

OREGON LIQUOR CONTROL COMMISSION
MINUTES
April 15, 2010

Thursday, April 15, 2010

7:30 A.M. Breakfast Meeting with NABCA President James Sgueo and VP Steve Schmidt at London Grill, The Benson Hotel. The Commissioners present were Alex Duarte, Bob Rice, Ron Roome Cassandra SkinnerLopata and Chairman Phil Lang. Others present were Executive Director Steve Pharo, Deputy Directors Merle Lindsey and Rudy Williams, and members of staff.

The meeting was an opportunity for the newest Commissioners to learn about the NABCA organization and answer any questions that they may have about the role and purpose of the National Alcohol Beverage Control Association.

Recessed 9:00 A.M.

Reconvened at OLCC Headquarters, 9:30 A.M. The Commissioners present were Alex Duarte, Bob Rice, Ron Roome, and Chairman Phil Lang. Others present were Executive Director Steve Pharo, Deputy Director Rudy Williams, and members of staff.

Minutes – Commissioner Rice moved to approve the minutes of the March 9th and 15th meetings. Passed 4 /0.

PUBLIC FORUM

No one was present for Public Forum.

COMPLIANCE

Becky Voelkel, Administrative Process Program presented.

There were 19 settlement agreements before the commissioners for ratification; Red Apple; La Costita III; The Blacksmith Restaurant; Jay Dee Tavern; La Sierra Mexican restaurant; Moose Lodge #2075 The Dalles; Oswego Lake House; Taj Palace Indian Cuisine/Wall St. Lounge; Sandy BP; Taqueria Dos Arbolitos; Rivershore Bar & Grill; Residence Inn By Marriott Portland West; Bethany's Kitchen; Star Sushi Japanese cuisine; John's Chinese Restaurant; The CI Bar & Grill; Asian Gardens; Old Mill Martini Bar; and Shenanigans.

Commissioner Roome indicated that he was not participating in the vote on Old Mill Martini Bar. Commissioner Roome asked a clarifying question about The Blacksmith (#3). There was a notice given in January and were not given a violation until June. He thought that this was a more serious situation than the resulting fine. Ms. Voelkel noted that there was only one aggravating factor in this case.

Commissioner Duarte moved to ratify the 19 agreements. Passed 4/0

LICENSE MATTERS

Dan Croy, License Services Division presented.

Commissioner SkinnerLopata joined the meeting.

Walgreens #03925, NE 82nd Ave., Portland. Off-Premises Sales, New Outlet. This application is before Commissioners based on an unfavorable recommendation from the City of Portland.

Commissioner Rice noted that this is not an alcohol impact area. He moved to grant the license. Passed 5/0.

Walgreens #04943, SE Powell Blvd, Portland. Off-Premises, New Outlet. This application is before the Commissioners based on an unfavorable recommendation from the City of Portland.

Commissioner Roome moved to grant the license. Passed 5/0.

Natural Mart #1, SW 4th Ave, Portland. Off-Premises, New Outlet. This application is before the Commissioners based on an unfavorable recommendation from the City of Portland.

Commissioner Duarte moved to grant the license. Passed 5/0.

Service Permit Refusals- There were 5 service permit refusals before the Commissioners for ratification.

Commissioner SkinnerLopata moved to ratify the refusals. Passed 5/0.

RULES

Jennifer Huntsman, Rules Coordinator, presented.

PETITION FOR RULEMAKING/POSSIBLE INITIAL ACTION

OAR 845-005-0329 Winery License

A petition has been received from the Oregon Beer & Wine Distributors Association (OBWDA) requesting the adoption of a new rule regarding Winery Licenses. This new rule would define the term “principally produce” from ORS 471.223(2).

Jesse Lyon, attorney for the Oregon Wine Board, spoke in opposition to the proposal. He finds the proposed rule to be too restrictive. He hopes that there could be an opportunity to work on this issue in a bigger effort to address needed updates to winery licenses which may even include legislative proposals.

Commissioner Duarte asked if there was a threshold that the OWB would be comfortable with and examples of wineries that would be impacted by this rulemaking? Mr. Lyon said that some of the largest brands in the state would be impacted by the rulemaking effort.

Wine is federally determined as ‘produced’ by the fermenter. Commissioner Duarte asked Mr. Lyon if there were any discussions with the OBWDA prior to the petition. Mr. Lyon said that he and Mr. Romain had a conversation last week and he thought they could reach a mutually acceptable alternative to entering the rulemaking process. Chairman Lang said that his opinion is that the rulemaking process would put pressure on all parties to reach resolution to their disagreement. Commissioner Rice commented that he disagrees and is reluctant to put the agency in the position of refereeing what are, in his view, industry squabbles. He does not think that this impacts the public interest and would like to see ongoing conversations and he thinks there can be appropriate resolutions in that process and moved to deny the petition.

Commissioner Duarte said that he did not see any urgency in the issue either and said that he would be comfortable deferring the issue for a few months to see if there could be a new proposal. Chairman Lang asked Mr. Romain to comment on his petition.

Paul Romain explained the reasons for submitting his petition and his concerns that the winery license as currently exists is not being used in the appropriate manner. He noted that rulemaking starts the structured process where all parties are brought together to discuss the desired outcome.

Commissioner Duarte commented on Mr. Romain's assessment of the rulemaking process and added that he thinks there is benefit in having informal discussions with stakeholders before going into the formal rulemaking process to make it easier and cleaner. Mr. Romain respectfully disagreed as he thinks there are many other interested parties in this issue and having an advisory committee ensures that all are included in the process.

Commissioner Rice moved to deny the petition. Failed 2/3, Roome, SkinnerLopata and Lang no.

Commissioner Roome moved to accept the petition for rulemaking to adopt OAR 845-005-0329, and to initiate rulemaking on this matter and hold a rulemaking hearing at staff's discretion. Passed 3/2, Duarte, Rice no.

Commissioner Rice encouraged all parties in the process to focus on what he considers is the real issue of whether credit is being inappropriately extended or sought and not determining the real definition of 'principally produced'.

INITIAL ACTION

OAR 845 – Division 5 & 6 – For-Profit Private Club Package (SB 1039)

This rule package includes two new rules for adoption which will describe the licensing criteria and the compliance requirements for a for-profit private club, as well as the necessary amendments to the existing non-profit private club rules. The 2010 special session of the legislature has passed Senate Bill (SB 1039) with an emergency clause, signed by the governor March 4, 2010. Senate Bill 1039 amends ORS 471.001 & ORS 471.175 allowing the Commission to issue a full on-premises sales license to a for-profit private club. Staff is proposing this package of rule amendments in order to implement the statutory changes. Due to an operative date clause in SB 1039 of 90 days following the effective date, the statutory changes become operative on June 2, 2010.

Commissioner Rice asked if this was just housekeeping matter in order to bring our rules into compliance with recent legislation. Ms. Huntsman said that it is not just housekeeping although we do need to take action in response to recent legislation. The legislature created a new category of For-Profit Full Commercials determining if they were public or private. In the statutory language the new for profit private clubs would have to follow rules promulgated by OLCC on food and membership requirements to make them similar and parallel to what is required for non profits.

Commissioner SkinnerLopata moved to initiate rulemaking to adopt OAR 845-005-0322 and OAR 845-006-0495 and amend OAR 845-005-0321, OAR 845-006-0460, OAR 845-006-0461 & OAR 845-006-0490 and hold a rulemaking hearing at staff's discretion. Passed 5/0.

FINAL ACTION

OAR845-007-0020 (2) Restrictions (Happy Hour)-

This rule places restrictions on the content of alcohol advertising that liquor licensees use. Due to recent case history, staff recommends amendment of section (2) regarding temporary price reductions in order to make it more enforceable and understandable. Commissioner Roome moved to amend OAR 845-007-0020 effective May 1, 2010. Passed 5/0.

OAR 845-015-0130 Advertising a Retail Liquor Store

We received a petition from a Corvallis liquor agent requesting amendment of this rule. The petitioner requests to amend this rule so that there would be much more flexibility in what advertising, including outside signage, a liquor store would be allowed to utilize. Commissioner Duarte moved to amend OAR 845-015-0130 effective May 1, 2010. Passed 5/0.

OAR 845-006-0340 Minor Postings (Housekeeping)

This rule describes the minor postings that the Commission assigns to those licensed premises that allow on-premises consumption. Staff recommends a series of housekeeping amendments to both standardize rule language with other recent rule changes and also add clarifying language.

Commissioner Roome moved to amend OAR 845-006-0340, effective May 1, 2010. Passed 5/0.

CONTESTED CASE HEARINGS

Judith Bracanovich, Administrative Process Division Director, presented.

Exotica Intl Club for Men; North House Enterprises, LLC; Ghassan Samander, Managing Member; dba. OLCC-08-V-077, -077A

A proposed order was issued on November 16, 2009. Attorney Derek Ashton and Ghassan Samander appeared to provide exceptions to the proposed order. Chairman Lang cautioned Mr. Ashton to keep his comments to the record. Kelly Routt presented staff comments.

Casa Colonial; Latin Corner, LLC; Javier Garcia, Managing Member; David Rivero, Member; dba. OLCC-09-V-084, -084A, -084B

A proposed order was issued on January 15, 2010. Licensee David Rivero appeared before Commissioners.

**Recessed for contested case continued deliberations and lunch - 11:00
Reconvened - 1:06**

Chevron N Wilsonville; La Point Business Group LLC; Garry LaPoint, Member; Katherine LaPoint, Member; dba. OLCC-09-V-064, -064A, -064B

A proposed order was issued on December 17, 2009. Licensee's attorney Mike Mills presented exceptions. Anna Davis presented staff comments.

Blue Iguana Mexican Restaurant & Cantina; Blue Iguana Inc.; Ramiro Rodriguez, Sr., President/Director/Stockholder; Graciela Rodriguez, Secretary/Director/Stockholder; dba. OLCC-09-V-035, -035A, -035B

A proposed order was issued on February 4, 2010. Licensee's attorney Mike Mills presented exceptions. Anna Davis presented staff comments. Commissioner Rice asked about the incidental nature of the duties of a service permittee with respect to age verification and controlling the premises. Ms. Davis noted that age verification would not be incidental, but that security people would be the primary responder to a security issue.

Big Shots Bar & Broiler; Valley Entertainment, LLC; Donald Boorman, Managing Member. OLCC-09-V-068, -077.

A proposed order was issued on March 12, 2010. Licensee's attorney Mike Mills presented exceptions. Becky Voelkel responded to the exceptions.

US Deli & Pub; US Deli & Pub, LLC; Rajinder Johal, Managing Member; Parveen Parveen, Member; dba. OLCC-09-V-044, -044A, -044B.

A proposed order was issued February 8, 2010. Anna Davis presented staff comments. Licensee's attorney Terrence McLaughlin responded to the comments. Commissioner Roome asked about the credibility determination by ALJ. Commissioner Duarte also expressed concerns over the staff position.

Dirty Bar & Grill; VegasStars, LLC; Christopher Lenahan, Managing Member; Jacob Wang, Member; Gary Yang, Member; Jessica Yang, Member; dba. OLCC-09-V-101, -101A, -101B, -101C, -101D

A proposed order was issued on February 19, 2010. Kelly Routt presented staff comments. Licensee Christopher Lenahan responded to staff comments.

**Recessed to confer with counsel on contested case items- 2:30 pm
Reconvened 4:40**

DECISIONS ON CONTESTED CASES

Exotica International Club for Men

Commissioner SkinnerLopata moved to deny the motion to postpone the oral argument on the exceptions. Passed 5/0.

Commissioner SkinnerLopata moved to amend the proposed order per the list that will accompany the minutes and adopt the amended order as the final order of the Commission. Passed 5/0.

Casa Colonial-

Commissioner Roome moved to amend the proposed order per the list that will accompany the minutes and adopt the amended order as the final order of the Commission. Passed 5/0.

Chevron N Wilsonville-

Commissioner SkinnerLopata moved to amend the proposed order per the list that will accompany the minutes and adopt the amended order as the final order of the commission. Passed 5/0

Blue Iguana-

Commissioner Roome moved to amend the proposed order pursuant to the listy that will accompany the minutes and adopt the amended order as the final order of the Commission. Passed 5/0.

Big Shots Bar & Broiler-

Commissioner Duarte moved to deny the licensee's motion to present additional evidence. Passed 5/0.

Commissioner Duarte moved to amend the proposed order per the list that will accompany the minutes and adopt the amended order as the final order of the Commission. Passed 5/0.

US Deli & Pub-

Commissioner Duarte moved to continue deliberations until the June meeting. Passed 5/0.

Dirty Bar & Grill-

Commissioner Rice moved to amend the proposed order per the list that will accompany the minutes and adopt the amended order as the final order of the Commission. Passed 5/0.

Lucky Jade Chinese Restaurant-

Commissioner Roome moved to amend the proposed order per the list that will accompany the minutes and adopt the amended order as the final order of the Commission. Passed 5/0.

Deluxe Billiards-

Commissioner Duarte moved to continue deliberations until the June meeting. Passed 5/0.

Recessed: 5: 09 pm

Friday, April 16, 2010

Reconvened 9:30 a.m.

The Commissioners present were Alex Duarte, Bob Rice, Ron Roome, Cassandra SkinnerLopata and Chairman Phil Lang. Others present were Executive Director Steve Pharo, Deputy Director Rudy Williams and members of staff.

ADMINISTRATION

Application for Redemption Center- Tom Erwin, Government Affairs and Communications Director and Donna Vandall, Administrative Process Program, presented.

An application has been submitted by Oregon Beverage Recycling Cooperative (OBRC) to site a Beverage Container Redemption Center at 23345 NE Halsey St, Wood Village. Staff have reviewed the application, investigated the proposed location and posted public notices at the site as well as the three grocery stores which will be served by the center. During the thirty day comment period, staff received 11 comments from the public which are summarized in the staff report. Based on the information contained in the application and staff's investigation of the location, staff found that the proposed redemption center would provide a convenient service to the public as required by ORS 459A.735 and OAR 845-020-0020.

John Andersen and Alicia Shifflett of OBRC presented a Powerpoint presentation to the Commissioners and were available to answer any of the Commissioners questions. Commissioner Roome asked if there is anticipation that other locations will join into the redemption center. Mr. Anderson said that they have not limited participation, but the funding model may discourage smaller return locations from participating as it is based on sales, not on returns.

Commissioner Duarte asked for more information on the funding. Mr. Andersen said that they must pay a per sale per unit fee to participate in the redemption center and they would need to weigh if there was enough volume in returns to warrant that charge.

Commissioner Rice confirmed that the stores served by the redemption center are no longer taking returns and they direct consumers to the redemption center to return their bottles and cans. The stores then pay a fee to OBRC for that service. Mr. Andersen confirmed. Commissioner SkinnerLopata asked if there has been a review of the future

effects of purchases at those stores as there will no longer be the bottle return funds dispersed at the store. Mr. Andersen reviewed the redemption opportunities in the new model and the possible partnering promotions with the stores in the area. He noted that this is also part of the pilot review. Commissioner SkinnerLopata asked what kind of personal information would be required to have an account, specifically if the redeemer did not have an address. Mr. Andersen said that there is not a requirement to have a bottle drop account and cash could be dispersed at the redemption center for people who did not wish to have an account. He said that the information required to have an account would be minimal; username, password- no confidential information.

It was noted that if an additional retailer wanted to be added to the redemption center, they would need to be added to the order approving the redemption center and that change ratified by the Commissioners.

Commissioner Rice asked, if the pilot program is successful, if they had a sense of how many Redemption Centers they would like to place in Oregon. Mr. Andersen said that he thought 90-100 centers would replace redemption options at 250-300 large grocery stores. He noted that an additional feature to add more convenience that they are considering is adding a night drop style door at other locations, besides redemption centers- perhaps at participating grocery stores.

Commissioner Duarte asked if Mr. Andersen could share his funding mechanism. Mr. Andersen said that conceptually, if this was built out as they anticipate, they anticipate the program would cost about 16 million a year state-wide. The commitment that the beverage industry distributors have made with the large grocery retailers is to share in that funding 50/50. Unredeemed deposits are currently funding OBRC's operations, but there is recognition within the industry that this is where we need to go. There is a desire to expand to the other categories of beverages and the current model will not accommodate all of those other types of bottles. Commissioner Duarte asked if they were a non-profit. Mr. Andersen said that they are a c-corp incorporated under Oregon's cooperative statutes. Co-op in nature is to distribute any excess funds at the end of the year back out to the members. Commissioner SkinnerLopata asked if the new redemption center would result in increased traffic. Mr. Andersen said that they carefully reviewed locations to locate in an area where people were already going. They wanted to be close to the stores so people were not going out of the way. They hope that the education provided to consumers will help in return patterns - having people save up their returns for less frequent trips. Chairman Lang asked if the recent veto of HB 3704 impacted their model. Mr. Andersen said that the bill did not have anything to do with the use or siting of redemption centers. There was one possible connection in Corvallis where there is one distributor who has chosen to not join the coop. In that case the redemption center would be required to sort out that distributor's brands from the other materials.

Chairman Lang asked for a motion.

Commissioner Rice moved to approve the redemption center proposed by OBRC at 23345 NE Halsey St, Wood Village based on the determination that it will provide a convenient service to the public and to direct the issuance of an Order Approving Redemption Center listing the dealers to be served by the center and such other provisions as will ensure that the center will provide a convenient service to the public. Passed 5/0.

GovDelivery Overview- Joy Evensen, Government Affairs and Communications Division, presented. She reviewed a new information system being implemented to help quickly and efficiently distribute information to the public and our partners. Commissioner Rice asked when this would begin. Ms. Evensen indicated that it would begin in early May. Chairman Lang thanked her for the presentation.

RETAIL SERVICES

Brian Flemming, Retail Services Director, presented

Relocation Enterprise, 1005-

Agent Mae McGinnis is requesting approval to relocate Enterprise #1005 from 222 West Main st. to 106 West Main St.

Commissioner Rice asked if this was the agent's preference that this store is an exclusive store. Mr. Flemming said that it is, and would qualify as a non-exclusive under the new guidelines, but it is the agent's choice to retain an exclusive store. Commissioner Rice moved to approve the relocation. Passed 5/0.

Relocation Roseburg East, 1095-

Agent Ann Herold is requesting approval to relocate Roseburg East 1095 from 1131 NE Stephens St to 1350-26 NE Stephens St.

Commissioner Duarte moved to approve the relocation. Passed 5/0.

New Site Proposal- North Medford-

Retail Services Division proposes a new retail store location in the North Medford area near a large retail development currently under construction.

Commissioner Roome asked if there was a site specifically approved or just an area. Mr. Flemming said that an area is proposed for the new store. Chairman Lang asked if a location was found outside of the proposed area, that the matter brought back before the Commissioners for further approval. Chairman Lang confirmed that there is a store in Central Point. Commissioner Roome moved to approve the new site for N Medford, 1131. Passed 5/0.

New Site Proposal- Redmond North-

Retail Service Division proposes a new retail store location in the North area of Redmond to better serve the growing population in that part of the state.

Commissioner Roome commented on his recent tour of the proposed sites and the length of time before the store is expected to open.

Commissioner SkinnerLopata moved to approve the new location. Passed 5/0.

Agent Appointment - Portland West Slope, #1216

This vacancy occurs as a result of Patty Bubarger's appointment to Milwaukie 1094. An interview committee interviewed five applicants; the two finalists appeared before the Commissioners: Catherin Daw and George Psihogios.

Recessed to executive session to deliberate applicants-11:00 am

Reconvened 11:10

Agent Appointment-

Commissioner Duarte complimented both applicants and appreciated their qualifications and encouraged the applicant who did not get the appointment to reapply in the future.

Commissioner Duarte moved to appoint George Psihogios as the agent for West Slope agent. Passed 5/0.

Recessed to deliberate contested cases with counsel. 11:12

Reconvened 11:40

DECISIONS ON CONTESED CASES

Grocery Outlet Warehouse-

Commissioner SkinnerLopata moved to amend and reverse the proposed order issued by the Administrative Law Judge pursuant to the list that will accompany the minutes and adopt the amended order as the final order. Passed 3/2, Duarte and Rice no.

Commissioner Duarte commented that while he does not believe that the Commission is bound by the 1986 letter, he does believe that this issue should be addressed in a rulemaking proceeding.

Adjourned 11:41 A.M.

_____/s/_____
Phil Lang, Chairman

_____/s/_____
Alex Duarte, Commissioner

_____/s/_____
Bob Rice, Commissioner

_____/s/_____
Ron Roome, Commissioner

_____/s/_____
Cassandra SkinnerLopata, Commissioner

_____/s/_____
Stephen A. Pharo, Executive Director
and Secretary to the Commissioners