OREGON LIQUOR CONTROL COMMISSION  
MINUTES  
April 5, 2012  

Thursday, April 5, 2012  

1:00 P.M. The Commissioners present were Alex Duarte, Michael Harper, Bob Rice, Ron Roome, and Chair Cassandra Skinner-Lopata. Executive Director Steve Pharo and Deputy Director Merle Lindsey attended along with members of staff.  

Minutes – Commissioner Roome moved to approve the minutes of the March 16, 2012 meeting. Passed 5/0.  

PUBLIC FORUM  
Barb Moore, OLCC Employee, appeared before Commissioners to present staff’s support for OLCC Executive Director Steve Pharo.  
Maury Hornstein, Liquor Broker, came forward to show support for Steve Pharo.  
Skipper Osbourne came forward to address his concerns with respect to the Governor’s involvement in the decision about the employment of Steve Pharo.  

COMPLIANCE  
Becky Voelkel, Administrative Process Division presented.  
There were 4 settlement agreements before the commissioners for ratification; Pizza Hut, Shiki/Four Seasons/Rumors, Da Vinci, and Celebrities Parkway Grill.  

Commissioner Duarte moved to ratify the four agreements. Passed 5/0.  

LICENSE MATTERS  
Gwenn McNeal, License Services Division presented.  
Service Permit Refusals-  
There were four service permit refusals before Commissioners for ratification.  
Commissioner Roome moved to ratify the four refusals. Passed 5/0.  

License Applications  
Farshad Allahdadi, License Services Division Director, presented.  

Casa Diablo, SE McLoughlin Blvd., Portland; Full On-Premises Sales, New Outlet.  
Applicants Johnny Zukle and Carol Lee were present before commissioners. The application is before Commissioners due to an unfavorable recommendation from the City of Portland and significant public opposition. The concerns raised by the City and neighbors are based upon three reasons; sufficient licensed premises in the area, proximity of the proposed license to certain facilities, and poor record of compliance at their other
licensed establishment. After reviewing records, staff found that these reasons were not supported.

Renee Kimball, a neighbor, came forward in support of the application and hoped that adding competition to the Acropolis, which is located next door to the proposed location for Casa Diablo, would force the applicants and existing licensees to do a better job policing themselves and their customers. Rob McCullough of Eastmoreland Neighborhood Association, came forward in opposition to the application. Galina Boquishevich of neighboring Tenino Terrace (subsidized housing) came forward in opposition to the application. Lisa Brown, a neighbor, came forward in opposition to the application. AnnMarie Huntha, a neighbor, came forward in opposition to the application. Matt Millenbach, president of the Sellwood-Moreland Improvement League came forward in opposition to the application.

Bradley Heintz, a neighbor and SMILE member, came forward in opposition to the application and shared the plans for building a new natural play area very close to the proposed license location.

Gerri Sue Lent, a neighbor and SMILE member came forward in opposition to the application. Paula Montejano, a concerned citizen, came forward in opposition to the application. Hope Hardaker, a neighbor, came forward in opposition to the application.

Chair SkinnerLopata asked several questions about the transfer of interest in the applicant’s other location and the time place and manner (TPM) violation from the city at that location.

Applicant Johnny Zukle responded that the violation was based on one night when they had live music. They received a notice of a possible violation of TPM. Mr Zukle called the city to ask about the notice and it was explained to him that they would be sending someone out to test their noise emissions. He let them know that he was planning to have live music again in the near future and coordinated with the testers to have the test while the band is there. He asked the band to play as loud as possible. The test showed that they were in compliance with the allowable 70 decibel levels for industrial zone in which they are located. The notice of possible violation showed each time a neighbor had called (six times) to complain as a ‘violation of noise’. He follows up with a phone call to the Office of Neighborhood Involvement (ONI). Two months later he has a meeting with Theresa Marchetti of ONI and believed he had resolved the concerns. When he applied for the McLoughlin location license he heard that records indicated that he had sold the club because he had a TPM violation. He noted that the consequence of TPM violation is a $300 fine and that would not be a good reason to sell his interest in the club. Chair SkinnerLopata asked if he has engaged with the neighborhood associations at the
proposed location and if he has a good neighbor agreement with them. Mr. Zukle answered that he has not done anything and no one has talked to him. He mentioned the good neighbor agreement they have at their existing location and that they have been in compliance with that agreement. He mentioned attending a meeting over a year ago with the neighborhood and they(neighbors) did not seem willing to work with the applicants.

Commissioner Roome asked if there was a control plan for the proposed location. Mr. Zukle said that they had. Mr. Allahdadi noted there was not a requirement for a typical ‘control plan’ based on the analysis of the application, but their submitted operating plan could be considered a control plan.

Chair SkinnerLopata asked if we knew what the zoning of was of the proposed location. Mr. Allahdadi said that he believes it commercial/light industrial.

Commissioner Rice pointed out that it is not only up to the association to come to the applicant to initiate the conversation about a good neighbor agreement and asked if the applicants would be willing to enter into a good neighbor agreement. Mr. Zukle answered yes. Commissioner Rice further asked if he would be willing to accept that as a condition of his license. Mr. Zukle said that they would prefer not to, as they are locked into the conditions set forth. He shared how he had worked with a close neighbor on his specific concerns about the lighting of the parking lot and the effect that would have on his home. Commissioner Rice asked if that was a yes or no. Mr. Zukle said that it depends on the conditions set forth in the agreement.

Commissioner Roome asked how many security staff are on hand at the existing location. Mr. Zukle said that he has 1-2 DPSST certified security on hand and 1-4 total generally. He discussed some of their other security measures.

Commissioner Roome discussed possible restrictions. The applicant would be willing to have restrictions as they already follow most of these as their operating plan. Commissioner Roome discussed having at least 2 DPSST certified security on duty Thursday thru Sunday, 30 minute outdoor patrols, outdoor seating fenced.

Commissioner Rice asked if the applicant would be willing to work with staff on some of the restrictions and defer for a month after noting that he has heard a lot of agreeable nature, but not a lot of commitment. Mr. Zukle said preferred to work on restrictions at the meeting right now. Commissioner Roome asked Mr. Allahdadi if there were other areas for restrictions they should consider as they have the discussion. Mr. Allahdadi commented on the mechanisms for placing restrictions- do they want to be forward looking or backward looking. He noted that this would be more forward looking and would be areas of possible concerns; security, patrols, patron behavior associated from alcohol consumption might lend itself to drink restrictions.
Commissioner Roome reviewed outdoor seating and sound/noise concerns. The applicant reviewed the proposed outdoor area, and did not think that there would be noise problems based on the location of the outdoor area. Discussed the possibility of an earlier closing time. Mr. Zukle commented on the closing time procedures at the existing location. Commissioner Rice pointed out that the procedures he reviewed are simply following the law and it is disingenuous to describe that procedure as a special policy as all they are doing is what they must do by law.

Commissioner Harper expressed concerns about the applicant working with the community in the future and wanted to hear from the applicant that he would work with the community to address their concerns in the future. Mr. Zukle said that he is willing to work with the community on real issues and not just the people who hate them who don’t know them.

Chair SkinnerLopata proposed setting this application aside until the June meeting to work with staff and the neighbors on restrictions. Commissioner Roome noted that he is leaning toward a basis to possibly deny the application and is trying to find a way to satisfy the concerns that have been expressed today and he is unsure that they are making progress. One proposal is to defer and work with staff and neighbors, or to work out the restrictions today. Discussed single sale drink restrictions, and Mr. Zukle was concerned about being able to conveniently serve couples who are his primary customers. Commissioner Harper commented on his concerns about signage and communication with the neighbors. He was unclear who exactly is the owner of the business. Ms Lee noted that Johnny is her partner and can speak on her behalf as she has been ill earlier in the week.

Ms. Renee Kimball offered to introduce the licensee to the community to help foster communication between the two groups.

Commissioner Rice moved to defer the matter to the June meeting. Passed 4/0, Commissioner Duarte abstained from voting.

Recessed: 2:35
Reconvened: 2:50

RETAIL SERVICES
Brian Flemming, Retail Services Director, presented.

Agent Appointment, 1012, Ashland- This vacancy is the result of Jim Conklin’s retirement. An interview committee interviewed three applicants and found only one applicant was qualified, Patrick Voris. Mr. Voris appeared before Commissioners to present his qualifications. Commissioner Duarte moved to appoint Mr. Voris as agent at 1012, Ashland. Passed 5/0.
Agent Appointment, 1205, Portland 205-
This vacancy occurs as a result of Bob Van Horn’s retirement. An interview committee interviewed seven applicants. The seven applicants; John Feurerstein, Dorsey Greene, Barry Karimi, Greta Karimi, Tim Lohman, Dan Miner and George Psihogios, presented their qualifications to the Commissioners.

Recessed to Executive Session to consider agent appointments: 3:49 pm
Reconvened: 4:35 pm

Commissioner Harper moved to appoint Greta Karimi as agent at Portland, 205. Passed 5/0.
Commissioner Roome and Chair SkinnerLopata thanked all of the candidates and shared that it was a very difficult decision given all of the well qualified applicants.

CONTESTED CASE HEARINGS
Foster Waterhole, U-N-Me, Inc., Theresa Brown Pres/Sec/Treas/Dir/Stockholder, dba, OLCC-11-V-014, -014A
A proposed order was issued on November 2, 2011. Case Presenter Kelly Routt presented staff comments and responded to licensee’s exceptions. Licensee and attorney did not appear as ownership has been transferred.

Illusions Sports Bar; Pham, LLC, Duy Pham, Managing Member, dba. OLCC-11-V-037, -037A
A proposed order was issued on February 27, 2012. Case Presenter Becky Voelkel presented. Licensee and attorney did not appear. Commissioner Duarte asked why attorney Mr. Mills had not elected to appear today on this case and the other case. Ms. Voelkel said that since in both cases the licensee had sold the business he did not feel it was necessary to appear and they would accept the letter of reprimand for the file.

Duffy’s Irish Pub, BCK Corporation, Brad Newberg, Pres/Dir/Stockholder, dba. OLCC-11-V-068, -068A
A proposed order was issued on February 29, 2012. Becky Voelkel presented on behalf of Case Presenter Anna Davis who was not available. Attorney Jennifer Costa and Licensee Brad Newberg appeared by telephone.

Bing’s Restaurant, Bing’s Restaurant Inc., dba. OLCC-11-V-054
A proposed order was issued on March 5, 2012. Kelly Rout presented on behalf of Case Presenter Anna Davis who was not available. Attorney Agnes Peterson and licensee Sue Joe appeared before commissioners to respond to staff comments.
RULES
Jennifer Huntsman, Rules Coordinator, presented.

Petition for rulemaking/ possible Initial Action
OAR 845-005-0329 Wine Retail Transfers
We have received a petition from the Oregon Beer & Wine Distributors Association (OBWDA). The petitioner requests to adopt a new rule which would allow a retail licensee with multiple locations to transfer up to ten cases of wine every twelve months from one of its licensed retail locations to another of its licensed retail locations.

Petitioner Paul Romain appeared in support of the petition and shared the background that he believes necessitates the need for the proposed rule changes. Commissioner Duarte asked if Mr. Romain has heard from the big grocers such as Fred Meyer on his proposal. Mr. Romain said that as far as he knows they are ok with the proposal. Commissioner Rice asked why this pertains only to wine and not beer and why 10 cases is the number of choice. Mr. Romain noted that the number was arrived at after discussions with Fred Meyer and Safeway. He noted that beer is not an issue of concern that has been raised, although they would not have an objection to beer being added in the final rule.

Commissioner Roome mentioned the current court of appeals case and if this was good timing while the court was still considering the issue. Mr. Romain said that the appeals case is mainly about whether or not Grocery Outlet is a Wholesaler. Commissioner Roome asked when we expect the opinion from the Court of Appeals. Mr. Romain is unsure when it will be resolved. Commissioner Duarte asked what was the final outcome on SB 1501. Mr. Romain responded that the bill was in committee when the legislature adjourned.

John DiLorenzo appeared in opposition to the petition. He noted that Grocery Outlet disagrees that there is a ban on central warehousing. He would like to see the Commission defer rulemaking until the court of appeals case is decided. He noted that if the commission decides to engage in rulemaking, then they will notify the court of appeals that the commission has switched its position that central warehousing is not allowed. He added that the best policy may be to defer until there is a decision from the Court of Appeals. He said that although accepting a petition to enter into rulemaking is not a decision, the fact that rulemaking is opened is an acknowledgement that you (the commission) have legal authority to make rules within the arena, which is a contradiction to the commission’s position in the court of appeals.

Commissioner Duarte asked Mr. Romain to comment on Mr. DiLorenzo’s statement about the opening of rulemaking. Mr. Romain said that authority is one of the considerations taken when rulemaking is opened.

Commissioner Duarte commented that he disagrees with Mr. DiLorenzo’s assessment. Discussed the schematics of the proposal.
Commissioner Rice suggested deferring accepting the petition. He restated his suggestion as a motion. Motion passed 5/0.

**INITIAL ACTION and FINAL ACTION (TEMPORARY RULEMAKING)**

**OAR 845-005-0413 Special Events Distillery License**

This rule describes the Special Events license that is available to current Distillery licensees and also describes the application process. The 2012 legislature has passed House Bill (HB) 4092, signed by the governor on March 5, 2012, which amends ORS 471.230 to provide the additional privileges of selling their distilled spirits by the drink and by the bottle at these special events. We need to amend this rule, including on a temporary basis, to comply with the new statutory language now in effect.

Commissioner Roome moved to initiate rulemaking to amend OAR 845-005-0413 and to hold a rulemaking hearing at staff’s discretion and also to temporarily amend OAR 845-005-0413 effective April 5, 2012 through October 1, 2012. Passed 5/0.

**FINAL ACTION**

**OAR 845-006-0335 Age Verification; Minors on Licensed Premises**

The proposed amendments would provide additional clarity as to where minor employees & service permittees, as well as minor entertainers, are allowed on licensed premises. Staff is also recommending some housekeeping amendments regarding what violations should be charged under this rule versus statute.

Commissioner Rice clarified that enter and remain is under different section. Huntsman this was brought in as a housekeeping item while the rule was open to clarify for service permittees.


**Division 6 Same Day Delivery Package**

We received a petition from Nathaniel Paschal (Restaurant Retrievers LLC). The proposed amendments would allow, with limits on amount and delivery hours, the delivery of malt beverages and wine with evening meal orders from restaurants with an Off-Premises license.

Commissioner Harper asked when this rulemaking began and if malt beverages were specifically added in the rulemaking process. Ms Huntsman noted that the petition was accepted in Nov 2011 and the petition was only considering malt beverages. Through the rulemaking process it was expanded to include wine to make it more all-encompassing.


AP Director Bracanovich came forward and informed Commissioners that a petition has to be accepted or denied within 90 days. Ms Huntsman added that she is happy to work with
the petitioner to resubmit his petition, if he would like to, once the Court of Appeals case is resolved. Commissioner Rice moved to deny the petition. Passed 5/0. Commissioner Duarte noted that it was without prejudice until after the Grocery Outlet litigation has been resolved by the Court of Appeals.

**Recessed to deliberate contested cases 6:07**  
**Reconvened 7:10 p.m.**

Commissioner Rice moved to rescind his earlier motion to defer action on the rulemaking petition. Passed 5/0. Commissioner Rice moved to deny the petition for rulemaking. Passed 5/0.

**Decisions on contested cases**

**Foster Waterhole**  
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. Passed 5/0.

**Illusions Sports Bar**  
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. Passed 5/0.

**Duffy’s Irish Pub**  
Commissioner Duarte moved to continue deliberations on this matter to June Commission Meeting. Passed 5/0.

**Bing’s Restaurant**  
Commissioner Roome moved to continue deliberations on this matter to the June Commission Meeting. Passed 5/0.

**Stone Cliff Inn**  
Commissioner Duarte moved to amend and reverse the proposed order pursuant to the list that will accompany the minutes and adopt the amended order as the final order. Passed 3/1. Harper no, Rice abstained as he was not present during the original deliberations.

Adjourned 7:15 pm

_____________________/s/_____________________
Cassandra SkinnerLopata, Chair
Alex M. Duarte, Commissioner

Michael E Harper, Sr., Commissioner

Bob Rice, Commissioner

Ron Roome, Commissioner

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