

CITY OF BRISTOL, TENNESSEE

MINUTES OF THE BEER BOARD MEETING

HELD NOVEMBER 15, 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. Glenn James
Lt. Brad Tate
Inv. Micah Doty
Ms. Danielle Kiser, City Atty.
Ms. Robin Stedman

Call to order – At approximately 5:00 pm on November 15, 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 – Board Members reviewed minutes from the October 18, 2017 Board Meeting, the minutes were approved as read.

NEW BUSINESS

The Angry Italian Restaurant, 16 6th St., Bristol, TN – Mr. Keith Yonker, Owner, appeared before the Board to request an On-Premises Beer Permit as a restaurant. Capt. James advised the Application is in order, fees paid, and inspection conducted. He related Mr. Yonker and one employee successfully completed Alcohol Awareness Education Training, and he plans to send additional employees to future classes. Mr. Kistner called for questions/comments from the public, there were none. Mr. Kistner asked Mr. Yonker if he has prior experience in alcohol sales, Mr. Yonker advised he owned a restaurant and bar in Ohio for five years, and held both beer and liquor licenses. He also stated he has been in the hospitality business for more than 35 years and is a certified executive chef. Mr. Kistner called for questions from the Board, Mr. Turner made a motion to approve the Application, seconded by Mr. Walden. There being no further discussion 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, represented by Mr. Matt King and Mr. Rick Spivey, Attorneys, appeared before the Board to answer a Petition submitted by Chief Blaine Wade, Chief of Police. Capt. James advised the Petition was presented to the Board on October 18, 2017, however, after hearing from the Police Dept., Ms. Howington, and her attorney, Mr. King, Board Members raised questions that could not be answered at that meeting. A motion was made and approved to continue this business at the November 15, 2017 scheduled meeting, allowing Ms. Kiser, City Attorney, to research some of the questions brought up. He related they are prepared to conclude the business at this meeting. Mr. Kistner asked Ms. Howington who will be speaking for her, Mr. Spivey advised he will.

Mr. Kistner called Inv. Micah Doty, Police Dept. Street Crimes Unit, to address the Board. Inv. Doty advised he was the lead investigator on this case, and after listening to the tape from the October 2017 Board Meeting he believes he can answer some of the Board's questions. He passed out copies of statements taken from employees as well as pictures of the gambling devices and alcohol seized. Mr. Kistner asked about a picture of an unmarked jar, Inv. Doty advised it was found among the liquor bottles and tested positive for alcohol, Mr. Kistner asked Inv. Doty if he had anything else to add to Lt. Tate's briefing at the October 2017 meeting, he advised approximately 34 bottles of liquor were seized, with five of them labeled with a name. He also noted the question was asked where money from the sale of the liquor went, according to the undercover officer inside the bar it went into the cash register. When the Search Warrant was served a voided receipt was found in the cash register that listed "Fireball" as one of the items. Another question asked was how the video machines were paid out, he related that after the patron played the machine and was ready to cash out they went to the bar, the bartender would check the machine to see how much they had won, zero it out, and take the money from the cash register to pay them. That was also reflected in text messages taken from an employee's cell phone where she advised Mr. Howington that the machines had paid out over \$200. The question was asked where the liquor sold at the bar came from, again, a text message to Mr. Howington from an employee advised they were almost out of Yeager, and asked him to bring another bottle, to which he replied he would. Inv. Doty advised employee cell phones show a group text sent from Ms. Howington's phone, the day after the Search Warrant was served, telling employees there would be a group meeting so everyone could be briefed on what was happening. Mr. Tickle asked if, since the business was actually selling liquor by the drink without a license, not just brown bagging, shouldn't Tennessee ABC handle that, Inv. Doty replied he personally called them and briefed them on what was going on. That violation was addressed in court with Mr. Howington pleading guilty, sentencing has not taken place yet. Mr. Tickle asked what led to the initial investigation, Inv. Doty advised an anonymous tip came in that they were gambling at the bar, so an investigation was initiated for illegal gambling, and while in the bar undercover officers observed the liquor violation as well. Mr. Turner asked about other complaints received prior to this gambling complaint. Inv. Doty related about a year before the most recent tip was received they received the same information about gambling at the bar, but due to complications in that case they could not proceed with charges at that time. Mr. Tickle asked if the sale of liquor is a violation of their Beer Permit, Ms. Kiser advised that is for the Beer Board to determine. Mr. Kistner called for any further questions for Inv. Doty, there were none. He then called for questions/comments from the public, there were none.

Mr. Kistner called Mr. Spivey to address the Board on behalf of Ms. Howington. Mr. Spivey advised this appears to be a case of selective enforcement, that other businesses have only been given warnings, such as the American Legion. He pointed out the Beer Permit holder is Ms. Patty Howington, not her husband, who pled guilty to all charges. That liquor sales is handled by the State of Tennessee, and that violation has been resolved, she was not charged with anything. He stated it is grossly unfair to them (the Howingtons), based on the City's previous actions regarding the exact same situations, to revoke their Beer Permit, that a warning should be enough, the matter has already been handled in criminal court and was not against Ms. Howington. He asked the Board not revoke the Beer Permit simply because it is The Sportsman Bar.

Mr. Kistner called for questions from the Board, Mr. Tickle asked Ms. Kiser who is requesting revocation of the Permit, she advised it comes from Chief Wade. Chief Wade advised he has been

Chief for 14 years and does not recall a similar case involving the VFW, however, when he was Captain of the Criminal Investigations Division there were several large gambling busts, but he does not recall the Beer Board being involved. Mr. Tickle observed this is obviously an unprecedented situation with no guidelines to follow, however, he believes it is the responsibility of Board Members to act as any reasonable citizen would to determine the best action to take. Mr. Kistner advised the Board is charged with weighing all evidence and information presented and make a decision. Mr. Tickle stated he feels Board Members should be able to answer questions from the public on what action is taken and why. He related the only other case he can remember where it was detrimental to the public for a Beer Permit to be issued was the Dollar General on MLK Blvd., near the Salvation Army. He also wanted to know why the Howingtons didn't just go ahead and get a Liquor License if they wanted to sell liquor, and how long is it going to take Ms. Howington to get the place cleaned up. Ms. Howington advised she took over in August 2016 and since she's been running the business there have not been any problems of any kind. Mr. Turner asked if she still allows brown bagging, she said no. Mr. Walden advised that is after they were caught, and the holder of the Permit should be responsible for operations of the business. Mr. Tickle asked if selling liquor or simple gambling games is immoral, or detrimental to the health of the community, Mr. Walden asked why they didn't just do it the right way. Mr. Turner pointed out Ms. Howington is the Permit holder, Mr. Howington is paying the price for his actions, and other people are affected, but he does not believe it warrants taking the Permit permanently. Mr. Tickle asked Ms. Howington if she plans to sell the business, she said she does. Mr. Kistner advised if the Permit is revoked it can prohibit the buyer from obtaining a Beer Permit. One of the things that bothers him is that both Mr. and Ms. Howington were listed as owners on the Permit Application, Ms. Howington said she didn't have time to go there much because she has a full time job. Assuming she still has the same job, how is she able to keep an eye on the business to prevent problems. Mr. Spivey advised she is taking a more active role in day to day operations, new safeguards have been put in place and new employees hired, so no problems have come up since. She has more contact with employees and is reviewing the books more closely and more often. He pointed out there are other means of punishment rather than revocation, and asked she be given a chance to keep it going till she can sell. Mr. Kistner advised he's also bothered by the attitude displayed, "Okay, you caught me, I won't do it any more." He also noted it is rare to ask for revocation on the first violation. That the Board has some discretion in their actions, they can go do nothing, issue a suspension of the Board's choosing, or level a civil penalty, however the maximum civil penalty is \$1000 and he does not feel that is enough in this case. Mr. Turner agreed, and said he would rather go with a suspension instead of revocation. Mr. Kistner pointed out that the criminal case is not usually heard about at the Beer Board Meeting, this is unusual in that this meeting is after the criminal case has been heard in court, cases before the Board concern the Permit holder only. Mr. Tickle pointed out Mr. and/or Ms. Howington can appeal any decision made by the Beer Board in Chancery Court, Mr. Kistner advised since 1999 no decision made by the Beer Board has been overturned in Chancery Court. Mr. Turner made a motion to suspend the Permit for 30 days. Mr. Kistner called for a second, there was none and the motion died. Mr. Walden and Mr. Tickle both noted there have been no problems since August 2016 when Ms. Howington took over running the business after the bust. Mr. Ketron stated that's not surprising with everything that happened, as well as the possibility of losing the Beer Permit hanging in the balance, everyone is good after they get caught. Mr. Walden questioned how long Ms. Howington can keep this level of scrutiny up. Mr. Kistner advised if the business is given a suspension, and is caught in a violation again, it would put them in a very bad position. Mr. Tickle asked why the maximum civil penalty is \$1000, Ms. Kiser advised it is state law. Mr. Spivey stated people go to a bar to drink alcohol, and insisted there are tip boards in every bar in the vicinity and it's not a morality

over 30 days is unfair, this not that grave a situation. Mr. Kistner stated he does not believe all the local bars have gambling, he also pointed out that in this case there are several different issues to be considered, a lot more than the Board is used to seeing from one business, and will not consider the civil penalty. Mr. Turner advised he is trying to find a solution all Board Members can agree on, because this is a very different situation. The Permit is in her name and he was charged, it's been over a year with no violations, no fights, they were not dealing drugs or selling to underage patrons, they don't even let anyone under 21 years of age into the business. Mr. Tickle made a motion for a 30 day Suspension with the option of a \$1000 Civil Penalty, seconded by Mr. Turner. Mr. Kistner called for further discussion, there being none he called for a vote. Mr. Kistner, Mr. Ketron, and Mr. Walden voted No, Mr. Turner and Mr. Tickle voted Yes, the motion failed. Mr. Turner made a motion for a 30 day Suspension without the option of a Civil Penalty, seconded by Mr. Tickle. Mr. Kistner called for further discussion, there being none he called for a vote. Mr. Kistner, Mr. Ketron, and Mr. Walden voted No, Mr. Turner and Mr. Tickle voted Yes, the motion failed. Mr. Kistner called for any further motions, Mr. Walden made a motion for a 90 day Suspension without any option for a Civil Penalty, seconded by Mr. Ketron. Mr. Kistner called for any discussion, there being none he called for a vote, Mr. Kistner, Mr. Ketron, and Mr. Walden voted Yes, Mr. Turner and Mr. Tickle voted No, the motion passed. Capt. James asked Ms. Kiser if the Suspension would start immediately since no Civil Penalty was offered, she advised it would start on the date set by the Board. Mr. Turner suggested Ms. Howington be given a few days to notify customers, staff and vendors of the suspension. He asked Mr. Spivey what would happen if she appeals, he advised the court could issue a stay until the case is heard, however, he asked Ms. Howington be given 21 days to make sure everyone is notified of the suspension. Board Members agreed to allow up to 21 days for her to make notifications before turning in her Beer Permit. Ms. Kiser advised Ms. Howington that if the business is sold the Permit terminates, it would not transfer to the new owner. She said she knows, she did have an interested buyer but he was discouraged by the ongoing case.

PENDING BUSINESS

Capt. James advised there are no pending Applications in hand, and he has not been notified of any alcohol enforcement violations to be brought before the Board, so he does not need a December 2017 meeting scheduled.

Mr. Kistner advised members will be notified when the next meeting is scheduled. There being no further business to conduct the meeting was adjourned.