr. King advised that as far as the LLC, Mr. and Ms. Howington are equal partners in the business, they are husband and wife and trust each other, so did not craft the set up to avoid responsibility. Mr. Ketron advised he believes it was crafted for just that reason, if not by both of them. Mr. King said that everything brought before the Board has been about Mr. Howington, not Ms. Howington other than her name is on the Beer Permit. Mr. Ketron asked if equal owners share equal responsibility, Mr. King said he didn't know, it becomes complicated and all depends on what happens. He asked Ms. Howington be looked at as the individual Permit holder, the Application talks about the Applicant, the individual applying for the Permit, their moral character, their criminal history, and their reputation, it does not talk about the business entity. He said Mr. Howington pled guilty, he took responsibility for all criminal activity, and none of it was hers. Mr. King said if the Board needs more time to consider this case he and his clients understand completely, Mr. Turner and Mr. Ketron have both brought up good points, and they appreciate that the Board is taking this matter so seriously. He said Ms. Howington should be treated as a first offender, especially since it was her husband's actions that brought her before the Board, she should not be treated any different from anyone else. Mr. Kistner asked Ms. Howington if she had anything else to say, she did not. Mr. Tickle asked what the average of customers at The Sportsman is, Ms. Howington said between 40 and 65 years of age.

Mr. Kistner advised the Application lists Patty Howington and James Howington, it does not say one has any more responsibility than the other. Most cases to come before the Board do not have a criminal court case also, but this one does, and one of the names on the Application admitted to all violations. Mr. Turner said he thought the Application was submitted under her name, with both names listed as owners. Mr. Tickle read applicable entries on the Application, it does read Ms. Howington as applying for the Permit, but lists her and Mr. Howington as owners of The Sportsman, LLC. Mr. Kistner said he understands how the names are listed, but he sees responsibility for these criminal actions lying with ownership, and one of those owners admitted guilt to all violations. Mr. Turner said there is no question of punishment, but the Petition requests Revocation of the Beer Permit. Mr. Kistner said it's a request only, the Board can decide on another penalty. Ms. Kiser said the Board can decide on Suspension of the Permit, a Civil Penalty, or Revocation. Mr. Turner asked how many Revocations the Board has issued in the past, Mr. Kistner said about 5, mostly for repeated sales to minors. Mr. Tickle said this is completely different, there were no underage sales or anything else to bring this business before the Board. Mr. Turner asked Chief Wade about the Petition, he related there have been many complaints, mostly anonymous, about this business. It has a loyal cliental and it is difficult to get undercover officers into a business like this where everybody knows everybody else, and they notice a new face. There have been

problems at this location going back years, before the Howingtons ever took it over. By the time the police can get investigators in it's not a simple case. This case involved several forms of gambling and illegal liquor sales, with one of the owners ending up pleading guilty. Cases like this usually build up over time, and complaints start coming in from disgruntled customers or fired employees, and by the time undercover officers can get in it's a total mess. Mr. Kistner asked if the Board would like a continuance so Ms. Kiser can research several questions brought up, or if they would like to consider it right now. Mr. Kistner had questions about the maximum civil penalty the Board can issue which Ms. Kiser will research, and Mr. Turner said his only issue is with the idea of Revocation. Mr. Kistner advised the Board can set a lengthy Suspension if they so choose, and are not limited on that, but Revocation is the most serious penalty. Mr. Tickle noted there has been no violence or drug problems, Mr. Turner asked if the charges Mr. Howington pled guilty were misdemeanor or felony. Mr. King advised some were misdemeanor and some felony. Mr. Walden advised he would like to hear what Ms. Kiser finds out from her research. Mr. Kistner asked if the Board would like answers to questions already asked of Ms. Kiser, Mr. Turner said he understands the Police Dept. put a lot of work into their investigation, and he would like to know the answers also. Mr. Turner made a motion to continue this case until the next meeting, seconded by Mr. Ketron. Mr. Kistner advised the next meeting will be November 15, 2016, and called for a vote. The motion was approved by unanimous vote. Mr. Kistner asked Mr. King if he and his clients understand this matter will be continued at the next meeting, November 15, 2017, he did.

PENDING BUSINESS

Capt. James advised he has one Application in hand for presentation at the next meeting, and will add The Sportsman, LLC case to that agenda.

Mr. Turner requested the Board go over their list of penalties historically issued on first, second, and third offenses. Board Members discussed penalty's issued and other options to consider, taking the circumstances of each individual case.

There being no further business to conduct the meeting was adjourned.